STATE OF NEW MEXICO
BEFORE THE WATER QUALITY CONTROL COMMISSION

IN THE MATTER OF PROPOSED REVISIONS TO: **No. WQCC 15-06 (R)**
20.7.5 NMAC – Wastewater Facility Construction Loans
and 20.7.6 NMAC – Wastewater Facility Construction Loan
Policies and Guidelines

NEW MEXICO ENVIRONMENT DEPARTMENT'S
NOTICE OF INTENT TO PRESENT TECHNICAL TESTIMONY

The Construction Programs Bureau ("Bureau") of the Water Protection Division of the New Mexico Environment Department ("NMED" or "Department"), pursuant to the Guidelines for Water Quality Control Commission Regulation Hearings (Approved November 10, 1992; Amended June 8, 1993), hereby files this Notice of Intent to Present Technical Testimony at the hearing scheduled to commence on October 13, 2015.

1. Entity Represented by the Technical Witness

The technical witnesses will testify for the Construction Programs Bureau of the Water Protection Division of the New Mexico Environment Department.

2. Name and Qualifications of the Technical Witness

The Department will call the following witness at the hearing to present direct technical testimony:

Jim Chiasson. Mr. Chiasson is the Bureau Chief of the Construction Programs Bureau. He has been with the Bureau for over 15 years serving in various positions. Mr. Chiasson received his Bachelor of Science degree in Mechanical Engineering from Syracuse University and his Master of Science degree in Civil Engineering with a concentration in Environmental Engineering from the University of New Mexico. He is also a registered professional engineer in the state of New Mexico, a designation he has held since 1996. Mr. Chiasson has over 23 years

of experience working with water, wastewater and solid waste facilities throughout the state of New Mexico, including four years as a consulting engineer and four years operating a solid waste facility in Santa Fe County.

Alysia Leavitt. Ms. Leavitt is the Financial Section Manager for the Construction Programs Bureau. She has been with the Bureau for seven and a half years and served as the Loan Programs Manager prior to her current position. In both capacities, Ms. Leavitt oversaw the Wastewater Facility Construction Loan Fund, also known as the Clean Water State Revolving Loan Fund program. Over the last 18 months, she has been implementing the federally mandated changes to the program. Ms. Leavitt's resume is attached as NMED Exhibit 2. Ms. Leavitt will not submit written technical testimony for the Department, but in her capacity as Financial Section manager for the Bureau, the Department will make her available with Mr. Chiasson to respond to the Commission's questions regarding this program.

3. List and Description of Exhibits

The Department submits the following exhibits:

NMED Exhibit 1	Written Testimony of Jim Chiasson
NMED Exhibit 2	Resume of Alysia Leavitt
NMED Exhibit 3	Proposed Amendments to 20.7.5 NMAC in Legislative Format
NMED Exhibit 4	Small Business Regulatory Relief Act Notice
NMED Exhibit 5	Proposed Statement of Reasons

4. Reservation of Rights

The Department reserves the right to call any other person to present original and/or rebuttal testimony in response to another notice of intent or public comment filed in this matter or to any testimony or exhibit offered at the public hearing.

Respectfully submitted,

CONSTRUCTIONS PROGRAM BUREAU
NEW MEXICO ENVIRONMENT DEPARTMENT

Christopher Atencio
Assistant General Counsel
New Mexico Environment Department
121 Tijeras Avenue NE, Suite 1000
Albuquerque, NM 87102-3400
Telephone: (505) 222-9554
christopher.atencio@state.nm.us

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *Notice of Intent to Present Technical Testimony* was served on the following parties on this the 29th day of September, 2015 via the stated delivery methods below:

Hand delivery:

Ms. Pam Castaneda, Administrator
Water Quality Control Commission
Room S-2102, Runnels Building
1190 St. Francis Dr.
Santa Fe, New Mexico 87505

Christopher N. Atencio

STATE OF NEW MEXICO
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WRITTEN TESTIMONY OF JIM CHIASSON

Witness Qualifications:

My name is Jim Chiasson, and I am the Bureau Chief of the Construction Programs Bureau within the New Mexico Environment Department. I have been with the Bureau for over 15 years serving in various positions. I received my Bachelor of Science degree in Mechanical Engineering from Syracuse University and my Master of Science degree in Civil Engineering with a concentration in Environmental Engineering from the University of New Mexico. I am also a registered professional engineer in the state of New Mexico, a designation I have held since 1996.

I. INTRODUCTION

Mr. Chairman and Members of the Water Quality Control Commission ("Commission"), I am here to present the New Mexico Environment Department's ("NMED" or "the Department") proposed revisions to 20.7.5 of the New Mexico Administrative Code ("NMAC") – *Wastewater Facility Construction Loans*. NMED Exhibit 3 reflects the Department's proposed amendments in current NMAC format. The proposed amendments are shown in standard legislative format: new material is underlined, and deleted material is designated in strikethrough format.

During my testimony, I will refer to 20.7.5 NMAC as Part 5. Part 5 specifically defines the objective, eligibility requirements, application procedures, priority system, eligible assistance items and administration of the Wastewater Facility Construction Loan Fund ("Fund"), which is also referred to as the Clean Water State Revolving Loan Fund ("CWSRF"). This fund was initiated to provide low-interest financing for wastewater related projects throughout the state. Such funding sources for wastewater related projects within the state are very limited in comparison to water project funding. The proposed revisions to Part 5 will improve the effectiveness and viability of the CWSRF program by increasing the pool of eligible applicants as well as their overall debt capacity, thus making projects more affordable and revolving funds more quickly.

On April 9, 2015, Senate Bill 227 ("SB 227") was 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 amendments signed into law, the Construction Programs Bureau proposes to the Commission the following two revisions to Part 5. Specifically, the

Department proposes to add "mutual domestic consumers associations as defined by the Sanitary Projects Act" to the Local Authority definition in 20.7.5.7.L NMAC and to increase the maximum term of repayment of the loan portion of the financial assistance to borrowers from twenty (20) years to thirty (30) years in 20.7.5.14.E NMAC. This directly reflects the changes to the fund as stated by SB 227.

The Commission is authorized by the Wastewater Facility Construction Loan Act, NMSA 1978 Sections 74-6A-4.1 and -9, to adopt these proposed revisions.

If the Commission does not adopt the revisions, Part 5 will not be aligned with the recent changes to the Federal Clean Water Act that took effect last year or the changes made to NMSA 1978, Sections 74-6A-3 and 74-6A-8. This will make it more difficult for borrowers to take on the necessary debt to fund eligible projects. Also, the pool of eligible applicants will remain as previously defined, thus limiting the ability of the Department to fund some important projects around the state and consequently revolve the fund more quickly.

II. BACKGROUND

The Wastewater Facility Construction Loan Act ("Act") (NMSA 1978 §§ 74-6A-1 to -15 (1986)) provides for the creation of the Fund, which is also referred to as the CWSRF. The purpose of the Fund is to provide low-cost financing for wastewater and storm water drainage projects that protect and improve surface and groundwater resources and public health, including projects that control non-point source water pollution as well as certain projects involving solid waste facilities and decentralized wastewater systems. The Fund is administered by the Department's Construction Programs Bureau.

The federal fund was created and capitalized by Congress in the mid 1980's. Since then, with the exception of 2001, Congress has allocated annual appropriations to the U.S. Environmental Protection Agency, which is then allotted to each state in the form of annual capitalization grants. The capitalization grants to NMED fund the CWSRF. Each federal grant requires a 20% match from the state.

Since 1986, the CWSRF has received $203 million in Federal Capitalization Grant Awards and $37.7 million in State Matching Funds, totaling $240.7 million. The Fund's net position has grown to $291.1 million through interest on loan repayments as the program funds revolve and investment earnings from the State Treasurer's Office. The total historical assistance from the CWSRF to New Mexico communities, to date, is $372.2 million, and the Fund has revolved over 1½ times over the life of the program. The Fund currently has $122 million in cash. However, of this cash amount, $74.1 million is currently obligated to projects in various stages, from signing agreements to projects in construction. Thus, the remaining cash available is $47.9 million. NMED will continue to make offers to eligible borrowers in order to obligate all available funds, while leaving a reasonable contingency amount available for cost overruns or last minute funding needs. It is, however, important to note that as the fund continues to grow, it becomes increasingly challenging to find enough eligible entities that have the debt capacity to take on a significant loan to fund projects and keep the available cash in the Fund at a reasonable level. SB 227 addresses this imbalance.

Furthermore, SB 227 brings the terms of the Fund in line with the recent repayment amendments made to Section 603(d)(1)(A)&(B) of the Federal Water Pollution Control Act ("FWPCA") also known as the Clean Water Act ("CWA") that went into effect on June 10, 2014. Additionally, this amendment may lower the annual repayment amount for borrowers, which will increase their debt capacity, and more closely match the term of the loan with the useful design life of the system being funded.

III. PROPOSED NMAC REVISIONS

The proposed revisions to Part 5 will apply to all future eligible entities state-wide upon approval by the Commission. A table summarizing the purpose of each proposed revision is included in Table 1 below:

Table 1: Proposed Revisions

*PROPOSED REVISIONS TO PART 5	CLEAN WATER ACT	NEW MEXICO ADMINISTRATIVE CODE
Inclusion of Mutual Domestic Organizations as defined under the Sanitary Projects Act to the Local Authority definition.	603(C)(1) and 502(4)	20.7.5.7.L
Increase the maximum allowable term of repayment of the loan portion of financial assistance to borrowers from twenty (20) years to thirty (30) years.	603(d)(1)(A)&(B)	20.7.5.14.E

*Exhibit 3 includes all specific changes to Part 5 in the Standard Legislative Format.

IV. OUTREACH

Outreach was conducted for the proposed revisions to Part 5. Prior to the start of the 2015 Legislature, the Department sent out mass emails to all municipalities, mutual domestic organizations, and engineering consulting firms, as well as other interested parties to solicit input regarding the proposed changes. Only two comments were received. The Dona Ana Mutual Domestic replied that they were in support of the revisions, as an entity that would become eligible for funds through the CWSRF under the revised definition of Local Authority. The other comment received (via telephone) was from a "private" mutual domestic coop organization, and they were told that they are not currently, nor would they become, eligible for funds from this program after the revisions went into effect unless they re-organized under the provisions of the sanitary projects act.

Notice for the hearing was published in the New Mexico Register on August 28, 2015, in English and Spanish. Notice was also placed in the Albuquerque Journal and published on August 31, 2015, and the Santa Fe New Mexican published the Notice on August 31, 2015, in both English and Spanish.

The Department also complied with the Small Business Regulatory Relief Act (attached hereto as Exhibit 3). The Act establishes a review process, not a standard or outcome. The Department must consider the effect of the proposed rule on small businesses; if the Department identifies an adverse effect, it must consider the available methods to reduce the effect. Even if there are no such methods, the Commission may approve the proposed rule to accomplish the objectives of the applicable law. The Department does not anticipate that the proposed regulatory amendments will have an adverse impact on small businesses.

V. CONCLUSION

This concludes my testimony to the Commission on NMED's proposed revisions to 20.7.5 NMAC. I respectfully request that the Commission adopt these rule revisions at the conclusion of this hearing. A Proposed Statement of Reasons supporting adoption of these amendments is attached to the Department's Notice of Intent to Present Technical Testimony as Exhibit 5 for the Commission's consideration.

The Department also advises the Commission that the rule revisions may be revised to correct any typographical errors and to reflect formatting changes required by the Administrative Law Division of the New Mexico Commission of Public Records for compilation into the New Mexico Administrative Code.

Jim Chiasson
Chief
Construction Programs Bureau

9/27/15
Date

Alysia J. Leavitt

EXPERIENCE

March 2014 to present New Mexico Environment Department, Santa Fe, NM

Financial Section Manager, Construction Programs Bureau

Oversee the Clean Water State Revolving Loan Fund Program (CWSRF), the Rural Infrastructure Program (RIP) and the Special Appropriations Projects Program (SAP). The CWSRF is a federally funded wastewater infrastructure program with a $292 million dollar net position. The RIP is also a revolving loan fund with a $32 million net position that is used for water, wastewater and solid waste infrastructure projects. The SAP program administers the capital outlay funding provided by the NM Legislature and authorized by the Governor that is assigned to the New Mexico Environment Department for water, wastewater, solid waste and other related infrastructure projects. The SAP program currently has 296 active projects totaling $79 million in funding.

Recent tasks have included:

- Updating the CWSRF program with the 2014 Water Resources Reform and Development Act (WRRDA) amendments, which are the first changes to the Clean Water Act governing the CWSRF program since 1986.
- Developing the business rules for the SAP program for use in programming the bureau's Loans and Grants Tracking System (LGTS).
- Collaborating with the other states in the Environmental Protection Agency (EPA) region on standard practice and procedures for the CWSRF program.
- Reviewing potential borrowers' financial information for RIP and CWSRF loan approval.
- Overseeing the bureau's $2.5 million operating budget by monitoring and reconciling each funding source and following the diverse rules for each program.
- Reviewing grantees' compliance with Executive Order 2013-006.

March 2008 to March 2014 New Mexico Environment Department, Santa Fe, NM

Loans Staff Manager, Construction Programs Bureau

Oversaw the CWSRF and the RIP programs. Day to day managerial functions for both loan programs included the identification and review of financing to potential borrowers; oversight of current borrowers; and the fiscal administration of both funds. Periodic managerial activities for both programs included plans for the use of the funds; written reports on the fund activities; and the development and enforcement of policies to ensure that federal and state requirements for each program were followed. For example, the CWSRF program was expanded in 2009 to allow grants to help subsidize the loans. I developed procedures to ensure the best use of the grant funds and that federal and state statutes would be followed.

Oversaw and worked on a daily basis with the administrator for each program to sign new loans and ensure the loan funds continue to revolve. Supervised the loan administrator who processed the loan disbursements, deposited the repayments and monitored the ongoing fiscal status of each borrower. Worked together as a group in SHARE and LGTS to ensure accurate accounting for each fund. Worked with other areas of the New Mexico Environment Department including the Drinking Water, Surface Water Quality, Ground Water Quality and Solid Waste Bureaus to identify possible funding to resolve regulatory issues.

NMED Exhibit 2

Nov. 2004 to March 2008 Burger, Carroll & Associates, Inc., Santa Fe, NM

Project Analyst and Executive Assistant

Performed project management, analysis and reporting for independent verification and validation (IV and V) of new and reconfigured information technology systems for multiple New Mexico and other governmental agencies. Duties included eliciting best business practices as required by the state agencies, and monitoring contractors' performance to assure that all of the state's needs were met. When gaps were identified, my role was to assist the agencies with the successful redirection of the contractor to fulfill project requirements.

IV and V project tasks included: identifying the business rules for 40 revenue generating programs in order to automate the revenue collection under one system; conducting a post-implementation review of a customized automated benefit system from a commercial-off-the-shelf program; analyzing proposed costs and response to requirements submitted by the top-ranked candidate on a project to develop a large and complex replacement payroll, financial management and case management system; reviewing business processes and performing a cost analysis of moving from a paper-based system to an electronic distribution system for two public assistance agencies; and conducting onsite interviews, collecting observation data, and performing analysis and reporting on a state's public health clinics, with an emphasis on comparing differing business practices.

Day-to-day responsibilities included financial management; project tracking; accounts receivable; and writing, editing, designing, and producing technical reports and proposals utilizing Microsoft Word, Excel, Project and Visio.

Jan. 2001 to Nov. 2004 New Mexico Energy, Minerals & Natural Resources Department, Santa Fe, NM

Management Analyst, Mining & Minerals Division

Mine registration and reporting program manager for all active mines in the state. Oversaw the automation and upgrade of the statewide mining tracking database. Made enforcement decisions on regulatory compliance of mine operators, working to identify unregistered/out of compliance operations. Interacted with other state and federal agencies. Collected, analyzed and reported on annual mine production and operational data. Provided public information and outreach. Managed budget and processed fiscal documents. Coordinated out of state travel. Participated in the requirements development, testing, training and implementation of several agency-wide IT systems, related to purchasing, IT services and human resources.

Feb. 1999 to Dec. 2000 Souder, Miller & Associates, Santa Fe/Farmington NM

Financial Database Manager/Computer System Manager

Information systems manager for 3 offices statewide comprised of 45 staff members and 42 computers. Researched, selected and customized a project/financial management database for engineering firms. Performed ongoing database management, including data quality management, report writing and training; administration, troubleshooting and problem solving of computer network; and installation and maintenance of computer/network hardware. Developed and implemented policies, procedures and standard practices for computer and network operation. Hired and supervised 6 support staff team members.

Sep. 1994 to Feb. 1999 Souder, Miller & Associates, Santa Fe NM

Project Administrator

Business administration for 40 person office. Managed financial and project tracking databases. Project management for environmental clean-up sites and water infrastructure projects, including state fund reimbursement application and tracking; budget management; scheduling; permitting; construction bidding; oversight of contractors; client interaction; and regulatory reporting. Performed business development including financial analysis, marketing and strategic planning. Completed extensive proposal and grant writing. Hired and supervised 9 staff members. Converted/standardized all company documents to Word and Excel, and trained employees in the use of Word and Excel.

Jun. 1992 to Sep. 1994 Souder, Miller & Associates, Santa Fe NM

Technical Assistant

Assistant to President of consulting firm. Main responsibilities included: complex report and proposal preparation in Microsoft Word; establishment and administration of project and financial management spreadsheets in Microsoft Excel; preparation and processing of accounts payable and accounts receivable; and development and use of budget tracking database in Microsoft Access. Conducted environmental investigations of real estate to identify environmental conditions in connection with property sales/purchases. Analyzed environmental programs for major communications company. Researched and authored report concerning water quality programs in all fifty states. Performed general office duties. Conducted field work at environmental clean-up sites throughout New Mexico. Supervised support staff: hired, trained, prioritized workloads, and conducted performance reviews for 3 administrative support staff.

EDUCATION

Cornell University	1987-1989	Mechanical Engineering
	1990-1991	Business Management

NMED Exhibit 2

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

20.7.5.1 ISSUING AGENCY. Water Quality Control Commission.
[11-30-95; 20.7.5.1 NMAC - Rn, 20 NMAC 7.5.100, 7/16/2000]

20.7.5.2 SCOPE. This part applies to financial assistance and actions pursuant to the Wastewater Facility Construction Loan Act.
[2-5-87; 11-30-95; 20.7.5.2 NMAC - Rn, 20 NMAC 7.5.101, 7/16/2000]

20.7.5.3 STATUTORY AUTHORITY. Wastewater Facility Construction Loan Act, NMSA 1978, Sections 74-6A-1 to 15 as amended.
[2-5-87; 11-30-95; 20.7.5.3 NMAC - Rn, 20 NMAC 7.5.102, 7/16/2000]

20.7.5.4 DURATION. Permanent.
[11-30-95; 20.7.5.4 NMAC - Rn, 20 NMAC 7.5.103, 7/16/2000]

20.7.5.5 EFFECTIVE DATE. July 16, 2000 This part amends and replaces 20 NMAC 7.5 filed October 25, 1995, amended September 17, 1998 entitled Wastewater Facility Construction Loan Act.

A. All references to 20 NMAC 7.5-7.7 or to the Wastewater Facility Construction Loan Act, in any other rule shall be construed as a reference to this part.

B. The amendment and replacement of 20 NMAC 7.5-7.7 shall not affect any administrative or judicial enforcement action pending on the effective date of such amendment nor the validity of any financial assistance provided pursuant to 20.7.5 NMAC - 20.7.7 NMAC.
[11-30-95; 20.7.5.5 NMAC - Rn, 20 NMAC 7.5.104 & A, 7/16/2000]

20.7.5.6 OBJECTIVE. The objective of this part is to establish a program to provide financial assistance to local authorities for the acquisition, construction or modification of wastewater facilities pursuant to the act.
[11-30-95; 20.7.5.6 NMAC - Rn, 20 NMAC 7.5.105, 7/16/2000]

20.7.5.7 DEFINITIONS: as used in this part.

A. "Act" means the Wastewater Facility Construction Loan Act.

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

C. "Clean Water Act" means the federal Clean Water Act of 1977 and its subsequent amendments or successor provisions.

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

E. "Commission" means the water quality control commission.

F. "Department" means the New Mexico environment department.

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

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

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

J. "Force account construction" means construction performed by the employees of a local authority rather than through a contractor.

K. "Fund" means the wastewater facility construction loan fund established in Section 74-6A-4.

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.

M. "Payment" means a disbursement from the fund directly to the local authority.

N. Priority list" means the list of eligible projects ranked according to the priority system pursuant to the Wastewater Facility Construction Loan Act.

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

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

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

[2-5-87; 10-25-88; 11-18-93; 11-30-95; 09-30-98; NMAC - Rn, 20 NMAC 7.5.108 & A, 7/16/2000; A, 11/15/2007; A, XX/XX/2015]

20.7.5.8 CONSTRUCTION. This part shall be liberally construed to effectuate the purposes of the act. If any provision or application of this part is held invalid, the remainder, or its application to other situations or persons, shall not be affected.

[11-30-95; 20.7.5.8 NMAC - Rn, 20 NMAC 7.5.106, 7/16/2000]

20.7.5.9 COMPLIANCE WITH OTHER REGULATIONS. Compliance with this part does not relieve a person from the obligation to comply with other applicable state and federal regulations.

[11-30-95; 20.7.5.9 NMAC - Rn, 20 NMAC 7.5.107, 7/16/2000]

20.7.5.10 ELIGIBILITY REQUIREMENTS FOR FINANCIAL ASSISTANCE.

A. Only local authorities will be eligible for financial assistance from the fund.

B. The project must appear on the current priority list at the time of the financial assistance award.

C. To be eligible for financial assistance from the fund, local authorities shall:

(1) meet the requirements of financial capability set by the department to assure sufficient revenue to operate and maintain the facility for its useful life and to repay the financial assistance;

(2) agree to operate and maintain the wastewater facility so that the facility will function properly over its structural and material design life;

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

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

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

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

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

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

[2-5-87; 11-18-93; 11-30-95; 20.7.5.10 NMAC - Rn, 20 NMAC 7.5.200 & A, 7/16/2000]

20.7.5.11 APPLICATION PROCEDURES FOR PRIORITY LIST PLACEMENT.

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

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

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

(2) a cost estimate of the project; and

(3) a target date for initiation of construction.

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

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

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

20.7.5.12 PRIORITY SYSTEM AND PRIORITY LIST.

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

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

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

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

20.7.5.13 ELIGIBLE AND INELIGIBLE FINANCIAL ASSISTANCE ITEMS.

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

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

C. Ineligible items include:

(1) the costs of water rights;

(2) local administrative costs;

(3) fulfillment or partial fulfillment of requirements made of a subdivider by the provisions of the Land Subdivision Act or the New Mexico Subdivision Act;

(4) force account construction; and

(5) administrative fee.

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

20.7.5.14 ADMINISTRATION OF THE LOAN PROGRAM AND FUND.

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

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

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

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

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

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

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

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

E. Repayment of the loan portion of the financial assistance shall begin no later than one year after completion of the project for which the loan was executed and shall be repaid in full no later than ~~twenty~~ thirty 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 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 percent, when the local authority's median household income is less than the statewide non-metropolitan median household income based on the most current decennial U.S. bureau of census statistics.

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

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

(4) An interest rate of zero percent when:

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

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

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

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

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

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

[11-18-93; 11-30-95; 09-30-98; 20.7.5.14 NMAC - Rn, 20 NMAC 7.5.204 & N, 7/16/2000; & A, 7/16/2000; A, 11/15/2007; A, XX/XX/2015]

HISTORY OF 20.7.5 NMAC:

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

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

NEW MEXICO
ENVIRONMENT DEPARTMENT

SUSANA MARTINEZ
Governor
JOHN A. SANCHEZ
Lt. Governor

Harold Runnels Building
1190 Saint Francis Drive (87505)
PO Box 5469, Santa Fe, NM 87502-5469
Phone (505) 827-2990 Fax (505) 827-1628
www.env.nm.gov

RYAN FLYNN
Cabinet Secretary
BUTCH TONGATE
Deputy Secretary

September 21, 2015

Small Business Regulatory Advisory Commission
c/o Ms. Leslie Porter
New Mexico Economic Development Department
1100 S. St. Francis Drive
Santa Fe, New Mexico 87505

Re: Proposed Revisions to 20.7.5 NMAC – *Wastewater Facility Construction Loans* and 20.7.6 NMAC – *Wastewater Facilities Construction Loan Policies and Guidelines*

Dear Ms. Porter,

The New Mexico Environment Department ("Department") hereby provides notice to the Small Business Regulatory Advisory Commission, pursuant to the Small Business Regulatory Relief Act ("Act"), NMSA 1978, Sections 14-4A-1 *et seq.* that the Water Protection Division, Construction Programs Bureau ("Bureau") has submitted a petition to the Water Quality Control Commission ("WQCC") for regulatory amendments to portions of 20.7.5 New Mexico Administrative Code ("NMAC"). The Bureau will also submit a petition to the Secretary of the Department for regulatory amendments to portions of 20.7.6 NMAC. Initially, the Bureau submitted one petition for both amendments to the WQCC, but upon further review, the Bureau determined that the proper venue for amendments to 20.7.6 NMAC was before the Secretary of the Department.

The Wastewater Facility Construction Loan Act ("WWFCLA") (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 decentralized wastewater systems. The Fund is administered by the Bureau.

The Bureau seeks these regulatory changes to amend the regulations to comply with NMSA 1978, Sections 74-6A-3(F) and 74-6A-8(C). In the 2015 New Mexico Legislative Session, Senator Richard Martinez sponsored Senate Bill 227 which proposed amendments to the WWFCLA that would make mutual domestic water consumer associations eligible for

funding under the WWFCLA and lengthen the maximum repayment period for borrowers from twenty (20) years to thirty (30) years. The bill was signed into law by Governor Martinez on April 9, 2015.

Specifically, Senate Bill 227 amended the WWFCLA in the following two ways:

1) Senate Bill 227 amended Section 74-6A-3(F) of the WWFCLA to add "mutual domestic water consumer 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) Senate Bill 227 amended Section 74-6A-8(C) of the WWFCLA to change the repayment period from "no later than twenty years after the completion of [the] construction" to "no later than 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 (design) life of the system being funded.

The WQCC will hold a hearing on the proposed regulatory amendments to 20.7.5 NMAC (Docket No. WQCC 15-06(R)) currently scheduled for Tuesday, October 13, 2015. For details regarding the time and location of the hearing please check the WQCC website at: https://www.env.nm.gov/wqcc/. Since the Bureau only recently noted the need to submit a petition to amend 20.7.6 NMAC with the Secretary of the Department, the matter has not yet been docketed, and no hearing has yet been scheduled.

Pursuant to Section 14-4A-4 of the Act, the Department does not anticipate that the proposed regulatory amendments will have any adverse effect on small businesses. If you require further information about these proposed regulatory amendments, please call me at (505) 222-9554 or email me at christopher.atencio@state.nm.us.

Sincerely,

Christopher N. Atencio, Esq.
Assistant General Counsel
New Mexico Environment Department

cc: Trais Kliphuis, NMED WPD Director
Jeffrey Kendall, General Counsel
Jim Chiasson, CPB Chief
Alysia Leavitt, CPB

STATE OF NEW MEXICO
BEFORE THE WATER QUALITY CONTROL COMMISSION

IN THE MATTER OF PROPOSED REVISIONS TO: **No. WQCC 15-06 (R)**
20.7.5 NMAC – Wastewater Facility Construction Loans
and 20.7.6 NMAC – Wastewater Facility Construction Loan
Policies and Guidelines

PROPOSED STATEMENT OF REASONS

This matter comes before the Water Quality Control Commission ("Commission") pursuant to WQCC 15-06 (R), the Petition for Regulatory Change filed by the New Mexico Environment Department ("Department") on June 2, 2015, and the Department's Amended Petition for Regulatory Change filed on September 23, 2015.

The Commission scheduled a public hearing for this matter on Tuesday, October 13, 2015, at the State Capitol Building in Santa Fe, New Mexico to be held in accordance with the Guidelines for Water Quality Control Commission Regulation Hearings ("Commission Rulemaking Guidelines"); the Water Quality Act, Section 74-6-6 NMSA 1978; and other applicable procedures.

The Commission held the aforementioned hearing on Tuesday, October 13, 2015, and at this hearing the Commission heard testimony from the Department and admitted exhibits into the record. On October 13, 2015, the Commission deliberated and voted to adopt the proposed amendments for the reasons that follow:

STATEMENT OF REASONS

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 Susan Martinez signed Senate Bill 227 ("SB 227") into law. Chapter 112 52nd Legislature, 1st Session, Laws of New Mexico (2015).

6. SB 227 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 Projects Act" to the definition of "local authorit[ies]." This amendment makes mutual domestics eligible for project funding under the Fund.

7. SB 227 amended Section 74-6A-8(C) of the Act to change the repayment period from "no later than twenty years after completion of [the] construction" to "no later than thirty years after completion of [the] construction."

8. This amendment brings the terms of the Fund in line with recent repayment amendments made to the federal Clean Water Act that went into effect on June 10, 2014. *See* 13 U.S.C. §1383(d)(1)(A) and (B).

9. 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.

10. Any person may petition the Commission for amendment of regulations within the jurisdiction of the Commission. NMSA 1978, § 74-6-6(B).

11. 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. *See* petition and amended petition in Record Proper.

12. 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.

13. On August 28, 2015, Notice of Hearing was published in the New Mexico Register in English and Spanish. *See* NMED Exhibit 1.

14. 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.

15. NMED filed a Notice of Intent to Present Technical Testimony ("NOI") on September 29, 2015, in accordance with Commission Rulemaking Guidelines.

16. A public hearing was held in this matter on October 13, 2015, in Santa Fe, New Mexico.

17. 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 and previous experience with equipment and methods available to control the water contaminants 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 uses; and (7) federal water quality requirements.

18. 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).

19. 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.

20. 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).

21. The notice and hearing requirements of NMSA 1978, Section 74-6-6 and the Commission Rulemaking Guidelines were satisfied in this rulemaking process.

22. The proposed amendments are adopted for any or all of the reasons stated above.

ORDER

By _____ vote of a quorum of the Commission members, the proposed regulatory revisions were approved by the Commission on October 13, 2015. Amendments to 20.7.5 NMAC, with any appropriate corrections of typographical errors, or formatting shall be filed with the New Mexico State Records Center.

_____ Dated: _____

On Behalf of the Commission