

## 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 2 - GENERAL REQUIREMENTS FOR CWSRF AND DWSRF FINANCING

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

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

003 Refinancing Existing Debt Obligation. 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.

003.01 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.

#### 004 Interest Rates and Administrative Fees.

004.01 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 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.

005 Additional Authorities. The use of CWSRF and the DWSRF funds will be subject to the following authorities:

005.01 Age Discrimination Act, PL 94-135.

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

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

005.04 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:

007.01 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 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