

NOTICE OF PUBLIC HEARINGS
AND PUBLIC MEETING
STATE OF NEBRASKA
DEPARTMENT OF ENVIRONMENTAL QUALITY (NDEQ)
ENVIRONMENTAL QUALITY COUNCIL

Notice is hereby given pursuant to Neb. Rev. Stats. §81-1505(17), §84-907, and §84-1411, the Nebraska Environmental Quality Council (EQC) will hold a meeting and public hearings on April 3, 2019 beginning at 9:00 A.M. Central Time (CT) at the Cornhusker Hotel, 333 South 13th St., Lincoln, Nebraska. Preceding the hearings will be business items on the agenda. The hearings are scheduled to begin at 9:00 A.M. CT or as soon thereafter as can reasonably be heard. The purpose of the hearings is to take testimony and evidence about the proposed amendment of NDEQ regulations, as outlined in this notice.

The meeting agenda and a draft copy of the proposals scheduled for hearing are available at the NDEQ's Lincoln office, 1200 N St., Suite 400, Lincoln, NE and on the NDEQ website at <http://deq.ne.gov>. The meeting agenda and a draft copy of the proposed regulations scheduled for hearing are also available at the Office of the Secretary of State, Regulations Division, 1201 N St., Suite 120, Lincoln, NE, 68508. The description of the fiscal impact of the proposed regulations on state agencies, political subdivisions, or persons regulated is also available at these locations.

All interested persons may attend and testify orally or by written submission at the public hearing. Any person may provide advance notice of intent to testify by contacting Carla Felix, Hearing Officer, NDEQ, 1200 N St., Suite 400, P.O. Box 98922, Lincoln, NE 68509-8922. Unscheduled testimony will be heard following scheduled testimony. Interested persons may also submit written comments to Carla Felix prior to the hearing, which will be entered into the hearing record if received at the Lincoln office by 5:00 P.M. CT, April 2, 2019.

Please notify the NDEQ at least one week in advance of the EQC meeting if auxiliary aids or reasonable accommodations or alternate formats of materials are needed. Contact phone number is 402-471-2186. TDD users call 800-833-7352 and ask the relay operator to call us at 402-471-2186.

A public hearing will be held on the following:

1. Amendments to Title 129 – Nebraska Air Quality Regulations, Chapter 8. Change to Chapter 8 eliminates language referring to supersession of previously issued operating and construction permit to clarify such permits do not lapse when a subsequent operating permit is issued. The EQC will vote to adopt, amend or not approve the NDEQ proposal after hearing and considering all the testimony and written submissions.
2. Amendments to Title 117 – Nebraska Surface Water Quality Standards. These amendments are proposed as part of the State's triennial review of Water Quality

Standards, required by Section 303 of the Federal Clean Water Act. Changes in Chapter 1 revise and update definitions, and where applicable reference statutory citations. Changes in Chapter 2 revise, clarify, and update language; and propose procedures for application and granting a variance to water quality standards as authorized by new federal regulations established in 40 Code of Federal Regulations § 131.14. Changes to Chapter 4 revise and update water quality standards as described in the chapter. Changes to Chapter 5 update designated use classifications of certain streams in the Nemaha River Basin identified in the chapter; update key species codes for streams identified in the chapter; and remove illustrative basin maps from the chapter which will be made available on the department website. Changes to Chapter 6 clarify that point source discharges from livestock sources are prohibited; add fifteen lakes and reservoirs located in the Big Blue River Basin, the Middle Platte River Basin, the Missouri Tributaries River Basin, the Nemaha River Basin, the Niobrara River Basin, and the North Platte River Basin; and delete one lake that no longer exhibits the characteristics of a lake and is now covered by Chapter 7 wetlands requirements; and make other minor revisions and updates language. Changes to Chapter 7 revise and update key species; update and revise pollutants; and make other minor revisions and update language. Chapter 8 is proposed for deletion because it duplicates statutory language found in Neb. Rev. Stat. § 84-906(1) of the Administrative Procedure Act.

3. Amendments to Title 131 – Rules and Regulations for the Wastewater Treatment Facilities and Drinking Water Construction Assistance Programs. Changes to Chapter 1 add, revise, and update definitions, and where applicable reference statutory citations. Changes to Chapter 2 remove redundant and unnecessary requirements; include provisions on interest rates and administrative fees from Chapter 3; include provisions on emergency assistance from Chapter 3 and 9; include provisions on application denial from Chapter 7; add new provisions related to environmental assessments; include provisions on applications and general loan terms from Chapter 8; and rename chapter. Chapter 3 as it currently exists is deleted because the language on Intended Use Plan (IUP) and its required elements is duplicative of federal requirements or state statute. General requirements applicable to wastewater treatment projects, nonpoint and other projects, and public water system projects, currently found in Chapters 4, 5, and 6, have been included as provisions in renamed Chapter 3; and the existing Chapters 4, 5, and 6 are deleted. Chapter 7 is deleted because provisions relating to application denial are moved to Chapter 2 and remaining provisions are duplicative of federal IUP requirements. Chapter 8 is deleted because its provisions on applications and general loan terms are moved to Chapter 2, are adequately addressed in statute, or will be included in the IUP. Chapter 9 is deleted because emergency assistance has been moved to Chapter 2 and will be implemented through the IUP. Chapter 10 is deleted because it is redundant of state statutes which adequately address requirements and eligibility for the linked deposit program. Chapter 11 is deleted because the requirements will be covered by applicable agreements and contracts with financial institutions.

4. Amendments to Title 115 – Rules of Practice and Procedure. Changes to Chapter 1 delete definitions and incorporate model rules of agency procedure promulgated by the Attorney General. Chapter 2 is deleted and incorporated as a model rule in Chapter 1.

Chapter 3 is deleted because it duplicates statutory public record requirements and is not needed in regulation. Changes to Chapter 4 update language on confidentiality of trade secrets and is renumbered as Chapter 2. Changes to Chapter 5 update language on public hearings and is renumbered as Chapter 3. Chapter 6 is deleted because it duplicates statutory language on voluntary compliance. Chapters 7 through 10 are deleted and incorporated as model rules in Chapter 1. The EQC will vote to adopt, amend or not approve the NDEQ proposal after hearing and considering all the testimony and written submissions.



FISCAL IMPACT STATEMENT

Agency: Nebraska Department of Environmental Quality
Prepared by: Lindsey Phillips, Financial Assistance Section Supervisor *ZAP*
Date Prepared: February 19, 2019
Phone: 402-471-4200
Title: Title 131
Chapters: 1 - 11
Name: Rules and Regulations for the Wastewater Treatment Facilities and Drinking Water Construction Assistance Programs

State Status: Hearing Draft

Type of Fiscal Impact:

	State Agency	Political subdivision	Regulated Public
No Fiscal Impact	X		
Increase Costs			
Decrease Costs		X	X
Increased Revenue			
Decreased Revenue			
Indeterminable			

Description of Impact:

On July 6, 2017, Nebraska Governor issued Nebraska Executive Order 17-04, "Regulatory Reform". The executive order tasked every state agency to review existing and pending agency regulations and provide a report answering several questions including effectiveness of regulations, restrictiveness of regulations, costs vs. benefits analysis, and more. Any regulations that were found to be more restrictive than required, repetitive, or unnecessary burdening of Nebraskans were to be revised or repealed.

State Agency:

At this time, it is not anticipated that there will be any fiscal impact to the State Agency with the proposed amendment changes. Majority of the changes proposed currently exist in federal or state regulations or are department policies that are not planning to be changed or will still require EQC approval.

One potential decrease costs possibility is that the proposed amendment to Title 131 will help increase employee productivity and reduce state employee time and labor by eliminating the need for future amendments to the Title due to regulation change. However, some specific language that has been determined as necessary that currently exists in either federal and/or state regulations has been kept to strengthen the Department's authority, thus any changes to these existing regulations would require an update to the Title. Changes to these specific regulations are not anticipated at this time or in the near future.

Political Subdivision and Regulated Public:

Chapter 3, Section 001.05B's specific statement of:

"...the rate will in no case be set below two percent per annum,"

restricts the Department of Health and Human Services' (DHHS) ability to provide interest rates at a rate lower than 2% interest per year. Current proposed amendment would remove this floor and allow DHHS to provide lower interest rate loans to communities and other political subdivisions eligible for SRF financing, thus decreasing costs for the eligible political subdivision.

This in turn would impact the regulated public in the political subdivisions and decrease overall costs for the borrowing and repayment of funds.

NEBRASKA ADMINISTRATIVE CODE

NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY

Title 131 - Rules and Regulations for the Wastewater Treatment Facilities and Drinking Water Construction Assistance Program

Chapter 1 - DEFINITIONS

~~001~~ ~~“Capacity Development” means the technical, managerial, and financial capability to comply with applicable Primary Drinking Water Standards. In addition to the terms defined in this chapter, relevant definitions for loan programs authorized by the Wastewater Treatment Facilities Construction Assistance Act can be found at Neb. Rev. Stat. §81-15,149, and relevant definitions for loan programs authorized by the Drinking Water State Revolving Fund Act can be found at Neb. Rev. Stat. §71-5316.~~

~~002~~ ~~“Clean Water Act” means Public Law 92-500, as amended by Public Law 98-396 and Public Law 100-4, 33 U.S.C. 1251 et seq.~~

~~003~~ ~~“Community Water System” as defined in the Nebraska Safe Drinking Water Act, section 71-5301(12) means a Public Water System that (a) serves at least fifteen service connections used by year-round residents of the area served by the system or (b) regularly serves at least twenty-five year-round residents.~~

~~004~~ ~~“Construction” means any one or more of the following: preliminary planning to determine the feasibility of the project, engineering, architectural, or economic investigations or studies such as value engineering, surveys, designs, plans, working drawings, specifications, procedures, or other necessary actions, erection, building, acquisition, alteration, remodeling, improvement, or extension of the facilities or systems, or the inspection or supervision of any of the foregoing items.~~

~~005~~ ~~“County” means any county authorized to construct a sewerage disposal system and plant or plants pursuant to the County Industrial Sewer Construction Act.~~

~~0026~~ ~~“CWSRF” means the Wastewater Treatment Facilities Construction Loan Fund that will commonly be known as the Clean Water State Revolving Fund.~~

~~0037~~ ~~“CWSRF Act” means the Wastewater Treatment Facilities Construction Assistance Act as stated in Neb. Rev. Stat. §§81-15,147 to 81-15,157.~~

~~0048~~ ~~“DHHS” means the Nebraska Department of Health and Human Services Division of Public Health.~~

~~009~~ ~~“Disadvantaged Community” for purposes of the DWSRF means a loan applicant or the service area of a loan applicant that meets affordability criteria adopted by the Council in the intended use plans.~~

~~0405~~ ~~“DWSRF” means the Drinking Water Facilities Loan Fund and the Land Acquisition and Source Water Loan Fund that together will commonly be known as the Drinking Water State Revolving Fund.~~

00611 "DWSRF Act" means the Drinking Water State Revolving Fund Act as stated in Neb. Rev. Stat. §§71-5314 to 71-5327.

~~012 "Eligible Financial Institution" means a bank that agrees to participate in the Linked Deposit Program and which is chartered to conduct banking in this state pursuant to the Nebraska Banking Act, is chartered to conduct banking by another state and authorized to do business in this state, or is a national bank authorized to do business in this state.~~

~~00713~~ "Initiation of Operation" means the date on which the loan recipient places the project in operation or the project is capable of being placed in operation for the purposes for which it was planned, designed, and built.

00814 "Intended Use Plan", or "IUP" means the Intended Use Plan, a document prepared annually by the Department, after public review and comment, which identifies intended use of all State Revolving Fund program funds and describes how those uses support the overall goals of the State Revolving Fund program.

~~015 "Linked Deposit Account" means the low yielding deposit account, certificate of deposit, or other authorized deposit as set forth in the linked deposit agreement between the Director and the eligible financial institution into which linked deposit funds are deposited.~~

~~016 "Linked Deposit Borrower" means a private or public owner who applies or receives a linked deposit loan from an eligible financial institution.~~

~~017 "Linked Deposit Lender Agreement" means the contractual documentation between the Director and a financial institution to become an eligible financial institution and allow the institution to administer linked deposit loans.~~

~~018 "Linked Deposit Loan" means the loan made to a linked deposit borrower by an eligible financial institution for a nonpoint source control system linked deposit project that has met all federal, state, and local requirements.~~

~~019 "Linked Deposit Loan Contract" means the contractual documentation between an eligible financial institution and a linked deposit borrower for a linked deposit loan.~~

~~020 "Linked Deposit Program" means the Wastewater Treatment Facilities Construction Assistance Act Linked Deposit Program to promote loans by eligible financial institutions for the construction, rehabilitation, and enhancement of nonpoint source control systems for public or private owners.~~

00921 "Loan Applicant" or "Applicant~~Loan Recipient~~" means any municipality, county, or any other eligible entity that applies for CWSRF or DWSRF funding. ~~authorized by law to construct, operate, and maintain a public water system .~~

010 "Loan Recipient" or "Recipient" means any eligible entity that receives funds from the CWSRF or DWSRF in the form of a loan and/or grant.

022 "Municipality" means any city, town, village, district, association, or other public body created by or pursuant to state law and having jurisdiction over disposal of sewage, industrial wastes, or other wastes.

~~023~~ “Nonpoint Source” means a discharge of pollutants from other than a point source.

~~024~~ “Nonpoint Source Control Systems” means projects which establish the use of methods, measures, or practices to control the pollution of surface waters and ground water that occurs as pollutants are transported by water from diffuse or scattered sources. Such projects include, but are not limited to, structural and nonstructural controls and operation and maintenance procedures applied before, during, and after pollution-producing activities. Sources of nonpoint source pollution may include, but are not limited to, agricultural, forestry, and urban lands, transportation corridors, stream channels, mining and construction activities, animal feeding operations, septic tank systems, underground storage tanks, landfills, and atmospheric deposition.

~~025~~ “Nonprofit Noncommunity Water System” means a Public Water System that is not a community water system and qualifies for a nonprofit status.

~~01126~~ “Point source” means any discernible confined and discrete conveyance, including, but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, or vessel or other floating craft from which pollutants are or may be discharged.

~~027~~ “Primary Drinking Water Standards” means the Regulations Governing Public Water Systems applicable to the system under Title 179 NAC 2 of DHHS that specifies either a maximum contaminant level or a treatment technique along with associated monitoring and reporting requirements for contaminants with adverse health effects on persons.

~~028~~ “Public Water System” is defined by the Nebraska Safe Drinking Water Act, section 71-5301(9) as amended.

~~029~~ “Safe Drinking Water Act” means Public Law 92-523, as amended.

~~030~~ “Significant Noncompliance” for purposes of the DWSRF means failure to comply with any Primary Drinking Water Standard as determined by the Director of DHHS.

~~031~~ “Wastewater Treatment Works” means the structures, equipment, and processes required to collect, transport, and treat domestic or industrial wastes and to dispose of the effluent and sludges.

Enabling Legislation: Neb. Rev. Stat. §81-15,149; §~~81-1502~~71-5316

Legal Citation: Title 131, Ch. 1, Nebraska Department of Environmental Quality

NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY

Title 131 - Rules and Regulations for the Wastewater Treatment Facilities and Drinking Water Construction Assistance Program

Chapter 2 - ~~ELIGIBLE USE OF FUNDS AND APPLICABILITY OF FEDERAL REQUIREMENTS~~ GENERAL REQUIREMENTS FOR CWSRF AND DWSRF FINANCING

001 General Requirements. Funding made from the CWSRF and the DWSRF will be ~~made for~~ limited to eligible projects and activities ~~authorized~~ defined in the Clean Water Act, ~~and the Safe Drinking Water Act,~~ respectively CWSRF Act, DWSRF Act, and the IUP.

~~001.01 The CWSRF will fund construction of publicly-owned facilities.~~

~~001.01A Categories of loan-eligibility for the CWSRF shall include: secondary or tertiary treatment and appurtenances; infiltration and inflow correction; major sewer system rehabilitation; new collector sewers and appurtenances; new interceptors and appurtenances; land integral to the treatment process; correction of combined sewer overflows; and nonpoint source control systems. Loans shall be made only for eligible items within such categories.~~

~~001.01B Eligible items for wastewater treatment works projects shall not include the costs of water rights, land (other than that specified in 001.01A above), easements and rights-of-way, legal costs, fiscal agent's fees, operation and maintenance costs, and municipal administrative costs.~~

~~001.02 The DWSRF will fund construction of at both privately and publicly owned community and non-profit Non-Community Public Water Systems.~~

~~001.02A Categories of loan-eligibility for the Drinking Water Facilities Loan Fund shall include projects which will facilitate compliance or prevent future violations of the Primary Drinking Water Standards applicable to the system or otherwise significantly further the health protection objectives of the Safe Drinking Water Act. This includes projects to replace aging infrastructure under which the following categories apply: rehabilitation, consolidation, or development of water sources to replace contaminated sources; installation or upgrade of water treatment facilities to comply with primary or secondary standards; installation or upgrade of storage facilities, including finished water reservoirs, to prevent microbiological contaminants from entering the water system; and installation or replacement of transmission and distribution pipes to prevent contamination caused by leaks or breaks in the pipe, or improve water pressure to safe levels. Land is eligible only if it is integral to a project such that the land is needed to locate eligible treatment or distribution projects. In addition, the acquisition of land must be from a willing seller. Loans shall be made only for eligible items within such categories.~~

~~001.02B The DWSRF shall not provide assistance to the following: for profit, noncommunity water systems; Public Water Systems owned by Federal agencies; dams or rehabilitation of dams; water rights, except if water rights are~~

~~owned by a system that is being purchased through consolidation as part of a capacity development strategy; reservoirs, except for finished water reservoirs and those reservoirs that are part of the treatment process and are located on the property where the treatment facility is located; laboratory fees for monitoring; operation and maintenance expenses; projects needed mainly for fire protection; projects for systems that lack adequate technical, managerial, and financial capability, unless assistance will ensure compliance; projects for systems in significant noncompliance, unless funding will ensure compliance; and projects primarily intended to serve future growth.~~

~~001.03 The Land Acquisition and Source Water Loan Fund will be used for the following:~~

~~001.03A Public Water Systems may use funds to acquire land or a conservation easement from a willing seller or grantor, if the purpose of the acquisition is to protect the source water of the system from contamination and to ensure compliance with Primary Drinking Water Standards.~~

~~001.03B Community Water Systems may use funds to implement local, voluntary, incentive based source water protection measures to protect source water in order to facilitate compliance with Primary Drinking Water Standards applicable to the system, or otherwise significantly further health protection objectives.~~

~~001.03C Community Water Systems may use funds to assist with voluntary local partnerships for the development and implementation of partnership recommendations for the protection of source water such as source water quality assessment, contingency plans, and demonstration projects for partners within a source water protection area.~~

~~002 Facility Planning and Design Assistance. The loan applicant will sign a loan with the Department for project construction costs prior to receiving any loan assistance for facility planning or design costs. Loan assistance for these costs is on an allowance or actual cost basis, in accordance with Chapter 4, 001.02, after the applicant has incurred the cost.~~

~~003 Recipients of loans made from the capitalization grants provided by the Clean Water Act and the Safe Drinking Water Act must comply with all applicable Federal cross-cutting authorities.~~

~~0024 Other Funding. If a loan ~~applicant~~recipient receives any loan or grant from the CWSRF or DWSRF for facility planning, design, and/or construction and subsequently receives a grant funding from any other funding source for any of these costs, the ~~loan~~ recipient shallwill promptly repay the loan or grant issued by the Department to the extent these costs are covered by the ~~grant~~other funding.~~

~~0035 Refinancing Existing Debt Obligation.~~

~~005.01 To enable a loan applicant under the CWSRF to proceed with construction using its own financing in advance of available loans, the CWSRF may buy or refinance local debt obligations, where such debt was incurred and construction was initiated after March 7, 1985.~~

~~005.02~~ The CWSRF may buy or refinance the debt obligation of eligible recipients to the extent permitted by federal and state laws and requirements stated in the IUP ~~municipalities for wastewater treatment works if the debt was incurred and construction was begun after March 7, 1985.~~

~~003.01~~~~005.02A~~ Eligibility and terms of such buying or refinancing shall be in accordance with the Wastewater Treatment Facilities Construction Assistance Act and other regulations in effect at time of the original loan or amendments Refinance projects need to have been constructed in accordance with all federal, state, and grant conditions that were in effect and would have been required at time of construction.

~~005.03~~ To enable a loan applicant under the DWSRF to proceed with construction using its own financing in advance of available loans, the DWSRF may buy or refinance local debt obligations, where such debt was incurred and construction was initiated after July 1, 1993.

~~005.04~~ Refinanced projects shall comply with Title 131 requirements as though they were projects receiving initial financing from the fund.

004 Interest Rates and Administrative Fees.

004.01 The method and criteria used to establish interest rates, alternate interest rates, and administrative fees to be charged on loans will be described in the IUPs. Each loan will bear interest at the rate set by the Department under procedures prescribed in the IUPs. In developing an interest rate and administrative fee, the Department shall will take the following items into consideration:

004.01A Loan interest and the administrative fees may be jointly considered when establishing the interest rate and administrative fee. The interest rates may be reviewed and adjusted by the Department at the end of each quarter, but should not be increased by more than 0.5 percent per quarter.

004.01B Alternate interest rate. The Department may adjust the interest rate when a loan applicant demonstrates a serious financial hardship or qualifies as a disadvantaged community, for the purposes of the DWSRF. The rate will be set by the Department according to the interest rate procedures approved by the Council in the IUPs.

004.02 An administrative fee may be assessed each year against the loan principal balance on the dates set by the Department, and payable on those dates.

~~0056~~ Loans made from the Additional Authorities. The use of CWSRF and the DWSRF shall have funds will be subject to the following authorities ~~attached to their use:~~

0056.01 Age Discrimination Act, PL 94-135.

0056.02 Civil Rights Act of 1964, PL 88-352.

0056.03 Section 13 of PL 92-500; Prohibition against sex discrimination under the Federal Water Pollution Control Act.

0056.04 Rehabilitation Act of 1973, PL 93-112.

006 Emergency Loan Assistance. An eligible applicant may apply for emergency assistance under the CWSRF and the DWSRF. The CWSRF and DWSRF may provide emergency assistance in the case of catastrophic failures of existing facilities and Public Water Systems, causing an environmental or public health threat or for unforeseen threats of contamination to the source water supply.

006.01 For emergency assistance, eligible recipients will notify the Department and DHHS of the need for emergency assistance. The notification needs to include the nature of the threat or failure, potential environmental or public health threat of the emergency, and a complete description of the proposed remedial action. Upon review of the notification and accompanying information the DHHS and Department may approve the emergency project, subject to availability of funds.

006.02 Emergency assistance cannot be used for routine maintenance of facilities.

006.03 The IUP may include criteria and the amount of funds available for providing emergency funding.

006.04 The recipient will repay the emergency assistance to the Department to the extent the recipient receives another grant, insurance settlement, or any other funds are received for the same need.

007 Environmental Assessment. The Department will conduct an environmental assessment prior to entering into a loan agreement with a loan applicant and issue an environmental document. The three categories of documents include: ~~Loans made from the CWSRF for wastewater treatment projects shall have the following authorities attached to their use if applicable:~~

007.01 ~~Davis-Bacon Act of 1931, PL 71-798.~~ Categorical Exclusion. A Categorical Exclusion, or "CatEx", means a category of actions which do not individually or cumulatively have a significant effect on the human environment and which have been found to have no such effect on procedures adopted by the Department in implementation of these regulations and for which, therefore, neither an finding of no significant impact nor an environmental impact statement is required.

007.02 ~~Consolidated Appropriations Act of 2014, Implementation of Iron and Steel Provisions of PL 113-76.~~ Finding of No Significant Impact. A Finding of No Significant Impact, or "FNSI", or "FONSI", means a document briefly presenting the reasons why an action, not otherwise excluded by Chapter 2, Section 007.01A, will not have a significant effect on the human environment and for which an environmental impact statement therefore will not be prepared. If the assessment is included, the finding need not repeat any of the discussion in the assessment but may incorporate it by reference.

007.03 Environmental Impact Statement. An Environmental Impact Statement is a report required of projects in which the proposed action will have a significant effect on human health or the human environment.

008 All loans made under the CWSRF will meet the requirements of Neb. Rev. Stat. §81-15,155, the Nebraska Wastewater Treatment Operator Certification Act, and Title 197 – Rules and Regulations for Certification of Wastewater Treatment Operators; all loans made under the

DWSRF will meet the requirements of Neb. Rev. Stat. §71-5324, the Nebraska Safe Drinking Water Act, and Title 179 – Public Water Systems; and:

008.01 Additional requirements for CWSRF and DWSRF include, but are not limited to, recipient must:

008.01A Agree to provide access to site and records to the Department, its agents, or third parties for inspections and audits of the project;

008.01B Agree to promptly initiate project construction and establish a maximum time for initiation, after which the Department may withdraw financial assistance; and

008.01C Agree to submit an annual financial statement during the term of the loan.

009 Applications. Applications will be reviewed by the Department to determine the eligibility of applicants to receive funding from the CWSRF and DWSRF. The Department may approve or deny applications. Reasons for denial may include, but not be limited to, failure to comply with applicable state and federal statutes and regulations, failure to meet financial capability requirements, availability of CWSRF and DWSRF funds, or for any other good cause as determined by the Department. Written notice of a denial of application will be given by the Department to the applicant.

010 General Terms of CWSRF and DWSRF Loans. Loans made under the CWSRF will meet the term requirements of Neb. Rev. Stat. §81-15,156 and the IUP; loans made under the DWSRF will meet the term requirement of Neb. Rev. Stat. §71-5325, and the IUP.

010.01 Additional terms and conditions for CWSRF and DWSRF loans will include, but not be limited to, the following:

010.01A The annual principal and interest payment due from a loan recipient will commence no later than one year after Initiation of Operation, one year after completion, or three years from the date of the loan, whichever occurs first. All loans will be fully amortized not later than the term of the loan.

010.01B Delinquent payment penalty and penalty interest. Payments may be considered delinquent if not received within 15 days of the due date and will be assessed with an administrative penalty not to exceed 5 percent. Interest on administrative penalties will accrue at a rate not to exceed 1 percent per month. Penalties will be assessed in accordance with the IUP and the loan agreement.

010.01C Security. The loan will contain provisions designed to ensure proper security of compliance with loan terms and repayment of principal and interest. Such provisions may include one or more of the following:

010.01C1 The filing of a lien upon the project in the amount of the loan together with any interest thereon. Such lien to attach to all project facilities, equipment, easements, real property, and any property of any kind or nature which is associated with the project. The Department will file a statement of the lien, its amounts, terms, and a description of the

project with the county register of deeds in the county which is the site of the project. The lien will be valid until the principal loan amount with all accrued interest is paid in full or otherwise discharged. The lien will be foreclosed in accordance with applicable state laws.

010.01C2 For non-compliance with terms and conditions of the loan, the Department may demand that the remaining balance of principal and interest become immediately due and payable.

010.01C3 Failure to pay any loan payment or other charges due within sixty days of the date due will be considered a delinquent account subject to state action to collect the outstanding obligation. Such amount will be paid directly to the applicable Fund, either the Drinking Water, Clean Water, or Land Acquisition and Source Water Loan Fund.

010.01D Additional terms and conditions may be established in the annual IUPs or administered through the loan agreement.

Enabling Legislation: Neb. Rev. Stat. §§81-15,151 to 81-15,154; §71-5323

Legal Citation: Title 131, Ch. 2, Nebraska Department of Environmental Quality

NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY

~~Title 131 – Rules and Regulations for the Wastewater Treatment Facilities and Drinking Water Construction Assistance Program~~

Chapter 3 – INTENDED USE PLANS

~~001 Intended Use Plans (IUPs) will be prepared each year by the Department for the implementation and administration of the CWSRF and the DWSRF for the following fiscal year's program. The Department will provide the public with adequate opportunity to comment on how the State plans to use capitalization grant funds by presenting these plans in a public hearing before the Council for their approval and to receive public review and comment. Public notice shall occur at least 30 days prior to the date of the hearing. The draft IUPs will be available from the Department by written request 30 days prior to the hearing. The IUPs will clearly differentiate the implementation of the CWSRF from the DWSRF. The IUP for the DWSRF will be proposed in consultation with the Director of DHHS and will include the separate priority ranking systems for the Drinking Water Fund and the Land Acquisition and Source Water Loan Fund and separate priority lists prepared by DHHS. The following are common elements of the CWSRF and the DWSRF and will be included in the IUPs:~~

~~001.01 Long term and short term goal statements as deemed necessary by the Council.~~

~~001.02 Priority systems depicting the methods and the criteria for distributing funds.~~

~~001.03 Priority lists which are developed in accordance with the priority systems.~~

~~001.04 Funding list projects will be assured of funding until the bypass date specified in the IUPs. After the bypass date projects on the planning list may be funded. Funding order after the bypass date will be by the highest priority project ready to proceed. An emergency assistance project, as defined in 005 or 006 of this chapter, may be funded at any time notwithstanding the adopted funding list.~~

~~001.05 Interest rates and administrative fees. The method and criteria used to establish interest rates and administrative fees to be charged on loans will be described in the IUPs. Each loan will bear interest at the rate set by the Department under procedures prescribed in the IUPs.~~

~~In developing an interest rate and administrative fee, the Department shall take the following items into consideration:~~

~~001.05A Loan interest and the administrative fees under Chapter 8, 004.04 may be jointly considered when establishing the interest rate and administrative fee. The interest rates may be reviewed and adjusted by the Department at the end of each quarter, but should not be increased by more than 0.5 percent per quarter.~~

~~001.05B Alternate interest rate. The Department may adjust the interest rate when a loan applicant demonstrates a serious financial hardship or qualifies as a disadvantaged community, for the purposes of the DWSRF. However, the rate will~~

~~in no case be set below two percent per annum. The rate will be set by the Department according to the interest rate procedures approved by the Council in the IUPs.~~

~~001.05C Accelerated payback. Notwithstanding 001.05A and 001.05B of this chapter, reduced interest rates may be provided for loans with payback periods of less than 20 years and for loans of less than 30 years for disadvantaged communities.~~

~~001.06 Other information as required by the Clean Water Act, Safe Drinking Water Act, and the U.S. Environmental Protection Agency guidance and regulations such as program administration costs, market loan rates, and public participation.~~

~~001.07 Loan limit. The Council may set a limit for any one loan or combination of loans for any single loan recipient. The IUPs will contain loan limit determination information when applicable.~~

~~002 The following elements apply only to the CWSRF:~~

~~002.01 Refinancing and buying debt obligation. The IUP will include a section on the refinancing system describing the method, criteria, and limits as determined by the Department, used to establish eligibility for buying or refinancing the debt obligation of municipalities for wastewater treatment works.~~

~~002.02 Linked Deposit Program. The IUP will include a section which provides a summary of the Linked Deposit Program.~~

~~003 The following elements apply only to the DWSRF:~~

~~003.01 The IUP will include a section which addresses the allocation of set-asides for the DWSRF.~~

~~003.02 Disadvantaged Community. The IUP will contain criteria for determining disadvantaged communities for the DWSRF utilizing affordability criteria developed by DHHS.~~

~~003.03 Loan Forgiveness. The IUP may include criteria for offering loan forgiveness to Disadvantaged Communities that are loan recipients of the DWSRF.~~

~~004 The Department and DHHS will accept loan applications from loan applicants through December 31 of each calendar year or a later date as deemed appropriate by the Department to provide sufficient time for consideration in development of the following fiscal year's IUPs. In addition, the Department and DHHS may propose candidates for loan assistance from needs identified in applicable agency programs.~~

~~005 Emergency Loan Assistance. A loan applicant may apply for emergency assistance under the CWSRF and the DWSRF. The CWSRF may provide emergency assistance in the case of catastrophic failures of existing facilities causing an environmental or public health threat. The DWSRF may provide emergency assistance to eligible Public Water Systems in the case of catastrophic failures of the Public Water Systems or unforeseen threats of contamination to the source water supply.~~

~~005.01 For emergency Loan Assistance under the CWSRF, an eligible Wastewater Treatment Works shall notify the Department of the need for emergency assistance because of a catastrophic failure of existing facilities causing an environmental or public health threat. The notification shall include the nature of the threat or failure, and a complete description of the proposed remedial action. Upon review of the notification and accompanying information and following a determination that the project conforms to eligibility requirements of the Clean Water Act and the CWSRF Act, the Department may approve the emergency project, subject to availability of funds. Approval will be based on the determination that the submitted information demonstrates the need for emergency funding, and that the proposed remediation will provide an acceptable and safe solution to the problems presented.~~

~~005.02 For emergency loan assistance under the DWSRF, an eligible Public Water System shall notify DHHS and the Department of the need for emergency remediation of threats of contamination of source water or of imminent or catastrophic failure of the drinking water supply. The notification shall include the nature of the threat or failure, and a complete description of the proposed remedial action. Upon review of the notification and accompanying information and following a determination that the project conforms to eligibility requirements of the Safe Drinking Water Act and the DWSRF Act, DHHS and the Department may approve the emergency project, subject to availability of funds. Approval will be based on the determination that the submitted information demonstrates the need for emergency funding, and that the proposed remediation will provide an acceptable and safe solution to the problems presented.~~

~~006 Emergency Grant Assistance. Under the CWSRF Act, a municipality may apply for an emergency grant to repair or replace Wastewater Treatment Works which have been damaged or destroyed by natural disaster or other unanticipated actions or circumstances. Such grant shall not be used for routine maintenance of facilities. The IUP may include criteria and the amount of funds available for providing emergency grants.~~

Enabling Legislation: Neb. Rev. Stat. §81-15,152; §81-15,153; §71-5321; §71-5322

Legal Citation: Title 131, Ch. 3, Nebraska Department of Environmental Quality

NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY

Title 131 - Rules and Regulations for the Wastewater Treatment Facilities and Drinking Water Construction Assistance Program

Chapter ~~34~~- GENERAL REQUIREMENTS FOR ~~WASTEWATER TREATMENT WORKS~~CWSRF and DWSRF PROJECTS

001 Wastewater Treatment Works, Nonpoint Source Control System, and Public Water System Land Acquisition and Source Water Protection Projects will satisfy the following:

001.01 Procurement Standards for Engineering Services and Construction Contracts. Loan applicants will use their own procurement procedures which reflect applicable federal, state, and local laws and regulations. ~~The Department will provide a guidance document to assist in procurement of engineering services.~~

001.01A For engineering services to be eligible, the loan applicant will submit to the Department the appropriate professional services agreement for planning, design, and/or construction administration services. The Department will review the agreement(s) for eligibility.

001.01B~~2~~ The Department will review costs and will provide assistance for engineering costs which are considered reasonable and acceptable. Costs that appear excessive or unjustified may be limited for loan participation. The Department may provide an allowance for planning and/or design costs. The Department may use 40 CFR Part 35 Appendix B dated February 17, 1984 as a tool to determine the allowance for engineering services.

001.01C~~3~~ For construction contracts the loan recipient ~~shall~~will follow the procedures under Chapter 34, ~~006.04~~002.03A.

001.02 Public Participation. Loan applicants ~~shall~~will conduct a minimum of the following:

001.02A.01 ~~One~~A public meeting when facility planning alternatives have been developed, but before an alternative has been selected, to discuss all alternatives under consideration and the reasons for rejection of others. Public notice ~~shall~~must occur not less than 30 days prior to the public meeting.

001.02B.02 ~~One~~A public hearing prior to formal adoption of a facility plan to discuss the proposed facility plan, financial aspects of the project, proposed annual residential and industrial user charges, and any needed mitigation measures. Public notice ~~shall~~must occur at least 45 days prior to the date of the hearing. ~~However, where the Department determines that there are no substantial documents which must be reviewed for effective hearing participation and there are no complex or controversial matters to be addressed by the hearing, the notice requirement may be reduced to no less than 30 days. For noncontroversial projects the public meeting and the public hearing can be combined into one public hearing.~~

001.03 Environmental Review. Loan applicants will conduct environmental review of projects using the following procedures.

~~003.01 The loan applicant should work with the Department as early as possible in the facilities planning process to determine if the project qualifies for a categorical exclusion or whether a finding of no significant impact or an environmental impact statement is required.~~

001.03A.02 40 CFR Part 6 – Procedures for Implementing the National Environmental Policy Act and Assessing the Environmental Effects Abroad of EPA Actions, as amended, is hereby adopted and incorporated herein.

001.04 Construction Contracts. Construction contracts are to include:

001.04A Requirements for the contractor of the construction project to post separate performance and payment bonds or other security approved by the Department in the amount of the bid;

001.04B A complete statement of work to be performed, including design drawings, specifications, and the required performance schedule;

001.04C The terms and conditions of the subagreement to be awarded;

001.04D A clear explanation of the loan recipient's method of bidding and evaluating bid prices, and its method for awarding the subagreement;

001.04E Any applicable wage determination requirements;

001.04F The deadline and place to submit bids;

001.04G Requirement for bid bond for 5% of the contractor's bid.

001.05 Contract Award and Construction Activities.

001.05A Construction Contract Procurement and Bid Document Review and Approval. Loan recipients will use their own procurement procedures which reflect applicable federal, state, and local laws and regulations.

001.05A1 The Department will review the bidding documents and authorize award of the construction contract.

001.05A2 In case of a single bid, the loan recipient may return the bid to the bidder unopened, promptly notify the Department, and re-advertise the project.

001.05B Monitoring Construction. The loan recipient is to provide and maintain competent and adequate engineering supervision and resident inspection during construction.

001.05B1 Department Inspections. Department officials will monitor and inspect project construction. Department officials may also attend construction progress meetings. The purpose of these inspections will be

to ensure that construction is progressing on schedule in accordance with approved plans/specifications and to determine compliance with terms of the loan. The loan recipient is required to correct all the deficiencies which are brought to their attention as a result of Department inspection. When the project is considered substantially complete and is operating as intended, the Department will perform a final inspection.

001.05B2 Initiation of operation. The loan recipient is to notify the Department in writing of the date of initiation of operation.

001.05C Change Orders. Change orders are to be in the form of a written document, issued by the loan recipient to a contractor, which alters the price, time of completion, or any other requirement(s) of the original contract documents.

001.05C1 The loan recipient is responsible for the adequate and prompt management of change orders.

001.05C2 Change orders will be submitted to the Department with documentation to support the cost and scope of work defined in the change order for review and approval by the Department.

001.05C3 The loan recipient may request additional funds for approved change orders if the additional work results in costs which will exceed the funds allocated to the project under the original contract.

001.05C4 Additional funds may be made available to the loan recipient if the change order costs are considered eligible and allowable subject to availability of funds.

001.05D Operation and Maintenance Manual. The operation and maintenance manual provides the information and guidance for the day-to-day effective and efficient operation and maintenance of the project. The loan recipient is to submit a draft of the manual as well as a final operation and maintenance manual to the Department.

001.05E Force Account. Project work which will be performed by the employees of the loan recipient may be categorized as force account. All significant elements of work are to be performed through the competitive bidding process.

001.05E1 The loan recipient may elect to complete certain project work by force account. In order to undertake this responsibility, the loan recipient will:

001.05E1.a Seek prior approval from the Department;

001.05E1.b Document that this work will be performed in an efficient and cost-effective manner; and

001.05E1.c Ensure that specific details of the force account effort are included in the loan as part of the project scope.

001.05E2 The loan recipient will receive loan disbursements for force account work upon receipt of documentation which verifies the costs incurred. Only direct labor and material cost is eligible for loan participation under this provision.

001.05F Small Purchases. The loan recipient may use small purchase provisions in accordance with applicable federal, state, and local laws and regulations, with prior approval of the Department. Payment for this work will require the submittal of documentation such as invoices and receipts.

002 General Requirements for Wastewater Treatment Works Projects.

002.014 Facility Planning Requirement. Loan applicants will conduct facility planning using the following procedures:

~~004~~002.01A That projects apply best practicable waste treatment technology, which is the cost-effective technology that can transport and treat wastewater, separate combined sewers, and remove excessive infiltration and inflow in publicly owned Wastewater Treatment Works.

~~004.002.01B~~ General Facility Planning Requirements. Facility planning ~~shall~~will demonstrate the need for proposed facilities. Through a systematic evaluation of alternatives that are feasible in light of the unique demographic, topographic, hydrologic, and institutional characteristics of the area, the facility plan will demonstrate that the selected alternative is cost-effective (i.e., is the most economical means of meeting the applicable effluent, water quality, and public health requirements over the design life of the facility while recognizing environmental and other nonmonetary considerations). The facility plan ~~shall~~will also demonstrate that the selected alternative is implementable from legal, institutional, financial, and management standpoints. All facility planning requirements may not be applicable to all types of projects. Comprehensive plans or engineering reports or studies may fulfill certain facility planning requirements.

~~004.03~~002.01C Facility plan contents. A completed facility plan ~~shall~~is to include:

~~004.03A~~002.01C1 A description of both the proposed Wastewater Treatment Works, and the complete Wastewater Treatment Works of which it is a part.

~~004.03B~~002.01C2 A cost-effectiveness analysis of the feasible conventional, innovative, and alternative Wastewater Treatment Works, processes and techniques capable of meeting the applicable effluent, water quality, and public health requirements over the design life of the facility while recognizing environmental and other nonmonetary considerations. The planning period for the cost-effectiveness analysis ~~shall~~will be at least 20 years. The monetary costs to be considered must include the present worth or equivalent annual value of all capital costs

and operation and maintenance costs. A cost-effectiveness analysis ~~shall~~ is to include:

004.03B1002.01C2.a An evaluation of alternative flow reduction methods.

004.03B2002.01C2.b A description of the relationship between the capacity of alternatives and the needs to be served, including capacity for future growth expected after the Wastewater Treatment Works become operational. This includes estimated flows from significant industrial users.

004.03B3002.01C2.c Cost information on total capital costs and annual operation and maintenance costs, including estimated annual or monthly costs to residential and industrial users.

004.03C002.01C3 A demonstration of the nonexistence or possible existence of excessive infiltration/inflow in the sewer system. See ~~Sec. 004.05~~ Chapter 3, 002.01E.

004.03D002.01C4 An evaluation of the environmental impacts including ground water and surface water impacts of alternatives.

004.03E002.01C5 For the selected alternative, a concise description at an appropriate level of detail of at least the following:

004.03E1002.01C5.a Relevant design parameters;

004.03E2002.01C5.b Estimated capital construction and operation and maintenance costs, and a description of the manner in which costs will be financed;

004.03E3002.01C5.c Cost impacts on Wastewater Treatment Works users; and

004.03E4002.01C5.d Institutional and management arrangements necessary for successful implementation.

002.01D004.04 Submission and review of a facility plan. Each facility plan ~~shall~~ is to be submitted to the Department for review.

002.01E004.05 Infiltration/Inflow.

002.01E1004.05A General. The loan applicant ~~shall~~ is to satisfactorily demonstrate to the Department that each sewer system discharging into the proposed Wastewater Treatment Works project is not or will not be subject to excessive infiltration/inflow. As an alternative loan applicants may propose long term program measures to limit infiltration and inflow. For previously existing combined sewers, inflow is not considered excessive in any event.

002.01E2004.05B Inflow. If the rainfall induced peak inflow rate results or will result in chronic operational problems during storm events, or the rainfall induced total flow rate exceeds 275 gpcd (1040 lpcd) during storm events, the loan applicant may perform a study of the sewer system to determine the quantity of excessive inflow and to propose a rehabilitation program to eliminate the excessive inflow.

002.01E3004.05C Infiltration.

002.01E3.a004.05C1 If the flow rate at the existing Wastewater Treatment Works is 120 gpcd (450 lpcd) or less during periods of high groundwater, the loan applicant may build the project including sufficient capacity to transport and treat any existing infiltration. However, if the loan applicant finds any specific portion of its sewer system is subject to excessive infiltration, the loan applicant may document its finding in a cost-effectiveness analysis and propose a sewer rehabilitation program to eliminate that specific excessive infiltration.

002.01E3.b004.05C2 If the flow rate at the existing treatment facility is more than 120 gpcd (450 lpcd) during periods of high groundwater, the loan applicant may perform a study of the sewer system to determine the quantity of excessive infiltration and propose a sewer rehabilitation program to eliminate the excessive infiltration.

002.02005 Design requirements ~~shall~~will include, but not be limited to, the following:

002.02A005.01 A requirement that the design of Wastewater Treatment Works be by professional engineers registered in Nebraska and follow current design standards as required by the Department. The design engineer will complete the Department's design information forms and submit them to the Department with the construction contract plans and specifications.

002.02B005.02 Capacity for twenty years domestic and industrial growth or reasonable capacity as approved by the Department.

002.02C005.03 Cost and Effectiveness Analysis. Beginning October 1, 2015, loan recipients who submit an application will certify to the Department that the loan recipient:

002.02C1005.03A Has studied and evaluated the cost and effectiveness of the processes, materials, techniques, and technologies for carrying out the proposed project or activity for which assistance is sought under this title; and

002.02C2005.03B Has selected, to the maximum extent practicable, a project or activity that maximizes the potential for efficient water use, reuse, recapture, and conservation, and energy conservation, taking into account:

~~002.02C2.a005.03B1~~ The cost of constructing the project or activity;

~~002.02C2.b005.03B2~~ The cost of operating and maintaining the project or activity over the life of the project or activity; and

~~002.02C2.c005.03B3~~ The cost of replacing the project or activity.

~~005.04 Construction contracts shall include:~~

~~005.04A Requirements for the contractor of the construction project to post separate performance and payment bonds or other security approved by the Department in the amount of the bid;~~

~~005.04B A complete statement of work to be performed, including design drawings, specifications, and the required performance schedule;~~

~~005.04C The terms and conditions of the subagreement to be awarded;~~

~~005.04D A clear explanation of the loan recipient's method of bidding and evaluating bid prices, and its method for awarding the subagreement;~~

~~005.04E Any applicable wage determination requirements;~~

~~005.04F The deadline and place to submit bids;~~

~~005.04G Requirement for bid bond for 5% of the contractor's bid.~~

~~006 Contract Award and Construction Activities.~~

~~006.01 Construction Contract Procurement and Bid Document Review and Approval. Loan recipients will use their own procurement procedures which reflect applicable federal, state, and local laws and regulations.~~

~~006.01A The Department shall review the bidding documents and authorize award of the construction contract.~~

~~006.01B In case of a single bid, the loan recipient may return the bid to the bidder unopened, promptly notify the Department, and re-advertise the project.~~

~~006.02 Preconstruction Conference. The loan recipient or its engineer is encouraged to arrange a preconstruction conference prior to issuing the notice to proceed. The purpose of the preconstruction conference is to coordinate schedules, review and emphasize regulatory requirements, resolve questions, and set the ground rules for working together during construction. At a minimum, participants in this conference should include the loan recipient, the construction contractor, and the engineer. The loan recipient should inform and seek the Department's participation in the preconstruction conference.~~

~~006.03 Monitoring Construction. The loan recipient shall provide and maintain competent and adequate engineering supervision and resident inspection during construction.~~

~~006.03A Department Inspections. Department officials shall monitor and inspect project construction. Department officials may also attend construction progress meetings. The purpose of these inspections shall be to ensure that construction is progressing on schedule in accordance with approved plans/specifications and to determine compliance with terms of the loan. The loan recipient is required to correct all the deficiencies which are brought to their attention as a result of Department inspection. When the project is considered substantially complete and is operating as intended, the Department shall perform a final inspection.~~

~~006.03B Initiation of operation. The loan recipient shall notify the Department in writing of the date of initiation of operation.~~

~~006.04 Change Orders. A change order is a written document, issued by the loan recipient to a contractor, which alters the price, time of completion, or any other requirement(s) of the original contract documents.~~

~~006.04A The loan recipient is responsible for the adequate and prompt management of change orders.~~

~~006.04B The loan recipient shall seek the Department's approval of all change orders and will provide documentation to support the cost and scope of work defined in the change order.~~

~~006.04C The loan recipient may request additional funds for approved change orders if the additional work results in costs which will exceed the funds allocated to the project under the original contract.~~

~~006.04D Additional funds may be made available to the loan recipient if the change order costs are considered eligible and allowable subject to availability of funds.~~

~~006.05 Operation and Maintenance Manual. The operation and maintenance manual provides the information and guidance for the day to day effective and efficient operation and maintenance of the project.~~

~~006.05A The loan recipient shall submit a draft of the operation and maintenance manual to the Department before loan disbursements exceed 75% of the total project costs.~~

~~006.05B The loan recipient shall submit a final operation and maintenance manual to the Department and receive approval before loan disbursements exceed 95% of the total project costs. This obligation of the loan recipient will be defined in the loan.~~

~~006.06~~002.03 Fiscal Sustainability Plan. Beginning October 1, 2014, loan recipients who submit an application whose projects involve the repair, replacement, or expansion of a publicly owned treatment work will: d

~~006.06A~~ Develop, certify, and implement a fiscal sustainability plan that will include:

~~002.03A~~ ~~006.06A1~~ An inventory of critical assets that are a part of the treatment works;

~~002.03B~~ ~~006.06A2~~ An evaluation of the condition and performance of inventoried assets or asset groupings;

~~002.03C~~ ~~006.06A3~~ A certification that the recipient has evaluated and will be implementing water and energy conservation efforts as part of the plan; and

~~002.03D~~ ~~006.06A4~~ A plan for maintaining, repairing, and, as necessary, replacing the treatment works and a plan for funding such activities; or

~~002.03E~~ ~~006.06B~~ Certify that the recipient has developed and implemented a plan that meets the requirements under Chapter 4, 006.06A.

~~006.07~~ Force Account. Project work which will be performed by the employees of the loan recipient may be categorized as force account. All significant elements of work ~~should~~ be performed through the competitive bidding process.

~~006.07A~~ The loan recipient may elect to complete certain project work by force account. In order to undertake this responsibility, the loan recipient shall:

~~006.07A1~~ Seek prior approval from the Department;

~~006.07A2~~ Document that this work ~~shall~~ be performed in an efficient and cost-effective manner; and

~~006.07A3~~ Ensure that specific details of the force account effort are included in the loan as part of the project scope.

~~006.07B~~ The loan recipient ~~shall~~ receive loan disbursements for force account work upon receipt of documentation which verifies the costs incurred. Only direct labor and material cost is eligible for loan participation under this provision.

~~006.08~~ Small Purchases. The loan recipient may use small purchase provisions in accordance with applicable federal, state, and local laws and regulations, with prior approval of the Department. Payment for this work will require the submittal of documentation such as invoices and receipts.

~~002.04~~~~007~~ Effect of Approval or Certification of Documents. Review or approval of facility plans, design drawings and specifications, or other documents by the Department does not relieve the loan recipient of its responsibility to properly plan, design, build, and

effectively operate and maintain the Wastewater Treatment Works described in the loan ~~as required under the Act~~ in accordance with the Clean Water Act, regulations, permits, and good management practices.

002.05008 Access to Individual On-Site Systems. Loan recipients receiving loans for alternatives including individual on-site systems on private property ~~shall~~ are to provide assurance of access to the systems at all reasonable times for such purposes as inspection, monitoring, building, operation, rehabilitation, and replacement.

002.06009 Sewer Use Ordinances/User Charge Systems. The loan recipient ~~shall~~ is to include the following ordinance provisions for its sewer use ordinance/user charge system. These legally binding documents ~~shall~~ are to be submitted to the Department for review and be adopted and implemented by the loan recipient before the Wastewater Treatment Works is placed in operation. The loan recipient ~~shall~~ will also implement the user charge system and sewer use ordinance for the useful life of the Wastewater Treatment Works.

002.06A009.01 Sewer Use Ordinance. This legally binding ordinance ~~shall~~ will prohibit any new connections from inflow sources into the Wastewater Treatment Works and require that new sewers and connections to the Wastewater Treatment Works are properly designed and constructed. This ordinance ~~shall~~ will also require that all wastewater introduced into the Wastewater Treatment Works not contain toxics or other pollutants in amounts or concentrations that endanger public safety and physical integrity of the Wastewater Treatment Works; cause violation of effluent or water quality limitations; or preclude the selection of the most cost-effective alternative for wastewater treatment and sludge disposal.

002.06B009.02 User Charge System. The user charge system ~~shall~~ is to be designed to produce adequate revenues required for operation and maintenance (including replacement) and also to retire debt incurred due to construction of Wastewater Treatment Works if the user charge system was utilized as the dedicated revenue source. These revenues ~~shall~~ are to be maintained in at least two separate accounts, one for the operation and maintenance costs (including replacement) and the other for debt retirement costs. The requirements for the debt retirement account ~~shall~~ will be defined in the loan. Additional accounts may be provided to meet other requirements of the loan recipient.

002.06B1009.02A The loan recipient's user charge system, based on actual or estimated use of wastewater treatment services, ~~shall~~ is to provide that each user or user class pay its proportionate share of operation and maintenance (including replacement) costs of Wastewater Treatment Works within the Municipality's or County's service area, based on the user's proportionate contribution to the total wastewater loading from all users or user classes.

002.06B2009.02B Each user charge system ~~shall~~ is to include an adequate financial management system that will accurately account for revenues generated by the system and expenditures for operation and maintenance (including replacement) of the Wastewater Treatment Works, based on an adequate budget identifying the basis for determining

the annual operation and maintenance costs and the costs of personnel, material, energy, and administration.

002.06B3~~009.02G~~ The user charge system ~~shall~~ is to provide that the costs of operation and maintenance for all flow not directly attributable to users (i.e. infiltration/inflow) be distributed among all users based upon either of the following:

002.06B3.a~~009.02G1~~ In the same manner that it distributes the costs for their actual use, or

002.06B3.b~~009.02G2~~ Under a system which uses one or any combination of the following factors on a reasonable basis: flow volume of the users, land area of the users, or number of hookups or discharges of the users.

002.06B4~~009.02D~~ After completion of building a project, revenue from the project (e.g. sale of a treatment-related byproduct) ~~shall~~ is to be used to offset the costs of operation and maintenance. The loan recipient is to ~~shall~~ proportionately reduce all user charges.

002.06B5~~009.02E~~ One or more municipal legislative enactments or other appropriate authority is to ~~shall~~ incorporate the user charge system. If the loan recipient accepts wastewater from other wastewater generators, the subscribers receiving waste treatment services from the loan recipient is to ~~shall~~ adopt user charge systems in accordance with this section. Acceptable user charge systems ~~shall~~ are also to be incorporated in appropriate municipal legislative enactments or other appropriate authority of all loan recipients contributing wastes to the Wastewater Treatment Works.

002.06B6~~009.02F~~ The user charge system ~~shall~~ will take precedence over any terms or conditions of agreements or contracts which are inconsistent with the requirements of this section.

003 General Requirements for Nonpoint Source Control System Projects and Land Acquisition and Source Water Protection Projects.

003.01 General Planning requirements. Loan applicants will prepare an engineering report which defines the project, its purpose, and its scope.

003. 01A Alternatives will be evaluated for the project through a cost-effectiveness analysis and other non-monetary considerations of an engineering evaluation. The engineering report will demonstrate that the selected alternative is cost-effective.

003. 01B An evaluation of the environmental impacts including ground water and surface water impacts of the selected alternative will be included in the engineering report.

003.01C For the selected alternative, a concise description will be provided in the engineering report of at least the following:

003.01C1 Relevant design parameters including project design life.

003.01C2 Estimated capital construction costs and the associated operation and maintenance costs, and a description of the manner in which costs will be financed.

003.01C4 Cost impacts on the entities who benefit from the Nonpoint Source Control System project or the land acquisition and source water protection project.

003.01C5 Institutional and management arrangements necessary for successful implementation.

003.01D Submission and review of the engineering report. Each engineering report will be submitted to the Department for review.

003.02 Recipients will satisfy the Cost and Effectiveness Analysis requirements in accordance with Chapter 3, 002.02C.

003.03 Loan applicants will have plans and specifications prepared by professional engineers registered in the state of Nebraska and submitted to the Department for review and approval.

003.04 Effect of Approval or Certification of Documents. Review or approval of engineering reports, design drawings and specifications, or other documents by the Department does not relieve the loan recipient of its responsibility to properly plan, design, build, and effectively operate and maintain the Nonpoint Source Control Systems and land acquisition and source water protection projects described in the loan in accordance with the CWSRF Act or DWSRF Act, regulations, permits, and good management practices.

003.05 Access to ground water monitoring wells shallis to be provided at all reasonable times for such purposes as inspection, monitoring, building, operation, rehabilitation, and replacement.

003.06 Use Ordinances or User Charge Systems: The loan recipient shallis to include ordinance provisions required by the Department for any use ordinance or user charge system enacted in relation to the nonpoint source control system or the land acquisition and source water protection project.

004 General Requirements for Public Water System Projects.

004.01 General Planning requirements. Loan applicants will prepare an engineering report which defines the project, its purpose, and its scope.

004.01A Alternatives will be evaluated for the project through a cost-effectiveness analysis and other non-monetary considerations of an engineering evaluation.

004.01B An evaluation of the environmental impacts including the beneficial and adverse consequences on the existing environment, the future environment and individual sensitive environmental issues that are identified by project management or through public participation on the alternatives of Chapter 3, 004.01A and the selected alternative will be included in the engineering report.

004.01C For the selected alternative, a concise description will be provided in the engineering report of at least the following:

004.01C1 Relevant design parameters including project design life.

004.01C2 Estimated capital construction costs and the associated operation and maintenance costs, and a description of the manner in which costs will be financed.

004.01C3 Cost impacts on the users of the Public Water System who benefit from the DWSRF project.

004.01C4 Institutional and management arrangements necessary for successful implementation.

004.01C5 Appropriate near-term and long-range measures to avoid, minimize, or mitigate adverse environmental impacts.

004.01D Submission and review of the engineering report. Each engineering report will be submitted to the Department and to DHHS for review.

004.02 Design requirements shall will include, but not be limited to, the following:

004.02A Loan applicants will have plans and specifications prepared by registered professional engineers and submitted to DHHS for review.

004.02B Capacity for twenty years domestic and industrial growth or reasonable capacity as approved by DHHS.

004.04 Effect of Approval or Certification of Documents. Review or approval of engineering reports, design drawings and specifications, or other documents by DHHS or by the Department does not relieve the loan recipient of its responsibility to properly plan, design, build, and effectively operate and maintain the Public Water System described in the loan in accordance with the DWSRF Act, regulations, permits, and good management practices.

004.05 Use Ordinances or User Charge Systems. The loan recipient shall is to include ordinance provisions required by the Department for any user charge system enacted in relation to the Public Water System. The loan recipient shall is to submit to DHHS for

review a water system use ordinance and satisfy DHHS requirements of capacity development.

Enabling Legislation: Neb. Rev. Stat. §81-15,152; §81-15,153; §71-5318; §71-5322; §71-5324

Legal Citation: Title 131, Ch. 34, Nebraska Department of Environmental Quality

~~NEBRASKA ADMINISTRATIVE CODE~~

~~NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY~~

~~Title 131 – Rules and Regulations for the Wastewater Treatment Facilities and Drinking Water Construction Assistance Program~~

~~Chapter 5 – GENERAL REQUIREMENTS FOR NONPOINT SOURCE CONTROL SYSTEM PROJECTS AND LAND ACQUISITION AND SOURCE WATER PROTECTION PROJECTS~~

~~001 – Loan applicants will use the procurement procedures in accordance with Chapter 4, 001.~~

~~002 – Loan applicants will satisfy the following:~~

~~002.01 – Public participation and environmental review requirements in accordance with Chapter 4, 002 and 003 respectively.~~

~~002.02 – Cost and Effectiveness Analysis requirements in accordance with Chapter 4, 005.04.~~

~~003 – General Planning requirements. Loan applicants will prepare an engineering report which defines the project, its purpose, and its scope.~~

~~003.01 – Alternatives will be evaluated for the project through a cost effectiveness analysis and other non-monetary considerations of an engineering evaluation. The engineering report will demonstrate that the selected alternative is cost effective.~~

~~003.02 – An evaluation of the environmental impacts including ground water and surface water impacts of the selected alternative will be included in the engineering report.~~

~~003.03 – For the selected alternative, a concise description will be provided in the engineering report of at least the following:~~

~~003.03A – Relevant design parameters including project design life.~~

~~003.03B – Estimated capital construction costs and the associated operation and maintenance costs, and a description of the manner in which costs will be financed.~~

~~003.03C – Cost impacts on the entities who benefit from the Nonpoint Source Control System project or the land acquisition and source water protection project.~~

~~003.03D – Institutional and management arrangements necessary for successful implementation.~~

~~003.04 – Submission and review of the engineering report. Each engineering report will be submitted to the Department for review.~~

~~004 – Loan applicants will have plans and specifications prepared by registered professional engineers and submitted to the Department for review and approval.~~

~~005 Construction contracts shall be prepared in accordance with Chapter 4, 005.04.~~

~~006 Construction award and construction activities shall be in accordance with Chapter 4, 006.~~

~~007 Effect of Approval or Certification of Documents. Review or approval of engineering reports, design drawings and specifications, or other documents by the Department does not relieve the loan recipient of its responsibility to properly plan, design, build, and effectively operate and maintain the Nonpoint Source Control Systems and land acquisition and source water protection projects described in the loan as required under the CWSRF Act or DWSRF Act, regulations, permits, and good management practices.~~

~~008 Access to ground water monitoring wells shall be provided at all reasonable times for such purposes as inspection, monitoring, building, operation, rehabilitation, and replacement.~~

~~009 Use Ordinances or User Charge Systems: The loan recipient shall include ordinance provisions required by the Department for any use ordinance or user charge system enacted in relation to the nonpoint source control system or the land acquisition and source water protection project.~~

Enabling Legislation: ~~Neb. Rev. Stat. §81-15,152; §81-15-153; §71-5318; §71-5322; §71-5324~~

Legal Citation: ~~Title 131, Ch. 5, Nebraska Department of Environmental Quality~~

NEBRASKA ADMINISTRATIVE CODE

NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY

~~Title 131 – Rules and Regulations for the Wastewater Treatment Facilities and Drinking Water Construction Assistance Program~~

~~Chapter 6 – GENERAL REQUIREMENTS FOR PUBLIC WATER SYSTEM PROJECTS~~

~~001 Loan applicants will use the procurement procedures in accordance with Chapter 4, 001.~~

~~002 Loan applicants will satisfy the public participation and environmental review requirements in accordance with Chapter 4, 002 and 003 respectively.~~

~~003 General Planning requirements. Loan applicants will prepare an engineering report which defines the project, its purpose, and its site~~

~~003.01 Alternatives will be evaluated for the project through a cost effectiveness analysis and other non-monetary considerations of an engineering evaluation.~~

~~003.02 An evaluation of the environmental impacts including the beneficial and adverse consequences on the existing environment, the future environment and individual sensitive environmental issues that are identified by project management or through public participation on the alternatives of 003.01 and the selected alternative will be included in the engineering report.~~

~~003.03 For the selected alternative, a concise description will be provided in the engineering report of at least the following:~~

~~003.03A Relevant design parameters including project design life.~~

~~003.03B Estimated capital construction costs and the associated operation and maintenance costs, and a description of the manner in which costs will be financed.~~

~~003.03C Cost impacts on the users of the Public Water System who benefit from the DWSRF project.~~

~~003.03D Institutional and management arrangements necessary for successful implementation.~~

~~003.03E Appropriate near-term and long-range measures to avoid, minimize, or mitigate adverse environmental impacts.~~

~~003.04 Submission and review of the engineering report. Each engineering report will be submitted to the Department and to DHHS for review.~~

~~004 Design requirements shall include, but not be limited to, the following:~~

~~004.01 Loan applicants will have plans and specifications prepared by registered professional engineers and submitted to DHHS for review.~~

~~004.02 Capacity for twenty years domestic and industrial growth or reasonable capacity as approved by DHHS.~~

~~004.03 Construction contracts shall be prepared in accordance with Chapter 4, 005.04.~~

~~005 Contract Award and Construction Activities shall be in accordance with Chapter 4, 006.~~

~~006 Effect of Approval or Certification of Documents. Review or approval of engineering reports, design drawings and specifications, or other documents by DHHS or by the Department does not relieve the loan recipient of its responsibility to properly plan, design, build, and effectively operate and maintain the Public Water System described in the loan as required under the DWSRF Act, regulations, permits, and good management practices.~~

~~007 Use Ordinances or User Charge Systems: The loan recipient shall include ordinance provisions required by the Department for any user charge system enacted in relation to the Public Water System. The loan recipient shall submit to DHHS for review a water system use ordinance and satisfy DHHS requirements of capacity development.~~

Enabling Legislation: Neb. Rev. Stat. §71-5318; §71-5322; §71-5324

Legal Citation: Title 131, Ch. 6, Nebraska Department of Environmental Quality

NEBRASKA ADMINISTRATIVE CODE

NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY

~~Title 131 – Rules and Regulations for the Wastewater Treatment Facilities and Drinking Water Construction Assistance Program~~

~~Chapter 7 – APPLICATION PROCEDURES~~

~~001 Requests for loan assistance. Loan applicants with projects identified on the Department's Intended Use Plans will submit a loan application before receiving assistance.~~

~~002 Loan application. All requests for loans will be made on the application form provided by the Department.~~

~~003 Financial Capability. Information concerning the loan applicant's financial, technical, and managerial capability as requested by the Department shall be supplied by the loan applicant.~~

~~004 Application Denial. Written notice of the denial of application shall be given by the Department to the loan applicant.~~

~~004.01 Applications may be denied by the Department for any of following reasons:~~

~~004.01A Failure to establish an underlying need for the project.~~

~~004.01B Failure to meet all eligibility requirements as required by the CWSRF Act or the DWSRF Act and the Clean Water Act or the Safe Drinking Water Act, if applicable.~~

~~004.01C Failure to submit a complete application.~~

~~004.01D Falsification or misrepresentation of information.~~

~~004.01E Substantial adverse public comment during the public hearing process.~~

~~004.01F Any failure to comply with Title 131 or other good cause as determined by the Department.~~

~~004.01G Failure to meet financial capability requirements as established by the Department.~~

~~004.02 Prior to initiating such action, the Department may provide written notice to the applicant explaining the reason for the intended action and offer an opportunity to respond or cure the failure within a specified time frame.~~

~~Enabling Legislation: Neb. Rev. Stat. §81-15,152; §81-15,153; §71-5321~~

~~Legal Citation: Title 131, Ch. 7, Nebraska Department of Environmental Quality~~

NEBRASKA ADMINISTRATIVE CODE

NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY

Title 131 – Rules and Regulations for the Wastewater Treatment Facilities and Drinking
Water Construction Assistance Program

Chapter 8 – LOAN CONDITIONS AND TERMS

~~001~~ Loans will be awarded to loan applicants only after the Finding of No Significant Impact public comment period has expired or a Categorical Exclusion has been issued and the Facility Plan or engineering report requirements are completed. All loans made under the CWSRF Act and the DWSRF Act will be made only to loan applicants which meet the following requirements:

~~001.01~~ Pledge sufficient revenue sources for the repayment of the loan if such revenue may by law be pledged for that purpose;

~~001.02~~ Agree to maintain financial records according to generally accepted accounting principles and to conduct an audit of the project's financial records according to generally accepted government auditing standards;

~~001.03~~ Provide a written assurance, signed by an attorney, that the loan applicant has proper title, easements, and rights-of-way to the property on or through which the Wastewater Treatment Works, Public Water System, Source Water Protection System or Nonpoint Source Control System is to be constructed or extended;

~~001.04~~ Provide a written notice of completion and Initiation of Operation of the facility;

~~001.05~~ Employ a registered professional engineer to provide and be responsible for engineering services on the project such as a facility plan, construction contract documents, observation of construction, and startup services.

~~001.06~~ Agree to provide access to site and records to the Department, its agents, or third parties for inspections and audits of the project;

~~001.07~~ Agree to promptly initiate project construction and establish a maximum time for initiation, after which the Department may withdraw financial assistance; and

~~001.08~~ Agree to submit an annual financial statement during the term of the loan.

~~002~~ Loans made under the CWSRF Act for the construction of Wastewater Treatment Works will be made only to Municipalities or to Counties which meet the conditions of 001 of this section and, in addition, that:

~~002.01~~ Develop and implement a long term Wastewater Treatment Works management plan for the term of the loan, including yearly renewals.

~~002.02~~ Agree to operate and maintain the Wastewater Treatment Works so that it will function properly over the structural and material design life which will not be less than twenty years;

~~002.03~~ Agree to provide a certified operator pursuant to Title 197 – Nebraska Department of Environmental Quality;

~~003~~ Loans made under the DWSRF Act for the construction of Public Water Systems will be made to loan applicants which meet the conditions of 001 of this section and, in addition, that:

~~003.01~~ Agree to provide a certified operator pursuant to Title 179 NAC 2 of DHHS.

~~003.02~~ Agree to maintain Capacity Development to ensure compliance with the requirements of the Safe Drinking Water Act and Title 179 NAC 2 of DHHS.

~~004~~ Loan terms will include, but not be limited to, the following:

~~004.01~~ The term of the loan will not exceed twenty years or the project design period if less than twenty years, except that in the case of a disadvantaged community for Public Water Systems, the Department may provide an extended term for a loan, if the extended term terminates not later than the date that is 30 years after the date of Initiation of Operation, and does not exceed the expected design life of the project;

~~004.02~~ The interest rate will be at or below market interest rates;

~~004.03~~ The annual principal and interest payment due from a loan recipient will commence no later than one year after Initiation of Operation or no later than three years from the date of the loan, whichever occurs first. All loans will be fully amortized not later than twenty years after the date of Initiation of Operation of the project; except in the case of disadvantaged communities which will be fully amortized not later than thirty years after the date of Initiation of Operation of the project.

~~004.04~~ An administrative fee up to 1% may be assessed each year against the loan principal balance on the dates set by the Department, and payable on those dates;

~~004.05~~ The loan recipient shall immediately repay any loan when a grant has been received which covers costs provided for by such loan; and

~~004.06~~ The loan will contain a loan repayment schedule which will be revised by the Department to reflect actual loan amount upon completion of the project.

~~005~~ Loan Conditions:

~~005.01~~ The loan will contain such terms as are necessary to ensure compliance with the CWSRF Act or the DWSRF Act and the Clean Water Act or Safe Drinking Water Act and any regulations adopted under such acts, when applicable, or additional terms as deemed necessary by the Department.

~~005.02~~ Delinquent payment penalty and penalty interest. Payments may be considered delinquent if not received within 15 days of the due date and will be assessed with a 5 percent administrative penalty. Penalty interest will accrue at the rate of 1 percent per

~~month of the amount of such delinquent payment from and after the due date until it is paid.~~

~~005.03 Security. The loan will contain provisions designed to ensure proper security of compliance with loan terms and repayment of principal and interest. Such provisions may include one or more of the following:~~

~~005.03A The filing of a lien upon the project in the amount of the loan together with any interest thereon. Such lien to attach to all project facilities, equipment, easements, real property, and any property of any kind or nature which is associated with the project. The Department will file a statement of the lien, its amounts, terms, and a description of the project with the county register of deeds in the county which is the site of the project. The lien will be valid until the principal loan amount with all accrued interest is paid in full or otherwise discharged. The lien will be foreclosed in accordance with applicable state laws.~~

~~005.03B For substantial non-compliance with terms and conditions of the loan, the Department may demand that the remaining balance of principal and interest become immediately due and payable.~~

~~005.03C Failure to pay any loan payment or other charges due within sixty days of the date due will result in a deduction of an equal amount from the amount of aid to loan recipients which are Municipalities or Counties to which the Municipality or County is entitled under Neb. Rev. Stat. §§77-27,136 to 77-27,137.01. Such amount will be paid directly to the applicable Fund, either the Drinking Water, Clean Water, or Land Acquisition and Source Water Loan Fund.~~

~~005.04 Before any action is taken under 005.03 of this chapter, the Department shall give thirty days written notice of the Department's intent to the loan recipient. The loan recipient shall have such thirty day time period to comply with violated contractual terms. If compliance is achieved, the loan will revert to good standing.~~

~~006 All outstanding loans will be reviewed annually by the Department for compliance with loan payment provisions.~~

~~Enabling Legislation: Neb. Rev. Stat. §81-15,152; §81-15,153; §81-15,155; §81-15,156; §81-15,158; §§71-5321 to 71-5326~~

~~Legal Citation: Title 131, Ch. 8, Nebraska Department of Environmental Quality~~

NEBRASKA ADMINISTRATIVE CODE

NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY

~~Title 131 – Rules and Regulations for the Wastewater Treatment Facilities and Drinking Water Construction Assistance Program~~

~~Chapter 9 – Emergency Grant Procedures for Wastewater Treatment Works~~

~~001 The Department may provide emergency grants subject to availability of funds to a municipality with Wastewater Treatment Works which have been damaged or destroyed by natural disaster or other unanticipated actions or circumstances. Such grant shall not be used for routine maintenance of facilities.~~

~~002 The Department may consider financial capability of the municipality in authorizing an emergency grant. A grant or a grant and loan combination may be offered. The intended use plan may include criteria and the amount of funds available for providing emergency grants. The loan portion of the grant and loan combination will be subject to the administrative requirements for other loans governed by this Title.~~

~~003 The municipality shall notify the Department of the need for emergency assistance by completing and submitting a report which describes the type of emergency, provides a complete description of the proposed remedial action, and includes the estimated cost for the proposed remedial action.~~

~~004 The recipient shall repay the emergency assistance grant or grant and loan combination to the Department to the extent another grant, insurance settlement, or any other funds are received for the same need.~~

Enabling Legislation: ~~Neb. Rev. Stat. §§81-15,152; 81-15,153.~~

Legal Citation: Title 131, Ch. 9, Nebraska Department of Environmental Quality

NEBRASKA ADMINISTRATIVE CODE

NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY

~~Title 131 – Rules and Regulations for the Wastewater Treatment Facilities and Drinking Water Construction Assistance Program~~

~~Chapter 10 – ELIGIBLE USE OF LINKED DEPOSIT FUNDS AND APPLICABILITY OF FEDERAL, STATE, AND LOCAL REQUIREMENTS~~

~~001 – General Requirements. The Department may deposit a portion of the Wastewater Treatment Facilities Construction Loan Fund with eligible financial institutions to make loans with public or private entities for the construction, rehabilitation, and enhancement of nonpoint source control systems including onsite wastewater and private septic systems; local water protection projects, for best management practices for nutrient controls; and eligible nonpoint source activities under the Livestock Waste Management Act.~~

~~002 – Linked Deposit Project Eligibility~~

~~002.01 – Eligible project costs. Linked deposit funding will be limited to the total costs deemed necessary, reasonable, and directly related to the construction, rehabilitation, repair, replacement, or enhancement of eligible projects or for the improvement, restoration, or protection of water quality and other practices that are shown to improve, restore, or protect water quality.~~

~~002.02 – Land control requirement. Linked deposit borrowers must own or have legal control over the land for the nonpoint source control system project during the term period specified in the Linked Deposit Loan Contract.~~

~~002.03 – Project maintenance and monitoring. Linked deposit borrowers are responsible for and must provide regular system maintenance and monitoring of the project for the life of the loan.~~

~~003 – Ineligible Project Costs~~

~~003.01 – Linked deposit funds will not be made available for: costs of water rights, purchasing of land, easements, rights-of-way, legal costs, fiscal agent's fees, operation and maintenance costs, municipal or county administrative costs or any project that does not meet required federal, state, and local regulations.~~

~~003.02 – Onsite Wastewater and Private Septic Systems. Linked deposit funds will not be made available for onsite wastewater and private septic system projects at facilities that have a connection to a publicly owned wastewater treatment works.~~

~~003.03 – Livestock Waste Management Act Projects. Linked deposit funds will not be made available for:~~

~~003.03A – Animal feeding operations, as defined in Title 130 – Livestock Waste Control Regulations, that require a National Pollutant Discharge Elimination System permit;~~

~~003.03B~~ Water pollution control facilities at animal feeding operations, including design, permitting, construction, financing, or other activities that would require the operation to obtain a National Pollutant Discharge Elimination System permit;

~~003.03C~~ Costs for operation and maintenance; and

~~003.03D~~ Refinancing of completed projects.

~~003.04~~ Local Water Protection Projects. Funding for water quality projects, where the primary purpose is not water quality protection or improvement, will be limited to the portion of the project that is directly related to water quality improvement, restoration, or protection.

Enabling Legislation: ~~Neb. Rev. Stat. §§81-15,148; §§81-15,151 to 81-15,153~~

Legal Citation: ~~Title 131, Ch. 10, Nebraska Department of Environmental Quality~~

NEBRASKA ADMINISTRATIVE CODE

NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY

~~Title 131—Rules and Regulations for the Wastewater Treatment Facilities and Drinking Water Construction Assistance Program~~

~~Chapter 11—GENERAL REQUIREMENTS FOR ELIGIBLE FINANCIAL INSTITUTIONS FOR THE LINKED DEPOSIT PROGRAM~~

~~001—Eligible financial institutions. To become an eligible financial institution to participate in the Linked Deposit Program, financial institutions and the Director must sign a Linked Deposit Lender Agreement.~~

~~002—Linked Deposit Lender Agreement will include, but not be limited to, the following:~~

~~002.01—Conditions to ensure compliance with all federal, state, and local requirements.~~

~~002.02—Specific conditions, terms, and limits for eligible financial institutions and Linked Deposit Loan Contracts, as determined by the Department.~~

~~002.03—Interest rate applied to linked deposit account. The Department may apply an annual interest rate to funds deposited into the linked deposit account.~~

~~002.04—The procedure for eligible financial institutions to obtain Department approval of project eligibility for the Linked Deposit Program.~~

~~003—Eligible financial institutions' responsibilities shall include, but not be limited to:~~

~~003.01—Evaluating linked deposit loan borrowers' financial capability. Eligible financial institutions will have the authority to approve or deny a linked deposit borrower's loan application.~~

~~003.02—Establishing a Linked Deposit Loan Contract with the linked deposit borrower.~~

~~003.03—Collecting repayment from linked deposit borrowers and any additional terms and conditions set in the Linked Deposit Loan Contract.~~

~~003.04—Confirming availability of linked deposit funds as described in the Linked Deposit Lender Agreement.~~

~~003.05—Submitting to the Department required documentation in accordance with the Linked Deposit Lender Agreement.~~

~~003.06—All other responsibilities as stated in the Linked Deposit Lender Agreement.~~

~~004—Linked Deposit Loan Contracts must include the following:~~

~~004.01—The interest rate for the linked deposit loan will be fixed and must be at an interest rate lower than the eligible financial institution's interest rate for a similar project.~~

~~004.02~~ The length of term for the linked deposit loan.

~~004.03~~ Conditions allowing the Department, and any authorized representative of the Department, access to the project at all reasonable times for such purposes as inspection, monitoring, and oversight of building, operation, rehabilitation, and replacement activities.

~~004.04~~ Conditions as are necessary to ensure compliance with all federal, state, and local requirements.

~~004.05~~ Conditions stating linked deposit borrowers shall be responsible for and will provide regular system maintenance and monitoring of the project for the life of the loan.

~~004.06~~ Other conditions as determined by the Linked Deposit Lender Agreement.

~~005~~ Linked deposit funds will be deposited into a linked deposit account with an eligible financial institution only after the following requirements have been met:

~~005.01~~ The Department has approved the initial project eligibility.

~~005.02~~ The project is in compliance with all federal, state, and local requirements.

~~005.03~~ The eligible financial institution has submitted all required documentation in accordance with the Linked Deposit Lender Agreement to the Department.

~~006~~ The Department will withdraw funds from the linked deposit account in accordance with the terms set in the Linked Deposit Lender Agreement.

~~007~~ Full repayment of a loan by linked deposit borrower. If a linked deposit loan is fully repaid, the eligible financial institution will notify the Department within thirty days from when the loan was fully repaid. The Department may withdraw the remaining linked deposit balance, including any interest which is due and payable, within sixty days from when the linked deposit loan was fully repaid.

~~008~~ Loss of property control by borrower. In the event that the linked deposit borrower no longer has legal control over the land for the nonpoint source control system project or activity during the term period specified in the Linked Deposit Loan Contract, the eligible financial institution will notify the Department within thirty days from the eligible financial institution's discovery of the loss of property control. The Department may withdraw the remaining linked deposit balance, including any interest which is due and payable, within sixty days from the eligible financial institution's discovery of the loss of property control.

~~009~~ Noncompliance. For substantial non-compliance with terms and conditions of the Linked Deposit Lender Agreement, Linked Deposit Loan Contract, or the Linked Deposit Program by the eligible financial institution or linked deposit borrower, the Department may withdraw the remaining linked deposit balance, including any interest which is due and payable, within thirty days from the Department's notice of noncompliance.

~~009.01~~ Before any action is taken under 009 of this chapter, the Department may give thirty days written notice of the Department's intent to the eligible financial institution.

~~The eligible financial institution shall have such time as indicated in the written notice to comply. If compliance is achieved, the eligible financial institution or the borrower shall revert to good standing.~~

~~010 Linked deposit borrower default. If a linked deposit borrower defaults on a linked deposit loan, the eligible financial institution will be responsible for the Linked Deposit Lender Agreement and all agreed upon scheduled withdrawals and interest as specified in the Linked Deposit Lender Agreement.~~

~~011 Selling of linked deposit loans. The eligible financial institution must not sell the linked deposit loan to another financial institution or entity without the approval of the Department.~~

~~Enabling Legislation: Neb. Rev. Stat. §81-15,148; §81-15-149; §§81-15,151 to 81-15,153~~

~~Legal Citation: Title 131, Ch. 11, Nebraska Department of Environmental Quality~~