

STATE OF MINNESOTA
POLLUTION CONTROL AGENCY

In the Matter of the Proposed Rules
Relating to the Administration of the
Capital Cost Component Grant Program
for Municipal Wastewater Treatment Projects

STATEMENT OF NEED
AND REASONABLENESS

I. INTRODUCTION

In 1987, the Legislature created a set-aside under the independent state grants program for the award of capital cost component grants to municipalities on the municipal needs list to construct and operate wastewater treatment facilities. Minn. Stat. §116.18, subd. 3b. The Agency authorization to promulgate permanent rules for the administration of this capital cost component grant program is contained in Minn. Stat. §116.18, subd.3b(g).

In drafting the proposed rules for the administration of the capital cost component grant program, the Agency sought and received input from municipalities, private vendors and the Technical Advisory Committee (TAC), a statutorily created body established in 1986. Minn. Stat. §115.54. The Agency developed a mailing list of interested parties to keep people advised of meetings and other progress in the development of the rules. There were six meetings with the Technical Advisory Committee to obtain the recommendations of the engineers, contractors, and municipal representatives on that committee. Two presentations were made to the Agency Board Committee on Water Quality. The staff met with different private vendors on several occasions. The rules that the Agency is proposing to adopt are the result of many months of debate and discussion.

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

II. STATEMENT OF AGENCY'S STATUTORY AUTHORITY

The Agency's statutory authority to adopt rules for the administration of the capital cost component grant program is set forth in Minn. Stat. §116.18, subd. 3b(g) (Supp. 1987), which provides:

- (g) The Agency shall adopt permanent rules to provide for the administration of grants awarded under this subdivision.

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

III. STATEMENT OF NEED

Minn. Stat. ch. 14 (1986) requires the Agency to make an affirmative presentation of facts establishing the need for and reasonableness of the rules as proposed. In general terms, this means that the Agency must set forth the reasons for its proposal, and the reasons must not be arbitrary or capricious. However, to the extent that need and reasonableness are separate, need has come to mean that a problem exists which requires administrative attention, and reasonableness means that the solution proposed by the Agency is appropriate. The need for the rules is discussed below.

The need for adopting rules to administer the capital cost component grant program arises from the creation by the Legislature of this new grant program for the purpose of constructing wastewater treatment facilities under Minn. Stat. §116.18, subd. 3b.

Prior to the enactment of the capital cost component grant program, municipalities that chose to address their wastewater treatment needs by contracting for services in the private sector were responsible to finance the project without grant assistance. The capital cost component grant program was legislatively created in an effort to provide financial assistance to municipalities that are interested in solving their wastewater

treatment needs through the privatization alternative without having to forsake grant funding.

Fiscal year 1989 begins on July 1, 1988. The Agency is on a schedule to have these rules adopted in 1988 and award grants in the spring of 1989 to allow municipalities to initiate construction in the fall of 1989.

IV. STATEMENT OF REASONABLENESS

The Agency is required by Minn. Stat. ch. 14 to make an affirmative presentation of facts establishing the reasonableness of the proposed rules. Rules are reasonable if they are not arbitrary or capricious. Reasonableness means that there is 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

These proposed rules establish a program for administration of the capital cost component grant program. The Agency believes that the proposed rules establish a reasonable scheme for getting the grant assistance out to the eligible communities quickly while allowing the Agency to ensure that the environment will be protected. All municipalities on the municipal needs list (Minn. Rules part 7075.0402) are eligible to participate in this alternative grant program.

Under Minn. Stat. §446A.10, subd.1, the Minnesota Public Facilities Authority (Authority) assumes responsibility on July 1, 1988 for awarding grants and making grant payments under the state independent grants program, including the capital cost component grant program. The Agency retains the responsibility for selecting the municipalities to receive grants and for reviewing and approving the projects and applications in accordance with Minn. Stat. §116.16 to §116.18 and Chapter 7075. The Authority shall award grants and make grant payments upon certification by the Agency. The provisions concerning grant

awards and payments in the proposed rule are written to accommodate this transfer of responsibilities.

B. Reasonableness of Individual Rules

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

Part 7075.1105 Purpose. (Hereafter only the last four digits will be used to identify parts. The first four digits are identical in all cases.) This part identifies that the capital cost component grant program will be administered by these rules.

Part 1110 Definitions.

The following terms used in the rules have a specific meaning. The terms and the reasonableness of the definitions are explained below.

Subpart 2. "Agency". Since there are several references to the Minnesota Pollution Control Agency, it is appropriate to shorten this and include it in definitions.

Subpart 3. "Authority". Since there are several references to the Public Facilities Authority, it is appropriate to shorten this and include it in definitions.

Subpart 4. "Commissioner". It is appropriate to clarify that "commissioner" is the commissioner of the Minnesota Pollution Control Agency and not an official of the Authority or a local government official.

Subpart 5. "Initiation of construction". Since a municipality obtaining a capital cost component grant must perform certain tasks before starting construction of its wastewater treatment facility, under Part 7075.1140, subp. 2, item B of the proposed rules, it is appropriate to define "initiation of construction." The proposed rules define the term as the issuance of the notice

to proceed. The Agency picked the earliest step in the process of construction so that the necessary tasks will be completed before any construction expense is incurred or any change which may impact the environment is made. This definition is reasonable and consistent with other Agency requirements to obtain necessary permits before any construction can commence. See Minn. Rules part 7001.1020, subp. 8., and parts 7001.1040 and 7001.0030 which require a National Pollutant Discharge Elimination Systems permit before construction can commence.

Subpart 6. "Municipal needs list". This eligibility and priority ranking procedure is explained in detail in parts 7075.0402 through 7075.0408.

Subpart 7. "Project". The word "project" is defined because there are several instances in the proposed rules where there is a reference to the project to be built with capital cost component grant funds. It is important to specifically identify what work is authorized to be covered with capital cost component grant funds.

Part 1115 Eligibility.

Eligibility for program participation is limited to municipalities on the municipal needs list (MNL). For further definition of the MNL, see Minn. Rules parts 7075.0402 to 7075.0408. The proposed rules identify the eligibility requirements for participation in the capital cost component grant program.

Part 1120 Grant applications.

Subpart 1. Notice of taking applications. The initiation of the application cycle is established by the commissioner by public notification in the STATE REGISTER. The application period will remain open for at least 90 days. This should be sufficient time for a municipality to complete its application and get it submitted.

The Agency envisions that once these rules are adopted, which should be in the fall of 1988, the Agency will ask the Authority, shortly thereafter, to

publish notice that applications will be accepted. The application period will end 90 days thereafter so that fiscal year 1989 funds can be awarded as soon as possible.

Thereafter, the Agency will tie the capital cost component grant program in with the independent state grants program's annual funding cycle. It must be understood that the entire program is dependent on funding. If funds are not available in a particular fiscal year, there will be no notice and no grants awarded.

Subpart 2. Application requirements. Since it is the Agency that makes the decision on which municipalities are awarded grants, the applicants must provide the necessary information to allow the Agency to conduct its review.

The Agency will provide a form for each applicant to complete. The form will be a document that provides general information, such as the name of the applicant, the address, and the authorized representative for the municipality. The significant part of the application will be the information detailed in items A-D.

Item A. An applicant shall submit a copy of the request for proposals (RFP). Minn. Stat. §471A.03, subd. 3 permits the waiver of competitive bidding requirements under certain conditions. One of these conditions is that the municipality must request proposals from two or more private vendors. The Agency is requiring submittal of the request for proposals to document that the municipality has complied with this condition and is exempt from procurement requirements.

Item B. An applicant shall submit an engineering report that includes geographic information, population data, effluent limitations, and present and future flows and loading data (subitems 1-4). An engineering report, including subitems 1-4, constitutes reasonable information for a municipality to require

in a request for proposals in order for the municipality to evaluate the private vendors' proposals. In addition, it is reasonable for the technical staff of the Agency to have access to the same preliminary engineering data to become familiar with the proposed project prior to submittal of the plans and specifications. This will expedite the technical review and approval process.

Item C. An applicant shall submit a copy of all proposals received. See the analysis of subp. 2, item A.

Item D. This item requires a design summary of the proposed facility to be submitted. Similarly to subp. 2, item B, it is reasonable for the technical review staff of the Agency to have access to preliminary engineering data. This will not only enable the staff to increase its familiarity with the proposed project, it will also enable the staff to advise the municipality and the private vendor of any potential problems in the design prior to the submittal of the plans and specifications. If any major problems are identified, the municipality, the private vendor and the Agency technical staff can work together to resolve these problems. Again, this assistance will expedite the review and approval process.

Subpart 3. Other information. The commissioner may require additional information from the municipality. After the information required in the application is submitted, it is sometimes necessary for the municipality to submit further information for clarification so that no misunderstandings exist on the part of staff that could impact review and award.

Subpart 4. Application closing date. The notice of taking applications, part 7075.1120, subp. 1, will specify an application closing date no less than 90 days after the STATE REGISTER publication date. It is reasonable to require that the applications must be submitted by the application closing date. The Agency staff ranks the applications (see Part 7075.1125, subp.1), and the ranking of projects cannot begin until all applications are submitted.

Subpart 5. Incomplete applications. The commissioner may determine that an application does not contain the information required in part 7075.1120, subp. 2. That application shall then be ineligible for funding during that funding cycle. It is reasonable for the Agency to impose this restriction because the application requirements will be stated in the public notice in the STATE REGISTER. Municipalities will have at least 90 days to complete the requirements. Any application that is submitted that does not have all the required information could impede the award process for the other applicants if the commissioner were to allow more time to complete the application.

Part 1125 Selection of eligible grantees.

Subpart 1. Ranking of applicants. This subpart describes the application ranking method and time frame. Minn. Stat. §116.18, subd. 3b(e) directs that funds shall be distributed to municipalities in order of their ranking on the municipal needs list that is effective at the point in time that the application period closes. Therefore, the rules adopt this method.

The proposed rules impose a 30 day time period on this segment of the staff review. The ranking will be done after the Agency staff has determined which of the applicants have submitted a timely and complete application. It is unclear how many applicants there will be in any given application period and it may take up to 30 days to review all applications for completeness and timeliness if many municipalities submit applications.

Subpart 2. Determination of grantees. The Agency shall look at two things when determining which applicants will receive grants: the applicant's ranking according to subp. 1, and the amount of set-aside funds available. The Agency will award grants in priority order to as many applicants as the available funding will allow.

The proposed rule imposes a 90 day time period from the close of the application period to the determination of grantees by the Agency. The Agency Board will act at one of its Board meetings on the list of grantees as presented by the commissioner. In order to allow for the time to review the application, prepare the list of grantees and allow for the required public notice of Agency meetings, it is reasonable to expect that the process may take 90 days following the close of the application period.

Part 1130 Amount of the grant award.

Subpart 1. State and federal construction grants program list. The Commissioner shall prepare a list, in order of wastewater treatment service area population, of municipalities that have accepted bids under state and federal construction grants program during the three previous state fiscal years. This list is a reasonable approach to addressing the formula for the award of capital cost component grants. Minn. Stat. §116.18, subd. 3b(c) requires that "the amount of the grant to a municipality shall be 50 percent of the average total eligible costs of municipalities of similar size recently awarded state and federal grants."

The Agency has determined that three previous state fiscal years constitute a reasonable time frame to compare recent projects. Less time than three years may not provide sufficient projects to compare and average. More than three years may not reflect the present costs of projects. The Agency has further determined that "similar size" is best reflected by listing the municipalities in order of the population of the wastewater treatment service area, and then applying the averaging procedure in Part 7075.1130, subp. 2. The reason for extending population to the service area (instead of just a single municipality) is to address the eventuality of a municipality serving an area beyond the city limits. Townships are a good example of where this might

happen. It is also possible that more than one municipality may agree to join together to provide wastewater treatment. Finally, it is the population of the service area that is used in the traditional grants programs and it is reasonable to compare populations in the same way when compiling this list.

Another measure of size that was considered was wastewater flow data. The staff determined that wastewater flow data was not as readily available or as easily verifiable as population data. Therefore, population of the service area was chosen as the most appropriate method of determining "similar size".

Subpart 2. Grant amount. The grant amount will be determined according to the formula in subp. 1. Each applicant will be placed on the list described in subp. 1 according to the population of its service area. The Agency will take the eligible costs of the ten municipalities with the closest population to the applicant and calculate the average of the eligible costs of the ten municipalities. It is reasonable to compare the ten municipalities that are closest in size to the applicant to determine the grant amount. Comparison of more than ten municipalities could cause the population differences to make the costs inappropriate. Less than ten municipalities increases the risk that the costs would not reflect the different kinds of treatment that are possible. The grant amount for the applicant will be 50 percent of the average total eligible costs for the ten municipalities of similar size on the list described in subp. 1.

Subpart 3. Grant restriction. Since there is a limited amount of grant funds available for this program and since there is a great deal of public interest in getting as many municipalities and private vendors involved in this program as possible, the Agency has limited any one grant to no more than 50 percent of the total funds available. Each municipality that is awarded only a portion of its capital cost component grant will be entitled to a grant

amendment, if capital cost component grant money is available in subsequent years, to bring the grantee up to the full grant amount determined in subp. 2. By limiting the grant this way, the Agency can be assured of awarding more than one grant per year, thereby including more participants earlier in the program.

Subpart 4. Grant limitation. The proposed rules provide that a municipality shall not receive more than 100 percent of the costs of design and construction of the wastewater treatment facility. It is reasonable to reimburse the municipality for only actual costs incurred during the design of the proposed wastewater treatment facility and during the construction of the facility due to the limited amount of available grant funds. The rules also exclude the costs of acquiring an existing facility. The acquisition of an existing facility is not going to solve a pollution problem and is exclusively a financial arrangement between the municipality and the private vendor. The Agency is charged with abating water pollution and the grants programs are designed to financially assist municipalities to achieve that goal. While spending grant money to acquire an existing facility helps the municipality financially, it does not change the way the municipality treats its wastewater. It is also possible that federal and state funds were involved in the original construction of the municipality's wastewater treatment facility. If acquisition was to be included in allowable costs, the Agency could be in the position of possibly granting public funds twice for the same facility.

Part 1135 Certification of award.

The Commissioner does not have the statutory authority to award grants. The Commissioner's responsibility is to determine who is to receive a grant and the amount of the grant. Once the determination has been made, the Commissioner will certify to the Public Facilities Authority that the list of grantees and

grant amounts has been based on the criteria in parts 7075.1125 and 7075.1130.
Part 1140 Grant conditions.

Subpart 1. Statutory and regulatory requirements. The proposed rules require the grantee to comply with statutory and regulatory requirements for capital cost component grants. Including this requirement in the rules alerts the municipality that it is required to be familiar with and comply with the statutes that govern this program.

Subpart 2. General conditions. The Agency has included conditions the municipality must comply with in order to receive the grant. Each of the conditions is discussed below.

Item A. Approval of plans and specifications. Minn. Stat. §116.18, subd. 3b(d) (Supp. 1987) requires municipalities receiving capital cost component grants to comply with federal and state regulations necessary to assure that the proposed facility is reasonably capable of meeting the conditions of the permit over 20 years. In order to determine whether the proposed facility is reasonably capable of meeting its permit limits over a 20 year period, the Agency needs to review the plans and specifications for the proposed facility. The rules also state that the Agency must approve or deny approval of the plan and specifications within 90 days of the initial submittal. Ninety days is a reasonable amount of time to complete this type of review. This is the time it typically takes to complete the review of other types of facility designs, barring major design flaws. It allows for the technical staff to have approximately 30 days for initial review and comment to the municipality, 30 days for the municipality to respond to the comments, and 30 days for the technical staff to review the municipality's response. Of course, these 30 day time frames are flexible, but this is a possible way for

the process to be completed. The rules also provide for a mutually agreed upon extension of time. This is reasonable to provide in the event that only minor issues remain for resolution when the initial 90 days expires.

Currently, plans and specifications for all disposal systems, whether or not they are grant funded, must be submitted to the Agency for approval prior to construction. See Minn. Stat. §115.03, subd. 1(f)(1986) and Minn. Rules part 7001.0050, item H. The overall purpose of the technical review of plans and specifications is to reduce the risk of environmental damage and pollution of the State's waters.

The primary purpose of the review is to provide reasonable assurance that the proposed facility is capable of reliably meeting effluent and water quality standards for the design life of the facility. The Agency's review considers the likelihood of the facility having to bypass or reduce its level of treatment, the risk to the environment or the public health and safety if the level of treatment is reduced or bypasses occur, and the reliability necessary to limit the danger to the public health and safety and to reasonably assure that the receiving water can assimilate the pollution caused by reduced treatment or bypass. Agency technical review of plans and specifications does not guarantee optimum treatment or compliance, but it does significantly reduce the chances for possible environmental damage.

The Agency also reviews the plans and specifications to provide reasonable assurance that the proposed facility is capable of conforming with generally accepted engineering standards. Design elements that are omitted or overlooked can affect the ability of the facility to reliably meet effluent limits during its design life.

The Agency also reviews plans and specifications to provide reasonable assurance that the proposed facility can be effectively and efficiently operated by appropriately trained staff for the design life of the facility.

Peculiarities in a design can affect the ability of an operator to run the facility to meet permit conditions during the 20 year design life.

The Agency review of design does not substitute for the involvement or judgement of the municipal officials, private vendors and their engineers, or engineering consultants unless the proposed design will not meet water quality standards. The review presents options and identifies problems that may not have been initially considered. The review assists the municipalities paying for the facilities to have as much information as possible to help them make their decisions. Most important, the review reduces the risk of environmental damage to the waters of the state.

Item B. Initiation of construction. The proposed rule requires the municipality to comply with certain conditions before initiation of construction. The following are the reasons for requiring these conditions:

(1) The environmental review process set forth in Minn. Stat. ch. 116D and Minn. Rules ch. 4410 is required of all projects that may have the potential for significant environmental effects. This environmental review is done by the Agency before a permit is issued for the construction of a wastewater treatment project. This requirement is included to alert the municipality to this statutory requirement.

(2) Under Minnesota Rules part 7001.0030, a permit is required before construction can begin on a facility. This requirement is included to alert the municipality to apply for and obtain a permit prior to initiation of construction.

(3) Approval of plans and specifications is included as a required grant condition because Minn. Stat. §116.18, subd. 3b(d) requires the municipality to comply with regulations necessary to assure that the proposed facility is reasonably capable of meeting permit conditions over 20 years. See discussion under item A for a full explanation of why this review is necessary.

(4) Submission of an executed service contract between the municipality and the private vendor is required as a grant condition as evidence that the service contract complies with the 20 year requirement in Minn. Stat. §116.18, subd. 3b(b). Since the capital cost component grant program is a new concept in funding for construction of wastewater treatment facilities, the service contract will also enable the Agency to be more fully informed about the progress and process of the project.

Item C. Approval of change orders. The proposed rules require that change orders that alter the type, efficiency, or reliability of the treatment process be approved by the commissioner prior to implementing the change. Review of such change orders is necessary because such changes may affect the ability of the proposed facility to meet its permit limits over the 20 year design life of the facility. In order to permit the commissioner to evaluate the impact of the change order, the rules require the municipality to submit information to the commissioner. The rules provide that the review of the change order will be in the same manner as the plans and specifications were originally reviewed. This requirement is reasonable because a change order is a change to the plans and specifications and, therefore, application of the same technical criteria is appropriate.

Change orders that do not alter the type, efficiency, or reliability of the treatment process do not need prior approval of the commissioner. However, the rules require submission of the change order to the commissioner as soon as

possible. After the fact submission of these types of change orders is for the purpose of keeping the Agency informed of the nature of the project changes and to permit the Agency to review whether the changes that were made do not in fact alter the type, efficiency or reliability of the treatment process.

Item D. The proposed rules require that the project be constructed in accordance with the approved plans and specifications and approved change orders. Items A and C explain why Agency review and approval of plans and specifications and change orders is necessary. Because of the contractual relationship between the grantee and the private vendor, it is reasonable for the grantee to have the responsibility for ensuring that construction of the project is in accordance with these documents.

Item E. Operations and maintenance manual. The proposed rules require that the municipality submit to the commissioner for review and comment an operations and maintenance manual for the wastewater treatment facility. An operations and maintenance manual is critical to the proper operation of a wastewater treatment facility. The Agency is proposing to comment on the submitted manual to assist the municipality in developing the best possible manual for its use. Agency staff has extensive experience in the preparation and review of such manuals, as well as experience in operator training. It is important for the municipality to have a manual it can work with should it become necessary for the municipality to assume operational responsibilities at some time. The Agency is not proposing to have approval authority of this document.

Part 1145 Inspections.

The proposed rules provide that the commissioner may conduct inspections of the grantee's project pursuant to Minn. Stat. §115.03, subd. 1(f). The commissioner has existing authority under Minn. Stat. §115.03, subd. 1(f) to

conduct inspections of the construction of any wastewater treatment facility for compliance with approved plans and specifications. Inspections during construction of a facility, especially during the critical phases, is a way for the technical staff to monitor the progress of the project.

Part 1150 Grant payment.

Subpart 1. Request for payment. The payment request alerts the Agency staff that the grantee is awaiting payment. The Commissioner will then make the determination on whether all grant and payment conditions have been satisfied.

Subpart 2. Schedule of payment.

Item A. The proposed rules provide that the municipality will receive 80 percent of the grant when it has submitted certification of compliance with grant conditions (Part 7075.1140). The Agency has determined that 80 percent is a reasonable amount to disburse at this point because the municipality will have certified compliance with all grant conditions and will have certified compliance with all permit conditions for two consecutive calendar months. Eighty percent is a large enough portion of the grant to allow the municipality to begin to defray some of its local capital costs for the project. However, the full amount of the grant should not be disbursed until a further demonstration of the facility's ability to operate effectively and efficiently has been shown. The conditions for payment are as follows:

(1) Certification from the grantee that the wastewater treatment facility was completed according to the approved plans and specifications. It is reasonable to require this certification because the grant is being awarded based on the facility being constructed according to these plans and specifications.

(2) Certification from the grantee of compliance with all permit conditions for a period of two consecutive calendar months following project completion. State dollars should not be disbursed for a project that is not serving the purpose for which it was built. The Agency has the responsibility to reduce the risk of pollution of the state's waters and it would not be a prudent use of grant money to pay for a facility that could not meet its permit conditions. The Agency believes that two months is a long enough period of time to determine that the facility is operating in compliance with permit conditions when this requirement is viewed in conjunction with the other certifications that are required.

(3) Certification from the grantee of compliance with all the grant conditions in Part 7075.1140, subp. 2. It is likely that the grantee will be required to enter into a grant agreement with the Authority. It is expected that the grant conditions will be included in this grant agreement. The Agency and the Authority will work together to determine the contents of the grant agreement. Since the grant conditions may be included in this agreement between the Authority and the municipality, it is reasonable for the Agency to see a certification that this has been accomplished.

(4) Submission of as-built plans and specifications to the Commissioner on micro-fiche. It is important for the Agency to have a record of the facility that was actually built, not only as a check for the Agency to determine that the approved plans and specifications were followed, but also because as-built plans and specifications are used for reference and historical data for the future.

(5) Written documentation to the commissioner of actual design and construction costs incurred for the wastewater treatment facility. This is reasonable because it is a method for the Agency staff to determine if the

grantee will be receiving more than a 100 percent grant. Part 7075.1130, subp. 4 limits the grant to 100 percent of the actual costs of design and construction costs incurred for the wastewater treatment facility.

Item B. The remaining 20 percent of the grant will be paid to the grantee upon compliance with conditions specified in the rules. The conditions are as follows:

(1) Certification of compliance with all permit conditions for twelve consecutive calendar months.

As discussed in item A, it is reasonable for the Agency to withhold a small portion of the grant money until the grantee can certify that the facility that was built is performing such that permit conditions have been met for a period of twelve consecutive months. One year of satisfactory operation has been shown to be a good demonstration of the facility's ability to consistently meet the permit conditions to reduce the risk of pollution of the state's waters. Major problems with the facility will usually surface during the first year.

(2) Certification that the project will be capable of accepting hydraulic and organic loadings to the extent for which the facility was designed. This is a reasonable condition for the Agency to require since, after one year of operation, the facility may not be treating design flows and loads. The certification holds the grantee responsible for insuring that the new facility can accept design flows and loads for the design life of the facility.

(3) Certification that the project will have no overflows or bypasses under design conditions. Again, as in subitem 2, after one year of operation, the facility may not be operating under design conditions. It is reasonable to require an assurance from the municipality that there will be no overflows or bypasses in the future.

Subpart 3. Verification of compliance. This subpart provides that, prior to any grant payment, the Commissioner will verify that the grantee has complied with its grant and permit conditions. This is a reasonable provision because payment of the grant funds should be dependent on compliance with required conditions. The grantee must certify that it has achieved compliance, but the Agency believes it is reasonable to expect that the Commissioner will make his own determination of compliance on behalf of the Agency.

Subpart 4. Certification of payment. This subpart provides that the commissioner shall make a determination on whether the grantee qualifies for payment within ten days of receipt of the request. The Agency staff must review the required certifications from the grantee for accuracy and completeness to assure all conditions have been satisfied. Ten days is a reasonable amount of time to examine the documents and prepare the paperwork necessary to make the certification to the authority. If the payment cannot be made due to deficiencies in the required documents, the Commissioner will notify the grantee so that the deficiencies can be corrected and payment then made.

Part 1155 Termination of the grant.

Part 1155 specifies that failure to comply with Part 7075.1140 (conditions of the grant) will constitute grounds to terminate the grant. If a grantee has not complied with grant conditions, it is important that the limited grant funds not be tied up by obligating these to a grantee that is not progressing satisfactorily in the program. After the grant has been terminated, the money would then be available to a municipality that is prepared to move forward on its project in compliance with the grant conditions.

Part 1160 Recovery of funds.

Part 1160 provides that grant money which has already been paid to a grantee may be recovered from the grantee if its wastewater treatment facility is not meeting permit conditions due to improper design, construction or

operation and maintenance. It is reasonable to include this provision as a mechanism for recovery of grant funds. The purpose of the grant money is to provide financial assistance to municipalities for wastewater treatment facilities. If a facility is not meeting permit conditions for any of the reasons cited, then the grant money was not used properly and should be returned to the granting Agency to be used to fund another wastewater treatment project.

V. SMALL BUSINESS CONSIDERATIONS IN RULEMAKING

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

- (a) the establishment of less stringent compliance or reporting requirements for small businesses;
- (b) the establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses;
- (c) the consolidation or simplification of compliance or reporting requirements for small businesses;
- (d) the establishment of performance standards for small businesses to replace design or operational standards required in the rule;
and
- (e) the exemption of small businesses from any or all requirements of the rule.

The proposed rules may affect small businesses as defined in Minn. Stat. §14.115 (1986). As a result, the Agency has considered whether there might be ways to reduce the impact of the rules on small businesses. The capital cost component grant program will provide opportunities for some small businesses to participate in the construction and operation of wastewater treatment facilities. The grant funds that are awarded to municipalities will, in all

cases, be paid to private vendors. The proposed rules do not include many of the administrative review requirements, reporting requirements, schedules and deadlines that are contained in Minnesota Rules ch. 7075, which are the rules that administer the independent state grants program. These exemptions may allow the private vendors to provide their services to the municipalities in a more efficient and less costly way. In addition, the Agency has proposed expeditious time frames for completing reviews and has provided for quick payment of grant funds to municipalities. This will aid small businesses as well as the municipalities.

VI. CONSIDERATION OF ECONOMIC FACTORS

In exercising its powers, the Agency is required by Minn. Stat., §116.07, subd. 6 (1986) to give due consideration to economic factors. The statute provides:

In exercising all its powers the pollution control agency shall give due consideration to the establishment, maintenance, operation and expansion of business, commerce, trade, industry, traffic, and other economic factors and other material matters affecting the feasibility and practicability of any proposed action, including, but not limited to, the burden on a municipality of any tax which may result therefrom, and shall take or provide for such action as may be reasonable, feasible, and practical under the circumstances.

In proposing the rules governing the capital cost component grant program, the Agency has given due consideration to the possible economic impacts of these proposed rules. The proposed rules will have a positive impact on the municipalities that receive a capital cost component grant. Municipalities receiving grant funds will be able to reduce local capital costs for constructing their wastewater treatment facilities. The economic impact related to businesses, specifically wastewater treatment service providers, will also be positive in that privatization has not occurred in the past because municipalities have maintained that they have not been financially able to

pursue the privatization option without some sort of grant funding. Municipalities have chosen, instead, to wait for funding under the traditional grants program which requires public ownership. Providing these grants to municipalities that choose to pursue privatization may allow a relatively new industry to develop.

VII. OTHER FACTORS


Pursuant to Minn. Stat. § 14.11, subd. 1 (1986), the Agency must provide an estimate of the public monies associated with implementing these rules if it is estimated that the total cost to all local public bodies exceeds \$100,000 in either of the first two years following adoption of the rules. Wastewater treatment facilities will undoubtedly cost in excess of \$100,000 to construct, but none of that expense is directly attributable to these rules. Indeed, as explained earlier, these rules will help to defray local expenses.

Minn. Stat. § 17.83 (1986) requires the Agency to describe any direct and substantial adverse effects on agricultural land. The Agency has determined that these rules will have no such effects.

VIII. CONCLUSION

Based on the foregoing, the proposed Minnesota Rules parts 7075.1100 through 7075.1155 are both needed and reasonable.

Dated: 5-13-, 1988



Gerald L. Willet
Commissioner