

Clean Water State Revolving Fund

Procedures Manual

State of Oregon

Department of Environmental Quality

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About This Manual

This document is the “CWSRF Procedures Manual” of the Oregon Clean Water State Revolving Fund Loan Program. It is an official document of the program, and is used primarily for internal purposes and to document program procedures for the U.S. Environmental Protection Agency. Other CWSRF documents provide this information in a more useful form to borrowers, engineers and the public.

While the title “Procedures Manual” implies a wider scope of procedures, only those topics listed under “Contents” are addressed in this manual.

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Engineering Planning Documents

Applicants for Clean Water State Revolving Fund (CWSRF) loans for design or construction of water pollution control facilities must submit engineering planning documentation to the DEQ project officer for DEQ review and approval. Submission of engineering plans and subsequent DEQ review and approval must be completed prior to signing a design and/or construction loan. This documentation may take the form of either ***a facility plan*** or ***a project design report*** depending on the complexity of the proposed project.

A “Facility Plan” as defined in 40 CFR § 35.917 (b) “consists of those necessary plans and studies which directly relate to the construction of treatment works necessary to comply with sections 301 and 302 of the [Clean Water] Act.” A “Facility Plan” as defined in Oregon Administrative Rule is a systematic evaluation of environmental factors, engineering alternatives and financial considerations affecting a proposed project area.

The engineering documentation required by the CWSRF program is essentially the same as the requirements for all wastewater treatment construction projects within the state regardless of funding source. The document, “Guidelines for the Preparation of Facilities Plans and Environmental Reviews for Community Wastewater Projects” has been prepared in conjunction with Oregon Economic and Community Development Department (OECDD), USDA’s Rural Utilities Service and the Rural Development, and Rural Community Assistance Corporation. This document outlines the basic requirements of a facility plan. A copy of this document can be found on the DEQ CWSRF website at <http://www.deq.state.or.us>

Before a design or construction of a wastewater project will receive CWSRF funding, the following additional items may need to be addressed within the facility planning report or as stand alone document.

- 1) An environmental analysis which discusses the projected direct and indirect impacts of the “no-action” alternative and other feasible alternatives. This analysis also identifies and outlines mitigation measures to resolve or lessen the identified impacts. The environmental analysis must specifically address:
 - Historic Resources
 - Wetlands
 - Floodplain Management
 - Farmland Protection
 - Coastal Zone Management
 - Wild and Scenic Rivers
 - Endangered Species Act
 - Essential Fish Habitat
 - Clean Air Act
 - Safe Drinking Water Act

- 2) A summary of public participation activities included in the facilities planning process.

3) **Phased Projects:** When projections of growth, flows or costs over the 20-year planning cycle are questioned; at the request of the borrower and with the approval of the Department, projects can be designed to be constructed in functional incremental phases during the 20-year project life. The following conditions apply to phased projects:

- All phases, in combination, over the 20-year planning cycle will be considered to be a single project for facilities planning purposes.
- The subject facilities plan must be reviewed and approved by the Department before the start of construction for each phase.
- If conditions change during the 20-year life of a phased project such that the phase being considered for construction exceeds the parameters of the project described in the current facilities plan, the facilities planning and environmental review process shall restart.
- Each phase must achieve the current water quality permit requirements in state rule at the time of Initiation of Operation.
- Each phase may be considered an independent project for CWSRF financing purposes.

User Charge System and Rates

If the CWSRF loan is to be secured with sewer system revenues, the borrower must submit a copy of its user charge system to the Department for review and approval prior to loan approval. The rate structure must be designed to produce adequate revenues to provide for operation and maintenance (including appropriate replacement reserves), and any debt service. If the current rate structure is not sufficient to pay the annual debt service on the Clean Water State Revolving Fund loan plus any additional surplus amount required by the loan agreement, a new rate structure must be enacted by the borrower that will meet the requirements of the loan. Any such new rate structure that must be enacted to satisfy the requirements of the loan agreement must be approved by the borrower's governing body and implemented by the time of the project's Initiation of Operations.

All borrowers are encouraged to review the user charge system and sewer rate projections annually to be sure that the new or rehabilitated system will be adequately operated and maintained over the life of the system.

Borrowers who are constructing systems that will serve two or more municipalities (Regional Facilities) must submit the executed inter-municipal agreements, contracts or other legally binding instruments necessary for the financing, building and operation of the proposed treatment works to the Department for review and approval before loan approval. If, in the opinion of the Department, the legally binding instrument is not adequate for the financing, building and operation of the proposed treatment works, the parties involved must change said instrument to the satisfaction of the Department before loan approval.

All borrowers must demonstrate continuing compliance with state and federal budget and audit requirements during the life of the loan and submit audited financial reports annually. Additional financial reporting requirements may be listed in the loan agreement, such as providing documentation that coverage and reserve requirements are being met each year.

Environmental Review

Federal regulations for the Clean Water State Revolving Fund (CWSRF) provide that “[t]he State must agree to conduct reviews of the potential environmental impacts of all section 212 construction projects receiving assistance from the SRF, including nonpoint source pollution control (section 319) and estuary protection (section 320) projects that are also section 212 projects.” (40 C.F.R. 35.3140(a).)

The Oregon Department of Environmental Quality (DEQ) will conduct environmental review of all Clean Water Act section 212 projects (i.e., municipal wastewater collection and treatment systems) financed through Oregon’s CWSRF program as described below.

There are three tracks to Oregon’s CWSRF State Environmental Review Process (SERP): the Categorical Exclusion track, the Environmental Assessment track and the Environmental Impact Statement track. DEQ will identify the appropriate track for, and extent of environmental analysis required by a given project based upon the significance of the potential environmental impacts associated with that project. Some of the factors that may be used to determine the significance of these effects include the existence of sensitive resources, the potential for irreversible impacts, the duration and frequency of effects, the potential for secondary and cumulative impacts and the uniqueness of potentially affected resources.

The Categorical Exclusion (CE) track. DEQ will:

- Evaluate the application and other initial project information;
- Determine whether the project qualifies for a CE from further environmental analysis;
- Document the decision and the bases for that decision; and
- Provide Public Notice that the project qualifies for a CE.

The Environmental Assessment (EA) track. If DEQ determines the project does not qualify for a CE, DEQ will:

- Require the applicant to submit further analysis, including an EA.
- Based on the DEQ’s review of the EA, it will determine whether an EIS is needed to resolve any environmental questions.
- If the DEQ concludes that an EIS is not necessary, DEQ will publish a proposed Finding of No Significant Impact (FONSI) for public review.
- After the completion of the public review period, DEQ will issue the final FONSI as described in section 4, below.

The Environmental Impact Statement (EIS) track. If an EIS is required, then the applicant will be required to:

- Publish Notice of Intent prior to initiating an EIS;
- Prepare and submit a Draft EIS;
- Provide for Public Participation;
- Prepare a Final EIS; and
- Submit to DEQ with a request for proposed action.

Upon receipt of a satisfactory final EIS, DEQ will issue a Record of Decision (ROD).

Each of the three tracks is discussed in more detail below.

1) *Categorical Exclusion*

Some categories of projects are not expected to have significant impacts on the quality of the natural and human environment. A detailed EA is not required for these projects. Federal cross-cutting authorities may, however, still apply. See 40 C.F.R. 35.3145 and section 7, below.

A project is eligible for a CE from further environmental review requirements *if* the project is limited solely to the minor rehabilitation of existing facilities, the replacement of equipment, or the construction of related facilities that do not significantly affect the degree of treatment or the capacity of the facility. The final determination as to whether a project qualifies for a CE rests with the DEQ. DEQ will verify that none of the “extraordinary circumstances” identified at 40 C.F.R. §6.204(b) apply to the project.

Examples of projects that are generally eligible for a CE include:

- Correction of infiltration and inflow
- Replacement or rehabilitation of existing equipment and structures
- Construction of small structures on existing sites
- Modification or expansion of solids processing, storage, or disposal facilities that do not expand liquid treatment capacity
- Process substitution or enhancement that does not expand liquid treatment capacity, such as adding chemical dechlorination, replacing chlorination with ultraviolet disinfection, or adding effluent irrigation facilities
- Installation of groundwater monitoring wells
- Construction of new collection lines to serve existing development with failing on-site systems
- Minor expansion or upgrade of existing water pollution control facilities of a system serving fewer than 10,000 people.

A project will generally not be eligible for a CE if it includes any of the following activities:

- Construction of new collection lines to serve undeveloped areas
- Construction of a new discharge point or relocation of an existing discharge point
- A substantial increase in the volume or loading of pollutants
- Expansion of treatment capacity sufficient to serve a population that exceeds the existing population by 30 percent or more
- Known or expected impacts to cultural resources, historical and archaeological resources, threatened or endangered species, or environmentally sensitive areas
- Construction of facilities that are known or expected to be highly controversial.

DEQ's determination that a project qualifies for a CE reflects that DEQ has determined that the project does not have the potential to significantly affect the quality of the environment, individually, cumulatively or over time, or in conjunction with other actions; and will not change the upstream or downstream function of the wastewater treatment facilities or the receiving waters.

A statement of CE and documentation regarding the information, processes and premises that influenced DEQ's determination that a project qualifies for a CE will be made a part of the CWSRF project file. The documentation will include DEQ's determination that none of the "extraordinary circumstances" identified at 40 C.F.R. §6.204(b) apply to the project. The project file will also include documentation demonstrating compliance with any applicable Federal cross-cutting authorities. Such documentation will be made part of the CWSRF project file if DEQ reaffirms or modifies a decision contained in a previously issued CE following mandatory 5-year reevaluation of a proposed project.

DEQ will provide for public participation as described in section 4, below.

If the project does not qualify for a CE, an EA must be prepared as described in section 2, below.

2) Environmental Assessment

Projects that do not qualify for a CE require a detailed environmental review, including an analysis of a no action alternative, in addition to other reasonable alternatives considered. This review is documented in an EA.

Section 212 projects are typically developed through a wastewater facilities plan. Therefore, the facilities plan may contain an EA chapter. Ideally, environmental impacts will be taken into consideration when evaluating potential alternatives and in selecting the final alternative. In some cases the facilities plan does not include an EA because the plan was developed before the applicant knew that CWSRF funding would be used for the project. In such a situation, it will be necessary for the applicant to prepare a freestanding EA, or amend the facilities plan to include an EA.

In either case, once a decision to develop an EA has been made, it should be prepared in accordance with section 6 and Appendix C of the document [Guidelines for the Preparation of Facilities Plans and Environmental Reviews for Community Wastewater Projects and Rural Utilities Service \(RUS\) Bulletin 1794A-602](#), both of which can be found on DEQ's website.

For the purpose of this SERP, applicants referring to the RUS Bulletin 1794A-602 should contact DEQ instead of RUS as the document indicates.

DEQ responsibilities include technical oversight and review of the EA, as well as review for compliance with any applicable Federal cross-cutting authorities. Documentation of the information, processes and premises that influenced DEQ's decision to accept the EA and issue a FONSI will be made a part of the CWSRF project file. Such documentation will also be made part of the CWSRF project file if DEQ reaffirms or modifies a decision contained in

a previously issued EA/FONSI following mandatory 5-year reevaluation of a proposed project.

DEQ's acceptance of an EA and issuance of a FONSI may be conditioned on implementation of mitigation measures that will be required of the applicant and upon which the loan agreement will be conditioned to ensure that the project will be environmentally sound and performed consistent with DEQ's findings. These mitigation measures and the steps being taken to ensure their effective implementation would be identified in the FONSI.

DEQ will provide for public participation as described in section 4, below.

3) Environmental Impact Statement

DEQ will base any decision to require the development of an EIS on the EA or other information which demonstrates that significant impacts will occur that will not be reduced or eliminated by changes to or mitigation of the proposed action. As suggested above, the DEQ might also determine that an EIS is needed based upon its consideration of information prepared by the applicant or based upon issues raised by the public or agencies with expertise during the scoping process for an EA.

The applicant will be required to publish a notice of intent to prepare an EIS in newspapers of state-wide and local publication before initiating an EIS. The applicant will also be required to contact affected local, state, and federal agencies, tribes and other interested parties for comments regarding the appropriate scope of the required EIS. The DEQ will participate in the scoping process and will work with the applicant to address the Federal cross-cutting authorities during the development of the EIS.

The applicant will prepare a Draft EIS that conforms to the requirements articulated at 40 C.F.R. §1502 and §6.207(d) (2)-(7). The completed Draft EIS will be submitted to the DEQ for its review and approval. The Draft EIS shall address the alternatives and issues identified during the scoping process. Once it is approved by DEQ, the applicant will submit the approved draft EIS to agencies with jurisdiction and expertise for their review and comment.

The public is then provided notice and an opportunity to provide comments on the draft EIS as further described in section 4 below. Based on the comments on the Draft EIS, the applicant will prepare a Final EIS under the DEQ's technical direction and submit it to DEQ with a request for proposed action. The final EIS must include or summarize all substantive comments received on the draft EIS, respond to any substantive comments on the draft EIS, and explain any changes to the draft EIS and the reason for the changes.

Upon receipt of satisfactory final EIS, the DEQ will publish it and make copies available to all who commented on the draft EIS as well as to the general public. After a 30-day "wait period" the DEQ will issue a ROD. During the "wait period" no action shall be taken on the project that will have adverse environmental impacts or limit the choice of alternatives. The ROD is DEQ's final action prior to implementation. The content of the ROD will conform generally to the requirements at 40 C.F.R. §6.208. The ROD will document the bases for DEQ's decisions on the project, describe how the project avoids minimizes and mitigates adverse environmental impacts and discuss the actions that the DEQ is taking and will take

to ensure proper implementation of all mitigation measures required of the applicant and upon which the loan agreement will be conditioned.

DEQ will document the information, processes and premises that influenced its decision to proceed or not proceed with a project contained in a ROD after preparation of an EIS or a decision to reaffirm or modify a decision contained in a previous EIS or ROD following a mandatory 5-year reevaluation of a project. This documentation, including all notices and public comments, will be maintained in project files.

4) Public Participation

All CE determinations require a public notice. All EAs, including those adopted from other agency's, require notice of availability and 30-day public comment period before the EA process is considered complete and the EA can be accepted. DEQ will not execute a design and/or construction loan agreement or otherwise take action on the project until the EA process is complete.

For each CE and EA, DEQ will publish the notice in a statewide publication and local newspaper in one of two ways:

- As part of the public notice for updates of the Intended Use Plan (IUP). This is ordinarily done three times per year in February, June and October. The IUP is open for public comment for 30 days. The IUP is a document that describes how Oregon plans to use CWSRF monies during the current funding year.
- As a freestanding notice of the CE or EA for the proposed project when waiting for the next regular IUP notice would be detrimental to the timely initiation of the project.

The notice of availability will include the environmental determinations for the project or projects slated to be funded, provide contact information (including information on how to obtain the environmental documents upon which DEQ's decisions will be based) and offer a 30-day comment period. Documentation of the public notice and any comments received will be kept in the DEQ project files.

A public hearing or meeting will generally not be held for projects having little or no environmental effect, including such projects determined to qualify for a CE or an EA/FONSI. Any public hearings will follow the current DEQ Communications Office guidelines for public involvement. After completion of the public review period, DEQ will issue the final FONSI.

If an EIS is required, the applicant must publish a notice of intent to prepare an EIS in a state-wide publication and a local newspaper and allow a 30-day public comment period before initiating the EIS. Upon DEQ approval of the draft EIS, the applicant must publish notice of availability of the draft EIS in a state-wide publication and a local newspaper, allow a 45-day public comment period, and conduct a public hearing on the draft EIS. Notice of the EIS will include contact information, how to obtain the EIS and any environmental documents incorporated into the EIS.

Upon issuance of the Final EIS, DEQ will allow a 30-day public comment period on the Final EIS. After the completion of the public comment period, a ROD will be issued. Notice of the ROD will include the contact information and how to obtain the environmental documents upon which DEQ's decision was based.

Judicial review of a CE determination, acceptance of an EA and issuance of a FONSI, or issuance of a ROD is as provided in ORS 183.484.

5) Land Use Compatibility Statement

An affirmative Land Use Compatibility Statement (or "LUCS") must be submitted with applications for all design and construction projects proposed for CWSRF funding. An affirmative LUCS ensures that the project is in compliance with state land use laws, the local comprehensive land use plan, as acknowledged by the Department of Land Conservation and Development, and local land use regulations. The required content and format for a LUCS can be found on DEQ's website.

The LUCS process also responds to other environmental objectives of the State by considering projects within the broader scope of long term, area-wide land use goals and objectives that have been reviewed and approved at both the local and state levels.

6) Environmental Reviews from Other Agencies

Municipal wastewater treatment system improvement projects receiving CWSRF funding assistance may also receive assistance directly from a Federal agency (EPA, United States Department of Agriculture or USDA) or indirectly from a Federal agency (Housing and Urban Development or HUD) through the Oregon Economic and Community Development Department (OECDD). The process for award of funding by these agencies includes completion of a National Environmental Policy Act (NEPA) environmental review pursuant to the NEPA procedures of each agency.

In accordance with the April 3, 1997 EPA-HUD-USDA agreement, and in view of the formally coordinated procedures used by DEQ, OECDD, and USDA/RUS in Oregon, it will be DEQ's practice to accept the environmental review documents prepared for, and accepted by, and the environmental determinations made by, Federal and other State agencies pursuant to their respective NEPA procedures. Two conditions must be met before DEQ accepts such reviews: (1) the scope of project must remain largely unchanged from that accepted by the other agency; and (2) the other agency's determination must have been made within the previous five years. The DEQ project file will contain a copy of the environmental review documents and a copy of the other agency's determination. DEQ will provide public notice of its intent to accept another agency's review.

7) Alternative Environmental Review Process

Federal environmental and economic cross cutting authority requirements may apply to projects on any track. Projects funded by an amount over and above the amount of Oregon's

capitalization grant are not, however, required to apply these cross-cutting authorities. The determination as to which project(s) are deemed to be funded by an amount over and above the amount of Oregon's capitalization grant will be made by the DEQ SRF Program Section Manager. Under no circumstances will this determination be used to intentionally avoid environmental scrutiny related to the federal cross cutting authorities. Documentation that a project is funded above the capitalization grant amount and thereby relieved from complying with Federal environmental and economic cross cutting authority requirements, must be included with the project file together with the basis for that determination and be listed in the IUP. The SRF Annual Report will note which projects applied Federal cross cutting authority requirements and which did not.

Value Engineering

A value engineering study satisfactory to the Department is encouraged for design and construction projects prior to commencement of construction if the total project cost will exceed \$10 million. “Value Engineering” is a specialized cost control technique that uses a systematic approach to identify cost savings that may be made without sacrificing the reliability or efficiency of the project.

Project Completion Activities

The requirements for a CWSRF-funded wastewater construction project, including the Operation and Maintenance Manual, Erosion Control Plan, MBE/WBE Utilization report and Change Orders are described in detail in the CWSRF Manual for Construction Projects. The items listed below are some of the requirements for the final completion of the project. More specific detail on these requirements is also contained in the Manual for Construction Projects.

Performance Evaluation Standards: The Performance Evaluation Standards is a detailed plan for evaluating the completed project to demonstrate whether or not it performs as intended. All CWSRF projects must be designed and constructed to achieve permit requirements, meet all DEQ regulations, and achieve the pollution abatement identified in the loan application. Design and construction shall assume a project life of at least twenty years, given reasonable assumptions of community and environmental change, and regular maintenance.

Initiation of Operation: The borrower shall notify the Department within 30 days of the actual date of Initiation of Operation. If the project is completed, or is completed except for minor items, and the facility is operable but the borrower has not sent its notice of Initiation of Operation, the Department may assign an Initiation of Operation date.

Construction Certification: After Initiation of Operation, the borrower's engineer submits the CWSRF Loan Construction Certification Form to certify that construction, materials and testing are in compliance with the approved plans and specifications and that all of the testing was adequately documented.

Performance Evaluation Report: The Performance Evaluation Report is submitted by the borrower's engineer approximately eleven months after the operation begins. It evaluates the project's performance based on the results of the testing and monitoring performed according to the approved performance evaluation standards.

Performance Certification: One year after Initiation of Operation, the borrower shall certify whether or not the facility meets the performance and operational requirements applicable to the project, and the specifications which the project was planned, designed and built to achieve (which were previously approved in writing by the DEQ).

Corrective Action: If the project does not meet permit and other DEQ requirements but the Borrower has made an effort to do so and has operated and maintained the project appropriately, a reasonable loan increase is generally available to make needed corrections or modifications within the original scope of the loan project, depending upon funds available at the time. The borrower will need to meet all of the financial requirements of the CWSRF program. The increase may be made in the form of a new loan at the current loan terms.