

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

**IN THE MATTER OF PROPOSED  
REVISIONS TO: 20.7.5 NMAC,  
WASTEWATER FACILITY  
CONSTRUCTION LOAN**

**No. WQCC 20-07 (R)**

**New Mexico Environment Department,  
Petitioner**

**Statement of Reasons**

1. This matter came before the New Mexico Water Quality Control Commission (“Commission”) pursuant to a Petition for Regulatory Change properly filed by the New Mexico Environment Department (“Department”) on February 12, 2020, and docketed as WQCC 20-07 (R). *See* Petition for Regulatory Change.
2. At a meeting conducted in compliance with the Open Meetings Act, NMSA 1978, Sections 10-15-1 to -4, and other applicable requirements on March 10, 2020, the Commission granted the Petition for Regulatory Change and scheduled a public hearing to consider the proposed changes for \_\_\_\_\_, 2020. *See* Order Setting Public Hearing on Proposed Regulatory Change and Designating Hearing Officer.
3. Due to the ongoing restrictions in place by the Governor’s Executive Orders and various emergency public health orders, the Commission held the hearing via the internet application WebEx beginning at 9:00 a.m. on \_\_\_\_\_, \_\_\_\_\_, 2020. *See* Public Notice.
4. The Department provided the proper public notice for the public hearing pursuant to 20.1.6.201 NMAC. NMED Exhibit 1, pg. 1.

5. Specifically, the Department had the notice published in the New Mexico Register in English and Spanish on May 5, 2020. NMED Exhibit 5.
6. The Department published the notice in Spanish and English in the Albuquerque Journal on May 15, 2020. NMED Exhibits 6 and 7.
7. The Department sent notice to the New Mexico Small Business Regulatory Advisory Commission on May 20, 2020. NMED Exhibit 8.
8. The Department, through the Commission Administrator, sent the notice to the interested parties list maintained for the Commission on May 12, 2020. NMED Exhibit 9.
9. The Department published the notice on the Department webpage. NMED Exhibit 10.
10. The Department sent the notice for posting on the New Mexico Sunshine Portal on May 15, 2020. NMED Exhibit 11.
11. The Department sent the notice to the Legislative Council Service for distribution to the appropriate committees on May 12, 2020. NMED Exhibit 12.
12. The Department could not post notice at its offices because the offices were, and remain, closed to public access due to the ongoing COVID-19 pandemic. NMED Exhibit 13.
13. The Department filed a Notice of Intent to Present Technical Testimony on June 29, 2020. NMED Notice of Intent to Present Technical Testimony.
14. No other parties submitted a Notice of Intent to Present Technical Testimony. *See* Administrative Record.
15. The Wastewater Facility Construction Loan Act (“Act”), NMSA 1978, Sections 74-6A-1 to -15, creates the Wastewater Facility Construction Loan Fund, which is also referred to as the Clean Water State Revolving Loan Fund (“CWSRF”).

16. 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); NMED Exhibit 1, pg. 1.
17. The CWSRF is funded through a mixture of federal and state dollars pursuant to a capitalization grant agreement. 33 U.S.C. § 1382; NMED Exhibit 1, pg. 1.
18. The CWSRF is administered by the Construction Programs Bureau (“Bureau”) of the Department pursuant to regulations established by the Commission at 20.7.5 NMAC. NMSA 1978, § 74-6A-4(A) (2007); NMED Exhibit 1, pg. 1.
19. Congress set aside funds for grants for the construction of necessary publicly owned treatment works, 33 U.S.C. § 1285, which are also managed by the Bureau pursuant to NMSA 1978, Section 74-6A-4.1 (2007).
20. 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).
21. 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).
22. The Bureau provided proposed amendments to 20.7.5 NMAC for the Commission’s consideration. NMED Exhibits 1, pg. 2; NMED Exhibit 2.

23. The Commission heard testimony from Ms. Rhonda Holderman and Ms. Judi Kahl and found them credible to testify as to the administration of the CWSRF, the proposed amendments, and federal grants for publicly owned treatment works. NMED Exhibits 1, 3, and 4.
24. Currently, the Commission may set a base rate at the beginning of each fiscal year.  
20.7.5.14(G) NMAC; *see* NMSA 1978, § 74-6A-8(D) (2018).
25. Other available rates are lower than and are an exception to the base rate. 20.7.5.14 NMAC;  
NMED Exhibit 1, pg. 2.
26. Current alternative rates are codified at 20.7.5.14(H) NMAC. NMED Exhibit 1, pg. 4.
27. Neither state nor federal law requires these rates to be codified. NMED Exhibit 1, pg. 4  
(citing 33 U.S.C. § 1383(d) and NMSA 1978, §§ 74-6A-8(A), (D), or (E)).
28. The New Mexico Finance Authority (“NMFA”) administers a similar loan program called the Drinking Water State Revolving Loan Fund to provide low-cost financial assistance to local authorities for the construction and rehabilitation of necessary drinking water facilities.  
NMSA 1978, § 6-21A-2 (1997).
29. NMFA determines annual alternative interest rates through internal policy rather than through regulations, providing a more flexible means of determining alternative rates.  
NMED Exhibit 1, pg. 4; NMED Exhibit 14, Section VI.
30. Removing the codification of interest rates will allow flexibility for the Commission and the Bureau to determine rates more reflective of current market conditions. NMED Exhibit 1, pp. 3-4.
31. Allowing the Bureau to determine hardship criteria and rates will also provide needed flexibility to drawdown current CWSRF balances. NMED Exhibit 1, pp. 4-5.

32. Hardship criteria are partially established in statute for zero-percent interest loans as a function of per capita income. NMSA 1978, § 74-6A-8(E).
33. The Bureau's proposed means of determining additional alternative rates is likewise based on per capita income which the legislature has found to be an appropriate method of determining hardship rates. NMED Exhibit 1, pg. 5; *see* NMSA 1978, § 74-6A-8(E).
34. As written, 20.7.5.14(H)(3) NMAC unnecessarily restricts grant subsidies to rural communities. NMED Exhibit 1, pg. 5.
35. Federal law governing grant disbursement specifies that states should give high priority to projects in priority water quality areas in developing a priority system. 33 U.S.C. § 1296; 40 C.F.R. § 35.2015(b).
36. State priority ranking systems must include ranking criteria based on the impairment of classified water uses resulting from existing municipal pollutant discharges and on the extent of surface or ground water use restoration or public health improvement resulting from the reduction of pollution. 40 C.F.R. § 35.2015(b)(1)(i). The federal regulations place importance on water quality consideration and pollution reduction but make no mention of population. *See* 40 C.F.R. § 35.2015(b).
37. Removal of the grant restriction will allow grants to be made based on water quality considerations and pollution reduction; population and socioeconomic factors are still given consideration through the affordability criteria. NMED Exhibit 1, p.5.
38. 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).
39. The proposed amendments are adopted for any or all of the reasons stated above.

**ORDER**

By a vote of \_\_\_ to \_\_\_ of a quorum of the Commission members, the proposed revisions were approved by the Commission on July 14, 2020. 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 upon the date of publication in the New Mexico Register. NMSA 1978, § 14-4-5(D) (2017).

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Jennifer J, Pruett, Chair  
New Mexico Water Quality Control Commission

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Date