

COPY



**STATE OF NEW MEXICO
BEFORE THE WATER QUALITY CONTROL COMMISSION**

**IN THE MATTER OF PROPOSED REVISIONS TO:
20.7.5 NMAC – Wastewater Facility Construction Loans
and 20.7.6 NMAC – Wastewater Facility Construction Loan
Policies and Guidelines**

No. WQCC 15-06

PETITION FOR REGULATORY CHANGE

The New Mexico Environment Department ("Department"), pursuant to the Guidelines for Water Quality Control Commission Regulation Hearings (as amended June 8, 1993), petitions the Water Quality Control Commission ("Commission") to revise 20.7.5 NMAC – *Wastewater Facility Construction Loans*, and 20.7.6 NMAC - *Wastewater Facility Construction Loan Policies and Guidelines*. The statement of reasons in support of this petition follows below. The Commission is authorized to adopt these regulations by the Wastewater Facility Construction Loan Act, NMSA 1978, Section 74-6A-9(A)(10).

The Department requests that the Commission schedule the hearing for August 11, 2015, in conjunction with the Commission's regular meeting. The Department anticipates that its testimony regarding the proposed revisions will require less than one hour.

Respectfully submitted,

NEW MEXICO ENVIRONMENT DEPARTMENT
OFFICE OF GENERAL COUNSEL

A handwritten signature in black ink, appearing to be 'BJ', written over a horizontal line.

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STATEMENT OF REASONS

The Wastewater Facility Construction Loan Act (“Act”) (NMSA 1978, §§ 74-6A-1 to -15 (1986)) provides for the creation of the Wastewater Facility Construction Loan Fund (“Fund”), which is also referred to as the Clean Water State Revolving Loan Fund. The purpose of the Fund is to provide low-cost financing for wastewater and storm water drainage projects that protect surface and ground water, including projects that control nonpoint source water pollution and projects involving solid waste and septic tank installations. The Fund is administered by the Construction Programs Bureau of the New Mexico Environment Department.

During the 2015 New Mexico Legislative Session, Senator Richard Martinez sponsored Senate Bill 227 (“SB 227”), which proposed amendments to the Act that would make mutual domestic water consumers associations eligible for funding under the Act and lengthen the maximum repayment period for borrowers from twenty (20) years to thirty (30) years. Specifically, SB 227 amended the Act in the following two ways:

1) SB 227 amended Section 74-6A-3(F) of the Act to add “mutual domestic water consumers association[s] as defined by the Sanitary Projects Act” to the definition of “local authorit[ies].” This amendment makes mutual domestics eligible for project funding under the Fund.

2) SB 227 amended Section 74-6A-8(C) of the Act to change the repayment period from “twenty years after completion of [the] construction” to “thirty years after completion of [the] construction.” This amendment brings the terms of the Fund in line with recent repayment amendments made to the federal Clean Water Act on October 1, 2014. Additionally, this amendment may lower the annual repayment amount for borrowers to increase debt capacity and more closely matches the term of the loan with the useful life of the system being funded.

On April 9, 2015, SB 227 was signed and enacted into law by Governor Susana Martinez. *See* Chapter 112, 52nd Legislature, 1st Session, Laws of New Mexico (2015). Accordingly, to satisfy and comply with the amendments signed into law, the Construction Programs Bureau proposes to the Water Quality Control Commission the following changes to the 20.7.5 NMAC – Wastewater Facility Construction Loans, and 20.7.6 NMAC - Wastewater Facility Construction Loan Policies and Guidelines.

Below are excerpts of each proposed amendment to 20.7.5 NMAC and 20.7.6 NMAC, followed by a brief explanation (in *italics*) of the impetus for the amendments, attached hereto as Exhibit A. Following these excerpts and explanations, the entire texts of 20.7.5 NMAC and 20.7.6 NMAC proposed for amendment are presented in redline/strikeout format, attached hereto as Exhibit B. A copy of SB 227 is attached hereto as Exhibit C.

**TITLE 20 ENVIRONMENTAL PROTECTION
CHAPTER 7 WASTEWATER AND WATER SUPPLY FACILITIES
PART 5 WASTEWATER FACILITY CONSTRUCTION LOANS**

20.7.5.7 DEFINITIONS: as used in this part.

L. "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.

[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; A, XX/XX/2015]

This amendment to 20.7.5.7.L NMAC adds mutual domestic water consumers associations to the definition of "local authority," making such entities eligible for funding under the Clean Water State Revolving Loan Fund. This amendment is necessary to comply with the amendment to NMSA 1978, Section 74-6A-3(F) of the Wastewater Facility Construction Loan Act, which was made during the 2015 New Mexico Legislative Session.

20.7.5.14 ADMINISTRATION OF THE LOAN PROGRAM AND 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~~ thirty years after completion of the project. All principal and interest on loan payments shall be deposited in the fund.

[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; A, XX/XX/2015]

This amendment to 20.7.5.14.E NMAC extends the repayment period for loans made from the Clean Water State Revolving Loan Fund from twenty (20) years to thirty (30) years. This amendment is necessary to comply with the amendment to NMSA 1978, Section 74-6A-8(C) of the Wastewater Facility Construction Loan Act, which was made during the 2015 New Mexico Legislative Session.

**TITLE 20 ENVIRONMENTAL PROTECTION
CHAPTER 7 WASTEWATER AND WATER SUPPLY FACILITIES
PART 6 WASTEWATER FACILITY CONSTRUCTION LOAN POLICIES AND
GUIDELINES**

20.7.6.7 DEFINITIONS. As used in this part.

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.

[2-5-87; 10-22-88; 11-30-95; 20.7.6.7 NMAC - Rn, 20 NMAC 7.6.109 & A, 7/16/2000; A, 10/29/2007; A, XX/XX/2015]

This amendment to 20.7.6.7.M NMAC adds mutual domestic water consumers associations to the definition of "local authority," making such entities eligible for funding under the Clean Water State Revolving Loan Fund. This amendment is necessary to comply with the amendment to NMSA 1978, Section 74-6A-3(F) of the Wastewater Facility Construction Loan Act, which was made during the 2015 New Mexico Legislative Session.

20.7.6.11 GENERAL.

B. Two types of loans are available: planning/design loans and construction loans.

(2) Construction loans. The length of the loan repayment period will not exceed ~~twenty (20)~~ thirty (30) years or the expected life of the project improvements, whichever is less. Loans of lesser amounts will receive a shorter repayment period depending upon the borrower's ability to service the debt in a reduced time period. The construction loan may include the cost of design and may precede the design phase of the project if the design period is relatively short and if a reasonable estimate of construction costs is available. Since the interim loan agreement is essentially a line-of-credit for planning, design and construction of the project the borrower must agree to complete the appropriate planning requirements prior to proceeding to the design and construction phases of the project.

[10-22-88; 11-30-95; 20.7.6.11 NMAC - Rn, 20 NMAC 7.6.200 & A, 7/16/2000; A, 10/29/2007; A, XX/XX/2015]

This amendment to 20.7.6.11.B(2) NMAC extends the repayment period for loans made from the Clean Water State Revolving Loan Fund from twenty (20) years to thirty (30) years. This amendment is necessary to comply with the amendment to NMSA 1978, Section 74-6A-8(C) of the Wastewater Facility Construction Loan Act, which was made during the 2015 New Mexico Legislative Session.

Exhibit A – Excerpts of proposed amendments and explanations

20.7.6.16 PROJECT PLANNING GUIDELINES.

B. The most important outcome of the planning process is the selection of the best water pollution control alternative.

The facilities plan (feasibility report or engineer's report) should include:

(3) A cost-effective analysis of the project in meeting enforceable requirements over the design life of the project which includes a ~~20~~30-year reserve capacity, if appropriate. Costs to be considered must include the present worth or equivalent annual value of all capital costs as well as operation and maintenance costs. Population forecasts should be consistent with the state needs survey.

[10-22-88; 20.7.6.16 NMAC - Rn, 20 NMAC 7.6.302 & A, 7/16/2000; A, XX/XX/2015]

This amendment to 20.7.6.16.B(3) NMAC extends the reserve capacity period for construction projects funded by the Clean Water State Revolving Loan Fund from twenty (20) years to thirty (30) years. This amendment is necessary to comply with the amendment to NMSA 1978, Section 74-6A-8(C) of the Wastewater Facility Construction Loan Act, which was made during the 2015 New Mexico Legislative Session.

20.7.6.21 FINAL LOAN AGREEMENT AND REPAYMENT POLICY. Upon completion of the planning/design or construction project and after final disbursement of principal to the borrower:

C. NMED shall prepare a repayment schedule for the borrower which details principal, plus accrued interest and administrative fees due. The schedule shall fully amortize the loan within ~~twenty~~ thirty years of project completion. In some cases the amortization shall be less than ~~twenty~~ thirty years. NMED shall address each loan on a case-by-case basis. The borrower may prepay the loan or any portion thereof at any time. The repayment period for a planning/design loan shall not exceed five years. The first annual repayment of principal, interest and administrative fees shall be due within one year after completion of the project.

[10-22-88; 11-30-95; 20.7.6.21 NMAC - Rn, 20 NMAC 7.6.602 & A, 7/16/2000; A, 10/29/2007; A, XX/XX/2015]

This amendment to 20.7.6.21.C NMAC extends amortization period for loans funded by the Clean Water State Revolving Loan Fund from twenty (20) years to thirty (30) years. This amendment is necessary to comply with the amendment to NMSA 1978, Section 74-6A-8(C) of the Wastewater Facility Construction Loan Act, which was made during the 2015 New Mexico Legislative Session.

Exhibit B – Entire texts of 20.7.5 NMAC and 20.7.6 NMAC

1 **TITLE 20 ENVIRONMENTAL PROTECTION**
2 **CHAPTER 7 WASTEWATER AND WATER SUPPLY FACILITIES**
3 **PART 5 WASTEWATER FACILITY CONSTRUCTION LOANS**
4
5 **20.7.5.1 ISSUING AGENCY.** Water Quality Control Commission.
6 [11-30-95; 20.7.5.1 NMAC - Rn, 20 NMAC 7.5.100, 7/16/2000]
7
8 **20.7.5.2 SCOPE.** This part applies to financial assistance and actions pursuant to the Wastewater Facility
9 Construction Loan Act.
10 [2-5-87; 11-30-95; 20.7.5.2 NMAC - Rn, 20 NMAC 7.5.101, 7/16/2000]
11
12 **20.7.5.3 STATUTORY AUTHORITY.** Wastewater Facility Construction Loan Act, NMSA 1978,
13 Sections 74-6A-1 to 15 as amended.
14 [2-5-87; 11-30-95; 20.7.5.3 NMAC - Rn, 20 NMAC 7.5.102, 7/16/2000]
15
16 **20.7.5.4 DURATION.** Permanent.
17 [11-30-95; 20.7.5.4 NMAC - Rn, 20 NMAC 7.5.103, 7/16/2000]
18
19 **20.7.5.5 EFFECTIVE DATE.** July 16, 2000 This part amends and replaces 20 NMAC 7.5 filed October
20 25, 1995, amended September 17, 1998 entitled Wastewater Facility Construction Loan Act.
21 **A.** All references to 20 NMAC 7.5-7.7 or to the Wastewater Facility Construction Loan Act, in any
22 other rule shall be construed as a reference to this part.
23 **B.** The amendment and replacement of 20 NMAC 7.5-7.7 shall not affect any administrative or
24 judicial enforcement action pending on the effective date of such amendment nor the validity of any financial
25 assistance provided pursuant to 20.7.5 NMAC - 20.7.7 NMAC.
26 [11-30-95; 20.7.5.5 NMAC - Rn, 20 NMAC 7.5.104 & A, 7/16/2000]
27
28 **20.7.5.6 OBJECTIVE.** The objective of this part is to establish a program to provide financial assistance
29 to local authorities for the acquisition, construction or modification of wastewater facilities pursuant to the act.
30 [11-30-95; 20.7.5.6 NMAC - Rn, 20 NMAC 7.5.105, 7/16/2000]
31
32 **20.7.5.7 DEFINITIONS:** as used in this part.
33 **A.** "Act" means the Wastewater Facility Construction Loan Act.
34 **B.** "Administrative fee" means a fee assessed and collected by the department from the local
35 authority on each loan and expressed as a percentage per year on the outstanding principal amount of the loan,
36 payable by the borrower on the same date that principal and interest on the loan are due, for deposit in the clean
37 water administrative fund.
38 **C.** "Clean Water Act" means the federal Clean Water Act of 1977 and its subsequent amendments or
39 successor provisions.
40 **D.** "Clean water state revolving loan administrative fund" means a separate fund created outside the
41 wastewater facility construction loan fund/clean water state revolving fund designated solely for the costs of
42 administering the clean water state revolving loan fund, in accordance with the Clean Water Act. Money remaining
43 in the fund at the end of any fiscal year shall not revert to the general fund but shall accrue to the loan administrative
44 fund and shall be used explicitly for the purpose above.
45 **E.** "Commission" means the water quality control commission.
46 **F.** "Department" means the New Mexico environment department.
47 **G.** "Final loan agreement" means an agreement executed by the local authority and the department
48 upon completion of the project in order to evidence the permanent financing of the final loan amount.
49 **H.** "Final loan amount" means the aggregate amount of the principal disbursed by the department to
50 the local authority during the construction of the wastewater facility, together with accrued and unpaid interest on
51 the aggregate principal thereof.
52 **I.** "Financial assistance" means loans, combination loan/grants, the purchase or refinancing of
53 existing local political subdivision obligations, loan guarantees, credit enhancement techniques to reduce interest on
54 loans and bonds, bond insurance and bond guarantees or any combination of these purposes.
55 **J.** "Force account construction" means construction performed by the employees of a local authority
56 rather than through a contractor.

Exhibit B – Entire texts of 20.7.5 NMAC and 20.7.6 NMAC

- 1 K. "Fund" means the wastewater facility construction loan fund established in Section 74-6A-4.
2 L. "Local authority" means any municipality, county, water and sanitation district or any similar
3 district, recognized Indian tribe, mutual domestic water consumers association as defined by the Sanitary Projects
4 Act, or other issuing agency created pursuant to a joint powers agreement acting on behalf of any entity listed in this
5 subsection.
6 M. "Payment" means a disbursement from the fund directly to the local authority.
7 N. "Priority list" means the list of eligible projects ranked according to the priority system pursuant to
8 the Wastewater Facility Construction Loan Act.
9 O. "Priority system" means the system approved by the commission for ranking eligible projects for
10 which financial assistance applications have been received pursuant to the act.
11 P. "Wastewater facility" means a publicly owned system for treating or disposing of sewage or
12 wastes either by surface or underground methods, including any equipment, plant, treatment works, structure,
13 machinery, apparatus or land in any combination, that is acquired, used, constructed or operated for the storage,
14 collection, reduction, recycling, reclamation, disposal, separation or treatment of water or wastes, or for the final
15 disposal of residues resulting from the treatment of water or wastes, such as pumping stations, facilities, plants and
16 works, outfall sewers, interceptor sewers and collector sewers and other real or personal property and appurtenances
17 incidental to their use or operation. "Wastewater facility" also includes a nonpoint source water pollution control or
18 Brownfield redevelopment project as eligible under the Clean Water Act.
19 Q. Other terms will retain their definition as given in the act.
20 [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;
21 A. XX/XX/2015]
22
23 **20.7.5.8 CONSTRUCTION.** This part shall be liberally construed to effectuate the purposes of the act. If
24 any provision or application of this part is held invalid, the remainder, or its application to other situations or
25 persons, shall not be affected.
26 [11-30-95; 20.7.5.8 NMAC - Rn, 20 NMAC 7.5.106, 7/16/2000]
27
28 **20.7.5.9 COMPLIANCE WITH OTHER REGULATIONS.** Compliance with this part does not relieve
29 a person from the obligation to comply with other applicable state and federal regulations.
30 [11-30-95; 20.7.5.9 NMAC - Rn, 20 NMAC 7.5.107, 7/16/2000]
31
32 **20.7.5.10 ELIGIBILITY REQUIREMENTS FOR FINANCIAL ASSISTANCE.**
33 A. Only local authorities will be eligible for financial assistance from the fund.
34 B. The project must appear on the current priority list at the time of the financial assistance award.
35 C. To be eligible for financial assistance from the fund, local authorities shall:
36 (1) meet the requirements of financial capability set by the department to assure sufficient
37 revenue to operate and maintain the facility for its useful life and to repay the financial assistance;
38 (2) agree to operate and maintain the wastewater facility so that the facility will function
39 properly over its structural and material design life;
40 (3) agree to maintain separate project accounts, to maintain project accounts properly in
41 accordance with generally accepted accounting principles and to conduct an audit of the project's financial records;
42 (4) provide a written assurance, signed by an attorney, that the local authority has or will
43 acquire proper title, easements and rights-of-way to the property upon or through which the wastewater facility
44 proposed for funding is to be constructed or extended;
45 (5) require the contractor of the construction project to post a performance and payment bond
46 in accordance with the requirements of NMSA 1978, Section 13-4-18 and its subsequent amendments and successor
47 provisions;
48 (6) provide a written notice of completion and start of operation of the wastewater facility;
49 and
50 (7) provide such information to the department as required by the commission in order to
51 comply with the provisions of the Clean Water Act and state law.
52 D. Financial assistance shall be made only to local authorities that establish one or more dedicated
53 sources of revenue to repay the money received from the commission and to provide for operation, maintenance and
54 equipment replacement expenses.
55 [2-5-87; 11-18-93; 11-30-95; 20.7.5.10 NMAC - Rn, 20 NMAC 7.5.200 & A, 7/16/2000]
56

Exhibit B – Entire texts of 20.7.5 NMAC and 20.7.6 NMAC

1 **20.7.5.11 APPLICATION PROCEDURES FOR PRIORITY LIST PLACEMENT.**

2 A. Applications for financial assistance shall be made by the local authority on a form specified by
3 the department.

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

- 5 (1) a description of the scope of work of the project;
- 6 (2) a cost estimate of the project; and
- 7 (3) a target date for initiation of construction.

8 C. The department will review the application for eligibility, and technical merits. The department
9 will notify the local authority of any inadequacies in the submittal. The local authority may correct any
10 inadequacies and resubmit the application.

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

13 [2-5-87; 11-18-93; 20.7.5.11 NMAC - Rn, 20 NMAC 7.5.201 & A, 7/16/2000]

14
15 **20.7.5.12 PRIORITY SYSTEM AND PRIORITY LIST.**

16 A. Financial assistance shall only be made to local authorities on the project priority list developed in
17 accordance with the priority system as adopted by the commission.

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

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

21 [2-5-87; 11-18-93; 20.7.5.12 NMAC - Rn, 20 NMAC 7.5.202, 7/16/2000]

22
23 **20.7.5.13 ELIGIBLE AND INELIGIBLE FINANCIAL ASSISTANCE ITEMS.**

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

29 B. Financial assistance shall be made only to local authorities that employ or contract with a
30 registered professional engineer to provide and be responsible for engineering services on the project. Such services
31 include, but are not limited to an engineering report, construction contract documents, supervision of construction
32 and start-up services.

33 C. Ineligible items include:

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

40 [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]

41
42 **20.7.5.14 ADMINISTRATION OF THE LOAN PROGRAM AND FUND.**

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

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

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

51 (1) an administrative fee may be assessed on all financial assistance provided after January 1,
52 1996, and will be assessed on the refinancing of financial assistance after October 1, 1993;

53 (2) if an administrative fee is assessed pursuant to Paragraph (1) of Subsection C of 20.7.5.14
54 NMAC above, the total administrative fee assessed shall not exceed five percent of the total loan amount. The fee
55 will be assessed on the outstanding principal balance of the loan payable. These fees are due on the same dates the
56 payment of principal and interest on the loans are due, and shall be charged to each borrower, unless waived from

Exhibit B – Entire texts of 20.7.5 NMAC and 20.7.6 NMAC

1 the requirement by the department. The department may determine, establish and revise from time to time, the
2 precise amount of the administrative fee to be charged, based on the projected costs of administering the program
3 and other revenue available to pay such costs. The administrative fee payments must be deposited in the clean water
4 state revolving loan administrative fund as they are received. Interest on the clean water state revolving loan
5 administrative fund shall be transferred to the administrative fund as it is received; and

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

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

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

14 **F.** The interest rate for the loan portion of the financial assistance shall be the rate in effect when the
15 final loan agreement is executed. The interest rate shall not change during the term of the financial assistance unless
16 refinanced in accordance with Subsection I of 20.7.5.14 NMAC. The interest rate shall be the base rate provided in
17 Subsection G of 20.7.5.14 NMAC unless the local authority qualifies for a hardship rate provided in Subsection H of
18 20.7.5.14 NMAC.

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

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

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

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

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

32 (4) An interest rate of zero percent when:
33 (a) the local authority's average user cost is at least fifteen dollars (\$15.00) per
34 month or a higher amount as determined by the commission. The calculation of average user cost shall be consistent
35 with a statewide methodology established by the department; and

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

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

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

- 43 (1) procurement;
- 44 (2) record keeping;
- 45 (3) accounting;
- 46 (4) audit and inspection;
- 47 (5) occupational health and safety;
- 48 (6) environmental review; and
- 49 (7) nondiscrimination.

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

52 [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,
53 11/15/2007; A. XX/XX/2015]

54
55
56 **HISTORY OF 20.7.5 NMAC:**

Exhibit B – Entire texts of 20.7.5 NMAC and 20.7.6 NMAC

1 **Pre-NMAC History:** Material in the part was derived from that previously filed with the commission of public
2 records - state records center and archives:
3 WQC Rule 67-2, Regulations Governing Water Pollution Control in New Mexico, filed 12/5/67;
4 WQC Rule 72-1, Water Quality Control Commission Regulations, filed 8/4/72;
5 WQCC Rule 77-1, Amended Water Quality Control Commission Regulations, filed 1/18/77;
6 WQCC Rule 81-2, Water Quality Control Commission Regulations, filed 6/2/81;
7 WQCC Rule 82-1, Water Quality Control Commission Regulations, filed 8/19/82.

8

9 **OTHER HISTORY:**

10 That applicable portion of WQCC Rule 82-1, Water Quality Control Commission Regulations (filed 8/19/82) was
11 renumbered, reformatted and replaced by 20 NMAC 7.5, Wastewater and Water Supply Facilities - Wastewater
12 Facility Construction Loans, effective 11/30/95.
13 20 NMAC 7.5, Wastewater and Water Supply Facilities - Wastewater Facility Construction Loans (filed 10/25/95)
14 renumbered, reformatted, amended, and replaced by 20.7.5 NMAC, Wastewater and Water Supply Facilities -
15 Wastewater Facility Construction Loans, effective 7/16/2000.

16

Exhibit B – Entire texts of 20.7.5 NMAC and 20.7.6 NMAC

1 **TITLE 20 ENVIRONMENTAL PROTECTION**
2 **CHAPTER 7 WASTEWATER AND WATER SUPPLY FACILITIES**
3 **PART 6 WASTEWATER FACILITY CONSTRUCTION LOAN POLICIES AND GUIDELINES**
4

5 **20.7.6.1 ISSUING AGENCY.** New Mexico Environment Department.
6 [11-30-95; 20.7.6.1 NMAC - Rn, 20 NMAC 7.6.100, 7/16/2000]
7

8 **20.7.6.2 SCOPE.** These policies, procedures and guidelines apply to all construction projects funded in-
9 part from funds within the wastewater facilities construction loan fund.
10 [10-22-88, 11-30-95; 20.7.6.2 NMAC - Rn, 20 NMAC 7.6.101, 7/16/2000]
11

12 **20.7.6.3 STATUTORY AUTHORITY.** Department of Environment Act, NMSA 1978, 9-7A-6.F;
13 Wastewater Facility Construction Loan Act, NMSA 1978, Sections 74-6A-1 to 15; and Water Quality Control Act,
14 NMSA 1978, Sections 74-6-1 to 17.
15 [10-22-88, 11-30-95; 20.7.6.3 NMAC - Rn, 20 NMAC 7.6.102, 7/16/2000]
16

17 **20.7.6.4 DURATION.** Permanent.
18 [11-30-95; 20.7.6.4 NMAC - Rn, 20 NMAC 7.6.103, 7/16/2000]
19

20 **20.7.6.5 EFFECTIVE DATE.** July 16, 2000. This Part amends and replaces the New Mexico Wastewater
21 Facility Construction Loan Fund Policies, Procedures and Guidelines, HED 88-2 (EID), filed September 22, 1988,
22 as amended.

23 **A.** All references to HED 88-2 (EID) or to the New Mexico Wastewater Facility Construction Loan
24 Fund Policies, Procedures and Guidelines in any other rule shall be construed as a reference to this Part.

25 **B.** The amendment and replacement of HED 88-2 (EID) shall not affect any administrative or judicial
26 enforcement action pending on the effective date of such amendment nor the validity of any financial assistance
27 provided pursuant to HED 88-2 (EID).

28 [11-30-95; 20.7.6.5 NMAC - Rn, 20 NMAC 7.6.104 & A, 7/16/2000]
29

30 **20.7.6.6 OBJECTIVE.** The objective of this Part is to establish policies, procedures and guidelines in the
31 administration of loans from the wastewater facility construction loan fund.
32 [10-22-88, 11-30-95; 20.7.6.6 NMAC - Rn, 20 NMAC 7.6.105, 7/16/2000]
33

34 **20.7.6.7 DEFINITIONS.** As used in this part.

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

39 **B.** "Applicant" means a local authority that meets the following criteria: (1) placement on the current
40 fiscal year priority list, (2) financial capability to service a loan, to perform operation and maintenance, to maintain a
41 replacement fund and debt service reserve fund, and (3) readiness to proceed.

42 **C.** "Borrower" means a local authority whose application has been approved for eligibility and is
43 ready to proceed to an interim loan agreement.

44 **D.** "Commission" or "WQCC" means the New Mexico water quality control commission.

45 **E.** "Department" or "NMED" means the New Mexico environment department.

46 **F.** "Event of default" means the borrower failed to make the complete annual payment of principal,
47 plus interest and administrative fee when the same shall become due and payable, as identified in the repayment
48 schedule of the final loan agreement.

49 **G.** "Final loan agreement" means a note issued by the borrower and the state upon completion of the
50 project to evidence the permanent financing of the final loan amount in substantially the form as shown in the
51 attachments.

52 **H.** "Final loan amount" means the aggregate amount of the principal disbursed by NMED to the
53 borrower during the project, together with accrued interest on the aggregate principal thereof.

54 **I.** "Force account" means that the local authority provides the materials, equipment, or labor
55 necessary to design or construct the project.

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- 1 J. "Fund" or "SRF" means the state water pollution control revolving fund pursuant to Title VI of the
2 Clean Water Act.
- 3 K. "Interim loan agreement" means a note, in the form of a line-of-credit, issued by the borrower and
4 the state at the beginning of the project in anticipation of the issuance of the final loan agreement upon completion
5 of the project in substantially the form as shown in the attachments.
- 6 L. "Loan issuance" means execution of the final loan agreement and revised promissory note.
- 7 M. "Local authority" means any municipality, county, water and sanitation district or any similar
8 district, recognized Indian tribe, mutual domestic water consumers association as defined by the Sanitary Projects
9 Act, or other issuing agency created pursuant to a joint powers agreement acting on behalf of any entity listed in this
10 subsection.
- 11 N. "Operate and maintain" means all necessary activities including replacement of equipment or
12 appurtenances to ensure the dependable and economical function of a wastewater facility in accordance with its
13 intended purpose.
- 14 O. "Priority system" means the system for ranking wastewater facility construction projects for which
15 loan applications have been received pursuant to the Wastewater Facility Construction Loan Act.
- 16 P. "Priority list" means the list of wastewater facility construction projects ranked according to the
17 priority system pursuant to the Wastewater Facility Construction Loan Act.
- 18 Q. "Project" means the planning, design, construction, repair, extension, improvement, alteration, or
19 reconstruction of the wastewater facilities by the borrower as described in the loan application.
- 20 R. "Project completion" means the date that operations of the completed works are initiated or
21 capable of being initiated, whichever is earlier. This also applies to individual phases or segments.
- 22 S. "Project engineer" means the NMED staff engineer assigned to the project.
- 23 T. "Wastewater facility" means a publicly owned system for treating or disposing of sewage or
24 wastes either by surface or underground methods, including any equipment, plant, treatment works, structure,
25 machinery, apparatus or land in any combination, that is acquired, used, constructed or operated for the storage,
26 collection, reduction, recycling, reclamation, disposal, separation or treatment of water or wastes, or for the final
27 disposal of residues resulting from the treatment of water or wastes, such as pumping stations, facilities, plants and
28 works, outfall sewers, interceptor sewers and collector sewers and other real or personal property and appurtenances
29 incidental to their use or operation. "Wastewater facility" also includes a nonpoint source water pollution control or
30 Brownfield redevelopment project as eligible under the Clean Water Act.
31 [2-5-87; 10-22-88; 11-30-95; 20.7.6.7 NMAC - Rn, 20 NMAC 7.6.109 & A, 7/16/2000; A, 10/29/2007; A,
32 XX/XX/2015

33
34
35 **20.7.6.8 BACKGROUND.** The Environment Department Act, NMSA 1978, Section 9-7A-6.F, provides
36 authority to the secretary of environment to make and adopt reasonable and procedural rules and regulations as may
37 be necessary to carry out the duties of the department and its division. The authority for the New Mexico
38 environment department to provide loans to eligible applicants for the construction of wastewater facilities is
39 provided in NMSA 1978, Sections 74-6A-1 to 15 Wastewater Facility Construction Loan Act and in the New
40 Mexico Water Quality Act, NMSA 1978, Sections 74-6-1 to 17. The water quality control commission adopted
41 regulations pursuant to the Wastewater Facility Construction Loan Act which address
42 6-102 Definitions;
43 6-103 Eligibility;
44 6-104 Eligible and Noneligible Construction Items;
45 6-105 Priority System and Priority List; and
46 6-107 Application Procedures.
47 Title VI of the Federal Clean Water Act, as amended, authorizes the U. S. environmental protection agency (EPA) to
48 make capitalization grants to states for deposit in the wastewater facility construction loan fund (state revolving fund
49 - SRF). "Final Initial Guidance - State Water Pollution Control Revolving Fund" was published by EPA on January
50 28, 1988, which represents EPA's approach to implementation of Title VI.
51 [10-22-88; 11-30-95; 20.7.6.8 NMAC - Rn, 20 NMAC 7.6.106 & A, 7/16/2000]

52
53 **20.7.6.9 CONSTRUCTION.** This Part shall be liberally construed to carry out the purposes of the Act. If
54 any provision or application of this Part is held invalid, the remainder or its application to other situations or persons
55 shall not be affected.
56 [11-30-95; 20.7.6.9 NMAC - Rn, 20 NMAC 7.6.107, 7/16/2000]

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- 1
2 **20.7.6.10 COMPLIANCE WITH OTHER REGULATIONS.** Compliance with this Part does not relieve a
3 person from the obligation to comply with other applicable state and federal regulations.
4 [11-30-95; 20.7.6.10 NMAC - Rn, 20 NMAC 7.6.108, 7/16/2000]
5
- 6 **20.7.6.11 GENERAL.**
- 7 A. Direct loans from the fund may be offered for up to 100% of total eligible project costs under state
8 and federal statutes and regulations, subject to availability of loan monies.
- 9 B. Two types of loans are available: planning/design loans and construction loans.
- 10 (1) Planning/design loans. The maximum repayment period is limited to five years from the date of
11 the interim loan agreement. If the borrower receives a construction loan for the same project, the borrower will be
12 provided the option of reamortizing any remaining principal balance plus accrued interest and administrative fees on
13 the planning/design loan upon completion of the construction project, or may make payments under both loans.
- 14 (2) Construction loans. The length of the loan repayment period will not exceed ~~twenty (20)~~ thirty
15 (30) years or the expected life of the project improvements, whichever is less. Loans of lesser amounts will receive
16 a shorter repayment period depending upon the borrower's ability to service the debt in a reduced time period. The
17 construction loan may include the cost of design and may precede the design phase of the project if the design
18 period is relatively short and if a reasonable estimate of construction costs is available. Since the interim loan
19 agreement is essentially a line-of-credit for planning, design and construction of the project the borrower must agree
20 to complete the appropriate planning requirements prior to proceeding to the design and construction phases of the
21 project.
- 22 C. A long-term commitment for future funding of a phased or segmented project will not be made;
23 although, partial or phased funding for a project (without a guarantee of future funding) may be offered when
24 deemed necessary to meet state water quality and financial assistance objectives.
- 25 D. Monies in the fund shall be loaned to eligible applicants as soon as possible after the monies
26 become available. The fund will be managed so that a reserve is held available. The amount of the reserve will be
27 dependent on the total size of the fund, including both available and committed monies. This reserve may be used
28 for administration of the fund, investment, and limited-purpose contingencies, including increases subject to federal
29 and state statutes.
- 30 E. In the event project costs exceed the estimates in the interim loan agreement, the borrower may
31 request that NMED consider an increase to the loan. Such request will be evaluated in respect to available
32 uncommitted monies in the fund, financial risk of the request, and other criteria set by NMED. NMED may follow
33 any procedure deemed appropriate under the circumstances, including renegotiation of the loan agreement in
34 accordance with federal and state statutes.
- 35 F. In the event project costs are less than the estimates in the interim loan agreement, then the loan
36 amount shall be adjusted downward by a corresponding amount at the time the final loan agreement is executed
37 following completion of the project.
- 38 G. A loan shall be declared in default if the full payment is not received on the due date. Should a
39 loan be declared in default, NMED may initiate legal action to collect past due amounts. NMED may also notify
40 other state agencies and may take actions to preclude the borrower from receiving grant or other financial assistance
41 from state agencies until all delinquent amounts due on the loan have been paid. In addition to these provisions,
42 technical assistance will be provided to a borrower with a loan in default to help assess the problem and advise on
43 corrective actions needed to bring the loan current. Should these efforts fail to produce results and the borrower
44 fails to adhere to the prescribed payment schedule, the NMED will dispatch an interdisciplinary team
45 (representatives of the general counsel, state auditor, and local government division, as needed) to conduct a
46 comprehensive assessment of the borrower, including, but not limited to, financial condition, management practices,
47 fiscal capacity, economic circumstances, and violations of the terms and conditions of the legally binding final loan
48 agreement. Upon the report of this team, NMED shall take whatever actions deemed appropriate, including court
49 actions, to resolve the outstanding obligation.
- 50 H. NMED may waive or adjust any rule relative to the administration of the wastewater facility
51 construction loan fund where it is deemed that the waiver or adjustment is in the best interest of the state and the
52 community, and the waiver or adjustment does not violate any state or federal statute or regulation.
53 [10-22-88; 11-30-95; 20.7.6.11 NMAC - Rn, 20 NMAC 7.6.200 & A, 7/16/2000; A, 10/29/2007; A, XX/XX/2015]
54
- 55 **20.7.6.12 APPLICATION PROCEDURES FOR PRIORITY LIST PLACEMENT.**

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1 A. The commission at 20 NMAC 7.5 Section 11 specifies loan program application procedures.
2 Applicants for loans shall submit a complete loan application to NMED on a form specified by the NMED.
3 Applications may be submitted at any time; although, generally an annual funding cycle is followed.

4 B. NMED shall review the applications for eligibility, technical merits, and rank the applications
5 based on the project priority system described in 20 NMAC 7.5 Section 12, following NMED procedures for priority
6 system and priority list.
7 [10-22-88; 11-30-95; 20.7.6.12 NMAC - Rn, 20 NMAC 7.6.201 & A, 7/16/2000]

8
9 **20.7.6.13 PRIORITY SYSTEM AND PRIORITY LIST PROCEDURES.**

10 A. A project must be on the current federal fiscal year priority list in order to receive a
11 planning/design or construction loan. It is the policy of NMED to make loans to communities in order of priority on
12 the current federal fiscal year priority list for loans to the extent reasonable considering the following:

- 13 (1) Willingness of a community to accept a loan;
- 14 (2) Financial capability of the community to service the loan, to perform operation and maintenance,
15 to maintain a replacement fund and a debt service reserve fund; and
- 16 (3) Readiness to proceed.

17 B. Procedures for developing and handling the annual priority system and priority list under the loan
18 program generally follow existing procedures for the construction grants program which are briefly summarized
19 here.

20 (1) A specific cap on an individual loan amount may be established by NMED each fiscal year so that
21 the fund will be able to assist several communities each year. The cap may be set as a total of the loan funds
22 available or as a specific dollar amount.

23 (2) This policy serves to maintain the flexibility of the fund each year by not excluding higher cost
24 projects from participation, yet ensures that more than one worthwhile project will be funded each year.

25 (3) Fundable applicants will be notified by NMED following approval of the final priority list and a
26 preplanning conference will be held with the applicant and its consulting engineer to identify the procedures and
27 requirements which must be met prior to execution of an interim loan agreement.

28 [10-22-88; 11-30-95; 20.7.6.13 NMAC - Rn, 20 NMAC 7.6.202 & A, 7/16/2000]

29
30 **20.7.6.14 APPLICATION FOR FUNDABLE PROJECTS GUIDELINES - PROJECT PREPLANNING**
31 **CONFERENCE.**

32 A. At NMED's request, a preplanning conference will be scheduled. The applicants' representatives
33 and possibly the applicants' consulting engineers will meet with the NMED project engineers to discuss the project.
34 Items that may be discussed are:

- 35 (1) Review of SRF policies, procedures, and guidelines;
- 36 (2) Enforceable requirements;
- 37 (3) Eligibility of applicant;
- 38 (4) Appropriate technology;
- 39 (5) User charges in relation to financial capability of the applicant being able to repay the loan;
- 40 (6) Environmental impacts;
- 41 (7) Procurement of A/E services;
- 42 (8) The importance of public participation; (Citizen involvement will be an asset in the development
43 of plans that reflect the needs and values of your community. Informing the public early on can result in issues
44 being resolved before delay and additional costs occur. Citizen support is necessary for capital and user charge
45 systems to fund a project.) and
- 46 (9) Project schedule.

47 [10-22-88; 11-30-95; 20.7.6.14 NMAC - Rn, 20 NMAC 7.6.200, 7/16/2000]

48
49 **20.7.6.15 GENERAL PROJECT ADMINISTRATIVE REQUIREMENTS.**

50 A. Loan Agreement.

51 (1) An interim loan agreement will be prepared by the NMED and executed by the borrower for the
52 project which can be financed with available loan funds and which has completed requirements set by the NMED
53 pursuant to the Clean Water Act, as amended, and the New Mexico Wastewater Facility Construction Loan Act.
54 Projects which are not ready to proceed to the interim loan agreement stage within six months of allocation of
55 available loan funds may be bypassed by projects lower on the priority list which are ready to proceed.

56 (2) The interim loan agreement contains several conditions and certifications including:

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1 (a) certification that the borrower is a legal entity with authority to execute a loan agreement by
2 ordinance; certification that a resolution designating signatory authority has been passed;

3 (b) copies of all executed contracts, subcontracts, agreements, and related amendments entered
4 into by the borrower prior to the interim loan agreement, but related to this project;

5 (c) request for proposals (RFP) documentation and an engineering agreement, or letter of
6 certificate if employing staff engineers.

7 **B. Security Interest.**

8 (1) Upon execution of an interim loan agreement with the NMED for a construction project and
9 before any proceeds of the loan are paid out to the borrower, the borrower shall execute a promissory note for the
10 principal amount of the interim loan agreement plus interest and administrative fee on the unpaid balance at the
11 appropriate rate per annum, and may transfer title to the property upon which the facilities are to be constructed to
12 the NMED. In lieu of, or in addition to, the transfer of title requirement, the borrower may transfer whatever interest
13 it possesses in the property upon which facilities are to be constructed, to the NMED. In either case, the value of
14 such property or interest so transferred shall be at least equal to the amount of the loan. All such titles and interest
15 transferred to the NMED shall be secured by title insurance, if applicable, the cost of which shall be paid by the
16 borrower. The NMED shall be named as primary beneficiary of all such title insurance policies. If title insurance
17 for the property is not applicable or is not reasonably available, as determined by the NMED, then the borrower shall
18 provide a title company's opinion on the abstract of title to the property up to the time the property was acquired by
19 the borrower for use as a wastewater facility.

20 (2) Upon repayment of the loan, such interest or title shall be reconveyed to the borrower. Where the
21 transfer of title or interest in the property would preclude the obtaining of federal grants, or where such transfer of
22 title or interest is inappropriate or is prohibited by or would be in violation of existing grant-in-aid agreements,
23 NMED may waive the requirements of transfer of title or transfer of any interest in the property, and substitute
24 therefore such other security of sufficient value it deems necessary such as an irrevocable pledge of revenue
25 covenant by the borrower.

26 (3) After the borrower transfers title or its interest in the property to the NMED as security, the
27 borrower shall:

28 (a) continue to insure the property;

29 (b) be liable for all taxes and assessments; and

30 (c) refrain from making major alterations that destroy the value of the security, unless NMED
31 gives prior approval.

32 **C. Allowable and Unallowable Costs.**

33 (1) Allowable costs shall be limited to those costs which are necessary, reasonable, and directly
34 related to the efficient achievement of the objectives of the project. Costs incurred by the borrower for work
35 performed on the project prior to execution of the interim loan agreement, but which received NMED prior
36 approval, may be considered as allowable costs. The borrower must justify all expenditures for which it requests a
37 disbursement of loan funds according to accepted NMED criteria and procedures. NMED may withhold
38 disbursement of funds and may reclaim improperly documented disbursements until the borrower provides sufficient
39 justification.

40 (2) All unallowable costs, including but not limited to overhead charges, administrative expenses,
41 indirect costs, and all costs of borrower's employed inspectors and noneligible construction costs shall be paid by the
42 borrower. The administrative fee shall not be included as principal in the loans and therefore considered an
43 unallowable cost.

44 (3) The borrower agrees that it will implement, in all respects, the project outlined in the interim loan
45 agreement.

46 (4) The borrower agrees to make no change in the project description without first submitting a
47 written request to NMED and obtaining NMED approval of the required change.

48 **D. Accounting.** Funds received by the borrower from NMED and those funds which are contributed
49 by the borrower shall be deposited in separate bank accounts or in a separate, identifiable ledger account. In
50 addition, the borrower shall establish and maintain accounting procedures which will ensure strict accountability for
51 all funds received and disbursements made by the borrower in connection with the interim loan agreement. NMED
52 shall be responsible for examining the borrower's audited financial statements in accordance with the most recent
53 circular on audits of states, local governments and non-profit organizations as published by the U.S. office of
54 management and budget.

55 **E. Records.** The borrower shall maintain books, records, documents, and other evidence sufficient to
56 reflect properly all costs of whatever nature claimed to have been incurred for the performance of this interim loan

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1 agreement. Such books, records, documents, ledgers, and other evidence shall be preserved and made available to
2 NMED, state auditor, US governmental accounting office, and USEPA office of the inspector general during the
3 loan agreement period and for a period of six (6) years from date of final repayment. If upon termination of the
4 interim loan agreement, questions exist concerning proper expenditure of funds, then the borrower shall preserve
5 and make available all books, records, documents, ledgers and other evidence relating to the interim loan agreement
6 until such questions are settled and the borrower has received written notification to that effect from NMED.

7 **F. Audit and Inspection.** The project sites and borrower facilities which are in any part the subject of
8 the loan agreement, and borrower records as defined elsewhere herein, shall be subject at all reasonable times to
9 inspection and audit by NMED, state auditor, US governmental accounting office, and USEPA office of the
10 inspector general during the period of the loan agreement and for a period of six (6) years following final payment
11 hereunder. All subcontracts let by the borrower, the cost of which are included in the interim loan agreement, shall
12 include the substance of this audit and inspection clause.

13 **G. Occupational Health and Safety.** The borrower covenants that it will take affirmative action to
14 ensure that the project shall be conducted in conformance with federal and state laws and regulations relating to
15 occupational health and safety. In addition, the borrower shall assure that any contract entered into by the borrower
16 for the performance of work on this project shall contain language by which the contractor and the borrower agree
17 that authorized representatives of the NMED occupational health and safety bureau shall have free access to the
18 project site, and shall not be impeded in any way from performance of their duties.

19 **H. Nondiscrimination.**

20 (1) During the performance of the interim loan agreement, the borrower shall not discriminate against
21 any employee or applicant for employment because of race, color, age, religion, sex, or national origin. The
22 borrower shall take affirmative action to ensure nondiscrimination in employee recruitment advertising, hiring,
23 upgrading, promotion, and selection for training (including apprenticeship).

24 (2) The borrower agrees to post in conspicuous places, available to employees and applicants for
25 employment, notices setting forth the provisions of this clause. All solicitation or advertisement for employees
26 placed by or on behalf of the borrower shall state that all qualified applicants will receive consideration without
27 regard to race, color, age, religion, sex, sexual preference, or national origin. The borrower shall comply with all
28 provisions of Title VI of the Civil Rights Act of 1964, Executive Order 11246, dated September 24, 1965, and all
29 relevant rules, regulations, and orders of the U. S. secretary of labor. The borrower shall include the provisions of
30 the clause in all project subcontracts.

31 **I. Termination.** NMED shall have the right to terminate the interim loan agreement if at any time in
32 the judgement of NMED, the terms of the interim loan agreement have been violated or the activities described in
33 the project description are not progressing satisfactorily. The borrower may terminate the interim loan agreement
34 with sufficient reason. In either case, the NMED shall establish following negotiations with the borrower a
35 repayment schedule for the funds disbursed to the borrower. Such termination must be in writing.

36 **J. Procurement.** The Procurement Code, NMSA 1978, Sections 13-1-28 through 13-1-199, imposes
37 civil and criminal penalties for its violation. In addition, New Mexico criminal statutes impose felony penalties for
38 illegal bribes, gratuities, and kick-backs.
39 [10-22-88; 11-30-95; 20.7.6.15 NMAC - Rn, 20 NMAC 7.6.301 & A, 7/16/2000; A, 10/29/2007]
40

41 **20.7.6.16 PROJECT PLANNING GUIDELINES.**

42 **A.** Facilities planning consists of those necessary plans and studies that directly relate to treatment
43 works or other eligible projects needed to comply with enforceable requirements of the Federal Clean Water Act and
44 New Mexico Water Quality Act. Facilities planning will substantiate the need for the proposed facilities. It is a
45 systematic evaluation of alternatives in regard to unique demographic, topographic, hydrologic, and institutional
46 characteristics of the area that demonstrates that the selected alternative is cost effective in meeting the applicable
47 effluent, groundwater, and surface water quality and public health requirements over the design life of the facility or
48 other eligible project (while recognizing environmental and other nonmonetary considerations).

49 **B.** The most important outcome of the planning process is the selection of the best water pollution
50 control alternative.

51 The facilities plan (feasibility report or engineer's report) should include:

52 (1) A description of the proposed project and the complete system of which it is a part.

53 (2) A description of the best practicable water pollution control technology (BPWPCT).

54 (3) A cost-effective analysis of the project in meeting enforceable requirements over the design life of
55 the project which includes a ~~20~~30-year reserve capacity, if appropriate. Costs to be considered must include the

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1 present worth or equivalent annual value of all capital costs as well as operation and maintenance costs. Population
2 forecasts should be consistent with the state needs survey.

3 (4) An evaluation of improved water quality attainable by upgrading the operation and maintenance
4 ("O & M") and efficiency of existing facilities as an alternative to new construction.

5 (5) Cost information on total capital costs and annual O & M as well as estimated annual or monthly
6 costs to residential and commercial users.

7 (6) A demonstration of the nonexistence or possible existence of excessive infiltration/inflow in an
8 existing system.

9 (7) An adequate evaluation of the environmental impacts of alternatives.

10 (8) An evaluation of the water supply implications of the project.

11 (9) For the selected alternative, a concise description of relevant design parameters.

12 (10) A description of the proposed pretreatment program if applicable.

13 (11) A demonstration that the selected alternative is consistent with the applicable water quality
14 management (WQM) plan.

15 (12) Demonstration that the borrower has the legal, institutional, managerial, and financial capability
16 to ensure adequate construction and operation and maintenance of the treatment works throughout the service area.
17 Financial capability to service this loan must also be demonstrated.

18 (13) Summary of public participation in the development of the facilities plan.

19 D. If any of the above information has been developed separately, it may be incorporated by
20 reference rather than duplication.

21 [10-22-88; 20.7.6.16 NMAC - Rn, 20 NMAC 7.6.302 & A, 7/16/2000; A, XX/XX/2015]

22
23 **20.7.6.17 INTERIM PAYMENTS.**

24 A. For satisfactory performance of all work and services required to be performed under the terms of
25 the interim loan agreement, NMED shall reimburse the borrower its actual costs incurred. The borrower may submit
26 requests for reimbursement as often as every month. NMED shall disburse funds to the borrower when NMED
27 determines, in its sole discretion, that expenditures have been properly documented, as provided for in general
28 requirements for allowable and unallowable costs, accounting procedures, and record keeping. Copies of all pay
29 request vouchers shall be submitted to NMED with request for payment. Copies of all requests shall be submitted
30 on the appropriate form furnished by NMED and shall be accompanied by appropriate documentation to assure that
31 those costs are correct and within the approved scope of work and attached budget form. Requests shall include
32 expenditures to date by category.

33 B. NMED and the borrower will comply with the Retainage Act (Section 57-28-2 et. Seq. NMSA
34 1978) if money is to be withheld during construction. The project will not be considered complete until the work as
35 defined in the interim loan agreement has been fully performed and finally and unconditionally accepted by the
36 borrower and NMED.

37 C. Interim payments will be made as the work progresses. Said payments will be based upon
38 requests for payment prepared and certified by the borrower or the borrower's engineer to include value of work
39 performed, materials on hand, and materials in place in accordance with the contract. Interim payments for
40 engineering, inspection, legal services, or other approved services shall be made in accordance with the approved
41 contracts or agreements.

42 D. Any portion of funds allocated to the project which remain unexpended after completion of the
43 project shall revert to the wastewater facility construction loan fund.

44 E. The borrower shall furnish NMED with an estimated disbursement schedule at the beginning of
45 the project.

46 [10-22-88; 11-30-95; 20.7.6.17 NMAC - Rn, 20 NMAC 7.6.400 & A, 7/16/2000; A, 10/29/2007]

47
48 **20.7.6.18 FINAL PAYMENT.** Upon completion of the project, final payment shall be made after final
49 inspection has been conducted and the following have been provided, reviewed, and approved by NMED:

50 A. The borrower's certified request for payment prepared by the engineer and approved by the
51 borrower.

52 B. A statement by the project engineer that work has been satisfactorily completed and the contractor
53 has fulfilled all of the obligations required under the contract documents with the borrower, or if payment and
54 materials performance bonds are "called," an acceptable close-out settlement to the borrower and contractors shall
55 be submitted to NMED for review and approval.

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1 C. Final engineering statement and recap of all engineering services, legal, administrative, and other
2 eligible and ineligible expenses and a final request for disbursement.

3 D. Certification by the borrower that the labor standards contract provisions have been met.

4 E. Final project inspection report prepared by the engineer.

5 F. Record drawings and, if applicable, an operation and maintenance manual.

6 G. Final budget showing all funding sources utilized for costs incurred for the project by designated
7 budget categories.

8 H. Written consent of the surety, if any, to final payment is prepared and submitted.

9 I. For projects which receive planning/design loans but do not proceed to the construction phase,
10 completion of the project is defined as substantial completion of the project description in the interim loan
11 agreement as determined by NMED.

12 [10-22-88; 11-30-95; 20.7.6.18 NMAC - Rn, 20 NMAC 7.6.401, 7/16/2000]

13
14 **20.7.6.19 PROJECT DESIGN REQUIREMENTS.** Before beginning the design of the project, the
15 following requirements must be completed and submitted by the borrower to NMED and approved by NMED:

16 A. Engineering report/facilities plan, which will include:

17 (1) When real property is to be acquired as part of the project and within the project period submit
18 documentation of the acquisition, including legal description, the date the property was acquired, a certified copy of
19 title to the property, and an appraisal report by a qualified appraiser.

20 (2) Cost effective analyses of project alternatives capable of meeting state and federal water quality
21 and public health requirements.

22 (3) Consideration of present worth or equivalent annual value of all capital cost, operation, and
23 replacement costs.

24 (4) Environmental information document (EID) in detail sufficient to determine categorical
25 exclusion, finding of no significant impact (FONSI), or need for an environmental impact statement (EIS).

26 (5) Evidence of public participation.

27 (6) Information to demonstrate legal, managerial, and financial capability to properly operate and
28 maintain the facility, maintain a repair and replacement reserve, and the ability to service this debt.

29 B. Proof of adequate property, liability, and fidelity insurance coverage for the project as shall be
30 required by NMED. Fidelity insurance shall cover the borrower(s) employees who are responsible for handling loan
31 monies.

32 C. Draft plan of operation which outlines staffing in compliance with the New Mexico Utility
33 Operator Certification Act with start-up procedures that assure efficient operation and maintenance for the facilities.

34 D. Project schedule.

35 E. Proposed sewer use ordinance.

36 F. Proposed user charge system. The user charge system represents revenue for good operation and
37 maintenance and replacement of worn-out equipment. One basis for the system is actual use which is measured in
38 terms of water meter readings, measurement of sewer flow, etc. The rates are uniformly applied to each class
39 (residential, commercial, or industrial) of user in proportions. If there is no existing user charge system, the first
40 year rates should be based on the estimates of O & M costs and then adjusted annually thereafter to reflect actual O
41 & M and replacement costs.

42 G. Number and name of NPDES permit and/or state groundwater permit.

43 H. Sludge management plan which assures compliance with Sections 201 and 405 of the Clean Water
44 Act, 40 CFR, Parts 35, 257 and 503, and New Mexico Water Quality Control Commission Groundwater Discharge
45 Regulations 20 NMAC 6.2.

46 I. Design of the project shall be done by a consulting engineer who is registered in the state.

47 (1) Designs should adhere to sound construction practice using materials, methods, and equipment of
48 proven dependability.

49 (2) Buildings shall be economical to operate and maintain and should be accessible to the
50 handicapped.

51 (3) Design shall insure compliance with the NPDES permit or state groundwater discharge permit as
52 appropriate.

53 (4) Safety shall be a prime consideration in design.

54 [10-22-88; 11-30-95; 20.7.6.19 NMAC - Rn, 20 NMAC 7.6.600 & A, 7/16/2000]

55
56 **20.7.6.20 PROJECT CONSTRUCTION REQUIREMENTS.**

Exhibit B – Entire texts of 20.7.5 NMAC and 20.7.6 NMAC

- 1 A. All plans and specifications and related addenda for the project must be submitted to NMED for
2 review and approval before the project is advertised for sealed construction bids.
- 3 B. All work relating to easements, rights of way, other property rights, and financing provisions shall
4 be completed prior to advertising for construction sealed bids.
- 5 C. Certified bid tabulation, recommendation of award, and evidence of full project financing should
6 be submitted to NMED for review and approval prior to construction contract award.
- 7 D. Competitive bidding, in accordance with applicable state laws (including local wage
8 determinations as provided for in NMSA 1978, Section 13-4-11), shall be used for awarding of contracts. Contracts
9 shall be awarded to the responsible bidder who submits the lowest acceptable bid, or as provided for by state law.
- 10 E. Following NMED approval of the proposed award the borrower shall provide for each contract:
11 (1) notice of award, (2) notice of preconstruction conference, (3) executed copies of previously approved contract
12 form documents, and (4) notice to contractor to proceed. Performance, and payment bonds in the amount of 100
13 percent of the project bid will be required of each contractor and copies of said documents will be filed with NMED.
14 A copy of bid bond (for 5% of the construction cost) for the selected contractor will be filed with the NMED.
- 15 F. The contractor shall be required to submit a schedule for construction at the preconstruction
16 conference for that contract.
- 17 G. The borrower shall submit all modifications to plans, specifications, and contract change orders to
18 NMED's project engineer promptly for approval prior to implementation of such modification or change. NMED's
19 decision shall be rendered promptly in writing. In cases necessitating immediate action, a verbal decision will be
20 rendered by NMED and followed by a written notification.
- 21 H. The borrower shall arrange for the services of a qualified full-time resident project inspector,
22 unless waived by NMED, during construction of the project. Borrower shall provide NMED with a summary of the
23 inspector's qualifications and training to be approved by NMED prior to the preconstruction conference.
- 24 I. Notwithstanding those inspections performed by the borrower and its engineer, NMED shall have
25 the right to examine all installations comprising the project, including materials delivered and stored on site for use
26 on the project.
- 27 J. After completion of the project, the borrower shall obtain from its engineer as built drawings for
28 the project and certify to NMED that such drawings have been received.
- 29 K. The borrower shall provide for NMED review and approval, unless waived by NMED, an
30 operation and maintenance manual for the project prior to 90% construction completion. The operation and
31 maintenance manual shall conform to NMED requirements.
- 32 L. If this assistance is awarded for construction of collection lines, the borrower shall assure NMED
33 that the existing population will connect to the collection system within a reasonable time after project completion.
34 This shall be accomplished by adoption and annual review of an ordinance and user charge system requiring such
35 connection to the system.
- 36 [10-22-88; 11-30-95; 20.7.6.20 NMAC - Rn, 20 NMAC 7.6.601 & A, 7/16/2000]
- 37
- 38 **20.7.6.21 FINAL LOAN AGREEMENT AND REPAYMENT POLICY.** Upon completion of the
39 planning/design or construction project and after final disbursement of principal to the borrower:
- 40 A. NMED and borrower shall execute a final loan agreement which details the final loan amount plus
41 accrued interest and administrative fees due to the date of the final loan agreement.
- 42 B. NMED and borrower shall execute a revision to the promissory note and real estate mortgage (if
43 applicable) which were recorded at the county seat at the time of the initial loan agreement. The revision shall
44 reflect final loan amount, plus accrued interest and administrative fees due.
- 45 C. NMED shall prepare a repayment schedule for the borrower which details principal, plus accrued
46 interest and administrative fees due. The schedule shall fully amortize the loan within ~~twenty~~ thirty years of project
47 completion. In some cases the amortization shall be less than ~~twenty~~ thirty years. NMED shall address each loan on
48 a case-by-case basis. The borrower may prepay the loan or any portion thereof at any time. The repayment period
49 for a planning/design loan shall not exceed five years. The first annual repayment of principal, interest and
50 administrative fees shall be due within one year after completion of the project.
- 51 D. For borrowers with planning/design loans who subsequently receive a construction loan and who
52 choose to reamortize (roll-over) the planning/design loan, repayments for the planning/design loan may be
53 postponed until construction of the project is completed, at which time the principal plus accrued interest and
54 administrative fees for the planning/design loan will be rolled into the final loan agreement for the construction loan
55 with one subsequent repayment schedule.
- 56 E. NMED shall annually prepare and send to the borrower a notice of payment due.

Exhibit B – Entire texts of 20.7.5 NMAC and 20.7.6 NMAC

1 **F.** The borrower shall make a check for the full amount of the notice payable to Wastewater Facility
2 Construction Loan Fund, Attention:
3 Chief, Construction Programs Bureau
4 New Mexico Environment Department
5 P.O. Box 26110
6 Santa Fe, New Mexico 87502-6110

7 and mail in time to insure delivery by due date.

8 **G.** In the event of late payment or default by the borrower, NMED shall have the option to declare the
9 principal, interest accrued and administrative fee on, any outstanding indebtedness forthwith due and payable
10 automatically without notice or demand of any kind, whereupon the same shall become forthwith due and payable;
11 and NMED may take legal recourse to implement collection.

12 [10-22-88; 11-30-95; 20.7.6.21 NMAC - Rn, 20 NMAC 7.6.602 & A, 7/16/2000; A, 10/29/2007; A, XX/XX/2015]

13
14 **HISTORY OF 20.7.6 NMAC:**

15 **Pre-NMAC History:** Material in the part was derived from that previously filed with the commission of public
16 records - state records center and archives:

17 HED 88-2 (EID) Rule 88-2 (EID), New Mexico Wastewater Facility Construction Loan Fund Policies, Procedures,
18 and Guidelines, 9/22/88.

19
20 **OTHER HISTORY:**

21 20 NMAC 7.6, Wastewater and Water Supply Facilities - Wastewater Facility Construction Loan policies and
22 Guidelines, 10/25/95

See attached Senate Bill 227

CHAPTER 112

AN ACT

1
2 RELATING TO THE ENVIRONMENT; AMENDING THE WASTEWATER FACILITY
3 CONSTRUCTION LOAN ACT TO INCLUDE MUTUAL DOMESTIC WATER
4 CONSUMERS ASSOCIATION IN THE DEFINITION OF "LOCAL AUTHORITY";
5 EXTENDING THE LOAN REPAYMENT PERIOD.
6

7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

8 SECTION 1. Section 74-6A-3 NMSA 1978 (being Laws 1986,
9 Chapter 72, Section 3, as amended) is amended to read:

10 "74-6A-3. DEFINITIONS.--As used in the Wastewater
11 Facility Construction Loan Act:

12 A. "administrative fee" means a fee assessed and
13 collected by the department from a local authority on each
14 loan and expressed as a percentage per year on the
15 outstanding principal amount of the loan, payable by the
16 borrower on the same date that principal and interest on the
17 loan are due, for deposit in the clean water administrative
18 fund;

19 B. "commission" means the water quality control
20 commission;

21 C. "division" or "department" means the department
22 of environment;

23 D. "financial assistance" means loans, the
24 purchase or refinancing of existing local political
25 subdivision obligations, loan guarantees, credit enhancement

1 techniques to reduce interest on loans and bonds, bond
2 insurance and bond guarantees or any combination of these
3 purposes;

4 E. "fund" means the wastewater facility
5 construction loan fund;

6 F. "local authority" means any municipality,
7 county, incorporated county, mutual domestic water consumers
8 association as defined by the Sanitary Projects Act,
9 sanitation district, water and sanitation district or any
10 similar district, recognized Indian tribe or other issuing
11 agency created pursuant to a joint powers agreement acting on
12 behalf of any entity listed in this subsection;

13 G. "operate and maintain" means to perform all
14 necessary activities, including replacement of equipment or
15 appurtenances, to ensure the dependable and economical
16 function of a wastewater facility in accordance with its
17 intended purpose;

18 H. "wastewater facility" means a publicly owned
19 system for treating or disposing of sewage or wastes either
20 by surface or underground methods, including any equipment,
21 plant, treatment works, structure, machinery, apparatus or
22 land, in any combination, that is acquired, used, constructed
23 or operated for the storage, collection, reduction,
24 recycling, reclamation, disposal, separation or treatment of
25 water or wastes or for the final disposal of residues

1 resulting from the treatment of water or wastes, such as
2 pumping and ventilating stations, facilities, plants and
3 works, outfall sewers, interceptor sewers and collector
4 sewers and other real or personal property and appurtenances
5 incident to their use or operation. "Wastewater facility"
6 also includes a nonpoint source water pollution control
7 project as eligible under the Clean Water Act;

8 I. "account" means the wastewater suspense
9 account;

10 J. "board" means the state board of finance;

11 K. "bonds" means wastewater bonds or other
12 obligations authorized by the commission to be issued by the
13 board pursuant to the Wastewater Facility Construction Loan
14 Act;

15 L. "Clean Water Act" means the federal Clean Water
16 Act of 1977 and its subsequent amendments or successor
17 provisions;

18 M. "federal securities" means direct obligations
19 of the United States, or obligations the principal and
20 interest of which are unconditionally guaranteed by the
21 United States, or an ownership interest in either of the
22 foregoing;

23 N. "force account construction" means construction
24 performed by the employees of a local authority rather than
25 through a contractor;

1 O. "holders" means persons who are owners of
2 bonds, whether registered or not, issued pursuant to the
3 Wastewater Facility Construction Loan Act;

4 P. "issuing resolution" means a formal statement
5 adopted by the board to issue bonds pursuant to the
6 Wastewater Facility Construction Loan Act, including any
7 trust agreement, trust indenture or similar instrument
8 providing terms and conditions for the bonds to be issued;
9 and

10 Q. "recommending resolution" means a formal
11 statement adopted by the commission recommending to the board
12 that bonds be issued pursuant to the Wastewater Facility
13 Construction Loan Act, including any trust agreement, trust
14 indenture or similar instrument providing the terms and
15 conditions for the bonds that are issued."

16 SECTION 2. Section 74-6A-8 NMSA 1978 (being Laws 1991,
17 Chapter 172, Section 6) is amended to read:

18 "74-6A-8. FINANCIAL ASSISTANCE--CRITERIA.--

19 A. Financial assistance shall be provided only to
20 local authorities that:

21 (1) meet the requirements for financial
22 capability set by the division to assure sufficient revenues
23 to operate and maintain the wastewater facility for its
24 useful life and to repay the financial assistance;

25 (2) agree to operate and maintain the

1 wastewater facility so that the facility will function
2 properly over its structural and material design life;

3 (3) agree to maintain separate project
4 accounts, to maintain project accounts properly in accordance
5 with generally accepted governmental accounting standards and
6 to conduct an audit of the project's financial records;

7 (4) provide a written assurance, signed by
8 an attorney, that the local authority has or will acquire
9 proper title, easements and rights of way to the property
10 upon or through which the wastewater facility proposed for
11 funding is to be constructed or extended;

12 (5) require the contractor of the wastewater
13 facility construction project to post a performance and
14 payment bond in accordance with the requirements of
15 Section 13-4-18 NMSA 1978 and its subsequent amendments and
16 successor provisions;

17 (6) provide a written notice of completion
18 and start of operation of the wastewater facility;

19 (7) appear on the priority list of the fund,
20 regardless of rank on such list; and

21 (8) provide such information to the division
22 as required by the commission in order to comply with the
23 provisions of the Clean Water Act and state law.

24 B. Loans shall be made only to local authorities
25 that establish one or more dedicated sources of revenue to

1 repay the money received from the commission and to provide
2 for operation, maintenance and equipment replacement
3 expenses. A local authority, any existing statute to the
4 contrary notwithstanding, may do any of the following:

5 (1) obligate itself to pay to the commission
6 at periodic intervals a sum sufficient to provide all or any
7 part of bond debt service with respect to the bonds
8 recommended by the commission and issued by the board to fund
9 the loan for the wastewater facility project of the local
10 authority and pay over the debt service to the account of the
11 wastewater facility project for deposit to the fund;

12 (2) fulfill any obligation to pay the
13 commission by the issuance of bonds, notes or other
14 obligations in accordance with the laws authorizing issuance
15 of local authority obligations; provided, however that,
16 notwithstanding the provisions of Section 4-54-3 or 6-15-5
17 NMSA 1978 or other statute or law requiring the public sale
18 of local authority obligations, such obligations may be sold
19 at private sale to the commission at the price and upon the
20 terms and conditions the local authority shall determine;

21 (3) levy, collect and pay over to the
22 commission and obligate itself to continue to levy, collect
23 and pay over to the commission the proceeds of one or more of
24 the following:

25 (a) sewer or waste disposal service

1 fees or charges;

2 (b) licenses, permits, taxes and fees;

3 (c) special assessments on the property
4 served or benefited by the wastewater facility project; or

5 (d) other revenue available to the
6 local authority;

7 (4) undertake and obligate itself to pay its
8 contractual obligation to the commission solely from the
9 proceeds from any of the sources specified in Paragraph (3)
10 of this subsection or, in accordance with the laws
11 authorizing issuance of local authority obligations, impose
12 upon itself a general obligation pledge to the commission
13 additionally secured by a pledge of any of the sources
14 specified in Paragraph (3) of this subsection; or

15 (5) enter into agreements, perform acts and
16 delegate functions and duties as its governing body shall
17 determine is necessary or desirable to enable the division as
18 agent for the commission to fund a loan to the local
19 authority to aid it in the construction or acquisition of a
20 wastewater facility project.

21 C. Each loan made by the division as agent for the
22 commission shall provide that repayment of the loan shall
23 begin not later than one year after completion of
24 construction of the wastewater facility project for which the
25 loan was made and shall be repaid in full no later than

1 thirty years after completion of the construction. All
2 principal and interest on loan payments shall be deposited in
3 the fund.

4 D. Financial assistance shall be made with an
5 annual interest rate to be five percent or less as determined
6 by the commission.

7 E. A zero-percent interest rate may be approved by
8 the division when the following conditions have been met by
9 the local authority:

10 (1) the local authority's average user cost
11 is at least fifteen dollars (\$15.00) per month or a higher
12 amount as determined by the commission; and

13 (2) the local authority's median household
14 income is less than three-fourths of the statewide
15 nonmetropolitan median household income.

16 F. A local authority may use the proceeds from
17 financial assistance received under the Wastewater Facility
18 Construction Loan Act to provide a local match or any other
19 nonfederal share of a wastewater facility construction
20 project as allowed pursuant to the Clean Water Act.

21 G. Financial assistance received pursuant to the
22 Wastewater Facility Construction Loan Act shall not be used
23 by a local authority on any wastewater facility project
24 constructed in fulfillment or partial fulfillment of
25 requirements made of a subdivider under the provisions of the

1 Land Subdivision Act or the New Mexico Subdivision Act.

2 H. Financial assistance shall be made only to
3 local authorities that employ or contract with a registered
4 professional engineer to provide and be responsible for
5 engineering services on the wastewater facility project.
6 Such services include but are not limited to an engineering
7 report, construction contract documents, supervision of
8 construction and start-up services.

9 I. Financial assistance shall be made only for
10 eligible items. For financial assistance composed entirely
11 of state funds, eligible items include but are not limited to
12 the costs of engineering feasibility reports, contracted
13 engineering design, inspection of construction, special
14 engineering services, start-up services, contracted
15 construction, materials purchased or equipment leased for
16 force account construction, land or acquisition of existing
17 facilities, but eligible items do not include the costs of
18 water rights and local authority administrative costs. For
19 financial assistance made from federal funds, eligible items
20 are those identified pursuant to the Clean Water Act.

21 J. In the event of default by the local authority,
22 the commission may enforce its rights by suit or mandamus
23 or may utilize all other available remedies under state
24 law." _____