DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

Water Quality Control Commission

5 CCR 1002-55

WATER QUALITY IMPROVEMENT FUND

REGULATION NO. 55

Adopted	May 15, 2007
Effective	July 30, 2007
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Effective	July 30, 2012

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REGULATION NO. 55

55.1 AUTHORITY AND PURPOSE OF THE WATER QUALITY IMPROVEMENT FUND

House Bill 06-1337 created the Water Quality Improvement Fund (Fund) codified in section 25-8-608, C.R.S., of the Colorado Water Quality Control Act (Act). The purpose of the Fund is to improve water quality in Colorado by providing grant funds for water quality improvement projects using civil penalties from water quality violations. House Bill 11-1026 amended the statute to authorize grants for stormwater management training and best practices training to prevent or reduce the pollution of state waters. Section 25-8-608(1.7)(c), C.R.S. provides the Water Quality Control Commission (Commission) with the authority to promulgate, implement and administer this regulation.

Funding is dependent upon annual appropriations by the Colorado General Assembly and is based on violations that were committed on or after May 26, 2006. The resulting penalties collected by the Water Quality Control Division (Division) are transmitted to the state treasurer for deposit to the credit of the Fund.

55.2 DEFINITIONS

(1) "Best Management Practices" (BMPs) - means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of "state waters". BMPs also include treatment requirements, operating procedures and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

(2) "Governmental Agency" – means any municipality, regional commission, county (or county on behalf of unincorporated areas), metropolitan district offering sanitation service, sanitation district, water and sanitation district, water conservancy district, metropolitan sewage disposal district, other special district used for funding a project under this regulation.

(3) "Impacted Water Body" – means a water body in which the designated use(s) of recreation, aquatic life, water supply, agriculture, and/or wetlands have been affected by pollutants associated with a violation of the Act, permit, control regulation, or final cease and desist order or clean-up order.

(4) "Nonpoint source" –means a diffused pollution source that is not regulated as a point source, including, but not limited to, sources that are often associated with agriculture, inactive or abandoned mining, silviculture, urban runoff, or runoff from construction activities. Nonpoint source pollution does not emanate from a discernible, confined, and discrete conveyance (such as a single pipe) but generally results from land runoff, precipitation, atmospheric deposition, or percolation.

(5) "Planning and Design of Domestic Wastewater Treatment Facilities and Stormwater Projects" – means any activity that results in the development of preliminary engineering reports, engineering

design documents, and/or environmental assessments for Domestic Wastewater Treatment Facilities and Stormwater Projects.

(6) "Stormwater Project" – includes: planning, design, construction or repair of a project that improves water quality from stormwater runoff, snow melt runoff, or surface runoff and drainage.

55.3 <u>ENTITY ELIGIBILITY</u>

Entities eligible for grants include: 1) governmental agencies; 2) publicly owned water systems; 3) private not- for- profit public water systems; 4) not- for- profit watershed groups; 5) not- for- profit stormwater program administrator in accordance with 25-8-802 C.R.S.; 6) not- for- profit training provider; and 7) private landowners impacted by a water quality violation.

Entities who pay a Colorado Water Quality Control Act civil penalty are prohibited from receiving a grant from this Fund for a period of 5 years from the date of the payment of the penalty.

55.4 <u>PROJECT ELIGIBILITY</u>

As provided for under section 25-8-608 (1.7)(a), C.R.S., the Fund will provide grants to the following project categories:

Category 1 – Stormwater management training and best management practices training to reduce the pollution of state waters.

Category 2 - Projects that improve the water quality in the community or water body which has been impacted by a water quality violation that resulted in a penalty being imposed.

Category 3 – Planning, design, construction, or repair of stormwater projects and domestic wastewater treatment facilities identified on the current fiscal year's Water Pollution Control Revolving Fund Intended Use Plan.

Category 4 - Nonfederal match funding for the current fiscal year's nonpoint source projects as approved by the Commission.

55.5 <u>FUNDING ALLOCATION</u>

All civil penalties collected by the Division shall be transmitted to the state treasurer for deposit to the credit of the Fund created by section 25-8-502, C.R.S., for violations committed on or after May 26, 2006 and shall be subject to annual appropriations by the Colorado General Assembly. The Division will post on its web page a list of violators that have paid into the Water Quality Improvement Fund. The following allocations from the Fund will be made:

Category 1 –For State Fiscal Year 2012-2013 the Division will allocate up to $150,000 of available funds with no one project initially receiving more than $50,000. If the entire $150,000 has not been fully utilized, the Division will allocate the remaining Category 1 funds within the year per its prioritization procedures to eligible Category 1 project(s) which may result in certain projects ultimately receiving more than $50,000.

For subsequent years thereafter, up to $50,000 of available funds will be allocated.

Category 2 – 10% of available funds following allocations to Category 1 projects.

Category 3 – 60% of available funds following allocations to Category 1 projects; no one project can receive more than 25% of the available funds allocated to this category.

Category 4 – 30% of available funds following allocations to Category 1 projects.

Any funds not utilized in one category will be redistributed among the remaining categories based on their relative percentage of funding. The Division will retain five percent (5%) of the moneys allocated annually to the Fund to cover the cost of administering the Fund. Funds may be carried over from previous years' appropriations and reallocated based upon the above distribution on an annual basis.

55.6 <u>PROJECT PRIORITIZATION CRITERIA</u>

If the Fund lacks sufficient funds to cover all requests within each category, Priority 1 projects will be funded prior to Priority 2 projects, which will be funded prior to Priority 3 projects, which will be funded prior to Priority 4 projects. If it is determined that there are insufficient funds, further prioritization criteria will be applied as identified under each category in this section. The Division may reallocate funding among categories based upon lack of requests or eligible projects within any category.

Criteria for funding project proposals within each category as described in Section 55.4 are as follows:

Category 1 – Stormwater management training and best management practices training to reduce the pollution of state waters.

> Priority 1 – Projects that implement stormwater management and best management practices training not previously available in Colorado, or previously limited in accessibility.
>
> Priority 2 – Projects that will expand the content or availability of existing stormwater management and best management practices training.
>
> Priority will be given to training providers that can demonstrate that training content will be relevant to implementation in Colorado with regards to Colorado's hydrology, climate and water rights, as applicable.
>
> Priority will also be given to training providers that provide no– or low-cost training.
>
> Additional prioritization criteria will include the expected water quality benefits, total population receiving training, availability of match, and readiness to proceed. Specific points available in each of these categories and tie breaking criteria will be included as an attachment to the Request for Application.

Category 2 - Projects that improve the water quality in the community or water body which has been impacted by a water quality violation.

> Priority 1 – Projects that address impacts to a water supply designated use.
>
> Priority 2 – Projects that address impacts to a recreation designated use.
>
> Priority 3 – Projects that address impacts to an aquatic life designated use.
>
> Priority 4 – Projects that address impacts to an agricultural or wetlands designated use.
>
> Additional prioritization criteria will include financial/affordability, water quality benefits, permit compliance, readiness to proceed, and availability of match. Specific points available in each of these categories and tie breaking criteria will be included as an attachment to the Request for Application.

Category 3 - Planning, design, construction, or repair of stormwater projects and domestic wastewater treatment facilities identified on the current fiscal year's Water Pollution Control Revolving Fund Intended Use Plan.

Priority 1 – Projects that improve water quality in the community or water body impacted by a violation.

Priority 2 – Planning, design, construction, or repair of stormwater projects.

Priority 3 – Projects identified on the current year's Water Pollution Control Revolving Fund Intended Use Plan.

Additional prioritization criteria will include financial/affordability, water quality benefits, permit compliance, readiness to proceed, and availability of match. Specific points available in each of these categories and tie breaking criteria will be included as an attachment to the Request for Application.

Category 4 - Nonfederal match funding for nonpoint source projects.

Priority 1 – Projects that reduce or eliminate water quality impairments identified in Regulation #93 (5 CCR 1002-93), Colorado's Section 303(d) List.

Priority 2 – Projects that protect any established designated water quality use.

55.7 <u>NOTIFICATION AND REPORTING</u>

Applications for Category 1, 2 and 3 projects will be noticed and accepted by the Division after the Division determines availability of appropriation. Applicants will be responsible for demonstrating the impacts of the violation on the affected water body or community, and the related water quality improvement project benefits. The Division will accept applications for Category 4 projects in accordance with the annual Nonpoint Source Project solicitation schedule.

The Division will evaluate all applications and determine the grant award(s) for each category based on the criteria in sections 55.3, 55.4, 55.5, and 55.6.

Grant recipients will provide a final project report within 60 days of completion of the project. Final project reports shall include a detailed description of the project as implemented, all problems encountered and the solutions thereto, itemized project costs, a declaration that the project has been fully implemented as approved, and a description of the environmental and public health benefits resulting from implementation of the project. Information on the grant recipients, including project description and grant award, will be reported in the Division's Annual Report to the Commission, in accordance with section 25-8-305, C.R.S.

55.8 - 55.10 <u>RESERVED</u>

55.11 <u>STATEMENT OF BASIS AND PURPOSE</u>

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.

<u>BASIS AND PURPOSE</u>

The purpose of this new regulation is to implement the Fund as established by House Bill 06-1337. This regulation provides a format for identifying eligible grant recipients and projects, Fund allocation, and prioritization criteria that will be used to award grants from the Fund.

The General Assembly appropriated $292,990 for the Fund for state fiscal year 2007. However, the statute did not take effect until the passage of the bill on May 26, 2006 and applies only to violations committed on or after this date. Only those penalties collected after May 26, 2006 and appropriated by the General Assembly will be available for grants.

The Fund will be administered by the Division, which also administers the Water Pollution Control Revolving Fund loans, State Domestic Wastewater Grants, and the Clean Water Act Section 319 nonpoint source grants. When compared to Water Pollution Control Revolving Fund loans, State Domestic Wastewater Grants, and the Section 319 nonpoint source grants, the initial amount of funding provided for the Fund is considerably less. No additional Division staff is included in the legislation to administer grants associated with this regulation. The goals of this regulation are similar to those for the Water Pollution Control Revolving Fund, State Domestic Wastewater Grant and the Section 319 nonpoint source grants. The grant amounts of the Fund are expected to be relatively small compared to the overall cost of such projects, and in most cases will not cover the entire cost of the project. Therefore, the Commission has determined that the most efficient and effective process to implement the Fund is to use, where established, the criteria already established by the three existing funding mechanisms.

An established process did not exist for projects identified under Category 1 (projects that improve the water quality in the community or water body which has been impacted by a water quality violation that resulted in a penalty being imposed). The Commission determined that a separate application process, with the criteria of project eligibility, Fund allocation, and project prioritization criteria being specifically developed, should be established to provide funding. This process will be compatible with existing Division loan and grant funding opportunities.

The Commission determined that entity eligibility for receipt of funding should be consistent with existing loan and grant opportunity processes and criteria. Ineligible entities are specifically identified to eliminate the potential for a party issued an enforcement action to apply for and receive grant funding. Project eligibility was determined to be consistent with the requirements specified in HB-06-1337. Funding allocation was determined by considering the legislative intent of the bill, which resulted in giving a slightly higher proportion to improving water quality in the community or water body that has been impacted by a water quality violation, to address effects from discharge violations. Categories 2 and 3 are given an equal funding allocation so that projects in these categories would receive funding over time. Project prioritization is established within each category because of the unique aspects of the project types. Category 1 and 2 priorities are to first address public health impacts to communities or impacted water bodies, and environmental impacts second. Category 3 priorities are to address more historic water quality impairments first, and protection of existing water quality designated uses and standards second.

This regulation will be implemented beginning in the fiscal year for which funds are appropriated and available. The Commission determined that implementation of this new Fund should be in conjunction with existing loan and grant opportunities currently administered by the Division, so as to minimize additional solicitation activities and associated staff workload.

55.12 STATEMENT OF BASIS, SPECIFIC STATUTORY AUTHORITY, AND PURPOSE, FEBRUARY 13, 2012 RULEMAKING, EFFECTIVE MARCH 30, 2012

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

House Bill 11-1026 amended the Water Quality Control Act to authorize grants for stormwater management training and best practices training to prevent or reduce the pollution of state waters.

Section 55.3 (Entity Eligibility) was amended for consistency with HB 11-1026 to include not-for-profit stormwater administrators and training providers as types of entities eligible to receive funding.

Section 55.4 (Project Eligibility) was amended per HB 11-1026 to add stormwater management training and best management practices training as Category 1 type projects. The existing categories were renumbered to account for this addition.

Section 55.5 (Funding Allocation) was amended to provide for up to $50,000 of available water quality improvement funds to Category 1 projects. The Commission determined that it was appropriate to allocate this amount as the maximum allowed under HB 11-1026.

The Commission determined it was appropriate to reduce the funding for Category 2 (formerly Category 1) projects from 40% to 10%. This category includes projects for the improvement of water quality impacts which are the result of a water quality violation that resulted in a penalty. While the Commission believes it is appropriate to maintain some level of funding for such projects, the number of applicants that have historically applied for funding under this category has been limited. In order to inform potential applicants of their eligibility to receive funding under Category 2, the Division will post a list of violators who paid penalties into the Water Quality Improvement Fund. The list will also include the county where the violation occurred. If the applicant can demonstrate its project will improve the water quality in the community or water body which has been impacted by the violation, such applicant may be eligible to receive funding.

The Commission also increased the funding allocation for Category 3 (formerly Category 2) projects from 30% to 60% because this category, which relates to planning, design, construction and repair of stormwater projects and domestic wastewater treatment works, represents the majority of funding requests received by the Division. The Commission found the increase for Category 3 to be necessary to address the high level of demand and the $2.9 billion of infrastructure needs that are documented in the 2012 Water Pollution Control Revolving Fund Intended Use Plan. The allocation for Category 4 (formerly Category 3), nonfederal match funding for nonpoint source projects, will remain at 30% of available funds.

In addition, language was added to section 55.5 to clarify that if any funds were not utilized in one category they will be redistributed among the remaining categories.

Section 55.6 (Project Prioritization Criteria), outlining the prioritization of grant requests within each category, was revised to include the new Category 1. The Commission found it appropriate to give priority to projects that implement stormwater management and best management practices training not previously available (or previously limited in accessibility) in Colorado, above those projects that will simply expand the context or availability of existing stormwater management and best management practices training. Language was also added to section 55.6 to explain that if insufficient requests for funding are received and determined eligible, the Division has the ability to reallocate funding among categories based on demand. Historically, when the Division did not receive sufficient eligible applications within a certain category, the funds allocated to that category were not expended. This provision ensures that all funds appropriated each year can be utilized.

Section 55.7 (Notification and Reporting) was amended to require grant recipients to provide a final project report instead of an annual report. Based upon Division feedback, the Commission determined this to be a more efficient approach to reporting.

PARTIES TO THE RULEMAKING

1. Urban Drainage and Flood Control District
2. Colorado Department of Transportation

55.13 STATEMENT OF BASIS, SPECIFIC STATUTORY AUTHORITY, AND PURPOSE, JUNE 11, 2012 RULEMAKING, EFFECTIVE JULY 30, 2012

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 2012 legislative session the General Assembly authorized additional funding for the Water Quality Improvement Fund through the annual appropriation of the Long Bill. In 2012, $600,000 for capital construction funding has been authorized with the flexibility to expend the funds over a three year period. The Commission took action to modify Regulation #55 by changing the funding allocation, project prioritization criteria, and notification provisions. Historically, $167,000 was appropriated annually for the Water Quality Improvement Fund with a requirement that the funds be expended within the fiscal year.

There has been more demand for Water Quality Improvement Fund grants due to the increase in available funds, the requirement to provide stormwater training grants, and the flexibility to expend the funds over multiple years. In order to properly notify the Requests for Applications, allocate, and award funds the Commission adopted the following modifications to Regulation #55:

Section 55.2 - Definitions were modified for the non-point source and stormwater projects to better clarify the intent of the statute and to specify the types of projects eligible for funding from the Water Quality Improvement Fund.

Section 55.5 – Funding Allocation was modified to provide additional funding for each of the four categories of projects under the statute. Specifically, additional funding has been provided for the first year of implementation of the stormwater management training category. Limits have been established within specific categories to ensure funding is equitably distributed among eligible applicants.

Section 55.6 - Project Prioritization Criteria were modified to include additional criteria. The additional criteria will be used to further prioritize projects within categories when there is insufficient funding. Specific criteria and associated points will be included as an attachment to the Request for Applications notice. The criteria will include population served/benefited by the project, financial/affordability (with an emphasis on providing funding opportunities for smaller, less financially capable communities), water quality benefits, permit compliance, readiness to proceed and availability of local project match. For Category 1 projects, a specific project may meet Priority 1 criteria over multiple years during the period that the training is being developed and established. For consistency, the Category 3 description was modified to reflect the project eligibility description identified in 55.4. Reference to the non-existent State Domestic Wastewater Treatment Grant was deleted.

Section 55.7 – Notification and Reporting section was modified to eliminate the application deadline and allow the Division the flexibility to notice Requests for Applications depending upon availability of appropriation of funds by the legislature.

PARTIES TO THE RULEMAKING

1. Urban Drainage and Flood Control District