

STATE OF COLORADO

John W. Hickenlooper, Governor
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Executive Director and Chief Medical Officer

WATER QUALITY CONTROL COMMISSION

<http://www.cdphe.state.co.us/op/wqcc/index.html>

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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 the adoption of revisions to portions of the State of Colorado Water Pollution Control Revolving Fund Rules, Regulation #51 (5 CCR 1002-51). The revisions to Regulation #51 proposed by the Water Quality Control Division, along with a proposed Statement of Basis, Specific Statutory Authority, and Purpose, are attached to this notice as Exhibit 1. 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, April 9, 2012
TIME: 10:00 a.m.
PLACE: Florence Sabin Conference Room
Department of Public Health and Environment
4300 Cherry Creek Drive South
Denver, Colorado 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. Although oral testimony from those with party status (see below) and other interested persons will be received at the hearing, the time available for such oral testimony may be limited. Written submissions prior to the hearing are encouraged, so that they can be distributed to the Commission for review prior to the hearing. Oral testimony at the hearing should primarily summarize written material previously submitted. The hearing will emphasize Commission questioning of parties and other interested persons about their written prehearing submittals. Introduction of written material at the hearing by those with party status or mailing list status (see below) generally will not be permitted. The Commission requests that all interested persons submit to the Commission Office any available information that may be relevant in considering the noticed proposals.

PARTY STATUS/MAILING LIST STATUS:

Participation as a "party" to this hearing or acquisition of "mailing list status," will require compliance with section 21.3(D) of the Procedural Rules, Regulation #21 (5 CCR 1002-21). Mailing list status will allow receipt of all party documents (except individual exhibits more than five pages in length).

It is not necessary to acquire party status or mailing list status in order to testify or comment. **For each request for party status or mailing list status, please provide the organization's name, a contact person, mailing address, phone number, fax number and email address if available.** Written party status or mailing list status requests are due in the Commission Office on or before:

DATE: Wednesday, January 25, 2012
TIME: 5:00 p.m.

A single copy of the party status or mailing list status request may be transmitted as an email attachment to cdphe.wqcc@state.co.us, submitted by fax to 303-691-7702, mailed or otherwise conveyed so as to be received in the Commission Office no later than this deadline. PLEASE NOTE that, as indicated below, parties will have the option of distributing materials to other parties electronically, except in instances where a party has requested receiving hard copies of documents. Therefore, **anyone requesting party or mailing list status that wishes to receive hard copies of documents instead of emailed copies should so indicate in the party status/ mailing list status request so that this information can be included on the list distributed by the Commission Office.**

PREHEARING STATEMENTS:

PLEASE NOTE that for this hearing two separate deadlines for prehearing statements are established: (1) An original and 13 copies of an initial **Prehearing Statement from the Water Quality Control Division, as proponent of the revisions proposed in Exhibit 1 attached to this notice**, including written testimony and exhibits providing the basis for the proposals, must be received in the Commission Office no later than **February 1, 2012**; and (2) an original and 13 copies of a **Responsive Prehearing Statement**, including any exhibits, written testimony, and alternative proposals of the Water Quality Control Division or **anyone seeking party status and intending to respond to the proponent's proposals** must be received in the Commission Office no later than **February 29, 2012**.

For each deadline, the required number of hard copies of documents must be received in the Commission office by the specified deadline. These requirements are not satisfied by electronic transmission of a facsimile copy or copies. However, **parties are also strongly encouraged to email a copy of their written documents to the Commission Office**, so that materials received can be posted on the Commission's web site. (Please email to cdphe.wqcc@state.co.us.) In addition, copies of these documents must be mailed or hand-delivered by the specified dates to all persons requesting party status or mailing list status, and to the Attorney General's Office representatives for the Commission and the Water Quality Control Division, in accordance with a list provided by the Commission Office following the party status/ mailing list status deadline. **Alternatively, parties may email documents to those with party status or mailing list status by the specified dates,**

except to those that the list distributed by the Commission Office identifies as requesting hard copies.

Also **note** that the Commission has prepared a document entitled **Information for Parties to Water Quality Control Commission Rulemaking Hearings**. A copy of this document will be mailed or emailed to all persons requesting party status or mailing list status. It is also posted on the Commission's web site at <http://www.cdphe.state.co.us/op/wgcc/PublicParticipation/HBappC.pdf>. Following the suggestions set forth in this document will enhance the effectiveness of parties' input for this proceeding. **Please note the request that all parties submit two-sided copies of all hearing documents on three-hole punch paper.**

MAILING LIST STATUS COMMENTS:

Those requesting mailing list status shall provide written testimony, if any testimony is to be offered for the hearing, by the above deadline for responsive prehearing statements – i.e., **February 29, 2012**. Copies shall be submitted and distributed in the same manner as noted above for prehearing statements.

PREHEARING CONFERENCE:

DATE: Wednesday, March 7, 2012
TIME: 1:30 p.m.
PLACE: Board Room, Department of Public Health and Environment
4300 Cherry Creek Drive South
Denver, Colorado

Attendance at the prehearing conference is mandatory for all persons requesting party status. An opportunity may be available to participate in this prehearing conference by telephone. Persons wishing to participate by telephone should notify the Commission Office as early as possible.

REBUTTAL STATEMENTS:

Written rebuttal statements responding to the prehearing statements due on February 29, 2012 may be submitted by anyone seeking party status or mailing list status. Any such rebuttal statements must be received in the Commission Office by **March 28, 2012**. An original and 13 copies of written rebuttal statements must be received in the Commission Office by this deadline, and submission of an emailed copy as noted above is strongly encouraged. In addition, copies of these documents must be mailed or hand-delivered by that date to all those requesting party status or mailing list status, and to the Attorney General's Office representatives for the Commission and Division. **Alternatively, parties may email documents to those with party status or mailing list status by this deadline**, except to those that the list distributed by the Commission Office identifies as requesting hard copies. No other written materials will be accepted following this deadline except for good cause shown.

SPECIFIC STATUTORY AUTHORITY:

The provisions of sections 25-8-202(1)(e) and (g); and section 37-95-107.6(4), 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 prehearing statement which is due in the Commission Office on the date specified above. 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 14th day of December 2012 at Denver, Colorado.

WATER QUALITY CONTROL COMMISSION

Paul D. Frohardt, Administrator

EXHIBIT 1
WATER QUALITY CONTROL DIVISION

DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

Water Quality Control Commission

5 CCR 1002-51

REGULATION NO. 51

WATER POLLUTION CONTROL REVOLVING FUND RULES

51.1 AUTHORITY AND PURPOSE OF THE WATER POLLUTION CONTROL REVOLVING FUND

The Water Pollution Control Revolving Fund ("WPCRF") was authorized by Congress in Title II and Title VI of the 1987 Amendments to the Clean Water Act ("Federal Act").

Senate Bill 50 (1988) authorized the State to participate in the WPCRF by amending the Colorado Water Resources and Power Development Authority Act, Title 37 of Article 95, C.R.S. ("Authority Act"); this allows the Colorado Water Resources and Power Development Authority ("Authority") to provide funds for the State's twenty percent match required by the Federal Act. §§ 37-95-103 and 37-95-107.6, C.R.S.

Sections 25-8-202 (1)(e) and (g), C.R.S., of the Colorado Water Quality Control Act ("State Act") also provides the Water Quality Control Commission ("Commission") and the Water Quality Control Division ("Division") with the authority to promulgate, implement, and administer this regulation.

The purpose of the WPCRF is to provide financial assistance to governmental agencies for the construction of any project as defined herein that appears on the Project Eligibility List included in the annual Intended Use Plan.

51.2 DEFINITIONS

See the State Act, the Authority Act, and the Federal Act for additional definitions.

- (1) "Beneficial Use" - The use or reuse of treatment works effluent or the use of biosolids to act as a soil conditioner or low grade fertilizer for the promotion of vegetative growth on land. Also means a use of water, including the method of diversion, storage, transportation, treatment and application; that is reasonable and consistent with the public interest in the proper utilization of water.
- (2) "Best Management Practices" (as found in the definition of "Section 319 Project") - A practice or combination of practices determined to be the most effective, practicable means of preventing or reducing the amount of pollution generated by a nonpoint source to a level compatible with water/stream quality goals. These include, but are not limited to, structural and nonstructural controls and operation and maintenance procedures.
- (23) "Biosolids" - The accumulated residual product resulting from processing waste materials from a wastewater and water treatment plant.

- ~~(34)~~ "Collection System" (as found in the definition of "Individual Sewage Disposal System (ISDS)" and "Treatment Works") - A system of sewers used to collect wastewater and convey the wastewater by gravity or pressure flow to a common point.
- ~~(5)~~ "Disadvantaged Communities" – A governmental agency that serves a population of 5,000 or less with a median household income that is 80 percent or less of the statewide median household income. Disadvantaged Communities have been identified specifically for funding from the WPCRF and State Construction Grants Programs.
- (46) "Governmental Agencies" - Departments, divisions, or other units of state government, special districts, water conservation districts, metropolitan water districts, conservancy districts, irrigation districts (as approved by a district court to enter into a contract to accept funding for a wastewater related project under the WPCRF), 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.
- ~~(57)~~ "Green Infrastructure" – Natural or engineered systems such as green roofs, rain gardens, permeable pavement, and alternative energy (e.g., solar, wind, etc.) sources that provide energy for the operation of the wastewater treatment facility. Green infrastructure is management approaches and technologies that utilize, enhance and/or mimic the natural hydrologic cycle processes of infiltration, evapotranspiration and reuse (as defined by EPA's "Action Strategy for Managing Wet Weather with Green Infrastructure" January 17, 2008): An approach to wet weather management that is cost-effective, sustainable, and environmentally friendly. Green Infrastructure management approaches and technologies treat stormwater where infiltration, evapotranspiration, and reuse is used to maintain or restore natural hydrologies. On a regional scale, Green Infrastructure is the preservation and restoration of natural landscapes, such as forests, floodplains, and wetlands, coupled with policies such as infill and redevelopment that reduce the overall imperviousness within a watershed.
- ~~(6)~~ "Ground Waters" - Subsurface waters which are or can be brought to the surface of the ground or to surface waters through wells, springs, seeps, or other discharge areas.
- ~~(8)~~ "Impaired Water" – a navigable water for which credible scientific data exists that demonstrates that the water does not support its designated beneficial uses and/or does not meet one or more adopted water quality standards and has been identified in Regulation No. 93 – Colorado's Section 303(d) List of Impaired Waters and Monitoring and Evaluation List (5 CCR 1002-93).
- ~~(9)~~ "Individual Sewage Disposal System (ISDS)" – A combination of components that may include onsite septic tanks or cluster systems that are designed to treat, neutralize, stabilize, store or dispose of sewage and that is not part of, or connected to, a centralized sewage collection system or treatment works.
- ~~(7)~~ "Interceptor Sewer" - (Intercepting sewer) - For purposes of this regulation, a sanitary sewer that receives flows from a number of collector sewers or outlets and transports such wastewater to a point for treatment or disposal.
- ~~(8)~~ "Management Agency" - Any public agency designated for wastewater management responsibilities in a certified area wide Water Quality Management Plan prepared under Section 208 of the Federal Act. Such designation shall be considered final only upon the agency's acceptance of its responsibilities as outlined in the appropriate 208 plan.
- ~~(10)~~ "Median Household Income (MHI)" (as found in the definition of "Disadvantaged Communities") – Estimated annually, this is the median value of the income households in a given area earn in a calendar year. Household income is calculated as the sum of income received by all household

members age 15 and over as determined by the most recently available census data or an approved income survey as provided by a recognized survey source.

- (11) "Municipal Separate Storm Sewer Systems ("MS4s")" (as found in the definition of "Section 319 Project") – A conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains) that are owned or operated by a state, city, town, county, district, or other public body created pursuant to state law. A National Pollutant Discharge Elimination System (NPDES) permit must be obtained by the operator of an MS4 system.
- (912) "Nonpoint Source ("NPS")" 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. NPS 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.
- (4013) "Nontraditional Project" - A project for which the primary purpose is other than water quality, but which has an additional purpose that is clearly related to the improvement or protection of water quality (e.g. the liner portion of a new landfill is intended to protect water quality).
- (11) ~~"NPS Project Implementation Plan" - A plan which describes proposed improvements to lessen a NPS pollution problem. At a minimum, the plan shall describe existing conditions, proposed improvements, anticipated benefits, project costs, financial arrangements and ongoing project maintenance and monitoring.~~
- (12) ~~"NPS Education Program" - A project which raises public awareness of a prevalent NPS problem and has a primary purpose including disseminating information to the public. As a minimum, a project description shall include a plan which describes the intent, proposed information for dissemination, project cost, financial arrangements and anticipated benefits.~~
- (4314) "Point Source" (as found in the definition of "Nonpoint Source (NPS)" and "Total Maximum Daily Loads ("TMDL"))- Any discernible, confined, and discrete conveyance, including, but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged. Point Source does not include agricultural stormwater discharges and return flows from irrigated agriculture. These projects are generally eligible under §212 of the Federal Act.
- (4415) "Pollution" - Activities or events that degrade The man-made, man-induced, or natural alteration of the physical, chemical, biological, and radiological integrity of water.
- (4516) "Project" - A specific improvement to a water quality management system, phase or segment.
- (4617) "Project Eligibility List" - The list of projects eligible for financial assistance from the Authority through the WPCRF or its other funding capabilities, as adopted and modified in accordance with section 37-95-107.6(4).
- (18) "Projected Loan List" – The list of projects that has been partially scored in accordance with the criteria described in the intended use plan. This list represents those projects that may be reasonably anticipated to receive a binding commitment for a loan in the WPCRF program. Projects can be moved from the Project Eligibility List to the Projected Loan List at any time during the year.
- (4719) "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.

- (20) "Reclaimed Domestic Wastewater ("Reuse")"- Wastewater that has received treatment that enables the wastewater to meet the requirements, prohibitions, standards, and concentration limitations adopted by the Commission for subsequent reuses other than drinking.
- ~~(18) "Refinance Project" - Refinancing of debt obligations for eligible projects where the initial debt was incurred and construction began after March 7, 1985.~~
- (1921) "Regionalization Project" - A water quality management system project that will combine and/or eliminate one or more existing treatment works or water quality management systems. An intergovernmental agreement or contract shall be signed or a resolution adopted by the project participants of the regional project.
- (22) "Section 212 Project" - Eligible projects under Section 212 may include, but are not limited to, the capital costs for wastewater collection and treatment, municipal stormwater projects, combined sewer overflow, sanitary sewer overflow, pipes, storage and treatment systems, green infrastructure, municipal landfill projects, water conservation and reuse, energy conservation and efficiency. Section 212 of the Federal Act provides the statutory authority for programs funded by the WPCRF for the construction of publicly owned Treatment Works ("POTWs").
- (23) "Section 319 Project" - Eligible projects under Section 319 may include, but are not limited to, projects that address run-off associated with agricultural activities or abandoned mining operations, and the implementation of Best Management Practices, aging and/or failing Individual Sewage Disposal Systems, stormwater run-off outside of Municipal Separate Storm Sewer System permitted projects, brownfield contamination, atmospheric deposition, and leaking underground storage tanks. Section 319 of the Federal Act provides the statutory authority for programs funded by the WPCRF for the development and execution of comprehensive conservation management plans.
- (2024) "Sewage Sludge" (as found in the definition of "Treatment Works")- Solid, semi-solid, or liquid residue generated during the treatment of domestic sewage in a treatment works. Sewage sludge includes, but is not limited to, domestic septage; scum or solids removed in wastewater treatment processes; and any material derived from sewage sludge. Sewage sludge does not include ash generated during the firing of sewage sludge in a sewage sludge incinerator or material generated from preliminary treatment of domestic sewage in a treatment works.
- ~~(21) "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.~~
- ~~(22) "Small Communities" - Identified specifically for funding from the WPCRF and State Construction Grants Programs, are defined as those governmental agencies with an existing population of not more than 5,000 persons.~~
- ~~(23) "State Waters" - Any and all surface and subsurface waters which are contained in or flow in or through this state, but does not include waters in sewage systems, waters in treatment works of~~

~~disposal systems, waters in potable water distribution systems, and all water withdrawn for use until use and treatment have been completed.~~

- ~~(24) "Sustainable Measures" - Implementation of a management system approach that identifies, implements, measures, and improves energy efficiency and renewable opportunities for wastewater treatment facilities (EPA's "Energy Management Guidebook for Wastewater and Water Utilities" January 2008).~~
- (25) "Traditional Project" - A project for which the primary purpose is water quality protection.
- (25) "Sustainability Benefits" - Projects and/or planning methodologies that promote sustainable wastewater systems through effective utility management to promote: the conservation of natural resources; alternative approaches such as natural or "green" systems; innovative approaches and technologies; and the full life-cycle costs on infrastructure investments (EPA's Clean Water and Drinking Water Infrastructure Sustainability Policy).
- (26) "Total Maximum Daily Loads ("TMDL")" - A TMDL is an analysis that results in the determination of: 1) the amount of a specific pollutant that a segment can receive without exceeding a water quality standard (the TMDL), and 2) the apportionment to the different contributing sources of the pollutant loading (the allocation). Once an impaired water body is identified, the State is required to prioritize these water bodies or segments (rivers, streams, lakes, and reservoirs) based on the severity of pollution and other factors. It will then determine the causes of the water quality problem and allocate the responsibility for controlling the pollution in the TMDL. The TMDL must include a margin of safety, waste load allocation (for point sources), and a load allocation (for non-point sources, and natural background). The TMDL must include upstream loads in the assessment and apportionment process.
- ~~(26/27) "Treatment Works" - Any devices and systems used in the storage, treatment, recycling or reclamation of municipal sewage, sewage sludge, and biosolids, or industrial wastes of a liquid nature, or necessary to recycle or reuse water or biosolids, including intercepting sewers, outfall sewers, sewage collection systems, pumping, power, and other equipment; extensions, improvements, remodeling, additions, and alterations thereof; elements essential to provide a reliable recycled supply such as stand-by treatment units and clear well facilities; and any works, including site acquisition of the land that will be an integral part of the treatment process (including land used for the storage of treated wastewater in land treatment systems prior to land application), or is used for ultimate disposal of residues resulting from such treatment. In addition, Treatment Works means any other method or system for preventing, abating, reducing, storing, treating, separating, or disposing of domestic wastewater, including stormwater runoff, or industrial waste, or waste in combined stormwater and sanitary sewer systems.~~
- ~~(27) "Water Conservation Project" - Any structural or nonstructural water conservation measure that achieves a reduction in wastewater flow for a publicly-owned treatment works. Structural measures shall include but are not necessarily limited to: installation of interior low-flow plumbing fixtures which are distributed and/or installed by a governmental agency or which are funded in whole or in part by the governmental agency, and water meters which are funded and owned by the governmental agency. Nonstructural measures shall include but are not necessarily limited to: incentives for previously installed low-flow fixtures, leaking or I/I detection programs, public awareness, public education, and incentive wastewater and water service charges and treatment works effluent reuse.~~
- (28) "Water Quality Management Plan" - The plan for managing the water quality, including consideration of the relationship of water quality to land and water resources and uses, on an areawide basis, for each planning area designated pursuant to sections 208(a) and 303(e) and 319 of the Federal Act.

- (29) "Water Quality Management System" - Any ~~†~~Treatment ~~w~~Works or any other system for disposal of sewage, biosolids, and industrial waste, or NPS pollution control, stormwater protection, ground water protection, and treatment operated by a ~~g~~Governmental ~~a~~Agency.
- ~~(30) "Water Quality Management System Phase or Segment" - Any portion of a water quality management system described in an approved planning document which can be identified as a contract, sub-item or subcontract. Completion of building of a system phase or segment may, but need not in and of itself, result in a complete system.~~
- ~~(34)~~30 "Watershed" - A geographical area in which activities may significantly impact a water body (or segment of concern) or an underlying aquifer. There are several considerations in defining the geographical scope of a watershed: hydrology, political boundaries, uses to be protected, nature of the water quality problem, manageability, available resources, and public interest.
- ~~(32) "Watershed Protection Approach" - An integrated, holistic strategy to protect or attain the desired beneficial uses within a watershed, including protection of human health and aquatic ecosystems.~~

51.3 INTENDED USE PLAN

- (1) The Division, in cooperation with the Division of Local Government (DLG) and the Authority, shall submit to EPA as part of its application for a capitalization grant an annual Intended Use Plan ("IUP"), which shall include the Project Eligibility List and information about how the State will assist communities with their water quality needs. The Division shall recommend the IUP to the Commission each year for final agency action after a ~~public hearing, and shall also provide for public notice and an opportunity to~~ for public comment in order to comply with the Federal Act.
- (2) The IUP shall include as a minimum:
- (a) A list of projects for construction of publicly owned ~~†~~Treatment ~~w~~Works and projects/activities eligible for assistance under sections 212 and 319 ~~and 320~~ of the Federal Act. This list must include the name of the community, permit number or other applicable enforceable requirements (if available), the type of financial assistance, and the projected amount of eligible assistance. (Permit numbers and other applicable enforceable requirements will be made available upon request);
 - (b) A description of the short-term and long-term goals of the State's WPCRF;
 - (c) Information on the types of activities, as opposed to project level details, to be supported by the WPCRF, including the eligible cost categories, types of assistance to be provided (e.g., loans, guarantees, insurance, ~~etc.~~), terms of financial assistance, types of communities to be served by the fund, and administrative costs;
 - (d) Assurances and specific proposals on how the State intends to meet the requirements of the Federal Act; and
 - (e) The criteria and method established for the prioritization of projects and distribution of funds.

51.4 GENERAL POLICIES

- (1) The Commission will consider protection of public health and water quality when determining the Water Quality Management System projects eligible for WPCRF participation.
- (2) The Commission will maintain and improve water quality in the State by providing accessibility to the WPCRF.

- (3) The Commission will support traditional and nontraditional approaches to meet water quality needs.
- (4) The Commission will encourage regionalization of Water Quality Management Systems where practicable. It is the policy of the Commission to encourage good local planning within the concept of an Areawide Water Quality Management Plan. Projects shall conform to a state-approved plan, ~~(for example e.g., Water Quality Management Plan, NPS Management Plan, etc.)~~ as updated from time to time, or they may not be considered for assistance through the WPCRF.
- (5) The Commission will promote biosolids disposal methods for beneficial use as opposed to other sludge disposal methods. The Commission will also promote water conservation and reuse measures, as well as green infrastructure approaches to water pollution issues caused by stormwater run-off in both urban and rural environments.
- (6) The Commission intends to identify projects for the Project Eligibility List that will address the long term water quality needs in Colorado.
- (7) To be eligible to receive assistance from the WPCRF, Governmental Agencies must complete a planning document identifying a specific project that is cost effective, environmentally acceptable, and consistent with applicable local, state and federal regulations and guidelines. The Division will review those projects to which environmental assessments and public participation requirements apply in accordance with the EPA-approved State Environmental Review Policy.
- (8) Eligible projects may include, but are not limited to, publicly owned Treatment Works, Nonpoint Source and stormwater pollution control projects, water conservation projects, Reuse projects and Biosolids projects. Funding for Nontraditional Projects shall be limited to that portion of the project that is related to protecting or improving water quality.
- (9) The Commission may amend the Project Eligibility List at any time throughout the year to include projects that it determines and declares to be emergency projects needed to prevent or address threats to public health or environment. In cases where the Commission determines the amendments will result in substantial changes to the Project Eligibility List, public notice and opportunity for comment on the proposed inclusion shall be provided.
- (10) The Projected Loan List will identify the Governmental Agency that will enter into the loan agreement and repay the loan. Before receiving WPCRF funding, the governmental agency must develop and/or maintain a user charge and fee system or other financial mechanism to ensure operation, maintenance, and replacement needs are met, and to ensure repayment of any WPCRF loan and existing debt. The WPCRF criteria for the financial capability review of applicants are included in the State/EPA Operating Agreement, which is available from the Division for review.
- (11) Each year, after a public notice and comment period, the Commission will schedule a public hearing for approval of the IUP. Each Governmental Agency on the proposed Project Eligibility List will receive notification of the hearing. After considering all pertinent comments, the Commission shall approve the IUP and adopt additions and modifications to the Project Eligibility List no later than December 31 of each year. The Division will establish a date each year for finalizing its proposal to the Commission for the IUP and Projected Loan List. After that date, any requests for changes must be transmitted directly to the Commission.
- (12) All loan project proponents shall submit applications by deadlines established in the annual IUP. If it is determined that the WPCRF lacks sufficient funds to cover loans for all eligible projects that are ready to proceed within the funding year, projects will be funded in priority order until all funds are obligated.

51.5 PROCEDURES FOR IDENTIFYING PROJECTS AND ESTABLISHING THE PROJECT ELIGIBILITY LIST, AND DISTRIBUTING FUNDS

- (1) Each year the Division shall ~~z~~ (after consultation with interested persons and entities, including but not limited to the DLG, the Authority, designated regional water quality planning organizations, watershed planning organizations, and Nonpoint Source Management interests) ~~z~~ review, update, and compile a Project Eligibility List that contains a project description that will improve or benefit water quality which may include, but are is not limited to, the following examples: ~~z~~ impact on public health; ~~z~~ impact on fish and wildlife; ~~z~~ impact on the ecosystem; ~~z~~ improving water quality to meet applicable standards for streams, lakes, and ground water; and ~~z~~ protection of classified uses.

This Project Eligibility List shall be included in the IUP as an Appendix A and, after a public notice and comment period, shall be presented to the Commission for final agency action ~~after~~ at a public hearing.

- (2) The Project Eligibility List shall be comprised of ~~six categories~~ five types of projects:
- (a) ~~Type Category 1 A includes those projects that improve or benefit public health or that will remediate a public health hazard as defined in this regulation. includes those projects that correct a documented public health hazard as defined in the WPCRF Rules.~~
 - (b) ~~Type Category 2 B includes those projects that improve water quality in an impaired water body; contribute to the prevention of a public health hazard; enable an entity to maintain permit compliance; or enable an entity to address a possible future effluent limit or emerging water quality issue. includes those projects that enable an entity to achieve permit compliance.~~
 - (c) ~~Type Category 3 C includes those projects that implement a watershed/nonpoint source management plan. includes those projects that contribute to the prevention of a public health hazard; enable an entity to maintain permit compliance; or enables an entity to address a possible future effluent limit or emerging issue.~~
 - (d) ~~Type Category 4 D includes those projects that implement a Source Water Protection Plan. includes those projects that implement a watershed/nonpoint source management plan.~~
 - (e) ~~Type Category 5 E includes those projects that enable an entity to achieve permit compliance. includes those projects that implement a source water protection plan.~~
 - (f) ~~Category 6 includes those projects that seek funding only under the American Recovery and Reinvestment Act of 2009 and that were not already on the Project Eligibility List as of January 1, 2009. Categories 1-5 will be given consideration prior to funding of Category 6 projects.~~

Note: The Project Types will be determined based on information provided in the Eligibility List Categories are determined based on information provided by the applicant during the annual Eligibility Survey. This information will not be used to prioritize projects. Based upon receipt and review of the Preliminary Engineering Report and a loan application, the assigned Eligibility List Category may be revised during the prioritization process to more accurately reflect the proposed project.

- (3) ~~All loan projects shall submit applications by deadlines established in the annual IUP. If it is determined that the WPCRF lacks sufficient funds to cover loans 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, which will be funded prior to Category 4 projects, which will be funded prior to Category 5 projects, which will be funded prior to Category 6 projects – until all funds are obligated. 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:—

Up to 1000 Population	20 Points
1,001 to 5,000 Population	15 Points
5,001 to 10,000 Population	10 Points
Over 10,000 Population	5 Points

(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.

(4) — The rationale for funding projects in an order other than that shown shall be due to one or more of the following three reasons:

(a) — Certain governmental agencies do not wish to participate in the WPCRF;

(b) — Certain governmental agencies are not ready to proceed with the project; or

(c) — Certain governmental agencies do not have the financial capability to repay a loan.

- (5) ~~To be eligible to receive assistance from the WPCRF, governmental agencies must complete a planning document, identifying a specific project that is cost-effective, environmentally acceptable, and consistent with applicable local, state and federal regulations and guidelines. The Division will review those projects that environmental assessments and public participation requirements apply in accordance with the EPA-approved State Environmental Review Policy.~~
- (6) ~~Eligible projects include: publicly owned treatment works, nonpoint source and stormwater control projects, water conservation projects, reuse and biosolids projects. However, funding for nontraditional projects shall be limited to that portion of the project that is related to water quality (e.g. the liner for a new landfill).~~
- (7) ~~The Project Eligibility List will identify the governmental agency that will enter into the loan agreement and repay the loan. Before receiving WPCRF funding, the governmental agency must develop and/or maintain a user charge and fee system or other financial mechanism to ensure operation, maintenance and replacement needs are met and to ensure repayment of any WPCRF loan and existing debt. The WPCRF criteria for the financial capability review of applicants are included in the State/EPA Operating Agreement, which is available from the Division for review.~~
- (8) ~~Each year, after a public notice and comment period, the Commission will schedule a public hearing for approval of the IUP. Each governmental agency on the proposed Project Eligibility List will receive notification of the hearing. After considering all pertinent comments, the Commission shall approve the IUP and adopt additions and modifications to the Project Eligibility List no later than December 31 of each year. The Division will establish a date each year for finalization of its proposal to the Commission for the IUP and Project Eligibility List. After that date, any requests for changes must be transmitted directly to the Commission.~~
- (9) ~~The Commission may amend the Project Eligibility List at any time throughout the year to include wastewater treatment system projects that it determines and declares to be emergency projects needed to prevent or address threats to public health or environment. In cases where the Commission determines the amendments will result in substantial changes to the Project Eligibility List, public notice and opportunity for comment on the proposed inclusion shall be provided.~~

51.6 PROCEDURES FOR ESTABLISHING THE PROJECTED LOAN LIST AND DISTRIBUTING FUNDS

- (1) The Projected Loan List shall be included in the IUP and, after a public notice and comment period, shall be presented to the Commission for final agency action at a public hearing. At a minimum, the Projected Loan List shall identify:
 - (a) The applicant
 - (b) Project title
 - (c) Type of project
 - (d) Amount of financial assistance requested
 - (e) Subsidy rate index
 - (f) Whether the project is considered "green"
 - (g) Whether the project is within the fundable range
 - (h) The rank of each project by the priority score determined according to the IUP.

- (2) The Division shall rank each project on the Projected Loan List based on the priority score of each project. Detailed scoring mechanisms shall be established in the IUP based on the following parameters:
 - (a) Water Quality Improvement
 - (b) Financial Capability and Affordability
 - (c) Sustainability/Green Project Reserve
 - (d) Enforcement/Compliance
 - (e) Readiness-To-Proceed
- (3) The Division shall identify the subsidy rate (if applicable) for each project on the Projected Loan List as identified in the Intended Use Plan.
- (4) Prior to adoption of the Projected Loan List by the Commission, the Division shall determine which projects are within the fundable range for financial assistance.
 - (a) In determining the fundable range, the Division shall evaluate each project for evidence that the project is ready to proceed. The Division shall consider the following indicators when evaluating whether the project is within the fundable range:
 - (i) Evidence that the applicant has completed or will have completed preliminary planning and/or design documents in which funding is sought
 - (ii) Evidence that the applicant has completed or will have completed a project loan application for the calendar year in which funding is sought
 - (iii) Evidence of debt authorization

51.651.7 DISADVANTAGED COMMUNITIES PROCEDURES

~~Under the Federal Act, states are authorized to provide “loans at or below market interest rates, including interest free loans, at terms not to exceed 20 years.” The following procedures describe the approval and amendment process for Colorado’s annual IUP as it relates to the administration of its Disadvantaged Communities Program. The Division, Authority and the DLG may recommend Program changes based on actual program implementation and the results of periodic reviews conducted hereunder. The Division shall recommend the IUP to the Commission each year for final agency action after a public hearing, and shall also provide for public notice and an opportunity to comment in order to comply with the Federal Act.~~

- (1) ~~The WPCRF may provide additional loan subsidies for governmental entities that are determined to be “disadvantaged.” The definition/criteria of a disadvantaged community and the nature of the loan subsidies to be made available thereto shall be recommended for inclusion in the IUP by the Division and the Authority in consultation with the DLG.~~
- (2) ~~While compiling projects on the Priority / Fundable List Projected Loan List (utilizing the procedures listed in Section 51.5 above), the Division will identify the community projects that qualify for assistance under the Disadvantaged Communities Program in accordance with the program definition/ and criteria.~~
- (3) ~~The Division, the Authority and the DLG will conduct periodic reviews, as appropriate, of the Disadvantaged Communities Program. The reviews may result in recommended program changes relative to the nature of available subsidies to be incorporated into the IUP. In~~

~~conducting such reviews and preparing recommendations, the following factors may be examined:~~

- ~~(a) — The overall financial condition of the communities participating in the program, including but not limited to:
 - ~~(i) — The total utility system fee and tax burden upon rate payers;~~
 - ~~(ii) — Post project utility charges;~~
 - ~~(iii) — Utility indebtedness;~~
 - ~~(iv) — Median household income.~~~~
- ~~(b) — The impact of the subsidy upon the continued financial viability of the WPCRF.~~
- ~~(c) — The merit of utilizing all financial assistance options allowed under the Federal Act to finance water quality projects that protect public health and the environment.~~

51.8 Planning and Design Grants

The Division may provide Planning and Design Grant assistance if funding is approved in the IUP according to section 51.3.

51.7-51.9 - 51.19 **RESERVED**

WATER QUALITY CONTROL DIVISION PROPOSED

51.37 STATEMENT OF BASIS, SPECIFIC STATUTORY AUTHORITY, AND PURPOSE (APRIL 9, 2012 RULEMAKING, EFFECTIVE MAY 30, 2012)

Sections 25-8-202(1)(e) and (g); and section 37-95-107.6, 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 took action to modify Regulation #51 by: removing the criteria for determining the priority assigned and including it in the Intended Use Plan (IUP); eliminating the categories and developing new criteria for determining the a project's priority; moving a number of items to the General Policies Section; establishing a Project Loan List that includes all projects that can be reasonably anticipated to receive a loan; and adding/deleting/revising definitions and updating other provisions. The Commission adopted these revisions for two principal reasons:

1. To provide a new emphasis on funding projects based on improving water quality consistent with subsection 51.4(6) of this regulation while maintaining the current emphasis on providing funding opportunities for smaller, less financially capable communities; and
2. To improve the function and transparency of the Water Pollution Control Revolving Fund loan process.

The Commission's action to modify Regulation #51 will require revisions to the process for prioritizing projects and the Commission is aware of the approach the Water Quality Control Division (Division), the Colorado Water Resources and Power Development Authority (Authority), and the Colorado Division of Local Governments (DLG) have developed to revise the project prioritization system for inclusion in the 2013 IUP. While the revised system will be proposed for consideration in a draft IUP at the October 2012 administrative action hearing, the Commission understands and appreciates that the Division, the Authority, and DLG have conducted significant outreach to inform stakeholders of the draft approach that will be included in the IUP.

Specific modifications to regulation #51 on a section-by-section basis are described below.

Section 51.2 – Definitions – Several new definitions were added to define terms used in the previous regulation as well as terms added to the regulation. Several existing definitions were deleted as the terms were no longer used in the regulation. The Commission also revised existing definitions to clarify their intent or to make them consistent with the definition in other regulations or statute.

Section 51.3 – Intended Use Plan – This section was modified to direct that the criteria for prioritizing projects are to be included in the IUP and to identify that the federal authority for projects is derived from sections 212 and 319 of the Clean Water Act.

Section 51.4 – General Policies – The Commission revised subsection 51.4(5) to indicate it will promote green infrastructure projects related to the control of stormwater pollution as these projects are sustainable approaches to pollution control as are the other projects described in this subsection. The Commission also moved several provisions from section 51.5 as these are seen more as statements of policy.

Section 51.5 – Procedures for Identifying Projects and Establishing the Project Eligibility List – The Commission renamed this section to denote a change in the process due to the addition of the concept of the Projected Loan List. This section lays out the broad approach to identify projects and to develop the Project Eligibility List. The Commission deleted the previous concept of project categories that had been used to prioritize projects and was based on a blend of concepts: 1) the type of problem to be solved (e.g., noncompliance at a wastewater treatment facility and health hazard due to surfacing ISDS), and 2) the type of project (e.g., wastewater treatment plants, stormwater treatment, and nonpoint source projects). These were replaced with project types that will be used to categorize projects for the Project Eligibility List. The Commission also deleted the detailed project priority scoring system that will be replaced by the new project priority system to be established in the IUP. This eliminates the previous approach of prioritizing projects based on category first, and then priority score within the category.

Section 51.6 – Procedures for Establishing the Projected Loan List and Distributing Funds – The Commission created a new section 51.6 to establish the concept of the Projected Loan List. This list will be used to identify which projects on the eligibility list are most likely ready to proceed to the application and funding stages. Project proponents will have to provide information under the five identified factors in subsection 51.6(2) to allow for the required priority scoring. These factors are based on local fiscal capacity and affordability indicators, water quality improvement benefits, green project/sustainability benefits, compliance status, and readiness to proceed that, taken together, will result in projects being funded that will help attain the water quality and other goals identified by the Division and the Commission. These factors will serve as a general guide for the Division, the Authority, and DLG to establish specific criteria in the IUP upon which all projects will be evaluated and scored.

The Commission also established conditions under which the Division will identify projects that are within the fundable range based on a combination of readiness to proceed and priority score. This will allow the Division, Authority, and DLG to focus the bulk of their efforts on projects that are most likely to proceed during the coming year.

Section 51.7 - Disadvantaged Communities – The Commission revised section 51.7 (previously section 51.6) to delete the requirement for periodic review of the disadvantaged community program as the Commission finds that provision of funding to Disadvantaged Communities is an important aspect of the WPCRF program and such funding should be provided when authorized.

Section 51.8 – The Commission added a new section 51.8 to authorize funding of planning and design grants when such funding is approved in the IUP.