

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

ATTORNEY GENERAL

February 16, 1988

JOCELYN OLSON
Assistant Attorney General

JULIE A. LEPPINK
Special Assistant
Attorney General

6-9422

In the Matter of the Adopted Rule Relating to
the Corrective Action Grants Program under
the Independent State Grants Program for
Wastewater Treatment

The above-referenced rule has been approved as to its legality by the Attorney General on February 13, 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

jcl

RULE REVIEW CHECKLIST

File No. 1567 Docket No. 05.0009.2010

DATE RECEIVED 2/2/89 ADOPTED W/O HEARING X

REVIEW DATE 2/13/89 EMERGENCY RULE _____

DUE DATE 2/16/89 REVISOR APPROVED _____

APPROVED 2/13/89 JaJ REVISOR DISAPPROVED _____

DISAPPROVED _____ FILED W/SEC. OF STATE _____

WITHDRAWN _____ RETURNED TO AGENCY _____

✓ Rule as adopted (4 copies)

✓ Notice to Solicit Outside Information/Opinion (if applicable)
- 8/17/87 Date published in State Register
- _____ Comments

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

✓ Board's Authorizing Resolution
- 10/25/88 Date adopted

✓ Proposed Rule
- Yes Revisor's Certificate

✓ Notice of Intent to Adopt Rule
- 116.181 Statutory Authority
- yes Small Business Statement
- yes Expenditure of public money statement
- yes Signature

✓ Statement of Need and Reasonableness (if applicable)
- yes Small Business Statement
- n/a Fees - § 16A.128

✓ Affidavit of Mailing Notice of Intent to Adopt Rule
- 11/10/84 Date (30)/25 days before adoption
- OK Notice attached
- _____ ~~Copy of rule or summary attached~~

✓ Publication in State Register
- 11/14/88 Date (30)/25 days before adoption

_____ 180-day deadline from:
- 8/1/89 Effective date of law requiring rule Minn Laws 1989, ch 272 §3 (14.12) (both rules)
- 12/14/88 end of comment period (§ 14.26) (rules without hearing)
- _____ ~~effective date of statutory authority (§ 14.29) (emergency rules)~~

✓ Resolution Adopting
- 1/26/89 Date adopted

✓ Findings of Fact, Conclusions & Order Adopting
- 1/26/89 Date — Called Jocelyn

_____ ~~Written requests, submissions or comments~~

✓ Declaration of attorney
- Jocelyn Olson Name of SAAG representing agency

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

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

Pollution Control Agency

Adopted Permanent Rules Relating to the Corrective Action Grants Program under the Independent State Grants Program for Wastewater Treatment

Rules as Adopted

CORRECTIVE ACTION GRANTS PROGRAM

7075.1005 PURPOSE.

The corrective action grants program provides grants to municipalities with wastewater treatment facilities funded under the Clean Water Act, United States Code, title 33, sections 1281 to 1299, or the independent state grants program that are unable to meet performance standards. The grants are for the purpose of correcting performance failures. The program is jointly administered by the Minnesota Pollution Control Agency and the Minnesota Public Facilities Authority. Parts 7075.1005 to 7075.1090 pertain to the agency's responsibilities in administering the program.

7075.1010 DEFINITIONS.

Subpart 1. **Scope.** For the purpose of this program, the following terms have the meanings given them.

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

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

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

Subp. 5. **Performance standards.** "Performance standards" means the criteria established for a wastewater treatment facility under the Clean Water Act, United States Code, title 33, sections 1281 to 1299, or the independent state construction grants program for the purpose of determining the project's satisfactory performance.

7075.1020 ELIGIBILITY FOR PARTICIPATION.

To be eligible for participation in the program, a municipality must meet the following requirements:

A. The municipality received a wastewater treatment facility construction grant under the Clean Water Act, United States Code, title 33, sections 1281 to 1299, or the independent state construction grants program after December 29, 1981. A municipality that received a grant under the individual on-site wastewater treatment system grants program or the capital cost component grant program does not meet this eligibility requirement.

B. The population served by the wastewater treatment facility is 1,500 or less.

C. The municipality's wastewater treatment facility is unable to meet performance standards and the inability was identified by the commissioner before the end of the one-year performance certification period established by Code of Federal Regulations, title 40, section 35.2218.

D. For projects that were originally funded under the Clean Water Act, United States Code, title 33, sections 1281 to 1299, the inability of the wastewater treatment facility to meet performance standards is not the result of the failure of innovative or alternative technology components.

E. The municipality has not received a grant under the corrective action grants program.

7075.1030 ELIGIBLE AND INELIGIBLE COSTS.

Subpart 1. **Construction and land costs.** Construction and land costs retain the same eligibility as they had under the Clean Water Act, United States Code, title 33, sections 1281 to 1299, or the independent state grants program at the time of the original construction grant award.

Subp. 2. **Construction and land costs incurred prior to award.** Construction and land costs incurred prior to the commissioner's written approval of the corrective action report are not eligible. Construction and land costs incurred after

written approval of the corrective action report and before grant award will be considered eligible at the time of application if the municipality receives the commissioner's written authorization to proceed with construction.

Subp. 3. **Administrative, engineering, and legal costs.** Administrative, engineering, and legal costs (collectively) incurred as a result of the corrective action are eligible up to a maximum of 25 percent of the construction and land costs approved in the corrective action report and eligible under subpart 1.

7075.1040 REQUIREMENTS PRIOR TO APPLICATION.

An eligible municipality may apply for a grant only after the following documents are submitted to the agency and approved by the commissioner:

A. a corrective action report that includes:

(1) an analysis of the causes of the wastewater treatment facility's failure to meet performance standards;

(2) a selected alternative for corrective action including a preliminary design and cost estimates for all feasible alternatives; and

(3) a schedule for undertaking the selected corrective action, including proposed dates for meeting permit requirements and for certifying that the project performance standards will be met;

B. plans and specifications, if applicable, to implement the approved corrective action; and

C. an assurance, including related documentation, that all remedies short of litigation have been pursued in an effort to complete the approved corrective action including, where applicable, at a minimum, the following:

(1) invoking the provisions of equipment warranties;

(2) seeking redress from construction contractor performance bonds;

(3) seeking redress from design engineer errors

and omissions insurance; and

(4) initiating enforcement action against industrial dischargers.

7075.1050 APPLICATION.

The municipality shall apply for a corrective action grant on a form provided by the authority. The municipality must also submit a plan, endorsed by resolution of the municipality's governing body, for the recovery of the costs of the proposed corrective action from responsible parties, including a report on the current status of negotiations or litigation.

7075.1060 CERTIFICATION OF APPLICATION FOR AWARD.

Subpart 1. **Priority.** The commissioner shall certify grants to the authority for award in the order that applications that meet the requirements of parts 7075.1040 and 7075.1050 are received and to the extent that funds are available.

Subp. 2. **Amount of award.** Except as provided in part 7075.1090, subpart 3, the amount of the grant will be 80 percent of the total corrective action costs, eligible and ineligible, or the amount of the eligible costs, whichever is less.

Subp. 3. **Amendments to award.** Any grant amendments shall be based on the cost of the completed procurement actions and shall be dependent upon the availability of additional grant funds.

Subp. 4. **Certification to authority.** Upon review and approval of the documents required under parts 7075.1040 and 7075.1050, the commissioner shall certify to the authority that the project meets the statutory requirements and the requirements of this chapter and is eligible for an award in the amount determined under subpart 2.

Subp. 5. **Report to agency board.** The commissioner shall report the certification of a corrective action grant under this part to the agency board as soon as possible, but, in any case, within 60 days.

7075.1070 CHANGE ORDERS.

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

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

7075.1080 PAYMENTS.

Subpart 1. **Request for payments.** The municipality shall make periodic payment requests for eligible costs as costs are incurred on a form provided by the authority. The commissioner shall certify to the authority whether the municipality has met payment conditions under this part.

Subp. 2. **Payment conditions.** Failure of a project to meet any of the following conditions constitutes grounds for the commissioner to request that the authority withhold payments to the municipality:

A. The project must substantially conform to the approved corrective actions report.

B. The project must be built in accordance with the approved plans and specifications for the corrective action.

C. The progress of the project must conform with the approved project schedule.

Subp. 3. **Retainage.** The commissioner shall withhold the

final ten percent of the grant until the municipality has successfully completed all activities in the corrective action report, has affirmatively certified that the project meets the performance standards, and has met the recovery of costs requirement.

Subp. 4. **Release of withheld payments.** If an agreement is reached between the commissioner and the municipality, the commissioner shall recommend to the authority that the withheld funds be released according to the provisions of the agreement. Failure of the municipality to reach an agreement with the commissioner within 30 days of receiving written notification that payments are being withheld constitutes grounds for the commissioner to request that the authority commence action for termination of the grant and repayment of the funds.

7075.1090 RECOVERY OF GRANT FUNDS.

Subpart 1. **Generally.** A municipality that is awarded a corrective action grant shall seek recovery from a person who is responsible for the failure of the facility to perform.

Subp. 2. **Recovery after corrective action taken.** In the event that the municipality recovers an amount of money from the responsible persons after the corrective action has been taken and state corrective action grant funds spent, the municipality shall repay to the state a portion of the money recovered. The portion of the recovery to be paid to the state shall be proportional to the state's monetary participation in the corrective action project. The amount of the payment to the state shall not exceed the amount of the grant.

Subp. 3. **Recovery before corrective action taken.** In the event that the municipality recovers an amount of money from the responsible persons before the corrective action is taken, the amount of the corrective action grant to be awarded shall be determined by allowing the municipality to keep the entire payment from the responsible persons.

Subp. 4. **Approval of negotiated settlement.** A municipality must obtain the written approval of the

commissioner of any settlement negotiated with the responsible persons before the municipality may enter into the settlement, whether the settlement is before or after litigation has begun and whether or not a corrective action grant has been awarded, if the municipality wants to maintain its eligibility for a corrective action grant. Failure of the municipality to obtain written approval from the commissioner of any settlement constitutes grounds for the commissioner to recommend denial of a corrective action grant or to request that the authority commence action to terminate the grant and seek repayment of the funds from the municipality if a grant has already been awarded.

Subp. 5. **Failure to seek recovery.** Failure of a municipality that has been awarded a corrective action grant to seek recovery of corrective action costs from responsible persons constitutes grounds for the commissioner to request that the authority withhold future payments to the municipality and seek repayment of the funds already paid.

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED

FEB 16 1989

Joan Anderson Growe
Secretary of State

9:40 AM

APPROVED AS TO FORM AND LEGALITY
February 13, 1989
HUBERT H. HUMPHREY, III
ATTORNEY GENERAL
BY
SPECIAL ASSISTANT ATTORNEY GENERAL

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

Metropolitan Council of the Twin Cities Area

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

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

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

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

Pollution Control Agency

Division of Water Quality

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Department of Public Safety

Meeting Notice for a Pipeline Safety—Statewide Notification Center

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

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

Paul J. Tschida, Commissioner
Minnesota Department of Public Safety

Minnesota State Retirement System

Board of Directors, Regular Meeting

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

Department of Transportation

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

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

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

CERTIFICATE OF AGENCY'S AUTHORIZING RESOLUTION

I, Gerald L. Willet, do hereby certify that I am the Commissioner of the Minnesota Pollution Control Agency, an agency duly authorized under the laws of the State of Minnesota, and that the following is a true, complete, and correct copy of a resolution adopted at a meeting of the Minnesota Pollution Control Agency duly and properly called and held on the 25th day of October, 1988, that a quorum was present at said meeting, that a majority of those present voted for the resolution and that said resolution will be set forth in the minutes of said meeting and has not been rescinded or modified:

> BE IT RESOLVED, that the Commissioner of the Minnesota Pollution Control Agency (Agency) is hereby granted the authority to sign and to give notice of the Agency's intent to adopt, without a public hearing, the attached proposed permanent rules, Minn. Rules pts 7075.1005 to 7075.1090, to all persons who have registered their names with the Agency for that purpose and publish the notice and the rules in the State Register, and to perform any acts incidental thereto, including making any form changes in the rules that the Revisor of Statutes requires the Agency to make in order to obtain the Revisor's certification as required by Minn. Stat. § 14.07, subd. 2 (1986).
>
> BE IT FURTHER RESOLVED, that in the event a public hearing becomes necessary, the Commissioner is hereby granted the authority and directed to call a hearing for the purpose of promulgating said rules as well as to perform any and all acts incidental thereto, including but not limited to signing an Order for a Notice of Hearing, as well as acting as the Agency's representative at all hearings.

IN WITNESS WHEREOF, I have hereunto subscribed my name this ____ day of _____, 1988.

Gerald L. Willet
Commissioner

Pollution Control Agency

Proposed Permanent Rules Relating to the Corrective Action Grants Program under the Independent State Grants Program for Wastewater Treatment

Rules as Proposed (all new material)

CORRECTIVE ACTION GRANTS PROGRAM

7075.1005 PURPOSE.

The corrective action grants program provides grants to municipalities with wastewater treatment facilities funded under the Clean Water Act, United States Code, title 33, sections 1281 to 1299, or the independent state grants program that are unable to meet performance standards. The grants are for the purpose of correcting performance failures. The program is jointly administered by the Minnesota Pollution Control Agency and the Minnesota Public Facilities Authority. Parts 7075.1005 to 7075.1090 pertain to the agency's responsibilities in administering the program.

7075.1010 DEFINITIONS.

Subpart 1. **Scope.** For the purpose of this program, the following terms have the meanings given them.

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

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

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

Subp. 5. **Performance standards.** "Performance standards" means the criteria established for a wastewater treatment facility under the Clean Water Act, United States Code, title 33, sections 1281 to 1299, or the independent state construction grants program for the purpose of determining the project's satisfactory performance.

Approved by Revisor

7075.1020 ELIGIBILITY FOR PARTICIPATION.

To be eligible for participation in the program, a municipality must meet the following requirements:

A. The municipality received a wastewater treatment facility construction grant under the Clean Water Act, United States Code, title 33, sections 1281 to 1299, or the independent state construction grants program after December 29, 1981. A municipality that received a grant under the individual on-site wastewater treatment system grants program or the capital cost component grant program does not meet this eligibility requirement.

B. The population served by the wastewater treatment facility is 1,500 or less.

C. The municipality's wastewater treatment facility is unable to meet performance standards and the inability was identified by the commissioner before the end of the one-year performance certification period established by Code of Federal Regulations, title 40, section 35.2218.

D. For projects that were originally funded under the Clean Water Act, United States Code, title 33, sections 1281 to 1299, the inability of the wastewater treatment facility to meet performance standards is not the result of the failure of innovative or alternative technology components.

E. The municipality has not received a grant under the corrective action grants program.

7075.1030 ELIGIBLE AND INELIGIBLE COSTS.

Subpart 1. **Construction and land costs.** Construction and land costs retain the same eligibility as they had under the Clean Water Act, United States Code, title 33, sections 1281 to 1299, or the independent state grants program at the time of the original construction grant award.

Subp. 2. **Construction and land costs incurred prior to award.** Construction and land costs incurred prior to the commissioner's written approval of the corrective action report are not eligible. Construction and land costs incurred after

Approved
by Revisor _____

written approval of the corrective action report and before grant award will be considered eligible at the time of application if the municipality receives the commissioner's written authorization to proceed with construction.

Subp. 3. **Administrative, engineering, and legal costs.** Administrative, engineering, and legal costs (collectively) incurred as a result of the corrective action are eligible up to a maximum of 25 percent of the construction and land costs approved in the corrective action report and eligible under subpart 1.

7075.1040 REQUIREMENTS PRIOR TO APPLICATION.

An eligible municipality may apply for a grant only after the following documents are submitted to the agency and approved by the commissioner:

A. a corrective action report that includes:

(1) an analysis of the causes of the wastewater treatment facility's failure to meet performance standards;

(2) a selected alternative for corrective action including a preliminary design and cost estimates for all feasible alternatives; and

(3) a schedule for undertaking the selected corrective action, including proposed dates for meeting permit requirements and for certifying that the project performance standards will be met;

B. plans and specifications, if applicable, to implement the approved corrective action; and

C. an assurance, including related documentation, that all remedies short of litigation have been pursued in an effort to complete the approved corrective action including, where applicable, at a minimum, the following:

(1) invoking the provisions of equipment warranties;

(2) seeking redress from construction contractor performance bonds;

(3) seeking redress from design engineer errors

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and omissions insurance; and

(4) initiating enforcement action against industrial dischargers.

7075.1050 APPLICATION.

The municipality shall apply for a corrective action grant on a form provided by the authority. The municipality must also submit a plan, endorsed by resolution of the municipality's governing body, for the recovery of the costs of the proposed corrective action from responsible parties, including a report on the current status of negotiations or litigation.

7075.1060 CERTIFICATION OF APPLICATION FOR AWARD.

Subpart 1. **Priority.** The commissioner shall certify grants to the authority for award in the order that applications that meet the requirements of parts 7075.1040 and 7075.1050 are received and to the extent that funds are available.

Subp. 2. **Amount of award.** Except as provided in part 7075.1090, subpart 3, the amount of the grant will be 80 percent of the total corrective action costs, eligible and ineligible, or the amount of the eligible costs, whichever is less.

Subp. 3. **Amendments to award.** Any grant amendments shall be based on the cost of the completed procurement actions and shall be dependent upon the availability of additional grant funds.

Subp. 4. **Certification to authority.** Upon review and approval of the documents required under parts 7075.1040 and 7075.1050, the commissioner shall certify to the authority that the project meets the statutory requirements and the requirements of this chapter and is eligible for an award in the amount determined under subpart 2.

Subp. 5. **Report to agency board.** The commissioner shall report the certification of a corrective action grant under this part to the agency board as soon as possible, but, in any case, within 60 days.

7075.1070 CHANGE ORDERS.

Approved
by Revisor _____

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

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

7075.1080 PAYMENTS.

Subpart 1. **Request for payments.** The municipality shall make periodic payment requests for eligible costs as costs are incurred on a form provided by the authority. The commissioner shall certify to the authority whether the municipality has met payment conditions under this part.

Subp. 2. **Payment conditions.** Failure of a project to meet any of the following conditions constitutes grounds for the commissioner to request that the authority withhold payments to the municipality:

A. The project must substantially conform to the approved corrective actions report.

B. The project must be built in accordance with the approved plans and specifications for the corrective action.

C. The progress of the project must conform with the approved project schedule.

Subp. 3. **Retainage.** The commissioner shall withhold the

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final ten percent of the grant until the municipality has successfully completed all activities in the corrective action report, has affirmatively certified that the project meets the performance standards, and has met the recovery of costs requirement.

Subp. 4. **Release of withheld payments.** If an agreement is reached between the commissioner and the municipality, the commissioner shall recommend to the authority that the withheld funds be released according to the provisions of the agreement. Failure of the municipality to reach an agreement with the commissioner within 30 days of receiving written notification that payments are being withheld constitutes grounds for the commissioner to request that the authority commence action for termination of the grant and repayment of the funds.

7075.1090 RECOVERY OF GRANT FUNDS.

Subpart 1. **Generally.** A municipality that is awarded a corrective action grant shall seek recovery from a person who is responsible for the failure of the facility to perform.

Subp. 2. **Recovery after corrective action taken.** In the event that the municipality recovers an amount of money from the responsible persons after the corrective action has been taken and state corrective action grant funds spent, the municipality shall repay to the state a portion of the money recovered. The portion of the recovery to be paid to the state shall be proportional to the state's monetary participation in the corrective action project. The amount of the payment to the state shall not exceed the amount of the grant.

Subp. 3. **Recovery before corrective action taken.** In the event that the municipality recovers an amount of money from the responsible persons before the corrective action is taken, the amount of the corrective action grant to be awarded shall be determined by allowing the municipality to keep the entire payment from the responsible persons.

Subp. 4. **Approval of negotiated settlement.** A municipality must obtain the written approval of the

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commissioner of any settlement negotiated with the responsible persons before the municipality may enter into the settlement, whether the settlement is before or after litigation has begun and whether or not a corrective action grant has been awarded, if the municipality wants to maintain its eligibility for a corrective action grant. Failure of the municipality to obtain written approval from the commissioner of any settlement constitutes grounds for the commissioner to recommend denial of a corrective action grant or to request that the authority commence action to terminate the grant and seek repayment of the funds from the municipality if a grant has already been awarded.

Subp. 5. **Failure to seek recovery.** Failure of a municipality that has been awarded a corrective action grant to seek recovery of corrective action costs from responsible persons constitutes grounds for the commissioner to request that the authority withhold future payments to the municipality and seek repayment of the funds already paid.

Approved
by Revisor _____

Office of the Revisor of Statutes

Administrative Rules

TITLE: Proposed Permanent Rules Relating to the Corrective Action Grants Program under the Independent State Grants Program for Wastewater Treatment

AGENCY: Pollution Control Agency

MINNESOTA RULES: Chapter 7075

The attached rules are approved for publication in the State Register

Paul M. Marinac
Assistant Deputy Revisor

STATE OF MINNESOTA POLLUTION CONTROL AGENCY

In the Matter of the Proposed Rules Governing The Administration of the Corrective Action Grants Program for Municipal Wastewater Treatment Projects, Minnesota Rules Parts 7075.1005 to 7075.1090

NOTICE OF INTENT TO ADOPT RULES WITHOUT A PUBLIC HEARING

Notice is hereby given that the Minnesota Pollution Control Agency (Agency) intends to adopt the above-entitled rule without a public hearing following the procedures set forth in the Administrative Procedure Act for adopting rules without a public hearing in Minn. Stat. §§14.22 to 14.28 (1986). The Agency's authority to adopt the rule is set forth in Minn. Stat. §116.181, subd. 5 (Supp. 1987).

All persons have until 4:30 p.m. on December 14, 1988, to submit comments in support of or in opposition to the proposed rules or any part or subpart of the rules. Comment is encouraged. Each comment should identify the portion of the proposed rules addressed, the reason for the comment, and any change proposed.

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

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

Deborah Olson
Minnesota Pollution Control Agency
520 Lafayette Road North
St. Paul, Minnesota 55155
(612) 296-7223

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

The proposed rules, if adopted, will create a corrective action grants program. The program will make grants available to municipalities with wastewater treatment facilities funded under the federal water pollution control act or the independent state grants program that are unable to meet performance standards. One free copy of the rules is available upon request from Ms. Olson at the address and telephone number stated above.

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

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

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

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

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 form relates to legality. Any person may request notification of the date of submission to the Attorney General. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the rules as adopted, must submit a written request to Ms. Olson.

Dated: November 10, 1988

Michael Robertson
for GERALD L. WILLET
Commissioner
Deputy

STATE OF MINNESOTA
POLLUTION CONTROL AGENCY

In the Matter of the Proposed Rules Governing The Administration of the Corrective Action Grants Program for Municipal Wastewater Treatment Projects, Minnesota Rules Parts 7075.1005 to 7075.1090

STATEMENT OF NEED AND REASONABLENESS

I. INTRODUCTION

In 1987, the Legislature created a set-aside under the independent state grants program to provide grants to municipalities with wastewater treatment facilities funded under the Clean Water Act or the independent state grants program that are unable to meet performance standards for the purpose of correcting the performance failures.

By statute (Minn. Stat. §§ 446A.06, 446A.10, subd. 1.(a), 116.181, subd. 5 and 116.16 (Supp. 1987)), the program is jointly administered by the Minnesota Pollution Control Agency (Agency) and the Minnesota Public Facilities Authority (Authority). These administrative rules provide for the Agency's responsibilities in administering the program. The Authority is promulgating amendments to administrative rules codified as Minn. Rules ch. 7380 to provide for its responsibilities. The Agency is responsible for reviewing the application and the project documents for conformance with applicable statutes and rules. Upon approval, the Agency certifies the project to the Authority for grant award and subsequent payment.

In drafting the proposed rules, the Agency sought and received input from interested municipalities and the Technical Advisory Committee for wastewater treatment control, established under Minn. Stat. § 115.54 (1986). In addition, the Agency initially administered this program under emergency

rules, published at 12 S.R. 1144-1146 (30 November 1987). The administration of the program under emergency rules provided information for the development of the proposed permanent rules.

This document contains the Agency's affirmative presentation of facts on the need for and reasonableness of the proposed rules.

II. STATEMENT OF AGENCY'S STATUTORY AUTHORITY

The Agency's statutory authority to adopt rules for the administration of the program is set forth in Minn. Stat. § 116.181, subds. 2 and 6 (Supp. 1987), which provide:

> Subd. 2. Set Aside. In any fiscal year, up to ten percent of the money available for independent state grants, up to a maximum of $1,000,000, may be set aside for the award of grants to municipalities for corrective action.
>
> Subd. 6. Rules of the Agency. The Agency shall promulgate permanent rules and may promulgate emergency rules for the administration of the corrective action grant program. The rules must contain at a minimum:
>
> (1) the method for determining the amount of the corrective action grant;
>
> (2) application requirements;
>
> (3) criteria for determining which municipalities will be awarded grants when there are more applicants than money;
>
> (4) conditions for use of the grant funds;
>
> (5) identification of eligible costs;
>
> (6) the amount that must be reimbursed to the authority in the event funds are recovered by the municipality from the responsible person; and
>
> (7) other matters that the Agency finds necessary for proper administration of the program.

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

III. STATEMENT OF NEED

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

The Legislature, in enacting Minn. Stat. § 116.181 (Supp. 1987), required the Agency to develop rules to implement and administer the corrective action grants program. The program was conceived and designed to allow corrective action on failed projects to proceed without delay while responsibility for the project failure is determined and legal remedies are pursued. The rules are needed so that corrective action grant procedures are clearly spelled out for the public.

IV. STATEMENT OF REASONABLENESS

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

A. Reasonableness of the Rules as a Whole

These proposed rules establish a program for the administration of the corrective action grants program. The rules establish reasonable criteria for establishing eligibility and a reasonable method for distributing grant funds to eligible municipalities.

The proposed rules allow small municipalities that have built wastewater treatment projects with construction grant funds to request additional funds in a crisis situation. The funds can be made available at the time when the project failure occurs. The rules require complete and comprehensive analysis of the cause of the failure and the proposed solution. This may be time consuming but is essential before the Agency is prepared to contribute funds beyond its initial agreement with the municipality. In addition, the rules' emphasis on analysis of the project failure conforms to the recovery of cost provision included in the authorizing statute because the analysis may lead to the identification of the responsible parties.

Municipalities receiving a corrective action grant are required to consider liability for the project's failure to meet performance standards and to pursue recovery of costs associated with the corrective action from responsible persons, if appropriate. Recovery may occur through litigation or negotiated settlement. Written approval from the Commissioner is required for any negotiated settlement. Recovered costs must be returned to the Agency.

B. Reasonableness of Individual Rules

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

Part 7075.1005 Purpose.

This part identifies the general nature of the corrective action grants program and states that Minn. Rules pts. 7075.1005 to 7075.1090 pertain to the Agency's responsibilities for administration of the corrective action grants program. It is reasonable to describe the overall purpose of the rules at the beginning so that the reader understands what program is being addressed by the rules.

Part 7075.1010 Definitions.

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

Subpart 2. "Agency."

Since there are several references to the Minnesota Pollution Control Agency, it is reasonable to shorten this term by including it in definitions.

Subpart 3. "Authority."

Since there are several references to the Public Facilities Authority, it is reasonable to shorten this term by and including it in definitions.

Subpart 4. "Commissioner."

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

Subpart 5. "Performance standards."

Performance standards are defined as the criteria established for a wastewater treatment facility under the existing federal and state programs. This limits a general phrase to a specific meaning and is reasonable because it allows the applicant for a grant to identify this element of the corrective action grants program.

Part 7075.1020 Eligibility for participation.

Five eligibility requirements are set forth in this part.

Item A provides that the municipality's failed wastewater treatment system must have been built under the state or federal construction grants programs. This is reasonable because Minn. Stat. § 116.181, subd. 1(b) defines "corrective action" as action taken to upgrade or correct failed wastewater treatment facilities funded under the state or federal construction grants program. Item A also provides that municipalities with failed systems funded under the individual on-site wastewater treatment systems grants program or the capital cost component grant program, set-asides of the independent state grants program, do not meet this eligibility requirement. These programs, enacted in 1987, offer a funding mechanism for systems that are primarily privately owned. Both programs are pilot-type programs and will be monitored for results by the Agency and the Legislature. It is reasonable to consider these two programs separately from the independent state grants program in order not to complicate these pilot programs by adding a corrective action grants element.

In addition, Item A provides that the original grant must have been awarded after December 29, 1981. It is reasonable to include a provision that limits the age of the project in order to limit program liability. December 29, 1981, is a reasonable cutoff date because the federal Clean Water Act amendments that establish the project performance standards provisions became effective on that date.

Item B limits eligibility to municipalities with a population of 1,500 or less. The program was conceived as an interim financing tool for municipalities that do not have the financial resources to fund needed corrective action while pursuing litigation against responsible parties to recover costs concurrently. Past experience in the grants program has illustrated that small communities have difficulty raising the additional local funds needed. Larger municipalities have a more diverse financial base. A population limit of 1,500 has been used in the program previously to delineate communities that are exempted from certain program requirements due to their size. For these reasons, it is reasonable to limit eligibility to municipalities with populations of 1,500 or less.

Item C states that the project failure must be specifically identified before the end of the one year certification period. The certification period is the facility's start-up period. After the facility initiates operation, it takes a period of time to identify problems and make the necessary adjustments that will result in the facility performing as required by the state and federal government. The state and federal programs under which the original facility was built require a one year certification period. (See 40 C.F.R. § 35.2218 and Minn. Stat. § 116.16, subp. 5(b).) At the end of that period, if the project meets performance standards, the grant is closed out. It is reasonable to tie eligibility to the identification of the problem prior to the end of the certification period because the certification period was established specifically to identify problems with performance of the completed wastewater treatment facility. In addition, it is desirable to spur prompt action against responsible parties so that municipalities maximize their chances of a prompt recovery from those responsible parties. The Agency

recognizes that a facility may experience failure beyond the one year certification period but because of the limited funding the program needs to limit eligibility.

Item D provides that municipalities with project failure due to the failure of innovative or alternative technology are not eligible. This eligibility limitation applies to projects originally funded under the federal grants program. The corrective action grants program is intended to be a program of last resort funding and also a program that requires the municipality to identify responsible parties in order to pursue recovery of costs. The federal program offers additional funding for projects that experience innovative or alternative technology failure. The federal program offers this additional funding because of the risk involved with these types of technology. The acknowledged risk often means that there is no party responsible for the failure since the municipality and the funding agency have acknowledged the inherent risk. Therefore, it is reasonable to exclude these types of failures from the corrective action grants program.

The independent state grants program gives no special consideration to innovative or alternative technology and offers no safety net funding if the project fails. A state project in this circumstance is eligible for this program.

To be ineligible, the failure of an innovative or alternative project must be due specifically to that technology. In other words, if an innovative or alternative project fails due to improper design or improper construction, and it is determined in the corrective action report that the facility would have performed if designed and constructed properly, then the project is eligible for this program.

Item E limits eligibility for a corrective action grant to one time only. This is reasonable because the Agency has limited funds for these grants, and it is fair to spread these funds to other communities once a municipality has already received a corrective action grant.

Part 7075.1030 Eligible and ineligible costs.

Subpart 1. Construction and land costs.

Subpart 1 provides that construction and land costs retain the same eligibility that they had under the applicable grant program at the time of the original award. It is reasonable to maintain the same cost eligibility categories since the corrective action is essentially a continuation of the original project. The rule is reasonable because it is consistent with Minn. Stat. § 116.181, subd. 3 (Supp. 1987), which provides: "construction costs that were not eligible under the original grant are not eligible under a corrective action grant."

Subpart 2. Construction and land costs incurred prior to award.

Subpart 2 provides that construction and land costs incurred before the Commissioner's approval of the corrective action report are not eligible. Costs incurred in the period between approval and grant award are eligible if the Commissioner authorizes proceeding with construction. This provision is reasonable because it allows the Agency to maintain control of program costs and project results by requiring approval of a complete and comprehensive report. At the same time, it allows the municipality to proceed with the corrective action without being required to wait for the grant award documents to be processed.

Subpart 3. Administrative, engineering and legal costs.

Subpart 3 limits eligibility of administrative, engineering and legal costs (collectively) to 25% of the eligible construction and land costs approved in the corrective action report and eligible under Subpart 1. This is reasonable because limited program funds makes it necessary to contain costs, especially in the volatile area of legal costs, which will vary widely. The 25% figure was chosen because the Agency's experience in the construction grants program has shown that engineering costs are generally 10%-20% and administrative costs are generally under 5% of the construction costs. Limiting the collective costs to a maximum of 25% allows the municipality to have most, if not all, of the costs incurred deemed eligible for reimbursement under the grant. The limitation is a strong incentive for the municipality to monitor the reasonableness of the costs.

Part 7075.1040 Requirements prior to application.

Part 7075.1040 requires that the three documents listed in items A through C of the rule be submitted before a municipality may submit a grant application. These documents demonstrate that the municipality is ready to proceed with the corrective action in an effective and timely manner.

Item A requires a corrective action report which includes: 1) an analysis of the causes of the facility's failure to meet performance standards; 2) a selected alternative for corrective action, including a preliminary design and cost estimates for all feasible alternatives; and 3) a schedule for undertaking the selected alternative. Requiring submission of this document is reasonable because a corrective action report is required and must be submitted under the conditions of the original grant when performance failure is experienced, regardless of participation in this program.

Item B requires submission of plans and specifications to implement the corrective action. This is reasonable because plans and specifications must be in final approved form before the corrective action can be undertaken. Some corrective actions do not require additional plans and specifications, but rather just the correct implementation of the original plans and specifications.

Item C requires the municipality to provide an assurance, including documentation, that it is pursuing available remedies to resolve the performance failure. Subitems 1 - 4 require the municipality to, at a minimum, pursue remedies available under warranties, performance bonds, and liability insurance and to pursue enforcement action against industrial dischargers. This requirement is reasonable because corrective action grants are intended to be a last resort; the Agency does not want to become involved until all available remedies have been pursued. If the available remedies work, it is to everyone's advantage to utilize them.

Part 7075.1050 Application.

This part requires the municipality to apply for a grant on a form provided by the authority. The application must include a plan for the recovery of the costs of the corrective action from responsible parties. Under Minn. Stat. § 116.16, subd. 9 (Supp. 1987), application is made to the authority. It is reasonable to require a recovery of costs plan because the municipality's pursuit of recovery of costs from responsible parties is a requirement of Minn. Stat. § 116.181, subp. 4 (Supp. 1987).

Part 7075.1060 Certification of Application for Award.

Subpart 1. Priority.

Subpart 1 provides that applications will be certified for award in the order that completed applications are received. This will continue until the funds are exhausted, at which time a municipality could wait to apply when the following year's appropriation becomes available. A first come, first served approach is reasonable for a small, specialized program such as the corrective action grants program because the pool of applicants is limited and known. The existing state and federal programs combined have funded approximately 30-40 projects annually in recent years. Since 1981, only 5 projects have failed to meet performance standards to the extent that they need this program. What that means is that where performance failure occurs, existing contract remedies most often resolve the failure. The major failures, the type that often result in litigation, are a very small proportion of the program.

Subpart 2. Amount of award.

This subpart provides that except as provided in Minn. Rules part 7075.1090, subp. 3 (relating to recovery from responsible persons before corrective action is taken) the amount of the grant will be 80 percent of the total corrective action costs, eligible and ineligible, or the amount of the eligible costs, whichever is less. The purpose of this provision is to ensure a minimum of 20% local participation. This is reasonable because local financial participation should ensure a local incentive to fully pursue the recovery of costs.

Subpart 3. Amendments to award.

Subpart 3 allows a grant award to be amended, but any grant amendments must be based on the actual costs of the completed procurement action and are dependent on the availability of funds. This is reasonable because the construction grants program's standard operating procedure is to amend grants to reflect completed procurement actions. This will continue under this set aside program based on the availability of funds.

Subpart 4. Certification to Authority.

Subpart 4 provides that upon review and approval of the documents required under parts 7075.1040 and 7075.1050, the Commissioner shall certify to the Authority that the project meets statutory requirements and the requirements of Minn. Rules Ch. 7075 and is eligible for an award. This is reasonable because it is the Authority, and not the Agency, who actually awards the grant assistance. By certifying the municipality's compliance, the Authority can proceed with the award without the need to duplicate the Agency's review.

Subpart 5. Report to Agency Board

This subpart provides that the Commissioner must report all certifications for award to the Agency Board. This is reasonable because the reporting mechanism offers an opportunity for the Board to evaluate the effectiveness of the program. It also offers a public forum for interested parties to monitor the program and to offer public comment.

Part 7075.1070 Change orders.

The proposed rules require that change orders that alter the type or reliability of the treatment process be approved by the Commissioner prior to implementing the change. Requiring review of such change orders is reasonable because such changes may affect the ability of the facility to meet its permit

limits over the 20 year design life of the facility. In order to permit the Commissioner to evaluate the impact of the change order, the rules require the municipality to submit whatever information to the Commissioner requests to determine the impact of the proposed change on the environment. This requirement is reasonable because it is the Commissioner's responsibility to only approve changes that would not result in damage to the environment. The rules provide that the review of the change order will be in the same manner as the plans and specifications were originally reviewed. This requirement is reasonable because a change order is a change to the plans and specifications and, therefore, application of the same technical criteria is appropriate.

The rule provides that a substantial change in the type or reliability of treatment process implemented without prior approval from the Commissioner constitutes grounds for the Commissioner to request that the authority terminate the grant. This is reasonable because a substantial change has the potential of negatively affecting the environment. The consequences for the grantee, possible termination of the grant, should be significant enough to reflect the potential seriousness of the infraction.

The rule states that change orders that do not alter the type or reliability of the treatment process do not need prior approval of the Commissioner. However, the rule requires submission of the change order to the Commissioner as soon as possible. Requiring the submission of these types of change orders is reasonable because it keeps the Agency informed of the nature of the project changes and it permits the Agency to review whether the changes that were made do not in fact alter the type or reliability of the treatment process.

Part 7075.1080 Payments.

Subpart 1. Request for payments.

This rule requires the municipality to make periodic payment requests for eligible costs as costs are incurred on a form provided by the Authority. This is reasonable because Minn. Stat. § 116.16 subd. 4 (Supp. 1987) requires disbursements to be made by the Authority. The payment request alerts the Agency that the grantee is awaiting payment. The rule also provides that the Commissioner will then certify to the Authority whether the municipality has met payment conditions set forth in subpart 2 of the rule. This is reasonable because payment should only be made if the project is proceeding according to the conditions under which the grant was offered and accepted.

Subpart 2. Payment conditions.

Under subpart 2, the Commissioner will request that the payments be withheld if the corrective action project is not proceeding in accordance with three major documents: the approved corrective action report, the approved plans and specifications, and the approved project schedule. It is reasonable to impose such conditions on payments in order to provide an incentive to the grantee to adhere to the grant agreement and to ensure that the corrective action will bring the wastewater treatment plant into compliance with performance standards.

Subpart 3. Retainage.

This rule provides that the final 10% of the grant will be withheld until the municipality has successfully completed the project in accordance with the approved corrective action report, has certified that the project meets performance standards, and has met the recovery of costs requirement.

Retainage is a standard contract method for assuring compliance with agreement conditions and is a reasonable provision for this program because it will provide an incentive to the grantee to meet all the program requirements.

Subpart 4. Release of withheld payments.

This provision allows the municipality to negotiate with the Agency to release withheld funds. It also provides that failure of the municipality to reach an agreement with the Commissioner within 30 days of receipt of written notification that payments are being withheld constitutes grounds for the Commissioner to request the Authority to commence action for termination of the grant and repayment of funds. This rule is reasonable because it allows the municipality adequate time to respond to the Commissioner's notice and commence negotiations. It is reasonable to require response and negotiation on project issues so that an amicable resolution to the problem can be reached.

Part 7075.1090 Recovery of Costs.

Subpart 1. Generally.

This rule requires the municipality to pursue recovery of costs from any person who is responsible for the failure of the facility to perform. This is reasonable because it is consistent with Minn. Stat. § 116.181, subd. 4 (1986).

Subpart 2. Recovery after corrective action taken.

This rule provides that in the event that the municipality recovers an amount of money from responsible persons after the corrective action and state corrective action grant fund spent, the municipality must repay to the State a portion of the money recovered. The portion of the recovery to be paid to the State shall be proportional to the State's monetary participation in the

corrective action project. The amount of repayment is not to exceed the amount of the corrective action grant. This rule is reasonable because it is consistent with Minn. Stat. § 116.181, subd. 4 (Supp. 1987) requiring repayment in the event funds are recovered from responsible persons.

The operation of the rule is shown by the following example:

A municipality's corrective action has a total cost, including all associated legal, engineering and administrative costs, of $400,000. Due to limits on the eligibility of the associated costs and the inclusion of some ineligible construction items, the eligible costs are $300,000. The grant formula in Part 7075.1060, subp. 2 allows for 80% of $400,000 ($320,000) or $300,000, whichever is less. The municipality receives a $300,000 grant which equals 75% of the total cost. The municipality recovers $200,000 from the responsible persons through a court settlement. The state has a claim on 75% of the recovered funds equaling $150,000. The municipality retains $50,000 to apply toward its local costs.

Subpart 3. Recovery before corrective action taken.

This rule provides that in the event that the municipality recovers an amount of money from the responsible persons before the corrective action is taken, the amount of the grant to be awarded shall be determined by allowing the municipality to keep the entire payment from responsible persons. This is reasonable because the State has not paid out any funds at this point, so the municipality has first claim on the recovered funds. The corrective action grant funds can then be used to supplement the amount recovered. This is

reasonable because use of the corrective action grant to supplement the recovered funds enhances the probability of a resolution to the project failure. The rule is sufficiently protective of the State's interest in the event of a negotiated settlement.

The operation of the rule is shown by the following example:

A municipality's corrective action has a total cost, including all associated legal, engineering and administrative costs, of $400,000. It receives an 80% grant of $320,000. Before any costs are incurred, the municipality with the Commissioner's approval reaches an agreement with the consulting engineering firm that the firm will pay $200,000 of the cost of the corrective action. The municipality cannot finance the remaining $200,000 without the Agency's financial assistance. At the same time the Agency and the city, after consulting with their legal counsel, have determined that proceeding to litigation would most probably not produce a more equitable settlement. The Agency agrees to pay the remaining construction costs ($100,000) and the city agrees to pay the legal, engineering and administrative costs of $100,000.

The above situation only represents an example of how the rule could work but illustrates the reasonableness of allowing the flexibility that this rule provides.

Subpart 4. Approval of negotiated settlement.

This rule provides that for a negotiated settlement, the municipality must secure the Commissioner's written approval before entering into the settlement. This is reasonable because, since the Agency is involved in the financing of the corrective action, the Agency has an interest in the resolution of the dispute between the municipality and the responsible

persons. This part also provides that execution of a negotiated settlement without the Commissioner's approval constitutes grounds for the Commissioner to recommend denial of a corrective action grant or to request the authority to commence action to terminate the grant and seek repayment of the funds. This provision is reasonable because it provides an incentive for the municipality to comply with the approval requirement and provides a remedy to the Commissioner if the rule is violated.

Subpart 5. Failure to seek recovery.

This subpart provides the remedies available to the state if the grantee fails to seek recovery from responsible persons. The rule provides that failure of the municipality to pursue recovery of costs constitutes grounds for the Commissioner to request that the authority withhold payments to the municipality. This is reasonable because Minn. Stat. § 116.181 requires a recipient of a corrective action grant to pursue recovery of costs from responsible persons, and it is a standard remedy to withhold payments for the purpose of enforcement.

V. SMALL BUSINESS CONSIDERATIONS IN RULEMAKING

Minn. Stat. § 14.115, subd. 2 (1986) requires the Agency, when proposing rules which may affect small businesses, to consider the methods for reducing the impact on small businesses. Minn. Stat. § 14.115, subd. 7(b) (1986) provides that Agency rules that do not affect small businesses directly are exempted from the small business consideration provision. These rules apply only to municipalities that voluntarily elect to participate in the program. Therefore, these rules fall under subd. 7(b) and are exempted from small business considerations. However, the Agency is satisfied that small businesses will not be adversely affected by the provisions of this program.

VI. CONSIDERATION OF ECONOMIC FACTORS

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

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

In proposing the rules governing the corrective action grants program, the Agency has given due consideration to any economic impacts of the proposed rules. This is a voluntary program so the rules will not have any affect on municipalities that do not elect to participate. The program provides financial assistance to municipalities specifically to relieve the burden imposed by the need for an unexpected corrective action on their wastewater treatment facility. The Agency in considering the economic factors concludes that the program has a positive economic impact on participating municipalities.

VII. OTHER FACTORS

Pursuant to Minn. Stat. § 14.11, subd. 1 (1986), the Agency must provide an estimate of the public monies associated with implementing these rules if it is estimated that the total cost to all local public bodies exceeds $100,000 in either of the first two years following adoption of the rules. When a program is voluntary it is not necessary to assess the costs to local public bodies that choose to participate. It is assumed that the public body

will make a cost/benefit assessment at the local level as part of its decision-making process prior to application. The local body is not required by statute or administrative rule to incur costs.

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

VIII. CONCLUSION

Based on the foregoing, the proposed Minnesota Rules pts. 7075.1005 to 7075.1090 are both needed and reasonable.

Date: October 24, 1988

Gerald L. Willet
Commissioner

STATE OF MINNESOTA
POLLUTION CONTROL AGENCY

In the Matter of the Proposed Rules Governing the Administration of the Corrective Action Grants Program for Municipal Wastewater Treatment Projects, Minn. Rules Part 7075.1005 to 7075.1090

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

STATE OF MINNESOTA
COUNTY OF RAMSEY

Deborah Olson, being duly sworn says:

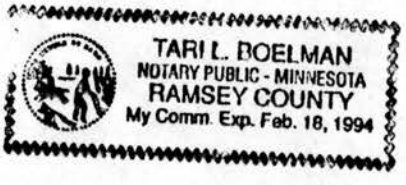
I hereby certify that the list of persons and associations who have requested, pursuant to Minn. Stat. §§ 14.14, subd. 1a and 14.22 (1986) that their names be placed on the Minnesota Pollution Control Agency's rulemaking mailing list is accurate, complete, and current as of this 8th day of November, 1988.

That on the 10th day of November, 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 Mailing System or in the United States mail for first class mailing a copy thereof, with postage prepaid, to all persons and associations on the aforementioned mailing list.

Deborah A Olson

Subscribed and sworn to before me
this 15 day of November, 1988.

Tari Boelman
Notary Public



Statutes, section 14.22-14.28. Authority for the adoption of these rules is contained in *Minnesota Statutes,* Section 45.023 and 60A.082.

All persons have 30 days to submit comments in support of or in opposition to the proposed rule 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 14.13 to 14.20.

Persons who wish to submit comments or a written request for a public hearing should submit them to:

John Gross
Senior Policy Analyst
Department of Commerce
500 Metro Square Building
St. Paul, MN 55101
(612) 296-6929

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

Pursuant to *Minnesota Statutes* Section 14.115, subdivision 2, the impact on small business has been considered in the promulgation of the rules. Anyone wishing to present evidence or argument as to the rules' effect on small business may do so. The Department's position regarding the impact of the rules on small business is set forth in the Statement of Need and Reasonableness.

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 John Gross.

Michael A. Hatch
Commissioner of Commerce

Rules as Proposed

2755.0400 LIABILITY OF PRIOR CARRIER.

The prior carrier remains liable to the extent of its accrued liability and any contractual liability for extension of benefits at the time of replacement. "Accrued liability" includes, but is not limited to, responsibility for covered inpatient ~~hospital~~ expenses, subject to applicable deductibles, copayments, and limitations, incurred by a covered individual who is ~~confined in a hospital~~ an inpatient on the date of replacement. The responsibility on the part of the prior carrier continues until the covered individual is discharged from the hospital or contract maximums have been reached, whichever first occurs.

Pollution Control Agency

Proposed Permanent Rules Relating to the Corrective Action Grants Program under the Independent State Grants Program for Wastewater Treatment

Notice of Intent to Adopt Rules Without a Public Hearing

Notice is hereby given that the Minnesota Pollution Control Agency (Agency) intends to adopt the above-entitled rule without a public hearing following the procedures set forth in the Administrative Procedure Act for adopting rules without a public hearing in *Minnesota Statutes,* §§ 14.22 to 14.28. The Agency's authority to adopt the rule is set forth in *Minnesota Statutes,* § 116.181 Subd. 5 (Supp. 1987).

All persons have until 4:30 p.m. on December 14, 1988, to submit comments in support of or in opposition to the proposed rules or any part or subpart of the rules. Comment is encouraged. Each comment should identify the portion of the proposed rules addressed, the reason for the comment, and any change proposed.

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

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

Deborah Olson
Minnesota Pollution Control Agency
520 Lafayette Road North
St. Paul, MN 55155
(612) 296-7223

The proposed rules may be modifed 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.

The proposed rules, if adopted, will create a corrective action grants program. The program will make grants available to municipalities with wastewater treatment facilities funded under the federal water pollution control act or the independent state grants program that are unable to meet performance standards. The proposed rules are published below. One free copy of the rules is available upon request from Ms. Olson at the address and telephone number stated above.

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

You are hereby advised, pursuant to *Minnesota Statutes* § 14.115 (1986), "Small business considerations in rulemaking", that the proposed rules will have no direct effect on small businesses. In addition, you are hereby advised, pursuant to *Minnesota Statutes* § 14.11 (1986), that none of the cost to local public bodies to construct wastewater treatment facilities is directly attributable to these rules.

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

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 form relates to legality. Any person may request notification of the date of submission to the Attorney General. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the rules as adopted, must submit a written request to Ms. Olson.

Gerald L. Willet
Commissioner

Rules as Proposed (all new material)

CORRECTIVE ACTION GRANTS PROGRAM

7075.1005 PURPOSE.

The corrective action grants program provides grants to municipalities with wastewater treatment facilities funded under the *Clean Water Act, United States Code*, title 33, sections 1281 to 1299, or the independent state grants program that are unable to meet performance standards. The grants are for the purpose of correcting performance failures. The program is jointly administered by the Minnesota Pollution Control Agency and the Minnesota Public Facilities Authority. Parts 7075.1005 to 7075.1090 pertain to the agency's responsibilities in administering the program.

7075.1010 DEFINITIONS.

Subpart 1. **Scope.** For the purpose of this program, the following terms have the meanings given them.

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

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

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

Subp. 5. **Performance standards.** "Performance standards" means the criteria established for a wastewater treatment facility under the Clean Water Act, United States Code, title 33, sections 1281 to 1299, or the independent state construction grants program for the purpose of determining the project's satisfactory performance.

7075.1020 ELIGIBILITY FOR PARTICIPATION.

To be eligible for participation in the program, a municipality must meet the following requirements:

A. The municipality received a wastewater treatment facility construction grant under the *Clean Water Act, United States Code*, title 33, sections 1281 to 1299, or the independent state construction grants program after December 29, 1981. A municipality that received a grant under the individual on-site wastewater treatment system grants program or the capital cost component grant program does not meet this eligibility requirement.

B. The population served by the wastewater treatment facility is 1,500 or less.

C. The municipality's wastewater treatment facility is unable to meet performance standards and the inability was identified by the commissioner before the end of the one-year performance certification period established by *Code of Federal Regulations*, title 40, section 35.2218.

D. For projects that were originally funded under the *Clean Water Act, United States Code*, title 33, sections 1281 to 1299, the inability of the wastewater treatment facility to meet performance standards is not the result of the failure of innovative or alternative technology components.

E. The municipality has not received a grant under the corrective action grants program.

7075.1030 ELIGIBLE AND INELIGIBLE COSTS.

Subpart 1. **Construction and land costs.** Construction and land costs retain the same eligibility as they had under the *Clean Water Act, United States Code*, title 33, sections 1281 to 1299, or the independent state grants program at the time of the original construction grant award.

Subp. 2. **Construction and land costs incurred prior to award.** Construction and land costs incurred prior to the commissioner's written approval of the corrective action report are not eligible. Construction and land costs incurred after written approval of the corrective action report and before grant award will be considered eligible at the time of application if the municipality receives the commissioner's written authorization to proceed with construction.

Subp. 3. **Administrative, engineering, and legal costs.** Administrative, engineering, and legal costs (collectively) incurred as a result of the corrective action are eligible up to a maximum of 25 percent of the construction and land costs approved in the corrective action report and eligible under subpart 1.

7075.1040 REQUIREMENTS PRIOR TO APPLICATION.

An eligible municipality may apply for a grant only after the following documents are submitted to the agency and approved by the commissioner:

A. a corrective action report that includes:

(1) an analysis of the causes of the wastewater treatment facility's failure to meet performance standards;

(2) a selected alternative for corrective action including a preliminary design and cost estimates for all feasible alternatives; and

(3) a schedule for undertaking the selected corrective action, including proposed dates for meeting permit requirements and for certifying that the project performance standards will be met;

B. plans and specifications, if applicable, to implement the approved corrective action; and

C. an assurance, including related documentation, that all remedies short of litigation have been pursued in an effort to complete the approved corrective action including, where applicable, at a minimum, the following:

(1) invoking the provisions of equipment warranties;

(2) seeking redress from construction contractor performance bonds;

(3) seeking redress from design engineer errors and omissions insurance; and

(4) initiating enforcement action against industrial dischargers.

7075.1050 APPLICATION.

The municipality shall apply for a corrective action grant on a form provided by the authority. The municipality must also submit a plan, endorsed by resolution of the municipality's governing body, for the recovery of the costs of the proposed corrective action from responsible parties, including a report on the current status of negotiations or litigation.

7075.1060 CERTIFICATION OF APPLICATION FOR AWARD.

Subpart 1. **Priority.** The commissioner shall certify grants to the authority for award in the order that applications that meet the requirements of parts 7075.1040 and 7075.1050 are received and to the extent that funds are available.

Subp. 2. **Amount of award.** Except as provided in part 7075.1090, subpart 3, the amount of the grant will be 80 percent of the total corrective action costs, eligible and ineligible, or the amount of the eligible costs, whichever is less.

Subp. 3. **Amendments to award.** Any grant amendments shall be based on the cost of the completed procurement actions and shall be dependent upon the availability of additional grant funds.

Subp. 4. **Certification to authority.** Upon review and approval of the documents required under parts 7075.1040 and 7075.1050, the commissioner shall certify to the authority that the project meets the statutory requirements and the requirements of this chapter and is eligible for an award in the amount determined under subpart 2.

Subp. 5. **Report to agency board.** The commissioner shall report the certification of a corrective action grant under this part to the agency board as soon as possible, but, in any case, within 60 days.

7075.1070 CHANGE ORDERS.

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

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

7075.1080 PAYMENTS.

Subpart 1. **Request for payments.** The municipality shall make periodic payment requests for eligible costs as costs are incurred on a form provided by the authority. The commissioner shall certify to the authority whether the municipality has met payment conditions under this part.

Subp. 2. **Payment conditions.** Failure of a project to meet any of the following conditions constitutes grounds for the commissioner to request that the authority withhold payments to the municipality:

A. The project must substantially conform to the approved corrective actions report.

B. The project must be built in accordance with the approved plans and specifications for the corrective action.

C. The progress of the project must conform with the approved project schedule.

Subp. 3. **Retainage.** The commissioner shall withhold the final ten percent of the grant until the municipality has successfully completed all activities in the corrective action report, has affirmatively certified that the project meets the performance standards, and has met the recovery of costs requirement.

Subp. 4. **Release of withheld payments.** If an agreement is reached between the commissioner and the municipality, the commissioner shall recommend to the authority that the withheld funds be released according to the provisions of the agreement. Failure of the municipality to reach an agreement with the commissioner within 30 days of receiving written notification that payments are being withheld constitutes grounds for the commissioner to request that the authority commence action for termination of the grant and repayment of the funds.

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.

7075.1090 RECOVERY OF GRANT FUNDS.

Subpart 1. **Generally.** A municipality that is awarded a corrective action grant shall seek recovery from a person who is responsible for the failure of the facility to perform.

Subp. 2. **Recovery after corrective action taken.** In the event that the municipality recovers an amount of money from the responsible persons after the corrective action has been taken and state corrective action grant funds spent, the municipality shall repay to the state a portion of the money recovered. The portion of the recovery to be paid to the state shall be proportional to the state's monetary participation in the corrective action project. The amount of the payment to the state shall not exceed the amount of the grant.

Subp. 3. **Recovery before corrective action taken.** In the event that the municipality recovers an amount of money from the responsible persons before the corrective action is taken, the amount of the corrective action grant to be awarded shall be determined by allowing the municipality to keep the entire payment from the responsible persons.

Subp. 4. **Approval of negotiated settlement.** A municipality must obtain the written approval of the commissioner of any settlement negotiated with the responsible persons before the municipality may enter into the settlement, whether the settlement is before or after litigation has begun and whether or not a corrective action grant has been awarded, if the municipality wants to maintain its eligibility for a corrective action grant. Failure of the municipality to obtain written approval from the commissioner of any settlement constitutes grounds for the commissioner to recommend denial of a corrective action grant or to request that the authority commence action to terminate the grant and seek repayment of the funds from the municipality if a grant has already been awarded.

Subp. 5. **Failure to seek recovery.** Failure of a municipality that has been awarded a corrective action grant to seek recovery of corrective action costs from responsible persons constitutes grounds for the commissioner to request that the authority withhold future payments to the municipality and seek repayment of the funds already paid.

Pollution Control Agency

Proposed Permanent Rules Relating to Municipal Wastewater Treatment Grants

Notice of Intent to Adopt Rules Without a Public Hearing

Notice is hereby given that the Minnesota Pollution Control Agency (Agency) intends to adopt the above-entitled rule without a public hearing following the procedures set forth in the Administrative Procedure Act for adopting rules without a public hearing in *Minnesota Statutes*, §§ 14.22-14.28 (1986). The Agency's authority to adopt the rule is set forth in *Minnesota Statutes*, § 116.16, subd. 5(a) (Supp. 1987).

All persons have until 4:30 p.m. on December 14, 1988, to submit comments in support of or in opposition to the proposed rules or any part or subpart of the rules. Comment is encouraged. Each comment should identify the portion of the proposed rules addressed, the reason for the comment, and any change proposed.

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

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

Deborah Olson
Minnesota Pollution Control Agency
520 Lafayette Road North
St. Paul, MN 55155
(612) 296-7223

The proposed rules may be modifed 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.

The proposed rules, if adopted, will bring *Minnesota Rule* ch. 7075 into conformance with State statutes and federal policy. Chapter 7075 contains rules for the State independent construction grants program for municipal wastewater treatment facilities. Rules for the Municipal Project List, project eligibility and grant amounts are affected by the proposed amendments. The proposed rules are published below. One free copy of the rules is available upon request from Ms. Olson at the address and telephone number stated above.

CERTIFICATE OF RESOLUTION ADOPTING RULES

I, Gerald L. Willet, do hereby certify that I am the Commissioner of the Minnesota Pollution Control Agency, an agency duly authorized under the law of the State of Minnesota, and that the following is a true, complete, and correct copy of a resolution adopted at a meeting of the Minnesota Pollution Control Agency duly and properly called and held on the 24th day of January, 1989, that a quorum was present at said meeting, that a majority of those present voted for the resolution and that said resolution will be set forth in the minutes of said meeting and has not been rescinded or modified:

> BE IT RESOLVED, that the Minnesota Pollution Control Agency (Agency) hereby approves and adopts the attached Minn. Rules pts. 7075.1005 to 7075.1090 governing the administration of the Corrective Action Grants Program pursuant to the authority vested in the Agency by Minn. Stat. §116.181, subd. 6 (1988).
>
> BE IT FURTHER RESOLVED, that prior to publishing the rules as adopted in the State Register, the Commissioner is authorized to make any form changes in the rules that the Revisor of Statutes requires the Agency to make in order to obtain the Revisor's Certificate as required by Minn. Stat. §14.28 (1988).
>
> BE IT FURTHER RESOLVED, that the Agency adopts the attached Findings of Fact, Conclusions, and Order Adopting Rules and that the Commissioner is hereby authorized to sign the above-mentioned document on behalf of the Agency and to the necessary acts to provide that the rule shall have the force and effect of law.

IN WITNESS WHEREOF, I have hereunto subscribed my name this 26 day of Jan, 1989.

Michael Robertson for Gerald L. Willet
Commissioner Deputy

STATE OF MINNESOTA
POLLUTION CONTROL AGENCY

In the Matter of the Proposed Rules for the Administration of the Corrective Action Grants Program

FINDINGS OF FACT, CONCLUSIONS, AND ORDER ADOPTING RULES

The above-entitled matter came on for decision before the Minnesota Pollution Control Agency (Agency) on the 24th day of January, 1989. After affording all interested persons the opportunity to present written and oral data, statements and arguments to the Agency, in accordance with statutory requirements regarding the adoption of noncontroversial rules, after considering the Statement of Need and Reasonableness, after considering all of the evidence adduced upon the records, files and proceedings herein, the Agency, being fully advised in the premises, hereby adopts the following Findings of Fact, Conclusions, and Order:

FINDINGS OF FACT

1. Notice of the Minnesota Pollution Control Agency's intent to adopt the above-entitled rules without a public hearing was published in the State Register on November 14, 1988, and was sent by mail to all persons on the list maintained by the Agency pursuant to Minn. Stat. §§14.14, subd. 1a and 14.22 (1988) on November 10, 1988.

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

3. All persons were given the opportunity to submit comments on the rule for 30 days after notice of proposed rulemaking. The 30-day comment period, as set out in the notice, expired on December 14, 1988.

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

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

6. During the comment period the Agency received no comments.

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

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

CONCLUSION

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

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

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

ORDER

NOW, THEREFORE, IT IS ORDERED, that the attached Minn. Rules pts. 7075.1005 to 7075.1090 governing the administration of the Corrective Action Grants Program are adopted pursuant to the authority vested in the Minnesota Pollution Control Agency by Minn. Stat. §116.181, subd. 6 (1988).

MINNESOTA POLLUTION CONTROL AGENCY

Dated:

Gerald L. Willet
for Commissioner

STATE OF MINNESOTA
POLLUTION CONTROL AGENCY

In the Matter of the Proposed Rules for the Administration of the Corrective Action Grants Program

FINDINGS OF FACT, CONCLUSIONS, AND ORDER ADOPTING RULES

The above-entitled matter came on for decision before the Minnesota Pollution Control Agency (Agency) on the 24th day of January, 1989. After affording all interested persons the opportunity to present written and oral data, statements and arguments to the Agency, in accordance with statutory requirements regarding the adoption of noncontroversial rules, after considering the Statement of Need and Reasonableness, after considering all of the evidence adduced upon the records, files and proceedings herein, the Agency, being fully advised in the premises, hereby adopts the following Findings of Fact, Conclusions, and Order:

FINDINGS OF FACT

1. Notice of the Minnesota Pollution Control Agency's intent to adopt the above-entitled rules without a public hearing was published in the State Register on November 14, 1988, and was sent by mail to all persons on the list maintained by the Agency pursuant to Minn. Stat. §§14.14, subd. 1a and 14.22 (1988) on November 10, 1988.

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

3. All persons were given the opportunity to submit comments on the rule for 30 days after notice of proposed rulemaking. The 30-day comment period, as set out in the notice, expired on December 14, 1988.

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

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

6. During the comment period the Agency received no comments.

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

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

CONCLUSION

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

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

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

ORDER

NOW, THEREFORE, IT IS ORDERED, that the attached Minn. Rules pts. 7075.1005 to 7075.1090 governing the administration of the Corrective Action Grants Program are adopted pursuant to the authority vested in the Minnesota Pollution Control Agency by Minn. Stat. §116.181, subd. 6 (1988).

MINNESOTA POLLUTION CONTROL AGENCY

Dated:

Gerald L. Willet
for Commissioner

STATE OF MINNESOTA
POLLUTION CONTROL AGENCY

In the Matter of the Proposed Rules
Governing The Administration of the
Corrective Action Grants Program for
Municipal Wastewater Treatment
Projects, Minnesota Rules
Parts 7075.1005 to 7075.1090

DECLARATION OF COUNSEL

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

Dated: February 1, 1989.

Jocelyn F. Olson

Jocelyn F. Olson
Assistant Attorney General

HUBERT H. HUMPHREY, III
ATTORNEY GENERAL

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

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

February 1, 1989

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

OK RMP 2/2/89 Recd

Re: In the Matter of Proposed Rules Governing the Administration of the Corrective Action Grants Program, Minn. Rules Parts 7075.1005 to 7075.1090.

Dear Ms. Eller:

On January 24, 1988, the Minnesota Pollution Control Agency adopted the above-captioned rules governing the administration of the Corrective Action Grants Program. Enclosed for your review are the following:

1. Rules as adopted (original and three copies.)

2. Findings of Fact, Conclusions, and Order Adopting Rules (two copies).

3. Certificate of Resolution Adopting Rules.

4. Notice of Intent to Solicit Outside Opinion (12 S.R. 297-298, August 17, 1987).

5. Certificate of Authorizing Resolution.

6. Notice of Intent to Adopt Rules Without a Public Hearing and rules as proposed (13 S.R. 1177-1180, November 14, 1988).

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

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

9. Rules as proposed.

10. Statement of Need and Reasonableness.

11. Declaration of Counsel.

There were no written comments received pursuant to the notice of intent to solicit outside opinion. There were no comments received during the comment period. There were no requests for notification of submission of rules adopted without public hearing to the Attorney General.

Very truly yours,

Jocelyn F. Olson

Jocelyn F. Olson
Assistant Attorney General

Enclosures

RECEIVED

FEB 0 2. 89

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