

In the Matter of the Proposed Revision  
to Minnesota Rules Governing the  
Administration of the Municipal Project List,  
Project Eligibility, and Grant Amounts  
Related to the Administration of Federal  
Grant Funds and State Grant and Loan Funds  
for Municipal Wastewater Treatment Projects  
Minnesota Rules, Part 7075.0409, 7075.0411,  
and 7075.0428

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 construction grants program and the state independent grants program for municipal wastewater treatment projects. Chapter 7075 (formerly WPC 34) was first adopted by the Agency in 1972 and was amended in 1973, 1978, 1983 and 1985. The Agency is proposing to amend parts of the rule at this time.

The amendments are proposed to bring Chapter 7075 of Minnesota Rules into conformance with federal regulatory and state statutory changes and to create a more efficient grants program. Most of these amendments were initially adopted as emergency rules, which were effective on February 29, 1988. Pursuant to Minn. Stat. § 14.35 (1986), the emergency rules were effective initially for 180 days, and their effective date was extended for an additional 180 days by publication of Notice in the State Register (13 S.R. 308, August 8, 1988). The new expiration date for the emergency rules is February 23, 1989, or the date the rules are replaced by permanent rules, whichever is earlier. Some of the language from the emergency rules has been revised in the proposed permanent rules for clarity.

The federal and state grants programs enable municipalities in Minnesota to construct wastewater treatment facilities through a combination of federal, state, and local funds. Minn. Rules Part 7075.0409, regarding the Municipal

Project List (MPL), Part 7075.0411, regarding project eligibility, and Part 7075.0428, regarding grant amounts, establish criteria for determining priority and grant amounts for awarding state and federal funds.

The federal construction grants program is authorized by the Federal Clean Water Act, 33 U.S.C. §§ 1281-1299 (1987). The U.S. Environmental Protection Agency (EPA) has promulgated regulations and developed guidelines for the administration of the federal program. See 40 CFR Parts 30, 33, and 35 (1987). The state independent grants program is funded from the Minnesota State Water Pollution Control Fund (Minn. Stat. §§ 116.16 and 116.18).

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.

## II. STATEMENT OF AGENCY'S STATUTORY AUTHORITY

The Agency's statutory authority to adopt the rules is set forth in Minn. Stat. § 115.03, subd. 1(g) (1986), which provides:

To prescribe and alter rules, not inconsistent with law, for the conduct of the agency and other matters within the scope of the powers granted to and imposed upon it by this chapter and, with respect to pollution of waters of the state, in chapter 116, provided that every rule affecting any other department or agency of the state or any person other than a member or employee of the agency shall be filed with the secretary of the state.

and Minn. Stat. § 116.16, subd. 5(a) (Supp. 1987), which provides:

The agency shall promulgate permanent rules and may promulgate emergency rules for the administration of grants and loans authorized to be made from the fund or from federal funds under the Federal Water Pollution Control Act, which rules, however, shall not be applicable to the issuance of

bonds by the commissioner of finance as provided in section 116.17. The rules shall contain as a minimum:

- (1) procedures for application by municipalities;
- (2) conditions for the administration of the grant or loan;
- (3) criteria for the ranking of projects in order of priority for grants or loans, based on factors including the extent and nature of pollution, technological feasibility, assurance of proper operation, maintenance and replacement, and participation in multimunicipal systems; and
- (4) such other matters as the agency and the director find necessary to the proper administration of the grant program.

Under these statutes 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 major reason for the proposed amendments is the need to change the submittal deadline for grant eligibility to enable as many projects as possible to be eligible each year for state or federal Step 3 grants. The deadline for submitting plans and specifications is proposed to be changed from December 1 to the following September 1. The Agency determined that making this rule change as quickly as possible was imperative and the Agency adopted emergency rules, which were effective February 29, 1988. The emergency rules expire February 23, 1989, or on the date the rules are



replaced by permanent rules, whichever date is earlier; therefore there is a need to adopt permanent rules to continue this change in the submittal deadline.

Changes in state statutes and federal policy have also made revisions to Chapter 7075 necessary. Changes in EPA policy have altered the eligibility provisions for projects that incur construction costs prior to the award of a grant. Changes, effective on August 1, 1987, have also been made to Minn. Stat. § 116.18, subds. 2a and 3a. These statutory changes eliminate the limit on the cumulative dollar amount of projects the Agency may place on the reimbursement project list each year and adjust the grant percentages and award criteria used after October 1, 1987. Revisions to Minn. Rules Chapter 7075 corresponding to these federal policy and state statutory changes were also included in the emergency rules effective February 29, 1988. Because the emergency rules will expire on February 23, 1989, or on the date they are replaced by permanent rules, there is a need to adopt permanent rules so that Chapter 7075 will conform to federal policy and state statutes in the future.

#### IV. STATEMENT OF REASONABLENESS

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

##### A. Reasonableness of the Rules as a Whole

The proposed rules are reasonable because they reflect statutory changes adopted by the Minnesota Legislature in 1987, relating to the Municipal Project List, that make meeting eligibility deadlines easier for municipalities applying for grants. These statutory changes are identified and

discussed under the individual parts that they affect. They also conform the rules to an EPA policy change (see discussion of Part 7075.0411). Finally, the rules are reasonable because they will improve the administrative burden imposed on the Agency and municipalities by the rules which existed prior to the adoption of emergency rules.

B. Reasonableness of Individual Rules

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

Part 7075.0409 Municipal Project List (MPL).

Subpart 1. Adoption of municipal project list.

The Agency proposes to add the word "independent" before the term "State grants." This proposal is reasonable because it clarifies which state grant program to which the rule is referring.

Subpart 2. Requirements for placement on list.

The Agency proposes to make changes in items A, B, and C of this rule, the net effect of which is to lengthen the period of time between a municipality's submission of a facilities plan or facilities plan addendum and submission of the documents listed in item C. In the existing rules, everything was required to be submitted by December 1 prior to the beginning of the fiscal year for which the municipal project list is prepared. Under this proposal, the municipality has until September 1 to submit the item C documents. The reasonableness of each of the changes in this rule are discussed below.

The Agency proposes to amend Item B by adding Step 3 grants to the list of grants to which this rule applies. While the existing rule implies that Step 3 grants are covered by this rule, it is reasonable to clarify that

Step 3 grant applicants must meet a December 1 deadline for submission of facilities plans and facilities plan addenda.

The Agency proposes to make two changes to Item C. First, the Agency proposes to apply this rule to Step 2 and 2+3 grants in addition to the Step 3 grants already covered by the rule. Second, the Agency proposes to delete the language requiring submission of the documents listed in this item by December 1. In its place, the Agency proposes to require the municipality, by June 1 prior to the beginning of the state fiscal year for which the project list is prepared, to make all necessary corrections to the documents listed in item B to make them approvable. If the grant is a Step 3 grant, the rule requires the municipality to submit a council resolution by June 1 agreeing to submit the items listed in (1) through (5) by the following September 1.

It is reasonable to require a municipality to make the necessary changes to the facilities plan or facilities plan addendum by June 1 because the Agency needs the corrected plans in order to complete its review of the project, and six months should be enough time for a municipality to make those corrections.

It is reasonable to require the municipality to submit a council resolution by June 1 stating that the municipality will meet the September 1 deadline for submission of the documents listed in (1) through (5) because a council resolution constitutes the official commitment from the governing body of the municipality to submit required documents by the proposed September 1 deadline, and this commitment assures Agency staff that the municipality will follow through on their proposed involvement in the grants program. This assurance is needed for staff to prepare the MPL, which is finalized before the proposed document submittal deadline.

The Agency proposes to amend Item D to delete language requiring submission of corrections to the facilities plan or facilities plan addendum. This is reasonable because the language has been proposed to be included in Item C.

The Agency also proposes to add language to Item D requiring the municipality to submit the documents listed in Item C by September 1 of the year for which the municipal project list was prepared. This is reasonable because it allows nine additional months for municipalities to meet grant eligibility requirements. This additional time is reasonable because it enables as many projects as possible to be eligible each year for state or federal grant funds and aligns the deadline with the Agency work load. With a September 1 deadline, the review of facilities plans will occur during the winter when staff are not conducting construction inspections. Reviews of plans and specifications would then be done after the inspection season, and grants could be awarded in time for spring bidding.

The Agency also proposes to add language to Item D stating that if the municipality fails to submit the required items by September 1, the Agency shall remove the municipality from the MPL. This is reasonable because the MPL is a funding tool that only lists projects demonstrating a reasonable readiness, demonstrated by required documentation, to begin construction the next construction season. This policy avoids saving limited grant funds at the expense of not funding some other project ready to proceed with construction. Projects removed from the MPL remain on the Municipal Needs List and continue to be recognized as requiring future funding.

#### Subpart 4. Procedures for drafting list.

In 1987, the Legislature amended Minn. Stat. § 116.18, subd. 3a (Supp. 1987) to replace the reference to "commissioner of energy and economic



development" with "the public facilities authority." See Minn. Stat. § 116.18, subd. 3a (Supp. 1987). The Agency proposes to amend Item C of the rule to conform to this statutory change. This is reasonable because it makes the rule reflect the actual state agency involved in the process.

The Agency also proposes to eliminate the July 1 deadline for submitting information on substantial economic development projects to be included on the MPL. This elimination is reasonable because experience with economic development set-asides has proven this deadline to be unnecessary.

Subpart 5. Reimbursement project list.

The 1987 changes to Minn. Stat. § 116.18, subd. 3a(c) (1987) eliminates the limit on the cumulative dollar amount of projects the Agency may place on the reimbursement project list each year. The Agency proposes to delete the sentence "The total cost of these reimbursement projects may not exceed the amount newly appropriated to the independent state grant program." This proposed deletion of limiting language is reasonable because it brings the rules into conformance with this statute.

Part 7075.0411 Project Eligibility.

The Agency proposes to make two changes to Subpart 3 of the rule. First, the Agency proposes to delete the first sentence: "A municipality is not eligible for a federal grant or a state matching grant if construction on the project has been initiated prior to the award of the grant." Second, the Agency proposes to amend the language of the second sentence of the rule to: "A municipality may retain eligibility of construction costs incurred prior to the award of an independent state grant only if: [items A-C]." Changes made to this subpart are being proposed to conform to current EPA policy expressed in a EPA Policy Memorandum dated May 29, 1986 (see attachment 1). By removing this language, projects that have initiated construction will be eligible for



federal and state grants to assist in payment of costs not yet incurred. The proposed rule amendments are reasonable because they conform the rules to current EPA policy on construction grant eligibility.

Part 7075.0428 Grant Amounts.

Subpart 1. State matching grants.

The Agency proposes to make three changes to this rule. First, add a sentence to this rule stating: "This subpart applies to state matching grants." This is reasonable in order to clarify the applicability of this rule.

Second, the Agency proposes to label the existing rule language as Item A and to limit the eligibility of projects for a 30 percent state matching grant to those projects tendered on or after October 1, 1984, and before October 1, 1987. Third, the Agency proposes to add a new Item B stating that for projects tendered on or before October 1, 1987, a federal grant at 55 percent or more of eligible costs, the Agency shall award state matching grant for 50 percent of the nonfederal share of the eligible costs for municipalities with populations of 25,000 or less.

These changes are reasonable because revisions made to Minn. Stat. § 116.18, subd. 2a by the 1987 Legislature changed the award percentages of state matching grants and changed the hardship criteria to a population requirement of 25,000 or less. The proposed addition of item B was made to incorporate these statutory changes into the administrative rule. The proposed change to Item A is included because grantees that received awards during the period beginning October 1, 1984, and ending on September 30, 1987, are still receiving funds under these conditions.

Subpart 2. Independent state grants.

The Agency proposes to amend Item B to reflect statutory revisions made in 1987 which changed award percentages for Step 2+3 and Step 3 independent state grants from 65 percent of eligible costs, with the requirement of advanced treatment, to 80 percent of eligible costs, with the 25,000 or less population requirement. The proposed revisions are reasonable because they bring the rule into conformance with Minn. Stat. § 116.18 subd. 3a (Supp. 1987).

Subpart 4. Significant financial hardship.

The Agency proposes to amend the first sentence of this rule to limit significant financial hardship awards to those municipalities which received a federal grant between the period beginning after October 1, 1984, and ending before October 1, 1987. This is reasonable because amendments made to Minn. Stat. § 116.18 subd. 3a(a) during 1987 Legislative session eliminated the provisions for significant financial hardship that were present in the 1986 statute.

The Agency proposes to eliminate the reference to "or independent state grant" in Items A, B, and C. This is reasonable because it brings the rule into conformance with Minn. Stat. § 116.18, subd. 3a(a)(Supp. 1987).

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.

Minn. Stat. § 14.115, subd. 7(b) (1986) provides that Agency rules that do not affect small businesses directly are exempted from the small business consideration provision. These rules apply only to municipalities that voluntarily elect to participate in the program. Therefore, these rules fall under subd. 7(b) and are exempted from small business considerations. However, the Agency is satisfied that small businesses will not be adversely affected by the provisions of this program.

#### 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 Municipal Project List, project eligibility, and grant amounts of the independent state grants program, the Agency has given due consideration to any economic impacts of the proposed rules. This is a voluntary program so the rules will not have any affect on municipalities that do not elect to participate. The program provides financial assistance to municipalities specifically to relieve the burden imposed by the need to construct wastewater treatment facilities. The Agency in considering the economic factors concludes that the program has a positive economic impact on participating municipalities.



## VII. CONCLUSION

Based on the foregoing, the proposed Minn. Rules pts. 7075.0409, 7075.0411, and 7075.0428 are both needed and reasonable.

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