



COLORADO

Water Quality
Control Commission

Department of Public Health & Environment

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

SUBJECT:

For consideration of the adoption of revisions to the State Funded Water and Wastewater Infrastructure Programs, Regulation #55 (5 CCR 1002-55). Revisions proposed by the Water Quality Control Division (division), along with a proposed Statement of Basis, Statutory Authority and Purpose are attached to this notice as Exhibit 1. The lead testing protocol and the ranking prioritization referenced in Exhibit 1 will be available for review on the commission’s web around August 8, 2017.

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

During the commission’s consideration of whether to approve this notice of rulemaking, the commission determined that there is not a likelihood of significant controversy during the rulemaking process. Therefore, the commission has chosen to pursue an alternative rulemaking process consistent with section 24-4-103(4)(a) C.R.S.; and section 21.3(C)(5) of the Procedural Rules. It is the goal of the commission to complete this rulemaking without oral testimony.

SCHEDULE OF IMPORTANT DATES

Initial comments from division due	9/20/2017	Additional information below.
Responsive comments from public due	10/11/2017	Additional information below.
Rebuttal comments due	11/01/2017 5 pm	Additional information below.
Rulemaking Hearing	11/13/2017 9:00 am	El Paso County Centennial Hall Auditorium 200 South Cascade Ave. Colorado Springs, CO 80903

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. Sumbittals may be emailed to cdphe.wgcc@state.co.us, provided via an FTP site, CD or flash drive, 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(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 November 1, 2017.

SPECIFIC STATUTORY AUTHORITY:

The provisions of sections 25-1.5-203, 25-1.5-208; 25-8-202(1)(g); 25-8-608(1.5 and 1.7); 25-8-608.5; and 25-8-608.7, 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 8th day of August, 2017 at Denver, Colorado.

WATER QUALITY CONTROL COMMISSION

Trisha Oeth, Administrator

EXHIBIT 1

DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

Water Quality Control Commission

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

5 CCR 1002-55

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 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.

(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" - 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.
- (54) "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.
- (65) "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.
- (10) "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.
- (118) "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 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~~ \$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, aAny 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~~ 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.

(5) Notification and Reporting

Applications for Category 1, 2 and 3 projects 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.

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55.7-10 RESERVED

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55.32 STATEMENT OF BASIS, SPECIFIC STATUTORY AUTHORITY, AND PURPOSE REGARDING STATE FUNDED WATER AND WASTEWATER INFRASTRUCTURE PROGRAMS, NOVEMBER 13, 2017 RULEMAKING, EFFECTIVE DECEMBER 31, 2017

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

During the 2017 legislative session, the General Assembly increased the spending authority for the Water Quality Improvement Fund by \$50,000 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 increase the funding allocation for Category 1 projects to \$100,000.

Also in 2017, the General Assembly created a new program under HB17-1306 titled the "Safe Water in Schools Act". HB17-1306 establishes a grant program to assist public schools as defined in sections 22-1-101(1) and 25-1.5-203(1)(f) C.R.S. with lead testing for their drinking water. Eligible public schools include public schools that are not a registered public water system and public schools that have not already tested for lead under the requirements of the 1991 federal Lead and Copper Rule or are not currently testing for lead. HB17-1306 provides the appropriation from the Water Quality Improvement Fund after the original four categories are fully appropriated.

In order to assist parties submitting applications for funding, and in order to provide a transparent process for allocation and award of the funds, the commission revised multiple sections in Regulation No. 55. The revised sections include 55.1; 55.2; and 55.3.

- Section 55.1(1) (Authority, Scope and Purpose) was revised to include the public school lead testing program under the ambit of the Water Quality Improvement Fund.
- Section 55.2 (Definitions) was revised to add definitions for the terms public school, elementary school, and public water system as included in HB17-1306.
- Section 55.3 (Water Quality Improvement Fund Criteria) was revised to establish a new project category - Category 5 - for lead testing in public schools in section 55.3(2)(Project Eligibility). Revisions were also included to clarify requirements for the public school lead testing program pertaining to entity eligibility, funding allocation, project prioritization criteria, and notification and reporting requirements, as discussed below.
- Section 55.3(1) – The commission reiterated the eligibility requirements in HB17-1306 by stating eligible entities are limited to public schools that are not subject to the federal Lead and Copper Rule, and those public schools that have not tested for lead pursuant to that rule or are not currently testing for lead.
- Section 55.3(3) - The commission determined that adding a fifth project category in section 55.3(2) allows public school lead testing projects to be funded, but only after categories 1 through

4 are fully appropriated. As indicated in HB17-1306, the commission agreed to allocate for grants 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, but subject to fund availability. In order to maximize funding to eligible public schools, the commission established a maximum of 100 samples per school, or a maximum grant amount of \$5,000 per school.

- Section 53.3(4) - The project prioritization criteria that were developed for the lead testing in public schools program in section 55.3(4) were designed to reflect language contained in HB17-1306 which emphasized funding priority in the following order: oldest public elementary schools; oldest public schools that are not elementary schools; and all other public schools. In the event there is a tie when prioritizing by using the above criteria, the commission felt it was important to have three tie breaking criteria in the following priority order: financial/ affordability; school district median household income; and readiness to proceed. The commission recognizes that the division will include point values associated with these criteria in the Request for Application.
- Section 53.3(5) – In accordance with HB17-1306, the commission also included certain criteria for conducting testing under the grant program. These include utilizing the division’s lead testing protocol and using the department’s lab or a lab certified by the state for analysis of the samples collected. The regulations also state, consistent with the bill, that grant recipients must provide the lead testing results to the public school’s local public health agency, its supplier of water, its school board, and the division.