

# STATE OF COLORADO

John W. Hickenlooper, Governor  
Larry Wolk, MD, MSPH  
Executive Director and Chief Medical Officer

## WATER QUALITY CONTROL COMMISSION

<http://www.colorado.gov/cdphe/wqcc>

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Denver, Colorado 80246-1530  
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Colorado  
Department  
of Public Health  
and Environment

## NOTICE OF PUBLIC RULEMAKING HEARING BEFORE THE COLORADO WATER QUALITY CONTROL COMMISSION

### SUBJECT:

For consideration of

- (1) combining (a) the Domestic Wastewater Treatment Grant Funding System, Regulation #53 (5 CCR 1002-53) and (b) the Drinking Water Grant Fund, Regulation #54 (5 CCR 1002-54) with the Water Quality Improvement Fund, Regulation #55 (5 CCR 1002-55), to be renamed State Funded Water and Wastewater Infrastructure Programs;
- (2) repealing Regulations #53 and #54; and
- (3) adopting revisions to Regulation #55.

The revisions to Regulation #55 proposed by the Water Quality Control Division (Division) as staff to the Commission, along with a proposed statement of Basis, Specific Statutory Authority and Purpose, are attached to this notice as Exhibit 1. Proposed repeal of Regulations #53 and #54 are attached to this notice as Exhibits 2 and 3 respectively. Proposed new language is shown with double-underlining and proposed deletions are shown with ~~strikeouts~~. Any alternative proposals related to the revisions proposed in Exhibit 1 and developed in response to those proposed revisions, will also be considered.

### HEARING SCHEDULE:

DATE: Monday, August 11, 2014  
TIME: 10:00 a.m.  
PLACE: Florence Sabin Conference Room  
Department of Public Health and Environment  
4300 Cherry Creek Drive South  
Denver, CO 80246

### PUBLIC PARTICIPATION ENCOURAGED:

The Commission encourages all interested persons to provide their opinions or recommendations regarding the matters to be addressed in this rulemaking hearing, either orally at the hearing or in writing prior to or at the hearing. Written submissions prior to the hearing are encouraged, so that they can be distributed to the Commission for review prior to the hearing.

### PARTY STATUS:

Participation as a "party" to this hearing will require compliance with section 21.3(D) of the Procedural Rules, Regulation #21 (5 CCR 1002-21). It is not necessary to acquire party status in order to testify or comment. **For each request for party status, please provide the**

**organization's name, a contact person, mailing address, phone number, and email address.**

Written party status requests are due in the Commission Office on or before:

DATE: Tuesday, July 8, 2014  
TIME: 5:00 p.m.

A single copy of the party status request may be transmitted as an email attachment to [cdphe.wqcc@state.co.us](mailto:cdphe.wqcc@state.co.us), submitted by fax to 303-691-7702, mailed or otherwise conveyed so as to be received in the mail room of the Colorado Department of Public Health and Environment (Department) no later than this deadline.

WRITTEN COMMENTS:

In view of the expedited nature of this rulemaking, no prehearing statements will be required. Those requesting party status and others interested in this proceeding are encouraged to provide written comments. Any such comments will be accepted at the hearing, although interested persons are encouraged to email or otherwise deliver a copy of their written comments to be received in the Commission Office by July 30, 2014 if feasible, so that they may be circulated to Commission members for review prior to the hearing.

PREHEARING CONFERENCE:

No prehearing conference will be held for this rulemaking.

SPECIFIC STATUTORY AUTHORITY:

The provisions of sections 25-8-202(1)(g); 25-8-308 and 25-8-608 C.R.S. provide the specific statutory authority for consideration of the regulatory amendments proposed by this notice. Should the Commission adopt the regulatory language as proposed in this notice or alternative amendments, it will also adopt, in compliance with section 24-4-103(4) C.R.S., an appropriate Statement of Basis, Specific Statutory Authority, and Purpose.

NOTIFICATION OF POTENTIAL MATERIAL INJURY TO WATER RIGHTS:

In accordance with section 25-8-104(2)(d), C.R.S., any person who believes that the actions proposed in this notice have the potential to cause material injury to his or her water rights is requested to so indicate in the party status request submitted. In order for this potential to be considered fully by the Commission and the other agencies listed in the statute, persons must fully explain the basis for their claim in their written comments. This explanation should identify and describe the water right(s), and explain how and to what degree the material injury will be incurred.

Dated this 9th day of June 2014 at Denver, Colorado.

WATER QUALITY CONTROL COMMISSION

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Trisha Oeth, Administrator

**EXHIBIT 1**  
**WATER QUALITY CONTROL DIVISION**

**DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT**

**Water Quality Control Commission**

**5 CCR 1002-55**

**STATE FUNDED WATER AND WASTEWATER INFRASTRUCTURE PROGRAMS**  
**WATER QUALITY IMPROVEMENT FUND**

**REGULATION NO. 55**

**55.1 AUTHORITY, SCOPE AND PURPOSE OF THE WATER QUALITY IMPROVEMENT FUND**

**(1) WATER QUALITY IMPROVEMENT FUND**

House Bill 06-1337 created the Water Quality Improvement Fund (~~Fund~~) codified in section 25-8-608, C.R.S., of the Colorado Water Quality Control Act (~~Act~~). House Bill 11-1026 amended the statute to authorize grants for stormwater management training and best practices training to prevent or reduce the pollution of state waters. Section 25-8-608(1.7)(c), C.R.S. provides the Water Quality Control Commission ("c~~ommission~~") with the authority to promulgate, implement and administer this regulation.

Funding is dependent upon annual appropriations by the Colorado General Assembly and is based on violations that were committed on or after May 26, 2006. The resulting penalties collected by the Water Quality Control Division ("d~~ivision~~") are transmitted to the state treasurer for deposit to the credit of the ~~f~~Fund.

The purpose of the fund is to improve water quality in Colorado by providing grant funds for water quality improvement projects using civil penalties from water quality violations.

**(2) NUTRIENTS MANAGEMENT GRANT FUND**

During the 2013 legislative session the General Assembly created a new program under House Bill 13-1191 entitled the Nutrient Grant Fund. Codified in section 25-8-608.5, C.R.S., HB 13-1191 authorizes the commission to promulgate rules necessary to administer the program as an amendment to Regulation #55, the Water Quality Improvement Fund.

The purpose of the fund is to provide assistance to Phase One Domestic Wastewater Treatment Works as defined in Regulation 85.

**(3) NATURAL DISASTER GRANT FUND**

House Bill 14-1002 created the Natural Disaster Grant Fund to be codified in section 25-8-608.7, C.R.S. – concerning the establishment of a grant program under the Colorado Water Quality Control Act to repair water infrastructure impacted by a natural disaster. The purpose of the fund is to award grants to local governments, including local governments accepting grants on behalf of and in coordination with not-for-profit public water systems, under rules promulgated by the commission for the planning, design, construction, improvement, renovation or reconstruction of domestic wastewater treatment works and public drinking water systems that have been

impacted, damaged or destroyed in connection with a natural disaster. The division may only award grants to be used in counties for which the governor has declared a disaster emergency by executive order or proclamation under section 24-33.5-704, C.R.S.

Section 25-8-608.7(3), C.R.S. provides the Water Quality Control Commission with the authority to promulgate rules necessary to implement and administer the Natural Disaster Grant Fund.

(4) SMALL COMMUNITIES WATER AND WASTEWATER GRANT FUND

Senate Bill 14-025 revised and consolidated the Small Communities Water and Wastewater Grant Fund to be codified in section 25-1.5-208, C.R.S. – concerning the establishment of a grant program under the Colorado Water Quality Control Act to assist suppliers of water and domestic wastewater treatment works that serve a population of not more than five thousand people with meeting their responsibilities with respect to the protection of public health and water quality.

Continuous funding for the Small Communities Water and Wastewater Grant Fund is provided in section 39-29-109(2)(a)(III) C.R.S., through money transferred to the fund pursuant to section 39-29-109(2)(a)(II) C.R.S. and any other moneys transferred to the fund by the General Assembly. Moneys for the fund originate from the severance tax perpetual base fund, up to \$10 million, and will be applied to both drinking water projects and wastewater projects.

Section 25-1.5-208(2), C.R.S. provides the commission with the authority to promulgate rules necessary to implement and administer the Small Communities Water and Wastewater Grant Program.

**55.2 DEFINITIONS**

- (1) "Beneficial Use" - means the use of water treatment plant sludge in conjunction with wastewater treatment plant sludge to act as a soil conditioner or low grade fertilizer for the promotion of vegetative growth on land and that meets the requirements of the state Biosolids Regulations.
- (2) Best Management Practices" (BMPs) - means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of "state waters". Best Management Practices also include treatment requirements, operating procedures and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.
- (3) "Consolidation" - means a proposed new construction or expansion of a drinking water supply system that will eliminate one or more existing water supply or treatment works. A letter of intent or a resolution adopted by the project participants must be provided to the division to guarantee the facilities will consolidate.
- (4) "Governmental Agency" – means any municipality, regional commission, county (or county on behalf of unincorporated areas), metropolitan district offering sanitation service, sanitation district used for funding a domestic wastewater treatment works project, water and sanitation district, water conservancy district, metropolitan sewage disposal district, other special district used for funding a project under this regulation.
- (5) "Impacted Water Body" – means a water body in which the designated use(s) of recreation, aquatic life, water supply, agriculture, and/or wetlands have been affected by pollutants associated with a violation of the Act, permit, control regulation, or final cease and desist order or clean-up order.
- (6) "Nonpoint source" – means a diffused pollution source that is not regulated as a point source, including, but not limited to, sources that are often associated with agriculture, inactive or

abandoned mining, silviculture, urban runoff, or runoff from construction activities. Nonpoint source pollution does not emanate from a discernible, confined, and discrete conveyance (such as a single pipe) but generally results from land runoff, precipitation, atmospheric deposition, or percolation.

(75) "Pollution" – means the man-made, man-induced, or natural alteration of the physical, chemical, biological, and radiological integrity of water. "Planning and Design of Domestic Wastewater Treatment Facilities and Stormwater Projects" – means any activity that results in the development of preliminary engineering reports, engineering design documents, and/or environmental assessments for Domestic Wastewater Treatment Facilities and Stormwater Projects.

(86) "Waterborne Disease Outbreak" – means the significant occurrence of acute infectious illness, epidemiologically associated with the ingestion of water from a public water system which is deficient in treatment, as determined by the appropriate local or State agency. "Stormwater Project" – includes: planning, design, construction or repair of a project that improves water quality from stormwater runoff, snow melt runoff, or surface runoff and drainage.

### **55.3 WATER QUALITY IMPROVEMENT FUND CRITERIA**

#### **(1)55.3 Entity Eligibility**

Entities eligible for grants include: 1) governmental agencies; 2) publicly owned water systems; 3) private not-for-profit public water systems; 4) not-for-profit watershed groups; 5) not-for-profit stormwater program administrator in accordance with 25-8-802 C.R.S.; 6) not-for-profit training provider; and 7) private landowners impacted by a water quality violation.

Entities who pay a Colorado Water Quality Control Act civil penalty are prohibited from receiving a grant from this fund for a period of 5 years from the date of the payment of the penalty.

#### **(2)55.4 Project Eligibility**

As provided for under section 25-8-608 (1.7) (a), C.R.S., the fFund will provide grants to the following project categories:

Category 1 – Stormwater management training and best management practices training to reduce the pollution of state waters.

Category 2 - Projects that improve the water quality in the community or water body which has been impacted by a water quality violation that resulted in a penalty being imposed.

Category 3 – Planning, design, construction, or repair of stormwater projects and domestic wastewater treatment facilities identified on the current fiscal year's Water Pollution Control Revolving Fund Intended Use Plan.

Category 4 - Nonfederal match funding for the current fiscal year's nonpoint source projects as approved by the cCommission.

#### **(3)55.5 Funding Allocation**

All civil penalties collected by the dDivision shall be transmitted to the state treasurer for deposit to the credit of the fFund created by section 25-8-502, C.R.S., for violations committed on or after May 26, 2006 and shall be subject to annual appropriations by the Colorado General Assembly. The dDivision will post on its web page a list of violators that have paid into the Water Quality Improvement Fund. The following allocations from the fFund will be made:

Category 1 – For State Fiscal Year 2012-2013 the Division will allocate up to \$150,000 of available funds with no one project initially receiving more than \$50,000. If the entire \$150,000 has not been fully utilized, the Division will allocate the remaining Category 1 funds within the year per its prioritization procedures to eligible Category 1 project(s) which may result in certain projects ultimately receiving more than \$50,000.

For subsequent years thereafter, up to \$50,000 of available funds will be allocated.

Category 2 – 10% of available funds following allocations to Category 1 projects.

Category 3 – 60% of available funds following allocations to Category 1 projects; no one project can receive more than 25% of the available funds allocated to this category.

Category 4 – 30% of available funds following allocations to Category 1 projects.

Any funds not utilized in one category will be redistributed among the remaining categories based on their relative percentage of funding. The Division will retain five percent (5%) of the moneys allocated annually to the fund to cover the cost of administering the fund. Funds may be carried over from previous years' appropriations and reallocated based upon the above distribution on an annual basis.

#### (4)55.6 Project Prioritization Criteria

If the fund lacks sufficient funds to cover all requests within each category, Priority 1 projects will be funded prior to Priority 2 projects, which will be funded prior to Priority 3 projects, which will be funded prior to Priority 4 projects. If it is determined that there are insufficient funds, further prioritization criteria will be applied as identified under each category in this section. The Division may reallocate funding among categories based upon lack of requests or eligible projects within any category.

Criteria for funding project proposals within each category as described in Section 55.3 are as follows:

Category 1 – Stormwater management training and best management practices training to reduce the pollution of state waters.

Priority 1 – Projects that implement stormwater management and best management practices training not previously available in Colorado, or previously limited in accessibility.

Priority 2 – Projects that will expand the content or availability of existing stormwater management and best management practices training.

Priority will be given to training providers that can demonstrate that training content will be relevant to implementation in Colorado with regards to Colorado's hydrology, climate and water rights, as applicable.

Priority will also be given to training providers that provide no- or low-cost training.

Additional prioritization criteria will include the expected water quality benefits, total population receiving training, availability of match, and readiness to proceed. Specific points available in each of these categories and tie breaking criteria will be included as an attachment to the Request for Application.

Category 2 - Projects that improve the water quality in the community or water body which has been impacted by a water quality violation.

Priority 1 – Projects that address impacts to a water supply designated use.

Priority 2 – Projects that address impacts to a recreation designated use.

Priority 3 – Projects that address impacts to an aquatic life designated use.

Priority 4 – Projects that address impacts to an agricultural or wetlands designated use.

Additional prioritization criteria will include financial/affordability, water quality benefits, permit compliance, readiness to proceed, and availability of match. Specific points available in each of these categories and tie breaking criteria will be included as an attachment to the rRequest for aApplication.

Category 3 - Planning, design, construction, or repair of stormwater projects and domestic wastewater treatment facilities identified on the current fiscal year's Water Pollution Control Revolving Fund Intended Use Plan.

Priority 1 – Projects that improve water quality in the community or water body impacted by a violation.

Priority 2 – Planning, design, construction, or repair of stormwater projects.

Priority 3 – Projects identified on the current year's Water Pollution Control Revolving Fund Intended Use Plan.

Additional prioritization criteria will include financial/affordability, water quality benefits, permit compliance, readiness to proceed, and availability of match. Specific points available in each of these categories and tie breaking criteria will be included as an attachment to the rRequest for aApplication.

Category 4 - Nonfederal match funding for nonpoint source projects.

Priority 1 – Projects that reduce or eliminate water quality impairments identified in Regulation #93 (5 CCR 1002-93), Colorado's Section 303(d) List.

Priority 2 – Projects that protect any established designated water quality use.

#### (5)55.7 Notification and Reporting

Applications for Category 1, 2 and 3 projects will be noticed and accepted by the dDivision after the dDivision determines availability of appropriation. Applicants will be responsible for demonstrating the impacts of the violation on the affected water body or community, and the related water quality improvement project benefits. The dDivision will accept applications for Category 4 projects in accordance with the annual nNonpoint sSource pProject schedule.

The dDivision will evaluate all applications and determine the grant award(s) for each category based on the criteria in the Entity Eligibility Section, Project Eligibility Section, Funding Allocation Section and Project Prioritization Sections ~~sections 55.3, 55.4, 55.5, and 55.6.~~

Grant recipients will provide a final project report within 60 days of completion of the project. Final project reports shall include a detailed description of the project as implemented, all problems encountered and the solutions thereto, itemized project costs, a declaration that the

project has been fully implemented as approved, and a description of the environmental and public health benefits resulting from implementation of the project. Information on the grant recipients, including project description and grant award, will be reported in the dDivision's Annual Report to the commission, in accordance with section 25-8-305, C.R.S.

**55.48 NUTRIENTS MANAGEMENT GRANT FUND CRITERIA**

(1) Entity Eligibility

Eligibility is for facilities subject to section 85.5(1)(a)(iii), not including those facilities that are eligible for an exception under 85.5(3)(b). Domestic Wastewater Treatment Works with capacity greater than two million gallons per day that are owned or operated by a local government and discharge to a high-priority watershed as designated by the dDivision are eligible to apply for a Nutrients Management Grant under this section.

(2) Project Eligibility

Projects for planning, design, construction, and/or improvement of domestic wastewater treatment works to comply with the effluent limitations in section 85.5(1)(a)(iii) are eligible for grants.

(3) Project Prioritization

The dDivision shall rank each project based on the priority score of each project. Projects will be funded in priority order from highest to lowest. The dDivision shall consider the following categories to determine the priority score of each Nutrient Management Grant project proposal:

- (a) The dDivision shall evaluate the financial and affordability needs of the proposed project. Financial need shall be determined using a points system that ranks projects based on the median household income of the service area, estimated existing monthly sewer user charges as a percentage of median household income, and the amount of total sewer debt per connection. For eligible facilities that have more than one ownership entity, the dDivision will use an average for the combined service area for each of the applicable scoring elements. In the case of Special Districts, the dDivision will use census block data, if available, to determine the median household income for the area in which the District is located. If census block data is not available, the dDivision will defer to the median household income for the County in which the District is located.

A local match component of twenty percent (20%) of the total grant award will be applied to pPlanning gGrants only. Local commitment to the proposed planning project shall be determined using a points system that ranks projects based on the percentage of match in the form of liquid capital, or funding from other sources that an applicant has committed to the project based on the estimated total project costs.

Points shall be assigned based on the following criteria:

- i) Median Household Income (MHI) of service area
 

|                                   |           |
|-----------------------------------|-----------|
| <75% of State MHI                 | 20 points |
| Between 75% and 85% of State MHI  | 15 points |
| Between 86% and 95% of State MHI  | 10 points |
| Between 96% and 100% of State MHI | 5 points  |
| >100% of State MHI                | 0 points  |
- ii) User Fees (existing sewer fees/area MHI)



|   |           |
|---|-----------|
| Rates are > 2.0% of the service area's MHI          | 20 points |
| Rates are >1.5% and ≤2.0% of the service area's MHI | 15 points |
| Rates are >1.0% and ≤1.5% of the service area's MHI | 10 points |
| Rates are ≤1.0% of the service area's MHI           | 5 points  |

iii) Total Sewer Debt per Connection (existing debt/number of connections)

|  |           |
|--|-----------|
| > \$1,500 per connection                 | 20 points |
| Between \$1,000 - \$1,500 per connection | 15 points |
| Between \$500-\$999 per connection       | 10 points |
| < \$500 per connection                   | 5 points  |

iv) Percent of Local Match Contribution (for Planning Grants only)

|                     |           |
|---------------------|-----------|
| > 50%               | 20 points |
| Between 35% and 50% | 15 points |
| Between 20% and 34% | 10 points |
| < 20%               | 0 points  |

- (b) The dDivision shall evaluate the degree to which the project improves or protects surface water quality by assessing the characteristics of the stream receiving effluent discharge. This includes determining whether the receiving stream has been classified as a cold water stream, a warm water stream, and the dilution rate of the receiving stream.

Points for the receiving stream characteristics shall be assigned based on the following criteria:

i) Receiving Stream Characteristics

|                   |           |
|-------------------|-----------|
| Cold water stream | 15 points |
| Warm water stream | 10 points |

ii) Dilution Rates

|  |           |
|--|-----------|
| Dilution rates <2:1 are considered "low"                     | 15 points |
| Dilution rates <10:1 but ≥ 2:1 are considered "intermediate" | 10 points |
| Dilution rates <50:1 but ≥10:1 are considered "high"         | 5 points  |
| Dilution rates ≥ 50:1 are considered "very high"             | 0 points  |

- (c) The dDivision shall also consider whether an entity has elected to incorporate a watershed approach to nutrient management that addresses the protection of surface and/or groundwater resources through either the planning and/or development of non-point source or agricultural best management practices both upstream and downstream from the facility; or the entity has elected to participate in or facilitate Community Action Partnerships, project sponsorship, or conduit financing mechanisms to enable other community stakeholders who will undertake nutrient, non-point source, or agricultural monitoring efforts both upstream and downstream of the facility. Applicants that incorporate such efforts, in addition to their treatment facility upgrade and adaptations, shall be awarded 10 points.

- (d) The dDivision shall evaluate the impacts of operational cost for design/construction projects and for planning projects with separate criteria.

The operational costs for design/construction projects will evaluate nutrient treatment upgrades and adaptations to existing Domestic Wastewater Treatment facilities based on cost per million gallons treated. Operational cost estimates are based on broad technology types available for nutrient removal and benchmarks are based on national cost averages published in the U.S. EPA (2008) Municipal Nutrient Removal Technologies Reference Document Volume I; Chapter 4, Cost Factors, which is incorporated herein by reference. This incorporation does not apply to later amendments or editions of the document, and is available via internet: <http://water.epa.gov/scitech/wastetech/upload/mnrt-volume1.pdf>, or from the Water Quality Control Commission Office, 4300 Cherry Creek Drive South, Denver, CO 80246, 303-692-3463.

Points for design/construction projects shall be assigned based on the following criteria:

- i) Estimated Operational Cost per million gallons treated
- |   |           |
|---|-----------|
| <\$75 per million gallons treated                   | 5 points  |
| Between \$75 - \$200 per million gallons treated    | 10 points |
| Between \$199 and \$500 per million gallons treated | 15 points |
| >\$500 per million gallons treated                  | 20 points |
- ii) The dDivision shall evaluate the costs associated with planning projects that incorporate one or more of the following nutrient management planning methodologies. For each of the following methodologies that are included, five points will be awarded.
- |  |          |
|--|----------|
| Water Quality Monitoring Plan Development                  | 5 points |
| Operational Optimization Study                             | 5 points |
| Operations Pilot Testing of Nutrient Removal Technology    | 5 points |
| Carbon Planning for Biological Nutrient Removal Technology | 5 points |

- (e) The dDivision shall determine the level of environmental impacts as a result of nutrient loading based on the number of Single Family Equivalent units located within the service area. Points shall be assigned based on the following criteria:

- i) Environmental impact based on number of Single Family Equivalents in Service Area
- |                           |           |
|---------------------------|-----------|
| <10,000                   | 5 points  |
| Between 10,000 and 30,000 | 10 points |
| Between 30,001 and 50,000 | 15 points |
| Over 50,000               | 20 points |

- (f) The dDivision shall evaluate whether the applicant has a Utility Management Plan in place that includes one or more of the criteria referenced below. For each of the following criteria that are met, 5 points shall be assigned:

- i) Secures a replacement fund for the rehabilitation and replacement of infrastructure as needed.

- ii) Includes provisions addressing the proper training, licensing, and certification of operators required to adequately operate and maintain the selected wastewater treatment technology.
  - iii) Includes provisions ensuring that the facility has adequate in-house staffing, long-term management contracts, or partnerships with third-party providers to properly operate and maintain the facility.
  - iv) Provides sufficient revenue to meet operations and maintenance capital needs (operating revenue divided by the operating expense).
  - v) Includes mechanisms to protect infrastructure investments to ensure longevity and ongoing functionality of non-point source best management practices.
- (g) The dDivision shall determine whether the project is ready to proceed with funding based on the following indicators specific to design/construction projects. For each of the following criteria that are met, 5 points shall be assigned:
- i) Site Application has been submitted.
  - ii) Process Design Report has been submitted.
  - iii) Technical plans and specifications have been submitted.
- (h) The dDivision shall determine whether the project is ready to proceed with funding based on the following indicators specific to planning projects. For each of the following criteria that are met, 5 points shall be assigned:
- i) Applicant has the required twenty percent (20%) local match secured and held in cash reserve.
  - ii) Engineer/Consultant(s) has been selected.
  - iii) Agreements with selected Engineer/Consultant(s) are in place.
- (i) In the event that two or more projects have the same priority score and rank, the division shall give priority to the project that is most ready to proceed with moving forward with financial assistance based on the readiness to proceed indicators specified in subsection 3(g) and (3)(h) above. If projects remain tied, priority will be given to the applicant that demonstrates the highest financial need pursuant to subsection 3(a).

(4) Funding Allocation and Awarding Process

The Colorado General Assembly created a Nutrients Management Grant Fund to assist eligible applicants with the costs associated with implementation of the Nutrients Management Control Regulation No.85. Funding is contingent upon final appropriation by the Colorado General Assembly. Pending appropriation, the dDivision will develop a request for application to solicit projects for funding. If there are more requests than available funds, the division will prioritize projects based on the above criteria and will notify all applicants of their funding status after the establishment of a fundable list. The fundable list will be posted on the division website to identify the recipients of funds and the amount of each award.

Projects will be funded in priority order, highest to lowest, until all funds have been allocated. The dDivision will determine the amount of funding to be made available for design/construction projects and the amount to be made available for planning projects. The division will have the

authority to transfer funds between design/construction projects and planning projects as needed to sufficiently meet the demand indicated by the number of Nutrient Management Grant applications that are received. In the event that funds remain unallocated subsequent to a transfer of funds between project types, the dDivision has the authority to increase the amount of grant awards in priority order, highest to lowest, until all of the funds have been allocated.

## **55.59 NATURAL DISASTER GRANT FUND CRITERIA**

- ~~(1) House Bill 14-1002 created the Natural Disaster Grant Fund to be codified in section 25-8-608.7, C.R.S. — concerning the establishment of a grant program under the “Colorado Water Quality Control Act” to repair water infrastructure impacted by a natural disaster. The purpose of the fund is to award grants to local governments, including local governments accepting grants on behalf of and in coordination with not-for-profit public water systems, under rules promulgated by the Water Quality Control Commission for the planning, design, construction, improvement, renovation or reconstruction of domestic wastewater treatment works and public drinking water systems that have been impacted, damaged or destroyed in connection with a natural disaster. The division may only award grants to be used in counties for which the governor has declared a disaster emergency by executive order or proclamation under section 24-33.5-704, C.R.S.~~

~~The division is required to award grants for the 2014-15 fiscal year and as needed for the 2015-16 fiscal year, to eligible local governments that have domestic wastewater treatment works, public drinking water systems or on-site wastewater treatment systems impacted, damaged or destroyed in connection with the flood of 2013. Any unencumbered funds in the 2014-15 Natural Disaster Grant Fund as of September 1, 2015 will be transferred to the Nutrients Management Grant Fund. The division will administer the Nutrients Management Grant Fund per section 55.8 of this regulation.~~

~~Section 25-8-608.7(3), C.R.S. provides the Water Quality Control Commission with the authority to promulgate rules necessary to implement and administer the Natural Disaster Grant Fund.~~

### **(12) Entity Eligibility**

- (a) Local governments defined as governmental agencies in section 55.2 that own and operate domestic wastewater treatment works and public drinking water systems in a designated disaster emergency county by an executive order or proclamation under section 24-33.5-704, C.R.S.
- (b) Local governments accepting grants on behalf of and in coordination with not-for-profit public drinking water systems.
- (c) Local governments assisting with the repair and restoration of on-site wastewater treatment systems as defined in section 25-10-103(12), C.R.S.
- (d) If funds are transferred to the Nutrients Management Grant Fund, eligible entities will be determined per section 55.24 of this regulation.

### **(23) Project Eligibility**

- (a) Domestic wastewater treatment works, public drinking water systems and on-site wastewater treatment systems that have been impacted, damaged or destroyed in connection with the September 2013 flood, or future declared disaster emergencies.
- (b) Projects for the planning, design, construction, improvement, renovation or reconstruction of domestic wastewater treatment works or public drinking water systems that have been impacted, damaged or destroyed in connection with the September 2013 flood.

- (c) Grant moneys under this section may be used as matching funds required to secure any other state and federal funding for the planning, design, construction, improvement, renovation or reconstruction of drinking water and wastewater infrastructure.

(34) Award Process and Funding Allocation

- (a) Appropriations are subject to approval by the Colorado General Assembly, and funding is contingent upon such final appropriation. Pending appropriation, the division will administer the funds per the Natural Disaster Grant Fund rules identified in this section and prioritize projects based upon the criteria in section 55.9(5) below. The division will notify all applicants of their funding status after the establishment of a fundable list. The fundable list will be posted on the division website to identify the recipients of funds and the amount of each award.
- (b) A portion of the Natural Disaster Grant Fund will be set-aside to assist local governments with grants for on-site wastewater treatment systems that have been impacted as a result of the September 2013 flood. To sufficiently meet the demand indicated by the number of applications received and project type, the division has the authority to transfer funds between the set-aside for on-site wastewater treatment systems and the Natural Disaster Grant Fund. If a transfer occurs and project prioritization is required, the division will prioritize per section ~~55.9(5)~~5(4).
- (c) In the event that funds remain unallocated subsequent to a transfer of funds between the Natural Disaster Grant Fund and the on-site wastewater set-aside, the division has the authority to increase the amount of grant awards in priority order, highest to lowest, until all of the funds have been allocated or the application demand has been met.
- (d) On September 1, 2015, any unencumbered moneys remaining in the Natural Disaster Grant Fund will be transferred to the Nutrients Management Grant Fund, at which time the division will solicit a separate request for application per section ~~55.84~~, the Nutrients Management Grant Fund.

(45) Project Prioritization

- (a) If the demand for funding in the Natural Disaster Grant Fund exceeds the available funds, the division shall rank each project based on population criteria, financial affordability factors, regionalization, utilization of multiple funding sources, readiness to proceed and impacts as a result of the September 2013 flood. The division will give priority to the applicants that have the lowest financial ability to pay. Specific point ranking criteria and associated points under each of the above factors will be included in the request for application. Projects will be funded in priority order from highest to lowest until all funds have been allocated.
- (b) Local governments receiving funds from the set-aside portion for the rehabilitation for on-site wastewater treatment systems impacted by the September 2013 flood will receive an equitable percentage of the funds requested. For example, if \$1 million is allocated to the set-aside portion and \$2 million is requested, each valid applicant will receive 50% of its application request.

**55.67 SMALL COMMUNITIES WATER AND WASTEWATER GRANT FUND CRITERIA**

(1) Entity Eligibility

- (a) Suppliers of water that serve a population of not more than five thousand people with meeting their responsibilities with respect to protection of public health, the department,

in the name of the state and to the extent that state funds are appropriated therefor, may enter into contracts with both governmental agencies and not-for-profit public water systems, as defined in section 25-1.5-201(1), or with counties representing unincorporated areas that serve a population of not more than five thousand people, to grant moneys for the planning, design, and construction of public water systems.

(b) Domestic wastewater treatment works, as defined in section 25-8-103(5), that serve a population of not more than five thousand people with meeting their responsibilities with respect to the protection of public health and water quality, the department, in the name of the state and to the extent that state funds are appropriated therefor, may enter into contracts with governmental agencies, or with the counties representing unincorporated areas that serve a population of not more than five thousand people, to grant moneys for eligible projects as defined in section 25-8-701(2).

(2) Project Eligibility

(a) Projects for the planning, design, and construction of public water systems or domestic wastewater treatment works that serve a population of not more than five thousand people with meeting their responsibilities with respect to the protection of public health and water quality.

(3) Award Process and Funding Allocation

(a) The division will administer the funds per the Small Communities Water and Wastewater Grant Fund rules identified in this section. The available funds will be allocated approximately 50/50 between water and wastewater projects. The division will adjust the 50/50 allocation if necessary depending upon the quantity and composition of the application requests. No more than 10% of the total available funds will be distributed to any single water and/or wastewater eligible project. The division will notify all applicants of their funding status after the establishment of a fundable list.

The fundable list will be posted on the division website to identify the recipients of funds and the amount of each award.

(4) Project Prioritization

(a) Drinking Water

i) If the demand for funding in the Small Communities Water and Wastewater Grant Fund exceeds the available funds, the division shall rank each project based on financial/affordability, drinking water quality and public health, CPDWR compliance, and readiness to proceed. The division will give priority to the applicants that have the lowest financial ability to pay based upon project ranking criteria. Specific point ranking criteria and associated points under each of the above factors will be included in the request for application. Projects will be funded in priority order from highest to lowest until all funds have been allocated.

ii) Additional points will be awarded if the project is a result of a natural disaster in a county where the Governor has declared a disaster emergency by Executive Order or proclamation under section 24-33.5-704, C.R.S.

(b) Wastewater

i) If the demand for funding in the Small Communities Water and Wastewater Grant Fund exceeds the available funds, the division shall rank each project based on

financial/affordability, water quality improvement, permit compliance, and readiness to proceed. The division will give priority to the applicants that have the lowest financial ability to pay based upon project ranking criteria. Specific point ranking criteria and associated points under each of the above factors will be included in the request for application. Projects will be funded in priority order from highest to lowest until all funds have been allocated.

- ii) Additional points will be awarded if the project is a result of a natural disaster in a county where the Governor has declared a disaster emergency by Executive Order or proclamation under section 24-33.5-704, C.R.S.

## **55.75-10 RESERVED**

### **55.11 STATEMENT OF BASIS AND PURPOSE REGARDING THE DOMESTIC WASTEWATER TREATMENT GRANT PROGRAM (1998)**

In accordance with the requirements of 24-4-103(4), the Commission makes these findings and adopts this Statement of Basis and Purpose.

The subject regulations are in implementation of the requirements of the Colorado Water Quality Control Act, C.R.S., 25-8-101., et seq. Section 202 of the Act requires that the Commission administer construction grants for municipal waste treatment facilities for the State. In particular, C.R.S., 1973, 25-5-202(1)(e)(g) provide as follows: The Commission shall develop and maintain a comprehensive and effective program for prevention, control, and abatement of water pollution and for water quality protection throughout the entire state and, in connection therewith, shall:

- (e) Perform duties assigned to the Commission in part 7 of this article with respect to the location, design, construction, financing, and operation of domestic wastewater treatment plants
- (g) Promulgate regulations and adopt priority ranking for the administration of federal and other public source construction loans or grants which the Commission or the Division administers which loans or grants shall not be expended for any purpose other than that for which they were provided.

These regulations provide a format for determining which eligible projects should receive funds. The priority system is in five parts as follows:

5.5.1 Authority

5.5.2 Purpose

5.5.3 Priority System

5.5.4 Prioritization within Categories

5.5.5 Determination of Project Funding

5.5.6 Update of Categorization and Ranking List

### **55.12 STATEMENT OF BASIS SPECIFIC STATUTORY AUTHORITY, AND PURPOSE REGARDING THE DOMESTIC WASTEWATER TREATMENT GRANT PROGRAM (1991 REVISIONS)**

The provisions of Sections 25-8-202(1)(e), and (g); 25-8-308(1)(d); and 37-95-107.6(4) C.R.S., provide the specific statutory authority for adoption of the attached regulatory amendments. The Commission also adopted, in compliance with Sections 24-103(4) C.R.S., the following statement of basis and purpose.

## **BASIS AND PURPOSE**

Many changes were incorporated into the priority system procedures (5.5.3) to allow additional projects that are eligible under this program to receive funding. The categories added were for potential health hazards, facilities that are beyond design life and in need of repair and sludge disposal. Categories for potential health hazards and facilities beyond design life and in need of repair were added to assist communities with pollution prevention to limit initiation of compliance and enforcement measures. The sludge disposal category was added to assist communities with meeting State/EPA sludge management regulations. The changes were also made to coincide with the Water Pollution Control Revolving Fund (WPCRF) 5.2.5 priority system procedures. The changes made will allow the Division to utilize one priority point system for all State priority lists. This system will accommodate the State grant program, the Sewer Needs List for the Division of Local Government, the WPCRF and any future federal grant program.

### **55.13 STATEMENT OF BASIS, SPECIFIC STATUTORY AUTHORITY, AND PURPOSE REGARDING THE DOMESTIC WASTEWATER TREATMENT GRANT PROGRAM (1992 REVISIONS)**

The provisions of Sections 25-8-202(1)(e), and (g); 25-8-308(1)(d); and 37-95-107.6(4) C.R.S. provide the specific statutory authority for adoption of the attached regulatory amendments. The Commission also adopted, in compliance with Sections 24-4-103(4) C.R.S., the following statement of basis and purpose.

## **BASIS AND PURPOSE**

The FY93 State Sewage Construction Grant Priority List is presented to the Water Quality Control Commission for agency action and public comment. The regulations under 5.5.4 provide for projects to be listed in a priority basis for funding dependent upon appropriations from the State Legislature. Because of lottery sales, it is possible this program will receive \$2 million for funding in FY93-94.

### **55.14 STATEMENT OF BASIS, SPECIFIC STATUTORY AUTHORITY, AND PURPOSE REGARDING THE DOMESTIC WASTEWATER TREATMENT GRANT PROGRAM (1993 REVISIONS)**

The provisions of Sections 25-8-202(1)(e), and (g); 25-8-308(1)(d); and 37-95-107.6(4) C.R.S. provide the specific statutory authority for adoption of the attached regulatory amendments. The Commission also adopted, in compliance with Sections 24-4-103(4) C.R.S., the following statement of basis and purpose.

## **BASIS AND PURPOSE**

The FY94 State Sewage Construction Grant Priority List is presented to the Water Quality Control Commission for agency action and public comment. The regulations under 5.5.4 provide for projects to be listed in a priority basis for funding dependent upon appropriations from the State Legislature. The Division has received \$2 million for funding in FY93-94.

### **55.15 STATEMENT OF BASIS, SPECIFIC STATUTORY AUTHORITY, AND PURPOSE REGARDING THE DOMESTIC WASTEWATER TREATMENT GRANT PROGRAM (1994 REVISIONS)**

The provisions of Sections 25-8-202(1)(e), and (g); 25-8-308(1)(d); and 37-95-107.6(4) C.R.S. provide the specific statutory authority for adoption of the attached regulatory amendments. The Commission also adopted, in compliance with Sections 24-4-103(4) C.R.S., the following statement of basis and purpose.

## **BASIS AND PURPOSE**

The FY95 State Sewage Construction Grant Priority List is presented to the Water Quality Control Commission for agency action and public comment. The regulations under 5.5.4 provide for projects to be listed in a priority basis for funding dependent upon appropriations from the State Legislature. The Division has received \$2 million for funding in FY94-95.



**55.16 STATEMENT OF BASIS, SPECIFIC STATUTORY AUTHORITY, AND PURPOSE REGARDING THE DOMESTIC WASTEWATER TREATMENT GRANT PROGRAM (1995) REVISIONS)**

The provisions of Sections 25-8-202(1)(e), and (g); 25-8-308(1)(d); and 25-8-703 C.R.S. provide the specific statutory authority for adoption of the attached regulatory amendments. The Commission also adopted, in compliance with Sections 24-4-103(4) C.R.S., the following statement of basis and purpose.

**BASIS AND PURPOSE**

The FY96 State Sewage Construction Grant Priority List is presented to the Water Quality Control Commission for agency action and public comment. The regulations under 5.5.4 provide for projects to be listed in a priority basis for funding dependent upon appropriations from the State Legislature. The Division has received \$2 million for funding in FY95-96. The Division will be utilizing 5% (\$100,000) for Administration of the program.

**55.17 STATEMENT OF BASIS, SPECIFIC STATUTORY AUTHORITY AND PURPOSE REGARDING THE DOMESTIC WASTEWATER TREATMENT GRANT PROGRAM: JULY, 1997 RULEMAKING**

The provisions of sections 25-8-202 and 25-8-401, C.R.S., provide the specific statutory authority for adoption of the attached regulatory amendments. The Commission also adopted, in compliance with section 24-4-103(4) C.R.S., the following statement of basis and purpose.

**BASIS AND PURPOSE**

The Commission has adopted a revised numbering system for this regulation, as a part of an overall renumbering of all Water Quality Control Commission rules and regulations. The goals of the renumbering are: (1) to achieve a more logical organization and numbering of the regulations, with a system that provides flexibility for future modifications, and (2) to make the Commission's internal numbering system and that of the Colorado Code of Regulations (CCR) consistent. The CCR references for the regulations will also be revised as a result of this hearing.

**55.18 STATEMENT OF BASIS, SPECIFIC STATUTORY AUTHORITY AND PURPOSE REGARDING THE DOMESTIC WASTEWATER TREATMENT GRANT PROGRAM: FEBRUARY, 1998 RULEMAKING**

The provisions of sections 25-8-202(1)(e) and (g); 25-8-308(1)(d); and 25-8-703, C.R.S., provide the specific statutory authority for adoption of the attached regulatory amendments. The Commission also adopted, in compliance with section 24-4-103(4) C.R.S., the following statement of basis and purpose.

**BASIS AND PURPOSE**

The FY98 State Sewage Construction Grant Priority List has been approved by the Water Quality Control Commission. Regulation # 53 provides for projects to be listed in a priority basis for funding dependent upon appropriations from the State Legislature.

The Division has received \$3 million for funding in FY96-97 and \$3 million for FY97-98. The Division will be utilizing up to 5% of each grant for administration of the program.

The Commission received comments from the Denver Regional Council of Governments Water Resource Management Advisory Committee. There appear to be three concerns by DRCOG, that are addressed as follows.

The Division has always in the past and will continue in the future (by means of the site approval process and Commission policy established in the Water Pollution Control Revolving Fund Rules) ensure that

projects are identified in the appropriate water quality planning documents prior to the award of funds to construct the project. The Division has committed to aggressively involve DRCOG as well as other water quality management agencies with the WPCRF Intended Use Plan and the State Construction Grant List as they are developed.

The Clear Creek/Arapahoe MHP and the Clear Creek/Herman Area are two distinct projects.

The Box Elder Water and Sanitation District is a community of approximately 40 homes near the Tomahawk Truck Stop in Adams County; however, the address listed with Special Districts to send correspondence is in the City of Englewood. The Division is willing to include both the location of the District and the address where they send correspondence.

#### **55.19 STATEMENT OF BASIS AND PURPOSE REGARDING THE DRINKING WATER GRANT FUND (1999)**

These rules establish a system to administer grant funds and to provide for a mechanism to prioritize eligible projects. The rules allow lower priority drinking water systems to receive funding ahead of systems with higher priority if the higher priority system does not apply for the funding or is not ready to proceed with its project.

The Drinking Water Grant Program will provide financial assistance to governmental agencies and not-for-profit public water systems serving populations of not more than 5,000 people for projects including consolidation, planning, design and/or construction of public water systems.

The Drinking Water Grant Program Plan, which includes eligible projects, will be developed by the WQCD and submitted to the Board of Health (Board) once each year. A public will be held by the Board to receive input on the Plan. Following the meeting, any changes will be incorporated and the final Plan shall be approved by the Board.

These rules are similar to those adopted by the Board for the Drinking Water Revolving Fund. The rules are also similar to those adopted by the Water Quality Control Commission (Commission) for the Water Pollution Control Revolving Fund and the Domestic Wastewater Treatment Grant Program. The rule adoption authority for wastewater rests with the Commission while the drinking water rules are adopted under the authority of the Board of Health.

#### **55.20 STATEMENT OF BASIS, SPECIFIC STATUTORY AUTHORITY, AND PURPOSE REGARDING THE DOMESTIC WASTEWATER TREATMENT GRANT PROGRAM (1999) REVISIONS**

The provisions of Sections 25-8-202(1)(e), and (g); 25-8-308(1)(d); and 25-8-703 CRS. provide the specific statutory authority for adoption of the attached regulatory amendments. The Commission also adopted, in compliance with Section 24-4-103(4) C.R.S., the following statement of basis and purpose.

##### **BASIS AND PURPOSE**

The FY99 State Sewage Construction Grant Priority List is presented to the Water Quality Control Commission for agency action and public comment. Regulations No. 53 provide for projects to be listed in a priority basis for funding dependent upon appropriations from the State Legislature.

The Division has received \$3 million for funding in FY97-98 and \$3 million for FY98-99. The Division will be utilizing up to 5% of each grant for administration of the program.

#### **55.21 STATEMENT OF BASIS, SPECIFIC STATUTORY AUTHORITY, AND PURPOSE REGARDING THE DOMESTIC WASTEWATER TREATMENT GRANT PROGRAM (2000) REVISIONS**

The provisions of sections 25-8-202(1)(e) and (g); 25-8-308(1)(d); and 25-8-703 C.R.S. provide the specific statutory authority for adoption of the attached regulatory amendments. The Commission also adopted, in compliance with Section 24-4-103(4) C.R.S., the following statement of basis and purpose.

## **BASIS AND PURPOSE**

The subject regulations are in implementation of the requirements of the Colorado Water Quality Control Act, C.R.S., 25-8-101. et seq. Section 25-8-202 of the Act requires that the Commission promulgate regulations for the administration of grants for domestic wastewater treatment facilities for the State. In particular, C.R.S., 25-8-202(1)(e) and (g) provide as follows: "The Commission shall develop and maintain a comprehensive and effective program for prevention, control, and abatement of water pollution and for water quality protection throughout the entire state and, in connection therewith, shall:

- (e) Perform duties assigned to the Commission in part 7 of this article with respect to the location, design, construction, financing, and operation of domestic wastewater treatment plants.
- (g) Promulgate regulations and adopt priority ranking for the administration of federal and other public source construction loans or grants which the Commission or the Division administers, which loans or grants shall not be expended for any purpose other than that for which they were provided.

A stakeholders group with members from the Southeast Council of Governments, Clear Creek Watershed Forum, a consulting engineering firm, the State Environmental Information Center, the Water Quality Control Division and the Division of Local Government of the Department of Local Affairs met to create new regulations to provide a format for determining which eligible projects should receive funds under the Domestic Wastewater Treatment (DWWT) Grant Program.

The need for revising Regulation No. 53 came about when the previous priority system that was used for both grants and loans under Regulation No. 51 (Water Pollution Control Revolving Fund (WPCRF) Rules) was deleted and replaced with a system that could fund water quality projects beyond wastewater treatment. Since Colorado's Water Quality Control Act only allows grants to small community domestic wastewater treatment projects, separate regulations had to be established to provide criteria for eligible grants. It is the Division's intent to continue to utilize the list of projects developed under the WPCRF Rules by extracting the projects that would meet the criteria for DWWT Grant Program established under this regulation.

Section 53.4(3) allows the Division to provide assistance to governmental agencies that were not identified in the Intended Use Plan and yet still need to move ahead with a project or make adjustments in an emergency situation. The focus on providing funds for planning or a quick fix in an emergency and then ensuring that those projects are identified on a subsequent approved plan provides flexibility while preserving the credibility of the process.

The timing of the public rulemaking hearing for this regulation will not accommodate approval of the Intended Use Plan for the year 2000 by December 31, 1999. The 2000 Intended Use Plan will be developed as Regulation No. 54 for the Commission's approval in February 2000 after adoption of these regulations. Until this process is complete, the Division will continue to award grant contracts from the Commission's approved 1999 State Construction Grant Priority List.

The new system as proposed will provide categories of eligible projects, provide mechanism for funding throughout the year, identify the use of the grant funds and allow for prioritization as necessary. The proposed system is still similar to the WPCRF and can accommodate this DWWT Grant Program, the Sewer Needs List for the Division of Local Government, and any future federal grant program.

**55.22 STATEMENT OF BASIS, SPECIFIC STATUTORY AUTHORITY, AND PURPOSE REGARDING THE DOMESTIC WASTEWATER TREATMENT GRANT PROGRAM (2001) REVISIONS**

The provisions of sections 25-8-202(1)(e) and (g); 25-8-308(1)(d); and 25-8-703 C.R.S. provide the specific statutory authority for adoption of the attached regulatory amendments. The Commission also adopted, in compliance with Section 24-4-103(4) C.R.S., the following statement of basis and purpose.

**BASIS AND PURPOSE**

With the passage of HB 1246, the scope of the DWWT Grant Funding System has been expanded to enable the program to fund counties on behalf of unincorporated areas with populations of not more than 5,000. This change is incorporated into this Regulation #53 and involves expanding the definition of "governmental agency" to include "counties on behalf of unincorporated areas" and the definition of a "small community" to include unincorporated areas of not more than 5,000 population.

The body of the regulation does not need to be changed because it has always been broad enough to identify the needs in counties. The Domestic Wastewater Treatment Grant Program funds were not made available to counties on behalf of unincorporated areas until the statutory change was made and approved March 20, 2001. Paragraph (1)(b)(l) of 25-8-703 gives the Division authority to enter into contracts with counties on behalf of unincorporated areas and it will be repealed July 1, 2006.

**55.23 STATEMENT OF BASIS, SPECIFIC STATUTORY AUTHORITY, AND PURPOSE REGARDING THE DOMESTIC WASTEWATER TREATMENT GRANT PROGRAM (MAY 2004 RULEMAKING)**

Sections 25-8-202(1)(e) and (g); 25-8-308(1)(d); and 25-8-703, C.R.S. provide the specific statutory authority for adoption of the attached regulatory amendments. The Commission also adopted, in compliance with Section 24-4-103(4), C.R.S., the following statement of basis and purpose.

**BASIS AND PURPOSE**

Recent statutory amendments led to changes to the regulations governing another of the Division's funding programs, the Water Pollution Control Revolving Fund Rules, Regulation No. 51. Since the Commission was planning to consider changes to Regulation No. 51, the Attorney General's Office also examined Regulation No. 53, focusing on streamlining certain provisions of the two regulations. The Attorney General's Office, along with the Division and a stakeholders group, also discussed options to simplify the process for the Commission's annual approval of the program's "Intended Use Plan."

In order to accomplish these objectives, the Commission made the following changes to Regulation No. 53:

Section 53.3 - Detailed definitions of a public health hazard and significant non-compliance were added to assist staff in determining under which category a project should be listed.

Section 53.4(1) - A change was made to indicate that the Domestic Wastewater Treatment Grant Program Intended Use Plan will be approved annually by the Commission in a public forum after a public notice and comment period, but not through a rulemaking process.

Section 53.4(2) - Category 1 and 2 were explained further to assist staff in categorizing projects on the Project Eligibility List.

**55.4124 STATEMENT OF BASIS AND PURPOSE REGARDING THE WATER QUALITY IMPROVEMENT FUND (MAY 2007)**

The provisions of Sections 25-8-202, 25-8-308, and 25-8-608, C.R.S. provide the specific statutory authority for adoption of the attached regulations. The Commission, in compliance with section 24-4-103(4), C.R.S., has adopted the following statement of basis and purpose.

### **BASIS AND PURPOSE**

The purpose of this new regulation is to implement the Fund as established by House Bill 06-1337. This regulation provides a format for identifying eligible grant recipients and projects, Fund allocation, and prioritization criteria that will be used to award grants from the Fund.

The General Assembly appropriated \$292,990 for the Fund for state fiscal year 2007. However, the statute did not take effect until the passage of the bill on May 26, 2006 and applies only to violations committed on or after this date. Only those penalties collected after May 26, 2006 and appropriated by the General Assembly will be available for grants.

The Fund will be administered by the Division, which also administers the Water Pollution Control Revolving Fund loans, State Domestic Wastewater Grants, and the Clean Water Act Section 319 nonpoint source grants. When compared to Water Pollution Control Revolving Fund loans, State Domestic Wastewater Grants, and the Section 319 nonpoint source grants, the initial amount of funding provided for the Fund is considerably less. No additional Division staff is included in the legislation to administer grants associated with this regulation. The goals of this regulation are similar to those for the Water Pollution Control Revolving Fund, State Domestic Wastewater Grant and the Section 319 nonpoint source grants. The grant amounts of the Fund are expected to be relatively small compared to the overall cost of such projects, and in most cases will not cover the entire cost of the project. Therefore, the Commission has determined that the most efficient and effective process to implement the Fund is to use, where established, the criteria already established by the three existing funding mechanisms.

An established process did not exist for projects identified under Category 1 (projects that improve the water quality in the community or water body which has been impacted by a water quality violation that resulted in a penalty being imposed). The Commission determined that a separate application process, with the criteria of project eligibility, Fund allocation, and project prioritization criteria being specifically developed, should be established to provide funding. This process will be compatible with existing Division loan and grant funding opportunities.

The Commission determined that entity eligibility for receipt of funding should be consistent with existing loan and grant opportunity processes and criteria. Ineligible entities are specifically identified to eliminate the potential for a party issued an enforcement action to apply for and receive grant funding. Project eligibility was determined to be consistent with the requirements specified in HB-06-1337. Funding allocation was determined by considering the legislative intent of the bill, which resulted in giving a slightly higher proportion to improving water quality in the community or water body that has been impacted by a water quality violation, to address effects from discharge violations. Categories 2 and 3 are given an equal funding allocation so that projects in these categories would receive funding over time. Project prioritization is established within each category because of the unique aspects of the project types. Category 1 and 2 priorities are to first address public health impacts to communities or impacted water bodies, and environmental impacts second. Category 3 priorities are to address more historic water quality impairments first, and protection of existing water quality designated uses and standards second.

This regulation will be implemented beginning in the fiscal year for which funds are appropriated and available. The Commission determined that implementation of this new Fund should be in conjunction with existing loan and grant opportunities currently administered by the Division, so as to minimize additional solicitation activities and associated staff workload.

### **55.25 STATEMENT OF BASIS, SPECIFIC STATUTORY AUTHORITY, AND PURPOSE REGARDING THE DOMESTIC WASTEWATER TREATMENT GRANT PROGRAM (JULY 2008 RULEMAKING, EFFECTIVE DATE JANUARY 1, 2009)**

The provisions of sections 25-8-202(1)(e) and (g); 25-8-308(1)(d); and 25-8-703 C.R.S. provide the specific statutory authority for adoption of the attached regulatory amendments. The Commission also adopted, in compliance with Section 24-4-103(4) C.R.S., the following statement of basis and purpose.

### **BASIS AND PURPOSE**

Changes to the Rules have been made to streamline the Intended Use Plan process. The categorization and prioritization system that are included in the Water Pollution Control Revolving Loan Fund Rules have been incorporated into the Domestic Wastewater Treatment Grant Rules. These revisions and will enable the Division to develop one Intended Use Plan and Project Eligibility List, that will be used for both the grant and loan funds.

### **55.26 STATEMENT OF BASIS AND PURPOSE REGARDING THE DRINKING WATER GRANT FUND (JULY 14, 2008 RULEMAKING, EFFECTIVE DATE JANUARY 1, 2009)**

Sections 25-1.5-208 and 25-1.5-208(1)(b) C.R.S. provide the specific statutory authority for adoption of the attached regulatory amendments. The Commission also adopted, in compliance with section 24-4-103(4) C.R.S. the following statement of basis and purpose.

### **BASIS AND PURPOSE**

Changes to Section 25-1.5-208 C.R.S. moved the authority for promulgating rules and approving the annual intended use plan from the Colorado Board of Health to the Water Quality Control Commission (Commission). Updates to these rules reflect this change in authority.

Changes to the Rules have also been made that streamline the Intended Use Plan process. The categorization and prioritization system that is included in the Drinking Water Revolving Loan Fund Rules have been incorporated into the Drinking Water Grant Program Rules. These revisions and will enable the Division to develop one Intended Use Plan and Project Eligibility List, that will be used for both the grant and loan funds.

### **55.4227 STATEMENT OF BASIS, SPECIFIC STATUTORY AUTHORITY, AND PURPOSE REGARDING THE WATER QUALITY IMPROVEMENT FUND, FEBRUARY 13, 2012 RULEMAKING, EFFECTIVE MARCH 30, 2012**

The provisions of Sections 25-8-202, 25-8-308, and 25-8-608, C.R.S. provide the specific statutory authority for adoption of the attached regulations. The Commission, in compliance with section 24-4-103(4), C.R.S., has adopted the following statement of basis and purpose.

### **BASIS AND PURPOSE**

House Bill 11-1026 amended the Water Quality Control Act to authorize grants for stormwater management training and best practices training to prevent or reduce the pollution of state waters.

Section 55.3 (Entity Eligibility) was amended for consistency with HB 11-1026 to include not-for-profit stormwater administrators and training providers as types of entities eligible to receive funding.

Section 55.4 (Project Eligibility) was amended per HB 11-1026 to add stormwater management training and best management practices training as Category 1 type projects. The existing categories were renumbered to account for this addition.

Section 55.5 (Funding Allocation) was amended to provide for up to \$50,000 of available water quality improvement funds to Category 1 projects. The Commission determined that it was appropriate to allocate this amount as the maximum allowed under HB 11-1026.

The Commission determined it was appropriate to reduce the funding for Category 2 (formerly Category 1) projects from 40% to 10%. This category includes projects for the improvement of water quality impacts which are the result of a water quality violation that resulted in a penalty. While the Commission believes it is appropriate to maintain some level of funding for such projects, the number of applicants that have historically applied for funding under this category has been limited. In order to inform potential applicants of their eligibility to receive funding under Category 2, the Division will post a list of violators who paid penalties into the Water Quality Improvement Fund. The list will also include the county where the violation occurred. If the applicant can demonstrate its project will improve the water quality in the community or water body which has been impacted by the violation, such applicant may be eligible to receive funding.

The Commission also increased the funding allocation for Category 3 (formerly Category 2) projects from 30% to 60% because this category, which relates to planning, design, construction and repair of stormwater projects and domestic wastewater treatment works, represents the majority of funding requests received by the Division. The Commission found the increase for Category 3 to be necessary to address the high level of demand and the \$2.9 billion of infrastructure needs that are documented in the 2012 Water Pollution Control Revolving Fund Intended Use Plan. The allocation for Category 4 (formerly Category 3), nonfederal match funding for nonpoint source projects, will remain at 30% of available funds.

In addition, language was added to section 55.5 to clarify that if any funds were not utilized in one category they will be redistributed among the remaining categories.

Section 55.6 (Project Prioritization Criteria), outlining the prioritization of grant requests within each category, was revised to include the new Category 1. The Commission found it appropriate to give priority to projects that implement stormwater management and best management practices training not previously available (or previously limited in accessibility) in Colorado, above those projects that will simply expand the context or availability of existing stormwater management and best management practices training. Language was also added to section 55.6 to explain that if insufficient requests for funding are received and determined eligible, the Division has the ability to reallocate funding among categories based on demand. Historically, when the Division did not receive sufficient eligible applications within a certain category, the funds allocated to that category were not expended. This provision ensures that all funds appropriated each year can be utilized.

Section 55.7 (Notification and Reporting) was amended to require grant recipients to provide a final project report instead of an annual report. Based upon Division feedback, the Commission determined this to be a more efficient approach to reporting.

#### PARTIES TO THE RULEMAKING

1. Urban Drainage and Flood Control District
2. Colorado Department of Transportation

#### **55.1328 STATEMENT OF BASIS, SPECIFIC STATUTORY AUTHORITY, AND PURPOSE REGARDING THE WATER QUALITY IMPROVEMENT FUND, JUNE 11, 2012 RULEMAKING, EFFECTIVE JULY 30, 2012**

The provisions of Sections 25-8-202, 25-8-308, and 25-8-608, C.R.S. provide the specific statutory authority for adoption of the attached regulations. The Commission, in compliance with section 24-4-103(4), C.R.S., has adopted the following statement of basis and purpose.

#### **BASIS AND PURPOSE**

During the 2012 legislative session the General Assembly authorized additional funding for the Water Quality Improvement Fund through the annual appropriation of the Long Bill. In 2012, \$600,000 for capital construction funding has been authorized with the flexibility to expend the funds over a three year period.

The Commission took action to modify Regulation #55 by changing the funding allocation, project prioritization criteria, and notification provisions. Historically, \$167,000 was appropriated annually for the Water Quality Improvement Fund with a requirement that the funds be expended within the fiscal year.

There has been more demand for Water Quality Improvement Fund grants due to the increase in available funds, the requirement to provide stormwater training grants, and the flexibility to expend the funds over multiple years. In order to properly notify the Requests for Applications, allocate, and award funds the Commission adopted the following modifications to Regulation #55:

Section 55.2 - Definitions were modified for the non-point source and stormwater projects to better clarify the intent of the statute and to specify the types of projects eligible for funding from the Water Quality Improvement Fund.

Section 55.5 – Funding Allocation was modified to provide additional funding for each of the four categories of projects under the statute. Specifically, additional funding has been provided for the first year of implementation of the stormwater management training category. Limits have been established within specific categories to ensure funding is equitably distributed among eligible applicants.

Section 55.6 - Project Prioritization Criteria were modified to include additional criteria. The additional criteria will be used to further prioritize projects within categories when there is insufficient funding. Specific criteria and associated points will be included as an attachment to the Request for Applications notice. The criteria will include population served/benefited by the project, financial/affordability (with an emphasis on providing funding opportunities for smaller, less financially capable communities), water quality benefits, permit compliance, readiness to proceed and availability of local project match. For Category 1 projects, a specific project may meet Priority 1 criteria over multiple years during the period that the training is being developed and established. For consistency, the Category 3 description was modified to reflect the project eligibility description identified in 55.4. Reference to the non-existent State Domestic Wastewater Treatment Grant was deleted.

Section 55.7 – Notification and Reporting section was modified to eliminate the application deadline and allow the Division the flexibility to notice Requests for Applications depending upon availability of appropriation of funds by the legislature.

#### PARTIES TO THE RULEMAKING

1. Urban Drainage and Flood Control District

#### **55.1429 STATEMENT OF BASIS, SPECIFIC STATUTORY AUTHORITY, AND PURPOSE REGARDING THE WATER QUALITY IMPROVEMENT FUND, MAY 13, 2013 RULEMAKING, EFFECTIVE JUNE 30, 2013**

The provisions of Sections 25-8-202, 25-8-308, and 25-8-608, C.R.S. provide the specific statutory authority for adoption of the attached regulations. The Commission, in compliance with section 24-4-103(4), C.R.S., has adopted the following statement of basis and purpose.

#### **BASIS AND PURPOSE**

During the 2013 legislative session the General Assembly created a new program under HB-13-1191 entitled the Nutrient Grant Fund. HB-13-1191 requires the Commission to promulgate rules necessary to administer the program as an amendment to Regulation #55, the Water Quality Improvement Fund. In order to assist parties submitting a Request for Applications, and in order to provide a transparent process for allocation and award of the funds the Commission created section 55.8, Nutrients Management Grant Fund. This section established four subsections for administering the program; Entity Eligibility, Project Eligibility, Project Prioritization, and Funding Allocation and Awarding Process.



Entities eligible for funding under this section are those Domestic Wastewater Treatment Works owned and operated by local governments and subject to the first phase implementation of Regulation #85. Funds can be used for projects to plan, design, construct, or improve a wastewater treatment works in order to comply with the effluent limits of Regulation #85.

The Project Prioritization criteria that were developed for the Nutrient Management Grants were designed to reflect language contained in HB-13-1191 which emphasized priority to be given to eligible applicants who would be the most financially burdened by the costs associated with incorporating the necessary improvements or adaptations to their domestic wastewater treatment facilities necessary to achieve compliance with Regulation #85. The priority system is comprised of five sections (affordability, water quality, operational costs/environmental impact, managerial capability, and readiness to proceed) with the majority of total points available to capture financial need of eligible applicants. Some sections have multiple criteria for scoring. The priority system evaluates the environmental impacts associated with nutrient loads to surface waters, the anticipated operational costs associated with implementing nutrient management controls, and the ability of eligible applicants to properly operate, maintain, and ensure the longevity and integrity of infrastructure investments. The priority system also provides points for eligible applicants who work cooperatively with community partners in efforts to address nutrient management on a watershed basis by incorporating non-point source monitoring and best management practices both upstream and downstream of the domestic wastewater treatment facility.

The Commission felt that a local match commitment of twenty percent (20%) for Planning grants was important to show applicant commitment and so will award 5 points for those meeting the twenty percent match with cash funds. Applicants with Planning projects who elect to contribute an amount greater than twenty percent of the grant award will receive additional points for their demonstration of local commitment. The Commission also determined that applicants with Design/Construction projects would ultimately contribute an amount greater than twenty percent of the grant award due to the level of cost associated with design and construction, therefore nullifying the need to apply a local match requirement for Design/Construction projects.

The development of Readiness to Proceed criteria for both Design/Construction and for Planning projects is an important criteria that will assist in ensuring that all funds will be allocated and expended within a three-year timeframe pursuant to HB-13-1191. The amount made available for Design/Construction projects and for Planning projects will be determined and identified at the time the Request for Applications has been noticed. In order to properly address the variability in demand for funding of Design/Construction and/or Planning, the Commission has provided the ability to transfer funds between Design/Construction and Planning projects to satisfactorily accommodate the demand indicated by the number and type of project applications. The Commission has also determined that it may be necessary to increase the amount of individual Nutrient Management Grant awards to ensure that all funds have been allocated to eligible entities.

**55.1530 STATEMENT OF BASIS, SPECIFIC STATUTORY AUTHORITY, AND PURPOSE  
REGARDING THE WATER QUALITY IMPROVEMENT FUND, MAY 12, 2014 RULEMAKING,  
EFFECTIVE JUNE 30, 2014**

The provisions of Sections 25-8-202, 25-8-308, and 25-8-608, C.R.S. provide the specific statutory authority for adoption of the attached regulations. The commission, in compliance with section 24-4-103(4), C.R.S., has adopted the following statement of basis and purpose.

**BASIS AND PURPOSE**

During the 2014 legislative session the General Assembly created a new program under HB14-1002 entitled the Natural Disaster Grant Fund. HB14-1002 requires the commission to promulgate rules necessary to administer the program. The commission determined that Regulation No. 55, the Water Quality Improvement Fund, was the most appropriate regulation to amend. In order to assist parties submitting a request for applications, and in order to provide a transparent process for allocation and award of the funds, the commission created section 55.9, Natural Disaster Grant Fund. This section

established four subsections for administering the program: entity eligibility, project eligibility, award process and funding allocation and project prioritization. Entities eligible for funding under this section include local governments, including local governments accepting grants on behalf of and in coordination with not-for-profit water systems, for the planning, design, construction, improvement, renovation or reconstruction of domestic wastewater treatment works or public drinking water systems that have been impacted, damaged or destroyed in connection with a natural disaster. Further, local governments assisting with the repair and restoration of on-site wastewater treatment systems as defined in section 25-10-103(12), are eligible for funding.

In alignment with HB14-1002, the commission has determined that only the above eligible local governments located in a county for which the governor has declared a disaster emergency by executive order or proclamation under section 24-33.5-704, C.R.S. are eligible to receive funds under the Natural Disaster Grant Fund.

In order to address on-site wastewater treatment systems that have been impacted by the September 2013 flood, the commission determined that a portion of the State Fiscal Year14-15 appropriation would be set-aside to assist local governments as determined by a stakeholder process.

In order to maximize other funding sources, the commission felt it was important to allow these grant moneys to be used as matching funds required to secure any other state and federal funding for the planning, design, construction, improvement, renovation or reconstruction of drinking water and wastewater infrastructure.

The project prioritization criteria that were developed for the Natural Disaster Grant Fund were designed to reflect language contained in HB14-1002 which emphasized priority to be given to eligible applicants who would be the most financially burdened by the costs associated with incorporating the necessary improvements or adaptations to their domestic wastewater treatment works or public drinking water systems. The commission also felt it was important to further prioritize projects based on population criteria, financial affordability factors, regionalization, utilization of multiple funding sources, readiness to proceed and impacts from the September 2013 flood necessary for planning, design, construction, improvements, renovation or reconstruction, and other factors pertinent to HB14-1002.

To properly address the variability in demand between the domestic wastewater treatment works, public drinking water systems and on-site wastewater systems the commission provides the ability to transfer funds between the Natural Disaster Grant Fund and a set-aside for on-site wastewater treatment systems. The commission has also determined that it may be necessary to increase the amount of grant awards in priority order, highest to lowest, until all of the funds have been allocated or the application demand has been met subsequent to any transfer between the main fund and the on-site wastewater treatment system set-aside.

**55.31 STATEMENT OF BASIS, SPECIFIC STATUTORY AUTHORITY, AND PURPOSE REGARDING STATE FUNDED WATER AND WASTEWATER INFRASTRUCTURE PROGRAMS, AUGUST 11, 2014 RULEMAKING, EFFECTIVE SEPTEMBER 30, 2014**

The provisions of sections 25-1.5-208, 25-8-202(1)(g), 25-8-608(1.7), 25-8-608.5, and 25-8-608.7, C.R.S., provide the specific statutory authority for adoption of the attached regulation. The Water Quality Control Commission has adopted the following statement of basis and purpose in compliance with section 24-4-103(4), C.R.S.

**BASIS AND PURPOSE**

Due to an increase in funding programs provided by the Colorado General Assembly, the commission felt it was important to consolidate all state funded programs into one regulation. Therefore, the commission renamed Regulation #55 from the Water Quality Improvement Fund to State Funded Water and Wastewater Infrastructure Programs, which now encompasses the Water Quality Improvement Fund, the

Nutrient Management Grant Fund, the Natural Disaster Grant Fund, and the Small Communities Water and Wastewater Grant Fund.

Specific changes to Regulation #55 include the following:

- The authority, scope, and purpose was combined for all state funded grant funds in section 55.1
- Section 55.2 is now reserved for definitions applicable to all state funded programs listed in the regulation, which now includes new definitions for the terms “pollution,” “beneficial use,” “consolidation,” and “waterborne disease outbreak” and various edits to existing definitions
- Previous Water Quality Improvement Fund sections have been renamed to include other state funded grant funds
- Section 55.6 Small Communities Water and Wastewater Grant Fund was added as a result of Senate Bill 14-025
- Each state funded program title was changed to include the word “criteria” and is listed in its own section:
  - 55.3 Water Quality Improvement Fund Criteria
  - 55.4 Nutrient Management Grant Fund Criteria
  - 55.5 Natural Disaster Grant Fund Criteria
  - 55.6 Small Communities Water and Wastewater Grant Fund Criteria
- Various editorial corrections have been made to align with other regulations or to provide clarity

New Provisions for Administration of the Small Communities Water and Wastewater Grant Fund

The Water Quality Control Commission’s Regulations #53 and #54 provide the rules for the Water Quality Control Division to administer two separate small community grant programs under two statutes: grants for drinking water in section 25-1.5-208 C.R.S., and grants for wastewater in section 25-8-703 C.R.S. In 2009, Senate Bill 09-165 amended section 25-1.5-208, C.R.S. by providing a continuous source of revenue from the severance tax trust fund. The legislation directed an annual transfer of up to \$10 million to the drinking water grant program after revenues from the fund exceeded \$201.5 million. However, this bill only amended the drinking water statute and did not provide the same continuous source of revenue for wastewater, which made it unclear that funds could be used for both drinking water and wastewater. As a result, SB 14-025 was introduced and signed into law on February 27, 2014 to clarify that drinking water and wastewater projects are eligible under the small community grant program.

Since SB 14-025 combined both water and wastewater small community grant programs, the commission determined it was important to be consistent with legislation and have one regulation for program administration. The commission therefore has repealed Regulation #53 for the Domestic Wastewater Treatment Grant Funding System and Regulation #54 for the Drinking Water Grant Fund as part of this rule adoption.

In order to administer the newly-combined Small Communities Water and Wastewater Grant Fund, the commission added sections 55.1(4) and 55.6 to Regulation #55. The following information lists the commission’s actions for the Small Community Grant Fund:

- In alignment with SB14-025, the commission added section 55.1(4) and has determined that governmental agencies, not-for-profit public water systems, as defined in section 25-1.5-201 (1)

C.R.S., or counties representing unincorporated areas that serve a population of not more than five thousand people are eligible to apply for funds for the planning, design, and construction of public water systems.

- In order to assist parties submitting applications, and in order to provide an equitable and transparent process for allocation and award of funds, the commission created section 55.6, Small Communities Water and Wastewater Grant Program Criteria. This section established four subsections for administering the program: entity eligibility, project eligibility, award process and funding allocation, and project prioritization for both drinking water and wastewater projects.
- The project prioritization criteria that were developed for the Small Communities Water and Wastewater Grant Fund were designed to reflect language contained in SB 14-025 which emphasized priority to be given to eligible applicants who have the greatest impact on water quality and public health protection. The commission felt it was important to further prioritize projects based on population criteria, financial affordability factors, compliance, and readiness to proceed.

**EXHIBIT 2**  
**WATER QUALITY CONTROL DIVISION**

**DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT**

**Water Quality Control Commission**

**5 CCR 1002-53**

**REGULATION NO. 53**

**DOMESTIC WASTEWATER TREATMENT GRANT FUNDING SYSTEM**

**53.1 AUTHORITY**

Section 25-8-202(1) (e) and (g), C.R.S., and section 25-8-703, C.R.S., as amended, of the Colorado Water Quality Control Act provide authority for this regulation.

**53.2 PURPOSE**

The purpose of the Domestic Wastewater Treatment (DWWT) Grant Program is to provide financial assistance to governmental agencies as well as to counties representing unincorporated areas for planning, design and construction of eligible DWWT projects serving a population of not more than 5,000 persons. This grant is not intended to reimburse DWWT grant recipients for any fees or penalties assessed by the Water Quality Control Division (Division).

The funding system is intended to identify those governmental agencies with wastewater treatment problems and financial needs and to allocate funds for the most beneficial program of public health protection and water quality improvement.

**53.3 DEFINITIONS**

See the Colorado Water Quality Control Act and the Water Pollution Control Revolving Fund (WPCRF) Rules (Regulation #51) for additional definitions.

- (1) — "Domestic Wastewater" - A combination of liquid wastes which may include chemicals, household wastes, human excreta, animal or vegetable matter in suspension or solution.
- (2) — "Governmental Agency" - Any regional commission, county (or county on behalf of unincorporated areas), metropolitan district offering sanitation service, sanitation district, water and sanitation district, water conservancy district, metropolitan sewage disposal district, other special district used for funding a domestic wastewater treatment works project, service authority, city and county, city, or town.
- (3) — "Management Agency" - Any governmental agency appropriately designated by the Governor for wastewater management responsibilities in a certified area wide Water Quality Management Plan prepared under Section 208 of the federal Clean Water Act.
- (4) — "Pollution" - Activities or events that degrade the physical, chemical, biological, and radiological integrity of water.

- (5) ~~"Project" - A new wastewater treatment system or a specific improvement to an existing wastewater treatment system, phase or segment.~~
- (6) ~~"Public Health Hazard" - Any contamination of ground or surface waters, caused by inadequate treatment works or disposal of inadequately treated sludge, which potentially endangers public health through contamination of drinking water supplies or direct public exposure. To qualify as a public health hazard, the contamination must be documented by means of a sanitary survey or engineering report submitted by a governmental agency to the Division.~~
- (7) ~~"Significant Non-Compliance" - Violation of limits in a discharge permit, issued under section 402 of the federal Act and/or Part 5 of the state Act to the extent that: any 2 or more exceedances of a non-toxic parameter which are 40% or more over the permit limit or 4 marginal violations (less than 40% over the permit limit) of the permit occur within a 6 month period. For toxic parameters, significant non-compliance is determined by 2 or more exceedances of a permit limit which are 20% or more over the limit or 4 marginal violations (less than 20% over the permit limit) of the permit within a 6 month period. Significant non-compliance is determined within the 12 month period prior to the time the Project Eligibility List is prepared.~~
- (8) ~~"Small Community" - A governmental agency and counties representing unincorporated areas with an existing population of not more than 5,000 persons or an unincorporated area (represented by its county) existing on January 1, 2001 that serve populations of not more than five thousand persons.~~
- (9) ~~"Treatment System" - Any devices and systems used in storing, treating, neutralizing, stabilizing, disposing, recycling or reclamation of domestic wastewater and biosolids; the term also includes appurtenances such as intercepting sewers, outfall sewers, sewage collection systems, pumping, power, and other equipment, extensions, improvements, remodeling, additions, and alterations thereof.~~

**53.4 PROJECT IDENTIFICATION PROCEDURES**

- (1) ~~Each year that funds are appropriated, the Water Quality Control Commission (Commission) will schedule a hearing for public review and comment on the grant fund Intended Use Plan (IUP) that will include a list of eligible DWWT projects, a description of the use of the funds from the previous year and the intended use of the funds for the current year. Governmental agencies that are included in the IUP will be notified of the public hearing. After a public notice and comment period, the Commission shall approve the IUP at a public hearing by December 31 of each year.~~
- (2) ~~In formulating and revising the IUP each year, the Division shall:~~
  - a. ~~Utilize the current WPCRF Project Eligibility List to select potential projects that serve a population of not more than 5,000 persons and are eligible to receive DWWT grants. One of the following categories will be assigned to each project listed:~~
    - ~~Category 1 includes those projects that improve or benefit public health or that will remediate a public health hazard as defined in this regulation.~~
    - ~~Category 2 includes those projects that enable an entity to achieve permit compliance.~~
    - ~~Category 3 includes those projects that contribute to the prevention of a public health hazard; enables an entity to maintain permit compliance; or enables an entity to address a possible future effluent limit or emerging issue.~~

~~Note: Nonpoint source, storm water and source water protection projects are not eligible for DWWT grant funding. Eligibility List Categories are determined based on information provided by~~

~~the applicant during the Annual Eligibility List Survey process. Based upon receipt and review of the Preliminary Engineering Report and a grant application, the assigned Eligibility List Category may be revised during the prioritization process to more accurately reflect the proposed project.~~

- ~~b. Provide a status on how the funds were actually utilized from the previous year.~~
- ~~c. Provide a description of how the funds are anticipated to be expended during the current year.~~

~~(3) Throughout the funding year, the Division may provide assistance:~~

- ~~a. To projects listed in the Project Eligibility List that are ready to proceed;~~
- ~~b. In the form of a planning grant from the DWWT Grant Program to eligible projects listed in the Project Eligibility List, when the governmental agency notifies the Division that it is ready to proceed with its facility plan.~~
- ~~c. To an eligible governmental agency that is not identified in the Project Eligibility List when there is an unforeseen emergency situation.~~
- ~~d. Grant funds cannot be used to reimburse for costs related to fees and/or penalties assessed by the Division.~~

~~Under c above, the governmental agency will then be included on a subsequent Project Eligibility List for the Commission's approval.~~

### **53.5 FUNDING CRITERIA**

~~Funding is dependent upon appropriations from the State Legislature and will be provided for planning, design and/or construction to eligible projects. Funding for a project will be provided when:~~

- ~~(1) The governmental agency's project is identified in the Project Eligibility List approved by the Commission or can be added to the Project Eligibility List in conformance with section 53.4(3) above;~~
- ~~(2) The governmental agency submits an application by the deadline established in the annual IUP;~~
- ~~(3) The Division obtains a certificate of financial need issued by the Division of Local Government (DLG); and~~
- ~~(4) Funds are available. If it is determined that the DWWT Grant Program lacks sufficient funds to cover grants for all eligible projects that are ready to proceed within the funding year, Category 1 projects will be funded prior to Category 2 projects, which will be funded prior to Category 3 projects. Within each category, the following criteria will be used to further prioritize the projects:~~

- ~~(a) Projects serving a small community. Population priority points will be assigned based on the following schedule:~~

|                                      |                      |
|--------------------------------------|----------------------|
| <del>Up to 1000 Population</del>     | <del>20 Points</del> |
| <del>1,001 to 5,000 Population</del> | <del>15 Points</del> |

- ~~(b) Entities that have a greater financial need as outlined in the following procedures. Financial need is determined using a priority point system that ranks projects based on estimated monthly user charges as a percentage of median household income (Ability to Pay) and project cost per tap (Local Burden). The financial data used are from the most~~

recently audited financial statements available to and interpreted by the DLG. Points are assigned based on the following criteria:

(i) Ability to pay (total annual sewer cost per single family equivalent as a % of median household income)

|                  |           |
|------------------|-----------|
| Over 3%          | 20 Points |
| Over 2% up to 3% | 15 Points |
| Over 1% up to 2% | 10 Points |
| 1% and under     | 5 Points  |

(ii) Local burden (total project cost per equivalent residential tap)

|                   |           |
|-------------------|-----------|
| Over \$5,000      | 20 Points |
| Over \$3,500      | 15 Points |
| Over \$2,000      | 10 Points |
| \$2,000 and under | 5 Points  |

(c) Projects of any governmental agency that is under an enforcement action and/or compliance schedule relating to water quality standards, as long as the enforcement action does not relate to administrative requirements of the program, will be assigned 10 points.

(d) Projects of any governmental agency that will result in a reduction in the discharge of pollutant(s) to a segment impaired for the relevant pollutant(s) will receive 10 points

(e) Projects that implement the "Green Infrastructure/Sustainable Measures" will be assigned 5 points.

(5) Grant funds cannot be used to reimburse for costs related to fees and/or penalties assessed by the Division.

### **53.6 – 53.9 RESERVED**

### **53.10 STATEMENT OF BASIS AND PURPOSE REGARDING STATE GRANT PRIORITY SYSTEM**

In accordance with the requirements of 24-4-103(4), the Commission makes these findings and adopts this Statement of Basis and Purpose.

The subject regulations are in implementation of the requirements of the Colorado Water Quality Control Act, C.R.S., 25-8-101., et seq. Section 202 of the Act requires that the Commission administer construction grants for municipal waste treatment facilities for the State. In particular, C.R.S., 1973, 25-5-202(1)(e)(g) provide as follows: The Commission shall develop and maintain a comprehensive and effective program for prevention, control, and abatement of water pollution and for water quality protection throughout the entire state and, in connection therewith, shall:

(e) Perform duties assigned to the Commission in part 7 of this article with respect to the location, design, construction, financing, and operation of domestic wastewater treatment plants

(g) Promulgate regulations and adopt priority ranking for the administration of federal and other public source construction loans or grants which the Commission or the Division administers which loans or grants shall not be expended for any purpose other than that for which they were provided.



These regulations provide a format for determining which eligible projects should receive funds. The priority system is in five parts as follows:

5.5.1 Authority

5.5.2 Purpose

5.5.3 Priority System

5.5.4 Prioritization within Categories

5.5.5 Determination of Project Funding

5.5.6 Update of Categorization and Ranking List

**53.11 STATEMENT OF BASIS SPECIFIC STATUTORY AUTHORITY, AND PURPOSE (1991 REVISIONS)**

The provisions of Sections 25-8-202(1)(e), and (g); 25-8-308(1)(d); and 37-95-107.6(4) C.R.S., provide the specific statutory authority for adoption of the attached regulatory amendments. The Commission also adopted, in compliance with Sections 24-103(4) C.R.S., the following statement of basis and purpose.

**BASIS AND PURPOSE**

Many changes were incorporated into the priority system procedures (5.5.3) to allow additional projects that are eligible under this program to receive funding. The categories added were for potential health hazards, facilities that are beyond design life and in need of repair and sludge disposal. Categories for potential health hazards and facilities beyond design life and in need of repair were added to assist communities with pollution prevention to limit initiation of compliance and enforcement measures. The sludge disposal category was added to assist communities with meeting State/EPA sludge management regulations. The changes were also made to coincide with the Water Pollution Control Revolving Fund (WPCRF) 5.2.5 priority system procedures. The changes made will allow the Division to utilize one priority point system for all State priority lists. This system will accommodate the State grant program, the Sewer Needs List for the Division of Local Government, the WPCRF and any future federal grant program.

**53.12 STATEMENT OF BASIS, SPECIFIC STATUTORY AUTHORITY, AND PURPOSE (1992 REVISIONS)**

The provisions of Sections 25-8-202(1)(e), and (g); 25-8-308(1)(d); and 37-95-107.6(4) C.R.S. provide the specific statutory authority for adoption of the attached regulatory amendments. The Commission also adopted, in compliance with Sections 24-4-103(4) C.R.S., the following statement of basis and purpose.

**BASIS AND PURPOSE**

The FY93 State Sewage Construction Grant Priority List is presented to the Water Quality Control Commission for agency action and public comment. The regulations under 5.5.4 provide for projects to be listed in a priority basis for funding dependent upon appropriations from the State Legislature. Because of lottery sales, it is possible this program will receive \$2 million for funding in FY93-94.

**53.13 STATEMENT OF BASIS, SPECIFIC STATUTORY AUTHORITY, AND PURPOSE (1993 REVISIONS)**

The provisions of Sections 25-8-202(1)(e), and (g); 25-8-308(1)(d); and 37-95-107.6(4) C.R.S. provide the specific statutory authority for adoption of the attached regulatory amendments. The Commission also adopted, in compliance with Sections 24-4-103(4) C.R.S., the following statement of basis and purpose.

**BASIS AND PURPOSE**

The FY94 State Sewage Construction Grant Priority List is presented to the Water Quality Control Commission for agency action and public comment. The regulations under 5.5.4 provide for projects to be listed in a priority basis for funding dependent upon appropriations from the State Legislature. The Division has received \$2 million for funding in FY93-94.

**53.14 STATEMENT OF BASIS, SPECIFIC STATUTORY AUTHORITY, AND PURPOSE (1994) REVISIONS)**

The provisions of Sections 25-8-202(1)(e), and (g); 25-8-308(1)(d); and 37-95-107.6(4) C.R.S. provide the specific statutory authority for adoption of the attached regulatory amendments. The Commission also adopted, in compliance with Sections 24-4-103(4) C.R.S., the following statement of basis and purpose.

**BASIS AND PURPOSE**

The FY95 State Sewage Construction Grant Priority List is presented to the Water Quality Control Commission for agency action and public comment. The regulations under 5.5.4 provide for projects to be listed in a priority basis for funding dependent upon appropriations from the State Legislature. The Division has received \$2 million for funding in FY94-95.

**53.15 STATEMENT OF BASIS, SPECIFIC STATUTORY AUTHORITY, AND PURPOSE (1995) REVISIONS)**

The provisions of Sections 25-8-202(1)(e), and (g); 25-8-308(1)(d); and 25-8-703 C.R.S. provide the specific statutory authority for adoption of the attached regulatory amendments. The Commission also adopted, in compliance with Sections 24-4-103(4) C.R.S., the following statement of basis and purpose.

**BASIS AND PURPOSE**

The FY96 State Sewage Construction Grant Priority List is presented to the Water Quality Control Commission for agency action and public comment. The regulations under 5.5.4 provide for projects to be listed in a priority basis for funding dependent upon appropriations from the State Legislature. The Division has received \$2 million for funding in FY95-96. The Division will be utilizing 5% (\$100,000) for Administration of the program.

**53.16 STATEMENT OF BASIS, SPECIFIC STATUTORY AUTHORITY AND PURPOSE: JULY, 1997 RULEMAKING**

The provisions of sections 25-8-202 and 25-8-401, C.R.S., provide the specific statutory authority for adoption of the attached regulatory amendments. The Commission also adopted, in compliance with section 24-4-103(4) C.R.S., the following statement of basis and purpose.

**BASIS AND PURPOSE**

The Commission has adopted a revised numbering system for this regulation, as a part of an overall renumbering of all Water Quality Control Commission rules and regulations. The goals of the renumbering are: (1) to achieve a more logical organization and numbering of the regulations, with a system that provides flexibility for future modifications, and (2) to make the Commission's internal numbering system and that of the Colorado Code of Regulations (CCR) consistent. The CCR references for the regulations will also be revised as a result of this hearing.

**53.17 STATEMENT OF BASIS, SPECIFIC STATUTORY AUTHORITY AND PURPOSE: FEBRUARY, 1998 RULEMAKING**

The provisions of sections ~~25-8-202(1)(e) and (g); 25-8-308(1)(d); and 25-8-703, C.R.S., provide the specific statutory authority for adoption of the attached regulatory amendments. The Commission also adopted, in compliance with section 24-4-103(4) C.R.S., the following statement of basis and purpose.~~

### **BASIS AND PURPOSE**

The FY98 State Sewage Construction Grant Priority List has been approved by the Water Quality Control Commission. Regulation # 53 provides for projects to be listed in a priority basis for funding dependent upon appropriations from the State Legislature.

The Division has received \$3 million for funding in FY96-97 and \$3 million for FY97-98. The Division will be utilizing up to 5% of each grant for administration of the program.

The Commission received comments from the Denver Regional Council of Governments Water Resource Management Advisory Committee. There appear to be three concerns by DRCOG, that are addressed as follows.

The Division has always in the past and will continue in the future (by means of the site approval process and Commission policy established in the Water Pollution Control Revolving Fund Rules) ensure that projects are identified in the appropriate water quality planning documents prior to the award of funds to construct the project. The Division has committed to aggressively involve DRCOG as well as other water quality management agencies with the WPCRF Intended Use Plan and the State Construction Grant List as they are developed.

The Clear Creek/Arapahoe MHP and the Clear Creek/Herman Area are two distinct projects.

The Box Elder Water and Sanitation District is a community of approximately 40 homes near the Tomahawk Truck Stop in Adams County; however, the address listed with Special Districts to send correspondence is in the City of Englewood. The Division is willing to include both the location of the District and the address where they send correspondence.

### **53.18 STATEMENT OF BASIS, SPECIFIC STATUTORY AUTHORITY, AND PURPOSE (1999) REVISIONS**

The provisions of Sections ~~25-8-202(1)(e), and (g); 25-8-308(1)(d); and 25-8-703 CRS. provide the specific statutory authority for adoption of the attached regulatory amendments. The Commission also adopted, in compliance with Section 24-4-103(4) C.R.S., the following statement of basis and purpose.~~

### **BASIS AND PURPOSE**

The FY99 State Sewage Construction Grant Priority List is presented to the Water Quality Control Commission for agency action and public comment. Regulations No. 53 provide for projects to be listed in a priority basis for funding dependent upon appropriations from the State Legislature.

The Division has received \$3 million for funding in FY97-98 and \$3 million for FY98-99. The Division will be utilizing up to 5% of each grant for administration of the program.

### **53.19 STATEMENT OF BASIS, SPECIFIC STATUTORY AUTHORITY, AND PURPOSE (2000) REVISIONS**

The provisions of sections ~~25-8-202(1)(e) and (g); 25-8-308(1)(d); and 25-8-703 C.R.S. provide the specific statutory authority for adoption of the attached regulatory amendments. The Commission also adopted, in compliance with Section 24-4-103(4) C.R.S., the following statement of basis and purpose.~~

### **BASIS AND PURPOSE**

~~The subject regulations are in implementation of the requirements of the Colorado Water Quality Control Act, C.R.S., 25-8-101, et seq. Section 25-8-202 of the Act requires that the Commission promulgate regulations for the administration of grants for domestic wastewater treatment facilities for the State. In particular, C.R.S., 25-8-202(1)(e) and (g) provide as follows: "The Commission shall develop and maintain a comprehensive and effective program for prevention, control, and abatement of water pollution and for water quality protection throughout the entire state and, in connection therewith, shall:~~

- ~~(e) — Perform duties assigned to the Commission in part 7 of this article with respect to the location, design, construction, financing, and operation of domestic wastewater treatment plants.~~
- ~~(g) — Promulgate regulations and adopt priority ranking for the administration of federal and other public source construction loans or grants which the Commission or the Division administers, which loans or grants shall not be expended for any purpose other than that for which they were provided.~~

~~A stakeholders group with members from the Southeast Council of Governments, Clear Creek Watershed Forum, a consulting engineering firm, the State Environmental Information Center, the Water Quality Control Division and the Division of Local Government of the Department of Local Affairs met to create new regulations to provide a format for determining which eligible projects should receive funds under the Domestic Wastewater Treatment (DWWT) Grant Program.~~

~~The need for revising Regulation No. 53 came about when the previous priority system that was used for both grants and loans under Regulation No. 51 (Water Pollution Control Revolving Fund (WPCRF) Rules) was deleted and replaced with a system that could fund water quality projects beyond wastewater treatment. Since Colorado's Water Quality Control Act only allows grants to small community domestic wastewater treatment projects, separate regulations had to be established to provide criteria for eligible grants. It is the Division's intent to continue to utilize the list of projects developed under the WPCRF Rules by extracting the projects that would meet the criteria for DWWT Grant Program established under this regulation.~~

~~Section 53.4(3) allows the Division to provide assistance to governmental agencies that were not identified in the Intended Use Plan and yet still need to move ahead with a project or make adjustments in an emergency situation. The focus on providing funds for planning or a quick fix in an emergency and then ensuring that these projects are identified on a subsequent approved plan provides flexibility while preserving the credibility of the process.~~

~~The timing of the public rulemaking hearing for this regulation will not accommodate approval of the Intended Use Plan for the year 2000 by December 31, 1999. The 2000 Intended Use Plan will be developed as Regulation No. 54 for the Commission's approval in February 2000 after adoption of these regulations. Until this process is complete, the Division will continue to award grant contracts from the Commission's approved 1999 State Construction Grant Priority List.~~

~~The new system as proposed will provide categories of eligible projects, provide mechanism for funding throughout the year, identify the use of the grant funds and allow for prioritization as necessary. The proposed system is still similar to the WPCRF and can accommodate this DWWT Grant Program, the Sewer Needs List for the Division of Local Government, and any future federal grant program.~~

### ~~**53.20 STATEMENT OF BASIS, SPECIFIC STATUTORY AUTHORITY, AND PURPOSE (2001) REVISIONS**~~

~~The provisions of sections 25-8-202(1)(e) and (g); 25-8-308(1)(d); and 25-8-703 C.R.S. provide the specific statutory authority for adoption of the attached regulatory amendments. The Commission also adopted, in compliance with Section 24-4-103(4) C.R.S., the following statement of basis and purpose.~~

## **BASIS AND PURPOSE**

With the passage of HB 1246, the scope of the DWWT Grant Funding System has been expanded to enable the program to fund counties on behalf of unincorporated areas with populations of not more than 5,000. This change is incorporated into this Regulation #53 and involves expanding the definition of "governmental agency" to include "counties on behalf of unincorporated areas" and the definition of a "small community" to include unincorporated areas of not more than 5,000 population.

The body of the regulation does not need to be changed because it has always been broad enough to identify the needs in counties. The Domestic Wastewater Treatment Grant Program funds were not made available to counties on behalf of unincorporated areas until the statutory change was made and approved March 20, 2001. Paragraph (1)(b)(i) of 25-8-703 gives the Division authority to enter into contracts with counties on behalf of unincorporated areas and it will be repealed July 1, 2006.

### **53.21 STATEMENT OF BASIS, SPECIFIC STATUTORY AUTHORITY, AND PURPOSE (MAY 2004 RULEMAKING)**

Sections 25-8-202(1)(e) and (g); 25-8-308(1)(d); and 25-8-703, C.R.S. provide the specific statutory authority for adoption of the attached regulatory amendments. The Commission also adopted, in compliance with Section 24-4-103(4), C.R.S., the following statement of basis and purpose.

## **BASIS AND PURPOSE**

Recent statutory amendments led to changes to the regulations governing another of the Division's funding programs, the Water Pollution Control Revolving Fund Rules, Regulation No. 51. Since the Commission was planning to consider changes to Regulation No. 51, the Attorney General's Office also examined Regulation No. 53, focusing on streamlining certain provisions of the two regulations. The Attorney General's Office, along with the Division and a stakeholders group, also discussed options to simplify the process for the Commission's annual approval of the program's "Intended Use Plan."

In order to accomplish these objectives, the Commission made the following changes to Regulation No. 53:

Section 53.3 – Detailed definitions of a public health hazard and significant non-compliance were added to assist staff in determining under which category a project should be listed.

Section 53.4(1) – A change was made to indicate that the Domestic Wastewater Treatment Grant Program Intended Use Plan will be approved annually by the Commission in a public forum after a public notice and comment period, but not through a rulemaking process.

Section 53.4(2) – Category 1 and 2 were explained further to assist staff in categorizing projects on the Project Eligibility List.

### **53.22 STATEMENT OF BASIS, SPECIFIC STATUTORY AUTHORITY, AND PURPOSE (JULY 2008 RULEMAKING, EFFECTIVE DATE JANUARY 1, 2009)**

The provisions of sections 25-8-202(1)(e) and (g); 25-8-308(1)(d); and 25-8-703 C.R.S. provide the specific statutory authority for adoption of the attached regulatory amendments. The Commission also adopted, in compliance with Section 24-4-103(4) C.R.S., the following statement of basis and purpose.

## **BASIS AND PURPOSE**

Changes to the Rules have been made to streamline the Intended Use Plan process. The categorization and prioritization system that are included in the Water Pollution Control Revolving Loan Fund Rules have been incorporated into the Domestic Wastewater Treatment Grant Rules. These revisions and will

~~enable the Division to develop one Intended Use Plan and Project Eligibility List, that will be used for both the grant and loan funds.~~

**EXHIBIT 3**  
**WATER QUALITY CONTROL DIVISION**

**DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT**

**WATER QUALITY CONTROL COMMISSION**

**5 CCR 1002-54**

**REGULATION NO. 54**

**DRINKING WATER GRANT FUND**

**54.1 AUTHORITY**

Section 25-1.5-208, C.R.S., as amended, provides authority for the Drinking Water Grant Fund to provide financial assistance to eligible public water systems (PWS). Section 25-1.5-208(1)(b) provides that the Water Quality Control Commission (Commission) shall promulgate rules for the administration of any appropriated grant funds and for prioritizing projects based upon public health impact and compliance with applicable regulations.

**54.2 PURPOSE**

The purpose of the Drinking Water Grant Fund is to provide financial assistance to governmental agencies and not-for-profit public water systems as well as to counties representing unincorporated areas serving populations of not more than 5,000 people. Eligible projects include consolidation, planning, design and/or construction of water treatment systems.

An annual Intended Use Plan (IUP) is developed by the Water Quality Control Division (Division) and approved by the Commission. The IUP provides information about how the state will assist communities with their drinking water needs. Included in the IUP is the Project Eligibility List, which is a comprehensive list identifying drinking water project needs.

The project priority system is intended to establish priorities for the grant fund that protect and improve the public health and safety through increased reliability of drinking water supplies in Colorado.

**54.3 DEFINITIONS**

Section 1.5 of the Colorado Primary Drinking Water Regulations (CPDWR) contains additional definitions that may apply to this rule.

- (1) “Beneficial Use” - The use of water treatment plant sludge in conjunction with wastewater treatment plant sludge to act as a soil conditioner or low grade fertilizer for the promotion of vegetative growth on land and that meet the requirements of the state Biosolids Regulations.
- (2) “Consolidation” - A proposed new construction or expansion of a drinking water supply system that will eliminate one or more existing water supply or treatment works. A letter of intent or a resolution adopted by the project participants must be provided to the Division to guarantee the facilities will consolidate.

- (3) ~~“Governmental Agencies” – Departments, Divisions, or other units of state government, special districts, water conservation districts, metropolitan water districts, conservancy districts, irrigation districts, municipal corporations, counties, cities and other political subdivisions, the United States or any agency thereof, and any agency, commission, or authority established pursuant to an interstate compact or agreement.~~
- (4) ~~“Health Hazard” – A situation where the Division has identified a maximum contaminant level (MCL) violation or a treatment technique violation. Funding for these projects must result in compliance with existing standards.~~
- (a) ~~An acute health hazard includes violations of Surface Water Treatment Rule (SWTR) treatment technique requirements, bacteriological standards, and nitrite/nitrate levels. Acute contaminant health effects can occur immediately or within a short period of time.~~
- (b) ~~A chronic health hazard includes violations of all MCLs (other than those listed as acute) or SWTR treatment technique requirements. Chronic contaminant health effects occur after years of exposure.~~
- (c) ~~A potential health hazard includes a situation where a PWS has periodically exceeded an MCL, has levels greater than 50 percent of an MCL on a regular basis, or has short term problems meeting a treatment technique requirement.~~
- (5) ~~“Not-For-Profit Public Water Systems” – PWSs that are operated by entities such as homeowners associations that are registered as a nonprofit association or nonprofit corporation with the Colorado Secretary of State.~~
- (6) ~~“Other Future Needs” – Those needs in situations where a facility is beyond the useful/design life and is in need of equipment replacement, rehabilitation or repair in order to maintain compliance or further the public health protection goals of the Safe Drinking Water Act.~~
- (7) ~~“Project” – A specific improvement to a public water system that may include planning, design, construction or consolidation.~~
- (8) ~~“Public Water System” – (PWS) A system for the provision to the public of piped water for human consumption, if such system has at least fifteen service connections or regularly serves at least twenty-five individuals. Such term includes:~~
- (a) ~~Any collection, treatment, storage, and distribution facilities under control of the operator of such system and used primarily in connection with such system; and~~
- (b) ~~Any collection or pretreatment storage facilities not under such control, which are used primarily in connection with such system.~~
- (9) ~~“Source Water Protection” – Structural or nonstructural source water protection activities done in addition to area delineation and contaminant assessment.~~
- (10) ~~“Water Conservation” – Any structural or nonstructural water conservation measure that achieves a reduction in water consumption for a PWS or a publicly owned treatment works. Structural measures shall include installation of interior low-flow plumbing fixtures that are distributed and/or installed by the PWS or that are funded in whole or in part by the PWS and water meters that are funded and owned by the PWS. Nonstructural measures shall include but are not necessarily limited to: incentives for previously installed low-flow fixtures, leak detection or infiltration/inflow programs, public awareness, public education, and incentive water service charges.~~

#### **54.4 INTENDED USE PLAN PROCEDURES**



The Division is required to develop an IUP including a comprehensive list of eligible projects. Annually the Division will conduct a statewide survey of infrastructure needs to identify projects for Project Eligibility List. The Division shall recommend the IUP to the Commission for final agency action at a public hearing, and shall also provide for public notice and an opportunity to comment.

The IUP shall include:

- (1) — The Project Eligibility List,
- (2) — Criteria and method used for distribution of funds,
- (3) — Drinking Water Grant Fund Activities, and
- (4) — Drinking Water Grant Fund Goals

#### **54.5 — PROJECT ELIGIBILITY LIST**

The Project Eligibility List is the comprehensive list of eligible projects showing current and future infrastructure needs. Each year the Division shall review, update and compile additions and modifications to the Project Eligibility List and recommend such additions and modifications to the Commission.

Project Eligibility List Categories are determined based on information provided by the applicant during the Annual Eligibility List Survey process. If sufficient funds are not available to fund all requests projects will be funded in priority order. However, exceptions for funding out of priority order shall be allowed due to one or more of the following reasons:

- (1) — The entity is not ready to proceed with the project;
- (2) — The entity does not wish to participate in the grant fund, or they have received funding from other sources;
- (3) — The entity (on the list) had an emergency situation occur during the funding year; or
- (4) — The entity is not approved for funding because of technical deficiencies.

#### **54.6 — PRIORITY SYSTEM**

All PWSs with identified infrastructure needs may be included in one of the categories listed below.

- (1) — Eligible Project Criteria

Categories were developed to emphasize the most immediate public health and compliance issues. Projects on the Project Eligibility List will be classified by category 1, 2, 3, 4, or 5 below, with "1" being the highest priority. Project Eligibility List Categories are determined based on information provided by the applicant during the Annual Eligibility List Survey process. Based upon receipt and review of a Preliminary Engineering Report and a grant application, the assigned Eligibility List Category may be revised, during the prioritization process, to more accurately reflect the proposed project.

- (2) — Categories By Priority Ranking

- (a) — 1 - Acute Health Hazard. The Division has identified continuous violation of an acute maximum contaminant level (MCL) or a surface water treatment rule (SWTR) treatment technique requirement.
- (b) — 2 - Chronic (long term) Health Hazard. The Division has identified a continuous violation of an MCL or an SWTR treatment technique requirement for a chronic contaminant.

- ~~(c) 3 - Potential Acute Health Hazard. The PWS has periodically exceeded an acute MCL, has levels greater than 50 percent of an acute MCL on a regular basis, or has short term problems meeting an SWTR treatment technique requirement that can be controlled temporarily by operational means.~~
- ~~(d) 4 - Potential Chronic Health Hazard. The PWS has periodically exceeded a chronic MCL, has levels greater than 50 percent of a chronic MCL on a regular basis, or has short term problems meeting other treatment technique requirements.~~
- ~~(e) 5 - Other Future Needs. The PWS is beyond the useful/design life and is in need of equipment replacement, rehabilitation or repair, in order to maintain compliance or further the public health protection goals of the Safe Drinking Water Act.~~

~~(3) Priority Point Assignments Within Each Category~~

~~If it is determined that the Drinking Water Grant Program Fund lacks sufficient funds to cover requests for all eligible projects that are ready to proceed, projects will be funded beginning with the highest priority categories. Category 1 projects will be funded prior to Category 2 projects, which will be funded prior to Category 3 projects, which will be funded prior to Category 4 projects, which will be funded prior to Category 5 projects.~~

~~Within each category, projects will be further prioritized using the following Priority Point Assignments.~~

- ~~(a) Population. Points shall be assigned to a PWS based on the following schedule of population served by the project, with emphasis given to small communities:~~
  - ~~25 to 1,000 20 points~~
  - ~~1,001 to 3,300 15 points~~
  - ~~3,301 to 10,000 10 points~~
  - ~~Over 10,000 5 points~~
- ~~(b) Financial Need. Points shall be assigned to a PWS in accordance with the following "financial need criteria:"~~
  - ~~(i) Ability to pay (annual water service fee as a % of median household income):~~
    - ~~over 3% 20 points~~
    - ~~over 2%; up to 3% 15 points~~
    - ~~over 1%; up to 2% 10 points~~
  - ~~(ii) Local burden (total project cost per equivalent residential tap):~~
    - ~~Over \$5,000 20 points~~
    - ~~Over \$3,500 15 points~~
    - ~~Over \$2,000 10 points~~
- ~~(c) Consolidation. Fifteen points shall be assigned to a PWS if the project includes consolidating two or more PWS.~~
- ~~(d) Water Conservation. Five points shall be assigned to a PWS if the PWS implements a water conservation measure.~~
- ~~(e) Source Water Protection. Two points shall be assigned to a PWS if the governmental agency implements source water protection measures.~~

- (f) ~~Beneficial Use of Sludge.~~ Two points shall be assigned to a PWS if the governmental agency intends to utilize water treatment plant sludge for a beneficial use as defined herein.
- (g) ~~Health Risk.~~ To further clarify the ranking of PWS projects, the Division shall assign up to twenty points for PWS health risks. Determination of the health risk will be made based upon the type and level of contaminant present within categories.

**54.7. FUNDING CRITERIA**

Funding is dependent upon appropriations from the State Legislature and will be provided for eligible projects that may include consolidation costs, planning, design and/or construction costs. Funding may be provided when:

- (1) ~~The public water system is ready to proceed with the project; and~~
- (2) ~~A grant application is submitted to the Division by the deadline established in the annual IUP. The Division shall submit the application to the Division of Local Government for its review and determination of financial need; and~~
- (3) ~~Funds are available. If it is determined that the Drinking Water Grant Program Fund lacks sufficient funds to cover grants for all eligible projects that are ready to proceed, projects will be funded beginning with the highest priority categories.~~

~~Grant funds cannot be used to reimburse for costs related to fees and/or penalties assessed by the Division.~~

**54.8-54.9 RESERVED**

**54.10 STATEMENT OF BASIS AND PURPOSE**

~~These rules establish a system to administer grant funds and to provide for a mechanism to prioritize eligible projects. The rules allow lower priority drinking water systems to receive funding ahead of systems with higher priority if the higher priority system does not apply for the funding or is not ready to proceed with its project.~~

~~The Drinking Water Grant Program will provide financial assistance to governmental agencies and not-for-profit public water systems serving populations of not more than 5,000 people for projects including consolidation, planning, design and/or construction of public water systems.~~

~~The Drinking Water Grant Program Plan, which includes eligible projects, will be developed by the WQCD and submitted to the Board of Health (Board) once each year. A public will be held by the Board to receive input on the Plan. Following the meeting, any changes will be incorporated and the final Plan shall be approved by the Board.~~

~~These rules are similar to those adopted by the Board for the Drinking Water Revolving Fund. The rules are also similar to those adopted by the Water Quality Control Commission (Commission) for the Water Pollution Control Revolving Fund and the Domestic Wastewater Treatment Grant Program. The rule adoption authority for wastewater rests with the Commission while the drinking water rules are adopted under the authority of the Board of Health.~~

**54.11 STATEMENT OF BASIS AND PURPOSE (JULY 14, 2008 RULEMAKING, EFFECTIVE DATE JANUARY 1, 2009)**

~~Sections 25-1.5-208 and 25-1.5-208(1)(b) C.R.S. provide the specific statutory authority for adoption of the attached regulatory amendments. The Commission also adopted, in compliance with section 24-4-103(4) C.R.S. the following statement of basis and purpose.~~

### **BASIS AND PURPOSE**

~~Changes to Section 25-1.5-208 C.R.S. moved the authority for promulgating rules and approving the annual intended use plan from the Colorado Board of Health to the Water Quality Control Commission (Commission). Updates to these rules reflect this change in authority.~~

~~Changes to the Rules have also been made that streamline the Intended Use Plan process. The categorization and prioritization system that is included in the Drinking Water Revolving Loan Fund Rules have been incorporated into the Drinking Water Grant Program Rules. These revisions will enable the Division to develop one Intended Use Plan and Project Eligibility List, that will be used for both the grant and loan funds.~~