STATE OF MINNESOTA

POLLUTION CONTROL AGENCY

In the Matter of Proposed Rules
Relating to the Administration of the
Municipal Wastewater Treatment
Construction Program,
Minn. Rules, ch. 7075

STATEMENT OF NEED
AND REASONABLENESS

I. INTRODUCTION

Grant programs for the construction of municipal wastewater treatment facilities in Minnesota have for many years been governed largely by federal regulations for the U.S. Environmental Protection Agency's Construction Grants Program. The Minnesota Pollution Control Agency (Agency) has the responsibility for administration of the federal program, directed by state rules, Parts 7075.0100 to 7075.0433, that directly follow the requirements of the federal regulations. These existing rules (Exhibit 1) contain many references to the federal regulations relative to the requirements a municipality must meet in order to receive grant funds. For consistency, rules for the State Independent Grants Program were also based directly on the requirements and procedures established in the federal grants program regulations.

The federal Construction Grants Program is now coming to an end with the final federal appropriation to be made in fiscal year 1990. As a result, it is necessary for the Agency to establish new rules for the State Independent Grants Program that will function independently of the federal regulations. The proposed rules are intended to govern the Agency's responsibilities for the state grants program for grants awarded after July 1, 1990. State grants awarded before that date will continue to be administered according to the existing rules.

The Agency decided to draft completely new rules for the State Independent Grants Program rather than to revise the existing ones. This was done for a number of reasons. The existing rules must remain in effect to administer federal grants awarded through 1990. For consistency, the Agency decided that state independent grants awarded through fiscal year 1990 should also continue to be administered under the existing rules. Finally, there are several portions of the existing rules that are unclear and awkwardly written. The Agency decided that it would be clearer and more efficient to draft new rules from the beginning rather than try to incorporate all of the proposed revisions through strike-outs and underlines in the existing rules.

However, while the proposed rules are new, there are few substantive changes from the current rules. The proposed rules differ from the current rules in two major ways. First, the structure and language of the current rules has been changed to make the rules easier to read and understand. Second, because the Agency has relied heavily in the current rules on the federal regulations, new language is proposed to address issues and necessary requirements that were previously dealt with through the federal regulations. These new portions of the rule adopt the basic concepts from the federal regulations although the language in many cases has been modified. Therefore, while the proposed rules

appear to be longer and more extensive than the current rules, the basic requirements and procedures for the State Independent Grants Program will not change significantly.

While a completely new set of rules is proposed for the State Independent Grants Program, only minor revisions are proposed to the existing rules for the Water Pollution Control Revolving Fund Program and the three set-aside programs (Corrective Action Grants Program, Capital Cost Component Grants Program, and Individual On-site Treatment Systems Grant Program). The rules for all of these programs are being renumbered in order to incorporate them in a logical sequence into the new rules for the state grants program. In addition, revisions are proposed to address problems that have been encountered as these programs have begun operating over the past two years. Finally, some changes are proposed to make the rules clearer and for consistency in certain areas with the new rules for the State Independent Grants Program.

In drafting the proposed rules, the Agency sought and received input from interested municipalities and citizens. A Notice to Solicit Outside Opinion was published in the March 6, 1989 State Register. Written and verbal suggestions were submitted during this comment period. Exhibit 2 outlines the comments we received as a result of State Register notice. The Agency also sought input from the Technical Advisory Committee (TAC) established under Minn. Stat. § 115.54. Monthly TAC meetings on the proposed rules began in August 1989 and have continued through December 14, 1989. The TAC's recommendation regarding these proposed rules was presented at the Water Quality Committee meeting on December 18, 1989. Representatives of the Consulting Engineers Council (CEC) were specifically asked for comments concerning changes to chapter 7075 at two separate meetings and a letter was

sent to the CEC requesting member input. Municipalities that received grants since January 1986 were sent letters requesting comments on how to make the program work better, since they have the perspective of experience in the program. A meeting was held with a representative of the League of Minnesota Cities to gain input from that organization. And finally, numerous meetings were held to utilize the experience of Agency staff in the effort to make the programs easier to understand and less restrictive while maintaining enough controls to ensure efficient and effective use of public funds to protect and enhance the quality of waters in the state.

This document contains the Agency's affirmative presentation of facts on the need for and reasonableness of the proposed rules. 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. Section V describes Small Business considerations in rulemaking. Section VII considers economic factors in the rulemaking process.

II. STATEMENT OF AGENCY'S STATUTORY AUTHORITY

The Agency's Statutory Authority to adopt rules for the administration of the State Independent Grants Program, the Combined Sewer Overflow Abatement Program, the Water Pollution Control Revolving Program, the Corrective Action Grants Program, the Capital Cost Component Grant Program, and the Individual On-site Treatment Systems Grants Program is set forth in Minn. Stat. § 116.16, subd. 5 (supp. 1989), which provides:

> Subd. 5. Rules. (a) 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 water pollution control program, 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 commissioner find necessary to the proper administration of the grant program.

(b) Except as otherwise provided in sections 116.16 to 116.18, the rules for the administration of state independent grants must comply, to the extent practicable, with provisions relating directly to protection of the environment contained in the Federal Water Pollution Control Act, as amended, and regulations and guidelines of the United States Environmental Protection Agency promulgated under the act, except provisions regarding allocation contained in section 205 of the act and regulations and guidelines promulgated under section 205 of the act. This provision does not require approval from federal agencies for the issuance of grants or for the construction of projects under the state independent grants program.

(c) For purposes of awarding independent state grants, the agency may by rule waive the federal 20-year planning requirement for municipalities with a population of less than 1,500.

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

III. STATEMENT OF NEED

Minn. Stat. ch. 14 (1988) 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.

With funding for the federal grants program ending fiscal year 1990, the Agency has chosen not to continue using the federal regulations to administer the State Independent Grants Program. Because the existing rules contain so many substantive references to the federal regulations, it is necessary to develop new administrative rules for the state grants program. Incorporating

certain concepts and language from the federal regulations into the state rules will serve to avoid confusion on the part of the municipalities as to the requirements of the program. The proposed rules contain those parts of the federal regulations that have proven to be valuable to ensure that public funds are used effectively to construct needed wastewater treatment facilities. At the same time, the proposed rules attempt to simplify the program as much as possible.

In addition, revisions are proposed in the Revolving Loan Program, the Corrective Action Grants Program, the Capital Cost Component Grant Program and the Individual On-site Treatment Systems Grants Program to address problems that have been encountered as these programs have begun operating over the past two years. Finally, some changes are proposed to make the rules for these programs clearer and consistent with certain areas of the new rules for the State Independent Grants Program.

Changes to the existing rules have become necessary due to the transfer of award and payment responsibilities from the Agency to the Minnesota Public Facilities Authority (Authority) under Minn. Stat. § 116.15, subd. 11. The proposed rules reflect this transfer by specifying under which circumstances the Authority is involved in the administration of grants and loans.

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 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 they establish the procedures and requirements for municipalities interested in state grants or loans for the construction of wastewater treatment facilities. Because the existing procedure in chapter 7075 contains many references to requirements of the federal regulations, it is reasonable to propose rules that do not rely on the federal regulations, but that describe all of the program requirements independent of the federal regulations. It is also reasonable that the proposed rules accommodate the transfer of award and payment responsibilities from the Agency to the Authority.

B. Reasonableness of Individual Rules

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

Part 7075.6000 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 administration of the financial assistance programs for the construction of municipal wastewater treatment facilities awarded after July 1, 1990 will be administered by these rules. It is reasonable to establish July 1, 1990 as the date of effectiveness since that is when the state fiscal year begins and new state appropriations are available on this date.

Part 6005 Definitions.

The terms defined in this part are used throughout Chapter 7075. They have meanings specific to the programs governed by this chapter and therefore it is reasonable to define them.

Subpart 2. "Statutorily defined terms". This Subpart identifies the terms that are defined in Minn. Stat. chs. 115 and 116 and states that the statutory

meanings will apply in these rules. It is reasonable to refer to the the statutory definitions rather than to restate the definitions for these terms in the rules.

Subpart 3. "Act". There are several references in the proposed rules to the Federal Water Pollution Control Act, United States Code, title 33, section 1251 et. seq. Since the proposed rules refer to only one "Act", it is reasonable to shorten this term and include it in the definitions.

Subpart 4. "Adequate errors and omissions insurance". This subpart defines adequate errors and omissions insurance as an insurance policy which provides a minimum amount of coverage based on the estimated project construction cost. These minimum amounts are the same as those specified in the current rules governing the State Independent Grants Program, Minn. Rules Chap. 7075.0200, Subp. 4.

Subpart 5. "Adverse impact". This subpart defines adverse impact as a violation of any water quality standard set forth in chapter 7050 or any deleterious effect on the physical, chemical or biological condition of the receiving water that lessens the present or long-term uses of the receiving water. This term is used in part 6020 which sets forth the priority of projects based on the waters affected. It is therefore reasonable to limit the definition to the impact on water quality. Minn. Rules ch. 7050 govern the establishment of water quality standards; therefore, it is reasonable to use violation of the standards set forth in that rule as a measure of adverse impact.

Subpart 6. "Authority". There are several references in the proposed rules to the Minnesota Public Facilities Authority. This is the only "Authority" referred to in this chapter; therefore, it is reasonable to shorten this term and include it in definitions.

Subpart 7. "Average dry weather flow". Average dry weather flow is the daily average flow when the ground water is at or near normal and a runoff condition is not occurring. The following flow conditions are also defined in this part: "average wet weather flow", "maximum wet weather flow", "peak hourly flow", "instantaneous wet weather flow", "excessive inflow" and "excessive infiltration." These terms are used in Part 6055: each of these flow conditions must be considered in preparing plans and specifications for wastewater treatment facilities. The specific terms and definitions describe the flow conditions which must be considered, and have been used by the consulting engineering community and the Minnesota Pollution Control Agency for several years. Since the information as defined is necessary to be considered in order to adequately design wastewater treatment facilities, it is reasonable use the same terms and definitions that are being used currently in the federal Construction Grants Program.

Subpart 8. "Average wet weather flow". Average wet weather flow is defined as the daily average flow for the wettest thirty consecutive days for mechanical plants or for the wettest 180 consecutive days for controlled discharge pond systems. This term has the same definition as is used in the Construction Grants Program.

Subpart 9. "Budget period". A budget period is the time frame during which eligible costs may be incurred. The period of time is typically from the date of grant award through the end of the one year certification period. A grant is a contract between the state of Minnesota and the municipality. Contracts typically include beginning and end dates for the contract work; therefore, it is reasonable to define a budget period for grants.

Subpart 10. "Debt charge". Debt charge defines the cost per user that will be charged the users of the wastewater treatment facility by the municipality to pay for the local capital costs of constructing a new treatment facility. It is reasonable to define this term so as to differentiate it from the user charges which must be assessed proportionately. The method used to assess the debt charge is a municipality's decision.

Subpart 11. "Excessive infiltration". Excessive infiltration is the amount of flow more that 120 gallons per capita per day or the amount that can reasonably eliminated from a sewer system. This term has the same definition as is used in the Construction Grants Program.

Subpart 12. "Excessive inflow". Excessive inflow is the amount of inflow that results in operational problems related to hydraulic overloading of the facility or in total flow of more than 275 gallons per capita per day. This term has the same definition as is used in the Construction Grants Program.

Subpart 13. "Facilities plan". A facilities plan is the report that includes the plans and studies necessary to determine the wastewater treatment needs of a project service area, to systematically evaluate wastewater treatment alternatives that will result in compliance with enforceable water quality standards, and to identify the cost-effective implementable alternative. Part 6050 of the rules specifies the contents of the facilities plan and clearly delineates what analyses must be completed as part of the plan.

Subpart 14. "Fiscal year". This term is defined as the state fiscal year, which begins July 1 and ends the following June 30. This is the only "fiscal year" referred to in this chapter; therefore, it is reasonable to shorten this term and include it in definitions.

Subpart 15. "Flow equalization system". A flow equalization system is a containment system, such as a pond, basin or tank, designed to temporarily hold wet weather flow until the flow can be transported to a wastewater treatment facility. The existing rules define this term in Part 0405, Subpart 2, Item A. Since it is a definition, it is reasonable to move it to this part.

Subpart 16. "Infiltration". Infiltration is water other than wastewater that enters a sewer system from the ground through defective pipes, pipe joints, connections or manholes. This is a source of flow which must be identified because of its specific properties in order to adequately plan and design wastewater treatment facilities. This term and definition is currently used by the consulting engineering community and the Minnesota Pollution Control Agency in the administration of the federal Construction Grants Program and the state independent grants program. It is reasonable to maintain a consistent definition for clarity.

Subpart 17. "Inflow". Inflow is a clear water connection to the sewer system from sources such as roof leaders, cellar drains and yard drains. This is a source of flow which must be identified because of its specific properties in order to adequately plan and design wastewater treatment facilities. This term and definition is currently used by the consulting engineering community and the Minnesota Pollution Control Agency in the administration of the federal Construction Grants Program and the state independent grants program. It is reasonable to maintain a consistent definition for clarity.

Subpart 18. "Intended use plan". The Intended Use Plan is a document that identifies projects that will be awarded loans through the Water Pollution Control Revolving Fund Program and the associated amounts. This document is required by the Environmental Protection Agency and is used as a planning tool for both the Agency and the Authority.

Subpart 19. "Major contributing industry". A major contributing industry is an industrial user of a treatment facility that:

A. has a rated flow of 50,000 gallons or more per work day where the rated flow is the daily design flow multiplied by 24 and divided by the actual hours of discharge in a day;

B. has a rated flow greater than five percent of the total design flow to the treatment works;

C. has a total organic load of greater tan five percent of the total organic load to the treatment works;

D. has in its waste before pretreatment a toxic pollutant in excess of what may be discharged to waters of the state, according to chapter 7050; or

E. is found by the agency in connection with the issuance of an NPDES/SDS permit to the municipality, either singly or in combination with other contributing industries, to interfere with the treatment plant's ability to meet effluent limitations, interfere with digester operation or biological unit process operation, impact the area required for sludge disposal, or increase sizing of the facility by five percent or more.

This definition is unchanged from the current rules, 7075.0200, Subp. 13.

Subpart 20. "Major interceptor sewer". A major interceptor sewer intercepts wastewater from the final point in a collector sewer and transports the wastewater directly to a wastewater treatment facility. It must not be confused with a collector because a major interceptor sewer is considered a major treatment facility under Part 6030, Subpart 2, Item A for the purpose of awarding priority points. This language is unchanged from the existing rules under Part 0405, Subp. 2, Item B, but has been moved to the definitions section.

Subpart 21. "Maximum wet weather flow". Maximum wet weather flow is defined as the flow conditions that exist during a specific seven day period of high ground water. This term has the same definition as is used in the Construction Grants Program.

Subpart 22. "Need". Need means a determination that a new or upgraded disposal system is currently required, or will be required within a five-year period to comply with chapters 7050, 7060, or 7080; provided the situation does not exist primarily due to inadequate operation and maintenance or to negligence on the part of any person. These rule chapters contain the standards for surface water discharge systems, ground water protection, and design of individual wastewater treatment systems. It is reasonable to define need for capital improvement using non-compliance with these chapters as a standard.

Subpart 23. "NPDES/SDS permit". A NPDES/SDS permit means a National Pollutant Discharge Elimination System and State Disposal System permit issued by the agency that authorizes under certain conditions the discharge of pollutants to waters of the state and subsurface disposal or on-land disposal and the operation of a disposal system. The descriptive title of these permits are long, and they are referred to frequently in the rule; therefore, it is reasonable to shorten the term and include it in the definitions.

Subpart 24. "Operation and maintenance manual". This term is defined as a document developed to give treatment facility personnel the proper understanding, techniques, and references necessary to properly operate and maintain the treatment facility. This definition is of general use by the consulting engineers who prepare the documents and the treatment operators who use the document.

Subpart 25. "Outstanding resource value water". Outstanding resource value waters are those waters defined in part 7050.0180, subpart 2.

Subpart 26. "Peak hourly wet weather flow". Peak hourly wet weather flow is the flow that occurs when ground water is high and a five year one hour storm is occurring. This term has the same definition as is used in the Construction Grants Program.

Subpart 27. "Peak instantaneous wet weather flow". Peak instantaneous wet weather flow is the flow that occurs when ground water is high and a 25 year storm is occurring. This term has the same definition as is used in the Construction Grants Program.

Subpart 28. "Performance certification". Performance certification is a term used to identify the actions which must be taken by a municipality when a project is complete and is meeting permit standards. It is the last activity required for a municipality before final payment is made. It is reasonable to define this term because it is such a critical activity and the municipality needs to be aware of what is required. Part 6115 of the rules deals more specifically with the actual requirements of the performance certification process.

Subpart 29. "Plans and specifications". Plans and specifications are the documents, including completed drawings and specifications, that describe the project and how it will be bid and constructed. This is a standard industry definition. Part 6055 of the rules sets forth the requirements for a complete plans and specifications submittal.

Subpart 30. "Primary treatment facilities". Primary treatment facilities are those that provide a level of treatment lower than that provided by secondary treatment facilities. There are three general categories of

wastewater treatment facilities: primary treatment facilities, secondary treatment facilities and tertiary treatment facilities. Secondary and tertiary treatment facilities have definitions with specific parameters. Primary treatment facilities are those which do not meet minimum requirements of secondary treatment facilities. Primary clarifiers, settling ponds and bar screens are examples of primary treatment facilities. It is reasonable to make this distinction between levels of treatment because priorities under part 6030 are dependent upon these definitions. These definitions are consistent with the definition of these terms in Minnesota Rules 7050.

Subpart 31." Reimbursement project". A reimbursement project is a municipal wastewater treatment facility constructed under the reimbursement provision of Minn. Stat. § 116.18, subd. 3(a). The term reimbursement is also used to mean payment for costs incurred, so it is necessary to make the distinction between a project which is in this special category and the act of reimbursing funds. It is reasonable to define this term in order to make this distinction to avoid confusion for municipalities.

Subpart 32. "Relief sewer". A relief sewer is a type of sewer designed to eliminate bypassing caused by insufficient hydraulic capacity in sanitary sewer systems by transporting infiltration or inflow to adequately sized sewers or a treatment facility. Under the current rules, both relief sewer and relief capacity sewer are defined under Part 0405, Priority points for type of project. The distinction between these two types of sewers in the current rules is that the design flow of a relief sewer cannot contain more than five percent wastewater or have connections closer than 1,000 feet or it is considered a relief capacity sewer. While a relief sewer receives the priority points for a major treatment facility, a relief capacity sewer essentially receives only the points for a collection sewer.

The Agency proposes to revise the definition of relief sewer and to eliminate the term relief capacity sewer. The percentage of wastewater allowed in the design flow of a relief sewer has been increased from five to fifteen percent. This is reasonable because the new percentage is less restrictive than the percentage in the current rules, yet maintains the idea that a relief sewer is primarily for carrying infiltration and inflow. The term relief capacity sewer is unnecessary because a sewer that does not qualify as a relief sewer can be considered as simply a collector sewer which is basically the same way a relief capacity sewer is treated under the current rules. Therefore, is it reasonable to eliminate the term because it improves the clarity of the rules without having any significant impact on the substance.

Subpart 33. "Secondary treatment facilities". Secondary treatment facilities are those designed to provide a biochemical oxidations, effective sedimentation and disinfection or the equivalent, consistent with the requirements of part 7050.0211, subpart 1. See analysis in subpart 30.

Subpart 34. "Sewer rate ordinance (SRO)". A sewer rate ordinance is a municipal ordinance that determines the method by which a municipality charges its users for wastewater treatment services. See analysis in Part 6060, subpart 3.

Subpart 35. "Sewer service charge". The sewer service charge is the aggregate of all charges for sewer services. This term is used to describe the charges for operation, maintenance, equipment replacement and debt service. It is reasonable to define a single term to summarize these charges because this represents the total cost to the user.

Subpart 36. "Sewer service charge system (SSCS)". The sewer service charge system is the document that in which the sewer service charge is

developed. Part 6060 of the rules lists specific provisions that are required in the sewer service charge system. See analysis in part 35.

Subpart 37. "Sewer system rehabilitation project". A sewer system rehabilitation project is a type of project to eliminate bypasses caused by insufficient hydraulic capacity in a treatment facility. This is essentially the same language as in the existing rules, with minor revisions for clarity, and was moved from 7075.0404, Subpart 3, Item C to the definitions.

Subpart 38. "Sewer use ordinance (SUO)". A sewer use ordinance is a municipal ordinance enacted to control the type and quantities of discharges to the wastewater treatment facility and the type and method of connections to the system. Part 6060 of the rules lists specific provisions that are required in the ordinance.

Subpart 39. "Tertiary treatment facilities". Tertiary treatment facilities are those facilities specifically designed to achieve effluent limitations based on part 7050.0211, subpart 1. See analysis in subpart 30.

Subpart 40. "Treatment agreement." A treatment agreement establishes the terms under which an industry will receive wastewater treatment services from the municipal treatment facility. This is the same definition as in existing rules under part 0200, subpart 26.

Subpart 41. "Unanticipated site condition". This term means any subsurface, latent or unknown physical condition at the construction site, which differs materially from those ordinarily encountered and generally recognized as a site condition that could not have been reasonably identified during the planning or design of the project. This term is used to describe a type of construction problem for which reimbursement is available to a municipality over and above the contingency ceiling under Minn. Stat. §

116.16, subd. 2(8). It is reasonable to define these conditions as those that could not have been reasonably identified during planning or design because the statute provides for a contingency for unanticipated site conditions.

Subpart 42. "User charge". A user charge is the charge levied on users of a wastewater treatment facility for the user's proportionate share of the cost of equipment replacement and operation and maintenance of the facility. It is a requirement of the program that the municipality collect user charges from its customers to pay for the cost of wastewater treatment. This term is adopted from the federal regulations and has been used in the Construction Grants Program for many years.

Subpart 43. "Value engineering". Value engineering is a technique used to identify possible areas for cost savings on large projects. This definition is adopted from the federal regulations and has been used in the Construction Grants Program for many years.

Subpart 44. "Wastewater". The term wastewater means sewage, industrial waste and other wastes collected for treatment in a wastewater treatment facility. This is the same definition as in existing rules under part 0200, subpart 27.

Part 6010 Types of programs.

This Part introduces the six types of assistance programs administered by these rules. It is a general overview of the available programs and a brief outline of the major elements of the individual programs. This part does not establish requirements or limitations. It is reasonable to include this listing to make the rules easier to read and to assist a municipality interested in a financial assistance program to locate the needed information at the beginning of the rules. The programs described are: the State

Independent Grants Program, the Combined Sewer Overflow Abatement Program, The Water Pollution Control Revolving Fund Program, the Corrective Action Grants Program, the Capital Cost Component Grant Program, and the Individual On-site Treatment Systems Grants Program. This listing corresponds to the primary program elements.

Part 6015 Municipal needs list.

Subpart 1. Requirement. This Subpart provides that the Commissioner will develop and maintain the Municipal Needs List of those municipalities that have a need to construct, upgrade or replace their wastewater treatment facilities. The needs list is designed to list the municipalities in Minnesota in order of demonstrated environmental need. Municipalities may request placement on this list in order to be eligible for grant and loan assistance. The purpose of the Municipal Needs List and the basic process for developing and maintaining it remain unchanged from the existing rules. The Municipal Needs List is a representation of the remaining needs in Minnesota for grant and loan funds for new or upgraded treatment facilities, and as the needs of municipalities change, so does the needs list. The list is revised as grant and loan funds. It is reasonable for the state's primary environmental agency be responsible for this list because it identifies and prioritizes projects according to environmental criteria.

Subpart 2. Points and listing order. This Subpart explains briefly that each municipality on the needs list will be assigned points based on criteria established in this Chapter and that the list will be arranged in descending order with the municipality with the most points at the top of the list. The criteria and point system remain essentially unchanged from the current rules. It is reasonable to establish a point system based on environmental factors in

order that each municipality is ranked by the same criteria in the same way. It is also reasonable to rank the municipality with the most points first on the list so that priority is given to projects that will have the greatest environmental benefit to the waters of the state as soon as possible.

Subpart 3. Request for placement on list. This Subpart requires a municipality requesting placement on the Municipal Needs List to submit specific information. The information to be submitted for sewered municipalities is different than that to be submitted by unsewered municipalities. It is reasonable to require that information be submitted so that for the Agency to make the determination that a need does exist and also to begin the process of assigning points to determine position on the needs list. It is also reasonable for the municipality to submit this information because it is the most familiar with the history of its facility and the current capability of its existing facility.

Item A. A sewered municipality must submit the following information with its request for placement on the Municipal Needs List:

Subitem (1). The municipality must describe the type of the existing treatment facility and the age of the facility. It is reasonable to require this information at this preliminary stage so that the Agency can evaluate, in general terms, the adequacy of the municipality's current treatment and the remaining useful life of the system. This is a major indicator of treatment "need."

Subitem (2). The municipality must identify the design capacity and the current treatment capability of the existing facility. It is reasonable to require this information so that the Agency has an idea of the quality of the treatment able to be provided by the existing facility. It is

important that we know the treatment capability of the existing facility so that a judgment can be made about how many more years of adequate service, if any, can be provided by this facility.

Subitem (3). The municipality must provide data describing actual wastewater flows and loadings for the existing facility. It is reasonable to require this information so that the Agency can compare existing operational conditions to the design capacity.

Subitem (4). The municipality must identify the current discharge point, the point at which effluent from the facility is discharged into surface waters, and the NPDES permit standards. It is reasonable to require this information since the waters of the state have varying sensitivity to wastewater effluent, and the classification of the receiving water and the permit standards for effluent discharge to the receiving water are criteria for determining priority points.

Subitem (5). The municipality must include a description of the need for a new or upgraded facility. It is reasonable to require that the municipality do an analysis of why a new or upgraded facility is needed since it is the municipality that is requesting placement on the needs list. Subitems (1) through (4) provide the supporting documentation for this analysis.

Subitem (6). The municipality must include an explanation of why the need for new or upgraded facilities is not due to inadequate operation and maintenance or negligence. It is reasonable for the municipality to verify that the problems with its existing facility are not due to negligence or poor operation and maintenance since the definition of need under Part 6005, Subpart 22 precludes municipalities that have wastewater treatment needs that are primarily due to these conditions.

Item B. An unsewered municipality must submit the following information with its request for placement on the Municipal Needs List:

Subitem (1). The municipality must identify the number of existing on-site treatment systems in the municipality. It is reasonable to require this information so that the Agency can evaluate the scope of the municipality's wastewater needs.

Subitem (2). The municipality must give a general description of the type and age of existing on-site systems. It is reasonable to require this information in order to begin to evaluate the overall adequacy or inadequacy of the municipality's systems.

Subitem (3). The municipality must provide a description of the need for improved wastewater treatment facilities and must include in the description the estimated number of failing on-site systems and how that number was determined. Similar to the sewered municipalities, it is reasonable to expect that an unsewered municipality requesting placement on the Municipal Needs List do some analysis of its need for new treatment facilities. In an unsewered municipality, this analysis must begin with an examination of the number of failing systems. If only a small percentage of systems are failing, it may be prudent for the municipality to require the owners of those few systems to upgrade them without state financial assistance. On the other hand, if the municipality has numerous failing systems and is a growing community, it may be reasonable to consider a central collection and treatment system.

Subpart 4. Review of petitions; additions to list. The Commissioner will review each request based on the information submitted by the municipality and will determine whether it should be added to the Municipal Needs List. If it is determined that a need does not exist, the municipality will not be added to

the needs list and the municipality will be notified why this decision was made. It is reasonable that each request be reviewed by the Agency to determine need. Being placed on the needs list is the first step the municipality takes in order to receive public funds to finance the construction of new treatment facilities. Because funds for this purpose are limited, it is reasonable that only those municipalities that have demonstrated that they have an environmental need for new or upgraded facilities should be put on this list. In addition, it is reasonable that if a determination is made by the Agency that a need does not exist, the municipality has a right to know why this decision was made.

Priority point system

The priority point system described in the following Parts is designed to assign points to municipalities on the Municipal Needs List. The points are assigned in various categories that affect water quality and public health. The priority point system (Parts 6020 through 6045) has remained essentially unchanged from what is in existing rules (Parts 7075.0403 through 7075.0408). Some portions are rewritten to make them more readable and to provide better organization. The part numbers are changed to correspond with other numbering changes.

It is reasonable to retain the existing priority point system which has been in effect since 1983 because it meets the objectives for which it was created. No major problems or concerns have arisen with the use of this system. In addition, it is important to maintain consistency for municipalities on the Municipal Needs List that have made plans based on their rank on the list. We have included the 1983 Statement Of Need And Reasonableness (SONAR) from rulemaking on these parts as Exhibit 3 to provide

the reasoning for the determination of the number of points assigned to the specific categories that affect the environmental quality of the waters of the state.

Part 6020 Priority points for waters affected.

This Part assigns priority points to a municipality based on the classification of the waters that will be receiving the wastewater discharge of a particular municipality. This Part comes directly from the existing rules, Part 7075.0403.

Subpart 1. Water use and point ratings. This Subpart gives the actual points for specific water use classifications of the receiving waters. The water use classifications are defined in Chapter 7050. See Exhibit 3 for analysis of the points assigned.

Subpart 2. Receiving water with more than one designated water use. This Subpart allows a municipality discharging into a receiving water with more than one designated water use to be awarded the points for the designated water use with the greatest number of points. This language is unchanged from the existing rules.

Subpart 3. Adverse impact on downstream water. This Subpart provides that if a municipal discharge has an adverse impact on a downstream water that is eligible for more water use points than the initial receiving water, the municipality will be awarded the priority points for the downstream water. This language is unchanged from the existing rules.

Part 6025 Priority points for population served.

This Part assigns priority points based on the population served by the wastewater treatment facility. The higher the population, the more points awarded. This Part remains unchanged from the existing rules, Part 7075.0404.

It is reasonable that treatment systems serving highly populated areas should receive more priority points because the more people contributing wastewater to a facility, the greater the potential environmental impact. See Exhibit 3 for more detail on the points to be assigned.

Part 6030 Priority points for type of project.

This Part designates the number of points awarded to a municipality based on the type of project necessary to meet its wastewater treatment need. A municipality that must construct facilities providing more advanced treatment receives more points. This approach is reasonable because an advanced treatment requirement relates to more stringent stream standards and a greater environmental protection need.

Subpart 1. Table of priority points by type of project. This Subpart outlines the number of points assigned to the particular types of treatment facilities. The Subpart has been reordered for clarity. However, the types of facilities and the number of points assigned to them remain unchanged. See Exhibit 3 for more detail on how specific points were determined for the types of treatment.

Subpart 2. Description of project types. Subpart 2 was reordered to correspond to the reordering of Subpart 1. Some of the items under this Subpart in the existing rules did not identify specific project types under Subpart 1, but rather provided supplemental information concerning types of facilities. These items have been moved to Part 6005, Definitions, since all they do is define particular terms. The terms that have been moved to the Part 6005 are: major interceptor sewer, sewer system rehabilitation project, flow equalization system, and relief sewer. Relief capacity sewer was deleted and merged with the definition of relief sewer. See analysis of Part 6005,

Subpart 32. Five types of projects are described to correspond with the five types of projects that receive points in Subpart 1.

Item A. Major treatment facilities. This is the same language that appears in the existing rules, Part 7075.0405, Subpart 2, Item A. The large paragraph in the existing rules has been separated into Subitems to make it easier to identify the project types that fall under major treatment facilities. It is reasonable to make a change that will make the rules easier for users to read and interpret.

Item B. Dechlorination facilities. This Item has some minor wording changes to provide more clarity. It remains essentially unchanged from the existing rules, Part 7075.0405, Subpart 2, Item H. It is reasonable to make a change that will make the rules easier for users to read and interpret.

Item C. Ancillary additions to existing tertiary or secondary treatment facilities. This Item was changed slightly for clarity. It remains essentially unchanged from the existing rules, Part 7075.0405, Subpart 2, Item I. It is reasonable to make a change that will make the rules easier for users to read and interpret.

Item D. A collection system or collector sewer. This item is essentially unchanged except for the deletion of the two terms which no longer apply. "Innovative and alternative" was deleted since it refers to a federal program. This program will no longer be available to municipalities under the State Independent Grants Program. The other term which was deleted is "relief capacity sewer". See analysis under Part 6005, Subpart 32. It is reasonable to delete terms that no longer apply to this program.

Item E. A project for the control of combined sewer overflow. This Item is being changed to define the term "combined sewer overflow". It also

deletes language in the existing rules, Part 7075.0405, Subpart 3, Item D, which is unnecessary because the funding mechanism for combined sewer overflow projects is outlined in Part 6145 as well as in Minn. Stat. § 116.162. Because the purpose of this Part is to describe the type of project, it is reasonable to remove wording regarding grant award or funding.

Subpart 3. Special restrictions for sewer system rehabilitation projects. This Subpart describes the two special conditions that apply to sewer system rehabilitation projects. These conditions or restrictions are largely unchanged from the existing rules, Part 7075.0405, Subpart 3. As in other parts, some of the wording has been made clearer with no change in substance or meaning. The existing rules have some restrictions related to relief capacity sewers that have been deleted in the new rules since the description of relief capacity sewer has also been deleted and incorporated with the definition of relief sewer. See analysis of Part 6005, Subpart 32.

Item A. In order to receive priority points under this Item, a municipality must not have obtained a construction grant for treatment facility construction since February 11, 1974. A small amount of rewording has taken place in this item, but no substantive changes were made from the existing rules.

Item B. A municipality proposing a sewer system rehabilitation project that doesn't meet the criteria in Item A will receive the priority points assigned to a collection system or collector sewer as opposed to major treatment facility points. This language remains essentially unchanged from the existing rules, Part 7075.0405, Subpart 3, Item C, except for the deletion of a reference to relief capacity sewer. Again, this language was deleted because the change to the definition of a relief sewer makes the distinction between relief sewer and the relief capacity sewer unnecessary.

Subpart 4. Temporary improvements. This Subpart provides that if any improvements are made to a municipality's treatment facility to keep it operating at its optimum capability while the municipality is waiting to receive a grant, the municipality's points will be determined as though the improvements had not been made. This language remains the same as the language in the existing rules, Part 7075.0405, Subpart 4.

Part 6035 Extra points.

This Part lists all of the other Municipal Needs List point criteria besides water use, population, and type of project. The eight additional criteria are the same as in the existing rules, Part 7075.0406. See Exhibit 3, the 1983 SONAR for the rule revisions, for an extensive analysis of the need for and reasonableness of the eight ways to receive extra points. A few minor changes were made in two items (Items F and H) and in the submittal dates concerning the watershed pollution abatement plan (Item C).

Item A. A municipality will receive 40 extra points for proposing a project that will eliminate a public health hazard. There is a list of specific information required to substantiate the designation as a public health hazard. This information must be submitted both to the Agency and the Minnesota Department of Health in order to be considered for the extra points. This information includes (1) information on geologic and soil conditions; (2) ground water flow patterns; (3) an assessment of the extent and magnitude of the contaminant plume; (4) an identification of water users and assessment of the amount of water appropriations in the area of the facility or proposed facility; (5) flow rates and flow patterns of surface waters; (6) information on well construction for wells in the area of the facility or proposed facility, particularly wells that have been or will be impacted; (7) a

description of the facility's construction, operation, and performance if there is an existing facility, with an explanation of why the facility is creating a public health hazard; (8) an identification and assessment of the suspected route of human exposure and the population exposed; and (9) a description of how the proposed improvements will mitigate or eliminate the public health hazard. See Exhibit 3 for a detailed analysis on the reasonableness of the subitems required for submittal to receive the 40 extra points for a public health hazard.

Item B. Extra points are awarded for a municipality's existing level of treatment. There are four categories under which points are awarded; the number of points awarded is specific to each category. There are no changes in this Item from the existing rules. See Exhibit 3 for detailed analysis of the reasons for the number of points awarded for each type of existing treatment.

Subitem (1). Forty extra points will be awarded to (a) a municipality which has a central sewer system serving more than 50 percent of the population but providing no treatment prior to discharge, or (b) a municipality which collects an average flow over one million gallons per day through a system and which has bypassed sewage more than 40 percent of the time over a period of at least two years while its facility is operating at full capacity.

Subitem (2). Thirty extra points will be awarded to a municipality that has no central sewer system where more than 50 percent of the existing septic systems discharge raw or partially treated sewage directly to the ground surface.

Subitem (3). Twenty extra points will be awarded to a municipality that has a central sewer system serving more than 50 percent of

the population and whose present facility is designed for only primary treatment.

Subitem (4). Twenty extra points will be awarded to a municipality that discharges untreated sewage as a result of combined sewer overflows.

Item C. A municipality proposing a project that is an integral part of a watershed pollution abatement plan will be awarded 15 extra points. The municipality cannot be considered for these points unless the watershed pollution abatement plan is submitted for review by December 1 and is approvable by May 1 of the fiscal year for which funding is sought. The review and approval of this plan is in the existing rules, but the dates for submittal and approval have changed. The dates in the new rules are reasonable because it gives the Agency time to review and approve the plan in order to award the extra 15 points prior to the time that the Municipal Project List is prepared. The award of the extra 15 points could be critical to a municipality and could, in fact, put it in fundable range on the Municipal Project List. The previous April 15 submittal and July 1 approval dates do not leave adequate time to award the extra points, prepare the two lists, put the lists on public notice and present them to the Agency for adoption by the August Board meeting. The substance of this additional point scheme has not changed; the date changes only facilitate implementation of the scheme by the Agency.

There are seven areas of information which must be included in a watershed abatement plan. These have not changed from the existing rules. They include (1) a description of the physical environment, land use and development in the watershed, as well as the planned future land use and development; (2) an inventory and description of the watershed's hydrologic system; (3) information

of the existing and potential water quality problems in the watershed, including both point and nonpoint sources of pollution; (4) objectives and policies, including management plans for water quality and natural resource protection; (5) a description of the hydrologic and water quality conditions that will be sought, including a description of the opportunities for improvement; (6) a statement on conflicts between the watershed pollution abatement plan and existing plans of local government units; and (7) a plan for implementation, consisting of governmental work agreements and schedules for implementing corrective action. These requirements remain the same as those in the current rules.

Item D. This Item provides that a municipality that discharges to or has an adverse impact on an outstanding resource value water will be awarded ten extra points.

Item E. This Item provides that a municipality proposing a project that will result in elimination of a point source discharge to a game fish lake or outstanding resource value water will be awarded ten extra points.

Item F. This Item provides that ten extra points will be awarded to a sanitary district or other multi-municipal project.

Item G. This Item provides that a municipality listed on the Municipal Needs List on January 1, 1985 will be awarded 40 extra points. This Item was added to the rules in 1985 so that municipalities on the needs list for a long period of time would not be consistently bumped out of position. See Exhibit 4, the SONAR for rule revisions made in 1985, for an analysis of the reasonableness of this rule.

Item H. Twenty extra points will be awarded to a municipality which does not qualify for the points under Item G, but which is in noncompliance

with its NPDES/SDS permit conditions more that 90 percent of the time during a one-year period. This Item, too, was added in 1985 and was put in to address the issue of noncompliance. Since noncompliance is a clear indication of a water pollution problem, some added priority should be given to municipalities which are having problems with meeting permit conditions. See Exhibit 4 for an analysis of the reasonableness of the rule. The definition of 90 percent compliance in the current rules is now included in this item.

Part 6040 Total points.

This Part states that the total points awarded to a municipality for placement on the Municipal Needs List is the sum of the priority points awarded in each of the available categories described in Parts 6020 through 6035. This language has been reworded for clarity, but the meaning is the same as in the existing rules.

Part 6045 Resolution of equal point ratings.

This Part sets up a method of breaking a tie if, once all the points are awarded, two or more municipalities end up with the same number of priority points. There are two ways of breaking the tie: 1) the municipality with the highest number of water use points under Part 6020 will be ranked higher; and 2) if a tie still exists, the municipality with the higher population will be ranked higher. These tie-breaking methods are the same as in the existing rules.

Part 6050 Facilities plan.

This Part is entirely new in the state rules for the administration of construction grants. A facilities plan is required prior to receiving a state independent grant in the existing rules, but the contents of the plan are stipulated by reference to the federal regulations. Because of the eventual

transition from the use of federal regulations regarding construction grants to state rules, the facilities plan requirements need to be added to the state rules. Facilities planning has been a requirement of the Construction Grants Program since the passage of the Clean Water Act in 1972. The purpose of facilities planning is the identification of the most cost-effective treatment alternative. It is reasonable to seek the construction of the most cost-effective treatment alternative when public funds are being used to construct the facility.

Facilities planning is an important phase in the process of constructing municipal wastewater treatment facilities. A planning requirement is reasonable because it ensures cost-efficient and cost-effective use of public funds. It is important that the requirements for a complete facilities plan are stated clearly so that there is no confusion as a municipality prepares and submits the plan. This is especially critical because the rules establish deadlines for submittal and approval of the facilities plan and if these deadlines are not met, the consequence to the municipality is that it will not be eligible for consideration for grant funding in the following year.

The basic facilities planning requirements are essentially the same as those in the federal regulations, but we have made changes in the wording. These requirements have been in existence since 1972 and have successfully guided municipalities through comprehensive planning for their wastewater treatment needs. It is reasonable to retain the basic facilities planning requirements that have been used in the past and have proven effective in identifying the cost-effective treatment alternative.

Many of the facilities planning requirements specified in the proposed rules are identical to facilities planning requirements applicable to the federal

Revolving Loan Program. It is reasonable to match these requirements in the State Independent Grants Program because many of the municipalities that will be receiving grants will also be receiving loans to cover the local capital costs of constructing their new facilities. In these cases, the municipalities would be required to meet the federal requirements for the loan program. It is reasonable to have one set of facilities plan requirements for both the grant and the loan programs. It would be very confusing for a municipality to determine which set of requirements applied if a two part system were established. Exhibit 5 is a copy of the federal regulations, including those governing facilities plans (CFR 35.2030).

Subpart 1. In general. A facilities plan must be approved by the Commissioner before a project can be placed on the Municipal Project List for a grant or the Intended Use Plan for a loan. It is reasonable to require that a municipality's facilities plan be reviewed and approved prior to placement on the project list since the project list designates the projects that will receive grants in that fiscal year. It would be premature to place a municipality on the project list before it had completed its planning, identified the cost-effective, implementable treatment alternative and selected the alternative it will construct. It is also reasonable that the Agency has reviewed the plan and concurred with the municipality's choice of treatment alternative prior to placing a project on the list.

The project list is also used as a planning tool to determine how many projects can be funded with available money. Cost estimates used in this determination are taken from the facilities plan. Since the facilities plan review and approval process could indicate that the municipality's selected alternative is neither cost-effective nor implementable, it would not be

prudent for the Agency to use a cost estimate for an unapproved treatment alternative in the planning process.

This Subpart also requires that a facilities plan be prepared and signed by a professional engineer registered in the state. It is reasonable to require an assurance to the State that the treatment alternatives considered in the facilities plan have been evaluated using sound engineering principles. Registration is a means of ensuring that the engineer involved has achieved a recognized level of knowledge, experience and expertise in the engineering field. It is also required by Minn. Stat. § 326.12, subd. 3 that a plan for public works be signed by a professional engineer.

Subpart 2. Facilities plan contents. The following eight items detail the information that must be included in a facilities plan. Again, these are basically the same items that have been required in the federal Construction Grants Program for many years.

Item A. This Item requires a complete description and evaluation of the existing treatment facility, including such factors as age, condition, design capacity and treatment capabilities of each treatment unit, an analysis of the facility's ability to meet current permit requirements, and the location, frequency and quantity of any bypasses. It is reasonable to require this for two reasons. First, this type of description and evaluation will demonstrate that the municipality has examined its existing facility very closely and has done a careful analysis of its present capability to provide adequate treatment. Secondly, this type of description and analysis provides the Agency reviewer a complete picture of what exists, how it functions and the problems therein. It must be made clear in the facilities plan that there is a problem with the current facility before it is appropriate to examine a proposed solution.

Item B. This Item requires that wastewater flow data used for planning purposes be obtained during rainfall events and high ground water conditions. Flow monitoring must be done for at least 30 consecutive days. It is reasonable to require that flow and treatment efficiency information be obtained during high flow situations since it is during these times that a treatment facility will receive maximum flow. Collecting wastewater flow data for a minimum of 30 consecutive days allows one to evaluate treatment facility performance under a sufficiently wide range of conditions to permit proper evaluation of the existing facility. The data also provides a reasonable basis of design for a new facility. Since the rules say at least 30 consecutive days, they do not preclude collection of data for more than 30 days if the municipality chooses.

Item C. This Item requires an analysis of inflow and infiltration (I/I) in the existing sewer system. If excessive levels of inflow and infiltration exist, a sewer system evaluation survey must be conducted to identify the sources of the problem and the estimated flow from each source. It is reasonable to require that the facilities plan include an analysis of inflow and infiltration in the existing sewer system because this is frequently the cause of bypassing or reduced operating effectiveness at a treatment facility or requires building more capacity into the treatment facility at a greater cost than correcting the I/I. If an excessive amount of inflow and infiltration exists, it may be possible to correct the problem without increasing the capacity of the treatment facility. It is important to identify if inflow and infiltration is excessive and, if so, to further determine the source and the extent of the problem. In order to do this adequately, a study must be conducted to identify the the infiltration and inflow sources are and to

determine the amount of flow that is generated from each source. When the scope of the problem is clearly delineated in the sewer system evaluation survey, it can be determined whether it is more cost effective to remove excessive I/I or to transport and treat it. This is a reasonable approach because it helps to minimize the overall cost of providing treatment.

Item D. This Item requires that flows and loadings be projected for the next five and 20 year periods based on population growth and letters of intent from major contributing industries. It is reasonable to require that flows and loadings be projected for five years because it ties into the definition of need (Part 6005, Subpart 22). Need means a determination that a new or upgraded treatment facility is currently required, or will be required within a five-year period. The municipality should identify what it expects its wastewater treatment needs to be in five years since it was already established at the time of placement on the needs list that a new facility would be needed within five years.

The projections for a 20-year period are reasonable because that is the recognized design life of most mechanical treatment facilities. Each alternative being considered must, in turn, be compared based on the same factors to justify which is the most cost-effective alternative. Twenty years has been the historical time period used in comparing treatment alternatives in facilities plans. It is reasonable to continue with the same practice since most municipalities are familiar with it and any facilities plan that has been completed includes these projections. Any longer period of time would be difficult for the municipality to project. It would also put most of the municipal officials involved with the project in a position of adding costs for very long-term future planning to an extremely expensive project that might be

seen in municipalities as a project for future generations rather than for the existing population. If a municipality wishes to do that type of longer-term planning, it should be the decision of the municipality rather than a requirement attached to receiving funding for a wastewater treatment facility.

Item E. This Item requires that a cost-effective analysis be performed of all feasible treatment works, processes and techniques capable of meeting the applicable effluent, water quality and public health requirements for 20 years. It is reasonable to require that the facilities plan include an analysis of the alternatives that are capable of providing adequate wastewater treatment so that the municipality and the Agency can be assured that public funds invested in the project will be used prudently for facilities that meet environmental objectives. Furthermore, it is reasonable to require that the alternative chosen by the municipality be the cost-effective one. This was a requirement of the federal Construction Grants Program and it is reasonable that public funds only be spent on a project where the selected alternative is shown to be the most cost-effective way to meet the applicable effluent, water quality and public health requirements over the design life of the facility while recognizing environmental and other nonmonetary considerations. The specific information that must be provided for each alternative being considered in the cost-effectiveness analysis is specified in subitems (1) and (2).

This Item also requires that, if excessive levels of I/I are determined to exist under Item C, the cost-effectiveness analysis must include a comparison of the costs of eliminating excessive I/I with the costs of transportation and treatment of the I/I. This is a reasonable requirement since the objective is to choose the alternative that will cost the least amount of money while providing adequate treatment to meet water quality objectives.

This Item also includes a requirement for unsewered or partially sewered municipalities to consider on-site treatment systems as an alternative. This is reasonable because unsewered communities choosing central treatment not only incur costs associated with construction of a treatment facility, but also incur significant costs associated with the construction of a collection system. The collection system may cost as much or more than the treatment facility. Added to the construction costs are those for operating and maintaining a municipally-owned treatment facility. It is reasonable to include this information for unsewered or partially sewered municipalities in the cost-effectiveness analysis.

Subitem (1). This Subitem requires that for each treatment alternative considered in the facilities plan a detailed breakdown of the present worth of all capital costs, annual operation and maintenance costs, equipment replacement costs and salvage cost be considered. Each treatment alternative considered involves a different mix of costs. Construction costs are incurred in the first year of the project; operation and maintenance costs are incurred each year for the life of the project; equipment replacement costs occur at specific times during the project life; and salvage costs are incurred when the useful life of a project ends and it is demolished. In order to compare the costs of alternatives in a consistent way, all costs for each alternative considered must be reduced to a single figure called the present worth of the alternative. The use of present worth for the purpose of comparison of alternatives is reasonable because it ensures that all elements in the assessment process are given equal weight.

Subitem (2). This Subitem requires that a site assessment of the existing soil and ground water conditions for each alternative be

conducted by a registered engineer or geotechnical engineer. This requirement is reasonable because the soils and ground water conditions may vary from site to site and because geological conditions may preclude certain treatment alternatives. The requirement that the assessment be conducted by a professional in the field of soils and ground water conditions is reasonable so that the Agency can be confident that the assessment provided has been completed properly.

Item F. This Item requires a description of the selected alternative and the complete wastewater treatment system of which it is a part, including the following information:

Subitem (1). Subitem 1 requires a description of the specific design parameters of all individual treatment units and the complete treatment system. It is reasonable to require a description of the design parameters of all individual units so the municipality can demonstrate that all major components of the wastewater treatment system have been included, that the cost estimate is adequate and reasonable, and that the facility can meet effluent limitations. The level of detail will vary from project to project depending on the project's complexity. For example, a stabilization pond may not require the same degree of detail as a pure oxygen system with phosphate removal and sludge incineration. Relevant design parameters should include information such as unit processes and sizes, a schematic flow diagram and hydraulic profile, sewer lengths and sizes, detention time, overflow rates, process and equipment loadings, removal efficiencies and initial design flow.

Subitem (2). Subitem 2 requires information on the estimated construction costs, the estimated annual equipment replacement, and operation and maintenance costs. It is reasonable to require this information since the

Agency will be reviewing the selected alternative for cost-effectiveness. It is important to look at both the initial construction costs and the annual costs to keep the facility operating. For example, a pond system may require an initial cash outlay that exceeds that of some mechanical systems, but the annual operation and maintenance costs (including equipment replacement) for the pond will be considerably less than those for the mechanical system. All of these types of costs must be evaluated together to show true cost-effectiveness over a 20 year period.

Subitem (3). Subitem 3 requires that the municipality state what the estimated annual sewer service charges will be for the selected alternative. It is reasonable to require this information because: 1) users have a right to know what a project of this scope will cost them; and 2) under the Title VI of the Revolving Loan Program the state has a responsibility in the State Environmental Review Process to ensure that users are notified of the costs of the system. The sewer service charge is a combination of the debt charge and the user charge. This is information that is relevant to the users in each municipality; they will be concerned with the level of monthly sewer costs the will have to address.

Subitem (4). Subitem 4 requires that the municipality determine whether pretreatment of industrial wastes is necessary so that proper operation of the proposed facility is not disrupted. It is reasonable to require this information because high-strength industrial wastes may present a serious problem in the proper operation and maintenance of a facility. It is the Agency's responsibility to review these plans to ensure that the waters of the state are protected and that the proposed facility is able to adequately treat the wastewater discharged into it. In order to do so, an adequate

profile of wastes to be treated must be provided to the Agency. Pretreatment of industrial wastes changes the treatment characteristics of the wastes contributed to the treatment system.

Subitem (5). Subitem 5 requires an evaluation of how and where sludge resulting from the treatment process will be disposed. It is reasonable to require this evaluation for treatment alternatives that will produce sludge as a by-product of the treatment process because there are federal and state laws and rules that require proper disposal of sludge. Because the municipality will have to comply with those regulations, it reasonable that it has developed a plan to ensure compliance. It is also reasonable to require this information during facilities planning so that the Agency knows that the municipality has a proposal for sludge disposal that is feasible and implementable.

Subitem (6). Subitem 6 requires an analysis of the 25 and 100 year flood elevations in relation to the proposed project site showing that the facility will be able to operate during a 25 year flood and that it will be protected during a 100 year flood. These requirements have been mandated by the U.S. Environmental Protection Agency for projects under the federal Construction Grants Program since its beginning. It is reasonable to continue these requirements in order to protect the environment and the facilities constructed with public funds from the effects of floods that have some reasonable chance of occurring.

Subitem (7). Subpart 7 requires a description of ordinances or intermunicipal agreements necessary to successfully implement and administer the project. It is reasonable to require the facilities plan to include a description of these documents since these types of documents will dictate the

cooperative efforts that a municipality must undertake in order to implement the subsequent design and construction of the project. The typical ordinances that will be required are the sewer rate ordinance and the sewer use ordinance described in detail in Part 6060. A pretreatment ordinance may be required if there is industry in the municipality which needs to pretreat its wastes prior to discharging to the sewer system. The process of ordinance enactment requires passage of the ordinance by the elected officials of the municipality. While it is not necessary to pass the ordinances at this time, the requirement to describe the necessary ordinances will identify for the municipality the types of ordinances it will have to consider passing.

An intermunicipal agreement will be required if two or more municipalities propose to jointly construct and operate treatment facilities. It is reasonable to require the municipalities to describe this in the facilities plan since an alternative that involves two or more municipalities requires that they reach an agreement to work together. Since selection of an alternative is dependent on the type and quantity of wastewater to be treated, identification of the selected alternative cannot be made without a commitment from the municipalities involved to work together.

Subitem (8). Subitem 8 requires an analysis of how interim treatment will be accomplished during construction to meet permit requirements. It is reasonable to require that the facilities plan include this analysis because the Agency will not approve a plan which does not provide for uninterrupted wastewater treatment so that the waters of the state are protected. The NPDES permit must require that treatment will continue during construction. In addition to that requirement, it is simply not prudent from an environmental and public health standpoint to allow the discharge of

untreated wastewater into the waters of the state, even for a short period of time. The municipality must demonstrate in the facilities plan that continued treatment is feasible and that it will ensure that the facility will continue to meet the water quality standards established in its permit. An interim treatment plan should include information about how the municipality intends to avoid bypasses during construction and during the transition from the old facility to the new one.

Item G. This Item requires that the facilities plan include an evaluation of the environmental impacts of the selected alternative. The analysis must include the following information:

Subitem (1). A description of the potential impacts of the selected treatment alternative on wetlands; floodplains; areas of archaeological, cultural, and historical significance; endangered or threatened species; wild and scenic rivers; farmlands; air quality; fish and wildlife; and open space and recreation opportunities. It is reasonable to require that the potential impacts of a project with respect to these issues be examined and described in the facilities plan because there are federal laws, executive orders and state statutes that govern the protection of these areas. If it appears that a selected treatment alternative will possibly have an adverse impact in one or more of these areas, the municipality and the Agency must be aware of this problem. Identification of these potential impacts may require that mitigative measures be developed, or perhaps require that a new site or different treatment alternative be selected.

Subitem (2). A comparison of the potential environmental impacts of the selected treatment alternative with the other treatment alternatives considered in the cost-effectiveness analysis. It is reasonable

to require that the facilities plan include this type of comparison so that the public has the opportunity to understand and consider the environmental impacts of the various alternatives.

Subpart 3. Public hearing. This Subpart requires that the municipality hold at least one public hearing to discuss the proposed facilities plan before adopting it. It is reasonable to require that persons who might be interested in the project have an opportunity prior to implementation to hear about the scope of the project and be able to comment on it in a public forum. A meeting of this type should be widely publicized in the affected area prior to the hearing. This can be accomplished through newspaper notices and notices in various public meeting places in the municipality. This is also a requirement under the State Environmental Review Process (SERP) and it is reasonable to make this requirement consistent for both the grant and the loan programs. It is also required that the municipality make the proposed plan available for review prior to the hearing. It is reasonable to require that the plan be available for review prior to the hearing so that interested persons can read it, evaluate it and be prepared to question the details of the proposal at the hearing.

At the public hearing, the discussion must include the various alternatives considered, the reasons for choosing the selected alternative, the location of the proposed project site, and the estimated sewer service charges. It is reasonable to require that the information presented at the public meeting include the various alternatives considered so that those present at the meeting will know about all of the choices. It is reasonable to discuss the reasons for choosing the selected alternative because the municipality should be able to justify to the affected persons why a particular alternative was

chosen over the others. And finally, it is reasonable to discuss the proposed project site and the estimated sewer service charges since these are the things that most directly affect the users of the facility. The location will affect those living near the site and they should have the opportunity to know about it and comment on it in a public forum. The sewer service charges are a reasonable topic for discussion with the users of the system since a new facility will invariably mean higher sewer service rates.

This Subpart also requires a summary of the information presented at the required public hearing, along with any public comments received at the hearing. It is reasonable to require this information in order to verify that an adequate public hearing was held and so that the Agency is aware of any potential problems that might arise as a result of citizens or groups having an objection to the construction of the selected alternative.

Subpart 4. Adoption. Subpart 4 requires the municipality to adopt the proposed facilities plan through a formal resolution of the municipality's governing body before the Commissioner will approve the plan. It is reasonable to require that the governing body of a municipality formally adopt the facilities plan so that the Agency is assured that it is endorsed and submitted by the municipality rather than an individual, and that the municipality intends to construct the alternative selected in the plan. The democratic process involved in passing a formal resolution ensures that the plan will be one that is endorsed by a majority of the elected officials of the municipality.

Part 6055 Plans and specifications.

This Part is new in the state rules for the administration of construction grants. The effect of putting this Part in the rules is to formalize the

practice that was in place for the federal and state programs under the delegation agreement with EPA. The proposed requirement for submittal of complete plans and specifications and what they must include is essentially the same as in the current program. It is the Agency's responsibility under Minn. Stat. § 115.03, subd. 1(f) to review plans and specifications for all construction of wastewater treatment facilities.

Subpart 1. In general. This Subpart requires a municipality to submit plans and specifications or a resolution of the municipality's governing body committing to the submittal of plans and specifications before the Agency will consider the municipality for placement on the Municipal Project List. It is reasonable to require that placement on the project list be limited to those municipalities that have either submitted plans and specifications or a resolution committing to a certain date for submittal because the project list is meant to identify the projects in fundable range that are ready to proceed to the construction phase of their projects. It would be ineffective to commit limited grant dollars to projects that are not ready to begin construction. When plans and specifications are completed and approved, the municipality is ready to advertise for bids and proceed to construction. This is a reasonable way for the Agency to judge that a project should have grant money committed to it through the Municipal Project List, and that grant money expended will result in environmental improvement within the shortest period of time.

This Subpart further requires the plans and specifications to be consistent with the scope of project described in the approved facilities plan. It is reasonable to require that the plans and specifications to be submitted reflect the project that was approved in the facilities plan since, by approval of the facilities plan, the Agency concurred with the municipality that the project

selected met the funding criteria. The preparation and review of the facilities plan culminates in the identification of the most cost-effective, implementable treatment alternative and it is reasonable to require that the plans and specifications are consistent with that selection.

This Subpart also requires that the project be constructed according to the approved plans and specifications and change orders. It is reasonable to require that the project be built according to the approved plans and specifications for much the same reason as the requirement that the plans and specifications be consistent with the approved facilities plan. The plans and specifications have been reviewed and approved based on technical and environmental factors and a grant has been awarded to construct that specific project. It is reasonable to expect that public funds will be used to pay for what was approved, and not for some other project.

Subpart 2. Contents. This Subpart outlines the specific contents of a complete set of plans and specifications. Seven separate items follow to describe the requirements.

Item A. According to Minn. Stat. § 326.12, subd. 3, the drawings and the specifications must be signed by a professional engineer registered in the state of Minnesota. It is reasonable to require that a professional engineer registered in the state of Minnesota take responsibility for the design being submitted as the proposed project for the municipality, because this ensures that the system conforms to basic engineering principles and should, if operated properly, provide compliance with environmental standards. The registration of professional engineers in the state of Minnesota is an accepted formal procedure that considers education, experience and the results of a standardized test.

Item B. The plans and specifications must include a summary of design parameters for all the treatment units. It is reasonable to require that the plans and specifications include a summary of the design parameters for all the treatment units proposed to be used in the project since the units must work together for the proper operation of the facility. Additionally, treatment units are sized differently to handle different types of treatment processes. In order for the Agency staff engineer to evaluate the adequacy of the design, s/he must know what the design expectations are from the design parameters. An example of the design parameters for a treatment unit would be the length to width ratio, the detention time at average flows and the detention time at peak flow for a chlorine contact tank.

Item C. The plans and specifications must include a summary of flow conditions for various weather situations on a form provided by the Agency. It is reasonable to require that this data be submitted on a specific form provided by the Agency because this way Agency engineers can be assured that, if the form is completed properly, all of the necessary flow data will be submitted with the plans and specifications. The form clearly organizes the flow data that must be provided, thereby making it easier for the municipality's engineer to provide the data.

The flow conditions to be reported on the form are average dry weather, average wet weather, maximum wet weather, peak hourly, and instantaneous wet weather. These are the five flow conditions considered to be critical to the design of the treatment facility. It is reasonable to require a summary of the flows for these varying conditions so that the Agency engineer can evaluate whether the design of the treatment facility is adequate to handle the flow during a variety of weather conditions. The average dry weather flow

is the daily average flow under normal weather conditions when no runoff is occurring. The average wet weather flow is the daily average flow for the wettest 30 consecutive days for mechanical facilities or for the wettest 180 consecutive days for controlled discharge pond systems. The maximum wet weather flow is one-seventh of the total maximum flow received during a seven day period when the ground water is high and a runoff condition is occurring. The peak hourly wet weather flow is the peak flow during the peak hour of the day at a time when the ground water is high and a five year one hour storm event is occurring. The peak instantaneous wet weather flow is the peak instantaneous flow during the day at a time when the ground water is high and a 25 year one hour storm event is occurring. By calculating the flows during these five conditions, the design engineer will be able to design the treatment facility on enough varying conditions that there can some reasonable assurance that the facility will provide adequate treatment under all but the most extreme circumstances, thereby protecting the waters of the state from damage and protecting public health by preventing human contact with untreated wastewater.

Item D. The plans and specifications must include a hydraulic profile of the flow through the treatment system. Drafting of a hydraulic profile fulfills two functions. It can be used by the consulting engineer as a way to quickly identify and eliminate potential design errors and it can be used by an Agency reviewer to save time in plan review. The existence of a hydraulic profile enables the Agency engineer to quickly find critical elevation data points which are more difficult to find in the body of the plans and specifications since they are scattered throughout. Furthermore, examination of the hydraulic profile allows the review engineer to quickly identify potential flow constriction points which could affect treatment efficiency

under varying flow conditions. The summary of the design parameters for the treatment units under Item B, the summary of various flow conditions under Item C and the hydraulic profile under this item are interrelated, demonstrating how the proposed design will function under various conditions. The design must demonstrate the ability of the proposed facility to provide treatment over 20 years under normal conditions and various predictable extraordinary conditions such that permit limits can be met.

Item E. The plans and specifications must include a plan for how the municipality intends to treat its wastewater during construction. A discussion of the reasonableness of interim treatment plans can be found under Part 6050, Subpart 2, Item F, Subitem (8).

Item F. The plans and specifications must include the latest detailed cost estimate. It is reasonable to require this information with the submittal of plans and specifications because the Agency, in conjunction with the Authority, provides grant funding for a percentage of the actual eligible costs of the project and must be aware of cost changes in the projects so that the most accurate financial planning may be done with the available funding. The municipality also benefits from an updated cost estimate, which makes it possible to plan effectively for its share of the costs. The cost estimates in the facilities plan may have changed considerably during the design phase due to inflation, change in scope of the project, change in equipment and supplies and for many other reasons. It is reasonable to expect the municipality to provide the latest estimate based on the exact project designed in the plans and specifications.

Item G. The plans and specifications must include the necessary administrative, bidding and contract documents required to bid and construct

the project. It is reasonable to require these as part of the plans and specifications submittal so that the Agency can be assured that the contracts contain an accurate description of the project scope, and materials and equipment required and that all the administrative details involved in managing such a large construction project have been addressed. There are many items that should be included in complete specifications to ensure that the project is bid following the state procurement laws in Minn. Stat. chs. 412, 429, and 471 and in keeping with the approved scope of the project. But, there are some additional requirements which the Agency feels are critical to ensuring that the municipality and its project are protected. These minimum requirements are:

Subitem (1). This Subitem requires the specifications to include a five percent bid bond. A bid bond is a guarantee that the bidder will, upon acceptance of the bid, execute the contracts within the time period set forth in the specification. It is reasonable to require that the administrative, bidding and contract documents of the specifications include a bid bond so that there is an assurance that the contractor will be held to a competitive bid notwithstanding the bid's relationship to other bids on the project. It is the responsibility of the contractor to honor his bid just as it is the responsibility of the municipality to award the contract to the low responsible bidder. Minn. Stat. § 429.041, subd. 1, requires that a bid bond be provided. Federal regulations governing the wastewater treatment Construction Grants Program (40 CFR 31.36 (h)(1)) require that, for projects over $100,000, the contractor provide a five percent bid guarantee. Municipalities with projects funded by the State Independent Grants Program were required to comply with this regulation. It has become an "industry standard" percentage

for this type of construction and is therefore reasonable. All bid bonds are returned to the contractors at the end of the bidding process unless there is a default on the part of the contractor. The bid bond provides insurance to the municipality that they can recoup additional costs expended as a result of a bid default.

Subitem (2). This Subitem requires the specifications to include a 100 percent payment bond. A payment bond provides the municipality with the assurance that the contractor will pay all of the subcontractors on the project 100 percent of the payments promised and due them. It is reasonable to require that this be included in the plans and specifications so that the Agency is certain that there will be no problems, such as liens against the project, due to non-payment of contracts on projects where public money is being expended. It is the Agency's responsibility to ensure that there are no delays or obstructions to the project meeting environmental objectives due to problems with liens, contractors not getting paid or not showing up, for example. Delays, in turn, could put the municipality in some financial jeopardy, obstructing its ability to complete the project for the purposes intended and its ability to adequately operate and maintain the project. The payment bond is an insurance against this type of problem.

Subitem (3). This Subitem requires the specifications to include a 1 percent performance bond. A performance bond ensures that the contractor will perform the work as described in the construction contract. The 100 percent bond is an insurance policy for the municipality provided by the contractor providing that if the contractor deviates from the contract without the municipality's approval, the municipality is entitled to collect the cost of the remedy. It is reasonable to require the municipality to require that the

contractor provide a monetary guarantee that it will perform the work that it has agreed to in the contract because the state has a financial interest in the project and if the work is not completed, the desired environmental result will not be achieved. It is reasonable that the State and the municipalities can expect to receive the project for which public funds have been expended.

Subitem (4). This Subitem requires the specifications to include the prevailing wage rates issued by the Minnesota Department of Labor and Industry. Minn. Stat. § 177.41 to 177.44 (1988) requires that all public works financed in whole or in part by state funds, whether let by the state or by a local unit of government, must pay the prevailing state wage rate. It is reasonable to require the inclusion of the wage rates in the plans and specifications since labor costs are a substantial part of any construction bid, and it is important to ensure that all bidders receive the same information on which to base their bids in order to ensure competitive bonding. It is important that the proper wage rates be obtained prior to construction because updated cost estimates are based, in part, on using the state wage rates. By including them in the plans and specifications submittal, the Agency can be assured that the municipality is using the current rates and has incorporated those rates into the cost estimate for the project.

Part 6060 Rate system and ordinances.

The federal regulations for the Municipal Wastewater Treatment Construction Grants Program require the review and approval of a municipality's user charge system, sewer rate ordinance and sewer use ordinance as a condition of grant award. Title II of the Clean Water Act requires that user charges be distributed proportionately to the users' wastewater contribution to the treatment facility. That is, users of the wastewater treatment system can only

be charged for the portion of the wastewater they contribute to the system. The primary reason that proportionality of user charges has been a federal requirement is that the Environmental Protection Agency determined in its rulemaking process that it would be unfair for the residential user to pay for an industry's contribution to the system.

Another reason for establishing a user charge system based on contributions to the system is to encourage water conservation, which is one of the environmental goals of the program. Currently, the State Independent Grants Program requires that these federal requirements be met. The Agency has included the requirement that user charges be distributed proportionately in the proposed rules for the State Independent Grants Program. In addition to being a federal requirement, Minn. Stat. § 444.075, subd. 3 requires that "charges made for service directly rendered shall be as nearly as possible proportionate to the cost of furnishing the service".

As in the facilities plan, any municipality receiving financial assistance through the Revolving Loan Program is required to meet certain federal requirements. The requirements contained in Part 6060 regarding the municipality's rate system and ordinances are those currently required in the federal Construction Grants Program, and continue to be required by Title VI of the Clean Water Act for municipalities receiving loans from the State Revolving Fund. It is reasonable to match the requirements for the grant program to the loan program in this case since many municipalities which will receive grants will also be receiving loans. It would be unreasonable for the Agency to establish separate requirements for programs that are so closely linked. In general, the following Subparts reflect the federal requirements for the State Revolving Fund program under Title VI of the Clean Water Act and are reasonable to include in the state program.

Subpart 1. In general. This Subpart requires that a municipality submit a sewer service charge system, a sewer rate ordinance and a sewer use ordinance or a resolution of the municipality's governing body committing to the submittal by a certain date before the Agency will consider the municipality for placement on the Municipal Project List. See analysis of Part 6055, Subpart 1. It also requires these documents to demonstrate that the municipality has the legal and financial capability to ensure adequate construction and operation and maintenance of the treatment facility. It is reasonable to require that the rate system and the related municipal ordinances contain the provisions necessary to give the municipality the legal and financial capability to adequately construct, operate and maintain the facility because public funds are being used to finance part of the project and the Agency must ensure that the public funds are being invested in a viable project that will protect the environmental quality of the state's waters for the 20 year design life of the project. The legal capability can be demonstrated by the inclusion of provisions in the ordinances which give the municipality certain rights regarding who may use the facility, what may be discharged into it, and who makes the decisions regarding discharges, enforcement, and penalties for violations. The financial capability can be demonstrated by preparing an adequate budget that reflects all of the expected annual operation and maintenance expenses and which includes equipment replacement. In addition to the budget, the rate system must show how the municipality plans to generate enough revenue to meet its annual expenses. This is a reasonable requirement because the revenue generated should be adequate to ensure a viable budget.

Subpart 2. Sewer service charge system. This Subpart describes what should be included in a sewer service charge system. The sewer service charge

system consists of two charges, the user charge and the debt charge. The user charge covers the cost of equipment replacement, and operation and maintenance of the facility. The debt charge covers the cost of the local share of the construction cost. It is reasonable that the sewer service charge system be based on the two factors that comprise the overall cost of the system.

Item A. This Item requires the inclusion of the engineering and accounting data for the wastewater flows and loadings of the users of the facility. The engineering data is necessary to show the strength and amount of each user's contribution to the treatment facility. Engineering data includes the number of connections and the wastewater characteristics (flow in gallons per day, BOD5 in pounds per day, TSS in pounds per day) in each user class. It is part of the process which determines what each user's proportionate share of the costs should be in relationship to its wastewater contribution to the facility. It is reasonable to require this information so that the Agency review can determine whether the user charge being proposed is proportionate to the users contribution of flows and loadings to the system.

The accounting data for the flows and loadings will determine the unit cost of treating a particular amount of flow, BOD5 (biochemical oxygen demand), TSS (total suspended solids), phosphorous or other type of waste. This is necessary to include in the sewer service charge system so that each user's costs can be estimated. A user charge is the cost of treating that user's amount of flow or loading contribution. For example, if a user contributes 10,000 gallons of flow per month and the unit cost to treat 1,000 gallons of flow is $1 per 1,000 gallons, that person's monthly user charge will be $10. A user charge can only be determined after the amount of the contribution is known and the unit cost for treating the flow and loadings is known.

Item B. This Item requires the inclusion of the estimated budget for the annual costs of equipment replacement and operation and maintenance of the facility. The estimated budget is an important piece of the rate setting process. It is reasonable to require that the sewer service charge system include an estimated budget for the annual costs of operating the treatment facility so that a user charge, based on that budget, can be determined. The unit costs discussed in Item A are derived partly from the annual budget. For example, if it costs $50,000 annually to treat 50,000,000 gallons of flow, then the unit cost to treat 1,000 gallons of flow is $1.

Item C. This Item requires the inclusion of the rates that will be charged to each user for the user's proportionate share of the annual costs of equipment replacement and operation and maintenance of the facility. It is reasonable to require that the rates that will be charged be included in the rate system. The Agency reviews the rate system to ensure that the user charges are proportionate and to ensure that adequate revenue will be generated by the proposed rates to adequately operate and maintain the treatment facilities. In order to properly assess this, the Agency must be aware of the rates in relation to the budget required under Item B. The rates that are shown must be determined according to the rate setting method established in the municipal sewer rate ordinance. It is reasonable to require that the rates are determined in accordance with the municipal ordinance that sets rates.

Item D. This item requires the inclusion of the rates that will be charged to each user for the debt retirement for the local capital costs of the facility. Unlike the user charges described in Items A through C, the debt charges do not have to be in proportion to a user's use of the facility, but the method to be used must be shown in the rate system. It is reasonable to

require that the rates the municipality will charge its users for debt retirement be included in the rate system so that the Agency may review these charges to ensure that the municipality has the financial capability to retire the debt.

Subpart 3. Sewer rate ordinance. This Subpart specifies particular minimum provisions that are required in the sewer rate ordinance.

Item A. The sewer rate ordinance must include the rate setting method for the proportionate user charges. It is reasonable to require that the sewer rate ordinance include the method for setting rates so that the municipality has the legal basis to meet the requirements set forth in the previous Subpart concerning the sewer service charge system.

Item B. The sewer rate ordinance must include the rate setting method for how the municipality intends to charge the users for debt retirement. It is reasonable to require the rate setting method for the debt charge in the ordinance for the same reasons as discussed in Item A.

Item C. The sewer rate ordinance must include a provision that establishes separate accounts for three different revenue sources. It is reasonable to require that separate accounts be maintained for specific purposes because the initial revenue sources generate the secondary revenue comprised of the interest income. The secondary revenue should be credited to the appropriate account from which it derives. Consequently, the accounts should be kept separate. The separate accounts are:

Subitem (1). The municipality must establish a separate account for annual operation and maintenance revenue. It is reasonable to keep this account separate from all others since the operation and maintenance revenue is used to pay for the daily operation of the facility. It is important to keep

it separate from the equipment replacement fund since the replacement fund depends on interest growth to offset inflation so that adequate funds are available to serve its intended purpose. The debt retirement fund may be generated from a different source of revenue than the other funds. It is important that these funds are separate to ensure that a community can reasonably determine that revenue streams are adequate to cover the real costs were intended to cover.

the debt charge system are not used for operation, maintenance and equipment replacement expenses, which are to be generated from users' proportionate charges based on their wastewater contributions to the system.

Subitem (2). The municipality must establish a separate account for revenue dedicated to equipment replacement. See analysis of Subitem (1).

Subitem (3). The municipality must establish a separate account for revenue dedicated to debt retirement. See analysis of Subitem (1).

Item D. The sewer rate ordinance must contain a provision for establishing administrative procedures for the financial management of the sewer service charges. It is reasonable to require that the municipality include administrative procedures regarding the rates implementation because if will give the municipality the framework to manage the finances of the wastewater treatment system. Some examples of administrative procedures to include are how often sewer bills will be sent, quarterly or monthly; an annual audit requirement; an annual notification of rates requirement; and how often the meters will be read.

Subpart 4. Sewer use ordinance. This Subpart requires that certain minimum provisions be included in the sewer use ordinance. The sewer use ordinance is designed to give the municipality the ability to regulate

connections, flows and substances introduced into the treatment facilities so that the system is protected. In order to accomplish this, it is reasonable to require that the ordinance contain certain minimum provisions. They are:

Item A. The sewer use ordinance must prohibit new connections from inflow sources. It is reasonable to prohibit new connections from inflow sources because inflow does not need to be treated but should go directly into a storm sewer to the receiving water. An example of an inflow source is a roof leader or sump pump connection to the sanitary sewer system. Additions of inflow connections to the treatment facility will increase the hydraulic loading of the facility, thereby decreasing the system's capacity to receive wastewater which must be treated.

Item B. The sewer use ordinance must require that new sewers and connections be properly designed and constructed. It is reasonable to require that new sewers and connections to the treatment facility be properly designed and constructed because connections that are designed and/or constructed improperly may adversely affect the operation and maintenance of the system. Proper design and construction of new sewers and connections will help to ensure that the facility continues to operate the way it was originally designed and it is in the interest of the municipality and the Agency to protect the integrity of the whole system.

Item C. The sewer use ordinance must prohibit the introduction of toxics and other pollutants in amounts or concentrations that will endanger the public safety or the physical integrity of the treatment facility or cause violation of permit limitations. It is reasonable to require the prohibition of the harmful substances listed because treatment facilities are not typically designed to treat those types of wastes. They require special handling either

through a pretreatment program or a separate method of disposal. A wastewater treatment facility is designed to treat a maximum amount of flow. Certain types of loadings and the introduction of substances outside of the original design has the potential to cause damage to the facility which in turn will affect the ability of the facility to provide adequate treatment of the wastewater. The end result of that can be violation of permit limits and potential harm to the receiving water and the public safety.

STATE INDEPENDENT GRANTS PROGRAM

Part 6065 Municipal project list.

This Part describes the methodology for placing municipalities on the Municipal Project List, which is the list of projects expected to be funded from an allotment of grant funds appropriated by the Minnesota State Legislature. The list is drafted once a year and contains those projects which will be funded during the upcoming fiscal year. The language in this Part is largely unchanged from that in the existing rules, Part 7075.0409. We are proposing to change the submittal dates and have also made some wording changes for clarity, but the concept of the project list and how it is prepared remains the same.

Subpart 1. Adoption of municipal project list. This Subpart provides that each fiscal year the Agency Board will adopt a list that identifies in priority order the municipalities eligible to apply for a grant. It is reasonable for the Agency Board to adopt the project list because the Board is the governing body of the Agency. It is reasonable to list the projects in priority order because Minn. Stat. § 116.16, subd. 5(a)(3) directs the Agency to promulgate rules for the ranking of projects in order of priority for grants and loans. It is reasonable to assume that the intent of this statute is that projects on a funding list should be listed in priority order.

Subpart 2. Requirements for placement on list. This Subpart specifies the steps that must be taken by a municipality in order to be placed on the project list. The steps are:

Item A. This Item requires that the municipality be on the municipal needs list before being placed on the project list. It is reasonable to require the municipality to be on the needs list before placement on the project list because it must first be established that a municipality has a demonstrated need for replacement or upgrade of a wastewater treatment facility before grant funds are committed to the project. Grant funds are to be expended to abate pollution problems affecting the waters of the state. It would be contrary to the intent of the program to commit public funds to a municipality that does not have a need as defined in Part 6005, Subpart 22 and has not met the requirements of Part 6015 for placement on the needs list.

Item B. This Item requires the submittal of a facilities plan or a facilities plan addendum by December 1 prior to the beginning of the fiscal year for which the project list is prepared. It is reasonable to require that a facilities plan or addendum be submitted by December 1 in order to give the Agency an adequate amount of time to review the plan and for the municipality to make any changes required to make it approvable by the following May 1. It is rare that a facilities plan complies with all the established criteria for approvability upon submittal. Submittal by December 1 allows a reasonable time span for review by the Agency and correction of deficiencies in time for municipalities to qualify for placement on the project list. Subitem (2) provides that if a project is being changed from what was already approved, an addendum to the approved plan must be submitted by December 1. Generally, major changes, such as selection of a different

treatment alternative, involve almost as much Agency review time as an original plan. Therefore, it is reasonable to require these municipalities to submit their addenda within a time frame that allows for adoption of the project list.

Item C. This Item requires that the facilities plan and addenda submitted under Item B undergo all required revisions to acquire the Commissioner's approval by May 1 of the year in which the project list is prepared. It is reasonable to require the municipality to make all necessary corrections to receive approval by May 1 in order to expedite the preparation of the project list. All of the dates are established with the intent to prepare the municipalities for a spring construction date. If a facilities plan receives approval by May 1, the municipality will have adequate time to prepare plans and specifications based on the approved plan and submit them to the Agency for review by October 1 in order to be placed on the Municipal Project List.

Many municipalities do not authorize preparation of plans and specifications until they receive approval of their facilities plans to minimize the risk of preparing a design for an alternative which may not be approved. Currently, a facilities plan is required to be approvable on June 1, and plans and specifications must be submitted by September 1. This only allows three months to prepare the plans and specifications and, as a result, many plans and specifications are incomplete upon submittal. The Agency believes that five months (December 1 - May 1) rather than the previous six months (December 1 - June 1) is an adequate amount of time to review and approve a facilities plan and that it will be more useful for the municipalities to use the extra month to prepare plans and specifications.

Item D. This Item requires that plans and specifications, sewer service charge system, sewer use ordinance, sewer rate ordinance and

documentation that the public has been informed of proposed sewer service rates be submitted for the Commissioner's review and approval by May 1; or, if that is not possible, a resolution by the municipality's governing body committing to submittal of the required documents by October 1. It is reasonable to require by May 1 documents or the resolution that commits the municipality to submit the required documents by October 1 for the reasons discussed in Item C.

The submittal date for plans and specifications and related documents is September 1 in the current rules. It has been extended to October 1 to allow a total of five months for the preparation of plans and specifications. The Agency believes that if municipalities are given more time to prepare plans and specifications, the quality of these submittals will improve, reducing the amount of time required for the staff to review them. If these items are submitted by October 1, there is enough time for Agency staff to review the documents and still begin construction by spring. The items to be submitted are:

Subitem (1). This Subitem requires plans and specifications to be submitted that are in conformance with Part 6055 and that are based on the approved facilities plan. It is reasonable to require the plans and specifications to be submitted at this time for the reasons stated above. It is reasonable to require that the plans and specifications are in conformance with the guidelines established in Part 6055 because Part 6055 was established to set forth the requirements of the plans and specifications. It is also reasonable to expect the plans and specifications to be based on the approved facilities plan since the facilities plan was approved as being the cost-effective implementable alternative which meets the environmental objectives, and the Agency has concurred that the selected alternative is eligible for grant funding.

Subitem (2). This Subitem requires an addendum to approved plans and specifications if major changes are proposed. It is reasonable to require this so that the Agency can review the addendum to ensure that all requirements are met and that it is in conformance with the approved facilities plan.

Subitem (3). This Subitem requires the submittal of a sewer service charge system by October 1. It is reasonable to require this document to be submitted at this time to give the Agency adequate time to review the document. The sewer service charge system will identify the cost of the project to the users of the facility. The charge system is based on the cost of operating and maintaining the treatment facility described in the plans and specifications as well as the costs of building the facility. It is reasonable to review these documents concurrently, because changes in the plans and specifications may require that the sewer service charge system be changed.

Subitem (4). This Subitem requires that the municipality submit documentation of how it has informed the public of the proposed rates within the past year. It is reasonable to require that the municipality to inform the public of the proposed sewer rates before committing to construct the facility so that the users have an opportunity to comment. It is reasonable to require a municipality to provide documentation that it has informed the public of the proposed rates at this time because the Agency is preparing the Municipal Project List at this time. Cost issues have the potential of delaying projects, and it is necessary to distribute limited grant dollars to those municipalities that will expeditiously proceed to construction. It is further reasonable to require that the cost information be current to account for inflation.

Subitem (5). This Subitem requires the submittal of the sewer rate ordinance by October 1. It is reasonable to require this document to be submitted with the sewer service charge system since they are interrelated documents and should be prepared and reviewed together. The sewer rate ordinance establishes the rate setting method that is to be implemented in the sewer service charge system.

Subitem (6). This Subitem requires the submittal of the sewer use ordinance by October 1. See analysis of Subitem (5).

Subitem (7). This Subitem requires that, for projects involving more than one municipality, an unexecuted intermunicipal agreement that sets forth the terms and conditions of joint treatment and cost-sharing be submitted by October 1. It is reasonable to require an unexecuted agreement so that the Agency can review it to make sure that it is an agreement that will clearly delineate the responsibilities of each municipality. If it is already executed and changes are necessary, it will require the municipalities to repeat the process. It will be more efficient to wait until the project has progressed further to execute the agreement.

Item E. This Item stipulates that a municipality's failure to submit the documents required in Item D by October 1 will result in removal of the municipality from the project list for that fiscal year. This is reasonable because it would not be good public policy to tie up limited grant funds in projects that are not ready to proceed to construction. Submittal of the documents in Item D is evidence that the municipality should be ready to construct in the spring. A project that has been removed from the Municipal Project List for a single fiscal year will retain its priority on the Municipal Needs List and be eligible to apply for a grant in the following fiscal year if it meets the requirements of this Part.

Subpart 3. Preparation of proposed municipal project list. This Subpart identifies the factors that the Commissioner will consider when preparing the project list. These factors will be considered in the following order:

Item A. This Item establishes as the first consideration the total dollars available for the program. It is reasonable for this to be the first consideration since the Agency cannot project the award of grants for more money than is available.

Item B. This Item takes into account other restrictions and obligations mandated by the rules and state statutes. Because of these other restrictions and obligations, the amount available for grants is less than the appropriated amount. Some examples of other types of restrictions that require funds are grant increase amendments, program administrative costs, set-aside programs, and special grant programs mandated by the Legislature. It is reasonable to consider these obligations next so that the Agency can determine the amount of funds available for new grants.

Item C. This Item establishes that the priority rank of projects on the Municipal Needs List be the next consideration in the preparation of the project list. Minn. Stat. § 116.16, subd. 5(a)(3) directs the Agency to promulgate rules which establish a priority, based on environmental factors, for the award of grants and loans. Therefore, it is reasonable for the priority rank of projects on the needs list to be considered after the available amount of funding is established when preparing the Municipal Project List, since the priority ranking system under Parts 6020 through 6045 is based on environmental factors.

Item D. This Item establishes as the next consideration whether the municipalities on the Municipal Needs List met the requirements of Subpart 2,

which established the requirements for a municipality to be placed on the Municipal Project List. It is reasonable for the Agency to consider whether a municipality met the requirements to be placed on the list when preparing the list.

Item E. This Item states that the Agency must next consider projects that meet the eligibility requirements of Part 6070. Part 6070 establishes the eligibility of projects and the eligibility of costs to be reimbursed by the grants program. It is reasonable to consider whether the project is eligible for a grant when preparing the annual funding list.

Item F. Item F provides that municipalities which have been identified by the Commissioner of Trade and Economic Development (DTED) as being substantial economic development projects, and which have a priority ranking below the cities on the project list, may be funded up to the maximum set aside for that purpose. By statute, the maximum amount that may be set aside is $1,000,000. (See Minn. Stat. § 116.18, subd. 3a(b) in Exhibit 6) The Department of Trade and Economic Development currently administers rules and procedures for identifying these projects.

Subpart 4. Reserve list. This Subpart provides that the project list will include a list of reserve projects with priority ranking lower than those identified under Subpart 3, Items A - E. The projects on the reserve list that meet the submittal and eligibility requirements under Subpart 3, Items D and E may receive a grant if funds become available. It is reasonable to develop a reserve list in order to be prepared to use the available money for another project if one or more of the projects identified on the project list prepared under Subpart 3 do not proceed, or if additional funds become available from another source. For example, if a municipality submits a resolution by May 1

committing to the submittal of the required documents under Subpart 2 by October 1, it will be placed on the Municipal Project List. If the municipality does not to meet the October 1 deadline and is removed from the list, it is reasonable to have a reserve list of the projects that can take advantage of the opportunity to use the grant funds to build wastewater treatment facilities to protect the state's waters. It is reasonable for the Agency to establish the reserve list at the time it is preparing the Municipal Project List because the municipalities on the reserve list must meet the submittal requirements under Subpart 3, Items D and E in order to receive grants. Therefore, they should be informed that they are listed on the reserve list.

Subpart 5. Reimbursement list. This Subpart provides for the inclusion on the project list of a list of those municipalities that have requested to proceed with construction but do not have a priority ranking high enough to receive a grant in that fiscal year. These municipalities are to be reimbursed with grant funds in a future year when they have moved into a fundable position on the project list, contingent upon compliance with the requirements of the State Independent Grants program and upon funds appropriated for these projects by the Legislature. It is reasonable to develop a reimbursement list in order to identify those cities that are willing to proceed with construction in the interest of pollution abatement. If a municipality is able to finance the construction with the expectation of a reimbursement in the future, it is reasonable to allow the project to proceed to construction to eliminate a source of pollution of the waters of the state.

Item A. This Item requires that a municipality submit a written request for placement on the reimbursement list. It is reasonable to require a

written request so that it is documented that it was the municipality which initiated participation in this program. This Item also requires a municipality requesting placement on the reimbursement list to have received approval of the facilities plan, plans and specifications, the rate system and related ordinances prior to being placed on the list. It is reasonable to require these approvals prior to placement on the list because the approvals of all of these items ensures the municipality's readiness to proceed with the project.

Item B. This Item specifies the different conditions that must be met in order for a municipality on the reimbursement list to retain eligibility of construction costs incurred prior to the award of a grant.

Subitem (1). This Subitem requires that the municipality must be on the reimbursement list when construction begins. It is reasonable to require that the municipality be on the reimbursement list prior to the beginning of construction since no project will be placed on the reimbursement list until all required documents have been submitted and approved. It is only at this time that the Agency has deemed the project ready to begin construction.

Subitem (2). This Subitem states that the municipality must have submitted a complete grant application under Part 6075, Subpart 2, within 90 days of being put on the reimbursement list in order to retain eligibility of construction costs. It is reasonable to require that reimbursement projects submit applications, because the Agency needs a basis for making a determination that requirements have been met.

Subitem (3). The municipality must have received written approval of the application prior to initiating construction. It is reasonable to require this approval to ensure that the municipality has met all requirements of the grant program prior to proceeding to construction.

Item C. This Item stipulates that reimbursement projects will be listed in the same order of priority as they appear on the Municipal Needs List. It is reasonable require that all projects remain in the order that the priority points system placed them.

Subpart 6. Public participation. This Subpart provides that the proposed project list will be made available to the public at least 30 days before its adoption by the Agency Board. It is reasonable to allow municipalities affected by placement on the project list to have an opportunity to comment on the project list before it is adopted by the Board since the project list is the blueprint for distribution of grant funds for the fiscal year. If a municipality believes it has been treated unfairly, the time to resolve the issue is before the list is adopted.

Part 6070 Eligibility.

This Part describes the eligibility criteria for projects, eligible costs and the timing of eligibility for state independent grants. Since the municipality must meet various requirements in order for projects and costs to be eligible, it is reasonable to delineate those requirements.

Subpart 1. Project eligibility. This Subpart describes the criteria for a project to be eligible for grant funding.

Item A. Only the project identified as the cost-effective and implementable alternative based on a 20 year design life is eligible for funding. It is reasonable to use the limited grant funds for the least expensive alternative that will meet environmental objectives including effluent and water quality limits. Cost-effectiveness is analyzed in more detail in Part 6050, Subpart 2, Item E. Examples of projects which might be cost effective but would not be implementable are those which have a

detrimental environmental effect, such as disturbing an historical or archaeological site or those which interfere with other environmental or public work projects. With limited funds available for awarding grants to municipalities for the purpose of constructing wastewater treatment facilities, it is reasonable to stipulate that only the cost-effective, implementable alternative is eligible. Public money should only be committed to those projects shown to be cost-effective, environmentally sound and able to be constructed in the near future. Any commitment of grant funds to a project that could never be built would be a violation of the public trust that money appropriated for environmental programs will be expeditiously used to solve environmental problems.

Item B. This Item establishes the Commissioner's ability to give an exemption from the required 20 year planning period for the cost-effectiveness analysis to municipalities under 1,500 population. It is reasonable to allow this exemption because Minn. Stat. § 116.16, subd. 5(c) states that the Agency may promulgate rules to waive the required 20 year planning period for municipalities under 1,500 population. See Exhibit 6. Such municipalities may experience significant financial hardship if required to construct a facility for a 20 year design period. Those municipalities requesting this exemption must demonstrate that financial hardship will occur with the implementation of the 20 year cost-effective alternative. For instance, if the population of the municipality is declining, a 20 year design period may not be necessary and may cause the unnecessary expenditure of local funds as well as grant funds just to satisfy this planning requirement. If a shorter term solution will solve the municipality's pollution problem for less money, it is reasonable to allow the municipality to explore and implement the shorter term

solution. The written request for this exemption must include certain information to allow the Agency to make a determination based on information directly related to the issue. Subitems (1) to (4) describe the information that must be included in the request.

Subitem (1). This Subitem requires the municipality to describe the proposed treatment alternative and discuss how it does not satisfy the 20 year cost-effectiveness analysis. The Agency is responsible for protecting water resources and state financial resources. It must be able to adequately assess if the proposed alternative will meet permitted effluent limits and meet the sewage disposal needs of the community over a shorter time frame but in a cost-effective manner. Therefore, it is reasonable to require the municipality to describe the proposed alternative and to describe where it fails to satisfy the requirement so that the Agency can make the proper assessment on the proposal by the municipality. A shorter design period should not mean that the cost-effectiveness factor is not a valid consideration.

Subitem (2). This Subitem requires the municipality to explain why a financial hardship would exist if the 20 year cost-effective alternative were to be implemented, including any necessary documentation. A distinction has to be made in how a project proposed under this exemption differs from one planned for a 20 year design life. For example, a city could be declining in population such that a new facility might be too expensive for the benefit derived. In such a case, a different project might better serve the wastewater treatment needs of the municipality. The municipality still must identify the cost-effective project based on a 20 year design life and identify how that project will cause financial hardship. Examples of the documentation may include the municipality's financial statement for the

previous year and a comparison of the estimated sewer service charges for both options. It is reasonable to require this information so that the Agency may analyze the situation adequately and make a determination that is not arbitrary.

Subitem (3). This Subitem requires the municipality to submit a plan for re-evaluating its wastewater treatment needs at a specific time in the future. It is reasonable to require a review of the municipality's future needs since the municipality may experience demographic or financial changes over time, which may affect its wastewater treatment needs. In addition, the assumptions the municipality used to forecast future population or industrial growth may not have been appropriate. A specific time needs to be proposed to satisfy this requirement. The municipality must commit to this re-evaluation within an appropriate number of years based on the plan it submits.

Subitem (4). This Subitem requires the municipality's governing board to formally recognize that it will not be constructing a facility with a 20 year design life and that it will review its needs at a future date. It is reasonable to require the municipality to formally recognize its commitment so that it is fully aware of the possible consequences of the action and so that it recognizes that it is responsible under its NPDES permit for its facility meeting water quality standards. The exemption from the 20 year design does not exempt a municipality from meeting permit limits.

One of the possible consequences is forfeiture of a larger grant. Under Minn. Stat. § 116.16, subd. 9(a), a municipality is eligible for only one grant (See Exhibit 6) and if it uses its one grant opportunity to build a facility that may not last a full 20 years, it will not be eligible for more assistance. The municipality would assume full financial responsibility if the

treatment facility requires more construction in the future to continue to meet its permit limits.

Item C. This Item specifies that grant assistance will not be available for a project which has as its principal purpose the treatment or conveyance of industrial wastewater. This is a reasonable provision because the funds appropriated under Minn. Stat. § 116.16, subd. 1 are for grants to be made for the construction of municipal disposal systems and combined sewer overflow abatement, which is a public purpose and therefore a proper function of state government. Construction of facilities to dispose of industrial waste is not of direct benefit to the broader public, but would instead benefit the individual industry. This provision prohibits municipalities from using grant funds to build or upgrade a wastewater treatment facility solely for the purpose of attracting or keeping an industry. It is not appropriate to permit the use of funds designated for pollution abatement for local economic development.

Subpart 2. Cost eligibility. This Subpart outlines the categories of costs which will be eligible for funding. It is reasonable to list categories of items so that it is clear to the municipality which items are eligible for funding under this program. As the related documents are reviewed for adherence to rules, regulations and guidelines, the Agency will also be reviewing the municipality's proposal for reasonableness of costs and will make a determination based on past market values, practice and other factors about what specific items will be considered eligible for grant funding. Eligible costs have been broken down into eight cost categories. Eligibility of costs in each category is determined by the Agency and the municipality will be informed in writing of that determination. The following are the eight categories of costs that are eligible for funding.

Item A. This Item states that those items identified in the approved plans and specifications and change orders that are necessary to construct a treatment facility that will meet permit limits are eligible costs. Each project is designed by the municipality or its agent and the design is submitted to this Agency for review. It is reasonable to limit eligibility for grant participation the costs of constructing a treatment facility that will meet permit limits because the purpose of the program is to provide grants to municipalities for the construction of a wastewater treatment facility that will meet water quality objectives. Examples of items that may be eligible for grant funding include but are not limited to aerators, clarifiers, landscaping, fencing, pond liners, standby generators, interceptor sewers, and lift stations. These items listed are eligible only if they are necessary to meet the permit limits. For example, a municipality may propose to construct three clarifiers but only two are necessary to provide reliable treatment that will meet the provisions of the permit. Under this Item, only the two clarifiers that are necessary to meet water quality standards will be eligible for grant funding; the municipality may construct the third but it will not be considered for grant funding. Examples of ineligible items would include process chemicals and laboratory chemicals beyond a start-up supply, amenities or costs related to the administration and maintenance of the facility, and any fines or penalties resulting from the construction of the project. Therefore, it is impossible to list in rules each item that will always be eligible or ineligible.

Item B. This Item establishes eligibility for the costs associated with procuring construction contractors. These costs will include the costs of bid advertisement, prequalification of equipment, and review of the bids to determine the low responsible bidder. Municipalities must comply with Minn.

Stat. § 471.345, the Uniform Municipal Contracting Law regarding the award of municipal contracts, and other applicable state law. It is reasonable to pay for these costs because they are specifically associated with the cost of construction of the project.

Item C. This Item establishes eligibility for the costs relating to engineering services associated with construction and start-up services. These are services typically rendered by the municipality's consulting engineer. It is reasonable to include these as eligible costs because the rules require that certain tasks be accomplished as part of the grant conditions. Examples of construction related costs included in this category are construction management, testing, staking and surveying, preparation of the operation and maintenance manual, and bidding. Start-up services assure that the operating personnel have received adequate information and training regarding the operation and maintenance of the new or upgraded facility, thus giving maximum assurance that the facility will be properly operated and meet water quality objectives.

Item D. This Item establishes eligibility of the costs of providing full-time inspection of the project during construction. It is reasonable to include this as an eligible cost since qualified full-time inspection of the project construction gives maximum assurance that the engineer's approved plans and specifications will be followed by the contractor during the construction phase of the project. This helps to eliminate some of the risk of improper construction of the treatment facility. The engineer is better prepared to evaluate project change orders as they occur. Full-time inspection helps ensure that funds are used to pay for an approved project and that the project will, when completed, meet its water quality objectives. Full-time inspection

means that the qualified person designated to observe and monitor the construction should be on the construction site at all times when significant construction activity is taking place. If there are two or more segments of a project being constructed concurrently at different sites, two inspectors may be required. Conversely, it may not be necessary for the inspector to be on-site for activities such as touch up painting or installing the fence around the pond. The purpose for requiring an inspector to be present during the significant times is to ensure that the contractor is not only building the project as designed, but also to prevent the contractor from making changes that would not be evident once the facility is completed, but which may affect the operation of the facility. It is a protection for the municipality as well as the Agency, both of whom are expending large sums of money for a wastewater treatment project expected to serve the municipality for at least 20 years. It is reasonable and prudent to protect the investment as it is being built.

Item E. This Item establishes eligibility for the cost of land on which stabilization ponds will be built. It is reasonable to include this as a cost eligible item because Minn Stat. § 116.16, subd. 2 states that land for stabilization ponds is eligible for funding. The statute does not include any other types of land as being eligible, so no others are included in the rules.

Item F. This Item establishes eligibility of a contingency fund for three percent of the construction costs eligible under Item A. It is reasonable to include a contingency fund as an eligible cost because construction projects are subject to changes during the course of construction which may increase the cost of the project. An example of a change that might increase costs is if, during the excavation of land for a pond project, the

contractor encounters more rock than expected and more blasting is necessary. These costs and changes are reviewed and approved by Agency engineers who check them for need and appropriateness. If, at the end of the project, it is necessary to use the contingency fund for the increase and the changes have been approved, it is available to the municipality. If there is not enough money in the contingency fund for all of the cost overruns, the municipality is responsible for them. It is reasonable for those extra costs to be covered by budgeting a contingency fund. Minn. Stat. § 116.16, subd. 2(8) limits the contingency fund to three percent. See Exhibit 6. Historically, three percent of eligible construction costs has proven adequate to reasonably cover routine project cost increases.

Item G. This Item establishes eligibility of costs associated with unanticipated site conditions. It is reasonable to include this as an eligible cost because Minn. Stat. § 116.16, subd. 2(8), allows these costs to be eligible up to the limit of two percent of the as-bid construction costs. It is also reasonable to include those costs as eligible because if a municipality has taken all reasonable precautions to design a project based on all known factors, it should not be financially penalized if something happens which could not reasonably be predicted and causes a cost overrun.

Item H. This Item establishes eligibility of costs for project planning, design, administration and legal services. In the current program, separate grants for project planning and design have been awarded where available. The proposed rules eliminate separate grants for planning and design, but include these activities as eligible costs in the construction grant. This Item establishes that costs in these four areas are eligible up to a maximum of 12 percent of the construction costs identified under Item A for

municipalities of 1,500 or less population and ten percent for municipalities over 1,500 population. Municipalities will only be reimbursed for costs that are incurred if those costs are less than the maximum allowable percentage. It is reasonable to establish this type of "allowance" method to reduce the amount of paperwork and administrative cost to the cities and the Agency since award of separate grants would require preparation and review of additional applications and contracts.

The ten and twelve percent figures were determined based on the tables in the federal regulations which were previously used to identify planning and design allowances. These tables are included in Exhibit 5. The percentages are an average of the amounts which would have been awarded using the federal formula for planning and design allowances based on project costs. These averages were calculated from the estimated project costs on the Municipal Needs List as a sample, comparing amounts eligible under the federal tables, and taking the mean value. If the municipality has previously received a grant for planning or design, the eligible costs from that grant will be deducted from the eligible costs used to determine the amount under this Item. It is reasonable to do this to ensure that the municipality is not reimbursed twice for the same activity. If a municipality has already received a grant for planning purposes, it should not receive additional money for planning.

Subpart 3. Timing of eligible costs. This Subpart outlines when eligible cost may be incurred. This Subpart allows for prior approval by the Commissioner for work that needs to be done prior to grant award. It is reasonable to specify when eligible costs may be incurred in order to ensure that construction does not proceed until the Agency has reviewed and approved the project.

Item A. This Item establishes that construction costs and related engineering and inspection costs will be ineligible until the grant application is certified to the Authority for award. Because the Agency must review and approve costs associated with construction, inspection, and related engineering, it is reasonable to specify that eligible costs may not be incurred in these areas until they are approved. The provision that, if necessary, a municipality may receive prior approval to incur costs allows for pressing environmental or public works project needs. Examples of these include: (1) A project involves the laying of pipes under the streets. It is reasonable to lay the pipes while the street is torn up to do municipal repair work on the streets. The municipality's schedule of road repair may mean that it will be tearing up the streets before the grant is certified. If the municipality requests eligibility of those pipe costs and it is approved from a technical standpoint by the Agency, the municipality may receive approval to incur those costs prior to certification. It is reasonable to allow prior approval in a situation like this to avoid tearing the streets up again; (2) An emergency at the treatment facility occurs, such as the failure of the final clarifier. If replacement of that clarifier is included in the scope of the approved facilities plan, it is reasonable to preserve eligibility for grant participation so that the municipality can repair the problem, thus preserving its ability to provide adequate wastewater treatment services and not jeopardize its grant funding for that construction cost item.

Item B. This Item states that the cost of purchasing land prior to the approval of the facilities plan is ineligible without prior approval. The cost of land is ineligible until the facilities plan is approved because a stabilization pond project may not be the cost-effective, implementable

alternative. Land for stabilization ponds is the only land that is eligible under Subpart 2, Item E. Review of the facilities plan and the environmental impacts associated with a particular site may yield the information that the site being proposed for the ponds may not be suitable and an alternate site must be found. It is therefore reasonable that land purchased before receiving a facilities plan approval is ineligible. The provision exists that the municipality may receive approval from the Commissioner to purchase the land before the facilities plan is approved. It is reasonable to include this provision for cases where it is more economical to purchase land before approvals. For example, there may be cases where it is clear, before approval of the facilities plan, that a particular site will be chosen. The municipality may be able to purchase the land at a lower cost while it is on the market. It may save the municipality and the Agency a lot of money to allow the purchase of the land prior to the facilities plan approval in selected cases.

Part 6075 Grant applications.

This Part outlines the items that must be submitted by a grant applicant to constitute a complete grant application and when those submittals are required. It is reasonable to require a grant application with specific information so that the award of grant money is made to municipalities that have demonstrated eligibility for the funds by submitting the application and supporting documentation. It is a reasonable way for the Agency to determine eligibility of each project and the associated costs by reviewing the information contained in the application.

Subpart 1. Agency notification. This Subpart establishes that no municipality may apply for a grant unless the Commissioner has notified it

of its placement on the Municipal Project List. The Commissioner notifies municipalities of their placement on the list by forwarding to them copies of the draft project list, the project list approved by the Agency Board and a grant application. It is reasonable that the Commissioner will not accept unsolicited applications because of the criteria that must be met by municipalities in order to be placed on the project list. Grants are available under a priority system. Because the grant application and associated documents are complicated and difficult to prepare and review, it would not be a good use of Agency staff time to receive applications from those municipalities that have not been determined to be eligible to receive funding.

Subpart 2. Complete application required. This Subpart specifies that no municipality will be considered for a grant unless it submits a complete application as defined in Subpart 3. It is reasonable to require submittal of a complete application to ensure that the Agency has the information it needs to assure that the municipality has the ability to successfully complete a construction project that meets the environmental objective and to assure that the proper planning and design has been accomplished. It is not in the public interest to commit money for a municipality that is unable to complete the application requirements in time to receive funding for the limited construction season in Minnesota. It is a statutory requirement for the Agency to approve or reject applications within 90 days of receipt with a discretionary 90 day extension. The Agency requires complete information in order to evaluate the project within that time frame. It is therefore reasonable to require that an application contain all items requested.

Subpart 3. Timing and form of application. This Subpart details the timing of the application submittal as well as the form of the application. It

is reasonable to establish these types of parameters to insure uniformity of applications and preparation time. In addition, the award of grant funds is tied to certain dates. The goal is for a project to start construction the following spring, as early as possible to take advantage of Minnesota's short construction season. The Agency wants to avoid committing money to projects that will not be able to begin to be constructed within that time frame. This ensures that grant funds dedicated to pollution abatement will be used to obtain the most environmental benefit as soon as possible in order to avoid further degradation of the waters of the state. It is therefore reasonable to require that the application be submitted in accordance with the established schedule so that projects are built in a timely manner.

Item A. This Item requires that the grant application be on special forms and that the forms will be provided by the Agency and the Authority. Certain information is needed by both agencies to assure proper use of state funds. It is therefore reasonable to require that the applicant use forms prepared by the Agency and Authority which identify the requirements of the program. Because the agencies are providing the application form, they can be sure that it contains the information necessary to award the grant. Since the Agency and the Authority are responsible for reviewing different information, it is reasonable for each agency to provide forms to the applicant. The Agency and the Authority review their portions of the application concurrently. The Agency is responsible for the review of technical information and the determination of eligibility of costs, as well as adherence to appropriate rules, laws and guidelines. The Authority is responsible for reviewing the financial capability of the municipality to undertake the project.

Item B. This Item requires the submittal of a complete application within 90 days of the adoption of that fiscal year's municipal project. It is reasonable to set a due date for applications so that, on a specific date, the Agency can determine the following:

1) which municipalities applied for grants;

2) how much grant money has been applied for;

3) whether sufficient funds are available for the projects; and

4) whether money is available to fund reserve list projects.

It is reasonable to limit the amount of time to prepare a grant application to 90 days from the approval of the project list so that the municipality is on schedule to initiate construction of the project the following spring. The current rules administering the federal Construction Grants Program and the State Independent Grants Program allow for a 90-day application preparation period, and that has been demonstrated to be a sufficient period of time to prepare adequate application documents.

Item C. This Item allows for an alternate submittal date for the required legal opinion, identifying that the municipality has sufficient vested interest in all land associated with the project. Historically, the acquisition of land has caused considerable delays in the processing of applications and awarding of grant funds. The existing rules require that the applicant have the legal opinion at the time of application submittal or the application will not be considered complete (Part 7075.0414, Subpart 6, Item L). The proposed rules require that, if the applicant has not been able to receive that opinion at the time of application, a land acquisition status report and schedule must be submitted in lieu of the legal opinion. It is reasonable to offer this option since land acquisition can be complicated and

is often dependent on conditions over which the municipality has no control. The Item also gives the municipality until the following April 1 to obtain the legal opinion. April 1 was chosen as the last date for this submittal so that the review, certification and award process can still take place within the fiscal year. It is reasonable to require all information in time to award grants within the fiscal year, since the Project List is based on fiscal year appropriations. Furthermore, if, by April 1, the municipality has still not resolved its land problems, it is not ready to proceed to construction and the project will be removed from the the Municipal Project List for that fiscal year. Having given the applicant until April 1 to complete the process, it is reasonable to remove that project from the list and award the funds to a project that is ready to proceed, thereby taking advantage of the prime construction season.

Subpart 4. Application requirements. This Subpart outlines the items to be included with the application. Each application requirement is found in the existing program, Part 7075.0414, Subpart 6. The information has been reorganized and the wording has been changed to make it for clear. There are no new requirements in this Subpart. All of the items listed below will be reviewed by Agency staff and must receive Agency approval. It is reasonable to have the Agency review and approve these items because they all provide information on cost or readiness to proceed.

Item A. This Item outlines the items to be included in a proposed engineering contract between the municipality and its consultant. It is reasonable for the Agency to review the unexecuted contract to make sure that it contains, at a minimum, the six items listed because each of the items relates to building a project that will be able to meet effluent and water

quality standards. The engineering contract specifies the responsibilities of the consultant to achieve the goal of construction and operation of the treatment facility. It is important that certain provisions be included in this contract so that the Agency has an assurance that certain tasks will be performed and that they will be performed by qualified people. The municipality is not precluded from including further provisions beyond the six required by the Agency. The Agency has prepared guidance for municipalities in this area and will provide assistance if requested.

Subitem (1). This Subitem requires that a provision for full-time inspection during construction be included in the contract. It is reasonable to require this in the contract since it is a requirement of the program that this be provided. The Agency inspects construction on a monthly basis, but cannot be on the site every day. Therefore, to assure that the contractor is following the approved plans and specifications and that construction is adequate, the engineer needs to have its own inspector on site full time during construction. This Subitem also requires the contract to contain a provision that the inspector submit monthly reports to the Agency describing the type of construction and the time involved in the inspection. It is reasonable to require the inspector to submit monthly reports to the Agency so that it is apprised of the construction activity including the progress and schedule of construction and any problems encountered on site.

Subitem (2). This Subitem requires the engineering contract to contain a provision for submittal of two sets of "as built" plans and specifications to the Agency. It is reasonable to require this provision to be in the engineering contract because the "as built" plans and specifications provide a permanent record of the project as it was constructed. The

requirement of having a microfiche copy meets the specifications for records storage at the Department of Administration and allows for efficient records storage at the Agency. Two sets are required so that one set can be sent to records storage to meet the rules of the Department of Administration, and one set can be kept at the Agency for future reference.

Subitem (3). This Subitem requires the engineering contract to provide the preparation of an operation and maintenance manual. It is reasonable to require the engineering firm to prepare a manual to assist the operator with the operation and maintenance of the facility as constructed because the engineering firm designed the project and was present during its construction. The manual is necessary to assist the operator to operate the facility properly to meet the requirements of the NPDES/SDS permit.

Subitem (4). This Subitem requires the engineering contract to include the provision of the following start-up services so that the municipality can take responsibility for the operation of the facility, and so that a smooth transition is made. It is reasonable to require the engineer to provide training and assistance with the operation of the facility during the first year of operation so that the facility, under the guidance of the design engineer, is tested. The testing should demonstrate that the facility can operate as designed. The consulting engineer must be available to make design changes, as necessary, if problems arise during the first year of operation.

Unit (a). The first requirement under start-up services is that the engineer direct the operation of the project and revise the operation and maintenance manual as necessary based on actual operating experience. It is reasonable to require that the engineer direct the first

year of operation because the consulting engineer planned, designed and was on site during construction of the project. It is also reasonable to require this to ensure that the facility functions as designed and that the municipality's operators are trained to operate the system. The operation and maintenance manual is to be revised so that it reflects the operating experience encountered during the first year of operation.

Unit (b). The second requirement under start-up services is that the engineer train or provide for training of operating personnel and prepare necessary the curricula and training materials. It is reasonable to require this during the start-up period because the consulting engineer designed the project, was on site during the construction and must direct the first year of operation. The consulting engineer has the most information regarding the efficient operation of the project, and therefore should be responsible for providing adequate training so that the operator has sufficient knowledge to operate the facility to meet the provision of the NPDES/SDS permit.

Unit (c). The third requirement under start-up services is that the engineer must advise the municipality whether the project is meeting performance standards. It is reasonable to require this in the engineering contract since the municipality is required to certify that the project meets performance standards one year after initiation of operation. The engineering firm is in charge of the testing and operation of the facility during the first year of operation and has the data to confirm whether standards are met.

Item B. This Item requires the municipality to submit a copy of the certificate of errors and omissions insurance carried by the consulting

engineer as a supplement to the application. Errors and omissions insurance is a protection for the municipality in case there is a failure of the project caused by the engineering firm. It also provides protection for the public funds that are being expended on the project.

Item C. This Item requires the municipality to submit a certification of design statement with the signature and registration number of the design engineer. The certification statement is required as an assurance that the project has been designed with full knowledge of the standards and to meet those standards. It is reasonable to require that the consulting engineer be registered, as required by Minn. Stat. § 326.12, subd. 3., to ensure that the highest possible professional standards are followed in the planning and construction of projects in the grants program and to assure that the engineering firms acknowledge the permit limitations that the project was designed to meet. The statement has been changed from the one in the existing rules to reflect the possibility that a different firm may design and construct the facility than the firm that prepared the facilities plan. The present firm must certify that it verified the data used for the design that is in the facilities plan, which will be the basis for the plans and specifications it develops for the project.

Item D. This Item requires the application to include a treatment agreement with each major contributing industry. As was explained in the previous discussion on treatment agreements in Part 6005, Subpart 40, a municipality proposing to construct a wastewater treatment facility must know in advance what significant industrial dischargers will be using the municipal system. In order to limit the adverse effects from industrial discharges to a wastewater treatment facility, it is reasonable for the municipality to have in

place a treatment agreement with each major contributing industry. If a municipality does not have a treatment agreement with each major contributing industry, the grant application will be incomplete and no grant will be awarded. This agreement will establish the industry's contribution to the facility in terms flows, loadings and the duration of the contract.

Item E. This Item requires the municipality to submit a breakdown of costs for the tasks the consulting engineer will be performing as part of the project work to be funded by the grant. Eligible and ineligible costs must be separated. This information is to be submitted on a form provided by the Agency to ensure consistency of the information provided. It is reasonable to require that the costs for engineering services be broken down into specific task categories to determine if the costs being requested are eligible and if they are reasonable. The form the Agency uses and has used for many years breaks the tasks down into the following categories: construction management, bidding, staking and surveying, materials testing, plan of operation, operation and maintenance manual, start-up services and project inspection. The form requires the number of hours estimated to be spent for each task as well as the level of the personnel and the corresponding pay rate. It is reasonable to require this information so that the Agency reviewer can make a determination as to the reasonableness of the costs being requested. It is in the public interest for the Agency to make sure that money dedicated to correction of water pollution be spent in a way that will achieve that end. Other items are judged to be ineligible by the criteria governing the grants program.

Item F. This Item requires the municipality to provide a legal opinion verifying the municipality's legal vested interest in all land, sites and easements required to construct the project. It is reasonable to require a

legal opinion of this nature to ensure that no legal questions will cause interruption of construction, result in claims or cause interruption of operation of the treatment facility during its design life, resulting in adverse environmental effects. Because land issues have caused problems in past grants program management, it reasonable to include some method of ensuring the easiest resolution of the conflict and to ensure that the municipality has the best possible protection against any legal claims regarding ownership. It is intended that the legal opinion provide this protection. As was discussed in Subpart 2, Item 3, the municipality has the option to include a status report and schedule if the legal opinion cannot be made at application time.

Item G. This Item requires the municipality to submit a project schedule on a form provided by the Agency. The inclusion of a project schedule provides the Agency with the information when major project tasks are to be completed. It is reasonable to keep the Agency informed so that they can monitor progress and assist the municipality with staying on schedule. Some of the milestone dates on the project schedule are initiation of construction, completion of construction and initiation of operation.

Subpart 5. Three copies. This Subpart requires the municipality to submit three copies of the application and attachments to the Authority with one copy containing original signatures. It is reasonable to require three copies so that the Authority will have one copy and the Agency will have two copies. The two Agency copies will be used by the Agency engineer and project manager.

Part 6080 Approval and certification of grant applications.

This Part provides for a grant approval mechanism when all requirements have been fulfilled by the municipality. After the submittal of a complete

application, the Agency, under Minn. Stat. § 116.163, subd. 1, may take 90 days to review and approve the application and certify it to the Authority with the provision for one 90-day extension by agreement of the municipality. This 180 day period provides Agency staff ample time to review the submittals and also provides ample time for the municipality to clarify document information and resolve outstanding land issues.

Item A. It is reasonable to require that the applicant meet the requirements already established within a certain time frame to allow the Commissioner to certify the grant within the same fiscal year because a new project list is prepared each year. If the municipality cannot provide the information within that time frame, it is unlikely that it will be able to begin construction in that year due to the short construction season caused by Minnesota's climate. The limited grant funds available should not be tied up by such a project, but should be used for another that is ready to proceed.

Item B. It is reasonable to require the completion of the environmental review process as it is required under Minn. Stat. § 116D and Minn. Rules ch. 4410 administered by the Environmental Quality Board.

Item C. Minn. Stat. § 115.03, subd. 1(e), and Minn. Rules pt. 7001.0030 require a municipality to obtain a permit before construction may begin.

Subpart 2. Certification. This Subpart provides that the Commissioner will certify to the Authority each approved application for grant award. This is reasonable because Minn. Stat. § 116.16, subd. 9 requires the Agency to certify to the Authority those applications which have met the appropriate requirements.

This Subpart also states that grant eligible costs under Part 6070, Subpart 2, Items B through D will be determined at the time of certification. Items B

through D relate to procurement of the construction contract, construction related engineering costs and full-time inspection. It is reasonable to determine what these costs will be prior to construction because the breakdown of costs and tasks that is required with the grant application under Part 6075, Subpart 4, Item E includes the time and cost that will be required for the completion of these tasks. The costs of these providing these services can be estimated accurately based on eligibility criteria and past experience of the consulting engineers and the Agency staff. The time between grant award and beginning of construction is usually quite short and experience has shown that the costs in these areas do not change significantly during that time.

Since the Agency reviews the breakdown of costs and tasks for eligibility and reasonableness, working with the municipality and the consultant to arrive at the proposed costs, they are generally quite accurate. It is reasonable to make a final determination on these costs prior to grant award because the eligibility of costs is determined prior to grant award and there should be no eligibility questions on these tasks beyond that point. However, to accommodate the rare exception, this Subpart allows for the use of contingency funds to offset increases which may occur. The rules limit the use of contingency funds for this purpose to increases that result from unanticipated site conditions and other situations approved by the Commissioner. It is reasonable to limit cost increases in these three areas to situations approved by the Commissioner so that the Agency is assured that the increases are a result of legitimate construction problems rather than poor planning or project management.

Part 6085 Rejection of grant applications.

This Part provides that under certain circumstances, an application may be rejected. This may be for nonsubmittal of documents or for nonapproval of

the submitted documents. It is reasonable to include a provision for rejecting an application that does not meet program requirements.

Subpart 1. Grounds. This Subpart establishes the basis for rejection of an application as not having received approval under Part 7075.6080. That generally means that the municipality has either not submitted a required document or that it did not meet a deadline in the submittal. The Agency itself is under time constraints in certifying grant awards and must have all documents to review them in a timely manner. Therefore, it is reasonable to reject an application that does not meet criteria set forth in rules and statutes.

Subpart 2. Effect of rejection. If an application is rejected, the municipality is removed from the Municipal Project List for that fiscal year. This is reasonable because it allows another project to proceed with the funds available, therefore allowing funds to be used to abate pollution. The municipality removed may apply again in the next fiscal year.

Part 6090 Contract assignment.

The purpose of this Part is to allow the Commissioner to assume the rights of the municipality under contracts with a contractor or engineer. This will allow the municipality to transfer its rights under the contract without the consent of that contractor or engineer. This Part also will allow the Commissioner to assume the municipality's rights under the contract without the municipality's consent if the municipality is unable to enforce the contract. It is reasonable to require this provision so that delay or abandonment of the project does not occur due to the municipality's inability to enforce its contracts. It is the Agency's responsibility to ensure that the public funds appropriated for this purpose are used to meet environmental objectives.

Part 6095 Contract beneficiary.

This Part establishes the requirement that contracts for the planning, design or construction of a treatment system include the provision that the Agency is a third-party beneficiary to the contract. The language in this Part has not changed from the existing rules. It is reasonable to require that the Agency is a third-party beneficiary to the contract with a contractor or engineer so that the Agency can enforce the contract, if necessary, without the municipality forfeiting rights under the contract. Contracts under this Part include anyone supplying services to the municipality which include, but are not limited to, the consulting engineering firm, the prime contractor, soils testing firms, electrical services, and asbestos removal.

Part 6100 Grant amendments.

The purpose of this Part is to describe the types of grant amendments allowed and the conditions under which those amendments will be allowed.

Subpart 1. After-bid amendments. This Subpart allows an amendment to the grant following the construction contract award to adjust the grant to reflect actual costs. The line item amounts in a grant award are estimates and will differ from the amounts in the bids and subsequent contracts. Two other cost categories are based on the eligible construction costs. They are the contingency, which is three percent of the eligible construction costs, and the "allowance" for administration, legal, planning and design costs. It is reasonable to increase or decrease the grant to correspond with the signed construction contracts rather than estimates. After the contracts are awarded and the after-bid amendment is approved, the grant may be increased only by an unanticipated site condition amendment under Minn. Stat. § 116.16, subd. 2(8).

Subpart 2. Unanticipated site condition amendments. This Subpart allows the grant to be amended to allow for unanticipated site conditions. Unexpected conditions encountered at the construction site may cause problems resulting in cost overruns requiring a change in the construction contract. It is reasonable to consider these costs for eligibility and increase the grant accordingly if the nature of the site condition could not have been foreseen and the condition was not identified in the plans and specifications. For example, if the preliminary soil borings for a project did not show a large amount of peat that existed on the site and initial excavation revealed it, time and materials in the original bid may have to be adjusted. A cost overrun may result. Since the soil borings were performed as required and the existence of the peat was not evident, the engineer could not have anticipated this condition. Minn. Stat. § 116.16, subd. 2(8), authorizes that unanticipated site conditions may be considered an eligible cost. The following Items outline the procedure for a municipality to request an unanticipated site condition amendment.

Item A. This Item limits the amendment to two percent of the as-bid eligible construction costs. The amount is limited to two percent under Minn. Stat. § 116.16, subd. 2(8). The Item also stipulates that the three percent contingency fund under Part 6070, Subpart 2, Item F, must be be depleted before this amendment is approved. This is reasonable because the cost overrun caused by the unanticipated site condition may be covered by the eligible construction costs plus the three percent contingency. It would not be prudent to tie up additional funds if an increase is not necessary, nor would it be efficient to use valuable Agency and municipal administrative resources to process unnecessary amendments.

Item B. This Item requires the municipality to request an unanticipated site condition amendment in writing, including certain information. It is reasonable to require a written request including several items so that the Agency can review the request for reasonableness and eligibility. The written request must include the following information.

Subitem (1). This Subitem requires an explanation of why the site condition was unanticipated. It is reasonable to require such an explanation so that the Agency can determine whether the condition qualifies for designation as unforeseen. Cost overruns due to omissions in the plans and specifications must be covered by the contingency. According to Minn. Stat. § 116.16, subd. 2(8), those costs in excess of three percent of the as-bid costs are not grant-eligible.

Subitem (2). This Subitem requires the municipality to submit a change order defining the scope and cost of the work required. It is reasonable to require this because all changes to the contract must be made by change order as discussed in Part 6105.

Subitem (3). This Subitem requires the municipality to submit a breakdown of the costs and tasks associated with the change order. It is reasonable to require a breakdown of costs and tasks to allow the Agency to review those items for eligibility.

Subitem (4). This Subitem requires the municipality to submit an amended engineering contract if any changes have been made to the approved contract. It is reasonable to require submittal of an amended engineering contract so the Agency is aware of the changes made to ensure that the contract still meets all rule and statutory requirements reviewed for previously. An example of a change that might be necessary is additional inspection required during the construction resulting from the unanticipated site condition.

Subitem (5). This Subitem requires the municipality to request a budget period extension if more time is needed to complete the project as a result of the unanticipated site condition. This is reasonable so that all costs under the grant are incurred within the time period of the grant contract.

Part 6105 Change orders.

This Part delineates when a change order is necessary and the information that must be contained in a change order. All of the items in this Part have been required of grantees in the federal Construction Grants Program and the State Independent Grants Program for many years. The purpose for including this language in the rules is so that it is clear to the municipalities, the consulting engineers and the contractors what will be required.

Subpart 1. In general. This Subpart outlines when a change order is required. The proposed language clarifies under what conditions a change order submittal is required. It is reasonable to require a change order to be submitted to the Agency under the following five situations so that the Agency has a chance to review changes to the construction contract that are made after the contract is executed. A change order must be submitted in the five situations that follow.

Item A. A change that alters the design or scope of the project. It is reasonable for the Agency to review this type of change because it would involve a fundamental change to the plans and specifications. The Agency has the responsibility to review plans and specifications under Minn. Stat. § 115.03, subd. 1(f). The Agency must review a change to the design or scope of the project to ensure that it does not affect grant eligibility, and that the project will still meet specific water quality standards. A change may alter

the operability or reliability of the facility which may affect its ability to meet water quality objectives.

Item B. A change causing an increase or decrease in the contract price must be submitted for approval. It is reasonable for the Agency to review this type of change because construction contract prices are directly related to the grant amount and the use of contingency funds in the grant. It is important for Agency staff to review a cost change to determine its eligibility for grant funding.

Item C. A change in the construction completion date must be submitted for approval. It is reasonable for the Agency to review this type of change since the budget period, engineering contract, and possibly consent decree and NPDES/SDS permit are tied to this date.

Item D. A deviation from the approved plans and specifications requires a change order. It is reasonable for the Agency to review this type of change because the Agency staff reviewed and approved a set of plans and specifications as the basis for the construction of the project. Any change in those documents must be reviewed to ensure that the change would not affect the project's grant eligibility and ability to meet water quality standards.

Item E. A substitution or replacement of equipment, suppliers or subcontractors requires a change order. It is reasonable for the Agency to review this type of change because it may affect the project's ability to meet water quality standards.

Subpart 2. Contents. This Subpart outlines the information required in all change orders submitted to the Agency. It is reasonable to require certain items to be included in the change order so that the Agency has all the information necessary to complete a review.

Item A. This Item requires that a change order be signed by the municipality, the engineer, and the contractor. It is reasonable to require this so that the Agency knows that these three parties have approved the change. A change order alters the original contract made between the contractor and the municipality. Therefore, those signatures are necessary to ensure that no right of any party was subverted. The project engineer serves as the technical representative of the municipality for construction.

Item B. This Item requires that a change order include the date on which the municipality and the contractor executed the change order. It is reasonable to require this information since it is important for the Agency to know when changes are occurring to be able to track the progress of the project. The date of the change order is also related to the requirement that changes not requiring prior approval be submitted to the Agency within one month of execution. In addition, it is reasonable to require that a change order be dated because a change order is a contract amendment and must be dated.

Item C. This Item requires the change order to include an identification of grant eligible and ineligible costs. At the time of plans and specifications approval, Agency staff has completed a review of and made a determination regarding eligible and ineligible items. It is reasonable to require a similar identification, review and approval of costs associated with the change order so that grant eligibility can be determined.

Item D. This Item requires the change order to include a complete description and justification of the change. At the time of plans and specifications approval, the Agency has completed an extensive and detailed review of all items included. If a change is necessary, it is reasonable to

require the municipality to describe the change and justify the necessity for the change. The Agency will determine whether the change is acceptable and if it is eligible for funding.

Item E. This Item requires the change order to contain an explanation of why the change was not included in the original plans and specifications and contractor's bid. It is reasonable to require such an explanation so that the Agency staff reviewing the change order can determine the type of change, whether it is fundable and whether it is eligible for designation as an unanticipated site condition. Change orders are common in this type of construction project. Quantities of bid items are estimated in the bids and they may differ from amounts necessary to complete the work. The explanation will enable the the Agency to determine whether the change is eligible for funding.

Item F. This Item requires the change order to provide a detailed cost breakdown for the change showing the costs of materials, labor, overhead, and profit. The project was bid competitively, but change orders must be negotiated. It is reasonable to review costs closely to ensure that they are consistent with the bid and in conformance with costs expected from the type of change requested.

Item G. This Item requires the change order to include a cost estimate for the change from the project engineer and an analysis of any differences between the engineer's estimate and the contractor's cost breakdown. It is reasonable to require an independent estimate from the engineer for comparison purposes and to evaluate whether the negotiation process yielded a competitive price for the work. It is reasonable to compare the engineer's estimate and the contractor's estimate and explain any discrepancy that exists. If the two

differ by more than ten percent, an explanation of the negotiations for agreement is required. This is to ensure that the negotiation process took place and was handled properly.

Subpart 3. Eligible costs. This Subpart describes what costs associated with change orders are eligible for grant funding.

Item A. This Item establishes that construction costs resulting from defects in the plans and specifications that would have been eligible and would have been incurred if the plans and specifications had no defects are eligible for grant funding. This is reasonable because it maintains consistency in the types of costs that are grant eligible while acknowledging that changes of this type are common in large construction projects. An example of this type of change is a quantities change order where the estimated amount of particular materials must be increased to complete the project.

The costs of rework, redesign, restocking, small tools, supervision, delay, acceleration or disruption caused by the defects will not be considered eligible. This is reasonable because any costs associated with the correction or replacement of defective work would obviously not be considered eligible during the review of plans and specifications and therefore should not be eligible during construction.

Item B. This Item allows unanticipated site condition costs to be eligible for grant funding. See analysis under Part 6100, subpart 2.

Item C. This Item allows the eligibility for combined profit and overhead costs for the contractor or subcontractor that actually performs the work up to 15 percent of the costs of materials and labor are allowable. It is reasonable to establish a limit on change order profit and overhead because change orders are negotiated and not competitively bid. Fifteen percent in

this situation is reasonable because it is consistent with past practice and is taken from guidelines for the federal Construction Grants Program.

Item D. This Item establishes the eligibility for combined profit and overhead costs for a contractor or subcontractor that administers the change order but does not perform the change order work up to five percent of the costs of materials and labor. It is reasonable to establish a limit on change order profit and overhead because change orders are negotiated and not competitively bid. Five percent in this situation is reasonable because it is consistent with past practice and is taken from guidelines for the federal Construction Grants Program.

Subpart 4. Approval of change orders. This Subpart explains the requirements for when change orders must be approved by the commissioner relative to the type of change order being submitted. This language comes directly from the existing rules, but was reorganized to make it easier to read. Approval of change orders follows the process listed in the items below.

Item A. This Item requires that proposed changes that substantially alter the type of treatment process, or its efficiency, versatility, or reliability receive prior approval by the Commissioner. It is reasonable for the Agency to review this type of change before it is implemented to ensure that it does not adversely affect the project's ability to meet water quality standards. A change of this type alters the approved plans and specifications significantly and the Agency has the responsibility to review plans and specifications under Minn. Stat. § 115.03, subd. 1(f). Prior approval is required because the Agency must have the opportunity to approve or deny the proposed change and the cost of denial will be much less before the change is implemented.

Item B. This Item requires that change orders not requiring prior approval by the Commissioner must be submitted within one month of the execution of the order. It is reasonable to require this timely submittal to allow the Agency to monitor changes made to the the project as it is being constructed. It is also reasonable to expect change orders to be submitted in a timely fashion so that they can be reviewed for eligibility prior to the end of the project when many other matters need to be resolved.

Item C. This Item allows for change orders that are of an emergency nature to be implemented without prior written approval of the Commissioner. The Agency must be made aware of the problem and must agree that the change is of an emergency nature, but no formal paperwork must take place before the problem is fixed. It is reasonable to allow this because waiting to solve the problem may increase costs significantly, threaten public health and safety, or cause damage to the existing construction. An example of an emergency situation might be accidentally cutting a water or gas main or electrical line that was not indicated in the plans and specifications.

Part 6110 Completion of construction.

The purpose of this Part is put into rules a policy that is already in use for the state and federal grants programs. Historically, the period of time during which the last remaining construction items are being finished and the project becomes ready for operation has been difficult for both the Agency and the municipality. This difficulty was due to the lack of a common understanding of terms and procedures between Agency staff, the municipality and its consulting engineer and contractor. The development of a completion of construction policy alleviated many of the problems during this stage of a project. Adding this language to the rules will further clarify terms and the requirements that must be met as a project completes construction.

Subpart 1. Building completion. This Subpart defines building completion as the date when all major components of the project have been built, all equipment is operational, start-up testing is complete, and the project is capable of functioning as designed. It is reasonable to define this term because several events in the completion of construction procedure are dependent on this date. Upon building completion, the municipality notifies Agency staff that its project is ready for initiation of operation and a pre-final inspection is scheduled. It is reasonable to require this notification and a pre-final inspection before initiation of operation in order to protect the environment from adverse impacts resulting from operation of a facility before it is fully functional.

Subpart 2. Initiation of operation. This Subpart identifies that the initiation of operation date is when the project begins operating for the purposes for which it was planned, designed and built. It is reasonable to define initiation of operation so that the Agency, the municipality and the consulting engineer have a basis for agreeing on the point at which the project is ready to begin operation.

Item A. The municipality must notify the Commissioner in writing of the date of initiation of operation within ten days of the date. Because this date is directly tied to the performance certification requirements under Part 6115, Subpart 1, it is reasonable to require this written notification from the municipality so that there is no question about what date initiation of operation occurred. Requiring that the notification be submitted within ten days provides adequate time for the municipality to prepare a letter, while at the same time, ensures that the Agency will receive the notification in a timely manner.

Item B. The date of initiation is the first day of the one year performance period that allows the municipality, its consulting engineer, and Agency staff to determine that the project meets the performance standards under Part 6115, Subpart 1, Item A. It is reasonable to include this in the rules so that all parties understand when the one year performance period starts and ends.

Subpart 3. Final inspection. This Subpart outlines when a final inspection should occur and explains the purpose of the final inspection. A final inspection of the facility is performed by Agency staff when construction is complete except for minor weather-related components. Examples of minor weather-related components include seeding, sodding and exterior painting. It is reasonable for Agency staff to conduct a final inspection to concur that the construction is substantially complete and acceptable. At the final inspection, outstanding change orders must be identified and a cut-off date for incurring grant eligible construction costs must be established. It is reasonable to require this because the project is essentially complete, and it is time to prepare the project to be closed out. By this time, the municipality, together with its contractor and consulting engineer, should be able to identify the specific construction items that have yet to be finished and a date for completing them.

Part 6115 Project performance.

This Part serves to identify what is required of the municipality at end of the first year of operation. It further serves to identify the action which must be taken in the event that the project meets project performance standards. It is reasonable to include a Part that defines what is required of the municipality at the end of its one year performance period because it is at

this time that the municipality affirms that the project is meeting the objectives for which it was built. It is the time that the municipality assures the Agency that the project that was constructed with grant funds to meet required effluent limits in the permit is achieving that goal and is expected to continue to do so.

Subpart 1. Performance certification. This Subpart identifies the items which the municipality is required to submit one year after initiation of operation.

Item A. This Item requires that a certification be submitted which outlines the performance standards and whether the project meets those standards. It is reasonable to include this certification because these are the standards for which the project was designed and which the facility should be able to meet. Meeting these standards is evidence that the facility will function as designed. These performance standards have been used in implementing the federally delegated performance certification program and have proven to be effective.

Subitem (1). The first performance standard to which the municipality must certify is that the project was completed in accordance with the approved plans and specifications. It is reasonable to require the municipality to give the Agency this assurance since it is a requirement of the program under Part 6055, Subpart 1 that the project be constructed according to the approved plans and specifications. This requirement demonstrates that the municipality takes responsibility for compliance with that rule.

Subitem (2). The second performance standard to which the municipality must certify is that the municipality has a sufficient number of trained and capable personnel to provide adequate operation and maintenance

of the project, and that the project requires only such operation and maintenance as is outlined as normal and routine in the approved operations and maintenance (O & M) manual. This statement is necessary in order to assure the Agency that the facility is staffed by an adequate number of trained operators and that no extraordinary measures are needed to operate it. Without the proper operation and maintenance, even a well-designed project may not function as required. If the municipality is not able to certify to the proper operation and maintenance of the facility, it raises the question of whether it will be able to meet water quality standards over time, which is the objective of the program.

Subitem (3). The third performance standard to which the municipality must certify is that the project accepts hydraulic and organic loading to the extent described in the approved design specifications and is in compliance with all NPDES/SDS permit requirements. This certification assures the Agency that the facility can accommodate the influent that it was designed for and that it can treat it to produce effluent that meets the municipality's permit limits. It is reasonable to require the municipality to state that the project is capable of accepting hydraulic and organic loading as described in the plans and specifications to assure that the facility is operating as designed and that the design meets the municipality's wastewater treatment needs. It is important that the influent be of the nature the facility is designed to treat. If the municipality finds the influent to be other than that, it must look to the enforcement of its sewer use ordinance, treatment agreements or pretreatment program to remedy the situation. The further statement that the facility is in compliance with the NPDES/SDS permit reinforces the desired end result that the project functions as designed.

Subitem (4). The fourth performance standard to which the municipality must certify is that the industrial wastewater discharges to the treatment facility do not interfere with the operation of the project or the disposal or use of municipal sludge. It is reasonable to require that the industrial wastewater discharges to the treatment facility do not interfere with the operation of the project so that the facility can operate the way it was designed. If industrial wastewater does interfere with the operation, it is the municipality's responsibility to ensure that treatment agreements and the sewer use ordinance are being enforced.

Subitem (5). The fifth performance standard to which the municipality must certify is that sludge treatment and disposal is accomplished in conformance with the sludge management rules or the sludge incineration rules. Minn. Rules Chapter 7040, governing sludge treatment and management, and Minn. Rules Chapter 7005.2350 to 7005.2400, governing sludge incineration, require proper proper treatment or disposal of sewage sludge. It is reasonable to require the municipality to certify conformance with these rules because improper management or disposal of sludge can cause a serious public health hazard.

Subitem (6). The sixth performance standard to which the municipality must certify is that the project meets the approved plans and specifications for the prevention of contamination of underground drinking water source(s) beyond the property boundary. For projects which have the potential to have an impact on ground water, such as stabilization ponds or large drainfields, it is reasonable to require the municipality to include the statement that the projects meets plans and specifications for the prevention of contamination of underground drinking water sources so that the Agency has

some assurance that public health and safety are being protected. This implements the policy contained in High Rate Soil Absorption System Task Force Final Report, prepared November 1984 by staff of the Agency. This report contains an interpretation of portions of Minn. Rules ch. 7060, which apply to this Subitem.

Item B. This Item requires the municipality to submit a start-up evaluation report describing the performance of the project. It is reasonable to require submittal of a start-up evaluation report describing the performance of the project to: 1) ensure staff were properly trained; 2) determine what problems were encountered during the first year of operation and how to remedy them; 3) determine if reimbursable costs were incurred; and 4) determine if changes are necessary to the operations and maintenance manual and if they are being addressed.

Item C. This Item requires submittal of a revised operations and maintenance manual based on actual operating experience. It is reasonable to require this submittal so that changes in operation and maintenance due to the practical experience obtained during that period can be included in the manual for the benefit of those who are now or may in the future be in charge of the daily operation of the project.

Item D. This Item requires submittal of a certification by the contractor that the project was built according to approved plans and specifications and change orders. It is reasonable to require this certification from the contractor for the same reason the municipality must provide this certification in Item A, Subitem 1. It is a requirement of the program that the project be built according to approved plans and specifications and change orders. The contractor agreed to this when the

contract was signed and it is reasonable to expect the contractor to provide an assurance that this was accomplished.

Item E. This Item requires submittal of two copies of the as-built plans and specifications on microfiche. See analysis of Part 6075, Subpart 4, Item A, Subitem (2).

Subpart 2. Corrective action report. This Subpart provides that if the project is unable to meet the performance standards, the municipality must submit a report to outline the problem and solution. It is reasonable to require submittal of such a report so that the Agency knows what the problems are and has assurance that there is a plan to correct the problem.

Item A. This Item requires submittal of a corrective action report within 30 days of the end of the first year of operation. It is reasonable to require the report within 30 days of the performance certification date because it should be apparent to the municipality that the facility is not operating properly and it is important to begin the process of correcting the problem as soon as possible. The longer the facility is providing inadequate treatment, the longer the adverse environmental impact. The corrective action report must include the following:

Subitem (1). This Subitem requires the report to provide an analysis of the project's failure to meet the performance standards. It is reasonable to require the municipality to analyze the project's failure to meet the performance standards so that Agency staff knows what the scope of the problem is and knows that the municipality has complete knowledge of the scope of the problem.

Subitem (2). This Subitem requires the report to estimate the nature, scope, and cost of the corrective action necessary to bring the project

into compliance. It is reasonable to require the report to include such an estimate so that the Agency knows what will be involved from a planning, design, construction and cost standpoint to correct the problem. It is important for the Agency to have this information so it can make an assessment about whether the proposed solution is environmentally sound as well as implementable.

Subitem (3). This Subitem requires the report to include a project schedule for beginning and completing the corrective action work in such a way as to meet the agreed on performance standards. It is reasonable to expect the municipality to set up a schedule and include it in the corrective action report so the Agency is aware of how quickly the municipality is planning to take care of the problem. It is also necessary to have a schedule for correcting the work so that the Agency can monitor the progress of the corrective action work. It is reasonable to expect the corrective action work to be completed in a timely manner to minimize the potential environmental damage that may occur with a facility that is not operating as it was designed. The Agency has a responsibility to ensure that environmental objectives are met following the expenditure of a large sum of grant money for a project designed specifically to meet water quality standards.

Item B. This Item requires the municipality to provide a performance certification under Subpart 1 following completion of corrective action work. It is reasonable to require that the performance certification be submitted after the corrective action work is completed and a successful start-up period has be completed for the same reasons discussed in the analysis of Subpart 1.

Part 6120 Payment of state independent grants.

This Part outlines the requirements for the municipality's requests for payments for grant funds and the four points at which payments will be stopped

during the progress of the project until certain tasks are completed. Under Minn. Stat. § 116.16, subd. 11, the Commissioner will certify the payment requests to the Public Facilities Authority when these requirements are met. When it receives the Commissioner's certification, the Authority will then make the payments to the municipality. It is reasonable to attach conditions to the request and approval of grant payments so the Agency has an assurance that certain important tasks are completed by the municipality. This type of payment process also creates a consistent administrative method for the Agency.

Subpart 1. Payment request. A municipality is required under this Subpart to submit a written request for payment to the Authority. This submittal is reasonable because only the Authority can make payments to a municipality, according to Minn. Stat. § 116.16, subd. 11. The municipality is also required to submit documentation for incurred planning, design, administration and legal services costs with payment requests. It is reasonable to require this documentation to aid Agency staff in the review of costs paid out so that state grant funds are expended for an Agency approved pollution abatement project.

Subpart 2. Certification of payment request. This Subpart states that the Commissioner will certify approved payment requests to the Authority. This Subpart also identifies the four points at which certifications will be stopped during the project and the tasks that must be completed to release payments.

Item A. This Item establishes that no payments will be certified until specific documents are submitted. It is reasonable to require these items prior to any grant money being certified for payment because all of them provide the Agency documentation that the project has been bid, contracts have been awarded and executed and any necessary cooperative agreements have been

executed. These documents indicate that the municipality is under contract to proceed with the project and it is reasonable to approve initial payments upon submittal of the documents listed below.

Subitem (1). This Subitem requires the submittal of the accepted bid proposal at this time. It is reasonable to require submittal of the accepted bid proposal before any payments are certified so that the Agency knows what the cost of the project will be, item by item. It is also the Agency's statutory responsibility to review the bids that have been accepted for construction of a wastewater treatment project under Minn. Stat. § 116.163, subd. 3.

Subitem (2). This Subitem requires the submittal of the detailed tabulation of all bids received. It is reasonable to require this so the Agency can make a comparison of the types and amounts of bids that are received on each project. We should be aware if the municipality did not choose the low, responsible bidder as required under Minn. Stat. § 412.311. This is in order to insure prudent use of public funds. A record of all the bids received can also serve as historical information that the Agency can use for reference on future projects and as guidance information to municipalities that request it.

Subitem (3). This Subitem requires the submittal of the contractor's payment and performance bonds. It is reasonable to require submittal of payment and performance bonds before any payments are made because the rules require that these be a part of the plans and specifications. See analysis of Part 6055, Subpart 2, Item 2, Subitems 2 and 3.

Subitem (4). This Subitem requires the submittal of the executed construction contract and notice to proceed. It is reasonable to

require submittal of the executed construction contract and notice to proceed before any payments are made so that the Agency can be certain that a contract was awarded, that it was executed and that the municipality has given the contractor the order to begin construction. If the municipality is making a payment request, costs should have been incurred and the Agency should have evidence that work is scheduled to begin before authorization of the payment.

Subitem (5). This Subitem requires the submittal of the executed engineering contract. It is reasonable to require this before payments are approved because the Agency reviewed the unexecuted contract for adherence to rules and statutes as well as eligibility of costs and it needs to know that it was the approved contract that was executed.

Subitem (6). This Subitem requires the submittal of an executed intermunicipal agreement, if applicable. It is reasonable to require submittal of an executed intermunicipal agreement if more than one municipality is involved in the project before any payments are made because the Agency reviewed and approved an unexecuted agreement prior to grant award and it needs to know that it is the approved agreement that was executed. It is also critical, in project that involves more than one municipality, that a legal agreement binds the cooperating municipalities together to ensure good management of the project. Some of the areas that should be addressed include who will be responsible for operation and maintenance, who will be financially responsible, who will pay what to whom, who will handle the administrative details of managing the project while under construction, and who will handle the administrative details of managing the facility once in operation.

Item B. Payments will not be certified beyond 50 percent until the municipality has hired an operator with a valid state certificate for the type

of facility. It is reasonable to require the municipality to have hired the appropriate operator for its facility by this time so the operator can be properly trained for the particular facility's operation by the time the facility is ready to be placed into operation. The operator should be available during the final phase of construction for consultation with the engineer and the contractor. It is requirement of the Minnesota Department of Health that wastewater treatment operators be certified for the level of treatment being provided.

Item C. Payments will not be certified beyond 80 percent until certain tasks have been completed.

Subitem (1). No payment will be certified until the municipality has enacted the approved sewer use ordinance. It is reasonable to require the municipality to enact the sewer use ordinance by 80 percent of completion of the project so that the Agency is assured that the municipality will have the legal authority to ensure that the facility will be protected from the discharge of prohibited substances into the sewer system prior to initiation of operation.

Subitem (2). No payment will be certified until the municipality has enacted the approved sewer rate ordinance. It is reasonable to require the municipality to enact the sewer rate ordinance by 80 percent of completion of the project so that the Agency is assured that the municipality has the legal mechanism prior to initiation of operation to collect sewer rates that will be adequate to ensure that the facility will be properly operated and maintained.

Subitem (3). No payment will be certified until the municipality has adopted by resolution the approved sewer service change system

with updated cost revisions. It is reasonable to require the municipality to have implemented the new rate system by 80 percent of completion of the project so that the Agency is assured prior to initiation of operation that adequate revenue will be generated to properly operate and maintain the facility prior to initiation of operation. Updated costs are required at 80 percent of project completion because at that point the municipality has an understanding of the actual construction costs. Therefore, the resulting debt charge to the users can be calculated at this time. This updated debt charge should be part of the sewer service charge that is passed by a resolution.

Subitem (4). No payment will be certified until the municipality has received approval of the operation and maintenance manual. It is reasonable to require that the Agency review and approve the O & M manual at this time because the Agency must ensure that the manual includes enough guidance so that the operator and the municipality can operate the facility independently. The manual must be ready for the operator to use in time for the initiation of operation.

Item D. Payments will not be certified beyond 90 percent until the municipality has met the requirements of the performance certification process under Part 6115. See analysis of Part 6115 for the reasonableness of the process. It is reasonable to withhold final payment until the municipality can meet these requirements so that the Agency is assured that the project is performing the way it was designed and that permit limits are being met. The performance certification is the way the Agency knows that a project has been completed in such a way as to provide environmental protection for the waters of the state. Withholding ten percent as final payment is a change from the existing state grants program (the amount withheld in the federal program is

less than in the state program). Currently, 20 percent is withheld in the state grants program during the first year of operation. Many municipalities have found this to be an extreme financial burden and many comments were received during the comment period recommending a change to this provision. Ten percent was determined to be a reasonable amount since this is approximately the amount that is withheld for a project receiving federal grant funds. Furthermore, in the 1989 Legislative Session, a law was passed requiring state matching grants to federal grants to be paid up to 90 percent of the grant rather than the 50 percent that is in the rules. This action lends support to a 10 percent retainage for this type of project. If a project cannot meet the performance certification requirements, no payment will be made until the municipality can do so or has entered into a legally enforceable agreement with the Agency containing a schedule for completing corrective action work. It is reasonable to withhold the final payment until the Agency has an enforceable commitment from the municipality that it will make the necessary corrections to the facility that will enable it to meet the performance requirements.

Subpart 3. Retained payments. The Commissioner may withhold certifications for payment of grant funds under various circumstances. These conditions are non-compliance with rules, statutes and grant conditions. It is reasonable to withhold a certification when the municipality fails to comply with applicable rules and statutes or breaches the grant agreement because acceptance of the grant by the municipality carries the obligation to abide by rules and the grant agreement. If the municipality fails to comply with the agreement, it is reasonable to withhold payment certification until the municipality is in compliance.

Part 6125 Recovery of funds.

This Part provides that the Agency can recommend that the Authority seek to

recover grant funds if excessive funds have been disbursed or if the project is improperly designed, constructed or operated and maintained. It is reasonable that these circumstance might prompt the recovery of public funds because this money which is earmarked for pollution abatement should only be used for its intended purpose. We should not pay municipalities grant funds in excess of eligible costs incurred because those funds would not have been expended for the achievement of the goal. In the same way, public funds should not go to a project that was improperly designed or constructed or is being operated and maintained improperly. That would be a violation of the public trust that the Agency will ensure that environmental funds go to projects that will protect the environment.

COMBINED SEWER OVERFLOW ABATEMENT PROGRAM

The Combined Sewer Overflow (CSO) Abatement Program was created by the Minnesota Legislature in 1985 under Minn. Stat. § 116.162 to provide financial assistance to eligible municipalities to separate storm and sanitary sewer service. The program currently operates under existing rules scattered throughout Chapter 7075. The Agency proposes to revise and consolidate the program rules to clarify the process and requirements. The proposed rules do not impose any additional requirements on participants in the program.

Part 6130 Purpose.

The purpose of the Combined Sewer Overflow (CSO) Abatement Program is to provide financial assistance to eligible municipalities for CSO abatement.

Part 6135 Municipal project list.

Subpart 1. In general. The Municipal Project List must contain the projects that will receive CSO financial assistance. This requirement is in existing rules under Part 0409, Subpart 1. It is reasonable that these

projects be included on the Municipal Project List because it is the Agency's main planning document for the award of grant funds each fiscal year.

Subpart 2. Requirements for placement on the list. The requirements for placement of CSO municipalities on the Municipal Needs List are identical to those in the current rules under Part 0409, Subpart 2.

Part 6140 Applications.

Subpart 1. Complete application required. To be eligible for financial assistance, a CSO municipality must submit a complete application as is currently required under Part 0414, Subpart 1. The proposed language clarifies what documents must be included to make an application complete.

Subpart 2. Timing and form of application. An application must be on a form provided by the Agency and must be submitted by December 1 or the deadline in the municipality's permit as is required under the current rules under Part 0414, Subpart 2, Items B and E.

Subpart 3. Additional information. With the exception of Item C, Subitem (2) and Item G, all items required to be submitted with the application are currently required under the existing rules.

Item A. This Item requires an identification of the scope of work to be performed in accordance with the list and schedule submitted the previous June 1 as is currently required in the existing rules under Part 0414, Subpart 6a, Item A.

Item B. This Item requires a resolution from the municipality's governing body authorizing the application to be filed and designating an authorized representative to sign all documents as is currently required in the existing rules under Part 0414, Subpart 6a, Item B.

Item C. This Item requires a proposed engineering contract that includes the following provisions.

Subitem (1). Full-time inspection provided during construction and written reports submitted to the Agency as is currently required under Part 0414, Subpart 6a, Item B. Language has been added to require that these reports be submitted monthly rather than as the Agency requests them. This is reasonable because monthly reports are what the Agency currently requests to monitor construction of the project.

Subitem (2). Preparing two sets of as-built plans and specifications on microfiche is an added requirement of the engineering contracts for CSO projects. Submitting these documents following completion of construction has been and will continue to be a requirement of the State Independent Grants Program. For that program, the requirement is being added as a required provision of the engineering contract so that it is clear that preparation of these documents is the engineer's responsibility. Although not specifically stated in the current rules for the CSO program, as-built plans and specifications have been prepared and submitted for CSO projects as common practice. It is reasonable to also include this requirement in the proposed rule revisions because the documents provide a permanent record of the projects as they are actually constructed. For further information, refer to Part 6075, Subpart 4, Item A, Subitem (2).

Item D. This Item requires an engineer's certificate of adequate errors and omissions insurance as is required in the existing rules under Part 0414, Subpart 6a, Item B.

Item E. This Item requires a cost breakdown for all project work on a form provided by the Agency as is currently required under Part 0414, Subpart 6a, Item B.

Item F. This Item requires plans and specifications for the scope of work described in Item A as is required under the existing rules in Part 0414, Subpart 6a, Item C.

Item G. The Agency proposes to add a requirement in the rules that the application must include a project schedule on a form provided by the Agency. Although not specifically required by rule, project schedules have always been provided by the CSO municipalities in the past. It is reasonable to require that a project schedule be submitted with the application so that Agency staff can monitor the progress of the project and ensure that the project progresses as expeditiously as possible. An Agency form is used so that consistent milestones are established for each project.

Part 6145 Financial assistance awards.

As provided under Minn. Stat. § 116.162, subd. 5, CSO financial assistance is awarded to the eligible municipalities based on their proportionate share of the total program costs. The percentages established in the proposed rules are identical to those in the current rules under Part 0428, Subpart 2a, Item B.

Part 6147 Change orders.

The Agency proposes new language regarding when change orders are necessary, what must be included in change orders submitted to the Commissioner, and the requirements for approval of change orders. The proposed language will not make any significant change to the current procedures for change orders, but will make the rules for change orders clearer and more complete. Similar language is proposed for change orders under the State Independent Grants Program. See Part 6105, Subparts 1, 2, and 4 for a discussion of the reasonableness of the proposed language.

Part 6149 Project performance.

The Agency proposes to add language to the rules that describes the procedures and requirements that a project must meet from the time of initiation of operation through the end of the one year performance period. The new language also identifies the actions that a municipality must take if its project cannot meet its performance standards at the end of the one year performance period. The basic process proposed for the new rules is the same as has applied to CSO projects under the federal Construction Grants Program regulations in the past. The project performance process is also proposed to be added to the State Independent Grants Program rules under Part 6115.

It is reasonable to require that certain procedures and requirements be met as a project completes construction and moves into operation to ensure that state funds were used effectively for a project that is capable of meeting the specific CSO abatement objectives for which it was planned, designed, and built.

Subpart 1. Notification of initiation of operation. This Subpart requires the municipality to notify the Commissioner when it initiates operation. It is reasonable to require this notification because the date of initiation of operation begins the one year performance period.

Subpart 2. Performance certification. This Subpart requires a municipality to submit certain items to the Commissioner one year after the project's initiation of operation to demonstrate that the project has been built correctly and is capable of meeting the specific CSO abatement requirements.

Item A. A certification from the municipality must be submitted stating whether the project meets the performance standards. It is reasonable

to require this certification from the municipality since the municipality, through its acceptance of state financial assistance funds and its role as the permittee for the project, is ultimately responsible for the performance of the project.

Subitem (1). The first performance standard is that the project was completed in accordance with the approved plans and specifications and change orders. It is reasonable to require the municipality to certify to this standard since it is a requirement of the program under Part 6055, subpart 1, and it is necessary to determine that the project was constructed as designed before determining whether the project is capable of meeting its objectives.

Subitem (2). The second performance standard is that the project accepts hydraulic loading to the extent described in the design specifications and is in compliance with all NPDES/SDS permit requirements. The basic goals of the CSO abatement program are to separate the storm and sanitary sewer systems and to provide enough hydraulic capacity to eliminate the bypass of raw sewage during storm events. To accomplish these goals, individual projects are designed based upon specifications which specify the hydraulic capacities needed in various areas. Each municipality's NPDES/SDS permit identifies specific project areas where work must be performed and sets a schedule for work in each area. The permit also establishes overall requirements for amounts of geographical area separated at various milestones throughout the ten year CSO abatement program. It is reasonable to require that each municipality certify whether its project accepts hydraulic loadings as described in the design specifications in order to determine whether the project is really capable of meeting its objectives. In addition, because each

municipality's permit is the legal document that requires the municipality to perform this work, it is reasonable that an evaluation of the project to ensure the effective use of state funds also be tied to compliance with the permit requirements.

Subitem (3). The third performance standard is that there has been a complete separation of stormwater and sanitary flows within the project area with the exception of permitted rainleader connections. CSO abatement projects in each municipality are broken down by project areas with the intent that, as a project is completed, all storm and sanitary flows in that project area have been separated. It is reasonable to require a municipality to certify to this performance standard in order to ensure that all necessary separation work in a particular area has been completed.

Item B. Along with its certification statements, a municipality must also submit a start-up evaluation report describing the performance of the project. This report describes, in greater detail than is possible through the certification process in Item A, the project's performance during the one year performance period. This report is particularly valuable if problems with the project were encountered or there is some unique aspect of the project which cannot be adequately covered in the performance standards. It is reasonable to require a start-up evaluation report so that Agency staff can be fully aware of all aspects of the project's performance.

Item C. A municipality must also submit a certification from its contractor(s) that the project was built according to the approved plans and specifications and change orders. It is reasonable to require this certification from the contractor for the same reasons it is required from the municipality in Item A, Subitem (1). This certification is the contractor's

final sign-off that the project was completed according to the contract documents. It provides some level of protection for the municipality if construction related problems are discovered in the future.

Item D. This Item requires the submittal of two copies of the as-built plans and specifications on microfiche. See discussion under Part 6140, Subpart 3, Item C, Subitem (2).

Subpart 3. This Subpart requires that if a project is unable to meet the performance standards, the municipality must submit a report describing the problem, the proposed solution, and a schedule for correcting the situation. This corrective action report is also proposed as a requirement of the State Independent Grants Program. See analysis under Part 6115, Subpart 2.

Part 6151 Payment of state financial assistance.

Subpart 1. Payments up to 90 percent of assistance. The proposed language states that, once some specific construction contract documents are submitted, payments may be made up to 90 percent of the total amount of financial assistance as the project work progresses. The construction contract submittals: accepted bid proposal, detailed bid tabulations, payment and performance bonds, and executed contract and notice to proceed, are all currently required at the beginning of CSO projects through the federal regulations. It is reasonable to require that these documents be submitted before any payments are made because these documents are necessary for Agency staff to monitor contractor procurement and project progress.

Under current rules, CSO financial assistance payments are made as work progresses up to 80 percent of the total amount. The Agency proposes to change this to 90 percent for consistency with the proposed changes to the State Independent Grants Program.

Subpart 2. Payments beyond 90 percent of assistance. Under this Subpart, the final 10 percent payment will not be made until Agency staff has completed a final inspection and the project performance requirements of Part 6149 are met. It is reasonable that these requirements be met to ensure that the project has been built correctly and meets all program requirements before the final payment for the project is made.

Subpart 3. Retained payments. Under this Subpart, the Commissioner may withhold financial assistance payments under various circumstances. Because state financial assistance funds are limited and must be protected from being used for inadequate work or in ways that violate state statutes and rules, it is reasonable to withhold payment of funds in such circumstances until the situation has been corrected.

WATER POLLUTION CONTROL REVOLVING FUND PROGRAM

Part 6155 Purpose.

Two changes to the purpose statement are proposed. First, language has been added to reflect that loans may be made for the planning and design of wastewater treatment facilities as well as the construction of these facilities. This is reasonable because it more clearly describes the types of loans that may be applied for under the program. Second, the reference to the Federal Water Pollution Control Act has been shortened to "Act" since this term is defined in Part 6005.

Definitions.

The definitions Part under the Water Pollution Control Revolving Fund Program is proposed to be eliminated because all of the terms with the exception of "Intended use plan" are already defined in Part 6005. The definition of "Intended use plan" has been moved to Part 6005.

Part 6160 Intended use plan.

Subpart 2. Eligibility. The Agency proposes to delete the statement that municipalities seeking refinancing must have been listed on the Municipal Needs List before the beginning of construction instead of on the current list. The U.S. Environmental Protection Agency (EPA) has determined that the Act requires all projects, including refinance projects, to be on the current priority list.

Subpart 3. Requirements for placement on the intended use plan.

Item A.

Subitem (3). Two changes are proposed to the items that must be included with a request for placement on the Intended Use Plan. First, a breakdown of the estimated cash flow needs has been added. This is a reasonable requirement because the information must be included in the Intended Use Plan in order to receive EPA approval. Second, the requirement that the proposed project schedule include a date for the submittal of a complete application has been eliminated. We have found that this is not a critical item and, in some cases, a municipality may be unable to determine a particular date for application submittal until discussions are held with the Agency and the Authority after the Intended Use Plan is adopted.

Item B. The Agency is proposing to identify projects as planning, design, or construction rather than Step 1, Step 2, or Step 3. This is reasonable because the terms are more descriptive than the numbered steps and are consistent with proposed changes in the State Independent Grants Program rules. In addition, the word "project" has been changed to "loan" in this Item. Since all types of projects will eventually become construction projects, this change clarifies that the requirements of Item B apply only to municipalities applying for construction loans.

Part 6165 Applications.

Subpart 1. Form of application. Revisions are proposed to the title and content of this Subpart to reflect the change described above in Part 6160, Subpart 3, Item A, Subitem (3) that a municipality will no longer be required to establish an application submittal date in its project schedule. Language has also been added to indicate that, in addition to the Authority's application forms, the Agency uses certain forms that must be completed to meet various application requirements. It is reasonable to require specific application forms be used to ensure consistency in the type of information provided.

Subpart 2. Planning loans. As described above in Part 6160, Subpart 3, Item B, the Agency is proposing to identify project types as planning, design, or construction rather than Step 1, Step 2, or Step 3 because the terms are more descriptive and are consistent with proposed changes in the State Independent Grants Program rules. In addition, the term "financial assistance" has been changed to "loan" in order to simplify the rules and make them clearer for the reader. While the Act and state statutes do allow other types of assistance under the program, all inquiries and requests concerning the program up to this point have exclusively addressed loans and we are confident that this will continue in the future.

Item B. Language has been added to indicate that the schedule must be on a form provided by the Agency. This is reasonable so that target dates can be established for certain interim steps during the facilities planning process to assist the municipality, its consulting engineer, and Agency staff in workload planning.

Subpart 3. Design loans. See explanation above under Subpart 2.

Item A. Additional language is proposed to identify in the project schedule the major work products that will be required of a municipality that receives a design loan and to indicate that the schedule must be on a form provided by the Agency. This is reasonable because the documents identified are the same as have always been required during the design phase of a project so that, upon completion of the design phase, the municipality is ready to proceed into the construction phase of the project. Requiring that the schedule be on a form provided by the Agency ensures that target dates will be established for certain interim steps during the design phase.

Subpart 4. Construction loans. See explanation above under Subpart 2.

Item A. Language has been deleted because the plan and specification requirements are now described under Part 6055.

Item B. Language has been deleted because the sewer service charge system requirements are now described under Part 6060, Subpart 2.

Item D. Language has been deleted because the sewer use ordinance requirements are now described under Part 6060, Subpart 4.

Item E. The Agency proposes to add a sewer rate ordinance as an Item to be included in a construction loan application. This document establishes the methodology for implementing the sewer service charge system. Although in the past it was not identified by name, a sewer rate ordinance has always been required as part of the sewer service charge system under the Federal Construction Grants Program and the State Independent Grants Program. It remains a requirement under Title VI of the Act for the Water Pollution Control Revolving Fund Program, and for administrative consistency, is also being proposed as a requirement of the State Independent Grants Program under Part

6060, Subpart 3. It is reasonable to add this requirement in Item D because it clarifies for the reader that this is a separate document that will be required at the time of application.

Item F. Language has been revised to indicate that the project schedule must be on a form provided by the Agency to ensure that target dates are established for all significant construction phase milestones from bidding to performance certification.

Item G. Language has been revised as described under Part 6075, Subpart 4, Item C.

Item I. The Agency proposes to add language requiring certain provisions to be included in the engineering contract. These items are all already required under the existing rules. Requiring that these items be included in the engineering contract is reasonable because it will ensure that the consulting engineer's responsibilities in these areas will be clearly understood. In addition, these same required provisions are proposed under Part 6075, Subpart 4, Item A for the State Independent Grants Program. Consistency between the engineering contract requirements for the grants program and the loan program is desirable because projects will often be funded through a combination of both programs.

Subitem (1). The proposed language requires the engineering contract to include a provision for full-time inspection and monthly reports. This is required under the current rules in Part 6165, Subpart 4, Item I as a certification from the municipality.

Subitem (2). The proposed language requires the engineering contract to include a provision for preparing two sets of as-built plans and specifications on microfiche. The current rules require that two sets of

as-built plans and specifications on microfiche be submitted to the Commissioner under Part 2540, Subpart 2, Item C. The proposed language clarifies that it is the consulting engineer's responsibility to prepare these documents.

Subitem (3). The proposed language requires the engineering contract to include a provision for preparing an operation and maintenance manual. The current rules require that an operation and maintenance manual be submitted to the Commissioner under Part 2540, Subpart 1, Item B. The proposed language clarifies that it is the consulting engineer's responsibility to prepare this document.

Subitem (4). The proposed language requires the engineering contract to include a provision for providing certain start-up services during the first year of operation. This is required under the current rules in Part 6165, Subpart 4, Item J as a certification from the municipality.

Item L. The term "loan" has been substituted for "revolving fund program" for clarity.

Item M. The Agency proposes to add a requirement for a legal opinion concerning all sites, easements, and rights-of-way. This has been a long-standing requirement of the state and federal grants programs and was mistakenly left out of the current loan program rules. It is reasonable to require that this legal opinion be included with an application for a construction loan so that loan funds are not committed to a municipality that has not yet secured the necessary land for the project and, as such, is not ready to begin construction.

Part 6170 Application Certification.

Subpart 1. Planning loans. See explanation under Part 6165, Subpart 2.

Subpart 2. Design loans. See explanation under Part 6165, Subpart 2.

Subpart 3. Construction loans. See explanation under Part 6165, Subpart 2.

Part 6175 Change orders.

The Agency proposes new language regarding when change orders are necessary, what must be included in change orders submitted to the Commissioner, and the requirements for approval of change orders. The proposed language will not make any significant change to the current procedures for change orders, but will make the rules for change orders clearer and more complete. Similar language is proposed for change orders under the State Independent Grants Program. See Part 6105, Subparts 1, 2, and 4 for a discussion of the reasonableness of the proposed language.

Part 6185 Construction loan reporting requirements.

The Agency is proposing revisions to the construction loan (Step 3) reporting requirements that will result in the elimination of Subpart 2. One of the Items in Subpart 2 will be moved to what is currently Subpart 1. The remaining two Items in Subpart 2 will be moved to Part 6195.

Item C. The proposed language requires the submittal at least sixty days before completion of construction of evidence that the approved sewer use ordinance and sewer rate ordinance have been enacted by the municipality. This submittal is currently required within 45 days following completion of construction under Subpart 2, Item B. It is reasonable to require that this documentation be submitted at least sixty days before completion of construction so that the ordinances will be in effect when the facility initiates operation.

Item D. The proposed language requires the submittal at least sixty days before completion of construction of a resolution of the municipality's

governing body adopting the approved sewer service charge system with updated cost revisions. This submittal is currently required within 45 days following completion of construction under Subpart 2, Item B. It is reasonable to require that this resolution be submitted at least sixty days before completion of construction to ensure that the sewer service charge system will be in effect when the facility initiates operation.

Part 6190 Completion of construction.

The Agency is proposing this new Part to provide a more complete description of the initiation of operation process which is currently required under Part 2545, Subpart 1, and to formalize the procedures used for the inspections that occur immediately before and after the initiation of operation. This language is also being proposed for the State Independent Grants Program. The reasonableness of this proposal is discussed in Part 6110.

Part 6195 Project performance.

The title of this Part has been changed for consistency with the State Independent Grants Program rules.

Subpart 1. Performance certification.

Item A. The Agency proposes to revise this Item to incorporate the specific performance standards that will apply to loan projects. This is reasonable because it will clarify what the performance standards will be for a project. For consistency between the programs, the same performance standards are proposed for the State Independent Grants Program. The reasonableness of each standard is discussed in Part 6115, Subpart 1, Item A.

Item D. The submittal of the contractor's certification is currently required 45 days following completion of construction. The Agency is proposing to make this requirement part of the performance certification process one year

after initiation of operation for consistency with the State Independent Grants Program.

Item E. The submittal of the as-built plans and specifications is currently required 45 days following completion of construction. The Agency is proposing to make this requirement part of the performance certification process one year after initiation of operation for consistency with the State Independent Grants Program.

Subpart 2. Corrective action report.

Item A.

Subitem (3). Language is proposed to be added that will require the schedule that is submitted with a corrective action report to include dates for meeting the performance certification requirements. Because the scope of the necessary corrective action work will be unique to each project, it is necessary that a schedule be established for each project that covers the full range of tasks from initiation of work to performance certification. The same language is proposed for the corrective action schedule under the State Independent Grants Program. The reasonableness of this requirement is discussed under Part 6115, Subpart 2, Item A, Subitem (3).

Item B. The proposed language requires that a municipality that is unable to initially provide a certification that its project meets the performance standards, must later provide this certification following the completion of the corrective action work. This is not a change from current practice but does serve to clarify this requirement. The reasonableness of this requirement is discussed under Part 6115, Subpart 2, Item B.

CORRECTIVE ACTION GRANTS PROGRAM

Several changes have been made in the corrective action grants program, Parts 7075.6210 through 7075.6255, to reword the rules to match statutory

language. This is most prevalent in the case of switching "independent state grants" to "state independent grants" as it is specified in the statutes. This program is administered in the current rules under Parts 7075.1005 through 7075.1090, which are proposed to be repealed.

Part 6210 Purpose.

The "purpose" explains the basic facts about the corrective action grants program. In this Part, "independent state grants" has been changed to "state independent grants." Changing language to match the statutory language is reasonable.

Part 6215 Definitions.

The proposed rules contain the definition for performance standards. It is reasonable to have a specific definition under this Part for performance standards because, for this Part, the term includes the standards from the federal programs, in addition to the standards set forth under Part 6115. Since the other definitions in the current rules duplicate the definitions under Part 6005, it is reasonable to eliminate them.

Part 6220 Eligibility for participation.

This Part explains the criteria a municipality must meet to be considered an eligible candidate for a corrective action grant award.

Item A. See analysis under Part 6210.

Item C. Currently, the rules limit grant eligible treatment facility failures to those identified by the Agency within the one-year performance certification period established by federal regulations. Since funding for the federal Construction Grants Program is ending, it is reasonable to add the state rule reference (Part 6110, Subpart 2, Item B) for the one-year performance certification to this Item to maintain this limitation. It is also

reasonable to keep the reference to the federal regulations in the rules until all federally funded projects have completed in the one-year performance certification periods.

Item D. The current rules exclude federally-funded treatment facilities that have a performance standard failure caused by an innovative or alternative technology component. Since these projects are eligible for corrective funds through the federal Construction Grants Program, this exclusion was added to the rules to eliminate the projects from receiving double compensation. It is reasonable to remove this exclusion when the federal grants program ends.

Item E. Relettered Item E in the current rules to Item D in the proposed rules as a result of eliminating Item D.

Part 6225 Eligible and ineligible costs.

This Part identifies the cost items that are eligible to be paid for with corrective action grant funds.

Subpart 3. Administrative, engineering, and legal costs. This Subpart specifies the maximum grant sum to be awarded for administrative, engineering, and legal costs. The current rules allow up to 25 percent of the grant eligible construction and land costs for these expenses. The proposed rules for the State Independent Grants Program, Part 6070, Subpart 2, Item H, contain a maximum grant sum for similar costs that is based solely on a percentage of grant eligible construction costs. In response to this proposal, eligible land costs have been eliminated from the maximum grant sum calculation under this Item to create consistency in the rules. It is reasonable to calculate the maximum grant sum for the same type of costs under different grant programs using the same calculation basis.

Part 6230 Requirements prior to application.

This Part describes the items that must be reviewed and approved by the Commissioner before an eligible municipality is allowed to submit an application to the Authority for a corrective action grant.

Item C. This Item requires that an "assurance," which summarizes and guarantees the actions that have been taken by the municipality to complete the needed corrective work, be submitted prior to applying for a grant. The word "assurance" has been changed in the proposed rules to "written affirmation." It is reasonable to implement this word change because it avoids confusion with the assurances that must be completed by the municipality at the time the application is completed. Assurances are a part of the application for all the assistance programs.

Part 6235 Application.

This Part explains the requirements of the corrective action grant application.

Subpart 1. Agency notification. This Subpart restricts a municipality from submitting an application to the Authority prior to receiving notification from the Commissioner. This restriction was added to the proposed rules to clarify when a corrective action grant may be submitted to the Authority and to eliminate the confusion created by having two agencies administering the same program. Since the municipalities may not submit an application to the Authority until the Agency has approved the items required under Part 6230, it is reasonable for the Commissioner to notify the municipality when this approval has been acquired and the application can be submitted.

Subpart 2. Application requirements. This Subpart identifies all the application components. The words "...and submit the following information for

the Commissioner's review and approval" have been added to the proposed rules to stipulate that the Commissioner will review and approve specified components of the application. This stipulation is reasonable because the Commissioner must have information to responsibly make grant award determinations and to meet the statutory obligation under Minn. Stat. § 116.16, subd. 9, to certify to the Authority those applications that meet statutory and rule criteria. An itemized list of application documents has been added to this Part.

Item A. A report on the current status of negotiations or litigation is required with the application form supplied by the Authority. This report is used by Agency staff to determine the current efforts of the municipality to fulfill the statutory obligation under Minn. Stat. § 116.181, subd. 4 to recover the costs of the corrective work from the responsible parties. Since the Agency will continue to monitor these recovery activities throughout the course of the project, it is reasonable to require this report as a monitoring reference. This requirement is in the current rules.

Item B. A plan for recovering the costs of the proposed corrective action from the responsible parties is also required with the application form. It is reasonable to require this plan because it forces the municipality to formulate a strategy for fulfilling its statutory recovery-obligation. This plan also provides Agency staff with a monitoring device. This requirement is in the current rules.

Items C through H. See explanation under Part 6075.

Subpart 3. Three copies. The requirement for three copies of the corrective action grant application has been added to the rules. It is reasonable to require three applications because one copy is needed for the Authority, one is needed for the Agency project manager and one copy is needed for the Agency staff engineer for review purposes.

Part 6240 Certification of application for award.

The process used to certify applications for award to the Authority is described in this Part.

Subpart 3. Amendments to award. This language has been revised and incorporated into a separate Part to clarify when an amendment can be requested and by how much. See analysis under Part 6242.

Subpart 5. Report to agency board. The requirement for the Commissioner to report to the Agency Board within 60 days after a corrective action grant has been certified was deleted from the rules. This notification requirement was part of the emergency rules when the program was competitive and the ranking criteria was based on some very subjective data. Since the Agency now accepts applications as the failures occur and because the certification is based on the availability of funds and a standardized method of determining the grant amount, the ranking and grant amount is no longer a controversial issue. Because of this method of certification, it is reasonable to delete the Board notification requirement.

Part 6242 Grant amendments.

This Part specifies what constitutes allowable amendments for this program.

Subpart 1. Maximum grant amount. This Subpart restates Minn. Stat. § 116.181, subd. 3, which allows for a maximum corrective action grant amount of $500,000. It is reasonable to restate this maximum to clarify it to both administrative staff and grantees. This clarification will prevent calculation errors in grant amounts and confusion over potential amendment increases.

Subpart 2. Amendments based on completed procurement. Current language included under this Subpart allows for amendments that are based on completed

procurement and the availability of funds. Language has been proposed to specify that a written request must be submitted for an amendment when construction contracts differ from construction costs estimated in the application. It is reasonable to clarify when the Agency will consider supporting a grant amendment, to set a consistent time frame for determining costs used to calculate an amendment amount, and to explain how such a request can be initiated by a grantee.

Subpart 3. Final amendment. This Subpart has been proposed to allow a final amendment to a corrective action grant that is based on eligible construction costs and approved change orders and is dependent upon availability of funds. It is reasonable to clarify when the Agency will consider supporting a grant amendment, to set a consistent method of determining costs used to calculate an amendment amount, and to explain how such a request can be initiated by a grantee.

Allowing a final increase amendment is unique to the corrective action grants program. Corrective projects have financial, legal, and technical problems. Experience with corrective action projects has shown that many unexpected costs and cost increases result. Since corrective action grants are available only to small municipalities with populations under 1,500, most with limited financial resources, it is reasonable to provide a final amendment up to the maximum statutorily allowable amount of $500,000 to ensure the proper and responsive correction is achieved. This amendment will also lessen the potential of the municipality having to endure a financial hardship as a result of the corrective work. The grant funds are to be paid back to the state when the municipality recovers the funds from the parties responsible for causing the treatment facility failure.

This Subpart also allows for the amendment of the grant amount for administrative, engineering, and legal costs. It is reasonable to allow such an increase because the basis for this amount, the grant eligible construction costs, is eligible for amendment. However, use of the allowance increase is limited by this Subpart to costs for inspection and engineering services specified in the approved change orders. The original allowance, as specified under Part 6225, Subpart 3, pays for administrative, engineering and legal costs. Since change orders will not change the amount of legal or administrative work that is needed to be done for a project, it is reasonable to limit the spending of the allowance increase to inspection and engineering costs.

Part 6245 Change orders.

This Part has been changed to reflect the change order requirements proposed under the State Independent Grants Program. It is reasonable for the Agency to have consistent requirements. See analysis of Part 6105 for the reasonableness of these Items.

Part 6250 Payments.

This Part specifies the requirements and process associated with corrective action grant payments.

Subpart 1. Request for payments. The requirement for submitting a summary of incurred costs has been added to the proposed rules. It is reasonable to require this because Agency staff needs a summary of incurred costs to evaluate payment requests from grantees and to determine an amount to certify to the Authority for payment.

Subpart 2. Payment conditions. This Subpart specifies the conditions for the Commissioner to request that the Authority withhold grant payments.

Item A. Under this Item, a grantee is required to submit quarterly summaries on the actions taken to recover the costs of the corrective work. Municipalities that receive corrective action grants must seek recovery from any person that is responsible for the failure of the facility to perform, according to Minn. Stat. § 116.181, subd. 4. Since Agency staff must evaluate municipal activities to determine whether the grantee has fulfilled its statutory obligation, it is reasonable to require activity summaries throughout the corrective action project.

Item B. Under this Item, a grantee is required to submit documents that support claims of incurred administration, legal, and engineering costs. Since Agency staff has the responsibility to ensure that costs requested for payment with state funds have been incurred and have been part of the corrective action grant project, it is reasonable to request documentation from the grantee that assists the project manager in making this determination.

Part 6255 Recovery of grant funds.

This Part explains the responsibilities of the grantee and the involvement of the state in the recovery of the corrective action costs.

Subparts 2 and 3. Recovery before corrective action grant award and Recovery after corrective action grant award. The numbers of these Subparts have been changed to correspond to the chronological order of the grant process. The use of "before and after the corrective action is taken" in the current rules allowed for the misinterpretation that the construction period was excluded from the recovery of grant fund rules. The revised wording "before and after corrective action grant award" has been proposed to clarify that all time periods in the grant process are included under this Part.

These Subparts specify how the grant amount is adjusted to include money recovered by the grantee from responsible parties. Since Minnesota Statutes

section 116.181, Subdivision 4 requires repayment of the grant when funds are recovered, it is reasonable to specify how and when the award will be adjusted in such cases.

Subpart 2. (Renumbered from Subpart 3.) Recovery before corrective action grant award. Current rules specify how the grant amount will be determined if a grantee recovers funds before the corrective action is "taken." "Taken" has been changed to "awarded," see the paragraph after the heading "Subparts 2 and 3." The current rules state that the municipality shall be allowed to keep the entire payment from the responsible parties. This wording is misleading because it can be falsely interpreted to mean the municipality may keep the entire amount of the recovered funds and the entire corrective action grant. The Agency's intent for this Subpart, as documented in the October 25, 1988 Statement of Need and Reasonableness for the proposed Corrective Action Grant Program rules, is to have the municipality first use the recovered funds and use the grant funds as a supplement to the recovered amount. To clarify this intent, language has been proposed to create a method for calculating corrective action grant awards that addresses the recovered amount. Since the municipality may not receive double compensation for the correction, it is reasonable to subtract the amount recovered for grant eligible costs from the total grant eligible costs, as determined under Part 6225, to calculate the award amount that will be certified to the Authority.

Subpart 3. (Renumbered from Subpart 2.) Recovery after corrective action grant award. The current rules state that after money is recovered, the grantee shall reimburse the state proportionally to the state's monetary participation in the project. The existing language is vague and more complicated than necessary. The proposed language provides a more specific

method for determining how the repayment amount will be calculated and specifies that the grant will be amended to reflect the recovered amount. Under the proposed rules, a grantee that received grant funds in excess of the amended grant amount is required to pay the excess back to the state. Staff concluded that determining the amount to be repaid by the grantee will be easier through this amendment process than trying to determine an amount based on the proportionality of all participating entities. It is reasonable to make this change because it clarifies the repayment process without changing the amount of money to be repaid by the grantee. It is also reasonable to remove the sentence that states that the repayment amount shall not exceed the grant amount because the potential for such excessive repayment is eliminated when the repayment amount is calculated per the proposed method.

CAPITAL COST COMPONENT GRANT PROGRAM.

Minor changes have been made in the Capital Cost Component Grant Program. Parts 7075.1110 through 7075.1160 have been renumbered, and the rules for this program are now found in 7075.6260 through 7075.6320. It is reasonable to renumber these rules so that this program, a set-aside of the State Independent Grants Program, follows the new rules for the administration of the State Independent Grants Program which are referenced in these parts. In addition, throughout the rules for the Capital Cost Component Grant Program, the references to the State Independent Grants Program rules have been changed to correspond to the numbering of the new rules. Other changes in the rules governing the Capital Cost Component Grant Program are described below.

Part 6265 Definitions.

Subpart 7. "Plans and specifications". Plans and specifications has been added as a definition because of the new Part 6295 on plans and specifications. See analysis of Part 6005, Subpart 29 for reasonableness of the definition.

Part 6275 Grant applications.

Subpart 2. Application requirements.

Item B.

Subitem (3). New language has been added to require that the municipality should provide the required information (existing flows and loadings data) on a form provided by the Agency. It is reasonable to require that the needed information be on a specific form to assure that the information provided will be enough to acquaint the Agency review engineer with the existing facility.

Subitem (3). The same change that was made in Subitem (2) was made to Subitem (3). The municipality will be required to submit data on its estimated future flows and loadings on a form provided by the Agency. It is reasonable to require this information on a specific form to assure that the information provided will be enough to acquaint the Agency review engineer with the proposed facility.

Part 6295 Plans and specifications.

This Part is new. It establishes the items that must be included in the plans and specifications submitted to the Agency in accordance with the requirements of Part 6300. It is reasonable to include a Part that outlines the requirements of a plans and specifications submittal so that adequate information in included in the plans and specifications to expedite the review and approval process.

Subpart 1. In general. This Subpart establishes that the plans and specifications described in this Part must be submitted in accordance with the requirements of Part 6300. This is reasonable because Part 6300 establishes the conditions of grant award. Submittal of plans and specifications is a condition of grant award.

Subpart 2. Contents. This Subpart establishes what must be included in the plans and specifications in order for them to be considered complete upon submittal.

Item A. This Item states that drawings and specifications must be signed by a professional engineer registered in Minnesota. According to Minn. Stat. § 326.12, subd. 3, drawings and specifications for public works projects must be signed by a professional engineer registered in Minnesota.

Item B. The plans and specifications must include a summary of design parameters for the treatment units. It is reasonable to require that the plans and specifications include a summary of the design parameters for the treatment units so that the Agency engineer receives the necessary information to properly review the adequacy of the treatment units to provide adequate treatment. See Part 6065, Item B for further discussion of this Item.

Item C. The plans and specifications must include a summary of flow conditions for various weather situations on a form provided by the Agency. It is reasonable to require that this information be submitted on a specific form to ensure that the Agency engineer receives the necessary information to properly review the adequacy of the design for the expected flows. Further discussion of this requirement is further described in Part 6065, Item C.

Item D. The plans and specifications must include a hydraulic profile of the flow through the treatment system. It is reasonable to require that the plans and specifications include a hydraulic profile of the flow so that the Agency engineer can review the adequacy of the design on the basis of the hydraulic characteristics. See Part 6065, Item D for further discussion of this Item.

Item E. The plans and specifications must include a plan for how the municipality intends to treat its wastewater during construction. See analysis of Part 6050, Subpart 2, Item F, Subitem (8).

Part 6300 Grant conditions.

Subpart 2. General conditions.

Item A. This Item changes the deadline for submittal of plans and specifications for the treatment facility from 90 days after award of the grant to 365 days after the award. The reason for this change is that 90 days has proven to be insufficient time for municipalities to have plans and specifications prepared. Two municipalities have been awarded Capital Cost Component grants to date; neither was able to meet this deadline. The reason that 365 days was chosen was to ensure that flow data for all weather conditions described in Part 6295, Subpart 2, Item C can be considered in the design.

Part 6310 Grant payment.

Subpart 1. Request for payment. This language has been changed to reflect the change in payment responsibilities from the Agency to the Authority under Minn. Stat. § 116.16, subd. 11.

INDIVIDUAL ON-SITE WASTEWATER TREATMENT SYSTEMS GRANTS PROGRAM

Minor changes have been made in the Individual On-Site Wastewater Treatment Systems Grants Program. Parts 7075.1400 through 7075.1530 have been renumbered, and the rules for this program are now found in 7075.6325 through 7075.6390. It is reasonable to renumber these rules so that this program, a set-aside of the State Independent Grants Program, follows the new rules for the administration of the State Independent Grants Program, which are referenced in these parts. In addition, throughout the rules for the Individual On-Site

Wastewater Treatment Systems Grants Program, the references to the existing rules have been changed to correspond to the numbering of the new rules. Other changes in the rules governing the Individual On-site Wastewater Treatment Systems Grants Program are described below.

Part 6330 Definitions.

Subpart 13. Maintenance plan. Maintenance plan is defined as a plan developed and administered by a municipality that demonstrates how the maintenance requirements of chapter 7080, Individual Sewage Treatment Systems Standards, will be implemented and enforced. It is reasonable to define this term because it is used in the body of the rule and has a definition that is specific to this program. The existing rules of this program require municipalities to adopt and enforce the provisions of Minn. Rules ch. 7080 as a municipal ordinance in order to receive funding. It is therefore reasonable to define a maintenance plan as one incorporating the maintenance requirements of that rule.

Part 6335 Eligibility.

Subpart 1. Municipal eligibility.

Item E. The Agency proposes to delete this Item which establishes that only municipalities with a median household income less than the state median household income are eligible for Individual On-Site Wastewater Treatment System grants. Part 6365 of the rules establishes that the median household income for the planning area of the project will be used to determine the funding priority of projects if there are requests for more funds than are available for grants. The grant applications will be ranked for funding priority with the lowest median household income receiving the highest priority. Deleting this Item will not alter the priority of the grant awards,

but will allow municipalities with incomes greater than the state median to receive grants if sufficient funds are available. It is reasonable to delete this Item so that, if sufficient funds are available, pollution abatement projects for all interested municipalities can be accomplished.

Part 6340 Wastewater treatment plan.

Subpart 2. Planning area. This Subpart defines the planning area as the entire geographic area in the municipality's jurisdiction unless the municipality submits an alternative proposal. The Agency proposes to change the time at which the municipality must submit this alternative proposal from "at the time of application" to "prior to application." The planning area defines the scope of the project. If a municipality submits an alternative proposal for a planning area at the time of application, and it is rejected, the application must also be rejected because the scope of the project would not have been defined. Therefore, it is reasonable to ensure that the municipality and the Agency agree on the planning area prior to application. The Agency also proposes to add a statement that separate dwellings that do not form a contiguous area are not considered a planning area. This is a clarification of the definition of the planning area, not a new requirement. It is reasonable that the planning area be a contiguous area because the purpose of the program is to solve environmental problems caused in an area by replacing failing on-site systems.

Subpart 3. Plan contents.

Item A. This Item requires that the Wastewater Treatment Plan must include a survey prepared by an inspector that identifies the failed systems. The Agency proposes to change this to require that the plan identify all systems in the planning area as failed or in compliance with chapter 7080.

This is reasonable because the general requirements of the plan under Subpart 1 establish that the wastewater treatment needs of the community must be identified and long term solutions proposed. It is necessary to have an inventory of the individual treatment systems in order to prepare this plan.

Item B. This Item describes the necessary site evaluations which must be conducted and included in the wastewater treatment plan. The Agency proposes to add language which identifies the specific tests that must be performed in the site evaluation: soil borings, and percolation tests. An evaluator must be aware of the types and characteristics of the soils on the site in order to properly evaluate whether the soils are suitable for an on-site treatment system. Soil borings provide this information, therefore, it is reasonable to require them. Percolation tests provide information on the rate at which water moves through the soil. This information is necessary to determine the size of a drainfield. In order to evaluate whether a site is suitable for the construction of an individual on-site treatment system, the size of the system must be considered. Therefore it is reasonable to require percolation tests.

The Agency proposes to change the language from "to determine" to "and a determination" to make the rule more readable. In addition, we propose to add "identified in item A" and "the failed" to make it clear which systems the requirements in this Item addresses.

Item C. This Item changes the word "municipality" to "planning area" to allow for the possibility that a planning area may be smaller than the municipality applying for the grant. The wastewater treatment plan need only provide information on the area that has been designated as the planning area.

This Item also adds a requirement to the analysis of the planning area to include the sizing and the location of the proposed systems. It is reasonable

to require this information in conjunction with the site evaluations to make sure that the site can accommodate the size of system being proposed. For example, a site may be acceptable for the installation of a system sized to serve two people. But that site may not be adequate for a system sized for a family of six. The location is important because soil conditions can change from one corner of a property lot to another and it is important for the Agency to be assured that the proposed systems will be placed in a suitable spot.

This Item changes "a site evaluator or site evaluators" to "the site evaluations prepared under item B". This was changed so that the site evaluations that are already required under this Part will be the basis for deciding where to place the proposed new systems.

Part 6350 Application.

Subpart 1. Notice of taking applications. This Subpart is changed to extend the period of time that municipalities have to submit an application for a grant under this program. The Agency proposes to change the submittal period from 90 days to 120 days. It is reasonable to make this change because the first two grant application cycles have shown 90 days to be an inadequate amount of time to complete the application. The required site evaluations have the potential to take a long time to complete and this is critical information needed to meet other requirements of the application.

Subpart 2. Application requirements.

Item E. The language in this Item has been changed to add planning areas to municipalities in the option for an alternative median household income. It is reasonable to add planning area to this Item because the priority ranking for grant award in this program is based on median household income. If a planning area is not the municipality, it is unlikely that there

will be an official record of the median household income for that area. There should be an alternate way to provide this data for a planning area than through an official census.

Part 6380 Payments.

Subpart 1. Request for payments. This language has been changed to reflect the change is payment responsibilities from the Agency to the Authority under Minn. Stat. § 116.16, subd. 11.

Part 6360 Amount of the grant award.

Subpart 1. Grant amount. The Agency proposes to change the maximum grant amount from "$2,500 per trench or bed system and $3,750 per mound system" to "$2,500 per household for a trench or bed system and $3,750 per household for a mound system." Minn. Stat. § 116.16, subd. 3c(b) allows grant funds to be used for a system that serves one or two dwellings. Systems serving more than one household have a greater capacity than those serving only one. These systems are larger and cost more; therefore, it is reasonable to increase the maximum grant amount for reimbursement of multiple dwelling systems.

Part 6365 Priority ranking.

This Part establishes that the priority ranking of applicants for grants under the Individual On-Site Treatment Systems Grants Program is based on the median household income of the municipality or planning area if different from the municipality. The Agency proposes to amend this Part by including the process by which the median household income for planning areas which are not included in the decennial census will be computed. The current rules include this language under Part 1420 (6335 in the proposed rules), Subpart 1, Item E. Item E was deleted and the process for computing the median household income has been moved to this Part. It is reasonable to include this process in this Part because the priority system is based on this information.

Part 6395 Disputes.

This Part allows for a municipality to request review of an action made by Agency staff with which it disagrees. The request for review must be submitted in writing within 45 days of the date of notification of a final decision. It is reasonable to provide a disputes opportunity so municipalities have a recourse if a decision is made that affects the progress of the project. It is reasonable to expect a municipality to request review of the decision within 45 days because 45 days is enough time to review the decision, decide whether to appeal and write the letter of request. Forty-five days allows enough time for a city council meeting if one is necessary. Allowing more time to request a review means that a potential problem with the project will remain unresolved for an unreasonable period of time and could adversely affect the progress of the project in the future.

Part 6400 Procedural rules and appeals.

This Part states that requests for hearings, appeals or other procedural matters is governed by specific rules and statutes. This language is the same as in the existing rules.

Part 6405 Variances.

This Part states that variances to any part of the rules may be requested and will be governed by applicable statutes and rules. This language is the same as in the existing rules.

V. SMALL BUSINESS CONSIDERATIONS IN RULEMAKING

Minn. Stat. § 14.115, subd. 2 (1988) requires the Agency, when proposing rules that may affect small businesses, to consider the following methods for reducing the impact on small business:

(a) the establishment of less stringent compliance or reporting requirements for small business;
(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;
(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 (1988). The way in which they may be affected is that the Construction Grants Program offers a great deal of opportunity for small business in the planning, design, and construction of a wastewater treatment facility. Without the Grants Program, many of the facilities being built would have to be indefinitely delayed because of the immense cost to the local units of government. The proposed rules do not impose any particular or unreasonable requirements on small businesses.

VI. CONSIDERATION OF ECONOMIC FACTORS

In exercising its powers, the Agency is required by Minn. Stat. § 116.07, subd. 6 (1988) 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, commercial 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 for the administration of the state independent grants program and the revolving loan program, the Agency has given due consideration to the possible economic impacts on the municipalities that will

receive grants and loans. While some expense and effort is involved in complying with these rules, the benefits are the receipt of substantial financial, technical, and administrative assistance in planning and constructing wastewater treatment facilities and, ultimately, improved water quality for Minnesota. Municipalities receiving financial assistance will be able to reduce local capital costs for construction of their wastewater treatment facilities.

VII. OTHER FACTORS

Pursuant to Minn. Stat. § 14.11, subd. 1 (1988), 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 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. As explained earlier, these rules will help to defray local expenses of meeting the requirements of their NPDES/SDS permits.

Minn. Stat. § 17.83 (1988) 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 Minn. Rules pts 7075.6000 through 7075.6405 are both needed and reasonable.

Dated: December 8, 1989

Barbara Lindsey Sims
for Gerald L. Willet
Commissioner