

DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

Water Quality Control Commission

5 CCR 1002-55

WATER QUALITY IMPROVEMENT FUND

REGULATION NO. 55

55.1 AUTHORITY AND PURPOSE OF THE WATER QUALITY IMPROVEMENT FUND

In House Bill 06-1337, the Colorado General Assembly 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. 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 of 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) "Governmental Agency" – means any 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.
- (2) "Impacted Water Body" – 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.
- (3) "Nonpoint source" – means any activity of a facility other than a point source from which pollutants are or may be discharged. For the purposes of this regulation, nonpoint source includes all runoff that is not subject to the requirements provided under 5 CCR 1002-61 section 61.3(2)(e), (f), or (g), including those designated by the Division under section 61.3(2)(f)(iii), whether sheet flows or collected and conveyed through channels, conduits, pipes or other discrete conveyances.
- (4) "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.
- (5) "Stormwater Project" – means planning, design, construction or repair of a project that improves water quality of stormwater runoff, snow melt runoff, or surface runoff and drainage.

55.3 ENTITY ELIGIBILITY

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; and 5) 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 PROJECT ELIGIBILITY

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

- (1) 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.
- (2) Category 2 – Planning, design, construction, or repair of stormwater projects and domestic wastewater treatment works, based on the current fiscal year's Water Pollution Control Revolving Fund and State Domestic Wastewater Treatment Grant Program Intended Use Plan.
- (3) Category 3 - Nonfederal match funding for the current fiscal year's nonpoint source projects as approved by the Commission.

55.5 FUNDING ALLOCATION

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 occurring after May 26, 2006 and shall be subject to annual appropriations by the Colorado General Assembly. By July 1 of each year, the Division will post on the Division's website the available funds for each of the project categories. The following allocations will be made:

Category 1 – 40% of available funds
Category 2 – 30% of available funds
Category 3 – 30% of available funds

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 PROJECT PRIORITIZATION CRITERIA

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

Category 1 (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.

Category 2 (Stormwater projects or planning, design, construction, or repair of domestic wastewater treatment works.)

- 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 in the current year’s Water Pollution Control Revolving Fund and State Domestic Wastewater Treatment Grant Program Intended Use Plan.

Category 3 (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.

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.

55.7 NOTIFICATION AND REPORTING

The Division will periodically identify violations that have resulted in penalties paid into the Fund. Applications for Category 1 and 2 projects will be accepted by the Division through August 1 of each year. 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 3 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 annually report on the project status by December 30 of each year or as applicable with established grant or Water Pollution Control Revolving Loan Fund reporting requirements. A final project report will be submitted 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.

55.11 STATEMENT OF BASIS AND PURPOSE

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

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.