ATTORNEY GENERAL

November 4, 1988

BEVERLY CONERTON
Special Assistant
Attorney General

JACQUELYN E. ALBRIGHT
Special Assistant
Attorney General

6-9715

In the Matter of the Adopted Rule Relating to
Capital Cost Component Grant Program

The above-referenced rule has been approved as to its legality by the Attorney General on November 2, 1988.

Enclosed is the agency's copy of the approved rule. This office has already filed two copies with the Secretary of State who will forward one copy to the Revisor of Statutes. The fourth is being retained by this division of the Attorney General's Office for its records.

Also enclosed are any petitions, requests, submission or comments received by the agency and any extra copies of documents which the agency submitted to the Attorney General.

In order for a permanent rule without a hearing to become effective, your agency must publish a notice of adoption in the State Register in accoradance with Minn. Stat. §14.27. An emergency rule becomes effective five working days after approval by the Attorney General; however, the agency must publish a notice in the State Register in accordance with Minn. Stat. §14.34.

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

JAL:rer

Enclosures

cc: Maryanne Hruby
Executive Director
Legislative Commission to Review
Administrative Rules

William Brown
Chief Administrative Law Judge
Office of Administrative Hearings

Office of the Revisor of Statutes
Administrative Rules

David S. Niss
Assistant Revisor
297-2948



700 State Office Building
100 Constitution Avenue
St. Paul, MN 55155-1297

August 30, 1988

RECEIVED
SEP 01 1988
MPCA
WATER QUALITY DIV.

Mr. Richard Sandberg
Pollution Control Agency
520 Lafayette Road
Saint Paul, Minnesota 55155

RE: AR1327, Capital Cost Component Grant Program

Dear Mr. Sandberg:

Enclosed are four copies of your rule with the modifications you requested.

Please submit the rules to the Attorney General or the Office of Administrative Hearings, as appropriate.

If you have any questions or need further modifications, please call me.

Very truly yours,

David S. Niss

DSN/ss
Encl.

Pollution Control Agency

Adopted Permanent Rules Relating to Capital Cost Component Grant Program

Rules as Adopted

CAPITAL COST COMPONENT GRANT PROGRAM

7075.1105 PURPOSE.

Parts 7075.1105 to 7075.1160 provide for the administration of the capital cost component grant program which makes grants available to municipalities for part of the capital cost component of the service fee under a service contract with a private vendor to construct and operate wastewater treatment facilities.

7075.1110 DEFINITIONS.

Subpart 1. **Scope.** For the purpose of parts 7075.1105 to 7075.1160, the following terms have the meanings given them.

Subp. 2. **Agency.** "Agency" means the Minnesota Pollution Control Agency.

Subp. 3. **Authority.** "Authority" means the Minnesota Public Facilities Authority.

Subp. 4. **Commissioner.** "Commissioner" means the commissioner of the Minnesota Pollution Control Agency.

Subp. 5. **Initiation of construction.** "Initiation of construction" means issuance of a notice to proceed under a construction contract for any segment of work on the project.

Subp. 6. **Municipal needs list.** "Municipal needs list" means the priority list prepared by the commissioner under parts 7075.0402 to 7075.0408.

Subp. 7. **Project.** "Project" means the work for which a grant or grant amendment is awarded under parts 7075.1105 to 7075.1160.

7075.1115 ELIGIBILITY.

To be eligible for a capital cost component grant, a

Approved by Revisor

municipality must be listed on the municipal needs list.

7075.1120 GRANT APPLICATIONS.

Subpart 1. **Notice of taking applications.** The commissioner shall request that the authority publish notice in the State Register that capital cost component grant applications will be accepted by the authority. The application closing date must be established by the commissioner and must be no less than 90 days after the publication date.

Subp. 2. **Application requirements.** The municipality shall apply for a capital cost component grant on an application form provided by the commissioner. The municipality shall submit the following information with the application:

A. a copy of the municipality's request for proposals for construction and operation of the wastewater treatment facility;

B. an engineering report containing:

(1) a description of the geographic planning area and the population to be served by the wastewater treatment facility;

(2) the effluent limitations for which the wastewater treatment facility is being designed;

(3) the municipality's existing wastewater flows and loadings data; and

(4) the municipality's estimated future wastewater flows and loadings data;

C. a copy of all proposals received in response to the municipality's request for proposals; and

D. a design summary of the wastewater treatment facility with all components listed and sized.

Subp. 3. **Other information.** After the application is received, the applicant shall submit other information requested by the commissioner necessary to clarify the application.

Subp. 4. **Application closing date.** The application must be submitted to the authority or postmarked by the noticed application closing date.

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by Revisor _____

Subp. 5. **Incomplete applications.** Municipalities that submit applications that do not include the information required in subpart 2 or that are not submitted by the application closing date are ineligible for funding. The municipalities may reapply in a later application period.

7075.1125 SELECTION OF ELIGIBLE GRANTEES.

Subpart 1. **Ranking of applicants.** Within 30 days of the close of the application period, the commissioner shall rank those applicants who have submitted a complete and timely application according to their priority ranking on the municipal needs list.

Subp. 2. **Determination of grantees.** Within 90 days of the close of the application period, the agency shall determine how many of the eligible applicants will receive a capital cost component grant. Grants must be awarded in priority order to as many applicants as the available funding will allow.

7075.1130 AMOUNT OF GRANT AWARD.

Subpart 1. **State and federal construction grants program list.** Each August the commissioner shall prepare a list of all municipal wastewater treatment facilities that have accepted bids under the state and federal construction grants program during the three previous state fiscal years. The municipal wastewater treatment facilities shall be listed in order of the population of the service area.

Subp. 2. **Grant amount.** The grant applicant shall be placed on the state and federal construction grants program list described in subpart 1 based on the population of the grantee's service area. The amount of the grant must be 50 percent of the average total eligible costs of the ten municipalities the closest in population to the grantee's service area.

Subp. 3. **Grant restriction.** No more than 50 percent of the total funds available for the award of capital cost component grants for any fiscal year shall be awarded to a grantee. A grantee that receives only a part of the grant to which it is entitled because of this restriction is entitled to

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by Revisor _____

receive a grant amendment in the next year or years, if capital cost component grant money is available, until the full amount of the grant is awarded. The grantee is entitled to priority over new grantees in the next year or years. The amount of the grant must not be recalculated under subparts 1 and 2.

Subp. 4. **Grant limitation.** No grant shall exceed 100 percent of the actual costs of design and construction of the wastewater treatment facility. The cost of acquiring an existing facility must not be included as an eligible cost for the purpose of determining actual costs.

7075.1135 CERTIFICATION OF AWARD.

The commissioner shall certify to the authority the list of projects to be awarded grants and the amount of the grant to be awarded based on the criteria in parts 7075.1125 and 7075.1130.

7075.1140 GRANT CONDITIONS.

Subpart 1. **Statutory and regulatory requirements.** The grantee shall comply with applicable statutory and regulatory requirements for capital cost component grants.

Subp. 2. **General conditions.** The grantee shall comply with the conditions in items A to E during the course of constructing the wastewater treatment facility.

A. Within 90 days after the grant award date, the grantee shall submit to the commissioner for technical review and approval complete plans and specifications for the wastewater treatment facility. The commissioner shall approve or deny approval of the plans and specifications within 90 days after initial submittal. The grantee and the commissioner may agree to one extension of up to an additional 90 days.

B. The grantee shall not initiate construction of the project until:

(1) the environmental review process in chapter 4410 and Minnesota Statutes, chapter 116D has been completed;

(2) the grantee has obtained the required permits for the project;

(3) the commissioner has approved the plans and

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by Revisor _____

specifications for the project; and

(4) a copy of the executed service contract between the grantee and the private vendor has been submitted to the commissioner along with a certification from the grantee that the service contract satisfies all statutory requirements applicable to the contract.

C. The project must be constructed in accordance with the approved plans and specifications and any approved change orders.

D. A grantee proposing to make changes in the project that alter the type, efficiency, or reliability of the treatment process shall submit to the commissioner information as the commissioner requires to determine the impact of the proposed change on the environment. Changes to the project that alter the type, efficiency, or reliability of the treatment process must not be made without the prior approval of the commissioner. The commissioner shall review a proposed change in the same manner as the original project was reviewed for compliance with applicable pollution control requirements. Change orders for changes not requiring prior approval must be submitted to the commissioner as soon as possible. A change in the type, efficiency, or reliability of the treatment process without prior approval from the commissioner shall constitute grounds for the commissioner to request that the authority terminate the grant of a grantee.

E. Before placing the wastewater treatment facility into operation, the grantee shall submit to the commissioner an operations and maintenance manual for the wastewater treatment facility. The commissioner shall review the manual and provide comments to the grantee.

7075.1145 INSPECTIONS.

The commissioner has the authority to conduct inspections of the grantee's project under the authority of Minnesota Statutes, section 115.03, subdivision 1, paragraph (f).

7075.1150 GRANT PAYMENT.

Approved
by Revisor _____

Subpart 1. **Request for payment.** A grantee seeking a grant payment shall submit a payment request to the commissioner on a form provided by the commissioner.

Subp. 2. **Schedule of payment.** Capital cost component grants shall be paid in accordance with the following schedule:

A. 80 percent of the grant upon compliance by the grantee with the following conditions:

(1) submission of a certification that the wastewater treatment facility has been completed in accordance with the approved plans and specifications and approved change orders;

(2) submission of a certification of compliance with all permit conditions for a period of two consecutive calendar months following project completion;

(3) submission of a certification of compliance with all grant conditions in part 7075.1140, subpart 2;

(4) submission of as-built plans and specifications to the commissioner on microfiche; and

(5) submission of written documentation to the commissioner of actual design and construction costs incurred for the wastewater treatment facility.

B. The remaining 20 percent of the grant upon compliance by the grantee with the following conditions:

(1) submission of a certification of compliance with all permit conditions for a period of 12 consecutive calendar months following project completion;

(2) submission of a certification that the project is capable of accepting hydraulic and organic loadings to the extent designed for in the approved plans and specifications; and

(3) submission of a certification that the project will have no overflows or bypasses under design conditions.

Subp. 3. **Verification of compliance.** Before a grant payment is made, the commissioner shall verify that the grantee has complied with part 7075.1135 and with the grantee's permit

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by Revisor _____

conditions.

Subp. 4. **Certification of payment.** Within ten days of receipt of a payment request, the commissioner shall determine whether the grantee qualifies for payment. If the commissioner determines that payment is not appropriate, the commissioner shall advise the grantee of the deficiencies in the request. If the commissioner determines that payment is appropriate, the commissioner shall certify to the authority that payment should be made.

7075.1155 TERMINATION OF GRANT.

Failure of the grantee to comply with part 7075.1140 shall constitute grounds for the commissioner to recommend that the authority terminate the grant of a grantee.

7075.1160 RECOVERY OF FUNDS.

Violation of permit conditions by reason of improper design, improper construction, or improper operation and maintenance shall constitute grounds for the commissioner to recommend that the authority seek to recover grant funds tendered or disbursed to a grantee. In determining whether to recommend such action to the authority, the commissioner shall consider the steps the grantee has undertaken to correct the problem that caused the violation of permit conditions. The commissioner shall advise the agency whenever a recommendation is made to the authority to seek recovery of grant funds.

Approved
by Revisor _____

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED

NOV 4 1988

Joan Anderson Growe

Secretary of State

11:05 AM

APPROVED AS TO FORM AND LEGALITY

Nov. 2 1988

HUBERT H. HUMPHREY, III
ATTORNEY GENERAL

BY Jacquelyn E. Albright
SPECIAL ASSISTANT ATTORNEY GENERAL

File No. 15c ?

Docket #. 05.0009.068

DATE RECEIVED 10/19/88

ADOPTED W/O HEARING ✓

REVIEW DATE 10/28/88

EMERGENCY RULE _____

DUE DATE 11/2/88

REVISOR APPROVED _____

APPROVED 11/2/88 JEA

REVISOR DISAPPROVED _____

DISAPPROVED _____

FILED W/SEC. OF STATE 11/4/88

WITHDRAWN _____

RETURNED TO AGENCY 11/4/88

✓ Rule as adopted (4 copies)

✓ Notice to Solicit Outside Information/Opinion (if applicable)

8/17/87 Date published in State Register
yes Comments

~~Petition for Adoption of a Rule (if applicable)~~

✓ Board's Authorizing Resolution

10/27/88 Date adopted

✓ Proposed Rule

yes Revisor's Certificate

✓ Notice of Intent to Adopt Rule ~~(missing period)~~

116.18 sub 3b(a) Statutory Authority
yes Small Business Statement
yes Expenditure of public money statement
yes Signature

✓ Statement of Need and Reasonableness (if applicable)

yes Small Business Statement
N/A Fees - § 16A.128

✓ Affidavit of Mailing Notice of Intent to Adopt Rule

6/9/88 Date (30)/25 days before adoption
✓ Notice attached
_____ ~~Copy of rule or summary attached~~

✓ Publication in State Register

6/13/88 Date (30)/25 days before adoption

_____ 180-day deadline from:

7/13/88 end of comment period (§ 14.26) (rules without hearing)
_____ ~~effective date of statutory authority (§ 14.29) (emergency rules)~~

✓ Resolution Adopting

8/23/88 Date adopted

✓ Findings of Fact, Conclusions & Order Adopting

8/24/88 Date

✓ Written requests, submissions or comments (3)

✓ Declaration of attorney

B. Conerton Name of SAAG representing agency

_____ ~~Notice of Submission to Atty. Gen. (if applicable)~~

_____ ~~Aff. of Mailing Notice to Atty. Gen. (if applicable)~~

Pollution Control Agency

Proposed Permanent Rules Relating to Capital Cost Component Grant Program

Rules as Proposed (all new material)

CAPITAL COST COMPONENT GRANT PROGRAM

7075.1105 PURPOSE.

Parts 7075.1105 to 7075.1160 provide for the administration of the capital cost component grant program which makes grants available to municipalities for part of the capital cost component of the service fee under a service contract with a private vendor to construct and operate wastewater treatment facilities.

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To be eligible for a capital cost component grant, a

Approved by Revisor

municipality must be listed on the municipal needs list.

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A. a copy of the municipality's request for proposals for construction and operation of the wastewater treatment facility;

B. an engineering report containing:

(1) a description of the geographic planning area and the population to be served by the wastewater treatment facility;

(2) the effluent limitations for which the wastewater treatment facility is being designed;

(3) the municipality's existing wastewater flows and loadings data; and

(4) the municipality's estimated future wastewater flows and loadings data;

C. a copy of all proposals received in response to the municipality's request for proposals; and

D. a design summary of the wastewater treatment facility with all components listed and sized.

Subp. 3. **Other information.** After the application is received, the applicant shall submit other information requested by the commissioner necessary to clarify the application.

Subp. 4. **Application closing date.** The application must be submitted to the authority or postmarked by the noticed application closing date.

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by Revisor _____

Subp. 5. **Incomplete applications.** Municipalities that submit applications that do not include the information required in subpart 2 or that are not submitted by the application closing date are ineligible for funding. The municipalities may reapply in a later application period.

7075.1125 SELECTION OF ELIGIBLE GRANTEES.

Subpart 1. **Ranking of applicants.** Within 30 days of the close of the application period, the commissioner shall rank those applicants who have submitted a complete and timely application according to their priority ranking on the municipal needs list.

Subp. 2. **Determination of grantees.** Within 90 days of the close of the application period, the agency shall determine how many of the eligible applicants will receive a capital cost component grant. Grants must be awarded in priority order to as many applicants as the available funding will allow.

7075.1130 AMOUNT OF GRANT AWARD.

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Subp. 2. **Grant amount.** The grant applicant shall be placed on the state and federal construction grants program list described in subpart 1 based on the population of the grantee's service area. The amount of the grant must be 50 percent of the average total eligible costs of the ten municipalities the closest in population to the grantee's service area.

Subp. 3. **Grant restriction.** No more than 50 percent of the total funds available for the award of capital cost component grants for any fiscal year shall be awarded to a grantee. A grantee that receives only a part of the grant to which it is entitled because of this restriction is entitled to

Approved
by Revisor _____

receive a grant amendment in the next year or years, if capital cost component grant money is available, until the full amount of the grant is awarded. The grantee is entitled to priority over new grantees in the next year or years. The amount of the grant must not be recalculated under subparts 1 and 2.

Subp. 4. **Grant limitation.** No grant shall exceed 100 percent of the actual costs of design and construction of the wastewater treatment facility. The cost of acquiring an existing facility must not be included as an eligible cost for the purpose of determining actual costs.

7075.1135 CERTIFICATION OF AWARD.

The commissioner shall certify to the authority the list of projects to be awarded grants and the amount of the grant to be awarded based on the criteria in parts 7075.1125 and 7075.1130.

7075.1140 GRANT CONDITIONS.

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Subp. 2. **General conditions.** The grantee shall comply with the conditions in items A to E during the course of constructing the wastewater treatment facility.

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B. The grantee shall not initiate construction of the project until:

(1) the environmental review process in chapter 4410 and Minnesota Statutes, chapter 116D has been completed;

(2) the grantee has obtained the required permits for the project;

(3) the commissioner has approved the plans and

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specifications for the project; and

(4) a copy of the executed service contract between the grantee and the private vendor has been submitted to the commissioner along with a certification from the grantee that the service contract satisfies all statutory requirements applicable to the contract.

C. The project must be constructed in accordance with the approved plans and specifications and any approved change orders.

D. A grantee proposing to make changes in the project that alter the type, efficiency, or reliability of the treatment process shall submit to the commissioner information as the commissioner requires to determine the impact of the proposed change on the environment. Changes to the project that alter the type, efficiency, or reliability of the treatment process must not be made without the prior approval of the commissioner. The commissioner shall review a proposed change in the same manner as the original project was reviewed for compliance with applicable pollution control requirements. Change orders for changes not requiring prior approval must be submitted to the commissioner as soon as possible. A change in the type, efficiency, or reliability of the treatment process without prior approval from the commissioner shall constitute grounds for the commissioner to request that the authority terminate the grant of a grantee.

E. Before placing the wastewater treatment facility into operation, the grantee shall submit to the commissioner an operations and maintenance manual for the wastewater treatment facility. The commissioner shall review the manual and provide comments to the grantee.

7075.1145 INSPECTIONS.

The commissioner has the authority to conduct inspections of the grantee's project under the authority of Minnesota Statutes, section 115.03, subdivision 1, paragraph (f).

7075.1150 GRANT PAYMENT.

Approved
by Revisor _____

Subpart 1. **Request for payment.** A grantee seeking a grant payment shall submit a payment request to the commissioner on a form provided by the commissioner.

Subp. 2. **Schedule of payment.** Capital cost component grants shall be paid in accordance with the following schedule:

A. 80 percent of the grant upon compliance by the grantee with the following conditions:

(1) submission of a certification that the wastewater treatment facility has been completed in accordance with the approved plans and specifications and approved change orders;

(2) submission of a certification of compliance with all permit conditions for a period of two consecutive calendar months following project completion;

(3) submission of a certification of compliance with all grant conditions in part 7075.1140, subpart 2;

(4) submission of as-built plans and specifications to the commissioner on microfiche; and

(5) submission of written documentation to the commissioner of actual design and construction costs incurred for the wastewater treatment facility.

B. The remaining 20 percent of the grant upon compliance by the grantee with the following conditions:

(1) submission of a certification of compliance with all permit conditions for a period of 12 consecutive calendar months following project completion;

(2) submission of a certification that the project is capable of accepting hydraulic and organic loadings to the extent designed for in the approved plans and specifications; and

(3) submission of a certification that the project will have no overflows or bypasses under design conditions.

Subp. 3. **Verification of compliance.** Before a grant payment is made, the commissioner shall verify that the grantee has complied with part 7075.1135 and with the grantee's permit

Approved
by Revisor _____

conditions.

Subp. 4. **Certification of payment.** Within ten days of receipt of a payment request, the commissioner shall determine whether the grantee qualifies for payment. If the commissioner determines that payment is not appropriate, the commissioner shall advise the grantee of the deficiencies in the request. If the commissioner determines that payment is appropriate, the commissioner shall certify to the authority that payment should be made.

7075.1155 TERMINATION OF GRANT.

Failure of the grantee to comply with part 7075.1140 shall constitute grounds for the commissioner to recommend that the authority terminate the grant of a grantee.

7075.1160 RECOVERY OF FUNDS.

Violation of permit conditions by reason of improper design, improper construction, or improper operation and maintenance shall constitute grounds for the commissioner to recommend that the authority seek to recover grant funds tendered or disbursed to a grantee.

Approved
by Revisor _____

Office of the Revisor of Statutes

Administrative Rules

TITLE: Proposed Permanent Rules Relating to Capital Cost Component Grant Program

AGENCY: Pollution Control Agency

MINNESOTA RULES: Chapter 7075

APPROVED AS TO FORM AND LEGALITY
Nov. 2 19 86
HUBERT H. HUMPHREY, III
ATTORNEY GENERAL
BY Jacquelyn E. Albright
SPECIAL ASSISTANT ATTORNEY GENERAL

The attached rules are approved for publication in the State Register

David S. Niss by JB Brenter

David S. Niss
Assistant Revisor

STATE OF MINNESOTA
POLLUTION CONTROL AGENCY

In the Matter of the Proposed Rules Governing The Administration of the Capital Cost Component Grant Program for Municipal Wastewater Treatment Projects, Minnesota Rules Chapter 7075.1105 to 7075.1160.

NOTICE OF INTENT TO ADOPT RULES WITHOUT A PUBLIC HEARING

Notice is hereby given that the Minnesota Pollution Control Agency (Agency) intends to adopt the above-entitled rules without a public hearing following the procedures set forth in the Administrative Procedure Act for adopting rules without a public hearing in Minn. Stat. §§ 14.22 to 14.28 (1986). The Agency's authority to adopt the rules is set forth in Minn. Stat. § 116.18, subd. 3b(g) (Supp. 1987).

All persons have until 4:30 p.m. on July 13, 1988, to submit comments in support of or in opposition to the proposed rules or any part or subpart of the rules. Comment is encouraged. Each comment should identify the portion of the proposed rules addressed, the reason for the comment, and any change proposed.

Any person may make a written request for a public hearing on the rules within the comment period. If 25 or more persons submit a written request for a public hearing within the comment period, a public hearing will be held unless a sufficient number withdraw their requests in writing. Any person requesting a public hearing should state his or her name and address, and is encouraged to identify the portion of the proposed rules addressed, the reason for the request, and any change proposed. If a public hearing is required, the Agency will proceed pursuant to Minn. Stat. §§ 14.131 to 14.20 (1986).

Comments or written requests for a public hearing must be submitted to:

Joan deMeurisse
Minnesota Pollution Control Agency
520 Lafayette Road North
St. Paul, Minnesota 55155
(612) 296-7211

The proposed rules may be modified if the modifications are supported by data and views submitted to the Agency and do not result in a substantial change in the proposed rules as noticed.

The proposed rules, if adopted, will create a capital cost component (privatization) grants program. The program will make grants available to municipalities for part of the capital cost component of the service fee under a service contract with a private vendor to construct and operate wastewater treatment facilities. One free copy of the rules is available upon request from Ms. deMeurisse at the address and telephone number stated above.

A Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed rules and identifies the data and information relied upon to support the proposed rules has been prepared and is available from Ms. deMeurisse upon request.

You are hereby advised, pursuant to Minn. Stat § 14.115 (1986), "Small business considerations in rulemaking," that the proposed rules will have no direct effect on small businesses. 14

In addition, you are hereby advised, pursuant to Minn. Stat. § 14.11 (1986), that none of the cost to local public bodies to construct wastewater treatment facilities is directly attributable to these rules. 13

Finally, you are hereby advised, pursuant to Minn. Stat. § 17.83 (1986), that the MPCA has determined that these rules will not have an adverse effect on agricultural land.

If no hearing is required, upon adoption of the rules, the rules and the required supporting documents will be submitted to the Attorney General for review as to legality and form to the extent form relates to legality. Any person may request notification of the date of submission to the Attorney General. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the rules as adopted, must submit a written request to Ms. deMeurisse. 9

Gerald L. Willet

Dated: June 9, 1988

GERALD L. WILLET
Commissioner

STATE OF MINNESOTA
POLLUTION CONTROL AGENCY

In the Matter of the Proposed Rules
Relating to the Administration of the
Capital Cost Component Grant Program
for Municipal Wastewater Treatment Projects

STATEMENT OF NEED
AND REASONABLENESS

I. INTRODUCTION

In 1987, the Legislature created a set-aside under the independent state grants program for the award of capital cost component grants to municipalities on the municipal needs list to construct and operate wastewater treatment facilities. Minn. Stat. §116.18, subd. 3b. The Agency authorization to promulgate permanent rules for the administration of this capital cost component grant program is contained in Minn. Stat. §116.18, subd.3b(g).

In drafting the proposed rules for the administration of the capital cost component grant program, the Agency sought and received input from municipalities, private vendors and the Technical Advisory Committee (TAC), a statutorily created body established in 1986. Minn. Stat. §115.54. The Agency developed a mailing list of interested parties to keep people advised of meetings and other progress in the development of the rules. There were six meetings with the Technical Advisory Committee to obtain the recommendations of the engineers, contractors, and municipal representatives on that committee. Two presentations were made to the Agency Board Committee on Water Quality. The staff met with different private vendors on several occasions. The rules that the Agency is proposing to adopt are the result of many months of debate and discussion.

This document contains the Agency's affirmative presentation of facts on the need for and reasonableness of the proposed amendments. Section II identifies the Agency's statutory authority for rulemaking. Section III describes the need for amendments to the rules. Section IV describes the Agency's reasons for the proposed changes.

II. STATEMENT OF AGENCY'S STATUTORY AUTHORITY

The Agency's statutory authority to adopt rules for the administration of the capital cost component grant program is set forth in Minn. Stat. §116.18, subd. 3b(g) (Supp. 1987), which provides:

> (g) The Agency shall adopt permanent rules to provide for the administration of grants awarded under this subdivision.

Under this statute the Agency has the necessary statutory authority to adopt the proposed rules.

III. STATEMENT OF NEED

Minn. Stat. ch. 14 (1986) requires the Agency to make an affirmative presentation of facts establishing the need for and reasonableness of the rules as proposed. In general terms, this means that the Agency must set forth the reasons for its proposal, and the reasons must not be arbitrary or capricious. However, to the extent that need and reasonableness are separate, need has come to mean that a problem exists which requires administrative attention, and reasonableness means that the solution proposed by the Agency is appropriate. The need for the rules is discussed below.

The need for adopting rules to administer the capital cost component grant program arises from the creation by the Legislature of this new grant program for the purpose of constructing wastewater treatment facilities under Minn. Stat. §116.18, subd. 3b.

Prior to the enactment of the capital cost component grant program, municipalities that chose to address their wastewater treatment needs by contracting for services in the private sector were responsible to finance the project without grant assistance. The capital cost component grant program was legislatively created in an effort to provide financial assistance to municipalities that are interested in solving their wastewater

treatment needs through the privatization alternative without having to forsake grant funding.

Fiscal year 1989 begins on July 1, 1988. The Agency is on a schedule to have these rules adopted in 1988 and award grants in the spring of 1989 to allow municipalities to initiate construction in the fall of 1989.

IV. STATEMENT OF REASONABLENESS

The Agency is required by Minn. Stat. ch. 14 to make an affirmative presentation of facts establishing the reasonableness of the proposed rules. Rules are reasonable if they are not arbitrary or capricious. Reasonableness means that there is a rational basis for the Agency's proposed action. The reasonableness of the proposed rules is discussed below.

A. Reasonableness of the Rules as a Whole

These proposed rules establish a program for administration of the capital cost component grant program. The Agency believes that the proposed rules establish a reasonable scheme for getting the grant assistance out to the eligible communities quickly while allowing the Agency to ensure that the environment will be protected. All municipalities on the municipal needs list (Minn. Rules part 7075.0402) are eligible to participate in this alternative grant program.

Under Minn. Stat. §446A.10, subd.1, the Minnesota Public Facilities Authority (Authority) assumes responsibility on July 1, 1988 for awarding grants and making grant payments under the state independent grants program, including the capital cost component grant program. The Agency retains the responsibility for selecting the municipalities to receive grants and for reviewing and approving the projects and applications in accordance with Minn. Stat. §116.16 to §116.18 and Chapter 7075. The Authority shall award grants and make grant payments upon certification by the Agency. The provisions concerning grant

awards and payments in the proposed rule are written to accommodate this transfer of responsibilities.

B. Reasonableness of Individual Rules

The following discussion addresses the specific provisions of the proposed rules.

Part 7075.1105 Purpose. (Hereafter only the last four digits will be used to identify parts. The first four digits are identical in all cases.) This part identifies that the capital cost component grant program will be administered by these rules.

Part 1110 Definitions.

The following terms used in the rules have a specific meaning. The terms and the reasonableness of the definitions are explained below.

Subpart 2. "Agency". Since there are several references to the Minnesota Pollution Control Agency, it is appropriate to shorten this and include it in definitions.

Subpart 3. "Authority". Since there are several references to the Public Facilities Authority, it is appropriate to shorten this and include it in definitions.

Subpart 4. "Commissioner". It is appropriate to clarify that "commissioner" is the commissioner of the Minnesota Pollution Control Agency and not an official of the Authority or a local government official.

Subpart 5. "Initiation of construction". Since a municipality obtaining a capital cost component grant must perform certain tasks before starting construction of its wastewater treatment facility, under Part 7075.1140, subp. 2, item B of the proposed rules, it is appropriate to define "initiation of construction." The proposed rules define the term as the issuance of the notice

to proceed. The Agency picked the earliest step in the process of construction so that the necessary tasks will be completed before any construction expense is incurred or any change which may impact the environment is made. This definition is reasonable and consistent with other Agency requirements to obtain necessary permits before any construction can commence. See Minn. Rules part 7001.1020, subp. 8., and parts 7001.1040 and 7001.0030 which require a National Pollutant Discharge Elimination Systems permit before construction can commence.

Subpart 6. "Municipal needs list". This eligibility and priority ranking procedure is explained in detail in parts 7075.0402 through 7075.0408.

Subpart 7. "Project". The word "project" is defined because there are several instances in the proposed rules where there is a reference to the project to be built with capital cost component grant funds. It is important to specifically identify what work is authorized to be covered with capital cost component grant funds.

Part 1115 Eligibility.

Eligibility for program participation is limited to municipalities on the municipal needs list (MNL). For further definition of the MNL, see Minn. Rules parts 7075.0402 to 7075.0408. The proposed rules identify the eligibility requirements for participation in the capital cost component grant program.

Part 1120 Grant applications.

Subpart 1. Notice of taking applications. The initiation of the application cycle is established by the commissioner by public notification in the STATE REGISTER. The application period will remain open for at least 90 days. This should be sufficient time for a municipality to complete its application and get it submitted.

The Agency envisions that once these rules are adopted, which should be in the fall of 1988, the Agency will ask the Authority, shortly thereafter, to

publish notice that applications will be accepted. The application period will end 90 days thereafter so that fiscal year 1989 funds can be awarded as soon as possible.

Thereafter, the Agency will tie the capital cost component grant program in with the independent state grants program's annual funding cycle. It must be understood that the entire program is dependent on funding. If funds are not available in a particular fiscal year, there will be no notice and no grants awarded.

Subpart 2. Application requirements. Since it is the Agency that makes the decision on which municipalities are awarded grants, the applicants must provide the necessary information to allow the Agency to conduct its review.

The Agency will provide a form for each applicant to complete. The form will be a document that provides general information, such as the name of the applicant, the address, and the authorized representative for the municipality. The siginificant part of the application will be the information detailed in items A-D.

Item A. An applicant shall submit a copy of the request for proposals (RFP). Minn. Stat. §471A.03, subd. 3 permits the waiver of competitive bidding requirements under certain conditions. One of these conditions is that the municipality must request proposals from two or more private vendors. The Agency is requiring submittal of the request for proposals to document that the municipality has complied with this condition and is exempt from procurement requirements.

Item B. An applicant shall submit an engineering report that includes geographic information, population data, effluent limitations, and present and future flows and loading data (subitems 1-4). An engineering report, including subitems 1-4, constitutes reasonable information for a municipality to require

in a request for proposals in order for the municipality to evaluate the private vendors' proposals. In addition, it is reasonable for the technical staff of the Agency to have access to the same preliminary engineering data to become familiar with the proposed project prior to submittal of the plans and specifications. This will expedite the technical review and approval process.

Item C. An applicant shall submit a copy of all proposals received. See the analysis of subp. 2, item A.

Item D. This item requires a design summary of the proposed facility to be submitted. Similarly to subp. 2, item B, it is reasonable for the technical review staff of the Agency to have access to preliminary engineering data. This will not only enable the staff to increase its familiarity with the proposed project, it will also enable the staff to advise the municipality and the private vendor of any potential problems in the design prior to the submittal of the plans and specifications. If any major problems are identified, the municipality, the private vendor and the Agency technical staff can work together to resolve these problems. Again, this assistance will expedite the review and approval process.

Subpart 3. Other information. The commissioner may require additional information from the municipality. After the information required in the application is submitted, it is sometimes necessary for the municipality to submit further information for clarification so that no misunderstandings exist on the part of staff that could impact review and award.

Subpart 4. Application closing date. The notice of taking applications, part 7075.1120, subp. 1, will specify an application closing date no less than 90 days after the STATE REGISTER publication date. It is reasonable to require that the applications must be submitted by the application closing date. The Agency staff ranks the applications (see Part 7075.1125, subp.1), and the ranking of projects cannot begin until all applications are submitted.

Subpart 5. Incomplete applications. The commissioner may determine that an application does not contain the information required in part 7075.1120, subp. 2. That application shall then be ineligible for funding during that funding cycle. It is reasonable for the Agency to impose this restriction because the application requirements will be stated in the public notice in the STATE REGISTER. Municipalities will have at least 90 days to complete the requirements. Any application that is submitted that does not have all the required information could impede the award process for the other applicants if the commissioner were to allow more time to complete the application.

Part 1125 Selection of eligible grantees.

Subpart 1. Ranking of applicants. This subpart describes the application ranking method and time frame. Minn. Stat. §116.18, subd. 3b(e) directs that funds shall be distributed to municipalities in order of their ranking on the municipal needs list that is effective at the point in time that the application period closes. Therefore, the rules adopt this method.

The proposed rules impose a 30 day time period on this segment of the staff review. The ranking will be done after the Agency staff has determined which of the applicants have submitted a timely and complete application. It is unclear how many applicants there will be in any given application period and it may take up to 30 days to review all applications for completeness and timeliness if many municipalities submit applications.

Subpart 2. Determination of grantees. The Agency shall look at two things when determining which applicants will receive grants: the applicant's ranking according to subp. 1, and the amount of set-aside funds available. The Agency will award grants in priority order to as many applicants as the available funding will allow.

The proposed rule imposes a 90 day time period from the close of the application period to the determination of grantees by the Agency. The Agency Board will act at one of its Board meetings on the list of grantees as presented by the commissioner. In order to allow for the time to review the application, prepare the list of grantees and allow for the required public notice of Agency meetings, it is reasonable to expect that the process may take 90 days following the close of the application period.

Part 1130 Amount of the grant award.

Subpart 1. State and federal construction grants program list. The Commissioner shall prepare a list, in order of wastewater treatment service area population, of municipalities that have accepted bids under state and federal construction grants program during the three previous state fiscal years. This list is a reasonable approach to addressing the formula for the award of capital cost component grants. Minn. Stat. §116.18, subd. 3b(c) requires that "the amount of the grant to a municipality shall be 50 percent of the average total eligible costs of municipalities of similar size recently awarded state and federal grants."

The Agency has determined that three previous state fiscal years constitute a reasonable time frame to compare recent projects. Less time than three years may not provide sufficient projects to compare and average. More than three years may not reflect the present costs of projects. The Agency has further determined that "similar size" is best reflected by listing the municipalities in order of the population of the wastewater treatment service area, and then applying the averaging procedure in Part 7075.1130, subp. 2. The reason for extending population to the service area (instead of just a single municipality) is to address the eventuality of a municipality serving an area beyond the city limits. Townships are a good example of where this might

happen. It is also possible that more than one municipality may agree to join together to provide wastewater treatment. Finally, it is the population of the service area that is used in the traditional grants programs and it is reasonable to compare populations in the same way when compiling this list.

Another measure of size that was considered was wastewater flow data. The staff determined that wastewater flow data was not as readily available or as easily verifiable as population data. Therefore, population of the service area was chosen as the most appropriate method of determining "similar size".

Subpart 2. Grant amount. The grant amount will be determined according to the formula in subp. 1. Each applicant will be placed on the list described in subp. 1 according to the population of its service area. The Agency will take the eligible costs of the ten municipalities with the closest population to the applicant and calculate the average of the eligible costs of the ten municipalities. It is reasonable to compare the ten municipalities that are closest in size to the applicant to determine the grant amount. Comparison of more than ten municipalities could cause the population differences to make the costs inappropriate. Less than ten municipalities increases the risk that the costs would not reflect the different kinds of treatment that are possible. The grant amount for the applicant will be 50 percent of the average total eligible costs for the ten municipalities of similar size on the list described in subp. 1.

Subpart 3. Grant restriction. Since there is a limited amount of grant funds available for this program and since there is a great deal of public interest in getting as many municipalities and private vendors involved in this program as possible, the Agency has limited any one grant to no more than 50 percent of the total funds available. Each municipality that is awarded only a portion of its capital cost component grant will be entitled to a grant

amendment, if capital cost component grant money is available in subsequent years, to bring the grantee up to the full grant amount determined in subp. 2. By limiting the grant this way, the Agency can be assured of awarding more than one grant per year, thereby including more participants earlier in the program.

Subpart 4. Grant limitation. The proposed rules provide that a municipality shall not receive more than 100 percent of the costs of design and construction of the wastewater treatment facility. It is reasonable to reimburse the municipality for only actual costs incurred during the design of the proposed wastewater treatment facility and during the construction of the facility due to the limited amount of available grant funds. The rules also exclude the costs of acquiring an existing facility. The acquisition of an existing facility is not going to solve a pollution problem and is exclusively a financial arrangement between the municipality and the private vendor. The Agency is charged with abating water pollution and the grants programs are designed to financially assist municipalities to achieve that goal. While spending grant money to acquire an existing facility helps the municipality financially, it does not change the way the municipality treats its wastewater. It is also possible that federal and state funds were involved in the original construction of the municipality's wastewater treatment facility. If acquisition was to be included in allowable costs, the Agency could be in the position of possibly granting public funds twice for the same facility.

Part 1135 Certification of award.

The Commissioner does not have the statutory authority to award grants. The Commissioner's responsibility is to determine who is to receive a grant and the amount of the grant. Once the determination has been made, the Commissioner will certify to the Public Facilities Authority that the list of grantees and

grant amounts has been based on the criteria in parts 7075.1125 and 7075.1130.

Part 1140 Grant conditions.

Subpart 1. Statutory and regulatory requirements. The proposed rules require the grantee to comply with statutory and regulatory requirements for capital cost component grants. Including this requirement in the rules alerts the municipality that it is required to be familiar with and comply with the statutes that govern this program.

Subpart 2. General conditions. The Agency has included conditions the municipality must comply with in order to receive the grant. Each of the conditions is discussed below.

Item A. Approval of plans and specifications. Minn. Stat. §116.18, subd. 3b(d) (Supp. 1987) requires municipalities receiving capital cost component grants to comply with federal and state regulations necessary to assure that the proposed facility is reasonably capable of meeting the conditions of the permit over 20 years. In order to determine whether the proposed facility is reasonably capable of meeting its permit limits over a 20 year period, the Agency needs to review the plans and specifications for the proposed facility. The rules also state that the Agency must approve or deny approval of the plan and specifications within 90 days of the initial submittal. Ninety days is a reasonable amount of time to complete this type of review. This is the time it typically takes to complete the review of other types of facility designs, barring major design flaws. It allows for the technical staff to have approximately 30 days for initial review and comment to the municipality, 30 days for the municipality to respond to the comments, and 30 days for the technical staff to review the municipality's response. Of course, these 30 day time frames are flexible, but this is a possible way for

the process to be completed. The rules also provide for a mutually agreed upon extension of time. This is reasonable to provide in the event that only minor issues remain for resolution when the initial 90 days expires.

Currently, plans and specifications for all disposal systems, whether or not they are grant funded, must be submitted to the Agency for approval prior to construction. See Minn. Stat. §115.03, subd. 1(f)(1986) and Minn. Rules part 7001.0050, item H. The overall purpose of the technical review of plans and specifications is to reduce the risk of environmental damage and pollution of the State's waters.

The primary purpose of the review is to provide reasonable assurance that the proposed facility is capable of reliably meeting effluent and water quality standards for the design life of the facility. The Agency's review considers the likelihood of the facility having to bypass or reduce its level of treatment, the risk to the environment or the public health and safety if the level of treatment is reduced or bypasses occur, and the reliability necessary to limit the danger to the public health and safety and to reasonably assure that the receiving water can assimilate the pollution caused by reduced treatment or bypass. Agency technical review of plans and specifications does not guarantee optimum treatment or compliance, but it does significantly reduce the chances for possible environmental damage.

The Agency also reviews the plans and specifications to provide reasonable assurance that the proposed facility is capable of conforming with generally accepted engineering standards. Design elements that are omitted or overlooked can affect the ability of the facility to reliably meet effluent limits during its design life.

The Agency also reviews plans and specifications to provide reasonable assurance that the proposed facility can be effectively and efficiently operated by appropriately trained staff for the design life of the facility. Peculiarities in a design can affect the ability of an operator to run the facility to meet permit conditions during the 20 year design life.

The Agency review of design does not substitute for the involvement or judgement of the municipal officials, private vendors and their engineers, or engineering consultants unless the proposed design will not meet water quality standards. The review presents options and identifies problems that may not have been initially considered. The review assists the municipalities paying for the facilities to have as much information as possible to help them make their decisions. Most important, the review reduces the risk of environmental damage to the waters of the state.

Item B. Initiation of construction. The proposed rule requires the municipality to comply with certain conditions before initiation of construction. The following are the reasons for requiring these conditions:

(1) The environmental review process set forth in Minn. Stat. ch. 116D and Minn. Rules ch. 4410 is required of all projects that may have the potential for significant environmental effects. This environmental review is done by the Agency before a permit is issued for the construction of a wastewater treatment project. This requirement is included to alert the municipality to this statutory requirement.

(2) Under Minnesota Rules part 7001.0030, a permit is required before construction can begin on a facility. This requirement is included to alert the municipality to apply for and obtain a permit prior to initiation of construction.

(3) Approval of plans and specifications is included as a required grant condition because Minn. Stat. §116.18, subd. 3b(d) requires the municipality to comply with regulations necessary to assure that the proposed facility is reasonably capable of meeting permit conditions over 20 years. See discussion under item A for a full explanation of why this review is necessary.

(4) Submission of an executed service contract between the municipality and the private vendor is required as a grant condition as evidence that the service contract complies with the 20 year requirement in Minn. Stat. §116.18, subd. 3b(b). Since the capital cost component grant program is a new concept in funding for construction of wastewater treatment facilities, the service contract will also enable the Agency to be more fully informed about the progress and process of the project.

Item C. Approval of change orders. The proposed rules require that change orders that alter the type, efficiency, or reliability of the treatment process be approved by the commissioner prior to implementing the change. Review of such change orders is necessary because such changes may affect the ability of the proposed facility to meet its permit limits over the 20 year design life of the facility. In order to permit the commissioner to evaluate the impact of the change order, the rules require the municipality to submit information to the commissioner. The rules provide that the review of the change order will be in the same manner as the plans and specifications were originally reviewed. This requirement is reasonable because a change order is a change to the plans and specifications and, therefore, application of the same technical criteria is appropriate.

Change orders that do not alter the type, efficiency, or reliability of the treatment process do not need prior approval of the commissioner. However, the rules require submission of the change order to the commissioner as soon as

possible. After the fact submission of these types of change orders is for the purpose of keeping the Agency informed of the nature of the project changes and to permit the Agency to review whether the changes that were made do not in fact alter the type, efficiency or reliability of the treatment process.

Item D. The proposed rules require that the project be constructed in accordance with the approved plans and specifications and approved change orders. Items A and C explain why Agency review and approval of plans and specifications and change orders is necessary. Because of the contractual relationship between the grantee and the private vendor, it is reasonable for the grantee to have the responsibility for ensuring that construction of the project is in accordance with these documents.

Item E. Operations and maintenance manual. The proposed rules require that the municipality submit to the commissioner for review and comment an operations and maintenance manual for the wastewater treatment facility. An operations and maintenance manual is critical to the proper operation of a wastewater treatment facility. The Agency is proposing to comment on the submitted manual to assist the municipality in developing the best possible manual for its use. Agency staff has extensive experience in the preparation and review of such manuals, as well as experience in operator training. It is important for the municipality to have a manual it can work with should it become necessary for the municipality to assume operational responsibilities at some time. The Agency is not proposing to have approval authority of this document.

Part 1145 Inspections.

The proposed rules provide that the commissioner may conduct inspections of the grantee's project pursuant to Minn. Stat. §115.03, subd. 1(f). The commissioner has existing authority under Minn. Stat. §115.03, subd. 1(f) to

conduct inspections of the construction of any wastewater treatment facility for compliance with approved plans and specifications. Inspections during construction of a facility, especially during the critical phases, is a way for the technical staff to monitor the progress of the project.

Part 1150 Grant payment.

Subpart 1. Request for payment. The payment request alerts the Agency staff that the grantee is awaiting payment. The Commissioner will then make the determination on whether all grant and payment conditions have been satisfied.

Subpart 2. Schedule of payment.

Item A. The proposed rules provide that the municipality will receive 80 percent of the grant when it has submitted certification of compliance with grant conditions (Part 7075.1140). The Agency has determined that 80 percent is a reasonable amount to disburse at this point because the municipality will have certified compliance with all grant conditions and will have certified compliance with all permit conditions for two consecutive calendar months. Eighty percent is a large enough portion of the grant to allow the municipality to begin to defray some of its local capital costs for the project. However, the full amount of the grant should not be disbursed until a further demonstration of the facility's ability to operate effectively and efficiently has been shown. The conditions for payment are as follows:

(1) Certification from the grantee that the wastewater treatment facility was completed according to the approved plans and specifications. It is reasonable to require this certification because the grant is being awarded based on the facility being constructed according to these plans and specifications.

(2) Certification from the grantee of compliance with all permit conditions for a period of two consecutive calendar months following project completion. State dollars should not be disbursed for a project that is not serving the purpose for which it was built. The Agency has the responsibility to reduce the risk of pollution of the state's waters and it would not be a prudent use of grant money to pay for a facility that could not meet its permit conditions. The Agency believes that two months is a long enough period of time to determine that the facility is operating in compliance with permit conditions when this requirement is viewed in conjuction with the other certifications that are required.

(3) Certification from the grantee of compliance with all the grant conditions in Part 7075.1140, subp. 2. It is likely that the grantee will be required to enter into a grant agreement with the Authority. It is expected that the grant conditions will be included in this grant agreement. The Agency and the Authority will work together to determine the contents of the grant agreement. Since the grant conditions may be included in this agreement between the Authority and the municipality, it is reasonable for the Agency to see a certification that this has been accomplished.

(4) Submission of as-built plans and specifications to the Commissioner on micro-fiche. It is important for the Agency to have a record of the facility that was actually built, not only as a check for the Agency to determine that the approved plans and specifications were followed, but also because as-built plans and specifications are used for reference and historical data for the future.

(5) Written documentation to the commissioner of actual design and construction costs incurred for the wastewater treatment facility. This is reasonable because it is a method for the Agency staff to determine if the

grantee will be receiving more than a 100 percent grant. Part 7075.1130, subp. 4 limits the grant to 100 percent of the actual costs of design and construction costs incurred for the wastewater treatment facility.

Item B. The remaining 20 percent of the grant will be paid to the grantee upon compliance with conditions specified in the rules. The conditions are as follows:

(1) Certification of compliance with all permit conditions for twelve consecutive calendar months.

As discussed in item A, it is reasonable for the Agency to withhold a small portion of the grant money until the grantee can certify that the facility that was built is performing such that permit conditions have been met for a period of twelve consecutive months. One year of satisfactory operation has been shown to be a good demonstration of the facility's ability to consistently meet the permit conditions to reduce the risk of pollution of the state's waters. Major problems with the facility will usually surface during the first year.

(2) Certification that the project will be capable of accepting hydraulic and organic loadings to the extent for which the facility was designed. This is a reasonable condition for the Agency to require since, after one year of operation, the facility may not be treating design flows and loads. The certification holds the grantee responsible for insuring that the new facility can accept design flows and loads for the design life of the facility.

(3) Certification that the project will have no overflows or bypasses under design conditions. Again, as in subitem 2, after one year of operation, the facility may not be operating under design conditions. It is reasonable to require an assurance from the municipality that there will be no overflows or bypasses in the future.

Subpart 3. Verification of compliance. This subpart provides that, prior to any grant payment, the Commissioner will verify that the grantee has complied with its grant and permit conditions. This is a reasonable provision because payment of the grant funds should be dependent on compliance with required conditions. The grantee must certify that is has achieved compliance, but the Agency believes it is reasonable to expect that the Commissioner will make his own determination of compliance on behalf of the Agency.

Subpart 4. Certification of payment. This subpart provides that the commissioner shall make a determination on whether the grantee qualifies for payment within ten days of receipt of the request. The Agency staff must review the required certifications from the grantee for accuracy and completeness to assure all conditions have been satisfied. Ten days is a reasonable amount of time to examine the documents and prepare the paperwork necessary to make the certification to the authority. If the payment cannot be made due to deficiencies in the required documents, the Commissioner will notify the grantee so that the deficiencies can be corrected and payment then made.

Part 1155 Termination of the grant.

Part 1155 specifies that failure to comply with Part 7075.1140 (conditions of the grant) will constitute grounds to terminate the grant. If a grantee has not complied with grant conditions, it is important that the limited grant funds not be tied up by obligating these to a grantee that is not progressing satisfactorily in the program. After the grant has been terminated, the money would then be available to a municipality that is prepared to move forward on its project in compliance with the grant conditions.

Part 1160 Recovery of funds.

Part 1160 provides that grant money which has already been paid to a grantee may be recovered from the grantee if its wastewater treatment facility is not meeting permit conditions due to improper design, construction or

operation and maintenance. It is reasonable to include this provision as a mechanism for recovery of grant funds. The purpose of the grant money is to provide financial assistance to municipalities for wastewater treatment facilities. If a facility is not meeting permit conditions for any of the reasons cited, then the grant money was not used properly and should be returned to the granting Agency to be used to fund another wastewater treatment project.

V. SMALL BUSINESS CONSIDERATIONS IN RULEMAKING

Minn. Stat., §14.115, subd. 2 (1986) requires the Agency, when proposing rules which may affect small businesses, to consider the following methods for reducing the impact on small businesses:

(a) the establishment of less stringent compliance or reporting requirements for small businesses;

(b) the establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses;

(c) the consolidation or simplification of compliance or reporting requirements for small businesses;

(d) the establishment of performance standards for small businesses to replace design or operational standards required in the rule; and

(e) the exemption of small businesses from any or all requirements of the rule.

The proposed rules may affect small businesses as defined in Minn. Stat. §14.115 (1986). As a result, the Agency has considered whether there might be ways to reduce the impact of the rules on small businesses. The capital cost component grant program will provide opportunities for some small businesses to participate in the construction and operation of wastewater treatment facilities. The grant funds that are awarded to municipalities will, in all

cases, be paid to private vendors. The proposed rules do not include many of the administrative review requirements, reporting requirements, schedules and deadlines that are contained in Minnesota Rules ch. 7075, which are the rules that administer the independent state grants program. These exemptions may allow the private vendors to provide their services to the municipalities in a more efficient and less costly way. In addition, the Agency has proposed expeditious time frames for completing reviews and has provided for quick payment of grant funds to municipalities. This will aid small businesses as well as the municipalities.

VI. CONSIDERATION OF ECONOMIC FACTORS

In exercising its powers, the Agency is required by Minn. Stat., §116.07, subd. 6 (1986) to give due consideration to economic factors. The statute provides:

> In exercising all its powers the pollution control agency shall give due consideration to the establishment, maintenance, operation and expansion of business, commerce, trade, industry, traffic, and other economic factors and other material matters affecting the feasibility and practicability of any proposed action, including, but not limited to, the burden on a municipality of any tax which may result therefrom, and shall take or provide for such action as may be reasonable, feasible, and practical under the circumstances.

In proposing the rules governing the capital cost component grant program, the Agency has given due consideration to the possible economic impacts of these proposed rules. The proposed rules will have a positive impact on the municipalities that receive a capital cost component grant. Municipalities receiving grant funds will be able to reduce local capital costs for constructing their wastewater treatment facilities. The economic impact related to businesses, specifically wastewater treatment service providers, will also be positive in that privatization has not occurred in the past because municipalities have maintained that they have not been financially able to

pursue the privatization option without some sort of grant funding. Municipalities have chosen, instead, to wait for funding under the traditional grants program which requires public ownership. Providing these grants to municipalities that choose to pursue privatization may allow a relatively new industry to develop.

VII. OTHER FACTORS

Pursuant to Minn. Stat. § 14.11, subd. 1 (1986), the Agency must provide an estimate of the public monies associated with implementing these rules if it is estimated that the total cost to all local public bodies exceeds $100,000 in either of the first two years following adoption of the rules. Wastewater treatment facilities will undoubtedly cost in excess of $100,000 to construct, but none of that expense is directly attributable to these rules. Indeed, as explained earlier, these rules will help to defray local expenses.

Minn. Stat. § 17.83 (1986) requires the Agency to describe any direct and substantial adverse effects on agricultural land. The Agency has determined that these rules will have no such effects.

VIII. CONCLUSION

Based on the foregoing, the proposed Minnesota Rules parts 7075.1100 through 7075.1155 are both needed and reasonable.

Dated: 5-13-, 1988

Gerald L Willet

Gerald L. Willet
Commissioner

STATE OF MINNESOTA
POLLUTION CONTROL AGENCY

In the Matter of the Proposed Rules Governing the Administration of the Capital Cost Component Grant Program for Municipal Wastewater Treatment Projects, Minn. Rules Pts. 7075.1105 to 7075.1160

AFFIDAVIT OF MAILING THE NOTICE OF INTENT TO ADOPT RULES WITHOUT A PUBLIC HEARING AND CERTIFICATE OF MAILING LIST

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

Joan de Meurisse, being duly sworn says:

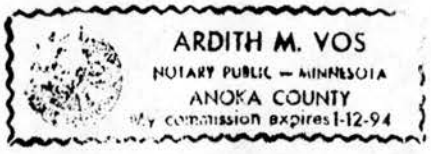
I hereby certify that the list of persons and associations who have requested, pursuant to Minn. Stat. §§ 14.14, subd. 1a and 14.22 (1986) that their names be placed on the Minnesota Pollution Control Agency's rulemaking mailing list is accurate, complete, and current as of this 9th day of June, 1988.

That on the 9th day of June, 1988, at the City of St. Paul, County of Ramsey, State of Minnesota, I mailed the attached Notice of Intent to Adopt Rules Without a Public Hearing by depositing in the State of Minnesota Central Mail System or in the United States mail for first class mailing a copy thereof, with postage prepaid, to all persons and associations on the aforementioned mailing list.

Joan de Meurisse

Subscribed and sworn to before me
this 9th day of June, 1988.

Ardith M. Vos
Notary Public



3560.0070 INCORPORATIONS BY REFERENCE.

The documents described in this part are incorporated by reference in chapter 3560 to the extent referred to in chapter 3560.

A. "Data Element Dictionary," published by the Department of Education, is frequently changed and is accessible by computer terminal through the Department of Education library. The publication is continuously updated.

B. Uniform Financial Accounting and Reporting Standards (UFARS), published by the Department of Education, is frequently changed and is available through the Minitex interlibrary loan system. The publication is continuously updated.

C. Reporting Requirements of the Department of Education is published annually in the Annual Data Acquisition Calendar and is available through the Minitex interlibrary loan system.

D. Government Accounting and Auditing Financial Reports (GAAFR) is a series of reports used in the audit of a district. A set of sample reports is available through the Minitex interlibrary loan system.

E. "Long Range Plan for the Elementary, Secondary, and Vocational (ESV) Information System" is published by the Department of Education. The publication is updated at least biennially. The current update is available through the Minitex interlibrary loan system.

Department of Natural Resources

Proposed Permanent Rules Relating to Parks; Daily Group Vehicle Permits

Notice of Intent to Amend Rules Without a Public Hearing

The Department of Natural Resources intends to amend the following rule for the Division of Parks and Recreation without a public hearing.

A Statement of Need and Reasonableness has been prepared to explain the rationale and legal authority for this rule change, and can be obtained from Bill Brinker at the address listed below.

Persons interested in this rule are encouraged to submit comments in support of or in opposition to the proposed rule change, and shall have 30 days to do so. Comments should address the proposed rule change, the reason for the comment, and any change proposed. The proposed rule change may be modified if the modifications are supported by the data and views submitted to the department and do not result in a substantial change in the proposed language.

Unless 25 or more persons submit written requests for a public hearing on the proposed rule change within the 30-day comment period, a public hearing will not be held. Persons requesting a public hearing should state their name and address, and are encouraged to identify the proposed rule change addressed, the reason for the request, and any proposed change. In the event a public hearing is required, the department will proceed according to the provisions of *Minnesota Statutes*, Sections 14.11-14.20.

Persons who wish to submit comments or a written request for a public hearing should submit them to: Bill Brinker, Minnesota Department of Natural Resources, 500 Lafayette Road, St. Paul, Minnesota 55155-4039, (612) 296-2760.

Rules as Proposed

6100.1710 GROUP DAILY VEHICLE PERMITS.

All state park managers will have authority to issue special group daily vehicle permits to groups consisting of ten vehicles or more at a rate of ~~$1.50~~ $2 (tax included) per vehicle. The permit will be issued by the park manager for one day of use between 8:00 a.m. and 10:00 p.m. The group daily vehicle permit will only be sold for days when the park manager determines that use in the particular park is normally limited, such as weekdays, weekends in some parks, or off-season weekends.

Pollution Control Agency

Proposed Permanent Rules Relating to Capital Cost Component Grant Program

Notice of Intent to Adopt Rules Without a Public Hearing

Notice is hereby given that the Minnesota Pollution Control Agency (Agency) intends to adopt the above-entitled rules without a public hearing following the procedures set forth in the Administrative Procedure Act for adopting rules without a public hearing in *Minnesota Statutes* §§ 14.22 to 14.28 (1986). The Agency's authority to adopt the rule is set forth in *Minnesota Statutes* § 116.18, Subd. 3b(g) (Supp. 1987).

All persons have until 4:30 p.m. on July 13, 1988, to submit comments in support of or in opposition to the proposed rules or

any part or subpart of the rules. Comment is encouraged. Each comment should identify the portion of the proposed rules addressed, the reason for the comment, and any change proposed.

Any person may make a written request for a public hearing on the rules within the comment period. If 25 or more persons submit a written request for a public hearing within the comment period, a public hearing will be held unless a sufficient number withdraw their requests in writing. Any person requesting a public hearing should state his or her name and address, and is encouraged to identify the portion of the proposed rules addressed, the reason for the request, and any change proposed. If a public hearing is required, the Agency will proceed pursuant to *Minnesota Statutes* §§ 14.131 to 14.20 (1986).

Comments or written requests for a public hearing must be submitted to:

Joan deMeurisse
Minnesota Pollution Control Agency
520 Lafayette Road North
St. Paul, Minnesota 55155
(612) 296-7211

The proposed rules may be modified if the modifications are supported by data and views submitted to the Agency and do not result in a substantial change in the proposed rules as noticed.

The proposed rules, if adopted, will create a capital cost component (privatization) grants program. The program will make grants available to municipalities for part of the capital cost component of the service fee under a service contract with a private vendor to construct and operate wastewater treatment facilities. The proposed rules are published below. One free copy of the rules is available upon request from Ms. deMeurisse at the address and telephone number stated above.

A Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed rules and identifies the data and information relied upon to support the proposed rules has been prepared and is available from Ms. deMeurisse upon request.

You are hereby advised, pursuant to *Minnesota Statutes* § 14.115 (1986), "Small business considerations in rulemaking," that the proposed rules will have no direct effect on small businesses.

If no hearing is required, upon adoption of the rules, the rules and the required supporting documents will be submitted to the Attorney General for review as to legality and form to the extent form relates to legality. Any person may request notification of the date of submission to the Attorney General. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the rules as adopted, must submit a written request to Ms. deMeurisse.

Gerald L. Willet
Commissioner

Rules as Proposed (all new material)

CAPITAL COST COMPONENT GRANT PROGRAM

7075.1105 PURPOSE.

Parts 7075.1105 to 7075.1160 provide for the administration of the capital cost component grant program which makes grants available to municipalities for part of the capital cost component of the service fee under a service contract with a private vendor to construct and operate wastewater treatment facilities.

7075.1110 DEFINITIONS.

Subpart 1. **Scope.** For the purpose of parts 7075.1105 to 7075.1160, the following terms have the meanings given them.

Subp. 2. **Agency.** "Agency" means the Minnesota Pollution Control Agency.

Subp. 3. **Authority.** "Authority" means the Minnesota Public Facilities Authority.

Subp. 4. **Commissioner.** "Commissioner" means the commissioner of the Minnesota Pollution Control Agency.

Subp. 5. **Initiation of construction.** "Initiation of construction" means issuance of a notice to proceed under a construction contract for any segment of work on the project.

Subp. 6. **Municipal needs list.** "Municipal needs list" means the priority list prepared by the commissioner under parts 7075.0402 to 7075.0408.

KEY: PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." ADOPTED RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

Subp. 7. **Project.** "Project" means the work for which a grant or grant amendment is awarded under parts 7075.1105 to 7075.1160.

7075.1115 ELIGIBILITY.

To be eligible for a capital cost component grant, a municipality must be listed on the municipal needs list.

7075.1120 GRANT APPLICATIONS.

Subpart 1. **Notice of taking applications.** The commissioner shall request that the authority publish notice in the *State Register* that capital cost component grant applications will be accepted by the authority. The application closing date must be established by the commissioner and must be no less than 90 days after the publication date.

Subp. 2. **Application requirements.** The municipality shall apply for a capital cost component grant on an application form provided by the commissioner. The municipality shall submit the following information with the application:

A. a copy of the municipality's request for proposals for construction and operation of the wastewater treatment facility;

B. an engineering report containing:

(1) a description of the geographic planning area and the population to be served by the wastewater treatment facility;

(2) the effluent limitations for which the wastewater treatment facility is being designed;

(3) the municipality's existing wastewater flows and loadings data; and

(4) the municipality's estimated future wastewater flows and loadings data;

C. a copy of all proposals received in response to the municipality's request for proposals; and

D. a design summary of the wastewater treatment facility with all components listed and sized.

Subp. 3. **Other information.** After the application is received, the applicant shall submit other information requested by the commissioner necessary to clarify the application.

Subp. 4. **Application closing date.** The application must be submitted to the authority or postmarked by the noticed application closing date.

Subp. 5. **Incomplete applications.** Municipalities that submit applications that do not include the information required in subpart 2 or that are not submitted by the application closing date are ineligible for funding. The municipalities may reapply in a later application period.

7075.1125 SELECTION OF ELIGIBLE GRANTEES.

Subpart 1. **Ranking of applicants.** Within 30 days of the close of the application period, the commissioner shall rank those applicants who have submitted a complete and timely application according to their priority ranking on the municipal needs list.

Subp. 2. **Determination of grantees.** Within 90 days of the close of the application period, the agency shall determine how many of the eligible applicants will receive a capital cost component grant. Grants must be awarded in priority order to as many applicants as the available funding will allow.

7075.1130 AMOUNT OF GRANT AWARD.

Subpart 1. **State and federal construction grants program list.** Each August the commissioner shall prepare a list of all municipal wastewater treatment facilities that have accepted bids under the state and federal construction grants program during the three previous state fiscal years. The municipal wastewater treatment facilities shall be listed in order of the population of the service area.

Subp. 2. **Grant amount.** The grant applicant shall be placed on the state and federal construction grants program list described in subpart 1 based on the population of the grantee's service area. The amount of the grant must be 50 percent of the average total eligible costs of the ten municipalities the closest in population to the grantee's service area.

Subp. 3. **Grant restriction.** No more than 50 percent of the total funds available for the award of capital cost component grants for any fiscal year shall be awarded to a grantee. A grantee that receives only a part of the grant to which it is entitled because of this restriction is entitled to receive a grant amendment in the next year or years, if capital cost component grant money is available, until the full amount of the grant is awarded. The grantee is entitled to priority over new grantees in the next year or years. The amount of the grant must not be recalculated under subparts 1 and 2.

Subp. 4. **Grant limitation.** No grant shall exceed 100 percent of the actual costs of design and construction of the wastewater treatment facility. The cost of acquiring an existing facility must not be included as an eligible cost for the purpose of determining actual costs.

7075.1135 CERTIFICATION OF AWARD.

The commissioner shall certify to the authority the list of projects to be awarded grants and the amount of the grant to be awarded based on the criteria in parts 7075.1125 and 7075.1130.

7075.1140 GRANT CONDITIONS.

Subpart 1. **Statutory and regulatory requirements.** The grantee shall comply with applicable statutory and regulatory requirements for capital cost component grants.

Subp. 2. **General conditions.** The grantee shall comply with the conditions in items A to E during the course of constructing the wastewater treatment facility.

A. Within 90 days after the grant award date, the grantee shall submit to the commissioner for technical review and approval complete plans and specifications for the wastewater treatment facility. The commissioner shall approve or deny approval of the plans and specifications within 90 days after initial submittal. The grantee and the commissioner may agree to one extension of up to an additional 90 days.

B. The grantee shall not initiate construction of the project until:

(1) the environmental review process in chapter 4410 and *Minnesota Statutes*, chapter 116D has been completed;

(2) the grantee has obtained the required permits for the project;

(3) the commissioner has approved the plans and specifications for the project; and

(4) a copy of the executed service contract between the grantee and the private vendor has been submitted to the commissioner along with a certification from the grantee that the service contract satisfies all statutory requirements applicable to the contract.

C. The project must be constructed in accordance with the approved plans and specifications and any approved change orders.

D. A grantee proposing to make changes in the project that alter the type, efficiency, or reliability of the treatment process shall submit to the commissioner information as the commissioner requires to determine the impact of the proposed change on the environment. Changes to the project that alter the type, efficiency, or reliability of the treatment process must not be made without the prior approval of the commissioner. The commissioner shall review a proposed change in the same manner as the original project was reviewed for compliance with applicable pollution control requirements. Change orders for changes not requiring prior approval must be submitted to the commissioner as soon as possible. A change in the type, efficiency, or reliability of the treatment process without prior approval from the commissioner shall constitute grounds for the commissioner to request that the authority terminate the grant of a grantee.

E. Before placing the wastewater treatment facility into operation, the grantee shall submit to the commissioner an operations and maintenance manual for the wastewater treatment facility. The commissioner shall review the manual and provide comments to the grantee.

7075.1145 INSPECTIONS.

The commissioner has the authority to conduct inspections of the grantee's project under the authority of *Minnesota Statutes*, section 115.03, subdivision 1, paragraph (f).

7075.1150 GRANT PAYMENT.

Subpart 1. **Request for payment.** A grantee seeking a grant payment shall submit a payment request to the commissioner on a form provided by the commissioner.

Subp. 2. **Schedule of payment.** Capital cost component grants shall be paid in accordance with the following schedule:

A. 80 percent of the grant upon compliance by the grantee with the following conditions:

(1) submission of a certification that the wastewater treatment facility has been completed in accordance with the approved plans and specifications and approved change orders;

(2) submission of a certification of compliance with all permit conditions for a period of two consecutive calendar months following project completion;

(3) submission of a certification of compliance with all grant conditions in part 7075.1140, subpart 2;

(4) submission of as-built plans and specifications to the commissioner on microfiche; and

(5) submission of written documentation to the commissioner of actual design and construction costs incurred for the wastewater treatment facility.

KEY: PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." ADOPTED RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

B. The remaining 20 percent of the grant upon compliance by the grantee with the following conditions:

(1) submission of a certification of compliance with all permit conditions for a period of 12 consecutive calendar months following project completion;

(2) submission of a certification that the project is capable of accepting hydraulic and organic loadings to the extent designed for in the approved plans and specifications; and

(3) submission of a certification that the project will have no overflows or bypasses under design conditions.

Subp. 3. **Verification of compliance.** Before a grant payment is made, the commissioner shall verify that the grantee has complied with part 7075.1135 and with the grantee's permit conditions.

Subp. 4. **Certification of payment.** Within ten days of receipt of a payment request, the commissioner shall determine whether the grantee qualifies for payment. If the commissioner determines that payment is not appropriate, the commissioner shall advise the grantee of the deficiencies in the request. If the commissioner determines that payment is appropriate, the commissioner shall certify to the authority that payment should be made.

7075.1155 TERMINATION OF GRANT.

Failure of the grantee to comply with part 7075.1140 shall constitute grounds for the commissioner to recommend that the authority terminate the grant of a grantee.

7075.1160 RECOVERY OF FUNDS.

Violation of permit conditions by reason of improper design, improper construction, or improper operation and maintenance shall constitute grounds for the commissioner to recommend that the authority seek to recover grant funds tendered or disbursed to a grantee.

Pollution Control Agency

Proposed Permanent Rules Relating to Hazardous Waste; Land Disposal Restrictions

Notice of Intent to Adopt Rule Amendments without a Public Hearing

Notice is hereby given that the Minnesota Pollution Control Agency (MPCA) intends to adopt the above-entitled rule amendments without a public hearing following the procedures set forth in the Administrative Procedure Act for adopting rules without a public hearing in *Minnesota Statutes* §§ 14.22 to 14.28 (1986). The MPCA's authority to adopt the rule amendments is set forth in *Minnesota Statutes* § 116.07, subd. 4 (1986).

The proposed rule amendments, if adopted, will address restrictions on the land disposal of hazardous wastes. These land disposal restrictions are based on federal "Land Ban" regulations and establish treatment standards for specific types of hazardous wastes. The hazardous wastes being addressed by these proposed rule amendments include solvents, dioxin wastes, and certain of the wastes identified as "California List" wastes. The California List wastes include PCB's, halogenated organic compounds and acidic wastes that have a pH of less than 2. The proposed rule amendments establish requirements for restricted waste analysis, record keeping, storage and treatment.

All persons have until 4:30 p.m. on July 13, 1988, to submit comments in support of or in opposition to the proposed rule amendments or any part or subpart of the rules. Comment is encouraged. Each comment should identify the portion of the proposed rule amendments addressed, the reason for comment, and any change proposed.

Any person may make a written request for public hearing on the rules within the comment period. If 25 or more persons submit a written request for a public hearing within the comment period, a public hearing will be held unless a sufficient number withdraw their requests in writing. Any person requesting a public hearing should state his or her name and address, and is encouraged to identify the portion of the proposed rule amendments addressed, the reason for the request, and any change proposed. If a public hearing is required, the MPCA will proceed pursuant to *Minnesota Statutes* §§ 14.131 to 14.20 (1986).

Comments or written requests for a public hearing must be addressed to:

Carol Nankivel
Minnesota Pollution Control Agency
520 Lafayette Road North
St. Paul, Minnesota 55155

The proposed rule amendments may be modified if the modifications are supported by data and views submitted to the MPCA and do not result in a substantial change in the proposed rule amendments as noticed.

Register to the Minnesota Department of Veterans Affairs by 4:30 p.m. on September 2 will also be accepted by the Department of Human Services.

Metropolitan Council of the Twin Cities Area

Notice of Preliminary Review Schedule for Revision to the Water Resources Management, Part 1, Policy Plan of the Metropolitan Development Guide

The Metropolitan Council is revising its plan for regional sewer service and treatment. Revisions are necessitated by the need to address service and treatment requirements to meet the demand from forecasted growth in households and employment through the year 2000 and 2010, and concerns over water quality management. Additionally, the legislature has provided new direction regarding the responsibilities of the Council and the Metropolitan Waste Control Commission (MWCC). In accordance with Council procedures for revising regional system plans, the following tentative schedule is proposed:

Oct. 27, 1987	Metropolitan Systems Committee adopts the draft document.
Nov. 12, 1987	Metropolitan Council adopts draft document for transmittal to the Metropolitan Waste Control Commission for a 90-day review.
Feb. 23, 1988	Metropolitan Systems Committee adopts draft document for public hearing purposes.
March 10, 1988	Metropolitan Council adopts draft document for public hearing purposes and sets public hearing date.
April 12, 1988	Public hearing.
May 17, 1988	Metropolitan Systems Committee considers the revised policy plan for adoption.
May 26, 1988	Council adopts the plan.

A "notice of public hearing" will be published. If you have questions regarding the schedule or the draft sewer policy plan, call Carl Schenk of the Council's Natural Resources Program at 291-6410.

Pollution Control Agency

Division of Water Quality

Outside Opinion Sought Concerning Revisions to Rules Governing Award of State and Federal Grants and Loans for Municipal Wastewater Treatment Facilities

Notice is hereby given that the Minnesota Pollution Control Agency is seeking information or opinions from sources outside the Agency in preparing to promulgate emergency and permanent rules governing state and federal grant and loan programs for the construction of municipal wastewater treatment facilities.

Minnesota Rules Chapter 7075 governs the award of federal and state grants and loans for the planning and construction of publicly owned wastewater treatment facilities. The rules will be revised to provide for administration of the following grant and loan programs:

1. Grants to assist municipalities seeking privatization of their municipal wastewater treatment facilities. See *Minnesota Laws 1987*, Chapter 277, Section 1.

2. Grants to reimburse owners of individual on-site wastewater treatment systems for a part of the costs of upgrading or replacing the systems. See *Minnesota Laws 1987*, Chapter 277, Section 2.

3. Grants to assist municipalities in taking corrective action to upgrade or correct wastewater treatment facilities, funded under the federal or state grants programs, that have failed to meet performance standards. See *Minnesota Laws 1987*, Chapter 277, Section 3.

4. Loans for the construction of wastewater treatment facilities, as authorized by Congress in Public Law 100-4. See *Minnesota Laws 1987*, Chapter 386, Art. 3, Section 24, Subdivision 11.

Minnesota Laws 1987, Chapter 386, Art. 3, Section 3 provides that cities with populations of less than 1500 that are funded under the independent state grants program may be exempted from federal 20-year planning requirements contained in 33 USC 1251 et. seq. (Clean Water Act). *Minnesota Rules* Chapter 7075 will be revised to include guidelines governing such exemptions.

In addition, revisions to existing rules are proposed. These include changes in the deadline dates for submittal of technical doc-

uments prior to listing a municipality on the Municipal Project List, and changes to the procedures for drafting the Municipal Project List. See *Minnesota Rules* Part 7075.0409.

Promulgation of permanent rules is authorized by the above cited Minnesota Laws and by *Minnesota Statutes*, section 116.16, subdivision 5. Promulgation of emergency rules for the corrective action grants program (Number 3 above) is authorized by *Minnesota Laws 1987*, Chapter 277, Section 3.

The Minnesota Pollution Control Agency requests information and comments concerning the subject of these rules. Interested or affected persons or groups may submit statements of information or comments orally or in writing. Written statements should be addressed to:

Sharon Meyer
Division of Water Quality
Minnesota Pollution Control Agency
520 Lafayette Road
St. Paul, Minnesota 55155

Oral statements of information and comment will be received over the telephone at (612) 296-8744 between the hours of 9:00 a.m. and 4:00 p.m.

All statements of information and comments regarding emergency rules relating to corrective action grants should be submitted by September 22, 1987. All statements of information and comments regarding permanent rules should be submitted by November 30, 1987. All written material received by the Minnesota Pollution Control Agency before the above deadlines will become a part of any rule file that is established in the event that the rules are proposed for adoption.

Department of Public Safety

Meeting Notice for a Pipeline Safety—Statewide Notification Center

In compliance with the Minnesota Pipeline Safety Act, *Minnesota Laws 1987*, Chapter 353, Section 9, the Commissioner of the Minnesota Department of Public Safety hereby notifies all operators, excavators and other persons eligible to participate of the first organizational meeting to establish a statewide notification center operated by a non-profit corporation to provide information regarding pipeline locations.

The meeting will be held on August 19, 1987 at 9:00 a.m. in the Minnegasco Auditorium, Minnegasco Headquarters Building, 201 South Seventh Street, Minneapolis, Minnesota.

Paul J. Tschida, Commissioner
Minnesota Department of Public Safety

Minnesota State Retirement System

Board of Directors, Regular Meeting

A meeting of the Board of Directors, Minnesota State Retirement System will be held on Friday, August 21, 1987 at 8:30 a.m. in the office of the System, 529 Jackson Street, St. Paul, Minnesota.

Department of Transportation

Petition of the County of Nicollet for a Variance from State Aid Standards for Roadway Design Criteria

Notice is hereby given that the County Board of the County of Nicollet has made a written request to the Commissioner of Transportation pursuant to *Minnesota Rules* § 8820.3300 for a variance from minimum standards for a construction (regrading) project on CSAH 4 from CSAH 5 to CSAH 1 (6.5 Miles).

The request is for a variance from *Minnesota Rules* for State Aid Operations § 8820.9910 adopted pursuant to *Minnesota Statutes* Chapter 161 and 162, so as to permit an interim 32' wide roadway with a gravel surface instead of the required surfacing and width necessary to provide a 7 ton ultimate 9 ton roadway.

CERTIFICATE OF AGENCY'S AUTHORIZING RESOLUTION

I, Gerald L. Willet, do hereby certify that I am the Commissioner 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 May 1988, that a quorum was present at said meeting, that a majority of those present voted for the resolution and that said resolution will be set forth in the minutes of said meeting and has not been rescinded or modified:

BE IT RESOLVED, that the Commissioner of the Minnesota Pollution Control Agency (Agency) is hereby granted the authority to sign and to give notice of the Agency's intent to adopt, without a public hearing, the attached rules, Minn. Rules Parts 7075.1105 to 7075.1160, to all persons who have registered their names with the Agency for that purpose and publish the notice and the rules in the State Register, and to perform any acts incidental thereto, including making any form changes in the rules that the Revisor of Statutes requires the Agency to make in order to obtain the Revisor's certification as required by Minn. Stat. § 14.07, subd. 2 (1986).

BE IT FURTHER RESOLVED, that in the event a public hearing becomes necessary, the Commissioner is hereby granted the authority and directed to call a hearing for the purpose of promulgating said rules as well as to perform any and all acts incidental thereto, including but not limited to signing an Order for and Notice of Hearing, as well as acting as the Agency's representative at all hearings.

IN WITNESS WHEREOF, I have hereunto subscribed my name this 7 day of October, 1988.

Gerald L. Willet
Commissioner

CERTIFICATE OF RESOLUTION ADOPTING RULES

I, Gerald L. Willet, do hereby certify that I am the Commissioner 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 1988, that a quorum was present at said meeting, that a majority of those present voted for the resolution and that said resolution will be 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 rules governing the administration of the Capital Cost Component Grant Program pursuant to the authority vested in the Agency by Minn. Stat. § 116.18, subd. 3b(g) (supp. 1987).
>
> BE IT FURTHER RESOLVED, that prior to publishing the rules as adopted in the State Register, the Commissioner is authorized to make any form changes in the rules that the Revisor of Statutes requires the Agency to make in order to obtain the Revisor's Certificate as required by Minn. Stat. § 14.28 (1986).

BE IT FURTHER RESOLVED, that the Agency adopts the attached Findings of Fact, Conclusions, and Order Adopting Rules and that the Commissioner is hereby authorized to sign the above-mentioned document on behalf of the Agency and to perform the necessary acts to provide that the rule shall have the force and effect of law.

IN WITNESS WHEREOF, I have hereunto subscribed my name this 23rd day of August 1988.

Gerald L. Willet

GERALD L. WILLET
Commissioner

STATE OF MINNESOTA
POLLUTION CONTROL AGENCY

In the Matter of the Proposed Rules Governing the Administration of the Capital Cost Component Grant Program for Municipal Wastewater Treatment Projects, Minn. Rules Parts 7075.1105 to 7075.1160

FINDINGS OF FACT, CONCLUSIONS, AND ORDER ADOPTING RULES

The above-entitled matter came on for decision before the Minnesota Pollution Control Agency (Agency) on the 23rd day of August, 1988. After affording all interested persons the opportunity to present written and oral data, statements and arguments to the Agency, in accordance with statutory requirements regarding the adoption of noncontroversial rules, after considering all of the evidence adduced upon the records, files and proceedings herein, the Agency, being fully advised in the premises, hereby adopts the following Findings of Fact, Conclusions, and Order:

FINDINGS OF FACT

1. Notice of the Minnesota Pollution Control Agency's intent to adopt the above-entitled rules without a public hearing was published in the State Register on June 13, 1988, and was sent by mail on June 10, 1988, to all persons on the list maintained by the Agency pursuant to Minn. Stat. §§ 14.14, subd. 1a and 14.22 (1986).

2. The Statement of Need and Reasonableness was prepared prior to mailing and publication of the notice and was made available to the public.

3. All persons were given the opportunity to submit comments on the rules for 30 days after notice of proposed rulemaking. The 30-day comment period, as set out in the notice, expired on July 13, 1988.

4. During the comment period the Agency received one request for a public hearing. Therefore, the Agency did not receive requests for a public hearing from 25 or more persons which were not withdrawn.

5. No requests for notice of submission to the Attorney General were received by the Agency.

6. During the comment period the Agency received three written comments. The Agency finds that one modification to the proposed rules is justified by the record in this proceeding, as follows:

Part 7075.1160 was modified to address a concern raised by Mr. William Bale of Hillstrom and Bale. His concern was discussed at the May 23, 1988, Agency Board meeting. He felt that the proposed Recovery of Funds language did not allow for the municipality and the private vendor to correct the problem causing the violation of permit conditions before recovery action was initiated by the Commissioner. He felt this might deter lenders from participating in the program. Part 7075.1160 is modified to read:

> Violation of permit conditions by reason of improper design, improper construction, or improper operation and maintenance shall constitute grounds for the commissioner to recommend that the authority seek to recover grant funds tendered or disbursed to a grantee. In determining whether to recommend such action to the authority, the commissioner shall consider the steps the grantee has undertaken to correct the problem that has caused the violation of permit conditions. The commissioner shall advise the agency whenever a recommendation is made to the authority to seek recovery of grant funds.

This modification is reasonable because it is simply an affirmation of existing Agency practice. The Agency believes it is always more desirable for a municipality to correct its problems causing the violation of its permit conditions than for the Agency to initiate some kind of enforcement action. Enforcement action by the Agency is the avenue of last resort and is designed for cases where a municipality has failed to take the necessary steps to comply with its permit. The revised language does not make a substantial change in the meaning of the rule. It does not impose any further restrictions on the grantee, rather it simply specifies that the Commissioner will consider the grantee's actions in determining whether to recommend that the authority seek

recovery. Moreover, advising the Board of all such recommendations will allow the Board to remain informed of any problems with capital cost component grants.

7. The Agency adopts the Statement of Need and Reasonableness, in its entirety, as the factual basis for the proposed rules. The Agency hereby incorporates the Statement of Need and Reasonableness into these findings.

8. The above-captioned rule is needed and reasonable.

CONCLUSIONS

1. The Minnesota Pollution Control Agency duly acquired and has jurisdiction over this proceeding.

2. The Agency published and served due, timely, and adequate notice of the intent to adopt the rules without a public hearing.

3. All relevant legal and procedural requirements of statute and rule have been complied with.

4. The modifications to the proposed rules are supported by the record and do not result in a substantial change in the proposed rules.

ORDER

NOW, THEREFORE, IT IS ORDERED, that the attached Minn. Rules pts. 7075.1105 to 7075.1160 governing the administration of the Capital Cost Component Grant Program are adopted pursuant to the authority vested in the Minnesota Pollution Control Agency by Minn. Stat. § 116.18, subd. 3b(g) (supp. 1987).

MINNESOTA POLLUTION CONTROL AGENCY

Dated: 8/24/88

Gerald L. Willet
Commissioner

ATTACHMENT 1

STATE OF MINNESOTA
POLLUTION CONTROL AGENCY

In the Matter of the Proposed Rules Governing the Administration of the Capital Cost Component Grant Program for Municipal Wastewater Treatment Projects, Minn. Rules Parts 7075.1105 to 7075.1160

FINDINGS OF FACT, CONCLUSIONS, AND ORDER ADOPTING RULES

The above-entitled matter came on for decision before the Minnesota Pollution Control Agency (Agency) on the 23rd day of August, 1988. After affording all interested persons the opportunity to present written and oral data, statements and arguments to the Agency, in accordance with statutory requirements regarding the adoption of noncontroversial rules, after considering all of the evidence adduced upon the records, files and proceedings herein, the Agency, being fully advised in the premises, hereby adopts the following Findings of Fact, Conclusions, and Order:

FINDINGS OF FACT

1. Notice of the Minnesota Pollution Control Agency's intent to adopt the above-entitled rules without a public hearing was published in the State Register on June 13, 1988, and was sent by mail on June 10, 1988, to all persons on the list maintained by the Agency pursuant to Minn. Stat. §§ 14.14, subd. 1a and 14.22 (1986).

2. The Statement of Need and Reasonableness was prepared prior to mailing and publication of the notice and was made available to the public.

3. All persons were given the opportunity to submit comments on the rules for 30 days after notice of proposed rulemaking. The 30-day comment period, as set out in the notice, expired on July 13, 1988.

4. During the comment period the Agency received one request for a public hearing. Therefore, the Agency did not receive requests for a public hearing from 25 or more persons which were not withdrawn.

5. No requests for notice of submission to the Attorney General were received by the Agency.

6. During the comment period the Agency received three written comments. The Agency finds that one modification to the proposed rules is justified by the record in this proceeding, as follows:

Part 7075.1160 was modified to address a concern raised by Mr. William Bale of Hillstrom and Bale. His concern was discussed at the May 23, 1988, Agency Board meeting. He felt that the proposed Recovery of Funds language did not allow for the municipality and the private vendor to correct the problem causing the violation of permit conditions before recovery action was initiated by the Commissioner. He felt this might deter lenders from participating in the program. Part 7075.1160 is modified to read:

> Violation of permit conditions by reason of improper design, improper construction, or improper operation and maintenance shall constitute grounds for the commissioner to recommend that the authority seek to recover grant funds tendered or disbursed to a grantee. In determining whether to recommend such action to the authority, the commissioner shall consider the steps the grantee has undertaken to correct the problem that has caused the violation of permit conditions. The commissioner shall advise the agency whenever a recommendation is made to the authority to seek recovery of grant funds.

This modification is reasonable because it is simply an affirmation of existing Agency practice. The Agency believes it is always more desirable for a municipality to correct its problems causing the violation of its permit conditions than for the Agency to initiate some kind of enforcement action. Enforcement action by the Agency is the avenue of last resort and is designed for cases where a municipality has failed to take the necessary steps to comply with its permit. The revised language does not make a substantial change in the meaning of the rule. It does not impose any further restrictions on the grantee, rather it simply specifies that the Commissioner will consider the grantee's actions in determining whether to recommend that the authority seek

recovery. Moreover, advising the Board of all such recommendations will allow the Board to remain informed of any problems with capital cost component grants.

7. The Agency adopts the Statement of Need and Reasonableness, in its entirety, as the factual basis for the proposed rules. The Agency hereby incorporates the Statement of Need and Reasonableness into these findings.

8. The above-captioned rule is needed and reasonable.

CONCLUSIONS

1. The Minnesota Pollution Control Agency duly acquired and has jurisdiction over this proceeding.

2. The Agency published and served due, timely, and adequate notice of the intent to adopt the rules without a public hearing.

3. All relevant legal and procedural requirements of statute and rule have been complied with.

4. The modifications to the proposed rules are supported by the record and do not result in a substantial change in the proposed rules.

ORDER

NOW, THEREFORE, IT IS ORDERED, that the attached Minn. Rules pts. 7075.1105 to 7075.1160 governing the administration of the Capital Cost Component Grant Program are adopted pursuant to the authority vested in the Minnesota Pollution Control Agency by Minn. Stat. § 116.18, subd. 3b(g) (supp. 1987).

MINNESOTA POLLUTION CONTROL AGENCY

Gerald L. Willet

Gerald L. Willet
Commissioner

Dated: 8/24/88

HILLSTROM & BALE, LTD.

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WILLIAM G. BALE
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DENIS R. VOGEL **
RUSSELL C. McCANDLESS
Technical Assistant

of Counsel
MARK S. ANDERSON

June 27, 1988

RECEIVED
JUN 28 19
MPCA
WATER QUALITY

Ms. Joan deMeurisse
Program Support Unit
Municipal Wastewater Treatment
Section
Division of Water Quality
Minnesota Pollution Control Agency
520 Lafayette Road
St. Paul, MN 55155

RE: Rulemaking on the capital cost component grant program from municipal waste treatment facilities
Our File No. 1.2092

Dear Ms. deMeurisse:

This letter constitutes the comments to be applied to the comment period, which ends July 13, 1988, regarding the above matter, these comments made on behalf of Water Technology Resources of Bloomington, Inc., our client.

The rules as published contain language at "7075.1155 Recovery of Funds" as follows:

> "Funds tendered or disbursed to a grantee may be recovered from the grantee for a wastewater treatment facility whose permit conditions are violated by reason of improper design, improper construction, or improper operation and maintenance."

Our client believes that recovery of the grant funds under this section and/or rule is improper and impractical for the following reasons:

1. Since MPCA approved the design and many of the plans and specifications, it should not have the right to recover the grant funds because of "improper design".

* Admitted in Minnesota, Illinois, California and Texas
** Admitted in Minnesota and Wisconsin

2. The period of recovering the grant funds for "improper construction" should be limited to a period of one year, which is the standard guarantee by construction companies regarding improper construction.

3. Grant funds should not be recovered due to "improper operation and maintenance". The remedy in that particular situation should be a termination of the operator who is responsible for operation and maintenance and the hiring of a party who does not practice "improper operation and maintenance".

The foregoing comments are the same comments which I made to the Minnesota Pollution Control Agency at the May Board Meeting. As I recall the consensus at the May Board Meeting, it was felt that the enforcement of, or action under, Section 7075.1155 would be subject to the failure of good faith efforts on the part of the municipality and/or the privatizor to correct the condition. Accordingly, I would recommend the following language:

> "Funds tendered or disbursed to a grantee may be recovered from the grantee for a wastewater treatment facility whose permit conditions are violated by reason of improper design, improper construction, or improper operation and maintenance. In the event of 'improper design', no action shall be taken hereunder until revised plans and specifications have been approved by the Commissioner and a good faith effort to implement the improved redesign has failed to correct the violation of the permit conditions. With respect to 'improper construction', no action shall be taken hereunder until the grantee has made a good faith effort to modify construction in an effort to stop the violation of the permit conditions. With respect to 'improper operation and maintenance', no action shall be taken hereunder until grantee has terminated those parties responsible for improper operation and maintenance and the installation of a new party to be responsible for operation and maintenance has failed to end the violation of the permit conditions."

Very truly yours,

HILLSTROM & BALE, LTD.

William G. Bale

William G. Bale

cc: Water Technology Resources, Inc.

Applicant
C27
Sec 2

Minnesota Pollution Control Agency

July 29, 1988

Mr. William G. Bale
Hillstrom & Bale, Ltd.
607 Marquette Avenue, Suite 10
Minneapolis, Minnesota 55402

RE: Comments on the Proposed Permanent Rules Relating to the Capital Cost Component Grant Program

Dear Mr. Bale:

Thank you for your comments in response to the State Register notice regarding the rules that the Minnesota Pollution Control Agency (MPCA) is proposing to administer the Capital Cost Component Grant Program. Your involvement in the rulemaking process has been helpful throughout and we appreciate your continued interest in the program.

Your comments are directed specifically to Part 7075.1155 Recovery of Funds. Your concern was that the grantee and the vendor should be allowed to correct any problem that is causing a violation of permit conditions prior to any action taken to recover already disbursed funds. You indicated that this will be a provision of the service contract between the municipality and the private vendor. As we discussed at the May 25, 1988, Agency Board meeting, it is always the intent of the Agency to encourage a municipality to correct a problem on their own before we enter into any enforcement action. We all agreed at that meeting that it is more desirable for a municipality to solve their own problems than for the MPCA to have to take formal action to force a municipality to do something.

Your comment letter provided suggested wording to revise the existing recovery language. While the language you propose has many merits, I believe that it involves substantive changes in the rules. According to the Administrative Procedures Act, if substantive changes are made to rules following the noticed comment period, we must renotice the rules and begin the process over again. As a result, we will address your concern about recovery action being taken prematurely with more general language than you proposed. At this time we are still drafting the language we will suggest to the Agency Board in August. As soon as we have a final draft of the language, we will contact you.

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If you have any questions about this, please call me at 296-7211.

Sincerely,

Joan deMeurisse
Program Support Unit
Municipal Wastewater Treatment Section
Division of Water Quality

JdeM/jms

MATTHEW J. LEVITT
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July 5, 1988

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M.P.C.A.
WATER QUALITY DIV.

Ms. Joan de Meurisse
Minnesota Pollution Control Agency
520 Lafayette Road North
Saint Paul, Minnesota 55155

RE: Proposed Permanent Rules Relating to Capital Cost Component Grant Program

Dear Ms. de Meurisse:

We have reviewed the proposed rules for the Capital Cost Component Grant Program as published in the State Register on June 13, 1988. Please consider these to be our comments on them.

As a preliminary matter, we hereby request a public hearing on the rules.

Our specific comments on the rules are as follows:

7075.1120, subp. 2.

Subp. 2.C. requires submission of "all proposals received in response to the municipality's request for proposals." We think this requirement unnecessary. It should be noted that Minn. Stat., Sec. 471A.03, Subd. 3 requires that the municipality request proposals from two or more private vendors. The statute does not require that such vendors respond. The last sentence of Subd. 3 expressly permits the municipality to negotiate the service contract with any private vendor that meets the requirements specified in the request for proposals ("RFP"), whether or not that private vendor responded to the RFP. In light of that statutory language, it is entirely possible that a municipality will negotiate a service contract with a vendor which did not initially respond to the RFP. Therefore, we fail to see what purpose will be served in the context of the Capital Cost Component Grant Program by requiring submission of copies of all of

the responses received. Instead, we suggest substituting a requirement that the municipality certify that it has requested proposals from at least two private vendors and that the vendor with whom it has negotiated is qualified under the terms of the RFP.

7075.1130, Subp. 4. Two limitations on the amount of grants are provided for in this subpart. First, the grant may not exceed 100% of "the actual costs of design and construction." Second, it is stated that "the cost of acquiring an existing facility must not be included as an eligible cost for the purpose of determining actual cost." We think these provisions are objectionable on the grounds that the limitations: are not required by Minn. Stat. Section 116.18, Subd. 3b; are inconsistent with both the language and underlying purposes of Minn. Stat. Chapter 471A (the "Privatization Act"); and are not justified on either practical or economic grounds.

Capital Costs

Minn. Stat., Section 116.18, Subd. 3b (a) states that the definition of "capital cost component" shall be determined by reference to Section 471A.02. Section 471A.02, Subd. 3 defines "capital cost component" as "that part of the service fee that the municipality determines is intended to reimburse the private vendor for the capital cost, including debt service expense, of the related facilities." (Emphasis added). By limiting the amount of the grant to "actual costs of design and construction" the rule in effect redefines "capital cost component" by narrowing its scope, and does so in a way inconsistent with Chapter 471A. Section 471A.02, Subd. 3 expressly includes debt service expense to the extent it is a capital cost of the "related facilities", while the proposed rule excludes debt service expense even where it is a capital cost.

For example, interest accrued or paid during the period of construction of a project is treated as a capital cost both under generally accepted accounting principles (applicable to private business entities) and under the accounting principles for public entities adopted by the Government Finance Officers Association. To exclude the interest during construction from capital costs for the purposes of this grant runs directly counter to both the language of the statute, and to uniformly applied accounting principles. You should note that both federal and state law applicable to the financing of both public and private projects permits the financing of interest during construction, precisely because it is a capital cost.

While interest during construction is the clearest example of a capital cost included in "capital cost component" by the Privatization Act, but excluded by this rule, there are a number of other costs of a project, other than interest during construction, which should also be included, provided only that such costs are treated as "capital costs" (as opposed to current expense items) under applicable accounting standards. The intent of Section 471A.02, Subd. 3 was to include any item properly treated as a capital cost. The cross-reference in Section 116.18, Subd. 3b(a) to the "capital cost component" definition in Ch. 471A in effect requires the same treatment of costs for the purposes of the grant rule.

We therefore recommend that 7075.1130, Subd. 4 be revised. Specifically, we suggest the deletion of the words "actual costs of design and construction" and substitution in their stead of the words "actual capital costs, including debt service expense,.."

Existing Facilities

The Privatization Act, at Section 471A.03, Subd. 5, expressly authorizes sale or lease to a private vendor of "any existing related facilities, including land, owned by the municipality." This concept is further reflected in Section 471A.10 which provides for certain protections to municipal employees currently employed at an existing facility which is to be sold or leased to the private vendor. The underlying statute therefore clearly contemplates that existing facilities may be sold or leased to a private vendor as part of a waste water treatment facilities project. Section 116.18, Subd. 3b provides for creation of a grant program for projects authorized by Ch. 471A. The clear intent of the Legislature was to provide for grants for projects of exactly the same kind as were authorized under Ch. 471A. There is no basis in Section 116.18, Subd. 3b for restricting grants to a more limited range of projects than those authorized by Ch. 471A.

A rule excluding acquisition costs of existing facilities implicitly assumes that only new construction waste water projects should be eligible for grants. In fact, many municipal wastewater treatment plants presently consist of facilities which are inadequate either for technological reasons, or because they are no longer capable of dealing with the municipality's waste water flow. In order to simultaneously privatize waste water treatment, and to upgrade and improve those facilities, the most efficient and economical method may well be to sell the existing facility to a private vendor, and provide by contract for its upgrade and

improvement. The effect of excluding the cost of acquisition of existing facilities from the calculation of the maximum grant amount will force municipalities into new construction projects even where such a course is neither efficient nor necessary.

There are two factors at work where an existing facility is in place. The first is technical - whether the best technical solution to the wastewater treatment problem is to upgrade the existing facility, or to build a new one. The second factor is financial - which of the technically feasible options is the most affordable. There will often be a third factor relating to debt previously issued to finance an existing facility. Municipalities will have a natural desire to redeem or defease existing debt so that their wastewater treatment financial obligations are concentrated in the privatization service contract. It makes no sense to arbitrarily exclude acquisition and upgrade of existing facilities where such a project is (a) technically sound, and (b) financially advantageous. Such a limitation was not contemplated by the Privatization Act or by Minn. Stat., §116.18, Subd. 3b. In fact, the Privatization Act purposefully included provisions which authorize such projects.

In the materials prepared for consideration by the Pollution Control Agency Board, it is stated "the acquisition of an existing facility is not going to solve a pollution problem and is exclusively a financial arrangement between the municipality and the private vendor." For the reasons stated above, that is simply wrong. In fact, acquisition of the existing facility may be necessary to solve a pollution problem, and typically will not be "exclusively" a financial arrangement between the municipality and the private vendor.

On the ground that this provision imposes a limitation inconsistent with the Privatization Act, and unnecessary for the purposes of the grant program, we recommend deletion of the entire second sentence of 7075.1130, Subd. 4.

7075.1120, Subd. 2.D.; 7075.1140, Subd. 2.A.; 7075, Subd. 2.A. (1) and (4); 7075.1140, Subd. 2.B. (2) and (3).

All of these provisions implement an underlying theory prevelant throughout the rule - that a design standard applies. The Privatization Act, at Section 471A.02, Subd. 12, however, refers to "performance standards" and the underlying theory of that entire statute is that performance standards rather than design standards should be the measure of project review and operation. Minn. Stat. Section 116.18, Subd. 3b pointedly avoids requiring design review, requiring instead only that "facilities planning"

be such as to meet NPDES requirements and to assure compliance with permit conditions for a period of twenty years. The Technical Advisory Committee recommended allowing municipalities to avoid design review.

The PCA staff materials presented to the Board cite Minn. Stat. Section 115.03, Subd. 1(f), and conclude that those provisions mandate PCA review and approval of plans and specifications. Ch. 471A and Section 116.18, Subd. 3b are later statutes, however, and under Minnesota's rules of statutory construction should be construed to have overruled Section 115.03 for the purpose of this program. See, Minn. Stat. Section 645.26, Subd. 4. The same result would be reached by application of Minn. Stat., Section 645.26, Subd. 1, which gives special statutory provisions controlling effect over general statutory provisions.

Here, Section 115.03 controls with respect to wastewater projects generally, but Ch. 471A and Section 116.18, Subd. 3b, enacted later provisions intended to apply only to a special class of projects - privatized wastewater treatment facilities. The later special provisions should be given effect as the Legislature intended. The rule should be revised throughout to delete the design review standard in favor of a performance standard focusing on the requirements for wastewater treatment disclosed in the facilities plan and necessary for NPDES permit purposes.

7075.1150 and 7075.1160. Throughout both of these sections, and elsewhere in the proposed rule, the terms "municipality" and "grantee" are used interchangeably and the rule is phrased in terms of the obligations of the "municipality" or "grantee." Since the authorizing statutes also speak in terms of grants to municipalities, the use of this terminology in the proposed rule is not objectionable, but the rule is deficient in that it does not recognize that many of the responsibilities involved will in fact be vested in the vendor rather than the municipality itself. For example, 7075.1150, subpart 2.A. (4) and (5) require as built plans and specifications, and documentation as to actual design and construction costs (for the reason stated above, this should be "capital costs"). In both cases, as with a number of other matters, the data required to satisfy these conditions will be within the control and knowledge of the private vendor more than the municipality. By the same token, 7075.1160 provides that the Commissioner may recommend to the Public Facilities Authority recovery of grant funds if there has been improper design, improper construction or improper operation and maintenance. The whole point of privatization contracts is to transfer responsibility for design, construction, and operation and maintenance to the private sector.

The rule, as written, exposes municipalities to liability for recovery of grant funds based on the acts or omissions of the private vendor. While it is not inappropriate to obtain the data specified, or to seek recovery of grant funds in certain events, the rule should clearly reflect the risk shifting that is one of the main purposes of privatization. We suggest, therefore, that 7075.1160 should have added to it a sentence which states explicitly that the municipality may transfer to the private vendor some or all of the responsibility for compliance with this rule, and some or all of any financial liability that may arise from noncompliance.

7075.1150, Subparts 2 and 3. These two subparts require certifications of compliance with permit conditions for periods of two consecutive calendar months following project completion, and twelve calendar months following project completion, respectively, in order to earn entitlement to disbursement of grant funds. While operational compliance with permit conditions should certainly be a prerequisite to entitlement to grant funds, we think the requirement for "consecutive" months to be unduly restrictive. A particular facility may become temporarily inoperable for any of a number of reasons ranging from improper operation by the private vendor, to climatic or other conditions beyond the private vendor's control (those events commonly known as "force majuere"). We therefore suggest that the consecutive compliance requirement be modified somewhat, and in particular:

1. With respect to the two month compliance period under 7075.1150, subpart 2.A. (2), allow for interruption of operation for not more than five consecutive days; and

2. For the twelve month compliance period under 7075.1150, subpart 2.B. (1), allow for interruption of operation for not more than twenty consecutive days;

In both cases, we think it would be reasonable to require that no more than one interruption attributable to vendor fault (as opposed to "force majeure") shall have occurred, and that the facility must have been restored to full operation in compliance with permit conditions after any such interruption. Allowance should also be made for periods of service interruption arising from project changes necessitated by changes in federal or state laws or regulations.

Yours very truly,

Richard H. Martin

RHM:mas-13
Enclosure

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WATER QUALITY DIV.

13 July 1988

Joan deMeurisse
Minnesota Pollution Control Agency
520 Lafayette Road North
St. Paul, MN 55155

RE: Comments on Proposed Rules
Capital Cost Component Grant Program

Dear Ms. deMeurisse

We have reviewed the proposed rules for the Capital Cost Component Grant Program. For the sake of brievity, we will simply concur with the comment letter submitted by Mr. Richard Martin with Briggs and Morgan. As Mr. Martin aptly noted, the underlying theory of the privitization statute was that performance standards as opposed to detailed design review should be the governing factors. Accordingly, we find the requirement of detailed plan and specification review and approval particularly bothersome.

Very truly yours,

Juran & Moody, Inc.

David P. Drown
Public Finance Advisor

DPD/mc

desk copy of
Briggs and Morgan letter

Official File Copy

Applicant _____
C27 _____
Sec # _____ Fee _____

Minnesota Pollution Control Agency

July 29, 1988

Mr. Richard Martin
Briggs and Morgan
2200 First National Bank Building
St. Paul, Minnesota 55101

RE: Comments On Proposed Permanent Rules Relating To The Capital Cost Component Grant Program

Dear Mr. Martin:

Thank you for your letter of July 5, 1988 commenting on the proposed rules relating to the Capital Cost Component Grant Program. You have been consistently helpful in the rulemaking process on this new and innovative program. While we have disagreed on certain issues, other issues have been resolved as a result of the many letters and discussions that we have shared.

Your request for a public hearing on the proposed rules was the only request received. According to the Administrative Procedures Act, we must receive 25 requests for a public hearing in order to hold one. There will be no public hearing on the proposed rules.

With respect to your specific comments on the proposed rules, I will address each one in the order they appear in your letter.

Part 7075.1120, Subp. 2.

Subp. 2 requires submission of "all proposals received in response to the municipality's request for proposals." You have raised this as a concern at a number of Technical Advisory Committee (TAC) meetings prior to our finalizing the rules. We continue to see that this is necessary information for us to have to verify that procurement regulations may be waived as specified in Minn. Stat. §471.03, subd. 2. Additionally, as we have stated before, with a new program such as this, we view this information as necessary for us to make a proper evaluation of the success of the program. We will not be approving or disapproving these submittals. It is for information only.

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Part 7075.1130, Subp. 4.

The two limitations that we have proposed to impose on the grant are reasonable and appropriate. Minn. Stat. §116.18, subd. 3b(b) states that grants may be awarded to municipalities on the municipal needs list for part of the cap being limited by the term "actual costs of design and construction". Specifically, you state that this language excludes debt service expense. We do not see that the language excludes debt service expense. We see debt service as a construction expense. Also, you are correct in that the statute is very clear in its inclusion of debt service as a capital cost. We had no intention of excluding debt service as an eligible cost. We limited eligible costs to design and construction for two reasons. Our research on the definition of the term "capital costs" yielded many different responses, leaving us with no consensus on the definition. We decided not to use the term, instead to specify that all expenses incurred during the design and construction phase were eligible. This also has the effect of excluding planning as an eligible cost. We think this is appropriate since it is not a requirement of the program.

The exclusion of the costs of acquiring an existing facility will remain. While the Privatization Act does expressly authorize sale or lease of any existing related facility, our limited amount of grant funds does not allow us to participate in acquisition. We have not excluded upgrade as an eligible cost. Upgrade of a facility is completely different than acquisition. If a municipality wishes to sell or lease their facility to a private vendor, that is between them and not something we discourage. If an upgrade of that facility is the most cost effective treatment alternative, we will participate in that portion of the project.

Parts 7075.1120, Subd. 2D.; 7075.1140, Subd. 2A.; 7075, Subd. 2A (1) and (4); 7075.1140, Subd. 2B (2) and (3).

You refer to a design standard that applies throughout the rules. You have interpreted the statutes to mean that only a performance standard should apply and that a design standard was pointedly avoided. Performance depends on the design. We have always maintained that our design review is not only mandated by law, but is a useful service that is provided to municipalities to help them avoid design errors before construction begins. As far as Minn. Stat. §115.03, subd. 1(f) is concerned, our attorneys have advised us that the statute applies. The later statutes to which you refer (Ch. 471A and §116.18, subd. 3b) do not deal specifically with the review of plans and specifications, and therefore should not be construed to overrule §115.03.

Parts 7075.1150 and 7075.1160.

The term municipality is used until the grant is awarded. The term is then changed to grantee to differentiate between those municipalities that receive a grant and those that do not. The rules that we propose to make permanent are rules for the administration of a grant program. They are not rules to administer a service contract between a municipality and a private vendor. We have consistently maintained that this is an area that should remain ungoverned by the MPCA. The grant agreement will be between the Public Facilities Authority and the municipality. The private vendor will not be party to this agreement. If the municipality wishes to incorporate protections for itself in the service contract, we certainly encourage this. In fact, it will be suggested in the application packet and guidance that interested municipalities will receive. But it will not be included in these rules. While certain activities required in the rules will be performed by the private vendor, it is ultimately the responsibility of the municipality to see that they are accomplished.

Part 7075.1150, subparts 2 and 3.

Compliance with permit conditions is rarely a black and white situation. Reports are received by the MPCA from each municipality for analysis by agency staff. Compliance is based on many factors and is determined by the MPCA. They take into consideration the weather, changes in laws or standards, and other conditions over which the municipality has no control. While the rules require compliance for consecutive periods of time, our staff is always ready to discuss the compliance reports with the municipalities to evaluate the reasons for the data being what it is. We feel that the current language allows enough flexibility for exceptional situations to be considered when compliance is determined by MPCA staff. The changes you suggest are substantive enough to require renoticing the rules. The rules will not be renoticed.

Sincerely,

Joan deMeurisse
Program Support Unit
Municipal Wastewater Treatment Section
Division of Water Quality

JdeM:alb

cc: David P. Drown, Juran & Moody, Inc.

STATE OF MINNESOTA
POLLUTION CONTROL AGENCY

In the Matter of the Proposed Rules
Governing the Administration of the
Capital Cost Component Grant Program
Rules Parts 7075.1105 to 7075.1160

DECLARATION OF COUNSEL

I, Beverly Conerton, Special Assistant Attorney General, do hereby declare that I have examined the above-captioned rules and the supporting rulemaking record, and that, based on my examination, the Administrative Procedure Act and Minnesota Rules ch. 2010 have been followed. For Attorney General billing purposes, the four-digit docket client code is 0698.

Dated: Oct 18, 1988

Beverly Conerton
Beverly Conerton
Special Assistant
Attorney General

Authority
116.18 subd 3b(g)

p2 lines 30-32
What is "other information"? (only additional)

p4 lines 27-28
Why would an ext. be granted? When would it be granted?

p5 lines 10-25.
Does the Commissioner (need to) have a time restraint in reviewing the changes which alter the type . . . . of the treatment process?

p7 lines 19-24
no guidelines - broad discretion?

HUBERT H. HUMPHREY, III
ATTORNEY GENERAL

STATE OF MINNESOTA
OFFICE OF THE ATTORNEY GENERAL
ST. PAUL 55155

ADDRESS REPLY TO:
SUITE 200
520 LAFAYETTE ROAD
ST. PAUL, MN 55155
TELEPHONE: (612) 297-1075

October 18, 1988

Christie Bennett Eller
Assistant Attorney General
Office of the Attorney General
515 Transportation Building
John Ireland Boulevard
St. Paul, MN 55155

RE: In the Matter of Proposed Rules Governing the Administration of the Capital Cost Component Grant Program Minn. Rules Parts 7075.1105 to 7075.1160

Dear Ms. Eller:

On August 23, 1988, the Minnesota Pollution Control Agency adopted the above-captioned rules governing the administration of the Capital Cost Component Grant Program. Enclosed for your review are the following:

1. Rules as adopted (original and three copies).
2. Findings of Fact, Conclusions, and Order Adopting Rules (two copies).
3. Certificate of Resolution Adopting Rules.
4. Notice of Intent to Solicit Outside Opinion (12 S.R. 297, August 17, 1987).
5. Copies of written comments received pursuant to Notice of Intent to Solicit Outside Opinion and meetings of the Agency's Technical Advisory Committee.
6. Certificate of Authorizing Resolution.
7. Notice of Intent to Adopt Rules Without a Public Hearing and rules as proposed (12 S.R. 2694, June 13, 1988).
8. Comments received during the comment period.
9. Notice of Intent to Adopt Rules Without a Public Hearing, as mailed.
10. Affidavit of Mailing the Notice of Intent to Adopt Rule Without a Public Hearing and Certificate of Mailing List.
11. Rules as proposed.

RECEIVED

OCT 19 88

ATTORNEY GENERAL'S OFFICE
515 TRANSPORTATION BLDG.
ST. PAUL, MN 55155

12. Statement of Need and Reasonableness.

13. Declaration of Counsel.

Please be advised that no requests were received for notice of submission of rules adopted without public hearing to the Attorney General.

Very truly yours,

Beverly Conerton

Beverly Conerton
Special Assistant
Attorney General

MATTHEW J. LEVITT
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August 25, 1987

Ms. Sharon Meyer
Minnesota Pollution Control Agency
520 Lafayette Road North
St. Paul, Minnesota 55101

RECEIVED
AUG 26 1987
MPCA
WATER QUALITY DIV

Mr. Russell Prince
Juran & Moody, Inc.
Minnesota Mutual Life Center
400 North Robert Street
Suite 800
St. Paul, Minnesota 55101

Re: **Municipal Wastewater Treatment Facilities/**
Capital Cost Component Grant Program

Dear Sharon and Russ:

Following the meeting on Thursday, August 20, we thought it would be useful to draft written comments for the guidance of the Technical Advisory Committee in making its recommendations to the PCA Board. A draft of those comments is attached. The enclosed draft covers many of the items mentioned at the last meeting, plus several that were not discussed because the Committee needed to spend its time on corrective grants.

Sharon, I suspect our comments reflect a viewpoint with which you will disagree, at least to some extent. You should understand that our viewpoint is essentially that of the municipalities which will be awarded grants, and our comments are intended to lead to recommendations, and therefore to rules, which will make the program more easily accessible, and more flexible, for the municipalities. Nevertheless, I would appreciate whatever comments you have and will take them into consideration in preparing a final version of these comments for the Committee.

Yours very truly,

Rich Martin

Richard H. Martin

RHM/jlt
Enclosure
/018

BRIGGS AND MORGAN

MEMORANDUM

Re: Minnesota Laws 1987, Chapter 277
Wastewater Treatment Facilities/
Capital Cost Component Grant Program

This memorandum has been prepared for the benefit of the Technical Advisory Committee (the "Committee") to the Minnesota Pollution Control Agency ("PCA"), and is intended to assist the Committee in formulating recommendations to the PCA Board in connection with rule-making for the capital cost component grant program authorized by Minnesota Laws 1987, Chapter 277.

The capital cost component grant legislation will be codified as Minnesota Statutes, Section 116.18, Subd. 3b. The section references below are to the statute as it will be codified.

GRANT AMOUNT/ELIGIBLE COSTS.

Subdivision 3b, clause (c) directs that the amount granted to a municipality "shall be" 50 percent of the "average total eligible costs of municipalities of similar size recently awarded state and federal grants" pursuant to the Federal Water Pollution Control Act. While this is not a matter which can be addressed in the rule-making process, consideration should be given to requesting the Legislature to amend this language. The need for change stems from the fact that there are a number of private vendors actively promoting wastewater treatment technology and/or construction techniques that are quite different than those traditionally used for municipal wastewater facilities. An attraction of some of those proposals will be that they involve

significantly less capital cost than traditional methods, and therefore involve a capital cost likely to be far less than the presumptive figure established by the statute. Other municipalities, however, face unique wastewater treatment problems, and may need to put in place facilities with capital costs higher than the statute assumes. As a consequence, a municipality which elects an alternative technology or faces unique circumstances may well receive a grant in an amount which is far higher or lower than 50% of actual capital cost. That potential situation indicates the desirability of legislative change for the following reasons:

A. The amount of funding for the capital cost grant program is very limited, and an objective of the program should be to utilize the limited resource to benefit as many municipalities as possible. Requiring automatic grant amounts at high percentages of actual capital cost will tend to defeat that objective.

B. Conversely, if the program is to provide real benefit to municipalities, the option should be available to allow for a grant for an amount higher than 50 percent of the prescriptive figure established by historic experience.

C. Where the private vendor's proposed capital costs are very significantly less than the presumptive figure under the statute, there is a possibility of grants in excess of 80% of actual capital cost. The customary standard for commercial lending for project financing is that not less than 20% of capital cost should be provided from equity or a subordinated financing source. The ability should be present under the statute to impose a similar requirement in connection with capital cost component grants.

D. Where actual capital costs will be higher then the prescriptive figure, the ability should be present in the statute to award a grant higher than 50 percent of the historic average in order to assume project feasibility, or to avoid excessive wastewater charges to the system users.

E. Particularly where alternative technology with limited operational history has been decided upon by the municipality, a state program should be wary of investing too many public dollars, in light of the operational and technical risks involved. Under the statute as it presently exists, the state will have no option but to either award the grant, or reject the grant entirely. The ability should be present to reflect the increased level of risk through the award of a somewhat reduced grant.

The legislative decision was to establish presumptive figures for eligible costs, and therefore for the grant amount, and to allow municipalities to utilize those dollars as best they are able. While that is not an unworthy objective, the considerations recited above indicate that a greater degree of flexibility would be more appropriate. Therefore, the first sentence of Subd. 3b(c) should be amended to read:

> The amount granted to a municipality shall be up to 50% of the actual capital costs of the wastewater treatment facility.

PERMITS.

Subdivision 3b, clause (d) states that "the municipality and the private vendor shall be parties to the permit." This

requires that the vendor and the municipality be co-permittees. In a typical situation, the private vendor will own and/or operate the wastewater treatment facility, but the municipality will retain operational control over, and responsibility for, the collection system. Since both operation of the treatment facility, and operation of the collection system, have a significant bearing on whether the effluent from the treatment facility will meet NPDES standards, co-permitting will be appropriate in those situations.

In promulgating rules, however, PCA should take into account that there may be significant variances from the typical model. It is possible, for example, that a particular vendor will have operational responsibility for both the treatment facility and the collection system, and that the municipality will function as little more than a regulatory body. In that case, the terms of the permit itself should reflect the actual responsibilities of the parties.

The PCA rules, therefore, should broadly direct that the responsibilities of the municipality and vendor, respectively, under the permit should directly reflect the operational responsibilities of each as established by the contract between them.

PROJECT/CONTRACT REVIEW.

Subdivision 3b, clause (d) exempts municipalities receiving capital cost component grants from federal and State regulations regarding facility planning and procurement, except to the extent required to obtain the issuance of an NPDES permit or state disposal permit "and those necessary to assure that the proposed facilities are reasonably capable of meeting the conditions of the permit over 20 years." Further, that clause exempts

municipalities from PCA rules and other state and federal regulations relating to grants "except those necessary to protect the state from fraud or misuse of state funds."

The quoted language should not be viewed as a broad charter mandating detailed design review of wastewater treatment facilities receiving grants. The Privatization Act [Minnesota Statutes, Chapter 471A] clearly intends that municipalities should have wide discretion in determining what technology should be selected, what construction method is appropriate, and what contract terms should be agreed to. Specifically, it should be noted that the definition of "service contract" in Section 471A.02, Subd. 12 provides that a service contract is an agreement under which a vendor provides capital intensive public services "in accordance with performance standards." The words "design standards" were avoided.

Every service contract for a wastewater treatment facility must, of course, require as the essential performance standard that the effluent meet NPDES requirements. It may also be assumed that every service contract will require that the treatment facility be capable of handling the volume of wastewater generated within the municipality. Beyond those basic standards, however, PCA should not substitute its own judgment for that of the municipality, as would be the case if PCA takes the statutory language quoted above as authorization to engage in detailed design review. To do so would be to violate the legislative intent of the Privatization Act.

There are means, however, by which PCA rules can implement the legislative mandate in clause (d). Specifically:

A. It might appropriately be a condition of the award of a grant that the vendor be directly obligated

for repayment of the grant in the event of either technical or operational failure of the treatment facility. Vendors should not be allowed to insulate their assets from that risk through the creation of limited-capital subsidiaries created for the purpose of owning or operating particular projects. In addition, it would be appropriate for PCA rules to require that a vendor have an unencumbered net worth at least equal to the amount of the grant.

B. Protecting public dollars from fraud or misuse can be accomplished by a rule requiring that the service contract (or related agreement) between the municipality and vendor provide for the monitoring of disbursement of grant dollars. In the field of tax-exempt financing, the same concern about fraud or misuse of funds is also present. It is therefore routine practice in that situation to allow the disbursement of the proceeds of tax-exempt bonds only upon receipt of appropriate certificates and backup documentation demonstrating that the moneys involved will be put to the intended and appropriate use. A similar system might be appropriately utilized for the capital cost component grant program.

C. PCA rules might also appropriate by provide for disbursement of a grant over time, rather than in a lump sum at the inception of construction or at completion of the project. A system of disbursement over time would have the advantage that the project must remain in operation, and must continue to meet technical standards, in order to receive the full benefit of the grant. Implicit in such a system is the ability to stop the grant disbursement process if the treatment facility experiences technical or operational failure. While this might be an appropriate method of providing protection

for State moneys, it should also be understood that there will be a countervailing cost to the municipality and to the users of the system.

Presumably, if the entire amount of grant funds are not immediately available, the vendor or municipality will be forced to borrow in anticipation of receipt of the grant funds, and that borrowing will involve some cost. Inevitably, the cost of borrowing (or alternatively, the internal rate of return attributable to equity funds utilized in lieu of debt) will be passed through to the persons paying wastewater rates and charges.

GRANT CYCLE.

Subdivision 3b, clause (e) provides that grant funds shall be distributed to municipalities "in the order of their ranking on the municipal needs list." That is an appropriate policy decision on prioritizing the use of grant funds, but it does raise the issue of whether a municipality must wait a lengthy period of time for the award of a grant, and take the risk that another municipality of higher rank on the needs list may later apply. Since municipalities need some level of certainty as to their sources of funding for wastewater treatment projects, this risk should be reduced somewhat, if possible. An appropriate means of doing so would be to provide, in the PCA rules, for a relatively short grant cycle. Under a short grant cycle system, applications for grants would be solicited and decided upon within a fairly limited period of time (e.g., two to three months) and the grant cycle closed after that period of time, and a new grant cycle begun. Municipalities awarded grants in a prior grant cycle would not, therefore, be at risk of losing their grant if a municipality with a higher ranking on the needs list applies for a grant during a succeeding grant cycle.

Richard H. Martin

General Recommendations for Privatization

In general there are three areas of concern the MPCA should address when a community chooses Privatization as the route for adding new, or upgrading existing waste water treatment facilities.

1.) **Effluent Discharge Standards:** The MPCA is responsible to assure compliance with state and federal waste water discharge standards.

2.) **Monitoring Project Costs:** Where state and federal monies are used to pay a part of the construction costs of new or upgraded waste water treatment facilities, the MPCA should be expected to continue monitoring project costs to assure that adequate treatment is being received for the money invested in the project.

3.) **Determine Who is the Permitee:** In the case of a privatized waste water treatment facility, the MPCA should determine who will be the permitee ultimately responsible for compliance with state and federal discharge standards.

Administrative Issues Regarding Grants

1.) There needs to be a policy to deal realistically with subordination of state grant monies in instances where additional public or private financing is sought to finance the balance of project costs. State grant monies need to be subordinated to the first mortgage lien of the private lender (who may be either public bondholders or private institutional lenders) who are supplying the balance of the funds for the project in order to interest them in funding projects.

2.) Where "non-federal" dollars are already part of a project, and an upgrade to an existing waste water treatment facility is to be privatized, (which will include the purchase of the existing facilities), the previous non-federal grant monies should be allowed to stay in place without forcing a payback of prior non-federal grant money by the local unit of government.

Respectfully submitted by:

Richard Martin
Attorney
Briggs & Morgan, P.A.

Russell L. Prince
Vice President
Juran & Moody, Inc.

August 20, 1987

Revolving Loan Fund

Basic Assumptions:

1.) Assume a state appropriation of $5 to $15 million per year for the following 10 to 15 years. (It could be advantagous to appropriate larger amounts during the early years of the Revolving Loan Fund to build it up more quickly, and lesser amounts in later years.)

2.) The Revolving Loan Fund monies would be loaned for an average term of 15 years at an assumed interest rate of 7.0%.

3.) Loans (for sake of example) are assumed to be repaid in equal monthly installments of principal and interest over the assumed term of 15 years from the date each loan is closed.

4.) To simplify the example, assume all loans are made at the beginning of each loan year. (In actual practice, the loans will be made over the course of each loan year and the funds will actually be invested at an interest rate assumed to be equal to the loan rate of interest.)

Conclusions:

1.) Based on the following tables, a Revolving Loan Fund, seeded with $5 million per year, will increase to over $51 million at the end of 7 years, and to over $78 million at the end of 10 years. Seeded with $10 million per year, the Revolving Loan Fund could increase to over $102 million at the end of 7 years, and to over $156 million at the end of 10 years.

2.) Each year, the fund will be able to reloan the amount of the annual appropriation plus the amount of principal and interest repaid from previous year's loans. In the $5 million example, the amount available to loan each year ranges from a low of $5 million in the first year, to nearly $14 million in the 10th year. In the $10 million example, the range is from $10 million to just under $28 million by the end of the 10th year.

3.) After 10 years of annual $10 million appropriations, the fund would be self-sustaining with an asset base of approximately $156 million. No further state appropriations would be required to maintain the fund at this level. The Fund would have the ability to loan nearly $18 million per year thereafter for as long as necessary.

Revolving Loan Fund

7.00%

Revolving Loan Fund Repayment Schedule and Fund Balances

Annual State Appropriation: $5,000,000

Year No.	Beginning Fund Balance	Interest Payments Received In Year	Principal Payments Received In Year	Total Payments Received In Year	Year End Fund Balance *Before New Appropriation*	Add New Annual $5,000,000 Appropriation	Funds Available For Loan Next Year*	Total Fund Assets Incl. New Appropriation
Start	5,000,000							
1	5,000,000	343,807	195,490	539,297	5,343,807	5,000,000	5,539,297	10,343,807
2	10,343,807	710,565	426,197	1,136,762	11,054,372	5,000,000	6,136,762	16,054,372
3	16,054,372	1,101,728	696,942	1,798,670	17,156,100	5,000,000	6,798,670	22,156,100
4	22,156,100	1,518,832	1,013,138	2,531,970	23,674,931	5,000,000	7,531,970	28,674,931
5	28,674,931	1,963,501	1,380,863	3,344,364	30,638,432	5,000,000	8,344,364	35,638,432
6	35,638,432	2,437,448	1,806,933	4,244,382	38,075,880	5,000,000	9,244,382	43,075,880
7	43,075,880	2,942,482	2,298,993	5,241,475	46,018,362	5,000,000	10,241,475	51,018,362
8	51,018,362	3,480,506	2,865,609	6,346,114	54,498,868	5,000,000	11,346,114	59,498,868
9	59,498,868	4,053,525	3,516,374	7,569,899	63,552,393	5,000,000	12,569,899	68,552,393
10	68,552,393	4,663,650	4,262,031	8,925,681	73,216,044	5,000,000	13,925,681	78,216,044
11	78,216,044	5,313,097	5,114,599	10,427,697	83,529,141	5,000,000	15,427,697	88,529,141
12	88,529,141	4,943,363	5,484,334	10,427,697	93,472,504	0		93,472,504
13	93,472,504	4,546,900	5,880,797	10,427,697	98,019,403	0		98,019,403
14	98,019,403	4,121,776	6,305,920	10,427,697	102,141,180	0		102,141,180
15	102,141,180	3,665,921	6,761,776	10,427,697	105,807,101	0		105,807,101
							107,106,311 **	

* The second column from the right, labeled "Funds Available For Loan Next Year", is made up of 3 items:
  1.) interest earnings received during the preceding year from loans made in all preceding years,
  2.) principal repayments received during the preceding year, and
  3.) the new state appropriation monies.

** In addition to loaning the initial appropriation of $5,000,000, the Revolving Loan Fund will be able to loan additional funds for waste water treatment facilities of up to $107,106,311 during the first 11 years.

Revolving Loan Fund

7.00%

Revolving Loan Fund Repayment Schedule and Fund Balances

Annual State Appropriation: $10,000,000

Year No.	Beginning Fund Balance	Interest Payments Received In Year	Principal Payments Received In Year	Total Payments Received In Year	Year End Fund Balance *Before New Appropriation*	Add New Annual $10,000,000 Appropriation	Funds Available For Loan Next Year*	Total Fund Assets Incl. New Appropriation
Start	10,000,000							
1	10,000,000	687,614	390,380	1,078,594	10,687,614	10,000,000	11,078,594	20,687,614
2	20,687,614	1,421,130	852,394	2,273,524	22,108,744	10,000,000	12,273,524	32,108,744
3	32,108,744	2,203,455	1,393,884	3,597,339	34,312,199	10,000,000	13,597,339	44,312,199
4	44,312,199	3,037,663	2,026,277	5,063,940	47,349,863	10,000,000	15,063,940	57,349,863
5	57,349,863	3,927,002	2,761,726	6,688,727	61,276,864	10,000,000	16,688,727	71,276,864
6	71,276,864	4,874,897	3,613,867	8,488,763	76,151,761	10,000,000	18,488,763	86,151,761
7	86,151,761	5,884,963	4,597,987	10,482,950	92,036,724	10,000,000	20,482,950	102,036,724
8	102,036,724	6,961,011	5,731,218	12,692,229	108,997,735	10,000,000	22,692,229	118,997,735
9	118,997,735	8,107,051	7,032,748	15,139,799	127,104,786	10,000,000	25,139,799	137,104,786
10	137,104,786	9,327,301	8,524,061	17,851,362	146,432,087	10,000,000	27,851,362	156,432,087
11	156,432,087	10,626,195	10,229,198	20,855,393	167,058,282	10,000,000	30,855,393	177,058,282
12	177,058,282	9,886,725	10,968,668	20,855,393	186,945,007	0		186,945,007
13	186,945,007	9,093,799	11,761,594	20,855,393	196,038,807	0		196,038,807
14	196,038,807	8,243,553	12,611,840	20,855,393	204,282,359	0		204,282,359
15	204,282,359	7,331,842	13,523,551	20,855,393	211,614,201	0		211,614,201
							214,212,621 **	

* The second column from the right, labeled "Funds Available For Loan Next Year", is made up of 3 items:
1.) Interest earnings received during the preceding year from loans made in all preceding years,
2.) principal repayments received during the preceding year, and
3.) the new state appropriation monies.

** In addition to loaning the initial appropriation of **$10,000,000**, the Revolving Loan Fund will be able to loan additional funds for waste water treatment facilities of up to **$214,212,621** during the first 11 years.

EBBESEN & SARRAZIN
ATTORNEYS AT LAW
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REDWOOD FALLS, MINNESOTA 56283-0127
507/637-5778

LOGAN N. FOREMAN (RETIRED)
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KEVIN E. PASSE

LAMBERTON 507/752-7644
BELVIEW 507/938-4295

January 8, 1988

RECEIVED
JAN 11 1988
M.P.C.A.
WATER QUALITY DIV.

Jean

Ms. Sharon Meyer
Minnesota Pollution Control Agency
Division of Water Quality
520 Lafayette Road
St. Paul, MN 55155

Re: City of Belview
Request for Privatization Grant Consideration

Dear Ms. Meyer:

You will recall that I had written to you previously about the City of Belview. For your information I enclose a copy of my letter of December 8, 1987. As I have indicated in that letter and in prior correspondence, the City is very interested in participating in the Privatization Grant program. The City recognizes its need to comply with the discharge requirements and all of the evidence that we have been able to gather leads us to believe that substantial savings can be realized by proceeding under the Privatization Law. However, a treatment facility can only be installed under the Privatization Law with financial assistance. On behalf of the City of Belview, this letter is to formally request an Application for a Grant under the Privatization Law. If those application forms are not yet available because the rule making process has not been completed, I would appreciate your advising me as to when those Applications might become available.

Thank you for your assistance.

Yours very truly,

EBBESEN & SARRAZIN

By: [signature]

Wolfgang Sarrazin/jd

JDF/File

Applicant
C27
Sec #_____ Rev.

Minnesota Pollution Control Agency

January 8, 1988

Mr. Wolfgang Sarrazin
Ebbesen and Sarrazin
301 East Third Street
P. O. Box 127
Redwood Falls, Minnesota 55283-0127

Dear Mr. Sarrazin:

This is in response to your December 8, 1987 letter to Ms. Sharon Meyer concerning the privatization grants program and the City of Belview.

We are still in the early stages of development of the privatization grants program and do not yet have draft rules available. Because of the complexity of the privatization issue, we have been meeting with various groups and individuals, including privatization vendors, our Technical Advisory Committee and members of our Agency Board, to solicit as much input as possible before we draft rules for the program. We expect to have draft rules available in February 1988 and to go before our Board in March 1988 for authorization to proceed through the formal rulemaking process. We will probably not be ready to accept applications for privatization grants until late 1988 or early 1989.

In your letter you mention that privatization grant funds could be paid in annual installments so that the $1.5 million appropriation could be used to start many privatization projects. This is a possibility which we are considering. As you suggest however, dependency upon future appropriations from the Legislature could be a problem.

Some clarification of the determination of privatization grant amounts is necessary. By statute, the amount of a grant is 50% of the average total eligible costs of municipalities of similar size recently awarded state or federal grants under the Construction Grants programs. The grant amount is not based at all upon the actual project costs. The grant amount for a particular city could be more or less than 50% of its actual costs depending on how the actual costs compare to costs of projects in cities of a similar size.

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I have added your name to our mailing list of persons interested in the privatization program so that you will receive draft rules when available and notices of all upcoming actions regarding the rulemaking process. If you have any further comments or questions, feel free to contact me at (612) 296-7312.

Sincerely,

Jeffrey D. Freeman
Program Support Unit
Municipal Wastewater Treatment Section
Division of Water Quality

JDF:nmf

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BOB B. EBBESEN
WOLFGANG SARRAZIN
PATRICK A. OMAN
KEVIN E. PASSE

December 8, 1987

Ms. Sharon Meyer
Minnesota Pollution Control Agency
Division of Water Quality
520 Lafayette Road
St. Paul, MN 55155

RECEIVED
DEC 14 1987
M.P.C.A.
WATER QUALITY DIV.

Re: City of Belview

Dear Ms. Meyer:

Enclosed is a copy of a letter dated July 29, 1987, that I had received from Mr. Scherkenbach. In that letter, he had indicated that the Pollution Control Agency was in the process of writing the rules governing the privatization grant program. A recent article that appeared in the Minnesota Cities monthly publication, which was co-authored by you, had indicated that the initial draft of the rules would be available in December. I would appreciate receiving a copy of that draft when it becomes available. Also, by way of comment, it strikes me that if the rules could be written in such a way that the state would provide annual assistance over the life of the lease, you could provide funding for many more communities than could be funded if the total costs are paid up front. I recognize that this would involve a long-term commitment from the state and the Legislature but it certainly would eliminate pollution problems for many more communities. In the case of Belview, we have received proposals under the privatization laws from two vendors. The City has interviewed both of the vendors and they have decided to negotiate a contract with Water Technology Resources. Those negotiations are, however, subject to receiving assistance from the Minnesota Pollution Control Agency for the project. The City of Belview is a small community with a number of elderly citizens and without State participation, costs would be prohibitive. For your information, I enclose a copy of the proposal that we had received from Water Technology Resources. The proposal that the City would like to pursue is Proposal #1 A for a trickling filter system and a guaranteed construction bid price of not to exceed $318,313. If the lease was amortized over 20 years, the annual payments would amount to about $36,000 a year. If a commitment could be obtained from the State, to provide 50% cost sharing on an annual basis, ($18,000 per year susidy) the City would be in a position to install that system. If the State were to provide one and one-half million dollars in funding per year, that would be sufficient to install 83 systems similar to Belview's.

Yours very truly,

EBBESEN & SARRAZIN

By: [signature]

Wolfgang Sarrazin/jd

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M E M O R A N D U M

TO: Julian Empson
Al Loehr
Gary Currie
Stan Peskar

FROM: Richard Martin

DATE: January 26, 1988

RE: **Minnesota Privatization Act**
Minnesota Statutes Chapter 471A

Attached is a revised version of the bill to amend Chapter 471A, together with a revised explanatory memorandum. As you will see, I concluded that enactment of the capital cost component grant legislation as Minn. Stat. § 116.18, Subd. 3(b) rendered the existing language of § 471A.07 obsolete. Accordingly, I replaced it with the alternative grant disbursement provisions we discussed at the meeting.

Please let me know if you have any comments on the enclosed draft. By a copy of this memo to Janet Cain and Sharon Meyer of the Pollution Control Agency, I am also requesting that they review the enclosed draft and let me know what comments they have.

R.H.M.

:012
Enclosure
cc: Janet Cain
Sharon Meyer

BRIGGS AND MORGAN

M E M O R A N D U M

Re: Minnesota Privatization Act
Minnesota Statutes, Chapter 471A

January 25, 1988

Attached to this memorandum as Exhibit A is a proposed form of legislation to make changes in the Minnesota Privatization Act [Minnesota Statutes, Chapter 471A]. The provisions of the proposed legislation are largely technical in nature, and are intended to clarify the original intent of the statute, to correct ambiguous language in the statute, or to conform Ch. 471A to other statutes. A section-by-section analysis of the proposed legislation appears below.

Sections 1 and 7 - Capital Cost Component Grants. The definition of "capital cost component grant" in Section 471A.02, Subd. 4 has been interpreted by the Minnesota Pollution Control Agency to require that a grant be disbursed over a term of at least ten years. PCA therefore interprets the statute to preclude disbursement of the entire amount of a grant at one time. While disbursement over time should be permitted in appropriate circumstances, it has become apparent from analysis of proposed privatization projects that disbursement of state grants in a lump sum should also be permitted. In addition, Minnesota Statutes, Section 116.18, Subd. 3b [providing for grants for privatized wastewater projects] requires a service contract with a term of at least 20 years as a precondition to the award of a grant. The enactment of Section 116.18, Subd. 3b in effect supersedes the present Section 471A.07.

Two policy considerations are involved in grant disbursement: (a) the economic efficiency of the grant, which in some cases will be best achieved by a lump sum disbursement of the grant at the outset as a replacement of other forms of financing; and (b) protection against the risk that state grant moneys will be used for projects that are technically flawed.

The form of amendment attached amends Chapter 471A in two places - Section 471A.02, Subd. 4 and Section 471A.07. First, Section 471A.02, Subd. 4 is amended to provide that the service agreement must have a term of at least twenty years in order to conform to Minn. Stat., Sec. 116.18, Subd. 3b. In addition, the language requiring grant disbursement over time has been deleted.

Second, the existing language of Section 471A.07 is repealed, since enactment of Section 116.18, Subd. 3b makes it obsolete. In place of the existing language, a new 471A.07 provides for two alternatives for grant disbursement. If the municipality elects to have PCA review the design, the grant will be disbursed in a lump sum at or before the time construction begins. Since review of the design protects the State's interest in not funding technically flawed projects, the overriding consideration becomes economic efficiency. The review standard is the same as for on-site treatment systems. That is the standard normally applied where a private entity will open and operate a wastewater treatment facility.

Where the municipality elects not to have PCA review design, grant disbursement must be in installments over not more than 10 years. With no review, the crucial policy concern becomes protection against wastage of grant funds.

Section 2 - Capital Intensive Public Services. It was the original intent of the legislation to permit the privatization of ownership, or design and construction, or operation, of a wastewater treatment or drinking water facility. Section 2 of the proposed legislation clarifies that intent. In addition, the amendment here deletes language relating to the furnishing of heating or cooling energy because that language is no longer relevant to facilities which may be privatized under this statute.

Section 3 - Service Contract. The definition of "service contract" in Section 471A.02, Subd. 12 currently refers only to performance standards. It was the original intent of the statute to allow a municipality the option to specify performance standards, rather than the detailed design standards typical of a competitively bid procurement process. Discussions concerning proposed privatized facilities have revealed that some municipalities may wish to use a design standard approach for construction projects, and therefore a reference to design standards is being added.

In addition, language is added to Subd. 12 to make clear that a "service contract" may consist of more than one agreement, and that such agreements may be titled in any way the parties choose, so long as the contractual arrangements, in the aggregate, comply with the definition.

Sections 4, 5 and 6 - Authorization for Privatization/Municipal Leasing. As originally enacted, Section 471A.03, Subd. 3 provides for an exemption from competitive bidding requirements, but disallows that exemption where the municipality holds more than 50 percent ownership interest in the related facilities. Unfortunately, this language did not take account of a traditional and often-used means of financing municipal facilities - municipal leasing. In a municipal leasing transactionaction, the government unit will hold a more than 50 percent interest in the facility, either as the lessee or as the lessor.

In the usual municipal lease transaction, the lessor (a private party) holds legal title to the facility, but the municipality installs the facility and is responsible for operation. For privatization situations, municipal leasing should be allowed, but responsibility for installation and operations must remain in private hands in order to avoid the use of municipal leasing as a means merely to evade other requirements of law.

There will also be situations in which the municipality wishes to continue to hold title to the real estate, and to "ground lease" it to the vendor. Depending on the situation, a ground lease legal structure may give the municipality useful bargaining leverage for when the service agreement expires, and should be allowed so long as the fundamental requirements for privatization are followed.

The proposed amendment (Section 5) deletes the language from Section 471A.03, Subd. 3 referring to a more than 50 percent ownership interest. Section 4 of the proposed legislation adds language to Section 471A.03, Subd. 1 to replace the language deleted from Subd. 3. The added language in Subd. 1 preserves the prohibition against the use of privatization powers by a municipality which holds a "controlling interest" in the vendor itself. This will effectively prevent the Privatization Act from being used for a "sham" transaction intended simply to circumvent competitive bidding requirements . This is done by assuring that the municipality does not control the vendor.

The added language authorizes a municipality to exercise privatization powers, even where the municipality holds a more than 50 percent interest in the related facilities, if the municipality privatizes construction and operation of the related facilities, for at least a ten-year period. The service agreement may be for a term of less than 10 years if the economic life of the "related facilities" is less than ten years.

Section 6 of the proposed legislation makes a related change in Section 471A.03, Subd. 5, by allowing the sale or leasing of new or existing related facilities, rather than only existing facilities only.

Section 7 - Effective Date. The proposed legislation is intended to take effect on the day following its final enactment.

a bill for an act

relating to capital intensive public services and private suppliers; amending Minnesota Statutes 1986, section 471A.02, subdivisions 4, 6 and 12; 471A.03, subdivisions 1 and 3, 471A.03, subdivision 5 and 471A.07.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 1986, section 471A.02, subdivision 4, is amended to read:

Subd. 4. [CAPITAL COST COMPONENT GRANT]. "Capital cost component grant" means any grant made to the municipality by the pollution control agency ~~over a term of at least ten years~~ to pay or reimburse the municipality for the payment of all or part of the capital cost component of the service fee provided for in a service contract with a term of at least twenty years. Grants shall be disbursed as provided in section 471A.07.

Section 2. Minnesota Statutes 1986, section 471.02, subdivision 6, is amended to read:

Subd. 6. [CAPITAL INTENSIVE PUBLIC SERVICES]. "Capital intensive public services" means the prevention, control, and abatement of water pollution through wastewater treatment facilities as defined by section 115.71, subdivision 8 and the furnishing of potable water. Capital intensive public services may be limited to the acquisition and ownership, design and construction, or operation, by the private vendor of related facilities ~~but do not include the furnishing of heating or cooling energy~~.

Section 3. Minnesota Statutes 1986, section 471A.02, subdivision 12, is amended to read:

Subd. 12. [SERVICE CONTRACT]. "Service contract" means any agreement or agreements between a municipality and a private vendor under which:

(1) the private vendor agrees to furnish to the municipality or any other user capital intensive public services in accordance with performance standards or, in the case of construction, design and performance standards set forth in the agreement or agreements and the municipality agrees to pay or cause to be paid to the private vendor a service fee for the services, and

(2) other covenants incident to clause (1) are made.

Any agreement or agreements complying with clause (1) shall be deemed to be a "service contract" for the purposes of this chapter, regardless of their title or form.

Section 4. Minnesota Statutes 1986, section 471A.03, subdivision 1, is amended to read:

Subdivision 1. [BASIC AUTHORIZATION]. A municipality may contract with a private vendor to furnish in accordance with a service contract any capital intensive public services the municipality is authorized by law to furnish, and for that purpose a municipality may exercise any and all of the powers provided in this chapter. The powers provided in this chapter may not be exercised by any municipality, or group of municipalities, which have a controlling interest in the private vendor. The powers provided in this chapter may not be exercised by any municipality, or group of municipalities, which have a more than 50 percent ownership interest in the related facilities unless the service contract provides that the private vendor will be responsible for construction or improvement, if any, of the related facilities and that the private vendor will be responsible for operation of the related facilities for a period of at least 10 years, or, if less, the economic useful life of the related facilities.

Section 5. Minnesota Statutes 1986, section 471A.03, subdivision 3, is amended to read:

Subd. 3. [PROCUREMENT PROCEDURES]. The municipality may agree under the service contract that the private vendor will acquire and construct any and all related facilities without compliance with any competitive bidding requirements, provided ~~(1) the municipality, or municipalities if the related facilities furnish capital intensive public services to more than one municipality, has in the aggregate either no or no more than 50% ownership interest in the related facilities, and (2)~~ the municipality enters into the service contract only after requesting from two or more private vendors proposals for the furnishing of the capital intensive public services, under terms and conditions the municipality determines to be fair and reasonable. After making the request and receiving any proposals in response to the request, the municipality may negotiate the service contract with any private vendor that meets the requirement specified in the request for proposals.

Section 6. Minnesota Statutes 1986, section 471A.03, subdivision 5, is amended to read:

Subd. 5. [SALE OR LEASE OF NEW OR EXISTING FACILITIES]. For purposes of carrying out the service contract, the municipality may, in compliance with subdivision 3, sell or lease to the private vendor or any other municipality on terms and conditions as the municipality considers appropriate and new or existing related facilities, including land, owned by the municipality.

Section 7. Minnesota Statutes 1986, section 471A.07 is hereby repealed in its entirety, and the following section 471A.07 substituted in its place:

471A.08 [STATE GRANTS AND LOANS].

Subd. 1. Capital cost component grants shall be disbursed as follows:

(a) if the municipality elects to have the pollution control agency review the design of the related facilities, the capital cost component grant shall be disbursed in its entirety to the municipality on or before the date on which construction or improvement of the related facilities commences;

(b) if the municipality elects not to have the pollution control agency review the design of the related facilities, the capital cost component grant shall be disbursed to the municipality in installments over a period of not more than ten years.

For the purposes of clause (a), the pollution control agency shall apply the review standards applicable to on-site waste water treatment systems.

Subd. 2. Loans shall be disbursed, repaid and secured in accordance with the terms of the contract or agreement providing for the loan.

Section 8. [EFFECTIVE DATE]. This act shall take effect on the day following final enactment.

pfc
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February 24, 1988

Ms. Sharon Meyer
Ms. Joan DeMeurisse

Division of Water Quality
Minnesota Pollution Control Agency
520 Lafayette Road
Saint Paul, Minnesota 55155

RE: Privatization Discussions

Dear Joan:

I really enjoyed being able to meet with you yesterday concerning possible changes to, and implementation of, the "Privatization Act". As I mentioned, formal meetings are not my favorite, but I felt that the introductory type of discussion we had enables me to better understand the Agency's position on Privatization, and I hope it gave you some idea of what we're thinking about.

Later that afternoon, Russ Jacobson and Lou Lundgren met with our attornies. (I found myself on a highway headed North, and just kept going.) They have concluded that our previous concern over finance vs. operating leases is of no consequence; therefore, for all practical purposes, we can be fully operational under the Law as it now stands.

There is still the problem of coordinating allocation of State funds with a privatization program, especially in very small communities, in order to achieve the goal of top quality treatment, at the lowest cost to the users, with the least expenditure of State funds. I will try and provide you with our written comments concerning these matters as much before March 7th as possible.

Sincerely,

SBaker

Steve Baker

SB/sb

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March 1, 1988

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MAR 04 1988
M.P.C.A.
WATER QUALITY DIV.

Rep. Jeff Bertram
565 State Office Building
St. Paul, Minnesota 55155

Re: Minn. Stat. Chapter 471A
Minnesota Privatization Act

Dear Rep. Bertram:

Following the discussion in your office on Friday, February 26, we prepared as you requested changes to the existing draft bill to amend Chapter 471A. Attached to this letter are copies of the proposed changes, together with a summary of the amendment legislation.

By a copy of this letter to David Ness in the office of the Revisor of Statutes, we are requesting that he prepare a new draft of the bill consistent with the changes enclosed. Technically, it will be necessary to make the enclosed changes by way of a "strike everything" amendment.

This letter, and the attached materials, are also being copied to Julian Empson, Sen. Gene Merriam, and other interested in this matter. I have talked with some of them about this, and invite their comments.

I spoke with Julian Empson late on Friday, February 26, and he tells me that if the bill is introduced early this week, hearings can be held on March 8th (with March 10th as a back-up date or as a date for an additional hearing). I will keep in touch with him, and with you, about the proposed hearing dates.

The explanatory material consists of a brief "executive summary". We will provide to you shortly a more detailed technical explanation. Please feel free to distribute these materials as you see fit, and to contact me with any questions you might have about them.

Again, I very much appreciate your willingness to act as chief author of this bill, and your interest in this matter. If there is ever a matter on which you should like to consult Briggs and Morgan, for technical background or advice, please feel free to do so.

Yours very truly,

Richard H. Martin

RHM/cf
Enclosures
/006
cc: Sen. Gene Merriam
Julian Empson
Al Loehr
Eric Hyland

Timothy Scherkenbach
Janet Cain
Rich Sandberg
Sharon Meyer
Pollution Control Agency

Stan Peskar
League of Cities

Gary Currie
House Research
George Beck
John McCarty
Ecolo Masters, Inc.

George J. Nugent
Water Technology Resources

Roxanne Rouleau
Miller & Schroeder Financial

William G. Bale
Hillstrom & Bale, Ltd.

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MINNESOTA PRIVATIZATION ACT
MINN. STAT. CHAPTER 471A
AMENDMENTS

RECEIVED
MAR 04 1988
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WATER QUALITY DIV.

SUMMARY OF AMENDMENTS

This summary briefly describes proposed amendments to the Minnesota Privatization Act, Minn. Stat. Chapter 471A, and related amendments to the capital cost component grant provisions of Section 116.18, subdivision 3b.

Capital Intensive Public Services. The definition of "capital intensive public services" in Section 471A.02, Subd. 6 is amended to correct inadvertent errors in the language. Makes clear that acquisition and ownership, design and construction, or operation, may be privatized. This change is not intended to change the intent or substance of Ch. 471A.

Municipal Leasing. As original enacted, Chapter 471A inadvertently precluded the use of municipal leasing - which is a major form of municipal finance. Changes are made in Section 471A.03 Subds. 1, 3 and 5 to correct that oversight. As revised, the language permits municipal leasing, but preserves the original legislative intent to prohibit the use of "sham" privatization transactions to evade competitive bidding requirements.

Project Review by PCA. The Minnesota Pollution Control Agency (PCA) has jurisdiction under Chapter 115 to review any wastewater project. New language is added to Section 471A.07 to specify the standard of review. PCA will be required to apply the same standard of review that it applies to "industrial facilities" and must not refuse to approve a privatization project that is capable of consistently meeting permit standards for its projected useful life. PCA is required to provide preliminary comments on the design within 30 days, and to provide final comments within 90 days, except that the PCA will not be required to provide final comments earlier than 30 days after the municipality or private vendor respond to the preliminary comments.

Capital Cost Component Grants. The Privatization Act as originally enacted required PCA to propose legislation by January, 1987 providing for capital cost component grants for wastewater projects. The PCA did propose legislation, which was enacted as Section 116.18, Subd. 3b. This bill amends the capital cost component grant provisions of the Privatization Act, and of Section 116.18, Subd. 3b in several respects:

a. The service contract term must be no less than 5 years - the 20 year standard presently required will interfere with the ability of municipalities to finance privatization projects, particularly if tax exempt financing is used.

b. Capital cost component grants must be disbursed in their entirety on or before the date construction starts on the project.

c. Privatization projects are determined eligible for loans from the Public Facilities Authority.

d. Capital cost component grants will be an amount equal to 50% of actual capital cost, rather than 50% of the average eligible costs of municipalities of similar size. The standard specified in present law has been determined to be unrealistic.

Other. The proposed amendments make certain other technical changes to present law, as further described in the attached technical memorandum.

Effective Date. The amendments will be effective on the day following final enactment.

Richard H. Martin

1/006

BRIGGS AND MORGAN

RECEIVED
MAR 04 1988
M.P.C.A.
WATER QUALITY DIV.

MEMORANDUM

Re: Minnesota Privatization Act
Minnesota Statutes, Chapter 471A
Amendments

March 1, 1988

Attached to this memorandum as Exhibit A is a proposed form of legislation to make changes in the Minnesota Privatization Act [Minnesota Statutes, Chapter 471A] and in Minn. Stat. Section 116.18, Subd. 3b. A section-by-section analysis of the proposed legislation appears below.

Section 7 - Project Review. The Minnesota Pollution Control Agency (PCA) has jurisdiction to review any wastewater treatment project in the state. The municipal community and the private entities which propose to act as "private vendors" have become concerned, however, about the standard of review which PCA will apply. Therefore, it is proposed that Section 471A.07 be amended to specify the standard of review. The present language of Section 471A.07 has been deleted because it has become obsolete by reason of enactment of Section 116.18, Subd. 3b.

Subdivision 1 of the proposed new Section 471A.07 will require the PCA to apply the same standard of review to privatized projects as it applies to "industrial facilities" under present law. The PCA may not refuse to approve a privatized wastewater project if the project will be capable of consistently meeting permit requirements for its projected useful life. Various administrative reviews normally conducted in the context of municipally owned and operated facilities will not be conducted for privatized facilities. The PCA must provide preliminary comments on the design and plans and specifications within 30 days after submission to the PCA, and final comments must be made within 90 days - except that the PCA will not be required to provide final comments earlier than 30 days after the private vendor or municipality respond to preliminary comments. In practice, this will mean that PCA will provide preliminary comments in 30 days, the municipality or private vendor will have 30 days in which to respond to the preliminary comments, and PCA will then have an additional 30 days in which to provide the final comments.

The "industrial facilities" standard of review has been found appropriate and workable in those situations where a private entity will be responsible for the design, construction and operation of a wastewater treatment facility. Since the essence of privatization is to shift responsibility for design, construction and operation from the public sector to the private sector, the "industrial facilities" standard of review appears to be the most appropriate choice in privatization situations as well.

Specifying the standard of review for privatized projects will give both municipalities and private vendors a reasonable level of certainty about the review process, and time schedule. Some level of certainty is essential to the negotiations between the municipalities and private vendors, and the present atmosphere of uncertainty has had the effect of delaying or preventing of the implementation of privatization projects.

Sections 1 and 7 - Capital Cost Component Grants - Disbursement. The definition of "capital cost component grant" in Section 471A.02, Subd. 4 has been interpreted by the Minnesota Pollution Control Agency to require that a grant be disbursed over a term of at least ten years. PCA therefore interprets the statute to preclude disbursement of the entire amount of a grant at one time. It has become apparent from analysis of proposed privatization projects that disbursement of state grants in a lump sum will lead to far greater economic efficiency and will provide more real benefit.

The form of amendment attached amends Section 471A.02, Subd. 4 and Section 471A.07. First, Section 471A.02, Subd. 4 is amended to delete the language requiring grant disbursement over time. Section 471A.07 is amended to require grant disbursement in a lump sum.

The PCA has been concerned about the use of grant funds for technically flawed projects. The PCA review required as described above will provide adequate protection against that risk.

Grant disbursement will take place on or before the date construction or improvement of the project begins.

Sections 1 and 8 - Service Contract Term. Under Section 116.18, Subd. 35 as it presently stands, the service contract must have a term of not less than 20 years if a capital cost component grant will be made for the project. This requirement was imposed by enactment of Section 116.17, Subd. 3b.

It has become apparent that a 20 year requirement for service contracts will present a serious impediment to the financing of privatized projects, particularly where tax-exempt financing will be used. First, few if any private lenders are willing to make loans for a period as long as 20 years. Periods from 7 to 12 years have become standard in commercial lending practice. Second, requiring a service contract term of more than 5 years will preclude the use of tax-exempt financing, unless the municipality is able to obtain an allocation of bonding authority for "private activity bonds" under the Internal Revenue Code. Under Chapter 474A (the legislation governing allocations of bonding authority) wastewater privatization projects are a third priority behind manufacturing and housing projects. In addition, the available amount of bonding authority in this state, as in all states, has been drastically reduced by federal tax reform legislation. If the municipality is able to enter into a service contract for term of no more than 5 years, however, characterization of the tax-exempt financing as "private activity bonds" can be avoided and the tax-exempt financing can be used without obtaining a "private activity bond" allocation.

Requiring only a 5 year service contract does not mean that the treatment facilities will have so short a life. In fact, municipalities can be expected to demand facilities with much longer useful lives. As described above, the PCA's technical review will look to the project's useful life, regardless of the service contract term.

If a service contract has a term of 5 years, the municipality will have the option at the end of that time to: (a) renew with the same vendor for a period of 5 years or less; (b) retain a new vendor to operate the project (after the same procurement process as required for new projects); or (c) take over operations itself.

Section 116.18, Subd. 3b, clause (b) is amended to reduce the 20-year required term to 5 years, and a conforming change is made to Section 471A.02, Subd. 4.

Section 8 - Capital Cost Component Grant - Amount. Section 116.18, Subd. 3b, clause (c) presently states that capital cost component grants "shall be" be in an amount equal to 50 percent of the "average total eligible costs of municipalities of similar size recently awarded state and federal grants . . . ." This standard is unrealistic. First, this standard is tied to "eligible costs" as determined for traditional municipal waste water treatment projects. In practice, privatized waste water treatment projects will be designed and constructed on the basis of technology choices and construction techniques different

from those used for traditional projects, and as a result of their capital costs in most cases will be significantly less than for traditional projects. In some cases, the private vendors have proposed capital costs which are less than half of the "eligible costs" for a traditional municipal project of similar capability as shown on the current PCA "needs list." If the present standard for grant amounts remains in effect, the result will be funding of very high percentages of the capital costs of privatized projects - as much as 80, 90 or even 100 percent in some cases. It makes little sense, on policy grounds, to use state grant funds to finance all or a very high percentage of a privatized project.

Second, it is not clear from the statute what "municipalities of similar size" actually means. It could be construed to require PCA to class municipalities by population size, but might also be construed to allow a classification of municipalities by wastewater treatment need. In either event, such classifications completely overlook special circumstances applicable to individual municipal situations.

The proposed legislation would replace the present grant amount standard with a much simpler and easier to administer requirement that the capital cost component grants be equal to 50 percent of the actual capital cost of the project. That capital cost will be specified in the service contract between each municipality and private vendor, usually in the form of a "guaranteed price" bid for the project. Interest during construction is included as a capital cost, as is normal under standard accounting practice, but interest on debt after the date of completion of the project has been excluded from the calculation.

This amendment can be expected to have the effect of reducing the amount of the capital cost component grants awarded for the great majority of privatized projects. As a result, the available grant funds will become available to more municipalities and for more projects.

Section 116.18, Subd. 3b, clause (c) is amended to make this change.

Section 2 - Capital Intensive Public Services. It was the original intent of the legislation to permit the privatization of ownership, or design and construction, or operation, of a wastewater treatment or drinking water facility. Section 2 of the proposed legislation clarifies that intent and does not change the original intent. In addition, the amendment here deletes language relating to the furnishing of heating or cooling energy because that language is no longer relevant to facilities which may be privatized under this statute.

Section 3 - Service Contract. The definition of "service contract" in Section 471A.02, Subd. 12 currently refers only to performance standards. It was the original intent of the statute to allow a municipality the option to specify performance standards, rather than the detailed design standards typical of a competitively bid procurement process. Discussions concerning proposed privatized facilities have revealed that some municipalities may wish to use a design standard approach for construction projects, and therefore a reference to design standards is being added.

In addition, language is added to Subd. 12 to make clear that a "service contract" may consist of more than one agreement, and that such agreements may be titled in any way the parties choose, so long as the contractual arrangements, in the aggregate, comply with the definition.

Sections 4, 5 and 6 - Authorization for Privatization/ Municipal Leasing. As originally enacted, Section 471A.03, Subd. 3 provides for an exemption from competitive bidding requirements, but disallows that exemption where the municipality holds more than 50 percent ownership interest in the related facilities. Unfortunately, this language did not take account of a traditional and often-used means of financing municipal facilities - municipal leasing. In a municipal leasing transaction, the government until will hold a more than 50 percent interest in the facility, either as the lessee or as the lessor.

In the usual municipal leasing transaction, the lessor (a private party) holds legal title to the facility, but the municipality installs the facility and is responsible for operation. For privatization situations, municipal leasing should be allowed, but responsibility for installation and operations must remain in private hands in order to avoid the use of municipal leasing as a means merely to evade other requirements of law such as competitive bidding.

There will also be situations in which the municipality wishes to continue to hold title to the real estate, and to "ground lease" it to the vendor. Depending on the situation, a ground lease legal structure may give the municipality useful bargaining leverage for when the service agreement expires, and should be allowed so long as the fundamental requirements for privatization are followed.

The proposed amendment (Section 5) deletes the language from Section 471A.03, Subd. 3 referring to a more than 50 percent ownership interest. Section 4 of the proposed legislation adds language to Section 471A.03, Subd. 1 to replace the language deleted from Subd. 3. The added language in Subd. 1 preserves the prohibition against the use of privatization powers by a municipality which holds a "controlling interest" in the vendor itself. This will effectively prevent the Privatization Act from being used for a "sham" transaction intended simply to circumvent competitive bidding requirements. This is done by assuring that the municipality does not control the vendor.

The added language authorizes a municipality to exercise privatization powers, even where the municipality holds a more than 50% interest in the related facilities, if the municipality privatizes construction and operation of the related facilities, for at least a 5 year period. The service agreement may be for a term of less than 5 years if the economic life of the "related facility" is less than 5 years. This period conforms to the minimum contract period required where a capital cost component grant will be awarded, thus avoiding conflict between this provision and the grant requirements.

Section 6 of the proposed legislation makes a related change in Section 471A.03, Subd. 5, by allowing the sale or leasing of new or existing related facilities, rather than existing facilities only.

Section 9 - Effective Date. The proposed legislation is intended to take effect on the day following its final enactment.

Questions or comments should be addressed to:

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MAR 04 1988
M.P.C.A.
WATER QUALITY DIV.

MEMORANDUM

Re: **Minnesota Statutes, Chapter 471A**
Section 116.18, Subd. 3b

March 3, 1988

Attached is our memorandum providing an explanation of the provisions of the bill to amend Minn. Stat. Ch. 471A and Section 116.18, Subd. 3b. This supplements and expands on the summary sent to each of you earlier. The Exhibit A referred to will be the revised amendment bill now being prepared by David Ness at the Revisor of Statutes office based on the changes we suggested. Please let us know if you have any questions or comments.

R.H.M.

/jlt
Attachment

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WATER QUALITY DIV.

SECTION 471A.07.

Strike all of the existing language of Section 471A.07, and all of the language proposed in the bill draft of February 5, 1988. In its place, substitute the following:

471A.07 [RELATED FACILITIES REVIEW; STATE GRANTS AND LOANS].

Subdivision 1. [RELATED FACILITIES REVIEW]. The pollution control agency shall require to be submitted for approval plans and specifications for related facilities which are wastewater treatment facilities. The pollution control agency shall review and approve such related facilities in a manner consistent with the standards applicable to industrial facilities, and shall not refuse to approve related facilities which are capable of consistently meeting permit standards for the projected useful life of the related facilities. The pollution control agency shall not conduct eligibility determinations, procurement or competitive bidding reviews, user charge system approvals or extensive review of treatment alternatives or cost effectiveness.

The pollution control agency shall provide preliminary comments on the design and plans and specifications for related facilities on or before the date which is 30 days after submission of those items to the agency by the municipality or the private vendor. The pollution control agency shall provide

final comments on the design and plans and specifications for related facilities on or before the date which is 90 days after submission of those items to the agency, except that the agency shall not be required to provide final comments sooner than 30 days after the municipality or private vendor respond in writing to the agency's preliminary comments.

Subdivision 2. [CAPITAL COST COMPONENT GRANT DISBURSEMENT]. A capital cost component grant awarded with respect to related facilities which are wastewater treatment facilities shall be disbursed in its entirety on or before the date of commencement of construction or improvement of the related facilities. Capital cost component grants for other kinds of related facilities shall be disbursed as provided in applicable law or rule.

Subdivision 3. [LOANS]. Loans made by the state or any agency thereof, including the public facilities authority, with respect to related facilities shall be disbursed, repaid and secured as provided in the contract or agreement providing for the loan. Related facilities shall be eligible for loans made by the public facilities authority, subject to chapter 446A.

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WATER QUALITY DIV.

Add to the February 9, 1988 draft bill:

Section 8. Minnesota Statutes 1986, section 116.18, subdivision 3b, is amended to read:

Subd. 3b. **Capital cost component grant.** (a) The definitions of "capital cost component," "capital cost component grant," "service fee," "service contract," "related facilities," and "private vendor" in section 471A.02 apply to this subdivision.

(b) Beginning in fiscal year 1989, up to $1,500,000 of the money to be awarded as grants under subdivision 3a in any single fiscal year may be set aside for the award of capital cost component grants to municipalities on the municipal needs list for part of the capital cost component of the service fee under a service contract for a term of at least ~~20~~ 5 years with a private vendor for the purpose of constructing and operating wastewater treatment facilities.

(c) The amount granted to a municipality shall be 50 percent of the ~~average total eligible costs of municipalities of similar size recently awarded state and federal grants under the provisions of subdivisions 2a and 3a and the Federal Water Pollution Control Act, United States Code, title 33, sections 1281 to 1289~~ capital cost component for the related facilities as specified in the service contract, including interest during the period of construction, but excluding interest on

debt after the projected date of completion of the related facilities. Federal and state eligibility requirements for determining the amount of grant dollars to be awarded to a municipality are not applicable to municipalities awarded capital cost component grants. Federal and state eligibility requirements for determining which cities qualify for state and federal grants are applicable, except as provided in this subdivision.

(d) Except as provided in this subdivision, municipalities receiving capital cost component grants shall not be required to comply with federal and state regulations regarding facilities planning and procurement contained in sections 116.16 to 116.18, except those necessary to issue a National Pollutant Discharge Elimination System permit or state disposal system permit and those necessary to assure that the proposed facilities are reasonably capable of meeting the conditions of the permit over ~~20-years~~ the period of the projected useful life of the related facilities. The municipality and the private vendor shall be parties to the permit. Municipalities receiving capital cost component grants may also be exempted by rules of the agency from other state and federal regulations relating to the award of state and federal grants for wastewater treatment facilities, except those necessary to protect the state from fraud or misuse of state funds.

(e) Funds shall be distributed from the set-aside to municipalities that apply for the funds in accordance with these provisions in the order of their ranking on the municipal needs list.

(f) The authority shall award capital cost component grants to municipalities selected by the state pollution control director upon certification by the state pollution control director that the municipalities' projects and applications have been reviewed and approved in accordance with this subdivision and section 471A.07, subdivision 1 and agency rules adopted under paragraph (g).

(g) The agency shall adopt permanent rules to provide for the administration of grants awarded under this subdivision.

(h) The commissioner of energy and economic development may adopt rules containing the procedures for administration of the authority's duties as set forth in paragraph (f).

service contract should be as long as the useful life Design life ~~Unit~~ must be minimum of 10 yrs.

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M.P.C.A.
WATER QUALITY DIV.

SECTION 471A.02, Subdivision 4.

Strike the language in the February 5, 1988 draft bill and substitute the following:

Subd. 4. [CAPITAL COST COMPONENT GRANT.] "Capital cost component grant" means any grant made to the municipality by the pollution control agency ~~over-a-term-of-at-least-ten years~~ to pay or ~~reimburse~~ the municipality for the ~~payment of all or~~ part of the capital cost ~~component~~ of the service fee provided for in a service contract with a term of at least 5 years.

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MAR 02 1988
M. P. C. A.
Water Quality Div.

March 1, 1988

Minnesota Pollution Control Agency
Attention Ms. Janet Cain
Assistant Director
520 Lafayette Road
St. Paul, MN 55155

RE: Technical Advisory Committee Meetings; MSA Chapter 116.18 and Chapter 471A; comments by Water Technology Resources of Bloomington, Inc. ("WTR").

Gentlewomen and Gentlemen:

The undersigned and our client have attended several of your technical advisory committee meetings and we wish to respond as follows. We appreciate that the comments that follow may need some refinement, but we feel it is important that you have before you some of the general concepts that WTR believes should control the utilization of the grant program under the privitization statute, all as referenced above.

REVIEW PROCESS

WTR believes that all proposed installations which are to receive grant money should be reviewed by MPCA. However, because the privitization concept contemplates an efficient, lean business operation, WTR believes that same concept must pass over to MPCA and that reviews should be efficient and timely so that neither the private vendor nor the municipality are delayed in their negotiations or in their efforts to construct and deliver a water or wastewater treatment facility. Accordingly, WTR believes that a review process should be adapted which guarantees a complete turn around of the plans and specifications within ninety days. WTR would propose that MPCA be given thirty days to review the preliminary plans and specifications as agreed upon between the vendor and the municipality, that the vendor and municipality then be given thirty days to modify and respond to the preliminary review by MPCA and finally, that MPCA be given a final thirty days for final review prior to start of construction. The foregoing schedule would allow the entire project to be approved by MPCA within a ninety day period.

* Admitted in Minnesota, Illinois, California and Texas
** Admitted in Minnesota and Wisconsin

GRANT DISTRIBUTION

The grant monies are only part of the funds needed to build a water or wastewater treatment facility. The private vendor must arrange additional financing and the source of additional financing must know the amount of grant available and it must know that the grant is a sum certain. For the foregoing reasons, WTR believes it is important that the grant monies be distributed by MPCA to the municipality with no strings attached whatsoever. The grant should be in a lump sum and not over a term. This approach will allow the balance of the financing to be arranged with certainty, and it is certainty in this transaction that is important in order to keep the costs as low as possible and allow the privitization concept to work.

MODEL SERVICE CONTRACT

WTR believes that the service contract will vary greatly between municipalities. The service contract will have to be negotiated, paragraph for paragraph, between the private vendor and the municipality and the terms contained in the service contract will depend upon a number of factors, including special concerns that the municipality has, whether or not the municipality owns any of the property upon which the installation is to be built, the term of the contract and the conditions under which the municipality wants to have the right to terminate the service contract for nonperformance on behalf of the vendor. Because a municipality will be represented by legal counsel, and because each service contract will contain provisions unique to that particular facility, WTR believes that the Minnesota Pollution Control Agency should not develop a model service contract and should not attempt to impose the terms of the model service contract upon the grant program. The Minnesota Pollution Control Agency should limit its involvement to the adequacy of the facility to be built and should leave the contractual remedies and rights and terms as between the private vendor and the municipality to the negotiation between those parties.

Respectfully submitted for your consideration on behalf of Water Technology Resources of Bloomington, Inc.

Very truly yours,

HILLSTROM & BALE, LTD.

William G. Bale

WGB:rjf

Water Technology Resources
10100 Morgan Avenue South
Bloomington, MN 55431
(612) 881-6284

March 18, 1988

Mrs. Marcia Gelpe
MINNESOTA POLLUTION CONTROL AGENCY
520 Lafayette Road
St. Paul, Minnesota 55155

Re: Privatization of Wastewater Treatment Facilities (WWTF)

Dear Mrs. Gelpe:

At the December 15, 1987 meeting of the Sub-Committee which you chair, you asked why under Privatization, a company could engineer, design and construct a WWTF "cheaper" than the "Conventional" methods used for the past (20) years.

The term "cheaper" carries a connotation suggesting a marginal facility, perhaps with inferior equipment. This is not the case. In the two projects we have bid under Privatization, we exceeded the standards of quality associated with the "Conventional" System.

One very appropriate comment reversed the question and asked "Why is the "Conventional System more expensive than a Privatization system?" This a very legitimate question.

This attached document will discuss why Privatization can result in substantial savings over the " Conventional" System, which involves procedures required with the EPA Federal Construction Grants Program, in effect since 1972.

The discussion is organized into two parts:

- General Reasons
- Specific Case Histories

GENERAL REASONS

There are a number of general reasons why costs can be reduced through Privatization in comparison with the Conventional procurement systems.

A) Federal EPA Involvement

Numerous articles have been written by engineers, and contractors suggesting that, with elimination of certain cumbersome rules and regulations imposed and required as a result of EPA Federal Bureaucracy involvement, savings of 20-30% could be realized.

A well respected local consulting engineer, stated in an Industry publication that 30-40% of a project cost can be attributed to having to comply with and provide documentation to the Federal Government, in order to qualify for a Federal Grant.

Some of the EPA requirements include:

1) Duplicity of facilities throughout the project.
2) Facility Plan.
3) Environmental Impact Study.
4) Environmental Assessment.
5) Full time inspection.
6) MBE participation.
7) WBE participation.
8) EEO Compliance.
9) A myriad of reporting forms and documents and endless red tape and delays.

B) MPCA Involvement

In conjunction with EPA funding requirements, the State MPCA has had to provide extra services and duties.

Although these do not add to a project's cost directly, they do indirectly in the form of added time and costs to consulting engineers and contracting firms.

It has been suggested, and I believe supported by some MPCA personnel, that substantially less MPCA Administrative Review may be required under Privatization. Some of the tasks which may be eliminated, include:

1) Eligibility Determinations (required by EPA).
2) Review of Procurement and Competitive Bidding Compliance.
3) User Charge System review and approval.
4) Cost Effective Analysis.
5) Extensive examination of treatment alternatives, involving three to four different studies.

Relaxing or eliminating some of these requirements will result in savings to the MPCA, consulting engineer and contractor. The saving of time would significantly affect cost savings.

It is our feeling and recommendation that MPCA must still be involved, but to a lesser degree. MPCA should provide a prompt technical review and confirm the following:

1) That appropriate project design criteria is being applied, (flow, wastewater characteristics, effluent requirements).

2) Evaluate the wastewater treatment process proposed, to satisfy themselves that it has the capability to consistently meet permit standards for a reasonable period of time.

3) Continue to monitor the operation of the facility, verify compliance of effluent standards and provide assistance to the Communities where requested to do so.

Note here that we encourage the use of innovative and alternative technologies, but would strongly discourage treatment processes which have proven to be overstated. We believe the MPCA has the experience and knowledge and should question technology which is unproven, or has been proven to be unreliable.

The wastewater treatment market is one of high profile and as such, has attracted a number of opportunists whose goal may be to make a quick buck and then disappear. On the other hand, there are plenty of well established, experienced firms who will remain in business and be available to service their work. It is our opinion that some Municipalities do not have the expertise and experience to recognize and differentiate between these two types of companies and that MPCA should raise the question to these Communities.

C) Design Flexibility

Federal Regulations require that funded municipalities build plants sized for projected populations at some future date, usually (20) years.

The new State regulations exempt communities of less than 1500 population from this requirement, although they still must meet applicable water quality standards. This allows very small communities, usually located in rural areas, to build only those facilities that are essential to their needs.

There are approximately (85) minor municipalities in need of major capital improvements who will not meet the July 1, 1988 deadline for compliance. Of these (85) communities, approximately 67% have a population of less than 1000. And in reality, many of these rural communities are decreasing in population.

Also can

Therefore, these communities can build to fit their realistic needs and not some future unknown need. If an Industry moves into town, or if the population should increase, then they will need to make adjustments to their facilities at that time. This is understood and accepted as standard practice.

D) Tax Incentives

There are various tax incentives, available to private investors but not to municipalities, that make cheaper money available to finance the project. Investment tax credits, depreciation deductions and other tax advantages still attract private investors, even though the recent new tax laws have taken some of the incentive away. We still see an interest and willingness to participate by well established bonding companies such as Miller-Schroeder and Juran & Moody, etc.

The lower interest rates made available through these channels result in sizeable cost savings to the communities.

E) Time Savings

The Privatization process enables a significant saving of time which results in cost savings because of lower escalation costs, lower interim financing, earlier completion dates and quicker compliance by a Municipality.

State Representative Dan Valento wrote an article appearing in a recent issue of the Minnesota Municipalities publication. The article outlined findings from a major research project which evaluated the MPCA wastewater treatment grants program.

The most severe criticism from City officials was that MPCA rules and technical requirements resulted in costly delays. A typical case was cited wherein one City completed its Step 1 facilities plan in 1972, with an estimated cost of $3 million. I am not certain of

why the project was delayed, perhaps no funding was available, but by 1979, additional technical requirements were imposed which increased the estimated projects costs to $9.5 million. And when the project eventually went to bid, the cost was $15.5 million. This was over five times the original estimate. Local sewer rates went up 60 percent in 1985 and were scheduled to increase another 75 percent in 1986.

Delays, for whatever reason, have a great impact on a project's cost. This has affected many municipalities who, if sufficient grant money were available, would have received a 90% grant, but now may only receive 50%.

Note: We are aware of two communities who have taken bids under Privatization procedures. Bids received by both communities (Belview and Spring Grove) resulted in substantial cost savings. However, because the Privatization rules and regulations are not complete, neither community is proceeding, until they can be assured grant assistance from the Privatization fund allocated by legislation passed by the State some time ago.

It is absolutely imperative that MPCA treat this top priority so that these communities can protect the bid prices they received, and not experience increased costs because of time delays.

F) Efficiencies

A Privatizer consists of a partnership team of experienced firms which perform all of the required tasks to build a facility. The team consists of: engineers, financers, lawyers, contractors and equipment suppliers.

They work together closely and efficiently as that insures the greatest profitability and return on their investment of time and money.

In the conventional system, the same functions are performed by different firms, with no partnership. In reality the parties usually become adversaries, each suspecting the other of not doing their job, making too much money or failing to comply with the contract documents.

G) Bidding Process

In the Conventional process, sealed bids are opened and the low bidder is normally awarded the contract. Contractors must bid to plans and specifications which are often too restrictive. If the plans are ambiguous or contain uncertainties, contractors must add money for contingencies.

In the Privatization process, the engineer, contractor and equipment supplier work together as a partnership. Although sealed bids are received, the owner is free to negotiate with any or all of the bidders. They can foster additional competition and maximize the Cities bargaining position.

The foregoing are some of the reasons which contribute to the Privatization Process' ability to be more competitive. Following are two examples of projects bid through the Privatization Process.

A) Belview, Minnesota

Requests for Proposals were accepted by the City on October 1, 1987. Two Proposals were received:

- Water Technology Resources (WTR) $318,313
- EcoloMasters $320,000

The City turned the bids over to its City Engineer for evaluation and recommendation. It was recommended the City select WTR's Proposal, subject to funding availability under the Privatization program.

WTR's Proposal was also reviewed and evaluated by the MPCA. Although we have had no formal comments from MPCA, we believe they found our Proposal to be acceptable.

In our design, we used a tried and proven process (Trickling Filter). Our Proposal was based on the highest quality equipment available, as it is our responsibility to operate, maintain and service the plant for an extended period of time.

Belview had been considering, for some time, various alternatives for bringing their wastewater treatment system into compliance.

Belview had hired a consulting engineering firm in 1979 to prepare a Step I Facilities Plan. The engineering report evaluated three alternative methods of treatment:

	1979 $
1) Oxidation Ditch	$555,000
2) Aerated Stabilization Ponds	$513,000
3) Conventional Stabilization Ponds	$522,000

Alternative #3 was recommended. The City did not proceed in 1979. The City was opposed to building a stabilization pond primarily because of surrounding farm owners' objections.

In order to compare WTR's proposed cost ($318,313) one would have to escalate the engineer's 1979 estimate $522,000 to present day costs.

B) Spring Grove, Minnesota

Requests for Proposals were accepted by the City on June 24, 1987. We have never been informed of the actual bid costs but understood them to be approximately as follows:

Company "A"	$550,000
WTR	$645,900
Company C	$400,000+

It is our understanding Company "A" and "C" both bid activated sludge designs. We based our design on a trickling filter system which is what Spring Grove presently has operated for the past (20) years. Of course, our Proposal was based on all new high quality equipment and a proven process with greater capacity, designed to meet the MPCA effluent criteria. Top grade equipment and a proven reliable process was the basis of our proposal.

It is our understanding the City has tabled any action until they are able to determine if they will receive Privatization grant money.

The savings, as a result of the Privatization bids, are very significant.

The City has had a number of studies done by various consulting engineering firms.

A Facilities Plan in 1985 recommended an Oxidation Ditch with estimated capital cost of $1,142,500. We understand this estimate was subsequently upgraded, in 1987, to over $2 million. We also understand this figure was reduced to approximately $1.6 million, after it was learned the City was interested in Privatization.

The savings, as a result of the Privatization bids, are very significant.

We do not feel our prices are too low. We are very comfortable with them and feel we would make a decent return on our investment. And, again we agreed to enter into a long time service contract.

We cannot fully explain the huge difference in costs between Privatization and Conventional systems of bidding. We believe a significant part of it has to do with the added requirements of EPA funded projects, and, perhaps the various parties involved want too much for their services (engineering, legal, construction).

We would be very pleased to meet with you to review our Proposals and answer any questions. Please feel free to contact us.

Cordially,

WATER TECHNOLOGY RESOURCES

Virg Muller

VM:av
attachment

WTR
Water Technology Resources

WALDOR PUMP

& EQUIPMENT CO.
9700 HUMBOLDT AVE. SO.
MINNEAPOLIS, MN. 55431
PHONE (612) 884-5394

March 25, 1988

Mrs. Marcia Gelpe
MINNESOTA POLLUTION CONTROL AGENCY
520 Lafayette Road
St. Paul, Minnesota 55155

Re: Privatization - Financing

Dear Mrs. Gelpe:

Attached is a letter from Miller and Schroeder Financial commenting on the effect of whether the cities receive the full grant amount (or not) at the onset.

It is our opinion the cities will work in a 20% retention of payment over a ten-year period to the Privatizer.

Our experience is that the cities' attorneys are very protective of the Cities interests and this will be reflected in the agreement.

Cordially,

WALDOR PUMP & EQUIPMENT COMPANY

Matt Waldor

Matt Waldor

MW:av
attachment

Toll Free Minnesota (800) 862-6002
Toll Free Other States (800) 328-6122

Miller & Schroeder Financial, Inc.

Northwestern Financial Center • 7900 Xerxes Avenue South • P.O. Box 789 • Minneapolis, Minnesota 55440 (612) 831-1500

JPdM

Mott

RECEIVED
MAR 25 1988
[illegible] CO.

March 24, 1988

Water Technology Resources
10100 Morgan Avenue South
Bloomington, Minnesota 55431

Gentlemen:

You have asked for my comments regarding the privatization rule proposed by the MPCA for allocation of grant money for water and waste water treatment facilities. The proposal is to disburse 80% of the grant money upon successful completion of the facility with the remaining 20% to be disbursed at the completion of the ten year term of the grant. It is our opinion that delaying the payment of 20% of the grant for 10 years significantly diminishes its economic value and may create financial hardships for some communities. I present the following points to support this opinion.

As a point of reference, I will use a total grant of $500,000 so 20% of the grant is $100,000, however, the analysis will be true regardless of amount. In today's market a municipality can issue ten year term tax-exempt private activity bonds with a net interest cost of approximately 7.00%.

- The value today of receiving $100,000 in ten years using a 7% discount rate is $50,835. One-half the value of the grant money is lost by waiting ten years to distribute these funds.

- Most municipalities will have to bond for their portion of the cost of the project <u>plus</u> the amount represented by they 20% of the grant which is delayed. On $100,000 at 7.00%, the City will pay $7,000/year in interest or $70,000 in interest prior to receiving the remaining grant money. The net grant is then actually $30,000 which has a value today of only $15,250

- If a community borrows the 20% grant amount, the interest to be paid on that borrowing comes from the City general funds or project revenues. In some communities, that additional expense may result in unacceptably high user rate or pressure the City's general fund.

The most economically efficient way to disburse the grant money is to distribute it up-front or in the shortest time possible. If a portion of the grant money must be withheld I suggest the money be given to the City to be held in escrow. This allows the City to earn interest on the money to offset their borrowing costs and it gives the City assurance that the funds will be available at the end of the ten year period.

If you have any questions or if I can be of any further assistance, please call me at 893-8542.

Sincerely,

MILLER & SCHROEDER FINANCIAL, INC.

Roxanne Rouleau

Roxanne Rouleau
Financial Consultant

MATTHEW J. LEVITT
COLE OEHLER
ROBERT M. BOWEN
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BURT E. SWANSON
M.J. GALVIN, JR.
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SAMUEL L. HANSON
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INCLUDING THE FORMER FIRM OF
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LEONARD J. KEYES
JOHN M. SULLIVAN

April 21, 1988

Ms. Sharon Meyer
Ms. Joan DeMeurisse
Minnesota Pollution
Control Agency
520 Lafayette Road
St. Paul, Minnesota 55155

Re: Capital Cost Component Grants

Dear Sharon and Joan:

I apologize for my inability to attend the TAC meeting on Thursday, April 21. I do hope to attend the MPCA Board Water Quality Committee meeting on Monday, April 25.

We did have a chance to review the April 19, 1988 draft of the Capital Cost Component Grant Program rule. Our comments on that draft are attached. Please do not hesitate to call me if you have any questions about our comments.

I also reviewed the TAC resolution adopted on March 29, 1988 proposing two alternatives for project review. Candidly, Alternative 2 appears to be unworkable. First, it seems to require MPCA review of the business terms of the Service Contract, which we think inappropriate in light of the general theory of Chapter 471A -- that municipalities and private vendors should be free to negotiate and agree to whatever business transaction seems to them appropriate. Second, Alternative 2 would require the Service Contract to provide for payment forfeitures during periods of violation of the NPDES permit, except where the violation is determined by the MPCA Board to result from an "act of God." It will, I think, be normal for Service Contracts to provide for interruption of payment to the private vendor during periods when the facility is not operating, or not operating in compliance with permit standards, although even that rule may have some exceptions. Payments might continue

at a reduced rate, for example, in order to avoid a default on underlying indebtedness. Beyond that, we think it inappropriate for the MPCA Board to be involved in resolving matters arising under specific contracts, for any reason.

If alternative 2 does find its way into the final rule, we think the consent provisions of 7075.2100 should be re-examined and probably revised.

Finally, I want to reiterate that the Capital Cost Component Grant Program will co-exist with private and municipal financing arrangements for the same projects. At this point, municipalities generally have better access to the capital markets than do the private vendors most likely to be involved in small city waste water treatment facilities. Minnesota law authorizes a broad array of financing mechanisms for municipal wastewater projects, and Chapter 471A explicitly authorizes the utilization of any of those mechanisms in connection with a privatized project. Despite what some vendors have said about their own ability to obtain financing, we feel strongly that the privatization grant rules should take account of the likelihood that municipal financing will be used in most (if not all) cases, and therefore the privatization grant rules should be designed to accommodate the realities and necessities of such financing.

Yours very truly,

Richard H. Martin

/004
Enclosure

M E M O R A N D U M

RE: **Capital Cost Component Grants Program**
MPCA Draft Rule

April 21, 1988

Attached is a copy of the April 19, 1988 draft rule for the Capital Cost Component Grants Program authorized by Minn. Stat. Section 116.18, Subd. 3b. This memorandum sets out Briggs and Morgan's comments on that draft rule.

7075.1130, Subp. 2. A new provision has been added here requiring an "engineering report" containing the information described in clauses (1) through (5). Our consistent recommendation to municipalities has been that just such a report should be done before a request for proposals is sent out. We agree that requiring an engineering report is appropriate.

This draft of the rule continues the provision contained in the prior draft requiring submission of the request for proposals, and copies of all proposals received in response to the RFP. We continue to believe that this should not be required, and that instead the municipality should be required to certify that it has complied with the procurement provisions of Minn. Stat. Ch. 471A. Our comments on the March 10, 1988 draft of the rule set out the specific language we suggest.

7075.1150. Subps. 1 and 2 replace the provisions of the March 10, 1988 draft, which would have grouped cities by population sizes. If we understand this new proposed system correctly, the PCA will prepare a list of all wastewater treatment projects for which bids have been accepted, and list them in order of population size. For the purpose of determining the amount of a privatization grant, the applicant city will be inserted into that list based on its population size, and the amount of its grant will then be 50% of the average grant amounts awarded to the ten projects which bracket the applicant city on that list. If that is so, such a system should eliminate many of the objections we had to the prior proposal.

Subpart 2 does limit the list to grant program funding during the three previous state fiscal years. As federal and state grant programs phase out in favor of loan programs, limiting the list to state and federal grant programs may, over time,

reduce the list to the point that it is no longer a reliable indicator of the appropriate privatization grant size. This problem could be cured in either of two ways: First, include on the list municipal waste water treatment projects which have accepted bids under state and federal construction grant or loan programs; or second, delete the limitation to the "three previous state fiscal years" so as to allow the list to go further back in time, if need be.

Subpart 3 limits the maximum grant such that no more than 50% of the total funds available go to any one municipality. Such a limitation is not expressly authorized by Minn. Stat. § 116.18, subd. 3b, although it is inherently sensible. Subpart 3 also limits grants to no more than 100% of the "actual cost of the new construction." If the intent is to limit grant amount by reference to "actual cost", then 7075.1170, subpart 1(B)(3) should be amended to cross-reference the certification of actual cost required by 7075.1190, Subp. 2. Since in all cases the private vendor will be responsible for design and construction, we think that certification should be made by the private vendor rather than by the municipality.

Also in subpart 3, we think it inappropriate to limit the grant amount to the actual cost of new construction. In some cases, the private vendor will be taking over an existing facility, and improving or upgrading it. Under Office Management and Budget Circular A-102, any federal grants then in place for such a facility must be repaid at the time of take-over by the private vendor. The grant repayment amount will thus become an additional capital cost of the facility. In addition, many municipalities will wish to sell the existing facility to the private vendor in order to recoup amounts invested by the municipality, and to acquire funds necessary to defease or redeem municipal debt issued for its share of the cost of the existing facility. Therefore, we suggest that the last sentence of subpart 3 be amended to read as follows:

> No grant shall exceed 100% of the actual cost of acquisition, and construction or improvement, of the waste water treatment facility.

7075.1170. In paragraph (C) there are provisions with respect to change orders which require prior approval under certain circumstances. Where the change is of an emergency nature, this provision requires that change orders nevertheless be submitted for "review and approval" within one month. The language leaves open the problem which will occur if an emergency change order is entered into and the work done, but the change order is later disapproved by PCA. That could lead to a harsh

result, and accordingly we recommend that the commissioners' power to disapprove an emergency change order be limited to a change which would make the facility incapable of meeting permit standards.

7075.1190. Subpart 2 requires documentation of "actual new construction costs incurred." For the reasons stated above, we think the word "new" should be deleted, and that the words "and acquisition" be added before the word "costs."

7075.2100. In light of the prior provisions requiring technical review and approval of complete plans and specifications, we think it inappropriate to provide for grant recoupment on the basis of improper design. Recouping grant funds on the basis of improper construction, or improper operation and maintenance, is different and more justifiable. "Improper", however, is a vague and undefined term which could lead to an unjust result. We think it would be more appropriate to provide for recoupment of grant funds only if any of the terms and conditions of the discharge permit are violated by reason of improper construction, or improper operation and maintenance.

As we have stated previously, it needs to be borne in mind that the essence of privatization is the shifting of risk for design, construction and operation from the public sector to the private sector. Accordingly, we think this provision of the rule should have a sentence added which explicitly permits the municipality to shift the financial risk of grant recoupment to the private vendor. Specifically, we suggest the addition of the following sentence:

> The municipality may provide in the service contract that the private vendor shall be solely responsible for repayment of grant funds.

Richard H. Martin

/003
Attachment

HILLSTROM & BALE, LTD.

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Technical Assistant

of Counsel
MARK S. ANDERSON

April 27, 1988

RECEIVED
APR 28 1988
M.P.C.A.
WATER QUALITY DIV

Ms. Joan deMeurisse
Program Support Unit
Municipal Wastewater Treatment Section
Minnesota Pollution Control Agency
520 Lafayette Road
St. Paul, MN 55155

RE: Draft Privitization Rules
Our File No. 1.2092

Dear Ms. DeMeurisse:

This letter follows up my conversation with you the afternoon of Monday, April 25, and shall constitute the comments and review of the proposed Rules for the Capital Cost Components Grants (Privitization) Program (draft dated April 19, 1988) by our client, Water Technology Resources of Bloomington, Inc.

We believe that Provision 7075.2100 "Recovery of Funds" should be deleted in its entirety. The concept is quite unworkable. The grant funds will pass from the State of Minnesota to the municipality. [Let's assume that it is $500,000.00.] The municipality will pay the funds to the privatizor through a disbursing agent to pay for labor and materials to construct the facility. Accordingly, the municipality will have spent the money and the privatizor using the privatizor's escrow agent will have spent the money, all for the purpose of building the wastewater treatment facility. Now we have in place a "paid for" wastewater treatment facility. If this were a private transaction, the issue of improper design and/or improper construction would have been handled during the design stage and the construction phase with engineers and inspecting engineers and no private lender would claim to have the right to recover its loan money after it has been disbursed if at a later date it learns that the project has been improperly designed or improperly constructed.

The municipality is going to be unwilling to give back to you $500,000.00. It has signed a lease for the facility with the privatizor. The privatizor is going to be unwilling to give you

* Admitted in Minnesota, Illinois, California and Texas
** Admitted in Minnesota and Wisconsin

$500,000.00. It has spent the money to build the facility and it is that facility that must be made to work since it is the only facility for the municipality and the privatizor requires that the municipality continue to use it as a wastewater treatment facility or the privatizor owns something that would be clearly a "white elephant". The bottom line is that you cannot expect to get your grant funds back if it is discovered after the testing and acceptance by the municipality that the project is improperly designed and improperly constructed. Acceptance by the municipality is alone enough to commit all parties to making the facility work properly, and no lender, privatizor or municipality is going to want to be liable to refund the money in the event of latent defects.

The foregoing points have even more force in connection with the language "improperly operated and maintained". Clearly, if something is being improperly operated and maintained, you fire the operator and hire someone to properly operate and maintain the plant, rather than cause a forfeiture and return of the original grant funds.

We believe that merely by discussing this provision its impracticality becomes obvious. Such a provision will operate to stagnate the privatization process.

The next provision we feel needs to be discussed is Paragraph G under 7075.1170 Grant Conditions. This provision sets forth the two month certification which must be made by the municipality. to the commissioner before 80% of the grant funds are paid to the municipality. The way a privatized project is financed and built is that the municipality and the privatizor negotiate a service contract. The service contract contains a provision for testing of the facility and acceptance by the municipality. This testing and acceptance is customarily no longer than 30 days from completion of construction. Accordingly, if it takes six months to build the wastewater treatment facility, it will take one month longer for testing and acceptance and the privatizor can expect that service contract payments will start seven months from date of construction. These exact dates are important in arranging the construction financing and the end loan financing. Both the construction finance company and the end loan finance company, for planning purposes, need to know how long it will be before the municipality will start making payments on the facility. This cannot be a vague point in time. It must be a fairly specific point in time. Under my example, it could be represented to the end lenders by the privatizor that lease payments would start seven months from start of construction.

With the foregoing as a background, we turn to the language in Subparagraph G. It states that the municipality must certify to the commissioner that the wastewater treatment facility has met

its established permit conditions for two consecutive calendar months. The first concern is whether this test can be met at all. Will there be adequate flow to meet the established permit conditions? As between the privatizor and the municipality, they will negotiate the testing process and the acceptance standard based upon the particular circumstances facing that municipality. The test may be that all of the equipment has to operate at a certain level of performance for two weeks, with no shutdowns, as opposed to two consecutive months.

We believe that 80% of the grant money should be paid and be available when the service contract calls for the first payment to start by the municipality. For example, if the facility has met the testing standards and the acceptance standard set forth in the service contract, and the municipality is required to make service payments to the privatizor, then at that time 80% of the grant funds should be available so to allow the municipality to make those payments to the privatizor to reduce the construction loan.

Accordingly, we think Paragraph G should read as follows:

> "G. Acceptance/certification. The municipality shall have accepted the water treatment facility pursuant to the terms of the executed service contract. As an alternative, and if practical based upon available flow and design criteria, the municipality may certify to the commissioner that the wastewater treatment facility has met its established permit conditions for one month following project completion."

Very truly yours,

HILLSTROM & BALE, LTD.

William G. Bale

WGB:rjf

cc: Water Technology Resources of Bloomington, Inc.
Miller & Schroeder Financial, Inc.