

**PROPOSED REGULATION OF
THE STATE ENVIRONMENTAL COMMISSION**

LCB File No. R115-10

November 8, 2010

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

AUTHORITY: §§1-14, NRS 445A.135.

A REGULATION relating to water controls; establishing guidelines for developing an intended use plan; revising provisions relating to financial assistance for the construction of wastewater treatment works and pollution control projects; and providing other matters properly relating thereto.

Section 1. Chapter 445A of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 6, inclusive, of this regulation.

Sec. 2. *The priority list established pursuant to NAC 445A.765 will be incorporated into the intended use plan developed pursuant to sections 3 and 4 of this regulation and submitted with other required information to the United States Environmental Protection Agency in the application for the annual capitalization grant agreement or an amendment to a capitalization grant agreement.*

Sec. 3. 1. *An intended use plan must be prepared by the Division which describes how all money deposited into the fund will be used. The intended use plan must include a description of:*

(a) The short- and long-term goals and objectives of the fund;

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

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

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

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 Act.

3. An intended use plan may be amended during the year pursuant to the provisions established in the intended use plan if the project has previously been identified through the public participation process as set forth in section 4 of this regulation.

Sec. 4. *1. The Division shall conduct a public participation process to obtain public comment and review before finalizing its intended use plan.*

2. Copies of the final intended use plan containing the information set forth in section 3 of this regulation must be made available in the offices of the Division or its successor.

Sec. 5. *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.*

2. After receiving the notification letter pursuant to subsection 1, 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 section 6 of this regulation.

Sec. 6. *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 section 5 of this regulation.

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 will forward the objection to the Administrator of the Division for decision pursuant to the provisions of NAC 445A.730.

Sec. 7. 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 6, inclusive, of this regulation*, unless the context otherwise requires, the words and terms defined in NAC 445A.686 to 445A.727, inclusive, have the meanings ascribed to them in those sections.

Sec. 8. 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 ~~contract~~ *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 additional studies and prepare, issue and distribute a supplemental environmental impact statement and document to the original or any revised decision in an addendum to the record of decision.

Sec. 9. NAC 445A.769 is hereby amended to read as follows:

445A.769 1. To obtain approval of financial assistance, an applicant must submit a letter of intent, a facility plan, an environmental document and a draft revenue program. After these documents are approved, the Division shall consider the project for initial approval of financial assistance.

2. Factors to be considered in awarding approval include:

(a) Placement on the priority list;

(b) The ~~[schedule for completing the design]~~ *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. 10. NAC 445A.770 is hereby amended to read as follows:

445A.770 1. To obtain financial assistance from the fund, 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 on which use of the project begins for the purposes that it was planned, designed and built.

2. ~~[A contract]~~ *An agreement* for financial assistance must not be offered until the applicant:

(a) Receives initial approval of assistance ; ~~[, the completed design of the project, and the plans and specifications for the project;]~~ and

(b) Anticipates bid solicitation in the near future.

3. The ~~[econtract]~~ *agreement* for financial assistance must be prepared and transmitted to the applicant for his 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. 11. 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:

- (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 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 ~~{contract documents,}~~ specifications and plans not less than 90 percent complete. Depending upon the complexity of the project, a 50 percent submittal may be required. ~~{The contract documents must include any general or special condition prescribed by the Division.}~~

(c) A final set of ~~{contract documents,}~~ specifications and plans. These must be submitted before advertising for bids.

(d) Any addenda issued during the bidding process.

Sec. 12. NAC 445A.773 is hereby amended to read as follows:

445A.773 1. A fixed amount of financial assistance ~~{must}~~ *may* be provided to a recipient to help offset costs for planning, design and construction inspection, engineering and management. ~~{The amount allowed for construction inspection, engineering and management must be calculated by dividing the costs of construction incurred to date by the total eligible costs of construction and multiplying the result by the amount of the total allowance for construction services.}~~ 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 recipient may request payment of the entire ~~{allowance}~~ *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. 13. NAC 445A.777 is hereby amended to read as follows:

445A.777 Before ~~[a contract]~~ *an agreement* for financial assistance is transmitted to it for signature, a 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.

Sec. 14. NAC 445A.793 is hereby amended to read as follows:

445A.793 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 ~~[contract]~~ *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.