



COLORADO

Water Quality
Control Commission

Department of Public Health & Environment

NOTICE OF WRITTEN-COMMENT-ONLY PUBLIC RULEMAKING HEARING BEFORE THE COLORADO WATER QUALITY CONTROL COMMISSION

SUBJECT:

For consideration of adoption of revisions to Regulation #55, State Funded Water and Wastewater Infrastructure Programs (5 CCR 1002-55). Revisions proposed by the Water Quality Control Division, along with a proposed Statement of Basis, Specific Statutory Authority and Purpose, are attached to this notices as Exhibit 1.

In these attachments, proposed new language is shown with underlining and proposed deletions are shown with ~~strikeouts~~. Any alternative proposals related to the subject of this hearing will also be considered.

SCHEDULE OF IMPORTANT DATES

| | | |
|--------------------------------------|-----------------------|---|
| Proponent’s Prehearing Statement Due | 11/2/2022 5:00 pm | Additional information below |
| Responsive Comments Due | 11/30/2022 5:00 pm | Additional information below |
| Rulemaking Deliberations | 12/12/2022 9:00 am | Remote via Zoom Or Sabin Cleere Conference Room Department of Public Health and Environment 4300 Cherry Creek Drive South Denver, CO 80246 |

HEARING SUBMITTALS:

For this hearing, the commission will receive all submittals electronically. Submittals must be provided as PDF documents, except for raw data exhibits which may be provided as Excel workbooks. Submittals may be emailed to cdphe.wqcc@state.co.us, provided via an FTP site, or otherwise conveyed to the commission office so as to be received no later than the specified date.

PARTY STATUS:

Pursuant to section 21.3.C.5 and Section 21.3.D. of the commission’s Procedural Rules, there shall be no party status for this rulemaking proceeding.

WRITTEN COMMENTS:

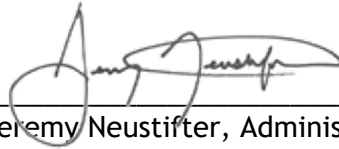
The commission encourages input from interested members of the public. Written comments should be emailed to cdphe.wqcc@state.co.us by 5:00 pm on 11/30/2022.

SPECIFIC STATUTORY AUTHORITY:

The provisions of sections 25-1.5-202; 25-8-202(1)(n); and 25-8-401 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.

Dated this 15th day of September, 2022 at Denver, Colorado.

WATER QUALITY CONTROL COMMISSION

A handwritten signature in black ink, appearing to read "Jeremy Neustifter", is written over a horizontal line.

Jeremy Neustifter, Administrator

DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

Water Quality Control Commission

REGULATION NO. 55 – STATE FUNDED WATER AND WASTEWATER INFRASTRUCTURE PROGRAMS

5 CCR 1002-55

[Editor's Notes follow the text of the rules at the end of this CCR Document.]

55.1 AUTHORITY, SCOPE AND PURPOSE

(1) Water Quality Improvement Fund

House Bill 06-1337 created the Water Quality Improvement Fund codified in section 25-8-608, C.R.S., of the Colorado Water Quality Control 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. ~~House Bill 17-1306 amended the statute to authorize grants for lead testing in public schools.~~ Section 25-8-608(1.7)(c), C.R.S. provides the Water Quality Control Commission ("commission") 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 ("division") are transmitted to the state treasurer for deposit to the credit of the fund.

The purpose of the fund is to improve water quality in Colorado by providing grant funds for water quality improvement projects and stormwater management training and best practices ~~by voluntary lead testing in public schools~~ 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.~~

(32) 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.

(43) 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" - 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) "Elementary school" - a public school that includes any or all of the following: preschool, kindergarten, and grades one through five.~~

(45) "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.

(56) "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.

(76) "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.

(87) "Pollution" – means the man-made, man-induced, or natural alteration of the physical, chemical, biological, and radiological integrity of water.

~~(9) "Public school" – means a school that derives its support, in whole or in part, from moneys raised by a general state, county, or district tax. Public school includes a public school district, charter school, as that term is defined in section 22-30.5-103(2), C.R.S., including an institute charter school, as that term is defined in section 22-30.5-502 (6), C.R.S.; and a board of cooperative services, as that term is defined in section 22-5-103(2), C.R.S.~~

(408) "Public water system" - a system for the provision to the public of water for human consumption through pipes or other constructed conveyances, if such system has at least fifteen service connections or regularly serves an average of at least 25 individuals daily at least 60 days per year. A public water system is either a community water system or a non-community water system. Such term does not include any special irrigation district. Such term includes: (a) Any collection, treatment, storage, and distribution facilities under control of the supplier of such system and used primarily in connection with such system. (b) Any collection or pretreatment storage facilities not under such control, which are used primarily in connection with such system.

(449) "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.

55.3 WATER QUALITY IMPROVEMENT FUND CRITERIA

(1) Entity Eligibility

Entities eligible for grants in Categories 1 thru 4 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 eligible for grants in Category 5 include public schools that are not subject to the federal lead and copper rule, 40 CRF part 141, subpart I, and public schools that have not tested or are not in the process of testing their drinking water for lead.~~

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) Project Eligibility

As provided for under section 25-8-608 (1.7) (a), C.R.S., the fund 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 commission.

~~Category 5 – Voluntary lead testing in public schools to detect the presence and concentration of lead in drinking water.~~

(3) Funding Allocation

All civil penalties collected by the division shall be transmitted to the state treasurer for deposit to the credit of the fund 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 division will post on its web page a list of violators that have paid into the Water Quality Improvement Fund. The following allocations from the fund will be made:

Category 1 – ~~for State Fiscal Year 2012-2013 the~~ The division will allocate up to ~~\$300,000~~~~150,000~~ of available funds with no one project initially receiving more than ~~\$100,000~~~~50,000~~. If the entire ~~\$300,000~~~~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 ~~\$300,000~~~~50,000~~.

~~For subsequent years thereafter, up to \$100,000 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.

~~Category 5 – After Categories 1 thru 4 are fully funded, up to \$300,000 for State Fiscal Year 2017-2018, up to \$300,000 for State Fiscal Year 2018-2019, and up to \$300,000 for State Fiscal Year 2019-2020. This Category is subject to fund availability. Public schools can apply for reimbursement up to 100 samples per school or to a maximum amount of \$5,000 per school.~~

For Categories 1 thru 4, 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 Categories 1 thru 4.

Funds may be carried over from previous years' appropriations and reallocated based upon the above distribution on an annual basis. ~~For Category 5 the division will retain funds to cover the cost of 1.3 full time equivalent for the administration of the category.~~

(4) 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 request for application.

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 request for application.

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.

~~Category 5—Public school lead testing projects.~~

~~Priority 1—Testing conducted in the oldest public elementary schools.~~

~~Priority 2—Testing conducted in the oldest public schools that are not elementary schools.~~

~~Priority 3—Testing conducted in all other public schools.~~

~~Prioritization criteria will include the age of the original constructed building. Tie breaking criteria will include financial/affordability, school district median household income, and readiness to proceed. Specific points available in each of these categories will be included as an attachment to the request for application.~~

~~The financial/affordability criterion relates to the percentage of students eligible for the Free and Reduced Lunch Program. Points were developed relative to the percentage of students eligible for the Free and Reduced Lunch Program based on the state average for free and reduced lunch eligibility, giving priority to schools who are equal to or higher than the current average. Data collected by Colorado Department of Education will be used to determine the percentage of students within each school who are eligible for free and reduced lunch. Schools will be ranked from highest to lowest with the highest percentage of student eligibility for the Free and Reduced Lunch Program receiving the most points.~~

~~The school district median household income (MHI) will be based on the American Community Survey data published by the United States Census Bureau. Schools will be ranked from lowest district MHI to the highest district MHI with the lowest taking priority. Since actual district MHI data is being used in the ranking, no points will be assigned in this category, rather, the school with the lowest district MHI will rank higher.~~

~~The readiness to proceed criterion will be based upon the time in which the school can start its lead testing. Schools that can start the lead testing within 4 weeks of the date of the award letter will receive higher priority.~~

(5) Notification and Reporting

Applications for all of the Categories will be noticed and accepted by the division after the division determines availability of appropriation. For Categories 1 thru 3, 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 division will accept applications for Category 4 projects in accordance with the annual nonpoint source project schedule. ~~Category 5 projects may be notified and accepted at different times than Categories 1 thru 4.~~

The division 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 Section.

Grant recipients for Categories 1 thru 4 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 division's Annual Report to the commission, in accordance with section 25-8-305, C.R.S.

~~Grant recipients for Category 5 shall follow the division's lead testing protocol and shall provide the test samples to the Department of Public Health and Environment's laboratory or a laboratory certified by the department. The public school shall provide the test results to its local public health agency, its public water system, its school board, and the division.~~

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

~~(a) — The division 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 division will use an average for the combined service area for each of the applicable scoring elements. In the case of Special Districts, the division 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 division 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 planning grants 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 division 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 division 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 division 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 division 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 division 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 division 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 division 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 division 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 division 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 division 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 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.~~

55.5 NATURAL DISASTER GRANT FUND CRITERIA

(1) 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 pursuant to section 55.5(3)(d), eligible entities will be determined per section 55.4 of this regulation.~~

(2) 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.

(3) 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 55.5(4) 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 55.5(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 55.4, the Nutrients Management Grant Fund.~~

(4) 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.

55.6 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.

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, ~~including counties,~~ and not-for-profit public water systems, as defined in section 25-1.5-201(1), or with counties representing unincorporated areas that ~~which~~ serve a population of not more than five thousand people, to grant moneys for the planning, design, and construction of public water systems. ~~that serve populations of not more than five thousand people.~~

(b) Domestic waste water treatment works that serve a population of not more than five thousand people.

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, ~~including or~~ counties representing unincorporated areas that serve a population of not more than five thousand people, for domestic wastewater treatment works, as defined in section 25-8-103(5), ~~which serve a population of not more than five thousand people which serve a population of not more than five thousand people,~~ to grant moneys for eligible projects as defined in section 25-8-701(2).

(c) During the grant application process, the department shall seek from the division of local government in the department of local affairs a fiscal analysis of the applying entity to determine financial need. Based upon its fiscal analysis, the division of local government shall issue or deny a certificate of

financial need. If a certificate of financial need is issued, the department may authorize a state grant to the project in accordance with the project prioritization adopted by the department.

(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 and which are necessary for 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, Colorado Primary Drinking Water Regulation 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 need for 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 need for 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.

55.7-10 RESERVED

55.33 STATEMENT OF BASIS, SPECIFIC STATUTORY AUTHORITY, AND PURPOSE REGARDING STATE FUNDED WATER AND WASTEWATER INFRASTRUCTURE PROGRAMS, DECEMBER 12, 2022 RULEMAKING, EFFECTIVE JANUARY 31, 2023

The provisions of Sections 25-8-202, 25-8-308, and 25-8-608, C.R.S. provide the specific statutory authority for adoption and implementation 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 following changes were made to the regulation to reflect the sunseting of funding authorizations for specific grant funds that were previously authorized by the state legislature, and increased spending levels authorized for Category 1 funds adopted during the 2022 legislative session through the appropriations process. Additional changes were made to improve clarity and organization of the regulation.

Water Quality Improvement Fund

● Stormwater Management Training, Section 55.1(1); Section 55.3(3)
Clarified that the purpose of the fund also includes stormwater management training and best practices. During the 2022 legislative session, the General Assembly increased the spending authority for the Water Quality Improvement Fund by \$300,000 to continue to support Category 1 projects (stormwater management training and best management practices training to reduce the pollution of state waters). Accordingly, the commission took action to revise section 55.3(3) to remove the \$100,000 allocation for Category 1 projects and replaced it with a \$300,000 allocation.

● Public School Lead Testing, Section 55.1(1); Section 55.2(2) and (9); Section 55.3
The public school lead testing grant and all associated references to category 5 have been removed from these sections in the regulation since the grant was repealed effective September 1, 2021.

Nutrient Management Grant Fund

● Section 55.1(2); Section 55.4; Section 55.5(3)(d)
These sections were edited to remove all associated references to the nutrient management grant fund from the regulation since the fund was repealed effective September 1, 2016.

Small Communities Water and Wastewater Grant Fund

● Section 55.6(1)
Entity Eligibility was revised to align with the eligibility requirements included in C.R.S. 25-1.5-208, including the addition of the division of local government requiring a certificate of financial need.

Editor's Notes

History

Entire rule eff. 07/30/2007.

Entire rule eff. 03/30/2012.

Entire rule eff. 07/30/2012.

Sections 55.8, 55.14 eff. 06/30/2013.

Sections 55.9, 55.15 eff. 06/30/2014.

Entire rule eff. 09/30/2014.

Sections 55.1-55.3, 55.32 eff. 12/31/2017.