

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

MJM
12/23/91

RULE REVIEW CHECKLIST

File No. 1880
DATE RECEIVED 12-18-91
REVIEW DATE 12-27-91
DUE ~~DATE~~ 1-2-92
~~(DIS)~~APPROVED MJM 12-92
WITHDRAWN _____

Docket No. 05 0009 0703
ADOPTED W/O HEARING _____
EMERGENCY RULE _____
TO REVISOR ON 12-23-91
REVISOR (DIS)APPROVED _____
FILED W/SEC. OF STATE 1/6/92
RETURNED TO AGENCY 1/6/92

✓ Rule as adopted (4 copies)

~~Notice to Solicit Outside Information/Opinion (if applicable)~~
_____ Date published in State Register
_____ Comments

_____ ~~Petition for Adoption~~ of a Rule

✓ Board's Authorizing Resolution
June 25, 1991 Date adopted

✓ Proposed Rule
~~June 25, 1991~~ ✓ Revisor's Certificate

✓ Notice of Intent to Adopt Rule
116.18 subd 3c Statutory Authority
_____ Small Business Statement
_____ Expenditure of public money statement
August 19, 1991 Signature

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

✓ Affidavit of Mailing Notice of Intent to Adopt Rule
August 15, 1991 Dated (30)/25 days before adoption
_____ Notice attached indicates it is attached
_____ Copy of rule or summary attached

✓ Publication in State Register
August 19, 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~~
Dec 4, 1991 Date adopted

✓ Findings of Fact, Conclusions & Order Adopting
Charles Williams Date

✓ Written Requests, Submissions or Comments

✓ Declaration of Attorney
Richard Cool Name of SAAG representing agency

_____ ~~Notice~~ of Submission to Attorney General (if applicable)

_____ ~~Affidavit~~ of Mailing Notice to Attorney General (if applicable)

DEPARTMENT: Office of the Attorney General **STATE OF MINNESOTA**

OFFICE MEMORANDUM

DATE: January 6, 1992

TO: SCOTT R. THOMPSON
Minnesota Pollution Control Agency
Water Quality Division/APS
520 Lafayette Road

FROM: MARY JO MURRAY
Special Assistant Attorney General
525 Park Street, Suite 500 (55103)

PHONE: 296-3258

SUBJECT: In the Matter of the Adopted Rule Relating to Individual On-Site Wastewater Treatment Grants Program

The above-referenced rule has been approved as to its legality by the Attorney General on January 2, 1992.

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.

MJM:jj
Enclosures
cc: Richard Cool, Esq.
William Brown, Chief Judge
MaryAnn Hruby

Pollution Control Agency

Adopted Permanent Rules Relating to Individual On-Site Wastewater Treatment Grants Program

Rules as Adopted

7077.0705 DEFINITIONS.

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

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

Subp. 2a. **Application cycle.** "Application cycle" means the development of an on-site funding list and the acceptance, review, and approval of written applications for individual on-site wastewater treatment system grant funds.

Subp. 5a. **Cluster on-site wastewater treatment system or cluster system.** "Cluster on-site wastewater treatment system" or "cluster system" means a wastewater treatment system, or part of a system, that uses subsurface soil treatment and disposal to serve two or more dwellings or other establishments. Only cluster systems that serve five or fewer dwellings or other establishments are eligible for grant assistance.

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

Subp. 7. **Designer.** "Designer" means a person who designs on-site wastewater treatment systems that conform to chapter 7080, and has received agency approval under part 7077.0720.

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[For text of subp 8, see M.R.]

Subp. 9. **Failed system.** "Failed system" means a wastewater treatment system that does not conform to chapter 7080 and has been issued an abatement notice by the municipality.

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

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

Subp. 12. **Installer.** "Installer" means a person who constructs or repairs on-site wastewater treatment systems according to chapter 7080, and has received agency approval under part 7077.0720.

[For text of subp 12a, see M.R.]

Subp. 13. **Median household income.** "Median household income" means the income data named "median household income" from the most recent decennial census of the United States or the median household income calculated by the municipality and approved by the commissioner for alternative planning areas.

[For text of subps 14 to 16, see M.R.]

Subp. 16a. **Planning area.** "Planning area" means an area of contiguous dwellings or other establishments. A planning area is the entire geographic area within a municipality's jurisdiction unless the commissioner approves an alternative area.

Subp. 16b. **Provisional certification.** "Provisional certification" means an apprenticeship status given to persons that have participated in the state individual sewage treatment system certification program and passed the certification examination, but lack the experience required for full certification.

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[For text of subp 17, see M.R.]

Subp. 17a. Site evaluation costs. "Site evaluation costs" means the expenses associated with a site evaluation, which include the cost of a site evaluator, soil borings, percolation tests, and the determination of topographical features.

Subp. 18. Site evaluator. "Site evaluator" means a person who investigates soils and site characteristics to determine suitability, limitations, soil type, and sizing requirements for designing on-site wastewater treatment systems that conform to chapter 7080, and has received agency approval under part 7077.0720.

Subp. 18a. System design costs. "System design costs" means the expenses charged by a designer to complete the necessary calculations for system size, location, materials, and other items necessary to develop a bed, trench, or mound wastewater treatment system design that conforms to chapter 7080.

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

7077.0710 ELIGIBILITY.

Subpart 1. Eligibility to participate. Only municipalities, as defined under part 7077.0105, subpart 24, are eligible to participate in the individual on-site wastewater treatment systems grants program.

Subp. 2. Eligibility of individual and cluster systems. For an individual or cluster system to be eligible to be included in a municipality's grant application and to receive grant funds it must meet the following conditions:

A. be a failed system;

B. have been constructed before January 1, 1977;

C. not be serving a seasonal residence;

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

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E. be located within the project planning area.

Subp. 3. **Eligibility of funded areas.** On-site wastewater treatment systems located in geographic areas that were included in planning areas of projects previously funded with state or federal water pollution control funds are not eligible for funding under this program.

Subp. 4. **Eligibility of alternative planning area.** The commissioner shall evaluate any written municipal proposal for a project planning area that is less than the municipality's entire geographic jurisdiction. The commissioner's evaluation of the proposal shall be based on housing density, water quality impact, and public health impact. Separate dwellings or other establishments that are not part of a contiguous area shall not be approved as or part of a planning area.

Subp. 5. **Eligibility to submit a request to be placed on the on-site funding list.** The commissioner shall only accept requests to place projects on the on-site funding list under part 7077.0713 from municipalities that:

A. have authorization from their governing bodies to assume the responsibility for the proposed grant projects and the associated official documents; and

B. have planning areas that have been approved by the commissioner.

Subp. 6. **Eligibility to submit grant application.** The authority shall accept grant applications only from municipalities that have:

A. successfully submitted requests to be placed on the on-site funding list;

B. been classified as fundable on the on-site funding list; and

C. received written notification from the commissioner to submit applications.

7077.0713 ON-SITE FUNDING LIST.

Subpart 1. **On-site funding list.** An on-site funding list shall be compiled by the commissioner before each grant

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application period. The list shall be used to determine which municipalities are eligible to apply for individual on-site wastewater treatment system grant funds.

Subp. 2. **Requirements for placement on the on-site funding list.** To be placed on the on-site funding list a municipality must meet the requirements of part 7077.0710, subpart 5, and either item A, B, or C, as appropriate.

A. A municipality with a project proposal must submit a written request for the project to be placed on the on-site funding list to the commissioner during a submittal period announced by a notice in the State Register. The notice shall include submittal deadlines and conditions. The placement request must be made on forms provided by the agency and must include:

(1) a resolution of the governing body of the municipality that designates the municipality as the responsible party for the on-site funding list placement request and future grant application, authorizes the filing of the request and future application, and designates the municipal official authorized to sign the request, future application, and related documents;

(2) a map of the municipal jurisdiction or approved alternative planning area;

(3) a preliminary list that identifies the addresses of the on-site wastewater treatment systems that are suspected to be failed and that meet the eligibility requirements under part 7077.0710, subpart 2;

(4) median household income data or alternative median household income data that includes income data and computation methodology for municipalities and planning areas not included in the decennial census;

(5) the municipality's estimated date of site evaluation, design, and construction for all eligible systems; and

(6) a copy of a draft ordinance for adopting the requirements of chapter 7080 and establishing a maintenance plan

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for the individual on-site wastewater treatment systems within the jurisdiction of the municipality; and

(7) the estimated amount of grant funding necessary for eligible site evaluation, system design, and construction costs.

B. A municipality with a project that has been awarded a partial grant under part 7077.0735, subpart 2, shall submit a written request for the remaining grant fund entitlement to the commissioner by the published placement-request submittal deadline described under item A.

C. A municipality eligible for a grant increase amendment under part 7077.0735, subpart 4, item A, shall submit a written request for the grant increase to the commissioner by the published placement-request submittal deadline described under item A.

Subp. 3. **Incomplete requests.** Municipalities that submit placement requests that do not include the information required in subpart 2 or that are not postmarked by the published deadline shall not be placed on the on-site funding list.

Subp. 4. **Priority ranking.** Priority ranking of projects will be based on the median household income approved by the commissioner for the project planning area. Ranking on the on-site funding list shall be determined as described in items A to C:

A. Partial award projects shall be ranked before other grant increase amendments and project proposals. Partial award projects shall be ranked with the lowest median household income receiving the highest priority.

B. Grant increase amendments other than for partial awards shall be ranked after the lowest priority partial award project on the on-site funding list and before project proposals. These grant increases shall be ranked with the lowest median household income receiving the highest priority.

C. Project proposals shall be ranked after the lowest priority grant increase amendment project on the on-site funding list. Project proposals shall be ranked with the lowest median

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household income receiving the highest priority.

Subp. 5. **Determination of fundable range.** To determine the fundable range on the on-site funding list, the commissioner shall subtract the estimated grant amount or calculated grant increase for each project, in order of decreased priority, from the amount available in the individual on-site wastewater treatment system grant fund. The projects classified as fundable are those that have their estimated or calculated project costs subtracted before the grant fund amount is depleted or diminished to an amount too small to complete the majority of the project next in priority on the on-site funding list.

Subp. 6. **Determination of projects eligible to submit applications.** Only municipalities with projects classified as fundable on the on-site funding list are eligible to submit applications.

Subp. 7. **Exclusion from fundable range.** Projects not classified as fundable on the on-site funding list must resubmit the documents required under subpart 2 during a subsequent placement request period.

Subp. 8. **Commissioner notification.** The commissioner shall notify each municipality of the on-site funding list priority for its project.

7077.0720 APPROVAL OF INDIVIDUAL ON-SITE WASTEWATER TREATMENT PERSONNEL.

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

Subp. 2. **First alternate approval criteria.** A person referred to in subpart 1 will be approved by the commissioner if the person is fully certified by the agency through the individual sewage treatment systems certification program administered by the agency in cooperation with the Individual

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Sewage Treatment Systems Advisory Committee established under part 7080.0100. Approval is automatic upon submittal of certification number. Provisional certification does not fulfill this approval criteria.

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

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

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

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

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

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

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

[For text of subps 4 and 5, see M.R.]

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7077.0725 GRANT APPLICATION.

Subpart 1. **Eligibility.** No municipality shall submit an individual on-site wastewater treatment system grant application unless it meets the eligibility requirements of part 7077.0710, subpart 6. The written notification from the commissioner shall include application submittal conditions and deadlines. No municipality is eligible for a grant unless a complete grant application has been submitted to the authority and has been certified by the commissioner. A complete application includes all the documents required under subpart 2.

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

A. the wastewater treatment plan adopted by the municipality's governing body that identifies wastewater treatment needs, proposes long-term solutions for a planning area, and includes:

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

(2) site evaluations, including soil investigations, soil borings, and percolation tests for the failed systems identified in subitem (1) prepared by a site evaluator and a determination if it is feasible to replace or upgrade the failed systems on-site made by a system designer;

(3) a summary of the proposed systems that includes sizing, location, and design, prepared by a designer using data from the site evaluations prepared under subitem (2);

(4) a list of the failed individual on-site wastewater treatment systems, including addresses and names of property owners, that meet the eligibility requirements under part 7077.0710, subpart 2, and copies of the abatement notices;

(5) an analysis of the overall wastewater treatment needs in the planning area including a proposal for addressing the remaining wastewater treatment needs in the

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planning area not covered in subitem (4), including specific actions to be taken and a proposed timetable for addressing the wastewater treatment needs;

(6) documentation of approval of the project inspector, site evaluator or site evaluators, designer, and installer under part 7077.0720; and

(7) a certification of adoption of the wastewater treatment plan from the municipality's governing body;

B. a copy of the enacted ordinance that adopts the requirements of chapter 7080, individual sewage treatment system standards, and establishes a maintenance plan for the on-site wastewater treatment systems in the municipal jurisdiction and certification that the ordinance is being enforced;

C. signed statements of compliance with the eligibility requirements under part 7077.0710, subpart 2, items B to E, from the individual system owners;

D. the amount of grant funding requested for site evaluation, system design, and construction and a certification stating that only eligible costs have been requested;

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

F. a statement from the municipality that it has an inspector on staff or under contract for services; and

G. an assurance from the municipality that states that all owners of dwellings or other establishments planned to be connected to a cluster system agree to be part of the system, to participate in the construction projects, and to participate in and finance future operation, maintenance, and replacement of the system.

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

Subp. 4. **Application closing date.** The application deadline shall not be less than 150 days after the placement request submittal deadline identified under part 7077.0713, subpart 2, item A. The commissioner shall send written notification of the application deadline to municipalities that

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are eligible to submit grant applications. The application must be postmarked by the specified application deadline.

Subp. 5. **Incomplete applications.** Municipalities that submit applications postmarked by the application deadline that require additional information to be considered complete under subpart 2, have 45 days from the application deadline to submit the information needed to make the application approvable. If an application is not completed within this 45 days, the municipality is ineligible for funding. Ineligible municipalities must wait to reapply until the on-site funding list placement requirements have been met and the project has been classified as fundable under part 7077.0713 during a subsequent application cycle.

Subp. 6. **Three copies.** Individual on-site wastewater treatment system grant application forms and attachments must be submitted in triplicate to the authority. At least one set of forms and attachments must contain original signatures.

Subp. 7. **Application approval.** The commissioner shall review and approve grant applications from municipalities that meet the requirements under this part.

7077.0730 ELIGIBLE COSTS.

Subpart 1. **Eligible costs.** Only the actual site evaluation, system design, and construction costs of upgrading or replacing failed individual or cluster on-site wastewater treatment systems that have been identified under part 7077.0725, subpart 2, item A, subitem (4), are eligible. Upgraded or replacement systems must be a trench, bed, or mound design and serve five or fewer dwellings or other establishments to be eligible for grant participation. Only the costs associated with one system shall be eligible for each dwelling or other establishment.

Subp. 2. **Ineligible costs.** All inspection, administrative, land, and easement costs are ineligible. Planning and engineering costs, other than for site evaluation and system design, are also ineligible.

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Subp. 3. [See repealer.]

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

A. the owner's system is specifically identified on the wastewater treatment plan as required under part 7077.0725, subpart 2, item A, that was approved by the municipality and the commissioner before construction costs are incurred; and

B. all work has been done by personnel approved under part 7077.0720, and according to chapter 7080 and the approved wastewater treatment plan.

7077.0735 AMOUNT OF GRANT AWARD.

Subpart 1. **Grant amount.** The amount of the grant to be awarded will be the sum of items A and B:

A. 50 percent of the construction costs eligible under part 7077.0730 up to a maximum amount of $2,500 per dwelling or other establishment for a trench or bed system and $3,750 per dwelling or other establishment for a mound system; and

B. 50 percent of the site evaluation and system design costs eligible under part 7077.0730 up to a maximum amount of $150 per dwelling or other establishment.

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

Subp. 3. **Funds not allocated.** Individual on-site wastewater treatment system grant funds that are not allocated for a fundable project, that are refused by a municipality, or that are denied award by the commissioner or authority shall

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remain in the grant fund for distribution during the next application cycle.

Subp. 4. **Amendments.** Grant amendments shall be made as described in items A and B:

A. Grant increase amendments shall only be made to fulfill the original grant entitlement for municipalities that receive partial awards as described under subpart 2, to reimburse the eligible cost for failed on-site treatment systems in a project planning area that were not identified on the on-site funding list placement request, and to reimburse site evaluation and system design costs eligible under subpart 1, item B, for municipalities that received individual on-site wastewater treatment system grant awards before July 1, 1991. Grant increases shall be made during an application cycle when on-site funds are available and the grant increase has been classified as fundable on the corresponding on-site funding list.

B. Grant decrease amendments shall be made upon project completion to reduce the grant to correspond with the amount of incurred, grant eligible costs.

7077.0745 CERTIFICATION OF AWARD.

Subpart 1. **Certification to authority.** The commissioner will certify each individual on-site wastewater treatment system grant application approved under part 7077.0725, subpart 7, and grant amendment approved under part 7077.0735, subpart 4, to the authority for award. Grant eligible costs, award amounts, and eligible budget periods will be determined at the time of certification.

Subps. 2 and 3. [See repealer.]

7077.0750 PAYMENT CONDITIONS.

Payment of the grant is contingent on complying with the following conditions:

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

D. The upgrade or replacement to the existing system must meet the standards under chapter 7080 and must be completed in accordance with the approved wastewater treatment plan.

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E. Costs on the payment request have been incurred and are eligible under part 7077.0730.

7077.0755 PAYMENTS.

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

Subp. 2. **Schedule of payments.** Payments may be requested monthly as construction on individual and cluster systems is completed and approved by the inspector.

Subp. 3. **Documentation.** Before payment of any part of the grant is made, the municipality must certify to the agency that the payment conditions under part 7077.0750 have been fulfilled and invoices that document incurred site evaluation, system design, and construction costs for each upgraded or replaced on-site system will be kept on file for state audit purposes.

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

7077.0760 TERMINATION OF GRANT.

Failure of the municipality to comply with the grant agreement or parts 7077.0700 to 7077.0765 constitutes grounds for the commissioner to recommend that the authority terminate the grant.

7077.0765 SUBSEQUENT GRANTS.

A municipality awarded a grant from the individual on-site wastewater treatment systems grants program is not eligible for additional funding under the program established by the 1972 Federal Water Pollution Control Act amendments or the state independent grants program, including the individual on-site wastewater treatment systems grants program, unless the municipality is applying for a project that serves a planning area that was not included, under part 7077.0725, subpart 2, item A, in the awarded grant.

REPEALER. Minnesota Rules, parts 7077.0715; 7077.0730, subpart 3; 7077.0740; and 7077.0745, subparts 2 and 3, are repealed.

Approved
by Revisor _____

APPROVED AS TO FORM AND LEGALITY

Jan 2 19 92

HUBERT H. HUMPHREY, III
ATTORNEY GENERAL

BY _____
SPECIAL ASSISTANT ATTORNEY GENERAL

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED

JAN 06 1992

Joan Anderson Growe
Secretary of State

10:010
RE

Pollution Control Agency

Proposed Permanent Rules Relating to Individual On-Site Wastewater Treatment Grants Program

Rules as Proposed

7077.0705 DEFINITIONS.

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

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Subp. 2a. **Application cycle.** "Application cycle" means the development of an on-site funding list and the acceptance, review, and approval of written applications for individual on-site wastewater treatment system grant funds.

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

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[For text of subp 8, see M.R.]

Subp. 9. **Failed system.** "Failed system" means a wastewater treatment system that does not conform to chapter 7080 and has been issued an abatement notice by the ~~**municipality's inspector**~~ municipality.

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

Subp. 12. **Installer.** "Installer" means a person who constructs or repairs ~~**individual**~~ on-site wastewater treatment systems according to chapter 7080, and has received agency approval under part 7077.0720.

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7077.0710 ELIGIBILITY.

Subpart 1. **Municipality Eligibility to participate.** ~~A municipality applying for~~ Only municipalities, as defined under part 7077.0105, subpart 24, are eligible to participate in the individual ~~system owners must meet the following conditions to be eligible for a grant:~~ on-site wastewater treatment systems grants program.

~~A. be authorized by its governing body to assume responsibility for the grant application and related documents for owners of individual on site wastewater treatment systems~~

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~~who-are-in-its-jurisdiction-and-included-in-the-planning-area under-part-7077.0715,-subpart-2;~~

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

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

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

Subp. 2. ~~Individual-system~~ **Eligibility** of individual and cluster systems. ~~The~~ For an individual ~~systems~~ or cluster system to be ~~replaced-or-upgraded~~ eligible to be included in ~~the~~ a municipality's grant application and to receive grant funds it must meet the following conditions:

A. be a failed system;

B. have been constructed before January 1, 1977;

C. not be serving a seasonal residence; ~~and~~

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

E. be located within the project planning area.

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

Subp. 4. **Eligibility of alternative planning area.** The commissioner shall evaluate any written municipal proposal for a project planning area that is less than the municipality's entire geographic jurisdiction. The commissioner's evaluation of the proposal shall be based on housing density, water quality impact, and public health impact. Separate dwellings or other establishments that are not part of a contiguous area shall not be approved as or part of a planning area.

Subp. 5. **Eligibility to submit a request to be placed on**

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the on-site funding list. The commissioner shall only accept requests to place projects on the on-site funding list under part 7077.0713 from municipalities that:

A. have authorization from their governing bodies to assume the responsibility for the proposed grant projects and the associated official documents; and

B. have planning areas that have been approved by the commissioner.

Subp. 6. **Eligibility to submit grant application.** The authority shall accept grant applications only from municipalities that have:

A. successfully submitted requests to be placed on the on-site funding list;

B. been classified as fundable on the on-site funding list; and

C. received written notification from the commissioner to submit applications.

7077.0713 ON-SITE FUNDING LIST.

Subpart 1. **On-site funding list.** An on-site funding list shall be compiled by the commissioner before each grant application period. The list shall be used to determine which municipalities are eligible to apply for individual on-site wastewater treatment system grant funds.

Subp. 2. **Requirements for placement on the on-site funding list.** To be placed on the on-site funding list a municipality must meet the requirements of part 7077.0710, subpart 5, and either item A, B, or C, as appropriate.

A. A municipality with a project proposal must submit a written request for the project to be placed on the on-site funding list to the commissioner during a submittal period announced by a notice in the State Register. The notice shall include submittal deadlines and conditions. The placement request must be made on forms provided by the agency and must include:

(1) a resolution of the governing body of the

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municipality that designates the municipality as the responsible party for the on-site funding list placement request and future grant application, authorizes the filing of the request and future application, and designates the municipal official authorized to sign the request, future application, and related documents;

(2) a map of the municipal jurisdiction or approved alternative planning area;

(3) a preliminary list that identifies the addresses of the on-site wastewater treatment systems that are suspected to be failed and that meet the eligibility requirements under part 7077.0710, subpart 2;

(4) median household income data or alternative median household income data that includes income data and computation methodology for municipalities and planning areas not included in the decennial census;

(5) the municipality's estimated date of site evaluation, design, and construction for all eligible systems; and

(6) a copy of a draft ordinance for adopting the requirements of chapter 7080 and establishing a maintenance plan for the individual on-site wastewater treatment systems within the jurisdiction of the municipality.

B. A municipality with a project that has been awarded a partial grant under part 7077.0735, subpart 2, shall submit a written request for the remaining grant fund entitlement to the commissioner by the published placement-request submittal deadline described under item A.

C. A municipality eligible for a grant increase amendment under part 7077.0735, subpart 4, item A, shall submit a written request for the grant increase to the commissioner by the published placement-request submittal deadline described under item A.

Subp. 3. **Incomplete requests.** Municipalities that submit placement requests that do not include the information required in subpart 2 or that are not postmarked by the published

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deadline shall not be placed on the on-site funding list.

Subp. 4. **Priority ranking.** Priority ranking of projects will be based on the median household income approved by the commissioner for the project planning area. Ranking on the on-site funding list shall be determined as described in items A to C:

A. Partial award projects shall be ranked before other grant increase amendments and project proposals. Partial award projects shall be ranked with the lowest median household income receiving the highest priority.

B. Grant increase amendments other than for partial awards shall be ranked after the lowest priority partial award project on the on-site funding list and before project proposals. These grant increases shall be ranked with the lowest median household income receiving the highest priority.

C. Project proposals shall be ranked after the lowest priority grant increase amendment project on the on-site funding list. Project proposals shall be ranked with the lowest median household income receiving the highest priority.

Subp. 5. **Determination of fundable range.** To determine the fundable range on the on-site funding list, the commissioner shall subtract the estimated grant amount or calculated grant increase for each project, in order of decreased priority, from the amount available in the individual on-site wastewater treatment system grant fund. The projects classified as fundable are those that have their estimated or calculated project costs subtracted before the grant fund amount is depleted or diminished to an amount too small to complete the majority of the project next in priority on the on-site funding list.

Subp. 6. **Determination of projects eligible to submit applications.** Only municipalities with projects classified as fundable on the on-site funding list are eligible to submit applications.

Subp. 7. **Exclusion from fundable range.** Projects not classified as fundable on the on-site funding list must resubmit

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the documents required under subpart 2 during a subsequent placement request period.

Subp. 8. **Commissioner notification.** The commissioner shall notify each municipality of the on-site funding list priority for its project.

7077.0720 APPROVAL OF INDIVIDUAL ON-SITE WASTEWATER TREATMENT PERSONNEL.

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

Subp. 2. **First alternate approval criteria.** A person referred to in subpart 1 will be approved by the commissioner if the person is fully certified by the agency through the individual sewage treatment systems certification program administered by the agency in cooperation with the Individual Sewage Treatment Systems Advisory Committee established under part 7080.0100. Approval is automatic upon submittal of certification number. Provisional certification does not fulfill this approval criteria.

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

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

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

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

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the criteria in chapter 7080.

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

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

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

[For text of subps 4 and 5, see M.R.]

7077.0725 GRANT APPLICATION.

Subpart 1. **~~Notice of taking applications~~** Eligibility. ~~The commissioner will request the authority to publish in the State Register a notice that applications for individual on-site wastewater treatment grants will be accepted by the authority~~ No municipality shall submit an individual on-site wastewater treatment system grant application unless it meets the eligibility requirements of part 7077.0710, subpart 6. The written notification from the commissioner shall include application ~~closing date will be established~~ submittal conditions and deadlines. No municipality is eligible for a grant unless a complete grant application has been submitted to the authority and has been certified by the commissioner~~, and will be no less than 120 days after the publication date~~. A complete application includes all the documents required under subpart 2.

Subp. 2. **Application requirements.** The municipality must

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apply for a grant on a form provided by the commissioner or the authority. The municipality must submit to the authority the following information with the application:

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

B. the wastewater treatment plan ~~prepared-under-part 7077.0715,~~ adopted by the municipality's governing body that identifies wastewater treatment needs, proposes long-term solutions for a planning area, and includes:

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

(2) site evaluations, including soil investigations, soil borings, and percolation tests for the failed systems identified in subitem (1) prepared by a site evaluator and a determination if it is feasible to replace or upgrade the failed systems on-site made by a system designer;

(3) a summary of the proposed systems that includes sizing, location, and design, prepared by a designer using data from the site evaluations prepared under subitem (2);

(4) a list of the failed individual on-site wastewater treatment systems, including addresses and names of property owners, that meet the eligibility requirements under part 7077.0710, subpart 2, and copies of the abatement notices;

(5) an analysis of the overall wastewater treatment needs in the planning area including a proposal for addressing the remaining wastewater treatment needs in the planning area not covered in subitem (4), including specific actions to be taken and a proposed timetable for addressing the wastewater treatment needs;

(6) documentation of approval of the project inspector, site evaluator or site evaluators, designer, and

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installer under part 7077.0720; and

(7) a certification of adoption of the wastewater treatment plan from the municipality's governing body;

~~C.~~ B. a copy of the enacted ordinance that adopts the requirements of chapter 7080, individual sewage treatment system standards, and establishes a maintenance plan for the on-site wastewater treatment systems in the municipal jurisdiction and certification that the ordinance is being enforced;

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

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

~~F.~~ C. signed statements of compliance with the eligibility requirements under part 7077.0710, subpart 2, items B to E, from the individual system owners ~~stating-that-their system-meets-the-following-conditions:~~

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

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

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

D. the amount of grant funding requested for site evaluation, system design, and construction and a certification stating that only eligible costs have been requested;

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

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

G. an assurance from the municipality that states that all owners of dwellings or other establishments planned to be connected to a cluster system agree to be part of the system,

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to participate in the construction projects, and to participate in and finance future operation, maintenance, and replacement of the system.

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

Subp. 4. **Application closing date.** The application deadline shall not be less than 150 days after the placement request submittal deadline identified under part 7077.0713, subpart 2, item A. The commissioner shall send written notification of the application deadline to municipalities that are eligible to submit grant applications. The application must be postmarked by the ~~noticed~~ specified application ~~closing-date~~ deadline.

Subp. 5. **Incomplete applications.** Municipalities that submit applications ~~that-do-not-include-the-information-required-in-subparts~~ postmarked by the application deadline that require additional information to be considered complete under subpart 2 ~~and-3-or-that-are-not-submitted-by~~, have 45 days from the application ~~closing-date-are~~ deadline to submit the information needed to make the application approvable. If an application is not completed within this 45 days, the municipality is ineligible for funding. ~~The~~ Ineligible municipalities ~~may reapply-in-a-later~~ must wait to reapply until the on-site funding list placement requirements have been met and the project has been classified as fundable under part 7077.0713 during a subsequent application ~~period~~ cycle.

Subp. 6. **Three copies.** Individual on-site wastewater treatment system grant application forms and attachments must be submitted in triplicate to the authority. At least one set of forms and attachments must contain original signatures.

Subp. 7. **Application approval.** The commissioner shall review and approve grant applications from municipalities that meet the requirements under this part.

7077.0730 ELIGIBLE COSTS.

Subpart 1. **Eligible costs.** Only the actual site evaluation, system design, and construction costs of upgrading

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or ~~replacing failed individual~~ or cluster on-site wastewater treatment systems that have been identified under part ~~7077.0715~~ 7077.0725, subpart ~~3~~ 2, item ~~B~~ A, subitem (4), are eligible. Upgraded or replacement systems must be a trench, bed, or mound design and serve five or fewer dwellings or other establishments to be eligible for grant participation. Only the costs associated with one system shall be eligible for each dwelling or other establishment.

Subp. 2. **Ineligible costs.** All ~~nonconstruction-costs including-planning,-engineering-and-design,-site-evaluation-and soil-investigation,~~ inspection, ~~and~~ administrative, land, and easement costs are ineligible. Planning and engineering costs, other than for site evaluation and system design, are also ineligible.

Subp. 3. [See repealer.]

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

~~A. the-municipality-has-developed-and-adopted-a wastewater-treatment-plan-as-described-in-part-7077.0715-before construction-costs-are-incurred-by-the-owner-of-the-individual system;~~

~~B.~~ the owner's system is specifically identified on the ~~municipality's~~ wastewater treatment plan as required under part 7077.0725, subpart 2, item A, that was approved by the municipality and the commissioner before construction costs are incurred; and

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

B. all work has been done by personnel approved under part 7077.0720, and according to chapter 7080 and the approved wastewater treatment plan.

7077.0735 AMOUNT OF GRANT AWARD.

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Subpart 1. **Grant amount.** The amount of the grant to be awarded will be the sum of items A and B:

A. 50 percent of the ~~actual eligible~~ construction costs eligible under part 7077.0730 up to a maximum ~~grant~~ amount of $2,500 per ~~household~~ dwelling or other establishment for a trench or bed system and $3,750 per ~~household~~ dwelling or other establishment for a mound system; and

B. 50 percent of the site evaluation and system design costs eligible under part 7077.0730 up to a maximum amount of $150 per dwelling or other establishment.

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

Subp. 3. **Funds not allocated.** Individual on-site wastewater treatment system grant funds that are not allocated for a fundable project, that are refused by a municipality, or that are denied award by the commissioner or authority shall remain in the grant fund for distribution during the next application cycle.

Subp. 4. **Amendments.** Grant amendments shall be made as described in items A and B:

A. Grant increase amendments shall only be made to fulfill the original grant entitlement for municipalities that receive partial awards as described under subpart 2, to reimburse the eligible cost for failed on-site treatment systems in a project planning area that were not identified on the on-site funding list placement request, and to reimburse site evaluation and system design costs eligible under subpart 1, item B, for municipalities that received individual on-site wastewater treatment system grant awards before July 1, 1991. Grant increases shall be made during an application cycle when

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on-site funds are available and the grant increase has been classified as fundable on the corresponding on-site funding list.

B. Grant decrease amendments shall be made upon project completion to reduce the grant to correspond with the amount of incurred, grant eligible costs.

7077.0745 CERTIFICATION OF AWARD.

Subpart 1. **~~Funding list~~ Certification to authority.** The commissioner will ~~prepare a list of municipalities eligible to receive grant funding~~ certify each individual on-site wastewater treatment system grant application approved under ~~this program~~ part 7077.0725, subpart 7, and grant amendment approved under part 7077.0735, subpart 4, to the authority for award. Grant eligible costs, award amounts, and eligible budget periods will be determined at the time of certification.

Subps. 2 and 3. [See repealer.]

7077.0750 PAYMENT CONDITIONS.

Payment of the grant is contingent on complying with the following conditions:

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

D. The upgrade or replacement to the existing system must meet the standards under chapter 7080 and must be completed in accordance with the approved wastewater treatment plan.

E. Costs on the payment request have been incurred and are eligible under part 7077.0730.

7077.0755 PAYMENTS.

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

Subp. 2. **Schedule of payments.** Payments may be requested monthly as construction on individual and cluster systems is completed and approved by the inspector.

Subp. 3. **Documentation.** Before payment of any part of the grant is made, the municipality must ~~submit copies of the following documents for each individual~~ certify to the agency that the payment conditions under part 7077.0750 have been fulfilled and invoices that document incurred site evaluation,

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system design, and construction costs for each upgraded or replaced on-site system~~:~~ will be kept on file for state audit purposes.

~~A.--invoices-documenting-incurred-construction-costs;~~

~~B.--documentation-that-the-system-was-designed-by-a designer-using-data-from-a-site-evaluator;~~

~~C.--documentation-that-the-system-was-upgraded-or replaced-by-an-installer;-and~~

~~D.--documentation-that-the-system-was-inspected-and approved-by-the-municipality's-inspector.~~

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

7077.0760 TERMINATION OF GRANT.

Failure of the municipality to comply with ~~the-construction schedule-contained-in~~ the grant agreement or parts 7077.0700 to 7077.0765 constitutes grounds for the commissioner to recommend that the authority terminate the grant.

7077.0765 SUBSEQUENT GRANTS.

A municipality awarded a grant from the individual on-site wastewater treatment systems grants program is not eligible for additional funding under the program established by the 1972 Federal Water Pollution Control Act amendments or the state independent grants program, including the individual on-site wastewater treatment systems grants program, unless the municipality is applying for a project that serves a planning area that was not included, under part ~~7077.0715~~ 7077.0725, subpart 2, item A, in the awarded grant.

REPEALER. Minnesota Rules, parts 7077.0715; 7077.0730, subpart 3; 7077.0740; and 7077.0745, subparts 2 and 3, are repealed.

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Stat Authority 116.18 3c (f)
The agency shall adopt permanent rules regarding priorities, distribution of funds payment, inspections etc

End of comment period September 20, 1991

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

December 17, 1991

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

Dear Ms. Nolte:

RE: In the Matter of Proposed Rules Governing Individual On-site Wastewater Treatment System Grants Program, Minn. Rules Chapter 7077.

On November 27, 1991, the Minnesota Pollution Control Agency adopted the above-captioned rules. Enclosed for your review are the following:

1. Certificate of Authorizing Resolution.

2. Proposed rule with reviser of statutes certificate.

3. Notice of Intent to Adopt Rule without a public hearing, as mailed.

4. Statement of Need and Reasonableness.

5. Submittal letter to Legislative Commission to Review Administrative Rules.

6. Affidavit of Mailing Notice of Intent to Adopt Rule Without a Public Hearing, and attached notice.

7. Certificate of mailing lists.

8. Copy of notice of intent to adopt rule without a public hearing as published in the State Register.

9. Rule as adopted (four copies).

10. Certificate of resolution adopting the rule.

11. Findings of Fact, Conclusions, and Order adopting the rule (two copies).

12. Copies of comments received during the comment period.

13. Declaration of Attorney

No person or association requested a copy of the attorney general rule submission notice. For purposes of billing, our attorney general client code is 75.0001.0703. Please call me at (612) 296-7223 if you have any questions.

Sincerely,

Scott R. Thompson
Assessment and Planning Section
Water Quality Division

SRT:ls

In the Matter of the
Proposed Rule Amendments
Governing the Administration
of the Individual On-site
Wastewater Treatment Systems
Grants Program, Minnesota Rules
Parts 7077.0700 to 7077.0765

STATEMENT OF NEED AND
REASONABLENESS
June 6, 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 Individual On-site Wastewater Treatment Systems Grants Program (hereinafter "On-site Grants Program"), which is established under Minnesota Statutes Section 116.18, subdivision 3c (hereinafter "authorizing statute"). Minnesota Rules parts 7077.0700 to 7077.0765 are for the administration of this program.

The goal of the On-site Grants Program is to provide cost effective solutions for wastewater treatment problems that exist in areas where centralized treatment facilities are too costly to be constructed or residents are too widely dispersed to be efficiently served by centralized treatment. The program provides financial assistance to municipalities for upgrading and replacing failing on-site wastewater treatment systems that are owned by community residents and businesses. Grant funds are used to reimburse system owners for up to 50 percent of the eligible corrective work. Grant funds are to be used to solve the wastewater treatment problems for a designated area, not for randomly selected property owners.

Proposed amendments are being made to incorporate changes made to the authorizing statute during the 1990 Legislative session, to change the application process to reduce the potential financial risk to municipalities, and to clarify administrative procedures.

Background

The On-site Grants Program was created by the Legislature in 1987. Emergency rules were used to administer this program until permanent rules were adopted by the Agency on October 25, 1988, which became effective on January 28, 1989. Amendments to the rules were adopted by the Agency on June 26, 1990, which eliminated the requirement that limited program participation to municipalities with median household incomes at or below the state income and changed the rule part numbers from parts 7075.1400 to 7075.1530 to the existing numbers. The program has been in operation approximately three years. During this time, two application periods have been conducted and five projects have collectively been awarded $472,100 in financial assistance.

Amendments are being proposed based on statutory changes and 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 August 13, 1990 (15 S.R. 388) and ended on September 28, 1990. Fourteen comments were received during this period from municipal officials, concerned owners of failing on-site wastewater treatment systems, and consultants interested in administering projects. Rule amendments were reviewed by the Technical Advisory Committee, established under Minnesota Statutes Section 115.54, during a meeting on May 23, 1991.

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 Minnesota Statutes section 116.18, subdivision 3c, item (f) (1990), which provides:

> The agency shall adopt permanent rules regarding priorities, distribution of funds, payments, inspections, and other matters that the agency finds necessary for proper administration of grants awarded under this subdivision.

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

III. STATEMENT OF NEED

Minnesota Statutes chapter 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 rule amendments is discussed below.

Rule amendments are needed to implement changes passed by the Legislature in 1990 under the authorizing statute. Under these revisions, the number of service connections considered eligible for grant funding was changed from two to five, more time has been provided for municipalities to meet the eligibility requirements for program participation, and individual site evaluation and system design costs were made eligible for grant assistance.

Rule amendments are also needed to reduce the risk of financial loss for municipalities attempting to acquire Individual On-site Wastewater Treatment System Grants. Under the existing application process, municipalities desiring

to be considered for grant assistance must complete an application. Criticism about the expense of completing the application was raised by several municipalities that wanted to be considered for assistance during the first two application periods. To complete the application, funds must be spent to inspect all property sites suspected of containing failed treatment systems and to design replacement systems or upgrade plans that will meet the state's standards for system design and construction, under Minnesota Rules chapter 7080. Several of these municipalities chose not to participate in the application process because they claimed the financial risk was too great. They did not want to incur these costs without some indication of their chances for receiving grant funds. This funding status is currently determined after the application submittal period has been closed.

Changes are also needed to clarify the eligibility of alternative planning areas, areas smaller than a municipality's entire geographic jurisdiction. Alternative planning areas have always been eligible under the rules, but many municipalities have been confused about this eligibility and the associated conditions and have inappropriately disqualified themselves from participating in the grants program.

Additional amendments are needed to improve the organization of the rules and make them easier for Agency administrative staff and municipal participants to understand.

IV. STATEMENT OF REASONABLENESS

The Agency is required by Minnesota Statutes chapter 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 lessen the burden for them. Proposed improvements include reducing the financial risk associated with seeking grant funds; expanding grant eligible costs to include site investigation and system design costs and eligible costs for systems with less than six service connections; and clarifying grant participation conditions and administrative procedures.

B. Reasonableness of Individual Rules:

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

Part 7077.0705 Definitions.

Subpart 2A. Application Cycle.

The Agency proposes to add a definition for "application cycle." This definition is needed to identify the steps associated with the proposed application process. The definition is reasonable because it provides clarification for the rules.

Subpart 5A. Cluster on-site wastewater treatment system or cluster system.

The Agency proposes to add a definition for "cluster systems." Cluster systems are on-site wastewater treatment systems that serve multiple residential homes, businesses or other establishments. Cluster systems that have two to five service connections were made eligible for grant assistance under the statutory revisions made during the 1990 Legislative session. This change made two types of systems: individual systems and cluster systems. Individual systems are

defined under subpart 10. The definition is needed to establish the difference between individual and cluster systems. This definition is reasonable because it provides clarification for the rules.

Subpart 6. Construction cost.

The Agency proposes deleting the word "individual" from the phrase "individual on-site wastewater treatment system." The definition of construction costs applies to both individual and cluster systems. This word change is needed to create a general a term, "on-site wastewater treatment systems," that refers to both types of systems. This general reference is needed in many parts throughout the rules. This word change is reasonable because it is the most economic way to include cluster systems in the definition.

Subpart 7. Designer.

The Agency proposes to delete the word "individual" from the phrase "individual on-site wastewater treatment system." See subpart 6 for an explanation of the need and reasonableness. The Agency also proposes to add the phrase "that conform to Chapter 7080" to further describe what is required of a designer under this program. Under the On-site Grants Program, only systems that are designed and constructed according to the standards under Minnesota Rules chapter 7080 are eligible for grant assistance. This word addition is reasonable because it clarifies the intent of the rules.

Subpart 9. Failed system.

The Agency proposes adding "does not conform to Chapter 7080" to the definition of a failed system. Minnesota Rules chapter 7080 are the standards used to determine if an on-site system is inappropriately constructed or is not meeting state treatment standards. Adding this phrase is reasonable because it clarifies which standards are used for classifying a treatment system as failed.

The Agency also proposes deleting the words "municipality's inspector" and identifying the "municipality" as the entity that will issue abatement notices. Experience in this program has shown that abatement notices are not issued by the inspector, but are more often issued by the municipal clerk. This change is reasonable because it reflects municipal practice. The determination to issue abatement notices will continue to be made only after an on-site system has been examined by a certified inspector and determined to be a failed system.

Subpart 10. Individual on-site wastewater treatment system or individual system.

The Agency proposes to define an individual system as a system that serves one dwelling or other establishment. This change is needed to reflect the change in the statute, which allows systems to serve up to 5 establishments. Before the statute was changed, on-site systems could serve a maximum of two establishments. Since system eligibility was so limited, systems that serve two establishments were classified in the rules as individual systems to limit program jargon. It is now reasonable to change this definition because the statute has broadened the eligibility of cluster systems and a definition of cluster system has been proposed.

Subpart 11. Inspector

The Agency proposes deleting the word "individual" from the phrase "individual on-site wastewater treatment systems." See subpart 6 for an explanation of the need and reasonableness.

Subpart 12. Installer.

The Agency proposes deleting the word "individual" from the phrase "individual on-site wastewater treatment systems." See subpart 6 for an explanation of the need and reasonableness.

Subpart 13. Median household income.

The Agency proposes adding the phrase "or the median household income calculated by the municipality and approved by the commissioner for alternative planning areas." Median household income is used by the Agency to determine funding priority. Alternative planning areas (see subpart 16A) are eligible under this program if approved by the Commissioner. The proposed change is needed to define median household income for these areas, which do not have values on the United States decennial census. This change is reasonable because it clarifies the value that will be used by Agency staff when they rank projects with alternative planning areas for funding priority.

Subpart 16A. Planning area.

The Agency proposes to add a definition for planning area. This term is currently defined under part 7077.0715, subpart 2. It is reasonable to place the definition within the section for definitions. The definition is reasonable because it clarifies the intent of the rules that projects with alternative planning areas can be eligible to compete for grant funds and clarifies which areas are considered planning areas under the rules.

Subpart 16B. Provisional certification.

The Agency proposes to add a definition for provisional certification. The Agency recognizes two personnel certification classifications: provisional and full. The existing rules do not clearly identify the difference between these classifications even though workers with full classifications can work on grant projects and workers with provisional classifications can not, see part 7077.0720, subpart 2. Confusion over adequate classification caused several grant recipients to request that provisionally certified workers be approved to work on their projects. This definition is needed to eliminate the confusion between provisional certification and full certification. The definition is reasonable because it clarifies the intent of the rules.

Subpart 17A. Site evaluation costs.

The Agency proposes to add a definition for site evaluation costs. The definition is needed to identify which project expenses are included under the classification of site evaluation costs. Site evaluation costs were made grant eligible under the 1990 statutory revisions. This definition is reasonable because it clarifies the intent of the rules by identifying which costs will be considered grant eligible and provides a means for the Agency to reimburse project costs in a consistent manner.

Subpart 18. Site evaluator.

The Agency proposes to delete the word "individual" from the phrase "individual on-site wastewater treatment systems." See subpart 6 for an explanation of the need and reasonableness.

The Agency proposes to delete the words "does soil borings or percolation tests for use in" and substituting the words "to determine suitability, limitations, soil and sizing requirements" to better describe the function of the site evaluator. This change is reasonable because it improves the definition for site evaluator.

The Agency also proposes to add language to specify that the site evaluator must acquire the information required by the system designer to design systems that meet the standards under Minnesota Rules Chapter 7080. This is reasonable because it clarifies the intent of the rules that all work must be done in accordance with the Individual Sewage Treatment Systems Standards.

Subpart 18A. System design costs.

The Agency proposes to add a definition for "system design costs." The definition is needed to identify which project expenses are included under the classification of system design costs. System design costs were made grant

eligible under the 1990 statutory revisions. This definition is reasonable because it clarifies the intent of the rules by identifying which costs will be considered grant eligible and provides a means for the Agency to reimburse project costs in a consistent manner.

Subpart 19. Trench or bed system.

The Agency proposes to delete the words "an individual" from the phrase "an individual wastewater treatment system." See subpart 6 for an explanation of the need and reasonableness.

7077.0710 Eligibility.

The Agency proposes changing this part to include a summary of the eligibility requirements for all phases of the grant process. The existing rules only describing the eligibility requirements for grant award. The proposed changes will create an easy-access reference of program eligibility requirements. A new heading format that begins with the word "eligibility" is also proposed for the subparts to create consistent headings and to eliminate confusion associated with randomly worded headings.

Subpart 1. Municipal eligibility.

The Agency proposes changing the heading for this subpart from "municipal eligibility" to "eligibility to participate." This is reasonable because it corresponds to the proposed heading format.

The existing language under this subpart describes what is required from a municipality before it will receive a grant award. Since the Agency proposes describing the eligibility requirements in a step-by-step manner, most of the requirements under this subpart have been proposed to be deleted here and moved under alternate subparts. This is reasonable because the step-by-step

explanation will allow grant participants to more easily understand the steps involved in the grant process and more readily identify the requirements for each step.

The Agency proposes to identify which entities are eligible to participate in the On-site Grants Program under this subpart. The proposed change is reasonable because it more clearly identifies the definition used to determine eligibility to participate in the On-site Grants Program and creates a format that more clearly states the intent of the rules.

Subpart 2. Individual system eligibility.

The Agency proposes changing the heading of this subpart to "Eligibility of individual and cluster systems." This is reasonable because it corresponds to the proposed heading format for this part and it includes "cluster systems," which were made eligible under this program by the 1990 statutory changes.

This subpart identifies the requirements that must be met by an on-site wastewater treatment system before the system can be included in a grant application or receive grant assistance. Word changes have been proposed to clarify the intent of the rules and to improve the readability of the subpart.

The Agency proposes to add an eligibility condition that requires on-site systems to be located within the project planning area. This condition is currently stated in the rules under subpart 1, item A. Adding this condition is reasonable because it is appropriate for this subpart and it is the intent of the rules that only failing on-site systems within a designated planning area receive grant assistance to ensure that community wastewater treatment problem are solved.

Subpart 3. Previous funding.

The Agency proposes changing the heading of this subpart to "eligibility of funded areas." This is reasonable because it corresponds to the proposed

heading format for this part and improves the description for the subpart. The Agency proposes to delete the word "individual" from "individual system" and substitute "onsite." This is reasonable because the general term "on-site system" refers to both the individual systems and the cluster systems, which were made eligible by the 1990 statutory changes. The Agency also proposes substituting the word "program" for "part." This is reasonable because it clarifies that the program will not fund a project area that has already received grant funding.

Subpart 4. Eligibility of alternative planning area.

The agency proposes adding a new subpart to describe the conditions of eligibility for alternative planning areas. The term "alternative planning area" is included under the definition for "planning area" under part 7077.0705, subpart 16A. This subpart is needed to prevent further confusion over the eligibility of alternative planning areas. After reading the existing rules, many municipalities have inaccurately interpreted that a planning area can only be the entire jurisdiction of a municipalities. Under this conclusion, many counties have unnecessarily disqualified themselves from the program. Alternative planning areas have always been eligible under the program and it is reasonable to change the rules to clarify this eligibility.

The conditions proposed under this subpart were taken from part 7077.0715, subpart 2, under the existing rules. Under these conditions, the commissioner will evaluate alternative planning areas proposals for approval. This process is reasonable because it ensures that only planning areas that best serve the wastewater treatment needs of the municipality are approved and funded. It is reasonable for on-site systems that are not part of a contiguous area to be disapproved as part of an alternative planning area because the goal of the grant program is to solve the wastewater treatment problems within a specific community.

Subpart 5. Eligibility to submit a request to be placed on the onsite funding list.

As part of the Agency's proposed application cycle, an onsite funding list will be developed to determine the funding priority for projects and to determine which municipalities are eligible to receive grant funds.

The Agency proposes to add a subpart that identifies the conditions that must be met by a municipality before it can submit a request to have its project included on the funding list. It is reasonable to add this subpart because it will eliminate confusion over which municipalities will be eligible to compete for grant funds and provides a consistent, nondiscretionary method for Agency staff to determine which municipalities are eligibility to be included on the funding list.

Item A requires that a municipality have authorization for its governing body to assume the responsibility for the grant project. This requirement is reasonable because it provides a guarantee to the Agency that the municipality wants to conduct the project and will follow through with project plans if awarded grant funds.

Item B requires a municipality to have a planning area that is approved by the Agency Commissioner. This requirement is reasonable because it ensures that the municipality has done some planning for the project and that the Agency and the municipality agree that the planning area encompasses the wastewater treatment problem and agree on boundaries for determining grant eligible costs.

The Agency established these conditions to ensure that only municipalities that are ready to proceed with a project are included on the funding list. The Agency wants to avoid awarding grant funds to a municipality that is not ready

to begin its project because grant funds that are not used for an extended period of time could have been used to solve other municipal wastewater treatment problems and prevent environmental degradation.

Subpart 6. Eligibility to submit grant application.

The Agency proposes adding a subpart to identify the conditions that must be met by a municipality before the Agency will accept an application for grant funding. This is reasonable because the subpart will clarify these requirements for municipalities interested in applying for grant funds and provides a consistent, nondiscretionary method for Agency staff to accept applications.

Item A requires a municipality to submit a request to be placed on the priority list for grant funding. This requirement is needed because it identifies the first step in the application process. This item is reasonable because it establishes a uniform process for municipalities seeking grant funds.

Item B requires a municipality to be classified as fundable on the priority list for grant funding. A project is proposed to be classified as fundable if the grant fund contains money for it as determined by the ranking on the priority list for grant funds. This requirement is needed to ensure grant applications are only submitted from municipalities that have projects for which funds are available. This requirement is reasonable because it eliminates unnecessary application review for the Agency and the unnecessary expense of completing an application for municipalities that can not receive grant funds during one of the application cycles.

Item C requires a municipality to receive a written notice from the Agency Commissioner before it submits an application to the Public Facilities Authority. This requirement is needed to ensure that the Agency notifies

eligible applicants and that they receive all pertinent information about the application and submittal deadlines. It is reasonable because it eliminates confusion over which municipalities can apply and ensures the municipalities are completely informed about Agency expectations before work is started and costs are incurred.

7077.0713 Onsite funding list.

Under the existing rules, see parts 7077.0740 and 7077.0745, a list is developed after applications have been approved to determine a funding priority for the municipalities competing for grant funds. The Agency proposes to change the timing of the development of this list to reduced the financial risk currently experienced by municipalities seeking consideration for funding. These financial risks are associated with the cost of completing the application, which requires site evaluation and system design work to be done. The Agency proposes to develop the priority list before applications are submitted, which would enable the Agency staff to determine the municipalities that can be funded with existing funds and assure them that funds are available before costs are incurred. This funding assurance is not a guarantee of a grant because the municipality must still meet the planning and application requirements identified under the rules.

Subpart 1. Onsite funding list.

The Agency proposes to compile a funding list before each application submittal period. The funding list, called the onsite funding list, will serve two purposes: 1) to establish a funding priority among the competing municipalities and 2) to determine which municipalities are eligible to submit an application for grant funds.

Changing the timing for determining funding priority from after application submittal to before the application submittal is reasonable because it addresses the concerns of the municipalities. The proposed funding priority list will provide municipalities with the knowledge of their chances of receiving grant funds before they are required to complete an application and spend funds on site evaluation and system designs.

Subpart 2. Requirements for placement on the onsite funding list.

The Agency proposes to require all municipalities to submit a written request to be placed on the priority list for grant funds. This is reasonable because it ensures that the Agency will only rank municipalities that want assistance and prevents the funding list from being influenced by staff input. The Agency proposes to establish specific requirements for each type of municipal project. This is reasonable because it ensures that a uniformed set of requirements is established, that municipalities can easily determine what is required of them and that requests are accepted by the Agency in a consistent, nondiscretionary manner.

Item A requires that a municipality with a project proposal for starting a new project to submit a written request to be placed on the list within a submittal period announced in the State Register. The written request is reasonable because it establishes a fair and impartial process for municipalities to be included on the funding list and compete for grant funds. It is reasonable to establish a specific time frame for accepting placement requests because only a limited amount of time is available to complete the list. The application cycle must accommodate the construction season. The Agency strives to provide enough time each construction season for the completion of a project. It is reasonable to publish a notice in the State

Register because this is the official notification process of state agencies and the State Register is a publication that is received by most municipal offices. Additional items are being proposed to be included with the placement request.

Subitem 1 requires a municipality with a new project to include a resolution that authorizes the project from its governing body with its placement request. This requirement is reasonable because it provides proof to the Agency that the municipality has met the eligibility requirement under part 7077.0710, subpart 5, item A.

Subitem 2 requires a municipality with a new project to include a map of its approved planning area. This requirement is reasonable because it provides proof to the Agency that the municipality has met the eligibility requirement under part 7077.0710, subpart 5, item B; and provides map references that are consistent for both the municipality and Agency staff and that can be used by Agency staff throughout the rest of the project. Map references are needed by Agency staff to determine if failing systems identified to receive grant funds are within the approved planning area, which is an eligibility requirement proposed under part 7077.0710, subpart 2, item E.

Subitem 3 requires a municipality to provide a preliminary list of on-site systems that require grant funds for replacement or upgrade. This requirement is reasonable because this list provides a basis for determining an estimated grant amount, which is needed for determining the fundable status of a project when the priority list is compiled.

Subitem 4 requires a municipality to provide its median household income. This requirement is reasonable because this number is the basis for determining a municipality's priority on the funding list.

Subitem 5 requires a municipality to provide an estimated date for conducting site evaluations, system design and construction. This is reasonable because it provides the Agency with the information that is needed to judge if a municipality is ready to conduct a project. The Agency does not want to award grant funds to a municipality that is not ready to conduct a project because the fight against state environmental degradation would be better served by awarding grant funds to other municipalities that are ready to begin their projects.

Subitem 6 requires a municipality to provide a draft ordinance that adopts the standards under Minnesota Rules chapter 7080 and establishes a maintenance plan for on-site systems. This requirement is reasonable because it ensures that a municipality can complete the application within the minimum 150 day submittal period. One of the application conditions under part 7077.0725, subpart 2, item B, requires a municipality to adopt the ordinance that is proposed to be submitted in draft under this subitem. The official process followed by most municipalities for adopting ordinances requires a minimum of 90 days. If a municipality has to both develop the ordinance and conduct the adoption process within the application period, most applications could not be completed by the application submittal deadline. This delay could result in the municipality being disqualified for grant funds for that application cycle. Submitting the draft ordinance to the Agency with the request to be placed on the funding list also allows Agency staff time to review the ordinance to ensure it is appropriate and allows them time to provide assistance to the municipality if further development is needed for the ordinance language.

Item B requires a municipality that received only a portion of the grant funds it is entitled, or a partial award, to submit a written request to the commissioner asking for the rest of its grant and to be placed on the funding

list. This is reasonable because it allows the ranking process and funding list to be as efficient and accurate as possible. These placement requests ensure that only projects from municipalities that desire to and are prepared to continue with their system upgrade and replacement projects are ranked on the funding list. Problems with administration, local funding, local cooperation and personnel could cause a municipality to delay a project. Automatically including these problem projects on the list would result in delays in distributing grant funds to the municipalities next in priority to receive grant funds. This requirement also provides a fair and impartial process for including partial award projects on the list.

Item C requires a municipality that is eligible for a grant amendment to submit a written request for the amendment, including the amount of increase and proof of eligibility, and for placement on the funding list. This is reasonable because it allows the ranking process to be as efficient and accurate as possible and provides a fair and impartial process for including projects eligible for grant increase amendments on the funding list.

Subpart 3. Incomplete requests.

The Agency proposes to disqualify projects from being included on the Onsite Funding List if their requests for placement on that list do not include the information required under subpart 2 or if the requests are not post marked by the submittal deadline. It is reasonable to establish conditions of disqualification because they establish a fair and impartial process that will be followed by Agency staff. It is reasonable to disqualify an incomplete placement request because adequate time will be provided during the submittal period for preparing a complete request. The submittal requests require basic information that should require minimal work and expense from the

municipalities. Time allowed after the submittal deadline reduces the amount of time for construction and penalizes municipalities that submit complete requests. It is also reasonable to enforce a published deadline.

Subpart 4. Priority Ranking.

The Agency proposes to establish criteria for determining priority ranking for municipalities that are seeking Individual On-site Wastewater Treatment System Grants and have submitted a complete and timely request to be placed on the Onsite Funding List. It is reasonable for the Agency to specify these conditions because they establish a fair and impartial process for determining priority for distributing the limited grant funds. The Agency proposes to use the median household income for approved project planning areas and the type of grant award (partial grant amendment, grant increase amendment, or full grant for project proposals) as the basis for determining a priority ranking. Priority ranking for grant funds is currently being done by median household income, with the lowest median household income receiving the highest priority, see part 7077.0740 of the existing rule. It is reasonable to use median household income to determine funding priority because it is a standardized value that can be calculated for any community and provides a consistent, impartial value for the ranking process.

Item A requires that municipal projects that receive only part of the funds they were entitled due to lack of state funds be grouped together and ranked among themselves by median household income, with the lowest median household income receiving the highest priority. It is reasonable for partial award projects to receive grant funds before other types of projects because these municipalities were promised they would receive the balance of their original grant when funds became available. It is reasonable to use funds to

finish projects that have been started, but that are being delayed by lack of funding before grant funds are awarded for new projects.

It is reasonable to give the lowest median household income the highest funding priority because this ranking process ensures the community with the lowest financial capabilities will receive grant funds. Owners of on-site wastewater treatment systems have a responsibility to maintain or install their systems so they effectively treat wastewater and do not cause environmental degradation or health threats. The Agency encourages owners with on-site systems to do work with their own funds. There are many communities with residents that can not afford the cost of upgrading or new construction. Their contribution to a communities environmental or health problem will not be solved without grant assistance. Therefore, it is reasonable to give the highest funding priority to the low income communities by ranking the project with the lowest median household income first for grant assistance.

Item B requires that projects that are eligible for grant increases to be grouped together and ranked among themselves and be placed on the Onsite Funding List able to rank grant increases after partial award projects because they received the full assistance entitlement under their original grant. It is also reasonable to rank them before new projects because this funding priority ensures projects that are already under construction are finished before new projects are started. See item A for an explanation of the reasonableness for giving the highest priority for awarding grant funds to the project with the lowest median household income.

Item C requires that project proposals, or new projects, be grouped together, ranked among themselves and placed on the On-site Funding List after projects requesting grant increase amendments. Ranking these projects last on

the On-site Funding List is reasonable because it ensures that all projects that are already under construction have received enough funding to be completed before new projects are started. See item A for an explanation of the reasonableness for giving the highest priority for awarding grant funds to the projects with the lowest median household income.

Under the proposed ranking system for the onsite funding list, the following ranking would occur for these sample projects:

Name of Planning Area	Number of failed systems or amount grant increase	Type of award	Median household income
Sampletown	23	project proposal	$12,500
Onsiteville	$56,000	partial award	$19,125
Water County	100	project proposal	$17,240
Mound Valley	$9,000	grant increase	$10,900
Trenton Heights	$15,000	partial award	$ 9,300

Priority Ranking based on median household income and type of grant award:

1. Trenton Heights, partial award, $9,300
2. Onsiteville, partial award, $19,125
3. Mound Valley, grant increase, $10,900
4. Sampletown, project proposal, $12,500
5. Water County, project proposal, $17,240

Subpart 5. Determination of the fundable range.

The Agency proposes to determine the availability of grant funds for each project prioritized on the On-site Funding List. Under this process, the amount of the grant eligible project costs is subtracted from the amount of available grant funds in the order of the priority ranking on the On-site Funding List. When the available grant funds are reduced to an amount that will not fund the majority of the project that is next in funding priority, the process stops. For municipalities with project proposals that can not determine what type of systems must be constructed until after site evaluation work has

been completed, an estimated grant value will be established to determine the fundable status of the project. The estimated value will be determined by multiplying the number of failed systems identified on the funding list placement request by the maximum grant amount ($150 for evaluation and design and $3,750 for a mound system, see part 7077.0735). A decrease amendment will be made after the project has been completed to return excess funds to the program fund. Projects that have grant funds available to them are called "fundable" projects. The classification of "fundable" does not guarantee that a grant will be awarded because a municipality must still meet the application requirements. Using the example under subpart 4, the funding determination would look like:

	Amount of available grant funds =	$300,000
1. Trenton Heights, $15,000	-$15,000	
		$285,000
2. Onsiteville, $56,000	-$56,000	
		$229,000
3. Mound Valley, $9,000	-$9,000	
		$220,000
4. Sampletown, 23 systems (23 x 3,900= $89,700)	-$89,700	
		$130,300
5. Water County, 100 systems (100 x 3,900= $390,000)	-$390,000	
		$130,300

Fundable range = Trenton Heights
Onsiteville
Mound Valley
Sampletown

Note: Since the fund can not supply Water County with a majority of the funds it requires to complete its project, the project is not classified as fundable. If the Agency has adequate staff for application review and negotiations, Water County could be offered a partial grant of $130,000 during the application submittal period. The Agency and the municipality must agree on which project elements will be completed with the funds before a grant can be awarded (see part 7077.0735, subpart 2).

This process for determining the funding status for projects on the On-site Funding List is reasonable because it utilizes the funding priority established under subpart 4 and is a fair, impartial, and consistent method. It is reasonable not to classify a project as fundable if the majority of the project can not be funded because future funding for this program is uncertain and the Agency wants to ensure that a community's wastewater treatment problem is not compounded by partially constructed on-site systems that are left unfinished until additional grant funds can be acquired.

Subpart 6. Determination of projects eligible to submit applications.

Under the existing rules, applications are required from all municipalities that would like to compete for grant funds. The Agency proposes to instead accept grant application only from municipalities that are classified as "fundable" on the On-site Funding List. This proposed process is reasonable because it ensures that municipalities that do not have grant funds available to them are not spending money for site evaluations and system designs, which are required to complete the application. Under the existing system, these costs must be incurred without an assurance that grant funds will be made available in the near future to reimburse these costs. The proposed process limits the financial risk to municipalities that have been notified that funds are available for their projects. Grants are not awarded until a municipality has an application that meets the requirements under part 7077.0725, the Commissioner has certified the application and the Public Facilities Authority has fulfilled its obligations. This process will also minimize the number of applications being reviewed by Agency staff.

Subpart 7. Exclusion from the fundable range.

The Agency proposes to require municipalities with projects that do not have available grant funds to meet the request conditions for placement on the

On-site Funding List during a subsequent application cycle. This is reasonable because each application cycle is independent. The Agency will not carry over the priority order from a funding list to the next application cycle. The request information does not require extensive work or expense from the sponsoring municipality. If the project does not change, no additional work is required and the same documents can be resubmitted to the Agency.

Subpart 8. Commissioner notification.

The Agency proposes to require the commissioner to notify each municipality that competed on an On-site Funding List of the ranking for its project after the list and funding determinations have been completed. This is reasonable because the municipalities are entitled to this information. Under the existing rules, this information is publicized in the State Register as part of the Agency Board approval process for the funding list, see part 7077.0745, subpart 2, item A. The Agency is proposing to eliminate this Board approval process.

Part 7077.0715. Wastewater Treatment Plan.

The Agency proposes moving the requirements under this part to be included the application requirements under part 7077.0725. Therefore, this entire part has been proposed to be deleted.

Part 7077.0720. Approval of individual on-site wastewater treatment personnel.

Subpart 2. First alternate approval criteria.

The Agency proposes to add the sentence "Provisional certification does not fulfill this approval criteria." under this subpart. Under the existing rules, the Agency recognizes two certification classes: full certification and

provisional certification. Since the Agency Commissioner will only approve personnel with full certification to work on grant projects, an explanation of provisional certification had been left out of the rules. The absence of an explanation of provisional certification has caused confusion for municipalities. Many requests to approve personnel with provisional certifications have been submitted to the Commissioner. The proposed sentence is needed to prevent further confusion about approvable personnel. The proposed language is reasonable because it clarifies the intent of the rules. For additional clarification, the Agency also proposes to add a definition for provisional certification, see part 7077.0705, subpart 16B.

Part 7077.0725. Application.

The Agency proposes to add "grant" to the heading of this part. This is needed to make the heading more descriptive of the information the part contains. It is reasonable to make rule language as descriptive and easy to understand as possible.

Subpart 1. Notice of taking applications.

The Agency proposes to change the heading of this subpart to "Commissioner notification" and to delete the existing rule language under this subpart. This is reasonable because the existing heading and language are obsolete under the proposed application process.

The existing subpart describes requirements for announcing when municipalities can submit applications to the Agency. This was done through a notice published in the State Register. Under the existing process all municipalities are invited to submit applications and a means of advertising the application submittal period to a mass audience was needed. Deleting the

requirement to publish this notice in the State Register is reasonable because a mass audience medium is not needed under the proposed process, which only allows municipalities that have met the eligibility requirements under part 7077.0710, subpart 6, to submit applications. A State Register notice inviting all municipalities to compete for grant funds is proposed under the requirements for the Onsite Funding List placement request period, see part 7077.0713, subpart 2, item A.

The Agency proposes to notify eligible municipalities that they can submit applications to the Public Facilities Authority by a letter from the Agency Commissioner. This is reasonable because a letter sent to a few chosen municipalities is more efficient and less expensive than a notice published in the State Register. This notification process also ensures that eligible municipalities have received all essential information about application submittal conditions and deadlines and received all required forms and instructions for completing the application.

The Agency also proposes to state that no municipality is eligible for a grant award unless a complete grant application has been submitted to the Public Facilities Authority and has been certified by the Agency Commissioner. This language is needed to clarify that a grant is not automatically awarded once a municipality has been classified as "fundable" on the On-site Funding List. This is reasonable because it clarifies the intent of the rules.

Subpart 2. Application requirements.

The Agency proposes to add the option for municipalities to acquire grant application forms from the Public Facilities Authority. This is reasonable because the grants are awarded from and forms are available from the authority.

This subpart identifies the information that is required to be included with the application.

Item A under the existing rules requires that the application include a resolution from the municipal governing body that authorizes the completion of the the application and the project. The Agency proposes to delete this language and proposes to require this resolution as part of the request to be placed on the On-site Funding List under part 7077.0713, subpart 2, item A, subitem a. It is reasonable to delete duplicate requirements.

Item B is proposed to be relettered to item A because the existing item A is proposed to be deleted.

The Agency proposes to delete the reference to part 7077.0715 and to move the requirements for developing a wastewater treatment plan identified under that part to be included under this item. This is reasonable because the wastewater treatment plan is a component of the application and moving this information improves the organization of the rules. Requiring the plan is reasonable because it provides an organized and complete method for conducting project planning, a basis for the municipality and the Agency to discuss proposed solutions and work, and a master plan for the municipality to follow when the grant project is being completed.

The Agency proposes to add the words "adopted by the municipality's governing body that identifies wastewater treatment needs, proposes long-term solutions for a planning area and includes:" to this subpart as requirements for the wastewater treatment plan. This language is under part 7077.0715, subpart 1, of the existing rules. These requirements are reasonable because they clarify the goals of the plan.

Subitem 1 requires the wastewater treatment plan to include determination of failed or in compliance for all the on-sites within the planning area. This requirement is reasonable because it is the first step in any planning effort to identify the problems. This requirement is under part 7077.0715, subpart 3, item A of the existing rules.

Subitem 2 requires site evaluations and a determination of feasible corrective measures for all on-site wastewater treatment systems within the planning area that were identified as failed systems. This requirement is reasonable because it provides information that is needed to make accurate design decisions that will eliminate the existing wastewater treatment problems. This requirement is under part 7077.0715, subpart 3, item B, of the existing rules.

Subitem 3 requires a detailed summary of the construction plans for upgrading or replacing the failed systems within the planning area. This requirement is reasonable because it provides the municipality and the Agency with a clear project plan and the opportunity to review the proposed work before construction begins. This requirement is under part 7077.0715, subpart 3, item C, under the existing rules.

Subitem 4 requires a list of addresses and owners names for the failed systems that meet the eligibility requirements for grant participation and copies of the abatement notice served for each system. This requirement is reasonable because it allows the municipality to know how much of the project is eligible to receive grant funds and provides the Agency with a basis for making grant payments. Copies of the abatement notices are needed by the Agency as proof that the systems are failed systems. This requirement is under part 7077.0715, subpart 3, item D, in the existing rules. The Agency accepts the abatement notices as the municipalities certification of failed system that is required by Minnesota Statute subdivision 3c, item C, subitem 2.

Subitem 5 requires an analysis of the overall wastewater treatment needs in the planning area and a plan, with a time table, for addressing these remaining wastewater treatment needs. This requirement is reasonable because it ensures

the goal of this grants program, to solve wastewater treatment problems for a community, will be fulfilled. The failing on-site wastewater treatment systems that are not eligible for grant funds and other problems compounding the community wastewater treatment problem must still be solved for the community wastewater treatment problem to be solved and for the municipality to be in compliance with the ordinance it is required by the grants program to pass and enact. The requirement proposed under this subitem is under part 7077.0715, subpart 3, items C and E in the existing rules.

Subitem 6 requires documentation of approval of the personnel required to be certified by the commissioner. This requirement is reasonable because it ensures the Agency approved personnel are available for the project and ensures the work conducted on the project will meet the payment conditions under part 7077.0750, item A, B and C. This requirement is under part 7077.0715, subpart 3, item F, in the existing rules.

Subitem 7 requires a certification of adoption of the wastewater treatment plan from the municipality's governing body. This requirement is reasonable because it is the normal process followed by a municipality and the certification will ensure that the action identified in the plan will be taken by the municipality to solve the wastewater treatment problem.

Item C is proposed to be renumbered to item B. The Agency also proposes to require the ordinance identified under this item to be enacted. This is reasonable because a draft ordinance is proposed to be submitted with the request to be placed on the On-site Funding List under part 7077.0713, subpart 2, item A, subitem 6. Adding the word "enact" clarifies that the ordinance submitted with the placement request does not fulfill the application requirement. Additional language is proposed to be added to this item to

identify the title of Minnesota Rules chapter 7080 and to include the requirement under item D for an ordinance establishing a maintenance plan. This is reasonable because it makes the rules more concise. This language is also under part 7077.0710, subpart 1, items C and D, under the existing rules.

Item D is proposed to be deleted because the requirement for an enacted ordinance establishing a maintenance plan for on-site systems within the project planning area is proposed to be moved to item C above. The Agency also proposes adding a new item D that requires the amount of grant funding requested for site evaluation, system design and construction to be submitted with the application. This request is reasonable because it provides the Agency with the information that is needed to determine an accurate grant amount.

Item E is proposed to be deleted because the requirement for submitting the median house income for the approved project planning area is proposed to be included with the requirements for the request to be placed on the On-site Funding List under part 7077.0713, subpart 2, item 4.

Item F is proposed to be relettered to item C. Also the Agency proposes to delete the eligibility conditions for individual systems and add a reference to part 7077.0710, subpart 2. This is reasonable because the eligibility requirements under subitems 1, 2, and 3 under the existing rules are proposed to be moved under part 7077.0710, subpart 2, items B, C, and D. Therefore, this proposed change makes the rule more concise. Part 7077.0710, subpart 2, item E is a proposed eligibility requirement. See that part of this document for an explanation of the reasonableness of this requirement.

Item G is proposed to be relettered to item E.

Item H is proposed to be relettered to item F. The Agency also proposes to delete the requirement for documentation of the commissioner's approval of the project inspector. Deleting the documentation requirement is reasonable because documentation for all certified personnel is required as part of the

wastewater treatment plan, proposed under item A, subitem 6, and this change eliminates a duplicate requirement.

The Agency proposes adding a new item G that requires an assurance from the municipality that all owners that are served by a cluster system constructed with grant funds agree to be part of the system; to participate in the construction project; and to participate in and finance future operation, maintenance and replacement of the system. This assurance is reasonable because it makes the owners of the cluster system aware of their current and future responsibilities and ensures that the system will continue to operate in compliance with the standards under chapter 7080. It is reasonable to get this assurance from the municipality because it is receiving the grant.

Subpart 4. Application closing date.

The Agency proposes to change the words "closing date" to "deadline" in the heading and throughout this subpart. This is reasonable because "deadline" is a more concise term and does not alter the meaning of the rules.

The Agency proposes to require the application submittal period to remain open a minimum of 150 days and to begin after the deadline for submitting requests to be placed on the corresponding On-site Funding List. Under subpart 1 of the existing rules, the application submittal period is 120 days long. The additional 30 days provided under this subpart allows Agency staff time to determine from the On-site Funding List which municipalities are eligible to submit applications and to mail application forms, instructions and the Commissioner's letter of notification to the appropriate municipalities. This time table is reasonable because experience during the two application periods conducted under the existing rules proved 150 days to be adequate time for the Agency staff and the municipalities to meet the rule requirements.

The Agency proposes that the Agency Commissioner notify municipalities eligible to submit an application of the application deadline. This method of notification is reasonable because it is less costly and more effective for a few municipalities than the State Register notice required under the existing rules. The application submittal deadline is to be included in the Commissioner's letter proposed to be required under subpart 1. Since the State Register notice is not required under the proposed rules, the Agency proposes changing the word "notice" to the word "specified."

Specifying the conditions for the application submittal period is reasonable because they provide a fair and impartial process for the Agency to follow when accepting applications.

Subpart 5. Incomplete applications.

The Agency proposes to provide an additional 45 days after the application submittal deadline for municipalities to make their applications complete. This change is in response to the change made under Minnesota Statutes section 116.18, subdivision 3c, item (c), that provides applicants the time between application submittal and Agency approval to complete the eligibility requirements. It is reasonable to implement the statutory change into the rules. It is also reasonable to establish a deadline for submitting information to the Agency because staff must have time to review the information before the 90 day approval deadline, see Minnesota Statutes section 116.163, subdivision 1.

Under the existing language, municipalities that submit incomplete applications are ineligible for funding and must seek grant funds during a future application period. The Agency proposes to modify this requirement so that it corresponds to the proposed application process. It is reasonable to make the rule language consistent with the proposed process.

Subpart 6. Three copies.

The Agency proposes to require that a municipality submit three copies of the application and that one copy contain original signatures. This requirement is reasonable because one copy is needed by the Public Facilities Authority, one copy is needed by Agency technical review staff and one copy is needed by the Agency administrative manager. Three copies are the standard requirement for the other grants programs under chapter 7077 and they ensure the fastest application review.

Subpart 7. Application approval.

The Agency proposes to have the Commissioner review and approve complete applications. This is the intent of the rules and it is reasonable to clarify this intent. This review must be completed before a grant application can be certified to the Public Facilities Authority for a grant award.

Part 7077.0730. Eligible costs.

Subpart 1. Eligible costs.

The Agency proposes to make site evaluation costs, system design costs and cluster systems, see part 7077.0705, subpart 5A for a definition, eligible for grant assistance. This is reasonable because these costs and cluster systems were made eligible under changes made to the authorizing statute.

The Agency proposes to change the rule reference from "part 7077.0715, subpart 3, item D" to "part 7077.0725, subpart 2, item B." This is reasonable because the reference change corresponds to the proposed reorganization of the rules. The proposed reference refers to the list of on-site system in the wastewater treatment plan that are eligible to receive grant assistance and does not involve a change in the rule requirements.

The Agency proposes to include conditions for an upgraded or replacement system to meet to be eligible to receive grant assistance for site evaluation, system design and construction costs. The first conditions limits the design to either trench, see part 7077.0705, subpart 19 for a definition; bed, see part 7077.0705, subpart 19 for a definition; or mound, see part 7077.0705, subpart 14 for a definition, systems. This is not a change in the rule requirements. This limitation on grant eligible system designs is under subpart 3 in the existing rules. The system design limitation is based on the Agency's interpretation of Minnesota Statutes section 116.18, subdivision 3c, item B, which defines an on-site system as one that utilizes subsurface soil treatment and disposal. Agency experts have determined the trench, bed and mound systems to be the only designs that meet these treatment and disposal requirements and the standards under Minnesota Rules chapter 7080. It is reasonable to only allow system designs that meet the state statutory and rule requirements to be eligible to receive grant assistance.

The second condition limits grant assistance to systems that serve five or fewer dwellings or other establishments. A change made to Minnesota Statute section 116.18, subdivision 3c, item (b) increased the maximum service limitation from two to five. This limitation is reasonable because if fulfills the requirements of the authorizing statute. Failed on-site systems with more than five connections are eligible to participate in the program, but the system that is constructed to solve their treatment problems must serve no more than five homesteads or businesses to receive any grant assistance.

The third condition limits the amount of grant funds each dwelling or other establishment can receive to the amount of the grant eligible costs for the replacement or upgrade for one system. This is reasonable because only

businesses would require more than one system and since this grant program is not intended to be for business improvement, businesses should not receive more state grant assistance than the homeowners.

For grant eligible cluster systems, each separate property owner that will be served by the system is eligible to receive the maximum grant for the system design being constructed. This is reasonable because the costs for cluster systems are higher than for an individual system and estimating the increased costs for each property owner when a grant award determination is made would be too difficult for Agency staff. However, each property owner will only receive grant assistance for up to 50 percent of the incurred site evaluation, system design and construction costs, not to exceed the maximum grant amounts established under part 7077.0735, subpart 1, for which they are responsible.

Example: Costs for a trench, cluster system that will serve three homes

Grant award will include total grant amount for each home owner
3 X ($2,500 + $150, see part 7077.0735, subpart 1) = $7,950

Incurred costs for the cluster system include:
site evaluation = $600
system design = $300
construction = $10,000
Total grant eligible costs for cluster system = $10,900

All costs are shared equally and each home owner is responsible for:
Total grant eligible
costs per home owner = $3,634
site evaluation = $200
system design = $100
construction = $3,334

Each home owner receives grant assistance for:
site evaluation and system design = $150 (maximum grant amount)
construction = $1,667
Total grant assistance = $1,817

Total grant assistance for cluster system = $5,451, the remaining $2,499 in grant funds is returned to the program fund through a decrease amendment, see part 7077.0735, subpart 4, item B.

Subpart 2. Ineligible costs.

The Agency proposes to change this subpart by clarifying that the costs for purchasing land and acquiring land easements and the costs for planning and engineering, other than for site evaluations and system designs, are ineligible for grant assistance. These limitations are reasonable because land costs, often a concern for cluster systems, are not identified as grant eligible under the authorizing statute and planning and engineering costs, other than those for site evaluation and system design, are identified under the revised authorizing statute as being ineligible for grant assistance.

Subpart 3. Number of systems limitation.

The Agency proposes to move the requirements under this subpart to under subpart 1. Therefore, it is reasonable to delete this subpart.

Subpart 4. Costs incurred before grant award.

The Agency proposes to combine the requirements of item A with those under item B. Therefore, it is reasonable to delete the language under item A and to reletter item B to item A and item C to item B.

Under item B, the Agency proposes to delete the word "municipality's" and replace it with the phrase "as required under part 7077.0725, subpart 2, item A." this is reasonable because the proposed rule reference provides a more exact description of the wastewater treatment plan identified in this item. The Agency proposes to change "has been" to "was" for word economy.

The Agency proposes to require that the wastewater treatment plan prepared by and approved by the municipality be approved by the Agency Commissioner before construction costs are incurred. This approval is reasonable because it is the same approval requirement specified under the application process. The wastewater treatment plan is normally submitted with the application then

reviewed by Agency staff as part of the application review. The application is not approved until staff has approved the components of the plan. It is reasonable for Agency staff to review the wastewater treatment plan because their review ensures that state grant funds are being spent on a plan that will solve the community wastewater treatment problem. It is also reasonable to allow site evaluation and system design costs to be incurred before the wastewater treatment plan is adopted by the municipality and the Commissioner because the work associated with these costs must be done to accurately complete the plan.

Under item C, the Agency proposes to delete the existing language, which requires a municipality that is incurring costs before a grant award to submit an application during the next application period. This deletion is reasonable because only selected municipalities are allowed to submit an application under the proposed application process. Since the Commissioner approves the wastewater treatment plan, which identifies the construction plans for the projects, there is no hurry, from the Agency's perspective, for the municipality to submit an application for grant assistance.

The Agency proposes to require that all work completed before a grant is awarded be done by certified personnel and in accordance with Minnesota Rules chapter 7080 and the approved wastewater treatment plan. This requirement is a repeat of the payment conditions under part 7077.0750, items A through D. Since these requirements must be met to ensure that costs are eligible for grant payment, it is reasonable to repeat them under this subpart. A municipality concerned about retaining the eligibility of costs incurred prior to grant award would probably only look under this subpart and not under part 7077.0750.

Part 7077.0735. Amount of grant award.

Subpart 1. Grant amount.

The Agency proposes to divide the subpart into into items A and B.

Item A will contain the existing language concerning grant amounts for incurred, eligible construction costs. Item B will contain proposed language concerning the grant amount for incurred, eligible site evaluation and system design costs.

The Agency proposes to change language under item A to improve the clarity of the subpart. Deleting the word "actual" is reasonable because it is repeated under the language referenced under part 7077.0730, subpart 1. Substituting the word "grant" for "amount" is reasonable because the grant is no longer formed solely by the eligible portion of project construction costs. Changing the word "household" to the words "dwelling or other establishment" is reasonable because "household" is not a defined term and is not used anywhere else in the rules.

Item B contains the proposed conditions for determining the grant amount for site evaluation and system design costs, which were made eligible for grant assistance by changes made to the authorizing statute. The Agency proposes to provide grant assistance of 50 percent of incurred site evaluation and system design costs up to a combined maximum of $150 per dwelling or other establishment. Limiting the grant amount to 50 percent is reasonable because this percentage is the maximum established under Minnesota Statutes section 116.18, subdivision 3c, item (c). Limiting the maximum grant amount for these combined costs to a $150 is reasonable because Agency technical and engineering staff experienced in reviewing on-site system construction proposals

established this maximum. According to these experts, the site evaluation and design costs will vary from one project planning area to another because of different types of environmental characteristics, such as soil types, water levels and topography. However, they determined a total of $300 ($150 paid by the system owner and $150 paid with grant funds) to be adequate for an area with the worst testing and evaluation conditions.

Subpart 2. Partial awards.

Since a partial award does not provide enough funds for all the project components, the Agency proposes to require a municipality that accepts a partial grant to identify which project elements will be completed with the reduced grant amount. Funding for Individual On-site Wastewater Treatment System grants is questionable for future years. If an entire project is completed under a partial grant award and additional state grant assistance is not available for several years, the municipality or its residents that are participating in the project could face significant financial hardship. Reduced funding could also result in workpersons abandoning partially completed treatment systems because funds are not available to pay for their work. Partially completed systems would compound the wastewater treatment problem for the community. It is reasonable to limit project work to the amount that can be completed with the partial grant to avoid potential financial hardship or incomplete, non-functioning treatment systems.

Subpart 3. Funds not allocated.

The Agency proposes to specify that all unused or unallocated grant funds will remain in the program fund until awards can be made during the next application cycle. This subpart is reasonable because it clarifies the Agency's current procedure and clarifies how extra grant funds will be handled.

Subpart 4. Amendments.

The Agency proposes to add a subpart on amendments. It is reasonable to identify conditions for awarding grant increases in the rules because they establish a fair and impartial method for the Agency to follow.

Item A identifies when the Agency will increase the amount of a grant, which is done through an amendment. The Agency proposes to allow grant amendments that increase a partial grant award, see subpart 2 of the rules for a definition, to the full amount a municipality is entitled. This is reasonable because the amendment fulfills the agreement made between the Agency and the municipality. If the grant funds had been available at the time of the original award, the municipality would have received the entire amount it was entitled.

The Agency proposes to allow grant increase amendments that provide funds for the eligible costs of failed systems that are located within the planning area, but that were not identified on the municipal request to be placed on the On-site Funding List. The Agency determines grant amounts based on the information provided on a municipality's request to be placed on the funding priority list. This request is required to be submitted to the Agency before site evaluations are required to be conducted. Therefore, there is the possibility that a treatment system assumed to be in compliance with Minnesota Rules chapter 7080 is found to be failing after tests are conducted by a site inspector or site evaluator. If the system failure is determined during the evaluation of the planning area, and the systems meet the eligibility requirements under part 7077.0710, subpart 2, and are added to the wastewater treatment plan under part 7077.0725, subpart 2, item A, it is reasonable to provide grant funds for their upgrade or replacement. These systems have met

the requirements of the grants program and funding assistance will not be offered again to systems within the planning area.

The Agency proposes to allow grant increase amendments to provide funds to reimburse site evaluation and system design costs incurred by the projects awarded grants before July 1, 1991. These grant amendments are reasonable because changes made to the authorizing statute after these projects received their awards make site evaluation and system design costs eligible for grant assistance. These first projects should receive the same grant assistance as projects that will receive grant awards after July 1, 1991. The statutory changes were made because municipal officials and Agency staff involved in these pilot projects determined that these additional grant funds are needed to ensure an adequate level of assistance.

It is also reasonable to award a grant increase only after it has been classified as fundable on an On-site Funding List because grant increases can not be promised until grant funds are available and the priority ranking process under part 7077.0713, subparts 4, 5 and 6, for available grant funds ensures these increases are awarded fairly and impartially.

Item B clarifies that a grant decrease amendment will be completed if grant funds remain within a grant after all costs eligible under part 7077.0730 and incurred during the project in accordance with budget period restrictions and payment conditions under part 7077.0750 have been paid to the municipality. Funds acquired through decrease amendments will be returned to the program fund. The grant decrease amendment conditions are reasonable because they ensure state funds are only being awarded and spent as specified under these rules and as intended under the authorizing statute.

Part 7077.0740. Priority ranking.

Conditions identified under this part are proposed to be moved under part 7077.0705, subpart 13; and part 7077.0713, subpart 2, item A, subitem (4) and subpart 4. Therefore, it is reasonable to delete this part.

Part 7077.0745. Certification of award.

The Agency proposes to delete the existing language under subparts 1, 2, and 3. The Agency proposes to add language that identifies when a grant application will be certified to the Public Facilities Authority to begin the grant award process. The proposed process is reasonable because it is fair, impartial, and the standard certification process followed by the Agency. The Agency also proposes to add language that identifies the date the certification is made to the Public Facilities Authority as the deadline for Agency staff to make grant determinations for the amount of eligible costs; the award amounts for construction, site evaluation and system design; and the dates of the budget period, during which reimburseable costs can be incurred. This determination deadline is reasonable because it provides consistent timing for establishing these grant conditions, provides information that can be placed in the grant agreement and is currently being used by the Agency. Placing this condition in the rules is reasonable because it establishes a uniform process for Agency staff to make decisions and provides clarification of when these determination are made for the municipalities that receive grant awards.

Subpart 1. Funding list.

It is reasonable to delete this subpart, which requires the Agency to prepare a list of grant recipients, because it is obsolete under the proposed application cycle. The On-site Funding List proposed under part 7077.0713 serves a similar function as the list deleted here.

Subpart 2. Public participation.

The Agency proposes to delete this subpart, which requires that the grant funding list be available to the public and affected municipalities for 45 days, that the list be presented to the Agency Board for approval and that interested persons be allowed to comment on the list at the board meeting. It is reasonable to delete this subpart because its requirements are obsolete under the proposed application cycle.

By deleting this subpart, the Agency proposes to delete the Board approval process. This process was originally included in the rules to ensure that priority ranking for grant assistance is done impartially and that staff's influence did not enter into the grant determination process. During the two application periods conducted under the existing rules, the Board concurred with staff's priority ranking and award decisions and approved the proposed funding lists. Municipal representatives complained that the 45 day period for reviewing the proposed funding list significantly reduced the amount of construction time for the awarded projects.

Eliminating the Board approval process is reasonable because the proposed process for determining the municipalities that are eligible to receive grant funds, see part 7077.0713, subpart 4, 5 and 6 and 7077.0725, subpart 1, allows for no staff discretion. All municipalities that participate in an application cycle are notified of their priority ranking and funding status, see part 7077.0713, subpart 8, and have an opportunity to appeal their ranking each month at the regularly scheduled Board meetings. It is also reasonable to streamline the Agency's approval process to provide more construction time for the awarded projects. Two to three additional construction months will be available to awarded projects if the Board approval process is deleted.

Subpart 3. Certification to authority.

It is reasonable to delete this subpart because the certification of a funding list to the Public Facilities Authority is obsolete under the proposed application cycle. Language has been proposed under this subpart for a process to certify each eligible grant application that is approved by the commissioner to the Public Facilities Authority.

Part 7077.0750. Payment conditions.

The Agency proposes to add two payment conditions under items D and E. Item D requires that work done to upgrade or replace on-site systems must be done in compliance with Minnesota Rules chapter 7080 and the approved wastewater treatment plan. Item E requires that the costs identified on a payment request must have been incurred and must be eligible for grant assistance. These conditions are reasonable because they clarify the intent of the rules.

Part 7077.0755. Payments.

Subpart 2. Schedule of payments.

The Agency proposes to include cluster systems in this subpart because of the changes made to the authorizing statute, which make cluster systems, see part 7077.0705, subpart 5A for a definition, eligible for grant assistance.

Subpart 3. Documentation.

The Agency proposes to delete language that requires municipalities to submit expense invoices and documentation that proves project work was completed by certified personnel with their payment requests. This change is reasonable because it will save time for municipal and Agency staff and will

allow grant payments to be processed faster. Audits conducted by the State Auditor will continue to ensure that grant funds were spent in accordance with the state rules and statutes.

The Agency proposes to require the municipalities to send a certification with the payment request that states the payment conditions, see part 7077.0750, have been fulfilled. It is reasonable to required the certification because it ensures the municipalities are aware of their obligations under the rules and provides a guarantee to the Agency that they have taken full responsibility and the required action to fulfill these requirements. The municipalities must still meet the review requirements of the State Auditor. The Agency also proposes to require the documentation that is required to be submitted with the payment request under the existing rules be retained by the municipalities and used as evidence for state audits. This requirement is reasonable because it ensures the municipalities can supply the documentation that is required by the State Auditor.

Part 7077.0760. Termination of grant.

The Agency proposes to delete "construction schedule" and add "or parts 7077.0700 to 7077.0765." This change is reasonable because it ensures that grantees must meet all the requirements under the grant agreement and the program rules or face potential grant termination. Grant termination should not be limited to the project progress as compared to the project schedule.
Part 7077.0765. Subsequent grants.

The Agency proposes to change a rule reference from "part 7077.0715" to "part 7077.0725, subpart 2, item A" in response to the proposed reorganization of the rules. This reference change does not involve a change in rule requirements.

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. sec. 14.11, subd. 1)

Participation in the Individual On-site Wastewater Treatment System Grants Program 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 program.

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

The proposed rule amendments will not have any direct adverse effects on agricultural lands in the state. The program or the amendments place no restrictions on agricultural practices or claim to agricultural land. The majority of construction will be done on property used for residential and business purposes. Occasionally, small parcels of agricultural land may be purchased as a site for an on-site wastewater treatment system. The purchase decision would be made at the land owner's discretion.

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

The On-site Grants Program and the proposed amendments have no direct adverse effects on small businesses in the state. Small businesses will continue to benefit from contracts for construction materials and equipment, laboratory testing and other items required for the completion of the grant projects. Small businesses with failing on-site systems that meet the criteria of the program can also receive grant funds.

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. sec. 116.07, 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 pts. 7077.0700 to 7077.0765, the Agency has given due consideration to available information regarding economic impacts. Under the proposed amendments the On-site Grants Program continues to be a voluntary program that makes 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 pts. 7077.0700 to 7077.0765 are both needed and reasonable.

Dated: June 25, 1991

Charles W. Williams
Commissioner

CERTIFICATE OF RESOLUTION ADOPTING RULES

I, Charles W. Williams, do hereby certify that I am the Commissioner of the Minnesota Pollution Control Agency (MPCA), 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 MPCA duly and properly called and held on the 27th day of November, 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 MPCA hereby approves and adopts the amendments to rules governing Individual On-site Wastewater Treatment Systems Grants Program, Minn. Rules ch. 7077 pursuant to the authority vested in the MPCA by Minn. Stat. § 116.07, subd 4d (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 MPCA to make in order to obtain the Revisor's Certificate as required by Minn. Stat. § 14.28 (1990).

BE IT FURTHER RESOLVED, that the MPCA 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 MPCA 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 4th day of December 1991.

for Ann Thumac
Charles W. Williams
Commissioner

CITY OF BROOK PARK

BROOK PARK, MINNESOTA 55007

RECEIVED
AUG 19 1991
M.P.C.A.
WATER QUALITY DIV.

August 18, 1991

Minnesota Pollution Control
Water Quality Division/APS
520 Lafayette Road
St. Paul, MN 55155-3898

To: Scott R. Thompson

Re: Proposed Rule Amendment to Minnesota Rules Chapter 7077:00

Rule:

Subpart 6 and subpart 19: state a system must be a "treatment system". This rule excludes holding tanks from MPC Grant matching funds.

Comment:

We feel this rule should be changed to include holding tanks with the following stipulations:

1. That holding tanks are a "last resort" system. That all other treatment systems must be ruled out for installation.

2. That they are installed by written request by a certified designer and inspector.

3. That the City, County or Township has authorized such installation.

Because of the large area a mound needs for installation, there are lots and areas that absolutely can not accommodate such

a system. Holding tanks are not to be considered a "cure", but more as the " lesser of evils" compared to open drainfields and pumping sewage onto the ground.

Sincerely,

Karen Youngblom

Karen Youngblom, Clerk
Adm. MPCA Grant
City of Brook Park

STATE OF MINNESOTA
POLLUTION CONTROL AGENCY

In the Matter of the proposed adoption of Rule Amendments Relating to On-Site Wastewater Treatment Grants Program, Minn. Rules Ch. 7077

NOTICE OF INTENT TO ADOPT RULES WITHOUT A PUBLIC HEARING

(1) NOTICE IS HEREBY GIVEN that the Minnesota Pollution Control Agency (MPCA) intends to adopt rule amendments to Minn. Rules ch. 7077 without a public hearing following the procedures set forth in the Administrative Procedure Act for adopting rule amendments without a public hearing in Minn. Stat. §§ 14.22 to 14.28 (1990). The statutory authority to adopt the rule amendments is set forth in Minn. Stat. § 116.18, subd. 3c (1990).

(2) All persons have until 4:30 p.m. on September 20, 1991, to submit comments in support of or in opposition to the proposed rule amendments or any part of subpart of the rule amendments. Comment is encouraged. (3) Each comment should identify the portion of the proposed rule amendments 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. (4) If 25 or more persons submit a written request for a public hearing within the comment period, a public hearing will be held unless a sufficient number withdraw their request in writing. (6) Any person requesting a public hearing must state his or her name and address, the reason for the request, and any change proposed. (7) If a public hearing is required, the MPCA will proceed pursuant to Minn. Stat. §§ 14.131 to 14.20 (1990).

Comments or written requests for a public hearing must be submitted to: (5)

Scott R. Thompson
Minnesota Pollution Control Agency
Water Quality Division/APS
520 Lafayette Road
St. Paul, Minnesota 55155-3898
(612) 296-7223

(8) 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 Individual On-site Wastewater Treatment Systems Grants Program more effective and more responsive to the needs of local governments that receive grant funds. One free copy of the rules is available upon request from Mr. Thompson 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 rule amendments has been prepared and is available from Mr. Thompson upon request.

(13) You are hereby advised, pursuant to Minn. Stat. § 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 local unit elects to participate in the program; and the proposed rules will not have any direct adverse effects on agricultural lands in the state.

(14) You are also advised, pursuant to 14.115 (1990), "Small business considerations in rulemaking," that the proposed rules will have no direct adverse effects on small businesses in the state.

(9) If no hearing is required, upon adoption of the rule amendments, the rule amendments and 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 Mr. Thompson.

Dated: August 14. 1991



Charles W. Williams

Commissioner

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

Official File Copy

August 13, 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 Minn. Rules ch. 7077 is enclosed for your review as required by Minn. Stat. § 14.131 (1990). The 30-day public comment period notice for this rulemaking will be published in the State Register on August 19, 1991.

If you require additional information, please call me at (612) 296-7223.

Sincerely,

Scott R. Thompson
Rule Revision Coordinator
Assessment and Planning Section
Water Quality Division

SRT:mbo

STATE OF MINNESOTA
POLLUTION CONTROL AGENCY

In the Matter of the Proposed Amendment of Rules Governing the Proposed Permanent Rules Relating to Individual On-Site Wastewater Treatment Grants Program of the Minn. Rules Pts. 7077.0705 to 7077.0765.

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

Scott R. Thompson, 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 15th day of August, 1991.

That on the 15th day of August 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.

Scott R. Thompson

subscribes and sworn to before me this 22 day of August, 1991.

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Notary Public

THOMAS W. NASH
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My commission expires 3-19-95

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Pollution Control Agency

Water Quality Division

Proposed Permanent Rule Amendments Relating to On-Site Wastewater Treatment Systems Grants Program.

Notice of Intent to Adopt Rule Amendments Without a Public Hearing

NOTICE IS HEREBY GIVEN that the Minnesota Pollution Control Agency (MPCA) intends to adopt rule amendments to Minnesota Rules, chapter 7077 without a public hearing following the procedures set forth in the Administrative Procedure Act for adopting rule amendments without a public hearing in Minnesota Statutes, sections 14.22 to 14.28 (1990). The statutory authority to adopt the rule amendments is set forth in Minnesota Statutes, section 116.18 subd. 3c (1990).

All persons have until 4:30 p.m. on September 20, 1991 to submit comments in support of or in opposition to the proposed rule amendments or any part of subpart of the rule amendments. Comment is encouraged. Each comment should identify the portion of the proposed rule amendments 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 request in writing. Any person requesting a public hearing must state his or her name and address, the reason for the request, and any change proposed. If a public hearing is required, the MPCA will proceed pursuant to Minnesota Statutes, sections 14.131 to 14.20 (1990).

Comments or written requests for a public hearing must be submitted to Scott R. Thompson, Minnesota Pollution Control Agency, Water Quality Division/APS, 520 Lafayette Road, St. Paul, Minnesota 55155-3898 (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 Individual On-site Wastewater Treatment Systems Grants Program more effective and more responsive to the needs of local governments that receive grant funds. The proposed rules are published below. One free copy of the rules is available upon request from Mr. Thompson 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 rule amendments has been prepared and is available from Mr. Thompson upon request.

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 local unit elects to participate in the program; and the proposed rules will not have any direct adverse effects on agricultural lands in the state.

You are also advised, pursuant to 14.115 (1990), "Small business considerations in rulemaking," that the proposed rules will have no direct adverse effects on small businesses in the state.

If no hearing is required, upon adoption of the rule amendments, the rule amendments and 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 Mr. Thompson.

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 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 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 of the Agency governing the Individual On-site Wastewater Treatment Systems Grants Program, Minnesota Rules parts 7077.0700 to 7077.0765, to all persons who have registered their names with the Agency for that purpose and published 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 Minnesota Statute section 14.07, subdivision 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 25 day of June, 1991.

Charles W. Williams
Commissioner

The fee for each follow-up certified letter, not to include the initial certified letter, is $25. The fee for each follow-up inspection is $200.

[For text of subps 6 and 7, see M.R.]

7046.0050 GENERATOR FEE EXEMPTIONS.

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

Subp. 4. **Certain nonmetro area generators.** Small quantity nonmetropolitan area generators whose sole hazardous wastes are degreasing or drycleaning solvent related wastes reclaimed ~~off-site~~ off site under a maintenance agreement, lead acid batteries, gasoline tank bottoms, and scrap metal are not subject to annual fees for those calendar years for which they ~~submit accurate disclosures~~ obtain a license under ~~part 7045.0240~~ parts 7045.0225 to 7045.0250, but rather are subject to a flat annual fee of $25. For the purposes of this part, a maintenance agreement is a written agreement acceptable to the commissioner between a generator and a transporter and a reclaimer under which waste is removed from the generator's site on a regularly scheduled basis for reclamation by distillation.

If a small quantity nonmetropolitan area generator, who qualifies for this exemption, fails to submit the annual report by March 1 under part ~~7045.0296~~ 7045.0248, the generator shall pay a full annual fee. If the generator is also subject to retroactive fees, the retroactive fees must be based on the flat annual fee of $25.

[For text of subp 5, see M.R.]

Subp. 6. **Waste collected as a result of a very small quantity generator hazardous waste collection program.** An operator of a very small quantity generator hazardous waste collection program is exempt from generator fees for waste collected under part 7045.0320.

An operator who is also a generator is not exempt from generator fees for the waste that the operator generates separate from the waste that the operator collects from other generators.

A very small quantity generator participating in a collection program under part 7045.0320 is not exempt from generator fees.

REPEALER. *Minnesota Rules*, parts 7045.0211, subparts 2 and 3; 7045.0219; 7045.0220; 7045.0230, subpart 3; 7045.0235; 7045.0240, subparts 1 and 2; 7045.0249; 7045.0275, subpart 1; 7045.0290; 7045.0292, subparts 3 and 4; 7045.0296; 7045.0304; 7045.0310, subpart 4; and 7045.1030, subpart 4, are repealed.

Pollution Control Agency

Water Quality Division

Proposed Permanent Rules Relating to Individual On-Site Wastewater Treatment Grants Program

Notice of Intent to Adopt Rule Amendments Without a Public Hearing

NOTICE IS HEREBY GIVEN that the Minnesota Pollution Control Agency (MPCA) intends to adopt rule amendments to *Minnesota Rules*, chapter 7077 without a public hearing following the procedures set forth in the Administrative Procedure Act for adopting rule amendments without a public hearing in *Minnesota Statutes*, sections 14.22 to 14.28 (1990). The statutory authority to adopt the rule amendments is set forth in *Minnesota Statutes*, section 116.18 subd. 3c (1990).

All persons have until 4:30 p.m. on September 20, 1991 to submit comments in support of or in opposition to the proposed rule amendments or any part or subpart of the rule amendments. Comment is encouraged. Each comment should identify the portion of the proposed rule amendments 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 request in writing. Any person requesting a public hearing must state his or her name and address, the reason for the request, and any change proposed. If a public hearing is required, the MPCA will proceed pursuant to *Minnesota Statutes*, sections 14.131 to 14.20 (1990).

Comments or written requests for a public hearing must be submitted to Scott R. Thompson, Minnesota Pollution Control Agency, Water Quality Division/APS, 520 Lafayette Road, St. Paul, Minnesota 55155-3898 (612) 296-7223.

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 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 Individual On-site Wastewater Treatment System Grants Program more effective and more responsive to the needs of local governments that receive grant funds. The proposed rules are published below. One free copy of the rules is available upon request from Mr. Thompson 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 rule amendments has been prepared and is available from Mr. Thompson 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 local unit elects to participate in the program; and the proposed rules will not have any direct adverse effects on agricultural lands in the state.

You are also advised, pursuant to 14.115 (1990), "Small business considerations in rulemaking," that the proposed rules will have no direct adverse effects on small businesses in the state.

If no hearing is required, upon adoption of the rule amendments, the rule amendments and 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 Mr. Thompson.

Charles W. Williams
Commissioner

Rules as Proposed

7077.0705 DEFINITIONS.

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

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

Subp. 2a. **Application cycle.** "Application cycle" means the development of an on-site funding list and the acceptance, review, and approval of written applications for individual on-site wastewater treatment system grant funds.

Subp. 5a. **Cluster on-site wastewater treatment system or cluster system.** "Cluster on-site wastewater treatment system" or "cluster system" means a wastewater treatment system, or part of a system, that uses subsurface soil treatment and disposal to serve two or more dwellings or other establishments. Only cluster systems that serve five or fewer dwellings or other establishments are eligible for grant assistance.

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

Subp. 7. **Designer.** "Designer" means a person who designs ~~individual~~ on-site wastewater treatment systems that conform to chapter 7080, and has received agency approval under part 7077.0720.

[For text of subp 8, see M.R.]

Subp. 9. **Failed system.** "Failed system" means a wastewater treatment system that does not conform to chapter 7080 and has been issued an abatement notice by the ~~municipality's inspector~~ municipality.

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

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

Subp. 12. **Installer.** "Installer" means a person who constructs or repairs ~~individual~~ on-site wastewater treatment systems according to chapter 7080, and has received agency approval under part 7077.0720.

[For text of subp 12a, see M.R.]

Subp. 13. **Median household income.** "Median household income" means the income data named "median household income" from the most recent decennial census of the United States or the median household income calculated by the municipality and approved by the commissioner for alternative planning areas.

[For text of subps 14 to 16, see M.R.]

Subp. 16a. **Planning area.** "Planning area" means an area of contiguous dwellings or other establishments. A planning area is the entire geographic area within a municipality's jurisdiction unless the commissioner approves an alternative area.

Subp. 16b. **Provisional certification.** "Provisional certification" means an apprenticeship status given to persons that have participated in the state individual sewage treatment system certification program and passed the certification examination, but lack the experience required for full certification.

[For text of subp 17, see M.R.]

Subp. 17a. **Site evaluation costs.** "Site evaluation costs" means the expenses associated with a site evaluation, which include the cost of a site evaluator, soil borings, percolation tests, and the determination of topographical features.

Subp. 18. **Site evaluator.** "Site evaluator" means a person who investigates soils and site characteristics~~, does~~ to determine suitability, limitations, soil ~~borings or percolation tests~~ type, and sizing requirements for ~~use in~~ designing ~~individual~~ on-site wastewater treatment systems that conform to chapter 7080, and has received agency approval under part 7077.0720.

Subp. 18a. **System design costs.** "System design costs" means the expenses charged by a designer to complete the necessary calculations for system size, location, materials, and other items necessary to develop a bed, trench, or mound wastewater treatment system design that conforms to chapter 7080.

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

7077.0710 ELIGIBILITY.

Subpart 1. **~~Municipality~~ Eligibility to participate.** ~~A municipality applying for~~ Only municipalities, as defined under part 7077.0105, subpart 24, are eligible to participate in the individual ~~system owners must meet the following conditions to be eligible for a grant:~~ on-site wastewater treatment systems grants program.

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

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

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

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

Subp. 2. **~~Individual system~~ Eligibility of individual and cluster systems.** ~~The~~ For an individual ~~systems~~ or cluster system to be ~~replaced or upgraded~~ eligible to be included in ~~the~~ a municipality's grant application and to receive grant funds it must meet the following conditions:

A. be a failed system;

B. have been constructed before January 1, 1977;

C. not be serving a seasonal residence; ~~and~~

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

E. be located within the project planning area.

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

Subp. 4. **Eligibility of alternative planning area.** The commissioner shall evaluate any written municipal proposal for a project planning area that is less than the municipality's entire geographic jurisdiction. The commissioner's evaluation of the proposal shall be based on housing density, water quality impact, and public health impact. Separate dwellings or other establishments that are not part of a contiguous area shall not be approved as or part of a planning area.

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

Subp. 5. **Eligibility to submit a request to be placed on the on-site funding list.** The commissioner shall only accept requests to place projects on the on-site funding list under part 7077.0713 from municipalities that:

A. have authorization from their governing bodies to assume the responsibility for the proposed grant projects and the associated official documents; and

B. have planning areas that have been approved by the commissioner.

Subp. 6. **Eligibility to submit grant application.** The authority shall accept grant applications only from municipalities that have:

A. successfully submitted requests to be placed on the on-site funding list;

B. been classified as fundable on the on-site funding list; and

C. received written notification from the commissioner to submit applications.

7077.0713 ON-SITE FUNDING LIST.

Subpart 1. **On-site funding list.** An on-site funding list shall be compiled by the commissioner before each grant application period. The list shall be used to determine which municipalities are eligible to apply for individual on-site wastewater treatment system grant funds.

Subp. 2. **Requirements for placement on the on-site funding list.** To be placed on the on-site funding list a municipality must meet the requirements of part 7077.0710, subpart 5, and either item A, B, or C, as appropriate.

A. A municipality with a project proposal must submit a written request for the project to be placed on the on-site funding list to the commissioner during a submittal period announced by a notice in the *State Register.* The notice shall include submittal deadlines and conditions. The placement request must be made on forms provided by the agency and must include:

(1) a resolution of the governing body of the municipality that designates the municipality as the responsible party for the on-site funding list placement request and future grant application, authorizes the filing of the request and future application, and designates the municipal official authorized to sign the request, future application, and related documents;

(2) a map of the municipal jurisdiction or approved alternative planning area;

(3) a preliminary list that identifies the addresses of the on-site wastewater treatment systems that are suspected to be failed and that meet the eligibility requirements under part 7077.0710, subpart 2;

(4) median household income data or alternative median household income data that includes income data and computation methodology for municipalities and planning areas not included in the decennial census;

(5) the municipality's estimated date of site evaluation, design, and construction for all eligible systems; and

(6) a copy of a draft ordinance for adopting the requirements of chapter 7080 and establishing a maintenance plan for the individual on-site wastewater treatment systems within the jurisdiction of the municipality.

B. A municipality with a project that has been awarded a partial grant under part 7077.0735, subpart 2, shall submit a written request for the remaining grant fund entitlement to the commissioner by the published placement-request submittal deadline described under item A.

C. A municipality eligible for a grant increase amendment under part 7077.0735, subpart 4, item A, shall submit a written request for the grant increase to the commissioner by the published placement-request submittal deadline described under item A.

Subp. 3. **Incomplete requests.** Municipalities that submit placement requests that do not include the information required in subpart 2 or that are not postmarked by the published deadline shall not be placed on the on-site funding list.

Subp. 4. **Priority ranking.** Priority ranking of projects will be based on the median household income approved by the commissioner for the project planning area. Ranking on the on-site funding list shall be determined as described in items A to C:

A. Partial award projects shall be ranked before other grant increase amendments and project proposals. Partial award projects shall be ranked with the lowest median household income receiving the highest priority.

B. Grant increase amendments other than for partial awards shall be ranked after the lowest priority partial award project on the on-site funding list and before project proposals. These grant increases shall be ranked with the lowest median household income receiving the highest priority.

C. Project proposals shall be ranked after the lowest priority grant increase amendment project on the on-site funding list. Project proposals shall be ranked with the lowest median household income receiving the highest priority.

Subp. 5. **Determination of fundable range.** To determine the fundable range on the on-site funding list, the commissioner shall subtract the estimated grant amount or calculated grant increase for each project, in order of decreased priority, from the amount available in the individual on-site wastewater treatment system grant fund. The projects classified as fundable are those that have

their estimated or calculated project costs subtracted before the grant fund amount is depleted or diminished to an amount too small to complete the majority of the project next in priority on the on-site funding list.

Subp. 6. **Determination of projects eligible to submit applications.** Only municipalities with projects classified as fundable on the on-site funding list are eligible to submit applications.

Subp. 7. **Exclusion from fundable range.** Projects not classified as fundable on the on-site funding list must resubmit the documents required under subpart 2 during a subsequent placement request period.

Subp. 8. **Commissioner notification.** The commissioner shall notify each municipality of the on-site funding list priority for its project.

7077.0720 APPROVAL OF INDIVIDUAL ON-SITE WASTEWATER TREATMENT PERSONNEL.

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

Subp. 2. **First alternate approval criteria.** A person referred to in subpart 1 will be approved by the commissioner if the person is fully certified by the agency through the individual sewage treatment systems certification program administered by the agency in cooperation with the Individual Sewage Treatment Systems Advisory Committee established under part 7080.0100. Approval is automatic upon submittal of certification number. Provisional certification does not fulfill this approval criteria.

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

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

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

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

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

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

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

[For text of subps 4 and 5, see M.R.]

7077.0725 GRANT APPLICATION.

Subpart 1. ~~**Notice of taking applications**~~ **Eligibility.** ~~The commissioner will request the authority to publish in the State Register a notice that applications for individual on-site wastewater treatment grants will be accepted by the authority~~ No municipality shall submit an individual on-site wastewater treatment system grant application unless it meets the eligibility requirements of part 7077.0710, subpart 6. The written notification from the commissioner shall include application ~~closing date will be established~~ submittal conditions and deadlines. No municipality is eligible for a grant unless a complete grant application has been submitted to the authority and has been certified by the commissioner~~, and will be no less than 120 days after the publication date~~. A complete application includes all the documents required under subpart 2.

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

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

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~~B.~~ the wastewater treatment plan ~~prepared under part 7077.0715;~~ adopted by the municipality's governing body that identifies wastewater treatment needs, proposes long-term solutions for a planning area, and includes:

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

(2) site evaluations, including soil investigations, soil borings, and percolation tests for the failed systems identified in subitem (1) prepared by a site evaluator and a determination if it is feasible to replace or upgrade the failed systems on-site made by a system designer;

(3) a summary of the proposed systems that includes sizing, location, and design, prepared by a designer using data from the site evaluations prepared under subitem (2);

(4) a list of the failed individual on-site wastewater treatment systems, including addresses and names of property owners, that meet the eligibility requirements under part 7077.0710, subpart 2, and copies of the abatement notices;

(5) an analysis of the overall wastewater treatment needs in the planning area including a proposal for addressing the remaining wastewater treatment needs in the planning area not covered in subitem (4), including specific actions to be taken and a proposed timetable for addressing the wastewater treatment needs;

(6) documentation of approval of the project inspector, site evaluator or site evaluators, designer, and installer under part 7077.0720; and

(7) a certification of adoption of the wastewater treatment plan from the municipality's governing body;

~~C.~~ B. a copy of the enacted ordinance that adopts the requirements of chapter 7080, individual sewage treatment system standards, and establishes a maintenance plan for the on-site wastewater treatment systems in the municipal jurisdiction and certification that the ordinance is being enforced;

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

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

~~F.~~ C. signed statements of compliance with the eligibility requirements under part 7077.0710, subpart 2, items B to E, from the individual system owners ~~stating that their system meets the following conditions:~~

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

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

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

D. the amount of grant funding requested for site evaluation, system design, and construction and a certification stating that only eligible costs have been requested;

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

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

G. an assurance from the municipality that states that all owners of dwellings or other establishments planned to be connected to a cluster system agree to be part of the system, to participate in the construction projects, and to participate in and finance future operation, maintenance, and replacement of the system.

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

Subp. 4. **Application closing date.** The application deadline shall not be less than 150 days after the placement request submittal deadline identified under part 7077.0713, subpart 2, item A. The commissioner shall send written notification of the application deadline to municipalities that are eligible to submit grant applications. The application must be postmarked by the ~~noticed~~ specified application ~~closing date~~ deadline.

Subp. 5. **Incomplete applications.** Municipalities that submit applications ~~that do not include the information required in subparts~~ postmarked by the application deadline that require additional information to be considered complete under subpart 2 ~~and 3 or that are not submitted by,~~ have 45 days from the application ~~closing date are~~ deadline to submit the information needed to make the application approvable. If an application is not completed within this 45 days, the municipality is ineligible for funding. ~~The~~ Ineligible municipalities ~~may reapply in a later~~ must wait to reapply until the on-site funding list placement requirements have been met and the project has been classified as fundable under part 7077.0713 during a subsequent application ~~period~~ cycle.

Subp. 6. **Three copies.** Individual on-site wastewater treatment system grant application forms and attachments must be submitted in triplicate to the authority. At least one set of forms and attachments must contain original signatures.

Subp. 7. **Application approval.** The commissioner shall review and approve grant applications from municipalities that meet the requirements under this part.

7077.0730 ELIGIBLE COSTS.

Subpart 1. **Eligible costs.** Only the actual site evaluation, system design, and construction costs of upgrading or replacing failed individual or cluster on-site wastewater treatment systems that have been identified under part ~~7077.0715~~ 7077.0725, subpart ~~3~~ 2, item ~~D~~ A, subitem (4), are eligible. Upgraded or replacement systems must be a trench, bed, or mound design and serve five or fewer dwellings or other establishments to be eligible for grant participation. Only the costs associated with one system shall be eligible for each dwelling or other establishment.

Subp. 2. **Ineligible costs.** All ~~nonconstruction costs including planning, engineering and design, site evaluation and soil investigation,~~ inspection, ~~and~~ administrative, land, and easement costs are ineligible. Planning and engineering costs, other than for site evaluation and system design, are also ineligible.

Subp. 3. **[See repealer.]**

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

A. ~~the municipality has developed and adopted a wastewater treatment plan as described in part 7077.0715 before construction costs are incurred by the owner of the individual system;~~

~~B.~~ the owner's system is specifically identified on the ~~municipality's~~ wastewater treatment plan as required under part 7077.0725, subpart 2, item A, that was approved by the municipality and the commissioner before construction costs are incurred; and

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

B. all work has been done by personnel approved under part 7077.0720, and according to chapter 7080 and the approved wastewater treatment plan.

7077.0735 AMOUNT OF GRANT AWARD.

Subpart 1. **Grant amount.** The amount of the grant to be awarded will be the sum of items A and B:

A. 50 percent of the ~~actual eligible~~ construction costs eligible under part 7077.0730 up to a maximum ~~grant~~ amount of $2,500 per ~~household~~ dwelling or other establishment for a trench or bed system and $3,750 per ~~household~~ dwelling or other establishment for a mound system; and

B. 50 percent of the site evaluation and system design costs eligible under part 7077.0730 up to a maximum amount of $150 per dwelling or other establishment.

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

Subp. 3. **Funds not allocated.** Individual on-site wastewater treatment system grant funds that are not allocated for a fundable project, that are refused by a municipality, or that are denied award by the commissioner or authority shall remain in the grant fund for distribution during the next application cycle.

Subp. 4. **Amendments.** Grant amendments shall be made as described in items A and B:

A. Grant increase amendments shall only be made to fulfill the original grant entitlement for municipalities that receive partial awards as described under subpart 2, to reimburse the eligible cost for failed on-site treatment systems in a project planning area that were not identified on the on-site funding list placement request, and to reimburse site evaluation and system design costs eligible under subpart 1, item B, for municipalities that received individual on-site wastewater treatment system grant awards before July 1, 1991. Grant increases shall be made during an application cycle when on-site funds are available and the grant increase has been classified as fundable on the corresponding on-site funding list.

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B. Grant decrease amendments shall be made upon project completion to reduce the grant to correspond with the amount of incurred, grant eligible costs.

7077.0745 CERTIFICATION OF AWARD.

Subpart 1. ~~**Funding list**~~ **Certification to authority.** The commissioner will ~~prepare a list of municipalities eligible to receive grant funding~~ certify each individual on-site wastewater treatment system grant application approved under ~~this program~~ part 7077.0725, subpart 7, and grant amendment approved under part 7077.0735, subpart 4, to the authority for award. Grant eligible costs, award amounts, and eligible budget periods will be determined at the time of certification.

Subps. 2 and 3. **[See repealer.]**

7077.0750 PAYMENT CONDITIONS.

Payment of the grant is contingent on complying with the following conditions:

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

D. The upgrade or replacement to the existing system must meet the standards under chapter 7080 and must be completed in accordance with the approved wastewater treatment plan.

E. Costs on the payment request have been incurred and are eligible under part 7077.0730.

7077.0755 PAYMENTS.

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

Subp. 2. **Schedule of payments.** Payments may be requested monthly as construction on individual and cluster systems is completed and approved by the inspector.

Subp. 3. **Documentation.** Before payment of any part of the grant is made, the municipality must ~~submit copies of the following documents for each individual~~ certify to the agency that the payment conditions under part 7077.0750 have been fulfilled and invoices that document incurred site evaluation, system design, and construction costs for each upgraded or replaced on-site system~~:~~ will be kept on file for state audit purposes.

~~A. invoices documenting incurred construction costs;~~

~~B. documentation that the system was designed by a designer using data from a site evaluator;~~

~~C. documentation that the system was upgraded or replaced by an installer; and~~

~~D. documentation that the system was inspected and approved by the municipality's inspector.~~

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

7077.0760 TERMINATION OF GRANT.

Failure of the municipality to comply with ~~the construction schedule contained in~~ the grant agreement or parts 7077.0700 to 7077.0765 constitutes grounds for the commissioner to recommend that the authority terminate the grant.

7077.0765 SUBSEQUENT GRANTS.

A municipality awarded a grant from the individual on-site wastewater treatment systems grants program is not eligible for additional funding under the program established by the 1972 Federal Water Pollution Control Act amendments or the state independent grants program, including the individual on-site wastewater treatment systems grants program, unless the municipality is applying for a project that serves a planning area that was not included, under part ~~7077.0715~~ 7077.0725, subpart 2, item A, in the awarded grant.

REPEALER. *Minnesota Rules*, parts 7077.0715; 7077.0730, subpart 3; 7077.0740; and 7077.0745, subparts 2 and 3, are repealed.

Department of Public Service

Proposed Permanent Rules Relating to Energy Information Reporting by Electrical Utilities

Notice of Intent to Adopt Rules Without a Public Hearing and Notice of Intent to Adopt Rules With a Public Hearing if 25 or More Persons Request a Hearing

NOTICE IS HEREBY GIVEN that the Minnesota Department of Public Service (Department) intends to adopt the above-entitled rules without a public hearing following the procedures set forth in the Administrative Procedure Act for adopting rules without a public hearing, *Minnesota Statutes*, sections 14.22 to 14.28 (1990). The Department's statutory authority to adopt the rules is set forth in *Minnesota Statutes* 216C.10.

All interested persons shall have until 4:30 p.m. on September 18, 1991 to submit comment in support of or in opposition to the

STATE OF MINNESOTA
MINNESOTA POLLUTION CONTROL AGENCY

IN THE MATTER OF THE PROPOSED RULE AMENDMENTS GOVERNING THE ADMINISTRATION OF INDIVIDUAL ON-SITE WASTEWATER TREATMENT SYSTEMS GRANTS PROGRAM, MINN. RULES PTS. 7077.0700 TO 7077.0765

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

(1) The above-entitled matter came on for decision before the Minnesota Pollution Control Agency (MPCA) on the 27th day of November, 1991. After affording all interested persons the opportunity to present written and oral data, statements and arguments to the MPCA, 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 MPCA, being fully advised in the premises, hereby adopts the following Finds of Fact, Conclusions, and Order:

FINDINGS OF FACT

1. (1) Notice of the MPCA's intent to adopt the above-entitled rules without a public hearing was published in the State Register on August 19, 1991, and was sent by mail to all persons on the list maintained by the MPCA pursuant to Minn. Stat. §§ 14.14, subd. 1a and 14.22 (1990) and August 15, 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.

3. (4) 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 September 20, 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 MPCA.

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

7. The MPCA adopts the Statement of Need and Reasonableness, in its entirety, as the factual basis for the proposed rules. The MPCA 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 Minnesota Pollution Control 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 pts. 7077.0700 to 7077.0765 governing the administration of the Individual On-Site Wastewater Treatment Systems Grants Program are adopted pursuant to the authority vested in the Minnesota Pollution Control Agency by Minn. Stat. § 116.18, subd. 3c (1990).

MINNESOTA POLLUTION CONTROL AGENCY

Dated: December 4, 1991

for Ann Glumac (9)
Charles W. Williams
Commissioner

STATE OF MINNESOTA
POLLUTION CONTROL AGENCY

In the Matter of the Proposed Rule Amendments
Governing Individual On-site Wastewater
Treatment Systems Grants Program,
Minn. Rules ch. 7077

DECLARATION OF COUNSEL

I, Richard Cool, Special Assistant Attorney General, do hereby declare that I have examined the above-captioned rules and the supporting rulemaking record, and that, based on my examination, the Administrative Procedure Act and Minnesota Rules ch. 2010 have been followed. For Attorney General billing purposes, the docket client code is 75.0001.0703.

Richard Cool
Special Assistant
Attorney General