

NEBRASKA ADMINISTRATIVE CODE

TITLE 131 – NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY

Chapter 2 - ELIGIBLE USE OF FUNDS AND APPLICABILITY OF FEDERAL REQUIREMENTS

001 General Requirements. ~~Loans~~ **Funding made** from the CWSRF and the DWSRF will be made for **funding**-eligible projects and activities defined in the Clean Water Act and the Safe Drinking Water Act, respectively.

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 **only** fund construction of ~~Public Water Supply System at both privately and publicly owned community and non-profit Non-Community Public Water Systems. Drinking water systems that are eligible for assistance are Community Water Systems, both privately and publicly owned, and Nonprofit Noncommunity 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

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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 Supply System~~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 Supply System~~Public Water Systems may use loan 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 loan 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 loan 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 contract~~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 ~~The following Federal cross-cutting authorities shall apply to loans made from the capitalization grants provided by the Clean Water Act and the Safe Drinking Water Act.~~Recipients of loans made from the capitalization grants provided by the Clean Water Act

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and the Safe Drinking Water Act must comply with all applicable Federal cross-cutting authorities.

003.01 Environmental:

~~003.01A Archeological and Historic Preservation Act of 1974, PL 93-291.~~

~~003.01B Clean Air Act, 42 U.S.C. 7506(c).~~

~~003.01C Coastal Barrier Resources Act, 16 U.S.C. 3501 et seq.~~

~~003.01D Coastal Zone Management Act of 1972, PL 92-583, as amended.~~

~~003.01E Endangered Species Act 16 U.S.C. 1531, et seq.~~

~~003.01F Executive Order 11593, Protection and Enhancement of Cultural Environment.~~

~~003.01G Executive Order 11988, Floodplain Management.~~

~~003.01H Executive Order 11990, Protection of Wetlands, as amended.~~

~~003.01I Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, as amended.~~

~~003.01J Farmland Protection Policy Act, 7 U.S.C. 4201 et seq.~~

~~003.01K Fish and Wildlife Coordination Act, PL 85-624, as amended.~~

~~003.01L National Historic Preservation Act of 1966, PL 89-665, as amended.~~

~~003.01M Safe Drinking Water Act, section 1424(e), PL 92-523, as amended.~~

~~003.01N Wild and Scenic Rivers Act, PL 90-542, as amended.~~

003.02 Economic:

~~003.02A Demonstration Cities and Metropolitan Development Act of 1966, PL 89-754, as amended.~~

~~003.02B Section 306 of the Clean Air Act and Section 508 of the Clean Water Act, including Executive Order 11738, Administration of the Clean Air Act and the Federal Water Pollution Control Act with Respect to Federal Contracts, Grants or Loans.~~

003.03 Social Legislation:

~~003.03A Age Discrimination Act, PL 94-135.~~

~~003.03B Civil Rights Act of 1964, PL 88-352.~~

~~003.03C Section 13 of PL 92-500; Prohibition against sex discrimination under the Federal Water Pollution Control Act.~~

~~003.03D Executive Order 11246, Equal Employment Opportunity.~~

~~003.03E Executive Orders 11625, 12138, and 12432 Women's and Minority Business Enterprise, as amended.~~

~~003.03F Rehabilitation Act of 1973, PL 93-112.~~

003.04 Miscellaneous Authority:

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~~003.04A Uniform Relocation and Real Property Acquisition Policies Act of 1970, PL 91-646.~~

~~003.04B Executive Order 12549 – Debarment and Suspension.~~

004 If a loan applicant receives a loan for facility planning, design, and/or construction and subsequently receives a grant for any of these costs, the loan recipient shall promptly repay the loan to the extent these costs are covered by the grant.

005 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 municipalities for wastewater treatment works if the debt was incurred and construction was begun after March 7, 1985.

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 contract~~loan or amendments.

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.

006 Loans made from ~~repaid principal from~~ the CWSRF and the DWSRF shall have the following ~~cross-cutting~~ authorities attached to their use, ~~and may not be required to comply with the other Federal cross-cutting authorities listed in Chapter 2, 003:~~

006.01 Age Discrimination Act, PL 94-135.

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

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

006.04 Rehabilitation Act of 1973, PL 93-112.

007 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.

007.02 Consolidated Appropriations Act of 2014, Implementation of Iron and Steel Provisions of PL 113-76.

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

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