

**Attachment A. and B to
RULE-MAKING ORDER- CR 103
Agency: Department of Ecology AO # 09-03**

**Emergency Rule Making to Amend WAC 173-98,
Uses and Limitations of the Water Pollution Control Revolving Fund**

Attachment A: Purpose

The purpose of this emergency rule is to amend existing sections of WAC 173-98 (Uses and Limitations of the Water Pollution Control Revolving Fund), and to add a new section to the rule in order for the Department of Ecology (Ecology) to receive and disburse federal stimulus money to public bodies to fund high priority water quality projects. The administration of the federal stimulus money and the water quality projects that it funds must be consistent with the intent of the federal American Recovery & Reinvestment Act of 2009 (Recovery Act).

The emergency rule will enable Ecology to administer the Recovery Act funds and will provide a framework regarding the application process, funding criteria, loan interest rates and amount of additional subsidies, funding limits, technical and federal environmental review requirements, and additional parameters related to the disbursement of the federal stimulus money. This emergency rule is required because the Recovery Act provides fast-approaching deadlines, including a goal to use half of the stimulus money by June 17, 2009, and a requirement to use all of the stimulus money by February 16, 2010.

If Ecology does not use all of the federal stimulus money by February 16, 2010, it must be returned to the federal government and it will be given to other states that can use it quickly. This would have a negative impact on the Washington State economy and would be a barrier to public bodies needing to implement high priority water quality projects.

In order to meet the intent of the Recovery Act, Ecology reopened its Fiscal Year (FY) 2010 application cycle to solicit new projects to add to the existing FY 2010 draft project list. This emergency rule will provide the framework for funding decisions associated with the application process and the overall management of federal-stimulus-funded projects.

Attachment B: Reasons for this finding

On February 17, 2009, President Obama signed federal legislation that enacted the American Recovery & Reinvestment Act of 2009 (Recovery Act) to address a national economic emergency. The Recovery Act calls for the enactment of legislation to create jobs, restore economic growth, and strengthen America's middle class through measures that modernize the nation's infrastructure. The Recovery Act, Section 5. Emergency Designations, provides that "each amount [appropriated] in this Act is designated as an emergency requirement and necessary to meet emergency needs pursuant to section 204(a) of S. Con. Res. 21 (110th Congress) and section 301(b)(2) of S. Con. Res. 70 (110th Congress), the concurrent resolutions on the budget for fiscal years 2008 and 2009."

The Recovery Act appropriates \$4 billion for capitalization grants for the Clean Water State Revolving Funds under Title VI of the Federal Water Pollution Control Act to fund wastewater infrastructure and innovative green projects. Washington State will receive approximately \$68 million of this appropriation to administer to public bodies for high priority water quality projects. The Recovery Act provides a short timeframe in which to obligate these funds, as well as new options for additional subsidies in the form of forgivable principal, that are not currently provided for in Ecology's state statute or rules.

This emergency rule will allow Ecology to receive stimulus funding and obligate such funding to public bodies in need.