

STATE OF NEW MEXICO
BEFORE THE WATER QUALITY CONTROL COMMISSION



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In the Matter of:)
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PROPOSED AMENDMENTS TO)
20.7.5.14 NMAC)
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_____)

No. WQCC 16-04 (R)

**NEW MEXICO ENVIRONMENT DEPARTMENT, CONSTRUCTION PROGRAMS
BUREAU'S PETITION TO AMEND THE WASTEWATER FACILITY
CONSTRUCTION LOANS REGULATIONS
(20.7.5 NMAC) AND REQUEST FOR HEARING**

1. The Construction Programs Bureau ("Bureau") of the Water Protection Division ("Division") of the New Mexico Environment Department ("Department") hereby petitions the Water Quality Control Commission ("Commission") to amend a portion of the Commission's regulations in Title 20, Chapter 7, Part 5, Section 14 of the New Mexico Administrative Code titled "*Administration of the Loan Program and Fund.*" The Bureau seeks to amend 20.7.5.14 NMAC by lowering the current base interest rate and the associated hardship rates in order to better serve the mandate of the Wastewater Facility Construction Loan Act ("Act") (NMSA 1978, §§ 74-6A-1 to -15). NMSA 1978, §§ 74-6A-2 and -4 create a revolving loan fund in the state treasury to provide local authorities with low cost financial assistance to construct necessary wastewater facilities. 20.7.5.14 NMAC provides directions for the administration of the fund and sets the interest rates for loans to local authorities.

Jurisdictional Authority

2. Pursuant to NMSA 1978, §§ 74-6A-4, the Commission is "authorized to establish procedures and adopt regulations as required to administer the [wastewater facility construction

loan] fund in accordance with the [federal] Clean Water Act and state law.” The Legislature has provided that NMED shall act as agent of the Commission, and therefore enter into contracts and other agreements to carry out the Act. According to the NMSA 1978, § 74-6A-9(A)(1), the Commission shall adopt regulations necessary to implement the provisions of the Act. The rule amendment must comply with NMSA 1978, § 74-6-6.

Hearing Date & Hearing Officer

3. The Bureau requests that the Commission set the hearing date for the **next Commission meeting following the 2017 legislative session and appoint a hearing officer.** The Bureau expects the public hearing to last for thirty (30) minutes depending on the level and extent of public involvement and participation. The Bureau has, as noted below, attempted to obtain pre-hearing comments from the public to assist in expediting the public hearing and adoption process.

Pre-Petition Public Involvement & Notice

4. The Bureau has, prior to this petition, solicited input from the public on the proposed rate change for the fund. On October 18, 2016, the Bureau sent email notice of the proposed rate change to all stakeholders and posted the changes on the Bureau website. To date, the Bureau has not received any comments from stakeholders.

5. If set for hearing pursuant to Section 302 of the Commissions’ *Guidelines for Water Quality Control Commission Regulation Hearings* (approved November 10, 1992; amended June 8, 1993), the Bureau will open the formal public comment period following publication of the proposed amendments in the required newspapers and delivery of public notice to required persons and entities.

WHEREFORE, the Bureau requests that the Commission set on the above-requested date a hearing to address the proposed Rule amendments.

Respectfully submitted,

NEW MEXICO ENVIRONMENT DEPARTMENT
OFFICE OF GENERAL COUNSEL

s/ Annie Maxfield
Annie Maxfield
Assistant General Counsel
New Mexico Environment Department
121 Tijeras Ave. NE, Suite 1000
Albuquerque, New Mexico 87102
Telephone (505) 222-9592

3 Attachments:

1. Statement of Reasons, 1 pg
2. Proposed Amendment to 20.7.5.14, 2 pgs
3. Proposed Order for Hearing, 1 pg

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *NEW MEXICO ENVIRONMENT DEPARTMENT, CONSTRUCTION PROGRAMS BUREAU'S PETITION TO AMEND 20.7.5.14 NMAC AND REQUEST FOR HEARING*, including attachments as indicated, was served on the following parties on this the 31st day of October, 2016 via hand delivery:

Ms. Pam Castaneda, Administrator
Water Quality Control Commission
Room N-2168, Runnels Building
1190 St. Francis Dr.
Santa Fe, New Mexico 87505

s/ Annie Maxfield
Annie Maxfield
Assistant General Counsel
Office of General Counsel
New Mexico Environment Department

STATEMENT OF REASONS

The Wastewater Facility Construction Loan Act ("Act"), NMSA 1978, §§ 74-6A-1 to -15, provides 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. The Act also provides that the NMED may impose and collect an administrative fee from each local authority that receives financial assistance from the fund, which fee shall not exceed five (5) percent of the total loan amount and which shall be deposited in the clean water administrative fund.

In order to fulfill the legislature's intent that the Bureau provide low cost financial assistance, the Bureau strives to remain competitive with other low cost public loan options when setting its rates. The Bureau has determined that it will be competitive in its market and remain an attractive option for local entities by lowering the general rate listed in 20.7.5.14.G NMAC from three (3) percent to two and three hundred seventy five thousandths (2.375 percent). Based on the lowering of the general rate, the Bureau then saw fit to lower the hardship rates in 20.7.5.14.H NMAC accordingly. The Bureau proposes additional wording changes in 20.7.5.14.H NMAC to make the standard for gauging a local authority's income simpler.

**Proposed Amendments to
20.7.5.14 NMAC**

20.7.5.14 ADMINISTRATION OF THE LOAN PROGRAM AND FUND:

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

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

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

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

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

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

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

E. Repayment of the loan portion of the financial assistance shall begin no later than one year after completion of the project for which the loan was executed and shall be repaid in full no later than 30 years after completion of the project. All principal and interest on loan payments shall be deposited in the fund.

F. The interest rate for the loan portion of the financial assistance shall be the rate in effect when the final loan agreement is executed. The interest rate shall not change during the term of the financial assistance unless refinanced in accordance with Subsection I of 20.7.5.14 NMAC. The interest rate shall be the base rate provided in Subsection G of 20.7.5.14 NMAC

unless the local authority qualifies for a hardship rate provided in Subsection H of 20.7.5.14 NMAC.

G. The base rate for the loan portion of the financial assistance shall not exceed ~~three two and three hundred seventy-five thousandths (2.375)~~ percent. At the beginning of each state fiscal year, the commission may determine a base rate for the state fiscal year which is less than or greater than the current base rate.

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

(1) An interest rate which shall not exceed ~~two one and two tenths (1.2)~~ percent, when the local authority's ~~median household per capita~~ income is less than the statewide ~~non-metropolitan median household per capita~~ income based on the most current ~~decennial~~ United States (U.S.) bureau of census statistics.

(2) An interest rate which shall not exceed ~~one six tenths (.6)~~ of a percent when the local authority's ~~median household per capita~~ income is less than three-fourths of the statewide ~~non-metropolitan median household per capita~~ income based upon the most current ~~decennial~~ U.S. bureau of census statistics.

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

(4) An interest rate of zero percent when:

(a) the local authority's average user cost is ~~at least fifteen dollars (\$15.00) per month or a higher amount as determined by the commission~~ greater than one and eighty-two hundredths (1.82) percent of the local authority's per capita income. The calculation of average user cost shall be consistent with a statewide methodology established by the department; and

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

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

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

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

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

[20.7.5.14 NMAC - Rp, 20.7.5.14 NMAC, 12/16/2015; A, XX/XX/2017]

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PROPOSED AMENDMENTS TO)	No. WQCC 16-04 (R)
20.7.5.14 NMAC)	
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ORDER FOR HEARING

The New Mexico Water Quality Control Commission (“Commission”), through its duly appointed Chairperson, now Orders that the petition by New Mexico Environment Department, Construction Programs Bureau (“Bureau”), as referenced above, be set for public hearing pursuant to NMSA 1978, § 74-6-1 to -17 (“Water Quality Act”), NMSA 1978, § 74-6A-1 to -15 (“Wastewater Facility Construction Loan Act”) and *Guidelines for Water Quality Control Commission Regulation Hearings* (Approved November 10, 1992; Amended June 8, 1993) (“*Guidelines*”) on _____, 2017, and continue until completion or as may be Ordered. The Commission Orders that the Bureau prepare and issue public notice of the hearing in accordance with Section 302 of the Commission’s *Guidelines*.

NOW ORDERED, this the ____ day of November, 2016, by the Commission and as attested by the Chairperson’s signature below.

Chair
New Mexico Water Quality Control Commission