

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

DEPARTMENT: Office of the Attorney General

STATE OF MINNESOTA

OFFICE MEMORANDUM

DATE: August 28, 1991

TO: DEBBIE OLSON
MPCA
Water Quality Division

FROM: CHARLENE HATCHER CH
Special Assistant Attorney General
525 Park Street, Suite 500 (55103)

PHONE: 296-9422

SUBJECT: In the Matter of the Adopted Rule Relating to Clean Water Partnership

The above-referenced rule has been approved as to its legality by the Attorney General on August 19, 1991.

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.

CH:sc
Enclosures
cc: Steve Shakman
William Brown, Chief Judge
MaryAnn Hruby

Pollution Control Agency

Adopted Permanent Rules Relating to Clean Water Partnership Grants

Rules as Adopted

7076.0110 DEFINITIONS.

Subpart 1. **Scope.** The terms used in parts 7076.0100 to 7076.0290 have the meanings given them in Minnesota Statutes, chapter 116, and rules adopted under that chapter and the meanings given them in this part. If terms defined in this part conflict with the definitions in Minnesota Statutes, chapter 116 and the rules adopted under that chapter, the definitions in this part govern.

[For text of subp 2, see M.R.]

Subp. 3. **Best management practices.** "Best management practices" has the meaning given it in Minnesota Statutes, section 103F.711, subdivision 3.

[For text of subp 4, see M.R.]

Subp. 5. [See repealer.]

[For text of subp 6, see M.R.]

Subp. 7. **Local unit of government.** "Local unit of government" has the meaning given it in Minnesota Statutes, section 103F.711, subdivision 5.

Subp. 8. **Local water plan.** "Local water plan" means a comprehensive water plan authorized under Minnesota Statutes, chapter 103B; a surface water management plan required under Minnesota Statutes, section 103B.231; or an overall plan required under Minnesota Statutes, chapter 103D, that has been approved by the Board of Water and Soil Resources.

Subp. 9. **Nonpoint source.** "Nonpoint source" has the meaning given it in Minnesota Statutes, section 103F.711, subdivision 6.

Subp. 10. **Official controls.** "Official controls" has the meaning given it in Minnesota Statutes, section 103F.711,

subdivision 7.

Subp. 11. [See repealer.]

Subp. 12. **Project.** "Project" has the meaning given it in Minnesota Statutes, section 103F.711, subdivision 8.

Subp. 13. **Project area.** "Project area" means the area identified as hydrologically contributing to the water of concern for which the diagnostic study and implementation plan are prepared and implemented.

Subp. 14. **Project continuation grant amendment.** "Project continuation grant amendment" means an amendment to an existing project implementation grant to provide funds to continue implementation of activities identified in an approved diagnostic study and implementation plan that were not funded or partially funded in the initial project implementation grant.

Subp. 15. **Project coordination team.** "Project coordination team" means the public interagency group established in Minnesota Statutes, section 103F.761.

Subp. 16. [See repealer.]

Subp. 17. [See repealer.]

[For text of subps 18 to 20, see M.R.]

Subp. 20a. **Resource investigation.** "Resource investigation" means the preparation of a diagnostic study and implementation plan.

Subp. 20b. **Resource investigation grant.** "Resource investigation grant" means a grant from the agency to the project sponsor for the preparation of a diagnostic study and implementation plan.

[For text of subps 21 to 23, see M.R.]

Subp. 24. **Work plan.** "Work plan" means a document prepared by a project sponsor that describes in detail the work activities to be undertaken by the sponsor to fulfill the requirements of Minnesota Statutes, sections 103F.701 to 103F.761, and of parts 7076.0100 to 7076.0290. A work plan is approved by the commissioner and includes the items required under part 7076.0230.

7076.0120 AVAILABLE ASSISTANCE.

Subpart 1. **Financial assistance.** There are two types of grants available for nonpoint source projects: (1) resource investigation grants, and (2) project implementation grants. The grants are for a maximum of 50 percent of the eligible cost of the project. Grants must be awarded, within the limits of available appropriations, to those applicants having the highest priority.

[For text of subp 2, see M.R.]

7076.0130 ELIGIBILITY CRITERIA.

Subpart 1. **Eligible applicants.** Only local units of government are eligible to apply for grants and receive technical assistance. A local unit of government is eligible to apply for state matching grants and request technical assistance if it has the following:

A. the authority to coordinate and enter into contracts with local, state, and federal agencies and private organizations for the purpose of carrying out a project;

B. the authority to generate cash revenues and in kind contributions for the local share of a project;

C. the authority to adopt, implement, and enforce official controls; and

D. the water of concern is addressed in an approved local water plan.

[For text of subp 2, see M.R.]

Subp. 3. **Ineligible costs.** Ineligible costs include any costs that are not related to the activities in subpart 2. Costs identified under subpart 2 are ineligible if the related project activities are started before the grant contract has been signed by the commissioner of finance. In addition, the following costs are ineligible whether or not they relate to the activities in subpart 2:

[For text of items A to N, see M.R.]

[For text of subp 4, see M.R.]

7076.0140 NOTICE OF GRANT AVAILABILITY.

Subpart 1. **Notice.** The agency will publish in the State Register a notice that applications for resource investigation grants and project implementation grants will be accepted whenever the agency determines that funds are available to award the grants. The notice will contain a deadline for application submittal, which must be no less than 60 days from the date of publication.

Subp. 2. **Notification list.** The agency shall maintain a list of those local governmental bodies that wish to be notified of grant application periods. Any local governmental body that wishes to be placed on the list shall notify the agency by writing to the director of the water quality division. Whenever the agency publishes notice in the State Register, the agency shall mail notice of the grant application period to those local governmental bodies on the list.

[For text of subp 3, see M.R.]

7076.0150 GRANT APPLICATION.

[For text of subpart 1, see M.R.]

Subp. 2. **Resource investigation grant.** An applicant submitting an application for a resource investigation grant must submit the following information:

A. a resolution by the local unit of government that will be the project sponsor, authorizing the filing of the application and designating an official authorized to execute the grant application;

B. written documentation that the project sponsor has consulted with soil and water conservation districts and watershed districts in the project area, in preparing the grant application;

C. identification of local units of government, agencies, and organizations that will be involved in resource investigation;

D. letters of support from each participating local unit of government, agency, and organization which identify their role in resource investigation and their contribution to

the local share of resource investigation costs;

E. the amount of grant funding requested;

F. a list identifying the amount, type, and source of the local share;

G. a preliminary work plan that contains the following:

(1) project goals and objectives;

(2) a statement of existing water quality conditions and problems;

(3) identification and summary of work plan activities that the grant would make possible;

(4) a schedule of work plan activities;

(5) a preliminary monitoring plan; and

(6) a preliminary work plan budget; and

H. documents required by state or federal statutes, rules, and regulations.

Subp. 3. **Project implementation grant.** An applicant submitting an application for a project implementation grant shall submit the following information:

A. a resolution by the local unit of government that will be the project sponsor, authorizing the filing of the application and designating an official authorized to execute the grant application;

B. written documentation that the project sponsor has consulted with soil and water conservation districts and watershed districts in the project area, in preparing the grant application;

C. a diagnostic study and implementation plan approved under part 7076.0260, or an equivalent study and plan that addresses the requirements of a diagnostic study and implementation plan and that has been approved under part 7076.0260 and is part of a local water plan;

D. letters of support from each participating local unit of government, agency, and organization that identify their role in project implementation and their contribution to the local share of project implementation costs;

E. a detailed preliminary work plan and schedule for project implementation during the grant period;

F. a detailed budget for the grant period including the identification of the amount requested in the grant;

G. a list identifying the amount, type, and source of the local share; and

H. documents required by state or federal statutes, rules, and regulations.

7076.0160 REJECTION OF GRANT APPLICATION.

Subpart 1. **Grounds.** An application for a resource investigation grant or a project implementation grant shall be rejected by the commissioner for the following reasons:

A. an ineligible applicant;

B. ineligible costs;

C. a late submittal; or

D. failure to comply with any requirement of statute or rule.

[For text of subp 2, see M.R.]

Subp. 3. **Effect of rejection.** A grant applicant whose application is rejected must reapply in a subsequent application period to be considered for a grant.

7076.0170 PROJECT RANKING.

Subpart 1. **Process of ranking.** Upon completion of the commissioner's review of the grant applications for acceptability, the agency shall rank the acceptable grant applications in order of priority. Each project for which an acceptable grant application has been submitted must be awarded the number of priority points the project is entitled to under subparts 2 and 3. The project with the highest number of priority points will be given the highest priority. All projects will be given a ranking depending on the number of points awarded. The resource investigation grant applications must be ranked separately from the project implementation grant applications.

Subp. 2. **Priority points for resource investigation grant**

applications. The agency and the project coordination team must use the following criteria to determine the number of priority points to be awarded in the evaluation of each resource investigation grant application. Each project shall receive either zero, two and one-half, five, seven and one-half, or ten points under each of the following criteria, depending on how well the project satisfies the criterion. The number of points awarded under each of the five criterion assigned by the agency and the project coordination team must be added together to determine the project's total point value. This total number must be used to determine the project's overall ranking and priority.

A. The criteria for the agency are as follows:

(1) the extent to which the proposed project demonstrates a high potential for project success based on the level of definition of the preliminary work plan for project goals and objectives, work activities, and project organization and management structure;

(2) the extent to which the proposed project demonstrates effective and efficient use of state financial resources based on the proposed budget and work plan;

(3) the extent to which the water of concern is identified as a priority water in the local water plan;

(4) the severity of water quality impairment or threat as compared to expectations for the least impacted waters in that ecoregion; and

(5) the extent the proposed project demonstrates the likelihood of water quality protection or improvement.

B. The criteria for the project coordination team are as follows:

(1) the extent to which the proposed project demonstrates a high potential for project success based on community support and involvement;

(2) the extent to which the proposed project includes coordination and cooperation of federal, state, and local agencies and units of government for water quality

protection or improvement;

(3) the extent to which the water of concern in the proposed project is of state and regional significance and priority;

(4) the extent to which the proposed project complements the existing efforts of local, state, and federal programs; and

(5) the likelihood that the proposed project will serve as a demonstration for water quality protection or improvement and provide useful information for the geographic area.

Subp. 3. **Priority points for project implementation grant applications.** The agency and the project coordination team must use the following criteria to determine the number of priority points to be awarded in the evaluation of each project implementation grant application. Each project shall receive either zero, two and one-half, five, seven and one-half, or ten points under each of the following criteria, depending on how well the project satisfies the criterion. The number of points under each of the five criterion assigned by the agency and the project coordination team must be added together to determine the project's total point value. This total number must be used to determine the project's overall ranking and priority.

A. The agency criteria are as follows:

(1) the extent to which the proposed project demonstrates a high potential for project success based on the level of definition of the work plan for project goals and objectives, work activities, budget, and project organization and management structure;

(2) the extent to which the proposed project employs best management practices which provide a technically feasible means to abate or prevent water pollution from nonpoint sources;

(3) the extent to which the proposed project implementation activities will result in water quality protection or improvement;

(4) the extent to which the proposed project maximizes water quality protection or improvement relative to the cost of project implementation; and

(5) the extent to which the proposed project demonstrates a high potential for project success based on the local capability, organization, and authority to carry out the identified activities.

B. The project coordination team criteria are as follows:

(1) the extent to which the proposed project demonstrates a high potential for project success based on community support and involvement;

(2) the extent to which the proposed project includes coordination and cooperation of federal, state, and local agencies and units of government for water quality protection or improvement;

(3) the extent to which the water of concern in the proposed project is of state and regional significance and priority;

(4) the extent to which the proposed project indicates a commitment to official controls, programs, and activities that are a long-term commitment to water quality protection or improvement; and

(5) the likelihood that the proposed project will serve as a demonstration of water quality protection or improvement and provide useful information for the geographic area.

Subp. 4. **Project coordination team.** The project coordination team has 60 days from the close of the application period to assign points to each project seeking a grant. In the event that the project coordination team fails to assign points to all projects with approved grant applications, the projects must be ranked without considering any points under the category for the project coordination team.

7076.0180 ALLOCATION OF FUNDING.

Subpart 1. **Project continuation grant amendments.** Each year, the agency shall determine how much of the available funds will be set aside to meet that year's anticipated requests for project continuation grant amendments. If the agency subsequently determines that the amount set aside for project continuation grant amendments is more than is required for grant amendments in that year, the agency may reallocate this money to other resource investigation grants and project implementation grants or carry over the money to another grant application period.

Subp. 2. **Grant fund allocation.** Within 90 days of the close of an application period, the agency shall determine how much of the remaining funds, after setting aside funds for project continuation grant amendments, will be made available for resource investigation and project implementation grant awards. In deciding how much money to make available for new grant awards, the agency shall consider the necessity to have money available for subsequent grant periods, the necessity to have money available for anticipated project continuation grant amendments in the next year, and other factors relating to the agency's ability to ensure that money will be available for upcoming projects.

Subp. 3. **Resource investigation; project implementation split.** Within 90 days of the close of an application period, the agency shall determine how much of the funds available for new grants in that application period will be available for resource investigation and project implementation grants. In determining the allocation of funds between resource investigation and project implementation grants, the agency shall consider:

A. the availability and conditions for use of federal funds; and

B. the phasing in and continuity of projects in the program.

If the money intended for resource investigation or project implementation grants, or both, is not awarded during a grant

period, the agency may reallocate the funds to the other kind of grant or to a subsequent grant period.

7076.0190 SELECTION OF PROJECTS FOR GRANT AWARD.

Subpart 1. **Ranking.** The agency shall complete its ranking of all projects for which an acceptable grant application has been submitted within 90 days of the close of the application period. The agency shall rank resource investigation separately from implementation projects.

Subp. 2. **Projects funded.** The agency shall select those projects that will be awarded grant funds by awarding grants to the highest priority resource investigation and project implementation applications within the limits of available funds established under part 7076.0180, subpart 2. A project that receives less than 50 points will not be considered for award of grant funds.

[For text of subps 3 to 5, see M.R.]

7076.0200 PROJECT CONTINUATION GRANT AMENDMENT.

[For text of subpart 1, see M.R.]

Subp. 2. **Request.** A project sponsor who seeks a project continuation grant amendment shall submit a request for the grant amendment in June of the calendar year that the activities funded through the initial project implementation grant will be completed and additional funds will be required to continue project implementation. The request must be submitted on a form provided by the agency. A project sponsor who fails to submit a request for a project continuation grant amendment in June of the calendar year the funds are required forfeits the right to an amendment. That project sponsor may apply in a subsequent grant period to continue the project and compete with other applicants for a project implementation grant.

Subp. 3. **Approval.** Subject to the availability of funds, the agency shall approve the project sponsor's request for a project continuation grant amendment if it meets the following conditions:

A. the project sponsor has satisfied the terms and

conditions of the grant to date; and

B. the project sponsor has identified the source of the local share of funds necessary for the project continuation grant amendment.

7076.0210 GRANT CONDITIONS.

Subpart 1. **Amount.** A grant that is made must be for the amount requested by the applicant, up to a maximum of 50 percent of the eligible cost of resource investigation or project implementation.

Subp. 2. **Grant period.** The grant period for a resource investigation grant will be for up to three years. The grant period for a project implementation grant will be for a period of three years and may be extended up to an additional three years with agency approval of a request for a project continuation grant amendment according to part 7076.0200.

Subp. 3. **Grant contract.** The project sponsor must enter into a grant contract with the agency to receive grant funds. The grant contract must include the provisions in part 7076.0220.

Subp. 4. **Records.** The project sponsor shall maintain all records relating to the receipt and expenditure of grant funds for at least three years from the date of termination of the grant contract. Records relating to the installation, operation, and maintenance of best management practices shall be maintained for three years beyond the design or useful life, whichever is longer.

[For text of subps 5 and 6, see M.R.]

Subp. 7. **Quarterly update.** During each year the grant is in effect, the project sponsor shall prepare for quarterly submittal or presentation to the commissioner an update of project activities and project expenditures.

Subp. 8. **Work plan.** The project sponsor shall prepare a work plan according to part 7076.0230 and submit it to the commissioner. The monitoring plan component of the work plan must be reviewed and revised annually and submitted to the commissioner by February 1 of each year during the project

period of the grant contract.

Subp. 9. **Diagnostic study and implementation plan.** The project sponsor for a resource investigation grant shall submit to the commissioner before the final grant payment is made a diagnostic study and implementation plan that meets the requirements of parts 7076.0240 and 7076.0250.

Subp. 10. **Eligible costs.** No grant funds shall be provided to the project sponsor for grant eligible project activities started before the grant contract period or after the end of the contract period.

7076.0220 GRANT CONTRACT.

Subpart 1. **Contents.** The agency and the project sponsor shall enter into a grant contract. The grant contract must:

A. establish the terms and conditions of the grant;

B. provide that the project sponsor may enter into contracts, under terms and conditions specified by the agency, to complete the work specified in the contract;

C. provide that cost overruns are the sole responsibility of the project sponsor;

D. require that the project sponsor submit periodic progress reports and a final report to the agency in a format prescribed by the agency; and

E. incorporate terms and conditions required by federal or state statutes, rules, and regulations.

Subp. 2. **Amendments.** A grant contract may be amended upon agreement of the agency and the project sponsor. Grant increase amendments shall be subject to the availability of funds.

Subp. 3. **Contract period.** Grant contracts for resource investigation will be for up to three years. Grant contracts for project implementation will be for up to six years. The agency may allow a one year extension of either of these grant contracts.

7076.0230 WORK PLAN.

Subpart 1. **Requirements.** The work plan required to be submitted to the commissioner, in a format specified by the

commissioner, as a condition of the grant must include the requirements in item A for resource investigation grants and the requirements in item B for project implementation grants.

A. For resource investigation grants, the sponsor shall prepare and submit a detailed work plan that includes the following:

(1) a description of the water of concern, the project area, and the existing and desired resource uses;

(2) a description of existing and suspected or potential water quality problems;

(3) a description of specified goals for project results, for water quality characterization and quantitative analysis research and assessment, and for citizen education;

(4) an outline that identifies specific tasks to be completed during the project, including the tasks needed to fulfill the requirements under parts 7076.0240 and 7076.0250, the individuals responsible for the tasks, and the dates for task initiation and completion;

(5) a monitoring plan as described in subpart 1a;

(6) a list of predictive and diagnostic computer or statistically based models that are to be used for the project and a description and statistical definition of predictive and diagnostic uncertainties;

(7) a quality assurance plan for data gathering and analyzing;

(8) detailed budgets; and

(9) a resolution from each participating local unit of government, agency, and organization that identifies their role in the project and their contribution to the local share of the project costs.

B. For project implementation grants, the sponsor shall prepare and submit a detailed work plan that includes any necessary revisions to the approved implementation plan and the following:

(1) a revised activity schedule for implementation activities;

(2) a revised implementation budget;

(3) a quality assurance plan for construction activities;

(4) a best management practice operation and maintenance plan;

(5) a monitoring plan as required in subpart 1a that has been revised to evaluate the effectiveness of best management practices and the improvement of water quality;

(6) a list of predictive and diagnostic computer or statistically based models that are to be used for the project and a description and statistical definition of predictive and diagnostic uncertainties;

(7) permits and authorities for implementation activities; and

(8) a resolution from each participating local unit of government, agency, and organization that identifies their role in the project and their contribution to the local share of the project costs.

Subp. 1a. **Monitoring plan.** A monitoring plan is a component of the work plan. For both resource investigation and project implementation grants, the sponsor shall prepare a monitoring plan that:

A. develops monitoring objectives based on project goals;

B. defines the information needs for water quality monitoring;

C. defines the statistical methods needed to address the monitoring objectives;

D. sets the data requirements that are to be met for meaningful statistical analysis to be completed;

E. delineates and provides rationale for the selection of monitoring sites, frequency, parameters, and sampling protocols;

F. identifies laboratories that will be doing analyses for the project, explains their quality assurance and quality control procedures, and provides the certification

number assigned by the Department of Health to prove the laboratories are fulfilling the requirements under chapter 4740; and

G. outlines a plan to analyze monitoring data and to use the data to assess the project area, water and pollutant loading, and alternative best management practices.

Subp. 2. **Review.** The commissioner will review the work plan and approve it or identify deficiencies in writing within 45 days of its receipt.

Subp. 3. [See repealer.]

7076.0240 DIAGNOSTIC STUDY.

Subpart 1. **General requirements.** The diagnostic study required to be submitted by a project sponsor under part 7076.0210, subpart 9, must include:

A. a detailed description of the water of concern;

B. a detailed description of the project area;

C. an analysis and assessment of the data and information collected as a requirement of subparts 2 and 3; and

D. the identification and documentation of the methods, procedures, predictive and diagnostic models, and other tools used to prepare and complete the diagnostic study.

Subp. 1a. **Exemption.** Upon written request from the project sponsor, the agency may allow an exemption from a specific diagnostic study requirement that does not provide data or information useful for diagnosis of the problem or solutions.

Subp. 2. **Description of water of concern.** The diagnostic study must contain a detailed description of the water of concern that includes:

[For text of items A and B, see M.R.]

C. current data or information for the following:

(1) if the water of concern is a lake, the description shall include the following:

[For text of unit (a), see M.R.]

(b) measurement of dissolved oxygen, total phosphorus, dissolved inorganic phosphorus, total Kjeldahl

nitrogen, total nitrogen, nitrite plus nitrate nitrogen, total suspended solids, total alkalinity, chloride concentrations, color, pH, and conductivity; determination of mass loadings of total phosphorus, total Kjeldahl nitrogen, and total suspended solids from major tributaries and completion of a nutrient budget for the lake;

[For text of units (c) and (d), see M.R.]

[For text of subitem (2), see M.R.]

(3) if the water of concern is an aquifer, the description shall include the following:

(a) identification or measurement of the aquifer physical type, size, temperature, porosity, saturated thickness, recharge sources, discharge sources transmissivity, hydraulic residence time, range of hydraulic gradients, and underlying lithology and stratigraphy;

[For text of units (b) to (d), see M.R.]

[For text of subitem (4), see M.R.]

Subp. 3. **Description of project area.** The diagnostic study must contain a detailed description of the project area that includes:

A. a map of the project area at a scale appropriate to the project;

[For text of items B to I, see M.R.]

J. land use:

[For text of subitems (1) to (13), see M.R.]

(14) wetlands identified under the National Wetlands Inventory, an inventory of drained wetlands, and a summary of applicable management plans;

[For text of subitems (15) to (21), see M.R.]

(22) population characteristics;

(23) a summary of recreational land uses;

(24) a list of bulk pesticide and fertilizer handling facilities;

(25) a list of commercial and industrial facilities with on-site hazardous materials or wastes;

(26) a list of transportation corridors such as

railroads, pipelines, and highways;

(27) a list of operating wells whose construction or maintenance may cause them to serve as conduits for contaminations to recharge groundwater; and

(28) a summary of other potential sources of groundwater contamination;

[For text of item K, see M.R.]

L. hydrology:

[For text of subitems (1) to (4), see M.R.]

(5) a description of wells covered by state appropriation permits including location, amounts of water appropriated, type of use, aquifer source, and amount of water used;

[For text of subitems (6) and (7), see M.R.]

[For text of subp 4, see M.R.]

Subp. 5. [See repealer.]

7076.0280 GRANT PAYMENTS.

Subpart 1. **Initial payment.** After the commissioner of finance has signed the grant contract between the agency and the project sponsor, the agency shall provide to the project sponsor 25 percent of the grant award provided in the grant contract.

Subp. 2. **Second payment.** Upon written approval by the commissioner of the work plan required under part 7076.0210, subpart 8, the agency shall provide to the project sponsor 35 percent of the grant award provided in the grant contract. The cumulative assistance paid to the project sponsor shall equal 60 percent of the grant award.

Subp. 3. **Project review and budget adjustment.** Upon expenditure of 50 percent of total eligible project costs by the project sponsor, the project sponsor shall submit to the commissioner for review and approval a detailed summary of project expenditures and completed work activities. The commissioner shall review the summary to verify cost eligibility and acceptable completion of work plan activities and to compare actual expenditures with the approved project work plan budget.

Subp. 4. **Third payment.** After the requirements of subpart 3 have been met, the agency shall provide to the project sponsor up to 30 percent of the grant award. The payment shall be less than 30 percent of the grant award to compensate for the final payment withholding required under subpart 6.

Subp. 5. **Payment adjustment upon grant contract amendment.** When the total grant assistance amount authorized for a project is increased by a grant contract amendment, the agency shall pay the project sponsor the additional amount of grant assistance that the project sponsor is entitled to receive under subparts 1 to 4.

Subp. 6. **Final payment.** The agency shall withhold a minimum of ten percent of the grant award until the agency is satisfied that the project has been completed according to the terms of the grant contract and parts 7076.0100 to 7076.0290. More than ten percent of the grant award shall be withheld if the costs necessary to complete the project are less than those identified in the grant contract. Ten percent of the grant award shall be withheld if the costs necessary to complete the project are equal to or exceed the costs identified in the grant contract.

Subp. 7. **Payment option.** Project sponsors that received grant awards before October 1, 1990, may have the grant payment conditions specified under subparts 1 to 6 or have grant payments made on a reimbursement basis. If reimbursements are desired, a project sponsor shall submit a written request for this option to the commissioner. Reimbursement payments shall be made according to items A to C.

A. The project sponsor may submit a request for reimbursement of expenditures for each of the standard calendar quarters ending March 31, June 30, September 30, and December 31. The agency shall pay the reimbursement within 45 days of the request if the grantee is in compliance with conditions of the grant contract and requirements of parts 7076.0100 to 7076.0290.

B. The agency shall withhold reimbursement on the

final ten percent of the grant contract amount until the agency is satisfied that the project has been completed according to the terms of the grant contract and parts 7076.0100 to 7076.0290.

C. The agency shall withhold reimbursement if the project sponsor has failed to comply with any requirements of the grant contract or parts 7076.0100 to 7076.0290. The funds may not be released until the agency determines that the project sponsor has corrected the deficiencies causing noncompliance.

REPEALER. Minnesota Rules, parts 7076.0110, subparts 5, 11, 16, and 17; 7076.0230, subpart 3; and 7076.0240, subpart 5, are repealed.

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
AUG 2 1991
Secretary of State

APPROVED AS TO FORM AND LEGALITY

August 19, 1991

HUBERT H. HUMPHREY, III
ATTORNEY GENERAL

BY Charlene M. Hatcher
SPECIAL ASSISTANT ATTORNEY GENERAL

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED

AUG27 1991

Joan Anderson Growe
Secretary of State

1:05 PM

8/6 CH

RULE REVIEW CHECKLIST

File No. 1845
DATE RECEIVED 8-5-91
REVIEW DATE 8-14-91
DUE DATE 8-19-91
(DIS)APPROVED 8-19-91
WITHDRAWN

Docket No. 15.0009.0703
ADOPTED W/O HEARING
EMERGENCY RULE
TO REVISOR ON 8-7-91
REVISOR (DIS)APPROVED 8-8-91
FILED W/SEC. OF STATE 8/27/91 (Check from Charlene 8/26)
RETURNED TO AGENCY 8/28/91

✓ Rule as adopted (4 copies)

✓ Notice to Solicit Outside Information/Opinion (if applicable)
December 17, 1990 Date published in State Register
Comments

✓ ~~Petition for Adoption~~ of a Rule

✓ Board's Authorizing Resolution
March 27, 1991 Date adopted

✓ Proposed Rule
✓ Revisor's Certificate

Notice of Intent to Adopt Rule
103 F.745 Statutory Authority
✓ Small Business Statement
NA Expenditure of public money statement
4-12-91 Signature

✓ Statement of Need and Reasonableness (if applicable)
✓ Small Business Statement
NA Fees - § 16A.128

✓ Affidavit of Mailing Notice of Intent to Adopt Rule
April 23, 1991 Dated 30/25 days before adoption
✓ Notice attached indicates it is attached
Copy of rule or summary attached

✓ Publication in State Register
April 29, 1991 Date 30/25 days before adoption

✓ 180-day deadline from:
✓ Effective date of law requiring rule (14.12) (both rules) amendments don't apply
✓ end of comment period (§ 14.26) (rules without hearing)
effective date of statutory authority (§ 14.29) (emergency rules)

✓ Resolution Adopting
June 25, 1991 Date adopted

✓ Findings of Fact, Conclusions & Order Adopting
6-28-91 Date

✓ Written Requests, Submissions or Comments

✓ Declaration of Attorney
Steve Shakman Name of SAAG representing agency

Notice of Submission to Attorney General (if applicable)

Affidavit of Mailing Notice to Attorney General (if applicable)

(d) Best management practices provide a feasible means to abate or prevent nonpoint source water pollution.

(e) The project goals and objectives are consistent with the state water quality management plans, the statewide resource assessment conducted under section 103F.721, and other applicable state and local resource management programs.

History: *1990 c 391 art 6 s 87*

103F.741 PLAN IMPLEMENTATION.

Subdivision 1. **Implementation according to law and contract.** A local unit of government receiving technical or financial assistance or both from the agency shall carry out the implementation plan approved by the agency according to the terms of the plan, the provisions of a contract or grant agreement made with the agency and according to sections 103F.701 to 103F.761, the rules of the agency, and applicable federal requirements.

Subd. 2. **Review by agency.** The commissioner or the commissioner's designee may, at any reasonable time, inspect any project and review the expenditure of financial assistance funds granted by the agency to determine whether the local unit of government has complied with subdivision 1.

Subd. 3. **Enforcement of agreements.** The agency may bring a civil action in district court to recover from a local governmental unit any financial assistance funds used in violation of subdivision 1.

History: *1990 c 391 art 6 s 88*

103F.745 RULES.

The agency shall adopt rules necessary to implement sections 103F.701 to 103F.761. The rules shall contain at a minimum:

(1) procedures to be followed by local units of government in applying for technical or financial assistance or both;

(2) conditions for the administration of assistance;

(3) procedures for the development, evaluation, and implementation of best management practices;

(4) requirements for a diagnostic study and implementation plan;

(5) criteria for the evaluation and approval of a diagnostic study and implementation plan;

(6) criteria for the evaluation of best management practices;

(7) criteria for the ranking of projects in order of priority for assistance;

(8) criteria for defining and evaluating eligible costs and cost-sharing by local units of government applying for assistance; and

(9) other matters as the agency and the commissioner find necessary for the proper administration of sections 103F.701 to 103F.761, including any rules determined by the commissioner to be necessary for the implementation of federal programs to control nonpoint source water pollution.

History: *1990 c 391 art 6 s 89*

103F.751 NONPOINT SOURCE POLLUTION CONTROL PLAN AND PROGRAM EVALUATION.

To coordinate the programs and activities used to control nonpoint sources of pol-

Minnesota Pollution Control Agency
520 Lafayette Road, Saint Paul, Minnesota 55155-3898
Telephone (612) 296-6300

April 24, 1991

Ms. Maryanne Hruby, Executive Director
Legislative Commission to Review
Administrative Rules
Room 55, State Office Building
100 Constitution Avenue
St. Paul, Minnesota 55155

Dear Ms. Hruby:

The Statement of Need and Reasonableness and proposed rule language for the amendment of Minnesota Rules chapter 7076 is enclosed for your review as required by Minnesota Statutes subdivision 14.131 (1990). The 30-day public comment period notice for this rulemaking will be published in the State Register on April 29, 1991.

If you require additional information, please call me at 296-7223.

Sincerely,

Debbie Olson

Debbie Olson, Policy Analyst
Rule Revision Coordinator
Assessment and Planning Section
Water Quality Division

DO:ah

STATE OF MINNESOTA
POLLUTION CONTROL AGENCY

In the Matter of the Proposed Amendment of Rules Governing the Administration of the Clean Water Partnership Program, Minn. Rules Ch. 7076

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

STATE OF MINNESOTA
COUNTY OF RAMSEY

Deborah Olson, being duly sworn says:

I hereby certify that the list of persons and associations who have requested, pursuant to Minn. Stat. §§ 14.14, subd. 1a and 14.22 (1990) that their names be placed on the Minnesota Pollution Control Agency's rule hearing mailing list is accurate, complete, and current as of this 19th day of April, 1991.

That on the 23rd day of April, 1991 at the City of St. Paul, County of Ramsey, State of Minnesota, I mailed the attached Notice of Intent to Adopt rules without a Public Hearing by depositing in the State of Minnesota Central Mail System or in the United States Mail for First class mailing a copy thereof, with postage prepaid, to all persons and associations on the aforementioned mailing list.

Deborah A. Olson

subscribed and sworn to before me
this 24th day of April, 1991.

Diane Fox
Notary Public

DIANE FOX
NOTARY PUBLIC — MINNESOTA
RAMSEY COUNTY
My commission expires 2-25-96

STATE OF MINNESOTA
POLLUTION CONTROL AGENCY

In the Matter of the Proposed
Amendment of Rules Governing
the Administration of the Clean
Water Partnership Program,
Minn. Rules Ch. 7076

NOTICE OF INTENT TO
ADOPT RULES WITHOUT
A PUBLIC HEARING

Notice is hereby given that the Minnesota Pollution Control Agency (Agency) intends to adopt the above-entitled rule amendments without a public hearing following the procedures set forth in the Administrative Procedure Act, in Minn. Stat. secs. 14.22 to 14.28 (1990). The Agency's authority to adopt rules for the Clean Water Partnership Program is set forth in Minn. Stat. sec. 103F.745 (1990).

The goal of the Clean Water Partnership Program is to protect state surface and ground waters from nonpoint source pollution. The program provides financial and technical assistance to local governments to help them develop and implement projects that will protect or restore bodies of water in their areas. The program offers grants that require local governments to match the funds received from the Agency.

The Agency is conducting a 30-day public comment period. All persons have until 4:30 p.m. on May 30, 1991, to submit comments in support of or in opposition to the proposed rule amendments or any part or subpart of the rules. Comment is encouraged. Each comment should identify the portion of the proposed rules addressed, the reason for the comment, and any change proposed.

Any person may make a written request for a public hearing on the rule amendments within the comment period. If 25 or more persons submit a written request for a public hearing within the comment period, a public hearing will be held unless a sufficient number withdraw their requests in writing. Any person requesting a public hearing should state his or her name and address, and is encouraged to identify the portion of the proposed rules addressed, the reason for the request, and any change proposed. If a public hearing is required, the Agency will proceed pursuant to Minn. Stat. secs. 14.14 to 14.20 (1990).

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

Debbie Olson
Minnesota Pollution Control Agency
Water Quality Division/APS
520 Lafayette Road
St. Paul, Minnesota 55155
(612)296-7223.

The proposed rule amendments 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.

(11) The proposed rule amendments, if adopted, will make the Clean Water Partnership Program more effective and more responsive to the needs of local governments that receive grant funds. The three major proposed amendments will modify the grant payment process to prevent financial hardship for project sponsors, will incorporate the resources and concerns of the existing Project Coordination Team into the project selection process, and will more clearly define the criteria used to rank grant applications. One free copy of the rules is available upon request from Ms. Olson at the address and telephone number stated above.

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

(13) You are hereby advised, pursuant to Minn. Stat. sec. 14.11 (1990), "Special notice of rulemaking," that the proposed rules will not require the expenditure of public monies by local units of government unless a government elects to participate in the Clean Water Partnership Program and the proposed rules will not have any direct adverse effects on agricultural lands in the state. In areas where projects are conducted, agricultural lands will continue to be improved by best management practices, which are a requirement of the program. (14) You are also advised, pursuant to 14.115 (1990), "Small business considerations in rulemaking," that the proposed rules will have only positive effects on small businesses. Small businesses will continue to benefit from contracts provided by the sponsors of Clean Water Partnership projects.

(9) If no hearing is required, upon adoption of the rule amendments, 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 Ms. Olson.

Dated: 4/12/91

for Ann Glumac
Charles Williams
Commissioner

Teaching Board

8700.0100; .0200; .0210; .0300; .0400; .0500; .0501; .2000; .2500; .2900; .3200; .3300; .3510; .3900; .4000; .4300; .4400; .4500; .4600; .5300; .6410; .7100; .7300; .7400; .7800; .8010; .8020; .8040; .8110; .8120; .8140; .9010; 8750.0060; .0082; .0240; .0500; .0520; .1000; .1240; .1560; .1580; .1700; .1800; .1820; .1840; .1860; .1880; .1900; .1920; .1930; .1940; .1960; .1980; .2000; .2020; .2040; .2060; .2100; .2120; .3010; .3250; .3300; .3350; .3450; .3500; .3800; .3810; .3820; .3830; .3840; .4200; .6200; .8000 (adopted) 2267

8700.2900 s.5; .3510 s.7; .4000 s.6; .4100 s.2; .4200 s.2; .4600 s.4 and 5; .7300 s.3; .7400 s.2 (repealed) 2267

Human Services Department

9505.0323 (proposed) 2295

9530.6600; .6605; .6615; .6620; .6625; .6630; .6631; .6640; .6641; .6650; .6655; .7000; .7021; .7031 (proposed) 2257

9530.6650 s.3 (proposed repeal) 2257

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.

Pollution Control Agency

Proposed Permanent Rules Relating to Clean Water Partnership Grants

Notice of Intent to Adopt Rule Amendments Without a Public Hearing

NOTICE IS HEREBY GIVEN that the Minnesota Pollution Control Agency (Agency) intends to adopt the above-entitled rule amendments without a public hearing following the procedures set forth in the Administrative Procedure Act, in *Minnesota Statutes* secs. 14.22 to 14.28 (1990). The Agency's authority to adopt rules for the Clean Water Partnership Program is set forth in *Minnesota Statutes* sec. 103F.745 (1990).

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

The goal of the Clean Water Partnership Program is to protect state surface and ground waters from nonpoint source pollution. The program provides financial and technical assistance to local governments to help them develop and implement projects that will protect or restore bodies of water in their areas. The program offers grants that require local governments to match the funds received from the Agency.

The Agency is conducting a 30-day public comment period. All persons have until 4:30 p.m. on May 30, 1991, to submit comments in support of or in opposition to the proposed rule amendments or any part or subpart of the rules. Comment is encouraged. Each comment should identify the portion of the proposed rules addressed, the reason for the comment, and any change proposed.

Any person may make a written request for a public hearing on the rule amendments within the comment period. If 25 or more persons submit a written request for a public hearing within the comment period, a public hearing will be held unless a sufficient number withdraw their requests in writing. Any person requesting a public hearing should state his or her name and address, and is encouraged to identify the portion of the proposed rules addressed, the reason for the request, and any change proposed. If a public hearing is required, the Agency will proceed pursuant to *Minnesota Statutes* secs. 14.14 to 14.20 (1990).

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

Debbie Olson
Minnesota Pollution Control Agency
Water Quality Division/APS
520 Lafayette Road
St. Paul, Minnesota 55155
(612) 296-7223

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

The proposed rule amendments, if adopted, will make the Clean Water Partnership Program more effective and more responsive to the needs of local governments that receive grant funds. The three major proposed amendments will modify the grant payment process to prevent financial hardship for project sponsors, will incorporate the resources and concerns of the existing Project Coordination Team into the project selection process, and will more clearly define the criteria used to rank grant applications. The proposed rules are published below. One free copy of the rules is available upon request from Ms. Olson at the address and telephone number stated above.

A STATEMENT OF NEED AND REASONABLENESS that describes the need for and reasonableness of each provision of the proposed rules and identifies the data and information relied upon to support the proposed rule has been prepared and is available from Ms. Olson upon request.

YOU ARE HEREBY advised, pursuant to *Minnesota Statutes* sec. 14.11 (1990), "Special notice of rulemaking," that the proposed rules will not require the expenditure of public monies by local units of government unless a government elects to participate in the Clean Water Partnership Program and the proposed rules will not have any direct adverse effects on agricultural lands in the state. In areas where projects are conducted, agricultural lands will continue to be improved by best management practices, which are a requirement of the program. You are also advised, pursuant to 14.115 (1990), "Small business considerations in rulemaking," that the proposed rules will have only positive effects on small businesses. Small businesses will continue to benefit from contracts provided by the sponsors of Clean Water Partnership projects.

If no hearing is required, upon adoption of the rule amendments, 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 Ms. Olson.

Charles Williams
Commissioner

Rules as Proposed

7076.0110 DEFINITIONS.

Subpart 1. **Scope.** The terms used in parts 7076.0100 to 7076.0290 have the meanings given them in *Minnesota Statutes*, ~~chapters 115 and~~ chapter 116, and rules adopted under ~~those chapters~~ that chapter and the meanings given them in this part. If terms defined in this part conflict with the definitions in *Minnesota Statutes*, ~~chapters 115 and~~ chapter 116 and the rules adopted under ~~those chapters~~ that chapter, the definitions in this part govern.

[For text of subp 2, see M.R.]

Subp. 3. **Best management practices.** "Best management practices" has the meaning given it in *Minnesota Statutes*, section ~~115.093~~ 103F.711, subdivision 3.

[For text of subp 4, see M.R.]

Subp. 5. [See repealer.]

[For text of subp 6, see M.R.]

Subp. 7. **Local unit of government.** "Local unit of government" has the meaning given it in *Minnesota Statutes*, section ~~115.093~~ 103F.711, subdivision 5.

Subp. 8. **Local water plan.** "Local water plan" means a comprehensive water plan authorized under *Minnesota Statutes*, chapter ~~110B~~ 103B; a surface water management plan required under *Minnesota Statutes*, section ~~473.878~~ 103B.231; or an overall plan required under *Minnesota Statutes*, chapter ~~112; or until July 1, 1991, any other local plan that provides an inventory of existing physical and hydrologic information on the area, a general identification of water quality problems and goals, and that demonstrates a local commitment to water quality protection or improvement~~ 103D, that has been approved by the Board of Water and Soil Resources.

Subp. 9. **Nonpoint source.** "Nonpoint source" has the meaning given it in *Minnesota Statutes*, section ~~115.093~~ 103F.711, subdivision 6.

Subp. 10. **Official controls.** "Official controls" has the meaning given it in *Minnesota Statutes*, section ~~115.093~~ 103F.711, subdivision 7.

Subp. 11. [See repealer.]

Subp. 12. **Project.** "Project" has the meaning given it in *Minnesota Statutes*, section ~~115.093~~ 103F.711, subdivision 8.

Subp. 13. **Project area.** "Project area" means the area identified as hydrologically contributing to the water of concern for which the diagnostic study and implementation plan are ~~developed~~ prepared and implemented.

Subp. 14. **Project continuation grant amendment.** "Project continuation grant amendment" means an amendment to an existing project implementation grant to provide funds to continue implementation of activities identified in an approved diagnostic study and implementation plan that were not funded or partially funded in the initial project implementation grant.

Subp. 15. **Project coordination team.** "Project coordination team" means the public interagency group established in *Minnesota Statutes*, section ~~115.103, subdivision 1~~ 103F.761.

Subp. 16. [See repealer.]

Subp. 17. [See repealer.]

[For text of subps 18 to 20, see M.R.]

Subp. 20a. **Resource investigation.** "Resource investigation" means the preparation of a diagnostic study and implementation plan.

Subp. 20b. **Resource investigation grant.** "Resource investigation grant" means a grant from the agency to the project sponsor for the preparation of a diagnostic study and implementation plan.

[For text of subps 21 to 23, see M.R.]

Subp. 24. **Work plan.** "Work plan" means a document prepared by a project sponsor that describes in detail the work activities to be undertaken by the sponsor to fulfill the requirements of *Minnesota Statutes*, sections 103F.701 to 103F.761, and of parts 7076.0100 to 7076.0290. A work plan is approved by the commissioner and includes the items required under part 7076.0230.

7076.0120 AVAILABLE ASSISTANCE.

Subpart 1. **Financial assistance.** There are two types of grants available for nonpoint source projects: (1) ~~project development~~ resource investigation grants, and (2) project implementation grants. The grants are for a maximum of 50 percent of the eligible cost of the project. Grants must be awarded, within the limits of available appropriations, to those applicants having the highest priority.

[For text of subp 2, see M.R.]

7076.0130 ELIGIBILITY CRITERIA.

Subpart 1. **Eligible applicants.** Only local units of government are eligible to apply for grants and receive technical assistance. A local unit of government is eligible to apply for state matching grants and request technical assistance if it has the following:

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A. the authority to coordinate and enter into contracts with local, state, and federal agencies and private organizations for the purpose of carrying out a project;

B. the authority to generate cash revenues and in kind contributions for the local share of a project; ~~and~~

C. the authority to adopt, implement, and enforce official controls; and

D. the water of concern is addressed in an approved local water plan.

[For text of subp 2, see M.R.]

Subp. 3. **Ineligible costs.** Ineligible costs include any costs that are not related to the activities in subpart 2. Costs identified under subpart 2 are ineligible if the related project activities are started before the grant contract has been signed by the commissioner of finance. In addition, the following costs are ineligible whether or not they relate to the activities in subpart 2:

[For text of items A to N, see M.R.]

[For text of subp 4, see M.R.]

7076.0140 NOTICE OF GRANT AVAILABILITY.

Subpart 1. **Notice.** The agency will publish in the State Register a notice that applications for ~~project development~~ resource investigation grants and project implementation grants will be accepted whenever the agency determines that funds are available to award the grants. The notice will contain a deadline for application submittal, which must be no less than 60 days from the date of publication.

Subp. 2. **Notification list.** The agency shall maintain a list of those local governmental bodies that wish to be notified of grant application periods. Any local governmental body that wishes to be placed on the list shall notify the agency by writing to the director of the ~~public information office~~ water quality division. Whenever the agency publishes notice in the *State Register*, the agency shall mail notice of the grant application period to those local governmental bodies on the list.

[For text of subp 3, see M.R.]

7076.0150 GRANT APPLICATION.

[For text of subpart 1, see M.R.]

Subp. 2. **~~Project development~~ Resource investigation grant.** An applicant submitting an application for a ~~project development~~ resource investigation grant must submit the following information:

A. a resolution by the local unit of government that will be the project sponsor, authorizing the filing of the application and designating an official authorized to execute the grant application~~, the grant contract, and other related project documents~~;

B. written documentation that the project sponsor has consulted with soil and water conservation districts and watershed districts in the project area, in preparing the grant application;

C. identification of local units of government, agencies, and organizations that will be involved in ~~project development~~ resource investigation;

D. ~~resolutions~~ letters of support from each participating local unit of government, agency, and organization which ~~identifies~~ identify their role in ~~project development~~ resource investigation and ~~identification of~~ their contribution to the local share of ~~project development~~ resource investigation costs;

E. the amount of grant funding requested;

F. a list identifying the amount, type, and source of the local share;

G. a preliminary work plan ~~and schedule~~ that ~~contain~~ contains the following:

(1) ~~the identification of each water of the state that will be affected by the~~ project goals and objectives;

(2) a ~~description~~ statement of ~~the~~ existing ~~or potential surface and ground~~ water quality conditions and problems ~~that are to be addressed in the project~~;

(3) ~~a~~ identification and summary of work plan ~~listing the~~ activities that the grant would make possible; ~~and~~

(4) a schedule ~~containing milestones for project development~~ of work plan activities;

(5) a preliminary monitoring plan; and

(6) a preliminary work plan budget; and

H. ~~a local water plan that provides an inventory of existing physical and hydrologic information on the project area, a general identification of water quality problems, and goals for resource use, and demonstrates a local commitment to water quality protection or improvements; and~~

~~I.~~ documents required by state or federal statutes, rules, and regulations.

Subp. 3. **Project implementation grant.** An applicant submitting an application for a project implementation grant shall submit the following information:

A. a resolution by the local unit of government that will be the project sponsor, authorizing the filing of the application and designating an official authorized to execute the grant application~~, the grant contract, and other related project documents~~;

B. written documentation that the project sponsor has consulted with soil and water conservation districts and watershed districts in the project area, in preparing the grant application;

C. a diagnostic study and implementation plan approved under part 7076.0260, or an equivalent study and plan that addresses the requirements of a diagnostic study and implementation plan and that has been approved under part 7076.0260 and ~~which contains~~ is part of a local water plan ~~that provides an inventory of existing physical and hydrologic information on the project area, a general identification of water quality problems, and goals for resource use, and demonstrates a local commitment to water quality protection or improvements~~;

D. ~~resolutions~~ letters of support from each participating local unit of government, agency, and organization that identify their role in project implementation and their contribution to the local share of project implementation costs;

E. a detailed preliminary work plan and schedule for project implementation during the grant period;

F. a detailed budget for the grant period including the identification of the amount requested in the grant;

G. a list identifying the amount, type, and source of the local share; and

H. ~~a description of the work and the budget for project implementation beyond the grant period, including an indication of whether the project sponsor anticipates applying for a project continuation grant amendment; and~~

~~I.~~ documents required by state or federal statutes, rules, and regulations.

7076.0160 REJECTION OF GRANT APPLICATION.

Subpart 1. **Grounds.** An application for a ~~project development~~ resource investigation grant or a project implementation grant shall be rejected by the commissioner for the following reasons:

A. an ineligible applicant;

B. ineligible costs;

C. a late submittal; or

D. failure to comply with any requirement of statute or rule.

[For text of subp 2, see M.R.]

Subp. 3. **Effect of rejection.** ~~A grant applicant whose application is rejected for a reason other than for late submittal has 14 days from receipt of the notice of rejection to correct any deficiencies, if correction is possible. If the application is corrected within the 14 days, the application must be accepted and the project must be ranked with other approved grant applications. An application that cannot be or is not corrected must not be further considered.~~ A grant applicant whose application is rejected ~~and not corrected~~ must reapply in a subsequent application period ~~in order~~ to be considered for a grant.

7076.0170 PROJECT RANKING.

Subpart 1. **Process of ranking.** Upon completion of the commissioner's review of the grant applications for acceptability, the agency shall rank the acceptable grant applications in order of priority. Each project for which an acceptable grant application has been submitted must be awarded the number of priority points the project is entitled to under subparts 2 and 3. The project with the highest number of priority points will be given the highest priority. All projects will be given a ranking depending on the number of points awarded. The ~~project development~~ resource investigation grant applications must be ranked separately from the project implementation grant applications.

Subp. 2. **Priority points for ~~project development~~ resource investigation grant applications.** The agency and the project coordination team must use the following criteria ~~must be used~~ to determine the number of priority points to be awarded in the evaluation of each ~~project development~~ resource investigation grant application. ~~The agency~~ Each project shall ~~award each project between~~ receive either zero ~~and~~, two and one-half, five, seven and one-half, or ten points under each of the following criteria, depending on

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.

how well the project satisfies the criterion. The number of points awarded under each of the five criterion assigned by the agency and the project coordination team must be added together to determine the project's total point value. This total number must be used to determine the project's overall ranking and priority. ~~The criteria are as follows:~~

A. The criteria for the agency are as follows:

(1) the extent to which the proposed project demonstrates a high potential for project success based on ~~community support and involvement as well as participation, coordination, and cooperation of federal, state, and local agencies and units of government for water quality protection and improvement~~ the level of definition of the preliminary work plan for project goals and objectives, work activities, and project organization and management structure;

~~B.~~ (2) the extent to which the proposed project ~~takes place where local units of government have adopted and implemented authorities or official controls to abate or prevent water pollution from nonpoint sources~~ demonstrates effective and efficient use of state financial resources based on the proposed budget and work plan;

~~C.~~ (3) the extent to which the water of concern is identified as a priority water in the local water plan;

~~D.~~ (4) the ~~extent to which the proposed project affects waters identified in the statewide resource assessment conducted under *Minnesota Statutes,* section 115.095, as waters that could not be expected to attain or maintain compliance with applicable water quality standards or goals without additional control of nonpoint sources~~ severity of water quality impairment or threat as compared to expectations for the least impacted waters in that ecoregion; and

~~E.~~ (5) the extent ~~to which~~ the proposed project demonstrates ~~a~~ the likelihood of ~~transferability to similar resources;~~ water quality protection or improvement.

~~F.~~ B. The criteria for the project coordination team are as follows:

(1) the extent to which the proposed project ~~is of a size and scale to promote successful project management and water quality protection and improvement~~ demonstrates a high potential for project success based on community support and involvement;

~~G.~~ (2) the ~~priority placed on each project by the project coordination team.~~ extent to which the proposed project includes coordination and cooperation of federal, state, and local agencies and units of government for water quality protection or improvement;

(3) the extent to which the water of concern in the proposed project is of state and regional significance and priority;

(4) the extent to which the proposed project complements the existing efforts of local, state, and federal programs; and

(5) the likelihood that the proposed project will serve as a demonstration for water quality protection or improvement and provide useful information for the geographic area.

Subp. 3. **Priority points for project implementation grant applications.** The agency and the project coordination team must use the following criteria ~~must be used~~ to determine the number of priority points to be awarded in the evaluation of each project implementation grant application. ~~The agency~~ Each project shall ~~award each project between~~ receive either zero ~~and~~, two and one-half, five, seven and one-half, or ten points under each of the following criteria, depending on how well the project satisfies the criterion. The number of points under each of the five criterion assigned by the agency and the project coordination team must be added together to determine the project's total point value. This total number must be used to determine the project's overall ranking and priority. ~~The criteria are as follows:~~

A. The agency criteria are as follows:

(1) the extent to which the proposed project demonstrates a high potential for ~~successful water quality protection and improvement~~ project success based on ~~a comparison of existing water quality and the project's~~ the level of definition of the work plan for project goals and objectives ~~with maximum contaminant levels and recommended allowable limits for drinking water, water quality standards, and regional lake and stream water quality criteria published by the agency, the Minnesota Department of Health, and the United States Environmental Protection Agency,~~ work activities, budget, and project organization and management structure;

~~B.~~ (2) the extent to which the proposed project employs best management practices which provide a technically ~~and economically~~ feasible means to abate or prevent water pollution from nonpoint sources;

~~C.~~ (3) the extent to which the proposed project ~~maximizes~~ implementation activities will result in water quality protection or improvement ~~relative to the cost of project implementation~~;

~~D.~~ (4) the extent to which the proposed project ~~goals and objectives are consistent with state management plans and other applicable state and federal resource management programs~~ maximizes water quality protection or improvement relative to the cost of project implementation; and

~~E.~~ (5) the extent to which the proposed project demonstrates a high potential for project success based on ~~community support and involvement as well as participation, coordination, and cooperation of federal, state, and local agencies and units of government for water quality protection and improvement;~~ capability, organization, and authority to carry out the identified activities.

~~F.~~ B. The project coordination team criteria are as follows:

(1) the extent to which the proposed project demonstrates a ~~significant degree of transferability to similar local units of government~~ high potential for project success based on community support and involvement; ~~and~~

~~G.~~ (2) the ~~priority placed on each project by the project coordination team.~~ extent to which the proposed project includes coordination and cooperation of federal, state, and local agencies and units of government for water quality protection or improvement;

(3) the extent to which the water of concern in the proposed project is of state and regional significance and priority;

(4) the extent to which the proposed project indicates a commitment to official controls, programs, and activities that are a long-term commitment to water quality protection or improvement; and

(5) the likelihood that the proposed project will serve as a demonstration of water quality protection or improvement and provide useful information for the geographic area.

Subp. 4. **Project coordination team.** The project coordination team has 60 days from the close of the application period to assign points to each project seeking a grant. In the event that the project coordination team fails to assign points to all projects with approved grant applications, the projects must be ranked without considering any points under the category for the project coordination team. ~~The project coordination team must use the criteria established in *Minnesota Statutes*, section 115.098, to assign points to each project seeking a grant.~~

7076.0180 ALLOCATION OF FUNDING.

Subpart 1. **Project continuation grant amendments.** Each year ~~by March 1~~, the agency shall determine how much of the available funds will be set aside to meet that year's anticipated requests for project continuation grant amendments. If the agency subsequently determines that the amount set aside for project continuation grant amendments is more than is required for grant amendments in that year, the agency may reallocate this money to other ~~project development~~ resource investigation grants and project implementation grants or carry over the money to another grant application period.

Subp. 2. **Grant fund allocation.** Within 90 days of the close of an application period, the agency shall determine how much of the remaining funds, after setting aside funds for project continuation grant amendments, will be made available for ~~project development~~ resource investigation and project implementation grant awards. In deciding how much money to make available for new grant awards, the agency shall consider the necessity to have money available for subsequent grant periods, the necessity to have money available for anticipated project continuation grant amendments in the next year, and other factors relating to the agency's ability to ensure that money will be available for upcoming projects.

Subp. 3. ~~**Development**~~ **Resource investigation; project implementation split.** Within 90 days of the close of an application period, the agency shall determine how much of the funds available for new grants in that application period will be available for ~~project development~~ resource investigation and project implementation grants. In determining the allocation of funds between ~~project development~~ resource investigation and project implementation grants, the agency shall consider:

A. the availability and conditions for use of federal funds; and

B. the phasing in and continuity of projects in the program.

If the money intended for ~~project development~~ resource investigation or project implementation grants, or both, is not awarded during a grant period, the agency may reallocate the funds to the other kind of grant or to a subsequent grant period.

7076.0190 SELECTION OF PROJECTS FOR GRANT AWARD.

Subpart 1. **Ranking.** The agency shall complete its ranking of all projects for which an acceptable grant application has been submitted within 90 days of the close of the application period. The agency shall rank ~~development projects~~ resource investigation separately from implementation projects.

Subp. 2. **Projects funded.** The agency shall select those projects that will be awarded grant funds by awarding grants to the highest priority ~~project development~~ resource investigation and project implementation applications within the limits of available funds established under part 7076.0180, subpart 2. A project that receives less than ~~40~~ 50 points will not be considered for award of grant funds.

[For text of subps 3 to 5, see M.R.]

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7076.0200 PROJECT CONTINUATION GRANT AMENDMENT.

[For text of subpart 1, see M.R.]

Subp. 2. **Request.** A project sponsor who seeks a project continuation grant amendment shall submit a request for the grant amendment in June of the calendar year that the activities funded through the initial project implementation grant will be completed and additional funds will be required to continue project implementation. The request must be submitted on a form provided by the agency ~~and may be submitted at any time during the calendar year the funds will be needed~~. A project sponsor who fails to submit a request for a project continuation grant amendment in June of the calendar year the funds are required forfeits the right to an amendment. That project sponsor may apply in a subsequent grant period to continue the project and compete with other applicants for a project implementation grant.

Subp. 3. **Approval.** Subject to the availability of funds, the agency shall approve the project sponsor's request for a project continuation grant amendment if it meets the following conditions:

A. the project sponsor has satisfied the terms and conditions of the grant to date; and

B. the project sponsor has identified the source of the local share of funds necessary for the project continuation grant amendment.

7076.0210 GRANT CONDITIONS.

Subpart 1. **Amount.** A grant that is made must be for the amount requested by the applicant, up to a maximum of 50 percent of the eligible cost of ~~project development~~ resource investigation or project implementation.

Subp. 2. **Grant period.** The grant period for a ~~project development~~ resource investigation grant will be for ~~a period of two~~ up to three years. The grant period for a project implementation grant will be for a period of three years and may be extended up to an additional three years with agency approval of a request for a project continuation grant amendment ~~in accordance with~~ according to part 7076.0200.

Subp. 3. **Grant contract.** The project sponsor must enter into a grant contract with the agency ~~before a~~ to receive grant ~~will be awarded~~ funds. The grant contract must include the provisions in part 7076.0220.

Subp. 4. **Records.** The project sponsor shall maintain all records relating to the receipt and expenditure of grant funds for ~~a period of~~ at least three years from the date of termination of the grant contract. Records relating to the installation, operation, and maintenance of best management practices shall be maintained for three years beyond the design or useful life, whichever is longer.

[For text of subps 5 and 6, see M.R.]

Subp. 7. ~~Mid-year~~ **Quarterly update.** ~~The project sponsor shall give the commissioner a mid-year update by August 1 of~~ During each year the grant is in effect~~. The mid-year update must include a brief report on~~, the project ~~progress and difficulties encountered in meeting the project schedule~~ sponsor shall prepare for quarterly submittal or presentation to the commissioner an update of project activities and project expenditures.

Subp. 8. ~~Monitoring~~ **Work plan.** The project sponsor shall prepare a work plan according to part 7076.0230 and submit ~~a monitoring plan~~ it to the commissioner ~~within 60 days of the award of the grant~~. The monitoring plan component of the work plan must be reviewed and revised annually and submitted to the commissioner by ~~January 31. The monitoring plan must comply with part 7076.0230~~ February 1 of each year during the project period of the grant contract.

Subp. 9. **Diagnostic study and implementation plan.** The project sponsor for a ~~project development~~ resource investigation grant shall submit to the commissioner before the final grant payment is made a diagnostic study and implementation plan that meets the requirements of parts 7076.0240 and 7076.0250.

Subp. 10. **Eligible costs.** No grant funds shall be ~~used~~ provided to ~~reimburse~~ the project sponsor for ~~costs incurred~~ grant eligible project activities started before the grant contract period or after the end of the contract period.

7076.0220 GRANT CONTRACT.

Subpart 1. **Contents.** The agency and the project sponsor shall enter into a grant contract. The grant contract must:

A. establish the terms and conditions of the grant;

B. provide that the project sponsor may enter into contracts, under terms and conditions specified by the agency, to complete the work specified in the contract;

C. provide that ~~the~~ cost overruns are the sole responsibility of the project sponsor;

D. require that the project sponsor submit periodic progress reports and a final report to the agency in a format prescribed by the agency; and

E. incorporate terms and conditions required by federal or state statutes, rules, and regulations.

Subp. 2. **Amendments.** A grant contract may be amended upon agreement of the agency and the project sponsor. Grant increase amendments shall be subject to the availability of funds.

Subp. 3. **Contract period.** Grant contracts for ~~project development~~ resource investigation will be for ~~a period of~~ up to ~~two~~ three years. Grant contracts for project implementation will be for ~~a period of~~ up to six years. The agency may allow a one year extension of either of these grant contracts.

7076.0230 ~~MONITORING~~ WORK PLAN.

Subpart 1. **Requirements.** The ~~monitoring~~ work plan required to be submitted to the commissioner, in a format specified by the commissioner, as a condition of the grant must include the requirements in item A for resource investigation grants and the requirements in item B for project implementation grants.

A. For resource investigation grants, the sponsor shall prepare and submit a detailed work plan that includes the following:

(1) a description of the water of concern, the project area, and the existing and desired resource uses;

(2) a description of existing and suspected or potential water quality problems;

(3) a description of specified goals for project results, for water quality characterization and quantitative analysis research and assessment, and for citizen education;

(4) an outline that identifies specific tasks to be completed during the project, including the tasks needed to fulfill the requirements under parts 7076.0240 and 7076.0250, the individuals responsible for the tasks, and the dates for task initiation and completion;

(5) a monitoring plan as described in subpart 1a;

(6) a list of predictive and diagnostic computer or statistically based models that are to be used for the project and a description and statistical definition of predictive and diagnostic uncertainties;

(7) a quality assurance plan for data gathering and analyzing;

(8) detailed budgets; and

(9) a resolution from each participating local unit of government, agency, and organization that identifies their role in the project and their contribution to the local share of the project costs.

B. For project implementation grants, the sponsor shall prepare and submit a detailed work plan that includes any necessary revisions to the approved implementation plan and the following:

(1) a revised activity schedule for implementation activities;

(2) a revised implementation budget;

(3) a quality assurance plan for construction activities;

(4) a best management practice operation and maintenance plan;

(5) a monitoring plan as required in subpart 1a that has been revised to evaluate the effectiveness of best management practices and the improvement of water quality;

(6) a list of predictive and diagnostic computer or statistically based models that are to be used for the project and a description and statistical definition of predictive and diagnostic uncertainties;

(7) permits and authorities for implementation activities; and

(8) a resolution from each participating local unit of government, agency, and organization that identifies their role in the project and their contribution to the local share of the project costs.

Subp. 1a. **Monitoring plan.** A monitoring plan is a component of the work plan. For both resource investigation and project implementation grants, the sponsor shall prepare a monitoring plan that:

A. ~~identify and provide~~ develops monitoring objectives based on project goals;

B. defines the information needs for water quality monitoring;

C. defines the statistical methods needed to address the monitoring objectives;

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D. sets the data requirements that are to be met for meaningful statistical analysis to be completed;

E. delineates and provides rationale for the selection of monitoring sites, ~~monitoring~~ frequency, ~~and~~ parameters ~~to be monitored;~~, and sampling protocols;

~~B. identify~~ F. identifies laboratories that will ~~do~~ be doing analyses ~~and explain~~ for the project, explains their quality assurance and quality control procedures, and provides the certification number assigned by the Department of Health to prove the laboratories are fulfilling the requirements under chapter 4740; and

G. outlines a plan to analyze monitoring data and to use the data to assess the project area, water and pollutant loading, and alternative best management practices.

Subp. 2. **Review.** The commissioner will review the ~~monitoring~~ work plan and approve it or identify deficiencies in writing within 45 days of its receipt. ~~The project sponsor shall have 15 days to correct any deficiencies.~~

Subp. 3. [See repealer.]

7076.0240 DIAGNOSTIC STUDY.

Subpart 1. **General requirements.** The diagnostic study required to be submitted by a project sponsor under part 7076.0210, subpart 9, must include:

A. a detailed description of the water of concern;

B. a detailed description of the project area;

C. an analysis and assessment of the data and information collected as a requirement of subparts 2 and 3; and

D. the identification and documentation of the methods, procedures, ~~model~~ predictive and diagnostic models, and other tools used to prepare and complete the diagnostic study.

Subp. 1a. **Exemption.** Upon written request from the project sponsor, the agency may allow an exemption from a specific diagnostic study requirement that does not provide data or information useful for diagnosis of the problem or solutions.

Subp. 2. **Description of water of concern.** The diagnostic study must contain a detailed description of the water of concern that includes:

[For text of items A and B, see M.R.]

C. current data or information for the following:

(1) if the water of concern is a lake, the description shall include the following:

[For text of unit (a), see M.R.]

(b) measurement of dissolved oxygen, total phosphorus, dissolved inorganic phosphorus, total Kjeldahl nitrogen, total nitrogen, nitrite plus nitrate nitrogen, total suspended solids, total alkalinity, chloride concentrations, color, pH, and conductivity; determination of mass loadings of total phosphorus, total Kjeldahl nitrogen, and total suspended solids from major tributaries and completion of a nutrient ~~and sediment budgets~~ budget for the lake;

[For text of units (c) and (d), see M.R.]

[For text of subitem (2), see M.R.]

(3) if the water of concern is an aquifer, the description shall include the following:

(a) identification or measurement of the aquifer physical type, size, temperature, porosity, saturated thickness, recharge sources, discharge sources transmissivity, hydraulic residence time, range of hydraulic gradients, and underlying lithology and stratigraphy;

[For text of units (b) to (d), see M.R.]

[For text of subitem (4), see M.R.]

Subp. 3. **Description of project area.** The diagnostic study must contain a detailed description of the project area that includes:

A. a map of the project area at a scale appropriate to the project;

[For text of items B to I, see M.R.]

J. land use:

[For text of subitems (1) to (13), see M.R.]

(14) wetlands identified under the National Wetlands Inventory, an inventory of drained wetlands, and a summary of applicable management plans;

[For text of subitems (15) to (21), see M.R.]

(22) population characteristics; ~~and~~

(23) a summary of recreational land uses;

(24) a list of bulk pesticide and fertilizer handling facilities;

(25) a list of commercial and industrial facilities with on-site hazardous materials or wastes;

(26) a list of transportation corridors such as railroads, pipelines, and highways;

(27) a list of operating wells whose construction or maintenance may cause them to serve as conduits for contaminations to recharge groundwater; and

(28) a summary of other potential sources of groundwater contamination;

[For text of item K, see M.R.]

L. hydrology:

[For text of subitems (1) to (4), see M.R.]

(5) a description of wells covered by state appropriation permits including location, amounts of water appropriated, type of use, ~~and~~ aquifer source, and amount of water used;

[For text of subitems (6) and (7), see M.R.]

[For text of subp 4, see M.R.]

Subp. 5. [See repealer.]

7076.0280 GRANT PAYMENTS.

Subpart 1. **~~Reimbursement~~ Initial payment.** ~~The project sponsor may submit a request for reimbursement of expenditures for each of the standard calendar quarters ending March 31, June 30, September 30, and December 31. The agency shall pay the reimbursement within 45 days of the request if the grantee is in compliance with conditions of the grant contract and requirements of parts 7076.0100 to 7076.0290.~~ After the commissioner of finance has signed the grant contract between the agency and the project sponsor, the agency shall provide to the project sponsor 25 percent of the grant award provided in the grant contract.

Subp. 2. **~~Final~~ Second payment.** ~~The agency shall withhold reimbursement on the final ten percent of the grant contract amount until the agency is satisfied that the project has been completed in accordance with the terms of the grant contract and parts 7076.0100 to 7076.0290.~~ Upon written approval by the commissioner of the work plan required under part 7076.0210, subpart 8, the agency shall provide to the project sponsor 35 percent of the grant award provided in the grant contract. The cumulative assistance paid to the project sponsor shall equal 60 percent of the grant award.

Subp. 3. **~~Withholding of reimbursement~~ Project review and budget adjustment.** ~~The agency shall withhold reimbursement if the project sponsor has failed to comply with any requirements of the grant contract or parts 7076.0100 to 7076.0290. The funds will not be released until the agency determines that the project sponsor has corrected the deficiencies causing noncompliance.~~ Upon expenditure of 50 percent of total eligible project costs by the project sponsor, the project sponsor shall submit to the commissioner for review and approval a detailed summary of project expenditures and completed work activities. The commissioner shall review the summary to verify cost eligibility and acceptable completion of work plan activities and to compare actual expenditures with the approved project work plan budget.

Subp. 4. **~~Advance~~ Third payment.** ~~The project sponsor may submit a request for an advance of grant funds after the commissioner approves the project monitoring plan. The advance is limited to ten percent of the grant award or $50,000, whichever amount is less.~~ After the requirements of subpart 3 have been met, the agency shall provide to the project sponsor up to 30 percent of the grant award. The payment shall be less than 30 percent of the grant award to compensate for the final payment withholding required under subpart 6.

Subp. 5. **Payment adjustment upon grant contract amendment.** When the total grant assistance amount authorized for a project is increased by a grant contract amendment, the agency shall pay the project sponsor the additional amount of grant assistance that the project sponsor is entitled to receive under subparts 1 to 4.

Subp. 6. **Final payment.** The agency shall withhold a minimum of ten percent of the grant award until the agency is satisfied that

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the project has been completed according to the terms of the grant contract and parts 7076.0100 to 7076.0290. More than ten percent of the grant award shall be withheld if the costs necessary to complete the project are less than those identified in the grant contract. Ten percent of the grant award shall be withheld if the costs necessary to complete the project are equal to or exceed the costs identified in the grant contract.

Subp. 7. **Payment option.** Project sponsors that received grant awards before October 1, 1990, may have the grant payment conditions specified under subparts 1 to 6 or have grant payments made on a reimbursement basis. If reimbursements are desired, a project sponsor shall submit a written request for this option to the commissioner. Reimbursement payments shall be made according to items A to C.

A. The project sponsor may submit a request for reimbursement of expenditures for each of the standard calendar quarters ending March 31, June 30, September 30, and December 31. The agency shall pay the reimbursement within 45 days of the request if the grantee is in compliance with conditions of the grant contract and requirements of parts 7076.0100 to 7076.0290.

B. The agency shall withhold reimbursement on the final ten percent of the grant contract amount until the agency is satisfied that the project has been completed according to the terms of the grant contract and parts 7076.0100 to 7076.0290.

C. The agency shall withhold reimbursement if the project sponsor has failed to comply with any requirements of the grant contract or parts 7076.0100 to 7076.0290. The funds may not be released until the agency determines that the project sponsor has corrected the deficiencies causing noncompliance.

REPEALER. *Minnesota Rules*, parts 7076.0110, subparts 5, 11, 16, and 17; 7076.0230, subpart 3; and 7076.0240, subpart 5, are repealed.

Department of Public Safety

Office of Pipeline Safety

Proposed Permanent Rules Relating to One Call Excavation Notice System Enforcement and Sanctions

Notice of Intent to Adopt Rules Without a Public Hearing and Notice of Intent to Adopt Rules With a Public Hearing if Twenty-five or More Persons Request a Hearing

NOTICE IS HEREBY GIVEN that the State Department of Public Safety proposes to adopt the above-entitled rule without a public hearing following the procedures set forth in *Minnesota Statutes*, sections 14.22 to 14.28. The statutory authority to adopt the rule is *Minnesota Statutes*, section 216D.08, subdivision 4; sections 299F.56 to 299F.641; and section 14.06.

Persons interested in this rule will 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 and 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. **PLEASE NOTE: That if twenty-five or more persons submit written requests for a public hearing within the 30-day comment period, a hearing will be held on June 26, 1991, unless a sufficient number withdraw their request. The hearing will be in accordance with the notice of public hearing on this same rule published in this *State Register* and mailed to persons registered with the Department of Public Safety.** To verify whether a hearing will be held, please call the Department of Public Safety, Office of Pipeline Safety, on or after May 30, 1991, between the hours of 8:00 a.m. and 4:30 p.m. at (612) 296-9636.

Persons who wish to submit comments or a written request for a public hearing must submit such comments or requests to: Brian Pierzina, Office of Pipeline Safety, 175 Aurora Avenue, St. Paul, MN 55103, (612) 296-9636.

Comments or requests for a public hearing must be received by the Department by 4:30 p.m. on May 29, 1991.

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

A free copy of this rule is available on request for your review from Brian Pierzina at the address and telephone number listed above.

STATE OF MINNESOTA
POLLUTION CONTROL AGENCY

In the Matter of the
Proposed Rule Amendments
Governing the Administration
of the Clean Water Partnership
Program, Minn. Rules Ch. 7076

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 Minn. Rules ch. 2010 have been followed. For Attorney General billing purposes, the four-digit docket client code is .0703.

Stephen A. Shakman
Special Assistant
Attorney General

In the Matter of the
Proposed Rule Amendments
Governing the Administration
of the Clean Water Partnership
Program, Minn. Rules Ch. 7076

STATEMENT OF NEED AND
REASONABLENESS
March 15, 1991

I. INTRODUCTION

The subject of this proceeding is the amendment of the rules of the Minnesota Pollution Control Agency (hereinafter "Agency") that govern the Clean Water Partnership Program (hereinafter "CWPP"). The CWPP is established under Minn. Stat. §§ 103F.701 to 103F.761 (recodified from 115.091 to 115.103 in 1990). Minn. Rules ch. 7076 are for the administration of the CWPP.

The goal of the CWPP is to protect state surface and ground waters from nonpoint source pollution, which is caused by land management and land use activities that contribute to water degradation as a result of runoff, seepage or percolation. The program provides financial and technical assistance to local governments to help them develop and implement projects that will protect or restore bodies of water in their areas. The program offers grants that require local governments to match the funds received from the Agency.

Proposed amendments are being made to provide program administration that better serve local governments conducting Clean Water Partnership projects, to more efficiently use staff time, to provide more state-wide input into the project selection process, and to clarify administrative procedures.

Background:

The CWPP was passed by the Legislature in 1987. The Agency Board adopted permanent rules to implement the program on June 28, 1988, and approved amendments required by the Attorney General on August 23, 1988. The program has been in operation nearly three years. During this time, 30 projects have collectively been awarded $2,632,000 in financial assistance.

Amendments are being proposed based on information gathered during the first years of program administration and the comments and opinions received by the Agency during a period of solicitation for outside information that was noticed in the State Register on December 17, 1990, (15 S.R. 1409) and ended on January 14, 1991. Two oral and eight written comments were received from local governments and consultants who are currently involved in funded Clean Water Partnership projects or who had unsuccessfully submitted an application.

This document contains the Agency's affirmative presentation of facts on the need for and the reasonableness of the proposed amendments. Section II identifies the Agency's statutory authority for rulemaking. Section III describes the need for amendments to rules. Section IV describes the reasonableness of the proposed amendments. Section V describes the Agency's consideration of small businesses in this rulemaking. Section VI describes the Agency's consideration of economic factors in this rulemaking.

II. STATEMENT OF AGENCY'S STATUTORY AUTHORITY

The Agency's statutory authority to adopt the rules is set forth in Minn. Stat. § 103F.745 (1990), which provides:

> The Agency shall adopt rules necessary to implement sections 103F.701 to 103F.761 (Clean Water Partnership).
>
> The rules shall contain at a minimum:
>
> (1) procedures to be followed by local units of government in applying for technical or financial assistance or both;
> (2) conditions for the administration of assistance;
> (3) procedures for the development, evaluation, and implementation of best management practices;
> (4) requirements for a diagnostic study and implementation plan;
> (5) criteria for the evaluation and approval of a diagnostic study and implementation plan;
> (6) criteria for the evaluation of best management practices;

(7) criteria for the ranking of projects in order of priority for assistance;
(8) criteria for defining and evaluating eligible costs and cost-sharing by local units of government applying for assistance; and
(9) other matters as the agency and the commissioner find necessary for the proper administration of sections 103F.701 to 103F.761, including any rules determined by the commissioner to be necessary for the implementation of federal programs to control nonpoint source water pollution.

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

III. STATEMENT OF NEED

Minn. Stat. ch. 14 (1990) 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 has come to mean that the solution proposed by the Agency is appropriate. The need for the rules amendments is discussed below.

The three major reasons for the proposed amendments are the need to modify the grant payment process to prevent financial hardship for project sponsors, the need to further incorporate in the project selection process the water quality resources and concerns of the organizations represented on the project coordination team, and the need to define the criteria used to rank grant applications more clearly.

Proposed amendments will change the grant payment process from a reimbursement process to a prepayment process. Clean Water Partnership projects are managed by a representative of the sponsoring local government. The existing payment process sends grant funds to the project sponsor after costs have been incurred and documented, the project manager has requested reimbursement from the Agency and Agency staff has reviewed the payment request and associated costs. This process creates a time lag between when payment is due from the sponsoring local government and grant funds are received by the sponsor. Comments received during the December 17, 1990 solicitation period described financial hardships caused by such funding delays. The proposed changes would provide 25, 35 and 30 percent of awarded grant funds to the project sponsor upon the completion of specific work products, but before associated project activities would be started. The proposed changes are needed to allow the Agency to provide grant funds to the project managers before project costs are incurred and to eliminate the financial hardship associated with the existing reimbursement grant-payment system.

Proposed amendments will divide application evaluation criteria and ranking points equally between the Agency and the Project Coordination team. The Project Coordination Team contains representatives from other state, federal and private organizations concerned with water quality issues. Membership is determined by Minn. Stat. § 103F.761. A grant application and the corresponding proposed water protection or restoration project is awarded priority points based on criteria established in the rules. The higher the point total for an application the higher its priority to receive grant funds.

Under the existing system, the Project Coordination Team's application rating is based on 10 of the 70 potential points. The Agency's rating is based on the remaining 60 points. The Project Coordination Team has valuable experience and resources concerning resource management, and water quality projects and issues. The proposed changes are needed to better utilize these resources and expertise when funding decisions are made.

Proposed amendments will provide new criteria for the Agency and the Project Coordination Team to use to evaluate proposed Clean Water Partnership projects and to rank grant applications for funding. Existing criteria are unclear to potential applicants, who rely on the criteria when developing a grant application. Comments received during the solicitation period for information state that the existing criteria provide little insight into how an application or proposed project would be judged and requested that the criteria be clarified. The proposed changes are needed to respond to these comments and to provide criteria that are more specific, easier to interpret, and provide a better basis for uniform evaluation.

Additional amendments are needed to revise the administrative process for the CWPP based on experience gained during the first years of administration to make the process more efficient and effective and to provide the Agency with information that is needed to assess a proposed project and its progress during implementation more accurately.

IV. STATEMENT OF REASONABLENESS

The Agency is required by Minn. Stat. ch. 14 to make an affirmative presentation of facts establishing the reasonableness of the proposed rules. Reasonableness is the opposite of arbitrariness or capriciousness. It means that there is a rational basis for the Agency's proposed action. The reasonableness of the proposed rules is discussed below.

A. Reasonableness of the Rules as a Whole:

The proposed rules are reasonable because they do not impose any additional burden onto program participants, but instead serve to improve the program for them by making the rules easier to understand and by solving existing problems, such as delayed payments, delayed grant awards and inadequate time allowances for project completion. The proposed rules that change the Agency's administration are also reasonable because they improve the efficiency and effectiveness of the CWPP.

B. Reasonableness of Individual Rules:

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

Part 7076.0110 Definitions

Subpart 5. Land occupier.

The Agency proposes to delete this subpart and the definition "land occupier." This is reasonable because the term "land occupier" is not used anywhere else in the chapter.

Subpart 8. Local water plan.

The Agency proposes to delete language that describes an alternative to the plans described under Minn. Stat. chs. 110B and 112 and section 473.878 and proposes to add language that requires the local water plans to be approved by the Board of Water and Soil Resources. These changes are reasonable because, by statute, a local unit of government must have developed a local water plan that meets the requirements under the above cited statutes by July 1, 1991 to be eligible to apply for CWPP. Since the Board of Water and Soil Resources (BWSR) is responsible for reviewing and approving these plans, it is also reasonable to only accept the plans approved by the BWSR for the Clean Water Partnership Program.

Subpart 11. Person.

The Agency proposed to delete this subpart and the definition "person." This proposal is reasonable because the term "person" is not used any where else in the chapter.

Subpart 13. Project Area.

The Agency proposes to change the word "developed" to the word "prepared" because "prepared" is a better descriptive word for the activities conducted under the proposed resource investigation grant for the study and the plan. This is reasonable because it improves the definition.

Subpart 14. Project continuation grant amendment.

The Agency proposes to add the words "or partially funded" to the definition. The words are needed to clarify that the costs of project activities that were started under the project implementation grant contract, but were not fully paid for under that contract, are eligible to receive grant funds under the amendment. This change is reasonable because it improves the definition by clarifying which costs are eligible under the continuation grant amendment.

Subpart 16. Project Development.

The Agency proposes to change the "project development" phase of the project to "resource investigation." Due to this proposed name change, the Agency proposes to delete this subpart. See subpart 20a for a discussion of reasonableness.

Subpart 17. Project development grant.

The Agency proposes to change the name of the "project development grant" to the "resource investigation grant." Due to this proposed name change, the Agency proposes to delete this subpart. See subpart 20a for a discussion of reasonableness.

Subpart 20a. Resource investigation.

The existing rules have two project phases, project development and project implementation, and two corresponding grants. The Agency has received complaints from rule readers and program participants that these names are too confusing because of their visual and auditory similarities. The Agency proposes to change "project development" to "resource investigation" in response to these complaints. The requirements for resource investigation will remain as they were under the title of "project development." The name change is reasonable because the proposed name accurately reflects the goal of the project--to investigate the water quality resource to determine the best means of protection or recovery--and the change makes the rules easier for readers and program participants to comprehend. This wording change is proposed for the entire chapter.

Subpart 20b. Resource investigation grant.

See subpart 20a for a discussion of terminology change and correlating reasonableness.

Subpart 24. Work plan.

The Agency proposes to add a new definition for "work plan." The definition is needed to define the work plan proposed to be added under part 7076.0230. The proposal is reasonable because it provides clarification of a proposed program requirement.

Part 7076.0120 Available Assistance.

Subpart 1. Financial assistance.

The Agency proposes changing the words "project development" to "resource investigation." See Part 7076.0110, subpart 20a for a discussion of the reasonableness.

Part 7076.0130 Eligibility Criteria.

Subpart 1. Eligible applicants.

The Agency proposes to add a new application eligibility requirement under item D. This requirement specifies that "the water of concern is addressed in an approved local water plan." This proposal is reasonable because it corresponds with Minn. Stat. § 103F.731, subd. 2, paragraph a, clause (3), which limits eligibility to receive assistance after July 1, 1991, to proposed projects that are part of or responsive to a local water plan. The requirement for local water planning is currently part of the application requirements under part 7076.0150, subparts 2, item H. Since the July 1, 1991, deadline will pass by the time the rule is adopted, the Agency proposes deleting the application language and making the plan a requirement under this part.

Subpart 3. Ineligible costs.

The Agency proposes to add the clarification that eligible costs become ineligible if the related project activities are started before the date the grant contract has been signed by the commissioner of the Finance Department. State policies require the commissioner of Finance to be the last to sign such an agreement. The grant contract identifies the conditions that must be met before grant funds can be paid for eligible project costs. It is reasonable to have all parties agree to the grant payment conditions before costs are incurred. This signature requirement is reasonable because it ensures that conditions of construction, management, environmental testing, etc. that are specified in the contract have been met by the project sponsor. Agency review and site inspections do not begin prior to the signing of the grant contract

and, therefore, staff could not ensure that payment conditions have been met for work done prior to this date. This restriction also helps define eligible costs, which is an Agency requirement under Minn. Stat. § 103F.745.

Part 7076.0140 Notice of grant availability.

Subpart 1. Notice.

The Agency proposes changing the words "project development" to "resource investigation." See Part 7076.0110, subpart 20a for a discussion of reasonableness.

Subpart 2. Notification list.

The Agency proposes to change the list for notifying local governments interested in learning when grant applications will be accepted by the Agency from the list kept by the Public Information Office Director to the list kept by the Water Quality Division Director. The list kept by the Public Information Office is too general for the notification purposes of this program. This proposal is reasonable because the list kept by the Water Quality Division will only contain names of representatives from local governments that desire application and funding information and will eliminate wasted postage expenses. Mailing information for local governments interested in the CWPP that is currently on the Public Information Office list will be transferred to the Water Quality Division list.

Part 7076.0150 Grant application.

Subpart 2. Project development.

The Agency proposes to change the words "project development" to the words "resource investigation." See part 7076.0110, subpart 20a for a discussion of the reasonableness.

Additional changes are proposed for items A, C, D, G, H and I under this subpart.

Item A requires a resolution from the local government sponsoring the project, which authorizes filing the application and designates an authorized official. The Agency proposes to eliminate the requirements for the resolution that would authorize the official to execute the grant contract and other related documents. This proposal is reasonable because it simplifies the resolution and the authorization proposed to be eliminated is not needed with the grant application.

Under item C, the Agency proposes to add "local units of government" to the list of organizations that must be identified on the grant application as being active in the project. This is reasonable because it completes the list of potential project supporters and clarifies what information must be included on the application.

Under item D, the Agency proposes to change the application requirement from "resolutions" of sponsorship to "letters of support." Program experience has proven that the formal resolutions, which require an official meeting for approval and signatures, delay the completion of grant applications. The proposed letters would still summarize the organization's level of planned financial participation and involvement, but would be signed by a representative from the organization that is responsible for endorsing proposals to use financial, technical and staff resources. This change is reasonable because it eliminates the potential for a grant application to be incomplete by the end of the specified application period and thus eliminates delaying application selection and grant awards. The formal resolutions are proposed to be required after a grant has been awarded, under part 7076.0230, subpart 1, item A(9).

The Agency also proposes to add the words "agency and organization" for the same reasons as explained under item C; to add the words "which identifies their role" to make the rule language uniform with that under subpart 3, item D; and to change "identification of" to "identifies" to maintain proper grammatical tense. These proposals are reasonable because they improve the clarity and readability of the rule.

Under item G, changes are proposed for the work plan that is submitted with the application. The Agency is proposing to call the document a "preliminary" work plan to differentiate it from the work plan proposed under Part 7076.0230. This is reasonable because the information supplied with the application is information gathered before scientific research is conducted at the project site and project planning has been completed. Therefore, the term "preliminary" is appropriate. The schedule is proposed to be made a component of the work plan under subitem 4 and the word "contain" is proposed to be changed to "contains" to maintain proper grammatical tense.

Program experience has identified the information that is the most beneficial to the Agency in helping to determine which projects have been well planned and have the most potential for being a successful project. Changes have been proposed for the subitems to ensure that this preferred information is required by the rules. Subitem 1 is proposed to be changed from requiring the identification of affected water to requiring the identification of project goals and objectives. Subitem 2 is proposed to include a statement of existing water quality conditions with the statement of existing water quality problems. New requirements are proposed for subitem 5, a preliminary monitoring plan, and subitem 6, a preliminary work plan budget. These changes are reasonable because they provide the Agency with a clearer picture of a project sponsor's preparedness and the potential for a project's success.

Word changes are also proposed to clarify the information requirements of subitems 3 and 4.

Item H, which requires a local water plan to be submitted with the grant application, is proposed to be deleted. The requirement for a local water plan was initially made an application requirement instead of an eligibility requirement to provide sponsoring governments time to develop a plan. This is reasonable because the statutory time allowance for developing a water plan ends on July 1, 1991, which will pass by the time the rule amendments are adopted. The local water plan is instead proposed to be an application eligibility requirement under part 7076.0130, subpart 1, item D.

Item I is proposed to be changed to item H. This is reasonable because item H is proposed to be deleted.

Subpart 3. Project implementation grant.

Under item A, which describes the requirements of the resolutions that must be submitted with the grant application, the Agency proposes to delete the words "the grant contract and other related project documents." See subpart 2, item A for a discussion of the reasonableness.

Amendments proposed for item C delete the language that requires the submittal of a local water plan with the application. See subpart 2, item H for a discussion of the reasonableness.

Item D is proposed to be changed from requiring "resolutions" of support to "letters of support" and the addition of "agency and organization." See subpart 2, item D for a discussion of the reasonableness.

The work plan under item E is proposed to be changed to the "preliminary" work plan to differentiate it from the work plan proposed to be required under part 7076.0230. See subpart 2, item G, for a discussion of the reasonableness.

Item H is proposed to be deleted. This change is reasonable because project continuation grant amendment information is not dealt with at the time of applying for the initial implementation grant, but is covered under Part 7076.0200.

Item I is proposed to be changed to item H, which is reasonable because item H is proposed to be deleted.

Part 7076.0160 Rejection of grant application.

Subpart 1. Grounds.

The Agency proposes to change "project development" to "resource investigation." See part 7076.0110, subpart 20a for an explanation of the reasonableness.

Subpart 3. Effect of rejection.

The Agency proposes to eliminate the 14 day period for correcting application deficiencies. This period was initially placed into the rules to allow applications to be submitted without supporting resolutions, which are required under Part 7076.0150, subpart 2, item D and subpart 3, item D, in the existing rules. The correction time allowed more time to schedule government board and committee meetings that were required to develop, approve and sign the resolutions. However, with the Agency's 10 day review period needed to identify application deficiencies and the 14 day correction period, the application review and ranking processes and project starting times were delayed by a month. The Agency has proposed to eliminate these delays by eliminating the application requirement for the resolutions. This change is reasonable because the correction period is obsolete under the proposed amendment that will eliminate the application requirement for resolutions.

The existing 14 day correction period was also being misused.

Part 7076.0170 Project Ranking.

Subpart 1. Process of ranking.

The Agency proposes to change "project development" to "resource investigation." See Part 7076.0110, subpart 20a for an explanation of the reasonableness.

Subpart 2. Priority points for project development grant applications.

The Agency proposes to change "project development" to "resource investigation." See part 7076.0110, subpart 20a for a discussion of reasonableness.

The Agency also proposes amendments that change the priority point system for ranking grant applications in the order of funding priority. The existing rating system is based on 70 potential points with a maximum of 10 points for each of the seven criteria. Evaluation for six of the criteria is done by the Agency. The Project Coordination Team determines the assignment of the final 10 points. Applications can receive between zero and 10 points for each criterion depending on how well it meets the requirements.

The revised point system proposed by the Agency will contain a maximum of 100 points with 10 evaluation criteria. Evaluation criteria and points will be equally divided between the Agency and the Project Coordination Team--50 points and 5 criteria for each. The proposed amendments that will create a priority system that equally divides the priority points between the Agency and the Project Coordination Team are reasonable because they allow the application evaluation to be based on the experience and knowledge of a wide range of environmental organizations rather than the limited resources of the Agency and allow the evaluation to be based on a wider range of environmental concerns.

The revised rating system proposed by the Agency will be based on a segmented rating system of zero, two and a half, five, seven and a half and ten points rather than the continuous one point scale in the existing rules. The proposed segmented scale is reasonable because it does not alter the evaluation, but will make the funding determination easier for the Agency by creating a distinct point variation between the evaluated grant applications after the points have been totaled.

The Agency also proposes to change the evaluation criteria for determining priority points. These proposed changes are reasonable because they provide more specific criteria and a basis for more uniform evaluations. A discussion of each of the criteria proposed for the Agency follows below.

The first criterion is a measure of a project's potential for success based on the project goals and objectives, work activities, and project organization and management structure, which are identified in the preliminary work plan submitted with the application. This is reasonable because the evaluation is directly based on part of the application, which is developed under part 7076.0150, subpart 2, item G, and because project success is directly related to how well a project has been planned and thought out.

The second criterion is a measure of how effectively and efficiently the project will use grant funds. This is reasonable because it ensures that the projects that will provide the greatest water quality improvement or protection for the least amount of grant funds will have the greatest potential of being funded. The Agency wants to ensure that the greatest abatement impact is achieved with the limited amount of CWPP funds.

The third criterion is a measure of the priority that is held by a project's water resource in the local water plan. This is reasonable because the priority ranking done on the local water plan is based on extensive public

opinion and research done by local experts. The higher the priority a body of water holds on the local water plan the higher the expectations for local support and for project success. The local priority is also important when two projects are proposed from the same area that are similar in other respects.

The fourth criterion compares the water quality impairment or threat faced by a project's water resource with the expectations for the least impacted waters in the same ecoregion. It is reasonable to evaluate the severity of a water quality problem by this method because standards for least impacted waters, which are the cleanest waters, create the model for desired water quality within an ecoregion. It is also reasonable to measure how severe the water quality impairment or threat is because this evaluation ensures that projects that will deal with the most severe pollution conditions will be given the highest funding priority.

The fifth criterion is a measure of the potential a project has for protecting or improving the water quality. This is reasonable because the Agency does not want to use limited grant funds on a project that will result in no or minimal water quality improvements.

The existing rules do not specify criteria for the Project Coordination Team. Proposed amendments identify five criteria for the team. This is reasonable because the criteria provide an objective basis for making uniform evaluation decisions. Since the team has influence over 50 points under the proposed priority system instead of just 10 points as under the existing system, specific evaluation criteria are important to the project sponsors submitting applicants and the proceedings of the team. A discussion of each of the criteria proposed for the Project Coordination Team follows below.

The first criterion is a measure of community support and involvement. This is reasonable because project success is directly related to public and private community support and involvement in the project. Since the project will often be dependent on individual land managers changing their land management activities, it is important to have broad community support for the project.

The second criterion is a measure of the coordination and cooperation among federal, state, and local agencies and units of government for water quality protection or improvement. This is reasonable because political boundaries of many governmental units will overlap in the proposed project and project success is directly related to how well these units will cooperate, how much they support the project, and how well project management has been planned. The Project Coordination Team is uniquely qualified to evaluate state and federal cooperation and coordination because they represent state and federal agencies.

The third criterion is a measure of how significant the water of concern for the project is to the state and the geographical region in which it is located. This is reasonable because it ensures that projects that will protect or improve waters of high state and regional concern will receive the highest funding priority. The limitations of available grant funds indicate the need to establish priorities in this manner. The Project Coordination Team is uniquely qualified to conduct this evaluation because it is an interagency group of local, state and federal representatives.

The fourth criterion is a measure of how well the proposed project complements the existing water quality protection and restoration efforts of local, state, and federal programs. This is reasonable because the higher the degree of complement, the higher the degree of government support and the

higher the potential is for project success. The Project Coordination Team is uniquely qualified to conduct this evaluation because it is an interagency group of local, state and federal representatives.

The fifth criterion is a measure of the potential that the proposed project will serve as a demonstration for water quality protection or improvement and provide useful information for its geographic area. This is reasonable because more benefit can be realized from the grant funds if funded projects also provide information that can help other water quality protection efforts within geographic areas.

Subpart 3. Priority points for project implementation grant applications.

The Agency is proposing to revise the priority point system for ranking implementation grant applications for funding. See subpart 2 for an explanation and a discussion of reasonableness.

The Agency is also proposing to change the evaluation criteria for determining priority points. These proposed changes are reasonable because they provide more specific criteria and a basis for more uniform evaluations. Each criterion is proposed to have a maximum point value of 10. A discussion of each of the criteria proposed for the Agency follows below.

The first criterion is a measure of a project's potential for success based on the project goals and objectives, work activities, and project organization and management structure, which are identified in the work plan submitted with the application. This is reasonable because project success is directly related to how well a project has been planned.

The second criterion is a measure of how well the project will use best management practices, which are defined under Minn. Stat. § 103F.711, subd. 3.

This is reasonable because projects that employ best management practices have a greater potential for success. Best management practices are important to the continuation of pollution prevention and abatement over the life of the project.

The third criterion is a measure of the potential a project has for protecting or improving the water quality. This is reasonable because the Agency does not want to use limited grant funds on a project that will result in no or minimal water quality improvements.

The fourth criterion is a measure of how well a project maximizes water quality protection or improvement relative to the cost of the project. This is reasonable because it ensures that the projects that will provide the best water quality improvement or protection for the least amount of grant funds will have the greatest potential of being funded. The Agency wants to ensure that the greatest pollution abatement impact is achieved with the limited amount of CWPP funds.

The fifth criterion is a measure of a project's potential for success based on local capability, organization, and authority to carry out the identified activities. This is reasonable because it ensures that projects that have the local resources required for successful completion will receive greater funding priority. Program experience has shown that even the best planned project can run into problems if a clear definition of organization has not been made; if the local employees, officials or citizens identified to work on the project do not have the skills or equipment necessary to fulfill the required tasks; or if the project does not have proper authorization or authority to get the project done.

The existing rules do not specify criteria for the Project Coordination Team, but instead rely on the broad criteria under Minn. Stat. § 103F.735. Proposed amendments identify five criteria for the team. This is reasonable

because the criteria are based on statutory criteria, but provide a better basis for making uniform evaluation decisions. A discussion of each of the criteria proposed for the Project Coordination Team follows.

The first criterion is a measure of community support and involvement. This is reasonable because project success is directly related to public and private community support and involvement in the project.

The second criterion is a measure of the coordination and cooperation among federal, state, and local agencies and units of government for water quality protection or improvement. This is reasonable because political boundaries of many governmental units will overlap in the proposed project and project success is directly related to how well these units will cooperate, how much they support the project, and how well project management has been planned.

The third criterion is a measure of how significant the project's water of concern is to the state and the geographical region in which it is located. This is reasonable because it ensures that projects that will protect or recover waters of high state and regional concern will receive the highest funding priority. The limitations of available grant funds require this prioritization.

The fourth criterion is a measure of a project's commitment to official controls, programs and activities that are a long term commitment to water quality protection and improvement. These are controls, programs and activities that would eliminate new or different pollution sources from affecting the water of concern. This is reasonable because it ensures that the project goals to protect or improve the water of concern continue to be enforced and met.

The fifth criterion is a measure of the potential that the project will serve as a demonstration for water quality protection or improvement and provide useful information for its geographic area. This is reasonable because more benefit can be realized from the grant funds if funded projects also provide information that can help other water quality protection or improvement efforts.

Subpart 4. Project coordination team.

The Agency proposes to remove the requirement that the Project Coordination Team use the project evaluation criteria established in Minn. Stat. § 103F.735, to assign points to each grant application. This proposed change is reasonable because additional language for specific criteria is proposed under subpart 2, item B, and subpart 3, item B, to take the place of this requirement. The criteria proposed provide more specific points of evaluation and a method for more objective and uniform rating of the applications.

Part 7076.0180 Allocation of funding.

Subpart 1. Project continuation grant amendments.

The Agency proposes to delete the March 1 deadline for the Agency's determination of how much of the available grant funds are to be set aside for project continuation grant amendments for the following fiscal year. This is reasonable because the March 1 deadline does not correspond to the state budget cycle or the newly imposed funding approval process required by the Legislative Commission on Minnesota Resources. State funding allocations are not known until the end of the Legislative session, usually the end of May. Additional time will now be required in the determining the distribution of funds among the grant categories because the Legislative Commission on Minnesota Resources now has to comment on the appropriateness of the distribution proposed by the

Agency. It is reasonable to allow the Agency as much time as it requires to determine the most appropriate distribution of funds among the grant categories. The amount to be set aside for the project continuation grant amendments will still be the first determination made by the Agency.

The Agency also proposes to changing "project development" to "resource investigation." See part 7076.0110, subpart 20a for a discussion of reasonableness.

Subpart 2. Grant fund allocation.

The Agency proposes to change "project development" to "resource investigation." See part 7076.0110, subpart 20a for a discussion of reasonableness.

Subpart 3. Development.

The Agency proposes to change "project development" to "resource investigation." See part 7076.0110, subpart 20a for a discussion of reasonableness.

Part 7076.0190 Selection of projects for grant award.

Subpart 1. Ranking.

The Agency proposes to change "project development" to "resource investigation." See part 7076.0110, subpart 20a for a discussion of reasonableness.

Subpart 2. Projects funded.

The Agency proposes to change "project development" to "resource investigation." See part 7076.0110, subpart 20a for a discussion of reasonableness.

The Agency also proposes to change the number of total points a grant application must receive from the Agency and the Project Coordination Team to be considered for a grant award. The proposed change is from 40 to 50 total

points. The higher number is reasonable because the amendments proposed for the priority ranking system under part 7076.0170 increase the number of potential ranking points from 70 to 100. The total of 50 points is reasonable because a project that cannot acquire half of the points available in the ranking scheme has little potential to be a successful project.

Part 7076.0200 Project continuation grant amendment.

Subpart 2. Request.

The Agency proposes changing the deadline for submitting a request for a project continuation grant amendment. The proposed changes will require project sponsors to submit their requests for amendments by June of the calendar year that the funding is needed to pay for project work. This change is needed to supply the Agency with the information it needs to make an accurate decision as to how much money must be set aside for these amendments. This decision is made before the amounts to be set aside for the other types of grants can be determined. This change is reasonable because it will improve the accuracy of Agency funding decisions and will require the requests be submitted before the beginning of the state fiscal year, which begins July 1, in which the grant awards will be made.

Subpart 3. Approval.

The Agency proposes to add the words "subject to the availability of funds" to the statement that the Agency shall approve requests for project continuation grant amendments. This change is reasonable because requests for amendments can only be approved if grant funds are available. The amount of available grant funds depends on the budget decisions of the Legislature and the Federal Government not the Agency.

Part 7076.0210 Grant conditions.

Subpart 1. Amount.

The Agency proposes to change "project development" to "resource investigation." See part 7076.0110, subpart 20a for a discussion of reasonableness.

Subpart 2. Grant period.

The Agency proposes to change "project development" to "resource investigation." See part 7076.0110, subpart 20a for a discussion of reasonableness.

The Agency is proposes to increase the period for a project sponsor to request resource investigation grant funds from "two" to "up to three years." Agency program administration experience has shown that most project development projects cannot be completed during the existing two year period. Therefore, it is reasonable to allow the projects enough time to complete the project and request the grant funds they have been awarded.

The Agency also proposes to allow variations in the extensions of the grant periods for project implementation projects. This change would cause extensions of project implementation grants from a standard three years extension to any time frame up to three years. Agency program administration has shown that many project implementation projects do not require a three year extension. Therefore, this change is reasonable because it allows the extension to be determined by the needs of the project rather than indiscriminate rule language.

Subpart 3. Grant contract.

The Agency is proposing word changes to clarify the program requirement that a grant contract must be signed by the Agency, the project sponsor, and the commissioner of the Department of Finance before a project will receive

grant funds. Existing rule language is based on grant award, which is a term that has no clear definition in the CWPP. The word changes are needed to remove the ambiguous concept of grant award and clearly identify what is required before an eligible project sponsor can receive grant funds. This clarification is reasonable because it creates no additional burden for project sponsors eligible to receive grant funds.

Subpart 4. Records.

The Agency is proposing to add the requirement that records relating to the installation, operation, and maintenance of best management practices shall be maintained by the project sponsor for either three years beyond the design or useful life of the project, which ever is longer. This requirement is needed to ensure that the information necessary for proper implementation of the best management practices is kept by the project sponsor. The amendment is reasonable because it requires no additional work from the project sponsor, but ensures that the sponsor has the information necessary for proper implementation of the best management practices on hand throughout the life of the project.

Subpart 7. Mid year update.

The Agency is proposing to change the mid year update to a quarterly update of project activities and project expenditures. The quarterly update will be made by the project sponsor and submitted to the Agency commissioner in the form of a written report or a presentation.

Quarterly reports are needed by the Agency to keep staff better informed about project progress and to allow staff the opportunity to monitor project expenditures. The monitoring of project expenditures is more important under the plan proposed under part 7076.0280 to prepay a portion of the grant funds

to the project sponsor because staff will no longer be able to review the eligibility and necessity of project costs before grant funds are issued for them.

The proposed change is reasonable because it ensures that the Agency will be better informed about a project and, as a result, in a better position to provide technical and support assistance as it is needed and ensures that the proposed prepaid grant funds are being spent according to this chapter and the grant contract. The proposed option to deliver the quarterly update as a written report or a presentation provides the flexibility that allows the project sponsor to make the update in the least time consuming format. This option is reasonable because the less formal reporting format offsets the additional work of reporting to the Agency two more times each year.

Subpart 8. Monitoring plan.

The Agency is proposing to change this grant condition to require a work plan instead of a monitoring plan. See part 7076.0230 for a discussion of the reasonableness of this change.

The Agency is proposing to make the submittal requirement for the work plan a grant payment condition, which is proposed under part 7076.0280, instead of continuing the existing deadline under this subpart, which requires the monitoring plan to be submitted to the Commissioner within 60 days of the grant award. Since Agency experience has shown that most monitoring plans could not be produced by the project sponsors within the 60 day time frame, it is reasonable to expect that the more complex work plan will require more preparation time. The proposed change from a fixed date submittal deadline to a payment condition is reasonable because it allows the submittal to be based on the individual preparation needs of each project rather than an

indiscriminate deadline established in the rules. The more complex a project's needs are for research, analysis, and planning the more time that will be required for the completion of the work plan.

The proposed change also allows the project sponsor to receive grant funds to pay costs incurred for the preparation of the work plan before the plan is submitted to the Agency. Under the existing payment process, a project sponsor is not eligible to receive any grant funds until the plan has been submitted, which has created financial hardship for many sponsors. The proposed submittal deadline for the work plan allows the project sponsor to receives 25 percent of the grant award before the plan must be submitted. This is reasonable because the financial hardship currently experienced by many projects will be eliminated. However, the Agency still maintains control over the project to ensure that progress is being made. Additional grant funds will not be paid to the project sponsor until the work plan has been submitted to the Agency and been approved by the Commissioner.

The Agency proposes to change the submittal date for the revised plan from January 31 to February 1. This change will make the plan submittal date the same as the submittal date for the annual report, which is required under Part 7076.0210, subpart 6. This is reasonable because having one instead of two submittal dates is easier for project sponsors to remember and Agency staff to track. This change creates no additional burden on the project sponsor or the Agency.

Subpart 9. Diagnostic study and implementation plan.

The Agency proposes to change "project development" to "resource investigation." See part 7076.0110, subpart 20a for a discussion of reasonableness.

Subpart 10. Eligible costs.

The Agency proposes to change the wording of this subpart to reflect how eligible costs will be determined under the payment amendments proposed under part 7076.0280. This change is reasonable because it removes the language about reimbursements, which is obsolete under the proposed amendments to the payment process, and specifies when eligible costs can be incurred to receive grant funds under the proposed payment process.

Part 7076.0220 Grant contract.

Subpart 2. Amendments.

The Agency proposes adding the sentence "Grant increase amendments shall be subject to the availability of funds." This is reasonable because it does not add additional restrictions for amendments, but clarifies that grant amendments will only be made if grant funds have been set aside for such amendments. Therefore, if a project is eligible for a grant amendment, but no amendment funds are available, the project sponsor is made aware that no grant amendment will be made.

Subpart 3. Contract period.

The Agency is proposing to change "project development" to "resource investigation." See Part 7076.0110, subpart 20a for a discussion of reasonableness.

The Agency is also proposing to increase the contract period by one year for resource investigation grants. Agency experience has shown that most project development projects are not completed within the current two year time allowance, but are usually completed within three years. Contract extensions are currently required to continue the projects. It is reasonable to provide

enough time for project completion and to eliminate the time delays in making grant payments that are caused by processing contract extension paperwork. The longer contract period will make the program run more efficiently.

Part 7076.0230. Monitoring plan.

The Agency proposes to require a work plan instead of the existing monitoring plan. The proposed work plan will include information about all aspects of the project, including monitoring. The work plan will be both a planning tool for the project sponsor and a project progress checklist for the Agency. Requiring the work plan is reasonable because it will ensure the project sponsor has thoroughly planned all parts of the project and it will provide the Agency with a detailed description of existing water quality problems and identify all the activities required to address these problems. Agency experience has shown that staff needs this detailed information to have a complete understanding of a project, to effectively provide technical and support assistance and to effectively monitor project progress.

Subpart 1. Requirements.

The Agency proposes to require the project sponsor to submit the work plan in a format specified by the commissioner. This is reasonable because it will ensure that all the required information is submitted and ensure that the information is submitted in a format that is easily reviewed by staff and easily updated by the project sponsor.

The Agency is also proposing that different information be submitted on the work plans for the proposed resource investigation grants and the project implementation grants. This is reasonable because each grant has different objectives and requires a different level of information detail. The work plan prepared for a resource investigation grant focuses on how to acquire scientific and environmental information that is needed to plan the details of the water

protection or restoration project. The work plan prepared for a project implementation grant includes research information that was gathered during the resource investigation project and focuses on the construction activities that must be done to fulfill the solution plans. A description of the specific work plan requirements follows.

A. For a resource investigation grant, the Agency proposes to require information that identifies the specific project area, identifies specific water quality problems that must be solved by the project and identifies a plan to acquire corresponding environmental and scientific information.

(1) The work plan must describe the body of water that the project will improve or protect, the associated project area and the existing and desired uses of the resources within the project area. This is reasonable because it ensures that the project sponsor has clearly defined these basic components of the project, which are important to establishing the project parameters.

(2) The work plan must describe the existing and suspected or potential water quality problems. This is reasonable because it ensures that the project sponsor has conducted preliminary investigations to identify the basic problems that will have to be addressed by the CWP project and has determined the focus for the work to be done under the resource investigation grant.

(3) The work plan must specify goals for project results, for water quality characterization and quantitative analysis research and assessment, and for citizen education. This is reasonable because it ensures that the project sponsor has planned to include these activities in the resource investigation project and has a means for evaluating the success of related project activities. Evaluation is needed to identify problems that could inhibit the the water quality improvement or protection results of a project.

(4) The work plan must identify specific tasks to be completed during the project, the individuals responsible for fulfilling the tasks and the dates the tasks will be initiated and completed. This is reasonable because it ensures that the project sponsor has developed a detailed plan for completing the resource investigation project that is based on goals established for the project and ensures that the Agency is aware of that plan. Staff must be aware of the sequence of tasks to be performed and their starting and completion dates to adequately monitor project progress. If staff have questions about a project task or if problems occur, it is reasonable for staff to have access to the person that is responsible for that task and should be given his/her related contact information.

(5) The work plan must continue to include the monitoring information required under the existing rules. See subpart 2 for further discussion.

(6) The work plan must contain a list of predictive and diagnostic computer or statistically based models that will be used for the project and a description of related uncertainties. This is reasonable because it ensures the Agency is aware of the computer and statistical modeling that are the basis for project decisions and that staff can provide appropriate guidance or re-evaluation.

(7) The work plan must describe a quality assurance plan for data gathering and analyzing. Quality assurance and quality control are standards for scientific investigation and are important to ensuring that project data and analysis are accurate and beneficial. This requirement is reasonable because it ensures that the project sponsor has adequately planned for the quality assurance of data gathering and analyzing. Agency experience has proven that quality assurance is directly related to project success.

(8) The work plan must include detailed budgets for the project. This is reasonable because it ensures that the project sponsor is aware of funding limits and has made provisions for responsible financial management. It also ensures that the Agency is aware of how the project sponsor plans to spend grant funds and can review the budget to ensure that public funds will be spent in accordance to the rules under this chapter and the project grant contract.

(9) The work plan must include resolutions from each participating local unit of government, agency and organization. The resolutions must specify how each authority will participate in the project and the amount of financial support they will contribute to the project. This support has already been pledged in letters of support, proposed under Part 7076.0150, subpart 2, item D. This is reasonable because the resolutions are a formal commitment to the project sponsor of funds and work resources that are needed to meet the objectives of the project and the conditions of the grant contract.

B. For a project implementation grant, the Agency proposes to require information that is needed to revise the implementation plan submitted with the grant application and that explains how the implementation project will be completed.

(1) The work plan must include necessary revisions to the schedule of implementation activities submitted with the application. This is reasonable because it ensures that the Agency is informed of schedule changes that have resulted from starting the first work activities. The Agency must be informed of these schedule changes to properly monitor project progress and to ensure that the project will meet its goals within a reasonable time frame.

(2) The work plan must include revisions to the implementation budget that was submitted with the application. This is reasonable because it ensures that the project sponsor is tracking incurred project costs and continuing its financial planning and ensures that the Agency is informed of budget changes as project work progresses.

(3) The work plan must include a quality assurance plan for construction activities. This is reasonable because it ensures the success of the project by ensuring construction meets the specifications required for proper project performance.

(4) The work plan must include a plan for operating and maintaining the best management practices for the project. This is reasonable because it ensures that the Agency can review the plan and offer appropriate guidance and re-evaluation and ensures that the the best management practices will be put into practice in a manner that will help control nonpoint source pollution for the life of the project.

(5) The work plan must include the monitoring information required under the existing rules. See subpart 2 for further discussion. The monitoring plan component must also evaluate the effectiveness of best management practices and the improvement of water quality. This is reasonable because it ensures the best management practices are appropriate for the project and ensures that the monitoring data is used to evaluate progress being made by the project.

(6) The work plan must include a list of predictive and diagnostic computer or statistically based models that will be used for the project and a description of related uncertainties. This is reasonable because it ensures the Agency is aware of the computer and statistical modeling that is the basis for project decisions and that staff can provide appropriate guidance or re-evaluation.

(7) The work plan must include copies of permits and authorizations necessary for conducting work in the project area and for project operation and maintenance. This is reasonable because it ensures that the project sponsor has the authority to construct and operate the project.

(8) The work plan must include resolutions from each participating local unit of government, agency and organization. The resolutions must specify how each authority will participate in the project and the amount of financial support they will contribute to the project. This support has already been pledged in letters of support, proposed under Part 7076.0150, subpart 3, item D. This is reasonable because the resolutions are a formal commitment to the project sponsor of funds and work resources that are needed to meet the objectives of the project and the conditions of the grant contract.

Subpart 2. Monitoring plan.

The Agency proposes making the existing monitoring plan a component of the proposed work plan. This is reasonable because monitoring is important to the project and provides vital information. It is also reasonable to have all the work associated with a project included under one plan for the ease of administration. The Agency also proposes to add requirements for the monitoring plan. A discussion of each of the requirements follows.

A. The Agency proposes to reletter the existing item A as item E and reword the item to fit the format established in the language proposed under this subpart. The Agency also proposes adding the requirement to describe and provide rationale for sampling protocols. This is reasonable because it ensures the Agency has a clear understanding of the project sponsors intended sampling plans and the reasons for the chosen plan.

B. The Agency proposes to reletter the existing item B as item F and reword the item to fit the format established in the language proposed under this subpart. The Agency also proposes requiring the submittal of laboratory certification numbers that are assigned by the Department of Health. This is reasonable because it ensures that analysis work for Clean Water Partnership projects is being done at laboratories that are in compliance with Minn. Rules ch. 4740.

The following proposed items are new to the rules.

A. The monitoring plan must develop monitoring objectives based on project goals. This is reasonable because it ensures the project sponsor has identified what it plans to achieve by monitoring, has established a basis for evaluating monitoring alternatives, and will conduct monitoring that produces the data that is needed to fulfill project goals.

B. The monitoring plan must define the information needs for water quality monitoring. The project sponsor will examine project goals and objectives and associated environmental questions to determine what monitoring will have to be done to fulfill the data needs of the project. This is reasonable because it ensures that the information gathered through monitoring is beneficial to the project and ensures that grant funds are not being spent on unnecessary monitoring.

C. The monitoring plan must define the statistical methods needed to address the monitoring objectives. This is reasonable because it ensures that the project sponsor has planned for statistical evaluation of the water of concern, has planned monitoring accordingly, and has identified if additional resources are needed to accurately complete the evaluation.

D. The monitoring plan must set the data requirements that are to be met for meaningful statistical analysis to be completed. The project sponsor will identify the water quality parameters, sampling sites and sampling frequencies that are necessary for statistical analysis. This is reasonable because it ensures monitoring will be conducted for the data that is necessary for a complete, accurate and conclusive statistical analysis.

E. See the discussion under the existing item A above.

F. See the discussion under the existing item B above.

G. The monitoring plan must outline a plan to analyze monitoring data and to use the data to assess the project area, water and pollutant loading and alternative best management practices. This is reasonable because it ensures that the project sponsor will plan to conduct this analysis.

Subpart 2. Review.

The Agency proposes to renumber this subpart to subpart 3. This is reasonable because a new subpart 2 has been proposed. The Agency proposes to change "monitoring plan" to "work plan" in response to a rule amendment that would require a work plan instead of a monitoring plan. See the beginning of this part for a discussion of reasonableness. The Agency also proposes to eliminate the 15 day time period for correcting plan deficiencies currently offered to the project sponsor. This is reasonable because proposed amendments make the correction period obsolete by eliminating the existing 60 day submittal deadline under part 7076.0210, subpart 8, and making it a condition of the second grant payment under part 7076.0280, subpart 2.

Subpart 3. Grant payments.

The Agency proposes to delete this subpart which states that no grant payments shall be paid to a project sponsor after March 31 in any year that a monitoring plan has not been approved. This is reasonable because the

changes proposed under the payment plan make this requirement unnecessary.

Part 7076.0240. Diagnostic study.

Subpart 1. General requirements.

The Agency proposes changing the referenced subpart numbers from subpart 2 to subpart 3 and subpart 3 to subpart 4. This is reasonable because additional proposed amendments under this part change the number order of existing subparts. See subpart 5 for further information. The Agency also proposes to clarify under item D which types of models are to be included in the diagnostic study. It is reasonable to add "predictive and diagnostic models" to this subpart because it clarifies what is required by the rules.

Subpart 2. Description of water of concern.

The Agency proposes to renumber this subpart from 2 to 3 in response to the proposed amendment to renumber subpart 5 to subpart 2. The Agency also proposes to add more specific testing requirements. These include adding a measurement for total nitrogen and to eliminate the requirement for a sediment budget of a lake, under item C, subitem 1 (b) and adding a measurement of porosity for an aquifer under item C, subitem 3 (a). These changes are reasonable because they are environmental measurements that have been proven by Agency experience to be important to accurately analyzing the water quality conditions for a CWP project.

Subpart 3. Description of project area.

The Agency proposes to renumber this subpart from 3 to 4 in response to the proposed amendment to renumber subpart 5 to subpart 2. The Agency also proposes to add standards of project area description and language that more specifically defines existing description requirements. This includes requiring under item A, that the map of the project area in the existing rules be in a scale appropriate to the project; and requiring under item J, an inventory of drained

wetlands under subitem 14, a list of bulk pesticide and fertilizer handling facilities under subitem 24, a list of commercial and industrial facilities with on-site hazardous materials or wastes under subitem 25, a list of transportation corridors under subitem 26, a list of operating wells whose construction or maintenance may cause them to serve as conduits for ground water contamination under subitem 27 and a summary of other potential sources of ground water contamination under subitem 28; and requiring under item L, subitem 5, a measurement of the amount of water used from wells covered by state appropriation permits. These requirements and clarification are reasonable because they identify information that is needed to determine the water quality status for a project's water of concern and to provide information that is vital to identifying potential avenues for ground water contamination.

Subpart 4. Analysis and assessment.

The Agency proposes to renumber this subpart from 4 to 5 in response to the proposed amendment to renumber subpart 5 to subpart 2. Corresponding number changes must be made to references of subpart 2 and subpart 3 made under this subpart.

Subpart 5. Exemption.

The Agency proposes renumbering subpart 5, which states when the Agency will exempt a project sponsor from meeting a diagnostic study requirement listed under this part, to subpart 2. Agency experience with the program has shown that the program participants and rule readers are concerned about this exemption and have a hard time locating it in the rules. It is reasonable to reorder the rules to make them easier to comprehend.

Part 7076.0280. Grant payments.

The Agency is proposing to change the entire grant payment process. The existing process is based on reimbursement of incurred costs. Project sponsors

do not receive grant funds until project costs have been incurred and requested from the Agency and the Agency has reviewed the costs for rule and contract compliance. Program experience has shown that this delay in payment has caused financial hardship for many project sponsors and could have jeopardized the completion of their projects. The Agency proposes to pay 90 percent of eligible grant funds to the project before the corresponding project activities have been started. This is reasonable because it will eliminate the payment delay that is currently causing hardships for CWP projects. Review of grant spending will continue to be monitored by the staff to ensure that funds are spent in accordance with this chapter and the conditions established in the grant contract. Agency experience has shown that local governments are capable of making responsible financial management and payment decisions.

Subpart 1. Reimbursement.

The Agency proposes to change this subpart to "initial payment" instead of "reimbursement" and to allow the Agency to provide the project sponsor 25 percent of the grant award once the grant contract has been signed by the project sponsor, the Agency and the Commissioner of the Department of Finance. This is reasonable because grant payment will be made before project activities have been initiated. No grant eligible project activities can be started until after the Commissioner of Finance has signed the grant contract, according to language proposed under Part 7076.0130, subpart 3 and Part 7076.0220, subpart 2.

Subpart 2. Final payment.

The Agency proposes to renumber subpart 2 to be subpart 6 in response to the proposed creation of a new subpart 2. See subpart 6 for a discussion of the changes proposed to the existing subpart 2.

Subpart 2. Second payment.

The Agency proposes to add a new subpart to describe the conditions for the second grant payment. The Agency proposes to pay the project sponsor 35 percent of the grant award, in addition to the 25 percent paid under subpart 1, after the Commissioner has approved, in writing, the work plan submitted by the project sponsor and required under Part 7076.0210, subpart 8. This is reasonable because it creates a submittal deadline for the work plan, allows the Agency to review the plan to ensure all components of the project have been properly planned, and provides additional grant funds to the project sponsor prior to the starting of the corresponding project activities.

Subpart 3. Withholding of reimbursement.

The Agency proposes to delete the existing language of this subpart. This is reasonable because it is obsolete under the proposed prepayment grant process. The Agency proposes to head this subpart "Project review and budget adjustments" and to add language that describes the Agency review and grant budget adjustment conditions for the proposed payment process.

The Agency proposes to require the project sponsor to submit a detailed summary of project expenditures and completed work activities for the CWP project when 50 percent of the total eligible project costs have been incurred by the project sponsor. This is reasonable because the Agency must be allowed to review the project to ensure that costs being paid with grant funds are eligible for such payment and that work on the project is meeting Agency expectations and schedule deadlines. At this time the work plan budget will be revised by the Agency to reflect incurred costs that were less than the amount budgeted. This is done to ensure that the project sponsor does not receive grant funds in excess of eligible costs.

Subpart 4. Advance.

The Agency proposes to delete the existing language of this subpart. This is reasonable because it is obsolete under the proposed prepayment grant process. The Agency proposes to head this subpart "third payment" and to add language that describes the conditions for the third grant payment to the project sponsor. The Agency proposes to pay the project sponsor a maximum of an additional 30 percent of the grant award after the Commissioner has approved the detailed summary of project expenditures and completed work activities required under subpart 3. This is reasonable because the Agency has been assured that the project is being managed correctly, that grant funds are being spent in accordance with this chapter and the grant contract, and that the project is progressing according to the work plan and activity schedule before additional funds are paid to the project sponsor. Also, this proposal ensures that grant funds continue to be provided to the project manager before the corresponding work activities are to begin.

The Agency also proposes to pay a project sponsor less than 30 percent of the grant award if incurred project costs are less than those identified in the project contract or the costs to complete the project are less than the remaining grant funds. This is reasonable because it ensures that the project sponsor does not receive overpayment of grant funds.

Subpart 5. Payment adjustment upon grant contract amendment.

The Agency proposes to allow grant increases by amending the grant contract. Grant amendments are allowed when amendment funds are available, when the requested cost increases are not the result of negligent project management or costs that exceed those currently being charged on the open market for the trade, when the work is a vital part of the project, and when all the contract

parties agree the amendment is necessary. This is reasonable because it ensures a funded project will be completed, but that government grant funds will not be misused.

The Agency proposes to pay the increased amount as the original grant was paid, in accordance with subparts 1 to 4. This is reasonable because it ensures easier payment tracking for Agency staff.

Subpart 6. Final payment.

This subpart has been renumbered from subpart 2 in the existing rules. The Agency proposes to delete all language under this subpart that directly relates to the existing reimbursement grant payment process. This is reasonable because it is obsolete under the proposed prepayment process.

The Agency is also proposing to withhold more than 10 percent of the grant award if the costs for completing the project are less than those identified in the grant contract. This additional withholding will usually be the result of incurred project costs that were lower than those estimated in the grant contract. This is reasonable because it ensures that the Agency is withholding funds that are needed to pay incurred project costs and that the Agency has adequate financial leverage to ensure the project is completed in accordance with requirements under this chapter and in the grant contract.

Subpart 7. Payment option.

The Agency proposes to offer a payment option to project sponsors that received grant awards before October 1, 1990. Under this option, sponsors of projects that are nearing completion can choose to continue receiving grant payments under the existing reimbursement process or change to the proposed prepayment process. For these projects, accounting, reporting and payment request procedures and negotiated contracts are based on the existing reimbursement process. It is reasonable to allow their sponsors to continue the

payment process they are currently being required to use because it will prevent staff confusion, cost increases and project delays that would result from changing procedures and contracts this late in the project. It is reasonable to allow these project sponsors to change to the proposed prepayment process if they feel this change will benefit the financial status of their projects. It is also reasonable to limit this option to project sponsors that received grant awards before October 1, 1990, because the reimbursement process will not create additional financial hardship for projects near completion, but there is a high risk of financial hardship developing under the reimbursement process for project sponsors that are in the first phases of their projects. See the discussion under this part for an explanation of the benefits of the proposed prepayment process.

V. CONSIDERATION OF IMPACTS ON EXPENDITURES OF PUBLIC MONIES BY LOCAL PUBLIC BODIES, AGRICULTURAL LAND, AND SMALL BUSINESS

A. Expenditures of Public Monies by Local Public Bodies (Minn. Stat. § 14.11, subd. 1).

Participation in the Clean Water Partnership Act by local units of government is not mandatory. Adoption of the proposed amendments will not require the expenditure of public monies by local units of government unless a local unit elects to participate in the Clean Water Partnership Program.

B. Agricultural Land (Minn. Stat. § 14.11, subd. 2).

The proposed rule amendments will not have any direct adverse effects on agricultural lands in the state. In areas where projects are conducted, the program will continue to improve agricultural lands because best management practices required under the program have secondary benefits such as improving soil productivity and limiting soil erosion.

C. Small Business (Minn. Stat. § 14.115, subd. 2).

The Clean Water Partnership Program and the proposed amendments has no direct adverse effects on small businesses in the state. Small businesses will continue to benefit from contracts provided by the sponsors of Clean Water Partnership projects.

In proposing the amendments, the Agency has given due consideration to expenditure of public monies by local public bodies, the potential of adverse impact on agricultural land and the potential impact on small businesses. After completing its review, the Agency concludes that the proposed rule amendments have no adverse impact on these categories of concern.

VI. CONSIDERATION OF ECONOMIC FACTORS

In exercising its powers, the Agency is required by Minn. Stat. § 116.06, subd. 6 (1990) to give due consideration to economic factors. The statute provides:

> In exercising all its powers the pollution control agency shall give due consideration to the establishment, maintenance, operation and expansion of business, commerce, trade, industry, traffic, and other economic factors and other materials 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 amendments Minn. Rules ch. 7076, the Agency has given due consideration to available information regarding economic impacts. Under the proposed amendments the Clean Water Partnership continues to be a voluntary program that make no demands on municipalities that do not wish to participate or on commerce in the areas where projects are conducted. Projects will continue to benefit a municipality or local commerce by bringing money into the

area for supplies and work that is needed for project completion. The Agency in considering the economic factors concludes that the proposed rule amendments have a positive economic impact on participating municipalities and associated businesses.

VII. CONCLUSION

Based on the foregoing, the proposed amendments to Minn. Rules ch. 7076 are both needed and reasonable.

dated: 3/21, 1991

Charles W. Williams
Commissioner

STATE OF MINNESOTA
MINNESOTA POLLUTION CONTROL AGENCY

IN THE MATTER OF THE
PROPOSED RULE AMENDMENTS
GOVERNING THE ADMINISTRATION
OF THE CLEAN WATER PARTNERSHIP
PROGRAM, MINN. RULES CH. 7076

FINDINGS OF FACT,
CONCLUSIONS, AND
ORDER OF ADOPTING RULE
AMENDMENTS

The above-entitled matter came on for decision before the Minnesota Pollution Control Agency (Agency) on the 25th day of June, 1991. 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 April 29, 1991, and was sent by mail to all persons on the list maintained by the Agency pursuant to Minnesota Statutes section 14.14, subdivision 1a and 14.22 (1990) on April 23, 1991.

(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.

(4) 3. All persons were given the opportunity to submit comments on the rules for 30 days after notice of proposed rulemaking. The 30 day comment period, as set out in the notice, expired on May 30, 1991.

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

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

6. During the comment period the Agency received two written comments and two oral comments. The Agency finds that no modifications to the proposed rules are justified by these comments.

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

8. The above-captioned rule and amendment are needed and reasonable.

CONCLUSIONS

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

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

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

ORDER

NOW, THEREFORE, IT IS ORDERED, that the attached amendments to Minnesota Rules chapter 7076 governing the Clean Water Partnership Program are adopted pursuant to the authority vested in the Minnesota Pollution Control Agency by Minnesota Statute section 103F.745 (1990).

MINNESOTA POLLUTION CONTROL AGENCY

DATED: 6/28/91

Charles W. Williams
Commissioner

STATE OF MINNESOTA
MINNESOTA POLLUTION CONTROL AGENCY

IN THE MATTER OF THE
PROPOSED RULE AMENDMENTS
GOVERNING THE ADMINISTRATION
OF THE CLEAN WATER PARTNERSHIP
PROGRAM, MINN. RULES CH. 7076

FINDINGS OF FACT,
CONCLUSIONS, AND
ORDER OF ADOPTING RULE
AMENDMENTS

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

8. The above-captioned rule and amendment are needed and reasonable.

CONCLUSIONS

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

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

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

ORDER

NOW, THEREFORE, IT IS ORDERED, that the attached amendments to Minnesota Rules chapter 7076 governing the Clean Water Partnership Program are adopted pursuant to the authority vested in the Minnesota Pollution Control Agency by Minnesota Statute section 103F.745 (1990).

MINNESOTA POLLUTION CONTROL AGENCY

DATED: 6/28/91

Charles W. Williams
Commissioner

CERTIFICATE OF AGENCY'S AUTHORIZING RESOLUTION

I, Charles W. Williams, 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 March, 1991, that a quorum was present at said meeting, that a majority of those present voted for the resolution and that said resolution will be set forth in the minutes of said meeting and has not been rescinded or modified:

> BE IT RESOLVED, that the Commissioner of the Minnesota Pollution Control Agency (Agency) is hereby granted the authority to sign and to give notice of the Agency's intent to adopt, without a public hearing, the attached amendments to rules, Minn. Rules ch. 7076, to all persons who have registered their names with the Agency for that purpose and publish the notice and the rules in the State Register, and to perform any acts incidental thereto, including making any form changes in the rules that the Revisor of Statutes requires the Agency to make in order to obtain the Revisor's certification as required by Minn. Stat. § 14.07, subd. 2 (1990).
>
> BE IT FURTHER RESOLVED, that in the event a public hearing becomes necessary, the Commissioner is hereby granted the authority and directed to call a hearing for the purpose of promulgating said rules as well as to perform any and all acts incidental thereto, including but not limited to signing an Order for and Notice of Hearing, as well as acting as the Agency's representative at all hearings.

IN WITNESS WHEREOF, I have hereunto subscribed my name this 27th, day of March, 1991.

CHARLES W. WILLIAMS
Commissioner

Pollution Control Agency

Proposed Permanent Rules Relating to Clean Water Partnership Grants

Rules as Proposed

7076.0110 DEFINITIONS.

Subpart 1. **Scope.** The terms used in parts 7076.0100 to 7076.0290 have the meanings given them in Minnesota Statutes, ~~chapters 115 and~~ chapter 116, and rules adopted under ~~those chapters~~ that chapter and the meanings given them in this part. If terms defined in this part conflict with the definitions in Minnesota Statutes, ~~chapters 115 and~~ chapter 116 and the rules adopted under ~~those chapters~~ that chapter, the definitions in this part govern.

[For text of subp 2, see M.R.]

Subp. 3. **Best management practices.** "Best management practices" has the meaning given it in Minnesota Statutes, section ~~115.093~~ 103F.711, subdivision 3.

[For text of subp 4, see M.R.]

Subp. 5. [See repealer.]

[For text of subp 6, see M.R.]

Subp. 7. **Local unit of government.** "Local unit of government" has the meaning given it in Minnesota Statutes, section ~~115.093~~ 103F.711, subdivision 5.

Subp. 8. **Local water plan.** "Local water plan" means a comprehensive water plan authorized under Minnesota Statutes, chapter ~~110B~~ 103B; a surface water management plan required under Minnesota Statutes, section ~~473.878~~ 103B.231; or an overall plan required under Minnesota Statutes, chapter ~~112, or until July 1, 1991, any other local plan that provides an inventory of existing physical and hydrologic information on the area, a general identification of water quality problems and goals, and that demonstrates a local commitment to water quality protection or improvement~~ 103D, that has been approved by the

Approved by Revisor

Board of Water and Soil Resources.

Subp. 9. **Nonpoint source.** "Nonpoint source" has the meaning given it in Minnesota Statutes, section ~~115.093~~ 103F.711, subdivision 6.

Subp. 10. **Official controls.** "Official controls" has the meaning given it in Minnesota Statutes, section ~~115.093~~ 103F.711, subdivision 7.

Subp. 11. [See repealer.]

Subp. 12. **Project.** "Project" has the meaning given it in Minnesota Statutes, section ~~115.093~~ 103F.711, subdivision 8.

Subp. 13. **Project area.** "Project area" means the area identified as hydrologically contributing to the water of concern for which the diagnostic study and implementation plan are ~~developed~~ prepared and implemented.

Subp. 14. **Project continuation grant amendment.** "Project continuation grant amendment" means an amendment to an existing project implementation grant to provide funds to continue implementation of activities identified in an approved diagnostic study and implementation plan that were not funded or partially funded in the initial project implementation grant.

Subp. 15. **Project coordination team.** "Project coordination team" means the public interagency group established in Minnesota Statutes, section ~~115.103, subdivision~~ 1 103F.761.

Subp. 16. [See repealer.]

Subp. 17. [See repealer.]

[For text of subps 18 to 20, see M.R.]

Subp. 20a. **Resource investigation.** "Resource investigation" means the preparation of a diagnostic study and implementation plan.

Subp. 20b. **Resource investigation grant.** "Resource investigation grant" means a grant from the agency to the project sponsor for the preparation of a diagnostic study and implementation plan.

[For text of subps 21 to 23, see M.R.]

Subp. 24. **Work plan.** "Work plan" means a document

Approved by Revisor _____

prepared by a project sponsor that describes in detail the work activities to be undertaken by the sponsor to fulfill the requirements of Minnesota Statutes, sections 103F.701 to 103F.761, and of parts 7076.0100 to 7076.0290. A work plan is approved by the commissioner and includes the items required under part 7076.0230.

7076.0120 AVAILABLE ASSISTANCE.

Subpart 1. **Financial assistance.** There are two types of grants available for nonpoint source projects: (1) ~~project development~~ resource investigation grants, and (2) project implementation grants. The grants are for a maximum of 50 percent of the eligible cost of the project. Grants must be awarded, within the limits of available appropriations, to those applicants having the highest priority.

[For text of subp 2, see M.R.]

7076.0130 ELIGIBILITY CRITERIA.

Subpart 1. **Eligible applicants.** Only local units of government are eligible to apply for grants and receive technical assistance. A local unit of government is eligible to apply for state matching grants and request technical assistance if it has the following:

A. the authority to coordinate and enter into contracts with local, state, and federal agencies and private organizations for the purpose of carrying out a project;

B. the authority to generate cash revenues and in kind contributions for the local share of a project; ~~and~~

C. the authority to adopt, implement, and enforce official controls; and

D. the water of concern is addressed in an approved local water plan.

[For text of subp 2, see M.R.]

Subp. 3. **Ineligible costs.** Ineligible costs include any costs that are not related to the activities in subpart 2. Costs identified under subpart 2 are ineligible if the related project activities are started before the grant contract

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has been signed by the commissioner of finance. In addition, the following costs are ineligible whether or not they relate to the activities in subpart 2:

[For text of items A to N, see M.R.]

[For text of subp 4, see M.R.]

7076.0140 NOTICE OF GRANT AVAILABILITY.

Subpart 1. **Notice.** The agency will publish in the State Register a notice that applications for ~~project-development~~ resource investigation grants and project implementation grants will be accepted whenever the agency determines that funds are available to award the grants. The notice will contain a deadline for application submittal, which must be no less than 60 days from the date of publication.

Subp. 2. **Notification list.** The agency shall maintain a list of those local governmental bodies that wish to be notified of grant application periods. Any local governmental body that wishes to be placed on the list shall notify the agency by writing to the director of the ~~public-information-office~~ water quality division. Whenever the agency publishes notice in the State Register, the agency shall mail notice of the grant application period to those local governmental bodies on the list.

[For text of subp 3, see M.R.]

7076.0150 GRANT APPLICATION.

[For text of subpart 1, see M.R.]

Subp. 2. **~~Project-development~~ Resource investigation grant.** An applicant submitting an application for a ~~project-development~~ resource investigation grant must submit the following information:

A. a resolution by the local unit of government that will be the project sponsor, authorizing the filing of the application and designating an official authorized to execute the grant application~~,-the-grant-contract,-and-other-related project-documents~~;

B. written documentation that the project sponsor has

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consulted with soil and water conservation districts and watershed districts in the project area, in preparing the grant application;

C. identification of local units of government, agencies, and organizations that will be involved in ~~project development~~ resource investigation;

D. ~~resolutions~~ letters of support from each participating local unit of government, agency, and organization which ~~identifies~~ identify their role in ~~project development~~ resource investigation and ~~identification of~~ their contribution to the local share of ~~project development~~ resource investigation costs;

E. the amount of grant funding requested;

F. a list identifying the amount, type, and source of the local share;

G. a preliminary work plan ~~and schedule~~ that ~~contain~~ contains the following:

(1) ~~the identification of each water of the state that will be affected by the~~ project goals and objectives;

(2) a ~~description~~ statement of ~~the~~ existing ~~or potential surface and ground~~ water quality conditions and problems ~~that are to be addressed in the project~~;

(3) ~~a~~ identification and summary of work plan ~~listing the~~ activities that the grant would make possible; ~~and~~

(4) a schedule ~~containing milestones for project development~~ of work plan activities;

(5) a preliminary monitoring plan; and

(6) a preliminary work plan budget; and

H. ~~a local water plan that provides an inventory of existing physical and hydrologic information on the project area, a general identification of water quality problems, and goals for resource use, and demonstrates a local commitment to water quality protection or improvements; and~~

~~I.~~ documents required by state or federal statutes, rules, and regulations.

Subp. 3. **Project implementation grant.** An applicant

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submitting an application for a project implementation grant shall submit the following information:

A. a resolution by the local unit of government that will be the project sponsor, authorizing the filing of the application and designating an official authorized to execute the grant application~~, the grant contract, and other related project documents~~;

B. written documentation that the project sponsor has consulted with soil and water conservation districts and watershed districts in the project area, in preparing the grant application;

C. a diagnostic study and implementation plan approved under part 7076.0260, or an equivalent study and plan that addresses the requirements of a diagnostic study and implementation plan and that has been approved under part 7076.0260 and ~~which contains~~ is part of a local water plan ~~that provides an inventory of existing physical and hydrologic information on the project area, a general identification of water quality problems, and goals for resource use, and demonstrates a local commitment to water quality protection or improvements~~;

D. ~~resolutions~~ letters of support from each participating local unit of government, agency, and organization that identify their role in project implementation and their contribution to the local share of project implementation costs;

E. a detailed preliminary work plan and schedule for project implementation during the grant period;

F. a detailed budget for the grant period including the identification of the amount requested in the grant;

G. a list identifying the amount, type, and source of the local share; and

H. ~~a description of the work and the budget for project implementation beyond the grant period, including an indication of whether the project sponsor anticipates applying for a project continuation grant amendment, and~~

~~I.~~ documents required by state or federal statutes,

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rules, and regulations.

7076.0160 REJECTION OF GRANT APPLICATION.

Subpart 1. **Grounds.** An application for a ~~project development~~ resource investigation grant or a project implementation grant shall be rejected by the commissioner for the following reasons:

A. an ineligible applicant;

B. ineligible costs;

C. a late submittal; or

D. failure to comply with any requirement of statute or rule.

[For text of subp 2, see M.R.]

Subp. 3. **Effect of rejection.** ~~A grant applicant whose application is rejected for a reason other than for late submittal has 14 days from receipt of the notice of rejection to correct any deficiencies, if correction is possible. If the application is corrected within the 14 days, the application must be accepted and the project must be ranked with other approved grant applications. An application that cannot be or is not corrected must not be further considered.~~ A grant applicant whose application is rejected ~~and not corrected~~ must reapply in a subsequent application period ~~in order~~ to be considered for a grant.

7076.0170 PROJECT RANKING.

Subpart 1. **Process of ranking.** Upon completion of the commissioner's review of the grant applications for acceptability, the agency shall rank the acceptable grant applications in order of priority. Each project for which an acceptable grant application has been submitted must be awarded the number of priority points the project is entitled to under subparts 2 and 3. The project with the highest number of priority points will be given the highest priority. All projects will be given a ranking depending on the number of points awarded. The ~~project development~~ resource investigation grant applications must be ranked separately from the project

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implementation grant applications.

Subp. 2. **Priority points for ~~project-development~~ resource investigation grant applications.** The agency and the project coordination team must use the following criteria ~~must be used~~ to determine the number of priority points to be awarded in the evaluation of each ~~project-development~~ resource investigation grant application. ~~The agency~~ Each project shall ~~award each project between~~ receive either zero ~~and~~, two and one-half, five, seven and one-half, or ten points under each of the following criteria, depending on how well the project satisfies the criterion. The number of points awarded under each of the five criterion assigned by the agency and the project coordination team must be added together to determine the project's total point value. This total number must be used to determine the project's overall ranking and priority. ~~The criteria are as follows:~~

A. The criteria for the agency are as follows:

(1) the extent to which the proposed project demonstrates a high potential for project success based on ~~community support and involvement as well as participation, coordination, and cooperation of federal, state, and local agencies and units of government for water quality protection and improvement~~ the level of definition of the preliminary work plan for project goals and objectives, work activities, and project organization and management structure;

~~B.~~ (2) the extent to which the proposed project ~~takes place where local units of government have adopted and implemented authorities or official controls to abate or prevent water pollution from nonpoint sources~~ demonstrates effective and efficient use of state financial resources based on the proposed budget and work plan;

~~C.~~ (3) the extent to which the water of concern is identified as a priority water in the local water plan;

~~D.~~ (4) the ~~extent to which the proposed project affects waters identified in the statewide resource assessment conducted under Minnesota Statutes, section 115.095, as waters~~

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~~that could not be expected to attain or maintain compliance with applicable water quality standards or goals without additional control of nonpoint sources~~ severity of water quality impairment or threat as compared to expectations for the least impacted waters in that ecoregion; and

~~E.~~ (5) the extent ~~to which~~ the proposed project demonstrates ~~a~~ the likelihood of ~~transferability to similar resources;~~ water quality protection or improvement.

~~F.~~ B. The criteria for the project coordination team are as follows:

(1) the extent to which the proposed project ~~is of a size and scale to promote successful project management and water quality protection and improvement~~ demonstrates a high potential for project success based on community support and involvement; ~~and~~

~~G.~~ (2) the ~~priority placed on each project by the project coordination team.~~ extent to which the proposed project includes coordination and cooperation of federal, state, and local agencies and units of government for water quality protection or improvement;

(3) the extent to which the water of concern in the proposed project is of state and regional significance and priority;

(4) the extent to which the proposed project complements the existing efforts of local, state, and federal programs; and

(5) the likelihood that the proposed project will serve as a demonstration for water quality protection or improvement and provide useful information for the geographic area.

Subp. 3. **Priority points for project implementation grant applications.** The agency and the project coordination team must use the following criteria ~~must be used~~ to determine the number of priority points to be awarded in the evaluation of each project implementation grant application. ~~The agency~~ Each project shall ~~award each project between~~ receive either zero

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and, two and one-half, five, seven and one-half, or ten points under each of the following criteria, depending on how well the project satisfies the criterion. The number of points under each of the five criterion assigned by the agency and the project coordination team must be added together to determine the project's total point value. This total number must be used to determine the project's overall ranking and priority. The criteria are as follows:

A. The agency criteria are as follows:

(1) the extent to which the proposed project demonstrates a high potential for successful water quality protection and improvement project success based on a comparison of existing water quality and the project's the level of definition of the work plan for project goals and objectives with maximum contaminant levels and recommended allowable limits for drinking water, water quality standards, and regional lake and stream water quality criteria published by the agency, the Minnesota Department of Health, and the United States Environmental Protection Agency, work activities, budget, and project organization and management structure;

B. (2) the extent to which the proposed project employs best management practices which provide a technically and economically feasible means to abate or prevent water pollution from nonpoint sources;

C. (3) the extent to which the proposed project maximizes implementation activities will result in water quality protection or improvement relative to the cost of project implementation;

D. (4) the extent to which the proposed project goals and objectives are consistent with state maximizes water quality management plans and other applicable state and federal resource management programs protection or improvement relative to the cost of project implementation; and

E. (5) the extent to which the proposed project demonstrates a high potential for project success based on community support and involvement as well as participation,

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~~coordination,-and-cooperation-of-federal,-state,-and~~ the local ~~agencies-and-units-of-government-for-water-quality-protection and-improvement,~~ capability, organization, and authority to carry out the identified activities.

~~F.~~ B. The project coordination team criteria are as follows:

(1) the extent to which the proposed project demonstrates a ~~significant-degree-of-transferability-to-similar local-units-of-government~~ high potential for project success based on community support and involvement; ~~and~~

~~G.~~ (2) the ~~priority-placed-on-each-project-by-the project-coordination-team.~~ extent to which the proposed project includes coordination and cooperation of federal, state, and local agencies and units of government for water quality protection or improvement;

(3) the extent to which the water of concern in the proposed project is of state and regional significance and priority;

(4) the extent to which the proposed project indicates a commitment to official controls, programs, and activities that are a long-term commitment to water quality protection or improvement; and

(5) the likelihood that the proposed project will serve as a demonstration of water quality protection or improvement and provide useful information for the geographic area.

Subp. 4. **Project coordination team.** The project coordination team has 60 days from the close of the application period to assign points to each project seeking a grant. In the event that the project coordination team fails to assign points to all projects with approved grant applications, the projects must be ranked without considering any points under the category for the project coordination team. ~~The-project-coordination team-must-use-the-criteria-established-in-Minnesota-Statutes, section-115.098,-to-assign-points-to-each-project-seeking-a grant.~~

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7076.0180 ALLOCATION OF FUNDING.

Subpart 1. **Project continuation grant amendments.** Each year ~~by March 1~~, the agency shall determine how much of the available funds will be set aside to meet that year's anticipated requests for project continuation grant amendments. If the agency subsequently determines that the amount set aside for project continuation grant amendments is more than is required for grant amendments in that year, the agency may reallocate this money to other ~~project development~~ resource investigation grants and project implementation grants or carry over the money to another grant application period.

Subp. 2. **Grant fund allocation.** Within 90 days of the close of an application period, the agency shall determine how much of the remaining funds, after setting aside funds for project continuation grant amendments, will be made available for ~~project development~~ resource investigation and project implementation grant awards. In deciding how much money to make available for new grant awards, the agency shall consider the necessity to have money available for subsequent grant periods, the necessity to have money available for anticipated project continuation grant amendments in the next year, and other factors relating to the agency's ability to ensure that money will be available for upcoming projects.

Subp. 3. ~~Development~~ Resource investigation; project **implementation split.** Within 90 days of the close of an application period, the agency shall determine how much of the funds available for new grants in that application period will be available for ~~project development~~ resource investigation and project implementation grants. In determining the allocation of funds between ~~project development~~ resource investigation and project implementation grants, the agency shall consider:

A. the availability and conditions for use of federal funds; and

B. the phasing in and continuity of projects in the program.

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If the money intended for ~~project-development~~ resource investigation or project implementation grants, or both, is not awarded during a grant period, the agency may reallocate the funds to the other kind of grant or to a subsequent grant period.

7076.0190 SELECTION OF PROJECTS FOR GRANT AWARD.

Subpart 1. **Ranking.** The agency shall complete its ranking of all projects for which an acceptable grant application has been submitted within 90 days of the close of the application period. The agency shall rank ~~development-projects~~ resource investigation separately from implementation projects.

Subp. 2. **Projects funded.** The agency shall select those projects that will be awarded grant funds by awarding grants to the highest priority ~~project-development~~ resource investigation and project implementation applications within the limits of available funds established under part 7076.0180, subpart 2. A project that receives less than ~~40~~ 50 points will not be considered for award of grant funds.

[For text of subps 3 to 5, see M.R.]

7076.0200 PROJECT CONTINUATION GRANT AMENDMENT.

[For text of subpart 1, see M.R.]

Subp. 2. **Request.** A project sponsor who seeks a project continuation grant amendment shall submit a request for the grant amendment in June of the calendar year that the activities funded through the initial project implementation grant will be completed and additional funds will be required to continue project implementation. The request must be submitted on a form provided by the agency ~~and may be submitted at any time during the calendar year the funds will be needed~~. A project sponsor who fails to submit a request for a project continuation grant amendment in June of the calendar year the funds are required forfeits the right to an amendment. That project sponsor may apply in a subsequent grant period to continue the project and compete with other applicants for a project implementation grant.

Subp. 3. **Approval.** Subject to the availability of funds, the agency shall approve the project sponsor's request for a

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project continuation grant amendment if it meets the following conditions:

A. the project sponsor has satisfied the terms and conditions of the grant to date; and

B. the project sponsor has identified the source of the local share of funds necessary for the project continuation grant amendment.

7076.0210 GRANT CONDITIONS.

Subpart 1. **Amount.** A grant that is made must be for the amount requested by the applicant, up to a maximum of 50 percent of the eligible cost of ~~project development~~ resource investigation or project implementation.

Subp. 2. **Grant period.** The grant period for a ~~project development~~ resource investigation grant will be for ~~a period of two~~ up to three years. The grant period for a project implementation grant will be for a period of three years and may be extended up to an additional three years with agency approval of a request for a project continuation grant amendment ~~in accordance with~~ according to part 7076.0200.

Subp. 3. **Grant contract.** The project sponsor must enter into a grant contract with the agency ~~before a~~ to receive grant ~~will be awarded~~ funds. The grant contract must include the provisions in part 7076.0220.

Subp. 4. **Records.** The project sponsor shall maintain all records relating to the receipt and expenditure of grant funds for ~~a period of~~ at least three years from the date of termination of the grant contract. Records relating to the installation, operation, and maintenance of best management practices shall be maintained for three years beyond the design or useful life, whichever is longer.

[For text of subps 5 and 6, see M.R.]

Subp. 7. **~~Mid-year~~ Quarterly update.** ~~The project sponsor shall give the commissioner a mid-year update by August 1 of~~ During each year the grant is in effect~~.--The mid-year update must include a brief report on~~, the project ~~progress and~~

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~~difficulties-encountered-in-meeting-the-project-schedule~~ sponsor shall prepare for quarterly submittal or presentation to the commissioner an update of project activities and project expenditures.

Subp. 8. **~~Monitoring~~ Work plan.** The project sponsor shall prepare a work plan according to part 7076.0230 and submit ~~a monitoring plan~~ it to the commissioner ~~within 60 days of the award of the grant~~. The monitoring plan component of the work plan must be reviewed and revised annually and submitted to the commissioner by ~~January 31. The monitoring plan must comply with part 7076.0230~~ February 1 of each year during the project period of the grant contract.

Subp. 9. **Diagnostic study and implementation plan.** The project sponsor for a ~~project development~~ resource investigation grant shall submit to the commissioner before the final grant payment is made a diagnostic study and implementation plan that meets the requirements of parts 7076.0240 and 7076.0250.

Subp. 10. **Eligible costs.** No grant funds shall be ~~used~~ provided to ~~reimburse~~ the project sponsor for ~~costs incurred~~ grant eligible project activities started before the grant contract period or after the end of the contract period.

7076.0220 GRANT CONTRACT.

Subpart 1. **Contents.** The agency and the project sponsor shall enter into a grant contract. The grant contract must:

A. establish the terms and conditions of the grant;

B. provide that the project sponsor may enter into contracts, under terms and conditions specified by the agency, to complete the work specified in the contract;

C. provide that ~~the~~ cost overruns are the sole responsibility of the project sponsor;

D. require that the project sponsor submit periodic progress reports and a final report to the agency in a format prescribed by the agency; and

E. incorporate terms and conditions required by federal or state statutes, rules, and regulations.

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Subp. 2. **Amendments.** A grant contract may be amended upon agreement of the agency and the project sponsor. Grant increase amendments shall be subject to the availability of funds.

Subp. 3. **Contract period.** Grant contracts for ~~project development~~ resource investigation will be for ~~a period of~~ up to ~~two~~ three years. Grant contracts for project implementation will be for ~~a period of~~ up to six years. The agency may allow a one year extension of either of these grant contracts.

7076.0230 ~~MONITORING~~ WORK PLAN.

Subpart 1. **Requirements.** The ~~monitoring~~ work plan required to be submitted to the commissioner, in a format specified by the commissioner, as a condition of the grant must: include the requirements in item A for resource investigation grants and the requirements in item B for project implementation grants.

A. For resource investigation grants, the sponsor shall prepare and submit a detailed work plan that includes the following:

(1) a description of the water of concern, the project area, and the existing and desired resource uses;

(2) a description of existing and suspected or potential water quality problems;

(3) a description of specified goals for project results, for water quality characterization and quantitative analysis research and assessment, and for citizen education;

(4) an outline that identifies specific tasks to be completed during the project, including the tasks needed to fulfill the requirements under parts 7076.0240 and 7076.0250, the individuals responsible for the tasks, and the dates for task initiation and completion;

(5) a monitoring plan as described in subpart 1a;

(6) a list of predictive and diagnostic computer or statistically based models that are to be used for the project and a description and statistical definition of predictive and diagnostic uncertainties;

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(7) a quality assurance plan for data gathering and analyzing;

(8) detailed budgets; and

(9) a resolution from each participating local unit of government, agency, and organization that identifies their role in the project and their contribution to the local share of the project costs.

B. For project implementation grants, the sponsor shall prepare and submit a detailed work plan that includes any necessary revisions to the approved implementation plan and the following:

(1) a revised activity schedule for implementation activities;

(2) a revised implementation budget;

(3) a quality assurance plan for construction activities;

(4) a best management practice operation and maintenance plan;

(5) a monitoring plan as required in subpart 1a that has been revised to evaluate the effectiveness of best management practices and the improvement of water quality;

(6) a list of predictive and diagnostic computer or statistically based models that are to be used for the project and a description and statistical definition of predictive and diagnostic uncertainties;

(7) permits and authorities for implementation activities; and

(8) a resolution from each participating local unit of government, agency, and organization that identifies their role in the project and their contribution to the local share of the project costs.

Subp. 1a. **Monitoring plan.** A monitoring plan is a component of the work plan. For both resource investigation and project implementation grants, the sponsor shall prepare a monitoring plan that:

A. ~~identify and provide~~ develops monitoring

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objectives based on project goals;

B. defines the information needs for water quality monitoring;

C. defines the statistical methods needed to address the monitoring objectives;

D. sets the data requirements that are to be met for meaningful statistical analysis to be completed;

E. delineates and provides rationale for the selection of monitoring sites, ~~monitoring~~ frequency, ~~and~~ parameters ~~to be monitored;~~, and sampling protocols;

~~B.--identify~~ F. identifies laboratories that will ~~do~~ be doing analyses ~~and explain~~ for the project, explains their quality assurance and quality control procedures, and provides the certification number assigned by the Department of Health to prove the laboratories are fulfilling the requirements under chapter 4740; and

G. outlines a plan to analyze monitoring data and to use the data to assess the project area, water and pollutant loading, and alternative best management practices.

Subp. 2. **Review.** The commissioner will review the ~~monitoring~~ work plan and approve it or identify deficiencies in writing within 45 days of its receipt. ~~The project sponsor shall have 15 days to correct any deficiencies.~~

Subp. 3. [See repealer.]

7076.0240 DIAGNOSTIC STUDY.

Subpart 1. **General requirements.** The diagnostic study required to be submitted by a project sponsor under part 7076.0210, subpart 9, must include:

A. a detailed description of the water of concern;

B. a detailed description of the project area;

C. an analysis and assessment of the data and information collected as a requirement of subparts 2 and 3; and

D. the identification and documentation of the methods, procedures, ~~model~~ predictive and diagnostic models, and other tools used to prepare and complete the diagnostic study.

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Subp. 1a. **Exemption.** Upon written request from the project sponsor, the agency may allow an exemption from a specific diagnostic study requirement that does not provide data or information useful for diagnosis of the problem or solutions.

Subp. 2. **Description of water of concern.** The diagnostic study must contain a detailed description of the water of concern that includes:

[For text of items A and B, see M.R.]

C. current data or information for the following:

(1) if the water of concern is a lake, the description shall include the following:

[For text of unit (a), see M.R.]

(b) measurement of dissolved oxygen, total phosphorus, dissolved inorganic phosphorus, total Kjeldahl nitrogen, total nitrogen, nitrite plus nitrate nitrogen, total suspended solids, total alkalinity, chloride concentrations, color, pH, and conductivity; determination of mass loadings of total phosphorus, total Kjeldahl nitrogen, and total suspended solids from major tributaries and completion of a nutrient ~~and sediment-budgets~~ budget for the lake;

[For text of units (c) and (d), see M.R.]

[For text of subitem (2), see M.R.]

(3) if the water of concern is an aquifer, the description shall include the following:

(a) identification or measurement of the aquifer physical type, size, temperature, porosity, saturated thickness, recharge sources, discharge sources transmissivity, hydraulic residence time, range of hydraulic gradients, and underlying lithology and stratigraphy;

[For text of units (b) to (d), see M.R.]

[For text of subitem (4), see M.R.]

Subp. 3. **Description of project area.** The diagnostic study must contain a detailed description of the project area that includes:

A. a map of the project area at a scale appropriate to the project;

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[For text of items B to I, see M.R.]

J. land use:

[For text of subitems (1) to (13), see M.R.]

(14) wetlands identified under the National Wetlands Inventory, an inventory of drained wetlands, and a summary of applicable management plans;

[For text of subitems (15) to (21), see M.R.]

(22) population characteristics; ~~and~~

(23) a summary of recreational land uses;

(24) a list of bulk pesticide and fertilizer handling facilities;

(25) a list of commercial and industrial facilities with on-site hazardous materials or wastes;

(26) a list of transportation corridors such as railroads, pipelines, and highways;

(27) a list of operating wells whose construction or maintenance may cause them to serve as conduits for contaminations to recharge groundwater; and

(28) a summary of other potential sources of groundwater contamination;

[For text of item K, see M.R.]

L. hydrology:

[For text of subitems (1) to (4), see M.R.]

(5) a description of wells covered by state appropriation permits including location, amounts of water appropriated, type of use, ~~and~~ aquifer source, and amount of water used;

[For text of subitems (6) and (7), see M.R.]

[For text of subp 4, see M.R.]

Subp. 5. [See repealer.]

7076.0280 GRANT PAYMENTS.

Subpart 1. ~~Reimbursement~~ Initial payment. ~~The project sponsor may submit a request for reimbursement of expenditures for each of the standard calendar quarters ending March 31, June 30, September 30, and December 31. The agency shall pay the~~

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~~reimbursement-within-45-days-of-the-request-if-the-grantee-is-in compliance-with-conditions-of-the-grant-contract-and requirements-of-parts-7076.0100-to-7076.0290.~~ After the commissioner of finance has signed the grant contract between the agency and the project sponsor, the agency shall provide to the project sponsor 25 percent of the grant award provided in the grant contract.

Subp. 2. ~~**Final**~~ **Second payment.** ~~The-agency-shall-withhold reimbursement-on-the-final-ten-percent-of-the-grant-contract amount-until-the-agency-is-satisfied-that-the-project-has-been completed-in-accordance-with-the-terms-of-the-grant-contract-and parts-7076.0100-to-7076.0290.~~ Upon written approval by the commissioner of the work plan required under part 7076.0210, subpart 8, the agency shall provide to the project sponsor 35 percent of the grant award provided in the grant contract. The cumulative assistance paid to the project sponsor shall equal 60 percent of the grant award.

Subp. 3. ~~**Withholding-of-reimbursement**~~ **Project review and budget adjustment.** ~~The-agency-shall-withhold-reimbursement-if the-project-sponsor-has-failed-to-comply-with-any-requirements of-the-grant-contract-or-parts-7076.0100-to-7076.0290.--The funds-will-not-be-released-until-the-agency-determines-that-the project-sponsor-has-corrected-the-deficiencies-causing noncompliance.~~ Upon expenditure of 50 percent of total eligible project costs by the project sponsor, the project sponsor shall submit to the commissioner for review and approval a detailed summary of project expenditures and completed work activities. The commissioner shall review the summary to verify cost eligibility and acceptable completion of work plan activities and to compare actual expenditures with the approved project work plan budget.

Subp. 4. ~~**Advance**~~ **Third payment.** ~~The-project-sponsor-may submit-a-request-for-an-advance-of-grant-funds-after-the commissioner-approves-the-project-monitoring-plan.--The-advance is-limited-to-ten-percent-of-the-grant-award-or-$50,000, whichever-amount-is-less.~~ After the requirements of subpart 3

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have been met, the agency shall provide to the project sponsor up to 30 percent of the grant award. The payment shall be less than 30 percent of the grant award to compensate for the final payment withholding required under subpart 6.

Subp. 5. **Payment adjustment upon grant contract amendment.** When the total grant assistance amount authorized for a project is increased by a grant contract amendment, the agency shall pay the project sponsor the additional amount of grant assistance that the project sponsor is entitled to receive under subparts 1 to 4.

Subp. 6. **Final payment.** The agency shall withhold a minimum of ten percent of the grant award until the agency is satisfied that the project has been completed according to the terms of the grant contract and parts 7076.0100 to 7076.0290. More than ten percent of the grant award shall be withheld if the costs necessary to complete the project are less than those identified in the grant contract. Ten percent of the grant award shall be withheld if the costs necessary to complete the project are equal to or exceed the costs identified in the grant contract.

Subp. 7. **Payment option.** Project sponsors that received grant awards before October 1, 1990, may have the grant payment conditions specified under subparts 1 to 6 or have grant payments made on a reimbursement basis. If reimbursements are desired, a project sponsor shall submit a written request for this option to the commissioner. Reimbursement payments shall be made according to items A to C.

A. The project sponsor may submit a request for reimbursement of expenditures for each of the standard calendar quarters ending March 31, June 30, September 30, and December 31. The agency shall pay the reimbursement within 45 days of the request if the grantee is in compliance with conditions of the grant contract and requirements of parts 7076.0100 to 7076.0290.

B. The agency shall withhold reimbursement on the final ten percent of the grant contract amount until the agency

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is satisfied that the project has been completed according to the terms of the grant contract and parts 7076.0100 to 7076.0290.

C. The agency shall withhold reimbursement if the project sponsor has failed to comply with any requirements of the grant contract or parts 7076.0100 to 7076.0290. The funds may not be released until the agency determines that the project sponsor has corrected the deficiencies causing noncompliance.

REPEALER. Minnesota Rules, parts 7076.0110, subparts 5, 11, 16, and 17; 7076.0230, subpart 3; and 7076.0240, subpart 5, are repealed.

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Office of the Revisor of Statutes

Administrative Rules

TITLE: Proposed Permanent Rules Relating to Clean Water Partnership

AGENCY: Pollution Control Agency

MINNESOTA RULES: Chapter 7076

The attached rules are approved for publication in the State Register

Carla M. Riehle
Assistant Revisor

CERTIFICATE OF RESOLUTION ADOPTING RULES

I, Charles W. Williams, do hereby certify that I am the Commissioner of the Minnesota Pollution Control Agency, an agency duly authorized under the laws of the State of Minnesota, and that the following is a true, complete, and correct copy of a resolution adopted at a meeting of the Minnesota Pollution Control Agency duly and properly called and held on the 25th day of June, 1991, that a quorum was present at said meeting, that a majority of those present voted for the resolution and that said resolution will be set forth in the minutes of said meeting and has not been rescinded or modified:

BE IT RESOLVED, that the Minnesota Pollution Control Agency (Agency) hereby approves and adopts the amendments to rules governing the administration of the Clean Water Partnership Program, Minnesota Rules chapter 7076, pursuant to the authority vested in the Agency by Minnesota Statute section 103F.745 (1990).

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 Minnesota Statutes section 14.28 (1990).

BE IT FURTHER RESOLVED, that the Agency adopts the attached Findings of Fact, Conclusions, and Order Adopting Rule Amendments 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 25th day of June, 1991.

Charles W. Williams
Commissioner

COMMENTS RECEIVED DURING 30-DAY PUBLIC COMMENT PERIOD FOR
RULE AMENDMENTS PROPOSED UNDER MINNESOTA RULES CHAPTER 7076

Oral Comments Received From:

1) 4/25/91 Phone call from: Peter Willenbring
Manager, Water Resources Department
Orr, Schelen, Mayeron & Associates, Inc.
2021 East Hennepin Avenue
Minneapolis, Minnesota 55413

Summary of comment:

Mr. Willenbring's original concern about the ranking criteria was that management practices not considered to be nonpoint source management practices caused a project to be ranked low. Example: treating water before it entered a lake (part of a project proposal that did not receive grant funds). Changes made to the Project Coordination Team project ranking criteria are good because they rank projects on water quality benefit not type of management practice.

Nonpoint source management practices often have limited water quality benefit. Proposed management practices should be given a high priority if they will cause a significant water quality benefit not simply if they are nonpoint management practices. Proposed ranking criteria for the MPCA still considers nonpoint management more valuable than other management practices that may produce a a greater water quality benefit. Staff should consider changing this ranking criteria (Minn. Rules part 7076.0170, subp. 3, item A, subitem (2)).

2) 5/14/91 Phone contact: Chuck Pugh, Project Coordinator
AHW Clean Lakes Project
1020 Morningstar Drive
Alexandria, Minnesota 56308-9110

Comment Summary:

Chuck said that he whole heartedly supports the proposed changes to the rules. He feels the change in financial policy will eliminate the payment delays currently being experienced by the project sponsors. He feels the proposed amendments will make the application and funding processes simplier and the program more effective.

Written Comments Received From: (letters are attached)

1) 5/14/91 Letter: Ron Harnack
Executive Director
Minnesota Board of Water & Soil Resources
Southbridge Office Building
155 South Wabasha Street, Suite 104
St. Paul, Minnesota 55107

2) 5/28/91 Letter: Jeffrey T. Lee
Manager, Environmental Programs
Minneapolis Park & Recreation Board
3800 Bryant Avenue South
Minneapolis, Minnesota 55409

Minnesota Board of Water & Soil Resources

Southbridge Office Building
155 South Wabasha St., Suite 104
St. Paul, Minnesota 55107

(612) 296-3767
Fax (612) 297-5615

May 14, 1991

Ms. Debbie Olson
Minnesota Pollution Control Agency
Water Quality Division
520 Lafayette Road
St. Paul, MN 55155

Subject: Comments Regarding Clean Water Partnership Rule Changes

Dear Debbie,

I want to thank the Minnesota Pollution Control Agency for the opportunity to review and comment on the proposed changes to the existing Rules (Chapter 7076) governing the administration of the Clean Water Partnership Program (CWP). I would also take this opportunity to commend the MPCA for undertaking this effort.

The Board of Water and Soil Resources administrative responsibility for various types of funding for local water resource planning, protection and implementation in the last two years has allowed us to work closely with many representatives of local government to develop program rules and guidelines, as well as to administer and implement the new programs. Many of these clientele also have, or will apply for, Clean Water Partnership Program funding. Their inputs and concerns to the BWSR regarding the need for clear and concise rules governing the Local Water Resources Protection and Management Program are reflected in the rules governing that program. Those individuals in local government that have been able to participate in the rulemaking process and their peers feel a sense of ownership in the program, thereby increasing their involvement and enthusiasm in the program.

The changes in the CWP Program Rules also appear to accomodate local input and concerns, thereby building increased local enthusiasm for participation in this program. With these changes, the applicants will have a better idea of the criteria that will be used to judge their individual applications. Recipients of program funding should

Regional Offices

Northwest Region
1106 Paul Bunyan Drive, NE
Bemidji, MN 56601
218-755-3963

Northeast Region
394 South Lake Avenue
Room 403
Duluth, MN 55802
218-723-4752

West Central Region
503 Washington Street
Brainerd, MN 56401
218-828-2604

South Central Region
Box 756
New Ulm, MN 56073
507-359-6074

Southeast Region
Friedell Bldg., Room 100
1200 S. Broadway
Rochester, MN 55904
507-285-7458

Southwest Region
Box 267
1400 E. Lyon Street
Marshall, MN 56258
507-537-6060

East Central Region
Southbridge Office Building
155 South Wabasha St., Suite 104
St. Paul, MN 55107
612-296-3767

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also have an easier ability to receive reimbursement payments. This should help the MPCA to gain local support, which will further advance the CWP Program as a useful and accessible tool to help local governments to investigate and address water resource concerns.

The Clean Water Partnership Program will also benefit from the increased responsibility placed on reviewer input from the project coordination team. With fifty per cent of an application's total score coming from the project coordination team, members of the team will then have an expanded role to play in the review of project applications. This, too, will result in increased reviewer participation, enthusiasm and input.

With the expected increases in local water planning activities by counties in the future, there will no doubt be an increase in local participation in programs we both administer by counties and other local government entities. We appreciate the increased opportunity to participate in the review of project applications in the proposed Rule changes.

In closing, I wish you well in this endeavor, and offer the services of BWSR staff as needed until the proposed changes are promulgated.

Sincerely,

Ron Harnack
Executive Director

RH:cn

MINNEAPOLIS
PARK & RECREATION BOARD

May 28, 1991

3800 Bryant Avenue South
Minneapolis MN 55409

Debbie Olson
Minnesota Pollution Control Agency
Water Quality Division/APS
520 Lafayette Road
St. Paul MN 55155

RE: Proposed amendment of rules governing the administration of the CWP program

Ms. Olson:

Thank you for the opportunity to comment on the proposed amendments to the administrative rules governing the Clean Water Partnership program. Several of the proposed changes warrant comment.

The proposed changes to 7076.0160 subp. 3. Effect of rejection may prelude the acceptance of a qualified application due to errors in the application. The nature of the unit of government that this program targets and the length of the application/rules can lead to errors. The provision to correct deficiencies and have the application ranked in the current application period should be retained.

7076.0210 subp. 7. Quarterly update requirement is needed to help project managers keep current on project progress. The reports should be expanded to include an assessment of the project quality control/quality assurance results for the quarter. Inclusion of this assessment will allow both the project sponsor and project manager to identify QA/QC problems and rectify any problems within a manageable time frame. Requiring QA/QC data quarterly will also help project sponsors in dealing with subcontractors when addressing potential problems concerning analysis results.

The proposed changes to 7076.0230 subp. 1A(6), concerning work plan requirements needs to be reconsidered. The selection of predictive and diagnostic models should be a project work element and included in the project schedule. Pre-selection of a model, prior to the collection of the data, is premature and does not take into account the limitations of particular models.

President:
Scott Neiman

Vice President:
Naomi Loper

Commissioners:
Patricia D. Baker
Tom Baker
Walter Bratt
Dale W. "Skip" Gilbert
Patricia Hillmeyer
Kathryn F. Thurber
Annie Young

Superintendent:
David L. Fisher

OPERATIONS CENTER
3800 Bryant Avenue South
Minneapolis, MN 55409-1029

Forestry Section (612) 348-4448
Maintenance Section (612) 348-4448
Park Police (612) 348-2183
FAX (612) 348-9354

1989 National Gold Medal Award Winner

The selection process for predictive models should be done as the project progresses and take into account the unique nature of the water of concern and individual model attributes. This rule should be altered to make model selection an element of the proposed work plan.

7076.0230 Subp. 1B(6) which requires a description and statistical definition of the models to be used is a topic that should be addressed by the MPCA staff and be made available to project sponsors. This type of model appraisal should be done by MPCA staff, which is better qualified to undertake such an assessment.

The changes proposed in 7076.0230 F. that will require the use of only Department of Health certified laboratories is disturbing to me. I understand that the intent is an attempt to insure that project sponsors are provided laboratory analysis data of high quality. Compliance with DOH certification requirements will not guarantee that accurate and reproducible data is being reported. More stringent QA/QC requirements should be instituted. This proposed change will most likely increase project costs and preclude cooperative work between local units of government and institutions such as colleges in lieu of certified commercial laboratories. This preclusion is of questionable worth, especially when many of the non-commercial laboratories are capable of provide high quality data, but are unable to bear the cost of certification for one short term project.

I would like to conclude by saying I feel the Clean Water Partnership Program has been highly successful to date. The program's greatest asset is the cooperative involvement of local units of governments in attempting to solve water quality problems. Some of the changes proposed to the current rules will increase the cost and complexity of the projects. Increasing the cost and complexity of the program may discourage participation by smaller governmental units.

Sincerely,

Jeffrey T. Lee

Jeffrey T. Lee
Manager, Environmental Programs

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.

Metropolitan Council

Notice of Public Hearings on the Draft Solid Waste Management Development Guide/Policy Plan

The Metropolitan Council will hold two public hearings to receive comments on the draft plan for managing the Metropolitan Area's solid waste through the year 2010. When adopted by the Metropolitan Council it will replace the Solid Waste Management Development Guide/Policy Plan adopted in 1985. The policy plan carries out state and federal requirements for proper solid waste management. It serves as a guide for developing a regional solid waste management system that emphasizes recovery of resources and minimizes land disposal of solid waste. The meetings will take place 3 p.m. on Wednesday, January 16, 1991 at the Metropolitan Council Chambers, Mears Park Centre, 230 E. Fifth St., and 7 p.m. on Thursday, January 17, 1991 at the St. Louis Park Recreation Center, 5005 W. 36th St., St. Louis Park, MN 55416. All interested people are encouraged to attend the meeting and offer comments. People may register in advance to speak by calling the Metropolitan Council Community Outreach Division at 291-6500. Written comments may be submitted to John Rafferty, at the Metropolitan Council's Solid Waste Division, Mears Park Centre, 230 E. Fifth St., St. Paul, MN 55101 through February 1, 1991. A copy of the Draft Solid Waste Management Development Guide/Policy Plan, publication 520-90-150, may be obtained from the Council's Data Center by calling 291-8140.

Minnesota Pollution Control Agency

Water Quality Division

Notice of Intent to Solicit Outside Information Regarding Amendments to Rules Governing the Clean Water Partnership Grants Program

NOTICE IS HEREBY GIVEN that the Minnesota Pollution Control Agency (Agency) is seeking information or opinions from outside sources in preparing to propose the amendment of rules governing the Clean Water Partnership Grants Program, *Minnesota Rules* ch. 7076. This program provides state matching grants and technical assistance to local units of government for the development and implementation of nonpoint source, water pollution prevention projects.

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

Debbie Olson
Minnesota Pollution Control Agency
Water Quality Division
Assessment and Planning Section
520 Lafayette Road
St. Paul, Minnesota 55155
Telephone: (612) 296-7223

Oral statements will be received during regular business hours, 8:00 a.m. to 4:30 p.m., Monday through Friday.

All statements of information and opinion will be accepted until 4:30 p.m., January 14, 1991. Any written materials received by the Agency shall become part of the rulemaking record in the event that the rule is amended. The rule amendment is authorized by *Minnesota Statutes* § 103F.745, which allows the Agency to adopt rules for the Clean Water Partnership Program.

Gerald L. Willet
Commissioner

Office of the Revisor of Statutes

Notice of Publication of the *Minnesota Rules Drafting Manual, 1990 edition*

A new edition of the drafting manual for rules has just been published. The new edition replaces the 1984 rules drafting manual.

Minnesota Pollution Control Agency
520 Lafayette Road, Saint Paul, Minnesota 55155-3898
Telephone (612) 296-6300

Ms. Patti Nolte
Office of the Attorney General
Capitol Office Building
Suite 500
525 Park Street
St. Paul, Minnesota 55103

Re: In the Matter of the Proposed Rule Amendments Governing the Administration of the Clean Water Partnership Program, Minn. Rules Ch. 7076

Dear Ms. Nolte:

On June 25, 1991, the Minnesota Pollution Control Agency (MPCA) adopted the above-captioned rules governing the administration of the Clean Water Partnership Program. Enclosed for your review are the following:

1. Rules as adopted (original and three copies).
2. Notice of Intent to Solicit Outside Opinion (15 S.R. 1409, December 17, 1990)
3. Copies of written comments received pursuant to Notice of Intent to Solicit Outside Opinion.
4. Certificate of Authorizing Resolution.
5. Rules as proposed.
6. Submittal of Statement of Need and Reasonableness to Legislative Commission to Review Administrative Rules
7. Notice of Intent to Adopt Rules Without a Public Hearing, as mailed
8. Affidavit of Mailing the Notice of Intent to Adopt Rule Without a Public Hearing and Certificate of Mailing List.
9. Notice of Intent to Adopt Rules Without a Public Hearing and rules as proposed, as published (15 S.R. 2333 - 2344, April 29, 1991)
10. Statement of Need and Reasonableness.
11. Comments received during the comment period.
12. Certificate of Resolution Adopting Rules.
13. Findings of Fact, Conclusions, and Order Adopting Rules (two copies).
14. Declaration of Counsel.

Sincerely,

Debbie Olson

Debbie Olson
Rule Revision Coordinator
Assessment and Planning Section
Water Quality Division

DO:ls

COMMENTS RECCEIVED DURING PERIOD OF SOLICITATION (12/17/90 - 1/14/91):

prepared by Debbie Olson, policy analyst
Program Development Unit, Assessment and Planning Section

SUMMARY OF COMMENTS RECEIVED BY PHONE:

12/27/90 JON KRUGER
Environmental Health Specialist
Rice County Environmental Services
218 NW Third Street
Faribault, Minnesota 55021

Mr. Kruger had the following comments about the rules:

Step-by-step procedures should be provided for project managers after the grant has been awarded.

MPCA's experience with this program should show how monitoring requirements can be streamlined. This streamlining is needed to cut project costs and project lag. Other streamlining is needed to prevent the program from being cumbersome for project managers, which is currently a problem.

Simplify grantee accountability. Money tracking is needed, but the current degree of accountability is too much. Since most municipalities do not have enough funds to hire a project manager, existing personnel fulfill this role while continuing their regular jobs. The current degree of accountability leads to personnel burn-out because it is too much and is cumbersome.

Revise the requirements of the work plan and the monitoring plan because current requirements involve too many work hours. Monitoring costs are the most expensive part of the project. Minimize these costs by standardizing the models (by project types) and provide better training on the models for the project managers.

Remember, the people that are taking on the project manager role have little or no experience. Better guidance is needed.

01/02/91 DAVE WEIRENS
Association of Minnesota Counties
125 Charles Avenue
St. Paul, MN 55103

Mr. Weirens had no comments at this time. He wanted to know why revisions were being made to the rules and who was notified of this solicitation period. I explained that the rules were being revised to make grant process and administration improvements based on the first three years of experience with the program. I also told him that managers of existing projects and other persons that have been involved in the program were sent notification.

He would like to see a draft of the proposed rule revisions.

01/02/91 CHUCK PUGH
AHW Clean Lakes Project
1020 Moringstar Drive
Alexandria, MN 56308
612-762-8980

Mr. Pugh had the following comments:

Payment of advance after the approval of the monitoring plan could create a financial problem for projects. He was told that this was already solved by a rule change made in June 1990.

A time limit (maybe somewhere between 2 and 4 weeks) should be imposed on the Agency for determining approvals or returning items with comments. Now the Agency stretches these tasks out for months, which creates delays in the project and often weather related problems. The project manager often assumes approval and proceeds with the project to prevent weather problems.

Expedite reimbursement payments. The current delay in these payments are causing financial hardships. The payment for a request he submitted in August was received in December. July and September costs were submitted in October and a payment check has not been recieved yet. Delays in approving grant contract modifications made in August also took too long. Payment delays created hardships for the AHW clean lakes project and Mr. Pugh had to turn to the county for temporary funding. This type of funding short fall can jeopardize a project.

01/02/91 MARLAND OTTO
Hawkenson-Anderson and Associates
222 Monroe Street
Anoka, MN 55303
427-5860

Mr. Otto had no comments on the rules. The rule revision notice introduced him to the Clean Water partnership program. He was inquiring about the eligibility of three municipal stormwater management projects. Gaylen Reetz called him back to discuss potential eligibility. In addition, a copy of the current rules were sent to Mr. Otto and his address was placed on the potential applicant list being kept by Greg Johnson.

01/03/91 LELAND KIANG
Burea of National Affairs
Department BNA Plus
1231 25th Street NW
Washington, D.C. 20037

Ms. Kiang saw the notice of solicitation and wanted to know the scope of the Agency's rule changes. I explained that the period of solicitation was to gather information from persons outside the Agency that have had experience with the grants program. I further explained that once the Agency has thoroughly examined the rules, changes will be proposed. I forecasted that a draft of proposed changes would be available, at the earliest, in three weeks and said I would send her a copy.

01/10/91 JOHN VONDELINDE
City of Eagan
3830 Pilot Knob road
Eagan, Minnesota 55122
(512)454-5220

Mr. VonDeLinde will send written comments. Eagan is currently involved in phase I. He feels that the rules overall are good. His experience with the program so far has been very positive.

Mr. VonDeLinde feels that a lot of progress has been made to make the workbook more user friendly, but feels the preliminary application process should be streamlined (down to one or two pages). Under the streamlined process, the simplified preliminary application would be used to determine which projects qualify to participate. Then qualified projects would submit the detailed application, which would be used for ranking. This streamlined process would probably generate more applications.

COMMENTS RECEIVED IN WRITING:

See attached letters from-- Continued on next page

See attached letters from--

Outside the Agency

1. 01/15/91 Joel Schilling, SEH engineers
2. 01/14/91 John VonDeLinde, City of Eagan
3. 01/10/91 Jeffrey Lee, Minneapolis Park & Recreation Board
4. 01/08/91 Carolyn Dindorf, Hennepin Conservation District
5. 01/07/91 Peter Willenbring, Orr, Schelen, Mayeron & Assoc.
6. 01/02/91 Robert Finley, Redwood-Cottonwood Rivers Control Area
7. 12/04/90 Peter McLeete, Natural Resources-Division of Waters
8. 03/28/90 Paul Fairbanks, Cass County Solid Waste Division
9. 02/08/91 MN Dept. of Health: Tom Klaseus, Gail Haglund and Bruce Olsen

ENGINEERS ■ ARCHITECTS ■ PLANNERS

3535 VADNAIS CENTER DRIVE, ST. PAUL, MINNESOTA 55110 612 490-2000

January 15, 1991

RE: Minnesota Pollution Control Agency
Clean Water Partnership Rules Revision
Chapter 7076

RECEIVED
JAN 15 1991
M.P.C.A.
WATER QUALITY DIV.

Ms. Debbie Olson
Water Quality Division
Minnesota Pollution Control Agency
520 Lafayette Road
St. Paul, Minnesota 55155

Dear Ms. OIson:

The following comments are in regards to your letter of December 19, 1990 seeking information and opinions relating to the Clean Water Partnership Grant Program rules revison. I want to thank the MPCA staff for requesting our opinion on the proposed rules revision.

Let me first indicate that my comments on the existing rules come from a perspective of three years of involvement in the program. Three grant applications have been submitted under my direction in this program; one successful project and two unsuccessful projects. The successful project was the Lambert Creek/Vadnais Lake Improvement for Vadnais Lake Area Water Management Organization in 1988. The unsuccessful projects were Lily Lake Improvement for the City of Stillwater in 1989 and Langton Lake Improvement for the City of Roseville in 1990. My comments will first be directed at the rule requirements for grant application content. Finally, I will direct my concerns specifically to the grant award rules process.

The aforementioned three grant applications were quite different in their content, thus reflecting the significant changes which have occurred in the three years of the program. For example, the Lambert Creek/Vadnais Lake project application would very likely be rejected under today's program requirements and conversely the Langton Lake application would likely have been funded in 1988. From a cost standpoint, the following is an accurate depiction of the costs incurred by the client and consultant in assembling the three grant applications:

	Client Cost	Total Cost
Lambert Creek/Vadnais Lake: (Schilling Environmental Consultants, Inc.)	$ 800	$ 1,750
Lily Lake: (Short-Elliott-Hendrickson, Inc.)	$ 5,499	$ 5,499
Langton Lake: (Short-Elliott-Hendrickson, Inc.)	$ 6,000	$11,289

Obviously, it has become very costly to assemble CWP grant applcations. Even more important, however, is that the program continues to become more complex in its requirements. It's exceedingly difficult for the consultant to provide an accurate estimate to the client on how much it will cost to put an application together because the rules keep changing! The CWP program now has 18 pages of formal rules along with over 200 pages of rule guidance, plus the grant application. With rules revision presently underway, the regulatory burden will no doubt increase.

Part 7076.0150, Subpart 2. G. and Part 7076.0210, Subpart 8.
The increasing grant application costs are without question being driven by the requirements of either or both the regulation or guidance manuals. In this regard, there appears to be confusion by grant applicants on the interpretation of these two subparts. The literal interpretation of Subpart 8 would indicate that a monitoring plan would not to be included in the grant application, but instead be developed after a grant award. Thus, costs incurred in its development would be grant eligible. Conversely, one of the guidance documents (DEVELOPMENT OF A PROJECT WORK PLAN FOR CLEAN LAKES AND CLEAN WATER PARTNERSHIP PROJECTS: A Guidance Document, June 1990) makes it quite clear throughout that considerable information (e.g. monitoring plan) is necessary in the application. The grant application requirement for a work plan (Subpart 2. G.), however, leaves the door open for the applicant to provide whatever information and level of detail is necessary.

As an example of apparent confusion relating to the above matter, two of three 1990 awarded project applications examined do not contain detailed monitoring plans. The Clearwater Nonpoint Source Study contained a very detailed monitoring plan (as did our unsuccessful Langton Lake grant application), while the Lake Shaokatan Restoration Study and Middle Des Moines Watershed Restoration projects included only brief discussions of a proposed monitoring plan. Project expenses were identified in the latter two applications in order to develop detailed monitoring plans upon a grant award.

SUGGESTION
The Agency staff is faced with a difficult decision. We agree that it is necessary in the rules (Part 7076.0240) to include what is specifically required in a finished Diagnostic Study. On the other hand, the project grant application should contain sufficient monitoring details to enable the staff to determine whether the applicant has their "act together" with respect to understanding nonpoint source pollution, monitoring and assessment. Should the grant application have a degree of detailed information similar to Part 7076.0230 and 7076.0240? Yes, the work program elements should be more clearly described in the rules (Part 7076.0150, Subpart 2. G.) and not in a guidance document.

Part 7076.0170, Subpart 2.
This specific area is certainly the most controversial. Everyone wants their project to get funded which of course is unrealistic. On the other hand, good ranking criteria should be able to be used by the applicant for two purposes. First, the applicant should be able to use the criteria as an initial screening tool for a potential grant application. In other words, the criteria should be able to tell you that a project application is worth pursuing or would not have a likelyhood of funding. Second, the ranking criteria should be sufficiently understandable so that the applicant can determine how their project got ranked. The ranking criteria do not serve either of these functions well at present. In addition, it's difficult to not conclude that the criteria are largely subjective rather than objective.

Ranking Criteria A.
This ranking criteria, while reflecting the word "partnership" more than any of the other six, appears to have a flaw. Effectively what appears to have happened in project applications is that the more co-sponsors or partners that are shown participating in a project the better chance it will get funded. The assumption presumbably is that this will lead to a more successful outcome, nonpoint source control. There is no technical or real world basis for such an assumption. The flaw is similar to saying: "I need to replace a bridge that's in disrepair, therefore perhaps I should retain two, three, four, ... or ten contractors because the likelyhood of a successful project is greater." The only conclusion that can be reached supporting the basis for this CWP criteria is either statutory or political.

SUGGESTION
If this criteria must remain, then it is recommended that a ceiling be placed upon the number of co-sponsors (e.g. five at the most). If a project demonstrates that it has a maximum of five co-sponsors, then it receives all the points allowable for that criteria. As the rule is now written and being interpreted by staff, the number of co-sponsors is infinite which is a receipe for project failure. There is a clear and tried maxim in project management: the lower the number of persons (presumbably agencies as well) directly involved on a project the greater its chance of success.

Ranking Criteria B.
This is a good criteria, but could be improved. As we all know, we don't really know what works in terms of effective nonpoint source control. However, obviously having a strong erosion and sediment control ordinance, storm water detention ordinance, wetland protection ordinance, or wellhead zoning ordinance, etc. is demonstrable that the local government may effectively win the battle.

SUGGESTION
Provide more detail. If the application demonstrates appropriate ordinances, a comprehensive plan, shoreland ordinance, etc. the project receives a certain number of points. In addition, perhaps bonus points could be added for ordinances with strong enforcement provisions.

Ranking Criteria C.
This is another good criteria, but needs expanding. The staff has interpreted that a local plan must do more than just identify a water(s) as a local concern. Agreed.

SUGGESTION
Expand the rule language to indicate what one should expect to be in a local plan with respect to the water of concern. For example:

WATERS OF CONCERN

1. Mud Lake: a local water body of concern.	2 pts.
2. Mud Lake: a local water body of concern in which water quality maintenance is necessary in concert with watershed nonpoint source management implementation.	5 pts.
3. Mud Lake is a local water body of concern which is in need of water quality improvement to restore it to a fishable or swimmable condition.	10 pts.

Ranking Criteria D.
This is probably a good criteria, except that the basis for it is relatively unavailable to the general public.

SUGGESTION
Make available the statewide assessement documents either for free or purchase so that the applicant may determine where the water of concern may fall in terms of priorities. Because project rankings are determined internally with respect to these documents, its not possible for the public to evaluate whether the ranking was subjective or objective without ready access to the documents.

Ranking Criteria E
Unfortunately, this criteria is very laudable but prone to serious subjectiveness. It's not possible even today to provide an objective approach to this criteria, until we know more about the technology of nonpoint source control.

SUGGESTION
Delete this criteria entirely.

Ranking Criteria F
This is poor! What does this criteria mean? Does it mean that a project with 10 co-sponsors on a 10 acre lake with a 100 acre drainage area has a better chance of success than the same project with 3 co-sponsors or 1 co-sponsor?

SUGGESTION
There should be a better explanation of what the basis is for awarding points under this criteria or delete it entirely.

Ranking Criteria G
While this criteria has a statutory basis (M.S. 115.103), it does not follow that it is a good method. I am unaware of another grant program in the State of Minnesota in which there is a coordination team of eighteen (18) agencies that may influence projects intended to control pollution. First, the MPCA's Construction Grants Program is not run in this fashion nor is the MDNR's C.O.R.E grant program or the SPA/Met Council LAWCON grant program. Second, the fact that a good number of the eighteen agencies have neither a legal authority or technical basis for nonpoint source control decision making or implementation means their involvement on a coordination team is purely political in nature. The risk to the environment in this regard is very real. That is, a project may get funded for political purposes and not on a sound technical and pragmatic basis. Has State government, particularily MPCA learned nothing in this regard? Ask around about the old (late 1960's early 1970's) lake improvement grant program (often called the "paragraph g" program) operated by State Planning Agency. That program included persons making decisions who knew little or nothing about a lake(s) and watershed pollution. The amount of State funds wasted in that program was staggering.

SUGGESTION
Seek statutory amendment to M.S. 115.103. In the absense of such, relegate the coordination team to an advisory role or in assisting in the determination of the ranking criteria make-up.

We appreciate the opportunity to assist the Agency in the revision of the Clean Water Partnership rules. As the process continues, we would like to be kept informed as to the proposed changes.

Sincerely,

Joel G. Schilling
Senior Scientist/Limnologist

city of eagan

3830 PILOT KNOB ROAD
EAGAN, MINNESOTA 55122-1897
PHONE: (612) 454-8100
FAX: (612) 454-8363

RECEIVED
JAN 16 1991
M.P.C.A.
WATER QUALITY DIV.

THOMAS EGAN
Mayor
DAVID K. GUSTAFSON
PAMELA McCREA
TIM PAWLENTY
THEODORE WACHTER
Council Members
THOMAS HEDGES
City Administrator
EUGENE VAN OVERBEKE
City Clerk

JANUARY 14, 1991

DEBBIE OLSON
RULE REVISION COORDINATOR
WATER QUALITY DIVISION
MINNESOTA POLLUTION CONTROL AGENCY
520 LAFAYETTE ROAD
ST. PAUL, MN 55155

RE: COMMENTS ON CLEANWATER PARTNERSHIP ADMINISTRATIVE RULES

Dear Ms. Olson:

Thank you for your recent letter requesting comments from the City of Eagan on the Administrative Rules pertaining to the Cleanwater Partnership Grants Program. The City of Eagan is pleased to offer its analysis of these rules in hopes that it may be useful to your agency as you contemplate procedural changes for subsequent grant funding cycles.

As a matter of background, the City of Eagan was awarded a fiscal year 1990 Cleanwater Partnership Grant in December 1989 to perform a Diagnostic Study/Implementation Plan for Schwanz Lake in southeast Eagan. Since that time, the City has completed and gained approval from the Minnesota Pollution Control Agency (MnPCA) on its Project Work Plan/Monitoring Plan for the diagnostic/feasibility study. Following that approval, the city and state entered into an amended grant agreement providing for an adjustment in the project's total cost. In October, an informational brochure was developed about the project, and introduced to the public in a special neighborhood meeting held in Trapp Farm Park surrounding Schwanz Lake. In the same month, sampling also began on the water body, and a number of rain gauges and other monitoring stations were set up within the watershed area.

As you can see by this account, the project is moving ahead quite smoothly and continues to be on target in terms of anticipated dates for task completion. Much of the credit for our success certainly must go to the staff of MnPCA's Water Quality Division who administer

this grant program. Gary Fandrei, who has since left your agency, was extremely gracious in meeting with our staff on several occasions to review application procedures, outlining details for completing the project work plan, and consulting on the draft budget and milestone schedule. Other staff within your agency have also been extremely cooperative and timely in their processing of grant agreements, amendments, and other paperwork involved with this multi-faceted grants program. Before moving into our comments, I want to assure you that we have been very pleased with the progress to date and look forward to continuing our project in further cooperation with your agency.

In response to your request, staff of the Eagan Parks and Recreation Department have made a conscientious effort to review and reflect upon the Administrative Rules pertaining to the Cleanwater Partnership Program. We were particularly interested in commenting on the rules, given our present involvement with the diagnostic study and with the expectation of applying for an implementation grant in 1992. Frankly, I must tell you that it was difficult to generate any substantive comments about the current rules relating to this program. We have found the rules to be quite thorough in terms of their content and procedure - being fairly representative of our experience in processing the Schwanz Lake grant to date. We do, however, have some recommendations for your consideration that may be helpful in streamlining and clarifying the grants process and in aiding other communities who are contemplating an application under the Cleanwater Partnership Program.

The following is a list of our comments, following the general outline of the rules as presented:

7076.0110 Definitions

- Under "Definitions", consideration should be given to providing copies of the appropriate state statutes which are referenced within the various subparts. This could be done as an addendum to the adopted rules as a convenience to participating local units of government.

- The terminology "project development" or "project development grant" (Subpart 16 and 17) can be easily confused with the terminology "project implementation" or "project implementation grants". The vernacular of both tend to be synonymous. Perhaps better terminology for "project development" would be something such as "project assessment grant" or "diagnostic/planning grant", or simply "planning grant".

7076.0130 Eligibility Criteria

- Item L within Subpart 3 "Ineligible Cost" indicates that the cost for dredging of harbors, lakes, and ditches may not be included within an implementation project.

This leaves a question as to whether or not the dredging of upstream lakes or ponds for the purposes of enhancing nutrient assimilation capacities, as a prescribed BMP, is an eligible cost. Perhaps, some clarification should be made that such costs only relate to dredging where water quality is not the primary goal.

7076.0140 Notice of Grant Availability

- Under Subpart 2 "Notification List", the state should consider expanding its current program notification to include a general mailing to all 1,500+ local units of government in the state. Other state grant programs, such as the Outdoor Recreation Grants Program administered by the Department of Trade and Economic Development, annually publishes a preliminary grant application package which was disseminated to all local government agencies. In so doing, the MnPCA would likely generate a greater level of interest in the program state wide, with more returned applications and higher quality selected projects. The ability to demonstrate the needs for the program during the budget setting process could also be enhanced, given a higher number of applications for the program. Quite honestly, if staff from the City of Eagan hadn't learned of the program through an incidental contact with another program participant, we probably would have missed this opportunity to become involved.

7076.0150 Grant Application

- As a local unit of government, which has now gone through the process of filing a Development Grant application, it appears to us that the current process outlined in the Administrative Rules may by more cumbersome than necessary. The number and technical nature of many of the items requested with the application requires a fairly significant commitment of staff time. And for some communities, this may require the hiring of consultants to complete the necessary paper work. It would seem that some items, such as the identification of potential agencies and organizations to be involved in the project, and corresponding resolutions, could be better incorporated into the assemblage of the more detailed project work plan.

  As a suggestion, the PCA may wish to consider developing a preliminary grant application phase which would involve the submission of a more simplified standard application (e.g., two or three pages) along with minimally required maps and other documentation. Through this process, the state could weed out ineligible projects, as well as determine a preliminary list of projects for inclusion in a second phase of applications. In this way, potential applicants would not only find it easier to apply, but avoid the potentially costly and lengthy process for completing applications required under the current process.

7076.0170 Project Ranking

- Under Subpart 2 G, it might be helpful to further define the composition of the "project coordination team", i.e., number of staff from the Pollution Control Agency, number of representatives from outside agencies, etc.

- Under Subpart 3 D, consideration should be given to expanding "Applicable State and Federal Resource Management Programs" to include regional and local management programs as well. With the recent advent of watershed management organizations and the requirement for local water management plans, this may become a more relevant issue in terms of measuring the effectiveness of Cleanwater Partnership applications in meeting local planning goals.

7076.0210 Grant Conditions

- Subpart 2 "Grant Period" indicates that the grant period for a project development grant will be for a period of two years. Our experience with the establishment of a milestone schedule, strongly suggests that two years may not be an adequate time frame in which to complete a Diagnostic/Feasibility Study - even on a small lake or watershed such as the Schwanz Lake project. It might be more realistic to broaden the project development grant period to three years, allowing a more adequate time frame for completion of the Diagnostic Study/Implementation Plan. Moreover, this could be a mechanism for reducing the number of potential requests for project continuation through grant amendment.

Finally, a question was raised relative to general requirements and procedures to be followed within an implementation grant. The current rules provide explicit definitions of requirements for diagnostic studies and implementation plans but do not seem to address documentation requirements for the implementation grant process. Perhaps, these rules have not yet been written or we simply overlooked them in our review.

This concludes the City of Eagan's comments on the Administrative Rules relating to the Cleanwater Partnership Program. We trust that these comments will prove to be of value to your agency as you begin the task of making revisions to the program in the months ahead. If we can be of further assistance in this process, please feel free to contact us at the letterhead address or by telephone at 454-5220.

Cordially,

John K. VonDeLinde
Superintendent of Parks

JKV/cm

MINNEAPOLIS
PARK & RECREATION BOARD

RECEIVED
JAN 14 1991
M.P.C.A.
WATER QUALITY DIV.

January 10, 1991

3800 Bryant Avenue South
Minneapolis MN 55409-1029

Debbie Olson
Assessment and Planning Section
Minnesota Pollution Control Agency
520 Lafayette road
St. Paul MN 55155

RE: Clean Water Partnership Administrative Rules

Ms. Olson:

Thank you for the opportunity to comment on the Clean Water Partnership administrative rules. I would like to direct my comments at two areas; the program rules and the administration of these rules. As I have been project manager for both Phase I and Phase II projects; as such my comments will be directed at both types of projects.

The administrative rules for the Clean Water Partnership program have several areas that I feel need to be reviewed and altered.

7076.0210 Subp. 8. Monitoring plan. A time frame for submittal of the monitoring plan on the part of the project sponsor is given but there is no deadline requirement for approval of the plan.

7076.0230 Subp. 2. Also gives the project sponsor 15 days to correct deficiencies in the plan. I feel the 15 day correction period for the project sponsor is too short. In both of these instances there needs to be an approval deadline for MPCA staff. This is needed to prevent unnecessary delay of projects due to failure on the part of MPCA staff to provide for timely approval.

7076.0240 Subp. 3. The description of the project area as part of the Diagnostic Study as set forth, requires the rewriting of the 110B or 509 plan for the project area. Provision for either

inclusion of the plan with the diagnostic study or reference to the local plan therein seems more time efficient. The local water plan is required as part of the grant application and it seems redundant to require a reprinting of the material as part of the diagnostic study.

Several items that relate to the administration of the program rules on the part of MPCA staff also need to be evaluated and altered.

As was noted above, the lack of deadlines for MPCA staff can and has led to delays in project timelines. There needs to be a faster response time, or at least a deadline set forth so that project sponsors and staff both can plan accordingly.

Better interaction with other MPCA divisions and sections are needed. This is especially important during Phase II projects when construction deadlines are involved. The MPCA Project Manager should be the route through which the local sponsor contacts other MPCA personnel.

During the grant application and ranking phase, failure on the part of the County Water Planning (110B) process to prioritize a resource should not negatively impact a project. Local units of government should not be discouraged from applying due to a county level disregard for the water resource.

There needs be solid staff support of local project sponsors when dealing with subcontractors. Actions that can be taken against subcontractors failing to meet contract obligations, especially with regard to laboratory QA/QC requirements, should be better defined.

In Phase II (implementation) projects, especially when construction is involved, qualified MPCA staff is needed. Personnel who are familiar with construction specifications, the bidding process, construction scheduling, etc., should be retained. During Phase II projects deadlines can be critical and lack of timely staff response is disruptive.

Thank you for the opportunity to comment on the Clean Water Partnership program. Overall I feel the program has been very beneficial and successful.

Sincerely,

Jeffrey T. Lee

Jeffrey T. Lee
Manager, Environmental Programs

Hennepin Conservation District

RECEIVED
JAN 10 1991
M.P.C.A.
WATER QUALITY DIV.

January 8, 1991

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

Re: Clean Water Partnership Program

Dear Ms. Olson:

In response to your December 19, 1990 letter I am submitting the following comments on the existing Clean Water Partnership Grants Program rules:

7076.0210 Subp. 2 and 7076.0220 Subp. 3. The grant period for a project development grant should be extended to 3 years. The two year period does not allow enough time for project completion.

7076.0230 Subp. 2. Existing rules allow only 15 days for the project sponsor to correct deficiencies to the monitoring plan. Additional time (e.g. 30 days) may be needed for plan modifications.

7076.0280 Subp. 4 It would be very helpful and sometimes necessary to release the 10% advance after the grant is awarded but prior to monitoring plan approval. Finalizing and gaining approval of the work plan/monitoring plan requires a lot of time and money. Unnecessary delays could be avoided if upfront funds were available to complete the plans. Also, some monitoring equipment must be ordered well in advance. If ordering of equipment must be delayed until the monitoring plan is approved, the project work may be delayed.

In addition to the above comments about specific rule subparts, I would like to provide some general comments about the program.

I think it would be helpful to start the grant application process about 2 months sooner so that selection occurs earlier allowing more time for selected projects to submit revised monitoring plans. This would allow some projects to begin their water monitoring program early enough to monitor spring snowmelt.

Secondly, the process now requires the project sponsor request an amended grant agreement once the project work plan/monitoring plan is approved. I believe the original start up grant agreement should remain in effect for the full year so that the projects are able to get a feel for revisions that will be needed in the work plan/monitoring plan before they are incorporated into the amended grant agreements.

205 Ridge Plaza Bldg. 12450 Wayzata Boulevard Minnetonka, Minnesota 55343 Telephone (612) 544-8572

There is some confusion regarding the work/monitoring plans. The question of whether these are two separate plans or one part of the other should be answered and some clarification provided in the rules or guidance. The rules refer to the Monitoring Plan, but not the Work Plan. Some reference to the Work Plan is needed.

I believe additional controls are needed to assure the quality of the data obtained. Technical assistance from MPCA staff is needed to review data and quality control procedures provided by the project's contract laboratory. This must be provided soon after the first few sample analyses are received in order to correct problems before important data is lost. This is especially important for those projects that do not have project staff with the technical expertise to review water quality data.

If you have any questions regarding these comments, please contact me at 544-8572.

Sincerely,

Carolyn J. Dindorf
District Limnologist

Orr
Schelen
Mayeron &
Associates, Inc.

2021 East Hennepin Avenue
Minneapolis, MN 55413

612-331-8660
FAX 331-3806

Engineers
Surveyors
Planners

January 7, 1991

RECEIVED
JAN 8 1991
M.P.C.A.
WATER QUALITY DIV.

Ms. Debbie Olson
Rules Revision Coordinator/Water Quality Division
Metropolitan Pollution Control Agency
520 Lafayette Road
St Paul, MN 55155

RE: Administration of Clean Water Partnerships Grant Program
OSM Comm. No. 4566.01

Dear Ms. Olson:

Receipt is acknowledged for you letter dated December 19, 1990 requesting information and opinions on the administrative rules associated with the Clean Water Partnership Grants Program. Having recently submitted an application for this program which was not funded, I have some feelings regarding the process that you may wish to consider.

The application we submitted on behalf of the Black Dog WMO outlined an extremely cost effective approach towards the protection and improvement of a significant water body within the City of Burnsville. Although I am not familiar with the specifics of the other applications submitted, based on my ten years of experience in this field and knowledge of programs that have been funded in the past, I find it hard to believe that the Black Dog WMO Project would not be one of the most cost effective and technically sound approaches toward improving water quality of any of those submitted.

In discussing the ranking of this project against the others, I was advised that the project did not score very well based on the scoring criteria outlined in the rules. Specifically, the scoring appeared to have been directed toward implementation of non-point source pollution controls instead of providing high points for projects that demonstrate significant and cost effective water quality benefits.

By way of prioritization, it also appears to me that Phase II projects that have good diagnostic feasibility work completed should be given a higher priority for funding than Phase I projects. This will allow something "to be done" instead of simply monitoring the system "to death", which has been a concern of many WMO representatives.

As I mentioned earlier, I am not familiar with the projects that were funded or that scored well through this process. I am, however, skeptical that very many of these projects could demonstrate the cost effective water quality benefits demonstrated by the Black Dog project.

I do generally support a defined evaluation process. I am concerned however, that projects are being proposed that will simply meet the formula requirements for scoring and not look at the most cost effective way to protect or improve the quality of water in lakes or streams in the state.

I thank you for the opportunity to comment on this matter. Should you have any questions, please feel free to call me at 378-6399.

Sincerely,

ORR-SCHELEN-MAYERON
& ASSOCIATES, INC.

Peter R. Willenbring, P.E.
Manager, Water Resources Department

/ch
01/91MPCA.DO

c: Mr. Craig Ebeling, City of Burnsville

redwood-cottonwood rivers control area

January 2, 1991

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JAN 7 1991
M.P.C.A.
WATER QUALITY DIV.

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

Dear Ms. Olson:

In response to your inquiry about administrative improvements to the Clean Water Partnership Grants Program, we offer the following brief suggestions:

1) Revise the reimbursement process to allow for more timely allocation of grant funds. This could be accomplished in a number of ways beginning with a simplification of the reporting procedures. Establish improved methods for evaluating completion of program elements which could then serve as guidelines for disbursing funds, and shorten the time between when a request is made and the funds arrive.

2) Consider changes to the work plan/budget elements of the program that would make them more responsive to changing circumstances. Again, this gets at the problem of delays whenever adjustments are made to either of these documents. It would seem improvements could be made to reduce the time factor.

3) Establish a more participatory role for agency staff that provide project assistance. Expand staff support to allow them to play a more active role. This should include a re-structuring of the program to give greater responsibility to regional staff provided, of course, additional staff are added.

Thank you for the opportunity to suggest these program changes.

Sincerely,

Robert Finley
Coordinator

post office building • room 210 - p.o. box 69 • redwood falls, mn 56283 • 507/637-2142

SF-00006-05 (4/86)

DEPARTMENT : Natural Resources-Div. of Waters

STATE OF MINNESOTA

Office Memorandum

DATE : December 4, 1990

TO : Gaylen Reetz, MPCA
Nonpoint Source Planning Unit
Program Development Section-Water Quality Division

RECEIVED
DEC 0 6 1990
M. P. C. A.
Water Quality Div.

FROM : Peter McLeete
Nonpoint Source Pollution Coordinator
Land Use Unit

PHONE : (612) 296-0512

SUBJECT : COMMENTS ON CLEAN WATER PARNERSHIP (CWP) RANKING PROCESS

I am pleased that the five highest ranked projects for 1990 have received funding. I think it is worthwhile for other agencies to provide comments, though I also feel more representation is justified. As it is, all PCT members combine to have a minimal impact on the final ranking. This left me feeling that I had wasted time coordinating and reviewing comments from the DNR staff. Other agencies may have similar concerns. CWP projects have the potential to benifit the entire population of the state and may greatly effect land use practices of many communities. For this reason I do not feel the process of ranking should be solely in the hands of the PCA. The following modifications to the ranking process may justify continued PCT member involvement.

1) PCA maintains its six point ranking system (60 points possible).

2) PCT members rank each project on a five point system.

   4-most favored
   2-medium
   0-least favored

3) PCT members should create their own guidelines on how to delegate a number to a project. A common system would not serve the diverse concerns and goals of the PCT organizations.

4) PCT ranking should be totalled (not averaged) and added to the PCA number.

With these modifications, the 16 PCT members would provide a possible of 64 points (if all participated). This would give the PCA and the remaining PCT members roughly a 50/50 weighting. An additional possibility would be to reduce the scale on the six points evaluated

by the PCA from 1-10 to 1-5. This would give the PCA 30 points maximum. These points would be added to the modified PCT point system (as described) for a total of 94 points (32%-68% weighting). In either case each PCT member would only represent 3 to 5 percent of the total points possible.It would be interesting to try these modifications on this years projects. I did not record the scores of all PCT members, though it would be interesting to see if a more balanced system of point weighting would indeed provide enough input to the final CWP ranking to warrant the change.

If you have any questions, please give me a call.

cc: Ron Harnack
Ogbazghi Sium

85

PAUL Z. FAIRBANKS
SOLID WASTE DIVISION
COUNTY OF CASS
CASS COUNTY COURTHOUSE
WALKER, MN. 56484

RECEIVED
APR -3 1990

March 28, 1990

Tim Scherkenbach, Director
Water Quality Division
Minnesota Pollution Control Agency
520 Lafayette Road
St. Paul, MN. 55101

Dear Mr. Scherkenbach:

Having recently completed the long, tedious, and frustrating process of getting the work and monitoring plans for the Boy River CWP Project completed, we would like to submit the following suggestions for MPCA consideration:

(1) **Amend the program rules to allow for a preliminary project approval process.** Under this system, applicants could be screened by a panel as in the present system, and projects selected for further plan development. Project plans would then be developed by the local sponsor and an MPCA representative to be submitted to a final selection committee for actual project funding. This seems to strike a balance between having the applicant come in with a totally developed project at their own cost, and the present systems which creates unreasonable delays and erodes local support. It would also give applicants not selected for CWP funding a good working plan to hold for another funding cycle or market elsewhere.

(2) **Schedule 3 to 5 day working sessions between local sponsors and MPCA project representatives.** An indeterminate, extended amount of time was wasted during the development of our plan on misunderstandings that could have been worked out easily in person. The sessions would afford the opportunity for the personalities involved to get acquainted, for the MPCA rep. to become familiar with the project area, and for work and monitoring plans to be drafted.

We feel that the basic premise behind CWP is a sound one. However, compared to the other programs we deliver at the local level, CWP administrative procedures make it too cumbersome to be effective.

Thank you for this opportunity to comment.

Sincerely,

Paul Z. Fairbanks, Local Project Representative
Boy River Cleanwater Partnership Project

February 8, 1991

To: Debbie Olsen

From: Tom Klaseus, Gail Haglund, Bruce Olsen

Subject: Proposed changes to the Clean Water Partnership Rules regarding wellhead protection (WHP) projects.

We have reviewed the rules and feel that only minor changes are warranted to ensure that the information needed for developing WHP measures is generated. We feel that it may be confusing to the public to place specific WHP rules in with those of the Clean Water Partnership Program until MDH has promulgated WHP rules for this program. However, we see the need to develop a memorandum of understanding between MDH and MPCA that outlines 1) WHP requirements specified in the 1986 Amendments to the Safe Drinking Water Act and 2) elements of a WHP management strategy for public wells that MDH and its advisory groups are considering. We wish to proceed with formalizing such a memorandum of understanding at your convenience. Also, we have developed a guidance document for preparing WHP area management plans that CWP projects could use. This would help them address WHP requirements and assist in the preparation of project work plans.

We offer the following changes to the CWP rules:

7076.0240 DIAGNOSTIC STUDY-

Item 1: Add "porosity" to the listing of aquifer characteristics under Subpart 2. C. 3.(a).

Item 2: Change Subpart 3. A. to read "a map of the project area <u>at a scale appropriate to the project</u>;"

Item 3: Add the following potential contaminant sources to those listed under Subpart 3. J. land use:

1) bulk pesticide and fertilizer handling facilities;
2) commercial and industrial facilities with on-site hazardous materials and wastes;
3) transportation corridors such as railroads, pipelines, and highways.
4) operating wells whose construction or maintenance may cause them to serve as conduits for contaminants to recharge groundwater;
5) and other potential sources of groundwater contamination.

Item 4: Change Subpart 3. L. (5) to read "a description of wells covered by state appropriations permits including location, amounts of water appropriated, type of use<u>,</u> aquifer source<u>, and amount of water used.</u>