

In the Matter of the  
Proposed Rule Amendments  
Governing the Administration  
of the Clean Water Partnership  
Program, Minn. Rules Ch. 7076

STATEMENT OF NEED AND  
REASONABLENESS  
March 15, 1991

## I. INTRODUCTION

The subject of this proceeding is the amendment of the rules of the Minnesota Pollution Control Agency (hereinafter "Agency") that govern the Clean Water Partnership Program (hereinafter "CWPP"). The CWPP is established under Minn. Stat. §§ 103F.701 to 103F.761 (recodified from 115.091 to 115.103 in 1990). Minn. Rules ch. 7076 are for the administration of the CWPP.

The goal of the CWPP is to protect state surface and ground waters from nonpoint source pollution, which is caused by land management and land use activities that contribute to water degradation as a result of runoff, seepage or percolation. The program provides financial and technical assistance to local governments to help them develop and implement projects that will protect or restore bodies of water in their areas. The program offers grants that require local governments to match the funds received from the Agency.

Proposed amendments are being made to provide program administration that better serve local governments conducting Clean Water Partnership projects, to more efficiently use staff time, to provide more state-wide input into the project selection process, and to clarify administrative procedures.

### Background:

The CWPP was passed by the Legislature in 1987. The Agency Board adopted permanent rules to implement the program on June 28, 1988, and approved amendments required by the Attorney General on August 23, 1988. The program has been in operation nearly three years. During this time, 30 projects have collectively been awarded \$2,632,000 in financial assistance.

Amendments are being proposed based on information gathered during the first years of program administration and the comments and opinions received by the Agency during a period of solicitation for outside information that was noticed in the State Register on December 17, 1990, (15 S.R. 1409) and ended on January 14, 1991. Two oral and eight written comments were received from local governments and consultants who are currently involved in funded Clean Water Partnership projects or who had unsuccessfully submitted an application.

This document contains the Agency's affirmative presentation of facts on the need for and the reasonableness of the proposed amendments. Section II identifies the Agency's statutory authority for rulemaking. Section III describes the need for amendments to rules. Section IV describes the reasonableness of the proposed amendments. Section V describes the Agency's consideration of small businesses in this rulemaking. Section VI describes the Agency's consideration of economic factors in this rulemaking.

## II. STATEMENT OF AGENCY'S STATUTORY AUTHORITY

The Agency's statutory authority to adopt the rules is set forth in Minn. Stat. § 103F.745 (1990), which provides:

The Agency shall adopt rules necessary to implement sections 103F.701 to 103F.761 (Clean Water Partnership).

The rules shall contain at a minimum:

- (1) procedures to be followed by local units of government in applying for technical or financial assistance or both;
- (2) conditions for the administration of assistance;
- (3) procedures for the development, evaluation, and implementation of best management practices;
- (4) requirements for a diagnostic study and implementation plan;
- (5) criteria for the evaluation and approval of a diagnostic study and implementation plan;
- (6) criteria for the evaluation of best management practices;

- (7) criteria for the ranking of projects in order of priority for assistance;
- (8) criteria for defining and evaluating eligible costs and cost-sharing by local units of government applying for assistance; and
- (9) other matters as the agency and the commissioner find necessary for the proper administration of sections 103F.701 to 103F.761, including any rules determined by the commissioner to be necessary for the implementation of federal programs to control nonpoint source water pollution.

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

### III. STATEMENT OF NEED

Minn. Stat. ch. 14 (1990) requires the Agency to make an affirmative presentation of facts establishing the need for and reasonableness of the rules as proposed. In general terms, this means that the Agency must set forth the reasons for its proposal, and the reasons must not be arbitrary or capricious. However, to the extent that need and reasonableness are separate, need has come to mean that a problem exists which requires administrative attention, and reasonableness has come to mean that the solution proposed by the Agency is appropriate. The need for the rules amendments is discussed below.

The three major reasons for the proposed amendments are the need to modify the grant payment process to prevent financial hardship for project sponsors, the need to further incorporate in the project selection process the water quality resources and concerns of the organizations represented on the project coordination team, and the need to define the criteria used to rank grant applications more clearly.

Proposed amendments will change the grant payment process from a reimbursement process to a prepayment process. Clean Water Partnership projects are managed by a representative of the sponsoring local government. The existing payment process sends grant funds to the project sponsor after costs have been incurred and documented, the project manager has requested reimbursement from the Agency and Agency staff has reviewed the payment request and associated costs. This process creates a time lag between when payment is due from the sponsoring local government and grant funds are received by the sponsor. Comments received during the December 17, 1990 solicitation period described financial hardships caused by such funding delays. The proposed changes would provide 25, 35 and 30 percent of awarded grant funds to the project sponsor upon the completion of specific work products, but before associated project activities would be started. The proposed changes are needed to allow the Agency to provide grant funds to the project managers before project costs are incurred and to eliminate the financial hardship associated with the existing reimbursement grant-payment system.

Proposed amendments will divide application evaluation criteria and ranking points equally between the Agency and the Project Coordination team. The Project Coordination Team contains representatives from other state, federal and private organizations concerned with water quality issues. Membership is determined by Minn. Stat. § 103F.761. A grant application and the corresponding proposed water protection or restoration project is awarded priority points based on criteria established in the rules. The higher the point total for an application the higher its priority to receive grant funds.

Under the existing system, the Project Coordination Team's application rating is based on 10 of the 70 potential points. The Agency's rating is based on the remaining 60 points. The Project Coordination Team has valuable experience and resources concerning resource management, and water quality projects and issues. The proposed changes are needed to better utilize these resources and expertise when funding decisions are made.

Proposed amendments will provide new criteria for the Agency and the Project Coordination Team to use to evaluate proposed Clean Water Partnership projects and to rank grant applications for funding. Existing criteria are unclear to potential applicants, who rely on the criteria when developing a grant application. Comments received during the solicitation period for information state that the existing criteria provide little insight into how an application or proposed project would be judged and requested that the criteria be clarified. The proposed changes are needed to respond to these comments and to provide criteria that are more specific, easier to interpret, and provide a better basis for uniform evaluation.

Additional amendments are needed to revise the administrative process for the CWPP based on experience gained during the first years of administration to make the process more efficient and effective and to provide the Agency with information that is needed to assess a proposed project and its progress during implementation more accurately.

#### IV. STATEMENT OF REASONABLENESS

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

A. Reasonableness of the Rules as a Whole:

The proposed rules are reasonable because they do not impose any additional burden onto program participants, but instead serve to improve the program for them by making the rules easier to understand and by solving existing problems, such as delayed payments, delayed grant awards and inadequate time allowances for project completion. The proposed rules that change the Agency's administration are also reasonable because they improve the efficiency and effectiveness of the CWPP.

B. Reasonableness of Individual Rules:

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

Part 7076.0110 Definitions

Subpart 5. Land occupier.

The Agency proposes to delete this subpart and the definition "land occupier." This is reasonable because the term "land occupier" is not used anywhere else in the chapter.

Subpart 8. Local water plan.

The Agency proposes to delete language that describes an alternative to the plans described under Minn. Stat. chs. 110B and 112 and section 473.878 and proposes to add language that requires the local water plans to be approved by the Board of Water and Soil Resources. These changes are reasonable because, by statute, a local unit of government must have developed a local water plan that meets the requirements under the above cited statutes by July 1, 1991 to be eligible to apply for CWPP. Since the Board of Water and Soil Resources (BWSR) is responsible for reviewing and approving these plans, it is also reasonable to only accept the plans approved by the BWSR for the Clean Water Partnership Program.

Subpart 11. Person.

The Agency proposed to delete this subpart and the definition "person." This proposal is reasonable because the term "person" is not used anywhere else in the chapter.

Subpart 13. Project Area.

The Agency proposes to change the word "developed" to the word "prepared" because "prepared" is a better descriptive word for the activities conducted under the proposed resource investigation grant for the study and the plan. This is reasonable because it improves the definition.

Subpart 14. Project continuation grant amendment.

The Agency proposes to add the words "or partially funded" to the definition. The words are needed to clarify that the costs of project activities that were started under the project implementation grant contract, but were not fully paid for under that contract, are eligible to receive grant funds under the amendment. This change is reasonable because it improves the definition by clarifying which costs are eligible under the continuation grant amendment.

Subpart 16. Project Development.

The Agency proposes to change the "project development" phase of the project to "resource investigation." Due to this proposed name change, the Agency proposes to delete this subpart. See subpart 20a for a discussion of reasonableness.

Subpart 17. Project development grant.

The Agency proposes to change the name of the "project development grant" to the "resource investigation grant." Due to this proposed name change, the Agency proposes to delete this subpart. See subpart 20a for a discussion of reasonableness.

Subpart 20a. Resource investigation.

The existing rules have two project phases, project development and project implementation, and two corresponding grants. The Agency has received complaints from rule readers and program participants that these names are too confusing because of their visual and auditory similarities. The Agency proposes to change "project development" to "resource investigation" in response to these complaints. The requirements for resource investigation will remain as they were under the title of "project development." The name change is reasonable because the proposed name accurately reflects the goal of the project--to investigate the water quality resource to determine the best means of protection or recovery--and the change makes the rules easier for readers and program participants to comprehend. This wording change is proposed for the entire chapter.

Subpart 20b. Resource investigation grant.

See subpart 20a for a discussion of terminology change and correlating reasonableness.

Subpart 24. Work plan.

The Agency proposes to add a new definition for "work plan." The definition is needed to define the work plan proposed to be added under part 7076.0230. The proposal is reasonable because it provides clarification of a proposed program requirement.

Part 7076.0120 Available Assistance.

Subpart 1. Financial assistance.

The Agency proposes changing the words "project development" to "resource investigation." See Part 7076.0110, subpart 20a for a discussion of the reasonableness.

Part 7076.0130 Eligibility Criteria.

Subpart 1. Eligible applicants.

The Agency proposes to add a new application eligibility requirement under item D. This requirement specifies that "the water of concern is addressed in an approved local water plan." This proposal is reasonable because it corresponds with Minn. Stat. § 103F.731, subd. 2, paragraph a, clause (3), which limits eligibility to receive assistance after July 1, 1991, to proposed projects that are part of or responsive to a local water plan. The requirement for local water planning is currently part of the application requirements under part 7076.0150, subparts 2, item H. Since the July 1, 1991, deadline will pass by the time the rule is adopted, the Agency proposes deleting the application language and making the plan a requirement under this part.

Subpart 3. Ineligible costs.

The Agency proposes to add the clarification that eligible costs become ineligible if the related project activities are started before the date the grant contract has been signed by the commissioner of the Finance Department. State policies require the commissioner of Finance to be the last to sign such an agreement. The grant contract identifies the conditions that must be met before grant funds can be paid for eligible project costs. It is reasonable to have all parties agree to the grant payment conditions before costs are incurred. This signature requirement is reasonable because it ensures that conditions of construction, management, environmental testing, etc. that are specified in the contract have been met by the project sponsor. Agency review and site inspections do not begin prior to the signing of the grant contract

and, therefore, staff could not ensure that payment conditions have been met for work done prior to this date. This restriction also helps define eligible costs, which is an Agency requirement under Minn. Stat. § 103F.745.

Part 7076.0140 Notice of grant availability.

Subpart 1. Notice.

The Agency proposes changing the words "project development" to "resource investigation." See Part 7076.0110, subpart 20a for a discussion of reasonableness.

Subpart 2. Notification list.

The Agency proposes to change the list for notifying local governments interested in learning when grant applications will be accepted by the Agency from the list kept by the Public Information Office Director to the list kept by the Water Quality Division Director. The list kept by the Public Information Office is too general for the notification purposes of this program. This proposal is reasonable because the list kept by the Water Quality Division will only contain names of representatives from local governments that desire application and funding information and will eliminate wasted postage expenses. Mailing information for local governments interested in the CWPP that is currently on the Public Information Office list will be transferred to the Water Quality Division list.

Part 7076.0150 Grant application.

Subpart 2. Project development.

The Agency proposes to change the words "project development" to the words "resource investigation." See part 7076.0110, subpart 20a for a discussion of the reasonableness.

Additional changes are proposed for items A, C, D, G, H and I under this subpart.

Item A requires a resolution from the local government sponsoring the project, which authorizes filing the application and designates an authorized official. The Agency proposes to eliminate the requirements for the resolution that would authorize the official to execute the grant contract and other related documents. This proposal is reasonable because it simplifies the resolution and the authorization proposed to be eliminated is not needed with the grant application.

Under item C, the Agency proposes to add "local units of government" to the list of organizations that must be identified on the grant application as being active in the project. This is reasonable because it completes the list of potential project supporters and clarifies what information must be included on the application.

Under item D, the Agency proposes to change the application requirement from "resolutions" of sponsorship to "letters of support." Program experience has proven that the formal resolutions, which require an official meeting for approval and signatures, delay the completion of grant applications. The proposed letters would still summarize the organization's level of planned financial participation and involvement, but would be signed by a representative from the organization that is responsible for endorsing proposals to use financial, technical and staff resources. This change is reasonable because it eliminates the potential for a grant application to be incomplete by the end of the specified application period and thus eliminates delaying application selection and grant awards. The formal resolutions are proposed to be required after a grant has been awarded, under part 7076.0230, subpart 1, item A(9).

The Agency also proposes to add the words "agency and organization" for the same reasons as explained under item C; to add the words "which identifies their role" to make the rule language uniform with that under subpart 3, item D; and to change "identification of" to "identifies" to maintain proper grammatical tense. These proposals are reasonable because they improve the clarity and readability of the rule.

Under item G, changes are proposed for the work plan that is submitted with the application. The Agency is proposing to call the document a "preliminary" work plan to differentiate it from the work plan proposed under Part 7076.0230. This is reasonable because the information supplied with the application is information gathered before scientific research is conducted at the project site and project planning has been completed. Therefore, the term "preliminary" is appropriate. The schedule is proposed to be made a component of the work plan under subitem 4 and the word "contain" is proposed to be changed to "contains" to maintain proper grammatical tense.

Program experience has identified the information that is the most beneficial to the Agency in helping to determine which projects have been well planned and have the most potential for being a successful project. Changes have been proposed for the subitems to ensure that this preferred information is required by the rules. Subitem 1 is proposed to be changed from requiring the identification of affected water to requiring the identification of project goals and objectives. Subitem 2 is proposed to include a statement of existing water quality conditions with the statement of existing water quality problems. New requirements are proposed for subitem 5, a preliminary monitoring plan, and subitem 6, a preliminary work plan budget. These changes are reasonable because they provide the Agency with a clearer picture of a project sponsor's preparedness and the potential for a project's success.

Word changes are also proposed to clarify the information requirements of subitems 3 and 4.

Item H, which requires a local water plan to be submitted with the grant application, is proposed to be deleted. The requirement for a local water plan was initially made an application requirement instead of an eligibility requirement to provide sponsoring governments time to develop a plan. This is reasonable because the statutory time allowance for developing a water plan ends on July 1, 1991, which will pass by the time the rule amendments are adopted. The local water plan is instead proposed to be an application eligibility requirement under part 7076.0130, subpart 1, item D.

Item I is proposed to be changed to item H. This is reasonable because item H is proposed to be deleted.

Subpart 3. Project implementation grant.

Under item A, which describes the requirements of the resolutions that must be submitted with the grant application, the Agency proposes to delete the words "the grant contract and other related project documents." See subpart 2, item A for a discussion of the reasonableness.

Amendments proposed for item C delete the language that requires the submittal of a local water plan with the application. See subpart 2, item H for a discussion of the reasonableness.

Item D is proposed to be changed from requiring "resolutions" of support to "letters of support" and the addition of "agency and organization." See subpart 2, item D for a discussion of the reasonableness.

The work plan under item E is proposed to be changed to the "preliminary" work plan to differentiate it from the work plan proposed to be required under part 7076.0230. See subpart 2, item G, for a discussion of the reasonableness.

Item H is proposed to be deleted. This change is reasonable because project continuation grant amendment information is not dealt with at the time of applying for the initial implementation grant, but is covered under Part 7076.0200.

Item I is proposed to be changed to item H, which is reasonable because item H is proposed to be deleted.

Part 7076.0160 Rejection of grant application.

Subpart 1. Grounds.

The Agency proposes to change "project development" to "resource investigation." See part 7076.0110, subpart 20a for an explanation of the reasonableness.

Subpart 3. Effect of rejection.

The Agency proposes to eliminate the 14 day period for correcting application deficiencies. This period was initially placed into the rules to allow applications to be submitted without supporting resolutions, which are required under Part 7076.0150, subpart 2, item D and subpart 3, item D, in the existing rules. The correction time allowed more time to schedule government board and committee meetings that were required to develop, approve and sign the resolutions. However, with the Agency's 10 day review period needed to identify application deficiencies and the 14 day correction period, the application review and ranking processes and project starting times were delayed by a month. The Agency has proposed to eliminate these delays by eliminating the application requirement for the resolutions. This change is reasonable because the correction period is obsolete under the proposed amendment that will eliminate the application requirement for resolutions.

The existing 14 day correction period was also being misused.

Part 7076.0170 Project Ranking.

Subpart 1. Process of ranking.

The Agency proposes to change "project development" to "resource investigation." See Part 7076.0110, subpart 20a for an explanation of the reasonableness.

Subpart 2. Priority points for project development grant applications.

The Agency proposes to change "project development" to "resource investigation." See part 7076.0110, subpart 20a for a discussion of reasonableness.

The Agency also proposes amendments that change the priority point system for ranking grant applications in the order of funding priority. The existing rating system is based on 70 potential points with a maximum of 10 points for each of the seven criteria. Evaluation for six of the criteria is done by the Agency. The Project Coordination Team determines the assignment of the final 10 points. Applications can receive between zero and 10 points for each criterion depending on how well it meets the requirements.

The revised point system proposed by the Agency will contain a maximum of 100 points with 10 evaluation criteria. Evaluation criteria and points will be equally divided between the Agency and the Project Coordination Team--50 points and 5 criteria for each. The proposed amendments that will create a priority system that equally divides the priority points between the Agency and the Project Coordination Team are reasonable because they allow the application evaluation to be based on the experience and knowledge of a wide range of environmental organizations rather than the limited resources of the Agency and allow the evaluation to be based on a wider range of environmental concerns.

The revised rating system proposed by the Agency will be based on a segmented rating system of zero, two and a half, five, seven and a half and ten points rather than the continuous one point scale in the existing rules. The proposed segmented scale is reasonable because it does not alter the evaluation, but will make the funding determination easier for the Agency by creating a distinct point variation between the evaluated grant applications after the points have been totaled.

The Agency also proposes to change the evaluation criteria for determining priority points. These proposed changes are reasonable because they provide more specific criteria and a basis for more uniform evaluations. A discussion of each of the criteria proposed for the Agency follows below.

The first criterion is a measure of a project's potential for success based on the project goals and objectives, work activities, and project organization and management structure, which are identified in the preliminary work plan submitted with the application. This is reasonable because the evaluation is directly based on part of the application, which is developed under part 7076.0150, subpart 2, item G, and because project success is directly related to how well a project has been planned and thought out.

The second criterion is a measure of how effectively and efficiently the project will use grant funds. This is reasonable because it ensures that the projects that will provide the greatest water quality improvement or protection for the least amount of grant funds will have the greatest potential of being funded. The Agency wants to ensure that the greatest abatement impact is achieved with the limited amount of CWPP funds.

The third criterion is a measure of the priority that is held by a project's water resource in the local water plan. This is reasonable because the priority ranking done on the local water plan is based on extensive public

opinion and research done by local experts. The higher the priority a body of water holds on the local water plan the higher the expectations for local support and for project success. The local priority is also important when two projects are proposed from the same area that are similar in other respects.

The fourth criterion compares the water quality impairment or threat faced by a project's water resource with the expectations for the least impacted waters in the same ecoregion. It is reasonable to evaluate the severity of a water quality problem by this method because standards for least impacted waters, which are the cleanest waters, create the model for desired water quality within an ecoregion. It is also reasonable to measure how severe the water quality impairment or threat is because this evaluation ensures that projects that will deal with the most severe pollution conditions will be given the highest funding priority.

The fifth criterion is a measure of the potential a project has for protecting or improving the water quality. This is reasonable because the Agency does not want to use limited grant funds on a project that will result in no or minimal water quality improvements.

The existing rules do not specify criteria for the Project Coordination Team. Proposed amendments identify five criteria for the team. This is reasonable because the criteria provide an objective basis for making uniform evaluation decisions. Since the team has influence over 50 points under the proposed priority system instead of just 10 points as under the existing system, specific evaluation criteria are important to the project sponsors submitting applicants and the proceedings of the team. A discussion of each of the criteria proposed for the Project Coordination Team follows below.

The first criterion is a measure of community support and involvement. This is reasonable because project success is directly related to public and private community support and involvement in the project. Since the project will often be dependent on individual land managers changing their land management activities, it is important to have broad community support for the project.

The second criterion is a measure of the coordination and cooperation among federal, state, and local agencies and units of government for water quality protection or improvement. This is reasonable because political boundaries of many governmental units will overlap in the proposed project and project success is directly related to how well these units will cooperate, how much they support the project, and how well project management has been planned. The Project Coordination Team is uniquely qualified to evaluate state and federal cooperation and coordination because they represent state and federal agencies.

The third criterion is a measure of how significant the water of concern for the project is to the state and the geographical region in which it is located. This is reasonable because it ensures that projects that will protect or improve waters of high state and regional concern will receive the highest funding priority. The limitations of available grant funds indicate the need to establish priorities in this manner. The Project Coordination Team is uniquely qualified to conduct this evaluation because it is an interagency group of local, state and federal representatives.

The fourth criterion is a measure of how well the proposed project complements the existing water quality protection and restoration efforts of local, state, and federal programs. This is reasonable because the higher the degree of complement, the higher the degree of government support and the

higher the potential is for project success. The Project Coordination Team is uniquely qualified to conduct this evaluation because it is an interagency group of local, state and federal representatives.

The fifth criterion is a measure of the potential that the proposed project will serve as a demonstration for water quality protection or improvement and provide useful information for its geographic area. This is reasonable because more benefit can be realized from the grant funds if funded projects also provide information that can help other water quality protection efforts within geographic areas.

Subpart 3. Priority points for project implementation grant applications.

The Agency is proposing to revise the priority point system for ranking implementation grant applications for funding. See subpart 2 for an explanation and a discussion of reasonableness.

The Agency is also proposing to change the evaluation criteria for determining priority points. These proposed changes are reasonable because they provide more specific criteria and a basis for more uniform evaluations. Each criterion is proposed to have a maximum point value of 10. A discussion of each of the criteria proposed for the Agency follows below.

The first criterion is a measure of a project's potential for success based on the project goals and objectives, work activities, and project organization and management structure, which are identified in the work plan submitted with the application. This is reasonable because project success is directly related to how well a project has been planned.

The second criterion is a measure of how well the project will use best management practices, which are defined under Minn. Stat. § 103F.711, subd. 3.

This is reasonable because projects that employ best management practices have a greater potential for success. Best management practices are important to the continuation of pollution prevention and abatement over the life of the project.

The third criterion is a measure of the potential a project has for protecting or improving the water quality. This is reasonable because the Agency does not want to use limited grant funds on a project that will result in no or minimal water quality improvements.

The fourth criterion is a measure of how well a project maximizes water quality protection or improvement relative to the cost of the project. This is reasonable because it ensures that the projects that will provide the best water quality improvement or protection for the least amount of grant funds will have the greatest potential of being funded. The Agency wants to ensure that the greatest pollution abatement impact is achieved with the limited amount of CWPP funds.

The fifth criterion is a measure of a project's potential for success based on local capability, organization, and authority to carry out the identified activities. This is reasonable because it ensures that projects that have the local resources required for successful completion will receive greater funding priority. Program experience has shown that even the best planned project can run into problems if a clear definition of organization has not been made; if the local employees, officials or citizens identified to work on the project do not have the skills or equipment necessary to fulfill the required tasks; or if the project does not have proper authorization or authority to get the project done.

The existing rules do not specify criteria for the Project Coordination Team, but instead rely on the broad criteria under Minn. Stat. § 103F.735. Proposed amendments identify five criteria for the team. This is reasonable

because the criteria are based on statutory criteria, but provide a better basis for making uniform evaluation decisions. A discussion of each of the criteria proposed for the Project Coordination Team follows.

The first criterion is a measure of community support and involvement. This is reasonable because project success is directly related to public and private community support and involvement in the project.

The second criterion is a measure of the coordination and cooperation among federal, state, and local agencies and units of government for water quality protection or improvement. This is reasonable because political boundaries of many governmental units will overlap in the proposed project and project success is directly related to how well these units will cooperate, how much they support the project, and how well project management has been planned.

The third criterion is a measure of how significant the project's water of concern is to the state and the geographical region in which it is located. This is reasonable because it ensures that projects that will protect or recover waters of high state and regional concern will receive the highest funding priority. The limitations of available grant funds require this prioritization.

The fourth criterion is a measure of a project's commitment to official controls, programs and activities that are a long term commitment to water quality protection and improvement. These are controls, programs and activities that would eliminate new or different pollution sources from affecting the water of concern. This is reasonable because it ensures that the project goals to protect or improve the water of concern continue to be enforced and met.

The fifth criterion is a measure of the potential that the project will serve as a demonstration for water quality protection or improvement and provide useful information for its geographic area. This is reasonable because more benefit can be realized from the grant funds if funded projects also provide information that can help other water quality protection or improvement efforts.

Subpart 4. Project coordination team.

The Agency proposes to remove the requirement that the Project Coordination Team use the project evaluation criteria established in Minn. Stat. § 103F.735, to assign points to each grant application. This proposed change is reasonable because additional language for specific criteria is proposed under subpart 2, item B, and subpart 3, item B, to take the place of this requirement. The criteria proposed provide more specific points of evaluation and a method for more objective and uniform rating of the applications.

Part 7076.0180 Allocation of funding.

Subpart 1. Project continuation grant amendments.

The Agency proposes to delete the March 1 deadline for the Agency's determination of how much of the available grant funds are to be set aside for project continuation grant amendments for the following fiscal year. This is reasonable because the March 1 deadline does not correspond to the state budget cycle or the newly imposed funding approval process required by the Legislative Commission on Minnesota Resources. State funding allocations are not known until the end of the Legislative session, usually the end of May. Additional time will now be required in the determining the distribution of funds among the grant categories because the Legislative Commission on Minnesota Resources now has to comment on the appropriateness of the distribution proposed by the

Agency. It is reasonable to allow the Agency as much time as it requires to determine the most appropriate distribution of funds among the grant categories. The amount to be set aside for the project continuation grant amendments will still be the first determination made by the Agency.

The Agency also proposes to changing "project development" to "resource investigation." See part 7076.0110, subpart 20a for a discussion of reasonableness.

Subpart 2. Grant fund allocation.

The Agency proposes to change "project development" to "resource investigation." See part 7076.0110, subpart 20a for a discussion of reasonableness.

Subpart 3. Development.

The Agency proposes to change "project development" to "resource investigation." See part 7076.0110, subpart 20a for a discussion of reasonableness.

Part 7076.0190 Selection of projects for grant award.

Subpart 1. Ranking.

The Agency proposes to change "project development" to "resource investigation." See part 7076.0110, subpart 20a for a discussion of reasonableness.

Subpart 2. Projects funded.

The Agency proposes to change "project development" to "resource investigation." See part 7076.0110, subpart 20a for a discussion of reasonableness.

The Agency also proposes to change the number of total points a grant application must receive from the Agency and the Project Coordination Team to be considered for a grant award. The proposed change is from 40 to 50 total

points. The higher number is reasonable because the amendments proposed for the priority ranking system under part 7076.0170 increase the number of potential ranking points from 70 to 100. The total of 50 points is reasonable because a project that cannot acquire half of the points available in the ranking scheme has little potential to be a successful project.

Part 7076.0200 Project continuation grant amendment.

Subpart 2. Request.

The Agency proposes changing the deadline for submitting a request for a project continuation grant amendment. The proposed changes will require project sponsors to submit their requests for amendments by June of the calendar year that the funding is needed to pay for project work. This change is needed to supply the Agency with the information it needs to make an accurate decision as to how much money must be set aside for these amendments. This decision is made before the amounts to be set aside for the other types of grants can be determined. This change is reasonable because it will improve the accuracy of Agency funding decisions and will require the requests be submitted before the beginning of the state fiscal year, which begins July 1, in which the grant awards will be made.

Subpart 3. Approval.

The Agency proposes to add the words "subject to the availability of funds" to the statement that the Agency shall approve requests for project continuation grant amendments. This change is reasonable because requests for amendments can only be approved if grant funds are available. The amount of available grant funds depends on the budget decisions of the Legislature and the Federal Government not the Agency.

Part 7076.0210 Grant conditions.

Subpart 1. Amount.

The Agency proposes to change "project development" to "resource investigation." See part 7076.0110, subpart 20a for a discussion of reasonableness.

Subpart 2. Grant period.

The Agency proposes to change "project development" to "resource investigation." See part 7076.0110, subpart 20a for a discussion of reasonableness.

The Agency is proposes to increase the period for a project sponsor to request resource investigation grant funds from "two" to "up to three years." Agency program administration experience has shown that most project development projects cannot be completed during the existing two year period. Therefore, it is reasonable to allow the projects enough time to complete the project and request the grant funds they have been awarded.

The Agency also proposes to allow variations in the extensions of the grant periods for project implementation projects. This change would cause extensions of project implementation grants from a standard three years extension to any time frame up to three years. Agency program administration has shown that many project implementation projects do not require a three year extension. Therefore, this change is reasonable because it allows the extension to be determined by the needs of the project rather than indiscriminate rule language.

Subpart 3. Grant contract.

The Agency is proposing word changes to clarify the program requirement that a grant contract must be signed by the Agency, the project sponsor, and the commissioner of the Department of Finance before a project will receive

grant funds. Existing rule language is based on grant award, which is a term that has no clear definition in the CWPP. The word changes are needed to remove the ambiguous concept of grant award and clearly identify what is required before an eligible project sponsor can receive grant funds. This clarification is reasonable because it creates no additional burden for project sponsors eligible to receive grant funds.

Subpart 4. Records.

The Agency is proposing to add the requirement that records relating to the installation, operation, and maintenance of best management practices shall be maintained by the project sponsor for either three years beyond the design or useful life of the project, whichever is longer. This requirement is needed to ensure that the information necessary for proper implementation of the best management practices is kept by the project sponsor. The amendment is reasonable because it requires no additional work from the project sponsor, but ensures that the sponsor has the information necessary for proper implementation of the best management practices on hand throughout the life of the project.

Subpart 7. Mid year update.

The Agency is proposing to change the mid year update to a quarterly update of project activities and project expenditures. The quarterly update will be made by the project sponsor and submitted to the Agency commissioner in the form of a written report or a presentation.

Quarterly reports are needed by the Agency to keep staff better informed about project progress and to allow staff the opportunity to monitor project expenditures. The monitoring of project expenditures is more important under the plan proposed under part 7076.0280 to prepay a portion of the grant funds

to the project sponsor because staff will no longer be able to review the eligibility and necessity of project costs before grant funds are issued for them.

The proposed change is reasonable because it ensures that the Agency will be better informed about a project and, as a result, in a better position to provide technical and support assistance as it is needed and ensures that the proposed prepaid grant funds are being spent according to this chapter and the grant contract. The proposed option to deliver the quarterly update as a written report or a presentation provides the flexibility that allows the project sponsor to make the update in the least time consuming format. This option is reasonable because the less formal reporting format offsets the additional work of reporting to the Agency two more times each year.

#### Subpart 8. Monitoring plan.

The Agency is proposing to change this grant condition to require a work plan instead of a monitoring plan. See part 7076.0230 for a discussion of the reasonableness of this change.

The Agency is proposing to make the submittal requirement for the work plan a grant payment condition, which is proposed under part 7076.0280, instead of continuing the existing deadline under this subpart, which requires the monitoring plan to be submitted to the Commissioner within 60 days of the grant award. Since Agency experience has shown that most monitoring plans could not be produced by the project sponsors within the 60 day time frame, it is reasonable to expect that the more complex work plan will require more preparation time. The proposed change from a fixed date submittal deadline to a payment condition is reasonable because it allows the submittal to be based on the individual preparation needs of each project rather than an

indiscriminate deadline established in the rules. The more complex a project's needs are for research, analysis, and planning the more time that will be required for the completion of the work plan.

The proposed change also allows the project sponsor to receive grant funds to pay costs incurred for the preparation of the work plan before the plan is submitted to the Agency. Under the existing payment process, a project sponsor is not eligible to receive any grant funds until the plan has been submitted, which has created financial hardship for many sponsors. The proposed submittal deadline for the work plan allows the project sponsor to receive 25 percent of the grant award before the plan must be submitted. This is reasonable because the financial hardship currently experienced by many projects will be eliminated. However, the Agency still maintains control over the project to ensure that progress is being made. Additional grant funds will not be paid to the project sponsor until the work plan has been submitted to the Agency and been approved by the Commissioner.

The Agency proposes to change the submittal date for the revised plan from January 31 to February 1. This change will make the plan submittal date the same as the submittal date for the annual report, which is required under Part 7076.0210, subpart 6. This is reasonable because having one instead of two submittal dates is easier for project sponsors to remember and Agency staff to track. This change creates no additional burden on the project sponsor or the Agency.

Subpart 9. Diagnostic study and implementation plan.

The Agency proposes to change "project development" to "resource investigation." See part 7076.0110, subpart 20a for a discussion of reasonableness.

Subpart 10. Eligible costs.

The Agency proposes to change the wording of this subpart to reflect how eligible costs will be determined under the payment amendments proposed under part 7076.0280. This change is reasonable because it removes the language about reimbursements, which is obsolete under the proposed amendments to the payment process, and specifies when eligible costs can be incurred to receive grant funds under the proposed payment process.

Part 7076.0220 Grant contract.

Subpart 2. Amendments.

The Agency proposes adding the sentence "Grant increase amendments shall be subject to the availability of funds." This is reasonable because it does not add additional restrictions for amendments, but clarifies that grant amendments will only be made if grant funds have been set aside for such amendments. Therefore, if a project is eligible for a grant amendment, but no amendment funds are available, the project sponsor is made aware that no grant amendment will be made.

Subpart 3. Contract period.

The Agency is proposing to change "project development" to "resource investigation." See Part 7076.0110, subpart 20a for a discussion of reasonableness.

The Agency is also proposing to increase the contract period by one year for resource investigation grants. Agency experience has shown that most project development projects are not completed within the current two year time allowance, but are usually completed within three years. Contract extensions are currently required to continue the projects. It is reasonable to provide

enough time for project completion and to eliminate the time delays in making grant payments that are caused by processing contract extension paperwork. The longer contract period will make the program run more efficiently.

Part 7076.0230. Monitoring plan.

The Agency proposes to require a work plan instead of the existing monitoring plan. The proposed work plan will include information about all aspects of the project, including monitoring. The work plan will be both a planning tool for the project sponsor and a project progress checklist for the Agency. Requiring the work plan is reasonable because it will ensure the project sponsor has thoroughly planned all parts of the project and it will provide the Agency with a detailed description of existing water quality problems and identify all the activities required to address these problems. Agency experience has shown that staff needs this detailed information to have a complete understanding of a project, to effectively provide technical and support assistance and to effectively monitor project progress.

Subpart 1. Requirements.

The Agency proposes to require the project sponsor to submit the work plan in a format specified by the commissioner. This is reasonable because it will ensure that all the required information is submitted and ensure that the information is submitted in a format that is easily reviewed by staff and easily updated by the project sponsor.

The Agency is also proposing that different information be submitted on the work plans for the proposed resource investigation grants and the project implementation grants. This is reasonable because each grant has different objectives and requires a different level of information detail. The work plan prepared for a resource investigation grant focuses on how to acquire scientific and environmental information that is needed to plan the details of the water

protection or restoration project. The work plan prepared for a project implementation grant includes research information that was gathered during the resource investigation project and focuses on the construction activities that must be done to fulfill the solution plans. A description of the specific work plan requirements follows.

A. For a resource investigation grant, the Agency proposes to require information that identifies the specific project area, identifies specific water quality problems that must be solved by the project and identifies a plan to acquire corresponding environmental and scientific information.

(1) The work plan must describe the body of water that the project will improve or protect, the associated project area and the existing and desired uses of the resources within the project area. This is reasonable because it ensures that the project sponsor has clearly defined these basic components of the project, which are important to establishing the project parameters.

(2) The work plan must describe the existing and suspected or potential water quality problems. This is reasonable because it ensures that the project sponsor has conducted preliminary investigations to identify the basic problems that will have to be addressed by the CWP project and has determined the focus for the work to be done under the resource investigation grant.

(3) The work plan must specify goals for project results, for water quality characterization and quantitative analysis research and assessment, and for citizen education. This is reasonable because it ensures that the project sponsor has planned to include these activities in the resource investigation project and has a means for evaluating the success of related project activities. Evaluation is needed to identify problems that could inhibit the the water quality improvement or protection results of a project.

(4) The work plan must identify specific tasks to be completed during the project, the individuals responsible for fulfilling the tasks and the dates the tasks will be initiated and completed. This is reasonable because it ensures that the project sponsor has developed a detailed plan for completing the resource investigation project that is based on goals established for the project and ensures that the Agency is aware of that plan. Staff must be aware of the sequence of tasks to be performed and their starting and completion dates to adequately monitor project progress. If staff have questions about a project task or if problems occur, it is reasonable for staff to have access to the person that is responsible for that task and should be given his/her related contact information.

(5) The work plan must continue to include the monitoring information required under the existing rules. See subpart 2 for further discussion.

(6) The work plan must contain a list of predictive and diagnostic computer or statistically based models that will be used for the project and a description of related uncertainties. This is reasonable because it ensures the Agency is aware of the computer and statistical modeling that are the basis for project decisions and that staff can provide appropriate guidance or re-evaluation.

(7) The work plan must describe a quality assurance plan for data gathering and analyzing. Quality assurance and quality control are standards for scientific investigation and are important to ensuring that project data and analysis are accurate and beneficial. This requirement is reasonable because it ensures that the project sponsor has adequately planned for the quality assurance of data gathering and analyzing. Agency experience has proven that quality assurance is directly related to project success.

(8) The work plan must include detailed budgets for the project. This is reasonable because it ensures that the project sponsor is aware of funding limits and has made provisions for responsible financial management. It also ensures that the Agency is aware of how the project sponsor plans to spend grant funds and can review the budget to ensure that public funds will be spent in accordance to the rules under this chapter and the project grant contract.

(9) The work plan must include resolutions from each participating local unit of government, agency and organization. The resolutions must specify how each authority will participate in the project and the amount of financial support they will contribute to the project. This support has already been pledged in letters of support, proposed under Part 7076.0150, subpart 2, item D. This is reasonable because the resolutions are a formal commitment to the project sponsor of funds and work resources that are needed to meet the objectives of the project and the conditions of the grant contract.

B. For a project implementation grant, the Agency proposes to require information that is needed to revise the implementation plan submitted with the grant application and that explains how the implementation project will be completed.

(1) The work plan must include necessary revisions to the schedule of implementation activities submitted with the application. This is reasonable because it ensures that the Agency is informed of schedule changes that have resulted from starting the first work activities. The Agency must be informed of these schedule changes to properly monitor project progress and to ensure that the project will meet its goals within a reasonable time frame.

(2) The work plan must include revisions to the implementation budget that was submitted with the application. This is reasonable because it ensures that the project sponsor is tracking incurred project costs and continuing its financial planning and ensures that the Agency is informed of budget changes as project work progresses.

(3) The work plan must include a quality assurance plan for construction activities. This is reasonable because it ensures the success of the project by ensuring construction meets the specifications required for proper project performance.

(4) The work plan must include a plan for operating and maintaining the best management practices for the project. This is reasonable because it ensures that the Agency can review the plan and offer appropriate guidance and re-evaluation and ensures that the the best management practices will be put into practice in a manner that will help control nonpoint source pollution for the life of the project.

(5) The work plan must include the monitoring information required under the existing rules. See subpart 2 for further discussion. The monitoring plan component must also evaluate the effectiveness of best management practices and the improvement of water quality. This is reasonable because it ensures the best management practices are appropriate for the project and ensures that the monitoring data is used to evaluate progress being made by the project.

(6) The work plan must include a list of predictive and diagnostic computer or statistically based models that will be used for the project and a description of related uncertainties. This is reasonable because it ensures the Agency is aware of the computer and statistical modeling that is the basis for project decisions and that staff can provide appropriate guidance or re-evaluation.

(7) The work plan must include copies of permits and authorizations necessary for conducting work in the project area and for project operation and maintenance. This is reasonable because it ensures that the project sponsor has the authority to construct and operate the project.

(8) The work plan must include resolutions from each participating local unit of government, agency and organization. The resolutions must specify how each authority will participate in the project and the amount of financial support they will contribute to the project. This support has already been pledged in letters of support, proposed under Part 7076.0150, subpart 3, item D. This is reasonable because the resolutions are a formal commitment to the project sponsor of funds and work resources that are needed to meet the objectives of the project and the conditions of the grant contract.

Subpart 2. Monitoring plan.

The Agency proposes making the existing monitoring plan a component of the proposed work plan. This is reasonable because monitoring is important to the project and provides vital information. It is also reasonable to have all the work associated with a project included under one plan for the ease of administration. The Agency also proposes to add requirements for the monitoring plan. A discussion of each of the requirements follows.

A. The Agency proposes to reletter the existing item A as item E and reword the item to fit the format established in the language proposed under this subpart. The Agency also proposes adding the requirement to describe and provide rationale for sampling protocols. This is reasonable because it ensures the Agency has a clear understanding of the project sponsors intended sampling plans and the reasons for the chosen plan.

B. The Agency proposes to reletter the existing item B as item F and reword the item to fit the format established in the language proposed under this subpart. The Agency also proposes requiring the submittal of laboratory certification numbers that are assigned by the Department of Health. This is reasonable because it ensures that analysis work for Clean Water Partnership projects is being done at laboratories that are in compliance with Minn. Rules ch. 4740.

The following proposed items are new to the rules.

A. The monitoring plan must develop monitoring objectives based on project goals. This is reasonable because it ensures the project sponsor has identified what it plans to achieve by monitoring, has established a basis for evaluating monitoring alternatives, and will conduct monitoring that produces the data that is needed to fulfill project goals.

B. The monitoring plan must define the information needs for water quality monitoring. The project sponsor will examine project goals and objectives and associated environmental questions to determine what monitoring will have to be done to fulfill the data needs of the project. This is reasonable because it ensures that the information gathered through monitoring is beneficial to the project and ensures that grant funds are not being spent on unnecessary monitoring.

C. The monitoring plan must define the statistical methods needed to address the monitoring objectives. This is reasonable because it ensures that the project sponsor has planned for statistical evaluation of the water of concern, has planned monitoring accordingly, and has identified if additional resources are needed to accurately complete the evaluation.

D. The monitoring plan must set the data requirements that are to be met for meaningful statistical analysis to be completed. The project sponsor will identify the water quality parameters, sampling sites and sampling frequencies that are necessary for statistical analysis. This is reasonable because it ensures monitoring will be conducted for the data that is necessary for a complete, accurate and conclusive statistical analysis.

E. See the discussion under the existing item A above.

F. See the discussion under the existing item B above.

G. The monitoring plan must outline a plan to analyze monitoring data and to use the data to assess the project area, water and pollutant loading and alternative best management practices. This is reasonable because it ensures that the project sponsor will plan to conduct this analysis.

#### Subpart 2. Review.

The Agency proposes to renumber this subpart to subpart 3. This is reasonable because a new subpart 2 has been proposed. The Agency proposes to change "monitoring plan" to "work plan" in response to a rule amendment that would require a work plan instead of a monitoring plan. See the beginning of this part for a discussion of reasonableness. The Agency also proposes to eliminate the 15 day time period for correcting plan deficiencies currently offered to the project sponsor. This is reasonable because proposed amendments make the correction period obsolete by eliminating the existing 60 day submittal deadline under part 7076.0210, subpart 8, and making it a condition of the second grant payment under part 7076.0280, subpart 2.

#### Subpart 3. Grant payments.

The Agency proposes to delete this subpart which states that no grant payments shall be paid to a project sponsor after March 31 in any year that a monitoring plan has not been approved. This is reasonable because the

changes proposed under the payment plan make this requirement unnecessary.

Part 7076.0240. Diagnostic study.

Subpart 1. General requirements.

The Agency proposes changing the referenced subpart numbers from subpart 2 to subpart 3 and subpart 3 to subpart 4. This is reasonable because additional proposed amendments under this part change the number order of existing subparts. See subpart 5 for further information. The Agency also proposes to clarify under item D which types of models are to be included in the diagnostic study. It is reasonable to add "predictive and diagnostic models" to this subpart because it clarifies what is required by the rules.

Subpart 2. Description of water of concern.

The Agency proposes to renumber this subpart from 2 to 3 in response to the proposed amendment to renumber subpart 5 to subpart 2. The Agency also proposes to add more specific testing requirements. These include adding a measurement for total nitrogen and to eliminate the requirement for a sediment budget of a lake, under item C, subitem 1 (b) and adding a measurement of porosity for an aquifer under item C, subitem 3 (a). These changes are reasonable because they are environmental measurements that have been proven by Agency experience to be important to accurately analyzing the water quality conditions for a CWP project.

Subpart 3. Description of project area.

The Agency proposes to renumber this subpart from 3 to 4 in response to the proposed amendment to renumber subpart 5 to subpart 2. The Agency also proposes to add standards of project area description and language that more specifically defines existing description requirements. This includes requiring under item A, that the map of the project area in the existing rules be in a scale appropriate to the project; and requiring under item J, an inventory of drained

wetlands under subitem 14, a list of bulk pesticide and fertilizer handling facilities under subitem 24, a list of commercial and industrial facilities with on-site hazardous materials or wastes under subitem 25, a list of transportation corridors under subitem 26, a list of operating wells whose construction or maintenance may cause them to serve as conduits for ground water contamination under subitem 27 and a summary of other potential sources of ground water contamination under subitem 28; and requiring under item L, subitem 5, a measurement of the amount of water used from wells covered by state appropriation permits. These requirements and clarification are reasonable because they identify information that is needed to determine the water quality status for a project's water of concern and to provide information that is vital to identifying potential avenues for ground water contamination.

Subpart 4. Analysis and assessment.

The Agency proposes to renumber this subpart from 4 to 5 in response to the proposed amendment to renumber subpart 5 to subpart 2. Corresponding number changes must be made to references of subpart 2 and subpart 3 made under this subpart.

Subpart 5. Exemption.

The Agency proposes renumbering subpart 5, which states when the Agency will exempt a project sponsor from meeting a diagnostic study requirement listed under this part, to subpart 2. Agency experience with the program has shown that the program participants and rule readers are concerned about this exemption and have a hard time locating it in the rules. It is reasonable to reorder the rules to make them easier to comprehend.

Part 7076.0280. Grant payments.

The Agency is proposing to change the entire grant payment process. The existing process is based on reimbursement of incurred costs. Project sponsors

do not receive grant funds until project costs have been incurred and requested from the Agency and the Agency has reviewed the costs for rule and contract compliance. Program experience has shown that this delay in payment has caused financial hardship for many project sponsors and could have jeopardized the completion of their projects. The Agency proposes to pay 90 percent of eligible grant funds to the project before the corresponding project activities have been started. This is reasonable because it will eliminate the payment delay that is currently causing hardships for CWP projects. Review of grant spending will continue to be monitored by the staff to ensure that funds are spent in accordance with this chapter and the conditions established in the grant contract. Agency experience has shown that local governments are capable of making responsible financial management and payment decisions.

Subpart 1. Reimbursement.

The Agency proposes to change this subpart to "initial payment" instead of "reimbursement" and to allow the Agency to provide the project sponsor 25 percent of the grant award once the grant contract has been signed by the project sponsor, the Agency and the Commissioner of the Department of Finance. This is reasonable because grant payment will be made before project activities have been initiated. No grant eligible project activities can be started until after the Commissioner of Finance has signed the grant contract, according to language proposed under Part 7076.0130, subpart 3 and Part 7076.0220, subpart 2.

Subpart 2. Final payment.

The Agency proposes to renumber subpart 2 to be subpart 6 in response to the proposed creation of a new subpart 2. See subpart 6 for a discussion of the changes proposed to the existing subpart 2.

Subpart 2. Second payment.

The Agency proposes to add a new subpart to describe the conditions for the second grant payment. The Agency proposes to pay the project sponsor 35 percent of the grant award, in addition to the 25 percent paid under subpart 1, after the Commissioner has approved, in writing, the work plan submitted by the project sponsor and required under Part 7076.0210, subpart 8. This is reasonable because it creates a submittal deadline for the work plan, allows the Agency to review the plan to ensure all components of the project have been properly planned, and provides additional grant funds to the project sponsor prior to the starting of the corresponding project activities.

Subpart 3. Withholding of reimbursement.

The Agency proposes to delete the existing language of this subpart. This is reasonable because it is obsolete under the proposed prepayment grant process. The Agency proposes to head this subpart "Project review and budget adjustments" and to add language that describes the Agency review and grant budget adjustment conditions for the proposed payment process.

The Agency proposes to require the project sponsor to submit a detailed summary of project expenditures and completed work activities for the CWP project when 50 percent of the total eligible project costs have been incurred by the project sponsor. This is reasonable because the Agency must be allowed to review the project to ensure that costs being paid with grant funds are eligible for such payment and that work on the project is meeting Agency expectations and schedule deadlines. At this time the work plan budget will be revised by the Agency to reflect incurred costs that were less than the amount budgeted. This is done to ensure that the project sponsor does not receive grant funds in excess of eligible costs.

Subpart 4. Advance.

The Agency proposes to delete the existing language of this subpart. This is reasonable because it is obsolete under the proposed prepayment grant process. The Agency proposes to head this subpart "third payment" and to add language that describes the conditions for the third grant payment to the project sponsor. The Agency proposes to pay the project sponsor a maximum of an additional 30 percent of the grant award after the Commissioner has approved the detailed summary of project expenditures and completed work activities required under subpart 3. This is reasonable because the Agency has been assured that the project is being managed correctly, that grant funds are being spent in accordance with this chapter and the grant contract, and that the project is progressing according to the work plan and activity schedule before additional funds are paid to the project sponsor. Also, this proposal ensures that grant funds continue to be provided to the project manager before the corresponding work activities are to begin.

The Agency also proposes to pay a project sponsor less than 30 percent of the grant award if incurred project costs are less than those identified in the project contract or the costs to complete the project are less than the remaining grant funds. This is reasonable because it ensures that the project sponsor does not receive overpayment of grant funds.

Subpart 5. Payment adjustment upon grant contract amendment.

The Agency proposes to allow grant increases by amending the grant contract. Grant amendments are allowed when amendment funds are available, when the requested cost increases are not the result of negligent project management or costs that exceed those currently being charged on the open market for the trade, when the work is a vital part of the project, and when all the contract

parties agree the amendment is necessary. This is reasonable because it ensures a funded project will be completed, but that government grant funds will not be misused.

The Agency proposes to pay the increased amount as the original grant was paid, in accordance with subparts 1 to 4. This is reasonable because it ensures easier payment tracking for Agency staff.

Subpart 6. Final payment.

This subpart has been renumbered from subpart 2 in the existing rules. The Agency proposes to delete all language under this subpart that directly relates to the existing reimbursement grant payment process. This is reasonable because it is obsolete under the proposed prepayment process.

The Agency is also proposing to withhold more than 10 percent of the grant award if the costs for completing the project are less than those identified in the grant contract. This additional withholding will usually be the result of incurred project costs that were lower than those estimated in the grant contract. This is reasonable because it ensures that the Agency is withholding funds that are needed to pay incurred project costs and that the Agency has adequate financial leverage to ensure the project is completed in accordance with requirements under this chapter and in the grant contract.

Subpart 7. Payment option.

The Agency proposes to offer a payment option to project sponsors that received grant awards before October 1, 1990. Under this option, sponsors of projects that are nearing completion can choose to continue receiving grant payments under the existing reimbursement process or change to the proposed prepayment process. For these projects, accounting, reporting and payment request procedures and negotiated contracts are based on the existing reimbursement process. It is reasonable to allow their sponsors to continue the

payment process they are currently being required to use because it will prevent staff confusion, cost increases and project delays that would result from changing procedures and contracts this late in the project. It is reasonable to allow these project sponsors to change to the proposed prepayment process if they feel this change will benefit the financial status of their projects. It is also reasonable to limit this option to project sponsors that received grant awards before October 1, 1990, because the reimbursement process will not create additional financial hardship for projects near completion, but there is a high risk of financial hardship developing under the reimbursement process for project sponsors that are in the first phases of their projects. See the discussion under this part for an explanation of the benefits of the proposed prepayment process.

V. CONSIDERATION OF IMPACTS ON EXPENDITURES  
OF PUBLIC MONIES BY LOCAL PUBLIC BODIES,  
AGRICULTURAL LAND, AND SMALL BUSINESS

A. Expenditures of Public Monies by Local Public Bodies (Minn. Stat. § 14.11, subd. 1).

Participation in the Clean Water Partnership Act by local units of government is not mandatory. Adoption of the proposed amendments will not require the expenditure of public monies by local units of government unless a local unit elects to participate in the Clean Water Partnership Program.

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

The proposed rule amendments will not have any direct adverse effects on agricultural lands in the state. In areas where projects are conducted, the program will continue to improve agricultural lands because best management practices required under the program have secondary benefits such as improving soil productivity and limiting soil erosion.

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

The Clean Water Partnership Program and the proposed amendments has no direct adverse effects on small businesses in the state. Small businesses will continue to benefit from contracts provided by the sponsors of Clean Water Partnership projects.

In proposing the amendments, the Agency has given due consideration to expenditure of public monies by local public bodies, the potential of adverse impact on agricultural land and the potential impact on small businesses. After completing its review, the Agency concludes that the proposed rule amendments have no adverse impact on these categories of concern.

VI. CONSIDERATION OF ECONOMIC FACTORS

In exercising its powers, the Agency is required by Minn. Stat. § 116.06, subd. 6 (1990) to give due consideration to economic factors. The statute provides:

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

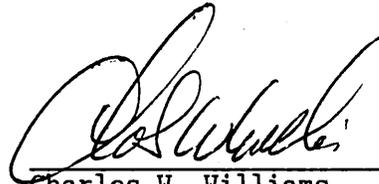
In proposing the amendments Minn. Rules ch. 7076, the Agency has given due consideration to available information regarding economic impacts. Under the proposed amendments the Clean Water Partnership continues to be a voluntary program that make no demands on municipalities that do not wish to participate or on commerce in the areas where projects are conducted. Projects will continue to benefit a municipality or local commerce by bringing money into the

area for supplies and work that is needed for project completion. The Agency in considering the economic factors concludes that the proposed rule amendments have a positive economic impact on participating municipalities and associated businesses.

#### VII. CONCLUSION

Based on the foregoing, the proposed amendments to Minn. Rules ch. 7076 are both needed and reasonable.

dated: 3/21, 1991



Charles W. Williams  
Commissioner