

ECONOMIC AND COMMUNITY DEVELOPMENT DEPARTMENT

DIVISION 43 WATER/WASTEWATER FINANCING PROGRAM

123-043-0010

Definitions

As used in this division of administrative rules, the following terms shall have the following meaning, unless the context clearly indicates otherwise:

- (1) "DEQ" means the State of Oregon Department of Environmental Quality.
- (2) "Department" means the State of Oregon Economic and Community Development Department.
- (3) "Director" means the director of the department.
- (4) "Facilities" means something that is built or installed to perform some particular function.
- (5) "Fund" means the water fund created by ORS 285B.563.
- (6) "Grant" means an award to a municipality of monies that can be used to reimburse eligible project costs. Grant funds are not required to be repaid when contract conditions are met.
- (7) "Loan" means debt financing provided to a municipality for a project.
- (8) "Municipality" means an entity defined in ORS 285B.560(4):
 - (a) Oregon City;
 - (b) Oregon County;
 - (c) District as defined in ORS 198.010;
 - (d) The Port of Portland created by ORS 778.010;
 - (e) County service district organized under ORS chapter 451;
 - (f) Tribal council of a federally recognized Indian Tribe in Oregon; or
 - (g) Airport district organized under ORS Chapter 838.
- (9) "Non-compliance" means the municipality has received a notice of non-compliance with:
 - (a) Drinking water quality standards administered by the Oregon Department of Human Services Public Health Services Drinking Water Program; or
 - (b) Water quality statutes, rules, orders, or permits administered by DEQ or the Environmental Quality Commission.
- (10) "Project" means an activity that is eligible for assistance from the fund as defined in ORS 285B.560(5) and (6).
- (11) "State Revenue Bond" means bonds issued by the State of Oregon that are payable from specific revenue sources and are not a pledge of the full faith and credit of the State of Oregon.
- (12) "Severely dDistressed community" means a community or area identified as severely distressed by the department under the procedures implementing OAR chapter 123, division 24.
- (13) "System" means the interconnected facilities that are required or useful for performing the required function.

(14) "Technical Assistance" means preliminary engineering or planning; legal, financial, and economic investigations, reports and studies to determine the feasibility of a project. [Technical Assistance also means required Water Master Plans or Wastewater Facility Studies needed to allow communities to properly plan for the future.](#)

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

Stat. Auth.: ORS 285B.563, [285A.075](#)

Stats. Implemented: ORS 285B.~~572~~[560](#) - 285B.599

Hist.: EDD 10-1993(Temp), f. & cert. ef. 10-4-93; EDD 7-1994, f. & cert. ef. 4-7-94; EDD 7-2002, f. & cert. ef. 4-26-02; EDD 11-2006, f. & cert. ef. 11-3-06

123-043-0035

Criteria and Limitations for Funding -- Non-Technical Assistance Projects

(1) The intent of the Legislature was to provide funding to municipalities to assist in complying with the **Safe Drinking Water Act** and the **Clean Water Act**. Therefore, priority will be given to projects necessary to ensure that municipal water and wastewater systems comply with the requirements of:

(a) Drinking water quality standards administered by the Oregon Department of Human Services Public Health Services Drinking Water Program; or

(b) Water quality statutes, rules, orders, or permits administered by DEQ or the Environmental Quality Commission.

(2) If a municipal water or wastewater system has not been issued a notice of non-compliance by the governing regulatory authority, the department may determine that a proposed project is eligible for assistance upon a finding that one of the following has been met:

(a) A recent letter has been issued by the appropriate regulatory authority, typically the Department of Human Services Drinking Water Program, DEQ, or its contracted agent, which indicates a high probability that the system owner will soon be notified of non-compliance with either the **Safe Drinking Water Act** or the **Clean Water Act**; or

(b) The department deems it reasonable and prudent that an award from the fund will assist in bringing the drinking water, storm water or wastewater system into compliance with the requirements of the **Safe Drinking Water Act**, the **Clean Water Act**, those requirements proposed to take effect within the next two years, or the requirements of other regulatory agencies recognized by the department as having responsibility for the protection of water quality and the supply of clean drinking water.

(3) The department generally will not award funds for any wastewater treatment facility that discharges into water quality limited streams for which DEQ has not yet established Total Maximum Daily Loads. The department will consult with DEQ to determine if the project can be designed and constructed without establishment of Total Maximum Daily Loads. Water quality limited streams are designated by the Oregon Environmental Quality Commission.

(4) The project must be consistent with the acknowledged local comprehensive plan.

(5) The department encourages regionalization whenever feasible.

(6) The department will apply the prioritization process as approved by the Oregon Economic and Community Development Commission when determining whether to make an award for an eligible development project:

(a) The department will review project concepts and/or project information contained in the Project Intake form.

(b) Proposed projects that it determines to be eligible, address the goals of the program and are determined to be a high priority, will be advanced to the next step. Proposed projects that are not advanced will be referred to other possible funding sources or for further project development.

(c) High priority projects will be funded on a funds available basis.

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

Stat. Auth.: ORS 285B.563, [285A.075](#)

Stats. Implemented: ORS 285B.560 - 285B.599

Hist.: EDD 7-2002, f. & cert. ef. 4-26-02; EDD 1-2003(Temp) f. 2-20-03, cert. ef. 2-24-03 thru 6-30-03; EDD 8-2003(Temp), f. & cert. ef. 9-24-03 thru 3-22-04; EDD 9-2004, f. & cert. ef. 3-22-04; EDD 11-2006, f. & cert. ef. 11-3-06

123-043-0045

Criteria and Limitations for Funding -- Technical Assistance Projects

(1) Awards are available to municipalities with populations of less than 15,000 people for technical assistance. If the project is for a facility plan or study required **or recommended** by a regulatory agency, the municipality is not required to document non-compliance. [Other Technical Assistance projects may be considered after consulting with the regulatory agency.](#)

(2) Technical assistance grants and loans are subject to the following limitations:

(a) A grant of up to \$20,000 may be awarded for a project.

(b) A loan of up to \$20,000 may be awarded for a project. Interest shall be at 75 percent of the annual interest rate for other loans made in accordance with the requirements of this OAR chapter 123, division 43. The loan term shall not exceed seven years; and

(c) No more than \$600,000 shall be expended from the fund on technical assistance in any biennium. When awarding a grant under this OAR 123-043-0045 the department will not first consider a municipality's ability to repay a loan. The department may determine the need for a grant due to the "special circumstances" of the project.

(d) The application must meet the requirements listed in OAR 123-043-0075(2).

(3) The loan shall be a full faith and credit obligation which is payable from any taxes which the municipality may levy within the limitations of Article XI of the Oregon Constitution and all legally available revenues and other funds of the municipality. A pledge of specific revenues of the municipality may be pledged in addition to the foregoing.

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

Stat. Auth.: ORS 285B.563, [285A.075](#)

Stats. Implemented: ORS 285B.560 - 285B.599

Hist.: EDD 7-2002, f. & cert. ef. 4-26-02; EDD 1-2003(Temp) f. 2-20-03, cert. ef. 2-24-03 thru 6-30-03; EDD 8-2003(Temp), f. & cert. ef. 9-24-03 thru 3-22-04; EDD 9-2004, f. & cert. ef. 3-22-04; EDD 11-2006, f. & cert. ef. 11-3-06

123-043-0055

Loan and Grant Information

(1) The department may award financing in a manner that maximizes the use of available resources and maintains the desired credit standards of the fund. The department shall determine the amount, type, interest rate and terms of any financing awarded. It may offer an alternate mix or lower amount of assistance than requested. The amount of the award may be the minimum amount that the department determines is necessary to enable the project to proceed, and the department may investigate and recommend other sources of funds for all or part of a proposed project. Projects that the department determines are not financially feasible will not be funded.

(2) Grants: When making a determination to award a grant, the department will apply prudent fiscal management of the fund in order to manage limited funding resources. In making its determination, the department shall, in addition to the criteria and procedures contained in the department's policies on grant and loan funding, apply the following criteria:

(a) The department's financial analysis determines that the municipality's financial resources, including its borrowing capacity, are insufficient to finance the project;

(b) If applicable, the projected annual residential utility rate for the system is at least equivalent to a minimum rate as determined by the department's policy. The department's policy incorporates the most recent U.S. Census data on median household income and annual adjustments for inflation since the most recent census; and

(c) If applicable, a grant would not cause the total amount of grants made by the department through all its programs to exceed \$10,000 per hookup per project.

(3) The department shall determine if the project meets the minimum criteria of a grant and make a determination on the amount of the grant based on financial need and other circumstances as described in the department's policies. A project in a ~~severely~~-distressed community may be eligible for a grant not to exceed \$750,000.

(4) Loans:

(a) The term of a loan is limited to the usable life of the contracted project, or 25 years from the year of project completion, whichever is less.

(b) Except as provided elsewhere in OAR chapter 123, division 43, the interest rate on a loan is based on market conditions for similar debt and is set at the time of the award.

(c) The interest rate on a bond funded loan is equal to the coupon rates on the state revenue bonds funding the loan. Until the state revenue bonds funding the loan are sold, the municipality will pay interest at a rate established by the department on loan funds disbursed to the municipality.

(d) Maximum amount for a loan for a project may be determined by the department on the basis of the department's financial analysis of the municipality's capacity for repaying the debt, the availability of moneys in the fund and prudent fund management as described in the department's adopted policies.

(5) The loan shall be a full faith and credit obligation which is payable from any taxes which the municipality may levy within the limitations of Article XI of the Oregon Constitution and all legally available revenues and other funds of the municipality. A pledge of specific revenues of the municipality may be required by the department to be pledged in addition to the foregoing.

Stat. Auth.: ORS 285B.563, [285A.075](#)

Stats. Implemented: ORS 285B.560 - 285B.599

Hist.: EDD 7-2002, f. & cert. ef. 4-26-02; EDD 1-2003(Temp) f. 2-20-03, cert. ef. 2-24-03 thru 6-30-03; EDD 8-2003(Temp), f. & cert. ef. 9-24-03 thru 3-22-04; EDD 9-2004, f. & cert. ef. 3-22-04; EDD 11-2006, f. & cert. ef. 11-3-06

123-043-0075

Application Review and Approval

(1) For a non-technical assistance project, the department must make the following determinations:

(a) The municipality [shall document that a registered professional engineer](#) has certified [in an engineering report, such as a Master Plan](#), that the proposed project is feasible, is the most cost effective solution, and adequately serves the applicable land uses in both the short and long term;

(b) The loan is secured by the pledge of utility revenues or other revenues or payments from owners of specially benefited properties, and these revenues or payments are sufficient, when considered with other security, to assure repayment of the loan and the municipality has certified to the department that there will be adequate funds available to repay the loans made to the municipality from the fund;

(c) Moneys in the appropriate accounts of the fund are or will be available for the project;

(d) The municipality is willing and able to enter into a contract with the department;

(e) The project is consistent with the requirements governing assistance from the fund. If the Department determines that the municipality or the proposed project does not meet the requirements of this OAR 123-043-0075, the department may reject an application or require further documentation from the municipality; and

(f) The project is ready to begin and the municipality has committed in writing that, if awarded the assistance it shall proceed immediately.

(2) To award assistance from the fund for a technical assistance project, the department must make the following determinations:

~~(a) Provisions of OAR 123-043-0075(1) are met;~~

~~(a)~~ (a) The technical assistance activities must be for a project that is eligible under OAR chapter 123, division 43 and meets the criteria listed in OAR 123-043-0045; and

~~(b)~~ (b) The municipality has, or has demonstrated the ability to secure, the administrative capacity to undertake and complete the project.

Stat. Auth.: ORS 285B.563, [285A.075](#)

Stats. Implemented: ORS 285B.560 - 285B.599

Hist.: EDD 7-2002, f. & cert. ef. 4-26-02; EDD 1-2003(Temp) f. 2-20-03, cert. ef. 2-24-03 thru 6-30-03; EDD 8-2003(Temp), f. & cert. ef. 9-24-03 thru 3-22-04; EDD 9-2004, f. & cert. ef. 3-22-04; EDD 11-2006, f. & cert. ef. 11-3-06