

NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY

TITLE 131 - RULES AND REGULATIONS FOR THE  
WASTEWATER TREATMENT FACILITIES AND DRINKING WATER  
CONSTRUCTION  
ASSISTANCE PROGRAMS

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Pete Ricketts

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TITLE 131

RULES AND REGULATIONS FOR THE  
WASTEWATER TREATMENT FACILITIES AND DRINKING WATER  
CONSTRUCTION ASSISTANCE PROGRAMS

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Loan Conditions and Terms

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### TITLE 131 – NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY

#### Chapter 1 - DEFINITIONS

001 “Capacity Development” means the technical, managerial, and financial capability to comply with applicable Primary Drinking Water Standards.

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 Supply 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 “Council” means the Nebraska Environmental Quality Council.

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

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

008 “CWSRF Act” means the Wastewater Treatment Facilities Construction Assistance Act.

009 “Department” means the Nebraska Department of Environmental Quality .

010 “DHHSR&L” means the Nebraska Department of Health and Human Services Regulation and Licensure.

011 “Director” means the Director of Environmental Quality.

012 “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.

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### Chapter 1

013 "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.

014 "DWSRF Act" means the Drinking Water State Revolving Fund Act

015 "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.

016 "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.

017 "Loan Applicant or Loan Recipient" means any municipality, county, or any entity authorized by law to construct, operate, and maintain a public water supply system.

018 "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.

019 "Nonpoint Source" means a discharge of pollutants from other than a point source.

020 "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.

021 "Nonprofit Noncommunity Water System" means a public water supply system that is not a community water system and qualifies for a nonprofit status.

022 "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.

023 "Primary Drinking Water Standards" means the Regulations Governing Public Water Supply Systems applicable to the system under Title 179 NAC 2 of DHHSR&L 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.

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### Chapter 1

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

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

026 “Significant Noncompliance” for purposes of the DWSRF means failure to comply with any Primary Drinking Water Standard as determined by the Director of DHHSR&L.

027 “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

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



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

001 General Requirements. Loans 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 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 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 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 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 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.

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### Chapter 2

#### 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:

- 003.04A Uniform Relocation and Real Property Acquisition Policies Act of 1970, PL 91-646.
- 003.04B Executive Order 12549 - Debarment and Suspension.

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### Chapter 2

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 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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Chapter 2

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

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#### 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 DHHSR&L 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 DHHSR&L. 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 004 or 005 may be funded at any time notwithstanding the adopted funding list.

001.05 An interest rate system describing the method and criteria used to establish interest rates to be charged on loans. Each loan will bear interest at the rate set by the Department under procedures prescribed in the IUPs.

In setting market rates and developing an interest rate system the Department shall take the following items into consideration:

001.05A Market rates. Separate market interest rates may be set for loans with payback periods of 20 years; for disadvantaged community extended term loans with payback period of 30 years; and for loans to privately owned or operated Public Water Supply Systems, using the cost of borrowing money for the CWSRF and DWSRF, recent local tax exempt municipal issues, and costs for private borrowers as guidance. Loan interest and the administrative fees under Chapter 8,

004.04 may be jointly considered when setting the market rates. The market 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 an disadvantaged community, for the purposes of the DWSRF. However, the rate will in no case be set below two percent per annum. The Department will consider income level of residents, amount of debt and debt service requirements, and the level of user fees in both absolute terms and relative to income of residents in determining the interest rate. The rate shall be set by the Department according to the interest rate system procedures approved by the Council in the IUPs.

001.05C Accelerated payback. Notwithstanding 001.05A and 001.05B above, 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.

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 DHHSR&L.

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 DHHSR&L 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 DHHSR&L 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 Supply Systems in the case of catastrophic failures of the Public Water Supply 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 Supply System shall notify DHHSR&L 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, DHHSR&L 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 intended use plan 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

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#### Chapter 4- GENERAL REQUIREMENTS FOR WASTEWATER TREATMENT WORKS PROJECTS

001 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.

001.01 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.

001.02 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.

001.03 For construction contracts the loan recipient shall follow the procedures under Chapter 4, 006.01.

002 Public Participation. Loan applicants shall conduct a minimum of the following:

002.01 One 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 occur not less than 30 days prior to the public meeting.

002.02 One 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 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.

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003 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.

003.02 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.

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

004.01 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.

004.02 General Facility Planning Requirements. Facility planning shall 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 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 Facility plan contents. A completed facility plan shall include:

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

004.03B 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 be 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 include:

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004.03B1 An evaluation of alternative flow reduction methods.

004.03B2 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.

004.03B3 Cost information on total capital costs and annual operation and maintenance costs, including estimated annual or monthly costs to residential and industrial users.

004.03C A demonstration of the nonexistence or possible existence of excessive infiltration/inflow in the sewer system. See Sec. 004.05.

004.03D An evaluation of the environmental impacts including ground water and surface water impacts of alternatives.

004.03E For the selected alternative, a concise description at an appropriate level of detail of at least the following:

004.03E1 Relevant design parameters;

004.03E2 Estimated capital construction and operation and maintenance costs, and a description of the manner in which costs will be financed;

004.03E3 Cost impacts on Wastewater Treatment Works users; and

004.03E4 Institutional and management arrangements necessary for successful implementation.

004.04 Submission and review of a facility plan. Each facility plan shall be submitted to the Department for review.

004.05 Infiltration/Inflow.

004.05A General. The loan applicant shall 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.

004.05B 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

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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.

#### 004.05C Infiltration.

004.05C1 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.

004.05C2 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.

#### 005 Design requirements shall include, but not be limited to, the following:

005.01 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.

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

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

005.03A 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

005.03B 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:

005.03B1 The cost of constructing the project or activity;

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005.03B2 The cost of operating and maintaining the project or activity over the life of the project or activity; and

005.03B3 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.

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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 contract. 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 contract.

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006.06 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:

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

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

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

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

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

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 contract 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.



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008 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 contract as required under the Act, regulations, permits, and good management practices.

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

010 Sewer Use Ordinances/User Charge Systems. The loan recipient shall include the following ordinance provisions for its sewer use ordinance/user charge system. These legally binding documents shall 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 also implement the user charge system and sewer use ordinance for the useful life of the Wastewater Treatment Works.

010.01 Sewer Use Ordinance. This legally binding ordinance shall 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 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.

010.02 User Charge System. The user charge system shall 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 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 be defined in the loan contract. Additional accounts may be provided to meet other requirements of the loan recipient.

010.02A The loan recipient's user charge system, based on actual or estimated use of wastewater treatment services, shall 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.

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010.02B Each user charge system shall 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.

010.02C The user charge system shall 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:

010.02C1 In the same manner that it distributes the costs for their actual use, or

010.02C2 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.

010.02D After completion of building a project, revenue from the project (e.g. sale of a treatment-related byproduct) shall be used to offset the costs of operation and maintenance. The loan recipient shall proportionately reduce all user charges.

010.02E One or more municipal legislative enactments or other appropriate authority 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 shall adopt user charge systems in accordance with this section. Acceptable user charge systems shall also be incorporated in appropriate municipal legislative enactments or other appropriate authority of all loan recipients contributing wastes to the Wastewater Treatment Works.

010.02F The user charge system shall take precedence over any terms or conditions of agreements or contracts which are inconsistent with the requirements of this section.

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

Legal Citation: Title 131, Ch. 4, Nebraska Department of Environmental Quality

## NEBRASKA ADMINISTRATIVE CODE

### TITLE 131 – NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY

#### 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.

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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 contract 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

Title 131

Chapter 6

Title 131 - NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY

Chapter 6 - GENERAL REQUIREMENTS FOR PUBLIC WATER SUPPLY 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 scope.

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 Supply 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.

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003.04 Submission and review of the engineering report. Each engineering report will be submitted to the Department and to DHHSR&L 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 DHHSR&L for review.

004.02 Capacity for twenty years domestic and industrial growth or reasonable capacity as approved by DHHSR&L.

004.03 Construction contracts shall be prepared in accordance with Chapter 4, 005.03.

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 DHHSR&L 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 Supply System described in the loan contract 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 Supply System. The loan recipient shall submit to DHHSR&L for review a water system use ordinance and satisfy DHHSR&L 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

### TITLE 131 – NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY

#### 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.

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

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



Title 131

Chapter 8

Title 131 - NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY

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 shall 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 Supply 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.

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002 Loans made under the CWSRF Act for the construction of Wastewater Treatment Works shall 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 shall 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 Supply Systems shall 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 DHHSR&L.

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 DHHSR&L.

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

004.01 The term of the loan shall 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 supply 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 shall be at or below market interest rates;

004.03 The annual principal and interest payment due from a loan recipient shall commence no later than one year after Initiation of Operation or no later than three years from the date of the loan contract, whichever occurs first. All loans shall 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

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shall be fully amortized not later than thirty years after the date of Initiation of Operation of the project.

004.04 An administrative fee of 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 contract shall contain a loan repayment schedule which will be revised by the Department to reflect actual loan amount upon completion of the project.

#### 005 Loan Contract.

005.01 All loan applicants applying for a loan under Title 131 shall sign a contractual document with the Department to be known as the loan contract.

005.02 The loan contract shall 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.

005.03 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 shall 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.

005.04 Security. The loan contract shall 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:

005.04A 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 shall be valid until the principal loan amount with all accrued interest is paid in full

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or otherwise discharged. The lien shall be foreclosed in accordance with applicable state laws.

005.04B 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.

005.04C Failure to pay any loan payment or other charges due under a loan contract within sixty days of the date due shall 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 shall be paid directly to the applicable Fund, either the Drinking Water, Clean Water, or Land Acquisition and Source Water Loan Fund.

005.05 Before any action is taken under 005.04 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 shall 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 - 71-5326.

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

Title 131

Chapter 9

Title 131 - NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY

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