

**REVISED ADOPTED REGULATION OF THE  
STATE ENVIRONMENTAL COMMISSION**

**LCB File No. R123-24**

EXPLANATION – Matter in *italics* is new; matter in brackets ~~omitted material~~ is material to be omitted.

AUTHORITY: §§ 1-23 and 37-67, NRS 445A.135; §§ 24-36, NRS 445A.135 and 445A.160.

A REGULATION relating to water; making various changes to provisions relating to the Account to Finance the Construction of Treatment Works and the Implementation of Pollution Control Projects; revising provisions governing certain disputes; revising requirements for proposals for financial assistance; revising the process for the environmental review of certain proposed projects; revising requirements for the preparation of an intended use plan and priority list by the Division of Environmental Protection of the State Department of Conservation and Natural Resources; revising requirements for the approval of financial assistance; authorizing the Administrator of the Division to impose and collect certain fees; adopting certain accounting standards by reference; revising provisions relating to the payment of prevailing wages; revising requirements relating to applicable federal and state law; revising certain duties of an eligible recipient of financial assistance; repealing certain provisions; and providing other matters properly relating thereto.

**Legislative Counsel's Digest:**

Existing law: (1) creates the Account to Finance the Construction of Treatment Works and the Implementation of Pollution Control Projects in the Fund for Water Projects Loans to finance the construction of projects of water pollution control, as authorized by the federal Clean Water Act, 33 U.S.C. §§ 1251, et seq., as amended; and (2) requires the State Environmental Commission to adopt regulations as necessary to carry out provisions of law related to the Account. (NRS 445A.120, 445A.135)

**Sections 2-6 and 13-20** of this regulation define and interpret certain terms relating to projects of treatment works and water pollution control. **Section 12** of this regulation applies the definitions in existing law and **sections 2-5** relating to the waste water treatment works on pollution control projects to the provisions of **sections 2-11** of this regulation.

Existing regulations require any dispute concerning the administration of provisions governing financial assistance for the construction of wastewater treatment works and pollution control projects that is not otherwise resolved to be referred to the Administrator of the Division of Environmental Protection of the State Department of Conservation and Natural Resources for decision. (NAC 445A.730) **Sections 7 and 22** of this regulation provide that an applicant for or an eligible recipient of financial assistance from the Account who has reason to believe that an action taken by an employee of the Division is incorrect or based on inadequate knowledge may

request, progressively, an informal discussion, an informal conference, a determination by the Administrator of the Division and a review by the Director of the Department.

**Section 8** establishes: (1) requirements for proposals for financial assistance for certain pollution control projects; and (2) a process for resolving objections by applicants whose projects are bypassed on the priority list.

**Section 9** establishes requirements for a letter of intent which must be submitted by an applicant for financial assistance.

**Section 10** establishes certain requirements which an eligible recipient of financial assistance must satisfy before commencing the construction of a project. **Section 11**: (1) requires contracts for architectural or engineering services for certain projects to be negotiated in the same manner as a contract for those types of services under federal law governing public buildings and works; (2) requires compliance with certain federal and state laws and processes; and (3) provides that the eligible recipient is solely responsible for the resolution of any disputes relating to bidding.

**Section 21** of this regulation expands the primary purpose and permissible uses of the Account.

Existing regulations establish certain requirements for a facility plan for a proposed wastewater treatment works or pollution control project. (NAC 445A.737) **Section 23** of this regulation specifies certain items which must be included in a facility plan.

Existing regulations set forth a process for the environmental review of proposed projects. (NAC 445A.742-445A.762) **Section 26** of this regulation provides that the Division may grant a categorical exclusion from review pursuant to the National Environmental Policy Act of 1969, 42 U.S.C. §§ 4321 et seq., to certain actions for a treatment works for which there is sufficient evidence that a significant effect on the quality of the environment is unlikely. **Section 27** of this regulation: (1) shortens the amount of time which must be allowed for review of any categorical exclusion from 30 days to 15 days; and (2) provides that only comments which are determined to be significant in the discretion of the Division must be resolved before the process of environmental review is completed. **Section 29** of this regulation: (1) revises materials which the Division is required to review; (2) transfers the responsibility to prepare an environmental assessment from the Division to the applicant; and (3) provides that the Division shall not accept an environmental information document if the applicant has not made or agreed to make certain changes in the project. **Section 31** of this regulation requires the applicant to finalize the environmental assessment and make it available for review by the public. **Sections 24 and 25** of this regulation make conforming changes to reflect that the applicant is required to prepare the environmental assessment. **Section 32** of this regulation revises the circumstances under which the applicant is required to revise the environmental assessment. **Sections 30 and 33** of this regulation revise the circumstances under which the Division is required to ensure that an environmental impact statement is prepared and issued. **Sections 34 and 35** of this regulation: (1) require an applicant to join with the Division in convening with certain interested parties to determine the scope of an environmental impact statement that is required; (2) transfer the responsibility for preparing the environmental impact statement from the staff or contractor of the Division to the applicant; and (3) require the response of the applicant to each significant comment received to be included in the final environmental impact statement. **Section 36** of this regulation transfers to the applicant the responsibility for preparing a supplemental environmental impact statement under certain circumstances.

Existing regulations require the Division to prepare an intended use plan and set forth the items which must be described in the plan. (NAC 445A.764) **Section 37** of this regulation: (1) requires the intended use plan to include descriptions of the affordability criteria that is intended to provide principal forgiveness loans to eligible recipients and the process for a waiver of fees due to hardship; and (2) sets forth certain requirements which must be satisfied by the Division in establishing the affordability criteria, developing the intended use plan and establishing certain reserves required or authorized by the federal Clean Water Act.

In 2023, the Nevada Legislature passed Assembly Bill No. 20 (A.B. 20), which transferred the responsibility for administering the Account from the Department to the Division and its Administrator. (Assembly Bill No. 20, chapter 69, Statutes of Nevada 2023, at page 329) Existing regulations require the Department to provide financial assistance from the Account to projects on a prioritized list developed by the Division. (NAC 445A.765-445A.7675) **Sections 38-41** of this regulation: (1) transfer the duty to provide that financial assistance from the Department to the Division; and (2) revise the processes by which the Division collects information on projects for inclusion on the list and ranks the priority of projects.

**Section 42** of this regulation: (1) eliminates the requirement that an applicant submit a draft revenue program to obtain approval of financial assistance; and (2) revises the factors which are considered in awarding such approval. **Section 43** of this regulation requires, among other documents, an approval of certain information from the governing body or board, as applicable, of an applicant to obtain financial assistance from the Account.

**Section 44** of this regulation eliminates certain requirements for an examination of the plans and specifications for a project.

**Section 45** of this regulation sets forth certain documents which must be submitted by an applicant if a project will serve two or more eligible recipients.

Existing regulations: (1) authorize the Director, with the approval of the Department of Administration, to impose and collect a fee for each award of financial assistance; (2) establish a maximum for such a fee; and (3) require the money so collected to be used to defray the cost of administering the Account. (NAC 445A.775) **Section 47** of this regulation: (1) transfers the authority to impose and collect fees from the Director to the Administrator to conform with provisions of law amended by A.B. 20; (2) eliminates the specified maximum for any such fee; (3) establishes loan origination and service fees; (4) requires installment payments on a specified schedule for service fees; and (5) requires the Administrator to make available a hardship waiver of the loan origination fee, setting forth factors to be considered in determining whether a hardship exists.

**Section 49** of this regulation revises the accounting standards which the Commission adopts by reference.

**Sections 53-55** of this regulation revise provisions governing systems of user charges.

Existing regulations require an eligible recipient to comply with the provisions of the federal Davis-Bacon Act, which establishes requirements relating to the payment of prevailing wages, and provisions of state law relating to the payment of prevailing wages on certain public works. (NAC 445A.794) **Section 56** of this regulation requires an eligible recipient and its contractors to pay mechanics, laborers and workers on all projects the greater of the prevailing wage required under the federal Davis-Bacon Act or state law.

**Sections 57 and 58** of this regulation revise references to provisions of federal and state law governing wages and equivalency requirements concerning the participation of disadvantaged businesses, with which eligible recipients must comply.

**Sections 60 and 61** of this regulation: (1) require an eligible recipient to permit any authorized representative of the Division to enter onto the site of the project, regardless of ownership, at any reasonable time; and (2) revise the purposes and timing of oversight inspections conducted by the Division during the construction of a project.

**Section 62** of this regulation revises the circumstances under which an eligible recipient is required to submit to the Division an operation and maintenance manual for the project.

**Sections 16, 19-21, 28, 37, 38, 40, 43, 45-52, 54-57, 59, 60 and 62-66** of this regulation revise references to the Fund and recipients to instead reference the Account and eligible recipients, respectively.

**Section 67** of this regulation repeals certain provisions that are redundant or have been incorporated in other sections of this regulation.

**Section 1.** Chapter 445A of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 11, inclusive, of this regulation.

**Sec. 2.** *“Affordability criteria” means the specific set of residential data which is used to designate an area in which, as compared to other communities in this State, residents disproportionately experience economic, environmental or health issues, including, without limitation, high rates of poverty or unemployment.*

**Sec. 3.** *“Clean Water Act” means the Clean Water Act, 33 U.S.C. §§ 1251 et seq., as amended.*

**Sec. 4.** *“Intermunicipal agency” means a service, agency, decision, plan or action undertaken or created by one or more municipalities on a cooperative basis.*

**Sec. 5.** *“Principal forgiveness loan” means a loan to an eligible recipient on which interest does not accrue or for which the eligible recipient is not required to repay the principal amount of the loan.*

**Sec. 6.** *For the purposes of NRS 445A.096, the Commission interprets the term “eligible recipient” to include:*

- 1. A municipality.*
- 2. An interstate agency.*

3. *An intermunicipal agency.*
4. *A state agency.*
5. *A tribal government.*
6. *A nonprofit organization which provides assistance to:*
  - (a) *Owners and operators of small and medium publicly owned treatment works; or*
  - (b) *Eligible persons for:*
    - (1) *The repair, replacement or removal of a decentralized wastewater treatment system for a household; or*
    - (2) *The removal of a decentralized wastewater treatment system for a household and connection into a publicly owned sanitary sewer.*
7. *An entity or organization, whether publicly or privately owned, for the implementation and development of:*
  - (a) *A nonpoint source management project;*
  - (b) *A project to manage, reduce, treat or recapture storm water or subsurface drainage water;*
  - (c) *A watershed project;*
  - (d) *The construction, repair, replacement or removal of a decentralized wastewater treatment system;*
  - (e) *The removal of a decentralized wastewater treatment system and connection into a publicly owned sanitary sewer; or*
  - (f) *A project for reusing or recycling wastewater, storm water or subsurface drainage water.*

*Sec. 7. 1. Except as otherwise provided in NAC 445A.7675 and subsection 4 of section 8 of this regulation, an applicant or eligible recipient of financial assistance who has reason to believe that an action taken by an employee of the Division pursuant to NAC 445A.685 to 445A.805, inclusive, and sections 2 to 11, inclusive, of this regulation is incorrect or based on inadequate knowledge may, not later than 10 business days after receiving notice of the action, request an informal discussion with the employee responsible for the action and the immediate supervisor of the employee. The informal discussion must be scheduled for a date, place and time mutually agreed upon by the applicant or eligible recipient and the Division, except that the informal discussion must be held not later than 30 days after the date on which the Division received the request.*

*2. If the informal discussion does not resolve the problem, the applicant or eligible recipient may, not later than 10 business days after the date scheduled for the informal discussion, submit a written request to the Division for an informal conference. The informal conference must be scheduled for a date, place and time mutually agreed upon by the applicant or eligible recipient and the Division, except that the informal conference must be held not later than 60 days after the date on which the Division received the written request.*

*3. If the informal conference does not resolve the problem, the applicant or eligible recipient may, not later than 10 business days after the date scheduled for the informal conference, submit a written request to the Administrator of the Division for a determination. The Administrator shall issue a determination not later than 30 days after the date on which the Administrator received the written request for a determination.*

*4. If the determination of the Administrator does not resolve the problem, the applicant or eligible recipient may, not later than 10 business days after the date the Administrator issues*

*the determination, submit a written request to the Director of the Department for a review of the determination of the Administrator. The Director shall issue a determination not later than 30 days after the date on which the Director received the written request for a review. An applicant or eligible recipient may not appeal the determination of the Director. Such a determination is the final remedy available to the applicant or eligible recipient.*

**Sec. 8. 1.** *The Division shall at any time without solicitation accept proposals to receive financial assistance from the Account for pollution control projects other than projects for the construction of treatment works in the form of preapplications. A proposal in the form of a preapplication for a pollution control project pursuant to this section must be submitted to the Division:*

*(a) Electronically, through the Nevada Infrastructure Financial System at the Internet address <https://ndepifs.ndep.nv.gov/>; or*

*(b) By any other means authorized by the Division.*

**2.** *Upon receipt of a preapplication for a proposed pollution control project submitted pursuant to subsection 1, the Division shall consider:*

*(a) Whether the management of water quality by the pollution control project is consistent with the goals and requirements of the Clean Water Act;*

*(b) The severity of any problem relating to public health or water quality which may be corrected by the pollution control project;*

*(c) The total amount of money available in the Account; and*

*(d) Any other factors as determined by the Division and outlined in the intended use plan pursuant to NAC 445A.764.*

3. *If the Division determines that the pollution control project is eligible for financial assistance, the Division shall notify the applicant who submitted the preapplication and provide notice of its determination to all applicants for a project for the construction of treatment works on the priority list established pursuant to NAC 445A.765 to 445A.768, inclusive, that the pollution control project which was determined to be eligible for financial assistance will bypass all such projects for the construction of treatment works. An applicant who receives notice pursuant to this subsection that the Division has determined to bypass a project for the construction of treatment works of that applicant may respond by filing an objection with the Division not later than 30 days after the date of the notice.*

4. *If the Division is unable to resolve an objection filed by an applicant whose project is bypassed pursuant to subsection 3, the Division must forward the objection to the Administrator for a decision pursuant to the provisions of NAC 445A.730.*

5. *After the 30-day period provided by subsection 3, an applicant whose project is bypassed pursuant to subsection 3 may submit a letter of intent pursuant to section 9 of this regulation.*

**Sec. 9. 1.** *Applicants for financial assistance for a pollution control project who are ready to receive the financial assistance and who have been notified that the pollution control project is eligible for financial assistance pursuant to section 8 of this regulation or have been notified that the pollution control project is on the priority list pursuant to NAC 445A.7655 must submit a letter of intent to the Division:*

(a) *Electronically, through the Nevada Infrastructure Financial System at the Internet address <https://ndepifs.ndep.nv.gov/>; or*

(b) *By any other means authorized by the Division.*

*2. A letter of intent submitted pursuant to subsection 1 must include, without limitation:*

*(a) The name, mailing address, electronic mail address and telephone number of each applicant;*

*(b) The title or name, location and a brief description of the pollution control project, including, without limitation, maps or preliminary plans;*

*(c) The number of residential service connections with population served and the number of nonresidential service connections with population served;*

*(d) A preliminary estimate of the cost of the pollution control project and any additional costs necessary for financing the project;*

*(e) Preliminary environmental information in a format provided by the Division;*

*(f) A description of any future improvements planned by the applicants, if any, that are not part of any capital improvement for which the application is made;*

*(g) A brief description of how the pollution control project would bring the system into compliance with the requirements of the Clean Water Act;*

*(h) The anticipated schedule for filing an application and constructing the pollution control project; and*

*(i) Any additional information required by the Division.*

*3. A letter of intent to proceed with the pollution control project submitted to the Division pursuant to this section serves as a request to initiate the process of environmental review pursuant to NAC 445A.742 to 445A.762, inclusive.*

**Sec. 10. 1. Before commencing the construction of a project, an eligible recipient shall submit to the Division:**

- (a) Bidding schedules, estimated schedules of payment and any other information the Division deems necessary to determine the progress of the project;*
- (b) Proof of the receipt of all permits required to construct the project;*
- (c) Documentation that any procedures for purchasing and contracting required by a state agency or the Federal Government will be followed;*
- (d) Agendas for any conferences regarding the project held by the eligible recipient before the commencement of bidding and construction;*
- (e) Schedules for the design of the project, engineering, the procurement of materials, construction and any other activity related to the project; and*
- (f) Any other documents that the Division deems necessary.*

*2. The eligible recipient shall, not later than 5 days before holding any conference described in paragraph (d) of subsection 1, notify the Division of the date, time and location of the conference.*

*3. The eligible recipient shall not commence the construction of the project until the eligible recipient receives from the Division a notice to proceed with the project. The Division may issue such a notice only after:*

- (a) The eligible recipient has complied with the provisions of subsection 1 to the satisfaction of the Division; and*
- (b) The Division has examined and approved the final plans and specifications for the project that are submitted pursuant to NAC 445A.770.*

**Sec. 11. 1. If a project for a system, regardless of ownership, is designated an equivalency project for the purposes of federal requirements, all contracts for architectural or**

*engineering services must be negotiated in the same manner as a contract for architectural and engineering services pursuant to 40 U.S.C. Chapter 11.*

*2. For publicly owned projects:*

*(a) The eligible recipient shall comply with any applicable provisions of chapter 338 of NRS, chapter 338 of NAC and all applicable federal laws and regulations regarding the award and administration of contracts for water projects;*

*(b) The eligible recipient shall ensure compliance with all legal requirements for advertising for bids and awarding construction contracts; and*

*(c) The Division may review the awards to ensure that the eligible recipient and its consultants and contractors have complied with any applicable federal and state laws.*

*3. For the procurement and award of contracts for privately owned projects, the eligible recipient shall demonstrate to the Division that the eligible recipient conducted a process of awarding and administration of contracts that is substantively similar to the requirements set forth in chapter 338 of NRS and chapter 338 of NAC.*

*4. The eligible recipient is solely responsible for the resolution of any disputes relating to bidding. The Division shall not participate in the resolution of such a dispute.*

**Sec. 12.** NAC 445A.685 is hereby amended to read as follows:

445A.685 As used in NAC 445A.685 to 445A.805, inclusive, *and sections 2 to 11, inclusive, of this regulation*, unless the context otherwise requires, the words and terms defined in NAC ~~[445A.686]~~ *445A.687* to 445A.727, inclusive, *and sections 2 to 5, inclusive, of this regulation* have the meanings ascribed to them in those sections.

**Sec. 13.** NAC 445A.688 is hereby amended to read as follows:

445A.688 1. “Best practicable waste treatment technology” means the cost-effective technology that can treat wastewater, combined sewer overflows and nonexcessive infiltration and inflow, to meet the enforceable requirements of the *Clean Water* Act, the requirements of a discharge permit issued by the Division or to protect the public health.

2. As used in this section:

(a) “Nonexcessive infiltration” means the quantity of infiltration that cannot be economically and effectively eliminated from a sewer system, as determined by a cost-effect analysis.

(b) “Nonexcessive inflow” means a rate of inflow that does not cause chronic operational problems, such as surcharging, backups, bypasses or overflows, related to hydraulic overloading of treatment works.

**Sec. 14.** NAC 445A.699 is hereby amended to read as follows:

445A.699 1. Except as otherwise provided in this section, “enforceable requirements of the *Clean Water* Act” means any condition or limitation of a permit issued pursuant to 33 U.S.C. § 1342 or 33 U.S.C. § 1344, the violation of which may result in the issuance of an order for compliance or the commencement of a civil or criminal action pursuant to 33 U.S.C. § 1319 or any other applicable law.

2. If no permit of the kind described in subsection 1 has been issued, the term means any requirement which, in the judgment of the Division, is to be included in the permit when it is issued.

3. If there is no requirement for a permit, the term means any requirement that the Division determines is necessary for the best practicable waste treatment technology to meet applicable criteria.

**Sec. 15.** NAC 445A.700 is hereby amended to read as follows:

445A.700 “Environmental assessment” means a concise document that:

1. Provides sufficient evidence and analysis to determine whether an environmental impact statement or a finding of no significant impact is appropriate;
2. Aids compliance by an agency with the *Clean Water* Act if no environmental impact statement is necessary; and
3. Facilitates preparation of an environmental impact statement if one is necessary.

**Sec. 16.** NAC 445A.703 is hereby amended to read as follows:

445A.703 “Facility plan” means any necessary plan or study that:

1. Investigates the need for any proposed facility; and
2. Relates directly to treatment works needed to comply with enforceable requirements of the *Clean Water* Act or to any other project eligible to receive financial assistance from the ~~fund.~~ *Account*.

**Sec. 17.** NAC 445A.715 is hereby amended to read as follows:

445A.715 “Operation and maintenance” means those activities required to ensure the dependable and economical functioning of treatment works ~~and~~ *and pollution control projects*.

**Sec. 18.** NAC 445A.716 is hereby amended to read as follows:

445A.716 ~~and~~ “Person” means the United States, to the extent authorized by federal law, ~~[any interstate agency, the State]~~ or any ~~[agency or institution thereof, or any municipality or other political subdivision of the State]~~.

~~—2.— As used in this section, “interstate agency” means an agency of two or more states:~~

~~—(a) Established by or pursuant to an agreement or compact approved by the Congress of the United States; or~~

~~—(b) Having substantial powers or duties pertaining to the control of water pollution.]~~ *eligible recipient.*

**Sec. 19.** NAC 445A.719 is hereby amended to read as follows:

445A.719 “Priority list” means the ordered listing, prepared annually, of projects for which the ~~[Department]~~ *Division* expects to provide financial assistance from the ~~[fund.]~~ *Account.*

**Sec. 20.** NAC 445A.720 is hereby amended to read as follows:

445A.720 “Project” means the activities or tasks identified in an agreement for financial assistance for which the *eligible* recipient may expend, obligate or commit money.

**Sec. 21.** NAC 445A.728 is hereby amended to read as follows:

445A.728 1. The primary purpose of the ~~[fund]~~ *Account* is to provide financial assistance as described in this section, other than grants, to ~~[municipalities]~~ *eligible recipients* for the construction of ~~[publicly owned wastewater]~~ treatment works and ~~[for]~~ the implementation of ~~[programs for the management of nonpoint sources of water]~~ pollution ~~[.]~~ *control projects.*

2. The ~~[fund]~~ *Account* may be used to:

(a) Provide a loan at or below the market rate of interest ~~[.]~~, *including interest-free loans and principal forgiveness loans, at terms not to exceed the lesser of 30 years or the projected useful life of the treatment works or pollution control projects, as applicable;*

(b) Guarantee *, or purchase insurance for*, a municipal obligation ~~[or purchase insurance for such an obligation if required]~~, *including, without limitation*, to improve access to credit or reduce the rate of interest paid by the municipality; ~~[or]~~

(c) ~~[Refinance]~~ *Buy or refinance* a ~~[municipal]~~ *debt* obligation ~~[for an eligible wastewater facility]~~ *of a municipality or intermunicipal agency, or an interstate agency of which this State is a member* at or below market rates if the debt is incurred ~~[and construction begins]~~ after

March 7, 1985. A municipality that requests refinancing must comply with all the requirements of NAC 445A.685 to 445A.805, inclusive ~~[H]~~, *and sections 2 to 11, inclusive, of this regulation;*  
*or*

*(d) Provide a loan guarantee for a similar revolving fund established by a municipality or intermunicipal agency.*

**Sec. 22.** NAC 445A.730 is hereby amended to read as follows:

445A.730 ~~[Any]~~ *Except as otherwise provided in section 7 of this regulation, any* dispute concerning the administration of the provisions of NAC 445A.685 to 445A.805, inclusive, *and sections 2 to 11, inclusive, of this regulation* that is not otherwise resolved must be referred to the Administrator for decision. The decision of the Administrator is subject to review by the Director. As used in this section, Administrator means the Administrator of the Division.

**Sec. 23.** NAC 445A.737 is hereby amended to read as follows:

445A.737 **1.** A facility plan for a proposed wastewater treatment works or pollution control project must demonstrate, through a systematic evaluation of alternatives that are feasible in light of the unique demographic, topographic, hydrologic and institutional characteristics of the area, that the alternative selected is the most economical means of meeting the applicable effluent, water quality and public health requirements over the design life of the facility.

**2. A facility plan must include, without limitation:**

*(a) A description of the proposed treatment works or pollution control project, including any relevant waste treatment systems, area and waters affected by the proposed treatment works or pollution control project;*

*(b) A description of the best practicable technology and best management practices for the proposed treatment works or pollution control project;*

*(c) A cost-effect analysis of the technically feasible conventional, innovative and alternative management practices, processes and techniques capable of meeting the applicable requirements of the Clean Water Act over the useful life of the treatment works or pollution control project;*

*(d) An evaluation of the selected alternative with appropriate detail of the relevant design parameters, cost effects on users of the wastewater system, institutional and management structures required for successful implementation of the treatment works or pollution control project and implications of the treatment works or pollution control project on the public or private water supply;*

*(e) An environmental information document that includes adequate evaluation of all significant environmental effects of the proposed treatment works or pollution control project;*

*(f) Adequate information on all historical and culturally significant properties inside and adjacent to the proposed treatment works or pollution control project;*

*(g) A detailed list of public participation in the development and approval process of the chosen treatment works or pollution control project; and*

*(h) Any other information or documentation required by the Division.*

*3. For the purposes of this section, a preliminary engineering report and environmental review may, at the discretion of the Division, satisfy the requirements of a facility plan.*

**Sec. 24.** NAC 445A.742 is hereby amended to read as follows:

445A.742 The process of environmental review of a proposed project *set forth in NAC 445A.742 to 445A.762, inclusive*, includes the following steps:

1. An applicant for financial assistance shall consult with the Division during the formulation of the project or the preparation of the facility plan to:

(a) Determine whether the project is eligible for a categorical exclusion from any applicable provisions of NAC 445A.685 to 445A.805, inclusive ~~[;]~~, *and sections 2 to 11, inclusive, of this regulation;*

(b) Determine alternatives to the project which must be evaluated;

(c) Identify potential environmental issues; and

(d) Determine the potential need for partitioning the environmental review process or the need for an environmental impact statement.

2. The Division shall determine if the project is eligible for a categorical exclusion. If the project is determined to be ineligible for such an exclusion, the applicant shall prepare an environmental information document for the project. The document must be included in the facility plan.

3. The ~~[Division]~~ *applicant* shall prepare an environmental assessment . ~~[and subsequently]~~

4. *The Division shall* prepare and issue a finding of no significant impact or a notice of intent ~~[to prepare]~~ *for the preparation of* an environmental impact statement and record of decision.

**Sec. 25.** NAC 445A.743 is hereby amended to read as follows:

445A.743 1. The Division shall initiate the process of environmental review *set forth in NAC 445A.742 to 445A.762, inclusive,* at the earliest practicable date to identify environmental impacts, avoid delays and resolve conflicts. This process must be integrated with the preparation of the facility plan.

2. A review of environmental information developed by the applicant must be conducted by the Division whenever meetings are held to assess progress in the development of the facility plan. These meetings must be held before a preferred alternative is selected.

3. A decision whether to ~~prepare~~ *require the preparation of* an environmental impact statement must be made as early as practicable during the preparation of the facility plan. The Division shall inform interested parties of:

(a) The preliminary nature of the Division's position on ~~preparing~~ *the preparation of* an environmental impact statement;

(b) The relationship between the preparation of the facility plan and the process of environmental review;

(c) The extent of the public participation program; and

(d) The name of a person who may be contacted for further information.

**Sec. 26.** NAC 445A.744 is hereby amended to read as follows:

445A.744 1. The Division shall determine whether an action is eligible for exclusion from review pursuant to the National Environmental Policy Act of 1969, 42 U.S.C. §§ 4321 et seq.

2. The Division may grant a categorical exclusion to:

(a) Any action for which the facility plan is directed to the rehabilitation of existing facilities, replacement of equipment or the construction of a new ancillary facility adjacent or appurtenant to an existing facility and not affecting the degree of treatment or capacity of that facility. These actions include, without limitation:

(1) Infiltration and inflow corrections;

(2) Replacement of existing mechanical equipment or structures; and

(3) Construction of small structures on existing sites.

(b) Any action in a sewerred community which is for minor upgrading or minor expansion of existing treatment works.

(c) Any action in an unsewerred community where on-site technologies are proposed.

*(d) Any action for a treatment works for which there is sufficient evidence that a significant effect on the quality of the environment is unlikely.*

3. The Division shall refuse a categorical exclusion if:

(a) The facilities to be provided create a new discharge or relocate an existing discharge to surface or groundwaters.

(b) The facilities result in substantial increases in the volume of discharge or the loading of pollutants from an existing source or from new facilities to receiving waters.

(c) The action is known or expected to have a significant effect on the quality of the human environment, whether individually, cumulatively over time or in conjunction with other federal, state, local or private actions.

(d) The action is known or expected to affect directly or indirectly cultural resources, habitats of endangered or threatened species, environmentally important natural resource areas such as floodplains, wetlands, important farmlands, aquifer recharge zones or other resource areas.

(e) The action is known or expected not to be cost-effective or to cause significant public controversy.

~~[4.—The Division may request the Commission to exclude, by amendment to this section, any other category of projects for which there is sufficient evidence that a significant effect on the quality of the environment is unlikely.]~~

**Sec. 27.** NAC 445A.746 is hereby amended to read as follows:

445A.746 ~~[Thirty]~~

*1. Fifteen* days must be allowed for review of any categorical exclusion. If no significant comment is received during that period, the process of environmental review *set forth in NAC 445A.742 to 445A.762, inclusive,* will be considered complete. If any ~~[such]~~ *significant*

comment is received during that period, it must be resolved before the process of environmental review is completed.

*2. For the purposes of this section, the determination of whether a comment is significant is solely within the discretion of the Division.*

**Sec. 28.** NAC 445A.747 is hereby amended to read as follows:

445A.747 Financial assistance from the ~~fund~~ *Account* may be committed upon the completion of the environmental review process unless the Division determines that the nature of the project or environmental conditions have changed significantly from those which were considered in the categorical exclusion.

**Sec. 29.** NAC 445A.748 is hereby amended to read as follows:

445A.748 1. The Division shall review the *letter of intent and* completed facility plan with particular attention to the environmental information document and its use in the development of alternatives and the selection of a preferred alternative. An adequate environmental information document must be part of any facility plan submitted. The environmental information document must be of sufficient scope to enable the Division to approve or deny any request to partition the environmental review process . ~~and to prepare an environmental assessment.~~

2. The process of environmental assessment must cover all potentially significant environmental impacts. The ~~Division~~ *applicant* shall prepare ~~a preliminary~~ *an* environmental assessment in sufficient detail to serve as an adequate basis for an independent environmental review and for the ~~decision~~ *Division to decide* to prepare and issue a finding of no significant impact *pursuant to NAC 445A.751* or *require the preparation of* an environmental impact statement ~~and~~ *pursuant to NAC 445A.754*. The Division may require the submission of

supplementary information before approving any facility plan. Each of the following areas must be reviewed to identify potentially significant environmental concerns and all potential impacts must be addressed in the environmental assessment:

(a) For the area delineated in the facility plan, the existing environmental conditions relevant to the analysis of alternatives or to determining the environmental impacts of the proposed action.

(b) The relevant future environmental conditions without the project.

(c) The purpose of and need for the facility. This must include a summary discussion and demonstration of the need for wastewater treatment in the area encompassed by the facility plan, with particular emphasis on existing public health or water quality problems and their severity and extent.

(d) A comparative analysis of feasible alternatives, including the no action alternative. The alternatives must be reviewed with respect to:

- (1) Capital and operating costs;
- (2) Direct, indirect and cumulative environmental effects;
- (3) Physical, legal or institutional constraints; and
- (4) Compliance with regulatory requirements.

↪ Special attention must be given to the environmental consequences of long-term, irreversible and induced environmental impacts. The reasons for rejecting any alternative must be presented in addition to any significant environmental benefits precluded by rejection of an alternative.

(e) A full range of relevant environmental impacts of the proposed action must be discussed, including measures to mitigate adverse impacts and any irreversible or irretrievable commitments of resources to the project. Any specific requirements, including conditions of

financial assistance and the requirements of an areawide waste treatment management plan or nonpoint source management program, must be identified and referenced. In addition to these items, the Division may require that other analyses and data which are needed to satisfy environmental review requirements be included with the facility plan.

3. The Division shall not accept a facility plan *or an environmental information document* if the applicant has not made or agreed to make changes in the project in accordance with determinations made in a finding of no significant impact based on ~~its supporting~~ *the* environmental assessment *prepared by the applicant* or the record of decision for an environmental impact statement.

4. Sources of information used to describe the existing environment and to assess future environmental impacts must be clearly referenced. These sources must include regional, state and federal agencies with responsibility or interest in the area and actions described in the facility plan.

**Sec. 30.** NAC 445A.749 is hereby amended to read as follows:

445A.749 1. The Division shall apply the criteria for initiating environmental impact statements to:

- (a) A complete facility plan;
- (b) The environmental information document;
- (c) The ~~preliminary~~ environmental assessment; and
- (d) Any other written material deemed necessary by the Division as necessary to make an environmental impact statement determination.

2. If the Division determines that an environmental impact statement is to be prepared, a formal environmental assessment is not required. If the Division identifies deficiencies in the

environmental information document, ~~preliminary~~ environmental assessment or other supporting material, necessary corrections must be made to this material. Any determination to issue a finding of no significant impact or to prepare an environmental impact statement is a final action by the Division and is not subject to administrative review.

**Sec. 31.** NAC 445A.751 is hereby amended to read as follows:

445A.751 1. If, after completion of the Division's review of the facility plan ~~and the~~ *environmental assessment*, it is determined that an environmental impact statement will not be required, the Division shall issue a finding of no significant impact. This finding must be based upon the Division's independent review of the ~~preliminary~~ environmental assessment and any other environmental information deemed necessary. Following the review by the Division, *the applicant shall finalize* the environmental assessment ~~must be finalized~~ and ~~made~~ *make the environmental assessment* available for review by the public. The finding of no significant impact must list mitigation measures necessary to make the recommended alternative environmentally acceptable and must note any other environmental documents related to it.

2. Unless otherwise required by federal law, notice of a finding of no significant impact for review must be published on an Internet website designed to give general public notice.

3. Copies of a finding of no significant impact must be mailed directly to persons included on a mailing list maintained by the Division. The mailing list must include appropriate federal and state agencies, municipalities and interested members of the public. An additional copy of the finding must be submitted to the state clearinghouse for review.

**Sec. 32.** NAC 445A.753 is hereby amended to read as follows:

445A.753 1. After an environmental assessment has been prepared and the issued finding of no significant impact becomes effective for the facility plan for the study area, a commitment

of financial assistance may be made without preparation of an additional finding of no significant impacts, unless the Division determines that the project or environmental conditions have changed significantly from those which underwent environmental review.

2. The Division shall ensure itself that mitigation measures identified in the facility plan or in the finding of no significant impact will be implemented by the applicant. This must be done by conditioning the agreement for financial assistance and discharge permit upon compliance with all agreed-upon mitigation measures.

3. In any case in which an environmental assessment or categorical exclusion is 5 or more years old, the Division shall reevaluate the project, environmental conditions and public views and, before awarding financial assistance:

(a) Issue a public notice reaffirming its decision to proceed with the project without ~~revising~~ *requiring the applicant to revise* the environmental assessment;

(b) ~~Update~~ *Require the applicant to update the* information *in the environmental assessment* and prepare, issue and distribute a revised environmental assessment ~~and~~ *in sufficient detail to serve as an adequate basis for an independent environmental review and for the Division to prepare and issue a* finding of no significant impact; or

(c) Withdraw the finding of no significant impact and publish a notice of intent to produce an environmental impact statement. The Division shall thereafter :

*(1) Prepare, issue and distribute a record of decision; and*

*(2) Require the applicant to* prepare, issue and distribute an environmental impact statement . ~~and record of decision.~~

**Sec. 33.** NAC 445A.754 is hereby amended to read as follows:

445A.754 The Division shall ensure that an environmental impact statement is prepared and issued *pursuant to NAC 445A.755* whenever the Division determines ~~[, without limitation,]~~ that

~~[an action is]~~ *the project proposed by the applicant:*

1. *Is not eligible for a categorical exclusion or a finding of no significant impact; and*

2. *Is known or expected:*

~~[1.]~~ (a) To have a significant effect on the quality of the human environment, ~~[either]~~ individually, cumulatively over time or in conjunction with other federal, state, local or private actions; *or*

~~[2.]~~ (b) To affect , directly or indirectly , *any* recognized ~~[cultural]~~ :

(1) *Cultural* resources ~~[, habitats]~~ ;

(2) *Habitats* of endangered or threatened species ~~[, environmentally important]~~ ; *or*

(3) *Environmentally significant* natural resource areas ~~[such as floodplains, wetlands, important farmlands, aquifer]~~ , *including, without limitation:*

(I) *Floodplains;*

(II) *Wetlands;*

(III) *Agricultural land;*

(IV) *Aquifer* recharge zones ~~[, scenic]~~ ;

(V) *Scenic* areas ; *or* ~~[other]~~

(VI) *Other* resource areas . ~~[; or]~~

~~—3.— Not to be cost effective or to cause significant public controversy.]~~

**Sec. 34.** NAC 445A.755 is hereby amended to read as follows:

445A.755 1. If the Division determines that an environmental impact statement will be required, the Division shall prepare and distribute a notice of intent.

2. As soon as possible after the distribution of the notice of intent, the Division, *in partnership with the applicant*, shall convene a meeting of affected federal, state and local agencies, affected Indian tribes ~~[, the recipient]~~ and other interested parties to determine the scope of the environmental impact statement. As part of this meeting, the Division *and applicant* shall:

- (a) Determine the significant issues to be analyzed in depth in the environmental impact statement;
- (b) Identify the preliminary range of alternatives to be considered;
- (c) Identify potential cooperating agencies and determine the information or analyses that may be needed from those agencies or other parties;
- (d) Discuss the method for preparing the environmental impact statement and the strategy for securing public participation; and
- (e) Determine the relationship between the environmental impact statement and the completion of the facility plan and any necessary coordination between the preparers of both documents.

3. Immediately following the meeting required by subsection 2, the ~~[Division]~~ *applicant* shall commence the identification and evaluation of all potentially viable alternatives to address adequately the range of issues identified at the meeting. Additional issues may be addressed or others eliminated during this process and the reasons for doing so may be documented as part of the environmental impact statement.

4. Except as otherwise provided in subsection 5, after the Division determines the need for an environmental impact statement, the Division shall ~~[-~~

~~—(a) Cause]~~ *require* the statement to be prepared by ~~[members of its staff; or~~

~~—(b) Contract~~ *the applicant. The applicant may contract* for the preparation of the statement with a qualified consulting firm.

~~[→ The applicant will be charged a fee to cover the costs incurred in preparing the environmental impact statement.]~~

5. If a federal agency is required to prepare an environmental impact statement, the Division and the applicant need not participate in the cost of the environmental impact statement, but shall cooperate in the preparation of the statement.

**Sec. 35.** NAC 445A.761 is hereby amended to read as follows:

445A.761 After the comment period, public hearings and consideration of comments received during the public participation process, *the Division shall cause* a final environmental impact statement ~~[must]~~ *to* be prepared. The final environmental impact statement must consist of:

1. The draft environmental impact statement;
2. Comments received concerning the draft environmental impact statement;
3. A list of persons commenting on the draft environmental impact statement;
4. The ~~[response]~~ *responses* of the Division *and applicant* to each significant comment received; and

5. Any other information deemed appropriate by the Division.

**Sec. 36.** NAC 445A.762 is hereby amended to read as follows:

445A.762 1. After a final environmental impact statement has been issued, the Division shall prepare and issue a record of decision in conjunction with its approval of the facility plan. The record of decision must include an identification of mitigation measures derived from the environmental impact statement process.

2. Before approving a facility plan, the Division shall ensure that any mitigation measures identified in the record of decision will be implemented by the applicant. An applicant shall implement mitigation measures agreed upon during the environmental review process. The Division shall condition the agreement for financial assistance and discharge permit upon compliance by the applicant with agreed-upon mitigation measures.

3. After the record of decision is prepared on the selected or preferred alternative for the facility plan described in the environmental impact statement and the facility plan is approved, a commitment of financial assistance may be made without preparation of supplemental environmental impact statements, unless the Division determines that the project or the environmental conditions described within the current environmental impact statement have changed significantly.

4. In any case in which the environmental impact statement is 5 or more years old, the Division shall reevaluate the project, environmental conditions and public views, compare them with the information contained in the environmental impact statement and, before awarding financial assistance:

(a) Prepare, issue and distribute a finding of no significant impact, affirming its decision to proceed with the project, and documenting that no additional significant impacts were identified during the reevaluation which would require supplementing the environmental impact statement; or

(b) ~~Conduct~~ *Require the applicant to conduct* additional studies and prepare, issue and distribute a supplemental environmental impact statement and document *and the Division shall issue and distribute the supplemental environmental impact statement and document* to the original or any revised decision in an addendum to the record of decision.

**Sec. 37.** NAC 445A.764 is hereby amended to read as follows:

445A.764 1. An intended use plan must be prepared by the Division which describes how all money deposited into the ~~fund~~ *Account* will be used. The intended use plan must include a description of:

(a) The short- and long-term goals and objectives of the ~~fund;~~ *Account*.

(b) The types of activities to receive financial assistance from the ~~fund;~~ *Account*, including eligible categories of costs, the types of financial assistance to be provided by the ~~fund~~ *Account* and the terms for the various types of financial assistance provided by the ~~fund;~~ *Account*.

(c) The criteria and method used for the distribution of money from the ~~fund; and~~ *Account*.

(d) The criteria and method used for selecting treatment works or pollution control projects to ~~be funded as eligible activities for nonpoint sources.~~ *receive financial assistance.*

*(e) The affordability criteria that is intended to provide principal forgiveness loans to eligible recipients. The Division shall establish the affordability criteria through the public participation process required by NAC 445A.7643.*

*(f) The process for the waiver of fees due to hardship pursuant to subsection 6 of NAC 445A.775.*

2. An intended use plan must provide assurances and specific proposals regarding the manner by which the State intends to meet the requirements of the *Clean Water* Act.

3. *In developing the intended use plan, the Division:*

*(a) Shall establish the reserves required or authorized by the Clean Water Act, including, without limitation, an amount required to carry out water quality management planning in accordance with the provisions of 33 U.S.C. § 1384(b).*

*(b) May reserve:*

*(1) A portion of the State's grant awards pursuant to 33 U.S.C. § 1383(d)(7) to administer the Account and to conduct activities under the Clean Water Act.*

*(2) A portion of the State's grant awards pursuant to 33 U.S.C. § 1383(k) to provide technical assistance to rural, small and tribal publicly owned utilities that own and manage treatment works.*

4. An intended use plan may be amended during the year pursuant to the provisions established in the intended use plan if the amended plan follows the public participation process as set forth in NAC 445A.7643.

**Sec. 38.** NAC 445A.765 is hereby amended to read as follows:

445A.765 1. The ~~[Department]~~ *Division* shall provide financial assistance from the ~~[fund]~~ *Account* to projects on a list of projects *for the construction of treatment works* developed by the Division in accordance with a priority system meeting the requirements of NAC 445A.767. The list and system must be designed to achieve the optimum management of water quality consistent with the goals and requirements of the *Clean Water* Act.

2. In establishing the priority of projects ~~[ ]~~ *for the construction of treatment works*, the Division shall ~~[also]~~ :

*(a) At least annually, solicit from utilities that own and manage treatment works:*

*(1) Proposals in the form of preapplications for projects for the construction of treatment works; and*

*(2) Requests from each applicant whose project for the construction of treatment works is currently on the priority list to have that project included on the next priority list.*

*(b) In addition to satisfying the requirements for the design of the list and priority system set forth in subsection 1, consider the total amount of money available, the needs and priorities*

set forth in areawide water quality management plans and any other factors contained in the state priority system.

3. *A proposal in the form of a preapplication for a project for the construction of treatment works or a request by an applicant to have a project included on the next priority list must be submitted to the Division:*

(a) *Electronically, through the Nevada Infrastructure Financial System at the Internet address <https://ndepifs.ndep.nv.gov/>; or*

(b) *By any other means authorized by the Division.*

4. *If an applicant whose project for the construction of treatment works is currently on the priority list fails to submit a request to have that project included on the next priority list pursuant to subsections 2 and 3, the project is subject to exclusion from the next priority list.*

5. The priority list must include an estimate of the eligible cost of each project.

**Sec. 39.** NAC 445A.7655 is hereby amended to read as follows:

445A.7655 1. After the priority list is finalized by the Division, the Division shall notify each applicant on the priority list of the ranking of projects ~~[ ]~~ *for the construction of treatment works.*

2. After receiving the notification ~~[letter]~~ pursuant to subsection 1 ~~[ ]~~ *and once the project is ready to receive financial assistance*, each applicant shall file with the Division a letter of intent ~~[, indicating its intentions to either:~~

~~—(a) Proceed with an application for financial assistance for proposed projects; or~~

~~—(b) Defer action on an application until a later time.~~

~~—3.— Failure to respond within 30 days after reviewing the notification letter may result in the bypass of the applicant’s project for that year pursuant to the procedure set forth in NAC 445A.7675.] pursuant to section 9 of this regulation.~~

**Sec. 40.** NAC 445A.767 is hereby amended to read as follows:

445A.767 1. A priority system must be used to rank projects *for the construction of treatment works* that are considered eligible for financial assistance from the ~~fund.]~~ *Account*.

2. The priority system must:

(a) Give highest priority to projects *for the construction of treatment works* that are necessary to meet the enforceable requirements of the *Clean Water* Act.

(b) Establish procedures for administration, management and public participation required to develop and revise the list of projects ~~for~~ *for the construction of treatment works*.

(c) Include the following criteria for ranking projects ~~for~~ *for the construction of treatment works*:

(1) The elimination of pollution from surface waters and groundwaters within this State.

(2) The protection of the health of the people of this State from harm caused by the inadequate or improper treatment, collection or disposal of wastewater.

(3) The attainment of standards of water quality adopted by the State Environmental Commission to protect designated beneficial uses.

(4) The operation of the ~~fund]~~ *Account* in such a manner so as to impose the least possible financial burden on municipalities.

~~[(d) Include categories of need. A project must fall into at least one of the following categories to be eligible for financial assistance from the fund:~~

- ~~(1) Category I Secondary treatment or any cost-effective alternative thereto.~~
- ~~(2) Category II Advanced treatment (treatment more stringent than secondary treatment).~~
- ~~(3) Category IIIA Infiltration and inflow protection.~~
- ~~(4) Category IIIB Major sewer system rehabilitation.~~
- ~~(5) Category IVA New collection systems and appurtenances.~~
- ~~(6) Category IVB New interceptor sewers and appurtenances.~~
- ~~(7) Category V Correction of combined sewer overflows.~~
- ~~(8) Category VI Treatment of wastewaters from nonpoint sources.]~~

***3. The Division shall place each project for the construction of treatment works into one of the following three classes and assign to each project the points as indicated and applicable:***

***(a) Class A -- Projects for the construction of treatment works which are intended to benefit public health or the environment, or both, including:***

***(1) Projects necessary to eliminate public health hazards in unsewered communities which are documented through a finding of violation or an official action by a public health authority -- 10 points.***

***(2) Projects necessary to correct existing documented violations of standards for surface water quality -- 8 points.***

***(3) Projects necessary to correct documented violations of limitations specified by permits for discharge -- 6 points.***

***(4) Projects necessary to eliminate or prevent interference with an existing beneficial use of groundwater where it has been determined that such an interference exists -- 4 points.***

*(5) Any other project that has demonstrated violations of compliance or is proactively addressing a public health or environmental impact that is outlined in the intended use plan -- 1 point.*

*(b) Class B -- Projects for the construction of treatment works which are necessary to increase reliability or sustainability, including:*

*(1) Projects necessary to provide a degree of treatment beyond standards for water quality or requirements for permits -- 10 points.*

*(2) Interceptors in sewer communities, pumping stations, correction of infiltration inflow, correction of combined sewer overflows, rehabilitation of sewer systems or distribution of reclaimed water -- 8 points.*

*(3) Facility flow or loading as the percentage of design capacity exceeds 85 percent -- 6 points.*

*(4) Facility flow or loading as the percentage of design capacity exceeds 75 percent but does not exceed 85 percent -- 4 points.*

*(5) Any other project that addresses reliability or sustainability that is outlined in the intended use plan -- 1 point.*

*(c) Class C -- Other projects for the construction of treatment works, including:*

*(1) Projects providing wastewater treatment and collection systems in existing unsewered communities with no public health hazards or violations of water standards -- 10 points.*

*(2) Projects providing wastewater collection systems to unsewered portions of sewer communities -- 10 points.*

*(3) All other projects for the construction of treatment works -- 5 points.*

*4. Regardless of the class in which a project for the construction of treatment works is placed and in addition to the criteria applicable to the project pursuant to paragraph (c) of subsection 2, the Division shall assign additional points to the project as indicated for each of the following criteria:*

*(a) Five points for any utility that owns and manages a treatment works which has mapped its facilities and analyzed:*

*(1) The risks of failure in its system;*

*(2) The expected dates for renewing and replacing its facilities and equipment; and*

*(3) The sources and amounts of money needed to finance the operation, maintenance and capital expenditures of its system.*

*(b) Five points for any utility that owns and manages a treatment works which has developed a rate structure that is appropriate to build, operate and maintain its system.*

*(c) Five points for any utility that owns and manages a treatment works which has specifically allocated money for the rehabilitation and replacement of aging or deteriorating facilities and equipment.*

*5. The Division shall rank projects for the construction of treatment works first according to which class the project is in, with Class A projects having the highest priority and Class C projects having the lowest priority, and then within each class according to the point total each project has been assigned pursuant to the ranking system set forth in subsections 3 and 4.*

*6. The Division shall not move a project for the construction of treatment works from one class to another based on the ranking the project receives from the total points within each class.*

7. *If the Division determines that the project for the construction of treatment works will serve an area that meets affordability criteria as outlined in the intended use plan, the Division shall assign an additional 25 points to the total score of that project.*

8. *If two or more projects for the construction of treatment works within the same class have the same final rank number, the project that is associated with the service area with the highest population shall be deemed to be ranked higher within the class.*

**Sec. 41.** NAC 445A.7675 is hereby amended to read as follows:

445A.7675 1. The Division may bypass a project on the priority list if the Division determines that the project is not ready to proceed or the applicant for the project:

- (a) Withdraws the project; or
- (b) Requests action to be deferred . ~~[as allowed pursuant to NAC 445A.7655.]~~

2. If the Division determines that the project is not ready to proceed, the Division shall provide notice of its determination to the applicant. After receiving notice, the applicant must respond to the Division within 30 days.

3. If the applicant files an objection in the response provided for in subsection 2 that the Division is unable to resolve, the Division shall forward the objection to the Administrator of the Division for decision pursuant to the provisions of NAC 445A.730.

**Sec. 42.** NAC 445A.769 is hereby amended to read as follows:

445A.769 1. To obtain *the initial* approval of financial assistance ~~[ ]~~ *from the Division*, an applicant must submit a *complete* letter of intent ~~[ ]~~ *and all supporting documentation, including, without limitation,* a facility plan ~~[ ]~~ *and* an environmental document ~~[and a draft revenue program. After these documents are approved,]~~ *for the review and approval of* the Division . ~~[shall consider the project for initial approval of financial assistance.]~~

2. ~~Factors to be considered~~ *The Division shall consider the following factors* in awarding *initial* approval ~~include:~~ *pursuant to subsection 1:*

(a) Placement on the priority list ~~of~~ *of projects for the construction of treatment works established pursuant to NAC 445A.767 or factors considered by the Division pursuant to subsection 2 of section 8 of this regulation;*

(b) The readiness of the project to proceed with construction; and

(c) The severity of any public health or water quality problem which will be corrected by the proposed project.

3. Initial approval of financial assistance for a project shall be deemed a binding commitment to provide such assistance.

**Sec. 43.** NAC 445A.770 is hereby amended to read as follows:

445A.770 1. To obtain financial assistance from the ~~fund,~~ *Account*, the following documents must be submitted:

(a) An application for assistance in the form prescribed by the Division.

(b) Final plans and specifications and an estimate by an engineer of the costs of construction for the project.

(c) A preliminary project schedule which provides a timetable for advertising and for opening bids, hiring and training operators, submission of an operation and maintenance manual, adoption of a system of user charges and a sewer use ordinance, completion of construction and initiation of operation. As used in this paragraph, “ initiation of operation ” means the date specified by the ~~recipient~~ *applicant* on which use of the project begins for the purposes that it was planned, designed and built.

*(d) An approval from the governing body or board, as applicable, of the applicant that indicates:*

*(1) The need for the project;*

*(2) The request to obtain a loan from the Account; and*

*(3) The persons who are authorized to represent the applicant for the project.*

2. An agreement for financial assistance must not be offered until the applicant:

(a) Receives initial approval of assistance; and

(b) Anticipates bid solicitation in the near future.

3. The agreement for financial assistance must be prepared and transmitted to the applicant for his or her signature no later than the time of the approval to award the construction contract.

4. A determination of project eligibility must be made during the preparation of the facility plan. After the initial approval of financial assistance, subsequent design reviews must be for the purpose of ensuring that the proposed design is conceptually the same as that approved by the Division.

**Sec. 44.** NAC 445A.771 is hereby amended to read as follows:

445A.771 1. An examination of the plans and specifications for a project must be performed to determine whether ~~the~~

~~—(a) The design is consistent with the facilities described in the facility plan;~~

~~—(b) The proposed project, in concept, will meet discharge requirements; and~~

~~—(c) The] *the* project will comply with applicable federal and state requirements.~~

2. An applicant shall submit the following documents for review:

(a) A design report.

(b) Except as otherwise provided in this paragraph, a set of specifications and plans not less than 90 percent complete. Depending upon the complexity of the project, a 50 percent submittal may be required.

(c) A final set of specifications and plans. These must be submitted before advertising for bids.

(d) Any addenda issued during the bidding process.

**Sec. 45.** NAC 445A.772 is hereby amended to read as follows:

445A.772 If a project will serve two or more ~~[municipalities,]~~ *eligible recipients*, the applicant shall submit the executed intermunicipal agreement, contract or other legally binding instrument necessary for the financing, building and operation of the proposed ~~[treatment works.]~~ *project*. This instrument must set forth the basis upon which costs are allocated, the formula by which costs are allocated and the manner in which the system of allocating costs will be administered.

**Sec. 46.** NAC 445A.773 is hereby amended to read as follows:

445A.773 1. A fixed amount of financial assistance may be provided to ~~[a]~~ *an eligible* recipient to help offset costs for planning, design and construction inspection, engineering and management. As used in this subsection, “engineering” means consultation, investigation, the preparation of reports or other services for a project within the scope of the practice of architecture or professional engineering as defined by the law of this State.

2. The *eligible* recipient may request payment of the entire fixed amount for planning and design as soon as the agreement for financial assistance is signed and money is available.

3. Financial assistance may also be provided for:

(a) The allowable costs of the construction contract;

- (b) The allowable costs of land;
- (c) A contingency fund; and
- (d) The cost of preparing an environmental impact statement if one is required.

**Sec. 47.** NAC 445A.775 is hereby amended to read as follows:

445A.775 1. ~~[The Director may, with the approval of the Department of Administration,]~~

*Except as otherwise provided in subsection 6, the Administrator shall impose and collect a loan origination fee and service fee for each award of financial assistance from the ~~[fund. The fee must not exceed 0.5 percent of:~~*

~~—(a) The amount of the loan, if assistance is given in the form of a loan.~~

~~—(b) The amount of the obligation, if assistance is given in the form of a guarantee of a municipal obligation or the purchase of insurance for such an obligation.~~

~~—(c) The amount refinanced, if assistance is given in the form of the refinancing of a municipal obligation.]~~ *Account in accordance with the provisions of this section.*

2. ~~[Money so collected must be used to defray the cost of administering the fund.]~~ *The Administrator shall charge an eligible recipient a loan origination fee of:*

*(a) If the eligible recipient receives a principal forgiveness loan or a short-term loan, \$1,000.*

*(b) If the eligible recipient receives a long-term loan, 0.5 percent of the total amount of the long-term loan.*

3. *A loan origination fee required pursuant to subsection 2 is due to the Administrator not later than 30 days after the closing of the loan.*

4. *Except as otherwise provided in subsection 6, in addition to a loan origination fee charged pursuant to subsection 2, the Administrator shall charge an eligible recipient:*

*(a) If the eligible recipient issues a bond, a service fee equal to 0.5 percent of the original loan amount.*

*(b) If the eligible recipient does not issue a bond, a service fee equal to 0.75 percent of the original loan amount.*

*5. Any service fee imposed pursuant to subsection 4 must be paid to the Administrator in equal installments over the life of the loan. Each installment is due to the Administrator not later than January 1 of each year.*

*6. The Administrator shall make available a waiver of the loan origination fee set forth in subsection 2, the service fee set forth in subsection 4, or both, if the eligible recipient can demonstrate to the Administrator that paying the fee or fees would cause hardship. In determining whether a hardship exists pursuant to the process developed by the Division pursuant to paragraph (f) of subsection 1 of NAC 445A.764, the Administrator shall consider the following factors:*

*(a) Whether user charges of the eligible recipient are sufficient and reasonable to operate, maintain and replace the current and future assets of the utility system of the eligible recipient;*

*(b) The frequency of increases in user charges imposed by the governing body or board, as applicable, of the eligible recipient over the 5 years immediately preceding the date of the application;*

*(c) The unrestricted cash maintained by the eligible recipient for the specific utility system;*

*(d) An analysis of the ratio of loan fees to the average cost of user charges; and*

*(e) Other sources of cash of the eligible recipient, including, without limitation:*

*(1) Subsidies from other utilities;*

*(2) Transfers from other sources;*

*(3) Grants;*

*(4) Proceeds from bonds;*

*(5) Earnings from interest; and*

*(6) Donations.*

**Sec. 48.** NAC 445A.777 is hereby amended to read as follows:

445A.777 Before an agreement for financial assistance is transmitted to it for signature, ~~[a]~~ *an eligible* recipient must certify that it has complied and will comply with all requirements of federal law that are determined by the United States Environmental Protection Agency to apply to the operation of the ~~[fund.]~~ *Account.*

**Sec. 49.** NAC 445A.779 is hereby amended to read as follows:

445A.779 1. The ~~[State Environmental]~~ Commission hereby adopts by reference ~~[the accounting standards contained in Standards for Audit of Governmental Organizations, Programs, Activities and Functions, published by the General Accounting Office. A copy of this publication is available at a cost of \$3.50 by mail from the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 979050, St. Louis, Missouri 63197-9000, or by toll-free telephone at (866) 512-1800.]~~ :

*(a) The most current pronouncements issued by the Governmental Accounting Standards Board, unless a pronouncement is disapproved by the Commission within 60 days after the date the pronouncement is published. The Commission will review each pronouncement to ensure its suitability for this State. The pronouncements are available, free of charge, from the Governmental Accounting Standards Board at the Internet address <https://www.gasb.org/standards-and-guidance/pronouncements>.*

*(b) Except as otherwise provided by this paragraph, the pronouncements issued by the Financial Accounting Standards Board on or before November 30, 1989. If the pronouncements issued by the Financial Accounting Standards Board on or before November 30, 1989, conflict with the most current pronouncements issued by the Governmental Accounting Standards Board adopted by reference pursuant to paragraph (a), the pronouncements issued by the Governmental Accounting Standards Board apply. The pronouncements issued by the Financial Accounting Standards Board are available, free of charge, from the Financial Accounting Standards Board at the Internet address <https://www.fasb.org>.*

2. ~~[A]~~ *An eligible* recipient of financial assistance shall maintain separate project accounts in accordance with generally accepted governmental accounting standards, including those adopted by reference in subsection 1.

**Sec. 50.** NAC 445A.780 is hereby amended to read as follows:

445A.780 1. ~~[A]~~ *An eligible* recipient shall:

(a) Establish an official file for the project. The file must contain an adequate record of all significant actions relating to the project.

(b) Establish accounts that accurately and adequately show all amounts of money:

(1) Received as financial assistance from the ~~[fund.]~~ *Account*.

(2) Received and spent on the project.

(3) Received as income from the project.

(c) Establish a system of accounting which ensures that the final total costs of the project, including all direct and indirect costs, are recorded accurately.

(d) Establish and maintain such other accounts and records as are required by the Division to comply with requirements for reporting established by the Federal Government.

(e) Retain all records relating to the project for at least 3 years after final repayment of financial assistance has been made or for any longer period required by the Division.

2. Any records of ~~fa~~ *an eligible* recipient relating to a project must be made available at any reasonable time for inspection or copying by any authorized representative of the Division.

**Sec. 51.** NAC 445A.781 is hereby amended to read as follows:

445A.781 1. Whenever an audit is required by federal law or by an agency of the Federal Government, or whenever it determines that an audit is necessary to ensure the integrity of the ~~fund,~~ *Account*, the Division may require that an audit be performed of financial records relating to a project.

2. Any audit required pursuant to this section must be performed at the expense of the *eligible* recipient by a certified public accountant who is independent of the *eligible* recipient.

3. A report of the audit must be prepared by the auditor in the form prescribed by the Division.

**Sec. 52.** NAC 445A.783 is hereby amended to read as follows:

445A.783 If a project involves collection system work, that work:

1. Must be for the replacement or major rehabilitation of an existing collection system and must be necessary to the integrity and performance of the complete waste treatment system; or

2. Must be for a new cost-effective collection system in an existing community which has sufficient existing or planned capacity to adequately treat such collected wastewater. Collection systems which primarily serve undeveloped areas are not eligible for financial assistance. If

assistance is awarded, the *eligible* recipient shall provide assurances that the existing population will connect to the collection system within a reasonable time after completion of the project.

**Sec. 53.** NAC 445A.788 is hereby amended to read as follows:

445A.788 A system of user charges must:

1. Be designed to produce the money required for costs of operation, maintenance, ~~and~~ replacement of *capital assets and debt service of the utility that owns and manages the treatment works* . ~~;~~
2. ~~Provide~~ *If applicable, provide* that each user who discharges pollutants which cause an increase in the cost of managing the effluent or sludge from the treatment works shall pay for the increased cost . ~~;~~
3. ~~Provide~~ *If applicable, provide* that each user or class of users shall pay its share of the cost of ~~operation, maintenance~~ :
  - (a) *Operation*;
  - (b) *Maintenance*; and ~~replacement~~
  - (c) *Replacement* of ~~treatment works~~ *capital assets and debt service* within the service area of the applicant,  
↳ based upon the proportionate contribution by the user or class to the total wastewater load . ~~;~~
4. ~~Provide~~ *If applicable, provide* that each user will be notified at least annually, in conjunction with a regular bill or other means acceptable to the Division, of that portion of the bill attributable to the costs of operation, maintenance, ~~and~~ replacement ~~;~~ and *debt service*.
5. Include an adequate system of financial management that will account accurately for revenues generated by the ~~system~~ *utility that owns and manages the treatment works* and expenditures for operation, maintenance, ~~and~~ replacement *of capital assets and debt service*

based on an adequate budget identifying the basis for determining the annual operation and maintenance costs and the costs of personnel, *equipment*, material, *supplies*, energy, ~~and~~ administration ~~and replacement of facilities that have exceeded their useful life.~~

**Sec. 54.** NAC 445A.789 is hereby amended to read as follows:

445A.789 **1.** One or more ~~municipal legislative enactments~~ *ordinances or resolutions of the governing body or board, as applicable, of the eligible recipient* must incorporate the system of user charges.

**2.** If a project accepts wastewater from other municipalities, the subscribers receiving waste treatment services from the *eligible* recipient shall adopt a system of user charges meeting the requirements of NAC 445A.788. This system must be incorporated in an appropriate legislative enactment by each municipality contributing wastes to the treatment works.

**Sec. 55.** NAC 445A.791 is hereby amended to read as follows:

445A.791 ~~An~~ *eligible* recipient shall adopt ~~its sewer use ordinance and implement its~~ *the* system of user charges before the ~~treatment works~~ *project* is placed in operation. The *eligible* recipient shall implement the system of user charges ~~and sewer use ordinance~~ during the entire useful life of the ~~treatment works~~ *project*.

**Sec. 56.** NAC 445A.794 is hereby amended to read as follows:

445A.794 **1.** ~~For all projects, an~~ *eligible* recipient ~~of financial assistance~~ *and its contractors* shall ~~comply with~~ *pay mechanics, laborers and workers the prevailing wage under* the *applicable* provisions of the Davis-Bacon Act, 40 U.S.C. §§ ~~276a~~ *3141* et seq., ~~if they apply, and~~ *or* the provisions of NRS ~~338.010~~ *338.013* to 338.090, inclusive ~~and~~, *whichever is greater.*

2. The Division shall review the final contract documents to verify that the proper federal and state wage determinations have been included.

3. The *eligible* recipient is responsible for assuring compliance with all applicable labor laws.

**Sec. 57.** NAC 445A.795 is hereby amended to read as follows:

445A.795 1. An ~~[applicant for financial assistance]~~ *eligible recipient* shall comply with ~~[the requirements]~~ *any applicable equivalency requirement* of federal law concerning the participation of disadvantaged businesses.

2. ~~[Each]~~ *An eligible* recipient ~~[of financial assistance]~~ shall attempt to comply with the fair share percentages established annually for disadvantaged businesses by the Division and the United States Environmental Protection Agency. Any *eligible* recipient not meeting these goals shall submit evidence of compliance with the affirmative steps identified in NAC 445A.796.

3. An ~~[applicant for financial assistance]~~ *eligible recipient* shall submit with his or her request for approval of an award a report, in the form prescribed by the Division, of participation by disadvantaged businesses. If the low bidder on any construction contract does not meet the fair share requirements for disadvantaged businesses, the ~~[applicant]~~ *eligible recipient* shall submit to the Division evidence of compliance by the bidder with the affirmative steps identified in NAC 445A.796.

4. ~~[A]~~ *An eligible* recipient of financial assistance shall submit to the Division, in the form prescribed by the Division, a report of participation by disadvantaged businesses following any quarter during which any procurement ~~[of \$10,000 or more]~~ *equal to the value that is required by federal requirements* is executed for the project. As used in this subsection, “quarter” means a quarter in the federal fiscal year.

**Sec. 58.** NAC 445A.796 is hereby amended to read as follows:

445A.796 If the contractor for a project awards any subcontracts relating to the project, he or she shall *comply with any applicable equivalency requirement of federal law and* take affirmative steps to ensure that disadvantaged businesses are used to the extent possible as sources of supplies, equipment, construction and services. These affirmative steps must include:

1. Including such businesses on solicitation lists.
2. Assuring that such businesses are solicited if they are potential sources.
3. Dividing total requirements, if economically feasible, into small tasks or quantities to permit maximum participation by disadvantaged businesses.
4. *Establishing a schedule for the delivery of a requirement, if the requirement permits, to allow maximum participation by disadvantaged businesses.*
5. Using the ~~[services of Nevada Economic Development Company and the Nevada Office of Small Business to locate disadvantaged businesses capable of performing the work to be subcontracted.]~~ *list of vendors certified through the federal Disadvantaged Business Enterprise Program, as maintained by the United States Department of Transportation, or an equivalent list of such vendors.*
6. *Ensuring that all subcontractors for the project comply with the provisions of this section.*

**Sec. 59.** NAC 445A.797 is hereby amended to read as follows:

445A.797 ~~[A]~~ *An eligible* recipient of financial assistance shall notify the Division promptly in writing of:

1. The award of the prime construction contract for the project.

2. The beginning of construction of the project, stating the date on which he or she anticipates construction will be completed.

3. Any substantial change in the scope of the project. No such change may be undertaken until it has been approved in writing by the Division.

4. The cessation of all major construction work on the project, in any case where the cessation of work is expected to or does continue for 30 days or more.

5. Any circumstance or condition that is expected to or does delay the completion of construction for 90 days or more after the anticipated date of completion reported pursuant to subsection 2.

6. The completion of construction of the project.

7. The beginning of the operation of the project.

**Sec. 60.** NAC 445A.798 is hereby amended to read as follows:

445A.798 During the construction of a project, *regardless of ownership*, the *eligible* recipient shall permit any authorized representative of the Division to enter onto the site of the project at any reasonable time.

**Sec. 61.** NAC 445A.799 is hereby amended to read as follows:

445A.799 1. The Division may conduct oversight inspections during the construction of a project ~~[The primary purpose of any such inspection must be to ascertain that the recipient is constructing the project according to applicable contract requirements. The first inspection must normally be conducted at the time the project is 10 percent complete. Subsequent inspections must be conducted only if they are deemed necessary by the Division.]~~ *as needed to satisfy federal and state requirements of the project.*

2. The Division shall conduct a final construction inspection of each project. The primary purpose of this inspection must be to ascertain that the project has been constructed according to the approved plans and specifications and to ensure that required mitigation measures have been implemented. At the time of the inspection, the completion date for the project must be established for the purpose of beginning the 1-year period for certification of the performance of the project.

**Sec. 62.** NAC 445A.801 is hereby amended to read as follows:

445A.801 Before a project is 90 percent completed, ~~[a]~~ *an eligible* recipient shall submit to the Division an operation and maintenance manual , *if applicable*, for the project. ~~[Not more than 90 percent of the total financial assistance for the project may be provided until the manual has been reviewed and approved by the Division.]~~

**Sec. 63.** NAC 445A.802 is hereby amended to read as follows:

445A.802 ~~[A]~~ *An eligible* recipient shall supply the Division with one set of as-built drawings of the project.

**Sec. 64.** NAC 445A.803 is hereby amended to read as follows:

445A.803 1. The Division shall establish, in consultation with each *eligible* recipient, the date that project operations are capable of being initiated for the purpose of establishing the procedure for certification of the performance of the project.

2. Before any certification of performance for a project is submitted, the Division shall conduct an inspection of the project to ensure that its facilities are operating and capable of meeting discharge standards.

3. After a project has been in operation for 1 year, the *eligible* recipient shall submit a certification that the project meets or fails to meet performance standards. The project must

comply with all applicable design specifications and, except for a nondischarging project, all applicable effluent requirements. Any nondischarging project must, where appropriate, meet requirements for the elimination of overflows and the reduction of infiltration or inflow. At the request of ~~an~~ *an eligible* recipient, the Division shall assist in developing applicable performance standards.

4. If the project cannot be affirmatively certified, the *eligible* recipient shall prepare a report of corrective action which includes an analysis of the cause of the failure of the project to meet performance standards and an estimate of the nature, scope and cost of necessary corrective action. The Division shall conduct follow-up inspections as necessary to determine whether the project meets performance standards. The cost of any corrective action is not eligible for financial assistance.

5. As used in this section, “performance standards” means the criteria used to evaluate the compliance of a project with the requirements contained in design specifications and a discharge permit.

**Sec. 65.** NAC 445A.804 is hereby amended to read as follows:

445A.804 ~~an~~ *An eligible* recipient shall notify the Division of any claims against the owner, the engineer, the contractor or any subcontractor arising from or related to the project.

**Sec. 66.** NAC 445A.805 is hereby amended to read as follows:

445A.805 ~~an~~ *An eligible* recipient shall not abandon, substantially discontinue his or her use of, or dispose of a project during its useful life without the prior written approval of the Division.

**Sec. 67.** NAC 445A.686, 445A.705, 445A.712, 445A.718, 445A.721, 445A.733, 445A.734, 445A.735, 445A.736, 445A.738, 445A.766, 445A.778, 445A.784, 445A.792 and 445A.793 are hereby repealed.

### **TEXT OF REPEALED SECTIONS**

**445A.686 “Act” defined. (NRS 445A.135)** “Act” means the Clean Water Act, 33 U.S.C. §§ 1251 et seq., as amended.

**445A.705 “Fund” defined. (NRS 445A.135)** “Fund” means the revolving fund created pursuant to the Act to provide loans and other forms of financial assistance for the construction of wastewater treatment works or pollution control projects.

**445A.712 “Municipality” defined. (NRS 445A.135)** “Municipality” means:

1. Any city, town, county, district, association or other public body created by or pursuant to the law of this State and having authority over the disposal of sewage, industrial wastes or other wastes; or
2. Any Indian tribe or authorized Indian tribal organization.

**445A.718 “Pollution control project” defined. (NRS 445A.135)** “Pollution control project” means any eligible component of a program for management established pursuant to 33 U.S.C. § 1329.

**445A.721 “Recipient” defined. (NRS 445A.135)** “Recipient” means an entity that receives financial assistance from the fund.

**445A.733 Proposed wastewater treatment works: Contents of facility plan. (NRS 445A.135)** A facility plan for a proposed wastewater treatment works must include:

1. A description of the proposed treatment works and the complete waste treatment system of which it is a part.
2. A description of the best practicable wastewater treatment technology.
3. A cost-effect 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.
4. A demonstration of the nonexistence or possible existence of excessive infiltration or inflow in the sewer system.
5. An analysis of any potential open-space and recreation opportunities associated with the project.
6. An environmental information document that includes an adequate evaluation of the environmental impacts of alternatives. This evaluation must discuss all significant environmental effects of the proposed project and the implications of the project with respect to:
  - (a) Threatened or endangered species;
  - (b) Wetlands;
  - (c) Farmland;
  - (d) Fish and wildlife;
  - (e) Cultural resources;

- (f) Open spaces;
- (g) Environmentally sensitive areas;
- (h) Air quality;
- (i) Water quality;
- (j) Consistency with land use plans;
- (k) Energy use;
- (l) Long-term versus short-term trade-offs;
- (m) Growth inducement;
- (n) Floodplains; and
- (o) Consistency with areawide planning, such as basin plans and plans prepared pursuant to section 208 of the Act, 33 U.S.C. § 1288.

7. An evaluation of the implications of the project for the public or private water supply.

8. For the selected alternative, a concise description at an appropriate level of detail of:

- (a) Relevant design parameters.
  - (b) Cost effects on users of the wastewater system.
  - (c) Institutional and management arrangements required for successful implementation of the project.
  - (d) Estimated costs for capital construction, operating and maintenance costs and costs for debt service and a description of the manner in which local costs are to be financed, including a preliminary revenue program in the form prescribed by the Division.
  - (e) Estimated costs of future expansion and long-term needs for reconstruction of facilities following their design life.
9. A summary of public participation in the development of the facility plan.

**445A.734 Proposed wastewater treatment works: Cost-effect analysis. (NRS 445A.135)**

1. A cost-effect analysis prepared pursuant to NAC 445A.733 must include:

(a) A description of the relationship between the capacity of alternatives and the needs to be served, including capacity or future growth expected after the treatment works become operational. The description must include estimates from significant industrial and commercial users documenting the need for capacity and the characteristics of existing or projected flows.

(b) An evaluation of improved effluent quality attainable by upgrading the operation and maintenance and efficiency of existing facilities as an alternative or supplement to the construction of new facilities.

(c) An evaluation of the alternative methods for the reuse or ultimate disposal of treated wastewater and sludge resulting from the treatment process.

(d) An evaluation of systems with revenue-generating applications.

(e) An evaluation of opportunities to reduce the use of energy or to recover energy.

(f) Information concerning total capital costs and annual operation and maintenance costs, as well as estimated annual or monthly costs to residential, commercial and industrial users.

2. The planning period used in the analysis must be 20 years.

3. The monetary costs to be considered in the analysis must include the present worth or equivalent annual value of all capital costs and operation and maintenance costs.

4. The forecasts of population contained in the analysis must be consistent with those prepared by the Department of Taxation.

5. As used in this section, "industrial user" means any nongovernmental, nonresidential user of a publicly owned treatment works who is identified in the *Standard Industrial Classification*

*Manual*, 1972 edition, of the Office of Management and Budget under one of the following divisions:

(a) Division B - Mining.

(b) Division D - Manufacturing.

↪ A copy of the *Manual* may be obtained by mail from the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 979050, St. Louis, Missouri 63197-9000, or by toll-free telephone at (866) 512-1800, for the price of \$24.

**445A.735 Proposed pollution control projects: Contents of facility plan. (NRS**

**445A.135)** A facility plan for a proposed pollution control project must include:

1. A description of the nonpoint sources of pollution and the areas and waters affected by them.
2. A description of the best management practices considered.
3. A cost-effect analysis of the feasible conventional, innovative and alternative management practices, processes and techniques capable of meeting the applicable effluent, water quality and public health requirements over the design life of the project while recognizing environmental and other nonmonetary considerations.
4. An environmental information document that includes an adequate evaluation of the environmental impacts of alternatives. This evaluation must discuss all significant environmental effects of the proposed project and the implications of the project with respect to:
  - (a) Threatened or endangered species;
  - (b) Wetlands;
  - (c) Farmland;
  - (d) Fish and wildlife;

- (e) Cultural resources;
- (f) Open spaces;
- (g) Environmentally sensitive areas;
- (h) Air quality;
- (i) Water quality;
- (j) Consistency with land use plans;
- (k) Energy use;
- (l) Long-term versus short-term trade-offs;
- (m) Floodplains; and
- (n) Consistency with areawide planning, such as basin plans and plans prepared pursuant to section 208 of the Act, 33 U.S.C. § 1288, and the nonpoint source management program.

5. For the selected alternative, a concise description at an appropriate level of detail of:

- (a) Relevant design parameters.
- (b) Cost effects on users of the wastewater system.
- (c) Institutional and management arrangements required for successful implementation of the project.
- (d) Estimated costs for capital construction, operating and maintenance costs and costs for debt service costs and a description of the manner in which local costs are to be financed, including a preliminary revenue program in the form prescribed by the Division.
- (e) Estimated costs of future expansion and long-term needs for reconstruction of facilities following their design life.

6. A summary of public participation in the development of the facility plan.

**445A.736 Proposed pollution control projects: Cost-effect analysis. (NRS 445A.135)**

1. A cost-effect analysis prepared pursuant to NAC 445A.734 must include:
  - (a) A description of the relationship between the capacity of alternatives and the needs to be served, including capacity or future growth expected after the project becomes operational.
  - (b) An evaluation of the alternative methods for the reuse or ultimate disposal of treated wastewater and sludge resulting from the treatment process.
  - (c) Information concerning total capital costs and annual operation and maintenance costs.
2. The planning period used in the analysis must be 20 years.
3. The monetary costs to be considered in the analysis must include the present worth or equivalent annual value of all capital costs and operation and maintenance costs.
4. The forecasts of population contained in the analysis must be consistent with those prepared by the Department of Taxation.

**445A.738 Public hearing before adoption of facility plan. (NRS 445A.135)**

1. Before adopting a facility plan, an applicant for financial assistance must hold a public hearing to describe the proposed project and ensure that the concerns of the public are fully considered.
2. The time, place and subject of the public hearing must be announced conspicuously and adequately by the applicant not less than 30 days before the hearing. Copies of the facility plan must be made available for inspection by the public not less than 15 days before the hearing.
3. Notice of the hearing must be circulated within the geographical area covered by the facility plan by:
  - (a) Publishing notice of the hearing in a newspaper of general circulation in the area; or
  - (b) Unless otherwise required by federal law, posting notice of the hearing on an Internet website designed to give general public notice that has been approved by the Division.

4. Notice of the hearing must be mailed by the applicant to any person or organization included on a mailing list provided by the Division.

5. Ten copies of the facility plan must be submitted by the applicant to the state clearinghouse for review.

**445A.766 Establishment of reserves. (NRS 445A.135)**

1. In developing its priority list, the Division shall establish the reserves required or authorized by the Act.

2. The Division may reserve not more than 4 percent of the State's grant awards. This money must be used to administer the fund and to manage the program.

3. The Division shall, in accordance with the provisions of 33 U.S.C. § 1384(b), reserve 1 percent of its annual allotment or \$100,000, whichever is more, to carry out water quality management planning.

**445A.778 Consistency of project with water quality management plan. (NRS 445A.135)** A project must be consistent with the approved elements of any applicable water quality management plan developed pursuant to 33 U.S.C. § 1285(j), 1288, 1313(e) or 1329 and the applicant must be the wastewater management agency designated in that plan.

**445A.784 Assurance of access to privately owned individual system. (NRS 445A.135)** An applicant for a privately owned individual system shall provide assurance of access to the system at all reasonable times for such purposes as inspection, monitoring, building, operating, rehabilitation and replacement.

**445A.792 Approval of award of contract for construction relating to project; resolution of disputes regarding bidding. (NRS 445A.135)**

1. Before awarding any construction contract relating to a project, an applicant for financial assistance shall submit to the Division, in the form prescribed by it, a request for approval of the award.

2. The Division may approve the award of the contract only to the lowest responsive, responsible bidder. The Division shall also review the request for approval to ensure that the applicant, his or her consultants and his or her contractors have complied with the positive effort policies relating to disadvantaged businesses.

3. The Division shall not participate in the resolution of any dispute relating to bidding. The resolution of any such dispute is the sole responsibility of the applicant. A request for approval must not be granted until any such dispute has been resolved.

4. A request for approval must not be granted until it can be demonstrated that the project is consistent with approved water management plans and that a valid discharge permit has been issued for the project.

**445A.793 Period for award of prime construction contract; extension of period. (NRS 445A.135)**

1. Except as otherwise provided in subsection 2, a recipient of financial assistance shall award the prime construction contract within 90 days after the Division approves the award of the contract. If the contract is not awarded within that time, the agreement for financial assistance is null and void.

2. The Division may, upon the request of a recipient, grant an extension of the time provided by subsection 1 in any case where unusual or extenuating circumstances exist. Any request for an extension must be made in writing and must set forth facts justifying the extension.

