

STATE OF MINNESOTA
COUNTY OF RAMSEY

MINNESOTA POLLUTION
CONTROL AGENCY

In the Matter of the Proposed Revision
to Minnesota Rules, Chapter 7075,
Relating to the Administration of
Federal Grant Funds and State Grant
and Loan Funds for Municipal Sewage
Treatment Projects and Combined Sewer
Overflow Abatement Projects

STATEMENT OF NEED
AND REASONABLENESS

I. INTRODUCTION

Chapter 7075 of Minnesota Rules contains the rules of the Minnesota Pollution Control Agency (hereinafter "Agency") that provide for the administration of federal grant funds and state grant and loan funds for municipal sewage treatment projects. Chapter 7075, which was earlier called WPC 34, was first adopted by the Agency in 1972 and was amended in 1973, 1978, 1983, 1984 and 1985. The Agency is proposing to amend the rule again at this time.

The construction grants program enables municipalities in Minnesota to construct wastewater treatment facilities through a combination of federal, state, and local funds. These rules, Chapter 7075, establish criteria for determining priority for the awarding of state and federal funds for sewage treatment projects.

The federal construction grants program is authorized by the Clean Water Act, 33 U.S.C., Section 1251 et seq. The U. S. Environmental Protection Agency has promulgated regulations and developed guidelines for the administration of the federal program. See 40 CFR Parts 30, 33 and 35 (1985). The state

independent construction grant program and the state loan program are funded from the Minnesota State Water Pollution Control Fund, created by the Legislature in 1971. Minnesota Laws 1971, Ex. Sess., ch. 20. See Minnesota Statutes, Section 116.16 - 116.18 (1984). The Agency's statutory authority to adopt Chapter 7075 is found in Minnesota Statutes, Section 116.16 (1984), which authorizes the Agency to adopt rules governing the allocation of federal grants and state grants and loans for municipal sewage treatment projects, and in Minnesota Statutes, Section 115.03, Subdivision 1(c) (1984), which authorizes the Agency to adopt rules in order to prevent, control, or abate water pollution.

In the 1985 Legislative Session, the Legislature created a state financial assistance program for the abatement of combined sewer overflows into the Mississippi River in the Twin Cities Metropolitan Area. Minnesota Laws 1985, Ex. Sess., Chapter 14, Article 19, Section 3. (A copy of the pertinent parts of Minnesota Laws 1985, Ex. Sess., Chapter 14, Article 19 is attached at the end of this document. Future citations to provisions in that Act are given to the particular statute in which the provision will be codified. For example, Article 19, Section 3 of the Session Law is cited as Minnesota Statutes, Section 116.162.) The Agency was given authority to promulgate emergency and permanent rules for the administration of the combined sewer overflow abatement program. Minnesota Statutes, Section 116.162, Subdivision 8. Rather than draft a new Chapter of Minnesota Rules, the Agency has elected to propose revisions to Chapter 7075 for the following reason. While the newly

created financial assistance program is somewhat different from the grant programs currently administered through Chapter 7075, many of the same provisions are applicable. Therefore, rather than repeat in a new Chapter the numerous provisions that apply to the new program as well as the ongoing programs, the Agency reasoned that it could provide for administration of the combined sewer overflow abatement program more quickly and with less confusion by proposing revisions to Chapter 7075.

The Agency is proposing further revisions to Chapter 7075 to accommodate several changes made to the independent state grants program by the Legislature in the 1985 Legislative Session. The two major changes are: (1) The supplemental grant awarded to cities that are experiencing financial hardship has been raised from a range of 0 to 15 percent to a range of 0 to 30 percent. See Minnesota Statutes, Section 116.18, Subdivisions 2a and 3a. Correspondingly, the maximum allowed to one municipality in combined state and federal grants was raised from 75 percent to 90 percent. (2) The reimbursement provisions of the program have been changed such that cities can proceed with construction without grants and be reimbursed in any future year, not just the following year as the previous language provided. This means that more cities will be eligible to proceed under the reimbursement provisions. See Minnesota Statutes, Section 116.18, Subdivision 3a (c).

The impact of the proposed revisions falls primarily on municipalities, counties, townships, sewer districts, and sanitary districts, with secondary impacts on engineering

consulting firms and construction contractors.

In accordance with Minnesota Statutes, Section 14.115, Subdivision 2 (1984), the Agency has assessed the impact of the proposed rules on small businesses. The rules do impact small businesses in that EPA procurement regulations in 40 CFR 33.240 require grant recipients to give special consideration to small, minority and women's businesses when procuring engineering and other services and when advertising for construction bids. Also, the new combined sewer overflow abatement program will provide numerous opportunities for small businesses to bid on construction projects throughout the next ten years. Therefore, the rules should be of economic benefit to small businesses.

This document contains the Agency's affirmative presentation of facts on the need for and reasonableness of the proposed amendments. The next section of this document describes the need for amendments to the rules and the following section describes the Agency's reasons for the changes proposed.

II. NEED FOR AMENDMENTS

The need for the proposed amendments to Chapter 7075 arises from the following factors:

1. Creation of a state financial assistance program for the abatement of combined sewer overflow. See Minnesota Statutes, Section 116.162.

2. An increase in the maximum amounts of state supplemental grants awarded to municipalities based on the extent to which

construction of the treatment works imposes a significant financial hardship. See Minnesota Statutes, Section 116.18, Subdivision 2a.

3. Changes in the reimbursement provisions of the independent state grants program to encourage cities to proceed with construction with the possibility of reimbursement in a future year.

Each of these factors is discussed below.

1. Creation of a state financial assistance program for the abatement of combined sewer overflow.

In the 1985 Legislative Session, the Legislature created a state financial assistance program for the abatement of combined sewer overflow. The Agency proposes amendments to Chapter 7075 to allow the administration of this new program. The program was established on a ten year schedule for completion.

Administrative rules must be in place to allow timely implementation of this program for initiation of construction in 1986. The rules outline the necessary requirements of applicants for financial assistance.

The state financial assistance program was created as a part of a massive effort to abate the discharge of combined sewage into the Mississippi River in the Metropolitan Area. The cities eligible for assistance are Minneapolis, St. Paul, and South St. Paul. Assistance is provided in the form of a grant to South St. Paul. The Cities of Minneapolis and St. Paul must repay half of the assistance beginning ten years after the first payment. Minnesota Statutes, Section 116.162, Subdivision 6. The yearly

appropriation is divided among the three Cities based on the prorata share of each City's abatement costs compared to the total abatement costs. In today's dollars, the total cost of solving the problem is \$215 million.

2. Increase to state supplemental grants.

In the 1985 Legislative Session, the Legislature raised the amount of grant assistance available to municipalities which experience significant financial hardship due to construction expenses. Formerly, the grant was available to a maximum of 15 percent of eligible costs. The grant is now available to a maximum of thirty percent. Administrative rules must be in place to allow implementation of these increased percentages so municipalities experiencing financial hardship may receive the allowable grant amounts.

3. Changes in the reimbursement provisions.

In the 1985 Legislative Session, the Legislature removed some of the restrictions to the reimbursement provisions of the state grants program to encourage more municipalities to utilize the opportunity to progress into construction. For eligibility, a municipality needs to be listed on a reimbursement list and can be reimbursed in any future year, rather than only the following fiscal year.

III. REASONABLENESS OF THE AMENDMENTS

This section describes the Agency's reasons for suggesting each of the changes proposed. Each of the provisions in the new

rules that is proposed to be changed is discussed in the order it appears in the Chapter.

It should be noted that throughout the rules a distinction is made between grant requirements for combined sewer overflow (cso) abatement projects, and financial assistance requirements for cso abatement projects. Two separate programs are referenced, and requirements are not necessarily applicable to both. Where requirements differ, the rules specify to which type of applicant they apply. The financial assistance program is that described in Minnesota Statutes, Section 116.162, and briefly described in Section II. The grant requirements are applicable to cso abatement projects funded under the Federal Clean Water Act or the Independent State Grant Program.

7075.0100 Purpose. (Hereafter only the last four digits will be used to identify Parts. The first four digits are identical in all cases.) This Part is changed to include the new state program of financial assistance for abatement of combined sewer overflow.

0400 Types of Programs.

Item E. This Item specifies the financial assistance program for the abatement of combined sewer overflow as a type of program for which the Agency may disburse funds from the water pollution control fund.

0401 Summary of the Construction Grants Programs.

Item H. This Item incorporates the additional program of financial assistance for the abatement of combined sewer overflow into the rules. This Item also exempts the financial assistance

program from the award of funds on a priority basis. The Legislature created a distinct program at specific levels of funding each fiscal year for ten years. Allocation of funds for this program is done on a prorata basis and is separate from the method of allocation of funds for the construction grants program. See Minnesota Statutes, Section 116.162, Subdivision 5.

0409 Municipal Project List.

Subpart 1. Adoption of municipal project list.

This Subpart is expanded to provide that projects receiving financial assistance for abatement of combined sewer overflow as established by the Legislature are to be included in the municipal project list. Rather than conduct a separate public participation process for the projects to be funded by the new program each year, the Agency is proposing to compile one funding list for all programs administered through Chapter 7075 in the interests of saving time and minimizing confusion.

Subpart 2. Requirements for placement on list.

Item F. This Item is proposed to be created to exempt combined sewer overflow (cso) abatement projects from document submittal dates applicable to other grant projects. Step 3 grantees under the federal and the independent state grants programs must submit plans and specifications and user charge systems by December 1 prior to drafting of the Municipal Project List (MPL), and must make all corrections necessary to bring these documents into compliance with all state and federal rules and regulations by June 1 prior to drafting the MPL. However, the cso projects do not lend themselves to these deadlines for

two reasons: (1) they are numerous and relatively simple, and scheduling that far in advance is almost impossible; and (2) compliance with these deadlines would not allow completion within the ten years mandated by the Legislature in Minnesota Statutes, Section 116.162, Subdivision 7.

Separate conditions for submittal of plans and specifications for cso projects are established in Part 0414, Subparts 6 and 7. For projects receiving financial assistance for cso abatement, the Agency proposes to require by June 1 a schedule of construction to enable inclusion of specific projects on the subsequent fiscal year's MPL, and construction of those projects during that fiscal year.

The above referenced statute provides that scheduling shall be done according to the National Pollutant Discharge Elimination System Permit and/or the State Disposal System Permit. While the Agency feels that the requirements described above are necessary to effective overall program management, it may be necessary to change the June 1 date due to the complicated interplay of the numerous design and construction projects and the ten year program completion time. Thus, the rules as proposed allow for the permits, rather than the rules, to govern because permits can be revised much more quickly than rules. Also, the June 1, 1985 date applicable to the FY 1986 MPL will have passed before the rules become effective.

Subpart 3. Preparation of proposed municipal project list.

Item E. See the explanation of Part 0409, Subpart 1.

Subpart 4. Procedures for drafting list.

Item D. This Item has been added to provide the Agency with the ability to include projects for financial assistance for abatement of combined sewer overflow on the Municipal Project List to the extent that funds are available.

Subpart 5. Reimbursement project list.

The proposed changes in this Subpart accomplish the following.

(1) The intent is to relieve a city that wishes to proceed under the reimbursement provisions from submitting plans and specifications and a user charge system by December 1 and receiving an approvable designation by June 1 prior to being placed on the reimbursement project list. The proposed language provides that the list may be amended at any time that a city receives approval of its plans and specifications and user charge system, and wishes to proceed with construction. The purpose of this is to enable as many cities as possible to meet the July 1, 1988 statutory date for compliance with water quality standards (33 U.S.C., Section 1311 i(1)), provided they are willing to risk that future state funds may not be available. These changes are not intended to relieve a city from complying with all rules and regulations governing adequate plans and specifications, the procurement process (bidding), and construction of adequate facilities. The Agency will review and approve all actions and give written permission to a city before construction may commence.

(2) Minnesota Statutes, Section 116.18, Subdivision 3a (c) now provides that a city may proceed with construction without a

grant and be reimbursed in any future year, rather than only the following fiscal year. In accordance with the past language of the referenced Subdivision, the rules currently restrict reimbursement grants to the amount expected to be appropriated the following year. Because of the statutory change, and because the July 1, 1988 compliance date is rapidly approaching, the Agency proposes to delete the additional restriction.

0411 Project eligibility.

Subpart 1. Steps eligible.

This Part is proposed to be amended to include projects in the new program of financial assistance for abatement of combined sewer overflow as eligible for design and construction, as is provided in Minnesota Statutes, Section 116.162, Subdivision 4.

Subpart 2. General eligibility.

Minnesota Statutes, Section 116.162, explicitly details conditions for receipt of state financial assistance. These conditions are as follows:

1. A recipient must construct the combined sewer overflow (cso) abatement facilities in accordance with the construction schedule contained in a permit, stipulation agreement, consent decree, or order issued by the Agency.
2. The Agency shall require that, with federal, state, and local funds, the construction schedule would complete abatement of combined sewer overflow within ten years of the issuance of the permit, agreement, decree, or order.
3. A recipient shall implement a program approved by the Agency to disconnect any structures or devices, excluding catch

basins on public property, constructed to direct or convey storm water, snow melt, or surface water from private or public property into a public sanitary or combined sewer.

The Agency issued NPDES/SDS permits to regulate combined sewer overflows in the Twin Cities Metropolitan Area on April 27, 1984. Three separate permits were issued, one to Minneapolis, the Metropolitan Waste Control Commission (MWCC) and the Metropolitan Council as joint permittees; one to St. Paul, the MWCC and the Metropolitan Council as joint permittees; and one to South St. Paul. On September 25, 1984, the Agency modified the permits to include additional conditions requested by the U.S. Environmental Protection Agency (EPA), Region 5. The basic requirement of the issued permits is for the permittees to develop the necessary plans for an implementable cso control program that will eliminate cso as a cause of non-compliance with water quality standards in the Metropolitan stretch of the Mississippi River. At present the permittees are proceeding with development of the facilities plans in accordance with the permit requirements. The cso permits expire on June 30, 1986.

By December 31, 1985, or as soon thereafter as possible, it is the Agency's intent to reissue the three NPDES/SDS permits regulating the cso discharges. The proposed permits will include a schedule for construction of the cso abatement program, language referencing the statutory requirement for a 10 year program and conditions for implementation of an approved rain leader elimination program.

Given the Agency's past record of issuing the necessary NPDES/SDS permits, which were upheld by the Minnesota Court of Appeals following a petition by the State of Wisconsin to further modify them, it is reasonable to expect that the Agency will again be able to reissue these permits. Consequently, it is reasonable to expect that the use conditions required by Minnesota Statutes, Section 116.162, Subdivision 7, will also be satisfied by this action. If unforeseen problems arise or unexpected delays occur in the permit reissuance process, it is the Agency's intent to then consider one of the other mechanisms authorized by the statute in order to satisfy its use conditions.

Subpart 3. Initiation of construction.

Item A. As explained in the discussion of Part 0409, Subpart 5, restrictions on eligibility for reimbursement are proposed to be reduced to encourage municipalities to progress to construction. The requirement that the municipality be on the reimbursement project list in the fiscal year in which construction began has proven to be confusing due to the difference between state (July 1 - June 30) and federal (October 1 - September 30) fiscal years, and is unnecessarily restrictive. The Agency proposes that if a city is listed on any year's reimbursement project list when construction begins, it remains eligible for reimbursement.

Item B. The proposed change makes clear that if a reimbursement project list is amended during the year to include additional projects, the cities added must submit applications 90 days after adoption of the revised list, not the original list.

Subpart 5. Eligible costs.

Item A. The proposed language makes clear that the eligible cost of any project shall be in accordance with all applicable rules and regulations. The change is for clarification only and does not represent any change in procedure.

Item B. The Cities of Minneapolis, St. Paul and South St. Paul have indicated that the most cost effective solution to most sewer separation projects will be to construct a storm sewer rather than a sanitary sewer. Existing state and federal grant eligibility guidelines do not define storm sewer eligibility for combined sewer overflow correction. Also, in general, storm sewers are not eligible as part of a municipal wastewater treatment system improvement project. Therefore, there is a need to define storm sewer conveyance facility eligibility.

It is reasonable for grant funds to be used for storm water conveyance facilities where they will be part of the most cost effective alternative for a combined sewer overflow abatement project. It would not be reasonable or prudent to require the construction of a sanitary sewer at a greater expense where there would be no additional environmental benefit.

It is not reasonable to fund solutions for local flooding and street improvement projects. It is reasonable to define the extent to which the government will participate in storm sewer construction, a multipurpose project. The proposed rules make catch basins, pipes, appurtenances and outlets eligible. The intent is to exclude surface water conveyance structures. Normally, this is part of the function of street curb and gutter

and alleys. The Agency on other municipal sewer projects pays for street restoration. Restoration will also be eligible for CSO correction projects. CSO projects will be coordinated with ongoing city street paving projects. If the government were to pay for surface water conveyance, there may be an argument for grant eligibility of curb and gutter. It would not be consistent to pay for curb and gutter and is reasonable to exclude it from grant eligibility.

7075.0414 Grant Applications.

Subpart 2. Timing and form of application.

Item A. This rule is proposed to be qualified to exempt projects for grants and financial assistance for abatement of combined sewer overflow (CSO) from the submittal date of applications for state and federal wastewater treatment construction grants. Application deadline dates specific to such projects have been established in Item B of this Part to provide for the distinctive nature of the effort involved in CSO abatement in the Metropolitan Area. Further explanation is offered below.

Item B. This Item and Subpart 6, Item N, Subitem (3), and Subpart 7, Subitem C, combine to require submittal of a grant or financial assistance application for combined sewer overflow (CSO) projects, plus plans and specifications and a user charge system (applicable only to grant applicants) by December 1 of the fiscal year for which the Municipal Project List (MPL) is adopted. The current rules require grantees to submit plans and specifications by December 1 prior to the fiscal year of funding.

However, for the reasons outlined in the explanation of Part 0409, Subpart 2, Item F, this date is too restrictive for cso abatement projects. The proposed date will allow the Agency to review plans and specifications during the winter, and construction to begin the following spring. Plans and specifications for cso projects are relatively uncomplicated and do not require extensive review time, as do those for wastewater treatment facilities. The December 1 date will allow a smooth flow of design and construction projects. The same date is also proposed as the application deadline to avoid confusion. The discussion of Part 0409, Subpart 2, Item F also provides an explanation of why the NPDES/SDS permit schedule takes precedence.

Items C, D and E. The proposed language clarifies that federal grant recipients must submit the federal grant application Form 5700-32, and that state grant and financial assistance recipients must submit the forms provided by the Agency.

Subpart 6. Additional information for Step 3 grant.

Item N, Subitems (1), (2) and (3). The proposed language clarifies that an applicant for a federal grant for combined sewer overflow abatement (cso) projects must apply for funding for the scope of work approved on the Municipal Project List (MPL). This facilitates appropriate planning and scheduling, and better assures construction of priority projects first; that is, those projects that will have the greatest impact on cso abatement. The Agency also proposes to require cities, as part

of their initial applications by December 1, to submit plans and specifications for any additional work they are prepared to do if additional money becomes available.

This will require some anticipation by one municipality of what another municipality is going to do, but if a municipality is going to be able to utilize additional funds in the present fiscal year, it will have to be at least at the plans and specifications stage by December 1 in order to be in construction the next spring. The Agency believes this is a reasonable requirement to impose on municipalities that seek additional funding. Moreover, it will help to promote communication between the Agency and the cities.

See the discussion of Part 0414, Subpart 2, Item B for an explanation of the language in Subitem (3).

Subpart 7. Additional information for state financial assistance for combined sewer overflow abatement.

This Subpart as proposed differentiates between the state financial assistance program for combined sewer overflow (cso) abatement projects and the federal grants program for cso projects. Because of the unique aspects of the overall effort to reduce cso into the Mississippi River, especially the relatively short time span required by the Legislature to solve this massive problem, many of the requirements of the federal and state grants programs are not proposed to apply to the state financial assistance program, in order to facilitate rapid progress. The requirements outlined in Items A, B and C are considered by the

Agency to be the minimum necessary for program integrity and protection of state dollars.

0418 Preparation of Plans Without a Grant.

The current rules provide that a city shall notify the Agency before proceeding with preparation of a facilities plan and shall obtain written approval from the Agency prior to proceeding with the preparation of plans and specifications. The rules were originally intended to protect a city from incurring costs for inappropriate planning or for design of an unapprovable alternative. However, in view of the rapidly approaching deadline for municipal compliance with water quality standards, the Agency feels that these restrictions may slow projects down. Cities and their Engineering Consultants have access to all rules and regulations regarding approvable facilities plans and plans and specifications and will be expected to comply with them.

0419 Advances of Allowance.

Subpart 3a. Submittal and approval of facilities plan.

The proposed change allows award of an advance of allowance for design whenever the facilities plan is approved. Current rules require submittal of the facilities plan by December 1 and an approvable designation by June 1 prior to award of the advance. The change is proposed to allow as many cities as possible to meet the federally mandated July 1, 1988 deadline for compliance with water quality standards.

0428 Grant Amounts.

Subpart 1. State matching grants; and Subpart 2. Independent state grants.

These Subparts are proposed for revision to reflect the Legislative increase to the maximum state supplemental grant amount from 15 percent to 30 percent, and the increase to the maximum allowed to one grantee in combined state and federal grants from 75 percent to 90 percent. See Minnesota Statutes, Section 116.18, Subdivisions 2a and 3a.

Subpart 3. State financial assistance for combined sewer overflow abatement projects.

Item A. The proposed language provides that financial assistance for design of combined sewer overflow (cso) abatement projects under the state financial assistance program will be calculated in the same way as are allowances for design under the federal and state grants programs. This method has drastically reduced application review and processing time and has removed subjective judgment from the calculation.

Item B. Minnesota Statutes, Section 116.162, Subdivision 5 requires that available funds be distributed to eligible cities according to their proportionate share, based on their respective combined sewer overflow (csc) abatement program costs. To date the cso abatement program financial needs have been based on estimates provided in the draft facilities plan. This plan, as updated October 31, 1984, was prepared by the Metropolitan Waste Control Commission (MWCC) and contains cost estimates independently prepared by the cities of Minneapolis, St. Paul and South St. Paul. These estimates formed the basis for the enabling Legislation and are shown below.

Minneapolis	\$ 52,000,000	24.2%
St. Paul	154,000,000	71.6%
South St. Paul	9,000,000	4.2%
Total	<u>\$215,000,000</u>	<u>100.0%</u>

Minneapolis has separated 87% of its combined sewers, St. Paul 64%, and South St. Paul 65%.

The above referenced statutes provide for a ten year program beginning in 1986. In order for the cities to implement a ten year program, the cities must develop a ten year project list broken down into annual increments. Plans and specifications must be developed for the upcoming year's projects. Cities must establish budgets and staffing levels and let construction contracts. Budgets for this work must be based on actual costs taking into consideration what is expected in state and federal financial assistance.

This work could not be completed in the time allowed if the yearly funding were unknown. Therefore, because the estimates provided by the cities were utilized in creating the program, the proposed rules reflecting each City's proportionate share based on these estimates are reasonable. The proposed proportionate share ratios represent the best available information, and it is reasonable to define those ratios in the rules to facilitate implementation of the cso abatement program.

Item C. The primary intent of this proposed provision is to ensure that all state funds available for combined sewer overflow (cso) control are utilized expeditiously to keep the program on schedule. In order to do this, it is necessary to establish a deadline for each eligible recipient to make the necessary commitments for obligating its total prorata share. If such

commitments cannot be met, then any remaining funds not able to be utilized by the intended recipient should go to the other eligible cities. As the program progresses, however, any city that is not able to initially utilize its funds should be afforded the opportunity to have such funds returned at a later date in order to comply with the 10 year completion requirement for the total program.

In order for an eligible recipient to demonstrate that it will obligate its prorata share on schedule, a financial assistance application and the plans and specifications for all projects to be constructed with a fiscal year's funds will be required to be submitted to the Agency by December 1 of the same fiscal year. If a city submits an application and plans and specifications for only a portion of the projects necessary to utilize its prorata share, the remaining funds will be redistributed to other eligible cities that did by December 1 submit applications and plans and specifications for work to be constructed in that fiscal year beyond their prorata shares.

By March 31 each year, a city must either sign construction contracts or issue work proceed orders for projects that will utilize its prorata share of that fiscal year's funds. If it does not do so for some portion of its prorata share, the amount not to be expended will be distributed to other eligible cities that applied for and submitted plans and specifications for that amount of additional funds. Cities receiving additional funds must sign construction contracts or work proceed orders by May 31 if they are to retain the additional funds.

It is necessary and reasonable that these deadlines be imposed so that timely award of financial assistance can be made to allow construction during the spring, summer and fall construction season, and also so that sufficient time is available for full utilization of available funds by other cities, in the event of a reallocation of unused funds under this provision. Also, the Agency needs the December 1 to March 31 period to review the plans and specifications to determine whether or not they are acceptable.

In general, award of a sufficient number of construction contracts will be a good indicator of ability to use all funds for the Cities of St. Paul and South St. Paul. However, Minneapolis intends to do much of the construction with its own work forces. Therefore, the indicator of ability to use all funds for Minneapolis will generally be the approval of specific construction projects by the City Council and issuance of work proceed orders for those projects signed by the City Engineer.

The reason for waiting until 1987 to implement this provision is because all of the cities will need time at the beginning of the program to gear up internal staffing to a sufficient level for conducting the accelerated ten year program. With the provision becoming effective in 1987, the cities will have the remainder of 1985 and all of 1986 to bring their programs to the necessary accelerated level, yet the Agency will still be able to redistribute funds, if necessary, before the next biennial Legislative appropriation is considered in 1987. Concerning the Fiscal Year 1986 appropriation, the Agency will

closely track the progress of each city and either make multiple grant offers for groups of construction projects as they are ready to proceed, or take other steps necessary to assure full obligation of available funds.

While it is important to obligate all funds on an annual basis as they become available, it is also important not to lose sight of the fact that the entire program needs to be completed in ten years. The Legislature structured the initial appropriation for FY 1986 and FY 1987 in accordance with construction estimates provided by the three eligible cities. Based upon expected federal assistance and an estimated amount for local contributions, the Legislature determined the amount of state funds that would be required to complete the program in ten years, and appropriated that amount for the biennium.

Consequently, even though the total amount necessary to complete the program may change over the years due to inflation, it is still important to make sure that the state and federal dollars are distributed over the long run to the cities that have demonstrated a need for it through the facilities planning effort. If their needs are not met, the ten year program cannot be achieved. For this reason, it is necessary to return any funds that may be taken from a city that is not able to initially utilize them in a timely manner. However, when returning the funds, it has to be done over a period of time that will not cause severe interruptions or oscillations in the programs of any of the cities involved.

Three years is a reasonable period of time to make the transition for returning additional funds. One or two years may not be enough in that the number of city forces would have to fluctuate significantly over such a short time frame in order to accommodate the changed levels of funding and construction. Such oscillations are not conducive to a steady state, long range program. A longer period of time may not allow the city to catch up and comply with the ten year program requirements.

The repayment method would function as follows. City A is entitled to \$2 million in a fiscal year, but can only use \$1 million. Cities B and C are awarded an additional \$500,000 each, provided they can use it. The next year, or in 1988, whichever is later, Cities B and C each repay one third of \$500,000 to City A. This continues for 3 years. If, during the repayment period, City A is unable to use the funds that it is entitled to recover, repayment does not occur. Non repayment will continue until the next year or until City A can demonstrate a firm commitment to utilize the funds to be repaid.

In addition, if City A is unable to use \$200,000 of its entitlement during the repayment period, Cities B and C each receive an additional \$100,000, provided they are able to use it. The following year, Cities B and C would each repay one third of \$600,000. Repayment continues until City A has been repaid the \$1,200,000. If City B completes its cso abatement projects before repayment is completed, the City's repayments stop. The following year, City A would receive a revised prorata allocation to recover the amount not repaid by City B. If funding for the

program ceases, all repayments cease and the entire cso abatement program is reassessed.

Subpart 4. Local share.

The proposed language reflects the Legislative change in the maximum allowed per grantee in combined state and federal grants from 75 percent to 90 percent. See Minnesota Statutes, Section 116.18, Subdivisions 2a and 3a.

Subpart 5. Significant financial hardship.

Items A, B and C. In the 1985 Legislative Session, the Legislature raised the state supplemental grants awarded for significant financial hardship from 0 - 15 percent to 0 - 30 percent. The proposed formulas reflect that change. Because the indicator for per connection capital cost has the least correlation with the financial status of the community, the grant percentages based on the three indicators is weighted toward the median household income indicator and the adjusted assessed valuation indicator. The grant percentage based on median household income is given the most weight.

Also, in contrast to the current maximum of 5 percent in grant funds per indicator, the proposed language allows 15 percent per indicator. Thus, if a city is extremely needy according to one indicator, it can receive a proportionately higher percentage despite good ratings on the other two indicators. The maximum, of course, will still be 30 percent.

Under the proposed formulas, 81.5 percent of the projects on the Municipal Needs List would receive some additional funding. 89.9 percent of the projects on the Municipal Needs List with

populations less than 10,000 would receive additional funds. 18.5 percent would receive from 0 to 10 percent; 26.9 percent would receive from 10.1 percent to 20 percent; 22.8 percent would receive from 20.1 percent to 29.9 percent; and 13.3 percent would receive 30 percent in additional funding.

0433. Payment of State Financial Assistance for Combined Sewer Overflow Abatement Projects.

The proposed payment requirements are considered by the Agency to be the minimum necessary to ensure construction in accordance with the approved plans and specifications, while allowing rapid progress toward the ten year deadline for abatement of combined sewer overflow into the Mississippi River.

IV. CONCLUSION

The Agency believes that the explanation and discussion of the proposed amendments to the Construction Grants Rule, Minnesota Rules, Chapter 7075, presented in this Statement of Need and Reasonableness establish the need for and reasonableness of the proposed amendments.

Respectfully submitted,



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Dated: October 2, 1985