

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

File No. 1570

Docket No. 05.0009.0100

gal DATE RECEIVED 2/8/89

ADOPTED W/O HEARING X

REVIEW DATE 2/17/89

EMERGENCY RULE _____

DUE DATE 2/22/89 ok

REVISOR APPROVED X

APPROVED 2/20/89 ga 2

REVISOR DISAPPROVED _____

DISAPPROVED _____

FILED W/SEC. OF STATE 2/22/89

WITHDRAWN _____

RETURNED TO AGENCY 2/22/89

✓ Rule as adopted (4 copies)

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

8/17/89 Date published in State Register
no Comments

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

✓ Board's Authorizing Resolution ~~(in the mail)~~

2/26/88 Date adopted

✓ Proposed Rule

yes Revisor's Certificate

✓ Notice of Intent to Adopt Rule

116.16 Statutory Authority
yes Small Business Statement
no 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

11-10-88 Date 30/25 days before adoption
yes 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:

12-14-88 end of comment period (§ 14.26) (rules without hearing)
_____ ~~effective date of statutory authority (§ 14.29) (emergency rules)~~
n/A 180 day publication

✓ Resolution Adopting

1/26/89 Date adopted

✓ Findings of Fact, Conclusions & Order Adopting

1-30-89 Date

✓ Written requests, submissions or comments (1)

✓ Declaration of attorney

Bev Conerton Name of SAAG representing agency

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

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

SF-00006-05 (4/86)

STATE OF MINNESOTA

Office Memorandum

DEPARTMENT : ATTORNEY GENERAL

DATE : February 22, 1989

TO : BEVERLY CONERTON
Special Assistant
Attorney General

FROM : JULIE A. LEPPINK
Special Assistant
Attorney General

PHONE : 6-9422

SUBJECT : In the Matter of the Adopted Rule Relating to the Rules Relating to Municipal Wastewater

The above-referenced rule has been approved as to its legality by the Attorney General on February 20, 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:klk
Enclosures

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

William Brown
Chief Administrative Law Judge
Office of Administrative Hearings

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 7, 1989

Recd 2/8/89 DR 6-6087

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

RE: In the Matter of the Proposed Revision to Minnesota Rules Governing the Administration of the Municipal Project List, Project Eligibility, and Grant Amounts Related to the Administration of Federal Grant Funds and State Grant and Loan Funds for Municipal Wastewater Treatment Projects Minnesota Rules, Parts 7075.0409, 7075.0411 and 7075.0428.

Dear Ms. Eller:

On January 24, 1989, the Minnesota Pollution Control Agency adopted the above-captioned amendments to the rules governing the administration of the Municipal Project List, project eligibility and grant amounts for the Federal Construction Grants Program and the Independent State 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). No comments were received in response to this notice.

5. Certificate of Authorizing Resolution.

6. Notice of Intent to Adopt Rules Without a Public Hearing and rules as proposed (13 S.R. 1180-1184, November 14, 1988).

7. The comment received during the comment period.

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

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

10. Rules as proposed.

11. Statement of Need and Reasonableness.

12. Declaration of Counsel.

There were no notification requests for the submission to the Attorney General of the rules adopted without public hearing.

Very truly yours,

Beverly Conerton

Beverly Conerton
Special Assistant Attorney General

BC/jmg

Enclosures

Pollution Control Agency

Adopted Permanent Rules Relating to Municipal Wastewater Treatment Grants

Rules as Adopted

7075.0409 MUNICIPAL PROJECT LIST.

Subpart 1. **Adoption of municipal project list.** The agency shall adopt a municipal project list each fiscal year which shall list in order of priority projects for which federal grant funds will be requested from current allotments and for which independent state grants will be awarded from current appropriations. The municipal project list shall also contain those projects for which state financial assistance will be available for combined sewer overflow abatement projects. The municipal project list shall also list any nonproject uses of the state's allotment of federal grant funds and of the appropriation of state grant funds, including but not limited to, training grants and costs of administration.

Subp. 2. **Requirements for placement on list.** A municipality that requests project placement on the municipal project list shall meet the following requirements:

A. If the grant sought is a Step 1, 2, 2+3, or 3 grant, the municipality must be listed on the municipal needs list.

B. If the grant sought is a Step 2, 2+3, or 3 grant, the municipality shall submit by December 1 prior to the beginning of the fiscal year for which the municipal project list is prepared:

(1) a facilities plan in conformance with part 7075.0200, subpart 9; and

(2) if the municipality is proposing to change the selected treatment method or any other major element of a previously approved facilities plan, a facilities plan addendum in conformance with part 7075.0200, subpart 9.

C. If the grant sought is a Step 2, 2+3, or 3 grant, the municipality shall, by June 1 prior to the beginning of the state fiscal year for which the project list is prepared, make all necessary corrections to the documents listed in item B to make them approvable. If the grant sought is a Step 3 grant, the municipality shall also submit a council resolution by June 1 agreeing to submit the documents listed below by the following September 1:

(1) plans and specifications in conformance with part 7075.0200, subpart 18, and based on a facilities plan previously approved by the agency;

(2) if the city is proposing to change the selected treatment method or any other major element of previously approved plans and specifications, a plans and specifications addendum in conformance with part 7075.0200, subpart 18, and based on a previously approved facilities plan;

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

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

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

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

(4) documentation of how the public has been informed of the proposed sewer service charge system; and

(5) a sewer use ordinance to control discharges to the disposal system throughout the jurisdiction of the municipality.

D. A municipality seeking a Step 3 grant shall submit the documents listed in item C by September 1 of the state fiscal year for which the municipal project list is prepared. If the municipality fails to submit the required items by this deadline, the agency shall remove the municipality from the municipal project list.

E. If the grant sought is a Step 2+3 or 3 grant, the municipality shall, by June 1 prior to the beginning of the fiscal year for which the municipal project list is prepared, indicate its preferred funding source, if it has one, in writing to the commissioner.

F. A municipality seeking a Step 3 federal grant for combined sewer overflow abatement projects or state financial assistance for combined sewer overflow abatement projects shall not be subject to the conditions contained in items C and D. The municipality shall submit by June 1 prior to the beginning of the fiscal year for which the grant or financial assistance is sought, a list and schedule of construction projects to be initiated in the following fiscal year. If the municipality's NPDES/SDS permit provides a different date for submission of the list and schedule, the date in the permit shall take precedence.

Subp. 3. [Unchanged.]

Subp. 4. **Procedures for drafting list.** In drafting the proposed municipal project list, the agency shall list projects on the proposed list according to the following procedures:

A. The agency shall attempt to accommodate municipalities' preferences for funding sources in priority order until the costs of the projects being funded from one funding source reach the full allotment or appropriation of grant funds available from that source for the fiscal year. If a municipality expresses no preference, the agency shall determine from which source it will be funded.

B. The agency shall then list projects in priority

order, funding those projects from the remaining funding source, until the costs of the projects reach the full allotment or appropriation of grant funds available for the fiscal year. Projects ineligible under the remaining funding source must be considered for placement on the following fiscal year's municipal project list.

C. The agency shall then list on the municipal project list in priority order those projects on the municipal needs list with priority rankings lower than those selected under items A and B, but which have been identified by the Public Facilities Authority as being substantial economic development projects, and for which a portion of the appropriation for the fiscal year has been set aside for such projects.

D. The agency shall then list combined sewer overflow abatement projects for which state financial assistance will be awarded in the fiscal year from funds available for those kinds of projects.

E. The agency may list projects which will receive Step 1 and 2 grants and advances of allowance in such a manner as to permit funding to proceed in an orderly fashion to fully utilize all allocated and appropriated funds.

Subp. 5. **Reimbursement project list.** The agency shall prepare a reimbursement project list that lists those municipalities that are willing to proceed with projects and are willing to be reimbursed in a subsequent year conditioned upon appropriation of sufficient money for that year. No municipality may be listed on the reimbursement project list unless the municipality has requested placement on the list and has received approval of the documents listed in subpart 2, item C. Reimbursement projects must be listed in the same order of priority as they appear on the municipal needs list. A reimbursement project may appear on both the reimbursement project list and the reserve project list.

7075.0411 PROJECT ELIGIBILITY.

Subpart 1. **Steps eligible.** Federal grants and state matching grants shall be awarded only for Step 2+3 and Step 3 projects. Advances of allowance for Step 1 and 2 projects may also be provided from federal funds. Independent state grants may be awarded for Step 1, Step 2, Step 2+3, and Step 3 projects. Financial assistance for combined sewer overflow abatement shall be awarded only for design and construction work.

Subp. 2. **General eligibility.** No project is eligible for a federal grant or a state matching grant unless it is eligible for funding under the act and applicable federal regulations. No project is eligible for an independent state grant unless it is eligible under this chapter and applicable state statutes. No municipality is eligible for state financial assistance for combined sewer overflow abatement projects unless the municipality complies with the conditions of Minnesota Statutes, section 116.162, subdivision 7.

Subp. 3. **Initiation of construction.** A municipality may retain eligibility of construction costs incurred prior to the award of an independent state grant only if:

A. the municipality was listed on a reimbursement project list when construction began;

B. the municipality submitted a complete grant application to the agency within 90 days after adoption or revision of the reimbursement project list; and

C. the municipality obtained written permission from the agency to advertise for bids and initiate construction before those steps were taken.

Subp. 4. **Cost-effectiveness.** A project is not eligible for a grant unless the agency determines that the project is an environmentally acceptable cost-effective means of handling the municipality's wastewater. The agency shall not award a grant to pay for those portions of a project that are not environmentally acceptable and cost-effective.

Subp. 5. **Eligible costs.** The following provisions govern eligible costs:

A. The eligible cost of any project for which a grant

or state financial assistance will be awarded shall be determined by the application of applicable state and federal statutes and rules.

B. In addition to other eligible costs established by state law for combined sewer overflow abatement projects, storm water conveyance facilities that are part of the most cost effective alternative for combined sewer overflow abatement shall be eligible for state financial assistance. Such facilities shall include those structures, pipes, and appurtenances from the point of entry at the catch basin to the outlet structure which are necessary to convey up to the five-year storm.

7075.0428 GRANT AMOUNTS.

Subpart 1. **State matching grants.** This subpart applies to state matching grants.

A. For projects tendered on or after October 1, 1984, and before October 1, 1987, a federal grant at 55 percent or more of the eligible cost for construction of a treatment works, the agency shall award a state matching grant for up to an additional 30 percent of the eligible cost if construction of the treatment works would otherwise impose a significant financial hardship on the municipality.

B. For projects tendered, on or after October 1, 1987, a federal grant at 55 percent or more of the eligible cost for construction of a treatment works, the agency shall award a state matching grant for 50 percent of the nonfederal share of the eligible cost of construction for municipalities with populations of 25,000 or less.

Subp. 2. **Independent state grants.** The agency may award independent state grants as follows:

A. The agency may award Step 1 and Step 2 independent state grants to municipalities in an amount determined according to the same procedures for calculating an allowance under Code of Federal Regulations, title 40, part 35, appendix B.

B. The agency may award Step 2+3 and Step 3

independent state grants to municipalities to pay for 50 percent of the eligible cost of construction, or, if the population of the municipality is 25,000 or less, 80 percent of the eligible cost of construction.

Subp. 2a. and 3. [Unchanged.]

Subp. 4. **Significant financial hardship.** The amount of a state matching grant awarded to a municipality which was awarded a federal grant after October 1, 1984, and before October 1, 1987, depends on the extent to which construction of the treatment works imposes a significant financial hardship on the municipality. The determination of the financial hardship and the amount of the grant must be based on per connection capital cost, median household income, and per capita adjusted assessed valuation, in accordance with the following procedures:

A. The agency shall award a state matching grant for up to five percent of the eligible cost of construction based on the municipality's per connection capital cost after bidding compared with the median per connection capital cost for all projects which accepted bids under the programs during the two years ending July 1 prior to adoption of the municipal project list on which the municipality appears. The percentage of the eligible cost to be paid for by the grant based on per connection capital cost is determined by the following table.

Municipality Per Connection Cost × 100 ÷ Median Per Connection Cost of Projects Bid During Previous Two Years	Percentage of Cost Funded
60 - 69	0.5
70 - 79	1.0
80 - 89	1.5
90 - 99	2.0
100 - 119	2.5
120 - 139	3.0
140 - 159	3.5
160 - 179	4.0
180 - 199	4.5
200 or more	5.0

B. The agency shall award a state matching grant for up to five percent of the eligible cost of construction based on the municipality's median household income compared with the state median nonmetropolitan household income. Median household income must be determined from the latest federal census. The

percentage of the eligible cost to be paid for by the grant based on median household income is determined by the following table.

Municipality Median Household Income × 100 ÷ State Median Nonmetropolitan Household Income	Percentage of Cost Funded
100 - 104	0.5
95 - 100	1.0
90 - 94	1.5
85 - 89	2.0
80 - 84	2.5
75 - 79	3.0
70 - 74	3.5
65 - 69	4.0
60 - 64	4.5
less than 60	5.0

C. The agency shall award a state matching grant for up to five percent of the eligible cost of construction based on the municipality's per capita adjusted assessed valuation compared with the state median per capita adjusted assessed valuation. Per capita adjusted assessed valuation must be determined from the latest data available from the Department of Revenue at the time of the grant award. The percentage of the eligible cost to be paid for by the grant based on the per capita adjusted assessed valuation is determined by the following table.

Municipality Per Capita Adjusted Assessed Valuation × 100 ÷ State Median Per Capita Adjusted Assessed Valuation	Percentage of Cost Funded
105 - 109	0.5
100 - 104	1.0
95 - 99	1.5
90 - 94	2.0
85 - 89	2.5
80 - 84	3.0
75 - 79	3.5
70 - 74	4.0
65 - 69	4.5
less than 65	5.0

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED

FEB 23 1989

Joan Anderson Growe

Secretary of State

10:10 AM

APPROVED AS TO FORM AND LEGALITY

February 20 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 amendments to rules, Minn. Rules Parts 70751.0409, 7075.0411 and 7075.0428 to all persons who have registered their names with the Agency for that purpose and publish the notice and the rules in the State Register, and to perform any acts incidental thereto, including making any form changes in the rules that the Revisor of Statutes requires the Agency to make in order to obtain the Revisor's certification as required by Minn. Stat. Section 14.07, subd. 2 (1986).
>
> BE IT FURTHER RESOLVED, that in the event a public hearing becomes necessary, the Commissioner is hereby granted the authority and directed to call a hearing for the purpose of promulgating said rules as well as to perform any and all acts incidental thereto, including but not limited to signing an Order for and Notice of Hearing, as well as acting as the Agency's representative at all hearings.

IN WITNESS WHEREOF, I have hereunto subscribed my name this 26th day of October, 1988.

Gerald L. Willet
Commissioner

Pollution Control Agency

Proposed Permanent Rules Relating to Municipal Wastewater Treatment Grants

Rules as Proposed

7075.0409 MUNICIPAL PROJECT LIST.

Subpart 1. **Adoption of municipal project list.** The agency shall adopt a municipal project list each fiscal year which shall list in order of priority projects for which federal grant funds will be requested from current allotments and for which independent state grants will be awarded from current appropriations. The municipal project list shall also contain those projects for which state financial assistance will be available for combined sewer overflow abatement projects. The municipal project list shall also list any nonproject uses of the state's allotment of federal grant funds and of the appropriation of state grant funds, including but not limited to, training grants and costs of administration.

Subp. 2. **Requirements for placement on list.** A municipality that requests project placement on the municipal project list shall meet the following requirements:

A. If the grant sought is a Step 1, 2, 2+3, or 3 grant, the municipality must be listed on the municipal needs list.

B. If the grant sought is a Step 2 ~~or~~, 2+3, or 3 grant, the municipality shall submit by December 1 prior to the beginning of the fiscal year for which the municipal project list is prepared:

(1) a facilities plan in conformance with part 7075.0200, subpart 9; and

(2) if the municipality is proposing to change the selected treatment method or any other major element of a previously approved facilities plan, a facilities plan addendum in conformance with part 7075.0200, subpart 9.

Approved by Revisor

C. If the grant sought is a Step 2, 2+3, or 3 grant, the municipality shall ~~submit by December 1 prior to the beginning of the fiscal year for which the municipal project list is prepared~~, by June 1 prior to the beginning of the state fiscal year for which the project list is prepared, make all necessary corrections to the documents listed in item B to make them approvable. If the grant sought is a Step 3 grant, the municipality shall also submit a council resolution by June 1 agreeing to submit the documents listed below by the following September 1:

(1) plans and specifications in conformance with part 7075.0200, subpart 18, and based on a facilities plan previously approved by the agency;

(2) if the city is proposing to change the selected treatment method or any other major element of previously approved plans and specifications, a plans and specifications addendum in conformance with part 7075.0200, subpart 18, and based on a previously approved facilities plan;

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

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

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

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

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(4) documentation of how the public has been informed of the proposed sewer service charge system; and

(5) a sewer use ordinance to control discharges to the disposal system throughout the jurisdiction of the municipality.

D. ~~The municipality shall, by June 1 prior to the beginning of the fiscal year for which the municipal project list is prepared, make all necessary corrections to the documents in item B if the grant sought is a Step 2 or 2+3 grant, or the documents in item C if the grant sought is a Step 3 grant, so as to make them approvable.~~ A municipality seeking a Step 3 grant shall submit the documents listed in item C by September 1 of the state fiscal year for which the municipal project list is prepared. If the municipality fails to submit the required items by this deadline, the agency shall remove the municipality from the municipal project list.

E. If the grant sought is a Step 2+3 or 3 grant, the municipality shall, by June 1 prior to the beginning of the fiscal year for which the municipal project list is prepared, indicate its preferred funding source, if it has one, in writing to the commissioner.

F. A municipality seeking a Step 3 federal grant for combined sewer overflow abatement projects or state financial assistance for combined sewer overflow abatement projects shall not be subject to the conditions contained in items C and D. The municipality shall submit by June 1 prior to the beginning of the fiscal year for which the grant or financial assistance is sought, a list and schedule of construction projects to be initiated in the following fiscal year. If the municipality's NPDES/SDS permit provides a different date for submission of the list and schedule, the date in the permit shall take precedence.

Subp. 3. [Unchanged.]

Subp. 4. **Procedures for drafting list.** In drafting the proposed municipal project list, the agency shall list projects on the proposed list according to the following procedures:

A. The agency shall attempt to accommodate

Approved by Revisor _____

municipalities' preferences for funding sources in priority order until the costs of the projects being funded from one funding source reach the full allotment or appropriation of grant funds available from that source for the fiscal year. If a municipality expresses no preference, the agency shall determine from which source it will be funded.

B. The agency shall then list projects in priority order, funding those projects from the remaining funding source, until the costs of the projects reach the full allotment or appropriation of grant funds available for the fiscal year. Projects ineligible under the remaining funding source must be considered for placement on the following fiscal year's municipal project list.

C. The agency shall then list on the municipal project list in priority order those projects on the municipal needs list with priority rankings lower than those selected under items A and B, but which have been identified by the ~~commissioner of energy and economic development by July 1~~ Public Facilities Authority as being substantial economic development projects, and for which a portion of the appropriation for the fiscal year has been set aside for such projects.

D. The agency shall then list combined sewer overflow abatement projects for which state financial assistance will be awarded in the fiscal year from funds available for those kinds of projects.

E. The agency may list projects which will receive Step 1 and 2 grants and advances of allowance in such a manner as to permit funding to proceed in an orderly fashion to fully utilize all allocated and appropriated funds.

Subp. 5. **Reimbursement project list.** The agency shall prepare a reimbursement project list that lists those municipalities that are willing to proceed with projects and are willing to be reimbursed in a subsequent year conditioned upon appropriation of sufficient money for that year. No municipality may be listed on the reimbursement project list unless the municipality has requested placement on the list and

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has received approval of the documents listed in subpart 2, item C. ~~The total cost of these reimbursement projects may not exceed the amount newly appropriated to the independent state grant program.~~ Reimbursement projects must be listed in the same order of priority as they appear on the municipal needs list. A reimbursement project may appear on both the reimbursement project list and the reserve project list.

7075.0411 PROJECT ELIGIBILITY.

Subpart 1. **Steps eligible.** Federal grants and state matching grants shall be awarded only for Step 2+3 and Step 3 projects. Advances of allowance for Step 1 and 2 projects may also be provided from federal funds. Independent state grants may be awarded for Step 1, Step 2, Step 2+3, and Step 3 projects. Financial assistance for combined sewer overflow abatement shall be awarded only for design and construction work.

Subp. 2. **General eligibility.** No project is eligible for a federal grant or a state matching grant unless it is eligible for funding under the act and applicable federal regulations. No project is eligible for an independent state grant unless it is eligible under this chapter and applicable state statutes. No municipality is eligible for state financial assistance for combined sewer overflow abatement projects unless the municipality complies with the conditions of Minnesota Statutes, section 116.162, subdivision 7.

Subp. 3. **Initiation of construction.** ~~A municipality is not eligible for a federal grant or a state matching grant if construction on the project has been initiated prior to the award of the grant.~~

A municipality may ~~be eligible for~~ retain eligibility of construction costs incurred prior to the award of an independent state grant ~~after initiation of construction, provided that~~ only if:

A. the municipality was listed on a reimbursement project list when construction began;

B. the municipality submitted a complete grant

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application to the agency within 90 days after adoption or revision of the reimbursement project list; and

C. the municipality obtained written permission from the agency to advertise for bids and initiate construction before those steps were taken.

Subp. 4. **Cost-effectiveness.** A project is not eligible for a grant unless the agency determines that the project is an environmentally acceptable cost-effective means of handling the municipality's wastewater. The agency shall not award a grant to pay for those portions of a project that are not environmentally acceptable and cost-effective.

Subp. 5. **Eligible costs.** The following provisions govern eligible costs:

A. The eligible cost of any project for which a grant or state financial assistance will be awarded shall be determined by the application of applicable state and federal statutes and rules.

B. In addition to other eligible costs established by state law for combined sewer overflow abatement projects, storm water conveyance facilities that are part of the most cost effective alternative for combined sewer overflow abatement shall be eligible for state financial assistance. Such facilities shall include those structures, pipes, and appurtenances from the point of entry at the catch basin to the outlet structure which are necessary to convey up to the five-year storm.

7075.0428 GRANT AMOUNTS.

Subpart 1. **State matching grants.** <u>This subpart applies to state matching grants.</u>

<u>A.</u> For projects tendered on or after October 1, 1984, <u>and before October 1, 1987,</u> a federal grant at 55 percent or more of the eligible cost for construction of a treatment works, the agency shall award a state matching grant for up to an additional 30 percent of the eligible cost if construction of the treatment works would otherwise impose a significant

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financial hardship on the municipality.

B. For projects tendered, on or after October 1, 1987, a federal grant at 55 percent or more of the eligible cost for construction of a treatment works, the agency shall award a state matching grant for 50 percent of the nonfederal share of the eligible cost of construction for municipalities with populations of 25,000 or less.

Subp. 2. **Independent state grants.** The agency may award independent state grants as follows:

A. The agency may award Step 1 and Step 2 independent state grants to municipalities in an amount determined according to the same procedures for calculating an allowance under Code of Federal Regulations, title 40, part 35, appendix B.

B. The agency may award Step 2+3 and Step 3 independent state grants to municipalities to pay for 50 percent of the eligible cost of construction, or, if the ~~agency requires and the municipality is constructing advanced treatment,~~ 65 population of the municipality is 25,000 or less, 80 percent of the eligible cost of construction. ~~If construction of a treatment works would otherwise impose a significant financial hardship on a municipality, the agency may award an independent state grant to pay for up to an additional 30 percent of the eligible cost of construction, or if the agency requires and the municipality is constructing advanced treatment, an additional 25 percent of the eligible cost of construction.~~

Subp. 2a. and 3. [Unchanged.]

Subp. 4. **Significant financial hardship.** The amount of a state matching grant awarded to a municipality which was awarded a federal grant after October 1, 1984, ~~and the amount of a supplemental independent state grant awarded to a municipality~~ and before October 1, 1987, depends on the extent to which construction of the treatment works imposes a significant financial hardship on the municipality. The determination of the financial hardship and the amount of the grant must be based on per connection capital cost, median household income, and per capita adjusted assessed valuation, in

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accordance with the following procedures:

A. The agency shall award a state matching grant ~~or independent-state-grant~~ for up to five percent of the eligible cost of construction based on the municipality's per connection capital cost after bidding compared with the median per connection capital cost for all projects which accepted bids under the programs during the two years ending July 1 prior to adoption of the municipal project list on which the municipality appears. The percentage of the eligible cost to be paid for by the grant based on per connection capital cost is determined by the following table.

Municipality Per Connection Cost × 100 ÷ Median Per Connection Cost of Projects Bid During Previous Two Years	Percentage of Cost Funded
60 - 69	0.5
70 - 79	1.0
80 - 89	1.5
90 - 99	2.0
100 - 119	2.5
120 - 139	3.0
140 - 159	3.5
160 - 179	4.0
180 - 199	4.5
200 or more	5.0

B. The agency shall award a state matching grant ~~or independent-state-grant~~ for up to five percent of the eligible cost of construction based on the municipality's median household income compared with the state median nonmetropolitan household income. Median household income must be determined from the latest federal census. The percentage of the eligible cost to be paid for by the grant based on median household income is determined by the following table.

Municipality Median Household Income × 100 ÷ State Median Nonmetropolitan Household Income	Percentage of Cost Funded
100 - 104	0.5
95 - 100	1.0
90 - 94	1.5
85 - 89	2.0
80 - 84	2.5
75 - 79	3.0
70 - 74	3.5
65 - 69	4.0
60 - 64	4.5
less than 60	5.0

C. The agency shall award a state matching grant ~~or independent-state-grant~~ for up to five percent of the eligible

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cost of construction based on the municipality's per capita adjusted assessed valuation compared with the state median per capita adjusted assessed valuation. Per capita adjusted assessed valuation must be determined from the latest data available from the Department of Revenue at the time of the grant award. The percentage of the eligible cost to be paid for by the grant based on the per capita adjusted assessed valuation is determined by the following table.

Municipality Per Capita Adjusted Assessed Valuation × 100 ÷ State Median Per Capita Adjusted Assessed Valuation	Percentage of Cost Funded
105 - 109	0.5
100 - 104	1.0
95 - 99	1.5
90 - 94	2.0
85 - 89	2.5
80 - 84	3.0
75 - 79	3.5
70 - 74	4.0
65 - 69	4.5
less than 65	5.0

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by Revisor _____

Office of the Revisor of Statutes

Administrative Rules

TITLE: Proposed Permanent Rules Relating to Municipal Wastewater Treatment Grants

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
Relating to Municipal Wastewater Treatment Grants
Rules Pts. 7075.0409, 7075.0411,
and 7075.0428

NOTICE OF INTENT TO
ADOPT RULES WITHOUT
A PUBLIC HEARING

Notice is hereby given that the Minnesota Pollution Control Agency (Agency) intends to adopt the above-entitled rules without a public hearing following the procedures set forth in the Administrative Procedure Act for adopting rules without a public hearing in Minn. Stat. §14.22 to 14.28 (1986). The Agency's authority to adopt the rules is set forth in Minn. Stat. §116.16, 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 person 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 bring Minn. Rule ch. 7075 into conformance with state statutes and federal policy. Chapter 7075 contains rules for the 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. A 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 rules 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.

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

Dated: November 10, 1988

Michael Robertson
for GERALD L. WILLET
Commissioner
Deputy

In the Matter of the Proposed Revision
to Minnesota Rules Governing the
Administration of the Municipal Project List,
Project Eligibility, and Grant Amounts
Related to the Administration of Federal
Grant Funds and State Grant and Loan Funds
for Municipal Wastewater Treatment Projects
Minnesota Rules, Part 7075.0409, 7075.0411,
and 7075.0428

STATEMENT OF NEED
AND REASONABLENESS

I. INTRODUCTION

Chapter 7075 of Minnesota Rules contains the rules of the Minnesota Pollution Control Agency (hereinafter "Agency") that provide for the administration of federal construction grants program and the state independent grants program for municipal wastewater treatment projects. Chapter 7075 (formerly WPC 34) was first adopted by the Agency in 1972 and was amended in 1973, 1978, 1983 and 1985. The Agency is proposing to amend parts of the rule at this time.

The amendments are proposed to bring Chapter 7075 of Minnesota Rules into conformance with federal regulatory and state statutory changes and to create a more efficient grants program. Most of these amendments were initially adopted as emergency rules, which were effective on February 29, 1988. Pursuant to Minn. Stat. § 14.35 (1986), the emergency rules were effective initially for 180 days, and their effective date was extended for an additional 180 days by publication of Notice in the State Register (13 S.R. 308, August 8, 1988). The new expiration date for the emergency rules is February 23, 1989, or the date the rules are replaced by permanent rules, whichever is earlier. Some of the language from the emergency rules has been revised in the proposed permanent rules for clarity.

The federal and state grants programs enable municipalities in Minnesota to construct wastewater treatment facilities through a combination of federal, state, and local funds. Minn. Rules Part 7075.0409, regarding the Municipal

Project List (MPL), Part 7075.0411, regarding project eligibility, and Part 7075.0428, regarding grant amounts, establish criteria for determining priority and grant amounts for awarding state and federal funds.

The federal construction grants program is authorized by the Federal Clean Water Act, 33 U.S.C. §§ 1281-1299 (1987). The U.S. Environmental Protection Agency (EPA) has promulgated regulations and developed guidelines for the administration of the federal program. See 40 CFR Parts 30, 33, and 35 (1987). The state independent grants program is funded from the Minnesota State Water Pollution Control Fund (Minn. Stat. §§ 116.16 and 116.18).

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

II. STATEMENT OF AGENCY'S STATUTORY AUTHORITY

The Agency's statutory authority to adopt the rules is set forth in Minn. Stat. § 115.03, subd. 1(g) (1986), which provides:

> To prescribe and alter rules, not inconsistent with law, for the conduct of the agency and other matters within the scope of the powers granted to and imposed upon it by this chapter and, with respect to pollution of waters of the state, in chapter 116, provided that every rule affecting any other department or agency of the state or any person other than a member or employee of the agency shall be filed with the secretary of the state.

and Minn. Stat. § 116.16, subd. 5(a) (Supp. 1987), which provides:

> The agency shall promulgate permanent rules and may promulgate emergency rules for the administration of grants and loans authorized to be made from the fund or from federal funds under the Federal Water Pollution Control Act, which rules, however, shall not be applicable to the issuance of

bonds by the commissioner of finance as provided in section 116.17. The rules shall contain as a minimum:

(1) procedures for application by municipalities;
(2) conditions for the administration of the grant or loan;
(3) criteria for the ranking of projects in order of priority for grants or loans, based on factors including the extent and nature of pollution, technological feasibility, assurance of proper operation, maintenance and replacement, and participation in multimunicipal systems; and
(4) such other matters as the agency and the director find necessary to the proper administration of the grant program.

Under these statutes 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 major reason for the proposed amendments is the need to change the submittal deadline for grant eligibility to enable as many projects as possible to be eligible each year for state or federal Step 3 grants. The deadline for submitting plans and specifications is proposed to be changed from December 1 to the following September 1. The Agency determined that making this rule change as quickly as possible was imperative and the Agency adopted emergency rules, which were effective February 29, 1988. The emergency rules expire February 23, 1989, or on the date the rules are

replaced by permanent rules, whichever date is earlier; therefore there is a need to adopt permanent rules to continue this change in the submittal deadline.

Changes in state statutes and federal policy have also made revisions to Chapter 7075 necessary. Changes in EPA policy have altered the eligibility provisions for projects that incur construction costs prior to the award of a grant. Changes, effective on August 1, 1987, have also been made to Minn. Stat. § 116.18, subds. 2a and 3a. These statutory changes eliminate the limit on the cumulative dollar amount of projects the Agency may place on the reimbursement project list each year and adjust the grant percentages and award criteria used after October 1, 1987. Revisions to Minn. Rules Chapter 7075 corresponding to these federal policy and state statutory changes were also included in the emergency rules effective February 29, 1988. Because the emergency rules will expire on February 23, 1989,or on the date they are replaced by permanent rules, there is a need to adopt permanent rules so that Chapter 7075 will conform to federal policy and state statutes in the future.

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. Reasonableness is the opposite of arbitrariness or capriciousness. It 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

The proposed rules are reasonable because they reflect statutory changes adopted by the Minnesota Legislature in 1987, relating to the Municipal Project List, that make meeting eligibility deadlines easier for municipalities applying for grants. These statutory changes are identified and

discussed under the individual parts that they affect. They also conform the rules to an EPA policy change (see discussion of Part 7075.0411). Finally, the rules are reasonable because they will improve the administrative burden imposed on the Agency and municipalities by the rules which existed prior to the adoption of emergency rules.

B. Reasonableness of Individual Rules

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

Part 7075.0409 Municipal Project List (MPL).

Subpart 1. Adoption of municipal project list.

The Agency proposes to add the word "independent" before the term "State grants." This proposal is reasonable because it clarifies which state grant program to which the rule is referring.

Subpart 2. Requirements for placement on list.

The Agency proposes to make changes in items A, B, and C of this rule, the net effect of which is to lengthen the period of time between a municipality's submission of a facilities plan or facilities plan addendum and submission of the documents listed in item C. In the existing rules, everything was required to be submitted by December 1 prior to the beginning of the fiscal year for which the municipal project list is prepared. Under this proposal, the municipality has until September 1 to submit the item C documents. The reasonableness of each of the changes in this rule are discussed below.

The Agency proposes to amend Item B by adding Step 3 grants to the list of grants to which this rule applies. While the existing rule implies that Step 3 grants are covered by this rule, it is reasonable to clarify that

Step 3 grant applicants must meet a December 1 deadline for submission of facilities plans and facilities plan addenda.

The Agency proposes to make two changes to Item C. First, the Agency proposes to apply this rule to Step 2 and 2+3 grants in addition to the Step 3 grants already covered by the rule. Second, the Agency proposes to delete the language requiring submission of the documents listed in this item by December 1. In its place, the Agency proposes to require the municipality, by June 1 prior to the beginning of the state fiscal year for which the project list is prepared, to make all necessary corrections to the documents listed in item B to make them approvable. If the grant is a Step 3 grant, the rule requires the municipality to submit a council resolution by June 1 agreeing to submit the items listed in (1) through (5) by the following September 1.

It is reasonable to require a municipality to make the necessary changes to the facilities plan or facilities plan addendum by June 1 because the Agency needs the corrected plans in order to complete its review of the project, and six months should be enough time for a municipality to make those corrections.

It is reasonable to require the municipality to submit a council resolution by June 1 stating that the municipality will meet the September 1 deadline for submission of the documents listed in (1) through (5) because a council resolution constitutes the official commitment from the governing body of the municipality to submit required documents by the proposed September 1 deadline, and this commitment assures Agency staff that the municipality will follow through on their proposed involvement in the grants program. This assurance is needed for staff to prepare the MPL, which is finalized before the proposed document submittal deadline.

The Agency proposes to amend Item D to delete language requiring submission of corrections to the facilities plan or facilities plan addendum. This is reasonable because the language has been proposed to be included in Item C.

The Agency also proposes to add language to Item D requiring the municipality to submit the documents listed in Item C by September 1 of the year for which the municipal project list was prepared. This is reasonable because it allows nine additional months for municipalities to meet grant eligibility requirements. This additional time is reasonable because it enables as many projects as possible to be eligible each year for state or federal grant funds and aligns the deadline with the Agency work load. With a September 1 deadline, the review of facilities plans will occur during the winter when staff are not conducting construction inspections. Reviews of plans and specifications would then be done after the inspection season, and grants could be awarded in time for spring bidding.

The Agency also proposes to add language to Item D stating that if the municipality fails to submit the required items by September 1, the Agency shall remove the municipality from the MPL. This is reasonable because the MPL is a funding tool that only lists projects demonstrating a reasonable readiness, demonstrated by required documentation, to begin construction the next construction season. This policy avoids saving limited grant funds at the expense of not funding some other project ready to proceed with construction. Projects removed from the MPL remain on the Municipal Needs List and continue to be recognized as requiring future funding.

Subpart 4. Procedures for drafting list.

In 1987, the Legislature amended Minn. Stat. § 116.18, subd. 3a (Supp. 1987) to replace the reference to "commissioner of energy and economic

development" with "the public facilities authority." See Minn. Stat. § 116.18, subd. 3a (Supp. 1987). The Agency proposes to amend Item C of the rule to conform to this statutory change. This is reasonable because it makes the rule reflect the actual state agency involved in the process.

The Agency also proposes to eliminate the July 1 deadline for submitting information on substantial economic development projects to be included on the MPL. This elimination is reasonable because experience with economic development set-asides has proven this deadline to be unnecessary.

Subpart 5. Reimbursement project list.

The 1987 changes to Minn. Stat. § 116.18, subd. 3a(c) (1987) eliminates the limit on the cumulative dollar amount of projects the Agency may place on the reimbursement project list each year. The Agency proposes to delete the sentence "The total cost of these reimbursement projects may not exceed the amount newly appropriated to the independent state grant program." This proposed deletion of limiting language is reasonable because it brings the rules into conformance with this statute.

Part 7075.0411 Project Eligibility.

The Agency proposes to make two changes to Subpart 3 of the rule. First, the Agency proposes to delete the first sentence: "A municipality is not eligible for a federal grant or a state matching grant if construction on the project has been initiated prior to the award of the grant." Second, the Agency proposes to amend the language of the second sentence of the rule to: "A municipality may retain eligibility of construction costs incurred prior to the award of an independent state grant only if: [items A-C]." Changes made to this subpart are being proposed to conform to current EPA policy expressed in a EPA Policy Memorandum dated May 29, 1986 (see attachment 1). By removing this language, projects that have initiated construction will be eligible for

federal and state grants to assist in payment of costs not yet incurred. The proposed rule amendments are reasonable because they conform the rules to current EPA policy on construction grant eligibility.

Part 7075.0428 Grant Amounts.

Subpart 1. State matching grants.

The Agency proposes to make three changes to this rule. First, add a sentence to this rule stating: "This subpart applies to state matching grants." This is reasonable in order to clarify the applicability of this rule.

Second, the Agency proposes to label the existing rule language as Item A and to limit the eligibility of projects for a 30 percent state matching grant to those projects tendered on or after October 1, 1984, and before October 1, 1987. Third, the Agency proposes to add a new Item B stating that for projects tendered on or before October 1, 1987, a federal grant at 55 percent or more of eligible costs, the Agency shall award state matching grant for 50 percent of the nonfederal share of the eligible costs for municipalities with populations of 25,000 or less.

These changes are reasonable because revisions made to Minn. Stat. § 116.18, subd. 2a by the 1987 Legislature changed the award percentages of state matching grants and changed the hardship criteria to a population requirement of 25,000 or less. The proposed addition of item B was made to incorporate these statutory changes into the administrative rule. The proposed change to Item A is included because grantees that received awards during the period beginning October 1, 1984, and ending on September 30,1987, are still receiving funds under these conditions.

Subpart 2. Independent state grants.

The Agency proposes to amend Item B to reflect statutory revisions made in 1987 which changed award percentages for Step 2+3 and Step 3 independent state grants from 65 percent of eligible costs, with the requirement of advanced treatment, to 80 percent of eligible costs, with the 25,000 or less population requirement. The proposed revisions are reasonable because they bring the rule into conformance with Minn. Stat. § 116.18 subd. 3a (Supp. 1987).

Subpart 4. Significant financial hardship.

The Agency proposes to amend the first sentence of this rule to limit significant financial hardship awards to those municipalities which received a federal grant between the period beginning after October 1, 1984, and ending before October 1, 1987. This is reasonable because amendments made to Minn. Stat. § 116.18 subd. 3a(a) during 1987 Legislative session eliminated the provisions for significant financial hardship that were present in the 1986 statute.

The Agency proposes to eliminate the reference to "or independent state grant" in Items A, B, and C. This is reasonable because it brings the rule into conformance with Minn. Stat. § 116.18, subd. 3a(a)(Supp. 1987).

V. SMALL BUSINESS CONSIDERATIONS IN RULEMAKING

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

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

(d) the establishment of performance standards for small businesses to replace design or operational standards required in the rule; and
(e) the exemption of small businesses from any or all requirements of the rule.

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 Municipal Project List, project eligibility, and grant amounts of the independent state 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 to construct wastewater treatment facilities. The Agency in considering the economic factors concludes that the program has a positive economic impact on participating municipalities.

VII. CONCLUSION

Based on the foregoing, the proposed Minn. Rules pts. 7075.0409, 7075.0411, and 7075.0428 are both needed and reasonable.

dated: October 14, 1988

Barbara Lindsey Sims

Gerald L. Willet
Commissioner

STATE OF MINNESOTA
POLLUTION CONTROL AGENCY

In the Matter of the Proposed Rules Relating to Municipal Wastewater Treatment Grants, Minn. Rules Parts 7075.0409, 7075.00411 and 7075.0428

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

Deborah A. Olson

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

Tari Boelman
Notary Public

TARI L. BOELMAN
NOTARY PUBLIC - MINNESOTA
RAMSEY COUNTY
My Comm. Exp. Feb. 18, 1994

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.

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.

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

7075.0409 MUNICIPAL PROJECT LIST.

Subpart 1. **Adoption of municipal project list.** The agency shall adopt a municipal project list each fiscal year which shall list in order of priority projects for which federal grant funds will be requested from current allotments and for which independent state grants will be awarded from current appropriations. The municipal project list shall also contain those projects for which state financial assistance will be available for combined sewer overflow abatement projects. The municipal project list shall also list any nonproject uses of the state's allotment of federal grant funds and of the appropriation of state grant funds, including but not limited to, training grants and costs of administration.

Subp. 2. **Requirements for placement on list.** A municipality that requests project placement on the municipal project list shall meet the following requirements:

A. If the grant sought is a Step 1, 2, 2+3, or 3 grant, the municipality must be listed on the municipal needs list.

B. If the grant sought is a Step 2 ~~or~~, 2+3, or 3 grant, the municipality shall submit by December 1 prior to the beginning of the fiscal year for which the municipal project list is prepared:

(1) a facilities plan in conformance with part 7075.0200, subpart 9; and

(2) if the municipality is proposing to change the selected treatment method or any other major element of a previously approved facilities plan, a facilities plan addendum in conformance with part 7075.0200, subpart 9.

C. If the grant sought is a Step 2, 2+3, or 3 grant, the municipality shall ~~submit by December 1 prior to the beginning of the fiscal year for which the municipal project list is prepared,~~ by June 1 prior to the beginning of the state fiscal year for which the project list is prepared, make all necessary corrections to the documents listed in item B to make them approvable. If the grant sought is a Step 3 grant, the municipality shall also submit a council resolution by June 1 agreeing to submit the documents listed below by the following September 1:

(1) plans and specifications in conformance with part 7075.0200, subpart 18, and based on a facilities plan previously approved by the agency;

(2) if the city is proposing to change the selected treatment method or any other major element of previously approved plans and specifications, a plans and specifications addendum in conformance with part 7075.0200, subpart 18, and based on a previously approved facilities plan;

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

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

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

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.

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

(4) documentation of how the public has been informed of the proposed sewer service charge system; and

(5) a sewer use ordinance to control discharges to the disposal system throughout the jurisdiction of the municipality.

D. ~~The municipality shall, by June 1 prior to the beginning of the fiscal year for which the municipal project list is prepared, make all necessary corrections to the documents in item B if the grant sought is a Step 2 or 2+3 grant, or the documents in item C if the grant sought is a Step 3 grant, so as to make them approvable.~~ A municipality seeking a Step 3 grant shall submit the documents listed in item C by September 1 of the state fiscal year for which the municipal project list is prepared. If the municipality fails to submit the required items by this deadline, the agency shall remove the municipality from the municipal project list.

E. If the grant sought is a Step 2 + 3 or 3 grant, the municipality shall, by June 1 prior to the beginning of the fiscal year for which the municipal project list is prepared, indicate its preferred funding source, if it has one, in writing to the commissioner.

F. A municipality seeking a Step 3 federal grant for combined sewer overflow abatement projects or state financial assistance for combined sewer overflow abatement projects shall not be subject to the conditions contained in items C and D. The municipality shall submit by June 1 prior to the beginning of the fiscal year for which the grant or financial assistance is sought, a list and schedule of construction projects to be initiated in the following fiscal year. If the municipality's NPDES/SDS permit provides a different date for submission of the list and schedule, the date in the permit shall take precedence.

Subp. 3. [Unchanged.]

Subp. 4. **Procedures for drafting list.** In drafting the proposed municipal project list, the agency shall list projects on the proposed list according to the following procedures:

A. The agency shall attempt to accommodate municipalities' preferences for funding sources in priority order until the costs of the projects being funded from one funding source reach the full allotment or appropriation of grant funds available from that source for the fiscal year. If a municipality expresses no preference, the agency shall determine from which source it will be funded.

B. The agency shall then list projects in priority order, funding those projects from the remaining funding source, until the costs of the projects reach the full allotment or appropriation of grant funds available for the fiscal year. Projects ineligible under the remaining funding source must be considered for placement on the following fiscal year's municipal project list.

C. The agency shall then list on the municipal project list in priority order those projects on the municipal needs list with priority rankings lower than those selected under items A and B, but which have been identified by the ~~commissioner of energy and economic development by July 1~~ Public Facilities Authority as being substantial economic development projects, and for which a portion of the appropriation for the fiscal year has been set aside for such projects.

D. The agency shall then list combined sewer overflow abatement projects for which state financial assistance will be awarded in the fiscal year from funds available for those kinds of projects.

E. The agency may list projects which will receive Step 1 and 2 grants and advances of allowance in such a manner as to permit funding to proceed in an orderly fashion to fully utilize all allocated and appropriated funds.

Subp. 5. **Reimbursement project list.** The agency shall prepare a reimbursement project list that lists those municipalities that are willing to proceed with projects and are willing to be reimbursed in a subsequent year conditioned upon appropriation of sufficient money for that year. No municipality may be listed on the reimbursement project list unless the municipality has requested placement on the list and has received approval of the documents listed in subpart 2, item C. ~~The total cost of these reimbursement projects may not exceed the amount newly appropriated to the independent state grant program.~~ Reimbursement projects must be listed in the same order of priority as they appear on the municipal needs list. A reimbursement project may appear on both the reimbursement project list and the reserve project list.

7075.0411 PROJECT ELIGIBILITY.

Subpart 1. **Steps eligible.** Federal grants and state matching grants shall be awarded only for Step 2 + 3 and Step 3 projects. Advances of allowance for Step 1 and 2 projects may also be provided from federal funds. Independent state grants may be awarded for Step 1, Step 2, Step 2 + 3, and Step 3 projects. Financial assistance for combined sewer overflow abatement shall be awarded only for design and construction work.

Subp. 2. **General eligibility.** No project is eligible for a federal grant or a state matching grant unless it is eligible for funding under the act and applicable federal regulations. No project is eligible for an independent state grant unless it is eligible under this chapter and applicable state statutes. No municipality is eligible for state financial assistance for combined sewer overflow abatement projects unless the municipality complies with the conditions of *Minnesota Statutes*, section 116.162, subdivision 7.

Subp. 3. **Initiation of construction.** ~~A municipality is not eligible for a federal grant or a state matching grant if construction on the project has been initiated prior to the award of the grant.~~

A municipality may ~~be eligible for~~ retain eligibility of construction costs incurred prior to the award of an independent state grant ~~after initiation of construction, provided~~ that only if:

A. the municipality was listed on a reimbursement project list when construction began;

B. the municipality submitted a complete grant application to the agency within 90 days after adoption or revision of the reimbursement project list; and

C. the municipality obtained written permission from the agency to advertise for bids and initiate construction before those steps were taken.

Subp. 4. **Cost-effectiveness.** A project is not eligible for a grant unless the agency determines that the project is an environmentally acceptable cost-effective means of handling the municipality's wastewater. The agency shall not award a grant to pay for those portions of a project that are not environmentally acceptable and cost-effective.

Subp. 5. **Eligible costs.** The following provisions govern eligible costs:

A. The eligible cost of any project for which a grant or state financial assistance will be awarded shall be determined by the application of applicable state and federal statutes and rules.

B. In addition to other eligible costs established by state law for combined sewer overflow abatement projects, storm water conveyance facilities that are part of the most cost effective alternative for combined sewer overflow abatement shall be eligible for state financial assistance. Such facilities shall include those structures, pipes, and appurtenances from the point of entry at the catch basin to the outlet structure which are necessary to convey up to the five-year storm.

7075.0428 GRANT AMOUNTS.

Subpart 1. **State matching grants.** This subpart applies to state matching grants.

A. For projects tendered on or after October 1, 1984, and before October 1, 1987, a federal grant at 55 percent or more of the eligible cost for construction of a treatment works, the agency shall award a state matching grant for up to an additional 30 percent of the eligible cost if construction of the treatment works would otherwise impose a significant financial hardship on the municipality.

B. For projects tendered, on or after October 1, 1987, a federal grant at 55 percent or more of the eligible cost for construction of a treatment works, the agency shall award a state matching grant for 50 percent of the nonfederal share of the eligible cost of construction for municipalities with populations of 25,000 or less.

Subp. 2. **Independent state grants.** The agency may award independent state grants as follows:

A. The agency may award Step 1 and Step 2 independent state grants to municipalities in an amount determined according to the same procedures for calculating an allowance under Code of Federal Regulations, title 40, part 35, appendix B.

B. The agency may award Step 2 + 3 and Step 3 independent state grants to municipalities to pay for 50 percent of the eligible cost of construction, or, if the ~~agency requires and the municipality is constructing advanced treatment, 65~~ population of the municipality is 25,000 or less, 80 percent of the eligible cost of construction. ~~If construction of a treatment works would otherwise impose a significant financial hardship on a municipality, the agency may award an independent state grant to pay for up to an additional 30 percent of the eligible cost of construction, or if the agency requires and the municipality is constructing advanced treatment, an additional 25 percent of the eligible cost of construction.~~

Subp. 2a. and 3. [Unchanged.]

Subp. 4. **Significant financial hardship.** The amount of a state matching grant awarded to a municipality which was awarded a federal grant after October 1, 1984, ~~and the amount of a supplemental independent state grant awarded to a municipality~~ and before October 1, 1987, depends on the extent to which construction of the treatment works imposes a significant financial hardship on the municipality. The determination of the financial hardship and the amount of the grant must be based on per connection capital cost, median household income, and per capita adjusted assessed valuation, in accordance with the following procedures:

A. The agency shall award a state matching grant ~~or independent state grant~~ for up to five percent of the eligible cost of construction based on the municipality's per connection capital cost after bidding compared with the median per connection capital cost for all projects which accepted bids under the programs during the two years ending July 1 prior to adoption of the municipal

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project list on which the municipality appears. The percentage of the eligible cost to be paid for by the grant based on per connection capital cost is determined by the following table.

Municipality Per Connection Cost × 100 ÷ Median Per Connection Cost of Projects Bid During Previous Two Years	Percentage of Cost Funded
60 - 69	0.5
70 - 79	1.0
80 - 89	1.5
90 - 99	2.0
100 - 119	2.5
120 - 139	3.0
140 - 159	3.5
160 - 179	4.0
180 - 199	4.5
200 or more	5.0

B. The agency shall award a state matching grant ~~or independent state grant~~ for up to five percent of the eligible cost of construction based on the municipality's median household income compared with the state median nonmetropolitan household income. Median household income must be determined from the latest federal census. The percentage of the eligible cost to be paid for by the grant based on median household income is determined by the following table.

Municipality Median Household Income × 100 ÷ State Median Nonmetropolitan Household Income	Percentage of Cost Funded
100 - 104	0.5
95 - 100	1.0
90 - 94	1.5
85 - 89	2.0
80 - 84	2.5
75 - 79	3.0
70 - 74	3.5
65 - 69	4.0
60 - 64	4.5
less than 60	5.0

C. The agency shall award a state matching grant ~~or independent state grant~~ for up to five percent of the eligible cost of construction based on the municipality's per capita adjusted assessed valuation compared with the state median per capita adjusted assessed valuation. Per capita adjusted assessed valuation must be determined from the latest data available from the Department of Revenue at the time of the grant award. The percentage of the eligible cost to be paid for by the grant based on the per capita adjusted assessed valuation is determined by the following table.

Municipality Per Capita Adjusted Assessed Valuation × 100 ÷ State Median Per Capita Adjusted Assessed Valuation	Percentage of Cost Funded
105 - 109	0.5
100 - 104	1.0
95 - 99	1.5
90 - 94	2.0
85 - 89	2.5
80 - 84	3.0
75 - 79	3.5
70 - 74	4.0
65 - 69	4.5
less than 65	5.0

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 amendments to Minn. Rules pts. 7075.0409, 7075.0411 and 7075.0428 as published in Volume 13, Number 20, State Register, pages 1181-1184 (November 14, 1988) pursuant to the authority vested in the Agency by Minn. Stat. §116.16, subd. 5(a) (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 perform the necessary acts to provide that the rule shall have the force and effect of law.

IN WITNESS WHEREOF, I have hereunto subscribed my name this 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 Revision to Minnesota Rules Governing the Administration of the Municipal Project List, Project Eligibility, and Grant Amounts Related to the Administration of Federal Grant Funds and State Grant and Loan Funds for Municipal Wastewater Treatment Projects Minnesota Rules, Part 7075.0409, 7075.0411 and 7075.0428

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 one written comment from Terry Kuhlman, executive director of the Minnesota Public Facilities Authority (Authority). He requested the change from "Agency" to "Authority" whenever the grant rules, relating to independent state grants, provide that the Agency shall award grants. He has suggested this change so that the grant rules conform to the 1987 legislative changes to Minn. Stat. §116.16, subd. 9, which transferred the authority to award certain grants and loans from the Agency to the Authority.

The grant award process is identified throughout Minn. Rules ch. 7075. Therefore, ch. 7075 would be rendered inconsistent if these changes are only made to the three parts currently open for revision. Since the statute supersedes conflicting rules, the suggested changes in the Agency's grant rules are not necessary at this time and can be made at a later date. Agency staff are currently carrying out the statutory requirements by assisting the Authority with the award process. The Agency will make these rule revisions when they can be made uniformly throughout ch. 7075, which can be done in the spring of 1989 when the staff intends to propose more extensive revision to this chapter of Minnesota rules.

The Agency finds that no modifications to the proposed rules are justified by the record in this proceeding.

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

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

CONCLUSIONS

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

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

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

ORDER

NOW, THEREFORE, IT IS ORDERED, that the attached amendments to Minn. Rules pts. 7075.0409, 7075.0411 and 7075.0428, governing the administration of the Municipal Project List, project eligibility, and grant amounts related to the administration of federal grant funds and state grant and loan funds for municipal wastewater treatment projects, are adopted pursuant to the authority vested in the Minnesota Pollution Control Agency by Minn. Stat. §116.16, subd. 5(a) (1988).

MINNESOTA POLLUTION CONTROL AGENCY

Dated: 1-30-89

for Gerald L. Willet
Commissioner

Deputy

Minnesota Department of
Trade and Economic Development

Community Development Division

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

612/296-5005
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DEC 07 1988
M.P.C.A.
WATER QUALITY DIV.

December 7, 1988

Ms. Debora Olson
Minnesota Pollution Control Agency
520 Lafayette Road North
St. Paul, MN 55155

RE: Proposed Permanent Rules Relating to Municipal Wastewater Treatment Grants as Published in the State Register, Monday, 14 November 1988

Dear Ms. Olson:

I am writing in regards to the referenced rules, specifically 7075.0428, subparts 2A and 2B wherein it is stated that the agency (MPCA) may award step 1, 2 and 3 independent state grants to municipalities.

I would direct your attention to Minnesota Statute 116.16, subd. 9 (as amended 1987) wherein it states; ". . . and the Authority shall award grants on loans . . . ." The amendment made to the statute in 1987 by the legislature changes the above-referenced statute from ". . . and the agency (MPCA) shall award grants or loans . . . ."

Likewise, 116.16, subd. 11, also discusses the awarding of grants by the Authority.

Also, the Interagency Agreement signed by MPCA, DTED and the Authority in October, 1988, on page one states in part ". . . the Minnesota Public Facilities Authority (PFA) was created under Minn. Stat. Sec. 446A and given responsibility for awarding independent state grants to municipalities . . . ."

I therefore recommend that the referenced rules be changed to correctly state that it is the Minnesota Public Facilities Authority that awards independent state grants and emphasize MPCA's certification of projects.

Sincerely,

Terry Kuhlman

Terry Kuhlman, Executive Director
Public Facilities Authority

MBE:km
PFA.GEN/I22-1

Enclosure

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STATE OF MINNESOTA
POLLUTION CONTROL AGENCY

In the Matter of the Proposed Revision to Minnesota Rules Governing the Administration of the Municipal Project List, Project Eligibility, and Grant Amounts Related to the Administration of Federal Grant Funds and State Grant and Loan Funds for Municipal Wastewater Treatment Projects Minnesota Rules, Parts 7075.0409, 7075.0411 and 7075.0428

DECLARATION OF COUNSEL

I, Beverly Conerton, Special Assistant Attorney General, do hereby declare that I have examined the above-captioned rules and the supporting rulemaking record, and that based on my examination, the Administrative Procedure Act and Minnesota Rules ch. 2010 have been followed. For Attorney General billing purposes, the four-digit docket client code is 0703.

Beverly Conerton
Special Assistant
Attorney General