

This is an amendment to 20.7.5 NMAC, Sections 20.7.5.7, 20.7.5.13, and 20.7.5.14 effective November 15, 2007.

20.7.5.7 DEFINITIONS: as used in this part.

~~[(4)]~~ A. "Act" means the Wastewater Facility Construction Loan Act.

B. "Administrative fee" means a fee assessed and collected by the department from the local authority on each loan and expressed as a percentage per year on the outstanding principal amount of the loan, payable by the borrower on the same date that principal and interest on the loan are due, for deposit in the clean water administrative fund.

~~[(2)]~~ C. "Clean Water Act" means the federal Clean Water Act of 1977 and its subsequent amendments or successor provisions.

D. "Clean water state revolving loan administrative fund" means a separate fund created outside the wastewater facility construction loan fund/clean water state revolving fund designated solely for the costs of administering the clean water state revolving loan fund, in accordance with the Clean Water Act. Money remaining in the fund at the end of any fiscal year shall not revert to the general fund but shall accrue to the loan administrative fund and shall be used explicitly for the purpose above.

~~[(3)]~~ E. "Commission" means the water quality control commission.

~~[(4)]~~ F. "Department" means the New Mexico environment department.

~~[(5)]~~ G. "Final loan agreement" means an agreement executed by the local authority and the department upon completion of the project in order to evidence the permanent financing of the final loan amount.

~~[(6)]~~ H. "Final loan amount" means the aggregate amount of the principal disbursed by the department to the local authority during the construction of the wastewater facility, together with accrued and unpaid interest on the aggregate principal thereof.

~~[(7)]~~ I. "Financial assistance" means loans, combination loan/grants, the purchase or refinancing of existing local political subdivision obligations, loan guarantees, credit enhancement techniques to reduce interest on loans and bonds, bond insurance and bond guarantees or any combination of these purposes.

~~[(8)]~~ J. "Force account construction" means construction performed by the employees of a local authority rather than through a contractor.

~~[(9)]~~ K. "Fund" means the wastewater facility construction loan fund established in Section 74-6A-4.

~~[(10)]~~ L. "Local authority" means any municipality, county, water and sanitation district or any similar district, recognized Indian tribe or other issuing agency created pursuant to a joint powers agreement acting on behalf of any entity listed in this subsection.

~~[(11)]~~ M. "Payment" means a disbursement from the fund directly to the local authority.

~~[(12)]~~ N. "Priority list" means the list of eligible projects ranked according to the priority system pursuant to the Wastewater Facility Construction Loan Act.

~~[(13)]~~ O. "Priority system" means the system approved by the commission for ranking eligible projects for which financial assistance applications have been received pursuant to the act.

P. "Wastewater facility" means a publicly owned system for treating or disposing of sewage or wastes either by surface or underground methods, including any equipment, plant, treatment works, structure, machinery, apparatus or land in any combination, that is acquired, used, constructed or operated for the storage, collection, reduction, recycling, reclamation, disposal, separation or treatment of water or wastes, or for the final disposal of residues resulting from the treatment of water or wastes, such as pumping stations, facilities, plants and works, outfall sewers, interceptor sewers and collector sewers and other real or personal property and appurtenances incidental to their use or operation. "Wastewater facility" also includes a nonpoint source water pollution control or Brownfield redevelopment project as eligible under the Clean Water Act.

Q. Other terms will retain their definition as given in the act.

[2-5-87; 10-25-88; 11-18-93; 11-30-95; 09-30-98; NMAC - Rn, 20 NMAC 7.5.108 & A, 7/16/2000; A, 11/15/2007]

20.7.5.13 ELIGIBLE AND INELIGIBLE FINANCIAL ASSISTANCE ITEMS.

A. Eligible items include but are not limited to the costs of engineering feasibility reports, contracted engineering design, inspection of construction, special engineering services, start-up services, contracted construction, materials purchased or equipment leased for force account construction, land or acquisition of existing facilities. For financial assistance made from federal funds, eligible items are those identified pursuant to the Clean Water Act.

B. Financial assistance shall be made only to local authorities that employ or contract with a registered professional engineer to provide and be responsible for engineering services on the project. Such services

include, but are not limited to an engineering report, construction contract documents, supervision of construction and start-up services.

C. Ineligible items include:

- (1) the costs of water rights;
- (2) local administrative costs;
- (3) fulfillment or partial fulfillment of requirements made of a subdivider by the provisions of the Land Subdivision Act or the New Mexico Subdivision Act;
- (4) force account construction; and
- (5) administrative fee.

[2-5-87; 11-24-88; 11-18-93; 20.7.5.13 NMAC - Rn, 20 NMAC 7.5.203 & A, 7/16/2000; A, 11/15/2007]

20.7.5.14 ADMINISTRATION OF THE LOAN PROGRAM AND FUND.

A. The loan program and fund is administered by the department as agent for the commission. Pursuant to Section 74-6A-9.A (10), the department shall develop new, and implement existing, policies, procedures and guidelines necessary and appropriate to implement the provisions of the act and the Clean Water Act.

B. The necessary administrative expenses required of the board, the commission and the department to implement the provisions of the act will be appropriated from the fund.

C. The department may impose and collect a fee from each local authority that receives financial assistance from the fund, which fee shall be deposited into the clean water state revolving loan administrative fund, and used solely for the costs of administering the fund as follows:

(1) an administrative fee may be assessed on all financial assistance provided after January 1, 1996, and will be assessed on the refinancing of financial assistance after October 1, 1993;

(2) if an administrative fee is assessed pursuant to Paragraph (1) of Subsection C of 20.7.5.14 NMAC above, the total administrative fee assessed [will be two percent (2%) of the principal amount of the financial assistance provided to the local authority. The fee will increase the principal amount of the financial assistance and will be retained by the department. The local authority will be responsible for repayment of the entire principal amount of the financial assistance.] shall not exceed five percent of the total loan amount. The fee will be assessed on the outstanding principal balance of the loan payable. These fees are due on the same dates the payment of principal and interest on the loans are due, and shall be charged to each borrower, unless waived from the requirement by the department. The department may determine, establish and revise from time to time, the precise amount of the administrative fee to be charged, based on the projected costs of administering the program and other revenue available to pay such costs. The administrative fee payments must be deposited in the clean water state revolving loan administrative fund as they are received. Interest on the clean water state revolving loan administrative fund shall be transferred to the administrative fund as it is received; and

(3) an administrative fee of two-percent (2%) of the unpaid principal balance of the refinanced loan will be assessed against the local authority and shall be paid into the clean water state revolving loan administrative fund at the time of closing of the refinancing.

D. Financial assistance agreements will be prepared by the department and executed by the local authority for the project which can be financed with available balances in the fund.

E. Repayment of the loan portion of the financial assistance shall begin no later than one year after completion of the project for which the loan was executed and shall be repaid in full no later than twenty years after completion of the project. All principal and interest on loan payments shall be deposited in the fund.

F. The interest rate for the loan portion of the financial assistance shall be the rate in effect when the ~~[original financial assistance]~~ final loan agreement is executed. The interest rate shall not change during the term of the financial assistance unless refinanced in accordance with Subsection I of 20.7.5.14 NMAC. The interest rate shall be the base rate provided in Subsection G of 20.7.5.14 NMAC unless the local authority qualifies for a hardship rate provided in Subsection H of 20.7.5.14 NMAC.

G. The base rate for the loan portion of the financial assistance shall ~~[be]~~ not exceed three percent. At the beginning of each state fiscal year, the commission may determine a base rate for the state fiscal year which is less than or greater than the current base rate.

H. The following hardship rates shall be approved by the department when a local authority meets the associated conditions at the time the financial assistance agreement is executed:

(1) An interest rate which ~~[is]~~ shall not exceed two percent, when the local authority's median household income is less than the statewide non-metropolitan median household income based on the most current decennial U.S. bureau of census statistics.

(2) An interest rate ~~[of]~~ which shall not exceed one percent when the local authority's median household income is less than three-fourths of the statewide non-metropolitan median household income based upon the most current decennial U.S. bureau of census statistics.

(3) A combination of loan and grant funds in those years when grant funding is available for assistance to rural communities.

(4) An interest rate of zero percent when:

(a) the local authority's average user cost is at least fifteen dollars (\$15.00) per month or a higher amount as determined by the commission. The calculation of average user cost shall be consistent with a statewide methodology established by the department; and

(b) the local authority's median household income is less than three-fourths of the statewide non-metropolitan median household income based upon the most current decennial U.S. bureau of census statistics.

I. A local authority may refinance the loan portion of the financial assistance if the local authority later qualifies for a reduced rate. The refinancing may only occur at or after the execution of a final loan agreement.

J. Financial assistance recipients shall comply with all applicable federal, state and local laws and regulations, including but not limited to:

- (1) procurement;
- (2) record keeping;
- (3) accounting;
- (4) audit and inspection;
- (5) occupational health and safety;
- (6) environmental review; and
- (7) nondiscrimination.

K. In the event of default by the local authority, the department as agent for the commission may enforce its rights by suit or mandamus or may utilize all other available remedies under state law.

[11-18-93; 11-30-95; 09-30-98; 20.7.5.14 NMAC - Rn, 20 NMAC 7.5.204 & N, 7/16/2000; & A, 7/16/2000; A, 11/15/2007]