

Meeting #1 Summary

Clean Water State Revolving Fund Advisory Committee Rulemaking 2020

Tuesday, Jan. 14, 2020
DEQ Headquarters
700 NE Multnomah, Room 610
Portland, Oregon 97232

List of advisory committee member attendees

Clean Water State Revolving Fund 2020 Rulemaking Advisory Committee Members in Attendance (or on the phone) for Meeting #1 on Jan. 14, 2020

- Chris Baily, Operations Manager, City of Albany representing League of Oregon Cities
- Charlotte Bentley, Community Program Director, USDA Rural Development
- Tom Elliott, Building Energy Analyst, Oregon Department of Energy
- Janna Graham, Public Finance Officer, Business Oregon
- Karen Lewotsky, Rural Partnerships Director, Oregon Environmental Council
- RosAnna Noval, Rural Development Specialist, Rural Community Assistance Corp.
- Eann Rains, Conservation Investments Coordinator, Clackamas Soil and Water Conservation District
- Desiree Sideroff, Consumer Lending Director, Craft3
- April Snell, Executive Director, Oregon Water Resources Congress
- 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 Utilities
- Sarah Absher, Planning Director, Tillamook County representing Association of Oregon Counties (absent)

List of Oregon DEQ staff attendees

Lynn Barlow (CWSRF Program Manager), Lee Ann Lawrence (CWSRF Program Coordinator, Rulemaking Lead), Kathy Estes (CWSRF Senior Loan Specialist), Jennifer Kenny (CWSRF Program Analyst), Mark Bentz (Water Quality), Chris Marko (CWSRF Program Analyst), Oscar Orejel (CWSRF Loan Specialist), Michelle Martin (Water Quality)

Members of the public

Lindsey Crowsigt (City of Bend Septic to Sewer Conversion Program), Larry O'Connor (Oregon Waste Water Association), Quinn Andreas (Rural Community Assistance Corp.), Sharon Reeder (La Pine), Bob Sweeny (Oregon Waste Water Association), Trish Rice (City of Sweet Home Public Works)

Facilitation team

Colby Mills and Donna Silverberg, DS Consulting

List of handouts and presentation notes

- [Agenda](#)
- [Background](#)
- [PowerPoint Presentation: State Senate Bill 884](#)



State of Oregon
Department of
Environmental
Quality

**Clean Water State
Revolving Fund**
700 NE Multnomah St.,
Suite 600
Portland, OR 97232
Phone: 503-229-5622
800-452-4011
Fax: 503-229-6124
Contact: Lee Ann Lawrence

www.oregon.gov/DEQ

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

Topics and Discussion

Introductions and purpose

Donna Silverberg, facilitator from DS Consulting, welcomed everyone to the meeting. She explained the purpose for the initial grounding session, and that the following meetings are for processing the information and then producing a recommendation. She clarified that DEQ is responsible for producing the final rules product, with considerations to the advice and recommendations provided by the Rulemaking Advisory Committee.

The purpose of this initial session was for the RAC to understand the new revisions to [SB 884](#), review the current state of operations at DEQ, and begin providing input on potential issues that may arise through DEQ's transition process as it implements pass-through lending through Community Development Financial Institutions. Over the three meetings, the RAC will:

- Make 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; and
- Ensure the loan program's substantive goals match the broader state water quality mandates.

Review Rulemaking Advisory Committee Charter

Donna reviewed the RAC Charter, which included background, purpose, goals, fiscal and economic impacts, roles and responsibilities, committee meetings, DEQ's website/support and communication platform, and public involvement. DEQ will ask the RAC to consider any fiscal and economic impacts of the proposed rules.

Clean Water State Revolving Fund Program overview

DEQ staff provided a brief overview of the CWSRF program, including background on SB 884, and the scope of the CWSRF 2020 Rulemaking. The rulemaking will lead the program into a future state of lending to CDFI's. The RAC's purpose is to help DEQ implement SB 884. Discussion items included:

- DEQ is confident in CWSRF funding for 20 years (short term) and, based on modeling, the fund should be revolving to meet demand over the next 60 years. The Clean Water Act requires DEQ to maintain the fund in perpetuity.
- Approximately 92 percent of CWSRF's projects are for wastewater treatment. The remaining 8 percent are nonpoint source projects including irrigation, water conservation and riparian restoration.
- Currently, all borrowers are public entities and, while the larger loans go to the largest communities, the greater majority of funds serve economically challenged, smaller communities.
- Every CWSRF fund has scoring criteria. Oregon DEQ's scoring criteria includes additional points for green infrastructure, environmentally innovative projects, etc.
- DEQ scores applicants according to the water quality and other associated environmental benefits with a rubric system. DEQ uses that score to compare other loan applicant and ranks them in order based on their scores. Currently access to funding is not competitive based on project score or rank but it could be in the future if funding requests are greater than the funds available.
- Scoring criteria do not address financial fitness or creditworthiness, which is a separate financial analysis process.

Senate Bill 884 and rulemaking scope

DEQ staff summarized SB 884, pass-through lending, and the parameters DEQ must consider when drafting new and amended administrative rules. The amendments in the bill will be incorporated into the 2019 Oregon Revised Statutes. These expand borrower eligibility to CDFIs for the sole purpose of lending for septic repair and replacement or connection to an available sewer system.

DEQ did not propose the bill or take a position on it. Craft3, a member of this RAC, is a nonprofit certified CDFI, testified in favor of the bill so that the organization could apply for a CWSRF loan to help to finance their clean water loans program.

SB 884 refers to CDFIs as ‘qualified institutions’ that now need to be included as a new eligible borrower in the Oregon Administrative Rules. CDFIs specialize in community-based lending, usually in underserved and low-income communities, and are regulated by the U.S. Department of Treasury. There are currently 18 CDFIs registered in Oregon.

The Clean Water Act limits pass-through lending for projects that control nonpoint source pollution and for projects that involve estuary management activities. In pass-through lending, the CWSRF would loan funds to a CDFI as the borrower that will lend to private landowners or homeowner’s associations currently ineligible to borrow directly from DEQ. CDFIs would repay DEQ the original CWSRF loan with interest and fees, as established in the loan terms. However, the CDFI will need to demonstrate their ability to repay with sources of funds not wholly dependent on the sub loan repayment.

As part of the rule making process, DEQ will need to adjust certain lending parameters for a nongovernmental borrowing pool that introduces risks to the lending program. Parameters that they are considering include underwriting, creditworthiness and securities, loan terms, interest rate and loan requirements.

Summary of key points of discussion

- Creditworthiness is determined through evaluating many factors. DEQ will need to determine the creditworthiness factors for private lending.
- DEQ should consider a CDFIs ability to create a pipeline of projects so that they can be responsive to homeowners’ with emergency timelines that may have not been in an established pipeline of projects.
- DEQ has not defined the CDFI requirements for sub loans yet. DEQ wants to support projects with clean water benefits with loans that are fairly priced and underwritten, with a fair repayment schedule.
- DEQ is hiring a third party financial advisor with experience in the private lending market to assist DEQ in developing new processes and guidelines as CWSRF staff have only been lending to public entities.
- DEQ will need to evaluate potential CDFI borrowers’ lending programs operations and requirements to determine eligibility and potential financial risks.
- RAC noted that new rules could potentially create a competitive situation between multiple CDFIs offering the septic system loans. New rules will need to ensure that any nonprofit CDFI that potentially has a loan program for septic work has equal access to the fund.
- RAC asked if DEQ had a goal or desire to incentivize connection to a public sewer system as opposed to an individual septic system. If so, what are the parameters of that? Is that within the CDFI’s responsibility, or can DEQ be seeking to incentivize one over the other? How would the local POTW get involved with the coordination?

Request for input: creditworthiness and securities

DEQ posed questions related to the following:

- Creditworthiness and securities
- Loan structure
- Risk Assessment/Maintaining the fund's perpetuity
- Other considerations

The scope of this rulemaking effort revolves around how DEQ will lend to CDFIs and focuses on that borrower relationship. End users, or sub loan recipients, are a factor in determining some aspects of risk and the applicability of some state and federal requirements, but most factors under consideration are directly related to how the CDFI operates.

DEQ must consider the borrower's creditworthiness, appropriate securities, loan structure and risk assessment to maintain the fund's perpetuity. The committee reviewed the three areas for consideration and offered input on other areas DEQ should evaluate.

Summary of key points of discussion:

- DEQ will need to determine appropriate below-market interest rates charged to CDFIs and determine what is reasonable for CDFIs to charge to ensure the end user accesses the below-market rates.
- There will need to be a spread for interest rates between what DEQ is charging and what CDFIs charge.
- DEQ uses the 20-year bond index as the baseline rate for determining interest rates.
- The loan terms between the CDFIs and their customers are currently unknown, but will be a consideration.
- DEQ's local community loan (pass-through lending tool) has a 10-year term, and the goal is to have no sub loan exceed that term. What is the right term? What is the appropriate structure?
- A healthy CDFI will have a diversified income stream and would not be able to rely solely on CWSRF loan funds to lend.
- The RAC needs to consider CWSRF's role in septic project loans: Is it to jumpstart new programs or co-fund them?
- Does DEQ plan to issue loans to CDFIs or put out an RFP to provide the service?
- The CWSRF team needs to consider water justice and equity in program delivery. This could include considering impacts to wells associated with failing septic systems and whether their relocation or remediation is part of the loan project's scope.
- To determine project completion: DEQ first verifies the water quality benefits being achieved and that the project is 'performing' as proposed and that the criteria is met based on planning, design, construction milestones. DEQ will use this model and compare to how other states and CDFIs determine project completion.
- Craft3 explained that their loan program is a blend of multiple funding sources together, and revolving funds, to meet the needs of the range of borrowers served. It works to drop interest rates based on income and offer partially deferred loans for lower income. Risk is a factor when lower income people are served, there will be a higher default rate than usual.
- Craft3 collateralizes their loans, and has switched over to UCC filings, which is a fixed re-filing on the property or septic system, or both. If the borrower defaults, Craft3 takes the loss from a loan loss reserve. UCC filing costs have gone up in Oregon and Washington, which is a concerning active-lending cost that adds up for borrowers
- Craft3's average loan to a private landowner is \$20k (OR) and \$24k (WA). The people that need these loans generally have a large, costly fix. There's interest in keeping the monthly payments as low as possible to make it affordable. One idea could be starting to measure the monthly payments based on income.

- DEQ will ask the third party analyst to analyze the Department of Treasury’s statutory requirements in order to find out what the authorities and limitations are that guide CDFIs.
- RAC asked for more information about the origin of the legislation.

DEQ staff clarified that, in terms of drafting the rules, there are considerations that have come up today that need further analysis, such as agency goals, prioritizing, connecting to available sewers, etc.

Public comment period

The RAC agreed to allow public testimony and heard the following from Bob Sweeny from Oregon Waste Water Association:

This program has an effect on public health, affordable housing, economic impacts to businesses, nonprofits, and government agencies etc. New technologies have evolved that can treat wastewater to a high degree, but there are unexpected costs. DEQ is looking at updating the Oregon administrative rules to include higher levels of treatment etc. This is necessary and important to protect public health.

Post - Meeting Responses and Action Items

| RAC Questions | DEQ Responses |
|--|---|
| <p>Will DEQ incentivize sewer connections over repairs or replacements of septic systems? How would the POTW get involved?</p> | <p>DEQ’s CWSRF loan program will not incentivize this action. The decision to connect to a sewer from an onsite septic system is a local jurisdiction decision based on availability of sewer, land use restrictions and local ordinances. There is no mechanism within DEQ’s onsite or CWSRF rules to incentivize connection to sewer.</p> <p>DEQ’s onsite rules OAR 340-071-0160(4)(f)(A and B) state that an agent must deny an onsite permit if sewer is legally and physically available and is within 300 feet of the connection point for the property being served. However, many municipalities and sanitary districts have used section B (sewer legally available) of this rule stating they are either not obligated or unwilling to connect a property to the sewer system.</p> <p>The local POTW or sanitary authority would work with the local government if connection to an available sewer would impact flow and any necessary treatment upgrades.</p> |
| <p>What does “failing” mean in the legislation? Will only failing systems be eligible for a loan?</p> | <p>Yes, the statute states only a “failing” system can be eligible. OAR 340-071-0100(65) defines “failing” as: "Failing System" means any system that discharges untreated or incompletely treated sewage or septic tank effluent directly or indirectly onto the ground surface or into public</p> |

| | |
|---|---|
| | waters or that creates a public health hazard.” DEQ will use this definition in OAR 340-054. |
| Is it DEQ’s role to jumpstart new programs or for DEQ to co-fund them? | It is DEQ’s role to implement the new legislation through a rulemaking to ensure the proper procedures and requirements are in place to lend to CDFIs while maintaining the fund’s perpetuity. New and amended administrative rules in OAR 340-054 will create the structure for any nonprofit CDFI that lends for septic system repair or replace and connection to the available sewer as long as DEQ can verify the CDFIs ability to meet the clean water benefit and repay DEQ based on established rates, terms and applicable state and federal requirements. |
| Does DEQ plan to issue loans to CDFIs or put out an RFP to provide the service? | DEQ intends to provide pass-through loans to CDFIs that need CWSRF loan funds to capitalize their own septic system lending programs. |

Information items about CDFIs

RAC members expressed interest in learning more about CDFIs, Craft3 and RCAC’s septic system loan programs. The following table lists information items in response to the requests discussed during the meeting.

| | |
|---|---|
| CDFI associations and government oversight body | |
| Opportunity Finance Network | https://ofn.org/ |
| CDFI Coalition | http://cdfi.org/ |
| US Department of Treasury, Community Development Financial Institutions Fund | https://www.cdfifund.gov/Pages/default.aspx |
| Craft3 | |
| Oregon Loan Program Brochure -Addresses repayment terms | https://www.craft3.org/docs/default-source/consumer-documents/clean-water-loan-brochure-ore-2019.pdf?sfvrsn=6fa17d56_0 |
| Clean Water Loans grant data -Addresses number of loans and loan amounts | Sept. 2016 – Dec. 2019: <ul style="list-style-type: none"> • 334 loan applications • 210 approved loans |

| | |
|--|---|
| | <ul style="list-style-type: none"> • 154 loan closings • 112 loans declined • 19,290,900 gallons of wastewater treated/year • Served 27 counties and 82 cities |
| Financial Statements | https://www.craft3.org/docs/default-source/default-document-library/craft3-2017-audit-report.pdf?sfvrsn=6 |
| Ratings and certifications -Demonstrates financial strength and CDFI certification | https://www.craft3.org/Invest/Ratings#subp |
| RCAC | |
| Idaho State Revolving Fund – Household Septic System Program -Low interest rate loans/grants available to refurbish or replace individual septic systems | https://www.rcac.org/lending/idaho-srf-household-septic-system-program/ |
| Other information resources | |
| GuideStar -Nonprofit tax filings and financial statements | https://www.guidestar.org/ |
| Aeris -Third party assessment of CDFI financial performance, risk and mitigants | https://www.aerisinsight.com/ |

Rulemaking action items and considerations:

- Clarify if there will be term and rate requirements based on the end user of the sub loans
- Determine all state and federal requirements that will pass-through to CDFI borrowers and CDFI sub loans
- Determine appropriate below-market interest rates charged to CDFIs and determine what is reasonable for CDFIs to charge to ensure the end user accesses the below-market rates.
- Determine loan term based on sub loans and useful life of the asset
- Determine definition for project completion and system start up that will determine the beginning of loan repayments
- Considered how landowner agreements impact how DEQ views a “pipeline” for projects that might come through a CDFI might because they will look differently than those coming through municipal channels

- Determine legal and appropriate ways to assign collateral
- Determine if there are any terms and conditions for loan forgiveness that can be applied, especially in light of water justice and water equity/accessibility
- Determine if there are conditions when a sub loan can be used for required well removal or relocation as part of the septic system repair

DEQ will provide information on the following at the next meeting, based on the RAC's questions:

- Clarification about the overarching goal for the rulemaking
- An estimate on the demand and need for septic repairs and locations in Oregon
- Overview of CDFIs:
 - Who are they? What do they do? What is the range of qualifying institutions?
 - Structure, funding, and goals of CDFIs to determine how best to lend to them?
 - How does DEQ define a CDFI as an eligible borrower?
- Information about other state programs of relevance
- Background on legislative intent

Alternative formats

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.