

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

ATTORNEY GENERAL

December 15, 1988

BEVERLY CONFERTON
Special Assistant
Attorney General

JULIE A. LEPPINK
Special Assistant
Attorney General

6-9422

In the Matter of the Adopted Rule Relating to
Water Pollution Control and Revolving Fund

The above-referenced rule has been approved as to its legality by the Attorney General on December 12, 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 accordance 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

File No. 1-116 Docket No. 05-0009-0698

DATE RECEIVED 12/2/88 ADOPTED W/O HEARING N

REVIEW DATE 12/12/88 EMERGENCY RULE _____

DUE DATE 12/16/88 REVISOR APPROVED _____

APPROVED 12/12/88 REVISOR DISAPPROVED _____

DISAPPROVED _____ FILED W/SEC. OF STATE _____

WITHDRAWN _____ RETURNED TO AGENCY _____

✓ Rule as adopted (4 copies)

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

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

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

✓ Board's Authorizing Resolution

8/23/88 Date adopted

✓ Proposed Rule

yes Revisor's Certificate

✓ Notice of Intent to Adopt Rule

446A.07(11) 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
NA Fees - § 16A.128

✓ Affidavit of Mailing Notice of Intent to Adopt Rule

9/15/88 Date (30)/25 days before adoption
✓ Notice attached
_____ ~~Copy of rule or summary attached~~

✓ Publication in State Register

9/19/87 Date (30)/25 days before adoption

_____ 180-day deadline from:

10/19/88 end of comment period (§ 14.26) (rules without hearing)
_____ ~~effective date of statutory authority (§ 14.29) (emergency rules)~~

✓ Resolution Adopting

11/22/88 Date adopted

✓ Findings of Fact, Conclusions & Order Adopting

11/22/88 Date

✓ Written requests, submissions or comments (6)

✓ Declaration of attorney

Bev 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

Adopted Permanent Rules Relating to Water Pollution Control Revolving Fund

Rules as Adopted

WATER POLLUTION CONTROL REVOLVING FUND PROGRAM

7075.2505 PURPOSE.

The water pollution control revolving fund program provides loans and other forms of financial assistance to municipalities for the construction of publicly owned wastewater treatment facilities according to the provisions of Title VI of the Federal Water Pollution Control Act and Minnesota Statutes, section 446A.07. The program is jointly administered by the Minnesota Pollution Control Agency and the Minnesota Public Facilities Authority. Parts 7075.2505 to 7075.2550 provide for the agency's responsibilities for the administration of the program.

7075.2510 DEFINITIONS.

Subpart 1. **Scope.** For the purpose of parts 7075.2505 to 7075.2550, the following terms have the meanings given them. Other terms defined in part 7075.0200 have the meanings given in that part.

Subp. 2. **Act.** "Act" means ~~Title VI of~~ the Federal Water Pollution Control Act, United States Code, title 33, sections ~~1381-1387~~ 1251-1387.

Subp. 3. **Agency.** "Agency" means the Minnesota Pollution Control Agency.

Subp. 4. **Authority.** "Authority" means the Minnesota Public Facilities Authority.

Subp. 5. **Commissioner.** "Commissioner" means the commissioner of the Minnesota Pollution Control Agency.

Subp. 6. **Intended use plan.** "Intended use plan" means the document ~~that lists eligible projects proposed to be funded in a particular federal fiscal year from funds available in the water~~

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~~pollution-control-revolving-fund~~ prepared annually by the agency according to the requirements in Title VI of the act and submitted to the United States Environmental Protection Agency. The plan will identify the intended uses of the amounts available to the water pollution control revolving fund, including a list of wastewater treatment projects and other eligible activities to be funded during the fiscal year.

Subp. 7. **Municipal needs list.** "Municipal needs list" means the list developed and maintained by the agency according to part 7075.0402 that lists in priority order municipalities that have a need for new or upgraded wastewater disposal systems.

Subp. 8. **Municipality.** "Municipality" means any county, city, or town, the Metropolitan Waste Control Commission established in Minnesota Statutes, chapter 473, the Metropolitan Council when acting under that chapter or an Indian tribe or an authorized Indian tribal organization, and any other governmental subdivision of the state responsible by law for the prevention, control, and abatement of water pollution in any area of the state.

7075.2515 INTENDED USE PLAN.

Subpart 1. **Adoption of intended use plan.** The agency shall annually adopt an intended use plan based upon the requests received under subpart 3. The agency will amend the intended use plan to add additional eligible projects as necessary.

Subp. 2. **Eligibility.** To be eligible for placement on the intended use plan, a municipality's project must be listed on the current municipal needs list or, if the municipality is seeking refinancing, the project must have been listed on the municipal needs list before the beginning of construction and meet the requirements of Minnesota Statutes, section 446A.07, subdivision 8, clause (1).

Subp. 3. **Requirements for placement on the intended use plan.** To be placed on the intended use plan, a municipality must meet the requirements of items A and B.

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A. The municipality must submit to the commissioner a written request for placement on the intended use plan that includes:

(1) a brief description of the project for which financial assistance is sought;

(2) a project cost estimate; and

(3) a proposed project schedule, including the date for submittal of a complete financial assistance application in conformance with the requirements of part 7075.2520.

B. For a Step 3 project, a municipality must first receive the commissioner's approval of its facilities plan before it will be placed on the intended use plan. If the municipality is proposing to change the selected treatment method or any other major element of a previously approved facilities plan, the municipality must receive the commissioner's approval of a facilities plan addendum.

7075.2520 APPLICATIONS.

Subpart 1. **Timing and form of application.** A municipality identified on the intended use plan may submit an application for financial assistance according to the municipality's schedule submitted under part 7075.2515, subpart 3, item A, subitem (3). Applications must be submitted to the executive director of the authority on forms provided by the authority.

Subp. 2. **Step 1 financial assistance.** In addition to any other information required by the authority, a municipality applying for Step 1 financial assistance shall include the following items for the commissioner's review and approval as part of its application:

A. a plan of study outlining the scope of work that will lead to an approvable facilities plan;

B. a schedule for completion of the facilities plan;

C. an engineer's certificate of adequate errors and omissions insurance; and

D. if more than one municipality is involved in the

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application, the municipalities shall submit an agreement indicating their intent to participate in joint treatment, outlining each municipality's responsibilities during planning and setting forth the cost-sharing methodology.

Subp. 3. **Step 2 financial assistance.** In addition to any other information required by the authority, a municipality applying for Step 2 financial assistance shall include the following items for the commissioner's review and approval as part of its application:

A. a schedule for completion of all Step 2 work;

B. an engineer's certificate of adequate errors and omissions insurance;

C. a treatment agreement for each major contributing industry that will discharge wastewater to the new or upgraded system; and

D. if more than one municipality is involved in the application, the requirements of items A to C must be submitted for each municipality involved in the project. In addition, the municipalities shall submit an unexecuted intermunicipal agreement that sets forth the terms and conditions of joint treatment and the cost-sharing methodology.

Subp. 4. **Step 3 financial assistance.** In addition to any other information required by the authority, a municipality applying for Step 3 financial assistance shall include the following items for the commissioner's review and approval as part of its application.

A. Project plans and specifications including documents that contain the requirements under which a bidder submits a bid for performing the work and the contractual requirements and detailed requirements. The documents that comprise the plans and specifications must conform to generally accepted engineering practices, applicable state statutes and rules, and applicable requirements of the act.

B. A sewer service charge system comprised of a user charge system and a system providing for dedicated sources of revenue to pay for the municipality's costs of construction and

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to retire the municipality's debt costs attributable to the wastewater treatment works to be constructed. The user charge system must ensure the sufficient generation of revenue to offset the annual costs of operation, maintenance, and replacement of the treatment works and must charge each user class a fee proportional to the contribution of each user class to the total wastewater loading. The user classes include residential, commercial, industrial, institutional, and governmental classes. The system providing for dedicated sources of revenue to pay for the municipality's costs of construction and to retire the municipality's debt costs need not be proportionally assessed against each user class, but the manner in which the charge will be distributed must be described.

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

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

E. A schedule for completion of all Step 3 work.

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

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

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

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H. An ~~unexecuted~~ engineering contract for all Step 3 work.

I. A certification from the municipality that its consulting engineer or the engineer's agent will be present on site during the hours of construction for purposes of inspection and will submit written reports to the agency upon request describing the type of construction inspected and the time involved in inspection after construction commences.

J. A certification from the municipality that its consulting engineer will provide the following services during the first year following initiation of operation:

(1) direct the operation of the project and revise the operation and maintenance manual as necessary to accommodate actual operating experience;

(2) train or provide for training of operating personnel and prepare curricula and training material for operating personnel;

(3) revise the operation and maintenance manual based on actual operating experience obtained during the one-year start-up period; and

(4) advise the municipality whether the project is meeting the project performance standards.

K. A certification from the municipality that it will comply with the performance certification requirements in part 7075.2545.

L. A treatment agreement with each major contributing industry that will discharge wastewater to the new or upgraded system.

M. A cost breakdown of all project work to be funded under the revolving fund program.

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

7075.2525 APPLICATION CERTIFICATION.

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Subpart 1. **Step 1 projects.** Upon review and approval of the documents required by part 7075.2520, subpart 2, ~~the commissioner shall certify to the authority~~ and a determination that the project meets the applicable requirements of the act, federal regulations, state statutes, and this chapter, the commissioner shall certify the application to the authority.

Subp. 2. **Step 2 projects.** Upon review and approval of the documents required by part 7075.2520, subpart 3, ~~the commissioner shall certify to the authority~~ and a determination that the project meets the applicable requirements of the act, federal regulations, state statutes, and this chapter, the commissioner shall certify the application to the authority.

Subp. 3. **Step 3 projects.** Upon review and approval of the documents required by part 7075.2520, subpart 4, ~~and~~ completion of items A and B, ~~the commissioner shall certify to the authority~~ and a determination that the project meets the applicable requirements of the act, federal regulations, state statutes, and this chapter, the commissioner shall certify the application to the authority.

Substantial change? Or new requirement? Add.

A. The environmental review ~~process in~~ requirements of chapter 4410 ~~and~~, Minnesota Statutes, chapter 116D ~~has~~, and title VI of the act have been satisfactorily ~~completed~~ met.

B. The municipality has obtained a state disposal system permit and, if necessary, a national pollutant discharge elimination system permit from the agency for the project.

7075.2530 CHANGE ORDERS.

A municipality proposing to make changes in a project that substantially alters the type or reliability of the treatment process shall submit to the commissioner such information as the commissioner requires to determine the impact of the proposed change on the environment. Changes in the project that substantially alter the type or reliability of the treatment process must be approved by the commissioner before the change is made. The commissioner shall review the proposed change in the same manner as the original project was reviewed for

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compliance with applicable pollution control requirements. A substantial change in the type or reliability of the treatment process implemented without prior approval from the commissioner constitutes grounds for the commissioner to request that the authority terminate the loan agreement.

Change orders for changes that do not substantially alter the type or reliability of the treatment process do not require prior approval of the commissioner, but must be submitted to the commissioner as soon as possible.

7075.2535 INSPECTIONS.

The commissioner may conduct inspections of the municipality's project under Minnesota Statutes, section 115.03, subdivision 1, paragraph (f).

7075.2540 STEP 3 REPORTING REQUIREMENTS.

Subpart 1. **Sixty days before completion of construction.** At least 60 days before the scheduled contract date for completion of construction, the municipality shall submit to the commissioner:

A. evidence that the municipality has hired a wastewater treatment works operator having a valid state certificate; and

B. an operation and maintenance manual for the commissioner's approval.

Subp. 2. **Within 45 days following completion of construction.** No later than 45 days after the completion of construction, the municipality shall submit to the commissioner:

A. a certification by the contractor that the project was built according to the approved plans and specifications and change orders;

B. evidence that the agency approved sewer use ordinance and the sewer service charge system with updated cost revisions have been adopted; and

C. two copies of the as-built plans and specifications on microfiche.

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7075.2545 PERFORMANCE CERTIFICATION.

Subpart 1. **Notification of initiation of operation.** The municipality shall notify the commissioner, in writing, of the project's initiation of operation date within ten days following initiation of operation.

Subp. 2. **One year after initiation of operation.** One year after the initiation of operation of the project, the municipality shall submit to the commissioner the following items:

A. a certification stating whether the project meets the performance standards identified in the permit;

B. a start-up evaluation report describing the performance of the project; and

C. a revised operation and maintenance manual based on actual operating experience obtained during the one-year start-up period.

Subp. 3. **Corrective action report.** If the commissioner or the municipality determines that the project does not meet the project performance standards identified in the permit, the municipality shall submit a corrective action report that includes:

A. an analysis of the project's failure to meet the performance standards;

B. an estimate of the nature, scope, and cost of the corrective action necessary to bring the project into compliance; and

C. a schedule for undertaking, in a timely manner, the corrective action necessary to bring the project into compliance.

7075.2550 REQUEST TO WITHHOLD FINANCIAL ASSISTANCE PAYMENTS.

Failure of a municipality's project to conform substantially to approved plans and specifications or failure of a municipality to comply with the requirements of part 7075.2540 or 7075.2545 constitutes grounds for the commissioner to request that the authority withhold payments to the municipality. Once

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an agreement for correcting the condition leading to the withholding of funds is reached between the commissioner and the municipality, the commissioner will recommend to the authority that the retained funds be released according to the provisions in the agreement.

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
DEC 14 ...
Secretary of State

Approved by Revisor CMR

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
DEC 14 1988
Joan Anderson Growe
Secretary of State
2:55 pm

APPROVED AS TO FORM AND LEGALITY
December 12 19 88
HUBERT H. HUMPHREY, III
ATTORNEY GENERAL
BY
SPECIAL ASSISTANT ATTORNEY GENERAL

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 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 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 amendments to rules, Minn. Rules Parts 7075.2005 to 7075.2055, 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. Section 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 an 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 23rd day of August 1988.

Gerald L. Willet
Commissioner

Pollution Control Agency

Proposed Permanent Rules Relating to Water Pollution Control Revolving Fund

Rules as Proposed (all new material)

WATER POLLUTION CONTROL REVOLVING FUND PROGRAM

7075.2505 PURPOSE.

The water pollution control revolving fund program provides loans and other forms of financial assistance to municipalities for the construction of publicly owned wastewater treatment facilities. The program is jointly administered by the Minnesota Pollution Control Agency and the Minnesota Public Facilities Authority. Parts 7075.2505 to 7075.2550 provide for the agency's responsibilities for the administration of the program.

7075.2510 DEFINITIONS.

Subpart 1. **Scope.** For the purpose of parts 7075.2505 to 7075.2550, the following terms have the meanings given them. Other terms defined in part 7075.0200 have the meanings given in that part.

Subp. 2. **Act.** "Act" means Title VI of the Federal Water Pollution Control Act, United States Code, title 33, sections 1381-1387.

Subp. 3. **Agency.** "Agency" means the Minnesota Pollution Control Agency.

Subp. 4. **Authority.** "Authority" means the Minnesota Public Facilities Authority.

Subp. 5. **Commissioner.** "Commissioner" means the commissioner of the Minnesota Pollution Control Agency.

Subp. 6. **Intended use plan.** "Intended use plan" means the document that lists eligible projects proposed to be funded in a particular federal fiscal year from funds available in the water pollution control revolving fund.

Subp. 7. **Municipal needs list.** "Municipal needs list"

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means the list developed and maintained by the agency according to part 7075.0402 that lists in priority order municipalities that have a need for new or upgraded wastewater disposal systems.

Subp. 8. **Municipality.** "Municipality" means any county, city, or town, the Metropolitan Waste Control Commission established in Minnesota Statutes, chapter 473, the Metropolitan Council when acting under that chapter or an Indian tribe or an authorized Indian tribal organization, and any other governmental subdivision of the state responsible by law for the prevention, control, and abatement of water pollution in any area of the state.

7075.2515 INTENDED USE PLAN.

Subpart 1. **Adoption of intended use plan.** The agency shall annually adopt an intended use plan based upon the requests received under subpart 3. The agency will amend the intended use plan to add additional eligible projects as necessary.

Subp. 2. **Eligibility.** To be eligible for placement on the intended use plan, a municipality's project must be listed on the current municipal needs list or, if the municipality is seeking refinancing, the project must have been listed on the municipal needs list before the beginning of construction and meet the requirements of Minnesota Statutes, section 446A.07, subdivision 8, clause (1).

Subp. 3. **Requirements for placement on the intended use plan.** To be placed on the intended use plan, a municipality must meet the requirements of items A and B.

A. The municipality must submit to the commissioner a written request for placement on the intended use plan that includes:

(1) a brief description of the project for which financial assistance is sought;

(2) a project cost estimate; and

(3) a proposed project schedule, including the date for submittal of a complete financial assistance

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application in conformance with the requirements of part 7075.2520.

B. For a Step 3 project, a municipality must first receive the commissioner's approval of its facilities plan before it will be placed on the intended use plan. If the municipality is proposing to change the selected treatment method or any other major element of a previously approved facilities plan, the municipality must receive the commissioner's approval of a facilities plan addendum.

7075.2520 APPLICATIONS.

Subpart 1. **Timing and form of application.** A municipality identified on the intended use plan may submit an application for financial assistance according to the municipality's schedule submitted under part 7075.2515, subpart 3, item A, subitem (3). Applications must be submitted to the executive director of the authority on forms provided by the authority.

Subp. 2. **Step 1 financial assistance.** In addition to any other information required by the authority, a municipality applying for Step 1 financial assistance shall include the following items for the commissioner's review and approval as part of its application:

A. a plan of study outlining the scope of work that will lead to an approvable facilities plan;

B. a schedule for completion of the facilities plan;

C. an engineer's certificate of adequate errors and omissions insurance; and

D. if more than one municipality is involved in the application, the municipalities shall submit an agreement indicating their intent to participate in joint treatment, outlining each municipality's responsibilities during planning and setting forth the cost-sharing methodology.

Subp. 3. **Step 2 financial assistance.** In addition to any other information required by the authority, a municipality applying for Step 2 financial assistance shall include the following items for the commissioner's review and approval as

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by Revisor _____

part of its application:

A. a schedule for completion of all Step 2 work;

B. an engineer's certificate of adequate errors and omissions insurance;

C. a treatment agreement for each major contributing industry that will discharge wastewater to the new or upgraded system; and

D. if more than one municipality is involved in the application, the requirements of items A to C must be submitted for each municipality involved in the project. In addition, the municipalities shall submit an unexecuted intermunicipal agreement that sets forth the terms and conditions of joint treatment and the cost-sharing methodology.

Subp. 4. **Step 3 financial assistance.** In addition to any other information required by the authority, a municipality applying for Step 3 financial assistance shall include the following items for the commissioner's review and approval as part of its application.

A. Project plans and specifications including documents that contain the requirements under which a bidder submits a bid for performing the work and the contractual requirements and detailed requirements. The documents that comprise the plans and specifications must conform to generally accepted engineering practices, applicable state statutes and rules, and applicable requirements of the act.

B. A sewer service charge system comprised of a user charge system and a system providing for dedicated sources of revenue to pay for the municipality's costs of construction and to retire the municipality's debt costs attributable to the wastewater treatment works to be constructed. The user charge system must ensure the sufficient generation of revenue to offset the annual costs of operation, maintenance, and replacement of the treatment works and must charge each user class a fee proportional to the contribution of each user class to the total wastewater loading. The user classes include residential, commercial, industrial, institutional, and

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governmental classes. The system providing for dedicated sources of revenue to pay for the municipality's costs of construction and to retire the municipality's debt costs need not be proportionally assessed against each user class, but the manner in which the charge will be distributed must be described.

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

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

E. A schedule for completion of all Step 3 work.

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

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

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

H. An unexecuted engineering contract for all Step 3 work.

I. A certification from the municipality that its consulting engineer or the engineer's agent will be present on site during the hours of construction for purposes of inspection and will submit written reports to the agency upon request describing the type of construction inspected and the time involved in inspection after construction commences.

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J. A certification from the municipality that its consulting engineer will provide the following services during the first year following initiation of operation:

(1) direct the operation of the project and revise the operation and maintenance manual as necessary to accommodate actual operating experience;

(2) train or provide for training of operating personnel and prepare curricula and training material for operating personnel;

(3) revise the operation and maintenance manual based on actual operating experience obtained during the one-year start-up period; and

(4) advise the municipality whether the project is meeting the project performance standards.

K. A certification from the municipality that it will comply with the performance certification requirements in part 7075.2545.

L. A treatment agreement with each major contributing industry that will discharge wastewater to the new or upgraded system.

M. A cost breakdown of all project work to be funded under the revolving fund program.

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

7075.2525 APPLICATION CERTIFICATION.

Subpart 1. **Step 1 projects.** Upon review and approval of the documents required by part 7075.2520, subpart 2, the commissioner shall certify to the authority that the project meets the applicable requirements of the act, federal regulations, state statutes, and this chapter.

Subp. 2. **Step 2 projects.** Upon review and approval of the documents required by part 7075.2520, subpart 3, the commissioner shall certify to the authority that the project

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meets the applicable requirements of the act, federal regulations, state statutes, and this chapter.

Subp. 3. **Step 3 projects.** Upon review and approval of the documents required by part 7075.2520, subpart 4, and completion of items A and B, the commissioner shall certify to the authority that the project meets the applicable requirements of the act, federal regulations, state statutes, and this chapter.

A. The environmental review process in chapter 4410 and Minnesota Statutes, chapter 116D has been satisfactorily completed.

B. The municipality has obtained a state disposal system permit and, if necessary, a national pollutant discharge elimination system permit from the agency for the project.

7075.2530 CHANGE ORDERS.

A municipality proposing to make changes in a project that substantially alters the type or reliability of the treatment process shall submit to the commissioner such information as the commissioner requires to determine the impact of the proposed change on the environment. Changes in the project that substantially alter the type or reliability of the treatment process must be approved by the commissioner before the change is made. The commissioner shall review the proposed change in the same manner as the original project was reviewed for compliance with applicable pollution control requirements. A substantial change in the type or reliability of the treatment process implemented without prior approval from the commissioner constitutes grounds for the commissioner to request that the authority terminate the loan agreement.

Change orders for changes that do not substantially alter the type or reliability of the treatment process do not require prior approval of the commissioner, but must be submitted to the commissioner as soon as possible.

7075.2535 INSPECTIONS.

The commissioner may conduct inspections of the municipality's project under Minnesota Statutes, section 115.03,

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subdivision 1, paragraph (f).

7075.2540 STEP 3 REPORTING REQUIREMENTS.

Subpart 1. **Sixty days before completion of construction.** At least 60 days before the scheduled contract date for completion of construction, the municipality shall submit to the commissioner:

A. evidence that the municipality has hired a wastewater treatment works operator having a valid state certificate; and

B. an operation and maintenance manual for the commissioner's approval.

Subp. 2. **Within 45 days following completion of construction.** No later than 45 days after the completion of construction, the municipality shall submit to the commissioner:

A. a certification by the contractor that the project was built according to the approved plans and specifications and change orders;

B. evidence that the agency approved sewer use ordinance and the sewer service charge system with updated cost revisions have been adopted; and

C. two copies of the as-built plans and specifications on microfiche.

7075.2545 PERFORMANCE CERTIFICATION.

Subpart 1. **Notification of initiation of operation.** The municipality shall notify the commissioner, in writing, of the project's initiation of operation date within ten days following initiation of operation.

Subp. 2. **One year after initiation of operation.** One year after the initiation of operation of the project, the municipality shall submit to the commissioner the following items:

A. a certification stating whether the project meets the performance standards identified in the permit;

B. a start-up evaluation report describing the performance of the project; and

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C. a revised operation and maintenance manual based on actual operating experience obtained during the one-year start-up period.

Subp. 3. **Corrective action report.** If the commissioner or the municipality determines that the project does not meet the project performance standards identified in the permit, the municipality shall submit a corrective action report that includes:

A. an analysis of the project's failure to meet the performance standards;

B. an estimate of the nature, scope, and cost of the corrective action necessary to bring the project into compliance; and

C. a schedule for undertaking, in a timely manner, the corrective action necessary to bring the project into compliance.

7075.2550 REQUEST TO WITHHOLD FINANCIAL ASSISTANCE PAYMENTS.

Failure of a municipality's project to conform substantially to approved plans and specifications or failure of a municipality to comply with the requirements of part 7075.2540 or 7075.2545 constitutes grounds for the commissioner to request that the authority withhold payments to the municipality. Once an agreement for correcting the condition leading to the withholding of funds is reached between the commissioner and the municipality, the commissioner will recommend to the authority that the retained funds be released according to the provisions in the agreement.

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Office of the Revisor of Statutes

Administrative Rules

TITLE: Proposed Permanent Rules Relating to Water Pollution Control Revolving Fund

AGENCY: Pollution Control Agency

MINNESOTA RULES: Chapter 7075

The attached rules are approved for publication in the State Register

David S. Niss
Assistant Revisor

STATE OF MINNESOTA
POLLUTION CONTROL AGENCY

Proposed Rules Relating to the Agency's Responsibilities for the Administration of the Water Pollution Control Revolving Fund Program, Minn. Rules Parts 7075.2505 to 7075.2550

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 rule is set forth in Minn. Stat. § 446A.07, Subd. 11 (Supp. 1987).

All persons have until 4:30 p.m. on October 19, 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:

Jeff Freeman
Minnesota Pollution Control Agency
520 Lafayette Road North
St. Paul, Minnesota 55155
(612) 296-7312

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 provide for the Agency's responsibilities for administration of the water pollution control revolving fund program. The program will provide loans and other financial assistance, but not grants, to municipalities for wastewater treatment facilities. One free copy of the rules is available upon request from Mr. Freeman at the address and telephone number stated above.

The water pollution control revolving fund program will be jointly administered by the Agency and the Minnesota Public Facilities Authority (Authority). A separate set of proposed rules provide for the Authority's responsibilities for administration of the program.

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 Mr. Freeman 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.

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.

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 data 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 Mr. Freeman.

Dated: September 15, 1988

Barbara Lyndaker Sims
for GERALD L. WILLET
Commissioner

STATE OF MINNESOTA
POLLUTION CONTROL AGENCY

In the Matter of the Proposed Rules
Relating to the Agency's Responsibilities
for the Administration of the Water
Pollution Control Revolving Fund Program

STATEMENT OF NEED
AND REASONABLENESS

I. INTRODUCTION

In 1987, the Legislature created the water pollution control revolving fund to provide loans and other financial assistance, but not grants, to governmental units for the construction of publicly owned wastewater treatment facilities, Minn. Stat. § 446A.07 (Supp. 1987). The fund was established in accordance with the requirements of Title VI of the federal Water Pollution Control Act of 1987, 33 U.S.C. §§ 1381-1387. Under Title VI, federal capitalization grants will be awarded to states through federal Fiscal Year (FY) 1994 to fund eligible activities. The federal funds must be matched by a minimum of 20 percent state funds. All repayments will be deposited back into the state water pollution control revolving fund.

Under Minn. Stat. §§ 446A.01-446A.07 (Supp. 1987), the Minnesota Public Facilities Authority (Authority) was created and given joint responsibility with the Agency for administration of the water pollution control revolving fund program. The Authority is responsible for maintaining the fund, setting the terms and conditions of the loans and other financial assistance, making the awards, and making the loan payments and receiving the repayments. The Agency is responsible for preparing the annual intended use plan which lists the projects proposed to receive assistance and for reviewing and monitoring the administrative and technical aspects of the projects.

In drafting the proposed rules, the Agency sought and received input from the Technical Advisory Committee for wastewater treatment control, established

under Minn. Stat. § 115.54. This document contains the Agency's affirmative presentation of facts on the need for and reasonableness of the proposed rules. Section II identifies the Agency's statutory authority for rulemaking. Section III describes the need for the proposed rules. Section IV describes the Agency's reasons for the proposed rules.

II. STATEMENT OF AGENCY'S STATUTORY AUTHORITY

The Agency's statutory authority to adopt rules for the administration of the program is set forth in Minn. Stat. § 446A.07, subd 11 (Supp. 1987), which provides:

> Subd. 11. The Agency shall adopt rules relating to the procedure for preparation of the annual intended use plan and other matters that the Agency considers necessary for proper loan administration.

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 water pollution control revolving fund program arises from action by Congress to phase out the federal construction grants program and replace it with grants to states to establish state revolving fund programs under Title VI of the federal Water Pollution

Control Act of 1987. The Legislature established the water pollution control revolving fund under Minn. Stat. § 446A.07 (Supp. 1987) to provide financial assistance to municipalities for wastewater treatment facilities under the provisions of Title VI. In 1987, the Legislature also created the Authority and divided the responsibility for administering the water pollution control revolving fund program between the Agency and the Authority.

Because of the joint responsibility for the program, both the Agency and the Authority are developing rules for their parts of the program. Both sets of rules are on a schedule to be adopted in late 1988. It is expected that an application for the first federal capitalization grant will be submitted to the U.S. Environmental Protection Agency in Spring 1989 and the first loan to a municipality from the fund will be awarded in Summer 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 reasonable method for the Agency to accomplish its responsibilities under the program which are primarily to prepare the intended use plan and to insure the technical adequacy of the projects and the protection of the environment.

Under the program, the intended use plan is the document which lists the projects proposed to receive financial assistance each fiscal year and also includes additional information required by the Environmental Protection Agency (EPA) for award of the capitalization grant. Once a municipality is placed on the intended use plan, it will receive an application packet from the Authority

which explains the information required by both the Authority and the Agency. The Agency will review the application materials required by the Agency and when all required items are approved, the Agency will certify the application to the Authority. The Authority will review the application materials required by the Authority, and upon approval of those materials and receipt of a certification by the Agency, will make the financial assistance award. Following award, the Agency will monitor the progress of the project and the Authority will make payments as costs are incurred by the municipality. This is a reasonable approach for both complying with the procedures established by the Legislature and satisfying the requirements of the EPA.

B. Reasonableness of Individual Rules

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

Part 7075.2505 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 Agency's responsibilities for administration of the water pollution control revolving fund program will be governed by these rules.

Part 2510 Definitions.

The following terms used in the rules have a specific meaning. The terms and the reasonableness of the definitions are explained below. Other terms used are defined in Minn. Rules 7075.0200 and have the same meanings as defined in that rule.

Subpart 2. "Act." Since there are several references to Title VI of the Federal Water Pollution Control Act, it is appropriate to shorten this and include it in the definitions.

Subpart 3. "Agency." Since there are several references to the Minnesota Pollution Control Agency, it is appropriate to shorten this and include it in the definitions.

Subpart 4. "Authority." Since there are several references to the Public Facilities Authority, it is appropriate to shorten this and include it in definitions.

Subpart 5. "Commissioner." It is appropriate to clarify that "Commissioner" is the Commissioner of the Minnesota Pollution Control Agency not an official of the Authority or a local government official.

Subpart 6. "Intended Use Plan." The definition describes that the intended use plan is the list of projects proposed to be funded in a particular federal fiscal year. The federal fiscal year is used because the intended use plan will be part of the application to the EPA for the federal capitalization grant each fiscal year.

Subpart 7. "Municipal Needs List." Being listed on the municipal needs list is a major eligibility requirement for a project to be placed on the intended use plan. The definition describes what the list is and references the rule which governs how the list is developed and maintained. In most cases, projects are listed on the municipal needs list by the name of the municipality. However, for larger municipalities, such as the Metropolitan Waste Control Commission, there may be more than one project in the municipality and each project is listed separately.

Subpart 8. "Municipality." The definition conforms with Minn. Stat. section 116.16 for consistency.

Part 2515 Intended use plan.

Subpart 1. Adoption of the intended use plan. To meet the federal requirements under Title IV, the Agency will adopt an annual intended use plan

that will be based upon the requests received under Subpart 3. If additional requests for placement on the intended use plan are received after the plan is adopted, the rule provides for the Agency to amend the intended use plan as necessary. This is a reasonable approach because the Agency and the Authority expect that there will be sufficient funds to accommodate all applicants. Therefore, it is not necessary to identify a particular time when the intended use plan will be adopted each year. The plan will be a fluid document which can expand as additional projects become ready to proceed.

Subpart 2. Eligibility. The only eligibility requirement for placement on the intended use plan for a project that has not begun construction is that the project be listed on the municipal needs list. This is reasonable because the state revolving fund concept was developed by Congress as a replacement for the federal construction grants program which has provided grants only to municipalities on the municipal needs list.

Under Minn. Stat. § 446A.07, Subdivision 8(1), the fund may also be used to refinance the debt obligation of a municipality for a treatment works project where the debt was incurred after March 7, 1985. Because projects are removed from the municipal needs list once construction is underway, the rule provides that the eligibility requirement is met as long as the project was on the municipal needs list prior to the beginning of construction and meets the statutory requirements.

Subpart 3. Requirements for placement on the intended use plan. There are two major requirements for placement.

Item A. The municipality must submit a written request which includes a brief description of the project, a cost estimate and a proposed project schedule. The project description is required so that the Agency can determine that the project is on the municipal needs list and is consistent with previous

planning or design work which has been performed. The cost estimate and proposed project schedule are required for planning purposes.

Requests for placement on the intended use plan may be submitted at any time. No deadline dates have been established due to the Agency's desire to make entry into the water pollution control revolving fund program as easy as possible. As discussed under Subpart 1, the intended use plan can be amended as additional requests are received.

Item B. Before a municipality will be placed on the intended use plan for a Step 3 construction project, it must first have an approved facilities plan. It is reasonable to require that the time consuming facilities planning work, such as analyzing existing facilities and needs, selecting the cost-effective treatment alternative and selecting an acceptable site, be completed before construction funds are committed for the project. Until a facilities plan is completed, it is difficult to accurately estimate project costs and schedules. Reasonably accurate estimates are needed for municipalities on the intended use plan so that the Authority can efficiently manage the monies in the fund.

Part 2520 Applications.

Subpart 1. Timing and form of application. A municipality on the intended use plan may submit a financial assistance application according to the municipality's schedule in its request for placement on the intended use plan. Allowing each municipality to determine its own schedule for application submittal is consistent with the Agency's desire to make entry into the program as easy as possible. Application forms will be provided by the Authority and, by statute, must be submitted to the executive director of the Authority.

Subpart 2. Step 1 financial assistance. To allow the Commissioner to make a determination of an applicant's conformance with the program requirements,

information needs to be submitted by the applicant. The application forms provided by the Authority will require information needed by the Authority to make its determination and will also require information detailed in items A through D, which are very similar to the requirements in part 7075.0419, subpart 3 for a Step 1 advance of allowance.

Item A. An applicant for Step 1 financial assistance must submit a plan of study outlining the scope of work. It is important for a municipality that is just beginning facilities planning to carefully plan out the scope of work so that its time and funds are not spent considering treatment alternatives that would not be feasible or approvable. By submitting a plan of study for review, the Agency can work with the municipality so that its limited resources are used as efficiently as possible.

Item B. The municipality must submit a schedule for completion of the facilities plan work so that the Agency and the Authority can make reasonable estimates as to when funds will be disbursed.

Item C. The municipality's consulting engineer must provide a certificate of adequate errors and omissions insurance. Because of the complex nature of wastewater treatment facilities and the large financial investment such facilities require from state and local governments, it is reasonable to require that the consulting engineer who develops the facilities plan for the project have adequate coverage under an errors and omissions insurance policy.

Item D. If two or more cities are going to develop a joint facilities plan, it is reasonable to require that they submit an agreement that describes how they will be working together so that the Commissioner can determine that all parties fully understand their responsibilities.

Subpart 3. Step 2 financial assistance. To allow the Commissioner to make a determination of an applicant's conformance with the program requirements,

information needs to be submitted by the applicant. The application forms provided by the Authority will require information needed by the Authority to make its determinations, and will also require information needed by the Agency and detailed in items A through D, which are very similar to the requirements in part 7075.0419, subpart 3 for a Step 2 advance of allowance.

Item A. The municipality must submit a schedule for completion of all Step 2 work for the same reasons stated above in subpart 2, Item B.

Item B. The municipality's consulting engineer must provide a certificate of adequate errors and omissions insurance. Because of the complex nature of wastewater treatment facilities and the large financial investment such facilities require from state and local governments, it is reasonable to require that the consulting engineer who prepares the plans and specifications for the project have adequate coverage under an errors and omissions insurance policy.

Item C. The municipality must submit a treatment agreement for each major contributing industry. The quantity and loading of the wastewater flow coming from major industries can greatly impact the design requirements of the treatment facility. Therefore, it is appropriate to require that these treatment agreements be entered into and submitted to the Agency for review with a Step 2 application.

Item D. If two or more municipalities are submitting a joint application, each of the application items must be provided for each municipality and an unexecuted intermunicipal agreement must also be submitted. These items are required so that the Agency can determine whether all required items and project related issues are being addressed by both municipalities.

Subpart 4. Step 3 financial assistance. To allow the Commissioner to make a determination of an applicant's conformance with the program requirements,

information needs to be provided by the applicant. The application forms provided by the Authority will require information needed by the Authority to make its determinations, and will also require information needed by the Agency and detailed in items A through N, which are very similar to the requirements in part 7075.0414, subpart 6 for a Step 3 grant application.

Item A. The municipality must submit the project plans and specifications as part of a Step 3 application. Under Minn. Stat. 115.03, subd. 1(f) (1986), the Agency has the authority to review and approve the plans and specifications before a project can proceed to construction. 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. It is reasonable that this review and approval come before the Commissioner certifies the application to the Authority so that any problems can be resolved before funds are committed for project construction.

Item B-D. The municipality must submit a sewer service charge system and a sewer use ordinance and must provide documentation of how the public has been informed of the proposed sewer service charge system. These items are required by the federal Water Pollution Control Act, 33 U.S.C. §§ 1381-1387.

Item E. The municipality must submit a schedule for completion of all Step 3 work for the same reasons stated above in subpart 2, Item B.

Item F. The municipality must submit a design certification statement signed by its consulting engineer that the proposed treatment works are capable of meeting the required effluent quality. It is appropriate that the person responsible for the design of a facility sign a certification that it will meet the required permit effluent limits and water quality standards.

Item G. The municipality's consulting engineer must provide a certificate of adequate errors and omissions insurance. Because of the complex nature of wastewater treatment facilities and the large financial investment, such facilities require from state and local governments, it is reasonable to require that the consulting engineer who is responsible for managing the construction for the project have adequate coverage under an errors and omissions insurance policy.

Item H. The municipality must submit a copy of its contract with its consulting engineer for all Step 3 work. The involvement of a municipality's engineer in managing the construction of the project and directing the start-up of the facility is important to the successful completion of the project. It is reasonable for the Agency to review the engineering contract to insure that all necessary work tasks are included.

Item I. The municipality must certify that its engineer will be on site during construction for the purposes of inspection and will provide inspection reports to the Agency. Providing on-site inspection is a critical service provided by the engineer to insure quality construction so that the project is capable of meeting water quality standards throughout its design life. It is important for the municipality to recognize the importance of this function and to verify that its engineer will provide sufficient inspection services for the project and provide the necessary progress reports to the Agency.

Item J. The municipality must certify that its engineer will provide the required start-up services during the first year after initiation of operation. It is important for the municipality to understand what start-up services are required and to verify that its engineer will perform these services so that the operation of the facility will provide the maximum protection to the environment.

Item K. The municipality must certify that, on the date one year after initiation of operation, it will meet the performance certification requirements. Performance certification is a requirement under the federal Water Pollution Control Act, 33 U.S.C. §§ 1381-1387. It is appropriate to inform the municipality of this requirement and to get the municipality's commitment to meet this requirement before Step 3 financial assistance is awarded.

Item L. The municipality must submit a treatment agreement for each major contributing industry. The quantity and loading of the wastewater flow coming from major industries can greatly impact a municipality's ability to meet applicable water quality standards and permit effluent limits. It is appropriate to require that these treatment agreements be entered into and submitted to the Agency for review with a Step 3 application. This item is a requirement under the Step 2 application requirements as well. It is possible that a municipality would seek Step 3 financial assistance without first having received Step 2 financial assistance, therefore it is necessary to repeat this requirement here.

Item M. The municipality must submit a cost breakdown for all project work. This is necessary for the Agency to make reasonable estimates as to when funds will be disbursed. These estimates are needed so that the Agency can determine if any amendments to the payment schedule provided to the U.S. Environmental Protection Agency are necessary.

Item N. If two or more municipalities are involved in the project, an executed intermunicipal agreement must be submitted in order that the commissioner can determine that all issues of project responsibility have been addressed and that a cost-sharing agreement has been worked out.

Part 2525 Application Certification.

Subpart 1. Step 1 projects. The commissioner does not have the statutory authority to award financial assistance under the program. Once an application has been reviewed and approved, the commissioner will certify to the Authority that the project meets the applicable federal and state requirements.

Subpart 2. Step 2 projects. The commissioner does not have the statutory authority to award financial assistance under the program. Once an application has been reviewed and approved, the commissioner will certify to the Authority that the project meets the applicable federal and state requirements.

Subpart 3. Step 3 projects. For Step 3 projects, two additional items must be completed in addition to the review and approval of the application before the commissioner can certify the project to the Authority.

Item A. The Minnesota environmental review process set forth in Minn. Stat. ch. 116D and Minn. Rules ch. 4410 must be complete for the proposed project. The federal Water Pollution Control Act, 33 U.S.C. §§ 1381-1387 requires that an environmental review be performed for all proposed projects.

Item B. The municipality must obtain a State Disposal System permit, and if applicable, a National Pollutant Discharge Elimination System permit as required under Minnesota Rules part 7001.0030 before construction can begin on a facility. It is reasonable to require that the permit be obtained before the commissioner certifies the project to the Authority so that when a project is certified by the Commissioner it is ready to proceed with construction.

Part 2530 Change Orders.

The proposed rules require that change orders that substantially alter the type or reliability of the treatment process be approved by the commissioner prior to implementing the change. Review of such change orders is necessary because these changes may affect the ability of the proposed facility to meet

its permit limits. A change order of this nature which is implemented without first receiving prior approval shall constitute grounds for the commissioner to request that the Authority terminate the loan agreement. This is reasonable because of the Agency's need to reasonably assure that the completed project is capable of achieving compliance with pollution control requirements.

Change orders that do not substantially alter the type or reliability of the treatment process do not need prior approval of the commissioner. However, the rules require that the change order be submitted as soon as possible for the purpose of keeping the Agency informed of the nature of the project changes.

Part 2535 Inspections.

The proposed rules provide that the commissioner may conduct inspections of the grantee's project pursuant to Minn. Stat. section 115.03, subd. 1(f). Inspections during construction of a facility allows the staff to monitor the progress of the project, insure that the approved project is being constructed and monitor interim treatment permit conditions.

Part 2540 Step 3 Reporting Requirements.

Subpart 1. Sixty days prior to completion of construction. Two items are required to be submitted at least 60 days prior to the scheduled contract date for completion of construction.

Item A. Provide evidence that a wastewater treatment works operator with a valid state certificate has been hired. It is reasonable that the operator of the facility be present to become familiar with the facility during the last stages of construction. If the operator does not have a valid state certificate when hired, there is no guarantee that the person will later be able to pass the test and meet the requirements to receive a state certificate.

Item B. Submit an operation and maintenance manual for the commissioner's approval. An adequate operation and maintenance manual is an

important reference source for the operator to insure that the facility is operated and maintained correctly. It is reasonable to require that the manual be submitted in advance of the completion of construction so that it can be approved and in place when initiation of operation occurs.

Subpart 2. Within 45 days following completion of construction. Three items are required no later than 45 days after completion of construction.

Item A. Submit a certification by the contractor that the project was built according to the approved plans and specifications and change orders. It is reasonable to require this certification be obtained from the contractor following completion of construction as a verification that the conditions of the contract were met.

Item B. Submit evidence that the Agency approved sewer use ordinance and sewer service charge system with updated cost revisions have been adopted. The sewer use ordinance and sewer service charge system are reviewed and approved based upon estimated project costs as part of the Step 3 application process. Some documentation is required following completion of construction to insure that the approved ordinance and the approved charge system with revisions based upon final costs were adopted.

Item C. Submit two copies of the as-built plans and specifications on microfiche. 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.

Part 2545 Performance Certification.

Subpart 1. Notification of initiation of operation. The rule provides that the municipality must notify the Commissioner in writing within 10 days of

the project's initiation of operation. The initiation of operation date is used as the beginning of the one year start-up period. Therefore, it is reasonable to require the municipality to notify the Commissioner of the specific date. Ten days is an adequate period of time to submit this notification.

Subpart 2. One year after initiation of operation. The rule provides for three items to be submitted one year after initiation of operation.

Item A. Federal statutes 33 U.S.C. §§ 1381-1387 require that the municipality certify whether the project meets its performance standards.

Item B. Federal statutes 33 U.S.C. §§ 1381-1387 require that the municipality's engineer prepare a start-up evaluation report for the facility and that a copy of the report be submitted with the performance certification.

Item C. A revised operation and maintenance manual. It is reasonable to require that the operation and maintenance manual submitted prior to completion of construction be revised based upon the experience gained during the one year start-up period so that it will be as accurate as possible and provide the maximum benefit to the facility operator.

Subpart 3. Corrective action report. Federal statutes 33 U.S.C. §§ 1381-1387 require that if the municipality or the Commissioner determines that the facility does not meet the project performance standards, a corrective action report which contains the items specified in A, B and C be submitted.

Part 2550 Request To Withhold Financial Assistance Payments.

The proposed rule provides that failure of a project to conform substantially to approved plans and specifications or failure of a municipality to comply with the project submittal requirements shall constitute grounds for the Commissioner to request that the Authority withhold payments. This is reasonable in that it sometimes is necessary to withhold funds in order for project deficiencies to be corrected. Once an agreement for correcting the

condition is reached between the commissioner and municipality, the commissioner will recommend that payments be released according to the provisions of the agreement.

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 methods for reducing the impact on small businesses. Minn. Stat. §14.115, subd. 7(b) (1986) provides the Agency rules that do not affect small businesses directly are exempted from the small business consideration provision. These rules apply only to municipalities that voluntarily elect to participate in the program. Therefore, these rules fall under subd. 7(b) and are exempted from small business considerations. However, the Agency is satisfied that small businesses will not be adversely affected by the provisions of this program.

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 water pollution control revolving fund, the Agency has given due consideration to any economic impacts of the proposed rules. This is a voluntary program so the rules will not have any affect on municipalities that do not elect to participate.

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. When a program is voluntary it is not necessary to access the costs to local public bodies that choose to participate. It is assumed that public body will make a cost/benefit assessment at the local level as part of its decision-making process prior to application. The local body is not required by statute or administrative rule to incur costs.

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 Minn. Rules parts 7075.2505 through 7075.2550 are both needed and reasonable.

Dated: 8-12-, 1988

Gerald L. Willet
Commissioner

STATE OF MINNESOTA
POLLUTION CONTROL AGENCY

In the Matter of the Proposed Rules Governing the Agency's Responsibilities for the Administration of the Water Pollution Control Revolving Fund Program, Minn. Rules Parts 7075.2505 to 7075.2550

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

STATE OF MINNESOTA)
) SS.
COUNTY OF RAMSEY)

Jeffrey D. Freeman, 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 list is accurate, complete, and current as of this 15th day of September, 1988.

That on the 15th day of September, 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.

Jeffrey D. Freeman

Subscribed and sworn to before me
this 20 day of September 1987.

Mary Ann Hammer
Notary Public

MARY ANN HAMMER
NOTARY PUBLIC-MINNESOTA
RAMSEY COUNTY
MY COMMISSION EXPIRES DECEMBER 10, 1991

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

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

Minnesota Statutes, Chapter 10A, requires each lobbyist to register with the Ethical Practices Board within five days after he or she commences lobbying. A lobbyist is defined in *Minnesota Statutes,* section 10A.10, Subdivision 11, as an individual:

(a) Engaged for pay or other consideration, or authorized by another individual or association to spend money, who spends more than five hours in any month or more than $250.00, not including travel expenses and membership dues, in any year, for the purpose of attempting to influence legislation or administrative action by communicating or urging others to communicate with public officials; or,

(b) Who spends more than $250.00, not including travel expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials.

The statute provides certain exceptions. Questions should be directed to the Ethical Practices Board, 625 North Robert Street, St. Paul, Minnesota 55101, (612) 296-5148.

If no hearing is required, upon adoption of the rule, the rule and the required supporting documents will be submitted to the Attorney General's Office for review as to legality and form to the extent the form relates to legality. Any person may request notification of the date of submission of this material to the Attorney General, or who wish to receive a copy of the adopted rule, must submit a written request to the State Board of Electricity.

John Quinn, Executive Secretary
State Board of Electricity

Rules as Proposed

3800.0900 ~~DEFINITION OF ON-THE-JOB~~ SUPERVISION ~~FOR~~ OF UNLICENSED PERSONNEL.

Subpart 1. **Definition of personal on-the-job supervision.** For the purpose of Minnesota Statutes, section 326.242, subdivision 5, "personal on-the-job supervision" shall require that the unlicensed person will have a licensed person present on the job and providing supervision the entire working day. A licensed person shall supervise no more than two unlicensed persons.

Subp. 2. **Definition of job.** For the purposes of Minnesota Statutes, section 326.242, subdivision 5, "job" means each separate building or structure where electrical work is being performed.

Pollution Control Agency

Proposed Permanent Rules Relating to Water Pollution Control Revolving Fund

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* § 446A.07, Subd. 11 (Supp. 1987).

All persons have until 4:30 p.m. on October 19, 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, 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).

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.

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

Jeff Freeman
Minnesota Pollution Control Agency
520 Lafayette Road North
St. Paul, Minnesota 55155
(612) 296-7312

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 provide for the Agency's responsibilities for administration of the water pollution control revolving fund program. The program will provide loans and other financial assistance, but not grants, to municipalities for wastewater treatment facilities. The proposed rules are published below. One free copy of the rules is available upon request from Mr. Freeman at the address and telephone number stated above.

The water pollution control revolving fund program will be jointly administered by the Agency and the Minnesota Public Facilities Authority (Authority). Proposed rules for the Authority's responsibilities for administration of the program are being published separately.

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 Mr. Freeman 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.

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

Finally, you are hereby advised, pursuant to *Minnesota Statutes* § 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 Mr. Freeman.

Gerald L. Willet
Commissioner

Rules as Proposed (all new material)

WATER POLLUTION CONTROL REVOLVING FUND PROGRAM

7075.2505 PURPOSE.

The water pollution control revolving fund program provides loans and other forms of financial assistance to municipalities for the construction of publicly owned wastewater treatment facilities. The program is jointly administered by the Minnesota Pollution Control Agency and the Minnesota Public Facilities Authority. Parts 7075.2505 to 7075.2550 provide for the agency's responsibilities for the administration of the program.

7075.2510 DEFINITIONS.

Subpart 1. **Scope.** For the purpose of parts 7075.2505 to 7075.2550, the following terms have the meanings given them. Other terms defined in part 7075.0200 have the meanings given in that part.

Subp. 2. **Act.** "Act" means Title VI of the Federal Water Pollution Control Act, United States Code, title 33, sections 1381-1387.

Subp. 3. **Agency.** "Agency" means the Minnesota Pollution Control Agency.

Subp. 4. **Authority.** "Authority" means the Minnesota Public Facilities Authority.

Subp. 5. **Commissioner.** "Commissioner" means the commissioner of the Minnesota Pollution Control Agency.

Subp. 6. **Intended use plan.** "Intended use plan" means the document that lists eligible projects proposed to be funded in a particular federal fiscal year from funds available in the water pollution control revolving fund.

Subp. 7. **Municipal needs list.** "Municipal needs list" means the list developed and maintained by the agency according to part 7075.0402 that lists in priority order municipalities that have a need for new or upgraded wastewater disposal systems.

Subp. 8. **Municipality.** "Municipality" means any county, city, or town, the Metropolitan Waste Control Commission established in Minnesota Statutes, chapter 473, the Metropolitan Council when acting under that chapter or an Indian tribe or an authorized Indian tribal organization, and any other governmental subdivision of the state responsible by law for the prevention, control, and abatement of water pollution in any area of the state.

7075.2515 INTENDED USE PLAN.

Subpart 1. **Adoption of intended use plan.** The agency shall annually adopt an intended use plan based upon the requests received under subpart 3. The agency will amend the intended use plan to add additional eligible projects as necessary.

Subp. 2. **Eligibility.** To be eligible for placement on the intended use plan, a municipality's project must be listed on the current municipal needs list or, if the municipality is seeking refinancing, the project must have been listed on the municipal needs list before the beginning of construction and meet the requirements of Minnesota Statutes, section 446A.07, subdivision 8, clause (1).

Subp. 3. **Requirements for placement on the intended use plan.** To be placed on the intended use plan, a municipality must meet the requirements of items A and B.

A. The municipality must submit to the commissioner a written request for placement on the intended use plan that includes:

(1) a brief description of the project for which financial assistance is sought;

(2) a project cost estimate; and

(3) a proposed project schedule, including the date for submittal of a complete financial assistance application in conformance with the requirements of part 7075.2520.

B. For a Step 3 project, a municipality must first receive the commissioner's approval of its facilities plan before it will be placed on the intended use plan. If the municipality is proposing to change the selected treatment method or any other major element of a previously approved facilities plan, the municipality must receive the commissioner's approval of a facilities plan addendum.

7075.2520 APPLICATIONS.

Subpart 1. **Timing and form of application.** A municipality identified on the intended use plan may submit an application for financial assistance according to the municipality's schedule submitted under part 7075.2515, subpart 3, item A, subitem (3). Applications must be submitted to the executive director of the authority on forms provided by the authority.

Subp. 2. **Step 1 financial assistance.** In addition to any other information required by the authority, a municipality applying for Step 1 financial assistance shall include the following items for the commissioner's review and approval as part of its application:

A. a plan of study outlining the scope of work that will lead to an approvable facilities plan;

B. a schedule for completion of the facilities plan;

C. an engineer's certificate of adequate errors and omissions insurance; and

D. if more than one municipality is involved in the application, the municipalities shall submit an agreement indicating their intent to participate in joint treatment, outlining each municipality's responsibilities during planning and setting forth the cost-sharing methodology.

Subp. 3. **Step 2 financial assistance.** In addition to any other information required by the authority, a municipality applying for Step 2 financial assistance shall include the following items for the commissioner's review and approval as part of its application:

A. a schedule for completion of all Step 2 work;

B. an engineer's certificate of adequate errors and omissions insurance;

C. a treatment agreement for each major contributing industry that will discharge wastewater to the new or upgraded system; and

D. if more than one municipality is involved in the application, the requirements of items A to C must be submitted for each municipality involved in the project. In addition, the municipalities shall submit an unexecuted intermunicipal agreement that sets forth the terms and conditions of joint treatment and the cost-sharing methodology.

Subp. 4. **Step 3 financial assistance.** In addition to any other information required by the authority, a municipality applying for Step 3 financial assistance shall include the following items for the commissioner's review and approval as part of its application.

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.

A. Project plans and specifications including documents that contain the requirements under which a bidder submits a bid for performing the work and the contractual requirements and detailed requirements. The documents that comprise the plans and specifications must conform to generally accepted engineering practices, applicable state statutes and rules, and applicable requirements of the act.

B. A sewer service charge system comprised of a user charge system and a system providing for dedicated sources of revenue to pay for the municipality's costs of construction and to retire the municipality's debt costs attributable to the wastewater treatment works to be constructed. The user charge system must ensure the sufficient generation of revenue to offset the annual costs of operation, maintenance, and replacement of the treatment works and must charge each user class a fee proportional to the contribution of each user class to the total wastewater loading. The user classes include residential, commercial, industrial, institutional, and governmental classes. The system providing for dedicated sources of revenue to pay for the municipality's costs of construction and to retire the municipality's debt costs need not be proportionally assessed against each user class, but the manner in which the charge will be distributed must be described.

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

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

E. A schedule for completion of all Step 3 work.

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

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

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

H. An unexecuted engineering contract for all Step 3 work.

I. A certification from the municipality that its consulting engineer or the engineer's agent will be present on site during the hours of construction for purposes of inspection and will submit written reports to the agency upon request describing the type of construction inspected and the time involved in inspection after construction commences.

J. A certification from the municipality that its consulting engineer will provide the following services during the first year following initiation of operation:

(1) direct the operation of the project and revise the operation and maintenance manual as necessary to accommodate actual operating experience;

(2) train or provide for training of operating personnel and prepare curricula and training material for operating personnel;

(3) revise the operation and maintenance manual based on actual operating experience obtained during the one-year start-up period; and

(4) advise the municipality whether the project is meeting the project performance standards.

K. A certification from the municipality that it will comply with the performance certification requirements in part 7075.2545.

L. A treatment agreement with each major contributing industry that will discharge wastewater to the new or upgraded system.

M. A cost breakdown of all project work to be funded under the revolving fund program.

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

7075.2525 APPLICATION CERTIFICATION.

Subpart 1. **Step 1 projects.** Upon review and approval of the documents required by part 7075.2520, subpart 2, the commissioner shall certify to the authority that the project meets the applicable requirements of the act, federal regulations, state statutes, and this chapter.

Subp. 2. **Step 2 projects.** Upon review and approval of the documents required by part 7075.2520, subpart 3, the commissioner shall certify to the authority that the project meets the applicable requirements of the act, federal regulations, state statutes, and this chapter.

Subp. 3. **Step 3 projects.** Upon review and approval of the documents required by part 7075.2520, subpart 4, and completion

of items A and B, the commissioner shall certify to the authority that the project meets the applicable requirements of the act, federal regulations, state statutes, and this chapter.

A. The environmental review process in chapter 4410 and Minnesota Statutes, chapter 116D has been satisfactorily completed.

B. The municipality has obtained a state disposal system permit and, if necessary, a national pollutant discharge elimination system permit from the agency for the project.

7075.2530 CHANGE ORDERS.

A municipality proposing to make changes in a project that substantially alters the type or reliability of the treatment process shall submit to the commissioner such information as the commissioner requires to determine the impact of the proposed change on the environment. Changes in the project that substantially alter the type or reliability of the treatment process must be approved by the commissioner before the change is made. The commissioner shall review the proposed change in the same manner as the original project was reviewed for compliance with applicable pollution control requirements. A substantial change in the type or reliability of the treatment process implemented without prior approval from the commissioner constitutes grounds for the commissioner to request that the authority terminate the loan agreement.

Change orders for changes that do not substantially alter the type or reliability of the treatment process do not require prior approval of the commissioner, but must be submitted to the commissioner as soon as possible.

7075.2535 INSPECTIONS.

The commissioner may conduct inspections of the municipality's project under Minnesota Statutes, section 115.03, subdivision 1, paragraph (f).

7075.2540 STEP 3 REPORTING REQUIREMENTS.

Subpart 1. **Sixty days before completion of construction.** At least 60 days before the scheduled contract date for completion of construction, the municipality shall submit to the commissioner:

A. evidence that the municipality has hired a wastewater treatment works operator having a valid state certificate; and

B. an operation and maintenance manual for the commissioner's approval.

Subp. 2. **Within 45 days following completion of construction.** No later than 45 days after the completion of construction, the municipality shall submit to the commissioner:

A. a certification by the contractor that the project was built according to the approved plans and specifications and change orders;

B. evidence that the agency approved sewer use ordinance and the sewer service charge system with updated cost revisions have been adopted; and

C. two copies of the as-built plans and specifications on microfiche.

7075.2545 PERFORMANCE CERTIFICATION.

Subpart 1. **Notification of initiation of operation.** The municipality shall notify the commissioner, in writing, of the project's initiation of operation date within ten days following initiation of operation.

Subp. 2. **One year after initiation of operation.** One year after the initiation of operation of the project, the municipality shall submit to the commissioner the following items:

A. a certification stating whether the project meets the performance standards identified in the permit;

B. a start-up evaluation report describing the performance of the project; and

C. a revised operation and maintenance manual based on actual operating experience obtained during the one-year start-up period.

Subp. 3. **Corrective action report.** If the commissioner or the municipality determines that the project does not meet the project performance standards identified in the permit, the municipality shall submit a corrective action report that includes:

A. an analysis of the project's failure to meet the performance standards;

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B. an estimate of the nature, scope, and cost of the corrective action necessary to bring the project into compliance; and

C. a schedule for undertaking, in a timely manner, the corrective action necessary to bring the project into compliance.

7075.2550 REQUEST TO WITHHOLD FINANCIAL ASSISTANCE PAYMENTS.

Failure of a municipality's project to conform substantially to approved plans and specifications or failure of a municipality to comply with the requirements of part 7075.2540 or 7075.2545 constitutes grounds for the commissioner to request that the authority withhold payments to the municipality. Once an agreement for correcting the condition leading to the withholding of funds is reached between the commissioner and the municipality, the commissioner will recommend to the authority that the retained funds be released according to the provisions in the agreement.

Department of Trade and Economic Development

Proposed Permanent Rules Relating to the Water Pollution Control Revolving Fund

Notice of Intent to Adopt Rules Without a Public Hearing

NOTICE IS HEREBY GIVEN that the Commissioner of Trade and Economic Development proposes to adopt the above entitled rules without a public hearing following the procedures set forth in the Administrative Procedures Act for adopted rules without a public hearing in *Minnesota Statutes,* sections 14.22 to 14.28. Authority for the adoption of these rules is contained in *Minnesota Statutes,* section 446A.06, subd. 2.

All persons have 30 days to submit comments in support of or in opposition to the proposed rules or any part or subpart of the rule. Comment is encouraged. Each comment should identify the portion of the proposed rule addressed, the reason for the comment and any change proposed. The proposed rules 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.

Any person may make a written request for a public hearing within the 30 day comment period. If 25 or more persons submit a written request for a public hearing within the 30 day comment period, a public hearing will be held unless a sufficient number withdraw their request in writing. Any person requesting a hearing should state his or her name and address, and is encouraged to identify the portion of the proposed rule addressed, the reason for the request, and any change proposed. If a public hearing is required, the Department will proceed pursuant to *Minnesota Statutes,* sections 14.131 to 14.20.

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

Terry Kuhlman
Acting Executive Director
Public Facilities Authority
800 American Center Building
150 East Kellogg Boulevard
St. Paul, MN 55101

The proposed rule 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 rule as noticed.

A copy of the proposed rule is attached to this notice.

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 Terry Kuhlman upon request.

This program is designed to provide loans to local public bodies, which loans may include financing fees and will be at interest rates that may vary from time to time. The Authority estimates that the total fees and interest costs that would be collected by the revolving fund in the first two years immediately following adoption of the rule will be approximately $5,300,000. Fees and interest paid to the fund for local public bodies is anticipated to be in lieu of similar payments made to other financing sources.

If no hearing is required, upon adoption of the rule, the rule and the required supporting documents will be submitted to the Attorney General for review as to legality and form to the extent the 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 adopted rule, must submit the written request to Terry Kuhlman.

Dated: 1 September 1988

David Speer
Commissioner of Trade and Economic Development

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 22 day of November, 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 Minn. Rules pts. 7075.2505 to 7075.2550 governing the administration of the Water Pollution Control Revolving Fund Program pursuant to the authority vested in the Agency by Minn. Stat. §446A.07, subd. 11 (subp. 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 rules shall have the force and effect of law.

IN WITNESS WHEREOF, I have hereunto subscribed my name this 22 day of November, 1988.

Gerald L. Willet
Commissioner

STATE OF MINNESOTA
POLLUTION CONTROL AGENCY

In the Matter of the Proposed Rules for the Administration of the Water Pollution Control Revolving Fund Program, Minn. Rules Parts 7075.2505 to 7075.2550

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 22nd day of November, 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 the Statement of Need and Reasonableness, 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 September 19, 1988, and was sent by mail to all persons on the list maintained by the Agency pursuant to Minn. Stat. § § 14.14, subd. 1a and 14.22 (1986) on September 15, 1988.

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 October 19, 1988.

4. No requests for public hearing were received during the comment period.

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

6. During the comment period the Agency received five written and one oral comment. The Agency finds that six modifications to the proposed rules are justified by the record in this proceeding, as follows:

a. Part 7075.2505 was modified in response to a concern raised by the U.S. Environmental Protection Agency (EPA). In their comments, EPA suggested that the purpose statement in the rule should include references to both the Federal Water Pollution Control Act and the Minnesota statute governing the program. Part 7075.2505 is modified to read:

> The water pollution control revolving fund program provides loans and other forms of financial assistance to municipalities for the construction of publicly owned wastewater treatment facilities according to the provisions of Title VI of the Federal Water Pollution Control Act and Minnesota Statutes section 446A.07. The program is jointly administered by the Minnesota Pollution Control Agency and the Minnesota Public Facilities Authority. Parts 7075.2505 to 7075.2550 provide for the agency's responsibilities for the administration of the program.

This modification is needed to include the federal and state statutory authority for the program. It is reasonable because it is simply a clarification of the basis for the program. The added language does not make a substantial change in the rule because it does not alter any program requirements or procedures. The change does not affect classes of persons who could not have been expected to comment on the proposed rules, introduce significant new subject matter, or make a major substantive change.

b. Part 7075.2510, subpart 2 was modified to address a comment from EPA that the definition of the term "Act" should include all of the Federal Water Pollution Control Act rather than only Title VI. Subpart 2 is modified to read:

> "Act" means ~~Title VI of~~ the Federal Water Pollution Control Act, United States Code, title 33, sections ~~1381~~ 1251-1387.

This modification is needed because some of the federal requirements of the program are contained within the body of the Federal Water Pollution Control Act but outside of Title VI. It is reasonable because it is a more complete reference to the federal statute. The revised language does not make a substantial change in the rule because it does not alter any of the program requirements. The change does not affect classes of persons who could not have been expected to comment on the proposed rules, introduce significant new subject matter, or make a major substantive change.

c. Part 7075.2510, subpart 6 was modified to address a comment from EPA that the definition of the term "Intended Use Plan" does not include all of the specific elements required by the Act. Subpart 6 is modified to read:

> "Intended use plan" means the document ~~that lists the eligible projects proposed to be funded in a particular federal fiscal year from the funds available in the water pollution control revolving fund.~~ prepared annually by the agency according to the requirements in title VI of the act and submitted to the United States Environmental Protection Agency. The plan will identify the intended uses of the amounts available to the water pollution control revolving fund, including a list of wastewater treatment projects and other eligible activities to be funded during the fiscal year.

This modification is needed to indicate that the intended use plan includes more than simply a list of wastewater treatment projects. It is reasonable because Title VI of the Act requires that the plan contain specific

elements. The revised language does not make a substantial change in the rule because it does not impose any additional requirements on municipalities. The revision simply expands on what the agency's intended use plan must contain to meet the federal requirements. The change does not affect classes of persons who could not have been expected to comment on the proposed rules, introduce significant new subject matter, or make a major substantive change.

d. Part 7075.2520, subpart 4, item H was modified based upon a question raised through a phone call during the comment period. The questioner wondered how the Step 3 application requirements would be met for a completed project for which a municipality was seeking refinancing. The answer was that the municipality would still have to provide the required documents and that the various certification statements could be worded in the past tense. In reviewing the application requirements from this perspective it was discovered that the requirement for an engineering contract that was unexecuted was not appropriate because a municipality seeking refinancing for a project would have to have executed the contract with its consulting engineer before the project could have proceeded.

Upon further thought, it was decided that the requirement that the contract be unexecuted could be dropped from the rule completely. For any type of project under the revolving fund program it does not matter whether the Agency reviews an executed or unexecuted contract. A municipality can choose to provide whichever is appropriate or available at the time it submits its application. The Agency's reason for reviewing the contract is to determine that all necessary work tasks are included. An unexecuted contract which did not include all necessary tasks could simply be revised to include the additional work. An executed contract could be amended to include additional tasks. Item H is modified to read:

An ~~unexecuted~~ engineering contract for all Step 3 work.

This modification is needed because it eliminates any problems for municipalities to meet the requirement. It is reasonable because it does not impose any additional burden on the municipalities. The revised language does not make any substantial change in the meaning of the rule because it does not negatively impact the municipalities and still allows the Agency to accomplish its purpose for reviewing the contract. The change does not affect classes of persons who could not have been expected to comment on the proposed rules, introduce significant new subject matter, or make a major substantive change.

e. Part 7075.2525, subparts 1, 2, and 3 were modified to clarify the application certification process to prevent potential misunderstanding. Subparts 1 and 2 use identical language to describe when the commissioner will certify a municipality's application to the Public Facilities Authority. Subpart 3 uses the same language as subparts 1 and 2 but also adds the additional requirements of completing the environmental review process and obtaining a permit. All three subparts state that upon review and approval of the application requirements (and items A and B under subpart 3), the commissioner shall certify to the authority that the project meets the applicable requirements of the act, federal regulations, state statutes and chapter 7075. The purpose of these subparts is to state at what point a certification from the commissioner can be made. However, it is possible that all of the application documents submitted by a municipality could receive approval, but that the project would not meet all of the applicable requirements of federal and state statutes, regulations and rules. Under Minnesota Statute section 446A.07, subdivision 5, the commissioner can only certify to the authority those applications that meet federal and state

statutory and regulatory requirements. A project that does not meet all requirements will not receive the commissioner's certification. Subparts 1 and 2 are modified to read:

> Upon review and approval of the documents required by part 7075.2520, subpart [2/3], ~~the commissioner shall certify to the authority that~~ and a determination that the project meets the applicable requirements of the act, federal regulations, state statutes, and this chapter~~.~~, the commissioner shall certify the application to the authority.

Subpart 3 is modified to read:

> Upon review and approval of the documents required by part 7075.2520, subpart 4, ~~and~~ completion of items A and B, ~~the commissioner shall certify to the authority that~~ and a determination that the project meets the applicable requirements of the act, federal regulations, state statutes, and this chapter~~.~~, the commissioner shall certify the application to the authority.

This modification is needed to clarify that the commissioner's certification is not automatic following approval of the application documents. Rather, an affirmative certification will be made only after the commissioner determines that all applicable state and federal requirements have been met. The modification is reasonable because by statute the commissioner cannot certify a project which does not meet all applicable state and federal requirements. The revised language does not make a substantial change in the meaning of the rule because it only clarifies the application certification process.

f. Part 7075.2525, subpart 3, item A was modified to address a comment made by EPA that the rule should indicate that the environmental review process may include activities in addition to the process in chapter 4410 and Minnesota Statutes, chapter 116D. Title VI of the Act requires each state to establish its own environmental review process for the revolving fund

program that is similar in its scope and nature to the requirements under the National Environmental Policy Act (NEPA). In Minnesota, the existing process in chapter 4410 and Minnesota Statutes, chapter 116D is already very similar to the NEPA process; however, it is likely that some additional elements will have to be added to fully meet the requirements of Title VI. Subpart 3, item A is modified to read:

> The environmental review ~~process in~~ requirements of chapter 4410, ~~and~~ Minnesota Statutes, chapter 116D, and title VI of the act have been satisfactorily ~~completed~~ met.

This modification is needed to clarify that projects in the program will have to meet the environmental review requirements of Title VI. Under Minnesota Statutes 446A.07, subdivision 5, the commissioner cannot certify an application if the requirements of the Act are not met. The modification is reasonable because the Title VI requirements will be based upon and similar to the process in chapter 4410 and Minnesota Statutes chapter 116D. The revised language does not make a substantial change in the meaning of the rule because it only clarifies the environmental review requirements that must be met before the commissioner may certify an application to the Authority. The change does not affect classes of persons who could not have been expected to comment on the proposed rules, introduce significant new subject matter, or make a major substantive change.

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, except as modified in Finding No. 6 above.

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. 7075.2505 to 7075.2550 governing the administration of the Water Pollution Control Revolving Fund Program are adopted pursuant to the authority vested in the Minnesota Pollution Control Agency by Minn. Stat. § 446A.07, subd. 11 (supp. 1987).

MINNESOTA POLLUTION CONTROL AGENCY

Gerald L. Willet

Gerald L. Willet
Commissioner

Dated:
November 22, 1988

STATE OF MINNESOTA
POLLUTION CONTROL AGENCY

In the Matter of the Proposed Rules for the Administration of the Water Pollution Control Revolving Fund Program, Minn. Rules Parts 7075.2505 to 7075.2550

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 22nd day of November, 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 the Statement of Need and Reasonableness, 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 September 19, 1988, and was sent by mail to all persons on the list maintained by the Agency pursuant to Minn. Stat. § § 14.14, subd. 1a and 14.22 (1986) on September 15, 1988.

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 October 19, 1988.

4. No requests for public hearing were received during the comment period.

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

6. During the comment period the Agency received five written and one oral comment. The Agency finds that six modifications to the proposed rules are justified by the record in this proceeding, as follows:

a. Part 7075.2505 was modified in response to a concern raised by the U.S. Environmental Protection Agency (EPA). In their comments, EPA suggested that the purpose statement in the rule should include references to both the Federal Water Pollution Control Act and the Minnesota statute governing the program. Part 7075.2505 is modified to read:

> The water pollution control revolving fund program provides loans and other forms of financial assistance to municipalities for the construction of publicly owned wastewater treatment facilities according to the provisions of Title VI of the Federal Water Pollution Control Act and Minnesota Statutes section 446A.07. The program is jointly administered by the Minnesota Pollution Control Agency and the Minnesota Public Facilities Authority. Parts 7075.2505 to 7075.2550 provide for the agency's responsibilities for the administration of the program.

This modification is needed to include the federal and state statutory authority for the program. It is reasonable because it is simply a clarification of the basis for the program. The added language does not make a substantial change in the rule because it does not alter any program requirements or procedures. The change does not affect classes of persons who could not have been expected to comment on the proposed rules, introduce significant new subject matter, or make a major substantive change.

b. Part 7075.2510, subpart 2 was modified to address a comment from EPA that the definition of the term "Act" should include all of the Federal Water Pollution Control Act rather than only Title VI. Subpart 2 is modified to read:

> "Act" means ~~Title VI of~~ the Federal Water Pollution Control Act, United States Code, title 33, sections ~~1381~~ 1251-1387.

This modification is needed because some of the federal requirements of the program are contained within the body of the Federal Water Pollution Control Act but outside of Title VI. It is reasonable because it is a more complete reference to the federal statute. The revised language does not make a substantial change in the rule because it does not alter any of the program requirements. The change does not affect classes of persons who could not have been expected to comment on the proposed rules, introduce significant new subject matter, or make a major substantive change.

c. Part 7075.2510, subpart 6 was modified to address a comment from EPA that the definition of the term "Intended Use Plan" does not include all of the specific elements required by the Act. Subpart 6 is modified to read:

> "Intended use plan" means the document ~~that lists the eligible projects proposed to be funded in a particular federal fiscal year from the funds available in the water pollution control revolving fund.~~ prepared annually by the agency according to the requirements in title VI of the act and submitted to the United States Environmental Protection Agency. The plan will identify the intended uses of the amounts available to the water pollution control revolving fund, including a list of wastewater treatment projects and other eligible activities to be funded during the fiscal year.

This modification is needed to indicate that the intended use plan includes more than simply a list of wastewater treatment projects. It is reasonable because Title VI of the Act requires that the plan contain specific

elements. The revised language does not make a substantial change in the rule because it does not impose any additional requirements on municipalities. The revision simply expands on what the agency's intended use plan must contain to meet the federal requirements. The change does not affect classes of persons who could not have been expected to comment on the proposed rules, introduce significant new subject matter, or make a major substantive change.

d. Part 7075.2520, subpart 4, item H was modified based upon a question raised through a phone call during the comment period. The questioner wondered how the Step 3 application requirements would be met for a completed project for which a municipality was seeking refinancing. The answer was that the municipality would still have to provide the required documents and that the various certification statements could be worded in the past tense. In reviewing the application requirements from this perspective it was discovered that the requirement for an engineering contract that was unexecuted was not appropriate because a municipality seeking refinancing for a project would have to have executed the contract with its consulting engineer before the project could have proceeded.

Upon further thought, it was decided that the requirement that the contract be unexecuted could be dropped from the rule completely. For any type of project under the revolving fund program it does not matter whether the Agency reviews an executed or unexecuted contract. A municipality can choose to provide whichever is appropriate or available at the time it submits its application. The Agency's reason for reviewing the contract is to determine that all necessary work tasks are included. An unexecuted contract which did not include all necessary tasks could simply be revised to include the additional work. An executed contract could be amended to include additional tasks. Item H is modified to read:

An ~~unexecuted~~ engineering contract for all Step 3 work.

This modification is needed because it eliminates any problems for municipalities to meet the requirement. It is reasonable because it does not impose any additional burden on the municipalities. The revised language does not make any substantial change in the meaning of the rule because it does not negatively impact the municipalities and still allows the Agency to accomplish its purpose for reviewing the contract. The change does not affect classes of persons who could not have been expected to comment on the proposed rules, introduce significant new subject matter, or make a major substantive change.

e. Part 7075.2525, subparts 1, 2, and 3 were modified to clarify the application certification process to prevent potential misunderstanding. Subparts 1 and 2 use identical language to describe when the commissioner will certify a municipality's application to the Public Facilities Authority. Subpart 3 uses the same language as subparts 1 and 2 but also adds the additional requirements of completing the environmental review process and obtaining a permit. All three subparts state that upon review and approval of the application requirements (and items A and B under subpart 3), the commissioner shall certify to the authority that the project meets the applicable requirements of the act, federal regulations, state statutes and chapter 7075. The purpose of these subparts is to state at what point a certification from the commissioner can be made. However, it is possible that all of the application documents submitted by a municipality could receive approval, but that the project would not meet all of the applicable requirements of federal and state statutes, regulations and rules. Under Minnesota Statute section 446A.07, subdivision 5, the commissioner can only certify to the authority those applications that meet federal and state

statutory and regulatory requirements. A project that does not meet all requirements will not receive the commissioner's certification. Subparts 1 and 2 are modified to read:

> Upon review and approval of the documents required by part 7075.2520, subpart [2/3], ~~the commissioner shall certify to the authority that~~ and a determination that the project meets the applicable requirements of the act, federal regulations, state statutes, and this chapter~~.~~, the commissioner shall certify the application to the authority.

Subpart 3 is modified to read:

> Upon review and approval of the documents required by part 7075.2520, subpart 4, ~~and~~ completion of items A and B, ~~the commissioner shall certify to the authority that~~ and a determination that the project meets the applicable requirements of the act, federal regulations, state statutes, and this chapter~~.~~, the commissioner shall certify the application to the authority.

This modification is needed to clarify that the commissioner's certification is not automatic following approval of the application documents. Rather, an affirmative certification will be made only after the commissioner determines that all applicable state and federal requirements have been met. The modification is reasonable because by statute the commissioner cannot certify a project which does not meet all applicable state and federal requirements. The revised language does not make a substantial change in the meaning of the rule because it only clarifies the application certification process.

f. Part 7075.2525, subpart 3, item A was modified to address a comment made by EPA that the rule should indicate that the environmental review process may include activities in addition to the process in chapter 4410 and Minnesota Statutes, chapter 116D. Title VI of the Act requires each state to establish its own environmental review process for the revolving fund

program that is similar in its scope and nature to the requirements under the National Environmental Policy Act (NEPA). In Minnesota, the existing process in chapter 4410 and Minnesota Statutes, chapter 116D is already very similar to the NEPA process; however, it is likely that some additional elements will have to be added to fully meet the requirements of Title VI. Subpart 3, item A is modified to read:

> The environmental review ~~process in~~ requirements of chapter 4410, ~~and~~ Minnesota Statutes, chapter 116D, and title VI of the act have been satisfactorily ~~completed~~ met.

This modification is needed to clarify that projects in the program will have to meet the environmental review requirements of Title VI. Under Minnesota Statutes 446A.07, subdivision 5, the commissioner cannot certify an application if the requirements of the Act are not met. The modification is reasonable because the Title VI requirements will be based upon and similar to the process in chapter 4410 and Minnesota Statutes chapter 116D. The revised language does not make a substantial change in the meaning of the rule because it only clarifies the environmental review requirements that must be met before the commissioner may certify an application to the Authority. The change does not affect classes of persons who could not have been expected to comment on the proposed rules, introduce significant new subject matter, or make a major substantive change.

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, except as modified in Finding No. 6 above.

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. 7075.2505 to 7075.2550 governing the administration of the Water Pollution Control Revolving Fund Program are adopted pursuant to the authority vested in the Minnesota Pollution Control Agency by Minn. Stat. § 446A.07, subd. 11 (supp. 1987).

MINNESOTA POLLUTION CONTROL AGENCY

Gerald L. Willet

Gerald L. Willet
Commissioner

Dated:
November 22, 1988

FAEGRE & BENSON

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RECEIVED
OCT 19 1988
M.P.C.A.
WATER QUALITY DIV.

October 19, 1988

[By Messenger]

Mr. Jeff Freeman
Minnesota Pollution Control Agency
520 Lafayette Road North
St. Paul, MN 55155

RE: Water Pollution Control Revolving Fund Program

Dear Mr. Freeman:

This letter is to comment on the above-captioned proposed rules as published in the State Register on September 19, 1988.

I am a lawyer engaged primarily in municipal finance law. The views expressed are my own and are not made on behalf of any client.

General Comments

My comments relate primarily to two aspects of the proposed rules which appear in various places: First, the rules apparently mandate a prescribed formula for the imposition of user charges. Second, the rules apparently mandate the negotiation of treatment agreements with all major industrial users. My concern is that these aspects may, in their present form, have unintended consequences and discourage use of the revolving fund loan program in circumstances where municipalities are deprived of flexibility in making rate determinations as a condition to participation in the program.

It seems to me that, while the Commissioner may be legitimately concerned about whether the funded wastewater disposal systems will operate on a sound financial basis, the rules for the application process ought to be limited to obtaining information establishing whether the financial goals can be obtained. The rules should not prescribe a fixed method

by which local governments impose rates. Minnesota Statutes, Section 446A.051, as added by Section 4 of Ch. 546, Minnesota Laws of 1988, requires review to determine feasibility of the financial plan. It does not grant authority to impose a particular rate formula on municipalities.

Determination of User Charges

The second sentence of proposed Part 7075.2520, Subp. 4(B) provides that "The user charge system ... must charge each user class a fee proportional to the contribution of each user class to the total wastewater loading." This restriction is inconsistent with the flexibility municipalities currently have under Minnesota Statutes, Section 444.075, Subd. 3 to impose sewer rates based on a number of other considerations, including cost of service and the pollution qualities of the sewage produced by particular users, as long as the resulting rates are equitable. Local governments should not be deprived of their ability to impose rates based on other considerations in order to maximize revenue or further other concepts of fairness.

I suggest that the second sentence of proposed Part 7075.2520, Subdp. 4(B) be amended by deleting all of the words which follow "treatment works". Consideration might be given to substituting a new sentence for the deleted language substantially as follows: "The user charge system must be accompanied by an estimate of the rates to be charged each user class, the estimated revenues to be received from each user class and the estimated contribution of each user class to the total wastewater loading." Other formulations might also be considered which get at the issue of feasibility of the financial plan, but avoid imposition of a particular rate structure.

If you believe you have legal authority to impose a specific formula similar to the formula proposed in paragraph B and you believe it to be desirable public policy to do so. I suggest that you solicit the advise of municipalities and financial consultants as to the practical impact of the formula. While I am not an expert on sewer rates, the proposed formula strikes me as unworkable in its present form. First, the measurement of sewage discharge is not likely to be precise unless metered. Second, there may be questions as to whether a user has a basis for legal challenge if the rates are not allocated precisely in accordance with the formula. Third, any change in the contribution mix would seem to require a change in the formula.

Treatment Agreements

Part 7075.2520 requires, at Subpart 3(C) and Subpart 4(L), submission of "a treatment agreement with each major contributing industry that will discharge wastewater to the new

or upgraded system" in connection with Step 2 and Step 3 financial assistance. For many municipalities, use of treatment agreements may be important to the feasibility of the project. However, it seems unnecessary to require that such a contract be entered into with every major user and by every municipality without regard to any other factors which bear upon the feasibility of the project. Furthermore, the proposed rules do not define "major" or indicate what the provisions of the agreement should be.

It seems to me that the application should provide for submission of any existing or proposed treatment agreements and that those should be considered as part of the feasibility evaluation of the project. If the terms are reasonably favorable, that should help feasibility. If the proposed or existing terms are unfavorable to the municipality, that would detract. However, municipalities should not be required to negotiate agreements with all major industrial users if that is not necessary to demonstrate feasibility. Accordingly, I suggest that the language of these sentences be revised to read as follows: "any existing or proposed treatment agreements with major contributing industries that will discharge wastewater to the new or upgraded system".

Very truly yours,

Stephen Rosholt

SR:lkl
3494g
cc: Mr. Terry Kuhlman

October 5, 1988

RECEIVED
OCT 19 1988
M.P.C.A.
WATER QUALITY DIV.

Mr. Jeff Freeman
Minnesota Pollution Control Agency
520 Lafayette Road North
St. Paul, MN 55155

Dear Mr. Freeman:

Concerning the Minnesota Pollution Control Agency's (MPCA) Proposed Permanent Rules Relating to Water Pollution Control Revolving Fund, in particular, Part 7075.2520, Subpart 4, Step 3 Financial Assistance, the rule states, in part:

> ". . . a municipality applying for financial assistance shall include the following items for the Commissioner's review and approval as part of its application."
>
> "B. A sewer service charge system comprised of a user charge system and a system providing for dedicated sources of revenue to pay for the municipality's cost of construction and to retire the municipality's debt cost attributable to the wastewater treatment works to be constructed. The user charge system must ensure the sufficient generation of revenue to offset the annual costs of operation, maintenance, and replacement of the treatment works . . ."

Looking at Minnesota Statutes 446A, cited as the Minnesota Public Facilities Act, I find that the Authority is given the statutory responsibility to undertake the activities described in the above-referenced and quoted rules of the MPCA (Minn. Stat. 446A.07, subp. 7). Also the rules of the Authority, in particular part 7380.0430, subparts 1 throught 6 deal at length with the issue of dedicated sources of revenue.

The fact that both the Authority and the MPCA appear to independently examine and make a determination of the credibility of the proposed dedicated sources of revenue, leads to a number of questions.

1. While the statutory directive to the Authority to examine and judge these proposed dedicated sources of revenue is quite specific, I find no specific statutory reference in the Public Facilities Authority Act for the MPCA to do so. The question is what is your statutory authority to state that the MPCA shall review and approve a municipal applicant's proposed dedicated sources of revenue to insure repayment?

2. If either the MPCA or the Authority "approved" the dedicated sources of revenue, and the other does not, what does the municipal applicant then do as it appears the application will not be approved?

3. Are the MPCA's standards of what constitutes an approvable dedicated source of revenue the same as the Authority, or are MPCA's standards different?

4. Part 7075.2525 Application Certification, Supart 3. I read this subpart that the Commissioner of the Agency will certify to the Authority that a municipal applicant's project meets all the requirements of the Federal Water Pollution Control Act, applicable other federal statutes, state statutes, including the Public Facilities Authority Act, and the rules of the MPCA. The question I then have is, given the all encompassing approval of the MPCA of any given project, what is the purpose and the function of the Public Facilities Authority.

Sincerely,

Martin B. English
Public Facilities Authority

MBE:km
PFA.GEN/I20-(1-2)

October 19, 1988

RECEIVED
OCT 19 1988
M.P.C.A.
WATER QUALITY DIV.

Mr. Jeff Freeman
Minnesota Pollution Control Agency
520 Lafayette Road North
St. Paul, MN 55155

Dear Mr. Freeman:

I am concerned about the fact that you define the Federal Water Pollution Control Act in your rules for the Water Pollution Control Fund differently than isdefined in the State Statute. You invoke sections 1381 - 1387, while the State Statute invokes section 1281 - 1299.

Would you please explain why you can choose to define a term differently than the State Statute?

Sincerely

Martin B. English

DEPARTMENT : **Minnesota Pollution Control Agency**

STATE OF MINNESOTA
Office Memorandum

PHONE : 296-7312

DATE : October 19, 1988

TO : Official File - Water Pollution Control Revolving Fund Program Rules

FROM : Jeff Freeman JEF
Program Support Unit
Municipal Wastewater Treatment Section

SUBJECT : **Comment On Application Certification Language In Proposed Rules**

The application certification language in the proposed rules, Part 7075.2525, subps. 1,2 and 3 is potentially misleading. The language states "Upon review and approval of the ...(application requirements)... the commissioner shall certify to the authority that the project meets the applicable requirements of the act, federal regulations, state statutes, and this chapter."

The purpose of this language is to state the timing of when the commissioner will certify (after the application items are reviewed and approved) and what the certification means (that the project meets the applicable requirements). However, it could be misinterpreted to mean that the commissioner's certification is automatic following approval of the application. This is not the case. It is possible that an application could be approved but that other state or federal requirements were not met.

The statute (446A.07, subd. 5) clearly indicates that the commissioner can only certify projects that meet all of the federal and state requirements. Therefore, the language should be revised to indicate that a municipality must both receive approval of its application materials AND meet all other applicable state and federal requirements before the commissioner can certify the application to the Public Facilities Authority.

DEPARTMENT : **Minnesota Pollution Control Agency**

STATE OF MINNESOTA
Office Memorandum

PHONE : 296-7312

DATE : September 21, 1988

TO : Official File - Water Pollution Control Revolving Fund Program Rules

FROM : Jeff Freeman JBF
Program Support Unit
Municipal Wastewater Treatment Section

SUBJECT : **Oral Question/Comment On Proposed Rules**

Ron Bunton from the Metropolitan Waste Control Commission called to ask about how the application requirements in the proposed rules would apply to a completed project that a municipality is seeking refinancing for. I told him that for most of the requirements they could simply reference previously submitted documents and reword the certification statements, etc. to the past tense. (Example: Instead of a certification that the consulting engineer will provide full-time onsite inspection, they could provide a statement saying that their consultant did provide full-time inspection and provide copies of the inspection reports.)

Upon furthur examination of the application requirements, I found that item H, an unexecuted engineering contract, was not appropriate for refinance projects because the contract would have to be executed in order for the project to proceed.

The term "unexecuted" should be dropped completely because it is not important for purposes of our review. MPCA review will be to determine that all necessary work tasks are included. This can be done on either an executed or unexecuted contract.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
230 SOUTH DEARBORN ST.
CHICAGO, ILLINOIS 60604

OCT 19 1988

REPLY TO THE ATTENTION OF:
5WFM-TUB-9

RECEIVED
OCT 21 1988
M.P.C.A.
WATER QUALITY DIV.

Richard J. Sandberg, Chief
Municipal Wastewater Treatment Section
Minnesota Pollution Control Agency
520 Lafayette Road
St. Paul, Minnesota 55155

Dear Mr. Sandberg:

We have completed a review of the proposed State Revolving Fund (SRF) Program rules submitted by the Minnesota Pollution Control Agency (MPCA) on August 19, 1988. We have also reviewed the proposed Interagency Agreement (IA) negotiated between the MPCA and the Minnesota Public Facilities Authority (PFA). Our detailed comments are enclosed in addition to annotated copies of the MPCA rules and IA.

As discussed during our October 17, 1988, conference call, our major concerns encompass:

(1) The terms and phrases commonly used in the SRF rules of the MPCA and the PFA need to be commonly defined.

(2) All Title II requirements, carried over to the Title VI SRF program, should be identified in the rules or operating agreement.

(3) The statutory requirements for the Intended Use Plan should be correctly and completely described the State SRF rules.

We have appreciated the opportunity to review this material. If you have any questions, please contact James Filippini at (312) 886-0181.

Very truly yours,

Gene Wojcik, Acting Chief
State Program Management Section

Enclosures

cc: Terry Kuhlman, MPCA w/enclosures

Minnesota Pollution Control Agency
Proposed State Revolving Fund Program Rules

(A) Purpose:

(1) The purpose statement should accurately reflect the general authority of the SRF program provided under Section 601 of Title VI.

(2) The purpose statement should provide not only the Federal statutory citation of the SRF program, but also the State statutory basis.

(B) Definitions:

(1) The terms that are commonly used between the SRF rules of PFA and the MPCA need to use the same definition.

(2) Under Subpart 2, the term "Act" should also reflect Title II requirements. Therefore, we suggest reference to the FWPCA.

(3) Under Subpart 8, it is not clear what constitutes "any other government subdivision". It is not defined within the Minnesota Statute. For purposes of the SRF, the funding of a treatment works should not be provided to government entities, such as State parks, local park districts, etc., whose responsibility for providing wastewater treatment is in support of its principal activity or services.

(C) Intended Use Plan:

(1) The IUP as described under the definitions of 7075.2510, Subpart 6, and 7075.2515 Subparts 1-3 is not inclusive. The IUP definition and explanation of its purpose should reflect the specific requirements identified under Section 606(c)(1)-(5). As presently provided, the MPCA description and definition is not adequate.

(2) The State must consider methods to incorporate projects seeking "refinancing" on the current annual project priority list.

(D) Applications:

(1) The State should include references under Subpart 2 and Subpart 3, when providing financial assistance to municipalities for facilities planning, and preparation of plans and specifications to prevent "double benefits" if the municipality has received a grant including an allowance under Title II. This is a requirement under Section 603(e) of Title VI.

(2) The sewer services charge system should also require that "dedicated sources of revenues" for local capital costs must generate sufficient revenue to repay the principal and interest on the loan.

(3) It is not clear what "cost-sharing methodology", referenced under Subpart 2D and 3D means? Is the "cost-sharing methodology" only for Step 1 and Step 2 costs, or also for construction?

(4) Section 602(b)(6) identifies 16 Title II requirements that are carried over to Title VI. Throughout the SRF rules, we have identified only 3 Title II requirements (user charge, project performance and NEPA) that are included. The other requirements will need to be addressed if not in the rules, than in the operating agreement.

(5) For Step 2 financial assistance under Subpart 3, a "treatment agreement" is required to be submitted. If a municipality will ultimately apply for a loan to construct, is it necessary to require the "agreement" at the time of a Step 2 submittal?

(6) The State should identify when a municipality will begin repayment of the loan for Step 1 and/or Step 2 assistance if it will not continue in the SRF program.

(E) Application Certification

(1) The State should indicate that the "SERP" may include activities in addition to Minnesota Rules Chapter 4410.

STATE OF MINNESOTA
POLLUTION CONTROL AGENCY

In the Matter of the Proposed Rules
Governing the Administration of the
Water Pollution Control Revolving Fund Program
Minn. Rules Parts 7075.2505 to 7075.2550

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.

Beverly Conerton
Special Assistant
Attorney General

HUBERT H. HUMPHREY, III
ATTORNEY GENERAL

STATE OF MINNESOTA
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November 30, 1988

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

Re: In the Matter of Proposed Rules Governing the Administration of the Water Pollution Control Revolving Fund Program, Minn. Rules Parts 7075.2505 to 7075.2550

Dear Ms. Eller:

On November 22, 1988, the Minnesota Pollution Control Agency adopted the above-captioned rules governing the Administration of the Water Pollution Control Revolving Fund 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. Certificate of Authorizing Resolution.
6. Notice of Intent to Adopt Rules Without a Public Hearing and rules as proposed (13 S.R. 649, September 19, 1988).
7. Comments received during the comment period.
8. Notice of Intent to Adopt Rules Without a Public Hearing, as mailed.
9. Affidavit of Mailing and Notice of Intent to Adopt Rule Without a Public Hearing and Certificate of Mailing List.
10. Rules as proposed.

11. Statement of Need and Reasonableness.

12. Declaration of Counsel.

There were no written comments received pursuant to the Notice of Intent to Solicit Outside Opinion. There were no requests to be notified of submission of rules adopted without public hearing to the Attorney General.

Very truly yours,

Beverly Conerton

Beverly Conerton
Special Assistant Attorney General

Enclosures

RECEIVED

DEC 02 88

ATTORNEY GENERAL'S OFFICE
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ST PAUL, MN 55155