



WASHINGTON STATE
DEPARTMENT OF
E C O L O G Y

As required by
the Washington State Administrative Procedures Act
Chapter 34.05 RCW

CONCISE EXPLANATORY STATEMENT
AND
RESPONSIVENESS SUMMARY
FOR THE ADOPTION OF
CHAPTER 173-98 WAC
USES OF THE WASHINGTON STATE WATER POLLUTION CONTROL
REVOLVING FUND
AND
CHAPTER 173-95A WAC
USES OF THE CENTENNIAL CLEAN WATER PROGRAM

JUNE 29, 2007
Publication: 07-10-040

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*CHAPTER 173-95A WAC
USES OF THE CENTENNIAL CLEAN WATER PROGRAM*

JUNE 29, 2007

Prepared by:

Cindy Price

Washington State Department of Ecology

Water Quality Program

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CONCISE EXPLANATORY STATEMENT

I. Introduction

- ◆ **Identify the reasons for adopting this rule (RCW 34.05.325(6)(a)(i)):**
Explain the need for the rule or amendment. Discuss the legislative background/federal law/statutory authority.

The purpose of the proposed rule changes is to respond to new funding initiatives and priorities identified by Ecology, EPA, and other stakeholders and clients. It has been almost seven years since the last time the rules were updated.

Centennial Clean Water Program (Centennial): In 1986 the Washington State Legislature established the Water Quality Account in Chapter 70.146 RCW, “Water Pollution Control Facilities Financing.” Centennial is a grant fund within the Water Quality Account and Ecology’s Water Quality Program has administered the fund since its inception. Through the Centennial fund, Ecology provides grants to local governments and tribes for water pollution control facilities and nonpoint activities designed to prevent and control water pollution to Washington State’s surface and ground water.

Water Pollution Control Revolving Fund (Revolving Fund): The United States Congress established the Revolving Fund program as part of the Clean Water Act Amendments in 1987. The Environmental Protection Agency (EPA) awards Ecology annual grants for the purpose of making loans to local governments and tribes. Ecology provides a twenty percent match and capitalizes the grant funds to provide low-cost financing for projects such as publicly owned wastewater treatment facilities, nonpoint source pollution control, and comprehensive estuary conservation and management programs.

Ecology is authorized to adopt rules under Chapter 90.48.035—Rule making authority.

The department shall have the authority to, and shall promulgate, amend, or rescind such rules and regulations as it shall deem necessary to carry out the provisions of this chapter, including but not limited to rules and regulations relating to standards of quality for waters of the state and for substances discharged therein in order to maintain the highest possible standards of all waters of the state in accordance with the public policy as declared in RCW 90.48.010.

- ◆ **Identify the adoption date of rule and effective date of rule.**

Adoption date: June 29, 2007

Effective date: July 30, 2007

Implementation would occur for the Fiscal Year 2009 funding cycle, which begins on September 1, 2007.

II. Describe Differences between Proposed and Final Rule

- ◆ Describe the differences between the text of the proposed rule as published in the Washington State Register and the text of the rule as adopted, other than editing changes. State the reasons for the differences (RCW 34.05.325(6)(a)(ii)):
- ◆ How to read the following differences in the proposed and final rule:
 - Listed first: changes to the Washington State Water Pollution Control Revolving Fund
 - Listed second: changes to the Centennial Clean Water Program
 - Official comments from clients and stakeholders are quoted exactly as spoken or written
 - Deletions have strikethroughs and are in red font
 - Additions are underlined and in green font
 - The page number corresponding to the draft rule cited is included at the end of each explanation for change.

Differences between proposed and final of Chapter 173-98 WAC, Uses of the Washington State Water Pollution Control Revolving Fund:

WAC 173-98-030 (59)—Definitions: Deleted the word “this” in two places and replaced with the word “a loan” in both places. (page 23)

(59) **Senior lien obligations** means all revenue bonds and other obligations of the recipient outstanding on the date of execution of ~~this~~ a loan agreement (or subsequently issued on a parity therewith, including refunding obligations) or issued after the date of execution of ~~this~~ a loan agreement having a claim or lien on the gross revenue of the utility prior and superior to the claim or lien of the loan, subject only to maintenance and operation expense.

WAC 173-98-030 (64)—Definitions: Deleted the word “Protection” and replaced with the correct word, “Policy.” (page 24)

State environmental review process (SERP) means the National Environmental ~~Protection~~ Policy Act (NEPA)-like environmental review process adopted to comply with the

requirements of the Environmental Protection Agency's Code of Regulations (40 CFR § 35.3140). SERP combines the State Environmental Policy Act (SEPA) review with additional elements to comply with federal requirements.

WAC 173-98-040 (2)—Water Pollution Control Revolving Fund Uses: Corrected language that was not clear and clarified eligibility by adding language from SEC. 601 (a) & (b) of the Clean Water Act. (page 32)

To provide loans for nonpoint source pollution control management ~~programs including planning and implementing elements of the~~ projects that implement the Washington's water quality management plan to control nonpoint sources of pollution, and for developing and implementing a conservation and management plans under section 320 of the act.

WAC 173-98-100 (6)—Water Pollution Control Revolving Fund Uses: Added language to clarify the intent of SEC. 601 of the Clean Water Act SEC. (page 38)

Confined animal feeding operations (CAFO) water pollution control projects located in federally designated national estuaries;

WAC 173-98-110 (31)—Noneligible: Added language to avoid an unintentional categorical exclusion of water quantity. (page 49)

Water quantity or other water resource projects that solely address water quantity issues.

WAC 173-98-(300(4)(a)(v)—Wastewater treatment facilities construction: It was discovered that two words were missing that helped describe the calculations used to determine financial burden. (page 55)

The applicant's current and future debt service on the project;

WAC 173-98-430(3)—Repayment: No. 3 of this rule was deleted entirely, because it allowed Ecology's director to extend the start date of loan repayment, which is not

consistent with SEC. 603(5)(1)(B) of the Clean Water Act. Deleting No. 3 also changed the numbering order. (page 63)

~~(3) The director may extend the first repayment due date if it is not detrimental to the perpetuity of the revolving fund. However, this will not change the total length of the loan terms, rather, the loan amount will be amortized over a shorter period of time;~~

WAC 173-98-520(4)(a)—Ceiling Amounts: Added language to clarify intent. Left unchanged, this language could have been interpreted to limit funding to only ten percent of the engineer’s estimate instead of an additional ten percent of the engineer’s original estimate. (page 69 & 70)

If the low responsive responsible construction bid(s) exceeds the engineer's estimate of construction costs, the department may approve funding increases for up to ten percent of the engineer's original estimate;

WAC 173-98-530(4)—Step Process for water pollution control facilities: This section had an incomplete sentence and a few words were missing. The incomplete sentence was deleted and words were added to complete the intent. (pages 71 & 72)

Combined steps for smaller design-construct projects (step four): In some cases, design and construction may be combined into one loan. Step four applicants must demonstrate that step two (design) can be completed and approved by the department within one ~~of the timeframes the funding agreement is signed~~ year of the effective date of the funding agreement. The total project costs for step four projects must be five million dollars or less.

WAC 173-98-600(1)—Design-build and design-build-operate project requirements: Changed the word “statues” to “statutes.” (page 74)

Design-build or design-build-operate projects must be consistent with applicable ~~statues~~ statutes, such as chapter 39.10 RCW, Alternative public works contracting procedures, chapter 70.150 RCW, Water Quality Joint Development Act, and/or chapter 35.58 RCW, Metropolitan municipal corporations.

WAC 173-98-720(3)—State Environmental Review Process: Changed the word “significance” to “significant.” (page 81)

All mitigation measures committed to in documents developed in the SERP process, such as the environmental checklist, environmental report, SEPA environmental impact statement (EIS), the finding of no ~~significance~~ significant impact/environmental assessment, or record of decision/federal EIS will become revolving fund loan agreement conditions. Failure to abide by these conditions will result in withholding of payments and may result in immediate repayment of the loan.

WAC 173-98-800(2)(c)—Starting a Project: Copied exact language from WAC 173-98-220 and duplicated it here as item (c), because it adds additional clarification. This is not new language. (page 84)

Loan offers identified on the "final offer and applicant list" will be effective for up to one year from the publication date of the "final offer and applicant list." Loan offers that do not result in a signed agreement are automatically terminated, see WAC 173-98-220 "Final offer and applicant list."

Differences between proposed and final of Chapter 173-95A WAC, Uses of the Centennial Clean Water Program:

WAC 173-95A-020(60)—Definitions: Deleted the word “Protection” and replaced with the correct word, “Policy.” (page 19)

State environmental review process (SERP) means the National Environmental ~~Protection~~ Policy Act (NEPA)-like environmental review process adopted to comply with the requirements of the Environmental Protection Agency's Code of Regulations (40 CFR § 35.3140). SERP combines the State Environmental Policy Act (SEPA) review with additional elements to comply with federal requirements.

WAC 173-95A-120 (26)—Projects ineligible for centennial program funding: Added language to avoid an unintentional categorical exclusion of water quantity. (page 32)

Water quantity or other water resource projects that solely address water quantity issues.

WAC 173-95A-400(4)(a)(iii)—Wastewater treatment facilities construction (a)(iii): It was discovered that two words were missing that helped describe the calculations used to determine financial burden. (page 39)

The applicant's current and future debt service on the project;

WAC 173-95A-420(5)—Storm Water Projects: It was discovered that this example did not capture the actual intent of the rule and therefore added no value. Language was clarified to capture the intent of WAC 173-95A-420 (3) in this section. This clarification does not change the meaning of the rule. (page 45 & 46)

Matching requirements, percent of grant, and grant ceiling amounts. Storm water-hardship grants are fifty percent grants with a fifty percent cash-matching requirement.

The maximum amount available for a storm water-hardship grant is \$500,000.

For example:

When a grant applicant whose service area population is twenty-five thousand or less can demonstrate that its MHI is ~~below~~ sixty percent or less of the average statewide MHI, the applicant may be eligible for a fifty percent grant, not to exceed five hundred thousand dollars.

WAC 173-95A-520(5)(a)—Ceiling Amounts: Added language to clarify intent. Left unchanged, this language could have been interpreted to limit funding to only ten percent of the engineer's estimate instead of an additional ten percent of the engineer's original estimate. (page 48 & 49)

If the low responsive responsible construction bid(s) exceeds the engineer's estimate of construction costs, the department may approve funding increases for up to ten percent of the engineer's original estimate;

WAC 173-95A-540(3)—Step process for facilities: This section had an incomplete sentence and a few words were missing. The incomplete sentence was deleted and words were added to complete the intent. (page 51)

Combined steps for smaller design-construct projects (step four): In some cases, design and construction may be combined into one loan. Step four applicants must demonstrate that step two (design) can be completed and approved by the department within one ~~of the timeframes the funding agreement is signed~~ year of the effective date of the funding agreement. The total project costs for step four projects must be five million dollars or less.

WAC 173-95A-700(2)(c)—Starting a project: Copied exact language from WAC 173-95A-320 and duplicated it here as item (c), because it adds additional clarification. This is not new language (page 59)

Loan and grant offers identified on the "final offer and applicant list" will be effective for up to one year from the publication date of the "final offer and applicant list." Loan and grant offers that do not result in a signed agreement are automatically terminated, see WAC 173-95A-320 "Final offer and applicant list."

III. Summarize Comments

Comment Numbered by Commenter				
Comment No.	First Name	Last Name	Organization	Page
1,2	Cheryl	Sonnen	Asotin County Conservation District	9
3,4,5	Charlie	Kessler	Stevens County Conservation District	10-11
6	Dana	Cowger	Varela & Associates, Inc.	11
7	Dave	Rounry	Ecology, Southwest Regional Office	14
8	Russell	Clark	Mayor, City of Rock Island	14
9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21	Robert	Masonis	Director, American Rivers, NW Region	15-21

Comment by Topic	
Topic	Comment numbers correspond to commenter in the table above
Rule Amendment Process	1,5,6,7,9
Best Management Practices Eligibility	1,3,7
Allocation of Centennial Funds Activities/Facilities	1,6,7
On-Site Septic Repair and Replacement Local Loan Program	4
Definition of: -Water pollution control activities	10, 11, 17, 18,
Definition of: -Low Impact Development	12
Land acquisition for wetland preservation	13
Eligibility of Low Impact Development Techniques	14
Water Quantity	15, 19
The Growth Management Act	16, 20
Cost effectiveness analysis for water pollution control facilities	21

- ◆ Summarize all comments received regarding the proposed rule and respond to comments by category or subject matter. You must indicate how the final rule reflects agency consideration of the comments or why it fails to do so (RCW 34.05.325(6)(a)(iii)):

Comment No. 1 (public hearing excerpt)

Cheryl Sonnen: “Hi, I’m Cheryl Sonnen with the Asotin County Conservation District, and my address is 720 Sixth Street, Suite B in Clarkston, WA 99403. I have provided a lot of information to Ecology requesting that the BMP list be expanded. And, I appreciate that Ecology has listened to that request and that they’ve supported that in this rule to expand the BMPs on a case-to-case basis, and I will be working with my project managers and the regional folks to get more information on what those BMPs are. But I appreciate that that has been put into rule.”

Ecology’s Response:

Ecology appreciates this comment. It reflects the extensive outreach and collaborative approach used to involve clients and stakeholders in the development of these rules.

Comment No. 2 (public hearing excerpt cont.)

Cheryl Sonnen: Asotin County Conservation District

“I also wanted to let you know that I support the idea of expanding or having the flexibility between the facilities and the activities projects and the flexibility to shift that money as needed. Thank you.”

Ecology’s Response:

Currently two-thirds (2/3) of the competitive funding is set aside for facilities hardship grants, and one-third (1/3) is set aside for nonpoint activities grants.

This new rule language will allow Ecology to distribute competitive Centennial funds according to the scores given to projects on the final offer and applicant list. In other words, Ecology will stream competitive funds to projects receiving the highest scores and in descending order. In addition, the two major project categories (Activities & Facilities) cannot receive more than two-thirds (2/3) of the competitive funding. This will provide a safety net of at least one-third (1/3) of the funding for each category. The remaining one-third (1/3) will be allocated based on the competitive process.

Ecology held outreach sessions regarding these rules at statewide conferences, such as the Infrastructure Assistance Coordinating Council and the Washington Association of District Employees. To help frame this issue, Ecology conducted several client and stakeholder workshops and formed several workgroups involving internal staff and community representatives from the Water Quality Financial Assistance Program. Based on this outreach, Ecology is satisfied that this approach is fair and will result in the funding of the highest priority water quality projects for both activities and facilities projects.

Comment No. 3 (public hearing excerpt)

Charlie Kessler: “Charlie Kessler, Stevens County Conservation District, 232 Williams Lake Road, Colville, WA. I, too, would like to say that I appreciate Ecology listening to the conservation districts when it came to talking about best management practices and putting some flexibility into the rule.”

Ecology’s Response:

Ecology appreciates this comment. It reflects the extensive outreach and collaborative approach used to involve clients and stakeholders in the development of these rules.

Comment No. 4 (public hearing excerpt cont.)

Charlie Kessler: Stevens County Conservation District

“Also, I appreciate what they are doing in the septic tank area, because that’s one of the concerns we have in Stevens County; how to repair or replace failing septic systems for people who really can’t afford it.”

Ecology’s Response:

In June of 2005 Ecology sponsored a statewide workshop to learn more about the ongoing difficulties that local governments and tribes experience with failing on-site septic systems. In response to comments received at the workshop, Ecology proposed rule revisions in September 2005 to expand its local loan program to include grants and offer public bodies more flexibility in managing local loan funds.

Since the initiation of the rule amendment process, the 2006 Washington State Legislature appropriated \$7.5M to repair and replace on-site septic systems in the Puget Sound area as part of the Puget Sound Initiative. This legislation compliments this rule. However, the appropriation is directed to the Puget Sound area.

Ecology is very pleased to offer an expanded on-site repair and replacement local loan program that includes grants and loans awarded on a statewide basis, because failing on-site septic systems are a statewide water quality problem.

Comment No. 5 (public hearing excerpt cont.)

Charlie Kessler: Stevens County Conservation District

“So, I’m also a part of the Water Quality Financial Assistance Council and have appreciated the whole process of incorporating the comments of diverse groups throughout the state.”

Ecology’s Response:

Ecology recognizes and appreciates the advice and guidance provided by members of our Financial Assistance Council. This comment reflects the extensive outreach and collaborative approach used to involve clients and stakeholders in the development of these rules.

Comment No. 6 (written comment)

Dana V. Cowger, P.E.—Vice President, VARELA & ASSOCIATES, INC.

Proposed rule revision: “Funding Allocation Revision For Facilities vs. Activities”

“The proposed rule change will have the greatest impact on the small communities of Washington, many of which are under DOE mandated schedules for implementing treatment upgrades. This rule change will directly impact funding availability to these communities for required treatment improvements which will otherwise be unaffordable for the communities. Most of the small communities we represent will be directly impacted by this rule change.

I believe this change is occurring without really hearing from the small communities in the state who are directly impacted by this change. The obvious question is, why have communities not commented to Ecology? I believe their silence is not due to lack of interest but due to a lack of knowledge and understanding that this directly impacts them. Small communities, their staff and elected officials are made up of non-technical volunteer citizens who work fulltime jobs (apart from the city or town) while on the side carrying out city business as best as they can. They do not have access to the information and consequently they remain uninformed on the pertinent points of these rule changes and do not understand the impact to their communities. They do not have staff responsible for monitoring and staying current on these rules. They rely on Ecology to craft a program which takes into account their community’s best interests.

Coupled with the fact that the rule change seems somewhat innocuous on surface, it therefore goes unnoticed to the average small city. This change will, in fact, reduce funding available for wastewater treatment plant upgrades for communities who have limited resources to fund upgrades. It is not prudent to make this change under these circumstances.

Contrast the above situation with the group of organizations that represent non-point activity projects (where the funding will be diverted). Non-point projects are sponsored by more sophisticated groups consisting of conservation districts, health districts, fish & game departments, public utilities districts, Indian tribes, etc. These groups generally have fulltime staff actively engaged and knowledgeable of the funding process, the rules and the funding allocations. In many cases the individuals seeking the funding have a personal stake in obtaining the funding (I suppose much like consulting firms like Varela & Associates) and whose ongoing salaries may be dependent on whether grants are received or not. These groups are informed and involved; they can and do offer supporting comments and input on the proposed rule changes.

Due to the difference in the representation of the two contrasting interest groups (i.e. facilities vs. activities), the comments expected from either group can hardly be compared with equal weight. The point is that input is that the small communities being adversely impacted by the proposed rule change are not easily accessed by the process. Whereas the favorably affected projects have interest groups which are more involved and aware of the process.

I believe adopting this rule revision amounts to an unfunded mandate by Ecology. This is particularly pointed, given that Ecology's funding for this program is not being cut (i.e. the Legislature is not decreasing Ecology's funding for this program). Rather, Ecology (not the Legislature) is reallocating existing funding from a mandated function (i.e. facilities) and redirecting it to activities projects which are generally more flexible regarding timeframe and optional regarding urgency and need for funds. I do not feel this is in the best interests of the small communities of Washington and their residents. I would propose that this change not be made unless at the same time a relaxation of the compliance deadlines facing the small communities can also be granted.

I respect the fact that DOE, in its judgment, is making an effort to distribute the available funding to the best and highest use they deem appropriate. However, I do not feel this proposed re-allocation of funding achieves that. It is detrimental to the efforts of small communities trying to comply with DOE imposed compliance deadlines toward achieving water quality goals.”

Ecology's Response:

Ecology is proposing a competitive process in which applicants must compete for the funding on an equitable basis, rather than receive funding priority based on hardship status alone.

Currently two-thirds (2/3) of the competitive funding is set aside for facilities hardship grants, and one-third (1/3) is set aside for nonpoint activities grants.

This new rule language will allow Ecology to distribute competitive Centennial funds according to the scores given to projects during a competitive project-rating process. In other words, Ecology will stream competitive funds to projects receiving the highest scores and in descending order.

To ensure funding availability for the two major project categories that Ecology funds (Activities & Facilities), a limit is set on how much funding one category can receive. No category can receive more than two-thirds (2/3) of the competitive funding, which means that at least one-third (1/3) will be left for the other category.

This will provide a safety net of at least one-third (1/3) of the funding for each category as illustrated below:

- Facilities hardship projects - - - at least 1/3
- Activities-type projects - - - - - at least 1/3
- Activities or facilities projects - - - - - 1/3 (depending on project score)

It is correct that this competitive method could result in less funding for hardship communities (as low as one-third (1/3) of the competitive funding). It is also possible for hardship communities to receive two-thirds (2/3) of the competitive funding. It depends

on the score given for the application during the competitive evaluation process in relation to other water quality projects.

Ecology is satisfied that this approach to the allocation of competitive Centennial funding will result in the funding of the highest priority water quality projects statewide.

Also, it is important to note that this distribution only applies to competitive Centennial funds. This will not affect federal 319 grants, legislative provisos, or dedicated funding that is appropriated through the legislature for small communities.

Ecology is sensitive to the needs of small, financially distressed communities and the negative impact that high sewer user fees can pose. Ecology will continue to consider these impacts when it revises the Water Quality funding application for the Fiscal Year 2009 funding cycle.

Outreach efforts:

Communication and outreach efforts for these rules are a top priority to Ecology.

This rule amendment process included many outreach efforts, such as multiple statewide workshops, informational presentations, and sessions at conferences, such as the Infrastructure Assistance Coordinating Council and the Washington Association of District Employees.

Ecology conducted several client and stakeholder workshops and formed several workgroups involving internal staff and community representatives from the Water Quality Financial Assistance Program.

Ecology staff spent extra effort to personally request comments and discuss possible impacts of the rule proposal with small communities at technical advisory and funding meetings whenever possible.

To make the rule amendment process transparent, Ecology staff solicited early comments to help guide its focus. Ecology received over one hundred (100) initial comments resulting from early outreach efforts. Ecology staff posted all of the initial comments on its comprehensive Water Quality Rule Development Web site at <http://www.ecy.wa.gov/programs/wq/wqhome.html>. This Web site also provides access to rule amendment plans, publications, schedules, focus sheets, miscellaneous workshop materials, and staff contacts.

Ecology staff shared the rule amendment Web site address at every possible venue throughout the rule amendment process along with a detailed rule amendment schedule.

Comment No. 7 (written comment)

Dave Rountry, Water Cleanup Lead, Dept. of Ecology Southwest Region (written response)

“Good to see the new option for expanding eligibility for Centennial grants beyond the traditional fencing and planting in riparian areas. My contacts at the CDs, the state Conservation Commission are glad to see that our advice for this proposed expansion is actually included in the rule changes.

To paraphrase one comment I got from the Commission, we appreciate that you listened to the needs of our CDs. I hope the rule is adopted, so we can move to the next level of discussion about translating the option into new BMP implementation. Thanks a lot.”

Ecology’s Response:

Ecology appreciates this comment. It reflects the extensive outreach and collaborative approach used to involve clients and stakeholders in the development of these rules.

Comment No. 8 (written comment)

Russell Clark, Mayor, City of Rock Island

“Please leave the centennial clean water fund alone. The city of Rock Island needs this funding to build it sewer plant. There isn’t enough funding as things are.”

Ecology’s Response:

Please see the response to comment No. 6.

Comment 9 (written comment)

Robert J. Masonis, Senior Director, American Rivers, NW Region

“American Rivers is a national, not-for-profit river conservation organization with a mission to protect and restore healthy, natural rivers for the benefit of people, fish and wildlife. The Northwest regional office headquartered in Seattle, Washington has been advocating for effective river conservation policies for 15 years since the office was opened in 1992.

We appreciate the opportunity to comment on the proposed rule-making regarding Chapter 173-98 WAC, Uses and limitations of the water pollution control revolving fund and chapter 173-95A WAC, Uses and limitations of the centennial clean water fund.

At the outset we wish to commend Ecology for proposing to improve these rules in several respects that, if codified in the final rule, should benefit rivers and streams in Washington State. An integrated funding approach, expanding loan and grant funds to cover Best Management Practices (BMPs), and linking loan eligibility to compliance with the Growth Management Act are all laudable objectives that would be advanced by the proposed rules. Our comments on specific proposed rule changes are set forth below.”

Ecology’s Response:

Ecology appreciates this comment. It reflects the extensive outreach and collaborative approach used to involve clients and stakeholders in the development of these rules.

Comment No. 10 *(written comment)*

Robert J. Masonis, Senior Director, American Rivers, NW Region

WAC 173-95A-020: Definitions (Centennial)

(64) “‘Water pollution control activities’ or ‘activities’”

“Subsection (a) should be expanded to include activities taken to prevent or mitigate pollution of surface water. The current proposal would limit such activities to those addressing only underground water.”

Ecology’s Response:

The current rule proposal does not limit funding to only underground water. The definition of water pollution control activities or activities is taken directly from state statute, RCW 70.146.020(5). It should be interpreted in its entirety and not be based on subsections. For example, subsection (a) should not be interpreted without subsection (b).

Ecology’s interpretation is consistent with the legislative statement of policy in RCW 70.146.010, which specifically refers to and includes “surface and underground waters.” WAC 173-95A-020 and all of its subsections adequately include surface waters of the state.

Comment No. 11 *(written comment)*

Robert J. Masonis, Senior Director, American Rivers, NW Region

WAC 173-95A-020: Definitions (Centennial)

“Subsection (c) should be revised to include activities taken to restore the water quality of rivers and streams. The current proposal only includes activities to restore lake water quality.”

Ecology’s Response:

The current rule proposal does not limit funding to only lakes. Please see the response to comment No. 10.

Comment No. 12 *(written comment)*

Robert J. Masonis, Senior Director, American Rivers, NW Region

WAC 173-95A-020: Definitions (Centennial)

“A definition should be included for “Low Impact Development”, that should read as follows: "A methodology that manages rainfall at the source using uniformly distributed decentralized micro-scale controls. LID's goal is to mimic a site's predevelopment hydrology by using design techniques that infiltrate, filter, store, evaporate, and detain runoff close to its source."”

Ecology’s Response:

Ecology appreciates the need to define Low Impact Development (LID) for the purposes of its funding programs. The issues surrounding LID funding continue to emerge. Ecology is currently developing an enhanced funding program as a result of new legislative appropriations. This involves input from numerous Ecology and other state and federal agencies, and clients and stakeholders.

The definition provided by American Rivers will be provided to the LID workgroup for consideration.

Ecology will likely use the information gathered by this LID workgroup to inform its decision on the definition of LID. Unfortunately, the definition will not be developed before the adoption date of this rule.

Comment No. 13 *(written comment)*

Robert J. Masonis, Senior Director, American Rivers, NW Region

WAC 173-95A-100: Grant and loan eligible (Centennial)

“(3) Land acquisition should be made not only for wetlands preservation, but also for the preservation of land that is critical for the preservation of natural hydrology and

prevention of non-point pollution. This would include but not be limited to streamside buffers, streams, areas with a shallow water table, and key areas of groundwater infiltration. Subsection (d) should be expanded accordingly.”

Ecology’s Response:

It appears that the comment intended to reference WAC 173-95A-110 Loan only eligible. The proposed rule also allows land acquisition ‘for prevention of water pollution.’ This section should be interpreted in its entirety and not be based on subsections. For example, subsection (a) should not be interpreted without subsection (b).

Comment No. 14 *(written comment)*

Robert J. Masonis, Senior Director, American Rivers, NW Region

WAC 173-95A-100: Grant and loan eligible.(Centennial)

“Low Impact Development” stormwater management techniques as defined above should be added to the list of eligible projects.”

Ecology’s Response:

Ecology appreciates the need to define Low Impact Development (LID) eligibilities for the purposes of its funding programs. The issues surrounding LID funding continue to emerge. Ecology is currently developing an enhanced funding program as a result of new legislative appropriations. This involves input from numerous Ecology and other state experts, federal agencies, and clients and stakeholders.

Ecology will consider the information gathered by this LID workgroup to inform its decision on determining future eligibility of LID and other storm water best management practices.

Comment No. 15 *(written comment)*

Robert J. Masonis, Senior Director, American Rivers, NW Region

WAC 173-95A-120: Projects ineligible for centennial program funding

(26) “The categorical exclusion of projects addressing water quantity is too broad and should be revised. Projects that improve water quantity can significantly improve water quality as well by diluting pollutants and reducing water temperature – a major problem in the state’s rivers and streams. Accordingly, projects that have both water quantity and significant water quality benefits should be eligible.”

Ecology’s Response:

Consistent with legislative intent, Ecology considers the protection of water quality a primary objective when screening projects for funding (RCW 70.146.070). While it is correct that projects solely addressing water quantity issues would not be eligible for funding, Ecology agrees that some water quality-focused project may include minor elements of water quantity.

Ecology updated the language in this rule to reflect this clarification.

Comment No. 16 *(written comment)*

Robert J. Masonis, Senior Director, American Rivers, NW Region

WAC 173-95A-610: The Growth Management Act (Centennial)

“American Rivers strongly supports linking grant and loan eligibility with compliance with the Growth Management Act. While we support a limited exception where there is an urgent public health need or risk of substantial environmental degradation, the available assistance should be limited to a loan; grants should not be available. This would increase the likelihood of compliance with the GMA. Subsections (1) and (5) should be revised accordingly.

The definition of compliance with GMA set forth in section (2) should be revised to expressly include required regulatory updates (e.g., Critical Areas Ordinances).

We propose the addition of another requirement in subsection (5) for funding eligibility where a county, city or town is not in compliance with the GMA. Eligibility for funds should be conditioned on an enforceable commitment by the governmental entity to come into compliance with GMA by a specified date agreed to by Ecology. This requirement should be added in a new subsection (d).”

Ecology’s Response:

This section implements the legislative requirements established by RCW 70.146.070(2) and (3). While these suggestions are certainly interesting, we believe the elements you suggest extend beyond Ecology’s authority under the statute to link funding with GMA compliance. Should the statutory standards change, Ecology will amend this rule accordingly.

Comment No. 17 *(written comment)*

Robert J. Masonis, Senior Director, American Rivers, NW Region

WAC 173-98-030 (Water Pollution Control Revolving Fund)

“(68) ‘Water pollution control activities’ or ‘activities’”

“Subsection (a) should be expanded to include activities taken to prevent or mitigate pollution of surface water. The current proposal would limit such activities to those addressing only underground water.”

Ecology’s Response:

The current rule proposal does not limit funding to only underground water. The definition of water pollution control activities or activities is taken directly from state statute, RCW 90.50A.010(5). The rule should be interpreted in its entirety and not be based on subsections. For example, subsection (a) should not be interpreted without subsection (b).

Ecology’s interpretation is consistent with the legislative statement of policy in RCW 90.50A.005, which specifically refers to and includes “surface and underground waters.”

Comment No. 18 *(written comment)*

Robert J. Masonis, Senior Director, American Rivers, NW Region

WAC 173-98-030 (Water Pollution Control Revolving Fund)

“Subsection (c) should be revised to include activities taken to restore the water quality of rivers and streams. The current proposal only includes activities to restore lake water quality.”

Ecology’s Response:

The current rule proposal does not limit funding to only lakes. See response No. 17.

Comment No. 19 *(written comment)*

Robert J. Masonis, Senior Director, American Rivers, NW Region

WAC 173-98-110: Noneligible (Water Pollution Control Revolving Fund)

(31) “The categorical exclusion of projects addressing water quantity is too broad and should be revised. Projects that improve water quantity can significantly improve water quality as well by diluting pollutants and reducing water temperature – a major problem in the state’s rivers and streams. Accordingly, projects that have both water quantity and significant water quality benefits should be eligible.”

Ecology's Response:

Consistent with legislative intent, Ecology considers the protection of water quality a primary objective when screening projects for funding (RCW 90.50A.010; 90.50A.030(2)). While it is correct that projects solely addressing water quantity issues would not be eligible for funding, Ecology agrees that some water quality-focused project may include minor elements of water quantity.

Ecology updated the language in this rule to reflect this clarification.

Comment No. 20 *(written comment)*

Robert J. Masonis, Senior Director, American Rivers, NW Region

WAC 173-98-710: The Growth Management Act (Water Pollution Control Revolving Fund)

“American Rivers strongly supports linking grant and loan eligibility with compliance with the Growth Management Act. While we support a limited exception where there is an urgent public health need or risk of substantial environmental degradation, the available assistance should be limited to a loan; grants should not be available. This would increase the likelihood of compliance with the GMA. Subsections (1) and (5) should be revised accordingly.

The definition of compliance with GMA set forth in subsection (2) should be revised to expressly include required regulatory updates (e.g., Critical Areas Ordinances).

We propose the addition of another requirement in subsection (5) for funding eligibility where a county, city or town is not in compliance with the GMA. Eligibility for funds should be conditioned on an enforceable commitment by the governmental entity to come into compliance with GMA by a specified date agreed to by Ecology. This requirement should be added in a new subsection (d).”

Ecology's Response:

Please see the response to comment No. 16

Comment No. 21 *(written comment)*

Robert J. Masonis, Senior Director, American Rivers, NW Region

WAC 173-98-730: Cost-effectiveness analysis for water pollution control facilities (Water Pollution Control Revolving Fund)

“Subsection (2) (c) requires that “environmental impact, energy impacts, growth impacts, and community priorities” be evaluated in a mandatory cost-effectiveness analysis, but describes such costs as “nonmonetary”. While not all such costs can be quantified in monetary terms, some can. Accordingly, this provision should be revised to include both “monetary and nonmonetary” costs.

Moreover, subsection (1) should be revised to make clear that the nonmonetary costs are a factor that will be considered in determining the most cost-effective alternative/solution.

Lastly, a new subsection (2) (d) should be added requiring the consideration of monetary and non-monetary project benefits in the cost-effectiveness determination.”

Ecology’s Response:

Ecology has updated the information in the rule to address this comment.

IV. Summary of public involvement opportunities

Please provide a summary of public involvement opportunities for this rule adoption:

Ecology conducted the following outreach:

- ✓ Four initial statewide public comment meetings: October 11, 12, 19, & 20 (2005)
- ✓ One additional Alternative Contracting (Design-Build) public comment meeting: July 12, 2006
- ✓ Eight internal rule development multi-regional workgroup meetings: January 2006-July 2006
- ✓ Four Financial Advisory Council (FAC) briefings: September 2005-June 2007
- ✓ Four FAC rule sub-committee workgroup events: February-July 2006
- ✓ Four Program Management Team briefing: September 2005-June 2007
- ✓ Two additional information-sharing presentations: March 2007 (Olympia & Spokane)

Hearing dates and locations:

- ✓ March 28 & 29, 2007: Olympia & Spokane
- ✓ Four people in attendance at each hearing
- ✓ See attached hearing memo

FOCUS sheet, news releases:

- ✓ Mailed to over 2,165 people

Advertisements and/or newspaper announcements (March 13, 2007):

- ✓ Seattle Times
- ✓ Spokesman Review
- ✓ Yakima Herald
- ✓ Daily Journal of Commerce