

**STATE OF NEW MEXICO  
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 (R)**

**THE WATER QUALITY CONTROL COMMISSION'S  
STATEMENT OF REASONS AND FINAL ORDER**

This matter comes before the Water Quality Control Commission (“WQCC”) following a public hearing before the WQCC and Hearing Officer (Morris J. Chavez, Esq.) on October 13, 2015, in Santa Fe, New Mexico.

The New Mexico Environment Department, (“NMED” or “Petitioner”) originally petitioned the WQCC to revise *20.7.5 NMAC – Wastewater Facility Construction Loans* and *20.7.6 Wastewater Facility Construction Loan Policies and Guidelines*. The NMED then decided to limit its petition for revisions to *20.7.5 NMAC – Wastewater Facility Construction Loans* only. Accordingly, the NMED presented technical testimony in support of the proposed rulemaking.

After a full deliberation of the entire record and having granted full support of the petitioner’s request, the WQCC submits the following Statement of Reasons in support of their decision:

1. The New Mexico Wastewater Facility Construction Loan Act is governed by NMSA 1978, Sections 74-6A-1 to -15 (1986).

2. NMSA 1978, Section 74-6A-4.1(A) (2007) States that the Commission may, "...establish procedures [and] adopt regulations... as required to administer the clean water administrative fund in accordance with the Clean Water Act and state law."
  3. NMSA 1978, Section 74-6A-9(A) (1991) states that the Commission has the power to, "...adopt regulations necessary and appropriate to implement the provisions of the Wastewater Facility Construction Loan Act."
  4. NMSA 1978, Section 74-6-6 outlines the notice and hearing requirements for the Commission before adoption of regulations.
  5. On April 9, 2015, Governor Susana Martinez signed Senate Bill 227 ("SB 277") into law. Chapter 112 52<sup>nd</sup> Legislature, 1<sup>st</sup> Session, Laws of New Mexico (2015) (Attached)
  6. SB 277 amended Section 74-6A-3(F) of the Wastewater Facility Construction Loan Act ("Act") to add "mutual domestic water consumers association[s] as defined by the Sanitary Project Act" to the definition of "local authorit[ies]." This amendment makes mutual domestics eligible for project funding under the Fund.
  7. SB 277 amended Section 74-6A-8(C) of the Act to change the repayment amendments made to the federal Clean Water Act that went into effect June 10, 2014. See Section 13 U.S.C. 1383(d)(1)(A) and (B).
  8. This amendment may lower the annual repayment amount for borrowers to increase debt capacity and more closely matched the term of the loan with the useful life of the system being funded.
  9. Any person may petition the Commission for amendment of regulations within the jurisdiction of the Commission. NMSA 1978, 74-6-6(B).
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10. On June 2, 2015, NMED filed a petition with the Commission for a public hearing in this matter; NMED filed an amended petition on September 23, 2015.
  11. On June 9, 2015, at a meeting conducted in compliance with the Open Meetings Act and other applicable requirements, the Commission granted the Department's request for a hearing
  12. On August 28, 2015, Notice of Hearing was published in the New Mexico Register in English and Spanish. See NMED Exhibit 1.
  13. The Notice of Hearing was published in the Albuquerque Journal on August 30, 2015, and in the Santa Fe New Mexican on August 31, 2015 (in English and Spanish). See NMED Exhibit 1.
  14. The NMED filed a Notice of Intent to Present Testimony ("NOI") on September 29, 2015, in accordance with Commission Rulemaking Guidelines.
  15. A public hearing was held on this matter on October 13, 2015, in Santa Fe, New Mexico.
  16. In considering the proposed amendments, the Commission is required by the Water Quality Act, NMSA 1978, Section 74-2-5.E (2009), to give the weight it deems appropriate to all relevant facts and circumstances, including but not limited to (1) character and degree of injury to or interference with health, welfare, environment and property; (2) the public interest, including the social and economic value of the sources of water contaminants; (3) technical practicability and economic reasonableness of reducing or eliminating water contaminants from the sources involved; (4) successive uses, including but not limited to domestic, commercial, industrial, pastoral, agricultural, wildlife and recreational uses; (5) feasibility of a user or subsequent user treating the water before subsequent use; (6) property rights and accustomed users; and (7) federal water quality requirements.
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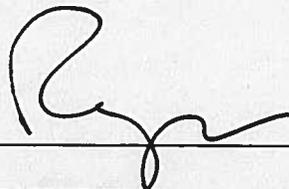
17. The purpose of the Act is to provide local authorities in New Mexico with low-cost financial assistance in the construction of necessary wastewater facilities through the creation of a self-sustaining program so as to improve and protect water quality and public health. NMSA 1978 74-6A-2 (1989).
  18. The proposed amendments will satisfy the purpose of the Act as well as the Commission's rulemaking considerations found in the Water Quality Act because they will increase the number of entities eligible for funding and may lower the annual repayment amount for borrowers, which will increase debt capacity, and more closely match the term of the loan with the useful design life of the system being funded. This serves the public interest.
  19. The Commission has the authority to approve these proposed amendments pursuant to NMSA 1978, Sections 74-6-4(E), 74-6A-4.1(A), and 74-6A-9(A).
  20. The notice and hearing requirements of NMSA 1978, Section 74-6-6 and the Commission Rulemaking Guidelines were satisfied in this rulemaking process.
  21. The proposed amendments are adopted for any or all of the reasons stated above.
  22. Below are excerpts of purposed amendment to 20.7.5 NMAC, followed by a brief explanation (in Italics) if the impetus for the amendments, attached hereto as Exhibit A. Following these excerpts and explanations, the entire texts of 20.7.5 NMAC proposed for amendment are presented in ~~strikeout~~ format, attached hereto as Exhibit B. A copy of SB 227 is attached hereto as Exhibit C.
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**FINAL ORDER**

Having considered the administrative record in its entirety, public testimony, and all technical testimony presented; and being otherwise fully advised regarding this matter;

ON BEHALF OF THE WATER QUALITY CONTROL COMMISSION, THE CHAIRMAN OF THE WATER QUALITY CONTROL COMMISSION ORDERS THE ADOPTION OF THE FOLLOWING:

*The proposed revisions to 20.7.5 NMAC – Wastewater Facility Construction Loans as presented herein.*



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**RYAN FLYNN**  
**Chairman – Water Quality Control Commission**

**NOTICE OF PROCEDURE FOR APPELLATE REVIEW**

Any aggrieved party may seek appellate review in the Court of Appeals, pursuant to NMSA 1978, §74-6-7 and Rules of Appellate Procedure, 12-601 NMRA. Direct appeals from orders shall be taken by filing a notice of appeal with the appellate court clerk within thirty (30) days from the date of the Order.

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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the Water Quality Control Commission's Statement of Reasons and Final Order was sent via the stated methods below to the following parties on December 9, 2015:

*Via hand delivery and email:*

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