

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**

No. WQCC 18-01 (R)

AMENDED ORDER AND STATEMENT OF REASONS

1. The order filed on August 17, 2018, is amended to reflect the correct effective date of the regulatory change, as set forth in Water Quality Act.
2. This matter comes before the New Mexico Water Quality Control Commission (“Commission”) pursuant to the Petition for Regulatory Change properly filed by the New Mexico Environment Department (“Department”) on April 2, 2018, and docketed at WQCC 18-01 (R). *See* Petition for Regulatory Change.
3. At a meeting conducted in compliance with the Open Meetings Act and other applicable requirements, the Commission granted the Petition for Regulatory Change and scheduled a public hearing for this matter on Tuesday, August 14, 2018, at the State Capitol Building in Santa Fe, New Mexico to be held in accordance with 20.1.6 NMAC, Rulemaking Procedures – Water Quality Control Commission; the Wastewater Facility Construction Loan Act, Section 74-6A-9(A)(10) NMSA 1978 (“Act”); and other applicable procedures.
4. The Commission held the aforementioned hearing on Tuesday, August 14, 2018, and at this hearing the Commission heard testimony from the Department and admitted exhibits into the record. *See generally* Admin Record.

5. The public hearing was properly noticed pursuant to the requirements of 20.1.6.201 NMAC. NMED Exhibit 4, p. 1.
6. Specifically, the notice was published in the New Mexico Register on June 12, 2018. NMED Exhibit 7.
7. Additionally, the Notice was published in the *Albuquerque Journal* on June 10, 2018. NMED Exhibit 8.
8. The Department filed a Notice of Intent to Present Technical Testimony on July 25, 2018.
9. No other parties submitted a Notice of Intent to Present Technical Testimony.
10. The Wastewater Facility Construction Loan Act (“Act”) (NMSA 1978, §§ 74-6A-1 to -15 (1986)) creates the Wastewater Facility Construction Loan Fund, which is also referred to as the Clean Water State Revolving Loan Fund (“CWSRF”).
11. The purpose of the CWSRF 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. NMSA 1978, § 74-6A-2 (2018).
12. The CWSRF is funded through a mixture of federal and state dollars pursuant to a capitalization grant agreement. 33 U.S.C. § 1382.
13. The CWSRF is administered by the Construction Programs Bureau (“Bureau”) of the New Mexico Environment Department (“Department”) pursuant to regulations established by the Water Quality Control Commission at 20.7.5 NMAC.
14. 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.” NMSA 1978, § 74-6A-4.1(A) (2007).

15. The Commission has the power to, "...adopt regulations necessary and appropriate to implement the provisions of the Wastewater Facility Construction Loan Act." NMSA 1978, § 74-6A-9(A) (2017).

16. During the 2017 New Mexico Legislative Session, Representatives Randall Crowder and Rodolpho Martinez sponsored House Bill 415 ("HB 415"), which added state agencies to the list of entities eligible to apply for CWSRF funding. *See* Chapter 114, 53rd Legislature, 1st session, Laws of New Mexico (2017); NMSA 1978, § 74-6A-8(B); NMED Exhibit 5.

17. State agencies and local authorities may receive financial assistance from the CWSRF. *Id.*; NMSA 1978, 74-6A8(B) (2017).

18. While there are other requirements to be met in determining state agency eligibility for a CWSRF loan, including compliance with Article 9, Section 8 of the New Mexico Constitution, this amendment allowed state agencies to apply for CWSRF funding in certain circumstances. NMED Exhibit 4, p. 1.

19. On June 10, 2014, President Obama signed the Water Resources Reform and Development Act of 2014 ("WRRDA"). WRRDA, H.R. 3080, 113th Cong. (2014).

20. The United States Environmental Protection Agency ("EPA") issued guidance on September 18, 2014, and again on January 6, 2015, to aid states in administering CWSRF funds. Generally, the EPA's guidance expands the entities eligible for CWSRF funding as well as the potential eligible projects. NMED Exhibit 4, p. 3.

21. During the 2018 New Mexico Legislative Session, Representative Randall Crowder sponsored House Bill 66 ("HB 66"), which proposed amendments to the Act that expanded the scope and eligibility of borrowers and projects for the CWSRF beyond the addition of state

agencies in 2017. *See* Chapter 19, 53rd Legislature, 2nd Session, Laws of New Mexico (2018); NMED Exhibit 6.

22. The 2018 amendments to the Act changed the definition of an eligible project in NMSA 1978, Section 74-6A-3(H) to specify that eligible projects and activities are those allowed pursuant to Section 603(c) of the Clean Water Act, Section 1383 of Title 33 of the United States Code. *Id.*

23. The 2018 amendments to the Act changed the definition of a qualified borrower in NMSA 1978, Section 74-6A-3(Q) to include any creditworthy borrower with an identified and verifiable repayment source eligible to receive funding pursuant to the Clean Water Act. *Id.*

24. The 2018 amendments to the Act restructured and revised the definitions in NMSA 1978, Section 74-6A-3 to alphabetical order and for consistency with the amendments to eligible projects and qualified borrowers. *Id.*

25. The 2018 amendments to the Act changed language throughout the Act to accommodate the expanded scope of eligible projects and borrowers as well as accounting for the related practical considerations in administering the CWSRF. *Id.*

26. The 2018 amendments to the Act changed NMSA 1978, Section 74-6A-8(E) to list the financial criteria for a zero-percent loan from an average user cost of at least \$15 per month or higher to an average user cost greater than one and eighty-two hundredths percent of the local authority's per capita income and from a median household income of less than three-fourths of the statewide nonmetropolitan median household income to per capita income. *Id.*

27. The Bureau's proposed amendments to 20.7.5 NMAC expand the list of potential eligible applicants for CWSRF as well as potential projects. This will allow for greater drawdown of currently available funds and fulfilment of the purposes of the Act. NMED Exhibit 4, p. 7. This serves the public interest.

28. The Commission has the authority to approve these proposed amendments pursuant to NMSA 1978, Sections 74-6A-4.1(A) and 74-6A-9(A).

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

ORDER

By a unanimous vote of a quorum of the Commission members, the proposed revisions were approved by the Commission on August 14, 2018. 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. Notice of the Commission Action shall be completed pursuant to 20.1.6.307 NMAC. The regulatory change as described in this Order is hereby adopted, to be effective 30 days after filing of the rule in accordance with the State Rules Act. NMSA 1978, § 74-6-6(E) (1993).


Larry Dominguez, Chair
New Mexico Water Quality Control Commission

Dated: 8-10-18

CERTIFICATE OF SERVICE

I hereby certify that a copy of the **Amended Order and Statement of Reasons** was sent to the following parties via the stated methods below on August 20, 2018:

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Pam Castañeda, Commission Administrator