

TITLE 20 ENVIRONMENTAL PROTECTION
CHAPTER 7 WASTEWATER AND WATER SUPPLY FACILITIES
PART 6 WASTEWATER FACILITY CONSTRUCTION LOAN POLICIES AND GUIDELINES

20.7.6.1 ISSUING AGENCY. New Mexico Environment Department.
[11-30-95; 20.7.6.1 NMAC - Rn, 20 NMAC 7.6.100, 7/16/2000]

20.7.6.2 SCOPE. These policies, procedures and guidelines apply to all construction projects funded in-part from funds within the wastewater facilities construction loan fund.
[10-22-88, 11-30-95; 20.7.6.2 NMAC - Rn, 20 NMAC 7.6.101, 7/16/2000]

20.7.6.3 STATUTORY AUTHORITY. Department of Environment Act, NMSA 1978, 9-7A-6.F; Wastewater Facility Construction Loan Act, NMSA 1978, Sections 74-6A-1 to 15; and Water Quality Control Act, NMSA 1978, Sections 74-6-1 to 17.
[10-22-88, 11-30-95; 20.7.6.3 NMAC - Rn, 20 NMAC 7.6.102, 7/16/2000]

20.7.6.4 DURATION. Permanent.
[11-30-95; 20.7.6.4 NMAC - Rn, 20 NMAC 7.6.103, 7/16/2000]

20.7.6.5 EFFECTIVE DATE. July 16, 2000. This Part amends and replaces the New Mexico Wastewater Facility Construction Loan Fund Policies, Procedures and Guidelines, HED 88-2 (EID), filed September 22, 1988, as amended.

A. All references to HED 88-2 (EID) or to the New Mexico Wastewater Facility Construction Loan Fund Policies, Procedures and Guidelines in any other rule shall be construed as a reference to this Part.

B. The amendment and replacement of HED 88-2 (EID) 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 HED 88-2 (EID).

[11-30-95; 20.7.6.5 NMAC - Rn, 20 NMAC 7.6.104 & A, 7/16/2000]

20.7.6.6 OBJECTIVE. The objective of this Part is to establish policies, procedures and guidelines in the administration of loans from the wastewater facility construction loan fund.
[10-22-88, 11-30-95; 20.7.6.6 NMAC - Rn, 20 NMAC 7.6.105, 7/16/2000]

20.7.6.7 DEFINITIONS. As used in this part.

A. "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.

B. "Applicant" means a local authority that meets the following criteria: (1) placement on the current fiscal year priority list, (2) financial capability to service a loan, to perform operation and maintenance, to maintain a replacement fund and debt service reserve fund, and (3) readiness to proceed.

C. "Borrower" means a local authority whose application has been approved for eligibility and is ready to proceed to an interim loan agreement.

D. "Commission" or "WQCC" means the New Mexico water quality control commission.

E. "Department" or "NMED" means the New Mexico environment department.

F. "Event of default" means the borrower failed to make the complete annual payment of principal, plus interest and administrative fee when the same shall become due and payable, as identified in the repayment schedule of the final loan agreement.

G. "Final loan agreement" means a note issued by the borrower and the state upon completion of the project to evidence the permanent financing of the final loan amount in substantially the form as shown in the attachments.

H. "Final loan amount" means the aggregate amount of the principal disbursed by NMED to the borrower during the project, together with accrued interest on the aggregate principal thereof.

I. "Force account" means that the local authority provides the materials, equipment, or labor necessary to design or construct the project.

J. "Fund" or "SRF" means the state water pollution control revolving fund pursuant to Title VI of the Clean Water Act.

K. "Interim loan agreement" means a note, in the form of a line-of-credit, issued by the borrower and the state at the beginning of the project in anticipation of the issuance of the final loan agreement upon completion of the project in substantially the form as shown in the attachments.

L. "Loan issuance" means execution of the final loan agreement and revised promissory note.

M. "Local authority" means any municipality, county, water and sanitation district or any similar district, recognized Indian tribe or other issuing agency created pursuant to a joint powers agreement acting on behalf of any entity listed in this subsection.

N. "Operate and maintain" means all necessary activities including replacement of equipment or appurtenances to ensure the dependable and economical function of a wastewater facility in accordance with its intended purpose.

O. "Priority system" means the system for ranking wastewater facility construction projects for which loan applications have been received pursuant to the Wastewater Facility Construction Loan Act.

P. "Priority list" means the list of wastewater facility construction projects ranked according to the priority system pursuant to the Wastewater Facility Construction Loan Act.

Q. "Project" means the planning, design, construction, repair, extension, improvement, alteration, or reconstruction of the wastewater facilities by the borrower as described in the loan application.

R. "Project completion" means the date that operations of the completed works are initiated or capable of being initiated, whichever is earlier. This also applies to individual phases or segments.

S. "Project engineer" means the NMED staff engineer assigned to the project.

T. "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.

[2-5-87; 10-22-88; 11-30-95; 20.7.6.7 NMAC - Rn, 20 NMAC 7.6.109 & A, 7/16/2000; A, 10/29/2007]

20.7.6.8 BACKGROUND. The Environment Department Act, NMSA 1978, Section 9-7A-6.F, provides authority to the secretary of environment to make and adopt reasonable and procedural rules and regulations as may be necessary to carry out the duties of the department and its division. The authority for the New Mexico environment department to provide loans to eligible applicants for the construction of wastewater facilities is provided in NMSA 1978, Sections 74-6A-1 to 15 Wastewater Facility Construction Loan Act and in the New Mexico Water Quality Act, NMSA 1978, Sections 74-6-1 to 17. The water quality control commission adopted regulations pursuant to the Wastewater Facility Construction Loan Act which address

6-102 Definitions;

6-103 Eligibility;

6-104 Eligible and Noneligible Construction Items;

6-105 Priority System and Priority List; and

6-107 Application Procedures.

Title VI of the Federal Clean Water Act, as amended, authorizes the U. S. environmental protection agency (EPA) to make capitalization grants to states for deposit in the wastewater facility construction loan fund (state revolving fund - SRF). "Final Initial Guidance - State Water Pollution Control Revolving Fund" was published by EPA on January 28, 1988, which represents EPA's approach to implementation of Title VI.

[10-22-88; 11-30-95; 20.7.6.8 NMAC - Rn, 20 NMAC 7.6.106 & A, 7/16/2000]

20.7.6.9 CONSTRUCTION. This Part shall be liberally construed to carry out 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; 20.7.6.9 NMAC - Rn, 20 NMAC 7.6.107, 7/16/2000]

20.7.6.10 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.

20.7.6.11 GENERAL.

A. Direct loans from the fund may be offered for up to 100% of total eligible project costs under state and federal statutes and regulations, subject to availability of loan monies.

B. Two types of loans are available: planning/design loans and construction loans.

(1) Planning/design loans. The maximum repayment period is limited to five years from the date of the interim loan agreement. If the borrower receives a construction loan for the same project, the borrower will be provided the option of reamortizing any remaining principal balance plus accrued interest and administrative fees on the planning/design loan upon completion of the construction project, or may make payments under both loans.

(2) Construction loans. The length of the loan repayment period will not exceed twenty (20) years or the expected life of the project improvements, whichever is less. Loans of lesser amounts will receive a shorter repayment period depending upon the borrower's ability to service the debt in a reduced time period. The construction loan may include the cost of design and may precede the design phase of the project if the design period is relatively short and if a reasonable estimate of construction costs is available. Since the interim loan agreement is essentially a line-of-credit for planning, design and construction of the project the borrower must agree to complete the appropriate planning requirements prior to proceeding to the design and construction phases of the project.

C. A long-term commitment for future funding of a phased or segmented project will not be made; although, partial or phased funding for a project (without a guarantee of future funding) may be offered when deemed necessary to meet state water quality and financial assistance objectives.

D. Monies in the fund shall be loaned to eligible applicants as soon as possible after the monies become available. The fund will be managed so that a reserve is held available. The amount of the reserve will be dependent on the total size of the fund, including both available and committed monies. This reserve may be used for administration of the fund, investment, and limited-purpose contingencies, including increases subject to federal and state statutes.

E. In the event project costs exceed the estimates in the interim loan agreement, the borrower may request that NMED consider an increase to the loan. Such request will be evaluated in respect to available uncommitted monies in the fund, financial risk of the request, and other criteria set by NMED. NMED may follow any procedure deemed appropriate under the circumstances, including renegotiation of the loan agreement in accordance with federal and state statutes.

F. In the event project costs are less than the estimates in the interim loan agreement, then the loan amount shall be adjusted downward by a corresponding amount at the time the final loan agreement is executed following completion of the project.

G. A loan shall be declared in default if the full payment is not received on the due date. Should a loan be declared in default, NMED may initiate legal action to collect past due amounts. NMED may also notify other state agencies and may take actions to preclude the borrower from receiving grant or other financial assistance from state agencies until all delinquent amounts due on the loan have been paid. In addition to these provisions, technical assistance will be provided to a borrower with a loan in default to help assess the problem and advise on corrective actions needed to bring the loan current. Should these efforts fail to produce results and the borrower fails to adhere to the prescribed payment schedule, the NMED will dispatch an interdisciplinary team (representatives of the general counsel, state auditor, and local government division, as needed) to conduct a comprehensive assessment of the borrower, including, but not limited to, financial condition, management practices, fiscal capacity, economic circumstances, and violations of the terms and conditions of the legally binding final loan agreement. Upon the report of this team, NMED shall take whatever actions deemed appropriate, including court actions, to resolve the outstanding obligation.

H. NMED may waive or adjust any rule relative to the administration of the wastewater facility construction loan fund where it is deemed that the waiver or adjustment is in the best interest of the state and the community, and the waiver or adjustment does not violate any state or federal statute or regulation.

[10-22-88; 11-30-95; 20.7.6.11 NMAC - Rn, 20 NMAC 7.6.200 & A, 7/16/2000; A, 10/29/2007]

20.7.6.12 APPLICATION PROCEDURES FOR PRIORITY LIST PLACEMENT.

A. The commission at 20 NMAC 7.5 Section 11 specifies loan program application procedures. Applicants for loans shall submit a complete loan application to NMED on a form specified by the NMED. Applications may be submitted at any time; although, generally an annual funding cycle is followed.

B. NMED shall review the applications for eligibility, technical merits, and rank the applications based on the project priority system described in 20 NMAC 7.5 Section 12, following NMED procedures for priority system and priority list.
[10-22-88; 11-30-95; 20.7.6.12 NMAC - Rn, 20 NMAC 7.6.201 & A, 7/16/2000]

20.7.6.13 PRIORITY SYSTEM AND PRIORITY LIST PROCEDURES.

A. A project must be on the current federal fiscal year priority list in order to receive a planning/design or construction loan. It is the policy of NMED to make loans to communities in order of priority on the current federal fiscal year priority list for loans to the extent reasonable considering the following:

- (1) Willingness of a community to accept a loan;
- (2) Financial capability of the community to service the loan, to perform operation and maintenance, to maintain a replacement fund and a debt service reserve fund; and
- (3) Readiness to proceed.

B. Procedures for developing and handling the annual priority system and priority list under the loan program generally follow existing procedures for the construction grants program which are briefly summarized here.

(1) A specific cap on an individual loan amount may be established by NMED each fiscal year so that the fund will be able to assist several communities each year. The cap may be set as a total of the loan funds available or as a specific dollar amount.

(2) This policy serves to maintain the flexibility of the fund each year by not excluding higher cost projects from participation, yet ensures that more than one worthwhile project will be funded each year.

(3) Fundable applicants will be notified by NMED following approval of the final priority list and a preplanning conference will be held with the applicant and its consulting engineer to identify the procedures and requirements which must be met prior to execution of an interim loan agreement.

[10-22-88; 11-30-95; 20.7.6.13 NMAC - Rn, 20 NMAC 7.6.202 & A, 7/16/2000]

20.7.6.14 APPLICATION FOR FUNDABLE PROJECTS GUIDELINES - PROJECT PREPLANNING CONFERENCE.

A. At NMED's request, a preplanning conference will be scheduled. The applicants' representatives and possibly the applicants' consulting engineers will meet with the NMED project engineers to discuss the project. Items that may be discussed are:

- (1) Review of SRF policies, procedures, and guidelines;
- (2) Enforceable requirements;
- (3) Eligibility of applicant;
- (4) Appropriate technology;
- (5) User charges in relation to financial capability of the applicant being able to repay the loan;
- (6) Environmental impacts;
- (7) Procurement of A/E services;
- (8) The importance of public participation; (Citizen involvement will be an asset in the development of plans that reflect the needs and values of your community. Informing the public early on can result in issues being resolved before delay and additional costs occur. Citizen support is necessary for capital and user charge systems to fund a project.) and
- (9) Project schedule.

[10-22-88; 11-30-95; 20.7.6.14 NMAC - Rn, 20 NMAC 7.6.200, 7/16/2000]

20.7.6.15 GENERAL PROJECT ADMINISTRATIVE REQUIREMENTS.

A. Loan Agreement.

(1) An interim loan agreement will be prepared by the NMED and executed by the borrower for the project which can be financed with available loan funds and which has completed requirements set by the NMED pursuant to the Clean Water Act, as amended, and the New Mexico Wastewater Facility Construction Loan Act. Projects which are not ready to proceed to the interim loan agreement stage within six months of allocation of available loan funds may be bypassed by projects lower on the priority list which are ready to proceed.

(2) The interim loan agreement contains several conditions and certifications including:

(a) certification that the borrower is a legal entity with authority to execute a loan agreement by ordinance; certification that a resolution designating signatory authority has been passed;

(b) copies of all executed contracts, subcontracts, agreements, and related amendments entered into by the borrower prior to the interim loan agreement, but related to this project;

(c) request for proposals (RFP) documentation and an engineering agreement, or letter of certificate if employing staff engineers.

B. Security Interest.

(1) Upon execution of an interim loan agreement with the NMED for a construction project and before any proceeds of the loan are paid out to the borrower, the borrower shall execute a promissory note for the principal amount of the interim loan agreement plus interest and administrative fee on the unpaid balance at the appropriate rate per annum, and may transfer title to the property upon which the facilities are to be constructed to the NMED. In lieu of, or in addition to, the transfer of title requirement, the borrower may transfer whatever interest it possesses in the property upon which facilities are to be constructed, to the NMED. In either case, the value of such property or interest so transferred shall be at least equal to the amount of the loan. All such titles and interest transferred to the NMED shall be secured by title insurance, if applicable, the cost of which shall be paid by the borrower. The NMED shall be named as primary beneficiary of all such title insurance policies. If title insurance for the property is not applicable or is not reasonably available, as determined by the NMED, then the borrower shall provide a title company's opinion on the abstract of title to the property up to the time the property was acquired by the borrower for use as a wastewater facility.

(2) Upon repayment of the loan, such interest or title shall be reconveyed to the borrower. Where the transfer of title or interest in the property would preclude the obtaining of federal grants, or where such transfer of title or interest is inappropriate or is prohibited by or would be in violation of existing grant-in-aid agreements, NMED may waive the requirements of transfer of title or transfer of any interest in the property, and substitute therefore such other security of sufficient value it deems necessary such as an irrevocable pledge of revenue covenant by the borrower.

(3) After the borrower transfers title or its interest in the property to the NMED as security, the borrower shall:

- (a) continue to insure the property;
- (b) be liable for all taxes and assessments; and
- (c) refrain from making major alterations that destroy the value of the security, unless NMED

gives prior approval.

C. Allowable and Unallowable Costs.

(1) Allowable costs shall be limited to those costs which are necessary, reasonable, and directly related to the efficient achievement of the objectives of the project. Costs incurred by the borrower for work performed on the project prior to execution of the interim loan agreement, but which received NMED prior approval, may be considered as allowable costs. The borrower must justify all expenditures for which it requests a disbursement of loan funds according to accepted NMED criteria and procedures. NMED may withhold disbursement of funds and may reclaim improperly documented disbursements until the borrower provides sufficient justification.

(2) All unallowable costs, including but not limited to overhead charges, administrative expenses, indirect costs, and all costs of borrower's employed inspectors and noneligible construction costs shall be paid by the borrower. The administrative fee shall not be included as principal in the loans and therefore considered an unallowable cost.

(3) The borrower agrees that it will implement, in all respects, the project outlined in the interim loan agreement.

(4) The borrower agrees to make no change in the project description without first submitting a written request to NMED and obtaining NMED approval of the required change.

D. Accounting. Funds received by the borrower from NMED and those funds which are contributed by the borrower shall be deposited in separate bank accounts or in a separate, identifiable ledger account. In addition, the borrower shall establish and maintain accounting procedures which will ensure strict accountability for all funds received and disbursements made by the borrower in connection with the interim loan agreement. NMED shall be responsible for examining the borrower's audited financial statements in accordance with the most recent circular on audits of states, local governments and non-profit organizations as published by the U.S. office of management and budget.

E. Records. The borrower shall maintain books, records, documents, and other evidence sufficient to reflect properly all costs of whatever nature claimed to have been incurred for the performance of this interim loan agreement. Such books, records, documents, ledgers, and other evidence shall be preserved and made available to NMED, state auditor, US governmental accounting office, and USEPA office of the inspector general during the

loan agreement period and for a period of six (6) years from date of final repayment. If upon termination of the interim loan agreement, questions exist concerning proper expenditure of funds, then the borrower shall preserve and make available all books, records, documents, ledgers and other evidence relating to the interim loan agreement until such questions are settled and the borrower has received written notification to that effect from NMED.

F. Audit and Inspection. The project sites and borrower facilities which are in any part the subject of the loan agreement, and borrower records as defined elsewhere herein, shall be subject at all reasonable times to inspection and audit by NMED, state auditor, US governmental accounting office, and USEPA office of the inspector general during the period of the loan agreement and for a period of six (6) years following final payment hereunder. All subcontracts let by the borrower, the cost of which are included in the interim loan agreement, shall include the substance of this audit and inspection clause.

G. Occupational Health and Safety. The borrower covenants that it will take affirmative action to ensure that the project shall be conducted in conformance with federal and state laws and regulations relating to occupational health and safety. In addition, the borrower shall assure that any contract entered into by the borrower for the performance of work on this project shall contain language by which the contractor and the borrower agree that authorized representatives of the NMED occupational health and safety bureau shall have free access to the project site, and shall not be impeded in any way from performance of their duties.

H. Nondiscrimination.

(1) During the performance of the interim loan agreement, the borrower shall not discriminate against any employee or applicant for employment because of race, color, age, religion, sex, or national origin. The borrower shall take affirmative action to ensure nondiscrimination in employee recruitment advertising, hiring, upgrading, promotion, and selection for training (including apprenticeship).

(2) The borrower agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this clause. All solicitation or advertisement for employees placed by or on behalf of the borrower shall state that all qualified applicants will receive consideration without regard to race, color, age, religion, sex, sexual preference, or national origin. The borrower shall comply with all provisions of Title VI of the Civil Rights Act of 1964, Executive Order 11246, dated September 24, 1965, and all relevant rules, regulations, and orders of the U. S. secretary of labor. The borrower shall include the provisions of the clause in all project subcontracts.

I. Termination. NMED shall have the right to terminate the interim loan agreement if at any time in the judgement of NMED, the terms of the interim loan agreement have been violated or the activities described in the project description are not progressing satisfactorily. The borrower may terminate the interim loan agreement with sufficient reason. In either case, the NMED shall establish following negotiations with the borrower a repayment schedule for the funds disbursed to the borrower. Such termination must be in writing.

J. Procurement. The Procurement Code, NMSA 1978, Sections 13-1-28 through 13-1-199, imposes civil and criminal penalties for its violation. In addition, New Mexico criminal statutes impose felony penalties for illegal bribes, gratuities, and kick-backs.

[10-22-88; 11-30-95; 20.7.6.15 NMAC - Rn, 20 NMAC 7.6.301 & A, 7/16/2000; A, 10/29/2007]

20.7.6.16 PROJECT PLANNING GUIDELINES.

A. Facilities planning consists of those necessary plans and studies that directly relate to treatment works or other eligible projects needed to comply with enforceable requirements of the Federal Clean Water Act and New Mexico Water Quality Act. Facilities planning will substantiate the need for the proposed facilities. It is a systematic evaluation of alternatives in regard to unique demographic, topographic, hydrologic, and institutional characteristics of the area that demonstrates that the selected alternative is cost effective in meeting the applicable effluent, groundwater, and surface water quality and public health requirements over the design life of the facility or other eligible project (while recognizing environmental and other nonmonetary considerations).

B. The most important outcome of the planning process is the selection of the best water pollution control alternative.

The facilities plan (feasibility report or engineer's report) should include:

- (1) A description of the proposed project and the complete system of which it is a part.
- (2) A description of the best practicable water pollution control technology (BPWPCT).
- (3) A cost-effective analysis of the project in meeting enforceable requirements over the design life of the project which includes a 20-year reserve capacity, if appropriate. Costs to be considered must include the present worth or equivalent annual value of all capital costs as well as operation and maintenance costs. Population forecasts should be consistent with the state needs survey.

- (4) An evaluation of improved water quality attainable by upgrading the operation and maintenance ("O & M") and efficiency of existing facilities as an alternative to new construction.
- (5) Cost information on total capital costs and annual O & M as well as estimated annual or monthly costs to residential and commercial users.
- (6) A demonstration of the nonexistence or possible existence of excessive infiltration/inflow in an existing system.
- (7) An adequate evaluation of the environmental impacts of alternatives.
- (8) An evaluation of the water supply implications of the project.
- (9) For the selected alternative, a concise description of relevant design parameters.
- (10) A description of the proposed pretreatment program if applicable.
- (11) A demonstration that the selected alternative is consistent with the applicable water quality management (WQM) plan.
- (12) Demonstration that the borrower has the legal, institutional, managerial, and financial capability to ensure adequate construction and operation and maintenance of the treatment works throughout the service area. Financial capability to service this loan must also be demonstrated.
- (13) Summary of public participation in the development of the facilities plan.

D. If any of the above information has been developed separately, it may be incorporated by reference rather than duplication.

[10-22-88; 20.7.6.16 NMAC - Rn, 20 NMAC 7.6.302 & A, 7/16/2000]

20.7.6.17 INTERIM PAYMENTS.

A. For satisfactory performance of all work and services required to be performed under the terms of the interim loan agreement, NMED shall reimburse the borrower its actual costs incurred. The borrower may submit requests for reimbursement as often as every month. NMED shall disburse funds to the borrower when NMED determines, in its sole discretion, that expenditures have been properly documented, as provided for in general requirements for allowable and unallowable costs, accounting procedures, and record keeping. Copies of all pay request vouchers shall be submitted to NMED with request for payment. Copies of all requests shall be submitted on the appropriate form furnished by NMED and shall be accompanied by appropriate documentation to assure that those costs are correct and within the approved scope of work and attached budget form. Requests shall include expenditures to date by category.

B. NMED and the borrower will comply with the Retainage Act (Section 57-28-2 et. Seq. NMSA 1978) if money is to be withheld during construction. The project will not be considered complete until the work as defined in the interim loan agreement has been fully performed and finally and unconditionally accepted by the borrower and NMED.

C. Interim payments will be made as the work progresses. Said payments will be based upon requests for payment prepared and certified by the borrower or the borrower's engineer to include value of work performed, materials on hand, and materials in place in accordance with the contract. Interim payments for engineering, inspection, legal services, or other approved services shall be made in accordance with the approved contracts or agreements.

D. Any portion of funds allocated to the project which remain unexpended after completion of the project shall revert to the wastewater facility construction loan fund.

E. The borrower shall furnish NMED with an estimated disbursement schedule at the beginning of the project.

[10-22-88; 11-30-95; 20.7.6.17 NMAC - Rn, 20 NMAC 7.6.400 & A, 7/16/2000; A, 10/29/2007]

20.7.6.18 FINAL PAYMENT. Upon completion of the project, final payment shall be made after final inspection has been conducted and the following have been provided, reviewed, and approved by NMED:

A. The borrower's certified request for payment prepared by the engineer and approved by the borrower.

B. A statement by the project engineer that work has been satisfactorily completed and the contractor has fulfilled all of the obligations required under the contract documents with the borrower, or if payment and materials performance bonds are "called," an acceptable close-out settlement to the borrower and contractors shall be submitted to NMED for review and approval.

C. Final engineering statement and recap of all engineering services, legal, administrative, and other eligible and ineligible expenses and a final request for disbursement.

D. Certification by the borrower that the labor standards contract provisions have been met.

- E. Final project inspection report prepared by the engineer.
 - F. Record drawings and, if applicable, an operation and maintenance manual.
 - G. Final budget showing all funding sources utilized for costs incurred for the project by designated budget categories.
 - H. Written consent of the surety, if any, to final payment is prepared and submitted.
 - I. For projects which receive planning/design loans but do not proceed to the construction phase, completion of the project is defined as substantial completion of the project description in the interim loan agreement as determined by NMED.
- [10-22-88; 11-30-95; 20.7.6.18 NMAC - Rn, 20 NMAC 7.6.401, 7/16/2000]

20.7.6.19 PROJECT DESIGN REQUIREMENTS. Before beginning the design of the project, the following requirements must be completed and submitted by the borrower to NMED and approved by NMED:

- A. Engineering report/facilities plan, which will include:
 - (1) When real property is to be acquired as part of the project and within the project period submit documentation of the acquisition, including legal description, the date the property was acquired, a certified copy of title to the property, and an appraisal report by a qualified appraiser.
 - (2) Cost effective analyses of project alternatives capable of meeting state and federal water quality and public health requirements.
 - (3) Consideration of present worth or equivalent annual value of all capital cost, operation, and replacement costs.
 - (4) Environmental information document (EID) in detail sufficient to determine categorical exclusion, finding of no significant impact (FONSI), or need for an environmental impact statement (EIS).
 - (5) Evidence of public participation.
 - (6) Information to demonstrate legal, managerial, and financial capability to properly operate and maintain the facility, maintain a repair and replacement reserve, and the ability to service this debt.
- B. Proof of adequate property, liability, and fidelity insurance coverage for the project as shall be required by NMED. Fidelity insurance shall cover the borrower(s) employees who are responsible for handling loan monies.
- C. Draft plan of operation which outlines staffing in compliance with the New Mexico Utility Operator Certification Act with start-up procedures that assure efficient operation and maintenance for the facilities.
- D. Project schedule.
- E. Proposed sewer use ordinance.
- F. Proposed user charge system. The user charge system represents revenue for good operation and maintenance and replacement of worn-out equipment. One basis for the system is actual use which is measured in terms of water meter readings, measurement of sewer flow, etc. The rates are uniformly applied to each class (residential, commercial, or industrial) of user in proportions. If there is no existing user charge system, the first year rates should be based on the estimates of O & M costs and then adjusted annually thereafter to reflect actual O & M and replacement costs.
- G. Number and name of NPDES permit and/or state groundwater permit.
- H. Sludge management plan which assures compliance with Sections 201 and 405 of the Clean Water Act, 40 CFR, Parts 35, 257 and 503, and New Mexico Water Quality Control Commission Groundwater Discharge Regulations 20 NMAC 6.2.
- I. Design of the project shall be done by a consulting engineer who is registered in the state.
 - (1) Designs should adhere to sound construction practice using materials, methods, and equipment of proven dependability.
 - (2) Buildings shall be economical to operate and maintain and should be accessible to the handicapped.
 - (3) Design shall insure compliance with the NPDES permit or state groundwater discharge permit as appropriate.
 - (4) Safety shall be a prime consideration in design.

[10-22-88; 11-30-95; 20.7.6.19 NMAC - Rn, 20 NMAC 7.6.600 & A, 7/16/2000]

20.7.6.20 PROJECT CONSTRUCTION REQUIREMENTS.

- A. All plans and specifications and related addenda for the project must be submitted to NMED for review and approval before the project is advertised for sealed construction bids.

B. All work relating to easements, rights of way, other property rights, and financing provisions shall be completed prior to advertising for construction sealed bids.

C. Certified bid tabulation, recommendation of award, and evidence of full project financing should be submitted to NMED for review and approval prior to construction contract award.

D. Competitive bidding, in accordance with applicable state laws (including local wage determinations as provided for in NMSA 1978, Section 13-4-11), shall be used for awarding of contracts. Contracts shall be awarded to the responsible bidder who submits the lowest acceptable bid, or as provided for by state law.

E. Following NMED approval of the proposed award the borrower shall provide for each contract: (1) notice of award, (2) notice of preconstruction conference, (3) executed copies of previously approved contract form documents, and (4) notice to contractor to proceed. Performance, and payment bonds in the amount of 100 percent of the project bid will be required of each contractor and copies of said documents will be filed with NMED. A copy of bid bond (for 5% of the construction cost) for the selected contractor will be filed with the NMED.

F. The contractor shall be required to submit a schedule for construction at the preconstruction conference for that contract.

G. The borrower shall submit all modifications to plans, specifications, and contract change orders to NMED's project engineer promptly for approval prior to implementation of such modification or change. NMED's decision shall be rendered promptly in writing. In cases necessitating immediate action, a verbal decision will be rendered by NMED and followed by a written notification.

H. The borrower shall arrange for the services of a qualified full-time resident project inspector, unless waived by NMED, during construction of the project. Borrower shall provide NMED with a summary of the inspector's qualifications and training to be approved by NMED prior to the preconstruction conference.

I. Notwithstanding those inspections performed by the borrower and its engineer, NMED shall have the right to examine all installations comprising the project, including materials delivered and stored on site for use on the project.

J. After completion of the project, the borrower shall obtain from its engineer as built drawings for the project and certify to NMED that such drawings have been received.

K. The borrower shall provide for NMED review and approval, unless waived by NMED, an operation and maintenance manual for the project prior to 90% construction completion. The operation and maintenance manual shall conform to NMED requirements.

L. If this assistance is awarded for construction of collection lines, the borrower shall assure NMED that the existing population will connect to the collection system within a reasonable time after project completion. This shall be accomplished by adoption and annual review of an ordinance and user charge system requiring such connection to the system.

[10-22-88; 11-30-95; 20.7.6.20 NMAC - Rn, 20 NMAC 7.6.601 & A, 7/16/2000]

20.7.6.21 FINAL LOAN AGREEMENT AND REPAYMENT POLICY. Upon completion of the planning/design or construction project and after final disbursement of principal to the borrower:

A. NMED and borrower shall execute a final loan agreement which details the final loan amount plus accrued interest and administrative fees due to the date of the final loan agreement.

B. NMED and borrower shall execute a revision to the promissory note and real estate mortgage (if applicable) which were recorded at the county seat at the time of the initial loan agreement. The revision shall reflect final loan amount, plus accrued interest and administrative fees due.

C. NMED shall prepare a repayment schedule for the borrower which details principal, plus accrued interest and administrative fees due. The schedule shall fully amortize the loan within twenty years of project completion. In some cases the amortization shall be less than twenty years. NMED shall address each loan on a case-by-case basis. The borrower may prepay the loan or any portion thereof at any time. The repayment period for a planning/design loan shall not exceed five years. The first annual repayment of principal, interest and administrative fees shall be due within one year after completion of the project.

D. For borrowers with planning/design loans who subsequently receive a construction loan and who choose to reamortize (roll-over) the planning/design loan, repayments for the planning/design loan may be postponed until construction of the project is completed, at which time the principal plus accrued interest and administrative fees for the planning/design loan will be rolled into the final loan agreement for the construction loan with one subsequent repayment schedule.

E. NMED shall annually prepare and send to the borrower a notice of payment due.

F. The borrower shall make a check for the full amount of the notice payable to Wastewater Facility Construction Loan Fund, Attention:

Chief, Construction Programs Bureau
New Mexico Environment Department
P.O. Box 26110
Santa Fe, New Mexico 87502-6110

and mail in time to insure delivery by due date.

G. In the event of late payment or default by the borrower, NMED shall have the option to declare the principal, interest accrued and administrative fee on, any outstanding indebtedness forthwith due and payable automatically without notice or demand of any kind, whereupon the same shall become forthwith due and payable; and NMED may take legal recourse to implement collection.

[10-22-88; 11-30-95; 20.7.6.21 NMAC - Rn, 20 NMAC 7.6.602 & A, 7/16/2000; A, 10/29/2007]

HISTORY OF 20.7.6 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:

HED 88-2 (EID) Rule 88-2 (EID), New Mexico Wastewater Facility Construction Loan Fund Policies, Procedures, and Guidelines, 9/22/88

OTHER HISTORY:

20 NMAC 7.6, Wastewater and Water Supply Facilities - Wastewater Facility Construction Loan policies and Guidelines, 10/25/95