



State of Oregon Department of Environmental Quality

Clean Water State Revolving Fund 2020 Advisory Committee Background Documents

This package contains the following documents:

- Advisory Committee Charter
- Senate Bill 884 (2019)

Note for Readers:

This package contains multiple documents. If you want to read more than one document at a time, you can open multiple copies of this PDF by downloading the PDF and then opening it in Adobe. You can then either:

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Clean Water State Revolving Fund 2020 Rulemaking

Advisory Committee Charter

[Dec. 24 2019]



**Clean Water State
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DEQ is a leader in restoring, maintaining and enhancing the quality of Oregon's air, land and water.



DEQ can provide documents in an alternate format or in a language other than English upon request. Call DEQ at 800-452-4011 or email deqinfo@deq.state.or.us.

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Objectives and Scope

Background

The Oregon Department of Environmental Quality is engaging in a rulemaking process to update the Clean Water State Revolving Fund program's administrative rules in response to Senate Bill 884. The bill addresses nonpoint source pollution caused by privately-owned failing septic systems, a leading cause of water quality contamination across the state.

The bill expanded Oregon's CWSRF definition of eligible borrowers. The definition now includes non-profit Community Development Financial Institutions, certified by the US Department of Treasury, for the specific purpose of lending to individual homeowners for:

- Septic repair
- Septic replacement
- Connection to a public sewer system

Lending to a CDFI that lends to homeowners (pass-through lending) will allow individuals access to the fund that is currently only available for certain public agencies. This is a new type of lending for DEQ and requires careful consideration to mitigate the potential risks.

The CWSRF 2020 Rulemaking process will ensure that the proper rules and procedures are in place to lend to non-profit CDFIs while ensuring the integrity and perpetuity of the loan fund.

Purpose and Goals

DEQ's goal is to use the subject matter expertise of the advisory committee to develop the parameters for lending to CDFIs that will inform new and amended rules in Oregon Administrative Rule chapter 340, division 054. The advisory committee will meet to discuss fiscal and programmatic considerations that DEQ should address within the rulemaking.

The purpose advisory committee's purpose is to:

- Make loan program rule amendment recommendations to DEQ
- Develop these recommendations through a collaborative process that considers the program goals and priorities
- Make recommendations that reflect adequate integration of regulatory, financial, technical, environmental and policy information
- Ensure the loan program's substantive goals match the broader state water quality mandates

In making recommendations for program rule amendments, the advisory committee will strive to ensure DEQ's loan program achieves a fair, objective, and transparent funding process for water quality improvement projects.

Fiscal and Economic Impact

ORS 183.333 requires that DEQ ask the committee to consider the fiscal and economic impact of the proposed rules including:

- Whether the rules will have a fiscal impact, and if so, what the extent of that impact will be.
- Whether the rules will have a significant adverse impact on small businesses, and if so, how DEQ can reduce the rules' negative fiscal impact on small businesses, as ORS 183.333 and 183.540 require.

Roles

Facilitator

The facilitator:

- Encourages open, candid and robust dialogue toward a productive meeting
- Starts and ends the meetings and agenda items on time
- Encourages innovation by listening to all ideas
- Recognizes when the discussion is outside the scope of the meeting and steers the discussion back to the primary focus

Committee Members

Advisory committee members must attend each meeting to ensure continuity throughout the process. An alternate may be assigned if needed. However, it is each committee member's responsibility to fully brief their alternate on all relevant issues and prior committee discussions in order to meet the meeting objectives and keep the project on schedule. The primary and alternate members of the committee cannot participate in the same meeting. If a member's absence is unavoidable, please notify Lee Ann Lawrence, lawrence.leeann@deq.state.or.us or 503-229-5622.

The committee member:

- Prepares for and sets aside time for the meetings
- Provides DEQ staff with copies of relevant research and documentation cited during the meeting
- Stays focused on the specific agenda topics for each meeting
- Contributes constructively and in good faith
- Consults regularly with constituencies to inform them on the process and gather their input
- Treats other participants and staff with respect
- Allows one person to speak at a time
- Is courteous by not engaging in sidebar discussions
- Avoids representing to the public or media the views of any other committee member or the committee as a whole

Non-Committee Member Attendees

Attendees who are not members of the committee may observe but not actively participate. DEQ may allow time during the meeting for their comments.

DEQ Staff

DEQ is committed to making the most effective use of committee member’s time by:

- Providing relevant meeting materials at least two weeks prior to scheduled meeting
- Giving committee members reasonable access to staff
- Encouraging all members to take part in discussions
- Providing a clear description of members’ roles, the committee timeline, the level of agreement expected and feedback on how members’ input is used

DEQ Support and Website

DEQ will post agenda and meeting materials on the advisory committee website at least two weeks in advance. DEQ administrative staff will provide meeting summaries that highlight committee discussions, different perspectives and input of committee members. DEQ will not prepare a formal committee report. Final meeting minutes will be posted to the advisory committee website and will be part of the public record.

The advisory committee charter, a full roster of the committee, meeting agendas and minutes and background materials will all be located on the advisory committee webpage.

Committee Meetings

1. All committee meetings will be:
 - Open to the public. The committee has discretion to allow public participation and comment under limits the committee sets for each meeting.
 - Advertised on DEQ’s webpage calendar two weeks before the meeting at: [DEQ Event Calendar](#)
 - Noticed by email to the Clean Water State Revolving Fund and DEQ Rulemaking GovDelivery lists
 - Held at 700 NE Multnomah, Portland, OR 97232
 - Accessible via a teleconference call-in number
2. Meeting materials and agenda will be posted to the rulemaking webpage at least two weeks before the scheduled meetings.

Meeting	Week of	Objective/Topics
Meeting #1	1/13/2019	<ul style="list-style-type: none">• Introductions

		<ul style="list-style-type: none"> • Review AC Charter, roles, responsibilities • CWSRF Program Overview <ul style="list-style-type: none"> ○ Basic requirements • Senate Bill 884 Overview • Scope of 2020 Rulemaking: CDFI Lending • Request for input
Meeting #2	2/24/2020	<ul style="list-style-type: none"> • Review summary from last meeting • Discuss CDFI lending (facilitated discussion) • Present housekeeping items
Meeting #3	4/6/2020	<ul style="list-style-type: none"> • Present final program proposal framework: CDFI Lending • Discuss Fiscal Impact Statement • Solicit final thoughts

Decision Making

The committee’s discussions will be used by DEQ in forming a draft rule. DEQ will then hold a public notice and comment period during which the public can submit comments on DEQ’s proposal.

When DEQ shares information with the group, DEQ will allow a reasonable timeframe for comments.

Membership

In convening this committee, DEQ selected members that reflect the range of stakeholders the proposed rules affect, both directly and indirectly. Representatives should be able to consider the policy and fiscal and economic impact of the proposed rules on the business or organization they represent.

Advisory Committee Membership

Name	Title	Affiliation
April Snell	Executive Director	Oregon Water Resources Congress
Charlotte Bentley	Community Program Director	USDA, Rural Development
Chris Thomas	Staff Attorney and Policy Specialist	The Freshwater Trust
Doug Waugh	Finance and Administrative Services Manager	Clackamas Water Environment Services, representing Oregon Association of Clean Water Agencies
Eann Rains	Conservation Investments Coordinator	Clackamas Soil and Water Conservation District
Janna Graham	Public Finance Officer	Business Oregon
Karen Lewotsky	Rural Partnerships Director	Oregon Environmental Council
Desiree Sideroff	Consumer Lending Director	Craft3
Sarah Absher	Planning Director, City of Tillamook	Association of Oregon Counties
RosAnna Noval	Rural Development Specialist	Rural Community Assistance Corp.
Chris Bailey	Public Works Official	League of Oregon Cities
Tom Elliott	Building Energy Analyst	Oregon Department of Energy

Travel Expenses

DEQ is able to reimburse any in state, out-of-town committee members for travel expenses, if DEQ approves them in advance. Members must use the DEQ travel expense reimbursement form and submit expenses monthly. Reimbursement will be made to the extent the budget allows.

Public Records and Confidentiality

Committee communications and records, such as formal documents, discussion drafts, meeting summaries and exhibits are public records and are available for public inspection and copying. DEQ does not assume responsibility for protecting proprietary or confidential business information shared during committee or subcommittee meetings. However, the private documents of individual committee members generally are not considered public records if DEQ does not have copies.

Information Exchange

Committee members will provide information as far in advance as possible of the meeting at which such information is used. The members will also share all relevant information with each other to the maximum extent possible. If a member believes the relevant information is proprietary in nature, the member will provide a general description of the information and the reason for not providing it.

Public Involvement

All meetings will be open to the public. The public is entitled to attend, but not to participate in, advisory committee meetings. The committee has discretion to permit public participation under limits the committee sets.

Once the committee process is complete, DEQ will develop draft rules and conduct a public rulemaking process. That process will include a specified period during which the public can submit comments on the proposed rules. DEQ will also hold a public hearing during which any member of the public can submit written or verbal comments. Individual committee members may provide comments to DEQ on the full draft rule at this time. DEQ may modify the final proposed rules based on public comment. DEQ intends to take a final proposed rule to the EQC for consideration in as soon as possible after the public hearing and public comment period close.



Clean Water State Revolving Fund 2020 Rulemaking Rulemaking Advisory Committee Members

Name	Title	Affiliation	Representing
April Snell	Executive Director	Water Districts	Oregon Water Resources Congress
Charlotte Bentley	Community Program Director	Federal Government	USDA, Rural Development
Chris Thomas	Staff Attorney and Policy Specialist	Environmental Advocacy	The Freshwater Trust
Doug Waugh	Finance and Administrative Services Manager	Wastewater Facilities	Clackamas Water Environment Services, representing Oregon Association of Clean Water Agencies
Eann Rains	Conservation Investments Coordinator	Conservation Districts	Clackamas Soil and Water Conservation District
Janna Graham	Public Finance Officer	State Government	Business Oregon
Karen Lewotsky	Rural Partnerships Director	Environmental Advocacy	Oregon Environmental Council
Desiree Sideroff	Consumer Lending Director	Community Development Financial Institution	Craft3
Sarah Absher	Director of Community Development, City of Tillamook	Local Government	Association of Oregon Counties
RosAnna Noval	Rural Development Specialist	Financial Sector	Rural Community Assistance Corp.
Chris Bailey	Operations Manager	Local Government	League of Oregon Cities
Tom Elliott	Building Energy Analyst	State Government	Oregon Department of Energy

Enrolled
Senate Bill 884

Sponsored by COMMITTEE ON ENVIRONMENT AND NATURAL RESOURCES

CHAPTER

AN ACT

Relating to the Water Pollution Control Revolving Fund; creating new provisions; amending ORS 468.423, 468.425, 468.429, 468.433, 468.437 and 468.440; and declaring an emergency.

Be It Enacted by the People of the State of Oregon:

SECTION 1. ORS 468.423 is amended to read:
468.423. As used in ORS 468.423 to 468.440:

(1) "Available sewer" has the meaning given that term in ORS 454.779.

~~[(1)]~~ **(2) "Fund" means the Water Pollution Control Revolving Fund established under ORS 468.427.**

(3) "On-site septic system" has the meaning given that term in ORS 454.779.

~~[(2)]~~ **(4) "Public agency" means:**

(a) A state agency, incorporated city, county, sanitary authority, federally recognized Indian tribal government, school district, county service district, sanitary district, metropolitan service district or other special district authorized or required to construct water pollution control facilities; or

(b) An intergovernmental entity created by units of local government under ORS 190.003 to 190.130.

(5) "Qualified institution" means a nonprofit organization registered to operate in the State of Oregon that is certified as a community development financial institution by the Community Development Financial Institution Fund at the United States Department of the Treasury.

~~[(3)]~~ **(6) "Treatment works" means:**

(a) The devices and systems used in the storage, treatment, recycling and reclamation of municipal sewage or industrial wastes of a liquid nature, necessary to recycle or reuse water at the most economical cost over the estimated life of the works. "Treatment works" includes:

(A) Intercepting sewers, outfall sewers, sewage collection systems, pumping power and other equipment, and any appurtenance, extension, improvement, remodeling, addition or alteration to the equipment;

(B) Elements essential to provide a reliable recycled water supply including standby treatment units and clear well facilities; and

(C) Any other acquisitions that will be an integral part of the treatment process or used for ultimate disposal of residues resulting from such treatment, including but not limited to land used to store treated waste water in land treatment systems prior to land application.

(b) Any other method or system for preventing, abating, reducing, storing, treating, separating or disposing of municipal waste, storm water runoff, industrial waste or waste in combined storm water and sanitary sewer systems.

(c) Any other facility that the Environmental Quality Commission determines a public agency must construct or replace in order to abate or prevent surface or ground water pollution.

SECTION 2. ORS 468.425 is amended to read:

468.425. It is declared to be the policy of this state:

(1) To aid and encourage public agencies required to provide treatment works for the control of water pollution in the transition from reliance on federal grants to local self-sufficiency by the use of fees paid by users of the treatment works;

(2) To aid and encourage qualified institutions to assist in the protection or maintenance of water quality in the waters of this state by financing projects to repair or replace failing on-site septic systems or to replace failing on-site septic systems with connections to an available sewer;

~~[(2)]~~ (3) To accept and use any federal grant funds available to capitalize a perpetual revolving loan fund; and

~~[(3)]~~ (4) To assist public agencies in meeting treatment works' construction obligations in order to prevent or eliminate pollution of surface and ground water by making loans from a revolving loan fund at interest rates that are less than or equal to market interest rates.

SECTION 3. ORS 468.429 is amended to read:

468.429. (1) The Department of Environmental Quality shall use the moneys in the Water Pollution Control Revolving Fund to provide financial assistance:

(a) To public agencies for the construction or replacement of treatment works.

(b) To qualified institutions to finance projects to repair or replace failing on-site septic systems or to replace failing on-site septic systems with connections to an available sewer.

~~[(b)]~~ (c) For the implementation of a management program established under section 319 of the federal Water Quality Act of 1986 relating to the management of nonpoint sources of pollution.

~~[(c)]~~ (d) For development and implementation of a conservation and management plan under section 320 of the federal Water Quality Act of 1986 relating to the national estuary program.

(2) The department may also use the moneys in the Water Pollution Control Revolving Fund for the following purposes:

(a) To buy or refinance the debt obligations of public agencies for eligible projects as listed under subsection (1) of this section, if the debt obligation was incurred after March 7, 1985.

(b) To guarantee, or purchase insurance for, public agency obligations for treatment works' construction or replacement if the guarantee or insurance would improve credit market access or reduce interest rates, or to provide loans to a public agency for this purpose.

(c) To pay the expenses of the department in administering the Water Pollution Control Revolving Fund, to make transfers to the Water Pollution Control Administration Fund, or to pay other departmental costs including expenses of the program described in ORS 468.433 (2).

(3) If amounts are advanced to the Water Pollution Control Revolving Fund from the Pollution Control Fund under ORS 468.220 (1), the department shall transfer from the Water Pollution Control Revolving Fund to the Pollution Control Sinking Fund amounts sufficient to pay the bonds that funded the advance.

SECTION 4. ORS 468.433 is amended to read:

468.433. (1) In administering the Water Pollution Control Revolving Fund, the Department of Environmental Quality shall:

(a) Allocate funds for loans in accordance with procedures adopted by rule by the Environmental Quality Commission.

(b) Use accounting, audit and fiscal procedures that conform to generally accepted government accounting standards.

(c) Prepare any reports required by the federal government as a condition to awarding federal capitalization grants.

(d) Seek to maximize the ability of the Water Pollution Control Revolving Fund to operate on a self-sustaining basis and maintain a perpetual source of treatment works financing.

(2) If amounts are advanced to the Water Pollution Control Revolving Fund from the Pollution Control Fund under ORS 468.220 (1), the department shall develop and administer a program designed to loan amounts in the Water Pollution Control Revolving Fund to public agencies **and qualified institutions**, so the loan repayments are sufficient to pay the bonds that funded the advance, and to further the policies established in ORS 468.425. In connection with the program, the department may:

(a) Establish one or more accounts in the Water Pollution Control Revolving Fund, make covenants for the benefit of bondowners regarding the deposit of amounts into those accounts and the use of amounts in those accounts and pledge or reserve all or a portion of the amounts in the Water Pollution Control Revolving Fund to pay bonds issued to fund advances to the Water Pollution Control Revolving Fund under ORS 468.220 (1).

(b) Establish requirements for loans made from the Water Pollution Control Revolving Fund to assure that:

(A) Adequate funds are available in the Water Pollution Control Revolving Fund to permit payment of bonds that funded advances to the Water Pollution Control Revolving Fund; and

(B) Adequate funds will be available in the Water Pollution Control Administration Fund to pay for costs of the program and costs of operating the Water Pollution Control Revolving Fund.

(c) Exercise any remedies available to the department in connection with defaults on loans of advanced funds to public agencies **or qualified institutions**.

(d) Take any other action reasonably necessary to develop the program and provide for the payment of bonds issued to fund advances to the Water Pollution Control Revolving Fund.

(3) The department may make loans to finance treatment works that are funded in part from advances or grants to the Water Pollution Control Revolving Fund, and in part from funds available under ORS 468.220 (1). These loans may have a blended interest rate that reflects their different sources of funding, and repayments of these loans may be allocated proportionally between the Water Pollution Control Revolving Fund and the Pollution Control Sinking Fund.

SECTION 5. ORS 468.437 is amended to read:

468.437. (1) Any public agency **or qualified institution** desiring a loan from the Water Pollution Control Revolving Fund shall submit an application to the Department of Environmental Quality on the form provided by the department. The department may require an opinion from the department's bond counsel or other counsel that the applicant has the legal authority to borrow from the Water Pollution Control Revolving Fund. If a public agency relies on borrowing authority granted by charter or law other than ORS 468.439, then with the consent of the department and notwithstanding any limitation or requirement of the charter or law, the public agency may borrow directly from the Water Pollution Control Revolving Fund by issuing revenue bonds to the department. The requirements of ORS 287A.150 do not apply to revenue bonds that are sold to the department pursuant to this section.

(2) Any public agency **or qualified institution** receiving a loan from the Water Pollution Control Revolving Fund shall establish and maintain a dedicated source of revenue or other acceptable source of revenue for the repayment of the loan.

(3) If a public agency **or qualified institution** defaults on payments due to the Water Pollution Control Revolving Fund, the state may withhold any amounts otherwise due to the public agency **or qualified institution** and direct that such funds be applied to the payments and deposited into the fund. If the department finds that the loan to the public agency **or qualified institution** is otherwise adequately secured, the department may waive this right in the loan agreement or other loan documentation.

SECTION 6. ORS 468.440 is amended to read:

468.440. (1) The Environmental Quality Commission shall establish by rule policies for establishing loan terms and interest rates for loans made from the Water Pollution Control Revolving Fund that ensure that the objectives of ORS 468.423 to 468.440 are met and that adequate funds are

maintained in the Water Pollution Control Revolving Fund to meet future needs. In establishing the policy, the commission shall take into consideration at least the following factors:

- (a) The capability of the project to enhance or protect water quality.
- (b) The ability of a public agency or **qualified institution** to repay a loan.
- (c) Current market rates of interest.
- (d) The size of the community or district to be served by the treatment works.
- (e) The type of project financed.
- (f) The ability of the applicant to borrow elsewhere.
- (g) Whether advances have been made to the Water Pollution Control Revolving Fund from the Pollution Control Fund that must be repaid to the Pollution Control Sinking Fund.

(2) The commission may establish an interest rate ranging from zero to the market rate. The commission may establish the loan term, provided that the loans must be fully amortized not later than 30 years after project completion.

(3) The commission shall adopt by rule any procedures or standards necessary to carry out the provisions of ORS 468.423 to 468.440.

SECTION 7. (1) The amendments to ORS 468.423, 468.425, 468.429, 468.433, 468.437 and 468.440 by sections 1 to 6 of this 2019 Act become operative January 1, 2020.

(2) The Environmental Quality Commission and the Department of Environmental Quality may adopt rules or take any action before the operative date specified in subsection (1) of this section that is necessary to enable the commission or the department, on and after the operative date specified in subsection (1) of this section, to carry out the amendments to ORS 468.423, 468.425, 468.429, 468.433, 468.437 and 468.440 by sections 1 to 6 of this 2019 Act.

SECTION 8. This 2019 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2019 Act takes effect on its passage.

Passed by Senate June 13, 2019

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Lori L. Brocker, Secretary of Senate

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Peter Courtney, President of Senate

Passed by House June 19, 2019

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Tina Kotek, Speaker of House

Received by Governor:

.....M.,....., 2019

Approved:

.....M.,....., 2019

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Kate Brown, Governor

Filed in Office of Secretary of State:

.....M.,....., 2019

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Bev Clarno, Secretary of State