

**NOTICE OF PUBLIC HEARING TO AMEND 20.7.5 NMAC,
WASTEWATER FACILITY CONSTRUCTION LOANS**

The New Mexico Water Quality Control Commission (“Commission” or “WQCC”) will hold a public hearing beginning at 9:00 a.m. on Tuesday, August 14, 2018, and continuing thereafter as necessary in Room 307 at the State Capital Building, 490 Old Santa Fe Trail, Santa Fe, New Mexico. The hearing location may change prior to the hearing date, and those interested in attending should visit the WQCC website: <http://www.env.nm.gov/wqcc> prior to the hearing. The purpose of the hearing is to consider amendments to the rules on Wastewater Facility Construction Loans, 20.7.5 NMAC (“Rules”) proposed by the New Mexico Environment Department (“NMED”).

The amendments would bring the Rules into compliance with recent changes to the Wastewater Facility Construction Loan Act (Sections 74-6A-1 thru 74-6A-15 NMSA 1978) (“Act”). The Act governs the administration of New Mexico’s Clean Water State Revolving Fund (“CWSRF”) which provides low interest loans and grant/loan packages to eligible entities for wastewater and storm water projects. Primarily, these amendments would expand the scope of projects and borrowers eligible for consideration for funding pursuant to the Act. Additionally, the amendments would bring 20.7.5 NMAC into compliance with changed criteria for zero-percent loans through the CWSRF.

The proposed amendments may be reviewed during regular business hours at the NMED Hearing Office located in the Harold Runnels Building, 1190 South St. Francis Drive, Room S-2102 Santa Fe, NM, 87505. The full text of the proposed amendments is also available online at <http://www.env.nm.gov/general/wqcc-18-01-r/>.

The hearing will be conducted in accordance with the WQCC Rulemaking Procedures (20.1.6 NMAC); the Water Quality Act, Section 74-6-6 NMSA 1978; the State Rules Act, Section 14-4-5.3 NMSA 1978 and other applicable procedures.

All interested persons will be given reasonable opportunity at the hearing to submit relevant evidence, data, views, and arguments, orally or in writing; to introduce exhibits; and to examine witnesses. Any person wishing to submit a non-technical written statement for the record in lieu of oral testimony must file such statement prior to the close of the hearing.

Pursuant to the WQCC Rulemaking Procedures, those wishing to present technical testimony must file a written notice of intent to do so with the Commission on or before 5:00 p.m. on July 25, 2018. The notice of intent shall:

- identify the person or entity for whom the witness(es) will testify;
- identify each technical witness that the person intends to present and state the qualifications of the witness, including a description of his or her education and work background;
- include a copy of the direct testimony of each technical witness in narrative form, and state the estimated duration of the direct oral testimony of that witness;
- include the text of any recommended modifications to the proposed regulatory change; and
- list and attach all exhibits anticipated to be offered by that person at the hearing.

Notices of intent for the hearing must be received in the Hearing Office no later than 5:00 p.m. on July 25, 2018, and should reference the name of the regulation, the date of the hearing, and docket number WQCC 18-01(R). Notices of intent to present technical testimony should be submitted to:

Pam Castaneda, Administrator of Boards and Commissions
Office of the Water Quality Control Commission
Harold Runnels Building

P.O. Box 5469
Santa Fe, NM 87502

Those wishing to do so may offer non-technical public comment at the hearing or submit a non-technical written statement in lieu of oral testimony at or before the hearing. Written comments regarding the proposed revisions may be addressed to Ms. Pam Castaneda, Administrator of Boards and Commissions, at the above address, and should reference docket number WQCC 18-01(R).

If any person requires assistance, an interpreter or auxiliary aid to participate in this process, please contact Pam Castaneda, WQCC Administrator by July 31, 2018, at P.O. Box 5469, 1190 St. Francis Drive, Santa Fe, New Mexico, 87502, telephone (505) 827-2425 or email pam.castaneda@state.nm.us. (TDD or TTY users please access the number via the New Mexico Relay Network, 1-800-659-1779 (voice); TTY users: 1-800-659-8331).

The Commission may make a decision on the proposed regulatory change at the conclusion of the hearing or may convene a meeting after the hearing to consider action on the proposal.

Notice of Non-Discrimination

NMED does not discriminate on the basis of race, color, national origin, disability, age or sex in the administration of its programs or activities, as required by applicable laws and regulations. NMED is responsible for coordination of compliance efforts and receipt of inquiries concerning non-discrimination requirements implemented by 40 C.F.R. Part 7, including Title VI of the Civil Rights Act of 1964, as amended; Section 504 of the Rehabilitation Act of 1973; the Age Discrimination Act of 1975, Title IX of the Education Amendments of 1972, and Section 13 of the Federal Water Pollution Control Act Amendments of 1972. If you have any questions about this notice or any of NMED's non-discrimination programs, policies or procedures, you may contact: Kristine Pintado, Non-Discrimination Coordinator New Mexico Environment Department, 1190 St. Francis Dr., Suite N4050, P.O. Box 5469, Santa Fe, NM 87502, (505) 827-2855, nd.coordinator@state.nm.us. If you believe that you have been discriminated against with respect to a NMED program or activity, you may contact the Non-Discrimination Coordinator identified above or visit our website at <https://www.env.nm.gov/NMED/EJ/index.html> to learn how and where to file a complaint of discrimination.

PROPOSED AMENDMENT

This is an amendment to 20.7.5 NMAC, Sections 6, 7, 10, 11, 12, 13, and 14, effective XX/XX/2018.

20.7.5.6 OBJECTIVE: The objective of this part is to establish a program to provide financial assistance to state agencies, local authorities, interstate agencies, and other qualified borrowers for the acquisition, construction, or modification of wastewater facilities or other eligible projects or activities pursuant to the act. [20.7.5.6 NMAC - Rp, 20.7.5.6 NMAC, 12/16/2015; A, XX/XX/2018]

20.7.5.7 DEFINITIONS: as used in this part.

- 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~~ qualified borrower 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.
- 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.
- E.** "Commission" means the water quality control commission.
- F.** "Department" means the New Mexico environment department.
- G.** "Eligible project" means any project or activity that is eligible for funding assistance under Section 603(c) of the Clean Water Act, Section 1383 of Title 33 of the United States Code, as of January 1, 2018,

including a wastewater facility project, a nonpoint source water pollution control project, and a watershed project that meet the criteria of the Clean Water Act.

~~[G.]~~ **H.** “Final loan agreement” means an agreement executed by the ~~[local authority]~~ qualified borrower and the department upon completion of the project in order to ~~[evidence]~~ document the permanent financing of the final loan amount.

~~[H.]~~ **I.** “Final loan amount” means the aggregate amount of the principal disbursed by the department to the ~~[local authority]~~ qualified borrower during the construction of the ~~[wastewater facility]~~ eligible project, together with accrued and unpaid interest on the aggregate principal thereof.

~~[I.]~~ **J.** “Financial assistance” means loans, combination loan/grants, the purchase or refinancing of existing state agency or 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.

~~[J.]~~ **K.** “Force account construction” means construction performed by the employees of a ~~local authority]~~ qualified borrower rather than through a contractor.

~~[K.]~~ **L.** “Fund” means the wastewater facility construction loan fund established in Section 74-6A-4 NMSA 1978 of the Wastewater Facility Construction Loan Act.

~~[L.]~~ **M.** ~~“Local authority” means any municipality, county, water and sanitation district or any similar district, recognized Indian tribe, mutual domestic water consumers association as defined by the Sanitary Projects Act, or other issuing agency created pursuant to a joint powers agreement acting on behalf of any entity listed in this subsection.~~ “Local authority” means a municipality, intermunicipal agency, county, incorporated county, mutual domestic water consumers association as defined by the Sanitary Projects Act, sanitation district, 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.

~~[M.]~~ **N.** “Payment” means a disbursement from the fund directly to the ~~[local authority]~~ qualified borrower.

~~[N.]~~ **O.** “Priority list” means the list of eligible projects ranked according to the priority system pursuant to the Wastewater Facility Construction Loan Act.

~~[O.]~~ **P.** “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.

Q. “Qualified borrower” means a creditworthy borrower with an identified and verifiable repayment source that is eligible for funding pursuant to the Clean Water Act, as of January 1, 2018, including a state agency, an interstate agency, and a local authority.

R. “State agency” means an agency or department of the executive branch of government.

~~[P.]~~ **S.** “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 and ventilating 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.]~~ **T.** Other terms will retain their definition as given in the act.
[20.7.5.7 NMAC - Rp, 20.7.5.7 NMAC, 12/16/2015; A, XX/XX/2018]

20.7.5.10 ELIGIBILITY REQUIREMENTS FOR FINANCIAL ASSISTANCE:

- A.** Only ~~[local authorities]~~ qualified borrowers will be eligible for financial assistance from the fund.
- B.** The project must appear on the current priority list at the time of the financial assistance award.
- C.** To be eligible for financial assistance from the fund, ~~[local authorities]~~ qualified borrowers shall:
 - (1) meet the requirements of financial capability set by the department to assure sufficient revenue to operate and maintain the facility for its useful life, if applicable, and to repay the financial assistance;
 - (2) agree to operate and maintain the ~~[wastewater]~~ eligible project facility so that the project facility will function properly over its structural and material design life, if applicable;
 - (3) agree to maintain separate project accounts, to maintain project accounts properly in accordance with generally accepted accounting principles and to conduct an audit of the project's financial records;
 - (4) agree to provide a written assurance prior to construction, signed by an attorney, or other authorized representative, that the ~~[local authority]~~ qualified borrower has or will acquire proper title, easements and

rights-of-way to the property upon or through which the ~~[wastewater]~~ eligible project facility proposed for funding is to be constructed or extended;

(5) require the contractor of the ~~[construction]~~ eligible project to post a performance and payment bond in accordance with the requirements of Section 13-4-18 NMSA 1978 and its subsequent amendments and successor provisions;

(6) provide a written notice of project completion ~~[and start of operation of the wastewater facility]~~; and

(7) provide such information to the department as required ~~[by the commission]~~ in order to comply with the provisions of the Clean Water Act and state law.

D. Financial assistance shall be made only to ~~[local authorities]~~ qualified borrowers that establish one or more dedicated sources of revenue to repay the money received from the commission and to provide for operation, maintenance, and equipment replacement expenses.

[20.7.5.10 NMAC - Rp, 20.7.5.10 NMAC, 12/16/2015; A, XX/XX/2018]

20.7.5.11 APPLICATION PROCEDURES FOR PRIORITY LIST PLACEMENT:

A. Applications for financial assistance shall be made by the ~~[local authority]~~ qualified borrower on a form specified by the department.

B. Applicants for financial assistance shall provide the department with:

(1) a description of the scope of work of the project;

(2) a cost estimate of the project; and

(3) a target date for initiation of construction.

C. The department will review the application for eligibility, and technical merits. The department will notify the ~~[local authority]~~ qualified borrower of any inadequacies in the submittal. The ~~[local authority]~~ qualified borrower may correct any inadequacies and resubmit the application.

D. Upon determination by the department that an application is eligible and complete, the application will be ranked utilizing the priority system and will be placed on the priority list.

[20.7.5.11 NMAC - Rp, 20.7.5.11 NMAC, 12/16/2015; A, XX/XX/2018]

20.7.5.12 PRIORITY SYSTEM AND PRIORITY LIST:

A. Financial assistance shall only be made to ~~[local authorities]~~ qualified borrowers on the project priority list developed in accordance with the priority system as adopted by the commission.

B. The commission shall adopt a system for the ranking of projects for financial assistance.

C. The department shall prepare a priority list of applicants for financial assistance based on the priority system approved by the commission.

[20.7.5.12 NMAC - Rp, 20.7.5.12 NMAC, 12/16/2015; A, XX/XX/2018]

20.7.5.13 ELIGIBLE AND INELIGIBLE FINANCIAL ASSISTANCE ITEMS:

A. Eligible items for financial assistance made from state only funds 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]~~ qualified borrowers that employ or contract with a ~~[registered]~~ New Mexico licensed professional engineer to provide and be responsible for engineering services on the project. Such services include, but are not limited to ~~[an engineering report]~~ engineering reports, construction contract documents, supervision of construction, and start-up services.

C. Ineligible for financial assistance made with state only funds items include:

(1) the costs of water rights;

(2) local authority 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]~~ fees.

[20.7.5.13 NMAC - Rp, 20.7.5.13 NMAC, 12/16/2015; A, XX/XX/2018]

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) of the Wastewater Facility Construction Loan Act, 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]~~ qualified borrower 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 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 of the unpaid principal balance of the refinanced loan will be assessed against the ~~[local authority]~~ qualified borrower 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]~~ qualified borrower 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 30 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 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. 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. 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) When the local authority's per capita income is less than the statewide per capita income based on the most current United States (U.S.) bureau of census statistics.

(2) The local authority's per capita income is less than three-fourths of the statewide per capita income based upon the most current 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 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]~~ per capita income is less than three-fourths of the statewide non-metropolitan ~~[median household income]~~ per capita income based upon the most current U.S. bureau of census statistics.

| Interest Rate | Local Authority Criteria |
|----------------------|---|
| 2.375% | Per capita income equal to or above statewide average; base interest rate. (G.) |
| 1.2% | Per capita income less than that statewide average. (H.)(1) |
| 0.6% | Per capita income less than ¾ of the statewide average. (H.)(2) |

| | |
|----|---|
| 0% | [Median household income] <u>Per capita income</u> less than $\frac{3}{4}$ if the statewide [median household income] <u>per capita income</u> and the average user cost is equal to or greater than \$15.00 per month. (H.)(4)(a)(b) |
|----|---|

I. The interest rate for a state agency shall be the lowest interest rate available above zero percent in 20.7.5.14 H.

~~[I.]~~ **J.** 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.]~~ **K.** 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) non-discrimination.

~~[K.]~~ **L.** In the event of default by the ~~[local authority]~~ qualified borrower, 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. [20.7.5.14 NMAC - Rp, 20.7.5.14 NMAC, 12/16/2015; A, 05/30/2017; A, XX/XX/2018]