

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

STATE OF MINNESOTA
POLLUTION CONTROL AGENCY

In the Matter of the Proposed Rules
Relating to the Administration of
the Municipal Wastewater Treatment
Construction Program, Minnesota Rules,
chapters 7075 and 7077

DECLARATION OF COUNSEL

I, Stephen A. Shakman, 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 chapter 2010 have been followed. For Attorney General Billing purposes, the four-digit docket client code is 0698.

June 1, 1990

Stephen A. Shakman
Special Assistant
Attorney General

Minnesota Pollution Control Agency
520 Lafayette Road, Saint Paul, Minnesota 55155
Telephone (612) 296-6300

Celebrate MINNESOTA 1990

May 31, 1990

Ms. Patty Nolte
Assistant Attorney General
Office of the Attorney General
525 Park Street
Suite 500
St. Paul, Minnesota 55155

Re: In the Matter of Proposed Rules Relating to the Administration of the Municipal Wastewater Treatment Construction Program, Minnesota Rules chapters 7075 and 7077.

Dear Ms. Nolte:

On May 22, 1990, the Minnesota Pollution Control Agency adopted the above-captioned rules governing the financial assistance programs available to municipalities with an environmental need to construct or upgrade their wastewater treatment facilities. 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 (13 S.R. 2158-2159, March 6, 1989).

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

6. Certificate of Authorizing Resolution.

7. Notice of Intent to Adopt Rules Without a Public hearing and rules as proposed (14 S.R. 2084-2122, February 26, 1990).

8. Comments received during the comment period.

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

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

11. Administrative Law Judge Documents: Order for Hearing (February 1, 1990) and letter cancelling hearing (April 2, 1990).

12. Rules as proposed.

13. Statement of Need and Reasonableness.

14. Declaration of Counsel.

Sincerely,

Debbie Olson

Debbie Olson
Policy Analyst
Municipal Wastewater Treatment Section
Water Quality Division

DO/jmg

Department of Health

Office of Health Systems Development

Notice of Intent to Solicit Outside Opinions Concerning a Request for a Waiver of HMO Statutes and Rules by Group Health Inc.

NOTICE IS HEREBY GIVEN that the Department of Health is seeking opinions and comments pertaining to a request by Group Health Inc. for a waiver of HMO statutes and rules relating to mental health and chemical dependency services, services for TMJ, craniomandubular disorder, cleft lip and cleft palate, and full financial risk. The proposal also includes a maximum of $10,000 in coverage annually for each enrollee. Such waivers are authorized for demonstration projects by *Minnesota Statutes* 62D.30. These waivers are proposed in relation to a demonstration project whereby Group Health Inc., Fairview Hospitals and Carondelet Community Hospitals would deliver and finance health care services on a transitional basis, for up to two years, to needy individuals without health insurance. Catholic Charities and Lutheran Social Services would perform intake and screening functions.

Under the proposal, enrollees would be notified of the time limited nature of the program and no replacement coverage would be offered. Payment would be on a sliding scale basis.

The request submitted by Group Health is available for inspection during normal business hours at the following location:

Alternative Delivery Systems
Room 450
Minnesota Department of Health
717 Delaware Street S.E.
Minneapolis, Minnesota
(612) 623-5365

Comments on the request must be received by March 16, 1989.

The Office of the Ombudsman for Mental Health and Mental Retardation

Notice of Meeting

The Ombudsman for Mental Health and Mental Retardation Advisory Committee will conduct a general meeting at 9:00 a.m. on Friday, March 10, 1989. The meeting will be held at the Ombudsman Office, Suite 202, Metro Square Building on 7th and Robert Street, St. Paul.

Minnesota Pollution Control Agency

Division of Water Quality

Outside Information Sought Regarding Amendment of Rules Governing the Municipal Wastewater Construction Grant and Loan Programs (*Minnesota Rules* Chapter 7075)

NOTICE IS HEREBY GIVEN that the Minnesota Pollution Control Agency (Agency) is seeking information and opinions from sources outside the agency to assist in the preparation of proposed amendments to the rules governing the administration of state municipal wastewater construction grant and loan programs. These rules are found in *Minnesota Rules* Chapter 7075. Amendments are needed to create state specific rules to be used after the federal Construction Grants Program ends on July 1, 1990. The amendment of this chapter is authorized by *Minnesota Statutes* sec. 115.03, subd. 1(g) (1988), which allows the Agency to prescribe and alter rules concerning pollution of Minnesota waters.

The Agency requests information and opinions concerning the subject matter of the rules. Interested persons or groups may submit data or views in writing or orally. Written or oral statements or comments should be directed to:

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

Oral statements will be received during regular business hours, 8 a.m. to 4:30 p.m., Monday through Friday. Copies of *Minnesota Rule* Chapter 7075 are also available from Ms. Olson.

All statements of information and opinion will be accepted until June 5, 1989. Any written materials received by the Agency shall become part of the rulemaking record in the event that the rule is amended.

Notice—Pollution Control Agency continued on page 2183

Gerald L. Willet
Commissioner

Teachers Retirement Association

Notice of Regular Meeting

The Board of Trustees, Minnesota Teachers Retirement Association will hold a meeting on Wednesday, March 8, 1989 at 9:30 a.m. in Suite 500, Gallery Building, 17 West Exchange Street, St. Paul, MN to consider matters which may properly come before the Board.

Department of Trade and Economic Development

Community Development Division

Comments Sought on the Proposed Final Statement for the 1989 Small Cities Community Development Block Grant Program

NOTICE IS HEREBY GIVEN that the Department of Trade and Economic Development, Community Development Division, is seeking comments or opinions from sources outside the agency in preparing to submit the Final Statement for the 1989 Small Cities Community Development Block Grant (CDBG) Program. The 1989 Final Statement will be submitted to the U.S. Department of Housing and Urban Development by March 31, 1989.

The State of Minnesota anticipates an allocation of $18,308,000.

The 1989 Final Statement will consist of the Administrative Rules Governing the Community Development Block Grant Program, which are found in *Minnesota Rules*, Chapter 4300, and were published, as adopted, in the *State Register* on September 17, 1984 (9 S.R. 602-611); a description of the use of funds in the 1988 grant program; an assessment of the use of funds in the 1988 grant program in relation to the community development objectives in the Rules and to the requirements of section 104(G)(3) of the U.S. Housing and Community Development Act, as amended by the U.S. Housing and Community Development Act of 1974, as amended by the U.S. Housing and Urban Rural Recovery Act of 1983 (P.L. 98-181).

The Minnesota Department of Trade and Economic Developement, Community Development Division, requests comments or opinions concerning proposed use of grant funds. Interested or affected persons, groups, or units of general purpose local government may submit statements or comments orally or in writing. Written statements should be addressed to:

Louis Jambois
Community Development Division
Minnesota Department of Trade and Economic Development
8th Floor, American Center Building
150 East Kellogg Boulevard
St. Paul, MN 55101

A public hearing will be conducted by the Division of Community Development on March 13, 1989 at 1:00 p.m. in Conference Room 10, 8th Floor American Center Building. Oral statements will also be received during regular business hours over the telephone at (612) 297-3172 or in person at the above address until 4:30 p.m. on March 13, 1989.

Final Statement as Proposed

Federal fiscal year 1989 Community Development Block Grant funds made available to the State for distribution to nonentitlement areas will be distributed in accordance with administrative rules adopted in Chapter 4300. These rules are the same as those under which fiscal year 1988 funds were administered. The text of said rules is as follows:

CHAPTER 4300
COMMUNITY BLOCK GRANTS

4300.0100. Definitions

Subp. 1. Scope. As used in this chapter, the following terms have the meanings given them:

Outside

SUMMARY OF COMMENTS RECEIVED DURING SOLICITATION OF OUTSIDE OPINIONS

COMMENTS RECEIVED DURING COMMENT PERIOD NOTICED IN THE STATE REGISTER ON MARCH 6, 1989 AND ENDING ON JUNE 5, 1989:

FROM:	ITEM:
City of Winton letter dated 1/21/88 Ann Jackson	1) 7075.0430: 80 percent stop payment point in subpart 5 creates a financial hardship for the city that has a state independent grant. Request state program to mirror federal stop payment of 90 percent with option to reimburse up to 99 percent.
Long Prairie letter dated 4/24/89 David Venekamp	1) 7075.0429: Stop payment at 50 percent and holding 50 percent for step 3 state matching grants to federal funds creates a financial hardship. Withheld funds should be reduced to 5-10 percent once project is completed.
Battle Lake phone conversation on 4/11/89 with Herman Borg	1) A coordinator is needed for each project to corrdinate all the "expertise" people, which will create a team effort and improve communication at the MPCA and with the grantee. 2) Changes are needed to improve the timeliness of paperwork. 3) The 50 percent withholding of matching state grant funds should be changed to a schedule of stop payments, like the federal program uses. The schedule of stop payments will help the grantee by identifying requirements and deadlines. A 10 percent withholding of matching state funds will reduce the extreme financial burden currently imposed by the 50 percent withholding.
City of Minneota letter dated 5/19/89 Betty Fier	1) The Community Assistance Program (Marshall) is helpful to cities and the practice of feasibility studies is a potential way for saving money. 2) Regional offices should be staffed with personnel who can assist with the administration of paperwork involved in a grant. This would save the cost of having the engineering firm doing this paperwork.
Center City letter dated 6/2/89 Mark Wolcott	1) Keep same staff person on project from start to finish. 2) Re-examine definition of grant eligible interceptor lines. Definition should include "any line servicing more than one entity is defined as an interceptor." 3) Be sure all communities involved in a multi-community projects receive the same information about the program. 4) Continue efforts to provide supplemental grants to those projects funded at levels lower than previous or subsequent recipients. 5) Examine Wisconsin's wastewater treatment program, which potentially operates more efficiently. 6) Encourage "in person" meetings between staff and affected local boards.

Chisago City letter dated 6/2/89 Mark Karnowski	1) 2) 3) 4) 5) 6)	Keep same staff person on project from start to finish. Revise definition of grant eligible interceptor lines to give consideration to multi-community projects. Extra effort should be given to communities involved in multi-community projects that do not have central collection facilities to be sure they have all needed information. Continue to provide supplemental grants to those entities whose projects were funded at less than the level of previous or subsequent grantees. Examine Wisconsin's program. Make every effort to assure grant payments to the recipients are made within a consistent time frame to allow the grantees to work with a cash flow chart.

INDIVIDUAL ON-SITE SYSTEMS GRANTS PROGRAM

Gary letter dated 6/2/89 Harold Natwick, Mayor	1)	Include inspector, site evaluator and designer as grant eligible costs or increase the overall percentage of grant assistance.
Cass County letter dated 6/5/89 Housing/Redevelopment Authority	1)	Include 100 percent of the actual eligible costs for very low income, poverty level elderly.

City of Winton

P.O. BOX 163
WINTON, MINNESOTA 55796

January 21, 1988

RECEIVED
JAN 22 1988
M.P.C.A.
WATER QUALITY DIV.

Ms. Sharon Myers
Minnesota Pollution Control Agency
520 Lafayette Road
St. Paul, Minnesota 55155

Dear Ms. Myers:

The City of Winton is writing in regard to the MPCA rule 7075.0430, subpart 5 which states that a cap shall be put on grant payments at the 80% level for those cities having an independent state wastewater construction grant. The remaining 20% of the grant is to be paid when the constructed facility is proved to be operating properly and efficiently. This final payment will be at least a minimum of one year from the start-up date of the facility; however, the City must still be financially responsible for any construction invoices occurring during this period.

The City of Winton feels that this rule places a financial hardship on cities having an independent state grant which cities having a combination federal/state grant do not have. It is our understanding that federal grants are not capped until the 90% level is reached and, further, that the MPCA also has the power to approve up to 99% of the grant payments if all operating requirements are met satisfactorily during the testing year. It is a difficult financial task for a small City such as Winton to bear the local share construction costs, provide for interim financing while waiting for reimbursements, and still plan for the time when the 80% cap is placed on the funding.

We have been notified that the MPCA Board is going to be reviewing this agency rule. We are, therefore, asking that the Board seriously consider changing the state grant program with regard to the 80% cap to mirror the federal program. This would be a great help to alleviate some of the financial hardship that this construction has imposed upon the City of Winton.

Thank you for your assistance and consideration.

Sincerely yours,

Anne Jackson

Anne Jackson
Winton City Clerk

cc: Mary James, MPCA project manager

CITY OF
LONG PRAIRIE

612-732-2167

42 THIRD STREET NORTH

LONG PRAIRIE, MN 56347

April 24, 1989

Debbie Olson
Policy Analyst
Minnesota Pollution Control Agency
520 Lafayette Road
St. Paul, Minnesota 55155

Dear Ms. Olson,

I am writing in response to the proposed revision of the state Independent Grants Program (Minn. Rules Chapter 7075). The City of Long Prairie is in the process of expanding their wastewater treatment facilities with the assistance of grants from the Environmental Protection Administration (EPA) and the Minnesota Pollution Control Agency (MPCA). State rules section 7075:0429 subpart 5 allow MPCA to withhold 50% of the state grant funds for a period of one year from the project's completion. The purpose of this letter is to ask MPCA to consider a change in the amount of state funds it retains on present grant projects. The City of Long Prairie proposes the 50% retention be reduced to 5% - 10% once projects are completed. This is the same percentage of withheld funds under the EPA guidelines.

Long Prairie's state grant is estimated at approximately $517,000.00. Under current state rules, one-half of the $517,000.00 ($258,000.00) will be withheld from the city until one year from the date of project completion. The capitalized interest costs the city will have to pay because these funds are withheld is approximately $25,000 to $35,000.

Though this grant cycle is ending, many cities throughout the state have a large amount of their funds withheld pending approval of their project. The capitalized interest costs simply add to the cost of the total project. Reducing the percentage of withheld funds, also reduces the city's overall costs to the taxpayers and users of the wastewater system.

MPCA's efforts in changing the rules would be greatly appreciated.

If you should have any questions concerning this letter please contact me.

Sincerely yours,

David Venekamp

David Venekamp
City Administrator/Clerk

RECEIVED
APR 26 1989
M.P.C.A.
WATER QUALITY DIV.

SF-00006-04

DEPARTMENT : Minnesota Pollution Control Agency

STATE OF MINNESOTA
Memorandum

PHONE : 296-7223

DATE : April 12, 1989

TO : Herman Borg
Battle Lake City Clerk

FROM : Debbie Olson
Municipal Wastewater Treatment Section
Water Quality Division

SUBJECT : **4/11/89 phone conversation**
Recommendations for improving
Minn. Rules Chapter 7075

Herman Borg, City Clerk of Battle Lake, called me on April 11, 1989 in response to an MPCA letter requesting recommendations for improving the municipal wastewater treatment construction grant program rules -- Minnesota Rules Chapter 7075.

Mr. Borg made the following recommendations during our phone conversation:

1. A coordinator is needed for each project to coordinate all the "expertise" people, which will create a team effort and improve communication at the MPCA and with the grantee.

2. Changes are needed to improve the timeliness of paperwork.

3. The 50 percent withholding of state grant funds should be changed to a schedule of stop payments, like the federal grants program uses, and a final withholding of 10 percent. The schedule of stop payments will help the grantee by identifying requirements and deadlines. A 10 percent withholding will reduce the extreme financial burden currently imposed by the 50 percent withholding.

This memo has been sent to Mr. Borg for his review.

129 East First Street

City of Minneota

Minneota, Minnesota 56264

(507) 872-6144

May 19, 1989

RECEIVED
MAY 22 1989
M.P.C.A.
WATER QUALITY DIV.

Debbie Olson, Policy Analyst
Municipal Wastewater Treatment Section
Division of Water Quality
520 Lafayette Road
St. Paul, Mn 55155

Dear Ms. Olson:

In response to your correspondence of April 4, 1989, soliciting opinions from municipalities that have administrated grants for wastewater treatment projects, I offer the following comments.

The City of Minneota is in the completion stage of their $2.3 million wastewater treatment project. Although the construction period was a trying time for all associated with the project, it was also a very challenging and valuable experience to have undergone.

With the elimination of the federal grant program, it is going to become very difficult for cities to own and operate an approved municipal wastewater treatment facility.

In the City of Minneota the cost of our treatment facility is more than 1/2 of the assessed value of the entire City. This holds true for other cities as well. Of the 854 cities, approximately 790+ are 4th class cities (cities with populations of 2500 or less) and of the 4th class cities approximately 692+ have populations of 1500 or less.

In the City of Minneota, the sewer rates increased as much as 500% per quarter per household. Our sewer rates are based upon water useage and are $3.97/1,000 gallons. This amount reflects 80% of the debt service cost and operation and maintenance costs, the remaining 20% is collected through taxes.

I am presently serving on a Community Assistance Program for wastewater treatment facilities out of the Marshall MPCA Office. I see a group such as this playing a very viable part in the design and/or review of the facilities plan prior to submitting it to the state for their approval. A big cost savings could possibly be the cost of a feasibility study. We are all aware of the cost of constructing, owning and operating an approved facility plant and perhaps some foresight into the initial planning could eleviate some of the costs. The engineering costs for projects of this magnitude are not by any means minimal. Rather than having an engineering firm do the design from beginning to end, it

might be beneficial for the cities to have the assistance of a group such as the CAP group (perhaps in conjunction with the Public Facilities Authority), to help them assess their needs and solicit an engineering firm once the scope of the project has been determined. Often times, the first contact cities have is with an engineering firm and not being knowledgeable in the area of wastewater treatment, they are easily sold. Rather than the City purchasing from the engineering firm what they need, they purchase what the engineering firm wants to sell.

What I see happening is that in order to be in compliance, cities are being forced into spending astronomical amounts of money and creating high user fees and/or increased taxes to cover their portion of the cost of the project. There are cities that are virtually "bedroom" cities that are being required to construct expensive systems to treat wastewater. In some cases, cities cannot really afford to accept a grant and/or grant/loan package.

With the elimination of the federal grant program, perhaps now is the time to exercise some innovative methods of dealing with the construction of the wastewater treatment facilities. We need to help cities to help themselves, helping cities to do for themselves what they would otherwise wait for someone else to do for them.

As far as the administration of the grant goes, I would like to see the regional MPCA offices staffed with personnel who can assist in this area. This is another area that would save cities money on the part of the engineering firm, as often times the engineering firms will include the paperwork, i.e., MWBE reporting, quarterly reporting, EPA request forms, etc., into their costs. These are items that the cities, with a bit of assistance on the local level, could handle themselves. I feel that it is important for cities to become as involved as they possibly can in these projects and I have sighted only a few of the areas in which this could be realized. Although there is staff available through the St. Paul Office, I feel it is vital that staff be made available on the regional level as well, if for no other reason than for accessibility.

In terms of the actual administration of the grant, while some of the requirements seemed stringent, and the paperwork and documentation seemed astronomical, at no time during our project did I ever feel that it was in vain. A wastewater treatment facility is the biggest investment that most of the cities will ever make and I feel that it is imperative that cities follow their projects from beginning to end and understand how their system will actually function.

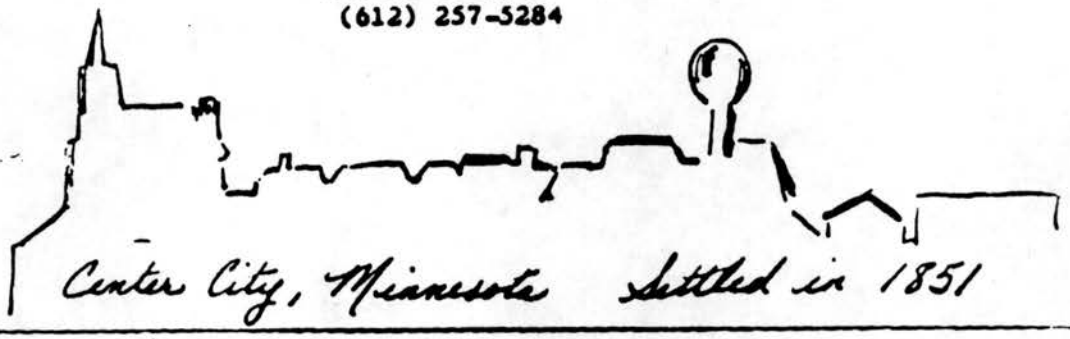
Sincerely,

Betty J.

Betty J. Fier
Clerk/Administrator
City of Minneota

Mayor: John Moody
Council: Mark Wolcott
Ron Elmquist
Ken Law
Connie Campbell
Clerk: Teish Caliguire

CITY OF CENTER CITY
MUNICIPAL OFFICES
P.O. BOX 245
CENTER CITY, MN 55012
(612) 257-5284



To: Debbie Olson, Policy Analyst
Municipal Wastewater Treatment Section
Division of Water Quality
MN PCA
520 Lafayette Road
St. Paul, MN 55155

June 2nd, 1989

From: Mark Wolcott, City of Center City

RE: Suggestions for MPCA Program Revisions

1. As much as possible, keep the same staff people in the same positions with a project from start to finish. Much time is lost when the staff goes through "musical chairs" and a new person has to review the former one's files and get familiar with the project. (There has been some improvement in this regard).

2. Re-examine your definition of grant eligible interceptor lines, particularly in regards to multi-community projects. Such projects can possibly be more cost-effective through fewer and larger plants being built, but the definition of interceptor requiring 90% of the sewage to be in the line can create confusion, friction and/or hardships where a line must be built through one community to include others in the project, which communities actually would have 100% of flow in a non-grant eligible line.
Perhaps a definition that says "any line servicing more than one entity is defined as an interceptor" (?)
(Just from curiosity, did all of the Mpls./St. Paul sewer lines built as part of the sewer seperation program and subsequently loan forgiven handle 90% of the sewage from those communities?)

3. Also, in regards to multi-community projects, make an extra effort to see that all communities proposed to be involved receive the same information about the program. Especially where townships and/or county governments are suggested for involvement, recognize that they are not customarily "in the sewer business" and may need extra time or information to properly make fairly far-reaching decisions. (Again, over time there has been some improvement noticed in this area).

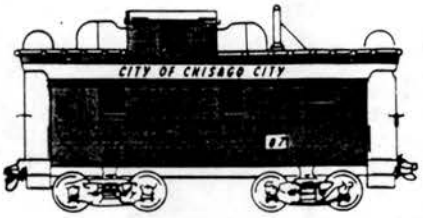
4. Continue efforts to provide supplemental grants to those projects funded at levels lower than previous or subsequent recipients.

5. Examine Wisconsin's program for improving wastewater treatment. Lying close to the state line as we do, we occasionally cross paths with the local officials from nearby Wisconsin towns. The impression is given that their projects move faster and smoother than here.

6. Encourage "in person" meetings between staff and affected local boards. Face to face meetings resolve issues more rapidly and clearly than telephone and or letter exchanges. Also, everyone can hear the same thing at the same time.

Sincerely,
Mark Wolcott

Mark Wolcott, City Council
City of Center City, MN



CITY OF

Chisago City

"Gateway to the Chisago Lakes Area"

MAYOR
Bob Gustafson
COUNCILMEN
Larry Giese
Charles Gramling
Randal Johnson
Greg House
ADMINISTRATIVE CLERK
Mark Karnowski

M E M O R A N D U M

Date: June 2, 1989
To: Debbie Olson, MPCA
From: Commissioner Mark Karnowski,
Chisago Lakes Joint Wastewater Treatment Commission
Re: Minnesota Rules, Chapter 7075

Your agency recently requested outside opinions regarding ways to improve the rules for the State Independent Grants Program. The following ideas were submitted by various members of our joint powers group:

1. Although the situation has improved somewhat, it would be helpful if PCA staff assigned to a particular project followed the project from start to finish.

2. Your definition of grant eligible interceptor lines should be revised to give additional consideration to multi-community projects. The current definition of an interceptor discounts the grant eligibility of lines constructed through communities to service neighboring towns. We suggest an alteration in the definition that would add a definition of an interceptor as, "any line servicing more than one entity".

3. in the case of multi-community projects, extra effort should be given to entities without any central collection facilities to make sure they have the necessary information to make the far-reaching decisions.

4. Continue to provide supplemental grants to those entities whose projects were funded at less than the level of previous or subsequent grantees.

5. Examine the process for wastewater treatment facilities used in our neighboring state of Wisconsin. Discussions with our neighbors to the east have left an impression that their funding and construction processes move faster and smoother than ours.

6. Every effort should be made to assure grant payments to the recipients are made within a consistent time frame to allow the grantees to work with a cash flow chart. The CLJSTC has had to borrow funds on a short term basis to make payments we anticipated would be made from grant funds that did not arrive as expected.

JUN 0 8 1989
M.P.C.A.
WATER QUALITY DIV.

BOX 256 29246 OLD TOWNE ROAD ZIP 55013 (612) 257-6578

City of Gary

Norman County

GARY, MINNESOTA 56545

Community Development Division
JUN 7 1989

June 2, 1989

Milan Thoreson
Minnesota Public Facilities Authority
Minnesota Department of Trade and Economic Development
Community Development Division
900 American center Building
150 East Kellogg Boulevard
St. Paul, Minnesota 55101-1421

COMMENT ON

re: On-Site Wastewater Treatment Systems Grants Program
City of Gary
Gary, Minnesota 56545

Dear Mr. Thoreson,

Enclosed is a grant application from the City of Gary for the On-Site Wastewater Treatment systems Grants Program. Please note that while the grant rules call for the adoption of certain ordinance requirements the City feels it would be placed in a catch 22 situation if adoption is completed before there is assurance that the grant will be approved. We are aware that the grant Checklist requires this information and are prepared to approve and adopt when needed.

The remainder of the necessary materials are enclosed and referenced as required. Please review the application and if you have any questions please do not hesitate to contact me.

There is little doubt that something needs to be done in our community to rectify our sewage problems. While a 50% construction grant will help, I urge you to consider the inclusion of inspector, site evaluator, and designer as grant eligible costs. All are integral costs to the construction process. And, if that is not possible then an increase in the overall percentage would be in order.

Consider the above and accept the City of gary's application for the On-Site Wastewater Treatment Systems Grants Program. With kindest personal regards.

Sincerely,

Harold Natwick, Mayor
City of gary

SOLICITATION OF COMMENTS FOR REVISING CHAPTER 7075 RULES

The federal program for appropriating funds for the construction of municipal wastewater treatment plants is being sunsetted in 1990. Thus, rules for a state program need to be promulgated. We have filed notice of intent to solicit outside opinion in the state register and are now soliciting comments from within the agency for revising Chapter 7075. We are also identifying problems with the existing program.

In the space below and using Chapter 7075 Rules as a guide, please write specific suggestions for improving the existing rules. Cite the subdivision and/or part of the rule referred to and explain why changes are needed. List specific wording in subparts if you are referring to specific wording. Conversely, if you believe a section is particularly effective as it is currently written, please cite the section and justify.

Because we expect a substantial number of responses, please help us track comments by citing one section number and corresponding comments per form. For more information, contact Debbie Olson at 6-7223. The response deadline is 4/1/89.

NAME: CASS COUNTY HRA
PHONE: 218 947 3993

RULE SECTION NUMBER: 7075.1470
SPECIFIC WORDING (IF APPLICABLE): AMOUNT OF THE GRANT AWARD

COMMENTS AND JUSTIFICATION FOR COMMENTS:

INCLUDE;

100 PERCENT OF THE ACTUAL ELIGIBLE COSTS FOR VERY LOW INCOME, POVERTY LEVEL ELDERLY

(3300 HOUSEHOLDS UNDER $9,999. ANNUAL INCOMES, 50% ELDERLY)

Minnesota Pollution Control Agency
520 Lafayette Road, Saint Paul, Minnesota 55155
Telephone (612) 296-6300

Celebrate MINNESOTA 1990

May 31, 1990

Ms. Patty Nolte
Assistant Attorney General
Office of the Attorney General
525 Park Street
Suite 500
St. Paul, Minnesota 55155

Re: In the Matter of Proposed Rules Relating to the Administration of the Municipal Wastewater Treatment Construction Program, Minnesota Rules chapters 7075 and 7077.

Dear Ms. Nolte:

On May 22, 1990, the Minnesota Pollution Control Agency adopted the above-captioned rules governing the financial assistance programs available to municipalities with an environmental need to construct or upgrade their wastewater treatment facilities. Enclosed for your review are the following:

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11. Administrative Law Judge Documents: Order for Hearing (February 1, 1990) and letter cancelling hearing (April 2, 1990).

12. Rules as proposed.

13. Statement of Need and Reasonableness.

14. Declaration of Counsel.

Sincerely,

Debbie Olson

Debbie Olson
Policy Analyst
Municipal Wastewater Treatment Section
Water Quality Division

DO/jmg

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 19th day of December, 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 Commissioner of the Minnesota Pollution Control Agency (Agency) is hereby granted the authority to sign and to give notice of the Agency's intent to adopt, without a public hearing, the attached rules, Minn. Rules pts. 7075.6000 to 7075.6405, to all persons who have registered their names with the Agency for that purpose and to publish the notice and the rules in the State Register, and to perform any acts incidental thereto, including making any form changes in the rules that the Revisor of Statutes requires the Agency to make in order to obtain the Revisor's certification as required by Minn. Stat. §14.07, subd. 2 (1986).

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

IN WITNESS WHEREOF, I have hereunto subscribed my name this 19 day of December, 1989.

Gerald L. Willet

Gerald L. Willet
Commissioner

Office of the Revisor of Statutes
Administrative Rules

Carla M. Riehle
Assistant Revisor
297-2948

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

June 20, 1990

Ms. Debbie Olson
Municipal Wastewater Treatment Section
Pollution Control Agency
520 Lafayette Road

RE: File No. 1626

Dear Debbie:

I have approved your rules adopted without a public hearing, and am enclosing a copy of these rules for your records.

I have also delivered two copies of these rules to the Attorney General for approval. If they are approved, the Attorney General will file two copies of the approved rules with the Secretary of State. The Secretary of State will then notify me of that fact.

After I am notified that the rules are filed with the Secretary of State, I will prepare three copies of a notice of adoption for you.

If you have any questions, please call me.

Very truly yours,

Carla M. Riehle

Pollution Control Agency

Adopted Permanent Rules Relating to Municipal Wastewater Treatment Construction Assistance Programs

Rules as Adopted

7075.0100 PURPOSE.

This chapter provides for the administration of grants awarded under the federal construction grant program~~, the independent state construction grant program~~, and the state matching ~~construction~~ grant program~~, the state loan program for the construction of municipal disposal systems~~. This chapter also provides for the administration of grants awarded before July 1, 1990, under the state independent grants program and the state financial assistance program for combined sewer overflow abatement. ~~It applies to grants and loans awarded before July 1, 1990.~~

7077.0100 PURPOSE.

Parts 7077.0100 to ~~7077.0330~~ 7077.2010 provide for the administration of the financial assistance programs for the construction of municipal wastewater treatment facilities ~~and~~. Parts 7077.0200 to 7077.0330 apply to state independent grants and ~~loans~~ financial assistance for combined sewer overflow abatement awarded on or after July 1, 1990. Chapter 7075 applies to awards made under these programs before July 1, 1990. Parts 7077.0400 to 7077.0765 apply to funds awarded at any time. ~~Chapter 7075 applies to grants and loans awarded before July 1, 1990.~~ The programs in chapter 7077 consist of the state independent grants program, parts 7077.0200 to 7077.0265; the combined sewer overflow abatement program, parts 7077.0300 to 7077.0330; and the water pollution control revolving fund program, parts 7077.0400 to 7077.0445. The state independent grants program includes three set-aside programs:

A. the corrective action grants program, parts 7077.0500 to 7077.0560;

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B. the capital cost component grants program, parts 7077.0600 to 7077.0660; and

C. the individual on-site wastewater treatment systems grants program, parts 7077.0700 to 7077.0765.

7077.0105 DEFINITIONS.

Subpart 1. **Scope.** For the purposes of chapter 7077, the terms defined in this part and in Minnesota Statutes, chapters 115 and 116, have the meanings given them.

Subp. 2. **Act.** "Act" means the Federal Water Pollution Control Act, United States Code, title 33, sections 1251 et seq.

Subp. 3. **Adequate errors and omissions insurance.** "Adequate errors and omissions insurance" means an insurance policy that provides the minimum amount of coverage for the corresponding estimated project construction cost, as determined from the following table, and that is maintained for a minimum of two years after initiation of operation of the project.

Estimated project construction cost	Minimum amount of coverage
less than $1,000,000	$250,000
$1,000,000 to $2,999,999	$500,000
$3,000,000 to $9,999,999	$1,000,000
$10,000,000 or over	$2,000,000

Subp. 4. **Adverse impact.** "Adverse impact" means the violation of a water quality standard, according to chapter 7050; an objectionable growth of weeds, algae, or rough fish; or a deleterious effect on the physical, chemical, or biological condition of the receiving water that lessens the present or long-term uses of the receiving water.

Subp. 5. **Agency.** "Agency" means the Minnesota Pollution Control Agency.

Subp. 6. **Authority.** "Authority" means the Minnesota Public Facilities Authority.

Subp. 7. **Average dry weather flow.** "Average dry weather flow" means the daily average flow when the groundwater is at or near normal and a runoff condition is not occurring.

Subp. 8. **Average wet weather flow.** "Average wet weather flow" means the daily average flow for the wettest 30

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consecutive days for mechanical facilities or for the wettest 180 consecutive days for controlled discharge pond systems. The 180 consecutive days for pond systems must be based on either the storage period from approximately November 15 through May 15 or the storage period from approximately May 15 through November 15.

Subp. 9. **Budget period.** "Budget period" means the period of time approved by the commissioner during which a municipality may incur reimbursable costs.

Subp. 10. **Commissioner.** "Commissioner" means the commissioner of the Minnesota Pollution Control Agency.

Subp. 11. **Debt charge.** "Debt charge" means the charge levied on users of a wastewater treatment facility for the user's share of the local capital costs of construction of the facility.

Subp. 12. **Excessive infiltration.** "Excessive infiltration" means the quantity of flow which is more than 120 gallons per capita per day (domestic base flow and infiltration) or the quantity of infiltration which can be economically and effectively eliminated from a sewer system as determined through a cost effectiveness analysis.

Subp. 13. **Excessive inflow.** "Excessive inflow" means the maximum total flow rate during storm events that results in chronic operational problems related to hydraulic overloading of the treatment facility or that results in a total flow of more than 275 gallons per capita per day (domestic base flow plus infiltration plus inflow). Chronic operational problems may include surcharging, backups, bypasses, and overflows.

Subp. 14. **Facilities plan.** "Facilities plan" means the plans and studies necessary to determine wastewater treatment needs of a project service area, to systematically evaluate wastewater treatment alternatives that will result in compliance with enforceable water quality standards, and to identify the cost-effective implementable alternative.

Subp. 15. **Fiscal year.** "Fiscal year" means the state fiscal year which begins July 1 and ends the following June 30.

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Subp. 16. **Flow equalization system.** "Flow equalization system" means a containment system such as a pond, basin, or tank designed to temporarily hold wet weather flow until the flow can be transported to a wastewater treatment facility. A flow equalization system is a type of sewer system rehabilitation project.

Subp. 17. **Infiltration.** "Infiltration" means water other than wastewater that enters a sewer system (including sewer service connections and foundation drains) from the ground through defective pipes, pipe joints, connections, or manholes. Infiltration does not include, and is distinguished from, inflow.

Subp. 18. **Inflow.** "Inflow" means water other than wastewater that enters a sewer system (including sewer service connections) from sources such as, but not limited to, roof leaders, cellar drains, yard drains, area drains, drains from springs and swampy areas, manhole covers, cross connections between storm sewers and sanitary sewers, catch basins, cooling towers, storm waters, surface runoff, street wash waters, or drainage. Inflow does not include, and is distinguished from, infiltration.

Subp. 19. **Intended use plan.** "Intended use plan" means the document prepared annually by the agency according to the requirements in Title VI of the act and submitted to the United States Environmental Protection Agency. The plan will identify the intended uses of the amounts available to the water pollution control revolving fund, including a list of wastewater treatment projects and other eligible activities proposed to be funded during the fiscal year. Projects will be listed on the intended use plan in the order of their priority ranking on the municipal needs list.

Subp. 20. **Major contributing industry.** "Major contributing industry" means an industrial user of a treatment facility that:

A. has a rated flow of 50,000 gallons or more per work day where the rated flow is the daily design flow multiplied by 24 and divided by the actual hours of discharge in

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a day;

B. has a rated flow greater than five percent of the total design flow to the treatment works;

C. has a total organic load of greater than five percent of the total organic load to the treatment works;

D. has in its waste before pretreatment a toxic pollutant in excess of what may be discharged to waters of the state, according to chapter 7050; or

E. is found by the agency in connection with the issuance of an NPDES/SDS permit to the municipality, either singly or in combination with other contributing industries, to interfere with the treatment plant's ability to meet effluent limitations, interfere with digester operation or biological unit process operation, impact the area required for sludge disposal, or increase sizing of the facility by five percent or more.

Subp. 21. **Major interceptor sewer.** "Major interceptor sewer" means a sewer, including related lift stations, that intercepts wastewater from the final point in a collector sewer of a municipality and transports the wastewater directly to a wastewater treatment facility, to another major interceptor sewer, or to the collector sewer of another municipality. To be a major interceptor sewer, the average design flow of the sewer must not increase by more than ten percent between its origin and its termination, and physical connections to the sewer must be more than 1,000 feet apart. Infiltration and inflow directly to the sewer and flow from other major interceptor sewers is not included in determining whether the average design flow has increased by more than ten percent.

Subp. 22. **Maximum wet weather flow.** "Maximum wet weather flow" means one-seventh of the total maximum flow received during a seven-day period when the groundwater is high and a runoff condition is occurring.

Subp. 23. **Municipal needs list.** "Municipal needs list" means the priority list prepared by the commissioner under parts 7077.0115 to 7077.0145.

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Subp. 24. **Municipality.** "Municipality" means any county, city, town, the Metropolitan Waste Control Commission established in Minnesota Statutes, chapter 473, the Metropolitan Council when acting under that chapter, an Indian tribe or an authorized Indian tribal organization, or any other governmental subdivision of the state responsible by law for the prevention, control, and abatement of water pollution in any area of the state.

Subp. 25. **Need.** "Need" means a determination that a new or upgraded disposal system is currently required, or will be required within a five-year period to comply with chapter 7040, 7050, 7060, or 7080; provided the situation does not exist primarily due to inadequate operation and maintenance or to negligence on the part of any person.

Subp. 26. **NPDES/SDS permit.** "NPDES/SDS permit" means a National Pollutant Discharge Elimination System and State Disposal System permit issued by the agency that authorizes under certain conditions the discharge of pollutants to waters of the state and subsurface disposal or on-land disposal and the operation of a disposal system.

Subp. 27. **Operation and maintenance manual.** "Operation and maintenance manual" means a document developed to give treatment facility personnel the proper understanding, techniques, and references necessary to properly operate and maintain the treatment facility.

Subp. 28. **Outstanding resource value water.** "Outstanding resource value water" means those waters defined in part 7050.0180, subpart 2.

Subp. 29. **Peak hourly wet weather flow.** "Peak hourly wet weather flow" is the peak flow during the peak hour of the day at a time when the groundwater is high and a five-year one hour storm event is occurring.

Subp. 30. **Peak instantaneous wet weather flow.** "Peak instantaneous wet weather flow" means the peak instantaneous flow during the day at a time when the groundwater is high and a 25-year one hour storm event is occurring.

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Subp. 31. **Performance certification.** "Performance certification" means a certification made by a municipality one year after initiation of operation that states its newly constructed wastewater treatment facility is meeting performance standards, as specified under ~~part~~ parts 7077.0255, ~~subpart 1, item A~~ 7077.0325, and 7077.0440.

Subp. 32. **Plans and specifications.** "Plans and specifications" means documents, including completed drawings and specifications, that describe the project in full and detail the complete requirements for materials, dimensions, and construction technique. The documents that comprise the plans and specifications must conform with generally accepted engineering practices and applicable state statutes, rules, and requirements.

Subp. 33. **Primary treatment facilities.** "Primary treatment facilities" means facilities designed to provide a level of treatment lower than that provided by secondary treatment facilities.

Subp. 34. **Reimbursement project.** "Reimbursement project" means a municipal wastewater treatment facility constructed under the reimbursement provision of Minnesota Statutes, section 116.18, subdivision 3a.

Subp. 35. **Relief sewer.** "Relief sewer" means a sewer primarily designed to eliminate bypassing caused by insufficient hydraulic capacity in sanitary sewer systems by transporting infiltration or inflow to adequately sized sewers or to a wastewater treatment facility for proper treatment. A sewer is a collector sewer and not a relief sewer if its design flow includes more than 15 percent wastewater at peak instantaneous flow conditions or if it has physical connections closer to each other than 1,000 feet. A relief sewer is a type of sewer system rehabilitation project.

Subp. 36. **Secondary treatment facilities.** "Secondary treatment facilities" means facilities designed to provide biochemical oxidation, effective sedimentation, and disinfection, or the equivalent, consistent with requirements of

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part 7050.0211, subpart 1. Facilities discharging to limited resource value waters (Class 7 waters) and assigned effluent limitations based on part 7050.0214 and that do not have a phosphorous or toxic substances effluent limitation are secondary treatment facilities for the purpose of this chapter.

Subp. 37. **Sewer rate ordinance or SRO.** "Sewer rate ordinance" or "SRO" means a municipal ordinance that determines the method by which a municipality will charge its users for wastewater treatment services, including the local capital cost of the treatment works.

Subp. 38. **Sewer service charge.** "Sewer service charge" means the aggregate of all charges, including charges for operation, maintenance, replacement, debt service, and other sewer related charges that are billed periodically to users of the city's wastewater treatment facility.

Subp. 39. **Sewer service charge system or SSCS.** "Sewer service charge system" or "SSCS" means a document developed by the municipality that determines the user charge and debt charge that each user will pay for wastewater treatment services.

Subp. 40. **Sewer system rehabilitation project.** "Sewer system rehabilitation project" means a project that repairs or replaces an existing collector or interceptor sewer in order to eliminate bypasses caused by insufficient hydraulic capacity or to reduce the hydraulic flows to a wastewater treatment facility. A sewer system rehabilitation project may include flow equalization systems and relief sewers.

Subp. 41. **Sewer use ordinance or SUO.** "Sewer use ordinance" or "SUO" means a municipal ordinance enacted to control the type and quantities of discharges to the wastewater treatment facility, and the type and method of connections to the system.

Subp. 42. **Tertiary treatment facilities.** "Tertiary treatment facilities" means facilities specifically designed to achieve effluent limitations based on part 7050.0211, subpart 1, for phosphorus or toxic substances and facilities designed to meet effluent standards that are more stringent than standards

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for secondary treatment facilities.

Subp. 43. **Treatment agreement.** "Treatment agreement" means an enforceable agreement between a municipality and a major contributing industry that includes the following:

A. the variations in daily flow and the monthly average and daily maximum quantity of compatible and incompatible pollutants to be discharged to the treatment facility;

B. the intended period of use of the treatment facility by the major contributing industry;

C. signatures by the major contributing industry and the owner of the treatment system accepting the wastewater; and

D. a requirement that the quantities to be discharged to the treatment system will be according to applicable standards and requirements.

Subp. 44. **Unanticipated site condition.** "Unanticipated site condition" means any subsurface, latent or unknown physical condition at the construction site, which differs materially from those ordinarily encountered and generally recognized as inherent in work of the type provided for in the construction contract that could not have been reasonably identified during the planning or design of the project.

Subp. 45. **User charge.** "User charge" means a charge levied on users of a wastewater treatment facility for the user's proportionate share of the cost of equipment replacement and operation and maintenance of the wastewater treatment facility.

Subp. 46. **Value engineering.** "Value engineering" means a specialized cost control technique which uses a systematic and creative approach to identify and to focus on unnecessarily high cost in a project in order to arrive at a cost saving without sacrificing the reliability or efficiency of the project.

Subp. 47. **Wastewater.** "Wastewater" means sewage, industrial waste, and other waste collected for treatment in a wastewater treatment facility.

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7077.0110 TYPES OF PROGRAMS.

Subpart 1. **Scope.** Under this chapter and Minnesota Statutes, sections 116.16 to 116.181, the agency may certify to the authority that municipalities may be awarded funds for the assistance programs described in subparts 2 to 7.

Subp. 2. **State independent grants program.** The state independent grants program under parts 7077.0200 to 7077.0265 offers grant funds to municipalities for the construction of wastewater treatment facilities and applies to funds awarded on or after July 1, 1990. The process is described in items A to D.

A. Construction grants are awarded to municipalities on a priority basis, except as provided in parts 7077.0205, subpart 3, item E; and 7077.0210. Municipalities with the highest priorities, as determined by the point system described in parts 7077.0120 to 7077.0145, are awarded construction grants first.

B. The commissioner develops and maintains a municipal needs list that ranks in priority order the municipalities that have a need for a new or upgraded treatment system and that have requested placement on the list. Priorities are determined by awarding points for projects based on the waters affected, the population affected, the type of project proposed, and extra points for qualifying projects.

C. The agency adopts a municipal project list that identifies the municipalities that are eligible to apply for construction grants during a designated fiscal year.

D. A reimbursement option is available to municipalities willing to proceed with construction while waiting to reach a fundable priority on the municipal needs list.

Subp. 3. **Combined sewer overflow abatement program.** Financial assistance is available for design and construction of combined sewer overflow abatement projects under parts 7077.0300 to 7077.0330. The program applies to funds awarded on or after July 1, 1990. The process awards this assistance on a pro rata basis to qualifying municipalities.

Subp. 4. **Water pollution control revolving fund program.**

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Loans are available to municipalities for the construction of publicly owned wastewater treatment facilities under parts 7077.0400 to 7077.0445. The program applies to funds awarded before, on, or after July 1, 1990. Loans may be requested for planning, design, and construction costs. The process is described in items A to C.

A. Municipalities seeking funds from the water pollution control revolving fund must be on the municipal needs list.

B. The agency annually adopts an intended use plan that includes a list of municipalities with eligible projects that have requested loan assistance.

C. The actual loan amounts, terms, and conditions are determined by the authority.

Subp. 5. **Corrective action grants program.** Financial assistance is available under parts 7077.0500 to 7077.0560 for the costs associated with correcting a wastewater treatment facility that failed to meet performance standards within the first year of operation. The program applies to funds awarded before, on, or after July 1, 1990. The process is described in items A and B.

A. Corrective action grants are certified to the authority for awards in the order that applications that meet the rule requirements are received and to the extent funds are available.

B. Recipients of corrective action funds must seek to recover the costs of the corrective work from the parties that are responsible for the performance failure. When funds are recovered, the municipality shall repay the state a portion of the money recovered.

Subp. 6. **Capital cost component grant program.** Grant funds are available to municipalities under parts 7077.0600 to 7077.0660 for part of the capital cost component of the service fee under a service contract with a private vendor to construct and operate wastewater treatment facilities for 20 years. The program applies to funds awarded before, on, or after July 1,

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1990. The process is described in items A to D.

A. Municipalities seeking a capital cost component grant must be listed on the municipal needs list. Grant applications are taken during announced application periods.

B. Applications are ranked according to the priority order on the municipal needs list.

C. Grant amounts are determined by comparing the costs of recently constructed facilities in municipalities of similar size.

D. Payment of the grant is made following completion of construction and demonstration of satisfactory performance.

Subp. 7. **Individual on-site wastewater treatment systems grants program.** Grant funds are available to municipalities under parts 7077.0700 to 7077.0765 to assist owners of individual on-site wastewater treatment systems in upgrading or replacing failed systems. The program applies to funds awarded before, on, or after July 1, 1990. The process is described in items A to C.

A. Municipalities meeting the eligibility requirements in part 7077.0710 may submit grant applications during announced application periods. Both the municipality and the owners of the failed systems must meet statutory and rule requirements.

B. Applications are prioritized according to a municipality's median household income.

C. Grant payments are made on a reimbursement basis for 50 percent of the on-site system construction costs up to the maximum amounts specified in part 7077.0735.

7077.0115 MUNICIPAL NEEDS LIST.

Subpart 1. **Requirement.** The commissioner shall develop and maintain a municipal needs list of municipalities that have a need for a new or upgraded wastewater treatment facility.

Subp. 2. **Points and listing order.** A municipality on the municipal needs list must be awarded points under the criteria established in this chapter. The municipalities must be listed

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on the municipal needs list in descending order according to the number of points awarded to each.

Subp. 3. **Request for placement on list.** A municipality may submit a written request to the commissioner for placement on the municipal needs list.

A. If the municipality is sewered, its request must include the following information:

(1) type and age of existing wastewater treatment facilities;

(2) design capacity and current treatment capabilities of existing facilities;

(3) data describing actual wastewater flows and loadings;

(4) current discharge point and NPDES permit standards;

(5) a description of the need for new or upgraded treatment facilities; and

(6) an explanation of why the need for new or upgraded facilities is not primarily due to inadequate operation and maintenance or to negligence on the part of any person.

B. If the municipality is unsewered, its request must include the following information:

(1) number of existing on-site treatment systems in the municipality;

(2) general description of the type and age of existing on-site treatment systems; and

(3) a description of the identified need for improved wastewater treatment facilities including the estimated number of failing on-site systems and a description of the basis for that estimate.

Subp. 4. **Review.** The commissioner shall review each request and add to the municipal needs list each municipality for which a need has been found to exist. If the commissioner determines that a need does not exist, the municipality shall not be added to the list and the commissioner shall notify the municipality of the reasons for the determination.

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7077.0120 PRIORITY POINTS FOR WATERS AFFECTED.

Subpart 1. **Water use and point ratings.** A municipality shall be awarded priority points based on the water use of the receiving water of the discharge according to the following:

Water Use	Point Rating
Class 1 Domestic consumption:	
Class 1A waters	70
Class 1B waters	65
Class 1C waters	60
Class 1D waters	55
Class 2 Fisheries and recreation:	
Class 2A waters	60
Class 2B waters	50
Class 2C waters	40
Class 7 Limited resource value waters	35

The water uses are defined in parts 7050.0200 and 7050.0220. The water use of a specific water of the state is the water use established by parts 7050.0400 to 7050.0470.

Subp. 2. **Receiving water with more than one designated water use.** If a municipality discharges to a receiving water with more than one designated water use, the municipality shall be awarded the points for the designated water use with the greatest number of points.

Subp. 3. **Adverse impact on downstream water.** If a municipal discharge has an adverse impact on a downstream water with a designated water use receiving more points than the receiving water, the municipality shall be awarded the priority points for the downstream water.

7077.0125 PRIORITY POINTS FOR POPULATION SERVED.

A municipality shall be awarded priority points based on the population of the municipality served by the project. The priority points for population served are five times the logarithm base 10 ($\log_{10}$) of the population determined by the most recent official census. The table below gives examples of the priority points assigned for various populations:

Population	$\log_{10}$	Priority Points Assigned
100	2	10.0

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1,000	3
10,000	4
100,000	5
1,000,000	6

15.0
20.0
25.0
30.0

7077.0130 PRIORITY POINTS FOR TYPE OF PROJECT.

Subpart 1. **Table of priority points by type of project.** A municipality shall be awarded priority points based on the type of project to be constructed according to the following:

Type of Project	Priority Points
A. Major treatment facilities:	
(1) major tertiary treatment facilities	160
(2) major secondary treatment facilities	150
B. Dechlorination facilities:	
(1) tertiary treatment dechlorination facilities	120
(2) secondary treatment dechlorination facilities	110
C. Ancillary additions:	
(1) ancillary additions to existing tertiary treatment facilities	80
(2) ancillary additions to existing secondary treatment facilities	75
D. Collection systems or collector sewers:	
(1) collection system or collector sewer	10
(2) improvement of collection system or collector sewer reliability	10
E. Control of combined sewer overflow	150

Subp. 2. **Description of project types.** Project types are described as follows:

A. Major treatment facilities are new facilities or additions to existing facilities which improve effluent quality in order that a municipality may achieve compliance with its NPDES/SDS permit conditions. Major treatment facilities include sewer system rehabilitation projects as described in subpart 3,

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item A, and major interceptor sewers ~~and may include sewer system rehabilitation projects in subpart 4~~.

(1) Land application systems and stabilization ponds that are proposed as an alternative to tertiary and secondary treatment facilities that discharge to waters of the state are considered tertiary treatment and secondary treatment for purposes of project priority. Whether a land application system or stabilization pond is a tertiary or secondary treatment system is determined as based on the effluent limitations applicable to discharges to the receiving water.

(2) Subsurface disposal systems, including septic tanks, designed to treat an average daily flow of not more than 1,200 gallons and the drainfield portion and one central septic tank to treat an average daily flow in excess of 1,200 gallons are considered secondary treatment for purposes of project priority.

B. Dechlorination facilities are facilities that remove chlorine from the effluent of a wastewater treatment facility. When a municipality is listed on the municipal needs list for major treatment facilities, the facilities described in this item ~~may~~ will be included as part of that project.

C. Ancillary additions to existing tertiary or secondary treatment facilities are additions that are not major treatment facilities, dechlorination facilities, or collector sewers. When a municipality is listed on the municipal needs list for a major treatment facility, the facilities described in this item will be included as part of that project.

D. A collection system or collector sewer is a sanitary sewer, specifically constructed to carry raw or partially treated wastewater and providing collection system reliability such as alternative power or dual pumps, that is not a major interceptor sewer or a relief sewer. For treatment works including subsurface disposal systems designed to treat an average daily flow in excess of 1,200 gallons, a collection system includes devices such as grinder pumps and septic tanks that will partly treat the wastewater, as well as septic tank

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effluent pumps and small diameter sewers that will pump and convey the partially treated waste.

E. A project for the control of combined sewer overflow is a project designed to eliminate bypasses caused by insufficient hydraulic capacity in combined storm and sanitary sewers. A combined sewer overflow project is not eligible for priority points under subpart 1, item E unless the project is necessary to meet requirements of the municipality's NPDES/SDS permit.

Subp. 3. **Special restrictions for sewer system rehabilitation projects.** Special restrictions for sewer system rehabilitation projects are as follows:

A. In order for a sewer system rehabilitation project to be eligible for priority points under subpart 1, item A, the municipality must not have obtained a grant for wastewater treatment facility construction since February 11, 1974, and sewer system rehabilitation must be justified by an infiltration/inflow analysis and sewer system evaluation survey that complies with part 7077.0150, subpart 2, item C.

B. A municipality proposing to undertake a sewer system rehabilitation project that does not meet the criteria in item A shall be awarded the priority points credited to a collection system or collector sewer under subpart 1, item D.

Subp. 4. **Temporary improvements.** If a municipality makes improvements to its existing wastewater treatment facility that are temporary in nature for the purpose of maximizing effluent quality or keeping its system operational while the municipality is awaiting a grant, the municipality shall receive the same priority points for its project as it would have received without the temporary improvements.

7077.0135 EXTRA POINTS.

In addition to the priority points to which a municipality is entitled for its project, the following extra points shall also be awarded to a qualifying municipality:

A. A municipality that proposes a project that will

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eliminate an existing public health hazard assessed by the Department of Health in a health advisory or commissioner's order shall be awarded 40 extra points. A municipality requesting the award of 40 extra points under this provision shall submit the following information to the agency and to the Department of Health:

(1) information on geologic and soil conditions including soil types, permeabilities, and presence or absence of confining units;

(2) groundwater flow patterns in the area of the facility or proposed facility;

(3) an assessment of the extent and magnitude of the contaminant plume;

(4) an identification of water users and assessment of the amount of water appropriations in the area of the facility or proposed facility;

(5) flow rates and flow patterns of surface waters;

(6) information on well construction for wells in the area of the facility or proposed facility, particularly wells that have been or will be impacted;

(7) a description of the facility's construction, operation, and performance if there is an existing facility, with an explanation of why the facility is creating a public health hazard;

(8) an identification and assessment of the suspected route of human exposure and the population exposed; and

(9) a description of how the proposed improvements will mitigate or eliminate the public health hazard.

B. A qualifying municipality shall be awarded extra points under one of the provisions below for its existing level of treatment:

(1) A municipality that presently has a collection system serving 50 percent or more of the population but provides no treatment before discharge, or a municipality

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which collects an average daily flow exceeding 1,000,000 gallons through a system without combined sewers and which has bypassed sewage more than 40 percent of the time over a period of at least two years while its plant is operating at full capacity, shall be awarded 40 extra points.

(2) A municipality with no collection system where more than 50 percent of the existing septic systems discharge raw or partially treated sewage directly to the ground surface shall be awarded 30 extra points.

(3) A municipality that presently has a collection system serving 50 percent or more of the population and whose present facilities are designed for only primary treatment shall be awarded 20 extra points.

(4) A municipality that discharges untreated sewage as a result of combined sewer overflows shall be awarded 20 extra points.

C. A municipality that proposes a project that is an integral part of a watershed pollution abatement plan shall be awarded 15 extra points. A municipality is not entitled to the 15 extra points under this provision unless the agency received the plan for review by December 1, and it is in approvable condition by May 1, before the beginning of the fiscal year for which funding is sought. A watershed pollution abatement plan shall include the following:

(1) an in depth description of the physical environment (geology, soils, topography, and land cover), land use and development in the watershed, as well as the planned future land use and development;

(2) an inventory and in depth description of the watershed's hydrologic system, including climatic conditions (precipitation), lakes, wetlands, streams, groundwater, drainage, and conveyance systems;

(3) information on the existing and potential water quality problems in the watershed, including both point and nonpoint sources of pollution;

(4) objectives and policies, including management

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plans for water quality and natural resource protection;

(5) a description of the hydrologic and water quality conditions that will be sought, including a description of the opportunities for improvement;

(6) a statement on conflicts between the watershed pollution abatement plan and existing plans of local government units; and

(7) a plan for implementation, consisting of governmental work agreements and schedules for implementing corrective actions.

D. A municipality that discharges to or has an adverse impact on an outstanding resource value water shall be awarded ten extra points.

E. A municipality proposing to undertake a project that will result in the elimination of a point source discharge to a game fish lake or outstanding resource value water, or the elimination of a discharge that has an adverse impact on a game fish lake or outstanding resource value water shall be awarded ten extra points. A game fish lake is a lake managed for propagation of game fish species and used for fisheries and recreation. There may be occasional but not regular winter kill in a game fish lake.

F. Ten extra points will be awarded to a sanitary district or other multimunicipal wastewater treatment project.

G. A municipality listed on the municipal needs list on January 1, 1985, shall be awarded 40 extra points.

H. A municipality which does not qualify for the points awarded in item G and which is in compliance with its NPDES/SDS permit conditions less than 90 percent of the time during a one-year period computed on the basis of the interval appropriate to the limitation shall be awarded 20 extra points. Periods of noncompliance caused by inadequate operation and maintenance or negligence on the part of any person are not included in the percentage computation for the purposes of this definition.

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7077.0140 TOTAL POINTS.

The total points to be awarded a municipality for placement on the municipal needs list is the sum of the priority points awarded under one of the provisions of parts 7077.0120, 7077.0125, and 7077.0130, and one or more of the provisions of part 7077.0135.

7077.0145 RESOLUTION OF EQUAL POINT RATINGS.

If, in the determination of the order of priority on the municipal needs list, two or more municipalities have the same total number of points, the municipality with the highest priority points under part 7077.0120 for water use is ranked higher. If two or more municipalities have the same total number of points and the same priority points under part 7077.0120 for water use, the municipalities are ranked based on population under part 7077.0125.

7077.0150 FACILITIES PLAN.

Subpart 1. **In general.** A municipality must have a facilities plan approved by the commissioner before it will be considered for placement on the municipal project list for a construction grant or the intended use plan for a construction loan. A facilities plan must be prepared and signed by a professional engineer registered in the state and submitted to the agency according to part 7077.0205, subpart 2, items B and C.

Subp. 2. **Facilities plan contents.** A facilities plan must include:

A. A complete description and evaluation of the existing treatment facility, including information about the age, condition, design capacity, and treatment capabilities of each treatment unit, an analysis of the facility's ability to meet current permit requirements, and the location, frequency, and quantity of any bypasses.

B. Data describing existing flows that accurately represent flows during rain events and high groundwater conditions. Flow data must be based on actual flow monitoring for at least 30 consecutive days.

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C. An analysis of inflow and infiltration in the existing sewer system to determine whether excessive levels of inflow or infiltration exist as defined in part 7077.0105, subparts 12 and 13. If excessive levels of inflow or infiltration are determined to exist, a sewer system evaluation survey must be conducted to identify the specific sources of inflow and infiltration and the estimated flows from each source.

D. Projected flows and loadings within the next five- and 20-year periods based on projected population growth and letters of intent from major contributing industries.

E. A cost effectiveness analysis of all feasible treatment works, processes, and techniques capable of meeting the applicable effluent, water quality, and public health requirements for 20 years. If excessive levels of inflow/infiltration are determined to exist under item C, the cost effectiveness analysis of treatment alternatives must include a comparison of the costs of eliminating excessive inflow/infiltration with the costs of transportation and treatment of the inflow/infiltration. For unsewered and partially unsewered communities, consideration must be given to on-site treatment systems. The following information must be provided for each treatment alternative considered:

(1) a detailed breakdown of the present worth of all capital costs, annual operation and maintenance costs, equipment replacement costs, and salvage costs; and

(2) a site assessment conducted by a registered engineer or geotechnical engineer of the existing soil and groundwater conditions.

F. A description of the selected treatment alternative and the complete wastewater treatment system of which it is a part, including:

(1) the specific design parameters of all individual treatment units and the complete treatment system;

(2) estimated construction, annual operation and maintenance, and equipment replacement costs;

(3) estimated annual sewer service charges;

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(4) a determination of whether pretreatment of any industrial wastes is needed in order not to disrupt the proper operation of the proposed facility;

(5) an evaluation of how and where sludge resulting from the treatment process will be disposed;

(6) an analysis of the 25- and 100-year flood elevations in relation to the proposed project site showing that the project will be operable during a 25-year flood and protected during a 100-year flood;

(7) a description of any ordinances or intermunicipal agreements necessary for the successful implementation and administration of the project; and

(8) an analysis of how interim treatment will be accomplished during construction to meet permit requirements.

G. An evaluation of the environmental impacts, including:

(1) a description of the potential impacts of the selected treatment alternative on wetlands; floodplains; areas of archaeological, cultural, and historical significance; endangered or threatened species; wild and scenic rivers; farmlands; air quality; fish and wildlife; open space and recreation opportunities; and

(2) a comparison of the potential environmental impacts of the selected treatment alternative with the other treatment alternatives considered in the cost effectiveness analysis.

Subp. 3. **Public hearing.** Before adopting the facilities plan, the municipality must hold at least one public hearing to discuss the proposed facilities plan. The proposed facilities plan must be made available for review by interested persons before the date of the hearing. At the public hearing, information must be presented on the various treatment alternatives considered, the reasons for choosing the selected alternative, the location of the proposed project site, and the estimated sewer service charges. A summary of the information presented and public comments received at the public hearing

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must be provided to the commissioner before the commissioner's approval of the facilities plan.

Subp. 4. **Adoption.** Before the commissioner's approval of the facilities plan, the municipality must adopt the facilities plan through a formal resolution of the municipality's governing body.

7077.0155 PLANS AND SPECIFICATIONS.

Subpart 1. **In general.** A municipality must submit plans and specifications or a council resolution to the commissioner according to part 7077.0205, subpart 2, item D, before it will be considered for placement on the municipal project list. The plans and specifications must be consistent with the scope of the approved facilities plan under part 7077.0150. The project must be constructed according to the approved plans and specifications and change orders.

Subp. 2. **Contents.** A complete set of plans and specifications must include:

A. drawings and specifications signed by a professional engineer registered in Minnesota;

B. a summary of design parameters for the treatment units;

C. a summary of flow conditions for average dry weather, average wet weather, maximum wet weather, peak hourly and instantaneous wet weather on a form provided by the agency;

D. a hydraulic profile of the flow through the treatment system;

E. a plan for interim treatment during construction;

F. the latest detailed cost estimate based on the plans and specifications submitted;

G. administrative, bidding, and contract documents according to the applicable requirements under Minnesota Statutes, chapters 412, 429, and 471 including, at a minimum:

(1) five percent bid bond;

(2) 100 percent payment bond;

(3) 100 percent performance bond; and

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(4) prevailing wage certifications issued by the Minnesota Department of Labor and Industry.

7077.0160 RATE SYSTEM AND ORDINANCES.

Subpart 1. **In general.** A municipality must submit a sewer service charge system, a sewer rate ordinance, and a sewer use ordinance or a council resolution to the commissioner according to part 7077.0205, subpart 2, item D, before it will be considered for placement on the municipal project list. The sewer service charge system, sewer rate ordinance, and sewer use ordinance must demonstrate that the municipality has the legal and financial capability to ensure adequate construction and operation and maintenance of the wastewater treatment facility. The rate system and ordinances must be enacted according to part 7077.0260, subpart 2, item C, to ensure full payment of the grant.

Subp. 2. **Sewer service charge system.** A sewer service charge system must include:

A. The engineering and accounting data for the wastewater flows and loadings of the users of the wastewater treatment facility.

B. The estimated annual costs of equipment replacement, and operating and maintaining the facility.

C. The rates that will be charged to each user for the user's share of the annual costs of equipment replacement and operation and maintenance of the treatment facility in proportion to the user's contribution of wastewater flow and loadings and according to the rate formula established in the sewer rate ordinance. The costs of treating infiltration and inflow and the costs of administration may be charged through other methods than proportionality, but the manner in which the charges will be distributed must be justified and described.

D. The rates that will be charged to each user for the cost of the debt retirement for the local capital cost of the treatment facility. The debt charge need not be proportionally assessed against each user, but the manner in

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which the charge will be distributed must be described.

Subp. 3. **Sewer rate ordinance.** The sewer rate ordinance must include the following minimum provisions:

A. the rate setting method for proportionate user charges;

B. the rate setting method for debt charges; and

C. separate accounts for:

(1) operation and maintenance;

(2) equipment replacement; and

(3) debt retirement; and

D. administrative procedures for the financial management of the sewer service charges.

Subp. 4. **Sewer use ordinance.** The sewer use ordinance must include the following minimum provisions:

A. prohibition of new connections from inflow sources;

B. new sewers and connections must be properly designed and constructed; and

C. prohibition of toxics and other pollutants in amounts or concentrations that endanger public safety or the physical integrity of the treatment facility or cause violation of permit limitations.

STATE INDEPENDENT GRANTS PROGRAM

7077.0200 PURPOSE.

The state independent grants program provides grants to municipalities for the construction of publicly owned wastewater treatment facilities according to the priority order of the municipal needs list and the provisions of Minnesota Statutes, section 116.18, subdivision 3a. The program is jointly administered by the Minnesota Pollution Control Agency and the Minnesota Public Facilities Authority. Parts 7077.0200 to 7077.0265 provide for the agency's responsibilities for the administration of the program.

7077.0205 MUNICIPAL PROJECT LIST.

Subpart 1. **Adoption of municipal project list.** Each

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fiscal year the agency shall adopt a municipal project list that identifies, in priority order, the municipalities that are eligible to apply for state independent grants from appropriated funds.

The municipal project list shall also list other uses of the appropriated funds including reserves for grant increases and costs of administration.

Subp. 2. **Requirements for placement on list.** To be placed on the municipal project list:

A. The municipality must be on the municipal needs list.

B. The municipality must submit by December 1 before the beginning of the fiscal year for which the municipal project list is prepared:

(1) a facilities plan in conformance with part 7077.0150; 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 7077.0150.

C. The municipality must, by May 1 before the beginning of the fiscal year for which the project list is prepared, make all revisions to the documents listed in item B that are necessary to obtain the commissioner's approval.

D. The municipality must also submit by May 1 the following documents for the commissioner's review and approval or a resolution of the municipality's governing body agreeing to submit the following documents by the following October 1:

(1) plans and specifications in conformance with part 7077.0155, and based on a facilities plan previously approved by the agency;

(2) if the municipality 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 7077.0155, and based on a previously approved facilities plan;

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(3) a sewer service charge system under part 7077.0160, subpart 2;

(4) documentation of how the public has been informed within the past year of the proposed sewer service rates;

(5) a sewer rate ordinance under part 7077.0160, subpart 3;

(6) a sewer use ordinance under 7077.0160, subpart 4; and

(7) if more than one municipality is involved in the project, an unexecuted intermunicipal agreement that sets forth the terms and conditions of joint treatment and the cost-sharing methodology.

E. Failure to submit, for the commissioner's review and approval, the documents agreed to in item D by October 1 of the fiscal year for which the municipal project list is prepared will result in the removal of the municipality from the municipal project list.

Subp. 3. **Preparation of proposed municipal project list.** In drafting the proposed municipal project list, the commissioner shall consider the following factors in the order given:

A. total dollars available for the purpose of constructing a municipal wastewater treatment facility;

B. restrictions and obligations mandated by these parts and applicable state statutes;

C. priority rank of projects according to the municipal needs list;

D. requirements of subpart 2;

E. eligibility of projects according to part 7077.0210; and

F. additional projects, in priority order, identified by the authority for award under the economic development set-aside under Minnesota Statutes, section 116.18, subdivision 3a, paragraph (b).

Subp. 4. **Reserve list.** The municipal project list shall

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include a list of reserve projects with priority rankings lower than those identified under subpart 3, items A to E. Municipalities listed on the reserve list meeting the requirements under subpart 3, items D and E, may receive funding if funds become available.

Subp. 5. **Reimbursement list.** The municipal project list shall include a list of municipalities that have requested to proceed with their projects and be reimbursed in a subsequent year conditioned upon appropriation of sufficient funds.

A. No municipality may be listed on the reimbursement list unless the municipality has submitted a written request for placement on the list and has received approval of the documents listed in subpart 2, items B and D.

B. A municipality may retain eligibility of construction and construction related costs incurred before the award of a state independent grant only if:

(1) the municipality was on the reimbursement list when construction began;

(2) the municipality submitted a complete application, as defined under part 7077.0215, subpart 2, to the commissioner within 90 days after adoption of or amendment to the municipal project list; and

(3) the municipality has received written approval of the application from the commissioner before initiating construction.

C. Reimbursement projects must be listed in the same order of priority as they appear on the municipal needs list.

Subp. 6. **Public participation.** The commissioner shall prepare a proposed municipal project list and make it available to the public at least 30 days before adoption. A free copy of the proposed list shall be mailed to interested persons upon request. Municipalities affected by the proposed list shall be given notice at least 30 days in advance of the agency board meeting at which the list will be considered for adoption.

7077.0210 ELIGIBILITY.

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Subpart 1. **Project eligibility.** The provisions in items A to C govern project eligibility.

A. Only the cost-effective implementable alternative determined according to part 7077.0150, subpart 2, and identified in an approved facilities plan is eligible to receive grant assistance, unless a municipality receives an exemption under item B.

B. The commissioner ~~may~~ shall grant an exemption to the required 20-year planning period for the cost-effectiveness analysis under part 7077.0150, subpart 2, item E, to a municipality under 1,500 population ~~for reasons of~~ where the commissioner finds that construction of the 20-year cost-effective alternative would result in significant financial hardship. In determining significant financial hardship, the commissioner shall consider the municipality's median household income, the estimated sewer service charge for the 20-year cost-effective alternative, the municipality's total bonded indebtedness, and the patterns of population and commercial-industrial growth or decline within the municipality. If an exemption is granted, the municipality may receive grant assistance for a proposed treatment alternative that is different than the 20-year cost-effective alternative. A municipality must submit a written request for this exemption that includes:

(1) a description of the proposed treatment alternative and a discussion of the extent to which it fails to satisfy the 20-year cost-effectiveness analysis;

(2) an explanation, including any necessary supporting documentation, of why the 20-year cost-effective alternative identified in the facilities plan would create a significant financial hardship for the municipality;

(3) a plan for reevaluating the municipality's wastewater treatment needs at a specific time in the future; and

(4) a resolution of the municipality's governing body that supports the municipality's request to construct a treatment alternative other than that identified in the

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facilities plan as the 20-year cost-effective alternative, and provides a formal commitment to reevaluate the municipality's wastewater treatment needs at a specific time in the future.

C. Grant assistance is not available for a project or portion of a project if the principal purpose is the treatment or conveyance of industrial wastewater.

Subp. 2. **Cost eligibility.** The following categories of costs related to the construction of the approved treatment alternative under subpart 1 are eligible for grant assistance:

A. costs of only those items identified in the approved plans and specifications and change orders that are necessary to construct a treatment facility that complies with NPDES/SDS permit requirements;

B. costs of procuring construction contractors;

C. costs relating to construction and start-up engineering services;

D. costs of providing full-time inspection of the project construction;

E. costs of land on which stabilization ponds will be built;

F. a contingency fund equal to three percent of the grant eligible construction costs;

G. costs associated with unanticipated site conditions as specified under part 7077.0240, subpart 2; and

H. costs incurred for project planning, design, administration, and legal services up to a maximum of 12 percent of the grant eligible construction costs for municipalities of 1,500 or less population and ten percent of the grant eligible construction costs for municipalities over 1,500 population. If a municipality has previously received funding for planning or design, the eligible costs from previous awards for planning or design will be subtracted from the eligible costs in this item.

Subp. 3. **Timing of eligible costs.** The following items govern the grant eligibility of project costs:

A. Costs of construction and construction related engineering and inspection services incurred before the

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certification of a grant application by the commissioner to the authority are ineligible unless the municipality receives prior written approval from the commissioner.

B. Costs of purchasing the land identified in subpart 2, item E, incurred before the approval of a facilities plan by the commissioner are ineligible unless the municipality receives prior written approval from the commissioner.

7077.0215 GRANT APPLICATIONS.

Subpart 1. **Agency notification.** The commissioner shall notify each municipality of its placement on the municipal project list. No municipality shall submit a state independent grant application unless it has been notified by the commissioner in writing that it is on this list.

Subp. 2. **Complete application required.** No municipality may be eligible for a state independent grant unless a complete grant application has been submitted to the authority. A complete application must include all documents required under subparts 3 and 4.

Subp. 3. **Timing and form of application.** The following provisions govern the timing and form of grant applications:

A. The application for grant funds shall be on forms provided by the agency and the authority.

B. A municipality on the municipal project list shall submit a complete construction grant application to the authority within 90 days after the date on which the agency adopts that fiscal year's municipal project list.

C. If a land acquisition legal opinion, specified under subpart 4, item F, is unobtainable at the time of application, a land acquisition status report and schedule must be included with the application. If the legal opinion is not received at the agency by the following April 1, the application must be rejected and the project must be removed from the municipal project list for that fiscal year.

Subp. 4. **Application requirements.** A municipality that applies for a construction grant shall, in addition to

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submitting the completed application form, submit the following information for the commissioner's review and approval:

A. A proposed engineering contract that includes, at a minimum, the following provisions:

(1) full-time inspection during construction and written monthly reports submitted to the agency describing the type of construction inspected and the time involved in inspection;

(2) two sets of "as built" plans and specifications on microfiche for submittal to the agency;

(3) preparation of an operation and maintenance manual; and

(4) start-up services during the first year of operation, including:

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

(b) training or providing for training of operating personnel and prepare necessary curricula and training materials; and

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

B. A certificate of adequate errors and omissions insurance carried by the engineering firm.

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

> The facilities described in this application have been designed based on data that has been verified to accurately represent present and future flows and loadings and with full knowledge of the effluent limitations required by the Minnesota Pollution Control Agency as set forth in NPDES Permit No. ..... dated ..... It is my judgment and carefully considered opinion that these facilities are will be capable of consistently producing the required

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effluent quality, provided that the facilities are operated in conformance with the approved operation and maintenance manual and that the volume and characteristics of raw wastewater are within the limits of the flow data presented in the plans and specifications under the requirements of Minnesota Rules, part 7077.0155, subpart 2, item C.

D. A treatment agreement with each major contributing industry.

E. A cost breakdown for all project work to be funded by the grant, including separation of grant eligible and ineligible items, in a format provided by the agency.

F. A legal opinion identifying that the municipality has sufficient legal vested interest in all sites, easements, or rights-of-way to ensure immediate construction and undisturbed use for the estimated life of the facilities. If this opinion can not be submitted at the time of application, a land acquisition status report and schedule must be provided.

G. A project schedule on a form provided by the agency.

Subp. 5. **Three copies.** State independent grant application forms and attachments must be submitted in triplicate to the authority. At least one set of forms and attachments must contain original signatures.

7077.0220 APPROVAL AND CERTIFICATION OF GRANT APPLICATIONS.

Subpart 1. **Approval.** The commissioner shall approve grant applications from municipalities that:

A. meet the requirements of parts 7077.0205, subpart 2, item D; and 7077.0215, subparts 3 and 4, within 180 days of the date the agency received a complete application;

B. complete the environmental review process requirements in chapter 4410 and Minnesota Statutes, chapter 116D; and

C. obtain the required NPDES/SDS permits.

Subp. 2. **Certification.** The commissioner shall certify

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each approved grant application to the authority for award. Grant eligible costs under part 7077.0210, subpart 2, items B to D, will be determined at the time of certification. Following certification, grant eligible costs under these items can be increased only through the approval of an unanticipated site condition amendment under part 7077.0240, subpart 2, or through the use of contingency funds under part 7077.0210, subpart 2, item F, approved by the commissioner.

7077.0225 REJECTION OF GRANT APPLICATIONS.

Subpart 1. **Grounds.** A municipality's grant application for a project on the municipal project list may be rejected by the commissioner if it cannot receive approval under part 7077.0220.

Subp. 2. **Effect of rejection.** When a grant application is rejected, the commissioner shall remove the municipality from the municipal project list for that fiscal year.

7077.0230 CONTRACT ASSIGNMENT.

A municipality that enters into a contract with a contractor or engineer for the planning, design, or construction of a part of or an entire wastewater treatment system, to be paid for in whole or in part by state independent grant funds, shall provide in the contract that any or all of its rights and duties thereunder may be assigned to the commissioner without the agreement of the contractor or engineer. The assignment may be made by mutual agreement between the municipality and the commissioner or according to an agency assumption of municipal powers under Minnesota Statutes, section 115.48.

7077.0235 CONTRACT BENEFICIARY.

A municipality that enters into a contract with a contractor or engineer for the planning, design, or construction of a part of or an entire wastewater treatment system, to be paid for in whole or in part by state independent grant funds, shall provide in the contract that the agency is a third-party beneficiary to the contract.

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7077.0240 GRANT AMENDMENTS.

Subpart 1. **After-bid amendments.** A municipality shall submit to the authority a written request for an after-bid amendment when actual construction contracts costs differ from construction costs estimated in the grant certification. Final grant eligible construction costs are based on the amounts in the signed construction contracts. No further amendments for additional construction costs will be considered except as provided under subpart 2. The commissioner shall certify the amendment to the authority if funds are available and the costs are eligible and reasonable.

Subp. 2. **Unanticipated site condition amendments.** Only cost overruns caused by unanticipated site conditions are eligible for grant amendments once final grant eligible construction costs based on the amounts in the signed construction contracts are determined under subpart 1.

A. Where the commissioner finds that unanticipated site conditions exist, the commissioner ~~may~~ shall approve an amendment for up to two percent of the final grant eligible construction costs ~~to-compensate-for-unanticipated-site conditions-encountered-during-construction~~. The three percent contingency fund under part 7077.0210, subpart 2, item F, must be depleted before an amendment for unanticipated site conditions is approved.

B. A written request by the municipality for an unanticipated site condition amendment must include:

(1) an explanation of why the site condition causing the cost overrun was unanticipated;

(2) a change order that defines the scope and cost of the work;

(3) a breakdown of costs and tasks;

(4) an amended engineering contract, if applicable; and

(5) a budget period extension request, if applicable.

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7077.0245 CHANGE ORDERS.

Subpart 1. **In general.** A change order must be submitted to the commissioner for any change that:

A. alters the design or scope of the project;

B. increases or decreases the contract price;

C. changes the construction completion date;

D. causes a deviation from the approved plans and specifications; or

E. causes a substitution or replacement of equipment, suppliers, or subcontractors.

Subp. 2. **Contents.** Change orders submitted to the commissioner must contain the following:

A. signatures of the municipality's authorized representative, the project engineer, and the contractor;

B. the date on which the municipality and the contractor executed the change order;

C. identification of grant eligible and ineligible costs;

D. a complete description and justification of the change;

E. an explanation of why the change was not included in the original plans and specifications and contractor's bid;

F. a detailed cost breakdown for the change from the contractor showing the costs of materials, labor, overhead, and profit; and

G. a cost estimate for the change from the project engineer and an analysis of any differences between the engineer's estimate and the contractor's cost breakdown. If the project engineer's estimate differs from the contractor's price by more than ten percent, an explanation of how the costs were agreed to is required.

Subp. 3. **Eligible costs.** The following costs associated with approved change orders are eligible for grant assistance:

A. construction costs resulting from defects in the plans and specifications that would have been eligible and would

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have been incurred if the plans and specifications had been free of the defects, excluding the costs of any rework, redesign, restocking, small tools, supervision, delay, acceleration, or disruption caused by the defects;

B. costs determined by the commissioner to be the result of unanticipated site conditions;

C. combined profit and overhead costs for the contractor or subcontractor that actually performs the change order work not exceeding 15 percent of the costs of materials and labor;

D. combined profit and overhead costs for a contractor or subcontractor that administers the change order but does not actually perform the change order work not exceeding five percent of the costs of materials and labor.

Subp. 4. **Approval of change orders.** Approval of change orders is required as follows:

A. Proposed changes that substantially alter the type of treatment process, or its efficiency, versatility, or reliability, must be submitted to the commissioner for prior approval.

B. Change orders not requiring the commissioner's prior approval under item A must be submitted to the commissioner for review and approval within one month after the date on which the municipality, its engineer, or other authorized agent, and the contractor execute the change order.

C. Proposed changes described in item A do not require prior written approval from the commissioner when the work is agreed by the commissioner to be of an emergency nature.

7077.0250 COMPLETION OF CONSTRUCTION.

Subpart 1. **Building completion.** Building completion is the date when all major components of a project have been built, all equipment is operational, start-up testing has been completed, and the project is capable of functioning as designed. At this point the municipality must notify the commissioner it is ready to initiate operation and request that

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a prefinal inspection be scheduled.

Subp. 2. **Initiation of operation.** Initiation of operation is the date the project begins operating for the purposes for which it was planned, designed, and built. A project must not initiate operation until it receives approval from the commissioner.

A. The municipality must notify the commissioner in writing of the initiation of operation date within ten days following initiation of ~~initiating~~ operation.

B. The date of initiation of operation is the first day of the one year performance period.

Subp. 3. **Final inspection.** A final inspection of the treatment facility must be performed by agency staff when all the construction is complete except for minor weather-related components. The purpose of the inspection is to verify that construction is complete and conforms with the approved plans, specifications, and change orders. A municipality requests that a final inspection be performed when it believes construction is complete. At the final inspection, any outstanding change orders must be identified and a cut-off date for incurring grant eligible construction related costs must be established.

7077.0255 PROJECT PERFORMANCE.

Subpart 1. **Performance certification.** One year after the initiation of operation of the project, the municipality shall submit to the commissioner the following items:

A. a certification stating whether the project meets the following performance standards:

(1) the project has been completed according to approved construction plans and specifications and change orders;

(2) the municipality has a sufficient number of trained and capable personnel to provide adequate operation and maintenance of the project, and the project requires only operation and maintenance as outlined as normal and routine in the approved operation and maintenance manual;

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(3) the project accepts hydraulic and organic loading to the extent described in the approved design specifications and is in compliance with all NPDES/SDS permit requirements;

(4) industrial wastewater discharges to the treatment facility do not interfere with the operation of the project or the disposal or use of municipal sludges;

(5) sludge treatment and disposal is accomplished in conformance with chapter 7040 or parts 7005.2350 to 7005.2400, as applicable; and

(6) the project meets the requirements in the approved plans and specifications for the prevention of contamination of underground drinking water sources beyond the property boundary, if applicable;

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

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

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

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

Subp. 2. **Corrective action report.** If the commissioner or the municipality determines that the project does not meet the project performance standards under subpart 1, item A, the municipality shall:

A. submit within 30 days of the performance certification date a corrective action report that includes:

(1) an analysis of the project's failure to meet the performance standards;

(2) an estimate of the nature, scope, and cost of the corrective action necessary to bring the project into compliance; and

(3) a schedule for initiating, in a timely

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manner, the necessary corrective action work and for meeting the performance certification requirements following a start-up period that is reasonable for the type of corrective action work to be performed; and

B. following the completion of corrective action work, submit a performance certification as specified under subpart 1 according to the schedule in item A, subitem (3).

7077.0260 PAYMENT OF STATE INDEPENDENT GRANTS.

Subpart 1. **Payment request.** A municipality must submit written payment requests to the authority. The municipality must include documentation for costs incurred under part 7077.0210, subpart 2, item H.

Subp. 2. **Certification of payment requests.** The commissioner shall certify to the authority payment requests for eligible costs incurred according to the following schedule:

A. No payments will be certified until the municipality has submitted:

(1) the accepted bid proposal;

(2) detailed tabulation of all bids received;

(3) payment and performance bonds;

(4) executed construction contract and notice to proceed;

(5) executed engineering contract; and

(6) if more than one municipality is involved in the project, an executed intermunicipal agreement.

B. Payments will not be certified beyond 50 percent of the construction grant until the municipality has hired a wastewater treatment operator having a valid state certificate appropriate for the facility being constructed.

C. Payments will not be certified beyond 80 percent of the construction grant until the municipality has:

(1) enacted the approved sewer use ordinance;

(2) enacted the approved sewer rate ordinance;

(3) adopted by a resolution of the governing body the approved sewer service charge system with updated cost

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revisions; and

(4) received approval of the operation and maintenance manual.

D. Payments will not be certified beyond 90 percent of the construction grant until the municipality has met requirements of the performance certification process under part 7077.0255. If a project cannot meet these requirements, final payment will not be made until the requirements under part 7077.0255, subpart 2, have been completed or the municipality has entered into a legally enforceable agreement with the agency containing a schedule for completing the corrective work.

Subp. 3. **Retained payments.** The commissioner may withhold certification of construction grant payments if the commissioner determines that a project does not substantially conform to approved plans and specifications, or there has been a major breach of a condition in the grant agreement, or the municipality has failed to comply with the applicable requirements of this chapter. If funds are withheld pursuant to this subpart, the commissioner shall certify further payments when the condition causing the withholding has been corrected, or otherwise agreed to by the commissioner and the municipality.

7077.0265 RECOVERY OF FUNDS.

The commissioner shall recommend that the authority seek the immediate recovery of grant funds if funds are disbursed in excess of eligible costs incurred, or if a project is improperly designed, improperly constructed, or improperly operated and maintained.

COMBINED SEWER OVERFLOW ABATEMENT PROGRAM

7077.0300 PURPOSE.

State financial assistance is available for combined sewer overflow abatement for those municipalities eligible under Minnesota Statutes, section 116.162, subdivision 3. Parts 7077.0300 to 7077.0330 provide for the administration of the program.

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7077.0305 MUNICIPAL PROJECT LIST.

Subpart 1. **In general.** The municipal project list prepared according to part 7077.0205 must contain those projects for which state financial assistance is available for combined sewer overflow abatement.

Subp. 2. **Requirements for placement on the list.** To be placed on the municipal project list, a municipality shall meet the following requirements:

A. The municipality must be listed on the municipal needs list.

B. The municipality shall submit by June 1 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.

7077.0310 APPLICATIONS.

Subpart 1. **Complete application required.** No municipality is eligible for combined sewer overflow abatement financial assistance unless a complete application has been submitted to the agency. A complete application must include all documents required under subparts 2 and 3.

Subp. 2. **Timing and form of application.** The following provisions govern the timing and form of financial assistance applications:

A. The application shall be on the form provided by the agency.

B. A municipality on the final municipal project list for a combined sewer overflow abatement project shall submit a complete application for state financial assistance by December 1 following agency adoption of that fiscal year's municipal project list, unless a different date is provided in the municipality's NPDES/SDS permit, in which case the deadline in the permit shall take precedence.

Subp. 3. **Additional information.** A municipality that applies for state financial assistance for a combined sewer

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overflow abatement project shall submit the following information for the commissioner's review and approval:

A. The scope of work contained in the list and schedule submitted the previous June 1, or according to the NPDES/SDS permit, plus additional scope of work as may be necessary to use any additional funds that may become available.

B. A resolution of the governing body of the municipality that authorizes the filing of the application and that designates the municipal official authorized to sign the application, financial assistance offer, and other related documents.

C. A proposed engineering contract that includes, at a minimum, the following provisions:

(1) full-time inspection during construction and written monthly reports submitted to the agency describing the type of construction inspected and the time involved in inspection;

(2) two sets of "as-built" plans and specifications on microfiche.

D. ~~An engineer's~~ A certificate of adequate errors and omissions insurance carried by the engineering firm.

E. A cost breakdown for all project work to be funded by the financial assistance, including separation of eligible and ineligible items, in a format provided by the agency.

F. Plans and specifications as required under part 7077.0155 for the scope of work described in item A.

G. A project schedule on a form provided by the agency.

7077.0315 FINANCIAL ASSISTANCE AWARDS.

Each fiscal year that funds are appropriated for combined sewer overflow abatement, the commissioner shall award financial assistance to municipalities that meet the requirements of part 7077.0310. The municipalities shall be awarded a proportionate share of the appropriation available in that fiscal year. The proportionate share for each eligible municipality is as follows:

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A. Minneapolis, 24.2 percent;

B. Saint Paul, 71.6 percent; and

C. South Saint Paul, 4.2 percent.

7077.0320 CHANGE ORDERS.

Subpart 1. **In general.** A change order must be submitted to the commissioner for any change that:

A. alters the design or scope of the project;

B. increases or decreases the contract price;

C. changes the construction completion date;

D. causes a deviation from the approved plans and specifications; or

E. causes a substitution or replacement of equipment, suppliers, or subcontractors.

Subp. 2. **Contents.** Change orders submitted to the commissioner must contain the following:

A. signatures of the municipality's authorized representative, the project engineer, and the contractor;

B. the date on which the municipality and the contractor executed the change order; and

C. a complete description of the change.

Subp. 3. **Approval of change orders.** Approval of change orders is required as follows:

A. Proposed changes that substantially alter the type of facility or its efficiency, versatility, or reliability, must be submitted to the commissioner for prior approval.

B. Change orders not requiring the commissioner's prior approval under item A must be submitted to the commissioner for review and approval within one month after the date on which the municipality, its engineer, or other authorized agent, and the contractor execute the change order.

C. Proposed changes described in item A do not require prior written approval from the commissioner when the work is agreed by the commissioner to be of an emergency nature.

7077.0325 PROJECT PERFORMANCE.

Subpart 1. **Notification of initiation of operation.**

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Initiation of operation is the date the project begins operating for the purposes for which it was planned, designed, and built. The municipality shall notify the commissioner, in writing, of the project's initiation of operation date within ten days following initiation of operation.

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

A. a certification stating whether the project meets the following performance standards:

(1) the project has been completed according to approved plans and specifications and change orders;

(2) the project accepts hydraulic loading to the extent described in the approved design specifications and complies with all NPDES/SDS permit requirements; and

(3) there is complete separation of stormwater and sanitary flows within the project area, with the exception of flows from building rainleader connections authorized under the NPDES/SDS permit;

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

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

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

Subp. 3. **Corrective action report.** If the commissioner or the municipality determines that the project does not meet the project performance standards under subpart 2, item A, the municipality shall:

A. Submit within 30 days of the performance certification date a corrective action report that includes:

(1) an analysis of the project's failure to meet the performance standards;

(2) an estimate of the nature, scope, and cost of the corrective action necessary to bring the project into

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compliance; and

(3) a schedule for initiating, in a timely manner, the necessary corrective action work and for meeting the performance certification requirements following a start-up period that is reasonable for the type of corrective action work to be performed.

B. Following the completion of corrective action work, submit a performance certification as specified under subpart 1 according to the schedule in item A, subitem (3).

7077.0330 PAYMENT OF STATE FINANCIAL ASSISTANCE.

Subpart 1. **Payments up to 90 percent of assistance.** The municipality may request in writing periodic payments as work on the project progresses up to 90 percent of the total amount of the financial assistance award. No payments will be made for project work until the municipality has submitted the following items, if applicable:

A. the accepted bid proposal;

B. detailed tabulation of all bids received;

C. payment and performance bonds; and

D. executed construction contract and notice to proceed.

Subp. 2. **Payments beyond 90 percent of assistance.** Payments will not be made beyond 90 percent of the financial assistance amount until a final inspection of the project is performed by agency staff and the municipality has met the requirements of part 7077.0325.

Subp. 3. **Retained payments.** Financial assistance payments ~~may~~ shall be withheld if the commissioner determines that a project does not substantially conform to approved plans and specifications, or there has been a major breach of a condition in the financial assistance agreement, or the municipality has failed to comply with the applicable requirements of this chapter. If funds are withheld pursuant to this subpart, further payments will be made when the condition causing the withholding has been corrected, or as otherwise agreed to by the

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commissioner and the municipality.

WATER POLLUTION CONTROL REVOLVING FUND PROGRAM

7077.0400 PURPOSE.

The water pollution control revolving fund program provides loans and other forms of financial assistance to municipalities for the planning, design, and construction of publicly owned wastewater treatment facilities according to Title VI of the act and Minnesota Statutes, section 446A.07. The program is jointly administered by the Minnesota Pollution Control Agency and the Minnesota Public Facilities Authority. Parts 7077.0400 to 7077.0445 provide for the agency's responsibilities for the administration of the program and apply to loans and other forms of financial assistance awarded before, on, or after July 1, 1990.

7077.0405 INTENDED USE PLAN.

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

Subp. 2. **Eligibility.** To be eligible for placement on the intended use plan, a municipality's project must be listed on the current municipal needs list.

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

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

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

(2) a project cost estimate; and

(3) a proposed project schedule and a breakdown of estimated quarterly cash flow needs.

B. For a construction loan, a municipality must first

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receive the commissioner's approval of its facilities plan, as required under part 7077.0150, before it will be placed on the intended use plan. If the municipality is proposing to change the selected treatment method or any other major element of a previously approved facilities plan, the municipality must receive the commissioner's approval of a facilities plan addendum.

7077.0410 APPLICATIONS.

Subpart 1. **Form of application.** A municipality identified on the intended use plan must submit an application to the executive director of the authority on forms provided by the authority and the agency.

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

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

B. a schedule for completion of the facilities plan on a form provided by the agency;

C. ~~an engineer's~~ a certificate of adequate errors and omissions insurance carried by the engineering firm; and

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

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

A. a schedule for completion of plans and specifications, a sewer service charge system, a sewer rate ordinance, and a sewer use ordinance on a form provided by the agency;

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B. ~~an engineer's~~ a certificate of adequate errors and omissions insurance carried by the engineering firm;

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

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

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

A. Plans and specifications as required under part 7077.0155.

B. A sewer service charge system as required under part 7077.0160, subpart 2.

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

D. A sewer use ordinance as required under part 7077.0160, subpart 4.

E. A sewer rate ordinance as required under part 7077.0160, subpart 3.

F. A project schedule on a form provided by the agency.

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

> The facilities described in this application have been designed based on data that has been verified to accurately represent present and future flows and loadings and with full knowledge of the effluent limitations required by the Minnesota Pollution

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Control Agency as set forth in NPDES Permit No. _____ dated _____. It is my judgment and carefully considered opinion that these facilities ~~are~~ will be capable of consistently producing the required effluent quality, provided that the facilities are operated in conformance with the approved operation and maintenance manual and that the volume and characteristics of raw wastewater are within the limits of the flow data presented in the plans and specifications under the requirements of Minnesota Rules, part 7077.0155, subpart 2, item C.

H. ~~An engineer's~~ A certificate of adequate errors and omissions insurance carried by the engineering firm.

I. An engineering contract that includes, at a minimum, the following provisions:

(1) full-time inspection during construction and written monthly reports submitted to the agency describing the type of construction inspected and the time involved in inspection;

(2) two sets of "as built" plans and specifications on microfiche;

(3) preparation of an operation and maintenance manual; and

(4) start-up services during the first year of operation, including:

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

(b) train or provide for training of operating personnel and prepare necessary curricula and training materials; and

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

J. A certification from the municipality that it will comply with the performance certification requirements in part 7077.0440.

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

L. A cost breakdown of all work to be funded under the loan.

M. A legal opinion identifying that the municipality has sufficient legal vested interest in all sites, easements, or rights-of-way to ensure immediate construction and undisturbed utilization for the estimated life of the facilities.

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

7077.0415 APPLICATION CERTIFICATION.

Subpart 1. **Planning loans.** Upon review and approval of the documents required by part 7077.0410, subpart 2, and a determination that the project meets the applicable requirements of the act, federal regulations, state statutes, and this chapter, the commissioner shall certify the application to the authority.

Subp. 2. **Design loans.** Upon review and approval of the documents required by part 7077.0410, subpart 3, and a determination that the project meets the applicable requirements of the act, federal regulations, state statutes, and this chapter, the commissioner shall certify the application to the authority.

Subp. 3. **Construction loans.** Upon review and approval of the documents required by part 7077.0410, subpart 4, completion of items A and B, and a determination that the project meets the applicable requirements of the act, federal regulations, state statutes, and this chapter, the commissioner shall certify the application to the authority.

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

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B. The municipality has obtained a NPDES/SDS permit from the agency for the project.

7077.0420 CHANGE ORDERS.

Subpart 1. **In general.** A change order must be submitted to the commissioner for any change that:

A. alters the design or scope of the project;

B. increases or decreases the contract price;

C. changes the construction completion date;

D. causes a deviation from the approved plans and specifications; or

E. causes a substitution or replacement of equipment, suppliers, or subcontractors.

Subp. 2. **Contents.** Change orders submitted to the commissioner must contain the following:

A. signatures of the municipality's authorized representative, the project engineer, and the contractor;

B. date on which the municipality and the contractor executed the change order; and

C. a complete description of the change.

Subp. 3. **Approval of change orders.** Approval of a change order is required as follows:

A. Proposed changes that substantially alter the type of treatment process, or its efficiency, versatility, or reliability, must be submitted to the commissioner for prior approval.

B. Change orders not requiring the commissioner's prior approval under item A must be submitted to the commissioner for review and approval within one month after the date on which the municipality, its engineer, or other authorized agent, and the contractor execute the change order.

C. Proposed changes described in item A do not require prior written approval from the commissioner when the work is agreed by the commissioner to be of an emergency nature.

7077.0430 CONSTRUCTION LOAN REPORTING REQUIREMENTS.

Subpart 1. **Sixty days before contract date for completion**

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

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

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

C. evidence that the approved sewer use ordinance and sewer rate ordinance have been enacted; and

D. a resolution of the governing body adopting the approved sewer service charge system with updated cost revisions.

Subp. 2. [See Repealer.]

7077.0435 COMPLETION OF CONSTRUCTION.

Subpart 1. **Building completion.** Building completion is the date when all major components of a project have been built, all equipment is operational, start-up testing has been completed, and the project is capable of functioning as designed. At this point, the municipality must notify the commissioner it is ready to initiate operation and request that a prefinal inspection be scheduled.

Subp. 2. **Initiation of operation.** Initiation of operation is the date the project begins operating for the purposes for which it was planned, designed, and built. A project must not initiate operation until it receives approval from the commissioner.

A. The municipality must notify the commissioner in writing of the initiation of operation date within ten days <u>following initation</u> of ~~initiating~~ operation.

B. The date of initiation of operation is the first day of the one-year performance period.

Subp. 3. **Final inspection.** A final inspection of the treatment facility shall be performed by agency staff when all the construction is complete except for minor weather-related components. The purpose of the inspection is to verify that

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construction is complete and conforms with the approved plans, specifications, and change orders. A municipality requests that a final inspection be performed when it believes construction is complete.

7077.0440 PROJECT PERFORMANCE.

Subpart 1. [See Repealer.]

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

A. a certification stating whether the project meets the following performance standards:

(1) the project has been completed according to approved construction plans and specifications and change orders;

(2) the municipality has a sufficient number of trained and capable personnel to provide adequate operation and maintenance of the project, and the project requires only the operation and maintenance as is outlined as normal and routine in the approved operation and maintenance manual;

(3) the project accepts hydraulic and organic loading to the extent described in the approved design specifications and complies with all NPDES/SDS permit requirements;

(4) industrial wastewater discharges to the treatment works do not interfere with the operation of the project or the disposal or use of municipal sludges;

(5) sludge treatment and disposal is accomplished in conformance with chapter 7040 or parts 7005.2350 to 7005.2400, as applicable; and

(6) the project meets the requirements in the approved plans and specifications for the prevention of contamination of underground drinking water sources beyond the property boundary, if applicable;

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

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

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

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

Subp. 3. **Corrective action report.** If the commissioner or the municipality determines that the project does not meet the project performance standards under subpart 2, item A, the municipality shall:

A. submit within 30 days of the performance certification date a corrective action report that includes:

(1) an analysis of the project's failure to meet the performance standards;

(2) an estimate of the nature, scope, and cost of the corrective action necessary to bring the project into compliance; and

(3) a schedule for initiating, in a timely manner, the necessary corrective action work and for meeting the performance certification requirements following a start-up period that is reasonable for the type of corrective action work to be performed; and

B. following the completion of corrective action work, submit a performance certification as specified under subpart 2 according to the schedule in item A, subitem (3).

7077.0445 REQUEST TO WITHHOLD FINANCIAL ASSISTANCE PAYMENTS.

Failure of a municipality's project to conform substantially to approved plans and specifications or failure of a municipality to comply with the requirements of part parts 7077.0430 and 7077.0440 constitutes grounds for the commissioner to request that the authority withhold payments to the municipality. Once an agreement for correcting the condition leading to the withholding of funds is reached between the

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commissioner and the municipality, the commissioner will recommend to the authority that the retained funds be released according to the provisions in the agreement.

CORRECTIVE ACTION GRANTS PROGRAM

7077.0500 PURPOSE.

The corrective action grants program provides grants according to Minnesota Statutes, section 116.181, to municipalities with wastewater treatment facilities funded under the Clean Water Act, United States Code, title 33, sections 1281 to 1299, or the state independent grants program that are unable to meet performance standards. The grants are for the purpose of correcting performance failures. The program is jointly administered by the Minnesota Pollution Control Agency and the Minnesota Public Facilities Authority. The program applies to grants made before, on, or after July 1, 1990. Parts 7077.0500 to 7077.0560 pertain to the agency's responsibilities in administering the program.

7077.0505 DEFINITION.

Subpart 1. to 4. [See Repealer.]

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

7077.0510 ELIGIBILITY FOR PARTICIPATION.

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

A. The municipality received a wastewater treatment facility construction grant under the Clean Water Act, United States Code, title 33, sections 1281 to 1299, or the state independent construction grants program after December 29, 1981. A municipality that received a grant under the individual on-site wastewater treatment system grants program or the

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capital cost component grant program does not meet this eligibility requirement.

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

C. The municipality's wastewater treatment facility is unable to meet performance standards and the inability was identified by the commissioner before the end of the one-year performance certification period established by Code of Federal Regulations, title 40, section 35.2218, or part 7077.0250, subpart 2, item B.

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

7077.0515 ELIGIBLE AND INELIGIBLE COSTS.

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

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

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

7077.0525 CONTRACT ASSIGNMENT.

A municipality that enters into a contract with a contractor or engineer for the planning, design, or construction of a part of or an entire wastewater treatment system, to be

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paid for in whole or in part by state corrective action grant funds, shall provide in the contract that any or all of its rights and duties thereunder may be assigned to the commissioner without the agreement of the contractor or engineer. The assignment may be made by mutual agreement between the municipality and the commissioner or according to an agency assumption of municipal powers under Minnesota Statutes, section 115.48.

7077.0530 CONTRACT BENEFICIARY.

A municipality that enters into a contract with a contractor or engineer for the planning, design, or construction of a part of or an entire wastewater treatment system, to be paid for in whole or in part by state corrective action grant funds, shall provide in the contract that the agency is a third-party beneficiary to the contract.

7077.0535 APPLICATION.

Subpart 1. **Agency notification.** After the preapplication items in part 7077.0520 are approved by agency staff, the commissioner shall notify the municipality that it is eligible to apply for a corrective action grant.

Subp. 2. **Application requirements.** The municipality shall apply for a corrective action grant on a form provided by the authority and submit the following information for the commissioner's review and approval:

A. A plan, endorsed by resolution of the municipality's governing body, for recovering the costs of the proposed corrective action from the responsible parties.

B. A report on the current status of negotiations or litigation.

C. A proposed engineering contract that includes, at a minimum, the following provisions:

(1) full-time inspection during construction and written monthly reports submitted to the agency describing the type of construction inspected and the time involved in inspection;

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(2) two sets of "as built" plans and specifications on microfiche for submittal to the agency;

(3) preparation of an operation and maintenance manual, if applicable; and

(4) start-up services during the first year of operation, if applicable, including:

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

(b) train or provide for training of operating personnel and prepare necessary curricula and training materials; and

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

D. A certificate of adequate errors and omissions insurance carried by the engineering firm.

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

> Corrective action for the facilities described in this grant application has been designed with full knowledge of the effluent limitations required by the Minnesota Pollution Control Agency as set forth in NPDES Permit No. ..... dated ..... It is my judgment and carefully considered opinion that the performance standards required by the Minnesota Pollution Control Agency will be met after the work detailed in the approved corrective action report, dated ....., is completed and that the corrected facilities ~~are~~ will be capable of consistently producing the required effluent quality, provided that the facilities are operated in conformance with the approved operation and maintenance manual and the volume and characteristics of raw wastewater are within the flow data presented in the plans and specifications approved for the original project or in

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the corrective action report modifications.

F. A treatment agreement with each major contributing industry.

G. A cost breakdown for all project work to be funded by the grant, including separation of grant eligible and ineligible items, in a format provided by the agency.

H. If necessary, a comprehensive legal opinion identifying that the municipality has sufficient legal vested interest in all sites, easements, or rights-of-way to ensure immediate construction and undisturbed use for the estimated life of the facilities.

Subp. 3. **Three copies.** Corrective action grant application forms and attachments, must be submitted in triplicate to the authority. At least one set of forms and attachments must contain original signatures.

7077.0540 CERTIFICATION OF APPLICATION FOR AWARD.

Subpart 1. **Priority.** The commissioner shall certify grants to the authority for award in the order that applications that meet the requirements of parts 7077.0520 and 7077.0535 are received and to the extent that funds are available.

Subp. 2. **Amount of award.** Except as provided in part 7077.0560, subpart 3, the amount of the grant will be 80 percent of the total corrective action costs, eligible and ineligible, or the amount of the eligible costs, whichever is less.

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

Subp. 4. **Certification to authority.** Upon review and approval of the documents required under parts 7077.0520 and 7077.0535, the commissioner shall certify to the authority that the project meets the statutory requirements and the requirements of this chapter and is eligible for an award in the amount determined under subpart 2.

Subp. 5. ~~**Report to agency board.** The commissioner shall~~

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~~report-the-certification-of-a-corrective-action-grant-under-this part-to-the-agency-board-as-soon-as-possible,-but,-in-any-case, within-60-days.~~

7077.0545 GRANT AMENDMENTS.

Subpart 1. **Maximum grant amount.** No grant shall be amended to exceed $500,000.

Subp. 2. **After-bid amendments.** A municipality shall submit a written request for an after-bid amendment when construction contracts differ from construction costs estimated in the grant certification. After-bid grant amendments shall be based on the cost of the completed procurement actions and shall be dependent upon the availability of additional grant funds. The commissioner shall certify the amendment to the authority if funds are available and the costs are eligible.

Subp. 3. **Final amendment.** A municipality shall submit a written request for a final amendment when construction has been completed. The commissioner shall certify the amendment to the authority if funds are available and the costs are eligible. The amendment shall:

A. be based on the eligible construction costs and change orders approved by the commissioner; and

B. increase the grant amount under part 7077.0515, subpart 3, ~~for-administrative,-engineering,-and-legal-costs~~ as the amount of grant eligible construction costs increase through approved change orders. ~~This-increase-may-only-be-used-to-pay for-engineering-costs,-including-inspection,-created-by-work specified-on-the-approved-change-orders.~~

7077.0550 CHANGE ORDERS.

Subpart 1. **In general.** A change order must be submitted to the commissioner for any change that:

A. alters the design or scope of the project;

B. increases or decreases the contract price;

C. changes the construction completion date;

D. causes a deviation from the approved plans and specifications; or

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E. causes a substitution or replacement of equipment, suppliers, or subcontractors.

Subp. 2. **Contents.** Change orders submitted to the commissioner must contain the following:

A. signatures of the municipality's authorized representative, the project engineer, and the contractor;

B. date on which the municipality and the contractor execute the change order;

C. identification of grant eligible and ineligible costs;

D. a complete description and justification of the change;

E. an explanation of why the change was not included in the original plans and specifications and contractor's bid;

F. a detailed cost breakdown for the change from the contractor showing the costs of materials, labor, overhead, and profit; and

G. a cost estimate for the change from the project engineer and an analysis of any differences between the engineer's estimate and the contractor's cost breakdown. If the project engineer's estimate differs from the contractor's price by more than ten percent, an explanation of how the costs were agreed to is required.

Subp. 3. **Eligible costs.** The following costs associated with approved change orders are eligible for grant assistance:

A. construction costs resulting from defects in the plans and specifications that would have been eligible and would have been incurred if the plans and specifications had been free of the defects, excluding the costs of any rework, redesign, restocking, small tools, supervision, delay, acceleration, or disruption caused by the defects;

B. costs, determined by the commissioner to be the result of unanticipated site conditions;

C. combined profit and overhead costs for the contractor or subcontractor that actually performs the change order work not exceeding 15 percent of the costs of materials

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and labor; and

D. combined profit and overhead costs for a contractor or subcontractor that administers the change order but does not actually perform the change order work not exceeding five percent of the costs of materials and labor.

Subp. 4. **Approval of change orders.** Approval of change orders is required as follows:

A. Proposed changes that substantially alter the type of treatment process, or its efficiency, versatility, or reliability, must be submitted to the commissioner for prior approval.

B. Change orders not requiring the commissioner's prior approval under item A must be submitted to the commissioner for review and approval within one month after the date on which the municipality, its engineer, or other authorized agent, and the contractor execute the change order.

C. Proposed changes described in item A do not require prior written approval from the commissioner when the work is agreed by the commissioner to be of an emergency nature.

7077.0555 PAYMENTS.

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

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

A. The municipality must submit a quarterly summary of actions taken to recover corrective action costs from or to complete needed corrective work by the responsible parties.

B. The municipality must support claims of incurred administration, legal, and engineering costs specified under

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part 7077.0515 with documentation.

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

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

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

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

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

7077.0560 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 before corrective action grant award.** In the event that the municipality recovers an amount of money from the responsible persons before the corrective action grant is awarded, the amount of the award shall be determined by subtracting the amount recovered for grant eligible work from the total eligible costs determined under part 7077.0515.

Subp. 3. **Recovery after corrective action grant award.** In the event that the municipality recovers an amount of money from the responsible persons after the corrective action has been

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awarded, the grant will be amended by subtracting the amount recovered for grant eligible work from the total eligible costs determined under part 7077.0515. If corrective action grant funds have been paid to the municipality in excess of the amended grant amount, the municipality shall repay the excess amount to the state.

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.

CAPITAL COST COMPONENT GRANT PROGRAM

7077.0600 PURPOSE.

The capital cost component grant program provides grants to municipalities for part of the capital cost component of the service fee under a service contract with a private vendor to construct and operate wastewater treatment facilities according to the provisions of Minnesota Statutes, section 116.18, subdivision 3b. The program is jointly administered by the Minnesota Pollution Control Agency and the Minnesota Public Facilities Authority. The program applies to grants made

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before, on, or after July 1, 1990. Parts 7077.0600 to 7077.0660 provide for the agency's responsibilities for the administration of the program.

7077.0605 DEFINITIONS.

Subpart 1. **Scope.** For the purpose of parts 7077.0600 to 7077.0660, the following terms have the meanings given them.

Subp. 2. to 4. [See Repealer.]

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

Subp. 6. [See Repealer.]

Subp. 7. **Project.** "Project" means the work for which a grant or grant amendment is awarded under parts 7077.0600 to 7077.0660.

7077.0615 GRANT APPLICATIONS.

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

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

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

B. an engineering report containing:

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

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

(3) the municipality's existing wastewater flows

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and loadings data on a form provided by the agency; and

(4) the municipality's estimated future wastewater flows and loadings data on a form provided by the agency;

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

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

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

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

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

7077.0630 CERTIFICATION OF AWARD.

The commissioner shall certify to the authority the list of projects to be awarded grants and the amount of the grant to be awarded based on the criteria in parts 7077.0620 and 7077.0625.

7077.0635 PLANS AND SPECIFICATIONS.

Subpart 1. **In general.** A municipality must submit plans and specifications to the commissioner for review and approval according to part 7077.0640, subpart 2, item A.

Subp. 2. **Contents.** A complete set of plans and specifications must include:

A. drawings and specifications signed by a professional engineer registered in Minnesota;

B. a summary of design parameters for the treatment units;

C. a summary of flow conditions for average dry weather, average wet weather, maximum wet weather, peak hourly

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and instantaneous wet weather on a form provided by the agency;

D. a hydraulic profile of the flow through the treatment system; and

E. a plan for interim treatment during construction.

7077.0640 GRANT CONDITIONS.

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

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

A. Within 365 days after the grant award date, the grantee shall submit to the commissioner for technical review and approval complete plans and specifications for the wastewater treatment facility. The commissioner shall approve or deny approval of the plans and specifications within 90 days after initial submittal. The grantee and the commissioner may agree to one extension of up to an additional 90 days.

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

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

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

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

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

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

D. A grantee proposing to make changes in the project

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

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

7077.0650 GRANT PAYMENT.

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

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

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

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

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

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(3) submission of a certification of compliance with all grant conditions in part 7077.0640, subpart 2;

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

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

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

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

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

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

Subp. 3. **Verification of compliance.** Before a grant payment is made, the commissioner shall verify that the grantee has complied with part 7077.0630 and with the grantee's permit conditions.

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

7077.0655 TERMINATION OF GRANT.

Failure of the grantee to comply with part 7077.0640 shall constitute grounds for the commissioner to recommend that the authority terminate the grant of a grantee.

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INDIVIDUAL ON-SITE WASTEWATER TREATMENT SYSTEMS GRANTS PROGRAM

7077.0700 PURPOSE.

The individual on-site wastewater treatment systems grants program provides grants to municipalities to assist owners of individual on-site wastewater treatment systems to upgrade or replace their failed systems according to the provisions of Minnesota Statutes, section 116.18, subdivision 3c. The program is jointly administered by the Minnesota Pollution Control Agency and the Minnesota Public Facilities Authority. The program applies to grants awarded before, on, or after July 1, 1990. Parts 7077.0700 to 7077.0765 provide for the agency's responsibilities for the administration of the program.

7077.0705 DEFINITIONS.

Subpart 1. **Scope.** For the purpose of parts 7077.0700 to 7077.0765, the following terms have the meanings given them.

Subp. 2. **Abatement notice.** "Abatement notice" means an official document issued by the municipality to the owner of an individual on-site wastewater treatment system stating that the owner is in violation of the municipality's ordinance that adopts the requirements of chapter 7080. The abatement notice must include a citation to the ordinance alleged to have been violated.

Subp. 3. to 5. [See Repealer.]

Subp. 6. **Construction cost.** "Construction cost" means the cost of the materials, labor, overhead, and profit necessary for installation, construction, and repair of an individual on-site wastewater treatment system established by a contract between a system owner and a system installer.

Subp. 7. **Designer.** "Designer" means a person who designs individual on-site wastewater treatment systems, and has received agency approval under part 7077.0720.

Subp. 8. **Dwelling.** "Dwelling" means any building or place used or intended to be used by human occupants as a single family or two family unit.

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Subp. 9. **Failed system.** "Failed system" means a wastewater treatment system that has been issued an abatement notice by the municipality's inspector.

Subp. 10. **Individual on-site wastewater treatment system or individual system.** "Individual on-site wastewater treatment system" or "individual system" means a wastewater treatment system, or part of a system, serving one or two dwellings or other establishments, that uses subsurface soil treatment and disposal.

Subp. 11. **Inspector.** "Inspector" means a person employed by or under contract to the municipality who inspects individual on-site wastewater treatment systems for conformance with the ordinance that adopts the requirements of chapter 7080, and has received agency approval under part 7077.0720.

Subp. 12. **Installer.** "Installer" means a person who constructs or repairs individual on-site wastewater treatment systems, and has received agency approval under part 7077.0720.

Subp. 12a. **Maintenance plan.** "Maintenance plan" means a plan developed and administered by a municipality that demonstrates how the maintenance requirements of chapter 7080 will be implemented and enforced.

Subp. 13. **Median household income.** "Median household income" means the income data named "median household income" from the most recent decennial census of the United States.

Subp. 14. **Mound system.** "Mound system" means a system for which the soil treatment area is built above the naturally occurring soil surface to overcome limits imposed by proximity to water table or bedrock, or by rapidly or slowly permeable soils.

Subp. 15. [See Repealer.]

Subp. 16. **Other establishment.** "Other establishment" means a public or private structure other than a dwelling that generates wastewater.

Subp. 17. **Seasonal residence.** "Seasonal residence" means a dwelling used for less than 182 days of a calendar year by a single family or household. Second homes, vacation residences,

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and recreation residences are included in this definition.

Subp. 18. **Site evaluator.** "Site evaluator" means a person who investigates soils and site characteristics, does soil borings or percolation tests for use in designing individual on-site wastewater treatment systems, and has received agency approval under part 7077.0720.

Subp. 19. **Trench or bed system.** "Trench or bed system" means an individual wastewater treatment system employing a building sewer, sewage tank, and the soil treatment system consisting of trenches or a seepage bed constructed below the original soil surface.

7077.0710 ELIGIBILITY.

Subpart 1. **Municipality eligibility.** A municipality applying for the individual system owners must meet the following conditions to be eligible for a grant:

A. be authorized by its governing body to assume responsibility for the grant application and related documents for owners of individual on-site wastewater treatment systems who are in its jurisdiction and included in the planning area under part 7077.0715, subpart 2;

B. have developed and adopted a wastewater treatment plan under part 7077.0715;

C. have enacted and be enforcing an ordinance that adopts the requirements of chapter 7080, Individual Sewage Treatment Systems Standards; and

D. have enacted an ordinance that establishes a maintenance plan for the individual on-site wastewater treatment systems in its jurisdiction.

Subp. 2. **Individual system eligibility.** The individual systems to be replaced or upgraded included in the municipality's grant application must meet the following conditions:

A. be a failed system;

B. have been constructed before January 1, 1977;

C. not be serving a seasonal residence; and

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D. not have been constructed with state or federal water pollution control funds.

Subp. 3. **Previous funding.** Individual systems located in geographic areas that were included in planning areas of projects previously funded with state or federal water pollution control funds are not eligible for funding under this part.

7077.0715 WASTEWATER TREATMENT PLAN.

Subpart 1. **General requirements.** The municipality must develop a wastewater treatment plan that identifies wastewater treatment needs and proposes long-term solutions for a planning area under subpart 2. The plan must be adopted by the municipality's governing body.

Subp. 2. **Planning area.** The planning area is the entire geographic area in the municipality's jurisdiction unless the municipality submits an alternative proposal before application. Alternative proposals must be approved by the commissioner and will be evaluated based on housing density, water quality impact, and public health impact. Separate dwellings that do not form a contiguous area are not considered a planning area.

Subp. 3. **Plan contents.** The plan must include the following:

A. a planning area survey prepared by an inspector that identifies all systems in the planning area as failed systems or systems in compliance with chapter 7080;

B. site evaluations, including soil investigations, soil borings, and percolation tests, for the failed systems identified in item A prepared by a site evaluator or site evaluators and a determination if it is feasible to replace or upgrade the failed systems on site;

C. an analysis of the overall wastewater treatment needs in the planning area, including sizing and the location of the proposed systems, prepared by a designer using data from the site evaluations prepared under item B;

D. a list of the specific failed individual on-site

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wastewater treatment systems, including addresses and names of property owners requesting grant funds and copies of the abatement notices;

E. a proposal for addressing the remaining wastewater treatment needs in the planning area not covered in item D, including specific actions to be taken and a proposed timetable for addressing the wastewater treatment needs; and

F. documentation of approval of the inspector, site evaluator or site evaluators, and designer under part 7077.0720.

Subp. 4. [See Repealer.]

7077.0720 APPROVAL OF INDIVIDUAL ON-SITE WASTEWATER TREATMENT PERSONNEL.

Subpart 1. **General requirement.** For the purposes of parts 7077.0700 to 7077.0765, inspectors, site evaluators, designers, and installers who inspect, evaluate sites for, design, and install individual on-site wastewater treatment systems under those parts must be approved by the commissioner under subpart 2 or 3.

Subp. 2. **First alternate approval criteria.** A person referred to in subpart 1 will be approved by the commissioner if the person is fully certified by the agency through the individual sewage treatment systems certification program administered by the agency in cooperation with the Individual Sewage Treatment Systems Advisory Committee established under part 7080.0100. Approval is automatic upon submittal of certification number.

Subp. 3. **Second alternate approval criteria.** A person referred to in subpart 1 may apply for approval under this subpart by submitting an application provided by the commissioner upon request. An applicant will be approved by the commissioner if the applicant meets the requirements of items A and B.

A. An applicant must demonstrate knowledge by scoring a minimum of 70 percent correct on an examination based on chapter 7080 and administered by the commissioner.

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B. An applicant must document experience by completing the following requirements:

(1) An inspector must submit a list of individual on-site wastewater treatment systems inspected by the applicant in the past three years. The inspector must certify that a minimum of 30 systems, or parts of systems, listed conform with the criteria in chapter 7080.

(2) A site evaluator must submit a list of individual on-site wastewater treatment systems for which the evaluator has conducted site evaluations in the past three years. The site evaluator must certify that a minimum of 20 sites for the systems listed were evaluated according to the criteria in chapter 7080.

(3) A designer must submit a list of individual on-site wastewater treatment systems designed by the applicant in the past three years. The designer must certify that a minimum of 20 systems listed were designed according to the criteria in chapter 7080.

(4) An installer must submit a list of individual on-site wastewater treatment systems constructed or repaired by the applicant in the past three years. The installer must certify that a minimum of ten systems listed were constructed or repaired according to the criteria in chapter 7080.

Subp. 4. **Notification of approval.** The commissioner will approve or deny an application within 30 days of the receipt of information required under subpart 3. Applicants may reapply at any time.

Subp. 5. **Purpose of agency approval.** Agency approval of inspectors, site evaluators, designers, and installers is for grant funding purposes only. This approval does not make the agency responsible for the technical adequacy of the work of inspectors, site evaluators, designers, and installers nor does it alter legal liability of this personnel otherwise provided by law.

7077.0725 APPLICATION.

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Subpart 1. **Notice of taking applications.** The commissioner will request the authority to publish in the State Register a notice that applications for individual on-site wastewater treatment grants will be accepted by the authority. The application closing date will be established by the commissioner, and will be no less than 120 days after the publication date.

Subp. 2. **Application requirements.** The municipality must apply for a grant on a form provided by the commissioner. The municipality must submit to the authority the following information with the application:

A. a resolution of the governing body of the municipality that designates the municipality as the responsible party for the grant application and related documents, authorizes the filing of the application, and designates the municipal official authorized to sign the application and related documents;

B. the wastewater treatment plan prepared under part 7077.0715;

C. a copy of the ordinance that adopts the requirements of chapter 7080 and certification that the ordinance is being enforced;

D. a copy of the ordinance establishing a maintenance plan under part 7077.0710, item D;

E. alternative median household income data under part 7077.0710, item E, for municipalities and planning areas not included in the decennial census;

F. signed statements from the individual system owners stating that their system meets the following conditions:

(1) the system to be replaced or upgraded was constructed before January 1, 1977;

(2) the system to be replaced or upgraded was not constructed with funds from state or federal water pollution control funds; and

(3) the system to be replaced or upgraded does not serve a seasonal residence;

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G. the municipality's estimated date for the completion of all construction and final request for payment for the grant eligible systems; and

H. a statement from the municipality that it has an inspector on staff or under contract for services, including documentation of approval under part 7077.0720.

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

Subp. 4. **Application closing date.** The application must be postmarked by the noticed application closing date.

Subp. 5. **Incomplete applications.** Municipalities that submit applications that do not include the information required in subparts 2 and 3 or that are not submitted by the application closing date are ineligible for funding. The municipalities may reapply in a later application period.

7077.0730 ELIGIBLE COSTS.

Subpart 1. **Eligible costs.** Only the actual construction costs of upgrading or replacing failed individual on-site wastewater treatment systems that have been identified under part 7077.0715, subpart 3, item D, are eligible.

Subp. 2. **Ineligible costs.** All nonconstruction costs including planning, engineering and design, site evaluation and soil investigation, inspection, and administrative costs are ineligible.

Subp. 3. **Number of systems limitation.** The eligibility of costs for a treatment site is limited to either a trench or bed system or a mound system under part 7077.0735, subpart 1.

Subp. 4. **Costs incurred before grant award.** An owner may incur costs before the award of the grant and retain eligibility for reimbursement of eligible costs if the following conditions are met:

A. the municipality has developed and adopted a wastewater treatment plan as described in part 7077.0715 before

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construction costs are incurred by the owner of the individual system;

B. the owner's system is specifically identified on the municipality's wastewater treatment plan; and

C. the municipality submits a complete and timely application, during the first noticed application period under part 7077.0725, subpart 1, following the adoption of the wastewater treatment plan.

7077.0735 AMOUNT OF GRANT AWARD.

Subpart 1. **Grant amount.** The amount of the grant will be 50 percent of the actual eligible costs under part 7077.0730 up to a maximum grant of $2,500 per household for a trench or bed system and $3,750 per household for a mound system.

Subp. 2. **Partial awards.** A municipality that receives only a part of the grant to which it is entitled, due to the limitation of funding, will be entitled to receive a grant amendment in the next year or years, if individual on-site wastewater treatment systems grant funding is available, until the full amount of the grant is awarded.

7077.0740 PRIORITY RANKING.

Municipalities that meet the requirements of parts 7077.0710 to 7077.0725 will be ranked for funding priority from lowest median household income to highest median household income, with the lowest median household income receiving the highest priority. Median household income is that established for the planning area identified under part 7077.0715, subpart 2. Planning areas not included in the decennial census shall submit a median household income figure for the planning area supported by complete income data and a computation methodology. If the data is complete and the computation methodology is equivalent to the decennial census, the median household income will be approved by the commissioner.

7077.0755 PAYMENTS.

Subpart 1. **Request for payments.** A municipality must

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submit payment requests to the authority on a form provided by the authority.

Subp. 2. **Schedule of payments.** Payments may be requested monthly as construction on individual systems is completed and approved by the inspector.

Subp. 3. **Documentation.** Before payment of any part of the grant is made, the municipality must submit copies of the following documents for each individual system:

A. invoices documenting incurred construction costs;

B. documentation that the system was designed by a designer using data from a site evaluator;

C. documentation that the system was upgraded or replaced by an installer; and

D. documentation that the system was inspected and approved by the municipality's inspector.

Subp. 4. **Certification of payment.** Within 30 days of agency receipt of payment request, the commissioner will determine whether payment will be made. If the commissioner determines that payment will not be made, the commissioner will advise the municipality of the deficiencies in the request. If the commissioner determines that payment conditions have been met, the commissioner will certify to the authority that payment should be made.

7077.0765 SUBSEQUENT GRANTS.

A municipality awarded a grant from the individual on-site wastewater treatment systems grants program is not eligible for additional funding under the program established by the 1972 Federal Water Pollution Control Act amendments or the state independent grants program, including the individual on-site wastewater treatment systems grants program, unless the municipality is applying for a project that serves a planning area that was not included, under part 7077.0715, subpart 2, in the awarded grant.

PROCEDURAL REQUIREMENTS

7077.2000 DISPUTES.

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A municipality adversely affected by an action of agency staff may request a review of the action. A request for review of the action must be submitted in writing to the commissioner by the municipality within 45 days of the date of notification of a final decision made by agency staff.

7077.2005 PROCEDURAL RULES AND APPEALS.

A request for a hearing, an appeal, or other procedural matter not specifically provided for in this chapter is governed by the agency rules of procedure, the rules of the Office of Administrative Hearings, and other applicable laws.

7077.2010 VARIANCES.

A person may apply for a variance from any requirement of parts in this chapter. The variance shall be applied for and acted upon by the agency according to Minnesota Statutes, section 116.07, subdivision 5, and other applicable statutes and rules.

REPEALER. Minnesota Rules, parts 7075.1010, subparts 1, 2, 3, and 4; 7075.1060, subparts 3 and 5; 7075.1110, subparts 2, 3, 4, and 6; 7075.1410, subparts 3, 4, 5, and 15; 7075.1430, subpart 4, 7075.2510; 7075.2540, subpart 2; 7075.2545, subpart 1, are repealed.

RENUMBER. In the next edition of Minnesota Rules, renumber the parts in column A with the corresponding part numbers in column B.

A	B
7075.1005	7077.0500
7075.1010	7077.0505
7075.1020	7077.0510
7075.1030	7077.0515
7075.1040	7077.0520
7075.1050	7077.0535
7075.1060	7077.0540
7075.1070	7077.0550
7075.1080	7077.0555
7075.1090	7077.0560
7075.1105	7077.0600
7075.1110	7077.0605
7075.1115	7077.0610
7075.1120	7077.0615
7075.1125	7077.0620
7075.1130	7077.0625

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1	7075.1135	7077.0630
2	7075.1140	7077.0640
3	7075.1145	7077.0645
4	7075.1150	7077.0650
5	7075.1155	7077.0655
6	7075.1160	7077.0660
7	7075.1400	7077.0700
8	7075.1410	7077.0705
9	7075.1420	7077.0710
10	7075.1430	7077.0715
11	7075.1440	7077.0720
12	7075.1450	7077.0725
13	7075.1460	7077.0730
14	7075.1470	7077.0735
15	7075.1480	7077.0740
16	7075.1490	7077.0745
17	7075.1500	7077.0750
18	7075.1510	7077.0755
19	7075.1520	7077.0760
20	7075.1530	7077.0765
21	7075.2505	7077.0400
22	7075.2515	7077.0405
23	7075.2520	7077.0410
24	7075.2525	7077.0415
25	7075.2530	7077.0420
26	7075.2535	7077.0425
27	7075.2540	7077.0430
28	7075.2545	7077.0440
29	7075.2550	7077.0445

Approved
by Revisor _____

Office of the Revisor of Statutes

Administrative Rules

TITLE: Adopted Permanent Rules Relating to Municipal Wastewater Treatment Construction Assistance Programs

AGENCY: Pollution Control Agency

MINNESOTA RULES: Chapters 7075 and 7077

The attached rules are approved for
filing with the Secretary of State

Carla M. Riehle
Assistant Revisor

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED

JUL 10 1990

Joan Anderson Growe

Secretary of State

2:35 PM

APPROVED AS TO FORM AND LEGALITY

July 7 19 90

HUBERT H. HUMPHREY, III
ATTORNEY GENERAL

BY Christie B Eller

ASSISTANT ATTORNEY GENERAL

Exhibit 1

CHAPTER 7075
MINNESOTA POLLUTION CONTROL AGENCY
WATER QUALITY DIVISION
STATE FUND AND FEDERAL GRANTS

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CHAPTER 7075

MINNESOTA POLLUTION CONTROL AGENCY

WATER QUALITY DIVISION

STATE FUND AND FEDERAL GRANTS

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WATER QUALITY DIV.

7075.0100 PURPOSE.

This chapter provides for the administration of the federal construction grant program, the independent state construction grant program, the state matching construction grant program, the state loan program for the construction of municipal disposal systems, and the state financial assistance program for combined sewer overflow abatement.

MS s 115.03 subd 1 cl (c); 116.16; 116.162

8 SR 694; 10 SR 278; 10 SR 1758

7075.0200 DEFINITIONS.

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

Subp. 2. **Statutorily defined terms.** The terms "person," "sewage," "industrial wastes," "other wastes," "treatment works," "sewer system," "disposal system," "waters of the state," "pollution control fund," "municipality," "commissioner," "agency," "pollution of water," "eligible cost," "wastewater treatment facility," as well as any other pertinent terms for which definitions are given in Minnesota Statutes, chapters 115 and 116 have the meanings ascribed to them therein.

Subp. 3. **Act.** "Act" means the Federal Water Pollution Control Act, United States Code, title 33, section 1251 et seq.

Subp. 4. **Adequate errors and omissions insurance.** "Adequate errors and omissions insurance" means a policy of insurance which provides the minimum amount of coverage for the corresponding estimated project construction cost as determined from the following table, which is maintained for a minimum of two years after acceptance of the project by the grantee.

Estimated Project Construction Cost	Minimum Amount of Coverage
less than $1,000,000	$ 250,000

$1,000,000 to $2,999,999	$ 500,000
$3,000,000 to $9,999,999	$1,000,000
$10,000,000 or over	$2,000,000

If an engineer has more than one project, the policy must provide for the minimum coverage applicable to the highest estimated project construction cost. Requests for variances from the requirements of this part are governed by part 7075.5000.

Subp. 5. **Administrator.** "Administrator" means the Administrator of the United States Environmental Protection Agency.

Subp. 6. **Adverse impact.** "Adverse impact" means the violation of any water quality standard or an objectionable growth of weeds, algae, or rough fish or any deleterious effect on the physical, chemical, or biological condition of the receiving water that lessens the present or long-term uses of the receiving water.

Subp. 7. **Construction loan.** "Construction loan" means a loan for a Step 3 project.

Subp. 8. **EPA.** "EPA" means the United States Environmental Protection Agency.

Subp. 9. **Facilities plan.** "Facilities plan" includes the information required by Code of Federal Regulations, title 40, section 35.2030, and other information as is necessary to determine whether the project is consistent with good engineering practice and capable of complying with applicable pollution control rules and standards.

Subp. 10. **Infiltration.** "Infiltration" means water other than wastewater that enters a sewer system (including sewer service connections and foundation drains) from the ground through defective pipes, pipe joints, connections, or manholes. Infiltration does not include, and is distinguished from, inflow.

Subp. 11. **Inflow.** "Inflow" means water other than wastewater that enters a sewer system (including sewer service connections) from sources such as, but not limited to, roof leaders, cellar drains, yard drains, area drains, drains from springs and swampy areas, manhole covers, cross connections

between storm sewers and sanitary sewers, catch basins, cooling towers, storm waters, surface runoff, street wash waters, or drainage. Inflow does not include, and is distinguished from, infiltration.

Subp. 12. **Need.** "Need" means a determination that a new or upgraded disposal system is currently required, or will be required within a five-year period to comply with state water pollution control rules; provided, the situation does not exist primarily due to inadequate operation and maintenance or primarily due to negligence on the part of any person.

Subp. 13. **Major contributing industry.** A "major contributing industry" means an industrial user of a treatment facility that:

A. has a rated flow of 50,000 gallons or more per work day where the rated flow is the daily design flow multiplied by 24 and divided by the actual hours of discharge in a day;

B. has a rated flow greater than five percent of the total design flow to the treatment works;

C. has a total organic load of greater than five percent of the total organic load to the treatment works;

D. has in its waste before pretreatment a toxic pollutant in in excess of what may be discharged to waters of the state; or

E. is found by the agency in connection with the issuance of an NPDES/SDS permit to the municipality, either singly or in combination with other contributing industries, to interfere with the treatment plant's ability to meet effluent limitations, interfere with digester operation or biological unit process operation, impact the area required for sludge disposal, or increase sizing of the facility by five percent or more.

Subp. 14. **NPDES/SDS permit.** "NPDES/SDS permit" means a National Pollutant Discharge Elimination System and State Disposal System permit issued by the agency that authorizes under certain conditions the discharge of pollutants to waters

of the state and subsurface disposal or on-land disposal and the operation of a disposal system.

Subp. 15. **90 percent compliance.** "90 percent compliance" means compliance with an NPDES/SDS permit limitation or condition related to effluent quality at a frequency of at least 90 percent of the time during a one-year period computed on the basis of the time interval appropriate to the limitation or condition. Periods of noncompliance caused by inadequate operation and maintenance or negligence on the part of a person are not included in the percentage computation for the purposes of this definition.

Subp. 16. **Outstanding resource value water.** "Outstanding resource value water" means those waters defined in part 7050.0180, subpart 2.

Subp. 17. **Planning loan.** "Planning loan" means a loan for Step 1 or Step 2 projects.

Subp. 18. **Plans and specifications.** "Plans and specifications" includes documents that contain the requirements under which a bidder submits a bid for performing the work and the contractual requirements and detailed requirements. The documents that comprise the plans and specifications must conform with generally accepted engineering practices, applicable state statutes and rules, and applicable requirements of Code of Federal Regulations, title 40, parts 33 and 35.

Subp. 19. **Primary treatment facilities.** "Primary treatment facilities" means facilities designed to provide a level of treatment lower than that provided by secondary treatment facilities.

Subp. 20. **Secondary treatment facilities.** "Secondary treatment facilities" includes facilities designed to provide effective sedimentation, biochemical oxidation, and disinfection, or the equivalent, consistent with requirements of part 7050.0211, subpart 1. Facilities discharging to limited resource value waters (Class 7 waters) and assigned effluent limitations based on part 7050.0214, subpart 1 or 2, and that do not have a phosphorus or toxic substances effluent limitation

are secondary treatment facilities for the purpose of this chapter.

Subp. 21. **Step 1.** "Step 1" means the preparation of all necessary preliminary engineering studies for the project.

Subp. 22. **Step 2.** "Step 2" means the preparation of construction plans and specifications for the project.

Subp. 23. **Step 3.** "Step 3" means the construction of the project.

Subp. 24. **Step 2+3.** "Step 2+3" means the preparation of construction plans and specifications for and construction of the project.

Subp. 25. **Tertiary treatment facilities.** "Tertiary treatment facilities" includes facilities specifically designed to achieve effluent limitations based on part 7050.0211, subpart 1, for phosphorus or toxic substances and facilities designed to provide a level of treatment higher than that provided by secondary treatment facilities.

Subp. 26. **Treatment agreement.** A "treatment agreement" is an agreement between a municipality and a major contributing industry that includes the following:

A. the variations in daily flow and the monthly average and daily maximum quantity of compatible and incompatible pollutants to be discharged to the treatment facility;

B. the intended period of use of the treatment facility;

C. signatures by the major contributing industry and the owner of the treatment system accepting the wastewater;

D. a requirement that the quantities to be discharged to the treatment system will be in accordance with applicable standards and requirements; and

E. enforceability in a court of law by the municipality.

Subp. 27. **Wastewater.** "Wastewater" means sewage, industrial waste, and other wastes collected for treatment in a disposal system.

Subp. 28. **Other terms and abbreviations.** Other terms and abbreviations used herein which are not specifically defined by law shall be construed in conformance with the context and professional usage.

MS s 115.03 subd 1 para (c); 116.16

8 SR 694; 10 SR 278; L 1987 c 186 s 15

7075.0300 [Repealed by amendment, 8 SR 694]

7075.0400 TYPES OF PROGRAMS.

Under this chapter and Minnesota Statutes, section 116.16 et seq., the agency may disburse funds from the pollution control fund for the following:

A. state matching grants for projects tendered a federal grant under the act;

B. grants to reduce or eliminate the local contribution of a municipality meeting the criteria in part 7075.0425;

C. independent state grants for planning and construction of municipal disposal systems;

D. loans for the construction of municipal disposal systems; and

E. financial assistance for the abatement of combined sewer overflow.

MS s 115.03 subd 1 cl (c); 116.16; 116.162

8 SR 694; 10 SR 278; 10 SR 1758

CONSTRUCTION GRANTS PROGRAM

7075.0401 SUMMARY OF CONSTRUCTION GRANTS PROGRAMS.

The following provisions apply to the municipal construction grant programs:

A. Federal construction grant funds and state matching construction grant funds are available for Step 2+3 and Step 3 projects and advances of allowance for Steps 1 and 2.

B. Independent state construction grant funds are available for Steps 1, 2, 3, and 2+3 projects.

C. Except as provided in part 7075.0409, subpart 4,

items C and D, construction grants are awarded to municipalities on a priority basis. Municipalities with the highest priorities as determined by a point system are awarded construction grants first.

D. Priorities are determined by awarding points for various disposal system projects based on the waters affected, the population affected, the type of project proposed, and extra points for qualifying projects.

E. The agency develops and maintains a municipal needs list that ranks in order of priority all municipalities within the construction grants programs for which a need exists.

F. The agency prepares a municipal project list that lists in order of priority from the municipal needs list, the municipalities that are eligible to apply for construction grants for their projects from funds allotted to the state for the current fiscal year by the federal government or appropriated into the fund for the current fiscal year.

G. A municipality on the municipal project list must apply for a construction grant before a grant will be awarded.

H. State financial assistance is available for design and construction of combined sewer overflow abatement projects. This assistance is awarded on a pro rata basis to qualifying municipalities separately from the priority ranking process for other construction grants.

MS s 115.03 subd 1 cl (c); 116.16; 116.162

8 SR 694; 10 SR 278; 10 SR 1758

7075.0402 MUNICIPAL NEEDS LIST.

Subpart 1. **Requirement.** The agency shall develop and maintain a municipal needs list of municipalities that have a need for a new or upgraded disposal system.

Subp. 2. **Points and listing order.** A municipality on the municipal needs list shall be awarded points under the criteria established in this chapter. The municipalities shall be listed on the municipal needs list in descending order according to the number of points awarded to each.

Subp. 3. **Petition for inclusion on list.** A municipality may petition the agency for inclusion on the municipal needs list. A municipality petitioning the agency for inclusion on the list shall submit the following information:

A. If the municipality is sewered, the municipality shall submit data regarding concentration of pollutants in existing discharge; volume of discharge; and waters of the state presently or potentially impacted by the discharge.

B. If the municipality is unsewered, the municipality shall submit data regarding type of soil in unsewered area; depth to seasonal high water table; size of all lots in the area; and age and type of existing system.

Subp. 4. **Review of petitions; additions to list.** The agency shall review each petition and add to the municipal needs list each municipality for which a need has been found to exist. If the agency determines that a need does not exist, the municipality shall not be added to the list and the agency shall notify the municipality of the reasons for the determination.

Subp. 5. **Removal from needs list.** Upon approval of a facilities plan, the agency may determine that the municipality does not have a need and remove the municipality and the project from the municipal needs list.

MS s 115.03 subd 1 para (c); 116.16

8 SR 694; 10 SR 278

7075.0403 PRIORITY POINTS FOR WATERS AFFECTED.

Subpart 1. **Water use and point ratings.** A municipality shall be awarded priority points based on the water use of the receiving water of the discharge according to the following:

	Water Use*	Point Rating
Class 1	Domestic consumption:	
	Class 1A waters	70
	Class 1B waters	65
	Class 1C waters	60
	Class 1D waters	55
Class 2	Fisheries and recreation:	
	Class 2A waters	60
	Class 2B waters	50
	Class 2C waters	40
Class 7	Limited Resource Value Waters	35

* The water uses are more specifically defined in parts

7050.0200 and 7050.0220 and the water use of a specific water of the state is the water use established by parts 7050.0400 to 7050.0470.

Subp. 2. **Receiving water with more than one designated water use.** If a municipality discharges to a receiving water with more than one designated water use, the municipality shall be awarded the points for the designated water use with the greatest number of points.

Subp. 3. **Adverse impact on downstream water.** If a municipal discharge has an adverse impact on a downstream water with a designated water use receiving more points than the receiving water, the municipality shall be awarded the priority points for the downstream water.

MS s 115.03 subd 1 para (c); 116.16

8 SR 694; 10 SR 278

7075.0404 PRIORITY POINTS FOR POPULATION SERVED.

A municipality shall be awarded priority points based on the population of the municipality served by the project. The priority points for population served are five times the logarithm to the base 10 ($\log_{10}$) of the population determined by the latest official census. The table below gives examples of the priority points assigned for various populations:

Population	Log $(_{10})$	Priority Points Assigned
100	2	10.0
1,000	3	15.0
10,000	4	20.0
100,000	5	25.0
1,000,000	6	30.0

MS s 115.03 subd 1; 116.16

8 SR 694

7075.0405 PRIORITY POINTS FOR TYPE OF PROJECT.

Subpart 1. **Table of priority points by type of project.** A municipality shall be awarded priority points based on the type of project to be constructed according to the following:

Type of Project	Priority Points
Tertiary treatment facilities:	
A. major tertiary treatment facilities	160
B. dechlorination facilities	120

C. ancillary addition to existing tertiary treatment facilities	80
Secondary treatment facilities:	
D. major secondary treatment facilities	150
E. dechlorination facilities	110
F. ancillary addition to existing secondary treatment facilities	75
Collection systems or collector sewers:	
G. collection system or collector sewer	10
H. improvement of collection system or collector sewer reliability	10
Combined sewer overflow:	
I. control of combined sewer overflow	150

Subp. 2. Description of project types. Project types are described as follows:

A. Major treatment facilities are new facilities or additions to existing facilities which improve effluent quality in order that a municipality may achieve compliance with its NPDES/SDS permit conditions. Major treatment facilities include major interceptor sewers and sewer system rehabilitation. Land application systems and stabilization ponds that are proposed as an alternative to tertiary and secondary treatment facilities that discharge to waters of the state are considered tertiary treatment and secondary treatment for purposes of project priority. Whether a land application system or stabilization pond is a tertiary or secondary treatment system is determined as based on the effluent limitations applicable to discharges to the receiving water. Subsurface disposal systems, including septic tanks, designed to treat an average daily flow of not more than 1,200 gallons and the drainfield portion and one central septic tank to treat an average daily flow in excess of 1,200 gallons are considered secondary treatment for purposes of project priority.

B. A major interceptor sewer is a sewer, including related lift stations, that intercepts wastewater from the final point in a collector sewer of a municipality and accomplishes one of the following:

(1) transports the wastewater directly to a wastewater treatment facility;

(2) transports the wastewater directly to another major interceptor sewer; or

(3) transports the wastewater directly to the collector sewer of another municipality.

A sewer is a collector sewer and not a major interceptor sewer if the average design flow of the sewer increases by more than ten percent from wastewater connections to the sewer between its origin and its termination or if it has physical connections closer to each other than 1,000 feet. Infiltration and inflow directly to the sewer and flow from other major interceptor sewers is not included in determining whether the flow has increased by more than ten percent.

C. A sewer system rehabilitation project is a project that repairs or replaces an existing collector or interceptor sewer in order to eliminate bypasses caused by insufficient hydraulic capacity in existing separate sanitary sewers by transporting infiltration and inflow to a wastewater treatment facility or to reduce the hydraulic capacity of the wastewater treatment plant and includes flow equalization systems, relief sewers, and relief capacity sewers.

D. A flow equalization system is a containment system such as a pond, basin, or tank designed to temporarily hold wet weather flow until the flow can be transported to the wastewater treatment plant.

E. A relief sewer is a sewer primarily designed to eliminate bypassing caused by insufficient hydraulic capacity in separate sewer systems by transporting infiltration or inflow to adequately sized sewers or a wastewater treatment facility for proper treatment. A sewer is a relief capacity sewer and not a relief sewer if its design flow includes more than five percent wastewater or if it has physical connections closer to each other than 1,000 feet. Storm sewer separation is not a relief sewer.

F. A relief capacity sewer is a new sewer designed to handle the normal flow of wastewater and to eliminate bypasses caused by insufficient hydraulic capacity in existing sewers by transporting infiltration and inflow to adequately sized sewers or to a wastewater treatment plant. A relief capacity sewer

must be designed to provide future capacity for a minimum of 40 years.

G. A collection system or collector sewer is a sanitary sewer, including innovative and alternative sewers carrying raw or partially treated wastewater and providing collection system reliability such as alternative power or dual pumps, that is not a major interceptor sewer, a relief sewer, or relief capacity sewer. For treatment works including subsurface disposal systems designed to treat an average daily flow in excess of 1,200 gallons, a collection system includes devices such as grinder pumps and septic tanks that will partly treat the wastewater, as well as septic tank effluent pumps and small diameter sewers that will pump and convey the partially treated waste.

H. Dechlorination facilities are facilities that remove chlorine from the effluent. When a municipality receives a grant to construct facilities receiving the points assigned in subpart 1, item A or D, the facilities described in this item shall be funded concurrently.

I. An ancillary addition to existing tertiary or secondary treatment facilities is an addition that is not a major addition and is not dechlorination facilities. Examples are administrative support facilities or sludge handling facilities to enable a municipality to comply with state disposal system permit conditions controlling sludge application to land or sludge disposal. When a municipality receives a grant to construct facilities receiving the points assigned in subpart 1, item A or D, the facilities described in this item shall be funded concurrently.

Subp. 3. **Special restrictions for sewer system projects.** Special restrictions for sewer system projects are as follows:

A. In order for a sewer system rehabilitation project to be eligible for priority points under part 7075.0405, subpart 1, item A or D, the municipality must not have obtained a construction grant for treatment plant construction since February 11, 1974, and sewer system rehabilitation must be

justified by an infiltration/inflow analysis and sewer system evaluation survey that complies with the requirements of Code of Federal Regulations, title 40, section 35.2120.

B. A relief capacity sewer is not eligible for priority points under part 7075.0405, subpart 1, item A or D unless the municipality has not obtained a construction grant since at least February 11, 1974, and a relief capacity sewer is justified by an infiltration/inflow analysis and sewer system evaluation survey that complies with the requirements of Code of Federal Regulations, title 40, section 35.2120.

A relief capacity sewer that qualifies as a major interceptor sewer is considered major treatment facilities and the municipality proposing the project shall be awarded the priority points under part 7075.0405, subpart 1, item A or D for the entire cost of the project.

A relief capacity sewer that is not a major interceptor sewer must be divided into two components:

(1) the portion of the sewer for domestic, commercial, and industrial wastewater and normal infiltration and inflow and generally accepted peaking factors; and

(2) the portion of the sewer necessary to convey excess infiltration and inflow.

The component in subitem (2) is considered major treatment facilities and awarded the priority points under part 7075.0405, subpart 1, item A or D and the component in subitem (1) is considered a collector and awarded the priority points under part 7075.0405, subpart 1, item G.

That percentage of total sewer flow at design condition that is attributable to the component in subitem (2), multiplied by the cost of the relief capacity sewer, is fundable as a major addition. That percentage of total sewer flow at design condition that is attributable to the component in subitem (1), multiplied by the cost of the relief capacity sewer, is fundable as a collector sewer.

C. A municipality proposing to undertake a sewer system rehabilitation project or to construct a relief capacity

sewer that does not meet the criteria specified in items A and B must be listed as a separate project on the municipal needs list and awarded the priority points credited to a collection system or collector sewer under part 7075.0405, subpart 1, item G or H.

D. A project for the control of combined sewer overflow is not eligible for priority points under part 7075.0405, subpart 1, item I unless the project is necessary to meet requirements of the municipality's NPDES/SDS permit and the act. In addition, after October 1, 1984, combined sewer overflow projects are eligible for funding and for priority points under part 7075.0405, subpart 1, item I only if the governor, by July 1 prior to the federal fiscal year in which funding is sought, has set aside a portion of the state's allotment or appropriation for correction of combined sewer overflows. This set aside must not exceed 20 percent of the state's allotment for each fiscal year. In no event after October 1, 1984, may funding for combined sewer overflow projects exceed the amount set aside by the governor for these projects.

Subp. 4. **Temporary improvements.** If a municipality makes improvements to its existing disposal system that are temporary in nature for the purpose of maximizing effluent quality or keeping its system operational while the municipality is awaiting a grant, the municipality shall receive the same priority points for its project as it would have received without the temporary improvements.

MS s 115.03 subd 1 para (c); 116.16

8 SR 694; 10 SR 278

7075.0406 EXTRA POINTS.

In addition to the priority points a municipality is entitled to for its project, the following extra points shall also be awarded to a qualifying municipality:

A. A municipality that proposes a project that will eliminate an existing public health hazard assessed by the Minnesota Department of Health in a health advisory or

commissioner's order shall be awarded 40 extra points. A municipality requesting the award of 40 extra points under this provision shall submit the following information to the agency and to the Minnesota Department of Health:

(1) information on geologic and soil conditions including soil types, permeabilities, and presence or absence of confining units;

(2) groundwater flow patterns in the area of the facility or proposed facility;

(3) an assessment of the extent and magnitude of the contaminant plume;

(4) an identification of water users and assessment of the amount of water appropriations in the area of the facility or proposed facility;

(5) flow rates and flow patterns of surface waters;

(6) information on well construction for wells in the area of the facility or proposed facility, particularly wells that have been or will be impacted;

(7) a description of the facility's construction, operation, and performance if there is an existing facility, with an explanation of why the facility is creating a public health hazard;

(8) an identification and assessment of the suspected route of human exposure and the population exposed; and

(9) a description of how the proposed improvements will mitigate or eliminate the public health hazard.

B. A qualifying municipality shall be awarded extra points under one of the provisions below for its existing level of treatment:

(1) A municipality that presently has a central sanitary sewer system serving 50 percent or more of the population but provides no treatment prior to discharge, or a municipality which collects an average daily flow exceeding one million gallons through a system without combined sewers and

which has bypassed sewage more than 40 percent of the time over a period of at least two years while its plant is operating at full capacity, shall be awarded 40 extra points.

(2) A municipality with no central sanitary sewer system where more than 50 percent of the existing septic systems discharge raw or partially treated sewage directly to the ground surface shall be awarded 30 extra points.

(3) A municipality that presently has a central sanitary sewer system serving 50 percent or more of the population and whose present facilities are designed for only primary treatment shall be awarded 20 extra points.

(4) A municipality that discharges untreated sewage as a result of combined sewer overflows shall be awarded 20 extra points.

C. A municipality that proposes a project that is an integral part of a watershed pollution abatement plan shall be awarded 15 extra points. A watershed pollution abatement plan shall include the following:

(1) an in depth description of the physical environment (geology, soils, topography, and land cover), land use and development in the watershed, as well as the planned future land use and development;

(2) an inventory and in depth description of the watershed's hydrologic system, including climatic conditions (precipitation), lakes, wetlands, streams, groundwater, drainage, and conveyance systems;

(3) information on the existing and potential water quality problems in the watershed, including both point and nonpoint sources of pollution;

(4) objectives and policies, including management plans for water quality and natural resource protection;

(5) a description of the hydrologic and water quality conditions that will be sought, including a description of the opportunities for improvement;

(6) a statement on conflicts between the watershed pollution abatement plan and existing plans of local

government units; and

(7) a plan for implementation, consisting of governmental work agreements and schedules for implementing corrective actions.

A municipality is not entitled to the 15 extra points under this provision unless the agency received the plan for review by April 15, and it is in approvable condition by July 1, prior to the beginning of the fiscal year for which funding is sought.

D. A municipality that discharges to or has an adverse impact upon an outstanding resource value water shall be awarded ten extra points.

E. A municipality proposing to undertake a project that will result in the elimination of a discharge to a game fish lake or the elimination of a discharge that has an adverse impact on a game fish lake shall be awarded ten extra points. A game fish lake is a lake managed for propagation of game fish species and used for fisheries and recreation. There may be occasional but not regular winter kill in a game fish lake.

F. An applicant who includes planned participation in a sanitary district or other multi-municipal disposal system as part of the project shall be awarded ten extra points.

G. A municipality listed on the municipal needs list on January 1, 1985, shall be awarded 40 extra points.

H. A municipality which does not qualify for the points awarded in item G and which is achieving less than 90 percent compliance with its NPDES/SDS permit conditions shall be awarded 20 extra points.

MS s 115.03 subd 1 para (c); 116.16

8 SR 694; 10 SR 278

7075.0407 TOTAL POINTS.

The total points to be awarded a municipality for placement on the municipal needs list is the sum of the priority points awarded under one of the provisions of part 7075.0600, the priority points awarded under part 7075.0404, the priority points awarded under one of the provisions of part 7075.0405,

and extra points awarded under one or more of the provisions of part 7075.0406.

MS s 115.03 subd 1; 116.16

8 SR 694

7075.0408 RESOLUTION OF EQUAL POINT RATINGS.

If in the determination of the order of priority on the municipal needs list, two or more municipalities have the same total number of points, the municipality with the highest priority points under part 7075.0403 for water use is ranked higher. If two or more municipalities have the same total number of points and the same priority points under part 7075.0403 for water use, the municipalities are ranked based on population under part 7075.0404.

MS s 115.03 subd 1; 116.16

8 SR 694

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. **Preparation of proposed municipal project list.** The agency shall prepare a municipal project list that lists in order of priority the municipalities that are eligible to apply

for construction grants for their projects from funds allotted to the state for the current fiscal year by the federal government or appropriated into the fund for the current fiscal year.

In drafting the proposed municipal project list, the agency shall consider the following factors in the order given:

A. total dollars available for obligation from each funding source;

B. eligibility of projects and portions of projects according to these parts and applicable state and federal statutes;

C. restrictions on obligations mandated by these parts and applicable state and federal statutes, including but not limited to set asides for administration of certain types of projects, and the percentage of the cost of construction that will be paid by state and federal grants;

D. the municipalities' preference for funding sources; and

E. the amount of state financial assistance available for combined sewer overflow abatement projects.

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.

MS s 115.03 subd 1 cl (c); 116.16; 116.162

8 SR 694; 10 SR 278; 10 SR 1758; L 1987 c 186 s 15, c 312 art 1; 13 SR 2329

7075.0410 RESERVE PROJECT LIST.

A reserve project list shall be developed by the agency concurrent with the adoption of the municipal project list.

The reserve project list shall contain a list of municipalities whose projects are eligible for funding from funds made available when a municipality's application for a grant is rejected pursuant to part 7075.0415.

Municipalities shall be listed on the reserve project list in the same order of priority as municipalities were listed on the municipal project list.

MS s 115.03 subd 1 para (c); 116.16

8 SR 694; 10 SR 278

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.

MS s 115.03 subd 1 cl (c); 116.16; 116.162

8 SR 694; 10 SR 278; 10 SR 1758; 13 SR 2329

7075.0412 ADJUSTMENTS IN THE MUNICIPAL PROJECT LIST.

Notwithstanding any other provision in this chapter, the commissioner may, as necessary to establish criteria for determining priority for applications for federal and state construction grants under the act, under regulations and guidelines of the Environmental Protection Agency promulgated under the act, and under Minnesota Statutes, chapters 115 and 116, establish such criteria for determining priority upon a basis other than that provided herein, to the extent required to comply with the act, and with guidelines and regulations under

or resulting from the act.

MS s 115.03 subd 1; 116.16

8 SR 694; L 1987 c 186 s 15

7075.0413 PUBLIC PARTICIPATION.

Subpart 1. **Needs and project lists.** The agency shall prepare a proposed municipal needs list, a proposed municipal project list, a proposed reserve project list, and a proposed reimbursement project list, and make them available to the public at least 45 days before adoption. The agency shall mail a free copy of the proposed lists to an interested person upon request.

Subp. 2. **Informational meetings.** The agency shall conduct public informational meetings about the proposed lists at locations deemed appropriate by the agency. The agency shall give ten days notice of meetings to all affected municipalities. A person shall be permitted to present oral and written comments about the proposed lists at the meetings.

Subp. 3. **Notice.** The agency shall give affected municipalities at least 45 days notice of the agency board meeting at which the proposed municipal needs list, the proposed municipal project list, the proposed reserve project list, and the proposed reimbursement project list will be acted upon.

Subp. 4. **Oral and written statements.** Interested persons may present oral statements to the board at the board meeting. The chairperson may place reasonable restrictions upon the time and manner in which oral comments are submitted. Written statements may be served on the commissioner any time up to five days before the meeting.

MS s 115.03 subd 1 para (c); 116.16

8 SR 694; 10 SR 278; L 1987 c 186 s 15

7075.0414 GRANT APPLICATIONS.

Subpart 1. **Complete application required.** No municipality may be eligible for a construction grant unless a completed grant application has been submitted to the agency.

Subp. 2. **Timing and form of application.** The following

provisions govern the timing and form of grant applications:

A. A municipality on the final municipal project list for other than a combined sewer overflow project shall submit a completed construction grant application to the agency within 90 days after the date on which the agency adopts that fiscal year's municipal project list.

B. A municipality on the final municipal project list for a combined sewer overflow abatement project shall submit a completed construction grant application, or a completed application for state financial assistance, whichever is being applied for, by December 1 following agency adoption of that fiscal year's municipal project list, unless a different date is provided in the municipality's NPDES/SDS permit, in which case the deadline in the permit shall take precedence.

C. The application for federal grant funds shall be on EPA's form 5700-32, as provided by the agency.

D. The application for state grant funds shall be on the form as provided by the agency.

E. The application for state financial assistance for combined sewer overflow abatement projects shall be on the form as provided by the agency.

Subp. 3. **Agency notification.** The agency shall notify in writing each municipality on the municipal project list, each municipality on the reserve project list, and each municipality on the reimbursement project list of its placement on the appropriate list. No municipality shall submit a construction grant application unless the municipality has been notified by the agency that it is on the municipal project list, the reserve project list, or the reimbursement project list.

Subp. 4. **Additional information for Step 1 grant.** A municipality that applies for a Step 1 grant shall, in addition to submitting the completed application form, submit the following information for agency review and approval:

A. A resolution of the governing body of the municipality that authorizes the filing of the application and that designates the municipal official authorized to sign the

application, grant offer, and other related grant documents.

B. A plan of study outlining the scope of work which will lead to an approvable facilities plan.

C. A schedule for completion of the facilities plan.

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

E. If more than one municipality is involved in the grant application, the resolutions required in items A; G, subitems (1) to (3); and H must be submitted for each municipality involved in the project. In addition, the municipalities shall submit an agreement indicating their intent to participate in joint treatment, outlining each municipality's responsibilities during planning and setting forth the cost-sharing methodology.

F. An opinion from the municipality's attorney that the municipality has the legal authority to construct, assess, operate, maintain, and replace the wastewater treatment facilities.

G. Unsewered municipalities shall also submit the following:

(1) a resolution by the governing body of the municipality resolving not to proceed with further planning beyond a phase 1 needs determination until the agency has approved phase 1 and concurs that further planning is justified;

(2) a resolution by the governing body of the municipality acknowledging that they are willing to pay the local share of the project costs;

(3) a resolution by the governing body of the municipality resolving that the sewage collection system will be constructed concurrently with the sewage treatment works if the collection system is not part of the project to be funded and the municipality does not already have a collection system; and

(4) the municipality's proposal for funding the cost of a collection system if the collection system is not part of the project to be funded and the municipality does not already have a collection system.

H. A resolution of the governing body of the municipality stating that the municipality will maintain records of costs incurred for facilities planning.

I. Other documents that are required by EPA regulation or other requirements of the act or other state or federal statutes.

Subp. 5. **Additional information for Step 2 or Step 2+3 grant.** A municipality that applies for a Step 2 or Step 2+3 grant shall, in addition to submitting the completed application form, submit the following information for agency review and approval:

A. A resolution of the governing body of the municipality that authorizes the filing of the application and that designates the municipal official authorized to sign the application, grant offer, and other related grant documents.

B. Updated cost estimates for Step 3 project work in a format provided by the agency.

C. A resolution by the governing body of the municipality resolving that the sewage collection system will be constructed concurrently with the sewage treatment works if the collection system is not part of the project to be funded and the municipality does not already have a collection system.

D. The municipality's proposal for funding the cost of a collection system if the collection system is not part of the project to be funded and the municipality does not already have a collection system.

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

F. If the municipality will be receiving state funds, a council resolution stating that the municipality will maintain records of costs incurred for Step 2 work.

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

H. A certification from the municipality that the municipality shall prohibit unpolluted water connections to the

municipality's sanitary sewer system in the future, and inspect new connections to the sanitary sewer system throughout the municipality's jurisdiction to ensure that the connections conform to the Minnesota Plumbing Code, found in the rules of the Department of Health, chapter 4715.

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

J. An opinion from the municipality's attorney that the municipality has the legal authority to construct, assess, operate, maintain, and replace the wastewater treatment facilities.

K. Schedule for completion of all Step 2 work.

L. Other documents that are required by EPA regulation or other requirements of the act or other state or federal statutes.

Subp. 6. **Additional information for Step 3 grant.** A municipality that applies for a Step 3 grant shall, in addition to submitting the completed application form, submit the following information for agency review and approval:

A. A resolution of the governing body of the municipality that authorizes the filing of the application and that designates the municipal official authorized to sign the application, grant offer, and other related grant documents.

B. A preliminary plan of operation of the treatment works.

C. A proposal for start-up/performance certification of the treatment works, plus the costs for developing an operation and maintenance manual, a final plan of operation, and for start-up/performance certification of the treatment works.

D. A wage rate determination information sheet, as provided by the agency.

E. A signature and registration number of the

consulting engineer accompanying the following certification statement:

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

F. A proposed engineering contract that provides for the consulting engineer or the engineer's agent to be present on-site during the hours of construction for purposes of inspection, although the inspector does not have to be a resident of the municipality, and to submit written reports to the agency on request describing the type of construction inspected and the time involved in inspection after construction commences.

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

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

I. A cost breakdown for all project work to be funded by the grant, including separation of eligible and ineligible items, in a format provided by the agency.

J. Documentation of the municipality's source of funding to cover the cost of a collection system if the collection system is not part of the project to be funded and the municipality does not already have a collection system.

K. If more than one municipality is involved in the

grant application, an executed intermunicipal agreement that sets forth the terms and conditions of joint treatment and the cost sharing methodology.

L. A comprehensive legal opinion identifying that the grantee has sufficient legal vested interest in all sites, easements, and/or rights-of-way to ensure immediate construction and undisturbed utilization for the estimated life of the facilities.

M. Other documents that are required by EPA regulation or other requirements of the act or other state or federal statutes.

N. For municipalities applying for Step 3 federal grants for combined sewer overflow abatement projects, the following information shall also be submitted:

(1) the scope of work outlined in the list and schedule submitted the previous June 1, or in accordance with the NPDES/SDS permit;

(2) such additional scope of work that the municipality could proceed with if any additional funds become available; and

(3) the items listed in part 7075.0409, subpart 2, item C. The plans and specifications shall be for the scope of work described in subitems (1) and (2).

Subp. 6a. **Additional information for state financial assistance for combined sewer overflow abatement.** A municipality that applies for state financial assistance for a combined sewer overflow abatement project shall submit the following information for agency review and approval:

A. the scope of work contained in the list and schedule submitted the previous June 1, or in accordance with the NPDES/SDS permit, plus such additional scope of work as may be necessary to utilize any additional funds that may become available;

B. that information required for a Step 3 grant under subpart 6, items A, F, G, I, and L; and

C. plans and specifications for the scope of work

described in item A.

Subp. 7. **Requirements prior to authorization to seek construction bids.** A municipality that has received a Step 2+3 grant shall submit, and receive agency approval of, the same information required of a Step 3 grant applicant in subpart 6, items B to M and part 7075.0409, subpart 2, items C and D, before the municipality may receive authorization to seek bids for construction of the project.

Subp. 8. **Three copies.** Construction grant application forms and attachments must be submitted in triplicate to the agency.

MS s 115.03 subd 1 para (c); 116.16; 116.162

8 SR 694; 10 SR 278; 10 SR 1758

7075.0415 REJECTION OF GRANT APPLICATIONS.

Subpart 1. **Grounds.** A municipality's grant application for a project on the municipal project list may be rejected by the agency for the following reasons:

A. failure to submit the necessary documentation required by this rule within the time allowed, unless the municipality was delayed for reasons beyond its control;

B. failure to develop the necessary user charge system and other fundraising systems or to develop the necessary ordinances or to enter into the necessary contracts and agreements or to do any of the other acts specified in the grant applications requirements to establish that the municipality has the capability to construct, operate, and maintain the disposal system in a manner that will comply with all applicable water pollution control requirements; or

C. a determination by the agency that the municipality cannot implement the project in a timely fashion to avoid the loss of federal grant funds to the state for that fiscal year.

Subp. 2. **Effect of rejection.** Whenever a grant application is rejected, the agency shall remove the municipality from the municipal project list.

MS s 115.03 subd 1; 116.16

8 SR 694

7075.0416 APPROVAL OF GRANT APPLICATIONS.

The agency shall approve grant applications that are not rejected for one or more of the reasons specified in part 7075.0415.

The commissioner shall certify to the EPA each approved federal grant application.

MS s 115.03 subd 1 para (c); 116.16

8 SR 694; 10 SR 278; L 1987 c 186 s 15

7075.0417 TENDER OF FEDERAL GRANTS AND STATE MATCHING GRANTS.

The state may not tender a federal grant until the EPA has determined the eligibility of the municipality for which a grant application has been certified to EPA.

After the EPA has determined the eligibility of the application and tendered a federal grant, the agency shall make a similar grant offer to the municipality in an amount not less than that required by federal law and regulation as a condition for the grant of federal funds or in an amount not less than that allowed by state statutes where not required by federal law.

MS s 115.03 subd 1 para (c); 116.16

8 SR 694; 10 SR 278

7075.0418 [Repealed, 10 SR 1758]

7075.0419 ADVANCES OF ALLOWANCE.

Subpart 1. **Allotment reserve.** The agency shall reserve a reasonable portion of its annual federal allotment for advances to municipalities for Step 1 and Step 2 work. The amount reserved shall not exceed ten percent of the state's federal allotment for a fiscal year.

Subp. 2. **Advance of allowance.** A municipality on the municipal needs list with a population in the service area of less than 25,000 people is eligible to apply for an advance of allowance. The application shall be submitted within 60 days after the date on which the agency informs the city in writing

of its intent to offer an advance.

Subp. 3. **Information required for advance of allowance.** A municipality applying for an advance of allowance shall submit the following information to the agency:

A. for a Step 1 advance, the information required in part 7075.0414, subpart 4, items A to G and I;

B. for a Step 2 advance, the information required in part 7075.0414, subpart 5, items A to E and G to L.

Subp. 3a. **Submittal and approval of facilities plan.** In order to receive a Step 2 advance, a municipality shall submit the documents listed in part 7075.0409, subpart 2, item B. The facilities plan must be approved before the advance will be awarded.

Subp. 4. **Amount of advance.** The amount to be allowed as an advance of allowance shall be that amount determined by EPA.

Subp. 5. **One advance limit.** A municipality is entitled to one Step 1 advance of allowance and one Step 2 advance of allowance.

Subp. 6. **Reduction of Step 3 grant.** A municipality that receives an advance of allowance shall not receive a construction grant for work paid for by the advance of allowance.

Subp. 7. **Payments.** The agency shall pay an advance of allowance in accordance with the procedures and requirements in part 7075.0431. The agency may seek to recover funds tendered or disbursed if the municipality does not make satisfactory progress in submitting an approvable facilities plan or plans and specifications within the time frame specified in the allowance award agreement. If satisfactory progress is not made in submitting approvable plans and specifications, the agency reserves the right not to list the project on the next municipal project list.

Subp. 8. [Repealed by amendment, 10 SR 278]

MS s 115.03 subd 1 para (c); 116.16; 116.162

8 SR 694; 10 SR 278; 10 SR 1758

7075.0420 GRANT AMENDMENTS.

Subpart 1. **Grant increases.** The agency shall reserve a reasonable amount of its allotment to pay for grant increases that become necessary during the fiscal year.

Subp. 1a. **Limitation of Step 1 and 2 grant increases.** For grants awarded before May 12, 1982, the agency shall not, after December 31, 1985, award grant increases for Step 1, Step 2, or the Step 2 portion of Step 2+3 grants.

Subp. 2. **Approval of Step 3 and the Step 3 portion of Step 2+3 grant increases.** The agency may approve a Step 3 and the Step 3 portion of a Step 2+3 grant increase when a municipality has solicited contracts that exceed the cost estimated in the application. The agency shall approve the grant amendment if funds are available and the costs are eligible and reasonable. After the as-bid costs have been determined, only cost overruns caused by unanticipated site conditions shall be eligible for funding through grant amendments, and the grant amendment shall be limited to two percent of the as-bid costs.

Subp. 3. **Information required.** A municipality that seeks a grant amendment shall submit the following information to the agency:

A. a written request for the amendment signed by an official of the municipality;

B. a complete cost breakdown and scope of work;

C. a cost breakdown of engineering fees on EPA form 5700-41, as provided by the agency;

D. an unexecuted amended engineering contract indicating changes in the cost, the scope of work, and the budget period that must be made in the contract; and

E. a budget period extension request signed by an official of the municipality if the budget period must be extended.

MS s 115.03 subd 1 para (c); 116.16

8 SR 694; 10 SR 278

7075.0421 CHANGE ORDERS.

Any proposed changes in the contract which result in cost

increases greater than that of the base contract plus contingencies as stated in the project summary or other proposed changes regardless of cost which substantially alter the type of treatment process, or its efficiency, versatility, or reliability, must be submitted to the commissioner for prior approval, except where the work is agreed by the commissioner to be of an emergency nature. Change orders not requiring prior approval of the commissioner must be submitted within one month after the date on which the change is ordered by the applicant, its engineer, or other authorized agent for review and approval.

MS s 115.03 subd 1; 116.16

8 SR 694; L 1987 c 186 s 15

7075.0422 [Repealed, 10 SR 278]

7075.0423 RETAINED PAYMENTS.

The agency may withhold Step 3 grant payments and may request the EPA to withhold grant payments if the commissioner determines that a project does not substantially conform to approved plans and specifications, or there has been a major breach of a condition in the grant agreement, or the municipality has failed to comply with the applicable requirements in parts 7075.0429 to 7075.0432. If funds are withheld pursuant to this part, and the condition causing the withholding has been corrected, then all retained funds shall be released to the municipality, unless otherwise agreed to by the commissioner and the municipality.

MS s 115.03 subd 1 para (c); 116.16

8 SR 694; 10 SR 278; L 1987 c 186 s 15

7075.0424 RECOVERY OF FUNDS.

In addition to any other remedies, the agency may seek to recover funds tendered or disbursed for a project that is improperly designed, improperly constructed, or improperly operated and maintained.

MS s 115.03 subd 1; 116.16

8 SR 694

7075.0425 LOCAL SHARE.

The agency may tender a grant of state funds to a municipality for what would otherwise be the local share of the cost if:

A. the municipality has applied for a state grant to cover the local share by July 1 prior to the fiscal year for which the grant is requested;

B. the municipality is unable to finance the local share and qualifies for the maximum percentage according to the criteria in part 7075.0428, subpart 4;

C. application is made and approval received from the agency prior to the initiation of construction; and

D. the public health of the state and the prevention, control, and abatement of water pollution require the construction of the project.

MS s 115.03 subd 1 para (c); 116.16

8 SR 694; 10 SR 278

7075.0426 CONTRACT ASSIGNMENT.

A municipality that enters into a contract with a contractor or engineer for the planning, design, or construction of a part of or an entire disposal system, to be paid for in whole or in part by state construction grant funds, may assign its rights under the contract to the agency.

MS s 115.03 subd 1; 116.16

8 SR 694

7075.0427 CONTRACT BENEFICIARY.

A municipality that enters into a contract with a contractor or engineer for the planning, designing, or construction of a part of or an entire disposal system, to be paid for in whole or in part by state construction grant funds, shall provide in the contract that the agency is a third-party beneficiary to the contract.

MS s 115.03 subd 1; 116.16

8 SR 694

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. **State financial assistance for combined sewer overflow abatement projects.** The agency may award state financial assistance for combined sewer overflow abatement projects as follows:

A. The agency may award state financial assistance for design of combined sewer overflow abatement projects 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. Each fiscal year, municipalities eligible for financial assistance for combined sewer overflow abatement projects shall be awarded a proportionate share of the appropriation available for such projects in that fiscal year. The proportionate share for each eligible municipality is as follows:

(1) Minneapolis, 24.2 percent;

(2) Saint Paul, 71.6 percent;

(3) South Saint Paul, 4.2 percent.

C. By no later than March 31 each year, beginning in 1987, the agency shall determine whether or not each municipality that is eligible for financial assistance under this program has submitted a complete financial assistance application and either the city council has adopted final orders for construction if the work is to be contracted out, or issued work proceed orders if the municipality will do the work with its own employees, for enough work to allow the municipality to utilize its total pro rata share for the present fiscal year. If the agency determines that a municipality has not submitted a complete financial assistance application and the city council has not adopted final orders for construction or the city has not issued work proceed orders, the agency shall distribute such unusable funds to other eligible municipalities that have submitted complete financial assistance applications to utilize such additional funds. For any municipality that is awarded additional funds, the city council shall adopt final orders for construction or the city shall issue work proceed orders to utilize such funds by May 31 of the present fiscal year in order to retain the funds.

Each fiscal year, beginning in 1988, allocations to a municipality that has received additional funds shall be reduced by one-third of the total amount of additional funds that have been awarded to the municipality in earlier years. These funds shall be awarded to the municipality that was initially entitled to them. In the event that, for the municipality entitled to

the repayment funds, the city council still has not adopted final orders for construction or the city has not issued work proceed orders to utilize the funds in that fiscal year, the municipality awarded the additional funds is not required to make the repayment. The repayment procedure set forth in this item shall continue until the municipality has repaid all additional funds that it has been awarded or until the municipality has completed its combined sewer overflow abatement projects in their entirety.

Subp. 3. **Local share.** Except as provided in part 7075.0425, in no event may a municipality that obtains a state matching grant or independent state grant be responsible for less than ten percent of the eligible cost of the project.

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 x 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 x 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

MS s 115.03 subd 1 para (c); 116.16; 116.162

10 SR 278; 10 SR 1758; 13 SR 2329

7075.0429 PAYMENT OF STATE MATCHING GRANTS.

Subpart 1. **Step 1 matching grants.** The agency shall pay 50 percent of a Step 1 state matching grant when an adequate facilities plan has been received by the commissioner. The remaining 50 percent of the Step 1 state matching grant shall be paid when the agency approves the facilities plan and after final payment has been paid by the Environmental Protection Agency.

Subp. 2. **Step 2 matching grants for federal grants awarded before May 12, 1982.** The agency shall pay 50 percent of a Step 2 state matching grant for a federal grant awarded before May 12, 1982, when adequate plans and specifications, a user charge system, and a preliminary plan of operation have been received by the commissioner. The remaining 50 percent of the Step 2 state matching grant shall be paid when the agency approves of the plans and specifications, the user charge system, and the preliminary plan of operation, and after final payment has been paid by the Environmental Protection Agency.

Subp. 3. **Step 2 portion of Step 2+3 matching grants for federal grants awarded before May 12, 1982.** The agency shall pay 50 percent of the Step 2 portion of a Step 2+3 state matching grant for a federal grant awarded before May 12, 1982, when adequate plans and specifications, a user charge system, and a preliminary plan of operation have been received by the commissioner. The remaining 50 percent of the Step 2 state matching grant shall be paid when the agency has given authorization to bid and after final payment has been paid by the Environmental Protection Agency. The agency shall pay for eligible land costs when the municipality submits proof of purchase, if the municipality received the agency's advance approval to purchase the land.

Subp. 4. **Step 2 portion of Step 2+3 matching grants for federal grants awarded after May 12, 1982.** The agency shall pay 50 percent of the Step 2 portion of a Step 2+3 state matching grant awarded after May 12, 1982, when the plans and

specifications are 50 percent complete, and the municipality has submitted a payment request certifying that at least 50 percent of the work on the plans and specifications is complete. The agency shall pay the remaining 50 percent of the Step 2 portion of the grant when a payment request indicating the amount of costs incurred for Step 2, the final invoice, and canceled check as proof of payment, have been submitted, the Environmental Protection Agency has paid the federal grant, and the municipality has awarded all subcontracts for construction and purchased all eligible land. The agency shall pay for eligible land costs when the municipality submits proof of purchase, provided the municipality received the agency's advance approval to purchase the land.

Subp. 5. **Step 3 matching grant.** A municipality may request periodic payments of a Step 3 state matching grant up to 50 percent of the total grant. The request for payment shall be submitted to the agency in writing. With each payment request the municipality shall submit a summary of all architectural and engineering costs expended to date in the format required in submitting the original grant application.

The agency shall make a final grant payment for the remaining 50 percent of the grant after the agency has completed a final inspection of the treatment works and the municipality has:

A. submitted to the agency a request for the payment;

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

C. adopted the sewer use ordinance that will control wastewater discharges to the municipality's wastewater treatment system;

D. adopted a sewer service charge system with updated cost revisions;

E. submitted a certification by the contractor that the project was built according to the plans and specifications;

F. submitted a copy of the as-built specifications;

G. certified that the municipality is complying with the approved operation and maintenance manual for the treatment works;

H. complied with the municipality's NPDES/SDS permit for the treatment works;

I. put the treatment plant into operation and is operating the treatment plant efficiently;

J. received final payment of the federal grant;

K. received agency approval of a revised operation and maintenance manual;

L. received agency approval of the final plan of operations;

M. if the federal grant was awarded before December 29, 1981, submitted a start-up report;

N. if the federal grant was awarded on or after December 29, 1981, received agency approval of a start-up evaluation report, including certification by the municipality that the facilities meet the project performance standards; and

O. received agency approval of the final small, minority, and women's business enterprise report, which includes canceled checks or lien waivers as proof of payment.

Subp. 6. **Step 3 portion of Step 2+3 matching grant.** The agency shall pay the Step 3 portion of a Step 2+3 grant in accordance with the procedures and requirements in subpart 5.

Subp. 7. **Step 3 matching grant with allowance.** The agency shall pay 50 percent of the estimated allowance for facilities planning and design immediately after the grant is awarded provided the municipality submits a payment request. The agency shall pay the final payment of the allowance when the municipality has awarded all subcontracts for construction, purchased all eligible land, and submitted a payment request, including a copy of the final invoice and canceled check as proof of payment, and the EPA has paid the federal allowance.

The agency shall pay the Step 3 grant in accordance with the procedures and requirements in subpart 5.

MS s 115.03 subd 1 para (c); 116.16

10 SR 278; L 1987 c 186 s 15

7075.0430 PAYMENT OF INDEPENDENT STATE GRANTS.

Subpart 1. **Step 1 grants for sewered communities.** The agency shall pay Step 1 grants for sewered communities in accordance with the following schedule:

A. 25 percent of the grant when the facilities plan is 50 percent complete, as certified by the municipality;

B. up to 50 percent of the grant when the facilities plan is received by the commissioner; and

C. the balance of the grant when the facilities plan has been approved by the agency, and the municipality has submitted a final payment request and a copy of the final invoice and canceled check as proof of payment.

Subp. 2. **Step 1 grants for unsewered communities.** The agency shall pay Step 1 grants for unsewered communities in accordance with the following schedule:

A. Twenty-five percent of the grant when the agency determines that the municipality needs to do additional planning for sewage treatment. If the agency determines that the municipality does not need to do additional planning, this payment will constitute final payment.

B. Up to 50 percent of the grant when the facilities plan is received by the commissioner.

C. The balance of the grant when the facilities plan has been approved by the agency, and the municipality has submitted the final payment request and a copy of the final invoice and canceled check as proof of payment.

Subp. 3. **Step 2 grants.** The agency shall pay Step 2 grants in accordance with the following schedule:

A. 25 percent of the grant when the plans and specifications are 50 percent complete, as certified by the municipality;

B. up to 50 percent of the grant when adequate plans and specifications, a user charge system, and a preliminary plan of operation are received by the commissioner; and

C. the balance of the grant when the plans and specifications, the user charge system, and the preliminary plan of operation have been approved by the agency, and the municipality has submitted the final payment request and a copy of the final invoice and canceled check as proof of payment.

Subp. 4. **Step 2 portion of Step 2+3 grants.** The agency shall pay the Step 2 portion of a Step 2+3 grant in accordance with the procedures and requirements in part 7075.0429, subpart 4, except that no federal payment will be required. The agency shall not make the final 50 percent payment until the municipality has submitted a copy of the final invoice and canceled check as proof of payment.

Subp. 5. **Step 3 portion of Step 2+3 grant.** The agency shall pay the Step 3 portion of a Step 2+3 grant in accordance with the following schedule:

A. A municipality may request in writing periodic payments of the Step 3 portion of a Step 2+3 grant up to 50 percent of the total grant. With each payment request the municipality shall submit a summary of all architectural and engineering costs expended to date in the format required in submitting the original grant application.

B. The agency shall make periodic payments of the amount encompassing 51 to 80 percent of the Step 3 portion of the Step 2+3 grant when the municipality submits the information required in item A and has completed the following:

(1) received agency approval of the final plan of operation;

(2) provided evidence that the municipality has hired a wastewater treatment works operator having a valid state certificate;

(3) adopted a sewer use ordinance that will control wastewater discharges to the municipality's wastewater treatment system;

(4) adopted a sewer service charge system with updated cost revisions;

(5) submitted an approvable final operation and

maintenance manual; and

(6) submitted a small, minority, and women's business progress report.

C. The agency shall make a final payment for the remaining 20 percent of the grant after the agency has completed a final inspection of the facilities and the municipality has completed the tasks for the earlier payments and performed the following:

(1) submitted a certification by the contractor that the project was built according to the plans and specifications;

(2) submitted a copy of the as-built specifications;

(3) certified that the municipality is complying with the approved operation and maintenance manual for the treatment works;

(4) complied with the municipality's NPDES/SDS permit for the treatment works;

(5) put the treatment plant into operation and is operating the treatment plant efficiently;

(6) received agency approval of a revised operation and maintenance manual;

(7) received agency approval of a start-up evaluation report, including certification by the municipality that the facilities meet the project performance standards;

(8) received agency approval of the final small, minority, and women's business enterprise report, which includes canceled checks or lien waivers as proof of payment; and

(9) submitted a final payment request and a copy of the final invoice and canceled check as proof of payment.

Subp. 6. **Step 3 grants.** The agency shall make periodic payments of a Step 3 grant in accordance with the procedures and requirements in subpart 5.

Subp. 7. **Step 3 grant with allowance.** The agency shall pay 50 percent of the estimated allowance for facilities planning and design immediately after the grant is awarded

provided the municipality has submitted a payment request indicating the amount of costs incurred for facilities planning and design. The agency shall pay the final payment of the allowance when the municipality has awarded all subcontracts for construction, purchased all eligible land, and submitted a payment request and a copy of the final invoice and canceled check as proof of payment.

The agency shall make periodic payments of the Step 3 grant in accordance with the procedures and requirements in subpart 5.

MS s 115.03 subd 1 para (c); 116.16

10 SR 278; L 1987 c 186 s 15

7075.0431 PAYMENT OF ADVANCES OF ALLOWANCE.

Subpart 1. **Sewered communities.** The agency shall pay Step 1 advances of allowance for sewered communities upon submittal of a payment request by the municipality.

Subp. 2. **Unsewered communities.** The agency shall pay Step 1 advances of allowance for unsewered communities in accordance with the following schedule:

A. Twenty-five percent of the allowance upon submittal of a payment request by the municipality. If the agency determines that the municipality does not need to do additional planning for wastewater treatment, this will constitute final payment.

B. The remaining 75 percent shall be paid by the agency when the agency determines that the municipality needs to do additional planning for wastewater treatment and the municipality has submitted a payment request.

Subp. 3. **Step 2 advances of allowance.** The agency shall pay Step 2 advances of allowance upon submittal of a payment request by the municipality.

MS s 115.03 subd 1 para (c); 116.16

10 SR 278

7075.0432 GENERAL REQUIREMENTS.

Subpart 1. **EPA payment.** The agency shall not make any payments of a state matching grant until the Environmental

Protection Agency has paid the corresponding federal grant payment.

Subp. 2. **Reduction in state grant payments.** For all state grants, including allowances, if the actual costs are less than the amount on which the grant was based, the agency shall reduce the grant proportionately.

Subp. 3. **Payment request.** The agency shall not make any grant payments unless the municipality submits a written payment request.

MS s 115.03 subd 1 para (c); 116.16

10 SR 278

7075.0433 PAYMENT OF STATE FINANCIAL ASSISTANCE FOR COMBINED SEWER OVERFLOW ABATEMENT.

The municipality may request in writing periodic payments as work on the project progresses up to 80 percent of the total amount of the financial assistance. After final inspection, the agency shall pay the remaining 20 percent after the municipality has complied with part 7075.0430, subpart 5, item C, subitems (1), (4), and (9).

MS s 115.03 subd 1 cl (c); 116.16; 116.162

10 SR 1758

7075.0500 [Repealed by amendment, 8 SR 694]

7075.0600 [Repealed by amendment, 8 SR 694]

7075.0700 [Repealed by amendment, 8 SR 694]

7075.0800 [Repealed by amendment, 8 SR 694]

7075.0900 [Repealed by amendment, 8 SR 694]

7075.1000 [Repealed by amendment, 8 SR 694]

CORRECTIVE ACTION GRANTS PROGRAM

7075.1005 PURPOSE.

The corrective action grants program provides grants to municipalities with wastewater treatment facilities funded under the Clean Water Act, United States Code, title 33, sections 1281

to 1299, or the independent state grants program that are unable to meet performance standards. The grants are for the purpose of correcting performance failures. The program is jointly administered by the Minnesota Pollution Control Agency and the Minnesota Public Facilities Authority. Parts 7075.1005 to 7075.1090 pertain to the agency's responsibilities in administering the program.

MS s 116.181 subd 5

13 SR 2330

7075.1010 DEFINITIONS.

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

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

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

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

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

MS s 116.181 subd 5

13 SR 2330

7075.1020 ELIGIBILITY FOR PARTICIPATION.

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

A. The municipality received a wastewater treatment facility construction grant under the Clean Water Act, United States Code, title 33, sections 1281 to 1299, or the independent state construction grants program after December 29, 1981. A municipality that received a grant under the individual on-site wastewater treatment system grants program or the capital cost

component grant program does not meet this eligibility requirement.

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

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

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

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

MS s 116.181 subd 5

13 SR 2330

7075.1030 ELIGIBLE AND INELIGIBLE COSTS.

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

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

Subp. 3. **Administrative, engineering, and legal costs.** Administrative, engineering, and legal costs (collectively) incurred as a result of the corrective action are eligible up to

a maximum of 25 percent of the construction and land costs approved in the corrective action report and eligible under subpart 1.

MS s 116.181 subd 5

13 SR 2330

7075.1040 REQUIREMENTS PRIOR TO APPLICATION.

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

A. a corrective action report that includes:

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

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

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

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

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

(1) invoking the provisions of equipment warranties;

(2) seeking redress from construction contractor performance bonds;

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

(4) initiating enforcement action against industrial dischargers.

MS s 116.181 subd 5

13 SR 2330

7075.1050 APPLICATION.

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

MS s 116.181 subd 5

13 SR 2330

7075.1060 CERTIFICATION OF APPLICATION FOR AWARD.

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

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

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

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

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

MS s 116.181 subd 5

13 SR 2330

7075.1070 CHANGE ORDERS.

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

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

MS s 116.181 subd 5

13 SR 2330

7075.1080 PAYMENTS.

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

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

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

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

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

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

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

MS s 116.181 subd 5

13 SR 2330

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.

MS s 116.181 subd 5

13 SR 2330

7075.1100 [Repealed by amendment, 8 SR 694]

CAPITAL COST COMPONENT GRANT PROGRAM

7075.1105 PURPOSE.

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

MS s 116.18 subd 3b para (g)

13 SR 1238

7075.1110 DEFINITIONS.

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

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

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

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

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

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

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

MS s 116.18 subd 3b para (g)

13 SR 1238

7075.1115 ELIGIBILITY.

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

MS s 116.18 subd 3b para (g)

13 SR 1238

7075.1120 GRANT APPLICATIONS.

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

Subp. 2. **Application requirements.** The municipality shall apply for a capital cost component grant on an application form

provided by the commissioner. The municipality shall submit the following information with the application:

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

B. an engineering report containing:

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

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

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

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

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

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

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

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

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

MS s 116.18 subd 3b para (g)

13 SR 1238

7075.1125 SELECTION OF ELIGIBLE GRANTEES.

Subpart 1. **Ranking of applicants.** Within 30 days of the close of the application period, the commissioner shall rank

those applicants who have submitted a complete and timely application according to their priority ranking on the municipal needs list.

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

MS s 116.18 subd 3b para (g)

13 SR 1238

7075.1130 AMOUNT OF GRANT AWARD.

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

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

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

Subp. 4. Grant limitation. No grant shall exceed 100

percent of the actual costs of design and construction of the wastewater treatment facility. The cost of acquiring an existing facility must not be included as an eligible cost for the purpose of determining actual costs.

MS s 116.18 subd 3b para (g)

13 SR 1238

7075.1135 CERTIFICATION OF AWARD.

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

MS s 116.18 subd 3b para (g)

13 SR 1238

7075.1140 GRANT CONDITIONS.

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

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

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

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

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

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

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

(4) a copy of the executed service contract

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

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

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

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

MS s 116.18 subd 3b para (g)

13 SR 1238

7075.1145 INSPECTIONS.

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

MS s 116.18 subd 3b para (g)

13 SR 1238

7075.1150 GRANT PAYMENT.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

MS s 116.18 subd 3b para (g)

13 SR 1238

7075.1155 TERMINATION OF GRANT.

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

MS s 116.18 subd 3b para (g)

13 SR 1238

7075.1160 RECOVERY OF FUNDS.

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

MS s 116.18 subd 3b para (g)

13 SR 1238

7075.1200 [Repealed by amendment, 8 SR 694]

7075.1300 [Repealed by amendment, 8 SR 694]

INDIVIDUAL ON-SITE WASTEWATER TREATMENT SYSTEMS GRANTS PROGRAM

7075.1400 PURPOSE.

Parts 7075.1400 to 7075.1530 provide for the administration of the individual on-site wastewater treatment systems grants program that makes grants available to municipalities to assist owners of individual on-site wastewater treatment systems to upgrade or replace their failed individual on-site wastewater treatment systems.

MS s 116.18 subd 3c para (f)

13 SR 1822

7075.1410 DEFINITIONS.

Subpart 1. **Scope.** For the purpose of parts 7075.1400 to 7075.1530 the following terms have the meanings given them.

Subp. 2. **Abatement notice.** "Abatement notice" means an official document issued by the municipality to the owner of an individual on-site wastewater treatment system stating that the owner is in violation of the municipality's ordinance that adopts the requirements of chapter 7080. The abatement notice must include a citation to the ordinance alleged to have been violated.

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

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

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

Subp. 6. **Construction cost.** "Construction cost" means the cost of the materials, labor, overhead, and profit necessary for installation, construction, and repair of an individual on-site wastewater treatment system established by a contract between a system owner and a system installer.

Subp. 7. **Designer.** "Designer" means a person who designs individual on-site wastewater treatment systems, and has

received agency approval under part 7075.1440.

Subp. 8. **Dwelling.** "Dwelling" means any building or place used or intended to be used by human occupants as a single family or two family unit.

Subp. 9. **Failed system.** "Failed system" means a wastewater treatment system that has been issued an abatement notice by the municipality's inspector.

Subp. 10. **Individual on-site wastewater treatment system or individual system.** "Individual on-site wastewater treatment system" or "individual system" means a wastewater treatment system, or part of a system, serving one or two dwellings or other establishments, that uses subsurface soil treatment and disposal.

Subp. 11. **Inspector.** "Inspector" means a person employed by or under contract to the municipality who inspects individual on-site wastewater treatment systems for conformance with the ordinance that adopts the requirements of chapter 7080, and has received agency approval under part 7075.1440.

Subp. 12. **Installer.** "Installer" means a person who constructs or repairs individual on-site wastewater treatment systems, and has received agency approval under part 7075.1440.

Subp. 13. **Median household income.** "Median household income" means the income data named "median household income" from the most recent decennial census of the United States.

Subp. 14. **Mound system.** "Mound system" means a system for which the soil treatment area is built above the naturally occurring soil surface to overcome limits imposed by proximity to water table or bedrock, or by rapidly or slowly permeable soils.

Subp. 15. **Municipality.** "Municipality" means any county, city, town, the Metropolitan Waste Control Commission established in Minnesota Statutes, chapter 473, the Metropolitan Council when acting under that chapter, an Indian tribe or an authorized Indian tribal organization, or any other governmental subdivision of the state responsible by law for the prevention, control, and abatement of water pollution in any area of the

state.

Subp. 16. **Other establishment.** "Other establishment" means a public or private structure other than a dwelling that generates wastewater.

Subp. 17. **Seasonal residence.** "Seasonal residence" means a dwelling used for less than 182 days of a calendar year by a single family or household. Second homes, vacation residences, and recreation residences are included in this definition.

Subp. 18. **Site evaluator.** "Site evaluator" means a person who investigates soils and site characteristics, does soil borings or percolation tests for use in designing individual on-site wastewater treatment systems, and has received agency approval under part 7075.1440.

Subp. 19. **Trench or bed system.** "Trench or bed system" means an individual wastewater treatment system employing a building sewer, sewage tank, and the soil treatment system consisting of trenches or a seepage bed constructed below the original soil surface.

MS s 116.18 subd 3c para (f)

13 SR 1822

7075.1420 ELIGIBILITY.

Subpart 1. **Municipality eligibility.** A municipality applying for the individual system owners must meet the following conditions to be eligible for a grant:

A. be authorized by its governing body to assume responsibility for the grant application and related documents for owners of individual on-site wastewater treatment systems who are in its jurisdiction and included in the planning area under part 7075.1430, subpart 2;

B. have developed and adopted a wastewater treatment plan under part 7075.1430;

C. have enacted and be enforcing an ordinance that adopts the requirements of chapter 7080, Individual Sewage Treatment Systems Standards;

D. have enacted an ordinance that establishes a

maintenance plan for the individual on-site wastewater treatment systems in its jurisdiction; and

E. have a median household income that is less than the state median household income. Municipalities not included in the decennial census shall submit an alternate median household income figure for their municipality, supported by complete income data and a computation methodology. If the data is complete and the computation methodology is equivalent to the decennial census, the alternate median household income will be approved by the commissioner.

Subp. 2. **Individual system eligibility.** The individual systems to be replaced or upgraded included in the municipality's grant application must meet the following conditions:

A. be a failed system;

B. have been constructed before January 1, 1977;

C. not be serving a seasonal residence; and

D. not have been constructed with state or federal water pollution control funds.

Subp. 3. **Previous funding.** Individual systems located in geographic areas that were included in planning areas of projects previously funded with state or federal water pollution control funds are not eligible for funding under this part.

MS s 116.18 subd 3c para (f)

13 SR 1822

7075.1430 WASTEWATER TREATMENT PLAN.

Subpart 1. **General requirements.** The municipality must develop a wastewater treatment plan that identifies wastewater treatment needs and proposes long-term solutions for a planning area under subpart 2. The plan must be adopted by the municipality's governing body.

Subp. 2. **Planning area.** The planning area is the entire geographic area in the municipality's jurisdiction unless the municipality submits an alternative proposal at the time of application. Alternative proposals must be approved by the

commissioner and will be evaluated based on housing density, water quality impact, and public health impact.

Subp. 3. **Plan contents.** The plan must include the following:

A. a planning area survey prepared by an inspector that identifies failed systems;

B. site evaluations, including soil investigations, for the failed systems prepared by a site evaluator or site evaluators to determine if it is feasible to replace or upgrade systems on site;

C. an analysis of the overall wastewater treatment needs in the municipality prepared by a designer using data from a site evaluator or site evaluators;

D. a list of the specific failed individual on-site wastewater treatment systems, including addresses and names of property owners requesting grant funds and copies of the abatement notices;

E. a proposal for addressing the remaining wastewater treatment needs in the planning area not covered in item D, including specific actions to be taken and a proposed timetable for addressing the wastewater treatment needs; and

F. documentation of approval of the inspector, site evaluator or site evaluators, and designer under part 7075.1440.

Subp. 4. **Approval of plan.** The commissioner will review the parts of the plan submitted under subpart 3, items B and C, and approve them if they are in conformance with chapter 7080.

MS s 116.18 subd 3c para (f)

13 SR 1822

7075.1440 APPROVAL OF INDIVIDUAL ON-SITE WASTEWATER TREATMENT PERSONNEL.

Subpart 1. **General requirement.** For the purposes of parts 7075.1400 to 7075.1530, inspectors, site evaluators, designers, and installers who inspect, evaluate sites for, design, and install individual on-site wastewater treatment systems under those parts must be approved by the commissioner under subpart 2

or 3.

Subp. 2. **First alternate approval criteria.** A person referred to in subpart 1 will be approved by the commissioner if the person is fully certified by the agency through the individual sewage treatment systems certification program administered by the agency in cooperation with the Individual Sewage Treatment Systems Advisory Committee established under part 7080.0100. Approval is automatic upon submittal of certification number.

Subp. 3. **Second alternate approval criteria.** A person referred to in subpart 1 may apply for approval under this subpart by submitting an application provided by the commissioner upon request. An applicant will be approved by the commissioner if the applicant meets the requirements of items A and B.

A. An applicant must demonstrate knowledge by scoring a minimum of 70 percent correct on an examination based on chapter 7080 and administered by the commissioner.

B. An applicant must document experience by completing the following requirements:

(1) An inspector must submit a list of individual on-site wastewater treatment systems inspected by the applicant in the past three years. The inspector must certify that a minimum of 30 systems, or parts of systems, listed conform with the criteria in chapter 7080.

(2) A site evaluator must submit a list of individual on-site wastewater treatment systems for which the evaluator has conducted site evaluations in the past three years. The site evaluator must certify that a minimum of 20 sites for the systems listed were evaluated according to the criteria in chapter 7080.

(3) A designer must submit a list of individual on-site wastewater treatment systems designed by the applicant in the past three years. The designer must certify that a minimum of 20 systems listed were designed according to the criteria in chapter 7080.

(4) An installer must submit a list of individual on-site wastewater treatment systems constructed or repaired by the applicant in the past three years. The installer must certify that a minimum of ten systems listed were constructed or repaired according to the criteria in chapter 7080.

Subp. 4. **Notification of approval.** The commissioner will approve or deny an application within 30 days of the receipt of information required under subpart 3. Applicants may reapply at any time.

Subp. 5. **Purpose of agency approval.** Agency approval of inspectors, site evaluators, designers, and installers is for grant funding purposes only. This approval does not make the agency responsible for the technical adequacy of the work of inspectors, site evaluators, designers, and installers nor does it alter legal liability of this personnel otherwise provided by law.

MS s 116.18 subd 3c para (f)

13 SR 1822

7075.1450 APPLICATION.

Subpart 1. **Notice of taking applications.** The commissioner will request the authority to publish in the State Register a notice that applications for individual on-site wastewater treatment grants will be accepted by the authority. The application closing date will be established by the commissioner, and will be no less than 90 days after the publication date.

Subp. 2. **Application requirements.** The municipality must apply for a grant on a form provided by the commissioner. The municipality must submit to the authority the following information with the application:

A. a resolution of the governing body of the municipality that designates the municipality as the responsible party for the grant application and related documents, authorizes the filing of the application, and designates the municipal official authorized to sign the application and

related documents;

B. the wastewater treatment plan prepared under part 7075.1430;

C. a copy of the ordinance that adopts the requirements of chapter 7080 and certification that the ordinance is being enforced;

D. a copy of the ordinance establishing a maintenance plan under part 7075.1420, item D;

E. alternative median household income data under part 7075.1420, item E, for municipalities not included in the decennial census;

F. signed statements from the individual system owners stating that their system meets the following conditions:

(1) the system to be replaced or upgraded was constructed before January 1, 1977;

(2) the system to be replaced or upgraded was not constructed with funds from state or federal water pollution control funds; and

(3) the system to be replaced or upgraded does not serve a seasonal residence;

G. the municipality's estimated date for the completion of all construction and final request for payment for the grant eligible systems; and

H. a statement from the municipality that it has an inspector on staff or under contract for services, including documentation of approval under part 7075.1440.

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

Subp. 4. **Application closing date.** The application must be postmarked by the noticed application closing date.

Subp. 5. **Incomplete applications.** Municipalities that submit applications that do not include the information required in subparts 2 and 3 or that are not submitted by the application closing date are ineligible for funding. The municipalities may

reapply in a later application period.

MS s 116.18 subd 3c para (f)

13 SR 1822

7075.1460 ELIGIBLE COSTS.

Subpart 1. **Eligible costs.** Only the actual construction costs of upgrading or replacing failed individual on-site wastewater treatment systems that have been identified under part 7075.1430, subpart 3, item D, are eligible.

Subp. 2. **Ineligible costs.** All nonconstruction costs including planning, engineering and design, site evaluation and soil investigation, inspection, and administrative costs are ineligible.

Subp. 3. **Number of systems limitation.** The eligibility of costs for a treatment site is limited to either a trench or bed system or a mound system under part 7075.1470, subpart 1.

Subp. 4. **Costs incurred before grant award.** An owner may incur costs before the award of the grant and retain eligibility for reimbursement of eligible costs if the following conditions are met:

A. the municipality has developed and adopted a wastewater treatment plan as described in part 7075.1430 before construction costs are incurred by the owner of the individual system;

B. the owner's system is specifically identified on the municipality's wastewater treatment plan; and

C. the municipality submits a complete and timely application, during the first noticed application period under part 7075.1450, subpart 1, following the adoption of the wastewater treatment plan.

MS s 116.18 subd 3c para (f)

13 SR 1822

7075.1470 AMOUNT OF THE GRANT AWARD.

Subpart 1. **Grant amount.** The amount of the grant will be 50 percent of the actual eligible costs under part 7075.1460 up to a maximum grant of $2,500 per trench or bed system and $3,750

per mound system.

Subp. 2. **Partial awards.** A municipality that receives only a part of the grant to which it is entitled, due to the limitation of funding, will be entitled to receive a grant amendment in the next year or years, if individual on-site wastewater treatment systems grant funding is available, until the full amount of the grant is awarded.

MS s 116.18 subd 3c para (f)

13 SR 1822

7075.1480 PRIORITY RANKING.

Municipalities that meet the requirements of parts 7075.1420 to 7075.1450 will be ranked for funding priority from lowest median household income to highest median household income, with the lowest median household income receiving the highest priority.

MS s 116.18 subd 3c para (f)

13 SR 1822

7075.1490 CERTIFICATION OF AWARD.

Subpart 1. **Funding list.** The commissioner will prepare a list of municipalities eligible to receive grant funding under this program.

Subp. 2. **Public participation.** The following provisions govern public participation:

A. The commissioner will prepare an individual on-site wastewater treatment systems grants funding list and make it available to the public at least 45 days before adoption. The commissioner shall mail a free copy of the proposal to any interested person upon request.

B. The commissioner will give affected municipalities at least 45 days notice of the agency board meeting at which the funding proposal will be acted upon.

C. Interested persons may present oral statements at the agency board meeting. The chair may place reasonable restrictions upon the time and manner in which oral comments are submitted. Written statements must be received by the agency

board at least five days before the meeting.

Subp. 3. **Certification to authority.** The commissioner will certify to the authority the individual on-site wastewater treatment systems grants program funding list approved by the agency.

MS s 116.18 subd 3c para (f)

13 SR 1822

7075.1500 PAYMENT CONDITIONS.

Payment of the grant is contingent on complying with the following conditions:

A. The upgrade or replacement to the existing system must be designed by a designer using data from a site evaluator.

B. The upgrade or replacement to the existing system must be constructed by an installer.

C. The upgrade or replacement to the existing system must be inspected and approved by the inspector.

MS s 116.18 subd 3c para (f)

13 SR 1822

7075.1510 PAYMENTS.

Subpart 1. **Request for payments.** A municipality must submit payment requests to the commissioner on a form provided by the commissioner.

Subp. 2. **Schedule of payments.** Payments may be requested monthly as construction on individual systems is completed and approved by the inspector.

Subp. 3. **Documentation.** Before payment of any part of the grant is made, the municipality must submit copies of the following documents for each individual system:

A. invoices documenting incurred construction costs;

B. documentation that the system was designed by a designer using data from a site evaluator;

C. documentation that the system was upgraded or replaced by an installer; and

D. documentation that the system was inspected and approved by the municipality's inspector.

Subp. 4. **Certification of payment.** Within 30 days of agency receipt of payment request, the commissioner will determine whether payment will be made. If the commissioner determines that payment will not be made, the commissioner will advise the municipality of the deficiencies in the request. If the commissioner determines that payment conditions have been met, the commissioner will certify to the authority that payment should be made.

MS s 116.18 subd 3c para (f)

13 SR 1822

7075.1520 TERMINATION OF GRANT.

Failure of the municipality to comply with the construction schedule contained in the grant agreement constitutes grounds for the commissioner to recommend that the authority terminate the grant.

MS s 116.18 subd 3c para (f)

13 SR 1822

7075.1530 SUBSEQUENT GRANTS.

A municipality awarded a grant from the individual on-site wastewater treatment systems grants program is not eligible for additional funding under the program established by the 1972 Federal Water Pollution Control Act amendments or the state independent grants program, including the individual on-site wastewater treatment systems grants program, unless the municipality is applying for a project that serves a planning area that was not included, under part 7075.1430, subpart 2, in the awarded grant.

MS s 116.18 subd 3c para (f)

13 SR 1822

CONSTRUCTION LOAN PROGRAM

7075.2000 APPLICATION FOR CONSTRUCTION LOAN PROGRAM.

Subpart 1. **Application form.** The application form shall be of the type set forth below:

Minnesota Pollution Control Agency

Division of Water Quality

Application for Disposal System Planning and/or Construction Loan

To be filled in by the State

Date Received_____
Project Number_____
Loan Request_____

Legal Name of Applicant

_____

Address, Zip Code

_____

Hereby Makes Application to the Pollution Control Agency of the State of Minnesota for a Loan of Funds for the Planning and/or Construction of:

_____

Financial Aspects:

Estimated Project Cost	$_____
State Loan Funds	_____
Local Funds	_____
Other Funds	_____

Project Schedule:

Project Starting Date	_____
Time to Complete Project	_____

Name and Title of Official Signature of Official Date

_____

Subp. 2. **Attachments for planning loan.** The planning loan application form shall be supported by the following attachments:

A. resolution of the governing body authorizing the filing of the application and designating the municipal official authorized to sign the application;

B. resolution of the governing body of the municipality obligating the municipality to repay the loan to the state treasurer in annual installments including both principal and interest, each in an amount sufficient to pay the amount due within five years from user charges, taxes, special assessments, or other funds available to it;

C. resolution of the governing body of the municipality obligating the municipality to establish rates and charges or the execution of contracts sufficient to produce the revenues pledged if required by the agency;

D. proposed method of loan repayment; and

E. proposed contracts for engineering, legal, planning, and other consulting services.

Subp. 3. **Attachments for construction loan.** The construction loan application form shall be supported by:

A. The attachments of subpart 2, items A, B, and D and part 7075.0414, subpart 6. The commissioner for just cause may waive or defer the submission of any items required pursuant to part 7075.0414, subpart 6 if the items are EPA requirements.

B. Resolution of the governing body of the municipality obligating the municipality to repay the loan to the state treasurer in annual installments including both principal and interest, each in an amount sufficient to pay the principal amount within 20 years or a shorter time interval if the amount of the annual payment will not justify the administrative expenses of processing the payment, from user charges, taxes, special assessments, or other funds available to it.

Subp. 4. **Submission.** The loan application form and attachments shall be submitted in duplicate to the agency at the address specified by the commissioner. Substantial deficiencies in the application and supporting documents or failure to conform with applicable requirements as those set forth in the current agency water pollution control program plan or the applicable basin, regional, or area water quality management plan shall be grounds for rejection. A construction loan application shall be rejected at the discretion of the agency if it does not include an engineering report acceptable to the commissioner, include an adequate commitment for support of operation and maintenance of the project, conform to the intent of the applicable statutes, contribute to the overall objectives of effective water quality management, or is not considered to be in the best interests of the state.

Subp. 5. **Time restriction.** Applications must be restricted to projects or portions of projects for which service contracts or construction contracts can be awarded by June 1, except in cases of advance approval by the commissioner, of the

state fiscal year in which the loan is applied for.

MS s 115.03 subd 1 para (c); 116.16

8 SR 694; 10 SR 278; L 1987 c 186 s 15

7075.2100 ADMINISTRATION OF CONSTRUCTION LOAN PROGRAM.

Subpart 1. **Allocation of state funds.** The allocation of state funds shall be established in accordance with parts 7075.0403 to 7075.0406 and priority rating points assignable to loan applications shall be established in accordance with part 7075.2200. Funds allocable to loans shall be determined each fiscal year by the agency on the basis of total availability and demand for grants.

Subp. 2. **Tender of planning loan.** Planning applications which receive a priority rating sufficiently high in relation to available funds shall be tendered a state planning loan. Within 60 days after the acceptance of the offer and award of contracts, for engineering, legal, and other consulting services the state payment shall be made.

Subp. 3. **Tender of construction loan.** Construction loan applications which receive a priority rating sufficiently high in relation to available funds shall be tendered a state construction loan. Within 30 days after acceptance of the offer and award of the construction contract for the project, the state payment shall be made.

Subp. 4. **Monthly payments.** Principal and interest, each in an amount sufficient to pay the principal amount within the loan period, shall be paid in equal annual installments to the state treasurer. Interest shall be calculated on the declining balance at the average annual interest rate on state bonds of issue from the proceeds of which the loan was made.

Subp. 5. **Priority ratings.** Priority ratings shall be established each fiscal year for loan applications filed on or before the beginning of the state fiscal year. Applications postmarked or hand delivered after that day shall be rejected.

MS s 115.03 subd 1; 116.16

8 SR 694

7075.2200 CRITERIA FOR DETERMINING LOAN PRIORITY.

Subpart 1. **Order of priority for planning loan applications.** The determination of the order of priority for planning loan applications shall comply with the criteria in parts 7075.0403 to 7075.0406. Rating points shall be awarded to a municipality by summing up the applicable percentage points for the project from the tables in part 7075.0428, subpart 4, items A, B, and C.

Subp. 2. [Repealed, 10 SR 278]

Subp. 3. [Repealed, 10 SR 278]

Subp. 4. [Repealed, 10 SR 278]

Subp. 5. **Construction loans.** The determination of the order of priority for construction loan applications shall comply with parts 7075.0403 to 7075.0406.

MS s 115.03 subd 1 para (c); 116.16

8 SR 694; 10 SR 278

WATER POLLUTION CONTROL REVOLVING FUND PROGRAM

7075.2505 PURPOSE.

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

MS s 446A.07 subd 11

13 SR 1690

7075.2510 DEFINITIONS.

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

that part.

Subp. 2. **Act.** "Act" means the Federal Water Pollution Control Act, United States Code, title 33, sections 1251 to 1387.

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

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

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

Subp. 6. **Intended use plan.** "Intended use plan" means the document prepared annually by the agency according to the requirements in Title VI of the act and submitted to the United States Environmental Protection Agency. The plan will identify the intended uses of the amounts available to the water pollution control revolving fund, including a list of wastewater treatment projects and other eligible activities to be funded during the fiscal year.

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

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

MS s 446A.07 subd 11

13 SR 1690

7075.2515 INTENDED USE PLAN.

Subpart 1. **Adoption of intended use plan.** The agency shall annually adopt an intended use plan based upon the requests received under subpart 3. The agency will amend the

intended use plan to add additional eligible projects as necessary.

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

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

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

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

(2) a project cost estimate; and

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

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

MS s 446A.07 subd 11

13 SR 1690

7075.2520 APPLICATIONS.

Subpart 1. **Timing and form of application.** A municipality identified on the intended use plan may submit an application for financial assistance according to the municipality's

schedule submitted under part 7075.2515, subpart 3, item A, subitem (3). Applications must be submitted to the executive director of the authority on forms provided by the authority.

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

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

B. a schedule for completion of the facilities plan;

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

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

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

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

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

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

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

Subp. 4. **Step 3 financial assistance.** In addition to any

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

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

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

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

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

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

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

"The treatment works described in this application

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

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

H. An engineering contract for all Step 3 work.

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

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

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

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

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

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

K. A certification from the municipality that it will

comply with the performance certification requirements in part 7075.2545.

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

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

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

MS s 446A.07 subd 11

13 SR 1690

7075.2525 APPLICATION CERTIFICATION.

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

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

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

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

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

MS s 446A.07 subd 11

13 SR 1690

7075.2530 CHANGE ORDERS.

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

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

MS s 446A.07 subd 11

13 SR 1690

7075.2535 INSPECTIONS.

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

MS s 446A.07 subd 11

13 SR 1690

7075.2540 STEP 3 REPORTING REQUIREMENTS.

Subpart 1. **Sixty days before completion of construction.**

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

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

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

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

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

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

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

MS s 446A.07 subd 11

13 SR 1690

7075.2545 PERFORMANCE CERTIFICATION.

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

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

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

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

C. a revised operation and maintenance manual based

on actual operating experience obtained during the one-year start-up period.

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

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

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

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

MS s 446A.07 subd 11

13 SR 1690

7075.2550 REQUEST TO WITHHOLD FINANCIAL ASSISTANCE PAYMENTS.

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

MS s 446A.07 subd 11

13 SR 1690

7075.4900 PROCEDURAL RULES AND APPEALS.

A request for a hearing, an appeal, or other procedural matter not specifically provided for in this chapter is governed by the agency rules of procedure, the rules of the Office of

COMMENTS RECEIVED DURING COMMENT PERIOD NOTICED IN THE STATE REGISTER ON MARCH 6, 1989 AND ENDING ON JUNE 5, 1989:

FROM:	ITEM:
City of Winton letter dated 1/21/88 Ann Jackson	1) 7075.0430: 80 percent stop payment point in subpart 5 creates a financial hardship for the city that has a state independent grant. Request state program to mirror federal stop payment of 90 percent with option to reimburse up to 99 percent.
Long Prairie letter dated 4/24/89 David Venekamp	1) 7075.0429: Stop payment at 50 percent and holding 50 percent for step 3 state matching grants to federal funds creates a financial hardship. Withheld funds should be reduced to 5-10 percent once project is completed.
Battle Lake phone conversation on 4/11/89 with Herman Borg	1) A coordinator is needed for each project to corrdinate all the "expertise" people, which will create a team effort and improve communication at the MPCA and with the grantee. 2) Changes are needed to improve the timeliness of paperwork. 3) The 50 percent withholding of matching state grant funds should be changed to a schedule of stop payments, like the federal program uses. The schedule of stop payments will help the grantee by identifying requirements and deadlines. A 10 percent withholding of matching state funds will reduce the extreme financial burden currently imposed by the 50 percent withholding.
City of Minneota letter dated 5/19/89 Betty Fier	1) The Community Assistance Program (Marshall) is helpful to cities and the practice of feasibility studies is a potential way for saving money. 2) Regional offices should be staffed with personnel who can assist with the administration of paperwork involved in a grant. This would save the cost of having the engineering firm doing this paperwork.
Center City letter dated 6/2/89 Mark Wolcott	1) Keep same staff person on project from start to finish. 2) Re-examine definition of grant eligible interceptor lines. Definition should include "any line servicing more than one entity is defined as an interceptor." 3) Be sure all communities involved in a multi-community projects receive the same information about the program. 4) Continue efforts to provide supplemental grants to those projects funded at levels lower than previous or subsequent recipients. 5) Examine Wisconsin's wastewater treatment program, which potentially operates more efficiently. 6) Encourage "in person" meetings between staff and affected local boards.

Chisago City letter dated 6/2/89 Mark Karnowski	1) 2) 3) 4) 5) 6)	Keep same staff person on project from start to finish. Revise definition of grant eligible interceptor lines to give consideration to multi-community projects. Extra effort should be given to communities involved in multi-community projects that do not have central collection facilities to be sure they have all needed information. Continue to provide supplemental grants to those entities whose projects were funded at less than the level of previous or subsequent grantees. Examine Wisconsin's program. Make every effort to assure grant payments to the recipients are made within a consistent time frame to allow the grantees to work with a cash flow chart.

INDIVIDUAL ON-SITE SYSTEMS GRANTS PROGRAM

Gary letter dated 6/2/89 Harold Natwick, Mayor	1)	Include inspector, site evaluator and designer as grant eligible costs or increase the overall percentage of grant assistance.
Cass County letter dated 6/5/89 Housing/Redevelopment Authority	1)	Include 100 percent of the actual eligible costs for very low income, poverty level elderly.

STATE OF MINNESOTA

COUNTY OF RAMSEY

MINNESOTA POLLUTION CONTROL AGENCY

In the Matter of the Proposed Revision to 6 MCAR § 4.8034, Relating to the Administration of Federal Grant Funds and State Grant and Loan Funds for Municipal Sewage Treatment Projects

STATEMENT OF NEED AND REASONABLENESS

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STATE OF MINNESOTA

COUNTY OF RAMSEY

MINNESOTA POLLUTION

CONTROL AGENCY

In the Matter of the Proposed
Revision to 6 MCAR § 4.8034, Relating
to the Administration of Federal Grant
Funds and State Grant and Loan Funds
for Municipal Sewage Treatment Projects

STATEMENT OF NEED
AND REASONABLENESS

I. INTRODUCTION

6 MCAR § 4.8034 (hereinafter sometimes referred to as WPC 34) is the rule of the Minnesota Pollution Control Agency (hereinafter "Agency") that provides for the administration of federal grant funds and state grant and loan funds for municipal sewage treatment projects. WPC 34 was first adopted by the Agency in 1972 and was amended in 1973 and 1978. The Agency is proposing to amend the rule again at this time.

The construction grants program enables municipalities in Minnesota to construct wastewater treatment facilities through a combination of federal, state, and local funds. This rule, 6 MCAR § 4.8034, establishes criteria for determining priority for the awarding of state and federal funds for sewage treatment projects.

The federal construction grants program is authorized by the Clean Water Act, 33 U.S.C. §§ 1251 et seq. The U.S. Environmental Protection Agency has promulgated regulations and developed guidelines for the administration of the federal program. See 40 C.F.R. Parts 30, 33 and 35 (1982). The state construction grant and loan program is funded from the Minnesota State Water Pollution Control Fund, created by the legislature in 1971. Minn. Laws 1971 Ex. Sess., ch. 20. Minn. Stat. §§ 116.16-116.18 (1982).

The Agency's statutory authority to adopt 6 MCAR § 4.8034 is found in Minn. Stat. § 116.16 (1982), which authorizes the Agency to adopt rules governing the allocation of federal grants and state grants and loans for municipal sewage treatment projects, and in Minn. Stat. § 115.03, subd. 1(c) (1982), which authorizes the Agency to adopt rules in order to prevent, control, or abate water pollution.

In 1981 the Legislative Commission to Review Administrative Rules (LCRAR) raised a numer of concerns about the criteria in WPC 34. On June 30, 1981, a hearing on the rule was held before the LCRAR. The Agency presented a written report to the LCRAR (see Exhibit 10) and appeared before the Commission on June 30 to make an oral presentation. As a result of these proceedings, the LCRAR made a number of recommendations to the Agency regarding WPC 34. The LCRAR Report is in the record as Exhibit 11.

In response to the LCRAR recommendations the Agency created a Task Force to review WPC 34. The Task Force was comprised of fourteen members, not including MPCA staff. A list of the Task Force members is shown in Exhibit 13. The Task Force met a total of four times from late March, 1982, to February, 1983. At these meetings the Agency explained the various amendments to WPC 34 that were being considered and the Task Force members offered suggestions and comments.

On February 22, 1983, the Minnesota Pollution Control Agency Board authorized a public hearing on proposed amendments to WPC 34. The hearing begins on June 13, 1983. See Exhibits 1, 2, and 3.

This document contains the Agency's affirmative presentation of facts on the need for and reasonableness of the proposed amendments. The next section of this document describes the need for amendments to the rule and the following section describes the Agency's reasons for the changes proposed.

II. NEED FOR AMENDMENTS

The need for the proposed amendments to WPC 34 arises from the following factors:

1. Amendments to the Clean Water Act.
2. Changes in EPA regulations.
3. Recommendations of the Legislative Commission to Review Administrative Rules.
4. Experienced gained since last amendments in 1978.

Each of these factors is discussed below.

1. Amendments to the Clean Water Act.

The Clean Water Act of 1977, P.L. 95-217, enacted on December 27, 1977, amended the Federal Water Pollution Control Act, 33 U.S.C. §§ 1251 et seq., in a number of ways, including changes relating to the construction grants program. (In this document the federal law is referred to as both the Clean Water Act and the Federal Water Pollution Control Act.) In 1978 the Agency amended WPC 34, partly in response to the changes made by Congress.

On December 29, 1981, Congress once again enacted changes in the Act when it passed the "Municipal Wastewater Treatment Construction Grant Amendments of 1981." P.L. 97-117. A copy of the Act has been introduced into the record as Exhibit 14. Some

of the changes in the construction grants program made in the 1981 Act relate to:

a. Type of projects eligible for funding.

After October 1, 1984, grants may only be made for projects for secondary treatment or more stringent treatment, for new interceptors, and for infiltration/inflow correction. P.L. 97-117, § 2, 33 U.S.C. § 1281(g)(1).

b. Advances of allowance.

Grants are awarded only for Step 2 + 3 and Step 3 projects, although advances of allowance are available for Step 1 and Step 2 projects to do facilities planning and preparation of plans and specs. P.L. 97-117, § 3, 33 U.S.C. § 1282(1)(1).

c. Funds for combined sewer overflow.

After October 1, 1984, the governor of a state may set aside a certain portion of the state's allotment to address combined sewer overflow problems. P.L. 97-117, § 5, 33 U.S.C. § 1282(n)(1).

d. Percentage of project cost eligible for funding.

After October 1, 1984, the federal share of a project cost is reduced from 75% to 55%. P.L. 97-117, § 7, 33 U.S.C. § 1282(a)(1).

e. Funding of innovative and alternative projects.

Innovative and alternative projects may by funded by federal grants to cover an additional 20% of the cost of the project that other projects are not eligible for. P.L. 97-117, § 8, 33 U.S.C. § 1281(a)(2).

2. Changes in EPA Regulations.

The U.S. Environmental Protection Agency has promulgated many regulations for the administration of all kinds of grant funds. These regulations are found in 40 C.F.R. Parts 30, 33, and 35 (1982). The regulations most applicable to municipal treatment works are found at 40 C.F.R. Part 35, Subparts C, D, E, and I (1982).

In the past five years, since WPC 34 was last amended, EPA has made numerous changes in its grant regulations. See e.g., 47 Fed. Reg. 20450-20472 (May 12, 1982) (Exhibit 15). These changes were made for a wide range of reasons, including EPA's own experience and Congressional changes in the Federal Water Pollution Control Act.

In addition, EPA has published new guidance on the construction grants program. That guidance is in a book entitled "Construction Grants 1982 (CG-82)," which is in the record as Exhibit 16.

No attempt is made here to describe any of these specific changes in the EPA regulations, but the fact that EPA has made these changes warrants another look at the state rule. In Section III the Agency points out those federal regulations that impact specific provisions of WPC 34 proposed for amendment.

3. Recommendations of the LCRAR.

On August 13, 1981, the LCRAR staff presented its report on WPC 34, which was adopted by the Commission on the same day. See Exhibit 11. The LCRAR made the following recommendations to the Agency about WPC 34:

a. Reassess the point rating system.

b. Give special consideration to water pollution effects.

c. Give priority to abating public health hazards.

d. Protect valuable recreational and scenic waters of the state.

e. Give higher priority to loans than has been given in the past.

As explained in Section III, many of the changes proposed by the Agency are directed to the concerns raised by the LCRAR.

4. Difficulties experienced since 1978.

The Agency has administered the construction grants program under the existing rule since 1979, during which time hundreds of grants involving over 300 million dollars have been awarded. Through this experience, the Agency has learned that a number of changes in the rule are needed.

These changes relate to the kinds of projects that should be given top priority, to innovative and alternative technology, to geographic split of the funds available, to grant applications, and to assurances that projects are completed expeditiously and properly. These changes and the reasons for them are more fully explained in Section III of this document.

III. REASONABLENESS OF THE AMENDMENTS

This section describes the Agency's reasons for suggesting each of the changes proposed. Each of the provisions in the new rule that is proposed to be changed is discussed in the order it appears in the rule.

One general note should be mentioned here. While the rule as printed in the State Register shows a great deal of the rule struck out, and many new provisions underlined, the rule is not changed as significantly as the underlining and strike outs might indicate. Much of the rule has been reorganized, and it was easier to strike out the old language, and underline it in its new location, than to attempt to merely show the renumbering. Also, in many cases, while the proposed language is new, in an attempt to be more specific and clearer, the intent of the rule and the practice of the Agency under the rule have not changed. These provisions are all discussed in greater detail below.

A. Purpose. The purpose of the rule -- to administer the federal construction grant program and the state construction grant and loan program for municipal sewage treatment projects -- has not changed, but the Agency has proposed to shorten this section considerably, from two paragraphs to one sentence. It seems to the Agency that the purpose of the rule can be adequately stated in one sentence and the excess verbiage can be eliminated.

B. Definitions

The definitions discussed below are those existing definitions that are proposed to be changed or repealed and those definitions that are new.

1. Wastewater. All the words in paragraph 1 of the definition section are words that are defined in the statutes. There is no statutory definition of "wastewater" so the Agency would propose deleting "wastewater" from paragraph 1.

It does seem preferable, however, since the word "wastewater" is used often in the rule, to include a definition of "wastewater" elsewhere in the definition section. The Agency would propose adding the following definition to the rule.

"Wastewater" means sewage, industrial waste, and other wastes collected for treatment in a disposal system.

This definition will help clarify that a municipality may be called upon to treat industrial and other wastes, in addition to sewage, in its municipal system. Without this definition this point could be confusing because while "treatment works" and "disposal system" are defined in Minn. Stat. § 115.01 (1982), subdivisions 7 and 8 respectively, to include industrial wastes and other wastes, the definition of "wastewater treatment works" in Minn. Stat. § 116.16, subd. 6 (1982) references only sewage. When the word "wastewater" is found in WPC 34, it should be read broadly enough to include liquid industrial wastes and other liquid wastes in addition to domestic sewage. This definition makes that clear.

This provision is consistent with EPA regulations. EPA also knows that wastewater in a municipal system could be liquid wastes besides sewage. See EPA definitions of "treatment works" in 40 C.F.R. §§ 35.805-7 and 35.905 (1982). See also the definition of "treatment works" in Section 212(2)(A), Federal Water Pollution Control Act, 33 U.S.C. § 1291(2)(A).

4. Regional Administrator. The Agency proposes to delete this definition because the phrase "Regional Administrator" is never used in the amended rule. It appears in the existing rule in section A (Purpose) but that reference is proposed to be deleted. Of course, it is understood that the Regional Administrator is the Administrator of Region V of EPA, but the phrase is not used in the rule so it need not be defined.

6. Category of Project. Under the old rule "Category of Project," "Type of Project," "Project," and "Scope of Project" were all defined. It does not seem necessary to use all of these phrases in the rule. Instead, the Agency is proposing to delete all of these and keep only the definitions for Step 1, Step 2, Step 2+3, and Step 3, which adequately define the work that is involved. The amended rule refers to the Step, rather than to the Category, Type, or Scope of Project, so these other phrases need not be defined. In addition, the extensive explanations provided in section H of the amended rule for the different kind of projects should help to eliminate any difficulty identifying particular project types.

~~7~~. Type of Project. See discussion above for Category of Project.

6. Step 1. The words "the preparation of" are proposed to be added to the definition simply to make this definition grammatically consistent with the other Step definitions.

~~8~~. Project. See discussion for Category of Project.

~~9~~. Metropolitan Area.
~~10~~. Non-metropolitan Area.

The definitions of metropolitan area and non-metropolitan area are proposed to be deleted because the reason for the distinction is not necessary under the amended rule. Under the existing rule, section E.4.b.(1), the available funds were split between the metropolitan area and the non-metropolitan area in approximately the same ratio as the sewered population in the respective areas. Under the proposed amendments, there would be no specific geographic split in the funds.

The reason the split was mandated in the past was to ensure that at least some of the funds went to outstate municipalities. The emphasis placed on population in establishing priorities under the existing rule was such that without the required split the more populous metropolitan area would have been awarded all or nearly all of the State's allotment each year. Under the proposed amendments, however, not as much emphasis is placed on population so smaller communities will be able to obtain funding on the basis of water quality impacts and project type.

In addition, the EPA has specifically indicated that they will not accept geographic concerns as a criterion for determining priority. 40 C.F.R. § 35.915(a)(1)(iv) (1982). The change being proposed is consistent with this EPA directive.

10. Secondary Treatment Plant. The definition of secondary treatment is needed to form a common basis of reference that categorizes levels of treatment. Basically the definition of secondary treatment has not changed, although the new language is more specific. Under the existing rule, the definition included only a reference to WPC 14 and 15. The new definition more precisely references the specific provision in WPC 14 and 15 that establishes what secondary treatment effluent limits are. 6 MCAR § 4.8014 C.6. (intrastate waters) and 4.8015 C.6. (interstate waters) essentially provide that secondary treatment produces an effluent of 25 milligrams per liter BOD_5 (5-day biochemical oxygen demand), 30 milligrams per liter total suspended solids, and 200 fecal coliform organisms per 100 milliliters.

A new part of the definition relates to plants discharging to Class 7 waters (limited resource value waters). Class 7 waters are waters that cannot attain the national water quality goal of being suitable for fishing and swimming. The rule provides that plants discharging to Class 7 waters and assigned effluent limits under 6 MCAR §§ 4.8014 C.16.a. or b. or 4.8015 C.16.a. or b. shall be considered secondary treatment. The reason this provision is included is because under section C.16.a of both WPC 14 and 15

dischargers to Class 7 waters are required to meet a BOD_5 effluent limit of 15 milligrams per liter. This is more stringent than the 25 milligrams per liter secondary standard. Class 7 dischargers have to meet a more stringent BOD_5 limit to avoid localized odor problems; the more stringent limit has nothing to do with the recreational use of the Class 7 water. In order to avoid awarding more priority points to a Class 7 discharger than to a discharger to a higher quality water assigned secondary limits, this language is included in the definition to clarify that the Class 7 discharger gets the same points as the secondary treatment plant. If more restrictive effluent limitations are assigned to a discharger to a Class 7 water based on protection of water quality standards for a downstream recreational water, however, the discharger would qualify for the higher points for tertiary treatment.

The word "plant" has been added to the definition simply to correspond with the phrase used in the priority criteria in Section H. This helps to focus on the facilities in addition to the treatment provided.

11. Tertiary Treatment Plant. Tertiary treatment is generally defined in terms of the quality of the effluent. A plant that produces a higher quality effluent than a secondary treatment plant is a tertiary treatment plant. This concept of a higher quality effluent is not a change from the existing rule. It is and has been a workable distinction, and it is reasonable to continue with this language.

The Agency has expanded on the definition, however, to specifically recognize that plants required to achieve specific effluent limits for phosphorus or toxic substances are tertiary treatment plants. This was done to make clear that dischargers required to meet effluent limits for these parameters are entitled to the tertiary treatment points even though the effluent limitations for these parameters are defined in the same section of 6 MCAR §§ 4.8014 and 4.8015, Section C.6., that defines secondary treatment.

12. Primary Treatment Plant. The language describing the treatment a primary plant provides --"lower than that provided by secondary treatment plants" -- is the same concept as is presently in the rule and one that is reasonably understood. It is not difficult to identify those plants that cannot meet a 25 mg/l BOD_5, 30 mg/l TSS, and 200 MPN/100 ml fecal coliform limit, which are the secondary standards.

~~14~~. Scope of Project. See discussion for Category of Project.

13. Planning Loan. The only change proposed here is a grammatical one to clarify that a loan may be made for Step 1 projects and Step 2 projects. Thus, a community could obtain a loan for the preparation of engineering studies or for the preparation of Plans and Specifications. Of course, the community could also apply for and obtain a loan to do both.

~~17~~. Resident Inspection. This phrase is used only once in the existing rule, in Section E.8.f.(5), so it was thought to be unnecessary to give it a separate definition. Under the proposed

amendments, the requirement of resident inspection is included in the substantive part of the rule in Section Q.5.j. The requirement of resident inspection has not changed; it has only been moved from the definitions to the substantive provision of the rule.

~~19~~. Contract. This definition is proposed to be deleted because in those parts of the rule where this definition applies, Sections CC. and DD., the kind of contract to which those sections apply is explained. This change helps to shorten and clarify the rule.

~~20~~. Grantee. In a few places in the existing rule,, obligations are placed on the "grantee", see Sections E.9.h. and i., or on the "applicant", see Section E.9.e.(3)(b). The "grantee" or the "applicant", however, can only be a municipality, as that term is defined. Thus, under the proposed amendments, the word "municipality" is used in those provisions where specific obligations or responsibilities are spelled out. Therefore a definition of grantee is no longer required. Again, this change is thought to shorten and clarify the rule.

16. Infiltration.
17. Inflow.

Infiltration and Inflow are two new definitions that are taken verbatim from the federal definitions. 40 C.F.R. §§ 35.2005 (20) and (21) (1982). Infiltration and inflow are important in determining which category a municipality's project falls under. See Sections H.2.c., d., f., and g. In addition, a municipality

may be required to prepare an Infiltration/Inflow Analysis and Sewer System Evaluation Survey. See Sections H.3.a. and H.3.b.(1). Also, an infiltration/inflow analysis is required as part of a Facilities Plan. See 40 C.F.R. § 35.2030(b)(4) (1982). For all these reasons, including definitions of Infiltration and Inflow in the rule is appropriate and adoption of the federal definitions is reasonable.

18. Facilities Plan.
19. Plans and Specifications.

These two definitions are discussed together.

One of the first steps in the construction of a sewage treatment plant is the development of what is called a Facilities Plan. This is normally called Step 1 work. A Facilities Plan is essentially a written report on the costs and impacts of various alternatives of sewage treatment in a community. The Facilities Plan is followed by the preparation of Plans and Specifications, often called Step 2 work. Plans and Specifications include documents that indicate what the sewage treatment project entails with enough specificity to allow contractors to submit bids. The Plans and Specifications essentially allow the project to be constructed.

Facilities Plans and Plans and Specifications are prepared by registered professional engineers on behalf of a municipality and reviewed for adequacy by the Agency staff. Municipalities and consulting engineers are well acquainted with the requirements to submit Facilities Plans and Plans and Specifications. Facilities

Plans and Plans and Specifications have been requirements of the construction grants program from the inception of the program. For an example of a Facilities Plan, see Exhibit 17.

Although municipalities and their consulting engineers are familiar with the requirements for Facilities Plans and Plans and Specifications, the Agency thought it would be helpful to provide a definition of each in the rule because these documents are inportant parts of the grant process and are referenced numerous times in the rule. The inclusion of definitions of Facilities Plan and Plans and Specifications should provide helpful guidance to municipalities and their engineers that will allow for the development of adequate and consistent Facilities Plans and Plans and Specifications and will shorten Agency review time.

Both definitions reference the EPA regulations. The definition of Facilities Plan specifically incorporates 40 C.F.R. § 35.2030 (1982), and other EPA regulations may apply as well. See 40 C.F.R. § 35.917-1 (1982). The EPA regulations are not as specific for Plans and Specifications as they are for Facilities Plans so only a general reference to 40 C.F.R. Parts 33 and 35 (1982) is given in the definition for Plans and Specifications. Some EPA guidance on Plans and Specifications can be found in 40 C.F.R. §§ 35.835-6, 35.920-3(c)(2), and 35.2040(b)(6) (1982).

But in addition to the federal regulations, additional guidance is given in the definitions. A Facilities Plan must include the information necessary to determine whether the project

is consistent with good engineering practice and capable of meeting applicable standards. Obviously, a project will not be approved and awarded a grant if the project does not entail good engineering practice and is not capable of meeting standards. Thus, requiring that enough information be included in the Facilities Plan to allow the Agency to make this determination is a reasonable requirement.

Plans and Specifications must conform with generally accepted engineering practices and applicable state statutes and rules. Examples of applicable state statutory rule requirements would be bidding restrictions, building codes, and requirements for review by a registered professional engineer.

20. NPDES/SDS Permit.

Every person in the state who discharges to waters of the state is required to obtain a National Pollutant Discharge Elimination System (NPDES) Permit. Every person in the state who operates a disposal system is required to obtain a State Disposal System (SDS) Permit. Often, when a person discharges effluent from a disposal system, the NPDES Permit and the SDS Permit are combined into one document called a NPDES/SDS Permit.

A person's NPDES/SDS Permit establishes certain conditions, including effluent limitations that restrict the amount of pollutants that may be discharged, that must be met in operating the disposal system and discharging the effluent. Under amendments being proposed here, those effluent limits are used to determine whether a municipality must undergo a major addition to

its sewage treatment plant in order to comply with its permit conditions. See Section H.2.b. Whether or not a project qualifies as a major addition will usually determine whether the municipality gets a grant or not.

Thus, because permit conditions are to be used in establishing how many priority points are awarded to a project, it is appropriate to define NPDES/SDS Permit. The definition itself should not be controversial.

21. 90% Compliance.

This is a new definition that is not found in the existing rule. The definition of "90% compliance" is used in conjunction with the provisions in Section H.2.b. to determine whether a proposed addition to a sewage treatment plant is a major addition or not. In general these provisions work as follows. A municipality that is not achieving compliance 90% of the time, and needs an addition to its municipal system to achieve compliance, will be awarded the top priority points for that addition. A municipality that is not achieving compliance 90% of the time, but whose noncompliance is not caused by the lack of adequate facilities, will not be awarded the top priority points for a proposed addition.

The definition refers to "compliance with an NPDES/SDS Permit limitation or condition related to effluent quality." What is meant here, of course, is compliance with the effluent limits in the municipality's permit. The permit will always contain effluent limits for BOD, TSS, and fecal coliform organisms, and

some municipalities will have limits for other parameters as well. These are the requirements the Agency looks to in determining whether a municipality is in compliance for purposes of prioritizing a project proposed by the municipality.

The effluent limits in a municipality's permit will specify different time periods over which a certain concentration of a pollutant must not be exceeded. For example, a permit might establish both a 30-day average and a 7-day average for BOD. This averaging period is what is meant by the "time interval appropriate to the limitation or condition" in the definition.

The definition also provides that the percentage of time of compliance is to be determined over the period of one year. The Agency selected the one year period to provide a long enough time to make an average meaningful, yet is not such a long period of time that a noncomplying situation can continue unchecked. Under this provision a muncipality would have to achieve compliance with a 30-day average effluent limit, eleven months out of the year to achieve "90% compliance." If the municipality exceeded the effluent limit two or more months out of the year, the municipality would not have achieved "90% compliance." Similarly, for a 7-day average limitation, the municipality would have to achieve compliance 47 weeks out of the year.

The important aspect of this definition and the implementation of it under Section H.2.b., of course, is to separate those situations where an addition is necessary to

achieve compliance from those situations where noncompliance is caused by something else. The Agency has proposed to do that in two ways: (1) to require only "90%" compliance and not something higher; and (2) to specifically exclude from the percentage computation, periods of noncompliance caused by factors not related to the capability of the existing facilities. These requirements are discussed in greater detail below.

The 90% value was chosen because effluent limit compliance greater than this frequency but still less than 100% is not likely to indicate a need for additional construction of facilities. In a study done by Niku, et al., the authors state that "[b]ecause of numerous uncertainties underlying the design and operation of a treatment plant, there is some risk of failure that is unavoidable". Exhibit 18 at p. 2841. In other words it is unrealistic to expect a treatment plant that guarantees no violations. Also, to overdesign a plant such that the expected violations would reach 0% would be extremely cost prohibitive.

In addition, operator judgment and uncontrollable situations make it virtually unavoidable that violations will occur, regardless of the adequacy of the system. Niku, et al. concluded as much in a second study. See Exhibit 19 at pp. 6-8. In other words there is an unavoidable probability that the most dedicated and knowledgeable operator may make judgment determinations that result in a certain number of violations. This human factor coupled with uncontrollable situations make it reasonable to expect that violations will occur that are not related to the

capabilities of the treatment works. These violations may not be excused in any enforcement sense, of course, but for purposes of prioritizing projects for grant awards, these noncompliance situations should not be considered. It is not cost effective to construct additional facilities to compensate for these violations. Therefore it is reasonable to apply a 90% compliance criteria for justification of a major addition.

While the 90% figure provides generally for excluding noncompliance situations caused by factors not related to facility capability, the definition also provides for the exclusion of periods of noncompliance caused specifically by certain nonfacility-related factors. These factors include inadequate operation and maintenance (O&M), negligence, and increased flow or loading.

Inadequate O&M and negligence are essentially the same exclusions included in the definition of "Need" (Section B.5.) and represent no change from the existing rule. It makes good sense that limited grant funds not be used to respond to situations of inadequate O & M or negligence.

Increased flow or loading to a treatment plant will also not be included in the percentage computation. The intent of this qualification is to reflect the provision of the Clean Water Act making reserve capacity ineligible for funding after October 1, 1984. See Section 204(a)(5) of the Municipal Wastewater Treatment Construction Grant Amendments of 1981, 33 U.S.C. § 1284(a)(5).

22. Major Contributing Industry.

Under the proposed amendments, a municipality on the Municipal Project List must include as part of its grant application a treatment agreement for each major contributing industry. See Sections Q.4.g. and Q.5.1. These agreements are used by the Agency to determine the design basis of a municipality's new or upgraded system. It is appropriate, then, to define what is meant by a major contributing industry and a treatment agreement.

A major contributing industry is essentially an industrial user planning to transport wastewater to a municipal wastewater treatment system in such quantity or of such quality that accommodating the industry impacts the design and operation of the municipality's facility. The definition proposed by the Agency contains four specific standards that will readily identify an industry as major and one more subjective standard that will be used to identify the less obvious major industrial contributors. Any industrial user falling within any one of the categories is a major contributing industry. These standards are discussed below seriatim.

1. Flow of 50,000 gallons or more per work day

The quantity of an industrial flow is a logical factor to consider in determining whether the industry is a major contributing industry. The Agency believes that a flow of 50,000 gallons or more per day is a reasonable cutoff point between major and nonmajor contributors because in every community in the State,

especially those outside the jurisdiction of the Metropolitan Waste Control Commission, special consideration would have to be made in designing and operating a wastewater treatment works to accommodate an industrial flow of 50,000 gallons or more per day.

In determining the flow rate of an industrial contributor, it is really the rated flow rather than the actual hourly flow that is of consequence. The rated flow is the equivalent 24 hour flow of an industry that discharges less than 24 hours per day. For example, an industry that discharges only 12 hours per day and discharges 30,000 gallons in those 12 hours, would have a rated flow of 60,000 gallons per day.

It is important that the rated flow be used in determining whether an industry is major because these short-term slug-type loads can have a significant impact on the operation of a sewage treatment plant. Sewage treatment plants do not operate on a 24-hour average but must respond to these individual slug loads. Thus, an industry that discharges less than 50,000 gallons in a single day but has a significant discharge over a short period of time can be and should be considered a major contributor.

For similar reasons, it is the design flow, rather than some kind of average flow that is important in determining whether the industry is a major contributor. If an industry averages 40,000 gallons per day for four days, but discharges 60,000 gallons on the fifth day, the 60,000 gallons becomes the crucial factor in determining the impact of the discharge on the treatment plant. The treatment plant must be designed to handle the 60,000 gallons,

and the industry must be considered a major contributor.

To clarify that it is the rated flow rather than the actual flow and that it is the design flow rather than some average flow that is to be considered here, the Agency would suggest that the proposed Section C.22.(a) be amended to read as follows:

> a. Has a rated flow of 50,000 gallons or more per work day where the rated flow is the daily design flow multiplied by 24 and divided by the actual hours of discharge in a day.
>
> 2. Flow greater than 5% of total flow.

Many municipal facilities have total flows of under a million gallons per day. In such cases an industrial contributor could have a flow of less than 50,000 gallons per day but still be a significant contributor to a municipal system. In our view any single industrial discharger who contributes more than 5% of the wastewater to the system must be identified early on in the design process to ensure that the system is capable of handling this industrial discharger. The 5% number is a reasonable figure because in our judgment it is not so small that every industrial user will be included just on the basis of quantity, and it is not so large that industrial users having a significant impact will be excluded.

Again, the language in this provision should be changed to clarify that it is the rated flow and the design flow that are to be used in determining when the industry contributes more than 5% of the total flow. Thus, in determining what percentage of the total flow is a particular industrial flow, the design flow from

the industry, converted to rated flow, should be divided by the total design flow of the municipal sewage treatment plant. The following example illustrates the math:

Industry Design Flow = 5,000 gallons for 8 hours

Sewage Treatment Plant Design Flow = 100,000 gallons per day

$$\text{Industry Percentage Contribution} = 5{,}000 \times \frac{24}{8} \times \frac{1}{100{,}000} \times 100 = 15\%$$

In this example the industry would be a major contributing industry. The Agency recognizes that the conversion to rated flow could lead to the computation of more than 100% contribution from all industries because the design flow to the plant does not change accordingly, but for purposes of determining what industrial contributors are major, it is not necessary for the overall math to be completely accurate. The computation is reasonable for identifying major contributing industries. The Agency suggests that the language in Section C.22.b. be amended to clarify the points discussed above. The new language would read as follows:

b. Has a rated flow greater than five percent of the total design flow to the treatment works.

3. Total Organic Load

The first two standards looked to the quantity of the flow to identify major industrial contributors. The last three standards look to the quality of the wastewater to determine whether a user is major or not.

The standard of 5% of the total organic load is similar to the 5% of the flow standard just discussed above. Again, in our view any single industrial contributor discharging more than 5% of the total organic matter that must be treated at the treatment works must be considered a major contributor and identified and planned for throughout the process of designing and constructing a sewage treatment system.

In making this calculation the time period can be important. No time period is specified in the rule because several could be used. What is intended is that the calculation would be made for whatever time periods are used in designing the plant. What is most common is the daily design flow, so what would be used is the daily design contribution of organic matter from the industry. But if over some other period, like a month or a year, the design of the plant would change because of the contribution of organic matter from the industry, this is the time period that would be used.

4. Toxic Pollutants

It is reasonable to conclude that any industrial discharger who has in its waste a toxic pollutant in amounts that could not be discharged to waters of the state is a major contributing industry. The municipality must ensure that its system is capable of accepting the toxic pollutant if the industry is to be permitted to join the municipal system.

The major questions, of course, are what is a toxic pollutant and what is the amount of concern. A toxic pollutant is any

pollutant identified as toxic under state or federal law. To date Congress has identified a list of over sixty toxic pollutants. See Section 307(a) of the Federal Water Pollution Control Act. EPA may from time to time identify additional pollutants as toxic. The Agency, too, might identify toxic pollutants.

Of course, a toxic pollutant is not of such concern unless there are certain amounts of it in the wastewater. The amount that we think is of concern is any amount in excess of what can be discharged into state waters. A wastewater containing a toxic pollutant in excess of this amount would have to be properly treated before it could be discharged. EPA has promulgated effluent limits for only eight toxic pollutants. See 40 C.F.R. Part 129 (1982). Until additional effluent limits are promulgated, case by case decisions wil have to be made on whether a wastewater contains a toxic amount of a toxic pollutant. This is already being done for individual dischargers under the NPDES program. See 6 MCAR §§ 4.8014 C.6 and C.14. and 4.8015 C.6. and C.14.

Since treatment of the wastewater is crucial to this decision, the decision on whether an industry is major must be made before any pretreatment is applied to the wastewater. While pretreatment should ensure that the toxic pollutant does not enter the municipal system in toxic amounts, that industry must still be identified as major so the municipality can consider during design of its system what precautions must be taken with respect to the industrial discharge.

In keeping with the above discussion, the Agency would propose the following change to Section C.22.d. be made:

d. Has in its waste before pretreatment a toxic pollutant in amounts in excess of what may be discharged to waters of the state.

5. Interference with system

The last category for determining major industrial contributors is intended to identify those contributors who do not fall into one of the specific categories just discussed but nonetheless have a significant impact on the design and operation of the municipality's treatment works. The Agency has described four ways in which a contributor may impact a treatment works. The contributor may actually cause the municipality difficulty in meeting its effluent limits; the contributor may cause difficulties with the treatment works equipment; the contributor may require the municipality to locate additional or other property for sludge disposal; or the contributor may cause the municipality to require a larger treatment works than it would otherwise require.

The common thread here is that all of these impacts are such that they require the municipality to take special precautions in order to handle the industrial wastewater. It is reasonable to expect that municipalities that want state and federal money to construct a disposal system know early on in the process just what wastes it will be treating and just what kind of facilities are required to provide effective treatment of those wastes.

One minor change should be made in this provision and that is to correct the very last phrase to provide that any industrial discharge that increases the size of the municipal system by 5% or more must be considered a major contributing industry. The rule as presently proposed only says 5%, but obviously it is not just that specific percentage but any increase of 5% or more that is of concern. The last phrase should be amended to read: "increase sizing of the facility by 5% or more."

23. Treatment agreement.

Municipalities must know in advance whether a major contributing industry will seek to have its wastewater treated in the municipal system. It is not enough to simply identify an industry as major; the municipality must know whether it will have to treat that wastewater or not.

The mechanism for obtaining commitments from major contributing industries is the treatment agreement. The parties to a treatment agreement, of course, are the municipality and the industry. The requirements for the treatment agreement spelled out in the proposed definition are obvious and reasonable: The agreement must be properly executed by the two parties; it must be an enforceable agreement; and it must identify exactly what and how much and for how long the industry will be calling on the municipality to treat the industry's wastes.

Without identifying the major contributing industries and without obtaining binding commitments from those major contributing industries who intend to discharge to the municipal

system, the municipality simply cannot develop a Facilities Plan or prepare Plans and Specifications for its system, and the Agency cannot determine the adequacy of the system it has been asked to fund in part. Treatment agreements will allow municipalities to finalize the industrial design component of their Facilities Plans and subsequent Plans and Specifications and allow the Agency to make a decision on the adequacy of the system.

It should be pointed out that treatment agreements are not for the purpose of developing local ordinances, sewer service agreements, or fee systems. These matters proceed independently of the treatment agreements.

C. Types of Programs. This Section amends the old section D in the existing rule. This Section still lists the uses to which money in the pollution control fund can be used -- matching grants, local share grants, grants to municipalities who elect to proceed without a federal grant, and loans -- but the proposed amendment would delete the language that prioritized these uses. It seems preferable to the Agency to not attempt at this time to determine in what order the funds should be disbursed, but to merely allow the rule to operate to identify those projects that will result in the greatest improvement in water quality.

This change addresses to some extent the concern expressed by the Legislative Commission to Review Administrative Rules that the Agency should consider using some of the state funds for loan purposes, rather than for grants. See the LCRAR Report Exhibit 11 at pp. 6-7. The Agency is willing to consider using some of the

money to advance loans to municipalities, but not if it means passing over grants to higher ranking municipalities. Those municipalities with the highest ranking are not likely to apply for loans when grants are available, and with the limited funds available, the Agency has not been able to award matching state grants for the high ranking projects and also make loans to lower ranking municipalities. In any event, the change in this rule will address the concern of the LCRAR and at least allow the Agency to make loans in qualifying situations.

The reference to the amount of the federal grant in Section D.1. of the existing rule is proposed to be deleted because in the future the percentage of the cost covered by a federal grant is going to change. The important point is to recognize that state funds may be used to award grants to municipalities who receive federal grants, and whether the federal grant covers 75%, or 55%, or 85%, of the cost is of no consequence.

D. Summary of Construction Grants Program.

This Section replaces the old section E.1. While the language is all new, the intent of the section is the same -- to merely provide a concise summary of what the construction grants program is and how it operates. Since it is only a summary, its substantive provisions are more fully discussed in subsequent sections of the rule. The Section is useful, however, in providing the public with a capsule overview and a general framework for understanding subsequent specific provisions governing the construction grants program.

A significant change from the existing rule is described in paragraph 1. -- grants are only available for Step 2+3 and Step 3 projects and advances of allowance for Step 2. This change is discussed further under section N.1.

E. Municipal Needs List.

This section has been redrafted to reflect better organization of the rule and for clarity but its substance has not changed. The corresponding provisions in the existing rule are found in sections E.2.a., b., and c., E.3.a., and E.3.d. Paragraph 5 of this section says that a municipality may be removed from the Municipal Needs List if the municipality does not have a need for a new sewage treatment project. While this specific language is new, the practice of removing municipalities from the Needs List if they have no need has always been followed and is dictated by common sense.

Under Section E.2. of the existing rule, the Agency is to maintain what is called a Municipal Discharge Inventory, which is a list of all those municipalities that maintain a discharge of effluent. The Municipal Needs List is then prepared by listing those municipalities on the Discharge Inventory who have a need for additional sewage treatment. Section E.3. of the existing rule. Both lists are prioritized according to criteria spelled out in the rule.

The Agency is proposing to delete the requirement of a Municipal Discharge Inventory. While the Agency does maintain

records on every municipality in the state with a discharge of effluent, it is unnecessary for purposes of administering the grants program to maintain a list of all these municipalities in some kind of prioritized order. Instead, the Municipal Needs List is sufficient for purposes of identifying the municipalities that have the highest priorities for grants.

Sections F., G., H., and I. Criteria for Prioritizing Projects.

Before proceeding to discuss these individual Sections F., G. H., and I., it is necessary to have a general discussion about the criteria established for prioritizing projects and for developing the Municipal Project List. These are the provisions that will be of most interest to municipalities that are affected by this rule.

Minn. Stat. § 116.16 subd. 6 (1982) sets forth certain criteria that the Agency shall consider in prioritizing projects. EPA, however, has also developed regulations governing the states' priority systems for the development of municipal project lists. See 40 C.F.R. § 35.915 (1982). Under EPA regulations, states are required to consider certain factors and are prohibited from considering other factors in the devlopment of their priority systems. Some of the factors EPA prohibits the states from considering are listed in the state statute. Minn. Stat. § 116.16 subd. 7 (1982), however, provides that the MPCA rules need not contain the listed criteria if necessary to comply with the Clean Water Act and EPA regulations and guidelines. The priority system in the proposed rules contains all of the criteria required by

the Clean Water Act and EPA regulations and the criteria required by Minn. Stat. § 116.16 subd. 6 (1982) that are not precluded by federal law.

Financial Aspects

One set of criteria in the existing rule that is proposed to be deleted is the set on financial aspects. See Section E.3.c.(2). These criteria were included in the rule when the rule was last amended in 1978. Shortly after the 1978 amendments took effect, however, EPA issued a Program Requirements Memorandum that prohibited consideration of these financial factors. As a result, EPA disapproved that portion of the state priority system that purported to consider financial aspects. See Exhibit 20, a letter from John McGuire, Regional Administrator, Region V, EPA, to Terry Hoffman, Executive Director, MPCA, dated February 15, 1979.

Since that time, although the rule has not been changed to delete this provision, the Agency has not used these financial aspects in developing the Municipal Project List. The Agency published a notice in the State Register on September 10, 1979, stating that the Agency was deleting financial need criteria as an element of the priority system. 4 State Register 403 (Sept. 10, 1979) (Exhibit 21.) Since financial criteria are not permitted by EPA, and the Agency has not used such criteria for the last four years or so, it makes sense to delete this provision from the rule.

River Segment Criteria

Another set of criteria that the Agency proposes to delete is found in Section E.2.d.(3), entitled "List of Segments," of the existing rule. This Section involves the assignment of segment priority points awarded to municipal dischargers based on the priority point rating of the segment in which the discharger is located.

A segment is defined as a subdivision of a basin consisting of a group of watersheds. For example, the Cannon River segment includes the Cannon River and all tributaries to the Cannon River. There are 44 segments identified in Minnesota. These segments have received a priority rating which was to have reflected the urgency of the water pollution problems contained within them. The segment priority system was based on four criteria: 1) severity of pollution problems; 2) population; 3) need for preservation of high-quality waters; and 4) national priorities. The Points assigned to each criteria were tallied, and the segment which received the highest number of total points was ranked number 1 and awarded 44 priority points under the segment priority point assignment category. To illustrate, the St. Louis River-St. Louis Bay segment received the second highest number of total points, was ranked number 2, and was subsequently awarded 43 priority points under this point assignment category.

Under the present rule, segment priority points are assigned equally to dischargers within a given segment, independent of problem severity. Using this approach, the possibility exists

that more points may be awarded to a municipality within a high-ranked segment whose localized pollution problems are of a lesser severity than another municipality within a lower-ranked segment where more severe localized problems exist. Deletion of this segment priority point asssignment category is therefore reasonable so that priority point assignments may be based on individual merits of need rather than tied to a segment need ranking. As the availability of construction grant funds diminishes, the remaining resources must be concentrated on situations which have the greatest impact on the natural environment and community health. It is reasonable therefore to propose the elimination of the segment priority-point assignment category since it is inequitable to assign points based on the overall priority of a large geographical segment rather than on the basis of site-specific conditions.

We turn next to a discussion of the criteria that the Agency will use under the proposed amendments for developing the Municipal Project List.

F. Priority Points for Waters Affected.

1. Point Rating for Various Waters. This Section F.1. replaces the old Section E.2.d.(1) entitled "Extent and Nature of Pollution". The point ratings for the various water classifications have not been changed but the new language does effect three changes: it more specifically identifies each water use classification, it eliminates redundant water use classifications

that are not used for point assignments, and it provides a point rating for Class 7 waters. Each of these changes is discussed in turn below.

Both the existing rule and the new rule look to the water classifications in 6 MCAR §§ 4.8024 and 4.8025 to establish which classification a particular body of water falls into, but the new rule more explicitly states that connection. The asterisk footnote in Section F.1. specifically references these other two rules. In addition, the new language more carefully identifies the specific classifications that are possible by referring to the numerical classifications 1A, 2A, 2B, 7, etc. and referencing 6 MCAR §§ 4.8014 B. and D. and 4.8015 B. and D. where each classification is more specifically defined.

To illustrate how priority points for water use are determined, we can use the Straight River as an example. 6 MCAR § 4.8024 classifies the Straight River as 2B, Fisheries and recreation; 3C, Industrial comsumption; 4A and 4B, Agriculture and wildlife; 5, Navigation and waste disposal; and 6, Other uses. Each of these classifications is more specifically defined in 6 MCAR § 4.8014 B. and D. The points to be awarded to a municpality discharging to the Straight River can then be determined by using the table in Section F.1., which establishes that a 2B river gets 50 priority points.

The table in the proposed rule eliminates Class 3, 4, and 5 waters. The reason for this is because all waters of the state are designated as either a Class 2 or Class 7 water. Since both

the existing and proposed rules specifiy that priority points shall be awarded for the designated water use with the greatest number of points, there is no reason to include those classes that award less priority points than higher classes into which all waters fall. In the above example, the fact that the Straight River is a 3C, a 4A, a 4B, a Class 5 and Class 6 river, in addition to a Class 2B, is of no consequence in awarding points.

It is therefore reasonable to exclude Classes 3, 4, 5, and 6 from the rule since all Class 3, 4, 5, and 6 waters are entitled to an equal or higher priority point assignment based on a Class 2 or Class 7 water use classification. For those waters classified as Class 1 waters, even higher priority points will be awarded, of course.

In 1978, when WPC 34 was last amended there was no such classification as Class 7 waters. Class 7 waters were created in January, 1981, when 6 MCAR § 4.8014, 4.8015, 4.8024, and 4.8025 were last amended. Thus, it is reasonable to amend WPC 34 to provide a priority point assignment for Class 7 waters.

Thirty-five (35) priority points are proposed to be awarded a municipality discharging to a Class 7 water. Class 7 waters are waters that cannot attain the national water quality goal of being suitable for fishing and swimming. Class 7 waters also fall within Class 4, Agriculture and wildlife. Under the existing rules Class 4A waters are awarded 35 points. Thirty-five points for Class 7 waters was considered a reasonable number because it is the same as the existing Class 4A waters and is five points

lower than the next highest classification, class 2C waters, for which forty (40) points are awarded.

2. Multiple Classifications. This provision is not new. Both the existing and proposed rules specifiy that priority points shall be awarded for the designated water use with the greatest number of points. The old, similar language is found in Section E.2.d.(1).

3. Downstream Waters. The protection of downstream waters is an important issue in addressing water quality management problems. The proposed rule specifically sets forth a priority point assignment approach designed to assure protection of these waters. It is reasonable to award higher priority points to municipalities that adversely impact a downstream water that has a higher water use than the initial receiving water and where more restrictive effluent limitations have been assigned to protect this downstream water.

A downstream water would be defined as being adversely affected if violations of water quality standards applicable to the downstream reach occur as a result of upstream discharges. These water quality standard violations may be actual, as determined through water quality monitoring studies, or potential, as determined by computer model predictions of the affected river segment.

G. Priority Points for Population Served

Under the existing rule, Section E.2.d.(2), priority points are awarded according to the population grouping the municipality

falls within. The existing rule has 12 population groups, ranging from a population of less than 250, which is awarded 2 points, to a population in excess of 450,000, which is awarded 50 points. Under the proposed rule, priority points will be awarded according to a mathematical computation using the logarithm of the population.

These changes are being proposed for a couple of reasons. First, the point spread from 2 points for the smallest communities to 50 points for the largest is thought to be too big a point spread. This point spread makes it extremely difficult for the smallest communities to overcome the point differential regardless of their pollution problems. Second, the 50 points possible in this category is thought to be more than should be awarded. The Agency wants to give more priority to water quality and less to population, and reducing the maximum number of points available in this category will help to do that. With less points awarded for population, the more significant will the point differentials for water use and special pollution problems become, thus ensuring funding of projects to address more serious environmental problems.

The Agency believes that the use of the logarithm of the population promotes both of the reasons described above. The logarithm diminishes the point spread between the largest and smallest communities. It also can be used to reduce the amount of points available in this category. This method will also reduce the possibility of arguments over a municipality's population. Under the existing approach, a few people either way could bump a

municipaltiy into a lower or higher population category, with a resulting difference in priority points of as much as 5. Under the new method, a few people will not affect the priority points awarded to any great extent.

The Agency has elected to include a factor of five (5) times the logarithm in determining priority points for population. A factor of five was chosen to give the largest municipalities about 30 points in this category and the smallest communities about 10 points. The 30 points maximum will give this category less significance than other areas such as public health hazard, existing treatment, and type of project, which is the result intended, and the 20 point spread between the large communities and the small communities will allow those small communities with significant pollution problems to overcome the population differential.

The logarithm is an easily calculated number and one that has great specificity. Under this approach each municipality will have its own unique priority points. The following table indicates the uniqueness of the logarithm.

Population	Logarithm	Priority Points
500	2.69897	13.49485
1000	3.00	15.0
5000	3.69897	18.49485
50,000	4.69897	23.49485

Other provisions of this section are not proposed to be changed. The population will still be determined from the most recent reliable census. And the population of concern is still the population of the municipality or municipalities served by the project.

H. Priority Points for Type of Project.

Section H. of the rule establishes the number of priority points to be awarded for various kinds of projects. Under the existing rule, priority points are awarded on the basis of the single highest disposal system improvement. Section E.3.c. Thus, most projects tended to receive the highest number of points available for tertiary treatment (160 points) or secondary treatment (150 points). The effect of this was to make the other categories under which points are awarded -- water affected and population -- more decisive in establishing priorities than the kind of project to be constructed.

The Agency is proposing to change the point structure for project type to do basically two things: (1) give top priority to the construction of sewage treatment plants and major additions to sewage treatment plants and (2) identify more types of projects so priority points can more exactly be awarded.

Under the proposed amendments, the construction of new sewage treatment plants and the construction of major additions to existing sewage treatment plants are awarded the top points. Other nonmajor additions to sewage treatment plants are awarded less points, and collection systems and additions to or replacement of previously funded projects are awarded the least number of points. This helps ensure the result the Agency wants, which is to fund those projects that provide the greatest water quality benefit. In the Agency's view, the projects providing the greatest water quality benefit are sewage treatment plants and major additions to sewage tretment plants.

We discuss below each of the project types identified for point rating -- what they are, how many points are awarded for each, and any special restrictions that apply to each project. While the discussion follows the list in Section H.1., the discussion also covers the provisions of Sections H.2. (Description of Project Types) and H.3. (Special Restrictions for Sewer System Projects).

a. New Treatment Plants

The definitions of tertiary treatment plant and secondary treatment plant have already been explained under the definitions. Sections B.10. and B.11. This Section does not change those basic definitions.

What is provided in Section H.2.a., however, is a definition of what a "new" plant is. A new plant is one for which construction is commenced after July 1, 1983. The Agency anticipates that the amendments made to WPC 34 as a result of this proceeding will go into effect in time for the development of the next Municipal Project List in October, 1983. Therefore, in order to determine which projects will be prioritized under these amendments, the Agency has proposed to define "new" treatment plants as those constructed after July 1, 1983. The July 1 date is intended to just provide some specificity to the definition; there is nothing magical about the July 1, 1983, date.

Sections H.1.a. and H.1.e. award 160 and 150 points for tertiary treatment plants and secondary treatment plants, respectively. This is not a change from the present rule.

The Agency continues to believe that sewage treatment plants deserve the highest priority rating. These are the kind of projects the Agency wants to fund. The Agency also continues to believe that tertiary treatment should be given ten additional points over secondary treatment. Tertiary treatment is required when a higher quality or more vulnerable receiving water is involved or when toxic pollutants are in the effluent, both situations when top priority is warranted. It will not mean, however, that phosphorus removal at a secondary plant will take priority over secondary treatment in a municipality with no treatment, because the extra points under Section I.2.a. for no treatment will give the municipality needing secondary treatment a higher point rating in this category.

Section H.2.a. also provides that certain facilities that are not sewage treatment "plants" per se will still be considered sewage treatment "plants" for purposes of awarding priority points for those projects. Land application projects and stabilization pond projects that are alternatives to actual sewage treatment plants with a surface water discharge will be awarded the same 150 or 160 points as a secondary or tertiary plant. Similarly, certain subsurface systems are considered secondary treatment plants and awarded 150 points. This is consistent with what Congress has provided in the Federal Water Pollution Control Act, where Congress recognizes that alternative systems can provide secondary treatment. See Section 304(d)(4) of the Federal Water Pollution Control Act, 33 U.S.C. § 1314(d)(4).

The reason land application systems and stabilization ponds are awarded the same number of points as sewage treatment plants is because these facilities are capable of providing the same treatment as an actual sewage treatment plant. As long as the land application system or stabilization pond eliminates the need for an actual sewage treatment plant, these kind of systems will be awarded the 150 points for a secondary sewage treatment plant.

The Agency will not fund both individual septic systems and large central septic systems in the same community, however. If the flow in a subsurface system is less than 1000 gallons per day, the Agency will award 150 points for both the septic tank system and the drainfield, but if the flow is in excess of 1000 gallons per day, the Agency will include only one central septic system and the drainfield within the 150 point project. The reason for this is that numerous individual septic tanks in a larger cluster of subsurface disposal systems (greater than 1000 gallons) are often part of alternative sewer design systems and should be and will be considered collector sewers and awarded 10 priority points. It is consistent with the Agency policy expressed throughout this rule that the Agency will not give a high priority to collection systems.

While the language in Section H. on alternatives to treatment plants is new, the concept is not. The existing rule already provides that projects that provide comparable treatment in lieu of tertiary treatment shall be awarded the points for tertiary treatment. See Section E.3.c.(1)(a) of the existing rule. The new rule only spells out in detail what has been the practice under the existing rule.

b. Major Addition.

The Agency also wants to award top priority points to projects that will improve the quality of the effluent discharged from an existing sewage treatment plant. These kinds of projects are called major additions and awarded 150 to 160 points, depending on whether the existing plant is a secondary or tertiary plant. This is not really a change from the existing rule, although the term "major addition" is a new way of labeling these projects.

Section H.2.b. identifies those projects that qualify as major additions to a sewage treatment plant. Basically, a major addition is an improvement in an existing plant that will bring a noncomplying facility into compliance with the effluent limits in the municipality's NPDES/SDS Permit. Whether or not a project will improve effluent quality from an existing plant depends on whether the municipality's existing facilities are adequate to comply with the effluent limits in the municipality's NPDES/SDS permit. Only those improvements to an existing plant that will bring a noncomplying facility into compliance will be considered a major addition. This is a reasonable requirement, and the basis for the 90% compliance has already been explained under the definitions. See Section B.21.

There are several other projects that will be considered major additions. These are: major interceptor sewers, sewer system rehabilitation projects, flow equalization systems, relief sewers, and relief capacity sewers. These projects are described below.

(1) Major Interceptor Sewers.

The definition of major interceptor sewer in Section H.2.c. of the proposed rule is consistent with the EPA definition of interceptor sewer in 40 C.F.R. § 35.2005(b)(24) (1982). The definition is intentionally narrow to ensure that collection systems do not obtain funding before treatment plants. It is only those sewers that indeed are interceptor sewers that route sewage to a treatment plant that will qualify for the maximum priority points as major additions.

It is anticipated that in most cases a municipality will have only one major interceptor sewer. The "final point in a collector sewer of a municipality" will in most cases be a single finite point in the municipality's collection system. The Agency intends to award full priority points for the sewer from that final point to the treatment plant, but the Agency expressly intends not to give the same priority to "multiple interceptors" or "multi-purpose interceptor/collector sewers" within one community.

There is a definition of "interceptor" in the statutes that applies to the Metropolitan Waste Control Commission. Minn. Stat. § 473.121 subd. 23 (1982). This definition, however, includes more within the concept of "interceptor," such as pumping stations and collection systems, than the Agency intends to include within "major interceptor." The Agency did not adopt the statutory definition last time the rules were amended and declines to do so again this time.

The language in the rule goes on to specifically provide that sewers with wastewater connections that increase flow a certain amount or that are close together are collection sewers and not major interceptors. The Agency has included this language to provide specific guidance to municipalities on the factors used to identify collection sewers. If there are so many connections to a sewer that the design flow increases by more than 10% along its length, or if the connections are closer together than 1000 feet, in the Agency's view that sewer is serving as a collection system and not as a major interceptor. The rule specifically excludes infiltration and inflow from any calculations regarding increases in design flow. It is only fair to exclude increased flow that has not been the result of factors directly within the control of the municipality.

The Agency, of course, recognizes that collector sewers are an important and necessary part of a municipality's disposal system. Through these proposed amendments, the Agency is simply saying that it wants to direct the limited funds available to the construction of sewage treatment plants. Municipalities may have to fund their own collection systems in order that more sewage treatment plants can be built.

(2) Sewer System Rehabilitation.

Sewer system rehabilitation is the repair or replacement of an existing collector or interceptor sewer to eliminate bypasses caused by insufficient hydraulic capacity in existing sewers to transport infiltration and inflow. Sewer

system rehabilitation is also defined to specifically include flow equalization systems, relief sewers, and relief capacity sewers.

The reasons that sewer system rehabilitation projects are given the same priority as sewage treatment plants and funded as major additions are because this kind of rehabilitation work eliminates bypassing of the sewage treatment plant and the dumping of raw sewage into waters of the state and also may reduce the required capacity of the sewage treatment plant. Since sewer system rehabilitation provides the same environmental effect as the construction of a sewage treatment plant, the Agency believes that such rehabilitation projects should be considered major additions and awarded the same number of priority points as actual plants.

There's one addition to the proposed language in Section H.2.d. that the Agency would suggest. The description of a sewer system rehabilitation project mentions the elimination of bypasses but does not refer to reducing the capacity of the sewage treatment plant. Since reduction of plant size is an important consideration, the Agency would propose making this clearer in the rule itself by adding the words "or to reduce the capacity of the wastewater treatment plant" between the word "inflow" and the word "and."

There are some restrictions, however, that sewer system rehabilitation projects must meet in order to qualify as major additions. These restrictions are found in Section H.3.a. of the

proposed rule. The restrictions are: (1) the municipality must not have obtained a construction grant (any Step) since at least February 11, 1974; (2) the municipality's existing treatment plant must be hydraulically overloaded; and (3) the rehabilitation project must be justified by an infiltration/inflow analysis and sewer system evaluation survey.

The second of these restrictions--hydraulically overloaded--should be eliminated because a municipality can have a need for a sewer system rehabilitation project without having an hydraulically overloaded plant. For example, a municipality could have a 12 inch sewer serving a 10 inch sewer, with resulting problems not caused by an overloaded plant. The Agency would propose eliminating this restriction.

The other two restrictions are tied in directly with infiltration/inflow problems. The February 11, 1974, date is the day on which EPA's regulations on infiltration/inflow went into effect. 39 Fed. Reg. 5252-5270 (1974). Municipalities that obtained construction grants after that date should have already complied with federal requirements on infiltration/inflow; if they are just addressing their infiltration/inflow problems at this late date, they are not eligible for prioritizing as major additions.

EPA will not fund a rehabilitation project without an infiltration/inflow analysis and sewer system evaluation survey (often called and I&I Analysis and S.S.E.S.). See 40 C.F.R. § 35.2120 (1982). Therefore, it is reasonable to adopt the federal requirement in the state rule.

In addition to changing this language to delete the condition about the plant being hydraulically overloaded, the Agency would also propose that the language be amended in the following way for clarity sake:

> a. Sewer System Rehabilitation. In order for a ~~A~~ sewer system rehabilitation project ~~shall not~~ to be eligible for priority points under Section H.1.b. or H.1.f., ~~unless~~ the municipality ~~has~~ must not have obtained a construction grant for treatment plant construction since at least February 11, 1974, ~~the municipality's existing treatment plant is hydraulically overloaded,~~ and sewer system rehabilitation ~~is~~ must be justified by an Infiltration/Inflow Analysis and Sewer System Evaluation Survey that complies with the requirement of Code of Federal Regulations, title 40, section 35.2120, as amended through December 31, 1982.

The definition in Section H.2.d. includes flow equalization systems, relief sewers, and relief capacity sewers as specific examples of sewer system rehabilitation projects. Including these in the rule provides guidance to municipalities in identifying rehabilitation projects that qualify as major additions. These specific projects are further described below.

(3) Flow Equalization System.

This provision is simply a more complete description of one kind of sewer system rehabilitation project. A flow equalization system is a pond or basin or other means of holding wet weather flow. The addition of the language to subsection d about reducing the capacity of the treatment plant more specifically addresses flow equalization systems than does language about eliminating bypasses caused by excessive inflow and infiltration. In any event, flow equalization systems are projects the Agency wants to give the same priority as actual

sewage treatment plants because such systems have the same impact on water quality as do actual plants.

The restrictions in Section H.3.a., of course, must be met before a flow equalization system will be awarded points as a major addition.

(4) Relief Sewer.

A relief sewer is a sewer that is constructed in addition to an existing sewer to provide additional capacity to carry infiltration and inflow and wet weather flow because the existing sewers do not have the hydraulic capacity to carry this flow. Relief sewers are not designed to carry wastewater so this provision of the rule specifically provides that sewers carrying more than 5% wastewater and having connections closer to each other than 1000 feet are relief capacity sewers and not relief sewers. This distinction is important because relief capacity sewers have restrictions on them that are not placed on relief sewers. See Sections H.2.g. and H.3.b.

The 1000 foot limitation on wastewater connections is the same restriction found in the definition of major interceptor sewer. See Section H.2.b. This provision reflects the Agency's judgment that a sewer with wastewater connections closer together than 1000 feet is serving as a collection sewer and not something else. The 5% limitation on the design flow for wastewater represents the Agency's judgment that if more than 5% of the design flow of the sewer is wastewater, then the municipality intends for the sewer to do more than just handle infiltration and inflow and wet weather flow.

Sewers that indeed are relief sewers should be given top priority, however, because they eliminate raw sewage bypasses and discharges caused during periods of wet weather and by excessive infiltration and inflow. Since the Agency wants to avoid discharges of raw sewage to waters of the state, relief sewers are among the top priority projects to be funded.

The rule specifically provides that storm sewer separation is not a relief sewer. This language was included to provide specific guidance to municipalities that storm sewers will be given a low priority. The difference between a storm sewer and a relief sewer is that the relief sewer will bring its flow ultimately to a treatment facility whereas a storm sewer most likely will not. Storm sewers do not carry raw sewage and usually discharge directly to a surface water without treatment. Thus, storm sewers are not the kind of projects that will be funded.

Again, as with all sewer system rehabilitation projects, the restrictions of Section H.3.a. must be met before a relief sewer will be given 150 or 160 points as a major addition.

(5) Relief Capacity Sewer.

A relief capacity sewer, as opposed to a relief sewer, is a new sewer that is designed to handle both wastewater and wet weather flow and infiltration and inflow. Since a relief capacity sewer does both -- transports wastewater and eliminates bypasses -- special requirements are necessary to determine what portion of the sewer should be given top priority for eliminating bypasses

and what portion should be given low priority for merely functioning as a collection sewer. These requirements are discussed under Section H.3.b.

Under Section H.3.b.(2) a relief capacity sewer that qualifies as a major interceptor shall be considered a major addition in its entirety and the entire cost of the project shall be fundable as a major addition. Since major interceptors and rehabilitation projects that eliminate bypasses are the kinds of projects that the Agency wants to give top priority, it follows that a project that does both should be awarded the maximum priority points for project type.

A relief capacity sewer that is not a major interceptor sewer, on the other hand, should not be awarded top priority points for that portion of the relief capacity sewer that is serving as a collection sewer. That is what Sections H.3.b.(3) and (4) provide. These two subsections provide that a relief capacity sewer that is not a major interceptor sewer will be divided into two components: (1) the portion that handles normal wastewater and normal infiltration/inflow, and (2) the portion that handles excess infiltration/inflow. These portions, expressed as percentages, are then used to determine what portion of the cost of the project is fundable as a major addition and what portion is fundable as a collection sewer.

The reason for breaking up the cost in this manner is to allow a municipality that is proposing to construct a relief capacity sewer to at least get top priority for a part of the cost so it

can proceed ahead with construction at the earliest possible time with a grant for a portion of the cost. If the whole sewer were to be awarded only 10 points as a collection system, the municipality would be hesitant to undertake the project because it would have to fund the entire project itself, and the control of the infiltration/inflow problem would be delayed.

Also, for the reasons discussed for sewer system rehabilitation projects generally, a municipality proposing a relief capacity sewer must not have received a construction grant since February 11, 1974, and the project must be justified by an infiltration/inflow analysis and sewer system evaluation survey. See Section H.3.b.(1). In fact, since Section H.3.a. provides everything that Section H.3.b.(1) provides, there is no need for Section H.3.b.(1) and the Agency would propose deleting it.

Section H.2.g. provides that in order to qualify as a relief capacity sewer, a sewer of this type must be designed to provide future capacity for a minimum of 40 years. The Agency does not want to fund sewers that become inadequate or obsolete within a few years so the Agency wants to promote the construction of relief capacity sewers that will be satisfactory for long periods of time. The 40 year period was chosen to conform with the generally accepted design period for interceptor sewers.

Under federal regulations, EPA will only fund the cost of 20-year reserve capacity rather than 40-year reserve capacity. See 33 U.S.C.§ 1284(a)(5). Nonetheless, the better engineering practice is to design a relief capacity sewer for 40 year flows

rather than 20, and the Agency believes it is reasonable to require such design. This is especially so when a municipality will be unlikely to obtain funding of the entire cost of the project as a collection system anyway when those projects are awarded only 10 priority points.

c. Dechlorination Facilities.

In 1980 the Agency adopted a chlorine water quality standard. 6 MCAR §§ 4.8014 D. and 4.8015 D., Class 2A, 2B, and 2C waters. It may be necessary for facilities that are chlorinating their effluents to kill pathogens to remove the chlorine before discharge to a Class 2 water. Section H.2.i. merely defines dechlorination facilities as those facilities that remove chlorine from the effluent.

Dechlorination facilities are awarded 120 or 110 points, depending on whether the plant involved is a tertiary or secondary plant. This helps to ensure that sewage treatment gets funded before dechlorination facilities. Facilities with dechlorination needs alone are generally in substantial compliance with NPDES permit conditions, have comparatively small eligible costs, and may have recently received construction grants.

There is a 40 point spread between treatment plants and dechlorination facilities. The Agency proposes this spread because it is comparable to the possible spread under the waters affected category. See Section F. Thus, a municipality needing dechlorination before discharge to a high quality water could possibly achieve a higher priority rating than a smaller

municipality needing sewage treatment of a discharge to a lower quality water like a Class 7 water. The 40 point spread still gives priority to sewage treatment plants and major additions but does allow some opportunity for funding for dechlorination facilities.

d. Ancillary Addition.

Ancillary additions are those additions that are not major additions and are not dechlorination facilities. See Section H.2.j. Because of the specificity with which major additions are defined, and dechlorination facilities should be identified without controversy, ancillary additions should also be readily identified by the process of elimination. If the project is not a major addition, and it does not remove chlorine, then it is an ancillary addition.

The Agency has provided in Section H.2.j. two examples of ancillary additions. These examples are based on projects that have been proposed in the past and for which municipalities will likely seek funding in the future. The examples are administrative support facilities and facilities to provide sludge handling capability for sludge disposal in accordance with disposal permit requirements. In the Agency's view, these are two of the kind of projects that should be given lower priority because they do not affect water quality directly and are less important from a water quality standpoint than actual sewage treatment plants and the projects qualifying as major additions.

Ancillary additions to sewage treatment plants are awarded only 75 or 80 points, depending on the plant involved. Sections H.1.d. and H.1.h. Since ancillary additions do not directly impact water quality, the Agency felt that only half as many points should be awarded for these kinds of additions as for the plant itself or for major additions that do affect water quality. In practice, however, it is unlikely that a municipality will be able to obtain funding for an ancillary addition under the proposed amendments.

i. Collection System.

Presently, under the existing rule, section E.3.c.1.(c), collection systems are awarded 10 priority points. As far as priority points go, there is no change in the rule. Collection systems still get 10 points. See Section H.2.i. Collection systems get only 10 points because the Agency prefers to use the limited funds available to build sewage treatment plants, not collection systems.

What the new language in Section H.2.i does is clarify what is meant by a collection system or collector sewer. The existing description is nondescript and vague. The new language provides that a collection system or collector sewer is any sanitary sewer that is not a major interceptor sewer, a relief sewer, or a relief capacity sewer. Since these other sewers are specifically defined (as was just discussed above), any sewer that does not fall into one of these categories is a collector sewer.

In addition, the proposed language contains a specific example of a sewer that is a collector sewer -- an innovative and alternative sewer carrying raw or partially treated wastewater and providing collection system reliability such as alternative power or dual pumps. This is a change from the practice under the existing rule. Under the existing rule innovative and alternative (I&A) collection sewers were given preferential treatment simply because they involved I&A technology. This preferential treatment not only increased a municipality's chances of obtaining funding, but it upped the amount of funding possible to 94% of the cost. Thus, by utilizing innovative and alternative technology, a municipality could go from 0% financing of a conventional sewer to 94% financing of an I&A sewer.

There are two reasons for changing this procedure. One, the Agency believes that collection sewers, even those involving I&A technology, should have a lower priority rating than other projects that more directly affect water quality. Two, the existing system gives too much incentive to municipalities and consultants to design I&A sewers. This can result in I&A sewers being built in questionable situations. For both of these reasons, collection sewers of any type will in the future be awarded only 10 points. For further discussion of I&A projects, see Section L.

Under Section H.2.a., certain subsurface disposal systems will be given the same priority rating as sewage treatment plants. But in order to emphasize that certain portions of such subsurface systems, such as pumps and small septic tanks, are part of the collection system and will be awarded only 10 priority points, the

Agency proposes to adopt language in this Section that states exactly that. Again, the reason for this provision is that the Agency wants to spend the limited funds available on sewage treatment plants, not collection systems.

Section H.3.c. provides that a sewer system rehabilitation project that does not meet the special restrictions for such projects in Section H.3.a. and H.3.b. shall be awarded the priority points awarded to collection systems. It was thought that this provision should be included in the rule to state clearly how relief capacity sewers and relief sewers that did not qualify as major additions would be treated as far as awarding priority points goes. This provision says that such projects get 10 points.

j. Improvement of collection system or collector sewer reliability.

Whether a municipality has proposed a new collection system or the improvement of an existing one, the project will still be awarded only 10 points. The reason is the same -- the Agency wants to use the limited funds available to build sewage treatment plants and other projects that directly impact water quality. Collection systems and improvements to collection systems are the lowest priority projects.

k. Control of combined sewer overflow.

After October 1, 1984, (beginning with fiscal year 1985), projects to control combined sewer overflow, which have not been eligible for funding in the past, will become eligible for funding under certain conditions. P.L. 97-117, § 5, 33 U.S.C. § 1281(n)(1). A combined sewer is "a sewer that is designed as a sanitary sewer

and a storm sewer." 40 C.F.R. § 35.2005(b)(9) (1982). Combined sewer overflow projects could involve sewer separation or other plans to provide storage of wet weather flow until the treatment plant can handle the extra flow.

The Agency has determined to award projects to control combined sewer overflow 150 points, the same as a secondary treatment plant. Section H.1.k. The full 150 points is awarded because the elimination or control of combined sewer overflow has the same effect as eliminating an inadequately treated discharge from a municipal treatment system.

In order to obtain funding for a combined sewer overflow project, however, the restriction found in Section H.3.d. of the proposed rule that the combined sewer overflow project must be necessary to meet requirements of the municipality's NPDES Permit and the Federal Water Pollution Control Act must be satisfied. This restriction is consistent with the EPA requirement in 40 C.F.R. § 35.2024(a) (1982) that it is only those combined sewer goals that will be funded. In Minnesota those national water quality goals are essentially expressed through the permit effluent limits. No permits addressing combined sewer overflow problems have been finalized as of this date, but it is anticipated that sewer separation or storage facilities would be possible permit conditions.

There is another restriction in Section H.3.d. that will more directly limit the number of combined sewer overflow projects to be funded, regardless of the priority points awarded, and that is that combined sewer overflow projects will only be funded to the

extent the Governor has set aside a portion of the state's allotment for these projects. This set-aside may not exceed 20% of the state's total allotment for each fiscal year. EPA has recognized that funding of combined sewer overflow projects is one the Governor of each state shall make. See 40 C.F.R. § 35.2015(b)(2)(iii) and (iv) (1982). The Agency believes, however, that it is reasonable to not spend more than 20% of the state's allotment on combined sewer overflow problems. There are too many communities requiring sewage treatment plants to direct more than 20% of the allotment to combined sewer overflow problems, and the Agency expects that in most years, far less than 20% will be directed to these problems.

1. Additions to previously funded projects.

Section H.2.j. addresses those situations where a municipality has obtained grant funding for a sewage treatment project in the past and now requests another grant to construct an addition to the system. In this case the municipality is awarded only 10 points, and will probably not get funding.

It makes sense to the Agency that because funds are limited, and there is not enough money to go around, that once a municipality receives a grant, it should not receive another one absent special circumstances. If the first project is inadequate in some way, the municipality should have to bear the cost of upgrading the system. Providing follow-up grants for repair, replacement or improvement to previously funded projects is determined to be lower priority than providing initial grants to municipalities with high priority water quality needs. It is believed that as many eligible muncipalities as possible should receive construction

grant funds to assist them in solving their wastewater treatment problems before municipalities are awarded a second grant.

The special circumstances under which a municipality may get the 150 or 160 points for a major addition is if new requirements have been imposed on the municipality since the grant was awarded. If the municipality's permit has been changed, and new effluent limits have been imposed, then it makes sense to the Agency that the municipality should be given a priority equal to that of municipalities seeking an initial grant to construct facilities. In such a case, the existing system (the one that was funded) was not designed to meet these new requirements, and the municipality should not be penalized for changing laws.

An example would be facilities necessary to meet the ammonia standard. In 1981 the Agency amended the ammonia water quality standard in a way that made the standard more stringent for at least some dischargers. See 6 MCAR §§ 4.8014 D. and 4.8015 D., Class 2 waters. Municipalities that built sewage treatment plants with grants awarded prior to 1981 that now require additional facilities to meet the new ammonia standard should be and will be given the full 150 or 160 points for such projects. Similarly, municipalities requiring dechlorination facilities to meet the new chlorine standard also adopted in 1981 will not be penalized because they have already received a construction grant; they will be awarded the appropriate points for dechlorination facilities.

It is obvious that this category takes precedence over all others. If a project qualifies as a major addition physically, but if the municipality just received a grant four years ago, this Section prevails and only 10 points are awarded. If a municipality has received a grant in the past, and the permit conditions have not changed, chances are the municipality will have to fund the project itself. In practice, however, a municipality obtaining a grant before 1974 that has an infiltration/inflow problem, will also probably have a change in permit conditions and will not fall under this Section. And any municipality that obtained a grant prior to 1969 will also most likely satisfy the requirement for a change in permit conditions since secondary treatment standards were first defined in 1969.

It should also be pointed out that a grant applicant like the Metropolitan Waste Control Commission with many eligible projects will not be awarded 10 points for all its projects simply because it has been awarded grants in the past. It is only for those projects for which a grant has already been awarded that this provision applies. An entirely separate project will stand on its own merits and be awarded the appropriate priority points depending on the kind of project it is.

m. Modification and replacement of innovative or alternative projects.

As with other municipalities that have already received grants, municipalities proposing to modify or replace innovative or alternative projects will be awarded only 10 points. These

municipalities earlier made the choice to increase their chances for funding and to seek funding for a larger portion of the cost by proposing an innovative or alternative project, and the Agency believes that these communities should now have to wait until other municipalities that have not received a grant previously have had an opportunity to construct their projects. Again, this provision will take precedence over the other provisions for awarding priority points.

Hopefully, there will not be many municipalities that fall within this category. Admittedly, innovative and alternative projects involve some element of risk, but these projects are designed by qualified engineers to do the job required. Nonetheless, if these projects need to be replaced or modified, the municipality will likely have to undertake the funding itself.

Under 40 C.F.R. § 35.908(c) (1982) EPA may award grant assistance to fund the replacement or modification of any innovative or alternative treatment works. While the conditions set forth in the federal regulation for funding have some merit, the Agency believes that it is fairer and preferable to award limited grant funds to municipalities that have needs for sewage treatment and have not received grants in the past.

4. Temporary improvements.

Section H.4 provides that if a municipality makes temporary improvements to its existing disposal system to improve effluent quality while it is waiting for a grant, the temporary

improvements shall not decrease the priority points awarded. The purpose of this provision is obvious. Since it often takes several years for a municipality to move to the top of the Project List, the Agency does not want to discourage municipalities from investing in temporary improvements to keep their system operating as efficiently as possible during the time the municipality is waiting for a grant. And since the improvements covered by this Section are only temporary in nature, it would not make sense to bump a municipality off the Project List simply because its effluent had improved in the short run.

I. Extra Points.

This section provides a method to award extra priority points for specific circumstances that the Agency believes warrant extra emphasis because of the potential for water quality benefits.

The criteria for awarding extra points can be placed into three general categories:

1. Extra points due to an existing treatment problem.

a.	Health Hazard	40 points
b.	No Treatment	40 points
c.	Failing Septic Systems	30 points
d.	Primary Treatment	20 points
e.	Combined Sewer Overflows	20 points

2. Extra points for enhancement of unique receiving waters.

a.	Watershed District	15 points
b.	Outstanding Resource Value Waters	10 points
c.	Game Fish Lakes	10 points

3. Multi-municipal projects.

Sanitary District 10 points

The first group is given overall higher priority because each condition represents a situation resulting in either raw sewage discharges, or only treatment to the primary level, thus creating a potentially serious impact on water quality or health. Within this grouping, the relative order represents Agency opinion as to degree of potential impact for each condition. The award of the maximum of 40 extra points for health hazards and for no treatment emphasizes the agency intent to provide grant funds for those situations before most other type of projects, such as major additions to secondary treatment plants.

The second grouping, while of less overall priority than the first, represents conditions that should receive extra consideration because of the unique recreational uses of the receiving waters. The watershed category rates the highest (15 points) in this grouping because of the greater potential for improved water quality throughout a watershed district for both point source and non-point source pollution. The other two categories in this grouping have, in the Agency's opinion, approximately the same relative merit (10 points each) to receive some additional emphasis.

The third grouping is one that the statute recognizes should be part of the prioritizing criteria. Minn. Stat. § 116.16 subd. 6 (1982) provides that the Agency shall give high priority to sanitary district projects.

Each of these categories is discussed below in greater detail.

1. Existing Public Health Hazard.

In 1981 the Legislative Commission to Review Administrative Rules recommended that the Agency give special consideration to abating immediate public health hazards. See Exhibit 11 at p. 6. The Agency agrees that projects that will address public health hazards must be given top priority.

Section I.1. is the provision of the rule that addresses public health hazards. This Section awards 40 extra points to a municipality that proposes a project that will eliminate an existing public health hazard. The Agency proposes to award these projects 40 extra points to ensure that these projects will obtain grant funding. Forty points will be enough to move a municipality near the top of the Project List.

But because the 40 points awarded under this provision will have the effort of essentially guaranteeing funding, the Agency must be sure that a public health hazard actually exists. The LCRAR recognized the importance of developing criteria to identify public health hazards and urged the Agency to work with the Minnesota Department of Health in developing these criteria. Exhibit 11 at p. 6.

The criteria in the rule, in subsections a. through i., were derived from suggestions made by the Department of Health. See Exhibit 22 (Health Dept. Memo 12/13/82). It is reasonable to require a municipality that claims it has a public health hazard to submit data justifying that conclusion. A public health hazard, if one exists, will result from contamination of drinking

water supplies; the data required all reasonably relate to determining the extent of the drinking water contamination.

Regardless of the adequacy and completeness of the data submitted, the underlying requirement that must be met to be awarded these points is that the Department of Health must have declared the existence of a public health hazard in a health advisory or in a Commissioner's order. It is reasonable to require an official act of this kind before these additional points, essentially guaranteeing funding, are awarded.

The combination of the requirements to submit the data and to have a health advisory or commissioner's order issued establishes the seriousness of the declaration of a public health hazard and ensures that the Agency will not have to deal with numerous unwarranted claims of public health hazard. Moreover, these requirements emphasize that municipalities suffering a public health hazard may have more immediate actions, such as assuring a safe drinking water supply, to undertake than the construction of sewage treatment facilities.

There are no situations presently existing that the Agency is aware of where a public health hazard has been declared because of a sewage treatment problem in a community. Thus, no municipality is presently eligible for the 40 extra points available under this Section.

2. Existing Level of Treatment.

The next category for which extra points are available is existing level of treatment. A community is eligible for extra points if its existing level of treatment falls within one of the following categories: no treatment, failing septic system, primary

treatment, or combined sewer overflow. The first three categories are not new; they already exist in Section E.3.c.(1) of the existing rule. Each of these categories is discussed in turn below.

a. No Treatment.

This section, Section I.2.a., replaces Section E.3.c.(1). The new language is somewhat more specific than the existing language but the intent of this provision has not changed.

This Section applies to municipalities that have a central collection system but no treatment prior to discharge. This kind of situation allows direct discharge of untreated sewage into waters of the state and potentially creates a serious water quality and public health concern. This is exactly the kind of situation the Agency wants to eliminate. It should be pointed out, however, that this Section does not apply to in-system bypasses that result in untreated sewage being discharged in municipalities with treatment works.

The new language includes some restriction that are not found in the existing rule that a municipality must meet before it will be awarded the 40 extra points available under this Section. The existing language merely says "sewer system" but the new language requires a "central collection system serving 50% or more of the population." The reason for this additional language is that the Agency wants to give an even higher priority to municipalities that collect the sewage and discharge it in one place than to municipalities that have no treatment either but

whose sewage is not collected and combined before discharge. The collection of the sewage only aggravagates the problem when no treatment is provided. Thus, municipalities with a central collection system and no treatment get 40 points and municipalities with no collection system and no treatment fall into the next category and get 30 points.

The Agency proposes to require that the collection system serve 50% or more of the population before a municipality can quality for the 40 points under this category. The 50% figure gives some specificity to what a central collection system is and ensures that the system actually does collect a significant amount of the community sewage before discharge.

b. Failing Septic System.

Communities without a collection system will be on some kind of individual treatment system. When those individual systems are failing on essentially a community-wide basis, the Agency believes those municipalities should be awarded extra points. Section I.2.b. provides that these communities get 30 extra points. The 30 points is the same as is awarded under Section E.3.c.(1)(f) of the existing rule, although the new language is more specific that the problem must be a community-wide problem.

Experience has shown that it is not cost effective nor efficient to use construction grants to remedy individual septic system failures. Enforcement of local ordinances is a better method of correcting individual on-site treatment problems.

To ensure that construction grant funds are effectively used to solve only community-wide septic system failures, the Agency proposes to require failure by 50% of more of the systems in the community. The 50% figure is a reasonable judgment of what a community problem is. It is also a number that can readily and accurately be determined. The proposed rule specifies that a failing system is one that discharges raw or partially treated sewage to the ground surface or to surface waters. This allows for a quick and visible determination of whether a system is failing or not. The 50% figure can then be easily calculated from a knowledge of the total number of septic systems in the community.

c. Primary Treatment.

This Section is essentially the same as existing Section E.3.c.(1)(e). The intent here is to give higher priority to municipalities with only primary treatment. This is consistent with national and state goals of providing at least secondary treatment for all sewage discharges. Municipalities with primary treatment facilities only will continue to be awarded 20 extra points.

An important concept here is that it is the design of the facilities, not the operating capabilities or effluent quality, that determines whether the municipality is awarded the 20 extra points under this Section. In addition, the design will not be changed by infiltration/inflow or other bypass problems. These kinds of problems alone will not qualify a municipality for these 20 points.

d. Combined Sewer Overflow.

Twenty (20) extra points are awarded by this new provision in the rule. The intent is to recognize the potential increased degradation of state waters where untreated sewage is discharged as a result of combined sewer overflows. The previous rule provided no mechanism for awarding specific priority points for this situation, and because the potential for serious impact on the receiving waters can be significant, extra consideration must be provided for eliminating combined sewer overflows that result in discharge of raw sewage.

Municipalities with combined sewer overflow problems, of course, will continue to be impacted by the restrictions in Section H.3.d., which restrict grants for combined sewer overflow projects to projects that are necessary to meet NPDES permit conditions and federal pollution control requirements and, in addition, limit the amount of money avaliable for grants for combined sewer overflow projects to that amount specifically allotted for these projects by the Governor. The reasons for these requirements have been fully explained at pages 60-62 of this document.

3. Watershed Pollution Abatement Plan.

This new section of the rule provides fifteen (15) extra points where a municipality is a part of a proposed watershed

pollution abatement plan that addresses specific point source and non-point source pollution abatement on a watershed scale. The intent is to provide incentive to watershed districts to become actively involved in pollution abatement, and for municipalities to actively engage in a scope of planning that encompasses the management practices and objectives of the watershed district. The benefit to water quality will be realized for both point and non-point sources of pollution and this effort is worthy of extra priority points.

A watershed district is a governmental body established pursuant to Minn. Stat. ch. 112 (1982), the Minnesota Watershed Act. A roster of watershed district boards is in the record as Exhibit 23. A watershed pollution abatement plan is a document prepared by a watershed district that contains the information required by statute. See Minn. Stat. §§ 112.46 and 473.879 (1982). Under the same statutes this plan must be approved by the Minnesota Water Resources Board, and the proposed language in the rule is consistent with the statutory requirements.

An additional requirement for qualifying for the extra watershed points is the adoption of rules to implement the plan. The intent of this provision is to select active watershed districts which have taken steps beyond planning toward resolving pollution problems within the district. This section also states that the watershed plan must have been updated within the last ten (10) years to ensure that the plans address current problems. This, too, is consistent with statutory requirements. See Minn. Stat. § 112.46, subd. 3 (1982).

4. Outstanding Resource Value Waters.

The Legislative Commission to Review Administrative Rules recommended that the Agency differentiate between valuable recreational water resources and other water resources of ordinary value. LCRAR Report, Exhibit 11 at p. 6. To address this recommendation, the Agency has coined the phrase Outstanding Resource Value Waters and is proposing to award 10 extra points to municipalities that discharge to or adversely affect an Outstanding Resource Value Water.

Outstanding Resource Value Waters are defined as Lake Superior, waters within the Boundary Waters Canoe Area Wilderness or Voyageurs National Park, and waters designated by the federal or state government as wild, scenic, or recreational river segments. These are obviously the surface waters of the state that have exceptional recreational and ecological value and are worthy of special consideration to protect and enhance their present condition and quality.

For many of these waters, especially the ones that have resulted from specific legislative enactment, like wild and scenic rivers, [see Minn. Stat. § 104.31-104.40 (1982) (Minnesota Wild and Scenic Rivers Act)] management plans are required to be developed to protect these waters. See Minn. Stat. § 104.35 (1982). Since control of municipal wastewater discharges will be a component of these plans, it is reasonable to assign high priority to these municipalities with sewage treatment needs.

The Agency has proposed to assign 10 extra points to qualifying municipalities under this category. Ten points was chosen as the number because ten points is the same incremental point increase between Class 2A waters (high quality fishery) and Class 2B (warm water fishery) and Class 2C waters (rough fishery). See Section F.

Any municipality that discharges directly to an Outstanding Resource Value Water or adversely affects such a water will qualify for the 10 extra points. A municipality not discharging directly to an Outstanding Resource Value Water would have an adverse impact on that water if it caused a violation of water quality standards or degradation to occur in the downstream Outstanding Resource Value Water.

Exhibit 24 lists those municipalities that the Agency has identified that qualify for the assignment of 10 extra points under this category. Exhibit 24 also identifies the Outstanding Resource Value Water that is involved.

5. Game Fish Lakes.

This point assignment category places special emphasis on lakes because lakes receive a high degree of recreational use and because lakes have a lesser assimilative capacity for nutrient loadings than do rivers. Lakes designated for fish and aquatic recreational uses are considered to be adversely affected by a discharger if through the introduction of nutrient loadings there is a material increase in undesirable slime growths or aquatic plants as specified in Section D.2. of 6 MCAR §§ 4.8014 and 4.8015.

From both a practical and aesthetic perspective, the elimination of a municipal wastewater discharge from a lake managed for fishing and aquatic recreation is an improvement in the recreational potential that the water body would have to offer. This is primarily accomplished through the total elimination of a significant nutrient loading which contributes to increased plant and algal growth in the lake. The assignment of ten (10) extra points provides an added incentive to remove such discharges from these water bodies. Ten (10) points were chosen for assignment under this category since they reflect the same incremental point increase between the water use classifications in Section F.

Lakes throughout the State are assigned specific management classifications by the Minnesota Department of Natural Resources. These management classifications describe the most important species, or combination of species, on which management efforts are directed. The removal of municipal wastewater discharges from lakes with one of the following five management classsifications would qualify for the assignment of ten (10) extra priority points: 1) Trout; 2) Walleye; 3) Walleye-Centrarchid; 4) Centrarchid; and 5) Game Fish. Lakes with regular winter kill have not been classified as Game Fish Lakes because recreational use in these lakes is limited. However, if aeration equipment or other artificial controls have been installed in regular winter kill lakes to enable preservation of a fishery, an additional ten (10) points will be assigned. Descriptions of these

management classifications can be found in Manual of Instructions for Lake Survey, Minnesota Department of Natural Resources, Special Publication No. 1, revised 1970, at A24, which document is in the record as Exhibit 25.

Since the elimination of waste sources from lake systems can improve the actual or potential recreational value of these waters, it is reasonable to award extra points when the waste source is removed from the lake system.

Exhibit 26 lists the municipalities which qualify for the assignment of ten (10) extra points under this assignment category.

6. Sanitary District.

The provision is not a change from the existing rule. The existing language is found in Section E.3.c.(3) of the present rule. This provision reflects the Agency's judgment that it is more efficient to design and construct a facility that resolves multiple or area-wide water pollution problems than to build several individual facilities. In addition, this provision is consistent with the statutory directive to give high priority to sanitary district projects. Minn. Stat. § 116.16 subd. 6 (1982).

J. Total Points.

This provision clarifies how the total points for a particular project are determined. A municipality is to be awarded points under Section F (water affected), Section G (population), and Section H (project type), and, if it qualifies, under applicable provisions of Section I (extra points). A

municipality can qualify for points under only one category of Section F and only one category of Section H, but it can qualify under as many categories of Section I that are appropriate. Thus, assuming a population served of 1,000, the most points a municipality of that size could be awarded is determined as follows:

Section F (water affected)	70	(Class 1A water)
Section G (population)	15	
Section H (project type)	160	(tertiary treatment plant)
Section I (extra points)	40	(public health hazard)
	40	(no treatment)
	15	(watershed pollution abatement plan)
	10	(outstanding recource value water)
	10	(game fish lake)
	10	(sanitary district)
	370	

No community, however, will qualify for maximum points under all the possible categories so each municipality with sewage treatment needs will end up with less than 370 points.

The Agency has prepared a draft Municipal Needs List using the proposed criteria and has included that List in the record as Exhibit 27. The Agency realizes that this draft List will become the focus of a great deal of attention during this hearing because the municipalities that are unhappy with their placement will complain about the proposed priority system. The Agency would

like to make clear at the outset that while the List is helpful in evaluating the relative importance of the respective categories under which points are awarded, it is not helpful for unhappy municipalities to complain that the rule is unreasonable because they end up near the bottom of the List.

We emphasize again. There is not enough money to go around. Not all municipalities that have treatment needs will be able to get a grant, at least not within any short period of time. Any priority system will cause some municipalities to come out at the bottom.

The Agency developed the draft List to evaluate whether the factors the Agency wants to give highest priority -- water quality impacts, construction of sewage treatment plants, and protection of valuable waters --actually end up driving the List. We conclude that it does. The draft List shows that those municipalities that require construction of sewage treatment plants are near the top, that the extra points for certain special factors do significantly change the ranking of a municipality, and that population is not as significant as some of these other factors. We believe that the draft list supports the Agency's conclusion that the criteria proposed establish a reasonable prioritizing system.

K. Resolution of Equal Point Ratings.

The wording in this provision is slightly different from the present language in existing Section E.3.e., but the manner of breaking ties has not changed. Also, with the new method of calculating points for population served, i.e., the logarithm of the population, it is unlikely that a tie will result, but the Agency thought that it was preferable to keep this provision in the rule.

L. Municipal Project List.

This Section describes the methodology for placing municipalities on the Municipal Project List, which is the list of projects expected to be funded from a federal allotment of grant funds. This new provision replaces Section E.4. of the existing rule. Much of the old language is proposed to be deleted and there are some new requirements in the proposed rule. Specific changes, and the rational for each change, are discussed below.

1. Section L.1. has not been proposed for change. This language is almost identical to the language in existing Section E.4.a. What this provision does is describe what the Municipal Project List is.

2. Section L.2. is a new provision that requires municipalities seeking placement on the Municipal Project List to submit a Facilities Plan or Plans and Specifications to the Agency by July 1 prior to the adoption of the List for the next fiscal year. The intent of this provision is to ensure that municipalities that are placed on the Municipal Project List are prepared to proceed with construction of their projects once the grant is awarded. The Agency wants to identify high priority projects, but even more so the Agency wants to fund projects that will be timely completed.

This requirement to submit a Facilities Plan or Plans and Specifications in order to be placed on the Project List is a reasonable requirement. It is reasonable to expect that a municipality requesting a construction grant be prepared to go ahead

with the project immediately upon award of the grant. There are always enough municipalities prepared to proceed that it does not make sense to put a municipality on the Project List just because it has a high priority when it isn't prepared to go ahead with its project anyway. See Exhibit 28, which is a list of municipalities with approved facilities plans that have not obtained Step 3 or Step 2+3 grants. Those municipalities that have a lower priority but are ready to go should be awarded the grant before those municipalities that are not ready to proceed.

The July 1 deadline was chosen to allow the Agency a significant amount of time to review the adequacy of the Facilities Plan or Plans and Specifications before the Project List is finalized The federal fiscal year begins on October 1, and although the timing of federal allotments is inconsistent, occurring anytime after October 1, a July 1 deadline will at least give the Agency two months to review the plans. This deadline will avoid last minute submittals of these work products. Late submittals create excessive pressure on staff to provide quick reviews, which may compromise professional judgments regarding approvals.

The next Municipal Project List to be adopted by the Agency will be the fiscal 84 List. This List will most likely be adopted pursuant to the priority system established by the amendments promulgated as a result of this hearing. These amendments, however, will not be effective until after July 1, 1983. The question arises whether municipalities wanting to be on the 84 List will have to have submitted an approvable Facilities Plan or

Plan and Specifications to the Agency prior to the time the 84 List is adopted. The answer is yes. The municipality cannot be required to have submitted a Facilities Plan or Plan and Specifications by July 1, 1983, of course, but under the last sentence of this Section L.2., submission of these documents is a prerequisite to getting on the Project List.

It is not anticipated that this requirement will cause any real hardship. Many municipalities that have not yet been on the Project List have already prepared a Facilities Plan and some have even prepared Plans and Specifications. Municipalities hoping to make the 84 List will also be on notice from reading this Statement of Need and Reasonableness that the appropriate plans, in an approvable form, are required to be submitted to the Agency before a municipality will be placed on the Project List.

There is one typographical error in the proposed language. In the very last sentence of Section L.2. the words "necessary facilities plan and specifications" should read "necessary facilities plan or plans and specifications."

3. Section L. 3. is new language that merely provides some specificity for determining how many municipalities will be placed on the Municipal Project List. The number of municipalities placed on the Project List depends, of course, on the amount of money available, and that is what this Section says.

Municipalities will be placed on the Project List until the cost of those projects uses up the amount of money the Agency has availabe for grant purposes. The language in the rule reads that

the Agency shall list projects until the "full allotment of federal construction grant funds" is awarded, but the Agency is aware, and the rule recognizes that there are restrictions and demands placed on the State's allotment such that the "full amount" is not available for construction purposes.

For example, the proposed amendment recognizes that the number of municipalities that can be funded depends on the percentage of the cost to be paid for. Obviously, more municipalities will be funded when only 55% of the cost is funded than when 75% of the cost is funded. There are other factors also that will affect the amount of the State's allotment that is available for actual grant awards. A reasonable amount of the allotment will be set aside to pay for project cost overruns. See Section W.1. and discussion. A reasonable amount will also be reserved for advances of allowance. See Section V. and discussion. In addition, the Agency deducts its administrative costs from the state allotment. See Section E.9.j. of the existing rule. (Section E.9.j. is proposed to be deleted from the rule because the EPA regulation authorizing such use, 40 C.F.R. § 35.1000 (1982) is sufficient authority for use of these funds for administering the grants program.)

Another factor that may reduce the amount of funds available for grant awards is the requirement to set aside 4% of the allotment for innovative and alternative projects. This was one of the comments made by Region V, EPA, in Chicago, upon their review of the proposed rule. (EPA's comments and suggested changes were submitted to the Agency orally.) EPA suggested that

the language in this Section be changed to recognize that the full amount of the allotment is not necessarily available for grant awards. The Agency believes that no changes in the rule are necessary because even under the existing language, the Agency will only be able to list as many municipalities as there is money for.

There is one minor change, however, that the Agency does recommend. As with Section L.2., the first sentence in Section L.3. should be amended in part as follows: "approvable facilities plan or plans and specifications. . ." The words "plan or" were inadvertently dropped.

4. Deletions from existing rule.

There are two very specific provisions in the existing rule regarding the Municipal Project List that the Agency proposes to drop. One relates to the metro-outstate split of funds and the other relates to the setting aside of a certain percentage of the state's allotment for certain types of projects. The reasons for proposing to delete these provisions are discussed below.

METRO-OUTSTATE SPLIT

Sections E.4.b.(1) and (4) provide for the splitting of funds between metro and outstate projects in proportion to the sewered population of the respective areas. This was done to ensure that a proportional share of the funds would be awarded to outstate municipalities, and this provision resulted in about a 60-40 split between metro and outstate, respectively. See Exhibit 29.

As was explained on pages 10-11 of this Statement, where the reasons for dropping the definitions of Metropolitan Area and

Nonmetropolitan Area were described, the metro-outstate provision is proposed to be dropped because the new point system will give less importance to population and will allow small communities to obtain funding on their own merits based on the other priority factors. Moreover, EPA no longer allows geography to determine priority. See 40 C.F.R. § 35.915(a)(1) (1982).

SET-ASIDES

There are several provisions in the existing rule that create a special priority for certain projects by providing for the actual set-aside of a portion of the state's allotment for these projects. Under the existing rule the Municipal Project List was actually revised each year to accomodate these projects. These projects that got special treatment are innovative and alternative (I & A) technology projects (Sections E.4.b.(2)(a) and E.4.d.), alternative projects for small communities (Section E.4.b.(2)(b), and various sewer system projects (Section E.4.b.(2)(c)). The Agency proposes to delete all these provisions.

Since 1978 the Agency has set aside 4% of its funds each year to be used for projects involving innovative and alternative technology. This was consistent with Congressional directives expressed in the Clean Water Act, see 33 U.S.C. §§ 1282(a)(2) and 1285(i), and with EPA regulations implementing those provisions. See 40 C.F.R. §§ 35.908, 35.2032, and 35.2152(b) (1982). Similarly, under Section E.4.b.(2)(b) of the existing rule, alternative treatment in small communities, those under 3500 in population, is given preferential treatment. This, too, is consistent with federal law. See 33 U.S.C. § 1285(h).

Under the existing WPC 34, Section E.4.b.(2)(a), each year the Municipal Project List was revised to ensure that enough innovative and alternative projects would be funded to utilize the full 4% that had been set aside for this purpose. This process resulted in some lower priority I & A projects obtaining funding over higher priority projects that did not involve innovative or alternative technology.

Finally, Section E.4.b.(2)(c) is a section that implements another provision of federal law that allows for 25% of a state's allotment to be used for the kind of projects specified if such projects are on the state's project list and are otherwise eligible for funding. 33 U.S.C. § 1296. This provision, however, in practice, did not result in adjustment of the Project List like the other two provisions did. The kinds of projects specified have generally not been on the state's Project List because of the high priority given to treatment works and the relatively low priority given to sewer projects. The state has exclusive authority to determine the priority given to the various classes of projects. See 40 C.F.R. § 35.915(a)(1) (1982). It is appropriate to delete this provision from the rule.

The reason these provisions are in the existing rule is because federal law provides that states that award the full amount of the set aside will be eligible to receive unallotted funds from other states. See 40 C.F.R. §§ 35.915-2 and 35.910-2(b) (1982). The Agency was reluctant to not use its full allotment because it not only did not want to lose its unallotted portion but it also

wanted to be eligible for unallotted funds from other states. Since 1978 the Agency has each year awarded the specified percentage of its allotment to I & A projects. In fiscal year 1982, because Minnesota was one of the states to commit the full set aside for I&A projects, Minnesota received $937,500 in reallotted funds from other states.

Notwithstanding the fact that Minnesota has received additional funds because it has awarded the full I & A amount, the Agency proposes to delete these provisions for special treatment of I & A projects. There are several reasons for this. The major reason is that under the existing procedure, the I & A projects drove the Project List, and higher priority projects were being bumped off the List by lower priority projects involving innovative or alternative technology. This was inconsistent with the Agency's objective to fund those projects providing the greatest water quality benefits.

Another reason for deleting this language is that the additional funds awarded to Minnesota were not that substantial. In 1982 the additional amount of nearly one million dollars allotted to the state was only about 2.5% of the over $40 million total allottment for the fiscal year. According to EPA, only about two-thirds of the set asides for I & A projects were awarded across the country in the last few years. See Exhibit 30, a graph prepared by EPA that shows the amounts awarded compared with the targeted amounts. The Agency estimates that if the Agency continued to grant special treatment for I & A projects, as it has in the past under the existing rule, approximately $200,000 to $700,000 in additional funds could become available to the state each year. This does not seem to be significant enough to give up the goal to fund the highest priority projects.

Moreover, the amount available is likely to drop in the future. Beginning in fiscal year 1985, municipalities employing innovative or alternative technology will be eligible for a grant to cover an additional 20% of the project cost that other municipalities utilizing conventional treatment will not be awarded. See 33 U.S.C. § 1282(a)(2). Although this additional grant award will not change the priority rating of a project, it will likely be enough incentive for some high ranking municipalities to seek approval of an I&A project. Thus, we expect that the number of states that award the required percentage of their allotment for I&A projects will increase, resulting in less funds available for reallotment. Perhaps more importantly, for this same reason it is reasonable to expect that Minnesota will be able to award the requisite amount for I&A projects without giving the special treatment given these projects in the past. It is likely that enough high priority projects that make the Municipal Project List on the basis of their point rating alone will involve I&A technology to satisfy the federal set-aside requirement.

For all these reasons the Agency proposes to delete the provisions that give preferential treatment for innovative and alternative projects.

M. Reserve Project List

This Section replaces Section E.4.c. of the existing rule. The new language is more specific than the old but in practice the procedure will remain the same.

The procedure is that each year the Agency prepares a Reserve Project List in addition to the Municipal Project List. Municipalities are listed on the Reserve Project List in descending order of priority.

These municipalities will be added to the Municipal Project List when and if municipalities already on the Municipal Project List have their grant applications rejected.

A Reserve Project List is necessary to ensure that the state is able to obligate its entire allotment each fiscal year. Monies intended for one municipality will be awarded to the reserve municipality when the first municipality fails to complete the application requirements.

It is important to emphasize that municipalities on the Reserve Project List are subject to all the same requirements as municipalities on the Municipal Project List. That means that municipalities will not be placed on the Reserve List unless they have submitted a Facilities Plan or Plans and Specifications by July 1, as required by Section L.2. And a municipality moved up from the Reserve List to the Project List will also have to comply with the application requirements. Section R. It would make no sense to even have a Reserve List if the municipalities on the Reserve List were no more able to complete their project than the municipalities that were dropped.

N. Project Eligibility

1. Steps Eligible. The Municipal Wastewater Treatment Construction Grant Amendments of 1981 eliminated grants for Step 1 and Step 2 work. P.L. 97-117, § 3, 33 U.S.C. § 1281(1)(1). This provision of the rule reflects the federal requirement and indicates that grants are no longer available for Step 1 and Step 2 work.

While grants for Step 1 and Step 2 work are no longer available, advances of allowance are possible for this work. Advances of allowance are addressed under Section V.

2. Initiation of Construction. Although the language is changed slightly, this is not a new provision. See Section E.5.b. of the existing rule. Under federal regulations, a municipality that begins construction on its project before a grant is awarded forfeits the right to obtain a grant. See 40 C.F.R. § 35.903(g) (1982).

A municipality, of course, may elect to proceed with a project without a construction grant. See Section V. And the municipality may apply for a state grant without also seeking a federal grant. See Section BB.

3. Cost-Effectiveness. As with subsection 2, this language in subsection 3 is changed slightly from the existing language but the intent remains the same. The existing language is found in Section E.5.c. This provision provides that the Agency will not fund projects that are not cost-effective. Nor will the federal government fund projects jects that are not cost-effective. See 33 U.S.C. § 1298(b).

O. Adjustments in the Municipal Project List.

The language in this Section is based on the statute that allows the Director to change the criteria for establishing priorities if required to comply with federal law. That statute is Minn. Stat. § 116.16, subd. 7 (1982). The Agency wanted to repeat the statute in the rule because it is an important provision that the public should be aware of.

The existing rule contains a provision, Section E.6., that tracks the statute essentially verbatim. The proposed language is different from the statutory language as a result of editing by the State Revisor's Office. The Agency would prefer that the statutory language be used in the rule so there is no confusion that the rule means what the statute means.

P. Public Participation.

This Section is another example of where the language has been changed for clarity and to provide more specifics but the requirements remain essentially the same. The existing provisions on public participation are found in Section E.7. of the existing rule.

One change of some significance is the change from 30 days public notice of the proposed Municipal Needs List and proposed Municipal Project List to 45 days public notice before the Agency may adopt the Lists. This change is proposed to conform with the EPA requirement of 45 days notice. See 40 C.F.R. § 25.5(b) (1982).

Section P.2. also gives more specificity about how public informational meetings will be held. This additional guidance should be helpful to municipalities wanting to participate in the development of the Municipal Needs List and the Municipal Project List.

Section P.4. is quite similar to Section E.7.d. of the existing rule in describing how interested persons may participate at the Agency Board meeting. The procedures described here are intended to be consistent with the Agency's procedural rules for conduct at Agency Board meetings. See 6 MCAR § 4.3015. In November, 1982, the Agency amended its procedural rules and

although Section P.4. can be interpreted to not be inconsistent with the amended procedural rules, the Agency would suggest that the language in Section P.4. be amended in the following way to eliminate any possible confusion between the procedures.

> Interested persons may present oral ~~or written~~ statements to the board at the board meeting. ~~if a request to do so is submitted to the agency at least three days before the meeting.~~ The ~~agency~~ chairperson may place reasonable restrictions upon the time and manner in which oral comments are submitted. ~~If a request to present oral or written statements is made at the board meeting, the agency may allow participation in a manner established by the chairperson.~~ Written statements may be served on the director any time up to five days before the meeting.

Q. Grant Applications.

This Section sets forth the requirements a municipality must follow in applying for a construction grant. This Section includes both procedural requirements for submitting the application and substantive requirements identifying what must be included as part of the application.

The provisions in this Section apply only to Step 2+3 and Step 3 grants. The old rule, Section E.8., imposed requirements on Step 1 and Step 2 applicants as well. All references to Step 1 and Step 2 grants have been eliminated in the proposed amendments because as was explained under Section N.1, grants are no longer available for Step 1 and Step 2 work.

Each of the subsections in Section Q is discussed in greater detail below.

1. Section Q.1. is simply a recitation that no municipality will receive a grant unless it has submitted a completed grant

application to the Agency. This has always been the situation under both state and federal rules. See Section E.8.g. of the existing rule and 40 C.F.R. § 35.2040 (1982).

2. This Section provides that a municipality on the Municipal Project List must submit a completed grant application to the Agency within 90 days after the Project List is adopted. Under the existing rule, Section E.8.b., a municipality is given 150 days to submit a grant application.

The reason the time has been shortened is because the Agency wants to reduce the risk of losing federal funds through failure to obligate the state's allotment by the deadline date set by Congress in the Clean Water Act. That deadline is the end of the fiscal year following the fiscal year of allotment. 33 U.S.C. § 1285(d). Thus, funds allotted in fiscal year '84 must be obligated by October 1, 1985. The failure to obligate the funds by the deadline results in the loss of those funds by reallotment to other states. 33 U.S.C. § 1285(d).

While twenty-four months may seem like a long time, often it turns out to be significantly less than 24 months. EPA often does not allot construction grant funds to the state until well into the fiscal year, months after October 1, and it takes some time to put together the Project List. This results in the Agency having far less than 24 months to award construction grants. While the Agency has not lost grant funds in any of the past years for failure to allot (one of the few states to accomplish that), the additional two months to be gained by shortening the submittal time can be significant in providing the

Agency sufficient time to review Facilities Plans and Plans and Specifications and other grant application information.

The 90 day requirement should not impose an unreasonable burden on municipalities applying for grants. The reason municipalities have difficulty in getting their applications in on time is because they don't have their Facilities Plans or Plans and Specifications completed. Municipalities now, however, are required to have their Facilities Plans or Plans and Specifications prepared before they even get on the Municipal Project List. See Section L.2. There are many municipalities that have already completed Facilities Plans that should be able to submit a grant application within 90 days. See Exhibit 28. There is no reason to risk losing grant funds or to require the Agency to conduct a hasty review to meet a deadline when there are a number of municipalities waiting for grant funds that can submit a timely application.

Section E.8.b. of the existing rule provides that the Director may extend the date for filing a completed grant application. While this language has been dropped from proposed Section Q., language is proposed for Section R.1.a. that provides the same thing. A municipality will still be able to get a time extension if it was delayed for reasons beyond its control. Of course, a time extension will not be granted if it results in the loss of federal grant funds. See Section R.1.c.

The proposed amendment provides that the application must be submitted on EPA Form 5700-32. While the existing rule does not specify the exact EPA form, see Section E.8.a., this is the form that has been used by EPA and this Agency for the past several

years. Blank forms will be provided by the Agency upon request. A copy of EPA Form 5700-32 has been placed in the record as Exhibit 31.

3. This Section continues the provision in existing Section E.8.b. that the Agency will notify each municipality that is on the Municipal Project List of its placement on the List. What is new, however, is the language that says a municipality is not to submit a grant application until it receives notice from the Agency that it is on the Municipal Project List. The reason for this is to discourage municipalities that are not on the Municipal Project List from going to the effort of preparing grant applications. This saves the Agency from doing unnecessary review work, and in many cases, it saves the municipality from having to revise its grant application to comply with federal requirements that have changed between the time the municipality first submitted an application and the time it is placed on the Project List.

We realize that the 90 day limit for submitting a grant application runs from the day the Municipal Project List is adopted and not from when the municipality receives notice of its placement on the List. We propose making the adoption of the List the starting point so that there will be only one deadline for all grant applications and not possibly different deadlines for various municipalities, depending on when they got notice. We don't expect this to be a problem because those municipalities that are on the Municipal Project List usually are aware of their placement. Moreover, the Agency will mail out the notice within

just a day or two of the adoption of the List, so if there is a municipality that is unaware of its placement on the Project List, that municipality will still have nearly 90 days to complete and submit its grant application.

There is no special language in the proposed amendments for handling grant applications for municipalities on the Reserve Project List that get moved up to the Municipal Project List. That is because municipalities initially on the Reserve List that get moved up to the Project List will have only that amount of time to submit their grant applications that is available to get the grant approved before the allotment is lost for failure to obligate. These municipalities have no more than 90 days to submit their applications and may in some years have even less.

4. Section Q.4. sets forth the information that must be submitted with a grant application for a Step 2+3 grant. This information is in addition to the information required by EPA Form 5700-32. This information will be reviewed by the Agency to determine whether the municipality meets the requirements for a grant. EPA also reviews this information and makes a determination on whether a grant is awarded.

The information that must be included with a Step 2+3 grant application is discussed below.

a. Resolution. Most of this requirement is already a part of the existing rule. See Section E.8.e.(2). The only addition that is proposed is to require that the municipal official who is authorized to sign the grant application also be

authorized to sign the grant documents. This change is proposed so that the municipality will identify the person who can legally bind the municipality to the conditions of the grant. This is the person the Agency and EPA would look to to sign the grant documents on behalf of the municipality.

b. Cost Estimates. The Agency wants each municipality to continually update its cost estimates for construction of the project so the Agency can determine how many projects it will be able to fund from current allotments. While there is no specific requirement in the existing rule to update cost estimates as part of a grant application, this is something municipalities have been doing anyway.

The rule requires the estimates to be submitted in a format provided by the Agency. That format is shown in Exhibit 32. The format developed by the Agency provides consistency and allows the Agency to compare projects and enables the Agency to more easily evaluate the cost-effectiveness of a project. In the past cost estimates have been submitted in all kinds of formats and the Agency has experienced some difficulty in evaluating and comparing these estimates.

c. & d. Collection System. These two provisions require a municipality to commit to the construction of the necessary collection system and to advise the Agency how the municipality proposes to pay for the collection system as a condition to obtaining a grant to construct a sewage treatment plant or other project. The reason for these requirements is obvious: the collection system, while not often of high enough priority to be funded with a grant award, is still an essential part of the treatment system.

Municipalities are presently required under the existing rule to commit to the funding and construction of the necessary collection system. See Sections E.8.d.(5) and (6) of the existing rule. In fact, this commitment was required as part of the Step 1 grant application, the earliest step in the construction grants program.

The proposed language in Section Q.4.d. reads slightly differently than the existing language in Section E.8.d.(6) but this is done only for clarity. The new language is just clearer and more specific than the existing language.

e. Errors and Omissions Insurance. This requirement is not new. The Agency adopted a requirement in 1978 that the engineer designing a municipal sewage treatment project funded by state and federal money carry errors and omissions insurance. See Sections B.18, E.8.e.(5), and E.8.f.(6) of the existing rule.

The only change in the rule is that under the existing rule the municipality has to provide "documentation" of the engineer's insurance but under the proposed amendments an engineer's "certificate" of insurance is required. This change is made to provide the Agency with a more specific assurance that the engineer has the requisite insurance. We anticipate that these certificates will actually be issued by the insurance company to the engineer.

f. Amendments to Facilities Plan. One of the changes proposed to be made that has already been discussed is the change to require municipalities seeking a Step 2+3 grant to submit a

Facilities Plan to the Agency by July 1 prior to the fiscal year for which the municipality wants to be on the Municipal Project List. See Section L.2. Since an approvable Facilities Plan is required just to get on the Project List, all that is required as part of the grant application is any amendments to the Plan. Sometimes, due to the lapse of time or a change in EPA regulations, a Facilities Plan has to be amended. In such event, the amendments must be submitted to the Agency. If there are no amendments, nothing need be submitted under this provision.

g. Treatment Agreement for Major Contributing Industry. Treatment Agreement and Major Contributing Industry are defined in Sections B.22 and B.23. As was explained in the discussion for those two provisions, a municipality proposing to construct a sewage treatment system must know in advance what significant industrial dischargers will be using the municipal system. This Section Q.4.g. requires a municipality seeking a grant to submit to the Agency a copy of the treatment agreement with each major contributing industry that will be using the system.

If a municipality does not have a treatment agreement with each major contributing industry, the grant application will be incomplete and the grant may be denied. In determining whether the municipality has accounted for treatment of all industrial wastewater generated in the community, the Agency can simply identify each industry in the municipality and determine whether the industry has a treatment agreement with the city or has a treatment system of its own.

h. New Sewer Connections. It is important that a municipality not allow water from extraneous sources to enter a municipal sewage treatment system. If water that is not expected enters the system, the system can become overloaded, resulting in bypassing or incomplete treatment.

Under this Section a municipality seeking a grant must certify that the municipality will do two things with respect to connections to its sewer system: (1) prohibit connectors of unpolluted water; and (2) inspect new connectors carrying wastewater to ensure that they are good, secure connections. Connections of unpolluted water must be prohibited because they would unnecessarily increase the loading to the sewage treatment plant. It makes no sense to send water to a treatment plant when the water needs no treatment, especially when the increased flow results in the degradation of wastewater that does need treatment.

A municipality is not precluded from adding new sanitary sewer connections to its system, of course, at least not when it has the capacity to handle the additional sewage, but the Agency can insist that all sanitary connections to the sewer be completed in a competent fashion that makes the connections air-tight and water-tight. In fact, this is a requirement of federal law. See 40 C.F.R. § 35.2130 (1982). This requirement will ensure that nothing but sewage will enter the line and that the plant will be able to handle the wastewater coming from that sewer. It is in the municipality's best interests to ensure that its sewer connections are done properly.

The best way the Agency can think of to ensure that sewer connections are adequate is to require compliance with the Minnesota Plumbing Code. The Plumbing Code is found in the rules of the Minnesota Department of Health. Minn. Rules MHD 120-134 and 7 MCAR § 1.135. The proposed language could be construed to read that the city must not only comply with the Plumbing Code, but also must comply with rules of the Minnesota Department of Health. But the citation to the Health Department rules is the Plumbing Code. If this is confusing to anyone, the Hearing Examiner or the staff can suggest a rewriting to clarify this point.

What is required of the municipality as part of the grant application under this Section is "certification." By this is meant a letter from the mayor or other municipal officer pledging a commitment on behalf of the city to prohibit unpolluted water connections and to inspect new sanitary connections for compliance with the Plumbing Code. The Agency would expect that the municipality would also describe the manner in which these requirements will be carried out. If the municipality has ordinances that prohibit certain connections and require compliance with the Plumbing Code, the Agency would expect the municipality would include those ordinances as part of its application.

Multiple Municipal Applicants. The last paragraph in Section Q.4.h. applies to those situations where more than one municipality is involved in the grant application. This paragraph does not belong in Subsection h. and should be given its own separate identity. Thus, this paragraph should be lettered i. and

the remaining two paragraphs i. and j. should be relettered j. and k.

The purpose of this paragraph is to ensure that in those situations where more than one municipality is involved in the project, the Agency receives the information it needs to determine that the project will be adequately designed and will do the job it is supposed to do when it is completed. Therefore, each municipality in the joint application must submit the resolution required by Section Q.4.a. that the governing body has authorized the filing of the application and the resolution required by subsection c. and the proposal required by subsection d. regarding the construction and funding of the collection system. Of course, the applicant must also submit the other documents and information, too, but not each municipality is required to submit those. For example, one engineer's certificate and one Facilities Plan are enough.

This paragraph also provides that the municipalities must submit a copy of a proposed intermunicipal agreement that describes the terms under which the municipalities will provide joint treatment and how they will share the cost. The agreement need not be signed at the time of the Step 2+3 application but the municipalities will not be able to proceed to actual construction until the agreement is executed. See Sections Q.5.n. and Q.6. The purpose of this agreement is to ensure that the facilities will be used and operated as intended and that all cities will abide by the terms of joint treatment, including the user charge system agreed to and ultimately approved by the Agency. The agreement gives assurance to the Agency and protection to the cities.

The existing rule, Section E.8.e.(3), provides that the municipalities applying for a joint Step 2 grant must have agreed to proceed to Step 3 when instructed to do so by the Agency. This provision is proposed to be deleted because now a Step 2+3 grant from EPA will be conditioned on the municipalities continuing to Step 3 construction.

i. Legal Authority. Section Q.4.i. requires the municipality to submit an opinion from its attorney that it has the legal authority to carry out the requirements to construct and operate the treatment system. This requirement gives the Agency and EPA extra assurance that the project will be carried out properly, and since ordinances and legal authorities can vary from municipality to municipality, and some governing bodies like watershed districts have different authorities, this opinion will help identify the specific laws and authorities of the particular grant applicant. The analysis by the municipality's attorney will also be useful in pointing out areas where a municipality may need to change or strengthen its local ordinances.

j. EPA Documents. Since the municipality is applying for a federal grant, as well as a state grant, and EPA is the final arbiter of whether the federal grant is awarded, the municipality must submit whatever information EPA requires. That is what this Section provides. Although this requirement is not spelled out in the existing rule, municipalities have always had to submit the information required by EPA if they wanted to get a federal grant, and this provision does not represent a change from past practice.

The EPA requirements are found in 40 C.F.R. Parts 30, 33, and 35 (1982). No attempt has been made here to list all the EPA requirements for grant applications, but both the Agency and EPA have and will continue to work closely with municipalities on the Municipal Project List to ensure that a completed application is submitted in a timely fashion.

5. Section Q.5. sets forth the information and documents that an applicant for a Step 3 grant must submit. Since Step 3 work involves the actual construction of the project, information required of a Step 3 applicant is more extensive than that required of a Step 2+3 applicant. (Although the Step 2+3 applicant will eventually have to submit all this information also before soliciting bids for construction. See Section Q.6.).

The information that must be included with a Step 3 grant application is discussed below.

a. Changes in Plans and Specs. This requirement is similar to the requirement that Step 2+3 applicants submit any amendments to the Facilities Plan. The municipality will already have submitted its Plans and Specifications to the Agency because that was a requirement of being placed on the Project List. See Section L.2. Changes in the Plans and Specifications generally occur if there has been some kind of change in the design or EPA has changed its regulations. If changes have occurred, the municipality has to submit those; if there have been no changes, nothing is required to be submitted under this provision.

b. Sewer Service Charge System. A municipality seeking a grant to construct a sewage treatment project must have developed a user charge system to raise funds to pay the municipality's share of the cost and to be able to pay operating and maintenance expenses. The requirements in this Section are based on the federal requirements. See 40 C.F.R. §§ 35.2005 (45), 35.2122, 35.2140, and 35.2209 (1982).

While the federal requirements regarding user charges only apply to the money needed to operate and maintain the system after it is constructed, the proposed Agency rule also requires the municipality to develop a user charge system to raise funds to pay for the municipality's costs of construction and debt costs. It makes good sense to the Agency that the municipality address all its financial obligations regarding the sewage treatment system, not just future 08M costs.

Under EPA regulations, a municipality seeking a construction grant must include with the information submitted on a user charge system, a financial management system that will accurately account for revenues generated by the system and expenditures for operation and maintenance. See 40 C.F.R. § 35.2140(d) (1982). One of EPA's suggestions was that the WPC 34 specifically reference the requirement to submit a proposed financial management system. The Agency would suggest that Section Q.5.b. amended to read:

> b. 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.

c. Public Notice of User Charge. This provision requires the municipality to advise the Agency of the manner in which the municipality informed the public of the user charge system. We believe that to allow for reaction to public comments and to prevent later objections and possible financing problems, a municipality should notify the public of the proposed charge system.

There is nothing in WPC 34 or in EPA regulations that specifies the kind of public notice of a proposed user charge system that must be given. Each municipality will have to determine what is appropriate and what is required by law in its case. This Section of the rule merely requires the municipality to inform the Agency of how they opted to provide that notice.

d. Ordinance Controlling Discharges. EPA regulation 40 C.F.R. § 35.2130 (1982) requires a grant applicant to have an ordinance in effect that regulates the kind of sewer connections the municipality may allow to its sewer system. See also 40 C.F.R. § 35.2122 and 35.2208 (1982). The purpose of the federal regulations is to prevent overloading of the system and the introduction of noncompatible pollutants that may harm the system or pass through untreated. This provision of the proposed rule merely implements the federal regulation.

e. Plan of Operation. Federal regulations 40 C.F.R. §§ 35.2106 and 35.2206 (1982) require a grant applicant to submit a plan of operation that addresses operation and maintenance and personnel training and budget questions. This plan of operation will help the municipality meet its effluent limits and lengthen the life of its facilities. The proposed rule implements the federal requirement.

f. Costs of O&M Manual and Startup. The municipality's plan of operation has to address the costs of preparing an operation and maintenance manual so this provision is really nothing more than a part of the plan. It is important that these costs be estimated so that the municipality will know what financial obligations it faces in obtaining an O&M manual. An O&M manual is required before the municipality will be paid its complete grant. 40 C.F.R. § 35.2206 (b) (1982).

The proposed rule also requires the municipality to submit a procedure for startup of the treatment works. Startup is a critical time and must be planned for. The Agency wants the municipality to be thinking about and planning for startup long before construction is complete.

g. Wage Rate Determination Information Sheet. Per the Davis-Bacon Act, 40 U.S.C. §§ 276a-276a-5, the U.S. Department of Labor provides the grantee an outline of wages to be paid the various categories of laborers identified by the contractor. The Agency has developed a wage rate determination information sheet that can be used by municipalities and their contractors to identify the different categories of laborers that will be employed in construction of the project. The use of the same form by all municipalities will be helpful to this Agency in processing the grant application. A copy of the wage rate determination information sheet is in the record as Exhibit 33.

h. Engineer's Certificate. This provision has not been changed from the existing language in Section E.8.f.(4).

i. Proposed Engineering Contract. This provision is not new. It is just a clearer statement of the requirement in the existing rule, Sections B.17 and E.8.f.(5), for resident inspection by the engineer and the submission of periodic inspection reports.

j. Errors and Omission Insurance. This is not a new requirement. The slight change in language was previously explained in the discussion for Section Q.4.e.

k. Treatment Agreement With Major Contributing Industry. The reasons behind requiring treatment agreements with major contributing industries was described in the discussion for Section Q.4.g.

l. Cost Breakdown. The requirement of this Section is to provide the Agency with the latest cost estimates available at the time of the grant application. This requirement is similar to the requirement to submit cost estimates with the Step 2+3 grant application. See Section Q.4.b. The format to be used is the same as the one for the Step 2+3 application. See Exhibit 32.

The one difference between the Step 2+3 cost estimates and the Step 3 cost estimates is that at the Step 3 stage the applicant must separate the eligible costs from the ineligible costs. This helps the Agency ensure that ineligible items have not been carried along with eligible ones.

m. Funding for Collection System. At the time a municipality seeks a Step 3 grant it must have determined how it will finance a collection system if it doesn't already have one

and one will not be funded by the grant. Municipalities often obtain other grants, such as HUD grants, to fund their collection system. Since a treatment plant cannot function without a collection system, the Agency must ensure that a collection system is or will be in place before a grant will be awarded to build the other treatment facilities.

n. Executed Intermunicipal Agreement. This Section applies when the grant applicant is more than one municipality. While at the Step 2+3 stage only a proposed intermunicipal agreement is required, see Section Q.4.h., at the Step 3 stage the agreement must be finalized and in effect.

o. Land Rights. It is important that a municipality that wants state and federal grant money to build sewage treatment facilities has rights to the property the facilities will be built on so that the municipality can operate the facilities in the years ahead. This provision is intended to provide the Agency with the information the Agency needs to determine whether the municipality has those rights. EPA has a similar regulation. See 40 C.F.R. § 35.2040(b)(8)(1982). EPA must also approve the purchase price. 40 C.F.R. § 35.2210 (1982)

The Agency has provided in the rule that a municipality need not own the property at the time of the grant application, but must acquire ownership or other rights within 90 days after authorization to bid. The 90 days was selected so that a grant application need not be held up while a municipality acquires the necessary property rights, but that the grant can be withdrawn before significant construction commences if the rights are not acquired.

p. EPA Documents. The reason for this provision was explained under Section Q.4.j.

6. Section Q.6. provides that a municipality that has obtained a Step 2+3 grant must submit the information required of a Step 3 grant applicant before the municipality may seek bids for construction of the project. It makes good sense that a municipality provide the same information about construction of the project whether it gets a Step 2+3 or a Step 3 grant. EPA requires the same information even though a separate grant is not awarded under a Step 2+3. See 40 C.F.R. § 35.2202 (1982).

7. Section Q.7. requires a grant applicant to submit the grant application in triplicate. This is not a change from the present rule, Section E.8.g.

R. Rejection of Grant Applications.

This Section lists three reasons for rejecting a grant application: (1) failure to submit a complete application by the deadline date; (2) failure to carry out the acts necessary to establish that the municipality can build and operate the disposal system in the proper manner; and (3) a determination that the municipality cannot carry out the project in a timely fashion to avoid the loss of federal grant funds. Like other provisions in the rule, the language is new, but the practice is not. This authority is not spelled out as clearly but Section E.8.g. of the existing rule describes the same reasons for rejecting grant applications. The Agency, and EPA too, have had the authority to reject grant applications for these reasons and have done so.

These reasons are all good reasons for rejecting grant applications. When there are more municipalities seeking funding than there is money for, the Agency should make every effort to direct the money to municipalities that will use it to construct good sewage treatment systems in a timely fashion. That is why Section R.2. provides that the result of having a grant application rejected is the removal of that municipality from the Municipal Project List. In that way a new municipality can be moved up from the Reserve Project List. See Section M.2.

The removal of a municipality from the Municipal Project List because its grant application has been rejected for one of the proscribed reasons does not mean that municipality can never get a grant. The municipality can seek funding in the next fiscal year, and if it corrects the defects in its past application, will obtain a grant for its project.

S. Approval of Grant Applications.

This Section merely states that a grant application that is not rejected for one of the reasons specified in Section R shall be approved and certified to the EPA. Certification is necessary to obtain the federal grant, and the existing rule, in Section E.9.a., already provides for certification.

T. Tender of Grant.

The first sentence in this Section provides that the state will not award a state grant until the EPA has determined the eligibility of the municipality for a federal grant. The federal grant will cover 55%, or more in some cases, of the project

cost, while the state grant will cover only 15%. It makes sense to wait until the municipality receives a decision on the federal grant for the large amount before tendering state grant money for a smaller amount. The municipality will probably have a change of plans if for some reason the federal grant is denied or delayed.

The second sentence in this Section is the identical language from Section E.9.b.(1) of the existing rule.

U. Construction without Grants.

The purpose of this Section is to ensure that municipalities working on sewage treatment projects for which they have not obtained grant funds stay in close contact with the Agency so that when it comes time to apply for grant funds, these municipalities will not have to redo any of their work. In addition, these municipalities also have to comply with applicable pollution standards, and keeping in contact with the Agency will help to ensure that the project is one that will meet pollution standards.

Section U.1. requires municipalities proposing to construct sewage treatment projects to notify the Agency of the project before starting work on a Facilities Plan. The rule then provides that after preparation of the Facilities Plan, but before preparation of Plans and Specifications, the municipality shall obtain written approval from the Agency that the project conforms to applicable technical, administrative, and public participation requirements. If the municipality has failed to comply with any

of these requirements, it could be a waste of time and money for the municipality to proceed if it hopes to get a federal construction grant to build the project.

Under Section U.2., a municipality wanting to prepare Plans and Specifications must notify the Agency in writing first, must have an approved Facilities Plan, and must obtain written approval from the Agency that its project conforms with applicable requirements. Again, this will help ensure that the municipality's effort does not go for naught.

There are some wording changes that should be made in this Section for clarity. The title of the Section should be changed because it is not really construction that is being done, but only the preparation of Facililites Plans and Plans and Specifications. Also, since Step 1 and Step 2 grants are no longer available, Section N.1., and Facilities Plans and Plans and Specifications must be prepared before a municipality will be placed on the Project List, Section L.2., all communities that have not yet prepared their Facilities Plans, and many that have not yet prepared their Plans and Specifications, will have to do so without a federal grant. The references in this Section to proceeding without a federal or state grant should probably be dropped.

The Agency would suggest that Section U. be revised to read as follows.

U. ~~Construction without grants.~~ Preparation of plans without a grant.

1. Any municipality ~~that elects to~~ developing a facilities plan for a project ~~without a federal or state grant~~ shall do the following:

a. Notify the Agency in writing of its proposed project scope prior to initiation of work on the facilities plan.

b. Obtain written approval from the Agency prior to proceeding to the development of plans and specifications that the project conforms with applicable technical, administrative, and public participation requirements.

2. Any municipality ~~that elects to~~ developing plans and specifications for a project without a federal or state grant shall notify the Agency in writing of its intention to develop plans and specifications for its project. The Agency shall review the scope of the proposed project and changes from the previously approved facilities plan and advise the municipality whether the project complies with applicable technical, administrative, and public participation requirements.

V. Advances of Allowance.

Section V. is a new Section that was drafted to provide for the award of what is called an "advance of allowance," which is an award of money to municipalities for doing facility planning and design work. These advances take the place of the former Step 1 and Step 2 grants, which are no longer available. Under the new rules, a Step 2+3 or Step 3 grant will include an allowance for facilities planning and design of the project. See 40 C.F.R. § 35.2025(a) (1982). But since Step 1 and Step 2 grants have been eliminated, a municipality wishing to proceed with planning and design that is not ready for a Step 2+3 grant, would have to fund this work itself or from other grant sources. With this Section of the rule, a municipality can receive an advance against its future grant, and obtain the money needed to proceed with design. Thus, a municipality wishing to proceed with design before a Step 2+3 grant is available, may receive an advance for that work, enabling the city to go directly to a Step 3 grant when its priority ranking places it on the Municipal Project List.

The Agency has determined, however, that advances will be awarded only for Step 2 work, design work involving the preparation of Plans and Specs. Advances will not be awarded for planning work. The reason for doing this is that there are many cities already doing facilities planning that, if current federal funding trends continue, will never receive a federal grant or at least will build facilities considerably different from those presently planned. Also, awarding advances for Step 2 work will allow those municipalities to move immediately into Step 3 construction work when their ranking comes up for a grant, while Step 1 planning work would still require tying up construction dollars for design work when a Step 2+3 grant is awarded. Step 2+3's have proven to take much longer than their original budget periods indicated. This results in a significant grant increase after bidding and makes long-range program planning difficult.

The language in this Section V. is based on the federal regulations. Further discussion and citations to the federal regulations for each provision are given below.

1. Amount available for advances. This subsection provides that the Agency shall reserve a reasonable portion of its annual allotment for advances, not to exceed 10% of the total allotment. Under the federal regulation, 40 C.F.R. § 35.2020(c) (1982), the state can determine how much of its allotment to use for advances; the only restriction on the state is that the amount may not exceed 10% of the total allotment.

The amount the Agency will reserve will vary each year, depending on the number of applicants for advances and on the direction the program is going overall. For example, if grant money is drastically reduced, as is possible, it may not be adviseable for more cities to complete Facilities Plans and Plans and Specifications when funding for construction of the project is several years away possible lunlikely at all.

This is also the Section that states that advances of allowance will only be given for design work. Advances of allowance are not available for planning work for the reasons described earlier.

2. Qualifying Municipalities. Under EPA regulation 40 C.F.R. § 35.2025(b)(3) (1982) the Agency may award advances of allowance to small communities only, as defined by the state. The Agency has defined a small community as those with less than 3500 people in the service area. This is the population that EPA uses to define small community, 40 C.F.R. § 35.2005(38) (1982), and we prefer to use the federal definition.

A small community seeking an advance shall apply for one by July 1 prior to the fiscal year in which the advance will be awarded. This is the same date by which cities must submit the information required to be considered for placement on the Municipal Project List. See Section L.2. Having these requests in hand on July 1 allows the Agency to prepare for the development of the Project List and to determine how much money should be set aside for advances.

The Agency anticipates that a decision on who gets advances will be made at the same time that the Municipal Project List is adopted. Thus, the public will know at one time how the state's allotment for that particular fiscal year will be spent.

3. Application for an Advance. This subsection sets forth the information that a municipality must submit as part of its request for an advance. This information is designed to allow the Agency and EPA to determine whether the municipality qualifies for an advance. The information required is discussed below.

a. Council resolution requesting the advance. This provision is intended to just provide assurance that the municipality has officially decided to seek an advance.

b. Certification that funds are not available from other sources. The Agency would prefer that municipalities use other funds for design work if other sources are available. This provision requires each applicant to at least attempt to find funding from other sources.

c. Estimate of construction costs of the project with supporting documentation. It is necessary that the municipality estimate the cost of construction and provide documentation on how that estimate was made because the amount advanced by EPA is a percentage of the cost of construction. See 40 C.F.R. Part 35, Subpart I, Appendix B, found in 47 Fed. Reg. 20471 (May 12, 1982).

d. Per capita income.

e. Municipal bonded debt.

f. Adjusted assessed value of the municipality.

g. Council resolution certifying that the municipality cannot afford to do the work with its own resources.

The information specified in the four provisions above allows the Agency to determine whether the municipality can afford design work on the project without an advance. Not every small community can qualify for an advance. A community is not eligible unless without the advance it would not be able to complete the design necessary to apply for a grant. See 40 C.F.R. § 35.2025(b)(3) (1982).

4. Amount Advanced. EPA will determine the amount of advance based on the construction cost of the project. See 47 Fed. Reg. 20471 (May 12, 1982).

5. One Advance Only. The Agency has determined that a municipality shall be entitled to an advance of allowance on one occasion only. This is done to encourage proper design of the project in the first instance and to spread the money around to other needy cities. In the event that the design and construction of the project, costs more than the advance covered, the municipality will be able to recover its costs when the grant is awarded.

6. Reduction in Grant Funds. An advance of allowance is an advance against a future grant. Thus, a municipality that receives an advance will have its grant reduced by an equal amount when the grant is awarded. This is consistent with the EPA regulations. See 40 C.F.R. § 35.2025(b)(4) (1982).

7. Reimbursement. This provision is the same as the EPA requirement in 40 C.F.R. § 35.2025(b)(5) (1982). Requiring municipalities to reimburse the state if the municipality does not ultimately receive a grant and construct the project will discourage municipalities from designing projects that will never be built.

EPA has suggested that language be added to the rule to clarify that if the municipality does not receive a Step 3 grant, but does ultimately construct the project using other funds, the municipality does not have to pay back the advance. The Agency would agree with EPA and would support adoption of the addition of the phrase "unless the project is constructed with other funds" at the end of Section V.7.

8. Qualifying Municipalities. This provision merely establishes the priority system for awarding advances when more municipalities seek advances than there is money to award. The same criteria for ranking municipalities on the Municipal Project List will be used to rank municipalities seeking advances of allotment.

W. Grant Amendments.

This section replaces Section E.9.b.(2) of the existing rule with more specific language on how grant amendments are handled. The new rule, however, is consistent with the Agency's past practice in handling grant amendments.

1. This subsection provides that the Agency shall reserve a reasonable amount of its allotment to pay for cost overruns and project changes. EPA allows the Agency to do this. See 40 C.F.R. § 35.2020 (1982). It is inevitable that every fiscal year some projects will experience legitimate cost overruns and necessary changes in design. The Agency believes that it is preferable to increase the grant award in these cases than to jeopardize the entire project.

The amount the Agency will reserve for grant increases will be determined each year. The Agency has in the past attempted to reserve enough so that all legitimate grant increases can be awarded without the necessity to bump somebody off the Project List. In the past the Agency's experience has been that about 5% of the state's allotment is required to pay for grant amendments. It is likely that the Agency will continue to reserve about this percentage of its allotment each year.

2. This subsection describes the conditions under which a grant amendment to cover a cost increase will be approved. The requirements are the same as the requirements to get the grant approved in the first place. Essentially the cost increases must be for work that is a high priority project and that is cost-effective.

3. This subsection sets forth the information a grantee must submit to the Agency when it requests a grant amendment.

a. As with other applications, the municipality must document that the city does indeed request a grant amendment. Therefore, a written request signed by a municipal official, usually the mayor, must be submitted before the Agency will consider a grant amendment request.

b. The municipality must provide a complete cost breakdown so the Agency can determine whether the cost overruns are reasonable and the work to be funded is grant eligible. The Agency will not pay for work that is not eligible or for expenses that are not reasonable. Nor will EPA. See 40 C.F.R. §§ 30.135-3 and 30.135.8 (1982).

c. The municipality must also provide a breakdown of the engineering fees incurred, in addition to the construction costs. These expenses also must be reasonable and eligible. EPA Form 5700-41 has been used for the past several years by EPA in evaluating the engineer's fees. It is reasonable to continue to use this form. A copy of the form is in the record as Exhibit 34.

d. If the municipality is going to incur additional expenses for project changes or cost overruns, it will be necessary for the municipality to enter into an amendment to its contract with the engineer. The Agency would like to review the contract amendments to ensure that the grant amendment and the contract are consistent. Also, it is preferable that the contract not be executed because it is easier to make changes if necessary to conform to the grant amendment as approved and because the municipality may want to preserve its own options and not be committed to the contract amendments in the event the grant amendment is denied. It also allows the Agency and EPA to determine that the contract itself complies with federal requirements. See 40 C.F.R. Part 33 (1982) (Procurement).

e. A request for a budget period extension must be submitted if the work covered by the grant amendment will necessitate an extension of time to complete the project. This not only alerts the Agency to delays but it also directs the municipality's attention to the fact that their project is slipping behind schedule.

X. Change Orders

The language in the State Register for Section X was drafted by the State Revisor's Office. The Agency has proposed no changes in the language in the existing rule, Section E.9.c., and the language drafted by the Revisor's Office changes significantly the meaning of this provision. The Agency intends to remain with the language in the existing rule and not the language that appears in the State Register.

The purpose of this provision, of course, is to allow the Agency to review changes in the project that increase the costs or alter the design before the changes are implemented. Changes that are cost-effective, technically acceptable, and grant eligible, and in conformance with EPA regulations, will be approved. Others will not be approved and will not be funded.

In the past the Agency has been asked to review cost increases caused by what are called emergency conditions, such as equipment failure, that could cause personal injury, property damage, environmental damage, or increased costs, if not immediately corrected. While the Agency may approve and fund changes caused by an act of God, unforseen site conditions, or unforseen weather conditions, not all emergency situations casuing cost increases will be funded. Those emergency situations caused by negligence or covered by insurance have not and will not be funded.

Y. Payment of State Grant Funds.

The existing provisions for payment of state grant funds are found in Section E.9.e. A number of changes in the payment procedure have been proposed. These proposed changes are discussed below.

Step 1 Grants. Section E.9.e.(1) of the existing rule, entitled Step 1 Grants, is proposed to be deleted because Step 1 grants are no longer available. In the past this would have been the payment to cover the cost of the planning of the facility, including the development of a Facilities Plan.

Step 2 Advance of Allowance and Step 2 Portion of Step 2+3 Grants. Payment for Step 2 work, essentially the development of Plans and Specifications, remains basically the same. The existing language in Section E.9.e.(2) and the new language in Section Y.1.a. provide essentially the same thing -- 50% of the cost of the Plans and Specifications will be paid when the Plans and Specs are received by the Agency, and the remaining 50% will be paid when the Plans and Specifications have been approved by the Agency and EPA. One change of perhaps most impact is that the amount of the payment shall be the amount calculated by EPA under its allowance schedule. See 40 C.F.R. Part 35, Subpart I, Appendix B. found at 47 Fed. Reg. 20471 (May 12, 1982).

Another new provision is Section Y.1.b., which provides that eligible land costs will now be paid as part of the Step 2 phase rather than under the Step 3 phase. This change is proposed to provide grantees with prompt payment for an expensive element of their project. Under the previous rule, not paying land purchase costs until the Step 3 phase created a financial hardship for some communities. This provision does, however, remind municipalities again that only necessary and eligible land costs will be paid for.

EPA has suggested, and the Agency agrees, that Section Y.1. should be clarified somewhat because it seems to talk about the payment of Step 2 grants, when Step 2 grants have been eliminated. To be clear the rule should lreference either the Step 2 portion of a Step 2+3 grant or a Step 2 advance of allowance. The following changes in Sections Y.1. and Y.1.a. should make that clear:

Y. Payment of state grant funds.

1. Step 2 ~~grants~~ advance of allowance and the Step 2 portion of Step 2+3 grants.

a. The agency shall pay 50 percent of a Step 2 advance of allowance and the Step 2 portion of a Step 2+3 state grant when adequate plans and specifications have been received by the director. . . .

Step 3 and Step 3 Portion of Step 2+3 Grants. Payment for Step 3 work, i.e., construction, is changed under the proposed amendments. Presently, under existing Section E.9.e.(3), a grantee could apply for periodic payments of both state and federal grants as the work was done and the expenses incurred. There were some requirements, such as hiring a certified operator and preparing an O & M Manual, see Section E.9.e(3)(b), that applied as the project neared completion, but essentially as the work was done, the grant was paid.

The Agency is now proposing a two-tier payment system. The grantee can continue to request periodic payments of both the state and federal grants as the work is completed, but only up to 50% of the amount of the state grant. The Agency proposes withholding the remaining half of the state grant until the project is complete and the facilities are operating properly.

The intent of this payment procedure is to create an incentive for timely completion of well constructed facilities. Historically, all too often the Agency has, after a long and tedious grant process, ended up with treatment facilities that do not meet pollution standards. We have struggled for years with some projects to get consultants and contractors to correct errors in facilities they have designed and constructed. Because the EPA and the Agency have in the past paid all or nearly all of the grant upon completion of construction, very little financial incentive remains to correct a facility that is not operating properly. Thus, the Agency proposes to withhold 50% of the state grant until the facility is shown to be operating properly. The 50% final state payment will amount to 7.5% of the construction cost (1/2 of the 15% state grant). We believe this is significant enough to provide an incentive for adequate project completion but not so large that it will jeopardize project completion.

Section Y.2.b. lays out the requirements a municipality must meet to qualify for the final payment of the second half of the state grant. All these requirements are consistent with other state rules and with the requirements for qualifying for the grant in the first place. Basically the twelve requirements specified in this Section require that the municipality have a well constructed plant, that it be operated efficiently, and that the municipality be in compliance with applicable pollution standards.

Z. Retained Payments.

This Section replaces Section E.9.f. of the existing rule. The requirements are essentially the same, except for one change. The change is the elimination of the 10% limitation on the amount that may be withheld specified in Section E.9.f.(3). This language is dropped because, as just discussed under Section Y., the Agency now proposes to withhold the final 50% of the state grant until the project is complete and operating properly.

Since under Section Y. the Agency will withhold the last half of the state payment in all cases, this provision for retaining payments in Section 2. is limited in application. It is a useful provision, however, for the following reasons. One, it makes clear that EPA may also withhold federal grant payments. Two, if problems occur even earlier in the construction process, even more than 50% of the state grant could be retained. And three, this language recognizes that when the municipality corrects the deficiency that has caused the Agency, and perhaps EPA, to withhold grant funds, the funds will be released. These are all important and reasonable provisions that belong in the rule.

AA. Recovery of Funds.

There are only grammatical changes suggested by the Revisor's Office proposed for this Section. The existing language is found in Section E.9.g.

BB. State Grants.

Section BB.1. provides for the awarding of state grants to municipalities that propose to go ahead with construction of their sewage treatment projects without waiting for a federal grant. The language in Section BB.1. is identical to that found in Section E.9.b.(3) of the existing rule, with the proviso added that state funds will be available for this purpose only if there is enough money in the pollution control fund to cover state matching grants for municipalities on the Municipal Project List.

The reason this proviso is proposed to be added to this Section is to ensure that state funds are directed to the highest priority projects. A municipality would not propose to forego a federal grant if it were high enough on the Project List to qualify for a federal grant. Therefore, only lower ranking municipalities will seek state grants under this provision. The Agency wants to help out these lower ranking municipalities but not if it means a higher ranking project will not be built. It is likely that although these kind of state grants may be available in some years, that in the immediate upcoming years only matching grants will be awarded. Because of the lack of funds, this additional language is important to clarify that the higher priority projects will get their state matching grants before lower ranking projects will get a state grant.

Section BB.2. addresses those situations in which a municipality that has qualified for a federal grant and for a state matching grant may also get a state grant for what would otherwise be the local share. This provision is used to ensure

that those projects that have a high priority will still get built even though the municipality cannot afford the local share.

Section BB.2. repeats all the language in Section E.b.9.(4) of the existing rule, although a new procedural requirement is contained in Section BB.2.a. This provision requires a municipality seeking a state grant to cover the local share to apply for the grant by July 1, the beginning of the fiscal year in which the grant will be considered. This is consistent with other requirements in the proposed amendments setting July 1 as the deadline for submitting requests. See Sections L.2 (Municipal Project List) and V.2 (Advance Allowance). These other deadlines involve the federal fiscal year, which begins on October 1, while this Section involves the state fiscal year, beginning July 1. The Agency prefers to still use the July 1 deadline, however, because it is simpler to have one deadline date and decisions under this Section are affected by the state's allotment for the federal fiscal year so decisions can't be made until several months later anyway.

This Section BB. is consistent with Section T.2., which provides for the awarding of state matching grants for high priority projects on the Municipal Project List that qualify for federal grants. These two Sections read together establish that the state will not award state grant funds in a way that eliminates a higher ranking project by funding a lower ranking project.

CC. Contract Assignment.

Although the language is different, this is another Section where the meaning in the existing rule has not been changed. The

new language in this Section just combines the existing requirement in Section E.9.h. and the definition of contract in Section B.19. We believe the new language is better and clearer.

DD. Contract Beneficiary.

This change is like the one described above for Section CC. The new language combines the requirement in Section E.9.i. with the definition of contract in Section B.19. to give a clearer statement of the requirement.

EE. Construction Loan Program.

There are not really any changes proposed in the construction loan program. The loan program continues to operate the same as the grants program -- those communities that have the highest priority have the first opportunity at receiving a loan.

The changes proposed in this Section are essentially just renumbering and editing changes. Tables 1, 2, and 3 are shown as new material, but that is only because these Tables were moved from those portions of the rule applying to grants and placed in this Section applying to loans; the criteria in these Tables presently apply to the loan program under the existing rule. See Section F.3.b. These financial criteria are no longer applicable to the grants program, see discussion at page 34 of this document, so they have to be set forth under this Section. The criteria themselves, however, have not changed.

As explained in the discussion for Section C at pages 30-31, the Agency is prepared to consider using some of the available money for loan purposes, rather than for grants, as the Legislative Commission to Review Administrative Rules has recommended. See Exhibit 11 at pp. 6-7. But the Agency does not believe that higher priority projects should be refused grants so that lower priority projects may be funded through loans. As long as the money is limited, the Agency believes that it should go to the construction of the higher priority projects.

FF. Procedural Rules and Appeals.

This Section is identical to the existing language in Section E.9.k. except the Office of Hearing Examiners has been changed to the Office of Administrative Hearings.

GG. Variances.

This Section is the same language as is presently found in Section E.9.1.

IV CONCLUSION

This document, together with the Agency's exhibits, constitutes the Agency's Statement of Need and Reasonableness for the amendments proposed to WPC 34. The Agency believes that it has made a presentation establishing the need for and reasonableness of these proposed amendments.

Respectfully submitted,

for Gary M. Hogeson

Sandra S. Gardebring
Executive Director
Minnesota Pollution
Control Agency

Dated: May 19, 1983

STATE OF MINNESOTA

COUNTY OF RAMSEY

MINNESOTA POLLUTION

CONTROL AGENCY

In the Matter of the Proposed Revision to Minnesota Rules, Chapter 7075, Relating to the Administration of Federal Grant Funds and State Grant and Loan Funds for Municipal Sewage Treatment Projects

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 grant funds and state grant and loan funds for municipal sewage treatment projects. Chapter 7075, which was earlier called WPC 34, was first adopted by the Agency in 1972 and was amended in 1973, 1978, and 1983. The Agency is proposing to amend the rule again at this time.

The construction grants program enables municipalities in Minnesota to construct wastewater treatment facilities through a combination of federal, state, and local funds. These rules, Chapter 7075, establish criteria for determining priority for the awarding of state and federal funds for sewage treatment projects.

The federal construction grants program is authorized by the Clean Water Act, 33 U.S.C. §§ 1251 et seq. The U.S. Environmental Protection Agency has promulgated regulations and developed guidelines for the administration of the federal program. See 40 CFR Parts 30, 33 and 35 (1984). The state construction grant and loan program is funded from the Minnesota State Water Pollution Control Fund, created by the Legislature in 1971. Minnesota Laws 1971, Ex. Sess., ch. 20. Minnesota Statutes §§ 116.16-116.18 (1984). The Agency's statutory authority to adopt Chapter 7075 is found in Minnesota Statutes § 116.16 (1984), which authorizes the Agency to adopt rules governing the allocation of federal grants and state grants and loans for municipal sewage

treatment projects, and in Minnesota Statutes § 115.03, subd. 1(c) (1984), which authorizes the Agency to adopt rules in order to prevent, control, or abate water pollution.

In the 1984 Legislative Session, the Legislature created a state grant program, independent of the federal grant program, to provide financial assistance to municipalities for the planning and construction of wastewater treatment facilities. Minnesota Statutes, Section 116.16-116.18 (1984). The Agency was given authority to promulgate emergency and permanent rules for the administration of the Independent State Grants Program. Rather than draft a new Chapter of Minnesota Rules, the Agency has elected to propose revisions to Chapter 7075 for the following reason. Minnesota Statutes, Section 116.16, Subdivision 5(b) (1984) provides that the rules for administration of independent state grants must comply to the extent practicable with the provisions of the Federal Water Pollution Control Act (the Act) and regulations and guidelines of the U.S. Environmental Protection Agency promulgated under the Act, except that approval from federal agencies is not required for the award of independent state grants. Because the rules contained in Chapter 7075 govern the award of federal grants under the Act, the Agency reasoned that it could provide for administration of independent state grants more quickly and with less confusion by proposing revisions to Chapter 7075 than by drafting a new Chapter of Minnesota Rules.

On June 18, 1984, the Agency published emergency revisions to Chapter 7075 in the State Register. Emergency rules, rather than permanent rules, were done for two reasons.

1. The 1981 Amendments to the Clean Water Act (Public Law 97-117) require all publicly owned wastewater treatment facilities to be in compliance with the conditions of their National Pollutant Discharge Elimination System (NPDES) permits by July 1, 1988. Therefore, the Agency felt it was imperative to begin distributing the newly available state funds for that purpose as quickly as possible. Under the Administrative Procedure Act, emergency rules may be promulgated and become effective more quickly than can permanent rules.

2. Emergency rules could become effective quickly enough for the Agency to include the prospective independent state grant recipients on the Fiscal Year (FY) 1985 Municipal Project List, which is a list of cities that will receive federal grants during FY 1985. Thus, the public participation and information dissemination procedures in place for the federal program could be utilized for the independent state grants program as well, saving the Agency and the State considerable time and money.

The emergency revisions to Chapter 7075 became effective on August 15, 1984. Minnesota Statutes, Section 14.35, provides that emergency rules may remain in effect for 180 days, and may be extended for another 180 days, if notice of such is published in the State Register, at which time they expire. Emergency rules may therefore be in effect for 360 days and then must be replaced with permanent rules promulgated in accordance with the procedures of Minnesota Statutes, Section 14.14 to 14.28.

On January 22, 1985, the Minnesota Pollution Control Agency Board will consider a resolution authorizing the Executive Director to call a public hearing for the purpose of promulgating permanent revisions to Chapter 7075, and authorizing the extension of the emergency revisions to Chapter 7075 for an additional 180 days. Notice of the public hearing on permanent revisions to Chapter 7075, and notice of extension of the emergency revisions to Chapter 7075

for a period of 180 days, will be published in the State Register on February 11, 1985. A public hearing will be held in March, 1985.

The emergency rules contain the minimal revisions which the Agency felt were absolutely necessary to allow the award of independent state grants and to accommodate a few major changes in federal regulations promulgated in conjunction with the Act. Further revisions are being proposed in the final rules as a result of changes to 40 CFR Parts 30, 33 and 35, which became effective on October 2, 1984, March 28, 1983, and February 17, 1984, respectively. The proposed changes which were not included in the emergency rules are noted in Section III.

The impact of the proposed rules falls primarily on municipalities, counties, townships, sewer districts, and sanitary districts, with secondary impacts on engineering consulting firms and construction contractors. While some expense and effort is involved in complying with the rules, the benefits are the receipt of substantial financial assistance in planning and constructing wastewater treatment facilities and, ultimately, improved water quality for Minnesota.

In accordance with Minnesota Statutes, Section 14.115, Subdivision 2, the Agency has assessed the impact of the proposed rules on small businesses. The rules do impact small businesses in that EPA procurement regulations in 40 CFR 33.240 require grant recipients to give special consideration to small, minority and women's businesses when procuring engineering and other services and when advertising for construction bids. Therefore, the rules should be of economic benefit to small businesses. The Agency also intends to place notices of the public hearing in small business publications and solicit their comments.

This document contains the Agency's affirmative presentation of facts on the need for and resonableness of proposed amendments. The next section of this

document describes the need for amendments to the rules and the following section describes the Agency's reasons for the changes proposed.

II. NEED FOR AMENDMENTS

The need for the proposed amendments to Chapter 7075 arises from the following factors:

1. Creation of the independent state grants program.
2. Amendments to EPA regulations.
3. Experience gained since the last amendments.

Each of these factors is discussed below.

1. Creation of the independent state grants program.

As described in the Introduction, the 1984 Legislature created an independent state grants program funded with state funds. The Agency adopted emergency rules in 1984 so that the Agency could get the state funds to the eligible municipalities as fast as possible. But those emergency rules will expire in mid 1985 and final rules are now necessary in order to continue the program. The amendments proposed here will allow the Agency to administer the independent state program.

2. Amendments to EPA regulations.

Revisions are being proposed in the final rules as a result of changes to 40 CFR Parts 30, 33 and 35, which become effective on October 2, 1984, March 28, 1983, and February 17, 1984, respectively.

3. Experience gained since the last amendments.

Since the rules were last amended in 1983, several administrative problems, such as deadlines for submitting documents, have arisen. The Agency addresses these problems in the proposed amendments.

III. REASONABLENESS OF THE AMENDMENTS

This section describes the Agency's reasons for suggesting each of the changes proposed. Each of the provisions in the new rules that is proposed to be changed is discussed in the order it appears in the Chapter.

Some of the proposed amendments are continuations of the rules that were adopted as emergency rules, and some are entirely new proposals. In the following discussion, those amendments that were not contained in the emergency rules are identified. A copy of the emergency rules will also be found in the record as Exhibit 10a.

7075.0100 Purpose. (Hereafter only the last four digits will be used to identify Parts. The first four digits are identical in all cases.) This Part is changed to clarify that these rules apply to the new independent state grants program as well as to the federal and state matching grants program and state loan program.

0200 Definitions.

Subpart 3. "Act". The Federal Water Pollution Control Act, which governs the federal construction grants program and forms the basis of these rules, is amended periodically. Deleting the date specific amendment reference eliminates the need to change the rules each time the Act changes.

Subpart 9. "Facilities plan". The date specific reference to federal regulations is being deleted for the reasons outlined in the analysis of Subpart 3.

Subpart 15. "90 percent compliance". Under the present rules, this definition is used in determining which improvements to a treatment plant qualify as "major additions" and receive the 150 or 160 priority points assigned to major additions, and therefore receive a high enough priority to be in reasonable competition for grant funds. (See Part 7075.0405, Subpart 2, Current Items A and B.)

But a definition of "90 percent compliance" is still required because the concept will be utilized in determining which cities newly added to the Municipal Needs List are eligible for 20 additional priority points because they are unable to achieve 90 percent compliance with their NPDES/SDS permits. (See Part 7075.0406, Item H). There is a change in the definition being proposed, however, and that is to provide that periods of noncompliance cause by increased flows or loadings will be considered noncompliance periods in calculating the percentage of time the facility is in noncompliance. Presently these periods are not considered periods of noncompliance. The Agency believes that changing the definition in this manner will better promote industrial and commercial growth within municipalities, in keeping with legislative intent in creating the independent state grants program. This change will allow municipalities that have experienced growth to be eligible for construction grants to upgrade or expand their sewage treatment facilities. These proposed changes were not included in the emergency rules.

Subpart 16. "Outstanding resource value water". This proposed definition was not included in the emergency rules. The recent revisions to Chapter 7050 of Minnesota Rules expanded the category of "outstanding resource value waters". These waters are given 10 extra priority points in Part 7075.0406, Item D. Rather than list all qualifying water bodies and risk omission or

misinterpretation, a definition is added that references the appropriate Subpart in Chapter 7050. (See Exhibit 18.)

Subpart 18. "Plans and specifications". See the analysis of Subpart 3.

Subpart 19. "Primary treatment facilities". These proposed changes were not included in the emergency rules. The term "plant" is being changed to "facilities" because the latter is more descriptive of the various types of wastewater treatment systems that are available. A "plant" is accepted to mean mechanical facilities housed within a building and having a continuous point discharge. Many people have assumed this term eliminated stabilization ponds, on-site systems, oxidation ditches, land application, and other types of treatment or portions of treatment works from these definitions. This was not the intent. Therefore, a broader term is being used.

Subpart 20. "Secondary treatment facilities". These proposed changes were not included in the emergency rules. See the analysis of Subpart 19 for an explanation of the change from "plant" to "facilities". The reference to Chapter 7055 in the existing rule is being deleted because Chapter 7055 has been eliminated, and the requirements of Chapter 7055 are now included in Chapter 7050 (See Exhibit 18.). The additional language being proposed for the definition regarding a phosphorus or toxic substances limitation was added for clarification and for consistency with Subpart 25, which currently contains this same language.

Subpart 25. "Tertiary treatment facilities". See the analyses for Subparts 19 and 20.

0400 Types of Programs.

Item A. The addition of the words "state matching" distinguishes state matching grants from the newly created independent state grants.

Item B. The present rule states that grants may be awarded to cover the local share to municipalities that meet the criteria in Part 7075.0425, Subpart 2. But cities must meet the criteria in the entire Part 0425, not just in Subpart 2, and the Agency is proposing to delete the language in Subpart 2. This appears to have been an error in past rules.

Item C. Grants to cities which would qualify for federal grants but wish to start construction without a federal grant, as described in the current language, were eliminated by the 1984 Legislature. Therefore, the Agency is proposing to delete this reference from these rules. Instead, reimbursement grants as described in Minnesota Statutes, Section 116.18, Subdivision 3a(c) (1984) (See Exhibit 14), and also further described in Part 0409, Subpart 5, and Part 0411, Subpart 3, of these rules, are available for cities that wish to initiate construction without either a federal or state grant and be reimbursed in the future if state funds are available.

The proposed language in Item C is all new language that recognizes the existence of the newly created independent state grants.

0401 Summary of Construction Grants Programs.

Item A. Other than to distinguish the state matching grants and federal grants from the new independent grants, the only change in this Item is that advances of allowance are now available for Step 1 facilities planning, as well as Step 2 design. Wastewater treatment needs continue to arise in small towns that find it very difficult to investigate their needs and determine solutions without financial assistance. Therefore, under the new language, assistance may be offered in the form of advances of allowance for facilities planning.

Item B. This language accommodates the new independent grants which are statutorily available for all steps, according to Minnesota Statutes, Section 116.18, Subdivision 3a(a) (1984) (See Exhibit 14).

Item C. These proposed changes were not included in the emergency rules. Language is being added to clarify that grants are awarded in priority order except that economic development projects and Step 1 and 2 grants and advances of allowances may be awarded before some higher priority projects. Further explanations of these procedures are offered in the analysis of Part 0409.

Items E and F. These changes are being proposed simply to recognize the new independent grants program.

0402 Municipal Needs List

Subpart 5. Removal from needs list. This proposed change was not included in the emergency rules. The current language implies that the only way the Agency

may determine that a municipality does not have a need is through approval of a facilities plan. There are other ways that a need is determined not to exist, including agency collection of data, a change in the circumstances of the city, corrective action, and others. The new language recognizes that the Agency may remove a municipality from the Needs List at any time the municipality no longer has a need for a wastewater treatment project.

0403 Priority Points for Waters Affected

Subpart 1. Water use and point ratings. These proposed changes were not included in the emergency rules. The changes reflect the fact that Chapter 7055 has been eliminated and its provisions included in Chapter 7050 (See Exhibit 18). The substance of the rule is not proposed to be changed.

0405 Priority Points for Type of Project

Subpart 1. Table of priority points by type of project. This Table outlines the priority points assigned the projects described in Subparts 2 through 4. The changes are explained in the analyses of the individual Subparts.

Subpart 2. Description of project types. None of the proposed changes in this Subpart were included in the emergency rules.

Item A. Major treatment facilities. The category for "new plants" and the category for "major additions" (currently Item B) are being combined to eliminate a non-existent distinction between completely new plants and major upgrades to existing plants. Both kinds of projects currently receive the same

priority points, and accomplish the same purpose of allowing cities to meet their NPDES/SDS permit conditions. The new category is called "Major treatment facilities".

In the second sentence of Item A, collection systems in totally unsewered incorporated cities have been added to the definition of "major treatment facilities". All collection is currently ineligible under the independent state grants program; therefore, the proposed addition to Item A would have no impact on state grants unless the Legislature changes the statutes. However, collection is eligible under the federal program if the Governor requests the U.S. Environmental Protection Agency to set aside up to 20 percent of each year's allotment for collection. (See 40 CFR 35.2015 B(2)(iii) in Exhibit 13.) The proposed addition would then allow collection in totally unsewered incorporated cities to receive the priority points of the accompanying treatment facilities, as opposed to the 10 points currently awarded them under 0405, Subpart 1, Item G, and be funded at the same time as treatment facilities being funded under the federal program. This change will preserve the Governor's option under the federal law to spend federal grant funds on collection systems.

With the drop in the maximum state and federal funding from 90% to 75% and the average grant at less than 75%, the residents of small unsewered cities which definitely need collection systems will find it extremely difficult to finance construction. The change proposed here will assist those cities which have no other alternative to abate serious pollution problems. The unsewered cities of Avoca and Danvers, for example, were within the fundable range on the

Fiscal Year 1985 Municipal Project List (MPL). However, they were not placed on the MPL because the alternative selected during facilities planning as the solution to their problems included construction of collection systems that the cities cannot afford. Alternative funding sources are being sought, but may or may not be found for Avoca and Danvers and for other cities in similar situations. Assigning the points of major facilities to collection in totally unsewered incorporated cities would alleviate their problems. If the Legislature changes the statutes to include collection systems as eligible under the state program, or if the Governor decides to set aside a portion of the State's federal allotment for collection systems, the change being proposed will allow unsewered cities to have their collection systems funded as part of their overall projects.

The proposed change would make collection fundable in unsewered cities, but collection outside corporate limits would still receive 10 points and thus would probably not be funded with the treatment facilities. This is in keeping with past Agency policy of not subsidizing development in outlying areas and of funding treatment plants before other needs.

The change from 1000 to 1200 gallons per day for eligible septic systems makes this rule consistent with the Agency's procedures in applying the requirements of Minnesota Rules, Chapter 7080, formerly WPC 40, regarding small, primarily individual, treatment systems. The Agency applies Chapter 7080 only to systems of less than 1200 gallons per day of flow.

The other substantive change to this Item is the deletion of the provision that projects can only be assigned the points of secondary or tertiary treatment

facilities if they are not meeting 90% compliance with their NPDES/SDS permits. As the rule now stands, cities must actually be polluting the state's waters 10% of the time or more in order to be funded. An evaluation of a treatment plant can determine that it is likely to violate its permit conditions before it actually does.

Item G. Collection system or collector sewer. For an explanation of the proposed change in the flow of eligible subsurface disposal systems, see the analysis of Item A.

Item H, Dechlorination facilities, and Item I, Ancillary addition. These proposed changes were not included in the emergency rules. Due to substantial public confusion about when dechlorination facilities and ancillary additions will be funded, these Items are being clarified. If the only needs that a municipality has are for these facilities, only 10 points are assigned, instead of 150 or 160 points for major facilities, and the city will not obtain funding for dechlorination facilities or ancillary additions until all higher priority projects have been considered for funding. If, however, a city receives a grant for major secondary or tertiary facilities, then dechlorination facilities and ancillary additions will be funded under the grant if the city needs them. The Agency's intent is to fund dechlorination facilities and ancillary additions if they are a necessary part of a new treatment facility, but not to utilize federal and state dollars to fund dechlorination and ancillary additions as add-ons to existing facilities.

Item K. Addition to previously funded projects. The Agency is proposing to delete this provision in its entirety. This proposed change was not included in the emergency rules.

Federal regulations in 40 CFR, Part 35, Appendix A, (1984) (See Exhibit 13) and Minnesota Statutes, Section 116.16, Subdivision 9a, (1984) (See Exhibit 14) provide for extensive and complicated limitations on the eligibility of previously funded projects. This Item has served only to add confusion, and is in conflict with the State Statutes cited above allowing additional grants for projects which accommodate increased flows or loadings due to population and/or industrial growth. Therefore, the Item is being deleted, allowing the state statutes and federal regulations alone to govern these projects.

Item L. Modification and replacement of innovative or alternative projects. This is another provision that is proposed for deletion. This proposed change was not included in the emergency rules.

The low priority presently given to replacement of innovative or alternative projects is in conflict with the intent of the federal regulations allowing 100% funding for this purpose. Although the Agency did consider this when these rules were last revised, other priorities took precedence. Since that time, additional innovative and alternative processes have been approved and substantial concern has been expressed by the municipalities which have completed or are proposing innovative facilities. Because innovative processes involve new technology that may not function properly, cities may not be able to meet their permit conditions and may have to do additional construction. To offset the risk involved in utilizing innovative and alternative treatment methods, federal regulations in 40 CFR 35.2032 (1984) (See Exhibit 13) allow 100 percent funding for repair or replacement. Deletion of Item L will allow cities that have to replace or modify innovative or alternative projects to obtain 150 or 160 points for the new project as a major treatment facility.

The City of Northfield installed ultraviolet disinfection facilities as an approved innovative part of the city's recently completed facilities, for which Northfield received a federal grant and a state matching grant. The ultraviolet equipment does not meet the performance standards in the design specifications and the City may not be able to consistently meet the fecal coliform limits in their permit. Under the present rules, the City would receive only 10 points for repair or replacement of the ultraviolet equipment, and would probably not receive a grant. However, deletion of Item L will result in the award of 150 or 160 points for construction of disinfection facilities because such facilities would be major additions to existing facilities necessary to achieve compliance with permit limitations under the definition of "major treatment facilities". The additional points would put Northfield and other similar cities in reasonable competition for grants.

Subpart 3. Special restrictions for sewer system projects. The reference corrections in Items A, B, C, and D are the result of preceding changes in the Parts referenced, but do not change the substance. The deletions of the December 31, 1982 date in items A and B were explained under Part 0200 Definitions, Subpart 3.

Item C. Sewer system rehabilitation project or relief capacity sewer. This Item is being given a more descriptive title. This proposed change was not included in the emergency rules.

Item D. Combined sewer overflow. The current language limits award of 20 extra points to combined sewer overflow (CSO) projects that have NPDES permits. However, not all permitted CSO projects have NPDES permits. The state has

authority similar to the federal government's in issuing permits, and State Disposal System permits cover the same types of raw sewage discharges as do NPDES permits. The language change extends the award of 20 extra points to CSO projects having State Disposal System permits.

The addition of the words "or appropriation" results in the application of the same limitations on the state appropriation as exist for the state's allotment of federal funds.

0406 Extra Points.

Item B. Existing level of treatment. None of the proposed changes in Item B was included in the emergency rules.

Subitem (1) No treatment. The new language clarifies that the 40 extra points available under this Category will be awarded only for cities that have formally engineered collection systems designed to carry sanitary sewage, and not for cities that have their sanitary sewage collected by drain tiles. Discharges from tile lines are diluted by clear water and do not present the health and pollution problems of raw sewage. In addition, drain tiles generally collect effluent from septic tanks, which provide some level of treatment.

Subitem (2) Failing septic system. The purpose of awarding 30 extra points for failing septic systems is to single out those which are creating potential or existing health hazards that should be corrected before less critical problems. The language has been changed to clarify that partially sewered cities with a small number of septic systems, half of which are failing, would

not qualify. These cases represent very localized problems which state and federal funds are not intended to reach.

The new language also disqualifies from the award of 30 extra points cities which have drain tiles, or some other form of collection, or individual systems, that discharge to surface waters. Diluted or partially treated discharges to surface waters do not pose the health threat that do discharges to the ground surface. This type of surface water discharge may constitute a need, but not one worthy of 30 extra points.

Subitem (3) Primary treatment. The intent with the added language in this Subitem is to clarify that, while unsewered cities may have collection of sorts through a drain tile system, these cities would not qualify for the 20 extra points for primary treatment. Drain tiles carry clear water that would greatly dilute the septic tank effluent, which also receives some treatment by the septic tank. Therefore, the diluted and partially treated discharges do not pose problems of the same magnitude as raw sewage collected in sanitary sewers and treated only by primary facilities.

Item C. Watershed pollution abatement plan. The proposed changes were not included in the emergency rules. Changes are proposed for this section to clarify the existing rules and to establish objective criteria for the award of priority points for completion of a watershed pollution abatement plan. The current rules require development of a plan approvable by the Water Resources Board. However, the Water Resources Board does not approve or disapprove plans based on water quality criteria. A review of existing plans reveals that the plans vary widely in content and quality. Therefore, the Agency will be

responsible for reviewing the plans, and the rules are being revised to establish minimum review criteria to allow the Cities to know what constitutes an acceptable plan and when the Agency will award 15 extra points for a system that is an integral part of a watershed pollution abatement plan.

Item D. Outstanding resource value waters. With the incorporation of the definition of outstanding resource waters contained in the Agency's water quality rules, Chapter 7050, into these rules in Part 0200, Subpart 16, a definition is not needed in this Subpart and is being deleted.

Item F. Sanitary district. The word "district" was inadvertently omitted during the last rule revisions.

Item G (Current). Existing advances of allowance. The Agency is proposing to delete the provision awarding 20 extra points for cities that received advances of allowance before July 1, 1983. Advances of allowance are available under federal regulations to assist cities in planning and design, since Step 1 and 2 federal grants are no longer awarded. Advances are intended to allow cities to proceed with those tasks and be ready for a Step 3 grant when their priority number comes up. Advances are not intended to give cities a higher priority. Therefore, the provision awarding 20 extra points for cities receiving advances before July 1, 1983 is being deleted.

Item G (New). Time on needs list. The proposed new Item G was not included in the emergency rules. It provides that cities on the Needs List on January 1, 1985 (See Exhibit 15) shall receive 40 extra points. This is because during the past several years the Agency has added very few cities to the list

due to the limited funds available. However, the purpose of the list is to reflect as accurately as possible all the wastewater treatment needs in Minnesota. Therefore, the Agency will in the near future be adding a substantial number of cities to the list. However, the cities currently on the list have for the most part done technical and financial planning based on a reasonable expectation of funding within the next several years. It would be extremely unfair to them and disruptive to both the agency's and the cities' long-term planning efforts if the relative rankings of those cities changed dramatically. Therefore, the Agency proposes to give cities on the existing Needs List an assurance that they will rank above those to be added in the future. 40 points should do this.

Item H. Non-compliance. The proposed new Item H was not included in the emergency rules. In conjunction with Item G, the Agency is proposing a new provision that would allow the award of 20 extra points to cities that cannot meet the definition of 90 percent compliance. In the future a city newly added to the Needs List may have severe problems and should be given extra consideration. The inability to meet 90% compliance is a good indication of a significant problem. 20 points would probably not place a city in competition with the cities currently on the list, but would likely put it at the top of those added after January 1, 1985.

0409 Municipal Project List.

The Municipal Project List (MPL) is currently drafted once a year and contains those projects which will be funded during the upcoming fiscal year. According to the proposed rules, the MPL will also list the cities being funded under the

newly created independent state grants program. The prospective independent state program grantees will, as now, be listed in priority order, and must meet all the requirements applicable to federal projects.

Subpart 1. Adoption of a municipal project list. The added language provides that the Municipal Project List will also include the projects to be funded under the new independent state grants program.

Subpart 2. Requirements for placement on list. None of the proposed changes to Subpart 2 was included in the emergency rules except in the two instances noted below in Item C, Subitem (1), and Item E.

Item A. The proposed rules clarify that all prospective grant recipients must be listed on the Municipal Needs List before they will be considered for placement on the MPL.

Item B. This proposed provision requires prospective Step 2 and Step 2+3 grant recipients to submit a facilities plan to the Agency by December 1 prior to the fiscal year for which the Municipal Project List is prepared. Presently, prospective grant recipients need not submit a facilities plan until July 1, but the plan must be in approvable condition on July 1. The reason for moving the date up is to give the Agency time to review the facilities plan and to give each municipality seeking placement on the MPL time to respond to any deficiencies found in the plan and to make the plan approvable by the deadline.

It is rare that facilities plans, plans and specifications or user charge systems comply with all federal and state criteria for approvability when they

are submitted. Submittal by December 1 of documents that comply with the referenced regulations would allow a reasonable time span for review by staff and correction of deficiencies by the cities so that these documents could be in approvable condition by the approvability deadline, thus qualifying those cities for placement on the MPL. The requirements should not impose undue hardship on the municipalities, most of which have had facilities planning grants since 1979 or 1980, and new municipalities just added to the Needs List should be able to obtain Advances of Allowance well in advance of actually receiving a grant for construction.

Subitem (2) merely provides that if a project is being changed, an addendum to the facilities plan must be submitted by December 1. Generally, a major change is the selection of a different treatment alternative, which involves almost as much staff review time as do the original documents. Therefore, it is reasonable to require these cities to submit their facilities plans will in advance of the deadline for adopting the project list too.

Item C. This provision, which was included in the emergency rules, applies to Step 3 applicants, and provides the same December 1 deadline for submitting plans and specifications as is required in Item B for submitting facilities plans.

Subitem (1). The requirement in Subitem (1) that approvable plans and specifications be based on a previously approved facilities plan is reasonable in that plans and specification cannot be approved, per federal regulations in effect since 1972, until the facilities plan has been approved. Some larger grantees have proceeded to complete plans and specifications for a project at

their own expense before the facilities plan has been approved, which is not prohibited by law or rules. They have then submitted the plans and specifications before July 1 and expected the Agency to approve the plans and specifications, or at least consider them approvable, and place the project on the next Municipal Project List. This rule change makes clear that even though plans and specifications may be technically approvable, plans and specifications will not be approved, and a city will not be placed on a Project List, until a facilities plan has been approved.

Subitem (2). As with changes in projects under Item B(2), if a municipality is proposing to change the project after plans and specifications have been approved, the municipality must submit the new information by December 1.

Subitem (3). The rules as proposed require Step 3 applicants to meet the same December 1 deadline applicable to plans and specifications for submitting their user charge systems. The current deadline for submittal of approvable user charge systems is 90 days after approval of the MPL by the Agency Board, which is also the application deadline. However, cities have tended to concentrate on finishing their plans and specifications and have overlooked their user charge systems. Step 3 grants cannot be awarded, per federal regulations contained in 40 CFR 35.2122 (1984) (See Exhibit 13), until the systems have been approved, and a number of grant awards have been delayed over the past few years. An important element of a user charge system is an estimate of the cost per user. If construction of facilities is going to be a severe financial burden, the sooner that is brought to light, the sooner the project can be examined and changed, if necessary, preferably before the plans and specifications are done. The requirements for an acceptable user charge system are already part of the

existing rules. Part 7075.0414, Subpart 5, Item B.

Item D. The Agency proposes to move the deadline for approvable facilities plans and plans and specifications from July 1 to June 1. Federal regulations in 40 CFR 35.2015(e) (1984) (See Exhibit 13) require the submittal of the MPL to the Environmental Protection Agency (EPA) by August 31 each year. To accomplish that, and to comply with public participation regulations, the Agency must prepare a draft MPL for public comment by early July. Making accurate determinations on the status of each prospective project, possibly as many as 90 in future years, in the space of one to two weeks after the deadline, is extremely difficult and leads to numerous changes between the draft and final lists, and much confusion by grantees. Therefore, the rules as proposed change the approvability deadline from July 1 to June 1. The extra month would provide the time needed to produce a more valid draft list.

Item E. This Item requires that a city notify the Agency of its preferred funding source by June 1 so that the MPL can be accurately drafted. The requirement was included in the emergency rules, except that the deadline date was July 1 instead of June 1. The June 1 date coincides with the deadline for having an approvable facilities plan or plans and specifications and is necessary to give the Agency enough time to complete the MPL by the August 31 federal deadline.

The Metropolitan Waste Control Commission commented during the emergency rule-making process (See Exhibit 10e) that cities receiving Step 1 or Step 2 grants or advances of allowances should be required to meet all deadline dates prior to placement on the Municipal Project List (MPL), presumably for Step 2+3

or Step 3 grants. Subpart 2 requires that all cities must meet the December 1 and June 1 deadline dates before placement on the MPL.

Subpart 3. Preparation of proposed municipal project list. The proposed rules in this Subpart represent no change from current procedure except that cities will be given the opportunity to select the program they would prefer. Further explanation is offered in the analysis of Subpart 4.

Subpart 4. Procedures for drafting list. The Fiscal Year 1985 Municipal Project List is in the record as Exhibit Number 16. It was prepared in accordance with these procedures. Because there are differences between the two programs with respect to eligibility and funding levels, cities will be given the opportunity to select their preferred program. However, the state receives specific federal and state dollars each year, and one funding source may be insufficient to cover all the cities on the MPL which have selected that source. When one funding source has been depleted, the remaining cities on the MPL will be funded under the other program. According to Minnesota Statutes, Section 116.16, Subdivision 9, (1984) (See Exhibit 14), a city which refuses funding, choosing to wait until funding is available under its preferred program, is ineligible for grant consideration the following year and could be subject to enforcement action. The intent of the statute is to encourage cities to proceed as quickly as possible to meet the federally mandated July 1, 1988 compliance date when their priority ranking comes up and either state or federal assistance is available.

During emergency rule-making, the Metropolitan Waste Control Commission commented (See Exhibt 10e) that, if a grantee's preferred funding source is

depleted, the grantee should be allowed to select the other. As explained above, a grantee must proceed in the other program.

Item C provides that cities which have been identified by the Commissioner of Energy and Economic Development (DEED) as being substantial economic development projects, and which have a priority ranking below the cities on the MPL, will be funded up to the maximum set aside for that purpose. By statute, the set-aside is currently 10 percent. (See Minnesota Statutes, Section 116.18, Subdivision 3a(b) in Exhibit 14.) No effort was made in these rules to outline criteria for these projects, as DEED currently administers rules and procedures for identifying them.

The Metropolitan Waste Control Commission commented during emergency rule-making (See Exhibit 10e) that cities partially funded from the DEED set-aside one year should be funded from the set-aside each subsequent year until the city's full entitlement is reached. However, if a city's priority ranking is within the fundable range in a subsequent year, and state funds are available, the city is entitled to those state funds. The statutes provide specifically that the DEED set-aside shall be used to fund cities beyond the fundable range. (See Minnesota Statutes, Section 116.18, Subdivision 3a(b) in Exhibit 14.)

Item D reflects an attempt to assure that a sufficient number of cities are ready to proceed to construction and expeditiously utilize available grant funds. Advances of allowance are federal dollars intended to assist grantees in doing planning and design, as Step 1 and 2 grants are no longer provided by the federal government. The rules as proposed would allow the Agency the flexibility

to award advances of allowances and independent state Step 1 and 2 grants regardless of cities' priority rankings, if cities need assistance for planning and design.

Subpart 5. Reimbursement project list. Cities that wish to proceed with construction but do not have priority rankings high enough to receive grants may proceed and be reimbursed under the independent state grants program in a future year, provided they are willing to take the risk that future funds will be available. The proposed rules require that cities meet the same deadlines for submittal of plans and specifications and applications and receive the same Agency approvals as cities receiving grants. This assures that grantees are treated equitably and that those who proceed without grants reduce the risk of audit exceptions if and when grants are awarded.

The emergency rules provided that a city could not be placed on a Municipal Project List as a reimbursement project unless the Agency reasonably expected that the city would be in the fundable range the following fiscal year. This was done to protect cities farther down the Needs List in case the state program was discontinued by the Legislature. However, the Agency has received many oral comments from cities willing to take that risk because their problems are severe enough that they want to proceed now. Therefore, the proposed rule does not contain the rule restriction found in the emergency rules that a city must be within the funding range the following fiscal year.

0411 Project Eligibility.

Subpart 1, Steps eligible, and Subpart 2, General eligibility, simply outline

the types of state and federal grants available and project eligibilities per federal regulations and state statutes. The only change from current rules is that advances of allowances will be provided for Step 1 facilities planning as well as for Step 2 design. (See Part 0401, Item A.)

Subpart 3. Initiation of Construction. This Subpart clarifies that only the independent state grants program funds projects after construction has commenced. It further clarifies that, aside from the award of a grant, all rules and regulations must be complied with by a city being funded under this provision for the reasons explained in the analysis of 0409, Subpart 5.

0413 Public Participation.

The revisions to Subpart 1, Needs and project lists, and Subpart 3, Notice, merely clarify that the Agency shall give public notice of the Reserve and Reimbursement Project Lists as well as the Municipal Project List for the information of the cities included or that wish to be included on those lists.

0414 Grant Applications.

Subpart 3. Agency notification. The new language in this Subpart extends the requirement for notification by the Agency to all cities being funded to include those listed on the Reimbursement Project List, which are being allowed to proceed without grants. It is reasonable to notify those cities so that they can meet the application deadline. Since municipalities on either the Reimbursement List or the Reserve List may submit grant applications, it is necessary to add those lists to this provision of the rule.

Subpart 4. Additional information for a Step 1 grant. The requirements listed are essentially the same as those deleted from these rules in 1983 when Step 1 and Step 2 federal grants were eliminated under the Act. However, the independent state grants program now funds Step 1 and Step 2 grants. Therefore, the requirements are again being placed in the rules. The Agency has administered the award of hundreds of grants under these requirements in the past, so it is reasonable to continue requiring the same information for Step 1 and Step 2 grants.

The following items were not included in the emergency amendments to Subpart 4 and are proposed for inclusion now.

Item C. A schedule for completion of facilities planning is added so that the grantee's progress can be tracked. If the grantee does not proceed on schedule, the grant may be terminated and the funds used for other projects.

Item H. A requirement for a council resolution stating that the city will maintain records of costs incurred for facilities planning is added because state law requires that the grant must be reduced if the actual costs are less than the amount on which the grant was based. Minnesota Statutes, Section 16A.41.

In addition, a requirement that the city submit cost estimates for construction was eliminated from the current rules because it is very difficult for a city to estimate construction costs before facilities planning is done. The requirement was originally intended to provide the basis on which the Step 1 grant amount is calculated, in accordance with 40 CFR Part 35, Appendix B (See

Exhibit 13). However, the amounts of Step 1 grants and allowances will be calculated based on Agency data on actual Step 3 costs for similar projects.

Subpart 5. Additional information for a Step 2 or Step 2+3 grant. As explained in the analysis of Subpart 4, Step 2 grants are now available under the independent state grants program. Since the state and federal programs are essentially parallel, it is reasonable to apply the same application requirements to Step 2 grantees under the state program as are applied to Step 2+3 grantees under the federal program. The proposed language additions in this Subpart provide that the information listed will be required of Step 2 applicants as well as Step 2+3 applicants.

In addition, there are a few changes being proposed in the requirements, and these are discussed below.

The change proposed in Item A would require the designated representative for the city to sign all official grant documents, not just the application. This new language merely places past practice into the rules.

Item C. The deleted language is redundant. The "appropriate time" for a city to construct a collection system is concurrently with the treatment works.

Item F (Current). The requirement that amendments to the facilities plan be submitted with the Step 2 or Step 2+3 application is being deleted here and moved to 0409, Subpart 2, as a requirement for placement on the Municipal Project List. The reasons are explained in the analysis of Part 0409. This proposed change was not included in the emergency rules.

Item F (New). The Agency proposes the requirement that, as provided by state law in Minnesota Statutes, Section 16A.41, whenever state funds are involved, cities keep records of the costs incurred so the costs can be reviewed during audit. Recipients of federal Step 2+3 grants alone do not have to keep records of costs incurred for the Step 2 portion because the federal government does not audit the City's costs. Therefore, this rule makes clear that the requirement applies to state grant recipients only. This proposed requirement was not included in the emergency amendments.

Item G. The current language is confusing. Cities need to be assured that a major industry will continue to contribute the same loadings to the system as those on which the facilities planning was based. The new language clarifies that the treatment agreements required are from each major discharger that will discharge to the system, not just those that went into determining the design bases of the system. (See the definitions of "major contributing industry" and "treatment agreement" in Part 0200, Subparts 13 and 26, respectively.)

Item K. The Agency proposes to require completion schedules for the Step 2 work. Schedules are essential if a City's progress and compliance with grant conditions are to be monitored. Failure to complete a project in a timely manner is grounds for termination of the grant under federal regulations contained in 40 CFR 35.2212 (1984) (See Exhibit 13). This requirement was not included in the emergency rule.

Item L. The current language requires that cities submit with their grant applications all documents required by the Act and EPA regulations. The proposed language clarifies that applicants must also comply with the

requirements of the state statutes, which reflect the creation of the independent state grants program, and with other federal statutes not included in the Act. An example of federal statutes that apply to the program, but are not part of the Act, is the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646).

Subpart 6. Additional information for a Step 3 grant.

The language in existing Items A through D requiring submittal of addenda to the plans and specifications and the submittal of information relating to a user charge system is being deleted here and moved to Part 0409, Subpart 2, which outlines the requirements for placement on the Municipal Project List. The reasons are described in the analysis of Part 0409.

Item A (New). The Agency is proposing a requirement for submittal of a resolution by a city applying for a grant. The resolution has always been required under the Act, but was inadvertently omitted in the 1983 revisions and the emergency rules.

Item C contains new language that clarifies that a grantee must submit the costs for all the documents listed, and must submit the documents themselves. Some grantees assume that only the costs for the start-up proposal are required, but not the proposal itself. The language requiring a proposal for a performance certification, as well as a start-up procedure, is a result of new federal regulations in 40 CFR 35.2218 (1984) (See Exhibit 13). These federal regulations require cities to certify at the end of construction that the facilities meet the design criteria and are capable of meeting the permit

conditions for the design life of the facilities. The new language was not included in the emergency rules.

Item H. See the Analysis of Subpart 5, Item G.

The language in Item O is being deleted and replaced by that in Item L. The new language was not included in the emergency rules. The Agency has experienced significant problems with grantees obtaining all rights to land and easements after a Step 3 grant has been awarded. The lack of clear title to the land has in several cases considerably delayed the start of construction. Federal regulations require clear title to land before construction can commence and also require construction to begin expeditiously. Grantees know at the time of facilities planning approval what land must be purchased. They have sufficient time before award of a Step 3 grant or authorization to bid under a Step 2+3 grant to accomplish the purchase, even if condemnation is necessary. Therefore, the requirement for a legal opinion indicating clear title to all land with the application should not impose significant hardship on the grantees and should expedite initiation of construction.

Item M. See the Analysis of Subpart 5, Item L.

Subpart 7. Requirements prior to authorization to seek construction bids. The new language was not included in the emergency rules. The current language requires that a Step 2+3 grantee submit all the information required of a Step 3 applicant in Subpart 6 before the Agency authorizes the city to bid the project. The new language was added because some of the items in Subpart 6 are proposed to be moved to Part 0409, Subpart 2, and the language clarifies that approvable

plans and specifications, addenda, and a user charge system are still required. The deadlines contained in Part 0409, Subpart 2 do not apply to cities which have previously been awarded Step 2+3 grants.

0416 Approval of Grant Applications.

The proposed addition of the word "federal" clarifies that only applications for federal grants will be certified to EPA. The Agency is not required by state or federal statutes to submit applications for state dollars to the EPA.

0417 Tender of Federal and State Matching Grants.

The new language in the title of this Part clarifies that the requirement for determination by EPA of the eligibility of a project applies only to federal grants and state matching grants. The Agency makes all eligibility determinations for independent state grants according to federal and state law and rules.

0419 Advances of Allowance.

Subpart 1. Allotment reserve. Advances of allowance are available under the federal grants program, but are not provided for in state statutes. Therefore, the word "federal" is being added to define which allotment is used for advances. Also, because a significant number of small towns not currently in the grants program now have needs for wastewater treatment, the Agency is proposing to extend facilities planning assistance in the form of allowances to those cities. Economic conditions of the recent past have made cities reluctant

to expend local funds to examine solutions to their wastewater problems. Advances of allowances will provide some financial assistance and will perhaps be the incentive needed for the cities to proceed.

Subpart 2. Advance of allowance. The Agency is proposing to increase the maximum population which a city may have in order to qualify for an advance of allowance from 3500 to 25,000. The same reluctance to expend local funds described in Subpart 1 extends to cities with populations over 3500 and which are ready to do design. Several such cities have expressed the desire for advances of allowances. Two of these are Hibbing and Virginia. Federal regulations in 40 CFR 35.2025 (1984) (See Exhibit 13) require that advances be given only to small towns, but the regulations allow the States to define small towns. The Agency wishes to encourage cities to proceed with plans and specifications as soon as facilities planning is approved so that they are ready to proceed to construction when their priority rankings come up. Providing advances of allowance for design will facilitate this. Therefore, the Agency is proposing to increase the population figure for a "small town." The figure included in the emergency rules was 10,000, but the EPA has historically used a figure of 25,000 to describe a small town, so the number has precedence.

As explained in the analysis of Part 0409, Subpart 4, Item D, the Agency wishes to have the flexibility to award advances at any time to keep projects moving and expeditiously utilize all available funds. Therefore the requirement for submittal of an application for an advance by July 1 prior to the fiscal year for which the Municipal Project List (MPL) is prepared is being deleted and replaced with language requiring submittal within 60 days after notification by the Agency that an advance is being offered. Federal regulations do not require

that cities receiving advances be listed on the MPL, and the proposed change to Subpart 2 severs all mandatory ties to the MPL. The Agency does, however, plan to list on the MPL those potential advance recipients which it is aware of at the time the MPL is prepared.

Subpart 3. Information required for advance of allowance.

Items B, D, E, F and G (All current). The Agency is proposing to delete these Items, which are currently required as indicators of a city's financial condition. Federal regulations in 40 CFR 35.2025 (1984) (See Exhibit 13) state that advances can only be given to small cities which would not otherwise be able to proceed to Step 2+3 or Step 3, in the judgment of the state. The current language in Items B, D, E, F and G is being deleted because, while they were originally intended as indicators of whether or not a city could afford to fund planning and design on its own, the Agency is assuming that all cities below a population of 25,000 need assistance to do so. These cities, if they were to fund Step 1 and Step 2 themselves, could receive payment for some of this work after award of a Step 2+3 or Step 3 grant. However, given the limited future federal funding projected, some cities may never receive federal grants. Therefore, the Agency feels that any small town on the Needs List should receive federal assistance while it has the opportunity to do so. The only one of these changes that was included in the emergency rules was the deletion of Item G.

Items A and B (New). Although advances of allowance are not grants as such, and the federal government has very few regulations associated with them, advances of allowance do represent a commitment of federal funds for the purpose of assisting grantees in doing facilities planning or design. Therefore, it is

reasonable to require of advance recipients the same information as is required of grant recipients in Part 0414, Subparts 4 and 5, to assure that the cities will proceed to do appropriate facilities planning or design. The new language in Items A and B requires this. The council resolution requirement being deleted from current Item A is included in Subparts 4 and 5 of Part 0414. The changes described in this paragraph were not included in the emergency rules.

Item C. The proposed change was not included in the emergency rules. Item C is being deleted because a city cannot make an adequate estimate of construction costs before facilities planning is done. It was originally intended to serve as the basis for calculating the amount of the allowance, in accordance with 40 CFR, Part 35, Appendix B (1984) (See Exhibit 13). However, the allowance can be more accurately and fairly calculated based on Agency data on the average Step 3 costs of similar size projects actually constructed recently, rather than based on an estimate provided by the city, and will still be in compliance with the cited regulation.

Subpart 3a. Submittal of facilities plan. This language requires potential Step 2 advance recipients to meet the same December 1 and June 1 deadlines as potential Step 2+3 grant recipients. This was done to encourage cities to finish their facilities planning and meet the June 1 deadline in the hope that they could get a design advance regardless of their priority rankings. The emergency rules only required submittal of an approvable facilities plan by July 1.

Subpart 5. One advance limit. The new language allows the award of advances of allowance for facilities planning as well as design, for the reasons described in the analysis of Part 0401, Item A.

Subpart 6. Reduction of Step 3 grant. The new language clarifies that if a city received an advance, it cannot receive a grant for the same work. The current language is confusing.

Subpart 7 (Current). Reimbursement for advance. The language requiring an advance of allowance recipient to pay the advance back if the city never proceeds to Step 3 is proposed to be deleted. While federal regulations permit the states to recoup advances, it is not practical or fair to demand the advance back. The reason that a city doesn't construct the project may be that funds are unavailable. The city may have requested the advance and performed the work in good faith, but cannot afford to construct the project as planned.

Subpart 7 (New). Payments. This Subpart was not included in the emergency rules. The new language tells where to look for the method of payment as an aid to the reader. It also provides that if a city does not proceed in a timely manner to do the work for which the advance was intended, the Agency can recover the advance funds. The purpose of advances is to keep cities progressing through the program, so this provision is reasonable.

The language in the last sentence in Subpart 7 gives the Agency the right not to list a city on the MPL for a Step 2+3 if the city has not made adequate progress in doing design after the Agency awards an advance of allowance. The Agency will list a project on the next Municipal Project List for a Step 2+3 to enable the city to proceed to construction as soon as the plans and specifications are approved. Otherwise, the city would have to wait until the following year's MPL to be listed for a Step 3 because of the June 1 deadline on approvable plans and specifications, thus adding another year before

construction. However, if the award of an advance does not speed up the design, there is no point in awarding it. The Agency could just as well list the city on the next MPL for a Step 2+3 grant without awarding an advance first. The possibility of not being listed for a Step 2+3 on the next MPL might make the city proceed quickly with design to avoid even further delays. The costs for the Step 2 portion of a Step 2+3 grant will, of course, be deleted if an advance has already been awarded.

Subpart 8. Order of award for advance. The proposed deletion of this Subpart was not included in the emergency rules. This Subpart currently requires that advances be awarded in priority order if more cities request advances than the set-aside can accommodate. The Subpart is being deleted to allow the Agency the flexibility to award advances regardless of priority ranking for the reasons explained in the analysis of Part 0409, Subpart 4.

0420 Grant Amendments.

Subpart 1a. Limitation of Step 1 and 2 grant increases. This Subpart was not included in the emergency rules. The Agency proposes to cease awarding Step 1, Step 2, and the Step 2 portion of Step 2+3 grant increases on December 31, 1985, for grants awarded before May 12, 1982, the last date such grants were available. A grantee that was awarded a grant to do facilities planning or design before May 12, 1982 has had sufficient time to complete those tasks by now. If the grantee has not finished Step 1 or Step 2 to this point, the grantee will have until December 31, 1985 to request an increase, if the increase is needed to enable the city to finish Step 1 or Step 2. If work remains after that date which will not be covered by grant funds, the work

should be minor. At any rate, those grantees have received 90% funding of all eligible costs to date. Currently, cities doing planning and design receive between 50% and 75% of an allowance for those tasks, based on federal tables, and the allowance may or may not cover costs actually incurred. Therefore, the provision to cease Step 1 and Step 2 grant increases is not unreasonable and will allow the close-out of all grants awarded before May 12, 1982. All increase requests must comply with Subpart 3.

Subpart 2. Approval of Step 3 and the Step 3 portion of Step 2+3 grant increases. This provision was added to the rules in 1983 to put some restrictions on grant increases so the Agency could better anticipate how much money would be available each year for new municipalities waiting for a grant. Since the effective date of this provision then, all grantees have been restricted to grant increases only for unanticipated site conditions and only for up to 2% of the as-bid costs.

These restrictions, however, even though they applied to all grantees in the program at the time, only applied to Step 3 and the Step 3 portion of Step 2+3 grants. The new language in this Subpart clarifies this point.

There also has been confusion about whether or not costs can be increased after bidding, but prior to award of the after-bid amendment. The intent of this rule was that grants should not be amended after bidding other than to accommodate the actual bid costs and establish a 3 percent contingency that all grants are subject to. Thus, the last chance for a city to add engineering or other costs to the project is before bidding. By the time the project is bid, the plans and specifications will have been approved, the scope of the project will be well

defined, and the bidding climate and economic conditions can be taken into consideration. Anything overlooked at that point will be the city's responsibility to fund.

After bidding, the 3% contingency that is available to all grantees is established against which the city may charge change orders approved by the Agency. Rebudgets may be requested to transfer funds from the contingency to the engineering or administrative categories, and the contingency will be reduced accordingly. The only reason that a grant may be increased after bidding is to cover additional costs due to unforeseen site conditions which reasonable soil exploration and surveying could not uncover or prevent. The limit of grant participation for unforeseen site conditions is 2% of the as bid costs. The grant limitations described in Subpart 2 are contained in Minnesota Statutes, Section 116.16, Subdivision 2(8) (1984) (See Exhibit 14).

0422 Payment of State Grant Funds.

This Part is being deleted and its requirements listed in Parts 0429 through 0432, which outline the methods for payment of the 3 different types of grants available, i.e., state matching grants, independent state grants, and advances of allowances. Part 0432 covers general requirements.

0423 Retained Payments.

The proposed changes were not included in the emergency rules. The current language provides that grant payments may be withheld if the requirements in Part 0422, Payment of State Grant Funds, are not complied with. The new

language references the proposed new payment requirements in Parts 0429 through 0432. While some of the payment requirements are proposed to be changed, the intent of Part 0423 remains the same, that is, that cities must meet the payment requirements in order to be paid.

0425 Local Share.

Subpart 1. Projects for which federal money is available. This Subpart is being deleted because grants for cities that would qualify for federal grants, but wish to proceed without federal grants, were eliminated by the 1984 Legislature.

Item A. The proposed change was not included in the emergency rules. The Agency proposes to clarify when an applicant for a state grant to cover the local share of a project must submit an application. Fiscal years referred to in other provisions of these rules are federal fiscal years beginning October 1. The current language in Item A, however, refers to the state fiscal year, which begins on July 1. The new language clarifies that it is a July 1 fiscal year that is being referenced. Thus, this proposed amendment does not change the deadline for submission, but clarifies that it is the next state fiscal year for which a grant is sought.

Item B. The proposed changes were not included in the emergency rules. The Agency proposes that cities requesting grants for their local shares of their projects be required to meet the criteria for award of the maximum financial hardship grant amount in Part 0428, Subpart 4. The criteria listed in Part 0428, Subpart 4, are now proposed to be used throughout these rules as

indicators of a city's financial need. For consistency, these criteria are utilized in this Item also. The criteria are explained in the analysis of Part 0428, Subpart 4.

Item C. This proposed change was not included in the emergency rules. The Agency proposes to make the award of a state grant for the city's local share consistent with the award of all other types of grants in these rules by requiring Agency approval prior to initiation of construction. The reasons for the requirement are to protect the grantee from constructing poorly designed or inadequate facilities and to protect the grantee from audit exceptions due to improper procurement practices.

0428 Grant Amounts. (all new language)

Subpart 1. State matching grants. The language in This Subpart is an abbreviated version of Minnesota Statutes, Section 116.18, Subdivision 2a (1984) (See Exhibit 14).

Subpart 2. Independent state grants.

Item A. State statutes provide for the award of Step 1 (facilities planning) and Step 2 (design) state grants, but do not specify how they shall be calculated (See Minnesota Statutes, Section 116.18, Subdivision 3a(a) in Exhibit 14). The Agency proposes to use the same method as is used to calculate federal allowances, which cover facilities planning and design, in an effort to treat grantees equitably and to minimize confusion and review time. The major difference between the two programs is that the state cannot by law give a

grantee more than the contractual percentage of actual costs incurred. (Minnesota Statutes, Section 16A.41). However, federal regulations provide that a grantee may receive the contractual percentage of the amount of the allowance calculated according to the tables in 40 CFR, Part 35, Appendix B, regardless of the actual costs incurred by the grantee. State grants, but not federal allowances, will be reduced if the amount on which the offer is based is more than the actual costs incurred, according to invoices. Although the rule doesn't repeat the Statute, the statutory requirement will require the state grant to be reduced in such instances.

Item B. The language in Item B is a summary of Minnesota Statutes Section 116.18, Subdivision 3a(a) (1984) (See Exhibit 14), except for the language which states "and the municipality is constructing advanced treatment." This particular language was not included in the emergency rules. That language is proposed to coincide with the intent of the statutes, i.e., that additional assistance should be provided to those cities actually constructing advanced treatment facilities (See Minnesota Statutes, Section 116.18, Subdivision 3a(a) in Exhibit 14). Without that added language the statute might be construed to intend that whenever an advanced treatment standard is imposed, the city should received a 65% grant. In part 0405, stabilization ponds received 160 priority points when tertiary standards are imposed, but only 150 points when secondary standards are imposed. Some readers may conclude from the statutes alone that 65% grants should be awarded whenever advanced (tertiary) treatment is required, regardless of what is being constructed. Ponds do not constitute an added financial burden to a city and therefore should not be funded at the higher level. Land application facilities, on the other hand, when constructed because of advanced treatment standards, do constitute an added financial burden, and

the project should be funded at the 65% level. The same is true of phosphorus removal facilities, tertiary filters, or any other facilities constructed in addition to secondary treatment facilities because of advanced treatment standards.

Some thought was given to funding only the tertiary treatment portion of a facility at 65%. This was rejected because the costs associated with meeting tertiary standards are often difficult to separate from the cost of the secondary treatment facilities. Also, the added burden to the city is not solely due to the cost of construction, but also to the added operation (chemicals, electricity, operators) and maintenance (repair and replacement of mechanical parts) costs.

Subpart 3. Local share. This proposed language is a re-statement of Minnesota Statutes, Section 116.18, Subdivision 2a, except for the reference to Part 0425. The exclusion in Part 0425 stems from Minnesota Statutes, Section 116.18, Subdivision 2(c), and means that under certain very limited conditions as outlined in Part 0425, a grantee can receive a grant for all of the local share, and therefore the provision in Subpart 3 that all grantees be responsible for at least 25% of the eligible cost of their projects would not apply in these cases.

Subpart 4. Significant financial hardship. The criteria for determining financial hardship are statutory. (See Minnesota Statutes, Section 116.18, Subdivision 3a(a) (1984) in Exhibit 14.) However, the specific methods of utilizing the criteria are not in the statutes. In compiling the tables, the Agency gave equal weight to each indicator and used readily available objective data and simple computations. The incremental percentages were placed at .5% so

that small changes in a city's standing on one of the indicators would not have a significant impact on the percentage received.

For each indicator, the statewide median was obtained and each project on the Needs List was compared to it. The tables were then developed based on how the projects clustered on each indicator. 90 percent of the projects would receive some additional funding according to the tables as proposed. 12 percent would receive from 10.5 to 15 percent; 39 percent would receive between 5.5 and 10 percent; and 39 percent would receive between .5 and 5 percent. This seems reasonable in light of the fact that the large cities, which are more able to finance projects with less assistance, have been funded, and the Needs List now contains smaller, less financially capable towns. However, the Legislature intended that only the most financially needy cities should receive the maximum additional funding. Exhibit 17 outlines the estimated percentage each city on the Needs List will receive on each indicator. It also contains a worksheet for calculating the percentages. During emergency rule-making, the Metropolitan Waste Control Commission commented that this information should be made available (See Exhibit 10e). Grantees will be provided with the worksheets in their application packets and upon request.

Item A. Per connection capital cost means the total, not the grant eligible, cost of a project divided by the number of connections, which represents the number of users of the system that would share in the costs. This information is available from the facilities plans and will be adjusted after bidding to reflect actual costs. Total cost, as opposed to local share, is used because some cities may obtain assistance from other funding sources for the local share. Eligible costs are not used because they do not represent the

total financial burden on a city. The median of projects actually bid during the past two years provides true costs, while the estimates for projects on the current Municipal Project List (MPL) or Needs List do not. Two years provides an adequate range of projects, while being reasonably representative of current costs. The two years prior to preparation of the MPL, rather than the award date, are used to provide a static field of projects from which a median can be calculated, and which can be used consistently throughout the public participation process required to be followed in finalizing a MPL each year. The words "ending July 1" in the first sentence of Item A were not included in the emergency rules.

Item B. Median Household Income is based on the latest federal census because there are no official updates to this figure outside of the census data. Any other update would be subjective and inconsistent across the state. During emergency rule-making, the Metropolitan Waste Control Commission commented (See Exhibit 10e) that the use of the non-metropolitan median household income has no statutory basis. While it is true that the words "non-metropolitan" are not in the statutes, the non-metropolitan median is used as the comparison basis because, if the metropolitan area data were included, almost everyone outside the metropolitan area would qualify for the maximum, and income would not be a valid indicator of relative need among the grant candidates.

Item C. Per Capita Adjusted Assessed Valuation (PCAAV) is calculated yearly by the Department of Revenue for every city. Thus, the PCAAV and the state median PCAAV are readily available whenever a grant is awarded.

0429 Payment of State Matching Grants (all new language)

Subpart 1. Step 1 matching grants. This proposed language represents no change from the current method of paying Step 1 state matching grants. Part 0422 of the current rules contains no language regarding Step 1 matching grants because the Municipal Wastewater Construction Grants Amendments of 1981 (P.L. 97-117) (See Exhibit 11) do not provide for award of Step 1 and Step 2 federal grants. Therefore, the payment procedures for Step 1 and Step 2 matching grants were deleted in the 1983 revisions to Chapter 7075. However, with the creation of the Independent State Grants Program, Step 1 and Step 2 state grants will be awarded. To distinguish the state grants from the remaining state matching grants that have not yet been closed out, and for which payments are still being made, language outlining the method of paying Step 1 matching grants is being proposed.

Subpart 2. Matching grants for federal grants awarded before May 12, 1982. See the analysis of Subpart 1 for an explanation of why language regarding Step 2 matching grants is proposed to be reinstated. The proposed language provides that Step 2 matching grants will be paid as they currently are, except that a user charge system (UCS) and a preliminary plan of operation (PPO) must be submitted before 50% payment and approved before final payment. There are currently no payment provisions in Part 0422, Subpart 1, related to a UCS or PPO for Step 2 matching grants. These two documents are often overlooked by grantees, who concentrate on completing plans and specifications, and do not make timely progress on all aspects of Step 2 work, thus delaying award of Step 3 grants. The requirements relating to a UCS and a PPO were not included in the emergency rules.

Subpart 3. Step 2 portion of Step 2+3 matching grants for federal grants awarded before May 12, 1982. The May 12, 1982, date is significant because on that date the new federal regulations in 40 CFR 35.2025 (1984) (See Exhibit 13) providing design allowances, rather than reimbursement grants, went into effect. It is proposed that the Step 2 portion of a Step 2+3 state grant that matches a federal grant awarded before May 12, 1982, be paid as a Step 2 matching grant is paid, except that final payment will be delayed until after the Agency authorizes bidding, rather than after approval of the plans and specifications, user charge system, and preliminary plan of operation. This will encourage timely completion of all Step 2 work tasks and progression toward bidding on Step 2+3 projects, which currently progress very slowly. Also, it is proposed that a user charge system (UCS) and a preliminary plan of operation (PPO) be submitted before 50% payment for the reasons discussed in Subpart 1. The language regarding a UCS and a PPO was not included in the emergency rules.

Subpart 4. Step 2 portion of Step 2+3 matching grants for federal grants awarded after May 12, 1982. It is proposed that these grants, which include design allowances, be paid in the same manner as is provided in the current rule in Part 0422, Subpart 1, except that final payment of the design allowance will not be made until after the project is bid and construction contracts are signed. The current rule provides that final payment of the design allowance will be made after plans and specifications are approved by the Agency. The change is proposed because, according to 40 CFR Part 35, Appendix B, (1984) (See Exhibit 13), when construction contracts are signed, the amount of the federal allowance is adjusted based on as-bid costs and then final federal payment is made. The state matching final payment of the allowance will not be made until the U.S. Environmental Protection Agency has made the final payment.

While not required by federal regulation, the proposed language provides that the grantee inform the Agency of the amount of actual costs incurred. By state law, the state grant must be reduced if actual costs are less than those on which the grant was based. This provision was not included in the emergency rules.

Subpart 5. Step 3 matching grant. It is proposed that Step 3 matching grants be paid as they are currently with the following exceptions. None of these proposed changes was included in the emergency rules.

Item B. The current language in Part 0422, Subpart 2, Item B, requires only that a city have a qualified operator. The proposed new language requires that cities provide evidence that they have hired a qualified operator. This evidence might include a copy of their operator's certificate, or a copy of a contract with another city to utilize their operator. It often happens that the city's current operator does not obtain the certificate appropriate to the new class of plant, or that the city neglects to discuss operator-sharing with neighboring cities, or the operator resigns or is fired, or for some other reason the city does not have a qualified operator. The evidence of hiring should provide greater assurance that the city will have a qualified operator on staff before construction is completed.

Item D. The current payment provision in Part 0422, Subpart 2, Item D, requires adoption of a user charge system (UCS) that will cover operation costs. The proposed language uses the term "sewer service charge system" because it is more descriptive. Language is also proposed which requires that the sewer service charge system be adopted with updated costs based on actual

construction, and not estimates previously used in drafting the sewer service charge system.

Item K. The current rule in Part 0422, Subpart 2, Item K, requires only submittal, but not approval, of a revised operation and maintenance manual. When construction is complete, the operation and maintenance manual previously approved by the Agency must be revised to accommodate equipment manuals and warranties, and any unanticipated changes or refinements made to the facilities. The proposed language would require that, for the operator's sake, the revisions must be approved to assure proper operation and maintenance.

Item L. An approved final plan of operation is proposed as a new requirement for final payment. The final plan of operation is a federal requirement that has often been overlooked by the grantees. It is being specifically added as a requirement for payment in the hope of assuring its submittal in a timely manner.

Item M. The current language in Part 0422, Subpart 2, Item L, requires all Step 3 matching grant recipients to submit a start-up report. The new language in Item M imposes this requirement only on recipients of state grants that match federal grants awarded before December 29, 1981, at which time Public Law 97-117 (See Exhibit 11) was passed and new requirements outlined in Item N became effective for grants awarded after that date.

Item N. The language in this Item reflects the fact that start-up regulations and requirements changed on December 29, 1981 with Public Law 97-117 (See Exhibit 11). Item N imposes the new federal requirements in 40 CFR 35.2218

(1984) (See Exhibit 13) on recipients of state grants which match federal grants awarded after December 29, 1981. These grantees must certify that the facilities will meet the design performance standards.

Item O is proposed as a new requirement stemming from federal regulations in 40 CFR 33.240 (See Exhibit 12), which provide that cities must give extra consideration to hiring small, minority and women's businesses. The required report must outline the city's efforts in this area and give an accounting of the amount of work contracted to small, minority and women's businesses.

Subpart 6. Step 3 portion of Step 2+3 matching grant. These grants are proposed to be paid in the same manner as are Step 3 matching grants in Subpart 5.

Subpart 7. Step 3 matching grant with allowance. A Step 3 matching grant with allowance is proposed to be paid in the same manner as are Step 3 matching grants in Subpart 5 except that provision is made for payment of the allowance. 50% of an allowance for planning and/or design is paid after award of the Step 3 grant and 50% after construction contracts are signed, per EPA regulations in 40 CFR Part 35, Appendix B (1984) (See Exhibit 13). The emergency rules provided that the entire allowance would be paid after award. However, this conflicts with the EPA regulations cited above. Also, as explained in Subpart 4, the city must submit proof of actual costs.

0430 Payment of Independent State Grants. (all new language)

The methods of paying independent state grants represent state and federal law,

EPA methods and stop points, past practice, and provision of incentives for timely completion. If grantees and their consultants manage a project well and comply with all federal and state rules and regulations, which are intended to result in a facility that meets performance standards and will be operated and maintained such that the facility will meet the permit conditions throughout their design life, payments will be made by the State and Federal governments to allow the grantee to make timely payments to all contractors. If the project is not well managed and rules and regulations are not complied with, payments will stop until corrections are made.

Subpart 1. Step 1 grants for sewered communities. It is proposed that Step 1 and Step 2 independent state grant payments be made in the same manner as are Step 1 matching grants with the following exception. A 25 percent payment is made when the facilities plan is 50 percent complete. A matching grant recipient does not receive any payments before 50%, but it does receive federal payments as often as monthly. Independent state grant recipients do not receive any federal payments. Three payments at 25%, 50% and 100% represent a schedule that should be sufficient to allow the grantee to make reasonably timely payment to its consultant, and yet should provide incentive to complete the project.

Subpart 2. Step 1 grants for unsewered cities. It is proposed that a Step 1 unsewered city receive a 25% payment after the Phase 1 thorough needs determination has been done. If the needs do not warrant further planning, this will be the final payment. The true needs of an unsewered city are not as readily discernible as those for a sewered city, which has been submitting monthly monitoring reports to the Agency for several years. If the needs warrant, 75% of the grant will be available for facilities planning. The

remaining payments are then made in the same manner as are payments for a sewered city, as outlined in Subpart 1.

Subpart 3. Step 2 grants. It is proposed that Step 2 grants be paid in the same manner as are Step 1 grants in Subpart 1, except that the document required is a set of plans and specifications, rather than a facilities plan.

Subpart 4. Step 2 portion of Step 2+3 grants. The emergency rules provided that the Step 2 design allowance portion of a Step 2+3 independent state grant would be paid in 3 installments, 25% when the plans and specifications are 50% complete, 50% when plans and specifications are submitted, and 100% when the project has been bid and construction contracts are signed. However, it is proposed that the Step 2 design allowance portion of a Step 2+3 state grant be paid in the same manner as is the Step 2 design allowance portion of a Step 2+3 matching grant for federal grants awarded after May 12, 1982 (See Part 0429, Subpart 4) for two reasons. First, paying matching grants and independent grants in the same manner reduces confusion. Second, the Agency is very concerned about the slow progress of Step 2+3 projects. Very few Step 2+3 grantees have advertised for bids on their projects on schedule. Providing only two payments, one after plans and specifications are submitted, and one after the project has been bid and construction contracts have been signed, should encourage grantees to proceed in a timely manner. Authorization to bid a project is not given, per EPA regulations in 40 CFR 35.2202 (1984) (See Exhibit 13), until the plans and specifications are approved and all Step 2 tasks have been completed and approved.

Subpart 5. Step 3 portion of a Step 2+3 grant. It is proposed that Step 3

payments be made in almost the same manner as are Step 3 matching grant payments in Part 0429, Subpart 5 except as follows. Because cities will not be receiving any federal payments, periodic payments will be made up to 80 percent, rather than 50%, provided that some of the requirements for final payment of Step 3 matching grants are met before release of any Step 3 independent state grant payments past 50 percent. The requirements for payment past 50%, as listed in Item B, Subitems (1) through (6), are in accordance with federal regulations or are necessary to provide for adequate start-up and operation of the facilities. See the analysis of Part 0429, Subpart 5, for an explanation of the proposed changes from the current rules in Part 0422, Subpart 2 and emergency rules. During emergency rule-making, the Metropolitan Waste Control Commission commented (See Exhibit 10e) that independent state grants should be paid in the same manner as are state matching grants. However, because cities will not be receiving payments from the EPA, stopping payment at 50%, as provided for Step 3 matching grants in Part 0429, Subpart 5, would almost certainly not allow grantees to make prompt payment to contractors without incurring substantial interim financing costs.

Subpart 6. Step 3 grants. It is proposed that Step 3 independent grants be paid in the same manner as are the Step 3 portions of Step 2+3 independent state grants outlined in Subpart 5.

Subpart 7. Step 3 grant with allowance. It is proposed that Step 3 independent state grants that contain allowances for facilities planning and/or design be paid in the same manner as are the Step 3 portions of Step 2+3 independent state grants outlined in Subpart 5. Language is also proposed which provides that allowances will be paid in accordance with federal regulations in 40 CFR Part

35, Appendix B (1984) (See Exhibit 13). This means that 50% of the allowance will be paid after award of the Step 3 grant, and final payment will be made after the project has been bid and construction contracts are signed. The emergency rules provided that the entire allowance would be paid after award of the Step 3 grant, but the final amount of the allowance is not calculated until the as-bids costs are known.

Language is also proposed that requires a grantee to submit a copy of the final invoice and cancelled check as proof of payment, so that the allowance can be reduced if actual costs incurred are less than the amount on which the allowance was based, in accordance with state law.

0431 Payment of Advances of Allowance. (All new language)

Federal regulations in 40 CFR 35.2025 (1984) (See Exhibit 13) provide that advances of allowance for facilities planning or design may be paid to recipients by whatever methods the states choose, including prior to initiation of planning or design by the recipients. The Agency proposes to make one payment when the city has signed the allowance award agreement and has submitted a payment request. An advance of allowance, which is provided from a set-aside from the State's yearly federal allotment, is not based on the costs that a city incurs doing planning or design. An allowance is a percentage of the Step 3 construction cost, as outlined in Appendix B of the previously referenced federal regulations. The amount awarded as an advance of allowance is an estimate that will be adjusted after a Step 3 grant is awarded and the as-bid construction costs are known. Because the advance is not based on costs incurred, and will not change during planning or design, the Agency proposes to

make only one payment whenever the recipient requests payment. Part 0419, Subpart 7 provides that the State may recover the advance if a city does not make satisfactory progress on planning or design according to the schedule in the advance of allowance award agreement. That provision should provide adequate protection of federal dollars and should encourage cities to proceed on schedule. The emergency rules provided that three payments would be made, but the amounts are likely to be very small because the cities which haven't yet done planning and design are very small. Therefore, the Agency proposes to make one payment.

The exception to the above procedure is contained in the language of Subpart 2. The Agency proposes that an unsewered community awarded a Step 1 advance of allowance receive a 25% payment upon request to assist the city in doing a thorough needs determination. If the needs determination shows and the Agency agrees that facilities planning is not warranted, the 25% will constitute final payment. If facilities planning is necessary the remaining 75% will be paid upon request. This procedure helps assure that careful consideration is given by unsewered cities and a definite need demonstrated before the city becomes involved in the lengthy and expensive process of planning, designing, and constructing wastewater treatment facilities.

0432 General Requirements. (all new language)

The language in Part 0432 that represents a change from current payment rules is contained in Subpart 2.

Subpart 2. Reduction in state grant payments. The proposed language reflects the fact that the State can pay a city no more than the contractual percentage of costs actually incurred. If the grant amount is more than the contractual percentage of costs incurred, the grant amount will be reduced accordingly.

2000 Application for Construction Loan Program.

Subpart 2. Attachments for planning loan. The proposed language provides a more descriptive title to Subpart 2. It was not proposed in the emergency rules.

Subpart 3. Attachments for construction loan. The proposed language provides a more descriptive title to Subpart 3.

Item A. The Agency is proposing to add a Subpart to Part 0414, which is referenced in Item A. Therefore, Subpart 5 of Part 0414 is proposed to be renumbered as Subpart 6. The substance of Item A is not proposed for change.

2200 Criteria for Determining Loan Priority.

Subpart 1. Order of priority for planning loan applications. The current criteria in this Subpart for determining a city's financial condition are proposed for deletion. The proposed criteria in Part 0428, Subpart 4 are set forth in Minnesota Statutes, Section 116.18, Subdivision 3a(a) (See Exhibit 14), as indicators of financial hardship. Therefore, the Agency proposes to utilize the same criteria for determining what cities should receive planning loans first. The criteria are further explained in the analysis of Part 0428, Subpart 4.

Exhibit 5

federal register

Friday
February 17, 1984

Part III

Environmental Protection Agency

40 CFR Part 35

Grants for Construction of Treatment Works; Final and Interim Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 35

[WH-FRL 2267-5]

Grants for Construction of Treatment Works

AGENCY: Environmental Protection Agency.

ACTION: Final and interim final rules.

SUMMARY: The construction grants regulation is being published in two places in today's **Federal Register**. This portion includes, as a final rule, the main body of the construction grant regulation (§ 35.2000 et seq.), Appendix B (Allowance for Facilities Planning and Design), and Appendix C (Subpart I Information Collection Requirements).

Appendix A (Determinations of Allowable Costs), published together with this final rule, is a *revised* interim final rule which responds to some of the comments received on the May 12, 1982 publication of Appendix A. These comments are described below under Description of Major Issues. EPA is publishing Appendix A as a revised *interim final* rule for two main reasons. First, the Congressional authorization for the construction grants program expires after fiscal year 1985 (September 30, 1985). In anticipation of reauthorization hearings on the Clean Water Act in 1984, the Agency is conducting a one-year study of the funding of municipal wastewater facilities. The study will evaluate a broad range of funding mechanisms such as loan programs, privatization and infrastructure banks in addition to the present grants program. The common goals which will be used to compare these alternatives are greater self-sufficiency of local communities in addressing wastewater treatment, more efficient targeting of Federal financial assistance, and quicker attainment of water quality goals. We expect to publish a notice of the study in the **Federal Register** in February. The results of the study may result in changes to the allowable costs described in Appendix A. Second, the proposed rule (§ 35.2205) is expected to elicit comments which may extend to allowable cost items in Appendix A.

A proposed rule published elsewhere in today's **Federal Register**, would create a new section (§ 35.2205) that would define the maximum increase in the allowable cost of a grant award. The new section would apply to all construction grants regardless of the grant award date.

This regulation includes only those items called for by the Clean Water Act, including the Municipal Wastewater Treatment Construction Grant Amendments of 1981, and the minimum requirements necessary for effective program management. The changes clarify and simplify the regulation and thereby reduce project costs.

DATES: This regulation is effective February 17, 1984. See also the section in the preamble on "Effective Date." Comments on the interim final regulation contained in Appendix A, must be received on or before April 17, 1984.

ADDRESS: Comments should be addressed to: Central Docket Section (LE131), Attention: Docket No. G-81-5, Environmental Protection Agency, Washington, D.C. 20460.

The public may inspect the comments received on this interim final rule at: Central Docket Section, Gallery 1 West Tower Lobby, Environmental Protection Agency, 401 M Street, SW., Washington, D.C., between 8 a.m. and 4 p.m., business days.

FOR FURTHER INFORMATION CONTACT: William Kramer, Office of Water Program Operations (WH-595), Environmental Protection Agency, Washington, D.C. 20460, (202) 382-7277.

SUPPLEMENTARY INFORMATION: In keeping with the President's mandate to reduce the burden of government regulation, EPA has undertaken a comprehensive review of the construction grants regulation. Based on that review, revisions to the regulation were proposed in the November 6, 1981 **Federal Register** and published as interim final on May 12, 1982. The interim rule reflected extensive experience with the program, comments received over the years from a broad spectrum of the program's constituents and comments received on the interim rule. In developing this regulation, the Agency consulted with a wide variety of organizations representing various participants in the program.

On December 29, 1981, the Municipal Wastewater Treatment Construction Grant Amendments of 1981, Pub. L. 97-117 (1981 amendments), were signed into law, making several basic modifications to the grants program. This regulation, which is built on the Administration's commitment to reduce regulatory burdens to a minimum while maintaining the program's environmental and financial integrity, incorporates provisions to implement the 1981 amendments and comments on the interim rule.

This regulation includes items required by statute—free of detailed procedures to be followed—and those additional minimum requirements that EPA considers necessary for effective program management.

In conjunction with this effort to reduce regulatory requirements to a minimum, EPA will issue appropriate guidance documents. These guidance documents will not be regulations in disguise. The regulatory requirements are repeated in the guidance solely for continuity and clarity. If there appears to be a difference between the regulations and the guidance, the regulations govern. The guidance materials will contain information which is helpful to States and grantees in managing and carrying out the construction grants program. Use of the information in the guidance documents is to be discretionary. That is, States or grantees may adopt other procedures which are sufficient to meet the requirements of this regulation.

The first major guidance document, *Facilities Planning 81 (FP 81)*, was published in 1981. Its successor, *Construction Grants 82 (CG 82)*, companion to the interim final regulation, reflects and includes this new emphasis on increased flexibility in its guidance for planning, design, and building. Future editions in the *CG* series will continue this approach. Other guidance publications in the areas of operation and maintenance, financial planning and development of user charge systems are being developed. By linking efforts to reduce mandatory requirements and to provide guidance, the greatest possible flexibility is provided to States and local governments to effectively carry out the construction grants program.

Although this subpart is the primary regulation governing the construction grants program, it is not the only one. Others that apply include EPA's Uniform Relocation Assistance and Real Property Acquisition Policies Act regulation (Part 4), NEPA regulation (Part 6), public participation regulation (Part 25), intergovernmental review regulation (Part 29), general grant regulation (Part 30), debarment and suspension regulation (Part 32), procurement regulation (Part 33), and pretreatment regulation (Part 403). Rather than repeat verbatim selected portions of these Parts, this regulation will rely on the others and, where appropriate, cross reference those requirements. It is felt that this is a simpler approach and, more helpful to the States and grantees. Requirements of these other Parts still apply to the construction grants program.

Following is a table showing the relationship of Subpart I to Subpart E:

CONSTRUCTION GRANT REGULATION—40 CFR PART 35

Subpart I		Subpart E
Sec.		Sec.
35.2000	Purpose and policy	35.900, 35.901, 35.903, and 35.912.
35.2005	Definitions	35.905.
35.2010	Allotment; reallotment	35.910 et seq.
35.2015	State priority system and project priority list.	35.915.
35.2020	Reserves	35.915-1.
35.2021	Reallotment of reserves	35.915.
35.2023	Water quality management planning.	1981 Amendments.
35.2024	Combined sewer overflows.	1981 Amendments.
35.2025	Allowance and advance of allowance.	1981 Amendments.
35.2030	Facilities planning	35.917 et seq.
35.2032	Innovative and alternative technologies.	35.908.
35.2034	Privately owned individual systems.	35.918.
35.2040	Grant application	35.920 et seq.
35.2042	Review of grant applications.	1981 Amendments.
35.2060	Effect of approval or certification of documents.	35.935-1.
35.2100	Limitations on award	35.925.
35.2101	Advanced treatment	New Section.
35.2102	Water quality management plans.	25.925-2.
35.2103	Priority determination	35.925-3.
35.2104	Funding and other considerations.	35.925-6.
35.2105	Debarment and suspension.	New Section.
35.2106	Plan of operation	35.925-12.
35.2107	Intermunicipal service agreements.	35.920-2.
35.2108	Phased or segmented treatment works.	New Section.
35.2109	Step 2+3	35.908.
35.2110	Access to individual systems.	35.918-1.
35.2111	Revised water quality standards.	1981 Amendments.
35.2112	Marine discharge waiver applicants.	1981 Amendments.
35.2113	Environmental review	35.925-8.
35.2114	Value engineering	1981 Amendments.
35.2116	Collection system	35.925-13.
35.2118	Preaward costs	35.925-16.
35.2120	Infiltration/inflow	35.927 et seq.
35.2122	Approval of user charge system and proposed sewer use ordinance.	35.929-1, 35.935-13, and 35.927-4.
35.2123	Reserve capacity	1981 Amendments.
35.2125	Treatment of wastewater from industrial users.	35.925-15.
35.2127	Federal facilities	35.925-15.
35.2130	Sewer use ordinance	35.927-4.
35.2140	User charge system	35.929-1.
35.2152	Federal share	35.930-4.
35.2200	Grant conditions	35.936 et seq.
35.2202	Step 2+3 projects	35.936-4.
35.2204	Project changes	35.936-11.
35.2206	Operation and maintenance.	35.936-12.
35.2208	Adoption of sewer use ordinance and user charge system.	[illegible]-4.
35.2210	Land acquisition	New Section.
35.2211	Field testing for innovative and alternative technology report.	1981 Amendments.
35.2212	Project initiation	35.936-8.
35.2214	Grantee responsibilities	35.936-1.
35.2216	Notice of building completion and final inspection.	35.935-14.
35.2218	Project performance	1981 Amendments.
35.2250	Determination of allowable costs.	35.940.
35.2260	Advance purchase of eligible land.	New Section.
35.2262	Funding of field testing	1981 Amendments.
35.2300	Grant payments	35.945.
35.2350	Subagreement enforcement.	35.970.
Appendix A	Determination of allowable costs.	35.940 et seq.
Appendix B	Allowance for facilities planning and design.	1981 Amendments.
Appendix C	Subpart I information collection requirements.	New Section.

Description of Major Issues

In response to the interim final regulation published on May 12, 1982, we received comments from a variety of States, municipalities, professional organizations, firms that work in the program, and industries. Although the preamble doesn't respond to every comment individually, all were considered and many served as the basis for revisions to the interim final regulation.

Effective Date

This regulation is effective for all grants awarded on or after the date of publication in the Federal Register. Facilities plans and design initiated under 40 CFR Subpart E continue to be subject to the requirements in Subpart E. Unless required by the 1981 amendments, no revisions to the facilities plan or design will be required. Work done under Subpart E will be accepted for grant awards under this subpart.

Elsewhere in this issue of the Federal Register, EPA is proposing a new section, § 35.2205, which would specify a maximum allowable project cost.

Program Direction: Improved Water Quality

The 1981 amendments stress the importance of improving water quality through the construction grants program. The regulation reflects this emphasis in several ways. It incorporates the concept of "priority water quality areas," which States will identify and use in setting priorities for projects. Revised regulations for water quality management planning (40 CFR Part 130) and water quality standards (40 CFR Part 131), and guidance for State preparation of section 305(b) reports will also use the concept of priority water quality areas for scheduling revisions to water quality standards, total daily maximum loads, and major permits, as well as focusing monitoring, enforcement and reporting efforts on critical water quality problems. Priority water quality areas will generally be water quality limited segments, i.e., segments where applicable water quality standards are not attainable with application of technology-based effluent limitations to point sources.

This term was introduced in the interim final regulations; however, the concept is not new. For the purposes of construction grant funding and this regulation, priority water quality areas are specific stream segments or bodies of water where municipal discharges have resulted in the impairment of a designated use or significant public health risks, and where the reduction of pollution from the municipal discharges will substantially restore surface or groundwater uses.

The regulation (§ 35.2111) includes a limitation stating that no grant assistance can be awarded for particular stream segments after December 28, 1984, if a State has failed to review and revise, as appropriate, its applicable water quality standards. To comply with this provision, States will need to review and revise the water quality standards for each stream segment within the State in priority order. In setting priorities for the review of water quality standards States should focus on priority water quality areas, considering the timing of pending advanced treatment and combined sewer overflow funding decisions. The necessary level of review will depend upon the characteristics of a segment and the priority that a State assigns a segment. For most effluent limited segments no further water quality standards reviews will be needed beyond the determination that the segment is indeed effluent limited. A more comprehensive review will be needed for segments designated as water quality limited. Regulations governing priority setting and the review and revision of water quality standards are found in the regulations for water quality standards (40 CFR Part 131).

Within this context for setting priorities, the regulation requires an annual project priority list with two sections: the fundable portion consists of those projects anticipated to be funded from the current allotment; and the planning portion consists of projects anticipated to be funded from future authorized allotments. After September 30, 1982, Regional Administrators will

not fund projects until they accept, and the States use, priority lists that reflect the 1981 amendments.

The 1981 amendments added section 205(j) to the Act which requires States to reserve not less than $100,000 nor more than 1 percent of their annual allotment for water quality management planning. The regulation provides an exception to the $100,000 minimum for Guam, the Virgin Islands, American Samoa, the Trust Territory of the Pacific Islands and the Commonwealth of the Northern Marianas because of the small size of their allotments.

The 1 percent ceiling is a maximum limit rather than a required limit. The language of the amendments states that the reserve is "not to exceed" 1 percent. Also, the "not to exceed" language is identical to the language of the 205(g) reserve for State administration which provides for an optional maximum percentage rather than a required percentage. 40 CFR Part 130 will govern the use of funds reserved under section 205(j).

This regulation in § 35.2106 also addresses the need to make EPA funded treatment works phases and segments operate to improve water quality. Several commenters interpreted the regulation to require in all cases that grant recipients build the complete waste treatment system, including even its lowest priority components, if grant assistance were awarded for any part of the system. We made minor modifications to the regulation to address this misunderstanding.

Section 35.2106 requires that all recipients of grants for a phase or segment of treatment works negotiate a commitment with the Regional Administrator that assures that the treatment works of which the phase or segment is a part will be made operational and meet the enforceable requirements of the Act. Section 35.2106 embodies a longstanding EPA policy previously contained in § 35.930–4. The policy is that grant recipients must commit to making EPA funded phases or segments operational and comply with the enforceable requirements of the Act and to making them part of treatment works that result in water quality improvements. This does not necessarily require recipients to commit to building all parts of a complete waste treatment system. However, the regulation does require that recipients commit to building the treatment works necessary to make EPA funded phases or segments contribute to improved water quality.

Priority System and List

There was some confusion over the due date for submission of revised annual lists to the Regional Administrator for review. We have revised § 35.2015(e) to clarify that each State must submit a new list by August 31 in order to allow time for review by the Regional Administrator prior to the beginning of the next fiscal year.

Activities Prior to Grant Award

One of the most significant changes in the program resulting from the 1981 amendments is the elimination of grants for planning (Step 1) and design (Step 2). An allowance is provided to grantees for facilities planning and design. A full discussion of issues related to the allowance is in the Appendix B section of this preamble.

Step 2+3

We received several comments recommending that the design portion of a Step 2+3 grant be a grant rather than an allowance. We believe the allowance is more consistent with the Congressional intent of the 1981 amendments to reduce EPA involvement in grantees' design activities.

The 1981 amendments raised the limit on building cost for projects eligible for a Step 2+3 grant to $8 million. The amount of the allowance will be based on the estimated Step 3 building cost in the Step 2+3 grant application. If the grantee has not received a grant or advance for facilities planning, the Agency will pay 30 percent of the Federal share of the estimated allowance as soon as requested after the Step 2+3 grant award. EPA will pay half the remaining estimated allowance when the design is 50 percent complete. The final portion of the allowance will be paid after the grantee awards all prime subagreements for building the project.

Advances

The 1981 amendments require States to reserve a portion up to 10 percent of their allotments to provide advances of the allowance to small communities which would otherwise be unable to undertake planning and design activities. Although the amendments do not prescribe a minimum amount, the Agency believes the Congress intended that a reasonable reserve be established. Designation of eligible applicants to receive an advance will be done entirely by the States.

Upon application by a State, a grant will be awarded to the State for making advances of allowance to small communities. A State may request that payments under the grant be assigned to specified potential grant applicants. Any community that has received an advance will have any later allowance reduced by an amount equal to the advance.

Some commenters were concerned that the States would not reserve adequate funds to meet the demand of small communities; others were concerned that States would unjustifiably lose funds through reallotment because there would not be a need or demand for them. The Agency recognizes the potential for problems related to this provision of the law, and believes that solutions can be found to those individual problems within the framework provided by the regulation. In particular, the regulation provides for waiving this reserve requirement when the State can demonstrate it is not necessary because planning and design requiring an advance is not expected to begin during the period of availability of the annual allotment. Some States, prior to the 1981 amendments, had built up a backlog of projects ready for Step 3 grants and had planned to initiate few if any new Step 1 or Step 2 projects. Further, States have available the Step 2+3 approach which, if used extensively, could reduce or eliminate the need for this reserve.

NEPA Compliance

Before publication of the interim final regulation there was great concern expressed that the elimination of grants for planning and design would make NEPA compliance ineffective, because for NEPA compliance to be most effective, environmental issues must be addressed in conjunction with planning the project, and traditionally that has been done during Step 1. The elimination of Step 1 and Step 2 grants postpones official EPA involvement in the project until after planning and design are complete. To avoid the design of environmentally unsound alternatives, the regulation encourages applicants to confer with review agencies very early in the process and request, in writing, that EPA make necessary NEPA determinations. In this way, NEPA responsibilities can be met at the appropriate time, avoiding delay and added expense that could result from postponement. In any case, the regulation requires that the environmental review under NEPA be completed before submission of an application.

Grantees currently in the facilities planning process with Step 1 grant assistance are bound by existing regulations and grant agreements to complete their environmental documents as planned and obtain a formal determination in accordance with Part 6 of this chapter.

Financial Capability

In 1981 amendments stress the importance of the applicant's financial and management capability to adequately build, operate and maintain the proposed project, particularly the ability to finance adequate operations and maintenance (including replacement) of facilities through their user charge systems. Three of the "limitations on awards" (conditions that must be met before a grant can be awarded) are designed to ensure adequate financial capability and management of Federally funded treatment works. First, the applicant is required to demonstrate that it has the legal, institutional, managerial, and financial capability to ensure adequate building and operation and maintenance of the treatment works. Second, the draft plan of operation, required at the time of application, must include "an adequate budget identifying the basis for determining the annual operation and maintenance costs and the costs of personnel, material, energy and administration." Third, the applicant must have the Regional Administrator's approval of a user charge system that will produce adequate revenues required for operation and maintenance (including replacement), and that contains an adequate financial management system that will accurately account for revenues generated by the system and expenditures for operation and maintenance (including replacement) of the treatment system. EPA has developed guidance to assist grantees in meeting these requirements.

Advanced Treatment Reviews

In March 1979 Congress directed EPA to review advanced treatment projects. The 1978 oversight and appropriation hearings focused on the high costs and often marginal benefits of advanced treatment projects. In action approving the FY 1979 appropriation for the construction grants program, the House and Senate Appropriations Conference Committee agree "that grant funds may be used for construction of new facilities providing treatment greater than secondary only if the incremental cost of the advanced treatment is $1 million or less, or if the Administrator personally determines that advanced treatment is required and will definitely result in significant water quality and public health improvements." The incremental dollar limit for the Administrator's review was raised from $1 million to $3 million in FY 1980. Each year's appropriation legislation or committee report has continued the review requirements.

Review procedures were set forth in EPA policy issued in March 1979. EPA published a revised draft policy in June 1980, and a final policy is nearing publication.

Section 35.2101 requires that before award of grant assistance, EPA review under the advanced treatment policy any project requiring advanced treatment. EPA recommends that the proposed advanced treatment projects be submitted for review upon completion of facility planning, but requires that the review be completed before submission of any application.

Innovative and Alternative (I/A) Technology

The 1981 amendments extend the innovative and alternative program by providing an I/A set-aside to increase grants for I/A projects. The regulation allows the Governor to reserve amounts from the annual allotment which range from a minimum of 4 percent up to 7½ percent. The Federal share of grants for I/A technologies will be 20 percent more than the Federal share for grants for conventional technologies as long as the Federal share totals no more than 85 percent. The regulation also includes provisions for field testing for verification of design parameters for higher risk technologies which EPA may fund either as a preaward cost or as a separate field testing grant. Upon completion of the field test, the grantee must submit a report containing the procedure, cost, results and conclusions of the test.

The 1981 amendments maintain the cost-effectiveness preference for the I/A program. Several commenters were confused by the provision which describes the applicability of the cost-effectiveness preference when the I/A components are less then 100 percent of the present worth cost of project. Section 35.2032(b) has been clarified to indicate that when the I/A components are 50 percent or less of the present worth cost of the treatment works, the cost-effectiveness preference applies only to the I/A components.

EPA is incorporating the innovative and alternative technology guidelines from Appendix E of the 1978 regulation into the *CG* series.

Infiltration/Inflow

The interim final regulations simplified the procedure for determining whether a treatment works is subject to excessive infiltration and inflow (I/I). The procedures previously specified in the regulation were not only time consuming and costly, but also produced inaccurate and misleading results in many instances. The net effect was that considerable effort was spent analyzing and repairing sewer systems without achieving the expected benefits of reduced flows and properly sized facilities.

The revised procedures incorporated in the interim final regulation specified baseline values for both infiltration and inflow. Comparison of the guildline values with actual flows in sewer systems allows rapid screening of those systems not subject to excessive I/I. This final regulation continues the use of a baseline for comparison of infiltration rates but deletes the baseline value previously specified for inflow.

The baseline figure of 120 gallons per capita per day (gpcd) for infiltration analysis is unchanged in the final regulation. The figure derived from Needs Survey data for 270 Standard Metropolitan Statistical Area cities. The 120 gpcd value is the national average wastewater flow for these cities and is comprised of 70 gpcd domestic wastewater and 50 gpcd of non-excessive infiltration.

The baseline figure for inflow was deleted because sufficient data were not available to support its uniform application to all projects. In the final regulation, inflow is excessive when it results in chronic operational problems in the treatment system.

The final regulation provides that no further I/I work is required if domestic wastewater plus non-excessive infiltration does not exceed 120 gpcd, and there are no chronic operational problems resulting from hydraulic overloading of the treatment works during storm events. Furthermore, even in cases where infiltration marginally exceeds 120 gpcd, the grantee may proceed with design and construction of facilities to accommodate the entire flow provided that such facilities are cost effective. In these cases, Federal grant participation will be based on 120 gpcd and grantees must demonstrate that sufficient local funds are available to construct and operate the entire treatment works.

Only in cases where infiltration is determined to be excessive in accordance with the previously described procedures or the treatment works is experiencing chronic operational problems due to inflow, will grantees be required to undertake more detailed sewer system evaluation studies and propose an I/I rehabilitation program. A limited amount of grant assisted sewer rehabilitation may also be undertaken on systems with flows less than 120 gpcd provided that grantees can demonstrate that such

rehabilitation is cost effective for specific portions of their systems.

Grantees will be responsible for the results achieved by I/I rehabilitation programs conducted using Federal funds as part of their certification of project performance at the end of the first year's operation of the facility. Grantees will also be responsible for taking corrective actions if flows are not reduced by the amounts specified or operational problems are not corrected as a result of the rehabilitation program.

Public Participation

Several commenters expressed concern that, with the exception of the requirement for public hearings in conjunction with developing State priority systems and project priority lists, the proposed regulation relies on Part 25 to supply all further requirements necessary to involve the public fully in decisions relating to the construction grants program. EPA is fully committed to public participation in all its programs and believes that Part 25 affords every opportunity necessary and available under the Clean Water Act for public participation in the construction grants program.

However, because the elimination of Step 1 and 2 grants effectively prohibits EPA involvement in facilities planning and design, neither provisions of this subpart nor of Part 25 apply to activities of a potential grantee prior to submission of the grant application. Grantees who request an early determination of NEPA compliance can take advantage of involving the public in Step 1 and Step 2 through application of public participation requirements of Part 6. Furthermore, this regulation requires the State to certify at the time of application that there has been adequate public participation in accordance with State and local laws.

Project Schedule

The regulation requires that a timetable of key project events be included in the grant application. The advice of the grantee's design engineer should be sought when developing the schedule. The schedule should include important dates regarding procurement actions, building schedule, and operation of the project. If the grantee has multiple projects, he must coordinate each project's schedule with the others and with the State's project priority list. Any change in the project schedule will require a formal grant amendment. This requirement is necessary to insure the continued coordination of project completion with permit and compliance schedules, court orders and State administrative orders.

State Certification

The 1981 amendments allow States with sufficient delegated program administration authority to certify that grant applications comply with all applicable Federal requirements. The certification must be supported by documentation specified in the delegation agreement, and the Regional Administrator shall accept the certification unless he determines the State has failed to establish adequate grounds for the certification or that an applicable requirement has not been met. Several commenters pointed out the failure of the interim final regulation to state the provision of the 1981 amendments mandating EPA to accept or reject in writing a fully certified application within 45 days of receipt or the application is automatically approved. That oversight has been corrected.

Treatment of Wastewater From Industrial Users

This section of the interim final regulation that dealt with treatment of wastewater from industrial users was intended to continue the Agency policy of not providing grant assistance for treatment works that are exclusively for industrial use. In stating that policy, we used the term "compatible industrial wastewater" and defined it in terms that could have been interpreted to prohibit funding POTW capacity to serve many industrial users. It was not the Agency's intention to place a new restriction on funding for treatment works serving industries. To correct that problem, we eliminated the term "compatible industrial wastewater" and added a new provision. Section 35.2125 prohibits award of grants for treatment works that are exclusively for industrial use. It is similar to a provision proposed in the May 18, 1981 **Federal Register** (46 FR 27314). Several commentors objected to the continuation of the Agency policy not to fund projects exclusively for industrial use. We believe that expanding eligibility to a substantial new category of industrial projects would be contrary to the overall intent of the 1981 amendments.

Project Performance

The purpose of EPA assistance is to build treatment works that have been planned and designed to meet the enforceable requirements of the Act. By executing a grant agreement, the grantee is obligated to build the project according to its approved design specifications and operate and maintain the project during its design life to meet the enforceable requirements of the Act.

The regulation requires the grantee to reach this performance goal within a year after the project has been put into use for its intended purpose. The costs of architectural, engineering, legal, technical and other services necessary to assure that the project is built according to its design drawings and specifications are allowable project costs.

The date of initiation of operation is determined by the grantee, in consultation with the design engineer and included in the project schedule. To assist in operating the project during the first full year, the amendments require the grantee to procure the services of the engineer or firm that provided architect engineering services during construction or the engineer or firm that supervised construction. The regulation uses the term "construction" to clarify congressional intent and makes this provision consistent with the language in the Act. The amendments state that such engineer shall "supervise operation of the treatment works, train operating personnel, and prepare curricula and training material for operating personnel."

EPA uses the term "supervising" as it is used in the law only once, when restating the statutory requirements. Elsewhere in detailing requirements the regulation uses language requiring the engineer to "direct" the operation of the project and revise the operation and maintenance manual as necessary to accommodate operating experience. It is not the intent of the amendment or the regulation to involve the engineer in the administrative details of daily operation of the plant such as individual personnel transactions or direct supervision of a contractor's employees. On the other hand, the legislative history of the amendments makes it clear that Congress envisioned a more active role for the engineer than merely advising the grantee, and that the intent was to firmly establish appropriate responsibility of all participants in the process.

We believe that the regulation provides a sufficiently flexible framework to allow grantees and their engineers to negotiate, on a case-by-case basis, appropriate arrangements that fulfill the intent of the amendments. The grantee may require sufficient assurances, guarantees or indemnity or other contractual requirements to achieve this goal.

At the end of the first year of operation, the grantee must certify to the Regional Administrator whether the project *meets* its design specifications and the enforceable requirements of the

Act. This has been changed from the language of the interim final regulation which said the certification was whether the project was *capable of meeting* project performance standards, in order to more closely reflect the 1981 amendments and their intent. The certification that the project *meets* project performance standards must be satisfactory to the Regional Administrator and must reflect at a minimum that applicable permit or other discharge requirements are currently being met.

If the project is not affirmatively certified, the grantee must provide a corrective action report. The cost of bringing the project into compliance is the responsibility of the grantee except for the modification or replacement of innovative or alternative technology projects. The grantee must also commit itself to a reasonable date on which it can make an affirmative certification to the Regional Administrator. If the grantee does not bring the project into compliance with the design specifications and enforceable requirements of the Act, EPA will take appropriate and prompt remedial action.

More detailed discussion of project certification is contained in the *CG* series guidance.

Delegation

For the sake of simplicity, the regulation refers to the role of the Regional Administrators. Delegation to State agencies remains an integral part of construction grants program management. As stated in § 35.2000(c), to the extent that the Regional Administrator delegates responsibility to a State agency under a delegation agreement, the term "Regional Administrator" is to be read "State agency."

Reserve Capacity

One commenter, noting that interceptors funded after the 1981 amendments are limited to 20 years reserve capacity in all cases, argued that the amendments and their history meant to allow Step 1 or Step 2 grantees with interceptors now under design for 40 years reserve capacity to receive Step 3 grants for that capacity. We disagree and believe that paragraph (a) of § 35.2123 is a correct reading of the law and its history. The "grandfathering" provision applies only if EPA awarded a grant for a Step 3 segment of an interceptor before December 29, 1981.

Several commenters expressed confusion over the application of 1990 needs as used in this section. This has been rewritten to make it clear that this date only has relevance after 1990, with 1990 being the cap on eligible needs after 1990.

Additionally, several questions were raised on how to determine "existing needs" and their relation to unallowable (beginning October 1, 1984) reserve capacity. First, existing needs should be considered flows as estimated to exist at time of grant award, and as described in an approved facility plan or facility plan amendment. For onsite systems, existing needs can include anticipated flows from failing onsite systems. The amount of these anticipated flows should be based on studies updated to the estimated date of grant award where necessary. Second, the length of the planning period to use in determining reserve capacity and in the cost-effectiveness analyses is to be 20 years (§ 35.2030(b)(3)). This is consistent with previous practice (40 CFR, Part 35, Subpart E, Appendix A.6.b and sections 204(a) (1) and (2) and 208(b)(2)(A) of the Clean Water Act). While this does not require that the project include capacity for a twenty-year period, it does require that the project be shown to be the most cost effective when compared to alternatives with capacity for a twenty year period.

For example, a project that only provides capacity for existing needs may be a stage of a complete waste treatment system. Alternatively, the project could be only for the costs to meet the existing needs, with the costs for reserve capacity identified using cost curves as described in the *CG* series guidance.

Federal Share

Some commenters expressed confusion relating to eligibility of treatment works phases or segments for 75 percent Federal grants after September 30, 1984 (grandfathering). Section 35.2152 of the regulation, which sets forth the requirement grandfathering, has been clarified in the final regulation. The final regulation makes our original intent that all grandfathered phases or segments be described in a facilities plan approved by the Regional Administrator before October 1, 1984, and that they be built in logical sequence assuring expeditious operation and compliance with the enforceable requirements of the Act.

The fact that an approved facilities plan describes a complete waste treatment system that includes a grandfathered phase or segment does not mean that the complete system is grandfathered. The description of the complete system is a planning tool to help put the proposed project in context. Under § 35.2152, the only grandfathered treatment works are those that are described in a facilities plan that is approved prior to October 1, 1984, and that include a phase or segment that is awarded a Step 3 grant prior to October 1, 1984. Treatment works that do not include a phase or segment that is awarded a grant prior to October 1, 1984, are not grandfathered merely because they are described in a facilities plan that contains grandfathered treatment works. For example, if there were two treatment facilities and their interceptors described in the facilities plan, and only one had received a grant for a phase or segment prior to October 1, 1984, then only that facility and its interceptors are eligible for grandfathering. However, two treatment facilities with simple interconnections, such as sludge lines, are considered separate treatment facilities for purposes of this regulation.

Concerning the sequence for EPA funding of grandfathered phases and segments, § 35.2152 requires that EPA funded phases and segments be built in a sequence necessary to make phases or segments previously funded by EPA operational and comply with the enforceable requirements of the Act before other phases or segments receive EPA funding. EPA expects the sequence of funding segments will result in the earliest compliance with the enforceable requirements of the Act. For example, where an interceptor segment is built, the next segments to be funded are those which will make the interceptor operational and meet the enforceable requirements of the Act. EPA would not expect to fund a segment in another interceptor until the first interceptor is operational.

Another area of concern is the uniform lower Federal share. The lower uniform Federal share is applied on a project-by-project basis. That is, each separate grant, including phased and segmented grants, is viewed individually. Prior to October 1, 1984, grant assistance is awarded for a phase or segment with the Federal share prevailing at the time of award. Separate phases or segments of the same treatment works may, therefore, receive grant assistance with varying Federal shares, but once grant assistance is awarded for a project, the Federal share shall be the same for any grant increase within the scope of the project.

There was a question raised on the relationship between the "grandfathering" Federal share provision for treatment works first awarded segment grants before October 1, 1984, and the Governor's discretion to

uniformly reduce the Federal grant share throughout a State.

When EPA first proposed a regulation to implement the 1980 amendment (Pub. L. 96–483) regarding the uniform lower Federal share (46 FR 27314, May 18, 1981), we addressed the issue of varying the Federal share among treatment works phases or segments. That proposal and this regulation allow variations among treatment works phases or segments. Requiring States to maintain the same Federal share to each phase or segment of an entire waste treatment system would inhibit, or even preclude effectiveness of the amendment. However, for increases within the scope of a project, the Federal share will be the same as the share of the initial award for that project.

In instituting the "grandfathering" provision, Congress did not restrict the use of the lower Federal share. The 1981 amendments used the phrase "shall be eligible for grants at 75 per centum . . ." not "shall be 75 per centum." Reading this provisions consistent with the uniform lower Federal share means that should the Governor not reduce the Federal share, post 1984 phases or segments would receive 75 percent grants like 1984 or earlier phases or segments of that treatment works. If the Governor reduces the share, post-1984 phases or segments would be eligible for a grant at only the reduced Federal share prevailing in that State.

By maintaining our initial interpretation we are able to give effect to both provisions now part of the law. We believe, further, that this view is consistent with prevailing policies calling for maintaining and increasing State control over the construction grants program.

Another issue was the period of time for which the share would be reduced. EPA believes that one year periods are reasonable, but the Governor may lower the share for a shorter or longer period of time as the Governor deems appropriate. However, this flexibility may not be used to discriminate against particular projects or classes of projects.

Allotment and Reallotment

Recent experience with reallotment and several comments on the interim regulation highlighted the need for changes in the "Allotment and reallotment" section (§ 35.2010) and the "Reserves" section (§ 35.2020).

First, we made it clear that § 35.2010 applies only to funds appropriated under section 205 of the Clean Water Act. Funds available to the construction grants program from sources other than section 205, such as the Public Works Employment Act and section 206 of the Clean Water Act, are not subject to reallotment under § 35.2010.

We revised § 35.2010 (c) and (d) to clarify the intent of those provisions. The interim final regulation revised § 35.910–2 in response to a problem encountered in reallotting FY 1979 and FY 1980 funds last year. Some regions deobligated funds late in fiscal year 1981 that were subject to reallotment on October 1, 1981. Deobligated funds must be reissued to the regions by the EPA Comptroller in headquarters before the Regional Administrator can reobligate them to other projects. That process takes time and some funds were not reissued in time for use before the end of the fiscal year. As a result, § 35.2010 (c) and (d) provide that funds deobligated by a Region which are not reissued to the Region before the reallotment date for those funds will not be subject to reallotment and shall be made available for obligation.

We added a new section (§ 35.2021) to clarify the reallotment provisons of the various reserves under § 35.2020. Paragraph (c) of § 35.2021 requires that Regions which deobligate funds from one of the mandatory reserves under § 35.2020 before the initial reallotment date for those funds return them to the same reserve after they are reissued by the EPA Comptroller. Funds from a mandatory reserve which are deobligated after the initial reallotment date for those funds are not to be returned to the reserve and are governed by § 35.2010(d).

Finally, we deleted the words "sums alloted for" from the second sentence of § 35.2010(b). This change was necessary to clarify the year with which funds realloted or deobligated before an approval of an appropriation for the current year would be identified. In the future these funds will be treated like funds for the current year regardless of whether funds for that year have been appropriated.

Combined Sewer Overflow

The regulation incorporates two provisions of the 1981 amendments directly related to funding the correction of combined sewer overflow problems:

(1) Section 35.2024 implements section 201(n)(1) of the Act and states that after September 30, 1984 (when correction of combined sewer overflows is no longer an eligible category), the Governor may elect to use the regular State allotments from funds authorized under section 207 to address impaired uses in priority water quality areas due to the impacts of combined sewer overflows (CSOs).

(2) Section 35.2024 also deals with the use after September 30, 1982, of funds to be appropriated under section 201(n)(2) of the Act for addressing impaired uses or public health risks resulting from combined sewer overflows in marine bays and estuaries. In addition to the priority criteria set forth here, § 35.2040 contains particular grant application requirements for this separate fund.

While this separate CSO fund's eligibility and priority criteria and application requirements are distinct, it is subject to all applicable limitations on award and grant conditions, as well as Federal share, allowable cost and other provisions imposed on CSO projects funded with monies authorized in section 207.

The regulation reflects the language of the conference committee report on H.R. 4503, placing restrictions on the funding of combined sewer overflow correction. Directed at both provisions for funding of combined sewer overflow projects, this language requires States to demonstrate to EPA the necessity for the project and the specific benefits to be achieved.

Guidance on the preparation and review of applications for marine CSO projects is available from the State water pollution control agency. Non-marine CSO projects applied for under § 35.2015(b)(2) (iii) and (iv) can also use the marine CSO guidance to prepare the demonstration of water quality benefits required by § 35.2024(b); however, the demonstration should address fishing (rather than shellfishing under the marine CSO program).

Work by Debarred or Suspended Persons

EPA published procedures for debarments and suspensions under EPA assistance programs, 40 CFR Part 32 (47 FR 35940) on August 17, 1982. This regulation states EPA's policy to do business only with persons who properly use Federal assistance.

The purpose of § 35.2105 is to inform EPA whether the applicant awarded a contract for planning or design work to a debarred, suspended, or excluded individual, organization, or unit of government. If the applicant certifies that it has made such an award, EPA shall closely examine the facilities plans, and design drawings and specifications to determine whether to award a Step 3 grant or take other appropriate action.

Value Engineering

Before the enactment of Pub. L. 97–117, value engineering was required during the design of projects with a projected total Step 3 grant eligible cost of $10 million or more, excluding the

cost for interceptor and collector sewers. Pub. L. 97-117 requires that value engineering be conducted on all projects that did not have prior grant assistance for design where the total cost of building the treatment works is estimated to exceed $10 million. (This includes the cost of building interceptor and collector sewers but does not include the cost of services.) Projects that had grant assistance for design are subject to the value engineering requirements of 40 CFR 35.926.

Miscellaneous Terms

The terms "project," "treatment works" and "complete waste treatment system" have specific meanings in this regulation and should not be used interchangeably. This reflects a consistency with the Act and EPA's general regulations for assistance programs (40 CFR Part 30).

"Project" refers only to the activities or tasks identified in the grant agreement.

The definition of "treatment works" is essentially the same as that contained in section 212 of the Act. In the context of the Clean Water Act, this is a broad definition, and includes "any devices and systems for the storage, treatment, recycling, and reclamation of municipal sewage, domestic sewage, or liquid industrial wastes."

A "complete waste treatment system" is the total of all elements necessary for the transport, treatment and ultimate disposal of treated wastewater and residuals.

Building

The term "building" has been used throughout this regulation to describe the principal activity to be undertaken in the grants program. That is, the program provides assistance for the erection, acquisition, alteration, remodeling, improvement or extension of facilities to transport and treat wastewater. The term "building" is used in this regulation rather than "construction" (the term used in the past) because "construction" is defined in the Act to include facilities planning and design. EPA can no longer award grant assistance solely for facilities planning and design activities.

Costs of Acquiring Existing Treatment Works

Section D.1.e of Appendix A to the interim final rule states long-standing EPA policy limiting grant assistance for the acquisition of existing publicly or privately owned treatment works. This provision explains that the costs of acquiring existing treatment works are allowable only if the acquisition provides new pollution control benefits and meets three other criteria.

The limitations contained in section D.1.e reflect the purpose of section 201 of the Clean Water Act, which is to make grant funds available to municipalities for the construction of treatment works that provide new pollution control benefits (i.e., pollution control services that are additional to those being provided before grant award) and not to provide reimbursement for costs incurred to construct existing facilities. In view of this purpose, acquisitions of existing treatment works are generally ineligible for section 201 funding because they usually do not provide new pollution control benefits. Conversely, the upgrade, expansion, or rehabilitation of a project that includes an acquisition does provide such benefits and thus the upgrade, expansion, or rehabilitation portion may be eligible although the acquisition portion is not. An example of an eligible acquisition would be a municipality's purchase of demonstrated excess treatment works capacity that was built without Federal funds and provides new pollution control benefits.

On October 28, 1982, subsequent to the promulgation of the interim final rule, the EPA Board of Assistance Appeals issued a decision on the case of *Atlantic City Municipal Utilities Authority* (EPA Docket No. 81-19) which misinterpreted the new pollution control benefits principle. In *Atlantic City*, the Board found allowable the costs incurred by the Authority to purchase a privately-owned sewage collection system. The Board based its determination on the assumption that the acquisition would result in new pollution control benefits because the Authority intended to rehabilitate the system. This determination, however, overlooked the fact that the acquisition independent of the rehabilitation plan would not provide new water pollution control services additional to those being provided before acquisition.

We have modified Appendix A to state explicitly that in determining the eligibility of acquisitions of existing facilities it is necessary to distinguish between the acquisition and any subsequent improvements. An acquisition of an existing facility is eligible only if the acquisition, in and of itself, considered apart from any upgrade, expansion or rehabilitation, provides new pollution control benefits.

Appendix A—Revised Interim Final Rule

Allowable Costs

Appendix A consolidates information on allowable and unallowable costs. Although the Appendix continues existing Agency policy in 40 CFR Part 35, the Handbook of Procedures and Program Requirement Memoranda, it also reflects new policies designed to restrict allowability assuring more pollution control benefits from limited program funds. To simplify its use, Appendix A has been organized by type of cost, i.e., subagreement costs, small systems, equipment, etc.

Replacement and Additions Costs

Section H.2.e of Appendix A states EPA's policy against providing grant assistance for replacing, through reconstruction or substitution, failed treatment works that were built with construction grants assistance. This provision bars the procedure of providing grant assistance for replacement costs after the costs under the original grant for the failed treatment works are disallowed.

Based on comments received on the interim final regulation, we have clarified the replacement cost provision in two ways. First, the sentence structure has been modified to make clear that the provision applies to treatment works that fail before the expiration of their design life, either before or after initiation of operation. Second, the statutory reference has been modified to clarify our original intent that the provision covers treatment works built with Federal assistance provided under the Federal Water Pollution Control Act of 1956 (Pub. L. 84-660) or any subsequent amendments including, but not limited to, Pub. L. 92-500.

We have also clarified the policy against grant assistance for replacement costs by explaining, in Paragraph H.1.d of Appendix A, EPA's policy concerning additions to projects that fail to meet their performance standards. The additions provision is not an exception to the prohibition against grant assistance for replacement costs. As Paragraph H.2.e makes clear, the costs of replacing failed treatment works through reconstruction or substitution are unallowable.

Paragraph H.1.d provides that if the additions costs are demonstrated not to be caused by the grantee's mismanagement or the improper actions of others (e.g., the grantee's engineers or contractors), the costs are allowable under limited conditions. Subparagraph

H.1.d(3)(a) provides that if the need for additions is caused by changes in performance standards or design criteria outside the grantee's control or by a written agreement or directive to delay building a portion of the treatment works, the cost of the additions is allowable. Subparagraph H.1.d(3)(b) limits the allowability of additions not covered by subparagraph H.1.d(3)(a) by excluding the costs of rework, delay, acceleration or disruption caused by the additions and requiring on projects for which grants are awarded after December 28, 1981, that the additions be made during the project's first year of operation.

Cost of Corrective Action Report

In the interim final regulation the cost of the corrective action report was listed as allowable. One commenter questioned this, and upon review of the 1981 amendments we have concluded that the Congress intended this cost to be unallowable. The statute refers to undertaking correction at other than Federal expense, and the corrective action report is a part of that effort.

Costs Related to Subagreement Enforcement

The construction grants regulation has long referred to the authority of EPA to provide technical and legal assistance in the administration and enforcement of subagreements. This regulation describes EPA financial assistance as an alternative to direct assistance. It is generally unallowable unless a number of conditions are met. These conditions include a formal grant amendment specifically covering the costs before they are incurred and the Regional Administrator's determination that there is a significant Federal interest in the subagreement matters at issue.

Mercury Seals

The cost of process equipment such as trickling filters and comminutors that use mercury seals is no longer listed as an unallowable cost. While the Agency continues to have concerns about the safe use of mercury seals, there is no statutory basis for prohibiting the use of mercury seals. Decisions on the use of mercury seals should be made on a case-by-case basis; specific guidance on this subject is contained in the *CG* series guidance.

Appendix B: Allowance for Facilities Planning and Design—Final Rule

One of the most significant changes in the construction grants program resulting from the 1981 Amendments is the elimination of grants for planning (Step 1) and design (Step 2). Grant agreements include an allowance for facilities planning and design. Grantees that currently have a Step 1 or Step 2 grant will be able to complete the work included in their scope of work using the present system of grant payments. However, the 1981 Amendments prohibit new grants exclusively for facilities planning or design. Those activities will be completed by potential grantees before they apply for a grant to build their projects. The Congress, in providing the allowance mechanism, sought to achieve systemwide efficiency. In so doing, the Congress acknowledged the potential for inequity in the allowance for any given project. The device in the law is not a cost reimbursement, but an allowance. EPA understands that, in practice, any savings realized from the allowance will be available to each community for general public purposes. The Agency expects that these funds will be used to defray unreimbursed expenses associated with plant construction. Due to the unrestricted nature of the allowance, however, EPA will not audit the use of these funds.

Appendix B contains the procedures to determine the amount of advances of allowance and of the estimated and final allowances. Allowances in Appendix B are based on the percentage of building costs that have historically been attributable to facilities planning and design. Costs of specific facilities planning and design activities are not segregated and cannot be considered as a basis for reimbursement in addition to the allowance.

The allowance for a project is a single sum based on the actual total allowable building cost. Allowances are not auditable and the activities they cover are not subject to EPA requirements for procurement under assistance agreements (40 CFR Part 33). However, the Congress did not intend to reduce the opportunities afforded minority and women's business enterprises (MBE/WBE) to compete for contracts associated with construction of publicly owned treatment works; therefore, it is EPA's policy to encourage recipients to adopt procurement procedures for all activities of their construction program that, at a minimum, include the affirmative steps in 40 CFR § 33.240. EPA will request information from grant applicants regarding the level of minority and women's business enterprise participation achieved during planning and design activities in order to meet our obligation to report MBE and WBE participation in the construction grants program.

The data analysis for the development of the allowances took the form of using one parameter as the sole predictor of a second parameter. The method employed was bivariate analysis using a linear regression technique, a convenient, widely accepted way of analyzing both large and small data sets for relationships. The least-squares method was used for the linear regression analysis; this method yields an equation which expresses one variable in terms of another. The allowances for facilities planning and design are based on such regression equations.

Since the allowance applies to all of the work performed during the facilities planning and design of the project, not just architectural or engineering services, the historical data used to develop the allowance tables included all of the allowable costs of the Step 1 and Step 2 work. In addition, prior to any analysis being performed, all of the cost values were updated (adjusted for inflation) and normalized (adjusted to a common geographical area) to fourth quarter (calendar year) 1980 Kansas City/St. Joseph, Missouri dollars.

After the publication of the proposed allowance tables in the **Federal Register** on May 12, 1982, additional analysis of the historical cost data was performed. This additional work was undertaken for two reasons. First, it was desired to verify the appropriateness of the methodology and procedures used to develop the allowance tables, and if possible to improve it. Second, the additional analysis was necessary to respond to comments which suggested different approaches for analyzing the cost data. As part of this follow-up analysis, EPA contracted for a statistician to conduct an independent review of the methodology and procedure that were used to develop the proposed (May 12, 1982) allowance tables.

The follow-up analysis contains two refinements that were not included in the development of the proposed allowance tables. The proposed allowance tables were developed from a regression analysis that related building cost (in dollars) to Step 1 and/or Step 2 cost (expressed as a percentage of building cost). The proposed allowance tables were calculated using the resulting regression equations. This technique, although valid, showed a poor correlation between the two variables. Although the basic technique used to generate the regression eq... is sound, the result tends to mask the actual relationships between building cost and Step 1 and Step 2 cost. In order to overcome the masking of the variation, the independent statistical consultant suggested a new method of

relating the two variables. The new method entailed relating the building cost (in dollars) directly to the Step 1 and/or Step 2 cost (in dollars), and not to Step 1 and/or Step 2 cost (expressed as a percentage of building cost) as was done in the original analysis. This method produced a very good correlation (in the 80–85% range) and supported the underlying hypothesis that a change in building cost results in a change in Step 1 and/or Step 2 cost.

Since the method for developing the regression equation changed, it was necessary to change the method of calculating the allowance percentage. Instead of inserting the building cost into an equation and calculating a percent, a two step process was necessary. First a building cost was entered into the regression equation to obtain the facilities planning and/or design cost. The resulting dollar value was then divided by the input building cost to obtain the allowance percentage.

The second change in the development of the final allowance tables involved the selection of projects that were included in the analysis. The analysis that resulted in the development of the proposed allowance tables included all of the projects in EPA's construction cost data base that had Step 1 cost and/or Step 2 cost. This resulted in the inclusion of a number of projects in the analysis that were lacking an associated Step 1 or Step 2 cost. The Step cost could have been missing for a number of reasons. For example, the Step 1 cost could have been funded by the community. This would result in a project being included in the analysis that had a Step 2 cost without any associated Step 1 cost. For this reason, the analysis that resulted in the final allowance tables only included projects that had both a Step 1 *and* a Step 2 cost.

In the proposed allowance tables, the allowance for design was developed by subtracting the values obtained from the regression equation for facilities planning from the values obtained from the regression equation for combined facilities planning and design to develop a third equation. This mathematical procedure was necessary because many of the Step 2 projects included in the earlier analysis contained reimbursement for facilities planning cost in the Step 2 awards. Since the analysis that resulted in the development of the final allowance tables only included projects that contained both a Step 1 and Step 2 cost, it was not necessary to use this mathematical procedure. Instead the allowance for design was developed directly from the regression equation relating building cost (in dollars) to Step 2 cost (in dollars).

As a result of this follow-up analysis, the final allowance tables differ slightly from the tables that were published on May 12, 1982. The percentages in the final allowance tables are higher for projects with low building cost and lower for projects with high building cost than those in the proposed allowance tables.

We received 38 comments concerning the allowance for facilities planning and design. A number of commenters stated that the allowance would not fully compensate communities for the facilities planning and design cost associated with complicated or involved projects. Similarly, other commenters were concerned that the allowance procedure could discourage value engineering (VE) or designs incorporating innovative or alternative (I/A) technologies, because the higher cost normally associated with these services would not be fully covered by the allowance.

EPA carefully considered these comments. However, after extensive deliberation, we determined that it was not in the best interest of the program to change the allowance procedures. This decision was based on the following:

(1) EPA does not want to create a compensation schedule for facilities planning or design services such as the one contained in the American Society of Civil Engineer's Manual No. 45. If separate allowance tables were created for advanced treatment projects, innovative projects, value engineering projects, or for different geographical areas of the country, it would give the impression that the allowance tables could be used to determine the compensation for services on these types of projects.

(2) EPA does not believe the amount paid under the allowance procedures would have any significant impact on the effectiveness of the VE program or selection of I/A technologies. The I/A program already has many incentives, including a larger Federal share, lower operational cost, and higher ranking on the State's priority list. Similarly, EPA believes that there are sufficient safeguards and incentives contained in the regulations to assure an effective VE program.

(3) Congress, in providing an allowance for facilities plannning and design, sought to achieve overall program efficiencies. In doing so, the Congress acknowledged the potential for inequity in the allowance for an individual project.

A number of commenters suggested that the allowance tables be changed to show the percentage for the Federal share. Although this could simplify the application of the allowance procedures, this change could not be made because the Federal share of a project is not fixed. Therefore, the tables continue to show the total allowance and EPA pays the prevailing Federal share of that figure.

The proposed allowance procedures require that the allowance be based on the allowable cost of building the treatment works. Accordingly, the allowance for a segment of a treatment works was to be based on the cumulative allowable building cost to date minus any previous allowances. We received comments from a number of communities and from members of the engineering profession stating that this was not an equitable way to determine the allowance. These commenters said that in most cases each segment stands alone, and for this reason, the allowance should be based only on the building cost of that segment. Another commenter wrote that the proposed procedure was more complex, difficult to understand, and different than the procedures generally used in the engineering profession. It was also pointed out that the analysis of the historical cost information did not, in many instances, represent the entire cost of building the treatment works. Because of these reasons EPA is deleting the procedures that were proposed for determining the allowance for segmented and phase funded treatment works. In the future, the allowance will be based on the allowable building cost of each segment.

A number of commenters objected to the adjustment of the allowance to reflect the building cost one year after substantial completion of the design drawings and specifications. They argue that since the allowance is not directly related to the cost of facilities planning and design, it should not be related to the date of completion of such work. EPA agrees with this logic. Accordingly, the proposal to adjust the allowance to reflect the date of completion of facilities planning and design was deleted from Appendix B.

In response to a number of comments the allowance tables were expanded to include projects with building cost less then $100,000 and projects with building cost between $100 million and $200 million.

One commenter suggested that all references to the allowance being based on an analysis of historical data be removed from Appendix B because such

a discussion could give the impression that the tables could be used to estimate the actual facilities planning and design cost. Since these references are not needed to determine the allowance, and because this preamble includes an extensive discussion of the data and analysis, these references have been deleted from Appendix B.

Many commenters expressed concern that the allowance tables in Appendix B would be used by communities to determine the amount to be paid to architect/engineering firms for planning and design services. As stated above, the tables are not designed to be used as a compensation schedule for facilities planning or design services. In fact, many variables, including demonstrated competence, experience and qualifications of the firms involved are important factors in determining the appropriate fees for architect/engineering services. To reinforce this fact, a "Note" to this effect has been incorporated into Appendix B.

Regulation Development Process

This program is listed in the Catalog of Federal Domestic Assistance as number 66.418—Construction Grants for Wastewater Treatment Works. Executive Order 12372 of July 14, 1982, detailed a State and local elected official consultation process to replace Office of Management and Budget Circular A-95. EPA published a final regulation on June 24, 1983, implementing this Executive Order (48 FR 29288).

Under Executive Order 12291 EPA is required to judge whether a regulation is "major" and therefore subject to the regulatory impact analysis requirements of the Order. We are making these changes to implement Pub. L. 96-483, the October 21, 1980 amendments to the Clean Water Act, to reduce the complexity of the regulation, and to implement the Municipal Wastewater Treatment Construction Grant Amendments of 1981 (Pub. L. 97-117). I have determined this regulation is not a major regulation as it will not have a substantial impact on the nation's economy or large numbers of individuals or businesses. Thus it is not subject to the impact analysis requirements of Executive Order 12291.

Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq. and have been assigned OMB control number 2040-0027.

Under the Regulatory Flexibility Act (5 U.S.C. 601) I hereby certify that this regulation will not have a significant impact on a substantial number of small entities. This rule is designed to reduce regulation burdens to a minimum. The revisions made clarify and simplify the regulation, and reduce project costs.

List of Subjects in 40 CFR Part 35

Air pollution control, Grant programs—environmental protection, Indians, Pesticides and pests, Reporting and recordkeeping requirements, Waste treatment and disposal, Water pollution control.

This regulation was submitted to the Office of Management and Budget for review as required by Executive Order 12291.

Dated: February 3, 1984.

William D. Ruckelshaus,

Administrator.

For the reasons outlined in the preamble, 40 CFR Part 35 is amended by revising Subpart I, to read as follows:

PART 35—STATE AND LOCAL ASSISTANCE

* * * * *

Subpart I—Grants for Construction of Treatment Works

Sec.

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Subpart I—Grants for Construction of Treatment Works

Authority: Secs. 101(e), 109(b), 201 through 205, 207, 208(d), 210 through 212, 215 through 217, 304(d)(3), 313, 501, 502, 511 and 516(b) of the Clean Water Act, as amended, 33 U.S.C. 1251 et seq.

§ 35.2000 Purpose and policy.

(a) The primary purpose of Federal grant assistance available under this subpart is to assist municipalities in meeting enforceable requirements of the Clean Water Act, particularly, applicable National Pollutant Discharge Elimination System (NPDES) permit requirements.

(b) This subpart supplements EPA's Uniform Relocation and Real Property Acquisition Policies Act regulation (Part 4 of this chapter), its National Environmental Policy Act (NEPA) regulation (Part 6 of this chapter), its public participation regulation (Part 25 of this chapter), its intergovernmental review regulation (Part 29 of this chapter), its general grant regulation (Part 30 of this subchapter), its debarment regulation (Part 32 of this subchapter), and its procurement under assistance regulation (Part 33 of this subchapter), and establishes requirements for Federal grant assistance for the building of wastewater treatment works. EPA may also find it necessary to publish other requirements applicable to the construction grants program in response

to Congressional action and executive orders.

(c) EPA's policy is to delegate administration of the construction grants program on individual projects to State agencies to the maximum extent possible (see Subpart F). Throughout this subpart we have used the term Regional Administrator. To the extent that the Regional Administrator delegates review of projects for compliance with the requirements of this subpart to a State agency under a delegation agreement (§ 35.1030), the term Regional Administrator may be read State agency. This paragraph does not affect the rights of citizens, applicants or grantees provided in Subpart F.

(d) In accordance with the Federal Grant and Cooperative Agreement Act (Pub. L. 95–224) EPA will, when substantial Federal involvement is anticipated, award assistance under cooperative agreements. Throughout this subpart we have used the terms grant and grantee but those terms may be read cooperative agreement and recipient if appropriate.

(e) From time to time EPA publishes technical and guidance materials on various topics relevant to the construction grants program. Grantees may find this information useful in meeting requirements in this subpart. These publications, including the MCD and FRD series, may be ordered from: EPA, 401 M St. SW, Room 1115 ET, WH 547, Washington, DC 20460. In order to expedite processing of requests, persons wishing to obtain these publications should request a copy of EPA form 7500–21 (the order form listing all available publications), from EPA Headquarters, Municipal Construction Division (WH–547) or from any EPA Regional Office.

§ 35.2005 Definitions.

(a) Words and terms not defined below shall have the meaning given to them in 40 CFR Parts 30 and 33.

(b) As used in this subpart, the following words and terms mean:

(1) *Act.* The Clean Water Act (33 U.S.C. 1251 et seq., as amended).

(2) *Ad valorem tax.* A tax based upon the value of real property.

(3) *Allowance.* An amount based on a percentage of the project's allowable building cost, computed in accordance with Appendix B.

(4) *Alternative technology.* Proven wastewater treatment processes and techniques which provide for the reclaiming and reuse of water, productively recycle wastewater constituents or otherwise eliminate the discharge of pollutants, or recover energy. Specifically, alternative technology includes land application of effluent and sludge; aquifer recharge; aquaculture; direct reuse (non-potable); horticulture; revegetation of disturbed land; containment ponds; sludge composting and drying prior to land application; self-sustaining incineration; methane recovery; individual and onsite systems; and small diameter pressure and vacuum sewers and small diameter gravity sewers carrying partially or fully treated wastewater.

(5) *Alternative to conventional treatment works for a small community.* For purposes of §§ 35.2020 and 35.2032 a treatment works in a small community using innovative or alternative technology.

(6) *Architectural or engineering services.* Consultation, investigations, reports, or services for design-type projects within the scope of the practice of architecture or professional engineering as defined by the laws of the State or territory in which the grantee is located.

(7) *Best Practicable Waste Treatment Technology (BPWTT).* The cost-effective technology that can treat wastewater, combined sewer overflows and nonexcessive infiltration and inflow in publicly owned or individual wastewater treatment works, to meet the applicable provisions of:

(i) 40 CFR Part 133—secondary treatment of wastewater;

(ii) 40 CFR Part 125, Subpart G—marine discharge waivers;

(iii) 40 CFR 122.44(d)—more stringent water quality standards and State standards; or

(iv) 41 FR 6190 (February 11, 1976)—Alternative Waste Management Techniques for Best Practicable Waste Treatment (treatment and discharge, land application techniques and utilization practices, and reuse).

(8) *Building.* The erection, acquisition, alteration, remodeling, improvement or extension of treatment works.

(9) *Building completion.* The date when all but minor components of a project have been built, all equipment is operational and the project is capable of functioning as designed.

(10) *Collector sewer.* The common lateral sewers, within a publicly owned treatment system, which are primarily installed to receive wastewaters directly from facilities which convey wastewater from individual systems, or from private property, and which include service "Y" connections designed for connection with those facilities including:

(i) Crossover sewers connecting more than one property on one side of a major street, road, or highway to a lateral sewer on the other side when more cost effective than parallel sewers; and

(ii) Except as provided in (b)(10)(iii) of this section, pumping units and pressurized lines serving individual structures or groups of structures when such units are cost effective and are owned and maintained by the grantee.

(iii) This definition excludes other facilities which convey wastewater from individual structures, from private property to the public lateral sewer, or its equivalent and also excludes facilities associated with alternatives to conventional treatment works in small communities.

(11) *Combined sewer.* A sewer that is designed as a sanitary sewer and a storm sewer.

(12) *Complete waste treatment system.* A complete waste treatment system consists of all the treatment works necessary to meet the requirements of title III of the Act, involving: (i) The transport of wastewater from individual homes or buildings to a plant or facility where treatment of the wastewater is accomplished; (ii) the treatment of the wastewater to remove pollutants; and (iii) the ultimate disposal, including recycling or reuse, of the treated wastewater and residues which result from the treatment process.

(13) *Construction.* Any one or more of the following: Preliminary planning to determine the feasibility of treatment works, engineering, architectural, legal, fiscal, or economic investigations or studies, surveys, designs, plans, working drawings, specifications, procedures, field testing of innovative or alternative wastewater treatment processes and techniques (excluding operation and maintenance) meeting guidelines promulgated under section 304(d)(3) of the Act, or other necessary actions, erection, building, acquisition, alteration, remodeling, improvement, or extension of treatment works, or the inspection or supervision of any of the foregoing items.

(14) *Conventional technology.* Wastewater treatment processes and techniques involving the treatment of wastewater at a centralized treatment plant by means of biological or physical/chemical unit processes followed by direct point source discharge to surface waters.

(15) *Enforceable requirements of the Act.* Those conditions or limitations of section 402 or 404 permits which, if violated, could result in the issuance of a compliance order or initiation of a civil or criminal action under section 309 of the Act or applicable State laws. If a permit has not been issued, the term shall include any requirement which, in the Regional Administrator's judgment,

would be included in the permit when issued. Where no permit applies, the term shall include any requirement which the Regional Administrator determines is necessary for the best practicable waste treatment technology to meet applicable criteria.

(16) *Excessive infiltration/inflow.* The quantities of infiltration/inflow which can be economically eliminated from a sewer system as determined in a cost-effectiveness analysis that compares the costs for correcting the infiltration/inflow conditions to the total costs for transportation and treatment of the infiltration/inflow. (See §§ 35.2005(b)(28), (b)(29) and 35.2120).

(17) *Field testing.* Practical and generally small-scale testing of innovative or alternative technologies directed to verifying performance and/or refining design parameters not sufficiently tested to resolve technical uncertainties which prevent the funding of a promising improvement in innovative or alternative treatment technology.

(18) *Individual systems.* Privately owned alternative wastewater treatment works (including dual waterless/gray water systems) serving one or more principal residences, or small commercial establishments. Normally these are onsite systems with localized treatment and disposal of wastewater, but may be systems utilizing small diameter gravity, pressure or vacuum sewers conveying treated or partially treated wastewater. These systems can also include small diameter gravity sewers carrying raw wastewater to cluster systems.

(19) *Industrial user.* Any nongovernmental, nonresidential user of a publicly owned treatment works which is identified in the Standard Industrial Classification Manual, 1972, Office of Management and Budget, as amended and supplemented, under one of the following divisions:

Division A. Agriculture, Forestry, and Fishing
Division B. Mining
Division D. Manufacturing
Division E. Transportation, Communications, Electric, Gas, and Sanitary Services
Division I. Services

(20) *Infiltration.* Water other than wastewater that enters a sewer system (including sewer service connections and foundation drains) from the ground through such means as defective pipes, pipe joints, connections, or manholes. Infiltration does not include, and is distinguished from, inflow.

(21) *Inflow.* Water other than wastewater that enters a sewer system (including sewer service connections) from sources such as, but not limited to, roof leaders, cellar drains, yard drains, area drains, drains from springs and swampy areas, manhole covers, cross connections between storm sewers and sanitary sewers, catch basins, cooling towers, storm waters, surface runoff, street wash waters, or drainage. Inflow does not include, and is distinguished from, infiltration.

(22) *Initiation of operation.* The date specified by the grantee on which use of the project begins for the purposes that it was planned, designed, and built.

(23) *Innovative technology.* Developed wastewater treatment processes and techniques which have not been fully proven under the circumstances of their contemplated use and which represent a significant advancement over the state of the art in terms of significant reduction in life cycle cost or significant environmental benefits through the reclaiming and reuse of water, otherwise eliminating the discharge of pollutants, utilizing recycling techniques such as land treatment, more efficient use of energy and resources, improved or new methods of waste treatment management for combined municipal and industrial systems, or the confined disposal of pollutants so that they will not migrate to cause water or other environmental pollution.

(24) *Interceptor sewer.* A sewer which is designed for one or more of the following purposes:

(i) To intercept wastewater from a final point in a collector sewer and convey such wastes directly to a treatment facility or another interceptor.

(ii) To replace an existing wastewater treatment facility and transport the wastes to an adjoining collector sewer or interceptor sewer for conveyance to a treatment plant.

(iii) To transport wastewater from one or more municipal collector sewers to another municipality or to a regional plant for treatment.

(iv) To intercept an existing major discharge of raw or inadequately treated wastewater for transport directly to another interceptor or to a treatment plant.

(25) *Interstate agency.* An agency of two or more States established under an agreement or compact approved by the Congress, or any other agency of two or more States, having substantial powers or duties pertaining to the control of water pollution.

(26) *Marine bays and estuaries.* Semi-enclosed coastal waters which have a free connection to the territorial sea.

(27) *Municipality.* A city, town, borough, county, parish, district, association, or other public body (including an intermunicipal agency of two or more of the foregoing entities) created under State law, or an Indian tribe or an authorized Indian tribal organization, having jurisdiction over disposal of sewage, industrial wastes, or other waste, or a designated and approved management agency under section 208 of the Act.

(i) This definition includes a special district created under State law such as a water district, sewer district, sanitary district, utility district, drainage district or similar entity or an integrated waste management facility, as defined in section 201(e) of the Act, which has as one of its principal responsibilities the treatment, transport, or disposal of domestic wastewater in a particular geographic area.

(ii) This definition excludes the following:

(A) Any revenue producing entity which has as its principal responsibility an activity other than providing wastewater treatment services to the general public, such as an airport, turnpike, port facility or other municipal utility.

(B) Any special district (such as school district or a park district) which has the responsibility to provide wastewater treatment services in support of its principal activity at specific facilities, unless the special district has the responsibility under State law to provide wastewater treatment services to the community surrounding the special district's facility and no other municipality, with concurrent jurisdiction to serve the community, serves or intends to serve the special district's facility or the surrounding community.

(28) *Nonexcessive infiltration.* The quantity of flow which is less than 120 gallons per capita per day (domestic base flow and infiltration) or the quantity of infiltration which cannot be economically and effectively eliminated from a sewer system as determined in a cost-effectiveness analysis. (See §§ 35.2005(b)(16) and 35.2120.)

(29) *Nonexcessive inflow.* The rainfall induced peak inflow rate which does not result in chronic operational problems related to hydraulic overloading of the treatment works during storm events. These problems may include surcharging, backups, bypasses, and overflows. (See §§ 35.2005(b)(16) and 35.2120.)

(30) *Operation and Maintenance.* Activities required to assure the dependable and economical function of treatment works.

(i) *Maintenance:* Preservation of functional integrity and efficiency of equipment and structures. This includes

preventive maintenance, corrective maintenance and replacement of equipment (See § 35.2005(b)(36)) as needed.)

(ii) *Operation:* Control of the unit processes and equipment which make up the treatment works. This includes financial and personnel management; records, laboratory control, process control, safety and emergency operation planning.

(31) *Principal residence.* For the purposes of § 35.2034, the habitation of a family or household for at least 51 percent of the year. Second homes, vacation or recreation residences are not included in this definition.

(32) *Project.* The activities or tasks the Regional Administrator identifies in the grant agreement for which the grantee may expend, obligate or commit funds.

(33) *Project performance standards.* The performance and operations requirements applicable to a project including the enforceable requirements of the Act and the specifications, including the quantity of excessive infiltration and inflow proposed to be eliminated, which the project is planned and designed to meet.

(34) *Priority water quality areas.* For the purposes of § 35.2015, specific stream segments or bodies of water, as determined by the State, where municipal discharges have resulted in the impairment of a designated use or significant public health risks, and where the reduction of pollution from such discharges will substantially restore surface or groundwater uses.

(35) *Project schedule.* A timetable specifying the dates of key project events including public notices of proposed procurement actions, subagreement awards, issuance of notice to proceed with building, key milestones in the building schedule, completion of building, initiation of operation and certification of the project.

(36) *Replacement.* Obtaining and installing equipment, accessories, or appurtenances which are necessary during the design or useful life, whichever is longer, of the treatment works to maintain the capacity and performance for which such works were designed and constructed.

(37) *Sanitary sewer.* A conduit intended to carry liquid and water-carried wastes from residences, commercial buildings, industrial plants and institutions together with minor quantities of ground, storm and surface waters that are not admitted intentionally.

(38) *Services.* A contractor's labor, time or efforts which do not involve the delivery of a specific end item, other than documents (e.g., reports, design drawings, specifications). This term does not include employment agreements or collective bargaining agreements.

(39) *Small commercial establishments.* For purposes of § 35.2034 private establishments such as restaurants, hotels, stores, filling stations, or recreational facilities and private, nonprofit entities such as churches, schools, hospitals, or charitable organizations with dry weather wastewater flows less than 25,000 gallons per day.

(40) *Small community.* For purposes of §§ 35.2020(b) and 35.2032, any municipality with a population of 3,500 or less, or highly dispersed sections of large municipalities, as determined by the Regional Administrator.

(41) *State.* A State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Trust Territory of the Pacific Islands, and the Commonwealth of the Northern Marianas. For the purposes of applying for a grant under section 201(g)(1) of the act, a State (including its agencies) is subject to the limitations on revenue producing entities and special districts contained in § 35.2005(b)(27)(ii).

(42) *State agency.* The State agency designated by the Governor having responsibility for administration of the construction grants program under section 205(g) of the Act.

(43) *Step 1.* Facilities planning.

(44) *Step 2.* Preparation of design drawings and specifications.

(45) *Step 3.* Building of a treatment works and related services and supplies.

(46) *Step 2+3.* Design and building of a treatment works and building related services and supplies.

(47) *Storm sewer.* A sewer designed to carry only storm waters, surface run-off, street wash waters, and drainage.

(48) *Treatment works.* Any devices and systems for the storage, treatment, recycling, and reclamation of municipal sewage, domestic sewage, or liquid industrial wastes used to implement section 201 of the Act, or necessary to recycle or reuse water at the most economical cost over the design life of the works. These include intercepting sewers, outfall sewers, sewage collection systems, individual systems, pumping, power, and other equipment and their appurtenances; extensions, improvement, remodeling, additions, and alterations thereof; elements essential to provide a reliable recycled supply such as standby treatment units and clear well facilities; and any works, including acquisition of the land that will be an integral part of the treatment process or is used for ultimate disposal of residues resulting from such treatment (including land for composting sludge, temporary storage of such compost and land used for the storage of treated wastewater in land treatment systems before land application); or any other method or system for preventing, abating, reducing, storing, treating, separating, or disposing of municipal waste or industrial waste, including waste in combined storm water and sanitary sewer systems.

(49) *Treatment works phase or segment.* A treatment works phase or segment may be any substantial portion of a facility and its interceptors described in a facilities plan under § 35.2030, which can be identified as a subagreement or discrete subitem. Multiple subagreements under a project shall not be considered to be segments or phases. Completion of building of a treatment works phase or segment may, but need not in and of itself, result in an operable treatment works.

(50) *Useful life.* The period during which a treatment works operates. (Not "design life" which is the period during which a treatment works is planned and designed to be operated.)

(51) *User charge.* A charge levied on users of a treatment works, or that portion of the ad valorem taxes paid by a user, for the user's proportionate share of the cost of operation and maintenance (including replacement) of such works under sections 204(b)(1)(A) and 201(h)(2) of the Act and this subpart.

(52) *Value engineering.* A specialized cost control technique which uses a systematic and creative approach to identify and to focus on unnecessarily high cost in a project in order to arrive at a cost saving without sacrificing the reliability or efficiency of the project.

§ 35.2010 Allotment; reallotment.

(a) Allotments are made on a formula or other basis which Congress specifies for each fiscal year (FY). The allotment for each State and the availability period shall be announced each fiscal year in the **Federal Register.** This section applies only to funds allotted under section 205 of the Act.

(b) Unless otherwise provided by Congress, all sums allotted to a State under section 205 of the Act shall remain available for obligation until the end of one year after the close of the fiscal year for which the sums were appropriated. Except as provided in § 35.2020)(a), sums not obligated at the end of that period shall be subject to reallotment on the basis of the same ratio as applicable to the then-current

fiscal year, but none of the funds reallotted shall be made available to any State which failed to obligate any of the fiscal year funds being reallotted. Any sum made available to a State by reallotment under this section shall be in addition to any funds otherwise allotted to such State for grants under this subpart during any fiscal year and the reallotted funds shall remain available for obligation until the last day of the fiscal year following the fiscal year in which the reallotted funds are issued by the Comptroller to the Regional Administrator.

(c) Except for funds appropriated for FY 72 and fiscal years prior to 1972, sums which are deobligated and reissued by the Comptroller to the Regional Administrator before their reallotment date shall be available for obligation in the same State and treated in the same manner as the allotment from which such funds were derived.

(d) Except for funds appropriated for FY 72 and fiscal years prior to 1972, deobligated sums which are reissued by the Comptroller to the Regional Administrator after their reallotment date shall be available for obligation in the same State until the last day of the fiscal year following the fiscal year in which the reissuance occurs.

(e) Deobligated FY 72 and prior to 1972 fiscal year funds, except 1964, 1965 and 1966 funds, will be credited to the allowances of the same Region from which such funds are recovered, and the Regional Administrator may determine how these recoveries are credited to the States within the Region.

§ 35.2015 State priority system and project priority list.

(a) *General.* The Regional Administrator will award grant assistance from annual allotments to projects on a State project priority list developed in accordance with an approved State priority system. The State priority system and list must be designed to achieve optimum water quality management consistent with the goals and requirements of the Act. All projects for building treatment works to be funded by EPA must be included on a State project priority list, except training facilities funded under section 109(b) of the Act and marine CSO projects funded under section 201(n)(2) of the Act.

(b) *State priority system.* The State priority system describes the methodology used to rank projects that are considered eligible for assistance. The priority system should give high priority to projects in priority water quality areas. The priority system may also include the administrative, management, and public participation procedures required to develop and revise the State project priority list. The priority system includes at least the following elements:

(1) *Criteria.* (i) The priority system shall include at least the following criteria for ranking projects:

(A) The impairment of classified water uses resulting from existing municipal pollutant discharges; and

(B) The extent of surface or ground water use restoration or public health improvement resulting from the reduction in pollution.

(ii) The State may also include other criteria in its priority system for ranking projects, such as the use of innovative or alternative technology, the need to complete a waste treatment system for which a grant for a phase or segment was previously awarded; and the category of need and the existing population affected.

(iii) In ranking phased and segmented projects States must comply with § 35.2108.

(2) *Categories of need.* All projects must fit into at least one of the categories of need described in this paragraph to be eligible for funding, except as provided in paragraphs (b)(2)(iii) and (b)(2)(iv) of this section. States will have sole authority to determine the priority for each category of need.

(i) Before October 1, 1984, these categories of need shall include at least the following:

(A) Secondary treatment (category I);

(B) Treatment more stringent than secondary (category II);

(C) Infiltration/inflow correction (category IIIA);

(D) Major sewer system rehabilitation (category IIIB);

(E) New collector sewers and appurtenances (category IVA);

(F) New interceptors and appurtenances (category IVB);

(G) Correction of combined sewer overflows (category V).

(ii) After September 30, 1984, except as provided in paragraphs (b)(2)(iii) and (b)(2)(iv) of this section, these categories of need shall include only the following:

(A) Secondary treatment or any cost-effective alternative;

(B) Treatment more stringent than secondary or any cost-effective alternative;

(C) New interceptors and appurtenances; and

(D) Infiltration/inflow correction.

(iii) After September 30, 1984, up to 20 percent (as determined by the Governor) of a State's annual allotment may be used for categories of need other than those listed in paragraph (b)(2)(ii) of this section.

(iv) After September 30, 1984, the Governor may include in the priority system a category for projects needed to correct combined sewer overflows which result in impaired uses in priority water quality areas. Only projects which comply with the requirements of § 35.2024(a) may be included in this category.

(c) *Project priority list.* The State's annual project priority list is an ordered listing of projects for which the State expects Federal financial assistance. The priority list contains two portions: the fundable portion, consisting of those projects anticipated to be funded from funds available for obligation; and the planning portion, consisting of projects anticipated to be funded from future authorized allotments.

(1) The State shall develop the project priority list consistent with the criteria established in the approved priority system. In ranking projects, the State must also consider total funds available, needs and priorities set forth in areawide water quality management plans, and any other factors contained in the State priority system.

(2) The list shall include an estimate of the eligible cost of each project.

(d) *Public participation.* (1) In addition to any requirements in 40 CFR Part 25, the State shall hold public hearings as follows:

(i) Before submitting its priority system to the Regional Administrator for approval and before adopting any significant change to an approved priority system; and

(ii) Before submitting its annual project priority list to the Regional Administrator for acceptance and before revising its priority list unless the State agency and the Regional Administrator determine that the revision is not significant.

(iii) If the approved State priority system contains procedures for bypassing projects on the fundable portion of the priority list, such bypasses will not be significant revisions for purposes of this section.

(2) Public hearings may be conducted as directed in the State's continuing planning process document or may be held in conjunction with any regular public meeting of the State agency.

(e) *Regional Administrator review.* The State must submit its priority system, project priority list and revisions of the priority system or priority list to the Regional Administrator for review. The State must also submit each year, by August 31, a new priority list for use in the next fiscal year.

(1) After submission and approval of the initial priority system and submission and acceptance of the project priority lists under paragraph (c) of this section, the State may revise its priority system and list as necessary.

(2) The regional Administrator shall review the State priority system and any revisions to insure that they are designed to obtain compliance with the criteria established in accordance with paragraphs (b) and (d) of this section and the enforceable requirements of the Act as defined in § 35.2005(b)(15). The Regional Administrator shall complete review of the priority system within 30 days of receipt of the system from the State and will notify the State in writing of approval or disapproval of the priority system, stating any reasons for disapproval.

(3) The Regional Administrator will review the project priority list and any revisions to insure compliance with the State's approved priority system and the requirements of paragraph (c) of this section. The Regional Administrator will complete review of the project priority list within 30 days of receipt from the State and will notify the State in writing of acceptance or rejection, stating the reasons for the rejection. Any project which is not contained on an accepted current priority list will not receive funding.

(f) *Compliance with the enforceable requirements of the Act.* (1) Except as limited under paragraph (f)(2) of this section, the Regional Administrator, after a public hearing, shall require the removal of a specific project or portion thereof from the State project priority list if the Regional Administrator determines it will not contribute to compliance with the enforceable requirements of the Act.

(2) The Regional Administrator shall not require removal of projects in categories under paragraphs (b)(2)(i)(D) through (b)(2)(i)(G) of this section which do not meet the enforceable requirements of the Act unless the total Federal share of such projects would exceed 25 percent of the State's annual allotment.

§ 35.2020 Reserves.

In developing its priority list the State shall establish the reserves required or authorized under this section. The amount of each mandatory reserve shall be based on the allotment to each State from the annual appropriation under § 35.2010. The State may also establish other reserves which it determines appropriate.

(a) *Reserve for State management assistance grants.* Each State may request that the Regional Administrator reserve, from the State's annual allotment, up to 4 percent of the State's allotment based on the amount authorized to be appropriated, or $400,000, whichever is greater, for State management assistance grants under Subpart F of this part. Grants may be made from these funds to cover the costs of administering activities delegated or scheduled to be delegated to a State. Funds reserved for this purpose that are obligated by the end of the allotment period will be added to the amounts last allotted to a State. These funds shall be immediately available for obligation to projects in the same manner and to the same extent as the last allotment.

(b) *Reserve for alternative systems for small communities.* Each State with 25 percent or more rural population (as determined by population estimates of the Bureau of Census) shall reserve 4 percent of the State's annual allotment for alternatives to conventional treatment works for small communities. The Governor of any non-rural State may reserve up to 4 percent of that State's allotment for the same purpose.

(c) Reserve for innovative and alternative technologies. Each State shall reserve not less than 4 percent nor more than 7½ percent from its annual allotment to increase the Federal share of grant awards under § 35.2032 for projects which use innovative or alternative wastewater treatment processes and techniques. Of this amount not less than one-half of one percent of the State's allotment shall be set aside to increase the Federal share for projects using innovative processes and techniques.

(d) *Reserve for water quality management.* Each State shall reserve not less than $100,000 nor more than 1 percent from its annual allotments, to carry out water quality management planning under § 35.2023, except that in the case of Guam, the Virgin Islands, American Samoa, the Trust Territory of the Pacific Islands and the Commonwealth of the Northern Marianas, a reasonable amount shall be reserved for this purpose.

(e) *Reserve for Advances of Allowance.* Each State shall reserve a reasonable portion of its annual allotment not to exceed 10 percent for advances of allowance under § 35.2025. The Regional Administrator may waive this reserve requirement where a State can demonstrate that such a reserve is not necessary because no new facilities planning or design work requiring an advance and resulting in Step 3 grant awards is expected to begin during the period of availability of the annual allotment.

§ 35.2021 Reallotment of reserves.

(a) Mandatory portions of reserves under § 35.2020(b) through (e) shall be reallotted if not obligated during the allotment period. The State management assistance reserve under § 35.2020(a) is not subject to reallotment.

(b) States may request the Regional Administrator to release funds in optional reserves or optional portions of required reserves under § 35.2020(b) through (e) for funding projects at any time before the reallotment date. If these optional reserves are not obligated or released and obligated for other purposes before the reallotment date, they shall be subject to reallotment under § 35.2010(b).

(c) Sums deobligated from the mandatory portion of reserves under paragraphs (b) through (e) of § 35.2020 which are reissued by the Comptroller to the Regional Administrator before the initial reallotment date for those funds shall be returned to the same reserve. (See § 35.2010.)

§ 35.2023 Water quality management planning.

(a) From funds reserved under § 35.2020(d) the Regional Administrator shall make grants to the States to carry out water quality management planning including but not limited to:

(1) Identifying the most cost-effective and locally acceptable facility and non-point measures to meet and maintain water quality standards;

(2) Developing an implementation plan to obtain State and local financial and regulatory commitments to implement measures developed under paragraph (a)(1);

(3) Determining the nature, extent and causes of water quality problems in various areas of the State and interstate region, and reporting on these annually; and

(4) Determining which publicly owned treatment works should be constructed, in which areas and in what sequence, taking into account the relative degree of effluent reduction attained, the relative contributions to water quality of other point or nonpoint sources, and the consideration of alternatives to such construction, and implementing section 303(e) of the Act.

(b) In carrying out planning with grants made under paragraph (a), a State shall develop jointly with local, regional and interstate entities, a plan for carrying out the program and give funding priority to such entities and designated or undesignated public comprehensive planning organizations to carry out the purposes of this section.

§ 35.2024 Combined sewer overflows.

(a) *Grant assistance from State allotment.* As provided in § 35.2015(b)(2)(iv), after September 30, 1984, upon request from a State, the Administrator may award a grant under section 201(n)(1) of the Act from the State allotment for correction of combined sewer overflows provided that the project is on the project priority list, it addresses impaired uses in priority water quality areas which are due to the impacts of the combined sewer overflows and otherwise meets the requirements of this subpart. The State must demonstrate to the Administrator that the water quality goals of the Act will not be achieved without correcting the combined sewer overflows. The demonstration shall as a minimum prove that significant usage of the water for fishing and swimming will not be possible without the proposed project, and that the project will result in substantial restoration of an existing impaired use.

(b) *Separate fund for combined sewer overflows in marine waters.* (1) After September 30, 1982, the Administrator may award grants under section 201(n)(2) of the Act for addressing impaired uses or public health risks in priority water quality areas in marine bays and estuaries due to the impacts of combined sewer overflows. The Administrator may award such grants provided that the water quality benefits of the proposed project have been demonstrated by the State. The demonstration shall as a minimum prove that significant usage of the water for shellfishing and swimming will not be possible without the proposed project for correction of combined sewer overflows, and the proposed project will result in substantial restoration of an existing impaired use.

(2) The Administrator shall establish priorities for projects with demonstrated water quality benefits based upon the following criteria:

(i) Extent of water use benefits that would result, including swimming and shellfishing;

(ii) Relationship of water quality improvements to project costs; and

(iii) National and regional significance.

(3) If the project is a phase or segment of the proposed treatment works described in the facilities plan, the criteria in paragraph (b)(2) of this section must be applied to the treatment works described in the facilities plan and each segment proposed for funding.

(4) All requirements of this Subpart apply to grants awarded under section 201(n)(2) of the Act except §§ 35.2010, 35.2015, 35.2020, 35.2021, 35.2025(b), 35.2042, 35.2103, 35.2109, and 35.2202.

§ 35.2025 Allowance and advance of allowance.

(a) *Allowance.* Step 2+3 and Step 3 grant agreements will include an allowance for facilities planning and design of the project to be determined in accordance with Appendix B of this subpart.

(b) *Advance of allowance to potential grant applicants.* (1) After application by the State (see § 35.2040(d)), the Regional Administrator will award a grant to the State in the amount of the reserve under § 35.2020(e) to advance allowances to potential grant applicants for facilities planning and project design.

(2) The State may request that the right to receive payments under the grant be assigned to specified potential grant applicants.

(3) The State may provide advances of allowance only to small communities, as defined by the State, which would otherwise be unable to complete an application for a grant under § 35.2040 in the judgment of the State.

(4) The advance shall not exceed the Federal share of the estimate of the allowance for such costs which a grantee would receive under paragraph (a) of this section.

(5) In the event a Step 2+3 or Step 3 grant is not awarded to a recipient of an advance, the State may seek repayment of the advance on such terms and conditions as it may determine. When a State recovers such advances they shall be added to its most recent grant for advances of allowance.

§ 35.2030 Facilities planning.

(a) *General.* (1) Facilities planning consists of those necessary plans and studies which directly relate to treatment works needed to comply with enforceable requirements of the Act. Facilities planning will investigate the need for proposed facilities. Through a systematic evaluation of alternatives that are feasible in light of the unique demographic, topographic, hydrologic and institutional characteristics of the area, it will demonstrate that, except for innovative and alternative technology under § 35.2032, the selected alternative is cost effective (i.e., is the most economical means of meeting the applicable effluent, water quality and public health requirements over the design life of the facility while recognizing environmental and other non-monetary considerations). For sewered communities with a population of 10,000 or less, consideration must be given to appropriate low cost technologies such as facultative ponds, trickling filters, oxidation ditches, or overland-flow land treatment; and for unsewered portions of communities of 10,000 or less, consideration must be given to onsite systems. The facilities plan will also demonstrate that the selected alternative is implementable from legal, institutional, financial and management standpoints.

(2) Grant assistance may be awarded before certification of the completed facilities plan if:

(i) The Regional Administrator determines that applicable statutory and regulatory requirements (including Part 6) have been met; that the facilities planning related to the project has been substantially completed; and that the project for which grant assistance is awarded will not be significantly affected by the completion of the facilities plan and will be a component part of the complete waste treatment system; and

(ii) The applicant agrees to complete the facilities plan on a schedule the State accepts and such schedule is inserted as a special condition of the grant agreement.

(b) *Facilities plan contents.* A completed facilities plan must include:

(1) A description of both the proposed treatment works, and the complete waste treatment system of which it is a part.

(2) A description of the Best Practicable Wastewater Treatment Technology. (See § 35.2005(b)(7).)

(3) A cost-effectiveness analysis of the feasible conventional, innovative and alternative wastewater treatment works, processes and techniques capable of meeting the applicable effluent, water quality and public health requirements over the design life of the facility while recognizing environmental and other non-monetary considerations. The planning period for the cost-effectiveness analysis shall be 20 years. The monetary costs to be considered must include the present worth or equivalent annual value of all capital costs and operation and maintenance costs. The discount rate established by EPA for the construction grants program shall be used in the cost-effectiveness analysis. The population forecasting in the analysis shall be consistent with the current Needs Survey. A cost-effectiveness analysis must include:

(i) An evaluation of alternative flow reduction methods. (If the grant applicant demonstrates that the existing average daily base flow (ADBF) from the area is less than 70 gallons per capita per day (gpcd), or if the Regional Administrator determines the area has

an effective existing flow reduction program, additional flow reduction evaluation is not required.)

(ii) A description of the relationship between the capacity of alternatives and the needs to be served, including capacity for future growth expected after the treatment works become operational. This includes letters of intent from significant industrial users and all industries intending to increase their flows or relocate in the area documenting capacity needs and characteristics for existing or projected flows;

(iii) An evaluation of improved effluent quality attainable by upgrading the operation and maintenance and efficiency of existing facilities as an alternative or supplement to construction of new facilities;

(iv) An evaluation of the alternative methods for the reuse or ultimate disposal of treated wastewater and sludge material resulting from the treatment process;

(v) A consideration of systems with revenue generating applications;

(vi) An evaluation of opportunities to reduce use of, or recover energy;

(vii) Cost information on total capital costs, and annual operation and maintenance costs, as well as estimated annual or monthly costs to residential and industrial users.

(4) A demonstration of the non-existence or possible existence of excessive infiltration/inflow in the sewer system. See § 35.2120.

(5) An analysis of the potential open space and recreation opportunities associated with the project.

(6) An adequate evaluation of the environmental impacts of alternatives under Part 6 of this chapter.

(7) An evaluation of the water supply implications of the project.

(8) For the selected alternative, a concise description at an appropriate level of detail, of at least the following:

(i) Relevant design parameters;

(ii) Estimated capital construction and operation and maintenance costs, (identifying the Federal, State and local shares), and a description of the manner in which local costs will be financed;

(iii) Estimated cost of future expansion and long-term needs for reconstruction of facilities following their design life;

(iv) Cost impacts on wastewater system users; and

(v) Institutional and management arrangements necessary for successful implementation.

(c) *Submission and review of facilities plan.* Each facilities plan must be submitted to the State for review. EPA recommends that potential grant applicants confer with State reviewers early in the facilities planning process. In addition, a potential grant applicant may request in writing from the State and EPA an early determination under Part 6 of this chapter of the appropriateness of a categorical exclusion from NEPA requirements, the scope of the environmental information document or the early preparation of an environmental impact statement.

§ 35.2032 Innovative and alternative technologies.

(a) *Funding for innovative and alternative technologies.* Projects or portions of projects using unit processes or techniques which the Regional Administrator determines to be innovative or alternative technology shall receive increased grants under § 35.2152.

(1) Only funds from the reserve in § 35.2020(c) shall be used to increase these grants.

(2) If the project is an alternative to conventional treatment works for a small community, funds from the reserve in § 35.2020(b) may be used for the 75 percent portion, or any lower Federal share of the grant as determined under § 35.2152.

(b) *Cost-effectiveness preference.* The Regional Administrator may award grant assistance for a treatment works or portion of a treatment works using innovative or alternative technologies if the total present worth cost of the treatment works for which the grant is to be made does not exceed the total present worth cost of the most cost-effective alternative by more than 15 percent.

(1) Privately-owned individual systems (§ 35.2034) are not eligible for this preference.

(2) If the present worth costs of the innovative or alternative unit processes are 50 percent or less of the present worth cost of the treatment works, the cost-effectiveness preference applies only to the innovative or alternative components.

(c) *Modification or replacement of innovative and alternative projects.* The Regional Administrator may award grant assistance to fund 100 percent of the allowable costs of the modification or replacement of any project funded with increased grant funding in accordance with paragraph (a) of this section if he determines that:

(1) The innovative or alternative elements of the project have caused the project or significant elements of the complete waste treatment system of which the project is a part to fail to meet project performance standards;

(2) The failure has significantly increased operation and maintenance expenditures for the project or the complete waste treatment system of which the project is a part; or requires significant additional captial expenditures for corrective action;

(3) The failure has occurred prior to two years after initiation of operation of the project; and

(4) The failure is not attributable to negligence on the part of any person.

§ 35.2034 Privately owned individual systems.

(a) An eligible applicant may apply for a grant to build privately owned treatment works serving one or more principal residences or small commercial establishments.

(b) In addition to those applicable limitations set forth in § 35.2100 through § 35.2127 the grant applicant shall:

(1) Demonstrate that the total cost and environmental impact of building the individual system will be less than the cost of a conventional system;

(2) Certify that the principal residence or small commercial establishment was constructed before December 27, 1977, and inhabited or in use on or before that date;

(3) Apply on behalf of a number of individual units to be served in the facilities planning area;

(4) Certify that public ownership of such works is not feasible and list the reasons; and

(5) Certify that such treatment works will be properly operated and maintained and will comply with all other requirements of section 204 of the Act.

§ 35.2040 Grant application.

Applicants for Step 2+3 or Step 3 assistance shall submit applications to the State. In addition to the information required in Parts 30 and 33 of this subchapter, applicants shall provide the following information:

(a) *Step 2+3: Combined design and building of a treatment works and building related services and supplies.* An application (EPA form 5700–32) for Step 2+3 grant assistance shall include:

(1) A facilities plan prepared in accordance with Subpart E or I as appropriate;

(2) Certification from the State that there has been adequate public participation based on State and local statutes;

(3) Notification of any advance received under § 35.2025(b); and

(4) Evidence of compliance with all applicable limitations on award (§§ 35.2100 through 35.2127).

(b) *Step 3: Building of a treatment works and related services and supplies.* An application (EPA form 5700–32) for Step 3 grant assistance shall include:

(1) A facilities plan prepared in accordance with Subpart E or I as appropriate;

(2) Certification from the State that there has been adequate public participation based on State and local statutes;

(3) Notification of any advance received under § 35.2025(b);

(4) Evidence of compliance with all applicable limitations on award (§§ 35.2100 through 35.2127);

(5) Final design drawings and specifications;

(6) The project schedule; and

(7) In the case of an application for Step 3 assistance that is solely for the acquisition of eligible real property, a plat which shows the legal description of the property to be acquired, a preliminary layout of the distribution and drainage systems, and an explanation of the intended method of acquiring the real property (see 40 CFR Part 4).

(c) *Training facility project.* An application (EPA form 5700–32) for a grant for construction and support of a training facility, facilities or training programs under section 109(b) of the Act shall include:

(1) A written commitment from the State agency to carry out at such facility a program of training; and

(2) If a facility is to be built, an engineering report including facility design data and cost estimates for design and building.

(d) *Advances of allowance.* State applications for advances of allowance to small communities shall be on EPA form 5700–31, Application for Federal Assistance (short form). The application shall include:

(1) A list of communities that received an advance of allowance and the amount received by each under the previous State grant; and

(2) The basis for the amount requested.

(e) *Field Testing of Innovative and Alternative Technology.* An application (EPA Form 5700–32) for field testing of I/A projects shall include a field testing plan containing:

(1) Identification, including size, of all principal components to be tested;

(2) Location of testing facilities in relationship to full scale design;

(3) Identification of critical design parameters and performance variables that are to be verified as the basis for I/A determinations;

(4) Schedule for construction of field testing facilities and duration of proposed testing;

(5) Capital and O&M cost estimate of field testing facilities with documentation of cost effectiveness of field testing approach; and

(6) Design drawing, process flow diagram, equipment specification and related engineering data and information sufficient to describe the overall design and proposed performance of the field testing facility.

(f) *Marine CSO Project.* An application (EPA Form 5700–32) for marine CSO grant assistance under § 35.2024(b) shall include:

(1) All information required under paragraphs (b)(1), (b)(2), (b)(4), (b)(6), and (b)(7), of this section;

(2) Final design drawings and specifications or a commitment to provide them by a date set by the Regional Administrator; and

(3) The water quality benefits demonstration required under § 35.2024(b)(1).

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§ 35.2042 Review of grant applications.

(a) All States shall review grant applications to ensure that they are complete. When the State determines the proposed project is entitled to priority it shall forward the State priority certification and, except where application review is delegated, the complete application to the regional Administrator for review.

(b)(1) All States delegated authority to manage the construction grants program under section 205(g) of the Act and Subpart F of this part shall furnish a written certification to the Regional Administrator, on a project-by-project basis, stating that the applicable Federal requirements within the scope of authority delegated to the State under the delegation agreement have been met. The certification must be supported by documentation specified in the delegation agreement which will be made available to the Regional Administrator upon request. The Regional Administrator shall accept the certification unless he determines the State has failed to establish adequate grounds for the certification or that an applicable requirement has not been met.

(2)(i) When EPA receives a certification covering all delegable preaward requirements, the Regional Administrator shall approve or disapprove the grant within 45 calendar days of receipt of the certification. The Regional Administrator shall state in writing the reasons for any disapproval, and he shall have an additional 45 days to review any subsequent revised submissions. If the Regional Administrator fails to approve or disapprove the grant within 45 days of receipt of the application, the grant shall be deemed approved and the Regional Adminstrator shall issue the grant agreement.

(ii) Grant increase requests are subject to the 45 day provision of this section if the State has been delegated authority over the subject matter of the request.

(c) Applications for assistance for training facilities funded under section 109(b) and for State advances of allowance under section 201(l)(1) of the Act and § 35.2025 will be reviewed in accordance with Part 30 of this subchapter.

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§ 35.2050 Effect of approval or certification of documents.

Review or approval of facilities plans, design drawings and specifications or other documents by or for EPA is for administrative purposes only and does not relieve the grantee of its responsibility to properly plan, design, build and effectively operate and maintain the treatment works described in the grant agreement as required under law, regulations, permits, and good management practices. EPA is not responsible for increased costs resulting from defects in the plans, design drawings and specifications or other subagreement documents.

§ 35.2100 Limitations on award.

Before awarding grant assistance for any project the Regional Administrator shall approve the facilities plan and final design drawings and specifications, and determine that the applicant and the applicant's project have met all of the applicable requirements of § 35.2040 and §§ 35.2100 through 35.2127 except as provided in § 35.2202 for Step 2+3 projects.

§ 35.2101 Advanced treatment.

Projects proposing advanced treatment shall be awarded grant assistance only after the project has been reviewed under EPA's advanced treatment review policy. This review must be completed before submission of any application. EPA recommends that potential grant applicants obtain this review before initiation of design.

§ 35.2102 Water quality management plans.

The project shall be consistent with the approved elements of any applicable

water quality management (WQM) plan approved under section 208 or section 303(e) of the Act; and the applicant shall be the wastewater management agency designated in that WQM plan.

§ 35.2103 Priority determination.

The project shall be entitled to priority in accordance with § 35.2015, and the award of grant assistance for the project shall not jeopardize the funding of any project of higher priority under the approved priority system.

§ 35.2104 Funding and other considerations.

The applicant shall:

(a) Agree to pay the non-Federal project costs;

(b) Demonstrate the legal, institutional, managerial, and financial capability to ensure adequate building and operation and maintenance of the treatment works throughout the applicant's jurisdiction including the ability to comply with Part 30 of this subchapter. This demonstration must include: an explanation of the roles and responsibilities of the local governments involved; how construction and operation and maintenance of the facilities will be financed; a current estimate of the cost of the facilities; and a calculation of the annual costs per household. It must also include a written certification signed by the applicant that the applicant has analyzed the costs and financial impacts of the proposed facilities, and that it has the capability to finance and manage their building and operation and maintenance in accordance with this regulation;

(c) Certify that it has not violated any Federal, State or local law pertaining to fraud, bribery, graft, kickbacks, collusion, conflict of interest or other unlawful or corrupt practice relating to or in connection with facilities planning or design work on a wastewater treatment works project.

(d) Indicate the level of participation for minority and women's business enterprises during facilities planning and design of the project.

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§ 35.2105 Debarment and suspension.

The applicant shall indicate whether it used the services of any individual, organization, or unit of government for facilities planning or design work whose name appears on the master list of debarments, suspensions, and voluntary exclusions. See 40 CFR 32.400. If the applicant indicates it has used the services of a debarred individual or firm, EPA will closely examine the facilities plan, design drawings and specifications to determine whether to award a grant. EPA will also determine whether the applicant should be found non-responsible under Part 30 of this subchapter or be the subject of possible debarment or suspension under Part 32 of this subchapter.

§ 35.2106 Plan of operation.

The applicant shall submit a draft plan of operation that addresses development of: An operation and maintenance manual; an emergency operating program; personnel training; an adequate budget consistent with the user charge system approved under § 35.2140; operational reports; laboratory testing needs; and an operation and maintenance program for the complete waste treatment system.

§ 35.2107 Intermunicipal service agreements.

If the project will serve two or more municipalities, the applicant shall submit the executed intermunicipal agreements, contracts or other legally binding instruments necessary for the financing, building and operation of the proposed treatment works. At a minimum they must include the basis upon which costs are allocated, the formula by which costs are allocated, and the manner in which the cost allocation system will be administered. The Regional Administrator may waive this requirement provided the applicant can demonstrate:

(a) That such an agreement is already in place; or

(b) Evidence of historic service relationships for water supply, wastewater or other services between the affected communities regardless of the existence of formal agreements, and

(c) That the financial strength of the supplier agency is adequate to continue the project, even if one of the proposed customer agencies fails to participate.

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§ 35.2108 Phased or segmented treatment works.

Grant funding may be awarded for a phase or segment of a treatment works, subject to the limitations of § 35.2123, although that phase or segment does not result in compliance with the enforceable requirements of the Act, provided:

(a) The great agreement requires the recipient to make the treatment works of which the phase or segment is a part operational and comply with the enforceable requirements of the Act according to a schedule specified in the grant agreement regardless of whether grant funding is available for the remaining phases and segments; and

(b) Except in the case of a grant solely for the acquisition of eligible real property, one or more of the following conditions exist:

(1) The Federal share of the cost of building the treatment works would require a disproportionate share of the State's annual allotment relative to other needs or would require a major portion of the State's annual allotment;

(2) The period to complete the building of the treatment works will cover three years or more; or

(3) The treatment works must be phased or segmented to meet the requirements of a Federal or State court order.

§ 35.2109 Step 2+3.

The Regional Administrator may award a Step 2+3 grant which will provide the Federal share of an allowance under Appendix B and the estimated allowable cost of the project only if:

(a) The population of the applicant municipality is 25,000 or less according to the most recent U.S. Census;.

(b) The total Step 3 building cost is estimated to be $8 million or less; and

(c) The project is not for a treatment works phase or segment.

§ 35.2110 Access to individual systems.

Applicants for privately owned individual systems shall provide assurance of access to the systems at all reasonable times for such purposes as inspection, monitoring, building, operation, rehabilitation and replacement.

§ 35.2111 Revised water quality standards.

After December 29, 1984, no grant assistance can be awarded in a State for stream segments which have not had their water quality standards reviewed and revised, as appropriate, or new standards adopted under section 303(c) of the Act, unless the State has in good faith submitted such water quality standards and the Regional Administrator has failed to act on them within 120 days of receipt.

§ 35.2112 Marine discharge waiver applicants.

If the applicant is also an applicant for a secondary treatment requirement waiver under section 301(h) of the Act, a plan must be submitted which contains a modified scope of work, a schedule for completion of the less-than-secondary facility and an estimate of costs providing for building the proposed less-than-secondary facilities, including

provisions for possible future additions of treatment processes or techniques to meet secondary treatment requirements.

§ 35.2113 Environmental review.

(a) The environmental review required by Part 6 of this Chapter must be completed before submission of any application. The potential applicant should work with the State and EPA as early as possible in the facilities planning process to determine if the project qualifies for a categorical exclusion from Part 6 requirements, or whether a finding of no significant impact or an environmental impact statement is required.

(b) In conjunction with the facilities planning process as described in § 35.2030(c), a potential applicant may request, in writing, that EPA make a formal determination under Part 6 of this chapter.

§ 35.2114 Value engineering.

(a) If the project has not received Step 2 grant assistance the applicant shall conduct value engineering if the total estimated cost of building the treatment works is more than $10 million.

(b) The value engineering recommendations shall be implemented to the maximum extent feasible.

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§ 35.2116 Collection system.

Except as provided in § 35.2032(c), if the project involves collection system work, such work:

(a) Shall be for the replacement or major rehabilitation of an existing collection system which was not build with Federal funds awarded on or after October 18, 1972, and shall be necessary to the integrity and performance of the complete waste treatment system; or

(b) Shall be for a new cost-effective collection system in a community in existence on October 18, 1972, which has sufficient existing or planned capacity to adequately treat such collected wastewater and where the bulk (generally two-thirds) of the expected flow (flow from existing plus future residential users) will be from the resident population on October 18, 1972. The expected flow will be subject to the limitations for interceptors contained in § 35.2123. If assistance is awarded, the grantee shall provide assurances that the existing population will connect to the collection system within a reasonable time after project completion.

§ 35.2118 Preaward costs.

(a) EPA will not award grant assistance for Step 2+3 and Step 3 work performed before award of grant assistance for that project, except:

(1) In emergencies or instances where delay could result in significant cost increases, the Regional Administrator may approve preliminary Step 3 work (such as procurement of major equipment requiring long lead times, field testing of innovative and alternative technologies, minor sewer rehabilitation, acquisition of eligible land, or of an option for the purchase of eligible land or advance building of minor portions of treatment works), after completion of the environmental review as required by § 35.2113.

(2) If the Regional Administrator approves preliminary Step 3 work, such approval is not an actual or implied commitment of grant assistance and the applicant proceeds at its own risk.

(b) Any procurement is subject to the requirements of 40 CFR Part 33, and in the case of acquisition of eligible real property, 40 CFR Part 4.

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§ 35.2120 Infiltration/inflow.

(a) *General.* The applicant shall demonstrate to the Regional Administrator's satisfaction that each sewer system discharging into the proposed treatment works project is not or will not be subject to excessive infiltration/inflow. For combined sewers, inflow is not considered excessive in any event.

(b) *Inflow.* If the rainfall induced peak inflow rate results or will result in chronic operational problems during storm events, the applicant shall perform a study of the sewer system to determine the quantity of excessive inflow and to propose a rehabilitation program to eliminate the excessive inflow. All cases in which facilities are planned for the specific storage and/or treatment of inflow shall be subject to a cost-effectiveness analysis.

(c) *Infiltration.* (1) If the flow rate at the existing treatment facility is 120 gallons per capita per day or less during periods of high groundwater, the applicant shall build the project including sufficient capacity to transport and treat any existing infiltration. However, if the applicant believes any specific portion of its sewer system is subject to excessive infiltration, the applicant may confirm its belief in a cost-effectiveness analysis and propose a sewer rehabilitation program to eliminate that specific excessive infiltration.

(2) If the flow rate at the existing treatment facility is more than 120 gallons per capita per day during periods of high groundwater, the applicant shall either:

(i) Perform a study of the sewer system to determine the quantity of excessive infiltration and to propose a sewer rehabilitation program to eliminate the excessive infiltration; or

(ii) If the flow rate is not significantly more than 120 gallons per capita per day, request the Regional Administrator to determine that he may proceed without further study, in which case the allowable project cost will be limited to the cost of a project with a capacity of 120 gallons per capita per day under Appendix A.G.2.a.

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§ 35.2122 Approval of user charge system and proposed sewer use ordinance.

If the project is for Step 3 grant assistance, unless it is solely for acquisition of eligible land, the applicant must obtain the Regional Administrator's approval of its user charge system (§ 35.2140) and proposed (or existing) sewer use ordinance § 35.2130). If the applicant has a sewer use ordinance or user charge system in affect, the applicant shall demonstrate to the Regional Administrator's satisfaction that they meet the requirements of this Part and are being enforced.

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§ 35.2123 Reserve capacity.

EPA will limit grant assistance for reserve capacity as follows:

(a) If EPA awarded a grant for a Step 3 interceptor segment before December 29, 1981, EPA may award grants for remaining interceptor segments included in the facilities plan with reserve capacity as planned, up to 40 years.

(b) Except as provided in paragraph (a) of this section, if EPA awards a grant for a Step 3 or Step 3 segment of a primary, secondary, or advanced treatment facility or its interceptors included in the facilities plan before October 1, 1984, the grant for that Step 3 or Step 3 segment, and any remaining segments, may include 20 years reserve capacity.

(c) Except as provided in paragraph (b) of this section, after September 30, 1984, no grant shall be made to provide reserve capacity for a project for secondary treatment or more stringent treatment or new interceptors and appurtenances. Grants for such projects shall be based on capacity necessary to serve existing needs (including existing needs of residential, commercial, industrial, and other users) as

determined on the date of the approval of the Step 3 grant. Grant assistance awarded after September 30, 1990 shall be limited to the needs existing on September 30, 1990.

(d) For any application with capacity in excess of that provided by this section:

(1) All incremental costs shall be paid by the applicant. Incremental costs include all costs which would not have been incurred but for the additional excess capacity, i.e., any cost in addition to the most cost-effective alternative with eligible reserve capacity described under paragraphs (a) and (b) of this section.

(2) It must be determined that the actual treatment works to be built meets the requirements of the National Environmental Policy Act and all applicable laws and regulations.

(3) The Regional Administrator shall approve the plans, specifications and estimates for the actual treatment works.

(4) The grantee shall assure the Regional Administrator satisfactorily that it has assessed the costs and financial impacts of the actual treatment works and has the capability to finance and manage their construction and operation.

(5) The grantee must implement a user charge system which applies to the entire service area of the grantee.

(6) The grantee shall execute appropriate grant conditions or releases protecting the Federal Government from any claim for any of the costs of construction due to the additional capacity.

§ 35.2125 Treatment of wastewater from industrial users.

(a) Grant assistance shall not be provided for a project unless the project is included in a complete waste treatment system and the principal purpose of both the project and the system is for the treatment of domestic wastewater of the entire community, area, region or district concerned.

(b) Allowable project costs do not include:

(1) Costs of interceptor or collector sewers constructed exclusively, or almost exclusively, to serve industrial users; or

(2) Costs for control or removal of pollutants in wastewater introduced into the treatment works by industrial users, unless the applicant is required to remove such pollutants introduced from nonindustrial users.

§ 35.2127 Federal facilities.

Grant assistance shall not be provided for costs to transport or treat wastewater produced by a facility that is owned and operated by the Federal government which contributes more than 250,000 gallons per day or five percent of the design flow of the complete waste treatment system, whichever is less.

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§ 35.2130 Sewer use ordinance.

The sewer use ordinance (see also §§ 35.2122 and 35.2208) or other legally binding document shall prohibit any new connections from inflow sources into the treatment works and require that new sewers and connections to the treatment works are properly designed and constructed. The ordinance or other legally binding document shall also require that all wastewater introduced into the treatment works not contain toxics or other pollutants in amounts or concentrations that endanger public safety and physical integrity of the treatment works; cause violation of effluent or water quality limitations; or preclude the selection of the most cost-effective alternative for wastewater treatment and sludge disposal.

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§ 35.2140 User charge system.

The user charge system (see §§ 35.2122 and 35.2208) must be designed to produce adequate revenues required for operation and maintenance (including replacement). It shall provide that each user which discharges pollutants that cause an increase in the cost of managing the effluent or sludge from the treatment works shall pay for such increased cost. The user charge system shall be based on either actual use under paragraph (a) of this section, ad valorem taxes under paragraph (b) of this section, or a combination of the two.

(a) *User charge system based on actual use.* A grantee's user charge system based on actual use (or estimated use) of wastewater treatment services shall provide that each user (or user class) pays its proportionate share of operation and maintenance (including replacement) costs of treatment works within the grantee's service area, based on the user's proportionate contribution to the total wastewater loading from all users (or user classes).

(b) *User charge system based on ad valorem taxes.* A grantee's user charge system which is based on ad valorem taxes may be approved if:

(1) On December 27, 1977, the grantee had in existence a system of dedicated ad valorem taxes which collected revenues to pay the cost of operation and maintenance of wastewater treatment works within the grantee's service area and the grantee has continued to use that system;

(2) The ad valorem user charge system distributes the operation and maintenance (including replacement) costs for all treatment works in the grantee's jurisdiction to the residential and small non-residential user class (including at the grantee's option nonresidential, commercial and industrial users that introduce no more than the equivalent of 25,000 gallons per day of domestic sanitary wastes to the treatment works), in proportion to the use of the treatment works by this class; and

(3) Each member of the industrial user and commercial user class which discharges more than 25,000 gallons per day of sanitary waste pays its share of the costs of operation and maintenance (including replacement) of the treatment works based upon charges for actual use.

(c) *Notification.* Each user charge system must provide that each user be notified, at least annually, in conjunction with a regular bill (or other means acceptable to the Regional Administrator), of the rate and that portion of the user charges or ad valorem taxes which are attributable to wastewater treatment services.

(d) *Financial management system.* Each user charge system must include an adequate financial management system that will accurately account for revenues generated by the system and expenditures for operation and maintenance (including replacement) of the treatment system, based on an adequate budget identifying the basis for determining the annual operation and maintenance costs and the costs of personnel, material, energy and administration.

(e) *Charges for operation and maintenance for extraneous flows.* The user charge system shall provide that the costs of operation and maintenance for all flow not directly attributable to users (i.e., infiltration/inflow) be distributed among all users based upon either of the following:

(1) In the same manner that it distributes the costs for their actual use, or

(2) Under a system which uses one or any combination of the following factors on a reasonable basis:

(i) Flow volume of the users;

(ii) Land area of the users;

(iii) Number of hookups or discharges of the users;

(iv) Property valuation of the users, if the grantee has an approved user charge system based on ad valorem taxes.

(f) After completion of building a project, revenue from the project (e.g., sale of a treatment-related by-product; lease of the land; or sale of crops grown on the land purchased under the grant agreement) shall be used to offset the costs of operation and maintenance. The grantee shall proportionately reduce all user charges.

(g) *Adoption of system.* One or more municipal legislative enactments or other appropriate authority must incorporate the user charge system. If the project accepts wastewater from other municipalities, the subscribers receiving waste treatment services from the grantee shall adopt user charge systems in accordance with this section. These user charge systems shall also be incorporated in appropriate municipal legislative enactments or other appropriate authority of all municipalities contributing wastes to the treatment works.

(h) *Inconsistent agreements.* The user charge system shall take precedence over any terms or conditions of agreements or contracts which are inconsistent with the requirements of section 204(b)(1)(A) of the Act and this section.

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§ 35.2152 Federal share.

(a) *General.* The Federal share for each project shall be based on the sum of the total Step 3 allowable costs and the allowance established in the grant agreement under Appendix B. Except as provided elsewhere in this section, the Federal share shall be:

(1) 75 percent for grant assistance awarded before October 1, 1984;

(2) 55 percent for grant assistance awarded after September 30, 1984, except as provided in paragraph (a)(3) of this section; and

(3) Subject to paragraph (c) of this section, 75 percent for grant assistance awarded after September 30, 1984, for sequential phases or segments of a primary, secondary, or advanced treatment facility or its interceptors, or infiltration/inflow correction provided:

(i) The treatment works being phased or segmented is described in a facilities plan approved by the Regional Administrator before October 1, 1984;

(ii) The Step 3 grant for the initial phase or segment of the treatment works described in (a)(3)(i) of this section is awarded prior to October 1, 1984; and

(iii) The phase or segment that receives 75 percent funding is necessary to (A) make a phase or segment previously funded by EPA operational and comply with the enforceable requirements of the Act, or (B) complete the treatment works referenced in (a)(3)(i) of this section provided that all phases or segments previously funded by EPA are operational and comply with the enforceable requirements of the Act.

(b) *Innovative and alternative technology.* In accordance with § 35.2032, the Federal share for eligible treatment works or unit processes and techniques that the Regional Administrator determines meet the definition of innovative or alternative technology shall be 20 percent greater than the Federal share under paragraph (a) or (c) of this section, but in no event shall the total Federal share be greater than 85 percent. This increased Federal share depends on the availability of funds from the reserve under § 35.2020. The proportional State contribution to the non-Federal share of building costs for I/A projects must be the same as or greater than the proportional State contribution (if any) to the non-Federal share of eligible building costs for all treatment works which receive 75 or 55 percent grants or such other Federal share under paragraph (c) of this section in the State.

(c) *Uniform lower Federal share.* (1) Except as provided in § 35.2032 (c) and (d) of this section, the Governor of a State may request the Regional Administrator's approval to revise uniformly throughout the State the Federal share of grant assistance for all future projects. The revised Federal share must apply to all needs categories (see § 35.2015(b)(2)).

(2) After EPA awards grant assistance for a project, the Federal share shall be the same for any grant increase that is within the scope of the project.

(d) *Training Facilities.* The Federal share of treatment works required to train and upgrade waste treatment works operations and maintenance personnel may be up to 100 percent of the allowable cost of the project.

(1) Where a grant is made to serve two or more States, the Administrator is authorized to make an additional grant for a supplemental facility in each State. The Federal funds awarded to any State under section 109(b) for all training facilities shall not exceed $500,000.

(2) Any grantee who received a grant under section 109(b) before December 27, 1977, may have the grant increased up to $500,000 by funds made available under the Act, not to exceed 100 percent of the allowable costs.

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§ 35.2200 Grant conditions.

In addition to the EPA General Grant Conditions (Part 30 of this subchapter), each treatment works grant shall be subject to the conditions under §§ 35.2202 through 35.2218.

§ 35.2202 Step 2+3 projects.

(a) Prior to initiating action to acquire eligible real property, a Step 2+3 grantee shall submit for Regional Administrator review and written approval the information required under § 35.2040(b)(7).

(b) Before initiating procurement action for the building of the project, a Step 2+3 grantee shall submit for the Regional Administrator's review and written approval the information required under §§ 35.2040 (b)(5) and (b)(6), 35.2106, 35.2107, 35.2130 and 35.2140.

§ 35.2204 Project changes.

(a) Minor changes in the project work that are consistent with the objectives of the project and within the scope of the grant agreement do not require the execution of a formal grant amendment before the grantee's implementation of the change. However, the amount of the funding provided by the grant agreement may only be increased by a formal grant amendment.

(b) The grantee must receive from the Regional Administrator a formal grant amendment before implementing changes which:

(1) Alter the project performance standards;

(2) Alter the type of wastewater treatment provided by the project;

(3) Significantly delay or accelerate the project schedule;

(4) Substantially alter the facilities plan, design drawings and specifications, or the location, size, capacity, or quality of any major part of the project; or

(5) Otherwise require a formal grant amendment under Part 30 of this subchapter.

§ 35.2206 Operation and maintenance.

(a) The grantee must assure economical and effective operation and maintenance (including replacement) of the treatment works.

(b) Except as provided in paragraphs (c)(1) and (c)(2) of this section, the Regional Administrator shall not pay more than 50 percent of the Federal share of any project unless the grantee has furnished and the Regional Administrator has approved the final plan of operation required by § 35.2106, and shall not pay more than 90 percent of the Federal share of any project unless the grantee has furnished and the Regional Administrator has approved an operation and maintenance manual.

(c)(1) In projects where segmenting of a proposed treatment works has occurred, the Regional Administrator shall not pay more than 90 percent of the Federal share of the total allowable costs of the proposed treatment works until the grantee has furnished and the Regional Administrator has approved an operation and maintenance manual.

(2) In projects where a component is placed in operation before completion of the entire project, the Regional Administrator shall not make any additional payment on that project until a final operation and maintenance manual for the operating component is furnished and approved.

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§ 35.2206 Adoption of sewer use ordinance and user charge system.

The grantee shall adopt its sewer use ordinance and implement its user charge system developed under §§ 35.2130 and 35.2140 before the treatment works is placed in operation. Further, the grantee shall implement the user charge system and sewer use ordinance for the useful life of the treatment works.

§ 35.2210 Land acquisition.

The grantee shall not acquire real property determined allowable for grant assistance until the Regional Administrator has determined that applicable provisions of 40 CFR Part 4 have been met.

§ 35.2211 Field testing for innovative and alternative technology report.

The grantee shall submit a report containing the procedure, cost, results and conclusions of any field testing. The report shall be submitted to the Regional Administrator in accordance with a schedule to be specified in the grant agreement.

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§ 35.2212 Project initiation.

(a) The grantee shall expeditiously initiate and complete the project, in accordance with the project schedule contained in the grant application and agreement. Failure to promptly initiate and complete a project may result in the imposition of sanctions under Part 30 of this subchapter.

(b) The grantee shall initiate procurement action for building the project promptly after award of a Step 3 grant or after receiving written approval of the information required under § 35.2202 under a Step 2+3 grant. Public notice of proposed procurement action should be made promptly after Step 3 award or final approvals for a Step 2+3 grant under § 35.2202. The grantee shall award the subagreement(s) and issue notice(s) to proceed, where required, for building all significant elements of the project within twelve months of the Step 3 award or final Step 2+3 approvals.

(c) Failure to promptly award all subagreement(s) for building the project will result in a limitation on allowable costs. (See Appendix A, A.2.e.).

(d) The grantee shall notify the Regional Administrator immediately upon award of the subagreement(s) for building all significant elements of the project (see 40 CFR 33.211).

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§ 35.2214 Grantee responsibilities.

(a) The grantee shall complete the project in accordance with the grant agreement including: the facilities plan that establishes the need for the project; the design drawings and specifications; the plan of operation under § 35.2106 that identifies the basis to determine annual operating costs; the financial management system under § 35.2140(d) that adequately accounts for revenues and expenditures; the user charge system under § 35.2140 that will generate sufficient revenue to operate and maintain the treatment works; the project schedule; and all other applicable regulations. The grantee shall maintain and operate the project to meet project performance standards including the enforceable requirements of the Act for the design life.

(b) The grantee shall provide the architectural and engineering services and other services necessary to fulfill the obligation in paragraph (a) of this section.

§ 35.2216 Notice of building completion and final inspection.

The grantee shall notify the Regional Administrator when the building of the project is complete. Final inspection shall be made by the Regional Administrator after receipt of the notice of building completion.

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§ 35.2218 Project performance.

(a) The grantee shall notify the Regional Administrator in writing of the actual date of initiation of operation.

(b) Subject to the provisions of 40 CFR Part 33, the grantee shall select the engineer or engineering firm principally responsible for either supervising construction or providing architectural and engineering services during construction as the prime engineer to provide the following services during the first year following the initiation of operation:

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

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

(3) Advise the grantee whether the project is meeting the project performance standards.

(c) On the date one year after the initiation of operation of the project, the grantee shall certify to the Regional Administrator whether the project meets the project performance standards. If the Regional Administrator or the grantee concludes that the project does not meet the project performance standards, the grantee shall submit the following:

(1) A corrective action report which includes an analysis of the cause of the project's failure to meet the performance standards (including the quantity of infiltration/inflow proposed to be eliminated), and an estimate of the nature, scope and cost of the corrective action necessary to bring the project into compliance;

(2) The schedule for undertaking in a timely manner the corrective action necessary to bring the project into compliance; and

(3) The scheduled date for certifying to the Regional Administrator that the project is meeting the project performance standards.

(d) Except as provided in § 35.2032(c) the grantee shall take corrective action necessary to bring a project into compliance with the project performance standards at its own expense.

(e) Nothing in this section:

(1) Prohibits a grantee from requiring more assurances, guarantees, or indemnity or other contractual requirements from any party performing project work; or

(2) Affects EPA's right to take remedial action, including enforcement, against a grantee that fails to carry out its obligations under § 35.2214.

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§ 35.2250 Determination of allowable costs.

The Regional Administrator will determine the allowable costs of the project based on applicable provisions of laws and regulations, the scope of the approved project, § 30.705 of this subchapter, and Appendix A of this subpart.

§ 35.2260 Advance purchase of eligible land.

In the case of grant assistance awarded solely for the acquisition of eligible land, the following provisions are deferred until the award of the ensuing Step 3 assistance for the building of facilities: §§ 35.2105, 35.2130, 35.2140, 35.2206 and 35.2208.

§ 35.2262 Funding of field testing.

In the case of grant assistance for field testing of innovative or alternative wastewater process and techniques, the following provisions are deferred until the award of assistance for building the approved facilities: §§ 35.2105, 35.2106, 35.2122, 35.2130, 35.2140, 35.2206, and 35.2208.

§ 35.2300 Grant payments.

Except as provided in § 35.2206, the Regional Administrator shall pay the Federal share of the allowance under § 35.2025 and the allowable project costs incurred to date and currently due and payable by the grantee, as certified in the grantee's most recent payment request.

(a) *Adjustment.* The Regional Administrator may at any time review and audit requests for payment and payments and make appropriate adjustments as provided in Part 30 of this subpart.

(b) *Refunds, rebates and credits.* The Federal share of any refunds, rebates, credits, or other amounts (including any interest) that accrue to or are received by the grantee for the project, and that are properly allocable to costs for which the grantee has been paid under a grant, must be credited to the current State allotment or paid to the United States. Examples include rebates for prompt payment and sales tax refunds. Reasonable expenses incurred by the grantee securing such refunds, rebates, credits, or other amounts shall be allowable under the grant when approved by the Regional Administrator.

(c) *Release.* By its acceptance of final payment, the grantee releases and discharges the United States, its officers, agents, and employees from all liabilities, obligations, and claims arising out of the project work or under the grant, subject only to exceptions previously specified in writing between the Regional Administrator and the grantee.

(d) *Payment of costs incurred under the Uniform Relocation Assistance and Real Property Acquisition Policies Act.* Notwithstanding the provisions of the introductory paragraph of this section, if the Regional Administrator determines it is necessary for the expeditious completion of a project, he may make advance payment after grant award for the Federal share of the eligible cost of any payment of relocation assistance under § 4.502(c) of this chapter by the grantee. The requirements in Part 30 of this subchapter apply to any advances of funds for assistance payments.

(e) *Payment under grants to States for advances of allowance*—(1) *Advance payment to State.* Notwithstanding the provisions of the introductory paragraph of this section, the Regional Administrator, under a State grant for advances of allowance (see § 35.2025), may make payments on an advance or letter-of-credit payment method in accordance with the requirements under Part 30 of this subchapter. The State and the Regional Administrator shall agree to the payment terms.

(2) *Assignment.* If the State chooses to assign its payments to a potential grant applicant, it shall execute an agreement with the potential grant applicant authorizing direct payment from EPA and establishing appropriate terms for payment. The State shall provide a copy of the agreement to EPA.

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§ 35.2350 Subagreement enforcement.

(a) *Regional Administrator authority.* At the grantee's request the Regional Administrator may provide technical and legal assistance in the administration and enforcement of any subagreement related to treatment works for which an EPA grant was made and to intervene in any civil action involving the enforcement of such subagreements, including subagreement disputes which are the subject of either arbitration or court action.

(b) *Privity of subagreement.* The Regional Administrator's technical or legal involvement in any subagreement dispute will not make EPA a party to any subagreement entered into by the grantee.

(c) *Grantee responsibilities.* The provision of technical or legal assistance under this section in no way releases the grantee from its obligations under § 35.2214, or affects EPA's right to take remedial action, including enforcement, against a grantee that fails to carry out those obligations.

Appendix A—Revised Interim Final Rule—Determination of Allowable Costs

(a) *Purpose.* The information in this appendix represents Agency policies and procedures for determining the allowability of project costs based on the Clean Water Act, EPA policy, appropriate Federal cost principles under Part 30 of this subchapter and reasonableness.

(b) *Applicability.* This cost information applies to grant assistance awarded on or after the effective date of this regulation. Project cost determinations under this subpart are not limited to the items listed in this appendix. Additional cost determinations based on applicable law and regulations must of course be made on a project-by-project basis. Those cost items not previously included in program requirements are not mandatory for decisions under grants awarded before the effective date. They are only to be used as guidance in those cases.

A. Costs Related to Subagreements

1. Allowable costs related to subagreements include:

a. The costs of subagreements for building the project.

b. The costs of complying with the procurement requirements of Part 33 of this subchapter, other than the costs of self-certification under § 33.110.

c. The cost of legal and engineering services incurred by grantees in deciding procurement protests and defending their decisions in protest appeals under subpart G of 40 CFR Part 33.

d. The costs for establishing or using minority and women's business liaison services.

e. The costs of services incurred during the building of a project to ensure that it is built in conformance with the design drawings and specifications.

f. The costs (including legal, technical, and administrative costs) of assessing the merits of or negotiating the settlement of a claim by or against a grantee under a subagreement provided:

(1) The claim arises from work within the scope of the grant;

(2) A formal grant amendment is executed specifically covering the costs before they are incurred;

(3) The costs are not incurred to prepare documentation that should be prepared by the contractor to support a claim against the grantee; and

(4) The Regional Administrator determines that there is a significant Federal interest in the issues involved in the claim.

g. Change orders and the costs of meritorious contractor claims for increased costs under subagreements as follows:

(1) Change orders and the costs of meritorious contractor claims provided the costs are:

(i) Within the scope of the project;

(ii) Not caused by the grantee's mismanagement; and

(iii) Not caused by the grantee's vicarious liability for the improper actions of others.

(2) Provided the requirements of paragraph g(1) are met, the following are examples of allowable change orders and contractor claim costs:

(i) Building costs resulting from defects in the plans, design drawings and specifications, or other subagreement documents only to the extent that the costs would have been incurred if the subagreement documents on which the bids were based had been free of the defects, and excluding the costs of any rework, delay,

acceleration, or disruption caused by such defects;

(ii) Costs of equitable adjustments under Clause 4, Differing Site Conditions, of the model subagreement clauses required under § 33.1030 of this Subchapter.

(3) Settlements, arbitration awards, and court judgments which resolve contractor claims shall be reviewed by the grant award official and shall be allowable only to the extent that they meet the requirements of paragraph g(1), are reasonable, and do not attempt to pass on to EPA the cost of events that were the responsibility of the grantee, the contractor, or others.

h. The costs of the services of the prime engineer required by § 35.2218 during the first year following initiation of operation of the project.

i. The cost of development of a plan of operation including an operation and maintenance manual required by § 35.2106.

j. Start-up services for onsite training of operating personnel in operation and control of specific treatment processes, laboratory procedures, and maintenance and records management.

2. Unallowable costs related to subagreements include:

a. The costs of architectural or engineering services or other services incurred in preparing a facilities plan and the design drawings and specifications for a project.

b. Except as provided in 1.g. above, architectural or engineering services or other services necessary to correct defects in a facilities plan, design drawings and specifications, or other subagreement documents.

c. The costs (including legal, technical and administrative) of defending against a contractor claim for increased costs under a subagreement or of prosecuting a claim to enforce any subagreement unless:

(1) The claim arises from work within the scope of the grant;

(2) A formal grant amendment is executed specifically covering the costs before they are incurred;

(3) The claim cannot be settled without arbitration or litigation;

(4) The claim does not result from the grantee's mismanagement;

(5) The Regional Administrator determines that there is a significant Federal interest in the issues involved in the claim; and

(6) In the case of defending against a contractor claim, the claim does not result from the grantee's responsibility for the improper action of others.

d. Bonus payments, not legally required, for completion of building before a contractual completion date.

e. All incremental costs of delay due to the award of any subagreements for building more than 12 months after the Step 3 grant award or final Step 2+3 approvals.

B. Mitigation

1. Allowable costs include:

a. Costs necessary to mitigate only direct, adverse, physical impacts resulting from building of the treatment works.

b. The costs of site screening necessary to comply with NEPA related studies and facilities plans, or necessary to screen adjacent properties.

c. The cost of groundwater monitoring facilities necessary to determine the possibility of groundwater deterioration, depletion or modification resulting from building the project.

2. Unallowable costs include:

a. The costs of solutions to aesthetic problems, including design details which require expensive building techniques and architectural features and hardware, that are unreasonable or substantially higher in cost than approvable alternatives and that neither enhance the function or appearance of the treatment works nor reflect regional architectural tradition.

C. Privately or Publicly Owned Small and Onsite Systems

1. Allowable costs for small and onsite systems serving residences and small commercial establishments inhabited on or before December 27, 1977 include:

a. The cost of major rehabilitation, upgrading, enlarging and installing small and onsite systems, but in the case of privately owned systems, only for principal residences.

b. Conveyance pipes from property line to offsite treatment unit which serves a cluster of buildings.

c. Treatment and treatment residue disposal portions of toilets with composting tanks, oil flush mechanisms, or similar in-house devices.

d. Treatment or pumping units from the incoming flange when located on private property and conveyance pipes, if any, to the collector sewer.

e. The cost of restoring individual system building sites to their original condition.

2. Unallowable costs for small and onsite systems include:

a. Modification to physical structure of homes or commercial establishments.

b. Conveyance pipes from the house to the treatment unit located on user's property.

c. Wastewater generating fixtures such as commodes, sinks, tubs, and drains.

D. Real Property

1. Allowable costs for land and rights-of-way include:

a. The cost (including associated legal, administrative and engineering costs) of land acquired in fee simple or by lease or easement under grants awarded after October 17, 1972, that will be an integral part of the treatment process or that will be used for the ultimate disposal of residues resulting from such treatment provided the Regional Administrator approves it in the grant agreement. These costs include:

(1) The cost of a reasonable amount of land, considering irregularities in application patterns, and the need for buffer areas, berms, and dikes;

(2) The cost of land acquired for a soil absorption system for a group of two or more homes;

(3) The cost of land acquired for composting or temporary storage of compost residues which result from wastewater treatment;

(4) The cost of land acquired for storage of treated wastewater in land treatment systems before land application. The total land area for construction of a pond for both treatment and storage of wastewater is allowable if the volume necessary for storage is greater then the volume necessary for treatment. Otherwise, the allowable cost will be determined by the ratio of the storage volume to the total volume of the pond.

b. The cost of complying with the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4621 et seq., 4651 et seq.), under Part 4 of this chapter.

c. The cost of contracting with another public agency or qualified private contractor for part or all of the required acquisition and/or relocation services.

d. The cost associated with the preparation of the treatment works site before, during and, to the extent agreed on in the grant agreement, after building. These costs include:

(1) The cost of demolition of existing structures on the treatment works site (including rights-of-way) if building cannot be undertaken without such demolition;

(2) The cost (considering such factors as betterment, cost of contracting and useful life) of removal, relocation or replacement of utilities, provided the grantee is legally obligated to pay under state or local law; and

(3) The cost of restoring streets and rights-of-way to their original condition. The need for such restoration must result directly from the construction and is generally limited to repaving the width of trench.

e. The cost of acquiring all or part of an existing publicly or privately owned wastewater treatment works provided all the following criteria are met:

(1) The acquisition, in and of itself, considered apart from any upgrade, expansion or rehabilitation, provides new pollution control benefits;

(2) The acquired treatment works was not built with previous Federal or State financial assistance;

(3) The primary purpose of the acquisition is *not* the reduction, elimination, or redistribution of public or private debt; and

(4) The acquisition does not circumvent the requirements of the Act, these regulations, or other Federal, State or local requirements.

2. Unallowable costs for land and rights-of-way include:

a. The costs of acquisition (including associated legal, administrative and engineering etc.) of sewer rights-of-way, waste treatment plant sites (including small system sites), sanitary landfill sites and sludge disposal areas except as provided in paragraph 1.a. of this section.

b. Any amount paid by the grantee for eligible land in excess of just compensation, based on the appraised value, the grantee's record of negotiation or any condemnation proceeding, as determined by the Regional Administrator.

c. Removal, relocation or replacement of utilities located on land by privilege, such as franchise.

E. Equipment, Materials and Supplies

1. Allowable costs of equipment, materials and supplies include:

a. The cost of a reasonable inventory of laboratory chemicals and supplies necessary

to initiate plant operations and laboratory items necessary to conduct tests required for plant operation.

b. The costs for purchase and/or transportation of biological seeding materials required for expeditiously initiating the treatment process operation.

c. Cost of shop equipment installed at the treatment works necessary to the operation of the works.

d. The costs of necessary safety equipment, provided the equipment meets applicable Federal, State, local or industry safety requirements.

e. A portion of the costs of collection system maintenance equipment. The portion of allowable costs shall be the total equipment cost less the cost attributable to the equipment's anticipated use on existing collection sewers not funded on the grant. This calculation shall be based on: (1) The portion of the total collection system paid for by the grant, (2) a demonstrable frequency of need, and (3) the need for the equipment to preclude the discharge or bypassing of untreated wastewater.

f. The cost of mobile equipment necessary for the operation of the overall wastewater treatment facility, transmission of wastewater or sludge, or for the maintenance of equipment. These items include:

(1) Portable stand-by generators;

(2) Large portable emergency pumps to provide "pump-around" capability in the event of pump station failure or pipeline breaks; and

(3) Sludge or septic tanks, trailers, and other vehicles having as their sole purpose the transportation of liquid or dewatered wastes from the collector point (including individual or on-site systems) to the treatment facility or disposal site.

g. Replacement parts identified and approved in advance by the Regional Administrator as necessary to assure uninterrupted operation of the facility, provided they are critical parts or major systems components which are:

(1) Not immediately available and/or whose procurement involves an extended "lead-time;"

(2) Identified as critical by the equipment supplier(s); or

(3) Critical but not included in the inventory provided by the equipment supplier(s).

2. Unallowable costs of equipment, materials and supplies include:

a. The costs of equipment or material procured in violation of the procurement requirements of 40 CFR Part 33.

b. The cost of furnishings including draperies, furniture and office equipment.

c. The cost of ordinary site and building maintenance equipment such as lawnmowers and snowblowers.

d. The cost of vehicles for the transportation of the grantees' employees.

e. Items of routine "programmed" maintenance such as ordinary piping, air filters, couplings, hose, bolts, etc.

F. Industrial and Federal Users

1. Except as provided in paragraph F.2.a., allowable costs for industrial and Federal facilities include development of a municipal pretreatment program approvable under Part 403 of this chapter, and purchase of monitoring equipment and construction of facilities to be used by the municipal treatment works in the pretreatment program.

2. Unallowable costs for industrial and Federal facilities include:

a. The cost of developing an approvable municipal pretreatment program when performed solely for the purpose of seeking an allowance for removal of pollutants under Part 403 of this chapter.

b. The cost of monitoring equipment used by industry for sampling and analysis of industrial discharges to municipal treatment works.

c. All incremental costs for sludge management incurred as a result of the grantee providing removal credits to industrial users under 40 CFR 403.7 beyond those sludge management costs that would otherwise be incurred in the absence of such removal credits.

G. Infiltration/Inflow

1. Allowable costs include:

a. The cost of treatment works capacity adequate to transport and treat nonexcessive infiltration/inflow under § 35.2120.

b. The costs of sewer system rehabilitation necessary to eliminate excessive infiltration/inflow as determined in a sewer system study under § 35.2120.

2. Unallowable costs include:

a. When the Regional Administrator determines that the flow rate is not significantly more than 120 gallons per capita per day under § 35.2120(c)(2)(ii), the incremental cost of treatment works capacity which is more than 120 gallons per capita per day.

H. Miscellaneous Costs

1. Allowable costs include:

a. The costs of salaries, benefits and expendable materials the grantee incurs for the project.

b. Unless otherwise specified in this regulation, the costs of meeting specific Federal statutory procedures.

c. Costs for necessary travel directly related to accomplishment of project objectives. Travel not directly related to a specific project, such as travel to professional meetings, symposia, technology transfer seminars, lectures, etc., may be recovered only under an indirect cost agreement.

d. The costs of additions to a treatment works that was assisted under the Federal Water Pollution Control Act of 1956 (Pub. L. 84–660), or its amendments, and that fails to meet its project performance standards provided:

(1) The project is identified on the State priority list as a project for additions to a treatment works that has received previous Federal funds;

(2) The grant application for the additions includes an analysis of why the treatment works cannot meet its project performance standards; and

(3) The additions could have been included in the original grant award as:

(a) Are the result of one of the following:

(i) a change in the project performance standards required by EPA or the State;

(ii) a written understanding between the Regional Administrator and grantee prior to or included in the original grant award;

(iii) a written direction by the Regional Administrator to delay building part of the treatment works; or

(iv) a major change in the treatment works' design criteria that the grantee cannot control; or

(b) Meet all the following conditions:

(i) if the original grant award was made after December 28, 1981, the treatment works has not completed its first full year of operation;

(ii) the additions are not caused by the grantee's mismanagement or the improper actions of others;

(iii) the costs of rework, delay, acceleration or disruption that are a result of building the additions are not included in the grant; and

(iv) the grant does not include an allowance for facilities planning or design of the additions.

(4) This provision applies to failures that occur either before or after the initiation of operation. This provision does not cover a treatment works that fails at the end of its design life.

e. Costs of royalties for the use of or rights in a patented process or product with the prior approval of the Regional Administrator.

f. Costs allocable to the water pollution control purpose of multiple purpose projects as determined by applying the Alternative Justifiable Expenditure (AJE) method described in the *CG* series. Multiple purpose projects that combine wastewater treatment with recreation do not need to use the AJE method, but can be funded at the level of the most cost-effective single-purpose alternative.

g. Costs of grantee employees attending training workshops/seminars that are necessary to provide instruction in administrative, fiscal or contracting procedures required to complete the construction of the treatment works, if approved in advance by the Regional Administrator.

2. Unallowable costs include:

a. Ordinary operating expenses of the grantee including salaries and expenses of elected and appointed officials and preparation of routine financial reports and studies.

b. Preparation of applications and permits required by Federal, State or local regulations or procedures.

c. Administrative, engineering and legal activities associated with the establishment of special departments, agencies, commissions, regions, districts or other units of government.

d. Approval, preparation, issuance and sale of bonds or other forms of indebtedness required to finance the project and the interest on them.

e. The costs of replacing, through reconstruction or substitution, a treatment works that was assisted under the Federal Water Pollution Control Act of 1956 (Pub. L. 84–660), or its amendments, and that fails to meet its project performance standards. This provision applies to failures that occur either before or after the initiation of operation. This provision does not apply to an innovative and alternative treatment works eligible for funding under § 35.2032(c) or a treatment works that fails at the end of its design life.

f. Personal injury compensation or damages arising out of the project.

g. Fines and penalties due to violations of, or failure to comply with, Federal, State or local laws, regulations or procedures.

h. Costs outside the scope of the approved project.

i. Costs for which grant payment has been or will be received from another Federal agency.

j. Costs of treatment works for control of pollutant discharges from a separate storm sewer system.

k. The cost of treatment works that would provide capacity for new habitation or other establishments to be located on environmentally sensitive land such as wetlands or floodplains.

l. The costs of preparing a corrective action report required by § 35.2218(c).

Appendix B—Final Rule—Allowance for Facilities Planning and Design

1. This Appendix provides the method EPA will use to determine both the estimated and the final allowance under § 35.2025 for facilities planning and design. The Step 2+3 and Step 3 grant agreement will include an estimate of the allowance.

2. The Federal share of the allowance is determined by applying the applicable grant percentage in § 35.2152 to the allowance.

3. The allowance is not intended to reimburse the grantee for costs actually incurred for facilities planning or design. Rather, the allowance is intended to assist in defraying those costs. Under this procedure, questions of equity (i.e., reimbursement on a dollar-for-dollar basis) will not be appropriate.

4. The estimated and final allowance will be determined in accordance with this Appendix and Tables 1 and 2. Table 2 is to be used in the event that the grantee received a grant for facilities planning. The amount of the allowance is computed by applying the resulting allowance percentage to the initial allowable building cost.

5. The initial allowable building cost is the initial allowable cost of erecting, altering, remodeling, improving, or extending a treatment works, whether accomplished through subagreement or force account. Specifically, the initial allowable building cost is the allowable cost of the following:

a. The initial award amount of all prime subagreements for building the project.

b. The initial amounts approved for force account work performed in lieu of awarding a subagreement for building the project.

c. The purchase price of eligible real property.

6. The estimated allowance is to be based on the estimate of the initial allowable building cost.

7. The final allowance will be determined one time only for each project, based on the initial allowable building cost, and will not be adjusted for subsequent cost increases or decreases.

8. For a Step 3 project, the grantee may request payment of 50 percent of the Federal share of the estimated allowance immediately after grant award. Final payment of the Federal share of the allowance may be requested in the first payment after the grantee has awarded all prime subagreements for building the project, received the Regional Administrator's approval for force account work, and completed the acquisition of all eligible real property.

9. For a Step 2+3 project, if the grantee has not received a grant for facilities planning, the grantee may request payment of 30 percent of the Federal share of the estimated allowance immediately after the grant award. Half of the remaining estimated allowance may be requested when design of the project is 50 percent complete. If the grantee has received a grant for facilities planning, the grantee may request half of the Federal share of the estimated allowance when design of the project is 50 percent complete. Final payment of the Federal share of the allowance may be requested in the first payment after the grantee has awarded all prime subagreements for building the project, received the Regional Administrator's approval for force account work, and completed the acquisition of all eligible real property.

10. The allowance does not include architect or engineering services provided during the building of the project, e.g., reviewing bids, checking shop drawings, reviewing change orders, making periodic visits to job sites, etc. Architect or engineering services during the building of the project are allowable costs subject to this regulation and 40 CFR Part 33.

11. The State will determine the amount and conditions of any advance under § 35.2025(b), not to exceed the Federal share of the estimated allowance.

12. EPA will reduce the Federal share of the allowance by the amount of any advances the grantee received under § 35.2025(b).

TABLE 1.—ALLOWANCE FOR FACILITIES PLANNING AND DESIGN

Building cost	Allowance as a percentage of building cost*
$100,000 or less	14.4945
120,000	14.1146
150,000	13.6631
175,000	13.3597
200,000	13.1023
250,000	12.6832
300,000	12.3507
350,000	12.0764
400,000	11.8436
500,000	11.4649
600,000	11.1644
700,000	10.9165
800,000	10.7062
900,000	10.5240
1,000,000	10.3637
1,200,000	10.0920
1,500,000	9.7682
1,750,000	9.5522
2,000,000	9.3682
2,500,000	9.0686
3,000,000	8.8309
3,500,000	8.6348
4,000,000	8.4684
5,000,000	8.1975
[illegible]	7.9827
7,000,000	7.8054
8,000,000	7.6550
9,000,000	7.5248
10,000,000	7.4101
12,000,000	7.2159
15,000,000	6.9851
17,500,000	6.8300
20,000,000	6.6964
25,000,000	6.4841
30,000,000	6.3142
35,000,000	6.1739
40,000,000	6.0550
50,000,000	5.8613
60,000,000	5.7077
70,000,000	5.5809
80,000,000	5.4734
90,000,000	5.3803
100,000,000	5.2983
120,000,000	5.1594
150,000,000	4.9944
175,000,000	4.8835
200,000,000	4.7894

NOTE.—The allowance does not reimburse for costs incurred. Accordingly, the allowance Tables shall not be used to determine the compensation for facilities planning or design services. The compensation for facilities planning or design services should be based upon the nature, scope and complexity of the services required by the community.

* Interpolate between values.

TABLE 2.—ALLOWANCE FOR DESIGN ONLY

Building cost	Allowance as a percentage of building cost*
$100,000 or less	8.5683
120,000	8.3808
150,000	8.1570
175,000	8.0059
200,000	7.8772
250,000	7.6656
300,000	7.4991
350,000	7.3602
400,000	7.2419
500,000	7.0485
600,000	6.8943
700,000	6.7666
800,000	6.6578
900,000	6.5634
1,000,000	6.4300
1,200,000	6.3383
1,500,000	6.1690
1,750,000	6.0547
2,000,000	5.9574
2,500,000	5.7983
3,000,000	5.6714
3,500,000	5.5664
4,000,000	5.4769
5,000,000	5.3306
6,000,000	5.2140
7,000,000	5.1174
8,000,000	5.0352
9,000,000	4.9637
10,000,000	4.9007
12,000,000	4.7935
15,000,000	4.6655
17,500,000	4.5790
20,000,000	4.5054
25,000,000	4.3851
30,000,000	4.2892
35,000,000	4.2097
40,000,000	4.1421
50,000,000	4.0314
60,000,000	3.9432
70,000,000	3.8702
80,000,000	3.8080
90,000,000	3.7540
100,000,000	3.7063
120,000,000	3.6252
150,000,000	3.5284
175,000,000	3.4630
200,000,000	3.4074

NOTE.—The allowance does not reimburse for costs incurred. Accordingly, the allowance Tables shall not be used to determine the compensation for facilities planning or design services. The compensation for facilities planning or design services should be based upon the nature, scope and complexity of the services required by the community.

*Interpolate between values.

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Exhibit 6

generators and other information available to the agency. The agency shall annually prepare a statement of the amount of the fee due from each generator. The fee shall be paid annually commencing with the first day of the calendar quarter after the date of the statement.

The agency may exempt generators of small quantities of hazardous wastes otherwise subject to the fee if it finds that the cost of administering a fee on those generators is excessive relative to the proceeds of the fee. The fee shall consist of a minimum fee for each generator not exempted by the agency and an additional fee based on the quantity of wastes generated by the generator.

If any metropolitan counties recover the costs of administering county hazardous waste regulations by charging fees, the fees charged by the agency outside of those counties shall not exceed the fees charged by those counties. The agency shall not charge a fee in any metropolitan county which charges such a fee. The agency shall impose a fee calculated as a surcharge on the fees charged by the metropolitan counties and by the agency to reflect the agency's expenses in carrying out its statewide hazardous waste regulatory responsibilities. The surcharge imposed on the fees charged by the metropolitan counties shall be collected by the metropolitan counties in the manner in which the counties collect their generator fees. Metropolitan counties shall remit the proceeds of the surcharge to the agency by the last day of the month following the month in which they were collected.

Subd. 3. **Facility fees.** The agency shall charge an original permit fee, a reissuance fee and an annual operator's fee for any hazardous waste facility regulated by the agency. The agency may include reasonable and necessary costs of any environmental review required under chapter 116D in the original permit fee for any hazardous waste facility.

History: *1983 c 121 s 25; 1Sp1985 c 13 s 234; 1986 c 444*

116.14 HAZARDOUS WASTE FACILITIES; LIABILITY OF GUARANTOR.

If the owner or operator of a hazardous waste facility is in bankruptcy, reorganization, or arrangement under the Federal Bankruptcy Code or if jurisdiction in any state or federal court cannot with reasonable diligence be obtained over an owner or operator likely to be solvent at the time of judgment, a person having a claim arising from conduct for which evidence of financial responsibility must be provided under the rules adopted under section 116.07, subdivision 4b, may bring the claim directly against the guarantor providing the evidence of financial responsibility. For the purposes of this section, "guarantor" means any person other than the owner or operator who provides evidence of financial responsibility for that owner or operator. In an action against a guarantor under this section, the guarantor is entitled to invoke the rights and defenses that would have been available to the owner or operator if the action had been brought against the owner or operator and that would have been available to the guarantor if an action had been brought against the guarantor by the owner or operator. In an action under this section, the total liability of a guarantor is limited to the aggregate amount that the guarantor has provided as evidence of financial responsibility to the owner or operator under the rules. Nothing in this section shall be construed to limit any other state or federal statutory, contractual, or common law liability of a guarantor to its owner or operator including the liability of the guarantor for bad faith either in negotiating or in failing to negotiate the settlement of any claim. Nothing in this section shall be construed to diminish the liability of any person under chapter 115B or the federal Superfund Act, United States Code, title 42, section 9601 et seq., or other applicable law.

History: *1987 c 391 s 1*

116.15 [Repealed, 1973 c 423 s 10]

116.16 MINNESOTA STATE WATER POLLUTION CONTROL FUND.

Subdivision 1. **Purpose.** A Minnesota state water pollution control fund is created

as a separate bookkeeping account in the general books of account of the state, to record receipts of the proceeds of state bonds and other money appropriated to the fund and disbursements of money appropriated or loaned from the fund to agencies and subdivisions of the state for the acquisition and betterment of public land, buildings, and improvements of a capital nature needed for the prevention, control, and abatement of water pollution in accordance with the long-range state policy, plan, and program established in sections 115.41 to 115.63, and in accordance with standards adopted pursuant to law by the Minnesota pollution control agency. It is determined that state financial assistance for the construction of water pollution prevention and abatement facilities for municipal disposal systems and combined sewer overflow is a public purpose and a proper function of state government, in that the state is trustee of the waters of the state and such financial assistance is necessary to protect the purity of state waters, and to protect the public health of the citizens of the state, which is endangered whenever pollution enters state waters at one point and flows to other points in the state.

Subd. 2. **Definitions.** In this section and sections 116.17 and 116.18:

(1) Agency means the Minnesota pollution control agency created by this chapter;

(2) Municipality means any county, city, and town, the metropolitan waste control commission established in chapter 473 and the metropolitan council when acting under the provisions of that chapter or an Indian tribe or an authorized Indian tribal organization, and any other governmental subdivision of the state responsible by law for the prevention, control, and abatement of water pollution in any area of the state;

(3) Pollution control fund means the Minnesota state water pollution control fund created by subdivision 1;

(4) Bond account means the Minnesota state water pollution control bond account created in the state bond fund by section 116.17, subdivision 4;

(5) Terms defined in section 115.01 have the meanings therein given them;

(6) The eligible cost of any municipal project, except as otherwise provided in clauses (7) and (8), includes (a) preliminary planning to determine the economic, engineering, and environmental feasibility of the project; (b) engineering, architectural, legal, fiscal, economic, sociological, project administrative costs of the agency and the municipality, and other investigations and studies; (c) surveys, designs, plans, working drawings, specifications, procedures, and other actions necessary to the planning, design, and construction of the project; (d) erection, building, acquisition, alteration, remodeling, improvement, and extension of disposal systems; (e) inspection and supervision of construction; and (f) all other expenses of the kinds enumerated in section 475.65;

(7) For state independent grant and matching grant purposes hereunder, the eligible cost for grant applicants shall be the eligible cost as determined by the United States environmental protection agency under the Federal Water Pollution Control Act, United States Code, title 33, sections 1281 to 1299;

(8) Notwithstanding clause (7), for state grants under the state independent grants program, the eligible cost includes the acquisition of land for stabilization ponds, the construction of collector sewers for totally unsewered statutory and home rule charter cities and towns described under section 368.01, subdivision 1 or 1a, that are in existence on January 1, 1985, and the provision of reserve capacity sufficient to serve the reasonable needs of the municipality for 20 years in the case of treatment works and 40 years in the case of sewer systems. Notwithstanding clause (7), for state grants under the state independent grants program, the eligible cost does not include the provision of service to seasonal homes, or cost increases from contingencies that exceed three percent of as-bid costs or cost increases from unanticipated site conditions that exceed an additional two percent of as-bid costs;

(9) Authority means the Minnesota public facilities authority established in section 446A.03.

Subd. 3. **Receipts.** The commissioner of finance and treasurer shall deposit in

the fund as received (a) all proceeds of Minnesota water pollution control bonds, except accrued interest and premiums received upon the sale thereof, (b) all other money appropriated by law for purposes stated in subdivision 1, and (c) all money granted to the state for such purposes by the federal government or any agency thereof. All such receipts are annually appropriated for the permanent construction and improvement purposes of the fund, and shall be and remain available for expenditure in accordance with this section and federal law until the purposes for which such appropriations were made have been accomplished or abandoned.

Subd. 4. **Disbursements.** Disbursements from the fund shall be made by the state treasurer upon order of the commissioner of finance at the times and in the amounts requested by the agency or the Minnesota public facilities authority in accordance with the applicable state and federal law governing such disbursements; except that no appropriation or loan of state funds for any project shall be disbursed to any municipality until and unless the agency has by resolution determined the total estimated cost of the project, and ascertained that financing of the project is assured by:

(1) a grant to the municipality by an agency of the federal government within the amount of funds then appropriated to that agency and allocated by it to projects within the state; or

(2) a grant of funds appropriated by state law; or

(3) a loan authorized by state law; or

(4) the appropriation of proceeds of bonds or other funds of the municipality to a fund for the construction of the project; or

(5) any or all of the means referred to in paragraphs (1) to (4); and

(6) an irrevocable undertaking, by resolution of the governing body of the municipality, to use all funds so made available exclusively for the construction of the project, and to pay any additional amount by which the cost of the project exceeds the estimate, by the appropriation to the construction fund of additional municipal funds or the proceeds of additional bonds to be issued by the municipality; and

(7) conformity of the project and of the loan or grant application with the state water pollution control plan as certified to the federal government and with all other conditions under applicable state and federal law for a grant of state or federal funds of the nature and in the amount involved.

Subd. 5. **Rules.** (a) 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 commissioner find necessary to the proper administration of the grant program.

(b) Except as otherwise provided in sections 116.16 to 116.18, the rules for the administration of state independent grants must comply, to the extent practicable, with provisions relating directly to protection of the environment contained in the Federal Water Pollution Control Act, as amended, and regulations and guidelines of the United States environmental protection agency promulgated under the act, except provisions regarding allocation contained in section 205 of the act and regulations and guidelines promulgated under section 205 of the act. This provision does not require approval from federal agencies for the issuance of grants or for the construction of projects under the state independent grants program.

(c) For purposes of awarding independent state grants, the agency may by rule waive the federal 20-year planning requirement for municipalities with a population of less than 1,500.

Subd. 6. [Repealed, 1984 c 597 s 55]

Subd. 7. [Repealed, 1984 c 597 s 55]

Subd. 8. **Loans.** Each loan made to a municipality from the proceeds of state bonds, when authorized by law, shall be evidenced by resolutions adopted by the agency and by the governing body of the municipality, obligating the municipality to repay the loan to the state treasurer, for credit to the water pollution control bond account in the state bond fund, in annual installments including both principal and interest, each in an amount sufficient to pay the principal amount within such period as may be provided by the agency in accordance with the law authorizing the loan, with interest on the declining balance thereof at a rate not less than the average annual interest rate on state bonds of the issue from the proceeds of which the loan was made, and obligating the municipality to provide money for such repayment from user charges, taxes, special assessments, or other funds available to it. For the purpose of repaying such loans the municipality by resolution of its governing body may undertake to fix rates and charges for disposal system service and enter into contracts for the payment by others of costs of construction, maintenance, and use of the project in accordance with section 444.075, and may pledge the revenues derived therefrom, and the agency may condition any such loans upon the establishment of rates and charges or the execution of contracts sufficient to produce the revenues pledged.

Subd. 9. **Applications.** Applications by municipalities for grants or loans from the fund shall be made to the authority on forms requiring information prescribed by rules of the agency. The authority shall send the application to the agency within ten days of receipt. The commissioner shall certify to the authority those applications which appear to meet the criteria set forth in sections 116.16 to 116.18 and the rules promulgated hereunder, and the authority shall award the grants or loans on the basis of the criteria and priorities established by the agency in its rules and in sections 116.16 to 116.18. A municipality that is designated under agency rules to receive state or federal funding for a project and that does not make a timely application for or that refuses the funding is not eligible for either state or federal funding for that project in that fiscal year or the subsequent year.

Subd. 9a. **Subsequent grants.** A municipality awarded a final grant of funding for a project under the program established by the 1972 Federal Water Pollution Control Act amendments or the state independent grants program is not eligible for additional funding to replace that project under the federal program or the state program, unless the funding is necessary as a result of subsequent changes in state water quality standards, effluent limits, or technical design requirements, or for a municipality awarded the final grant before October 1, 1984, if the funding is necessary for the provision of increased capacity.

Subd. 10. **Costs.** To the extent the agency administers or engages in activities necessary for administering any aspects of the federal water pollution control act as amended, United States Code, title 33, section 1251 et seq., the agency may assess the costs of such administrative activities, in an amount not to exceed that allowed by federal law, against the federal construction grant funds allotted to the state.

Subd. 11. **Awards of grants and loans.** Upon certification by the commissioner of the pollution control agency, the authority shall notify a municipality that is to receive a grant or loan and advise the municipality of the grant agreement or loan form or other document that must be executed to complete the grant or loan. Upon certification from the commissioner that the work has been completed and that payment is proper, the authority shall pay to the municipality the periodic grant or loan payment.

Subd. 12. **Amendments.** A municipality that seeks an amendment to a previously awarded grant or loan shall follow the procedure in subdivision 9 for applying to the authority. The request for a grant or loan amendment must be forwarded by the

authority to the commissioner of the pollution control agency for consideration, and the authority shall process a grant or loan amendment that is approved by the commissioner.

History: *Ex1971 c 20 s 1; 1973 c 123 art 5 s 7; 1973 c 423 s 1-6; 1973 c 492 s 14; 1976 c 2 s 53; 1976 c 76 s 5; 1977 c 418 s 1; 1980 c 397 s 1; 1980 c 509 s 27; 1983 c 301 s 115; 1984 c 597 s 42-46; 1984 c 640 s 32; 1Sp1985 c 14 art 19 s 1,2; 1987 c 186 s 15; 1987 c 386 art 3 s 1-6*

116.162 STATE FINANCIAL ASSISTANCE PROGRAM FOR COMBINED SEWER OVERFLOW.

Subdivision 1. **Definitions.** (a) Except as otherwise provided in this section, the terms used in this section have the meanings given in section 116.16, subdivision 2.

(b) "Combined sewer" means a sewer that is designed and intended to serve as a sanitary sewer and a storm sewer, or as an industrial sewer and a storm sewer.

(c) "Combined sewer overflow" means a discharge of a combination of storm and sanitary wastewater or storm and industrial wastewater directly or indirectly into the waters of the state, occurring when the volume of wastewater flow exceeds the conveyance or storage capacity of a combined sewer system.

Subd. 2. **Program purpose.** The agency shall administer a state financial assistance program to assist eligible recipients to abate combined sewer overflow to the Mississippi river from its confluence with the Rum river to its confluence with the St. Croix river.

Subd. 3. **Eligible recipients.** A statutory or home rule charter city is eligible for financial assistance under the program if the city has a permit, stipulation agreement, consent decree, or order issued by the agency requiring construction to abate combined sewer overflow and if the city adopts an approved plan to abate combined sewer overflow.

Subd. 4. **Eligible costs.** The eligible costs under this section include the costs listed in section 116.16, subdivision 2, paragraph (6), as determined by the agency, using as guidelines the regulations promulgated by the United States Environmental Protection Agency under the Federal Water Pollution Control Act, United States Code, title 33, sections 1314 to 1328, except that the eligible costs include easements necessary for implementing the combined sewer overflow abatement plan and do not include:

(1) the preparation of combined sewer overflow abatement plans;

(2) acquisition of interests in real property other than easements;

(3) storm water treatment facilities;

(4) costs for a program to disconnect any structures or devices, excluding catch basins on public property, constructed to direct or convey storm water, snow melt, or surface water from private or public property into a public sanitary or combined sewer;

(5) costs incurred before July 1, 1985; and

(6) costs incurred after July 1, 1985 but without prior written approval of the agency.

Subd. 5. **Financial assistance program.** The agency shall annually provide financial assistance to eligible recipients for combined sewer overflow projects. The agency shall determine eligible costs for each eligible recipient and compare those individual costs to the total eligible cost required to abate combined sewer overflows. This comparison determines each eligible recipient's proportionate share of the costs, and the appropriation for the program must be distributed among eligible recipients according to their proportionate share.

Subd. 6. **Repayments.** A city of the first class that receives assistance under this section shall repay one-half of each assistance payment ten years after the date when the recipient received the assistance payment. The repayment must be deposited in the Minnesota state water pollution control fund.

Subd. 7. **Conditions; administration.** (a) A recipient of financial assistance under this section shall construct the combined sewer overflow abatement facilities in accordance with the construction schedule contained in the permit, stipulation agreement, consent decree, or order issued by the agency. The agency shall require that, with federal, state, and local funds, the construction schedule would complete abatement of combined sewer overflow within ten years of the issuance of the permit, agreement, decree, or order. As a condition of receiving financial assistance, the recipient shall implement a program approved by the agency to disconnect any structures or devices, excluding catch basins on public property, constructed to direct or convey storm water, snow melt, or surface water from private or public property into a public sanitary or combined sewer. The deadlines for submittance of facilities plans, plans and specifications, and other documents to the agency for financial assistance are governed by the construction schedule contained in the permit, stipulation agreement, consent decree, or order issued by the agency requiring combined sewer overflow abatement construction.

(b) A recipient of financial assistance under this section is not eligible to receive a grant to abate combined sewer overflow under the state independent grants program.

Subd. 8. **Rules.** The agency shall promulgate permanent rules and may promulgate emergency rules for the administration of the financial assistance program established by this section. The rules must contain as a minimum:

(1) procedures for application;

(2) criteria for eligibility of combined sewer overflow abatement projects;

(3) conditions for use of the financial assistance;

(4) procedures for the administration of financial assistance; and

(5) other matters that the agency finds necessary for the proper administration of the program.

History: *1Sp1985 c 14 art 19 s 3*

116.163 AGENCY FUNDING APPLICATION REVIEW.

Subdivision 1. **Construction grant and loan applications.** The agency shall, pursuant to agency rules and within 90 days of receipt of a completed application for a wastewater treatment facility construction grant or loan, grant or deny the application and notify the municipality of the agency's decision. The time for consideration of the application by the agency may be extended up to 180 days if the municipality and the agency agree it is necessary.

Subd. 2. **Limitation on municipal planning time.** A municipality shall complete all planning work required by the agency for award of a grant or loan, and be ready to advertise for bids for construction, within two years of receipt of grant or loan funds under subdivision 1. The planning time may be extended automatically by the amount of time the agency exceeds its 90-day review under subdivision 1.

Subd. 3. **Bid review.** After a municipality has accepted bids for construction of a wastewater treatment project, the agency must review the bids within 30 days of receipt.

History: *1986 c 465 art 3 s 4*

116.165 INSPECTION RESPONSIBILITY.

When a wastewater treatment plant is constructed with federal funds and a federal agency conducts inspections of the plant, the owner of the plant or the owner's designee must conduct inspections and forward all inspection documents required by the agency to the agency for its review.

History: *1986 c 465 art 3 s 5*

116.167 [Repealed, 1987 c 386 art 3 s 30]

116.17 MINNESOTA STATE WATER POLLUTION CONTROL BONDS.

Subdivision 1. **Purpose and appropriation.** For the purpose of providing money to be appropriated or loaned to municipalities from the Minnesota state water pollution control fund for the acquisition and betterment of public land, buildings, and improvements of a capital nature needed for the prevention, control, and abatement of water pollution in accordance with the provisions of section 116.16, when such appropriations or loans are authorized by law and funds therefor are requested by the agency, the commissioner of finance shall sell and issue bonds of the state of Minnesota for the prompt and full payment of which, with interest thereon, the full faith, credit, and taxing powers of the state are irrevocably pledged. Bonds shall be issued pursuant to this section only as authorized by a law specifying the purpose thereof and the maximum amount of the proceeds authorized to be expended for this purpose. Any act authorizing the issuance of bonds for this purpose, together with this section, constitutes complete authority for such issue, and such bonds shall not be subject to restrictions or limitations contained in any other law.

Subd. 2. **Issuance of bonds.** Upon request by resolution of the agency and upon authorization as provided in subdivision 1 the commissioner of finance shall sell and issue Minnesota state water pollution control bonds in the aggregate amount requested, upon sealed bids and upon such notice, at such price, in such form and denominations, bearing interest at a rate or rates, maturing in amounts and on dates, with or without option of prepayment upon notice and at specified times and prices, payable at a bank or banks within or outside the state, with provisions, if any, for registration, conversion, and exchange and for the issuance of temporary bonds or notes in anticipation of the sale or delivery of definitive bonds, and in accordance with further provisions, as the commissioner of finance shall determine, subject to the approval of the attorney general, but not subject to the provisions of sections 14.02, 14.04 to 14.36, 14.38, 14.44 to 14.45, and 14.57 to 14.62. The bonds shall be executed by the commissioner of finance and attested by the state treasurer under their official seals. The signatures of the officers on the bonds and any appurtenant interest coupons and their seals may be printed, lithographed, engraved, stamped, or otherwise reproduced thereon, except that each bond shall be authenticated by the manual signature on its face of one of the officers or of an authorized representative of a bank designated by the commissioner as registrar or other authenticating agent. The commissioner of finance shall ascertain and certify to the purchasers of the bonds the performance and existence of all acts, conditions, and things necessary to make them valid and binding general obligations of the state of Minnesota, subject to the approval of the attorney general.

Subd. 3. **Expenses.** All expenses incidental to the sale, printing, execution, and delivery of bonds pursuant to this section, including but not limited to actual and necessary travel and subsistence expenses of state officers and employees for such purposes, and any expenses of litigation relating to the validity of the bonds, shall be paid from the pollution control fund, and the amounts necessary therefor are appropriated from that fund; provided that if any amount is specifically appropriated for this purpose in an act authorizing the issuance of bonds pursuant to this section, such expenses shall be limited to the amount so appropriated.

Subd. 4. **State water pollution control bond account in the state bond fund.** The commissioner of finance shall maintain in the state bond fund a separate bookkeeping account which shall be designated as the state water pollution control bond account, to record receipts and disbursements of money transferred to the fund to pay Minnesota state water pollution control bonds and income from the investment of such money, which income shall be credited to the account in each fiscal year in an amount equal to the approximate average return that year on all funds invested by the state treasurer, as determined by the treasurer, times the average balance in the account that year.

Subd. 5. **Appropriations to bond account.** The premium and accrued interest received on each issue of Minnesota state water pollution control bonds, and all loan payments received under the provisions of section 116.16, subdivision 5, shall be credited to the bond account. All income from the investment of the Minnesota state

water pollution control fund, shall be credited to the bond account identified in Minnesota Statutes 1971, section 116.16. In order to reduce the amount of taxes otherwise required to be levied, there shall also be credited to the bond account therein from the general fund in the state treasury, on November 1 in each year, a sum of money sufficient in amount, when added to the balance then on hand therein, to pay all Minnesota water pollution control bonds and interest thereon due and to become due to and including July 1 in the second ensuing year. All money so credited and all income from the investment thereof is annually appropriated to the bond account for the payment of such bonds and interest thereon, and shall be available in the bond account prior to the levy of the tax in any year required by the Constitution, article XI, section 7. The commissioner of finance and treasurer are directed to make the appropriate entries in the accounts of the respective funds.

Subd. 6. **Tax levy.** On or before December 1 in each year the state auditor shall levy on all taxable property within the state whatever tax may be necessary to produce an amount sufficient, with all money then and theretofore credited to the bond account, to pay the entire amount of principal and interest then and theretofore due and principal and interest to become due on or before July 1 in the second year thereafter on Minnesota water pollution control bonds. This tax shall be subject to no limitation of rate or amount until all such bonds and interest thereon are fully paid. The proceeds of this tax are appropriated and shall be credited to the state bond fund, and the principal of and interest on the bonds are payable from such proceeds, and the whole thereof, or so much as may be necessary, is appropriated for such payments. If at any time there is insufficient money from the proceeds of such taxes to pay the principal and interest when due on Minnesota water pollution control bonds, such principal and interest shall be paid out of the general fund in the state treasury, and the amount necessary therefor is hereby appropriated.

History: *Ex1971 c 20 s 2; 1973 c 423 s 7; 1973 c 492 s 14; 1976 c 2 s 172; 1982 c 424 s 130; 1983 c 301 s 116; 1Sp1985 c 14 art 4 s 14*

116.18 WATER POLLUTION CONTROL FUNDS; APPROPRIATIONS AND BONDS.

Subdivision 1. **Appropriation from the fund.** The sum of $167,000,000, or so much thereof as may be necessary, is appropriated from the Minnesota state water pollution control fund in the state treasury to the pollution control agency, for the period commencing on July 23, 1971, to be granted and disbursed to municipalities and agencies of the state in aid of the construction of projects conforming to section 116.16, in accordance with the rules, priorities, and criteria therein described.

Subd. 2. [Repealed, 1Sp1985 c 14 art 19 s 38]

Subd. 2a. **State matching grants program beginning October 1, 1987.** For projects tendered, on or after October 1, 1987, a grant of federal money under section 201(g), section 202, 203, or 206(f) of the Federal Water Pollution Control Act, as amended, United States Code, title 33, sections 1251 to 1376, at 55 percent or more of the eligible cost for construction of the treatment works, state money appropriated under subdivision 1 must be expended for 50 percent of the nonfederal share of the eligible cost of construction for municipalities with populations of 25,000 or less.

Subd. 3. [Repealed, 1973 c 423 s 10]

Subd. 3a. **State independent grants program.** (a) The Minnesota public facilities authority may award independent grants for projects certified by the state pollution control commissioner for 50 percent or, if the population of the municipality is 25,000 or less, 80 percent of the eligible cost of construction. These grants may be awarded in separate steps for planning and design in addition to actual construction. Until December 31, 1990, not more than 20 percent of the total amount of grants awarded under this subdivision in any single fiscal year may be awarded to a single grantee.

(b) Up to ten percent of the money to be awarded as grants under this subdivision in any single fiscal year shall be set aside for municipalities having substantial economic

development projects that cannot come to fruition without municipal wastewater treatment improvements. The agency shall forward its municipal needs list to the authority at the beginning of each fiscal year, and the authority shall review the list and identify those municipalities having substantial economic development projects. After the first 90 percent of the total available money is allocated to municipalities in accordance with agency priorities, the set-aside shall be used by the authority to award grants to remaining municipalities that have been identified.

(c) Grants may also be awarded under this subdivision to reimburse municipalities willing to proceed with projects and be reimbursed in a subsequent year conditioned upon appropriation of sufficient money under subdivision 1 for that year.

(d) A municipality that applies for a state independent grant to be reimbursed for a project must receive an additional five percent of the total eligible cost of construction beyond the normal percentage to which the municipality is entitled under paragraph (a).

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

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

(c) The amount granted to a municipality shall be 50 percent of the average total eligible costs of municipalities of similar size recently awarded state and federal grants under the provisions of subdivisions 2a and 3a and the Federal Water Pollution Control Act, United States Code, title 33, sections 1281 to 1289. Federal and state eligibility requirements for determining the amount of grant dollars to be awarded to a municipality are not applicable to municipalities awarded capital cost component grants. Federal and state eligibility requirements for determining which cities qualify for state and federal grants are applicable, except as provided in this subdivision.

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

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

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

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

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

Subd. 3c. **Individual on-site treatment systems program.** (a) Beginning in fiscal year 1989, up to ten percent of the money to be awarded as grants under subdivision 3a in any single fiscal year, up to a maximum of $1,000,000, may be set aside for the award of grants by the authority to municipalities to reimburse owners of individual on-site wastewater treatment systems for a part of the costs of upgrading or replacing the systems.

(b) An individual on-site treatment system is a wastewater treatment system, or part thereof, serving one or two dwellings or other establishments, which utilizes subsurface soil treatment and disposal.

(c) Municipalities may apply yearly for grants of up to 50 percent of the cost of replacing or upgrading individual on-site treatment systems within their jurisdiction. Upon application for a grant, a municipality must certify that:

(1) it has adopted and is enforcing the requirements of Minnesota Rules governing individual sewage treatment systems;

(2) the existing systems for which application is made do not conform to those rules, were constructed prior to January 1, 1977, do not serve seasonal residences, and were not constructed with state or federal funds; and

(3) that the costs requested do not include planning and engineering costs, administrative costs, and costs for improvements or replacements made before the application is submitted to the authority unless it pertains to the plan finally adopted.

(d) The federal and state regulations regarding the award of state and federal wastewater treatment grants do not apply to municipalities or systems funded under this subdivision, except as provided in this subdivision.

(e) The authority shall award individual on-site wastewater treatment grants to municipalities selected by the state pollution control commissioner upon certification by the state pollution control commissioner that the municipalities' applications have been reviewed and approved in accordance with this subdivision and agency rules adopted under paragraph (f).

(f) The agency shall adopt permanent rules regarding priorities, distribution of funds, payments, inspections, and other matters that the agency finds necessary for proper administration of grants awarded under this subdivision.

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

Subd. 3d. **Adjustments to matching grants and state independent grants.** A municipality with a population of 25,000 or less that was tendered a state matching grant under subdivision 2a, or a state independent grant under subdivision 3a, or a federal grant under the federal Water Pollution Control Act, United States Code, title 33, sections 1281 to 1299, from October 1, 1984, through September 30, 1987, shall, after the municipality has awarded bids for construction of the treatment works, and upon request, receive a grant increase of five percent of the total eligible costs of construction, up to the maximum entitlement for grants awarded on or after October 1, 1987, under subdivisions 2a and 3a. The municipality must inform other entities that are providing funding for construction of the treatment works of the grant increase, and repay any funds to which it is not entitled. A municipality must not receive funding for more than 100 percent of the total costs of the treatment works. Documentation of money received from other sources must be submitted with the request for the grant increase. Money remaining after all grants have been awarded under this subdivision may be used for the award of grants under subdivisions 2a and 3a.

Subd. 4. **Bond authorization.** For the purpose of providing money appropriated in subdivision 1 for expenditure from the Minnesota state water pollution control fund through grants to municipalities and agencies of the state for the acquisition and betterment of public land, buildings, and improvements of a capital nature needed for the prevention, control, and abatement of water pollution, the commissioner of finance is authorized upon request of the pollution control agency to sell and issue Minnesota

state water pollution control bonds in the amount of $156,000,000, in the manner and upon the conditions prescribed in section 116.17 and in the Constitution, article XI, sections 4 to 7. The proceeds of the bonds, except as provided in section 116.17, subdivision 5, are appropriated and shall be credited to the Minnesota state water pollution control fund. The amount of bonds issued pursuant to this authorization shall not exceed at any time the amount needed to produce a balance in the water pollution control fund equal to the aggregate amount of grants then approved and not previously disbursed, plus the amount of grants to be approved in the current and the following fiscal year, as estimated by the pollution control agency.

Subd. 5. **Federal and other funds.** All federal and other funds made available for any purpose of the water pollution control fund are also appropriated to that fund.

Subd. 6. **Continuance of appropriations.** None of the appropriations made in this section shall lapse until the purpose for which it is made has been accomplished or abandoned. The amount of each grant approved for disbursement from the water pollution control fund shall be and remain appropriated for that purpose until the grant is fully disbursed or part or all thereof is revoked by the pollution control agency.

History: *Ex1971 c 20 s 3; 1973 c 423 s 8,9; 1973 c 492 s 14; 1973 c 771 s 1,2; 1975 c 354 s 1,2; 1976 c 2 s 172; 1977 c 418 s 2,3; 1979 c 285 s 1,2; 1981 c 361 s 14,15; 1983 c 301 s 117; 1984 c 597 s 47; 1Sp1985 c 14 art 19 s 4-6; 1987 c 186 s 15; 1987 c 277 s 1,2; 1987 c 312 art 1 s 26 subd 2; 1987 c 386 art 3 s 7,8; 1988 c 686 art 1 s 59*

116.181 CORRECTIVE ACTION GRANTS.

Subdivision 1. **Definitions.** (a) The definitions in section 116.16, subdivision 2, apply to this section.

(b) "Corrective action" means action taken to upgrade or correct wastewater treatment facilities, funded under the Federal Water Pollution Control Act or the independent state grants program, that have failed to meet performance standards, and includes engineering, design, construction, legal assistance, and other action as the agency may allow.

Subd. 2. **Set aside.** In any fiscal year, up to ten percent of the money available for independent state grants, up to a maximum of $1,000,000, may be set aside for the award of grants to municipalities for corrective action.

Subd. 3. **Grant limitations.** The amount of a corrective action grant awarded to a municipality shall not exceed $500,000. In no event shall the grant amount exceed the cost of the corrective action. Construction costs that were not eligible under the original grant are not eligible under a corrective action grant.

Subd. 4. **Repayment.** Any municipality that is awarded a corrective action grant shall seek recovery from any person who is responsible for the failure of the facility to perform. The municipality shall reimburse the state in the event the municipality recovers any funds from responsible persons. Any repayments must be deposited in the Minnesota state water pollution control fund.

Subd. 5. **Award of grants.** Until June 30, 1988, the agency shall award corrective action grants. On July 1, 1988, the authority shall award corrective action grants to municipalities selected by the state pollution control commissioner upon certification by the state pollution control commissioner that the municipalities' projects and applications have been reviewed and approved in accordance with this section and agency rules adopted under subdivision 6.

Subd. 6. **Rules of the agency.** The agency shall promulgate permanent rules and may promulgate emergency rules for the administration of the corrective action grant program. The rules must contain at a minimum:

(1) the method for determining the amount of the corrective action grant;

(2) application requirements;

(3) criteria for determining which municipalities will be awarded grants when there are more applicants than money;

(4) conditions for use of the grant funds;

(5) identification of eligible costs;

(6) the amount that must be reimbursed to the authority in the event funds are recovered by the municipality from the responsible person; and

(7) other matters that the agency finds necessary for proper administration of the program.

Subd. 7. **Rules of the authority.** The commissioner of trade and economic development may adopt rules containing procedures for administration of the authority's duties as set forth in subdivision 5.

History: *1987 c 186 s 15; 1987 c 277 s 3; 1987 c 312 art 1 s 26 subd 2*

116.19 MUNICIPAL POWERS.

Subdivision 1. **Purpose.** Notwithstanding a statute or home rule charter to the contrary, a recipient of financial assistance from the agency under section 116.162 may exercise the authority provided in this section to abate combined sewer overflow or provide money to pay all or part of the costs of the abatement and of making improvements to any utility required to effect the abatement.

Subd. 2. **General.** A recipient may acquire real or personal property by purchase, including installment purchase, lease, including a financing lease, condemnation, gift, or grant, or may sell real or personal property at its fair market value determined by the recipient and simultaneously enter into an installment purchase or lease, including a financing lease, for purposes of reacquiring real or personal property. A recipient may construct, enlarge, improve, replace, repair, maintain, and operate a public sewer system, including storm sewers, sanitary sewers, and facilities for separating storm sewers from combined storm and sanitary sewers, or any other public utilities combined with the public sewer system as provided in this section. To accomplish these purposes, a recipient may exercise the powers granted a municipality by chapters 115, 117, 412, 429, 435, 444, 471, and 475, and may combine the public sewer system, for purposes of operation or revenue collection or both or for other purposes the city council determines, with one or more other public utilities. Charges for the services provided by a combined utility may be determined in any reasonable manner.

Subd. 3. **Debt.** A recipient may incur indebtedness and may issue and sell bonds or other obligations, including notes, an installment purchase contract, or obligations to make payments under a financing lease, and pledge the full faith and credit of the city to its payment for storm and sanitary sewers and systems without submitting the question of issuing the bonds, or otherwise incurring the obligations, to the electors. The bonds or other obligations may be issued in one or more series, may bear interest at the rate or rates, including floating rates, and may be sold at public or private sale and at the price the recipient determines. A recipient may, in addition to or in substitution for the pledge of its full faith and credit, pledge the revenues or net revenues of its public sewer system or a combined utility or a part of it, or mortgage the assets of the system or combined utility. A recipient may vest in a trustee or trustees, located within or outside the state, the right to enforce any covenants made to secure or to pay the bonds or other obligations, and may determine the powers and duties of the trustee or trustees. Except as provided in this section, the bonds or other obligations must be issued and sold according to chapter 475.

Subd. 4. **Property tax.** In addition and supplemental to the grants of authority in subdivisions 2 and 3, the governing body may establish a special taxing district or districts within the corporate limits of the city that include some or all of the real or personal property served by a combined sewer separated after the effective date of this section, and may levy and collect ad valorem taxes in the district or districts for the purposes of this section. The taxes must be collected by the county and paid over to the city as are other taxes. The taxes are not restricted by any other tax levy limitations imposed upon the city by any other law or charter provision.

Subd. 5. **Assessments.** The governing body of the city may divide the city into

STATE OF MINNESOTA
POLLUTION CONTROL AGENCY

In the Matter of the Proposed Rules Relating to the Administration of the Municipal Wastewater Treatment Construction Program, Minnesota Rules chapters 7075 and 7077

SUPPLEMENTAL FINDINGS OF FACT, CONCLUSIONS, AND ORDER ADOPTING RULES

Revisions to the above-entitled matter came on for decision before the Minnesota Pollution Control Agency (Agency) on the 26th day of June 1990. After reviewing the revisions and 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 Supplemental Findings of Fact, Conclusions, and Order:

SUPPLEMENTAL FINDINGS OF FACT

1. The Agency adopted the Findings of Fact and Conclusions, and issued an Order Adopting Minnesota Rules parts 7075.0100 and 7077.0100 through 7077.2010, as proposed, on the 22nd day of May 1990.

2. Problematic rule language was found during the final review of the Attorney General's Office. During a telephone call with Agency staff on June 18, Ms. Christie Eller, Assistant Attorney General, described five areas in the rules that needed to be changed before the proposed rules would be approved for adoption and advised that the Agency could withdraw the rules from Attorney General review to avoid rejection by her office.

3. The commissioner executed an Order of Withdrawal from the review of the Attorney General for the above-entitled matter on the 18th day of June 1990 and promptly submitted it to Assistant Attorney General Eller.

4. The Agency finds that five modifications to the proposed rules are necessary to satisfy concerns from the Attorney General's Office. These modifications are justified by the record in this proceeding, as follows:

a. Part 7077.0130, subpart 2, item A was modified to create a specific and accurate description of major treatment facilities that are eligible to receive priority points for the Agency's competitive funding list. This item is modified to read:

> Major treatment facilities are new facilities or additions to existing facilities which improve effluent quality in order that a municipality may achieve compliance with its NPDES/SDS permit conditions. Major treatment facilities include sewer system rehabilitation projects as described in subpart 3, item A, and major interceptor sewers ~~and may include sewer system rehabilitation projects in subpart 4.~~

These modifications are needed to avoid the appearance of Agency discretion, implied by the word "may," for determining the priority point value for sewer system rehabilitation projects. The modification also changes the rule reference to correctly identify the criteria under which a sewer rehabilitation project will be considered major treatment facilities. It is reasonable for the rules for an administrative agency to be accurate and impartial and provide a fair and uniform standard for determining the project priority for state financial assistance. The revised language does not make a substantial change in the rule because it does not alter any of the program requirements. The change does not affect classes of persons who could not have been expected to comment on the proposed rules, introduce significant new subject matter, or make a major substantive change.

b. Part 7077.0130, subpart 2, item B was modified to remove the word "may." This item is modified to read:

> Dechlorination facilities are facilities that remove chlorine from the effluent of a wastewater treatment facility. When a municipality is listed on the municipal needs list for major treatment facilities, the facilities described in this item ~~may~~ will be included as part of that project.

This modification is needed to remove the appearance of Agency discretion, implied by the word "may," for determining the priority point value for dechlorination facilities when a municipality is also on the municipal needs list for construction of major treatment facilities. It is reasonable for the rules for an administrative agency to be impartial and provide fair and uniform standards for determining project priority for state financial assistance. The revised language does not make a substantial change in the rule because it does not alter any of the program requirements. The change does not affect classes of persons who could not have been expected to comment on the proposed rules, introduce significant new subject matter, or make a major substantive change.

c. Part 7077.0210, subpart 1, item B, was modified to remove the word "may" and provide a standard for determining significant financial hardship. This item is modified to read:

> The commissioner ~~may~~ shall grant an exemption to the required 20-year planning period for the cost-effectiveness analysis under part 7077.0150, subpart 2, item E, to a municipality under 1,500 population where the commissioner finds that construction of the 20-year cost-effective alternative would result in ~~for reasons of~~ significant financial hardship. In determining significant financial hardship, the commissioner shall consider the municipality's median household income, the estimated sewer service charge for the 20-year cost-effective alternative, the municipality's total bonded indebtedness, and the patterns of population and commercial-industrial growth or decline within the

municipality. If an exemption is granted, the municipality may receive grant assistance for a proposed treatment alternative that is different than the 20-year cost effective alternative.

These modifications are needed to eliminate the Agency's potentially excessive discretion, implied by the word "may," for granting exemptions to the 20-year planning requirement for proposed wastewater treatment facility projects. It is reasonable for the rules to clarify how significant financial hardship will be determined by identifying the factors that the commissioner will consider when making this determination. The revised language does not make a substantial change in the rule because it does not alter any of the program requirements. The change does not affect classes of persons who could not have been expected to comment on the proposed rules, introduce significant new subject matter, or make a major substantive change.

d. Part 7077.0240, subpart 2, item A, was modified to remove the word "may" and to clarify when an unanticipated site condition amendment will be approved. This item is amended to read:

Where the commissioner finds that unanticipated site conditions exist, ~~The~~ the commissioner ~~may~~ shall approve an amendment for up to two percent of the final grant eligible construction costs ~~to compensate for unanticipated site conditions encountered during construction.~~ The three percent contingency fund under part 7077.0210, subpart 2, item F, must be depleted before an amendment for unanticipated site conditions is approved.

These modifications are needed to remove the appearance of Agency discretion, implied by the word "may," for determining when projects are eligible to receive grant funds in excess of the standard 3 percent contingency for cost over-runs. Minnesota Statutes section 116.16, subdivision 2 (8), provides for a grant amendment of up to 2 percent of the grant eligible construction costs for costs incurred due to unanticipated site conditions. It is reasonable to establish a fair and systematic method for determining when a project is eligible for the additional two percent grant amendment. The revised language does not make a substantial change in the rule because it does not alter any of the program requirements. The change does not affect classes of persons who could not have been expected to comment on the proposed rules, introduce significant new subject matter, or make a major substantive change.

e. Part 7077.0330, subpart 3, was modified to remove the word "may." This subpart is modified to read:

> Financial assistance payments ~~may~~ shall be withheld if the commissioner determines that a project does not substantially conform to approved plans and specifications, or there has been a major breach of a condition in the financial assistance agreement, or the municipality has failed to comply with the applicable requirements of this chapter. If funds are withheld pursuant to this subpart, further payments will be made when the condition causing the withholding has been corrected, or as otherwise agreed to by the commissioner and the municipality.

This modification is needed to remove the appearance of excessive Agency discretion, implied by the word "may," for determining when financial assistance payments can be withheld from a municipality. It is reasonable for the rules of an administrative agency to be impartial and provide fair and uniform standards for determining the withholding of financial assistance payments. The revised language does not make a substantial change in the rule because it does not alter any of the program requirements. The change does not affect classes of persons who could not have been expected to comment on the proposed rules, introduce significant new subject matter, or make a major substantive change.

5. A period for public comments is not required by the Administrative Procedures Act or the Attorney General's rules, Minnesota Rules chapter 2010, for the modifications identified in this Supplemental Findings of Fact.

6. 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 and the Findings of Fact signed by the Agency commissioner on the 24th day of May 1990 into these findings, except as modified in the Supplemental Findings number 4 above.

7. 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 intent to adopt the rules without a public hearing.

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

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

ORDER

NOW, THEREFORE, IT IS ORDERED, that the attached Minnesota Rules parts 7075.0100 and 7077.0100 through 7077.2010 governing the municipal wastewater treatment construction assistance programs are adopted pursuant to the authority vested in the Minnesota Pollution Control Agency by Minnesota Statute section 116.16, subpart 5(a) (Supplement 1989).

MINNESOTA POLLUTION CONTROL AGENCY

Gerald L. Willet

Gerald L. Willet
Commissioner

Dated:

SUPPLEMENTAL CERTIFICATE OF RESOLUTION ADOPTING RULES

I, Gerald L. Willet, do hereby certify that I am the Commissioner of the Minnesota Pollution Control Agency, an agency duly authorized under the laws of the state of Minnesota, and that the following is a true, complete, and correct copy of a resolution adopted at a meeting of the Minnesota Pollution Control Agency duly and properly called and held on the 26 day of June 1990, 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 revisions to Minn. Rules pt. 7075.0100 and chapter 7077 as identified in the Supplemental Findings of Fact, Conclusions, and Order Adopting Rules pursuant to the authority vested in the Agency by Minn. Stat. § 116.16, subd. 5(a) (Supp. 1989).

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 Supplemental 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 June, 1990.

Gerald L. Willet

Gerald L. Willet
Commissioner

RULE REVIEW CHECKLIST
RESUBMITTED RULE

File No. 1710

Docket No. 05-0009.0698

RESUBMISSION DATE 7-3-90
DATE DUE 7-13-90

APPROVED 7-7-90
DISAPPROVED
WITHDRAWM

ADOPTED W/O HEARING ✓
EMERGENCY RULE

REVISOR APPROVED 6-8-90
REVISOR DISAPPROVED
FILED W/SEC. STATE 7/10/90
RETURNED TO AGENCY 7/12/90

NO **Does the revision raise significant new legal issues?**

____ Review date

QV ✓ Rule as adopted (4 copies) – 2 back from the Revisor

____ ✓ Supplemental Findings of Fact, Conclusions & Order Adopting

____ ✓ Board's Supplemental Resolution Adopting

____ Notice of submission to Attorney General

____ Affidavit of Mailing Notice to Attorney General

✓ Statement of Need and Reasonableness

I checked to see that the changes in Olsens letter to you were made but I don't know if there were others. If you want to give me your notes I will check to see if all were made

Changes all made
ke

CBE

RULE REVIEW CHECKLIST

File No. 1710 Docket No. 05.0009.0698

DATE RECEIVED 6-4-90 ADOPTED W/O HEARING X

REVIEW DATE 6/13/90 EMERGENCY RULE _____

DUE DATE 6/18/90 To Revisor 6/5/90 resubmitted rules 6-20-90

REVISOR APPROVED 6-18-90

APPROVED _____ REVISOR DISAPPROVED _____

DISAPPROVED _____ FILED W/SEC. OF STATE 7/10/90

WITHDRAWN 6-18-90 RETURNED TO AGENCY _____

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4 Rule as adopted (4 copies)

~~O~~ ✓ Notice to Solicit Outside Information/Opinion (if applicable)
- March 6, 1989 Date published in State Register
- ✓ Comments

_____ Petition for Adoption of a Rule (if applicable)

✓ Board's Authorizing Resolution
- ~~May 22, 1990~~ Date adopted Dec 19, 1989

✓ Proposed Rule
- ✓ Revisor's Certificate

✓ Notice of Intent to Adopt Rule
- 116.07 subd 3 Statutory Authority
- NA Small Business Statement
- _____ Expenditure of public money statement see notes
- ~~Feb 16, 1990~~ Signature

✓ Statement of Need and Reasonableness (if applicable)
- NA Small Business Statement
- NA Fees - § 16A.128

✓ Affidavit of Mailing Notice of Intent to Adopt Rule
- ~~Feb 21, 1990~~ Date (30)/25 days before adoption
- ✓ Notice attached - indicates it is attached
- _____ Copy of rule or summary attached

_____ Publication in State Register
- ~~Feb 26, 1990~~ Date (30)/25 days before adoption

✓ 180-day deadline from:
- NA Effective date of law requiring rule (14.12) (both rules) not mandatory
- ✓ end of comment period (§ 14.26) (rules without hearing)
- _____ effective date of statutory authority (§ 14.29) (emergency rules)

✓ Resolution Adopting
- ~~Dec 19, 1989~~ Date adopted May 22, 1990

✓ Findings of Fact, Conclusions & Order Adopting
- ~~May 24, 1990~~ Date

✓ Written requests, submissions or comments

_____ Declaration of attorney
- Steven A. Shakman Name of SAAG representing agency

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

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

STATE OF MINNESOTA
POLLUTION CONTROL AGENCY

In the Matter of the Proposed Rules
Relating to the Administration of
the Municipal Wastewater Treatment
Construction Program, Minnesota Rules,
Chapters 7075 and 7077

Order of Withdrawal

In accordance with Minn. Rules pt. 2010.1100, the Minnesota Pollution Control Agency hereby withdraws the above-entitled proposed rules from review by the Attorney General.

MINNESOTA POLLUTION CONTROL AGENCY

Barbara Lindsey Sims for
Gerald L. Willet
Commissioner

Dated: June 18, 1990

STATE OF MINNESOTA
POLLUTION CONTROL AGENCY

In the Matter of Proposed Rules
Relating to the Administration of the
Municipal Wastewater Treatment
Construction Program,
Minn. Rules ch. 7075

STATEMENT OF NEED
AND REASONABLENESS
COVER MEMO

RE: Number changes made to the proposed rules that have not been made to the Statement of Need and Reasonableness

The proposed rules were presented to the Agency Board as Minnesota Rules parts 7075.6000 through 7075.6405. The proposed rules where changed from the part numbers under Chapter 7075 to part numbers under a new chapter--Chapter 7077. This numbering change was made to avoid confusion over the continued use of Chapter 7075 for administering grants awarded before July 1, 1990 and the use of the proposed rules for administering grants awarded after July 1, 1990.

When reading the attached Statement of Need and Reasonableness, please use the following chart to locate the appropriate part of the proposed rules:

	Part Number Used in the Statement of Need and Reasonableness	Part Number Used in the Proposed Rules as Approved by State Revisor of Statutes
Purpose	7075.6000	7077.0100
Definitions	7075.6005	7077.0105
Type of programs	7075.6010	7077.0110
Municipal needs list	7075.6015	7077.0115
Priority points for waters affected	7075.6020	7077.0120
Priority points for population served	7075.6025	7077.0125
Priority points for type of project	7075.6030	7077.0130
Extra points	7075.6035	7077.0135
Total points	7075.6040	7077.0140
Resolution of equal point ratings	7075.6045	7077.0145
Facilities plan	7075.6050	7077.0150
Plans and specifications	7075.6055	7077.0155
Rate system and ordinances	7075.6060	7077.0160
State Independent Grants Program Purpose		7077.0200
Municipal project list	7075.6065	7077.0205
Eligibility	7075.6070	7077.0210
Grant applications	7075.6075	7077.0215
Approval and certification of grant applications	7075.6080	7077.0220
Rejection of grant applications	7075.6085	7077.0225
Contract assignment	7075.6090	7077.0230
Contract beneficiary	7075.6095	7077.0235
Grant amendments	7075.6100	7077.0240
Change orders	7075.6105	7077.0245
Completion of Construction	7075.6110	7077.0250
Project performance	7075.6115	7077.0255
Payment of state independent grants	7075.6120	7077.0260
Recovery of funds	7075.6125	7077.0265

continued

Combined Sewer Overflow Abatement		
Purpose	7075.6130	7077.0300
Municipal project list	7075.6135	7077.0305
Applications	7075.6140	7077.0310
Financial assitance awards	7075.6145	7077.0315
Change orders	7075.6147	7077.0320
Project performance	7075.6149	7077.0325
Payment of state financial assistance	7075.6151	7077.0330
Water Pollution Control Revolving Fund Program		
Purpose	7075.6155	7077.0400
Intended use plan	7075.6160	7077.0405
Applications	7075.6165	7077.0410
Application Certification	7075.6170	7077.0415
Change orders	7075.6175	7077.0420
Inspections	7075.6180	7077.0425
Construction loan reporting requirements	7075.6185	7077.0430
Completion of Construction	7075.6190	7077.0435
Project Performance	7075.6195	7077.0440
Request to withhold financial assistance payments	7075.6200	7077.0445
Corrective Action Grants Program		
Purpose	7075.6210	7077.0500
Definition	7075.6215	7077.0505
Eligibility for participation	7075.6220	7077.0510
Eligible and ineligible costs	7075.6225	7077.0515
Requirements prior to application	7075.6230	7077.0520
Contract assignment	7075.6231	7077.0525
Contract beneficiary	7075.6232	7077.0530
Application	7075.6235	7077.0535
Certification of application for award	7075.6240	7077.0540
Grant amendments	7075.6242	7077.0545
Change orders	7075.6245	7077.0550
Payments	7075.6250	7077.0555
Recovery of grant funds	7075.6255	7077.0560
Capital Cost Component Grant Program		
Purpose	7075.6260	7077.0600
Definitions	7075.6265	7077.0605
Eligibility	7075.6270	7077.0610
Grant applications	7075.6275	7077.0615
Selection of eligible grantees	7075.6280	7077.0620
Amount of grant award	7075.6285	7077.0625
Certification of award	7075.6290	7077.0630
Plans and specifications	7075.6295	7077.0635
Grant conditions	7075.6300	7077.0640
Inspections	7075.6305	7077.0645
Grant payment	7075.6310	7077.0650
Termination of grant	7075.6315	7077.0655
Recovery of funds	7075.6320	7077.0660

continued

Individual On-site Wastewater Treatment Systems Grants Program		
Purpose	7075.6325	7077.0700
Definitions	7075.6330	7077.0705
Eligibility	7075.6335	7077.0710
Wastewater treatment plan	7075.6340	7077.0715
Approval of individual on-site wastewater treatment personnel	7075.6345	7077.0720
Application	7075.6350	7077.0725
Eligible costs	7075.6355	7077.0730
Amount of the grant award	7075.6360	7077.0735
Priority ranking	7075.6365	7077.0740
Certification of award	7075.6370	7077.0745
Payment conditions	7075.6375	7077.0750
Payments	7075.6380	7077.0755
Termination of grant	7075.6385	7077.0760
Subsequent grants	7075.6390	7077.0765
Disputes	7075.6395	7077.2000
Procedureal rules and appeals	7075.6400	7077.2005
Variances	7075.6405	7077.2010

When the proposed rules are adopted, Chapter 7075 will contain rules for administering federal construction, state matching, state independent and combined sewer overflow abatement grants awarded before July 1, 1990. Chapter 7077 will contain rules for administering state independent and combined sewer overflow abatement grants awarded after July 1, 1990, and all of the corrective action, capital cost component, and individual on-site wastewater treatment system grants and loans from the water pollution control revolving fund.

STATE OF MINNESOTA

POLLUTION CONTROL AGENCY

In the Matter of Proposed Rules
Relating to the Administration of the
Municipal Wastewater Treatment
Construction Program,
Minn. Rules, ch. 7075

STATEMENT OF NEED
AND REASONABLENESS

I. INTRODUCTION

Grant programs for the construction of municipal wastewater treatment facilities in Minnesota have for many years been governed largely by federal regulations for the U.S. Environmental Protection Agency's Construction Grants Program. The Minnesota Pollution Control Agency (Agency) has the responsibility for administration of the federal program, directed by state rules, Parts 7075.0100 to 7075.0433, that directly follow the requirements of the federal regulations. These existing rules (Exhibit 1) contain many references to the federal regulations relative to the requirements a municipality must meet in order to receive grant funds. For consistency, rules for the State Independent Grants Program were also based directly on the requirements and procedures established in the federal grants program regulations.

The federal Construction Grants Program is now coming to an end with the final federal appropriation to be made in fiscal year 1990. As a result, it is necessary for the Agency to establish new rules for the State Independent Grants Program that will function independently of the federal regulations. The proposed rules are intended to govern the Agency's responsibilities for the state grants program for grants awarded after July 1, 1990. State grants awarded before that date will continue to be administered according to the existing rules.

The Agency decided to draft completely new rules for the State Independent Grants Program rather than to revise the existing ones. This was done for a number of reasons. The existing rules must remain in effect to administer federal grants awarded through 1990. For consistency, the Agency decided that state independent grants awarded through fiscal year 1990 should also continue to be administered under the existing rules. Finally, there are several portions of the existing rules that are unclear and awkwardly written. The Agency decided that it would be clearer and more efficient to draft new rules from the beginning rather than try to incorporate all of the proposed revisions through strike-outs and underlines in the existing rules.

However, while the proposed rules are new, there are few substantive changes from the current rules. The proposed rules differ from the current rules in two major ways. First, the structure and language of the current rules has been changed to make the rules easier to read and understand. Second, because the Agency has relied heavily in the current rules on the federal regulations, new language is proposed to address issues and necessary requirements that were previously dealt with through the federal regulations. These new portions of the rule adopt the basic concepts from the federal regulations although the language in many cases has been modified. Therefore, while the proposed rules

appear to be longer and more extensive than the current rules, the basic requirements and procedures for the State Independent Grants Program will not change significantly.

While a completely new set of rules is proposed for the State Independent Grants Program, only minor revisions are proposed to the existing rules for the Water Pollution Control Revolving Fund Program and the three set-aside programs (Corrective Action Grants Program, Capital Cost Component Grants Program, and Individual On-site Treatment Systems Grant Program). The rules for all of these programs are being renumbered in order to incorporate them in a logical sequence into the new rules for the state grants program. In addition, revisions are proposed to address problems that have been encountered as these programs have begun operating over the past two years. Finally, some changes are proposed to make the rules clearer and for consistency in certain areas with the new rules for the State Independent Grants Program.

In drafting the proposed rules, the Agency sought and received input from interested municipalities and citizens. A Notice to Solicit Outside Opinion was published in the March 6, 1989 State Register. Written and verbal suggestions were submitted during this comment period. Exhibit 2 outlines the comments we received as a result of State Register notice. The Agency also sought input from the Technical Advisory Committee (TAC) established under Minn. Stat. § 115.54. Monthly TAC meetings on the proposed rules began in August 1989 and have continued through December 14, 1989. The TAC's recommendation regarding these proposed rules was presented at the Water Quality Committee meeting on December 18, 1989. Representatives of the Consulting Engineers Council (CEC) were specifically asked for comments concerning changes to chapter 7075 at two separate meetings and a letter was

sent to the CEC requesting member input. Municipalities that received grants since January 1986 were sent letters requesting comments on how to make the program work better, since they have the perspective of experience in the program. A meeting was held with a representative of the League of Minnesota Cities to gain input from that organization. And finally, numerous meetings were held to utilize the experience of Agency staff in the effort to make the programs easier to understand and less restrictive while maintaining enough controls to ensure efficient and effective use of public funds to protect and enhance the quality of waters in the state.

This document contains the Agency's affirmative presentation of facts on the need for and reasonableness of the proposed rules. Section II identifies the Agency's statutory authority for rulemaking. Section III describes the need for amendments to the rules. Section IV describes the Agency's reasons for the proposed changes. Section V describes Small Business considerations in rulemaking. Section VII considers economic factors in the rulemaking process.

II. STATEMENT OF AGENCY'S STATUTORY AUTHORITY

The Agency's Statutory Authority to adopt rules for the administration of the State Independent Grants Program, the Combined Sewer Overflow Abatement Program, the Water Pollution Control Revolving Program, the Corrective Action Grants Program, the Capital Cost Component Grant Program, and the Individual On-site Treatment Systems Grants Program is set forth in Minn. Stat. § 116.16, subd. 5 (supp. 1989), which provides:

> Subd. 5. Rules. (a) 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 water pollution control program, 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 commissioner find necessary to the proper administration of the grant program.

(b) Except as otherwise provided in sections 116.16 to 116.18, the rules for the administration of state independent grants must comply, to the extent practicable, with provisions relating directly to protection of the environment contained in the Federal Water Pollution Control Act, as amended, and regulations and guidelines of the United States Environmental Protection Agency promulgated under the act, except provisions regarding allocation contained in section 205 of the act and regulations and guidelines promulgated under section 205 of the act. This provision does not require approval from federal agencies for the issuance of grants or for the construction of projects under the state independent grants program.

(c) For purposes of awarding independent state grants, the agency may by rule waive the federal 20-year planning requirement for municipalities with a population of less than 1,500.

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

III. STATEMENT OF NEED

Minn. Stat. ch. 14 (1988) 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.

With funding for the federal grants program ending fiscal year 1990, the Agency has chosen not to continue using the federal regulations to administer the State Independent Grants Program. Because the existing rules contain so many substantive references to the federal regulations, it is necessary to develop new administrative rules for the state grants program. Incorporating

certain concepts and language from the federal regulations into the state rules will serve to avoid confusion on the part of the municipalities as to the requirements of the program. The proposed rules contain those parts of the federal regulations that have proven to be valuable to ensure that public funds are used effectively to construct needed wastewater treatment facilities. At the same time, the proposed rules attempt to simplify the program as much as possible.

In addition, revisions are proposed in the Revolving Loan Program, the Corrective Action Grants Program, the Capital Cost Component Grant Program and the Individual On-site Treatment Systems Grants Program to address problems that have been encountered as these programs have begun operating over the past two years. Finally, some changes are proposed to make the rules for these programs clearer and consistent with certain areas of the new rules for the State Independent Grants Program.

Changes to the existing rules have become necessary due to the transfer of award and payment responsibilities from the Agency to the Minnesota Public Facilities Authority (Authority) under Minn. Stat. § 116.15, subd. 11. The proposed rules reflect this transfer by specifying under which circumstances the Authority is involved in the administration of grants and loans.

IV. STATEMENT OF REASONABLENESS

The Agency is required by Minn. Stat. ch. 14 to make an affirmative presentation of facts establishing the reasonableness of the proposed rules. Rules are reasonable if they are not arbitrary or capricious. Reasonableness means that there is 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 they establish the procedures and requirements for municipalities interested in state grants or loans for the construction of wastewater treatment facilities. Because the existing procedure in chapter 7075 contains many references to requirements of the federal regulations, it is reasonable to propose rules that do not rely on the federal regulations, but that describe all of the program requirements independent of the federal regulations. It is also reasonable that the proposed rules accommodate the transfer of award and payment responsibilities from the Agency to the Authority.

B. Reasonableness of Individual Rules

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

Part 7075.6000 Purpose. (Hereafter only the last four digits will be used to identify parts. The first four digits are identical in all cases.) This Part identifies that the administration of the financial assistance programs for the construction of municipal wastewater treatment facilities awarded after July 1, 1990 will be administered by these rules. It is reasonable to establish July 1, 1990 as the date of effectiveness since that is when the state fiscal year begins and new state appropriations are available on this date.

Part 6005 Definitions.

The terms defined in this part are used throughout Chapter 7075. They have meanings specific to the programs governed by this chapter and therefore it is reasonable to define them.

Subpart 2. "Statutorily defined terms". This Subpart identifies the terms that are defined in Minn. Stat. chs. 115 and 116 and states that the statutory

meanings will apply in these rules. It is reasonable to refer to the the statutory definitions rather than to restate the definitions for these terms in the rules.

Subpart 3. "Act". There are several references in the proposed rules to the Federal Water Pollution Control Act, United States Code, title 33, section 1251 et. seq. Since the proposed rules refer to only one "Act", it is reasonable to shorten this term and include it in the definitions.

Subpart 4. "Adequate errors and omissions insurance". This subpart defines adequate errors and omissions insurance as an insurance policy which provides a minimum amount of coverage based on the estimated project construction cost. These minimum amounts are the same as those specified in the current rules governing the State Independent Grants Program, Minn. Rules Chap. 7075.0200, Subp. 4.

Subpart 5. "Adverse impact". This subpart defines adverse impact as a violation of any water quality standard set forth in chapter 7050 or any deleterious effect on the physical, chemical or biological condition of the receiving water that lessens the present or long-term uses of the receiving water. This term is used in part 6020 which sets forth the priority of projects based on the waters affected. It is therefore reasonable to limit the definition to the impact on water quality. Minn. Rules ch. 7050 govern the establishment of water quality standards; therefore, it is reasonable to use violation of the standards set forth in that rule as a measure of adverse impact.

Subpart 6. "Authority". There are several references in the proposed rules to the Minnesota Public Facilities Authority. This is the only "Authority" referred to in this chapter; therefore, it is reasonable to shorten this term and include it in definitions.

Subpart 7. "Average dry weather flow". Average dry weather flow is the daily average flow when the ground water is at or near normal and a runoff condition is not occurring. The following flow conditions are also defined in this part: "average wet weather flow", "maximum wet weather flow", "peak hourly flow", "instantaneous wet weather flow", "excessive inflow" and "excessive infiltration." These terms are used in Part 6055: each of these flow conditions must be considered in preparing plans and specifications for wastewater treatment facilities. The specific terms and definitions describe the flow conditions which must be considered, and have been used by the consulting engineering community and the Minnesota Pollution Control Agency for several years. Since the information as defined is necessary to be considered in order to adequately design wastewater treatment facilities, it is reasonable use the same terms and definitions that are being used currently in the federal Construction Grants Program.

Subpart 8. "Average wet weather flow". Average wet weather flow is defined as the daily average flow for the wettest thirty consecutive days for mechanical plants or for the wettest 180 consecutive days for controlled discharge pond systems. This term has the same definition as is used in the Construction Grants Program.

Subpart 9. "Budget period". A budget period is the time frame during which eligible costs may be incurred. The period of time is typically from the date of grant award through the end of the one year certification period. A grant is a contract between the state of Minnesota and the municipality. Contracts typically include beginning and end dates for the contract work; therefore, it is reasonable to define a budget period for grants.

Subpart 10. "Debt charge". Debt charge defines the cost per user that will be charged the users of the wastewater treatment facility by the municipality to pay for the local capital costs of constructing a new treatment facility. It is reasonable to define this term so as to differentiate it from the user charges which must be assessed proportionately. The method used to assess the debt charge is a municipality's decision.

Subpart 11. "Excessive infiltration". Excessive infiltration is the amount of flow more that 120 gallons per capita per day or the amount that can reasonably eliminated from a sewer system. This term has the same definition as is used in the Construction Grants Program.

Subpart 12. "Excessive inflow". Excessive inflow is the amount of inflow that results in operational problems related to hydraulic overloading of the facility or in total flow of more than 275 gallons per capita per day. This term has the same definition as is used in the Construction Grants Program.

Subpart 13. "Facilities plan". A facilities plan is the report that includes the plans and studies necessary to determine the wastewater treatment needs of a project service area, to systematically evaluate wastewater treatment alternatives that will result in compliance with enforceable water quality standards, and to identify the cost-effective implementable alternative. Part 6050 of the rules specifies the contents of the facilities plan and clearly delineates what analyses must be completed as part of the plan.

Subpart 14. "Fiscal year". This term is defined as the state fiscal year, which begins July 1 and ends the following June 30. This is the only "fiscal year" referred to in this chapter; therefore, it is reasonable to shorten this term and include it in definitions.

Subpart 15. "Flow equalization system". A flow equalization system is a containment system, such as a pond, basin or tank, designed to temporarily hold wet weather flow until the flow can be transported to a wastewater treatment facility. The existing rules define this term in Part 0405, Subpart 2, Item A. Since it is a definition, it is reasonable to move it to this part.

Subpart 16. "Infiltration". Infiltration is water other than wastewater that enters a sewer system from the ground through defective pipes, pipe joints, connections or manholes. This is a source of flow which must be identified because of its specific properties in order to adequately plan and design wastewater treatment facilities. This term and definition is currently used by the consulting engineering community and the Minnesota Pollution Control Agency in the administration of the federal Construction Grants Program and the state independent grants program. It is reasonable to maintain a consistent definition for clarity.

Subpart 17. "Inflow". Inflow is a clear water connection to the sewer system from sources such as roof leaders, cellar drains and yard drains. This is a source of flow which must be identified because of its specific properties in order to adequately plan and design wastewater treatment facilities. This term and definition is currently used by the consulting engineering community and the Minnesota Pollution Control Agency in the administration of the federal Construction Grants Program and the state independent grants program. It is reasonable to maintain a consistent definition for clarity.

Subpart 18. "Intended use plan". The Intended Use Plan is a document that identifies projects that will be awarded loans through the Water Pollution Control Revolving Fund Program and the associated amounts. This document is required by the Environmental Protection Agency and is used as a planning tool for both the Agency and the Authority.

Subpart 19. "Major contributing industry". A major contributing industry is an industrial user of a treatment facility that:

A. has a rated flow of 50,000 gallons or more per work day where the rated flow is the daily design flow multiplied by 24 and divided by the actual hours of discharge in a day;

B. has a rated flow greater than five percent of the total design flow to the treatment works;

C. has a total organic load of greater tan five percent of the total organic load to the treatment works;

D. has in its waste before pretreatment a toxic pollutant in excess of what may be discharged to waters of the state, according to chapter 7050; or

E. is found by the agency in connection with the issuance of an NPDES/SDS permit to the municipality, either singly or in combination with other contributing industries, to interfere with the treatment plant's ability to meet effluent limitations, interfere with digester operation or biological unit process operation, impact the area required for sludge disposal, or increase sizing of the facility by five percent or more.

This definition is unchanged from the current rules, 7075.0200, Subp. 13.

Subpart 20. "Major interceptor sewer". A major interceptor sewer intercepts wastewater from the final point in a collector sewer and transports the wastewater directly to a wastewater treatment facility. It must not be confused with a collector because a major interceptor sewer is considered a major treatment facility under Part 6030, Subpart 2, Item A for the purpose of awarding priority points. This language is unchanged from the existing rules under Part 0405, Subp. 2, Item B, but has been moved to the definitions section.

Subpart 21. "Maximum wet weather flow". Maximum wet weather flow is defined as the flow conditions that exist during a specific seven day period of high ground water. This term has the same definition as is used in the Construction Grants Program.

Subpart 22. "Need". Need means a determination that a new or upgraded disposal system is currently required, or will be required within a five-year period to comply with chapters 7050, 7060, or 7080; provided the situation does not exist primarily due to inadequate operation and maintenance or to negligence on the part of any person. These rule chapters contain the standards for surface water discharge systems, ground water protection, and design of individual wastewater treatment systems. It is reasonable to define need for capital improvement using non-compliance with these chapters as a standard.

Subpart 23. "NPDES/SDS permit". A NPDES/SDS permit means a National Pollutant Discharge Elimination System and State Disposal System permit issued by the agency that authorizes under certain conditions the discharge of pollutants to waters of the state and subsurface disposal or on-land disposal and the operation of a disposal system. The descriptive title of these permits are long, and they are referred to frequently in the rule; therefore, it is reasonable to shorten the term and include it in the definitions.

Subpart 24. "Operation and maintenance manual". This term is defined as a document developed to give treatment facility personnel the proper understanding, techniques, and references necessary to properly operate and maintain the treatment facility. This definition is of general use by the consulting engineers who prepare the documents and the treatment operators who use the document.

Subpart 25. "Outstanding resource value water". Outstanding resource value waters are those waters defined in part 7050.0180, subpart 2.

Subpart 26. "Peak hourly wet weather flow". Peak hourly wet weather flow is the flow that occurs when ground water is high and a five year one hour storm is occurring. This term has the same definition as is used in the Construction Grants Program.

Subpart 27. "Peak instantaneous wet weather flow". Peak instantaneous wet weather flow is the flow that occurs when ground water is high and a 25 year storm is occurring. This term has the same definition as is used in the Construction Grants Program.

Subpart 28. "Performance certification". Performance certification is a term used to identify the actions which must be taken by a municipality when a project is complete and is meeting permit standards. It is the last activity required for a municipality before final payment is made. It is reasonable to define this term because it is such a critical activity and the municipality needs to be aware of what is required. Part 6115 of the rules deals more specifically with the actual requirements of the performance certification process.

Subpart 29. "Plans and specifications". Plans and specifications are the documents, including completed drawings and specifications, that describe the project and how it will be bid and constructed. This is a standard industry definition. Part 6055 of the rules sets forth the requirements for a complete plans and specifications submittal.

Subpart 30. "Primary treatment facilities". Primary treatment facilities are those that provide a level of treatment lower than that provided by secondary treatment facilities. There are three general categories of

wastewater treatment facilities: primary treatment facilities, secondary treatment facilities and tertiary treatment facilities. Secondary and tertiary treatment facilities have definitions with specific parameters. Primary treatment facilities are those which do not meet minimum requirements of secondary treatment facilities. Primary clarifiers, settling ponds and bar screens are examples of primary treatment facilities. It is reasonable to make this distinction between levels of treatment because priorities under part 6030 are dependent upon these definitions. These definitions are consistent with the definition of these terms in Minnesota Rules 7050.

Subpart 31." Reimbursement project". A reimbursement project is a municipal wastewater treatment facility constructed under the reimbursement provision of Minn. Stat. § 116.18, subd. 3(a). The term reimbursement is also used to mean payment for costs incurred, so it is necessary to make the distinction between a project which is in this special category and the act of reimbursing funds. It is reasonable to define this term in order to make this distinction to avoid confusion for municipalities.

Subpart 32. "Relief sewer". A relief sewer is a type of sewer designed to eliminate bypassing caused by insufficient hydraulic capacity in sanitary sewer systems by transporting infiltration or inflow to adequately sized sewers or a treatment facility. Under the current rules, both relief sewer and relief capacity sewer are defined under Part 0405, Priority points for type of project. The distinction between these two types of sewers in the current rules is that the design flow of a relief sewer cannot contain more than five percent wastewater or have connections closer than 1,000 feet or it is considered a relief capacity sewer. While a relief sewer receives the priority points for a major treatment facility, a relief capacity sewer essentially receives only the points for a collection sewer.

The Agency proposes to revise the definition of relief sewer and to eliminate the term relief capacity sewer. The percentage of wastewater allowed in the design flow of a relief sewer has been increased from five to fifteen percent. This is reasonable because the new percentage is less restrictive than the percentage in the current rules, yet maintains the idea that a relief sewer is primarily for carrying infiltration and inflow. The term relief capacity sewer is unnecessary because a sewer that does not qualify as a relief sewer can be considered as simply a collector sewer which is basically the same way a relief capacity sewer is treated under the current rules. Therefore, is it reasonable to eliminate the term because it improves the clarity of the rules without having any significant impact on the substance.

Subpart 33. "Secondary treatment facilities". Secondary treatment facilities are those designed to provide a biochemical oxidations, effective sedimentation and disinfection or the equivalent, consistent with the requirements of part 7050.0211, subpart 1. See analysis in subpart 30.

Subpart 34. "Sewer rate ordinance (SRO)". A sewer rate ordinance is a municipal ordinance that determines the method by which a municipality charges its users for wastewater treatment services. See analysis in Part 6060, subpart 3.

Subpart 35. "Sewer service charge". The sewer service charge is the aggregate of all charges for sewer services. This term is used to describe the charges for operation, maintenance, equipment replacement and debt service. It is reasonable to define a single term to summarize these charges because this represents the total cost to the user.

Subpart 36. "Sewer service charge system (SSCS)". The sewer service charge system is the document that in which the sewer service charge is

developed. Part 6060 of the rules lists specific provisions that are required in the sewer service charge system. See analysis in part 35.

Subpart 37. "Sewer system rehabilitation project". A sewer system rehabilitation project is a type of project to eliminate bypasses caused by insufficient hydraulic capacity in a treatment facility. This is essentially the same language as in the existing rules, with minor revisions for clarity, and was moved from 7075.0404, Subpart 3, Item C to the definitions.

Subpart 38. "Sewer use ordinance (SUO)". A sewer use ordinance is a municipal ordinance enacted to control the type and quantities of discharges to the wastewater treatment facility and the type and method of connections to the system. Part 6060 of the rules lists specific provisions that are required in the ordinance.

Subpart 39. "Tertiary treatment facilities". Tertiary treatment facilities are those facilities specifically designed to achieve effluent limitations based on part 7050.0211, subpart 1. See analysis in subpart 30.

Subpart 40. "Treatment agreement." A treatment agreement establishes the terms under which an industry will receive wastewater treatment services from the municipal treatment facility. This is the same definition as in existing rules under part 0200, subpart 26.

Subpart 41. "Unanticipated site condition". This term means any subsurface, latent or unknown physical condition at the construction site, which differs materially from those ordinarily encountered and generally recognized as a site condition that could not have been reasonably identified during the planning or design of the project. This term is used to describe a type of construction problem for which reimbursement is available to a municipality over and above the contingency ceiling under Minn. Stat. §

116.16, subd. 2(8). It is reasonable to define these conditions as those that could not have been reasonably identified during planning or design because the statute provides for a contingency for unanticipated site conditions.

Subpart 42. "User charge". A user charge is the charge levied on users of a wastewater treatment facility for the user's proportionate share of the cost of equipment replacement and operation and maintenance of the facility. It is a requirement of the program that the municipality collect user charges from its customers to pay for the cost of wastewater treatment. This term is adopted from the federal regulations and has been used in the Construction Grants Program for many years.

Subpart 43. "Value engineering". Value engineering is a technique used to identify possible areas for cost savings on large projects. This definition is adopted from the federal regulations and has been used in the Construction Grants Program for many years.

Subpart 44. "Wastewater". The term wastewater means sewage, industrial waste and other wastes collected for treatment in a wastewater treatment facility. This is the same definition as in existing rules under part 0200, subpart 27.

Part 6010 Types of programs.

This Part introduces the six types of assistance programs administered by these rules. It is a general overview of the available programs and a brief outline of the major elements of the individual programs. This part does not establish requirements or limitations. It is reasonable to include this listing to make the rules easier to read and to assist a municipality interested in a financial assistance program to locate the needed information at the beginning of the rules. The programs described are: the State

Independent Grants Program, the Combined Sewer Overflow Abatement Program, The Water Pollution Control Revolving Fund Program, the Corrective Action Grants Program, the Capital Cost Component Grant Program, and the Individual On-site Treatment Systems Grants Program. This listing corresponds to the primary program elements.

Part 6015 Municipal needs list.

Subpart 1. Requirement. This Subpart provides that the Commissioner will develop and maintain the Municipal Needs List of those municipalities that have a need to construct, upgrade or replace their wastewater treatment facilities. The needs list is designed to list the municipalities in Minnesota in order of demonstrated environmental need. Municipalities may request placement on this list in order to be eligible for grant and loan assistance. The purpose of the Municipal Needs List and the basic process for developing and maintaining it remain unchanged from the existing rules. The Municipal Needs List is a representation of the remaining needs in Minnesota for grant and loan funds for new or upgraded treatment facilities, and as the needs of municipalities change, so does the needs list. The list is revised as grant and loan funds. It is reasonable for the state's primary environmental agency be responsible for this list because it identifies and prioritizes projects according to environmental criteria.

Subpart 2. Points and listing order. This Subpart explains briefly that each municipality on the needs list will be assigned points based on criteria established in this Chapter and that the list will be arranged in descending order with the municipality with the most points at the top of the list. The criteria and point system remain essentially unchanged from the current rules. It is reasonable to establish a point system based on environmental factors in

order that each municipality is ranked by the same criteria in the same way. It is also reasonable to rank the municipality with the most points first on the list so that priority is given to projects that will have the greatest environmental benefit to the waters of the state as soon as possible.

Subpart 3. Request for placement on list. This Subpart requires a municipality requesting placement on the Municipal Needs List to submit specific information. The information to be submitted for sewered municipalities is different than that to be submitted by unsewered municipalities. It is reasonable to require that information be submitted so that for the Agency to make the determination that a need does exist and also to begin the process of assigning points to determine position on the needs list. It is also reasonable for the municipality to submit this information because it is the most familiar with the history of its facility and the current capability of its existing facility.

Item A. A sewered municipality must submit the following information with its request for placement on the Municipal Needs List:

Subitem (1). The municipality must describe the type of the existing treatment facility and the age of the facility. It is reasonable to require this information at this preliminary stage so that the Agency can evaluate, in general terms, the adequacy of the municipality's current treatment and the remaining useful life of the system. This is a major indicator of treatment "need."

Subitem (2). The municipality must identify the design capacity and the current treatment capability of the existing facility. It is reasonable to require this information so that the Agency has an idea of the quality of the treatment able to be provided by the existing facility. It is

important that we know the treatment capability of the existing facility so that a judgment can be made about how many more years of adequate service, if any, can be provided by this facility.

Subitem (3). The municipality must provide data describing actual wastewater flows and loadings for the existing facility. It is reasonable to require this information so that the Agency can compare existing operational conditions to the design capacity.

Subitem (4). The municipality must identify the current discharge point, the point at which effluent from the facility is discharged into surface waters, and the NPDES permit standards. It is reasonable to require this information since the waters of the state have varying sensitivity to wastewater effluent, and the classification of the receiving water and the permit standards for effluent discharge to the receiving water are criteria for determining priority points.

Subitem (5). The municipality must include a description of the need for a new or upgraded facility. It is reasonable to require that the municipality do an analysis of why a new or upgraded facility is needed since it is the municipality that is requesting placement on the needs list. Subitems (1) through (4) provide the supporting documentation for this analysis.

Subitem (6). The municipality must include an explanation of why the need for new or upgraded facilities is not due to inadequate operation and maintenance or negligence. It is reasonable for the municipality to verify that the problems with its existing facility are not due to negligence or poor operation and maintenance since the definition of need under Part 6005, Subpart 22 precludes municipalities that have wastewater treatment needs that are primarily due to these conditions.

Item B. An unsewered municipality must submit the following information with its request for placement on the Municipal Needs List:

Subitem (1). The municipality must identify the number of existing on-site treatment systems in the municipality. It is reasonable to require this information so that the Agency can evaluate the scope of the municipality's wastewater needs.

Subitem (2). The municipality must give a general description of the type and age of existing on-site systems. It is reasonable to require this information in order to begin to evaluate the overall adequacy or inadequacy of the municipality's systems.

Subitem (3). The municipality must provide a description of the need for improved wastewater treatment facilities and must include in the description the estimated number of failing on-site systems and how that number was determined. Similar to the sewered municipalities, it is reasonable to expect that an unsewered municipality requesting placement on the Municipal Needs List do some analysis of its need for new treatment facilities. In an unsewered municipality, this analysis must begin with an examination of the number of failing systems. If only a small percentage of systems are failing, it may be prudent for the municipality to require the owners of those few systems to upgrade them without state financial assistance. On the other hand, if the municipality has numerous failing systems and is a growing community, it may be reasonable to consider a central collection and treatment system.

Subpart 4. Review of petitions; additions to list. The Commissioner will review each request based on the information submitted by the municipality and will determine whether it should be added to the Municipal Needs List. If it is determined that a need does not exist, the municipality will not be added to

the needs list and the municipality will be notified why this decision was made. It is reasonable that each request be reviewed by the Agency to determine need. Being placed on the needs list is the first step the municipality takes in order to receive public funds to finance the construction of new treatment facilities. Because funds for this purpose are limited, it is reasonable that only those municipalities that have demonstrated that they have an environmental need for new or upgraded facilities should be put on this list. In addition, it is reasonable that if a determination is made by the Agency that a need does not exist, the municipality has a right to know why this decision was made.

Priority point system

The priority point system described in the following Parts is designed to assign points to municipalities on the Municipal Needs List. The points are assigned in various categories that affect water quality and public health. The priority point system (Parts 6020 through 6045) has remained essentially unchanged from what is in existing rules (Parts 7075.0403 through 7075.0408). Some portions are rewritten to make them more readable and to provide better organization. The part numbers are changed to correspond with other numbering changes.

It is reasonable to retain the existing priority point system which has been in effect since 1983 because it meets the objectives for which it was created. No major problems or concerns have arisen with the use of this system. In addition, it is important to maintain consistency for municipalities on the Municipal Needs List that have made plans based on their rank on the list. We have included the 1983 Statement Of Need And Reasonableness (SONAR) from rulemaking on these parts as Exhibit 3 to provide

the reasoning for the determination of the number of points assigned to the specific categories that affect the environmental quality of the waters of the state.

Part 6020 Priority points for waters affected.

This Part assigns priority points to a municipality based on the classification of the waters that will be receiving the wastewater discharge of a particular municipality. This Part comes directly from the existing rules, Part 7075.0403.

Subpart 1. Water use and point ratings. This Subpart gives the actual points for specific water use classifications of the receiving waters. The water use classifications are defined in Chapter 7050. See Exhibit 3 for analysis of the points assigned.

Subpart 2. Receiving water with more than one designated water use. This Subpart allows a municipality discharging into a receiving water with more than one designated water use to be awarded the points for the designated water use with the greatest number of points. This language is unchanged from the existing rules.

Subpart 3. Adverse impact on downstream water. This Subpart provides that if a municipal discharge has an adverse impact on a downstream water that is eligible for more water use points than the initial receiving water, the municipality will be awarded the priority points for the downstream water. This language is unchanged from the existing rules.

Part 6025 Priority points for population served.

This Part assigns priority points based on the population served by the wastewater treatment facility. The higher the population, the more points awarded. This Part remains unchanged from the existing rules, Part 7075.0404.

It is reasonable that treatment systems serving highly populated areas should receive more priority points because the more people contributing wastewater to a facility, the greater the potential environmental impact. See Exhibit 3 for more detail on the points to be assigned.

Part 6030 Priority points for type of project.

This Part designates the number of points awarded to a municipality based on the type of project necessary to meet its wastewater treatment need. A municipality that must construct facilities providing more advanced treatment receives more points. This approach is reasonable because an advanced treatment requirement relates to more stringent stream standards and a greater environmental protection need.

Subpart 1. Table of priority points by type of project. This Subpart outlines the number of points assigned to the particular types of treatment facilities. The Subpart has been reordered for clarity. However, the types of facilities and the number of points assigned to them remain unchanged. See Exhibit 3 for more detail on how specific points were determined for the types of treatment.

Subpart 2. Description of project types. Subpart 2 was reordered to correspond to the reordering of Subpart 1. Some of the items under this Subpart in the existing rules did not identify specific project types under Subpart 1, but rather provided supplemental information concerning types of facilities. These items have been moved to Part 6005, Definitions, since all they do is define particular terms. The terms that have been moved to the Part 6005 are: major interceptor sewer, sewer system rehabilitation project, flow equalization system, and relief sewer. Relief capacity sewer was deleted and merged with the definition of relief sewer. See analysis of Part 6005,

Subpart 32. Five types of projects are described to correspond with the five types of projects that receive points in Subpart 1.

Item A. Major treatment facilities. This is the same language that appears in the existing rules, Part 7075.0405, Subpart 2, Item A. The large paragraph in the existing rules has been separated into Subitems to make it easier to identify the project types that fall under major treatment facilities. It is reasonable to make a change that will make the rules easier for users to read and interpret.

Item B. Dechlorination facilities. This Item has some minor wording changes to provide more clarity. It remains essentially unchanged from the existing rules, Part 7075.0405, Subpart 2, Item H. It is reasonable to make a change that will make the rules easier for users to read and interpret.

Item C. Ancillary additions to existing tertiary or secondary treatment facilities. This Item was changed slightly for clarity. It remains essentially unchanged from the existing rules, Part 7075.0405, Subpart 2, Item I. It is reasonable to make a change that will make the rules easier for users to read and interpret.

Item D. A collection system or collector sewer. This item is essentially unchanged except for the deletion of the two terms which no longer apply. "Innovative and alternative" was deleted since it refers to a federal program. This program will no longer be available to municipalities under the State Independent Grants Program. The other term which was deleted is "relief capacity sewer". See analysis under Part 6005, Subpart 32. It is reasonable to delete terms that no longer apply to this program.

Item E. A project for the control of combined sewer overflow. This Item is being changed to define the term "combined sewer overflow". It also

deletes language in the existing rules, Part 7075.0405, Subpart 3, Item D, which is unnecessary because the funding mechanism for combined sewer overflow projects is outlined in Part 6145 as well as in Minn. Stat. § 116.162. Because the purpose of this Part is to describe the type of project, it is reasonable to remove wording regarding grant award or funding.

Subpart 3. Special restrictions for sewer system rehabilitation projects. This Subpart describes the two special conditions that apply to sewer system rehabilitation projects. These conditions or restrictions are largely unchanged from the existing rules, Part 7075.0405, Subpart 3. As in other parts, some of the wording has been made clearer with no change in substance or meaning. The existing rules have some restrictions related to relief capacity sewers that have been deleted in the new rules since the description of relief capacity sewer has also been deleted and incorporated with the definition of relief sewer. See analysis of Part 6005, Subpart 32.

Item A. In order to receive priority points under this Item, a municipality must not have obtained a construction grant for treatment facility construction since February 11, 1974. A small amount of rewording has taken place in this item, but no substantive changes were made from the existing rules.

Item B. A municipality proposing a sewer system rehabilitation project that doesn't meet the criteria in Item A will receive the priority points assigned to a collection system or collector sewer as opposed to major treatment facility points. This language remains essentially unchanged from the existing rules, Part 7075.0405, Subpart 3, Item C, except for the deletion of a reference to relief capacity sewer. Again, this language was deleted because the change to the definition of a relief sewer makes the distinction between relief sewer and the relief capacity sewer unnecessary.

Subpart 4. Temporary improvements. This Subpart provides that if any improvements are made to a municipality's treatment facility to keep it operating at its optimum capability while the municipality is waiting to receive a grant, the municipality's points will be determined as though the improvements had not been made. This language remains the same as the language in the existing rules, Part 7075.0405, Subpart 4.

Part 6035 Extra points.

This Part lists all of the other Municipal Needs List point criteria besides water use, population, and type of project. The eight additional criteria are the same as in the existing rules, Part 7075.0406. See Exhibit 3, the 1983 SONAR for the rule revisions, for an extensive analysis of the need for and reasonableness of the eight ways to receive extra points. A few minor changes were made in two items (Items F and H) and in the submittal dates concerning the watershed pollution abatement plan (Item C).

Item A. A municipality will receive 40 extra points for proposing a project that will eliminate a public health hazard. There is a list of specific information required to substantiate the designation as a public health hazard. This information must be submitted both to the Agency and the Minnesota Department of Health in order to be considered for the extra points. This information includes (1) information on geologic and soil conditions; (2) ground water flow patterns; (3) an assessment of the extent and magnitude of the contaminant plume; (4) an identification of water users and assessment of the amount of water appropriations in the area of the facility or proposed facility; (5) flow rates and flow patterns of surface waters; (6) information on well construction for wells in the area of the facility or proposed facility, particularly wells that have been or will be impacted; (7) a

description of the facility's construction, operation, and performance if there is an existing facility, with an explanation of why the facility is creating a public health hazard; (8) an identification and assessment of the suspected route of human exposure and the population exposed; and (9) a description of how the proposed improvements will mitigate or eliminate the public health hazard. See Exhibit 3 for a detailed analysis on the reasonableness of the subitems required for submittal to receive the 40 extra points for a public health hazard.

Item B. Extra points are awarded for a municipality's existing level of treatment. There are four categories under which points are awarded; the number of points awarded is specific to each category. There are no changes in this Item from the existing rules. See Exhibit 3 for detailed analysis of the reasons for the number of points awarded for each type of existing treatment.

Subitem (1). Forty extra points will be awarded to (a) a municipality which has a central sewer system serving more than 50 percent of the population but providing no treatment prior to discharge, or (b) a municipality which collects an average flow over one million gallons per day through a system and which has bypassed sewage more than 40 percent of the time over a period of at least two years while its facility is operating at full capacity.

Subitem (2). Thirty extra points will be awarded to a municipality that has no central sewer system where more than 50 percent of the existing septic systems discharge raw or partially treated sewage directly to the ground surface.

Subitem (3). Twenty extra points will be awarded to a municipality that has a central sewer system serving more than 50 percent of

the population and whose present facility is designed for only primary treatment.

Subitem (4). Twenty extra points will be awarded to a municipality that discharges untreated sewage as a result of combined sewer overflows.

Item C. A municipality proposing a project that is an integral part of a watershed pollution abatement plan will be awarded 15 extra points. The municipality cannot be considered for these points unless the watershed pollution abatement plan is submitted for review by December 1 and is approvable by May 1 of the fiscal year for which funding is sought. The review and approval of this plan is in the existing rules, but the dates for submittal and approval have changed. The dates in the new rules are reasonable because it gives the Agency time to review and approve the plan in order to award the extra 15 points prior to the time that the Municipal Project List is prepared. The award of the extra 15 points could be critical to a municipality and could, in fact, put it in fundable range on the Municipal Project List. The previous April 15 submittal and July 1 approval dates do not leave adequate time to award the extra points, prepare the two lists, put the lists on public notice and present them to the Agency for adoption by the August Board meeting. The substance of this additional point scheme has not changed; the date changes only facilitate implementation of the scheme by the Agency.

There are seven areas of information which must be included in a watershed abatement plan. These have not changed from the existing rules. They include (1) a description of the physical environment, land use and development in the watershed, as well as the planned future land use and development; (2) an inventory and description of the watershed's hydrologic system; (3) information

of the existing and potential water quality problems in the watershed, including both point and nonpoint sources of pollution; (4) objectives and policies, including management plans for water quality and natural resource protection; (5) a description of the hydrologic and water quality conditions that will be sought, including a description of the opportunities for improvement; (6) a statement on conflicts between the watershed pollution abatement plan and existing plans of local government units; and (7) a plan for implementation, consisting of governmental work agreements and schedules for implementing corrective action. These requirements remain the same as those in the current rules.

Item D. This Item provides that a municipality that discharges to or has an adverse impact on an outstanding resource value water will be awarded ten extra points.

Item E. This Item provides that a municipality proposing a project that will result in elimination of a point source discharge to a game fish lake or outstanding resource value water will be awarded ten extra points.

Item F. This Item provides that ten extra points will be awarded to a sanitary district or other multi-municipal project.

Item G. This Item provides that a municipality listed on the Municipal Needs List on January 1, 1985 will be awarded 40 extra points. This Item was added to the rules in 1985 so that municipalities on the needs list for a long period of time would not be consistently bumped out of position. See Exhibit 4, the SONAR for rule revisions made in 1985, for an analysis of the reasonableness of this rule.

Item H. Twenty extra points will be awarded to a municipality which does not qualify for the points under Item G, but which is in noncompliance

with its NPDES/SDS permit conditions more that 90 percent of the time during a one-year period. This Item, too, was added in 1985 and was put in to address the issue of noncompliance. Since noncompliance is a clear indication of a water pollution problem, some added priority should be given to municipalities which are having problems with meeting permit conditions. See Exhibit 4 for an analysis of the reasonableness of the rule. The definition of 90 percent compliance in the current rules is now included in this item.

Part 6040 Total points.

This Part states that the total points awarded to a municipality for placement on the Municipal Needs List is the sum of the priority points awarded in each of the available categories described in Parts 6020 through 6035. This language has been reworded for clarity, but the meaning is the same as in the existing rules.

Part 6045 Resolution of equal point ratings.

This Part sets up a method of breaking a tie if, once all the points are awarded, two or more municipalities end up with the same number of priority points. There are two ways of breaking the tie: 1) the municipality with the highest number of water use points under Part 6020 will be ranked higher; and 2) if a tie still exists, the municipality with the higher population will be ranked higher. These tie-breaking methods are the same as in the existing rules.

Part 6050 Facilities plan.

This Part is entirely new in the state rules for the administration of construction grants. A facilities plan is required prior to receiving a state independent grant in the existing rules, but the contents of the plan are stipulated by reference to the federal regulations. Because of the eventual

transition from the use of federal regulations regarding construction grants to state rules, the facilities plan requirements need to be added to the state rules. Facilities planning has been a requirement of the Construction Grants Program since the passage of the Clean Water Act in 1972. The purpose of facilities planning is the identification of the most cost-effective treatment alternative. It is reasonable to seek the construction of the most cost-effective treatment alternative when public funds are being used to construct the facility.

Facilities planning is an important phase in the process of constructing municipal wastewater treatment facilities. A planning requirement is reasonable because it ensures cost-efficient and cost-effective use of public funds. It is important that the requirements for a complete facilities plan are stated clearly so that there is no confusion as a municipality prepares and submits the plan. This is especially critical because the rules establish deadlines for submittal and approval of the facilities plan and if these deadlines are not met, the consequence to the municipality is that it will not be eligible for consideration for grant funding in the following year.

The basic facilities planning requirements are essentially the same as those in the federal regulations, but we have made changes in the wording. These requirements have been in existence since 1972 and have successfully guided municipalities through comprehensive planning for their wastewater treatment needs. It is reasonable to retain the basic facilities planning requirements that have been used in the past and have proven effective in identifying the cost-effective treatment alternative.

Many of the facilities planning requirements specified in the proposed rules are identical to facilities planning requirements applicable to the federal

Revolving Loan Program. It is reasonable to match these requirements in the State Independent Grants Program because many of the municipalities that will be receiving grants will also be receiving loans to cover the local capital costs of constructing their new facilities. In these cases, the municipalities would be required to meet the federal requirements for the loan program. It is reasonable to have one set of facilities plan requirements for both the grant and the loan programs. It would be very confusing for a municipality to determine which set of requirements applied if a two part system were established. Exhibit 5 is a copy of the federal regulations, including those governing facilities plans (CFR 35.2030).

Subpart 1. In general. A facilities plan must be approved by the Commissioner before a project can be placed on the Municipal Project List for a grant or the Intended Use Plan for a loan. It is reasonable to require that a municipality's facilities plan be reviewed and approved prior to placement on the project list since the project list designates the projects that will receive grants in that fiscal year. It would be premature to place a municipality on the project list before it had completed its planning, identified the cost-effective, implementable treatment alternative and selected the alternative it will construct. It is also reasonable that the Agency has reviewed the plan and concurred with the municipality's choice of treatment alternative prior to placing a project on the list.

The project list is also used as a planning tool to determine how many projects can be funded with available money. Cost estimates used in this determination are taken from the facilities plan. Since the facilities plan review and approval process could indicate that the municipality's selected alternative is neither cost-effective nor implementable, it would not be

prudent for the Agency to use a cost estimate for an unapproved treatment alternative in the planning process.

This Subpart also requires that a facilities plan be prepared and signed by a professional engineer registered in the state. It is reasonable to require an assurance to the State that the treatment alternatives considered in the facilities plan have been evaluated using sound engineering principles. Registration is a means of ensuring that the engineer involved has achieved a recognized level of knowledge, experience and expertise in the engineering field. It is also required by Minn. Stat. § 326.12, subd. 3 that a plan for public works be signed by a professional engineer.

Subpart 2. Facilities plan contents. The following eight items detail the information that must be included in a facilities plan. Again, these are basically the same items that have been required in the federal Construction Grants Program for many years.

Item A. This Item requires a complete description and evaluation of the existing treatment facility, including such factors as age, condition, design capacity and treatment capabilities of each treatment unit, an analysis of the facility's ability to meet current permit requirements, and the location, frequency and quantity of any bypasses. It is reasonable to require this for two reasons. First, this type of description and evaluation will demonstrate that the municipality has examined its existing facility very closely and has done a careful analysis of its present capability to provide adequate treatment. Secondly, this type of description and analysis provides the Agency reviewer a complete picture of what exists, how it functions and the problems therein. It must be made clear in the facilities plan that there is a problem with the current facility before it is appropriate to examine a proposed solution.

Item B. This Item requires that wastewater flow data used for planning purposes be obtained during rainfall events and high ground water conditions. Flow monitoring must be done for at least 30 consecutive days. It is reasonable to require that flow and treatment efficiency information be obtained during high flow situations since it is during these times that a treatment facility will receive maximum flow. Collecting wastewater flow data for a minimum of 30 consecutive days allows one to evaluate treatment facility performance under a sufficiently wide range of conditions to permit proper evaluation of the existing facility. The data also provides a reasonable basis of design for a new facility. Since the rules say at least 30 consecutive days, they do not preclude collection of data for more than 30 days if the municipality chooses.

Item C. This Item requires an analysis of inflow and infiltration (I/I) in the existing sewer system. If excessive levels of inflow and infiltration exist, a sewer system evaluation survey must be conducted to identify the sources of the problem and the estimated flow from each source. It is reasonable to require that the facilities plan include an analysis of inflow and infiltration in the existing sewer system because this is frequently the cause of bypassing or reduced operating effectiveness at a treatment facility or requires building more capacity into the treatment facility at a greater cost than correcting the I/I. If an excessive amount of inflow and infiltration exists, it may be possible to correct the problem without increasing the capacity of the treatment facility. It is important to identify if inflow and infiltration is excessive and, if so, to further determine the source and the extent of the problem. In order to do this adequately, a study must be conducted to identify the the infiltration and inflow sources are and to

determine the amount of flow that is generated from each source. When the scope of the problem is clearly delineated in the sewer system evaluation survey, it can be determined whether it is more cost effective to remove excessive I/I or to transport and treat it. This is a reasonable approach because it helps to minimize the overall cost of providing treatment.

Item D. This Item requires that flows and loadings be projected for the next five and 20 year periods based on population growth and letters of intent from major contributing industries. It is reasonable to require that flows and loadings be projected for five years because it ties into the definition of need (Part 6005, Subpart 22). Need means a determination that a new or upgraded treatment facility is currently required, or will be required within a five-year period. The municipality should identify what it expects its wastewater treatment needs to be in five years since it was already established at the time of placement on the needs list that a new facility would be needed within five years.

The projections for a 20-year period are reasonable because that is the recognized design life of most mechanical treatment facilities. Each alternative being considered must, in turn, be compared based on the same factors to justify which is the most cost-effective alternative. Twenty years has been the historical time period used in comparing treatment alternatives in facilities plans. It is reasonable to continue with the same practice since most municipalities are familiar with it and any facilities plan that has been completed includes these projections. Any longer period of time would be difficult for the municipality to project. It would also put most of the municipal officials involved with the project in a position of adding costs for very long-term future planning to an extremely expensive project that might be

seen in municipalities as a project for future generations rather than for the existing population. If a municipality wishes to do that type of longer-term planning, it should be the decision of the municipality rather than a requirement attached to receiving funding for a wastewater treatment facility.

Item E. This Item requires that a cost-effective analysis be performed of all feasible treatment works, processes and techniques capable of meeting the applicable effluent, water quality and public health requirements for 20 years. It is reasonable to require that the facilities plan include an analysis of the alternatives that are capable of providing adequate wastewater treatment so that the municipality and the Agency can be assured that public funds invested in the project will be used prudently for facilities that meet environmental objectives. Furthermore, it is reasonable to require that the alternative chosen by the municipality be the cost-effective one. This was a requirement of the federal Construction Grants Program and it is reasonable that public funds only be spent on a project where the selected alternative is shown to be the most cost-effective way to meet the applicable effluent, water quality and public health requirements over the design life of the facility while recognizing environmental and other nonmonetary considerations. The specific information that must be provided for each alternative being considered in the cost-effectiveness analysis is specified in subitems (1) and (2).

This Item also requires that, if excessive levels of I/I are determined to exist under Item C, the cost-effectiveness analysis must include a comparison of the costs of eliminating excessive I/I with the costs of transportation and treatment of the I/I. This is a reasonable requirement since the objective is to choose the alternative that will cost the least amount of money while providing adequate treatment to meet water quality objectives.

This Item also includes a requirement for unsewered or partially sewered municipalities to consider on-site treatment systems as an alternative. This is reasonable because unsewered communities choosing central treatment not only incur costs associated with construction of a treatment facility, but also incur significant costs associated with the construction of a collection system. The collection system may cost as much or more than the treatment facility. Added to the construction costs are those for operating and maintaining a municipally-owned treatment facility. It is reasonable to include this information for unsewered or partially sewered municipalities in the cost-effectiveness analysis.

Subitem (1). This Subitem requires that for each treatment alternative considered in the facilities plan a detailed breakdown of the present worth of all capital costs, annual operation and maintenance costs, equipment replacement costs and salvage cost be considered. Each treatment alternative considered involves a different mix of costs. Construction costs are incurred in the first year of the project; operation and maintenance costs are incurred each year for the life of the project; equipment replacement costs occur at specific times during the project life; and salvage costs are incurred when the useful life of a project ends and it is demolished. In order to compare the costs of alternatives in a consistent way, all costs for each alternative considered must be reduced to a single figure called the present worth of the alternative. The use of present worth for the purpose of comparison of alternatives is reasonable because it ensures that all elements in the assessment process are given equal weight.

Subitem (2). This Subitem requires that a site assessment of the existing soil and ground water conditions for each alternative be

conducted by a registered engineer or geotechnical engineer. This requirement is reasonable because the soils and ground water conditions may vary from site to site and because geological conditions may preclude certain treatment alternatives. The requirement that the assessment be conducted by a professional in the field of soils and ground water conditions is reasonable so that the Agency can be confident that the assessment provided has been completed properly.

Item F. This Item requires a description of the selected alternative and the complete wastewater treatment system of which it is a part, including the following information:

Subitem (1). Subitem 1 requires a description of the specific design parameters of all individual treatment units and the complete treatment system. It is reasonable to require a description of the design parameters of all individual units so the municipality can demonstrate that all major components of the wastewater treatment system have been included, that the cost estimate is adequate and reasonable, and that the facility can meet effluent limitations. The level of detail will vary from project to project depending on the project's complexity. For example, a stabilization pond may not require the same degree of detail as a pure oxygen system with phosphate removal and sludge incineration. Relevant design parameters should include information such as unit processes and sizes, a schematic flow diagram and hydraulic profile, sewer lengths and sizes, detention time, overflow rates, process and equipment loadings, removal efficiencies and initial design flow.

Subitem (2). Subitem 2 requires information on the estimated construction costs, the estimated annual equipment replacement, and operation and maintenance costs. It is reasonable to require this information since the

Agency will be reviewing the selected alternative for cost-effectiveness. It is important to look at both the initial construction costs and the annual costs to keep the facility operating. For example, a pond system may require an initial cash outlay that exceeds that of some mechanical systems, but the annual operation and maintenance costs (including equipment replacement) for the pond will be considerably less than those for the mechanical system. All of these types of costs must be evaluated together to show true cost-effectiveness over a 20 year period.

Subitem (3). Subitem 3 requires that the municipality state what the estimated annual sewer service charges will be for the selected alternative. It is reasonable to require this information because: 1) users have a right to know what a project of this scope will cost them; and 2) under the Title VI of the Revolving Loan Program the state has a responsibility in the State Environmental Review Process to ensure that users are notified of the costs of the system. The sewer service charge is a combination of the debt charge and the user charge. This is information that is relevant to the users in each municipality; they will be concerned with the level of monthly sewer costs the will have to address.

Subitem (4). Subitem 4 requires that the municipality determine whether pretreatment of industrial wastes is necessary so that proper operation of the proposed facility is not disrupted. It is reasonable to require this information because high-strength industrial wastes may present a serious problem in the proper operation and maintenance of a facility. It is the Agency's responsibility to review these plans to ensure that the waters of the state are protected and that the proposed facility is able to adequately treat the wastewater discharged into it. In order to do so, an adequate

profile of wastes to be treated must be provided to the Agency. Pretreatment of industrial wastes changes the treatment characteristics of the wastes contributed to the treatment system.

Subitem (5). Subitem 5 requires an evaluation of how and where sludge resulting from the treatment process will be disposed. It is reasonable to require this evaluation for treatment alternatives that will produce sludge as a by-product of the treatment process because there are federal and state laws and rules that require proper disposal of sludge. Because the municipality will have to comply with those regulations, it reasonable that it has developed a plan to ensure compliance. It is also reasonable to require this information during facilities planning so that the Agency knows that the municipality has a proposal for sludge disposal that is feasible and implementable.

Subitem (6). Subitem 6 requires an analysis of the 25 and 100 year flood elevations in relation to the proposed project site showing that the facility will be able to operate during a 25 year flood and that it will be protected during a 100 year flood. These requirements have been mandated by the U.S. Environmental Protection Agency for projects under the federal Construction Grants Program since its beginning. It is reasonable to continue these requirements in order to protect the environment and the facilities constructed with public funds from the effects of floods that have some reasonable chance of occurring.

Subitem (7). Subpart 7 requires a description of ordinances or intermunicipal agreements necessary to successfully implement and administer the project. It is reasonable to require the facilities plan to include a description of these documents since these types of documents will dictate the

cooperative efforts that a municipality must undertake in order to implement the subsequent design and construction of the project. The typical ordinances that will be required are the sewer rate ordinance and the sewer use ordinance described in detail in Part 6060. A pretreatment ordinance may be required if there is industry in the municipality which needs to pretreat its wastes prior to discharging to the sewer system. The process of ordinance enactment requires passage of the ordinance by the elected officials of the municipality. While it is not necessary to pass the ordinances at this time, the requirement to describe the necessary ordinances will identify for the municipality the types of ordinances it will have to consider passing.

An intermunicipal agreement will be required if two or more municipalities propose to jointly construct and operate treatment facilities. It is reasonable to require the municipalities to describe this in the facilities plan since an alternative that involves two or more municipalities requires that they reach an agreement to work together. Since selection of an alternative is dependent on the type and quantity of wastewater to be treated, identification of the selected alternative cannot be made without a commitment from the municipalities involved to work together.

Subitem (8). Subitem 8 requires an analysis of how interim treatment will be accomplished during construction to meet permit requirements. It is reasonable to require that the facilities plan include this analysis because the Agency will not approve a plan which does not provide for uninterrupted wastewater treatment so that the waters of the state are protected. The NPDES permit must require that treatment will continue during construction. In addition to that requirement, it is simply not prudent from an environmental and public health standpoint to allow the discharge of

untreated wastewater into the waters of the state, even for a short period of time. The municipality must demonstrate in the facilities plan that continued treatment is feasible and that it will ensure that the facility will continue to meet the water quality standards established in its permit. An interim treatment plan should include information about how the municipality intends to avoid bypasses during construction and during the transition from the old facility to the new one.

Item G. This Item requires that the facilities plan include an evaluation of the environmental impacts of the selected alternative. The analysis must include the following information:

Subitem (1). A description of the potential impacts of the selected treatment alternative on wetlands; floodplains; areas of archaeological, cultural, and historical significance; endangered or threatened species; wild and scenic rivers; farmlands; air quality; fish and wildlife; and open space and recreation opportunities. It is reasonable to require that the potential impacts of a project with respect to these issues be examined and described in the facilities plan because there are federal laws, executive orders and state statutes that govern the protection of these areas. If it appears that a selected treatment alternative will possibly have an adverse impact in one or more of these areas, the municipality and the Agency must be aware of this problem. Identification of these potential impacts may require that mitigative measures be developed, or perhaps require that a new site or different treatment alternative be selected.

Subitem (2). A comparison of the potential environmental impacts of the selected treatment alternative with the other treatment alternatives considered in the cost-effectiveness analysis. It is reasonable

to require that the facilities plan include this type of comparison so that the public has the opportunity to understand and consider the environmental impacts of the various alternatives.

Subpart 3. Public hearing. This Subpart requires that the municipality hold at least one public hearing to discuss the proposed facilities plan before adopting it. It is reasonable to require that persons who might be interested in the project have an opportunity prior to implementation to hear about the scope of the project and be able to comment on it in a public forum. A meeting of this type should be widely publicized in the affected area prior to the hearing. This can be accomplished through newspaper notices and notices in various public meeting places in the municipality. This is also a requirement under the State Environmental Review Process (SERP) and it is reasonable to make this requirement consistent for both the grant and the loan programs. It is also required that the municipality make the proposed plan available for review prior to the hearing. It is reasonable to require that the plan be available for review prior to the hearing so that interested persons can read it, evaluate it and be prepared to question the details of the proposal at the hearing.

At the public hearing, the discussion must include the various alternatives considered, the reasons for choosing the selected alternative, the location of the proposed project site, and the estimated sewer service charges. It is reasonable to require that the information presented at the public meeting include the various alternatives considered so that those present at the meeting will know about all of the choices. It is reasonable to discuss the reasons for choosing the selected alternative because the municipality should be able to justify to the affected persons why a particular alternative was

chosen over the others. And finally, it is reasonable to discuss the proposed project site and the estimated sewer service charges since these are the things that most directly affect the users of the facility. The location will affect those living near the site and they should have the opportunity to know about it and comment on it in a public forum. The sewer service charges are a reasonable topic for discussion with the users of the system since a new facility will invariably mean higher sewer service rates.

This Subpart also requires a summary of the information presented at the required public hearing, along with any public comments received at the hearing. It is reasonable to require this information in order to verify that an adequate public hearing was held and so that the Agency is aware of any potential problems that might arise as a result of citizens or groups having an objection to the construction of the selected alternative.

Subpart 4. Adoption. Subpart 4 requires the municipality to adopt the proposed facilities plan through a formal resolution of the municipality's governing body before the Commissioner will approve the plan. It is reasonable to require that the governing body of a municipality formally adopt the facilities plan so that the Agency is assured that it is endorsed and submitted by the municipality rather than an individual, and that the municipality intends to construct the alternative selected in the plan. The democratic process involved in passing a formal resolution ensures that the plan will be one that is endorsed by a majority of the elected officials of the municipality.

Part 6055 Plans and specifications.

This Part is new in the state rules for the administration of construction grants. The effect of putting this Part in the rules is to formalize the

practice that was in place for the federal and state programs under the delegation agreement with EPA. The proposed requirement for submittal of complete plans and specifications and what they must include is essentially the same as in the current program. It is the Agency's responsibility under Minn. Stat. § 115.03, subd. 1(f) to review plans and specifications for all construction of wastewater treatment facilities.

Subpart 1. In general. This Subpart requires a municipality to submit plans and specifications or a resolution of the municipality's governing body committing to the submittal of plans and specifications before the Agency will consider the municipality for placement on the Municipal Project List. It is reasonable to require that placement on the project list be limited to those municipalities that have either submitted plans and specifications or a resolution committing to a certain date for submittal because the project list is meant to identify the projects in fundable range that are ready to proceed to the construction phase of their projects. It would be ineffective to commit limited grant dollars to projects that are not ready to begin construction. When plans and specifications are completed and approved, the municipality is ready to advertise for bids and proceed to construction. This is a reasonable way for the Agency to judge that a project should have grant money committed to it through the Municipal Project List, and that grant money expended will result in environmental improvement within the shortest period of time.

This Subpart further requires the plans and specifications to be consistent with the scope of project described in the approved facilities plan. It is reasonable to require that the plans and specifications to be submitted reflect the project that was approved in the facilities plan since, by approval of the facilities plan, the Agency concurred with the municipality that the project

selected met the funding criteria. The preparation and review of the facilities plan culminates in the identification of the most cost-effective, implementable treatment alternative and it is reasonable to require that the plans and specifications are consistent with that selection.

This Subpart also requires that the project be constructed according to the approved plans and specifications and change orders. It is reasonable to require that the project be built according to the approved plans and specifications for much the same reason as the requirement that the plans and specifications be consistent with the approved facilities plan. The plans and specifications have been reviewed and approved based on technical and environmental factors and a grant has been awarded to construct that specific project. It is reasonable to expect that public funds will be used to pay for what was approved, and not for some other project.

Subpart 2. Contents. This Subpart outlines the specific contents of a complete set of plans and specifications. Seven separate items follow to describe the requirements.

Item A. According to Minn. Stat. § 326.12, subd. 3, the drawings and the specifications must be signed by a professional engineer registered in the state of Minnesota. It is reasonable to require that a professional engineer registered in the state of Minnesota take responsibility for the design being submitted as the proposed project for the municipality, because this ensures that the system conforms to basic engineering principles and should, if operated properly, provide compliance with environmental standards. The registration of professional engineers in the state of Minnesota is an accepted formal procedure that considers education, experience and the results of a standardized test.

Item B. The plans and specifications must include a summary of design parameters for all the treatment units. It is reasonable to require that the plans and specifications include a summary of the design parameters for all the treatment units proposed to be used in the project since the units must work together for the proper operation of the facility. Additionally, treatment units are sized differently to handle different types of treatment processes. In order for the Agency staff engineer to evaluate the adequacy of the design, s/he must know what the design expectations are from the design parameters. An example of the design parameters for a treatment unit would be the length to width ratio, the detention time at average flows and the detention time at peak flow for a chlorine contact tank.

Item C. The plans and specifications must include a summary of flow conditions for various weather situations on a form provided by the Agency. It is reasonable to require that this data be submitted on a specific form provided by the Agency because this way Agency engineers can be assured that, if the form is completed properly, all of the necessary flow data will be submitted with the plans and specifications. The form clearly organizes the flow data that must be provided, thereby making it easier for the municipality's engineer to provide the data.

The flow conditions to be reported on the form are average dry weather, average wet weather, maximum wet weather, peak hourly, and instantaneous wet weather. These are the five flow conditions considered to be critical to the design of the treatment facility. It is reasonable to require a summary of the flows for these varying conditions so that the Agency engineer can evaluate whether the design of the treatment facility is adequate to handle the flow during a variety of weather conditions. The average dry weather flow

is the daily average flow under normal weather conditions when no runoff is occurring. The average wet weather flow is the daily average flow for the wettest 30 consecutive days for mechanical facilities or for the wettest 180 consecutive days for controlled discharge pond systems. The maximum wet weather flow is one-seventh of the total maximum flow received during a seven day period when the ground water is high and a runoff condition is occurring. The peak hourly wet weather flow is the peak flow during the peak hour of the day at a time when the ground water is high and a five year one hour storm event is occurring. The peak instantaneous wet weather flow is the peak instantaneous flow during the day at a time when the ground water is high and a 25 year one hour storm event is occurring. By calculating the flows during these five conditions, the design engineer will be able to design the treatment facility on enough varying conditions that there can some reasonable assurance that the facility will provide adequate treatment under all but the most extreme circumstances, thereby protecting the waters of the state from damage and protecting public health by preventing human contact with untreated wastewater.

Item D. The plans and specifications must include a hydraulic profile of the flow through the treatment system. Drafting of a hydraulic profile fulfills two functions. It can be used by the consulting engineer as a way to quickly identify and eliminate potential design errors and it can be used by an Agency reviewer to save time in plan review. The existence of a hydraulic profile enables the Agency engineer to quickly find critical elevation data points which are more difficult to find in the body of the plans and specifications since they are scattered throughout. Furthermore, examination of the hydraulic profile allows the review engineer to quickly identify potential flow constriction points which could affect treatment efficiency

under varying flow conditions. The summary of the design parameters for the treatment units under Item B, the summary of various flow conditions under Item C and the hydraulic profile under this item are interrelated, demonstrating how the proposed design will function under various conditions. The design must demonstrate the ability of the proposed facility to provide treatment over 20 years under normal conditions and various predictable extraordinary conditions such that permit limits can be met.

Item E. The plans and specifications must include a plan for how the municipality intends to treat its wastewater during construction. A discussion of the reasonableness of interim treatment plans can be found under Part 6050, Subpart 2, Item F, Subitem (8).

Item F. The plans and specifications must include the latest detailed cost estimate. It is reasonable to require this information with the submittal of plans and specifications because the Agency, in conjunction with the Authority, provides grant funding for a percentage of the actual eligible costs of the project and must be aware of cost changes in the projects so that the most accurate financial planning may be done with the available funding. The municipality also benefits from an updated cost estimate, which makes it possible to plan effectively for its share of the costs. The cost estimates in the facilities plan may have changed considerably during the design phase due to inflation, change in scope of the project, change in equipment and supplies and for many other reasons. It is reasonable to expect the municipality to provide the latest estimate based on the exact project designed in the plans and specifications.

Item G. The plans and specifications must include the necessary administrative, bidding and contract documents required to bid and construct

the project. It is reasonable to require these as part of the plans and specifications submittal so that the Agency can be assured that the contracts contain an accurate description of the project scope, and materials and equipment required and that all the administrative details involved in managing such a large construction project have been addressed. There are many items that should be included in complete specifications to ensure that the project is bid following the state procurement laws in Minn. Stat. chs. 412, 429, and 471 and in keeping with the approved scope of the project. But, there are some additional requirements which the Agency feels are critical to ensuring that the municipality and its project are protected. These minimum requirements are:

Subitem (1). This Subitem requires the specifications to include a five percent bid bond. A bid bond is a guarantee that the bidder will, upon acceptance of the bid, execute the contracts within the time period set forth in the specification. It is reasonable to require that the administrative, bidding and contract documents of the specifications include a bid bond so that there is an assurance that the contractor will be held to a competitive bid notwithstanding the bid's relationship to other bids on the project. It is the responsibility of the contractor to honor his bid just as it is the responsibility of the municipality to award the contract to the low responsible bidder. Minn. Stat. § 429.041, subd. 1, requires that a bid bond be provided. Federal regulations governing the wastewater treatment Construction Grants Program (40 CFR 31.36 (h)(1)) require that, for projects over $100,000, the contractor provide a five percent bid guarantee. Municipalities with projects funded by the State Independent Grants Program were required to comply with this regulation. It has become an "industry standard" percentage

for this type of construction and is therefore reasonable. All bid bonds are returned to the contractors at the end of the bidding process unless there is a default on the part of the contractor. The bid bond provides insurance to the municipality that they can recoup additional costs expended as a result of a bid default.

Subitem (2). This Subitem requires the specifications to include a 100 percent payment bond. A payment bond provides the municipality with the assurance that the contractor will pay all of the subcontractors on the project 100 percent of the payments promised and due them. It is reasonable to require that this be included in the plans and specifications so that the Agency is certain that there will be no problems, such as liens against the project, due to non-payment of contracts on projects where public money is being expended. It is the Agency's responsibility to ensure that there are no delays or obstructions to the project meeting environmental objectives due to problems with liens, contractors not getting paid or not showing up, for example. Delays, in turn, could put the municipality in some financial jeopardy, obstructing its ability to complete the project for the purposes intended and its ability to adequately operate and maintain the project. The payment bond is an insurance against this type of problem.

Subitem (3). This Subitem requires the specifications to include a 1 percent performance bond. A performance bond ensures that the contractor will perform the work as described in the construction contract. The 100 percent bond is an insurance policy for the municipality provided by the contractor providing that if the contractor deviates from the contract without the municipality's approval, the municipality is entitled to collect the cost of the remedy. It is reasonable to require the municipality to require that the

contractor provide a monetary guarantee that it will perform the work that it has agreed to in the contract because the state has a financial interest in the project and if the work is not completed, the desired environmental result will not be achieved. It is reasonable that the State and the municipalities can expect to receive the project for which public funds have been expended.

Subitem (4). This Subitem requires the specifications to include the prevailing wage rates issued by the Minnesota Department of Labor and Industry. Minn. Stat. § 177.41 to 177.44 (1988) requires that all public works financed in whole or in part by state funds, whether let by the state or by a local unit of government, must pay the prevailing state wage rate. It is reasonable to require the inclusion of the wage rates in the plans and specifications since labor costs are a substantial part of any construction bid, and it is important to ensure that all bidders receive the same information on which to base their bids in order to ensure competitive bonding. It is important that the proper wage rates be obtained prior to construction because updated cost estimates are based, in part, on using the state wage rates. By including them in the plans and specifications submittal, the Agency can be assured that the municipality is using the current rates and has incorporated those rates into the cost estimate for the project.

Part 6060 Rate system and ordinances.

The federal regulations for the Municipal Wastewater Treatment Construction Grants Program require the review and approval of a municipality's user charge system, sewer rate ordinance and sewer use ordinance as a condition of grant award. Title II of the Clean Water Act requires that user charges be distributed proportionately to the users' wastewater contribution to the treatment facility. That is, users of the wastewater treatment system can only

be charged for the portion of the wastewater they contribute to the system. The primary reason that proportionality of user charges has been a federal requirement is that the Environmental Protection Agency determined in its rulemaking process that it would be unfair for the residential user to pay for an industry's contribution to the system.

Another reason for establishing a user charge system based on contributions to the system is to encourage water conservation, which is one of the environmental goals of the program. Currently, the State Independent Grants Program requires that these federal requirements be met. The Agency has included the requirement that user charges be distributed proportionately in the proposed rules for the State Independent Grants Program. In addition to being a federal requirement, Minn. Stat. § 444.075, subd. 3 requires that "charges made for service directly rendered shall be as nearly as possible proportionate to the cost of furnishing the service".

As in the facilities plan, any municipality receiving financial assistance through the Revolving Loan Program is required to meet certain federal requirements. The requirements contained in Part 6060 regarding the municipality's rate system and ordinances are those currently required in the federal Construction Grants Program, and continue to be required by Title VI of the Clean Water Act for municipalities receiving loans from the State Revolving Fund. It is reasonable to match the requirements for the grant program to the loan program in this case since many municipalities which will receive grants will also be receiving loans. It would be unreasonable for the Agency to establish separate requirements for programs that are so closely linked. In general, the following Subparts reflect the federal requirements for the State Revolving Fund program under Title VI of the Clean Water Act and are reasonable to include in the state program.

Subpart 1. In general. This Subpart requires that a municipality submit a sewer service charge system, a sewer rate ordinance and a sewer use ordinance or a resolution of the municipality's governing body committing to the submittal by a certain date before the Agency will consider the municipality for placement on the Municipal Project List. See analysis of Part 6055, Subpart 1. It also requires these documents to demonstrate that the municipality has the legal and financial capability to ensure adequate construction and operation and maintenance of the treatment facility. It is reasonable to require that the rate system and the related municipal ordinances contain the provisions necessary to give the municipality the legal and financial capability to adequately construct, operate and maintain the facility because public funds are being used to finance part of the project and the Agency must ensure that the public funds are being invested in a viable project that will protect the environmental quality of the state's waters for the 20 year design life of the project. The legal capability can be demonstrated by the inclusion of provisions in the ordinances which give the municipality certain rights regarding who may use the facility, what may be discharged into it, and who makes the decisions regarding discharges, enforcement, and penalties for violations. The financial capability can be demonstrated by preparing an adequate budget that reflects all of the expected annual operation and maintenance expenses and which includes equipment replacement. In addition to the budget, the rate system must show how the municipality plans to generate enough revenue to meet its annual expenses. This is a reasonable requirement because the revenue generated should be adequate to ensure a viable budget.

Subpart 2. Sewer service charge system. This Subpart describes what should be included in a sewer service charge system. The sewer service charge

system consists of two charges, the user charge and the debt charge. The user charge covers the cost of equipment replacement, and operation and maintenance of the facility. The debt charge covers the cost of the local share of the construction cost. It is reasonable that the sewer service charge system be based on the two factors that comprise the overall cost of the system.

Item A. This Item requires the inclusion of the engineering and accounting data for the wastewater flows and loadings of the users of the facility. The engineering data is necessary to show the strength and amount of each user's contribution to the treatment facility. Engineering data includes the number of connections and the wastewater characteristics (flow in gallons per day, BOD5 in pounds per day, TSS in pounds per day) in each user class. It is part of the process which determines what each user's proportionate share of the costs should be in relationship to its wastewater contribution to the facility. It is reasonable to require this information so that the Agency review can determine whether the user charge being proposed is proportionate to the users contribution of flows and loadings to the system.

The accounting data for the flows and loadings will determine the unit cost of treating a particular amount of flow, BOD5 (biochemical oxygen demand), TSS (total suspended solids), phosphorous or other type of waste. This is necessary to include in the sewer service charge system so that each user's costs can be estimated. A user charge is the cost of treating that user's amount of flow or loading contribution. For example, if a user contributes 10,000 gallons of flow per month and the unit cost to treat 1,000 gallons of flow is $1 per 1,000 gallons, that person's monthly user charge will be $10. A user charge can only be determined after the amount of the contribution is known and the unit cost for treating the flow and loadings is known.

Item B. This Item requires the inclusion of the estimated budget for the annual costs of equipment replacement and operation and maintenance of the facility. The estimated budget is an important piece of the rate setting process. It is reasonable to require that the sewer service charge system include an estimated budget for the annual costs of operating the treatment facility so that a user charge, based on that budget, can be determined. The unit costs discussed in Item A are derived partly from the annual budget. For example, if it costs $50,000 annually to treat 50,000,000 gallons of flow, then the unit cost to treat 1,000 gallons of flow is $1.

Item C. This Item requires the inclusion of the rates that will be charged to each user for the user's proportionate share of the annual costs of equipment replacement and operation and maintenance of the facility. It is reasonable to require that the rates that will be charged be included in the rate system. The Agency reviews the rate system to ensure that the user charges are proportionate and to ensure that adequate revenue will be generated by the proposed rates to adequately operate and maintain the treatment facilities. In order to properly assess this, the Agency must be aware of the rates in relation to the budget required under Item B. The rates that are shown must be determined according to the rate setting method established in the municipal sewer rate ordinance. It is reasonable to require that the rates are determined in accordance with the municipal ordinance that sets rates.

Item D. This item requires the inclusion of the rates that will be charged to each user for the debt retirement for the local capital costs of the facility. Unlike the user charges described in Items A through C, the debt charges do not have to be in proportion to a user's use of the facility, but the method to be used must be shown in the rate system. It is reasonable to

require that the rates the municipality will charge its users for debt retirement be included in the rate system so that the Agency may review these charges to ensure that the municipality has the financial capability to retire the debt.

Subpart 3. Sewer rate ordinance. This Subpart specifies particular minimum provisions that are required in the sewer rate ordinance.

Item A. The sewer rate ordinance must include the rate setting method for the proportionate user charges. It is reasonable to require that the sewer rate ordinance include the method for setting rates so that the municipality has the legal basis to meet the requirements set forth in the previous Subpart concerning the sewer service charge system.

Item B. The sewer rate ordinance must include the rate setting method for how the municipality intends to charge the users for debt retirement. It is reasonable to require the rate setting method for the debt charge in the ordinance for the same reasons as discussed in Item A.

Item C. The sewer rate ordinance must include a provision that establishes separate accounts for three different revenue sources. It is reasonable to require that separate accounts be maintained for specific purposes because the initial revenue sources generate the secondary revenue comprised of the interest income. The secondary revenue should be credited to the appropriate account from which it derives. Consequently, the accounts should be kept separate. The separate accounts are:

Subitem (1). The municipality must establish a separate account for annual operation and maintenance revenue. It is reasonable to keep this account separate from all others since the operation and maintenance revenue is used to pay for the daily operation of the facility. It is important to keep

it separate from the equipment replacement fund since the replacement fund depends on interest growth to offset inflation so that adequate funds are available to serve its intended purpose. The debt retirement fund may be generated from a different source of revenue than the other funds. It is important that these funds are separate to ensure that a community can reasonably determine that revenue streams are adequate to cover the real costs were intended to cover.

the debt charge system are not used for operation, maintenance and equipment replacement expenses, which are to be generated from users' proportionate charges based on their wastewater contributions to the system.

Subitem (2). The municipality must establish a separate account for revenue dedicated to equipment replacement. See analysis of Subitem (1).

Subitem (3). The municipality must establish a separate account for revenue dedicated to debt retirement. See analysis of Subitem (1).

Item D. The sewer rate ordinance must contain a provision for establishing administrative procedures for the financial management of the sewer service charges. It is reasonable to require that the municipality include administrative procedures regarding the rates implementation because if will give the municipality the framework to manage the finances of the wastewater treatment system. Some examples of administrative procedures to include are how often sewer bills will be sent, quarterly or monthly; an annual audit requirement; an annual notification of rates requirement; and how often the meters will be read.

Subpart 4. Sewer use ordinance. This Subpart requires that certain minimum provisions be included in the sewer use ordinance. The sewer use ordinance is designed to give the municipality the ability to regulate

connections, flows and substances introduced into the treatment facilities so that the system is protected. In order to accomplish this, it is reasonable to require that the ordinance contain certain minimum provisions. They are:

Item A. The sewer use ordinance must prohibit new connections from inflow sources. It is reasonable to prohibit new connections from inflow sources because inflow does not need to be treated but should go directly into a storm sewer to the receiving water. An example of an inflow source is a roof leader or sump pump connection to the sanitary sewer system. Additions of inflow connections to the treatment facility will increase the hydraulic loading of the facility, thereby decreasing the system's capacity to receive wastewater which must be treated.

Item B. The sewer use ordinance must require that new sewers and connections be properly designed and constructed. It is reasonable to require that new sewers and connections to the treatment facility be properly designed and constructed because connections that are designed and/or constructed improperly may adversely affect the operation and maintenance of the system. Proper design and construction of new sewers and connections will help to ensure that the facility continues to operate the way it was originally designed and it is in the interest of the municipality and the Agency to protect the integrity of the whole system.

Item C. The sewer use ordinance must prohibit the introduction of toxics and other pollutants in amounts or concentrations that will endanger the public safety or the physical integrity of the treatment facility or cause violation of permit limitations. It is reasonable to require the prohibition of the harmful substances listed because treatment facilities are not typically designed to treat those types of wastes. They require special handling either

through a pretreatment program or a separate method of disposal. A wastewater treatment facility is designed to treat a maximum amount of flow. Certain types of loadings and the introduction of substances outside of the original design has the potential to cause damage to the facility which in turn will affect the ability of the facility to provide adequate treatment of the wastewater. The end result of that can be violation of permit limits and potential harm to the receiving water and the public safety.

STATE INDEPENDENT GRANTS PROGRAM

Part 6065 Municipal project list.

This Part describes the methodology for placing municipalities on the Municipal Project List, which is the list of projects expected to be funded from an allotment of grant funds appropriated by the Minnesota State Legislature. The list is drafted once a year and contains those projects which will be funded during the upcoming fiscal year. The language in this Part is largely unchanged from that in the existing rules, Part 7075.0409. We are proposing to change the submittal dates and have also made some wording changes for clarity, but the concept of the project list and how it is prepared remains the same.

Subpart 1. Adoption of municipal project list. This Subpart provides that each fiscal year the Agency Board will adopt a list that identifies in priority order the municipalities eligible to apply for a grant. It is reasonable for the Agency Board to adopt the project list because the Board is the governing body of the Agency. It is reasonable to list the projects in priority order because Minn. Stat. § 116.16, subd. 5(a)(3) directs the Agency to promulgate rules for the ranking of projects in order of priority for grants and loans. It is reasonable to assume that the intent of this statute is that projects on a funding list should be listed in priority order.

Subpart 2. Requirements for placement on list. This Subpart specifies the steps that must be taken by a municipality in order to be placed on the project list. The steps are:

Item A. This Item requires that the municipality be on the municipal needs list before being placed on the project list. It is reasonable to require the municipality to be on the needs list before placement on the project list because it must first be established that a municipality has a demonstrated need for replacement or upgrade of a wastewater treatment facility before grant funds are committed to the project. Grant funds are to be expended to abate pollution problems affecting the waters of the state. It would be contrary to the intent of the program to commit public funds to a municipality that does not have a need as defined in Part 6005, Subpart 22 and has not met the requirements of Part 6015 for placement on the needs list.

Item B. This Item requires the submittal of a facilities plan or a facilities plan addendum by December 1 prior to the beginning of the fiscal year for which the project list is prepared. It is reasonable to require that a facilities plan or addendum be submitted by December 1 in order to give the Agency an adequate amount of time to review the plan and for the municipality to make any changes required to make it approvable by the following May 1. It is rare that a facilities plan complies with all the established criteria for approvability upon submittal. Submittal by December 1 allows a reasonable time span for review by the Agency and correction of deficiencies in time for municipalities to qualify for placement on the project list. Subitem (2) provides that if a project is being changed from what was already approved, an addendum to the approved plan must be submitted by December 1. Generally, major changes, such as selection of a different

treatment alternative, involve almost as much Agency review time as an original plan. Therefore, it is reasonable to require these municipalities to submit their addenda within a time frame that allows for adoption of the project list.

Item C. This Item requires that the facilities plan and addenda submitted under Item B undergo all required revisions to acquire the Commissioner's approval by May 1 of the year in which the project list is prepared. It is reasonable to require the municipality to make all necessary corrections to receive approval by May 1 in order to expedite the preparation of the project list. All of the dates are established with the intent to prepare the municipalities for a spring construction date. If a facilities plan receives approval by May 1, the municipality will have adequate time to prepare plans and specifications based on the approved plan and submit them to the Agency for review by October 1 in order to be placed on the Municipal Project List.

Many municipalities do not authorize preparation of plans and specifications until they receive approval of their facilities plans to minimize the risk of preparing a design for an alternative which may not be approved. Currently, a facilities plan is required to be approvable on June 1, and plans and specifications must be submitted by September 1. This only allows three months to prepare the plans and specifications and, as a result, many plans and specifications are incomplete upon submittal. The Agency believes that five months (December 1 - May 1) rather than the previous six months (December 1 - June 1) is an adequate amount of time to review and approve a facilities plan and that it will be more useful for the municipalities to use the extra month to prepare plans and specifications.

Item D. This Item requires that plans and specifications, sewer service charge system, sewer use ordinance, sewer rate ordinance and

documentation that the public has been informed of proposed sewer service rates be submitted for the Commissioner's review and approval by May 1; or, if that is not possible, a resolution by the municipality's governing body committing to submittal of the required documents by October 1. It is reasonable to require by May 1 documents or the resolution that commits the municipality to submit the required documents by October 1 for the reasons discussed in Item C.

The submittal date for plans and specifications and related documents is September 1 in the current rules. It has been extended to October 1 to allow a total of five months for the preparation of plans and specifications. The Agency believes that if municipalities are given more time to prepare plans and specifications, the quality of these submittals will improve, reducing the amount of time required for the staff to review them. If these items are submitted by October 1, there is enough time for Agency staff to review the documents and still begin construction by spring. The items to be submitted are:

Subitem (1). This Subitem requires plans and specifications to be submitted that are in conformance with Part 6055 and that are based on the approved facilities plan. It is reasonable to require the plans and specifications to be submitted at this time for the reasons stated above. It is reasonable to require that the plans and specifications are in conformance with the guidelines established in Part 6055 because Part 6055 was established to set forth the requirements of the plans and specifications. It is also reasonable to expect the plans and specifications to be based on the approved facilities plan since the facilities plan was approved as being the cost-effective implementable alternative which meets the environmental objectives, and the Agency has concurred that the selected alternative is eligible for grant funding.

Subitem (2). This Subitem requires an addendum to approved plans and specifications if major changes are proposed. It is reasonable to require this so that the Agency can review the addendum to ensure that all requirements are met and that it is in conformance with the approved facilities plan.

Subitem (3). This Subitem requires the submittal of a sewer service charge system by October 1. It is reasonable to require this document to be submitted at this time to give the Agency adequate time to review the document. The sewer service charge system will identify the cost of the project to the users of the facility. The charge system is based on the cost of operating and maintaining the treatment facility described in the plans and specifications as well as the costs of building the facility. It is reasonable to review these documents concurrently, because changes in the plans and specifications may require that the sewer service charge system be changed.

Subitem (4). This Subitem requires that the municipality submit documentation of how it has informed the public of the proposed rates within the past year. It is reasonable to require that the municipality to inform the public of the proposed sewer rates before committing to construct the facility so that the users have an opportunity to comment. It is reasonable to require a municipality to provide documentation that it has informed the public of the proposed rates at this time because the Agency is preparing the Municipal Project List at this time. Cost issues have the potential of delaying projects, and it is necessary to distribute limited grant dollars to those municipalities that will expeditiously proceed to construction. It is further reasonable to require that the cost information be current to account for inflation.

Subitem (5). This Subitem requires the submittal of the sewer rate ordinance by October 1. It is reasonable to require this document to be submitted with the sewer service charge system since they are interrelated documents and should be prepared and reviewed together. The sewer rate ordinance establishes the rate setting method that is to be implemented in the sewer service charge system.

Subitem (6). This Subitem requires the submittal of the sewer use ordinance by October 1. See analysis of Subitem (5).

Subitem (7). This Subitem requires that, for projects involving more than one municipality, an unexecuted intermunicipal agreement that sets forth the terms and conditions of joint treatment and cost-sharing be submitted by October 1. It is reasonable to require an unexecuted agreement so that the Agency can review it to make sure that it is an agreement that will clearly delineate the responsibilities of each municipality. If it is already executed and changes are necessary, it will require the municipalities to repeat the process. It will be more efficient to wait until the project has progressed further to execute the agreement.

Item E. This Item stipulates that a municipality's failure to submit the documents required in Item D by October 1 will result in removal of the municipality from the project list for that fiscal year. This is reasonable because it would not be good public policy to tie up limited grant funds in projects that are not ready to proceed to construction. Submittal of the documents in Item D is evidence that the municipality should be ready to construct in the spring. A project that has been removed from the Municipal Project List for a single fiscal year will retain its priority on the Municipal Needs List and be eligible to apply for a grant in the following fiscal year if it meets the requirements of this Part.

Subpart 3. Preparation of proposed municipal project list. This Subpart identifies the factors that the Commissioner will consider when preparing the project list. These factors will be considered in the following order:

Item A. This Item establishes as the first consideration the total dollars available for the program. It is reasonable for this to be the first consideration since the Agency cannot project the award of grants for more money than is available.

Item B. This Item takes into account other restrictions and obligations mandated by the rules and state statutes. Because of these other restrictions and obligations, the amount available for grants is less than the appropriated amount. Some examples of other types of restrictions that require funds are grant increase amendments, program administrative costs, set-aside programs, and special grant programs mandated by the Legislature. It is reasonable to consider these obligations next so that the Agency can determine the amount of funds available for new grants.

Item C. This Item establishes that the priority rank of projects on the Municipal Needs List be the next consideration in the preparation of the project list. Minn. Stat. § 116.16, subd. 5(a)(3) directs the Agency to promulgate rules which establish a priority, based on environmental factors, for the award of grants and loans. Therefore, it is reasonable for the priority rank of projects on the needs list to be considered after the available amount of funding is established when preparing the Municipal Project List, since the priority ranking system under Parts 6020 through 6045 is based on environmental factors.

Item D. This Item establishes as the next consideration whether the municipalities on the Municipal Needs List met the requirements of Subpart 2,

which established the requirements for a municipality to be placed on the Municipal Project List. It is reasonable for the Agency to consider whether a municipality met the requirements to be placed on the list when preparing the list.

Item E. This Item states that the Agency must next consider projects that meet the eligibility requirements of Part 6070. Part 6070 establishes the eligibility of projects and the eligibility of costs to be reimbursed by the grants program. It is reasonable to consider whether the project is eligible for a grant when preparing the annual funding list.

Item F. Item F provides that municipalities which have been identified by the Commissioner of Trade and Economic Development (DTED) as being substantial economic development projects, and which have a priority ranking below the cities on the project list, may be funded up to the maximum set aside for that purpose. By statute, the maximum amount that may be set aside is $1,000,000. (See Minn. Stat. § 116.18, subd. 3a(b) in Exhibit 6) The Department of Trade and Economic Development currently administers rules and procedures for identifying these projects.

Subpart 4. Reserve list. This Subpart provides that the project list will include a list of reserve projects with priority ranking lower than those identified under Subpart 3, Items A - E. The projects on the reserve list that meet the submittal and eligibility requirements under Subpart 3, Items D and E may receive a grant if funds become available. It is reasonable to develop a reserve list in order to be prepared to use the available money for another project if one or more of the projects identified on the project list prepared under Subpart 3 do not proceed, or if additional funds become available from another source. For example, if a municipality submits a resolution by May 1

committing to the submittal of the required documents under Subpart 2 by October 1, it will be placed on the Municipal Project List. If the municipality does not to meet the October 1 deadline and is removed from the list, it is reasonable to have a reserve list of the projects that can take advantage of the opportunity to use the grant funds to build wastewater treatment facilities to protect the state's waters. It is reasonable for the Agency to establish the reserve list at the time it is preparing the Municipal Project List because the municipalities on the reserve list must meet the submittal requirements under Subpart 3, Items D and E in order to receive grants. Therefore, they should be informed that they are listed on the reserve list.

Subpart 5. Reimbursement list. This Subpart provides for the inclusion on the project list of a list of those municipalities that have requested to proceed with construction but do not have a priority ranking high enough to receive a grant in that fiscal year. These municipalities are to be reimbursed with grant funds in a future year when they have moved into a fundable position on the project list, contingent upon compliance with the requirements of the State Independent Grants program and upon funds appropriated for these projects by the Legislature. It is reasonable to develop a reimbursement list in order to identify those cities that are willing to proceed with construction in the interest of pollution abatement. If a municipality is able to finance the construction with the expectation of a reimbursement in the future, it is reasonable to allow the project to proceed to construction to eliminate a source of pollution of the waters of the state.

Item A. This Item requires that a municipality submit a written request for placement on the reimbursement list. It is reasonable to require a

written request so that it is documented that it was the municipality which initiated participation in this program. This Item also requires a municipality requesting placement on the reimbursement list to have received approval of the facilities plan, plans and specifications, the rate system and related ordinances prior to being placed on the list. It is reasonable to require these approvals prior to placement on the list because the approvals of all of these items ensures the municipality's readiness to proceed with the project.

Item B. This Item specifies the different conditions that must be met in order for a municipality on the reimbursement list to retain eligibility of construction costs incurred prior to the award of a grant.

Subitem (1). This Subitem requires that the municipality must be on the reimbursement list when construction begins. It is reasonable to require that the municipality be on the reimbursement list prior to the beginning of construction since no project will be placed on the reimbursement list until all required documents have been submitted and approved. It is only at this time that the Agency has deemed the project ready to begin construction.

Subitem (2). This Subitem states that the municipality must have submitted a complete grant application under Part 6075, Subpart 2, within 90 days of being put on the reimbursement list in order to retain eligibility of construction costs. It is reasonable to require that reimbursement projects submit applications, because the Agency needs a basis for making a determination that requirements have been met.

Subitem (3). The municipality must have received written approval of the application prior to initiating construction. It is reasonable to require this approval to ensure that the municipality has met all requirements of the grant program prior to proceeding to construction.

Item C. This Item stipulates that reimbursement projects will be listed in the same order of priority as they appear on the Municipal Needs List. It is reasonable require that all projects remain in the order that the priority points system placed them.

Subpart 6. Public participation. This Subpart provides that the proposed project list will be made available to the public at least 30 days before its adoption by the Agency Board. It is reasonable to allow municipalities affected by placement on the project list to have an opportunity to comment on the project list before it is adopted by the Board since the project list is the blueprint for distribution of grant funds for the fiscal year. If a municipality believes it has been treated unfairly, the time to resolve the issue is before the list is adopted.

Part 6070 Eligibility.

This Part describes the eligibility criteria for projects, eligible costs and the timing of eligibility for state independent grants. Since the municipality must meet various requirements in order for projects and costs to be eligible, it is reasonable to delineate those requirements.

Subpart 1. Project eligibility. This Subpart describes the criteria for a project to be eligible for grant funding.

Item A. Only the project identified as the cost-effective and implementable alternative based on a 20 year design life is eligible for funding. It is reasonable to use the limited grant funds for the least expensive alternative that will meet environmental objectives including effluent and water quality limits. Cost-effectiveness is analyzed in more detail in Part 6050, Subpart 2, Item E. Examples of projects which might be cost effective but would not be implementable are those which have a

detrimental environmental effect, such as disturbing an historical or archaeological site or those which interfere with other environmental or public work projects. With limited funds available for awarding grants to municipalities for the purpose of constructing wastewater treatment facilities, it is reasonable to stipulate that only the cost-effective, implementable alternative is eligible. Public money should only be committed to those projects shown to be cost-effective, environmentally sound and able to be constructed in the near future. Any commitment of grant funds to a project that could never be built would be a violation of the public trust that money appropriated for environmental programs will be expeditiously used to solve environmental problems.

Item B. This Item establishes the Commissioner's ability to give an exemption from the required 20 year planning period for the cost-effectiveness analysis to municipalities under 1,500 population. It is reasonable to allow this exemption because Minn. Stat. § 116.16, subd. 5(c) states that the Agency may promulgate rules to waive the required 20 year planning period for municipalities under 1,500 population. See Exhibit 6. Such municipalities may experience significant financial hardship if required to construct a facility for a 20 year design period. Those municipalities requesting this exemption must demonstrate that financial hardship will occur with the implementation of the 20 year cost-effective alternative. For instance, if the population of the municipality is declining, a 20 year design period may not be necessary and may cause the unnecessary expenditure of local funds as well as grant funds just to satisfy this planning requirement. If a shorter term solution will solve the municipality's pollution problem for less money, it is reasonable to allow the municipality to explore and implement the shorter term

solution. The written request for this exemption must include certain information to allow the Agency to make a determination based on information directly related to the issue. Subitems (1) to (4) describe the information that must be included in the request.

Subitem (1). This Subitem requires the municipality to describe the proposed treatment alternative and discuss how it does not satisfy the 20 year cost-effectiveness analysis. The Agency is responsible for protecting water resources and state financial resources. It must be able to adequately assess if the proposed alternative will meet permitted effluent limits and meet the sewage disposal needs of the community over a shorter time frame but in a cost-effective manner. Therefore, it is reasonable to require the municipality to describe the proposed alternative and to describe where it fails to satisfy the requirement so that the Agency can make the proper assessment on the proposal by the municipality. A shorter design period should not mean that the cost-effectiveness factor is not a valid consideration.

Subitem (2). This Subitem requires the municipality to explain why a financial hardship would exist if the 20 year cost-effective alternative were to be implemented, including any necessary documentation. A distinction has to be made in how a project proposed under this exemption differs from one planned for a 20 year design life. For example, a city could be declining in population such that a new facility might be too expensive for the benefit derived. In such a case, a different project might better serve the wastewater treatment needs of the municipality. The municipality still must identify the cost-effective project based on a 20 year design life and identify how that project will cause financial hardship. Examples of the documentation may include the municipality's financial statement for the

previous year and a comparison of the estimated sewer service charges for both options. It is reasonable to require this information so that the Agency may analyze the situation adequately and make a determination that is not arbitrary.

Subitem (3). This Subitem requires the municipality to submit a plan for re-evaluating its wastewater treatment needs at a specific time in the future. It is reasonable to require a review of the municipality's future needs since the municipality may experience demographic or financial changes over time, which may affect its wastewater treatment needs. In addition, the assumptions the municipality used to forecast future population or industrial growth may not have been appropriate. A specific time needs to be proposed to satisfy this requirement. The municipality must commit to this re-evaluation within an appropriate number of years based on the plan it submits.

Subitem (4). This Subitem requires the municipality's governing board to formally recognize that it will not be constructing a facility with a 20 year design life and that it will review its needs at a future date. It is reasonable to require the municipality to formally recognize its commitment so that it is fully aware of the possible consequences of the action and so that it recognizes that it is responsible under its NPDES permit for its facility meeting water quality standards. The exemption from the 20 year design does not exempt a municipality from meeting permit limits.

One of the possible consequences is forfeiture of a larger grant. Under Minn. Stat. § 116.16, subd. 9(a), a municipality is eligible for only one grant (See Exhibit 6) and if it uses its one grant opportunity to build a facility that may not last a full 20 years, it will not be eligible for more assistance. The municipality would assume full financial responsibility if the

treatment facility requires more construction in the future to continue to meet its permit limits.

Item C. This Item specifies that grant assistance will not be available for a project which has as its principal purpose the treatment or conveyance of industrial wastewater. This is a reasonable provision because the funds appropriated under Minn. Stat. § 116.16, subd. 1 are for grants to be made for the construction of municipal disposal systems and combined sewer overflow abatement, which is a public purpose and therefore a proper function of state government. Construction of facilities to dispose of industrial waste is not of direct benefit to the broader public, but would instead benefit the individual industry. This provision prohibits municipalities from using grant funds to build or upgrade a wastewater treatment facility solely for the purpose of attracting or keeping an industry. It is not appropriate to permit the use of funds designated for pollution abatement for local economic development.

Subpart 2. Cost eligibility. This Subpart outlines the categories of costs which will be eligible for funding. It is reasonable to list categories of items so that it is clear to the municipality which items are eligible for funding under this program. As the related documents are reviewed for adherence to rules, regulations and guidelines, the Agency will also be reviewing the municipality's proposal for reasonableness of costs and will make a determination based on past market values, practice and other factors about what specific items will be considered eligible for grant funding. Eligible costs have been broken down into eight cost categories. Eligibility of costs in each category is determined by the Agency and the municipality will be informed in writing of that determination. The following are the eight categories of costs that are eligible for funding.

Item A. This Item states that those items identified in the approved plans and specifications and change orders that are necessary to construct a treatment facility that will meet permit limits are eligible costs. Each project is designed by the municipality or its agent and the design is submitted to this Agency for review. It is reasonable to limit eligibility for grant participation the costs of constructing a treatment facility that will meet permit limits because the purpose of the program is to provide grants to municipalities for the construction of a wastewater treatment facility that will meet water quality objectives. Examples of items that may be eligible for grant funding include but are not limited to aerators, clarifiers, landscaping, fencing, pond liners, standby generators, interceptor sewers, and lift stations. These items listed are eligible only if they are necessary to meet the permit limits. For example, a municipality may propose to construct three clarifiers but only two are necessary to provide reliable treatment that will meet the provisions of the permit. Under this Item, only the two clarifiers that are necessary to meet water quality standards will be eligible for grant funding; the municipality may construct the third but it will not be considered for grant funding. Examples of ineligible items would include process chemicals and laboratory chemicals beyond a start-up supply, amenities or costs related to the administration and maintenance of the facility, and any fines or penalties resulting from the construction of the project. Therefore, it is impossible to list in rules each item that will always be eligible or ineligible.

Item B. This Item establishes eligibility for the costs associated with procuring construction contractors. These costs will include the costs of bid advertisement, prequalification of equipment, and review of the bids to determine the low responsible bidder. Municipalities must comply with Minn.

Stat. § 471.345, the Uniform Municipal Contracting Law regarding the award of municipal contracts, and other applicable state law. It is reasonable to pay for these costs because they are specifically associated with the cost of construction of the project.

Item C. This Item establishes eligibility for the costs relating to engineering services associated with construction and start-up services. These are services typically rendered by the municipality's consulting engineer. It is reasonable to include these as eligible costs because the rules require that certain tasks be accomplished as part of the grant conditions. Examples of construction related costs included in this category are construction management, testing, staking and surveying, preparation of the operation and maintenance manual, and bidding. Start-up services assure that the operating personnel have received adequate information and training regarding the operation and maintenance of the new or upgraded facility, thus giving maximum assurance that the facility will be properly operated and meet water quality objectives.

Item D. This Item establishes eligibility of the costs of providing full-time inspection of the project during construction. It is reasonable to include this as an eligible cost since qualified full-time inspection of the project construction gives maximum assurance that the engineer's approved plans and specifications will be followed by the contractor during the construction phase of the project. This helps to eliminate some of the risk of improper construction of the treatment facility. The engineer is better prepared to evaluate project change orders as they occur. Full-time inspection helps ensure that funds are used to pay for an approved project and that the project will, when completed, meet its water quality objectives. Full-time inspection

means that the qualified person designated to observe and monitor the construction should be on the construction site at all times when significant construction activity is taking place. If there are two or more segments of a project being constructed concurrently at different sites, two inspectors may be required. Conversely, it may not be necessary for the inspector to be on-site for activities such as touch up painting or installing the fence around the pond. The purpose for requiring an inspector to be present during the significant times is to ensure that the contractor is not only building the project as designed, but also to prevent the contractor from making changes that would not be evident once the facility is completed, but which may affect the operation of the facility. It is a protection for the municipality as well as the Agency, both of whom are expending large sums of money for a wastewater treatment project expected to serve the municipality for at least 20 years. It is reasonable and prudent to protect the investment as it is being built.

Item E. This Item establishes eligibility for the cost of land on which stabilization ponds will be built. It is reasonable to include this as a cost eligible item because Minn Stat. § 116.16, subd. 2 states that land for stabilization ponds is eligible for funding. The statute does not include any other types of land as being eligible, so no others are included in the rules.

Item F. This Item establishes eligibility of a contingency fund for three percent of the construction costs eligible under Item A. It is reasonable to include a contingency fund as an eligible cost because construction projects are subject to changes during the course of construction which may increase the cost of the project. An example of a change that might increase costs is if, during the excavation of land for a pond project, the

contractor encounters more rock than expected and more blasting is necessary. These costs and changes are reviewed and approved by Agency engineers who check them for need and appropriateness. If, at the end of the project, it is necessary to use the contingency fund for the increase and the changes have been approved, it is available to the municipality. If there is not enough money in the contingency fund for all of the cost overruns, the municipality is responsible for them. It is reasonable for those extra costs to be covered by budgeting a contingency fund. Minn. Stat. § 116.16, subd. 2(8) limits the contingency fund to three percent. See Exhibit 6. Historically, three percent of eligible construction costs has proven adequate to reasonably cover routine project cost increases.

Item G. This Item establishes eligibility of costs associated with unanticipated site conditions. It is reasonable to include this as an eligible cost because Minn. Stat. § 116.16, subd. 2(8), allows these costs to be eligible up to the limit of two percent of the as-bid construction costs. It is also reasonable to include those costs as eligible because if a municipality has taken all reasonable precautions to design a project based on all known factors, it should not be financially penalized if something happens which could not reasonably be predicted and causes a cost overrun.

Item H. This Item establishes eligibility of costs for project planning, design, administration and legal services. In the current program, separate grants for project planning and design have been awarded where available. The proposed rules eliminate separate grants for planning and design, but include these activities as eligible costs in the construction grant. This Item establishes that costs in these four areas are eligible up to a maximum of 12 percent of the construction costs identified under Item A for

municipalities of 1,500 or less population and ten percent for municipalities over 1,500 population. Municipalities will only be reimbursed for costs that are incurred if those costs are less than the maximum allowable percentage. It is reasonable to establish this type of "allowance" method to reduce the amount of paperwork and administrative cost to the cities and the Agency since award of separate grants would require preparation and review of additional applications and contracts.

The ten and twelve percent figures were determined based on the tables in the federal regulations which were previously used to identify planning and design allowances. These tables are included in Exhibit 5. The percentages are an average of the amounts which would have been awarded using the federal formula for planning and design allowances based on project costs. These averages were calculated from the estimated project costs on the Municipal Needs List as a sample, comparing amounts eligible under the federal tables, and taking the mean value. If the municipality has previously received a grant for planning or design, the eligible costs from that grant will be deducted from the eligible costs used to determine the amount under this Item. It is reasonable to do this to ensure that the municipality is not reimbursed twice for the same activity. If a municipality has already received a grant for planning purposes, it should not receive additional money for planning.

Subpart 3. Timing of eligible costs. This Subpart outlines when eligible cost may be incurred. This Subpart allows for prior approval by the Commissioner for work that needs to be done prior to grant award. It is reasonable to specify when eligible costs may be incurred in order to ensure that construction does not proceed until the Agency has reviewed and approved the project.

Item A. This Item establishes that construction costs and related engineering and inspection costs will be ineligible until the grant application is certified to the Authority for award. Because the Agency must review and approve costs associated with construction, inspection, and related engineering, it is reasonable to specify that eligible costs may not be incurred in these areas until they are approved. The provision that, if necessary, a municipality may receive prior approval to incur costs allows for pressing environmental or public works project needs. Examples of these include: (1) A project involves the laying of pipes under the streets. It is reasonable to lay the pipes while the street is torn up to do municipal repair work on the streets. The municipality's schedule of road repair may mean that it will be tearing up the streets before the grant is certified. If the municipality requests eligibility of those pipe costs and it is approved from a technical standpoint by the Agency, the municipality may receive approval to incur those costs prior to certification. It is reasonable to allow prior approval in a situation like this to avoid tearing the streets up again; (2) An emergency at the treatment facility occurs, such as the failure of the final clarifier. If replacement of that clarifier is included in the scope of the approved facilities plan, it is reasonable to preserve eligibility for grant participation so that the municipality can repair the problem, thus preserving its ability to provide adequate wastewater treatment services and not jeopardize its grant funding for that construction cost item.

Item B. This Item states that the cost of purchasing land prior to the approval of the facilities plan is ineligible without prior approval. The cost of land is ineligible until the facilities plan is approved because a stabilization pond project may not be the cost-effective, implementable

alternative. Land for stabilization ponds is the only land that is eligible under Subpart 2, Item E. Review of the facilities plan and the environmental impacts associated with a particular site may yield the information that the site being proposed for the ponds may not be suitable and an alternate site must be found. It is therefore reasonable that land purchased before receiving a facilities plan approval is ineligible. The provision exists that the municipality may receive approval from the Commissioner to purchase the land before the facilities plan is approved. It is reasonable to include this provision for cases where it is more economical to purchase land before approvals. For example, there may be cases where it is clear, before approval of the facilities plan, that a particular site will be chosen. The municipality may be able to purchase the land at a lower cost while it is on the market. It may save the municipality and the Agency a lot of money to allow the purchase of the land prior to the facilities plan approval in selected cases.

Part 6075 Grant applications.

This Part outlines the items that must be submitted by a grant applicant to constitute a complete grant application and when those submittals are required. It is reasonable to require a grant application with specific information so that the award of grant money is made to municipalities that have demonstrated eligibility for the funds by submitting the application and supporting documentation. It is a reasonable way for the Agency to determine eligibility of each project and the associated costs by reviewing the information contained in the application.

Subpart 1. Agency notification. This Subpart establishes that no municipality may apply for a grant unless the Commissioner has notified it

of its placement on the Municipal Project List. The Commissioner notifies municipalities of their placement on the list by forwarding to them copies of the draft project list, the project list approved by the Agency Board and a grant application. It is reasonable that the Commissioner will not accept unsolicited applications because of the criteria that must be met by municipalities in order to be placed on the project list. Grants are available under a priority system. Because the grant application and associated documents are complicated and difficult to prepare and review, it would not be a good use of Agency staff time to receive applications from those municipalities that have not been determined to be eligible to receive funding.

Subpart 2. Complete application required. This Subpart specifies that no municipality will be considered for a grant unless it submits a complete application as defined in Subpart 3. It is reasonable to require submittal of a complete application to ensure that the Agency has the information it needs to assure that the municipality has the ability to successfully complete a construction project that meets the environmental objective and to assure that the proper planning and design has been accomplished. It is not in the public interest to commit money for a municipality that is unable to complete the application requirements in time to receive funding for the limited construction season in Minnesota. It is a statutory requirement for the Agency to approve or reject applications within 90 days of receipt with a discretionary 90 day extension. The Agency requires complete information in order to evaluate the project within that time frame. It is therefore reasonable to require that an application contain all items requested.

Subpart 3. Timing and form of application. This Subpart details the timing of the application submittal as well as the form of the application. It

is reasonable to establish these types of parameters to insure uniformity of applications and preparation time. In addition, the award of grant funds is tied to certain dates. The goal is for a project to start construction the following spring, as early as possible to take advantage of Minnesota's short construction season. The Agency wants to avoid committing money to projects that will not be able to begin to be constructed within that time frame. This ensures that grant funds dedicated to pollution abatement will be used to obtain the most environmental benefit as soon as possible in order to avoid further degradation of the waters of the state. It is therefore reasonable to require that the application be submitted in accordance with the established schedule so that projects are built in a timely manner.

Item A. This Item requires that the grant application be on special forms and that the forms will be provided by the Agency and the Authority. Certain information is needed by both agencies to assure proper use of state funds. It is therefore reasonable to require that the applicant use forms prepared by the Agency and Authority which identify the requirements of the program. Because the agencies are providing the application form, they can be sure that it contains the information necessary to award the grant. Since the Agency and the Authority are responsible for reviewing different information, it is reasonable for each agency to provide forms to the applicant. The Agency and the Authority review their portions of the application concurrently. The Agency is responsible for the review of technical information and the determination of eligibility of costs, as well as adherence to appropriate rules, laws and guidelines. The Authority is responsible for reviewing the financial capability of the municipality to undertake the project.

Item B. This Item requires the submittal of a complete application within 90 days of the adoption of that fiscal year's municipal project. It is reasonable to set a due date for applications so that, on a specific date, the Agency can determine the following:

1) which municipalities applied for grants;

2) how much grant money has been applied for;

3) whether sufficient funds are available for the projects; and

4) whether money is available to fund reserve list projects.

It is reasonable to limit the amount of time to prepare a grant application to 90 days from the approval of the project list so that the municipality is on schedule to initiate construction of the project the following spring. The current rules administering the federal Construction Grants Program and the State Independent Grants Program allow for a 90-day application preparation period, and that has been demonstrated to be a sufficient period of time to prepare adequate application documents.

Item C. This Item allows for an alternate submittal date for the required legal opinion, identifying that the municipality has sufficient vested interest in all land associated with the project. Historically, the acquisition of land has caused considerable delays in the processing of applications and awarding of grant funds. The existing rules require that the applicant have the legal opinion at the time of application submittal or the application will not be considered complete (Part 7075.0414, Subpart 6, Item L). The proposed rules require that, if the applicant has not been able to receive that opinion at the time of application, a land acquisition status report and schedule must be submitted in lieu of the legal opinion. It is reasonable to offer this option since land acquisition can be complicated and

is often dependent on conditions over which the municipality has no control. The Item also gives the municipality until the following April 1 to obtain the legal opinion. April 1 was chosen as the last date for this submittal so that the review, certification and award process can still take place within the fiscal year. It is reasonable to require all information in time to award grants within the fiscal year, since the Project List is based on fiscal year appropriations. Furthermore, if, by April 1, the municipality has still not resolved its land problems, it is not ready to proceed to construction and the project will be removed from the the Municipal Project List for that fiscal year. Having given the applicant until April 1 to complete the process, it is reasonable to remove that project from the list and award the funds to a project that is ready to proceed, thereby taking advantage of the prime construction season.

Subpart 4. Application requirements. This Subpart outlines the items to be included with the application. Each application requirement is found in the existing program, Part 7075.0414, Subpart 6. The information has been reorganized and the wording has been changed to make it for clear. There are no new requirements in this Subpart. All of the items listed below will be reviewed by Agency staff and must receive Agency approval. It is reasonable to have the Agency review and approve these items because they all provide information on cost or readiness to proceed.

Item A. This Item outlines the items to be included in a proposed engineering contract between the municipality and its consultant. It is reasonable for the Agency to review the unexecuted contract to make sure that it contains, at a minimum, the six items listed because each of the items relates to building a project that will be able to meet effluent and water

quality standards. The engineering contract specifies the responsibilities of the consultant to achieve the goal of construction and operation of the treatment facility. It is important that certain provisions be included in this contract so that the Agency has an assurance that certain tasks will be performed and that they will be performed by qualified people. The municipality is not precluded from including further provisions beyond the six required by the Agency. The Agency has prepared guidance for municipalities in this area and will provide assistance if requested.

Subitem (1). This Subitem requires that a provision for full-time inspection during construction be included in the contract. It is reasonable to require this in the contract since it is a requirement of the program that this be provided. The Agency inspects construction on a monthly basis, but cannot be on the site every day. Therefore, to assure that the contractor is following the approved plans and specifications and that construction is adequate, the engineer needs to have its own inspector on site full time during construction. This Subitem also requires the contract to contain a provision that the inspector submit monthly reports to the Agency describing the type of construction and the time involved in the inspection. It is reasonable to require the inspector to submit monthly reports to the Agency so that it is apprised of the construction activity including the progress and schedule of construction and any problems encountered on site.

Subitem (2). This Subitem requires the engineering contract to contain a provision for submittal of two sets of "as built" plans and specifications to the Agency. It is reasonable to require this provision to be in the engineering contract because the "as built" plans and specifications provide a permanent record of the project as it was constructed. The

requirement of having a microfiche copy meets the specifications for records storage at the Department of Administration and allows for efficient records storage at the Agency. Two sets are required so that one set can be sent to records storage to meet the rules of the Department of Administration, and one set can be kept at the Agency for future reference.

Subitem (3). This Subitem requires the engineering contract to provide the preparation of an operation and maintenance manual. It is reasonable to require the engineering firm to prepare a manual to assist the operator with the operation and maintenance of the facility as constructed because the engineering firm designed the project and was present during its construction. The manual is necessary to assist the operator to operate the facility properly to meet the requirements of the NPDES/SDS permit.

Subitem (4). This Subitem requires the engineering contract to include the provision of the following start-up services so that the municipality can take responsibility for the operation of the facility, and so that a smooth transition is made. It is reasonable to require the engineer to provide training and assistance with the operation of the facility during the first year of operation so that the facility, under the guidance of the design engineer, is tested. The testing should demonstrate that the facility can operate as designed. The consulting engineer must be available to make design changes, as necessary, if problems arise during the first year of operation.

Unit (a). The first requirement under start-up services is that the engineer direct the operation of the project and revise the operation and maintenance manual as necessary based on actual operating experience. It is reasonable to require that the engineer direct the first

year of operation because the consulting engineer planned, designed and was on site during construction of the project. It is also reasonable to require this to ensure that the facility functions as designed and that the municipality's operators are trained to operate the system. The operation and maintenance manual is to be revised so that it reflects the operating experience encountered during the first year of operation.

Unit (b). The second requirement under start-up services is that the engineer train or provide for training of operating personnel and prepare necessary the curricula and training materials. It is reasonable to require this during the start-up period because the consulting engineer designed the project, was on site during the construction and must direct the first year of operation. The consulting engineer has the most information regarding the efficient operation of the project, and therefore should be responsible for providing adequate training so that the operator has sufficient knowledge to operate the facility to meet the provision of the NPDES/SDS permit.

Unit (c). The third requirement under start-up services is that the engineer must advise the municipality whether the project is meeting performance standards. It is reasonable to require this in the engineering contract since the municipality is required to certify that the project meets performance standards one year after initiation of operation. The engineering firm is in charge of the testing and operation of the facility during the first year of operation and has the data to confirm whether standards are met.

Item B. This Item requires the municipality to submit a copy of the certificate of errors and omissions insurance carried by the consulting

engineer as a supplement to the application. Errors and omissions insurance is a protection for the municipality in case there is a failure of the project caused by the engineering firm. It also provides protection for the public funds that are being expended on the project.

Item C. This Item requires the municipality to submit a certification of design statement with the signature and registration number of the design engineer. The certification statement is required as an assurance that the project has been designed with full knowledge of the standards and to meet those standards. It is reasonable to require that the consulting engineer be registered, as required by Minn. Stat. § 326.12, subd. 3., to ensure that the highest possible professional standards are followed in the planning and construction of projects in the grants program and to assure that the engineering firms acknowledge the permit limitations that the project was designed to meet. The statement has been changed from the one in the existing rules to reflect the possibility that a different firm may design and construct the facility than the firm that prepared the facilities plan. The present firm must certify that it verified the data used for the design that is in the facilities plan, which will be the basis for the plans and specifications it develops for the project.

Item D. This Item requires the application to include a treatment agreement with each major contributing industry. As was explained in the previous discussion on treatment agreements in Part 6005, Subpart 40, a municipality proposing to construct a wastewater treatment facility must know in advance what significant industrial dischargers will be using the municipal system. In order to limit the adverse effects from industrial discharges to a wastewater treatment facility, it is reasonable for the municipality to have in

place a treatment agreement with each major contributing industry. If a municipality does not have a treatment agreement with each major contributing industry, the grant application will be incomplete and no grant will be awarded. This agreement will establish the industry's contribution to the facility in terms flows, loadings and the duration of the contract.

Item E. This Item requires the municipality to submit a breakdown of costs for the tasks the consulting engineer will be performing as part of the project work to be funded by the grant. Eligible and ineligible costs must be separated. This information is to be submitted on a form provided by the Agency to ensure consistency of the information provided. It is reasonable to require that the costs for engineering services be broken down into specific task categories to determine if the costs being requested are eligible and if they are reasonable. The form the Agency uses and has used for many years breaks the tasks down into the following categories: construction management, bidding, staking and surveying, materials testing, plan of operation, operation and maintenance manual, start-up services and project inspection. The form requires the number of hours estimated to be spent for each task as well as the level of the personnel and the corresponding pay rate. It is reasonable to require this information so that the Agency reviewer can make a determination as to the reasonableness of the costs being requested. It is in the public interest for the Agency to make sure that money dedicated to correction of water pollution be spent in a way that will achieve that end. Other items are judged to be ineligible by the criteria governing the grants program.

Item F. This Item requires the municipality to provide a legal opinion verifying the municipality's legal vested interest in all land, sites and easements required to construct the project. It is reasonable to require a

legal opinion of this nature to ensure that no legal questions will cause interruption of construction, result in claims or cause interruption of operation of the treatment facility during its design life, resulting in adverse environmental effects. Because land issues have caused problems in past grants program management, it reasonable to include some method of ensuring the easiest resolution of the conflict and to ensure that the municipality has the best possible protection against any legal claims regarding ownership. It is intended that the legal opinion provide this protection. As was discussed in Subpart 2, Item 3, the municipality has the option to include a status report and schedule if the legal opinion cannot be made at application time.

Item G. This Item requires the municipality to submit a project schedule on a form provided by the Agency. The inclusion of a project schedule provides the Agency with the information when major project tasks are to be completed. It is reasonable to keep the Agency informed so that they can monitor progress and assist the municipality with staying on schedule. Some of the milestone dates on the project schedule are initiation of construction, completion of construction and initiation of operation.

Subpart 5. Three copies. This Subpart requires the municipality to submit three copies of the application and attachments to the Authority with one copy containing original signatures. It is reasonable to require three copies so that the Authority will have one copy and the Agency will have two copies. The two Agency copies will be used by the Agency engineer and project manager.

Part 6080 Approval and certification of grant applications.

This Part provides for a grant approval mechanism when all requirements have been fulfilled by the municipality. After the submittal of a complete

application, the Agency, under Minn. Stat. § 116.163, subd. 1, may take 90 days to review and approve the application and certify it to the Authority with the provision for one 90-day extension by agreement of the municipality. This 180 day period provides Agency staff ample time to review the submittals and also provides ample time for the municipality to clarify document information and resolve outstanding land issues.

Item A. It is reasonable to require that the applicant meet the requirements already established within a certain time frame to allow the Commissioner to certify the grant within the same fiscal year because a new project list is prepared each year. If the municipality cannot provide the information within that time frame, it is unlikely that it will be able to begin construction in that year due to the short construction season caused by Minnesota's climate. The limited grant funds available should not be tied up by such a project, but should be used for another that is ready to proceed.

Item B. It is reasonable to require the completion of the environmental review process as it is required under Minn. Stat. § 116D and Minn. Rules ch. 4410 administered by the Environmental Quality Board.

Item C. Minn. Stat. § 115.03, subd. 1(e), and Minn. Rules pt. 7001.0030 require a municipality to obtain a permit before construction may begin.

Subpart 2. Certification. This Subpart provides that the Commissioner will certify to the Authority each approved application for grant award. This is reasonable because Minn. Stat. § 116.16, subd. 9 requires the Agency to certify to the Authority those applications which have met the appropriate requirements.

This Subpart also states that grant eligible costs under Part 6070, Subpart 2, Items B through D will be determined at the time of certification. Items B

through D relate to procurement of the construction contract, construction related engineering costs and full-time inspection. It is reasonable to determine what these costs will be prior to construction because the breakdown of costs and tasks that is required with the grant application under Part 6075, Subpart 4, Item E includes the time and cost that will be required for the completion of these tasks. The costs of these providing these services can be estimated accurately based on eligibility criteria and past experience of the consulting engineers and the Agency staff. The time between grant award and beginning of construction is usually quite short and experience has shown that the costs in these areas do not change significantly during that time.

Since the Agency reviews the breakdown of costs and tasks for eligibility and reasonableness, working with the municipality and the consultant to arrive at the proposed costs, they are generally quite accurate. It is reasonable to make a final determination on these costs prior to grant award because the eligibility of costs is determined prior to grant award and there should be no eligibility questions on these tasks beyond that point. However, to accommodate the rare exception, this Subpart allows for the use of contingency funds to offset increases which may occur. The rules limit the use of contingency funds for this purpose to increases that result from unanticipated site conditions and other situations approved by the Commissioner. It is reasonable to limit cost increases in these three areas to situations approved by the Commissioner so that the Agency is assured that the increases are a result of legitimate construction problems rather than poor planning or project management.

Part 6085 Rejection of grant applications.

This Part provides that under certain circumstances, an application may be rejected. This may be for nonsubmittal of documents or for nonapproval of

the submitted documents. It is reasonable to include a provision for rejecting an application that does not meet program requirements.

Subpart 1. Grounds. This Subpart establishes the basis for rejection of an application as not having received approval under Part 7075.6080. That generally means that the municipality has either not submitted a required document or that it did not meet a deadline in the submittal. The Agency itself is under time constraints in certifying grant awards and must have all documents to review them in a timely manner. Therefore, it is reasonable to reject an application that does not meet criteria set forth in rules and statutes.

Subpart 2. Effect of rejection. If an application is rejected, the municipality is removed from the Municipal Project List for that fiscal year. This is reasonable because it allows another project to proceed with the funds available, therefore allowing funds to be used to abate pollution. The municipality removed may apply again in the next fiscal year.

Part 6090 Contract assignment.

The purpose of this Part is to allow the Commissioner to assume the rights of the municipality under contracts with a contractor or engineer. This will allow the municipality to transfer its rights under the contract without the consent of that contractor or engineer. This Part also will allow the Commissioner to assume the municipality's rights under the contract without the municipality's consent if the municipality is unable to enforce the contract. It is reasonable to require this provision so that delay or abandonment of the project does not occur due to the municipality's inability to enforce its contracts. It is the Agency's responsibility to ensure that the public funds appropriated for this purpose are used to meet environmental objectives.

Part 6095 Contract beneficiary.

This Part establishes the requirement that contracts for the planning, design or construction of a treatment system include the provision that the Agency is a third-party beneficiary to the contract. The language in this Part has not changed from the existing rules. It is reasonable to require that the Agency is a third-party beneficiary to the contract with a contractor or engineer so that the Agency can enforce the contract, if necessary, without the municipality forfeiting rights under the contract. Contracts under this Part include anyone supplying services to the municipality which include, but are not limited to, the consulting engineering firm, the prime contractor, soils testing firms, electrical services, and asbestos removal.

Part 6100 Grant amendments.

The purpose of this Part is to describe the types of grant amendments allowed and the conditions under which those amendments will be allowed.

Subpart 1. After-bid amendments. This Subpart allows an amendment to the grant following the construction contract award to adjust the grant to reflect actual costs. The line item amounts in a grant award are estimates and will differ from the amounts in the bids and subsequent contracts. Two other cost categories are based on the eligible construction costs. They are the contingency, which is three percent of the eligible construction costs, and the "allowance" for administration, legal, planning and design costs. It is reasonable to increase or decrease the grant to correspond with the signed construction contracts rather than estimates. After the contracts are awarded and the after-bid amendment is approved, the grant may be increased only by an unanticipated site condition amendment under Minn. Stat. § 116.16, subd. 2(8).

Subpart 2. Unanticipated site condition amendments. This Subpart allows the grant to be amended to allow for unanticipated site conditions. Unexpected conditions encountered at the construction site may cause problems resulting in cost overruns requiring a change in the construction contract. It is reasonable to consider these costs for eligibility and increase the grant accordingly if the nature of the site condition could not have been foreseen and the condition was not identified in the plans and specifications. For example, if the preliminary soil borings for a project did not show a large amount of peat that existed on the site and initial excavation revealed it, time and materials in the original bid may have to be adjusted. A cost overrun may result. Since the soil borings were performed as required and the existence of the peat was not evident, the engineer could not have anticipated this condition. Minn. Stat. § 116.16, subd. 2(8), authorizes that unanticipated site conditions may be considered an eligible cost. The following Items outline the procedure for a municipality to request an unanticipated site condition amendment.

Item A. This Item limits the amendment to two percent of the as-bid eligible construction costs. The amount is limited to two percent under Minn. Stat. § 116.16, subd. 2(8). The Item also stipulates that the three percent contingency fund under Part 6070, Subpart 2, Item F, must be be depleted before this amendment is approved. This is reasonable because the cost overrun caused by the unanticipated site condition may be covered by the eligible construction costs plus the three percent contingency. It would not be prudent to tie up additional funds if an increase is not necessary, nor would it be efficient to use valuable Agency and municipal administrative resources to process unnecessary amendments.

Item B. This Item requires the municipality to request an unanticipated site condition amendment in writing, including certain information. It is reasonable to require a written request including several items so that the Agency can review the request for reasonableness and eligibility. The written request must include the following information.

Subitem (1). This Subitem requires an explanation of why the site condition was unanticipated. It is reasonable to require such an explanation so that the Agency can determine whether the condition qualifies for designation as unforeseen. Cost overruns due to omissions in the plans and specifications must be covered by the contingency. According to Minn. Stat. § 116.16, subd. 2(8), those costs in excess of three percent of the as-bid costs are not grant-eligible.

Subitem (2). This Subitem requires the municipality to submit a change order defining the scope and cost of the work required. It is reasonable to require this because all changes to the contract must be made by change order as discussed in Part 6105.

Subitem (3). This Subitem requires the municipality to submit a breakdown of the costs and tasks associated with the change order. It is reasonable to require a breakdown of costs and tasks to allow the Agency to review those items for eligibility.

Subitem (4). This Subitem requires the municipality to submit an amended engineering contract if any changes have been made to the approved contract. It is reasonable to require submittal of an amended engineering contract so the Agency is aware of the changes made to ensure that the contract still meets all rule and statutory requirements reviewed for previously. An example of a change that might be necessary is additional inspection required during the construction resulting from the unanticipated site condition.

Subitem (5). This Subitem requires the municipality to request a budget period extension if more time is needed to complete the project as a result of the unanticipated site condition. This is reasonable so that all costs under the grant are incurred within the time period of the grant contract.

Part 6105 Change orders.

This Part delineates when a change order is necessary and the information that must be contained in a change order. All of the items in this Part have been required of grantees in the federal Construction Grants Program and the State Independent Grants Program for many years. The purpose for including this language in the rules is so that it is clear to the municipalities, the consulting engineers and the contractors what will be required.

Subpart 1. In general. This Subpart outlines when a change order is required. The proposed language clarifies under what conditions a change order submittal is required. It is reasonable to require a change order to be submitted to the Agency under the following five situations so that the Agency has a chance to review changes to the construction contract that are made after the contract is executed. A change order must be submitted in the five situations that follow.

Item A. A change that alters the design or scope of the project. It is reasonable for the Agency to review this type of change because it would involve a fundamental change to the plans and specifications. The Agency has the responsibility to review plans and specifications under Minn. Stat. § 115.03, subd. 1(f). The Agency must review a change to the design or scope of the project to ensure that it does not affect grant eligibility, and that the project will still meet specific water quality standards. A change may alter

the operability or reliability of the facility which may affect its ability to meet water quality objectives.

Item B. A change causing an increase or decrease in the contract price must be submitted for approval. It is reasonable for the Agency to review this type of change because construction contract prices are directly related to the grant amount and the use of contingency funds in the grant. It is important for Agency staff to review a cost change to determine its eligibility for grant funding.

Item C. A change in the construction completion date must be submitted for approval. It is reasonable for the Agency to review this type of change since the budget period, engineering contract, and possibly consent decree and NPDES/SDS permit are tied to this date.

Item D. A deviation from the approved plans and specifications requires a change order. It is reasonable for the Agency to review this type of change because the Agency staff reviewed and approved a set of plans and specifications as the basis for the construction of the project. Any change in those documents must be reviewed to ensure that the change would not affect the project's grant eligibility and ability to meet water quality standards.

Item E. A substitution or replacement of equipment, suppliers or subcontractors requires a change order. It is reasonable for the Agency to review this type of change because it may affect the project's ability to meet water quality standards.

Subpart 2. Contents. This Subpart outlines the information required in all change orders submitted to the Agency. It is reasonable to require certain items to be included in the change order so that the Agency has all the information necessary to complete a review.

Item A. This Item requires that a change order be signed by the municipality, the engineer, and the contractor. It is reasonable to require this so that the Agency knows that these three parties have approved the change. A change order alters the original contract made between the contractor and the municipality. Therefore, those signatures are necessary to ensure that no right of any party was subverted. The project engineer serves as the technical representative of the municipality for construction.

Item B. This Item requires that a change order include the date on which the municipality and the contractor executed the change order. It is reasonable to require this information since it is important for the Agency to know when changes are occurring to be able to track the progress of the project. The date of the change order is also related to the requirement that changes not requiring prior approval be submitted to the Agency within one month of execution. In addition, it is reasonable to require that a change order be dated because a change order is a contract amendment and must be dated.

Item C. This Item requires the change order to include an identification of grant eligible and ineligible costs. At the time of plans and specifications approval, Agency staff has completed a review of and made a determination regarding eligible and ineligible items. It is reasonable to require a similar identification, review and approval of costs associated with the change order so that grant eligibility can be determined.

Item D. This Item requires the change order to include a complete description and justification of the change. At the time of plans and specifications approval, the Agency has completed an extensive and detailed review of all items included. If a change is necessary, it is reasonable to

require the municipality to describe the change and justify the necessity for the change. The Agency will determine whether the change is acceptable and if it is eligible for funding.

Item E. This Item requires the change order to contain an explanation of why the change was not included in the original plans and specifications and contractor's bid. It is reasonable to require such an explanation so that the Agency staff reviewing the change order can determine the type of change, whether it is fundable and whether it is eligible for designation as an unanticipated site condition. Change orders are common in this type of construction project. Quantities of bid items are estimated in the bids and they may differ from amounts necessary to complete the work. The explanation will enable the the Agency to determine whether the change is eligible for funding.

Item F. This Item requires the change order to provide a detailed cost breakdown for the change showing the costs of materials, labor, overhead, and profit. The project was bid competitively, but change orders must be negotiated. It is reasonable to review costs closely to ensure that they are consistent with the bid and in conformance with costs expected from the type of change requested.

Item G. This Item requires the change order to include a cost estimate for the change from the project engineer and an analysis of any differences between the engineer's estimate and the contractor's cost breakdown. It is reasonable to require an independent estimate from the engineer for comparison purposes and to evaluate whether the negotiation process yielded a competitive price for the work. It is reasonable to compare the engineer's estimate and the contractor's estimate and explain any discrepancy that exists. If the two

differ by more than ten percent, an explanation of the negotiations for agreement is required. This is to ensure that the negotiation process took place and was handled properly.

Subpart 3. Eligible costs. This Subpart describes what costs associated with change orders are eligible for grant funding.

Item A. This Item establishes that construction costs resulting from defects in the plans and specifications that would have been eligible and would have been incurred if the plans and specifications had no defects are eligible for grant funding. This is reasonable because it maintains consistency in the types of costs that are grant eligible while acknowledging that changes of this type are common in large construction projects. An example of this type of change is a quantities change order where the estimated amount of particular materials must be increased to complete the project.

The costs of rework, redesign, restocking, small tools, supervision, delay, acceleration or disruption caused by the defects will not be considered eligible. This is reasonable because any costs associated with the correction or replacement of defective work would obviously not be considered eligible during the review of plans and specifications and therefore should not be eligible during construction.

Item B. This Item allows unanticipated site condition costs to be eligible for grant funding. See analysis under Part 6100, subpart 2.

Item C. This Item allows the eligibility for combined profit and overhead costs for the contractor or subcontractor that actually performs the work up to 15 percent of the costs of materials and labor are allowable. It is reasonable to establish a limit on change order profit and overhead because change orders are negotiated and not competitively bid. Fifteen percent in

this situation is reasonable because it is consistent with past practice and is taken from guidelines for the federal Construction Grants Program.

Item D. This Item establishes the eligibility for combined profit and overhead costs for a contractor or subcontractor that administers the change order but does not perform the change order work up to five percent of the costs of materials and labor. It is reasonable to establish a limit on change order profit and overhead because change orders are negotiated and not competitively bid. Five percent in this situation is reasonable because it is consistent with past practice and is taken from guidelines for the federal Construction Grants Program.

Subpart 4. Approval of change orders. This Subpart explains the requirements for when change orders must be approved by the commissioner relative to the type of change order being submitted. This language comes directly from the existing rules, but was reorganized to make it easier to read. Approval of change orders follows the process listed in the items below.

Item A. This Item requires that proposed changes that substantially alter the type of treatment process, or its efficiency, versatility, or reliability receive prior approval by the Commissioner. It is reasonable for the Agency to review this type of change before it is implemented to ensure that it does not adversely affect the project's ability to meet water quality standards. A change of this type alters the approved plans and specifications significantly and the Agency has the responsibility to review plans and specifications under Minn. Stat. § 115.03, subd. 1(f). Prior approval is required because the Agency must have the opportunity to approve or deny the proposed change and the cost of denial will be much less before the change is implemented.

Item B. This Item requires that change orders not requiring prior approval by the Commissioner must be submitted within one month of the execution of the order. It is reasonable to require this timely submittal to allow the Agency to monitor changes made to the the project as it is being constructed. It is also reasonable to expect change orders to be submitted in a timely fashion so that they can be reviewed for eligibility prior to the end of the project when many other matters need to be resolved.

Item C. This Item allows for change orders that are of an emergency nature to be implemented without prior written approval of the Commissioner. The Agency must be made aware of the problem and must agree that the change is of an emergency nature, but no formal paperwork must take place before the problem is fixed. It is reasonable to allow this because waiting to solve the problem may increase costs significantly, threaten public health and safety, or cause damage to the existing construction. An example of an emergency situation might be accidentally cutting a water or gas main or electrical line that was not indicated in the plans and specifications.

Part 6110 Completion of construction.

The purpose of this Part is put into rules a policy that is already in use for the state and federal grants programs. Historically, the period of time during which the last remaining construction items are being finished and the project becomes ready for operation has been difficult for both the Agency and the municipality. This difficulty was due to the lack of a common understanding of terms and procedures between Agency staff, the municipality and its consulting engineer and contractor. The development of a completion of construction policy alleviated many of the problems during this stage of a project. Adding this language to the rules will further clarify terms and the requirements that must be met as a project completes construction.

Subpart 1. Building completion. This Subpart defines building completion as the date when all major components of the project have been built, all equipment is operational, start-up testing is complete, and the project is capable of functioning as designed. It is reasonable to define this term because several events in the completion of construction procedure are dependent on this date. Upon building completion, the municipality notifies Agency staff that its project is ready for initiation of operation and a pre-final inspection is scheduled. It is reasonable to require this notification and a pre-final inspection before initiation of operation in order to protect the environment from adverse impacts resulting from operation of a facility before it is fully functional.

Subpart 2. Initiation of operation. This Subpart identifies that the initiation of operation date is when the project begins operating for the purposes for which it was planned, designed and built. It is reasonable to define initiation of operation so that the Agency, the municipality and the consulting engineer have a basis for agreeing on the point at which the project is ready to begin operation.

Item A. The municipality must notify the Commissioner in writing of the date of initiation of operation within ten days of the date. Because this date is directly tied to the performance certification requirements under Part 6115, Subpart 1, it is reasonable to require this written notification from the municipality so that there is no question about what date initiation of operation occurred. Requiring that the notification be submitted within ten days provides adequate time for the municipality to prepare a letter, while at the same time, ensures that the Agency will receive the notification in a timely manner.

Item B. The date of initiation is the first day of the one year performance period that allows the municipality, its consulting engineer, and Agency staff to determine that the project meets the performance standards under Part 6115, Subpart 1, Item A. It is reasonable to include this in the rules so that all parties understand when the one year performance period starts and ends.

Subpart 3. Final inspection. This Subpart outlines when a final inspection should occur and explains the purpose of the final inspection. A final inspection of the facility is performed by Agency staff when construction is complete except for minor weather-related components. Examples of minor weather-related components include seeding, sodding and exterior painting. It is reasonable for Agency staff to conduct a final inspection to concur that the construction is substantially complete and acceptable. At the final inspection, outstanding change orders must be identified and a cut-off date for incurring grant eligible construction costs must be established. It is reasonable to require this because the project is essentially complete, and it is time to prepare the project to be closed out. By this time, the municipality, together with its contractor and consulting engineer, should be able to identify the specific construction items that have yet to be finished and a date for completing them.

Part 6115 Project performance.

This Part serves to identify what is required of the municipality at end of the first year of operation. It further serves to identify the action which must be taken in the event that the project meets project performance standards. It is reasonable to include a Part that defines what is required of the municipality at the end of its one year performance period because it is at

this time that the municipality affirms that the project is meeting the objectives for which it was built. It is the time that the municipality assures the Agency that the project that was constructed with grant funds to meet required effluent limits in the permit is achieving that goal and is expected to continue to do so.

Subpart 1. Performance certification. This Subpart identifies the items which the municipality is required to submit one year after initiation of operation.

Item A. This Item requires that a certification be submitted which outlines the performance standards and whether the project meets those standards. It is reasonable to include this certification because these are the standards for which the project was designed and which the facility should be able to meet. Meeting these standards is evidence that the facility will function as designed. These performance standards have been used in implementing the federally delegated performance certification program and have proven to be effective.

Subitem (1). The first performance standard to which the municipality must certify is that the project was completed in accordance with the approved plans and specifications. It is reasonable to require the municipality to give the Agency this assurance since it is a requirement of the program under Part 6055, Subpart 1 that the project be constructed according to the approved plans and specifications. This requirement demonstrates that the municipality takes responsibility for compliance with that rule.

Subitem (2). The second performance standard to which the municipality must certify is that the municipality has a sufficient number of trained and capable personnel to provide adequate operation and maintenance

of the project, and that the project requires only such operation and maintenance as is outlined as normal and routine in the approved operations and maintenance (O & M) manual. This statement is necessary in order to assure the Agency that the facility is staffed by an adequate number of trained operators and that no extraordinary measures are needed to operate it. Without the proper operation and maintenance, even a well-designed project may not function as required. If the municipality is not able to certify to the proper operation and maintenance of the facility, it raises the question of whether it will be able to meet water quality standards over time, which is the objective of the program.

Subitem (3). The third performance standard to which the municipality must certify is that the project accepts hydraulic and organic loading to the extent described in the approved design specifications and is in compliance with all NPDES/SDS permit requirements. This certification assures the Agency that the facility can accommodate the influent that it was designed for and that it can treat it to produce effluent that meets the municipality's permit limits. It is reasonable to require the municipality to state that the project is capable of accepting hydraulic and organic loading as described in the plans and specifications to assure that the facility is operating as designed and that the design meets the municipality's wastewater treatment needs. It is important that the influent be of the nature the facility is designed to treat. If the municipality finds the influent to be other than that, it must look to the enforcement of its sewer use ordinance, treatment agreements or pretreatment program to remedy the situation. The further statement that the facility is in compliance with the NPDES/SDS permit reinforces the desired end result that the project functions as designed.

Subitem (4). The fourth performance standard to which the municipality must certify is that the industrial wastewater discharges to the treatment facility do not interfere with the operation of the project or the disposal or use of municipal sludge. It is reasonable to require that the industrial wastewater discharges to the treatment facility do not interfere with the operation of the project so that the facility can operate the way it was designed. If industrial wastewater does interfere with the operation, it is the municipality's responsibility to ensure that treatment agreements and the sewer use ordinance are being enforced.

Subitem (5). The fifth performance standard to which the municipality must certify is that sludge treatment and disposal is accomplished in conformance with the sludge management rules or the sludge incineration rules. Minn. Rules Chapter 7040, governing sludge treatment and management, and Minn. Rules Chapter 7005.2350 to 7005.2400, governing sludge incineration, require proper proper treatment or disposal of sewage sludge. It is reasonable to require the municipality to certify conformance with these rules because improper management or disposal of sludge can cause a serious public health hazard.

Subitem (6). The sixth performance standard to which the municipality must certify is that the project meets the approved plans and specifications for the prevention of contamination of underground drinking water source(s) beyond the property boundary. For projects which have the potential to have an impact on ground water, such as stabilization ponds or large drainfields, it is reasonable to require the municipality to include the statement that the projects meets plans and specifications for the prevention of contamination of underground drinking water sources so that the Agency has

some assurance that public health and safety are being protected. This implements the policy contained in High Rate Soil Absorption System Task Force Final Report, prepared November 1984 by staff of the Agency. This report contains an interpretation of portions of Minn. Rules ch. 7060, which apply to this Subitem.

Item B. This Item requires the municipality to submit a start-up evaluation report describing the performance of the project. It is reasonable to require submittal of a start-up evaluation report describing the performance of the project to: 1) ensure staff were properly trained; 2) determine what problems were encountered during the first year of operation and how to remedy them; 3) determine if reimbursable costs were incurred; and 4) determine if changes are necessary to the operations and maintenance manual and if they are being addressed.

Item C. This Item requires submittal of a revised operations and maintenance manual based on actual operating experience. It is reasonable to require this submittal so that changes in operation and maintenance due to the practical experience obtained during that period can be included in the manual for the benefit of those who are now or may in the future be in charge of the daily operation of the project.

Item D. This Item requires submittal of a certification by the contractor that the project was built according to approved plans and specifications and change orders. It is reasonable to require this certification from the contractor for the same reason the municipality must provide this certification in Item A, Subitem 1. It is a requirement of the program that the project be built according to approved plans and specifications and change orders. The contractor agreed to this when the

contract was signed and it is reasonable to expect the contractor to provide an assurance that this was accomplished.

Item E. This Item requires submittal of two copies of the as-built plans and specifications on microfiche. See analysis of Part 6075, Subpart 4, Item A, Subitem (2).

Subpart 2. Corrective action report. This Subpart provides that if the project is unable to meet the performance standards, the municipality must submit a report to outline the problem and solution. It is reasonable to require submittal of such a report so that the Agency knows what the problems are and has assurance that there is a plan to correct the problem.

Item A. This Item requires submittal of a corrective action report within 30 days of the end of the first year of operation. It is reasonable to require the report within 30 days of the performance certification date because it should be apparent to the municipality that the facility is not operating properly and it is important to begin the process of correcting the problem as soon as possible. The longer the facility is providing inadequate treatment, the longer the adverse environmental impact. The corrective action report must include the following:

Subitem (1). This Subitem requires the report to provide an analysis of the project's failure to meet the performance standards. It is reasonable to require the municipality to analyze the project's failure to meet the performance standards so that Agency staff knows what the scope of the problem is and knows that the municipality has complete knowledge of the scope of the problem.

Subitem (2). This Subitem requires the report to estimate the nature, scope, and cost of the corrective action necessary to bring the project

into compliance. It is reasonable to require the report to include such an estimate so that the Agency knows what will be involved from a planning, design, construction and cost standpoint to correct the problem. It is important for the Agency to have this information so it can make an assessment about whether the proposed solution is environmentally sound as well as implementable.

Subitem (3). This Subitem requires the report to include a project schedule for beginning and completing the corrective action work in such a way as to meet the agreed on performance standards. It is reasonable to expect the municipality to set up a schedule and include it in the corrective action report so the Agency is aware of how quickly the municipality is planning to take care of the problem. It is also necessary to have a schedule for correcting the work so that the Agency can monitor the progress of the corrective action work. It is reasonable to expect the corrective action work to be completed in a timely manner to minimize the potential environmental damage that may occur with a facility that is not operating as it was designed. The Agency has a responsibility to ensure that environmental objectives are met following the expenditure of a large sum of grant money for a project designed specifically to meet water quality standards.

Item B. This Item requires the municipality to provide a performance certification under Subpart 1 following completion of corrective action work. It is reasonable to require that the performance certification be submitted after the corrective action work is completed and a successful start-up period has be completed for the same reasons discussed in the analysis of Subpart 1.

Part 6120 Payment of state independent grants.

This Part outlines the requirements for the municipality's requests for payments for grant funds and the four points at which payments will be stopped

during the progress of the project until certain tasks are completed. Under Minn. Stat. § 116.16, subd. 11, the Commissioner will certify the payment requests to the Public Facilities Authority when these requirements are met. When it receives the Commissioner's certification, the Authority will then make the payments to the municipality. It is reasonable to attach conditions to the request and approval of grant payments so the Agency has an assurance that certain important tasks are completed by the municipality. This type of payment process also creates a consistent administrative method for the Agency.

Subpart 1. Payment request. A municipality is required under this Subpart to submit a written request for payment to the Authority. This submittal is reasonable because only the Authority can make payments to a municipality, according to Minn. Stat. § 116.16, subd. 11. The municipality is also required to submit documentation for incurred planning, design, administration and legal services costs with payment requests. It is reasonable to require this documentation to aid Agency staff in the review of costs paid out so that state grant funds are expended for an Agency approved pollution abatement project.

Subpart 2. Certification of payment request. This Subpart states that the Commissioner will certify approved payment requests to the Authority. This Subpart also identifies the four points at which certifications will be stopped during the project and the tasks that must be completed to release payments.

Item A. This Item establishes that no payments will be certified until specific documents are submitted. It is reasonable to require these items prior to any grant money being certified for payment because all of them provide the Agency documentation that the project has been bid, contracts have been awarded and executed and any necessary cooperative agreements have been

executed. These documents indicate that the municipality is under contract to proceed with the project and it is reasonable to approve initial payments upon submittal of the documents listed below.

Subitem (1). This Subitem requires the submittal of the accepted bid proposal at this time. It is reasonable to require submittal of the accepted bid proposal before any payments are certified so that the Agency knows what the cost of the project will be, item by item. It is also the Agency's statutory responsibility to review the bids that have been accepted for construction of a wastewater treatment project under Minn. Stat. § 116.163, subd. 3.

Subitem (2). This Subitem requires the submittal of the detailed tabulation of all bids received. It is reasonable to require this so the Agency can make a comparison of the types and amounts of bids that are received on each project. We should be aware if the municipality did not choose the low, responsible bidder as required under Minn. Stat. § 412.311. This is in order to insure prudent use of public funds. A record of all the bids received can also serve as historical information that the Agency can use for reference on future projects and as guidance information to municipalities that request it.

Subitem (3). This Subitem requires the submittal of the contractor's payment and performance bonds. It is reasonable to require submittal of payment and performance bonds before any payments are made because the rules require that these be a part of the plans and specifications. See analysis of Part 6055, Subpart 2, Item 2, Subitems 2 and 3.

Subitem (4). This Subitem requires the submittal of the executed construction contract and notice to proceed. It is reasonable to

require submittal of the executed construction contract and notice to proceed before any payments are made so that the Agency can be certain that a contract was awarded, that it was executed and that the municipality has given the contractor the order to begin construction. If the municipality is making a payment request, costs should have been incurred and the Agency should have evidence that work is scheduled to begin before authorization of the payment.

Subitem (5). This Subitem requires the submittal of the executed engineering contract. It is reasonable to require this before payments are approved because the Agency reviewed the unexecuted contract for adherence to rules and statutes as well as eligibility of costs and it needs to know that it was the approved contract that was executed.

Subitem (6). This Subitem requires the submittal of an executed intermunicipal agreement, if applicable. It is reasonable to require submittal of an executed intermunicipal agreement if more than one municipality is involved in the project before any payments are made because the Agency reviewed and approved an unexecuted agreement prior to grant award and it needs to know that it is the approved agreement that was executed. It is also critical, in project that involves more than one municipality, that a legal agreement binds the cooperating municipalities together to ensure good management of the project. Some of the areas that should be addressed include who will be responsible for operation and maintenance, who will be financially responsible, who will pay what to whom, who will handle the administrative details of managing the project while under construction, and who will handle the administrative details of managing the facility once in operation.

Item B. Payments will not be certified beyond 50 percent until the municipality has hired an operator with a valid state certificate for the type

of facility. It is reasonable to require the municipality to have hired the appropriate operator for its facility by this time so the operator can be properly trained for the particular facility's operation by the time the facility is ready to be placed into operation. The operator should be available during the final phase of construction for consultation with the engineer and the contractor. It is requirement of the Minnesota Department of Health that wastewater treatment operators be certified for the level of treatment being provided.

Item C. Payments will not be certified beyond 80 percent until certain tasks have been completed.

Subitem (1). No payment will be certified until the municipality has enacted the approved sewer use ordinance. It is reasonable to require the municipality to enact the sewer use ordinance by 80 percent of completion of the project so that the Agency is assured that the municipality will have the legal authority to ensure that the facility will be protected from the discharge of prohibited substances into the sewer system prior to initiation of operation.

Subitem (2). No payment will be certified until the municipality has enacted the approved sewer rate ordinance. It is reasonable to require the municipality to enact the sewer rate ordinance by 80 percent of completion of the project so that the Agency is assured that the municipality has the legal mechanism prior to initiation of operation to collect sewer rates that will be adequate to ensure that the facility will be properly operated and maintained.

Subitem (3). No payment will be certified until the municipality has adopted by resolution the approved sewer service change system

with updated cost revisions. It is reasonable to require the municipality to have implemented the new rate system by 80 percent of completion of the project so that the Agency is assured prior to initiation of operation that adequate revenue will be generated to properly operate and maintain the facility prior to initiation of operation. Updated costs are required at 80 percent of project completion because at that point the municipality has an understanding of the actual construction costs. Therefore, the resulting debt charge to the users can be calculated at this time. This updated debt charge should be part of the sewer service charge that is passed by a resolution.

Subitem (4). No payment will be certified until the municipality has received approval of the operation and maintenance manual. It is reasonable to require that the Agency review and approve the O & M manual at this time because the Agency must ensure that the manual includes enough guidance so that the operator and the municipality can operate the facility independently. The manual must be ready for the operator to use in time for the initiation of operation.

Item D. Payments will not be certified beyond 90 percent until the municipality has met the requirements of the performance certification process under Part 6115. See analysis of Part 6115 for the reasonableness of the process. It is reasonable to withhold final payment until the municipality can meet these requirements so that the Agency is assured that the project is performing the way it was designed and that permit limits are being met. The performance certification is the way the Agency knows that a project has been completed in such a way as to provide environmental protection for the waters of the state. Withholding ten percent as final payment is a change from the existing state grants program (the amount withheld in the federal program is

less than in the state program). Currently, 20 percent is withheld in the state grants program during the first year of operation. Many municipalities have found this to be an extreme financial burden and many comments were received during the comment period recommending a change to this provision. Ten percent was determined to be a reasonable amount since this is approximately the amount that is withheld for a project receiving federal grant funds. Furthermore, in the 1989 Legislative Session, a law was passed requiring state matching grants to federal grants to be paid up to 90 percent of the grant rather than the 50 percent that is in the rules. This action lends support to a 10 percent retainage for this type of project. If a project cannot meet the performance certification requirements, no payment will be made until the municipality can do so or has entered into a legally enforceable agreement with the Agency containing a schedule for completing corrective action work. It is reasonable to withhold the final payment until the Agency has an enforceable commitment from the municipality that it will make the necessary corrections to the facility that will enable it to meet the performance requirements.

Subpart 3. Retained payments. The Commissioner may withhold certifications for payment of grant funds under various circumstances. These conditions are non-compliance with rules, statutes and grant conditions. It is reasonable to withhold a certification when the municipality fails to comply with applicable rules and statutes or breaches the grant agreement because acceptance of the grant by the municipality carries the obligation to abide by rules and the grant agreement. If the municipality fails to comply with the agreement, it is reasonable to withhold payment certification until the municipality is in compliance.

Part 6125 Recovery of funds.

This Part provides that the Agency can recommend that the Authority seek to

recover grant funds if excessive funds have been disbursed or if the project is improperly designed, constructed or operated and maintained. It is reasonable that these circumstance might prompt the recovery of public funds because this money which is earmarked for pollution abatement should only be used for its intended purpose. We should not pay municipalities grant funds in excess of eligible costs incurred because those funds would not have been expended for the achievement of the goal. In the same way, public funds should not go to a project that was improperly designed or constructed or is being operated and maintained improperly. That would be a violation of the public trust that the Agency will ensure that environmental funds go to projects that will protect the environment.

COMBINED SEWER OVERFLOW ABATEMENT PROGRAM

The Combined Sewer Overflow (CSO) Abatement Program was created by the Minnesota Legislature in 1985 under Minn. Stat. § 116.162 to provide financial assistance to eligible municipalities to separate storm and sanitary sewer service. The program currently operates under existing rules scattered throughout Chapter 7075. The Agency proposes to revise and consolidate the program rules to clarify the process and requirements. The proposed rules do not impose any additional requirements on participants in the program.

Part 6130 Purpose.

The purpose of the Combined Sewer Overflow (CSO) Abatement Program is to provide financial assistance to eligible municipalities for CSO abatement.

Part 6135 Municipal project list.

Subpart 1. In general. The Municipal Project List must contain the projects that will receive CSO financial assistance. This requirement is in existing rules under Part 0409, Subpart 1. It is reasonable that these

projects be included on the Municipal Project List because it is the Agency's main planning document for the award of grant funds each fiscal year.

Subpart 2. Requirements for placement on the list. The requirements for placement of CSO municipalities on the Municipal Needs List are identical to those in the current rules under Part 0409, Subpart 2.

Part 6140 Applications.

Subpart 1. Complete application required. To be eligible for financial assistance, a CSO municipality must submit a complete application as is currently required under Part 0414, Subpart 1. The proposed language clarifies what documents must be included to make an application complete.

Subpart 2. Timing and form of application. An application must be on a form provided by the Agency and must be submitted by December 1 or the deadline in the municipality's permit as is required under the current rules under Part 0414, Subpart 2, Items B and E.

Subpart 3. Additional information. With the exception of Item C, Subitem (2) and Item G, all items required to be submitted with the application are currently required under the existing rules.

Item A. This Item requires an identification of the scope of work to be performed in accordance with the list and schedule submitted the previous June 1 as is currently required in the existing rules under Part 0414, Subpart 6a, Item A.

Item B. This Item requires a resolution from the municipality's governing body authorizing the application to be filed and designating an authorized representative to sign all documents as is currently required in the existing rules under Part 0414, Subpart 6a, Item B.

Item C. This Item requires a proposed engineering contract that includes the following provisions.

Subitem (1). Full-time inspection provided during construction and written reports submitted to the Agency as is currently required under Part 0414, Subpart 6a, Item B. Language has been added to require that these reports be submitted monthly rather than as the Agency requests them. This is reasonable because monthly reports are what the Agency currently requests to monitor construction of the project.

Subitem (2). Preparing two sets of as-built plans and specifications on microfiche is an added requirement of the engineering contracts for CSO projects. Submitting these documents following completion of construction has been and will continue to be a requirement of the State Independent Grants Program. For that program, the requirement is being added as a required provision of the engineering contract so that it is clear that preparation of these documents is the engineer's responsibility. Although not specifically stated in the current rules for the CSO program, as-built plans and specifications have been prepared and submitted for CSO projects as common practice. It is reasonable to also include this requirement in the proposed rule revisions because the documents provide a permanent record of the projects as they are actually constructed. For further information, refer to Part 6075, Subpart 4, Item A, Subitem (2).

Item D. This Item requires an engineer's certificate of adequate errors and omissions insurance as is required in the existing rules under Part 0414, Subpart 6a, Item B.

Item E. This Item requires a cost breakdown for all project work on a form provided by the Agency as is currently required under Part 0414, Subpart 6a, Item B.

Item F. This Item requires plans and specifications for the scope of work described in Item A as is required under the existing rules in Part 0414, Subpart 6a, Item C.

Item G. The Agency proposes to add a requirement in the rules that the application must include a project schedule on a form provided by the Agency. Although not specifically required by rule, project schedules have always been provided by the CSO municipalities in the past. It is reasonable to require that a project schedule be submitted with the application so that Agency staff can monitor the progress of the project and ensure that the project progresses as expeditiously as possible. An Agency form is used so that consistent milestones are established for each project.

Part 6145 Financial assistance awards.

As provided under Minn. Stat. § 116.162, subd. 5, CSO financial assistance is awarded to the eligible municipalities based on their proportionate share of the total program costs. The percentages established in the proposed rules are identical to those in the current rules under Part 0428, Subpart 2a, Item B.

Part 6147 Change orders.

The Agency proposes new language regarding when change orders are necessary, what must be included in change orders submitted to the Commissioner, and the requirements for approval of change orders. The proposed language will not make any significant change to the current procedures for change orders, but will make the rules for change orders clearer and more complete. Similar language is proposed for change orders under the State Independent Grants Program. See Part 6105, Subparts 1, 2, and 4 for a discussion of the reasonableness of the proposed language.

Part 6149 Project performance.

The Agency proposes to add language to the rules that describes the procedures and requirements that a project must meet from the time of initiation of operation through the end of the one year performance period. The new language also identifies the actions that a municipality must take if its project cannot meet its performance standards at the end of the one year performance period. The basic process proposed for the new rules is the same as has applied to CSO projects under the federal Construction Grants Program regulations in the past. The project performance process is also proposed to be added to the State Independent Grants Program rules under Part 6115.

It is reasonable to require that certain procedures and requirements be met as a project completes construction and moves into operation to ensure that state funds were used effectively for a project that is capable of meeting the specific CSO abatement objectives for which it was planned, designed, and built.

Subpart 1. Notification of initiation of operation. This Subpart requires the municipality to notify the Commissioner when it initiates operation. It is reasonable to require this notification because the date of initiation of operation begins the one year performance period.

Subpart 2. Performance certification. This Subpart requires a municipality to submit certain items to the Commissioner one year after the project's initiation of operation to demonstrate that the project has been built correctly and is capable of meeting the specific CSO abatement requirements.

Item A. A certification from the municipality must be submitted stating whether the project meets the performance standards. It is reasonable

to require this certification from the municipality since the municipality, through its acceptance of state financial assistance funds and its role as the permittee for the project, is ultimately responsible for the performance of the project.

Subitem (1). The first performance standard is that the project was completed in accordance with the approved plans and specifications and change orders. It is reasonable to require the municipality to certify to this standard since it is a requirement of the program under Part 6055, subpart 1, and it is necessary to determine that the project was constructed as designed before determining whether the project is capable of meeting its objectives.

Subitem (2). The second performance standard is that the project accepts hydraulic loading to the extent described in the design specifications and is in compliance with all NPDES/SDS permit requirements. The basic goals of the CSO abatement program are to separate the storm and sanitary sewer systems and to provide enough hydraulic capacity to eliminate the bypass of raw sewage during storm events. To accomplish these goals, individual projects are designed based upon specifications which specify the hydraulic capacities needed in various areas. Each municipality's NPDES/SDS permit identifies specific project areas where work must be performed and sets a schedule for work in each area. The permit also establishes overall requirements for amounts of geographical area separated at various milestones throughout the ten year CSO abatement program. It is reasonable to require that each municipality certify whether its project accepts hydraulic loadings as described in the design specifications in order to determine whether the project is really capable of meeting its objectives. In addition, because each

municipality's permit is the legal document that requires the municipality to perform this work, it is reasonable that an evaluation of the project to ensure the effective use of state funds also be tied to compliance with the permit requirements.

Subitem (3). The third performance standard is that there has been a complete separation of stormwater and sanitary flows within the project area with the exception of permitted rainleader connections. CSO abatement projects in each municipality are broken down by project areas with the intent that, as a project is completed, all storm and sanitary flows in that project area have been separated. It is reasonable to require a municipality to certify to this performance standard in order to ensure that all necessary separation work in a particular area has been completed.

Item B. Along with its certification statements, a municipality must also submit a start-up evaluation report describing the performance of the project. This report describes, in greater detail than is possible through the certification process in Item A, the project's performance during the one year performance period. This report is particularly valuable if problems with the project were encountered or there is some unique aspect of the project which cannot be adequately covered in the performance standards. It is reasonable to require a start-up evaluation report so that Agency staff can be fully aware of all aspects of the project's performance.

Item C. A municipality must also submit a certification from its contractor(s) that the project was built according to the approved plans and specifications and change orders. It is reasonable to require this certification from the contractor for the same reasons it is required from the municipality in Item A, Subitem (1). This certification is the contractor's

final sign-off that the project was completed according to the contract documents. It provides some level of protection for the municipality if construction related problems are discovered in the future.

Item D. This Item requires the submittal of two copies of the as-built plans and specifications on microfiche. See discussion under Part 6140, Subpart 3, Item C, Subitem (2).

Subpart 3. This Subpart requires that if a project is unable to meet the performance standards, the municipality must submit a report describing the problem, the proposed solution, and a schedule for correcting the situation. This corrective action report is also proposed as a requirement of the State Independent Grants Program. See analysis under Part 6115, Subpart 2.

Part 6151 Payment of state financial assistance.

Subpart 1. Payments up to 90 percent of assistance. The proposed language states that, once some specific construction contract documents are submitted, payments may be made up to 90 percent of the total amount of financial assistance as the project work progresses. The construction contract submittals: accepted bid proposal, detailed bid tabulations, payment and performance bonds, and executed contract and notice to proceed, are all currently required at the beginning of CSO projects through the federal regulations. It is reasonable to require that these documents be submitted before any payments are made because these documents are necessary for Agency staff to monitor contractor procurement and project progress.

Under current rules, CSO financial assistance payments are made as work progresses up to 80 percent of the total amount. The Agency proposes to change this to 90 percent for consistency with the proposed changes to the State Independent Grants Program.

Subpart 2. Payments beyond 90 percent of assistance. Under this Subpart, the final 10 percent payment will not be made until Agency staff has completed a final inspection and the project performance requirements of Part 6149 are met. It is reasonable that these requirements be met to ensure that the project has been built correctly and meets all program requirements before the final payment for the project is made.

Subpart 3. Retained payments. Under this Subpart, the Commissioner may withhold financial assistance payments under various circumstances. Because state financial assistance funds are limited and must be protected from being used for inadequate work or in ways that violate state statutes and rules, it is reasonable to withhold payment of funds in such circumstances until the situation has been corrected.

WATER POLLUTION CONTROL REVOLVING FUND PROGRAM

Part 6155 Purpose.

Two changes to the purpose statement are proposed. First, language has been added to reflect that loans may be made for the planning and design of wastewater treatment facilities as well as the construction of these facilities. This is reasonable because it more clearly describes the types of loans that may be applied for under the program. Second, the reference to the Federal Water Pollution Control Act has been shortened to "Act" since this term is defined in Part 6005.

Definitions.

The definitions Part under the Water Pollution Control Revolving Fund Program is proposed to be eliminated because all of the terms with the exception of "Intended use plan" are already defined in Part 6005. The definition of "Intended use plan" has been moved to Part 6005.

Part 6160 Intended use plan.

Subpart 2. Eligibility. The Agency proposes to delete the statement that municipalities seeking refinancing must have been listed on the Municipal Needs List before the beginning of construction instead of on the current list. The U.S. Environmental Protection Agency (EPA) has determined that the Act requires all projects, including refinance projects, to be on the current priority list.

Subpart 3. Requirements for placement on the intended use plan.

Item A.

Subitem (3). Two changes are proposed to the items that must be included with a request for placement on the Intended Use Plan. First, a breakdown of the estimated cash flow needs has been added. This is a reasonable requirement because the information must be included in the Intended Use Plan in order to receive EPA approval. Second, the requirement that the proposed project schedule include a date for the submittal of a complete application has been eliminated. We have found that this is not a critical item and, in some cases, a municipality may be unable to determine a particular date for application submittal until discussions are held with the Agency and the Authority after the Intended Use Plan is adopted.

Item B. The Agency is proposing to identify projects as planning, design, or construction rather than Step 1, Step 2, or Step 3. This is reasonable because the terms are more descriptive than the numbered steps and are consistent with proposed changes in the State Independent Grants Program rules. In addition, the word "project" has been changed to "loan" in this Item. Since all types of projects will eventually become construction projects, this change clarifies that the requirements of Item B apply only to municipalities applying for construction loans.

Part 6165 Applications.

Subpart 1. Form of application. Revisions are proposed to the title and content of this Subpart to reflect the change described above in Part 6160, Subpart 3, Item A, Subitem (3) that a municipality will no longer be required to establish an application submittal date in its project schedule. Language has also been added to indicate that, in addition to the Authority's application forms, the Agency uses certain forms that must be completed to meet various application requirements. It is reasonable to require specific application forms be used to ensure consistency in the type of information provided.

Subpart 2. Planning loans. As described above in Part 6160, Subpart 3, Item B, the Agency is proposing to identify project types as planning, design, or construction rather than Step 1, Step 2, or Step 3 because the terms are more descriptive and are consistent with proposed changes in the State Independent Grants Program rules. In addition, the term "financial assistance" has been changed to "loan" in order to simplify the rules and make them clearer for the reader. While the Act and state statutes do allow other types of assistance under the program, all inquiries and requests concerning the program up to this point have exclusively addressed loans and we are confident that this will continue in the future.

Item B. Language has been added to indicate that the schedule must be on a form provided by the Agency. This is reasonable so that target dates can be established for certain interim steps during the facilities planning process to assist the municipality, its consulting engineer, and Agency staff in workload planning.

Subpart 3. Design loans. See explanation above under Subpart 2.

Item A. Additional language is proposed to identify in the project schedule the major work products that will be required of a municipality that receives a design loan and to indicate that the schedule must be on a form provided by the Agency. This is reasonable because the documents identified are the same as have always been required during the design phase of a project so that, upon completion of the design phase, the municipality is ready to proceed into the construction phase of the project. Requiring that the schedule be on a form provided by the Agency ensures that target dates will be established for certain interim steps during the design phase.

Subpart 4. Construction loans. See explanation above under Subpart 2.

Item A. Language has been deleted because the plan and specification requirements are now described under Part 6055.

Item B. Language has been deleted because the sewer service charge system requirements are now described under Part 6060, Subpart 2.

Item D. Language has been deleted because the sewer use ordinance requirements are now described under Part 6060, Subpart 4.

Item E. The Agency proposes to add a sewer rate ordinance as an Item to be included in a construction loan application. This document establishes the methodology for implementing the sewer service charge system. Although in the past it was not identified by name, a sewer rate ordinance has always been required as part of the sewer service charge system under the Federal Construction Grants Program and the State Independent Grants Program. It remains a requirement under Title VI of the Act for the Water Pollution Control Revolving Fund Program, and for administrative consistency, is also being proposed as a requirement of the State Independent Grants Program under Part

6060, Subpart 3. It is reasonable to add this requirement in Item D because it clarifies for the reader that this is a separate document that will be required at the time of application.

Item F. Language has been revised to indicate that the project schedule must be on a form provided by the Agency to ensure that target dates are established for all significant construction phase milestones from bidding to performance certification.

Item G. Language has been revised as described under Part 6075, Subpart 4, Item C.

Item I. The Agency proposes to add language requiring certain provisions to be included in the engineering contract. These items are all already required under the existing rules. Requiring that these items be included in the engineering contract is reasonable because it will ensure that the consulting engineer's responsibilities in these areas will be clearly understood. In addition, these same required provisions are proposed under Part 6075, Subpart 4, Item A for the State Independent Grants Program. Consistency between the engineering contract requirements for the grants program and the loan program is desirable because projects will often be funded through a combination of both programs.

Subitem (1). The proposed language requires the engineering contract to include a provision for full-time inspection and monthly reports. This is required under the current rules in Part 6165, Subpart 4, Item I as a certification from the municipality.

Subitem (2). The proposed language requires the engineering contract to include a provision for preparing two sets of as-built plans and specifications on microfiche. The current rules require that two sets of

as-built plans and specifications on microfiche be submitted to the Commissioner under Part 2540, Subpart 2, Item C. The proposed language clarifies that it is the consulting engineer's responsibility to prepare these documents.

Subitem (3). The proposed language requires the engineering contract to include a provision for preparing an operation and maintenance manual. The current rules require that an operation and maintenance manual be submitted to the Commissioner under Part 2540, Subpart 1, Item B. The proposed language clarifies that it is the consulting engineer's responsibility to prepare this document.

Subitem (4). The proposed language requires the engineering contract to include a provision for providing certain start-up services during the first year of operation. This is required under the current rules in Part 6165, Subpart 4, Item J as a certification from the municipality.

Item L. The term "loan" has been substituted for "revolving fund program" for clarity.

Item M. The Agency proposes to add a requirement for a legal opinion concerning all sites, easements, and rights-of-way. This has been a long-standing requirement of the state and federal grants programs and was mistakenly left out of the current loan program rules. It is reasonable to require that this legal opinion be included with an application for a construction loan so that loan funds are not committed to a municipality that has not yet secured the necessary land for the project and, as such, is not ready to begin construction.

Part 6170 Application Certification.

Subpart 1. Planning loans. See explanation under Part 6165, Subpart 2.

Subpart 2. Design loans. See explanation under Part 6165, Subpart 2.

Subpart 3. Construction loans. See explanation under Part 6165, Subpart 2.

Part 6175 Change orders.

The Agency proposes new language regarding when change orders are necessary, what must be included in change orders submitted to the Commissioner, and the requirements for approval of change orders. The proposed language will not make any significant change to the current procedures for change orders, but will make the rules for change orders clearer and more complete. Similar language is proposed for change orders under the State Independent Grants Program. See Part 6105, Subparts 1, 2, and 4 for a discussion of the reasonableness of the proposed language.

Part 6185 Construction loan reporting requirements.

The Agency is proposing revisions to the construction loan (Step 3) reporting requirements that will result in the elimination of Subpart 2. One of the Items in Subpart 2 will be moved to what is currently Subpart 1. The remaining two Items in Subpart 2 will be moved to Part 6195.

Item C. The proposed language requires the submittal at least sixty days before completion of construction of evidence that the approved sewer use ordinance and sewer rate ordinance have been enacted by the municipality. This submittal is currently required within 45 days following completion of construction under Subpart 2, Item B. It is reasonable to require that this documentation be submitted at least sixty days before completion of construction so that the ordinances will be in effect when the facility initiates operation.

Item D. The proposed language requires the submittal at least sixty days before completion of construction of a resolution of the municipality's

governing body adopting the approved sewer service charge system with updated cost revisions. This submittal is currently required within 45 days following completion of construction under Subpart 2, Item B. It is reasonable to require that this resolution be submitted at least sixty days before completion of construction to ensure that the sewer service charge system will be in effect when the facility initiates operation.

Part 6190 Completion of construction.

The Agency is proposing this new Part to provide a more complete description of the initiation of operation process which is currently required under Part 2545, Subpart 1, and to formalize the procedures used for the inspections that occur immediately before and after the initiation of operation. This language is also being proposed for the State Independent Grants Program. The reasonableness of this proposal is discussed in Part 6110.

Part 6195 Project performance.

The title of this Part has been changed for consistency with the State Independent Grants Program rules.

Subpart 1. Performance certification.

Item A. The Agency proposes to revise this Item to incorporate the specific performance standards that will apply to loan projects. This is reasonable because it will clarify what the performance standards will be for a project. For consistency between the programs, the same performance standards are proposed for the State Independent Grants Program. The reasonableness of each standard is discussed in Part 6115, Subpart 1, Item A.

Item D. The submittal of the contractor's certification is currently required 45 days following completion of construction. The Agency is proposing to make this requirement part of the performance certification process one year

after initiation of operation for consistency with the State Independent Grants Program.

Item E. The submittal of the as-built plans and specifications is currently required 45 days following completion of construction. The Agency is proposing to make this requirement part of the performance certification process one year after initiation of operation for consistency with the State Independent Grants Program.

Subpart 2. Corrective action report.

Item A.

Subitem (3). Language is proposed to be added that will require the schedule that is submitted with a corrective action report to include dates for meeting the performance certification requirements. Because the scope of the necessary corrective action work will be unique to each project, it is necessary that a schedule be established for each project that covers the full range of tasks from initiation of work to performance certification. The same language is proposed for the corrective action schedule under the State Independent Grants Program. The reasonableness of this requirement is discussed under Part 6115, Subpart 2, Item A, Subitem (3).

Item B. The proposed language requires that a municipality that is unable to initially provide a certification that its project meets the performance standards, must later provide this certification following the completion of the corrective action work. This is not a change from current practice but does serve to clarify this requirement. The reasonableness of this requirement is discussed under Part 6115, Subpart 2, Item B.

CORRECTIVE ACTION GRANTS PROGRAM

Several changes have been made in the corrective action grants program, Parts 7075.6210 through 7075.6255, to reword the rules to match statutory

language. This is most prevalent in the case of switching "independent state grants" to "state independent grants" as it is specified in the statutes. This program is administered in the current rules under Parts 7075.1005 through 7075.1090, which are proposed to be repealed.

Part 6210 Purpose.

The "purpose" explains the basic facts about the corrective action grants program. In this Part, "independent state grants" has been changed to "state independent grants." Changing language to match the statutory language is reasonable.

Part 6215 Definitions.

The proposed rules contain the definition for performance standards. It is reasonable to have a specific definition under this Part for performance standards because, for this Part, the term includes the standards from the federal programs, in addition to the standards set forth under Part 6115. Since the other definitions in the current rules duplicate the definitions under Part 6005, it is reasonable to eliminate them.

Part 6220 Eligibility for participation.

This Part explains the criteria a municipality must meet to be considered an eligible candidate for a corrective action grant award.

Item A. See analysis under Part 6210.

Item C. Currently, the rules limit grant eligible treatment facility failures to those identified by the Agency within the one-year performance certification period established by federal regulations. Since funding for the federal Construction Grants Program is ending, it is reasonable to add the state rule reference (Part 6110, Subpart 2, Item B) for the one-year performance certification to this Item to maintain this limitation. It is also

reasonable to keep the reference to the federal regulations in the rules until all federally funded projects have completed in the one-year performance certification periods.

Item D. The current rules exclude federally-funded treatment facilities that have a performance standard failure caused by an innovative or alternative technology component. Since these projects are eligible for corrective funds through the federal Construction Grants Program, this exclusion was added to the rules to eliminate the projects from receiving double compensation. It is reasonable to remove this exclusion when the federal grants program ends.

Item E. Relettered Item E in the current rules to Item D in the proposed rules as a result of eliminating Item D.

Part 6225 Eligible and ineligible costs.

This Part identifies the cost items that are eligible to be paid for with corrective action grant funds.

Subpart 3. Administrative, engineering, and legal costs. This Subpart specifies the maximum grant sum to be awarded for administrative, engineering, and legal costs. The current rules allow up to 25 percent of the grant eligible construction and land costs for these expenses. The proposed rules for the State Independent Grants Program, Part 6070, Subpart 2, Item H, contain a maximum grant sum for similar costs that is based solely on a percentage of grant eligible construction costs. In response to this proposal, eligible land costs have been eliminated from the maximum grant sum calculation under this Item to create consistency in the rules. It is reasonable to calculate the maximum grant sum for the same type of costs under different grant programs using the same calculation basis.

Part 6230 Requirements prior to application.

This Part describes the items that must be reviewed and approved by the Commissioner before an eligible municipality is allowed to submit an application to the Authority for a corrective action grant.

Item C. This Item requires that an "assurance," which summarizes and guarantees the actions that have been taken by the municipality to complete the needed corrective work, be submitted prior to applying for a grant. The word "assurance" has been changed in the proposed rules to "written affirmation." It is reasonable to implement this word change because it avoids confusion with the assurances that must be completed by the municipality at the time the application is completed. Assurances are a part of the application for all the assistance programs.

Part 6235 Application.

This Part explains the requirements of the corrective action grant application.

Subpart 1. Agency notification. This Subpart restricts a municipality from submitting an application to the Authority prior to receiving notification from the Commissioner. This restriction was added to the proposed rules to clarify when a corrective action grant may be submitted to the Authority and to eliminate the confusion created by having two agencies administering the same program. Since the municipalities may not submit an application to the Authority until the Agency has approved the items required under Part 6230, it is reasonable for the Commissioner to notify the municipality when this approval has been acquired and the application can be submitted.

Subpart 2. Application requirements. This Subpart identifies all the application components. The words "...and submit the following information for

the Commissioner's review and approval" have been added to the proposed rules to stipulate that the Commissioner will review and approve specified components of the application. This stipulation is reasonable because the Commissioner must have information to responsibly make grant award determinations and to meet the statutory obligation under Minn. Stat. § 116.16, subd. 9, to certify to the Authority those applications that meet statutory and rule criteria. An itemized list of application documents has been added to this Part.

Item A. A report on the current status of negotiations or litigation is required with the application form supplied by the Authority. This report is used by Agency staff to determine the current efforts of the municipality to fulfill the statutory obligation under Minn. Stat. § 116.181, subd. 4 to recover the costs of the corrective work from the responsible parties. Since the Agency will continue to monitor these recovery activities throughout the course of the project, it is reasonable to require this report as a monitoring reference. This requirement is in the current rules.

Item B. A plan for recovering the costs of the proposed corrective action from the responsible parties is also required with the application form. It is reasonable to require this plan because it forces the municipality to formulate a strategy for fulfilling its statutory recovery-obligation. This plan also provides Agency staff with a monitoring device. This requirement is in the current rules.

Items C through H. See explanation under Part 6075.

Subpart 3. Three copies. The requirement for three copies of the corrective action grant application has been added to the rules. It is reasonable to require three applications because one copy is needed for the Authority, one is needed for the Agency project manager and one copy is needed for the Agency staff engineer for review purposes.

Part 6240 Certification of application for award.

The process used to certify applications for award to the Authority is described in this Part.

Subpart 3. Amendments to award. This language has been revised and incorporated into a separate Part to clarify when an amendment can be requested and by how much. See analysis under Part 6242.

Subpart 5. Report to agency board. The requirement for the Commissioner to report to the Agency Board within 60 days after a corrective action grant has been certified was deleted from the rules. This notification requirement was part of the emergency rules when the program was competitive and the ranking criteria was based on some very subjective data. Since the Agency now accepts applications as the failures occur and because the certification is based on the availability of funds and a standardized method of determining the grant amount, the ranking and grant amount is no longer a controversial issue. Because of this method of certification, it is reasonable to delete the Board notification requirement.

Part 6242 Grant amendments.

This Part specifies what constitutes allowable amendments for this program.

Subpart 1. Maximum grant amount. This Subpart restates Minn. Stat. § 116.181, subd. 3, which allows for a maximum corrective action grant amount of $500,000. It is reasonable to restate this maximum to clarify it to both administrative staff and grantees. This clarification will prevent calculation errors in grant amounts and confusion over potential amendment increases.

Subpart 2. Amendments based on completed procurement. Current language included under this Subpart allows for amendments that are based on completed

procurement and the availability of funds. Language has been proposed to specify that a written request must be submitted for an amendment when construction contracts differ from construction costs estimated in the application. It is reasonable to clarify when the Agency will consider supporting a grant amendment, to set a consistent time frame for determining costs used to calculate an amendment amount, and to explain how such a request can be initiated by a grantee.

Subpart 3. Final amendment. This Subpart has been proposed to allow a final amendment to a corrective action grant that is based on eligible construction costs and approved change orders and is dependent upon availability of funds. It is reasonable to clarify when the Agency will consider supporting a grant amendment, to set a consistent method of determining costs used to calculate an amendment amount, and to explain how such a request can be initiated by a grantee.

Allowing a final increase amendment is unique to the corrective action grants program. Corrective projects have financial, legal, and technical problems. Experience with corrective action projects has shown that many unexpected costs and cost increases result. Since corrective action grants are available only to small municipalities with populations under 1,500, most with limited financial resources, it is reasonable to provide a final amendment up to the maximum statutorily allowable amount of $500,000 to ensure the proper and responsive correction is achieved. This amendment will also lessen the potential of the municipality having to endure a financial hardship as a result of the corrective work. The grant funds are to be paid back to the state when the municipality recovers the funds from the parties responsible for causing the treatment facility failure.

This Subpart also allows for the amendment of the grant amount for administrative, engineering, and legal costs. It is reasonable to allow such an increase because the basis for this amount, the grant eligible construction costs, is eligible for amendment. However, use of the allowance increase is limited by this Subpart to costs for inspection and engineering services specified in the approved change orders. The original allowance, as specified under Part 6225, Subpart 3, pays for administrative, engineering and legal costs. Since change orders will not change the amount of legal or administrative work that is needed to be done for a project, it is reasonable to limit the spending of the allowance increase to inspection and engineering costs.

Part 6245 Change orders.

This Part has been changed to reflect the change order requirements proposed under the State Independent Grants Program. It is reasonable for the Agency to have consistent requirements. See analysis of Part 6105 for the reasonableness of these Items.

Part 6250 Payments.

This Part specifies the requirements and process associated with corrective action grant payments.

Subpart 1. Request for payments. The requirement for submitting a summary of incurred costs has been added to the proposed rules. It is reasonable to require this because Agency staff needs a summary of incurred costs to evaluate payment requests from grantees and to determine an amount to certify to the Authority for payment.

Subpart 2. Payment conditions. This Subpart specifies the conditions for the Commissioner to request that the Authority withhold grant payments.

Item A. Under this Item, a grantee is required to submit quarterly summaries on the actions taken to recover the costs of the corrective work. Municipalities that receive corrective action grants must seek recovery from any person that is responsible for the failure of the facility to perform, according to Minn. Stat. § 116.181, subd. 4. Since Agency staff must evaluate municipal activities to determine whether the grantee has fulfilled its statutory obligation, it is reasonable to require activity summaries throughout the corrective action project.

Item B. Under this Item, a grantee is required to submit documents that support claims of incurred administration, legal, and engineering costs. Since Agency staff has the responsibility to ensure that costs requested for payment with state funds have been incurred and have been part of the corrective action grant project, it is reasonable to request documentation from the grantee that assists the project manager in making this determination.

Part 6255 Recovery of grant funds.

This Part explains the responsibilities of the grantee and the involvement of the state in the recovery of the corrective action costs.

Subparts 2 and 3. Recovery before corrective action grant award and Recovery after corrective action grant award. The numbers of these Subparts have been changed to correspond to the chronological order of the grant process. The use of "before and after the corrective action is taken" in the current rules allowed for the misinterpretation that the construction period was excluded from the recovery of grant fund rules. The revised wording "before and after corrective action grant award" has been proposed to clarify that all time periods in the grant process are included under this Part.

These Subparts specify how the grant amount is adjusted to include money recovered by the grantee from responsible parties. Since Minnesota Statutes

section 116.181, Subdivision 4 requires repayment of the grant when funds are recovered, it is reasonable to specify how and when the award will be adjusted in such cases.

Subpart 2. (Renumbered from Subpart 3.) Recovery before corrective action grant award. Current rules specify how the grant amount will be determined if a grantee recovers funds before the corrective action is "taken." "Taken" has been changed to "awarded," see the paragraph after the heading "Subparts 2 and 3." The current rules state that the municipality shall be allowed to keep the entire payment from the responsible parties. This wording is misleading because it can be falsely interpreted to mean the municipality may keep the entire amount of the recovered funds and the entire corrective action grant. The Agency's intent for this Subpart, as documented in the October 25, 1988 Statement of Need and Reasonableness for the proposed Corrective Action Grant Program rules, is to have the municipality first use the recovered funds and use the grant funds as a supplement to the recovered amount. To clarify this intent, language has been proposed to create a method for calculating corrective action grant awards that addresses the recovered amount. Since the municipality may not receive double compensation for the correction, it is reasonable to subtract the amount recovered for grant eligible costs from the total grant eligible costs, as determined under Part 6225, to calculate the award amount that will be certified to the Authority.

Subpart 3. (Renumbered from Subpart 2.) Recovery after corrective action grant award. The current rules state that after money is recovered, the grantee shall reimburse the state proportionally to the state's monetary participation in the project. The existing language is vague and more complicated than necessary. The proposed language provides a more specific

method for determining how the repayment amount will be calculated and specifies that the grant will be amended to reflect the recovered amount. Under the proposed rules, a grantee that received grant funds in excess of the amended grant amount is required to pay the excess back to the state. Staff concluded that determining the amount to be repaid by the grantee will be easier through this amendment process than trying to determine an amount based on the proportionality of all participating entities. It is reasonable to make this change because it clarifies the repayment process without changing the amount of money to be repaid by the grantee. It is also reasonable to remove the sentence that states that the repayment amount shall not exceed the grant amount because the potential for such excessive repayment is eliminated when the repayment amount is calculated per the proposed method.

CAPITAL COST COMPONENT GRANT PROGRAM.

Minor changes have been made in the Capital Cost Component Grant Program. Parts 7075.1110 through 7075.1160 have been renumbered, and the rules for this program are now found in 7075.6260 through 7075.6320. It is reasonable to renumber these rules so that this program, a set-aside of the State Independent Grants Program, follows the new rules for the administration of the State Independent Grants Program which are referenced in these parts. In addition, throughout the rules for the Capital Cost Component Grant Program, the references to the State Independent Grants Program rules have been changed to correspond to the numbering of the new rules. Other changes in the rules governing the Capital Cost Component Grant Program are described below.

Part 6265 Definitions.

Subpart 7. "Plans and specifications". Plans and specifications has been added as a definition because of the new Part 6295 on plans and specifications. See analysis of Part 6005, Subpart 29 for reasonableness of the definition.

Part 6275 Grant applications.

Subpart 2. Application requirements.

Item B.

Subitem (3). New language has been added to require that the municipality should provide the required information (existing flows and loadings data) on a form provided by the Agency. It is reasonable to require that the needed information be on a specific form to assure that the information provided will be enough to acquaint the Agency review engineer with the existing facility.

Subitem (3). The same change that was made in Subitem (2) was made to Subitem (3). The municipality will be required to submit data on its estimated future flows and loadings on a form provided by the Agency. It is reasonable to require this information on a specific form to assure that the information provided will be enough to acquaint the Agency review engineer with the proposed facility.

Part 6295 Plans and specifications.

This Part is new. It establishes the items that must be included in the plans and specifications submitted to the Agency in accordance with the requirements of Part 6300. It is reasonable to include a Part that outlines the requirements of a plans and specifications submittal so that adequate information in included in the plans and specifications to expedite the review and approval process.

Subpart 1. In general. This Subpart establishes that the plans and specifications described in this Part must be submitted in accordance with the requirements of Part 6300. This is reasonable because Part 6300 establishes the conditions of grant award. Submittal of plans and specifications is a condition of grant award.

Subpart 2. Contents. This Subpart establishes what must be included in the plans and specifications in order for them to be considered complete upon submittal.

Item A. This Item states that drawings and specifications must be signed by a professional engineer registered in Minnesota. According to Minn. Stat. § 326.12, subd. 3, drawings and specifications for public works projects must be signed by a professional engineer registered in Minnesota.

Item B. The plans and specifications must include a summary of design parameters for the treatment units. It is reasonable to require that the plans and specifications include a summary of the design parameters for the treatment units so that the Agency engineer receives the necessary information to properly review the adequacy of the treatment units to provide adequate treatment. See Part 6065, Item B for further discussion of this Item.

Item C. The plans and specifications must include a summary of flow conditions for various weather situations on a form provided by the Agency. It is reasonable to require that this information be submitted on a specific form to ensure that the Agency engineer receives the necessary information to properly review the adequacy of the design for the expected flows. Further discussion of this requirement is further described in Part 6065, Item C.

Item D. The plans and specifications must include a hydraulic profile of the flow through the treatment system. It is reasonable to require that the plans and specifications include a hydraulic profile of the flow so that the Agency engineer can review the adequacy of the design on the basis of the hydraulic characteristics. See Part 6065, Item D for further discussion of this Item.

Item E. The plans and specifications must include a plan for how the municipality intends to treat its wastewater during construction. See analysis of Part 6050, Subpart 2, Item F, Subitem (8).

Part 6300 Grant conditions.

Subpart 2. General conditions.

Item A. This Item changes the deadline for submittal of plans and specifications for the treatment facility from 90 days after award of the grant to 365 days after the award. The reason for this change is that 90 days has proven to be insufficient time for municipalities to have plans and specifications prepared. Two municipalities have been awarded Capital Cost Component grants to date; neither was able to meet this deadline. The reason that 365 days was chosen was to ensure that flow data for all weather conditions described in Part 6295, Subpart 2, Item C can be considered in the design.

Part 6310 Grant payment.

Subpart 1. Request for payment. This language has been changed to reflect the change in payment responsibilities from the Agency to the Authority under Minn. Stat. § 116.16, subd. 11.

INDIVIDUAL ON-SITE WASTEWATER TREATMENT SYSTEMS GRANTS PROGRAM

Minor changes have been made in the Individual On-Site Wastewater Treatment Systems Grants Program. Parts 7075.1400 through 7075.1530 have been renumbered, and the rules for this program are now found in 7075.6325 through 7075.6390. It is reasonable to renumber these rules so that this program, a set-aside of the State Independent Grants Program, follows the new rules for the administration of the State Independent Grants Program, which are referenced in these parts. In addition, throughout the rules for the Individual On-Site

Wastewater Treatment Systems Grants Program, the references to the existing rules have been changed to correspond to the numbering of the new rules. Other changes in the rules governing the Individual On-site Wastewater Treatment Systems Grants Program are described below.

Part 6330 Definitions.

Subpart 13. Maintenance plan. Maintenance plan is defined as a plan developed and administered by a municipality that demonstrates how the maintenance requirements of chapter 7080, Individual Sewage Treatment Systems Standards, will be implemented and enforced. It is reasonable to define this term because it is used in the body of the rule and has a definition that is specific to this program. The existing rules of this program require municipalities to adopt and enforce the provisions of Minn. Rules ch. 7080 as a municipal ordinance in order to receive funding. It is therefore reasonable to define a maintenance plan as one incorporating the maintenance requirements of that rule.

Part 6335 Eligibility.

Subpart 1. Municipal eligibility.

Item E. The Agency proposes to delete this Item which establishes that only municipalities with a median household income less than the state median household income are eligible for Individual On-Site Wastewater Treatment System grants. Part 6365 of the rules establishes that the median household income for the planning area of the project will be used to determine the funding priority of projects if there are requests for more funds than are available for grants. The grant applications will be ranked for funding priority with the lowest median household income receiving the highest priority. Deleting this Item will not alter the priority of the grant awards,

but will allow municipalities with incomes greater than the state median to receive grants if sufficient funds are available. It is reasonable to delete this Item so that, if sufficient funds are available, pollution abatement projects for all interested municipalities can be accomplished.

Part 6340 Wastewater treatment plan.

Subpart 2. Planning area. This Subpart defines the planning area as the entire geographic area in the municipality's jurisdiction unless the municipality submits an alternative proposal. The Agency proposes to change the time at which the municipality must submit this alternative proposal from "at the time of application" to "prior to application." The planning area defines the scope of the project. If a municipality submits an alternative proposal for a planning area at the time of application, and it is rejected, the application must also be rejected because the scope of the project would not have been defined. Therefore, it is reasonable to ensure that the municipality and the Agency agree on the planning area prior to application. The Agency also proposes to add a statement that separate dwellings that do not form a contiguous area are not considered a planning area. This is a clarification of the definition of the planning area, not a new requirement. It is reasonable that the planning area be a contiguous area because the purpose of the program is to solve environmental problems caused in an area by replacing failing on-site systems.

Subpart 3. Plan contents.

Item A. This Item requires that the Wastewater Treatment Plan must include a survey prepared by an inspector that identifies the failed systems. The Agency proposes to change this to require that the plan identify all systems in the planning area as failed or in compliance with chapter 7080.

This is reasonable because the general requirements of the plan under Subpart 1 establish that the wastewater treatment needs of the community must be identified and long term solutions proposed. It is necessary to have an inventory of the individual treatment systems in order to prepare this plan.

Item B. This Item describes the necessary site evaluations which must be conducted and included in the wastewater treatment plan. The Agency proposes to add language which identifies the specific tests that must be performed in the site evaluation: soil borings, and percolation tests. An evaluator must be aware of the types and characteristics of the soils on the site in order to properly evaluate whether the soils are suitable for an on-site treatment system. Soil borings provide this information, therefore, it is reasonable to require them. Percolation tests provide information on the rate at which water moves through the soil. This information is necessary to determine the size of a drainfield. In order to evaluate whether a site is suitable for the construction of an individual on-site treatment system, the size of the system must be considered. Therefore it is reasonable to require percolation tests.

The Agency proposes to change the language from "to determine" to "and a determination" to make the rule more readable. In addition, we propose to add "identified in item A" and "the failed" to make it clear which systems the requirements in this Item addresses.

Item C. This Item changes the word "municipality" to "planning area" to allow for the possibility that a planning area may be smaller than the municipality applying for the grant. The wastewater treatment plan need only provide information on the area that has been designated as the planning area.

This Item also adds a requirement to the analysis of the planning area to include the sizing and the location of the proposed systems. It is reasonable

to require this information in conjunction with the site evaluations to make sure that the site can accommodate the size of system being proposed. For example, a site may be acceptable for the installation of a system sized to serve two people. But that site may not be adequate for a system sized for a family of six. The location is important because soil conditions can change from one corner of a property lot to another and it is important for the Agency to be assured that the proposed systems will be placed in a suitable spot.

This Item changes "a site evaluator or site evaluators" to "the site evaluations prepared under item B". This was changed so that the site evaluations that are already required under this Part will be the basis for deciding where to place the proposed new systems.

Part 6350 Application.

Subpart 1. Notice of taking applications. This Subpart is changed to extend the period of time that municipalities have to submit an application for a grant under this program. The Agency proposes to change the submittal period from 90 days to 120 days. It is reasonable to make this change because the first two grant application cycles have shown 90 days to be an inadequate amount of time to complete the application. The required site evaluations have the potential to take a long time to complete and this is critical information needed to meet other requirements of the application.

Subpart 2. Application requirements.

Item E. The language in this Item has been changed to add planning areas to municipalities in the option for an alternative median household income. It is reasonable to add planning area to this Item because the priority ranking for grant award in this program is based on median household income. If a planning area is not the municipality, it is unlikely that there

will be an official record of the median household income for that area. There should be an alternate way to provide this data for a planning area than through an official census.

Part 6380 Payments.

Subpart 1. Request for payments. This language has been changed to reflect the change is payment responsibilities from the Agency to the Authority under Minn. Stat. § 116.16, subd. 11.

Part 6360 Amount of the grant award.

Subpart 1. Grant amount. The Agency proposes to change the maximum grant amount from "$2,500 per trench or bed system and $3,750 per mound system" to "$2,500 per household for a trench or bed system and $3,750 per household for a mound system." Minn. Stat. § 116.16, subd. 3c(b) allows grant funds to be used for a system that serves one or two dwellings. Systems serving more than one household must have a greater capacity than those serving only one. These systems are larger and cost more; therefore, it is reasonable to increase the maximum grant amount for reimbursement of multiple dwelling systems.

Part 6365 Priority ranking.

This Part establishes that the priority ranking of applicants for grants under the Individual On-Site Treatment Systems Grants Program is based on the median household income of the municipality or planning area if different from the municipality. The Agency proposes to amend this Part by including the process by which the median household income for planning areas which are not included in the decennial census will be computed. The current rules include this language under Part 1420 (6335 in the proposed rules), Subpart 1, Item E. Item E was deleted and the process for computing the median household income has been moved to this Part. It is reasonable to include this process in this Part because the priority system is based on this information.

Part 6395 Disputes.

This Part allows for a municipality to request review of an action made by Agency staff with which it disagrees. The request for review must be submitted in writing within 45 days of the date of notification of a final decision. It is reasonable to provide a disputes opportunity so municipalities have a recourse if a decision is made that affects the progress of the project. It is reasonable to expect a municipality to request review of the decision within 45 days because 45 days is enough time to review the decision, decide whether to appeal and write the letter of request. Forty-five days allows enough time for a city council meeting if one is necessary. Allowing more time to request a review means that a potential problem with the project will remain unresolved for an unreasonable period of time and could adversely affect the progress of the project in the future.

Part 6400 Procedural rules and appeals.

This Part states that requests for hearings, appeals or other procedural matters is governed by specific rules and statutes. This language is the same as in the existing rules.

Part 6405 Variances.

This Part states that variances to any part of the rules may be requested and will be governed by applicable statutes and rules. This language is the same as in the existing rules.

V. SMALL BUSINESS CONSIDERATIONS IN RULEMAKING

Minn. Stat. § 14.115, subd. 2 (1988) requires the Agency, when proposing rules that may affect small businesses, to consider the following methods for reducing the impact on small business:

(a) the establishment of less stringent compliance or reporting requirements for small business;
(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;
(e) the exemption of small businesses from any or all requirements of the rule.

The proposed rules may affect small businesses as defined in Minn. Stat. § 14.115 (1988). The way in which they may be affected is that the Construction Grants Program offers a great deal of opportunity for small business in the planning, design, and construction of a wastewater treatment facility. Without the Grants Program, many of the facilities being built would have to be indefinitely delayed because of the immense cost to the local units of government. The proposed rules do not impose any particular or unreasonable requirements on small businesses.

VI. CONSIDERATION OF ECONOMIC FACTORS

In exercising its powers, the Agency is required by Minn. Stat. § 116.07, subd. 6 (1988) 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, commercial 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 for the administration of the state independent grants program and the revolving loan program, the Agency has given due consideration to the possible economic impacts on the municipalities that will

receive grants and loans. While some expense and effort is involved in complying with these rules, the benefits are the receipt of substantial financial, technical, and administrative assistance in planning and constructing wastewater treatment facilities and, ultimately, improved water quality for Minnesota. Municipalities receiving financial assistance will be able to reduce local capital costs for construction of their wastewater treatment facilities.

VII. OTHER FACTORS

Pursuant to Minn. Stat. § 14.11, subd. 1 (1988), the Agency must provide an estimate of the public monies associated with implementing these rules if it is estimated that the total cost to all local bodies exceeds $100,000 in either of the first two years following adoption of the rules. Wastewater treatment facilities will undoubtedly cost in excess of $100,000 to construct, but none of that expense is directly attributable to these rules. As explained earlier, these rules will help to defray local expenses of meeting the requirements of their NPDES/SDS permits.

Minn. Stat. § 17.83 (1988) requires the Agency to describe any direct and substantial adverse effects on agricultural land. The Agency has determined that these rules will have no such effects.

VIII. CONCLUSION

Based on the foregoing, the proposed Minn. Rules pts 7075.6000 through 7075.6405 are both needed and reasonable.

Dated: December 8, 1989

Barbara Lindsey Sims
for Gerald L. Willet
Commissioner

DEPARTMENT: Office of the Attorney General

STATE OF MINNESOTA

OFFICE MEMORANDUM

DATE: July 12, 1990

TO: DEBBIE OLSON
Minnesota Pollution Control Agency

FROM: CHRISTIE B. ELLER CBE
Assistant Attorney General
525 Park Street, Suite 500 (55103)

PHONE: 296-9421

SUBJECT: In the Matter of the Adopted Rule Relating to
Municipal Wastewater Treatment Construction Assistance Programs

The above-referenced rule has been approved as to its legality by the Attorney General on July 10, 1990.

Enclosed is your 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, submissions or comments along with any extra copies of documents which you submitted to the Attorney General.

Your next step is to arrange for publication of the Notice of Adoption in the State Register. In a day or two, you should receive from the Revisor's Office three copies of the notice of adoption of your rule. You should submit two copies of the Notice of Adoption to the State Register for publication. A permanent rule without a hearing does not become effective until five days after a notice of adoption is published in the State Register in accordance with Minn. Stat. § 14.27. An emergency rule becomes effective five working days after approval by the Attorney General; however, the agency must publish a notice in the State Register in accordance with Minn. Stat. § 14.34.

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

CE:sc

Enclosures

cc: William Brown, Chief Judge (memo only)
MaryAnn Hruby " "
Steve Shakman

Minnesota Pollution Control Agency
520 Lafayette Road, Saint Paul, Minnesota 55155
Telephone (612) 296-6300

Celebrate MINNESOTA 1990

July 3, 1990

Ms. Christie Eller
Assistant Attorney General
Office of Attorney General
525 Park Street
Suite 500
St. Paul, Minnesota 55155

Dear Ms. Eller:

RE: Resubmission Of The Proposed Rules Relating To The Administration Of The Municipal Wastewater Treatment Construction Program, Minnesota Rules Chapters 7075 And 7077

On June 18, 1990, the Minnesota Pollution Control Agency (MPCA) withdrew Minnesota Rules parts 7075.0100 and 7077.0100 through 7077.2010, as proposed, from the Attorney General's review because of problematic language that you identified.

On June 19, during a telephone call with Jeff Freeman and Mary Knudsen of the MPCA, Steve Shakman of the Attorney General's Environmental Branch and yourself, alternative rule language was discussed and corrections were agreed upon. When the corrections were sent to the State Revisor's Office, the word "will" in two of the rule items was changed to "shall" by Revisor Carla Riehle. The revised language is summarized below:

Part 7077.0130, subpart 2, item A was modified to read:
Major treatment facilities are new facilities or additions to existing facilities which improve effluent quality in order that a municipality may achieve compliance with its NPDES/SDS permit conditions. Major treatment facilities include sewer system rehabilitation projects as described in subpart 3, item A, and major interceptor sewers ~~and may include sewer system rehabilitation projects in subpart 4~~.

Part 7077.0130, subpart 2, item B was modified to read:
Dechlorination facilities are facilities that remove chlorine from the effluent of a wastewater treatment facility. When a municipality is listed on the municipal needs list for major treatment facilities, the facilities described in this item ~~may~~ will be included as part of that project.

Part 7077.0210, subpart 1, item B, was modified to read:
The commissioner ~~may~~ shall grant an exemption to the required 20-year planning period for the cost-effectiveness analysis under part 7077.0150, subpart 2, item E, to a municipality under 1,500 population where the commissioner finds that construction of the 20-year cost-effective alternative would result in ~~for reasons of~~ significant financial hardship. In determining significant financial hardship, the commissioner shall consider the municipality's median household income, the estimated sewer service charge for the 20-year cost-effective alternative, the municipality's total bonded indebtedness, and the patterns of population and commercial-industrial growth or decline within the municipality. If an exemption is granted, the municipality may receive grant assistance for a proposed treatment alternative that is different than the 20-year cost effective alternative.

Part 7077.0240, subpart 2, item A, was modified to read:
Where the commissioner finds that unanticipated site conditions exist, ~~The~~ the commissioner ~~may~~ shall approve an amendment for up to two percent of the final grant eligible construction costs ~~to compensate for unanticipated site conditions encountered during construction~~. The three percent contingency fund under part 7077.0210, subpart 2, item F, must be depleted before an amendment for unanticipated site conditions is approved.

Part 7077.0330, subpart 3, was modified to read:
Financial assistance payments ~~may~~ shall be withheld if the commissioner determines that a project does not substantially conform to approved plans and specifications, or there has been a major breach of a condition in the financial assistance agreement, or the municipality has failed to comply with the applicable requirements of this chapter. If funds are withheld pursuant to this subpart, further payments will be made when the condition causing the withholding has been corrected, or as otherwise agreed to by the commissioner and the municipality.

On June 26, the MPCA adopted these language revisions and resubmits the rules and the official file for your review. Please add to the review file the following enclosed items:

1. Exhibits 1 through 6 for the Statement of Need and Reasonableness signed on December 8, 1990.

2. Supplemental Findings of Fact, Conclusions and Order Adopting the Rule (two copies).

3. Supplemental Certification of Resolution Adopting Rules.

4. Rules as adopted (two copies, Carla sent two copies directly from the Revisor's Office).

Sincerely,

Debbie Olson

Debbie Olson, Policy Analyst
Program Support Unit
Municipal Wastewater Treatment Section
Water Quality Division

DO:ah

Enclosure

Pollution Control Agency

Adopted Permanent Rules Relating to Municipal Wastewater Treatment Construction Assistance Programs

Rules as Adopted

7075.0100 PURPOSE.

This chapter provides for the administration of grants awarded under the federal construction grant program~~,~~ ~~the independent state construction grant program,~~ and the state matching ~~construction~~ grant program~~,~~ ~~the state loan program for the construction of municipal disposal systems~~. This chapter also provides for the administration of grants awarded before July 1, 1990, under the state independent grants program and the state financial assistance program for combined sewer overflow abatement. ~~It applies to grants and loans awarded before July 1, 1990.~~

7077.0100 PURPOSE.

Parts 7077.0100 to ~~7077.0330~~ 7077.2010 provide for the administration of the financial assistance programs for the construction of municipal wastewater treatment facilities ~~and~~. Parts 7077.0200 to 7077.0330 apply to state independent grants and ~~loans~~ financial assistance for combined sewer overflow abatement awarded on or after July 1, 1990. Chapter 7075 applies to awards made under these programs before July 1, 1990. Parts 7077.0400 to 7077.0765 apply to funds awarded at any time. ~~Chapter 7075 applies to grants and loans awarded before July 1, 1990.~~ The programs in chapter 7077 consist of the state independent grants program, parts 7077.0200 to 7077.0265; the combined sewer overflow abatement program, parts 7077.0300 to 7077.0330; and the water pollution control revolving fund program, parts 7077.0400 to 7077.0445. The state independent grants program includes three set-aside programs:

A. the corrective action grants program, parts 7077.0500 to 7077.0560;

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B. the capital cost component grants program, parts 7077.0600 to 7077.0660; and

C. the individual on-site wastewater treatment systems grants program, parts 7077.0700 to 7077.0765.

7077.0105 DEFINITIONS.

Subpart 1. **Scope.** For the purposes of chapter 7077, the terms defined in this part and in Minnesota Statutes, chapters 115 and 116, have the meanings given them.

Subp. 2. **Act.** "Act" means the Federal Water Pollution Control Act, United States Code, title 33, sections 1251 et seq.

Subp. 3. **Adequate errors and omissions insurance.** "Adequate errors and omissions insurance" means an insurance policy that provides the minimum amount of coverage for the corresponding estimated project construction cost, as determined from the following table, and that is maintained for a minimum of two years after initiation of operation of the project.

Estimated project construction cost	Minimum amount of coverage
less than $1,000,000	$250,000
$1,000,000 to $2,999,999	$500,000
$3,000,000 to $9,999,999	$1,000,000
$10,000,000 or over	$2,000,000

Subp. 4. **Adverse impact.** "Adverse impact" means the violation of a water quality standard, according to chapter 7050; an objectionable growth of weeds, algae, or rough fish; or a deleterious effect on the physical, chemical, or biological condition of the receiving water that lessens the present or long-term uses of the receiving water.

Subp. 5. **Agency.** "Agency" means the Minnesota Pollution Control Agency.

Subp. 6. **Authority.** "Authority" means the Minnesota Public Facilities Authority.

Subp. 7. **Average dry weather flow.** "Average dry weather flow" means the daily average flow when the groundwater is at or near normal and a runoff condition is not occurring.

Subp. 8. **Average wet weather flow.** "Average wet weather flow" means the daily average flow for the wettest 30

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consecutive days for mechanical facilities or for the wettest 180 consecutive days for controlled discharge pond systems. The 180 consecutive days for pond systems must be based on either the storage period from approximately November 15 through May 15 or the storage period from approximately May 15 through November 15.

Subp. 9. **Budget period.** "Budget period" means the period of time approved by the commissioner during which a municipality may incur reimbursable costs.

Subp. 10. **Commissioner.** "Commissioner" means the commissioner of the Minnesota Pollution Control Agency.

Subp. 11. **Debt charge.** "Debt charge" means the charge levied on users of a wastewater treatment facility for the user's share of the local capital costs of construction of the facility.

Subp. 12. **Excessive infiltration.** "Excessive infiltration" means the quantity of flow which is more than 120 gallons per capita per day (domestic base flow and infiltration) or the quantity of infiltration which can be economically and effectively eliminated from a sewer system as determined through a cost effectiveness analysis.

Subp. 13. **Excessive inflow.** "Excessive inflow" means the maximum total flow rate during storm events that results in chronic operational problems related to hydraulic overloading of the treatment facility or that results in a total flow of more than 275 gallons per capita per day (domestic base flow plus infiltration plus inflow). Chronic operational problems may include surcharging, backups, bypasses, and overflows.

Subp. 14. **Facilities plan.** "Facilities plan" means the plans and studies necessary to determine wastewater treatment needs of a project service area, to systematically evaluate wastewater treatment alternatives that will result in compliance with enforceable water quality standards, and to identify the cost-effective implementable alternative.

Subp. 15. **Fiscal year.** "Fiscal year" means the state fiscal year which begins July 1 and ends the following June 30.

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Subp. 16. **Flow equalization system.** "Flow equalization system" means a containment system such as a pond, basin, or tank designed to temporarily hold wet weather flow until the flow can be transported to a wastewater treatment facility. A flow equalization system is a type of sewer system rehabilitation project.

Subp. 17. **Infiltration.** "Infiltration" means water other than wastewater that enters a sewer system (including sewer service connections and foundation drains) from the ground through defective pipes, pipe joints, connections, or manholes. Infiltration does not include, and is distinguished from, inflow.

Subp. 18. **Inflow.** "Inflow" means water other than wastewater that enters a sewer system (including sewer service connections) from sources such as, but not limited to, roof leaders, cellar drains, yard drains, area drains, drains from springs and swampy areas, manhole covers, cross connections between storm sewers and sanitary sewers, catch basins, cooling towers, storm waters, surface runoff, street wash waters, or drainage. Inflow does not include, and is distinguished from, infiltration.

Subp. 19. **Intended use plan.** "Intended use plan" means the document prepared annually by the agency according to the requirements in Title VI of the act and submitted to the United States Environmental Protection Agency. The plan will identify the intended uses of the amounts available to the water pollution control revolving fund, including a list of wastewater treatment projects and other eligible activities proposed to be funded during the fiscal year. Projects will be listed on the intended use plan in the order of their priority ranking on the municipal needs list.

Subp. 20. **Major contributing industry.** "Major contributing industry" means an industrial user of a treatment facility that:

A. has a rated flow of 50,000 gallons or more per work day where the rated flow is the daily design flow multiplied by 24 and divided by the actual hours of discharge in

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a day;

B. has a rated flow greater than five percent of the total design flow to the treatment works;

C. has a total organic load of greater than five percent of the total organic load to the treatment works;

D. has in its waste before pretreatment a toxic pollutant in excess of what may be discharged to waters of the state, according to chapter 7050; or

E. is found by the agency in connection with the issuance of an NPDES/SDS permit to the municipality, either singly or in combination with other contributing industries, to interfere with the treatment plant's ability to meet effluent limitations, interfere with digester operation or biological unit process operation, impact the area required for sludge disposal, or increase sizing of the facility by five percent or more.

Subp. 21. **Major interceptor sewer.** "Major interceptor sewer" means a sewer, including related lift stations, that intercepts wastewater from the final point in a collector sewer of a municipality and transports the wastewater directly to a wastewater treatment facility, to another major interceptor sewer, or to the collector sewer of another municipality. To be a major interceptor sewer, the average design flow of the sewer must not increase by more than ten percent between its origin and its termination, and physical connections to the sewer must be more than 1,000 feet apart. Infiltration and inflow directly to the sewer and flow from other major interceptor sewers is not included in determining whether the average design flow has increased by more than ten percent.

Subp. 22. **Maximum wet weather flow.** "Maximum wet weather flow" means one-seventh of the total maximum flow received during a seven-day period when the groundwater is high and a runoff condition is occurring.

Subp. 23. **Municipal needs list.** "Municipal needs list" means the priority list prepared by the commissioner under parts 7077.0115 to 7077.0145.

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Subp. 24. **Municipality.** "Municipality" means any county, city, town, the Metropolitan Waste Control Commission established in Minnesota Statutes, chapter 473, the Metropolitan Council when acting under that chapter, an Indian tribe or an authorized Indian tribal organization, or any other governmental subdivision of the state responsible by law for the prevention, control, and abatement of water pollution in any area of the state.

Subp. 25. **Need.** "Need" means a determination that a new or upgraded disposal system is currently required, or will be required within a five-year period to comply with chapter 7040, 7050, 7060, or 7080; provided the situation does not exist primarily due to inadequate operation and maintenance or to negligence on the part of any person.

Subp. 26. **NPDES/SDS permit.** "NPDES/SDS permit" means a National Pollutant Discharge Elimination System and State Disposal System permit issued by the agency that authorizes under certain conditions the discharge of pollutants to waters of the state and subsurface disposal or on-land disposal and the operation of a disposal system.

Subp. 27. **Operation and maintenance manual.** "Operation and maintenance manual" means a document developed to give treatment facility personnel the proper understanding, techniques, and references necessary to properly operate and maintain the treatment facility.

Subp. 28. **Outstanding resource value water.** "Outstanding resource value water" means those waters defined in part 7050.0180, subpart 2.

Subp. 29. **Peak hourly wet weather flow.** "Peak hourly wet weather flow" is the peak flow during the peak hour of the day at a time when the groundwater is high and a five-year one hour storm event is occurring.

Subp. 30. **Peak instantaneous wet weather flow.** "Peak instantaneous wet weather flow" means the peak instantaneous flow during the day at a time when the groundwater is high and a 25-year one hour storm event is occurring.

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Subp. 31. **Performance certification.** "Performance certification" means a certification made by a municipality one year after initiation of operation that states its newly constructed wastewater treatment facility is meeting performance standards, as specified under ~~part~~ parts 7077.0255, ~~subpart 1, item A~~ 7077.0325, and 7077.0440.

Subp. 32. **Plans and specifications.** "Plans and specifications" means documents, including completed drawings and specifications, that describe the project in full and detail the complete requirements for materials, dimensions, and construction technique. The documents that comprise the plans and specifications must conform with generally accepted engineering practices and applicable state statutes, rules, and requirements.

Subp. 33. **Primary treatment facilities.** "Primary treatment facilities" means facilities designed to provide a level of treatment lower than that provided by secondary treatment facilities.

Subp. 34. **Reimbursement project.** "Reimbursement project" means a municipal wastewater treatment facility constructed under the reimbursement provision of Minnesota Statutes, section 116.18, subdivision 3a.

Subp. 35. **Relief sewer.** "Relief sewer" means a sewer primarily designed to eliminate bypassing caused by insufficient hydraulic capacity in sanitary sewer systems by transporting infiltration or inflow to adequately sized sewers or to a wastewater treatment facility for proper treatment. A sewer is a collector sewer and not a relief sewer if its design flow includes more than 15 percent wastewater at peak instantaneous flow conditions or if it has physical connections closer to each other than 1,000 feet. A relief sewer is a type of sewer system rehabilitation project.

Subp. 36. **Secondary treatment facilities.** "Secondary treatment facilities" means facilities designed to provide biochemical oxidation, effective sedimentation, and disinfection, or the equivalent, consistent with requirements of

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part 7050.0211, subpart 1. Facilities discharging to limited resource value waters (Class 7 waters) and assigned effluent limitations based on part 7050.0214 and that do not have a phosphorous or toxic substances effluent limitation are secondary treatment facilities for the purpose of this chapter.

Subp. 37. **Sewer rate ordinance or SRO.** "Sewer rate ordinance" or "SRO" means a municipal ordinance that determines the method by which a municipality will charge its users for wastewater treatment services, including the local capital cost of the treatment works.

Subp. 38. **Sewer service charge.** "Sewer service charge" means the aggregate of all charges, including charges for operation, maintenance, replacement, debt service, and other sewer related charges that are billed periodically to users of the city's wastewater treatment facility.

Subp. 39. **Sewer service charge system or SSCS.** "Sewer service charge system" or "SSCS" means a document developed by the municipality that determines the user charge and debt charge that each user will pay for wastewater treatment services.

Subp. 40. **Sewer system rehabilitation project.** "Sewer system rehabilitation project" means a project that repairs or replaces an existing collector or interceptor sewer in order to eliminate bypasses caused by insufficient hydraulic capacity or to reduce the hydraulic flows to a wastewater treatment facility. A sewer system rehabilitation project may include flow equalization systems and relief sewers.

Subp. 41. **Sewer use ordinance or SUO.** "Sewer use ordinance" or "SUO" means a municipal ordinance enacted to control the type and quantities of discharges to the wastewater treatment facility, and the type and method of connections to the system.

Subp. 42. **Tertiary treatment facilities.** "Tertiary treatment facilities" means facilities specifically designed to achieve effluent limitations based on part 7050.0211, subpart 1, for phosphorus or toxic substances and facilities designed to meet effluent standards that are more stringent than standards

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for secondary treatment facilities.

Subp. 43. **Treatment agreement.** "Treatment agreement" means an enforceable agreement between a municipality and a major contributing industry that includes the following:

A. the variations in daily flow and the monthly average and daily maximum quantity of compatible and incompatible pollutants to be discharged to the treatment facility;

B. the intended period of use of the treatment facility by the major contributing industry;

C. signatures by the major contributing industry and the owner of the treatment system accepting the wastewater; and

D. a requirement that the quantities to be discharged to the treatment system will be according to applicable standards and requirements.

Subp. 44. **Unanticipated site condition.** "Unanticipated site condition" means any subsurface, latent or unknown physical condition at the construction site, which differs materially from those ordinarily encountered and generally recognized as inherent in work of the type provided for in the construction contract that could not have been reasonably identified during the planning or design of the project.

Subp. 45. **User charge.** "User charge" means a charge levied on users of a wastewater treatment facility for the user's proportionate share of the cost of equipment replacement and operation and maintenance of the wastewater treatment facility.

Subp. 46. **Value engineering.** "Value engineering" means a specialized cost control technique which uses a systematic and creative approach to identify and to focus on unnecessarily high cost in a project in order to arrive at a cost saving without sacrificing the reliability or efficiency of the project.

Subp. 47. **Wastewater.** "Wastewater" means sewage, industrial waste, and other waste collected for treatment in a wastewater treatment facility.

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by Revisor _____

7077.0110 TYPES OF PROGRAMS.

Subpart 1. **Scope.** Under this chapter and Minnesota Statutes, sections 116.16 to 116.181, the agency may certify to the authority that municipalities may be awarded funds for the assistance programs described in subparts 2 to 7.

Subp. 2. **State independent grants program.** The state independent grants program under parts 7077.0200 to 7077.0265 offers grant funds to municipalities for the construction of wastewater treatment facilities and applies to funds awarded on or after July 1, 1990. The process is described in items A to D.

A. Construction grants are awarded to municipalities on a priority basis, except as provided in parts 7077.0205, subpart 3, item E; and 7077.0210. Municipalities with the highest priorities, as determined by the point system described in parts 7077.0120 to 7077.0145, are awarded construction grants first.

B. The commissioner develops and maintains a municipal needs list that ranks in priority order the municipalities that have a need for a new or upgraded treatment system and that have requested placement on the list. Priorities are determined by awarding points for projects based on the waters affected, the population affected, the type of project proposed, and extra points for qualifying projects.

C. The agency adopts a municipal project list that identifies the municipalities that are eligible to apply for construction grants during a designated fiscal year.

D. A reimbursement option is available to municipalities willing to proceed with construction while waiting to reach a fundable priority on the municipal needs list.

Subp. 3. **Combined sewer overflow abatement program.** Financial assistance is available for design and construction of combined sewer overflow abatement projects under parts 7077.0300 to 7077.0330. The program applies to funds awarded on or after July 1, 1990. The process awards this assistance on a pro rata basis to qualifying municipalities.

Subp. 4. **Water pollution control revolving fund program.**

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Loans are available to municipalities for the construction of publicly owned wastewater treatment facilities under parts 7077.0400 to 7077.0445. The program applies to funds awarded before, on, or after July 1, 1990. Loans may be requested for planning, design, and construction costs. The process is described in items A to C.

A. Municipalities seeking funds from the water pollution control revolving fund must be on the municipal needs list.

B. The agency annually adopts an intended use plan that includes a list of municipalities with eligible projects that have requested loan assistance.

C. The actual loan amounts, terms, and conditions are determined by the authority.

Subp. 5. **Corrective action grants program.** Financial assistance is available under parts 7077.0500 to 7077.0560 for the costs associated with correcting a wastewater treatment facility that failed to meet performance standards within the first year of operation. The program applies to funds awarded before, on, or after July 1, 1990. The process is described in items A and B.

A. Corrective action grants are certified to the authority for awards in the order that applications that meet the rule requirements are received and to the extent funds are available.

B. Recipients of corrective action funds must seek to recover the costs of the corrective work from the parties that are responsible for the performance failure. When funds are recovered, the municipality shall repay the state a portion of the money recovered.

Subp. 6. **Capital cost component grant program.** Grant funds are available to municipalities under parts 7077.0600 to 7077.0660 for part of the capital cost component of the service fee under a service contract with a private vendor to construct and operate wastewater treatment facilities for 20 years. The program applies to funds awarded before, on, or after July 1,

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1990. The process is described in items A to D.

A. Municipalities seeking a capital cost component grant must be listed on the municipal needs list. Grant applications are taken during announced application periods.

B. Applications are ranked according to the priority order on the municipal needs list.

C. Grant amounts are determined by comparing the costs of recently constructed facilities in municipalities of similar size.

D. Payment of the grant is made following completion of construction and demonstration of satisfactory performance.

Subp. 7. **Individual on-site wastewater treatment systems grants program.** Grant funds are available to municipalities under parts 7077.0700 to 7077.0765 to assist owners of individual on-site wastewater treatment systems in upgrading or replacing failed systems. The program applies to funds awarded before, on, or after July 1, 1990. The process is described in items A to C.

A. Municipalities meeting the eligibility requirements in part 7077.0710 may submit grant applications during announced application periods. Both the municipality and the owners of the failed systems must meet statutory and rule requirements.

B. Applications are prioritized according to a municipality's median household income.

C. Grant payments are made on a reimbursement basis for 50 percent of the on-site system construction costs up to the maximum amounts specified in part 7077.0735.

7077.0115 MUNICIPAL NEEDS LIST.

Subpart 1. **Requirement.** The commissioner shall develop and maintain a municipal needs list of municipalities that have a need for a new or upgraded wastewater treatment facility.

Subp. 2. **Points and listing order.** A municipality on the municipal needs list must be awarded points under the criteria established in this chapter. The municipalities must be listed

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on the municipal needs list in descending order according to the number of points awarded to each.

Subp. 3. **Request for placement on list.** A municipality may submit a written request to the commissioner for placement on the municipal needs list.

A. If the municipality is sewered, its request must include the following information:

(1) type and age of existing wastewater treatment facilities;

(2) design capacity and current treatment capabilities of existing facilities;

(3) data describing actual wastewater flows and loadings;

(4) current discharge point and NPDES permit standards;

(5) a description of the need for new or upgraded treatment facilities; and

(6) an explanation of why the need for new or upgraded facilities is not primarily due to inadequate operation and maintenance or to negligence on the part of any person.

B. If the municipality is unsewered, its request must include the following information:

(1) number of existing on-site treatment systems in the municipality;

(2) general description of the type and age of existing on-site treatment systems; and

(3) a description of the identified need for improved wastewater treatment facilities including the estimated number of failing on-site systems and a description of the basis for that estimate.

Subp. 4. **Review.** The commissioner shall review each request and add to the municipal needs list each municipality for which a need has been found to exist. If the commissioner determines that a need does not exist, the municipality shall not be added to the list and the commissioner shall notify the municipality of the reasons for the determination.

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7077.0120 PRIORITY POINTS FOR WATERS AFFECTED.

Subpart 1. **Water use and point ratings.** A municipality shall be awarded priority points based on the water use of the receiving water of the discharge according to the following:

Water Use	Point Rating
Class 1 Domestic consumption:	
Class 1A waters	70
Class 1B waters	65
Class 1C waters	60
Class 1D waters	55
Class 2 Fisheries and recreation:	
Class 2A waters	60
Class 2B waters	50
Class 2C waters	40
Class 7 Limited resource value waters	35

The water uses are defined in parts 7050.0200 and 7050.0220. The water use of a specific water of the state is the water use established by parts 7050.0400 to 7050.0470.

Subp. 2. **Receiving water with more than one designated water use.** If a municipality discharges to a receiving water with more than one designated water use, the municipality shall be awarded the points for the designated water use with the greatest number of points.

Subp. 3. **Adverse impact on downstream water.** If a municipal discharge has an adverse impact on a downstream water with a designated water use receiving more points than the receiving water, the municipality shall be awarded the priority points for the downstream water.

7077.0125 PRIORITY POINTS FOR POPULATION SERVED.

A municipality shall be awarded priority points based on the population of the municipality served by the project. The priority points for population served are five times the logarithm base 10 ($\log_{10}$) of the population determined by the most recent official census. The table below gives examples of the priority points assigned for various populations:

Population	$\log_{10}$	Priority Points Assigned
100	2	10.0

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1,000	3
10,000	4
100,000	5
1,000,000	6

7077.0130 PRIORITY POINTS FOR TYPE OF PROJECT.

Subpart 1. **Table of priority points by type of project.** A municipality shall be awarded priority points based on the type of project to be constructed according to the following:

Type of Project	Priority Points
A. Major treatment facilities:	
(1) major tertiary treatment facilities	160
(2) major secondary treatment facilities	150
B. Dechlorination facilities:	
(1) tertiary treatment dechlorination facilities	120
(2) secondary treatment dechlorination facilities	110
C. Ancillary additions:	
(1) ancillary additions to existing tertiary treatment facilities	80
(2) ancillary additions to existing secondary treatment facilities	75
D. Collection systems or collector sewers:	
(1) collection system or collector sewer	10
(2) improvement of collection system or collector sewer reliability	10
E. Control of combined sewer overflow	150

Subp. 2. **Description of project types.** Project types are described as follows:

A. Major treatment facilities are new facilities or additions to existing facilities which improve effluent quality in order that a municipality may achieve compliance with its NPDES/SDS permit conditions. Major treatment facilities include major interceptor sewers and may include sewer system

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rehabilitation projects in subpart 4.

(1) Land application systems and stabilization ponds that are proposed as an alternative to tertiary and secondary treatment facilities that discharge to waters of the state are considered tertiary treatment and secondary treatment for purposes of project priority. Whether a land application system or stabilization pond is a tertiary or secondary treatment system is determined as based on the effluent limitations applicable to discharges to the receiving water.

(2) Subsurface disposal systems, including septic tanks, designed to treat an average daily flow of not more than 1,200 gallons and the drainfield portion and one central septic tank to treat an average daily flow in excess of 1,200 gallons are considered secondary treatment for purposes of project priority.

B. Dechlorination facilities are facilities that remove chlorine from the effluent of a wastewater treatment facility. When a municipality is listed on the municipal needs list for major treatment facilities, the facilities described in this item may be included as part of that project.

C. Ancillary additions to existing tertiary or secondary treatment facilities are additions that are not major treatment facilities, dechlorination facilities, or collector sewers. When a municipality is listed on the municipal needs list for a major treatment facility, the facilities described in this item will be included as part of that project.

D. A collection system or collector sewer is a sanitary sewer, specifically constructed to carry raw or partially treated wastewater and providing collection system reliability such as alternative power or dual pumps, that is not a major interceptor sewer or a relief sewer. For treatment works including subsurface disposal systems designed to treat an average daily flow in excess of 1,200 gallons, a collection system includes devices such as grinder pumps and septic tanks that will partly treat the wastewater, as well as septic tank effluent pumps and small diameter sewers that will pump and

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convey the partially treated waste.

E. A project for the control of combined sewer overflow is a project designed to eliminate bypasses caused by insufficient hydraulic capacity in combined storm and sanitary sewers. A combined sewer overflow project is not eligible for priority points under subpart 1, item E unless the project is necessary to meet requirements of the municipality's NPDES/SDS permit.

Subp. 3. **Special restrictions for sewer system rehabilitation projects.** Special restrictions for sewer system rehabilitation projects are as follows:

A. In order for a sewer system rehabilitation project to be eligible for priority points under subpart 1, item A, the municipality must not have obtained a grant for wastewater treatment facility construction since February 11, 1974, and sewer system rehabilitation must be justified by an infiltration/inflow analysis and sewer system evaluation survey that complies with part 7077.0150, subpart 2, item C.

B. A municipality proposing to undertake a sewer system rehabilitation project that does not meet the criteria in item A shall be awarded the priority points credited to a collection system or collector sewer under subpart 1, item D.

Subp. 4. **Temporary improvements.** If a municipality makes improvements to its existing wastewater treatment facility that are temporary in nature for the purpose of maximizing effluent quality or keeping its system operational while the municipality is awaiting a grant, the municipality shall receive the same priority points for its project as it would have received without the temporary improvements.

7077.0135 EXTRA POINTS.

In addition to the priority points to which a municipality is entitled for its project, the following extra points shall also be awarded to a qualifying municipality:

A. A municipality that proposes a project that will eliminate an existing public health hazard assessed by the

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Department of Health in a health advisory or commissioner's order shall be awarded 40 extra points. A municipality requesting the award of 40 extra points under this provision shall submit the following information to the agency and to the Department of Health:

(1) information on geologic and soil conditions including soil types, permeabilities, and presence or absence of confining units;

(2) groundwater flow patterns in the area of the facility or proposed facility;

(3) an assessment of the extent and magnitude of the contaminant plume;

(4) an identification of water users and assessment of the amount of water appropriations in the area of the facility or proposed facility;

(5) flow rates and flow patterns of surface waters;

(6) information on well construction for wells in the area of the facility or proposed facility, particularly wells that have been or will be impacted;

(7) a description of the facility's construction, operation, and performance if there is an existing facility, with an explanation of why the facility is creating a public health hazard;

(8) an identification and assessment of the suspected route of human exposure and the population exposed; and

(9) a description of how the proposed improvements will mitigate or eliminate the public health hazard.

B. A qualifying municipality shall be awarded extra points under one of the provisions below for its existing level of treatment:

(1) A municipality that presently has a collection system serving 50 percent or more of the population but provides no treatment before discharge, or a municipality which collects an average daily flow exceeding 1,000,000 gallons

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through a system without combined sewers and which has bypassed sewage more than 40 percent of the time over a period of at least two years while its plant is operating at full capacity, shall be awarded 40 extra points.

(2) A municipality with no collection system where more than 50 percent of the existing septic systems discharge raw or partially treated sewage directly to the ground surface shall be awarded 30 extra points.

(3) A municipality that presently has a collection system serving 50 percent or more of the population and whose present facilities are designed for only primary treatment shall be awarded 20 extra points.

(4) A municipality that discharges untreated sewage as a result of combined sewer overflows shall be awarded 20 extra points.

C. A municipality that proposes a project that is an integral part of a watershed pollution abatement plan shall be awarded 15 extra points. A municipality is not entitled to the 15 extra points under this provision unless the agency received the plan for review by December 1, and it is in approvable condition by May 1, before the beginning of the fiscal year for which funding is sought. A watershed pollution abatement plan shall include the following:

(1) an in depth description of the physical environment (geology, soils, topography, and land cover), land use and development in the watershed, as well as the planned future land use and development;

(2) an inventory and in depth description of the watershed's hydrologic system, including climatic conditions (precipitation), lakes, wetlands, streams, groundwater, drainage, and conveyance systems;

(3) information on the existing and potential water quality problems in the watershed, including both point and nonpoint sources of pollution;

(4) objectives and policies, including management plans for water quality and natural resource protection;

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(5) a description of the hydrologic and water quality conditions that will be sought, including a description of the opportunities for improvement;

(6) a statement on conflicts between the watershed pollution abatement plan and existing plans of local government units; and

(7) a plan for implementation, consisting of governmental work agreements and schedules for implementing corrective actions.

D. A municipality that discharges to or has an adverse impact on an outstanding resource value water shall be awarded ten extra points.

E. A municipality proposing to undertake a project that will result in the elimination of a point source discharge to a game fish lake or outstanding resource value water, or the elimination of a discharge that has an adverse impact on a game fish lake or outstanding resource value water shall be awarded ten extra points. A game fish lake is a lake managed for propagation of game fish species and used for fisheries and recreation. There may be occasional but not regular winter kill in a game fish lake.

F. Ten extra points will be awarded to a sanitary district or other multimunicipal wastewater treatment project.

G. A municipality listed on the municipal needs list on January 1, 1985, shall be awarded 40 extra points.

H. A municipality which does not qualify for the points awarded in item G and which is in compliance with its NPDES/SDS permit conditions less than 90 percent of the time during a one-year period computed on the basis of the interval appropriate to the limitation shall be awarded 20 extra points. Periods of noncompliance caused by inadequate operation and maintenance or negligence on the part of any person are not included in the percentage computation for the purposes of this definition.

7077.0140 TOTAL POINTS.

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The total points to be awarded a municipality for placement on the municipal needs list is the sum of the priority points awarded under one of the provisions of parts 7077.0120, 7077.0125, and 7077.0130, and one or more of the provisions of part 7077.0135.

7077.0145 RESOLUTION OF EQUAL POINT RATINGS.

If, in the determination of the order of priority on the municipal needs list, two or more municipalities have the same total number of points, the municipality with the highest priority points under part 7077.0120 for water use is ranked higher. If two or more municipalities have the same total number of points and the same priority points under part 7077.0120 for water use, the municipalities are ranked based on population under part 7077.0125.

7077.0150 FACILITIES PLAN.

Subpart 1. **In general.** A municipality must have a facilities plan approved by the commissioner before it will be considered for placement on the municipal project list for a construction grant or the intended use plan for a construction loan. A facilities plan must be prepared and signed by a professional engineer registered in the state and submitted to the agency according to part 7077.0205, subpart 2, items B and C.

Subp. 2. **Facilities plan contents.** A facilities plan must include:

A. A complete description and evaluation of the existing treatment facility, including information about the age, condition, design capacity, and treatment capabilities of each treatment unit, an analysis of the facility's ability to meet current permit requirements, and the location, frequency, and quantity of any bypasses.

B. Data describing existing flows that accurately represent flows during rain events and high groundwater conditions. Flow data must be based on actual flow monitoring for at least 30 consecutive days.

C. An analysis of inflow and infiltration in the

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existing sewer system to determine whether excessive levels of inflow or infiltration exist as defined in part 7077.0105, subparts 12 and 13. If excessive levels of inflow or infiltration are determined to exist, a sewer system evaluation survey must be conducted to identify the specific sources of inflow and infiltration and the estimated flows from each source.

D. Projected flows and loadings within the next five- and 20-year periods based on projected population growth and letters of intent from major contributing industries.

E. A cost effectiveness analysis of all feasible treatment works, processes, and techniques capable of meeting the applicable effluent, water quality, and public health requirements for 20 years. If excessive levels of inflow/infiltration are determined to exist under item C, the cost effectiveness analysis of treatment alternatives must include a comparison of the costs of eliminating excessive inflow/infiltration with the costs of transportation and treatment of the inflow/infiltration. For unsewered and partially unsewered communities, consideration must be given to on-site treatment systems. The following information must be provided for each treatment alternative considered:

(1) a detailed breakdown of the present worth of all capital costs, annual operation and maintenance costs, equipment replacement costs, and salvage costs; and

(2) a site assessment conducted by a registered engineer or geotechnical engineer of the existing soil and groundwater conditions.

F. A description of the selected treatment alternative and the complete wastewater treatment system of which it is a part, including:

(1) the specific design parameters of all individual treatment units and the complete treatment system;

(2) estimated construction, annual operation and maintenance, and equipment replacement costs;

(3) estimated annual sewer service charges;

(4) a determination of whether pretreatment of

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any industrial wastes is needed in order not to disrupt the proper operation of the proposed facility;

(5) an evaluation of how and where sludge resulting from the treatment process will be disposed;

(6) an analysis of the 25- and 100-year flood elevations in relation to the proposed project site showing that the project will be operable during a 25-year flood and protected during a 100-year flood;

(7) a description of any ordinances or intermunicipal agreements necessary for the successful implementation and administration of the project; and

(8) an analysis of how interim treatment will be accomplished during construction to meet permit requirements.

G. An evaluation of the environmental impacts, including:

(1) a description of the potential impacts of the selected treatment alternative on wetlands; floodplains; areas of archaeological, cultural, and historical significance; endangered or threatened species; wild and scenic rivers; farmlands; air quality; fish and wildlife; open space and recreation opportunities; and

(2) a comparison of the potential environmental impacts of the selected treatment alternative with the other treatment alternatives considered in the cost effectiveness analysis.

Subp. 3. **Public hearing.** Before adopting the facilities plan, the municipality must hold at least one public hearing to discuss the proposed facilities plan. The proposed facilities plan must be made available for review by interested persons before the date of the hearing. At the public hearing, information must be presented on the various treatment alternatives considered, the reasons for choosing the selected alternative, the location of the proposed project site, and the estimated sewer service charges. A summary of the information presented and public comments received at the public hearing must be provided to the commissioner before the commissioner's

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approval of the facilities plan.

Subp. 4. **Adoption.** Before the commissioner's approval of the facilities plan, the municipality must adopt the facilities plan through a formal resolution of the municipality's governing body.

7077.0155 PLANS AND SPECIFICATIONS.

Subpart 1. **In general.** A municipality must submit plans and specifications or a council resolution to the commissioner according to part 7077.0205, subpart 2, item D, before it will be considered for placement on the municipal project list. The plans and specifications must be consistent with the scope of the approved facilities plan under part 7077.0150. The project must be constructed according to the approved plans and specifications and change orders.

Subp. 2. **Contents.** A complete set of plans and specifications must include:

A. drawings and specifications signed by a professional engineer registered in Minnesota;

B. a summary of design parameters for the treatment units;

C. a summary of flow conditions for average dry weather, average wet weather, maximum wet weather, peak hourly and instantaneous wet weather on a form provided by the agency;

D. a hydraulic profile of the flow through the treatment system;

E. a plan for interim treatment during construction;

F. the latest detailed cost estimate based on the plans and specifications submitted;

G. administrative, bidding, and contract documents according to the applicable requirements under Minnesota Statutes, chapters 412, 429, and 471 including, at a minimum:

(1) five percent bid bond;

(2) 100 percent payment bond;

(3) 100 percent performance bond; and

(4) prevailing wage certifications issued by the

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Minnesota Department of Labor and Industry.

7077.0160 RATE SYSTEM AND ORDINANCES.

Subpart 1. **In general.** A municipality must submit a sewer service charge system, a sewer rate ordinance, and a sewer use ordinance or a council resolution to the commissioner according to part 7077.0205, subpart 2, item D, before it will be considered for placement on the municipal project list. The sewer service charge system, sewer rate ordinance, and sewer use ordinance must demonstrate that the municipality has the legal and financial capability to ensure adequate construction and operation and maintenance of the wastewater treatment facility. The rate system and ordinances must be enacted according to part 7077.0260, subpart 2, item C, to ensure full payment of the grant.

Subp. 2. **Sewer service charge system.** A sewer service charge system must include:

A. The engineering and accounting data for the wastewater flows and loadings of the users of the wastewater treatment facility.

B. The estimated annual costs of equipment replacement, and operating and maintaining the facility.

C. The rates that will be charged to each user for the user's share of the annual costs of equipment replacement and operation and maintenance of the treatment facility in proportion to the user's contribution of wastewater flow and loadings and according to the rate formula established in the sewer rate ordinance. The costs of treating infiltration and inflow and the costs of administration may be charged through other methods than proportionality, but the manner in which the charges will be distributed must be justified and described.

D. The rates that will be charged to each user for the cost of the debt retirement for the local capital cost of the treatment facility. The debt charge need not be proportionally assessed against each user, but the manner in which the charge will be distributed must be described.

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Subp. 3. **Sewer rate ordinance.** The sewer rate ordinance must include the following minimum provisions:

A. the rate setting method for proportionate user charges;

B. the rate setting method for debt charges; and

C. separate accounts for:

(1) operation and maintenance;

(2) equipment replacement; and

(3) debt retirement; and

D. administrative procedures for the financial management of the sewer service charges.

Subp. 4. **Sewer use ordinance.** The sewer use ordinance must include the following minimum provisions:

A. prohibition of new connections from inflow sources;

B. new sewers and connections must be properly designed and constructed; and

C. prohibition of toxics and other pollutants in amounts or concentrations that endanger public safety or the physical integrity of the treatment facility or cause violation of permit limitations.

STATE INDEPENDENT GRANTS PROGRAM

7077.0200 PURPOSE.

The state independent grants program provides grants to municipalities for the construction of publicly owned wastewater treatment facilities according to the priority order of the municipal needs list and the provisions of Minnesota Statutes, section 116.18, subdivision 3a. The program is jointly administered by the Minnesota Pollution Control Agency and the Minnesota Public Facilities Authority. Parts 7077.0200 to 7077.0265 provide for the agency's responsibilities for the administration of the program.

7077.0205 MUNICIPAL PROJECT LIST.

Subpart 1. **Adoption of municipal project list.** Each fiscal year the agency shall adopt a municipal project list that

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identifies, in priority order, the municipalities that are eligible to apply for state independent grants from appropriated funds.

The municipal project list shall also list other uses of the appropriated funds including reserves for grant increases and costs of administration.

Subp. 2. **Requirements for placement on list.** To be placed on the municipal project list:

A. The municipality must be on the municipal needs list.

B. The municipality must submit by December 1 before the beginning of the fiscal year for which the municipal project list is prepared:

(1) a facilities plan in conformance with part 7077.0150; 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 7077.0150.

C. The municipality must, by May 1 before the beginning of the fiscal year for which the project list is prepared, make all revisions to the documents listed in item B that are necessary to obtain the commissioner's approval.

D. The municipality must also submit by May 1 the following documents for the commissioner's review and approval or a resolution of the municipality's governing body agreeing to submit the following documents by the following October 1:

(1) plans and specifications in conformance with part 7077.0155, and based on a facilities plan previously approved by the agency;

(2) if the municipality 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 7077.0155, and based on a previously approved facilities plan;

(3) a sewer service charge system under part

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7077.0160, subpart 2;

(4) documentation of how the public has been informed within the past year of the proposed sewer service rates;

(5) a sewer rate ordinance under part 7077.0160, subpart 3;

(6) a sewer use ordinance under 7077.0160, subpart 4; and

(7) if more than one municipality is involved in the project, an unexecuted intermunicipal agreement that sets forth the terms and conditions of joint treatment and the cost-sharing methodology.

E. Failure to submit, for the commissioner's review and approval, the documents agreed to in item D by October 1 of the fiscal year for which the municipal project list is prepared will result in the removal of the municipality from the municipal project list.

Subp. 3. **Preparation of proposed municipal project list.** In drafting the proposed municipal project list, the commissioner shall consider the following factors in the order given:

A. total dollars available for the purpose of constructing a municipal wastewater treatment facility;

B. restrictions and obligations mandated by these parts and applicable state statutes;

C. priority rank of projects according to the municipal needs list;

D. requirements of subpart 2;

E. eligibility of projects according to part 7077.0210; and

F. additional projects, in priority order, identified by the authority for award under the economic development set-aside under Minnesota Statutes, section 116.18, subdivision 3a, paragraph (b).

Subp. 4. **Reserve list.** The municipal project list shall include a list of reserve projects with priority rankings lower

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than those identified under subpart 3, items A to E. Municipalities listed on the reserve list meeting the requirements under subpart 3, items D and E, may receive funding if funds become available.

Subp. 5. **Reimbursement list.** The municipal project list shall include a list of municipalities that have requested to proceed with their projects and be reimbursed in a subsequent year conditioned upon appropriation of sufficient funds.

A. No municipality may be listed on the reimbursement list unless the municipality has submitted a written request for placement on the list and has received approval of the documents listed in subpart 2, items B and D.

B. A municipality may retain eligibility of construction and construction related costs incurred before the award of a state independent grant only if:

(1) the municipality was on the reimbursement list when construction began;

(2) the municipality submitted a complete application, as defined under part 7077.0215, subpart 2, to the commissioner within 90 days after adoption of or amendment to the municipal project list; and

(3) the municipality has received written approval of the application from the commissioner before initiating construction.

C. Reimbursement projects must be listed in the same order of priority as they appear on the municipal needs list.

Subp. 6. **Public participation.** The commissioner shall prepare a proposed municipal project list and make it available to the public at least 30 days before adoption. A free copy of the proposed list shall be mailed to interested persons upon request. Municipalities affected by the proposed list shall be given notice at least 30 days in advance of the agency board meeting at which the list will be considered for adoption.

7077.0210 ELIGIBILITY.

Subpart 1. **Project eligibility.** The provisions in items A

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to C govern project eligibility.

A. Only the cost-effective implementable alternative determined according to part 7077.0150, subpart 2, and identified in an approved facilities plan is eligible to receive grant assistance, unless a municipality receives an exemption under item B.

B. The commissioner may grant an exemption to the required 20-year planning period for the cost-effectiveness analysis under part 7077.0150, subpart 2, item E, to a municipality under 1,500 population for reasons of significant financial hardship. If an exemption is granted, the municipality may receive grant assistance for a proposed treatment alternative that is different than the 20-year cost-effective alternative. A municipality must submit a written request for this exemption that includes:

(1) a description of the proposed treatment alternative and a discussion of the extent to which it fails to satisfy the 20-year cost-effectiveness analysis;

(2) an explanation, including any necessary supporting documentation, of why the 20-year cost-effective alternative identified in the facilities plan would create a significant financial hardship for the municipality;

(3) a plan for reevaluating the municipality's wastewater treatment needs at a specific time in the future; and

(4) a resolution of the municipality's governing body that supports the municipality's request to construct a treatment alternative other than that identified in the facilities plan as the 20-year cost-effective alternative, and provides a formal commitment to reevaluate the municipality's wastewater treatment needs at a specific time in the future.

C. Grant assistance is not available for a project or portion of a project if the principal purpose is the treatment or conveyance of industrial wastewater.

Subp. 2. **Cost eligibility.** The following categories of costs related to the construction of the approved treatment alternative under subpart 1 are eligible for grant assistance:

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A. costs of only those items identified in the approved plans and specifications and change orders that are necessary to construct a treatment facility that complies with NPDES/SDS permit requirements;

B. costs of procuring construction contractors;

C. costs relating to construction and start-up engineering services;

D. costs of providing full-time inspection of the project construction;

E. costs of land on which stabilization ponds will be built;

F. a contingency fund equal to three percent of the grant eligible construction costs;

G. costs associated with unanticipated site conditions as specified under part 7077.0240, subpart 2; and

H. costs incurred for project planning, design, administration, and legal services up to a maximum of 12 percent of the grant eligible construction costs for municipalities of 1,500 or less population and ten percent of the grant eligible construction costs for municipalities over 1,500 population. If a municipality has previously received funding for planning or design, the eligible costs from previous awards for planning or design will be subtracted from the eligible costs in this item.

Subp. 3. **Timing of eligible costs.** The following items govern the grant eligibility of project costs:

A. Costs of construction and construction related engineering and inspection services incurred before the certification of a grant application by the commissioner to the authority are ineligible unless the municipality receives prior written approval from the commissioner.

B. Costs of purchasing the land identified in subpart 2, item E, incurred before the approval of a facilities plan by the commissioner are ineligible unless the municipality receives prior written approval from the commissioner.

7077.0215 GRANT APPLICATIONS.

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Subpart 1. **Agency notification.** The commissioner shall notify each municipality of its placement on the municipal project list. No municipality shall submit a state independent grant application unless it has been notified by the commissioner in writing that it is on this list.

Subp. 2. **Complete application required.** No municipality may be eligible for a state independent grant unless a complete grant application has been submitted to the authority. A complete application must include all documents required under subparts 3 and 4.

Subp. 3. **Timing and form of application.** The following provisions govern the timing and form of grant applications:

A. The application for grant funds shall be on forms provided by the agency and the authority.

B. A municipality on the municipal project list shall submit a complete construction grant application to the authority within 90 days after the date on which the agency adopts that fiscal year's municipal project list.

C. If a land acquisition legal opinion, specified under subpart 4, item F, is unobtainable at the time of application, a land acquisition status report and schedule must be included with the application. If the legal opinion is not received at the agency by the following April 1, the application must be rejected and the project must be removed from the municipal project list for that fiscal year.

Subp. 4. **Application requirements.** A municipality that applies for a construction grant shall, in addition to submitting the completed application form, submit the following information for the commissioner's review and approval:

A. A proposed engineering contract that includes, at a minimum, the following provisions:

(1) full-time inspection during construction and written monthly reports submitted to the agency describing the type of construction inspected and the time involved in inspection;

(2) two sets of "as built" plans and

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specifications on microfiche for submittal to the agency;

(3) preparation of an operation and maintenance manual; and

(4) start-up services during the first year of operation, including:

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

(b) training or providing for training of operating personnel and prepare necessary curricula and training materials; and

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

B. A certificate of adequate errors and omissions insurance carried by the engineering firm.

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

> The facilities described in this application have been designed based on data that has been verified to accurately represent present and future flows and loadings and with full knowledge of the effluent limitations required by the Minnesota Pollution Control Agency as set forth in NPDES Permit No. ..... dated ..... It is my judgment and carefully considered opinion that these facilities ~~are~~ will be capable of consistently producing the required effluent quality, provided that the facilities are operated in conformance with the approved operation and maintenance manual and that the volume and characteristics of raw wastewater are within the limits of the flow data presented in the plans and specifications under the requirements of Minnesota Rules, part 7077.0155, subpart 2, item C.

D. A treatment agreement with each major contributing industry.

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E. A cost breakdown for all project work to be funded by the grant, including separation of grant eligible and ineligible items, in a format provided by the agency.

F. A legal opinion identifying that the municipality has sufficient legal vested interest in all sites, easements, or rights-of-way to ensure immediate construction and undisturbed use for the estimated life of the facilities. If this opinion can not be submitted at the time of application, a land acquisition status report and schedule must be provided.

G. A project schedule on a form provided by the agency.

Subp. 5. **Three copies.** State independent grant application forms and attachments must be submitted in triplicate to the authority. At least one set of forms and attachments must contain original signatures.

7077.0220 APPROVAL AND CERTIFICATION OF GRANT APPLICATIONS.

Subpart 1. **Approval.** The commissioner shall approve grant applications from municipalities that:

A. meet the requirements of parts 7077.0205, subpart 2, item D; and 7077.0215, subparts 3 and 4, within 180 days of the date the agency received a complete application;

B. complete the environmental review process requirements in chapter 4410 and Minnesota Statutes, chapter 116D; and

C. obtain the required NPDES/SDS permits.

Subp. 2. **Certification.** The commissioner shall certify each approved grant application to the authority for award. Grant eligible costs under part 7077.0210, subpart 2, items B to D, will be determined at the time of certification. Following certification, grant eligible costs under these items can be increased only through the approval of an unanticipated site condition amendment under part 7077.0240, subpart 2, or through the use of contingency funds under part 7077.0210, subpart 2, item F, approved by the commissioner.

7077.0225 REJECTION OF GRANT APPLICATIONS.

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Subpart 1. **Grounds.** A municipality's grant application for a project on the municipal project list may be rejected by the commissioner if it cannot receive approval under part 7077.0220.

Subp. 2. **Effect of rejection.** When a grant application is rejected, the commissioner shall remove the municipality from the municipal project list for that fiscal year.

7077.0230 CONTRACT ASSIGNMENT.

A municipality that enters into a contract with a contractor or engineer for the planning, design, or construction of a part of or an entire wastewater treatment system, to be paid for in whole or in part by state independent grant funds, shall provide in the contract that any or all of its rights and duties thereunder may be assigned to the commissioner without the agreement of the contractor or engineer. The assignment may be made by mutual agreement between the municipality and the commissioner or according to an agency assumption of municipal powers under Minnesota Statutes, section 115.48.

7077.0235 CONTRACT BENEFICIARY.

A municipality that enters into a contract with a contractor or engineer for the planning, design, or construction of a part of or an entire wastewater treatment system, to be paid for in whole or in part by state independent grant funds, shall provide in the contract that the agency is a third-party beneficiary to the contract.

7077.0240 GRANT AMENDMENTS.

Subpart 1. **After-bid amendments.** A municipality shall submit to the authority a written request for an after-bid amendment when actual construction contracts costs differ from construction costs estimated in the grant certification. Final grant eligible construction costs are based on the amounts in the signed construction contracts. No further amendments for additional construction costs will be considered except as provided under subpart 2. The commissioner shall certify the

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amendment to the authority if funds are available and the costs are eligible and reasonable.

Subp. 2. **Unanticipated site condition amendments.** Only cost overruns caused by unanticipated site conditions are eligible for grant amendments once final grant eligible construction costs based on the amounts in the signed construction contracts are determined under subpart 1.

A. The commissioner may approve an amendment for up to two percent of the final grant eligible construction costs to compensate for unanticipated site conditions encountered during construction. The three percent contingency fund under part 7077.0210, subpart 2, item F, must be depleted before an amendment for unanticipated site conditions is approved.

B. A written request by the municipality for an unanticipated site condition amendment must include:

(1) an explanation of why the site condition causing the cost overrun was unanticipated;

(2) a change order that defines the scope and cost of the work;

(3) a breakdown of costs and tasks;

(4) an amended engineering contract, if applicable; and

(5) a budget period extension request, if applicable.

7077.0245 CHANGE ORDERS.

Subpart 1. **In general.** A change order must be submitted to the commissioner for any change that:

A. alters the design or scope of the project;

B. increases or decreases the contract price;

C. changes the construction completion date;

D. causes a deviation from the approved plans and specifications; or

E. causes a substitution or replacement of equipment, suppliers, or subcontractors.

Subp. 2. **Contents.** Change orders submitted to the

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commissioner must contain the following:

A. signatures of the municipality's authorized representative, the project engineer, and the contractor;

B. the date on which the municipality and the contractor executed the change order;

C. identification of grant eligible and ineligible costs;

D. a complete description and justification of the change;

E. an explanation of why the change was not included in the original plans and specifications and contractor's bid;

F. a detailed cost breakdown for the change from the contractor showing the costs of materials, labor, overhead, and profit; and

G. a cost estimate for the change from the project engineer and an analysis of any differences between the engineer's estimate and the contractor's cost breakdown. If the project engineer's estimate differs from the contractor's price by more than ten percent, an explanation of how the costs were agreed to is required.

Subp. 3. **Eligible costs.** The following costs associated with approved change orders are eligible for grant assistance:

A. construction costs resulting from defects in the plans and specifications that would have been eligible and would have been incurred if the plans and specifications had been free of the defects, excluding the costs of any rework, redesign, restocking, small tools, supervision, delay, acceleration, or disruption caused by the defects;

B. costs determined by the commissioner to be the result of unanticipated site conditions;

C. combined profit and overhead costs for the contractor or subcontractor that actually performs the change order work not exceeding 15 percent of the costs of materials and labor;

D. combined profit and overhead costs for a contractor or subcontractor that administers the change order

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but does not actually perform the change order work not exceeding five percent of the costs of materials and labor.

Subp. 4. **Approval of change orders.** Approval of change orders is required as follows:

A. Proposed changes that substantially alter the type of treatment process, or its efficiency, versatility, or reliability, must be submitted to the commissioner for prior approval.

B. Change orders not requiring the commissioner's prior approval under item A must be submitted to the commissioner for review and approval within one month after the date on which the municipality, its engineer, or other authorized agent, and the contractor execute the change order.

C. Proposed changes described in item A do not require prior written approval from the commissioner when the work is agreed by the commissioner to be of an emergency nature.

7077.0250 COMPLETION OF CONSTRUCTION.

Subpart 1. **Building completion.** Building completion is the date when all major components of a project have been built, all equipment is operational, start-up testing has been completed, and the project is capable of functioning as designed. At this point the municipality must notify the commissioner it is ready to initiate operation and request that a prefinal inspection be scheduled.

Subp. 2. **Initiation of operation.** Initiation of operation is the date the project begins operating for the purposes for which it was planned, designed, and built. A project must not initiate operation until it receives approval from the commissioner.

A. The municipality must notify the commissioner in writing of the initiation of operation date within ten days following initiation of ~~initiating~~ operation.

B. The date of initiation of operation is the first day of the one year performance period.

Subp. 3. **Final inspection.** A final inspection of the

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treatment facility must be performed by agency staff when all the construction is complete except for minor weather-related components. The purpose of the inspection is to verify that construction is complete and conforms with the approved plans, specifications, and change orders. A municipality requests that a final inspection be performed when it believes construction is complete. At the final inspection, any outstanding change orders must be identified and a cut-off date for incurring grant eligible construction related costs must be established.

7077.0255 PROJECT PERFORMANCE.

Subpart 1. **Performance certification.** One year after the initiation of operation of the project, the municipality shall submit to the commissioner the following items:

A. a certification stating whether the project meets the following performance standards:

(1) the project has been completed according to approved construction plans and specifications and change orders;

(2) the municipality has a sufficient number of trained and capable personnel to provide adequate operation and maintenance of the project, and the project requires only operation and maintenance as outlined as normal and routine in the approved operation and maintenance manual;

(3) the project accepts hydraulic and organic loading to the extent described in the approved design specifications and is in compliance with all NPDES/SDS permit requirements;

(4) industrial wastewater discharges to the treatment facility do not interfere with the operation of the project or the disposal or use of municipal sludges;

(5) sludge treatment and disposal is accomplished in conformance with chapter 7040 or parts 7005.2350 to 7005.2400, as applicable; and

(6) the project meets the requirements in the approved plans and specifications for the prevention of

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contamination of underground drinking water sources beyond the property boundary, if applicable;

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

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

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

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

Subp. 2. **Corrective action report.** If the commissioner or the municipality determines that the project does not meet the project performance standards under subpart 1, item A, the municipality shall:

A. submit within 30 days of the performance certification date a corrective action report that includes:

(1) an analysis of the project's failure to meet the performance standards;

(2) an estimate of the nature, scope, and cost of the corrective action necessary to bring the project into compliance; and

(3) a schedule for initiating, in a timely manner, the necessary corrective action work and for meeting the performance certification requirements following a start-up period that is reasonable for the type of corrective action work to be performed; and

B. following the completion of corrective action work, submit a performance certification as specified under subpart 1 according to the schedule in item A, subitem (3).

7077.0260 PAYMENT OF STATE INDEPENDENT GRANTS.

Subpart 1. **Payment request.** A municipality must submit written payment requests to the authority. The municipality must include documentation for costs incurred under part

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7077.0210, subpart 2, item H.

Subp. 2. **Certification of payment requests.** The commissioner shall certify to the authority payment requests for eligible costs incurred according to the following schedule:

A. No payments will be certified until the municipality has submitted:

(1) the accepted bid proposal;

(2) detailed tabulation of all bids received;

(3) payment and performance bonds;

(4) executed construction contract and notice to proceed;

(5) executed engineering contract; and

(6) if more than one municipality is involved in the project, an executed intermunicipal agreement.

B. Payments will not be certified beyond 50 percent of the construction grant until the municipality has hired a wastewater treatment operator having a valid state certificate appropriate for the facility being constructed.

C. Payments will not be certified beyond 80 percent of the construction grant until the municipality has:

(1) enacted the approved sewer use ordinance;

(2) enacted the approved sewer rate ordinance;

(3) adopted by a resolution of the governing body the approved sewer service charge system with updated cost revisions; and

(4) received approval of the operation and maintenance manual.

D. Payments will not be certified beyond 90 percent of the construction grant until the municipality has met requirements of the performance certification process under part 7077.0255. If a project cannot meet these requirements, final payment will not be made until the requirements under part 7077.0255, subpart 2, have been completed or the municipality has entered into a legally enforceable agreement with the agency containing a schedule for completing the corrective work.

Subp. 3. **Retained payments.** The commissioner may withhold

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certification of construction grant payments if the commissioner determines that a project does not substantially conform to approved plans and specifications, or there has been a major breach of a condition in the grant agreement, or the municipality has failed to comply with the applicable requirements of this chapter. If funds are withheld pursuant to this subpart, the commissioner shall certify further payments when the condition causing the withholding has been corrected, or otherwise agreed to by the commissioner and the municipality.

7077.0265 RECOVERY OF FUNDS.

The commissioner shall recommend that the authority seek the immediate recovery of grant funds if funds are disbursed in excess of eligible costs incurred, or if a project is improperly designed, improperly constructed, or improperly operated and maintained.

COMBINED SEWER OVERFLOW ABATEMENT PROGRAM

7077.0300 PURPOSE.

State financial assistance is available for combined sewer overflow abatement for those municipalities eligible under Minnesota Statutes, section 116.162, subdivision 3. Parts 7077.0300 to 7077.0330 provide for the administration of the program.

7077.0305 MUNICIPAL PROJECT LIST.

Subpart 1. **In general.** The municipal project list prepared according to part 7077.0205 must contain those projects for which state financial assistance is available for combined sewer overflow abatement.

Subp. 2. **Requirements for placement on the list.** To be placed on the municipal project list, a municipality shall meet the following requirements:

A. The municipality must be listed on the municipal needs list.

B. The municipality shall submit by June 1 a list and schedule of construction projects to be initiated in the

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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.

7077.0310 APPLICATIONS.

Subpart 1. **Complete application required.** No municipality is eligible for combined sewer overflow abatement financial assistance unless a complete application has been submitted to the agency. A complete application must include all documents required under subparts 2 and 3.

Subp. 2. **Timing and form of application.** The following provisions govern the timing and form of financial assistance applications:

A. The application shall be on the form provided by the agency.

B. A municipality on the final municipal project list for a combined sewer overflow abatement project shall submit a complete application for state financial assistance by December 1 following agency adoption of that fiscal year's municipal project list, unless a different date is provided in the municipality's NPDES/SDS permit, in which case the deadline in the permit shall take precedence.

Subp. 3. **Additional information.** A municipality that applies for state financial assistance for a combined sewer overflow abatement project shall submit the following information for the commissioner's review and approval:

A. The scope of work contained in the list and schedule submitted the previous June 1, or according to the NPDES/SDS permit, plus additional scope of work as may be necessary to use any additional funds that may become available.

B. A resolution of the governing body of the municipality that authorizes the filing of the application and that designates the municipal official authorized to sign the application, financial assistance offer, and other related documents.

C. A proposed engineering contract that includes, at

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a minimum, the following provisions:

(1) full-time inspection during construction and written monthly reports submitted to the agency describing the type of construction inspected and the time involved in inspection;

(2) two sets of "as-built" plans and specifications on microfiche.

D. ~~An engineer's~~ A certificate of adequate errors and omissions insurance carried by the engineering firm.

E. A cost breakdown for all project work to be funded by the financial assistance, including separation of eligible and ineligible items, in a format provided by the agency.

F. Plans and specifications as required under part 7077.0155 for the scope of work described in item A.

G. A project schedule on a form provided by the agency.

7077.0315 FINANCIAL ASSISTANCE AWARDS.

Each fiscal year that funds are appropriated for combined sewer overflow abatement, the commissioner shall award financial assistance to municipalities that meet the requirements of part 7077.0310. The municipalities shall be awarded a proportionate share of the appropriation available in that fiscal year. The proportionate share for each eligible municipality is as follows:

A. Minneapolis, 24.2 percent;

B. Saint Paul, 71.6 percent; and

C. South Saint Paul, 4.2 percent.

7077.0320 CHANGE ORDERS.

Subpart 1. **In general.** A change order must be submitted to the commissioner for any change that:

A. alters the design or scope of the project;

B. increases or decreases the contract price;

C. changes the construction completion date;

D. causes a deviation from the approved plans and specifications; or

E. causes a substitution or replacement of equipment,

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suppliers, or subcontractors.

Subp. 2. **Contents.** Change orders submitted to the commissioner must contain the following:

A. signatures of the municipality's authorized representative, the project engineer, and the contractor;

B. the date on which the municipality and the contractor executed the change order; and

C. a complete description of the change.

Subp. 3. **Approval of change orders.** Approval of change orders is required as follows:

A. Proposed changes that substantially alter the type of facility or its efficiency, versatility, or reliability, must be submitted to the commissioner for prior approval.

B. Change orders not requiring the commissioner's prior approval under item A must be submitted to the commissioner for review and approval within one month after the date on which the municipality, its engineer, or other authorized agent, and the contractor execute the change order.

C. Proposed changes described in item A do not require prior written approval from the commissioner when the work is agreed by the commissioner to be of an emergency nature.

7077.0325 PROJECT PERFORMANCE.

Subpart 1. **Notification of initiation of operation.** Initiation of operation is the date the project begins operating for the purposes for which it was planned, designed, and built. The municipality shall notify the commissioner, in writing, of the project's initiation of operation date within ten days following initiation of operation.

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

A. a certification stating whether the project meets the following performance standards:

(1) the project has been completed according to approved plans and specifications and change orders;

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(2) the project accepts hydraulic loading to the extent described in the approved design specifications and complies with all NPDES/SDS permit requirements; and

(3) there is complete separation of stormwater and sanitary flows within the project area, with the exception of flows from building rainleader connections authorized under the NPDES/SDS permit;

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

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

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

Subp. 3. **Corrective action report.** If the commissioner or the municipality determines that the project does not meet the project performance standards under subpart 2, item A, the municipality shall:

A. Submit within 30 days of the performance certification date a corrective action report that includes:

(1) an analysis of the project's failure to meet the performance standards;

(2) an estimate of the nature, scope, and cost of the corrective action necessary to bring the project into compliance; and

(3) a schedule for initiating, in a timely manner, the necessary corrective action work and for meeting the performance certification requirements following a start-up period that is reasonable for the type of corrective action work to be performed.

B. Following the completion of corrective action work, submit a performance certification as specified under subpart 1 according to the schedule in item A, subitem (3).

7077.0330 PAYMENT OF STATE FINANCIAL ASSISTANCE.

Subpart 1. **Payments up to 90 percent of assistance.** The

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municipality may request in writing periodic payments as work on the project progresses up to 90 percent of the total amount of the financial assistance award. No payments will be made for project work until the municipality has submitted the following items, if applicable:

A. the accepted bid proposal;

B. detailed tabulation of all bids received;

C. payment and performance bonds; and

D. executed construction contract and notice to proceed.

Subp. 2. **Payments beyond 90 percent of assistance.** Payments will not be made beyond 90 percent of the financial assistance amount until a final inspection of the project is performed by agency staff and the municipality has met the requirements of part 7077.0325.

Subp. 3. **Retained payments.** Financial assistance payments may be withheld if the commissioner determines that a project does not substantially conform to approved plans and specifications, or there has been a major breach of a condition in the financial assistance agreement, or the municipality has failed to comply with the applicable requirements of this chapter. If funds are withheld pursuant to this subpart, further payments will be made when the condition causing the withholding has been corrected, or as otherwise agreed to by the commissioner and the municipality.

WATER POLLUTION CONTROL REVOLVING FUND PROGRAM

7077.0400 PURPOSE.

The water pollution control revolving fund program provides loans and other forms of financial assistance to municipalities for the planning, design, and construction of publicly owned wastewater treatment facilities according to Title VI of the act and Minnesota Statutes, section 446A.07. The program is jointly administered by the Minnesota Pollution Control Agency and the Minnesota Public Facilities Authority. Parts 7077.0400 to 7077.0445 provide for the agency's responsibilities for the

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administration of the program and apply to loans and other forms of financial assistance awarded before, on, or after July 1, 1990.

7077.0405 INTENDED USE PLAN.

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

Subp. 2. **Eligibility.** To be eligible for placement on the intended use plan, a municipality's project must be listed on the current municipal needs list.

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

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

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

(2) a project cost estimate; and

(3) a proposed project schedule and a breakdown of estimated quarterly cash flow needs.

B. For a construction loan, a municipality must first receive the commissioner's approval of its facilities plan, as required under part 7077.0150, before it will be placed on the intended use plan. If the municipality is proposing to change the selected treatment method or any other major element of a previously approved facilities plan, the municipality must receive the commissioner's approval of a facilities plan addendum.

7077.0410 APPLICATIONS.

Subpart 1. **Form of application.** A municipality identified on the intended use plan must submit an application to the executive director of the authority on forms provided by the

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authority and the agency.

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

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

B. a schedule for completion of the facilities plan on a form provided by the agency;

C. ~~an engineer's~~ a certificate of adequate errors and omissions insurance carried by the engineering firm; and

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

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

A. a schedule for completion of plans and specifications, a sewer service charge system, a sewer rate ordinance, and a sewer use ordinance on a form provided by the agency;

B. ~~an engineer's~~ a certificate of adequate errors and omissions insurance carried by the engineering firm;

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

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

Subp. 4. **Construction loans.** In addition to any other

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information required by the authority, a municipality applying for a construction loan shall include the following items for the commissioner's review and approval as part of its application.

A. Plans and specifications as required under part 7077.0155.

B. A sewer service charge system as required under part 7077.0160, subpart 2.

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

D. A sewer use ordinance as required under part 7077.0160, subpart 4.

E. A sewer rate ordinance as required under part 7077.0160, subpart 3.

F. A project schedule on a form provided by the agency.

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

> The facilities described in this application have been designed based on data that has been verified to accurately represent present and future flows and loadings and with full knowledge of the effluent limitations required by the Minnesota Pollution Control Agency as set forth in NPDES Permit No. _____ dated _____. It is my judgment and carefully considered opinion that these facilities ~~are~~ will be capable of consistently producing the required effluent quality, provided that the facilities are operated in conformance with the approved operation and maintenance manual and that the volume and characteristics of raw wastewater are within the limits of the flow data presented in the plans and specifications under the requirements of Minnesota Rules, part 7077.0155, subpart 2, item C.

H. ~~An engineer's~~ A certificate of adequate errors and

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omissions insurance carried by the engineering firm.

I. An engineering contract that includes, at a minimum, the following provisions:

(1) full-time inspection during construction and written monthly reports submitted to the agency describing the type of construction inspected and the time involved in inspection;

(2) two sets of "as built" plans and specifications on microfiche;

(3) preparation of an operation and maintenance manual; and

(4) start-up services during the first year of operation, including:

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

(b) train or provide for training of operating personnel and prepare necessary curricula and training materials; and

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

J. A certification from the municipality that it will comply with the performance certification requirements in part 7077.0440.

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

L. A cost breakdown of all work to be funded under the loan.

M. A legal opinion identifying that the municipality has sufficient legal vested interest in all sites, easements, or rights-of-way to ensure immediate construction and undisturbed utilization for the estimated life of the facilities.

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

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cost-sharing methodology.

7077.0415 APPLICATION CERTIFICATION.

Subpart 1. **Planning loans.** Upon review and approval of the documents required by part 7077.0410, subpart 2, and a determination that the project meets the applicable requirements of the act, federal regulations, state statutes, and this chapter, the commissioner shall certify the application to the authority.

Subp. 2. **Design loans.** Upon review and approval of the documents required by part 7077.0410, subpart 3, and a determination that the project meets the applicable requirements of the act, federal regulations, state statutes, and this chapter, the commissioner shall certify the application to the authority.

Subp. 3. **Construction loans.** Upon review and approval of the documents required by part 7077.0410, subpart 4, completion of items A and B, and a determination that the project meets the applicable requirements of the act, federal regulations, state statutes, and this chapter, the commissioner shall certify the application to the authority.

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

B. The municipality has obtained a NPDES/SDS permit from the agency for the project.

7077.0420 CHANGE ORDERS.

Subpart 1. **In general.** A change order must be submitted to the commissioner for any change that:

A. alters the design or scope of the project;

B. increases or decreases the contract price;

C. changes the construction completion date;

D. causes a deviation from the approved plans and specifications; or

E. causes a substitution or replacement of equipment, suppliers, or subcontractors.

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Subp. 2. **Contents.** Change orders submitted to the commissioner must contain the following:

A. signatures of the municipality's authorized representative, the project engineer, and the contractor;

B. date on which the municipality and the contractor executed the change order; and

C. a complete description of the change.

Subp. 3. **Approval of change orders.** Approval of a change order is required as follows:

A. Proposed changes that substantially alter the type of treatment process, or its efficiency, versatility, or reliability, must be submitted to the commissioner for prior approval.

B. Change orders not requiring the commissioner's prior approval under item A must be submitted to the commissioner for review and approval within one month after the date on which the municipality, its engineer, or other authorized agent, and the contractor execute the change order.

C. Proposed changes described in item A do not require prior written approval from the commissioner when the work is agreed by the commissioner to be of an emergency nature.

7077.0430 CONSTRUCTION LOAN REPORTING REQUIREMENTS.

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

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

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

C. evidence that the approved sewer use ordinance and sewer rate ordinance have been enacted; and

D. a resolution of the governing body adopting the approved sewer service charge system with updated cost revisions.

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Subp. 2. [See Repealer.]

7077.0435 COMPLETION OF CONSTRUCTION.

Subpart 1. **Building completion.** Building completion is the date when all major components of a project have been built, all equipment is operational, start-up testing has been completed, and the project is capable of functioning as designed. At this point, the municipality must notify the commissioner it is ready to initiate operation and request that a prefinal inspection be scheduled.

Subp. 2. **Initiation of operation.** Initiation of operation is the date the project begins operating for the purposes for which it was planned, designed, and built. A project must not initiate operation until it receives approval from the commissioner.

A. The municipality must notify the commissioner in writing of the initiation of operation date within ten days <u>following initation</u> of ~~initiating~~ operation.

B. The date of initiation of operation is the first day of the one-year performance period.

Subp. 3. **Final inspection.** A final inspection of the treatment facility shall be performed by agency staff when all the construction is complete except for minor weather-related components. The purpose of the inspection is to verify that construction is complete and conforms with the approved plans, specifications, and change orders. A municipality requests that a final inspection be performed when it believes construction is complete.

7077.0440 PROJECT PERFORMANCE.

Subpart 1. [See Repealer.]

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

A. a certification stating whether the project meets the following performance standards:

(1) the project has been completed according to

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approved construction plans and specifications and change orders;

(2) the municipality has a sufficient number of trained and capable personnel to provide adequate operation and maintenance of the project, and the project requires only the operation and maintenance as is outlined as normal and routine in the approved operation and maintenance manual;

(3) the project accepts hydraulic and organic loading to the extent described in the approved design specifications and complies with all NPDES/SDS permit requirements;

(4) industrial wastewater discharges to the treatment works do not interfere with the operation of the project or the disposal or use of municipal sludges;

(5) sludge treatment and disposal is accomplished in conformance with chapter 7040 or parts 7005.2350 to 7005.2400, as applicable; and

(6) the project meets the requirements in the approved plans and specifications for the prevention of contamination of underground drinking water sources beyond the property boundary, if applicable;

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

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

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

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

Subp. 3. **Corrective action report.** If the commissioner or the municipality determines that the project does not meet the project performance standards under subpart 2, item A, the municipality shall:

A. submit within 30 days of the performance

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certification date a corrective action report that includes:

(1) an analysis of the project's failure to meet the performance standards;

(2) an estimate of the nature, scope, and cost of the corrective action necessary to bring the project into compliance; and

(3) a schedule for initiating, in a timely manner, the necessary corrective action work and for meeting the performance certification requirements following a start-up period that is reasonable for the type of corrective action work to be performed; and

B. following the completion of corrective action work, submit a performance certification as specified under subpart 2 according to the schedule in item A, subitem (3).

7077.0445 REQUEST TO WITHHOLD FINANCIAL ASSISTANCE PAYMENTS.

Failure of a municipality's project to conform substantially to approved plans and specifications or failure of a municipality to comply with the requirements of part parts 7077.0430 and 7077.0440 constitutes grounds for the commissioner to request that the authority withhold payments to the municipality. Once an agreement for correcting the condition leading to the withholding of funds is reached between the commissioner and the municipality, the commissioner will recommend to the authority that the retained funds be released according to the provisions in the agreement.

CORRECTIVE ACTION GRANTS PROGRAM

7077.0500 PURPOSE.

The corrective action grants program provides grants according to Minnesota Statutes, section 116.181, to municipalities with wastewater treatment facilities funded under the Clean Water Act, United States Code, title 33, sections 1281 to 1299, or the state independent grants program that are unable to meet performance standards. The grants are for the purpose of correcting performance failures. The program is jointly administered by the Minnesota Pollution Control Agency and the

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Minnesota Public Facilities Authority. The program applies to grants made before, on, or after July 1, 1990. Parts 7077.0500 to 7077.0560 pertain to the agency's responsibilities in administering the program.

7077.0505 DEFINITION.

Subpart 1. to 4. [See Repealer.]

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

7077.0510 ELIGIBILITY FOR PARTICIPATION.

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

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

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

C. The municipality's wastewater treatment facility is unable to meet performance standards and the inability was identified by the commissioner before the end of the one-year performance certification period established by Code of Federal Regulations, title 40, section 35.2218, or part 7077.0250, subpart 2, item B.

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

7077.0515 ELIGIBLE AND INELIGIBLE COSTS.

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

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

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

7077.0525 CONTRACT ASSIGNMENT.

A municipality that enters into a contract with a contractor or engineer for the planning, design, or construction of a part of or an entire wastewater treatment system, to be paid for in whole or in part by state corrective action grant funds, shall provide in the contract that any or all of its rights and duties thereunder may be assigned to the commissioner without the agreement of the contractor or engineer. The assignment may be made by mutual agreement between the municipality and the commissioner or according to an agency assumption of municipal powers under Minnesota Statutes, section 115.48.

7077.0530 CONTRACT BENEFICIARY.

A municipality that enters into a contract with a contractor or engineer for the planning, design, or construction of a part of or an entire wastewater treatment system, to be paid for in whole or in part by state corrective action grant

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funds, shall provide in the contract that the agency is a third-party beneficiary to the contract.

7077.0535 APPLICATION.

Subpart 1. **Agency notification.** After the preapplication items in part 7077.0520 are approved by agency staff, the commissioner shall notify the municipality that it is eligible to apply for a corrective action grant.

Subp. 2. **Application requirements.** The municipality shall apply for a corrective action grant on a form provided by the authority and submit the following information for the commissioner's review and approval:

A. A plan, endorsed by resolution of the municipality's governing body, for recovering the costs of the proposed corrective action from the responsible parties.

B. A report on the current status of negotiations or litigation.

C. A proposed engineering contract that includes, at a minimum, the following provisions:

(1) full-time inspection during construction and written monthly reports submitted to the agency describing the type of construction inspected and the time involved in inspection;

(2) two sets of "as built" plans and specifications on microfiche <u>for submittal to the agency</u>;

(3) preparation of an operation and maintenance manual, if applicable; and

(4) start-up services during the first year of operation, if applicable, including:

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

(b) train or provide for training of operating personnel and prepare necessary curricula and training materials; and

(c) advise the municipality whether the

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project is meeting performance standards.

D. A certificate of adequate errors and omissions insurance carried by the engineering firm.

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

> Corrective action for the facilities described in this grant application has been designed with full knowledge of the effluent limitations required by the Minnesota Pollution Control Agency as set forth in NPDES Permit No. ..... dated ..... It is my judgment and carefully considered opinion that the performance standards required by the Minnesota Pollution Control Agency will be met after the work detailed in the approved corrective action report, dated ....., is completed and that the corrected facilities ~~are~~ will be capable of consistently producing the required effluent quality, provided that the facilities are operated in conformance with the approved operation and maintenance manual and the volume and characteristics of raw wastewater are within the flow data presented in the plans and specifications approved for the original project or in the corrective action report modifications.

F. A treatment agreement with each major contributing industry.

G. A cost breakdown for all project work to be funded by the grant, including separation of grant eligible and ineligible items, in a format provided by the agency.

H. If necessary, a comprehensive legal opinion identifying that the municipality has sufficient legal vested interest in all sites, easements, or rights-of-way to ensure immediate construction and undisturbed use for the estimated life of the facilities.

Subp. 3. **Three copies.** Corrective action grant application forms and attachments, must be submitted in

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triplicate to the authority. At least one set of forms and attachments must contain original signatures.

7077.0540 CERTIFICATION OF APPLICATION FOR AWARD.

Subpart 1. **Priority.** The commissioner shall certify grants to the authority for award in the order that applications that meet the requirements of parts 7077.0520 and 7077.0535 are received and to the extent that funds are available.

Subp. 2. **Amount of award.** Except as provided in part 7077.0560, subpart 3, the amount of the grant will be 80 percent of the total corrective action costs, eligible and ineligible, or the amount of the eligible costs, whichever is less.

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

Subp. 4. **Certification to authority.** Upon review and approval of the documents required under parts 7077.0520 and 7077.0535, the commissioner shall certify to the authority that the project meets the statutory requirements and the requirements of this chapter and is eligible for an award in the amount determined under subpart 2.

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

7077.0545 GRANT AMENDMENTS.

Subpart 1. **Maximum grant amount.** No grant shall be amended to exceed $500,000.

Subp. 2. **After-bid amendments.** A municipality shall submit a written request for an after-bid amendment when construction contracts differ from construction costs estimated in the grant certification. After-bid grant amendments shall be based on the cost of the completed procurement actions and shall be dependent upon the availability of additional grant funds. The commissioner shall certify the amendment to the authority if

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funds are available and the costs are eligible.

Subp. 3. **Final amendment.** A municipality shall submit a written request for a final amendment when construction has been completed. The commissioner shall certify the amendment to the authority if funds are available and the costs are eligible. The amendment shall:

A. be based on the eligible construction costs and change orders approved by the commissioner; and

B. increase the grant amount under part 7077.0515, subpart 3, ~~for administrative, engineering, and legal costs~~ as the amount of grant eligible construction costs increase through approved change orders. ~~This increase may only be used to pay for engineering costs, including inspection, created by work specified on the approved change orders.~~

7077.0550 CHANGE ORDERS.

Subpart 1. **In general.** A change order must be submitted to the commissioner for any change that:

A. alters the design or scope of the project;

B. increases or decreases the contract price;

C. changes the construction completion date;

D. causes a deviation from the approved plans and specifications; or

E. causes a substitution or replacement of equipment, suppliers, or subcontractors.

Subp. 2. **Contents.** Change orders submitted to the commissioner must contain the following:

A. signatures of the municipality's authorized representative, the project engineer, and the contractor;

B. date on which the municipality and the contractor execute the change order;

C. identification of grant eligible and ineligible costs;

D. a complete description and justification of the change;

E. an explanation of why the change was not included

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in the original plans and specifications and contractor's bid;

F. a detailed cost breakdown for the change from the contractor showing the costs of materials, labor, overhead, and profit; and

G. a cost estimate for the change from the project engineer and an analysis of any differences between the engineer's estimate and the contractor's cost breakdown. If the project engineer's estimate differs from the contractor's price by more than ten percent, an explanation of how the costs were agreed to is required.

Subp. 3. **Eligible costs.** The following costs associated with approved change orders are eligible for grant assistance:

A. construction costs resulting from defects in the plans and specifications that would have been eligible and would have been incurred if the plans and specifications had been free of the defects, excluding the costs of any rework, redesign, restocking, small tools, supervision, delay, acceleration, or disruption caused by the defects;

B. costs, determined by the commissioner to be the result of unanticipated site conditions;

C. combined profit and overhead costs for the contractor or subcontractor that actually performs the change order work not exceeding 15 percent of the costs of materials and labor; and

D. combined profit and overhead costs for a contractor or subcontractor that administers the change order but does not actually perform the change order work not exceeding five percent of the costs of materials and labor.

Subp. 4. **Approval of change orders.** Approval of change orders is required as follows:

A. Proposed changes that substantially alter the type of treatment process, or its efficiency, versatility, or reliability, must be submitted to the commissioner for prior approval.

B. Change orders not requiring the commissioner's prior approval under item A must be submitted to the

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commissioner for review and approval within one month after the date on which the municipality, its engineer, or other authorized agent, and the contractor execute the change order.

C. Proposed changes described in item A do not require prior written approval from the commissioner when the work is agreed by the commissioner to be of an emergency nature.

7077.0555 PAYMENTS.

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

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

A. The municipality must submit a quarterly summary of actions taken to recover corrective action costs from or to complete needed corrective work by the responsible parties.

B. The municipality must support claims of incurred administration, legal, and engineering costs specified under part 7077.0515 with documentation.

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

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

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

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

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

7077.0560 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 before corrective action grant award.** In the event that the municipality recovers an amount of money from the responsible persons before the corrective action grant is awarded, the amount of the award shall be determined by subtracting the amount recovered for grant eligible work from the total eligible costs determined under part 7077.0515.

Subp. 3. **Recovery after corrective action grant award.** In the event that the municipality recovers an amount of money from the responsible persons after the corrective action has been awarded, the grant will be amended by subtracting the amount recovered for grant eligible work from the total eligible costs determined under part 7077.0515. If corrective action grant funds have been paid to the municipality in excess of the amended grant amount, the municipality shall repay the excess amount to the state.

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

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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.

CAPITAL COST COMPONENT GRANT PROGRAM

7077.0600 PURPOSE.

The capital cost component grant program provides grants to municipalities for part of the capital cost component of the service fee under a service contract with a private vendor to construct and operate wastewater treatment facilities according to the provisions of Minnesota Statutes, section 116.18, subdivision 3b. The program is jointly administered by the Minnesota Pollution Control Agency and the Minnesota Public Facilities Authority. The program applies to grants made before, on, or after July 1, 1990. Parts 7077.0600 to 7077.0660 provide for the agency's responsibilities for the administration of the program.

7077.0605 DEFINITIONS.

Subpart 1. **Scope.** For the purpose of parts 7077.0600 to 7077.0660, the following terms have the meanings given them.

Subp. 2. to 4. [See Repealer.]

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

Subp. 6. [See Repealer.]

Subp. 7. **Project.** "Project" means the work for which a grant or grant amendment is awarded under parts 7077.0600 to

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7077.0660.

7077.0615 GRANT APPLICATIONS.

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

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

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

B. an engineering report containing:

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

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

(3) the municipality's existing wastewater flows and loadings data on a form provided by the agency; and

(4) the municipality's estimated future wastewater flows and loadings data on a form provided by the agency;

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

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

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

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

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application closing date.

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

7077.0630 CERTIFICATION OF AWARD.

The commissioner shall certify to the authority the list of projects to be awarded grants and the amount of the grant to be awarded based on the criteria in parts 7077.0620 and 7077.0625.

7077.0635 PLANS AND SPECIFICATIONS.

Subpart 1. **In general.** A municipality must submit plans and specifications to the commissioner for review and approval according to part 7077.0640, subpart 2, item A.

Subp. 2. **Contents.** A complete set of plans and specifications must include:

A. drawings and specifications signed by a professional engineer registered in Minnesota;

B. a summary of design parameters for the treatment units;

C. a summary of flow conditions for average dry weather, average wet weather, maximum wet weather, peak hourly and instantaneous wet weather on a form provided by the agency;

D. a hydraulic profile of the flow through the treatment system; and

E. a plan for interim treatment during construction.

7077.0640 GRANT CONDITIONS.

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

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

A. Within 365 days after the grant award date, the

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

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

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

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

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

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

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

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

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grounds for the commissioner to request that the authority terminate the grant of a grantee.

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

7077.0650 GRANT PAYMENT.

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

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

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

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

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

(3) submission of a certification of compliance with all grant conditions in part 7077.0640, subpart 2;

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

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

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

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

(2) submission of a certification that the

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project is capable of accepting hydraulic and organic loadings to the extent designed for in the approved plans and specifications; and

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

Subp. 3. **Verification of compliance.** Before a grant payment is made, the commissioner shall verify that the grantee has complied with part 7077.0630 and with the grantee's permit conditions.

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

7077.0655 TERMINATION OF GRANT.

Failure of the grantee to comply with part 7077.0640 shall constitute grounds for the commissioner to recommend that the authority terminate the grant of a grantee.

INDIVIDUAL ON-SITE WASTEWATER TREATMENT SYSTEMS GRANTS PROGRAM

7077.0700 PURPOSE.

The individual on-site wastewater treatment systems grants program provides grants to municipalities to assist owners of individual on-site wastewater treatment systems to upgrade or replace their failed systems according to the provisions of Minnesota Statutes, section 116.18, subdivision 3c. The program is jointly administered by the Minnesota Pollution Control Agency and the Minnesota Public Facilities Authority. The program applies to grants awarded before, on, or after July 1, 1990. Parts 7077.0700 to 7077.0765 provide for the agency's responsibilities for the administration of the program.

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7077.0705 DEFINITIONS.

Subpart 1. **Scope.** For the purpose of parts 7077.0700 to 7077.0765, the following terms have the meanings given them.

Subp. 2. **Abatement notice.** "Abatement notice" means an official document issued by the municipality to the owner of an individual on-site wastewater treatment system stating that the owner is in violation of the municipality's ordinance that adopts the requirements of chapter 7080. The abatement notice must include a citation to the ordinance alleged to have been violated.

Subp. 3. to 5. [See Repealer.]

Subp. 6. **Construction cost.** "Construction cost" means the cost of the materials, labor, overhead, and profit necessary for installation, construction, and repair of an individual on-site wastewater treatment system established by a contract between a system owner and a system installer.

Subp. 7. **Designer.** "Designer" means a person who designs individual on-site wastewater treatment systems, and has received agency approval under part 7077.0720.

Subp. 8. **Dwelling.** "Dwelling" means any building or place used or intended to be used by human occupants as a single family or two family unit.

Subp. 9. **Failed system.** "Failed system" means a wastewater treatment system that has been issued an abatement notice by the municipality's inspector.

Subp. 10. **Individual on-site wastewater treatment system or individual system.** "Individual on-site wastewater treatment system" or "individual system" means a wastewater treatment system, or part of a system, serving one or two dwellings or other establishments, that uses subsurface soil treatment and disposal.

Subp. 11. **Inspector.** "Inspector" means a person employed by or under contract to the municipality who inspects individual on-site wastewater treatment systems for conformance with the ordinance that adopts the requirements of chapter 7080, and has

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received agency approval under part 7077.0720.

Subp. 12. **Installer.** "Installer" means a person who constructs or repairs individual on-site wastewater treatment systems, and has received agency approval under part 7077.0720.

Subp. 12a. **Maintenance plan.** "Maintenance plan" means a plan developed and administered by a municipality that demonstrates how the maintenance requirements of chapter 7080 will be implemented and enforced.

Subp. 13. **Median household income.** "Median household income" means the income data named "median household income" from the most recent decennial census of the United States.

Subp. 14. **Mound system.** "Mound system" means a system for which the soil treatment area is built above the naturally occurring soil surface to overcome limits imposed by proximity to water table or bedrock, or by rapidly or slowly permeable soils.

Subp. 15. [See Repealer.]

Subp. 16. **Other establishment.** "Other establishment" means a public or private structure other than a dwelling that generates wastewater.

Subp. 17. **Seasonal residence.** "Seasonal residence" means a dwelling used for less than 182 days of a calendar year by a single family or household. Second homes, vacation residences, and recreation residences are included in this definition.

Subp. 18. **Site evaluator.** "Site evaluator" means a person who investigates soils and site characteristics, does soil borings or percolation tests for use in designing individual on-site wastewater treatment systems, and has received agency approval under part 7077.0720.

Subp. 19. **Trench or bed system.** "Trench or bed system" means an individual wastewater treatment system employing a building sewer, sewage tank, and the soil treatment system consisting of trenches or a seepage bed constructed below the original soil surface.

7077.0710 ELIGIBILITY.

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Subpart 1. **Municipality eligibility.** A municipality applying for the individual system owners must meet the following conditions to be eligible for a grant:

A. be authorized by its governing body to assume responsibility for the grant application and related documents for owners of individual on-site wastewater treatment systems who are in its jurisdiction and included in the planning area under part 7077.0715, subpart 2;

B. have developed and adopted a wastewater treatment plan under part 7077.0715;

C. have enacted and be enforcing an ordinance that adopts the requirements of chapter 7080, Individual Sewage Treatment Systems Standards; and

D. have enacted an ordinance that establishes a maintenance plan for the individual on-site wastewater treatment systems in its jurisdiction.

Subp. 2. **Individual system eligibility.** The individual systems to be replaced or upgraded included in the municipality's grant application must meet the following conditions:

A. be a failed system;

B. have been constructed before January 1, 1977;

C. not be serving a seasonal residence; and

D. not have been constructed with state or federal water pollution control funds.

Subp. 3. **Previous funding.** Individual systems located in geographic areas that were included in planning areas of projects previously funded with state or federal water pollution control funds are not eligible for funding under this part.

7077.0715 WASTEWATER TREATMENT PLAN.

Subpart 1. **General requirements.** The municipality must develop a wastewater treatment plan that identifies wastewater treatment needs and proposes long-term solutions for a planning area under subpart 2. The plan must be adopted by the municipality's governing body.

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Subp. 2. **Planning area.** The planning area is the entire geographic area in the municipality's jurisdiction unless the municipality submits an alternative proposal before application. Alternative proposals must be approved by the commissioner and will be evaluated based on housing density, water quality impact, and public health impact. Separate dwellings that do not form a contiguous area are not considered a planning area.

Subp. 3. **Plan contents.** The plan must include the following:

A. a planning area survey prepared by an inspector that identifies all systems in the planning area as failed systems or systems in compliance with chapter 7080;

B. site evaluations, including soil investigations, soil borings, and percolation tests, for the failed systems identified in item A prepared by a site evaluator or site evaluators and a determination if it is feasible to replace or upgrade the failed systems on site;

C. an analysis of the overall wastewater treatment needs in the planning area, including sizing and the location of the proposed systems, prepared by a designer using data from the site evaluations prepared under item B;

D. a list of the specific failed individual on-site wastewater treatment systems, including addresses and names of property owners requesting grant funds and copies of the abatement notices;

E. a proposal for addressing the remaining wastewater treatment needs in the planning area not covered in item D, including specific actions to be taken and a proposed timetable for addressing the wastewater treatment needs; and

F. documentation of approval of the inspector, site evaluator or site evaluators, and designer under part 7077.0720.

Subp. 4. [See Repealer.]

7077.0720 APPROVAL OF INDIVIDUAL ON-SITE WASTEWATER TREATMENT PERSONNEL.

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Subpart 1. **General requirement.** For the purposes of parts 7077.0700 to 7077.0765, inspectors, site evaluators, designers, and installers who inspect, evaluate sites for, design, and install individual on-site wastewater treatment systems under those parts must be approved by the commissioner under subpart 2 or 3.

Subp. 2. **First alternate approval criteria.** A person referred to in subpart 1 will be approved by the commissioner if the person is fully certified by the agency through the individual sewage treatment systems certification program administered by the agency in cooperation with the Individual Sewage Treatment Systems Advisory Committee established under part 7080.0100. Approval is automatic upon submittal of certification number.

Subp. 3. **Second alternate approval criteria.** A person referred to in subpart 1 may apply for approval under this subpart by submitting an application provided by the commissioner upon request. An applicant will be approved by the commissioner if the applicant meets the requirements of items A and B.

A. An applicant must demonstrate knowledge by scoring a minimum of 70 percent correct on an examination based on chapter 7080 and administered by the commissioner.

B. An applicant must document experience by completing the following requirements:

(1) An inspector must submit a list of individual on-site wastewater treatment systems inspected by the applicant in the past three years. The inspector must certify that a minimum of 30 systems, or parts of systems, listed conform with the criteria in chapter 7080.

(2) A site evaluator must submit a list of individual on-site wastewater treatment systems for which the evaluator has conducted site evaluations in the past three years. The site evaluator must certify that a minimum of 20 sites for the systems listed were evaluated according to the criteria in chapter 7080.

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(3) A designer must submit a list of individual on-site wastewater treatment systems designed by the applicant in the past three years. The designer must certify that a minimum of 20 systems listed were designed according to the criteria in chapter 7080.

(4) An installer must submit a list of individual on-site wastewater treatment systems constructed or repaired by the applicant in the past three years. The installer must certify that a minimum of ten systems listed were constructed or repaired according to the criteria in chapter 7080.

Subp. 4. **Notification of approval.** The commissioner will approve or deny an application within 30 days of the receipt of information required under subpart 3. Applicants may reapply at any time.

Subp. 5. **Purpose of agency approval.** Agency approval of inspectors, site evaluators, designers, and installers is for grant funding purposes only. This approval does not make the agency responsible for the technical adequacy of the work of inspectors, site evaluators, designers, and installers nor does it alter legal liability of this personnel otherwise provided by law.

7077.0725 APPLICATION.

Subpart 1. **Notice of taking applications.** The commissioner will request the authority to publish in the State Register a notice that applications for individual on-site wastewater treatment grants will be accepted by the authority. The application closing date will be established by the commissioner, and will be no less than 120 days after the publication date.

Subp. 2. **Application requirements.** The municipality must apply for a grant on a form provided by the commissioner. The municipality must submit to the authority the following information with the application:

A. a resolution of the governing body of the municipality that designates the municipality as the responsible

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party for the grant application and related documents, authorizes the filing of the application, and designates the municipal official authorized to sign the application and related documents;

B. the wastewater treatment plan prepared under part 7077.0715;

C. a copy of the ordinance that adopts the requirements of chapter 7080 and certification that the ordinance is being enforced;

D. a copy of the ordinance establishing a maintenance plan under part 7077.0710, item D;

E. alternative median household income data under part 7077.0710, item E, for municipalities and planning areas not included in the decennial census;

F. signed statements from the individual system owners stating that their system meets the following conditions:

(1) the system to be replaced or upgraded was constructed before January 1, 1977;

(2) the system to be replaced or upgraded was not constructed with funds from state or federal water pollution control funds; and

(3) the system to be replaced or upgraded does not serve a seasonal residence;

G. the municipality's estimated date for the completion of all construction and final request for payment for the grant eligible systems; and

H. a statement from the municipality that it has an inspector on staff or under contract for services, including documentation of approval under part 7077.0720.

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

Subp. 4. **Application closing date.** The application must be postmarked by the noticed application closing date.

Subp. 5. **Incomplete applications.** Municipalities that

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submit applications that do not include the information required in subparts 2 and 3 or that are not submitted by the application closing date are ineligible for funding. The municipalities may reapply in a later application period.

7077.0730 ELIGIBLE COSTS.

Subpart 1. **Eligible costs.** Only the actual construction costs of upgrading or replacing failed individual on-site wastewater treatment systems that have been identified under part 7077.0715, subpart 3, item D, are eligible.

Subp. 2. **Ineligible costs.** All nonconstruction costs including planning, engineering and design, site evaluation and soil investigation, inspection, and administrative costs are ineligible.

Subp. 3. **Number of systems limitation.** The eligibility of costs for a treatment site is limited to either a trench or bed system or a mound system under part 7077.0735, subpart 1.

Subp. 4. **Costs incurred before grant award.** An owner may incur costs before the award of the grant and retain eligibility for reimbursement of eligible costs if the following conditions are met:

A. the municipality has developed and adopted a wastewater treatment plan as described in part 7077.0715 before construction costs are incurred by the owner of the individual system;

B. the owner's system is specifically identified on the municipality's wastewater treatment plan; and

C. the municipality submits a complete and timely application, during the first noticed application period under part 7077.0725, subpart 1, following the adoption of the wastewater treatment plan.

7077.0735 AMOUNT OF GRANT AWARD.

Subpart 1. **Grant amount.** The amount of the grant will be 50 percent of the actual eligible costs under part 7077.0730 up to a maximum grant of $2,500 per household for a trench or bed system and $3,750 per household for a mound system.

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Subp. 2. **Partial awards.** A municipality that receives only a part of the grant to which it is entitled, due to the limitation of funding, will be entitled to receive a grant amendment in the next year or years, if individual on-site wastewater treatment systems grant funding is available, until the full amount of the grant is awarded.

7077.0740 PRIORITY RANKING.

Municipalities that meet the requirements of parts 7077.0710 to 7077.0725 will be ranked for funding priority from lowest median household income to highest median household income, with the lowest median household income receiving the highest priority. Median household income is that established for the planning area identified under part 7077.0715, subpart 2. Planning areas not included in the decennial census shall submit a median household income figure for the planning area supported by complete income data and a computation methodology. If the data is complete and the computation methodology is equivalent to the decennial census, the median household income will be approved by the commissioner.

7077.0755 PAYMENTS.

Subpart 1. **Request for payments.** A municipality must submit payment requests to the authority on a form provided by the authority.

Subp. 2. **Schedule of payments.** Payments may be requested monthly as construction on individual systems is completed and approved by the inspector.

Subp. 3. **Documentation.** Before payment of any part of the grant is made, the municipality must submit copies of the following documents for each individual system:

A. invoices documenting incurred construction costs;

B. documentation that the system was designed by a designer using data from a site evaluator;

C. documentation that the system was upgraded or replaced by an installer; and

D. documentation that the system was inspected and

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approved by the municipality's inspector.

Subp. 4. **Certification of payment.** Within 30 days of agency receipt of payment request, the commissioner will determine whether payment will be made. If the commissioner determines that payment will not be made, the commissioner will advise the municipality of the deficiencies in the request. If the commissioner determines that payment conditions have been met, the commissioner will certify to the authority that payment should be made.

7077.0765 SUBSEQUENT GRANTS.

A municipality awarded a grant from the individual on-site wastewater treatment systems grants program is not eligible for additional funding under the program established by the 1972 Federal Water Pollution Control Act amendments or the state independent grants program, including the individual on-site wastewater treatment systems grants program, unless the municipality is applying for a project that serves a planning area that was not included, under part 7077.0715, subpart 2, in the awarded grant.

PROCEDURAL REQUIREMENTS

7077.2000 DISPUTES.

A municipality adversely affected by an action of agency staff may request a review of the action. A request for review of the action must be submitted in writing to the commissioner by the municipality within 45 days of the date of notification of a final decision made by agency staff.

7077.2005 PROCEDURAL RULES AND APPEALS.

A request for a hearing, an appeal, or other procedural matter not specifically provided for in this chapter is governed by the agency rules of procedure, the rules of the Office of Administrative Hearings, and other applicable laws.

7077.2010 VARIANCES.

A person may apply for a variance from any requirement of parts in this chapter. The variance shall be applied for and

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acted upon by the agency according to Minnesota Statutes, section 116.07, subdivision 5, and other applicable statutes and rules.

REPEALER. Minnesota Rules, parts 7075.1010, subparts 1, 2, 3, and 4; 7075.1060, subparts 3 and 5; 7075.1110, subparts 2, 3, 4, and 6; 7075.1410, subparts 3, 4, 5, and 15; 7075.1430, subpart 4, 7075.2510; 7075.2540, subpart 2; 7075.2545, subpart 1, are repealed.

RENUMBER. In the next edition of Minnesota Rules, renumber the parts in column A with the corresponding part numbers in column B.

A	B
7075.1005	7077.0500
7075.1010	7077.0505
7075.1020	7077.0510
7075.1030	7077.0515
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7075.1060	7077.0540
7075.1070	7077.0550
7075.1080	7077.0555
7075.1090	7077.0560
7075.1105	7077.0600
7075.1110	7077.0605
7075.1115	7077.0610
7075.1120	7077.0615
7075.1125	7077.0620
7075.1130	7077.0625
7075.1135	7077.0630
7075.1140	7077.0640
7075.1145	7077.0645
7075.1150	7077.0650
7075.1155	7077.0655
7075.1160	7077.0660
7075.1400	7077.0700
7075.1410	7077.0705
7075.1420	7077.0710
7075.1430	7077.0715
7075.1440	7077.0720
7075.1450	7077.0725
7075.1460	7077.0730
7075.1470	7077.0735
7075.1480	7077.0740
7075.1490	7077.0745
7075.1500	7077.0750
7075.1510	7077.0755
7075.1520	7077.0760
7075.1530	7077.0765
7075.2505	7077.0400
7075.2515	7077.0405
7075.2520	7077.0410
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7075.2535	7077.0425
7075.2540	7077.0430
7075.2545	7077.0440

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1 7075.2550 7077.0445

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Office of the Revisor of Statutes

Administrative Rules

TITLE: Adopted Permanent Rules Relating to Municipal Wastewater Treatment Construction Assistance Programs

AGENCY: Pollution Control Agency

MINNESOTA RULES: Chapters 7075 and 7077

The attached rules are approved for
filing with the Secretary of State

Carla M. Riehle
Assistant Revisor

STATE OF MINNESOTA
COUNTY OF RAMSEY

MINNESOTA POLLUTION
CONTROL AGENCY

Proposed Rules Governing the Administration of the State Independent Grants Program, Combined Sewer Overflow Abatement Grants Program, and Water Pollution Control Revolving Fund Program, Minnesota Rules Parts 7075.0100, 7075.1005 through 7075.1530, 7075.2505 through 7075.2550 and chapter 7077.

Notice of Intent to Adopt Rules Without a Public Hearing and Intent to Adopt Rules With Public Hearing Upon Receiving 25 or More Requests

(1) 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 in Minn. Stat. sections 14.22 to 14.28 (1988). The Agency's authority to adopt the rule is set forth in Minn. Stat. section 116.07, subd. 3 (1988).

(2) All persons have until 4:30 p.m. on March 28, 1990, to submit comments in support of or in opposition to the proposed rules or any part or subpart of the rules. Comment is encouraged. (3) Each comment should identify the portion of the proposed rules addressed, the reason for the comment, and any change proposed.

Any person may also make a written request for a public hearing on the rules within the comment period. (4) 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. (7) 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.

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

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

If 25 or more requests for a public hearing are received, a hearing will be held pursuant to Minnesota Statute Section 14.14, subdivision 1, beginning on Wednesday, April 4, at 10:00 a.m. in the 5th floor conference rooms of the Minnesota Pollution Control Agency, at the above address. The hearing will continue at the following times and locations:

1. Monday, April 9, 1990, 7:00 p.m.
   Mankato State University
   Student Union, Room 203
   Mankato, Minnesota

2. Wednesday, April 11, 1990, 7:00 p.m.
   Meeting Room 1
   Crow Wing County Services Building
   Laurel Street behind the Court House
   Brainerd, Minnesota

If necessary, the hearing will continue on additional days at times and places determined during the hearing. All interested or affected persons would have an opportunity to participate.

A free copy of the proposed rules is available from Debbie Olson at the address and telephone number listed above. The proposed rules may be modified without a public hearing 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.

Minn. Rules chapter 7075 currently provides for the administration of the federal and state financial assistance programs available to municipalities with an environmental need to construct or upgrade a wastewater treatment facility. The federal government's plan to eliminate assistance funds after July 1, 1990 prompted the Agency to propose rule changes under a new chapter, Chapter 7077. Chapter 7077 nearly mirrors Chapter 7075 in administrative procedures, but does not include the federal Construction Grants Program or federal rule and regulation references. The proposed rules under Chapter 7077 also reflect the responsibilities assumed by the Public Facilities Authority on July 1, 1988 to award grants and to make payments under the State Independent Grants Program. State Independent, State Match, and Construction Grants awarded before July 1, 1990, will continue to be administered under Chapter 7075.

A Statement of Need and Reasonableness (SONAR) includes a summary of all the evidence and argument justifying both the need for and the reasonableness of the proposed rules and identifies the data and information relied upon during the preparation of the proposed rule. Copies of the SONAR may be reviewed at the Agency offices or at the Office of Administrative Hearings and copies may be obtained from the Office of Administrative Hearings at the cost of reproduction.

You are hereby advised, pursuant to Minn. Stat. § 14.115 (1988), "Small business considerations in rulemaking," that the proposed rules will affect small businesses by offering business opportunities in the planning, design, and construction of wastewater treatment facilities. Without the assistance programs, many of the facilities being built would have to be delayed indefinitely due to the financial burden the cost would place on local governments. The proposed rules do not impose any particular or unreasonable requirements on small businesses.

IF NO HEARING IS REQUIRED, this fact will be included in the rule adoption notification published by the Agency in the State Register. 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 rule as adopted, must submit a written request to Debbie Olson.

IF A HEARING IS REQUIRED, it will proceed in accordance with Minn. Stat., §§ 14.14 to 14.20 and Minn. Rules pts. 1400.0200 to 1400.1200. Questions about these procedures may be directed to Administrative Law Judge Allen Giles, Office of Administrative Hearings, 5th floor Flour Exchange Building, 310 4th Avenue South, Minneapolis, Minnesota 55415, telephone (612)349-2543. The proposed rules are subject to change as a result of the rule hearing process.

All interested or affected persons will have an opportunity to participate in the hearing by asking questions about the SONAR and by presenting oral and written comments about the proposed rules. Comments are most helpful if the commenters identify with particularity each provision of

the proposed rules that is supported or objected to and if the comments suggest specific alternative language to what is proposed and provide the reasons and data that support the proposed modifications.

Written material may be submitted and recorded in the hearing record for five working days after the public hearing ends, or for a longer period not to exceed 20 calendar days if ordered by the administrative law judge at the hearing. Written material received during this period shall be available for review at the office of administrative hearings. The Agency and interested persons may respond to any new information that is submitted. Response must be made in writing within three business days after the submission period ends. No additional evidence may be submitted during this three-day comment period.

Any person may request notification of the date on which the administrative law judge's report will be available, after which date the Agency may not take any final action on the rules for a period of five working days. If you desire to be so notified, you may so indicate at the hearing. After the hearing, you may request notification by sending a written request to the administrative law judge. Any person may request notification of the date on which the rules were adopted and filed with the secretary of state. The notice must be mailed on the same day that the rules are filed. If you want to be so notified you may so indicate at the hearing or send a request in writing to the Agency at any time prior to the filing of the rules with the secretary of state.

Lobbyists must register with the State Ethical Practices Board within five working days after s/he commences lobbying, as required by Minn. Stat. ch. 10A. A lobbyist is defined in Minn. Stat. § 10A.01, subd. 11, as any individual:

a) engaged for pay or other consideration, or authorized by another individual or association to spend money, who spends more than five hours in any month or more than $250, not including travel expenses and membership dues, in any year for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials; or

b) who spends more than $250, not including traveling expenses and membership dues, in any year for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials.

The statute provides certain exceptions. Questions should be directed to the Ethical Practices Board, 41 State Office Building, Saint Paul, Minnesota 55155, telephone (612)296-5615.

Date: 2-16-90

Gerald L. Willet
Commissioner

State of Minnesota

STATE REGISTER

Department of Administration—Print Communications Division

Rules edition

Published every Monday

26 February 1990

Volume 14, Number 35

Pages 2075-2146

STATE REGISTER

Judicial Notice Shall Be Taken of Material Published in the *State Register*

The *State Register* is the official publication of the State of Minnesota, containing executive and commissioners' orders, proposed and adopted rules, official notices, state and non-state contracts, contract awards, grants, supreme court and tax court decisions, and a monthly calendar of cases to be heard by the state supreme court.

***A Contracts Supplement* is published every Thursday and contains additional state contracts and advertised bids, and the most complete source of state contract awards available in one source.**

Printing Schedule and Submission Deadlines

Vol. 14 Issue Number	*Submission deadline for Adopted and Proposed Rules, Commissioners' Orders**	*Submission deadline for Executive Orders, Contracts, and Official Notices**	Issue Date
35	Monday 12 February	Friday 16 February	Monday 26 February
36	Friday 16 February	Monday 26 February	Monday 5 March
37	Monday 26 February	Monday 5 March	Monday 12 March
38	Monday 5 March	Monday 12 March	Monday 19 March

*Deadline extensions may be possible at the editor's discretion; however, none will be made beyond the second Wednesday (12 calendar days) preceding the issue date for rules, proposed rules and executive orders, or beyond the Wednesday (5 calendar days) preceding the issue date for official notices. Requests for deadline extensions should be made only in valid emergency situations.

**Notices of public hearings on proposed rules and notices of intent to adopt rules without a public hearing are published in the Proposed Rules section and must be submitted two weeks prior to the issue date.

Instructions for submission of documents may be obtained from the *State Register* editorial offices, 504 Rice Street, St. Paul, Minnesota 55103, (612) 296-4273.

The *STATE REGISTER* is published every Monday (Tuesday when Monday is a holiday) by the State of Minnesota, Department of Administration, Print Communications Division, 117 University Avenue, St. Paul, Minnesota 55155, pursuant to *Minnesota Statutes* § 14.46. A *STATE REGISTER Contracts Supplement* is published every Thursday. The Monday edition is the vehicle for conveying all information about state agency rulemaking, including official notices; hearing notices; proposed, adopted and emergency rules. It also contains executive orders of the governor; commissioners' orders; state contracts and advertised bids; professional, technical and consulting contracts; non-state public contracts; state grants; decisions of the supreme and tax courts; a monthly calendar of scheduled cases before the supreme court; and other announcements. The Thursday edition contains additional state contracts and advertised bids, and the most complete listing of contract awards available in one source.

In accordance with expressed legislative intent that the *STATE REGISTER* be self-supporting, the following subscription rates have been established: the Monday edition costs $130.00 per year and includes an index issue published in August (single issues are available at the address listed above for $3.50 per copy); the combined Monday and Thursday editions cost $195.00 (subscriptions are not available for just the *Contracts Supplement*); trial subscriptions are available for $60.00, include both the Monday and Thursday edition, last for 13 weeks, and may be converted to a full subscription anytime by making up the price difference. No refunds will be made in the event of subscription cancellation.

Both editions are delivered postpaid to points in the United States, second class postage paid for the Monday edition at St. Paul, MN, first class for the Thursday edition. Publication Number 326630 (ISSN 0146-7751).

Subscribers who do not receive a copy of an issue should notify the *STATE REGISTER* circulation manager immediately at (612) 296-0931. Copies of back issues may not be available more than two weeks after publication.

Rudy Perpich, Governor
Sandra J. Hale, Commissioner
Department of Administration

Stephen A. Ordahl, Director
Print Communications Division
Robin PanLener, Editor

Paul Hoffman, Assistant Editor
Debbie George, Circulation Manager
Bonita Karels, Staff Assistant

FOR LEGISLATIVE NEWS

Publications containing news and information from the Minnesota Senate and House of Representatives are available free to concerned citizens and the news media. To be placed on the mailing list, write or call the offices listed below:

SENATE

Briefly-Preview—Senate news and committee calendar; published weekly during legislative sessions.

Perspectives—Publication about the Senate.

Session Review—Summarizes actions of the Minnesota Senate.

Contact: Senate Public Information Office
Room 231 State Capitol, St. Paul, MN 55155
(612) 296-0504

HOUSE

Session Weekly—House committees, committee assignments of individual representatives; news on committee meetings and action. House action and bill introductions

This Week—weekly interim bulletin of the House.

Session Summary—Summarizes all bills that both the Minnesota House of Representatives and Minnesota Senate passed during their regular and special sessions.

Contact: House Information Office
Room 175 State Office Building, St. Paul, MN 55155
(612) 296-2146

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NOTICE: How to Follow State Agency Rulemaking in the *State Register*

The ***State Register*** is the official source, and only complete listing, for all state agency rulemaking in its various stages. State agencies are required to publish notice of their rulemaking action in the ***State Register***. Published every Monday, the ***State Register*** makes it easy to follow and participate in the important rulemaking process. Approximately 75 state agencies have the authority to issue rules. Each agency is assigned specific ***Minnesota Rule*** chapter numbers. Every odd-numbered year the ***Minnesota Rules*** are published. This is a ten-volume bound collection of all adopted rules in effect at the time. Supplements are published to update this set of rules. Proposed and adopted emergency rules do not appear in this set because of their short-term nature, but are published in the ***State Register***.

If an agency seeks outside opinion before issuing new rules or rule amendments, it must publish a NOTICE OF INTENT TO SOLICIT OUTSIDE OPINION in the ***Official Notices*** section of the ***State Register***. When rules are first drafted, state agencies publish them as **Proposed Rules**, along with a notice of hearing, or notice of intent to adopt rules without a hearing in the case of noncontroversial rules. This notice asks for comment on the rules as proposed. Proposed emergency rules and withdrawn proposed rules are also published in the ***State Register***. After proposed rules have gone through the comment period, and have been rewritten into their final form, they again appear in the ***State Register*** as **Adopted Rules**. These final adopted rules are not printed in their entirety in the ***State Register***, only the changes made since their publication as Proposed Rules. To see the full rule, as adopted and in effect, a person simply needs two issues of the ***State Register***, the issue the rule appeared in as proposed, and later as adopted. For a more detailed description of the rulemaking process, see the ***Minnesota Guidebook to State Agency Services.***

The ***State Register*** features partial and cumulative listings of rules in this section on the following schedule: issues 1-13 inclusive; issues 14-25 inclusive; issue 26, cumulative for issues 1-26; issues 27-38 inclusive; issue 39, cumulative for 1-39; issues 40-51 inclusive; and issue 52, cumulative for 1-52. An annual subject matter index for rules appears in August. For copies of the ***State Register***, a subscription, the annual index, the ***Minnesota Rules*** or the ***Minnesota Guidebook to State Agency Services***, contact the Print Communications Division, 117 University Avenue, St. Paul, MN 55155 (612) 297-3000 or toll-free in Minnesota 1-800-9747.

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4715.0100; .0200; .0310; .0320; .0420; .0500; .0520; .0580; .0620; .0800; .0805; .0810; .0820; .0860; .1220; .1240; .1260; .1300; .1305; .1380; .1440; .1590; .1930; .1940; .1941; .2020; .2100; .2110; .2120; .2163; .2190; .2230; .2260; .2440 (proposed) 1591
4715.2130; .2140; .3900; .4000 (proposed repealer) 1591
4717.4600-.5300 (repealed) 1874
4740.2010-.2040 (adopted) 1874

Higher Education Coordinating Board

4830.0100; .0200; .0300; .0400; .0500; .0600; .0700; .1550; .1551; .1552; .1553; .1554; .1555; .2100; .2200; .2300; .2500; .2600; 4850.0010; .0011; .0012; .0014; .0015; .0016; .0017; .0018 (proposed) 1860
4830.0400 s.2; .3000; .3100; .3200; .3300; .3400 (proposed repealer) 1860
4840.0400 (adopted) 1968

Housing Finance Agency

4900.0010; .2200-.2270 (proposed) 1745
4900.0010; .2300-.2340 (proposed) 1747
4900.0920 (proposed) 1750
4900.1300; .1315; .1331; .1345; .1359; .1375; .1390 (proposed) 1870
4900.1310; .1320; .1330; .1340; .1350; .1360; .1361; .1362 (proposed repealer) 1870
4900.1520; .1574; .1580 (proposed) 1794
4900.2400-.2600 (proposed) 1751

Labor & Industry Department

5205.0010 (proposed) 1646
5205.0010 (adopted) 2130
5205.0680 (repealed) 2130
5217.0010-.0280 (repealed) 1969
5230.0040; .0080; .0110; .0130 (adopted) 1877
5230.0110 s.1-2 (repealed) 1877

Mediation Services Bureau

5510.0510; .1410; .1510; .1910; .2810 (proposed) 2081

Medical Examiners Board

5620.0100-.0160 (adopted) 1774

Natural Resources Department

6100.0100; .0200; .0300; .0400; .0500; .0600; .0700; .0800; .0900; .1000; .1100; .1200; .1300; .1400; .1500; .1600; .1700; .1710; .1800; .1910; .1920; .2000; .2100; .2200; .2300; .2400 (proposed) 1798
6105.0330 (proposed) 1873
6120.2800 (adopted) 1718

Pollution Control Agency

7001.0520; 7045.0020; .0102; .0120; .0125; .0214; .0219; .0665;.0692; .0695 (adopted) 1718
7002.0010; .0020; .0030; .0050; .0060; .0070; .0080; .0100; (adopted) 1878
7002.0020 s.2,4,5,7 (repealed) 1878
7002.0310 (adopted) 1878
7045.0100; .0125 s.10, 11 (repealed) 1718
7050.0150; .0180; .0185; .0210; .0211; .0212; .0214; .0218; .0220; .0460; .0470 (proposed) 1662
7050.0210 s.14 (proposed repealer) 1662
7075.0100 (proposed) 2084
7075.1005-.2550 renumbered to 7077.0500-.0445 (proposed) . 2084
7075.1010 s.1,2,3,4; .1060 s.3,5; .1110 s.2,3,4,6; .1410 s.3,4,5,15; .1430 s.4; .2510; .2540 s.2; .2545 s.1 (proposed repealer) 2084
7077.0100-.2010 (proposed) 2084
7105.0010; .0020; .0030; .0040; .0050; .0060; .0070; .0080; .0090; .0100; .0110; .0120; .0130 (adopted) 1718

Public Safety Department

7411.0100; .0200; .0300; .0400; .0510; .0550; .0610; .0700; .0800 (proposed) 1755
7411.0100 s.2,3; .0500; .0600; .0800 s.4,6; .2100; .2200; .2300; .2400; .2500; .2600; .2700 (proposed repealer) 1755
7520.0650; .1000; .1100 (adopted) 1806
7530.0100; .0300; .0500; .0800; .1000; .1200; .1400; .1500 (proposed) 2043

Public Service Department

7640.0120; .0130; .0140; .0150; .0160; .0180 (proposed) 2122
7640.0110 s.5 (proposed repealer) 2122

Public Utilities Commission

7843.0100-.0600 (proposed) 1994

Minnesota State Lottery

7856.1000-.7070 (proposed) 1650
7857.2000-.7000 (proposed) 1657

Minnesota Racing Commission

7869.0100; 7873.0100; .0120; .0140; .0150; .0190; .0191; .0300; 7876.0110; 7877.0120; .0170; .0175; .0185; 7878.0120; 7883.0130; .0140; .0150; 7890.0140; 7892.0120; 7895.0100; .0125; .0250; .0275; .0300; .0350; 7897.0150; .0160; .0170 (adopted) 2008
7873.0185; .0186 (proposed) 1922
7877.0120; .0170 (proposed) 1922

Revenue Department

8100.0100; .0200; .0300; .0400; .0500; .0600 (adopted) 1806
8130.9200 (proposed repealer withdrawn) 2052
8130.9250 (proposed withdrawn) 2052

Water & Soil Resources Board

8400.3000; .3030; .3060; .3100; .3110; .3130; .3160; .3200; .3230; .3400; .3430; .3460; .3500; .3530; .3600; .3610; .3630; .3700; .3730; .3830; .3860; .3900; .3930 (adopted) 1928
8400.3030 s.3, 7, 47; .3760; .3930 s.4 (repealed) 1928

Transportation Department

8815.0100; .0200; .0300 (adopted) 1719

Veterinary Medicine Board

9100.0500 (adopted) 2131

Human Services Department

9500.2060; .2100; .2140; .2340; .2380; .2420; .2440; .2500; .2580; .2640; .2680; .2700; .2740; .2800; .2820; .2880 (proposed) 1901
9500.2060 s.118 (proposed repealer) 1901
9500.2700 (proposed) 1920
9503.0015; .0075; .0170 (proposed) 1991
9505.0115 (proposed) 1859
9505.3010-.3140 (proposed) ..... 1627 and 1796
9553.0010; .0020; .0035; .0036; .0040; .0050; .0052; .0053; .0054; .0056; .0057; .0061; .0070; .0075; .0079 (proposed) ..... 1841 and 1967
9553.0051; .0020 s.43 (proposed renumbering) 1841
9575.0350; .1500 (adopted) 1806

Proposed Rules

Pursuant to Minn. Stat. §§ 14.22, an agency may propose to adopt, amend, suspend or repeal rules without first holding a public hearing, as long as the agency determines that the rules will be noncontroversial in nature. The agency must first publish a notice of intent to adopt rules without a public hearing, together with the proposed rules, in the *State Register*. The notice must advise the public:

1. that they have 30 days in which to submit comment on the proposed rules;
2. that no public hearing will be held unless 25 or more persons make a written request for a hearing within the 30-day comment period;
3. of the manner in which persons shall request a hearing on the proposed rules; and
4. that the rule may be modified if the modifications are supported by the data and views submitted.

If, during the 30-day comment period, 25 or more persons submit to the agency a written request for a hearing of the proposed rules, the agency must proceed under the provisions of §§ 14.14-14.20, which state that if an agency decides to hold a public hearing, it must publish a notice of intent in the *State Register*.

Pursuant to Minn. Stat. §§ 14.29 and 14.30, agencies may propose emergency rules under certain circumstances. Proposed emergency rules are published in the *State Register* and, for at least 25 days thereafter, interested persons may submit data and views in writing to the proposing agency.

Department of Agriculture

Proposed Permanent Rules Relating to Retail Food Store Plan Review Fees

Notice of Intent to Adopt a Rule without a Public Hearing

NOTICE IS HEREBY GIVEN that the Minnesota Department of Agriculture intends to adopt the above-entitled rule without a public hearing following the procedures set forth in the Administrative Procedures Act for adopting rules without a public hearing in *Minnesota Statutes*, sections 14.22-14.28. The statutory authority to adopt this rule is *Minnesota Statutes*, section 31.11, subdivision 2.

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

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

Comments or written requests for a public hearing must be submitted to: Carol Milligan, Minnesota Department of Agriculture, 90 West Plato Boulevard, St. Paul, MN 55107, (612) 296-6906.

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

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

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

All food stores including those that meet the definition of a small business in *Minnesota Statutes*, section 14.115, will be required to comply with the rule. However, the fee is based on the size of the store, which means that small businesses will usually pay a lower fee.

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

Dated: 2 January 1990

Jim Nichols, Commissioner
Department of Agriculture

Rules as Proposed

1547.0110 REVIEW OF PLANS.

Subpart 1. **Submission of plans.** Before construction or major remodeling of a retail food store, and when an existing structure is

converted to use as a retail food store, properly prepared plans and specifications for construction, major remodeling, or conversion must be submitted to the Department of Agriculture for review and approval. The plans and specifications must show the proposed layout, arrangement, mechanical plans, construction materials of work areas, and the type and model of proposed fixed equipment and facilities. The Department of Agriculture will treat the plans and specifications as confidential or trade secret information in accordance with law and will approve the plans and specifications if they meet the requirements of this chapter. A retail food store may not be constructed, extensively remodeled, or converted except in accordance with plans and specifications approved by the Department of Agriculture.

Subp. 2. **Plan review fee.** Plans submitted to the Department of Agriculture under this part must be accompanied by the appropriate fee and a plan review application form provided by the department. Fees are based on the square footage of the structure being constructed, remodeled, or converted as prescribed below.

Square Footage	Review Fee
0 - 4,999	$125
5,000 - 24,999	175
25,000 plus	275

Bureau of Mediation Services

Proposed Permanent Rules Relating to Public Employee Labor Relations

Notice of Intent to Adopt a Rule without a Public Hearing

NOTICE IS HEREBY GIVEN that the State Bureau of Mediation Service 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*, sections 14.22 to 14.28. The statutory authority to adopt the rule is *Minnesota Statutes*, section 179.02, subdivision 4.

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

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

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

Paul W. Goldberg, Commissioner
Bureau of Mediation Services
1380 Energy Lane, Suite Two
St. Paul, MN 55108
(612) 649-5421

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

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

A STATEMENT OF NEED AND REASONABLENESS that describes the need for and reasonableness of each provision of the proposed rule and identifies the data and information relied upon to support the proposed rule has been prepared and is available from Paul W. Goldberg, Commissioner, Bureau of Mediation Services, 1380 Energy Lane, Suite Two, St. Paul, Minnesota, 55108.

YOU ARE HEREBY ADVISED pursuant to *Minnesota Statutes*, section 14.115 (1988) that the proposed rules are not considered to have any impact on small business.

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If no hearing is required, upon adoption of the rule, the rule and the required supporting documents will be submitted to the Attorney General for review as to legality and form to the extent the form relates to legality. Any person may request notification of the date of submission to the Attorney General. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the adopted rule, must submit the written request to Paul W. Goldberg, Commissioner, Bureau of Mediation Services, 1380 Energy Lane, Suite Two, St. Paul, Minnesota, 55108.

Dated: 26 February 1990

Rules as Proposed

5510.0510 LIMITATION ON FILING PETITION.

Subpart 1. **Contract bar.**

A. If there is an exclusive representative and a labor contract in effect, the commissioner shall consider a petition for ~~clarification,~~ decertification~~,~~ or representation only:

~~A.~~ (1) when it is submitted during the open-window period or after the expiration date in the contract; or

~~B. when it is submitted jointly by the employer and the exclusive representative; or~~

~~C.~~ (2) when the commissioner determines that the interests of good labor relations policy warrant consideration of the petition during the life of the existing contract.

B. A single-party petition for clarification of a unit shall be accepted only when submitted prior to the close of the open-window period of an existing collective bargaining contract.

A joint request for clarification of a unit shall be accepted at any time during the life of the existing contract.

[For text of subps 2 to 7, see M.R.]

5510.1410 FAIR SHARE FEE REQUIREMENTS.

Subpart 1. **Advance notice of fair share fee assessment.** The exclusive representative must provide written notice of the amount of the fair share fee assessment to ~~the commissioner,~~ the employer~~,~~ and each employee assessed: upon initial implementation of the fair share fee assessment; to employees hired after the original notice has been issued; and upon a change in the amount of the fair share fee assessment. The notice must contain:

[For text of items A to C, see M.R.]

D. sufficient information to identify expenditures for benefits available only to members of the exclusive representative and sufficient information to identify expenditures for collective bargaining and contract administration services that have been provided for bargaining unit employees without regard to membership status. This information shall include documentation of the preceding year's actual expenditures and of the current year's projected expenditures;

[For text of items E and F, see M.R.]

[For text of subps 2 and 3, see M.R.]

Subp. 4. **Assessment.** On the effective day of the fair share fee assessment and thereafter, the amount of the assessment shall be deducted by the employer from the pay of the employee. The initial amounts deducted must be held in escrow by the employer and not remitted to the exclusive representative for a period of 30 calendar days from the date notice is provided under subpart 1.

If at the end of the 30-day period an employee has not challenged the fair share fee assessment, subsequent assessments shall be promptly remitted to the exclusive representative ~~without the need for escrow by the employer~~.

If an employee challenges the fair share fee assessment, the assessment for that employee shall continue to be deducted, but must be held in escrow by the employer until otherwise ordered by the commissioner.

5510.1510 FAIR SHARE FEE CHALLENGE PETITION.

Subpart 1. **Filing petition.** A petition challenging a fair share fee assessment may be filed by individual employees and must include:

[For text of items A to C, see M.R.]

D. ~~the job classification of the petitioner;~~

~~E.~~ the amount of regular membership dues in the unit;

~~F.~~ E. the amount of the fair share fee assessment;

~~G. the amount that represents 85 percent of the regular membership dues;~~

~~H. the percent of regular membership dues which the fair share fee represents;~~

~~I. the amount by which the fair share fee assessment should be adjusted to conform to the statutory prerequisites of *Minnesota Statutes*, section 179A.06, subdivision 3;~~

~~J.~~ F. the specific activities or expenditures of the exclusive representative which the ~~challenger~~ petitioner believes are not in conformance with the statutory prerequisites of *Minnesota Statutes*, section 179A.06, subdivision 3; and

~~K.~~ G. the date on which the petitioner received notice of the fair share fee assessment.

[For text of subp 2, see M.R.]

Subp. 3. **Filing fee.** The challenge petition must be accompanied by a certified check or other guaranteed form of payment in the amount of $10, made payable to ~~"Treasurer, State of Minnesota."~~ "Bureau of Mediation Services." A challenge petition filed without the proper filing fee shall be returned to the individual filing the petition.

Subp. 4. **Receipt of petition.** Upon receipt of the challenge petition and fee, the commissioner shall provide the ~~challenger~~ petitioner with an acknowledgment and receipt, along with a copy of the rules governing such challenge.

[For text of subps 5 and 6, see M.R.]

5510.1910 HEARINGS OR INVESTIGATIONS.

[For text of subps 1 to 9, see M.R.]

Subp. 10. **The record.** The commissioner shall maintain the record in each case. The record shall contain:

[For text of items A to D, see M.R.]

E. an audiomagnetic or stenographic recording of the hearing.

The commissioner shall retain the audiomagnetic or stenographic recording of the hearing for a period not less than 60 calendar days after the issuance of his order. ~~In the event that an appeal of the commissioner's order is initiated by any party to the hearing on the matter, the record shall be transcribed, in whole or in part, at the request of any party, provided the request is timely and the party requesting the transcript pays a charge per page, as established by the commissioner, for transcript production and for duplication of other requested or necessary parts of the record. In the event a party to a hearing before the commissioner requests that all or part of the record be transcribed absent a pending appeal from or prior to the issuance of the commissioner's order in such matter, the commissioner shall require the party to pay the full costs associated with the production of the transcript. In all cases, the commissioner shall maintain original documents as a part of bureau records and parties requesting copies of the record for any purpose shall be required to pay a charge per page, as established by the commissioner.~~

Subp. 10a. **Requests for transcripts.** The audiomagnetic recording of a hearing before the bureau may be transcribed in whole or in part upon the written request of any party or person, provided that the party or person requesting the transcript makes a request within the 60-day retention period and agrees in writing to pay full costs of preparation of the transcript.

Subp. 10b. **Preparation of case record on appeal to PERB.** Any person or party appealing a determination of the commissioner to the board must agree in writing to pay for the cost of preparing the transcript of the hearing upon which the determination was based, as well as the costs of duplicating all relevant exhibits and other written case file material. If the appeal involves only a portion of the elements or factors decided by the commissioner, and only parts of the hearing are relevant to that element or factor, a partial transcript and record may be purchased. The extent of the transcript and record necessary to provide the board with the complete record upon which that portion of the commissioner's determination was based will be determined by the commissioner, based upon the scope of the issues under appeal. Any partial transcript shall include all testimony and evidence relevant to the issues under appeal.

[For text of subps 11 to 15, see M.R.]

5510.2810 PETITION FOR MEDIATION.

[For text of subps 1 to 4, see M.R.]

Subp. 5. **Mediation meetings.** Joint or separate mediation meetings of the parties may be scheduled by the commissioner. Mediation meetings are informal and must be limited by the commissioner to matters relevant to the settlement of the dispute. The parties must continue to participate in a mediation meeting until excused by the commissioner. Use of recording devices, stenographic records, or other recording methods is prohibited in mediation meetings.

A mediation meeting may be closed to the public by the commissioner when, in the commissioner's judgment, closing will facilitate resolution of the dispute. In all cases a meeting will be closed only after receipt by the bureau of a valid and timely petition for

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mediation or after initiation of mediation by the commissioner. The commissioner may close a meeting to the public prior to its start or at any time during the meeting.

Subp. 5a. **Meetings of governing bodies.** When the commissioner determines that it is in the interest of resolution of a dispute, the commissioner may authorize a closed meeting of the public employer's governing body for the purpose of review and discussion of the status of negotiations and the employer's positions.

No closed meeting may be authorized unless the bureau has received a valid and timely petition for mediation or unless mediation has been initiated by the commissioner.

No closed meeting may be authorized when the commissioner or a representative of the commissioner is not physically present at the meeting unless the bureau has received a timely and valid notice of intent to strike.

In the event the commissioner determines that a closed meeting is necessary, but the commissioner cannot be physically present at the meeting and a timely and valid notice of intent to strike has been received by the bureau, the commissioner may authorize a closed meeting upon written notice to the governing body and exclusive representative at least 24 hours prior to the closed meeting. The written notice must include the date, time, and place of the closed meeting of the governing body and limit the purpose of the meeting to matters relevant to the dispute.

Pollution Control Agency

Proposed Permanent Rules Relating to Municipal Wastewater Treatment Construction Grant Programs

Notice of Intent to Adopt Rules Without a Public Hearing and Intent to Adopt Rules With Public Hearing Upon Receiving 25 or More Requests

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 in *Minnesota Statutes* §§ 14.22 to 14.28 (1988). The Agency's authority to adopt the rule is set forth in *Minnesota Statutes* § 116.07, subd. 3 (1988).

The proposed rules follow this notice. All persons have until 4:30 p.m. on March 28, 1990, 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 also 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.

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

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

If 25 or more requests for a public hearing are received, a hearing will be held pursuant to *Minnesota Statutes* § 14.14, subdivision 1, beginning on Wednesday, April 4, at 10:00 a.m. in the 5th floor conference rooms of the Minnesota Pollution Control Agency, at the above address. The hearing will continue at the following times and locations:

1. Monday, April 9, 1990, 7:00 p.m.
   Mankato State University
   Student Union, Room 203
   Mankato, Minnesota
2. Wednesday, April 11, 1990, 7:00 p.m.
   Meeting Room 1
   Crow Wing County Services Building
   Laurel Street behind the Court House
   Brainerd, Minnesota

If necessary, the hearing will continue on additional days at times and places determined during the hearing. All interested or affected persons would have an opportunity to participate.

The proposed rules may be modified without a public hearing 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.

Minnesota Rules ch. 7075 currently provides for the administration of the federal and state financial assistance programs available to municipalities with an environmental need to construct or upgrade a wastewater treatment facility. The federal government's plan to eliminate assistance funds after July 1, 1990, prompted the Agency to propose rule changes under a new chapter, Chapter 7077. Chapter 7077 nearly mirrors Chapter 7075 in administrative procedures, but does not include the federal Construction Grants Program or federal rule and regulation references. The proposed rules under Chapter 7077 also reflect the responsibilities assumed by the Public Facilities Authority on July 1, 1988, to award grants and to make payments under the State Independent Grants Program. State Independent, State Match, and Construction Grants awarded before July 1, 1990, will continue to be administered under Chapter 7075. One free copy of the proposed rules is available from Debbie Olson at the address and telephone number stated above.

A STATEMENT OF NEED AND REASONABLENESS (SONAR) includes a summary of all the evidence and arguments justifying both the need for and the reasonableness of the proposed rules and identifies the data and information relied upon during the preparation of the proposed rule. Copies of the SONAR may be reviewed at the Agency Offices or at the Office of Administrative Hearings and copies may be obtained from the Office of Administrative Hearings at the cost of reproduction.

YOU ARE HEREBY ADVISED, pursuant to *Minnesota Statutes* § 14.115 (1988), "Small business considerations in rulemaking," that the proposed rules will affect small businesses by offering business opportunities in the planning, design, and construction of wastewater treatment facilities. Without the assistance programs, many of the facilities being built would have to be delayed indefinitely due to the financial burden the cost would place on local governments. The proposed rules do not impose any particular or unreasonable requirements on small businesses.

IF NO HEARING IS REQUIRED, this fact will be included in the rule adoption notification published by the Agency in the *State Register*. 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 rule as adopted, must submit a written request to Debbie Olson.

IF A HEARING IS REQUIRED, it will proceed in accordance with *Minnesota Statutes* §§ 14.14 to 14.20 and rule parts 1400.0200 to 1400.1200. Questions about these procedures may be directed to Administrative Law Judge Allen Giles, Office of Administrative Hearings, 5th floor Flour Exchange Building, 310 4th Avenue South, Minneapolis, Minnesota 55415, telephone (612) 349-2543. The proposed rules are subject to change as a result of the rule hearing process.

All interested or affected persons will have an opportunity to participate in the hearing by asking questions about the SONAR and by presenting oral and written comments about the proposed rules. Comments are most helpful if the commenters identify with particularity each provision of the proposed rules that is supported or objected to and if the comments suggest specific alternative language to what is proposed and provide the reasons and data that support the proposed modifications.

Written material may be submitted and recorded in the hearing record for five working days after the public hearing ends, or for a longer period not to exceed 20 calendar days if ordered by the administrative law judge at the hearing. Written material received during this period shall be available for review at the office of administrative hearings. The Agency and interested persons may respond to any new information that is submitted. Response must be made in writing within three business days after the submission period ends. No additional evidence may be submitted during this three-day comment period.

Any person may request notification of the date on which the administrative law judge's report will be available, after which date the Agency may not take any final action on the rules for a period of five working days. If you desire to be so notified, you may so indicate at the hearing. After the hearing, you may request notification by sending a written request to the administrative law judge. Any person may request notification of the date on which the rules were adopted and filed with the secretary of state. The notice must be mailed on the same day that the rules are filed. If you want to be so notified you may so indicate at the hearing or send a request in writing to the Agency at any time prior to the filing of the rules with the secretary of state.

Lobbyists must register with the State Ethical Practices Board within five working days after s/he commences lobbying, as required by *Minnesota Statutes* ch. 10A. A lobbyist is defined in *Minnesota Statutes* § 10A.01, subd. 11, as any individual:

a) engaged for pay or other consideration, or authorized by another individual or association to spend money, who spends more

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than five hours in any month or more than $250, not including travel expenses and membership dues, in any year for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials; or

b) who spends more than $250, not including traveling expenses and membership dues, in any year for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials.

The statute provides certain exceptions. Questions should be directed to the Ethical Practices Board, 41 State Office Building, Saint Paul, Minnesota 55155, telephone (612) 296-5615.

Gerald L. Willet
Commissioner

Rules as Proposed

7075.0100 PURPOSE.

This chapter provides for the administration of the federal construction grant program, the independent state construction grant program, the state matching construction grant program, the state loan program for the construction of municipal disposal systems, and the state financial assistance program for combined sewer overflow abatement. It applies to grants and loans awarded before July 1, 1990.

Rules as Proposed (all new material)

7077.0100 PURPOSE.

Parts 7077.0100 to 7077.0330 provide for the administration of the financial assistance programs for the construction of municipal wastewater treatment facilities and apply to grants and loans awarded on or after July 1, 1990. Parts 7077.0400 to 7077.0765 apply to funds awarded at any time. Chapter 7075 applies to grants and loans awarded before July 1, 1990. The programs in chapter 7077 consist of the state independent grants program, parts 7077.0200 to 7077.0265; the combined sewer overflow abatement program, parts 7077.0300 to 7077.0330; and the water pollution control revolving fund program, parts 7077.0400 to 7077.0445. The state independent grants program includes three set-aside programs:

A. the corrective action grants program, parts 7077.0500 to 7077.0560;

B. the capital cost component grants program, parts 7077.0600 to 7077.0660; and

C. the individual on-site wastewater treatment systems grants program, parts 7077.0700 to 7077.0765.

7077.0105 DEFINITIONS.

Subpart 1. **Scope.** For the purposes of chapter 7077, the terms defined in this part and in *Minnesota Statutes*, chapters 115 and 116, have the meanings given them.

Subp. 2. **Act.** "Act" means the Federal Water Pollution Control Act, United States Code, title 33, sections 1251 et seq.

Subp. 3. **Adequate errors and omissions insurance.** "Adequate errors and omissions insurance" means an insurance policy that provides the minimum amount of coverage for the corresponding estimated project construction cost, as determined from the following table, and that is maintained for a minimum of two years after initiation of operation of the project.

Estimated project construction cost	Minimum amount of coverage
less than $1,000,000	$250,000
$1,000,000 to $2,999,999	$500,000
$3,000,000 to $9,999,999	$1,000,000
$10,000,000 or over	$2,000,000

Subp. 4. **Adverse impact.** "Adverse impact" means the violation of a water quality standard, according to chapter 7050; an objectionable growth of weeds, algae, or rough fish; or a deleterious effect on the physical, chemical, or biological condition of the receiving water that lessens the present or long-term uses of the receiving water.

Subp. 5. **Agency.** "Agency" means the Minnesota Pollution Control Agency.

Subp. 6. **Authority.** "Authority" means the Minnesota Public Facilities Authority.

Subp. 7. **Average dry weather flow.** "Average dry weather flow" means the daily average flow when the groundwater is at or near normal and a runoff condition is not occurring.

Subp. 8. **Average wet weather flow.** "Average wet weather flow" means the daily average flow for the wettest 30 consecutive days for mechanical facilities or for the wettest 180 consecutive days for controlled discharge pond systems. The 180 consecutive days for

pond systems must be based on either the storage period from approximately November 15 through May 15 or the storage period from approximately May 15 through November 15.

Subp. 9. **Budget period.** "Budget period" means the period of time approved by the commissioner during which a municipality may incur reimbursable costs.

Subp. 10. **Commissioner.** "Commissioner" means the commissioner of the Minnesota Pollution Control Agency.

Subp. 11. **Debt charge.** "Debt charge" means the charge levied on users of a wastewater treatment facility for the user's share of the local capital costs of construction of the facility.

Subp. 12. **Excessive infiltration.** "Excessive infiltration" means the quantity of flow which is more than 120 gallons per capita per day (domestic base flow and infiltration) or the quantity of infiltration which can be economically and effectively eliminated from a sewer system as determined through a cost effectiveness analysis.

Subp. 13. **Excessive inflow.** "Excessive inflow" means the maximum total flow rate during storm events that results in chronic operational problems related to hydraulic overloading of the treatment facility or that results in a total flow of more than 275 gallons per capita per day (domestic base flow plus infiltration plus inflow). Chronic operational problems may include surcharging, backups, bypasses, and overflows.

Subp. 14. **Facilities plan.** "Facilities plan" means the plans and studies necessary to determine wastewater treatment needs of a project service area, to systematically evaluate wastewater treatment alternatives that will result in compliance with enforceable water quality standards, and to identify the cost-effective implementable alternative.

Subp. 15. **Fiscal year.** "Fiscal year" means the state fiscal year which begins July 1 and ends the following June 30.

Subp. 16. **Flow equalization system.** "Flow equalization system" means a containment system such as a pond, basin, or tank designed to temporarily hold wet weather flow until the flow can be transported to a wastewater treatment facility. A flow equalization system is a type of sewer system rehabilitation project.

Subp. 17. **Infiltration.** "Infiltration" means water other than wastewater that enters a sewer system (including sewer service connections and foundation drains) from the ground through defective pipes, pipe joints, connections, or manholes. Infiltration does not include, and is distinguished from, inflow.

Subp. 18. **Inflow.** "Inflow" means water other than wastewater that enters a sewer system (including sewer service connections) from sources such as, but not limited to, roof leaders, cellar drains, yard drains, area drains, drains from springs and swampy areas, manhole covers, cross connections between storm sewers and sanitary sewers, catch basins, cooling towers, storm waters, surface runoff, street wash waters, or drainage. Inflow does not include, and is distinguished from, infiltration.

Subp. 19. **Intended use plan.** "Intended use plan" means the document prepared annually by the agency according to the requirements in Title VI of the act and submitted to the United States Environmental Protection Agency. The plan will identify the intended uses of the amounts available to the water pollution control revolving fund, including a list of wastewater treatment projects and other eligible activities proposed to be funded during the fiscal year. Projects will be listed on the intended use plan in the order of their priority ranking on the municipal needs list.

Subp. 20. **Major contributing industry.** "Major contributing industry" means an industrial user of a treatment facility that:

A. has a rated flow of 50,000 gallons or more per work day where the rated flow is the daily design flow multiplied by 24 and divided by the actual hours of discharge in a day;

B. has a rated flow greater than five percent of the total design flow to the treatment works;

C. has a total organic load of greater than five percent of the total organic load to the treatment works;

D. has in its waste before pretreatment a toxic pollutant in excess of what may be discharged to waters of the state, according to chapter 7050; or

E. is found by the agency in connection with the issuance of an NPDES/SDS permit to the municipality, either singly or in combination with other contributing industries, to interfere with the treatment plant's ability to meet effluent limitations, interfere with digester operation or biological unit process operation, impact the area required for sludge disposal, or increase sizing of the facility by five percent or more.

Subp. 21. **Major interceptor sewer.** "Major interceptor sewer" means a sewer, including related lift stations, that intercepts

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wastewater from the final point in a collector sewer of a municipality and transports the wastewater directly to a wastewater treatment facility, to another major interceptor sewer, or to the collector sewer of another municipality. To be a major interceptor sewer, the average design flow of the sewer must not increase by more than ten percent between its origin and its termination, and physical connections to the sewer must be more than 1,000 feet apart. Infiltration and inflow directly to the sewer and flow from other major interceptor sewers is not included in determining whether the average design flow has increased by more than ten percent.

Subp. 22. **Maximum wet weather flow.** "Maximum wet weather flow" means one-seventh of the total maximum flow received during a seven-day period when the groundwater is high and a runoff condition is occurring.

Subp. 23. **Municipal needs list.** "Municipal needs list" means the priority list prepared by the commissioner under parts 7077.0115 to 7077.0145.

Subp. 24. **Municipality.** "Municipality" means any county, city, town, the Metropolitan Waste Control Commission established in *Minnesota Statutes*, chapter 473, the Metropolitan Council when acting under that chapter, an Indian tribe or an authorized Indian tribal organization, or any other governmental subdivision of the state responsible by law for the prevention, control, and abatement of water pollution in any area of the state.

Subp. 25. **Need.** "Need" means a determination that a new or upgraded disposal system is currently required, or will be required within a five-year period to comply with chapter 7050, 7060, or 7080; provided the situation does not exist primarily due to inadequate operation and maintenance or to negligence on the part of any person.

Subp. 26. **NPDES/SDS permit.** "NPDES/SDS permit" means a National Pollutant Discharge Elimination System and State Disposal System permit issued by the agency that authorizes under certain conditions the discharge of pollutants to waters of the state and subsurface disposal or on-land disposal and the operation of a disposal system.

Subp. 27. **Operation and maintenance manual.** "Operation and maintenance manual" means a document developed to give treatment facility personnel the proper understanding, techniques, and references necessary to properly operate and maintain the treatment facility.

Subp. 28. **Outstanding resource value water.** "Outstanding resource value water" means those waters defined in part 7050.0180, subpart 2.

Subp. 29. **Peak hourly wet weather flow.** "Peak hourly wet weather flow" is the peak flow during the peak hour of the day at a time when the groundwater is high and a five-year one hour storm event is occurring.

Subp. 30. **Peak instantaneous wet weather flow.** "Peak instantaneous wet weather flow" means the peak instantaneous flow during the day at a time when the groundwater is high and a 25-year one hour storm event is occurring.

Subp. 31. **Performance certification.** "Performance certification" means a certification made by a municipality one year after initiation of operation that states its newly constructed wastewater treatment facility is meeting performance standards, as specified under part 7077.0255, subpart 1, item A.

Subp. 32. **Plans and specifications.** "Plans and specifications" means documents, including completed drawings and specifications, that describe the project in full and detail the complete requirements for materials, dimensions, and construction technique. The documents that comprise the plans and specifications must conform with generally accepted engineering practices and applicable state statutes, rules, and requirements.

Subp. 33. **Primary treatment facilities.** "Primary treatment facilities" means facilities designed to provide a level of treatment lower than that provided by secondary treatment facilities.

Subp. 34. **Reimbursement project.** "Reimbursement project" means a municipal wastewater treatment facility constructed under the reimbursement provision of *Minnesota Statutes*, section 116.18, subdivision 3a.

Subp. 35. **Relief sewer.** "Relief sewer" means a sewer primarily designed to eliminate bypassing caused by insufficient hydraulic capacity in sanitary sewer systems by transporting infiltration or inflow to adequately sized sewers or to a wastewater treatment facility for proper treatment. A sewer is a collector sewer and not a relief sewer if its design flow includes more than 15 percent wastewater at peak instantaneous flow conditions or if it has physical connections closer to each other than 1,000 feet. A relief sewer is a type of sewer system rehabilitation project.

Subp. 36. **Secondary treatment facilities.** "Secondary treatment facilities" means facilities designed to provide biochemical oxidation, effective sedimentation, and disinfection, or the equivalent, consistent with requirements of part 7050.0211, subpart 1. Facilities discharging to limited resource value waters (Class 7 waters) and assigned effluent limitations based on part 7050.0214 and that do not have a phosphorous or toxic substances effluent limitation are secondary treatment facilities for the purpose of this chapter.

Subp. 37. **Sewer rate ordinance or SRO.** "Sewer rate ordinance" or "SRO" means a municipal ordinance that determines the method by which a municipality will charge its users for wastewater treatment services, including the local capital cost of the treatment works.

Subp. 38. **Sewer service charge.** "Sewer service charge" means the aggregate of all charges, including charges for operation, maintenance, replacement, debt service, and other sewer related charges that are billed periodically to users of the city's wastewater treatment facility.

Subp. 39. **Sewer service charge system or SSCS.** "Sewer service charge system" or "SSCS" means a document developed by the municipality that determines the user charge and debt charge that each user will pay for wastewater treatment services.

Subp. 40. **Sewer system rehabilitation project.** "Sewer system rehabilitation project" means a project that repairs or replaces an existing collector or interceptor sewer in order to eliminate bypasses caused by insufficient hydraulic capacity or to reduce the hydraulic flows to a wastewater treatment facility. A sewer system rehabilitation project may include flow equalization systems and relief sewers.

Subp. 41. **Sewer use ordinance or SUO.** "Sewer use ordinance" or "SUO" means a municipal ordinance enacted to control the type and quantities of discharges to the wastewater treatment facility, and the type and method of connections to the system.

Subp. 42. **Tertiary treatment facilities.** "Tertiary treatment facilities" means facilities specifically designed to achieve effluent limitations based on part 7050.0211, subpart 1, for phosphorus or toxic substances and facilities designed to meet effluent standards that are more stringent than standards for secondary treatment facilities.

Subp. 43. **Treatment agreement.** "Treatment agreement" means an enforceable agreement between a municipality and a major contributing industry that includes the following:

A. the variations in daily flow and the monthly average and daily maximum quantity of compatible and incompatible pollutants to be discharged to the treatment facility;

B. the intended period of use of the treatment facility by the major contributing industry;

C. signatures by the major contributing industry and the owner of the treatment system accepting the wastewater; and

D. a requirement that the quantities to be discharged to the treatment system will be according to applicable standards and requirements.

Subp. 44. **Unanticipated site condition.** "Unanticipated site condition" means any subsurface, latent or unknown physical condition at the construction site, which differs materially from those ordinarily encountered and generally recognized as inherent in work of the type provided for in the construction contract that could not have been reasonably identified during the planning or design of the project.

Subp. 45. **User charge.** "User charge" means a charge levied on users of a wastewater treatment facility for the user's proportionate share of the cost of equipment replacement and operation and maintenance of the wastewater treatment facility.

Subp. 46. **Value engineering.** "Value engineering" means a specialized cost control technique which uses a systematic and creative approach to identify and to focus on unnecessarily high cost in a project in order to arrive at a cost saving without sacrificing the reliability or efficiency of the project.

Subp. 47. **Wastewater.** "Wastewater" means sewage, industrial waste, and other waste collected for treatment in a wastewater treatment facility.

7077.0110 TYPES OF PROGRAMS.

Subpart 1. **Scope.** Under this chapter and *Minnesota Statutes,* sections 116.16 to 116.181, the agency may certify to the authority that municipalities may be awarded funds for the assistance programs described in subparts 2 to 7.

Subp. 2. **State independent grants program.** The state independent grants program under parts 7077.0200 to 7077.0265 offers grant funds to municipalities for the construction of wastewater treatment facilities and applies to funds awarded on or after July 1, 1990. The process is described in items A to D.

A. Construction grants are awarded to municipalities on a priority basis, except as provided in parts 7077.0205, subpart 3, item E; and 7077.0210. Municipalities with the highest priorities, as determined by the point system described in parts 7077.0120 to 7077.0145, are awarded construction grants first.

B. The commissioner develops and maintains a municipal needs list that ranks in priority order the municipalities that have a need for a new or upgraded treatment system and that have requested placement on the list. Priorities are determined by awarding points for projects based on the waters affected, the population affected, the type of project proposed, and extra points for qualifying projects.

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C. The agency adopts a municipal project list that identifies the municipalities that are eligible to apply for construction grants during a designated fiscal year.

D. A reimbursement option is available to municipalities willing to proceed with construction while waiting to reach a fundable priority on the municipal needs list.

Subp. 3. **Combined sewer overflow abatement program.** Financial assistance is available for design and construction of combined sewer overflow abatement projects under parts 7077.0300 to 7077.0330. The program applies to funds awarded on or after July 1, 1990. The process awards this assistance on a pro rata basis to qualifying municipalities.

Subp. 4. **Water pollution control revolving fund program.** Loans are available to municipalities for the construction of publicly owned wastewater treatment facilities under parts 7077.0400 to 7077.0445. The program applies to funds awarded before, on, or after July 1, 1990. Loans may be requested for planning, design, and construction costs. The process is described in items A to C.

A. Municipalities seeking funds from the water pollution control revolving fund must be on the municipal needs list.

B. The agency annually adopts an intended use plan that includes a list of municipalities with eligible projects that have requested loan assistance.

C. The actual loan amounts, terms, and conditions are determined by the authority.

Subp. 5. **Corrective action grants program.** Financial assistance is available under parts 7077.0500 to 7077.0560 for the costs associated with correcting a wastewater treatment facility that failed to meet performance standards within the first year of operation. The program applies to funds awarded before, on, or after July 1, 1990. The process is described in items A and B.

A. Corrective action grants are certified to the authority for awards in the order that applications that meet the rule requirements are received and to the extent funds are available.

B. Recipients of corrective action funds must seek to recover the costs of the corrective work from the parties that are responsible for the performance failure. When funds are recovered, the municipality shall repay the state a portion of the money recovered.

Subp. 6. **Capital cost component grant program.** Grant funds are available to municipalities under parts 7077.0600 to 7077.0660 for part of the capital cost component of the service fee under a service contract with a private vendor to construct and operate wastewater treatment facilities for 20 years. The program applies to funds awarded before, on, or after July 1, 1990. The process is described in items A to D.

A. Municipalities seeking a capital cost component grant must be listed on the municipal needs list. Grant applications are taken during announced application periods.

B. Applications are ranked according to the priority order on the municipal needs list.

C. Grant amounts are determined by comparing the costs of recently constructed facilities in municipalities of similar size.

D. Payment of the grant is made following completion of construction and demonstration of satisfactory performance.

Subp. 7. **Individual on-site wastewater treatment systems grants program.** Grant funds are available to municipalities under parts 7077.0700 to 7077.0765 to assist owners of individual on-site wastewater treatment systems in upgrading or replacing failed systems. The program applies to funds awarded before, on, or after July 1, 1990. The process is described in items A to C.

A. Municipalities meeting the eligibility requirements in part 7077.0710 may submit grant applications during announced application periods. Both the municipality and the owners of the failed systems must meet statutory and rule requirements.

B. Applications are prioritized according to a municipality's median household income.

C. Grant payments are made on a reimbursement basis for 50 percent of the on-site system construction costs up to the maximum amounts specified in part 7077.0735.

7077.0115 MUNICIPAL NEEDS LIST.

Subpart 1. **Requirement.** The commissioner shall develop and maintain a municipal needs list of municipalities that have a need for a new or upgraded wastewater treatment facility.

Subp. 2. **Points and listing order.** A municipality on the municipal needs list must be awarded points under the criteria established in this chapter. The municipalities must be listed on the municipal needs list in descending order according to the number of points awarded to each.

Subp. 3. **Request for placement on list.** A municipality may submit a written request to the commissioner for placement on the municipal needs list.

A. If the municipality is sewered, its request must include the following information:

(1) type and age of existing wastewater treatment facilities;

(2) design capacity and current treatment capabilities of existing facilities;

(3) data describing actual wastewater flows and loadings;

(4) current discharge point and NPDES permit standards;

(5) a description of the need for new or upgraded treatment facilities; and

(6) an explanation of why the need for new or upgraded facilities is not primarily due to inadequate operation and maintenance or to negligence on the part of any person.

B. If the municipality is unsewered, its request must include the following information:

(1) number of existing on-site treatment systems in the municipality;

(2) general description of the type and age of existing on-site treatment systems; and

(3) a description of the identified need for improved wastewater treatment facilities including the estimated number of failing on-site systems and a description of the basis for that estimate.

Subp. 4. **Review.** The commissioner shall review each request and add to the municipal needs list each municipality for which a need has been found to exist. If the commissioner determines that a need does not exist, the municipality shall not be added to the list and the commissioner shall notify the municipality of the reasons for the determination.

7077.0120 PRIORITY POINTS FOR WATERS AFFECTED.

Subpart 1. **Water use and point ratings.** A municipality shall be awarded priority points based on the water use of the receiving water of the discharge according to the following:

Water Use	Point Rating
Class 1 Domestic consumption:	
Class 1A waters	70
Class 1B waters	65
Class 1C waters	60
Class 1D waters	55
Class 2 Fisheries and recreation:	
Class 2A waters	60
Class 2B waters	50
Class 2C waters	40
Class 7 Limited resource value waters	35

The water uses are defined in parts 7050.0200 and 7050.0220. The water use of a specific water of the state is the water use established by parts 7050.0400 to 7050.0470.

Subp. 2. **Receiving water with more than one designated water use.** If a municipality discharges to a receiving water with more than one designated water use, the municipality shall be awarded the points for the designated water use with the greatest number of points.

Subp. 3. **Adverse impact on downstream water.** If a municipal discharge has an adverse impact on a downstream water with a designated water use receiving more points than the receiving water, the municipality shall be awarded the priority points for the downstream water.

7077.0125 PRIORITY POINTS FOR POPULATION SERVED.

A municipality shall be awarded priority points based on the population of the municipality served by the project. The priority points for population served are five times the logarithm base 10 ($\log_{10}$) of the population determined by the most recent official census. The table below gives examples of the priority points assigned for various populations:

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Population	Log_{10}	Priority Points Assigned
100	2	10.0
1,000	3	15.0
10,000	4	20.0
100,000	5	25.0
1,000,000	6	30.0

7077.0130 PRIORITY POINTS FOR TYPE OF PROJECT.

Subpart 1. **Table of priority points by type of project.** A municipality shall be awarded priority points based on the type of project to be constructed according to the following:

Type of Project	Priority Points
A. Major treatment facilities:	
(1) major tertiary treatment facilities	160
(2) major secondary treatment facilities	150
B. Dechlorination facilities:	
(1) tertiary treatment dechlorination facilities	120
(2) secondary treatment dechlorination facilities	110
C. Ancillary additions:	
(1) ancillary additions to existing tertiary treatment facilities	80
(2) ancillary additions to existing secondary treatment facilities	75
D. Collection systems or collector sewers:	
(1) collection system or collector sewer	10
(2) improvement of collection system or collector sewer reliability	10
E. Control of combined sewer overflow	150

Subp. 2. **Description of project types.** Project types are described as follows:

A. Major treatment facilities are new facilities or additions to existing facilities which improve effluent quality in order that a municipality may achieve compliance with its NPDES/SDS permit conditions. Major treatment facilities include major interceptor sewers and may include sewer system rehabilitation projects in subpart 4.

(1) Land application systems and stabilization ponds that are proposed as an alternative to tertiary and secondary treatment facilities that discharge to waters of the state are considered tertiary treatment and secondary treatment for purposes of project priority. Whether a land application system or stabilization pond is a tertiary or secondary treatment system is determined as based on the effluent limitations applicable to discharges to the receiving water.

(2) Subsurface disposal systems, including septic tanks, designed to treat an average daily flow of not more than 1,200 gallons and the drainfield portion and one central septic tank to treat an average daily flow in excess of 1,200 gallons are considered secondary treatment for purposes of project priority.

B. Dechlorination facilities are facilities that remove chlorine from the effluent of a wastewater treatment facility. When a municipality is listed on the municipal needs list for major treatment facilities, the facilities described in this item may be included as part of that project.

C. Ancillary additions to existing tertiary or secondary treatment facilities are additions that are not major treatment facilities, dechlorination facilities, or collector sewers. When a municipality is listed on the municipal needs list for a major treatment facility, the facilities described in this item will be included as part of that project.

D. A collection system or collector sewer is a sanitary sewer, specifically constructed to carry raw or partially treated wastewater and providing collection system reliability such as alternative power or dual pumps, that is not a major interceptor sewer or a relief sewer. For treatment works including subsurface disposal systems designed to treat an average daily flow in excess of 1,200 gallons, a collection system includes devices such as grinder pumps and septic tanks that will partly treat the wastewater, as well as septic tank effluent pumps and small diameter sewers that will pump and convey the partially treated waste.

E. A project for the control of combined sewer overflow is a project designed to eliminate bypasses caused by insufficient

hydraulic capacity in combined storm and sanitary sewers. A combined sewer overflow project is not eligible for priority points under subpart 1, item E unless the project is necessary to meet requirements of the municipality's NPDES/SDS permit.

Subp. 3. **Special restrictions for sewer system rehabilitation projects.** Special restrictions for sewer system rehabilitation projects are as follows:

A. In order for a sewer system rehabilitation project to be eligible for priority points under subpart 1, item A, the municipality must not have obtained a grant for wastewater treatment facility construction since February 11, 1974, and sewer system rehabilitation must be justified by an infiltration/inflow analysis and sewer system evaluation survey that complies with part 7077.0150, subpart 2, item C.

B. A municipality proposing to undertake a sewer system rehabilitation project that does not meet the criteria in item A shall be awarded the priority points credited to a collection system or collector sewer under subpart 1, item D.

Subp. 4. **Temporary improvements.** If a municipality makes improvements to its existing wastewater treatment facility that are temporary in nature for the purpose of maximizing effluent quality or keeping its system operational while the municipality is awaiting a grant, the municipality shall receive the same priority points for its project as it would have received without the temporary improvements.

7077.0135 EXTRA POINTS.

In addition to the priority points to which a municipality is entitled for its project, the following extra points shall also be awarded to a qualifying municipality:

A. A municipality that proposes a project that will eliminate an existing public health hazard assessed by the Department of Health in a health advisory or commissioner's order shall be awarded 40 extra points. A municipality requesting the award of 40 extra points under this provision shall submit the following information to the agency and to the Department of Health:

(1) information on geologic and soil conditions including soil types, permeabilities, and presence or absence of confining units;

(2) groundwater flow patterns in the area of the facility or proposed facility;

(3) an assessment of the extent and magnitude of the contaminant plume;

(4) an identification of water users and assessment of the amount of water appropriations in the area of the facility or proposed facility;

(5) flow rates and flow patterns of surface waters;

(6) information on well construction for wells in the area of the facility or proposed facility, particularly wells that have been or will be impacted;

(7) a description of the facility's construction, operation, and performance if there is an existing facility, with an explanation of why the facility is creating a public health hazard;

(8) an identification and assessment of the suspected route of human exposure and the population exposed; and

(9) a description of how the proposed improvements will mitigate or eliminate the public health hazard.

B. A qualifying municipality shall be awarded extra points under one of the provisions below for its existing level of treatment:

(1) A municipality that presently has a collection system serving 50 percent or more of the population but provides no treatment before discharge, or a municipality which collects an average daily flow exceeding 1,000,000 gallons through a system without combined sewers and which has bypassed sewage more than 40 percent of the time over a period of at least two years while its plant is operating at full capacity, shall be awarded 40 extra points.

(2) A municipality with no collection system where more than 50 percent of the existing septic systems discharge raw or partially treated sewage directly to the ground surface shall be awarded 30 extra points.

(3) A municipality that presently has a collection system serving 50 percent or more of the population and whose present facilities are designed for only primary treatment shall be awarded 20 extra points.

(4) A municipality that discharges untreated sewage as a result of combined sewer overflows shall be awarded 20 extra points.

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C. A municipality that proposes a project that is an integral part of a watershed pollution abatement plan shall be awarded 15 extra points. A municipality is not entitled to the 15 extra points under this provision unless the agency received the plan for review by December 1, and it is in approvable condition by May 1, before the beginning of the fiscal year for which funding is sought. A watershed pollution abatement plan shall include the following:

(1) an in depth description of the physical environment (geology, soils, topography, and land cover), land use and development in the watershed, as well as the planned future land use and development;

(2) an inventory and in depth description of the watershed's hydrologic system, including climatic conditions (precipitation), lakes, wetlands, streams, groundwater, drainage, and conveyance systems;

(3) information on the existing and potential water quality problems in the watershed, including both point and nonpoint sources of pollution;

(4) objectives and policies, including management plans for water quality and natural resource protection;

(5) a description of the hydrologic and water quality conditions that will be sought, including a description of the opportunities for improvement;

(6) a statement on conflicts between the watershed pollution abatement plan and existing plans of local government units; and

(7) a plan for implementation, consisting of governmental work agreements and schedules for implementing corrective actions.

D. A municipality that discharges to or has an adverse impact on an outstanding resource value water shall be awarded ten extra points.

E. A municipality proposing to undertake a project that will result in the elimination of a point source discharge to a game fish lake or outstanding resource value water, or the elimination of a discharge that has an adverse impact on a game fish lake or outstanding resource value water shall be awarded ten extra points. A game fish lake is a lake managed for propagation of game fish species and used for fisheries and recreation. There may be occasional but not regular winter kill in a game fish lake.

F. Ten extra points will be awarded to a sanitary district or other multimunicipal wastewater treatment project.

G. A municipality listed on the municipal needs list on January 1, 1985, shall be awarded 40 extra points.

H. A municipality which does not qualify for the points awarded in item G and which is in compliance with its NPDES/SDS permit conditions less than 90 percent of the time during a one-year period computed on the basis of the interval appropriate to the limitation shall be awarded 20 extra points. Periods of noncompliance caused by inadequate operation and maintenance or negligence on the part of any person are not included in the percentage computation for the purposes of this definition.

7077.0140 TOTAL POINTS.

The total points to be awarded a municipality for placement on the municipal needs list is the sum of the priority points awarded under one of the provisions of parts 7077.0120, 7077.0125, and 7077.0130, and one or more of the provisions of part 7077.0135.

7077.0145 RESOLUTION OF EQUAL POINT RATINGS.

If, in the determination of the order of priority on the municipal needs list, two or more municipalities have the same total number of points, the municipality with the highest priority points under part 7077.0120 for water use is ranked higher. If two or more municipalities have the same total number of points and the same priority points under part 7077.0120 for water use, the municipalities are ranked based on population under part 7077.0125.

7077.0150 FACILITIES PLAN.

Subpart 1. **In general.** A municipality must have a facilities plan approved by the commissioner before it will be considered for placement on the municipal project list for a construction grant or the intended use plan for a construction loan. A facilities plan must be prepared and signed by a professional engineer registered in the state and submitted to the agency according to part 7077.0205, subpart 2, items B and C.

Subp. 2. **Facilities plan contents.** A facilities plan must include:

A. A complete description and evaluation of the existing treatment facility, including information about the age, condition, design capacity, and treatment capabilities of each treatment unit, an analysis of the facility's ability to meet current permit requirements, and the location, frequency, and quantity of any bypasses.

B. Data describing existing flows that accurately represent flows during rain events and high groundwater conditions. Flow data must be based on actual flow monitoring for at least 30 consecutive days.

C. An analysis of inflow and infiltration in the existing sewer system to determine whether excessive levels of inflow or

infiltration exist as defined in part 7077.0105, subparts 12 and 13. If excessive levels of inflow or infiltration are determined to exist, a sewer system evaluation survey must be conducted to identify the specific sources of inflow and infiltration and the estimated flows from each source.

D. Projected flows and loadings within the next five- and 20-year periods based on projected population growth and letters of intent from major contributing industries.

E. A cost effectiveness analysis of all feasible treatment works, processes, and techniques capable of meeting the applicable effluent, water quality, and public health requirements for 20 years. If excessive levels of inflow/infiltration are determined to exist under item C, the cost effectiveness analysis of treatment alternatives must include a comparison of the costs of eliminating excessive inflow/infiltration with the costs of transportation and treatment of the inflow/infiltration. For unsewered and partially unsewered communities, consideration must be given to on-site treatment systems. The following information must be provided for each treatment alternative considered:

(1) a detailed breakdown of the present worth of all capital costs, annual operation and maintenance costs, equipment replacement costs, and salvage costs; and

(2) a site assessment conducted by a registered engineer or geotechnical engineer of the existing soil and groundwater conditions.

F. A description of the selected treatment alternative and the complete wastewater treatment system of which it is a part, including:

(1) the specific design parameters of all individual treatment units and the complete treatment system;

(2) estimated construction, annual operation and maintenance, and equipment replacement costs;

(3) estimated annual sewer service charges;

(4) a determination of whether pretreatment of any industrial wastes is needed in order not to disrupt the proper operation of the proposed facility;

(5) an evaluation of how and where sludge resulting from the treatment process will be disposed;

(6) an analysis of the 25- and 100-year flood elevations in relation to the proposed project site showing that the project will be operable during a 25-year flood and protected during a 100-year flood;

(7) a description of any ordinances or intermunicipal agreements necessary for the successful implementation and administration of the project; and

(8) an analysis of how interim treatment will be accomplished during construction to meet permit requirements.

G. An evaluation of the environmental impacts, including:

(1) a description of the potential impacts of the selected treatment alternative on wetlands; floodplains; areas of archaeological, cultural, and historical significance; endangered or threatened species; wild and scenic rivers; farmlands; air quality; fish and wildlife; open space and recreation opportunities; and

(2) a comparison of the potential environmental impacts of the selected treatment alternative with the other treatment alternatives considered in the cost effectiveness analysis.

Subp. 3. **Public hearing.** Before adopting the facilities plan, the municipality must hold at least one public hearing to discuss the proposed facilities plan. The proposed facilities plan must be made available for review by interested persons before the date of the hearing. At the public hearing, information must be presented on the various treatment alternatives considered, the reasons for choosing the selected alternative, the location of the proposed project site, and the estimated sewer service charges. A summary of the information presented and public comments received at the public hearing must be provided to the commissioner before the commissioner's approval of the facilities plan.

Subp. 4. **Adoption.** Before the commissioner's approval of the facilities plan, the municipality must adopt the facilities plan through a formal resolution of the municipality's governing body.

7077.0155 PLANS AND SPECIFICATIONS.

Subpart 1. **In general.** A municipality must submit plans and specifications or a council resolution to the commissioner according

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to part 7077.0205, subpart 2, item D, before it will be considered for placement on the municipal project list. The plans and specifications must be consistent with the scope of the approved facilities plan under part 7077.0150. The project must be constructed according to the approved plans and specifications and change orders.

Subp. 2. **Contents.** A complete set of plans and specifications must include:

A. drawings and specifications signed by a professional engineer registered in Minnesota;

B. a summary of design parameters for the treatment units;

C. a summary of flow conditions for average dry weather, average wet weather, maximum wet weather, peak hourly and instantaneous wet weather on a form provided by the agency;

D. a hydraulic profile of the flow through the treatment system;

E. a plan for interim treatment during construction;

F. the latest detailed cost estimate based on the plans and specifications submitted;

G. administrative, bidding, and contract documents according to the applicable requirements under *Minnesota Statutes*, chapters 412, 429, and 471 including, at a minimum:

(1) five percent bid bond;

(2) 100 percent payment bond;

(3) 100 percent performance bond; and

(4) prevailing wage certifications issued by the Minnesota Department of Labor and Industry.

7077.0160 RATE SYSTEM AND ORDINANCES.

Subpart 1. **In general.** A municipality must submit a sewer service charge system, a sewer rate ordinance, and a sewer use ordinance or a council resolution to the commissioner according to part 7077.0205, subpart 2, item D, before it will be considered for placement on the municipal project list. The sewer service charge system, sewer rate ordinance, and sewer use ordinance must demonstrate that the municipality has the legal and financial capability to ensure adequate construction and operation and maintenance of the wastewater treatment facility. The rate system and ordinances must be enacted according to part 7077.0260, subpart 2, item C, to ensure full payment of the grant.

Subp. 2. **Sewer service charge system.** A sewer service charge system must include:

A. The engineering and accounting data for the wastewater flows and loadings of the users of the wastewater treatment facility.

B. The estimated annual costs of equipment replacement, and operating and maintaining the facility.

C. The rates that will be charged to each user for the user's share of the annual costs of equipment replacement and operation and maintenance of the treatment facility in proportion to the user's contribution of wastewater flow and loadings and according to the rate formula established in the sewer rate ordinance. The costs of treating infiltration and inflow and the costs of administration may be charged through other methods than proportionality, but the manner in which the charges will be distributed must be justified and described.

D. The rates that will be charged to each user for the cost of the debt retirement for the local capital cost of the treatment facility. The debt charge need not be proportionally assessed against each user, but the manner in which the charge will be distributed must be described.

Subp. 3. **Sewer rate ordinance.** The sewer rate ordinance must include the following minimum provisions:

A. the rate setting method for proportionate user charges;

B. the rate setting method for debt charges; and

C. separate accounts for:

(1) operation and maintenance;

(2) equipment replacement; and

(3) debt retirement; and

D. administrative procedures for the financial management of the sewer service charges.

Subp. 4. **Sewer use ordinance.** The sewer use ordinance must include the following minimum provisions:

A. prohibition of new connections from inflow sources;

B. new sewers and connections must be properly designed and constructed; and

C. prohibition of toxics and other pollutants in amounts or concentrations that endanger public safety or the physical integrity of the treatment facility or cause violation of permit limitations.

STATE INDEPENDENT GRANTS PROGRAM

7077.0200 PURPOSE.

The state independent grants program provides grants to municipalities for the construction of publicly owned wastewater treatment facilities according to the priority order of the municipal needs list and the provisions of *Minnesota Statutes*, section 116.18, subdivision 3a. The program is jointly administered by the Minnesota Pollution Control Agency and the Minnesota Public Facilities Authority. Parts 7077.0200 to 7077.0265 provide for the agency's responsibilities for the administration of the program.

7077.0205 MUNICIPAL PROJECT LIST.

Subpart 1. **Adoption of municipal project list.** Each fiscal year the agency shall adopt a municipal project list that identifies, in priority order, the municipalities that are eligible to apply for state independent grants from appropriated funds.

The municipal project list shall also list other uses of the appropriated funds including reserves for grant increases and costs of administration.

Subp. 2. **Requirements for placement on list.** To be placed on the municipal project list:

A. The municipality must be on the municipal needs list.

B. The municipality must submit by December 1 before the beginning of the fiscal year for which the municipal project list is prepared:

(1) a facilities plan in conformance with part 7077.0150; 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 7077.0150.

C. The municipality must, by May 1 before the beginning of the fiscal year for which the project list is prepared, make all revisions to the documents listed in item B that are necessary to obtain the commissioner's approval.

D. The municipality must also submit by May 1 the following documents for the commissioner's review and approval or a resolution of the municipality's governing body agreeing to submit the following documents by the following October 1:

(1) plans and specifications in conformance with part 7077.0155, and based on a facilities plan previously approved by the agency;

(2) if the municipality 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 7077.0155, and based on a previously approved facilities plan;

(3) a sewer service charge system under part 7077.0160, subpart 2;

(4) documentation of how the public has been informed within the past year of the proposed sewer service rates;

(5) a sewer rate ordinance under part 7077.0160, subpart 3;

(6) a sewer use ordinance under 7077.0160, subpart 4; and

(7) if more than one municipality is involved in the project, an unexecuted intermunicipal agreement that sets forth the terms and conditions of joint treatment and the cost-sharing methodology.

E. Failure to submit, for the commissioner's review and approval, the documents agreed to in item D by October 1 of the fiscal year for which the municipal project list is prepared will result in the removal of the municipality from the municipal project list.

Subp. 3. **Preparation of proposed municipal project list.** In drafting the proposed municipal project list, the commissioner shall consider the following factors in the order given:

A. total dollars available for the purpose of constructing a municipal wastewater treatment facility;

B. restrictions and obligations mandated by these parts and applicable state statutes;

C. priority rank of projects according to the municipal needs list;

D. requirements of subpart 2;

E. eligibility of projects according to part 7077.0210; and

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F. additional projects, in priority order, identified by the authority for award under the economic development set-aside under *Minnesota Statutes*, section 116.18, subdivision 3a, paragraph (b).

Subp. 4. **Reserve list.** The municipal project list shall include a list of reserve projects with priority rankings lower than those identified under subpart 3, items A to E. Municipalities listed on the reserve list meeting the requirements under subpart 3, items D and E, may receive funding if funds become available.

Subp. 5. **Reimbursement list.** The municipal project list shall include a list of municipalities that have requested to proceed with their projects and be reimbursed in a subsequent year conditioned upon appropriation of sufficient funds.

A. No municipality may be listed on the reimbursement list unless the municipality has submitted a written request for placement on the list and has received approval of the documents listed in subpart 2, items B and D.

B. A municipality may retain eligibility of construction and construction related costs incurred before the award of a state independent grant only if:

(1) the municipality was on the reimbursement list when construction began;

(2) the municipality submitted a complete application, as defined under part 7077.0215, subpart 2, to the commissioner within 90 days after adoption of or amendment to the municipal project list; and

(3) the municipality has received written approval of the application from the commissioner before initiating construction.

C. Reimbursement projects must be listed in the same order of priority as they appear on the municipal needs list.

Subp. 6. **Public participation.** The commissioner shall prepare a proposed municipal project list and make it available to the public at least 30 days before adoption. A free copy of the proposed list shall be mailed to interested persons upon request. Municipalities affected by the proposed list shall be given notice at least 30 days in advance of the agency board meeting at which the list will be considered for adoption.

7077.0210 ELIGIBILITY.

Subpart 1. **Project eligibility.** The provisions in items A to C govern project eligibility.

A. Only the cost-effective implementable alternative determined according to part 7077.0150, subpart 2, and identified in an approved facilities plan is eligible to receive grant assistance, unless a municipality receives an exemption under item B.

B. The commissioner may grant an exemption to the required 20-year planning period for the cost-effectiveness analysis under part 7077.0150, subpart 2, item E, to a municipality under 1,500 population for reasons of significant financial hardship. If an exemption is granted, the municipality may receive grant assistance for a proposed treatment alternative that is different than the 20-year cost-effective alternative. A municipality must submit a written request for this exemption that includes:

(1) a description of the proposed treatment alternative and a discussion of the extent to which it fails to satisfy the 20-year cost-effectiveness analysis;

(2) an explanation, including any necessary supporting documentation, of why the 20-year cost-effective alternative identified in the facilities plan would create a significant financial hardship for the municipality;

(3) a plan for reevaluating the municipality's wastewater treatment needs at a specific time in the future; and

(4) a resolution of the municipality's governing body that supports the municipality's request to construct a treatment alternative other than that identified in the facilities plan as the 20-year cost-effective alternative, and provides a formal commitment to reevaluate the municipality's wastewater treatment needs at a specific time in the future.

C. Grant assistance is not available for a project or portion of a project if the principal purpose is the treatment or conveyance of industrial wastewater.

Subp. 2. **Cost eligibility.** The following categories of costs related to the construction of the approved treatment alternative under subpart 1 are eligible for grant assistance:

A. costs of only those items identified in the approved plans and specifications and change orders that are necessary to construct a treatment facility that complies with NPDES/SDS permit requirements;

B. costs of procuring construction contractors;

C. costs relating to construction and start-up engineering services;

D. costs of providing full-time inspection of the project construction;

E. costs of land on which stabilization ponds will be built;

F. a contingency fund equal to three percent of the grant eligible construction costs;

G. costs associated with unanticipated site conditions as specified under part 7077.0240, subpart 2; and

H. costs incurred for project planning, design, administration, and legal services up to a maximum of 12 percent of the grant eligible construction costs for municipalities of 1,500 or less population and ten percent of the grant eligible construction costs for municipalities over 1,500 population. If a municipality has previously received funding for planning or design, the eligible costs from previous awards for planning or design will be subtracted from the eligible costs in this item.

Subp. 3. **Timing of eligible costs.** The following items govern the grant eligibility of project costs:

A. Costs of construction and construction related engineering and inspection services incurred before the certification of a grant application by the commissioner to the authority are ineligible unless the municipality receives prior written approval from the commissioner.

B. Costs of purchasing the land identified in subpart 2, item E, incurred before the approval of a facilities plan by the commissioner are ineligible unless the municipality receives prior written approval from the commissioner.

7077.0215 GRANT APPLICATIONS.

Subpart 1. **Agency notification.** The commissioner shall notify each municipality of its placement on the municipal project list. No municipality shall submit a state independent grant application unless it has been notified by the commissioner in writing that it is on this list.

Subp. 2. **Complete application required.** No municipality may be eligible for a state independent grant unless a complete grant application has been submitted to the authority. A complete application must include all documents required under subparts 3 and 4.

Subp. 3. **Timing and form of application.** The following provisions govern the timing and form of grant applications:

A. The application for grant funds shall be on forms provided by the agency and the authority.

B. A municipality on the municipal project list shall submit a complete construction grant application to the authority within 90 days after the date on which the agency adopts that fiscal year's municipal project list.

C. If a land acquisition legal opinion, specified under subpart 4, item F, is unobtainable at the time of application, a land acquisition status report and schedule must be included with the application. If the legal opinion is not received at the agency by the following April 1, the application must be rejected and the project must be removed from the municipal project list for that fiscal year.

Subp. 4. **Application requirements.** A municipality that applies for a construction grant shall, in addition to submitting the completed application form, submit the following information for the commissioner's review and approval:

A. A proposed engineering contract that includes, at a minimum, the following provisions:

(1) full-time inspection during construction and written monthly reports submitted to the agency describing the type of construction inspected and the time involved in inspection;

(2) two sets of "as built" plans and specifications on microfiche for submittal to the agency;

(3) preparation of an operation and maintenance manual; and

(4) start-up services during the first year of operation, including:

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

(b) training or providing for training of operating personnel and prepare necessary curricula and training materials; and

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

B. A certificate of adequate errors and omissions insurance carried by the engineering firm.

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

The facilities described in this application have been designed based on data that has been verified to accurately represent present and future flows and loadings and with full knowledge of the effluent limitations required by the Minnesota Pollution Control Agency as set forth in NPDES Permit No. ..... dated ..... It is my judgment and carefully considered opinion that these facilities are capable of consistently producing the required effluent quality, provided that the facilities are operated in conformance with the approved operation and maintenance manual and that the volume and characteristics of raw wastewater are within the limits of the flow data presented in the plans and specifications under the requirements of *Minnesota Rules*, part 7077.0155, subpart 2, item C.

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D. A treatment agreement with each major contributing industry.

E. A cost breakdown for all project work to be funded by the grant, including separation of grant eligible and ineligible items, in a format provided by the agency.

F. A legal opinion identifying that the municipality has sufficient legal vested interest in all sites, easements, or rights-of-way to ensure immediate construction and undisturbed use for the estimated life of the facilities. If this opinion can not be submitted at the time of application, a land acquisition status report and schedule must be provided.

G. A project schedule on a form provided by the agency.

Subp. 5. **Three copies.** State independent grant application forms and attachments must be submitted in triplicate to the authority. At least one set of forms and attachments must contain original signatures.

7077.0220 APPROVAL AND CERTIFICATION OF GRANT APPLICATIONS.

Subpart 1. **Approval.** The commissioner shall approve grant applications from municipalities that:

A. meet the requirements of parts 7077.0205, subpart 2, item D; and 7077.0215, subparts 3 and 4, within 180 days of the date the agency received a complete application;

B. complete the environmental review process requirements in chapter 4410 and *Minnesota Statutes*, chapter 116D; and

C. obtain the required NPDES/SDS permits.

Subp. 2. **Certification.** The commissioner shall certify each approved grant application to the authority for award. Grant eligible costs under part 7077.0210, subpart 2, items B to D, will be determined at the time of certification. Following certification, grant eligible costs under these items can be increased only through the approval of an unanticipated site condition amendment under part 7077.0240, subpart 2, or through the use of contingency funds under part 7077.0210, subpart 2, item F, approved by the commissioner.

7077.0225 REJECTION OF GRANT APPLICATIONS.

Subpart 1. **Grounds.** A municipality's grant application for a project on the municipal project list may be rejected by the commissioner if it cannot receive approval under part 7077.0220.

Subp. 2. **Effect of rejection.** When a grant application is rejected, the commissioner shall remove the municipality from the municipal project list for that fiscal year.

7077.0230 CONTRACT ASSIGNMENT.

A municipality that enters into a contract with a contractor or engineer for the planning, design, or construction of a part of or an entire wastewater treatment system, to be paid for in whole or in part by state independent grant funds, shall provide in the contract that any or all of its rights and duties thereunder may be assigned to the commissioner without the agreement of the contractor or engineer. The assignment may be made by mutual agreement between the municipality and the commissioner or according to an agency assumption of municipal powers under *Minnesota Statutes*, section 115.48.

7077.0235 CONTRACT BENEFICIARY.

A municipality that enters into a contract with a contractor or engineer for the planning, design, or construction of a part of or an entire wastewater treatment system, to be paid for in whole or in part by state independent grant funds, shall provide in the contract that the agency is a third-party beneficiary to the contract.

7077.0240 GRANT AMENDMENTS.

Subpart 1. **After-bid amendments.** A municipality shall submit to the authority a written request for an after-bid amendment when actual construction contracts costs differ from construction costs estimated in the grant certification. Final grant eligible construction costs are based on the amounts in the signed construction contracts. No further amendments for additional construction costs will be considered except as provided under subpart 2. The commissioner shall certify the amendment to the authority if funds are available and the costs are eligible and reasonable.

Subp. 2. **Unanticipated site condition amendments.** Only cost overruns caused by unanticipated site conditions are eligible for grant amendments once final grant eligible construction costs based on the amounts in the signed construction contracts are determined under subpart 1.

A. The commissioner may approve an amendment for up to two percent of the final grant eligible construction costs to compensate for unanticipated site conditions encountered during construction. The three percent contingency fund under part 7077.0210, subpart 2, item F, must be depleted before an amendment for unanticipated site conditions is approved.

B. A written request by the municipality for an unanticipated site condition amendment must include:

(1) an explanation of why the site condition causing the cost overrun was unanticipated;

(2) a change order that defines the scope and cost of the work;

(3) a breakdown of costs and tasks;

(4) an amended engineering contract, if applicable; and

(5) a budget period extension request, if applicable.

7077.0245 CHANGE ORDERS.

Subpart 1. **In general.** A change order must be submitted to the commissioner for any change that:

A. alters the design or scope of the project;

B. increases or decreases the contract price;

C. changes the construction completion date;

D. causes a deviation from the approved plans and specifications; or

E. causes a substitution or replacement of equipment, suppliers, or subcontractors.

Subp. 2. **Contents.** Change orders submitted to the commissioner must contain the following:

A. signatures of the municipality's authorized representative, the project engineer, and the contractor;

B. the date on which the municipality and the contractor executed the change order;

C. identification of grant eligible and ineligible costs;

D. a complete description and justification of the change;

E. an explanation of why the change was not included in the original plans and specifications and contractor's bid;

F. a detailed cost breakdown for the change from the contractor showing the costs of materials, labor, overhead, and profit; and

G. a cost estimate for the change from the project engineer and an analysis of any differences between the engineer's estimate and the contractor's cost breakdown. If the project engineer's estimate differs from the contractor's price by more than ten percent, an explanation of how the costs were agreed to is required.

Subp. 3. **Eligible costs.** The following costs associated with approved change orders are eligible for grant assistance:

A. construction costs resulting from defects in the plans and specifications that would have been eligible and would have been incurred if the plans and specifications had been free of the defects, excluding the costs of any rework, redesign, restocking, small tools, supervision, delay, acceleration, or disruption caused by the defects;

B. costs determined by the commissioner to be the result of unanticipated site conditions;

C. combined profit and overhead costs for the contractor or subcontractor that actually performs the change order work not exceeding 15 percent of the costs of materials and labor;

D. combined profit and overhead costs for a contractor or subcontractor that administers the change order but does not actually perform the change order work not exceeding five percent of the costs of materials and labor.

Subp. 4. **Approval of change orders.** Approval of change orders is required as follows:

A. Proposed changes that substantially alter the type of treatment process, or its efficiency, versatility, or reliability, must be submitted to the commissioner for prior approval.

B. Change orders not requiring the commissioner's prior approval under item A must be submitted to the commissioner for review and approval within one month after the date on which the municipality, its engineer, or other authorized agent, and the contractor execute the change.

C. Proposed changes described in item A do not require prior written approval from the commissioner when the work is agreed by the commissioner to be of an emergency nature.

7077.0250 COMPLETION OF CONSTRUCTION.

Subpart 1. **Building completion.** Building completion is the date when all major components of a project have been built, all

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equipment is operational, start-up testing has been completed, and the project is capable of functioning as designed. At this point the municipality must notify the commissioner it is ready to initiate operation and request that a prefinal inspection be scheduled.

Subp. 2. **Initiation of operation.** Initiation of operation is the date the project begins operating for the purposes for which it was planned, designed, and built. A project must not initiate operation until it receives approval from the commissioner.

A. The municipality must notify the commissioner in writing of the initiation of operation date within ten days of initiating operation.

B. The date of initiation of operation is the first day of the one year performance period.

Subp. 3. **Final inspection.** A final inspection of the treatment facility must be performed by agency staff when all the construction is complete except for minor weather-related components. The purpose of the inspection is to verify that construction is complete and conforms with the approved plans, specifications, and change orders. A municipality requests that a final inspection be performed when it believes construction is complete. At the final inspection, any outstanding change orders must be identified and a cut-off date for incurring grant eligible construction related costs must be established.

7077.0255 PROJECT PERFORMANCE.

Subpart 1. **Performance certification.** One year after the initiation of operation of the project, the municipality shall submit to the commissioner the following items:

A. a certification stating whether the project meets the following performance standards:

(1) the project has been completed according to approved construction plans and specifications and change orders;

(2) the municipality has a sufficient number of trained and capable personnel to provide adequate operation and maintenance of the project, and the project requires only operation and maintenance as outlined as normal and routine in the approved operation and maintenance manual;

(3) the project accepts hydraulic and organic loading to the extent described in the approved design specifications and is in compliance with all NPDES/SDS permit requirements;

(4) industrial wastewater discharges to the treatment facility do not interfere with the operation of the project or the disposal or use of municipal sludges;

(5) sludge treatment and disposal is accomplished in conformance with chapter 7040 or parts 7005.2350 to 7005.2400, as applicable; and

(6) the project meets the requirements in the approved plans and specifications for the prevention of contamination of underground drinking water sources beyond the property boundary, if applicable;

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

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

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

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

Subp. 2. **Corrective action report.** If the commissioner or the municipality determines that the project does not meet the project performance standards under subpart 1, item A, the municipality shall:

A. submit within 30 days of the performance certification date a corrective action report that includes:

(1) an analysis of the project's failure to meet the performance standards;

(2) an estimate of the nature, scope, and cost of the corrective action necessary to bring the project into compliance; and

(3) a schedule for initiating, in a timely manner, the necessary corrective action work and for meeting the performance certification requirements following a start-up period that is reasonable for the type of corrective action work to be performed; and

B. following the completion of corrective action work, submit a performance certification as specified under subpart 1 according to the schedule in item A, subitem (3).

7077.0260 PAYMENT OF STATE INDEPENDENT GRANTS.

Subpart 1. **Payment request.** A municipality must submit written payment requests to the authority. The municipality must include documentation for costs incurred under part 7077.0210, subpart 2, item H.

Subp. 2. **Certification of payment requests.** The commissioner shall certify to the authority payment requests for eligible costs incurred according to the following schedule:

A. No payments will be certified until the municipality has submitted:

(1) the accepted bid proposal;

(2) detailed tabulation of all bids received;

(3) payment and performance bonds;

(4) executed construction contract and notice to proceed;

(5) executed engineering contract; and

(6) if more than one municipality is involved in the project, an executed intermunicipal agreement.

B. Payments will not be certified beyond 50 percent of the construction grant until the municipality has hired a wastewater treatment operator having a valid state certificate appropriate for the facility being constructed.

C. Payments will not be certified beyond 80 percent of the construction grant until the municipality has:

(1) enacted the approved sewer use ordinance;

(2) enacted the approved sewer rate ordinance;

(3) adopted by a resolution of the governing body the approved sewer service charge system with updated cost revisions; and

(4) received approval of the operation and maintenance manual.

D. Payments will not be certified beyond 90 percent of the construction grant until the municipality has met requirements of the performance certification process under part 7077.0255. If a project cannot meet these requirements, final payment will not be made until the requirements under part 7077.0255, subpart 2, have been completed or the municipality has entered into a legally enforceable agreement with the agency containing a schedule for completing the corrective work.

Subp. 3. **Retained payments.** The commissioner may withhold certification of construction grant payments if the commissioner determines that a project does not substantially conform to approved plans and specifications, or there has been a major breach of a condition in the grant agreement, or the municipality has failed to comply with the applicable requirements of this chapter. If funds are withheld pursuant to this subpart, the commissioner shall certify further payments when the condition causing the withholding has been corrected, or otherwise agreed to by the commissioner and the municipality.

7077.0265 RECOVERY OF FUNDS.

The commissioner shall recommend that the authority seek the immediate recovery of grant funds if funds are disbursed in excess of eligible costs incurred, or if a project is improperly designed, improperly constructed, or improperly operated and maintained.

COMBINED SEWER OVERFLOW ABATEMENT PROGRAM

7077.0300 PURPOSE.

State financial assistance is available for combined sewer overflow abatement for those municipalities eligible under *Minnesota Statutes*, section 116.162, subdivision 3. Parts 7077.0300 to 7077.0330 provide for the administration of the program.

7077.0305 MUNICIPAL PROJECT LIST.

Subpart 1. **In general.** The municipal project list prepared according to part 7077.0205 must contain those projects for which state financial assistance is available for combined sewer overflow abatement.

Subp. 2. **Requirements for placement on the list.** To be placed on the municipal project list, a municipality shall meet the following requirements:

A. The municipality must be listed on the municipal needs list.

B. The municipality shall submit by June 1 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.

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7077.0310 APPLICATIONS.

Subpart 1. **Complete application required.** No municipality is eligible for combined sewer overflow abatement financial assistance unless a complete application has been submitted to the agency. A complete application must include all documents required under subparts 2 and 3.

Subp. 2. **Timing and form of application.** The following provisions govern the timing and form of financial assistance applications:

A. The application shall be on the form provided by the agency.

B. A municipality on the final municipal project list for a combined sewer overflow abatement project shall submit a complete application for state financial assistance by December 1 following agency adoption of that fiscal year's municipal project list, unless a different date is provided in the municipality's NPDES/SDS permit, in which case the deadline in the permit shall take precedence.

Subp. 3. **Additional information.** A municipality that applies for state financial assistance for a combined sewer overflow abatement project shall submit the following information for the commissioner's review and approval:

A. The scope of work contained in the list and schedule submitted the previous June 1, or according to the NPDES/SDS permit, plus additional scope of work as may be necessary to use any additional funds that may become available.

B. A resolution of the governing body of the municipality that authorizes the filing of the application and that designates the municipal official authorized to sign the application, financial assistance offer, and other related documents.

C. A proposed engineering contract that includes, at a minimum, the following provisions:

(1) full-time inspection during construction and written monthly reports submitted to the agency describing the type of construction inspected and the time involved in inspection;

(2) two sets of "as-built" plans and specifications on microfiche.

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

E. A cost breakdown for all project work to be funded by the financial assistance, including separation of eligible and ineligible items, in a format provided by the agency.

F. Plans and specifications as required under part 7077.0155 for the scope of work described in item A.

G. A project schedule on a form provided by the agency.

7077.0315 FINANCIAL ASSISTANCE AWARDS.

Each fiscal year that funds are appropriated for combined sewer overflow abatement, the commissioner shall award financial assistance to municipalities that meet the requirements of part 7077.0310. The municipalities shall be awarded a proportionate share of the appropriation available in that fiscal year. The proportionate share for each eligible municipality is as follows:

A. Minneapolis, 24.2 percent;

B. Saint Paul, 71.6 percent; and

C. South Saint Paul, 4.2 percent.

7077.0320 CHANGE ORDERS.

Subpart 1. **In general.** A change order must be submitted to the commissioner for any change that:

A. alters the design or scope of the project;

B. increases or decreases the contract price;

C. changes the construction completion date;

D. causes a deviation from the approved plans and specifications; or

E. causes a substitution or replacement of equipment, suppliers, or subcontractors.

Subp. 2. **Contents.** Change orders submitted to the commissioner must contain the following:

A. signatures of the municipality's authorized representative, the project engineer, and the contractor;

B. the date on which the municipality and the contractor executed the change order; and

C. a complete description of the change.

Subp. 3. **Approval of change orders.** Approval of change orders is required as follows:

A. Proposed changes that substantially alter the type of facility or its efficiency, versatility, or reliability, must be submitted to the commissioner for prior approval.

B. Change orders not requiring the commissioner's prior approval under item A must be submitted to the commissioner for review and approval within one month after the date on which the municipality, its engineer, or other authorized agent, and the contractor execute the change order.

C. Proposed changes described in item A do not require prior written approval from the commissioner when the work is agreed by the commissioner to be of an emergency nature.

7077.0325 PROJECT PERFORMANCE.

Subpart 1. **Notification of initiation of operation.** Initiation of operation is the date the project begins operating for the purposes for which it was planned, designed, and built. The municipality shall notify the commissioner, in writing, of the project's initiation of operation date within ten days following initiation of operation.

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

A. a certification stating whether the project meets the following performance standards:

(1) the project has been completed according to approved plans and specifications and change orders;

(2) the project accepts hydraulic loading to the extent described in the approved design specifications and complies with all NPDES/SDS permit requirements; and

(3) there is complete separation of stormwater and sanitary flows within the project area, with the exception of flows from building rainleader connections authorized under the NPDES/SDS permit;

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

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

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

Subp. 3. **Corrective action report.** If the commissioner or the municipality determines that the project does not meet the project performance standards under subpart 2, item A, the municipality shall:

A. Submit within 30 days of the performance certification date a corrective action report that includes:

(1) an analysis of the project's failure to meet the performance standards;

(2) an estimate of the nature, scope, and cost of the corrective action necessary to bring the project into compliance; and

(3) a schedule for initiating, in a timely manner, the necessary corrective action work and for meeting the performance certification requirements following a start-up period that is reasonable for the type of corrective action work to be performed.

B. Following the completion of corrective action work, submit a performance certification as specified under subpart 1 according to the schedule in item A, subitem (3).

7077.0330 PAYMENT OF STATE FINANCIAL ASSISTANCE.

Subpart 1. **Payments up to 90 percent of assistance.** The municipality may request in writing periodic payments as work on the project progresses up to 90 percent of the total amount of the financial assistance award. No payments will be made for project work until the municipality has submitted the following items, if applicable:

A. the accepted bid proposal;

B. detailed tabulation of all bids received;

C. payment and performance bonds; and

D. executed construction contract and notice to proceed.

Subp. 2. **Payments beyond 90 percent of assistance.** Payments will not be made beyond 90 percent of the financial assistance amount until a final inspection of the project is performed by agency staff and the municipality has met the requirements of part 7077.0325.

Subp. 3. **Retained payments.** Financial assistance payments may be withheld if the commissioner determines that a project does

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not substantially conform to approved plans and specifications, or there has been a major breach of a condition in the financial assistance agreement, or the municipality has failed to comply with the applicable requirements of this chapter. If funds are withheld pursuant to this subpart, further payments will be made when the condition causing the withholding has been corrected, or as otherwise agreed to by the commissioner and the municipality.

Rules as Proposed

WATER POLLUTION CONTROL REVOLVING FUND PROGRAM

~~7075.2505~~ 7077.0400 PURPOSE.

The water pollution control revolving fund program provides loans and other forms of financial assistance to municipalities for the planning, design, and construction of publicly owned wastewater treatment facilities according to ~~the provisions of~~ Title VI of the ~~Federal Water Pollution Control~~ act and *Minnesota Statutes*, section 446A.07. The program is jointly administered by the Minnesota Pollution Control Agency and the Minnesota Public Facilities Authority. Parts ~~7075.2505~~ 7077.0400 to ~~7075.2550~~ 7077.0445 provide for the agency's responsibilities for the administration of the program and apply to loans and other forms of financial assistance awarded before, on, or after July 1, 1990.

~~7075.2515~~ 7077.0405 INTENDED USE PLAN.

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

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

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

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

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

(2) a project cost estimate; and

(3) a proposed project schedule~~, including the date for submittal of a complete financial assistance application in conformance with the requirements of part 7075.2520~~ and a breakdown of estimated quarterly cash flow needs.

B. For a ~~Step 3 project~~ construction loan, a municipality must first receive the commissioner's approval of its facilities plan, as required under part 7077.0150, before it will be placed on the intended use plan. If the municipality is proposing to change the selected treatment method or any other major element of a previously approved facilities plan, the municipality must receive the commissioner's approval of a facilities plan addendum.

~~7075.2520~~ 7077.0410 APPLICATIONS.

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

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

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

B. a schedule for completion of the facilities plan on a form provided by the agency;

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

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

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

A. a schedule for completion of ~~all Step 2 work~~ plans and specifications, a sewer service charge system, a sewer rate ordinance, and a sewer use ordinance on a form provided by the agency;

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

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

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

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

A. ~~Project~~ Plans and specifications ~~including documents that contain the requirements under which a bidder submits a bid for performing the work and the contractual requirements and detailed requirements. The documents that comprise the plans and specifications must conform to generally accepted engineering practices, applicable state statutes and rules, and applicable requirements of the act.~~ as required under part 7077.0155.

B. A sewer service charge system ~~comprised of a user charge system and a system providing for dedicated sources of revenue to pay for the municipality's costs of construction and to retire the municipality's debt costs attributable to the wastewater treatment works to be constructed. The user charge system must ensure the sufficient generation of revenue to offset the annual costs of operation, maintenance, and replacement of the treatment works and must charge each user class a fee proportional to the contribution of each user class to the total wastewater loading. The user classes include residential, commercial, industrial, institutional, and governmental classes. The system providing for dedicated sources of revenue to pay for the municipality's costs of construction and to retire the municipality's debt costs need not be proportionally assessed against each user class, but the manner in which the charge will be distributed must be described.~~ as required under part 7077.0160, subpart 2.

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

D. A sewer use ordinance ~~to control discharges to the disposal system throughout the jurisdiction of the municipality.~~ as required under part 7077.0160, subpart 4.

E. A sewer rate ordinance as required under part 7077.0160, subpart 3.

F. A project schedule ~~for completion of all Step 3 work.~~ on a form provided by the agency.

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

"The ~~treatment works~~ facilities described in this application have been designed based on data that has been verified to accurately represent present and future flows and loadings and with full knowledge of the effluent limitations required by the Minnesota Pollution Control Agency as set forth in NPDES Permit No. _____ dated _____. It is my judgment and carefully considered opinion that these ~~treatment works~~ facilities are capable of consistently producing the required effluent quality, provided that the ~~facility is~~ facilities are operated in conformance with the approved operation and maintenance manual and that the volume and characteristics of raw wastewater are within the limits of ~~"Design Data" stated on page _____ of the plans as follows."~~ the flow data presented in the plans and specifications under the requirements of *Minnesota Rules*, part 7077.0155, subpart 2, item C.

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

~~H~~ I. An engineering contract ~~for all Step 3 work.~~ that includes, at a minimum, the following provisions:

~~I. A certification from the municipality that its consulting engineer or the engineer's agent will be present on site during the hours of construction for purposes of~~ (1) full-time inspection during construction and ~~will submit~~ written monthly reports submitted to the agency ~~upon request~~ describing the type of construction inspected and the time involved in inspection ~~after construction commences.~~;

~~J. A certification from the municipality that its consulting engineer will provide the following~~ (2) two sets of "as built" plans and specifications on microfiche;

(3) preparation of an operation and maintenance manual; and

(4) start-up services during the first year ~~following initiation~~ of operation, including:

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

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

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

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

~~K~~ J. A certification from the municipality that it will comply with the performance certification requirements in part ~~7075.2545~~ 7077.0440.

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

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

M. A legal opinion identifying that the municipality has sufficient legal vested interest in all sites, easements, or rights-of-way to ensure immediate construction and undisturbed utilization for the estimated life of the facilities.

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

~~7075.2525~~ 7077.0415 APPLICATION CERTIFICATION.

Subpart 1. **~~Step 1 projects~~ Planning loans.** Upon review and approval of the documents required by part ~~7075.2520~~ 7077.0410, subpart 2, and a determination that the project meets the applicable requirements of the act, federal regulations, state statutes, and this chapter, the commissioner shall certify the application to the authority.

Subp. 2. **~~Step 2 projects~~ Design loans.** Upon review and approval of the documents required by part ~~7075.2520~~ 7077.0410, subpart 3, and a determination that the project meets the applicable requirements of the act, federal regulations, state statutes, and this chapter, the commissioner shall certify the application to the authority.

Subp. 3. **~~Step 3 projects~~ Construction loans.** Upon review and approval of the documents required by part ~~7075.2520~~ 7077.0410, subpart 4, completion of items A and B, and a determination that the project meets the applicable requirements of the act, federal regulations, state statutes, and this chapter, the commissioner shall certify the application to the authority.

A. The environmental review requirements of chapter 4410, *Minnesota Statutes*, chapter 116D, and title VI of the act have been satisfactorily met.

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

~~7075.2530~~ 7077.0420 CHANGE ORDERS.

Subpart 1. **In general.** A change order must be submitted to the commissioner for any change that:

A. alters the design or scope of the project;

B. increases or decreases the contract price;

C. changes the construction completion date;

D. causes a deviation from the approved plans and specifications; or

E. causes a substitution or replacement of equipment, suppliers, or subcontractors.

Subp. 2. **Contents.** Change orders submitted to the commissioner must contain the following:

A. signatures of the municipality's authorized representative, the project engineer, and the contractor;

B. date on which the municipality and the contractor executed the change order; and

C. a complete description of the change.

Subp. 3. **Approval of change orders.** Approval of a change order is required as follows:

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

B. Change orders ~~for changes that do~~ not ~~substantially alter the type or reliability of the treatment process do not require prior approval of the commissioner, but~~ requiring the commissioner's prior approval under item A must be submitted to the commissioner ~~as soon as possible~~ for review and approval within one month after the date on which the municipality, its engineer, or other authorized agent, and the contractor execute the change order.

C. Proposed changes described in item A do not require prior written approval from the commissioner when the work is agreed by the commissioner to be of an emergency nature.

~~7075.2540 STEP 3~~ 7077.0430 CONSTRUCTION LOAN REPORTING REQUIREMENTS.

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

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

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

C. evidence that the approved sewer use ordinance and sewer rate ordinance have been enacted; and

D. a resolution of the governing body adopting the approved sewer service charge system with updated cost revisions.

Subp. 2. [See Repealer.]

7077.0435 COMPLETION OF CONSTRUCTION.

Subpart 1. **Building completion.** Building completion is the date when all major components of a project have been built, all equipment is operational, start-up testing has been completed, and the project is capable of functioning as designed. At this point, the municipality must notify the commissioner it is ready to initiate operation and request that a prefinal inspection be scheduled.

Subp. 2. **Initiation of operation.** Initiation of operation is the date the project begins operating for the purposes for which it was planned, designed, and built. A project must not initiate operation until it receives approval from the commissioner.

A. The municipality must notify the commissioner in writing of the initiation of operation date within ten days of initiating operation.

B. The date of initiation of operation is the first day of the one-year performance period.

Subp. 3. **Final inspection.** A final inspection of the treatment facility shall be performed by agency staff when all the construction is complete except for minor weather-related components. The purpose of the inspection is to verify that construction is complete and conforms with the approved plans, specifications, and change orders. A municipality requests that a final inspection be performed when it believes construction is complete.

~~7075.2545~~ 7077.0440 PROJECT PERFORMANCE ~~CERTIFICATION~~.

Subpart 1. [See Repealer.]

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

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

(1) the project has been completed according to approved construction plans and specifications and change orders;

(2) the municipality has a sufficient number of trained and capable personnel to provide adequate operation and maintenance of the project, and the project requires only the operation and maintenance as is outlined as normal and routine in the approved operation and maintenance manual;

(3) the project accepts hydraulic and organic loading to the extent described in the approved design specifications and complies with all NPDES/SDS permit requirements;

(4) industrial wastewater discharges to the treatment works do not interfere with the operation of the project or the disposal or use of municipal sludges;

(5) sludge treatment and disposal is accomplished in conformance with chapter 7040 or parts 7005.2350 to 7005.2400, as applicable; and

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(6) the project meets the requirements in the approved plans and specifications for the prevention of contamination of underground drinking water sources beyond the property boundary, if applicable;

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

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

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

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

Subp. 3. **Corrective action report.** If the commissioner or the municipality determines that the project does not meet the project performance standards ~~identified in the permit~~ under subpart 2, item A, the municipality shall:

A. submit within 30 days of the performance certification date a corrective action report that includes:

~~A.~~ (1) an analysis of the project's failure to meet the performance standards;

~~B.~~ (2) an estimate of the nature, scope, and cost of the corrective action necessary to bring the project into compliance; and

~~C.~~ (3) a schedule for ~~undertaking~~ initiating, in a timely manner, the necessary corrective action ~~necessary to bring the project into compliance~~ work and for meeting the performance certification requirements following a start-up period that is reasonable for the type of corrective action work to be performed; and

B. following the completion of corrective action work, submit a performance certification as specified under subpart 2 according to the schedule in item A, subitem (3).

~~7075.2550~~ 7077.0445 REQUEST TO WITHHOLD FINANCIAL ASSISTANCE PAYMENTS.

Failure of a municipality's project to conform substantially to approved plans and specifications or failure of a municipality to comply with the requirements of part ~~7075.2540 or 7075.2545~~ parts 7077.0430 and 7077.0440 constitutes grounds for the commissioner to request that the authority withhold payments to the municipality. Once an agreement for correcting the condition leading to the withholding of funds is reached between the commissioner and the municipality, the commissioner will recommend to the authority that the retained funds be released according to the provisions ~~the agency's responsibilities for the administration of the program~~ in the agreement.

CORRECTIVE ACTION GRANTS PROGRAM

~~7075.1005~~ 7077.0500 PURPOSE.

The corrective action grants program provides grants according to *Minnesota Statutes*, section 116.181, to municipalities with wastewater treatment facilities funded under the Clean Water Act, United States Code, title 33, sections 1281 to 1299, or the ~~independent~~ state independent grants program that are unable to meet performance standards. The grants are for the purpose of correcting performance failures. The program is jointly administered by the Minnesota Pollution Control Agency and the Minnesota Public Facilities Authority. The program applies to grants made before, on, or after July 1, 1990. Parts ~~7075.1005~~ 7077.0500 to ~~7075.1090~~ 7077.0560 pertain to the agency's responsibilities in administering the program.

~~7075.1010 DEFINITIONS~~ 7077.0505 DEFINITION.

Subpart 1. to 4. [See Repealer.]

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

~~7075.1020~~ 7077.0510 ELIGIBILITY FOR PARTICIPATION.

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

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

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

C. The municipality's wastewater treatment facility is unable to meet performance standards and the inability was identified by the commissioner before the end of the one-year performance certification period established by Code of Federal Regulations, title 40, section 35.2218, or part 7077.0250, subpart 2, item B.

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

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

~~7075.1030~~ 7077.0515 ELIGIBLE AND INELIGIBLE COSTS.

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

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

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

7077.0525 CONTRACT ASSIGNMENT.

A municipality that enters into a contract with a contractor or engineer for the planning, design, or construction of a part of or an entire wastewater treatment system, to be paid for in whole or in part by state corrective action grant funds, shall provide in the contract that any or all of its rights and duties thereunder may be assigned to the commissioner without the agreement of the contractor or engineer. The assignment may be made by mutual agreement between the municipality and the commissioner or according to an agency assumption of municipal powers under *Minnesota Statutes*, section 115.48.

7077.0530 CONTRACT BENEFICIARY.

A municipality that enters into a contract with a contractor or engineer for the planning, design, or construction of a part of or an entire wastewater treatment system, to be paid for in whole or in part by state corrective action grant funds, shall provide in the contract that the agency is a third-party beneficiary to the contract.

~~7075.1050~~ 7077.0535 APPLICATION.

Subpart 1. **Agency notification.** After the preapplication items in part 7077.0520 are approved by agency staff, the commissioner shall notify the municipality that it is eligible to apply for a corrective action grant.

Subp. 2. **Application requirements.** The municipality shall apply for a corrective action grant on a form provided by the authority. ~~The municipality must also~~ and submit the following information for the commissioner's review and approval:

A. A plan, endorsed by resolution of the municipality's governing body, for ~~the recovery of~~ recovering the costs of the proposed corrective action from the responsible parties~~, including~~.

B. A report on the current status of negotiations or litigation.

C. A proposed engineering contract that includes, at a minimum, the following provisions:

(1) full-time inspection during construction and written monthly reports submitted to the agency describing the type of construction inspected and the time involved in inspection;

(2) two sets of "as built" plans and specifications on microfiche;

(3) preparation of an operation and maintenance manual, if applicable; and

(4) start-up services during the first year of operation, if applicable, including:

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

(b) train or provide for training of operating personnel and prepare necessary curricula and training materials; and

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

D. A certificate of adequate errors and omissions insurance carried by the engineering firm.

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.

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

Corrective action for the facilities described in this grant application has been designed with full knowledge of the effluent limitations required by the Minnesota Pollution Control Agency as set forth in NPDES Permit No. ..... dated ..... It is my judgment and carefully considered opinion that the performance standards required by the Minnesota Pollution Control Agency will be met after the work detailed in the approved corrective action report, dated ....., is completed and that the corrected facilities are capable of consistently producing the required effluent quality, provided that the facilities are operated in conformance with the approved operation and maintenance manual and the volume and characteristics of raw wastewater are within the flow data presented in the plans and specifications approved for the original project or in the corrective action report modifications.

F. A treatment agreement with each major contributing industry.

G. A cost breakdown for all project work to be funded by the grant, including separation of grant eligible and ineligible items, in a format provided by the agency.

H. If necessary, a comprehensive legal opinion identifying that the municipality has sufficient legal vested interest in all sites, easements, or rights-of-way to ensure immediate construction and undisturbed use for the estimated life of the facilities.

Subp. 3. **Three copies.** Corrective action grant application forms and attachments, must be submitted in triplicate to the authority. At least one set of forms and attachments must contain original signatures.

~~7075.1060~~ 7077.0540 CERTIFICATION OF APPLICATION FOR AWARD.

Subpart 1. **Priority.** The commissioner shall certify grants to the authority for award in the order that applications that meet the requirements of parts ~~7075.1040~~ 7077.0520 and ~~7075.1050~~ 7077.0535 are received and to the extent that funds are available.

Subp. 2. **Amount of award.** Except as provided in part ~~7075.1090~~7077.0560, subpart 3, the amount of the grant will be 80 percent of the total corrective action costs, eligible and ineligible, or the amount of the eligible costs, whichever is less.

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

Subp. 4. **Certification to authority.** Upon review and approval of the documents required under parts ~~7075.1040~~ 7077.0520 and ~~7075.1050~~ 7077.0535, the commissioner shall certify to the authority that the project meets the statutory requirements and the requirements of this chapter and is eligible for an award in the amount determined under subpart 2.

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

7077.0545 GRANT AMENDMENTS.

Subpart 1. **Maximum grant amount.** No grant shall be amended to exceed $500,000.

Subp. 2. **After-bid amendments.** A municipality shall submit a written request for an after-bid amendment when construction contracts differ from construction costs estimated in the grant certification. After-bid grant amendments shall be based on the cost of the completed procurement actions and shall be dependent upon the availability of additional grant funds. The commissioner shall certify the amendment to the authority if funds are available and the costs are eligible.

Subp. 3. **Final amendment.** A municipality shall submit a written request for a final amendment when construction has been completed. The commissioner shall certify the amendment to the authority if funds are available and the costs are eligible. The amendment shall:

A. be based on the eligible construction costs and change orders approved by the commissioner; and

B. increase the grant amount under part 7077.0515, subpart 3, for administrative, engineering, and legal costs as the amount of grant eligible construction costs increase through approved change orders. This increase may only be used to pay for engineering costs, including inspection, created by work specified on the approved change orders.

~~7075.1070~~ 7077.0550 CHANGE ORDERS.

Subpart 1. **In general.** A change order must be submitted to the commissioner for any change that:

A. alters the design or scope of the project;

B. increases or decreases the contract price;

C. changes the construction completion date;

D. causes a deviation from the approved plans and specifications; or

E. causes a substitution or replacement of equipment, suppliers, or subcontractors.

Subp. 2. **Contents.** Change orders submitted to the commissioner must contain the following:

A. signatures of the municipality's authorized representative, the project engineer, and the contractor;

B. date on which the municipality and the contractor execute the change order;

C. identification of grant eligible and ineligible costs;

D. a complete description and justification of the change;

E. an explanation of why the change was not included in the original plans and specifications and contractor's bid;

F. a detailed cost breakdown for the change from the contractor showing the costs of materials, labor, overhead, and profit; and

G. a cost estimate for the change from the project engineer and an analysis of any differences between the engineer's estimate and the contractor's cost breakdown. If the project engineer's estimate differs from the contractor's price by more than ten percent, an explanation of how the costs were agreed to is required.

Subp. 3. **Eligible costs.** The following costs associated with approved change orders are eligible for grant assistance:

A. construction costs resulting from defects in the plans and specifications that would have been eligible and would have been incurred if the plans and specifications had been free of the defects, excluding the costs of any rework, redesign, restocking, small tools, supervision, delay, acceleration, or disruption caused by the defects;

B. costs, determined by the commissioner to be the result of unanticipated site conditions;

C. combined profit and overhead costs for the contractor or subcontractor that actually performs the change order work not exceeding 15 percent of the costs of materials and labor; and

D. combined profit and overhead costs for a contractor or subcontractor that administers the change order but does not actually perform the change order work not exceeding five percent of the costs of materials and labor.

Subp. 4. **Approval of change orders.** Approval of change orders is required as follows:

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

B. Change orders ~~for changes that do not substantially alter the type or reliability of the treatment process do~~ not ~~require prior approval of~~ requiring the ~~commissioner, but~~ commissioner's prior approval under item A must be submitted to the commissioner ~~as soon as possible~~ for review and approval within one month after the date on which the municipality, its engineer, or other authorized agent, and the contractor execute the change order.

C. Proposed changes described in item A do not require prior written approval from the commissioner when the work is agreed by the commissioner to be of an emergency nature.

~~7075.1080~~ 7077.0555 PAYMENTS.

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

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

A. The municipality must submit a quarterly summary of actions taken to recover corrective action costs from or to complete needed corrective work by the responsible parties.

B. The municipality must support claims of incurred administration, legal, and engineering costs specified under part 7077.0515 with documentation.

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

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

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

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

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

~~7075.1090~~ 7077.0560 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.~~ **Recovery before corrective action grant award.** In the event that the municipality recovers an amount of money from the responsible persons before the corrective action grant is awarded, the amount of the award shall be determined by subtracting the amount recovered for grant eligible work from the total eligible costs determined under part 7077.0515.

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.~~ **Recovery after corrective action grant award.** In the event that the municipality recovers an amount of money from the responsible persons after the corrective action has been awarded, the grant will be amended by subtracting the amount recovered for grant eligible work from the total eligible costs determined under part 7077.0515. If corrective action grant funds have been paid to the municipality in excess of the amended grant amount, the municipality shall repay the excess amount to the state.

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.

CAPITAL COST COMPONENT GRANT PROGRAM

~~7075.1105~~ 7077.0600 PURPOSE.

~~Parts 7075.1105 to 7075.1160 provide for the administration of~~ The capital cost component grant program ~~which makes~~ provides grants ~~available~~ to municipalities for part of the capital cost component of the service fee under a service contract with a private vendor to construct and operate wastewater treatment facilities according to the provisions of *Minnesota Statutes*, section 116.18, subdivision 3b. The program is jointly administered by the Minnesota Pollution Control Agency and the Minnesota Public Facilities Authority. The program applies to grants made before, on, or after July 1, 1990. Parts 7077.0600 to 7077.0660 provide for the agency's responsibilities for the administration of the program.

~~7075.1110~~ 7077.0605 DEFINITIONS.

Subpart 1. **Scope.** For the purpose of parts ~~7075.1105~~ 7077.0600 to ~~7075.1160~~ 7077.0660, the following terms have the meanings given them.

Subp. 2. to 4. [See Repealer.]

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

Subp. 6. [See Repealer.]

Subp. 7. **Project.** "Project" means the work for which a grant or grant amendment is awarded under parts ~~7075.1105~~ 7077.0600 to ~~7075.1160~~ 7077.0660.

~~7075.1120~~ 7077.0615 GRANT APPLICATIONS.

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

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

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

B. an engineering report containing:

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

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

(3) the municipality's existing wastewater flows and loadings data on a form provided by the agency; and

(4) the municipality's estimated future wastewater flows and loadings data on a form provided by the agency;

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

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

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

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

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

~~7075.1135~~ 7077.0630 CERTIFICATION OF AWARD.

The commissioner shall certify to the authority the list of projects to be awarded grants and the amount of the grant to be awarded based on the criteria in parts ~~7075.1125~~ 7077.0620 and ~~7075.1130~~ 7077.0625.

7077.0635 PLANS AND SPECIFICATIONS.

Subpart 1. **In general.** A municipality must submit plans and specifications to the commissioner for review and approval according to part 7077.0640, subpart 2, item A.

Subp. 2. **Contents.** A complete set of plans and specifications must include:

A. drawings and specifications signed by a professional engineer registered in Minnesota;

B. a summary of design parameters for the treatment units;

C. a summary of flow conditions for average dry weather, average wet weather, maximum wet weather, peak hourly and instantaneous wet weather on a form provided by the agency;

D. a hydraulic profile of the flow through the treatment system; and

E. a plan for interim treatment during construction.

~~7075.1140~~ 7077.0640 GRANT CONDITIONS.

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

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

A. Within ~~90~~ 365 days after the grant award date, the grantee shall submit to the commissioner for technical review and approval complete plans and specifications for the wastewater treatment facility. The commissioner shall approve or deny approval of the plans and specifications within 90 days after initial submittal. The grantee and the commissioner may agree to one extension of up to an additional 90 days.

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

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

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

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

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

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

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

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

~~7075.1150~~ 7077.0650 GRANT PAYMENT.

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

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

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

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

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

(3) submission of a certification of compliance with all grant conditions in part ~~7075.1140~~ 7077.0640, subpart 2;

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

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

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

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

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

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

Subp. 3. **Verification of compliance.** Before a grant payment is made, the commissioner shall verify that the grantee has complied with part ~~7075.1135~~ 7077.0630 and with the grantee's permit conditions.

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

~~7075.1155~~ 7077.0655 TERMINATION OF GRANT.

Failure of the grantee to comply with part ~~7075.1140~~ 7077.0640 shall constitute grounds for the commissioner to recommend that the authority terminate the grant of a grantee.

INDIVIDUAL ON-SITE WASTEWATER TREATMENT SYSTEMS GRANTS PROGRAM

~~7075.1400~~ 7077.0700 PURPOSE.

~~Parts 7075.1400 to 7075.1530 provide for the administration of~~ The individual on-site wastewater treatment systems grants program ~~that makes~~ provides grants ~~available~~ to municipalities to assist owners of individual on-site wastewater treatment systems to upgrade or replace their failed ~~individual on-site wastewater treatment~~ systems according to the provisions of *Minnesota Statutes*, section 116.18, subdivision 3c. The program is jointly administered by the Minnesota Pollution Control Agency and the Minnesota Public Facilities Authority. The program applies to grants awarded before, on, or after July 1, 1990. Parts 7077.0700 to 7077.0765 provide for the agency's responsibilities for the administration of the program.

~~7075.1410~~ 7077.0705 DEFINITIONS.

Subpart 1. **Scope.** For the purpose of parts ~~7075.1400~~ 7077.0700 to ~~7075.1530~~ 7077.0765, the following terms have the meanings given them.

Subp. 2. **Abatement notice.** "Abatement notice" means an official document issued by the municipality to the owner of an individual on-site wastewater treatment system stating that the owner is in violation of the municipality's ordinance that adopts the requirements of chapter 7080. The abatement notice must include a citation to the ordinance alleged to have been violated.

Subp. 3. to 5. [See Repealer.]

Subp. 6. **Construction cost.** "Construction cost" means the cost of the materials, labor, overhead, and profit necessary for installation, construction, and repair of an individual on-site wastewater treatment system established by a contract between a system owner and a system installer.

Subp. 7. **Designer.** "Designer" means a person who designs individual on-site wastewater treatment systems, and has received agency approval under part ~~7075.1440~~ 7077.0720.

Subp. 8. **Dwelling.** "Dwelling" means any building or place used or intended to be used by human occupants as a single family or two family unit.

Subp. 9. **Failed system.** "Failed system" means a wastewater treatment system that has been issued an abatement notice by the municipality's inspector.

Subp. 10. **Individual on-site wastewater treatment system or individual system.** "Individual on-site wastewater treatment system" or "individual system" means a wastewater treatment system, or part of a system, serving one or two dwellings or other establishments, that uses subsurface soil treatment and disposal.

Subp. 11. **Inspector.** "Inspector" means a person employed by or under contract to the municipality who inspects individual on-site wastewater treatment systems for conformance with the ordinance that adopts the requirements of chapter 7080, and has received agency approval under part ~~7075.1440~~ 7077.0720.

Subp. 12. **Installer.** "Installer" means a person who constructs or repairs individual on-site wastewater treatment systems, and has received agency approval under part ~~7075.1440~~ 7077.0720.

Subp. 12a. **Maintenance plan.** "Maintenance plan" means a plan developed and administered by a municipality that demonstrates how the maintenance requirements of chapter 7080 will be implemented and enforced.

Subp. 13. **Median household income.** "Median household income" means the income data named "median household income" from the most recent decennial census of the United States.

Subp. 14. **Mound system.** "Mound system" means a system for which the soil treatment area is built above the naturally occurring soil surface to overcome limits imposed by proximity to water table or bedrock, or by rapidly or slowly permeable soils.

Subp. 15. [See Repealer.]

Subp. 16. **Other establishment.** "Other establishment" means a public or private structure other than a dwelling that generates wastewater.

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Subp. 17. **Seasonal residence.** "Seasonal residence" means a dwelling used for less than 182 days of a calendar year by a single family or household. Second homes, vacation residences, and recreation residences are included in this definition.

Subp. 18. **Site evaluator.** "Site evaluator" means a person who investigates soils and site characteristics, does soil borings or percolation tests for use in designing individual on-site wastewater treatment systems, and has received agency approval under part ~~7075.1440~~ 7077.0720.

Subp. 19. **Trench or bed system.** "Trench or bed system" means an individual wastewater treatment system employing a building sewer, sewage tank, and the soil treatment system consisting of trenches or a seepage bed constructed below the original soil surface.

~~7075.1420~~ 7077.0710 ELIGIBILITY.

Subpart 1. **Municipality eligibility.** A municipality applying for the individual system owners must meet the following conditions to be eligible for a grant:

A. be authorized by its governing body to assume responsibility for the grant application and related documents for owners of individual on-site wastewater treatment systems who are in its jurisdiction and included in the planning area under part ~~7075.1430~~ 7077.0715, subpart 2;

B. have developed and adopted a wastewater treatment plan under part ~~7075.1430~~ 7077.0715;

C. have enacted and be enforcing an ordinance that adopts the requirements of chapter 7080, Individual Sewage Treatment Systems Standards; and

D. have enacted an ordinance that establishes a maintenance plan for the individual on-site wastewater treatment systems in its jurisdiction; ~~and~~.

~~E. have a median household income that is less than the state median household income. Municipalities not included in the decennial census shall submit an alternate median household income figure for their municipality, supported by complete income data and a computation methodology. If the data is complete and the computation methodology is equivalent to the decennial census, the alternate median household income will be approved by the commissioner.~~

Subp. 2. **Individual system eligibility.** The individual systems to be replaced or upgraded included in the municipality's grant application must meet the following conditions:

A. be a failed system;

B. have been constructed before January 1, 1977;

C. not be serving a seasonal residence; and

D. not have been constructed with state or federal water pollution control funds.

Subp. 3. **Previous funding.** Individual systems located in geographic areas that were included in planning areas of projects previously funded with state or federal water pollution control funds are not eligible for funding under this part.

~~7075.1430~~ 7077.0715 WASTEWATER TREATMENT PLAN.

Subpart 1. **General requirements.** The municipality must develop a wastewater treatment plan that identifies wastewater treatment needs and proposes long-term solutions for a planning area under subpart 2. The plan must be adopted by the municipality's governing body.

Subp. 2. **Planning area.** The planning area is the entire geographic area in the municipality's jurisdiction unless the municipality submits an alternative proposal ~~at the time of~~ before application. Alternative proposals must be approved by the commissioner and will be evaluated based on housing density, water quality impact, and public health impact. Separate dwellings that do not form a contiguous area are not considered a planning area.

Subp. 3. **Plan contents.** The plan must include the following:

A. a planning area survey prepared by an inspector that identifies ~~failed~~ all systems in the planning area as failed systems or systems in compliance with chapter 7080;

B. site evaluations, including soil investigations, soil borings, and percolation tests, for the failed systems identified in item A prepared by a site evaluator or site evaluators ~~to determine~~ and a determination if it is feasible to replace or upgrade the failed systems on site;

C. an analysis of the overall wastewater treatment needs in the ~~municipality~~ planning area, including sizing and the location of the proposed systems, prepared by a designer using data from ~~a site evaluator or site evaluators~~ the site evaluations prepared under item B;

D. a list of the specific failed individual on-site wastewater treatment systems, including addresses and names of property owners requesting grant funds and copies of the abatement notices;

E. a proposal for addressing the remaining wastewater treatment needs in the planning area not covered in item D, including specific actions to be taken and a proposed timetable for addressing the wastewater treatment needs; and

F. documentation of approval of the inspector, site evaluator or site evaluators, and designer under part ~~7075.1440~~ 7077.0720.

Subp. 4. [See Repealer.]

~~7075.1440~~ 7077.0720 APPROVAL OF INDIVIDUAL ON-SITE WASTEWATER TREATMENT PERSONNEL.

Subpart 1. **General requirement.** For the purposes of parts ~~7075.1400~~ 7077.0700 to ~~7075.1530~~ 7077.0765, inspectors, site evaluators, designers, and installers who inspect, evaluate sites for, design, and install individual on-site wastewater treatment systems under those parts must be approved by the commissioner under subpart 2 or 3.

Subp. 2. **First alternate approval criteria.** A person referred to in subpart 1 will be approved by the commissioner if the person is fully certified by the agency through the individual sewage treatment systems certification program administered by the agency in cooperation with the Individual Sewage Treatment Systems Advisory Committee established under part 7080.0100. Approval is automatic upon submittal of certification number.

Subp. 3. **Second alternate approval criteria.** A person referred to in subpart 1 may apply for approval under this subpart by submitting an application provided by the commissioner upon request. An applicant will be approved by the commissioner if the applicant meets the requirements of items A and B.

A. An applicant must demonstrate knowledge by scoring a minimum of 70 percent correct on an examination based on chapter 7080 and administered by the commissioner.

B. An applicant must document experience by completing the following requirements:

(1) An inspector must submit a list of individual on-site wastewater treatment systems inspected by the applicant in the past three years. The inspector must certify that a minimum of 30 systems, or parts of systems, listed conform with the criteria in chapter 7080.

(2) A site evaluator must submit a list of individual on-site wastewater treatment systems for which the evaluator has conducted site evaluations in the past three years. The site evaluator must certify that a minimum of 20 sites for the systems listed were evaluated according to the criteria in chapter 7080.

(3) A designer must submit a list of individual on-site wastewater treatment systems designed by the applicant in the past three years. The designer must certify that a minimum of 20 systems listed were designed according to the criteria in chapter 7080.

(4) An installer must submit a list of individual on-site wastewater treatment systems constructed or repaired by the applicant in the past three years. The installer must certify that a minimum of ten systems listed were constructed or repaired according to the criteria in chapter 7080.

Subp. 4. **Notification of approval.** The commissioner will approve or deny an application within 30 days of the receipt of information required under subpart 3. Applicants may reapply at any time.

Subp. 5. **Purpose of agency approval.** Agency approval of inspectors, site evaluators, designers, and installers is for grant funding purposes only. This approval does not make the agency responsible for the technical adequacy of the work of inspectors, site evaluators, designers, and installers nor does it alter legal liability of this personnel otherwise provided by law.

~~7075.1450~~ 7077.0725 APPLICATION.

Subpart 1. **Notice of taking applications.** The commissioner will request the authority to publish in the *State Register* a notice that applications for individual on-site wastewater treatment grants will be accepted by the authority. The application closing date will be established by the commissioner, and will be no less than ~~90~~ 120 days after the publication date.

Subp. 2. **Application requirements.** The municipality must apply for a grant on a form provided by the commissioner. The municipality must submit to the authority the following information with the application:

A. a resolution of the governing body of the municipality that designates the municipality as the responsible party for the grant application and related documents, authorizes the filing of the application, and designates the municipal official authorized to sign the application and related documents;

B. the wastewater treatment plan prepared under part ~~7075.1430~~ 7077.0715;

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C. a copy of the ordinance that adopts the requirements of chapter 7080 and certification that the ordinance is being enforced;

D. a copy of the ordinance establishing a maintenance plan under part ~~7075.1420~~ 7077.0710, item D;

E. alternative median household income data under part ~~7075.1420~~ 7077.0710, item E, for municipalities and planning areas not included in the decennial census;

F. signed statements from the individual system owners stating that their system meets the following conditions:

(1) the system to be replaced or upgraded was constructed before January 1, 1977;

(2) the system to be replaced or upgraded was not constructed with funds from state or federal water pollution control funds; and

(3) the system to be replaced or upgraded does not serve a seasonal residence;

G. the municipality's estimated date for the completion of all construction and final request for payment for the grant eligible systems; and

H. a statement from the municipality that it has an inspector on staff or under contract for services, including documentation of approval under part ~~7075.1440~~ 7077.0720.

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

Subp. 4. **Application closing date.** The application must be postmarked by the noticed application closing date.

Subp. 5. **Incomplete applications.** Municipalities that submit applications that do not include the information required in subparts 2 and 3 or that are not submitted by the application closing date are ineligible for funding. The municipalities may reapply in a later application period.

~~7075.1460~~ 7077.0730 ELIGIBLE COSTS.

Subpart 1. **Eligible costs.** Only the actual construction costs of upgrading or replacing failed individual on-site wastewater treatment systems that have been identified under part ~~7075.1430~~ 7077.0715, subpart 3, item D, are eligible.

Subp. 2. **Ineligible costs.** All nonconstruction costs including planning, engineering and design, site evaluation and soil investigation, inspection, and administrative costs are ineligible.

Subp. 3. **Number of systems limitation.** The eligibility of costs for a treatment site is limited to either a trench or bed system or a mound system under part ~~7075.1470~~ 7077.0735, subpart 1.

Subp. 4. **Costs incurred before grant award.** An owner may incur costs before the award of the grant and retain eligibility for reimbursement of eligible costs if the following conditions are met:

A. the municipality has developed and adopted a wastewater treatment plan as described in part ~~7075.1430~~ 7077.0715 before construction costs are incurred by the owner of the individual system;

B. the owner's system is specifically identified on the municipality's wastewater treatment plan; and

C. the municipality submits a complete and timely application, during the first noticed application period under part ~~7075.1450~~ 7077.0725, subpart 1, following the adoption of the wastewater treatment plan.

~~7075.1470~~ 7077.0735 AMOUNT OF THE GRANT AWARD.

Subpart 1. **Grant amount.** The amount of the grant will be 50 percent of the actual eligible costs under part ~~7075.1460~~ 7077.0730 up to a maximum grant of $2,500 per household for a trench or bed system and $3,750 per household for a mound system.

Subp. 2. **Partial awards.** A municipality that receives only a part of the grant to which it is entitled, due to the limitation of funding, will be entitled to receive a grant amendment in the next year or years, if individual on-site wastewater treatment systems grant funding is available, until the full amount of the grant is awarded.

~~7075.1480~~ 7077.0740 PRIORITY RANKING.

Municipalities that meet the requirements of parts ~~7075.1420~~ 7077.0710 to ~~7075.1450~~ 7077.0725 will be ranked for funding priority from lowest median household income to highest median household income, with the lowest median household income receiving the highest priority. Median household income is that established for the planning area identified under part 7077.0715, subpart 2. Planning areas not included in the decennial census shall submit a median household income figure for the planning area supported by complete income data and a computation methodology. If the data is complete and the computation methodology is equivalent to the decennial census, the median household income will be approved by the commissioner.

~~7075.1510~~ 7077.0755 PAYMENTS.

Subpart 1. **Request for payments.** A municipality must submit payment requests to the ~~commissioner~~ authority on a form provided by the ~~commissioner~~ authority.

Subp. 2. **Schedule of payments.** Payments may be requested monthly as construction on individual systems is completed and approved by the inspector.

Subp. 3. **Documentation.** Before payment of any part of the grant is made, the municipality must submit copies of the following documents for each individual system:

A. invoices documenting incurred construction costs;

B. documentation that the system was designed by a designer using data from a site evaluator;

C. documentation that the system was upgraded or replaced by an installer; and

D. documentation that the system was inspected and approved by the municipality's inspector.

Subp. 4. **Certification of payment.** Within 30 days of agency receipt of payment request, the commissioner will determine whether payment will be made. If the commissioner determines that payment will not be made, the commissioner will advise the municipality of the deficiencies in the request. If the commissioner determines that payment conditions have been met, the commissioner will certify to the authority that payment should be made.

~~7075.1530~~ 7077.0765 SUBSEQUENT GRANTS.

A municipality awarded a grant from the individual on-site wastewater treatment systems grants program is not eligible for additional funding under the program established by the 1972 Federal Water Pollution Control Act amendments or the state independent grants program, including the individual on-site wastewater treatment systems grants program, unless the municipality is applying for a project that serves a planning area that was not included, under part ~~7075.1430~~ 7077.0715, subpart 2, in the awarded grant.

PROCEDURAL REQUIREMENTS

7077.2000 DISPUTES.

A municipality adversely affected by an action of agency staff may request a review of the action. A request for review of the action must be submitted in writing to the commissioner by the municipality within 45 days of the date of notification of a final decision made by agency staff.

7077.2005 PROCEDURAL RULES AND APPEALS.

A request for a hearing, an appeal, or other procedural matter not specifically provided for in this chapter is governed by the agency rules of procedure, the rules of the Office of Administrative Hearings, and other applicable laws.

7077.2010 VARIANCES.

A person may apply for a variance from any requirement of parts in this chapter. The variance shall be applied for and acted upon by the agency according to *Minnesota Statutes*, section 116.07, subdivision 5, and other applicable statutes and rules.

REPEALER. *Minnesota Rules*, parts 7075.1010, subparts 1, 2, 3, and 4; 7075.1060, subparts 3 and 5; 7075.1110, subparts 2, 3, 4, and 6; 7075.1410, subparts 3, 4, 5, and 15; 7075.1430, subpart 4, 7075.2510; 7075.2540, subpart 2; 7075.2545, subpart 1, are repealed.

RENUMBER. In the next edition of *Minnesota Rules*, renumber the parts in column A with the corresponding part numbers in column B.

A	B
7075.1005	7077.0500
7075.1010	7077.0505
7075.1020	7077.0510
7075.1030	7077.0515
7075.1040	7077.0520
7075.1050	7077.0535
7075.1060	7077.0540

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A	B
7075.1070	7077.0550
7075.1080	7077.0555
7075.1090	7077.0560
7075.1105	7077.0600
7075.1110	7077.0605
7075.1115	7077.0610
7075.1120	7077.0615
7075.1125	7077.0620
7075.1130	7077.0625
7075.1135	7077.0630
7075.1140	7077.0640
7075.1145	7077.0645
7075.1150	7077.0650
7075.1155	7077.0655
7075.1160	7077.0660
7075.1400	7077.0700
7075.1410	7077.0705
7075.1420	7077.0710
7075.1430	7077.0715
7075.1440	7077.0720
7075.1450	7077.0725
7075.1460	7077.0730
7075.1470	7077.0735
7075.1480	7077.0740
7075.1490	7077.0745
7075.1500	7077.0750
7075.1510	7077.0755
7075.1520	7077.0760
7075.1530	7077.0765
7075.2505	7077.0400
7075.2515	7077.0405
7075.2520	7077.0410
7075.2525	7077.0415
7075.2530	7077.0420
7075.2535	7077.0425
7075.2540	7077.0430
7075.2545	7077.0440
7075.2550	7077.0445

Department of Public Service

Proposed Permanent Rules Relating to Insulation Standards

Notice of Intent to Amend Rules Without a Public Hearing

NOTICE IS HEREBY GIVEN that the Minnesota Department of Public Service intends to adopt amendments to *Minnesota Rules* Chapter 7640, without a public hearing. The Commissioner has determined that the proposed amendment of these rules will be noncontroversial in nature and has elected to follow the procedures set forth in the *Minnesota Statutes*, sections 14.22 to 14.28. Authority for the adoption of these rules is contained in *Minnesota Statutes*, sections 325F.20, subd. 1 and 325F.21, subd. 1 and 2.

All persons have 30 days in which to submit comment in support of or in opposition to any part or subpart of the proposed amendments. Comment is encouraged. Each comment should identify the proposed amendment addressed, the reason for the comment, and any change proposed.

All persons may make a written request for a public hearing on the proposed amendments within the 30-day comment period. If 25 or more persons submit a written request for a public hearing within the 30-day comment period, a public hearing will be held

unless a sufficient number withdraw their requests in writing. Any person requesting a public hearing must state his or her name and address and is encouraged to identify the portion of the proposed amendment addressed, the reason for the request, and any change proposed. If a public hearing is required, the agency will proceed pursuant to *Minnesota Statutes*, sections 14.131 to 14.20.

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

Bruce Nelson, Senior Engineer
Department of Public Service, Energy Division
900 American Center Building
150 East Kellogg Boulevard
St. Paul, MN 55101
phone (612) 297-2313 fax (612) 297-1959

Comments or requests for a public hearing must be received no later than 4:00 p.m., March 29, 1990.

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

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

A STATEMENT OF NEED AND REASONABLENESS that describes the need for and reasonableness of each provision of the proposed amendments and identifies the data and information relied upon to support the proposed amendments has been prepared and is available by requesting a copy from Mr. Nelson at the address listed above.

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 that form relates to legality. Any person may request notification of the date of submission to the Attorney General. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the adopted rules, must submit a written request for such to Mr. Nelson at the address listed above.

Dated: 7 February 1990

Tony Perpich, Commissioner
Department of Public Service

Rules as Proposed

7640.0120 DEFINITIONS.

Subpart 1. **Applicability.** For the purposes of this chapter, the following definitions of terms apply. Technical, scientific, and engineering terms undefined by this part have the meanings given in ~~the ASHRAE Handbook of Fundamentals or in~~ ASTM C ~~168-88a~~ 168, Standard Definitions of Terms Relating to Thermal Insulation Materials.

[For text of subps 2 to 16, see M.R.]

Subp. 17. **Manufacturer of insulation.** "Manufacturer of insulation" means:

A. an industry member who produces insulation materials in their final form for distribution or sale to intermediate and ultimate consumers ~~or who is a urea formaldehyde foam or spray urethane foam insulation manufacturer of the component resins and catalysts used for in situ foaming.~~;

B. an industry member who produces insulation materials or installation instructions for a product the manufacture of which is completed at the jobsite; or

C. an installer of an insulation product the manufacture of which is completed at the jobsite who prepares or modifies the product's installation instructions.

An applicator, contractor, or fabricator of insulation materials who installs, applies, or uses insulation materials for their intended uses, without changing the thermal or physical properties of the insulation material is not a manufacturer of insulation.

[For text of subps 18 to 26, see M.R.]

7640.0130 INSULATION MATERIALS STANDARDS.

[For text of subpart 1, see M.R.]

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Subp. 2. **General testing requirements.** General testing requirements for regulated thermal insulation materials in this part are as follows:

[For text of item A, see M.R.]

B. All regulated thermal insulation materials must be tested for compliance with the standards in this part ~~by April 2, 1986. Testing procedures are~~ as follows:

[For text of subitems (1) to (4), see M.R.]

(5) Insulation must have flammability characteristics in accordance with the ~~Uniform Building Code, 1985 Edition~~ UBC, sections 1712 and 1713, for its intended uses.

C. All thermal performance tests must be conducted in accordance with this item, unless additional requirements are imposed within the body of a materials standard. Insulation's thermal performance must be stated in R-value.

(1) One of the following ~~ASTM~~ test methods must be used: ASTM C ~~177-85~~ 177, ASTM C ~~236-87~~ 236, ASTM C ~~518-85~~ 518, or ASTM C ~~976-82~~ 976. Manufacturers shall select the appropriate test method for the material unless a specific method or procedure is referenced within a materials specification. Thermal conductivity must only be measured at a mean temperature of 75 degrees Fahrenheit.

(2) R-value testing must be performed at the insulation's representative thickness, and be consistent with the requirements of ~~the United States Federal Trade Commission~~ Code of Federal Regulations, title 16, part 460. Unit R per inch must be derived from R-value testing performed to its representative thickness.

(3) For ~~polyurethane, polyisocyanurate, and extruded polystyrene, in accordance with the FTC R-value rule, section 460.5~~ foam plastic insulations that incorporate blowing agents other than air or pentane, R-value tests must be done on samples that have been treated to fully reflect the effect of aging on the product's R-value. If criteria for treating samples to reflect the effect of aging are not specified within a material specification, the samples must be treated for either 90 days at 140 ± 2 degrees Fahrenheit (60 ± 1 degree centigrade) or six months at ambient conditions prior to conditioning and thermal resistance testing. During treating, air circulation must be provided so that all surfaces of the insulation are exposed to the surrounding environmental conditions.

[For text of subitems (4) to (6), see M.R.]

[For text of item D, see M.R.]

Subp. 3. **Cellulose insulation.**

A. Cellulose fiber in loose-fill form must meet the following requirements:

(1) The product must comply with ASTM C ~~739-86~~ 739, Standard Specification for Cellulosic Fiber (wood-base) Loose-Fill Thermal Insulation or the United States Consumer Product Safety Commission Interim Safety Standard for Cellulose Insulation, Code of Federal Regulations, title 16, part 1209 subpart B.

[For text of subitems (2) and (3), see M.R.]

B. Cellulose fiber spray-applied must meet the following requirements:

[For text of subitems (1) and (2), see M.R.]

(3) Determination of thermal performance must be in accordance with ~~ASTM C 177-85, ASTM C 236-87, ASTM C 518-85 or ASTM C 976-82 at the manufacturer's option~~ subpart 2, item C, at the test defined density of the material. R value testing must be performed at a thickness of material of two inches, unless the material is designed for use at a lesser maximum thickness and the material is so designated on the label or label notice by the manufacturer. It must then be tested at the maximum thickness of suggested use.

(4) Density must be determined in accordance with ~~section 7 of~~ ASTM E ~~605-77 reapproved 1982~~ 605. The density established by this test must be used in the preparation of manufacturer's installation guidelines and in the determination of thermal performance.

(5) Critical radiant flux and smoldering combustion must be ~~tested for~~ in accordance with ASTM C ~~739-86, part 5~~ 739, or the CPSC Interim Safety Standard for Cellulose Insulation, Code of Federal Regulations, title 16, part 1209. ~~Values achieved must not exceed those established by the CPSC.~~ If the product in loose-fill form meets the criteria for critical radiant flux, then a test of the product in spray-applied form for critical radiant flux is unnecessary.

(6) Moisture absorption must be determined in accordance with section ~~15~~ 14 of ASTM C ~~553-70 reapproved 1977~~ 553. Moisture absorption must not exceed 15 percent by weight.

(7) The product must ~~comply with test standards for air erosion, bond strength, and bond deflection that have been accepted by the ASTM or a federal or state government agency~~ have a minimum adhesive/cohesive bond strength per unit area of five times the weight of the material under the test plate when tested in accordance with ASTM E 736.

~~(8) Test procedures in subitem (7)~~ Exception: Testing and compliance with bond strength criteria are not required of products that are ~~installed so that physical restrictions imposed by the construction elements preclude any possibility of subsequent delamination, erosion, or dusting~~ intended only for installation in enclosed cavities, and the product is identified as intended only for those installations.

(8) Corrosion must be in accordance with ASTM C 739, or the CPSC Interim Safety Standard for Cellulose Insulation, Code of Federal Regulations, title 16, part 1209. If the product in loose-fill form meets the criteria for corrosion, then a test of the product in spray-applied form is unnecessary.

(9) Odor emission must be in accordance with ASTM C 739, or the CPSC Interim Safety Standard for Cellulose Insulation, Code of Federal Regulations, title 16, part 1209. If the product in loose-fill form meets the criteria for odor emission, then a test of the product in spray-applied form is unnecessary.

(10) Fungi resistance must be in accordance with ASTM C 739, or the CPSC Interim Safety Standard for Cellulose Insulation, Code of Federal Regulations, title 16, part 1209. If the product in loose-fill form meets the criteria for fungi resistance, then a test of the product in spray-applied form is unnecessary.

Subp. 4. **Mineral fiber insulation.**

A. Mineral fiber in loose fill form must comply with ASTM C ~~764-84~~ 764, Standard Specification for Mineral Fiber Loose Fill Thermal Insulation.

B. Mineral fiber in batts and blankets form must comply with ASTM C ~~665-86~~ 665, Standard Specification for Mineral Fiber Blanket Thermal Insulation for Light Frame Construction and Manufactured Housing.

C. Mineral fiber in board form must ~~meet the following requirements:~~ comply with ASTM C 612, Standard Specification for Mineral Fiber Block and Board Thermal Insulation.

~~(1) The basic material shall be made from mineral substances such as rock, slag, or glass processed from a molten state into a fibrous form. Insulation shall be composed of mineral fibers with water resistant binder added and formed into flat rectangular units. Insulation boards shall be uniform in quality and free from defects, such as broken edges, splits, or loose materials which would impair its intended use.~~

~~(2) Thermal performance and surface burning characteristics shall be determined in accordance with subpart 2.~~

D. Spray applied mineral fiber must comply with ASTM C ~~1014-84~~ 1014, Standard Specification for Spray Applied Mineral Fiber Thermal or Acoustical Insulation.

Subp. 5. **Foam plastic insulation.**

A. Molded expanded polystyrene insulation must comply with ASTM C ~~578-87A~~ 578, Standard Specification for Preformed, Cellular Polystyrene Thermal Insulation and the accompanying Supplementary Requirements.

B. Extruded Polystyrene must comply with ASTM C ~~578-87A~~ 578, Standard Specification for Preformed, Cellular Polystyrene Thermal Insulation and the accompanying Supplementary Requirements.

C. Unfaced polyurethane and polyisocyanurate in board form must comply with ASTM C ~~591-85~~ 591, Standard Specification for Unfaced Preformed Rigid Cellular Polyurethane Thermal Insulation.

Exception: Aged R-value must be 5.6 per inch or greater at 75 degrees Fahrenheit.

[For text of item D, see M.R.]

E. Field applied urea formaldehyde foam must meet the following requirements:

(1) The product must comply with ASTM C ~~951-85~~ 951, Standard Specification for Urea Formaldehyde Based, Foam in Place Insulation.

[For text of subitem (2), see M.R.]

~~(3) Manufacturers and installers of urea formaldehyde foam insulation shall comply with statutes and rules, including parts 4620.1600 to 4620.2100, and *Minnesota Statutes*, section 325F.18.~~

F. Spray applied urethane must comply with ASTM C ~~1029-85~~ 1029, Standard Specification for Spray Applied Rigid Polyurethane Thermal Insulation.

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G. Rigid cellular phenolic insulation must comply with ASTM C 1126, Standard Specification for Faced or Unfaced Rigid Cellular Phenolic Thermal Insulation.

H. Foam plastic insulation that conforms to all requirements of ICBO Evaluation Service Acceptance Criteria for Foam Plastic~~, October, 1982,~~ for the intended application~~,~~ meets the ~~Minnesota testing standards in this subpart~~ requirements of part 7640.0130.

Subp. 6. **Perlite and vermiculite insulation.**

A. Perlite loose fill insulation must meet the following requirements:

(1) The product must comply with ASTM C ~~549-81 (reapproved 1986)~~ 549, Standard Specification for Perlite Loose Fill Insulation.

[For text of subitem (2), see M.R.]

B. Vermiculite in loose fill form must meet the following requirements:

(1) The product must comply with ASTM C ~~516-80 (reapproved 1985)~~ 516, Standard Specification for Vermiculite Loose Fill Thermal Insulation.

[For text of subitem (2), see M.R.]

Subp. 7. **Reflective foil insulation.**

A. The following requirements apply to reflective foil insulation:

[For text of subitem (1), see M.R.]

(2) Except for radiant barrier products, thermal performance for single or multiple sheet sections must be determined according to ASTM C ~~976-82~~ 976 or ASTM C ~~236-87~~ 236. The test panel must consist of a panel using a wooden frame of two-by-six inch boards 16 inches apart and at least 24 inches long, covered with a minimum of 1/2-inch gypsum wallboard or 1/2-inch plywood on each side. For tests in the vertical position, the test panel must be at least seven feet high at a mean temperature of 75 degrees Fahrenheit, with a temperature differential of 30 degrees Fahrenheit. The resultant thermal performance must be based upon the insulation and the associated air spaces.

[For text of subitems (3) to (6), see M.R.]

B. Reflective insulation systems with more than one sheet must be tested according to ASTM C ~~976-82~~ 976 or ASTM C ~~236-87~~ 236 to determine the thermal performance in horizontal, upward, and downward directions. The tested thermal performance in the heat-flow direction or directions of the intended application must be labeled on the material. The manufacturer shall test once in each direction of intended application; except that, for products labeled with only one heat-flow direction, the manufacturer shall test two samples in that direction. The tests must be done at a mean temperature of 75 degrees Fahrenheit, with a temperature differential of 30 degrees Fahrenheit.

C. A single sheet reflective insulation ~~systems~~ system must be tested ~~with~~ according to ASTM E 408 ~~or another test method that provides comparable results. This tests the~~ to determine its emissivity ~~of the foil (its power to radiate heat)~~. To get the R-value for ~~a specific~~ the measured emissivity ~~level,~~ and a specific air space~~,~~ and direction of heat flow, ~~use the tables in the most recent edition of the American Society of Heating, Refrigerating, and Air Conditioning Engineers (ASHRAE)~~ Table 2 in chapter 22 of the ASHRAE Handbook of Fundamentals must be used. The R-value shown for 50 degrees Fahrenheit must be used, with a temperature differential of 30 degrees Fahrenheit.

[For text of item D, see M.R.]

Subp. 8. **Other insulation.** Insulation other than insulation specified in subparts 1 to 7~~, to be sold, marketed, or advertised for use in residential structures in Minnesota~~ must comply with the requirements in items A to F.

[For text of item A, see M.R.]

B. ~~Results of the~~ Water or moisture absorption ~~test~~ must be ~~reported~~ determined according to one of the following methods:

(1) ASTM C 272;

(2) ASTM C 553, section 14;

(3) ASTM C 739, section 12; or

(4) ASTM D 2842.

[For text of items C and D, see M.R.]

E. The ~~initial report as required by part 7640.0150, subpart 2, must include a description of other tests applied to the~~ product must not produce a detectable odor that is classified as objectionable and strong or very strong by two or more panel members when tested in accordance with ASTM C 739, section 13.

[For text of item F, see M.R.]

7640.0140 REQUIREMENTS FOR INSULATION FOR SPECIAL APPLICATIONS.

Subpart 1. **~~Application testing~~ Physical requirements for insulation materials designed for exterior, underground ~~insulation~~ use.**

A. The insulation ~~by itself or as part of a system,~~ installed according to the manufacturer's recommendations, must be in service tested ~~in~~ at either a testing facility ~~designed to duplicate actual underground conditions~~ or an actual house for a period of one continuous year. The testing environment must ~~reflect the extremes of~~ have historical winter weather~~, moisture~~ conditions no less than 8,000 Fahrenheit heating degree days, and soil conditions with drainage characteristics classified as poor in Table 7-4 of the Building Foundation Design Handbook. The purpose of the testing must be to determine aged R-value performance~~, giving consideration to the conditions listed in item C. A summary of the test results must be submitted to the department~~.

Exception: In-service testing is not necessary if the manufacturer demonstrates that a product of the same material specification with equal or less durability in this application has been successfully in-service tested. The manufacturer shall demonstrate the equal or less durability test by comparing laboratory test results of the physical characteristics listed in part 7640.0140, subpart 1, item B, clauses (1) to (4).

B. ~~As an alternative to item A, the testing initiator may elect to have an insulation tested by an approved laboratory and listed for underground use, with consideration given to the conditions listed in item C.~~

~~C.~~ The ~~listing of the~~ manufacturer shall demonstrate that the product ~~for~~ will exhibit less than a ten percent loss in R-value when installed underground ~~use must be based on the most recent applicable ASTM tests or any other tests that are available that give consideration to each~~ and the combined effect of ~~the following~~ assumed conditions on the following physical characteristics are considered:

[For text of subitems (1) and (2), see M.R.]

(3) soil compatibility; and

(4) ~~flexural strength or compression; and~~ compressive strength

~~(5) vapor drives due to high low pressure gradients~~.

~~D.~~ The ~~initiator~~ manufacturer ~~seeking the listing~~ shall ~~select~~ state the ~~appropriate tests that best address the~~ assumed conditions ~~stated~~ in ~~item C~~ the initial report filed according to part 7640.0150, subpart 2.

~~E~~ C. An association ~~or trade representative~~ may ~~initiate a product's listing~~ conduct tests and prepare a filing for exterior below grade application of a type of product on behalf of its constituency. The association shall ~~submit representative samples for~~ conduct testing ~~and certify to the department which manufacturers within its constituency the samples are representative of~~ according to subpart 1, item A, on at least three specimens of the product. The association ~~must have an internal certification procedure to determine constituency conformity to~~ shall demonstrate that the manufacturers' products for which the tests and filing would apply are representative ~~samples submitted for testing~~ of the tests and filing performed by the association.

~~F~~ D. ~~A summary of test results for item B must be submitted to the department~~ Mineral fiber board for exterior below ground application must be manufactured to facilitate downward drainage.

Subp. 2. **Requirements for installation instructions for underground use.** Written instructions on underground use of insulation must~~, at a minimum,~~ contain instructions or information for vertical and, if recommended, horizontal application regarding:

A. ~~optimal~~ application techniques;

B. if required for the insulation, drainage, as specified in section R-305 of the CABO One & Two Family Dwelling Code ~~by CABO (1983 Edition)~~;

C. if required for the insulation, waterproofing ~~and~~ or dampproofing, as specified in section R-306 of the CABO One & Two Family Dwelling Code ~~by CABO (1983 Edition)~~;

D. ~~varying soil and soil moisture conditions~~ chemical resistance information;

E. ambient temperature ~~effects on~~ range permitted during application; and

F. ~~optimal~~ backfill techniques and backfill materials for ~~protection from physical damage; and~~ prevention of damage to the insulation material and below grade protective coating.

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~~G. the manufacturers' warranty, if any. The manufacturer shall state whether it warrants the insulation for underground use and, if applicable, the conditions of warranty and the length of warranty, including a statement of the number of years for which the product is warranted to maintain 80 percent of its advertised R value.~~

~~Manufacturers that recommend a product for underground use in the vertical or horizontal position shall provide complete instructions for its respective applications.~~

Subp. 3. **~~Practice of insulation use~~ Installation requirements for exterior above ground and underground ~~installation~~ use.** ~~The following requirements apply to the exterior installation or application of insulation below the ground:~~

A. ~~The installation or application of insulation in the vertical and horizontal position must conform to the manufacturers' instructions and recommendations.~~

~~B.~~ Insulation extending above ~~the ground line~~ grade must be covered with an exterior wall finish to protect the insulation from ~~ultraviolet~~ deterioration due to sunlight, ~~moisture absorption, freeze thaw durability, air erosion, and general weather conditions~~ and physical abuse.

~~C~~ B. Polyurethane or polyisocyanurate ~~spray applied~~ application must ~~meet the following conditions:~~

~~(1) Manufacturers shall recommend the type of urethane systems to be used for underground use and applicators shall only use a recommended system.~~

~~(2) Polyurethane or polyisocyanurate spray applied application must~~ have a protective coating applied to its exterior surface ~~above and~~ below ground. The type of protective coating and method of application must be in accordance with the insulation manufacturer's instructions and recommendations.

~~D~~ C. Mineral fiber foundation insulation ~~and drainage boards~~ must ~~meet the following conditions:~~

~~(1) The board must be manufactured to facilitate proper downward drainage, or in the alternative, manufactured in such a manner that moisture will not substantially penetrate horizontally toward the foundation wall.~~

~~(2) The board must not be used without~~ include exterior drainage, as defined in part 7640.0120.

[For text of subp 4, see M.R.]

7640.0150 REPORTING REQUIREMENTS.

[For text of subpart 1, see M.R.]

Subp. 2. **Initial report.** An industry member shall file an initial report at least 30 days before offering for sale in the state any new products, significant changes to a product already filed, or changes to product installation instructions to a product already filed.

The initial report must include the following:

[For text of items A to E, see M.R.]

F. results of initial tests, as required by part 7640.0130, identifying tests performed, name of laboratory, testing dates, and test results. The report for "other" insulation products regulated by part 7640.0130, subpart 8, must also include the products' Material Safety Data Sheet;

[For text of items G to I, see M.R.]

[For text of subp 3, see M.R.]

7640.0160 APPLICATION AND INSTALLATION STANDARDS.

Subpart 1. **Applicability.** Industry members, including industry members who offer insulation installation services for new and existing residential buildings, shall comply with ~~the application standards in~~ this part.

~~The application standards in this part do not apply to nonresidential buildings or construction.~~

~~This part applies to new residential construction and retrofit applications.~~

An installer of an insulation the manufacture of which is completed at the jobsite who significantly alters the manufacturer's installation instructions becomes a manufacturer for the purpose of *Minnesota Rules*, chapter 7640.

Subp. 2. **Application and inspection.**

A. Industry members installing insulation shall follow manufacturer's written application instructions.

~~In attic areas where insulation is to be installed, the installer shall comply with part 7640.0110, subpart 5.~~

B. When installing insulation in attic areas, the installer shall locate flush and recessed light fixtures, and other heat producing appurtenances, and shall comply with National Electrical Code, section 410-66, subsections A and B.

C. Installation of cellulosic and mineral fiber in loose-fill form must ~~comply~~ be in conformance with ASTM standard C ~~1015-84~~ 1015, including part 7.7.2.

D. Installation of reflective insulation must ~~comply~~ be in conformance with ASTM standard C ~~727-72 (reapproved 1978)~~ 727.

E. Installers of urea formaldehyde foam insulation shall conform with *Minnesota Statutes*, section 325F.18, and *Minnesota Rules*, parts 4620.1600 to 4620.2100.

F. State and local agencies using appropriated federal funds and persons contracting with state or local agencies with respect to work performed under the contracts shall comply with Code of Federal Regulations, title 40, part 248, Guideline for Federal Procurement of Building Products Containing Recovered Materials.

Subp. 3. **Manufacturer's installation or application instructions.** Manufacturers shall provide installation and application instructions that comply with this subpart:

[For text of items A and B, see M.R.]

C. ~~Urea formaldehyde foam insulation installation must conform with *Minnesota Statutes*, section 325F.18 and *Minnesota Rules*, part 4620.2100~~ Installation instructions for products whose manufacture is completed at the jobsite must address the quality assurance program required by part 7640.0130, subpart 2, item D; ambient temperature during application; and actions necessary to facilitate curing or drying.

7640.0180 INCORPORATIONS BY REFERENCE AND CITATIONS.

[For text of subpart 1, see M.R.]

Subp. 2. **ASTM.** The following ASTM standards are incorporated by reference:

[For text of items A to C, see M.R.]

D. ASTM C 272-53 (reapproved 1980), Standard Test Method for Water Absorption of Core Materials for Structural Sandwich Constructions.

E. ASTM C 516-80 (reapproved 1985), Standard Specification for Vermiculite Loose-Fill Thermal Insulation.

~~E~~ F. ASTM C 518-85, Standard Test Method for Steady State Heat Flux Measurements and Thermal Transmission Properties by Means of the Heat Flow Meter Apparatus.

~~F~~ G. ASTM C 549-81 (reapproved 86), Standard Specification for Perlite Loose Fill Insulation.

~~G~~ H. ASTM C 553-70 (reapproved 1977), Standard Specification for Mineral Fiber Blanket and Felt Insulation (Industrial Type).

~~H~~ I. ASTM C 578-87A, Standard Specification for Preformed, Cellular Polystyrene Thermal Insulation.

~~I~~ J. ASTM C 591-85, Standard Specification for Unfaced Preformed Rigid Cellular Polyurethane Thermal Insulation.

~~J~~ K. ASTM C 612-83, Standard Specification for Mineral Fiber Block and Board Thermal Insulation.

L. ASTM C ~~665-86~~ 665-88, Standard Specification for Mineral Fiber Blanket Thermal Insulation for Light Frame Construction and Manufactured Housing.

~~K~~ M. ASTM C 727-72 (reapproved 1978), Standard Recommended Practice for Use of Reflective Insulation in Building Constructions.

~~L~~ N. ASTM C ~~739-86~~ 739-88, Standard Specification for Cellulosic Fiber (wood-base) Loose-Fill Thermal Insulation.

~~M~~ O. ASTM C ~~764-84~~ 764-88, Standard Specification for Mineral Fiber Loose-Fill Thermal Insulation.

~~N~~ P. ASTM C 951-83, Standard Specification for Urea-Formaldehyde-Based, Foam in Place Insulation.

~~O~~ Q. ASTM C 976-82, Standard Test Method for Thermal Performance of Building Assemblies by Means of a Calibrated Hot Box.

~~P~~ R. ASTM C ~~1014-84~~ 1014-88, Standard Specification for Spray-Applied Mineral Fiber Thermal or Acoustical Insulation.

~~Q. ASTM E 84-84 Revision A, Surface Burning Characteristics of Building Materials.~~

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.

~~R~~ S. ASTM C 1015-84, Standard Practice for Installation of Cellulosic and Mineral Fiber Loose-Fill Thermal Insulation.

~~S~~ T. ASTM C 1029-85, Standard Specification for Spray-Applied Rigid Cellular Polyurethane Thermal Insulation.

~~T~~ U. ASTM C 1126-89, Standard Specification for Faced or Unfaced Rigid Cellular Phenolic Thermal Insulation.

V. ASTM D 2842-69 (reapproved 1975), Standard Test Method for Water Absorption of Rigid Cellular Plastics.

W. ASTM E 84-84 Revision A, Surface Burning Characteristics of Building Materials.

X. ASTM E 408-71 (reapproved 1985), Standard Test Methods for Total Normal Emittance of Surfaces Using Inspection Meter Techniques.

~~U~~ Y. ASTM E 605-77 (reapproved 1982), Thickness and Density of Sprayed Fire-Resistive Material Applied to Structural Members.

Z. ASTM E 736-86, Test for Cohesion/Adhesion of Sprayed Fire Resistive Materials Applied to Structural Members.

[For text of subp 2a, see M.R.]

Subp. 3. **Other incorporation and citations.** The following non ASTM standards are also incorporated by reference:

A. ASHRAE Handbook of Fundamentals, (~~1981~~ 1989 Edition) by the American Society of Heating, Refrigerating and Air Conditioning Engineers, Inc. (~~Technical Reference Book~~), chapter 22, tables 1 and 2.

[For text of item B, see M.R.]

C. ~~Federal Trade Commission requirements in~~ Code of Federal Regulations, title 16, part 460, Labeling and Advertising of Home Insulation.

[For text of items D to J, see M.R.]

K. Code of Federal Regulations, title 40, part 248, Guideline for Federal Procurement of Building Insulation Products Containing Recovered Materials.

L. Underground Space Center, University of Minnesota; Building Foundation Design Handbook; Prepared for Oak Ridge National Laboratory; May 1988, Table 7-4.

[For text of subp 4, see M.R.]

REPEALER. *Minnesota Rules*, part 7640.0110, subpart 5, is repealed.

Adopted Rules

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

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

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

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

Department of Labor and Industry

Adopted Permanent Rules Relating to OSHA Update

Rules as Adopted

5205.0010 ADOPTION OF FEDERAL OCCUPATIONAL SAFETY AND HEALTH STANDARDS BY REFERENCE.

[For text of subpart 1, see M.R.]

Subp. 2. **Part 1910.** Part 1910: Occupational Safety and Health Standards as published in Volume 43, No. 206 of the *Federal Register* on October 24, 1978, and corrected in Volume 43, No. 216 on November 7, 1978, which incorporates changes, additions, deletions, and corrections made up to November 7, 1978; and subsequent changes made prior to December 6, 1989:

[For text of items A to K, see M.R.]

L. *Federal Register*, Vol. 54:

[For text of subitems (1) to (6), see M.R.]

(7) *Federal Register,* Vol. 54, No. 146, dated August 1, 1989: "Occupational Exposure to Formaldehyde (1910.1048); Correction."

(8) *Federal Register,* Vol. 54, No. 166, dated August 29, 1989: "Occupational Exposure to Formaldehyde (1910.1048); Extension of Administrative Stay."

(9) *Federal Register,* Vol. 54, No. 169, dated September 1, 1989: "Control of Hazardous Energy Sources - Lockout/Tagout (1910.147)."

(10) *Federal Register,* Vol. 54, No. 170, dated September 5, 1989: "Air Contaminants; Final Rule - Grant of Petitions for Reconsideration of Three Exposure Limits and Partial Stays of Effective Dates for Four Substances (1910.1000)."

(11) *Federal Register,* Vol. 54, No. 174, dated September 11, 1989: "Occupational Exposure to Formaldehyde (1910.1048); Correction."

(12) *Federal Register,* Vol. 54, No. 193, dated October 6, 1989: "Air Contaminants (1910.1000); Final Rule Partial Stay of Effective Date for Two Substances."

(13) *Federal Register,* Vol. 54, No. 199, dated October 17, 1989: "Control of Hazardous Energy Sources - Lockout/Tagout (1910.147); Final Rule Approval of Information Collection Requirements."

(14) *Federal Register,* Vol. 54, No. 213, dated November 6, 1989: "Control of Hazardous Energy Sources - Lockout/Tagout (1910.147); Final Rule Extension of Effective Date."

(15) *Federal Register,* Vol. 54, No. 219, dated November 15, 1989: "Air Contaminants; Final Rule Corrections."

(16) *Federal Register,* Vol. 54, No. 233, dated December 6, 1989: "Air Contaminants; Final Rule Partial Stay of Effective Date for Two Substances."

[For text of subps 3 to 5, see M.R.]

Subp. 6. **Part 1926.** Part 1926: Construction Safety and Health Regulations as published in Part VII, Volume 44, No. 29 of the *Federal Register* on February 9, 1979, which incorporates changes, additions, deletions, and corrections made up to October 17, 1978, and includes General Industry Occupational Safety and Health Standards (29 CFR Part 1910) which have been identified as applicable to construction work; and subsequent changes made prior to December 6, 1989:

[For text of items A to D, see M.R.]

E. *Federal Register,* Volume 54:

[For text of subitems (1) and (2), see M.R.]

(3) *Federal Register,* Vol. 54, No. 192, dated October 5, 1989: "Concrete and Masonry Construction Safety Standards (Subpart O of 29 CFR Part 1926); Final Rule Technical Amendment."

(4) *Federal Register,* Vol. 54, No. 209, dated October 31, 1989: "Excavations (Subpart P of 29 CFR Part 1926)."

[For text of subp 7, see M.R.]

REPEALER. *Minnesota Rules,* part 5205.0680, is repealed.

Board of Veterinary Medicine

Adopted Permanent Rules Relating to Veterinary License Renewal Fees

The rule proposed and published at *State Register*, Volume 14, Number 4, pages 159-160, July 24, 1989 (14 S.R. 159) is adopted as proposed.

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.

Executive Orders

Executive Order #90-1 Providing for the Establishment of the Governor's Council on Children 2000; Rescinding Executive Order #88-7

I, RUDY PERPICH, GOVERNOR OF THE STATE OF MINNESOTA, by virtue of the authority vested in me by the Constitution and applicable statutes, do hereby issue this Executive Order:

WHEREAS, the well-being of children is a matter of high priority because of its great and pervasive impact on society; and

WHEREAS, persons and organizations, including state government, do not individually have resources to deal comprehensively with the needs of children; and

WHEREAS, a comprehensive state vision for children through the year 2000 will promote more directed and unified actions, and more effective application of resources, to better the interests of children; and

WHEREAS, the groundwork toward a vision for children has been laid and a mechanism is needed to articulate and implement a state vision for children; and

WHEREAS, a partnership of leaders from government, business, the nonprofit community and education can significantly advance the implementation of a vision for children;

NOW, THEREFORE, I hereby order that a Governor's Council on Children 2000 be established.

1. The Council shall advise the Governor on policy issues concerning the well-being of children.

2. The Council shall consist of up to 15 members, appointed by the Governor. Members shall be persons in leadership positions who have a demonstrated commitment to children's issues. State agencies not represented on the Council may become ex officio members. The Lieutenant Governor shall serve as Council chair and may choose another member as co-chair.

3. The Council shall promote the interests of children in the state. Goals of the Council shall be:

(a) To develop and foster an ongoing public-private partnership of leaders from business, government, education and nonprofit sectors to provide statewide leadership in promoting, initiating action on and sustaining support for children's issues.

(b) To integrate consideration of children's issues into government and business policy.

(c) To create a public information program that highlights innovative public-private efforts on behalf of children, increases public awareness of children's issues, and recognizes exemplary service on behalf of children.

4. The Council may form working committees of members and nonmembers to carry out its activities. Working committees will support the Council through fact-finding, examining issues, and formulating recommendations for action. Working committees shall be composed of persons with knowledge and familiarity in specific issue areas that relate to the Council's goals.

5. The Council may be staffed by persons on loan from state agencies or other organizations. In addition, the Council, to the extent of available funds, may hire staff. State agencies shall assist the Council in carrying out its work.

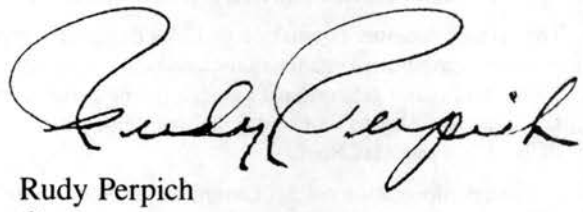
6. The Council may solicit funds from private sources to support its work. Funds received by the Council shall, upon acceptance by the State Treasurer and Commissioner of Finance pursuant to *Minnesota Statutes 1988*, Chapter 7, become the property of the State of Minnesota. Such funds shall be subject to all standard state accounting policies and procedures and shall further be subject to all appropriate auditing requirements and mechanisms.

7. Council members may be reimbursed for expenses as provided in *Minnesota Statutes 1988*, Section 15.0593.

Executive Order 88-7 is rescinded.

Pursuant to *Minnesota Statutes 1988,* Section 4.035, Subdivision 2, this Order shall be effective fifteen (15) days after publication in the *State Register* and filing with the Secretary of State, and shall remain in effect until rescinded by proper authority or it expires in accordance with *Minnesota Statutes 1988,* Section 4.035, Subdivision 3.

IN TESTIMONY WHEREOF, I have set my hand this 20th day of February, 1990.



Rudy Perpich
Governor

Official Notices

Pursuant to the provisions of Minnesota Statutes §14.10, an agency, in preparing proposed rules, may seek information or opinion from sources outside the agency. Notices of intent to solicit outside opinion must be published in the *State Register* and all interested persons afforded the opportunity to submit data or views on the subject, either orally or in writing.

The *State Register* also publishes other official notices of state agencies, notices of meetings, and matters of public interest.

Department of Administration

Building Codes & Standards Division

Notice to Solicit Outside Opinion Regarding Proposed Amendments to Minnesota State Building Code, Chapter 1340, Facilities for the Handicapped

NOTICE IS HEREBY GIVEN that the State Building Codes and Standards Division is seeking information or opinions from sources outside the agency in preparing to amend the current rules relating to facilities for the handicapped. The adoption of the rule is authorized by *Minnesota Statutes* section 16B.59 which permits the commissioner of administration to adopt and amend the State Building Code, and section 16B.64 which authorizes the commissioner of administration to hold all state hearings in regard to the State Building Code including rules proposed by another state agency.

The State Building Codes and Standards Division requests information and opinions concerning the subject matter of the rule. Interested persons or groups may submit data or views on the subject matter of concern in writing. Written statements should be addressed to Margaret White, Building Codes and Standards Division, 408 Metro Square Building, St. Paul, Minnesota 55101.

All statements of information and opinions shall be accepted until July 2, 1990. Any written material received by the State Building Codes and Standards Division shall become part of the rulemaking record to be submitted to the attorney general or the administrative law judge in the event the rule is adopted.

Minnesota State Arts Board

Notice of Board Meeting

A meeting of the Minnesota State Arts Board will take place at 10:00 a.m. on Thursday, March 1, 1990 at the Arts Board offices, 432 Summit Avenue in Saint Paul. The public is invited to attend. Open meeting law guidelines will be in effect.

Agenda items will include recommendations on Artist Assistance Fellowship grants for Music and Dance. For information on this meeting or other programs, contact the Arts Board at 432 Summit Avenue, Saint Paul, MN 55102, (612) 297-2603 or toll-free from greater Minnesota at (800) 652-9747.

Minnesota State Arts Board

Notice of Committee Meeting

The Minnesota State Arts Board's Cultural Diversity Advisory Committee will hold its first meeting at 10:00 a.m. on March 8, 1990, at the Arts Board offices, 432 Summit Avenue in Saint Paul. All committee meetings are open to the public and adhere to the state's Open Meeting Law guidelines.

The committee's primary purpose will be to help the Arts Board determine the current status of cultural diversity programming in Minnesota, and to provide practical recommendations for improvement.

The sixteen-member committee includes designated representatives from the state's four minority councils; professional managers of minority-based arts organizations; practicing minority artists; representatives from Minnesota's funding community, regional arts councils, and major arts organizations; a public policy expert; a folk arts scholar; and a representative from a recognized coalition of minority artists. (Up to four additional committee members may be appointed after the first meeting. A list of current appointees is available from the Arts Board.)

For more information on this committee or other programs, contact the Minnesota State Arts Board at (612) 297-2603 or toll-free from greater Minnesota at (800) 652-9747.

Minnesota Comprehensive Health Association

Notice of Meeting of Public Awareness Committee

NOTICE IS HEREBY GIVEN that a meeting of the Public Awareness Committee of the Minnesota Comprehensive Health Association will be held at 9:00 a.m. on Tuesday, March 6, 1990, at Blue Cross and Blue Shield of Minnesota, Conference Room D, 3535 Blue Cross Road, Eagan, Minnesota. For additional information, please call (612) 456-8466.

Department of Finance

Notice of Maximum Interest Rate for Municipal Obligations in February

Pursuant to *Minnesota Statutes*, Section 475.55, Subdivision 4, Commissioner of Finance, Peter Hutchinson, announced today that the maximum interest rate for municipal obligations in the month of February, 1990 would be nine (9) percent per annum. Obligations which are payable wholly or in part from the proceeds of special assessments or which are not secured by General Obligations of the municipality may bear an interest rate of up to ten (10) percent per annum.

Dated: 14 February 1990

Peter Sausen
Assistant Commissioner
Cash & Debt Management

Minnesota Historical Society

State Review Board Regular Meeting

A meeting of the State Review Board of the Minnesota Historical Society to consider nominations to the National Register of Historic Places will be held on March 22, 1990 in the Auditorium of the Fort Snelling History Center, Fort Snelling Minnesota. The Preservation Office staff will make an informational presentation on program activities at 5:30 p.m. The meeting will be called to order and consideration of the meeting's agenda will begin at 7:00 p.m. For further information contact the State Historic Preservation Office, Minnesota Historical Society, Fort Snelling History Center, St. Paul, MN 55111, (612) 726-1171.

State Contracts and Advertised Bids

Pursuant to the provisions of Minn. Stat. §14.10, an agency must make reasonable effort to publicize the availability of any services contract or professional and technical services contract which has an estimated cost of over $2,000.

Department of Administration procedures require that notice of any consultant services contract or professional and technical services contract which has an estimated cost of over $10,000 be printed in the *State Register*. These procedures also require that the following information be included in the notice: name of contact person, agency name and address, description of project and tasks, cost estimate, and final submission date of completed contract proposal. Certain quasi-state agencies are exempted from some of the provisions of this statute.

Commodities contracts with an estimated value of $15,000 or more are listed under the Procurement Division, Department of Administration. All bids are open for 7-10 days before bidding deadline. For bid specifics, time lines, and other general information, contact the appropriate buyers whose initials appear in parentheses next to the commodity for bid, by calling (612) 296-6152.

Awards of contracts and advertised bids for commodities and printing, as well as awards of professional, technical and consulting contracts, appear in the midweek STATE REGISTER Contracts Supplement, published every Thursday. Call (612) 296-0931 for subscription information.

Department of Administration: Materials Management Division

Contracts and Requisitions Open for Bid

Call 296-2600 for information on a specific bid, or to request a specific bid.

Commodity: Used presses
Contact: John Bauer 296-2621
Bid due date at 2pm: February 28
Agency: Printcomm-Department of Administration
Deliver to: St. Paul
Requisition #: 02520 00917

Commodity: Toshiba T1200 HB
Contact: Bernadette Vogel 296-3778
Bid due date at 4:30pm: February 28
Agency: Public Safety Department
Deliver to: St. Paul
Requisition #: 07100 61328

Commodity: Sound equipment
Contact: Pam Anderson 296-1053
Bid due date at 4:30pm: February 28
Agency: Normandale Community College
Deliver to: Bloomington
Requisition #: 27156 10601

Commodity: Judicial chairs—rebid
Contact: John Bauer 296-2621
Bid due date at 2pm: March 1
Agency: Judicial Center
Deliver to: St. Paul
Requisition #: 02310 17501 2

Commodity: AT—clones
Contact: Bernadette Vogel 296-3778
Bid due date at 2pm: March 2
Agency: Transportation Department
Deliver to: St. Paul
Requisition #: 79000 05036

Commodity: AA spectrometer
Contact: Joseph Gibbs 296-3750
Bid due date at 2pm: March 2
Agency: State University
Deliver to: St. Cloud
Requisition #: 26073 21613 1

Commodity: Tower installation/removal
Contact: Pam Anderson 296-1053
Bid due date at 4:30pm: March 2
Agency: Pollution Control Agency
Deliver to: St. Paul
Requisition #: 32200 22033

Commodity: Speech and voice analysis system
Contact: Joseph Gibbs 296-3750
Bid due date at 2pm: March 5
Agency: State University
Deliver to: Moorhead
Requisition #: 26072 02151 1

Commodity: Spectrophotometer
Contact: Joseph Gibbs 296-3750
Bid due date at 2pm: March 5
Agency: Health Department
Deliver to: Minneapolis
Requisition #: 12400 45476

Commodity: Regular & unleaded gasoline: No. 1 & 2 regular diesel fuel
Contact: Dale Meyer 296-3773
Bid due date at 2pm: March 7
Agency: Transportation Department
Deliver to: Windom
Requisition #: Price Contract

Commodity: Security systems purchase & maintenance
Contact: Pat Anderson 296-3770
Bid due date at 2pm: March 14
Agency: Tourism Office
Deliver to: Various
Requisition #: Price Contract

Commodity: Automated fingerprint ID system
Contact: Pat Anderson 296-3770
Bid due date at 2pm: April 11
Agency: Public Safety Department
Deliver to: St. Paul
Requisition #: Price Contract

Commodity: Tableware/cutlery-stainless steel
Contact: Norma Cameron 296-2546
Bid due date at 2pm: March 8
Agency: Various
Deliver to: Various
Requisition #: Price Contract

Commodity: Underbody snowplow
Contact: Mary Jo Bruski 296-3772
Bid due date at 2pm: March 6
Agency: Transportation Department
Deliver to: St. Paul
Requisition #: 79382 01906

Department of Administration: Print Communications Division

Printing vendors for the following printing contracts must review contract specifications in printing buyers office at 117 University Avenue, Room 134-B, St. Paul, MN.

Printing vendors NOTE: Other printing contracts can be found in the Materials Management Division listing above, and in the Professional, Technical & Consulting Contracts section immediately following this section.

Commodity: Small mail labels, 2.5M in rolls of 500, 3½"x2⅝", pinfeed, crack and peel, sensitive
Contact: Printing Buyer's Office
Bids are due: February 28
Agency: Office of Volunteer Services
Deliver to: St. Paul
Requisition #: 5246

Commodity: Traffic accident report, 75M (3M pads of 25) 2-part sets, 8½"x12¼" includes stubs, camera ready, 1-sided, perf for snapout
Contact: Printing Buyer's Office
Bids are due: February 28
Agency: Public Safety Department
Deliver to: St. Paul
Requisition #: 5183

Commodity: Food stamp ID card, 15M on sheets of 10, 7"x12½" sheets—cards 2½"x3½", negs available, 1-sided, perfs
Contact: Printing Buyer's Office
Bids are due: February 28
Agency: Human Services Department
Deliver to: St. Paul
Requisition #: 5226

Commodity: Brochure, 2M 4-pages 9"x12", die cut, score and fold cover, stitch into pocket folder
Contact: Printing Buyer's Office
Bids are due: March 1
Agency: St. Peter Regional Treatment Center
Deliver to: St. Peter
Requisition #: 4913

Commodity: State Parks Special Programs Tabloid 1990, 46M 22¾"x17½" two folds to 11⅜"x8¾", camera ready 2-sided, 4-colors
Contact: Printing Buyer's Office
Bids are due: February 28
Agency: Natural Resources Department
Deliver to: St. Paul
Requisition #: 5230

Commodity: Mailing labels, 50M 6¼"x4" type to set, 1-sided, fanfold
Contact: Printing Buyer's Office
Bids are due: February 28
Agency: Teachers Retirement Association
Deliver to: St. Paul
Requisition #: 5208

Commodity: Benefit Account Deposit Slips, 1,500 4-part sets, type to set, 1-sided, 6"x11¾" detached, 2-hole punch
Contact: Printing Buyer's Office
Bids are due: March 1
Agency: Jobs & Training Department
Deliver to: St. Paul
Requisition #: 5254

Commodity: Envelopes with clasp, 15M 14½"x11½", camera ready, 1-sided, gummed flap
Contact: Printing Buyer's Office
Bids are due: March 1
Agency: Education Department
Deliver to: St. Paul
Requisition #: 5238

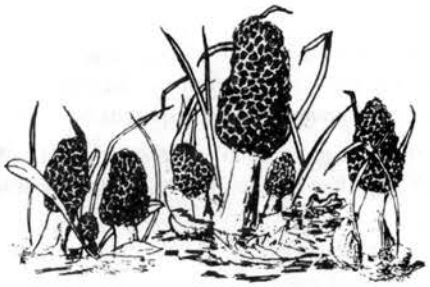
Commodity: Envelopes, 10M #10 (4⅛"x9½"), camera ready
Contact: Printing Buyer's Office
Bids are due: February 28
Agency: Office of Volunteer Services
Deliver to: St. Paul
Requisition #: 5247

Commodity: Food stamp notice of decision, 10M 4-part, 3-page sets, 1&2 2-sided, 3&4 2-sided, 8½"x14" and 8½"x11", negs available
Contact: Printing Buyer's Office
Bids are due: February 28
Agency: Human Services Department
Deliver to: St. Paul
Requisition #: 5225

Commodity: Reports to determine liability and succession, 20M 9"x11" overall, 4-part sets, type to set, 2-sided
Contact: Printing Buyer's Office
Bids are due: February 28
Agency: Jobs & Training Department
Deliver to: St. Paul
Requisition #: 5195

Commodity: 1990 State Telephone Directory, 24.5M, 8½"x11", 250 pages, 4 sections each a different color paper, disk conversion, perfect bind, cover bleeds
Contact: Printing Buyer's Office
Bids are due: March 6
Agency: Administration Department—Communications Center
Deliver to: St. Paul
Requisition #: 5274

Commodity: Arbor Day Packets, 3M sets with folders, 210M sheets 8½"x11", 3-hole punch, 2-sided, 3-color, 2 folded pockets in folders, 4-sided bleeds
Contact: Printing Buyer's Office
Bids are due: March 1
Agency: Natural Resources Department
Deliver to: St. Paul
Requisition #: 5277



Morel: Minnesota's mushroom

The Mushroom Hunter's Field Guide. An all-color guide by Alexander Smith and Nancy Smith Weber with clear and orderly facts, explicit pictures and scientific accuracy. Stock # 9-10, $14.95 + tax.

Edible Mushrooms, a classic guide to safe mushrooms, describes 60 species in detail, with photographs (many in color) to show each in its natural habitat. Advice to amateur mushroom hunters. Paperbound, 118 pp. Code #19-11, $9.95.

Malfred Ferndock's Morel Cookbook, brim full of morel lore, interesting and tall tales, recounts of the hunt, and many savory recipes. Spiral bound, 117 pgs., black & white photos and drawings. Code #19-83, $8.50.

Northland Wildflowers, the perfect mushroomers companion. An excellent guide for identification and enjoyment of wildflowers, with 308 color photographs and descriptions of 300 species. Paperbound. 236 pp. Code #19-9, $14.95.

TO ORDER: Send to Minnesota's Bookstore, 117 University Avenue, St. Paul, MN 55155. Call (612) 297-3000, or toll-free in Minnesota: 1-800-652-9747. Minnesota residents please include 6% sales tax. On all orders, add $2.00 per order for postage and handling. Prepayment is required. Please include daytime phone. VISA/MasterCard and American Express orders accepted over phone and through mail. ***Prices are subject to change.*** FAX: (612) 296-2265.

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Professional, Technical & Consulting Contracts

Department of Jobs and Training

Division of Jobs, Opportunities, and Insurance

Minnesota Employment and Training Information System Project

Availability of Funds to Identify and Analyze the Information Needs of the Service Delivery Areas in their Roles as Provider of Employment and Training Programs

The Minnesota Employment and Training Information System (METIS) Project is soliciting bids from potential vendors to undertake a user requirements study and to identify IBM-compatible options to meet those requirements. The current systems (a description of the current systems environment is included as part of the RFP) are presently experiencing the following problems:

1) The current systems do not report a participant's status across multiple programs adequately.

2) System doesn't link with agencies required for proper participant management.

3) System does not provide fiscal accountability/data.

4) System does not serve business functions at local level.

5) System is not accessible and user friendly.

It will be the responsibility of the vendor to develop the necessary survey and interview instruments to identify user requirements; the surveys and interviews will be administered by members of the user community in order to reduce project costs. Further it will be the responsibility of the vendor to identify at least four system configurations to address identified user requirements.

The deliverable of this entire work effort will be a final report presenting all findings. A more detailed description of tasks and deliverables is included as part of the complete Request for Proposal (RFP). The State will then decide on the appropriate next steps with regards to system development.

All proposals will be reviewed based on criterion listed in the RFP.

The State has estimated this work effort to be approximately $20,000.00.

Copies of the complete Request for Proposal are available from:

Paul Wasko
Minnesota Department of Jobs and Training
State Job Training Office
690 American Center Building
St. Paul, MN 55101
612-296-6868

Proposals must be received by 2:00 p.m. on March 30, 1990.

Non-State Public Contracts

The *State Register* also serves as a central marketplace for contracts let out on bid by the public sector. The *Register* meets state and federal guidelines for statewide circulation of public notices. Any tax-supported institution or government jurisdiction may advertise contracts and requests for proposals from the private sector.

It is recommended that contracts and RFPs include the following: 1) name of contact person; 2) institution name, address, and telephone number; 3) brief description of project and tasks; 4) cost estimate; and 5) final submission date of completed contract proposal. Allow at least three weeks from publication date (four weeks from date article is submitted for publication). Surveys show that subscribers are interested in hearing about contracts for estimates as low as $1,000. Contact the editor for further details.

City of Grand Rapids

Notice of Request for Proposals for Municipal Computer System Suppliers

The City of Grand Rapids is issuing a Request for Proposals (RFP) for a City Hall Automation System. The City seeks to automate a number of its information management functions, including accounting, recreation programming, police records, special assessments, project management, building permits, and computer aided design/drafting.

Details of the City's specifications and bid requirements can be found in the Request for Proposals dated February 09, 1990. The City emphasizes that it is not predetermined on any hardware/software platform. We are quite open to considering "proven" solutions to our automation needs.

The deadline for submission of proposals is 11:00 a.m., March 23, 1990. Copies of the RFP are available from the City of Grand Rapids.

Please Contact:

Chad Haatvedt, Chairperson
Computer Task Force
420 North Pokegama Avenue
P.O. Box 867
Grand Rapids, MN 55744
or phone
(218) 327-2803

Late proposals shall not be accepted.

Supreme Court Calendar

Listed below are the cases scheduled to be heard by the Minnesota Supreme Court in the next few weeks. This listing has been compiled by the Minnesota State Law Library for informational purposes only. Cases may be rescheduled by the Court subsequent to publication in the *State Register*. Questions concerning dates, locations, cases, etc., should be directed to: Clerk of the Appellate Courts, Room 230 State Capitol, St. Paul, MN 55155 612-296-2581.

Supreme Court Calendar for March, 1990

Compiled by Dale A. Hansen (612) 297-4050

Listed below are the cases scheduled to be heard by the Minnesota Supreme Court in the next few weeks. This listing has been compiled by the Minnesota State Law Library for informational purposes only. Cases may be rescheduled by the Court subsequent to publication in the *State Register*. Questions concerning the time and location of hearings should be directed to: Clerk of the Appellate Courts, Room 230 State Capitol, St. Paul, MN 55155, (612) 296-2581.

Monday 5 March 1990 9:00 AM

C8-88-782 In Re Petition for Disciplinary Action against JOHN R. WYLDE, JR., an Attorney at Law of the State of Minnesota (Attorney for Respondent: Jack S. Nordby of Meshbesher, Singer & Spence). Petition for Disciplinary Action.

In Re Petition for Disciplinary Action against WAYNE A. POKORNY, an Attorney at Law of the State of Minnesota (Attorney for Respondent: Wayne A. Pokorny). Petition for Disciplinary Action.

Tuesday 6 March 1990 9:00 AM

C2-89-190 KRISTINE DOKMO, Respondent (Attorney: Richard A. Williams, Jr. of Hvass, Weisman & King) **vs. INDEPENDENT SCHOOL DISTRICT NO. 11, ANOKA-HENNEPIN, MINNESOTA, petitioner, Appellant** (Attorneys: John M. Roszak and Anne F. Krisnik of Ratwick, Roszak, Bergstrom, Maloney & Bartel). Opinion Court of Appeals.

In a case involving the right of a teacher to reinstatement following an extended leave of absence, did the court of appeals err in holding Respondent was not required to obtain review of her termination by certiorari?

Was Respondent entitled to reinstatement even though she had accepted a position with another school district during her extended leave of absence?

May a teacher waive continuing contract rights in order to preserve a right of reinstatement?

C8-89-744 STATE OF MINNESOTA, Respondent (Attorney: Lee W. Barry, Senior Assistant County Attorney, Hennepin County) **vs. LEONARD RICHARDS, Appellant** (Attorney: Susan M. Maki, Assistant State Public Defender). Judgment Hennepin County.

Wednesday 7 March 1990 5:30 PM William Mitchell College of Law

C1-89-1671 DONALD SHETKA, et al., Respondents (Attorneys: Richard E. Bend of Bend & Beckjord and Richard E. Berger) **vs. KUEPPERS, KUEPPERS, VON FELDT AND SALMEN, a partnership, et al., petitioners, Appellants** (Attorney: Richard J. Thomas of Geraghty, O'Loughlin & Kenney), **T. JAY SALMEN, et al., Respondents** (Attorney: Anthony K. Berg of Salmen, Brinkman & Martinson). Order Court of Appeals.

Is a partner/principal's financial condition discoverable where punitive damages may be awarded against him as a result of actions taken by his agent and the partnership has been dissolved following the event giving rise to the liability?

May a Plaintiff discover a Defendant's financial condition where Plaintiff's complaint alleges a claim for punitive damages resulting from Defendant's reckless and willful failure to notify them that they required independent legal counsel due to the firm's representation of a party with an adverse interest?

Thursday 8 March 1990 9:00 AM

C0-89-186 PATRICK F. HUNT, Respondent (Attorneys: Robert J. Sheran, David G. Newhall, Charles J. Lloyd, and Ansis V. Viksnins of Lindquist & Vennum) **vs. REGENTS OF THE UNIVERSITY OF MINNESOTA, et al., Appellants** (Attorney: David C. Hutchinson of Geraghty, O'Loughlin & Kenney), **SHELLEY N. CHOU, M.D., petitioner, Appellant** (Attorneys: J. Richard Bland and William M. Hart of Meagher, Geer, Markham, Anderson, Adamson, Flaskamp & Brennan), **AIZIK WOLF, M.D., petitioner, Appellant** (Attorneys: Jerome C. Briggs and Charles E. Lundberg of Bassford, Heckt, Lockhart, Truesdell & Briggs). Opinion Court of Appeals.

Is it reversible error, as a matter of law and without showing of prejudice, for a trial court to grant additional peremptory challenges to multiple party defendants based on adverse interests among them at the outset of the trial?

Where prospective jurors have been asked about their employment, and Defendants' insurers are never identified during trial, is it

reversible error for the trial court, in the exercise of its discretion, not to inquire or permit Plaintiff's attorneys to inquire about whether the prospective jurors are policyholders, stockholders, or officers of Defendants' insurers?

Do the trial court's discretionary rulings to require foundation before allowing impeachment of a causation witness and to give cautionary and corrective instructions constitute reversible error where the jury found no negligence and did not decide causation?

C1-89-1993 PATRICIA A. RUETHER, Respondent (Attorney: Ruth M. Harvey of Blethen, Gage & Krause) **vs. STATE OF MINNESOTA, MANKATO STATE UNIVERSITY, Self-Insured, Relator** (Attorneys: Candice E. Hektner and Christopher E. Celichowski of Chadwick, Johnson & Condon), **and BLUE CROSS/BLUE SHIELD OF MINNESOTA, intervenor, Respondent** (Attorney: Indru Advani). Order Workers' Compensation Court of Appeals.

Did the Workers' Compensation Court of Appeals (WCCA) properly apply *Hengemuhle v. Long Prairie Jaycees* in reversing some of the compensation judge's findings of fact?

Is Employee's organic brain disorder, whether considered physical or psychiatric, a compensable disability if caused by breathing organic toxins in Employers' chemistry labs, a physical insult?

Did the WCCA properly apply *Soderberg v. Medtronics, Inc.* and *Swanson v. Medtronics, Inc.* which hold uncertainty regarding levels of toxic chemicals is not enough in and of itself to discredit a medical opinion linking toxic exposure to an injury?

Monday 12 March 1990 9:00 AM

C2-89-1064 STATE OF MINNESOTA, by STEPHEN W. COOPER, COMMISSIONER, DEPARTMENT OF HUMAN RIGHTS, Respondent (Attorneys: Andrea Mitau Kircher, Carl M. Warren, and Earll M. Pott, Special Assistants State Attorney General) **vs. LAYLE FRENCH, petitioner, Appellant** (Attorney: James R. Anderson). Opinion Court of Appeals.

Did Appellant violate the statutory prohibition against making rental decisions on the basis of marital status when he refused to rent his house to a woman because she lived with a man to whom she was not married?

Were Appellant's religious liberties, due process or equal protection rights under the First, Fifth and Fourteenth Amendments to the United States Constitution violated by enforcement of the Minnesota Human Rights Act against marital status discrimination?

C2-89-1534 STATE OF MINNESOTA, Respondent (Attorney: Andrea G. White, Assistant Dakota County Attorney) **vs. PEGGY ANN BARSNESS, petitioner, Appellant** (Attorney: Scott G. Swanson, Assistant State Public Defender). Opinion Court of Appeals.

Is testimony regarding the Defendant's I.Q., including expert psychiatric testimony, not offered to establish the mental illness or deficiency defense, admissible at trial?

Tuesday 13 March 1990 9:00 AM

C7-89-1156 STATE OF MINNESOTA, Respondent (Attorney: Paul R. Kempainen, Assistant State Attorney General) **vs. EUGENE DENNIS MOORE, Appellant** (Attorney: Steven P. Russett, Assistant State Public Defender). Judgment Crow Wing County.

Are first degree murder and second degree manslaughter guilty verdicts legally inconsistent?

Did the evidence exclude beyond a reasonable doubt the rational hypotheses of culpable negligence and heat-of-passion manslaughter?

Did the State properly qualify a witness as an expert before he gave an opinion as to the victim's position when she was shot, establish that the results of blood-splatter analysis are generally accepted in the scientific community, and demonstrate that the results in this case were reliable?

Did Appellant's counsel, during closing argument, concede Appellant's guilt of a lesser offense and comment adversely on Appellant's credibility thereby denying Appellant of a fair trial and the effective assistance of counsel?

C8-88-2631 and C0-88-2672 DAN COHEN, petitioner, Respondent (Attorney: Eliot C. Rothenberg) **vs. COWLES MEDIA COMPANY, d/b/a/ MINNEAPOLIS STAR AND TRIBUNE COMPANY, petitioner, Appellant** (Attorneys: John Borger, James Fitzmaurice, and Andrew S. Dunne of Faegre & Benson and Patricia A. Longstaff) (Of Counsel: Norton L. Armour), **NORTHWEST PUBLICATIONS, INC., petitioner, Appellant** (Attorney: Paul R. Hannah) (Of Counsel: Richard J. Ovelmen and Landon K. Claymen of Baker & McKenzie). Opinion Court of Appeals.

Wednesday 14 March 1990 9:00 AM

CX-89-616 AMERICAN FAMILY MUTUAL INSURANCE COMPANY, Respondent (Attorney: Mark C. Vandelist of Cousineau, McGuire, Shaughnessy & Anderson) **vs. ELEANOR C. BAUMANN, et al., petitioners, Appellants** (Attorney: Mary C. Ivory of Lyons Sawicki & Associates). Opinion Court of Appeals.

Did the Appellant give proper notice prior to settling their bodily injury action with the underinsured tortfeasor?

Has Respondent waived its right to object to the defective notice?

C3-89-277 LIBERTY MUTUAL INSURANCE COMPANY, Respondent (Attorney: Michael S. Kreidler of Stich, Angell, Kriedler & Muth) **vs. AMERICAN FAMILY MUTUAL INSURANCE COMPANY, et al., petitioners, Appellants** (Attorneys: Kenneth P. Gleason and Victor E. Lund of Mahoney, Dougherty and Mahoney). Opinion Court of Appeals.

Is a claimant who seeks recovery of underinsured motorist benefits barred from recovering such benefits by his failure to give adequate and timely notice of a proposed settlement with the liability insurer?

Is a liability carrier that has satisfied a judgment owed by its insured to an injured party entitled to recover by way of subrogation from the injured party's uninsured/underinsured motorist insurer?

Was there adequate consideration given by the parties for the agreement upon which Appellant's subrogation claim is based?

Supreme Court Decisions, Opinions & Rules

Orders Filed 23 February 1990

C2-89-1520 In Re Petition for Disciplinary Action against David C. Beman, an Attorney at Law of the State of Minnesota. Supreme Court.

Indefinitely suspended. Kelley, J.

CX-90-203 In Re Petition for Disciplinary Action against Donald P. Halva, an Attorney at Law of the State of Minnesota. Supreme Court.

Publicly reprimanded. Kelley, J.

Announcements

Environmental Quality Board (EQB): Comments are due March 21 on the EAWs (environmental assessment worksheets) for the following projects at their listed regional governing unit: **Roberts Bird Sanctuary Restoration,** Minneapolis Park and Recreation Board (612) 348-2220; **Medford Outlet Center,** Steele County (507) 451-4842; **Lexington Avenue-County Road G2 to County Road J,** Ramsey County (612) 298-4127; **Wawina Wetland Mitigation Project,** Minn. Dept. of Transportation (612) 296-1611. • Copies of the EAW and Draft Scoping Decision Document for the **Midway Corridor Light Rail Transit System** will be available for review at Ramsey County Regional Railroad Authority, 316 Courthouse, 15 West Kellogg Blvd., St. Paul, and at Hennepin County Regional Railroad Authority, Southwest Street Level, Hennepin County Gov't Center, Minneapolis. Two scoping meetings are scheduled for March 27, 10 a.m. in the Ramsey County Boardroom, 316 Courthouse, 15 West Kellogg Blvd., and St. Paul, and March 27, 7 p.m. at Concordia College, Fine Arts Center (Hamline between Marshall and Concordia Aves.). Written comments are due by April 4 to Kathryn DeSpiegelaere, Ramsey Co. Reg. Railroad Authority, 316 Courthouse, St. Paul, MN 55102. Call (612) 298-4145 for more information. • The City of Eagan has begun preparation of an EIS (environmental impact statement) for the proposed **West Publishing/Eagan Corporate Center** project, located on the west side of Highway 149, generally between Yankee Doodle and Westcott Roads. For further information regarding the scoping decision or the draft EIS, contact Dale Runkle, Community Development Director, City of Eagan, 3830 Pilot Knob Road, Eagan, MN 55122, (612) 454-8100. • A DEIS (draft environmental impact statement) information meeting will be held for the **Ritz Block Development** in downtown Minneapolis. Scheduled for March 14 at 3pm in Room 210 City Hall, the DEIS comment period ends March 28. For more information contact Neil Anderson, Minneapolis Planning Dept., 210 City Hall, Minneapolis, MN 55415 (612) 673-2351 where copies are available for review.

Library & Information Services Conference: Nominations are being taken for 160 delegates to participate in the Governor's Conference on Library and Information Services, to be held Sept. 16-17, in St. Paul. Governor Rudy Perpich will host the conference in preparation for a national White House Conference on Library and Information Services scheduled for July 1991 in Washington, D.C. Any resident of the state may apply to become a delegate to the Governor's Conference and become a candidate for the national conference. Nomination forms are available at public libraries throughout the state or by writing or calling the Office of Library Development and Services, 440 Capitol Square Bldg., 550 Cedar St., St. Paul, MN 55101, (612) 296-2821. Nomination forms must be submitted by March 30, and the 160 delegates will be announced by June 30.

Announcements

Metro Council Focuses on Housing: Addressing the challenges of a changing housing market in the 1990s will be the focus of the Metropolitan Council's 1990 "State of the Region" event on Wednesday, March 7. Jack Kemp, U.S. Secretary of Housing and Urban Development (HUD), the keynote speaker, will outline HUD's national agenda for the '90s. Council Chair Steve Keefe, in his address, will challenge current thinking about housing and outline new directions and initiatives for the Twin Cities Metro Area in the next decade. The event will be held at the Minneapolis Hyatt Regency Hotel, 1300 Nicollet Mall, from 1:30 to 7:30 p.m. The $40 registration fee includes an evening meal and a new Council report—sent to registrants before the event—summarizing recent regional housing studies. To register and for more information, call Bernadine Scott at (612) 291-6500.

RIM Annual Report Available: Minnesotans interested in the state's Reinvest in Minnesota (RIM) program can now receive copies of the 1990 RIM annual report. The 12-page report explains how RIM uses tax dollars to improve water quality, enhance fisheries, increase wildlife populations, reduce erosion and flooding, and protect rare species. The report shows examples of how this nationally acclaimed conservation program, now in its fourth year, has enhanced 233,000 acres of land and water at more than 2,200 locations and spread across all of Minnesota's 87 counties. The report also contains a list of RIM projects completed in each county between July 1, 1988, and June 30, 1989. For a 1990 RIM annual report, call or write: Information Center, Minnesota Department of Natural Resources, 500 Lafayette Road, St. Paul, MN 55155-4040; (612) 296-6157; 1-800-652-9747; Telecommunications Device for the Deaf (612) 296-5484. People may also write: Board of Water and Soil Resources, South Bridge Office Building, 155 Wabasha St., Suite 104, St. Paul, MN 55107.

DNR Asks for Volunteers: Volunteers play a vital role in the success of many Minnesota Department of Natural Resources (DNR) programs. Opportunities are available for those with interests in a broad range of natural resources areas. Volunteers perform duties such as presenting talks and films, assisting with newsletter mailings, assisting in research studies, collecting seeds and water samples, serving as campground hosts, sharing knowledge through interpretive programs, entering data on computers, and cleaning up rivers and streams. Volunteers also assist in the operation of the popular DNR State Fair Building, which draws an estimated 650,000 visitors each year. Volunteers of all ages and skills are needed. For more information, contact the DNR Volunteer Services Office, 500 Lafayette Road, St. Paul, MN 55155-4036. Call (612) 297-1449, or call toll free in Minnesota 1-800-652-9747 (ask for the DNR).



Social workers', counselors' and therapists' guides and directories

It's Never OK. A handbook for professionals on sexual exploitation by counselors and therapists. It covers the therapeutic and prevention issues and employer responsibilities, plus recommended curriculum for training institutions for counselors and therapists. Stock No. 14-16. $19.95 + tax.

Chemical Dependency Programs Directory 1989. Features comprehensive listings for programs ranging from prevention/intervention services to a wide range of treatment services. Each type of program includes a listing of facilities and description of programs. Stock No. 1-12, $15.00 + tax.

Process parenting—Breaking the Addictive Cycle. This training manual provides parent education and treatment techniques for professionals working with recovering chemically dependent parents or dysfunctional families. Stock No. 5-4, $15.00 + tax.

TO ORDER: Send to Minnesota Documents Division, 117 University Avenue, St. Paul, MN 55155. Call (612) 297-3000, or toll-free in Minnesota: 1-800-652-9747 and ask for "DOCUMENTS." Please include 6% sales tax and $2.00 postage and handling. Prepayment required. Please include daytime phone. VISA/MasterCard and American Express orders accepted over phone. FAX: (612) 296-2265.

Publication editors: As a public service please reprint this ad in your publications. Thank you.

Minnesota: national leader in education

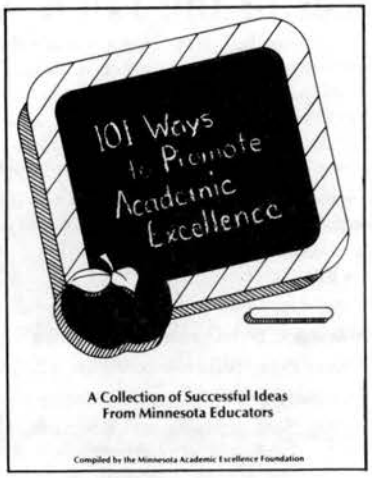
101 Ways to Promote Academic Excellence

A collection of nuts-and-bolts methods educators have successfully used to foster academic achievement. These are techniques that directly help students, can be replicated easily, are cost-effective, and that work in meeting the public educations' great challenge: helping every single child learn. Code #5-1, $4.50.

Education Directory, 1989-90

This popular comprehensive directory contains Minnesota school districts, superintendents, principals, addresses, phone numbers and enrollment. 170 pages, paperbound. Code #1-93, $8.95.

TO ORDER: Send to Minnesota's Bookstore, 117 University Avenue, St. Paul, MN 55155. Call (612) 297-3000, or toll-free in Minnesota: 1-800-652-9747. Minnesota residents please include 6% sales tax. On all orders, add $2.00 per order for postage and handling. Prepayment is required. Please include daytime phone. VISA/MasterCard and American Express orders accepted over phone and through mail. ***Prices are subject to change.*** FAX: (612) 296-2265.



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MAILING LISTS GALORE

Successful business means successful sales

The Minnesota Documents Division has a variety of mailing lists of licensed professionals and permit holders that will enable you to focus your marketing efforts on a targeted audience.

Types of lists available are: registered nurses, real estate agents, physicians, insurance agents, boatowners, hunters, cosmetologists, teachers, and many more! And you can get them on printouts, cheshire/pressure sensitive labels, as well as 9-track magnetic tapes.

What's more, you can choose from several selection capabilities. You will find our selections most helpful and beneficial to your business when you learn that you can acquire names and addresses of individuals in the areas you need to target most.

Find out more about our mailing lists by writing for our free mailing list catalog. In a hurry? Call (612) 297-2552 for more information. Requests can be sent to: Minnesota Documents Division, Mailing List Operation, 117 University Avenue, St. Paul, MN 55155. FAX: (612) 296-2265.

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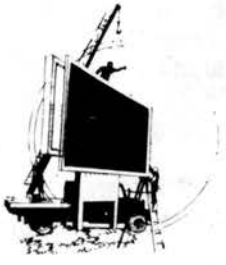
Minnesota Manufacturer's Directory 1989-90



NEW: In the directory this year are two titles (where applicable) Chief Engineer and Data Processing Manager.





UPDATED: Name, address, phone number, staff size, sales volume, market area, year of establishment, type of firm, C.E.O., Sales or Marketing Manager, Purchasing Manager and four major manufactured products. Code #40-2, $78.50.

TO ORDER: Send to Minnesota's Bookstore, 117 University Avenue, St. Paul, MN 55155. Call (612) 297-3000, or toll-free in Minnesota: 1-800-652-9747. Minnesota residents please include 6% sales tax. On all orders, add $2.00 per order for postage and handling. Prepayment is required. Please include daytime phone. VISA/MasterCard and American Express orders accepted over phone and through mail. ***Prices are subject to change.*** FAX: (612) 296-2265.

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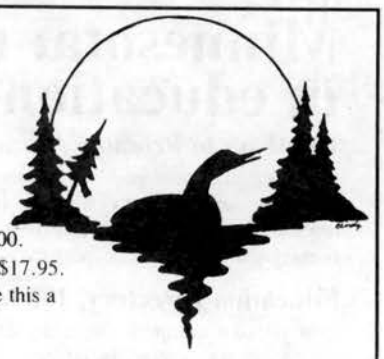
Voices of the Loon



Its voice severs the bonds to the world of cities, traffic, crowds, lights and noise. The lyrical magic of the loon, sometimes hauntingly eerie, makes the skin tingle, and the hair on the back of the neck stand on edge, awakening a primitive response. Its solitary wail turns the shadowy wilderness into a mysterious path into eternity.

Voices of the Loon, cassette tape, includes introduction and loon call identification, chorus from a distant lake, tremolo duet, wail duet, border confrontation, wails with morning songbird chorus, tremolos while running, wails during a thunderstorm, and coyotes calling with loons. Code #19-73, $12.00.

The Loon: Voice of the Wilderness, hardbound with color plates and illustrations, 143 pages. Code #19-54, $17.95.

Love of Loons. A Voyageur Wilderness Book, with color photos and lore of this delightful state bird make this a beautiful gift. Stock #9-22, $12.95 + tax.

Loon Lapel Pin. Code #15-30, $2.49.

Loon Windsock, 56 inches long in full color. Code #15-29, $19.95.

Loon Nature Print, full-color poster 16″ × 22″, Code #15-18, $3.00.

Loon with Baby–poster, 16″ × 20″. Code #15-48, $3.00.

TO ORDER: Send to Minnesota's Bookstore, 117 University Avenue, St. Paul, MN 55155. Call (612) 297-3000, or toll-free in Minnesota: 1-800-652-9747. Minnesota residents please include 6% sales tax. On all orders, add $2.00 per order for postage and handling. Prepayment is required. Please include daytime phone. VISA/MasterCard and American Express orders accepted over phone and through mail. ***Prices are subject to change.*** FAX: (612) 296-2265.

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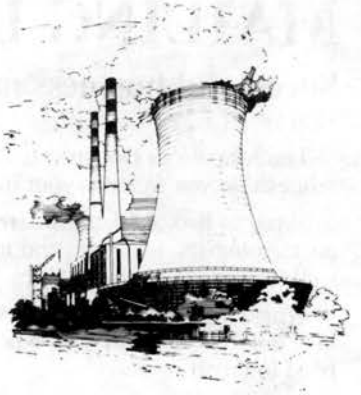
Minnesota's future environment



The issue of environmental protection is of continuing interest to both Minnesota business and the general public. Stay abreast of changes in state government regulations with these publications.

1989 Pollution Control Laws

Laws dealing with water pollution, disposal facilities, solid waste management, the MN Environmental Rights Act, recycling, and more. Code No. 2-21. $24.95.

1989 Hazardous Waste Rules

Governs the production, storage, transportation and disposal of hazardous waste. MN Rules Chapter 7045 and 7046. Code No. 3-71. $16.95.

TO ORDER: Send to Minnesota's Bookstore, 117 University Avenue, St. Paul, MN 55155. Call (612) 297-3000, or toll-free in Minnesota: 1-800-652-9747. Minnesota residents please include 6% sales tax. On all orders, add $2.00 per order for postage and handling. Prepayment is required. Please include daytime phone. VISA/MasterCard and American Express orders accepted over phone and through mail. ***Prices are subject to change.*** FAX: (612) 296-2265.

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For Real Estate Professionals:



REAL ESTATE RULES 1987

Chapters 2800, 2805, and 2810 from the Minnesota Rules. *Essential* for both students and established brokers and salespersons. It contains all education and licensing requirements. Code No. 3-99. $8.00

REAL ESTATE LAWS 1988

Includes all the changes made by the 1986 State Legislature. Complete and up-to-date. Code No. 2-92. $7.00

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MN Stat. 116.07 subd 3
Pursuant and subject to the provisions of chapter 14 and the provisions hereof, the pollution control agency may adopt, amend and rescind rules governing its own administration

Notice of Intent
states deadline is March 28 to comment = 30 days

E (7) – Rule states 14.131 to 14.20
Notice of Intent states 14.14 to 14.20

~~70 77.0100~~
70 75 0100 - applies to grants awarded prior to July 1, 1990 under the state independent grants program
no rules with it

Expenditure of Public Money
Statement of need and Reasonableness indicates the total cost to local bodies exceeds $100,000 but none of that expense is directly attributable to these rules. These rules help defray local expenses of meeting requirements of NPDES/SDS permits

End of comment ~~pro~~ period stated in findings - March 28, 1990 - notice published in State Register Feb 26, 1990 = 30 days

There were a substantial number of changes

Pollution Control Agency

Proposed Permanent Rules Relating to Municipal Wastewater Treatment Construction Grant Programs

Rules as Proposed

7075.0100 PURPOSE.

This chapter provides for the administration of the federal construction grant program, the independent state construction grant program, the state matching construction grant program, the state loan program for the construction of municipal disposal systems, and the state financial assistance program for combined sewer overflow abatement. <u>It applies to grants and loans awarded before July 1, 1990.</u>

Rules as Proposed (all new material)

7077.0100 PURPOSE.

Parts 7077.0100 to 7077.0330 provide for the administration of the financial assistance programs for the construction of municipal wastewater treatment facilities and apply to grants and loans awarded on or after July 1, 1990. Parts 7077.0400 to 7077.0765 apply to funds awarded at any time. Chapter 7075 applies to grants and loans awarded before July 1, 1990. The programs in chapter 7077 consist of the state independent grants program, parts 7077.0200 to 7077.0265; the combined sewer overflow abatement program, parts 7077.0300 to 7077.0330; and the water pollution control revolving fund program, parts 7077.0400 to 7077.0445. The state independent grants program includes three set-aside programs:

A. the corrective action grants program, parts 7077.0500 to 7077.0560;

B. the capital cost component grants program, parts 7077.0600 to 7077.0660; and

C. the individual on-site wastewater treatment systems grants program, parts 7077.0700 to 7077.0765.

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7077.0105 DEFINITIONS.

Subpart 1. **Scope.** For the purposes of chapter 7077, the terms defined in this part and in Minnesota Statutes, chapters 115 and 116, have the meanings given them.

Subp. 2. **Act.** "Act" means the Federal Water Pollution Control Act, United States Code, title 33, sections 1251 et seq.

Subp. 3. **Adequate errors and omissions insurance.** "Adequate errors and omissions insurance" means an insurance policy that provides the minimum amount of coverage for the corresponding estimated project construction cost, as determined from the following table, and that is maintained for a minimum of two years after initiation of operation of the project.

Estimated project construction cost	Minimum amount of coverage
less than $1,000,000	$250,000
$1,000,000 to $2,999,999	$500,000
$3,000,000 to $9,999,999	$1,000,000
$10,000,000 or over	$2,000,000

Subp. 4. **Adverse impact.** "Adverse impact" means the violation of a water quality standard, according to chapter 7050; an objectionable growth of weeds, algae, or rough fish; or a deleterious effect on the physical, chemical, or biological condition of the receiving water that lessens the present or long-term uses of the receiving water.

Subp. 5. **Agency.** "Agency" means the Minnesota Pollution Control Agency.

Subp. 6. **Authority.** "Authority" means the Minnesota Public Facilities Authority.

Subp. 7. **Average dry weather flow.** "Average dry weather flow" means the daily average flow when the groundwater is at or near normal and a runoff condition is not occurring.

Subp. 8. **Average wet weather flow.** "Average wet weather flow" means the daily average flow for the wettest 30 consecutive days for mechanical facilities or for the wettest 180 consecutive days for controlled discharge pond systems. The 180 consecutive days for pond systems must be based on either the storage period from approximately November 15 through May 15

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or the storage period from approximately May 15 through November 15.

Subp. 9. **Budget period.** "Budget period" means the period of time approved by the commissioner during which a municipality may incur reimbursable costs.

Subp. 10. **Commissioner.** "Commissioner" means the commissioner of the Minnesota Pollution Control Agency.

Subp. 11. **Debt charge.** "Debt charge" means the charge levied on users of a wastewater treatment facility for the user's share of the local capital costs of construction of the facility.

Subp. 12. **Excessive infiltration.** "Excessive infiltration" means the quantity of flow which is more than 120 gallons per capita per day (domestic base flow and infiltration) or the quantity of infiltration which can be economically and effectively eliminated from a sewer system as determined through a cost effectiveness analysis.

Subp. 13. **Excessive inflow.** "Excessive inflow" means the maximum total flow rate during storm events that results in chronic operational problems related to hydraulic overloading of the treatment facility or that results in a total flow of more than 275 gallons per capita per day (domestic base flow plus infiltration plus inflow). Chronic operational problems may include surcharging, backups, bypasses, and overflows.

Subp. 14. **Facilities plan.** "Facilities plan" means the plans and studies necessary to determine wastewater treatment needs of a project service area, to systematically evaluate wastewater treatment alternatives that will result in compliance with enforceable water quality standards, and to identify the cost-effective implementable alternative.

Subp. 15. **Fiscal year.** "Fiscal year" means the state fiscal year which begins July 1 and ends the following June 30.

Subp. 16. **Flow equalization system.** "Flow equalization system" means a containment system such as a pond, basin, or tank designed to temporarily hold wet weather flow until the flow can be transported to a wastewater treatment facility. A

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flow equalization system is a type of sewer system rehabilitation project.

Subp. 17. **Infiltration.** "Infiltration" means water other than wastewater that enters a sewer system (including sewer service connections and foundation drains) from the ground through defective pipes, pipe joints, connections, or manholes. Infiltration does not include, and is distinguished from, inflow.

Subp. 18. **Inflow.** "Inflow" means water other than wastewater that enters a sewer system (including sewer service connections) from sources such as, but not limited to, roof leaders, cellar drains, yard drains, area drains, drains from springs and swampy areas, manhole covers, cross connections between storm sewers and sanitary sewers, catch basins, cooling towers, storm waters, surface runoff, street wash waters, or drainage. Inflow does not include, and is distinguished from, infiltration.

Subp. 19. **Intended use plan.** "Intended use plan" means the document prepared annually by the agency according to the requirements in Title VI of the act and submitted to the United States Environmental Protection Agency. The plan will identify the intended uses of the amounts available to the water pollution control revolving fund, including a list of wastewater treatment projects and other eligible activities proposed to be funded during the fiscal year. Projects will be listed on the intended use plan in the order of their priority ranking on the municipal needs list.

Subp. 20. **Major contributing industry.** "Major contributing industry" means an industrial user of a treatment facility that:

A. has a rated flow of 50,000 gallons or more per work day where the rated flow is the daily design flow multiplied by 24 and divided by the actual hours of discharge in a day;

B. has a rated flow greater than five percent of the total design flow to the treatment works;

C. has a total organic load of greater than five

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percent of the total organic load to the treatment works;

D. has in its waste before pretreatment a toxic pollutant in excess of what may be discharged to waters of the state, according to chapter 7050; or

E. is found by the agency in connection with the issuance of an NPDES/SDS permit to the municipality, either singly or in combination with other contributing industries, to interfere with the treatment plant's ability to meet effluent limitations, interfere with digester operation or biological unit process operation, impact the area required for sludge disposal, or increase sizing of the facility by five percent or more.

Subp. 21. **Major interceptor sewer.** "Major interceptor sewer" means a sewer, including related lift stations, that intercepts wastewater from the final point in a collector sewer of a municipality and transports the wastewater directly to a wastewater treatment facility, to another major interceptor sewer, or to the collector sewer of another municipality. To be a major interceptor sewer, the average design flow of the sewer must not increase by more than ten percent between its origin and its termination, and physical connections to the sewer must be more than 1,000 feet apart. Infiltration and inflow directly to the sewer and flow from other major interceptor sewers is not included in determining whether the average design flow has increased by more than ten percent.

Subp. 22. **Maximum wet weather flow.** "Maximum wet weather flow" means one-seventh of the total maximum flow received during a seven-day period when the groundwater is high and a runoff condition is occurring.

Subp. 23. **Municipal needs list.** "Municipal needs list" means the priority list prepared by the commissioner under parts 7077.0115 to 7077.0145.

Subp. 24. **Municipality.** "Municipality" means any county, city, town, the Metropolitan Waste Control Commission established in Minnesota Statutes, chapter 473, the Metropolitan Council when acting under that chapter, an Indian tribe or an

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authorized Indian tribal organization, or any other governmental subdivision of the state responsible by law for the prevention, control, and abatement of water pollution in any area of the state.

Subp. 25. **Need.** "Need" means a determination that a new or upgraded disposal system is currently required, or will be required within a five-year period to comply with chapter 7050, 7060, or 7080; provided the situation does not exist primarily due to inadequate operation and maintenance or to negligence on the part of any person.

Subp. 26. **NPDES/SDS permit.** "NPDES/SDS permit" means a National Pollutant Discharge Elimination System and State Disposal System permit issued by the agency that authorizes under certain conditions the discharge of pollutants to waters of the state and subsurface disposal or on-land disposal and the operation of a disposal system.

Subp. 27. **Operation and maintenance manual.** "Operation and maintenance manual" means a document developed to give treatment facility personnel the proper understanding, techniques, and references necessary to properly operate and maintain the treatment facility.

Subp. 28. **Outstanding resource value water.** "Outstanding resource value water" means those waters defined in part 7050.0180, subpart 2.

Subp. 29. **Peak hourly wet weather flow.** "Peak hourly wet weather flow" is the peak flow during the peak hour of the day at a time when the groundwater is high and a five-year one hour storm event is occurring.

Subp. 30. **Peak instantaneous wet weather flow.** "Peak instantaneous wet weather flow" means the peak instantaneous flow during the day at a time when the groundwater is high and a 25-year one hour storm event is occurring.

Subp. 31. **Performance certification.** "Performance certification" means a certification made by a municipality one year after initiation of operation that states its newly constructed wastewater treatment facility is meeting performance

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standards, as specified under part 7077.0255, subpart 1, item A.

Subp. 32. **Plans and specifications.** "Plans and specifications" means documents, including completed drawings and specifications, that describe the project in full and detail the complete requirements for materials, dimensions, and construction technique. The documents that comprise the plans and specifications must conform with generally accepted engineering practices and applicable state statutes, rules, and requirements.

Subp. 33. **Primary treatment facilities.** "Primary treatment facilities" means facilities designed to provide a level of treatment lower than that provided by secondary treatment facilities.

Subp. 34. **Reimbursement project.** "Reimbursement project" means a municipal wastewater treatment facility constructed under the reimbursement provision of Minnesota Statutes, section 116.18, subdivision 3a.

Subp. 35. **Relief sewer.** "Relief sewer" means a sewer primarily designed to eliminate bypassing caused by insufficient hydraulic capacity in sanitary sewer systems by transporting infiltration or inflow to adequately sized sewers or to a wastewater treatment facility for proper treatment. A sewer is a collector sewer and not a relief sewer if its design flow includes more than 15 percent wastewater at peak instantaneous flow conditions or if it has physical connections closer to each other than 1,000 feet. A relief sewer is a type of sewer system rehabilitation project.

Subp. 36. **Secondary treatment facilities.** "Secondary treatment facilities" means facilities designed to provide biochemical oxidation, effective sedimentation, and disinfection, or the equivalent, consistent with requirements of part 7050.0211, subpart 1. Facilities discharging to limited resource value waters (Class 7 waters) and assigned effluent limitations based on part 7050.0214 and that do not have a phosphorous or toxic substances effluent limitation are secondary treatment facilities for the purpose of this chapter.

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Subp. 37. **Sewer rate ordinance or SRO.** "Sewer rate ordinance" or "SRO" means a municipal ordinance that determines the method by which a municipality will charge its users for wastewater treatment services, including the local capital cost of the treatment works.

Subp. 38. **Sewer service charge.** "Sewer service charge" means the aggregate of all charges, including charges for operation, maintenance, replacement, debt service, and other sewer related charges that are billed periodically to users of the city's wastewater treatment facility.

Subp. 39. **Sewer service charge system or SSCS.** "Sewer service charge system" or "SSCS" means a document developed by the municipality that determines the user charge and debt charge that each user will pay for wastewater treatment services.

Subp. 40. **Sewer system rehabilitation project.** "Sewer system rehabilitation project" means a project that repairs or replaces an existing collector or interceptor sewer in order to eliminate bypasses caused by insufficient hydraulic capacity or to reduce the hydraulic flows to a wastewater treatment facility. A sewer system rehabilitation project may include flow equalization systems and relief sewers.

Subp. 41. **Sewer use ordinance or SUO.** "Sewer use ordinance" or "SUO" means a municipal ordinance enacted to control the type and quantities of discharges to the wastewater treatment facility, and the type and method of connections to the system.

Subp. 42. **Tertiary treatment facilities.** "Tertiary treatment facilities" means facilities specifically designed to achieve effluent limitations based on part 7050.0211, subpart 1, for phosphorus or toxic substances and facilities designed to meet effluent standards that are more stringent than standards for secondary treatment facilities.

Subp. 43. **Treatment agreement.** "Treatment agreement" means an enforceable agreement between a municipality and a major contributing industry that includes the following:

A. the variations in daily flow and the monthly

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average and daily maximum quantity of compatible and incompatible pollutants to be discharged to the treatment facility;

B. the intended period of use of the treatment facility by the major contributing industry;

C. signatures by the major contributing industry and the owner of the treatment system accepting the wastewater; and

D. a requirement that the quantities to be discharged to the treatment system will be according to applicable standards and requirements.

Subp. 44. **Unanticipated site condition.** "Unanticipated site condition" means any subsurface, latent or unknown physical condition at the construction site, which differs materially from those ordinarily encountered and generally recognized as inherent in work of the type provided for in the construction contract that could not have been reasonably identified during the planning or design of the project.

Subp. 45. **User charge.** "User charge" means a charge levied on users of a wastewater treatment facility for the user's proportionate share of the cost of equipment replacement and operation and maintenance of the wastewater treatment facility.

Subp. 46. **Value engineering.** "Value engineering" means a specialized cost control technique which uses a systematic and creative approach to identify and to focus on unnecessarily high cost in a project in order to arrive at a cost saving without sacrificing the reliability or efficiency of the project.

Subp. 47. **Wastewater.** "Wastewater" means sewage, industrial waste, and other waste collected for treatment in a wastewater treatment facility.

7077.0110 TYPES OF PROGRAMS.

Subpart 1. **Scope.** Under this chapter and Minnesota Statutes, sections 116.16 to 116.181, the agency may certify to the authority that municipalities may be awarded funds for the assistance programs described in subparts 2 to 7.

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Subp. 2. **State independent grants program.** The state independent grants program under parts 7077.0200 to 7077.0265 offers grant funds to municipalities for the construction of wastewater treatment facilities and applies to funds awarded on or after July 1, 1990. The process is described in items A to D.

A. Construction grants are awarded to municipalities on a priority basis, except as provided in parts 7077.0205, subpart 3, item E; and 7077.0210. Municipalities with the highest priorities, as determined by the point system described in parts 7077.0120 to 7077.0145, are awarded construction grants first.

B. The commissioner develops and maintains a municipal needs list that ranks in priority order the municipalities that have a need for a new or upgraded treatment system and that have requested placement on the list. Priorities are determined by awarding points for projects based on the waters affected, the population affected, the type of project proposed, and extra points for qualifying projects.

C. The agency adopts a municipal project list that identifies the municipalities that are eligible to apply for construction grants during a designated fiscal year.

D. A reimbursement option is available to municipalities willing to proceed with construction while waiting to reach a fundable priority on the municipal needs list.

Subp. 3. **Combined sewer overflow abatement program.** Financial assistance is available for design and construction of combined sewer overflow abatement projects under parts 7077.0300 to 7077.0330. The program applies to funds awarded on or after July 1, 1990. The process awards this assistance on a pro rata basis to qualifying municipalities.

Subp. 4. **Water pollution control revolving fund program.** Loans are available to municipalities for the construction of publicly owned wastewater treatment facilities under parts 7077.0400 to 7077.0445. The program applies to funds awarded before, on, or after July 1, 1990. Loans may be requested for planning, design, and construction costs. The process is

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described in items A to C.

A. Municipalities seeking funds from the water pollution control revolving fund must be on the municipal needs list.

B. The agency annually adopts an intended use plan that includes a list of municipalities with eligible projects that have requested loan assistance.

C. The actual loan amounts, terms, and conditions are determined by the authority.

Subp. 5. **Corrective action grants program.** Financial assistance is available under parts 7077.0500 to 7077.0560 for the costs associated with correcting a wastewater treatment facility that failed to meet performance standards within the first year of operation. The program applies to funds awarded before, on, or after July 1, 1990. The process is described in items A and B.

A. Corrective action grants are certified to the authority for awards in the order that applications that meet the rule requirements are received and to the extent funds are available.

B. Recipients of corrective action funds must seek to recover the costs of the corrective work from the parties that are responsible for the performance failure. When funds are recovered, the municipality shall repay the state a portion of the money recovered.

Subp. 6. **Capital cost component grant program.** Grant funds are available to municipalities under parts 7077.0600 to 7077.0660 for part of the capital cost component of the service fee under a service contract with a private vendor to construct and operate wastewater treatment facilities for 20 years. The program applies to funds awarded before, on, or after July 1, 1990. The process is described in items A to D.

A. Municipalities seeking a capital cost component grant must be listed on the municipal needs list. Grant applications are taken during announced application periods.

B. Applications are ranked according to the priority

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order on the municipal needs list.

C. Grant amounts are determined by comparing the costs of recently constructed facilities in municipalities of similar size.

D. Payment of the grant is made following completion of construction and demonstration of satisfactory performance.

Subp. 7. **Individual on-site wastewater treatment systems grants program.** Grant funds are available to municipalities under parts 7077.0700 to 7077.0765 to assist owners of individual on-site wastewater treatment systems in upgrading or replacing failed systems. The program applies to funds awarded before, on, or after July 1, 1990. The process is described in items A to C.

A. Municipalities meeting the eligibility requirements in part 7077.0710 may submit grant applications during announced application periods. Both the municipality and the owners of the failed systems must meet statutory and rule requirements.

B. Applications are prioritized according to a municipality's median household income.

C. Grant payments are made on a reimbursement basis for 50 percent of the on-site system construction costs up to the maximum amounts specified in part 7077.0735.

7077.0115 MUNICIPAL NEEDS LIST.

Subpart 1. **Requirement.** The commissioner shall develop and maintain a municipal needs list of municipalities that have a need for a new or upgraded wastewater treatment facility.

Subp. 2. **Points and listing order.** A municipality on the municipal needs list must be awarded points under the criteria established in this chapter. The municipalities must be listed on the municipal needs list in descending order according to the number of points awarded to each.

Subp. 3. **Request for placement on list.** A municipality may submit a written request to the commissioner for placement on the municipal needs list.

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A. If the municipality is sewered, its request must include the following information:

(1) type and age of existing wastewater treatment facilities;

(2) design capacity and current treatment capabilities of existing facilities;

(3) data describing actual wastewater flows and loadings;

(4) current discharge point and NPDES permit standards;

(5) a description of the need for new or upgraded treatment facilities; and

(6) an explanation of why the need for new or upgraded facilities is not primarily due to inadequate operation and maintenance or to negligence on the part of any person.

B. If the municipality is unsewered, its request must include the following information:

(1) number of existing on-site treatment systems in the municipality;

(2) general description of the type and age of existing on-site treatment systems; and

(3) a description of the identified need for improved wastewater treatment facilities including the estimated number of failing on-site systems and a description of the basis for that estimate.

Subp. 4. **Review.** The commissioner shall review each request and add to the municipal needs list each municipality for which a need has been found to exist. If the commissioner determines that a need does not exist, the municipality shall not be added to the list and the commissioner shall notify the municipality of the reasons for the determination.

7077.0120 PRIORITY POINTS FOR WATERS AFFECTED.

Subpart 1. **Water use and point ratings.** A municipality shall be awarded priority points based on the water use of the receiving water of the discharge according to the following:

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Water Use	Point Rating
Class 1 Domestic consumption:	
Class 1A waters	70
Class 1B waters	65
Class 1C waters	60
Class 1D waters	55
Class 2 Fisheries and recreation:	
Class 2A waters	60
Class 2B waters	50
Class 2C waters	40
Class 7 Limited resource value waters	35

The water uses are defined in parts 7050.0200 and 7050.0220. The water use of a specific water of the state is the water use established by parts 7050.0400 to 7050.0470.

Subp. 2. **Receiving water with more than one designated water use.** If a municipality discharges to a receiving water with more than one designated water use, the municipality shall be awarded the points for the designated water use with the greatest number of points.

Subp. 3. **Adverse impact on downstream water.** If a municipal discharge has an adverse impact on a downstream water with a designated water use receiving more points than the receiving water, the municipality shall be awarded the priority points for the downstream water.

7077.0125 PRIORITY POINTS FOR POPULATION SERVED.

A municipality shall be awarded priority points based on the population of the municipality served by the project. The priority points for population served are five times the logarithm base 10 ($\log_{10}$) of the population determined by the most recent official census. The table below gives examples of the priority points assigned for various populations:

Population	$\log_{10}$	Priority Points Assigned
100	2	10.0
1,000	3	15.0
10,000	4	20.0
100,000	5	25.0
1,000,000	6	30.0

7077.0130 PRIORITY POINTS FOR TYPE OF PROJECT.

Subpart 1. **Table of priority points by type of project.** A

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municipality shall be awarded priority points based on the type of project to be constructed according to the following:

Type of Project	Priority Points
A. Major treatment facilities:	
(1) major tertiary treatment facilities	160
(2) major secondary treatment facilities	150
B. Dechlorination facilities:	
(1) tertiary treatment dechlorination facilities	120
(2) secondary treatment dechlorination facilities	110
C. Ancillary additions:	
(1) ancillary additions to existing tertiary treatment facilities	80
(2) ancillary additions to existing secondary treatment facilities	75
D. Collection systems or collector sewers:	
(1) collection system or collector sewer	10
(2) improvement of collection system or collector sewer reliability	10
E. Control of combined sewer overflow	150

Subp. 2. **Description of project types.** Project types are described as follows:

A. Major treatment facilities are new facilities or additions to existing facilities which improve effluent quality in order that a municipality may achieve compliance with its NPDES/SDS permit conditions. Major treatment facilities include major interceptor sewers and may include sewer system rehabilitation projects in subpart 4.

(1) Land application systems and stabilization ponds that are proposed as an alternative to tertiary and secondary treatment facilities that discharge to waters of the state are considered tertiary treatment and secondary treatment

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for purposes of project priority. Whether a land application system or stabilization pond is a tertiary or secondary treatment system is determined as based on the effluent limitations applicable to discharges to the receiving water.

(2) Subsurface disposal systems, including septic tanks, designed to treat an average daily flow of not more than 1,200 gallons and the drainfield portion and one central septic tank to treat an average daily flow in excess of 1,200 gallons are considered secondary treatment for purposes of project priority.

B. Dechlorination facilities are facilities that remove chlorine from the effluent of a wastewater treatment facility. When a municipality is listed on the municipal needs list for major treatment facilities, the facilities described in this item may be included as part of that project.

C. Ancillary additions to existing tertiary or secondary treatment facilities are additions that are not major treatment facilities, dechlorination facilities, or collector sewers. When a municipality is listed on the municipal needs list for a major treatment facility, the facilities described in this item will be included as part of that project.

D. A collection system or collector sewer is a sanitary sewer, specifically constructed to carry raw or partially treated wastewater and providing collection system reliability such as alternative power or dual pumps, that is not a major interceptor sewer or a relief sewer. For treatment works including subsurface disposal systems designed to treat an average daily flow in excess of 1,200 gallons, a collection system includes devices such as grinder pumps and septic tanks that will partly treat the wastewater, as well as septic tank effluent pumps and small diameter sewers that will pump and convey the partially treated waste.

E. A project for the control of combined sewer overflow is a project designed to eliminate bypasses caused by insufficient hydraulic capacity in combined storm and sanitary sewers. A combined sewer overflow project is not eligible for

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priority points under subpart 1, item E unless the project is necessary to meet requirements of the municipality's NPDES/SDS permit.

Subp. 3. **Special restrictions for sewer system rehabilitation projects.** Special restrictions for sewer system rehabilitation projects are as follows:

A. In order for a sewer system rehabilitation project to be eligible for priority points under subpart 1, item A, the municipality must not have obtained a grant for wastewater treatment facility construction since February 11, 1974, and sewer system rehabilitation must be justified by an infiltration/inflow analysis and sewer system evaluation survey that complies with part 7077.0150, subpart 2, item C.

B. A municipality proposing to undertake a sewer system rehabilitation project that does not meet the criteria in item A shall be awarded the priority points credited to a collection system or collector sewer under subpart 1, item D.

Subp. 4. **Temporary improvements.** If a municipality makes improvements to its existing wastewater treatment facility that are temporary in nature for the purpose of maximizing effluent quality or keeping its system operational while the municipality is awaiting a grant, the municipality shall receive the same priority points for its project as it would have received without the temporary improvements.

7077.0135 EXTRA POINTS.

In addition to the priority points to which a municipality is entitled for its project, the following extra points shall also be awarded to a qualifying municipality:

A. A municipality that proposes a project that will eliminate an existing public health hazard assessed by the Department of Health in a health advisory or commissioner's order shall be awarded 40 extra points. A municipality requesting the award of 40 extra points under this provision shall submit the following information to the agency and to the Department of Health:

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(1) information on geologic and soil conditions including soil types, permeabilities, and presence or absence of confining units;

(2) groundwater flow patterns in the area of the facility or proposed facility;

(3) an assessment of the extent and magnitude of the contaminant plume;

(4) an identification of water users and assessment of the amount of water appropriations in the area of the facility or proposed facility;

(5) flow rates and flow patterns of surface waters;

(6) information on well construction for wells in the area of the facility or proposed facility, particularly wells that have been or will be impacted;

(7) a description of the facility's construction, operation, and performance if there is an existing facility, with an explanation of why the facility is creating a public health hazard;

(8) an identification and assessment of the suspected route of human exposure and the population exposed; and

(9) a description of how the proposed improvements will mitigate or eliminate the public health hazard.

B. A qualifying municipality shall be awarded extra points under one of the provisions below for its existing level of treatment:

(1) A municipality that presently has a collection system serving 50 percent or more of the population but provides no treatment before discharge, or a municipality which collects an average daily flow exceeding 1,000,000 gallons through a system without combined sewers and which has bypassed sewage more than 40 percent of the time over a period of at least two years while its plant is operating at full capacity, shall be awarded 40 extra points.

(2) A municipality with no collection system

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where more than 50 percent of the existing septic systems discharge raw or partially treated sewage directly to the ground surface shall be awarded 30 extra points.

(3) A municipality that presently has a collection system serving 50 percent or more of the population and whose present facilities are designed for only primary treatment shall be awarded 20 extra points.

(4) A municipality that discharges untreated sewage as a result of combined sewer overflows shall be awarded 20 extra points.

C. A municipality that proposes a project that is an integral part of a watershed pollution abatement plan shall be awarded 15 extra points. A municipality is not entitled to the 15 extra points under this provision unless the agency received the plan for review by December 1, and it is in approvable condition by May 1, before the beginning of the fiscal year for which funding is sought. A watershed pollution abatement plan shall include the following:

(1) an in depth description of the physical environment (geology, soils, topography, and land cover), land use and development in the watershed, as well as the planned future land use and development;

(2) an inventory and in depth description of the watershed's hydrologic system, including climatic conditions (precipitation), lakes, wetlands, streams, groundwater, drainage, and conveyance systems;

(3) information on the existing and potential water quality problems in the watershed, including both point and nonpoint sources of pollution;

(4) objectives and policies, including management plans for water quality and natural resource protection;

(5) a description of the hydrologic and water quality conditions that will be sought, including a description of the opportunities for improvement;

(6) a statement on conflicts between the watershed pollution abatement plan and existing plans of local

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government units; and

(7) a plan for implementation, consisting of governmental work agreements and schedules for implementing corrective actions.

D. A municipality that discharges to or has an adverse impact on an outstanding resource value water shall be awarded ten extra points.

E. A municipality proposing to undertake a project that will result in the elimination of a point source discharge to a game fish lake or outstanding resource value water, or the elimination of a discharge that has an adverse impact on a game fish lake or outstanding resource value water shall be awarded ten extra points. A game fish lake is a lake managed for propagation of game fish species and used for fisheries and recreation. There may be occasional but not regular winter kill in a game fish lake.

F. Ten extra points will be awarded to a sanitary district or other multimunicipal wastewater treatment project.

G. A municipality listed on the municipal needs list on January 1, 1985, shall be awarded 40 extra points.

H. A municipality which does not qualify for the points awarded in item G and which is in compliance with its NPDES/SDS permit conditions less than 90 percent of the time during a one-year period computed on the basis of the interval appropriate to the limitation shall be awarded 20 extra points. Periods of noncompliance caused by inadequate operation and maintenance or negligence on the part of any person are not included in the percentage computation for the purposes of this definition.

7077.0140 TOTAL POINTS.

The total points to be awarded a municipality for placement on the municipal needs list is the sum of the priority points awarded under one of the provisions of parts 7077.0120, 7077.0125, and 7077.0130, and one or more of the provisions of part 7077.0135.

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7077.0145 RESOLUTION OF EQUAL POINT RATINGS.

If, in the determination of the order of priority on the municipal needs list, two or more municipalities have the same total number of points, the municipality with the highest priority points under part 7077.0120 for water use is ranked higher. If two or more municipalities have the same total number of points and the same priority points under part 7077.0120 for water use, the municipalities are ranked based on population under part 7077.0125.

7077.0150 FACILITIES PLAN.

Subpart 1. **In general.** A municipality must have a facilities plan approved by the commissioner before it will be considered for placement on the municipal project list for a construction grant or the intended use plan for a construction loan. A facilities plan must be prepared and signed by a professional engineer registered in the state and submitted to the agency according to part 7077.0205, subpart 2, items B and C.

Subp. 2. **Facilities plan contents.** A facilities plan must include:

A. A complete description and evaluation of the existing treatment facility, including information about the age, condition, design capacity, and treatment capabilities of each treatment unit, an analysis of the facility's ability to meet current permit requirements, and the location, frequency, and quantity of any bypasses.

B. Data describing existing flows that accurately represent flows during rain events and high groundwater conditions. Flow data must be based on actual flow monitoring for at least 30 consecutive days.

C. An analysis of inflow and infiltration in the existing sewer system to determine whether excessive levels of inflow or infiltration exist as defined in part 7077.0105, subparts 12 and 13. If excessive levels of inflow or infiltration are determined to exist, a sewer system evaluation survey must be conducted to identify the specific sources of

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inflow and infiltration and the estimated flows from each source.

D. Projected flows and loadings within the next five- and 20-year periods based on projected population growth and letters of intent from major contributing industries.

E. A cost effectiveness analysis of all feasible treatment works, processes, and techniques capable of meeting the applicable effluent, water quality, and public health requirements for 20 years. If excessive levels of inflow/infiltration are determined to exist under item C, the cost effectiveness analysis of treatment alternatives must include a comparison of the costs of eliminating excessive inflow/infiltration with the costs of transportation and treatment of the inflow/infiltration. For unsewered and partially unsewered communities, consideration must be given to on-site treatment systems. The following information must be provided for each treatment alternative considered:

(1) a detailed breakdown of the present worth of all capital costs, annual operation and maintenance costs, equipment replacement costs, and salvage costs; and

(2) a site assessment conducted by a registered engineer or geotechnical engineer of the existing soil and groundwater conditions.

F. A description of the selected treatment alternative and the complete wastewater treatment system of which it is a part, including:

(1) the specific design parameters of all individual treatment units and the complete treatment system;

(2) estimated construction, annual operation and maintenance, and equipment replacement costs;

(3) estimated annual sewer service charges;

(4) a determination of whether pretreatment of any industrial wastes is needed in order not to disrupt the proper operation of the proposed facility;

(5) an evaluation of how and where sludge resulting from the treatment process will be disposed;

(6) an analysis of the 25- and 100-year flood

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elevations in relation to the proposed project site showing that the project will be operable during a 25-year flood and protected during a 100-year flood;

(7) a description of any ordinances or intermunicipal agreements necessary for the successful implementation and administration of the project; and

(8) an analysis of how interim treatment will be accomplished during construction to meet permit requirements.

G. An evaluation of the environmental impacts, including:

(1) a description of the potential impacts of the selected treatment alternative on wetlands; floodplains; areas of archaeological, cultural, and historical significance; endangered or threatened species; wild and scenic rivers; farmlands; air quality; fish and wildlife; open space and recreation opportunities; and

(2) a comparison of the potential environmental impacts of the selected treatment alternative with the other treatment alternatives considered in the cost effectiveness analysis.

Subp. 3. **Public hearing.** Before adopting the facilities plan, the municipality must hold at least one public hearing to discuss the proposed facilities plan. The proposed facilities plan must be made available for review by interested persons before the date of the hearing. At the public hearing, information must be presented on the various treatment alternatives considered, the reasons for choosing the selected alternative, the location of the proposed project site, and the estimated sewer service charges. A summary of the information presented and public comments received at the public hearing must be provided to the commissioner before the commissioner's approval of the facilities plan.

Subp. 4. **Adoption.** Before the commissioner's approval of the facilities plan, the municipality must adopt the facilities plan through a formal resolution of the municipality's governing body.

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7077.0155 PLANS AND SPECIFICATIONS.

Subpart 1. **In general.** A municipality must submit plans and specifications or a council resolution to the commissioner according to part 7077.0205, subpart 2, item D, before it will be considered for placement on the municipal project list. The plans and specifications must be consistent with the scope of the approved facilities plan under part 7077.0150. The project must be constructed according to the approved plans and specifications and change orders.

Subp. 2. **Contents.** A complete set of plans and specifications must include:

A. drawings and specifications signed by a professional engineer registered in Minnesota;

B. a summary of design parameters for the treatment units;

C. a summary of flow conditions for average dry weather, average wet weather, maximum wet weather, peak hourly and instantaneous wet weather on a form provided by the agency;

D. a hydraulic profile of the flow through the treatment system;

E. a plan for interim treatment during construction;

F. the latest detailed cost estimate based on the plans and specifications submitted;

G. administrative, bidding, and contract documents according to the applicable requirements under Minnesota Statutes, chapters 412, 429, and 471 including, at a minimum:

(1) five percent bid bond;

(2) 100 percent payment bond;

(3) 100 percent performance bond; and

(4) prevailing wage certifications issued by the Minnesota Department of Labor and Industry.

7077.0160 RATE SYSTEM AND ORDINANCES.

Subpart 1. **In general.** A municipality must submit a sewer service charge system, a sewer rate ordinance, and a sewer use ordinance or a council resolution to the commissioner according

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to part 7077.0205, subpart 2, item D, before it will be considered for placement on the municipal project list. The sewer service charge system, sewer rate ordinance, and sewer use ordinance must demonstrate that the municipality has the legal and financial capability to ensure adequate construction and operation and maintenance of the wastewater treatment facility. The rate system and ordinances must be enacted according to part 7077.0260, subpart 2, item C, to ensure full payment of the grant.

Subp. 2. **Sewer service charge system.** A sewer service charge system must include:

A. The engineering and accounting data for the wastewater flows and loadings of the users of the wastewater treatment facility.

B. The estimated annual costs of equipment replacement, and operating and maintaining the facility.

C. The rates that will be charged to each user for the user's share of the annual costs of equipment replacement and operation and maintenance of the treatment facility in proportion to the user's contribution of wastewater flow and loadings and according to the rate formula established in the sewer rate ordinance. The costs of treating infiltration and inflow and the costs of administration may be charged through other methods than proportionality, but the manner in which the charges will be distributed must be justified and described.

D. The rates that will be charged to each user for the cost of the debt retirement for the local capital cost of the treatment facility. The debt charge need not be proportionally assessed against each user, but the manner in which the charge will be distributed must be described.

Subp. 3. **Sewer rate ordinance.** The sewer rate ordinance must include the following minimum provisions:

A. the rate setting method for proportionate user charges;

B. the rate setting method for debt charges; and

C. separate accounts for:

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(1) operation and maintenance;

(2) equipment replacement; and

(3) debt retirement; and

D. administrative procedures for the financial management of the sewer service charges.

Subp. 4. **Sewer use ordinance.** The sewer use ordinance must include the following minimum provisions:

A. prohibition of new connections from inflow sources;

B. new sewers and connections must be properly designed and constructed; and

C. prohibition of toxics and other pollutants in amounts or concentrations that endanger public safety or the physical integrity of the treatment facility or cause violation of permit limitations.

STATE INDEPENDENT GRANTS PROGRAM

7077.0200 PURPOSE.

The state independent grants program provides grants to municipalities for the construction of publicly owned wastewater treatment facilities according to the priority order of the municipal needs list and the provisions of Minnesota Statutes, section 116.18, subdivision 3a. The program is jointly administered by the Minnesota Pollution Control Agency and the Minnesota Public Facilities Authority. Parts 7077.0200 to 7077.0265 provide for the agency's responsibilities for the administration of the program.

7077.0205 MUNICIPAL PROJECT LIST.

Subpart 1. **Adoption of municipal project list.** Each fiscal year the agency shall adopt a municipal project list that identifies, in priority order, the municipalities that are eligible to apply for state independent grants from appropriated funds.

The municipal project list shall also list other uses of the appropriated funds including reserves for grant increases and costs of administration.

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Subp. 2. **Requirements for placement on list.** To be placed on the municipal project list:

A. The municipality must be on the municipal needs list.

B. The municipality must submit by December 1 before the beginning of the fiscal year for which the municipal project list is prepared:

(1) a facilities plan in conformance with part 7077.0150; 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 7077.0150.

C. The municipality must, by May 1 before the beginning of the fiscal year for which the project list is prepared, make all revisions to the documents listed in item B that are necessary to obtain the commissioner's approval.

D. The municipality must also submit by May 1 the following documents for the commissioner's review and approval or a resolution of the municipality's governing body agreeing to submit the following documents by the following October 1:

(1) plans and specifications in conformance with part 7077.0155, and based on a facilities plan previously approved by the agency;

(2) if the municipality 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 7077.0155, and based on a previously approved facilities plan;

(3) a sewer service charge system under part 7077.0160, subpart 2;

(4) documentation of how the public has been informed within the past year of the proposed sewer service rates;

(5) a sewer rate ordinance under part 7077.0160, subpart 3;

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(6) a sewer use ordinance under 7077.0160, subpart 4; and

(7) if more than one municipality is involved in the project, an unexecuted intermunicipal agreement that sets forth the terms and conditions of joint treatment and the cost-sharing methodology.

E. Failure to submit, for the commissioner's review and approval, the documents agreed to in item D by October 1 of the fiscal year for which the municipal project list is prepared will result in the removal of the municipality from the municipal project list.

Subp. 3. **Preparation of proposed municipal project list.** In drafting the proposed municipal project list, the commissioner shall consider the following factors in the order given:

A. total dollars available for the purpose of constructing a municipal wastewater treatment facility;

B. restrictions and obligations mandated by these parts and applicable state statutes;

C. priority rank of projects according to the municipal needs list;

D. requirements of subpart 2;

E. eligibility of projects according to part 7077.0210; and

F. additional projects, in priority order, identified by the authority for award under the economic development set-aside under Minnesota Statutes, section 116.18, subdivision 3a, paragraph (b).

Subp. 4. **Reserve list.** The municipal project list shall include a list of reserve projects with priority rankings lower than those identified under subpart 3, items A to E. Municipalities listed on the reserve list meeting the requirements under subpart 3, items D and E, may receive funding if funds become available.

Subp. 5. **Reimbursement list.** The municipal project list shall include a list of municipalities that have requested to

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proceed with their projects and be reimbursed in a subsequent year conditioned upon appropriation of sufficient funds.

A. No municipality may be listed on the reimbursement list unless the municipality has submitted a written request for placement on the list and has received approval of the documents listed in subpart 2, items B and D.

B. A municipality may retain eligibility of construction and construction related costs incurred before the award of a state independent grant only if:

(1) the municipality was on the reimbursement list when construction began;

(2) the municipality submitted a complete application, as defined under part 7077.0215, subpart 2, to the commissioner within 90 days after adoption of or amendment to the municipal project list; and

(3) the municipality has received written approval of the application from the commissioner before initiating construction.

C. Reimbursement projects must be listed in the same order of priority as they appear on the municipal needs list.

Subp. 6. **Public participation.** The commissioner shall prepare a proposed municipal project list and make it available to the public at least 30 days before adoption. A free copy of the proposed list shall be mailed to interested persons upon request. Municipalities affected by the proposed list shall be given notice at least 30 days in advance of the agency board meeting at which the list will be considered for adoption.

7077.0210 ELIGIBILITY.

Subpart 1. **Project eligibility.** The provisions in items A to C govern project eligibility.

A. Only the cost-effective implementable alternative determined according to part 7077.0150, subpart 2, and identified in an approved facilities plan is eligible to receive grant assistance, unless a municipality receives an exemption under item B.

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B. The commissioner may grant an exemption to the required 20-year planning period for the cost-effectiveness analysis under part 7077.0150, subpart 2, item E, to a municipality under 1,500 population for reasons of significant financial hardship. If an exemption is granted, the municipality may receive grant assistance for a proposed treatment alternative that is different than the 20-year cost-effective alternative. A municipality must submit a written request for this exemption that includes:

(1) a description of the proposed treatment alternative and a discussion of the extent to which it fails to satisfy the 20-year cost-effectiveness analysis;

(2) an explanation, including any necessary supporting documentation, of why the 20-year cost-effective alternative identified in the facilities plan would create a significant financial hardship for the municipality;

(3) a plan for reevaluating the municipality's wastewater treatment needs at a specific time in the future; and

(4) a resolution of the municipality's governing body that supports the municipality's request to construct a treatment alternative other than that identified in the facilities plan as the 20-year cost-effective alternative, and provides a formal commitment to reevaluate the municipality's wastewater treatment needs at a specific time in the future.

C. Grant assistance is not available for a project or portion of a project if the principal purpose is the treatment or conveyance of industrial wastewater.

Subp. 2. **Cost eligibility.** The following categories of costs related to the construction of the approved treatment alternative under subpart 1 are eligible for grant assistance:

A. costs of only those items identified in the approved plans and specifications and change orders that are necessary to construct a treatment facility that complies with NPDES/SDS permit requirements;

B. costs of procuring construction contractors;

C. costs relating to construction and start-up

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engineering services;

D. costs of providing full-time inspection of the project construction;

E. costs of land on which stabilization ponds will be built;

F. a contingency fund equal to three percent of the grant eligible construction costs;

G. costs associated with unanticipated site conditions as specified under part 7077.0240, subpart 2; and

H. costs incurred for project planning, design, administration, and legal services up to a maximum of 12 percent of the grant eligible construction costs for municipalities of 1,500 or less population and ten percent of the grant eligible construction costs for municipalities over 1,500 population. If a municipality has previously received funding for planning or design, the eligible costs from previous awards for planning or design will be subtracted from the eligible costs in this item.

Subp. 3. **Timing of eligible costs.** The following items govern the grant eligibility of project costs:

A. Costs of construction and construction related engineering and inspection services incurred before the certification of a grant application by the commissioner to the authority are ineligible unless the municipality receives prior written approval from the commissioner.

B. Costs of purchasing the land identified in subpart 2, item E, incurred before the approval of a facilities plan by the commissioner are ineligible unless the municipality receives prior written approval from the commissioner.

7077.0215 GRANT APPLICATIONS.

Subpart 1. **Agency notification.** The commissioner shall notify each municipality of its placement on the municipal project list. No municipality shall submit a state independent grant application unless it has been notified by the commissioner in writing that it is on this list.

Subp. 2. **Complete application required.** No municipality

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may be eligible for a state independent grant unless a complete grant application has been submitted to the authority. A complete application must include all documents required under subparts 3 and 4.

Subp. 3. **Timing and form of application.** The following provisions govern the timing and form of grant applications:

A. The application for grant funds shall be on forms provided by the agency and the authority.

B. A municipality on the municipal project list shall submit a complete construction grant application to the authority within 90 days after the date on which the agency adopts that fiscal year's municipal project list.

C. If a land acquisition legal opinion, specified under subpart 4, item F, is unobtainable at the time of application, a land acquisition status report and schedule must be included with the application. If the legal opinion is not received at the agency by the following April 1, the application must be rejected and the project must be removed from the municipal project list for that fiscal year.

Subp. 4. **Application requirements.** A municipality that applies for a construction grant shall, in addition to submitting the completed application form, submit the following information for the commissioner's review and approval:

A. A proposed engineering contract that includes, at a minimum, the following provisions:

(1) full-time inspection during construction and written monthly reports submitted to the agency describing the type of construction inspected and the time involved in inspection;

(2) two sets of "as built" plans and specifications on microfiche for submittal to the agency;

(3) preparation of an operation and maintenance manual; and

(4) start-up services during the first year of operation, including:

(a) direct the operation of the project and

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revise the operation and maintenance manual as necessary to accommodate actual operating experience;

(b) training or providing for training of operating personnel and prepare necessary curricula and training materials; and

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

B. A certificate of adequate errors and omissions insurance carried by the engineering firm.

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

> The facilities described in this application have been designed based on data that has been verified to accurately represent present and future flows and loadings and with full knowledge of the effluent limitations required by the Minnesota Pollution Control Agency as set forth in NPDES Permit No. ..... dated ..... It is my judgment and carefully considered opinion that these facilities are capable of consistently producing the required effluent quality, provided that the facilities are operated in conformance with the approved operation and maintenance manual and that the volume and characteristics of raw wastewater are within the limits of the flow data presented in the plans and specifications under the requirements of Minnesota Rules, part 7077.0155, subpart 2, item C.

D. A treatment agreement with each major contributing industry.

E. A cost breakdown for all project work to be funded by the grant, including separation of grant eligible and ineligible items, in a format provided by the agency.

F. A legal opinion identifying that the municipality has sufficient legal vested interest in all sites, easements, or rights-of-way to ensure immediate construction and undisturbed

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use for the estimated life of the facilities. If this opinion can not be submitted at the time of application, a land acquisition status report and schedule must be provided.

G. A project schedule on a form provided by the agency.

Subp. 5. **Three copies.** State independent grant application forms and attachments must be submitted in triplicate to the authority. At least one set of forms and attachments must contain original signatures.

7077.0220 APPROVAL AND CERTIFICATION OF GRANT APPLICATIONS.

Subpart 1. **Approval.** The commissioner shall approve grant applications from municipalities that:

A. meet the requirements of parts 7077.0205, subpart 2, item D; and 7077.0215, subparts 3 and 4, within 180 days of the date the agency received a complete application;

B. complete the environmental review process requirements in chapter 4410 and Minnesota Statutes, chapter 116D; and

C. obtain the required NPDES/SDS permits.

Subp. 2. **Certification.** The commissioner shall certify each approved grant application to the authority for award. Grant eligible costs under part 7077.0210, subpart 2, items B to D, will be determined at the time of certification. Following certification, grant eligible costs under these items can be increased only through the approval of an unanticipated site condition amendment under part 7077.0240, subpart 2, or through the use of contingency funds under part 7077.0210, subpart 2, item F, approved by the commissioner.

7077.0225 REJECTION OF GRANT APPLICATIONS.

Subpart 1. **Grounds.** A municipality's grant application for a project on the municipal project list may be rejected by the commissioner if it cannot receive approval under part 7077.0220.

Subp. 2. **Effect of rejection.** When a grant application is rejected, the commissioner shall remove the municipality from

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the municipal project list for that fiscal year.

7077.0230 CONTRACT ASSIGNMENT.

A municipality that enters into a contract with a contractor or engineer for the planning, design, or construction of a part of or an entire wastewater treatment system, to be paid for in whole or in part by state independent grant funds, shall provide in the contract that any or all of its rights and duties thereunder may be assigned to the commissioner without the agreement of the contractor or engineer. The assignment may be made by mutual agreement between the municipality and the commissioner or according to an agency assumption of municipal powers under Minnesota Statutes, section 115.48.

7077.0235 CONTRACT BENEFICIARY.

A municipality that enters into a contract with a contractor or engineer for the planning, design, or construction of a part of or an entire wastewater treatment system, to be paid for in whole or in part by state independent grant funds, shall provide in the contract that the agency is a third-party beneficiary to the contract.

7077.0240 GRANT AMENDMENTS.

Subpart 1. **After-bid amendments.** A municipality shall submit to the authority a written request for an after-bid amendment when actual construction contracts costs differ from construction costs estimated in the grant certification. Final grant eligible construction costs are based on the amounts in the signed construction contracts. No further amendments for additional construction costs will be considered except as provided under subpart 2. The commissioner shall certify the amendment to the authority if funds are available and the costs are eligible and reasonable.

Subp. 2. **Unanticipated site condition amendments.** Only cost overruns caused by unanticipated site conditions are eligible for grant amendments once final grant eligible construction costs based on the amounts in the signed

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construction contracts are determined under subpart 1.

A. The commissioner may approve an amendment for up to two percent of the final grant eligible construction costs to compensate for unanticipated site conditions encountered during construction. The three percent contingency fund under part 7077.0210, subpart 2, item F, must be depleted before an amendment for unanticipated site conditions is approved.

B. A written request by the municipality for an unanticipated site condition amendment must include:

(1) an explanation of why the site condition causing the cost overrun was unanticipated;

(2) a change order that defines the scope and cost of the work;

(3) a breakdown of costs and tasks;

(4) an amended engineering contract, if applicable; and

(5) a budget period extension request, if applicable.

7077.0245 CHANGE ORDERS.

Subpart 1. **In general.** A change order must be submitted to the commissioner for any change that:

A. alters the design or scope of the project;

B. increases or decreases the contract price;

C. changes the construction completion date;

D. causes a deviation from the approved plans and specifications; or

E. causes a substitution or replacement of equipment, suppliers, or subcontractors.

Subp. 2. **Contents.** Change orders submitted to the commissioner must contain the following:

A. signatures of the municipality's authorized representative, the project engineer, and the contractor;

B. the date on which the municipality and the contractor executed the change order;

C. identification of grant eligible and ineligible

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costs;

D. a complete description and justification of the change;

E. an explanation of why the change was not included in the original plans and specifications and contractor's bid;

F. a detailed cost breakdown for the change from the contractor showing the costs of materials, labor, overhead, and profit; and

G. a cost estimate for the change from the project engineer and an analysis of any differences between the engineer's estimate and the contractor's cost breakdown. If the project engineer's estimate differs from the contractor's price by more than ten percent, an explanation of how the costs were agreed to is required.

Subp. 3. **Eligible costs.** The following costs associated with approved change orders are eligible for grant assistance:

A. construction costs resulting from defects in the plans and specifications that would have been eligible and would have been incurred if the plans and specifications had been free of the defects, excluding the costs of any rework, redesign, restocking, small tools, supervision, delay, acceleration, or disruption caused by the defects;

B. costs determined by the commissioner to be the result of unanticipated site conditions;

C. combined profit and overhead costs for the contractor or subcontractor that actually performs the change order work not exceeding 15 percent of the costs of materials and labor;

D. combined profit and overhead costs for a contractor or subcontractor that administers the change order but does not actually perform the change order work not exceeding five percent of the costs of materials and labor.

Subp. 4. **Approval of change orders.** Approval of change orders is required as follows:

A. Proposed changes that substantially alter the type of treatment process, or its efficiency, versatility, or

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reliability, must be submitted to the commissioner for prior approval.

B. Change orders not requiring the commissioner's prior approval under item A must be submitted to the commissioner for review and approval within one month after the date on which the municipality, its engineer, or other authorized agent, and the contractor execute the change.

C. Proposed changes described in item A do not require prior written approval from the commissioner when the work is agreed by the commissioner to be of an emergency nature.

7077.0250 COMPLETION OF CONSTRUCTION.

Subpart 1. **Building completion.** Building completion is the date when all major components of a project have been built, all equipment is operational, start-up testing has been completed, and the project is capable of functioning as designed. At this point the municipality must notify the commissioner it is ready to initiate operation and request that a prefinal inspection be scheduled.

Subp. 2. **Initiation of operation.** Initiation of operation is the date the project begins operating for the purposes for which it was planned, designed, and built. A project must not initiate operation until it receives approval from the commissioner.

A. The municipality must notify the commissioner in writing of the initiation of operation date within ten days of initiating operation.

B. The date of initiation of operation is the first day of the one year performance period.

Subp. 3. **Final inspection.** A final inspection of the treatment facility must be performed by agency staff when all the construction is complete except for minor weather-related components. The purpose of the inspection is to verify that construction is complete and conforms with the approved plans, specifications, and change orders. A municipality requests that a final inspection be performed when it believes construction is

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complete. At the final inspection, any outstanding change orders must be identified and a cut-off date for incurring grant eligible construction related costs must be established.

7077.0255 PROJECT PERFORMANCE.

Subpart 1. **Performance certification.** One year after the initiation of operation of the project, the municipality shall submit to the commissioner the following items:

A. a certification stating whether the project meets the following performance standards:

(1) the project has been completed according to approved construction plans and specifications and change orders;

(2) the municipality has a sufficient number of trained and capable personnel to provide adequate operation and maintenance of the project, and the project requires only operation and maintenance as outlined as normal and routine in the approved operation and maintenance manual;

(3) the project accepts hydraulic and organic loading to the extent described in the approved design specifications and is in compliance with all NPDES/SDS permit requirements;

(4) industrial wastewater discharges to the treatment facility do not interfere with the operation of the project or the disposal or use of municipal sludges;

(5) sludge treatment and disposal is accomplished in conformance with chapter 7040 or parts 7005.2350 to 7005.2400, as applicable; and

(6) the project meets the requirements in the approved plans and specifications for the prevention of contamination of underground drinking water sources beyond the property boundary, if applicable;

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

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

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start-up period;

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

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

Subp. 2. **Corrective action report.** If the commissioner or the municipality determines that the project does not meet the project performance standards under subpart 1, item A, the municipality shall:

A. submit within 30 days of the performance certification date a corrective action report that includes:

(1) an analysis of the project's failure to meet the performance standards;

(2) an estimate of the nature, scope, and cost of the corrective action necessary to bring the project into compliance; and

(3) a schedule for initiating, in a timely manner, the necessary corrective action work and for meeting the performance certification requirements following a start-up period that is reasonable for the type of corrective action work to be performed; and

B. following the completion of corrective action work, submit a performance certification as specified under subpart 1 according to the schedule in item A, subitem (3).

7077.0260 PAYMENT OF STATE INDEPENDENT GRANTS.

Subpart 1. **Payment request.** A municipality must submit written payment requests to the authority. The municipality must include documentation for costs incurred under part 7077.0210, subpart 2, item H.

Subp. 2. **Certification of payment requests.** The commissioner shall certify to the authority payment requests for eligible costs incurred according to the following schedule:

A. No payments will be certified until the municipality has submitted:

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(1) the accepted bid proposal;

(2) detailed tabulation of all bids received;

(3) payment and performance bonds;

(4) executed construction contract and notice to proceed;

(5) executed engineering contract; and

(6) if more than one municipality is involved in the project, an executed intermunicipal agreement.

B. Payments will not be certified beyond 50 percent of the construction grant until the municipality has hired a wastewater treatment operator having a valid state certificate appropriate for the facility being constructed.

C. Payments will not be certified beyond 80 percent of the construction grant until the municipality has:

(1) enacted the approved sewer use ordinance;

(2) enacted the approved sewer rate ordinance;

(3) adopted by a resolution of the governing body the approved sewer service charge system with updated cost revisions; and

(4) received approval of the operation and maintenance manual.

D. Payments will not be certified beyond 90 percent of the construction grant until the municipality has met requirements of the performance certification process under part 7077.0255. If a project cannot meet these requirements, final payment will not be made until the requirements under part 7077.0255, subpart 2, have been completed or the municipality has entered into a legally enforceable agreement with the agency containing a schedule for completing the corrective work.

Subp. 3. **Retained payments.** The commissioner may withhold certification of construction grant payments if the commissioner determines that a project does not substantially conform to approved plans and specifications, or there has been a major breach of a condition in the grant agreement, or the municipality has failed to comply with the applicable requirements of this chapter. If funds are withheld pursuant to

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this subpart, the commissioner shall certify further payments when the condition causing the withholding has been corrected, or otherwise agreed to by the commissioner and the municipality.

7077.0265 RECOVERY OF FUNDS.

The commissioner shall recommend that the authority seek the immediate recovery of grant funds if funds are disbursed in excess of eligible costs incurred, or if a project is improperly designed, improperly constructed, or improperly operated and maintained.

COMBINED SEWER OVERFLOW ABATEMENT PROGRAM

7077.0300 PURPOSE.

State financial assistance is available for combined sewer overflow abatement for those municipalities eligible under Minnesota Statutes, section 116.162, subdivision 3. Parts 7077.0300 to 7077.0330 provide for the administration of the program.

7077.0305 MUNICIPAL PROJECT LIST.

Subpart 1. **In general.** The municipal project list prepared according to part 7077.0205 must contain those projects for which state financial assistance is available for combined sewer overflow abatement.

Subp. 2. **Requirements for placement on the list.** To be placed on the municipal project list, a municipality shall meet the following requirements:

A. The municipality must be listed on the municipal needs list.

B. The municipality shall submit by June 1 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.

7077.0310 APPLICATIONS.

Subpart 1. **Complete application required.** No municipality is eligible for combined sewer overflow abatement financial

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assistance unless a complete application has been submitted to the agency. A complete application must include all documents required under subparts 2 and 3.

Subp. 2. **Timing and form of application.** The following provisions govern the timing and form of financial assistance applications:

A. The application shall be on the form provided by the agency.

B. A municipality on the final municipal project list for a combined sewer overflow abatement project shall submit a complete application for state financial assistance by December 1 following agency adoption of that fiscal year's municipal project list, unless a different date is provided in the municipality's NPDES/SDS permit, in which case the deadline in the permit shall take precedence.

Subp. 3. **Additional information.** A municipality that applies for state financial assistance for a combined sewer overflow abatement project shall submit the following information for the commissioner's review and approval:

A. The scope of work contained in the list and schedule submitted the previous June 1, or according to the NPDES/SDS permit, plus additional scope of work as may be necessary to use any additional funds that may become available.

B. A resolution of the governing body of the municipality that authorizes the filing of the application and that designates the municipal official authorized to sign the application, financial assistance offer, and other related documents.

C. A proposed engineering contract that includes, at a minimum, the following provisions:

(1) full-time inspection during construction and written monthly reports submitted to the agency describing the type of construction inspected and the time involved in inspection;

(2) two sets of "as-built" plans and specifications on microfiche.

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

E. A cost breakdown for all project work to be funded by the financial assistance, including separation of eligible and ineligible items, in a format provided by the agency.

F. Plans and specifications as required under part 7077.0155 for the scope of work described in item A.

G. A project schedule on a form provided by the agency.

7077.0315 FINANCIAL ASSISTANCE AWARDS.

Each fiscal year that funds are appropriated for combined sewer overflow abatement, the commissioner shall award financial assistance to municipalities that meet the requirements of part 7077.0310. The municipalities shall be awarded a proportionate share of the appropriation available in that fiscal year. The proportionate share for each eligible municipality is as follows:

A. Minneapolis, 24.2 percent;

B. Saint Paul, 71.6 percent; and

C. South Saint Paul, 4.2 percent.

7077.0320 CHANGE ORDERS.

Subpart 1. **In general.** A change order must be submitted to the commissioner for any change that:

A. alters the design or scope of the project;

B. increases or decreases the contract price;

C. changes the construction completion date;

D. causes a deviation from the approved plans and specifications; or

E. causes a substitution or replacement of equipment, suppliers, or subcontractors.

Subp. 2. **Contents.** Change orders submitted to the commissioner must contain the following:

A. signatures of the municipality's authorized representative, the project engineer, and the contractor;

B. the date on which the municipality and the contractor executed the change order; and

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C. a complete description of the change.

Subp. 3. **Approval of change orders.** Approval of change orders is required as follows:

A. Proposed changes that substantially alter the type of facility or its efficiency, versatility, or reliability, must be submitted to the commissioner for prior approval.

B. Change orders not requiring the commissioner's prior approval under item A must be submitted to the commissioner for review and approval within one month after the date on which the municipality, its engineer, or other authorized agent, and the contractor execute the change order.

C. Proposed changes described in item A do not require prior written approval from the commissioner when the work is agreed by the commissioner to be of an emergency nature.

7077.0325 PROJECT PERFORMANCE.

Subpart 1. **Notification of initiation of operation.** Initiation of operation is the date the project begins operating for the purposes for which it was planned, designed, and built. The municipality shall notify the commissioner, in writing, of the project's initiation of operation date within ten days following initiation of operation.

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

A. a certification stating whether the project meets the following performance standards:

(1) the project has been completed according to approved plans and specifications and change orders;

(2) the project accepts hydraulic loading to the extent described in the approved design specifications and complies with all NPDES/SDS permit requirements; and

(3) there is complete separation of stormwater and sanitary flows within the project area, with the exception of flows from building rainleader connections authorized under the NPDES/SDS permit;

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

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

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

Subp. 3. **Corrective action report.** If the commissioner or the municipality determines that the project does not meet the project performance standards under subpart 2, item A, the municipality shall:

A. Submit within 30 days of the performance certification date a corrective action report that includes:

(1) an analysis of the project's failure to meet the performance standards;

(2) an estimate of the nature, scope, and cost of the corrective action necessary to bring the project into compliance; and

(3) a schedule for initiating, in a timely manner, the necessary corrective action work and for meeting the performance certification requirements following a start-up period that is reasonable for the type of corrective action work to be performed.

B. Following the completion of corrective action work, submit a performance certification as specified under subpart 1 according to the schedule in item A, subitem (3).

7077.0330 PAYMENT OF STATE FINANCIAL ASSISTANCE.

Subpart 1. **Payments up to 90 percent of assistance.** The municipality may request in writing periodic payments as work on the project progresses up to 90 percent of the total amount of the financial assistance award. No payments will be made for project work until the municipality has submitted the following items, if applicable:

A. the accepted bid proposal;

B. detailed tabulation of all bids received;

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C. payment and performance bonds; and

D. executed construction contract and notice to proceed.

Subp. 2. **Payments beyond 90 percent of assistance.** Payments will not be made beyond 90 percent of the financial assistance amount until a final inspection of the project is performed by agency staff and the municipality has met the requirements of part 7077.0325.

Subp. 3. **Retained payments.** Financial assistance payments may be withheld if the commissioner determines that a project does not substantially conform to approved plans and specifications, or there has been a major breach of a condition in the financial assistance agreement, or the municipality has failed to comply with the applicable requirements of this chapter. If funds are withheld pursuant to this subpart, further payments will be made when the condition causing the withholding has been corrected, or as otherwise agreed to by the commissioner and the municipality.

Rules as Proposed

WATER POLLUTION CONTROL REVOLVING FUND PROGRAM

~~7075.2505~~ 7077.0400 PURPOSE.

The water pollution control revolving fund program provides loans and other forms of financial assistance to municipalities for the planning, design, and construction of publicly owned wastewater treatment facilities according to ~~the provisions of~~ Title VI of the ~~Federal Water Pollution Control~~ act and Minnesota Statutes, section 446A.07. The program is jointly administered by the Minnesota Pollution Control Agency and the Minnesota Public Facilities Authority. Parts ~~7075.2505~~ 7077.0400 to ~~7075.2550~~ 7077.0445 provide for the agency's responsibilities for the administration of the program and apply to loans and other forms of financial assistance awarded before, on, or after July 1, 1990.

~~7075.2515~~ 7077.0405 INTENDED USE PLAN.

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

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

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

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

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

(2) a project cost estimate; and

(3) a proposed project schedule~~, including the date for submittal of a complete financial assistance application in conformance with the requirements of part 7075.2520~~ and a breakdown of estimated quarterly cash flow needs.

B. For a ~~Step 3 project~~ construction loan, a municipality must first receive the commissioner's approval of its facilities plan, as required under part 7077.0150, before it will be placed on the intended use plan. If the municipality is proposing to change the selected treatment method or any other major element of a previously approved facilities plan, the municipality must receive the commissioner's approval of a facilities plan addendum.

~~7075.2520~~ 7077.0410 APPLICATIONS.

Subpart 1. ~~Timing and~~ **Form of application.** A municipality

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

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

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

B. a schedule for completion of the facilities plan on a form provided by the agency;

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

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

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

A. a schedule for completion of ~~all-Step-2-work~~ plans and specifications, a sewer service charge system, a sewer rate ordinance, and a sewer use ordinance on a form provided by the agency;

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

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

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

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

A. ~~Project~~ Plans and specifications ~~including documents that contain the requirements under which a bidder submits a bid for performing the work and the contractual requirements and detailed requirements. The documents that comprise the plans and specifications must conform to generally accepted engineering practices, applicable state statutes and rules, and applicable requirements of the act.~~ as required under part 7077.0155.

B. A sewer service charge system ~~comprised of a user charge system and a system providing for dedicated sources of revenue to pay for the municipality's costs of construction and to retire the municipality's debt costs attributable to the wastewater treatment works to be constructed. The user charge system must ensure the sufficient generation of revenue to offset the annual costs of operation, maintenance, and replacement of the treatment works and must charge each user class a fee proportional to the contribution of each user class to the total wastewater loading. The user classes include residential, commercial, industrial, institutional, and governmental classes. The system providing for dedicated sources of revenue to pay for the municipality's costs of construction and to retire the municipality's debt costs need not be proportionally assessed against each user class, but the manner in which the charge will be distributed must be described.~~ as required under part 7077.0160, subpart 2.

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

D. A sewer use ordinance ~~to control discharges to the disposal system throughout the jurisdiction of the municipality.~~ as required under part 7077.0160, subpart 4.

E. A sewer rate ordinance as required under part 7077.0160, subpart 3.

F. A project schedule ~~for completion of all Step 3 work.~~ on a form provided by the agency.

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

"The ~~treatment works~~ facilities described in this application have been designed based on data that has been verified to accurately represent present and future flows and loadings and with full knowledge of the effluent limitations required by the Minnesota Pollution Control Agency as set forth in NPDES Permit No. _____ dated _____. It is my judgment and carefully considered opinion that these ~~treatment works~~ facilities are capable of consistently producing the required effluent quality, provided that the ~~facility is~~ facilities are operated in conformance with the approved operation and maintenance manual and that the volume and characteristics of raw wastewater are within the limits of ~~"Design Data" stated on page ---- of the plans as follows."~~ the flow data presented in the plans and specifications under the requirements of Minnesota Rules, part 7077.0155, subpart 2, item C.

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

H I. An engineering contract ~~for all Step 3 work.~~ that includes, at a minimum, the following provisions:

~~I. A certification from the municipality that its consulting engineer or the engineer's agent will be present on site during the hours of construction for purposes of~~ (1)

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full-time inspection during construction and ~~will submit~~ written monthly reports submitted to the agency ~~upon request~~ describing the type of construction inspected and the time involved in inspection ~~after construction commences.~~;

~~J.--A certification from the municipality that its consulting engineer will provide the following~~ (2) two sets of "as built" plans and specifications on microfiche;

(3) preparation of an operation and maintenance manual; and

(4) start-up services during the first year ~~following initiation~~ of operation, including:

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

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

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

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

~~K~~ J. A certification from the municipality that it will comply with the performance certification requirements in part ~~7075.2545~~ 7077.0440.

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

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

M. A legal opinion identifying that the municipality has sufficient legal vested interest in all sites, easements, or rights-of-way to ensure immediate construction and undisturbed utilization for the estimated life of the facilities.

N. If more than one municipality is involved in the application, an executed intermunicipal agreement that sets

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forth the terms and conditions of joint treatment and the cost-sharing methodology.

~~7075.2525~~ 7077.0415 APPLICATION CERTIFICATION.

Subpart 1. **~~Step 1 projects~~ Planning loans.** Upon review and approval of the documents required by part ~~7075.2520~~ 7077.0410, subpart 2, and a determination that the project meets the applicable requirements of the act, federal regulations, state statutes, and this chapter, the commissioner shall certify the application to the authority.

Subp. 2. **~~Step 2 projects~~ Design loans.** Upon review and approval of the documents required by part ~~7075.2520~~ 7077.0410, subpart 3, and a determination that the project meets the applicable requirements of the act, federal regulations, state statutes, and this chapter, the commissioner shall certify the application to the authority.

Subp. 3. **~~Step 3 projects~~ Construction loans.** Upon review and approval of the documents required by part ~~7075.2520~~ 7077.0410, subpart 4, completion of items A and B, and a determination that the project meets the applicable requirements of the act, federal regulations, state statutes, and this chapter, the commissioner shall certify the application to the authority.

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

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

~~7075.2530~~ 7077.0420 CHANGE ORDERS.

Subpart 1. **In general.** A change order must be submitted to the commissioner for any change that:

A. alters the design or scope of the project;

B. increases or decreases the contract price;

C. changes the construction completion date;

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D. causes a deviation from the approved plans and specifications; or

E. causes a substitution or replacement of equipment, suppliers, or subcontractors.

Subp. 2. **Contents.** Change orders submitted to the commissioner must contain the following:

A. signatures of the municipality's authorized representative, the project engineer, and the contractor;

B. date on which the municipality and the contractor executed the change order; and

C. a complete description of the change.

Subp. 3. **Approval of change orders.** Approval of a change order is required as follows:

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

B. Change orders ~~for changes that do~~ not ~~substantially alter the type or reliability of the treatment process do not require prior approval of the commissioner,~~ ~~but~~ requiring the commissioner's prior approval under item A must be submitted to the commissioner ~~as soon as possible~~ for review and approval within one month after the date on which the municipality, its engineer, or other authorized agent, and the

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contractor execute the change order.

C. Proposed changes described in item A do not require prior written approval from the commissioner when the work is agreed by the commissioner to be of an emergency nature.

~~7075.2540 STEP 3~~ 7077.0430 CONSTRUCTION LOAN REPORTING REQUIREMENTS.

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

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

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

C. evidence that the approved sewer use ordinance and sewer rate ordinance have been enacted; and

D. a resolution of the governing body adopting the approved sewer service charge system with updated cost revisions.

Subp. 2. [See Repealer.]

7077.0435 COMPLETION OF CONSTRUCTION.

Subpart 1. **Building completion.** Building completion is the date when all major components of a project have been built, all equipment is operational, start-up testing has been completed, and the project is capable of functioning as designed. At this point, the municipality must notify the commissioner it is ready to initiate operation and request that a prefinal inspection be scheduled.

Subp. 2. **Initiation of operation.** Initiation of operation is the date the project begins operating for the purposes for which it was planned, designed, and built. A project must not initiate operation until it receives approval from the commissioner.

A. The municipality must notify the commissioner in writing of the initiation of operation date within ten days of

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initiating operation.

B. The date of initiation of operation is the first day of the one-year performance period.

Subp. 3. **Final inspection.** A final inspection of the treatment facility shall be performed by agency staff when all the construction is complete except for minor weather-related components. The purpose of the inspection is to verify that construction is complete and conforms with the approved plans, specifications, and change orders. A municipality requests that a final inspection be performed when it believes construction is complete.

~~7075.2545~~ 7077.0440 PROJECT PERFORMANCE ~~CERTIFICATION~~.

Subpart 1. [See Repealer.]

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

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

(1) the project has been completed according to approved construction plans and specifications and change orders;

(2) the municipality has a sufficient number of trained and capable personnel to provide adequate operation and maintenance of the project, and the project requires only the operation and maintenance as is outlined as normal and routine in the approved operation and maintenance manual;

(3) the project accepts hydraulic and organic loading to the extent described in the approved design specifications and complies with all NPDES/SDS permit requirements;

(4) industrial wastewater discharges to the treatment works do not interfere with the operation of the project or the disposal or use of municipal sludges;

(5) sludge treatment and disposal is accomplished

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in conformance with chapter 7040 or parts 7005.2350 to 7005.2400, as applicable; and

(6) the project meets the requirements in the approved plans and specifications for the prevention of contamination of underground drinking water sources beyond the property boundary, if applicable;

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

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

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

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

Subp. 3. **Corrective action report.** If the commissioner or the municipality determines that the project does not meet the project performance standards ~~identified in the permit~~ under subpart 2, item A, the municipality shall:

A. submit within 30 days of the performance certification date a corrective action report that includes:

~~A.~~ (1) an analysis of the project's failure to meet the performance standards;

~~B.~~ (2) an estimate of the nature, scope, and cost of the corrective action necessary to bring the project into compliance; and

~~C.~~ (3) a schedule for ~~undertaking~~ initiating, in a timely manner, the necessary corrective action ~~necessary to bring the project into compliance~~ work and for meeting the performance certification requirements following a start-up period that is reasonable for the type of corrective action work to be performed; and

B. following the completion of corrective action work, submit a performance certification as specified under subpart 2 according to the schedule in item A, subitem (3).

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~~7075.2550~~ 7077.0445 REQUEST TO WITHHOLD FINANCIAL ASSISTANCE PAYMENTS.

Failure of a municipality's project to conform substantially to approved plans and specifications or failure of a municipality to comply with the requirements of part ~~7075.2540 or 7075.2545~~ parts 7077.0430 and 7077.0440 constitutes grounds for the commissioner to request that the authority withhold payments to the municipality. Once an agreement for correcting the condition leading to the withholding of funds is reached between the commissioner and the municipality, the commissioner will recommend to the authority that the retained funds be released according to the provisions ~~the agency's responsibilities for the administration of the program~~ in the agreement.

CORRECTIVE ACTION GRANTS PROGRAM

~~7075.1005~~ 7077.0500 PURPOSE.

The corrective action grants program provides grants according to Minnesota Statutes, section 116.181, to municipalities with wastewater treatment facilities funded under the Clean Water Act, United States Code, title 33, sections 1281 to 1299, or the ~~independent~~ state independent grants program that are unable to meet performance standards. The grants are for the purpose of correcting performance failures. The program is jointly administered by the Minnesota Pollution Control Agency and the Minnesota Public Facilities Authority. The program applies to grants made before, on, or after July 1, 1990. Parts ~~7075.1005~~ 7077.0500 to ~~7075.1090~~ 7077.0560 pertain to the agency's responsibilities in administering the program.

~~7075.1010 DEFINITIONS~~ 7077.0505 DEFINITION.

Subpart 1. to 4. [See Repealer.]

Subp. 5. **Performance standards.** "Performance standards" means, for the purpose of this program, the criteria established for a wastewater treatment facility under the Clean Water Act, United States Code, title 33, sections 1281 to 1299, or

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the ~~independent~~ state independent construction grants program for the purpose of determining the project's satisfactory performance.

~~7075.1020~~ 7077.0510 ELIGIBILITY FOR PARTICIPATION.

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

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

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

C. The municipality's wastewater treatment facility is unable to meet performance standards and the inability was identified by the commissioner before the end of the one-year performance certification period established by Code of Federal Regulations, title 40, section 35.2218, or part 7077.0250, subpart 2, item B.

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

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

~~7075.1030~~ 7077.0515 ELIGIBLE AND INELIGIBLE COSTS.

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

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

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

7077.0525 CONTRACT ASSIGNMENT.

A municipality that enters into a contract with a contractor or engineer for the planning, design, or construction of a part of or an entire wastewater treatment system, to be paid for in whole or in part by state corrective action grant funds, shall provide in the contract that any or all of its rights and duties thereunder may be assigned to the commissioner without the agreement of the contractor or engineer. The assignment may be made by mutual agreement between the municipality and the commissioner or according to an agency assumption of municipal powers under Minnesota Statutes, section 115.48.

7077.0530 CONTRACT BENEFICIARY.

A municipality that enters into a contract with a contractor or engineer for the planning, design, or construction of a part of or an entire wastewater treatment system, to be paid for in whole or in part by state corrective action grant funds, shall provide in the contract that the agency is a third-party beneficiary to the contract.

~~7075.1050~~ 7077.0535 APPLICATION.

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Subpart 1. **Agency notification.** After the preapplication items in part 7077.0520 are approved by agency staff, the commissioner shall notify the municipality that it is eligible to apply for a corrective action grant.

Subp. 2. **Application requirements.** The municipality shall apply for a corrective action grant on a form provided by the authority~~.--The-municipality-must-also~~ and submit the following information for the commissioner's review and approval:

A. A plan, endorsed by resolution of the municipality's governing body, for ~~the-recovery-of~~ recovering the costs of the proposed corrective action from the responsible parties~~,-including~~.

B. A report on the current status of negotiations or litigation.

C. A proposed engineering contract that includes, at a minimum, the following provisions:

(1) full-time inspection during construction and written monthly reports submitted to the agency describing the type of construction inspected and the time involved in inspection;

(2) two sets of "as built" plans and specifications on microfiche;

(3) preparation of an operation and maintenance manual, if applicable; and

(4) start-up services during the first year of operation, if applicable, including:

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

(b) train or provide for training of operating personnel and prepare necessary curricula and training materials; and

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

D. A certificate of adequate errors and omissions insurance carried by the engineering firm.

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

Corrective action for the facilities described in this grant application has been designed with full knowledge of the effluent limitations required by the Minnesota Pollution Control Agency as set forth in NPDES Permit No. ..... dated ..... It is my judgment and carefully considered opinion that the performance standards required by the Minnesota Pollution Control Agency will be met after the work detailed in the approved corrective action report, dated ....., is completed and that the corrected facilities are capable of consistently producing the required effluent quality, provided that the facilities are operated in conformance with the approved operation and maintenance manual and the volume and characteristics of raw wastewater are within the flow data presented in the plans and specifications approved for the original project or in the corrective action report modifications.

F. A treatment agreement with each major contributing industry.

G. A cost breakdown for all project work to be funded by the grant, including separation of grant eligible and ineligible items, in a format provided by the agency.

H. If necessary, a comprehensive legal opinion identifying that the municipality has sufficient legal vested interest in all sites, easements, or rights-of-way to ensure immediate construction and undisturbed use for the estimated life of the facilities.

Subp. 3. **Three copies.** Corrective action grant application forms and attachments, must be submitted in triplicate to the authority. At least one set of forms and attachments must contain original signatures.

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~~7075.1060~~ 7077.0540 CERTIFICATION OF APPLICATION FOR AWARD.

Subpart 1. **Priority.** The commissioner shall certify grants to the authority for award in the order that applications that meet the requirements of parts ~~7075.1040~~ 7077.0520 and ~~7075.1050~~ 7077.0535 are received and to the extent that funds are available.

Subp. 2. **Amount of award.** Except as provided in part ~~7075.1090~~7077.0560, subpart 3, the amount of the grant will be 80 percent of the total corrective action costs, eligible and ineligible, or the amount of the eligible costs, whichever is less.

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

Subp. 4. **Certification to authority.** Upon review and approval of the documents required under parts ~~7075.1040~~ 7077.0520 and ~~7075.1050~~ 7077.0535, the commissioner shall certify to the authority that the project meets the statutory requirements and the requirements of this chapter and is eligible for an award in the amount determined under subpart 2.

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

7077.0545 GRANT AMENDMENTS.

Subpart 1. **Maximum grant amount.** No grant shall be amended to exceed $500,000.

Subp. 2. **After-bid amendments.** A municipality shall submit a written request for an after-bid amendment when construction contracts differ from construction costs estimated in the grant certification. After-bid grant amendments shall be based on the cost of the completed procurement actions and shall be dependent upon the availability of additional grant funds. The commissioner shall certify the amendment to the authority if

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funds are available and the costs are eligible.

Subp. 3. **Final amendment.** A municipality shall submit a written request for a final amendment when construction has been completed. The commissioner shall certify the amendment to the authority if funds are available and the costs are eligible. The amendment shall:

A. be based on the eligible construction costs and change orders approved by the commissioner; and

B. increase the grant amount under part 7077.0515, subpart 3, for administrative, engineering, and legal costs as the amount of grant eligible construction costs increase through approved change orders. This increase may only be used to pay for engineering costs, including inspection, created by work specified on the approved change orders.

~~7075.1070~~ 7077.0550 CHANGE ORDERS.

Subpart 1. **In general.** A change order must be submitted to the commissioner for any change that:

A. alters the design or scope of the project;

B. increases or decreases the contract price;

C. changes the construction completion date;

D. causes a deviation from the approved plans and specifications; or

E. causes a substitution or replacement of equipment, suppliers, or subcontractors.

Subp. 2. **Contents.** Change orders submitted to the commissioner must contain the following:

A. signatures of the municipality's authorized representative, the project engineer, and the contractor;

B. date on which the municipality and the contractor execute the change order;

C. identification of grant eligible and ineligible costs;

D. a complete description and justification of the change;

E. an explanation of why the change was not included

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in the original plans and specifications and contractor's bid;

F. a detailed cost breakdown for the change from the contractor showing the costs of materials, labor, overhead, and profit; and

G. a cost estimate for the change from the project engineer and an analysis of any differences between the engineer's estimate and the contractor's cost breakdown. If the project engineer's estimate differs from the contractor's price by more than ten percent, an explanation of how the costs were agreed to is required.

Subp. 3. **Eligible costs.** The following costs associated with approved change orders are eligible for grant assistance:

A. construction costs resulting from defects in the plans and specifications that would have been eligible and would have been incurred if the plans and specifications had been free of the defects, excluding the costs of any rework, redesign, restocking, small tools, supervision, delay, acceleration, or disruption caused by the defects;

B. costs, determined by the commissioner to be the result of unanticipated site conditions;

C. combined profit and overhead costs for the contractor or subcontractor that actually performs the change order work not exceeding 15 percent of the costs of materials and labor; and

D. combined profit and overhead costs for a contractor or subcontractor that administers the change order but does not actually perform the change order work not exceeding five percent of the costs of materials and labor.

Subp. 4. **Approval of change orders.** Approval of change orders is required as follows:

~~A-municipality-proposing-to-make~~ A. Proposed changes ~~in-a-corrective-action-project~~ that substantially alter the type ~~or-reliability~~ of ~~the~~ treatment process ~~must-submit-to-the commissioner-the-information-the-commissioner-requests-to determine-the-impact-of-the-proposed-change-on-the-environment. Changes-in-the-project-that-substantially-alter-the-type~~, or its

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efficiency, versatility, or reliability ~~of the treatment process~~, must be ~~approved by~~ submitted to the commissioner ~~before the change is made. The commissioner shall review the proposed change in the same manner as the original project was reviewed for compliance with applicable pollution control requirements. A substantial change in the type or reliability of the treatment process implemented without prior approval from the commissioner constitutes grounds for the commissioner to request that the authority terminate the grant~~ for prior approval.

B. Change orders ~~for changes that do not substantially alter the type or reliability of the treatment process do~~ not ~~require prior approval of~~ requiring the ~~commissioner, but~~ commissioner's prior approval under item A must be submitted to the commissioner ~~as soon as possible~~ for review and approval within one month after the date on which the municipality, its engineer, or other authorized agent, and the contractor execute the change order.

C. Proposed changes described in item A do not require prior written approval from the commissioner when the work is agreed by the commissioner to be of an emergency nature.

~~7075.1080~~ 7077.0555 PAYMENTS.

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

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

A. The municipality must submit a quarterly summary of actions taken to recover corrective action costs from or to complete needed corrective work by the responsible parties.

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B. The municipality must support claims of incurred administration, legal, and engineering costs specified under part 7077.0515 with documentation.

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

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

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

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

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

~~7075.1090~~ 7077.0560 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~~

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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.

CAPITAL COST COMPONENT GRANT PROGRAM

~~7075.1105~~ 7077.0600 PURPOSE.

~~Parts 7075.1105 to 7075.1160 provide for the administration~~ ~~of~~ The capital cost component grant program ~~which makes~~ provides grants ~~available~~ to municipalities for part of the capital cost component of the service fee under a service contract with a private vendor to construct and operate wastewater treatment facilities according to the provisions of Minnesota Statutes, section 116.18, subdivision 3b. The program is jointly administered by the Minnesota Pollution Control Agency and the Minnesota Public Facilities Authority. The program applies to grants made before, on, or after July 1, 1990. Parts 7077.0600 to 7077.0660 provide for the agency's responsibilities for the administration of the program.

~~7075.1110~~ 7077.0605 DEFINITIONS.

Subpart 1. **Scope.** For the purpose of parts ~~7075.1105~~ 7077.0600 to ~~7075.1160~~ 7077.0660, the following terms have the meanings given them.

Subp. 2. to 4. [See Repealer.]

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

Subp. 6. [See Repealer.]

Subp. 7. **Project.** "Project" means the work for which a grant or grant amendment is awarded under parts ~~7075.1105~~ 7077.0600 to ~~7075.1160~~ 7077.0660.

~~7075.1120~~ 7077.0615 GRANT APPLICATIONS.

Subpart 1. **Notice of taking applications.** The commissioner shall request that the authority publish notice in

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~~corrective-action-project.--The-amount-of-the-payment-to-the state-shall-not-exceed-the-amount-of-the-grant.~~ **Recovery before corrective action grant award.** In the event that the municipality recovers an amount of money from the responsible persons before the corrective action grant is awarded, the amount of the award shall be determined by subtracting the amount recovered for grant eligible work from the total eligible costs determined under part 7077.0515.

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.~~ **Recovery after corrective action grant award.** In the event that the municipality recovers an amount of money from the responsible persons after the corrective action has been awarded, the grant will be amended by subtracting the amount recovered for grant eligible work from the total eligible costs determined under part 7077.0515. If corrective action grant funds have been paid to the municipality in excess of the amended grant amount, the municipality shall repay the excess amount to the state.

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

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the State Register that capital cost component grant applications will be accepted by the authority. The application closing date must be established by the commissioner and must be no less than 90 days after the publication date.

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

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

B. an engineering report containing:

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

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

(3) the municipality's existing wastewater flows and loadings data <u>on a form provided by the agency</u>; and

(4) the municipality's estimated future wastewater flows and loadings data <u>on a form provided by the agency</u>;

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

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

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

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

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

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reapply in a later application period.

~~7075.1135~~ 7077.0630 CERTIFICATION OF AWARD.

The commissioner shall certify to the authority the list of projects to be awarded grants and the amount of the grant to be awarded based on the criteria in parts ~~7075.1125~~ 7077.0620 and ~~7075.1130~~ 7077.0625.

7077.0635 PLANS AND SPECIFICATIONS.

Subpart 1. **In general.** A municipality must submit plans and specifications to the commissioner for review and approval according to part 7077.0640, subpart 2, item A.

Subp. 2. **Contents.** A complete set of plans and specifications must include:

A. drawings and specifications signed by a professional engineer registered in Minnesota;

B. a summary of design parameters for the treatment units;

C. a summary of flow conditions for average dry weather, average wet weather, maximum wet weather, peak hourly and instantaneous wet weather on a form provided by the agency;

D. a hydraulic profile of the flow through the treatment system; and

E. a plan for interim treatment during construction.

~~7075.1140~~ 7077.0640 GRANT CONDITIONS.

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

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

A. Within ~~90~~ 365 days after the grant award date, the grantee shall submit to the commissioner for technical review and approval complete plans and specifications for the wastewater treatment facility. The commissioner shall approve or deny approval of the plans and specifications within 90 days

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after initial submittal. The grantee and the commissioner may agree to one extension of up to an additional 90 days.

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

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

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

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

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

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

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

E. Before placing the wastewater treatment facility into operation, the grantee shall submit to the commissioner an

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operations and maintenance manual for the wastewater treatment facility. The commissioner shall review the manual and provide comments to the grantee.

~~7075.1150~~ 7077.0650 GRANT PAYMENT.

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

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

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

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

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

(3) submission of a certification of compliance with all grant conditions in part ~~7075.1140~~ 7077.0640, subpart 2;

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

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

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

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

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

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

Subp. 3. **Verification of compliance.** Before a grant payment is made, the commissioner shall verify that the grantee has complied with part ~~7075.1135~~ 7077.0630 and with the grantee's permit conditions.

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

~~7075.1155~~ 7077.0655 TERMINATION OF GRANT.

Failure of the grantee to comply with part ~~7075.1140~~ 7077.0640 shall constitute grounds for the commissioner to recommend that the authority terminate the grant of a grantee.

INDIVIDUAL ON-SITE WASTEWATER TREATMENT SYSTEMS GRANTS PROGRAM

~~7075.1400~~ 7077.0700 PURPOSE.

~~Parts 7075.1400 to 7075.1530 provide for the administration of~~ The individual on-site wastewater treatment systems grants program ~~that makes~~ provides grants ~~available~~ to municipalities to assist owners of individual on-site wastewater treatment systems to upgrade or replace their failed ~~individual on-site wastewater treatment~~ systems according to the provisions of Minnesota Statutes, section 116.18, subdivision 3c. The program is jointly administered by the Minnesota Pollution Control Agency and the Minnesota Public Facilities Authority. The program applies to grants awarded before, on, or after July 1, 1990. Parts 7077.0700 to 7077.0765 provide for the agency's responsibilities for the administration of the program.

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~~7075.1410~~ 7077.0705 DEFINITIONS.

Subpart 1. **Scope.** For the purpose of parts ~~7075.1400~~ 7077.0700 to ~~7075.1530~~ 7077.0765, the following terms have the meanings given them.

Subp. 2. **Abatement notice.** "Abatement notice" means an official document issued by the municipality to the owner of an individual on-site wastewater treatment system stating that the owner is in violation of the municipality's ordinance that adopts the requirements of chapter 7080. The abatement notice must include a citation to the ordinance alleged to have been violated.

Subp. 3. to 5. [See Repealer.]

Subp. 6. **Construction cost.** "Construction cost" means the cost of the materials, labor, overhead, and profit necessary for installation, construction, and repair of an individual on-site wastewater treatment system established by a contract between a system owner and a system installer.

Subp. 7. **Designer.** "Designer" means a person who designs individual on-site wastewater treatment systems, and has received agency approval under part ~~7075.1440~~ 7077.0720.

Subp. 8. **Dwelling.** "Dwelling" means any building or place used or intended to be used by human occupants as a single family or two family unit.

Subp. 9. **Failed system.** "Failed system" means a wastewater treatment system that has been issued an abatement notice by the municipality's inspector.

Subp. 10. **Individual on-site wastewater treatment system or individual system.** "Individual on-site wastewater treatment system" or "individual system" means a wastewater treatment system, or part of a system, serving one or two dwellings or other establishments, that uses subsurface soil treatment and disposal.

Subp. 11. **Inspector.** "Inspector" means a person employed by or under contract to the municipality who inspects individual on-site wastewater treatment systems for conformance with the ordinance that adopts the requirements of chapter 7080, and has

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received agency approval under part ~~7075.1440~~ 7077.0720.

Subp. 12. **Installer.** "Installer" means a person who constructs or repairs individual on-site wastewater treatment systems, and has received agency approval under part ~~7075.1440~~ 7077.0720.

Subp. 12a. **Maintenance plan.** "Maintenance plan" means a plan developed and administered by a municipality that demonstrates how the maintenance requirements of chapter 7080 will be implemented and enforced.

Subp. 13. **Median household income.** "Median household income" means the income data named "median household income" from the most recent decennial census of the United States.

Subp. 14. **Mound system.** "Mound system" means a system for which the soil treatment area is built above the naturally occurring soil surface to overcome limits imposed by proximity to water table or bedrock, or by rapidly or slowly permeable soils.

Subp. 15. [See Repealer.]

Subp. 16. **Other establishment.** "Other establishment" means a public or private structure other than a dwelling that generates wastewater.

Subp. 17. **Seasonal residence.** "Seasonal residence" means a dwelling used for less than 182 days of a calendar year by a single family or household. Second homes, vacation residences, and recreation residences are included in this definition.

Subp. 18. **Site evaluator.** "Site evaluator" means a person who investigates soils and site characteristics, does soil borings or percolation tests for use in designing individual on-site wastewater treatment systems, and has received agency approval under part ~~7075.1440~~ 7077.0720.

Subp. 19. **Trench or bed system.** "Trench or bed system" means an individual wastewater treatment system employing a building sewer, sewage tank, and the soil treatment system consisting of trenches or a seepage bed constructed below the original soil surface.

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~~7075.1420~~ 7077.0710 ELIGIBILITY.

Subpart 1. **Municipality eligibility.** A municipality applying for the individual system owners must meet the following conditions to be eligible for a grant:

A. be authorized by its governing body to assume responsibility for the grant application and related documents for owners of individual on-site wastewater treatment systems who are in its jurisdiction and included in the planning area under part ~~7075.1430~~ 7077.0715, subpart 2;

B. have developed and adopted a wastewater treatment plan under part ~~7075.1430~~ 7077.0715;

C. have enacted and be enforcing an ordinance that adopts the requirements of chapter 7080, Individual Sewage Treatment Systems Standards; and

D. have enacted an ordinance that establishes a maintenance plan for the individual on-site wastewater treatment systems in its jurisdiction~~;--and~~.

~~E.--have-a-median-household-income-that-is-less-than the-state-median-household-income.--Municipalities-not-included in-the-decennial-census-shall-submit-an-alternate-median household-income-figure-for-their-municipality,-supported-by complete-income-data-and-a-computation-methodology.--If-the-data is-complete-and-the-computation-methodology-is-equivalent-to-the decennial-census,-the-alternate-median-household-income-will-be approved-by-the-commissioner.~~

Subp. 2. **Individual system eligibility.** The individual systems to be replaced or upgraded included in the municipality's grant application must meet the following conditions:

A. be a failed system;

B. have been constructed before January 1, 1977;

C. not be serving a seasonal residence; and

D. not have been constructed with state or federal water pollution control funds.

Subp. 3. **Previous funding.** Individual systems located in geographic areas that were included in planning areas of

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projects previously funded with state or federal water pollution control funds are not eligible for funding under this part.

~~7075.1430~~ 7077.0715 WASTEWATER TREATMENT PLAN.

Subpart 1. **General requirements.** The municipality must develop a wastewater treatment plan that identifies wastewater treatment needs and proposes long-term solutions for a planning area under subpart 2. The plan must be adopted by the municipality's governing body.

Subp. 2. **Planning area.** The planning area is the entire geographic area in the municipality's jurisdiction unless the municipality submits an alternative proposal ~~at the time of~~ before application. Alternative proposals must be approved by the commissioner and will be evaluated based on housing density, water quality impact, and public health impact. Separate dwellings that do not form a contiguous area are not considered a planning area.

Subp. 3. **Plan contents.** The plan must include the following:

A. a planning area survey prepared by an inspector that identifies ~~failed~~ all systems in the planning area as failed systems or systems in compliance with chapter 7080;

B. site evaluations, including soil investigations, soil borings, and percolation tests, for the failed systems identified in item A prepared by a site evaluator or site evaluators ~~to determine~~ and a determination if it is feasible to replace or upgrade the failed systems on site;

C. an analysis of the overall wastewater treatment needs in the ~~municipality~~ planning area, including sizing and the location of the proposed systems, prepared by a designer using data from ~~a site evaluator or site evaluators~~ the site evaluations prepared under item B;

D. a list of the specific failed individual on-site wastewater treatment systems, including addresses and names of property owners requesting grant funds and copies of the abatement notices;

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E. a proposal for addressing the remaining wastewater treatment needs in the planning area not covered in item D, including specific actions to be taken and a proposed timetable for addressing the wastewater treatment needs; and

F. documentation of approval of the inspector, site evaluator or site evaluators, and designer under part ~~7075.1440~~ 7077.0720.

Subp. 4. [See Repealer.]

~~7075.1440~~ 7077.0720 APPROVAL OF INDIVIDUAL ON-SITE WASTEWATER TREATMENT PERSONNEL.

Subpart 1. **General requirement.** For the purposes of parts ~~7075.1400~~ 7077.0700 to ~~7075.1530~~ 7077.0765, inspectors, site evaluators, designers, and installers who inspect, evaluate sites for, design, and install individual on-site wastewater treatment systems under those parts must be approved by the commissioner under subpart 2 or 3.

Subp. 2. **First alternate approval criteria.** A person referred to in subpart 1 will be approved by the commissioner if the person is fully certified by the agency through the individual sewage treatment systems certification program administered by the agency in cooperation with the Individual Sewage Treatment Systems Advisory Committee established under part 7080.0100. Approval is automatic upon submittal of certification number.

Subp. 3. **Second alternate approval criteria.** A person referred to in subpart 1 may apply for approval under this subpart by submitting an application provided by the commissioner upon request. An applicant will be approved by the commissioner if the applicant meets the requirements of items A and B.

A. An applicant must demonstrate knowledge by scoring a minimum of 70 percent correct on an examination based on chapter 7080 and administered by the commissioner.

B. An applicant must document experience by completing the following requirements:

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(1) An inspector must submit a list of individual on-site wastewater treatment systems inspected by the applicant in the past three years. The inspector must certify that a minimum of 30 systems, or parts of systems, listed conform with the criteria in chapter 7080.

(2) A site evaluator must submit a list of individual on-site wastewater treatment systems for which the evaluator has conducted site evaluations in the past three years. The site evaluator must certify that a minimum of 20 sites for the systems listed were evaluated according to the criteria in chapter 7080.

(3) A designer must submit a list of individual on-site wastewater treatment systems designed by the applicant in the past three years. The designer must certify that a minimum of 20 systems listed were designed according to the criteria in chapter 7080.

(4) An installer must submit a list of individual on-site wastewater treatment systems constructed or repaired by the applicant in the past three years. The installer must certify that a minimum of ten systems listed were constructed or repaired according to the criteria in chapter 7080.

Subp. 4. **Notification of approval.** The commissioner will approve or deny an application within 30 days of the receipt of information required under subpart 3. Applicants may reapply at any time.

Subp. 5. **Purpose of agency approval.** Agency approval of inspectors, site evaluators, designers, and installers is for grant funding purposes only. This approval does not make the agency responsible for the technical adequacy of the work of inspectors, site evaluators, designers, and installers nor does it alter legal liability of this personnel otherwise provided by law.

~~7075.1450~~ 7077.0725 APPLICATION.

Subpart 1. **Notice of taking applications.** The commissioner will request the authority to publish in the State

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Register a notice that applications for individual on-site wastewater treatment grants will be accepted by the authority. The application closing date will be established by the commissioner, and will be no less than ~~90~~ 120 days after the publication date.

Subp. 2. **Application requirements.** The municipality must apply for a grant on a form provided by the commissioner. The municipality must submit to the authority the following information with the application:

A. a resolution of the governing body of the municipality that designates the municipality as the responsible party for the grant application and related documents, authorizes the filing of the application, and designates the municipal official authorized to sign the application and related documents;

B. the wastewater treatment plan prepared under part ~~7075.1430~~ 7077.0715;

C. a copy of the ordinance that adopts the requirements of chapter 7080 and certification that the ordinance is being enforced;

D. a copy of the ordinance establishing a maintenance plan under part ~~7075.1420~~ 7077.0710, item D;

E. alternative median household income data under part ~~7075.1420~~ 7077.0710, item E, for municipalities and planning areas not included in the decennial census;

F. signed statements from the individual system owners stating that their system meets the following conditions:

(1) the system to be replaced or upgraded was constructed before January 1, 1977;

(2) the system to be replaced or upgraded was not constructed with funds from state or federal water pollution control funds; and

(3) the system to be replaced or upgraded does not serve a seasonal residence;

G. the municipality's estimated date for the completion of all construction and final request for payment for

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the grant eligible systems; and

H. a statement from the municipality that it has an inspector on staff or under contract for services, including documentation of approval under part ~~7075.1440~~ 7077.0720.

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

Subp. 4. **Application closing date.** The application must be postmarked by the noticed application closing date.

Subp. 5. **Incomplete applications.** Municipalities that submit applications that do not include the information required in subparts 2 and 3 or that are not submitted by the application closing date are ineligible for funding. The municipalities may reapply in a later application period.

~~7075.1460~~ 7077.0730 ELIGIBLE COSTS.

Subpart 1. **Eligible costs.** Only the actual construction costs of upgrading or replacing failed individual on-site wastewater treatment systems that have been identified under part ~~7075.1430~~ 7077.0715, subpart 3, item D, are eligible.

Subp. 2. **Ineligible costs.** All nonconstruction costs including planning, engineering and design, site evaluation and soil investigation, inspection, and administrative costs are ineligible.

Subp. 3. **Number of systems limitation.** The eligibility of costs for a treatment site is limited to either a trench or bed system or a mound system under part ~~7075.1470~~ 7077.0735, subpart 1.

Subp. 4. **Costs incurred before grant award.** An owner may incur costs before the award of the grant and retain eligibility for reimbursement of eligible costs if the following conditions are met:

A. the municipality has developed and adopted a wastewater treatment plan as described in part ~~7075.1430~~ 7077.0715 before construction costs are incurred by the owner of

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the individual system;

B. the owner's system is specifically identified on the municipality's wastewater treatment plan; and

C. the municipality submits a complete and timely application, during the first noticed application period under part ~~7075.1450~~ 7077.0725, subpart 1, following the adoption of the wastewater treatment plan.

~~7075.1470~~ 7077.0735 AMOUNT OF ~~THE~~ GRANT AWARD.

Subpart 1. **Grant amount.** The amount of the grant will be 50 percent of the actual eligible costs under part ~~7075.1460~~ 7077.0730 up to a maximum grant of $2,500 per household for a trench or bed system and $3,750 per household for a mound system.

Subp. 2. **Partial awards.** A municipality that receives only a part of the grant to which it is entitled, due to the limitation of funding, will be entitled to receive a grant amendment in the next year or years, if individual on-site wastewater treatment systems grant funding is available, until the full amount of the grant is awarded.

~~7075.1480~~ 7077.0740 PRIORITY RANKING.

Municipalities that meet the requirements of parts ~~7075.1420~~ 7077.0710 to ~~7075.1450~~ 7077.0725 will be ranked for funding priority from lowest median household income to highest median household income, with the lowest median household income receiving the highest priority. Median household income is that established for the planning area identified under part 7077.0715, subpart 2. Planning areas not included in the decennial census shall submit a median household income figure for the planning area supported by complete income data and a computation methodology. If the data is complete and the computation methodology is equivalent to the decennial census, the median household income will be approved by the commissioner.

~~7075.1510~~ 7077.0755 PAYMENTS.

Subpart 1. **Request for payments.** A municipality must submit payment requests to the ~~commissioner~~ authority on a form

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provided by the ~~commissioner~~ authority.

Subp. 2. **Schedule of payments.** Payments may be requested monthly as construction on individual systems is completed and approved by the inspector.

Subp. 3. **Documentation.** Before payment of any part of the grant is made, the municipality must submit copies of the following documents for each individual system:

A. invoices documenting incurred construction costs;

B. documentation that the system was designed by a designer using data from a site evaluator;

C. documentation that the system was upgraded or replaced by an installer; and

D. documentation that the system was inspected and approved by the municipality's inspector.

Subp. 4. **Certification of payment.** Within 30 days of agency receipt of payment request, the commissioner will determine whether payment will be made. If the commissioner determines that payment will not be made, the commissioner will advise the municipality of the deficiencies in the request. If the commissioner determines that payment conditions have been met, the commissioner will certify to the authority that payment should be made.

~~7075.1530~~ 7077.0765 SUBSEQUENT GRANTS.

A municipality awarded a grant from the individual on-site wastewater treatment systems grants program is not eligible for additional funding under the program established by the 1972 Federal Water Pollution Control Act amendments or the state independent grants program, including the individual on-site wastewater treatment systems grants program, unless the municipality is applying for a project that serves a planning area that was not included, under part ~~7075.1430~~ 7077.0715, subpart 2, in the awarded grant.

PROCEDURAL REQUIREMENTS

7077.2000 DISPUTES.

A municipality adversely affected by an action of agency

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staff may request a review of the action. A request for review of the action must be submitted in writing to the commissioner by the municipality within 45 days of the date of notification of a final decision made by agency staff.

7077.2005 PROCEDURAL RULES AND APPEALS.

A request for a hearing, an appeal, or other procedural matter not specifically provided for in this chapter is governed by the agency rules of procedure, the rules of the Office of Administrative Hearings, and other applicable laws.

7077.2010 VARIANCES.

A person may apply for a variance from any requirement of parts in this chapter. The variance shall be applied for and acted upon by the agency according to Minnesota Statutes, section 116.07, subdivision 5, and other applicable statutes and rules.

REPEALER. Minnesota Rules, parts 7075.1010, subparts 1, 2, 3, and 4; 7075.1060, subparts 3 and 5; 7075.1110, subparts 2, 3, 4, and 6; 7075.1410, subparts 3, 4, 5, and 15; 7075.1430, subpart 4, 7075.2510; 7075.2540, subpart 2; 7075.2545, subpart 1, are repealed.

RENUMBER. In the next edition of Minnesota Rules, renumber the parts in column A with the corresponding part numbers in column B.

A	B
7075.1005	7077.0500
7075.1010	7077.0505
7075.1020	7077.0510
7075.1030	7077.0515
7075.1040	7077.0520
7075.1050	7077.0535
7075.1060	7077.0540
7075.1070	7077.0550
7075.1080	7077.0555
7075.1090	7077.0560
7075.1105	7077.0600
7075.1110	7077.0605
7075.1115	7077.0610
7075.1120	7077.0615
7075.1125	7077.0620
7075.1130	7077.0625
7075.1135	7077.0630
7075.1140	7077.0640

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1	7075.1145	7077.0645
2	7075.1150	7077.0650
3	7075.1155	7077.0655
4	7075.1160	7077.0660
5	7075.1400	7077.0700
6	7075.1410	7077.0705
7	7075.1420	7077.0710
8	7075.1430	7077.0715
9	7075.1440	7077.0720
10	7075.1450	7077.0725
11	7075.1460	7077.0730
12	7075.1470	7077.0735
13	7075.1480	7077.0740
14	7075.1490	7077.0745
15	7075.1500	7077.0750
16	7075.1510	7077.0755
17	7075.1520	7077.0760
18	7075.1530	7077.0765
19	7075.2505	7077.0400
20	7075.2515	7077.0405
21	7075.2520	7077.0410
22	7075.2525	7077.0415
23	7075.2530	7077.0420
24	7075.2535	7077.0425
25	7075.2540	7077.0430
26	7075.2545	7077.0440
27	7075.2550	7077.0445

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by Revisor _____

Office of the Revisor of Statutes

Administrative Rules

TITLE: Proposed Permanent Rules Relating to Municipal Wastewater Treatment Construction Grant Programs

AGENCY: Pollution Control Agency

MINNESOTA RULES: Chapters 7075 and 7077

The attached rules are approved for publication in the State Register

Carla M. Riehle
Assistant Revisor

SUMMARY OF COMMENTS RECEIVED DURING 30-DAY PUBLIC COMMENT PERIOD
(FEBRUARY 26 - MARCH 28, 1990)

Letters were received from:

1. Tom Wall
   DeWild Grant Reckert and Associates Company
   315 First Avenue
   Rock Rapids, Iowa 51246
   (March 19, 1990)

2. Vicky Cook
   Minnesota Pollution Control Agency
   Water Quality Division
   Municipal Wastewater Treatment Section
   (March 2, 1990)

3. Jeff Freeman
   Minnesota Pollution Control Agency
   Water Quality Division
   Municipal Wastewater Treatment Section
   (March 13, 1990)

4. Debbie Olson
   Minnesota Pollution Control Agency
   Water Quality Division
   Municipal Wastewater Treatment Section
   (March 23, 1990)

DeWild Grant Reckert and Associates Company
Consulting Engineers

315 First Avenue
Rock Rapids, Iowa 51246
(712) 472-2531

March 19, 1990

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

Attn: Debbie Olson

Re: New Rules for Wastewater Projects

Dear Debbie:

I attended the informational meeting in Marshall on February 27, and have subsequently been reviewing the proposed rules. While some changes have been made, it appears that the proposed rules simply continue to a great extent the EPA regulations and many state imposed procedures that have been utilized in the program in the past. Because of our geographical location, we work with the various funding programs and regulatory agencies from not only Minnesota, but Iowa and South Dakota as well. Without question, your program is the most difficult of any in the three-state area under which to construct wastewater facilities.

The EPA regulations were generated to apply to projects of all sizes on a nationwide basis. I assume that most of the remaining needs are in smaller communities and unsewered communities. These communities are simply not capable of dealing with the program as it presently stands. It needs to be greatly simplified and streamlined. To that end, I would offer the following suggestions:

1. Delete the requirement in facilities planning for an evaluation of inflow and infiltration. Sewer system evaluation studies and subsequent sewer system rehabilitation has been an area of many difficulties in the grants program. I would guess that the percentage of projects realizing some beneficial sewer system rehab under the grants program is quite low. You seem to forget that the communities themselves will be paying for a substantial cost of these projects and will be paying all of the operation and maintenance costs. Let the decision as to treating total flow or reducing clear water flows be left to the individual communities.

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WATER QUALITY DIV.

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2. Delete the requirement in facilities planning for a cost effective analysis. Again, if most of the remaining needs are in smaller communities, it would seem that lagoons would be the logical choice in most cases. In some instances, cluster systems or on-site facilities may be cheaper but the cost effective analysis procedure really allows the community no choice in the matter. If a small unsewered community wishes to construct a conventional collection system and wastewater lagoons, they should be allowed to do so.

3. Delete the requirement for operation and maintenance manuals on lagoon projects. The State already has an entirely adequate guidance manual for wastewater lagoons.

4. Allow up to 3% of the construction cost in change orders without extensive cost documentation and analysis. We sometimes spend $500.00 worth of effort to support a $100.00 change order which is totally ridiculous. There should be a recognition that some change order work is likely to occur on any project and that as long as it is within a reasonable amount, it does not warrant extensive evaluation.

These modifications would help bring your program more into line with those of other agencies, some of whom have been in the wastewater construction business longer than MPCA. You may have an adequate supply of applicants for the state grant and loan programs initially because of the number of communities that have already completed some of the initial steps. I do not believe, however, that many new communities will start on the process as outlined under the proposed rules when there are simpler and more expedient avenues for them to pursue through the Farmers Home Administration or the Small Cities Block Grant Program.

Very truly yours,

DEWILD GRANT RECKERT
& ASSOCIATES COMPANY

Thomas E. Wall, P.E.

TEW:kld

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STATE OF MINNESOTA
Office Memorandum

DEPARTMENT : **Minnesota Pollution Control Agency**

PHONE :

DATE : March 2, 1990

TO : Debbie Olson
Water Quality Division
Municipal Wastewater Treatment Section

FROM : Vicky Cook
Water Quality Division
Municipal Wastewater Treatment Section

SUBJECT : **Comments on proposed rules - Chapter 7077**

When I reviewed the proposed rules for Corrective Action Grants (CAG), I discovered three parts that should be changed.

1. When I compared the proposed Corrective Action Grant rules to the Statement of Need and Reasonableness, I discovered that the printed version of the rules did not have two subparts crossed out as the SONAR indicated. Therefore, part 7077.0540, subparts 3 and 5 should be crossed out.

2. When I reviewed the amendment language, I discovered limitations that do not fulfill the goals of the Corrective Action Program. The CAG program was developed to help small communities that have an urgent need to correct their treatment facilities but lack the necessary financial resources. The limitations imposed under part 7077.0545 on increased funds for administrative, engineering and legal costs do not parallel the assistance goals of the program. Further more, these limitations are not imposed on allowances in other grants programs. Therefore, these limitations should be removed from part 7077.0545, subpart 3, item B.

3. When I reviewed the payments language, I discovered language that improperly represents the current payment process. The Agency no longer makes payments, but certifies eligibility for and the amount of payments to the Public Facilities Authority. Part 7077.0555 should be changed to reflect this process.

Please see me if you have any questions on the above.

VAC

STATE OF MINNESOTA
Office Memorandum

DEPARTMENT : **Minnesota Pollution Control Agency**

PHONE : 296-7312

DATE : March 13, 1990

TO : Debbie Olson
Water Quality Division
M.W.T.S.

FROM : Jeff Freeman
Water Quality Division
M.W.T.S.

SUBJECT : **Definition of "need" under proposed Minnesota Rules chapter 7077**

A reference to Minnesota Rules chapter 7040 should be included in the definition of "need" in the proposed rules under Chapter 7077. Chapter 7040 contains the state rules for sewage sludge management.

When we were drafting the proposed rules last fall, we decided to modify the old definintion of "need" to make it more specific. The old definition said that a "need" was a determination that a new system was required to comply with "state water pollution control rules". We decided to make this phrase clearer by listing the specific rule chapters that related to wastewater treatment. Projects related to sludge handling have always been considered eligible for our assistance programs and there is no reason why this should not continue. Therefore, chapter 7040 should be added to the listing of rule chapters in the definition of "need".

STATE OF MINNESOTA
Office Memorandum

DEPARTMENT : **Minnesota Pollution Control Agency**

PHONE :

DATE : March 23, 1990

TO : Debbie Olson
Division of Water Quality
M.W.T.S.

FROM : Debbie Olson DAO
Division of Water Quality
M.W.T.S.

SUBJECT : **General language modifications for Minnesota Rules part 7075.0100 and Chapter 7077, as proposed**

I have identified several areas in the proposed rules that needed modification for the purpose of clarifying the purpose of the rules, correcting grammar, making wording and program names consistent, and improving language clarity. These areas are identified below:

A. Names used to identify the assistance programs in the purpose statements of Chapters 7075 and 7077 are inconsistent. Since both chapters will be used to administer different portions of the same programs, the same program names should be used in both chapters. For example, the state grants program is called independent state construction grant program in the purpose statement under Chapter 7075 and called state independent grants program in the purpose statement under Chapter 7077. This inconstancy makes the meaning of the rules unclear and should be eliminated.

B. Federal funds will still be available after July 1, 1990 for making construction grant awards. However, the proposed rules do not clearly identify which rules are to be used for administering these grants. Since the appropriate rules are included under Chapter 7075, the purpose statements should be changed to clarify that Chapter 7075 will be used to administer these grants. State awards matching federal funds (called state matching grants) should also be administered under Chapter 7075.

C. The purpose statement under Chapter 7077 is difficult to understand. Modifications should be made to clarify the intended meaning.

D. The proposed definition under Chapter 7077 for performance certification is incomplete because it only identifies one of the three rule parts that list associated requirements. References for all the performance certification parts should be added to this definition.

E. A correction in verb tense should be made in all the parts under

Chapter 7077 that specify language for the consulting engineer certification. An engineer that signs a certification is certifying that the project will meet requirements after the project is completed. Therefore, the use of "are" should changed to "will be" to accurately represent this future date.

F. Keeping language consistent from part to part was a problem for several rule categories, including change order requirements, initiation of operation, application reqirements for errors and omissions insurance, and required language for proposed contracts regarding the submittal of microfiche. Wording changes are needed under part 7077.0245, Subp. 4, item B;
part 7077.0250, Subp. 2, item A;
part 7077.0310, subpart 3, item D;
part 7077.0410, subparts 2, item C, subpart 3, item B and subpart 4, item H;
part 7077.0435, subpart 2, item A; and
part 7077.0535, subpart 2, item C(2).
These minor wording changes were inadvertently forgotten when the rules were developed. The rule should be reviewed to determine if additional parts have these omissions. These changes should be made to keep the rule and the requirements consistent.

STATE OF MINNESOTA
POLLUTION CONTROL AGENCY

In the Matter of the Proposed Rules Relating to the Administration of the Municipal Wastewater Treatment Construction Program, Minnesota Rules, chapters 7075 and 7077

FINDINGS OF FACT, CONCLUSIONS, AND ORDER ADOPTING RULES

(1) The above-entitled matter came on for decision before the Minnesota Pollution Control Agency (Agency) on the 22nd day of May 1990. 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) 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 February 26, 1990, and was sent by mail to all persons on the list maintained by the Agency pursuant to Minn. Stat. sec. 14.14, subd. 1a and 14.22 (1989), the Technical Advisory Committee, and the Agency Board on February 21, 1990.

(2) 2. The Statement of Need and Reasonableness was prepared prior to mailing and publication of the notice and was made available to the public upon request through the Minnesota Pollution Control Agency's St. Paul office and for review at the Duluth, Brainerd, Detroit Lakes, Marshall, and Rochester offices and at the Office of Administrative Hearings located in Minneapolis.

3. A new chapter (Chapter 7077) was proposed for the state rules to administer state independent and combined sewer overflow abatement grants awarded after July 1, 1990, and all of the corrective action, capital cost component, and individual on-site wastewater treatment system grants and loans from the water pollution control revolving fund. This change was recommended by the State Revisor of Statutes and was included in the 30-day public notice. The part numbers under Chapter 7077 correspond to those identified in the Statement of Need and Reasonableness as follows:

	Part Number Used in the Statement of Need and Reasonableness	Part Number Used in the Proposed Rules as Approved by by State Revisor of Statutes
Purpose	7075.6000	7077.0100
Definitions	7075.6005	7077.0105

Type of programs	7075.6010	7077.0110
Municipal needs list	7075.6015	7077.0115
Priority points for waters affected	7075.6020	7077.0120
Priority points for population served	7075.6025	7077.0125
Priority points for type of project	7075.6030	7077.0130
Extra points	7075.6035	7077.0135
Total points	7075.6040	7077.0140
Resolution of equal point ratings	7075.6045	7077.0145
Facilities plan	7075.6050	7077.0150
Plans and specifications	7075.6055	7077.0155
Rate system and ordinances	7075.6060	7077.0160
State Independent Grants Program		
Purpose	---------	7077.0200
Municipal project list	7075.6065	7077.0205
Eligibility	7075.6070	7077.0210
Grant applications	7075.6075	7077.0215
Approval and certification of grant applications	7075.6080	7077.0220
Rejection of grant applications	7075.6085	7077.0225
Contract assignment	7075.6090	7077.0230
Contract beneficiary	7075.6095	7077.0235
Grant amendments	7075.6100	7077.0240
Change orders	7075.6105	7077.0245
Completion of Construction	7075.6110	7077.0250
Project performance	7075.6115	7077.0255
Payment of state independent grants	7075.6120	7077.0260
Recovery of funds	7075.6125	7077.0265
Combined Sewer Overflow Abatement		
Purpose	7075.6130	7077.0300
Municipal project list	7075.6135	7077.0305
Applications	7075.6140	7077.0310
Financial assistance awards	7075.6145	7077.0315
Change orders	7075.6147	7077.0320
Project performance	7075.6149	7077.0325
Payment of state financial assistance	7075.6151	7077.0330
Water Pollution Control Revolving Fund Program		
Purpose	7075.6155	7077.0400
Intended use plan	7075.6160	7077.0405
Applications	7075.6165	7077.0410
Application Certification	7075.6170	7077.0415
Change orders	7075.6175	7077.0420
Inspections	7075.6180	7077.0425
Construction loan reporting requirements	7075.6185	7077.0430
Completion of Construction	7075.6190	7077.0435
Project Performance	7075.6195	7077.0440
Request to withhold financial assistance payments	7075.6200	7077.0445

Corrective Action Grants Program		
Purpose	7075.6210	7077.0500
Definition	7075.6215	7077.0505
Eligibility for participation	7075.6220	7077.0510
Eligible and ineligible costs	7075.6225	7077.0515
Requirements prior to application	7075.6230	7077.0520
Contract assignment	7075.6231	7077.0525
Contract beneficiary	7075.6232	7077.0530
Application	7075.6235	7077.0535
Certification of application for award	7075.6240	7077.0540
Grant amendments	7075.6242	7077.0545
Change orders	7075.6245	7077.0550
Payments	7075.6250	7077.0555
Recovery of grant funds	7075.6255	7077.0560
Capital Cost Component Grant Program		
Purpose	7075.6260	7077.0600
Definitions	7075.6265	7077.0605
Eligibility	7075.6270	7077.0610
Grant applications	7075.6275	7077.0615
Selection of eligible grantees	7075.6280	7077.0620
Amount of grant award	7075.6285	7077.0625
Certification of award	7075.6290	7077.0630
Plans and specifications	7075.6295	7077.0635
Grant conditions	7075.6300	7077.0640
Inspections	7075.6305	7077.0645
Grant payment	7075.6310	7077.0650
Termination of grant	7075.6315	7077.0655
Recovery of funds	7075.6320	7077.0660
Individual On-site Wastewater Treatment Systems Grants Program		
Purpose	7075.6325	7077.0700
Definitions	7075.6330	7077.0705
Eligibility	7075.6335	7077.0710
Wastewater treatment plan	7075.6340	7077.0715
Approval of individual on-site wastewater treatment personnel	7075.6345	7077.0720
Application	7075.6350	7077.0725
Eligible costs	7075.6355	7077.0730
Amount of the grant award	7075.6360	7077.0735
Priority ranking	7075.6365	7077.0740
Certification of award	7075.6370	7077.0745
Payment conditions	7075.6375	7077.0750
Payments	7075.6380	7077.0755
Termination of grant	7075.6385	7077.0760
Subsequent grants	7075.6390	7077.0765
Disputes	7075.6395	7077.2000
Procedural rules and appeals	7075.6400	7077.2005
Variances	7075.6405	7077.2010

4. All persons were given the opportunity to submit comments for 30 days after notice of proposed rulemaking. The 30 day comment period, as set out in the notice, expired on March 28, 1990.

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

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

7. During the comment period the Agency received four written comments. Three comments were received from Agency staff, as follows:

-- Debbie Olson of the Municipal Wastewater Treatment Section submitted a comment memo regarding general rule language, which is addressed in items 9.a, b, and d through n;
-- Vicky Cook from the Municipal Wastewater Treatment Section submitted a comment memo regarding the corrective action grants program, which is addressed in items 9.o, p, and q; and
-- Jeff Freeman from the Municipal Wastewater Treatment Section submitted a comment regarding the definition of need, which is addressed in item 9.c.

8. The fourth comment letter was submitted by Tom Wall, a consulting engineer. After reviewing the letter and the information gathered while developing the proposed rules, the Agency finds that no modifications should be made based on Mr. Wall's comments.

9. The Agency finds that 20 modifications to the proposed rules are justified by the record in this proceeding, as follows:

a. Part 7075.0100 was modified to make program names consistent with those used in the purpose statement of Chapter 7077 and to identify rules for administering federal construction grants and state matching grants awarded after July 1, 1990. This part is modified to read:

> This chapter provides for the administration of grants awarded under the federal construction grants program ~~, the independent state construction grant program,~~ and the state matching ~~construction~~ grants program~~, the state loan program for the construction of municipal disposal systems, and the state financial assistance program for combined sewer overflow abatement. It applies to~~ This chapter also provides for the administration of grants ~~and loans~~ awarded before July 1, 1990, under the state independent grants program and the state financial assistance program for combined sewer overflow abatement.

These modifications are needed to create program names that are in agreement with those used in Chapter 7077 and to identify the rules that will be used for administering federal construction and state matching grants awarded after July 1, 1990. Since both Chapter 7075 and 7077 are used for the administration of the state assistance programs, it is reasonable to refer to

the various programs by the same names and to change the terminology used in this purpose statement to agree with that used in the purpose statement under Chapter 7077.

Although there will be no new federal appropriations for construction grants after 1990, federal grants will be awarded after July 1, 1990. The intent of this rulemaking and the proposed rules was for parts under Chapter 7075 to be used to administer all federal grants and associated state matching grant awards. It is reasonable to clarify this intent in the purpose statement.

The changes to the purpose statement under Chapter 7075 are not substantial changes because they do not alter any program requirements or procedures. These changes do not affect classes of persons who could not have been expected to comment on the proposed rules, introduce significant new subject matter, or make a major substantive change.

b. Part 7077.0100 was modified to make the purpose statement of this chapter clearer. This part is modified to read:

> Parts 7077.0100 to 7077.~~0330~~2010 provide for the administration of the financial assistance programs for the construction of municipal wastewater treatment facilities ~~and~~. Parts 7077.0100 to 7077.0330 apply to state independent grants and ~~loans~~ financial assistance for combined sewer overflow abatement awarded on or after July 1, 1990. Chapter 7075 applies to awards made under these programs before July 1, 1990. (Parts 7077.0400 to 7077.0765 apply to funds awarded at any time.) ~~Chapter 7075 applies to grants and loans awarded before July 1, 1990.~~ The programs in chapter 7077 consist of the state independent grants program, parts 7077.0200 to 7077.0265; the combined sewer overflow abatement program, parts 7077.0300 to 7077.0330; and the water pollution control revolving fund program, parts 7077.0400 to 7077.0445. The state independent grants program includes three set-asides:

Modifications made to the organization and reference numbers under this part are needed to clarify the purpose of Chapter 7077. It is reasonable and desirable to use clear language that is easy for readers to understand. The revised language does not make a substantial change in the meaning of the rule because it only clarifies the existing purpose statement. The change does not affect classes of persons who could not have been expected to comment on the proposed rules, introduce significant new subject matter, or make a major substantive change.

c. Part 7077.0105, subpart 25, was modified to include the state sludge management rules in the definition of "need". The definition of "need" is used to determine eligibility for the assistance programs. Subpart 25 is modified to read:

> Need. "Need" means a determination that a new or upgraded disposal system is currently required, or will be required within a five-year period to comply with

> chapter 7040, 7050, 7060, or 7080; provided the situation does not exist primarily due to inadequate operation and maintenance or to negligence on the part of many person.

The addition of chapter "7040" is needed so that the determination of need is based on all of the state rules related to wastewater treatment. This addition is reasonable because it provides a more complete definition. The revised language does not make a substantial change in the rule because it does not alter any of the state requirements. The change does not affect classes of persons who could not have been expected to comment on the proposed rules, introduce significant new subject matter, or make a major substantive change.

d. Part 7077.0105, subpart 31, was modified to include all rule references for performance certifications in the definition of that term. This subpart is modified to read:

> Performance certification. "Performance certification" means a certification made by a municipality one year after initiation of operation that states its newly constructed wastewater treatment facility is meeting performance standards, as specified under parts 7077.0255, ~~subpart 1, item A~~ 7077.0325 and 7077.0440.

This modification is needed to clarify the definition of performance certification as it applies to these rules and to identify all the parts in the rules that specify performance certification requirements for the various programs. It is reasonable to ensure that the rules are clear and complete. The revised language does not make a substantial change in the rule because it does not alter any of the program requirements. The change does not affect classes of persons who could not have been expected to comment on the proposed rules, introduce significant new subject matter, or make a major substantive change.

e. Part 7077.0215, subpart 4, item C, was grammatically modified to correct the wording of the design certification for the wastewater treatment facilities that is specified in the rules. Subpart 4, Item C is modified to read:

> A signature and registration number of the consulting engineer accompanying the following certification statement:
>
> The facilities described in this application have been designed based on data that has been verified to accurately represent present and future flows and loadings and with full knowledge of the effluent limitations required by the Minnesota Pollution Control Agency as set forth in NPDES Permit No. ..... dated ..... It is my judgment and carefully considered opinion that these facilities ~~are~~ will be capable of consistently producing the required effluent quality, provided that the facilities are operated in conformance with the approved operation and maintenance manual and that the volume and

> characteristics of raw wastewater are within the limits of the flow data presented in the plans and specifications under the requirements of Minnesota Rules part 7077.0155, subpart 2, item C.

This modification is needed for the certification language to be grammatically correct. This certification is required to be completed by the design engineer before the facilities are actually constructed. Therefore, it is reasonable to change "are" to "will be" because it is the correct grammatical form. The revised language does not make a substantial change in the rule because it does not alter any of the program requirements. The change does not affect classes of persons who could not have been expected to comment on the proposed rules, introduce significant new subject matter, or make a major substantive change.

f. Part 7077.0245, subpart 4, item B was modified because a word was mistakenly omitted. The change makes this item consistent with language under other parts of the chapter that identify the requirements for change orders. This item is modified to read:

> Change orders not requiring the commissioner's prior approval under item A must be submitted to the commissioner for review and approval within one month after the date on which the municipality, its engineer, or other authorized agent, and the contractor execute the change order.

This modification is needed to keep this item consistent with the change order language under other programs within the chapter and to clarify that the required deadline date for submitting change order documents to the Agency is based on the signature date on the change order. The revised language does not make substantial change in the rule because it does not alter any of the program requirements. The change does not affect classes of persons who could not have expected to comment on the proposed rules, introduce significant new subject matter, or make a major substantive change.

g. Part 7077.0250, subpart 2, item A was modified to be consistent with other parts of the chapter that identify the requirements for notifying the agency of the date a facility initiates operation. This item is modified to read:

> The municipality must notify the commissioner in writing of the initiation of operation date within ten days ~~of~~ following initiation of operation.

This modification is needed to keep this item consistent with the completion of construction language under other programs within the chapter and to clarify the required deadline date for notifying the Agency. It is reasonable because it maintains a notification deadline that is the same for all the programs within the chapter and clarifies the submittal deadline. The revised language does not make a substantial change in the rule because it does not alter any of the program requirements. The change does not affect classes of persons who could not have been expected to comment on the proposed rules, introduce significant new subject matter, or make a major substantive change.

h. Part 7077.0310, subpart 3, item D was modified to be consistent with other parts of the chapter that explain the application requirement for a certificate of adequate errors and omissions insurance. This item is modified to read:

> ~~An engineer's~~ A certificate of adequate errors and omissions insurance carried by the engineering firm.

This modification is needed to keep this item consistent with the application language under other programs within the chapter. It is reasonable and desirable to express a requirement that is located in more than one part of the rules using the same words because it avoids confusion. The revised language does not make a substantial change in the rule because it does not alter any of the program requirements. The change does not affect classes of persons who could not have been expected to comment on the proposed rules, introduce significant new subject matter, or make a major substantive change.

i. Part 7077.0410, subpart 2, item C and subpart 3, item B were modified to be consistent with other parts of the chapter that explain the application requirement for a certificate of adequate errors and omissions insurance. The same modification was made to part 7077.0310, subpart 3, item D and discussed above in item h. See item h for a discussion of the need and reasonableness for this change. These items are modified to read:

> ~~an engineer's~~ a certificate of adequate errors and omissions insurance carried by the engineering firm;

j. Part 7077.0410, subpart 4, item G was modified to correct the wording of the design certification for the wastewater treatment facilities that is specified in the rules. The same modification was made to part 7077.0215, subpart 4, item C and discussed above in item e. See item e for a discussion of the need and reasonableness for this change. This item is modified to read:

> A signature and registration number of the consulting engineer accompanying the following certification statement:
>
> The facilities described in this application have been designed based on data that has been verified to accurately represent present and future flows and loadings and with full knowledge of the effluent limitations required by the Minnesota Pollution Control Agency as set forth in NPDES Permit No. _____ dated _____. It is my judgment and carefully considered opinion that these facilities ~~are~~ will be capable of consistently producing the required effluent quality, provided that the facilities are operated in conformance with the approved operation and maintenance manual and that the volume and characteristics of raw wastewater are within the limits of the flow data presented in the plans and specifications under the requirements of Minnesota Rules, part 7077.0155, subpart 2, item C.

k. Part 7077.0410, subpart 4, item H was modified to be consistent with other parts of the chapter that explain the application requirement for a

certificate of adequate errors and omissions insurance. The same modification was made to part 7077.0310, subpart 3, item D and discussed above in item h. See item h for a discussion of the need and reasonableness for this change. This item is modified to read:

> ~~An engineer's~~ A certificate of adequate errors and omissions insurance carried by the engineering firm.

l. Part 7077.0435, subpart 2, item A was modified to be consistent with other parts of the chapter that identify the requirements for notifying the agency of the date a facility initiates operation. The same modification was made to part 7077.0250, subpart 2, item A and discussed above in item g. See item g for a discussion of the need and reasonableness for this change. This item is modified to read:

> The municipality must notify the commissioner in writing of the initiation of operation date within ten days following initiation of ~~initiating~~ operation.

m. Part 7077.0535, subpart 2, item C(2) was modified to be consistent with other parts of the chapter that identify the engineering contract requirement for submitting as-built plans and specifications on microfiche to the agency. This subitem is modified to read:

> (2) two sets of "as built" plans and specifications on microfiche for submittal to the agency;

This modification is needed to keep the language in this subitem consistent with the language under other programs within the chapter and to clarify that the agency is to receive both sets of the microfiche plans and specifications. It is reasonable and desirable to express a requirement that is located in more than one part using the same words because it avoids confusion. It is also reasonable to clarify that both sets of microfiche are to be submitted to the Agency and that additional sets must be ordered if the municipality is planning to retain a set. The revised language does not make a substantial change in the rule because it does not alter any of the program requirements. The change does not affect classes of persons who could not have been expected to comment on the proposed rules, introduce significant new subject matter, or make a major substantive change.

n. Part 7077.0535, subpart 2, item E, was modified to correct the wording of the design certification for the wastewater treatment facilities that is specified in the rules. The same modification was made to part 7077.0215, subpart 4, item C and discussed above in item e. See item e for a discussion of the need and reasonableness for this change. This item is modified to read:

> A signature and registration number of the consulting engineer accompanying the following certification statement:
>
> > Corrective action for the facilities described in this grant application has been designed with full knowledge of the effluent limitations required by the Minnesota Pollution Control Agency as set forth in NPDES Permit No. ..... dated ..... It is my judgment and carefully considered opinion that the performance standards required by the Minnesota Pollution Control Agency will be met

after the work detailed in the approved corrective action report, dated ....., is completed and that the corrected facilities ~~are~~ will be capable of consistently producing the required effluent quality, provided that the facilities are operated in conformance with the approved operation and maintenance manual and the volume and characteristics of raw wastewater are within the flow data presented in the plans and specifications approved for the original project or in the corrective action report modifications.

o. Part 7077.0540, subparts 3 and 5 were deleted to match the revisions stated in the Statement of Need and Reasonableness (SONAR). These subparts were proposed to be stricken from the rule as described in the SONAR. However, by mistake the published proposed rules did not contain this striking. These parts were modified as follows:

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

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

These modifications are needed to fulfill the changes specified in the Statement of Need and Reasonableness. Amendment language under subpart 3 was incorporated under part 7077.0545 and changes made under the proposed rules to the grant award process made subpart 5 unnecessary. The revised language does not make a substantial change in the rule because it does not alter any of the program requirements. The change does not affect classes of persons who could not have been expected to comment on the proposed rules, introduce significant new subject matter, or make a major substantive change.

p. Part 7077.0545, subpart 3, item B was modified in response to a concern that putting additional restrictions on grant increases for administrative, engineering and legal costs are unnecessary and punitive for the communities eligible for corrective action grants. Subpart 3, item B is modified to read:

increase the grant amount under part 7077.0515, subpart 3, ~~for administrative, engineering, and legal costs~~ as the amount of grant eligible construction costs increase through approved change orders. ~~This increase may only be used to pay for engineering costs, including inspection, created by work specified on the approved change orders.~~

The modification is needed to remove the proposed limitation on the use of grant increases for administrative, engineering, and legal costs under

the corrective action grants program. This limitation was proposed under this rulemaking. It is reasonable to remove a requirement before it is implemented. The removal of this limitation is reasonable because it allows the grantee to use the funds for the costs that are determined eligible under the eligibility section, part 7077.0515, subpart 3, without further restriction. Further restrictions on administrative, engineering and legal costs are unnecessary because these costs are already capped by part 7077.0515, subpart 3, at 25 percent of the construction costs. The revised language does not make a substantial change in the rule because it does not alter any of the enacted program requirements. The change does not affect classes of persons who could not have been expected to comment on the proposed rules, introduce significant new subject matter, or make a major substantive change.

q. Part 7077.0555, subpart 3 was modified to clarify the Agency's payment responsibilities. Subpart 3 is modified to read:

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

This modification is needed to clarify the Agency's responsibilities in the payment process. Under Minnesota Statute section 116.16, subdivision 11, the Public Facilities Authority is responsible for making grant payments following certification by the Agency Commissioner that the payment is proper. This modification is reasonable because it clarifies the role the Agency plays in the payment process. The revised language does not make a substantial change in the rule because it does not alter any of the program requirements. The change does not affect classes of persons who could not have been expected to comment on the proposed rules, introduce significant new subject matter, or make a major substantive change.

10. The Agency adopts the Statement of Need and Reasonableness, in its entirety, as the factual basis for the proposed rules. The Agency hereby incorporates the Statement of Need and Reasonableness into these findings, except as modified in Finding numbers 3 and 9 above.

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

CONCLUSIONS

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

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

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

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

ORDER

NOW, THEREFORE, IT IS ORDERED, that the attached Minn. Rules parts 7075.0100 and 7077.0100 through 7077.2010 governing the municipal wastewater treatment construction assistance programs are adopted pursuant to the authority vested in the Minnesota Pollution Control Agency by Minn. Stat. sec. 116.16, subp. 5(a) (Supp. 1989).

MINNESOTA POLLUTION CONTROL AGENCY

Gerald L. Willet

Gerald L. Willet
Commissioner

Dated: 5-24-90

STATE OF MINNESOTA
POLLUTION CONTROL AGENCY

In the Matter of the Proposed Rules Relating to the Administration of the Municipal Wastewater Treatment Construction Program, Minnesota Rules, chapters 7075 and 7077

FINDINGS OF FACT, CONCLUSIONS, AND ORDER ADOPTING RULES

The above-entitled matter came on for decision before the Minnesota Pollution Control Agency (Agency) on the 22nd day of May 1990. 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 February 26, 1990, and was sent by mail to all persons on the list maintained by the Agency pursuant to Minn. Stat. sec. 14.14, subd. 1a and 14.22 (1989), the Technical Advisory Committee, and the Agency Board on February 21, 1990.

2. The Statement of Need and Reasonableness was prepared prior to mailing and publication of the notice and was made available to the public upon request through the Minnesota Pollution Control Agency's St. Paul office and for review at the Duluth, Brainerd, Detroit Lakes, Marshall, and Rochester offices and at the Office of Administrative Hearings located in Minneapolis.

3. A new chapter (Chapter 7077) was proposed for the state rules to administer state independent and combined sewer overflow abatement grants awarded after July 1, 1990, and all of the corrective action, capital cost component, and individual on-site wastewater treatment system grants and loans from the water pollution control revolving fund. This change was recommended by the State Revisor of Statutes and was included in the 30-day public notice. The part numbers under Chapter 7077 correspond to those identified in the Statement of Need and Reasonableness as follows:

	Part Number Used in the Statement of Need and Reasonableness	Part Number Used in the Proposed Rules as Approved by by State Revisor of Statutes
Purpose	7075.6000	7077.0100
Definitions	7075.6005	7077.0105

Type of programs	7075.6010	7077.0110
Municipal needs list	7075.6015	7077.0115
Priority points for waters affected	7075.6020	7077.0120
Priority points for population served	7075.6025	7077.0125
Priority points for type of project	7075.6030	7077.0130
Extra points	7075.6035	7077.0135
Total points	7075.6040	7077.0140
Resolution of equal point ratings	7075.6045	7077.0145
Facilities plan	7075.6050	7077.0150
Plans and specifications	7075.6055	7077.0155
Rate system and ordinances	7075.6060	7077.0160
State Independent Grants Program		
Purpose	---------	7077.0200
Municipal project list	7075.6065	7077.0205
Eligibility	7075.6070	7077.0210
Grant applications	7075.6075	7077.0215
Approval and certification of grant applications	7075.6080	7077.0220
Rejection of grant applications	7075.6085	7077.0225
Contract assignment	7075.6090	7077.0230
Contract beneficiary	7075.6095	7077.0235
Grant amendments	7075.6100	7077.0240
Change orders	7075.6105	7077.0245
Completion of Construction	7075.6110	7077.0250
Project performance	7075.6115	7077.0255
Payment of state independent grants	7075.6120	7077.0260
Recovery of funds	7075.6125	7077.0265
Combined Sewer Overflow Abatement		
Purpose	7075.6130	7077.0300
Municipal project list	7075.6135	7077.0305
Applications	7075.6140	7077.0310
Financial assistance awards	7075.6145	7077.0315
Change orders	7075.6147	7077.0320
Project performance	7075.6149	7077.0325
Payment of state financial assistance	7075.6151	7077.0330
Water Pollution Control Revolving Fund Program		
Purpose	7075.6155	7077.0400
Intended use plan	7075.6160	7077.0405
Applications	7075.6165	7077.0410
Application Certification	7075.6170	7077.0415
Change orders	7075.6175	7077.0420
Inspections	7075.6180	7077.0425
Construction loan reporting requirements	7075.6185	7077.0430
Completion of Construction	7075.6190	7077.0435
Project Performance	7075.6195	7077.0440
Request to withhold financial assistance payments	7075.6200	7077.0445

Corrective Action Grants Program		
Purpose	7075.6210	7077.0500
Definition	7075.6215	7077.0505
Eligibility for participation	7075.6220	7077.0510
Eligible and ineligible costs	7075.6225	7077.0515
Requirements prior to application	7075.6230	7077.0520
Contract assignment	7075.6231	7077.0525
Contract beneficiary	7075.6232	7077.0530
Application	7075.6235	7077.0535
Certification of application for award	7075.6240	7077.0540
Grant amendments	7075.6242	7077.0545
Change orders	7075.6245	7077.0550
Payments	7075.6250	7077.0555
Recovery of grant funds	7075.6255	7077.0560
Capital Cost Component Grant Program		
Purpose	7075.6260	7077.0600
Definitions	7075.6265	7077.0605
Eligibility	7075.6270	7077.0610
Grant applications	7075.6275	7077.0615
Selection of eligible grantees	7075.6280	7077.0620
Amount of grant award	7075.6285	7077.0625
Certification of award	7075.6290	7077.0630
Plans and specifications	7075.6295	7077.0635
Grant conditions	7075.6300	7077.0640
Inspections	7075.6305	7077.0645
Grant payment	7075.6310	7077.0650
Termination of grant	7075.6315	7077.0655
Recovery of funds	7075.6320	7077.0660
Individual On-site Wastewater Treatment Systems Grants Program		
Purpose	7075.6325	7077.0700
Definitions	7075.6330	7077.0705
Eligibility	7075.6335	7077.0710
Wastewater treatment plan	7075.6340	7077.0715
Approval of individual on-site wastewater treatment personnel	7075.6345	7077.0720
Application	7075.6350	7077.0725
Eligible costs	7075.6355	7077.0730
Amount of the grant award	7075.6360	7077.0735
Priority ranking	7075.6365	7077.0740
Certification of award	7075.6370	7077.0745
Payment conditions	7075.6375	7077.0750
Payments	7075.6380	7077.0755
Termination of grant	7075.6385	7077.0760
Subsequent grants	7075.6390	7077.0765
Disputes	7075.6395	7077.2000
Procedural rules and appeals	7075.6400	7077.2005
Variances	7075.6405	7077.2010

4. All persons were given the opportunity to submit comments for 30 days after notice of proposed rulemaking. The 30 day comment period, as set out in the notice, expired on March 28, 1990.

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

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

7. During the comment period the Agency received four written comments. Three comments were received from Agency staff, as follows:

-- Debbie Olson of the Municipal Wastewater Treatment Section submitted a comment memo regarding general rule language, which is addressed in items 9.a, b, and d through n;
-- Vicky Cook from the Municipal Wastewater Treatment Section submitted a comment memo regarding the corrective action grants program, which is addressed in items 9.o, p, and q; and
-- Jeff Freeman from the Municipal Wastewater Treatment Section submitted a comment regarding the definition of need, which is addressed in item 9.c.

8. The fourth comment letter was submitted by Tom Wall, a consulting engineer. After reviewing the letter and the information gathered while developing the proposed rules, the Agency finds that no modifications should be made based on Mr. Wall's comments.

9. The Agency finds that 20 modifications to the proposed rules are justified by the record in this proceeding, as follows:

a. Part 7075.0100 was modified to make program names consistent with those used in the purpose statement of Chapter 7077 and to identify rules for administering federal construction grants and state matching grants awarded after July 1, 1990. This part is modified to read:

> This chapter provides for the administration of grants awarded under the federal construction grants program ~~, the independent state construction grant program,~~ and the state matching ~~construction~~ grants program~~, the state loan program for the construction of municipal disposal systems, and the state financial assistance program for combined sewer overflow abatement. It applies to~~ This chapter also provides for the administration of grants ~~and loans~~ awarded before July 1, 1990, under the state independent grants program and the state financial assistance program for combined sewer overflow abatement.

These modifications are needed to create program names that are in agreement with those used in Chapter 7077 and to identify the rules that will be used for administering federal construction and state matching grants awarded after July 1, 1990. Since both Chapter 7075 and 7077 are used for the administration of the state assistance programs, it is reasonable to refer to

the various programs by the same names and to change the terminology used in this purpose statement to agree with that used in the purpose statement under Chapter 7077.

Although there will be no new federal appropriations for construction grants after 1990, federal grants will be awarded after July 1, 1990. The intent of this rulemaking and the proposed rules was for parts under Chapter 7075 to be used to administer all federal grants and associated state matching grant awards. It is reasonable to clarify this intent in the purpose statement.

The changes to the purpose statement under Chapter 7075 are not substantial changes because they do not alter any program requirements or procedures. These changes do not affect classes of persons who could not have been expected to comment on the proposed rules, introduce significant new subject matter, or make a major substantive change.

b. Part 7077.0100 was modified to make the purpose statement of this chapter clearer. This part is modified to read:

> Parts 7077.0100 to 7077.~~0330~~2010 provide for the administration of the financial assistance programs for the construction of municipal wastewater treatment facilities ~~and~~. Parts 7077.0100 to 7077.0330 apply to state independent grants and ~~loans~~ financial assistance for combined sewer overflow abatement awarded on or after July 1, 1990. Chapter 7075 applies to awards made under these programs before July 1, 1990. (Parts 7077.0400 to 7077.0765 apply to funds awarded at any time.) ~~Chapter 7075 applies to grants and loans awarded before July 1, 1990.~~ The programs in chapter 7077 consist of the state independent grants program, parts 7077.0200 to 7077.0265; the combined sewer overflow abatement program, parts 7077.0300 to 7077.0330; and the water pollution control revolving fund program, parts 7077.0400 to 7077.0445. The state independent grants program includes three set-asides:

Modifications made to the organization and reference numbers under this part are needed to clarify the purpose of Chapter 7077. It is reasonable and desirable to use clear language that is easy for readers to understand. The revised language does not make a substantial change in the meaning of the rule because it only clarifies the existing purpose statement. The change does not affect classes of persons who could not have been expected to comment on the proposed rules, introduce significant new subject matter, or make a major substantive change.

c. Part 7077.0105, subpart 25, was modified to include the state sludge management rules in the definition of "need". The definition of "need" is used to determine eligibility for the assistance programs. Subpart 25 is modified to read:

> Need. "Need" means a determination that a new or upgraded disposal system is currently required, or will be required within a five-year period to comply with

> chapter 7040, 7050, 7060, or 7080; provided the situation does not exist primarily due to inadequate operation and maintenance or to negligence on the part of many person.

The addition of chapter "7040" is needed so that the determination of need is based on all of the state rules related to wastewater treatment. This addition is reasonable because it provides a more complete definition. The revised language does not make a substantial change in the rule because it does not alter any of the state requirements. The change does not affect classes of persons who could not have been expected to comment on the proposed rules, introduce significant new subject matter, or make a major substantive change.

d. Part 7077.0105, subpart 31, was modified to include all rule references for performance certifications in the definition of that term. This subpart is modified to read:

> Performance certification. "Performance certification" means a certification made by a municipality one year after initiation of operation that states its newly constructed wastewater treatment facility is meeting performance standards, as specified under parts 7077.0255, ~~subpart 1, item A~~ 7077.0325 and 7077.0440.

This modification is needed to clarify the definition of performance certification as it applies to these rules and to identify all the parts in the rules that specify performance certification requirements for the various programs. It is reasonable to ensure that the rules are clear and complete. The revised language does not make a substantial change in the rule because it does not alter any of the program requirements. The change does not affect classes of persons who could not have been expected to comment on the proposed rules, introduce significant new subject matter, or make a major substantive change.

e. Part 7077.0215, subpart 4, item C, was grammatically modified to correct the wording of the design certification for the wastewater treatment facilities that is specified in the rules. Subpart 4, Item C is modified to read:

> A signature and registration number of the consulting engineer accompanying the following certification statement:
>
> The facilities described in this application have been designed based on data that has been verified to accurately represent present and future flows and loadings and with full knowledge of the effluent limitations required by the Minnesota Pollution Control Agency as set forth in NPDES Permit No. ..... dated ..... It is my judgment and carefully considered opinion that these facilities ~~are~~ will be capable of consistently producing the required effluent quality, provided that the facilities are operated in conformance with the approved operation and maintenance manual and that the volume and

> characteristics of raw wastewater are within the limits of the flow data presented in the plans and specifications under the requirements of Minnesota Rules part 7077.0155, subpart 2, item C.

This modification is needed for the certification language to be grammatically correct. This certification is required to be completed by the design engineer before the facilities are actually constructed. Therefore, it is reasonable to change "are" to "will be" because it is the correct grammatical form. The revised language does not make a substantial change in the rule because it does not alter any of the program requirements. The change does not affect classes of persons who could not have been expected to comment on the proposed rules, introduce significant new subject matter, or make a major substantive change.

f. Part 7077.0245, subpart 4, item B was modified because a word was mistakenly omitted. The change makes this item consistent with language under other parts of the chapter that identify the requirements for change orders. This item is modified to read:

> Change orders not requiring the commissioner's prior approval under item A must be submitted to the commissioner for review and approval within one month after the date on which the municipality, its engineer, or other authorized agent, and the contractor execute the change <u>order</u>.

This modification is needed to keep this item consistent with the change order language under other programs within the chapter and to clarify that the required deadline date for submitting change order documents to the Agency is based on the signature date on the change order. The revised language does not make substantial change in the rule because it does not alter any of the program requirements. The change does not affect classes of persons who could not have expected to comment on the proposed rules, introduce significant new subject matter, or make a major substantive change.

g. Part 7077.0250, subpart 2, item A was modified to be consistent with other parts of the chapter that identify the requirements for notifying the agency of the date a facility initiates operation. This item is modified to read:

> The municipality must notify the commissioner in writing of the initiation of operation date within ten days ~~of~~ <u>following</u> initiation of operation.

This modification is needed to keep this item consistent with the completion of construction language under other programs within the chapter and to clarify the required deadline date for notifying the Agency. It is reasonable because it maintains a notification deadline that is the same for all the programs within the chapter and clarifies the submittal deadline. The revised language does not make a substantial change in the rule because it does not alter any of the program requirements. The change does not affect classes of persons who could not have been expected to comment on the proposed rules, introduce significant new subject matter, or make a major substantive change.

h. Part 7077.0310, subpart 3, item D was modified to be consistent with other parts of the chapter that explain the application requirement for a certificate of adequate errors and omissions insurance. This item is modified to read:

> ~~An engineer's~~ A certificate of adequate errors and omissions insurance carried by the engineering firm.

This modification is needed to keep this item consistent with the application language under other programs within the chapter. It is reasonable and desirable to express a requirement that is located in more than one part of the rules using the same words because it avoids confusion. The revised language does not make a substantial change in the rule because it does not alter any of the program requirements. The change does not affect classes of persons who could not have been expected to comment on the proposed rules, introduce significant new subject matter, or make a major substantive change.

i. Part 7077.0410, subpart 2, item C and subpart 3, item B were modified to be consistent with other parts of the chapter that explain the application requirement for a certificate of adequate errors and omissions insurance. The same modification was made to part 7077.0310, subpart 3, item D and discussed above in item h. See item h for a discussion of the need and reasonableness for this change. These items are modified to read:

> ~~an engineer's~~ a certificate of adequate errors and omissions insurance carried by the engineering firm;

j. Part 7077.0410, subpart 4, item G was modified to correct the wording of the design certification for the wastewater treatment facilities that is specified in the rules. The same modification was made to part 7077.0215, subpart 4, item C and discussed above in item e. See item e for a discussion of the need and reasonableness for this change. This item is modified to read:

> A signature and registration number of the consulting engineer accompanying the following certification statement:
>
> The facilities described in this application have been designed based on data that has been verified to accurately represent present and future flows and loadings and with full knowledge of the effluent limitations required by the Minnesota Pollution Control Agency as set forth in NPDES Permit No. _____ dated _____. It is my judgment and carefully considered opinion that these facilities ~~are~~ will be capable of consistently producing the required effluent quality, provided that the facilities are operated in conformance with the approved operation and maintenance manual and that the volume and characteristics of raw wastewater are within the limits of the flow data presented in the plans and specifications under the requirements of Minnesota Rules, part 7077.0155, subpart 2, item C.

k. Part 7077.0410, subpart 4, item H was modified to be consistent with other parts of the chapter that explain the application requirement for a

certificate of adequate errors and omissions insurance. The same modification was made to part 7077.0310, subpart 3, item D and discussed above in item h. See item h for a discussion of the need and reasonableness for this change. This item is modified to read:

> ~~An engineer's~~ A certificate of adequate errors and omissions insurance carried by the engineering firm.

l. Part 7077.0435, subpart 2, item A was modified to be consistent with other parts of the chapter that identify the requirements for notifying the agency of the date a facility initiates operation. The same modification was made to part 7077.0250, subpart 2, item A and discussed above in item g. See item g for a discussion of the need and reasonableness for this change. This item is modified to read:

> The municipality must notify the commissioner in writing of the initiation of operation date within ten days following initiation of ~~initiating~~ operation.

m. Part 7077.0535, subpart 2, item C(2) was modified to be consistent with other parts of the chapter that identify the engineering contract requirement for submitting as-built plans and specifications on microfiche to the agency. This subitem is modified to read:

> (2) two sets of "as built" plans and specifications on microfiche for submittal to the agency;

This modification is needed to keep the language in this subitem consistent with the language under other programs within the chapter and to clarify that the agency is to receive both sets of the microfiche plans and specifications. It is reasonable and desirable to express a requirement that is located in more than one part using the same words because it avoids confusion. It is also reasonable to clarify that both sets of microfiche are to be submitted to the Agency and that additional sets must be ordered if the municipality is planning to retain a set. The revised language does not make a substantial change in the rule because it does not alter any of the program requirements. The change does not affect classes of persons who could not have been expected to comment on the proposed rules, introduce significant new subject matter, or make a major substantive change.

n. Part 7077.0535, subpart 2, item E, was modified to correct the wording of the design certification for the wastewater treatment facilities that is specified in the rules. The same modification was made to part 7077.0215, subpart 4, item C and discussed above in item e. See item e for a discussion of the need and reasonableness for this change. This item is modified to read:

> A signature and registration number of the consulting engineer accompanying the following certification statement:
>
> > Corrective action for the facilities described in this grant application has been designed with full knowledge of the effluent limitations required by the Minnesota Pollution Control Agency as set forth in NPDES Permit No. ..... dated ..... It is my judgment and carefully considered opinion that the performance standards required by the Minnesota Pollution Control Agency will be met

> after the work detailed in the approved corrective action report, dated ....., is completed and that the corrected facilities ~~are~~ will be capable of consistently producing the required effluent quality, provided that the facilities are operated in conformance with the approved operation and maintenance manual and the volume and characteristics of raw wastewater are within the flow data presented in the plans and specifications approved for the original project or in the corrective action report modifications.

o. Part 7077.0540, subparts 3 and 5 were deleted to match the revisions stated in the Statement of Need and Reasonableness (SONAR). These subparts were proposed to be stricken from the rule as described in the SONAR. However, by mistake the published proposed rules did not contain this striking. These parts were modified as follows:

> ~~Subp. 3. Amendments to award. Any grant amendments shall be based on the cost of the completed procurement actions and shall be dependent upon the availability of additional grant funds.~~
>
> ~~Subp. 5. Report to agency board. The commissioner shall report the certification of the corrective action grant under this part to the agency board as soon as possible, but, in many case, within 60 days.~~

These modifications are needed to fulfill the changes specified in the Statement of Need and Reasonableness. Amendment language under subpart 3 was incorporated under part 7077.0545 and changes made under the proposed rules to the grant award process made subpart 5 unnecessary. The revised language does not make a substantial change in the rule because it does not alter any of the program requirements. The change does not affect classes of persons who could not have been expected to comment on the proposed rules, introduce significant new subject matter, or make a major substantive change.

p. Part 7077.0545, subpart 3, item B was modified in response to a concern that putting additional restrictions on grant increases for administrative, engineering and legal costs are unnecessary and punitive for the communities eligible for corrective action grants. Subpart 3, item B is modified to read:

> increase the grant amount under part 7077.0515, subpart 3, ~~for administrative, engineering, and legal costs~~ as the amount of grant eligible construction costs increase through approved change orders. ~~This increase may only be used to pay for engineering costs, including inspection, created by work specified on the approved change orders.~~

The modification is needed to remove the proposed limitation on the use of grant increases for administrative, engineering, and legal costs under

the corrective action grants program. This limitation was proposed under this rulemaking. It is reasonable to remove a requirement before it is implemented. The removal of this limitation is reasonable because it allows the grantee to use the funds for the costs that are determined eligible under the eligibility section, part 7077.0515, subpart 3, without further restriction. Further restrictions on administrative, engineering and legal costs are unnecessary because these costs are already capped by part 7077.0515, subpart 3, at 25 percent of the construction costs. The revised language does not make a substantial change in the rule because it does not alter any of the enacted program requirements. The change does not affect classes of persons who could not have been expected to comment on the proposed rules, introduce significant new subject matter, or make a major substantive change.

q. Part 7077.0555, subpart 3 was modified to clarify the Agency's payment responsibilities. Subpart 3 is modified to read:

> Retainage. The commissioner shall withhold <u>certification for payment of</u> the final ten percent of the grant until the municipality has successfully completed all activities in the corrective action report, has affirmatively certified that the project meets the performance standards, and has met the recovery of costs requirement.

This modification is needed to clarify the Agency's responsibilities in the payment process. Under Minnesota Statute section 116.16, subdivision 11, the Public Facilities Authority is responsible for making grant payments following certification by the Agency Commissioner that the payment is proper. This modification is reasonable because it clarifies the role the Agency plays in the payment process. The revised language does not make a substantial change in the rule because it does not alter any of the program requirements. The change does not affect classes of persons who could not have been expected to comment on the proposed rules, introduce significant new subject matter, or make a major substantive change.

10. The Agency adopts the Statement of Need and Reasonableness, in its entirety, as the factual basis for the proposed rules. The Agency hereby incorporates the Statement of Need and Reasonableness into these findings, except as modified in Finding numbers 3 and 9 above.

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

CONCLUSIONS

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

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

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

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

ORDER

NOW, THEREFORE, IT IS ORDERED, that the attached Minn. Rules parts 7075.0100 and 7077.0100 through 7077.2010 governing the municipal wastewater treatment construction assistance programs are adopted pursuant to the authority vested in the Minnesota Pollution Control Agency by Minn. Stat. sec. 116.16, subp. 5(a) (Supp. 1989).

MINNESOTA POLLUTION CONTROL AGENCY

Gerald L. Willet

Gerald L. Willet
Commissioner

Dated: 5-24-90

STATE OF MINNESOTA
POLLUTION CONTROL AGENCY

In the Matter of the Proposed Rules Relating to the Administration of the Municipal Wastewater Treatment Construction Program, Minnesota Rules, chapters 7075 and 7077

FINDINGS OF FACT, CONCLUSIONS, AND ORDER ADOPTING RULES

The above-entitled matter came on for decision before the Minnesota Pollution Control Agency (Agency) on the 22nd day of May 1990. 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 February 26, 1990, and was sent by mail to all persons on the list maintained by the Agency pursuant to Minn. Stat. sec. 14.14, subd. 1a and 14.22 (1989), the Technical Advisory Committee, and the Agency Board on February 21, 1990.

2. The Statement of Need and Reasonableness was prepared prior to mailing and publication of the notice and was made available to the public upon request through the Minnesota Pollution Control Agency's St. Paul office and for review at the Duluth, Brainerd, Detroit Lakes, Marshall, and Rochester offices and at the Office of Administrative Hearings located in Minneapolis.

3. A new chapter (Chapter 7077) was proposed for the state rules to administer state independent and combined sewer overflow abatement grants awarded after July 1, 1990, and all of the corrective action, capital cost component, and individual on-site wastewater treatment system grants and loans from the water pollution control revolving fund. This change was recommended by the State Revisor of Statutes and was included in the 30-day public notice. The part numbers under Chapter 7077 correspond to those identified in the Statement of Need and Reasonableness as follows:

	Part Number Used in the Statement of Need and Reasonableness	Part Number Used in the Proposed Rules as Approved by by State Revisor of Statutes
Purpose	7075.6000	7077.0100
Definitions	7075.6005	7077.0105

Type of programs	7075.6010	7077.0110
Municipal needs list	7075.6015	7077.0115
Priority points for waters affected	7075.6020	7077.0120
Priority points for population served	7075.6025	7077.0125
Priority points for type of project	7075.6030	7077.0130
Extra points	7075.6035	7077.0135
Total points	7075.6040	7077.0140
Resolution of equal point ratings	7075.6045	7077.0145
Facilities plan	7075.6050	7077.0150
Plans and specifications	7075.6055	7077.0155
Rate system and ordinances	7075.6060	7077.0160
State Independent Grants Program		
Purpose	---------	7077.0200
Municipal project list	7075.6065	7077.0205
Eligibility	7075.6070	7077.0210
Grant applications	7075.6075	7077.0215
Approval and certification of grant applications	7075.6080	7077.0220
Rejection of grant applications	7075.6085	7077.0225
Contract assignment	7075.6090	7077.0230
Contract beneficiary	7075.6095	7077.0235
Grant amendments	7075.6100	7077.0240
Change orders	7075.6105	7077.0245
Completion of Construction	7075.6110	7077.0250
Project performance	7075.6115	7077.0255
Payment of state independent grants	7075.6120	7077.0260
Recovery of funds	7075.6125	7077.0265
Combined Sewer Overflow Abatement		
Purpose	7075.6130	7077.0300
Municipal project list	7075.6135	7077.0305
Applications	7075.6140	7077.0310
Financial assistance awards	7075.6145	7077.0315
Change orders	7075.6147	7077.0320
Project performance	7075.6149	7077.0325
Payment of state financial assistance	7075.6151	7077.0330
Water Pollution Control Revolving Fund Program		
Purpose	7075.6155	7077.0400
Intended use plan	7075.6160	7077.0405
Applications	7075.6165	7077.0410
Application Certification	7075.6170	7077.0415
Change orders	7075.6175	7077.0420
Inspections	7075.6180	7077.0425
Construction loan reporting requirements	7075.6185	7077.0430
Completion of Construction	7075.6190	7077.0435
Project Performance	7075.6195	7077.0440
Request to withhold financial assistance payments	7075.6200	7077.0445

Corrective Action Grants Program		
Purpose	7075.6210	7077.0500
Definition	7075.6215	7077.0505
Eligibility for participation	7075.6220	7077.0510
Eligible and ineligible costs	7075.6225	7077.0515
Requirements prior to application	7075.6230	7077.0520
Contract assignment	7075.6231	7077.0525
Contract beneficiary	7075.6232	7077.0530
Application	7075.6235	7077.0535
Certification of application for award	7075.6240	7077.0540
Grant amendments	7075.6242	7077.0545
Change orders	7075.6245	7077.0550
Payments	7075.6250	7077.0555
Recovery of grant funds	7075.6255	7077.0560
Capital Cost Component Grant Program		
Purpose	7075.6260	7077.0600
Definitions	7075.6265	7077.0605
Eligibility	7075.6270	7077.0610
Grant applications	7075.6275	7077.0615
Selection of eligible grantees	7075.6280	7077.0620
Amount of grant award	7075.6285	7077.0625
Certification of award	7075.6290	7077.0630
Plans and specifications	7075.6295	7077.0635
Grant conditions	7075.6300	7077.0640
Inspections	7075.6305	7077.0645
Grant payment	7075.6310	7077.0650
Termination of grant	7075.6315	7077.0655
Recovery of funds	7075.6320	7077.0660
Individual On-site Wastewater Treatment Systems Grants Program		
Purpose	7075.6325	7077.0700
Definitions	7075.6330	7077.0705
Eligibility	7075.6335	7077.0710
Wastewater treatment plan	7075.6340	7077.0715
Approval of individual on-site wastewater treatment personnel	7075.6345	7077.0720
Application	7075.6350	7077.0725
Eligible costs	7075.6355	7077.0730
Amount of the grant award	7075.6360	7077.0735
Priority ranking	7075.6365	7077.0740
Certification of award	7075.6370	7077.0745
Payment conditions	7075.6375	7077.0750
Payments	7075.6380	7077.0755
Termination of grant	7075.6385	7077.0760
Subsequent grants	7075.6390	7077.0765
Disputes	7075.6395	7077.2000
Procedural rules and appeals	7075.6400	7077.2005
Variances	7075.6405	7077.2010

4. All persons were given the opportunity to submit comments for 30 days after notice of proposed rulemaking. The 30 day comment period, as set out in the notice, expired on March 28, 1990.

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

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

7. During the comment period the Agency received four written comments. Three comments were received from Agency staff, as follows:

-- Debbie Olson of the Municipal Wastewater Treatment Section submitted a comment memo regarding general rule language, which is addressed in items 9.a, b, and d through n;
-- Vicky Cook from the Municipal Wastewater Treatment Section submitted a comment memo regarding the corrective action grants program, which is addressed in items 9.o, p, and q; and
-- Jeff Freeman from the Municipal Wastewater Treatment Section submitted a comment regarding the definition of need, which is addressed in item 9.c.

8. The fourth comment letter was submitted by Tom Wall, a consulting engineer. After reviewing the letter and the information gathered while developing the proposed rules, the Agency finds that no modifications should be made based on Mr. Wall's comments.

9. The Agency finds that 20 modifications to the proposed rules are justified by the record in this proceeding, as follows:

a. Part 7075.0100 was modified to make program names consistent with those used in the purpose statement of Chapter 7077 and to identify rules for administering federal construction grants and state matching grants awarded after July 1, 1990. This part is modified to read:

> This chapter provides for the administration of grants awarded under the federal construction grants program ~~, the independent state construction grant program,~~ and the state matching ~~construction~~ grants program~~, the state loan program for the construction of municipal disposal systems, and the state financial assistance program for combined sewer overflow abatement. It applies to~~ This chapter also provides for the administration of grants ~~and loans~~ awarded before July 1, 1990, under the state independent grants program and the state financial assistance program for combined sewer overflow abatement.

These modifications are needed to create program names that are in agreement with those used in Chapter 7077 and to identify the rules that will be used for administering federal construction and state matching grants awarded after July 1, 1990. Since both Chapter 7075 and 7077 are used for the administration of the state assistance programs, it is reasonable to refer to

the various programs by the same names and to change the terminology used in this purpose statement to agree with that used in the purpose statement under Chapter 7077.

Although there will be no new federal appropriations for construction grants after 1990, federal grants will be awarded after July 1, 1990. The intent of this rulemaking and the proposed rules was for parts under Chapter 7075 to be used to administer all federal grants and associated state matching grant awards. It is reasonable to clarify this intent in the purpose statement.

The changes to the purpose statement under Chapter 7075 are not substantial changes because they do not alter any program requirements or procedures. These changes do not affect classes of persons who could not have been expected to comment on the proposed rules, introduce significant new subject matter, or make a major substantive change.

b. Part 7077.0100 was modified to make the purpose statement of this chapter clearer. This part is modified to read:

> Parts 7077.0100 to 7077.~~0330~~2010 provide for the administration of the financial assistance programs for the construction of municipal wastewater treatment facilities ~~and~~. Parts 7077.0100 to 7077.0330 apply to state independent grants and ~~loans~~ financial assistance for combined sewer overflow abatement awarded on or after July 1, 1990. Chapter 7075 applies to awards made under these programs before July 1, 1990. (Parts 7077.0400 to 7077.0765 apply to funds awarded at any time.) ~~Chapter 7075 applies to grants and loans awarded before July 1, 1990.~~ The programs in chapter 7077 consist of the state independent grants program, parts 7077.0200 to 7077.0265; the combined sewer overflow abatement program, parts 7077.0300 to 7077.0330; and the water pollution control revolving fund program, parts 7077.0400 to 7077.0445. The state independent grants program includes three set-asides:

Modifications made to the organization and reference numbers under this part are needed to clarify the purpose of Chapter 7077. It is reasonable and desirable to use clear language that is easy for readers to understand. The revised language does not make a substantial change in the meaning of the rule because it only clarifies the existing purpose statement. The change does not affect classes of persons who could not have been expected to comment on the proposed rules, introduce significant new subject matter, or make a major substantive change.

c. Part 7077.0105, subpart 25, was modified to include the state sludge management rules in the definition of "need". The definition of "need" is used to determine eligibility for the assistance programs. Subpart 25 is modified to read:

> Need. "Need" means a determination that a new or upgraded disposal system is currently required, or will be required within a five-year period to comply with

> chapter 7040, 7050, 7060, or 7080; provided the situation does not exist primarily due to inadequate operation and maintenance or to negligence on the part of many person.

The addition of chapter "7040" is needed so that the determination of need is based on all of the state rules related to wastewater treatment. This addition is reasonable because it provides a more complete definition. The revised language does not make a substantial change in the rule because it does not alter any of the state requirements. The change does not affect classes of persons who could not have been expected to comment on the proposed rules, introduce significant new subject matter, or make a major substantive change.

d. Part 7077.0105, subpart 31, was modified to include all rule references for performance certifications in the definition of that term. This subpart is modified to read:

> Performance certification. "Performance certification" means a certification made by a municipality one year after initiation of operation that states its newly constructed wastewater treatment facility is meeting performance standards, as specified under parts 7077.0255, ~~subpart 1, item A~~ 7077.0325 and 7077.0440.

This modification is needed to clarify the definition of performance certification as it applies to these rules and to identify all the parts in the rules that specify performance certification requirements for the various programs. It is reasonable to ensure that the rules are clear and complete. The revised language does not make a substantial change in the rule because it does not alter any of the program requirements. The change does not affect classes of persons who could not have been expected to comment on the proposed rules, introduce significant new subject matter, or make a major substantive change.

e. Part 7077.0215, subpart 4, item C, was grammatically modified to correct the wording of the design certification for the wastewater treatment facilities that is specified in the rules. Subpart 4, Item C is modified to read:

> A signature and registration number of the consulting engineer accompanying the following certification statement:
>
> The facilities described in this application have been designed based on data that has been verified to accurately represent present and future flows and loadings and with full knowledge of the effluent limitations required by the Minnesota Pollution Control Agency as set forth in NPDES Permit No. ..... dated ..... It is my judgment and carefully considered opinion that these facilities ~~are~~ will be capable of consistently producing the required effluent quality, provided that the facilities are operated in conformance with the approved operation and maintenance manual and that the volume and

> characteristics of raw wastewater are within the limits of the flow data presented in the plans and specifications under the requirements of Minnesota Rules part 7077.0155, subpart 2, item C.

This modification is needed for the certification language to be grammatically correct. This certification is required to be completed by the design engineer before the facilities are actually constructed. Therefore, it is reasonable to change "are" to "will be" because it is the correct grammatical form. The revised language does not make a substantial change in the rule because it does not alter any of the program requirements. The change does not affect classes of persons who could not have been expected to comment on the proposed rules, introduce significant new subject matter, or make a major substantive change.

f. Part 7077.0245, subpart 4, item B was modified because a word was mistakenly omitted. The change makes this item consistent with language under other parts of the chapter that identify the requirements for change orders. This item is modified to read:

> Change orders not requiring the commissioner's prior approval under item A must be submitted to the commissioner for review and approval within one month after the date on which the municipality, its engineer, or other authorized agent, and the contractor execute the change order.

This modification is needed to keep this item consistent with the change order language under other programs within the chapter and to clarify that the required deadline date for submitting change order documents to the Agency is based on the signature date on the change order. The revised language does not make substantial change in the rule because it does not alter any of the program requirements. The change does not affect classes of persons who could not have expected to comment on the proposed rules, introduce significant new subject matter, or make a major substantive change.

g. Part 7077.0250, subpart 2, item A was modified to be consistent with other parts of the chapter that identify the requirements for notifying the agency of the date a facility initiates operation. This item is modified to read:

> The municipality must notify the commissioner in writing of the initiation of operation date within ten days ~~of~~ following initiation of operation.

This modification is needed to keep this item consistent with the completion of construction language under other programs within the chapter and to clarify the required deadline date for notifying the Agency. It is reasonable because it maintains a notification deadline that is the same for all the programs within the chapter and clarifies the submittal deadline. The revised language does not make a substantial change in the rule because it does not alter any of the program requirements. The change does not affect classes of persons who could not have been expected to comment on the proposed rules, introduce significant new subject matter, or make a major substantive change.

h. Part 7077.0310, subpart 3, item D was modified to be consistent with other parts of the chapter that explain the application requirement for a certificate of adequate errors and omissions insurance. This item is modified to read:

> ~~An engineer's~~ A certificate of adequate errors and omissions insurance carried by the engineering firm.

This modification is needed to keep this item consistent with the application language under other programs within the chapter. It is reasonable and desirable to express a requirement that is located in more than one part of the rules using the same words because it avoids confusion. The revised language does not make a substantial change in the rule because it does not alter any of the program requirements. The change does not affect classes of persons who could not have been expected to comment on the proposed rules, introduce significant new subject matter, or make a major substantive change.

i. Part 7077.0410, subpart 2, item C and subpart 3, item B were modified to be consistent with other parts of the chapter that explain the application requirement for a certificate of adequate errors and omissions insurance. The same modification was made to part 7077.0310, subpart 3, item D and discussed above in item h. See item h for a discussion of the need and reasonableness for this change. These items are modified to read:

> ~~an engineer's~~ a certificate of adequate errors and omissions insurance carried by the engineering firm;

j. Part 7077.0410, subpart 4, item G was modified to correct the wording of the design certification for the wastewater treatment facilities that is specified in the rules. The same modification was made to part 7077.0215, subpart 4, item C and discussed above in item e. See item e for a discussion of the need and reasonableness for this change. This item is modified to read:

> A signature and registration number of the consulting engineer accompanying the following certification statement:
>
> The facilities described in this application have been designed based on data that has been verified to accurately represent present and future flows and loadings and with full knowledge of the effluent limitations required by the Minnesota Pollution Control Agency as set forth in NPDES Permit No. _____ dated _____. It is my judgment and carefully considered opinion that these facilities ~~are~~ will be capable of consistently producing the required effluent quality, provided that the facilities are operated in conformance with the approved operation and maintenance manual and that the volume and characteristics of raw wastewater are within the limits of the flow data presented in the plans and specifications under the requirements of Minnesota Rules, part 7077.0155, subpart 2, item C.

k. Part 7077.0410, subpart 4, item H was modified to be consistent with other parts of the chapter that explain the application requirement for a

certificate of adequate errors and omissions insurance. The same modification was made to part 7077.0310, subpart 3, item D and discussed above in item h. See item h for a discussion of the need and reasonableness for this change. This item is modified to read:

> ~~An engineer's~~ A certificate of adequate errors and omissions insurance carried by the engineering firm.

l. Part 7077.0435, subpart 2, item A was modified to be consistent with other parts of the chapter that identify the requirements for notifying the agency of the date a facility initiates operation. The same modification was made to part 7077.0250, subpart 2, item A and discussed above in item g. See item g for a discussion of the need and reasonableness for this change. This item is modified to read:

> The municipality must notify the commissioner in writing of the initiation of operation date within ten days following initiation of ~~initiating~~ operation.

m. Part 7077.0535, subpart 2, item C(2) was modified to be consistent with other parts of the chapter that identify the engineering contract requirement for submitting as-built plans and specifications on microfiche to the agency. This subitem is modified to read:

> (2) two sets of "as built" plans and specifications on microfiche for submittal to the agency;

This modification is needed to keep the language in this subitem consistent with the language under other programs within the chapter and to clarify that the agency is to receive both sets of the microfiche plans and specifications. It is reasonable and desirable to express a requirement that is located in more than one part using the same words because it avoids confusion. It is also reasonable to clarify that both sets of microfiche are to be submitted to the Agency and that additional sets must be ordered if the municipality is planning to retain a set. The revised language does not make a substantial change in the rule because it does not alter any of the program requirements. The change does not affect classes of persons who could not have been expected to comment on the proposed rules, introduce significant new subject matter, or make a major substantive change.

n. Part 7077.0535, subpart 2, item E, was modified to correct the wording of the design certification for the wastewater treatment facilities that is specified in the rules. The same modification was made to part 7077.0215, subpart 4, item C and discussed above in item e. See item e for a discussion of the need and reasonableness for this change. This item is modified to read:

> A signature and registration number of the consulting engineer accompanying the following certification statement:
>
> > Corrective action for the facilities described in this grant application has been designed with full knowledge of the effluent limitations required by the Minnesota Pollution Control Agency as set forth in NPDES Permit No. ..... dated ..... It is my judgment and carefully considered opinion that the performance standards required by the Minnesota Pollution Control Agency will be met

> after the work detailed in the approved corrective action report, dated ....., is completed and that the corrected facilities ~~are~~ will be capable of consistently producing the required effluent quality, provided that the facilities are operated in conformance with the approved operation and maintenance manual and the volume and characteristics of raw wastewater are within the flow data presented in the plans and specifications approved for the original project or in the corrective action report modifications.

o. Part 7077.0540, subparts 3 and 5 were deleted to match the revisions stated in the Statement of Need and Reasonableness (SONAR). These subparts were proposed to be stricken from the rule as described in the SONAR. However, by mistake the published proposed rules did not contain this striking. These parts were modified as follows:

> ~~Subp. 3. Amendments to award. Any grant amendments shall be based on the cost of the completed procurement actions and shall be dependent upon the availability of additional grant funds.~~
>
> ~~Subp. 5. Report to agency board. The commissioner shall report the certification of the corrective action grant under this part to the agency board as soon as possible, but, in many case, within 60 days.~~

These modifications are needed to fulfill the changes specified in the Statement of Need and Reasonableness. Amendment language under subpart 3 was incorporated under part 7077.0545 and changes made under the proposed rules to the grant award process made subpart 5 unnecessary. The revised language does not make a substantial change in the rule because it does not alter any of the program requirements. The change does not affect classes of persons who could not have been expected to comment on the proposed rules, introduce significant new subject matter, or make a major substantive change.

p. Part 7077.0545, subpart 3, item B was modified in response to a concern that putting additional restrictions on grant increases for administrative, engineering and legal costs are unnecessary and punitive for the communities eligible for corrective action grants. Subpart 3, item B is modified to read:

> increase the grant amount under part 7077.0515, subpart 3, ~~for administrative, engineering, and legal costs~~ as the amount of grant eligible construction costs increase through approved change orders. ~~This increase may only be used to pay for engineering costs, including inspection, created by work specified on the approved change orders.~~

The modification is needed to remove the proposed limitation on the use of grant increases for administrative, engineering, and legal costs under

the corrective action grants program. This limitation was proposed under this rulemaking. It is reasonable to remove a requirement before it is implemented. The removal of this limitation is reasonable because it allows the grantee to use the funds for the costs that are determined eligible under the eligibility section, part 7077.0515, subpart 3, without further restriction. Further restrictions on administrative, engineering and legal costs are unnecessary because these costs are already capped by part 7077.0515, subpart 3, at 25 percent of the construction costs. The revised language does not make a substantial change in the rule because it does not alter any of the enacted program requirements. The change does not affect classes of persons who could not have been expected to comment on the proposed rules, introduce significant new subject matter, or make a major substantive change.

q. Part 7077.0555, subpart 3 was modified to clarify the Agency's payment responsibilities. Subpart 3 is modified to read:

> Retainage. The commissioner shall withhold <u>certification for payment of</u> the final ten percent of the grant until the municipality has successfully completed all activities in the corrective action report, has affirmatively certified that the project meets the performance standards, and has met the recovery of costs requirement.

This modification is needed to clarify the Agency's responsibilities in the payment process. Under Minnesota Statute section 116.16, subdivision 11, the Public Facilities Authority is responsible for making grant payments following certification by the Agency Commissioner that the payment is proper. This modification is reasonable because it clarifies the role the Agency plays in the payment process. The revised language does not make a substantial change in the rule because it does not alter any of the program requirements. The change does not affect classes of persons who could not have been expected to comment on the proposed rules, introduce significant new subject matter, or make a major substantive change.

10. The Agency adopts the Statement of Need and Reasonableness, in its entirety, as the factual basis for the proposed rules. The Agency hereby incorporates the Statement of Need and Reasonableness into these findings, except as modified in Finding numbers 3 and 9 above.

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

CONCLUSIONS

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

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

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

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

ORDER

NOW, THEREFORE, IT IS ORDERED, that the attached Minn. Rules parts 7075.0100 and 7077.0100 through 7077.2010 governing the municipal wastewater treatment construction assistance programs are adopted pursuant to the authority vested in the Minnesota Pollution Control Agency by Minn. Stat. sec. 116.16, subp. 5(a) (Supp. 1989).

MINNESOTA POLLUTION CONTROL AGENCY

Gerald L. Willet

Gerald L. Willet
Commissioner

Dated: 5-24-90

STATE OF MINNESOTA
POLLUTION CONTROL AGENCY

In the Matter of the Proposed Rules Governing the Administration of the State Independent Grants Programs, Combined Sewer Overflow Abatement Grants Program, and Water Pollution Control Revolving Fund program Rules Parts 7075.0100, 7075.1005 through 7075.1530, 7075.2505 through 7075.2550 and chapter 7077.

AFFIDAVIT OF MAILING THE NOTICE OF INTENT TO ADOPT RULES WITHOUT A PUBLIC HEARING AND INTENT TO ADOPT RULES WITH PUBLIC HEARING UPON RECEIVING 25 OR MORE REQUESTS AND CERTIFICATE OF MAILING LIST

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

Deborah A. 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 (1988) that their names be placed on the Minnesota Pollution Control Agency's rulemaking mailing list was accurate, complete, and current as of the 15th day of February, 1990.

That on the 21st day of February, 1990, 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 and Intent to Adopt Rules with public hearing upon receiving 25 or more requests 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 6 day of March 1990.

Ardith M. Vos
Notary Public

ARDITH M. VOS
NOTARY PUBLIC — MINNESOTA
ANOKA COUNTY
My commission expires 1-12-94

RECEIVED
FEB - 1990
ADMINISTRATIVE
HEARINGS

STATE OF MINNESOTA
POLLUTION CONTROL AGENCY

In the Matter of Proposed Rules Governing the State Independent Grants Program, the Combined Sewer Overflow Abatement Program, and the Water Pollution Control Revolving Fund, Minn. Rules pts. 7075.0100, 7075.1005 through 7075.1530, 7075.2505 through 7075.2550 and chapter 7077.

ORDER FOR HEARING

It is hereby ordered this 1st day of February, 1990, that a public hearing on the proposed rules captioned above be held if 25 or more requests for such a hearing are received by the Minnesota Pollution Control Agency during the public comment period that begins February 26 and ends March 28, 1990. This hearing will begin in the 5th floor conference rooms of the Minnesota Pollution Control Agency, 520 Lafayette Road, St. Paul, commencing at 10:00 a.m. on Wednesday, April 4, 1990. The hearing will continue on Monday, April 9, at 7:00 p.m. in Room 203 of the Mankato State University Student Union and on Wednesday, April 11, at 7:00 p.m. in the Crow Wing County Services Building, Brainerd, Minnesota.

IT IS FURTHER ORDERED, that notice of said hearing be given to all persons who have registered their names with the Minnesota Pollution Control Agency for that purpose and be published in the State Register.

Date: February 1, 1990

Gerald L. Willet

Gerald L. Willet
Commissioner

STATE OF MINNESOTA

OFFICE OF ADMINISTRATIVE HEARINGS

FIFTH FLOOR, FLOUR EXCHANGE BUILDING
310 FOURTH AVENUE SOUTH
MINNEAPOLIS, MINNESOTA 55415
(612) 341-7600

RECEIVED
APR 3 1990
MINN. POLLUTION CONTROL AGENCY

April 2, 1990

Gerald L. Willet
Commissioner
Minnesota Pollution Control Agency
520 Lafayette Road
St. Paul, Minnesota 55155

Re: Proposed Rules Governing the Adminstration of the State Independent Grants Program, Combined Sewer Overflow Abatement Grants Program, and Water Pollution Control Revolving Fund Program; OAH Docket No. 3-2200-4433-1

Dear Commissioner Willet:

Please be advised that because there is no need for a public hearing in the above-entitled matter I have cancelled all the scheduled hearing dates. I am also closing our file and returning the official record to you.

Sincerely,

Paige L. Purcell

PAIGE L. PURCELL
Administrative Law Judge

Telephone: 612/341-7615

PP
Enclosure

CERTIFICATE OF RESOLUTION ADOPTING RULES

I, Gerald L. Willet, do hereby certify that I am the Commissioner of the Minnesota Pollution Control Agency, an agency duly authorized under the laws of the state of Minnesota, and that the following is a true, complete, and correct copy of a resolution adopted at a meeting of the Minnesota Pollution Control Agency duly and properly called and held on the 22 day of May 1990, that a quorum was present at said meeting, that a majority of those present voted for the resolution and that said resolution will be set forth in the minutes of said meeting and has not been rescinded or modified:

BE IT RESOLVED, that the Minnesota Pollution Control Agency hereby approves and adopts Minn. Rules pt. 7075.0100 and chapter 7077 as published in Volume 14, Number 35, State Register, pages 2084-2122 (February 26, 1990) and revisions identified in the Findings of Fact pursuant to the authority vested in the Agency by Minn. Stat. § 116.16, subd. 5(a) (Supp. 1989).

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 22 day of May, 1990.

Gerald L. Willet

Gerald L. Willet
Commissioner