

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

Our File No. 4440

RULE REVIEW CHECKLIST

DATE RULE RECEIVED 8-31-83
DATE FOR REVIEW 9-2-83
DATE DUE 9-20-83

Adopted w/a hearing ✓
Adopted w/o hearing _____
Temporary rule _____

Approved _____ Disapproved _____ Returned to Agency _____

Resubmitted _____ Due _____
Approved _____ Disapproved _____ Returned to Agency _____

Date filed w/Secretary of State _____ Revisor approved _____ disapproved _____

_____ Rule as Adopted

✓ Rule as Proposed

✓ Order Adopting 8.23.83 Date

✓ Notice of Intent to Solicit Outside Opinion SR. 8.16.82

✓ Order for rulemaking
6.13.83 date of Hearing

✓ Certificate of Board's Authorizing Resolution

✓ Notice of rulemaking
✓ Sufficiency

✓ Affidavit of Mailing Notice or rulemaking
4.26 + 27. 83 At least 30 days prior to hearing/~~adoption~~

✓ Mailing list Certificate

✓ Publication in State Register
5.9.83 At least 30/~~20~~ days prior to hearing/~~adoption~~

✓ Hearing Examiner's Report

✓ Chief Hearing Examiner's Report(s)
8.3.83 Approving H.E.'s Report
8.30.83 Approving agency action

✓ Agency's Findings of Fact

N/A LCRAR Report or agency Affidavit BUT see LCRAR report Agency Ex. 11 + HE 12

✓ Certificate of Board's Resolution Adopting Rules

_____ Order Approving Incorporation by Reference

✓ Statement of Need and Reasonableness

_____ Petition for Adoption of a Rule

✓ Record (includes transcript or tape, exhibits, comments received by agency, requests for a hearing, and other relevant materials)

✓ Certificate of Compliance w/Rulemaking Procedures

✓ Affidavit of Mailing Notice of Submission to Attorney General

✓ Notice of Submission to the Attorney General

STATE OF MINNESOTA

OFFICE OF THE ATTORNEY GENERAL

ST. PAUL 55155

HUBERT H. HUMPHREY, III
ATTORNEY GENERAL

ADDRESS REPLY TO:
ATTORNEY GENERAL'S OFFICE
POLLUTION CONTROL DIVISION
1935 WEST COUNTY ROAD B-2
ROSEVILLE, MN 55113
TELEPHONE: (612) 296-7342

RECEIVED
SEP 20 1983
ATTORNEY GENERAL
ADMINISTRATIVE AGENCIES

September 16, 1983

Ms. Judith Wehrwein
Attorney General's Office
204 Administration Building
50 Sherburne Avenue
St. Paul, Minnesota 55155

Re: A. G. Review of 6 MCAR § 4.8034

Dear Ms. Wehrwein:

Enclosed for your review are two copies of the final revision of 6 MCAR § 4.8034 as adopted by the Minnesota Pollution Control Agency and as approved by the State Revisor's Office.

Very truly yours,

Alan Mitchell

ALAN R. MITCHELL
Special Assistant
Attorney General

ARM:mh
Enclosures

HUBERT H. HUMPHREY, III
ATTORNEY GENERAL

STATE OF MINNESOTA

OFFICE OF THE ATTORNEY GENERAL

ST. PAUL 55155

August 31, 1983

ADDRESS REPLY TO:
ATTORNEY GENERAL'S OFFICE
POLLUTION CONTROL DIVISION
1935 WEST COUNTY ROAD B-2
ROSEVILLE, MN 55113
TELEPHONE: (612) 296-7342

Mr. J. Michael Miles
Deputy Attorney General
Office of the Attorney General
204 Administration Building
50 Sherburne Avenue
St. Paul, MN 55155

Re: In the Matter of the Proposed Revision to 6 MCAR § 4.8034, Relating to the Administration of Federal Grant Funds and State Grant and Loan Funds for Municipal Sewage Treatment Projects

Dear Mr. Miles:

In accordance with Minn. Stat. § 14.16 (1982) and 1 MCAR § 1.202, the above-captioned rule amendments are hereby submitted for review by the Attorney General's Office.

The following documents are enclosed:

1. Rule as Adopted. The changes the Agency made in the amendments from what was proposed in the State Register on May 9, 1983, are shown in the enclosed document called Order Adopting Rules. These changes are in accordance with the Hearing Examiner's recommendation; the one change made by the Agency that was not reviewed by the Hearing Examiner (Section I.7.) was reviewed by the Chief Hearing Examiner and found not to be a substantial change. I understand that you will arrange for the Revisor's Office to review these changes and to provide a certified approved copy of the entire rule. Maryanne Hruby is the person in the Revisor's Office who reviewed the original proposed rules.

2. Order Adopting Rules.

3. Certificate of Agency's Authorizing Resolution Adopting Rule.

4. Notice of Intent to Solicit Outside Opinion published in August 16, 1982 State Register. This notice is Exhibit 9 in the hearing record. No written material was received in response to this notice.

5. Order for Hearing. The Order for Hearing and a Corrected Order for Hearing are in the record as Exhibit 1.

6. Certificate of Board's Authorizing Resolution. Exhibit 2.

7. Notice of Hearing. Exhibit 3.

8. Affidavit of Mailing. Exhibit 6.

9. Mailing List Certificate. Exhibit 5.

10. Rule as Proposed. Exhibit 4 is the relevant pages of the May 9, 1983, State Register in which the rule as proposed was published.

11. Hearing Examiner's Report.

12. Chief Hearing Examiner's Report. (August 3, 1983.)

13. Chief Hearing Examiner's Report. (August 30, 1983.)

14. Agency's Findings of Fact and Conclusions.

15. Statement of Need and Reasonableness. Exhibit 8.

16. Hearing Record. The transcripts of the hearing and all the exhibits and documents in the record are submitted to you. I have also enclosed the documents that were submitted to the Board for its August 23, 1983, meeting at which this matter was considered.

17. Certificate of Compliance with Rulemaking Procedures.

18. Notice of Submission to the Attorney General.

19. Affidavit of Mailing Notice of Submission to the Attorney General.

Please advise when you have completed your review.

Very truly yours,

Alan R. Mitchell

ALAN R. MITCHELL
Special Assistant
Attorney General

ARM:cg
Enclosures

SF-00006-02

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL

Office Memorandum

TO : SANDRA S. GARDEBRING, Executive Director DATE: 9/20/83

Attn: ALAN R. MITCHELL, Special Assistant Attorney General

FROM : TED A. MARTINEZ Tam PHONE: 296-4692
Special Assistant Attorney General

SUBJECT: In the Matter of the Proposed Revision to 6 MCAR § 4.8034, Relating to the Administration of Federal Grant Funds and State Grant and Loan Funds for Municipal Sewage Treatment Projects.

Enclosed herewith are the rules you have submitted for approval. These rules have been approved by this office and filed with the Secretary of State. Please note that they have not been filed with the State Register. This must be done promptly by your agency.

Upon receipt and before transmittal to your agency, however, it is important that you recheck these rules as to:

1. Affixation of stamps of the Attorney General and Secretary of State;

2. Coverage by these stamps of all rules submitted; and

3. Inclusion of all pages to the rules in the approved set.

If you have any questions in this regard, please contact me.

Encs.
TAM/ls
cc: Ms. Kathy Burek
Mr. Duane Harves

Minnesota Pollution Control Agency

Adopted Revision to 6 MCAR S 4.8034 Relating to the Administration of Federal Grant Funds and State Grant and Loan Funds for Municipal Sewage Treatment Projects

Rules as Adopted

6 MCAR S 4.8034 Rule for the administration of the Minnesota State Water Pollution Control Fund and federal grant funds allotted to Minnesota.

A. Purpose. This rule provides for the administration of the federal construction grant program and the state construction grant and loan program for the construction of municipal disposal systems.

B. Definitions. For the purpose of this rule, the following terms have the meanings given them.

1. The terms "person," "sewage," "industrial wastes," "other wastes," "treatment works," "sewer system," "disposal system," "waters of the state," "pollution control fund," "municipality," "director," "agency," "pollution of water," "eligible cost," ~~"wastewater,"~~ "wastewater treatment facility," as well as any other pertinent terms for which definitions are given in Minnesota Statutes, chapters 115 and 116 have the meanings ascribed to them therein.

2. "Act" means the Federal Water Pollution Control Act, United States Code, title 33, section 1251 et seq., as amended through December 31, 1982.

3. "EPA" means the United States Environmental Protection Agency.

4. "Administrator" means the Administrator of the United States Environmental Protection Agency.

5. "Need" means a determination that a new or upgraded disposal system is currently required, or will be required within a five-year period to comply with State Water Pollution Control rules; provided, the situation does not exist primarily due to inadequate operation and maintenance or primarily due to

negligence on the part of any person.

6. "Step 1" means the preparation of all necessary preliminary engineering studies for the project.

7. "Step 2" means the preparation of construction plans and specifications for the project.

8. "Step 2+3" means the preparation of construction plans and specifications for and construction of the project.

9. "Step 3" means the construction of the project.

10. "Secondary treatment plant" includes plants designed to provide effective sedimentation, biochemical oxidation, and disinfection, or the equivalent, consistent with requirements of 6 MCAR SS 4.8014 C.6. and 4.8015 C.6. Plants discharging to limited resource value waters (Class 7 waters) and assigned effluent limitations based on 6 MCAR SS 4.8014 C.16.a. or C.16.b. or 4.8015 C.16.a. or C.16.b. are secondary treatment plants for the purpose of this rule.

11. "Tertiary treatment plant" includes plants specifically designed to achieve effluent limitations based on 6 MCAR SS 4.8014 C.6. or 4.8015 C.6. for phosphorus or toxic substances and plants designed to provide a level of treatment higher than that provided by a secondary treatment plant.

12. "Primary treatment plant" means a plant designed to provide a level of treatment lower than that provided by a secondary treatment plant.

13. "Planning loan" means a loan for Step 1 or Step 2 projects.

14. "Construction loan" means a loan for a Step 3 project.

15. "Adequate errors and omissions insurance" means a policy of insurance which provides the minimum amount of coverage for the corresponding estimated project construction cost as determined from the following table, which is maintained for a minimum of two years after acceptance of the project by the grantee.

Estimated Project Construction Cost	Minimum Amount of Coverage
less than $1,000,000	$ 250,000

$1,000,000 to $2,999,999	$ 500,000
$3,000,000 to $9,999,999	$1,000,000
$10,000,000 or over	$2,000,000

If an engineer has more than one project, the policy must provide for the minimum coverage applicable to the highest estimated project construction cost. Requests for variances from the requirements of this section are governed by section GG. of this rule.

16. "Infiltration" means water other than wastewater that enters a sewer system (including sewer service connections and foundation drains) from the ground through defective pipes, pipe joints, connections, or manholes. Infiltration does not include, and is distinguished from, inflow.

17. "Inflow" means water other than wastewater that enters a sewer system (including sewer service connections) from sources such as, but not limited to, roof leaders, cellar drains, yard drains, area drains, drains from springs and swampy areas, manhole covers, cross connections between storm sewers and sanitary sewers, catch basins, cooling towers, storm waters, surface runoff, street wash waters, or drainage. Inflow does not include, and is distinguished from, infiltration.

18. "Facilities plan" includes the information required by Code of Federal Regulations, title 40, section 35.2030, as amended through December 31, 1982, and other information as is necessary to determine whether the project is consistent with good engineering practice and capable of complying with applicable pollution control rules and standards.

19. "Plans and specifications" includes documents that contain the requirements under which a bidder submits a bid for performing the work and the contractual requirements and detailed requirements. The documents that comprise the plans and specifications must conform with generally accepted engineering practices, applicable state statutes and rules, and applicable requirements of Code of Federal Regulations, title 40, parts 33 and 35, as amended through December 31, 1982.

20. "NPDES/SDS permit" means a National Pollutant

Discharge Elimination System and State Disposal System permit issued by the agency that authorizes under certain conditions the discharge of pollutants to waters of the state and subsurface disposal or on-land disposal and the operation of a disposal system.

21. "90 percent compliance" means compliance with an NPDES/SDS permit limitation or condition related to effluent quality at a frequency of at least 90 percent of the time during a one-year period computed on the basis of the time interval appropriate to the limitation or condition. Periods of noncompliance caused by inadequate operation and maintenance, negligence on the part of a person, or increased flow or loading to a treatment plant are not included in the percentage computation for the purposes of this definition.

22. A "major contributing industry" means an industrial user of a treatment facility that:

a. has a rated flow of 50,000 gallons or more per work day ~~on-the-average~~ where the rated flow is the daily design flow multiplied by 24 and divided by the actual hours of discharge in a day;

b. has a rated flow greater than five percent of the total design flow to the treatment works;

c. has a total organic load of greater than five percent of the total organic load to the treatment works;

d. has in its waste before pretreatment a toxic pollutant in ~~toxic-amounts-as-defined-in-standards-issued-by-the U.S.-Environmental-Protection-Agency-under-section-307(a)-of-the act~~ in excess of what may be discharged to waters of the state; or

e. is found by the agency in connection with the issuance of an NPDES/SDS permit to the municipality, either singly or in combination with other contributing industries, to interfere with the treatment plant's ability to meet effluent limitations, interfere with digester operation or biological unit process operation, impact the area required for sludge disposal, or increase sizing of the facility by five percent or

more.

23. A "treatment agreement" is an agreement between a municipality and a major contributing industry that includes the following:

a. the variations in daily flow and the monthly average and daily maximum quantity of compatible and incompatible pollutants to be discharged to the treatment facility;

b. the intended period of use of the treatment facility;

c. signatures by the major contributing industry and the owner of the treatment system accepting the wastewater;

d. a requirement that the quantities to be discharged to the treatment system will be in accordance with applicable standards and requirements; and

e. enforceability in a court of law by the municipality.

24. "Wastewater" means sewage, industrial waste, and other wastes collected for treatment in a disposal system.

25. "Adverse impact" means the violation of any water quality standard or an objectionable growth of weeds, algae, or rough fish or any deleterious effect on the physical, chemical, or biological condition of the receiving water that lessens the present or long-term uses of the receiving water.

26. Other terms and abbreviations used herein which are not specifically defined by law shall be construed in conformance with the context and professional usage.

C. Types of programs. Under this rule and Minnesota Statutes, section 116.16 et seq., the agency may disburse funds from the pollution control fund for the following:

1. grants for projects tendered a federal grant under the act;

2. grants to reduce or eliminate the local contribution of a municipality meeting the criteria set forth in 6 MCAR S 4.8034 BB.2.;

3. grants to municipalities which would qualify for a

federal grant but which desire to initiate construction of the project without a federal grant;

4. loans for the construction of municipal disposal systems.

D. Summary of construction grants program.

1. Construction grant funds are available for Step 2+3 and Step 3 projects and advances of allowance for Step 2.

2. Construction grants are awarded to municipalities on a priority basis. Municipalities with the highest priorities as determined by a point system are awarded construction grants first.

3. Priorities are determined by awarding points for various disposal system projects based on (a) the waters affected; (b) the population affected; (c) the type of project proposed; and (d) extra points for qualifying projects.

4. The agency develops and maintains a municipal needs list that ranks in order of priority all municipalities <u>within the construction grants program</u> for which a need exists.

5. The agency prepares a municipal project list that lists in order of priority from the municipal needs list, the municipalities that are eligible to apply for construction grants for their projects from funds allotted to the state for the current fiscal year.

6. A municipality on the municipal project list must apply for a construction grant before a grant will be awarded.

E. Municipal needs list.

1. The ~~director~~ <u>agency</u> shall develop and maintain a municipal needs list of municipalities that have a need for a new or upgraded disposal system.

2. A municipality on the municipal needs list shall be awarded points under the criteria established in this rule. The municipalities shall be listed on the municipal needs list in descending order according to the number of points awarded to each.

3. A municipality may petition the agency for inclusion on the municipal needs list. A municipality petitioning the

agency for inclusion on the list shall submit the following information:

a. If the municipality is sewered, the municipality shall submit data regarding concentration of pollutants in existing discharge; volume of discharge; and waters of the state presently or potentially impacted by the discharge.

b. If the municipality is unsewered, the municipality shall submit data regarding type of soil in unsewered area; depth to seasonal high water table; size of all lots in the area; and age and type of existing system.

4. The ~~director~~ agency shall review each petition and add to the municipal needs list each municipality for which a need has been found to exist. If the ~~director~~ agency determines that a need does not exist, the municipality shall not be added to the list and the ~~director~~ agency shall notify the municipality of the reasons for the determination.

5. Upon approval of a facilities plan, the agency may determine that the municipality does not have a need and remove the municipality and the project from the municipal needs list.

F. Priority points for waters affected.

1. A municipality shall be awarded priority points based on the water use of the receiving water of the discharge according to the following:

	Water Use*	Point Rating
Class 1	Domestic consumption:	
	Class 1A waters	70
	Class 1B waters	65
	Class 1C waters	60
	Class 1D waters	55
Class 2	Fisheries and recreation:	
	Class 2A waters	60
	Class 2B waters	50
	Class 2C waters	40
Class 7	Limited Resource Value Waters	35

* The water uses are more specifically defined in 6 MCAR SS 4.8014 B. and D. and 4.8015 B. and D. and the water use of a

specific water of the state is the water use established by 6 MCAR S 4.8024 or 4.8025.

2. If a municipality discharges to a receiving water with more than one designated water use, the municipality shall be awarded the points for the designated water use with the greatest number of points.

3. If a municipal discharge has an adverse impact on a downstream water with a designated water use receiving more points than the receiving water, the municipality shall be awarded the priority points for the downstream water.

G. Priority points for population served. A municipality shall be awarded priority points based on the population of the municipality served by the project. The priority points for population served are five times the logarithm to the base 10 ($\log_{10}$) of the population determined by the latest official census. The table below gives examples of the priority points assigned for various populations:

Population	Log ($_{10}$)	Priority Points Assigned
100	2	10.0
1,000	3	15.0
10,000	4	20.0
100,000	5	25.0
1,000,000	6	30.0

H. Priority points for type of project.

1. A municipality shall be awarded priority points based on the type of project to be constructed according to the following:

Type of Project	Priority Points
Tertiary Treatment Plants:	
a. New tertiary treatment plant	160
b. Major addition to existing tertiary treatment plant	160
c. Dechlorination facilities	120
d. Ancillary addition to existing tertiary treatment plant	80

Secondary Treatment Plants:	
e. New secondary treatment plant	150
f. Major addition to existing secondary treatment plant	150
g. Dechlorination facilities	110
h. Ancillary addition to existing secondary treatment plant	75
Collection Systems or Collector Sewers:	
i. Collection system or collector sewer	10
j. Improvement of collection system or collector sewer reliability	10
Combined Sewer Overflow:	
k. Control of combined sewer overflow	150
Previously Funded Projects:	
l. Additions to previously funded projects	10
m. Modification and replacement of innovative or alternative projects	10

2. Description of project types.

a. New plant. A new tertiary treatment plant is a plant designed to meet tertiary treatment standards ~~and constructed~~ <u>for which construction was commenced</u> after July 1, 1983. A new secondary treatment plant is a plant designed to meet secondary treatment standards ~~and constructed~~ <u>for which construction was commenced</u> after July 1, 1983. Land application systems and stabilization ponds that are proposed as an alternative to tertiary and secondary treatment plants that discharge to waters of the state are considered tertiary treatment and secondary treatment for purposes of project priority. Whether a land application system or stabilization pond is a tertiary or secondary treatment system is determined as based on the effluent limitations applicable to discharges to the receiving water. Subsurface disposal systems, including septic tanks, designed to treat an average daily flow of not more than 1,000 gallons and the drainfield portion and one central septic tank to treat an average daily flow in excess of 1,000 gallons are considered secondary treatment for purposes of

project priority.

b. Major addition. A major addition to an existing tertiary or secondary treatment plant is an addition that improves effluent quality in order that a municipality achieving less than 90 percent compliance may achieve compliance with applicable NPDES/SDS permit conditions. A major addition also includes major interceptor sewers and sewer system rehabilitation projects.

c. Major interceptor sewer. A major interceptor sewer is a sewer, including related lift stations, that intercepts wastewater from the final point in a collector sewer of a municipality and accomplishes one of the following:

(1) transports the wastewater directly to a wastewater treatment facility;

(2) transports the wastewater directly to another major interceptor sewer; or

(3) transports the wastewater directly to the collector sewer of another municipality.

A sewer is a collector sewer and not a major interceptor sewer if the average design flow of the sewer increases by more than ten percent from wastewater connections to the sewer between its origin and its termination or if it has physical connections closer to each other than 1,000 feet. Infiltration and inflow directly to the sewer and flow from other major interceptor sewers is not included in determining whether the flow has increased by more than ten percent.

d. Sewer system rehabilitation. A sewer system rehabilitation project is a project that repairs or replaces an existing collector or interceptor sewer in order to eliminate bypasses caused by insufficient hydraulic capacity in existing separate sanitary sewers by transporting infiltration and inflow <u>to a wastewater treatment facility or to reduce the hydraulic capacity of the wastewater treatment plant</u> and includes flow equalization systems, relief sewers, and relief capacity sewers.

e. Flow equalization system. A flow equalization system is a containment system such as a pond, basin, or tank

designed to temporarily hold wet weather flow until the flow can be transported to the wastewater treatment plant.

f. Relief sewer. A relief sewer is a sewer primarily designed to eliminate bypassing caused by insufficient hydraulic capacity in separate sewer systems by transporting infiltration or inflow to adequately sized sewers or a wastewater treatment facility for proper treatment. A sewer is a relief capacity sewer and not a relief sewer if its design flow includes more than five percent wastewater or if it has physical connections closer to each other than 1,000 feet. Storm sewer separation is not a relief sewer.

g. Relief capacity sewer. A relief capacity sewer is a new sewer designed to handle the normal flow of wastewater and to eliminate bypasses caused by insufficient hydraulic capacity in existing sewers by transporting infiltration and inflow to adequately sized sewers or to a wastewater treatment plant. A relief capacity sewer must be designed to provide future capacity for a minimum of 40 years.

h. Collection system or collector sewer. A collection system or collector sewer is a sanitary sewer, including innovative and alternative sewers carrying raw or partially treated wastewater and providing collection system reliability such as alternative power or dual pumps, that is not a major interceptor sewer, a relief sewer, or relief capacity sewer. For treatment works including subsurface disposal systems designed to treat an average daily flow in excess of 1,000 gallons, a collection system includes devices such as grinder pumps and septic tanks that will partly treat the wastewater, as well as septic tank effluent pumps and small diameter sewers that will pump and convey the partially treated waste.

i. Dechlorination facilities. Dechlorination facilities are facilities that remove chlorine from the effluent.

j. Ancillary addition. An ancillary addition to an existing tertiary or secondary treatment plant is an addition that is not a major addition and is not dechlorination facilities such as administrative support facilities and sludge

handling capability to comply with State Disposal System permit conditions controlling sludge application to land or sludge disposal.

k. Addition to previously funded project. An addition to a previously funded project is a project that will bring an existing disposal system that has been funded by a construction grant into compliance with the municipality's existing NPDES/SDS permit without a change in the conditions of the NPDES/SDS permit.

l. Modification and replacement of innovative or alternative projects. A modification or replacement of an innovative or alternative project is a project to modify or replace a project that was funded with increased grant funding in accordance with Code of Federal Regulations, title 40, section 35.2032, as amended through December 31, 1982.

3. Special restrictions for sewer system projects.

a. Sewer system rehabilitation. In order for a sewer system rehabilitation project ~~is not~~ to be eligible for priority points under section H.1.b. or H.1.f. ~~unless~~, the municipality ~~has~~ must not have obtained a construction grant for treatment plant construction since ~~at least~~ February 11, 1974, ~~the municipality's existing treatment plant is hydraulically overloaded,~~ and sewer system rehabilitation ~~is~~ must be justified by an infiltration/inflow analysis and sewer system evaluation survey that complies with the requirements of Code of Federal Regulations, title 40, section 35.2120, as amended through December 31, 1982.

b. Relief capacity sewer.

(1) A relief capacity sewer is not eligible for priority points under section H.1.b. or H.1.f. unless the municipality has not obtained a construction grant since at least February 11, 1974, and a relief capacity sewer is justified by an infiltration/inflow analysis and sewer system evaluation survey that complies with the requirements of Code of Federal Regulations, title 40, section 35.2120, as amended through December 31, 1982.

(2) A relief capacity sewer that qualifies as a major interceptor sewer is considered a major addition to a treatment plant and the municipality proposing the project shall be awarded the priority points under section H.1.b. or H.1.f. for the entire cost of the project.

(3) A relief capacity sewer that is not a major interceptor sewer must be divided into two components: (a) the portion of the sewer for domestic, commercial, and industrial wastewater and normal infiltration and inflow and generally accepted peaking factors; and (b) the portion of the sewer necessary to convey excess infiltration and inflow. Component (b) is considered a major addition to a treatment plant and awarded the priority points under section H.1.b. or H.1.f. and component (a) is considered a collector and awarded the priority points under section H.1.i.

(4) That percentage of total sewer flow at design condition that is attributable to component (b), multiplied by the cost of the relief capacity sewer, is fundable as a major addition. That percentage of total sewer flow at design condition that is attributable to component (a), multiplied by the cost of the relief capacity sewer, is fundable as a collector sewer.

c. Collection systems or collector sewers. A municipality proposing to undertake a sewer system rehabilitation project or to contstruct a relief capacity sewer that does not meet the criteria specified in a. and b. must be listed as a separate project on the municipal needs list and awarded the priority points credited to a collection system or collector sewer under section H.1.i. or H.1.j.

d. Combined sewer overflow. A project for the control of combined sewer overflow is not eligible for priority points under section H.1.k. unless the project is necessary to meet requirements of the municipality's NPDES permit and the act. In addition, after October 1, 1984, combined sewer overflow projects are eligible for funding and for priority points under section H.1.k. only if the governor, by July 1 prior to the

federal fiscal year in which funding is sought, has set aside a portion of the state's allotment for correction of combined sewer overflows. This set aside must not exceed 20 percent of the state's allotment for each fiscal year. In no event after October 1, 1984, may funding for combined sewer overflow projects exceed the amount set aside by the governor for these projects.

4. Temporary improvements. If a municipality makes improvements to its existing disposal system that are temporary in nature for the purpose of maximizing effluent quality or keeping its system operational while the municipality is awaiting a grant, the municipality shall receive the same priority points for its project as it would have received without the temporary improvements.

I. Extra points. In addition to the priority points a municipality is entitled to for its project, the following extra points shall also be awarded to a qualifying municipality:

1. Existing public health hazard. A municipality that proposes a project that will eliminate an existing public health hazard assessed by the Minnesota Department of Health in a health advisory or commissioner's order shall be awarded 40 extra points. A municipality requesting the award of 40 extra points under this provision shall submit the following information to the agency and to the Minnesota Department of Health:

a. information on geologic and soil conditions including soil types, permeabilities, and presence or absence of confining units;

b. groundwater flow patterns in the area of the facility or proposed facility;

c. an assessment of the extent and magnitude of the contaminant plume;

d. an identification of water users and assessment of the amount of water appropriations in the area of the facility or proposed facility;

e. flow rates and flow patterns of surface waters;

f. information on well construction for wells in the area of the facility or proposed facility, particularly wells that have been or will be impacted;

g. a description of the facility's construction, operation, and performance if there is an existing facility, with an explanation of why the facility is creating a public health hazard;

h. an identification and assessment of the suspected route of human exposure and the population exposed; and

i. a description of how the proposed improvements will mitigate or eliminate the public health hazard.

2. Existing level of treatment. A qualifying municipality shall be awarded extra points under one of the provisions below for its existing level of treatment.

a. No treatment. A municipality that presently has a central collection system serving 50 percent or more of the population but provides no treatment prior to discharge, or a municipality which collects an average daily flow exceeding one million gallons through a system without combined sewers and which has bypassed sewage more than 40 percent of the time over a period of at least two years while its plant is operating at full capacity, shall be awarded 40 extra points.

b. Failing septic system. A municipality with an existing septic system where more than 50 percent of the existing septic systems discharge raw or partially treated sewage to the ground surface or surface waters shall be awarded 30 extra points.

c. Primary treatment. A municipality whose present facilities are designed for only primary treatment shall be awarded 20 extra points.

d. Combined sewer overflow. A municipality that discharges untreated sewage as a result of combined sewer overflows shall be awarded 20 extra points.

3. Watershed pollution abatement plan. A municipality that proposes a project that is an integral part of a watershed pollution abatement plan shall be awarded 15 extra points. A

watershed pollution abatement plan is a plan prepared by a watershed district or watershed management organization and approved by the Minnesota Water Resources Board and includes the following:

a. specific point source and nonpoint source pollution abatement strategy; and

b. statewide water quality management plan goals and objectives, including the best management practices.

A municipality is not entitled to 15 extra points under this provision unless the watershed district or watershed management organization has adopted specific rules to implement the watershed abatement plan and the plan has been updated in the last ten years. If a project is part of several watershed districts or management organizations, all of the watershed districts or management organizations must have satisfied the above criteria in order for the municipality to receive the extra points.

4. Outstanding resource value waters. A municipality that discharges to or ~~adversely affects~~ has an adverse impact upon an outstanding resource value water shall be awarded ten extra points. An outstanding resource value water is Lake Superior, any water in the Boundary Waters Canoe Area Wilderness or Voyageurs National Park, and all federal and state designated wild, scenic, or recreational river segments.

5. Game fish lakes. A municipality proposing to undertake a project that will result in the elimination of a discharge to a game fish lake or ~~that will adversely affect~~ the elimination of a discharge that has an adverse impact on a game fish lake shall be awarded ten extra points. A game fish lake is a lake managed for propagation of game fish species and used for fisheries and recreation. There may be occasional but not regular winter kill in a game fish lake.

6. Sanitary district. An applicant who includes planned participation in a sanitary district or other multi-municipal disposal system as part of the project shall be awarded ten extra points.

7. Existing advances of allowance. Any municipality that received an advance of allowance prior to July 1, 1983, shall be awarded 20 extra points for the project covered by the advance of allowance.

J. Total points. The total points to be awarded a municipality for placement on the municipal needs list is the sum of the priority points awarded under one of the provisions of section F., the priority points awarded under section G., the priority points awarded under one of the provisions of section H., and extra points awarded under one or more of the provisions of section I.

K. Resolution of equal point ratings. If in the determination of the order of priority on the municipal needs list, two or more municipalities have the same total number of points, the municipality with the highest priority points under section F. for water use is ranked higher. If two or more municipalities have the same total number of points and the same priority points under section F. for water use, the municipalities are ranked based on population under section G.

L. Municipal project list.

1. The agency shall adopt a municipal project list each fiscal year which shall list in order of priority projects for which federal grant funds will be requested from current allotments. The municipal project list shall also list any nonproject uses of the state's allotment of federal construction grant funds, including but not limited to, training grants and costs of administration.

2. A municipality that requests project placement on the municipal project list shall submit to the agency by July 1 prior to the beginning of the fiscal year for which the municipal project list is prepared, an approvable facilities plan if the grant sought is a Step 2+3 grant and approvable plans and specifications if the grant sought is a Step 3 grant. No municipality may be listed on the municipal project list unless the municipality has submitted the necessary facilities plan or plans and specifications.

3. The agency shall prepare a proposed municipal project list of municipalities on the municipal needs list that have submitted approvable facilities plan or plans and specifications in conventional order of priority until the cost of the proposed projects reaches the full allotment of federal construction grant funds available for the fiscal year. In preparing the list, the agency shall consider the percentage of the cost of the projects that will be paid for by a federal construction grant, as determined by requirements of the act and decisions of the governor under the act to uniformly reduce the federal share of grant assistance.

M. Reserve project list.

1. A reserve project list shall be developed by the agency concurrent with the adoption of the municipal project list.

2. The reserve project list shall contain a list of municipalities whose projects are eligible for funding from grants made available when a municipality's application for a grant is rejected pursuant to 6 MCAR S 4.8034 R.

3. Municipalities shall be listed on the reserve project list in the same order of priority as municipalities were listed on the municipal project list.

N. Project eligibility.

1. Steps eligible. Federal grants shall be awarded only for Step 2+3 and Step 3 projects.

2. Initiation of construction. A municipality is not eligible for a federal grant if construction on the project has been initiated prior to the award of the grant.

3. Cost-effectiveness. A project is not eligible for a grant unless the agency determines that the project is a an environmentally acceptable cost-effective means of handling the municipality's wastewater. The agency shall not award a grant to pay for those portions of a project that are not environmentally acceptable and cost-effective.

O. Adjustments in the municipal project list. Notwithstanding any other provision in this rule, the director

may ~~establish criteria for determining priority for applications for federal and state construction grants upon a basis other than that provided in this rule if the criteria complies with the act, EPA regulations and guidelines, and Minnesota Statutes, chapters 115 and 116~~, as necessary to establish criteria for determining priority for applications for federal and state construction grants under the act, under regulations and guidelines of the Environmental Protection Agency promulgated under the act, and under Minnesota Statutes, chapters 115 and 116, establish such criteria for determining priority upon a basis other than that provided herein, to the extent required to comply with the act, and with guidelines and regulations under or resulting from the act.

P. Public participation.

1. The agency shall prepare a proposed municipal needs list and a proposed municipal project list and make them available to the public at least 45 days before adoption. The agency shall mail a free copy of the proposed lists to an interested person upon request.

2. The agency shall conduct public informational meetings about the proposed lists at locations deemed appropriate by the agency. The agency shall give ten days notice of meetings to all affected municipalities. A person shall be permitted to present oral and written comments about the proposed lists at the meetings.

3. The agency shall give affected municipalities at least 45 days notice of the agency board meeting at which the proposed municipal needs list and proposed municipal project list will be acted upon.

4. Interested persons may present oral ~~or written~~ statements to the board at the board meeting ~~if a request to do so is submitted to the agency at least three days before the meeting~~. The ~~agency~~ chairperson may place reasonable restrictions upon the time and manner in which oral comments are submitted. ~~If a request to present oral or written statements is made at the board meeting, the agency may allow participation~~

~~in-a-manner-established-by-the-chairperson~~ Written statements may be served on the director any time up to five days before the meeting.

Q. Grant applications.

1. No municipality may be eligible for a construction grant unless a completed grant application has been submitted to the agency.

2. A municipality on the final municipal project list shall submit a completed construction grant application to the agency within 90 days after the date on which the agency adopts that fiscal year's municipal project list. The application shall be on EPA's form 5700-32, as provided by the agency.

3. The agency shall notify in writing each municipality on the municipal project list and each municipality on the reserve project list of its placement on the appropriate list. No municipality shall submit a construction grant application unless the municipality has been notified by the agency that it is on the municipal project list.

4. A muncipality that applies for a Step 2+3 grant shall, in addition to submitting the completed application form, submit the following information for agency review and approval:

a. A resolution of the governing body of the municipality that authorizes the filing of the application and that designates the municipal official authorized to sign the application and grant documents;

b. Updated cost estimates for Step 3 project work in a format provided by the agency;

c. A resolution by the governing body of the municipality resolving that the sewage collection system will, at the appropriate time, be constructed concurrently with the sewage treatment works if the collection system is not part of the project to be funded and the municipality does not already have a collection system;

d. The municipality's proposal for funding the cost of a collection system if the collection system is not part of the project to be funded and the municipality does not already have

a collection system;

e. An engineer's certificate of adequate errors and omissions insurance;

f. Amendments to the facilities plan;

g. A treatment agreement for each major contributing industry to be used in determining the design basis of the new or upgraded system;

h. A certification from the municipality that the municipality shall:

(1) prohibit unpolluted water connections to the municipality's sanitary sewer system in the future; and

(2) inspect new connections to the sanitary sewer system throughout the municipality's jurisdiction to ensure that the connections ~~are air tight and water tight and~~ conform to the Minnesota Plumbing Code, found in the rules of the department of health, MHD 120-134~~,~~ and ~~to~~ 7 MCAR S 1.135;

i. If more than one municipality is involved in the grant application, the resolutions required in a.-h. must be submitted for each municipality involved in the project. In addition, the municipalities shall submit an unexecuted intermunicipal agreement that sets forth the terms and conditions of joint treatment and the cost-sharing methodology.

~~i.~~ j. An opinion from the municipality's attorney that the muncipality has the legal authority to construct, assess, operate, maintain, and replace the wastewater treatment facilities;

~~j.~~ k. Other documents that are required by EPA regulation or other requirements of the act.

5. A municipality that applies for a Step 3 grant shall, in addition to submitting the completed application form, submit the following information for agency review and approval:

a. Addendums to the plans and specifications for the treatment works or other project to be funded.

b. A sewer service charge system comprised of a user charge system, including a proposed financial management system, and a system for raising funds to cover the municipality's costs

of construction and to retire the municipality's debt costs attributable to the wastewater treatment works to be constructed.

(1) The user charge system must ensure the sufficient generation of revenue to offset the annual costs of operation, maintenance, and replacement (O, M, and R) of the treatment works and must charge each user class a fee proportional to the contribution of each user class to the total wastewater loading.

(2) The user class includes residential, commercial, industrial, institutional, and governmental classes.

(3) The system for raising funds to cover the municipality's costs of construction and to retire the municipality's debt costs need not be proportionally assessed against each user class, but the manner in which the charge will be distributed must be described.

c. Documentation of how the public has been informed of the proposed sewer service charge system.

d. A sewer use ordinance to control discharges to the disposal system throughout the jurisdiction of the municipality.

e. A preliminary plan of operation of the treatment works.

f. Costs for developing an operation and maintenance manual and a procedure for startup of the treatment works.

g. A wage rate determination information sheet, as provided by the agency.

h. A signature and registration number of the consulting engineer accompanying the following certification statement:

> The treatment works described in this grant application have been designed with full knowledge of the effluent limitations required by the Minnesota Pollution Control Agency as set forth in NPDES Permit No. ..... dated ..... . It is my judgement and carefully considered opinion that these treatment works are capable of consistently producing the required effluent quality, provided that the facility is operated in conformance with

the approved operation and maintenance manual and that the volume and characteristics of raw wastewater are within the limits of "Design Data" stated on page ... of the plans as follows:

i. A proposed engineering contract that provides for the consulting engineer or the engineer's agent to be present onsite during the hours of construction for purposes of inspection, although the inspector does not have to be a resident of the municipality, and to submit written reports to the agency on request describing the type of construction inspected and the time involved in inspection after construction commences.

j. An engineer's certificate of adequate errors and omissions insurance.

k. A treatment agreement with each major contributing industry to be used in determining the design basis of the new or upgraded system.

l. A cost breakdown for all project work to be funded by the grant, including separation of eligible and ineligible items, in a format provided by the agency.

m. Documentation of the municipality's source of funding to cover the cost of a collection system if the collection system is not part of the project to be funded and the municipality does not already have a collection system.

n. If more than one municipality is involved in the grant application, an executed intermunicipal agreement that sets forth the terms and conditions of joint treatment and the cost sharing methodology.

o. Assurance that the municipality has, or will have within 90 days after authorization to bid, full rights to all necessary land to allow construction and operation of the facilities during the useful life of the facilities.

p. Other documents that are required by EPA regulation or other requirements of the act.

6. A municipality that has received a Step 2+3 grant shall submit the same information required of a Step 3 grant

applicant before the municipality may receive authorization to seek bids for construction of the project.

7. Construction grant application forms and attachments must be submitted in triplicate to the agency.

R. Rejection of grant applications.

1. Grounds. A municipality's grant application for a project on the municipal project list may be rejected by the agency for the following reasons:

a. failure to submit the necessary documentation required by this rule within the time allowed, unless the municipality was delayed for reasons beyond its control;

b. failure to develop the necessary user charge system and other fundraising systems or to develop the necessary ordinances or to enter into the necessary contracts and agreements or to do any of the other acts specified in the grant applications requirements to establish that the municipality has the capability to construct, operate, and maintain the disposal system in a manner that will comply with all applicable water pollution control requirements; or

c. a determination by the agency that the municipality cannot implement the project in a timely fashion to avoid the loss of federal grant funds to the state for that fiscal year.

2. Effect of rejection. Whenever a grant application is rejected, the agency shall remove the municipality from the municipal project list.

S. Approval of grant applications. The agency shall approve grant applications that are not rejected for one or more of the reasons specified in section R.

The director shall certify to the EPA each approved grant application.

T. Tender of grant. The state may not tender a grant until the EPA has determined the eligibility of the municipality for which a grant application has been certified to EPA.

After the EPA has determined the eligibility of the application and tendered a federal grant, the agency shall make a similar grant offer to the municipality in an amount not less

than that required by federal law and regulation as a condition for the grant of federal funds or in an amount not less than that allowed by state statutes where not required by federal law.

U. ~~Construction-without-grants~~ Preparation of plans without a grant.

1. A municipality ~~that-elects-to-develop~~ developing a facilities plan for a project ~~without-a-federal-or-state-grant~~ shall:

a. notify the agency in writing of its proposed project scope prior to initiation of work on the facilities plan; and

b. obtain written approval from the agency prior to proceeding to the development of plans and specifications that the project conforms with applicable technical, administrative, and public participation requirements.

2. A municipality ~~that-elects-to-develop~~ developing plans and specifications for a project without a federal or state grant shall notify the agency in writing of its intention to develop plans and specifications for its project. The agency shall review the scope of the proposed project and changes from the previously approved facilities plan and advise the municipality whether the project complies with applicable technical, administrative, and public participation requirements.

V. Advances of allowance.

1. The agency shall reserve a reasonable portion of its annual allotment for advances to municipalities for Step 2 work. The amount reserved shall not exceed ten percent of the state allotment for a fiscal year.

2. A municipality on the municipal needs list with a population in the service area of less than 3,500 people is eligible to apply for an advance of allowance. The application shall be submitted by July 1 prior to the beginning of the federal fiscal year for which the municipal project list will be prepared.

3. A municipality applying for an advance of allowance shall submit the following information to the agency:

a. council resolution requesting the advance;

b. certification that funds are not available from other sources;

c. estimate of construction costs of the project with supporting documentation;

d. per capita income;

e. municipal bonded debt;

f. adjusted assessed value of the municipality; and

g. council resolution certifying that the municipality cannot afford to do the work with its own resources.

4. The amount to be allowed as an advance of allowance shall be that amount determined by EPA.

5. A municipality is entitled to an advance of allowance on one occasion only.

6. A municipality that receives an advance of allowance shall have its Step 3 construction grant reduced by an amount equal to the advance of allowance.

7. A municipality that receives an advance of allowance but does not subsequently receive a Step 3 grant for the project shall reimburse the state the amount of the advance unless the project is constructed with other funds.

8. If more municipalities apply for an advance of allowance than can be awarded from the amount reserved for that purpose, the money available must be awarded to the qualifying municipalities in order of their placement on the municipal needs list.

W. Grant amendments.

1. The agency shall reserve a reasonable amount of its allotment to pay for grant increases that become necessary during the fiscal year.

2. The agency may approve a grant increase when a municipality has solicited contracts that exceed the cost estimated in the application. The agency shall approve the grant amendment if funds are available and the ~~cost overruns~~ costs are eligible and reasonable. After the grant has been amended to reflect the as-bid costs, only cost overruns caused

by unanticipated site conditions shall be eligible for funding through grant amendments, and the grant amendment shall be limited to two percent of the as-bid costs.

3. A municipality that seeks a grant amendment shall submit the following information to the agency:

a. a written request for the amendment signed by an official of the municipality;

b. a complete cost breakdown and scope of work;

c. a cost breakdown of engineering fees on EPA form 5700-41, as provided by the agency;

d. an unexecuted amended engineering contract indicating changes in the cost, the scope of work, and the budget period that must be made in the contract; and

e. a budget period extension request signed by an official of the municipality if the budget period must be extended.

~~X. The director shall give a prior approval for a proposed change in the contract if the change:~~

~~1. results in a cost increase greater than the base contract plus contingencies as stated in the project summary; or~~

~~2. substantially alters the type, efficiency, versatility, or reliability of the treatment process.~~

~~Prior approval of a proposed change is not required if the director agrees the change is of an emergency nature.~~

~~Change orders that do not require prior approval shall be submitted within one month after the date on which the change is ordered by the applicant, its engineer, or other authorized agent for review and approval.~~ Change orders. Any proposed changes in the contract which result in cost increases greater than that of the base contract plus contingencies as stated in the project summary or other proposed changes regardless of cost which substantially alter the type of treatment process, or its efficiency, versatility, or reliability, must be submitted to the director for prior approval, except where the work is agreed by the director to be of an emergency nature. Change orders not requiring prior approval of the director must be submitted

within one month after the date on which the change is ordered by the applicant, its engineer, or other authorized agent for review and approval.

Y. Payment of state grant funds.

1. Step 2 ~~grants~~ advance of allowance and the Step 2 portion of Step 2+3 grants.

a. The agency shall pay 50 percent of a Step 2 advance of allowance and the Step 2 portion of a Step 2+3 state grant when adequate plans and specifications have been received by the director. The balance of the Step 2 portion must be paid when the agency and the EPA approve of the plans and specifications and after final payment of the Step 2 portion has been paid by the EPA.

b. The agency shall pay for eligible land costs during the Step 2 portion of a Step 2+3 grant when the municipality submits proof of purchase of the land. The agency shall pay for only that portion of the land costs that are necessary to the operation of the treatment works and are eligible for payment.

2. Step 3 grants and the Step 3 portion of Step 2+3 grants.

a. A municipality may request periodic payments of a Step 3 state grant up to 50 percent of the total grant. The request for payment shall be submitted to the agency in writing. With each payment request the municipality shall submit a summary of all architectural and engineering costs expended to date in the format required in submitting the original grant application.

b. The agency shall make a final grant payment for the remaining 50 percent of the grant after the agency has completed a final inspection of the treatment works and the municipality has:

(1) submitted to the agency a request for the payment;

(2) hired a wastewater treatment works operator having a valid state certificate;

(3) adopted a sewer use ordinance that will control

wastewater discharges to the municipality's wastewater treatment system;

(4) adopted a user charge system that will generate revenue to offset the annual costs of operation, maintenance, and equipment replacement;

(5) submitted a certification by the contractor that the project was built according to the plans and specifications;

(6) submitted a copy of the as-built specifications;

(7) certified that the municipality is complying with the operation and maintenance manual for the treatment works that was approved by the agency;

(8) complied with the municipality's NPDES/SDS permit for the treatment works;

(9) put the treatment plant into operation and is operating the treatment plant efficiently;

(10) received final payment of the federal grant;

(11) submitted a revised operation and maintenance manual; and

(12) submitted a start-up report.

Z. Retained payments. The agency may withhold Step 3 grant payments and may request the EPA to withhold grant payments if the director determines that a project does not substantially conform to approved plans and specifications, or there has been a major breach of a condition in the grant agreement, or the municipality has failed to comply with the applicable requirements in 6 MCAR S 4.8034 Y. If funds are withheld pursuant to this rule, and the condition causing the withholding has been corrected, then all retained funds shall be released to the municipality, unless otherwise agreed to by the director and the municipality.

AA. Recovery of funds. In addition to any other remedies, the agency may seek to recover funds tendered or disbursed for a project that is improperly designed, improperly constructed, or improperly operated and maintained.

BB. State grants.

1. The agency may tender a grant of state funds to a

municipality that would otherwise qualify for a federal grant but desires to initiate construction of a project without a federal grant if enough funds are in the pollution control fund to cover state matching grants for those projects on the municipal projects list for which federal grants are available.

2. The agency may tender a grant of state funds to a municipality for what would otherwise be the local share of the cost if:

a. the municipality has applied for a state grant to cover the local share by July 1 of the fiscal year for which the grant is requested;

b. the municipality is unable to finance the local share and attain a minimal point rating of 40 under the criteria of 6 MCAR S 4.8034 EE.3.;

c. application is made prior to the initiation of construction; and

d. the public health of the state and the prevention, control, and abatement of water pollution require the construction of the project.

CC. Contract assignment. A municipality that enters into a contract with a contractor or engineer for the planning, design, or construction of a part of or an entire disposal system, to be paid for in whole or in part by state construction grant funds, may assign its rights under the contract to the agency.

DD. Contract beneficiary. A municipality that enters into a contract with a contractor or engineer for the planning, designing, or construction of a part of or an entire disposal system, to be paid for in whole or in part by state construction grant funds, shall provide in the contract that the agency is a third-party beneficiary to the contract.

EE. Construction loan program.

1. Application.

a. The application form shall be of the type set forth below:

MINNESOTA POLLUTION CONTROL AGENCY

Division of Water Quality

Application for Disposal System Planning and/or Construction Loan

To be filled in by the State

Date Received_____

Project Number_____

Loan Request_____

Legal Name of Applicant

_____

Address, Zip Code

_____

Hereby Makes Application to the Pollution Control Agency of the State of Minnesota for a Loan of Funds for the Planning and/or Construction of:

_____

Financial Aspects:

Estimated Project Cost	$_____
State Loan Funds	_____
Local Funds	_____
Other Funds	_____

Project Schedule:

Project Starting Date	_____
Time to Complete Project	_____

Name and Title of Official Signature of Official Date

_____

b. The planning loan application form shall be supported by the following attachments:

(1) resolution of the governing body authorizing the filing of the application and designating the municipal official authorized to sign the application;

(2) resolution of the governing body of the municipality obligating the municipality to repay the loan to the state treasurer in annual installments including both principal and interest, each in an amount sufficient to pay the

amount due within five years from user charges, taxes, special assessments, or other funds available to it;

(3) resolution of the governing body of the municipality obligating the municipality to establish rates and charges or the execution of contracts sufficient to produce the revenues pledged if required by the agency;

(4) proposed method of loan repayment; and

(5) proposed contracts for engineering, legal, planning, and other consulting services.

c. The construction loan application form shall be supported by:

(1) The attachments of b. (1), (3), and (4) and the items of 6 MCAR S 4.8034 Q.5. The director for just cause may waive or defer the submission of any items required pursuant to 6 MCAR S 4.8034 Q.5. if the items are EPA requirements.

(2) Resolution of the governing body of the municipality obligating the municipality to repay the loan to the state treasurer in annual installments including both principal and interest, each in an amount sufficient to pay the principal amount within 20 years or a shorter time interval if the amount of the annual payment will not justify the administrative expenses of processing the payment, from user charges, taxes, special assessments, or other funds available to it.

d. The loan application form and attachments shall be submitted in duplicate to the agency at the address specified by the director. Substantial deficiencies in the application and supporting documents or failure to conform with applicable requirements as those set forth in the current agency water pollution control program plan or the applicable basin, regional, or area water quality management plan shall be grounds for rejection. A construction loan application shall be rejected at the discretion of the agency if it does not include an engineering report acceptable to the director, include an adequate commitment for support of operation and maintenance of the project, conform to the intent of the applicable statutes,

contribute to the overall objectives of effective water quality management, or is not considered to be in the best interests of the state.

e. Applications must be restricted to projects or portions of projects for which service contracts or construction contracts can be awarded by June 1, except in cases of advance approval by the director, of the state fiscal year in which the loan is applied for.

2. Administration.

a. The allocation of state funds shall be established in accordance with 6 MCAR S 4.8034 F., G., H., and I. and priority rating points assignable to loan applications shall be established in accordance with section EE.3. Funds allocable to loans shall be determined each fiscal year by the agency on the basis of total availability and demand for grants.

b. Planning applications which receive a priority rating sufficiently high in relation to available funds shall be tendered a state planning loan. Within 60 days after the acceptance of the offer and award of contracts, for engineering, legal, and other consulting services the state payment shall be made.

c. Construction loan applications which receive a priority rating sufficiently high in relation to available funds shall be tendered a state construction loan. Within 30 days after acceptance of the offer and award of the construction contract for the project, the state payment shall be made.

d. Principal and interest, each in an amount sufficient to pay the principal amount within the loan period, shall be paid in equal annual installments to the state treasurer. Interest shall be calculated on the declining balance at the average annual interest rate on state bonds of issue from the proceeds of which the loan was made.

e. Priority ratings shall be established each fiscal year for loan applications filed on or before the beginning of the state fiscal year. Applications postmarked or hand delivered after that day shall be rejected.

3. Criteria for determining loan priority.

a. The determination of the order of priority for planning loan applications shall comply with:

(1) the criteria set forth in 6 MCAR S 4.8034 F., G., H., and I.

(2) Rating points shall be awarded to a municipality by summing up the applicable rating points for the project from tables 1, 2, and 3 relative to per capita project cost, the ratio of municipal bonded debt to adjusted assessed values of municipalities, and per capita buying income.

TABLE 1

Per Capita Cost of Project

Per Capita Cost ($)	Point Rating
0-280	1
281-400	3
401-600	5
601-800	7
801-1000	9
1001-1300	11
1301-1600	13
over 1600	15

TABLE 2

Ratio of Municipal Bonded Debt to Adjusted Assessed Values of Municipalities

Ratio x 100	Point Rating
0-3	3
4-9	5
10-15	7
16-21	9
22-27	11
28-33	13
over 33	15

TABLE 3

Per Capita Buying Income

Percent of Average	Point Rating
0-50	15

51-60	13
61-70	11
71-80	9
81-90	7
91-100	5
101-110	3
over 110	1

b. Construction loans. The determination of the order of priority for construction loan applications shall comply with 6 MCAR S 4.8034 F., G., H., and I.

FF. Procedural rules and appeals. A request for a hearing, an appeal, or other procedural matter not specifically provided for in this rule is governed by the agency rules of procedure, the rules of the Office of Administrative Hearings, and other applicable laws.

GG. Variances. A person may apply for a variance from any requirement of these rules. The variance shall be applied for and acted upon by the agency in accordance with Minnesota Statutes, section 116.07, subdivision 5, and other applicable statutes and rules.

APPROVED AS TO LEGALITY

September 2019 83

HUBERT H. HUMPHREY, III
ATTORNEY GENERAL

BY Ted A. Mathews
SPECIAL ASSISTANT ATTORNEY GENERAL

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
SEP 2 2 1983
Joan Anderson Growe
Secretary of State
9:04AM

STATE OF MINNESOTA

COUNTY OF RAMSEY

MINNESOTA POLLUTION

CONTROL AGENCY

In the Matter of the Proposed
Revision to 6 MCAR § 4.8034, Relating
to the Administration of Federal Grant
Funds and State Grant and Loan Funds
for Municipal Sewage Treatment Projects

ORDER ADOPTING
RULES

The above-entitled matter came on for hearing before Hearing Examiner Phyllis A. Reha on June 13, 1983, after proper notice was served upon all persons, associations, and other interested groups registered with the Minnesota Pollution Control Agency for that purpose. After affording all interested persons an opportunity to present written and oral data, statements and argument, after considering the Statement of Need and Reasonableness and the Report of the Hearing Examiner and the Report of the Chief Hearing Examiner, after considering all of the evidence adduced upon the records, files, and proceedings herein, and the Agency being fully advised in the premises,

NOW, THEREFORE, IT IS ORDERED that the proposed amendments to 6 MCAR § 4.8034 published at 7 State Register 1596-1621 are hereby adopted with the following changes:

1. Delete the word "wastewater" from Section B.1. and add the following definition as B.24 and renumber B.24 as B.26.

> 24. "Wastewater" means sewage, industrial waste, and other wastes collected for treatment in a disposal system.

2. Amend the definition of "major contributing industry" in Section B.22 to read as follows:

> 22. A "major contributing industry" means an industrial user of a treatment facility that:

a. has a rated flow of 50,000 gallons or more per work day ~~on the average~~ where the rated flow is the daily design flow multiplied by 24 and divided by the actual hours of discharge in a day.

b. has a rated flow greater than five percent of the total design flow to the treatment works.

c. has a total organic load of greater than five percent of the total organic load to the treatment works;

d. has in its waste before pretreatment a toxic pollutant in ~~toxic~~ amounts ~~as defined in standards issued by the U.S. Environmental Protection Agency under section 307(a) of the act;~~ in excess of what may be discharged to waters of the state; or

e. is found by the agency in connection with the issuance of an NPDES/SDS permit to the municipality, either singly or in combination with other contributing industries, to interfere with the treatment plant's ability to meet effluent limitations, interfere with digester operation or biological unit process operation, impact the area required for sludge disposal, or increase sizing of the facility by five percent or more.

3. Add the following defintion of "adverse impact" to the rule as Section B.25.

25. "Adverse impact" means the violation of any water quality standard or an objectionable growth of weeds, algae, or rough fish or any deleterious effect on the physical, chemical, or biological condition of the receiving water that lessens the present or long-term uses of the receiving water.

4. Amend Section D.4. to read as follows:

4. The agency develops and maintains a municipal needs list that ranks in order of priority all municipalities, within the construction grants program, for which a need exists.

5. Amend Section E.1. to read as follows:

1. The ~~director~~ agency shall develop and maintain a municipal needs list of municipalities that have a need for a new or upgraded disposal system.

6. Amend Section E.4. to read as follows:

4. The ~~director~~ agency shall review each petition and add to the municipal needs list each municipality for which a need has been found to exist. If the ~~director~~ agency determines that a need does not exist, the municipality shall not be added to the list and the ~~director~~ agency shall notifiy the municipality of the reasons for the determination.

7. Amend Section H.2.a. to read as follows:

a. New Plant. A new tertiary treatment plant is a plant designed to meet tertiary treatment standards for which construction was commenced ~~and constructed~~ after July 1, 1983. A new secondary treatment plant is a plant designed to meet secondary treatment standards for which construction was commenced ~~and constructed~~ after July 1, 1983.

8. Amend Section H.2.d. to read as follows:

d. Sewer system rehabilitation. A sewer system rehabilitation project is a project that repairs or replaces an existing collector or interceptor sewer in order to eliminate bypasses caused by insufficient hydraulic capacity in existing separate sanitary sewers by transporting infiltration and inflow to a wastewater treatment facility or to reduce the hydraulic capacity of the wastewater treatment plant and includes flow equalization systems, relief sewers, and relief capacity sewers.

9. Amend Section H.3.a. to read as follows:

a. ~~S~~ewer System Rehabilitation. In order for a ~~A~~ sewer system rehabilitation project ~~shall not~~ to be eligible for priority points under Section H.1.b. or H.1.f., ~~unless~~ the municipality ~~has~~ must not have obtained a construction grant for treatment plant construction since ~~at least~~ February 11, 1974, ~~the municipality's existing treatment plant is hydraulically overloaded,~~ and sewer system rehabilitation ~~is~~ must be justified by an Infiltration/Inflow Analysis and Sewer System Evaluation Survey that complies with the requirement of Code of Federal Regulations, title 40, section 35.2120, as amended through December 31, 1982.

10. Amend Section I.2.a. to read as follows:

a. No treatment. A municipality that presently has a central collection system serving 50 percent or more of the population but provides no treatment prior to discharge, or a municipality which collects an average daily flow exceeding one million gallons through a system without combined sewers and which has bypassed sewage more than 40% of the time over a period of at least two years while its plant is operating at full capacity, shall be awarded 40 extra points.

11. Amend Section I.3. to read as follows:

3. Watershed pollution abatement plan. A municipality that proposes a project that is an integral part of a watershed pollution abatement plan shall be awarded 15 extra points. A watershed pollution abatement plan is a plan prepared by a watershed district or watershed management organization and approved by the Minnesota Water Resources Board and includes the following:

a. specific point source and nonpoint source pollution abatement strategy; and

b. statewide water quality management plan goals and objectives, including the best management practices.

A municipality is not entitled to 15 extra points under this provision unless the watershed district or watershed management organization has adopted specific rules to implement the watershed abatement plan and the plan has been updated in the last ten years. If a project is part of several watershed districts or management organizations, all of the watershed districts or management organizations must have satisfied the above criteria in order for the municipality to receive the extra points.

12. Amend Section I.4 to read as follows:

4. Outstanding Resource Value Waters. A municipality that discharges to or has an adverse impact upon ~~adversely affects~~ an outstanding resource value water shall be awarded ten extra points. An outstanding resource value water is Lake Superior, any water in the Boundary Waters Canoe Area Wilderness or Voyageurs National Park, and all federal and state designated wild, scenic, or recreational river segments.

13. Amend Section I.5. to read as follows:

> 5. Game Fish Lakes. A municipality proposing to undertake a project that will result in the elimination of a discharge to a game fish lake or the elimination of a discharge that has an adverse impact on ~~that will adversely affect~~ a game fish lake shall be awarded ten extra points. A game fish lake is a lake managed for propogation of game fish species and used for fisheries and recreation. There may be occasional but not regular winter kill in a game fish lake.

14. Amend Section I. to add a new subsection I.7. to read as follows:

> 7. Existing advances of allowance. Any municipality that received an advance of allowance prior to July 1, 1983, shall be awarded 20 extra points for the project covered by the advance of allowance.

15. In the last sentence of Section L.2. the words "necessary facilities plan and specifications" should read "necessary facilities plan or plans and specifications."

16. In the first sentence of Section L.3., the words "approvable facilities plans and specifications" should be amended to read "approvable facilities plan or plans and specifications."

17. Amend Section N.3. to read as follows:

> 3. Cost-effectiveness. A project is not eligible for a grant unless the agency determines that the project is an environmentally acceptable cost-effective means of handling the municipality's wastewater. The agency shall not award a grant to pay for those portions of a projet that are not environmentally acceptable and cost-effective.

18. Amend Section O to read as follows:

O. Adjustments in the municipal project list. Notwithstanding any other provision in this rule, the director may, as necessary to establish criteria for determining priority for applications for federal and state construction grants under the Act, and regulations and guidelines of the EPA promulgated pursuant thereto, and Minn. Stat. chs. 115 and 116, establish such criteria for determining priority upon a basis other than that provided herein, to the extent required to comply with the Act, and guidelines and regulations thereto or resulting therefrom.

19. Amend Section P.4. to read as follows:

4. Interested persons may present oral ~~or written~~ statements to the board at the board meeting. ~~if a request to do so is submitted to the agency at least three days before the meeting.~~ The ~~agency~~ chairperson may place reasonable restrictions upon the time and manner in which oral comments are submitted. ~~If a request to present oral or written statements is made at the board meeting, the agency may allow participation in a manner established by the chairperson.~~ Written statements may be served on the director any time up to five days before the meeting.

20. Amend Section Q.3. to read as follows:

3. The agency shall notify in writing each municipality on the municipal project list and each municipality on the reserve project list of its placement on the appropriate list. No municipality shall submit a construction grant application unless the municipality has been notified by the agency that it is on the municipal project list.

21. Amend Section Q.4.c. to read as follows:

c. A resolution by the governing body of the municipality resolving that the sewage collection system will, at the appropriate time, be constructed concurrently with the sewage treatment works if the collection system is not part of the project to be funded and the municipality does not already have a collection system;

22. Amend Section Q.4.h. to read as follows:

h. A certification from the municipality that the municipality shall:

(1) prohibit unpolluted water connections to the municipality's sanitary sewer system in the future; and

(2) inspect new connections to the sanitary sewer system throughout the municipality's jurisdiction to ensure that the connections ~~are air tight and water tight and~~ conform to the Minnesota Plumbing Code, found in the rules of the department of health, MHD 120-134, and ~~to~~ 7 MCAR § 1.135.

23. Amend Section Q.5.b. to read as follows:

b. A sewer service charge system comprised of a user charge system, including a proposed financial management system, and a system for raising funds to cover the municipality's costs of construction and to retire the municipality's debt costs attributable to the wastewater treatment works to be constructed.

24. Amend Section U. to read as follows:

U. ~~Construction without grants.~~ Preparation of plans without a grant.

1. Any municipality ~~that elects to~~ developing a facilities plan for a project ~~without a federal or state grant~~ shall do the following:

a. Notify the Agency in writing of its proposed project scope prior to initiation of work on the facilities plan.

b. Obtain written approval from the Agency prior to proceeding to the development of plans and specifications that the project conforms with applicable technical, administrative, and public participation requirements.

2. Any municipality ~~that elects to~~ developing plans and specifications for a project without a federal or state grant shall notify the Agency in writing of its intention to develop plans and specifications for its project. The Agency shall review the scope of the proposed project and changes from the previously approved facilities plan and advise the municipality whether the project complies with applicable technical, administrative, and public participation requirements.

25. Amend Section V.7. to read as follows:

7. A municipality that receives an advance of allowance but does not subsequently receive a Step 3 grant for the project shall reimburse the state the amount of the advance~~.~~, unless the project is constructed with other funds."

26. Amend Section W.2. to read as follows:

2. The agency may approve a grant increase when a municipality has solicited contracts that exceed the cost estimated in the application. The agency shall approve the grant amendment if funds are available and the costs ~~overruns~~ are eligible and reasonable. After the grant has been amended to reflect the as-bid costs, only cost overruns caused by unanticipated site conditions shall be eligible for funding through grant amendments, and the grant amendment shall be limited to 2% of the as-bid costs.

27. Amend Section X. to read as follows:

X. Change orders. Any proposed changes in the contract which result in cost increases greater than that of the base contract plus contingencies as stated in the project summary or other proposed changes regardless of cost which substantially alter the type of treatment process, or its efficiency, versatility or reliability, shall be submitted to the director for prior approval, except where the work is agreed by the director to be of an emergency nature. Change orders not requiring prior approval of the director shall be submitted within one month after the date on which the change is ordered by the applicant, its engineer or other authorized agent for review and approval.

28. Amend Section Y.1. to read as follows:

Y. Payment of state grant funds.

1. Step 2 ~~grants~~ advance of allowance and the Step 2 portion of Step 2+3 grants.

a. The agency shall pay 50 percent of a Step 2 advance of allowance and the Step 2 portion of a Step 2+3 state grant when adequate plans and specifications have been received by the director. The balance of the Step 2 portion must be paid when the agency and the EPA approve of the plans and specifications and after final payment of the Step 2 portion has been paid by the EPA.

Dated this 23rd day of August, 1983

MINNESOTA POLLUTION CONTROL AGENCY

Cynthia C Jepsen

CYNTHIA JEPSEN
Chairwoman

Sandra Gardebring

SANDRA S. GARDEBRING
Executive Director

STATE OF MINNESOTA

COUNTY OF RAMSEY

MINNESOTA POLLUTION

CONTROL AGENCY

In the Matter of the Proposed
Revision to 6 MCAR § 4.8034, Relating
to the Administration of Federal Grant
Funds and State Grant and Loan Funds
for Municipal Sewage Treatment Projects

CORRECTED ORDER
FOR HEARING

IT IS HEREBY ORDERED that a public hearing on the above-captioned rule be held at 9:30 a.m. on June 13, 1983, in the Board Room of the Minnesota Pollution Control Agency at 1935 W. County Road B-2, Roseville, Minnesota, and continue on subsequent days, if necessary, at times and places determined during the hearing.

IT IS FURTHER ORDERED that a Notice of Hearing be mailed to all persons or representatives of associations or other interested groups who have registered their names with the Agency for that purpose.

IT IS FURTHER ORDERED that the Notice of Hearing be published in the State Register.

for Jay M. Heffern

SANDRA S. GARDEBRING
Executive Director

Dated: May 20, 1983

EXHIBIT 1

STATE OF MINNESOTA

COUNTY OF RAMSEY

MINNESOTA POLLUTION CONTROL AGENCY

In the Matter of the Proposed Revision to 6 MCAR § 4.8034, Relating to the Administration of Federal Grant Funds and State Grant and Loan Funds for Municipal Sewage Treatment Projects

ORDER FOR HEARING

IT IS HEREBY ORDERED that a public hearing on the above-captioned rule be held at 9:30 a.m. in the Board Room of the Minnesota Pollution Control Agency at 1935 W. County Road B-2, Roseville, Minnesota, and continue on subsequent days, if necessary, at times and places determined during the hearing.

IT IS FURTHER ORDERED that a Notice of Hearing be mailed to all persons or representatives of associations or other interested groups who have registered their names with the Agency for that purpose.

IT IS FURTHER ORDERED that the Notice of Hearing be published in the State Register.

Dated: April 22, 1983

SANDRA S. GARDEBRING
Executive Director

Department of Natural Resources Minerals Division

Notice of Intent to Hold State Copper-Nickel Lease Sale; State Lands to be Offered for Copper-Nickel Exploration

The Minnesota Department of Natural Resources hereby announces that plans are being developed to hold the state's seventh sale of copper-nickel exploration and mining leases during November or December of 1982. The lease sale plans are being announced at this time in order to give mining companies, public interest groups and all other interested parties additional time to review the areas under consideration.

The purpose of Minnesota's copper-nickel rules is to promote and regulate the prospecting for, mining and removal of copper, nickel and associated minerals on state-owned and state-administered lands. These rules, and the leases issued under the rules, authorize exploration and development of these minerals and impose certain requirements on the lessee. The requirements include: the payment of minimum rentals which increase with the passage of time, the payment of royalty for all ore mined and removed, the submission of data and other reports, and addressment of certain environmental considerations. In addition, the state lessee must comply with all applicable regulatory laws.

The areas under consideration for lease sale cover portions of the Greenstone formation in St. Louis, Itasca, Koochiching, Beltrami, Lake of the Woods, Roseau and Marshall counties. Some of the land being considered has been offered in previous copper-nickel lease sales, but in light of interest shown and geologic data and exploration techniques developed during the past few years, it is felt that within these lands there is significant potential for the discovery of mineral resources. Certain new lands of interest are also being considered for the lease sale.

The exact time of the lease sale will be announced by legal notice at least thirty days prior to the sale. Mining unit books, listing the state lands to be offered at the lease sale, will be available at that time.

A map showing the general areas under consideration and further information regarding the state copper-nickel lease sale may be obtained from the Division of Minerals, Box 45, Centennial Office Building, 658 Cedar Street, St. Paul, MN 55155, telephone (612) 296-4807.

Pollution Control Agency

Notice of Intent to Solicit Outside Opinion Regarding Proposed Rules Governing Administration of the Minnesota State Water Pollution Control Fund and Federal Grant Funds Allotted to Minnesota (6 MCAR § 4.8034)

Notice is hereby given that the Minnesota Pollution Control Agency (Agency) is seeking information or opinions from sources outside the agency in preparing to promulgate revised rules for the administration of the State Water Pollution Control Fund and federal funds authorized for the Construction Grant Program. The promulgation of these rules is authorized by *Minn. Stat.* Chs. 115 and 116 (1980). This rule, in association with the agency's enabling legislation, provides authority for the State of Minnesota, upon approval of the Regional Administrator of the Environmental Protection Agency, to certify applicants for federal construction grants and subsequently, to the extent funds are available, provide state construction grants. The Minnesota Pollution Control Agency is the state agency designated by state law to administer this program.

The agency requests information and comments concerning the subject matter of these rules. Interested of affected persons or groups may submit statements of information or comment orally or in writing. Written or oral statements relating specifically to the subject matter of the rule should be directed to Mr. Duane L. Anderson at the address and telephone number listed below. Inquiries which relate to the rulemaking process should be directed to Mr. Paul Hoff at the address and telephone number listed below. Oral comments and inquiries will be accepted by Mr. Anderson and Mr. Hoff during regular business hours over the telephone and in person at the agency offices as follows:

Mr. Duane Anderson
Division of Water Quality
Minnesota Pollution Control Agency

1935 West County Road B-2
Roseville, Minnesota 55113
Telephone: (612) 296-7205

Mr. Paul Hoff
Public Information Office
Minnesota Pollution Control Agency

1935 West County Road B-2
Roseville, Minnesota 55113
Telephone: (612) 296-7283

EXHIBIT 9

All statements of information and comments shall be accepted until September 15, 1982. Any written material received by the Agency shall become a part of the record in the event that the rules are promulgated.

July 28, 1982

Louis J. Breimhurst
Executive Director

Office of the Secretary of State

Notice of Vacancies in Multi-Member State Agencies

Notice is hereby given to the public that vacancies have occurred in multi-member state agencies, pursuant to *Minn. Stat.* § 15.0597, subd. 4. Application forms may be obtained at the Office of the Secretary of State, 180 State Office Building, St. Paul, MN, 55155-1299; (612) 296-2805. Application deadline is September 7, 1982.

STATE CEREMONIAL BUILDING COUNCIL has 1 vacancy open for a public member. The council develops an overall restoration plan for the state ceremonial building (Governor's Mansion) and surrounding grounds; to solicit contributions to maintain and improve the public areas of the building. Members are appointed by the Governor. Members receive no compensation. For specific information, contact the State Ceremonial Building Council, 1006 Summit Avenue, St. Paul, MN 55105; (612) 296-2961.

MEDICAL POLICY DIRECTIONAL COMMITTEE ON MENTAL HEALTH has 3 vacancies open immediately. Prescribed qualifications include: 1 doctor, who is a Family Practitioner in Chemical Dependency; 1 doctor in Development Disability Pediatrics; and 1 vacancy for a Nurse/Administrator. The committee advises the Commissioner of Welfare on mental health and public policy. Members are appointed by the Commissioner of Welfare. Members receive $50 per diem plus expenses. For specific information, contact the Medical Policy Directional Committee on Mental Health, Dept. of Public Welfare, Centennial Bldg., St. Paul, MN 55155; (612) 296-3058.

CITIZENS' COMMITTEE ON VOYAGEURS NATIONAL PARK has 1 vacancy open for a member from St. Louis County. The committee researches all matters related to the establishment and operation of Voyageurs National Park; makes recommendations to the U.S. National Park Service and other federal and state agencies concerned. Members are appointed by the Governor. Quarterly meetings; members receive $35 per diem plus expenses. For specific information, contact the Citizens' Committee on Voyageurs National Park, 201-3rd Street, International Falls, MN 56649; (218) 283-3507.

INVESTMENT ADVISORY COUNCIL has 1 vacancy open immediately for a member with experience in general investment matters. The council advises the Board of Investment on policy relating to investments of state funds. Members are appointed by the Board of Investment. Members must file with EPB, and receive no compensation. For specific information, contact the Investment Advisory Council, MEA Bldg., Rm. 105, 55 Sherburne Ave., St. Paul, MN 55155; (612) 296-3328.

MATERNAL AND CHILD HEALTH ADVISORY TASK FORCE to the Commissioner of Health has 1 vacancy open for a public member. No members shall be employees of the State Departmemt of Health. The task force will advise the commissioner on general Maternal and Child Health (MCH) matters, review MCH grant awards, make recommendations on MCH grant priorities and make recommendations on a process to distribute (federal) MCH block grant funds after July 1, 1983. Members are appointed by the Commissioner of Health. Meetings as needed; members receive expenses. For specific information, contact Community Services Division, Minnesota Department of Health, 717 Delaware S.E., Minneapolis, MN 55440; (612) 296-5377.

MINNESOTA PROPERTY INSURANCE PLACEMENT FACILITY (FAIR-PLAN GOVERNING COMMITTEE) has 2 vacancies open for public members. The facility administers the Fair-Plan Act to make property insurance available in urban areas. Members appointed by the Commissioner of Insurance. Three to four meetings per year; members receive no compensation. For specific information, contact the Minnesota Property Insurance Placement Facility, 12 South 6th St., Room 1229, Minneapolis, MN 55402; (612) 338-7584.

Minnesota State Retirement System

Notice of Regular Meeting, Board of Directors

A meeting of the Board of Directors, Minnesota State Retirement System, will be held on Friday, August 20, 1982 at 8:30 A.M. in the office of the system, 529 Jackson Street, St. Paul, Minnesota.

CERTIFICATE OF BOARD'S

AUTHORIZING RESOLUTION

I, Jay M. Heffern, do hereby certify that I am the Deputy Executive Director of the Minnesota Pollution Control Agency, an agency duly authorized under the laws of the State of Minnesota, and that the following is a true, complete and correct copy of a resolution adopted at a meeting of the Minnesota Pollution Control Agency, duly and properly called and held on the 22th day of February, 1983, that a quorum was present at said meeting, that a majority of the Board voted for the resolution, and that said resolution is set forth in the minutes of said meeting and has not been rescinded or modified.

BE IT RESOLVED, that Jay M. Heffern, the Deputy Executive Director of the Minnesota Pollution Control Agency is hereby granted the authority and directed to call a hearing for the purpose of promulgating the attached rules of the Agency governing the administration of the Minnesota State Water Pollution Control Fund and federal grant funds allotted construction of municipal disposal systems (6 MCAR § 4.8034) and to perform any and all acts incidental thereto, including without being limited to signing an Order for Hearing and Notice of Hearing as well as acting as the Agency's representative at all hearings.

Prior to publishing the proposed rules in the State Register, the Executive Director is authorized to make any form changes in the rules that the Revisor of Statutes requires th Agency to make in order to obtain the Revisor's certification as required in Minn. Stat. § 15.0412, subd. 2a (1981 Supp.).

IN WITNESS WHEREOF, I have hereunto subscribed my name this 22nd day of April, 1983.

Jay M. Heffern

JAY M. HEFFERN
Deputy Executive Director

Subscribed and sworn to before me this 22nd day of April, 1983.

Marianne C. Gibbons

NOTARY PUBLIC

MARIANNE C. GIBBONS
NOTARY PUBLIC MINNESOTA
RAMSEY COUNTY
My Commission Expires Sept 26, 1985

EXHIBIT 2

STATE OF MINNESOTA

COUNTY OF RAMSEY

MINNESOTA POLLUTION

CONTROL AGENCY

In the Matter of the Proposed
Revision to 6 MCAR § 4.8034, Relating
to the Administration of Federal Grant
Funds and State Grant and Loan Funds
for Municipal Sewage Treatment Projects

NOTICE OF HEARING

NOTICE IS HEREBY GIVEN that on Monday, June 13, 1983, a public hearing on proposed amendments to 6 MCAR § 4.8034 will commence at 9:30 a.m. in the Board Room of the Minnesota Pollution Control Agency at 1935 W. County Road B-2, Roseville, Minnesota, and continue on subsequent days, if necessary, at times and places determined during the hearing.

The hearing will be conducted by Hearing Examiner Phyllis Reha, Office of Administrative Hearings, 400 Summit Bank Building, 310 S. 4th Avenue, Minneapolis, Minnesota 55415, telephone (612) 341-7611.

6 MCAR § 4.8034 provides for the administration of federal grant funds and state grant and loan funds for the construction of municipal sewage treatment projects. The construction grants program enables municipalities to construct wastewater treatment facilities through a combination of federal, state and local funds.

Not enough funds are available to award a grant to all municipalities with a need for additional sewage treatment facilities, and 6 MCAR § 4.8034 establishes a point system for prioritizing all municipalities seeking grant funds. Municipalities with the highest number of priority points are awarded grants first. The proposed amendments to the rule would change the priority points awarded under the various criteria used for prioritizing projects. For example, less points would be awarded for population under the proposed amendments than are awarded under the existing rule, while greater importance will be placed on the kind of project to be undertaken.

Under the proposed amendments top priority will be given to the construction of sewage treatment plants; it is unlikely that collection sewers and support facilities like administrative buildings will receive funding. The proposed amendments also would create several categories, such as public health hazard and outstanding resource value waters, for which additional priority points are awarded and by which qualifying municipalities can improve their priority ranking.

EXHIBIT 3

The proposed amendments would also delete special provisions in the existing rule for funding innovative and alternative technology and for splitting the available grant funds between the metropolitan area and outstate areas. Under the proposed amendments funds would be awarded in direct order of priority, whether or not a project involved innovative or alternative technology and whether the municipality was in the metropolitan area or outstate.

Under the proposed amendments, grants for the development of facilities plans and for other initial steps in the construction process will no longer be available. Advances of allowance, however, will be possible for these early steps. Other proposed changes involve definitions, public participation, grant applications, and grant payments.

A free copy of the proposed amendments is available by contacting Peggy Hicks, Division of Water Quality, Grants Section, Minnesota Pollution Control Agency, Roseville, Minnesota, telephone (612) 296-7254.

The Agency's authority to promulgate this rule is found in Minn. Stat. §§ 116.16 and 115.03, subd. 1(c) (1982).

Notice is hereby given that 25 days prior to the hearing, a Statement of Need and Reasonableness will be available for review at the Agency and at the Office of Administrative Hearings. This Statement of Need and Reasonableness will include a summary of all the evidence and argument which the agency anticipates presenting at the hearing justifying both the need for and the reasonableness of the proposed rule or rules. Copies of the Statement of Need and Reasonableness may be obtained from the Office of Administrative Hearings at a minimal charge.

At the hearing the Agency will introduce its Statement of Need and Reasonableness and its Exhibits. The Statement of Need and Reasonableness and the Exhibits will constitute the Agency's affirmative presentation in support of the proposed amendments. All interested or affected persons will then have an opportunity to participate by asking questions about the Statement of Need and Reasonableness and by presenting oral and written comments about the proposed amendments. Comments are most helpful if the comments identify with particularity each provision of the proposed amendments that is supported or objected to and if the comments suggest specific alternative language to what is proposed and provide the reasons and data that support the proposed modifications.

Written comments may be submitted to the Hearing Examiner at any time up to five working days after the hearing ends, or for a longer period not to exceed twenty days after the hearing ends if ordered by the Hearing Examiner. Copies of the comments should also be submitted to the Agency.

Notice: Any person may request notification of the date on which the Hearing Examiner's Report will be available, after which date the agency may not take any final action on the rules for a period of five working days. Any person may request notification of the date on which the hearing record has been submitted (or resubmitted) to the Attorney General by the agency. If you desire to be so notified, you may so indicate at the hearing. After the hearing, you may request notification by sending a written request to the Hearing Examiner (in the case of the Hearing Examiner's Report), or to the agency (in the case of the agency's submission or resubmission to the Attorney General).

This proceeding is governed by Minn. Stat. §§ 14.04-14.20 and 14.50 (1982) and by the rules of the Office of Administrative Hearings 9 MCAR §§ 2.101-2.113. Any person who has any questions about the procedure to be followed may contact the Hearing Examiner.

Please be advised that the proposed amendments are subject to change as a result of the rule hearing process. The Agency urges those who are interested to any extent in the proposed amendments, including those who support the amendments as proposed and do not want to see changes made, to participate in the hearing and make their view known.

Please be further advised that Minn. Stat. Ch. 10A requires each lobbyist to register with the State Ethical Practices Board within five days after he or she commences lobbying. A lobbyist is defined in Minn. Stat. § 10A.01, subd. 11 (1979 Supp.) as any individual:

(a) Engaged for pay or other consideration, or authorized by another individual or association to spend money, who spends more than five hours in any month or more than $250, not including his own travel expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials; or

(b) Who spends more than $250, not including his own traveling expenses and membership dues, in any year for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials.

The statute provides certain exceptions. Questions should be directed to the Ethical Practices Board, 41 State Office Building, Saint Paul, Minnesota 55155, telephone (612) 296-5615.

Dated: April 22, 1983

SANDRA S. GARDEBRING
Executive Director

STATE OF MINNESOTA

COUNTY OF RAMSEY

RECEIVED
MAY 19 1983
ADMINISTRATIVE HEARINGS

MINNESOTA POLLUTION CONTROL AGENCY

In the Matter of the Proposed Revision to 6 MCAR § 4.8034, Relating to the Administration of Federal Grant Funds and State Grant and Loan Funds for Municipal Sewage Treatment Projects

MAILING LIST CERTIFICATE

I hereby certify that those persons, associations and other interested groups on the list attached are those who have requested, pursuant to Minn. Stat. § 14.14, subd. 1 (1982), that their names be placed on file with and maintained by the Minnesota Pollution Control Agency for the purpose of receiving Notice of Hearing by this Agency and that the attached list is accurate and complete as of the 12th day of April, 1983.

Paul W. Hoff

PAUL HOFF
Public Information Director
Minnesota Pollution Control Agency

Subscribed and sworn to before me this 19th day of May, 1983

Charlene Hughes
Notary Public

CHARLENE G. HUGHES
NOTARY PUBLIC — MINNESOTA
WRIGHT COUNTY
MY COMMISSION EXPIRES JUNE 14, 1984

EXHIBIT 5

LAKE SUPERIOR
INDUSTRIAL BUREAU
328 FIRST NATIONAL BANK
DULUTH MN 55802 1

I S P LAW DEPT
ATTN JOSEPH D BIZZANO JR
114 NICOLLET MALL
MPLS MN 55401 1

NORTHERN STATES POWER CO
ATTN G V WELK MANAGER
REG COMPLIANCE AND SERV
414 NICOLLET MALL
MPLS MN 55401 1

MN MULTI HOUSING ASSOC
ATTN JOHN G HORNER
3100 W LAKE ST
MPLS MN 55416 1

HOLMES & GRAVEN
ATTN LARRY M WERTHEIM
470 PILLSBURY CENTER
MINNEAPOLIS MN 55402 1

POTLATCH CORPORATION
ATTN MR ARCHIE D CHELSETH
BOX 510
CLOQUET MN 55720 1

ANOKA CO COMM HEALTH &
SOCIAL SERV DEPT
ATTN GERTRUDE M JAMES
COURTHOUSE 4TH FL
ANOKA MN 55303 1

FEDERAL STATE REPORTS INC
ATTN STATE REG DIV
5203 LEESBURG PIKE
SUITE 1201
FALLS CHURCH VA 22041 1

LAKE MINNETONKA CONS DIST
402 E LAKE ST
WAYZATA MN 55391 1

Barbara L. Hughes P
Managing Director
Am. Lung Ass'n Ramsey Cty
464 Portland Ave.
St. Paul, MN 55102 1

U OF M PHYSICAL PLANT DEPT
ATTN ROBERT SILVAGNI
200 SHOPS BLDG
319 15TH AVE SE
MPLS MN 55455 1

GENERAL MILLS INC
ATTN J W HAUN
P O BOX 1113
MPLS MN 55440 1

HESSIAN MCKASY & SODERBERG
ATTN MR JOHN A KNAPP
1500 MIDWEST PLAZA BLDG
MPLS MN 55402 1

MN ASSOC HEALTH CARE FAC
ATTN RICK CARTER
2850 METRO DRIVE SUITE 429
MPLS MN 55420 1

PETERSON POPOVICH KNUTSON
& FLYNN LAW OFFICE
ATTN PETER S POPOVICH
345 CEDAR BLDG SUITE 800
ST PAUL MN 55101 1

JONES HAUGH & SMITH INC
515 SOUTH WASHINGTON
ALBERT LEA MN 56007 1

WILLIAM MITCHELL COLLEGE
OF LAW
ATTN PROF MARCIA GELPE
875 SUMMIT AVE
ST PAUL MN 55102 1

COLOR-AD PACKAGING INC
ATTN MICHAEL S KECKEISEN
3600 ALABAMA AVE
MPLS MN 55416 1

THE SHERWIN-WILLIAMS CO
ATTN D A COHAGAN
101 PROSPECT AVE NW
CLEVELAND OH 44115 1

CONWED
ATTN K J POWELL
444 CEDAR STREET
P O BOX 43237

MN RETAIL MERCHANTS ASSOC
ATTN JOHN E VAN DOORN
180 METRO SQUARE BLDG
ST PAUL MN 55101

IOWA DEPT ENVIRON QUALITY
ATTN STEVEN N WILLIAMS
HENRY A WALLACE BLDG
DES MOINES IA 50319 1

MPIRG
ATTN KENNETH PETERSON
2412 UNIVERSITY AVE SE
MPLS MN 55414

MPIRG
ATTN JAMES MILLER
2412 UNIVERSITY AVE SE
MPLS MN 55414 1

GEO A HORMEL & CO
ATTN KEVIN C JONES
BOX 800
AUSTIN MN 55912 1

ASHLAND PETROLEUM COMPANY
ATTN RICHARD HETLAND
P O BOX 9
ST PAUL PARK MN 55071 1

BLANDIN PAPER COMPANY
ATTN W J LICKE
115 FIRST STREET SW
GRAND RAPIDS MN 55744 1

ROBERT S BURK
4344 IDS CENTER
MINNEAPOLIS MN 55402 1

METRO CLEAN AIR COMMITTEE
1829 PORTLAND AVENUE
MINNEAPOLIS MN 55404 1

PAUL DENEKA
MINNEGASCO
DR LAB & ENVIRON PRGMS
6161 GOLDEN VALLEY RD

YNDA WEIS [redacted]
26 BRIMHALL
T PAUL MN 55105 2

MN MOTOR TRANSPORT ASSOC
ATTN JAMES N DENN
1821 UNIVERSITY RM 134N
ST PAUL MN 55104 2

MAC ARTHUR CO
2400 WYCLIFF STREET
ST PAUL MN 55114 2

NITED POWER ASSOC
TTN REYNOLD S RAHKO
ROJECTS COORD DIVISION
LK RIVER MN 55330 2

THE PILLSBURY COMPANY
ATTN CARL A SMITH -MS3750
THE PILLSBURY CENTER
MPLS, MN 55402 2

INDUST HEALTH ENG ASSOC IN
ATTN KNOWLTON J CAPLAN
P O BOX 9342
MPLS MN 55440 2

OMM HEALTH SERV BRD
TTN BRUCE T ROWE
25 LAKE AVENUE S SUITE 604
ULUTH MN 55802 2

CITY OF WINONA
ATTN ROBERT J BOLLANT
4TH & LAFAYETTE ST
WINONA MN 55987 2

MOSS FLAHERTY CLARKSON &
FLETCHER LAW OFFICES
1200 PILLSBURY CENTER
200 SO 6TH STREET
MPLS MN 55402 2

L P O D LAW OFFICES
TTN JOHN E DRAWZ
100 FIRST NAT BANK BLDG
PLS MN 55402 2

~~ASSOC OF MN COUNTIES~~
ATTN ~~JAMES C SHIPMAN~~
2305 ~~FORD PARKWAY~~
ST ~~PAUL~~ MN 55116 2

DAKOTA COUNTY ATTORNEY
ROBERT F CAROLAN
1560 HIGHWAY 55
HASTINGS MN 55033 2

HELDAHL
TTN DAVID MILLER
HWY 3
ORTHFIELD MN 55057 2

OLSON GUNN & SERAN LTD
ATTN WAYNE H OLSON ESQ
315 PEAVEY BLDG
730 SECOND AVE SOUTH
MPLS MN 55402 2

AM CRYSTAL SUGAR CO
ATTN MR I V FORDYCE
101 NO THIRD ST
MOORHEAD MN 56560 2

N RAILROADS ASSOC
TTN GORDON FORBES
03 HANOVER BLDG
80 CEDAR ST
T PAUL MN 55101 2

PAUL J HUBER LTD
1821 UNIVERSITY AVE
ST PAUL MN 55104 2

JOHN AULBACH II 2 LT.MSC
DEPT OF ARMY
US ARMY ENV HYGIENE AGENCY
FITZSIMONS ARMY MED CENTER
AURORA CO 80045 2

ave Kolbert, Chairman
N COUN TROUT UNLIMITED
675 E. River Road
ochester, MN 55901 2

IBM CORPORATION
ATTN J P HARMON
DEPT 713/BLDG 658-D
ROCHESTER MN 55901 2

EPA REGION V
ATTN KATHY BROWN
230 S DEARBORN ST
CHICAGO IL 60604 2

N PETROLEUM COUNCIL
TTN WILLIAM HADDELAND
00 NORTHERN FEDERAL BLDG
T PAUL MN 55102 2

PUBLIC AFFAIRS INFORMATION
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1024 10th ST, SUITE 300
SACRAMENTO, CA 95814 2

MINNEAPOLIS TRIBUNE
ATTN BOB FRANKLIN
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MPLS MN 55488 2

OLTON & MENK INC
TTN THOMAS A ROUSHAR
15 N FRONT ST
ANKATO MN 56001 2

MS SHAILLA REGEHR
R R 1 BOX 419
STEWARTVILLE MN 55976 2

PICKANDS MATHER & CO
ATTN T J MANTHEY
1100 SUPERIOR AVE NE
CLEVELAND OH 44114 2

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212 1st AVE S.W.
ROCHESTER MN 55901 2

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MPLS MN 55404

MS MARY STANTON
STAFF ASSOC/FINANCE
STATE UNIVERSITY SYSTEM
407 CAPITOL SQUARE BLDG
550 CEDAR STREET
ST PAUL MN 55101

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ICKANDS MATHER & CO
TTN CHUCK [illegible]
00 WEST SUPERIOR ST
UITE 811
ULUTH MN 55802 3

DOUGLAS HILDRE
NORTHERN ORDINANCE DIV.
FMC CORP.
4800 E RIVER ROAD
MINNEAPOLIS MN 55421 3

MN CHAPTER OF ABC
ATTN DONALD E MONTGOMERY
6300 WALKER ST SUITE 109
MPLS MN 55416 3

NORTH STAR STEEL CO
ATTN MR R A GARVEY
1678 RED TOCK TD
P O BOX 43189 3
ST PAUL MN 55164

COOPERATIVE POWER ASSOC
ATTN WILLIAM KAUL
14615 LONE OAK ROAD
EDEN PRAIRIE MN 55344 3

ROBT J PUGLEASA CO INC
ATTN GENE A BROWN
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MPLS MN 55414 3

MINNKOTA POWER COOP INC
ATTN LOREN L JOHNSON
BOX 1318
GRAND FORKS MN 58201 3

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SUITE 342
MINNEAPOLIS MN 55414 3

PERRY GRUBB ASSOC INC
ATTN CHARLES R SINGER
771 HARDING ST NE
MPLS MN 55413 3

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RANGE RAILWAY CO
210 MISSABE BLDG
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ROOM 807
TRANSPORTATION BLDG
ST PAUL MN 55155 3

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MCCARTHY BLDG
EYOTA MN 55934 3

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CONSULTING ENGINEERS
DIVERSIFIED INC
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RAMSEY CO ENVIR HEALTH
ATTN DOUGLAS WOOD
1910 W CO RD B
ROSEVILLE MN 55113 3

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ATTN J D GIALLOMBARDO
176 EAST FIFTH ST RM 1280
ST PAUL MN 55101 3

GEORGE MASTOR
LEGAL DIVISION
MINNESOTA GAS CO
300 PEAVEY BLDG
MINNEAPOLIS MN 55402 3

KRIS ANNE MONTEITH
SF&A REPORTING SERVICES
1101 15TH ST NW
WASHINGTON DC 20005 3

RICE COUNTY PLANNING OFF
610 NW 20TH STREET
PO BOX 40
FARIBAULT MN 55021 3

DAMES & MOORE
ATTN GEORGE NICHOLAS
1550 NORTHWEST HIGHWAY
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UNITED POWER ASSOC
ATTN MICHAEL V OBRIEN
ENVIRONMENTAL & LAND DIV
ELK RIVER MN 55330 3

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ATTN PAM BARBOUR
122 W FRANKLIN AVE RM 302
MINNEAPOLIS MN 55404 3

STEVE LOUCKS
EMT
ROOM 137
1935 W COUNTY RD B2
ROSEVILLE, MN 55113 3

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THERMO-KING
314 W 90TH STREET
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COURTHOUSE-4TH FLOOR
ANOKA MN 55303 3

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513 1ST AVE E APT 16
WEST FARGO ND 58078
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MIKE SHOTLAND REP
513 1ST AVE E APT 16
WEST FARGO ND 58078
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)UBUQUE IA 52001 4

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159 RICE ST
ST PAUL MN 55103 4

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1560 HWY 55
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) H G & G ATTORNEYS AT LAW
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IDLAND GLASS COMPANY
)NALD F HENNEN
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LAW DEPARTMENT
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ST PAUL MN 55101 4

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847 40TH AVENUE NE
COLUMBIA HTS MN 55421
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LA CROSSE WI 54601 4

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506 FIRST AVENUE NE
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ROCHESTER MN 55901 4

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300 PARKDALE 1 BLDG
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MPLS MN 55416 4

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ST PAUL MN 55106 4

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DULUTH MN 55802 4

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248 CLASSROOM OFFICE BLDG
1994 BUFORD AVE
ST PAUL MN 55108 4

KSTP AM RADIO
ATTN J B ECKERT
3415 UNIVERSITY AVE
ST PAUL MN 55114
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KOPPERS COMPANY INC
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1201 KOPPERS BUILDING
PITTSBURGH PA 15219 4

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MINNEAPOLIS MN 55408 4

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ATTN BECKY A COMSTOCK
2200 FIRST BANK PLACE EAST
MINNEAPOLIS MN 55402
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2149 GOODRICH AVE
ST PAUL MN 55105 4

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4

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CENTRAL LAKE ST REG CE
WESTERN MICHIGAN UNIVERSITY
KALAMAZOO MI 49008 5

BLACK & VEATCH/MICHIGAN
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ST CLOUD MN 56301 5

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HOUSTON TX 77001 5

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TTN PATRICIA KLOCKE
50 METRO DRIVE SUITE 725
NNEAPOLIS MN 55420 5

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PUBLIC INTEREST CLINIC
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ST PAUL MN 55104 5

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1235 JEFFERSON DAVIS HWY
SUITE 1410
ARLINGTON VA 22202 5

TECH SALES CO
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311 WEST 44TH STREET
MPLS MN 55409 5

ELLSWORTH HARPOLE
1906 THIRD AVE S APT 35
MINNEAPOLIS MN 55404 5

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CONTROL/3M: 21-2W-06
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GRAND RAPIDS MN 55744 5

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VALLEYNEWS
210 WEST BROADWAY
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EDEN PRAIRIE MN 55344 5

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ST PAUL MN 55104 5

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MPLS MN 55420 5

EN KADLER
52 HOLLY AVE
T PAUL MN 55104
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ADGER SAFE ENERGY ALLI
OX 68
JRAND WI 54736
6

E GRAMMER
110 E 4TH AVE
IBBING MN 55746
6

KURKI
904 W 3RD ST
JLUTH MN 55806
6

ASSN OF MN COUNTIES
SUITE 300
555 PARK STREET
ST. PAUL, MN 55103
6

AMLINE U SCHOOL OF LAW
JBLIC INTEREST AD
OVOCACY CLINIC
T PAUL MN 55104
6

FORREST SEYMOUR
4537 33rd AVE SO
MPLS MN 55406
6

ELSON FRENCH
715 E 26TH ST
PLS MN 55406
6

RON WALLACE
1790 DAYTON AVE.
ST. PAUL MN 55104
6

EGINZ LARSON
17 FRY ST
T PAUL MN 55104
6
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GREG LARSON
MN ENV QUALITY BOARD
550 CEDAR STREET
ST PAUL MN 55101
6

THE MINNESOTA PROJECT
ATTN LONI KEMP
618 E 22ND ST
MPLS MN 55404
6

BROEKER HARTFELDT HEDGES &
GRANT ATTORNEY AT LAW
ATTN JOHN M BROEKER
2850 METRO DRIVE SUITE 800
MPLS MN 55420
6

CITY OF BROOKLYN CENTER
ATTN PATTY PAGE
6301 SHINGLE CREEK PKWY
BROOKLYN CE MN 55430
6

POPHAM HAIK LAW FIRM
ATTN G ROBERT JOHNSON
4344 IDS CENTER
MPLS MN 55402
6

HARDIA RIEKE
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6

A B SCHAEFER JR
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6

ROBERT LOCKYEAR
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6

M NEAL ERDAHL
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PAUL BRANDT
14900 61ST ST N
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6

B. J. WHITLEY, JR.
1100 MILAM BLDG.
P. O. BOX 2511
HOUSTON, TX 77001
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JACQUELYNE FARM
385 W CO RD B2
ROSEVILLE MN 55113
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ENVIRONMENTAL ENGINEERING
& POLLUTION CONTROL/3M
ATTN THOMAS ZOSEL
P O BOX 33331
ST PAUL MN 55133
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MOBIL OIL
ATTN PETE GATES
P O BOX 66568
AMF O'HARE IL 60666
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DORSEY LAW FIRM
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117 WEST 5TH STREET
BLUE EARTH MN 56013
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ROBTSON RESEARCH & DVLP CI
4730 CRITTENDEN DRIVE
LOUISVILLE KY 40233
6

RICHARD L BUTLER
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BURNSVILLE MN 55337
7

LEAGUE OF MINNESOTA CITIES
ATTN DON SLATER
183 UNIVERSITY AVE EAST
ST PAUL MN 55101 7

ULP & PAPER
TTN PAULA IRONS
00 HOWARD ST
AN FRANCISCO CA 94105
7

PICKANDS MATHER & CO
ATTN THOMAS W HAYES
SUITE 811-200 W SUPERIOR ST
DULUTH MN 55802 7

CITIZENS FOR BETTER ENVIR
ATTN CAROLE BARTH
127 7TH ST N
SUITE 204
MPLS MN 55403 7

.W. BERGSTROM
IV. CHIEF ENGINEER
MOCO PIPELINE CO.
200 S. MAIN ST.
OMBARD IL 60148
7

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ENVIR & PROCESS INST DIV
P O DRAWER 831
LEWISBURG W VA 24901 7

ERM-NORTH CENTRAL INC
ATTN SUSAN HOGLUND
200 SOUTH PROSPECT AVE
PARK RIDGE IL 60068 7

PI INC
TTN TERRY WOLD
366 ROSE PLACE
T PAUL MN 55113 7

PAUL WEIR CO
ATTN MARY VACULA
20 NORTH WACKER DR
CHICAGO IL 60606 7

ENVIR RESEARCH GROUP
ATTN SALES & MARKETING
PO BOX 70006
135 STATE ST
ST PAUL MN 55107 7

HE HEALTH CENTRAL SYSTEM
TTN DONALD G ROBIDA
01 BROOKDALE TOWERS
310 FIFTY SEVENTH AVE N
PLS MN 55430 7

ST PAUL PUBLIC HEALTH
ATTN DR PAUL J COX
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M & M PROTECT CONSULTANTS
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1500 NORTH STAR CENTER
MPLS MN 55402 7

CENEX
ATTN RALPH SCHLETTY
BOX 43089
ST PAUL MN 55164 7

FEDERAL-STATE REPORTS INC
ATTN LOU O'BOYLE
5203 LEESBURG PIKE #1201
BAILEYS CROSSROADS
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MINNESOTA FARMERS UNION
ATTN MARK McAFEE
1717 UNIVERSITY
ST PAUL MN 55104 7

BOISE CASCADE CORPORATION
ATTN MR RUSS SUMMER
ENVIRONMENTAL ENGINEER
INTERNATIONAL FALLS MN
56649 7

OFFICE OF ADMIN HEARINGS
ATTN SAM RUHLE
400 SUMMIT BANK BLDG
310 S FOURTH AVE
MPLS MN 55415 7

MN CONSERVATION FED
DIANE KELLY
4354 HARRIET AVE SO
MPLS MN 55409 7

EPA REGION V
ATTN DAVE ULLRICH
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CHICAGO IL 60604
7

MICHAEL HENNEN
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MPLS MN 55409
7

SECURE OUR SOCIETY INC
ATTN LESLIE DAVIS
2124 LOWER ST DENNIS RD
ST PAUL MN 55116
7

AMES & MOORE
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550 NW HWY
ARK RIDGE IL 60068
7

SHELL ENGINEERING & ASSOC
1804 VANDIVER DRIVE
PO BOX 548
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VAN HOVEN CO INC
ATTN ED VAN HOVEN JR
BOX 56
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GOULD INC
PORTABLE BATTERY DIVISION
ATTN DOUGLAS ROBAHM
931 VANDALIA ST
ST PAUL MN 55114 7

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ATTN DAVID T MODI
LEGAL DEPT (D7082)
1007 MARKET STREET
WILMINGTON DE 19898 7

NATL RENDERERS ASSO INC
ATTN WILLIAM H PROKOP
2250 EAST DEVON AVE
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CLEAR AIR CLEAR WATER
STEVE CHAPMAN
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UNION CARBIDE CORP
ATTN C E VAN DYK
OLD RIDGEBURY RD
DANBURY CT 06810 7

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HEMATOLOGY RESEARCH
MAYO CLINIC FOUNDATION
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T PAUL MN 55101

EPT OF ECONOMIC DVLPMT
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EPT OF ECONOMIC DVLPMT
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N DEPT OF HEALTH
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OMMUNITY DEVELOPMENT
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555 WABASHA RM 206
ST. PAUL MN 55102

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REVIEW ADMIN RULES
ATTN KATHLEEN BUREK
RM 430
STATE OFFICE BLDG

IN DEPT ECONOMIC SECURITY
ATTN F JAMES RYBAK PHD
590 AM CE 150 E KELLOGG
ST PAUL MN 55101

OFF OF LEGISLATIVE AUDITOR
ATTN ALLAN BAUMGARTEN
PROGRAM EVALUATION SPEC
122 VETERANS SERV BLDG
ST PAUL MN 55155

LEGISLATIVE COMM ON
WASTE MANAGEMENT
ATTN SUE ROBERTSON
B-46
STATE CAPITOL

ATTORNEY GENERAL'S OFFICE
ANTITRUST DIVISION
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117 UNIVERSITY AVE

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MEEB CENTRAL OFFICE
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RM 480
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ST PAUL MN 55155

BRD OF ARCH ENG LAND SURV
AND LANDSCAPE ARCHITECTURE
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500 METRO SQUARE
ST PAUL MN 55101

MN DEPT OF HEALTH
ATTN JAMES WITKOWSKI
717 Delaware St. SE
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ATTN JOHN ~~MALINKA~~ takeoff
RM 49 ~~STATE OFFICE BLDG~~
~~SP~~ PAUL MN 55155 no longer at 515

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RM 600 AMERICAN CTR BLDG
150 E. KELLOGG BLVD.
ST. PAUL MN 55101

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ATTN JOHN T HOEFT
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7TH ST & ROBERT ST
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Marsh & McLennan
1500 Northstar Center
MPLS, MN 55402

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ATTN DIR OF OPERATIONS
6040 28TH AVE S
MPLS MN 55450
WQ

ECRDC
119 SOUTH LAKE STREET
MORA MN 55051 WQ

WINONA DAILY NEWS
ATTN DON STUART
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WINONA MN 55987
OLMSTED
WINONA
COUNTIES

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MPLS MN 55417 WQ

CHEMFIX INC
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1675 AIRLINE HWY
PO BOX 1572
KENNER LA 70063 WQ

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854 NATIONAL PRESS BLDG
WASHINGTON DC 20045 WQ

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DIR OF PHYSICAL PLANNING
503 MORRILL HALL
MPLS MN 55455 WQ

UNION OIL COMPANY OF CA
ATTN DIANE DUNCAN
PO BOX 7600
LOS ANGELES CA 90051 WQ

BARBARA KNAPP
9508 BRUNSWICK CIRCLE
BLOOMINGTON MN 55438

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IR QUALITY REQUESTS

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EGULATORY LIAISON
14 NICOLLET MALL
PLS MN 55401 AQ

AIRYLAND POWER COOP
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O BOX 817
615 EAST AVE SO
A CROSSE WI 54601 AQ

ETRO AIRPORTS COMM
TTN DIR OF OPERATIONS
040 28TH AVE S
PLS MN 55450 AQ

IBCOR ENGINEERING CO
TTN BERNARD TRENDA
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PLS MN 55416 AQ

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TTN DON STUART
01 N FRANKLIN
INONA MN 55987 OLMSTED WINONA COUNTIES

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TTN CHARLES MILLER
9TH & GRAND
E MOINES IA 50316 AQ

VB ENGINEERING
TTN THOMAS STERN
176 OLSON MEM HWY
OLDEN VALLEY MN 55422 AQ

NTERN MINERAL & CHEM CORP
NVIR & SAFETY OPERATIONS
21 E HAWLEY ST
UNDELEIN IL 60060 AQ

W PULP & PAPER
TTN HEIDI SCHULTZ
55 116TH AVE NE SUITE 266
ELLEVUE WA 98004 AQ

CORBIN S KIDDER
442 SUMMIT AVE APT #2
ST PAUL MN 55102
AQ

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9508 BRUNSWICK CIRCLE
BLOOMINGTON MN 55438
AQ & ACID RAIN

VAN HOVEN CO INC
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NATIONAL RENDERERS ASSO INC
ATTN WILLIAM H PROKOP
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DES PLAINES IL 60018 AQ

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AMBER OF COMMERCE
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TN DON STUART
1 N FRANKLIN
NONA MN 55987 OLMSTED WINONA COUNTIES

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341 WAYZATA BLVD
LS MN 55426 HAZ W

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TN MICHAEL CATT
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NVIRONMENTAL SERV TECH
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NEAL ERDAHL
OUNTY ADMINISTRATOR
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10740 RIVERVIEW PLACE
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ATTN LASZLO FULOP
DIR OF PHYSICAL PLANNING
503 MORRILL HALL
MPLS MN 55455 SHW

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6521 154TH LANE NW
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David Marquette
Marsh & McLennan
1500 Northstar Center
MPLS, MN 55402

PROPOSED RULES

Pursuant to Minn. Stat. of 1980, §§ 14.21, an agency may propose to adopt, amend, suspend or repeal rules without first holding a public hearing, as long as the agency determines that the rules will be noncontroversial in nature. The agency must first publish a notice of intent to adopt rules without a public hearing, together with the proposed rules, in the *State Register*. The notice must advise the public:

1. that they have 30 days in which to submit comment on the proposed rules;
2. that no public hearing will be held unless seven or more persons make a written request for a hearing within the 30-day comment period;
3. of the manner in which persons shall request a hearing on the proposed rules; and
4. that the rule may be modified if modifications are supported by the data and views submitted.

If, during the 30-day comment period, seven or more persons submit to the agency a written request for a hearing of the proposed rules, the agency must proceed under the provisions of §§ 14.13-14.20 which state that if an agency decides to hold a public hearing, it must publish in the *State Register* a notice of its intent to do so. This notice must appear at least 30 days prior to the date set for the hearing, along with the full text of the proposed rules. (If the agency has followed the provisions of subd. 4h and has already published the proposed rules, a citation to the prior publication may be substituted for republication.)

Pursuant to Minn. Stat. § 14.29, when a statute, federal law or court order to adopt, suspend or repeal a rule does not allow time for the usual rulemaking process, temporary rules may be proposed. Proposed temporary rules are published in the *State Register*, and for at least 20 days thereafter, interested persons may submit data and views in writing to the proposing agency.

Minnesota Pollution Control Agency

Proposed Revision to 6 MCAR § 4.8034 Relating to the Administration of Federal Grant Funds and State Grant and Loan Funds for Municipal Sewage Treatment Projects

Notice of Hearing

Notice is hereby given that on Monday, June 13, 1983, a public hearing on proposed amendments to 6 MCAR § 4.8034 will commence at 9:30 a.m. in the Board Room of the Minnesota Pollution Control Agency at 1935 W. County Road B-2, Roseville, Minnesota, and continue on subsequent days, if necessary, at times and places determined during the hearing.

The hearing will be conducted by Hearing Examiner Phyllis Reha, Office of Administrative Hearings, 400 Summit Bank Building, 310 S. 4th Avenue, Minneapolis, Minnesota 55415, telephone (612) 341-7611.

6 MCAR § 4.8034 provides for the administration of federal grant funds and state grant and loan funds for the construction of municipal sewage treatment projects. The construction grants program enables municipalities to construct wastewater treatment facilities through a combination of federal, state and local funds.

Not enough funds are available to award a grant to all municipalities with a need for additional sewage treatment facilities, and 6 MCAR § 4.8034 establishes a point system for prioritizing all municipalities seeking grant funds. Municipalities with the highest number of priority points are awarded grants first. The proposed amendments to the rule would change the priority points awarded under the various criteria used for prioritizing projects. For example, less points would be awarded for population under the proposed amendments than are awarded under the existing rule, while greater importance will be placed on the kind of project to be undertaken.

Under the proposed amendments top priority will be given to the construction of sewage treatment plants; it is unlikely that collection sewers and support facilities like administrative buildings will receive funding. The proposed amendments also would create several categories, such as public health hazard and outstanding resource value waters, for which additional priority points are awarded and by which qualifying municipalities can improve their priority ranking.

The proposed amendments would also delete special provisions in the existing rule for funding innovative and alternative technology and for splitting the available grant funds between the metropolitan area and outstate areas. Under the proposed amendments funds would be awarded in direct order of priority, whether or not a project involved innovative or alternative technology and whether the municipality was in the metropolitan area or outstate.

Under the proposed amendments, grants for the development of facilities plans and for other initial steps in the construction process will no longer be available. Advances of allowance, however, will be possible for these early steps. Other proposed changes involve definitions, public participation, grant applications, and grant payments.

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EXHIBIT 4

A free copy of the proposed amendments is available by contacting Peggy Hicks, Division of Water Quality, Grants Section, Minnesota Pollution Control Agency, Roseville, Minnesota, telephone (612) 296-7254.

The agency's authority to promulgate this rule is found in Minn. Stat. §§ 116.16 and 115.03, subd. 1 (c) (1982).

Notice is hereby given that 25 days prior to the hearing, a statement of need and reasonableness will be available for review at the agency and at the Office of Administrative Hearings. This statement of need and reasonableness will include a summary of all the evidence and argument which the agency anticipates presenting at the hearing justifying both the need for and the reasonableness of the proposed rule or rules. Copies of the statement of need and reasonableness may be obtained from the Office of Administrative Hearings at a minimal charge.

At the hearing the agency will introduce its statement of need and reasonableness and its exhibits. The statement of need and reasonableness and the exhibits will constitute the agency's affirmative presentation in support of the proposed amendments. All interested or affected persons will then have an opportunity to participate by asking questions about the statement of need and reasonableness and by presenting oral and written comments about the proposed amendments. Comments are most helpful if the comments identify with particularity each provision of the proposed amendments that is supported or objected to and if the comments suggest specific alternative language to what is proposed and provide the reasons and data that support the proposed modifications.

Written comments may be submitted to the hearing examiner at any time up to five working days after the hearing ends, or for a longer period not to exceed twenty days after the hearing ends if ordered by the hearing examiner. Copies of the comments should also be submitted to the agency.

Notice: Any person may request notification of the date on which the hearing examiner's report will be available, after which date the agency may not take any final action on the rules for a period of five working days. Any person may request notification of the date on which the hearing record has been submitted (or resubmitted) to the Attorney General by the agency. If you desire to be so notified, you may so indicate at the hearing. After the hearing, you may request notification by sending a written request to the hearing examiner (in the case of the hearing examiner's report), or to the agency (in the case of the agency's submission or resubmission to the Attorney General).

This proceeding is governed by Minn. Stat. §§ 14.04-14.20 and 14.50 (1982) and by the rules of the Office of Administrative Hearings 9 MCAR §§ 2.101-2.113. Any person who has any questions about the procedure to be followed may contact the Hearing Examiner.

Please be advised that the proposed amendments are subject to change as a result of the rule hearing process. The agency urges those who are interested to any extent in the proposed amendments, including those who support the amendments as proposed and do not want to see changes made, to participate in the hearing and make their view known.

Please be further advised that Minn. Stat. ch. 10A requires each lobbyist to register with the State Ethical Practices Board within five days after he or she commences lobbying. A lobbyist is defined in Minn. Stat. § 10A.01, subd. 11 (1979 Supp.) as any individual:

(a) Engaged for pay or other consideration, or authorized by another individual or association to spend money, who spends more than five hours in any month or more than $250, not including his own travel expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials; or

(b) Who spends more than $250, not including his own traveling expenses and membership dues, in any year for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials.

The statute provides certain exceptions. Questions should be directed to the Ethical Practices Board, 41 State Office Building, Saint Paul, Minnesota 55155, telephone (612) 296-5615.

April 22, 1983

Sandra S. Gardebring
Executive Director

Rules as Proposed

6 MCAR § 4.8034 Rule for the administration of the Minnesota State Water Pollution Control Fund and federal grant funds allotted to Minnesota.

A. Purpose. ~~This rule is herein adopted and promulgated by the Minnesota Pollution Control Agency to implement the provisions of Minnesota Statutes chs. 115 and 116 (1976 and 1977 Supp.) and to comply with the Federal Water Pollution Control Act 33 U.S.C. Section 1251 et seq., and guidelines and regulations pursuant thereto, by the establishment of procedures relating to the federal construction grants and state construction grant and loan programs.~~

~~The promulgation of this rule, in association with the agency's enabling legislation, provides authority for the State of Minnesota, upon approval by the Regional Administrator of the United States Environmental Protection Agency, to certify applicants for Federal construction grants and subsequently, to the extent funds are available, provide state construction grants. The Minnesota Pollution Control Agency is the State agency designated by State law to administer this program. Except as specifically provided herein, this rule shall apply with equal force to state financial assistance and Federal grant funds~~ This rule provides for the administration of the federal construction grant program and the state construction grant and loan program for the construction of municipal disposal systems.

B. Definitions. For the purpose of this rule, the following terms have the meanings given them.

1. The terms "person," "sewage," "industrial wastes," "other wastes," "treatment works," "sewer system," "disposal system," "waters of the state," "pollution control fund," "municipality," "director," "agency," "pollution of water," "eligible cost," "wastewater," "wastewater treatment facility," as well as any other pertinent terms for which definitions are given in Minnesota Statutes, chapters 115 and 116 ~~shall~~ have the meanings ascribed to them therein.

~~The terms specified below shall have the meanings ascribed to them:~~

~~1.~~ 2. "Act" means the Federal Water Pollution Control Act, ~~33 USC~~ United States Code, title 33, section 1251 et seq., as amended through December 31, 1982.

~~2.~~ 3. "EPA" means the United States Environmental Protection Agency.

~~3.~~ 4. "Administrator" means the Administrator of the United States Environmental Protection Agency.

~~4. "Regional Administrator" means the EPA Regional Administrator for the region in which Minnesota is located (now Region Five).~~

5. "Need" means a determination that a new or upgraded disposal system is currently required, or will be required within a five-year period to comply with State Water Pollution Control rules; provided, the situation does not exist primarily due to inadequate operation and maintenance or primarily due to negligence on the part of any person.

6. ~~"Category of Project" means the part of the disposal system the municipality intends to construct.~~

~~7. "Type of project" means its "STEP":~~

~~a.~~ "Step 1" means the preparation of all necessary preliminary engineering studies for the project.

~~b.~~ 7. "Step 2" means the preparation of construction plans and specifications for the project.

8. "Step 2+3" means the preparation of construction plans and specifications for and construction of the project.

~~c.~~ 9. "Step 3" means the construction of the project.

~~8. "Project" means the scope of work for which grant assistance is awarded.~~

~~9. "Metropolitan Area" means Anoka, Carver, Dakota, Hennepin, Ramsey, Scott and Washington Counties.~~

10. ~~"Non-metropolitan Area" means all counties of the state not in the metropolitan area.~~

~~11.~~ "Secondary treatment plant" ~~shall have the meaning ascribed to it in Minnesota Rule WPC 14 or 15 or amendments thereto~~ includes plants designed to provide effective sedimentation, biochemical oxidation, and disinfection, or the equivalent, consistent with requirements of 6 MCAR §§ 4.8014 C.6. and 4.8015 C.6. Plants discharging to limited resource value waters (Class 7 waters) and assigned effluent limitations based on 6 MCAR §§ 4.8014 C.16.a. or C.16.b. or 4.8015 C.16.a. or C.16.b. are secondary treatment plants for the purpose of this rule.

~~12.~~ 11. "Tertiary treatment plant" ~~means any level of treatment of higher quality than secondary treatment~~ includes plants specifically designed to achieve effluent limitations based on 6 MCAR §§ 4.8014 C.6. or 4.8015 C.6. for phosphorus or toxic substances and plants designed to provide a level of treatment higher than that provided by a secondary treatment plant.

~~13.~~ 12. "Primary treatment plant" means ~~any level of treatment of lesser quality than secondary treatment~~ a plant designed to provide a level of treatment lower than that provided by a secondary treatment plant.

~~14. "Scope of Project" means Step 1, Step 2, or Step 3 of disposal system construction or segments thereof.~~

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~~15.~~ 13. "Planning loan" means a loan for Step 1 ~~and/or~~ or Step 2 projects.

~~16.~~ 14. "Construction loan" means a loan for a Step 3 project.

~~17. "Resident Inspection" means that the consulting engineer or his agent shall be present on site, during the hours of construction for purposes of inspection. It does not mean the inspector has to be a resident of the community.~~

~~18.~~ 15. "Adequate errors and omissions insurance" means a policy of insurance which provides the minimum amount of coverage for the corresponding estimated project construction cost as determined from the following table, which is maintained for a minimum of two years after acceptance of the project by the grantee.

Estimated Project Construction Cost	Minimum Amount of Coverage
less than $1,000,000	$ 250,000
$1,000,000 to $2,999,999	$ 500,000
$3,000,000 to $9,999,999	$1,000,000
$10,000,000 or over	$2,000,000

If an engineer has more than one project, the policy must provide for the minimum coverage applicable to the highest estimated project construction cost. Requests for variances from the requirements of this section ~~shall be~~ are governed by section ~~E.9.1.~~ GG. of this rule.

~~19. "Contract" means a contract between a municipality and an engineer or a contractor for the planning, design, or construction of a disposal system, or part thereof, which will be paid for, in all or in part, by state construction grant funds.~~

~~20. "Grantee" means the grantee of a state construction grant.~~

16. "Infiltration" means water other than wastewater that enters a sewer system (including sewer service connections and foundation drains) from the ground through defective pipes, pipe joints, connections, or manholes. Infiltration does not include, and is distinguished from, inflow.

17. "Inflow" means water other than wastewater that enters a sewer system (including sewer service connections) from sources such as, but not limited to, roof leaders, cellar drains, yard drains, area drains, drains from springs and swampy areas, manhole covers, cross connections between storm sewers and sanitary sewers, catch basins, cooling towers, storm waters, surface runoff, street wash waters, or drainage. Inflow does not include, and is distinguished from, infiltration.

18. "Facilities plan" includes the information required by Code of Federal Regulations, title 40, section 35.2030, as amended through December 31, 1982, and other information as is necessary to determine whether the project is consistent with good engineering practice and capable of complying with applicable pollution control rules and standards.

19. "Plans and specifications" includes documents that contain the requirements under which a bidder submits a bid for performing the work and the contractual requirements and detailed requirements. The documents that comprise the plans and specifications must conform with generally accepted engineering practices, applicable state statutes and rules, and applicable requirements of Code of Federal Regulations, title 40, parts 33 and 35, as amended through December 31, 1982.

20. "NPDES/SDS permit" means a National Pollutant Discharge Elimination System and State Disposal System permit issued by the agency that authorizes under certain conditions the discharge of pollutants to waters of the state and subsurface disposal or on-land disposal and the operation of a disposal system.

21. "90 percent compliance" means compliance with an NPDES/SDS permit limitation or condition related to effluent quality at a frequency of at least 90 percent of the time during a one-year period computed on the basis of the time interval appropriate to the limitation or condition. Periods of noncompliance caused by inadequate operation and maintenance, negligence on the part of a person, or increased flow or loading to a treatment plant are not included in the percentage computation for the purposes of this definition.

22. A "major contributing industry" means an industrial user of a treatment facility that:

a. has a flow of 50,000 gallons or more per work day on the average;

b. has a flow greater than five percent of the total flow to the treatment works;

c. has a total organic load of greater than five percent of the total organic load to the treatment works;

d. has in its waste a toxic pollutant in toxic amounts as defined in standards issued by the U.S. Environmental Protection Agency under section 307(a) of the act; or

e. is found by the agency in connection with the issuance of an NPDES/SDS permit to the municipality, either singly or in combination with other contributing industries, to interfere with the treatment plant's ability to meet effluent limitations, interfere with digester operation or biological unit process operation, impact the area required for sludge disposal, or increase sizing of the facility by five percent.

23. A "treatment agreement" is an agreement between a municipality and a major contributing industry that includes the following:

a. the variations in daily flow and the monthly average and daily maximum quantity of compatible and incompatible pollutants to be discharged to the treatment facility;

b. the intended period of use of the treatment facility;

c. signatures by the major contributing industry and the owner of the treatment system accepting the wastewater;

d. a requirement that the quantities to be discharged to the treatment system will be in accordance with applicable standards and requirements; and

e. enforceability in a court of law by the municipality.

24. Other terms and abbreviations used herein which are not specifically defined by law shall be construed in conformance with the context and professional usage.

C. ~~Severability. If any provision of this rule or the application thereof to any person or circumstances is held to be invalid, such invalidity shall not affect other provisions of the rule or application of any other part of this rule which can be given effect without application of the invalid provision. To this end, the provisions of all sections, subsections, or subdivisions herein and the various applications thereof are declared to be severable.~~

~~D. Priority~~ Types of programs. ~~Minnesota Statutes, section 116.16 et seq. (1976) establishes a pollution control fund and authorizes grants and loans for the construction of municipal disposal systems. To the extent funds are available and requested, the agency shall disburse funds from the pollution control fund in the following order~~ Under this rule and Minnesota Statutes, section 116.16 et seq., the agency may disburse funds from the pollution control fund for the following:

1. grants for projects tendered a ~~75%~~ federal grant under the act ~~and, to the extent authorized by statute, grants for projects utilizing innovative or alternative wastewater treatment processes and techniques which have been tendered an 85% federal grant under the act.~~;

2. grants to reduce or eliminate the local contribution of a municipality meeting the criteria set forth in 6 MCAR § 4.8034 ~~E.9.b.(4).~~ BB.2;

3. grants to municipalities which would qualify for a federal grant but which desire to initiate construction of the project without a federal grant~~.~~;

4. loans for the construction of municipal disposal systems.

D. Summary of construction grants program.

1. Construction grant funds are available for Step 2+3 and Step 3 projects and advances of allowance for Step 2.

2. Construction grants are awarded to municipalities on a priority basis. Municipalities with the highest priorities as determined by a point system are awarded construction grants first.

3. Priorities are determined by awarding points for various disposal system projects based on (a) the waters affected; (b) the population affected; (c) the type of project proposed; and (d) extra points for qualifying projects.

4. The agency develops and maintains a municipal needs list that ranks in order of priority all municipalities for which a need exists.

5. The agency prepares a municipal project list that lists in order of priority from the municipal needs list, the

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municipalities that are eligible to apply for construction grants for their projects from funds allotted to the state for the current fiscal year.

6. A municipality on the municipal project list must apply for a construction grant before a grant will be awarded.

~~E. Construction grant program.~~

~~1. Summary of construction grants program.~~

~~a. The construction grants program generally consists of three steps:~~

~~(1) Step 1: preparation of all necessary preliminary engineering studies;~~

~~(2) Step 2: preparation of construction plans and specifications; and~~

~~(3) Step 3: construction of the disposal system or part thereof.~~

~~b. Grants may be awarded for a Step 1, Step 2, or Step 3 project or, as authorized by the act, for a project which combines steps.~~

~~c. The scope of the project is initially defined by the applicant but may be revised by the agency or by EPA.~~

~~d. Grants are awarded to municipalities on a priority basis. Priority is determined as follows:~~

~~(1) The director shall develop a municipal discharge inventory which lists in priority order, pursuant to 6 MCAR Section 4.8034 E.2.c., all municipalities which maintain a discharge of effluent, including those municipalities which utilize land application or individual sewage treatment systems. This inventory includes municipalities which have adequate disposal systems as well as those which have a need for a new or upgraded disposal system.~~

~~(2) The agency shall develop a municipal needs list from the municipal discharge inventory. The municipal needs list shall rank in priority order, pursuant to 6 MCAR Section 4.8034 E.3.b.(2) all municipalities or projects for which a need exists.~~

~~(3) A municipal project list shall be developed by the agency from the municipal needs list. The municipal project list shall list in priority order, pursuant to 6 MCAR Section 4.8034 E.4.b., all projects which will be funded during the current fiscal year. The municipal project list shall also list any nonproject uses of the state's allotment of federal construction grant funds.~~

~~e. Public participation shall be sought by the agency prior to the adoption of the municipal needs list and the municipal project list, pursuant to 6 MCAR Section 4.8034 E.7.~~

~~f. Each applicant must apply to the agency for each proposed grant in the manner set forth in 6 MCAR Section 4.8034 E.7.~~

~~g. The agency shall certify applications which have been determined to be complete for a grant of federal funds from EPA.~~

~~h. Funds shall be disbursed to a municipality in the manner set forth in 6 MCAR Section 4.8034 E.9.e.~~

~~2. Municipal discharge inventory.~~

~~a. The director shall develop and maintain a municipal discharge inventory listing all those municipalities which maintain a discharge of effluent, including those which utilize land application or individual sewage treatment systems.~~

~~b. The municipal discharge inventory shall include those municipalities which have adequate disposal systems as well as those which have a need for a new or upgraded disposal system.~~

~~c. Each municipality shall be awarded points pursuant to the criteria set forth in 6 MCAR Section 4.8034 E.2.d. below. The municipalities shall be listed on the municipal discharge inventory in descending order according to the number of points awarded to each.~~

~~d. Criteria.~~

~~(1) Extent and nature of pollution. Priority points shall be awarded as set forth below from a determination of the highest single beneficial water use seriously affected, or if no pollution problem currently exists, from a determination of the highest single beneficial water use to be preserved.~~

~~Water Use~~		~~Point Rating~~
~~Class 1~~	~~Domestic water supply:~~	
	~~A. Direct consumption (groundwater)~~	~~70~~
	~~B. Consumption after only disinfection by chlorination~~	~~65~~

	C. Consumption after moderate water treatment proces.	60
	D. Consumption after very complete water treatment proces.	55
Class 2	Fisheries and recreation waters:	
	A. Propagation and maintenance of cold water fishery and all recreation uses	60
	B. Propagation and maintenance of mixed fishery and all recreational uses	50
	C. Propagation and maintenance of rough fishery and non-contact recreational uses	40
Class 3	Industrial consumption, except food processing and related uses:	
	A. Direct use without chemical treatment	40
	B. Use with moderate treatment	30
	C. Use for cooling and material transport	20
Class 4	Agriculture and wildlife:	
	A. Irrigation and agricultural crops of all kinds	25
	B. Watering of livestock and wildlife	20
Class 5	Commercial navigation and waste disposal	10

(2) Population affected. Priority points shall be assigned for each type of project based on the population of the municipality, or population of the municipalities served by such project as determined by the most recent reliable census, as follows:

	Point Rating
(a) Municipal population under 250	2
(b) Municipal population from 251-500	4
(c) Municipal population from 501-750	6
(d) Municipal population from 751-1000	8
(e) Municipal population from 1001-1500	10
(f) Municipal population from 1501-3000	12
(g) Municipal population from 3001-5000	14
(h) Municipal population from 5001-10,000	16
(i) Municipal population from 10,001-20,000	20
(j) Municipal population from 20,001-50,000	25
(k) Municipal population from 50,001 to 450,000	35
(l) Municipal population in excess of 450,000	50

(3) List of segments. Pursuant to section 303(e) of the act and guidelines and regulations thereto relating to the state continuing planning process, all waters of the state shall be divided into segments and each segment classified as either water quality or effluent limited. The director shall annually develop a list of segments, and after giving consideration to:

(a) severity of pollution problems;

(b) population;

(c) need for preservation of high quality waters; and

(d) national priorities as determined by the administrator; priority points will be established in accordance with criteria approved by the agency and the EPA.

The segment ranked number one shall be awarded priority rating equal to the total number (N) of segments with any subsequent segment receiving a priority rating of N + 1 minus the numerical ranking of the segment. Priority points shall be accordingly awarded to a municipality for the type of project located in a segment.

3. Municipal needs list.

a. The agency shall develop, and update whenever necessary, a municipal needs list listing all municipalities for which a need exists or which desire to construct eligible projects which do not meet the enforceable requirements of the act.

b. Each municipality shall be awarded points in the following manner:

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(1) Points awarded pursuant to 6 MCAR Section 4.8034 E.2.d. in the development of the municipal discharge inventory: and.

(2) Points awarded pursuant to the criteria set forth in 6 MCAR Section 4.8034 E.3.e. below. The municipalities or projects shall be ranked on the municipal needs list according to the number of points awarded to each.

e. Criteria:

(1) Category of project. Priority points shall be allocated on the basis of the single highest disposal system or part thereof. improvement to prevent. control. and abate the source of pollution as follows:

	Point Rating
(a) Provision of tertiary treatment. For the purpose of this regulation. treatment works which provide for the regulated discharge of effluents in lieu of tertiary treatment shall be construed to provide tertiary treatment.	160
(b) Provision of secondary treatment	150
(c) Provision of a new sewer system or portion thereof for a municipality. in existence on October 18. 1972 with sufficient existing or planned capacity to adequately treat such collected sewage or industrial waste.	10
(d) Provision by a municipality of storm water disposal system. including sewer systems to separate existing combined sanitary and storm sewers or treatment works.	10
(e) A municipality having only primary treatment.	20
(f) A municipality or an area part of an area wide study having a sewer system with no treatment including septic tanks overflowing to a sewer system.	30

(g) Subsections (a). or (b). whichever is applicable. shall also include treatment works and/or any portion of sewer system improvements deemed necessary by the director to insure the integrity and performance of a disposal system.

(h) An interceptor sewer which eliminates any existing treatment works or which. in accordance with an approved basin plan. eliminates the need for construction of new treatment works shall be considered equivalent to tertiary or secondary treatment and allocated the appropriate priority points pursuant to subsections (a) or (b). whichever is applicable.

(i) In the case of a sanitary sewer system being tributary to sewerage facilities which are on the municipal project list for funding but which the EPA will not fund until an infiltration/inflow analysis. and where required. a sewer system evaluation survey has been performed. this sewer system project shall be awarded by the director an equal number of priority points as the project on the municipal project list.

(2) Financial aspects. Priority points shall be awarded by summing up the applicable rating points for the project from Tables 1. 2. and 3 relative to per capita project cost. the ratio of municipal bonded debt to adjusted assessed values of municipalities and per capita buying income.

TABLE I

Per Capita Cost of Project

Per Capita Cost ($)	Point Rating
0-280	1
281-400	3
401-600	5
601-800	7
801-1000	9
1001-1300	11
1301-1600	13
over 1600	15

TABLE II

Ratio of Municipal Bonded Debt to Adjusted Assessed Values of Municipalities

Ratio x 100	Point rating
0-3	3
4-9	5
10-15	7

16-21	9
22-27	11
28-33	13
over 33	15

TABLE III
Per Capita Buying Income

Percent of Average	Point Rating
0-50	15
51-60	13
61-70	11
71-80	9
81-90	7
91-100	5
101-110	3
over 110	1

(3) Ten additional points will be awarded to an application which includes planned participation in a sanitary district and/or other multimunicipal disposal system.

d. If a municipality or project is not included on the municipal needs list, the municipality may petition the agency for inclusion on the list. The municipality must document its need in the following manner:

(1) Sewered communities: submission of data regarding: concentration of pollutants in existing discharge, volume of discharge; and waters of the state presently or potentially impacted by the discharge;

(2) Unsewered communities: submission of data regarding: type of soil in unsewered area; depth to seasonally high water table; size of all lots in the area; and age and type of existing system.

Following submission of this data, the director will review the material and determine if a need has been shown. If so, the municipality will be added to the municipal needs list, in the manner set forth above. If not, the municipality will be notified of the reasons for the decision of the director.

e. If in the determination of the order of priority on the municipality needs list, two or more municipalities have the same total number of priority points, the municipality in accordance with 6 MCAR Section 4.8034 E.2.d.(1) that has the highest single beneficial water use seriously affected or to be preserved shall be ranked higher. If two or more municipalities have the same total number of priority points and the same highest single beneficial water use seriously affected or to be preserved, the municipalities shall be ranked based on population as determined by the most recent federal census in descending order below the municipality with the largest population.

4. Municipal project list.

a. The agency shall prepare a municipal project list each fiscal year which shall list in order of priority those projects for which federal grant funds will be requested from current allotments. The municipal project list shall also list any nonproject uses of the state's allotment of federal construction grant funds, including but not limited to training grants and costs of administration.

b. Projects with the highest priority on the municipal needs list will be placed on the municipal project list in the following manner:

(1) Funds shall be allocated between the metropolitan area and the non-metropolitan area in approximately the same ratio which the population of sewered municipalities of the metropolitan area bears to the sewered population of the non-metropolitan area.

(2) Funds will be set aside for such classifications of projects and in such amounts as is required by the act. Such classifications presently include:

(a) Treatment works utilizing innovative or alternative wastewater treatment processes and techniques for which an 85% federal grant may be tendered;

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(b) Alternatives to conventional sewage treatment works for municipalities having a population of three thousand five hundred or less or for the highly dispersed sections of larger municipalities, as defined by the administrator; and

(c) Construction of publicly owned treatment works for major sewer system rehabilitation, new collector sewers and appurtenances, new interceptors and appurtenances, and, correction of combined sewer overflows, if such projects are on the municipal project list for that year and are otherwise eligible for funding in that fiscal year.

These classifications are presently required by sections 205 and 216 of the act. 6 MCAR Section 4.8034 E.4.b. (2) shall, therefore, be read in conjunction with the terms as defined in the act and U.S. EPA regulations.

(3) The agency shall provide for an adequate mixture of Step 1, 2, and 3 projects so as to permit funding to proceed in an orderly fashion and to fully utilize all allocated funds.

(4) Federal grant funds allocated to non-metropolitan area projects and for which there are not sufficient certifiable non-metropolitan projects by the end of the fiscal year for which those funds were allotted shall be reallocated by the agency to the metropolitan area. Any such federal grant funds which are reallocated to the metropolitan area shall be recoverable in total for allocation to non-metropolitan projects in later fiscal years in annual amounts deemed reasonable by the director. Grant funds allocated to the metropolitan area which are unused are subject to similar provisions for reallocation to and recovery from non-metropolitan projects.

c. A reserve project list shall be developed by the agency for the purpose of utilizing grant monies forfeited by any municipality pursuant to 6 MCAR Section 4.8034 E.8.b. and E.8.c.

d. The municipal project list may be modified, in accordance with EPA regulations, to give higher priority to Step 2 or combined Step 2 and 3 projects utilizing innovative or alternative wastewater treatment processes and techniques to the extent necessary to comply with the set asides required by the act.

5. Project eligibility.

a. Projects which are not eligible for federal grants shall not be eligible for state grant funds except as provided in section E.9.b.

b. A project is not eligible for a grant if the construction has been initiated prior to the award of the grant, except as provided in 6 MCAR Section 4.8034 E.9.b.

c. Items are not grant eligible unless the director determines that they are necessary to the cost effective functioning of an otherwise grant eligible disposal system.

6. Adjustments.

a. Notwithstanding any other provision in this rule including, but not limited to, 6 MCAR Section 4.8034 E.2.d., E.3.c. and E.6.a., to the contrary, the director may, as necessary to establish criteria for determining priority for applications for federal and state construction grants under the act, and regulations and guidelines of the EPA promulgated pursuant thereto, and Minnesota Statutes chs. 115 and 116, establish such criteria for determining priority upon a basis other than that provided herein, to the extent required to comply with the act, and guidelines and regulations thereto or resulting therefrom.

7. Public participation. Prior to the adoption of the municipal needs list and the municipal project list by the agency, public participation shall be sought in the following manner:

a. Notice of the agency board meeting at which the municipal needs list and the municipal project list will be adopted shall be given to all affected municipalities at least 30 days prior to such meeting.

b. A free copy of the proposed municipal needs list and the proposed municipal project list will be mailed to any interested person upon request.

c. Prior to the agency board meeting, public informational meetings will be conducted at such locations as the director deems appropriate. Notice of such meetings shall be given to all affected municipalities.

d. All interested persons shall have the opportunity to present oral or written statements to the board in regard to the proposed municipal needs list or the proposed municipal project list if a request is submitted to the board. Such request should be submitted fourteen days prior to the meeting to facilitate agenda preparation and must be submitted at least three days prior to meeting. If such request is made during the board meeting, interested persons may be afforded the opportunity to participate within such limits of time and manner as the board may establish under the circumstances.

8. Applications.

a. Unless otherwise specified by the director, the state construction grant application form shall be the federal construction grant application form of the EPA.

b. Within 90 days for a Step 1, 150 days for a Step 2, and 150 days for a Step 3 after notification in writing from the director, a municipality shall file a completed construction grant application or submit such information as the director determines to be necessary to complete a previously submitted application. The director may extend the date of filing or submission of any information subject to the municipality providing adequate justification therefor. Failure to comply with this schedule may cause forfeiture of grant monies for the step grant involved and the municipality may be required to complete the work for that step without grant monies.

c. A specific schedule for completing the particular step of the project will be contained in each grant offer tendered. The municipality's National Pollutant Discharge Elimination System (NPDES) permit may be modified, pursuant to agency rule, to include such schedule. Failure to comply with this schedule may cause forfeiture of grant monies for the step grant involved and the municipality may be required to complete the work for that step without grant monies. Prior to the forfeiture of grant monies or the required completion of work without grant monies pursuant to 6 MCAR Section 4.8034 E.8.b. or c., the municipality shall have the right to a hearing, if it so requests.

d. The construction grant application for a Step 1 project shall include the following attachments and such other attachments as EPA may require.

(1) Resolution of governing body of the municipality authorizing the filing of the application and designating the municipal official authorized to sign the application;

(2) If more than one municipality is involved, resolutions from the governing body of all municipalities agreeing to cost sharing and agreeing to proceed to Steps 2 and 3 if cost effective;

(3) Proposed sub-agreements, or an explanation of the intended method of awarding sub-agreements for substantial portions of the project work;

(4) Statement by the consulting engineer indicating the effluent limitations for which the disposal system is being designed;

(5) A resolution by the governing body of the municipality to the effect that the sewage collection system will, at the appropriate time, be constructed concurrently with the sewage treatment works; and

(6) A resolution by the governing body of the municipality as to the methods for financing the construction of the collection system; and

(7) Documentation by the engineer(s) that they carry adequate errors and omissions insurance.

e. The construction grant application form for a Step 2 project shall include the following attachments and such other attachments as EPA may require.

(1) Any of the items listed in 6 MCAR Section 4.8034 E.8.d. which were not previously submitted or which require updating;

(2) Resolution of the governing body of the municipality authorizing the application and designating the municipal official authorized to sign the application;

(3) If more than one municipality is involved, resolutions from the governing bodies of all municipalities agreeing to cost sharing and agreeing to proceed to Step 3 when so instructed by the agency;

(4) A design summary based on the plans and specifications to be submitted when the plans and specifications are complete; and

(5) Documentation by the engineer(s) that they carry adequate errors and omissions insurance.

f. The construction grant application form for a Step 3 project shall be supported by the following attachments and such other attachments as EPA may require.

(1) Any of the items listed in 6 MCAR Section 4.8034 E.8.d. or E.8.e. which were not submitted or which require updating;

(2) Resolution of the governing body of the municipality authorizing the application and designating the municipal official authorized to sign the application;

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(3) If any items are deleted from project eligibility after initial submittal of the plans and specifications, the cost of such items must be set out;

(4) Signature and registration number of the consulting engineer accompanying the following certification statement:

The treatment works described in this grant application have been designed with full knowledge of the effluent limitations required by the Minnesota Pollution Control Agency as set forth in NPDES Permit No. - - - dated - - - - - - - - - - - It is my judgment and carefully considered opinion that these treatment works are capable of consistently producing the required effluent quality, provided that the facility is operated in conformance with the approved operation and maintenance manual and that the volume and characteristics of raw wastewater are within the limits of "Design Data" stated on page of the plans or as follows:

(5) Executed engineering contract, including, unless otherwise approved by the director, full-time qualified resident inspection by the consulting engineer or his agent during construction. After project initiation, reports are to be submitted outlining type of construction inspected and time; and

(6) Documentation by the engineer(s) that they carry adequate errors and omissions insurance.

g. All construction grant application forms and attachments shall be submitted in triplicate to the agency at the address specified by the director. Unless adequately justified in writing, failure to submit all the necessary documents by the date specified shall constitute grounds for rejection of the application. Substantial deficiencies in the application and/or supporting documents or failure to conform with applicable requirements such as those set forth in the current agency water pollution control program plan or the applicable basin, regional, or area water quality management plan also shall be grounds for rejection. Any application shall be rejected at the discretion of the agency if it does not include an engineering report acceptable to the director, or does not include an adequate commitment for support of operation and maintenance of the project or is not consistent with applicable statutes, or does not contribute to the overall objective of the effective water quality management.

9. Administration.

a. Certification. Accepted applications of municipalities on the municipal project list shall be certified to the EPA for a grant. Such certification shall in any fiscal year be withheld or withdrawn by the director if the project is not or cannot be implemented according to an acceptable schedule or otherwise poses a substantial likelihood of causing a loss of federal funds to the state.

b. Tender of grant.

(1) After the EPA has determined the eligibility of the application and tendered a federal grant, the agency shall make a similar grant offer to the municipality in an amount not less than that required by federal law and regulation as a condition for the grant of federal funds or in an amount not less than that allowed by state statutes where not required by federal law.

(2) In the case of a project for which the applicant has solicited and received contracts which exceed the costs estimated in the application, the director may, after consideration of available federal funds and in accordance with EPA regulations, recommend a grant increase. A reasonable amount shall be reserved by the agency from each allotment of funds for such increases.

(3) The agency may tender a grant of state funds to a municipality that would otherwise qualify for a federal grant but desires to initiate construction of a project without a federal grant.

(4) The agency may tender a grant of state funds to a municipality for what would otherwise be the local share of the cost if:

(a) The municipality is unable to finance the local share and attain a minimal point rating of 40 under the criteria of 6 MCAR Section 4.8034 E.3.c.(2); and,

(b) Application is made prior to the initiation of construction; and,

(c) The prevention, control, and abatement of water pollution and the public health of the state require the construction of the project.

c. Change orders. Any proposed changes in the contract which result in cost increases greater than that of the base contract plus contingencies as stated in the project summary or other proposed changes regardless of cost which substantially alter the type of treatment process, or its efficiency, versatility or reliability, shall be submitted to the director for prior approval, except where the work is agreed by the director to be of an emergency nature. Change orders not requiring prior approval of the director shall be submitted within one month after the date on which the change is ordered by the applicant, its engineer or other authorized agent for review and approval.

d. Reimbursement grants. If a project is eligible for a federal reimbursement grant, the agency may provide a state grant or grant increase for such project.

e. Payment of grant funds.

(1) Step 1 grants. The agency shall pay 50% of the grant when an adequate facilities plan has been received by the director. The balance shall be paid upon agency and EPA approval of the facilities plan.

(2) Step 2 grants. The agency shall pay 50% of the grant when adequate plans and specifications have been received by the director. The balance shall be paid upon agency and EPA approval of the plans and specifications.

(3) Step 3 grants.

(a) Installment payments may be requested from the agency when twenty-five (25 percent fifty (50) percent and seventy-five (75) percent of the eligible construction, as measured by its cost, has been completed, or in accordance with a schedule and conditions agreed upon between the grantee, EPA and the director. The director shall authorize such proportional installment payment upon notification from the EPA that a federal installment has been authorized in a given amount.

(b) Installment payments at the fifty (50) percent level shall not be made until the applicant has in its employ for the operation of the project treatment works, a waste water treatment works operator having a valid state certificate or one who is capable of obtaining such a certificate for operation of the designated class of treatment works within a reasonable period of time. State installment payments at the seventy five (75) percent level, and beyond the seventy five (75) percent level, shall be based on an assessment of the applicant's development of and progress towards completion of an acceptable facilities. Final payment shall not be made until final inspection of the project by the agency.

(c) The proportional installment payment to be made by the agency shall not be in excess of the overall federal state project cost ratio as authorized by the agency and director.

f. Retained payment. The agency may withhold Step 3 grant payments in the following circumstances:

(1) If the director determines that a project does not substantially conform to approved plans and specifications and/or there has been a major breach of a condition in the grant agreement, the agency may withhold all unpaid funds and may request EPA to do likewise.

(2) If the director determines that a project does not conform to approved plans and specifications, but such nonconformity is not substantial, and/or there has been a minor breach of a condition in the grant agreement, the agency may withhold up to 10% of unpaid funds and may request EPA to do likewise.

(3) If the director determines that a project has any other deficiency, the agency may withhold up to 10% of the unpaid funds.

(4) If funds are withheld pursuant to (1), (2) or (3) above and the condition causing such action has been corrected to the satisfaction of the director, then all retained funds shall be released to the municipality, unless otherwise agreed to by the director and the municipality.

g. Funds recovery. In addition to any other remedies, the agency may seek to recover any or all funds tendered or disbursed for a project which is improperly designed, improperly constructed, or improperly operated and maintained.

h. Contract assignment. The grantee shall retain the right to assign its contract with a contractor or engineer, and any or all rights pursuant thereto, to the agency.

i. Contract beneficiary. The contract between the engineer or contractor and the grantee shall provide that the agency is a third party beneficiary to their contract.

j. Cost of administration. The agency may use federal funds from the state's allotment, in such amount as authorized by the act, for administration of the construction grants program.

k. Procedural rules and appeals. All requests for hearing, appeals, and other procedural matters not specifically provided for herein shall be governed by the agency rules of procedure, the rules of the Office of Hearing Examiners and other applicable law.

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~~I. Variances. Any person may apply for a variance from any requirement of these rules. Such variance shall be applied for and acted upon by the agency in accordance with Minnesota Statutes, section 116.07, subd. 5, and other applicable statutes and rules.~~

E. Municipal needs list.

1. The director shall develop and maintain a municipal needs list of municipalities that have a need for a new or upgraded disposal system.

2. A municipality on the municipal needs list shall be awarded points under the criteria established in this rule. The municipalities shall be listed on the municipal needs list in descending order according to the number of points awarded to each.

3. A municipality may petition the agency for inclusion on the municipal needs list. A municipality petitioning the agency for inclusion on the list shall submit the following information:

a. If the municipality is sewered, the municipality shall submit data regarding concentration of pollutants in existing discharge; volume of discharge; and waters of the state presently or potentially impacted by the discharge.

b. If the municipality is unsewered, the municipality shall submit data regarding type of soil in unsewered area; depth to seasonal high water table; size of all lots in the area; and age and type of existing system.

4. The director shall review each petition and add to the municipal needs list each municipality for which a need has been found to exist. If the director determines that a need does not exist, the municipality shall not be added to the list and the director shall notify the municipality of the reasons for the determination.

5. Upon approval of a facilities plan, the agency may determine that the municipality does not have a need and remove the municipality and the project from the municipal needs list.

F. Priority points for waters affected.

1. A municipality shall be awarded priority points based on the water use of the receiving water of the discharge according to the following:

	Water Use*	Point Rating
Class 1	Domestic consumption:	
	Class 1A waters	70
	Class 1B waters	65
	Class 1C waters	60
	Class 1D waters	55
Class 2	Fisheries and recreation:	
	Class 2A waters	60
	Class 2B waters	50
	Class 2C waters	40
Class 7	Limited Resource Value Waters	35

* The water uses are more specifically defined in 6 MCAR §§ 4.8014 B. and D. and 4.8015 B. and D. and the water use of a specific water of the state is the water use established by 6 MCAR § 4.8024 or 4.8025.

2. If a municipality discharges to a receiving water with more than one designated water use, the municipality shall be awarded the points for the designated water use with the greatest number of points.

3. If a municipal discharge has an adverse impact on a downstream water with a designated water use receiving more points than the receiving water, the municipality shall be awarded the priority points for the downstream water.

G. Priority points for population served. A municipality shall be awarded priority points based on the population of the municipality served by the project. The priority points for population served are five times the logarithm to the base 10 ($\log_{10}$) of the population determined by the latest official census. The table below gives examples of the priority points assigned for various populations:

Population	Log ($_{10}$)	Priority Points Assigned
100	2	10.0
1,000	3	15.0

10,000	4	20.0
100,000	5	25.0
1,000,000	6	30.0

H. Priority points for type of project.

1. A municipality shall be awarded priority points based on the type of project to be constructed according to the following:

Type of Project	Priority Points
Tertiary Treatment Plants:	
a. New tertiary treatment plant	160
b. Major addition to existing tertiary treatment plant	160
c. Dechlorination facilities	120
d. Ancillary addition to existing tertiary treatment plant	80
Secondary Treatment Plants:	
e. New secondary treatment plant	150
f. Major addition to existing secondary treatment plant	150
g. Dechlorination facilities	110
h. Ancillary addition to existing secondary treatment plant	75
Collection Systems or Collector Sewers:	
i. Collection system or collector sewer	10
j. Improvement of collection system or collector sewer reliability	10
Combined Sewer Overflow:	
k. Control of combined sewer overflow	150
Previously Funded Projects:	
l. Additions to previously funded projects	10
m. Modification and replacement of innovative or alternative projects	10

2. Description of project types.

a. New plant. A new tertiary treatment plant is a plant designed to meet tertiary treatment standards and constructed after July 1, 1983. A new secondary treatment plant is a plant designed to meet secondary treatment standards and constructed after July 1, 1983. Land application systems and stabilization ponds that are proposed as an alternative to tertiary and secondary treatment plants that discharge to waters of the state are considered tertiary treatment and secondary tretment for purposes of project priority. Whether a land application system or stabilization pond is a tertiary or secondary treatment system is determined as based on the effluent limitations applicable to discharges to the receiving water. Subsurface disposal systems, including septic tanks, designed to treat an average daily flow of not more than 1,000 gallons and the drainfield portion and one central septic tank ~~at the drainfield site for subsurface disposal systems designed~~ to treat an average daily flow in excess of 1,000 gallons are considered secondary treatment for purposes of project priority.

b. Major addition. A major addition to an existing tertiary or secondary treatment plant is an addition that improves effluent quality in order that a municipality achieving less than 90 percent compliance may achieve compliance with applicable NPDES/SDS permit conditions. A major addition also includes major interceptor sewers and sewer system rehabilitation projects.

c. Major interceptor sewer. A major interceptor sewer is a sewer, including related lift stations, that intercepts wastewater from the final point in a collector sewer of a municipality and accomplishes one of the following:

(1) transports the wastewater directly to a wastewater treatment facility;

(2) transports the wastewater directly to another major interceptor sewer; or

(3) transports the wastewater directly to the collector sewer of another municipality.

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A sewer is a collector sewer and not a major interceptor sewer if the average design flow of the sewer increases by more than ten percent from wastewater connections to the sewer between its origin and its termination or if it has physical connections closer to each other than 1,000 feet. Infiltration and inflow directly to the sewer and flow from other major interceptor sewers is not included in determining whether the flow has increased by more than ten percent.

d. Sewer system rehabilitation. A sewer system rehabilitation project is a project that repairs or replaces an existing collector or interceptor sewer in order to eliminate bypasses caused by insufficient hydraulic capacity in existing separate sanitary sewers by transporting infiltration and inflow and includes flow equalization systems, relief sewers, and relief capacity sewers.

e. Flow equalization system. A flow equalization system is a containment system such as a pond, basin, or tank designed to temporarily hold wet weather flow until the flow can be transported to the wastewater treatment plant.

f. Relief sewer. A relief sewer is a sewer primarily designed to eliminate bypassing caused by insufficient hydraulic capacity in separate sewer systems by transporting infiltration or inflow to adequately sized sewers or a wastewater treatment facility for proper treatment. A sewer is a relief capacity sewer and not a relief sewer if its design flow includes more than five percent wastewater or if it has physical connections closer to each other than 1,000 feet. Storm sewer separation is not a relief sewer.

g. Relief capacity sewer. A relief capacity sewer is a new sewer designed to handle the normal flow of wastewater and to eliminate bypasses caused by insufficient hydraulic capacity in existing sewers by transporting infiltration and inflow to adequately sized sewers or to a wastewater treatment plant. A relief capacity sewer must be designed to provide future capacity for a minimum of 40 years.

h. Collection system or collector sewer. A collection system or collector sewer is a sanitary sewer, including innovative and alternative sewers carrying raw or partially treated wastewater and providing collection system reliability such as alternative power or dual pumps, that is not a major interceptor sewer, a relief sewer, or relief capacity sewer. For treatment works including subsurface disposal systems designed to treat an average daily flow in excess of 1,000 gallons, a collection system includes devices such as grinder pumps and septic tanks that will partly treat the wastewater, as well as septic tank effluent pumps and small diameter sewers that will pump and convey the partially treated waste.

i. Dechlorination facilities. Dechlorination facilities are facilities that remove chlorine from the effluent.

j. Ancillary addition. An ancillary addition to an existing tertiary or secondary treatment plant is an addition that is not a major addition and is not dechlorination facilities such as administrative support facilities and sludge handling capability to comply with State Disposal System permit conditions controlling sludge application to land or sludge disposal.

k. Addition to previously funded project. An addition to a previously funded project is a project that will bring an existing disposal system that has been funded by a construction grant into compliance with the municipality's existing NPDES/SDS permit without a change in the conditions of the NPDES/SDS permit.

l. Modification and replacement of innovative or alternative projects. A modification or replacement of an innovative or alternative project is a project to modify or replace a project that was funded with increased grant funding in accordance with Code of Federal Regulations, title 40, section 35.2032, as amended through December 31, 1982.

3. Special restrictions for sewer system projects.

a. Sewer system rehabilitation. A sewer system rehabilitation project is not eligible for priority points under section H.1.b. or H.1.f. unless the municipality has not obtained a construction grant since at least February 11, 1974, the municipality's existing treatment plant is hydraulically overloaded, and sewer system rehabilitation is justified by an infiltration/inflow analysis and sewer system evaluation survey that complies with the requirements of Code of Federal Regulations, title 40, section 35.2120, as amended through December 31, 1982.

b. Relief capacity sewer.

(1) A relief capacity sewer is not eligible for priority points under section H.1.b. or H.1.f. unless the municipality has not obtained a construction grant since at least February 11, 1974, and a relief capacity sewer is justified by an infiltration/inflow analysis and sewer system evaluation survey that complies with the requirements of Code of Federal Regulations, title 40, section 35.2120, as amended through December 31, 1982.

(2) A relief capacity sewer that qualifies as a major interceptor sewer is considered a major addition to a treatment plant and the municipality proposing the project shall be awarded the priority points under section H.1.b. or H.1.f. for the entire cost of the project.

(3) A relief capacity sewer that is not a major interceptor sewer must be divided into two components: (a) the portion of the sewer for domestic, commercial, and industrial wastewater and normal infiltration and inflow and generally accepted peaking factors; and (b) the portion of the sewer necessary to convey excess infiltration and inflow. Component (b) is considered a major addition to a treatment plant and awarded the priority points under section H.1.b. or H.1.f. and component (a) is considered a collector and awarded the priority points under section H.1.i.

(4) That percentage of total sewer flow at design condition that is attributable to component (b), multiplied by the cost of the relief capacity sewer, is fundable as a major addition. That percentage of total sewer flow at design condition that is attributable to component (a), multiplied by the cost of the relief capacity sewer, is fundable as a collector sewer.

c. Collection systems or collector sewers. A municipality proposing to undertake a sewer system rehabilitation project or to construct a relief capacity sewer that does not meet the criteria specified in a. and b. must be listed as a separate project on the municipal needs list and awarded the priority points credited to a collection system or collector sewer under section H.1.i. or H.1.j.

d. Combined sewer overflow. A project for the control of combined sewer overflow is not eligible for priority points under section H.1.k. unless the project is necessary to meet requirements of the municipality's NPDES permit and the act. In addition, after October 1, 1984, combined sewer overflow projects are eligible for funding and for priority points under section H.1.k. only if the governor, by July 1 prior to the federal fiscal year in which funding is sought, has set aside a portion of the state's allotment for correction of combined sewer overflows. This set aside must not exceed 20 percent of the state's allotment for each fiscal year. In no event after October 1, 1984, may funding for combined sewer overflow projects exceed the amount set aside by the governor for these projects.

4. Temporary improvements. If a municipality makes improvements to its existing disposal system that are temporary in nature for the purpose of maximizing effluent quality or keeping its system operational while the municipality is awaiting a grant, the municipality shall receive the same priority points for its project as it would have received without the temporary improvements.

I. Extra points. In addition to the priority points a municipality is entitled to for its project, the following extra points shall also be awarded to a qualifying municipality:

1. Existing public health hazard. A municipality that proposes a project that will eliminate an existing public health hazard assessed by the Minnesota Department of Health in a health advisory or commissioner's order shall be awarded 40 extra points. A municipality requesting the award of 40 extra points under this provision shall submit the following information to the agency and to the Minnesota Department of Health:

a. information on geologic and soil conditions including soil types, permeabilities, and presence or absence of confining units;

b. groundwater flow patterns in the area of the facility or proposed facility;

c. an assessment of the extent and magnitude of the contaminant plume;

d. an identification of water users and assessment of the amount of water appropriations in the area of the facility or proposed facility;

e. flow rates and flow patterns of surface waters;

f. information on well construction for wells in the area of the facility or proposed facility, particularly wells that have been or will be impacted;

g. a description of the facility's construction, operation, and performance if there is an existing facility, with an explanation of why the facility is creating a public health hazard;

h. an identification and assessment of the suspected route of human exposure and the population exposed; and

i. a description of how the proposed improvements will mitigate or eliminate the public health hazard.

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2. Existing level of treatment. A qualifying municipality shall be awarded extra points under one of the provisions below for its existing level of treatment.

a. No treatment. A municipality that presently has a central collection system serving 50 percent or more of the population but provides no treatment prior to discharge shall be awarded 40 extra points.

b. Failing septic system. A municipality with an existing septic system where more than 50 percent of the existing septic systems discharge raw or partially treated sewage to the ground surface or surface waters shall be awarded 30 extra points.

c. Primary treatment. A municipality whose present facilities are designed for only primary treatment shall be awarded 20 extra points.

d. Combined sewer overflow. A municipality that discharges untreated sewage as a result of combined sewer overflows shall be awarded 20 extra points.

3. Watershed pollution abatement plan. A municipality that proposes a project that is an integral part of a watershed pollution abatement plan shall be awarded 15 extra points. A watershed pollution abatement plan is a plan prepared by a watershed district and approved by the Minnesota Water Resources Board and includes the following:

a. specific point source and nonpoint source pollution abatement strategy; and

b. statewide water quality management plan goals and objectives, including the best management practices.

A municipality is not entitled to 15 extra points under this provision unless the watershed district has adopted specific rules to implement the watershed abatement plan and the plan has been updated in the last ten years. If a project is part of several watershed districts, all of the watershed districts must have satisfied the above criteria in order for the municipality to receive the extra points.

4. Outstanding resource value waters. A municipality that discharges to or adversely affects an outstanding resource value water shall be awarded ten extra points. An outstanding resource value water is Lake Superior, any water in the Boundary Waters Canoe Area Wilderness or Voyageurs National Park, and all federal and state designated wild, scenic, or recreational river segments.

5. Game fish lakes. A municipality proposing to undertake a project that will result in the elimination of a discharge to a game fish lake or that will adversely affect a game fish lake shall be awarded ten extra points. A game fish lake is a lake managed for propagation of game fish species and used for fisheries and recreation. There may be occasional but not regular winter kill in a game fish lake.

6. Sanitary district. An applicant who includes planned participation in a sanitary district or other multi-municipal disposal system as part of the project shall be awarded ten extra points.

J. Total points. The total points to be awarded a municipality for placement on the municipal needs list is the sum of the priority points awarded under one of the provisions of section F., the priority points awarded under section G., the priority points awarded under one of the provisions of section H., and extra points awarded under one or more of the provisions of section I.

K. Resolution of equal point ratings. If in the determination of the order of priority on the municipal needs list, two or more municipalities have the same total number of points, the municipality with the highest priority points under section F. for water use is ranked higher. If two or more municipalities have the same total number of points and the same priority points under section F. for water use, the municipalities are ranked based on population under section G.

L. Municipal project list.

1. The agency shall adopt a municipal project list each fiscal year which shall list in order of priority projects for which federal grant funds will be requested from current allotments. The municipal project list shall also list any nonproject uses of the state's allotment of federal construction grant funds, including but not limited to, training grants and costs of administration.

2. A municipality that requests project placement on the municipal project list shall submit to the agency by July 1 prior to the beginning of the fiscal year for which the municipal project list is prepared, an approvable facilities plan if the grant sought is a Step 2+3 grant and approvable plans and specifications if the grant sought is a Step 3 grant. No municipality may be listed on the municipal project list unless the municipality has submitted the necessary facilities plan and specifications.

3. The agency shall prepare a proposed municipal project list of municipalities on the municipal needs list that have submitted approvable facilities plans and specifications in conventional order of priority until the cost of the proposed projects reaches the full allotment of federal construction grant funds available for the fiscal year. In preparing the list, the agency shall consider the percentage of the cost of the projects that will be paid for by a federal construction grant, as determined by requirements of the act and decisions of the governor under the act to uniformly reduce the federal share of grant assistance.

M. Reserve project list.

1. A reserve project list shall be developed by the agency concurrent with the adoption of the municipal project list.

2. The reserve project list shall contain a list of municipalities whose projects are eligible for funding from grants made available when a municipality's application for a grant is rejected pursuant to 6 MCAR § 4.8034 R.

3. Municipalities shall be listed on the reserve project list in the same order of priority as municipalities were listed on the municipal project list.

N. Project eligibility.

1. Steps eligible. Federal grants shall be awarded only for Step 2+3 and Step 3 projects.

2. Initiation of construction. A municipality is not eligible for a federal grant if construction on the project has been initiated prior to the award of the grant.

3. Cost-effectiveness. A project is not eligible for a grant unless the agency determines that the project is a cost-effective means of handling the municipality's wastewater. The agency shall not award a grant to pay for those portions of a project that are not cost-effective.

O. Adjustments in the municipal project list. Notwithstanding any other provision in this rule, the director may establish criteria for determining priority for applications for federal and state construction grants upon a basis other than that provided in this rule if the criteria complies with the act, EPA regulations and guidelines, and Minnesota Statutes, chapters 115 and 116.

P. Public participation.

1. The agency shall prepare a proposed municipal needs list and a proposed municipal project list and make them available to the public at least 45 days before adoption. The agency shall mail a free copy of the proposed lists to an interested person upon request.

2. The agency shall conduct public informational meetings about the proposed lists at locations deemed appropriate by the agency. The agency shall give ten days notice of meetings to all affected municipalities. A person shall be permitted to present oral and written comments about the proposed lists at the meetings.

3. The agency shall give affected municipalities at least 45 days notice of the agency board meeting at which the proposed municipal needs list and proposed municipal project list will be acted upon.

4. Interested persons may present oral or written statements to the board at the board meeting if a request to do so is submitted to the agency at least three days before the meeting. The agency may place reasonable restrictions upon the time and manner in which comments are submitted. If a request to present oral or written statements is made at the board meeting, the agency may allow participation in a manner established by the chairperson.

Q. Grant applications.

1. No municipality may be eligible for a construction grant unless a completed grant application has been submitted to the agency.

2. A municipality on the final municipal project list shall submit a completed construction grant application to the agency within 90 days after the date on which the agency adopts the fiscal year's municipal project list. The application shall be on EPA's form 5700-32, as provided by the agency.

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3. The agency shall notify in writing each municipality on the municipal project list of its placement on the list. No municipality shall submit a construction grant application unless the municipality has been notified by the agency that it is on the municipal project list.

4. A municipality that applies for a Step 2+3 grant shall, in addition to submitting the completed application form, submit the following information for agency review and approval:

a. A resolution of the governing body of the municipality that authorizes the filing of the application and that designates the municipal official authorized to sign the application and grant documents;

b. Updated cost estimates for Step 3 project work in a format provided by the agency;

c. A resolution by the governing body of the municipality resolving that the sewage collection system will, at the appropriate time, be constructed concurrently with the sewage treatment works;

d. The municipality's proposal for funding the cost of a collection system if the collection system is not part of the project to be funded and the municipality does not already have a collection system;

e. An engineer's certificate of adequate errors and omissions insurance;

f. Amendments to the facilities plan;

g. A treatment agreement for each major contributing industry to be used in determining the design basis of the new or upgraded system;

h. A certification from the municipality that the municipality shall:

(1) prohibit unpolluted water connections to the municipality's sanitary sewer system; and

(2) inspect new connections to the sanitary sewer system throughout the municipality's jurisdiction to ensure that the connections are air-tight and water-tight and conform to the Minnesota Plumbing Code, the rules of the department of health, MHD 120-134, and to 7 MCAR § 1.135;

If more than one municipality is involved in the grant application, the resolutions required in a.-h. must be submitted for each municipality involved in the project. In addition, the municipalities shall submit an unexecuted intermunicipal agreement that sets forth the terms and conditions of joint treatment and the cost-sharing methodology.

i. An opinion from the municipality's attorney that the municipality has the legal authority to construct, assess, operate, maintain, and replace the wastewater treatment facilities;

j. Other documents that are required by EPA regulation or other requirements of the act.

5. A municipality that applies for a Step 3 grant shall, in addition to submitting the completed application form, submit the following information for agency review and approval:

a. Addendums to the plans and specifications for the treatment works or other project to be funded.

b. A sewer service charge system comprised of a user charge system and a system for raising funds to cover the municipality's costs of construction and to retire the municipality's debt costs attributable to the wastewater treatment works to be constructed.

(1) The user charge system must ensure the sufficient generation of revenue to offset the annual costs of operation, maintenance, and replacement (O, M, and R) of the treatment works and must charge each user class a fee proportional to the contribution of each user class to the total wastewater loading.

(2) The user class includes residential, commercial, industrial, institutional, and governmental classes.

(3) The system for raising funds to cover the municipality's costs of construction and to retire the municipality's debt costs need not be proportionally assessed against each user class, but the manner in which the charge will be distributed must be described.

c. Documentation of how the public has been informed of the proposed sewer service charge system.

d. A sewer use ordinance to control discharges to the disposal system throughout the jurisdiction of the municipality.

e. A preliminary plan of operation of the treatment works.

f. Costs for developing an operation and maintenance manual and a procedure for startup of the treatment works.

g. A wage rate determination information sheet, as provided by the agency.

h. A signature and registration number of the consulting engineer accompanying the following certification statement:

The treatment works described in this grant application have been designed with full knowledge of the effluent limitations required by the Minnesota Pollution Control Agency as set forth in NPDES Permit No. . . . . dated . . . . . .It is my judgement and carefully considered opinion that these treatment works are capable of consistently producing the required effluent quality, provided that the facility is operated in conformance with the approved operation and maintenance manual and that the volume and characteristics of raw wastewater are within the limits of "Design Data" stated on page . . . . of the plans as follows:

i. A proposed engineering contract that provides for the consulting engineer or the engineer's agent to be present onsite during the hours of construction for purposes of inspection, although the inspector does not have to be a resident of the municipality, and to submit written reports to the agency on request describing the type of construction inspected and the time involved in inspection after construction commences.

j. An engineer's certificate of adequate errors and omissions insurance.

k. A treatment agreement with each major contributing industry to be used in determining the design basis of the new or upgraded system.

l. A cost breakdown for all project work to be funded by the grant, including separation of eligible and ineligible items, in a format provided by the agency.

m. Documentation of the municipality's source of funding to cover the cost of a collection system if the collection system is not part of the project to be funded and the municipality does not already have a collection system.

n. If more than one municipality is involved in the grant application, an executed intermunicipal agreement that sets forth the terms and conditions of joint treatment and the cost sharing methodology.

o. Assurance that the municipality has, or will have within 90 days after authorization to bid, full rights to all necessary land to allow construction and operation of the facilities during the useful life of the facilities.

p. Other documents that are required by EPA regulation or other requirements of the act.

6. A municipality that has received a Step 2+3 grant shall submit the same information required of a Step 3 grant applicant before the municipality may receive authorization to seek bids for construction of the project.

7. Construction grant application forms and attachments must be submitted in triplicate to the agency.

R. Rejection of grant applications.

1. Grounds. A municipality's grant application for a project on the municipal project list may be rejected by the agency for the following reasons:

a. failure to submit the necessary documentation required by this rule within the time allowed, unless the municipality was delayed for reasons beyond its control;

b. failure to develop the necessary user charge system and other fundraising systems or to develop the necessary ordinances or to enter into the necessary contracts and agreements or to do any of the other acts specified in the grant applications requirements to establish that the municipality has the capability to construct, operate, and maintain the disposal system in a manner that will comply with all applicable water pollution control requirements; or

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c. a determination by the agency that the municipality cannot implement the project in a timely fashion to avoid the loss of federal grant funds to the state for that fiscal year.

2. Effect of rejection. Whenever a grant application is rejected, the agency shall remove the municipality from the municipal project list.

S. Approval of grant applications. The agency shall approve grant applications that are not rejected for one or more of the reasons specified in section R.

The director shall certify to the EPA each approved grant application.

T. Tender of grant. The state may not tender a grant until the EPA has determined the eligibility of the municipality for which a grant application has been certified to EPA.

After the EPA has determined the eligibility of the application and tendered a federal grant, the agency shall make a similiar grant offer to the municipality in an amount not less than that required by federal law and regulation as a condition for the grant of federal funds or in an amount not less than that allowed by state statutes where not required by federal law.

U. Construction without grants.

1. A municipality that elects to develop a facilities plan for a project without a federal or state grant shall:

a. notify the agency in writing of its proposed project scope prior to initiation of work on the facilities plan; and

b. obtain written approval from the agency prior to proceeding to the development of plans and specifications that the project conforms with applicable technical, administrative, and public participation requirements.

2. A municipality that elects to develop plans and specifications for a project without a federal or state grant shall notify the agency in writing of its intention to develop plans and specifications for its project. The agency shall review the scope of the proposed project and changes from the previously approved facilities plan and advise the municipality whether the project complies with applicable technical, administrative, and public participation requirements.

V. Advances of allowance.

1. The agency shall reserve a reasonable portion of its annual allotment for advances to municipalities for Step 2 work. The amount reserved shall not exceed ten percent of the state allotment for a fiscal year.

2. A municipality on the municipal needs list with a population in the service area of less than 3,500 people is eligible to apply for an advance of allowance. The application shall be submitted by July 1 prior to the beginning of the federal fiscal year for which the municipal project list will be prepared.

3. A municipality applying for an advance of allowance shall submit the following information to the agency:

a. council resolution requesting the advance;

b. certification that funds are not available from other sources;

c. estimate of construction costs of the project with supporting documentation;

d. per capita income;

e. municipal bonded debt;

f. adjusted assessed value of the municipality; and

g. council resolution certifying that the municipality cannot afford to do the work with its own resources.

4. The amount to be allowed as an advance of allowance shall be that amount determined by EPA.

5. A municipality is entitled to an advance of allowance on one occasion only.

6. A municipality that receives an advance of allowance shall have its Step 3 construction grant reduced by an amount equal to the advance of allowance.

7. A municipality that receives an advance of allowance but does not subsequently receive a Step 3 grant for the project shall reimburse the state the amount of the advance.

8. If more municipalities apply for an advance of allowance than can be awarded from the amount reserved for that purpose, the money available must be awarded to the qualifying municipalities in order of their placement on the municipal needs list.

W. Grant amendments.

1. The agency shall reserve a reasonable amount of its allotment to pay for grant increases that become necessary during the fiscal year.

2. The agency may approve a grant increase when a municipality has solicited contracts that exceed the cost estimated in the application. The agency shall approve the grant amendment if funds are available and the cost overruns are eligible and reasonable.

3. A municipality that seeks a grant amendment shall submit the following information to the agency:

a. a written request for the amendment signed by an official of the municipality;

b. a complete cost breakdown and scope of work;

c. a cost breakdown of engineering fees on EPA form 5700-41, as provided by the agency;

d. an unexecuted amended engineering contract indicating changes in the cost, the scope of work, and the budget period that must be made in the contract; and

e. a budget period extension request signed by an official of the municipality if the budget period must be extended.

X. The director shall give a prior approval for a proposed change in the contract if the change:

1. results in a cost increase greater than the base contract plus contingencies as stated in the project summary; or

2. substantially alters the type, efficiency, versatility, or reliability of the treatment process.

Prior approval of a proposed change is not required if the director agrees the change is of an emergency nature.

Change orders that do not require prior approval shall be submitted within one month after the date on which the change is ordered by the applicant, its engineer, or other authorized agent for review and approval.

Y. Payment of state grant funds.

1. Step 2 grants and the Step 2 portion of Step 2-3 grants.

a. The agency shall pay 50 percent of a Step 2 state grant when adequate plans and specifications have been received by the director. The balance of the Step 2 portion must be paid when the agency and the EPA approve of the plans and specifications and after final payment of the Step 2 portion has been paid by the EPA.

b. The agency shall pay for eligible land costs during the Step 2 portion of a Step 2-3 grant when the municipality submits proof of purchase of the land. The agency shall pay for only that portion of the land costs that are necessary to the operation of the treatment works and are eligible for payment.

2. Step 3 grants and the Step 3 portion of Step 2-3 grants.

a. A municipality may request periodic payments of a Step 3 state grant up to 50 percent of the total grant. The request for payment shall be submitted to the agency in writing. With each payment request the municipality shall submit a summary of all architectural and engineering costs expended to date in the format required in submitting the original grant application.

b. The agency shall make a final grant payment for the remaining 50 percent of the grant after the agency has completed a final inspection of the treatment works and the municipality has:

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(1) submitted to the agency a request for the payment;

(2) hired a wastewater treatment works operator having a valid state certificate;

(3) adopted a sewer use ordinance that will control wastewater discharges to the municipality's wastewater treatment system;

(4) adopted a user charge system that will generate revenue to offset the annual costs of operation, maintenance, and equipment replacement;

(5) submitted a certification by the contractor that the project was built according to the plans and specifications;

(6) submitted a copy of the as-built specifications;

(7) certified that the municipality is complying with the operation and maintenance manual for the treatment works that was approved by the agency;

(8) complied with the municipality's NPDES/SDS permit for the treatment works;

(9) put the treatment plant into operation and is operating the treatment plant efficiently;

(10) received final payment of the federal grant;

(11) submitted a revised operation and maintenance manual; and

(12) submitted a start-up report.

Z. Retained payments. The agency may withhold Step 3 grant payments and may request the EPA to withhold grant payments if the director determines that a project does not substantially conform to approved plans and specifications, or there has been a major breach of a condition in the grant agreement, or the municipality has failed to comply with the applicable requirements in 6 MCAR § 4.8034 Y. If funds are withheld pursuant to this rule, and the condition causing the withholding has been corrected, then all retained funds shall be released to the municipality, unless otherwise agreed to by the director and the municipality.

AA. Recovery of funds. In addition to any other remedies, the agency may seek to recover funds tendered or disbursed for a project that is improperly designed, improperly constructed, or improperly operated and maintained.

BB. State grants.

1. The agency may tender a grant of state funds to a municipality that would otherwise qualify for a federal grant but desires to initiate construction of a project without a federal grant if enough funds are in the pollution control fund to cover state matching grants for those projects on the municipal projects list for which federal grants are available.

2. The agency may tender a grant of state funds to a municipality for what would otherwise be the local share of the cost if:

a. the municipality has applied for a state grant to cover the local share by July 1 of the fiscal year for which the grant is requested;

b. the municipality is unable to finance the local share and attain a minimal point rating of 40 under the criteria of 6 MCAR § 4.8034 EE.3.;

c. application is made prior to the initiation of construction; and

d. the public health of the state and the prevention, control, and abatement of water pollution require the construction of the project.

CC. Contract assignment. A municipality that enters into a contract with a contractor or engineer for the planning, design, or construction of a part of or an entire disposal system, to be paid for in whole or in part by state construction grant funds, may assign its rights under the contract to the agency.

DD. Contract beneficiary. A municipality that enters into a contract with a contractor or engineer for the planning, designing, or construction of a part of or an entire disposal system, to be paid for in whole or in part by state construction grant funds, shall provide in the contract that the agency is a third-party beneficiary to the contract.

~~F.~~ EE. Construction loan program.

1. Application.

a. The application form shall be of the type set forth below:

MINNESOTA POLLUTION CONTROL AGENCY

Division of Water Quality

Application for Disposal System Planning and/or Construction Loan

To be filled in by the State

Date Received _____

Project Number _____

Loan Request _____

Legal Name of Applicant

Address, Zip Code

Hereby Makes Application to the Pollution Control Agency of the State of Minnesota for a Loan of Funds for the Planning and/or Construction of:

Financial Aspects:

Estimated Project Cost

State Loan Funds $ _____

Local Funds _____

Other Funds _____

Project Schedule: _____

Project Starting Date _____

Time to Complete Project _____

Name and Title of Official

Signature of Official Date

b. The planning loan application form shall be supported by the following attachments:

(1) resolution of the governing body authorizing the filing of the application and designating the municipal official authorized to sign the application~~.~~;

(2) resolution of the governing body of the municipality obligating the municipality to repay the loan to the state treasurer in annual installments including both principal and interest, each in an amount sufficient to pay the amount due within five ~~(5)~~ years from user charges, taxes, special assessments, or other funds available to it~~.~~;

(3) resolution of the governing body of the municipality obligating the municipality to establish rates and charges or the execution of contracts sufficient to produce the revenues pledged if required by the agency~~.~~;

(4) proposed method of loan payment~~.~~; and

(5) proposed contracts for engineering, legal, planning, and other consulting services.

c. The construction loan application form shall be supported by:

(1) The attachments of ~~6 MCAR Section 4.8034 F.1.b.(1), (3) and (4) of this section~~ b. (1), (3), and (4) and the items of 6 MCAR § 4.8034 ~~E.8.f. Q.5. The director for just cause may waive or defer the submission of any items required~~ pursuant to 6 MCAR § 4.8034 ~~E.8.f.~~ Q.5. if ~~such~~ the items are EPA requirements.

(2) Resolution of the governing body of the municipality obligating the municipality to repay the loan to the state treasurer in annual installments including both principal and interest, each in an amount sufficient to pay the principal amount within ~~twenty (20)~~ year or ~~lesser~~ a shorter time interval if the amount of the annual payment will not justify the administrative expenses of processing the payment, from user charges, taxes, special assessments, or other funds available to it.

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d. The loan application form and attachments shall be submitted in duplicate to the agency at the address specified by the director. Substantial deficiencies in the application and supporting documents or failure to conform with applicable requirements ~~such~~ as those set forth in the current agency water pollution control program plan or the applicable basin, regional, or area water quality management plan shall be grounds for rejection. ~~Any~~ A construction loan application shall be rejected at the discretion of the agency if it does not include an engineering report acceptable to the director. ~~or does not~~ include an adequate commitment for support of operation and maintenance of the project. ~~or does not~~ conform to the intent of the applicable statutes. ~~or does not~~ contribute to the overall objectives of effective water quality management, or is not considered to be in the best interests of the state.

e. Applications must be restricted to ~~those~~ projects or portions ~~thereof~~ of projects for which service contracts or construction contracts can be awarded by June 1, except in cases of advance approval by the director, of the state fiscal year in which the loan is applied for.

2. Administration.

a. The allocation of state funds shall be established in accordance with 6 MCAR Section 4.8034 ~~E.4.b.(1)~~ F., G., H., and I. and priority rating points assignable to loan applications shall be established in accordance with section ~~F.3.~~ EE.3. Funds allocable to loans shall be determined each fiscal year by the agency on the basis of total availability and demand for grants ~~listed in 6 MCAR Section 4.8034 D.1.,2., and 3.~~

b. ~~Those~~ Planning applications which receive a priority rating sufficiently high in relation to available funds shall be tendered a state planning loan. Within ~~sixty (60)~~ days after the acceptance of the offer and award of contracts, for engineering, legal, and other consulting services the state payment shall be made.

c. ~~Those~~ Construction loan applications which receive a priority rating sufficiently high in relation to available funds shall be tendered a state construction loan. Within ~~thirty (30)~~ days after acceptance of the offer and award of the construction contract for the project, the state payment shall be made.

d. Principal and interest, each in an amount sufficient to pay the principal amount within the loan period, shall be paid in equal annual installments to the state treasurer. Interest shall be calculated on the declining balance at the average annual interest rate on state bonds of issue from the proceeds of which the loan was made.

e. Priority ratings shall be established each fiscal year for ~~those~~ loan applications filed on or before the ~~end~~ beginning of the state fiscal year. Applications postmarked or hand delivered after that day shall be rejected.

3. Criteria for determining loan priority.

a. ~~The loan funds set aside in any fiscal year shall be allocated in the ratio of twenty-five (25) percent for planning and seventy-five (75) percent for construction.~~

~~b.~~ The determination of the order of priority for planning loan applications shall ~~be in accordance~~ comply with:

(1) the criteria set forth in 6 MCAR Section 4.8034 ~~E.2.d., E.3.c. and F.3.b.~~ ~~(2)~~ F., G., H., and I.

(2) ~~Technological feasibility. Priority points shall be assigned based on the completion of the planning studies as set forth below:~~

	~~Point rating~~
~~(a) Sewer system evaluation which shall demonstrate to the satisfaction of the director and regional administrator that each sewer system discharging into such treatment works is not subject to excessive infiltration/inflow. through an infiltration/inflow analyses and. where appropriate and authorized by the regional administrator. a sewer system evaluation survey.~~	~~50~~
~~(b) Report on Wastewater disposal concepts.~~	~~40~~
~~(c) Regionalization evaluations.~~	~~30~~
~~(d) Other planning activities including assimilation studies.~~	~~20~~

Rating points shall be awarded to a municipality by summing up the applicable rating points for the project from tables 1, 2, and 3 relative to per capita project cost, the ratio of municipal bonded debt to adjusted assessed values of municipalities, and per capita buying income.

TABLE 1

Per Capita Cost of Project

Per Capita Cost ($)	Point Rating
0-280	1
281-400	3
401-600	5

601-800	7
801-1000	9
1001-1300	11
1301-1600	13
over 1600	15

TABLE 2

Ratio of Municipal Bonded Debt to Adjusted Assessed Values of Municipalities

Ratio × 100	Point Rating
0-3	3
4-9	5
10-15	7
16-21	9
22-27	11
28-33	13
over 33	15

TABLE 3

Per Capita Buying Income

Percent of Average	Point Rating
0-50	15
51-60	13
61-70	11
71-80	9
81-90	7
91-100	5
101-110	3
over 110	1

~~c.~~ b. Construction loans. The determination of the order of priority for construction loan applications shall ~~be in accordance~~ comply with 6 MCAR § 4.8034 ~~E.2.d. and E.3.c.~~ F., G., H., and I.

FF. Procedural rules and appeals. A request for a hearing, an appeal, or other procedural matter not specifically provided for in this rule is governed by the agency rules of procedure, the rules of the Office of Administrative Hearings, and other applicable laws.

GG. Variances. A person may apply for a variance from any requirement of these rules. The variance shall be applied for and acted upon by the agency in accordance with Minnesota Statutes, section 116.07, subdivision 5, and other applicable statutes and rules.

Department of Public Welfare
Support Services Division

Proposed Adoption of Rule Governing Reimbursement for Cost of Care of Patients of a State Hospital

Notice of Intent to Adopt a Rule without a Public Hearing

Notice is hereby given that the State Department of Public Welfare proposes to adopt the above-entitled rule without a public hearing. The commissioner has determined that the proposed adoption of this rule will be noncontroversial in nature and has elected to follow the procedures set forth in Minnesota Statutes sections 14.21 to 14.28.

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PCA-83-005-PR

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE MINNESOTA POLLUTION CONTROL AGENCY

In the Matter of the Proposed Revision to 6 MCAR § 4.8034, Relating to Administration of Federal Grant Funds and State Grant and Loan Funds for Municipal Sewage Treatment Projects.

REPORT OF THE HEARING EXAMINER

The above-entitled matter came on for hearing before Hearing Examiner Phyllis A. Reha on June 13, 1983, at 9:30 a.m. in the Board Room of the Minnesota Pollution Control Agency at 1935 West County Road B2, Roseville, Minnesota. The hearing reconvened on June 14, 1983, at the same time and in the same location as the previous day's proceedings; on June 16, 1983, at 10:00 a.m. in Room 191 of the University of Minnesota at 1200 South Broadway, Rochester, Minnesota, and on June 17, 1983, at 10:00 a.m. in St. Cloud at the Area Vocational-Technical School at 1540 Northway Drive, St. Cloud, Minnesota.

The hearing record remained open for 20 days after completion of the hearing, until July 7, 1983.

This Report is part of a rulemaking proceeding conducted pursuant to Minn. Stat. Ch. 14, to determine whether the proposed revisions to 6 MCAR § 4.8034, relating to the administration of federal grant funds, state grant and loan funds for municipal sewage treatment projects should be adopted by the Minnesota Pollution Control Agency (hereinafter "Agency"). A copy of this Report may be obtained from the Office of Administrative Hearings for the cost of reproduction.

Members of the Agency panel appearing at the hearings included Duane Anderson, John Hensel, Roger Bjork, Sharon Meyer, Lanny Peissig, Jerry Blaha, and Lauren Voigt. Special Assistant Attorney General Alan Mitchell, 1935 West County Road B2, Roseville, Minnesota 55113, appeared as counsel for the Agency.

Forty persons signed the hearing register. Fifteen public witnesses spoke at the hearing. The Agency submitted 42 written exhibits at the hearing and three timely post-hearing filings. After the hearing but before the expiration of the 20-day comment period authorized by the Hearing Examiner, 16 timely public comments were filed. Three public comments were filed after the expiration of the 20-day comment period and were not considered by the Hearing Examiner in the preparation of this Report.

The Agency must wait at least five working days before taking any final action on the rules; during that period, this Report must be made available to all interested persons upon request.

Pursuant to the provisions of Minn. Stat. § 14.15, subd. 3 (1982), this Report has been submitted to the Chief Hearing Examiner for his approval. If the Chief Hearing Examiner approves the findings of this Report, he will advise the Agency of actions which will correct the defects and the Agency may

not adopt the rule until the Chief Hearing Examiner determines that the defects have been corrected. However, in those instances where the Chief Hearing Examiner identifies defects which relate to the issues of need or reasonableness, the Agency may either adopt the Hearing Examiner's recommendations to cure the defects or, in the alternative, if the Agency does not elect to adopt the recommendations, Agency may submit the proposed rule to the Legislative Commission to Review Administrative Rules for the Commission's advice and comment. Provisions relating to this submission to the Commission may be found in Minn. Stat. § 14.15, subd. 4 (1982).

If the Agency elects to adopt the recommendations of the Hearing Examiner and makes no other changes and the Chief Hearing Examiner determines that the defects have been corrected, then the Agency shall submit the rule to the Attorney General for review of form and legality. If the Agency makes changes in the rule other than those recommended by the Hearing Examiner, then it shall submit the rule, with the complete record, to the Chief Hearing Examiner for a review of the changes before adopting it and submitting it to the Attorney General. Procedures relating to this subsequent review by the Chief Hearing Examiner are set forth in Minn. Stat. § 14.16 (1982).

When the Agency submits the rule to the Attorney General, it shall give notice on the day of submission to all persons who requested that they be informed of the submission to the Attorney General.

Based upon all the testimony, exhibits and written comments, the Hearing Examiner makes the following:

FINDINGS OF FACT

Procedural Requirements

1. On April 20, 1983, the Agency filed the following documents with the Hearing Examiner:

(a) A copy of the proposed rules.
(b) The Order for Hearing.
(c) The Notice of Hearing proposed to be issued.
(d) A Statement of the number of persons expected to attend the hearing and estimated length of the Agency's presentation.
(e) A copy of the Certificate of the Agency's authorizing resolution.

2. On April 26 and 27, 1983, the Agency mailed a copy of the Notice of Hearing to all persons and associations who had requested that their names be placed on the Minnesota Pollution Control Agency rulemaking list and to other persons who are interested in this rule.

3. On May 9, 1983, a Notice of Hearing and a copy of the proposed rules were published at 7 State Register 1595-1621.

4. On May 19, 1983, the Agency filed the following documents with the Hearing Examiner:

(a) The Order for Hearing.
(b) The Notice of Hearing.
(c) The Certificate of the Board's authorizing resolution.
(d) The Certificate of Mailing List.
(e) The Affidavit of Mailing List.
(f) The Statement of Need and Reasonableness.
(g) A Statement that a notice of intent to solicit outside information was published in the August 16, 1982, State Register. No written responses were received.
(h) A list of personal who would represent the Agency at the hearing.

(i) A copy of the State Register containing the proposed amendments.
(j) The Exhibit List.

The documents listed above were available for inspection at the Office of Administrative Hearings from the date of filing to the date of the hearing.

5. On June 6, 1983, the Agency filed a Notice of Additional Hearing Locations and a corrected Order for Hearing with the Hearing Examiner.

9 MCAR § 2.102 B.1. requires that the Order for Hearing contain a proposed date for the hearing. The original Order for Hearing did not include a proposed date. However, the Notice of Hearing published at 7 State Register 1595 on May 9, 1983, and mailed to the mailing list noted above, did include the date of the hearing. The Hearing Examiner finds that there has been no prejudice to the public in correcting the order for hearing.

6. The record remained open until July 7, 1983, for the receipt of written comments and statements, the period having been extended by order of the Hearing Examiner to 20 calendar days after the last day of hearing.

7. The Examiner finds that the Agency served due, adequate and timely notice of the hearing. All relevant and substantive and procedural requirements of law or rule have been fulfilled.

Background

8. 6 MCAR § 4.8034 (hereinafter sometimes referred to as "WPC 34") is the rule of the Minnesota Pollution Control Agency that provides for the administration of the state and federal grants and loan programs for municipal sewage treatment projects. The agency adopted WPC 34 in 1972. WPC 34 was previously amended in 1973 and 1978.

9. The construction grant program enables municipalities in the state to construct wastewater treatment facilities through a combination of federal, state and local funds. WPC 34 establishes criteria for determining priorities for awarding of state and federal funds for sewage treatment projects.

10. The federal construction grants program is authorized by the Clean Water Act, 33 U.S.C. §§ 1251, et seq. The United States Environmental Protection Agency has promulgated regulations and guidelines for the administration of the federal program. (See, 40 C.F.R. Parts 30, 33 and 35 (1982)). The state construction grant and loan program is funded from the Minnesota State Water Pollution Control Fund, created by the Legislature in 1971. (Minn. Laws 1971, Ex. Sess., Ch. 20; Minn. Stat. §§ 116.16 - 116.18 (1982)).

11. On December 29, 1981, Congress amended the Clean Water Act when it passed the "Municipal Wastewater Treatment Construction Grant Amendments of 1981". (P.L. 97-117). These amendments affected the construction grants program in a number of ways, including the type of projects eligible for funding, funds available for combined sewer overflow problems, the percentage of the cost of a project eligible for federal funding, the funding for innovative and alternative projects, and the establishment of advances of allowance for initial facilities planning.

12. On August 13, 1981, the Legislative Commission to Review Administrative Rules (LCRAR) adopted its staff report on WPC 34. (See, Agency Ex. 11). The LCRAR made a number of recommendations for amendments to WPC 34. These

recommendations included: reassess the point rating system; give special consideration to water pollution effects; give priority to abating public health hazards; protect valuable recreation and scenic waters of the state; and give higher priority to loans than has been given in the past.

13. In these proposed rules, the Agency has attempted to respond to changes in the Clean Water Act, to accommodate the recommendations of the LCRAR, to clarify and simplify current language, and to provide open administration of federal grant funds and state grant and loan funds for the construction of municipal sewage treatment projects under a point system for prioritizing all municipalities seeking grant funds.

Statutory Authority

14. The specific statutory authority to adopt and promulgate these proposed rules is contained in Minn. Stat. § 116.18, subd. 5, which states:

> Subdivision 5. Rules. The agency shall promulgate rules for the administration of grants and loans authorized to be made from the fund, which rules, however, shall not be applicable to the issuance of bonds by the commissioner of finance as provided in section 116.17. The rules shall contain as a minimum:
>
> 1. Procedures for application by municipalities;
>
> 2. Conditions for the administration of the grants or loans;
>
> 3. Criteria for eligibility for grants or loans, including those specified in subdivision 6; and
>
> 4. Such other matters as the agency and the director find necessary to the proper administration of the grant program.

15. The Agency has cited additional statutory provisions as its authority to promulgate the proposed rules. Minn. Stat. § 115.03, subd. 1(c) (1982), authorized the Agency to establish and alter reasonable pollution standards for any water in the state. Subdivision 1(c) provides that the Agency has the power and duty:

> To establish and alter such reasonable pollution standards for any waters of the state in relation to the public use to which they are or may be put as it shall deem necessary for the purpose of this chapter and, with respect to the pollution of the waters of the state.

16. The proposed rules provide for the administration of federal grant funds in addition to state grant and loan funds for municipal sewage treatment projects. The federal construction grants program is authorized by the Clean Water Act, 33 U.S.C. § 1251, et seq. Specifically, 33 U.S.C. § 1296 provides, in part:

> [T]he determination of the priority to be given each category or projects for construction of publicly owned treatment works within each state shall be made solely by the state . . . .

Also see, 40 C.F.R. Parts 30, 33, and 35 (1982).

17. The Hearing Examiner finds that the Agency has the statutory authority to promulgate rules and amendments regarding the administration of federal grant funds and state grant and loan funds for municipal sewage treatment programs.

Need for and Reasonableness of the Proposed Rules

18. Many sections of the proposed rules were not opposed, and this Report is generally limited to those that were opposed or were amended by the Agency. A detailed discussion of each section of the proposed rules is believed to be unnecessary. Such an analysis is contained in the Statement of Need and Reasonableness submitted by the Agency. (Agency Ex. 8). The Hearing Examiner notes at this point that sections not commented on in this Report are hereby found to be needed and reasonable and that the Agency has documented this by an affirmative presentation of facts. With respect to the sections commented on in this Report, all of the concerns discussed on the record and in written comments have been carefully considered. In addition, the Hearing Examiner has examined the factual basis supporting some of the more controversial sections as well as discretionary language not objected to by the public.

It should be noted that Sam Claassen with the firm of Rieke, Carroll, Muller & Associates submitted detailed comments regarding many of the proposed sections. Many of the comments were helpful in the identification of potential problem areas and the Hearing Examiner encourages the Agency to carefully review all public comments to assure uniformity and clarity. The Examiner, however, has only commented on the more notable proposed changes.

19. According to 9 MCAR § 2.104, the Agency, when amending its rules need not demonstrate the need for or reasonableness of the existing rules not effected by the proposed amendment. However, the Agency must show that the proposed amendments to WPC 34 are needed and reasonable.

20. Parties submitting comments expressed their support and recognition of the need for revising the current priority system. With a few exceptions (discussed below), the proposed rules generally were supported by the public. (Pub. Exs. 1, 3, 4, 8; Pub. Post-Hearing Comments 1, 3, 4, 5, 7 and 12).

Proposed Rule 6 MCAR § 4.8034 B. - Definitions

21. The Agency has proposed to delete 11 definitions and to add 12 definitions to the section. During the hearing, the Agency staff proposed two changes in the definitions as proposed. These changes are:

a. Delete the word "wastewater" from section B.1. and add the following definition as B.24. and renumber B.24. as B.26.

> 24. "Wastewater" means sewage, industrial waste and other wastes collected for treatment in a disposal system.

b. Amend the definition of "major contributing industry" in Section B.22. to read as follows:

> 22. A "major contributing industry" means an industrial user of a treatment facility that:
>
> (a) Has a rated flow of 50,000 gallons or more per workday where the rated flow is the daily design flow multiplied by 24 and divided by the actual hours of discharge in a day;
>
> (b) Has a rated flow of greater than 5% of the total design flow to the treatment works;
>
> (c) Has a total organic load of greater than 5% of the total organic load to the treatment works;

(d) Has in its waste before pretreatment a toxic pollutant in amounts in excess of what may be discharged to waters of the state; or

(e) Is found by the agency in connection with the issuance of an NPDES/SDS permit to the municipality, either singly or in combination of other contributing industries, to interfere with the treatment plant's ability to meet effluent limitations, interfere with digester operation or biological unit process operation, impacted the area required for sludge disposal, or increase sizing of the facility by 5% or more.

The Hearing Examiner finds that the definitions, as amended, are necessary and reasonable as they assist with the understanding and clarity of the proposed rules. Adoption of the recommended changes would not create a substantial revision of the proposed rules as published in the State Register.

22. During the hearing, Joel Schilling of the Department of Natural Resources recommended that a definition of "adverse impact" be incorporated into the rule and that the term "adversely affects" be replaced by the term "adverse impact" to maintain consistency within the language of the rule. The Agency in their post-hearing comments proposed the following definition to be incorporated as B.25.:

25. "Adverse impact" means the violation of any water quality standard or an objectionable growth of weeds, algae, or rough fish or any deleterious effect on the physical, chemical, or biological condition of the receiving water that lessens the present or long-term uses of receiving water.

The Hearing Examiner finds that the adoption of such a definition is reasonable and will assure consistency throughout the rules. It is not substantially different from the proposed rule as published.

Proposed Rule 6 MCAR § 4.8034 D. - Summary of Construction Grants Program

23. This section provides a summary as to how the construction grants program operates and reflects changes made in this program. Several members of the public raised the issue of whether readiness to proceed was considered in determining priority. The Agency responded that this is not a factor in establishing priority, but in practice if a municipality does not meet deadlines for grant applications, it will not obtain funding. (See, Pub. Ex. 2; June 13 Tr., p. 36).

The Hearing Examiner finds that the proposed rule is reasonable. However, the Examiner suggests that Section D.4. be clarified to include all municipalities within the construction grants program. The Hearing Examiner recommends the following language for Section D.4.:

The agency develops and maintains a municipal needs lists that ranks in order of priority all municipalities, within the construction grants program, for which a need exists.

Adoption of this change would not operate as a substantial revision of the rule as published.

Proposed Rule 6 MCAR § 4.8034 E. - Municipal Needs List

24. This section describes how the municipal needs list is prepared. The municipal needs list determines which municipalities will be awarded grants for a particular fiscal year. Section 4.8034 E.1. provides that the Director

shall develop and maintain the municipal needs list. Section E.4. states that the Agency will develop and maintain a municipal list. In their post-hearing comments, the Agency recommends that E.1. and E.4. be amended to clarify that the Agency shall develop and maintain the municipal needs list. This change was in response to a suggestion made by the public. (Pub. Ex. 2). The Hearing Examiner agrees that such an amendment is reasonable and necessary for clarification and is not substantially different from the proposed rule as published.

25. Mr. Claassen suggested that a method of appeal be spelled out in the proposed rule when a municipality is aggrieved by an Agency decision. (See, June 13 Tr., p. 45; Pub. Ex. 2). The Agency responded that it does not seem appropriate to address the rights of appeal from one specific decision. (Agency Post-Hearing Comment 1 at pp. 5-6). The Examiner finds no defect in the rule as written, however, the Examiner does suggest that the Agency consider incorporating within these rules a general appeal section which would inform an aggrieved party that it has the usual rights to appeal of an Agency final decision as provided under Minnesota Statutes. Inclusion of such a section would help to assure that a municipality's rights are protected from arbitrary agency decisions. Nevertheless, the proposed section with the above-mentioned editing changes is needed and reasonable as written.

Proposed Rule 6 MCAR § 4.8034 F. - Priority Points for Water Affected

26. This proposed amendment does not change the ratings for various water use classifications as found in the existing rule, but it does more specifically identify each water use classification. (Agency Ex. 8 at pp. 36-39). The DNR suggests that the rule provide additional points for municipalities that affect a chain of lakes. (Pub. Ex. 4; June 14 Tr., pp. 17, 18). The Agency responded that awarding extra consideration for a chain of lakes would have the possibility of isolating several specific problem areas in the state and overlooking others that are just as important. By awarding extra points for a chain of lakes, the effect would be to lopside the point system in favor of these lakes. (June 4 Tr., pp. 21-26). The Examiner believes that the granting of additional points for a chain of lakes could work against the purpose of the rule. Therefore, the Examiner finds that the proposed rule as written is reasonable.

Proposed Rule 6 MCAR § 4.8034 H. - Priority Points for Type of Project

27. This section establishes the number of priority points that will be awarded to a municipality based on the type of project. This section deletes the existing rule's metro-outstate priority split of 60-40. Under the proposed amendment, priority points will be awarded according to a mathematical computation using the logarithm of the population. (Agency Ex. 8, pp. 39-41).

28. This proposed rule essentially was supported by the public. (Pub. Ex. 3; Pub. Post-Hearing Comment 1). There was one public comment questioning the Agency's rationale for choosing the number "5" as a multiplier. (Pub. Ex. 2). However, the proposed section as written is adequately supported in the Agency's Statement of Need and Reasonableness. (Agency Ex. 8, p. 41). The

Hearing Examiner finds that the proposed rule is needed and reasonable as written.

Proposed Rule 6 MCAR § 4.8034 H. - Priority Points for Type of Project

28. This section establishes the number of priority points that will be awarded for various kinds of projects. This proposed rule received many comments. (Pub. Exs. 1, 2, 3, 5, 7, 8; Pub. Post-Hearing Comments 1, 4, 8, 14, 16). The proposed changes in the point structure are intended to accomplish the following purposes: (1) give top priority to the construction of sewage treatment plants and major additions to sewage treatment plants; and (2) identify more types of projects so priority points can more exactly be awarded. (Agency Ex. 8, p. 42).

29. Sections 4.8034 H.1.(m) and H.2.(l) provide for only 10 priority points for modification and replacement of innovative or alternative projects. This particular section of the proposed rule provided the most controversy.

Those in favor of the proposed rule change argue that there should not be double funding of projects which under the existing rule could occur if an innovative project was not successful. Those opposed to the rule change argued that the federal government was trying to provide incentives for municipalities to be creative in developing innovative and alternative projects. With the Agency's decision to delete this priority, it was argued, the Agency was taking away this incentive. (Pub. Exs. 2, 7).

In response to these criticisms, the Agency suggests that a priority system must focus on the water quality impacts of a project rather than the technology involved. (Agency Ex. 8, p. 42; Agency Post-Hearing Comment 1, p. 9). The Agency points out that there are over $2 billion worth of wastewater treatment needs and only $45 million a year coming into the state to take care of those needs. Although it is recognized that Congress has attempted to encourage the development of innovative and alternative technology, sufficient incentive remains in the system. An additional 20% grant is available to encourage some municipalities to use innovative and alternative technology. (Agency Post-Hearing Comment 1, p. 9). The Examiner finds that the water quality related goals are better promoted through a priority system that looks to the water quality impacts of a project rather than to the technology involved. This rule provision as written adequately promotes congressionally expressed goals. The Hearing Examiner also notes that strong support exists for the deletion of high priority points awarded to Innovative and Alternative projects. (Pub. Exs. 1, 3, 4, 8; Pub. Post-Hearing Comments 1, 4, 14).

30. It was suggested by Michael Zagar of the firm of Rieke, Carroll and Muller & Associates, that a larger point spread is needed between tertiary and secondary treatment plants. (Pub. Post-Hearing Comment 16, June 13 Tr., pp. 37-38). Tertiary treatment receives top priority because it is required when a higher quality or more vulnerable receiving water is involved or when toxic pollutants are in the effluent. (Agency Ex. 8, p. 44). The Agency believes that the 10 additional points that tertiary treatment plants receive over secondary plants is a reasonable number that gives tertiary treatment plants an appropriate high priority. (See, June 13 Tr., pp. 39-42). The Examiner finds

that the rule as written adequately responds to the overall goal that water quality is the greatest concern in the awarding of points, rather than the financial aspects of constructing sewage treatment plants.

31. Section H.2.h. provides a definition of a collection system or collector sewer. It includes devices such as grinder pumps, septic tanks, septic tank effluent pumps, and small diameter sewers for subsurface disposal systems with average daily flows in excess of 1000 gallons. Collection systems or collector sewers receive only 10 priority points. Several commentors suggested that collection systems or collector sewers should be awarded more points because they are, in many cases, integral parts of some smaller systems and do provide a significant degree of treatment. The Agency points out that the rule as drafted attempts to draw the line between collection and treatment for funding purposes. That line is drawn at 1000 gallons recognizing that septic tanks in small systems (flows under 1000 gallons) are integral to the system. For systems in excess of 1000 gallons, septic tanks are usually remote from the drain field and not an integral part of the treatment system. (June 13 Tr., pp. 50-53; Agency Ex. 8, p. 48).

The Examiner finds that the rule as written is necessary and reasonable. The rule recognizes that collector sewers are an important and necessary part of a municipality's disposal system. However, municipalities may have to fund their own collection systems in order that more sewage treatment plants can be built. The section is consistent with the stated purpose of these rules and the enabling legislation.

32. The Agency has proposed to change Sections H.2.a., H.2.d., and H.3.a. for clarification purposes pursuant to comments received. (Pub. Ex. 2). The Agency amendments are:

Amend Section H.2.a. to read as follows:

a. New plant. A new tertiary treatment plant is a plant designed to meet tertiary treatment standards for which construction was commenced after July 1, 1983. A new secondary treatment plant is a plant designed to meet secondary treatment standards for which construction was commenced after July 1, 1983.

Amend Section H.2.d. to read as follows:

d. Sewer system rehabilitation. A sewer system rehabilitation project is a project that repairs or replaces an existing collector or interceptor sewer in order to eliminate bypasses caused by insufficient hydraulic capacity in existing separate sanitary sewers by transporting infiltration and inflow to a wastewater treatment facility or to reduce the hydraulic capacity of the wastewater treatment plant and includes flow equalization systems, relieve sewers, and relief capacity sewers.

Amend Section H.3.a. to read as follows:

a. Sewer system rehabilitation. In order for a sewer system rehabilitation project to be eligible for priority points under section H.1.b. or H.1.f., the municipality must not have obtained a construction grant for treatment plant construction since February 11, 1974, and sewer system rehabilitation must be justified by an Infiltration/Inflow Analysis and Sewer System Evaluation Survey that complies with the requirement of Code of Federal Regulations, Title 40, Section 35.2120 as amended through December 31, 1982.

The Hearing Examiner finds that the Agency's proposed changes would not create a substantial revision of the proposed rule as published in the State Register.

33. After careful and thorough consideration of the many comments received, the Hearing Examiner finds that the proposed rule as written, with the above-noted changes, is needed and reasonable. The Agency has clearly demonstrated a reasonable basis for the exercise of this judgment in awarding priority points for the type of project. (Agency Ex. 8, pp. 42-66). (See, American Trucking Association, Inc. v. United States, 344 U.S. 298 (1953)).

Proposed Rule 6 MCAR § 4.8034 I. - Extra Points

34. This section creates categories whereby extra points may be awarded to municipalities.

35. Several commentors suggested that extra points should be awarded for the length of time a municipality has been in the grants program. (See, e.g., Pub. Post-Hearing Comment 11). Since water quality impacts should be the primary factor considered in the awarding of priority points, the Agency does not support the awarding of extra points on the basis of the length of time in the grants program. The Examiner must agree, because awarding extra points for length of time in the grants program is inconsistent with the stated purpose of the rules and enabling legislation.

35. The DNR suggested a few changes to clarify the proposed rule. (Pub. Ex. 4). The Agency has proposed to adopt some of these recommended changes with respect to Sections I.3., 4. and 5. The Agency proposes the following amendments:

Amend Section I.3. to read as follows:

> 3. Watershed pollution abatement plan. A municipality that proposes a project that is an integral part of a watershed pollution abatement plan shall be awarded 15 extra points. A watershed pollution abatement plan is a plan prepared by a watershed district or watershed management organization and approved by the Minnesota Water Resources Board and includes the following:
>
> a. Specific point source and nonpoint source pollution abatement strategy; and
>
> b. Statewide water quality management plan goals and objectives, including the best management practices.
>
> A municipality is not entitled to 15 extra points under this provision unless the watershed district or watershed management organization has adopted specific rules to implement the watershed abatement plan and the plan has been updated in the last 10 years. If a project is part of separate watershed districts or management organizations, all of the watershed districts or management organizations must have satisfied the above criteria in order for the municipality to receive the extra points.

Amend Section I.4. to read as follows:

> 4. Outstanding resource value waters. A municipality that discharges to or has an adverse impact upon an outstanding resource value water shall be awarded 10 extra points. An outstanding resource value water is Lake Superior, any water in the Boundary Waters Canoe Area Wilderness or Voyagers National Park, and all federal and state designated wild, scenic, or recreational river segments.

Amend Section I.5. to read as follows:

> 5. Game fish lakes. A municipality proposing to undertake a project that will result in the elimination of a discharge of a game fish lake or the elimination of a discharge that has an adverse impact on a game fish lake shall be awarded 10 extra points. A game fish lake is a lake managed for propagation of game fish species and used for fisheries and recreation. There may be occasional but not regular winter kill in a game fish lake.

The inclusion of watershed management organization in Section I.3. is appropriate because it is now a statutorily recognized organizational body. (Minn. Laws, 1982, Ch. 509, §§ 19-25). The proposed change to Sections I.4. and 5. is consistent with the Agency's proposed amendment to define "adverse impact". (See, Finding 22, above). The above changes would not create a substantial revision to the proposed rule as published in the State Register. The Examiner finds that the changes are proposed to provide consistency and clarity to the rules and is needed and reasonable.

37. The DNR also suggested that all tributaries to Lake Superior should be considered as outstanding resource value waters under Section I.4. Furthermore, the DNR suggested that waterfowl and furbearer lakes should be given similar treatment as game fish lakes. (Pub. Ex. 4). The Agency does not support either suggestion. (June 14 Tr., pp. 32-37; Agency Post-Hearing Comment 1, p. 11). By including all tributaries to Lake Superior in the outstanding resource value waters designation, all waters all the way up to the headwaters and all the connecting tributaries would be granted extra points, even when these waters may not have a major impact on Lake Superior. As the rule is written, if a municipality discharging to a tributary has an adverse impact on Lake Superior, the extra points under the section will be awarded. It is not enough to simply discharge into the tributary. The Examiner believes that the Agency's analysis is appropriate and consistent with the purposes of the rules. It is not, therefore, necessary to specifically include tributaries as outstanding resource value waters.

The Agency does not support the inclusion of the DNR suggestion that lakes managed for the use and benefit of waterfowl and furbearers be given like treatment as game fish lakes because some of these lakes may already be included within the game fish designation. The Agency is unsure exactly how these waterfowl and furbearer lakes would be identified. (Agency Post-Hearing Comment 1, p. 11).

The Examiner finds the suggestion by the DNR to be valuable and consistent with the purposes of the rule. If the problem of overlap and identification can be resolved, the Examiner believes the Agency should consider giving waterfowl and furbearer lakes similar treatment as game fish lakes as suggested by the DNR. It is suggested that the Agency meet with the DNR to determine how waterfowl and furbearer lakes can be identified. However, the rule as currently proposed is not unreasonable. Adoption of the DNR suggested amendment would not create a substantial revision to the rule as originally published in the State Register.

38. It was suggested by several commentors including Mark Sather, representing the City of Waseca, that a municipality be awarded extra points if its existing system suffered from in-system bypassing caused by overloading. The

LCRAR strongly supports the suggested change to Section I.2.a., similar to the one proposed by Mr. Sather. (Pub. Post-Hearing Comment 10, 13). Mr. Sather suggests the following:

> I.2.a. No treatment. A municipality that presently has a central collection system serving 50% or more of the population but provides no treatment prior to discharge, or a municipality which collects an average daily flow exceeding one million gallons through a system without combined sewers and which has bypassed sewage more than 40% of the time over a period of at least two years while its plant is operating at full capacity, shall be awarded 40 extra points.

The Agency claims that there are too many factors that would have to be considered if points were to be awarded for facilities suffering from in-system bypassing caused by overloading. Furthermore, the Agency claims that the awarding of extra points in the above-mentioned situation would create incentives for municipalities to allow sewage treatment plants to become overloaded. (Agency Post-Hearing Comment 1, pp. 12-13). However, the Examiner believes that an overloaded treatment plant facility which discharges raw sewage should be taken into account under the proposed rules. The Examiner finds that consistent bypassing of a wastewater treatment facility receiving over one million gallons is as serious, or more serious, than no treatment at all. The Examiner also recognizes, however, that the rules must be drafted in such a way as to discourage mediocre operation, improper maintenance or delayed improvements. The Examiner believes that a rule as drafted by Mr. Sather and supported by the LCRAR satisfies these concerns. The Examiner finds that the above-quoted suggested amendment or a conceptually similar amendment which addresses the problem of in-system bypassing caused by overloading is needed. The rules are unreasonable without it. The inclusion of such an amendment would not create a substantial change from the proposed rule as published in the State Register. The Examiner finds that the inclusion of the above-suggested language is consistent with the policy of the proposed rules to fund projects based on water quality impacts. To correct this defect, the Agency must adopt the proposed amendment or a similarly worded amendment.

39. It was suggested by William McCombs of McCombs-Knutson, and others, that extra points should be awarded on the basis of the "age and condition of a treatment facility". (June 13 Tr., pp. 10-11, 108-109; Pub. Post-Hearing Comment 6). The rule as drafted gives extra points based on the facility's "level of treatment". (Agency Post-Hearing Comment 1, p. 12; June 13 Tr., p. 110). In effect, then, this rule does provide points for age and condition of the facility. For example, Imhoff tanks get an additional 20 points, i.e., communities that have old systems generally have Imhoff tanks. Trickling filter plants, on the other hand, are in all likelihood newer, and get fewer points. However, there still is no provision in the rules to compare two identical treatment plants and make a determination that one is in worse condition than the other. (June 13 Tr., p. 110).

The Agency agrees in principle with the suggestion that age or condition is an important concern; however, it was unable to develop a reasonably rational system without creating a disincentive to water quality protection by encouraging some communities to allow the plants to become rundown. (June 13

Tr., pp. 109-111). Mr. McCombs recommends that a point system include a variable rating based on the age of the plant. To take into consideration the Agency's concern that this could create a negative incentive, Mr. McCombs suggests that the points be modified by granting bonus points if the municipality does a good job of maintaining the plant and maximizing its ability to treat the waste even though the plant may be in an advanced age. (See, Pub. Post-Hearing Comment 6).

It is suggested that the Agency consider a rule similar to that suggested by Mr. McCombs. However, since the rule as drafted does indirectly provide priority points for age and condition of the facility, the rule cannot be said to be unreasonable. Substitution of the amendment suggested by Mr. McCombs or a similarly worded amendment which directly addresses the problem of age and condition of a facility would not create a substantial change from the proposed rule as published in the State Register.

Proposed Rule 6 MCAR § 4.8034 L. - Municipal Project List

40. This section sets forth the method for placing municipalities on the municipal project list. Several public witnesses expressed concern that the July 1 deadline in Section L.2. for the submission of facilities plans, as well as plans and specifications, was too restrictive. (Pub. Ex. 2; Pub. Post-Hearing Comment 14). The Hearing Examiner finds that the July 1 deadline is adequately supported by the Agency in its Statement of Need and Reasonableness. Furthermore, the evidence shows that the municipalities can meet this deadline. The Hearing Examiner finds the proposed rule change reasonable. (Agency Ex. 8, pp. 82-83).

41. Section 4.8034 L.3. specifies that the Agency shall prepare a proposed municipal project list of municipalities on the municipal needs list that have submitted approvable facilities plans and specifications. The Examiner recommends that the Agency consider specifying within the rule a specific date for issuing the proposed municipal projects list. The rule as written, however, is reasonable.

42. The Agency proposes to make the following amendments which the Hearing Examiner finds reasonable and not substantial changes from the proposed rules as published:

> 1. In the last sentence of Section L.2. the words "necessary facilities plan and specifications" should read "necessary facilities plan or plans and specifications".
>
> 2. In the first sentence of Section L.3. the words "approvable facilities plans and specifications" should be amended to read "approvable facilities plan or plans and specifications".

These changes are consistent with recommendations made by William McCombs representing McCombs-Knutson.

Proposed Rule 6 MCAR § 4.8034 N. - Project Eligibility

43. Section 4.8034 N.3. specifies that a project is not eligible for a grant unless the Agency determines that the project is a cost-effective means of handling the municipality's wastewater. As stated at the Public Hearing June 13 transcript at page 61, there may be some instances where environmental

issues impact the cost-effectiveness considerations. The Hearing Examiner recommends the following amended language.

> 3. Cost-effectiveness. A project is not eligible for a grant unless the agency determines that the project is an environmentally acceptable cost-effective means of handling the municipality's wastewater. The agency shall not award a grant to pay for those portions of a project that are not environmentally acceptable and cost-effective.

This change will allow the Agency reasonable flexibility to consider other criteria other than strict financial considerations. The Examiner does not believe that it affords the Agency too much discretion, nor is this suggested amendment excessively vague. See, Can Manufacturers Institute, Inc. v. State, 289 N.W.2d 416 (Minn. 1979). It will, however, allow the Agency reasonable flexibility to consider other criteria rather than strict financial considerations. The rule as written, however, is not unreasonable.

Proposed Rule 6 MCAR § 4.8034 O. - Adjustments in the Municipal Projects List

44. This section provides the Director with the authority to establish criteria for determining priority in applications for federal and state construction grants. The language in this section is based on the statute that allows the Director to change the criteria for establishing priorities if required to comply with federal law. That statute is Minn. Stat. § 116.16, subd. 7 (1982). The Agency wants to repeat the statute in the rule because it believes it to be an important provision that the public should be aware of.

The Agency wishes to use the verbatim statutory language in the rule so there is no confusion that the rule means what the statute means. (Statement of Need and Reasonableness, pp. 91-92).

> O. Adjustments in the municipal project list. Notwithstanding any other provision in this rule, the director may, as necessary to establish criteria for determining priority for applications for federal and state construction grants under the Act, and regulations and guidelines of the EPA promulgated pursuant thereto, and Minn. Stat. Chapters 115 and 116, establish such criteria for determining priority upon a basis other than that provided herein, to the extent required to comply with the Act, and guidelines and regulations thereto or resulting therefrom.

The Hearing Examiner has reviewed in detail the amended language and has compared it to the statute. Although it is not verbatim, it is similar to the statutory language expressed in Minn. Stat. § 116.16, subd. 7. The Examiner finds that the duplication of the statutory language in this rule is crucial to the ability of a person affected by the rule to comprehend its meaning and effect. The Agency may, therefore, duplicate the statutory language of Minn. Stat. § 116.16, subd. 7, consistent with Minn. Stat. § 14.07, subd. 5 (1982). Furthermore, the rule as amended is not substantially different than the rule as originally published in the State Register.

Proposed Rule 6 MCAR § 4.8034 P. - Public Participation

45. The Agency has proposed amending P.4. to provide as follows:

> 4. Interested persons may present oral statements to the board at the board meeting. The chairperson may place reasonable restrictions upon the time and manner in which oral

comments are submitted. Written statements may be served on the director any time up to five days before the meeting.

The Hearing Examiner finds that the amended language is reasonable and does not represent a substantial change of the proposed rule as published.

Proposed Rule 6 MCAR § 4.8034 Q. - Grant Applications

46. Section Q.2. states that a municipality must submit a completed construction grant application to the Agency within 90 days after the date on which the Agency adopts the fiscal year's municipal projects list. Under the current rule, a municipality has 150 days in which to submit a completed construction grant application. The Agency states that the 150-day time limit imposed a risk of losing federal funds through failure to obligate the state's allotment by the deadline date set by Congress in the Clean Water Act. Several commentors believed that the 150-day period should be retained in the rule. The Examiner finds, however, that the 90-day requirement will not impose an unreasonable burden on municipalities applying for grants and the Agency has adequately supported its reasoning for shortening the time requirement. (Agency Ex. 8, pp. 94-95).

47. The Agency has adopted several suggestions made to clarify Section Q. (Pub. Ex. 2). The Agency proposes amending Section Q. as follows:

Amend Section Q.3. to read as follows:

3. The agency shall notify in writing each municipality on the municipal project list and each municipality on the reserve project list of its placement on the appropriate list. No municipality shall submit a construction grant application unless the municipality has been notified by the agency that it is on the municipal project list.

Amend Section Q.4.c. to read as follows:

c. A resolution by the governing body of the municipality resolving that the sewage collection system will, at the appropriate time, be constructed concurrently with the sewage treatment works if the collection system is not part of the project to be funded and the municipality does not already have a collection system.

Amend Section Q.4.h. to read as follows:

h. A certification from the municipality that the municipality shall:

1. Prohibit unpolluted water connections to the municipality's sanitary sewer system in the future; and

2. Inspect new connections to the sanitary sewer system throughout the municipality's jurisdiction to ensure that the connections conform to the Minnesota Plumbing Code, found in the Rules of the Department of Health, MHD 120-134, and to 7 MCAR § 1.135.

Amend Section Q.5.b. to read as follows:

b. A system service charge system comprised of a user charge system, including a proposed financial management system, and a system for raising funds to cover the municipality's costs of construction and to retire the municipality's debt costs attributable to the wastewater treatment works to be constructed.

The Hearing Examiner finds that the proposed amendments are for clarification purposes, are reasonable, and do not represent a substantial change from the proposed rules as published.

Proposed Rule 6 MCAR § 4.8034 U. - Construction Without Grants

48. Section U. establishes procedures and regulations for municipalities not participating in the grant program. It requires municipalities working on sewage treatment projects to notify the Agency about the status of their projects even though they have not received grant money. Comments at the hearing (June 13 Tr., p. 71) suggested that the Agency did not have authority to regulate municipalities not participating in the grant program. The Examiner requested the Agency to respond to this concern in its post-hearing comments. (See, Post-Hearing Comment 1, pp. 15-16). The Agency has authority to regulate municipalities that have a discharge to state waters or that propose to construct or already operate sewage treatment facilities. The water pollution control statutes and rules apply to all such municipalities, whether or not they apply for a construction grant. The Agency bases its authority upon Minn. Stat. § 115.07 (1982); 6 MCAR § 4.8036; Minn. Stat. § 116.16, subd. 5 (1982); and Minn. Stat. § 116.16, subd. 1 (1982). The Examiner finds that pursuant to Minn. Stat. § 115.03 (1982) the Agency has authority to adopt rules in order to prevent, control or abate water pollution. In order that the Agency can adequately further the pollution policies stated in Minn. Stat. § 116.01 (1982), it must be knowledgeable regarding all proposed sewage treatment projects. (See, Sterling Secret Service, Inc. v. Michigan Department of State Police, 20 Mich. App. 502, 174 N.W.2d 298 (1969)). Ensuring that the municipalities that have wastewater treatment needs do design and construct capable and cost-effective sewage treatment plants promotes the legislative purpose and protects the integrity of the pollution control fund. The Hearing Examiner finds that it is reasonable to require all municipalities constructing wastewater treatment facilities to proceed only after review and approval by the PCA. The Hearing Examiner finds that the Agency has the statutory authority to regulate municipalities not participating in the grant program to protect state waters and public health from municipal water pollution.

49. To make Section U. more clear, the Agency has proposed the following amendments:

Amend Section U. to read as follows:

U. Preparations of plans without a grant.

1. Any municipality developing a facilities plan for a project shall do the following:

* * *

2. Any municipality developing plans and specifications . . . .

The Hearing Examiner finds that the above language would not create a substantial revision of the rule as published in the State Register. The Examiner finds that the proposed rule, with the above changes, is needed and reasonable.

Proposed Rule 6 MCAR § 4.8034 V. - Advances of Allowance

50. This section sets forth the method whereby a municipality can receive

an award of money for doing facility planning and design work. It was suggested that the population limit under Section V.2. be increased. (Pub. Post-Hearing Comment 8; June 13 Tr., pp. 78-79, 99). The rule provides that only communities of less than 3,500 people may apply for an advance allowance. The Agency chose this cutoff point because the EPA defines a small community as having a population of 3,500 people or less. (Agency Ex. 8, p. 117). The Agency believes that the 3,500 population is a reasonable and appropriate cut-off point because larger communities and larger districts should be able to fund the development of plans and specifications, which is all that advances of allowance are available for. The Examiner finds that the Agency has adequately supported the reasons for the population limit with an affirmative presentation of facts in their Statement of Need and Reasonableness.

51. Several comments were made that Section V.7. should provide a method for collecting the overpayment of advanced funds. (Pub. Post-Hearing Comment 2, 14; June 13 Tr., p. 98). The Agency has responded that each municipality's situation will be different and the terms of the payback can be negotiated without any specifics required in the rule. The Examiner, in this instance, will defer to the Agency's experience and expertise. Section V.7. is essentially a procedural rule. The statutory language demonstrates a broad delegation of statutory authority upon the Agency. The Agency has authority to adopt rules that are flexible to the extent of reasonable implication. Welsand v. Railroad and Warehouse Commission, 251 Minn. 504, 88 N.W.2d 834 (1958). The failure to specify a deadline for the paying back of an advance of allowance when the step 3 grant is not ultimately obtained does not make this rule vague. Each municipality's situation will be different, especially since these are small communities that are involved. It is sufficient to specify that the municipality shall reimburse the state the amount of the advance.

52. The Agency has suggested adding the words "unless the project is constructed with other funds" to the end of Section V.7. The Examiner finds that the inclusion of the above words would not create a substantial revision to the proposed rule as published in the State Register. The Examiner finds that the proposed rule, as amended, is needed and reasonable.

Proposed Rule 6 MCAR § 4.8034 W. - Grant Amendments

53. This section sets forth the policy regarding the handling of grant amendments. Basically, this proposed section is the same as the existing rule, but contains more specific language. (Agency Ex. 8, p. 120). During the hearing, the Agency submitted an amendment to Section W.2. (Agency Ex. 41). The proposed amendment to Section W.2. would allow a municipality to seek funding for only those cost overruns caused by unanticipated site conditions. The funding would be limited to only 2% of the as-bid costs. (Agency Ex. 41). Agency Exhibit 41 (which was a handout available throughout the hearing) contains the proposed amendment with a discussion of its need and reasonableness. There were no public comments either orally or in writing submitted in response to the proposed change.

In its post-hearing comments, the Agency has suggested further changes in the language of Section W.2. to provide as follows:

The agency may approve a grant increase when a municipality has solicited contracts that exceed the cost estimated in the application. The agency shall approve the grant amendments if funds are available and the costs are eligible and reasonable. After the grant has been amended to reflect the as-bid costs, only cost overruns caused by unanticipated site conditions shall be eligible for funding for grant amendments, and the grant amendment shall be limited to 2% of the as-bid costs.

The Examiner finds that the adoption of the proposed amendment is a reasonable restriction and is consistent with the purpose of the rules and the enabling legislation. The Examiner also finds that the addition of the proposed amendment does not result in a rule fundamentally different than that contained in the rule as published in the State Register. The rule as originally proposed notified the public that the Agency was reaffirming its authority to approve grant amendments if funds were available. All the proposed amendment is attempting to do is specify some limits on the availability of grant amendments. The rule as originally published sufficiently notified all those who would be affected by the proposed amendment. The Examiner finds that the proposed rule with the above changes is needed and reasonable.

Proposed Rule 6 MCAR § 4.8034 X. - Change Orders

54. The Agency has proposed to change Section X. as published in 7 State Register 1596 and retain the language of the existing rule. The Examiner finds that the Agency's determination to use the existing rule is needed and reasonable. It is not a substantial revision of the rule as originally published in the State Register.

Proposed Rule 6 MCAR § 4.8034 Y. - Payment of State Grant Funds

55. This section provides for the method by which a municipality will receive state grant money. This section states that 50% of state grant money will be withheld until the Agency is assured that the project is complete and operating property. (Agency Ex. 8, pp. 125-127). There was essentially no controversy regarding this proposed rule change. Mr. Claassen suggested that the requirement in Section Y.2.b.(11) delaying the final 50% of grant money until after a revised operation and maintenance manual is submitted was too long a delay. The operation and maintenance manual is usually submitted approximately one year after start-up. (Pub. Ex. 2). The Examiner has reviewed the comment but finds that the Agency's need for the requirement listed in Section Y.2.b. is sufficiently supported in the Statement of Need and Reasonableness. (Agency Ex. 8, p. 126).

56. The Agency has suggested a few changes to the proposed rule Section Y. as published in the State Register.

The Agency proposes to amend Section Y.1. to read as follows:

Y. Payment of state grant funds.

1. Step two advance of allowance and step two portion of step plus three grants.

a. The agency shall pay 50% of a step two advance of allowance and the step two portion of a step two plus three state grant when adequate plans and specifications have been received by the director . . . .

The Examiner finds that the proposed rule, as amended, is reasonable and is not a substantial change from the proposed rule as published.

Proposed Rule 6 MCAR § 4.8034 CC. - Contract Assignments

57. This section allows municipalities to assign their contract rights to the Agency. It was suggested that this entire section be deleted. (Pub. Ex. 2). This proposed rule is essentially the same as the existing rule, but is stated more clearly. (Agency Ex. 8, p. 130). The Examiner finds that the proposed rule as written is needed and reasonable.

Based upon the foregoing Findings of Fact, the Hearing Examiner makes the following:

CONCLUSIONS

1. That the Agency gave proper notice of the hearing in this matter.

2. That the Agency has fulfilled the procedural requirements of Minn. Stat. § 14.14, subds. 1 and 2 (1982) and all other procedural requirements of law or rule; the procedural irregularity noted at Finding 5 is technical in nature, and no corrective action is needed. There was no evidence of any prejudice to interested parties.

3. That the Agency has demonstrated its statutory authority to adopt the proposed rules and has fulfilled all other substantive requirements of law or rule within the meaning of Minn. Stat. §§ 14.05, subd. 1, 14.15, subd. 3 and 14.50 (i) and (ii) (1982).

4. That the Agency has documented the need for and reasonableness of its proposed rules with an affirmative presentation of facts in the record within the meaning of Minn. Stat. §§ 14.14, subd. 2 and 14.50 (iii) (1982), except as noted at Finding 38.

5. That the amendments and additions to the proposed rules which were suggested by the Agency after publication of the proposed rules in the State Register do not result in rules which are substantially different from the proposed rules as published in the State Register within the meaning of Minn. Stat. § 14.15, subd. 3 (1982) and 9 MCAR §§ 2.110 A. and 2.111 (1980 Ed.).

6. That the Hearing Examiner has suggested action to correct the defect cited in Conclusion 4 as noted at Finding 38.

7. That due to Conclusion 4, this Report has been submitted to the Chief Hearing Examiner for his approval pursuant to Minn. Stat. § 14.15, subd. 3 (1982).

8. That any Findings which might properly be termed Conclusions and any Conclusions which might properly be termed Findings are hereby adopted as such.

9. That a finding or conclusion of need and reasonableness in regard to any particular rule subsection does not preclude and should not discourage the Agency from further modification of the proposed rules based upon an examination of the public comments, provided that no substantial change is made from the proposed rules as originally published, and provided that the rule finally adopted is based upon facts appearing in this rule hearing record.

Based upon the foregoing Conclusions, the Hearing Examiner makes the following:

RECOMMENDATION

It is hereby recommended that the proposed rules be adopted except where specifically otherwise noted above.

Dated: August 2nd, 1983.

Phyllis A Reha

PHYLLIS A. REHA
Hearing Examiner

Reported: Harry Reiner (June 13, 1983)
Lynn Peters (June 14, 1983)
Karen Toughill (June 16, 1983)
Allen J. Thiry (June 17, 1983)

PCA-83-005-PR

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE MINNESOTA POLLUTION CONTROL AGENCY

In the Matter of the Proposed Revision to 6 MCAR § 4.8034, Relating to Administration of Federal Grant Funds and State Grant and Loan Funds for Municipal Sewage Treatment Projects.

REPORT OF THE CHIEF HEARING EXAMINER

The above-entitled matter came on for review by the Chief Hearing Examiner pursuant to the provisions of Minn. Stat. § 14.15, subds. 3 and 4 (1982), as amended by Laws of Minnesota, 1983, Ch. 210, which provide in part:

> If the [hearing examiner's] report contains a finding that the proposed rule is substantially different from that which was proposed at the public hearing, or that the agency has not met the requirements of sections 14.13 to 14.18 it shall be submitted to the chief hearing examiner for approval. If the chief hearing examiner approves the finding of the hearing examiner, he shall advise the agency of actions which will correct the defects, and the agency shall not adopt the rule until the chief hearing examiner determines that the defects have been corrected. If the chief hearing examiner determines that the need for and reasonableness of the rule has not been established pursuant to section 14.14, subdivision 2, and if the agency does not elect to follow the suggested actions of the chief hearing examiner to correct that defect, then the agency shall submit the proposed rule to the legislative commission to review administrative rules for the commission's advice and comment. The agency shall not proceed to adopt the rule until it has received and considered the advice of the commission; provided, that the agency is not required to delay adoption longer than 30 days after the commission's receipt of the agency's submission.

Based upon a review of the record in this proceeding, the Chief Hearing Examiner hereby approves the Report of the Hearing Examiner in all respects. The Hearing Examiner has found that the rule as written is unreasonable in that it fails to treat an equally or more serious situation in a similar manner. The rule as proposed is, therefore, arbitrary or unreasonable since it disregards the facts and circumstances of the subject matter it purports to regulate. See, Greenhill v. Bailey, 519 F.2d 5, 10 (8th Cir. 1975); Hurley v. Chaffee, 43 N.W.2d 281, 284 (Minn. 1950).

In order to correct the defect enumerated by the Hearing Examiner, the agency shall either take the action recommended by the Hearing Examiner or submit the rule to the LCRAR.

If the agency chooses to take the action recommended by the Hearing Examiner, it shall, prior to submitting the rules to the Attorney General for review, submit to the Chief Hearing Examiner a copy of the rules as initially published in the State Register, a copy of the rules as proposed for final adoption in the form required by the State Register for final publication, and a copy of the agency's Findings of Fact and Order Adopting Rules. The Chief Hearing Examiner will then make a determination as to whether the defect has

been corrected and whether the modifications in the rules are substantial changes.

Should the agency make changes in the rules other than those recommended by the Hearing Examiner, it shall also, prior to submitting the rule to the Attorney General, submit the complete record to the Chief Hearing Examiner for a review in regard to substantial changes.

Dated: August 3, 1983.

DUANE R. HARVES
Chief Hearing Examiner

By: George A. Beck
Hearing Examiner Supervisor

PCA-83-005-PR

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE MINNESOTA POLLUTION CONTROL AGENCY

In the Matter of the Proposed Revision to 6 MCAR § 4.8034, Relating to Administration of Federal Grant Funds and State Grant and Loan Funds for Municipal Sewage Treatment Projects.

REPORT OF THE HEARING EXAMINER

The above-entitled matter came on for hearing before Hearing Examiner Phyllis A. Reha on June 13, 1983, at 9:30 a.m. in the Board Room of the Minnesota Pollution Control Agency at 1935 West County Road B2, Roseville, Minnesota. The hearing reconvened on June 14, 1983, at the same time and in the same location as the previous day's proceedings; on June 16, 1983, at 10:00 a.m. in Room 191 of the University of Minnesota at 1200 South Broadway, Rochester, Minnesota, and on June 17, 1983, at 10:00 a.m. in St. Cloud at the Area Vocational-Technical School at 1540 Northway Drive, St. Cloud, Minnesota.

The hearing record remained open for 20 days after completion of the hearing, until July 7, 1983.

This Report is part of a rulemaking proceeding conducted pursuant to Minn. Stat. Ch. 14, to determine whether the proposed revisions to 6 MCAR § 4.8034, relating to the administration of federal grant funds, state grant and loan funds for municipal sewage treatment projects should be adopted by the Minnesota Pollution Control Agency (hereinafter "Agency"). A copy of this Report may be obtained from the Office of Administrative Hearings for the cost of reproduction.

Members of the Agency panel appearing at the hearings included Duane Anderson, John Hensel, Roger Bjork, Sharon Meyer, Lanny Peissig, Jerry Blaha, and Lauren Voigt. Special Assistant Attorney General Alan Mitchell, 1935 West County Road B2, Roseville, Minnesota 55113, appeared as counsel for the Agency.

Forty persons signed the hearing register. Fifteen public witnesses spoke at the hearing. The Agency submitted 42 written exhibits at the hearing and three timely post-hearing filings. After the hearing but before the expiration of the 20-day comment period authorized by the Hearing Examiner, 16 timely public comments were filed. Three public comments were filed after the expiration of the 20-day comment period and were not considered by the Hearing Examiner in the preparation of this Report.

The Agency must wait at least five working days before taking any final action on the rules; during that period, this Report must be made available to all interested persons upon request.

Pursuant to the provisions of Minn. Stat. § 14.15, subd. 3 (1982), this Report has been submitted to the Chief Hearing Examiner for his approval. If the Chief Hearing Examiner approves the findings of this Report, he will advise the Agency of actions which will correct the defects and the Agency may

not adopt the rule until the Chief Hearing Examiner determines that the defects have been corrected. However, in those instances where the Chief Hearing Examiner identifies defects which relate to the issues of need or reasonableness, the Agency may either adopt the Hearing Examiner's recommendations to cure the defects or, in the alternative, if the Agency does not elect to adopt the recommendations, Agency may submit the proposed rule to the Legislative Commission to Review Administrative Rules for the Commission's advice and comment. Provisions relating to this submission to the Commission may be found in Minn. Stat. § 14.15, subd. 4 (1982).

If the Agency elects to adopt the recommendations of the Hearing Examiner and makes no other changes and the Chief Hearing Examiner determines that the defects have been corrected, then the Agency shall submit the rule to the Attorney General for review of form and legality. If the Agency makes changes in the rule other than those recommended by the Hearing Examiner, then it shall submit the rule, with the complete record, to the Chief Hearing Examiner for a review of the changes before adopting it and submitting it to the Attorney General. Procedures relating to this subsequent review by the Chief Hearing Examiner are set forth in Minn. Stat. § 14.16 (1982).

When the Agency submits the rule to the Attorney General, it shall give notice on the day of submission to all persons who requested that they be informed of the submission to the Attorney General.

Based upon all the testimony, exhibits and written comments, the Hearing Examiner makes the following:

FINDINGS OF FACT

Procedural Requirements

1. On April 20, 1983, the Agency filed the following documents with the Hearing Examiner:

(a) A copy of the proposed rules.
(b) The Order for Hearing.
(c) The Notice of Hearing proposed to be issued.
(d) A Statement of the number of persons expected to attend the hearing and estimated length of the Agency's presentation.
(e) A copy of the Certificate of the Agency's authorizing resolution.

2. On April 26 and 27, 1983, the Agency mailed a copy of the Notice of Hearing to all persons and associations who had requested that their names be placed on the Minnesota Pollution Control Agency rulemaking list and to other persons who are interested in this rule.

3. On May 9, 1983, a Notice of Hearing and a copy of the proposed rules were published at 7 State Register 1595-1621.

4. On May 19, 1983, the Agency filed the following documents with the Hearing Examiner:

(a) The Order for Hearing.
(b) The Notice of Hearing.
(c) The Certificate of the Board's authorizing resolution.
(d) The Certificate of Mailing List.
(e) The Affidavit of Mailing List.
(f) The Statement of Need and Reasonableness.
(g) A Statement that a notice of intent to solicit outside information was published in the August 16, 1982, State Register. No written responses were received.
(h) A list of personal who would represent the Agency at the hearing.

(i) A copy of the State Register containing the proposed amendments.
(j) The Exhibit List.

The documents listed above were available for inspection at the Office of Administrative Hearings from the date of filing to the date of the hearing.

5. On June 6, 1983, the Agency filed a Notice of Additional Hearing Locations and a corrected Order for Hearing with the Hearing Examiner.

9 MCAR § 2.102 B.1. requires that the Order for Hearing contain a proposed date for the hearing. The original Order for Hearing did not include a proposed date. However, the Notice of Hearing published at 7 State Register 1595 on May 9, 1983, and mailed to the mailing list noted above, did include the date of the hearing. The Hearing Examiner finds that there has been no prejudice to the public in correcting the order for hearing.

6. The record remained open until July 7, 1983, for the receipt of written comments and statements, the period having been extended by order of the Hearing Examiner to 20 calendar days after the last day of hearing.

7. The Examiner finds that the Agency served due, adequate and timely notice of the hearing. All relevant and substantive and procedural requirements of law or rule have been fulfilled.

Background

8. 6 MCAR § 4.8034 (hereinafter sometimes referred to as "WPC 34") is the rule of the Minnesota Pollution Control Agency that provides for the administration of the state and federal grants and loan programs for municipal sewage treatment projects. The agency adopted WPC 34 in 1972. WPC 34 was previously amended in 1973 and 1978.

9. The construction grant program enables municipalities in the state to construct wastewater treatment facilities through a combination of federal, state and local funds. WPC 34 establishes criteria for determining priorities for awarding of state and federal funds for sewage treatment projects.

10. The federal construction grants program is authorized by the Clean Water Act, 33 U.S.C. §§ 1251, et seq. The United States Environmental Protection Agency has promulgated regulations and guidelines for the administration of the federal program. (See, 40 C.F.R. Parts 30, 33 and 35 (1982)). The state construction grant and loan program is funded from the Minnesota State Water Pollution Control Fund, created by the Legislature in 1971. (Minn. Laws 1971, Ex. Sess., Ch. 20; Minn. Stat. §§ 116.16 - 116.18 (1982)).

11. On December 29, 1981, Congress amended the Clean Water Act when it passed the "Municipal Wastewater Treatment Construction Grant Amendments of 1981". (P.L. 97-117). These amendments affected the construction grants program in a number of ways, including the type of projects eligible for funding, funds available for combined sewer overflow problems, the percentage of the cost of a project eligible for federal funding, the funding for innovative and alternative projects, and the establishment of advances of allowance for initial facilities planning.

12. On August 13, 1981, the Legislative Commission to Review Administrative Rules (LCRAR) adopted its staff report on WPC 34. (See, Agency Ex. 11). The LCRAR made a number of recommendations for amendments to WPC 34. These

recommendations included: reassess the point rating system; give special consideration to water pollution effects; give priority to abating public health hazards; protect valuable recreation and scenic waters of the state; and give higher priority to loans than has been given in the past.

13. In these proposed rules, the Agency has attempted to respond to changes in the Clean Water Act, to accommodate the recommendations of the LCRAR, to clarify and simplify current language, and to provide open administration of federal grant funds and state grant and loan funds for the construction of municipal sewage treatment projects under a point system for prioritizing all municipalities seeking grant funds.

Statutory Authority

14. The specific statutory authority to adopt and promulgate these proposed rules is contained in Minn. Stat. § 116.15, subd. 5, which states:

> Subdivision 5. Rules. The agency shall promulgate rules for the administration of grants and loans authorized to be made from the fund, which rules, however, shall not be applicable to the issuance of bonds by the commissioner of finance as provided in section 116.17. The rules shall contain as a minimum:
>
> 1. Procedures for application by municipalities;
>
> 2. Conditions for the administration of the grants or loans;
>
> 3. Criteria for eligibility for grants or loans, including those specified in subdivision 6; and
>
> 4. Such other matters as the agency and the director find necessary to the proper administration of the grant program.

15. The Agency has cited additional statutory provisions as its authority to promulgate the proposed rules. Minn. Stat. § 115.03, subd. 1(c) (1982), authorized the Agency to establish and alter reasonable pollution standards for any water in the state. Subdivision 1(c) provides that the Agency has the power and duty:

> To establish and alter such reasonable pollution standards for any waters of the state in relation to the public use to which they are or may be put as it shall deem necessary for the purpose of this chapter and, with respect to the pollution of the waters of the state.

16. The proposed rules provide for the administration of federal grant funds in addition to state grant and loan funds for municipal sewage treatment projects. The federal construction grants program is authorized by the Clean Water Act, 33 U.S.C. § 1251, et seq. Specifically, 33 U.S.C. § 1296 provides, in part:

> [T]he determination of the priority to be given each category or projects for construction of publicly owned treatment works within each state shall be made solely by the state . . . .

Also see, 40 C.F.R. Parts 30, 33, and 35 (1982).

17. The Hearing Examiner finds that the Agency has the statutory authority to promulgate rules and amendments regarding the administration of federal grant funds and state grant and loan funds for municipal sewage treatment programs.

Need for and Reasonableness of the Proposed Rules

18. Many sections of the proposed rules were not opposed, and this Report is generally limited to those that were opposed or were amended by the Agency. A detailed discussion of each section of the proposed rules is believed to be unnecessary. Such an analysis is contained in the Statement of Need and Reasonableness submitted by the Agency. (Agency Ex. 8). The Hearing Examiner notes at this point that sections not commented on in this Report are hereby found to be needed and reasonable and that the Agency has documented this by an affirmative presentation of facts. With respect to the sections commented on in this Report, all of the concerns discussed on the record and in written comments have been carefully considered. In addition, the Hearing Examiner has examined the factual basis supporting some of the more controversial sections as well as discretionary language not objected to by the public.

It should be noted that Sam Claassen with the firm of Rieke, Carroll, Muller & Associates submitted detailed comments regarding many of the proposed sections. Many of the comments were helpful in the identification of potential problem areas and the Hearing Examiner encourages the Agency to carefully review all public comments to assure uniformity and clarity. The Examiner, however, has only commented on the more notable proposed changes.

19. According to 9 MCAR § 2.104, the Agency, when amending its rules need not demonstrate the need for or reasonableness of the existing rules not effected by the proposed amendment. However, the Agency must show that the proposed amendments to WPC 34 are needed and reasonable.

20. Parties submitting comments expressed their support and recognition of the need for revising the current priority system. With a few exceptions (discussed below), the proposed rules generally were supported by the public. (Pub. Exs. 1, 3, 4, 8; Pub. Post-Hearing Comments 1, 3, 4, 5, 7 and 12).

Proposed Rule 6 MCAR § 4.8034 B. - Definitions

21. The Agency has proposed to delete 11 definitions and to add 12 definitions to the section. During the hearing, the Agency staff proposed two changes in the definitions as proposed. These changes are:

a. Delete the word "wastewater" from section B.1. and add the following definition as B.24. and renumber B.24. as B.26.

> 24. "Wastewater" means sewage, industrial waste and other wastes collected for treatment in a disposal system.

b. Amend the definition of "major contributing industry" in Section B.22. to read as follows:

> 22. A "major contributing industry" means an industrial user of a treatment facility that:
>
> (a) Has a rated flow of 50,000 gallons or more per workday where the rated flow is the daily design flow multiplied by 24 and divided by the actual hours of discharge in a day;
>
> (b) Has a rated flow of greater than 5% of the total design flow to the treatment works;
>
> (c) Has a total organic load of greater than 5% of the total organic load to the treatment works;

(d) Has in its waste before pretreatment a toxic pollutant in amounts in excess of what may be discharged to waters of the state; or

(e) Is found by the agency in connection with the issuance of an NPDES/SDS permit to the municipality, either singly or in combination of other contributing industries, to interfere with the treatment plant's ability to meet effluent limitations, interfere with digester operation or biological unit process operation, impacted the area required for sludge disposal, or increase sizing of the facility by 5% or more.

The Hearing Examiner finds that the definitions, as amended, are necessary and reasonable as they assist with the understanding and clarity of the proposed rules. Adoption of the recommended changes would not create a substantial revision of the proposed rules as published in the State Register.

22. During the hearing, Joel Schilling of the Department of Natural Resources recommended that a definition of "adverse impact" be incorporated into the rule and that the term "adversely affects" be replaced by the term "adverse impact" to maintain consistency within the language of the rule. The Agency in their post-hearing comments proposed the following definition to be incorporated as B.25.:

25. "Adverse impact" means the violation of any water quality standard or an objectionable growth of weeds, algae, or rough fish or any deleterious effect on the physical, chemical, or biological condition of the receiving water that lessens the present or long-term uses of receiving water.

The Hearing Examiner finds that the adoption of such a definition is reasonable and will assure consistency throughout the rules. It is not substantially different from the proposed rule as published.

Proposed Rule 6 MCAR § 4.8034 D. - Summary of Construction Grants Program

23. This section provides a summary as to how the construction grants program operates and reflects changes made in this program. Several members of the public raised the issue of whether readiness to proceed was considered in determining priority. The Agency responded that this is not a factor in establishing priority, but in practice if a municipality does not meet deadlines for grant applications, it will not obtain funding. (See, Pub. Ex. 2; June 13 Tr., p. 36).

The Hearing Examiner finds that the proposed rule is reasonable. However, the Examiner suggests that Section D.4. be clarified to include all municipalities within the construction grants program. The Hearing Examiner recommends the following language for Section D.4.:

The agency develops and maintains a municipal needs lists that ranks in order of priority all municipalities, within the construction grants program, for which a need exists.

Adoption of this change would not operate as a substantial revision of the rule as published.

Proposed Rule 6 MCAR § 4.8034 E. - Municipal Needs List

24. This section describes how the municipal needs list is prepared. The municipal needs list determines which municipalities will be awarded grants for a particular fiscal year. Section 4.8034 E.1. provides that the Director

shall develop and maintain the municipal needs list. Section E.4. states that the Agency will develop and maintain a municipal list. In their post-hearing comments, the Agency recommends that E.1. and E.4. be amended to clarify that the Agency shall develop and maintain the municipal needs list. This change was in response to a suggestion made by the public. (Pub. Ex. 2). The Hearing Examiner agrees that such an amendment is reasonable and necessary for clarification and is not substantially different from the proposed rule as published.

25. Mr. Claassen suggested that a method of appeal be spelled out in the proposed rule when a municipality is aggrieved by an Agency decision. (See, June 13 Tr., p. 45; Pub. Ex. 2). The Agency responded that it does not seem appropriate to address the rights of appeal from one specific decision. (Agency Post-Hearing Comment 1 at pp. 5-6). The Examiner finds no defect in the rule as written, however, the Examiner does suggest that the Agency consider incorporating within these rules a general appeal section which would inform an aggrieved party that it has the usual rights to appeal of an Agency final decision as provided under Minnesota Statutes. Inclusion of such a section would help to assure that a municipality's rights are protected from arbitrary agency decisions. Nevertheless, the proposed section with the above-mentioned editing changes is needed and reasonable as written.

Proposed Rule 6 MCAR § 4.8034 F. - Priority Points for Water Affected

26. This proposed amendment does not change the ratings for various water use classifications as found in the existing rule, but it does more specifically identify each water use classification. (Agency Ex. 8 at pp. 36-39). The DNR suggests that the rule provide additional points for municipalities that affect a chain of lakes. (Pub. Ex. 4; June 14 Tr., pp. 17, 18). The Agency responded that awarding extra consideration for a chain of lakes would have the possibility of isolating several specific problem areas in the state and overlooking others that are just as important. By awarding extra points for a chain of lakes, the effect would be to lopside the point system in favor of these lakes. (June 4 Tr., pp. 21-26). The Examiner believes that the granting of additional points for a chain of lakes could work against the purpose of the rule. Therefore, the Examiner finds that the proposed rule as written is reasonable.

Proposed Rule 6 MCAR § 4.8034 H. - Priority Points for Type of Project

27. This section establishes the number of priority points that will be awarded to a municipality based on the type of project. This section deletes the existing rule's metro-outstate priority split of 60-40. Under the proposed amendment, priority points will be awarded according to a mathematical computation using the logarithm of the population. (Agency Ex. 8, pp. 39-41).

28. This proposed rule essentially was supported by the public. (Pub. Ex. 3; Pub. Post-Hearing Comment 1). There was one public comment questioning the Agency's rationale for choosing the number "5" as a multiplier. (Pub. Ex. 2). However, the proposed section as written is adequately supported in the Agency's Statement of Need and Reasonableness. (Agency Ex. 8, p. 41). The

Hearing Examiner finds that the proposed rule is needed and reasonable as written.

Proposed Rule 6 MCAR § 4.8034 H. - Priority Points for Type of Project

28. This section establishes the number of priority points that will be awarded for various kinds of projects. This proposed rule received many comments. (Pub. Exs. 1, 2, 3, 5, 7, 8; Pub. Post-Hearing Comments 1, 4, 8, 14, 16). The proposed changes in the point structure are intended to accomplish the following purposes: (1) give top priority to the construction of sewage treatment plants and major additions to sewage treatment plants; and (2) identify more types of projects so priority points can more exactly be awarded. (Agency Ex. 8, p. 42).

29. Sections 4.8034 H.1.(m) and H.2.(1) provide for only 10 priority points for modification and replacement of innovative or alternative projects. This particular section of the proposed rule provided the most controversy.

Those in favor of the proposed rule change argue that there should not be double funding of projects which under the existing rule could occur if an innovative project was not successful. Those opposed to the rule change argued that the federal government was trying to provide incentives for municipalities to be creative in developing innovative and alternative projects. With the Agency's decision to delete this priority, it was argued, the Agency was taking away this incentive. (Pub. Exs. 2, 7).

In response to these criticisms, the Agency suggests that a priority system must focus on the water quality impacts of a project rather than the technology involved. (Agency Ex. 8, p. 42; Agency Post-Hearing Comment 1, p. 9). The Agency points out that there are over $2 billion worth of wastewater treatment needs and only $45 million a year coming into the state to take care of those needs. Although it is recognized that Congress has attempted to encourage the development of innovative and alternative technology, sufficient incentive remains in the system. An additional 20% grant is available to encourage some municipalities to use innovative and alternative technology. (Agency Post-Hearing Comment 1, p. 9). The Examiner finds that the water quality related goals are better promoted through a priority system that looks to the water quality impacts of a project rather than to the technology involved. This rule provision as written adequately promotes congressionally expressed goals. The Hearing Examiner also notes that strong support exists for the deletion of high priority points awarded to Innovative and Alternative projects. (Pub. Exs. 1, 3, 4, 8; Pub. Post-Hearing Comments 1, 4, 14).

30. It was suggested by Michael Zagar of the firm of Rieke, Carroll and Muller & Associates, that a larger point spread is needed between tertiary and secondary treatment plants. (Pub. Post-Hearing Comment 16, June 13 Tr., pp. 37-38). Tertiary treatment receives top priority because it is required when a higher quality or more vulnerable receiving water is involved or when toxic pollutants are in the effluent. (Agency Ex. 8, p. 44). The Agency believes that the 10 additional points that tertiary treatment plants receive over secondary plants is a reasonable number that gives tertiary treatment plants an appropriate high priority. (See, June 13 Tr., pp. 39-42). The Examiner finds

that the rule as written adequately responds to the overall goal that water quality is the greatest concern in the awarding of points, rather than the financial aspects of constructing sewage treatment plants.

31. Section H.2.h. provides a definition of a collection system or collector sewer. It includes devices such as grinder pumps, septic tanks, septic tank effluent pumps, and small diameter sewers for subsurface disposal systems with average daily flows in excess of 1000 gallons. Collection systems or collector sewers receive only 10 priority points. Several commentors suggested that collection systems or collector sewers should be awarded more points because they are, in many cases, integral parts of some smaller systems and do provide a significant degree of treatment. The Agency points out that the rule as drafted attempts to draw the line between collection and treatment for funding purposes. That line is drawn at 1000 gallons recognizing that septic tanks in small systems (flows under 1000 gallons) are integral to the system. For systems in excess of 1000 gallons, septic tanks are usually remote from the drain field and not an integral part of the treatment system. (June 13 Tr., pp. 50-53; Agency Ex. 8, p. 48).

The Examiner finds that the rule as written is necessary and reasonable. The rule recognizes that collector sewers are an important and necessary part of a municipality's disposal system. However, municipalities may have to fund their own collection systems in order that more sewage treatment plants can be built. The section is consistent with the stated purpose of these rules and the enabling legislation.

32. The Agency has proposed to change Sections H.2.a., H.2.d., and H.3.a. for clarification purposes pursuant to comments received. (Pub. Ex. 2). The Agency amendments are:

Amend Section H.2.a. to read as follows:

> a. New plant. A new tertiary treatment plant is a plant designed to meet tertiary treatment standards for which construction was commenced after July 1, 1983. A new secondary treatment plant is a plant designed to meet secondary treatment standards for which construction was commenced after July 1, 1983.

Amend Section H.2.d. to read as follows:

> d. Sewer system rehabilitation. A sewer system rehabilitation project is a project that repairs or replaces an existing collector or interceptor sewer in order to eliminate bypasses caused by insufficient hydraulic capacity in existing separate sanitary sewers by transporting infiltration and inflow to a wastewater treatment facility or to reduce the hydraulic capacity of the wastewater treatment plant and includes flow equalization systems, relieve sewers, and relief capacity sewers.

Amend Section H.3.a. to read as follows:

> a. Sewer system rehabilitation. In order for a sewer system rehabilitation project to be eligible for priority points under section H.1.b. or H.1.f., the municipality must not have obtained a construction grant for treatment plant construction since February 11, 1974, and sewer system rehabilitation must be justified by an Infiltration/Inflow Analysis and Sewer System Evaluation Survey that complies with the requirement of Code of Federal Regulations, Title 40, Section 35.2120 as amended through December 31, 1982.

The Hearing Examiner finds that the Agency's proposed changes would not create a substantial revision of the proposed rule as published in the State Register.

33. After careful and thorough consideration of the many comments received, the Hearing Examiner finds that the proposed rule as written, with the above-noted changes, is needed and reasonable. The Agency has clearly demonstrated a reasonable basis for the exercise of this judgment in awarding priority points for the type of project. (Agency Ex. 8, pp. 42-66). (See, American Trucking Association, Inc. v. United States, 344 U.S. 298 (1953)).

Proposed Rule 6 MCAR § 4.8034 I. - Extra Points

34. This section creates categories whereby extra points may be awarded to municipalities.

35. Several commentors suggested that extra points should be awarded for the length of time a municipality has been in the grants program. (See, e.g., Pub. Post-Hearing Comment 11). Since water quality impacts should be the primary factor considered in the awarding of priority points, the Agency does not support the awarding of extra points on the basis of the length of time in the grants program. The Examiner must agree, because awarding extra points for length of time in the grants program is inconsistent with the stated purpose of the rules and enabling legislation.

35. The DNR suggested a few changes to clarify the proposed rule. (Pub. Ex. 4). The Agency has proposed to adopt some of these recommended changes with respect to Sections I.3., 4. and 5. The Agency proposes the following amendments:

Amend Section I.3. to read as follows:

> 3. Watershed pollution abatement plan. A municipality that proposes a project that is an integral part of a watershed pollution abatement plan shall be awarded 15 extra points. A watershed pollution abatement plan is a plan prepared by a watershed district or watershed management organization and approved by the Minnesota Water Resources Board and includes the following:
>
> a. Specific point source and nonpoint source pollution abatement strategy; and
>
> b. Statewide water quality management plan goals and objectives, including the best management practices.
>
> A municipality is not entitled to 15 extra points under this provision unless the watershed district or watershed management organization has adopted specific rules to implement the watershed abatement plan and the plan has been updated in the last 10 years. If a project is part of separate watershed districts or management organizations, all of the watershed districts or management organizations must have satisfied the above criteria in order for the municipality to receive the extra points.

Amend Section I.4. to read as follows:

> 4. Outstanding resource value waters. A municipality that discharges to or has an adverse impact upon an outstanding resource value water shall be awarded 10 extra points. An outstanding resource value water is Lake Superior, any water in the Boundary Waters Canoe Area Wilderness or Voyagers National Park, and all federal and state designated wild, scenic, or recreational river segments.

Amend Section I.5. to read as follows:

> 5. Game fish lakes. A municipality proposing to undertake a project that will result in the elimination of a discharge of a game fish lake or the elimination of a discharge that has an adverse impact on a game fish lake shall be awarded 10 extra points. A game fish lake is a lake managed for propagation of game fish species and used for fisheries and recreation. There may be occasional but not regular winter kill in a game fish lake.

The inclusion of watershed management organization in Section I.3. is appropriate because it is now a statutorily recognized organizational body. (Minn. Laws, 1982, Ch. 509, §§ 19-25). The proposed change to Sections I.4. and 5. is consistent with the Agency's proposed amendment to define "adverse impact". (See, Finding 22, above). The above changes would not create a substantial revision to the proposed rule as published in the State Register. The Examiner finds that the changes are proposed to provide consistency and clarity to the rules and is needed and reasonable.

37. The DNR also suggested that all tributaries to Lake Superior should be considered as outstanding resource value waters under Section I.4. Furthermore, the DNR suggested that waterfowl and furbearer lakes should be given similar treatment as game fish lakes. (Pub. Ex. 4). The Agency does not support either suggestion. (June 14 Tr., pp. 32-37; Agency Post-Hearing Comment 1, p. 11). By including all tributaries to Lake Superior in the outstanding resource value waters designation, all waters all the way up to the headwaters and all the connecting tributaries would be granted extra points, even when these waters may not have a major impact on Lake Superior. As the rule is written, if a municipality discharging to a tributary has an adverse impact on Lake Superior, the extra points under the section will be awarded. It is not enough to simply discharge into the tributary. The Examiner believes that the Agency's analysis is appropriate and consistent with the purposes of the rules. It is not, therefore, necessary to specifically include tributaries as outstanding resource value waters.

The Agency does not support the inclusion of the DNR suggestion that lakes managed for the use and benefit of waterfowl and furbearers be given like treatment as game fish lakes because some of these lakes may already be included within the game fish designation. The Agency is unsure exactly how these waterfowl and furbearer lakes would be identified. (Agency Post-Hearing Comment 1, p. 11).

The Examiner finds the suggestion by the DNR to be valuable and consistent with the purposes of the rule. If the problem of overlap and identification can be resolved, the Examiner believes the Agency should consider giving waterfowl and furbearer lakes similar treatment as game fish lakes as suggested by the DNR. It is suggested that the Agency meet with the DNR to determine how waterfowl and furbearer lakes can be identified. However, the rule as currently proposed is not unreasonable. Adoption of the DNR suggested amendment would not create a substantial revision to the rule as originally published in the State Register.

38. It was suggested by several commentors including Mark Sather, representing the City of Waseca, that a municipality be awarded extra points if its existing system suffered from in-system bypassing caused by overloading. The

LCRAR strongly supports the suggested change to Section I.2.a., similar to the one proposed by Mr. Sather. (Pub. Post-Hearing Comment 10, 13). Mr. Sather suggests the following:

> I.2.a. No treatment. A municipality that presently has a central collection system serving 50% or more of the population but provides no treatment prior to discharge, or a municipality which collects an average daily flow exceeding one million gallons through a system without combined sewers and which has bypassed sewage more than 40% of the time over a period of at least two years while its plant is operating at full capacity, shall be awarded 40 extra points.

The Agency claims that there are too many factors that would have to be considered if points were to be awarded for facilities suffering from in-system bypassing caused by overloading. Furthermore, the Agency claims that the awarding of extra points in the above-mentioned situation would create incentives for municipalities to allow sewage treatment plants to become overloaded. (Agency Post-Hearing Comment 1, pp. 12-13). However, the Examiner believes that an overloaded treatment plant facility which discharges raw sewage should be taken into account under the proposed rules. The Examiner finds that consistent bypassing of a wastewater treatment facility receiving over one million gallons is as serious, or more serious, than no treatment at all. The Examiner also recognizes, however, that the rules must be drafted in such a way as to discourage mediocre operation, improper maintenance or delayed improvements. The Examiner believes that a rule as drafted by Mr. Sather and supported by the LCRAR satisfies these concerns. The Examiner finds that the above-quoted suggested amendment or a conceptually similar amendment which addresses the problem of in-system bypassing caused by overloading is needed. The rules are unreasonable without it. The inclusion of such an amendment would not create a substantial change from the proposed rule as published in the State Register. The Examiner finds that the inclusion of the above-suggested language is consistent with the policy of the proposed rules to fund projects based on water quality impacts. To correct this defect, the Agency must adopt the proposed amendment or a similarly worded amendment.

39. It was suggested by William McCombs of McCombs-Knutson, and others, that extra points should be awarded on the basis of the "age and condition of a treatment facility". (June 13 Tr., pp. 10-11, 108-109; Pub. Post-Hearing Comment 6). The rule as drafted gives extra points based on the facility's "level of treatment". (Agency Post-Hearing Comment 1, p. 12; June 13 Tr., p. 110). In effect, then, this rule does provide points for age and condition of the facility. For example, Imhoff tanks get an additional 20 points, i.e., communities that have old systems generally have Imhoff tanks. Trickling filter plants, on the other hand, are in all likelihood newer, and get fewer points. However, there still is no provision in the rules to compare two identical treatment plants and make a determination that one is in worse condition than the other. (June 13 Tr., p. 110).

The Agency agrees in principle with the suggestion that age or condition is an important concern; however, it was unable to develop a reasonably rational system without creating a disincentive to water quality protection by encouraging some communities to allow the plants to become rundown. (June 13

Tr., pp. 109-111). Mr. McCombs recommends that a point system include a variable rating based on the age of the plant. To take into consideration the Agency's concern that this could create a negative incentive, Mr. McCombs suggests that the points be modified by granting bonus points if the municipality does a good job of maintaining the plant and maximizing its ability to treat the waste even though the plant may be in an advanced age. (See, Pub. Post-Hearing Comment 6).

It is suggested that the Agency consider a rule similar to that suggested by Mr. McCombs. However, since the rule as drafted does indirectly provide priority points for age and condition of the facility, the rule cannot be said to be unreasonable. Substitution of the amendment suggested by Mr. McCombs or a similarly worded amendment which directly addresses the problem of age and condition of a facility would not create a substantial change from the proposed rule as published in the State Register.

Proposed Rule 6 MCAR § 4.8034 L. - Municipal Project List

40. This section sets forth the method for placing municipalities on the municipal project list. Several public witnesses expressed concern that the July 1 deadline in Section L.2. for the submission of facilities plans, as well as plans and specifications, was too restrictive. (Pub. Ex. 2; Pub. Post-Hearing Comment 14). The Hearing Examiner finds that the July 1 deadline is adequately supported by the Agency in its Statement of Need and Reasonableness. Furthermore, the evidence shows that the municipalities can meet this deadline. The Hearing Examiner finds the proposed rule change reasonable. (Agency Ex. 8, pp. 82-83).

41. Section 4.8034 L.3. specifies that the Agency shall prepare a proposed municipal project list of municipalities on the municipal needs list that have submitted approvable facilities plans and specifications. The Examiner recommends that the Agency consider specifying within the rule a specific date for issuing the proposed municipal projects list. The rule as written, however, is reasonable.

42. The Agency proposes to make the following amendments which the Hearing Examiner finds reasonable and not substantial changes from the proposed rules as published:

1. In the last sentence of Section L.2. the words "necessary facilities plan and specifications" should read "necessary facilities plan or plans and specifications".

2. In the first sentence of Section L.3. the words "approvable facilities plans and specifications" should be amended to read "approvable facilities plan or plans and specifications".

These changes are consistent with recommendations made by William McCombs representing McCombs-Knutson.

Proposed Rule 6 MCAR § 4.8034 N. - Project Eligibility

43. Section 4.8034 N.3. specifies that a project is not eligible for a grant unless the Agency determines that the project is a cost-effective means of handling the municipality's wastewater. As stated at the Public Hearing June 13 transcript at page 61, there may be some instances where environmental

issues impact the cost-effectiveness considerations. The Hearing Examiner recommends the following amended language.

> 3. Cost-effectiveness. A project is not eligible for a grant unless the agency determines that the project is an environmentally acceptable cost-effective means of handling the municipality's wastewater. The agency shall not award a grant to pay for those portions of a project that are not environmentally acceptable and cost-effective.

This change will allow the Agency reasonable flexibility to consider other criteria other than strict financial considerations. The Examiner does not believe that it affords the Agency too much discretion, nor is this suggested amendment excessively vague. See, Can Manufacturers Institute, Inc. v. State, 289 N.W.2d 416 (Minn. 1979). It will, however, allow the Agency reasonable flexibility to consider other criteria rather than strict financial considerations. The rule as written, however, is not unreasonable.

Proposed Rule 6 MCAR § 4.8034 O. - Adjustments in the Municipal Projects List

44. This section provides the Director with the authority to establish criteria for determining priority in applications for federal and state construction grants. The language in this section is based on the statute that allows the Director to change the criteria for establishing priorities if required to comply with federal law. That statute is Minn. Stat. § 116.16, subd. 7 (1982). The Agency wants to repeat the statute in the rule because it believes it to be an important provision that the public should be aware of.

The Agency wishes to use the verbatim statutory language in the rule so there is no confusion that the rule means what the statute means. (Statement of Need and Reasonableness, pp. 91-92).

> O. Adjustments in the municipal project list. Notwithstanding any other provision in this rule, the director may, as necessary to establish criteria for determining priority for applications for federal and state construction grants under the Act, and regulations and guidelines of the EPA promulgated pursuant thereto, and Minn. Stat. Chapters 115 and 116, establish such criteria for determining priority upon a basis other than that provided herein, to the extent required to comply with the Act, and guidelines and regulations thereto or resulting therefrom.

The Hearing Examiner has reviewed in detail the amended language and has compared it to the statute. Although it is not verbatim, it is similar to the statutory language expressed in Minn. Stat. § 116.16, subd. 7. The Examiner finds that the duplication of the statutory language in this rule is crucial to the ability of a person affected by the rule to comprehend its meaning and effect. The Agency may, therefore, duplicate the statutory language of Minn. Stat. § 116.16, subd. 7, consistent with Minn. Stat. § 14.07, subd. 5 (1982). Furthermore, the rule as amended is not substantially different than the rule as originally published in the State Register.

Proposed Rule 6 MCAR § 4.8034 P. - Public Participation

45. The Agency has proposed amending P.4. to provide as follows:

> 4. Interested persons may present oral statements to the board at the board meeting. The chairperson may place reasonable restrictions upon the time and manner in which oral

comments are submitted. Written statements may be served on the director any time up to five days before the meeting.

The Hearing Examiner finds that the amended language is reasonable and does not represent a substantial change of the proposed rule as published.

Proposed Rule 6 MCAR § 4.8034 Q. - Grant Applications

46. Section Q.2. states that a municipality must submit a completed construction grant application to the Agency within 90 days after the date on which the Agency adopts the fiscal year's municipal projects list. Under the current rule, a municipality has 150 days in which to submit a completed construction grant application. The Agency states that the 150-day time limit imposed a risk of losing federal funds through failure to obligate the state's allotment by the deadline date set by Congress in the Clean Water Act. Several commentors believed that the 150-day period should be retained in the rule. The Examiner finds, however, that the 90-day requirement will not impose an unreasonable burden on municipalities applying for grants and the Agency has adequately supported its reasoning for shortening the time requirement. (Agency Ex. 8, pp. 94-95).

47. The Agency has adopted several suggestions made to clarify Section Q. (Pub. Ex. 2). The Agency proposes amending Section Q. as follows:

Amend Section Q.3. to read as follows:

3. The agency shall notify in writing each municipality on the municipal project list and each municipality on the reserve project list of its placement on the appropriate list. No municipality shall submit a construction grant application unless the municipality has been notified by the agency that it is on the municipal project list.

Amend Section Q.4.c. to read as follows:

c. A resolution by the governing body of the municipality resolving that the sewage collection system will, at the appropriate time, be constructed concurrently with the sewage treatment works if the collection system is not part of the project to be funded and the municipality does not already have a collection system.

Amend Section Q.4.h. to read as follows:

h. A certification from the municipality that the municipality shall:

1. Prohibit unpolluted water connections to the municipality's sanitary sewer system in the future; and

2. Inspect new connections to the sanitary sewer system throughout the municipality's jurisdiction to ensure that the connections conform to the Minnesota Plumbing Code, found in the Rules of the Department of Health, MHD 120-134, and to 7 MCAR § 1.135.

Amend Section Q.5.b. to read as follows:

b. A system service charge system comprised of a user charge system, including a proposed financial management system, and a system for raising funds to cover the municipality's costs of construction and to retire the municipality's debt costs attributable to the wastewater treatment works to be constructed.

The Hearing Examiner finds that the proposed amendments are for clarification purposes, are reasonable, and do not represent a substantial change from the proposed rules as published.

Proposed Rule 6 MCAR § 4.8034 U. - Construction Without Grants

48. Section U. establishes procedures and regulations for municipalities not participating in the grant program. It requires municipalities working on sewage treatment projects to notify the Agency about the status of their projects even though they have not received grant money. Comments at the hearing (June 13 Tr., p. 71) suggested that the Agency did not have authority to regulate municipalities not participating in the grant program. The Examiner requested the Agency to respond to this concern in its post-hearing comments. (See, Post-Hearing Comment 1, pp. 15-16). The Agency has authority to regulate municipalities that have a discharge to state waters or that propose to construct or already operate sewage treatment facilities. The water pollution control statutes and rules apply to all such municipalities, whether or not they apply for a construction grant. The Agency bases its authority upon Minn. Stat. § 115.07 (1982); 6 MCAR § 4.8036; Minn. Stat. § 116.16, subd. 5 (1982); and Minn. Stat. § 116.16, subd. 1 (1982). The Examiner finds that pursuant to Minn. Stat. § 115.03 (1982) the Agency has authority to adopt rules in order to prevent, control or abate water pollution. In order that the Agency can adequately further the pollution policies stated in Minn. Stat. § 116.01 (1982), it must be knowledgeable regarding all proposed sewage treatment projects. (See, Sterling Secret Service, Inc. v. Michigan Department of State Police, 20 Mich. App. 502, 174 N.W.2d 298 (1969)). Ensuring that the municipalities that have wastewater treatment needs do design and construct capable and cost-effective sewage treatment plants promotes the legislative purpose and protects the integrity of the pollution control fund. The Hearing Examiner finds that it is reasonable to require all municipalities constructing wastewater treatment facilities to proceed only after review and approval by the PCA. The Hearing Examiner finds that the Agency has the statutory authority to regulate municipalities not participating in the grant program to protect state waters and public health from municipal water pollution.

49. To make Section U. more clear, the Agency has proposed the following amendments:

Amend Section U. to read as follows:

U. Preparations of plans without a grant.

1. Any municipality developing a facilities plan for a project shall do the following:

* * *

2. Any municipality developing plans and specifications . . . .

The Hearing Examiner finds that the above language would not create a substantial revision of the rule as published in the State Register. The Examiner finds that the proposed rule, with the above changes, is needed and reasonable.

Proposed Rule 6 MCAR § 4.8034 V. - Advances of Allowance

50. This section sets forth the method whereby a municipality can receive

an award of money for doing facility planning and design work. It was suggested that the population limit under Section V.2. be increased. (Pub. Post-Hearing Comment 8; June 13 Tr., pp. 78-79, 99). The rule provides that only communities of less than 3,500 people may apply for an advance allowance. The Agency chose this cutoff point because the EPA defines a small community as having a population of 3,500 people or less. (Agency Ex. 8, p. 117). The Agency believes that the 3,500 population is a reasonable and appropriate cutoff point because larger communities and larger districts should be able to fund the development of plans and specifications, which is all that advances of allowance are available for. The Examiner finds that the Agency has adequately supported the reasons for the population limit with an affirmative presentation of facts in their Statement of Need and Reasonableness.

51. Several comments were made that Section V.7. should provide a method for collecting the overpayment of advanced funds. (Pub. Post-Hearing Comment 2, 14; June 13 Tr., p. 98). The Agency has responded that each municipality's situation will be different and the terms of the payback can be negotiated without any specifics required in the rule. The Examiner, in this instance, will defer to the Agency's experience and expertise. Section V.7. is essentially a procedural rule. The statutory language demonstrates a broad delegation of statutory authority upon the Agency. The Agency has authority to adopt rules that are flexible to the extent of reasonable implication. Welsand v. Railroad and Warehouse Commission, 251 Minn. 504, 88 N.W.2d 834 (1958). The failure to specify a deadline for the paying back of an advance of allowance when the step 3 grant is not ultimately obtained does not make this rule vague. Each municipality's situation will be different, especially since these are small communities that are involved. It is sufficient to specify that the municipality shall reimburse the state the amount of the advance.

52. The Agency has suggested adding the words "unless the project is constructed with other funds" to the end of Section V.7. The Examiner finds that the inclusion of the above words would not create a substantial revision to the proposed rule as published in the State Register. The Examiner finds that the proposed rule, as amended, is needed and reasonable.

Proposed Rule 6 MCAR § 4.8034 W. - Grant Amendments

53. This section sets forth the policy regarding the handling of grant amendments. Basically, this proposed section is the same as the existing rule, but contains more specific language. (Agency Ex. 8, p. 120). During the hearing, the Agency submitted an amendment to Section W.2. (Agency Ex. 41). The proposed amendment to Section W.2. would allow a municipality to seek funding for only those cost overruns caused by unanticipated site conditions. The funding would be limited to only 2% of the as-bid costs. (Agency Ex. 41). Agency Exhibit 41 (which was a handout available throughout the hearing) contains the proposed amendment with a discussion of its need and reasonableness. There were no public comments either orally or in writing submitted in response to the proposed change.

In its post-hearing comments, the Agency has suggested further changes in the language of Section W.2. to provide as follows:

The agency may approve a grant increase when a municipality has solicited contracts that exceed the cost estimated in the application. The agency shall approve the grant amendments if funds are available and the costs are eligible and reasonable. After the grant has been amended to reflect the as-bid costs, only cost overruns caused by unanticipated site conditions shall be eligible for funding for grant amendments, and the grant amendment shall be limited to 2% of the as-bid costs.

The Examiner finds that the adoption of the proposed amendment is a reasonable restriction and is consistent with the purpose of the rules and the enabling legislation. The Examiner also finds that the addition of the proposed amendment does not result in a rule fundamentally different than that contained in the rule as published in the State Register. The rule as originally proposed notified the public that the Agency was reaffirming its authority to approve grant amendments if funds were available. All the proposed amendment is attempting to do is specify some limits on the availability of grant amendments. The rule as originally published sufficiently notified all those who would be affected by the proposed amendment. The Examiner finds that the proposed rule with the above changes is needed and reasonable.

Proposed Rule 6 MCAR § 4.8034 X. - Change Orders

54. The Agency has proposed to change Section X. as published in 7 State Register 1596 and retain the language of the existing rule. The Examiner finds that the Agency's determination to use the existing rule is needed and reasonable. It is not a substantial revision of the rule as originally published in the State Register.

Proposed Rule 6 MCAR § 4.8034 Y. - Payment of State Grant Funds

55. This section provides for the method by which a municipality will receive state grant money. This section states that 50% of state grant money will be withheld until the Agency is assured that the project is complete and operating property. (Agency Ex. 8, pp. 125-127). There was essentially no controversy regarding this proposed rule change. Mr. Claassen suggested that the requirement in Section Y.2.b.(11) delaying the final 50% of grant money until after a revised operation and maintenance manual is submitted was too long a delay. The operation and maintenance manual is usually submitted approximately one year after start-up. (Pub. Ex. 2). The Examiner has reviewed the comment but finds that the Agency's need for the requirement listed in Section Y.2.b. is sufficiently supported in the Statement of Need and Reasonableness. (Agency Ex. 8, p. 126).

56. The Agency has suggested a few changes to the proposed rule Section Y. as published in the State Register.

The Agency proposes to amend Section Y.1. to read as follows:

Y. Payment of state grant funds.

1. Step two advance of allowance and step two portion of step plus three grants.

a. The agency shall pay 50% of a step two advance of allowance and the step two portion of a step two plus three state grant when adequate plans and specifications have been received by the director . . . .

The Examiner finds that the proposed rule, as amended, is reasonable and is not a substantial change from the proposed rule as published.

Proposed Rule 6 MCAR § 4.8034 CC. - Contract Assignments

57. This section allows municipalities to assign their contract rights to the Agency. It was suggested that this entire section be deleted. (Pub. Ex. 2). This proposed rule is essentially the same as the existing rule, but is stated more clearly. (Agency Ex. 8, p. 130). The Examiner finds that the proposed rule as written is needed and reasonable.

Based upon the foregoing Findings of Fact, the Hearing Examiner makes the following:

CONCLUSIONS

1. That the Agency gave proper notice of the hearing in this matter.

2. That the Agency has fulfilled the procedural requirements of Minn. Stat. § 14.14, subds. 1 and 2 (1982) and all other procedural requirements of law or rule; the procedural irregularity noted at Finding 5 is technical in nature, and no corrective action is needed. There was no evidence of any prejudice to interested parties.

3. That the Agency has demonstrated its statutory authority to adopt the proposed rules and has fulfilled all other substantive requirements of law or rule within the meaning of Minn. Stat. §§ 14.05, subd. 1, 14.15, subd. 3 and 14.50 (i) and (ii) (1982).

4. That the Agency has documented the need for and reasonableness of its proposed rules with an affirmative presentation of facts in the record within the meaning of Minn. Stat. §§ 14.14, subd. 2 and 14.50 (iii) (1982), except as noted at Finding 38.

5. That the amendments and additions to the proposed rules which were suggested by the Agency after publication of the proposed rules in the State Register do not result in rules which are substantially different from the proposed rules as published in the State Register within the meaning of Minn. Stat. § 14.15, subd. 3 (1982) and 9 MCAR §§ 2.110 A. and 2.111 (1980 Ed.).

6. That the Hearing Examiner has suggested action to correct the defect cited in Conclusion 4 as noted at Finding 38.

7. That due to Conclusion 4, this Report has been submitted to the Chief Hearing Examiner for his approval pursuant to Minn. Stat. § 14.15, subd. 3 (1982).

8. That any Findings which might properly be termed Conclusions and any Conclusions which might properly be termed Findings are hereby adopted as such.

9. That a finding or conclusion of need and reasonableness in regard to any particular rule subsection does not preclude and should not discourage the Agency from further modification of the proposed rules based upon an examination of the public comments, provided that no substantial change is made from the proposed rules as originally published, and provided that the rule finally adopted is based upon facts appearing in this rule hearing record.

Based upon the foregoing Conclusions, the Hearing Examiner makes the following:

RECOMMENDATION

It is hereby recommended that the proposed rules be adopted except where specifically otherwise noted above.

Dated: August 2nd, 1983.

Phyllis A. Reha

PHYLLIS A. REHA
Hearing Examiner

Reported: Harry Reiner (June 13, 1983)
Lynn Peters (June 14, 1983)
Karen Toughill (June 16, 1983)
Allen J. Thiry (June 17, 1983)

PCA-83-005-PR

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE MINNESOTA POLLUTION CONTROL AGENCY

In the Matter of the Proposed Revision to 6 MCAR § 4.8034, Relating to Administration of Federal Grant Funds and State Grant and Loan Funds for Municipal Sewage Treatment Projects.

REPORT OF THE CHIEF HEARING EXAMINER

WHEREAS, a hearing was held on June 13, 14, 16 and 17, 1983, before Phyllis A. Reha, a Hearing Examiner of the State Office of Administrative Hearings, on the above-entitled matter in compliance with the rule-making provisions of Minn. Stat. Ch. 14 (1982); and

WHEREAS, the Report of Hearing Examiner made pursuant to Minn. Stat. § 14.50, was issued to the Minnesota Pollution Control Agency and;

WHEREAS, the Minnesota Pollution Control Agency has now determined to the amendments to 6 MCAR § 4.8034; and

WHEREAS, the Minnesota Pollution Control Agency has submitted said rules to the Chief Hearing Examiner for review pursuant to Minn. Stat. §§ 14.16, 14.51, and 9 MCAR § 2.111; and

WHEREAS, the Chief Hearing Examiner finds that the final proposed rules are not substantially different from those proposed at the public hearing and that the Minnesota Pollution Control Agency has cured the defect in the rule as required.

NOW, THEREFORE, upon receipt of this Order, the Minnesota Pollution Control Agency may proceed with the adoption of the amendments to 6 MCAR § 4.8034 pursuant to further requirements of Minn. Stat. Ch. 14 (1982).

Dated: August 30th, 1983.

DUANE R. HARVES
Chief Hearing Examiner

STATE OF MINNESOTA

COUNTY OF RAMSEY

MINNESOTA POLLUTION

CONTROL AGENCY

In the Matter of the Proposed
Revision to 6 MCAR § 4.8034, Relating
to the Administration of Federal Grant
Funds and State Grant and Loan Funds
for Municipal Sewage Treatment Projects

FINDINGS OF FACT
AND CONCLUSIONS

The above-entitled matter came on for hearing before Hearing Examiner Phyllis A. Reha on June 13, 1983, after proper notice was served upon all persons, associations, and other interested groups registered with the Minnesota Pollution Control Agency for that purpose. After affording all interested persons an opportunity to present written and oral data, statements and argument, after considering the Statement of Need and Reasonableness and the Report of the Hearing Examiner and the Report of the Chief Hearing Examiner, after considering all of the evidence adduced upon the records, files, and proceedings herein, and the Agency being fully advised in the premises, hereby adopts the following Findings of Fact and Conclusions.

FINDINGS OF FACT

The Agency adopts the Findings of Fact of the Hearing Examiner, as contained in her Report attached hereto, and incorporates them herein by reference, with the following amendments:

1. Finding No. 5 on page 3 of the Hearing Examiner's Report is amended by adding the following language:

On June 3, 1983, the Agency mailed a Notice of Additional Hearing Locations to persons on a mailing list compiled by the Agency.

2. The statutory citation in Finding No. 14 on page 4 of the Hearing Examiner's Report should be Minn. Stat. § 116.16, subd. 5, not Minn. Stat. § 116.15, subd. 5.

3. The second paragraph of Finding No. 18 on page 5 of the Hearing Examiner's Report is amended to read:

The public comments that were submitted were helpful to the Agency in identifying provisions of the rule that are of concern. The Agency has considered all of the public comments that were submitted.

4. Finding No. 24 at page 6 of the Hearing Examiner's Report is amended to read as follows:

This section describes how the municipal needs list is prepared. The municipal needs list provides a list of all municipalities with a need for wastewater treatment in order of priority. The Agency is the one who adopts the municipal needs list so the provisions in this section should refer to the Agency instead of to the Director. This amendment is reasonable and not substantially different from what was proposed.

5. Finding No. 25 at page 7 of the Hearing Examiner's Report is amended to read as follows:

Persons aggrieved by a decision of the Agency in the development of the municipal needs list may seek judicial review under existing statutory procedures. It is not

necessary to attempt to set out in this rule the various methods of appeal that may be available to persons aggrieved by a decision of the Agency in the administration of this rule.

6. Findings No. 27 and No. 28 at pages 7 and 8 of the Hearing Examiner's Report are amended to read as follows:

Proposed Rule 6 MCAR § 4.8034 H. - Priority Points for Population

27. This section establishes the number of priority points that will be awarded to a municipality based on population. The Agency has chosen to base the number of priority points awarded for population on the logarithm of the population. This will give population less importance than it had in the past. In order that population still retain some significance, however, the Agency finds that a multiplier of five should be used, so that the priority points for population will be five times the logarithm. This multiplier will result in 30 points being the maximum available under this section and the minimum about 10. The proposed rule was supported by the public for the most part and the Agency finds that the logarithmic method is a reasonable approach for awarding priority points for population.

27A. The existing rule provides that funds will be split between metro and outstate projects in proportion to the sewered population of the respective areas. This provision resulted in about a 60-40 split between metro and outstate

communities, respectively. The reason for this provision was to ensure that some of the funds went to the smaller outstate communities. With population given a lower priority under the proposed amendments, a special provision mandating a metro-outstate split of funds is no longer necessary. Moreover, EPA no longer allows geography to determine priority. See 40 C.F.R. § 35.915(a)(1) (1982). It is reasonable to drop this provision from the rule.

7. Finding No. 29 at page 8 of the Hearing Examiner's Report is amended to read as follows:

29. Sections 4.8034 H.1.m. and H.2.1. provide for only 10 priority points for modification and replacement of innovative or alternative projects. Some commenters stated that the federal government wants to provide incentives for municipalities to be creative in developing wastewater treatment projects and that awarding only 10 points for these replacement or modification projects would destroy this incentive.

Although it is recognized that Congress has attempted to encourage the development of innovative and alternative technology, sufficient incentive remains in the system. An additional 20% grant is available to encourage some municipalities to use innovative and alternative technology. The Agency finds that the water quality related goals are better promoted through a priority system that looks to the water quality impacts of a project rather than

to the technology involved. This rule provision as written adequately promotes congressionally expressed goals.

8. A new Finding No. 29A is added to read as follows:

29A. Under the existing rule the municipal project list was actually revised each year to give preferential treatment to projects involving innovative and alternative technology, to alternative projects for small communities, and to various sewer system projects. This preferential treatment resulted in some lower priority projects obtaining funding over higher priority projects. Under the proposed amendments, all of these set-aside provisions would be deleted and the Agency finds that it is reasonable to delete these provisions.

The set-aside that involved the greatest revision of the project list and the only one to be discussed at the hearing is the I&A set-aside, the set-aside for innovative and alternative technology. Since 1978 the Agency has set aside 4% of its allotment each year for projects involving innovative and alternative technology. The reason this was done was to ensure that the State used its full federal allotment and also to make the State eligible to receive unallotted funds from other states.

Even though the State has received unallotted funds from other states in the past, it is reasonable to delete the I&A set-aside provision for a number of reasons. The major

reason is that with the I&A set-aside, higher priority projects were being bumped off the project list by lower priority projects involving innovative and alternative technology. Another reason is that the additional funds awarded to Minnesota for awarding the full I&A set-aside amount were not that substantial, less than one million dollars compared to a $40 million fiscal year allotment. Finally, it is possible that the remaining incentive to construct innovative and alternative projects -- coverage of an additional 20% of the cost of the project above the percentage covered for conventional treatment -- is likely to result in the award of the requisite amount of I&A funds to high priority projects.

9. The first sentence of Finding No. 30 at page 8 of the Hearing Examiner's Report is amended to read:

30. One commenter suggested that a larger point spread than 10 is needed between tertiary and secondary treatment plants because tertiary plants require a higher capital expenditure than secondary plants.

10. Finding No. 33 at page 10 of the Hearing Examiner's Report is amended to read:

33. In sum, the Agency finds that the priority scheme established for type of project, with the above-noted changes, represents a reasonable exercise of judgment.

11. The second and third paragraphs of Finding 37 at page 11 of the Hearing Examiner's Report are amended to read:

The Agency does not support the inclusion of the DNR suggestion that lakes managed for the use and benefit of waterfowl and furbearers be given like treatment as game fish lakes because the Agency is unsure how these waterfowl and furbearer lakes would be identified. The possible inclusion of a large number of lakes in this category would detract from the intent to give higher priority to the protection of game fish lakes.

12. Finding No. 38 at pages 11 and 12 of the Hearing Examiner's Report is amended to read:

An overloaded treatment facility that discharges raw sewage from in-system bypassing caused by overloading can have a pollution impact as serious as a situation where no treatment is provided. The Agency believes that the awarding of extra points to municipalities that have significant in-system bypassing problems is justified and is consistent with the policy followed in the rule to fund projects based on water quality impacts.

The Agency recognizes, however, that the rule must be drafted in a way that will not encourage mediocre operation, improper maintenance, or delayed improvements. Also, combined sewer overflow problems are not considered in-system bypassing for purposes of this part of the rule.

The City of Waseca and the Legislative Commission to Review Administrative Rules (LCRAR) both support the

inclusion in the rule of a provision awarding extra points to municipalities whose existing system suffers from in-system bypassing caused by overloading. The following language suggested by the City of Waseca is a reasonable amendment to the rule:

> I.1.a. No treatment. A municipality that presently has a central collection system serving 50% or more of the population but provides no treatment prior to discharge, or a municipality which collects an average daily flow exceeding one million gallons through a system without combined sewers and which has bypassed sewage more than 40% of the time over a period of at least two years while its plant is operating at full capacity, shall be awarded 40 extra points.

13. Finding No. 39 at pages 12 and 13 of the Hearing Examiner's Report is amended to read:

Some commentors suggested that extra points should be awarded on the basis of the age and condition of the existing treatment facility. In some ways the rule already considers the age and condition of the treatment facility. Communities with old systems generally have what are called Imhoff tanks; Imhoff tanks provide only primary treatment; communities with only primary treatment are awarded 20 extra points. Municipalities with newer systems likely provide more than primary treatment and will not get the 20 extra points.

There is no provision in the rule to compare two identical treatment plants and make a determination that one is older or in worse condition than the other. Attempting to make that distinction could encourage some communities to allow their plants to become rundown, to the detriment of the

receiving water. The Agency prefers not to distinguish treatment facilities on the basis of age and condition beyond what is already in the rule.

14. A new Finding 39A is added to read:

39A. As discussed in paragraph 50 of the Findings of Fact and provided in Section V.2. of the rule, only small communities are eligible for advances of allowance. Small communities often have to seek funding from other state and federal agencies in order to pay for the local share of the project and to pay for portions of the overall project, such as the collection system, not covered by construction grant funds. Two small communities -- Vesta and Dassel -- have already received advances of allowance to prepare plans and specifications for their projects. In order to ensure that any possible grants applied for by these communities to pay for local costs of their treatment projects not be jeopardized by delays in obtaining construction grants, the Agency finds that it is reasonable to award 20 extra points to communities that have already been awarded advances of allowance.

15. Finding No. 41 at page 13 of the Hearing Examiner's Report is amended to read:

Section 4.8034 L.3. specifies that the Agency shall prepare a proposed municipal project list of municipalities on the municipal needs list that have submitted approvable facilities plans or plans and specifications. It is reasonable to expect that municipalities requesting

construction grants be prepared to proceed with their projects immediately upon award of the grant. Requiring an approvable facilities plan or plans and specifications will ensure the municipality is prepared to proceed.

16. Finding No. 43 at pages 13 and 14 of the Hearing Examiner's Report is amended to read:

43. Section 4.8034 N.3. specifies that a project is not eligible for a grant unless the Agency determines that the project is a cost-effective means of handling the municipality's wastewater. This provision simply restates in clearer terms the existing provisions of the rule. In order to clarify, however, that cost-effectiveness requires a consideration of environmental factors, the Agency supports the following change in section N.3.

3. Cost-effectiveness. A project is not eligible for a grant unless the agency determines that the project is an <u>environmentally acceptable</u> cost-effective means of handling the municipality's wastewater. The agency shall not award a grant to pay for those portions of a project that are not <u>environmentally acceptable and</u> cost-effective.

17. Finding No. 47 at page 15 of the Hearing Examiner's Report is amended to delete the word "to" in the suggested language for Section Q.4.h.2.

18. The first sentence of Finding No. 50 at pages 16 and 17 of the Hearing Examiner's Report is deleted, and the remainder of the Hearing Examiner's Finding No. 50 is adopted as a separate paragraph, and the following paragraph is adopted as the first paragraph of Finding No. 50.

This section sets forth the method whereby a municipality can receive an award of money for doing Step 2 work, the development of plans and specifications. The reason for this is that there are many cities doing facilities

planning work now that, if current federal funding trends continue, will not receive a federal grant for the facilities they are planning. It is not advisable to spend limited grant funds for additional facilities planning work when construction of those facilities remains doubtful. Furthermore, allowing advances for Step 2 preparation of Plans and Specifications will allow those municipalities to move immediately into Step 3 construction work when their ranking comes up for a grant, while Step 1 planning work would still tie up construction dollars for design work when a Step 2+3 grant was awarded.

19. Finding No. 55 at page 18 of the Hearing Examiner's Report is amended to change the word "property" at the end of the second sentence to read "properly."

20. Finding No. 56 at page 18 of the Hearing Examiner's Report is amended to correct the title of Section Y.1. in the rule to read:

1. Step 2 advance of allowance and the Step portion of Step 2+3 grants

Based upon the foregoing Findings of Fact, the Agency hereby makes the following:

CONCLUSIONS

1. That the Agency gave proper notice of the hearing in this matter.

2. That the Agency has fulfilled the procedural requirements of Minn. Stat. § 14.14, subds. 1 and 2 (1982) and all other procedural requirements of law or rule; the procedural irregularity noted at Finding 5 is technical in nature, and no corrective action is needed. There was no evidence of any prejudice to interested parties.

3. That the Agency has demonstrated its statutory authority to adopt the proposed rules and has fulfilled all other substantive requirements of law or rule within the meaning of Minn. Stat. §§ 14.05, subd. 1, 14.15, subd. 3 and 14.50 (i) and (ii) (1982).

4. That the Agency has documented the need for and reasonableness of its proposed rules with an affirmative presentation of facts in the record within the meaning of Minn. Stat. §§ 14.14, subd. 2 and 14.50 (iii) (1982).

5. That the amendments and additions to the proposed rules that have been made since publication of the proposed rules in the State Register do not result in rules which are substantially different from the proposed rules as published in the State Register within the meaning of Minn. Stat. § 14.15, subd. 3 (1982) and 9 MCAR §§ 2.110 A. and 2.111 (1980 Ed.).

6. That any Findings which might properly be termed Conclusions and any Conclusions which might properly be termed Findings are hereby adopted as such.

Dated this 23rd day of August, 1983.

MINNESOTA POLLUTION CONTROL AGENCY

Cynthia C Jepsen

CYNTHIA JEPSEN
Chairwoman

Sandra Gardebring

SANDRA S. GARDEBRING
Executive Director

CERTIFICATE OF BOARD'S

AUTHORIZING RESOLUTION

ADOPTING RULE

I, Sandra S. Gardebring, do hereby certify that I am the Executive Director of the Minnesota Pollution Control Agency, an agency duly authorized under the laws of the State of Minnesota, and that the following is a true, complete and correct copy of a resolution adopted at a meeting of the Minnesota Pollution Control Agency, duly and properly called and held on the 23rd day of August, 1983, that a quorum was present at said meeting, that a majority of the Board voted for the resolution, and that said resolution is set forth in the minutes of said meeting and has not been rescinded or modified.

BE IT RESOLVED that the Minnesota Pollution Control Agency hereby approves and adopts the amendments to 6 MCAR § 4.8034 published at 7 State Register 1596-1621 with the changes specified in the attached Order Adopting Rules, pursuant to the authority vested in the Agency by Minn. Stat. § 116.16 and 115.03 (1982).

BE IT FURTHER RESOLVED that the Agency adopts the attached Findings of Fact and Conclusions and Order Adopting Rules and that the Chairman and Executive Director are hereby authorized to execute these documents.

BE IT FURTHER RESOLVED that the Executive Director shall submit the amended rule to the Attorney General and take such other further action as is necessary to promulgate the rule as amended and is authorized to make any form changes in the rule the Revisor of Statutes requires the Agency to make in order to obtain the Revisor's Certificate as required by Minn. Stat. § 14.08 (1982).

IN WITNESS WHEREOF, I have hereunto subscribed my name this 31st day of August, 1983.

Sandra Gardebring

SANDRA S. GARDEBRING
Executive Director

Subscribed and sworn to before me this 31st day of August, 1983.

Maryanne Gibbons

NOTARY PUBLIC

MARYANNE GIBBONS
NOTARY PUBLIC MINNESOTA
RAMSEY COUNTY
My Commission Expires Sept 26, 1985

STATE OF MINNESOTA

COUNTY OF RAMSEY

MINNESOTA POLLUTION

CONTROL AGENCY

In the Matter of the Proposed
Revision to 6 MCAR § 4.8034, Relating
to the Administration of Federal Grant
Funds and State Grant and Loan Funds
for Municipal Sewage Treatment Projects

CERTIFICATE OF
COMPLIANCE WITH
RULEMAKING PROCEDURES

I, Alan R. Mitchell, Special Assistant Attorney General, do hereby declare that I have examined the rule amendments and all related documents in this matter, and that, based on my examination and my personal familiarity with applicable rulemaking procedures, do certify that the applicable requirements of the Administrative Procedure Act, the rules of the Office of Administrative Hearings, and the rules of the Attorney General have been followed.

Alan R. Mitchell

ALAN R. MITCHELL
Special Assistant
Attorney General

Dated: August 31, 1983

STATE OF MINNESOTA

COUNTY OF RAMSEY

MINNESOTA POLLUTION

CONTROL AGENCY

In the Matter of the Proposed
Revision to 6 MCAR § 4.8034, Relating
to the Administration of Federal Grant
Funds and State Grant and Loan Funds
for Municipal Sewage Treatment Projects

AFFIDAVIT OF MAILING
NOTICE OF SUBMISSION
TO THE ATTORNEY GENERAL

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

Alan R. Mitchell, being first duly sworn, deposes and says:

That on the 31st day of August, 1983, in the City of Roseville, County of Ramsey, State of Minnesota, he served the attached Notice of Submission of Rule Amendments to the Attorney General on those named on the attached mailing list, which includes those persons who indicated on the Rule Hearing Register that they wanted to receive this Notice, by depositing in the United States mail at said City of Roseville, a copy thereof, properly enveloped, with postage prepaid.

Alan R. Mitchell
ALAN R. MITCHELL

Subscribed and sworn to
before me this 31st day
of August, 1983.

Carol T. Groppoli
Notary Public

CAROL T. GROPPOLI
NOTARY PUBLIC-MINNESOTA
RAMSEY COUNTY
My Comm. Expires Jun.23, 1987

STATE OF MINNESOTA

COUNTY OF RAMSEY

MINNESOTA POLLUTION

CONTROL AGENCY

In the Matter of the Proposed Revision to 6 MCAR § 4.8034, Relating to the Administration of Federal Grant Funds and State Grant and Loan Funds for Municipal Sewage Treatment Projects

NOTICE OF SUBMISSION OF RULE AMENDMENTS TO ATTORNEY GENERAL

PLEASE TAKE NOTICE that the above-captioned rule amendments were acted upon by the Minnesota Pollution Control Agency at its Board meeting on August 23, 1983, and have been submitted to the Office of Attorney General for review as to form and legality as of this date.

Pursuant to 1 MCAR § 1.206 C., the Attorney General will not approve the rule amendments for at least ten calendar days from August 31, 1983 to allow any person or association time to comment on the legality of the rules, after which that Office will complete its review. Persons desiring to comment on the legality of the above-captioned rule amendments should direct their comments to the Office of the Attorney General, 204 Administration Building, 50 Sherburne Avenue, St. Paul, Minnesota 55155, telephone (612) 297-3493. Please note that the above-cited rule of the Attorney General also provides that a copy of any written comments submitted to the Attorney General must be submitted simultaneously to this Agency.

If you are interested in determining the changes the Agency made in the proposed rules from what was published in the State Register, you may contact Duane Anderson, Minnesota Pollution Control Agency, Division of Water Quality, Grants Section, Roseville, Minnesota 55113, telephone (612) 296-7205.

Sandra Gardebring

SANDRA S. GARDEBRING
Executive Director

Dated: August 31, 1983

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