

COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

WATER QUALITY CONTROL COMMISSION

REGULATION NO. 51

WATER POLLUTION CONTROL REVOLVING FUND RULES

5 CCR 1002-51

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DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

Water Quality Control Commission

5 CCR 1002-51

REGULATION NO. 51

WATER POLLUTION CONTROL REVOLVING FUND RULES

51.1 AUTHORITY AND PURPOSE OF THE WATER POLLUTION CONTROL REVOLVING FUND

The Water Pollution Control Revolving Fund ("WPCRF") was authorized by Congress in Title II and Title VI of the 1987 Amendments to the Clean Water Act ("Federal Act"). Additional provisions are provided in the Water Resources Reform and Development Act of 2014 ("WRRDA") and are amendments to Titles I, II, V, and VI of the Federal Act.

Senate Bill 50 (1988) authorized the State to participate in the WPCRF by amending the Colorado Water Resources and Power Development Authority Act, Title 37 of Article 95, C.R.S. ("Authority Act"); this allows the Colorado Water Resources and Power Development Authority ("Authority") to provide funds for the State's twenty percent match required by the Federal Act. §§ 37-95-103 and 37-95-107.6, C.R.S.

Sections 25-8-202 (1)(e) and (g), C.R.S., of the Colorado Water Quality Control Act ("State Act") also provide the Water Quality Control Commission ("Commission") and the Water Quality Control Division ("Division") with the authority to promulgate, implement, and administer this regulation.

The purpose of the WPCRF is to provide financial assistance to governmental agencies for the construction of any project as defined herein that appears on the Project Eligibility List included in the annual Intended Use Plan.

51.2 DEFINITIONS

See the State Act, the Authority Act, and the Federal Act for additional definitions.

- (1) "Beneficial Use" - The use or reuse of treatment works effluent or the use of biosolids to act as a soil conditioner or low grade fertilizer for the promotion of vegetative growth on land. Also means a use of water, including the method of diversion, storage, transportation, treatment and application; that is reasonable and consistent with the public interest in the proper utilization of water.
- (2) "Best Management Practices" (as found in the definition of "Section 319") - A practice or combination of practices determined to be the most effective, practicable means of preventing or reducing the amount of pollution generated by a nonpoint source to a level compatible with water/stream quality goals. These include, but are not limited to, structural and nonstructural controls and operation and maintenance procedures.
- (3) "Biosolids" - The accumulated residual product resulting from processing waste materials from a wastewater and water treatment plant.
- (4) "Collection System" (as found in the definition of "On-site wastewater treatment system" and "Treatment Works") - A system of sewers used to collect wastewater and convey the wastewater by gravity or pressure flow to a common point.

- (5) "Governmental Agencies" - Departments, divisions, or other units of state government, special districts, water conservation districts, metropolitan water districts, conservancy districts, irrigation districts (as approved by a district court to enter into a contract to accept funding for a wastewater related project under the WPCRF), 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.
- (6) "Green Infrastructure" - Green Infrastructure includes energy efficiency, water efficiency, environmentally innovative technologies and wet weather management that takes advantage of those sustainable functions and services in the natural environment. Green Infrastructure planning approaches and management technologies apply stormwater treatment practices including infiltration, evapotranspiration, and rain harvesting/reuse in order to maintain, restore, or mimic natural hydrologies. On a regional scale, Green Infrastructure is the preservation, restoration, and stabilization of natural features such as forests, meadows, floodplains, wetlands, and receiving waters to allow for wildlife habitat and passage. Coupled with policies such as infill and redevelopment that reduce the effective imperviousness within a watershed, Green Infrastructure applies techniques similar to those found in nature to preserve ecological function and create balance between built and natural environments.
- (7) "Impaired Water" - State waters for which credible scientific data exists to demonstrate that the water body does not support its designated beneficial uses and/or does not meet one or more adopted water quality standards and has been identified as impaired in Regulation No. 93 – Colorado's Section 303(d) List of Impaired Waters (5 CCR 1002-93).
- (8) "Municipal Separate Storm Sewer Systems (MS4s)" (as found in the definition of "Section 319") – A conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains) that are owned or operated by a state, city, town, county, district, or other public body created pursuant to state law and for which a National Pollutant Discharge Elimination System (NPDES) permit must be obtained.
- (9) "Nonpoint Source (NPS)" - 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. NPS 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.
- (10) "Nontraditional Project" - A project for which the primary purpose is other than water quality, but which has an additional purpose that is clearly related to the improvement or protection of water quality (e.g. the liner portion of a new landfill is intended to protect water quality).
- (11) "On-site Wastewater Treatment System" – A combination of components that may include onsite septic tanks or cluster systems that are designed to treat, neutralize, stabilize, store or dispose of sewage and that is not part of, or connected to, a centralized sewage collection system or treatment works.
- (12) "Point Source" (as found in the definition of "Nonpoint Source (NPS)") - Any discernible, confined, and discrete conveyance, including, but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged. Point source does not include agricultural stormwater discharges and return flows from irrigated agriculture.
- (13) "Pollution" - The man-made, man-induced, or natural alteration of the physical, chemical, biological, and radiological integrity of water.

- (14) "Project" - A specific improvement to a water quality management system, phase or segment.
- (15) "Project Eligibility List" - The list of projects eligible for financial assistance from the Authority through the WPCRF or its other funding capabilities, as adopted and modified in accordance with section 37-95-107.6(4).
- (16) "Projected Loan List" – The list of projects that has been partially scored in accordance with the criteria described in the Intended Use Plan. This list represents those projects that may be reasonably anticipated to receive a binding commitment for a loan in the WPCRF program. Projects can be moved from the Project Eligibility List to the Projected Loan List at any time during the year.
- (17) "Public Health Hazard" - Any contamination of ground or surface waters, caused by inadequate treatment works or disposal of inadequately treated sludge, which potentially endangers public health through contamination of drinking water supplies or direct public exposure. To qualify as a public health hazard, the contamination must be documented by means of a sanitary survey or engineering report submitted by a governmental agency to the Division.
- (18) "Reclaimed Water" - Domestic wastewater that has received secondary treatment by a domestic wastewater treatment works and such additional treatment as to enable the wastewater to meet the standards for approved uses as found in Regulation # 84 (5 CCR 1002-84).
- (19) "Section 212" - The section of the Federal Act that provides the statutory authority for programs funded by the WPCRF for the construction of publicly owned treatment works ("POTWs"). Projects eligible for funding under Section 212 may include, but are not limited to, the capital costs for wastewater collection and treatment, municipal stormwater projects, combined sewer overflow, sanitary sewer overflow, pipes, storage and treatment systems, green infrastructure, municipal landfill projects, water conservation and reclaimed water, energy conservation and efficiency, security, and decentralized wastewater treatment systems.
- (20) "Section 319" - The section of the Federal Act that provides the statutory authority for programs funded by the WPCRF for the development and execution of comprehensive conservation management plans. Eligible projects under Section 319 may include, but are not limited to, projects that address run-off associated with agricultural activities or abandoned mining operations, and the implementation of best management practices, aging and/or failing on-site wastewater treatment systems, stormwater run-off outside of municipal separate storm sewer system--permitted projects, brownfield contamination, atmospheric deposition, and leaking underground storage tanks.
- (21) "Sewage Sludge" (as found in the definition of "Treatment Works") - Solid, semi-solid, or liquid residue generated during the treatment of domestic sewage in a treatment works. Sewage sludge includes, but is not limited to, domestic septage; scum or solids removed in wastewater treatment processes; and any material derived from sewage sludge. Sewage sludge does not include ash generated during the firing of sewage sludge in a sewage sludge incinerator or material generated from preliminary treatment of domestic sewage in a treatment works.
- (22) "Traditional Project" - A project for which the primary purpose is water quality protection.
- (23) "Sustainability Projects" - Projects and/or planning methodologies that promote sustainable wastewater systems through effective utility management to promote: the conservation of natural resources; alternative approaches such as natural or "green" systems; or innovative approaches and technologies; and consideration of the full life-cycle costs on infrastructure investments (EPA's Clean Water and Drinking Water Infrastructure Sustainability Policy).

- (24) "Treatment Works" - Any devices and systems used in the storage, treatment, recycling or reclamation of municipal sewage, sewage sludge, and biosolids, or industrial wastes of a liquid nature or necessary to recycle or reclaimed water or biosolids, including intercepting sewers, outfall sewers, sewage collection systems, pumping, power, and other equipment; extensions, improvements, remodeling, additions, and alterations thereof; elements essential to provide a reliable recycled supply such as stand-by treatment units and clear well facilities; and any works, including site acquisition of the land that will be an integral part of the treatment process (including land used for the storage of treated wastewater in land treatment systems prior to land application), or is used for ultimate disposal of residues resulting from such treatment. In addition, Treatment Works means any other method or system for preventing, abating, reducing, storing, treating, separating, or disposing of domestic wastewater, including stormwater runoff, or industrial waste, or waste in combined stormwater and sanitary sewer systems.
- (25) "Water Quality Management Plan" - The plan for managing water quality, including consideration of the relationship of water quality to land and water resources and uses, on an areawide basis, for each planning area designated pursuant to sections 208(a) and 303(e) and 319 of the Federal Act.
- (26) "Water Quality Management System" - Any treatment works or any other system for disposal of sewage, biosolids, and industrial waste, or NPS pollution control, stormwater protection, ground water protection, and treatment operated by a governmental agency.
- (27) "Watershed" - A geographical area in which activities may significantly impact a water body (or segment of concern) or an underlying aquifer. There are several considerations in defining the geographical scope of a watershed: hydrology, political boundaries, uses to be protected, nature of the water quality problem, manageability, available resources, and public interest.

51.3 INTENDED USE PLAN

- (1) The Division, in cooperation with the Division of Local Government (DLG) and the Authority, shall submit to EPA as part of its application for a capitalization grant an annual Intended Use Plan ("IUP"), which shall include the Project Eligibility List and information about how the State will assist communities with their water quality needs. The Division shall recommend the IUP to the Commission each year for final agency action after public notice, public comment, and public hearing in order to comply with the Federal Act.
- (2) The IUP shall include as a minimum:
- (a) A list of projects for construction of publicly owned Treatment Works and projects/activities eligible for assistance under sections 212 and 319 of the Federal Act. This list must include the name of the community, permit number or other applicable enforceable requirements (if available), the type of financial assistance, and the projected amount of eligible assistance. (Permit numbers and other applicable enforceable requirements will be made available upon request);
 - (b) A description of the short-term and long-term goals of the State's WPCRF;
 - (c) Information on the types of activities, as opposed to project level details, to be supported by the WPCRF, including the eligible cost categories, types of assistance to be provided (e.g., loans, guarantees, insurance), terms of financial assistance, types of communities to be served by the fund, and administrative costs;
 - (d) Assurances and specific proposals on how the State intends to meet the requirements of the Federal Act; and

- (e) The criteria and method established for the prioritization of projects and distribution of funds.

51.4 GENERAL POLICIES

- (1) The Commission will consider protection of public health and water quality when determining the Water Quality Management System projects eligible for WPCRF participation.
- (2) The Commission will maintain and improve water quality in the State by providing accessibility to the WPCRF.
- (3) The Commission will support implementation of traditional and nontraditional projects to meet water quality needs.
- (4) The Commission will encourage regionalization of Water Quality Management Systems where practicable. It is the policy of the Commission to encourage good local planning within the concept of a Water Quality Management Plan. Projects shall conform to a state-approved plan, e.g., Water Quality Management Plan and NPS Management Plan as updated from time to time, or they may not be considered for assistance through the WPCRF.
- (5) The Commission will promote biosolids disposal methods for beneficial use as opposed to other sludge disposal methods. The Commission will also promote water conservation and reclaimed water measures, as well as green infrastructure approaches to water pollution issues caused by stormwater run-off in both urban and rural environments.
- (6) The Commission intends to identify projects for the Project Eligibility List that will address the long-term water quality needs in Colorado.
- (7) To be eligible to receive assistance from the WPCRF, governmental agencies must complete a planning document identifying a specific project that is cost-effective, environmentally acceptable, and consistent with applicable local, state and federal regulations and guidelines. The Division will review those projects to which environmental assessments and public participation requirements apply in accordance with the EPA-approved State Environmental Review Policy.
- (8) Eligible projects may include, but are not limited to, publicly owned treatment works, nonpoint source and stormwater pollution control projects, water conservation projects, reclaimed water projects and biosolids projects. Funding for nontraditional projects shall be limited to that portion of the project that is related to protecting or improving water quality.
- (9) The Commission may amend the Project Eligibility List at any time throughout the year to include projects that it determines and declares to be emergency projects needed to prevent or address threats to public health or environment. In cases where the Commission determines the amendments will result in substantial changes to the Project Eligibility List, public notice and opportunity for comment on the proposed inclusion shall be provided.
- (10) The Projected Loan List will identify the governmental agencies that will enter into the loan agreements and repay the loans. Before receiving WPCRF funding, the governmental agencies must develop and/or maintain a user charge and fee system or other financial mechanism to ensure operation, maintenance, and replacement needs are met, and to ensure repayment of any WPCRF loan and existing debt. The WPCRF criteria for the financial capability review of applicants are included in the State/EPA Operating Agreement, which is available from the Division for review.
- (11) Each year, after a public notice and comment period, the Commission will schedule a public hearing for approval of the IUP. Each Governmental Agency on the proposed Project Eligibility

51.5 PROCEDURES FOR IDENTIFYING PROJECTS AND ESTABLISHING THE PROJECT ELIGIBILITY LIST

List will receive notification of the hearing. After considering all pertinent comments, the Commission shall approve the IUP and adopt additions and modifications to the Project Eligibility List no later than December 31st of each year. The Division will establish a date each year for finalizing its proposal to the Commission for the IUP and Projected Loan List. After that date, any requests for changes must be transmitted directly to the Commission.

- (12) All loan project proponents shall submit applications by deadlines established in the annual IUP. If it is determined that the WPCRF lacks sufficient funds to cover loans for all eligible projects that are ready to proceed within the funding year, projects will be funded in priority order until all funds are obligated.

51.5 PROCEDURES FOR IDENTIFYING PROJECTS AND ESTABLISHING THE PROJECT ELIGIBILITY LIST

- (1) Each year the Division shall, after consultation with interested persons and entities, including but not limited to the DLG, the Authority, designated regional water quality planning organizations, watershed planning organizations, and nonpoint source management interests, review, update, and compile a Project Eligibility List that contains a project description that will improve or benefit water quality which may include, but is not limited to, the following examples: impact on public health; impact on fish and wildlife; impact on the ecosystem; improving water quality to meet applicable standards for streams, lakes, and ground water; and protection of classified uses.

This Project Eligibility List shall be included in the IUP as an Appendix and, after a public notice and comment period, shall be presented to the Commission for final agency action at a public hearing.

- (2) The Project Eligibility List shall be comprised of five types of projects:
 - (a) Type A includes those projects that correct a documented public health hazard as defined in the WPCRF Rules.
 - (b) Type B includes those projects that improve water quality in an impaired water body; contribute to the prevention of a public health hazard; enable an entity to maintain permit compliance; or enable an entity to address a possible future effluent limit or emerging water quality issue.
 - (c) Type C includes those projects that implement a watershed/nonpoint source management plan.
 - (d) Type D includes those projects that implement a source water protection plan.
 - (e) Type E includes those projects that enable an entity to achieve permit compliance.

The project types will be determined based on information provided in the Annual Eligibility Survey. This information will not be used to prioritize projects.

51.6 PROCEDURES FOR ESTABLISHING THE PROJECTED LOAN LIST AND DISTRIBUTING FUNDS

- (1) The Projected Loan List shall be included in the IUP and, after a public notice and comment period, shall be presented to the Commission for final agency action at a public hearing. At a minimum, the Projected Loan List shall identify:
 - (a) The applicant;

- (b) project title;
 - (c) type of project;
 - (d) amount of financial assistance requested;
 - (e) subsidy rate index;
 - (f) whether the project is considered “green infrastructure”;
 - (g) whether the project is within the fundable range; and
 - (h) the rank of each project by the priority score determined according to the IUP.
- (2) The Division shall rank each project on the Projected Loan List based on the priority score of each project. Detailed scoring mechanisms shall be established in the IUP based on the following parameters:
- (a) Water quality improvement;
 - (b) financial capability and affordability;
 - (c) sustainability/green project reserve;
 - (d) enforcement/compliance; and
 - (e) readiness-to-proceed.
- (3) The Division shall identify the subsidy rate (if applicable) for each project on the Projected Loan List as identified in the IUP.
- (4) Prior to adoption of the Projected Loan List by the Commission, the Division shall determine which projects are within the fundable range for financial assistance.
- (a) In determining the fundable range, the Division shall evaluate each project for evidence that the project is ready to proceed. The Division shall consider the following factors when evaluating whether the project is within the fundable range:
 - (i) Evidence that the applicant has completed or will have completed preliminary planning and/or design documents in which funding is sought;
 - (ii) evidence that the applicant has completed or will have completed a project loan application for the calendar year in which funding is sought; and
 - (iii) evidence of debt authorization.
- (5) In accordance with federal statutes, states are authorized to provide loans at or below market interest rates, including interest free loans, at terms not to exceed the lesser of 30 years or the projected useful life (as determined by the State) of the project to be financed with proceeds of the loan.

51.7 DISADVANTAGED COMMUNITIES

- (1) The WPCRF may provide additional loan subsidies for governmental agencies that are determined to be “disadvantaged.” The definition/criteria of a disadvantaged community and the

nature of the loan subsidies to be made available thereto shall be recommended for inclusion in the IUP by the Division and the Authority in consultation with the DLG.

- (2) While compiling projects on the Projected Loan List (utilizing the procedures listed in section 51.6 above), the Division will identify the community projects that qualify for assistance under the Disadvantaged Communities Program in accordance with the program definition and criteria.

51.8 PLANNING AND DESIGN GRANTS

The Division may provide planning grants and design / engineering grant assistance if funding is approved in the IUP according to section 51.3.

51.9 - 51.19 RESERVED

51.20 STATEMENT OF BASIS AND PURPOSE

In accordance with the requirements of Sections 25-8-202(1)(e) and (g), 25-8-308(1)(d), and 25-8-703, C.R.S., the Commission adopts this Statement of Basis and Purpose.

These regulations will be used concurrently with the Construction Grant regulations, 5 CCR 1002-15, and will eventually replace them once the Grant Program has ended. The purpose of these new regulations is to bring the State into conformity with Title VI of the 1987 Clean Water Act Amendments. Title VI allows the State to establish a permanent Water Pollution Control Revolving Fund (WPCRF) to provide continuing sources of financing (except grants) needed to maintain water quality.

Since this is a water quality program, the priority list will still be developed by awarding points to governmental agencies discharging to "threatened" or "impaired" waters and severity of pollution as defined in the regulations. In addition, a subcategory has been included to promote regionalization and a new category has been developed for assigning points to projects based on financial need.

This program will allow the State to fund out of priority order and, once all enforceable requirements of the Act are met, the State will be allowed to fund nonpoint source and ground water projects as well.

Fiscal Impact Statement

The shift in the program from grants to loans will create more of a financial burden on local governments. The individual user charges and fee structures will have to be sufficient to operate and maintain their wastewater management systems as well as to repay any WPCRF loan, and existing debt.

The Authority through the WPCRF will provide loans below market interest rates which will benefit small communities. In some cases where a Governmental Agency would have to bond its share of a grant project, a low interest loan from the WPCRF for up to the entire amount of the eligible project would be less costly than the grant and bond combined.

The conversion from a grant program to a revolving fund program is mandated by Title VI of the Federal Act.

51.21 STATEMENT OF BASIS AND PURPOSE

In accordance with the requirements of Sections 25-8-202(1)(e) and (g), 25-8-308(1)(d), and 25-8-703, C.R.S., the Commission adopts this Statement of Basis and Purpose.

These regulations have been amended to meet the needs of the Water Pollution Control Revolving Fund (WPCRF) as it evolves. The majority of the changes are being recommended since significant issues surfaced during the first attempt at developing the WPCRF Priority List. These changes included: 1)

Improvements to the water quality priority points, 2) revisions and clarification to the financial need points, 3) clarification to the eligibility list procedures, and 4) inclusion of the nonpoint source priority list procedures.

Because of the Involvement of the Division of Local Government (DLG) in performing the financial analyses of the Governmental Agencies as authorized by Senate Bill 50, the DLG will assist in the preparation of the point source priority list by assessing the points for financial need. DLG will use the most current monthly user charge information and the most recent data on median household income and persons per household. DLG will access information regarding total existing debt from the Governmental Agencies' annual audit. Additional documents and information referenced by DLG includes: construction cost estimates from the Division, the Colorado Municipal League "Water and Sewer Utility Charges in Colorado", and census data from the State Demographer's Office.

The nonpoint source revisions to the regulations allows funding of nonpoint source management programs, as defined by Section 319 of the Federal Clean Water Act, through the WPCRF.

Section 5.2.5 has been revised to create procedures and a priority system for nonpoint sources. The procedures (5.2.5.3) set forth the requirements for nonpoint source projects to be considered for funding and the methods for assigning priority points to projects interested in funding. The priority system (5.2.5.4) delineates ranking criteria and rating factors for comparing the relative priority of nonpoint source projects. The point system is based upon impacts to beneficial uses caused by nonpoint sources, potential for restoration of beneficial uses and reduction of severity of nonpoint sources. This system then emphasizes the severity of nonpoint source impacts and the ability of proposed improvements to restore water quality. The system also allows education programs to be considered for funding. These educational programs may be funded by the Commission if they present an opportunity to raise public awareness of a prevalent nonpoint source problem area and these programs are weighted against the need for demonstration projects to advance the state of knowledge of best management practices.

The Colorado Nonpoint Source Task Force, an organization recognized in Colorado's nonpoint source management program, is identified as a review agency of the Division's yearly submittal of the Nonpoint Source Project Priority List. The Colorado Nonpoint Source Task Force is comprised of a broad spectrum of Governmental agencies and interest groups involved in and affected by nonpoint source decision making.

51.22 STATEMENT OF BASIS, SPECIFIC STATUTORY AUTHORITY, AND PURPOSE (1989 REVISIONS)

The provisions of Sections 25-8-202(1)(e), and (g); 25-8-308(1)(d); and 37-95-107.6(4) C.R.S., provide the specific statutory authority for adoption of the attached regulatory amendments. The Commission also adopted, in compliance with Sections 24-4-103(4) C.R.S., the following Statement of Basis and Purpose.

BASIS AND PURPOSE

Section 5.2.2(4) is the definition for the use of the term "Equivalent Residential Taps (ERT'S)." The equation used to determine ERT'S has been revised to correctly state "Average Daily Organic Loading."

Section 5.2.4(7) of the regulation has been revised to clarify that point source wastewater treatment projects must complete facility planning requirements. The term "environmentally acceptable" relates to the Federal requirements of the national environmental policy act "NEPA", which requires that federally funded or assisted projects must be shown to have no adverse environmental impacts or that such impacts will be mitigated. An environmental review must be conducted for each wastewater treatment facility plan in order to meet Federal regulations.

Section 5.2.5.2(1)(B) has been revised to delete reference to tap restrictions as a condition for receiving severity of pollution points. The intent of the Commission is that any municipal wastewater treatment facility that is at or in excess of 95% of plant capacity be given priority points so that they can be considered for loan assistance. Tap restrictions are rarely imposed by a municipality or the Division and are not relevant to the assignment of priority points; therefore, the phrase "and is under a tap restriction" has been deleted. The terms "hydraulic" and organic capacity have been added to clarify that if a facility reaches 95% of either type of treatment capacity, the 20 points shall be assigned.

51.23 STATEMENT OF BASIS, SPECIFIC STATUTORY AUTHORITY, AND PURPOSE (1990 REVISIONS)

The provisions of sections 25-8-202(1)(e), and (g); 25-8-308(1)(d); and 37-95-107.6(4) C.R.S., provide the specific statutory authority for adoption of the attached regulatory amendments. The Commission also adopted, in compliance with sections 24-4-103(4) C.R.S., the following statement of basis and purpose.

BASIS AND PURPOSE

Section 5.2.5.1(2) and 5.2.6(2) of the regulation has been revised to allow the division and the commission the flexibility to compile and adopt the priority and eligibility lists at anytime during the year with final action being completed by December 31. Currently, the process is initiated in April with approval by the commission at the August hearing. The eligibility list then goes to the legislature in January for joint resolution by April; therefore, the funding of projects is delayed by an entire year. This change will allow the process to be compatible with the legislation and reduce delays by 2-3 months.

Section 5.2.5.2(1)(b) has been changed from 95% of capacity to 80%. Since state law requires a community to start facilities planning when capacity is at 80%, this revision will allow those communities to receive priority points for financial assistance during the planning process.

Other changes in this regulation were due to typographical errors.

51.24 STATEMENT OF BASIS, SPECIFIC STATUTORY AUTHORITY, AND PURPOSE (1991 REVISIONS)

The provisions of Sections 25-8-202(1)(e), and (g); 25-8-308 (1)(d); and 37-95-107.6(4) C.R.S. provide the specific statutory authority for adoption of the attached regulatory amendments. The Commission also adopted, in compliance with Sections 24-4-103(4) C.R.S., the following statement of basis and purpose.

BASIS AND PURPOSE

Many changes were incorporated into the point source priority system (5.2.5.2) to allow additional projects that are eligible under this program to receive funding. Categories were added for potential health hazards, facilities that are beyond the design life and in need of repair and sludge disposal. Categories for potential health hazards and facilities beyond the design life and in need of repair were added to assist communities in pollution prevention to limit initiation of compliance and enforcement measures. The sludge disposal category was added to assist communities with meeting State/EPA sludge management regulations.

The order of these categories was also changed to utilize one priority system for all state priority lists. This system will accommodate the State grant program, the Sewer Needs List for Division of Local Government Funding and any future federal grant program. New definitions were added to 5.2.2 for beneficial use, sludge, sludge disposal as a health hazard, potential health hazard, and refinance project. The point source priority system procedures (5.2.5.1) were revised to include a system for awarding points to projects requesting refinancing. Minor changes were also made to the nonpoint source priority

point system (5.2.5.4) by replacing the word beneficial with the word classified. This change will provide more accuracy when describing Commission actions. The changes were made throughout the document with regards to nonpoint source information and will assist in differentiating between beneficial uses for sludge disposal and the new classified use for nonpoint source.

51.25 STATEMENT OF BASIS, SPECIFIC STATUTORY AUTHORITY, AND PURPOSE (1992) REVISIONS

The provisions of Sections 25-8-202(1)(e), and (g); 25-8-308 (1)(d); and 37-95-107.6(4) C.R.S. provide the specific statutory authority for adoption of the attached regulatory amendments. The Commission also adopted, in compliance with Sections 24-4-103(4) C.R.S., the following statement of basis and purpose.

BASIS AND PURPOSE

Proactive changes are incorporated into the WPCRF Rules which will allow (1) small communities to be eligible for funding without going through an extensive 201 facility planning process; and, (2) water conservation measures are being promoted by the State. A definition of water conservation projects is included in section 5.2.2, as well as a point system category in section 5.2.5.2. The change allowing feasibility studies for small communities is located in 5.2.6 "Eligibility List Procedures."

Assignment of points for interceptor projects is changed to the governmental agency responsible for the interceptor since repair work is now eligible and the receiving plant may not have a severity of pollution problem. This will also direct the financial capability and loan agreement to the appropriate agency.

51.26 STATEMENT OF BASIS, SPECIFIC STATUTORY AUTHORITY, AND PURPOSE (1993) REVISIONS

The provisions of Sections 25-8-202(1)(e), and (g); 25-8-308 (1)(d); and 37-95-107.6(4) C.R.S. provide the specific statutory authority for adoption of the attached regulatory amendments. The Commission also adopted, in compliance with Sections 24-4-103(4) C.R.S., the following statement of basis and purpose.

BASIS AND PURPOSE

The WPCRF rules that were adopted in October, 1992 are revised to correct three typographical errors on page 1, 11 and 22.

The definition of "small communities" 5.2.2 (28) has been expanded to clarify that for all intents and purposes a small community is under 10,000 existing population. The exception is funds from the State Grant or Feasibility Studies Programs are only awarded to small communities under 5,000 existing population.

5.2.4(8) was reworded for clarification.

5.2.6(3) was rewritten for simplification but did not change the content.

51.27 STATEMENT OF BASIS, SPECIFIC STATUTORY AUTHORITY, AND PURPOSE (1997) REVISIONS

The provisions of sections 25-8-202(1)(e), and (g); 25-8-308 (1)(d); and 37-95-107.6(4) 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

The Federal Clean Water Act and the Environmental Protection Agency have authorized flexibility to state revolving fund programs by encouraging states to fund expandable uses and integrate other water quality eligibilities into their priority systems and plans for distributing funds. The Water Quality Control Commission authorized a critical review team to review and propose revisions to the existing Water Pollution Control Revolving Fund (WPCRF) Rules 5.2.0 (5 CCR 1002-21) to assist communities that are proactive with compliance issues and encourage pollution prevention. With these broad directions in place, the Interim WPCRF Rules with expanded eligibilities were proposed.

The existing WPCRF Rules have separate priority ranking systems for point source (wastewater projects defined by Section 212 of the Federal Act) and nonpoint source projects. The nonpoint source priority system has not been utilized since 1992. The point source priority system required points to be compiled for each project; first for severity of pollution problems, then for quality of receiving waters, financial need, regionalization, water conservation and beneficial use.

The Interim WPCRF Rules provide for a list of all projects that improve or benefit water quality with emphasis on public health, and proactive and long range planning of water quality approaches and/or pollution prevention methods. A more detailed prioritization will be assembled if there is a shortage of funds available.

This interim rule provides two major benefits:

Even though traditional wastewater projects are still a priority and will be identified as such, this rule will allow communities to receive low interest loans for other water quality concerns in their area, such as: stormwater, biosolids, water reuse, landfills, etc.

The effort of compiling the project list will be more strategic with planning and watershed efforts, more accurate with addressing actual water quality needs, less subjective and less resource intensive as far as collecting data to prioritize each project (which would be very difficult with such diverse types of projects).

In subsection (a) of section 5.2.9(6), Procedures for Identifying Projects and Establishing the Project Eligibility List, the Commission has included broader language regarding consultation than appears in the existing rule. The purpose of this language is to further strengthen the WPCRF program by broadening community involvement. The Commission is hopeful that this will result in more timely and accurate needs assessment information, improved coordination between different funding sources, and ongoing feedback on the WPCRF program.

The critical review team recommended that the Commission adopt an interim rule to assess the outcome of such a radical change in prioritizing water quality projects in Colorado before permanently changing this regulation. Therefore, this rulemaking has not repealed the existing regulatory provisions, but rather provides that the new Interim Rules will apply for purposes of developing a FY98 Intended Use Plan. It is anticipated that this Interim WPCRF Rule will be reviewed in an informational hearing in November, 1997, to receive input on the operation of the Interim Rules and whether they should be modified, repealed, or made permanent.

51.28 STATEMENT OF BASIS, SPECIFIC STATUTORY AUTHORITY AND PURPOSE; JULY, 1997 RULEMAKING

The provisions of sections 25-8-202 and 25-8-401, 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

The Commission has adopted a revised numbering system for this regulation, as a part of an overall renumbering of all Water Quality Control Commission rules and regulations. The goals of the renumbering are: (1) to achieve a more logical organization and numbering of the regulations, with a system that provides flexibility for future modifications, and (2) to make the Commission's internal numbering system and that of the Colorado Code of Regulations (CCR) consistent. The CCR references for the regulations will also be revised as a result of this hearing.

51.29 STATEMENT OF BASIS, SPECIFIC STATUTORY AUTHORITY AND PURPOSE; APRIL, 1998 RULEMAKING

The provisions of Sections 25-8-202(1)(e), and (g); 25-8-308 (1)(d); and 37-95-107.6(4) C.R.S. provide the specific statutory authority for adoption of the attached regulatory amendments. The Commission also adopted, in compliance with Sections 24-4-103(4) C.R.S., the following statement of basis and purpose.

BASIS AND PURPOSE

The Commission has determined the Interim Rules For FY98 Intended Use Plan (51.11) shall be extended to the FY99 Intended Use Plan (IUP). The Critical Review Team and the Water Quality Control Division has not yet been able to assess the benefit of the new system for identifying water quality projects; it would therefore be premature to adopt permanent revisions to the prioritization system at this time. The watershed efforts now being implemented by the Division as part of the process for identifying projects should be better utilized in the FY99 IUP.

It is anticipated that the Interim WPCRF Rules will be reviewed and the system for identifying eligible projects be assessed by the Critical Review Team prior to August, 1998. The Commission may then decide to schedule a Rulemaking Hearing in January, 1999 to determine whether the Rules should be modified, repealed or made permanent.

51.30 STATEMENT OF BASIS, SPECIFIC STATUTORY AUTHORITY AND PURPOSE; February, 1999 RULEMAKING

The provisions of Sections 25-8-202(1)(e), and (g); 25-8-308 (1)(d); and 37-95-107.6(4) C.R.S. provide the specific statutory authority for adoption of the attached regulatory amendments. The Commission also adopted, in compliance with Sections 24-4-103(4) C.R.S., the following statement of basis and purpose.

BASIS AND PURPOSE

The Federal Clean Water Act and the Environmental Protection Agency have authorized flexibility to state revolving fund programs by encouraging states to fund expandable uses and integrate other water quality eligibilities into the Intended Use Plans. The Water Quality Control Commission authorized a critical review team to review and propose revisions to the existing Water Pollution Control Revolving Fund (WPCRF) Rules, No. 51 (5 CCR 1002-51) to assist communities that are proactive with compliance issues and encourage pollution prevention. The Interim WPCRF Rules with expanded eligibilities were adopted as a pilot to be tested on the 1998 and 1999 Intended Use Plan (IUP), project and eligibility lists.

The previous WPCRF Rules have been deleted and the Interim WPCRF Rules are now final with a few changes. Definitions for Traditional and Nontraditional projects have been added as recommended by EPA; a new policy has been added to encourage nontraditional projects as well as traditional projects to meet water quality needs; a description of eligible projects was included; a deadline for the Division to finalize the IUP will be publicized early in the process and any subsequent changes from communities will have to be requested directly to the Commission; the project categories and the subcriteria for further prioritization in case there is a lack of funds have all been grouped together in one area of the rules; and

the priority for small communities has been deleted since it is already considered by the Division of Local Government when determining financial need.

The WPCRF Rules provide for a list of all projects that improve or benefit water quality with emphasis on public health, and proactive and long range planning of water quality approaches and/or pollution prevention methods.

This rule provides two major benefits:

1. Even though traditional wastewater projects are still a priority and will be identified as such, this rule will allow communities to receive low interest loans for other water quality concerns in their area, such as projects relating to: stormwater, biosolids, water reuse, ground water quality, etc.
2. The effort of compiling the project list will be more strategic with planning and watershed efforts, more accurate with addressing actual water quality needs, less subjective and less resource intensive as far as collecting data to prioritize each project (which would be very difficult with such diverse types of projects).

A representative from the Denver Regional Council of Governments requested that the Commission broaden the definition of "governmental agencies" to include unincorporated associations and other entities recognized in water quality management plans. The Commission chose to conform the definition in this regulation to the terminology in the Colorado Water Resources and Power Development Authority Act, Title 37, Article 95, C.R.S., since that statute determines which entities qualify for funding under this program. To change which entities can receive funding would require a statutory change by the Colorado General Assembly. In the absence of any such change, the Commission notes that creative options are available under the current definition to the extent that multiple entities that qualify as "government agencies" choose to work cooperatively on a project.

51.31 STATEMENT OF BASIS, SPECIFIC STATUTORY AUTHORITY AND PURPOSE; May, 2000 RULEMAKING

The provisions of Sections 25-8-202(1)(e) and (g); 25-8-308 (1)(d); and 37-95-107.6(4) 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

These regulations were amended to simplify the Water Pollution Control Revolving Fund (WPCRF) Intended Use Plan process along with some minor editing. The Intended Use Plan previously contained two lists. The Project List identified all projects including long term needs. The Project Eligibility List contained projects extracted from the Project List that had prepared or anticipated preparing a facility plan during the funding year. Based on recommendations from stakeholders, the two lists were combined into one Project Eligibility List. Additions and modifications to this list will be submitted to the legislature each year for approval.

The Drinking Water Revolving Fund (DWRF) Intended Use Plan also contains a comprehensive Project Eligibility List that identifies all projects, including long term needs. Additions and modifications to the Project Eligibility List are submitted to the legislature each year; this approach has been very successful.

The Water Quality Control Division requested the change to the WPCRF process to be consistent with the DWRF. This simplified approach will alleviate several problems. Having a similar format for both the WPCRF and DWRF Intended Use Plans will make the processes easier for program personnel and communities to understand. Compressing the process to one list will also alleviate the possibility of potential data transfer errors. Finally, by submitting a comprehensive list of projects for legislative

approval, projects that were not ready to proceed during the funding year, but later become ready for funding, will not have to wait until the next legislative session.

51.32 STATEMENT OF BASIS, SPECIFIC STATUTORY AUTHORITY, AND PURPOSE (MAY 2004 RULEMAKING)

Sections 25-8-202(1)(e) and (g); 25-8-308 (1)(d); and 37-95-107.6(4), 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

Recent statutory amendments necessitated changes to the Water Pollution Control Revolving Fund (WPCRF) Rules, Regulation No. 51. The Division and the Attorney General's Office took this rulemaking opportunity to reexamine the regulation for consistency with federal requirements. The Attorney General's Office, along with the Division and a stakeholders group, also discussed options to simplify the process for the Commission's annual approval of the "Intended Use Plan."

In order to accomplish these objectives, the Commission made the following changes to Regulation No. 51:

Section 51.3 - This section was amended to specifically include the federal requirements for developing the annual Intended Use Plan. The section (along with section 51.5(8)) was also amended to make the process for annual changes to the Intended Use Plan more flexible by authorizing the Commission to approve of the Plan in a public forum after a public notice and comment period, while deleting the requirement for a rulemaking process.

Section 51.5(2) - Category 1 and 2 were explained further to assist staff in categorizing projects on the Project Eligibility List.

Section 51.5(3) - Language was added to specify that applications for leveraged loan projects must be submitted by a deadline established in the Intended Use Plan. This process allows staff to prioritize projects when the WPCRF lacks sufficient funds to provide loans to all eligible applicants ready to proceed.

Section 51.5(9) - This provision was included to reflect recent amendments to the Colorado Water Resources and Power Development Authority Act that allow emergency projects to be added to the Project Eligibility List for funding throughout the year with approval by the Commission.

51.33 STATEMENT OF BASIS, SPECIFIC STATUTORY AUTHORITY, AND PURPOSE (OCTOBER 2005 RULEMAKING, EFFECTIVE NOVEMBER 30, 2005)

Sections 25-8-202(1)(e) and (g); 25-8-308 (1)(d); and 37-95-107.6(4), 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

Under the Clean Water Act, States are authorized to provide "loans at or below market interest rates, including interest free loans, at terms not to exceed 20 years." These regulations have been amended to include Section 51.6 that allows for a Disadvantage Community Loan program. The section also outlines the procedures that will be used during the approval and amendment process of Colorado's annual IUP as it relates to the administration of its Disadvantaged Communities Program. The Division, Authority and the Division of Local Government worked with a stakeholders group to identify eligibility criteria that is

outlined in the annual IUP. This program is being implemented in response to the growing needs of small community systems faced with implementing water quality infrastructure projects.

51.34 STATEMENT OF BASIS, SPECIFIC STATUTORY AUTHORITY, AND PURPOSE (JULY 2008 RULEMAKING, EFFECTIVE JANUARY 1, 2009)

Sections 25-8-202(1)(e) and (g); 25-8-308 (1)(d); and 37-95-107.6(4), 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

Federal funding for Water Pollution Control Revolving Loan Fund has been significantly reduced over the last 5 years. This reduction in federal funds has resulted in limited loan capacity available for Colorado's wastewater treatment projects. In order to assure that the limited loan funds are directed to projects that have the most environmental and public health benefits, this rule has been revised to replace the current three-category system.

This proposed categorization system is anticipated to provide greater discrimination among the projects than the existing categorization system. In addition, the Rules have been revised to include changes to the prioritization point system that will be used to rank projects within each category. The categories will still dictate what types of projects will be funded before others. However, the revisions to the Rules expand the prioritization point scheme to encompass more projects with a potential environmental benefit. Points will be provided to communities based on their population and financial need, whether the facility is currently under an enforcement action, whether the project will reduce the discharge of pollutant(s) to a segment impaired for the relevant pollutant(s), and/or whether the project will implement green infrastructure/sustainable measures technology and/or practices.

The Division has sought input from an internal stakeholders' group comprised of Division staff from the permitting (surface water, ground water, stormwater), enforcement, non-point source, source water protection, and total maximum daily load programs. Input was also sought from the DLG, the Authority and the Wastewater Utility Council.

51.35 FINDINGS IN SUPPORT OF EMERGENCY REVISIONS TO REGULATION #51, WATER POLLUTION CONTROL REVOLVING FUND RULES [5 CCR 1002-51] (MARCH 9, 2009)

The Commission conducted this rulemaking hearing to add a sixth category of projects for inclusion on the Water Pollution Control Revolving Fund Project Eligibility List. The addition of this category will ensure that Colorado will be able to use all funds that may become available under the American Recovery and Reinvestment Act of 2009 (ARRA). Projects added to the existing 2009 Project Eligibility list will receive funding only if necessary to fully utilize existing loan capacity and new federal funding that may become available in 2009. Consistent with the existing structure for prioritization, Category 6 projects will only be considered for funding after all other projects designated under Categories 1-5 have been given an opportunity to proceed. Category 6 projects will be subject to the eligibility requirements and intra-category ranking system outlined in Section 51.5 of this regulation.

The Commission intends that terms and conditions specific to the administration of grant monies received under the ARRA will be memorialized in an addendum to the 2009 Water Pollution Control Revolving Fund and State Domestic Wastewater Treatment Grant Intended Use Plan (IUP). Such terms and conditions may include additional criteria for funding eligibility and priority ranking to comply with the requirements of the ARRA and to maintain consistency with EPA's final ARRA guidance document. Interim deadlines or milestones to ensure that projects are proceeding expeditiously to meet the 12-month deadline in the ARRA may also be included in the IUP Addendum. To the extent that any of the terms and conditions in the IUP Addendum may differ from the original 2009 IUP or these Regulations, the Commission intends that the provisions of the IUP Addendum will govern with respect to the details of

administering ARRA funds among the six funding categories. The Commission will utilize its administrative action hearing process, including opportunity for public review and comment, for approval of any IUP Addendum(s) as developed by the Water Quality Control Division, the Division of Local Affairs, and the Colorado Water Resources and Power Development Authority, consistent with Section 606(c) of the federal Clean Water Act.

The Commission adopted these revisions on an emergency basis, with the intent that such revisions become effective immediately. The Commission found that immediate adoption of these revisions to Regulation #51 is imperatively necessary to preserve public health, safety or welfare and that compliance with the requirements of section 24-4-103, C.R.S. would be contrary to the public interest.

The Commission found that immediate effectiveness of these regulatory revisions was necessary to ensure timely addition of new projects to the Project Eligibility List contained within the 2009 IUP. To that end, the Commission conducted an administrative action hearing immediately after the Regulation #51 rulemaking hearing for the purpose of considering appropriate additions to the IUP (in the form of an addendum) and addition of specific projects to the Project Eligibility List contained in the IUP. The Commission determined that the projects added to the Project Eligibility List are emergency projects needed to prevent or address threats to public health or the environment. The Commission intends that the revised Project Eligibility List be submitted to the General Assembly for action by the April 1, 2009 statutory approval deadline.

51.36 STATEMENT OF BASIS, SPECIFIC STATUTORY AUTHORITY, AND PURPOSE (MARCH 9, 2009 RULEMAKING, EFFECTIVE APRIL 30, 2009)

Sections 25-8-202(1)(e) and (g); and Section 37-95-107.6(4), 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

The Commission conducted this rulemaking hearing to add a sixth category of projects for inclusion on the Water Pollution Control Revolving Fund Project Eligibility List. The addition of this category will ensure that Colorado will be able to use all funds that may become available under the American Reinvestment and Recovery Act of 2009 (ARRA). Projects added to the existing 2009 Project Eligibility list will receive funding only if necessary to fully utilize existing loan capacity and new federal funding that may become available in 2009. Consistent with the existing structure for prioritization, Category 6 projects will only be considered for funding after all other projects designated under Categories 1-5 have been given an opportunity to proceed. Category 6 projects will be subject to the eligibility requirements and intra-category ranking system outlined in Section 51.5 of this regulation.

The Commission intends that terms and conditions specific to the administration of grant monies received under the ARRA will be memorialized in an addendum to the 2009 Water Pollution Control Revolving Fund and State Domestic Wastewater Treatment Grant Intended Use Plan (IUP). Such terms and conditions may include additional criteria for funding eligibility and priority ranking to comply with the requirements of the ARRA and to maintain consistency with EPA's final ARRA guidance document. Interim deadlines or milestones to ensure that projects are proceeding expeditiously to meet the 12-month deadline in the ARRA may also be included in the IUP Addendum. To the extent that any of the terms and conditions in the IUP Addendum may differ from the original 2009 IUP or these Regulations, the Commission intends that the provisions of the IUP Addendum will govern with respect to the details of administering ARRA funds among the six funding categories. The Commission will utilize its administrative action hearing process, including opportunity for public review and comment, for approval of any IUP Addendum(s) as developed by the Water Quality Control Division, the Division of Local Affairs, and the Colorado Water Resources and Power Development Authority, consistent with Section 606(c) of the federal Clean Water Act.

The Commission adopted these revisions on both an emergency and permanent basis, with the intent that the permanent amendments become effective April 30, 2009.

PARTIES TO THE RULEMAKING

1. Denver Water
2. City of Aurora
3. Colorado Contractors Association
4. Northwest Colorado Council of Governments

51.37 STATEMENT OF BASIS, SPECIFIC STATUTORY AUTHORITY, AND PURPOSE (MAY 14, 2012 RULEMAKING, EFFECTIVE JUNE 30, 2012)

Sections 25-8-202(1)(e) and (g); and section 37-95-107.6, 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

The Commission took action to modify Regulation #51 by: removing the criteria for determining the priority assigned and including it in the Intended Use Plan (IUP); eliminating the categories and developing new criteria for determining the a project's priority; moving a number of items to the General Policies Section; establishing a Project Loan List that includes all projects that can be reasonably anticipated to receive a loan; and adding/deleting/revising definitions and updating other provisions. The Commission adopted these revisions for two principal reasons:

1. To provide a new emphasis on funding projects based on improving water quality consistent with subsection 51.4(6) of this regulation while maintaining the current emphasis on providing funding opportunities for smaller, less financially capable communities; and
2. To improve the function and transparency of the Water Pollution Control Revolving Fund loan process.

The Commission's action to modify Regulation #51 will require revisions to the process for prioritizing projects and the Commission is aware of the approach the Water Quality Control Division (Division), the Colorado Water Resources and Power Development Authority (Authority), and the Colorado Division of Local Governments (DLG) have developed to revise the project prioritization system for inclusion in the 2013 IUP. While the revised system will be proposed for consideration in a draft IUP at the October 2012 administrative action hearing, the Commission understands and appreciates that the Division, the Authority, and DLG have conducted significant outreach to inform stakeholders of the draft approach that will be included in the IUP.

Specific modifications to Regulation #51 on a section-by-section basis are described below.

Section 51.2 – Definitions – Several new definitions were added to define terms used in the previous regulation as well as terms added to the regulation. Several existing definitions were deleted as the terms were no longer used in the regulation. The Commission also revised existing definitions to clarify their intent or to make them consistent with the definition in other regulations or statute.

Section 51.3 – Intended Use Plan – This section was modified to direct that the criteria for prioritizing projects are to be included in the IUP and to identify that the federal authority for projects is derived from sections 212 and 319 of the Clean Water Act.

Section 51.4 – General Policies – The Commission revised subsection 51.4(5) to indicate it will promote green infrastructure projects related to the control of stormwater pollution as these projects are

sustainable approaches to pollution control as are the other projects described in this subsection. The Commission also moved several provisions from section 51.5 to this section because they were seen more as statements of policy.

Section 51.5 – Procedures for Identifying Projects and Establishing the Project Eligibility List – The Commission renamed this section to denote a change in the process due to the addition of the concept of the Projected Loan List. This section lays out the broad approach to identify projects and to develop the Project Eligibility List. The Commission deleted the previous concept of project categories that had been used to prioritize projects and was based on a blend of concepts: 1) the type of problem to be solved (e.g., noncompliance at a wastewater treatment facility and health hazard due to surfacing ISDS), and 2) the type of project (e.g., wastewater treatment plants, stormwater treatment, and nonpoint source projects). These were replaced with project types that will be used to categorize projects for the Project Eligibility List. The Commission also deleted the detailed project priority scoring system that will be replaced by the new project priority system to be established in the IUP. This eliminates the previous approach of prioritizing projects based on category first, and then priority score within the category.

Section 51.6 – Procedures for Establishing the Projected Loan List and Distributing Funds – The Commission created a new section 51.6 to establish the concept of the Projected Loan List. This list will be used to identify which projects on the Project Eligibility List are most likely ready to proceed to the application and funding stages. Project proponents will have to provide information under the five identified factors in subsection 51.6(2) to allow for the required priority scoring. These factors are based on local fiscal capacity and affordability indicators, water quality improvement benefits, green project/sustainability benefits, compliance status, and readiness to proceed that, taken together, will result in projects being funded that will help attain the water quality and other goals identified by the Division and the Commission. These factors will serve as a general guide for the Division, the Authority, and DLG to establish specific criteria in the IUP upon which all projects will be evaluated and scored.

The Commission also established conditions under which the Division will identify projects that are within the fundable range based on a combination of readiness to proceed and priority score. This will allow the Division, Authority, and DLG to focus the bulk of their efforts on projects that are most likely to proceed during the coming year.

Section 51.7 - Disadvantaged Communities – The Commission revised section 51.7 (previously section 51.6) to delete the requirement for periodic review of the disadvantaged community program, as the Commission finds that provision of funding to disadvantaged communities is an important aspect of the WPCRF program and such funding should be provided when authorized.

Section 51.8 – The Commission added a new section 51.8 to authorize funding of planning and design grants when such funding is approved in the IUP.

PARTIES TO THE RULEMAKING

1. Colorado Municipal League
2. Colorado Stormwater Council

51.38 STATEMENT OF BASIS, SPECIFIC STATUTORY AUTHORITY, AND PURPOSE (AUGUST 10, 2015 RULEMAKING, EFFECTIVE SEPTEMBER 30, 2015)

Sections 25-8-202(1)(e) and (g); and section 37-95-107.6, 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

The Commission took action to modify Regulation #51 by: aligning the loan terms with the federal Water Resources Reform and Development Act (WRRDA); and revising the planning and design grant nomenclature to planning, design and engineering grants to align with the program grant terminology. The Commission adopted these revisions for three principal reasons:

1. To align the Colorado Water Pollution Control Revolving Fund eligible project types with WRRDA; and
2. To align the Colorado Water Pollution Control Revolving Fund loan terms with WRRDA; and
3. To clarify the grant terminology under the Colorado Water Pollution Control Revolving Fund (WPCRF) loan process.

Specific modifications to Regulation #51 on a section-by-section basis are described below.

Section 51.2 - Definitions – The Commission revised section 51.2(19) to add security and decentralized wastewater treatment systems as eligible project types.

Section 51.6 - Procedures – The Commission added section 51.6(5) to provide for financing terms the lesser of 30 years, or projected life of the financed project.

Section 51.7 - Disadvantaged Communities – The Commission revised section 51.7 to delete the loan duration terms which are addressed in Sections 51.3(2)(c), 51.6(5), and the IUP.

Section 51.8 – The Commission renamed and reworded the section to reflect the two grant programs being (1) Planning Grants and (2) Design and Engineering Grants.