

# STATE OF COLORADO

John W. Hickenlooper, Governor  
Christopher E. Urbina, MD, MPH  
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 potential revisions to the Water Quality Improvement Fund Rules, Regulation #55 (5 CCR 1002-55). The purpose of this hearing is to consider adding provisions to this rule establishing project prioritization criteria for the award of grants that may be available for nutrients management efforts. The Colorado General Assembly is currently considering a proposal to establish a nutrients grant fund within the Water Quality Improvement Fund. If such legislative action is adopted, this hearing will consider appropriate implementing regulations.

The initial proposed revisions to Regulation #55 along with an initial 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~~. A revised proposal will be available from the Commission office by April 23, 2013. Any alternative proposals related to the revisions set forth in the proposal, and developed in response to those proposed revisions, will also be considered.

### HEARING SCHEDULE:

DATE: Monday, May 13, 2013  
TIME: 2:00 p.m.  
PLACE: Florence Sabin Conference Room  
Department of Public Health and Environment  
4300 Cherry Creek Drive South  
Denver, Colorado

### PUBLIC PARTICIPATION ENCOURAGED:

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

### PARTY STATUS/MAILING LIST STATUS:

Participation as a "party" to this hearing will require compliance with section 21.4(D) of the Procedural Rules, Regulation #21 (5 CCR 1002-21). It is not necessary to acquire party status in order to testify or comment. **For each request for party status 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: Tuesday, April 9, 2013  
TIME: 5:00 p.m.

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

WRITTEN COMMENTS:

In view of the expedited nature of this rulemaking, no prehearing statements will be required. Those requesting party status and others interested in this proceeding are encouraged to provide written comments. Any such comments will be accepted at the hearing, although interested persons are encouraged to email or otherwise deliver a copy of their written comments to be received in the Commission Office by May 1, 2013 if feasible, so that they may be circulated to Commission members for review prior to the hearing.

PREHEARING CONFERENCE:

No prehearing conference will be held for this rulemaking.

SPECIFIC STATUTORY AUTHORITY:

The provisions of sections 25-8-202(1)(g); 25-8-308 and 25-8-608 C.R.S. provide the specific statutory authority for consideration of the regulatory amendments proposed by this notice. Should the Commission adopt the regulatory language as proposed in this notice or alternative amendments, it will also adopt, in compliance with section 24-4-103(4) C.R.S., appropriate Statements of Basis, Specific Statutory Authority, and Purpose, as well as appropriate Findings in Support of Adoption of Emergency Revisions, in compliance with section 24-4-103(6) C.R.S.

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 13<sup>th</sup> day of March 2013 at Denver, Colorado.

WATER QUALITY CONTROL COMMISSION

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Paul D. Frohardt, Administrator

**EXHIBIT 1**  
**WATER QUALITY CONTROL COMMISSION**

**DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT**

**Water Quality Control Commission**

**5 CCR 1002-55**

**WATER QUALITY IMPROVEMENT FUND**

**REGULATION NO. 55**

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**55.8 NUTRIENTS MANAGEMENT GRANT FUND**

**Entity Eligibility**

Domestic Wastewater Treatment Works owned or operated by a local government and subject to section 85.5(1)(a)(iii) and not eligible for an exception under 85.5(3)(b) are eligible for a Nutrients Management Grant Fund under this section.

**Project Eligibility**

Planning, design, construction, or improvement of domestic wastewater treatment works to comply with the effluent limitations in 85.5(1)(a)(iii).

**Project Prioritization**

The Division shall rank each project based on financial capability/affordability along with other factors that will be identified through a stakeholder process. Those factors identified will be proposed to be included in this section. Factors may include, but are not limited to, treatment need, permit renewal date, readiness to proceed, and compliance/enforcement.

**Funding Allocation and Awarding Process**

The Colorado General Assembly is currently considering a proposal to establish this nutrients grant fund to assist municipalities with the costs associated with implementation of the Nutrients Management Control Regulation #85. Funding is contingent upon final appropriation by the Colorado General Assembly. Pending appropriation, the Division will develop a Request for Application (RFA) to solicit projects for funding. If there are more request 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. Projects will be funded in rank order, highest to lowest, until all funds have been allocated. The fundable list will be posted on the Division website to identify the recipients of funds and the amount of each award.

Recipients of awards under this section are required to have a 20% match for their respective award. The match can consist of cash reserves, other funding sources, and/or in-kind. No one project or entity can receive more than 3% of the total funds available.

**55.89 - 55.10 RESERVED**

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## **PROPOSED STATEMENT OF BASIS, STATUTORY AUTHORITY AND PURPOSE**

### **55.14 STATEMENT OF BASIS, SPECIFIC STATUTORY AUTHORITY, AND PURPOSE, MAY 13, 2013 RULEMAKING, EFFECTIVE JUNE 30, 2013**

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

#### **BASIS AND PURPOSE**

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

Entities eligible for funding under this section are those domestic wastewater treatment works owned and operated by local governments and subject to the first phase implementation of Regulation #85. Funds can be used for projects to plan, design, construct, or improve a wastewater treatment works in order to comply with the effluent limits of Regulation #85. *[More language will be included about funding prioritization and the funding and allocation process after a stakeholder process.]*