

STATE OF COLORADO

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

WATER QUALITY CONTROL COMMISSION

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

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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 flood recovery efforts. The Colorado General Assembly is currently considering a proposal to establish a flood recovery grant fund within the Water Quality Improvement Fund. If such legislative action is adopted, this hearing will consider appropriate implementing regulations.

The proposed revisions to Regulation #55 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 set forth in the proposal, and developed in response to those proposed revisions, will also be considered.

HEARING SCHEDULE:

DATE: Monday, May 12, 2014
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:

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

email address if available. Written party status requests are due in the Commission Office on or before:

DATE: Tuesday, April 8, 2014
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, 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 April 30, 2014 if feasible, so that they may be circulated to Commission members for review prior to the hearing.

PREHEARING CONFERENCE:

No prehearing conference will be held for this rulemaking.

SPECIFIC STATUTORY AUTHORITY:

The provisions of sections 25-8-202(1)(g); 25-8-308 and 25-8-608 C.R.S. provide the specific statutory authority for consideration of the regulatory amendments proposed by this notice. Should the Commission adopt the regulatory language as proposed in this notice or alternative amendments, it will also adopt, in compliance with section 24-4-103(4) C.R.S., appropriate Statements 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 13th day of March 2014 at Denver, Colorado.

WATER QUALITY CONTROL COMMISSION

Trisha Oeth, 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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55.9 NATURAL DISASTER GRANT FUND

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

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

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

(2) Entity Eligibility

- (a) Local governments defined as governmental agencies in section 52.5 that own and operate domestic wastewater treatment works and public drinking water systems in a designated disaster emergency county by an executive order or proclamation under section 24-33.5-704, C.R.S.
- (b) Local governments accepting grants on behalf of and in coordination with not-for-profit public drinking water systems.
- (c) Local governments assisting with the repair and restoration of on-site wastewater treatment systems as defined in section 25-10-103(12), C.R.S.

- (d) If funds are transferred to the Nutrients Management Grant Fund, eligible entities will be determined per section 55.8 of this regulation.

(3) 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.

(4) Award Process and Funding Allocation

- (a) Appropriations are subject to approval by the Colorado General Assembly, and funding is contingent upon such final appropriation. Pending appropriation, the division will administer the funds per the Natural Disaster Grant Fund rules identified in this section and prioritize projects based upon the criteria in section 55.9(5) below. The division will notify all applicants of their funding status after the establishment of a fundable list. The fundable list will be posted on the division website to identify the recipients of funds and the amount of each award.
- (b) A portion of the Natural Disaster Grant Fund will be set-aside to assist local governments with grants for on-site wastewater treatment systems that have been impacted as a result of the September 2013 flood. To sufficiently meet the demand indicated by the number of applications received and project type, the division has the authority to transfer funds between the set-aside for on-site wastewater treatment systems and the Natural Disaster Grant Fund. If a transfer occurs and project prioritization is required, the division will prioritize per section 55.9(5).
- (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 55.8, the Nutrients Management Grant Fund.

(5) 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.

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PROPOSED STATEMENT OF BASIS, STATUTORY AUTHORITY AND PURPOSE

55.15 STATEMENT OF BASIS, SPECIFIC STATUTORY AUTHORITY, AND PURPOSE, MAY 12, 2014 RULEMAKING, EFFECTIVE JUNE 30, 2014

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

BASIS AND PURPOSE

During the 2014 legislative session the General Assembly created a new program under HB14-1002 entitled the Natural Disaster Grant Fund. HB14-1002 requires the commission to promulgate rules necessary to administer the program. The commission determined that Regulation No. 55, the Water Quality Improvement Fund, was the most appropriate regulation to amend. In order to assist parties submitting a request for applications, and in order to provide a transparent process for allocation and award of the funds, the commission created section 55.9, Natural Disaster Grant Fund. This section established four subsections for administering the program: entity eligibility, project eligibility, award process and funding allocation and project prioritization. Entities eligible for funding under this section include local governments, including local governments accepting grants on behalf of and in coordination with not-for-profit water systems, for the planning, design, construction, improvement, renovation or reconstruction of domestic wastewater treatment works or public drinking water systems that have been impacted, damaged or destroyed in connection with a natural disaster. Further, local governments assisting with the repair and restoration of on-site wastewater treatment systems as defined in section 25-10-103(12), are eligible for funding.

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

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

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

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

proceed and impacts from the September 2013 flood necessary for planning, design, construction, improvements, renovation or reconstruction, and other factors pertinent to HB14-1002.

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