COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT WATER QUALITY CONTROL COMMISSION

DRINKING WATER GRANT FUND

REGULATION NO. 54

5 CCR 1002-54

BOARD OF HEALTH WATER QUALITY CONTROL COMMISSION

ADOPTED: September 15, 1999 AMENDED: August 11, 2008 EFFECTIVE: October 30, 1999 EFFECTIVE: January 1, 2009

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54.1 AUTHORITY

Section 25-1.5-208, C.R.S., as amended, provides authority for the Drinking Water Grant Fund to provide financial assistance to eligible public water systems (PWS). Section 25-1.5-208(1)(b) provides that the Water Quality Control Commission (Commission) shall promulgate rules for the administration of any appropriated grant funds and for prioritizing projects based upon public health impact and compliance with applicable regulations.

54.2 PURPOSE

The purpose of the Drinking Water Grant Fund is to provide financial assistance to governmental agencies and not-for-profit public water systems as well as to counties representing unincorporated areas serving populations of not more than 5,000 people. Eligible projects include consolidation, planning, design and/or construction of water treatment systems.

An annual Intended Use Plan (IUP) is developed by the Water Quality Control Division (Division) and approved by the Commission. The IUP provides information about how the state will assist communities with their drinking water needs. Included in the IUP is the Project Eligibility List, which is a comprehensive list identifying drinking water project needs.

The project priority system is intended to establish priorities for the grant fund that protect and improve the public health and safety through increased reliability of drinking water supplies in Colorado.

54.3 **DEFINITIONS**

Section 1.5 of the Colorado Primary Drinking Water Regulations (CPDWR) contains additional definitions that may apply to this rule.

- (1) "Beneficial Use" 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 meet the requirements of the state Biosolids Regulations.
- (2) "Consolidation" 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.
- (3) "Governmental Agencies" Departments, Divisions, or other units of state government, special districts, water conservation districts, metropolitan water districts, conservancy districts, irrigation districts, 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.

- (4) "Health Hazard" A situation where the Division has identified a maximum contaminant level (MCL) violation or a treatment technique violation. Funding for these projects must result in compliance with existing standards.
 - (a) An acute health hazard includes violations of Surface Water Treatment Rule (SWTR) treatment technique requirements, bacteriological standards, and nitrite/nitrate levels. Acute contaminant health effects can occur immediately or within a short period of time.
 - (b) A chronic health hazard includes violations of all MCLs (other than those listed as acute) or SWTR treatment technique requirements. Chronic contaminant health effects occur after years of exposure.
 - (c) A potential health hazard includes a situation where a PWS has periodically exceeded an MCL, has levels greater than 50 percent of an MCL on a regular basis, or has short term problems meeting a treatment technique requirement.
- (5) "Not-For-Profit Public Water Systems" PWSs that are operated by entities such as homeowners associations that are registered as a nonprofit association or nonprofit corporation with the Colorado Secretary of State.
- (6) "Other Future Needs" Those needs in situations where a facility is beyond the useful/design life and is in need of equipment replacement, rehabilitation or repair in order to maintain compliance or further the public health protection goals of the Safe Drinking Water Act.
- (7) "Project" A specific improvement to a public water system that may include planning, design, construction or consolidation.
- (8) "Public Water System" (PWS) A system for the provision to the public of piped water for human consumption, if such system has at least fifteen service connections or regularly serves at least twenty-five individuals. Such term includes:
 - (a) Any collection, treatment, storage, and distribution facilities under control of the operator of such system and used primarily in connection with such system; and
 - (b) Any collection or pretreatment storage facilities not under such control, which are used primarily in connection with such system.
- (9) "Source Water Protection" Structural or nonstructural source water protection activities done in addition to area delineation and contaminant assessment.
- (10) "<u>Water Conservation</u>" Any structural or nonstructural water conservation measure that achieves a reduction in water consumption for a PWS or a publicly owned treatment works. Structural measures shall include installation of interior low-flow plumbing fixtures that are distributed and/or installed by the PWS or that are funded in whole or in part by the PWS and water meters that are funded and owned by the PWS. Nonstructural measures shall include but are not necessarily limited to: incentives for previously installed low-flow fixtures, leak detection or infiltration/inflow programs, public awareness, public education, and incentive water service charges.

54.4 <u>INTENDED USE PLAN PROCEDURES</u>

The Division is required to develop an IUP including a comprehensive list of eligible projects. Annually the Division will conduct a statewide survey of infrastructure needs to identify projects for Project Eligibility List. The Division shall recommend the IUP to the Commission for final agency action at a public hearing, and shall also provide for public notice and an opportunity to comment.

The IUP shall include:

- (1) The Project Eligibility List,
- (2) Criteria and method used for distribution of funds,
- (3) Drinking Water Grant Fund Activities, and
- (4) Drinking Water Grant Fund Goals

54.5 PROJECT ELIGIBILITY LIST

The Project Eligibility List is the comprehensive list of eligible projects showing current and future infrastructure needs. Each year the Division shall review, update and compile additions and modifications to the Project Eligibility List and recommend such additions and modifications to the Commission.

Project Eligibility List Categories are determined based on information provided by the applicant during the Annual Eligibility List Survey process. If sufficient funds are not available to fund all requests projects will be funded in priority order. However, exceptions for funding out of priority order shall be allowed due to one or more of the following reasons:

- (1) The entity is not ready to proceed with the project:
- (2) The entity does not wish to participate in the grant fund, or they have received funding from other sources;
- (3) The entity (on the list) had an emergency situation occur during the funding year; or
- (4) The entity is not approved for funding because of technical deficiencies.

54.6 PRIORITY SYSTEM

All PWSs with identified infrastructure needs may be included in one of the categories listed below.

(1) Eligible Project Criteria

Categories were developed to emphasize the most immediate public health and compliance issues. Projects on the Project Eligibility List will be classified by category 1, 2, 3, 4, or 5 below, with "1" being the highest priority. Project Eligibility List Categories are determined based on information provided by the applicant during the Annual Eligibility List Survey process. Based upon receipt and review of a Preliminary Engineering Report and a grant application, the assigned Eligibility List Category may be revised, during the prioritization process, to more accurately reflect the proposed project.

- (2) Categories By Priority Ranking
 - (a) 1 <u>Acute Health Hazard</u>. The Division has identified continuous violation of an acute maximum contaminant level (MCL) or a surface water treatment rule (SWTR) treatment technique requirement.
 - (b) 2 <u>Chronic (long term) Health Hazard</u>. The Division has identified a continuous violation of an MCL or an SWTR treatment technique requirement for a chronic contaminant.
 - (c) 3 Potential Acute Health Hazard. The PWS has periodically exceeded an acute MCL, has levels greater than 50 percent of an acute MCL on a regular basis, or has short term problems meeting an SWTR treatment technique requirement that can be controlled temporarily by operational means.

- (d) 4 <u>Potential Chronic Health Hazard</u>. The PWS has periodically exceeded a chronic MCL, has levels greater than 50 percent of a chronic MCL on a regular basis, or has short term problems meeting other treatment technique requirements.
- (e) 5 Other Future Needs. The PWS is beyond the useful/design life and is in need of equipment replacement, rehabilitation or repair, in order to maintain compliance or further the public health protection goals of the Safe Drinking Water Act.
- (3) Priority Point Assignments Within Each Category

If it is determined that the Drinking Water Grant Program Fund lacks sufficient funds to cover requests for all eligible projects that are ready to proceed, projects will be funded beginning with the highest priority categories. 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 5 projects.

Within each category, projects will be further prioritized using the following Priority Point Assignments.

(a) <u>Population</u>. Points shall be assigned to a PWS based on the following schedule of population served by the project, with emphasis given to small communities:

25 to 1,000	20 points
1,001 to 3,300	15 points
3,301 to 10,000	10 points
Over 10,000	5 points

- (b) <u>Financial Need</u>. Points shall be assigned to a PWS in accordance with the following "financial need criteria:"
 - (i) Ability to pay (annual water service fee as a % of median household income):

over 3%	20 points
over 2%; up to 3%	15 points
over 1%; up to 2%	10 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

- (c) <u>Consolidation</u>. Fifteen points shall be assigned to a PWS if the project includes consolidating two or more PWS.
- (d) <u>Water Conservation</u>. Five points shall be assigned to a PWS if the PWS implements a water conservation measure.
- (e) <u>Source Water Protection</u>. Two points shall be assigned to a PWS if the governmental agency implements source water protection measures.
- (f) <u>Beneficial Use of Sludge</u>. Two points shall be assigned to a PWS if the governmental agency intends to utilize water treatment plant sludge for a beneficial use as defined herein.

(g) Health Risk. To further clarify the ranking of PWS projects, the Division shall assign up to twenty points for PWS health risks. Determination of the health risk will be made based upon the type and level of contaminant present within categories.

54.7. FUNDING CRITERIA

Funding is dependent upon appropriations from the State Legislature and will be provided for eligible projects that may include consolidation costs, planning, design and/or construction costs. Funding may be provided when:

- (1) The public water system is ready to proceed with the project; and
- (2) A grant application is submitted to the Division by the deadline established in the annual IUP. The Division shall submit the application to the Division of Local Government for its review and determination of financial need; and
- (3) Funds are available. If it is determined that the Drinking Water Grant Program Fund lacks sufficient funds to cover grants for all eligible projects that are ready to proceed, projects will be funded beginning with the highest priority categories.

Grant funds cannot be used to reimburse for costs related to fees and/or penalties assessed by the Division.

54.8-54.9 RESERVED

54.10 STATEMENT OF BASIS AND PURPOSE

These rules establish a system to administer grant funds and to provide for a mechanism to prioritize eligible projects. The rules allow lower priority drinking water systems to receive funding ahead of systems with higher priority if the higher priority system does not apply for the funding or is not ready to proceed with its project.

The Drinking Water Grant Program will provide financial assistance to governmental agencies and not-for-profit public water systems serving populations of not more than 5,000 people for projects including consolidation, planning, design and/or construction of public water systems.

The Drinking Water Grant Program Plan, which includes eligible projects, will be developed by the WQCD and submitted to the Board of Health (Board) once each year. A public will be held by the Board to receive input on the Plan. Following the meeting, any changes will be incorporated and the final Plan shall be approved by the Board.

These rules are similar to those adopted by the Board for the Drinking Water Revolving Fund. The rules are also similar to those adopted by the Water Quality Control Commission (Commission) for the Water Pollution Control Revolving Fund and the Domestic Wastewater Treatment Grant Program. The rule adoption authority for wastewater rests with the Commission while the drinking water rules are adopted under the authority of the Board of Health.

54.11 STATEMENT OF BASIS AND PURPOSE (JULY 14, 2008 RULEMAKING, EFFECTIVE DATE JANUARY 1, 2009)

Sections 25-1.5-208 and 25-1.5-208(1)(b) 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

Changes to Section 25-1.5-208 C.R.S. moved the authority for promulgating rules and approving the annual intended use plan from the Colorado Board of Health to the Water Quality Control Commission (Commission). Updates to these rules reflect this change in authority.

Changes to the Rules have also been made that streamline the Intended Use Plan process. The categorization and prioritization system that is included in the Drinking Water Revolving Loan Fund Rules have been incorporated into the Drinking Water Grant Program Rules. These revisions and will enable the Division to develop one Intended Use Plan and Project Eligibility List, that will be used for both the grant and loan funds.