


# Minnesota Attorney General: Administrative Rules Proceedings

## Copyright Notice:

This material may be protected by copyright law (U.S. Code, Title 17). Researchers are liable for any infringement. For more information, visit www.mnhs.org/copyright.

Version 3
August 20, 2018

RULE REVIEW CHECKLIST

File No. 1563 Docket No. 05.0009.0183

DATE RECEIVED 1/24/89 ADOPTED W/O HEARING X

REVIEW DATE 2/2/89 EMERGENCY RULE _____

DUE DATE 2/7/89 ✱ REVISOR APPROVED _____

APPROVED X 2/6/89 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WITHDRAWN _____ RETURNED TO AGENCY _____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)~~
_____ ~~Date published in State Register~~
_____ ~~Comments~~

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

_____ ~~Board's Authorizing Resolution~~
_____ ~~Date adopted~~

✓ Proposed Rule
yes Revisor's Certificate

✓ Notice of Intent to Adopt Rule
446A.06 Statutory Authority
no Small Business Statement
yes Expenditure of public money statement
no Signature

✓ Statement of Need and Reasonableness (if applicable)
no Small Business Statement
no Fees - § 16A.128

✓ Affidavit of Mailing Notice of Intent to Adopt Rule
9/16/88 Date (30)/25 days before adoption
ok Notice attached
_____ ~~Copy of rule or summary attached~~

✓ Publication in State Register
9/19/88 Date (30)/25 days before adoption

_____ 180-day deadline from:
7/1/88 Effective date of law requiring rule (14.12) (both rules)
10/9/88 end of comment period (§ 14.26) (rules without hearing)
_____ ~~effective date of statutory authority (§ 14.29) (emergency rules)~~

_____ ~~Resolution Adopting~~
_____ ~~Date adopted~~

✓ Findings of Fact, Conclusions & Order Adopting
12/7/88 Date

✓ Written requests, submissions or comments (4)

✓ Declaration of attorney
Karl Sonneman Name of SAAG representing agency

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

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

ATTORNEY GENERAL

February 10, 1988

MARTIN B. ENGLISH
Public Finance Officer

JULIE A. LEPPINK
Special Assistant
Attorney General

6-9422

In the Matter of the Adopted Rule Relating to
Water Pollution Control

The above-referenced rule has been approved as to its legality by the Attorney General on February 6, 1989.

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

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

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

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

JAL:rer
Enclosures

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

William Brown
Chief Administrative Law Judge
Office of Administrative Hearings

Minnesota Department of
Trade and Economic Development

Community Development Division

900 American Center
150 East Kellogg Boulevard
St. Paul, MN 55101-1421

612/296-5005
Fax: 612/296-1290

December 8, 1988

Ms. Martha Casserly
Assistant Attorney General
Office of the Attorney General
204 Administration Building
50 Sherburne Avenue
St. Paul, MN 55155

Rec'd 1/24/89 JK

RE: **In the Matter of Proposed Rules Governing the Water Pollution Control Fund**
**Minn. Rules Parts 7380.0400 to 7380.0480**

Dear Ms. Casserly:

On December 13, 1988, the Commissioner of Trade and Economic Development adopted the above-captioned rules governing the Water Pollution Control Fund. 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).

N/A 3. Certificate of Resolution Adopting Rules.

N/A 4. Notice of Intent to Solicit Outside Opinion S. R. _____.

N/A 5. Copies of written comments received pursuant to Notice of Intent to Solicit Outside Opinion.

N/A 6. Certificate of Authorizing Resolution.

7. Notice of Intent to Adopt Rules Without a Public Hearing and rules as proposed 13 S. R. 12, September 19, 1988.

8. Comments received during the comment period.

9. Notice of Intent to Adopt Rules Without a Public Hearing, as mailed.

10. Affidavit of Mailing the Notice of Intent to Adopt Rules Without a Public Hearing and Certificate of Mailing List.

11. Rules as proposed.

12. Statement of Need and Reasonableness.

13. Declaration of Counsel.

An Equal Opportunity Employer

N/A 14. Notice of Submission of Rule Adopted Without Public Hearing to the Attorney General.

N/A 15. Affidavit of Mailing of Notice of Submission of Rule Adopted Without Public Hearing to the Attorney General.

N/A 16. [Petition for Rulemaking].

Sincerely,

Martin B. English
Public Finance Officer

MBE:cd

PFA II/26-4

Enclosures

A6 Copy

p 7 l 30

Department of Trade and Economic Development

Adopted Permanent Rules Relating to the Water Pollution Control Revolving Fund

Rules as Adopted

7380.0400 PURPOSE.

The Water Pollution Control Revolving Fund administered by the Minnesota Public Facilities Authority provides loans and other forms of financial assistance for the planning, designing, and construction of municipal wastewater treatment plants to assure maintenance of progress toward municipal compliance, or implementation of nonpoint source management controls, as required by the Federal Water Pollution Control Act, to municipalities for projects that have been certified by the Minnesota Pollution Control Agency. The United States Environmental Protection Agency provides a capitalization grant to the state of Minnesota to provide loans through the authority to ensure that the Revolving Fund is available to finance water pollution control projects in perpetuity. The terms and conditions of the loan agreement for financial assistance provided by the authority must be in conformance with the Federal Water Pollution Control Act, United States Code, title 33, particularly sections 1381 to 1387, the rules of the agency, and this part.

7380.0410 DEFINITIONS.

Subpart 1. **Scope.** The terms defined in this part, in Minnesota Statutes, section 446A.02, and in the Federal Water Pollution Control Act, apply to parts 7380.0400 to 7380.0480.

Subp. 2. **Act.** "Act" means the Federal Water Pollution Control Act, ~~as-defined-in-Minnesota-Statutes,-section-446A.02,-subdivision-4~~ United States Code, title 33, sections 1251 to 1387.

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



Approved by Revisor

Subp. 4. **Applicant.** "Applicant" means:

A. a governmental unit as defined in Minnesota Statutes, section 446A.02, subdivision 5; or

B. a municipality as defined in this part.

Subp. 5. **Average coupon rate.** "Average coupon rate" means the weighted average of bonds at the various maturity dates as provided in the bond.

Subp. 6. **Dedicated sources of revenue for repayment.** "Dedicated sources of revenue for repayment" means one or more dedicated sources of revenue established by the municipality to ensure repayment of the loan from the authority. Dedicated sources of revenue may be: special assessments; general taxes or general obligation bonds; sewer service charges; or other sources acceptable to the authority.

Subp. 7. **Allowable costs.** Allowable costs that may be financed by the authority, provided the allowable cost item is reasonable ~~or~~, necessary, and permitted by the act, include those provided in the list of costs given below. The listing is only representative of allowable costs that may be financed by a loan from the authority. Other allowable costs may also fall within the language of the act, United States Code, title 33, sections ~~1381-1387~~ 1381 to 1387.

discretionary

A. acquisition costs of ~~land, building, or both~~ buildings or land under United States Code, title 33, sections 1381 to 1387;

B. site preparation;

C. construction costs;

D. engineering costs;

E. costs of equipment, machinery, or both;

F. bond issuance costs;

G. underwriting, financial advisors, or placement fees;

H. trustee fees;

I. fees of guarantor, insurer, or financial institution, other than the authority, which provide letters of credit, surety bonds, or equivalent security;



Approved
by Revisor _____

J. authority fees, including application and guaranty fees of the authority ~~and administrative costs and expenses~~;

K. certain contingency costs;

L. interest costs during construction;

M. legal fees, including those of the authority; and

N. a debt service reserve fund.

Removing an allowable cost could be controversial -

Subp. 8. **Executive director.** "Executive director" means the executive director of the Public Facilities Authority.

Subp. 9. **Fund.** "Fund" means the Minnesota Water Pollution Control Revolving Fund created by Minnesota Statutes, section 446A.07, as amended.

Subp. 10. **Intended use plan.** "Intended use plan" means the document prepared annually by the agency according to requirements of the act and submitted to the United States Environmental Protection Agency ~~that identifies~~. The plan will identify the intended uses of the amounts available to the fund, including a list of wastewater treatment projects and other eligible activities scheduled to be funded during the fiscal year.

Subp. 11. **Loan agreement.** "Loan agreement" means the loan agreement or financing agreement between the authority and the municipality that provides all the terms and conditions of the loan.

Subp. 12. **Municipal bond index.** "Municipal bond index" means the index based on the yield that about 500 major issuers, mainly of investment grade, would pay on new long-term (20 years) general obligation, tax exempt bonds. The index is published each Friday in the Wall Street Journal.

Subp. 13. **Municipality.** "Municipality" means any county, city, and town, the Metropolitan Waste Control Commission established in Minnesota Statutes, chapter 473 and the Metropolitan Council when acting under the provisions of 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.



Approved by Revisor _____

Subp. 14. **Poverty level.** "Poverty level" means the level of income identified as the poverty level by the United States Census Bureau; or by another federal or state agency; or by an accredited independent survey, which most accurately measures the level of poverty within a project service area.

Subp. 15. **Project completion.** "Project completion" means the date on which the operation of the treatment works is initiated or is capable of being initiated.

Subp. 16. **Project service area.** "Project service area" means that part of the sewer service area directly served by the project being constructed.

Subp. 17. **Quarterly set rate.** "Quarterly set rate" means the maximum rate of interest set for a calendar quarter and shall be determined by the authority using as guidance the average of the municipal bond index for the four weeks prior to the beginning of the quarter minus 100 basis points for 20-year term loans. For loans of less than 20 years, the quarterly set rate will be determined by the authority using as guidance an index of investment grade bond issues having a maturity equal to the term of the loan being requested by the municipality minus a discount of five basis points for each year less than 20 years.

Subp. 18. **Sewer service area.** "Sewer service area" means the sewer service area that utilizes the individual sewage treatment plant.

Subp. 19. **Sewer service charge.** "Sewer service charge" means a charge levied upon the users of the sewer service system to pay for the use of the system. Service charges include tax assessment, special assessments, user ~~fees~~ charges, or other charges identified by any other name.

FINANCIAL ASSISTANCE APPLICATIONS

7380.0420 PROCEDURES FOR FINANCIAL ASSISTANCE APPLICATIONS PROCESSING.

Subpart 1. **In general.** To apply for financial assistance from the authority, eligible applicants identified in the annual intended use plan prepared by the agency may submit an



Approved
by Revisor _____

application at any time to the executive director of the authority.

Prior to the submission of an application to the authority, the municipality shall contact the authority to receive the authority's advice under Minnesota Statutes, section 446A.051.

The authority shall forward the application to the agency within ten day after receipt of the application by the authority. The agency will accept and review the application as provided in its rules.

Subp. 2. ~~**Deadline for submission**~~ **Authority review.** When an application that has been certified by the commissioner of the agency is returned to and received by the authority on or before the first business day of the month, the authority shall consider the application at the authority meeting that month. If the certified application is received after the first business day of the month and can be reviewed by the executive director prior to the authority agenda deadline, the authority may consider the application at the meeting in that month.

Subp. 3. **Completed application.** An application certified by the commissioner of the agency is considered complete when the executive director of the authority determines that the exhibits and documentation which have been received provide a full and accurate account of the project financing to the extent that the authority is able to make an informed determination on the application.

Subp. 4. **Incomplete application.** If an incomplete application is received, the executive director shall notify the applicant in writing of specific deficiencies in the application. The applicant has 60 days from the date of mailing of the executive director's notification to complete the application. If the application is not completed and received by the executive director within those 60 days, the application is deemed to be rejected and the applicant, subject to agency rules, must reapply to be further considered.

Subp. 5. **Applications not receiving certification.** An application not receiving certification by the commissioner of



Approved by Revisor _____

the agency will not receive consideration for financial assistance by the authority. The executive director of the authority shall notify the applicant of the rejection of the application by the authority within ten days of the rejection determination.

Subp. 6. **Rejection of loan applications by the authority.** The authority may reject an application for financial assistance for the following reasons:

A. failure to obtain certification from the commissioner of the agency for the project;

B. failure to develop and document dedicated sources of revenue sufficient in the judgment of ~~the~~ authority to ensure repayment of the loan to the authority; and

C. failure to submit a completed application using the procedure provided in part 7380.0420, subpart 4~~;-and~~

~~D.--failure-to-demonstrate-the-legal,-managerial,-institutional,-and-financial-capacity-to-provide-for-adequate-operation,-maintenance,-and-replacement-cost-of-the-municipal-facility-for-the-term-of-the-loan.~~

7380.0430 AUTHORITY EVALUATION PROCEDURE.

Subpart 1. **In general.** The authority shall evaluate applications certified by the commissioner of the agency to determine the applicant's capacity to comply with the terms and conditions of the Act and the rules of the authority as provided in this part.

The applicant's project must have been identified in the agency's intended use plan for the year in which the applicant is applying.

The authority will only provide financial aid for the allowable costs provided in part 7380.0410, subpart 7.

Subp. 2. **Loan terms and conditions.**

A. The terms and conditions for loans and other forms of financial assistance provided by the authority to eligible applicants for certified projects are as provided by the Act; Minnesota Statutes, chapter 446A; this part; and as provided by



Approved by Revisor _____

the authority in the loan agreement for the project financing.

B. If the authority provides a loan to a municipality for planning or design engineering of a wastewater treatment facility, the interest rate, terms, and conditions must be the same as for loans elsewhere in this part.

Subp. 3. **Repayment.** The repayment of loans to the authority by the recipient must be sufficient to fully amortize the loan for a period of not more than 20 years after project completion. If treatment works have been segmented or phased, the repayment requirements of this subpart and the payment requirements of subpart 6 apply to each phase or segment of the project.

~~Subp. 4. Project completion. The repayment of loans to the authority by the recipients must begin no later than one year after project completion.~~

Subp. 5 4. **Dedicated sources of revenue.** Loan recipients shall establish, and identify in the application, dedicated sources of revenue sufficient to operate and maintain the new facility, and fully amortize the loan for a term of not more than 20 years. The authority shall examine the identified dedicated sources of revenue to ensure that they are a sufficient amount and of sufficient certainty to fully repay the loan.

Subp. 6 5. **Payments.** The first principal and interest payment is due and payable not later than one year after project completion, or 24 months from the beginning of construction, whichever is earlier. Subsequent principal and interest payments by the loan recipient must be made at the times agreed upon by the loan recipient and the authority in the loan agreement. In general, semiannual loan payments will be required, unless a different payment schedule is agreed upon and provided in the loan agreement. However, in no case shall payments be less frequent than annual principal and interest payments sufficient to amortize the debt within the contracted period.



Approved
by Revisor _____

7380.0440 INTEREST RATE DETERMINATIONS.

Subpart 1. **In general.** The interest rate charged by the authority to a loan recipient must be determined as provided in this part.

Subp. 2. **Setting of interest rates.**

A. The interest rate charged to a loan recipient must be determined by the authority using as guidance the quarterly set rate in effect at either the time of the municipality's application to the authority, or at the time of the signing of the loan agreement by the authority and the municipality, as determined by the municipality at the signing of the loan agreement.

B. The applicant is~~, however, eligible for~~ entitled to the cumulative interest rate adjustments provided in this part, ~~or the applicant may request in its loan application a specified basis point reduction from the average coupon rate of bonds to be sold by the authority. If the loan applicant applies for the specified basis point reduction, the following requirements must be met:~~ regardless of when the applicant chooses to set the interest rate as provided in item A.

C. If the authority funds an applicant's project through the sale of authority bonds, the applicant may request in its loan application the specific basis point reduction from the average coupon rate of the bonds sold by the authority as provided in item D. If an applicant chooses this option, the applicant will not be entitled to receive any other interest rate adjustment as provided in item B or subparts 4 to 6. The applicant also must comply with the following conditions:

~~A.~~ (1) the payment schedule agreed to ~~will follow~~ follows the payment schedule of the bonds sold by the authority;

~~B.~~ (2) acceptable agreement on fund accountability is reached;

~~C.~~ (3) the municipality can demonstrate its creditworthiness; and

~~D.~~ (4) the integrity of the fund is maintained.

D. The authority shall annually provide in its



Approved by Revisor _____

application material the specific basis point reduction it will allow under ~~this option~~ item C.

Subp. 3. **Suspension of loans at the quarterly set rate.** The authority may suspend offering loans at the quarterly set rate if it determines that market conditions impacting the municipal bond index are unsettled or impair the viability of the fund. At the time of that determination, the authority may by resolution adopt a revised quarterly set rate, based upon generally accepted practices of interest rate forecasting, for a period of time determined by the authority. The authority may, based upon market conditions, extend the offering of loans at the revised quarterly set rate and continue to do so until the time the authority considers it prudent to again use the municipal bond index as guidance for the quarterly set rate.

Subp. 4. **Demographic considerations.**

A. A loan application will be considered for an interest rate reduction based upon the population of the project service area, and be eligible for a reduction as follows:

(1) Applicants with a project service area population of less than 150,000 and larger than 100,000 are eligible to receive the quarterly set rate minus 25 basis points, subject to the interest rate adjustments given in this part.

(2) Applicants with a project service area population of 100,000 or less and larger than 25,000 are eligible to receive the quarterly set rate minus 50 basis points, subject to the interest rate adjustments given in this part.

(3) Applicants with a project service area population of 25,000 or less and larger than 5,000 are eligible to receive the quarterly set rate minus 75 basis points, subject to the interest rate adjustments in this part.

(4) Applicants with a project service area population of 5,000 or less and larger than 2,500 are eligible to receive the quarterly set rate minus 100 basis points, subject to the interest rate adjustments in this part.



Approved
by Revisor _____

(5) Applicants with a project service area population of 2,500 or less but larger than 1,000 are eligible to receive the quarterly set rate minus 125 basis points, subject to the interest rate adjustments in this part.

(6) Applicants with a project service population of 1,000 or less are eligible to receive the quarterly set rate minus 150 basis points, subject to the interest rate adjustments in this part.

B. The data used to determine the population and the median household income of the project service area should be that which most accurately measures the population and median household income of the area. The authority shall determine if the data submitted by the municipality is an appropriate and accurate measurement of the population and household income of the project service area.

C. The metropolitan and nonmetropolitan median household income levels of the state must be determined from income data from the most recent census of the United States or from data from the state demographer. The data provided must be applied as the criteria to determine if the applicants' project service area household income is at, below, or above the median household level for the metropolitan or nonmetropolitan area as applicable.

D. If there is reason to believe that the United States census data or the data from the state demographer is not a currently accurate representation of the median household income or population within the project service area, the applicant may document the reasons why the data is not an accurate representation, and obtain additional information regarding median household income or population for the project service area. The information must consist of reliable data from local, regional, state or federal sources, or from a survey conducted by a reliable impartial source.

Subp. 5. **Interest rate adjustment.** Any applicant is eligible to receive consideration for interest rate adjustments to the interest rate to be charged by the authority as provided



Approved by Revisor _____

in this part.

A. The median household income is the income level for the project service area of the facility being financed by the authority. If the median household income level for the area is below the median household income level for a metropolitan or nonmetropolitan area, as applicable, the applicant is eligible for a 50 basis point reduction in the rate; or

B. If the percentage of poverty level households in the project service area is at or above the national average, the applicant is eligible for a 100 basis points reduction in the interest rate charged by the authority.

C. If the ~~current~~ estimated annual sewer service charge of the project service area~~,-coupled-with-the-financing,-operation,-maintenance,-and-replacement-costs-of-the-new-facility-results-in-an-annual-sewer-service-charge-in-excess-of~~ after the completion of the project exceeds one percent of the median household income level of the project service area, the municipality is eligible for a 100 basis ~~points~~ point reduction in the interest rate.

Subp. 6. **Interest-free loans.** The authority may offer interest-free loans as provided in this part to municipalities demonstrating in their application that they are financially unable to pay any interest charge on the loan. The authority shall not offer interest-free loans if the offering of an interest-free loan results in the combined rate of interest on the authority's portfolio to yield less than the rate of inflation as determined by the consumer price index.

Interest-free loans for any applicant are limited to $500,000, or the eligible cost of the project, whichever is less. The authority shall not provide interest-free loans, in total, exceeding up to ten percent of the total capitalization grant funds scheduled to be received by the authority.

To be eligible for consideration for an interest-free loan, an applicant must meet each of the following conditions:

A. the population of the project service area has



Approved by Revisor _____

declined over the past ten years;

B. the percent of ~~people in~~ poverty level households in the project service area of the project is at or ~~exceeds the poverty level~~ above the national average; and

C. the ~~current~~ estimated annual sewer service charge of the project service area~~, coupled with the financing, operation, maintenance, and replacement costs of the new facility results in an annual sewer service charge in excess of~~ after the completion of the project exceeds one and one-half percent of the median household income level of the project service area.

7380.0450 OTHER FINANCIAL ASSISTANCE.

In addition to the loans provided in parts 7380.0430 to 7380.0440, the authority may use any forms of financial aids provided in United States Code, title 33, section 1383(d). The use of specific financing tools will be determined by the authority based on existing financial market conditions at the time the financing of the project takes place.

The revolving loan fund authorized by the act may be used:

A. to buy or refinance the debt obligation of municipalities for treatment works for which the debt was incurred and construction begun after March 7, 1985, at or below market rate;

B. to guarantee or purchase insurance for local obligations to improve credit market access or reduce interest rates;

C. to provide a source of revenue or security for the payment of principal and interest on revenue or general obligation bonds issued by the authority if bond proceeds are deposited in the fund; and

D. to provide loan guarantees for similar revolving funds established by a governmental unit other than state agencies.

7380.0460 FEES.

If the authority charges a loan recipient a loan



Approved
by Revisor _____

origination fee, the fee must be based on a schedule established by the authority and must not exceed one and one-half percent of funds borrowed from the authority. The fees, if any, will be charged to all loan recipients and must be as provided in the loan application form. These fees may be included as an eligible project activity or category in the municipality's application to the authority, and are due and payable as provided in the loan agreement.

7380.0470 RELEASE OF FUNDS.

Subpart 1. **In general.** Subject to the availability of funds, payments to the governmental unit for an approved project will be made in accordance with applicable state and federal law governing payments, but payments will not be made until the authority has determined the total estimated cost of the project, and ascertained that the total final financing of the project is assured by the following:

A. a loan authorized by state law or the appropriation proceeds of bonds or other money of the municipality to a fund for construction of a project; and

B. an irrevocable undertaking, by resolution of the applicant, to use the loan proceeds exclusively for the project, and to pay any additional amount by which the cost of the project exceeds the final estimate by the appropriation to the construction fund of additional money or proceeds of additional bonds to be issued by the governmental unit.

Subp. 2. **Adverse change.** The authority shall not release funds to a municipality for an approved project until the authority has determined that there have been no adverse changes in the financial capacity of the municipality since the day of the completion of the application.

The authority reserves the right to suspend or terminate funding to the municipality if the authority determines that there has been an adverse change.

Subp. 3. **Conformance with plans and reporting requirements.** The authority shall withhold, suspend, or



Approved
by Revisor _____

terminate either total or partial payments if the authority determines that a project does not substantially conform to approved plans and specifications, or there has been substantial noncompliance with reporting requirements.

The executive director shall give a municipality written notice of the deficiencies the authority has determined exist, and the time in which the municipality must demonstrate to the authority's satisfaction that the condition has or will be corrected. The time for demonstration must not exceed 90 days.

7380.0480 REPORTS AND AUDITS.

Subpart 1. **Reports.** During the term of the loan, the municipality shall make written reports to the executive director on forms provided by the authority and on a schedule determined by the executive director.

Subp. 2. **Audits.** Financial assistance recipients must arrange and pay for independent audits, acceptable to the authority and prepared in compliance with the Office of Management and Budget, Circular A-128, published in the Federal Register, volume 50, number 188, page 39083, on September 27, 1985, and in compliance with the Single Audit Act of 1984, United States Code, title 31, sections 7501-7507. ~~Costs incurred in preparation of the audit are an eligible activity or category under part 7380.0410, subpart 7.~~



Approved by Revisor _____

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED

FEB 10 1989

Joan Anderson Growe

Secretary of State

10:05 AM

APPROVED AS TO FORM AND LEGALITY

February 6, 1989

HUBERT H. HUMPHREY, III
ATTORNEY GENERAL

BY

SPECIAL ASSISTANT ATTORNEY GENERAL

#11

# Office of the Revisor of Statutes

## Administrative Rules

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

**AGENCY:** Department of Trade and Economic Development

**MINNESOTA RULES:** Chapter 7380

The attached rules are approved for publication in the State Register

David S. Niss
Assistant Revisor

Department of Trade and Economic Development

Proposed Permanent Rules Relating to the Water Pollution Control Revolving Fund

Rules as Proposed (all new material)

7380.0400 PURPOSE.

The Water Pollution Control Revolving Fund administered by the Minnesota Public Facilities Authority provides loans and other forms of financial assistance for construction of municipal wastewater treatment plants to assure maintenance of progress toward municipal compliance, or implementation of nonpoint source management controls, as required by the Federal Water Pollution Control Act, to municipalities for projects that have been certified by the Minnesota Pollution Control Agency. The United States Environmental Protection Agency provides a capitalization grant to the state of Minnesota to provide loans through the authority to ensure that the Revolving Fund is available to finance water pollution control projects in perpetuity. The terms and conditions of the loan agreement for financial assistance provided by the authority must be in conformance with the Federal Water Pollution Control Act, United State Code, title 33, particularly sections 1381 to 1387, the rules of the agency, and this part.

7380.0410 DEFINITIONS.

Subpart 1. **Scope.** The terms defined in this part, in Minnesota Statutes, section 446A.02, and in the Federal Water Pollution Control Act, apply to parts 7380.0400 to 7380.0480.

Subp. 2. **Act.** "Act" means the Federal Water Pollution Control Act, as defined in Minnesota Statutes, section 446A.02, subdivision 4.

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

Subp. 4. **Applicant.** "Applicant" means:

A. a governmental unit as defined in Minnesota



Approved by Revisor DSN

Statutes, section 446A.02, subdivision 5; or

B. a municipality as defined in this part.

Subp. 5. **Average coupon rate.** "Average coupon rate" means the weighted average of bonds at the various maturity dates as provided in the bond.

Subp. 6. **Dedicated sources of revenue for repayment.** "Dedicated sources of revenue for repayment" means one or more dedicated sources of revenue established by the municipality to ensure repayment of the loan from the authority. Dedicated sources of revenue may be: special assessments; general taxes or general obligation bonds; sewer service charges; or other sources acceptable to the authority.

Subp. 7. **Allowable costs.** Allowable costs that may be financed by the authority, provided the allowable cost item is reasonable or necessary, include those provided in the list of costs given below. The listing is only representative of allowable costs that may be financed by a loan from the authority. Other allowable costs may also fall within the language of the Act, United States Code, title 33, sections 1381-1387.

A. acquisition costs of land, building, or both;

B. site preparation;

C. construction costs;

D. engineering costs;

E. costs of equipment, machinery, or both;

F. bond issuance costs;

G. underwriting or placement fees;

H. trustee fees;

I. fees of guarantor, insurer, or financial institution, other than the authority, which provide letters of credit, surety bonds, or equivalent security;

J. authority fees, including application and guaranty fees of the authority and administrative costs and expenses;

K. certain contingency costs;

L. interest costs during construction;

M. legal fees, including those of the authority; and



Approved by Revisor _____

N. a debt service reserve fund.

Subp. 8. **Executive director.** "Executive director" means the executive director of the Public Facilities Authority.

Subp. 9. **Fund.** "Fund" means the Minnesota Water Pollution Control Revolving Fund created by Minnesota Statutes, section 446A.07, as amended.

Subp. 10. **Intended use plan.** "Intended use plan" means the document prepared annually by the agency and submitted to the United States Environmental Protection Agency that identifies the intended uses of the amounts available to the fund, including a list of wastewater treatment projects and other eligible activities scheduled to be funded during the fiscal year.

Subp. 11. **Loan agreement.** "Loan agreement" means the loan agreement or financing agreement between the authority and the municipality that provides all the terms and conditions of the loan.

Subp. 12. **Municipal bond index.** "Municipal bond index" means the index based on the yield that about 500 major issuers, mainly of investment grade, would pay on new long-term (20 years) general obligation, tax exempt bonds. The index is published each Friday in the Wall Street Journal.

Subp. 13. **Municipality.** "Municipality" means any county, city, and town, the Metropolitan Waste Control Commission established in Minnesota Statutes, chapter 473 and the Metropolitan Council when acting under the provisions of 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.

Subp. 14. **Poverty level.** "Poverty level" means the level of income identified as the poverty level by the United States Census Bureau; or by another federal or state agency; or by an accredited independent survey, which most accurately measures the level of poverty within a project service area.

Subp. 15. **Project completion.** "Project completion" means



Approved
by Revisor _____

the date on which the operation of the treatment works is initiated or is capable of being initiated.

Subp. 16. **Project service area.** "Project service area" means the sewer service area directly served by the project being constructed.

Subp. 17. **Quarterly set rate.** "Quarterly set rate" means the maximum rate of interest set for a calendar quarter and shall be determined by the authority using as guidance the average of the municipal bond index for the four weeks prior to the beginning of the quarter minus 100 basis points for 20-year term loans. For loans of less than 20 years, the quarterly set rate will be determined by the authority using as guidance an index of investment grade bond issues having a maturity equal to the term of the loan being requested by the municipality minus a discount of five basis points for each year less than 20 years.

Subp. 18. **Sewer service area.** "Sewer service area" means the sewer service area that utilizes the individual sewage treatment plant.

Subp. 19. **Sewer service charge.** "Sewer service charge" means a charge levied upon the users of the sewer service system to pay for the use of the system. Service charges include tax assessment, special assessments, user fees, or other charges identified by any other name.

Charges

FINANCIAL ASSISTANCE APPLICATIONS

7380.0420 PROCEDURES FOR FINANCIAL ASSISTANCE APPLICATIONS PROCESSING.

Subpart 1. **In general.** To apply for financial assistance from the authority, eligible applicants identified in the annual intended use plan prepared by the agency may submit an application at any time to the executive director of the authority.

Prior to the submission of an application to the authority, the municipality shall contact the authority to receive the authority's advice under Minnesota Statutes, section 446A.051.

The authority shall forward the application to the agency



Approved by Revisor _____

within ten day after receipt of the application by the authority. The agency will accept and review the application as provided in its rules.

Subp. 2. **Deadline for submission.** When an application that has been certified by the commissioner of the agency is returned to and received by the authority on or before the first business day of the month, the authority shall consider the application at the authority meeting that month. If the certified application is received after the first business day of the month and can be reviewed by the executive director prior to the authority agenda deadline, the authority may consider the application at the meeting in that month.

Subp. 3. **Completed application.** An application certified by the commissioner of the agency is considered complete when the executive director of the authority determines that the exhibits and documentation which have been received provide a full and accurate account of the project financing to the extent that the authority is able to make an informed determination on the application.

Subp. 4. **Incomplete application.** If an incomplete application is received, the executive director shall notify the applicant in writing of specific deficiencies in the application. The applicant has 60 days from the date of mailing of the executive director's notification to complete the application. If the application is not completed and received by the executive director within those 60 days, the application is deemed to be rejected and the applicant, subject to agency rules, must reapply to be further considered.

Subp. 5. **Applications not receiving certification.** An application not receiving certification by the commissioner of the agency will not receive consideration for financial assistance by the authority. The executive director of the authority shall notify the applicant of the rejection of the application by the authority within ten days of the rejection determination.

Subp. 6. **Rejection of loan applications by the authority.**



Approved
by Revisor _____

The authority may reject an application for financial assistance for the following reasons:

A. failure to obtain certification from the commissioner of the agency for the project;

B. failure to develop and document dedicated sources of revenue sufficient in the judgment of the authority to ensure repayment of the loan to the authority;

C. failure to submit a completed application using the procedure provided in part 7380.0420, subpart 4; and

D. failure to demonstrate the legal, managerial, institutional, and financial capacity to provide for adequate operation, maintenance, and replacement cost of the municipal facility for the term of the loan.

7380.0430 AUTHORITY EVALUATION PROCEDURE.

Subpart 1. **In general.** The authority shall evaluate applications certified by the commissioner of the agency to determine the applicant's capacity to comply with the terms and conditions of the Act and the rules of the authority as provided in this part.

The applicant's project must have been identified in the agency's intended use plan for the year in which the applicant is applying.

The authority will only provide financial aid for the allowable costs provided in part 7380.0410, subpart 7.

Subp. 2. **Loan terms and conditions.** The terms and conditions for loans and other forms of financial assistance provided by the authority to eligible applicants for certified projects are as provided by the Act; Minnesota Statutes, chapter 446A; this part; and as provided by the authority in the loan agreement for the project financing.

Subp. 3. **Repayment.** The repayment of loans to the authority by the recipient must be sufficient to fully amortize the loan for a period of not more than 20 years after project completion. If treatment works have been segmented or phased, the repayment requirements of this subpart and the payment



Approved by Revisor _____

requirements of subpart 6 apply to each phase or segment of the project.

Subp. 4. **Project completion.** The repayment of loans to the authority by the recipients must begin no later than one year after project completion.

Subp. 5. **Dedicated sources of revenue.** Loan recipients shall establish, and identify in the application, dedicated sources of revenue sufficient to operate and maintain the new facility, and fully amortize the loan for a term of not more than 20 years. The authority shall examine the identified dedicated sources of revenue to ensure that they are a sufficient amount and of sufficient certainty to fully repay the loan.

Subp. 6. **Payments.** The first principal and interest payment is due and payable not later than one year after project completion, or 24 months from the beginning of construction, whichever is earlier. Subsequent principal and interest payments by the loan recipient must be made at the times agreed upon by the loan recipient and the authority in the loan agreement. In general, semiannual loan payments will be required, unless a different payment schedule is agreed upon and provided in the loan agreement. However, in no case shall payments be less frequent than annual principal and interest payments sufficient to amortize the debt within the contracted period.

7380.0440 INTEREST RATE DETERMINATIONS.

Subpart 1. **In general.** The interest rate charged by the authority to a loan recipient must be determined as provided in this part.

Subp. 2. **Setting of interest rates.** The interest rate charged to a loan recipient must be determined by the authority using as guidance the quarterly set rate in effect at either the time of the municipality's application to the authority, or at the time of the signing of the loan agreement by the authority and the municipality, as determined by the municipality. The



Approved by Revisor _____

applicant is, however, eligible for the cumulative interest rate adjustments provided in this part, or the applicant may request in its loan application a specified basis point reduction from the average coupon rate of bonds to be sold by the authority. If the loan applicant applies for the specified basis point reduction, the following requirements must be met:

A. the payment schedule agreed to will follow the payment schedule of the bonds sold by the authority;

B. acceptable agreement on fund accountability is reached;

C. the municipality can demonstrate its credit worthiness; and

D. the integrity of the fund is maintained.

The authority shall annually provide in its application material the specific basis point reduction it will allow under this option.

Subp. 3. **Suspension of loans at the quarterly set rate.** The authority may suspend offering loans at the quarterly set rate if it determines that market conditions impacting the municipal bond index are unsettled or impair the viability of the fund. At the time of that determination, the authority may by resolution adopt a revised quarterly set rate, based upon generally accepted practices of interest rate forecasting, for a period of time determined by the authority. The authority may, based upon market conditions, extend the offering of loans at the revised quarterly set rate and continue to do so until the time the authority considers it prudent to again use the municipal bond index as guidance for the quarterly set rate.

Subp. 4. **Demographic considerations.**

A. A loan application will be considered for an interest rate reduction based upon the population of the project service area, and be eligible for a reduction as follows:

(1) Applicants with a project service area population of less than 150,000 and larger than 100,000 are eligible to receive the quarterly set rate minus 25 basis points, subject to the interest rate adjustments given in this



Approved by Revisor _____

part.

(2) Applicants with a project service area population of 100,000 or less and larger than 25,000 are eligible to receive the quarterly set rate minus 50 basis points, subject to the interest rate adjustments given in this part.

(3) Applicants with a project service area population of 25,000 or less and larger than 5,000 are eligible to receive the quarterly set rate minus 75 basis points, subject to the interest rate adjustments in this part.

(4) Applicants with a project service area population of 5,000 or less and larger than 2,500 are eligible to receive the quarterly set rate minus 100 basis points, subject to the interest rate adjustments in this part.

(5) Applicants with a project service area population of 2,500 or less but larger than 1,000 are eligible to receive the quarterly set rate minus 125 basis points, subject to the interest rate adjustments in this part.

(6) Applicants with a project service population of 1,000 or less are eligible to receive the quarterly set rate minus 150 basis points, subject to the interest rate adjustments in this part.

B. The data used to determine the population and the median household income of the project service area should be that which most accurately measures the population and median household income of the area. The authority shall determine if the data submitted by the municipality is an appropriate and accurate measurement of the population and household income of the project service area.

C. The metropolitan and nonmetropolitan median household income levels of the state must be determined from income data from the most recent census of the United States or from data from the state demographer. The data provided must be applied as the criteria to determine if the applicants' project service area household income is at, below, or above the median household level for the metropolitan or nonmetropolitan area as



Approved by Revisor _____

applicable.

D. If there is reason to believe that the United States census data or the data from the state demographer is not a currently accurate representation of the median household income or population within the project service area, the applicant may document the reasons why the data is not an accurate representation, and obtain additional information regarding median household income or population for the project service area. The information must consist of reliable data from local, regional, state or federal sources, or from a survey conducted by a reliable impartial source.

Subp. 5. **Interest rate adjustment.** Any applicant is eligible to receive consideration for interest rate adjustments to the interest rate to be charged by the authority as provided in this part.

A. The median household income is the income level for the project service area of the facility being financed by the authority. If the median household income level for the area is below the median household income level for a metropolitan or nonmetropolitan area, as applicable, the applicant is eligible for a 50 basis point reduction in the rate; or

B. If the percentage of poverty level households in the project service area is at or above the national average, the applicant is eligible for a 100 basis points reduction in the interest rate charged by the authority.

C. If the current annual sewer service charge of the project service area, coupled with the financing, operation, maintenance, and replacement costs of the new facility results in an annual sewer service charge in excess of one percent of the median household income level of the project service area, the municipality is eligible for a 100 basis points reduction in the interest rate.

Subp. 6. **Interest-free loans.** The authority may offer interest-free loans as provided in this part to municipalities demonstrating in their application that they are financially



Approved by Revisor _____

unable to pay any interest charge on the loan. The authority shall not offer interest-free loans if the offering of an interest-free loan results in the combined rate of interest on the authority's portfolio to yield less than the rate of inflation as determined by the consumer price index.

Interest-free loans for any applicant are limited to $500,000, or the eligible cost of the project, whichever is less. The authority shall not provide interest-free loans, in total, exceeding up to ten percent of the total capitalization grant funds scheduled to be received by the authority.

To be eligible for consideration for an interest-free loan, an applicant must meet each of the following conditions:

A. the population of the project service area has declined over the past ten years;

B. the percent of people in poverty in the project service area of the project is at or exceeds the poverty level; and

C. the current annual sewer service charge of the project service area, coupled with the financing, operation, maintenance, and replacement costs of the new facility results in an annual sewer service charge in excess of one and one-half percent of the median household income level of the project service area.

7380.0450 OTHER FINANCIAL ASSISTANCE.

In addition to the loans provided in parts 7380.0430 to 7380.0440, the authority may use any forms of financial aids provided in United States Code, title 33, section 1383(d). The use of specific financing tools will be determined by the authority based on existing financial market conditions at the time the financing of the project takes place.

The revolving loan fund authorized by the act may be used:

A. to buy or refinance the debt obligation of municipalities for treatment works incurred after March 7, 1985, at or below market rate;

B. to guarantee or purchase insurance for local



Approved by Revisor _____

obligations to improve credit market access or reduce interest rates;

C. to provide a source of revenue or security for the payment of principal and interest on revenue or general obligation bonds issued by the authority if bond proceeds are deposited in the fund; and

D. to provide loan guarantees for similar revolving funds established by a governmental unit other than state agencies.

7380.0460 FEES.

If the authority charges a loan recipient a loan origination fee, the fee must be based on a schedule established by the authority and must not exceed one and one-half percent of funds borrowed from the authority. The fees, if any, will be charged to all loan recipients and must be as provided in the loan application form. These fees may be included as an eligible project activity or category in the municipality's application to the authority, and are due and payable as provided in the loan agreement.

7380.0470 **RELEASE OF FUNDS.**

**Subpart 1. In general.** Subject to the availability of funds, payments to the governmental unit for an approved project will be made in accordance with applicable state and federal law governing payments, but payments will not be made until the authority has determined the total estimated cost of the project, and ascertained that the total final financing of the project is assured by the following:

A. a loan authorized by state law or the appropriation proceeds of bonds or other money of the municipality to a fund for construction of a project; and

B. an irrevocable undertaking, by resolution of the applicant, to use the loan proceeds exclusively for the project, and to pay any additional amount by which the cost of the project exceeds the final estimate by the appropriation to the construction fund of additional money or proceeds of additional



Approved by Revisor _____

bonds to be issued by the governmental unit.

Subp. 2. **Adverse change.** The authority shall not release funds to a municipality for an approved project until the authority has determined that there have been no adverse changes in the financial capacity of the municipality since the day of the completion of the application.

The authority reserves the right to suspend or terminate funding to the municipality if the authority determines that there has been an adverse change.

Subp. 3. **Conformance with plans and reporting requirements.** The authority shall withhold, suspend, or terminate either total or partial payments if the authority determines that a project does not substantially conform to approved plans and specifications, or there has been substantial noncompliance with reporting requirements.

The executive director shall give a municipality written notice of the deficiencies the authority has determined exist, and the time in which the municipality must demonstrate to the authority's satisfaction that the condition has or will be corrected. The time for demonstration must not exceed 90 days.

7380.0480 **REPORTS AND AUDITS.**

Subpart 1. **Reports.** During the term of the loan, the municipality shall make written reports to the executive director on forms provided by the authority and on a schedule determined by the executive director.

Subp. 2. **Audits.** Financial assistance recipients must arrange and pay for independent audits, acceptable to the authority and prepared in compliance with the Office of Management and Budget, Circular A-128, published in the Federal Register, volume 50, number 188, page 39083, on September 27, 1985, and in compliance with the Single Audit Act of 1984, United States Code, title 31, sections 7501-7507. Costs incurred in preparation of the audit are an eligible activity or category under part 7380.0410, subpart 7.



Approved by Revisor _____

Com sioner of Trade and Economic D opment #9

Public Facilities Authority
Proposed Permanent Rules Relating to the Water Pollution 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 tro 14.28.[1] Authority for the adoption of these rules is contained in Minnesota Statutes, section 446A.06, subd. 2.

All persons have 30[2] 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[3] 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[8] 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[4] 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[6] 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.[7]

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

Terry Kuhlman[5]
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[9] 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.[11]

A Statement of Need and Reasonableness that describes[12] 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,[13] 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 r red, upon adoption of the rule he rule and the required supporting documen ill 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.

David Speer
Commissioner of Trade and Economic Development

_____
Date

PFA.RULES/II4-2

COMMISSIONER OF TRADE
ECONOMIC DEVELOPMENT

#12

STATEMENT OF
NEEDS AND
REASONABLENESS

IN THE MATTER OF THE PROPOSED
RULES OF THE MINNESOTA PUBLIC
FACILITIES AUTHORITY GOVERNING
THE ADMINISTRATION OF THE WATER
POLLUTION CONTROL REVOLVING
FUND PROGRAM

INTRODUCTION:

This Statement of Needs and Reasonableness describes the rules proposed for the operation of the Minnesota Water Pollution Control Revolving Fund Program. The format used in this statement is as follows: each rule is first stated, followed by a discussion of the necessity of the proposed rule, and its reasonableness.

7380.0400 PURPOSE:

THE WATER POLLUTION CONTROL REVOLVING FUND ADMINISTERED BY THE MINNESOTA PUBLIC FACILITIES AUTHORITY PROVIDES LOANS AND OTHER FORMS OF FINANCIAL ASSISTANCE FOR CONSTRUCTION OF MUNICIPAL WASTEWATER TREATMENT PLANTS TO ASSURE MAINTENANCE OF PROGRESS TOWARD MUNICIPAL COMPLIANCE, OR IMPLEMENTATION OF NONPOINT SOURCE MANAGEMENT CONTROLS, AS REQUIRED BY THE FEDERAL WATER POLLUTION CONTROL ACT, TO MUNICIPALITIES FOR PROJECTS THAT HAVE BEEN CERTIFIED BY THE MINNESOTA POLLUTION CONTROL AGENCY. THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY PROVIDES A CAPITALIZATION GRANT TO THE STATE OF MINNESOTA TO PROVIDE LOANS THROUGH THE AUTHORITY TO ENSURE THAT THE REVOLVING FUND IS AVAILABLE TO FINANCE WATER POLLUTION CONTROL PROJECTS IN PERPETUITY. THE TERMS AND CONDITIONS OF THE LOAN AGREEMENT FOR FINANCIAL ASSISTANCE PROVIDED BY THE AUTHORITY MUST BE IN CONFORMANCE WITH THE FEDERAL WATER POLLUTION CONTROL ACT, UNITED STATE CODE, TITLE 33, PARTICULARLY SECTIONS 1381 TO 1387, THE RULES OF THE AGENCY, AND THIS PART.

The 1987 legislature established the Water Pollution Control Revolving Fund as provided in MN Stat. 446A.07. The Statute established the lending program under the direction fo the Minnesota Public Facilities Authority (MN Stat. 446A.03) in the Department of Trade and Economic Development. The statute directs the Authority to operate the fund in compliance with the Federal Water Pollution Control Act, Title 33, and the rules of the Minnesota Pollution Control Agency. It is necessary to inform potential applicants to the Fund of the scope and intent of the program in order that they may judge the applicability of the program for their purposes.

7380.0410 DEFINITIONS:

SUBP. 1. SCOPE. "SCOPE" THE TERMS DEFINED IN THIS PART, IN MINNESOTA STATUTES, SECTION 446A.02, AND IN THE FEDERAL WATER POLLUTION CONTROL ACT, APPLY TO PARTS 7380.0400 TO 7380.0480.

This statement is necessary to define applicability of the definitions given in this part, and to reference the Federal and State Statutes which provide

the definition i[illegible]ch is the case. It is reasonable to provide such definition and to provide statutory authority for use of a definition.

SUBP. 2. **ACT.** "ACT" MEANS THE FEDERAL WATER POLLTUION CONTROL ACT, AS DEFINED IN MINNESOTA STATUTES, SECTION 446A.02, SUBDIVISION 4.

This term is necessary as it informs readers that Act can only mean the Federal Water Pollution Control Act in the content of the rules. It is reasonable because it adds to the readability of the rules.

SUBP. 3 **AGENCY.** "AGENCY" MEANS THE MINNESOTA POLLUTION CONTROL AGENCY.

This term is necessary to clarify that agency can only mean the Pollution Control Agency in the content of the rules. It is reasonable since the shortened term allows for easier reading of the rules.

SUBP. 4 **APPLICANT** "APPLICANT" MEANS:

A. A GOVERNMENTAL UNIT AS DEFINED IN MINNESOTA STATUTES 446A.02, SUBDIVISION; 5 OR,

B. A MUNICIPALITY AS PROVIDED IN THIS PART.

This term is necessary as it provides for a synonymous term for municipality and governmental unit which when used in the body of the rules connotes that the municipality is in the application stage when the term is used in various parts of the rules and has not had its application approved or turned down by the Authority. It is reasonable because it informs the reader that specific matters must be dealt with during the application process prior to approval or disapproval of the application.

SUBP. 5 **AVERAGE COUPON RATE.** "AVERAGE COUPON RATE" MEANS THE WEIGHTED AVERAGE OF BONDS AT THE VARIOUS MATURITY DATES AS PROVIDED IN THE BOND.

This definition is necessary since it describes one of the sources used by the Authority to establish loan interest rates. It is reasonable because it provides a basis upon which loan interest rates may be based.

SUBP. 6 **DEDICATED SOURCES OF REVENUE FOR REPAYMENT.** "DEDICATED SOURCES OF REVENUE FOR REPAYMENT" MEANS ONE OR MORE DEDICATED SOURCES OF REVENUE ESTABLISHED BY THE MUNICIPALITY TO INSURE REPAYMENT OF THE LOAN FROM THE AUTHORITY. DEDICATED SOURCES OF REVENUE MAY BE: SPECIAL ASSESSMENTS; GENERAL TAXES OR GENERAL OBLIGATION BONDS; SEWER SERVICE CHARGES OR OTHER SOURCES, ACCEPTABLE TO THE AUTHORITY.

This definition is necessary as it informs the public that dedicated sources of repayment are required as evidence of the capacity to repay the loan, what may comprise a dedicated source of repayment, and by what mechanism the municipality will convey the obligation to repay the loan from the Authority. This is reasonable as it permits the municipality to utilize whatever resources it may wish, subject to acceptance by the Authority to demonstrate financial capacity to repay the loan from the Authority which is required by the Act.

SUBP. 7 **ALLOWABLE TS.** ALLOWABLE COSTS THAT MAY FINANCED BY THE AUTHORITY, ...OVIDED THE ALLOWABLE COST ITEM IS REASONABLE OR NECESSARY, INCLUDE THOSE PROVIDED IN THE LIST OF COSTS GIVEN BELOW. THE LISTING IS ONLY REPRESENTATIVE OF ALLOWABLE COSTS THAT MAY BE FINANCED BY A LOAN FROM THE AUTHORITY. OTHER ALLOWABLE COSTS MAY ALSO FALL WITHIN THE LANGUAGE OF THE ACT, UNITED STATES CODE, TITLE 33, SECTIONS 1381-1387.

A. ACQUISITION COSTS OF LAND, BUILDING, OR BOTH;

B. SITE PREPARATION;

C. CONSTRUCTION COSTS;

D. ENGINEERING COSTS;

E. COSTS OF EQUIPMENT, MACHINERY, OR BOTH;

F. BOND ISSUANCE COSTS;

G. UNDERWRITING OR PLACEMENT FEES;

H. TRUSTEE FEES;

I. FEES OF GUARANTOR, INSURER, OR FINANCIAL INSTITUTION OTHER THAN THE AUTHORITY, WHICH PROVIDE LETTERS OF CREDIT, SURETY BONDS, OR EQUIVALENT SECURITY;

J. AUTHORITY FEES, INCLUDING APPLICATION AND GUARANTY FEES OF THE AUTHORITY AND ADMINISTRATIVE COSTS AND EXPENSES;

K. CERTAIN CONTINGENCY COSTS;

L. INTEREST COSTS DURING CONSTRUCTION;

M. LEGAL FEES, INCLUDING THOSE OF THE AUTHORITY; AND

N. DEBT SERVICE RESERVE FUND.

It is necessary to identify what constitutes eligible costs for a project financed by the Authority. It is reasonable since it is consistent with the Act.

SUBP. 8 **EXECUTIVE DIRECTOR.** "EXECUTIVE DIRECTOR" MEANS THE EXECUTIVE DIRECTOR OF THE PUBLIC FACILITIES AUTHORITY.

This term is necessary because it informs the reader that Executive Director means the Executive Director of the Authority. It is reasonable as the shortened term adds to the readability of the rules.

SUBP. 9 **FUND.** "FUND" MEANS THE MINNESOTA WATER POLLUTION CONTROL REVOLVING FUND CREATED BY MINN. STAT. 446A.07, AS AMENDED.

The definition is necessary as it informs the reader that Fund can only mean the Minnesota Water Pollution Control Revolving Fund in the

content of rules. It is reasonable as th hortened term provides for greater readability of the rules.

SUBP. 10 **INTENDED USE PLAN.** "INTENDED USE PLAN" MEANS THE DOCUMENT PREPARED ANNUALLY BY THE AGENCY AND SUBMITTED TO THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY THAT IDENTIFIES THE INTENDED USES OF THE AMOUNTS AVAILABLE TO THE FUND, INCLUDING A LIST OF WASTEWATER TREATMENT PROJECTS AND OTHER ELIGIBLE ACTIVITIES SCHEDULED TO BE FUNDED DURING THE FISCAL YEAR.

This definition is necessary because it identifies a document which is required by the U.S. Environmental Agency and which reports what eligible projects and activities the Authority may provide financing for in the fiscal year. It is reasonable as the Authority shall only provide funds for those projects and activities identified within a given year.

SUBP. 11 **LOAN AGREEMENT.** "LOAN AGREEMENT" MEANS THE LOAN AGREEMENT OR FINANCING AGREEMENT BETWEEN THE AUTHORITY AND THE MUNICIPALITY THAT PROVIDES ALL TERMS AND CONDITIONS OF THE LOAN.

It is necessary to provide a definition of a "loan agreement" as the term is used throughout the rules. It is reasonable as the Authority is required by the Act to make loans to an applicant which is able to comply with certain terms and conditions which are provided in a loan agreement.

SUBP. 12 **MUNICIPAL BOND INDEX.** "MUNICIPAL BOND INDEX" MEANS THE INDEX BASED ON THE YIELD THAT ABOUT 500 MAJOR ISSUERS, MAINLY OF INVESTMENT GRADE, WOULD PAY ON NEW LONG-TERM (20 YEARS) GENERAL-OBLIGATION, TAX-EXEMPT BONDS. THE INDEX IS PUBLISHED EACH FRIDAY IN THE WALL STREET JOURNAL.

This term is defined as it is necessary to provide the meaning for a term not in common usage outside of a financial institution. It is reasonable as the Municipal Bond Index provides the basis upon which interest rates on loans from the Authority are based.

SUBP. 13 **MUNICIPALITY.** "MUNICIPALITY" MEANS ANY COUNTY, CITY AND TOWN, THE METRPOLITAN WASTE CONTROL COMMISSION ESTABLISHED IN CHAPTER 473 AND THE METROPOLITAN COUNCIL WHEN ACTING UNDER THE PROVISIONS OF 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.

This definition is necessary to specifically identify what entities constitute an eligible applicant. It is reasonable because it provides identification of eligible entities and is consistent with the definitions provided in the Act, Minn Stat. 446A.02 for government unit and the rules of the Agency.

SUBP. 14 **POVERTY LEVEL.** "POVERTY LEVEL" MEANS THAT LEVEL OF INCOME IDENTIFIED AS THE POVERTY LEVEL BY THE UNITED STATES CENSUS BUREAU: OR BY ANOTHER FEDERAL OR STATE AGENCY: OR BY AN ACCREDITED INDEPENDENT SURVEY, WHICH MOST ACCURATELY MEASURES THE LEVEL OF POVERTY WITHIN A PROJECT SERVICE AREA.

It is neces ' to define poverty levels sin he interest rates on loans made by the Authority to a municipality is reduced if the percentage of households in the project service area at or below the poverty level is above the national average. It is reasonable as it is consistent with other financing programs as a socio-economic consideration relative to setting interest rates.

SUBP. 15 **PROJECT COMPLETION.** "PROJECT COMPLETION" MEANS THE DATE ON WHICH OPERATION OF THE TREATMENT WORKS ARE INITIATED OR CAPABLE OF BEING INITIATED.

This definition is necessary to differentiate between the term as used by the Agency relative to compliance with water pollution control criteria and the Authority which uses the term relative to the project being able to generate an income stream which is irrevocably pledged to the Authority until the municipality's loan from the Authority is repaid. It is reasonable as it is consistent with the Act.

SUBP. 16 **PROJECT SERVICE AREA.** "PROJECT SERVICE AREA" MEANS THE SEWER SERVICE AREA DIRECTLY SERVED BY THE PROJECT BEING CONSTRUCTED.

It is necessary to provide a definition for "project service area" in order that applicants be informed of the specific meaning of a term which is taken into consideration in the determining of an interest rate to charge an applicant. It is reasonable as it is consistent with the Act.

SUBP. 17 **QUARTERLY SET RATE.** "QUARTERLY SET RATE" MEANS THE MAXIMUM RATE OF INTEREST SET FOR A CALENDAR QUARTER AND SHALL BE DETERMINED BY THE AUTHORITY USING AS GUIDANCE THE AVERAGE OF THE MUNICIPAL BOND INDEX FOR THE FOUR WEEKS PRIOR TO THE BEGINNING OF THE QUARTER MINUS 100 BASIS POINTS FOR 20 YEAR TERM LOANS. FOR LOANS OF LESS THAN 20 YEARS, THE QUARTERLY SET RATE WILL BE DETERMINED BY THE AUTHORITY USING AS GUIDANCE AN INDEX OF INVESTMENT GRADE BOND ISSUES HAVING A MATURITY EQUAL TO THE TERM OF THE LOAN BEING REQUESTED BY THE MUNICIPALITY MINUS A DISCOUNT OF FIVE (5) BASIS POINTS FOR EACH YEAR LESS THAN TWENTY (20) YEARS.

This definition is necessary since it describes the sources and the process used by the Authority for establishing a market interest rate which is required by the Act. It is reasonable because it is consistent with the Act.

SUBP. 18 **SEWER SERVICE AREA.** "SEWER SERVICE AREA" MEANS THE SERVICE AREA WHICH UTILIZES THE INDIVIDUAL SEWAGE TREATMENT PLANT.

This definition is necessary as it provides for as specific meaning of a term which is utilized by the Authority to determine the interest rate to be charged an applicant. It is reasonable as it is consistent with the Act.

SUBP. 19 **SEWER SERVICE CHARGE.** "SEWER SERVICE CHARGE" MEANS A CHARGE LEVIED UPON THE USERS OF THE SEWER SERVICE SYSTEM TO PAY FOR THE USE OF THE SYSTEM. INCLUDE TAX ASSESSMENT, SPECIAL ASSESSMENTS, USER FEES, OR REVENUES IDENTIFIED BY ANY OTHER NAME.

This defini  is necessary to inform a mun  ality what types of revenues paid to the municipality by the household in the sewer service area may be measured against the one and one-half percent of the median household income guidelines which, if exceeded, entitles the municipality to a 100 basis point reduction in the interest rate charged by the Authority on the loan to the municipality.

It is reasonable since it is consistent with other financing programs.

## FINANCIAL ASSISTANCE APPLICATIONS

**7380.0420 PROCEDURES FOR FINANCIAL ASSISTANCE APPLICATIONS PROCESSING.**

SUBP. 1 **IN GENERAL.** TO APPLY FOR FINANCIAL ASSISTANCE FROM THE AUTHORITY, ELIGIBLE APPLICANTS IDENTIFIED IN THE ANNUAL INTENDED USE PLAN PREPARED BY THE AGENCY, MAY SUBMIT AN APPLICATION AT ANY TIME TO THE EXECUTIVE DIRECTOR OF THE AUTHORITY.

PRIOR TO THE SUBMISSION OF AN APPLICATION TO THE AUTHORITY, THE MUNICIPALITY SHALL CONTACT THE AUTHORITY TO RECEIVE THE AUTHORITY'S ADVICE UNDER MINNESOTA STATUTES, SECTION 446A.051.

It is necessary that the applicant know at what times an application can be submitted, to whom the application needs to be submitted to, and from whom the application forms may be obtained. It is reasonable because it is consistent with Minnesota Statutes 446A.051.

THE AUTHORITY SHALL FORWARD THE APPLICATION TO THE AGENCY WITHIN TEN DAYS AFTER RECEIPT OF THE APPLICATION BY THE AUTHORITY. THE AGNECY WILL ACCEPT AND REVIEW THE APPLICATION AS PROVIDED IN ITS RULES.

This paragraph is necessary to inform applicants that the Authority will forward the application to the Agency within a specified time period, and that the Agency will review the application in accordance with its rules for such projects. It is reasonable because it is consistent with Minnesota Statutes 446A.07, Subd. 5.

SUBP.2 **DEADLINE FOR SUBMISSION.** WHEN AN APPLICATION THAT HAS BEEN CERTIFIED BY THE COMMISSIONER OF THE AGENCY IS RETURNED TO AND RECEIVED BY THE AUTHORITY ON OR BEFORE THE FIRST BUSINESS DAY OF THE MONTH, THE AUTHORITY SHALL CONSIDER THE APPLICATION AT THE AUTHORITY MEETING THAT MONTH. IF THE CERTIFIED APPLICATION IS RECEIVED AFTER THE FIRST BUSINESS DAY OF THE MONTH AND CAN BE REVIEWED BY THE EXECUTIVE DIRECTOR PRIOR TO THE AUTHORITY AGENDA DEADLINE, THE AUTHORITY MAY CONSIDER THE APPLICATION AT THE MEETING IN THAT MONTH.

It is necessary to establish the method for, and the time period during which the Authority will accept applications which have received certification from the Commissioner of the Agency. It is reasonable since this method allows sufficient time for and ensures that all applicants are informed of the time period during which applicants will be accepted after receiving a certified application from the Commissioner of the Agency.

SUBP. 3. **COMPLETED AI CATIONS.** AN APPLICATION CERTI D BY THE COMMISSIONER OF THE AGENCY IS CONSIDERED COMPLETE WHEN THE EXECUTIVE DIRECTOR OF THE AUTHORITY DETERMINES THAT THE EXHIBITS AND DOCUMENTATION WHICH HAVE BEEN RECEIVED PROVIDE A FULL AND ACCURATE ACCOUNT OF THE PROJECT FINANCING TO THE EXTENT THAT THE AUTHORITY IS ABLE TO MAKE AN INFORMED DETERMINATION ON THE APPLICATION.

It is necessary to inform an applicant that the Executive Director shall determine if all the required documentation and information has been submitted by the applicant in order for the Authority to make an informed judgement of the municipality's capacity to comply with the terms and conditions of the financing to be provided to the applicant. It is reasonable as it is consistent with the Act and Minnesota Statutes 446A.07, Subd. 6, Subd. 7 and Subd. 9.

SUBP. 4. **INCOMPLETED APPLICATIONS.** IF AN INCOMPLETE APPLICATION IS RECEIVED, THE EXECUTIVE DIRECTOR SHALL NOTIFY THE APPLICANT IN WRITING OF SPECIFIC DEFICIENCIES IN THE APPLICATION. THE APPLICANT HAS 60 DAYS FROM THE DATE OF MAILING OF THE EXECUTIVE DIRECTOR'S NOTIFICATION TO COMPLETE THE APPLICATION. IF THE APPLICATION IS NOT COMPLETED AND RECEIVED BY THE EXECUTIVE DIRECTOR WITHIN THOSE 60 DAYS, THE APPLICATION IS DEEMED TO BE REJECTED AND THE APPLICANT, SUBJECT TO AGENCY RULES, SHALL NEED TO REAPPLY TO BE FURTHER CONSIDERED.

It is necessary to inform an applicant of the procedures that will be followed if an application has been determined to be incomplete by the Authority, and the time frame in which an applicant has to supply the information required by the Authority. It is reasonable since this procedure allows for sufficient time for and ensures that all applicants are afforded an opportunity to complete their application.

SUBP. 5. **APPLICATIONS NOT RECEIVING CERTIFICATION.** AN APPLICATION NOT RECEIVING CERTIFICATION BY THE COMMISSIONER OF THE AGENCY WILL NOT RECEIVE CONSIDERATION FOR FINANCIAL ASSISTANCE BY THE AUTHORITY. THE EXECUTIVE DIRECTOR OF THE AUTHORITY SHALL NOTIFY THE APPLICANT OF THE REJECTION OF THE APPLICATION BY THE AUTHORITY WITHIN TEN DAYS OF THE REJECTION DETERMINATION.

It is necessary to inform an applicant of the procedures that will be followed should an application not receive certification by the Commissioner of the Agency, and the consequences of not receiving certificaion. It is reasonable as it is consistent with Minnesota Statutes 446A.07, Subd. 6.

SUBP. 6. **REJECTION OF LOAN APPLICATIONS BY THE AUTHORITY.** THE AUTHORITY MAY REJECT AN APPLICATION FOR FINANCIAL ASSISTANCE FOR THE FOLLOWING REASONS.

A. FAILURE TO OBTAIN CERTIFICATION OF THE COMMISSIONER OF THE AGENCY FOR THE PROJECT.

B. FAILURE TO DEVELOP AND DOCUMENT DEDICATED SOURCES OF REVENUE SUFFICIENT IN THE JUDGEMENT OF THE AUTHORITY TO INSURE REPAYMENT OF THE LOAN TO THE AUTHORITY.

C. FAILURE TO SUBMIT A COMPLETED APPLICATION USING THE PROCEDURE PROVIDED IN PART 7380.0420, SUBP. 4; AND

D. FAILURE TO DEMONSTRATE THE LEGAL, MANAGERIAL, INSTITUTIONAL AND FINANCIAL CAPACITY TO PROVIDE FOR ADEQUATE OPERATION, MAINTENANCE, AND REPLACEMENT COST OF THE MUNICIPAL FACILITY FOR THE TERM OF THE LOAN.

It is necessary to summarize the reasons why an application may be rejected by the Authority. It is reasonable because Subp. 6, A,B,C and D are consistent with Minnesota Statutes 446A.07, Subd. 6, Subd. 7 and Subd. 9.

## AUTHORITY EVALUATION PROCEDURE

7380.0430

SUBP. 1 **IN GENERAL.** THE AUTHORITY SHALL EVALUATE APPLICATIONS CERTIFIED BY THE COMMISSIONER OF THE AGENCY TO DETERMINE THE APPLICANT'S CAPACITY TO COMPLY WITH THE TERMS AND CONDITIONS OF THE ACT AND THE RULES OF THE AUTHORITY AS PROVIDED IN THIS PART.

It is necessary to inform an applicant on what basis and by what criteria an application will be judged by the Authority to evaluate if an application can be approved by the Authority. It is reasonable as it is consistent with the Act and Minnesota Statutes 446A.07, Subd. 7 and Subd. 9.

THE APPLICANT'S PROJECT MUST HAVE BEEN IDENTIFIED IN THE AGENCY'S INTENDED USE PLAN FOR THE YEAR IN WHICH THE APPLICANT IS APPLYING.

This statement is necessary to inform an applicant of the requirement that the applicant's project must include the Agency's Intended Use Plan for the year in which the applicant is planning to apply. It is reasonable as it is consistent with the Act and Minnesota Statutes 446A.07, Subd. 4 and Subd. 5.

THE AUTHORITY WILL ONLY PROVIDE FINANCIAL AID FOR THE ALLOWABLE COSTS PROVIDED IN PART 7380.0410, SUBPART 7.

This statement is necessary to inform the applicant that the Authority is limited to providing funds for only allowable project costs. It is reasonable as it is consistent with the Act and the allowable costs provided by this part.

SUBP. 2. **LOAN TERMS AND CONDITIONS.** THE TERMS AND CONDITIONS FOR LOANS AND OTHER FORMS OF FINANCIAL ASSISTANCE PROVIDED BY THE AUTHORITY TO ELIGIBLE APPLICANTS FOR CERTIFIED PROJECTS SHALL BE AS PROVIDED BY THE ACT, MINNESOTA STATUTES CHAPTER 446A; THIS PART; AND AS PROVIDED BY THE AUTHORITY IN THE LOAN AGREEMENT FOR THE PROJECT FINANCING.

SUBP. 3. **REPAYMENT.** THE REPAYMENT OF LOANS TO THE AUTHORITY BY THE RECIPIENT MUST BE SUFFICIENT TO FULLY AMORTIZE THE LOAN FOR A PERIOD OF NOT MORE THAN TWENTY YEARS AFTER PROJECT COMPLETION. IF TREATMENT WORKS HAVE

BEEN SEGMEN OR PHASED, THE REPAYMENT REQU ENTS OF THIS SUBPART AND THE PAYMENT REQUIREMENTS OF SUBPART 6 APPLY TO EACH PHASE OR SEGMENT OF THE PROJECT.

SUBP. 4. **PROJECT COMPLETION.** THE REPAYMENT OF LOANS TO THE AUTHORITY BY THE RECIPIENTS SHALL BEGIN NO LATER THAN ONE YEAR AFTER PROJECT COMPLETION.

SUBP. 5 **DEDICATED SOURCES OF REVENUE.** LOAN RECIPIENTS SHALL ESTABLISH, AND IDENTIFY IN THE APPLICATION, DEDICATED SOURCES OF REVENUE SUFFICIENT TO OPERATE AND MAINTAIN THE NEW FACILITY, AND FULLY AMORTIZE THE LOAN, FOR A TERM OF NOT MORE THEN 20 YEARS. THE AUTHORITY SHALL EXAMINE THE IDENTIFIED DEDICATED SOURCES OF REVENUE TO ENSURE THAT THEY ARE A SUFFICIENT AMOUNT, AND OF SUFFICIENT CERTAINTY TO FULLY REPAY THE LOAN.

SUBP. 6 **PAYMENTS.** THE FIRST PRINCIPAL AND INTEREST PAYMENT SHALL BE DUE AND PAYABLE NOT LATER THAN ONE YEAR AFTER PROJECT COMPLETION, OR TWENTY-FOUR MONTHS FROM THE BEGINNING OF CONSTRUCTION, WHICHEVER IS EARLIER. SUBSEQUENT PRINCIPAL AND INTEREST PAYMENTS FROM THE LOAN RECIPIENT MUST BE MADE AT TIMES AGREED UPON BY THE LOAN RECIPIENT AND THE AUTHORITY IN THE LOAN AGREEMENT. IN GENERAL, SEMIANNUAL LOAN PAYMENTS WILL BE REQUIRED, UNLESS A DIFFERENT PAYMENT SCHEDULE IS AGREED UPON AND PROVIDED IN THE LOAN AGREEMENT. HOWEVER, IN NO CASE SHALL PAYMENTS BE LESS FREQUENT THAN AN ANNUAL PRINCIPAL AND INTEREST PAYMENT SUFFICIENT TO AMORTIZE THE DEBT WITHIN THE CONTRACTED PERIOD.

Subparts 1 through 6 are necessary as they inform the applicant of the minimum terms and conditions which the applicant has to meet in order for the Authority to be able to make the loan to the municipality. It is reasonable as it is consistent with the Act, and Minnesota Statutes 446A.07, Subd. 7.

## INTEREST RATE DETERMINATIONS

**7380.0440**

SUBP. 1 **IN GENERAL.** THE INTEREST RATE CHARGED BY THE AUTHORITY TO A LOAN RECIPIENT SHALL BE DETERMINED AS PROVIDED IN THIS PART.

SUBP. 2 **SETTING OF INTEREST RATES.** THE INTEREST RATE CHARGED TO A LOAN RECIPIENT MUST BE DETERMINED BY THE AUTHORITY USING AS GUIDANCE THE QUARTERLY SET RATE IN EFFECT AT EITHER THE TIME OF THE MUNICIPALITY'S APPLICATION TO THE AUTHORITY; OR AT THE TIME OF THE SIGNING OF THE LOAN AGREEMENT BY THE AUTHORITY AND THE MUNICIPALITY, AS DETERMINED BY THE MUNICIPALITY. THE APPLICANT IS, HOWEVER, ELIGIBLE FOR THE CUMULATIVE INTEREST RATE ADJUSTMENTS PROVIDED IN THIS PART, OR THE APPLICANT MAY REQUEST IN ITS LOAN APPLICATION A SPECIFIED BASIS POINT REDUCTION FROM THE AVERAGE COUPON RATE OF BONDS TO BE SOLD BY THE AUTHORITY. IF THE LOAN APPLICANT APPLIES FOR THE SPECIFIED BASIS POINT REDUCTION, THE FOLLOWING REQUIREMENTS MUST BE MET:

A. THE PAYMENT SCHEDULE AGREED TO WILL FOLLOW THE PAYMENT SCHEDULE OF THE BONDS SOLD BY THE AUTHORITY;

B. ACCEPTA AGREEMENT ON FUND ACCOUNTABIL IS REACHED;

C. THE MUNICIPALITY CAN DEMONSTRATE ITS CREDIT WORTHINESS, AND

D. THE INTEGRITY OF THE FUND IS MAINTAINED.

THE AUTHORITY, SHALL ANNUALLY PROVIDE IN ITS APPLICATION MATERIAL THE SPECIFIC BASIS POINT REDUCTION IT WILL ALLOW UNDER THIS OPTION.

It is necessary to inform an applicant that they have an option of choosing an interest rate reduction in the amount of the cumulative total of all the categories which follow for which the applicant qualified or choosing the Authority's interest rate on bonds sold minus basis points specified in the application. It is reasonable as it deals with each applicant equally.

**SUBP. 3 SUSPENSION OF LOANS AT THE QUARTERLY SET RATE.** THE AUTHORITY MAY SUSPEND OFFERING OF LOANS AT THE QUARTERLY SET RATE IF IT DETERMINES THAT MARKET CONDITIONS IMPACTING THE MUNICIPAL BOND INDEX ARE UNSETTLED OR IMPAIR THE VIABILITY OF THE FUND. AT THE TIME OF THAT DETERMINATION, THE AUTHORITY MAY BY RESOLUTION ADOPT A REVISED QUARTERLY SET RATE, BASED UPON GENERALLY ACCEPTED PRACTICES OF INTEREST RATE FORECASTING, FOR A PERIOD OF TIME DETERMINED BY THE AUTHORITY. THE AUTHORITY MAY, BASED UPON MARKET CONDITIONS, EXTEND THE OFFERING OF LOANS AT THE REVISED QUARTERLY SET RATE AND CONTINUE TO DO SO UNTIL THE TIME THE AUTHORITY CONSIDERS IT PRUDENT TO AGAIN USE THE MUNICIPAL BOND INDEX AS GUIDANCE FOR THE QUARTERLY SET RATE.

It is necessary as it informs an applicant that the Authority shall have the right to suspending offering at the quarterly set rate should the Authority determine that market conditions, which impact the municipal bond index upon which the Authority's quarterly set is based and utilized for guidance, are unsettled. This is reasonable as the Authority has represented under contract to the U.S. Environmental Protection Agency that it will maintain the Fund in perpetuity by assuring the financial integrity of the Fund.

The Authority cannot knowingly make loans which will undermine the financial integrity of the Fund. It is reasonable because the Authority would have the ability to suspend the offering of loans should market conditions be such that the financial integrity of the Fund is placed at risk.

**SUBP. 4 DEMOGRAPHIC CONSIDERATIONS.**

A. A LOAN APPLICATION WILL BE CONSIDERED FOR AN INTEREST RATE REDUCTION BASED UPON THE POPULATION OF THE PROJECT SERVICE AREA, AND BE ELIGIBLE FOR A REDUCTION AS FOLLOWS:

(1) APPLICANTS WITH A PROJECT SERVICE AREA POPULATION OF LESS THAN 150,000 AND LARGER THAN 100,000 ARE ELIGIBLE TO RECEIVE THE QUARTERLY SET RATE MINUS 25 BASIS POINTS, SUBJECT TO THE INTEREST RATE ADJUSTMENTS GIVEN IN THIS PART.

(2) APPLICANTS WITH A PROJECT SERVICE AREA POPULATION OF 100,000 OR LESS AND LARGER THAN 25,000 ARE ELIGIBLE TO RECEIVE THE QUARTERLY SET RATE MINUS 50 BASIS POINTS, SUBJECT TO THE INTEREST RATE ADJUSTMENT GIVEN IN THIS PART.

(3) APPL ITS WITH A PROJECT SERVICE ARE, PULATION OF 25,000 OR LESS AND LARGER THAN 5,000 ARE ELIGIBLE TO RECEIVE THE QUARTERLY SET RATE MINUS 75 BASIS POINTS, SUBJECT TO THE INTEREST RATE ADJUSTMENTS GIVEN IN THIS PART.

(4) APPLICANTS WITH A PROJECT SERVICE AREA POPULATION OF 5,000 OR LESS AND LARGER THAN 2,500 ARE ELIGIBLE TO RECEIVE THE QUARTERLY SET RATE MINUS 100 BASIS POINTS, SUBJECT TO THE INTEREST RATE ADJUSTMENTS GIVEN IN THIS PART.

(5) APPLICANTS WITH A PROJECT SERVICE AREA POPULATION OF 2,500 OR LESS BUT LARGER THAN 1,000 ARE ELIGIBLE TO RECEIVE THE QUARTERLY SET RATE MINUS 125 BASIS POINTS, SUBJECT TO THE INTEREST RATE ADJUSTMENTS GIVEN IN THIS PART.

(6) APPLICANTS WITH A PROJECT SERVICE AREA POPULATION OF 1,000 OR LESS ARE ELIGIBLE TO RECEIVE THE QUARTERLY SET RATE MINUS 150 BASIS POINTS, SUBJECT TO THE INTEREST RATE ADJUSTMENTS GIVEN IN THIS PART.

B. THE DATA USED TO DETERMINE THE POPULATION AND THE MEDIAN HOUSEHOLD INCOME OF THE PROJECT SERVICE AREA SHOULD BE THAT WHICH MOST ACCURATELY MEASURES THE POPULATION AND MEDIAN HOUSEHOLD INCOME OF THE AREA. THE AUTHORITY SHALL DETERMINE IF THE DATA SUBMITTED BY THE MUNICIPALITY IS AN APPROPRIATE AND ACCURATE MEASUREMENT OF THE POPULATION AND HOUSEHOLD INCOME OF THE PROJECT SERVICE AREA.

C. THE METROPOLITAN AND NONMETROPOLITAN MEDIAN HOUSEHOLD INCOME LEVELS OF THE STATE MUST BE DETERMINED FROM INCOME DATA FROM THE MOST RECENT CENSUS OF THE UNITED STATES OR FROM DATA FROM THE STATE DEMOGRAPHER. THE DATA PROVIDED MUST BE APPLIED AS THE CRITERIA TO DETERMINE IF THE APPLICANTS' PROJECT SERVICE AREA HOUSEHOLD INCOME LEVEL IS AT, BELOW, OR ABOVE THE MEDIAN HOUSEHOLD LEVEL FOR THE METROPOLITAN OR NONMETROPOLITAN AREA AS APPLICABLE.

D. IF THERE IS REASON TO BELIEVE THAT THE UNITED STATES CENSUS DATA OR THE DATA FROM THE STATE DEMOGRAPHER IS NOT A CURRENTLY ACCURATE REPRESENTATION OF THE MEDIAN HOUSEHOLD INCOME OR POPULATION WITHIN THE PROJECT SERVICE AREA, THE APPLICANT MAY DOCUMENT THE REASONS WHY THE DATA IS NOT AN ACCURATE REPRESENTATION, AND OBTAIN ADDITIONAL INFORMATION REGARDING MEDIAN HOUSEHOLD INCOME OR POPULATION FOR THE PROJECT SERVICE AREA. THE INFORMATION MUST CONSIST OF RELIABLE DATA FROM LOCAL, REGIONAL, STATE OR FEDERAL SOURCES OR FROM A SURVEY CONDUCTED BY A RELIABLE IMPARTIAL SOURCE.

It is necessary to inform applicants in Subpart 4, A through D with the first of interest rate adjustments the Authority may consider in offering a loan to an applicant. A through C introduces and explains that a population size of the project service area will be the first consideration. It is reasonable as the Minnesota Public Facilities Authority and its programs are part of the Rural Development Act, and as such the Authority's legislative mandate is to respond to the limited financial capabilities of the smaller size communities in the State. The population size of the project service area relates to a significant measure to financial capacity. Accordingly, the Authority

in determi the interest rate to be offe an applicant will offer the smaller municipalities a reduced rate based on population size, and therefore capacity to finance public facility projects.

Subpart 4, Item D is necessary as it provides a procedure for applicants to utilize should there be substanitive reason to believe that the demographic information available from the U.S. Census Bureau on the State is not representative of the median house income level or population. It is reasonable to offer this option to an applicant due to the significant changes which may occur in municipalities due to a number of socio-economic reasons within a short period of time.

SUBP. 5 **INTEREST RATE ADJUSTMENT.** ANY APPLICANT IS ELIGIBLE TO RECEIVE CONSIDERATION FOR INTERST RATE ADJUSTMENTS TO THE INTEREST RATE TO BE CHARGED BY THE AUTHORITY AS PROVIDED IN THIS PART.

A. THE MEDIAN HOUSEHOLD INCOME IS THE INCOME LEVEL FOR THE PROJECT SERVICE AREA TO BE SERVICED BY THE FACILITY BEING FINANCED BY THE AUTHORITY. IF THE MEDIAN HOUSEHOLD INCOME LEVEL FOR THE AREA IS BELOW THE MEDIAN HOUSEHOLD INCOME LEVEL FOR A METROPOLITAN OR NONMETROPOLITAN AREA AS APPLICABLE, THE APPLICANT SHALL BE ELIGIBLE FOR A 50 BASIS POINT REDUCTION IN THE RATE.

B. IF THE PERCENTAGE OF POVERTY LEVEL HOUSEHOLDS IN THE PROJECT SERVICE AREA IS AT OR ABOVE THE NATIONAL AVERAGE, THE APPLICANT IS ELIGIBLE FOR 100 BASIS POINTS REDUCTION IN THE INTEREST RATE CHARGED BY THE AUTHORITY.

C. IF THE CURRENT ANNUAL SEWER SERVICE CHARGE OF THE PROJECT SERVICE AREA, COUPLED WITH THE FINANCING, OPERATION, MAINTENANCE AND REPLACEMENT COSTS OF THE NEW FACILITY RESULTS IN AN ANNUAL SEWER SERVICE CHARGE IN EXCESS OF ONE PERCENT OF THE MEDIAN HOUSEHOLD INCOME LEVEL OF THE PROJECT SERVICE AREA, THE MUNICIPALITY IS ELIGIBLE FOR A 100 BASIS POINTS REDUCTION IN THE INTERST RATE.

Subparts 5A, B and C are necessary as they provide a measure of capacity to pay, i.e. the household income of the sewer service area and the percent of the increased sewer service charge relative to the project against household income. These criteria are reasonable as they are used by other Federal and State Agencies as a capacity to pay.

Subp. 6 **INTEREST-FREE LOANS.** THE AUTHORITY MAY OFFER INTEREST-FREE LOANS AS PROVIDED IN THIS PART TO MUNICIPALITIES DEMONSTRATING IN THEIR APPLICATION THAT THEY ARE FINANCIALLY UNABLE TO PAY INTEREST CHARGE ON THE LOAN. THE AUTHORITY SHALL NOT OFFER INTEREST-FREE LOANS IF THE OFFERING OF AN INTEREST-FREE LOAN RESULTS IN THE COMBINED RATE OF INTEREST ON THE AUTHORITY'S PORTFOLIO TO YIELD LESS THAN THE RATE OF INFLATION AS DETERMINED BY THE CONSUMER PRICE INDEX.

INTEREST-FREE LOANS FOR ANY APPLICANT SHALL BE LIMITED TO $500,000, OR THE ELIGIBLE COST OF THE PROJECT, WHICHEVER IS LESS. THE AUTHORITY SHALL NOT PROVIDE INTEREST-FREE LOANS, IN TOTAL, EXCEEDING UP TO TEN PERCENT OF THE TOTAL CAPITALIZATION GRANT FUNDS SCHEDULED TO BE RECEIVED BY THE AUTHORITY.

TO BE ELIGI FOR CONSIDERATION FOR AN INTE...T-FREE LOAN, AN APPLICANT MUST MEET EACH OF THE FOLLOWING CONDITIONS:

A. THE POPULATION OF THE PROJECT SERVICE AREA HAS DECLINED OVER THE PAST TEN YEARS;

B. THE PERCENT OF PEOPLE IN POVERTY IN THE PROJECT SERVICE AREA OF THE PROJECT IS AT OR EXCEEDS THE POVERTY LEVEL; AND

C. THE CURRENT ANNUAL SEWER SERVICE CHARGE OF THE PROJECT SERVICE AREA, COUPLED WITH THE FINANCING, OPERATION, MAINTENANCE, AND REPLACEMENT COSTS OF THE NEW FACILITY RESULTS IN AN ANNUAL SEWER SERVICE CHARGE IN EXCESS OF ONE AND ONE-HALF PERCENT OF THE MEDIAN HOUSEHOLD INCOME LEVEL OF THE PROJECT SERVICE AREA.

It is necessary to inform applicants how they may qualify for an interest-free loan based on the requirements given in Subpart 4. It is reasonable as it is consistent with the Act and Minnesota Statutes 446A.07, Subd. 7(a).

It is necessary to inform an applicant that there may be circumstances which may prevent the Authority offering an interest-free loan to an applicant which qualifies. It is reasonable to not offer interest-free loan to an eligible applicant should the circumstances be as provided in the part as it is consistent with the contractual agreement entered into by the Authority with the U.S. Environment Protection Agency which requries the Authority to maintain the financial integrity of the fund.

It is necessary to establish a loan limit on the amount of interest-free loan any applicant may receive. It is reasonable as the Authority is required to maintain the financial integrity of the fund and therefore must limit the amount an individual applicant may receive in order to insure interest-free funds are available to all applicants who qualify.

It is necessary to inform applicants in Subparts 4A through 4C of the requirements to receive consideration by the Authority for an interest-free loan. It is reasonable to require applicants to demonstrate their need for an interest-free loan.

## OTHER FINANCIAL ASSISTANCE

**7380.0450**

SUBP. 1 IN ADDITION TO LOANS AS PROVIDED IN PARTS 7380.0430 TO 7380.0440, THE AUTHORITY MAY USE ANY FORMS OF FINANCIAL AIDS PROVIDED IN UNITED STATES CODE, TITLE 33, SECTION 1383(d). THE USE OF A SPECIFIC FINANCING TOOLS WILL BE DETERMINED BY THE AUTHORITY BASED ON EXISTING FINANCIAL MARKET CONDITIONS AT THE TIME OF THE FINANCING OF THE PROJECT TAKES PLACE.

SUBP. 2 THE REVOLVING LOAN FUND AUTHORIZED BY THE ACT MAY BE USED:

A. TO BUY ( EFINANCE THE DEBT OBLIGATION C. _OVERNMENTAL UNITS FOR TREATMENT WORKS INCURRED AFTER MARCH 7, 1985, AT OR BELOW MARKET RATE;

B. TO GUARANTEE OR PURCHASE INSURANCE FOR LOCAL OBLIGATIONS TO IMPROVE CREDIT MARKET ACCESS OR REDUCE INTEREST RATES;

C. TO PROVIDE A SOURCE OF REVENUE OR SECURITY FOR THE PAYMENT OF PRINCIPAL AND INTEREST ON REVENUE OR GENERAL OBLIGATION BONDS ISSUED BY THE AUTHORITY IF BOND PROCEEDS ARE DEPOSITED IN THE FUND;

D. TO PROVIDE LOAN GUARANTEES FOR SIMILAR REVOLVING FUNDS ESTABLISHED BY A GOVERNMENTAL UNIT OTHER THAN STATE AGENCIES.

It is necessary to inform an applicant that other types of financial assistance are available from the Authority in addition to direct loans. It is reasonable as it is consistent with the Act and Minnesota Statutes 446A.07, Subd. 8.

## FEES

7380.0460

SUBP. 1 IN GENERAL. IF THE AUTHORITY CHARGES A LOAN RECIPIENT A LOAN ORIGINATION FEE, THE FEE MUST BE BASED ON A SCHEDULE ESTABLISHED BY THE AUTHORITY AND MUST NOT EXCEED ONE AND ONE-HALF PERCENT OF FUNDS BORROWED FROM THE AUTHORITY. THE FEES, IF ANY, WILL BE CHARGED TO ALL LOAN RECIPIENTS AND MUST BE AS PROVIDED IN THE LOAN APPLICATION FORM. THESE FEES MAY BE INCLUDED AS AN ELIGIBLE PROJECT ACTIVITY OR CATEGORY IN THE MUNICIPALITY'S APPLICATION TO THE AUTHORITY, AND SHALL BE DUE AND PAYABLE AS PROVIDED IN THE LOAN AGREEMENT.

It is necessary to inform applicants that the Authority may charge a fee in an amount not to exceed one and one-half percent of the amount borrowed from the Authority. It is reasonable as it is consistent with Minnesota Statutes 446A.04, Subd. 5.

## RELEASE OF FUNDS

7380.0470

SUBP. 1 **IN GENERAL.** SUBJECT TO THE AVAILABILITY OF FUNDS, PAYMENTS TO THE GOVERNMENTAL UNIT FOR AN APPROVED PROJECT WILL BE MADE IN ACCORDANCE WITH APPLICABLE STATE AND FEDERAL LAW GOVERNING PAYMENTS, BUT PAYMENTS WILL NOT BE MADE UNTIL THE AUTHORITY HAS DETERMINED THE TOTAL ESTIMATED COST OF THE PROJECT, AND ASCERTAINED THAT THE TOTAL FINANCING OF THE PROJECT IS ASSURED BY THE FOLLOWING:

A. A LOAN AUTHORIZED BY STATE LAW OR THE APPROPRIATION PROCEEDS OF BONDS OR OTHER MONEY OF THE MUNICIPALITY TO A FUND FOR CONSTRUCTION OF A PROJECT; AND

B. AN IRREVOCABLE UNDERTAKING, BY RESOLUTION BY THE GOVERNING BODY OF THE GOVERNING UNIT TO USE LOAN PROCEEDS EXCLUSIVELY FOR THE

PROJ[ AND TO PAY ANY ADDITIONAL AM( BY WHICH THE COST OF THE PROJECT EXCEEDS THE FINAL ESTIMATE BY THE APPROPRIATION TO THE CONSTRUCTION FUND OF ADDITIONAL MONEY OR PROCEEDS OF ADDITIONAL BONDS TO BE ISSUED BY THE GOVERNMENTAL UNIT.

It is necessary to inform applicants that the Authority will not release funds to an approved applicant unless certain requirements are met by the applicant, and the Authority has the funds to fund the project. It is reasonable as it is consistent with the Act and Minnesota Statutes 446A.07, Subd. 9.

SUBP. 2 **ADVERSE CHANGE.** THE AUTHORITY SHALL NOT RELEASE FUNDS TO A MUNICIPALITY FOR AN APPROVED PROJECT UNTIL THE AUTHORITY HAS DETERMINED THAT THERE HAVE BEEN NO ADVERSE CHANGES IN THE FINANCIAL CAPACITY OF THE MUNICIPALITY SINCE THE DAY OF THE COMPLETION OF THE APPLICATION.

THE AUTHORITY RESERVES THE RIGHT TO SUSPEND OR TERMINATE FUNDING TO THE MUNICIPALITY OR CALL FOR REPAYMENT OF THE LOAN IN FULL, SHOULD THE AUTHORITY DETERMINE THAT THERE HAS BEEN AN ADVERSE CHANGE.

It is necessary to inform an applicant that the applicants' representations made in the application, as approved by the Authority, must remain in effect until the loan is fully repaid, if not, the Authority has the right to suspend, terminate or call the loan. It is reasonable as it is standard lending practice.

SUBP. 3 **CONFORMANCE WITH PLANS AND REPORTING REQUIREMENTS.** THE AUTHORITY SHALL WITHOLD, SUSPEND OR TERMINATE EITHER TOTAL OR PARTIAL PAYMENTS IF THE AUTHORITY DETERMINES THAT A PROJECT DOES NOT SUBSTANTIALLY CONFORM TO APPROVED PLANS AND SPECIFICAITONS; OR THERE HAS BEEN SUBSTANTIAL NONCOMPLIANCE WITH REPORTING REUIREMENTS.

THE EXECUTIVE DIRECTOR SHALL GIVE A MUNICIPALITY WRITTEN NOTICE OF THE DEFICIENCIES THE AUTHORITY HAS DETERMINED EXIST, AND THE TIME LIMIT IN WHICH THE MUNICIPALITY MUST DEMONSTRATE TO THE AUTHORITY'S SATISFACTION THAT THE CONDITION HAS BEEN OR WILL BE CORRECTED. THE TIME FOR DEMONSTRATION MUST NOT EXCEED 90 DAYS.

It is necessary to inform loan recipients that the Authority may withold, suspend, or terminate payments if the Authority determines that the project is not being constructed to approved plans and specifications, or the loan recipient has not provided the required reports as agreed upon. It is reasonable as the Authority is required by the Act to only fund those projects which are constructed in compliance with the Act and approved plans and specifications.

The second paragraph of subpart 3 is necessary as it informs the loan recipient of the method the Authority will utilize to inform a loan recipient that the Authority has determined that the loan recipient is in non-compliance, and also inform the loan recipient of the maximum allowable time to correct the deficiency. It is reasonable as it informs and provides for a loan recipient a period of time to correct the deficiency.

7380.0480

SUBP. 1 **IN GENERAL.** DURING THE TERM OF THE LOAN, THE MUNICIPALITY SHALL MAKE WRITTEN REPORTS TO THE EXECUTIVE DIRECTOR OF THE AUTHORITY ON FORMS PROVIDED BY THE AUTHORITY ON A SCHEDULE DETERMINED BY THE EXECUTIVE DIRECTOR.

It is necessary for the municipality to provide to the Authority an accounting of project costs and expenditure of funds in order that the Authority may provide for an accounting of its lending activity. It is reasonable as it is generally accepted accounting practice.

SUBP. 2 **AUDITS.** FINANCIAL ASSISTANCE RECIPIENTS MUST ARRANGE FOR AND PAY FOR INDEPENDENT AUDITS, ACCEPTABLE TO THE AUTHORITY AND PREPARED IN COMPLIANCE WITH THE OFFICE OF MANAGEMENT AND BUDGET, CIRCULAR A-128, PUBLISHED IN THE FEDERAL REGISTER, VOLUME 50, NUMBER 188, PAGE 39083, ON SEPTEMBER 27, 1985, AND IN COMPLIANCE WITH THE SINGLE AUDIT ACT OF 1984, UNITED STATES CODE, TITLE 31, SECTIONS 7501-7507. COSTS INCURRED IN PREPARATION OF THE AUDIT ARE AN ELIGIBLE ACTIVITY OR CATEGORY UNDER PART 7380.0410, SUBPART 7.

It is necessary to inform potential applicants that there are specific audit requirements involved in utilizing the loan program and that there is a cost that will be incurred by the applicant. It is also necessary to inform applicants that the cost is an allowable project cost and can be included in the amount of funds sought from the Authority. It is reasonable as the audit is required by the Act.

PFA II/7(1-11)CP

#10

STATE OF MINNESOTA

In the Matter of the Proposed
Adoption of the Rule of the
Commissioner of the Department of
Trade and Economic Development
for the Public Facilities Authority
Governing:
Administrative Rules
Independent Wastewater Treatment Grants Program
Water Pollution Control Revolving Fund Program
District Heating Loan Program
Energy Conservation Investment Loan Program

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

STATE OF MINNESOTA )
) §
COUNTY OF RAMSEY )

Mary Andersen, 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 Department of Trade and Economic Development rulemaking mailing list is accurate, complete, and current as of this 13th day of September, 1988.

Mary Andersen
Name

Data Processing Coordinator
Title

Subscribed and sworn to before me

this 1st day of November, 1988.

Richard B. Nadeau
Notary Public

RICHARD B. NADEAU
NOTARY PUBLIC—MINNESOTA
RAMSEY COUNTY
My Comm Expires Apr. 12, 1993

Terry Kuhlman, being duly sworn says:

That on the 16th 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 for United States Mail or in the United States mail a copy thereof, with postage prepaid, to all persons and associations on the aforementioned mailing list.

Terry Kuhlman
Name

Director, Public Facilities Authority
Title

Subscribed and sworn to before me

this 1st day of November, 1988.

Richard B. Nadeau
Notary Public

RICHARD B. NADEAU
NOTARY PUBLIC—MINNESOTA
RAMSEY COUNTY
My Comm Expires Apr. 12, 1993

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

## Rules as Proposed (all new material)

### 7380.0400 PURPOSE.

The Water Pollution Control Revolving Fund administered by the Minnesota Public Facilities Authority provides loans and other forms of financial assistance for construction of municipal wastewater treatment plants to assure maintenance of progress toward municipal compliance, or implementation of nonpoint source management controls, as required by the Federal Water Pollution Control Act, to municipalities for projects that have been certified by the Minnesota Pollution Control Agency. The United States Environmental Protection Agency provides a capitalization grant to the state of Minnesota to provide loans through the authority to ensure that the Revolving Fund is available to finance water pollution control projects in perpetuity. The terms and conditions of the loan agreement for financial assistance provided by the authority must be in conformance with the Federal Water Pollution Control Act, United State Code, title 33, particularly sections 1381 to 1387, the rules of the agency, and this part.

### 7380.0410 DEFINITIONS.

Subpart 1. **Scope.** The terms defined in this part, in Minnesota Statutes, section 446A.02, and in the Federal Water Pollution Control Act, apply to parts 7380.0400 to 7380.0480.

Subp. 2. **Act.** "Act" means the Federal Water Pollution Control Act, as defined in Minnesota Statutes, section 446A.02, subdivision 4.

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

Subp. 4. **Applicant.** "Applicant" means:

A. a governmental unit as defined in Minnesota Statutes, section 446A.02, subdivision 5; or

B. a municipality as defined in this part.

Subp. 5. **Average coupon rate.** "Average coupon rate" means the weighted average of bonds at the various maturity dates as provided in the bond.

Subp. 6. **Dedicated sources of revenue for repayment.** "Dedicated sources of revenue for repayment" means one or more dedicated sources of revenue established by the municipality to ensure repayment of the loan from the authority. Dedicated sources of revenue may be: special assessments; general taxes or general obligation bonds; sewer service charges; or other sources acceptable to the authority.

Subp. 7. **Allowable costs.** Allowable costs that may be financed by the authority, provided the allowable cost item is reasonable or necessary, include those provided in the list of costs given below. The listing is only representative of allowable costs that may be financed by a loan from the authority. Other allowable costs may also fall within the language of the Act, United States Code, title 33, sections 1381-1387.

A. acquisition costs of land, building, or both;

B. site preparation;

C. construction costs;

D. engineering costs;

E. costs of equipment, machinery, or both;

F. bond issuance costs;

G. underwriting or placement fees;

H. trustee fees;

I. fees of guarantor, insurer, or financial institution, other than the authority, which provide letters of credit, surety bonds, or equivalent security;

J. authority fees, including application and guaranty fees of the authority and administrative costs and expenses;

K. certain contingency costs;

L. interest costs during construction;

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.

M. legal fees, including those of the authority; and

N. a debt service reserve fund.

Subp. 8. **Executive director.** "Executive director" means the executive director of the Public Facilities Authority.

Subp. 9. **Fund.** "Fund" means the Minnesota Water Pollution Control Revolving Fund created by Minnesota Statutes, section 446A.07, as amended.

Subp. 10. **Intended use plan.** "Intended use plan" means the document prepared annually by the agency and submitted to the United States Environmental Protection Agency that identifies the intended uses of the amounts available to the fund, including a list of wastewater treatment projects and other eligible activities scheduled to be funded during the fiscal year.

Subp. 11. **Loan agreement.** "Loan agreement" means the loan agreement or financing agreement between the authority and the municipality that provides all the terms and conditions of the loan.

Subp. 12. **Municipal bond index.** "Municipal bond index" means the index based on the yield that about 500 major issuers, mainly of investment grade, would pay on new long-term (20 years) general obligation, tax exempt bonds. The index is published each Friday in the Wall Street Journal.

Subp. 13. **Municipality.** "Municipality" means any county, city, and town, the Metropolitan Waste Control Commission established in Minnesota Statutes, chapter 473 and the Metropolitan Council when acting under the provisions of 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.

Subp. 14. **Poverty level.** "Poverty level" means the level of income identified as the poverty level by the United States Census Bureau; or by another federal or state agency; or by an accredited independent survey, which most accurately measures the level of poverty within a project service area.

Subp. 15. **Project completion.** "Project completion" means the date on which the operation of the treatment works is initiated or is capable of being initiated.

Subp. 16. **Project service area.** "Project service area" means the sewer service area directly served by the project being constructed.

Subp. 17. **Quarterly set rate.** "Quarterly set rate" means the maximum rate of interest set for a calendar quarter and shall be determined by the authority using as guidance the average of the municipal bond index for the four weeks prior to the beginning of the quarter minus 100 basis points for 20-year term loans. For loans of less than 20 years, the quarterly set rate will be determined by the authority using as guidance an index of investment grade bond issues having a maturity equal to the term of the loan being requested by the municipality minus a discount of five basis points for each year less than 20 years.

Subp. 18. **Sewer service area.** "Sewer service area" means the sewer service area that utilizes the individual sewage treatment plant.

Subp. 19. **Sewer service charge.** "Sewer service charge" means a charge levied upon the users of the sewer service system to pay for the use of the system. Service charges include tax assessment, special assessments, user fees, or other charges identified by any other name.

## FINANCIAL ASSISTANCE APPLICATIONS

### 7380.0420 PROCEDURES FOR FINANCIAL ASSISTANCE APPLICATIONS PROCESSING.

Subpart 1. **In general.** To apply for financial assistance from the authority, eligible applicants identified in the annual intended use plan prepared by the agency may submit an application at any time to the executive director of the authority.

Prior to the submission of an application to the authority, the municipality shall contact the authority to receive the authority's advice under Minnesota Statutes, section 446A.051.

The authority shall forward the application to the agency within ten days after receipt of the application by the authority. The agency will accept and review the application as provided in its rules.

Subp. 2. **Deadline for submission.** When an application that has been certified by the commissioner of the agency is returned to and received by the authority on or before the first business day of the month, the authority shall consider the application at the authority meeting that month. If the certified application is received after the first business day of the month and can be reviewed by the executive director prior to the authority agenda deadline, the authority may consider the application at the meeting in that month.

Subp. 3. **Completed application.** An application certified by the commissioner of the agency is considered complete when the executive director of the authority determines that the exhibits and documentation which have been received provide a full and accurate account of the project financing to the extent that the authority is able to make an informed determination on the application.

Subp. 4. **Incomplete application.** If an incomplete application is received, the executive director shall notify the applicant in

writing of specific deficiencies in the application. The applicant has 60 days from the date of mailing of the executive director's notification to complete the application. If the application is not completed and received by the executive director within those 60 days, the application is deemed to be rejected and the applicant, subject to agency rules, must reapply to be further considered.

Subp. 5. **Applications not receiving certification.** An application not receiving certification by the commissioner of the agency will not receive consideration for financial assistance by the authority. The executive director of the authority shall notify the applicant of the rejection of the application by the authority within ten days of the rejection determination.

Subp. 6. **Rejection of loan applications by the authority.** The authority may reject an application for financial assistance for the following reasons:

A. failure to obtain certification from the commissioner of the agency for the project;

B. failure to develop and document dedicated sources of revenue sufficient in the judgment of the authority to ensure repayment of the loan to the authority;

C. failure to submit a completed application using the procedure provided in part 7380.0420, subpart 4; and

D. failure to demonstrate the legal, managerial, institutional, and financial capacity to provide for adequate operation, maintenance, and replacement cost of the municipal facility for the term of the loan.

**7380.0430 AUTHORITY EVALUATION PROCEDURE.**

Subpart 1. **In general.** The authority shall evaluate applications certified by the commissioner of the agency to determine the applicant's capacity to comply with the terms and conditions of the Act and the rules of the authority as provided in this part.

The applicant's project must have been identified in the agency's intended use plan for the year in which the applicant is applying.

The authority will only provide financial aid for the allowable costs provided in part 7380.0410, subpart 7.

Subp. 2. **Loan terms and conditions.** The terms and conditions for loans and other forms of financial assistance provided by the authority to eligible applicants for certified projects are as provided by the Act; Minnesota Statutes, chapter 446A; this part; and as provided by the authority in the loan agreement for the project financing.

Subp. 3. **Repayment.** The repayment of loans to the authority by the recipient must be sufficient to fully amortize the loan for a period of not more than 20 years after project completion. If treatment works have been segmented or phased, the repayment requirements of this subpart and the payment requirements of subpart 6 apply to each phase or segment of the project.

Subp. 4. **Project completion.** The repayment of loans to the authority by the recipients must begin no later than one year after project completion.

Subp. 5. **Dedicated sources of revenue.** Loan recipients shall establish, and identify in the application, dedicated sources of revenue sufficient to operate and maintain the new facility, and fully amortize the loan for a term of not more than 20 years. The authority shall examine the identified dedicated sources of revenue to ensure that they are a sufficient amount and of sufficient certainty to fully repay the loan.

Subp. 6. **Payments.** The first principal and interest payment is due and payable not later than one year after project completion, or 24 months from the beginning of construction, whichever is earlier. Subsequent principal and interest payments by the loan recipient must be made at the times agreed upon by the loan recipient and the authority in the loan agreement. In general, semiannual loan payments will be required, unless a different payment schedule is agreed upon and provided in the loan agreement. However, in no case shall payments be less frequent than annual principal and interest payments sufficient to amortize the debt within the contracted period.

**7380.0440 INTEREST RATE DETERMINATIONS.**

Subpart 1. **In general.** The interest rate charged by the authority to a loan recipient must be determined as provided in this part.

Subp. 2. **Setting of interest rates.** The interest rate charged to a loan recipient must be determined by the authority using as guidance the quarterly set rate in effect at either the time of the municipality's application to the authority, or at the time of the signing of the loan agreement by the authority and the municipality, as determined by the municipality. The applicant is, however, eligible for the cumulative interest rate adjustments provided in this part, or the applicant may request in its loan application a specified basis point reduction from the average coupon rate of bonds to be sold by the authority. If the loan applicant applies for the specified basis point reduction, the following requirements must be met:

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. the payment schedule agreed to will follow the payment schedule of the bonds sold by the authority;

B. acceptable agreement on fund accountability is reached;

C. the municipality can demonstrate its credit worthiness; and

D. the integrity of the fund is maintained.

The authority shall annually provide in its application material the specific basis point reduction it will allow under this option.

Subp. 3. **Suspension of loans at the quarterly set rate.** The authority may suspend offering loans at the quarterly set rate if it determines that market conditions impacting the municipal bond index are unsettled or impair the viability of the fund. At the time of that determination, the authority may by resolution adopt a revised quarterly set rate, based upon generally accepted practices of interest rate forecasting, for a period of time determined by the authority. The authority may, based upon market conditions, extend the offering of loans at the revised quarterly set rate and continue to do so until the time the authority considers it prudent to again use the municipal bond index as guidance for the quarterly set rate.

Subp. 4. **Demographic considerations.**

A. A loan application will be considered for an interest rate reduction based upon the population of the project service area, and be eligible for a reduction as follows:

(1) Applicants with a project service area population of less than 150,000 and larger than 100,000 are eligible to receive the quarterly set rate minus 25 basis points, subject to the interest rate adjustments given in this part.

(2) Applicants with a project service area population of 100,000 or less and larger than 25,000 are eligible to receive the quarterly set rate minus 50 basis points, subject to the interest rate adjustments given in this part.

(3) Applicants with a project service area population of 25,000 or less and larger than 5,000 are eligible to receive the quarterly set rate minus 75 basis points, subject to the interest rate adjustments in this part.

(4) Applicants with a project service area population of 5,000 or less and larger than 2,500 are eligible to receive the quarterly set rate minus 100 basis points, subject to the interest rate adjustments in this part.

(5) Applicants with a project service area population of 2,500 or less but larger than 1,000 are eligible to receive the quarterly set rate minus 125 basis points, subject to the interest rate adjustments in this part.

(6) Applicants with a project service population of 1,000 or less are eligible to receive the quarterly set rate minus 150 basis points, subject to the interest rate adjustments in this part.

B. The data used to determine the population and the median household income of the project service area should be that which most accurately measures the population and median household income of the area. The authority shall determine if the data submitted by the municipality is an appropriate and accurate measurement of the population and household income of the project service area.

C. The metropolitan and nonmetropolitan median household income levels of the state must be determined from income data from the most recent census of the United States or from data from the state demographer. The data provided must be applied as the criteria to determine if the applicants' project service area household income is at, below, or above the median household level for the metropolitan or nonmetropolitan area as applicable.

D. If there is reason to believe that the United States census data or the data from the state demographer is not a currently accurate representation of the median household income or population within the project service area, the applicant may document the reasons why the data is not an accurate representation, and obtain additional information regarding median household income or population for the project service area. The information must consist of reliable data from local, regional, state or federal sources, or from a survey conducted by a reliable impartial source.

Subp. 5. **Interest rate adjustment.** Any applicant is eligible to receive consideration for interest rate adjustments to the interest rate to be charged by the authority as provided in this part.

A. The median household income is the income level for the project service area of the facility being financed by the authority. If the median household income level for the area is below the median household income level for a metropolitan or nonmetropolitan area, as applicable, the applicant is eligible for a 50 basis point reduction in the rate; or

B. If the percentage of poverty level households in the project service area is at or above the national average, the applicant is eligible for a 100 basis points reduction in the interest rate charged by the authority.

C. If the current annual sewer service charge of the project service area, coupled with the financing, operation, maintenance, and replacement costs of the new facility results in an annual sewer service charge in excess of one percent of the median household income level of the project service area, the municipality is eligible for a 100 basis points reduction in the interest rate.

Subp. 6. **Interest-free loans.** The authority may offer interest-free loans as provided in this part to municipalities demonstrating in their application that they are financially unable to pay any interest charge on the loan. The authority shall not offer interest-free loans if the offering of an interest-free loan results in the combined rate of interest on the authority's portfolio to yield less than the rate of inflation as determined by the consumer price index.

Interest-free loans for any applicant are limited to $500,000, or the eligible cost of the project, whichever is less. The authority shall not provide interest-free loans, in total, exceeding up to ten percent of the total capitalization grant funds scheduled to be received by the authority.

To be eligible for consideration for an interest-free loan, an applicant must meet each of the following conditions:

A. the population of the project service area has declined over the past ten years;

B. the percent of people in poverty in the project service area of the project is at or exceeds the poverty level; and

C. the current annual sewer service charge of the project service area, coupled with the financing, operation, maintenance, and replacement costs of the new facility results in an annual sewer service charge in excess of one and one-half percent of the median household income level of the project service area.

**7380.0450 OTHER FINANCIAL ASSISTANCE.**

In addition to the loans provided in parts 7380.0430 to 7380.0440, the authority may use any forms of financial aids provided in United States Code, title 33, section 1383(d). The use of specific financing tools will be determined by the authority based on existing financial market conditions at the time the financing of the project takes place.

The revolving loan fund authorized by the act may be used:

A. to buy or refinance the debt obligation of municipalities for treatment works incurred after March 7, 1985, at or below market rate;

B. to guarantee or purchase insurance for local obligations to improve credit market access or reduce interest rates;

C. to provide a source of revenue or security for the payment of principal and interest on revenue or general obligation bonds issued by the authority if bond proceeds are deposited in the fund; and

D. to provide loan guarantees for similar revolving funds established by a governmental unit other than state agencies.

**7380.0460 FEES.**

If the authority charges a loan recipient a loan origination fee, the fee must be based on a schedule established by the authority and must not exceed one and one-half percent of funds borrowed from the authority. The fees, if any, will be charged to all loan recipients and must be as provided in the loan application form. These fees may be included as an eligible project activity or category in the municipality's application to the authority, and are due and payable as provided in the loan agreement.

**7380.0470 RELEASE OF FUNDS.**

Subpart 1. **In general.** Subject to the availability of funds, payments to the governmental unit for an approved project will be made in accordance with applicable state and federal law governing payments, but payments will not be made until the authority has determined the total estimated cost of the project, and ascertained that the total final financing of the project is assured by the following:

A. a loan authorized by state law or the appropriation proceeds of bonds or other money of the municipality to a fund for construction of a project; and

B. an irrevocable undertaking, by resolution of the applicant, to use the loan proceeds exclusively for the project, and to pay any additional amount by which the cost of the project exceeds the final estimate by the appropriation to the construction fund of additional money or proceeds of additional bonds to be issued by the governmental unit.

Subp. 2. **Adverse change.** The authority shall not release funds to a municipality for an approved project until the authority has determined that there have been no adverse changes in the financial capacity of the municipality since the day of the completion of the application.

The authority reserves the right to suspend or terminate funding to the municipality if the authority determines that there has been an adverse change.

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

Subp. 3. **Conformance with plans and reporting requirements.** The authority shall withhold, suspend, or terminate either total or partial payments if the authority determines that a project does not substantially conform to approved plans and specifications, or there has been substantial noncompliance with reporting requirements.

The executive director shall give a municipality written notice of the deficiencies the authority has determined exist, and the time in which the municipality must demonstrate to the authority's satisfaction that the condition has or will be corrected. The time for demonstration must not exceed 90 days.

**7380.0480 REPORTS AND AUDITS.**

Subpart 1. **Reports.** During the term of the loan, the municipality shall make written reports to the executive director on forms provided by the authority and on a schedule determined by the executive director.

Subp. 2. **Audits.** Financial assistance recipients must arrange and pay for independent audits, acceptable to the authority and prepared in compliance with the Office of Management and Budget, Circular A-128, published in the Federal Register, volume 50, number 188, page 39083, on September 27, 1985, and in compliance with the Single Audit Act of 1984, United States Code, title 31, sections 7501-7507. Costs incurred in preparation of the audit are an eligible activity or category under part 7380.0410, subpart 7.

# Adopted Rules

The adoption of a rule becomes effective after the requirements of Minn. Stat. § 14.14-14.28 have been met and five working days after the rule is published in *State Register*, unless a later date is required by statutes or specified in the rule.

If an adopted rule is identical to its proposed form as previously published, a notice of adoption and a citation to its previous *State Register* publication will be printed.

If an adopted rule differs from its proposed form, language which has been deleted will be printed with strikeouts and new language will be underlined. The rule's previous *State Register* publication will be cited.

An emergency rule becomes effective five working days after the approval of the Attorney General as specified in Minn. Stat. § 14.33 and upon the approval of the Revisor of Statutes as specified in § 14.36. Notice of approval by the Attorney General will be published as soon as practicable, and the adopted emergency rule will be published in the manner provided for adopted rules under § 14.18.

# Department of Labor and Industry

## Adopted Permanent Rule Relating to Prevailing Wages

The rule proposed and published at *State Register*, Volume 12, Number 43, pages 2340-2342, April 25, 1988 (12 S.R. 2340) is adopted with the following modifications:

### Rule as Adopted

**5200.1105 RENTAL RATES FOR TRUCKS ON HIGHWAY PROJECTS.**

Drivers who own and operate trucks on contract work shall be compensated for their equipment according to the following formula: Truck Rental Rates Equals Labor Cost Plus Operating Cost.

Labor cost shall be the rate determined to be prevailing by the Department of Labor and Industry using existing survey methods under parts 5200.1000 to 5200.1120.

Operating cost shall be determined by averaging the itemized costs of operating a vehicle as submitted ~~from not less than four~~ by at least five trucking firms of various size and five independent truck owner-operators, all selected by the commissioner as representative of the industry.

The following items shall be considered as operating costs of a vehicle: the average cost of the vehicle depreciated over seven years, insurance, fuel, oil, tires, taxes, licenses, maintenance, repair, and any administrative expense associated with the vehicle's operation.

ATTACHMENT 1

STATE OF MINNESOTA
COMMISSIONER OF TRADE AND ECONOMIC DEVELOPMENT

In the Matter of the Proposed Rules Governing the Administration of the Water Pollution Control Revolving Fund, Minn. Rules Parts 7380.0400 to 7380.0480

FINDINGS OF FACT, CONCLUSIONS, AND ORDER ADOPTING RULES

FINDINGS OF FACT

1. Notice of the Commissioner'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 on September 16, 1988, to all persons on the list maintained by the Department of Trade and Economic Development pursuant to Minn. Stat. §§ 14.14, subd. 1a and 14.22 (1986).

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

3. All persons were given the opportunity to submit comments on the rules for 30 days after notice of proposed rulemaking. The 30-day comment period, as set out in the notice, expired on October 19, 1988.

4. During the comment period the Commissioner received no requests for a public hearing. Therefore, the Commissioner did not receive requests for a public hearing from 25 or more persons which were not withdrawn.

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

6. During the comment period the Commissioner of Trade and Economic Development received four written comments and one verbal comment.

All references to modifications to parts of the rule are to the attached Revisor's copy of the rule.

7380.0400 Page 1, Lines 10 and 11; The phrase "....the planning, designing, and ..." was added. While the program, since its inception, was intended to provide for planning and design costs of a facility in addition to construction costs, it was not specifically noted. It was determined that a specific statement was needed to fully inform potential applicants of the eligibility of planning and design costs.

7380.0410, Page 1, Lines 31, 32, and 33. During the public comment period the Minnesota Pollution Control Agency (PCA) commented that a more accurate statutory reference to the Act would be United States Code, Title 33, Sections 1251 to 1387. It was determined that the statutory references suggested by the PCA more accurately identifies the sections of the Act applicable to the Water Pollution Control Revolving Fund.

7380.0410, Page 2, Line 17. During the public comment period both the PCA and the United States Environmental Protection Agency (EPA) commented on the fact that the phrase "... reasonable or necessary ..." did not convey the absoluteness of the requirement that an allowable cost always be both reasonable and necessary in addition to being permitted by the Act. The restatement of these requirements suggested by both the PCA and the EPA is appropriate and more clearly conveys the requirement of the subpart.

7380.0410, Page 2, Lines 23, 24 and 25. As with 7380.0410, Page 1, Lines 31, 32 and 33, the referenced agencies noted that a more accurate reference to the statute applicable to these project costs would be United States Code, Title 33, Sections 1381 to 1387. It was determined that the suggested statutory reference was more accurate in identifying allowable acquisition costs.

7380.0410, Page 2, Line 31. A comment was received noting that the costs of financial advisor services are routinely an allowable cost associated with bond

financing. As the omission of the cost was inadvertent in the proposed rules, it is entirely appropriate to include such costs.

7380.0410, Page 3, Line 2. The EPA, during the public comment period, noted that the phrase "..and administrative costs and expenses..." might be construed by applicants to mean the routine operating costs of the Public Facilities Authority (PFA) rather than those costs associated with the actual application process of each applicant. It was determined that the application processing costs, if charged to individual applicants, would be provided for under authority fees and therefore the phrase "....and administrative costs and expenses..." is redundant and therefore it was eliminated.

7380.0410, Page 3, Lines 13, 14, 15, and 16. The EPA recommended to the Authority and the PCA, that in cases where a term is defined by each in its respective rules that the same definition be used. It was determined that the PCA's definition for this term was a more precise and clear definition and therefore this subpart was modified.

7380.0410, Page 4, Line 10. The EPA provided comment that the definition of "project service area" needed to be more precisely defined. It was determined that a more precise definition was in order and the definition has been refined.

7380.0410, Page 4, Line 28. The EPA also recommended that in place of the term "user fees" the term "user charges" be used because it has more commonality in reference to sewer service charges. It was determined that the term "user charges" was more appropriate when dealing with the subpart subject matter.

7380.0420, Page 5, Line 10. A comment received from the PCA suggested that the heading for subpart 2 was not appropriate and could be misleading to applicants. It was determined that a heading of "Authority review" more accurately represents the nature and contents of the subpart.

7380.0420, Page 6, Lines 16, 17, 18 and 19. A comment received from the PCA noted that item D of subpart 6 duplicated a like requirement of applicants in the PCA program rules. As this requirement would be redundant, it was determined that it should be eliminated.

7380.0430, Page 7, Lines 2, 3, 4, and 5. As noted in the comments under 7380.0400, Page 1, Lines 10 and 11, it was determined that amplification was required on the manner in which the Authority would provide for loans for planning and design of wastewater treatment facilities. Therefore, subpart B was added.

It was determined that 7380.0430, Page 7, Lines 13, 14 and 15. Subpart 4 as originally proposed was redundant as "project completion" is dealt with elsewhere in the rules.

7380.0430, Page 7, Lines 15, 16 and 17. A comment was received from the Authority's bond counsel stating that although it is common practice for municipalities to issue general obligation bonds as evidence of indebtedness, it was not specifically noted in the rules. While the comment of bond counsel is pertinent in a vast majority of the cases, it is not the only means by which a municipality may evidence its indebtedness. The Authority does not want to restrict the use of other means by which a municipality may evidence its indebtedness.

Further, as Part 7380.0410, Subpart 6 addresses this issue, the suggested addition to the rules to include another subpart to address this issue is somewhat redundant.

It was, therefore, determined that it was not necessary to change the rules to include the suggested revision.

7380.0440, Subpart 2, Page 8, Lines 12 through 29. Based on comments from several sources during the public comment period it became apparent that subpart 2 was not clear, and may be subject to misinterpretation. It was determined that it was necessary to expand subpart 2 into 4 separate items, i.e. A,B,C and D for clarity and amplification. No additional requirements were placed on applicants and therefore, even though the subpart was considerably expanded, it only represents further clarification and amplification of the requirements already in this subpart.

7380.0440, Page 11, Lines 15 through 19. During the public comment period a comment was received from the PCA in which it expressed its concern that the language in this item could be misinterpreted by applicants in the calculation of the sewer service charge that is to be compared with the median household income. It was determined that the restatement of this item as suggested by PCA would more clearly describe the provisions of this item.

7380.0440, Page 12, Lines 4, 5 and 6. One of the comments received during the public comment period recommended that the language in this item read the same as subpart 5, item B on page 11. In order to be consistent and for greater clarity, it was determined that this item should read the same as the referenced item.

7380.0440, Page 12, Lines 7 through 11. As provided in the comment on 7380.0440, page 11, lines 15 through 19, the restatement of this item, as suggested by the PCA, provides for greater clarity.

7380.0450, Page 12, Lines 23 and 24. During the public comment period, a comment was received from the EPA that the proposed rules for this program for item A should be modified as the EPA had further refined the statutory requirement dealing with this issue. It was determined that a restatement of this item to include EPA's refined definition was in order.

7380.0480, Page 14, Lines 23, 24 and 25. A comment was received during the public comment period that this item as proposed could be misinterpreted by applicants as all-inclusive and not limited to only those specific audits given in this item. It was determined that the elimination of lines 23, 24 and 25 would eliminate any confusion.

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

CONCLUSIONS

1. The Commissioner of Trade and Economic Development duly acquired and has jurisdiction over this proceeding.

2. The Commissioner 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. 7380.0400 to 7380.0480 governing the administration of the Water Pollution Control Revolving Fund Program are adopted pursuant to the authority vested in the Commissioner of Trade and Economic Development by Minn. Stat. § 446A, subd. 10.

COMMISSIONER OF TRADE AND ECONOMIC DEVELOPMENT

Dated: 5-27-88

David J. Speer
Commissioner

PFA II/19-CP (5-6)

Community Development Division

#8

OCT 19 1988

# Minnesota Pollution Control Agency

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

Dear Mr. Kuhlman:

The following are the Minnesota Pollution Control Agency's comments on your proposed rules for the Water Pollution Control Revolving Fund.

1. Part 7380.0410, Subpart 7.

a. The phrase in the first sentence should read "reasonable AND necessary.

b. The sentence which begins "Other allowable costs may also fall within the language of the Act..." should be deleted. Title VI does not identify allowable costs.

2. Part 7380.0410, Subpart 19.

The phrase in the first sentence, "...to pay for the use of the system" is ambiguous. To clarify and make the definition of sewer service charge consistent with our rule, we suggest replacing the phrase with "...to pay for the capital cost and operation, maintenance and replacement of the system.

3. Part 7380.0420, Subpart 2.

We continue to feel that this item would be more appropriate in our Interagency Agreement rather than in the rules because it pertains to our interaction and the cities will have no control over when the Commissioner's certification is made. If it cannot be deleted, we suggest that the heading be changed so that cities (the primary audience) do not think that this has something to do with their application submission.

4. Part 7380.0420, Subpart 6, Item D.

This item should be deleted. The language is an EPA Title II requirement and is therefore within the MPCA's responsibilities for review.

5. Part 7380.0430, Subpart 3.

The statute indicates that loan repayments must be made to the Fund, not the Authority.

Phone:_____
520 Lafayette Road, St. Paul, Minnesota 55155
Regional Offices • Duluth/Brainerd/Detroit Lakes/Marshall/Rochester
Equal Opportunity Employer

6. Part 7380.0440, Subpart 5, Item C.

We are concerned that this sentence could lead to misinterpretation by cities in the calculation of the sewer service charge to be compared to median household income, and in the meaning of the term "new facility". We suggest the following language: "If the annual sewer service charge of the project service area after completion of the project exceeds one percent of the median household income level of the project service area, the municipality is eligible for a 100 basis points reduction in the interest rate."

7. Part 7380.0440, Subpart 6, Item C.

We have the same concern here as in comment #6. We suggest a language change similar to that proposed in comment #6.

8. Part 7380.0450, Item A.

Rewording this item as follows will bring the rule into compliance with EPA's policy on refinancing: "to buy or refinance the debt obligation of municipalities for treatment works where debt was incurred and construction begun after March 7, 1985, at or below market rate;"

9. Part 7380.0460.

The phrase "eligible project activity or category" should be replaced with "allowable cost".

If you have any questions concerning these comments, please contact me or Jeff Freeman at 296-7312.

Sincerely,

Richard J. Sandberg

Richard J. Sandberg, Chief
Municipal Wastewater Treatment Section
Division of Water Quality

[redacted] TIE : REMOVE STAPLES!

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, REGION V
230 South Dearborn Street
CHICAGO IL 60604

&EPA

# FACSIMILE REQUEST AND COVER SHEET

PLEASE PRINT IN BLACK INK ONLY

TO: TERRY Kuhlman

OFFICE/PHONE: 312-296-5005

MACHINE NO.: FTS 886-1290

VERIFICATION NO.: FTS 886-1291

SUBJECT: SRF Rule Comments

FROM: Schulenberg - EPA

PHONE: 312-353-2477

MAIL CODE: 5WFM-TUB-9

OFFICE:

DATE: 10/19/88

NUMBER OF PAGES TO INCLUDE THIS COVER SHEET:

*Please number all pages*

## INFORMATION FOR SENDING FACSIMILE MESSAGES

| EQUIPMENT | FACSIMILE NUMBER | VERIFICATION NUMBER |
|---|---|---|
| PANAFAX FX-100 | FTS: 886-9096(auto)<br>Comm: (312)886-9096 | FTS: 886-3096<br>Comm: (312)886-3096 |
| XEROX 400 | FTS: 886-3096(manual)<br>Comm: (312)886-3096 | FTS: 886-3096<br>Comm: (312)886-3096 |

PAGE ___ OF ___ PAGES

EPA Form 5040-5 (Rev. 12-83) Replaces EPA Form 5040-5A and the previous edition of EPA Form 5040-5, which are obsolete.

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

5WFM-TUB-9
REPLY TO THE ATTENTION OF

OCT 19 1988

Mr. Terry Kuhlman
Executive Director, Department of
Trade and Economic Development (TED)
Minnesota Public Facilities Authority
900 American Center
150 East Kellogg Boulevard
St. Paul, Minnesota 55101

Dear Mr. Kuhlman:

We have completed our review of the proposed State Revolving Fund (SRF) program rules submitted by your office on September 8, 1988. We have also reviewed the proposed Interagency Agreement (IA) between PFA and the MPCA regarding SRF program management responsibilities.

Please find enclosed our detailed comments on the SRF rules and IA, in addition to an annotated copies of the documents. Our primary concerns are:

(1) Common terms used between the PFA and the MPCA must have identical definitions. no problem

(2) Land costs are only an allowable cost if they meet the definition of "treatment works" under Section 212 of the Act. done

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

Very truly yours,

Gene Wojcik, Acting Chief
State Program Management Section

Enclosures

cc: Richard Sandberg, w/enclosures

Minnesota Public Facilities Authority
Department of Trade and Economic Development
Proposed State Revolving Fund Program Rules

A. Definition

(1) It is not clear what constitutes a "governmental unit" as defined in Subpart 4. The definition should differentiate between those governmental entities whose principal responsibility is to provide wastewater treatment services versus a governmental entity; i.e., park district or school district, whose responsibility is to provide wastewater treatment service in support of its principal activity.

(2) The definition for "project completion" appears adequate when providing loans for the "building" of a water pollution control project. How will this term be used when loan assistance is provided solely for facilities planning (Step 1) and/or preparing project plans and specifications (Step 2)?

(3) The definitions for a "project service area" and a "sewer service area" need some clarification to identify the difference between the two meanings.

(4) A distinction should be made between "user fees" as used in Subpart 19, and "user charges" when defining a sewer service charge system. We suggest changing "fees" to "charges" since it would be more consistent with Title II requirements.

(5) The use of the terms "necessary or reasonable" in defining an "allowable cost" is not correctly provided. As used under Subpart 7, the phrase implies a one-tier test for costs to be determined allowable. As federally defined, a cost is considered allowable if the costs are "necessary and reasonable" for the project. This is a "two-tier" allowability test rather than a "one-tier".

(6) Care should be utilized to separate the "fees" identified under Subpart 7(J) from the SRF fund, if utilized to defer the administrative costs of the SRF fund.

(7) Land costs are unallowable under the SRF program. The costs associated with land acquisition are allowable only if the land is an integral part of the treatment works; i.e., spray irrigation. This interpretation must be consistent with the definition of "treatment works" in Section 212 of the Act.

B. Authority Evaluation Procedure

(1) The State should develop repayment procedures for loan recipients receiving assistance for Step 1 or Step 2 facilities planning and plans and specifications, respectively.

(2) The State's procedure should also identify a mechanism to prevent "double benefits" as precluded under Section 603(e) of Title VI.

C. Interest Rate Determinations:

(1) Subpart 3 identifies certain conditions when the authority may suspend loans at the quarterly set rate. The State should recognize that such suspension may require a revision to the negotiated payment schedule of the Capitalization Grant Agreement.

(2) It is not clear under the interest rate adjustments referenced in Subpart 5c, if all basis points are to be applied before the calculation of the sewer service charge is made. In addition, the 1 percent threshold for median household income appears rather low--most projects may exceed.

E. Release of Funds

(1) The payment provisions should be consistent with MCFA rules requiring disbursement based upon actual incurred costs.

F. Reports and Audits

(1) The rules make no provisions for Annual Federal Oversight activities referenced under Section 606(e) of Title VI. Such review activities may include monitoring and evaluation of task specific activities performed by the State, and audits conducted by the Office of Inspector General on loan recipient records.

State Revolving Fund Program
Interagency Agreement (IA)
PFA - MPCA

A. Description and Purposes

(1) Under the general responsibilities statement, the Interagency Agreement should reference the program rules established by each State agency.

B. Capitalization Grant Agreement Process

(1) The Intended Use Plan is more encompassing than a listing projects. This Section should be revised to reflect the requirements of Section 606(c).

(2) The IA should reflect the necessary financial statements that for TED will be prepare for incorporation into MPCA's Annual Report.

(3) The first-use requirements are specifically identified in Section 602(b)(5). We recommend that Section (B)(5) be revised to reflect the statutory language.

(4) Administrative costs of the SRF are limited through the provisions of Section 603(d)(7). Accordingly, costs associated with the development of the SRF are not allowable.

C. Application Process for SRF Assistance

(1) The specific requirements should be delineated in the State/EPA Operating Agreement.

D. Exchange of Information

(1) The IA makes no clear delineation of the roles and responsibilities for data management; i.e., program and project related information.

Prudential-Bache Capital Funding

**William B. James, C.F.A.**
Associate Director
Public Finance Department

October 18, 1988

Community Development Division

OCT 19 1988

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

Re: Proposed Permanent Rules Relating to the
Water Pollution Control Revolving Fund

Dear Mr. Kuhlman:

In accordance with the Notice of Intent published in the September 19, 1988 issue of the State Register, I am writing in support of the proposed rules (including all parts and subparts) relating to the Water Pollution Control Revolving Fund established under the Federal Water Quality Act of 1987.

I have reviewed Sections 7380.0400 through 7380.0480 as published in the State Register on September 19, 1988. Provided below are relevant comments on certain of these sections (underlining indicates additions to language):

1. Section 7380.0410. Definitions. Subp. 7. Allowable Costs. "G. Underwriting, financial advisory or placement fees..." OK

Comment: The Authority may desire the use of the services of a financial advisor.

2. Section 7380.0410. Definitions. Subp. 15. Project Completion. "Project completion" means the date on which the operation of the treatment works is initiated or is capable of being initiated (as determined by the Commissioner of Trade and Economic Development). NO

Comment: There should be authority for the Commissioner to determine whether the project is capable of being initiated in case there is a dispute on this matter.

3. Section 7380.0440. Interest Rate Determinations. Subp. 2. Setting of Interest Rates. "D. The integrity of the fund is maintained in perpetuity."

Comment: The "in perpetuity" concept is very important in the eyes of the USEPA.

100 Gold Street, New York, NY 10292, Telephone 212-776-3963

4. Section 7380.0450. Other Financial Assistance. "A. to buy or refinance the debt obligation of municipalities for treatment works incurred and construction begun after March 7, 1985, at or below market rate."

Comment: This clarification was provided in EPA's Initial Guidance document of January 28, 1988. (see p. 3 and p. 5).

I hope these comments are helpful and, of course, if you have any questions on these comments, please do not hesitate to call.

Please let me know if there is any additional assistance we may provide to you in respect to the State Revolving Fund Program.

Very truly yours,

William B. James

William B. James, C.F.A.
SRF Program Manager

cc: Jeff Freeman

FAEGRE & BENSON
2200 NORWEST CENTER
90 SOUTH SEVENTH STREET
MINNEAPOLIS, MINNESOTA 55402-3901
612/336-3000
TELECOPIER 336-3026
TELEX 425131

SUITE 1150, 8400 TOWER
8400 NORMANDALE LAKE BOULEVARD
BLOOMINGTON, MINNESOTA 55437-1078
612/921-2200
TELECOPIER 921-2244

10 EASTCHEAP
LONDON EC3M 1ET, ENGLAND
01/623-6163
TELECOPIER 623-3227
TELEX 8811084

2500 REPUBLIC PLAZA
370 SEVENTEENTH STREET
DENVER, COLORADO 80202-4004
303/592-5690
TELECOPIER 592-5693

Community Development Division
OCT 19 1988

October 19, 1988

[By Messenger]

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

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

Dear Mr. Kuhlman:

This letter is to comment on the above-captioned proposed rules as published in the State Register on September 19, 1988. As you will see, my comments on the rules proposed by the Commissioner of Trade and Economic Development are technical rather than substantive in nature. I do, however, have substantive comments on the related rules proposed by the Minnesota Pollution Control Agency and I have enclosed for your information a copy of my comments on those rules.

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.

7380.0440, Subp. 2.

The first sentence indicates that a municipality may determine to receive a loan at the rate in effect either at the time of application or at the time the loan agreement is signed, but does not specify when the determination must be made. If you intend that the determination is to be made irrevocably at the time of the application, the rule should probably so state by adding "at the time the application is submitted" or similar language. If you intend that the

determination can be made at the time the loan agreement is executed, you may as well refer to "the lesser of" the two rates.

The alternative of a specified basis point reduction introduced in the second sentence is not really an alternative to the cumulative interest rate adjustments, but rather is intended as an alternative to the quarterly set rates explained in the first sentence as adjusted by the cumulative interest rate adjustments. Therefore, the concept should be set forth in a separate sentence which also indicates clearly whether election of the specified basis point reduction from the average coupon rate is irrevocable after submission of the application. I suggest the following language be substituted for the second sentence to clarify what is intended: "In either case, eligible applicants may receive the cumulative rate adjustments provided in this part. As an alternative, the applicant may request in its loan application a specified basis point reduction from the average coupon rate of bonds to be sold by the authority to finance the loan. If this alternative is selected, the applicant is not eligible for the interest rate reductions provided in subparts 4 [and subpart 5] [but is eligible for the interest rate reductions provided in subpart 5]." I assume the first bracketed phrase is intended rather than the second.

7380.0440, Subp. 5.

The first sentence, taken by itself, would appear to provide a reduction from the established rate whether determined on the basis of the quarterly set rate or the specified basis point reduction from the average coupon rate. If, as suggested by the existing second sentence of Subpart 2, the intent is to grant these additional reductions only to rates based on the quarterly set rates, I suggest the following language be substituted: "any applicant for a rate based on the quarterly set rate as adjusted for population in accordance with Subpart 4, is eligible to receive consideration for additional adjustments to the rate determined under subpart 4, or to the quarterly set rate if the population of the project service area is 150,000 or larger.

Paragraph C, as drafted, contains several conceptual difficulties. The definition of "sewer service charge" in Part 7380.0410 includes taxes and special assessments which will vary depending on the value of the property, its tax classification and, in the case of assessments, the benefits established at the time of levy. Paragraph C appears to be an attempt to translate all these costs into costs for the average household. While it is difficult to put all of these concepts in a single sentence, the following is an attempt to come closer to the mark: "If the estimated average annual service

charge for residential users in the project service area (determined on the basis of that portion of the total estimated annual service charges for the sewer service area after completion of the new facility which are estimated to be borne by residential users and property owners), divided by the number of households in the service area, will exceed one percent of the median household income level in the project service area, the municipality is eligible for a 100 basis points reduction in the interest rate."

5 The language in Subp. 6(B) should be revised to conform to Subp. 5(B) by substituting "poverty level households" for "people in poverty" and substituting "national average" for "poverty level".

6 The language in Subpart 6(C) should be revised in a manner similar to the proposed revision to Subpart 5(C) explained above.

Please call if you have any questions about these comments.

Very truly yours,

Stephen Rosholt

SR:lkl

3497g

STATE OF MINNESOTA
DEPARTMENT OF TRADE AND ECONOMIC DEVELOPMENT
PUBLIC FACILITIES AUTHORITY

In the Matter of the Adoption
of the Rules Governing the
Administration of the Water
Pollution Control Minn. Rules
Parts 7380.0400 to 7380.0480
Revolving Fund

**DECLARATION OF COUNSEL**

I, Karl W. Sonneman, Special Assistant Attorney General, do hereby declare that I have examined the above-captioned rule and the supporting rulemaking record, and that, based on my examination, the Administrative Procedure Act and Minnesota Rules, chapter 2010 have been followed. Any exceptions are listed below.

1. The FFCLO states a conclusion that the changes made in the rule are not substantial. No specific findings address this issue. However, the findings do state that the changes are to clarify, adopt more precise language, and eliminate redundant terms, and thus support this conclusion.

2. The FFCLO is signed by "Jayne B. Khalifa for David J. Speer." I have examined the Delegation of Authority to Ms. Khalifa by Commissioner Speer, dated March 10, 1988, and believe that this delegation confers adequate authority for Ms. Khalifa to sign the FFCLO adopting rules.

For Attorney General billing purposes, the four-digit docket client code is 0183.

Dated: January 19, 1989

Karl W. Sonneman
Special Assistant
Attorney General