

STATE OF MINNESOTA  
MINNESOTA POLLUTION CONTROL AGENCY

IN THE MATTER OF THE PROPOSED REVISIONS  
TO RULES GOVERNING FINANCIAL ASSISTANCE  
FOR WASTEWATER TREATMENT SYSTEMS,  
MINN. RULES CH. 7077.0100 TO 7077.2010

STATEMENT OF NEED  
AND REASONABLENESS

**I. Introduction**

**A. Purpose**

The primary purpose of this revision to Minn. Rules pts. 7077.0100 through 7077.2010 is to comply with the legislative mandate under Minn. Stat. § 116.182, subd. 5 to create a rule for a newly enacted financial assistance program, the Wastewater Infrastructure Funding Program (WIFP). The legislature instructed that new rules must be adopted by both the Minnesota Pollution Control Agency (Agency) and the Public Facilities Authority (Authority) for administering the WIFP. These rules must include a revised project priority system that more clearly reflects the environmental needs and problems related to wastewater discharges in the state. In addition, the revisions need to reflect other changes:

\* the WIFP, under Minn. Stat. § 446A.071, the Water Pollution Control Revolving Fund (SRF) under Minn. Stat. § 446A.07, and the State Independent Grants Program (SIGP) under Minn. Stat. § 116.18, subd. 3a. projects are being combined under one set of requirements for ease of administering these programs; (hereinafter referred to as the "program.")

\* the rules are being simplified so municipalities may more easily receive funding for different types of projects, especially individual sewage treatment system projects; and,

\* the responsibilities for the Agency and the Authority are being further clarified and any duplication of effort between these two entities is being eliminated. The Agency's proposed rule is more clearly focused on environmental and technical requirements, rather than administrative and financial items that are the responsibility of the Authority.

#### **B. Background**

Currently, the primary source of funding for the construction of municipal wastewater treatment systems in Minnesota is loans from the SRF. Although Minn. Rules pts. 7077.0200 through 7077.0265 provide state grants for construction of municipal wastewater treatment systems, this program has not been funded by the legislature in recent years.

During the 1991 legislative session, the Legislative Water Commission (LWC) reviewed municipal wastewater financing in the state and found that some municipalities were limited in their ability to complete needed projects because their financial situation required funding in addition to the SRF. The Agency and the Authority were then directed to study the issues raised by the LWC and report specific findings and recommendations by January 1, 1992. The study was completed and the subsequent report recommended, in summary, that a new fund be established to provide supplemental financial assistance to municipalities that lack the capability to meet their wastewater needs solely through the SRF. It was because of this recommendation, and

others in the report, that the 1992 Minnesota Legislature created the WIFP and mandated that a rule be created and adopted to administer the WIFP.

In drafting the proposed rule (Exhibit 1), the Agency sought and received input from interested municipalities and citizens. A Notice to Solicit Outside Opinion (Exhibit 2) was published in the May 18, 1992 State Register. Written and verbal suggestions were submitted during this comment period. Exhibit 3 is the comments received as a result of the State Register notice.

The Agency also sought input from the Consulting Engineers Council (CEC). Representatives of the CEC were specifically asked for comments concerning changes to Chapter 7077 at two separate meetings and a letter was sent to the CEC requesting member input. Meetings were held with representatives of the League of Minnesota Cities, the Association of Small Cities, the National Audubon Society, the Project Environment Foundation and the Minnesota On-Site Treatment Contractors Association to gain input from their organizations.

Ideas were also solicited from other state and federal agencies, such as the Department of Natural Resources (DNR), the Department of Trade and Economic Development (DTED), the Authority, and the U.S. Environmental Protection Agency (EPA), Region V. Finally, numerous meetings were held to use the experience of Agency staff in an effort to make the programs under the proposed rule easier to understand and less restrictive while maintaining enough safeguards 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 rule. Section II identifies the Agency's statutory authority for rulemaking. Section III describes the need for amendments to the rule. Section IV describes the Agency's reasons for the proposed changes. Section V describes Small Business considerations in rulemaking. Section VI considers economic factors in the rulemaking process. Section VII discusses the impact of the proposed rule on public monies. Section VIII discusses the impacts this rulemaking may have on agricultural interests. Section IX is the list of exhibits, and Section X is the conclusion of the document.

## II. STATEMENT OF AGENCY'S STATUTORY AUTHORITY

The Agency's statutory authority to adopt and revise rules for the administration of the financial assistance program for construction of municipal wastewater treatment systems are set forth in:

### A. Minn. Stat. § 116.182, subd. 5, which provides:

Subd. 5. Rules. (a) The agency shall adopt rules for the administration of the financial assistance program. The rules must include:

- (1) application requirements;
- (2) criteria for the ranking of points in order of priority based on factors including the type of project and the degree of environmental impact and scenic and wild river standards; and
- (3) criteria for determining essential project components.

B. Minn. Stat. § 115.43, subd. 2, which provides:

Acting within the scope of the policy and purposes of Laws 1963, chapter 874, the agency shall adopt, promulgate, amend or rescind rules in the manner provided by law, as may be necessary or proper to carry into effect the provisions of Laws 1963, chapter 874.

C. Minn. Stat. § 446A.071, subd. 11, which provides:

Subd. 11. Rules of the Agency. The agency shall adopt rules relating to the procedure for preparation of the annual intended use plan and other matters that the agency considers necessary for proper loan administration.

### III. STATEMENT OF NEED

Minn. Stat. § 14 (1990) requires the Agency to make an affirmative presentation of facts establishing the need for and reasonableness of the rule 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 rule is discussed below.

- A. The Minnesota Legislature mandated in Minn. Stat. § 116.182, subd. 5, that the Agency adopt rules for the administration of the WIFP. Specifically, the legislature instructed the Agency to establish criteria for the prioritizing of wastewater projects to address current environmental needs and wastewater treatment problems in the state. The existing priority points process was created to meet the requirements of the Federal Construction Grants Program which has been terminated by Congress. In order to address the legislative mandate and termination of the Federal Construction Grants Program, the existing priority points process was deleted and a new project priority system is proposed.
  
- B. The existing rule needs to be updated. As indicated above, the Federal Construction Grants Program has been terminated. The existing rule contains numerous provisions that were required by federal statute and regulations that governed the Federal Construction Grants Program. These provisions are no longer needed and their deletion will simplify the rule.
  
- C. Both the Authority and the Agency are responsible for the administration of the various wastewater treatment financial assistance programs covered by the existing rule in Chapter 7077. The Agency is

responsible for the technical and environmental review of proposed projects while the Authority is responsible for financial review. In addition, the Authority is responsible for management of the funds in the SRF. The existing rule contains a number of provisions that duplicated requirements in the existing Authority rule, under Chapter 7380. Deletion of these provisions was necessary to avoid duplication of effort by Agency and Authority personnel and to lessen the administrative burden for municipalities applying for assistance.

#### **IV. STATEMENT OF REASONABLENESS**

The Agency is required by Minn. Stat. § 14 to make an affirmative presentation of facts establishing the reasonableness of the proposed rule. 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 rule is discussed below.

##### **A. Reasonableness of the Rule as a Whole**

The proposed rule is a revision of the existing rule, not a completely new rule. Many items in the existing rule are not being revised or deleted. Three major changes are:

1. The existing priority points process is being deleted. The existing process was created to meet the requirements of the Federal Construction Grants Program. Because the Federal Construction Grants Program has been terminated, a new project

priority system is being proposed. It is reasonable to have a system that clearly reflects the current environmental needs and problems in the state.

2. The rule is being revised to delete many federal requirements that are no longer applicable. Since there is no reason for the Agency to require adherence to federal requirements that no longer exist, it is reasonable to make the revisions throughout the rule.
3. Changes are also being made in wording for simplification and the need to be consistent throughout the rule. It is reasonable to revise existing wording so that the rule is easier to read.

**B. Reasonableness of Individual Sections of the Rule**

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

Part 7077.0100 Purpose. This part identifies that the financial assistance programs for the construction of municipal wastewater treatment systems will be administered by this rule.

Part 7077.0105 Definitions. The terms defined in this part are used throughout Chapter 7077. They have meanings specific to the programs governed by this chapter and therefore it is reasonable to define them.

Subpart 4. "Adverse impact." This definition is being deleted because the term is not used in the proposed rule. It is used in the existing priority points process and since this process will no longer be used, the definition is being deleted.

Subpart 11a. "Discharge monitoring report." This definition is being added. The discharge monitoring reports will be used in the proposed project priority system. These reports are the best source of data for use in assigning points and are already being used by permitted municipalities. This definition is reasonable because it identifies a specific form that is familiar to a large number of municipalities that may request project funding.

Subpart 11c. "Evaluator/designer." This definition is being changed. The existing Individual On-site Treatment Systems Grants Program rule, parts 7077.0700 through 7077.0765, has separate definitions for evaluator and designer. The two terms are being combined because it is imperative that designers are also educated in site evaluation. Combining the two terms may assist in making municipalities more aware that the Agency is concerned that designers are educated in site evaluation. No additional training is required for those individuals because the existing certification exam requires proficiency in both areas. The reasonableness of this definition is discussed further in the Statement of Need and Reasonableness (SONAR), part 7077.0720, Subpart 1.

Subpart 12. "Excessive infiltration." The reference to cost-effectiveness is being deleted from this definition to make the

definition more specific. This portion of the definition has been interpreted in different ways, which resulted in confusion. A cost-effective analysis of infiltration may identify excessive infiltration and at the same time identify that it is not economical to remove it. Just because infiltration is not economical to remove, does not mean that it is not excessive. This definition is reasonable because it narrows the term to objective technical criteria and eliminates ambiguity.

**Subpart 13. "Excessive inflow."** This definition is being changed to provide readability. The changes are not intended to alter the meaning of the term. "Maximum total quantity of flow rate" was changed to "quantity of flow," because a flow that causes operational problems is not necessarily a maximum flow. The term "industrial" was added to account for all possible flow to the system. These changes are reasonable because they provide a definition that is clearer than the existing definition.

**Subpart 13a. "Expanded discharge."** This definition is being added, and is used in project priority system determinations of whether a project should get a 30% penalty in points because of an increased discharge to a highly-valued water. This definition is reasonable because it is the same definition of an expanded discharge already used under Minn. Rule, ch. 7050, pt. 0180, subp. 2(c) and Minn. Rule, ch. 7050, pt. 0185, subp. 2(b), on non-degradation of the waters of the state.

**Subpart 14. "Facilities plan."** The word "reports" is being added to the existing definition to simplify the program. Ten States Standards, which is accepted engineering practice, uses the terms "engineering report" and "facilities plan" as acceptable planning documents for wastewater treatment system designs, depending on the scope of the proposed project. With a variety of project types currently being proposed, either type of report is acceptable. This change makes the program conform better to accepted engineering practices.

A new requirement is added that all structures with wastewater flows within the project service area be evaluated for needs. This ensures that the facilities plan is comprehensive and considers the needs of structures served by individual sewage treatment systems. Under the existing rule, the program and the facilities plan were not oriented toward such systems. This change is necessary to ensure that the environmental needs of unsewered areas receive due consideration.

**Subpart 14a. "Failed systems."** This definition is being added to provide a definition for failed individual sewage treatment systems. This definition is necessary because failed systems are considered during the determination of priority points. This definition clearly describes conditions that indicate a nonfunctioning or poorly functioning system that poses an environmental and public health risk.

**Subpart 16. "Flow equalization system."** This definition is being deleted because the term is not used in the proposed rule. It is

used in the existing rule to describe a temporary containment system. Since all types of projects are being defined as wastewater treatment systems under the proposed rule, this definition is no longer necessary.

Subpart 16a. "Individual sewage treatment system." This definition is being moved. It is currently in the existing rule under part 7077.0705, "Individual on-site wastewater treatment system or individual system." It is reasonable to use this definition since it is an accurate description of a particular type of system, and it is also reasonable to move this definition to the beginning of the proposed rule since "individual sewage treatment system" is a term that is used throughout the rule, not just in one part of the rule.

For a discussion of the terminology change from "individual on-site wastewater treatment system" to "individual sewage treatment system," refer to the SONAR for part 7077.0700.

In the existing definition, only systems with subsurface disposal qualify. The proposed rule deletes the word "subsurface" to allow the use of new technologies which could employ a surface discharge. This is reasonable to ensure that the rule does not arbitrarily exclude a valid mode of disposal.

Finally, there is another terminology change. The two definitions "dwelling" and "other establishments" are being replaced by the term "structures with wastewater flows," which is clear enough that it needs

no definition in the rule. This change simplifies the rule by replacing two terms with a single one. At the same time, this change promotes comprehensibility since the average person does not automatically understand that the existing term "other establishments" refers specifically to non-residential structures which generate wastewater. Refer to the last paragraph of the SONAR for part 7077.0105, subpart 16a, for a discussion of the terminology change from "dwellings" and "other establishments" to "structures with wastewater flows."

**Subpart 18a.** "Initiation of operation." This definition is being moved. It is currently in the existing rule, under part 7077.0435, subpart 2. This definition should have originally been included in the existing rule's definition section (part 7077.0105). Inclusion of this definition in the proposed rule is merely a correction of this omission. This definition is reasonable because it is an accurate and comprehensive description of an important milestone in the construction of a project.

**Subpart 19.** "Intended use plan." This definition is being changed to replace the term "Municipal Needs List" with the new term "Project Priority List." The reasonableness is discussed further in the SONAR, part 7077.0115.

**Subpart 19a.** "Maintenance plan." This definition is being added. The requirement for a maintenance plan in place of an operation and maintenance (O & M) manual for municipalities replacing and/or

upgrading individual sewage treatment systems is being added to the proposed rule. The maintenance plan, like an O & M manual, serves to assist in preventing pollution and to protect the state's investment, while saving time and money for the smaller municipalities with simple projects. The proposed definition is a reasonable definition for a maintenance plan because it is a clear listing of items necessary to provide assurance of operable individual sewage treatment systems over time.

**Subpart 19b. "Maximum design flow."** This definition is being added. Maximum design flow applies to the design of individual sewage treatment systems. The submittal of maximum design flow information is one of the requirements during facilities planning. This is a reasonable definition of maximum design flow because it will be consistent with Minn. Rules, ch. 7080.

**Subpart 22a. "Minimum secondary treatment standards."** This definition is being added. This definition is used in the proposed project priority system. This definition is reasonable because it is the same definition that is already used in Minn. Rules, ch. 7050, pt. 0211.

**Subpart 20. "Major contributing industry."** This definition is being deleted because the term is not precise enough, and has caused confusion. It does not correspond to the language used in the federal pretreatment regulations. It is being replaced by the more accurate term "significant industrial user." The reasonableness is discussed further in the SONAR, part 7077.0105, subpart 41a.

Subpart 21. "Major interceptor sewer." This definition is being deleted because the term is not used in the proposed rule. It is used in the existing priority points process. Since the existing process is being completely replaced, this definition is no longer needed.

Subpart 21a. "Maximum impact zone." This definition is being added because it is used in the proposed project priority system. This is a new concept that defines a method of measurement. The reasonableness is discussed further in the SONAR, part 7077.0189.

Subpart 22. "Maximum wet weather flow." This definition is being deleted. This definition was used to define extreme conditions in NPDES permits. This term is no longer used in permit language and no longer needed in the proposed rule.

Subpart 23. "Municipal needs list." This definition is being deleted because the term is not used in the proposed rule. "Municipal needs list" is being replaced by the term, "project priority list" to be consistent with the change from a list of municipalities to a list of projects.

Subpart 25. "Need." This definition is being changed to resolve the misunderstandings there have been with this definition in the past. Changes are reasonable to clarify or simplify this definition. "Determination that a" is being deleted to clarify the definition. Determination seems to connote, to the public, a very formal process,

while, in reality, it is informal. "Disposal system" is being changed to "wastewater treatment system" to be consistent throughout the proposed rule. References to a time frame have been deleted. A time frame for the need is not necessary because Agency experience has shown that very few projects are proposed if the need is not existing or in the near future.

Subpart 25a. "New discharge." This definition is being added. This definition is used in the project priority system to determine whether a project should get a 30% penalty in points because of a new discharge to a highly-valued water. This definition is reasonable because it is similar to the definition of a discharge as used under Minn. Rules, ch. 7050, pt. 0180, subp. 2(c) and under Minn. Rules, ch. 7050, pt. 0185, subp. 2(b), relating to non-degradation of the waters of the state.

Subpart 26. "NPDES permit." This definition is being changed. Although all NPDES permits are also SDS permits, SDS permits which discharge to the subsurface ground water are not NPDES permits. The distinction between surface water discharges and ground water discharges is vital to the project priority system. Therefore, this definition is reasonable because it is clear, simple and necessary in the proposed project priority system.

Subpart 27. "Operation and maintenance manual." This definition is being changed to reflect a wording change from "facility" to "system." The reasonableness is discussed further in the SONAR under part 7077.0105, subpart 48.

**Subpart 28.** "Outstanding resource value water." This definition is being changed to clarify that the waters defined as outstanding resource value waters are given that classification specifically in item A of the rule, under Minn. Rules, ch. 7050, pt. 0180, subp. 2.

**Subpart 31.** "Performance certification." This definition is being changed to reflect a wording change from "facility" to "system".

The reasonableness is discussed further in the SONAR in part 7077.0105, subpart 48, and in Section IV, No. 3.

**Subpart 32a.** "Pollutant." This definition is being added because it is a critical environmental term used throughout the rule. This definition is reasonable because it is the same definition used in Minn. Stat. § 115.01, subd. 13 (1990).

**Subpart 33.** "Primary treatment facilities." This definition is being deleted because the term is not used in the proposed rule. This definition is used in the existing priority points process. Since the existing process is being completely replaced, this definition is no longer needed.

**Subpart 33a.** "Project priority list." This definition is being added. This term will replace the "Municipal Needs List" which is being deleted. The reasonableness is further discussed in the SONAR, part 7077.0115 and in Section IV, No. 1.

Subpart 33b. "Project service area." This definition is being added to provide clarification of what area is to be serviced by the proposed project. This definition gives a clear outline of the boundaries of the area.

Subpart 34. "Reimbursement project." This definition is being deleted because the term is not used in the proposed rule. The concept of a reimbursement project in the SIGP was valuable because it allowed communities to proceed with construction/rehabilitation before receipt of a grant with the guarantee of reimbursement. Because of the consistent availability of low-interest loan funds to municipalities through the SRF, this type of project is no longer needed.

Subpart 35. "Relief sewer." This definition is being deleted because the term is not used in the proposed rule. It is used in the existing priority points process. Since the existing process is being completely replaced, this definition is no longer needed.

Subpart 35a. "Residential growth." This definition is being added. Minn. Stat. § 116.182, subd. 4., creates the financial assistance program where only existing wastewater flows and residential growth are eligible for supplemental assistance. This definition clearly states what constitutes residential growth.

Subpart 35b. "SDS permit." This definition is being added because the project priority system requires a distinction between discharges

to surface water and subsurface discharges to ground water. The reasonableness is discussed further in the SONAR, part 7077.0105, subpart 26.

**Subpart 36. "Secondary treatment facilities."** This definition is being deleted because the term is not used in the proposed rule. It is used in the existing priority points process. Since the existing process is being completely replaced, this definition is no longer needed.

**Subpart 36a. "Seepage."** This definition is being added to provide a definition for seepage from individual sewage treatment and SDS systems to be used during the determination of priority points. This definition is an indicator of a failed system.

**Subpart 38. "Sewer service charge."** This definition is being changed to reflect a wording change from "facility" to "system." The reasonableness is further discussed in the SONAR, part 7077.0105, subpart 48.

**Subpart 40. "Sewer system rehabilitation project."** This definition is being deleted because the term is not used in the proposed rule. It is used in the existing priority points process. Since that is being completely replaced, this definition is no longer needed.

**Subpart 41. "Sewer use ordinance or SUO."** This definition is being changed to reflect a wording change from "facility" to "system."

The reasonableness is discussed further in the SONAR, part 7077.0105, subpart 48.

Subpart 41a. "Significant industrial user." This definition is being added. This definition replaces that of "major contributing industry." This term is used in NPDES permit language and corresponds with the federal pretreatment regulations. This definition is more specific than the definition for "major contributing industry."

Subpart 42. "Tertiary treatment facilities." This definition is being deleted because the term is not used in the proposed rule. It is used in the existing priority points process. Since the existing process is being completely replaced, this definition is no longer needed.

Subpart 43. "Treatment agreement." This definition is being changed to provide consistency throughout the rule. The portions proposed to be deleted were inconsistent with requirements used in the permitting and pretreatment programs. This definition is needed because municipalities are required to submit, with the facilities plan, a signed treatment agreement with each significant industrial user. Refer to the proposed rule, part 7077.0272, subpart 2a(F) in this SONAR for a further discussion. This definition is reasonable because it will ensure consistency between requirements for industrial treatment agreements in all parts of the water quality program.

Subpart 45. "User charge." This definition is being changed. In the existing rule, it was a requirement of the federal Clean Water Act that the user charge be proportionate. This federal requirement no longer applies to the programs under this rule; therefore, this definition is being changed.

Subpart 46. "Value engineering." This definition is being deleted because the term is not used in the proposed rule. Value engineering is a federal requirement that existed in the Federal Construction Grants Program. Since the program has been terminated, the requirement and the definition are no longer needed.

Subpart 47. "Wastewater." This definition is being changed to reflect a wording change from "facility" to "system." The reasonableness is discussed further in the SONAR, part 7077.0105, subpart 48 and in Section IV, No. 3.

Subpart 48. "Wastewater treatment system." This definition is being added to cover the variety of projects that can request funding through the different programs. This definition is reasonable because it is broad enough to cover all types of projects, therefore eliminating some confusion regarding which projects qualify for specific programs.

Subpart 49. "Water use classifications." This definition is being added. Water use classifications are used in the project priority system as part of the determination of the value of a water. This

definition is reasonable because it contains the rule citation for finding the specific classifications.

Subpart 50. "Water with significant water quality violations." This definition is being added. This is used in the project priority system. This definition is reasonable because the determination of whether a water has poor quality comes from an official biennial report to Congress. If a water is listed as having poor quality, the project priority system gives it more points. The reasonableness is discussed further in the SONAR, part 7077.0173.

Part 7077.0110. Types of Programs.

This part of the rule is being deleted. Some programs listed in this part have not been funded for some time. The rule is being restructured to eliminate the program descriptions from this part and to place the descriptions with the related program requirements.

**PROJECT PRIORITY SYSTEM**

Part 7077.0115. Municipal Needs List.

The title of the List is being changed from "Municipal Needs List" to "Project Priority List." Under the existing rule, the list of projects with wastewater needs over the next five years is called the Municipal Needs List. In this part, the List is renamed the Project Priority List. The List ranks projects rather than municipalities. The change from

"municipality" to "project" is necessitated because the Municipal Needs List prioritizes wastewater projects rather than municipalities. For example, on the current Municipal Needs List, the Metropolitan Waste Control Commission is listed 13 times with 13 different rankings, which would not occur if the Municipal Needs List were actually a list of municipalities ranked by the municipalities' need. As a list of projects, however, it is logical that a municipality could have several project entries with varying rankings, depending on the characteristics of the project.

Changing the name of the Municipal Needs List to the Project Priority List is necessary because it better reflects the contents of the list. It is reasonable to make the change in order to eliminate any confusion that could result from a municipality being listed several times with different rankings.

**Subpart 1. Requirement.** The term "municipal need" has been changed to "project priority" in keeping with the above discussion. "Facility" has been changed to "system" in order to maintain consistency throughout the rule. Refer to the SONAR, part 7077.0105, subpart 48 for a further discussion.

**Subpart 2. Points and listing order.** This subpart changes references to "municipalities" on the Project Priority List to "projects." Refer to part 7077.0115, introduction, of this SONAR for a further discussion.

Subpart 3. Request for placement on list. In this subpart there are major revisions to the submittals required for placement on the Project Priority List. For permitted municipalities, five of the six previous requirements are being deleted; this is reasonable because they are not necessary in determining eligibility or priority under the proposed rule. Also, the revisions reduce the amount of work and associated cost required of municipalities seeking placement on the Project Priority List.

If known, a description of the proposed project and its costs are requested. This is reasonable because estimated costs are useful to the Authority, the Agency and to the legislature for planning purposes. It is reasonable to request a description and costs because projects are sometimes added to the Project Priority List before facilities planning has been completed. The facilities planning process is used to evaluate alternative ways to deal with a wastewater problem and to select the most advantageous method for the project. Until facilities planning is completed, estimation of costs is largely speculative.

Municipalities are encouraged to submit their requests for extra points and to document such requests. This is appropriate to ensure that municipalities have every opportunity to obtain all of the applicable points. This is reasonable because the basis for obtaining extra points involves information that is more readily available to the municipality than to the Agency. It is reasonable to have a request-and-document approach so that municipalities may ignore extra points categories that do not apply to them. It is also reasonable because it reduces the workload of both the municipalities and the Agency.

It is reasonable to encourage municipalities to submit information at the time of requesting placement on the Project Priority List so that everyone on the Project Priority List can obtain as accurate a picture as possible of their relative rankings. It is necessary, however, to allow extra points to be requested up to the point when the facilities plan is submitted, because the applicability of some extra points could possibly remain unknown until facilities planning is completed.

In the past, unpermitted municipalities have had four requirements, three of which are being deleted. Under the Project Priority List they may request and document any extra points that are relevant. It is reasonable to require only what is needed. It has proven necessary to add two new requirements in order to help the Agency assess the environmental impact of the unpermitted municipality. The extra information discussed below is requested from unpermitted municipalities since they do not submit discharge monitoring reports from which the Agency could derive applicable information.

First, the municipalities are now required to submit "the total number of structures with wastewater flows in the project service area". This information is necessary in determining points under the new system and is reasonable because this is information that is readily available to the officials in the localities.

Second, municipalities are required to submit "a map with an identifiable scale which shows all the structures with wastewater flows in the project service area." The location of such structures is necessary to find the

maximum impact zone and to calculate the density ratio. Such information is vital to the revised point system and is discussed at length in the portion of the SONAR on proposed part 7077.0189. It is reasonable to ask the local officials to mark these structures on the map because this information is more readily available to them than it is to the Agency. A further requirement is that the submitted map have the maximum impact zone (the area of highest density of wastewater flows), clearly encircled. Determination of this zone is necessary in order to assign the points for the environmental impact on the subsurface ground water. It is reasonable to ask local officials to determine the zone in order to give them the opportunity to find the smallest possible zone and to obtain the highest density ratio for which they might qualify.

**Subpart 4. Review.** Under this subpart, the commissioner reviews each request for placement on the Project Priority List. In sewered areas, the project shall be added to the List if a need is demonstrated to exist, or shall exist in the next five years. In unsewered areas, the project shall be added only if a need currently exists. This distinction is necessary to maintain the environmental focus of the program, otherwise the program could be used to subsidize property development, rather than existing environmental needs. This is reasonable because such development has not been funded in the past.

**Subpart 5. Recalculation of points.** This subpart is being added. Under this subpart, the Agency shall recalculate the total points given to a project when new information is available and when the Authority determines

that the project is eligible for funding under the financial assistance program established by Minn. Stat. § 446A.071.

It is reasonable to recalculate points if new information becomes available after the project has been placed on the Project Priority List. In particular, the facilities plan, which often will not be completed by the time of placement on the Project Priority List, contains information which affects the project's total points. For instance, if the facilities plan determines that the project will create a new point of discharge into a highly valued water such as a lake, the project will be penalized by reducing its total points by 30%, according to the proposed rule, part 7077.0176. It is necessary to recalculate points based on new information to accurately reflect the current conditions of the project.

In addition, the commissioner will recalculate points if the Authority determines that the project is eligible for funding under the program established by Minn. Stat. § 446A.071. This is reasonable because the points rank projects for funding under that program. If a project is only eligible for loan funding, its total points and its consequent rank on the Project Priority List are not as important because currently there is no shortage of available loan money. Recalculating points for projects ineligible for such funding is not a cost-effective use of staff time for the Agency.

If a project is eligible for a loan or for supplemental funding under the program cited above, it is reasonable to recalculate points. Each year, among the projects eligible for such assistance, the projects' relative

ranks on the Project Priority List determine which projects shall receive funding. It is necessary to recalculate points for projects eligible for financial assistance in order to ensure that the priority rankings are based on the best estimate of environmental impacts.

**Subpart 6. Removal from Project Priority List.** This subpart is being added. Under this subpart, a project will be removed from the Project Priority List after five years. Previously, a project on the Municipal Needs List frequently was constructed without Agency funding or the municipality decided that the project was not needed. In such cases, the municipalities rarely asked to have the project removed from the List and, over time, the List accumulated projects that were no longer viable. It is important to avoid this situation because the Agency and the legislature will use the Project Priority List as a planning document to project upcoming costs.

It is reasonable to remove projects from the Project Priority List after five years because some of the potential points are based on data that could change over time, and removing a project and adding it again at a later date will ensure that its points are re-examined periodically.

Parts 7077.0120 to 7077.0145

These parts, covering the determination of points under the existing rule, are being deleted. This is reasonable because an entirely new project priority system is being created to meet the statutory requirement of addressing environmental concerns more efficiently.

Part 7077.0150 Facilities plan.

This part is being renumbered as part 7077.0272 to allow for a more logical order of subjects in the proposed rule. Facilities plans are needed to ensure that municipalities will have wastewater treatment systems that are cost-effective and serve the needs of the municipality when the construction of the project is completed and operation is initiated. Facilities plans help a municipality investigate and identify its wastewater treatment needs, identify a number of treatment options, and evaluate and compare treatment costs of these options. The part for facilities plans efficiently outlines the desired results.

Much of the language proposed under this part is related to individual sewage treatment systems. This language is part of the simplification of technical requirements to allow municipalities to more easily receive funding for many types of projects.

**Subpart 1.** In general. References to the Municipal Project List and the Federal Construction Grants Program, both obsolete terms, are proposed to be deleted under this subpart and throughout the chapter. References to the Intended Use Plan are proposed to be deleted for purposes of clarity under this subpart.

The commissioner's approval of facilities plans is currently required under this subpart. However, restructuring of the proposed text makes it appear that this is a new requirement.

Several facilities plan submittal requirements are being deleted from the existing rule, part 7077.0205, Municipal Project List, and added to the proposed rule, part 7077.0280, Certification Submittal Requirements, to allow for a more logical ordering of items for ease in the administration of programs.

An exception to the requirement for having a professional, registered engineer complete the facilities plan is proposed for individual sewage treatment systems designed to treat 5,000 gallons or less of wastewater per day. Under this exception, municipalities will have the option of hiring evaluator/designers or hiring registered engineers to complete the facilities plan. For an explanation of the reasonableness of the 5,000 gallons per day cut-off point, see part 7077.0710 in this SONAR.

Currently, municipalities cannot hire evaluator/designers (defined under the proposed rule, part 7077.0105, subpart 11c to complete a facilities plan. The proposed language would change the requirement for the specified treatment systems. It is reasonable to allow evaluator/designers to complete this work because they have the proper experience and knowledge.

Evaluator/designers may not be engineers and are people that have a working knowledge of individual sewage treatment systems. They are required under the proposed rule, part 7077.0720, subpart 3, item B, subitems (2) and (3) to have completed within the last three years, a minimum of 20 site evaluations and a minimum of 20 system designs that meet the state requirements under Minn. Rules, ch. 7080. Therefore, only experienced personnel are qualified as evaluator/designers.

Minn. Rules, ch. 7080 establishes the minimum standards and criteria for the design, location, installation, use and maintenance of individual sewage treatment systems. These standards and criteria were established as a means of protection for the surface and ground water of the state. System designs produced by evaluator/designers must meet the requirements of Minn. Rules, ch. 7080. Evaluator/designers are required under the rule in part 7077.0720, subpart 3, item A to prove their knowledge of Minn. Rules, ch. 7080 standards and criteria by passing a written exam.

A certification program administered jointly by the Agency and the Individual Sewage Treatment System Committee, offers training opportunities for evaluator/designers. Evaluator/designers that complete the training and are certified under the program automatically meet the requirements under the rule in part 7077.0720.

It is reasonable to provide municipalities with the opportunity to hire evaluator/designers to complete the facilities plan because they can complete the work, are often familiar with local concerns and may be able to offer the municipality a cost savings.

Under the existing program, small rural municipalities have had to hire registered engineers to meet the rule requirements. These same municipalities may have local evaluator/designers that have become "local experts" on geology, soil types, ground water characteristics and wastewater treatment difficulties. This local knowledge would be beneficial in completing a facilities plan.

Hiring a local evaluator/designer could reduce the cost of completing the facilities plan for a municipality. Evaluator/designers typically have hourly wage rates that are lower than registered engineers. Travel expenses would be reduced, if not eliminated, because the evaluator/designer is usually located in the vicinity.

**Subpart 2. Facilities plan contents.** The word "include" is proposed to be changed to the phrase "address the following items in the amount of detail that is appropriate to describe a project accurately." This change is reasonable because it allows for increased flexibility in the amount of information submitted for different types of projects.

The word "include" is vague and has resulted in the submittal of many facilities plans that have been considered by the commissioner to be incomplete. For example, information included in the facilities plan intended to describe a treatment system could say:

- A. a mound system, or
  
- B. A structure with wastewater flows requiring a 1,500 gallon septic tank (garbage disposal has been installed) and a 60' x 70' mound system designed for 600 gallons per day average daily flow. The mound contains a 50' x 10' x 1' single rock bed. Septic tank effluent is distributed via three 1-1/4" perforated PVC pipes. A total of 51 perforations are necessary for a center distribution manifold system in the rockbed to adequately disperse the partially treated wastewater.

At 0.74 gallons per minute per perforation (assuming one foot of head over the perforations), a 38 gallon per minute pump is necessary. The elevation difference between the pump point of discharge and manifold discharge is approximately 12 feet. Assuming an equivalent pipe length of 85', the total friction loss will equal approximately 4'. Total head requirements are thus 12' x 5' (center manifold) + 4' = 21'.

Both A and B were intended to describe the same system, but B provides details that illustrate how the system to be constructed during this project differs from other mound systems.

Under the existing rule, the commissioner reviews and approves the facilities plan. If a plan does not contain enough information for the commissioner to complete review, it is returned to the municipality for completion. This causes a delay in the project and, potentially, a project could be delayed a whole funding cycle. This review and certification process will continue under the proposed rule.

**Item A.** This item requires facilities plans to describe and evaluate the existing wastewater treatment system. Problems at the existing treatment system that need correction are proposed to be added to the description and evaluation. These system problems need to be identified in the facilities plan because they help to accurately identify the specific project, to accurately assess the municipal need for additional treatment, and to accurately consider upgrading the existing system as a project option. The municipality and the commissioner need to understand the problems with the existing system to determine the appropriate course of action. This

requirement is reasonable because it aids the identification of wastewater treatment problems and potential sources of ground water contamination which should be solved by the selected treatment alternative for the project. This requirement is reasonable because it does not cause additional work or cost to a project since the system problems must be identified to accurately complete the facilities plan.

The ability of the existing wastewater treatment system to meet proposed permit requirements is proposed to be added to the list of evaluation items for the existing system. This addition is reasonable because the information helps to accurately describe the project and is needed to determine if upgrading the existing system is a viable project alternative. Language is proposed to require that existing individual sewage treatment systems within a project service area be evaluated to determine if they conform to the requirements under Minn. Rules, ch. 7080.

As part of the effort to make terminology consistent throughout the chapter, the words "treatment facility" and "facility's" are proposed to be changed to "wastewater treatment system" and "system's" respectively.

Changes are being proposed to make this item read more smoothly. The original single, complex sentence has been divided into two sentences. The phrase "including information about" has been revised to "must consider." The phrase "an analysis of" has been dropped because it is revised with "evaluation." These changes are reasonable because they create no changes to the requirements.

Item B. The existing item requires the facilities plan to include measures of flows that occur during rain events and high ground water conditions. Flow information is required to be based on a minimum of 30 consecutive days of monitoring. These requirements are being deleted. This deletion is reasonable because the Agency already has the requested measurements. NPDES and SDS permits require flows to be reported monthly on discharge monitoring reports, which are sent to the Agency. The existing rule language has been incorrectly interpreted by engineers to require monitoring that is in addition to the monitoring required for the discharge monitoring reports. This interpretation has resulted in additional and unnecessary planning costs. It is reasonable to eliminate unnecessary and confusing language from the rules.

Measures of existing residential wastewater flows and loadings and measures of existing nonresidential flows and loadings are being added to the facilities plan. It is reasonable to require that these measurements be reported on the plan because they are established as part of the evaluation of the existing wastewater treatment system and the determination of municipal wastewater treatment needs. There should be no additional work or expense associated with providing this information.

Flow measurements are needed under the proposed program to complete the essential project component percentage (defined under the proposed rule, part 7077.0276, subpart 2). This percentage is used to determine the amount of a project that is eligible to receive WIFP funds and is part of the commissioner's certification to the Authority under the proposed rule, part

7077.0276, subpart 3. It is reasonable for the rules to request the information that is needed to complete the commissioner's certification.

Language that requires flow measurements to be submitted to the Agency on a form provided by the Agency is being proposed. There is one method for calculating the essential project component percentage under the proposed rules. The form, which is currently used by the Agency, provides standardized guidelines for calculating the flow numbers. This standardization of flow calculation methods and results will ensure that the essential project component percentages will be consistent, comparable, and accurate for each project.

Item C. This item is being deleted. This existing item requires the facilities plan to analyze the existing sewer system to determine if excessive levels of inflow and infiltration exist. If excessive levels are found, the sources of the inflow and infiltration must be identified. These requirements are proposed to be deleted. The evaluation of inflow and infiltration and related sources is routinely part of the wastewater flow evaluation and the municipal wastewater treatment need determination. The requirements were established under this item to meet requirements under the Federal Construction Grants Program. As the delegated administrator of the Federal Construction Grants Program, the Agency had to require municipalities to analyze and reduce inflow and infiltration. The form mentioned in Item B above provides for a review of inflow and infiltration.

Since the Federal Construction Grants Program has been terminated, there is no longer a federal requirement for this item. The Agency has decided to

stop requiring that municipalities reduce inflow and infiltration. This is reasonable because program experience has shown that projects designed to eliminate or reduce inflow and infiltration often are not cost-effective. This decision also gives the municipality more control over the scope of its project. Agency staff will continue to be available to advise municipal officials on inflow and infiltration issues.

Item D. This item is being relettered to "C" to correspond with the deletion of the existing item C. This item requires future flow projections to be included on the facilities plan. The terms "residential" and "non-residential" wastewater flows and loadings are proposed to be added. These terms refer to values that are required to complete the calculation of an essential project component percentage. See item B, paragraph 3, for a discussion of the reasonableness of adding these terms.

The requirement to report flows and loadings that will occur within the next five years is being deleted. The five year projection was established under this item as a means of identifying present wastewater treatment needs. It is reasonable to make this deletion because present flows are addressed under item B. This item has been revised to address only future flows. The word "periods" is being made singular in response to the deletion of "five-year period."

"Population growth" is proposed to be changed to the more specific terms "residential growth" and "industrial growth." Under the new financial assistance program, the "residential growth" value is needed to determine the essential project component percentage. It is reasonable for the rules

to require the information that is needed to complete the Agency's essential project component percentage calculation.

"Nonresidential growth" is not eligible for assistance under the proposed program. However, it is reasonable to require this value to be included on the facilities plan because it is part of the evaluation of a municipality's wastewater treatment needs. This value can have an influence on treatment alternatives. This information is important to the Agency's review of the selected treatment alternative and the plans and specifications. The Agency review must reasonably assure that the final treatment facility will meet the needs of the municipality. It is reasonable to require information that is needed to complete the Agency's responsibility to review plans and specifications.

This item requires that significant industrial users, that will contribute flow into the treatment system within 20 years, prepare letters explaining their wastewater needs as part of the facilities plan. Adding a signature to these letters is proposed. This is reasonable because a signature makes the letter an official document authorized by a company representative. The municipality needs the industrial users to be accountable for their treatment requests. An official document makes a company more accountable than an unsigned letter. A municipality must have an accurate idea of the wastewater needs or a treatment system that is too large or too small will be constructed. This could mean hundreds of thousands of dollars wasted or spent for ineffective or inadequate treatment.

A form for reporting future flows and loadings data to the Agency will be required. See item B, paragraph 4, above, for a discussion of the reasonableness for this requirement.

Item E. This item is being relettered to "D" to correspond with the deletion of item C.

This item requires the facilities plan to describe all feasible treatment works, processes and techniques considered in the selection of an alternative capable of meeting the applicable effluent water quality and public health requirements for 20 years.

Wording changes are being made to make this item easier to read. As part of this effort, the requirements for a cost-effective analysis and a cost comparison between eliminating excessive inflow and infiltration and transporting and treating the extra wastewater is being included under subitem (1) of this item. These are required only if excessive inflow and infiltration exist.

The requirement for municipalities with unsewered areas to consider individual sewage treatment systems is being deleted. In the proposed rule, municipalities are required to report on the various treatment alternatives that were considered prior to selecting a facilities plan. This is a reasonable requirement because municipalities will need to look at a variety of alternatives in order to decide on what treatment method is best for a particular need.

Subitem (1). Refer to paragraph three of new item D, above.

Subitem (2). The reference to "geotechnical engineer" is being removed because the term is redundant with the term "registered engineer." The option of using a professional engineer or an evaluator/designer to complete a site assessment is proposed to be added for individual sewage treatment systems designed to treat 5,000 gallons or less of wastewater per day. See subpart 1, above, for an explanation of the reasonableness of this option.

Subitem (3). This is a new subitem which requires that a project be evaluated to determine the impacts it will have on the existing wastewater treatment system. This requirement is reasonable because it is part of evaluating treatment alternatives. A project may solve one wastewater treatment problem but cause another problem somewhere else in the treatment system.

Subitem (4). This is a new subitem which requires that the potential environmental impacts of the selected treatment alternative be considered. This requirement is reasonable because it is part of a complete evaluation of the treatment alternatives and it is a federal requirement in order to use the SRF. A project may solve the wastewater treatment needs but cause environmental degradation such as destroying a unique biological community or causing an erosion problem. Environmental protection is one of the federal and state goals of wastewater treatment.

Item F. Item F is proposed to be relettered to "E" to correspond with the deletion of item C. This item requires information about the selected treatment alternative.

Subitem (4). Changes are being proposed to make the language easier to read and to change the word "facility" to "system." These changes do not change the meaning or the requirements of the rules.

Subitem (5). This requirement addresses the planned method of sludge disposal. "Septage" is being added to this subitem. Septage is a solid byproduct of individual sewage treatment systems. It is reasonable to add this term to this subitem because of the likelihood of more individual sewage treatment systems being funded in the future.

Subitem (6). This subitem requires proof to be provided that shows the selected treatment system will operate during a 25-year flood and be protected during a 100-year flood. The term "sites" is proposed to be added to this subitem to require that 25-year and 100-year flood information be examined for each project site. It is reasonable to plan a project that will not be impacted by flooding because it ensures that a disaster is prevented. A treatment system destroyed or overloaded during a flood could result in environmental degradation such as ground water contamination or risk public health by causing backups of sewage into homes.

Subitem (7). This subitem requires a description of the ordinances or intermunicipal agreements necessary for implementation of the project. This requirement is being deleted because it has been moved under

subpart 2a, item E, above. Ordinances and intermunicipal agreements are not the responsibility of the engineer and are not prepared as part of the wastewater treatment selection process. Therefore, the requirement fits more appropriately under subpart 2a, Facilities Plan Supplement.

Subitem (8). This subitem is being renumbered to "(7)" to correspond with the deletion of subitem (7). There are no additional changes proposed.

Item G. This item requires that the facilities plan include an evaluation of the environmental impacts for the selected treatment alternative. This item is being deleted because it has been moved under subpart 2a, item G. The evaluation of environmental impacts for the selected treatment alternative is not prepared as part of the wastewater treatment selection process and is not part of the standard facilities plan. Therefore, the requirement more appropriately fits under subpart 2a, facilities plan supplement.

The existing language under subpart 2a, item G, provides extensive detail about the information that is to be submitted about the environmental impacts of the selected project. The language under subitems (1) and (2) summarizes the questions addressed on the environmental information sheet used as part of the state environmental review process established under Minn. Rules, ch. 4410. It is reasonable not to include this language under subpart 2a, item G, because the municipality will not be completing a narrative, but will be completing the information sheet from the environmental review process.

Subpart 2a. This is a new subpart that establishes the requirements for a facilities plan supplement. It is reasonable to require a supplement to be developed by a municipality because the content requirements are items that are routinely produced as part of the project planning process and contain information needed by the commissioner during review of the facilities plan. Most of the requirements proposed under this part already exist under this chapter. It is reasonable to consolidate the existing requirements under this subpart because it improves the organization of the rules, clarifies what items are required to be submitted to the commissioner in addition to the facilities plan and creates a process for this submittal.

Item A. This item will require an assurance from the municipality that property owners planning to be part of a multi-connection individual sewage treatment system agree to be part of the system, to participate in the construction project and to provide money for the system as needed. The property owners and users must address these issues to ensure that the system operates properly and provides the needed wastewater treatment. This assurance is currently required under the existing rule, part 7077.0725, as an application requirement for the Individual On-site Wastewater Treatment Systems Grants Program. It is reasonable for the property owners to address these issues before the system is constructed because they will become informed about how they will have to interact with the other users and their responsibilities to system maintenance and replacement. This education and decision-making process is part of thorough planning. It is reasonable for the municipality to provide an assurance because it is receiving the financial assistance and is ultimately responsible for ensuring that the

individual sewage treatment system operates properly under the contract for the funding.

Item B. This item will require a list of addresses used for public notice purposes on a form provided by the Agency. This list will include the names and addresses of the persons that own property adjacent to the proposed project site or sites. Adjacent property owners are the persons that are impacted the most by the project and location of the treatment system. It is reasonable to give them notice about the facilities plan and the municipalities' proposed plans.

The State Environmental Review Process (SERP) which is required by the federal government, requires public notice of the proposed project. It is reasonable for the list to be submitted to the Agency so that it can be used in the public notice.

Item C. This item will require the facilities plan supplement to include a summary of the information that was presented and comments received at a public hearing held to discuss the facilities plan and related project. This information is required under subpart 3 of the existing rule, which also requires the public hearing. Therefore, this language does not add a new requirement. See subpart 3 for an explanation of the reasonableness for having this requirement under subpart 2A.

This item will also require the supplement to summarize the actions that were taken to address public comments. This is a new requirement and has been proposed to help municipalities expedite their projects. The public

hearing process is used to educate the affected public about the proposed project, to hear their concerns about the project and to address those concerns in an attempt to prevent social problems and to gain public acceptance for the project. Experience with administering grant programs for construction projects has shown that projects that have had public comments addressed expeditiously experience less protest and are completed without delay. This requirement will make the municipal project managers accountable to the Agency for addressing the public comments. This is reasonable because the accountability will encourage municipalities to address public comments as quickly as possible, which will prevent project delays.

Item D. This item will require a formal resolution of the municipality's governing body adopting the facilities plan. This resolution and its submittal to the commissioner are currently required under subpart 4. Therefore, this is not a new requirement. It is reasonable to include the resolution as part of the facilities plan supplement because it is related to the facilities plan and is needed by the commissioner for the review.

Item E. This item will require a list of the ordinances or intermunicipal agreements that are necessary for the successful implementation and administration of the project to be part of the facilities plan supplement. This list is currently required under subpart 2, item F, subitem (7), above. In the SRF program, all conditions under this part are required to be met under the existing rule, part 7077.0278, subpart 3, item B. Therefore, this is not a new requirement. It is reasonable to include the list as part of

the facilities plan supplement because it is produced as part of the planning process for a project and is needed by the commissioner for review.

Item F. This item will require a signed treatment agreement between the municipality and each significant industrial user to be part of the facilities plan supplement. This agreement is currently required under the existing rule, part 7077.0215, subpart 4, item D, grant applications requirements for the SIGP and under part 7077.0410, subpart 3, item C, submittal requirements for the SRF. Therefore, this is not a new requirement. It is reasonable to include the agreements as part of the facilities plan supplement because it is part of thorough project planning and part of the information that is needed by the commissioner for review.

Significant industrial users greatly impact a municipality's wastewater treatment needs. The agreement ensures that the municipality is not constructing a wastewater treatment system that will exceed its treatment needs because it commits an industry to using the system once it is constructed. Without the agreement, a treatment alternative that accommodates an industry's request for treatment could be chosen and the industry could decide not to use the municipal system once it is built. The system is left to operate with wastewater loads far below the design, which limits the treatment capabilities of the system. Program experience has shown that these under-used systems have problems meeting permit limits and problems with operation and maintenance.

Item G. This item will require a complete environmental information sheet to be part of the facilities plan supplement. This environmental condition

and impact information is currently required under subpart 2, item G above. Therefore, this is not a new requirement. It is reasonable to include the environmental information under the facilities plan supplement because it is not completed until after the facilities plan has been completed and the treatment alternative has been selected. See subpart 2, item G, above, for an explanation of why the proposed language differs from the existing language.

**Subpart 3. Public hearing.** This subpart requires a public hearing to be held for the discussion of the proposed facilities plan. The topic of discussion is being changed from the "proposed facilities plan" to the "proposed project." The facilities plan is completed prior to the hearing.

A treatment alternative is selected upon completion of this plan. It is reasonable to make this change because the municipality will have established the potential construction project prior to the public hearing.

It is reasonable for the public to receive all the information and decisions that have been made regarding their future wastewater treatment system at the public hearing.

The reference to "proposed facilities plan" is being deleted. This deletion is reasonable because the facilities plan has been completed and a treatment alternative has been selected at the time of the project hearing.

The requirement to submit to the commissioner a summary of the information presented and the public comments received at the public hearing to the

commissioner is being deleted under this subpart because it is being moved under subpart 2a, item C, above. Placing this requirement under subpart 2a is reasonable because it makes it easier for rule readers to identify that this submittal is a requirement and will provide a more structured system for submitting the information.

**Subpart 4. Adoption.** This subpart requires that the municipality adopt the facilities plan through a formal resolution before the commissioner will approve the plan. This subpart is proposed to be deleted. This is reasonable because the requirement is proposed under subpart 2a, item D, above, which provides a process for submitting the resolution. The language proposed under subpart 2a is simpler and more direct.

**Subpart 5. Consistency with planning requirements.** This is a new subpart that will require plans for the selected treatment alternative to be consistent with plans developed under sections 205(j), 208, 303(e) and 319 of the Federal Water Pollution Control Act. These requirements are part of the federal conditions for Minnesota to receive loan money under the SRF and the Agency must ensure that each project that receives loans meets these requirements. It is reasonable to include these requirements under this part because it will ensure that the Agency will fulfill its responsibility. Staff members use the rules to administer the project. This subpart will ensure that staff is aware of the requirements and will inform municipal project managers of these requirements and work with them to make sure the requirements are fulfilled.

Part 7077.0155. Plans and specifications.

This part is proposed to be renumbered 7077.0274.

**Subpart 1.** In general. "Or a council resolution" and "before it will be considered for placement on the municipal project list" are being deleted. There are no longer deadlines for submittal of plans and specification to the Agency. Therefore, the council resolution is no longer necessary, since it applies to the deadlines in the SIGP. Since there will no longer be a "Municipal Project List", the reference is no longer necessary.

**Subpart 2.** Contents. "Address the following items in the amount of detail that is appropriate to describe a project accurately," replaces, "must include" to provide some flexibility to the rule. Under the current loan rules, there have been types of projects that were not in the Federal Construction Grants Program. They were primarily projects involving the rehabilitation of existing facilities, not the construction of completely new plants. Additional flexibility in the amount and type of information for review is needed so that the requirements of the rule can conform to the unique nature of each individual project.

**Item A.** The word "plans" is replacing the word "drawings." This is the only place in the existing rule that refers to "drawings and specifications" and not "plans and specifications." The word was changed to be consistent with the rest of the rule. The requirement that an evaluator/designer certified by the Agency may prepare plans and specifications was added because, although a professional engineer is not required for design work on

sewage treatment systems, the Agency wants assurance that the work is completed by a knowledgeable and experienced evaluator/designer.

Item C. "Maximum wet weather" is being deleted. It has been required in the past to define extreme conditions in NPDES permits. Maximums are no longer used in permit language and therefore the Agency does not need this particular data. Because of their unique use, individual sewage treatment systems' designs are based on average design flow and maximum design flow. These parameters are being added to accommodate designs for individual sewage treatment systems.

Item E. "To meet permit requirements" is being added to reinforce the idea that permit conditions must be met at all times. There are no exceptions, even during construction.

Item F. The references to other statutes are being removed because they do not include all requirements that must be followed by municipalities for construction contracts because the list is so extensive. "Five percent" is being deleted to allow the municipalities to use their own bid bond requirements. Many cities have an established bid bond requirement that may be a flat dollar rate instead of a percentage. A bid bond is required by statute for municipalities, and there have been no significant problems in past programs of contractors bidding a project and then not entering into a contract. Five percent appears to have been an arbitrary amount and to allow additional flexibility, the municipality may use their own bid bond requirements. "100 percent payment bonds" and "100 percent performance bonds" are required under other state statutes. This ensures that the

contractor will pay all suppliers and subcontractors on the project. Payment bond is being deleted. Other laws and statutes adequately cover this item.

A performance bond is also required under other statutes and rules, but is retained in the rules. A performance bond insures that once a contractor accepts the agreement in the contract that the work will be performed. It is reasonable to retain this because the state has a vested interest that the projects will be completed, the wastewater treatment system will operate as it was designed and constructed, and the environment will not be negatively impacted.

**Subpart 3. Additional submittals.** Additional information is required beyond that in a typical set of plans and specifications for projects funded under the financial assistance program. The information in the subpart is being added to place construction-related items together in a logical manner since these items need to be reviewed as a whole.

**Item A.** A project schedule is a requirement in the existing loan program as part of the application requirement. It is reasonable to move the requirement to this section in the proposed rule because a project schedule is primarily a construction-related item and it is logical to place it with other construction-related items.

**Item B.** Certification for inspection during construction is in the existing rule and is being moved to this subpart of the proposed rule because it is logical that municipalities are still required to have full-

time inspection during construction and submit inspection reports on a monthly basis.

Item C. The finalized and executed intermunicipal agreement is in the existing rule, and is still necessary in the proposed rule since it plays a major role in the successful implementation and administration of proposed projects.

Part 7077.0160 Rate system and ordinances.

This part is being deleted. This part refers to requirements of the Municipal Project List which will no longer exist. It is reasonable to delete this portion because the requirements are no longer applicable. Proposed requirements for rate systems and ordinances are outlined in 7077.0280, subp. 4.

Part 7077.0165 Priority points for type of project.

This part of the proposed rule divides all projects into one of three categories: projects covered by an NPDES permit, those covered by SDS permits, and those not covered by any permit. The reason for this division is that these groups are very dissimilar to each other. NPDES projects are the most common. These are in municipalities which are typically sewered to a central treatment plant discharging to a lake, stream or wetland.

SDS projects generally are also sewered, but do not discharge to a surface water. Rather, their impact is on the subsurface ground water.

Finally, there are the projects in unpermitted municipalities. These are not sewered, so each structure typically has an individual sewage treatment system discharging to subsurface ground water.

It would be difficult for a single project priority system to be both general enough to apply to such dissimilar projects and yet still provide an accurate estimation of the environmental impacts of those projects.

Therefore, to fulfill the statutory charge to evaluate environmental impacts, it is necessary to develop different sections of the proposed rule for prioritizing the three categories of projects discussed above. These three categories also facilitate the statutory charge to base the priority system on the degree of environmental impact since, within each category, evaluating the impact involves similar concerns and is based on similar data. It is necessary to use these three categories in order to assign points according to the proposed rule. It is a reasonable distinction because it is not difficult to determine to which category a project belongs.

In establishing these three categories, the focus is on the project service area, rather than on the municipality as a whole. This is necessary to evaluate the actual environmental impacts of the project. For example, a municipality could have a centralized treatment system serving 99% of the population and the proposed project is to sewer the remaining 1% of the population. The main environmental impact of the project is based on the impact on the ground water of the individual sewage treatment systems of that 1%. If type of project is based on the municipality, however, points will erroneously be based on the impact of the centralized plant. If type

of project is based on the project service area, points will correctly be assigned according to the third category, unpermitted systems.

In rare cases, some projects may be a mix of NPDES, SDS and unsewered projects. In these cases, if a project is part NPDES and either or both of the other two, it is considered an NPDES project. If the project is both SDS and unpermitted, it is considered SDS. For example, a municipality could have a centralized treatment system which serves the business district and many of the municipality's households, as well as some outlying residences which are unsewered and unpermitted and have individual sewage treatment systems. A typical project could involve upgrading the central plant and bringing the unsewered residences up to code.

In such a case, it is necessary to judge the whole project as an NPDES project for two reasons. First, most of the projects on the existing Municipal Needs List are NPDES projects. While every effort has been made to make the NPDES, SDS, and unpermitted points systems as comparable as possible, assigning the points by the most commonly used system (NPDES), when possible, maximizes the comparability between points assigned to projects. Thus, when possible, the NPDES system is used in preference to the other two.

Second, the NPDES and SDS priority points are based on information submitted to the Agency in discharge monitoring reports. The points are thus based on actual data from individual municipalities and the data may be more reliable than those points that would be assigned under the section relating to unpermitted priority points. It is also likely that in many cases where the

portion of the project relates to the NPDES or SDS portion of the project (the upgrading of the central treatment plant), the cost will be higher than renovating the individual sewage treatment systems and will most likely encompass the largest portion of the project.

It is reasonable to avoid apportioning points between the various categories because cost information is not likely to be available at the time a project is placed on the priority list. As a result, it is not possible to apportion the points according to the relative costs of the two portions of the project.

It is further reasonable to assign points in the manner described because it does not mean the municipality would get a ranking lower than it deserves. If the municipality has a situation where a project could get several points as an unsewered project and fewer points as an NPDES project, the municipality has the option of dividing the project into two separate projects, one covering the NPDES portion of the project and the other covering the unpermitted portion of the project. The two projects would be evaluated and ranked separately on the Project Priority List.

**Part 7077.0167 Total points for wastewater treatment systems with an NPDES permit.**

This part is being added. This part is a major change from the existing priority points process in which a project receives five points for one factor and 20 points for another factor, and so on. The various points are simply added together to obtain the project's total points. Under the

proposed project priority system, a project is assigned several different factors, which, in this part, are multiplied together for a subtotal, to which a list of extra points is added to produce the total points.

This approach is necessary to carry out the legislative requirement to assess the "degree of environmental impact." As an example, take three fictional projects. In one, the municipality is on a wild and scenic (high priority) river, but is evidently having almost no impact on that river. In the second, the municipality discharges to a low priority unnamed ditch, but provides so much of the flow in the ditch that the municipality's impact on the ditch is extremely high. Finally, a third municipality has a moderate impact on a moderately important river.

	1: Wild & Scenic River	2: Unnamed Ditch	3: Moderate River
Impact on Water:	1	5	3
Use Value of Water:	5	1	3
Add Points:	6	6	6
Multiply factors:	5	5	9

Under an additive system, municipalities 1-3 get equal ranking, as do "1" and "2" under a multiplicative system. But in the multiplicative system, municipality "3" gets a higher priority. This is desirable because it is the only municipality which is having a measurable impact on a valued water. Adopting a multiplicative approach is also reasonable because it remains relatively simple.

In the new system, total points will equal (impact factor x use factor x condition factor) + extra points. This total will be reduced by 30% if a penalty factor is appropriate to this project. The rationale for these various factors will be discussed below.

**Part 7077.0169 Impact factor for wastewater treatment systems with an NPDES permit.**

This part is being added. This part describes one of the major factors involved in the multiplicative system, namely the impact factor. The impact factor approximates the current impact of a municipality's discharge on the receiving water. The basis for this approximation is the dilution ratio, which is a ratio of the flow of the receiving water to the wastewater flow from a municipality.

Under the existing priority points process, the major factor used to prioritize was the municipality's population. But such a population-based approach ignores non-residential flows and does not take into account the flow volumes of the receiving water. This is a serious omission because the same amount of wastewater has much more impact on a small stream than it would have on the Mississippi River. Thus, it is necessary to take the dilution ratio into account to fulfill the statutory requirement to consider the degree of environmental impact. It is reasonable to do so because the dilution ratio is based on data which the Agency is gathering and analyzing routinely.

According to the proposed rule, the dilution ratio is calculated by dividing the low flow of the receiving water by the average low flow from the municipality's wastewater treatment facility. The low flow of the receiving water is a scientific estimation of the lowest flow the stream is likely to have in any one week during the average decade. The municipality's average low flow is calculated by averaging the flows in the three consecutive months in the last three years which had the lowest average amount of wastewater entering the treatment plant. These flow measurements are included in the discharge monitoring reports submitted by the municipality to the Agency.

It is necessary to use three years worth of data in order to avoid distorting the impact factor because of an unusually wet or dry year. Municipalities that get on the Project Priority List in a wet year would have larger than average wastewater flows. This would result in a smaller dilution ratio. A smaller dilution ratio leads to a larger impact factor. Therefore, projects which get on the Project Priority List in a wet year would have an inequitable advantage over those which got on the list in a dry year. To avoid this problem, it is therefore reasonable to base data on the lowest months in three years of data.

It is necessary to base both flow numbers on low flows because when a stream is at its lowest flow the impact of wastewater discharge is at its highest. The low wastewater flow is a reasonable number to use because it is measured when there is the least amount of rainwater entering the system and artificially inflating the amount of effluent. It is reasonable to use the "lowest week in the average decade" calculation because it is

the generally accepted method of calculating low stream flows. It is reasonable to base the low wastewater effluent flow number on influent information from discharge monitoring reports because that information is readily available on all permitted facilities.

If a municipality currently discharges to a lake or wetland, its impact factor is set at "1." A collection system project also has an impact factor of "1." Otherwise, the impact factor is based on the municipality's dilution ratio, according to the following table:

Dilution Ratio	Impact Factor
1 or less	5
Between 1 and 10	$(49 - (4 \times \text{Dilution Ratio})) / 9$
10 or more	1

A dilution ratio of one or less means that at the driest point in time, all the flow in the receiving water is from wastewater flow, so it is reasonable that such a dilution ratio gets a maximum impact, or "5", in the NPDES priority point system. A dilution ratio of "10" or more is generally considered extremely well diluted, so it is reasonable that such a ratio gets the minimum value of "1". To calculate an impact factor which diminishes from "5" to "1" as the dilution ratio rises from "1" to "10," it is reasonable to employ the formula above, because it provides the simplest way to do so in a continuous fashion.

It is reasonable to assign an impact factor of "1" for lakes and wetlands, since these bodies of water are generally large enough to result in a dilution ratio of more than "10". Also, the concept of "flow" in a lake or wetland presents conceptual and measurement difficulties not found with a stream.

It is necessary to assign collection system projects an impact factor of "1" because measurements of flow are often not easily available for these projects, and it is reasonable to avoid imposing a difficult requirement on cities to accurately measure the flows involved. A typical collection system project could consist of separating storm sewers from wastewater sewers in order to eliminate the problem of bypassing raw sewage into the receiving water whenever there is significant rainfall. In this case, measuring the amount of water bypassed can be difficult.

Basically, the dilution ratio does not work well for collection system projects, so an impact factor of "1" is assigned so they can be prioritized as an NPDES system. It would not be desirable to complicate the rule by creating a whole new section dealing only with the small number of collection system projects. In addition, a low impact factor is usually appropriate for these projects. In the bypass elimination project discussed above, the impact is lessened by several factors. First, rather than a continuous discharge, the bypasses are events that may occur only a few times a year. Second, the wastewater in these bypasses is being diluted by rainwater before the wastewater reaches the receiving water.

Part 7077.0171 Use factor for wastewater treatment systems with an NPDES permit.

This part is being added.

Subpart 1. Determining the use factor. This subpart introduces the next factor in the multiplicative system, the use factor. This factor approximates the value or significance of the receiving water. Employing this factor is a reasonable way to fulfill the statutory charge to assess the degree of environmental impact.

Subpart 2. Water use classification. The use factor is primarily based on the water use classifications, as follows:

Water Use Classification	Use Factor
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2A	100
1	85
2Bd	85
2B	75
2C	50
7	10

It is reasonable to weight the value of the various waters as outlined above to adequately distinguish between uses for various waters. It is reasonable to rank 2A waters as the highest, since these are cold water fisheries

similar to trout streams, and must be strictly protected to avoid degradation in the sport value of the waters.

Next are Class 1 and Class 2Bd waters, which are basically waters used for drinking water intakes for municipalities. Protecting human health is, of course, a vital concern for the Agency. It is necessary to rank these below 2A waters for the following reason. Whole rivers are designated as "Class 1", regardless of the number and location of the drinking water intakes. Under subpart 3, 40 extra points are given if there is a drinking water intake within 25 miles downstream of a wastewater discharge point. Such discharges thus get  $85 + 40 = 125$  points, or more than the 100 points given to a trout stream. Also, trout are in the stream without protection, while drinking water is purified after it is taken from the river.

Class 2B waters are basically cool and warm water fisheries and get three-fourths the points a trout stream gets, which reflects their somewhat lower significance. Class 7 waters are "limited resource value waters", under the rule in Chapter 7050, and are the lowest priority, and get the minimum 10 points. These are often ditches which go dry periodically. Class 2C is the catch-all category for all other waters, such as those with rough fish. This classification is assigned a value of 50, or roughly half-way between the value of a trout stream and that of a Class 7 water. This is reasonable given its significance, which is also roughly half-way between the highest and lowest priority waters.

The proposed subpart also states that if the receiving water at the point of discharge has more than one designated water use classification, the project

shall receive a use factor for the water use classification with the higher use factor. This provision is necessary to avoid confusion over which use factor should apply when a water has several designated water use classifications.

**Subpart 3. Drinking water.** The next several proposed subparts increase the use factor according to specific characteristics of the water receiving the discharge. This is necessary because the water use classes do not address all the issues of importance in assessing the overall importance of a water.

If there is a municipal drinking water intake less than 25 miles downstream of the discharge point of the municipality's treatment facility, the project's use factor shall increase by "40". This is necessary because of the high value placed on human health and welfare. Forty points are sufficient to give a discharge a short distance upstream from a drinking water intake, a use factor 25% higher than that of a trout stream, which provides a significant amount of distinction.

**Subpart 4. Outstanding resource value waters.** If the municipality discharges to an Outstanding Resource Value Water, the project's use factor shall increase by "40". This fulfills the statutory charge to base priority partly on whether a river is a "Wild and Scenic River." All "Wild and Scenic Rivers" are classed as outstanding resource value waters, so this clause is needed to give an increase in priority comparable in magnitude to that given to waters with drinking water intakes. Inclusion of all outstanding resource value waters, not just Wild and Scenic Rivers, is

reasonable because these are waters designated under Minn. Rules, ch. 7050 as the waters in Minnesota which are of the highest overall resource value.

**Subpart 5. Canoe and boating route.** If the municipality discharges to a canoeable/boatable water that is not designated as an Outstanding Resource Value Water, then the project's use factor shall increase by "5". The DNR classifies some waters, including all Wild and Scenic Rivers, as canoeable/boatable. While this designation is not a high environmental priority, it is reasonable to assign a minimal amount of points for this designation in order to distinguish between two otherwise identical waters, one of which is designated as canoeable/boatable, and the other which is not.

**Subpart 6. Effluent limits.** This subpart increases the use factor based on effluent limits in the municipality's current permit, or, if it changes, in a future permit. A water is assigned more stringent limits for reasons related to the value or particular conditions of the water and of the downstream impacted waters. For instance, a stream may receive a phosphorus limit because it discharges into a lake for which such a limit is necessary. This analysis is done when the permit is written, and need not be duplicated in the project priority system. Also, these limits are more stringent when an impacted Outstanding Resource Value Water is downstream, so again this facilitates giving high priority to a Wild and Scenic River.

The value for toxics limits is set at "25" to make them a significant factor, and yet not be as crucial as a nearby drinking water intake. The values for carbonaceous biological oxygen demand and phosphorus are set at "17" because an EPA guidance rates them as two-thirds as important as

toxics, and "17" is two-thirds of "25." See "Water Pollution Control" (June 1987), Volume 911, Pages 1004 to 1005, (Exhibit 6).

Not all stringent limits in a permit reflect a high quality receiving water or downstream impacted water. All mechanical plants which dechlorinate get a limit for total residual chlorine. Consequently, the 25 points for toxics are not given for total residual chlorine because points for a residual chlorine limit would not help the project priority system distinguish between the uses of various receiving waters. Similarly, the 17 points for carbonaceous biological oxygen demand (CBOD) limits are not given to any Class 7 waters which have a stringent CBOD limit based on the rule under Minn. Rules, ch. 7050, pt. 0214. These waters get the CBOD limit because of their unusually low flow, not because of the value of that water or some downstream water.

**Subpart 7. Habitat.** This subpart assigns 20 points for discharges to waters that support one or more species or natural communities which are "at risk." Minn. Rules, ch. 6134, pts. 0200 to 0400 identify habitats of species which are endangered, threatened, or of special concern. The statutory basis for determining which natural communities are at risk is defined in Minn. Stat. § 84.944. These communities are catalogued in the "Natural Heritage" database of the DNR. The aim of this subpart is to help assess the degree of environmental impact.

It is reasonable to give 20 points under this subpart. This will have a significant impact on rankings, and yet not be a predominant factor in the project priority system. Without more analysis than is practical, it is

difficult to assess how much impact, if any, a discharge will have on a given species or community.

Part 7077.0173 Condition factor for wastewater treatment systems with an NPDES permit.

In this part, most projects default to a condition factor of "1", so that as a multiplier this factor will have no effect on them. But a project on a water which is identified as a water with significant water quality violations is given a condition factor of 1.25. This will increase their point total by 25%. These are waters in jeopardy based on measurements of ambient stream quality. The condition factor will give a significant increase in priority to those waters most in need of water quality improvement. This designation is necessary to meet the statutory requirement to assess environmental impact.

A "water with significant water quality violations" means a water listed as a "Water with Significant Water Quality Violations" in the appendices of the most recent 305(b) Report, a biennial report to Congress on the quality of Minnesota waters. This report contains the Agency's best assessment of which waters in the state are in the worst condition.

Part 7077.0175 Extra points for wastewater treatment systems with an NPDES permit.

**Subpart 1.** Determining extra points. This subpart introduces the list of extra points given for one factor or another, which do not fit well into the

multiplicative structure of the priority system. The magnitude of these points does not compare well to those discussed above since all the above points are multiplied together, and these are not. It is necessary to do this in order to fine-tune the priority system to incorporate important miscellaneous factors.

**Subpart 2. Eliminate discharge.** This subpart gives a project 200 points for eliminating a discharge to a lake, a wetland, a stream with a water use classification of 2A, or a stream designated as an Outstanding Resource Value Water. Since eliminating such a discharge is very desirable, giving a high number of points is reasonable.

**Subpart 3. Karst.** This subpart gives 200 points to replace or rehabilitate an existing pond system in an area with Karstic characteristics. This is necessary to address the potential serious problem of sinkholes appearing in a pond system, which would drain untreated wastewater directly into the subsurface ground water. Preventing this type of catastrophic failure is a major priority. It is reasonable to give it the same priority as total elimination of a discharge to a valued water.

**Subpart 4. Excessive leakage.** This subpart gives a project 50 points if it corrects excessive leakage from a stabilization pond. Excessive leakage is leakage where correction is required as a permit condition. In cases where stabilization ponds are leaking or are suspected to be leaking beyond accepted levels, municipalities will be required to take specific actions which could culminate in major corrective action work to seal the stabilization pond bottoms.

Assigning a moderate amount of extra points to these projects will slightly increase their priority in comparison to other projects of a similar size and situation. This higher priority reflects the threat of ground water contamination posed by leaking stabilization ponds.

Subpart 5. Multi-municipal cooperation. This subpart gives 50 points if a sanitary district or other multi-municipality entity is formed to carry out the project. Fifty points are reasonable because it is a much smaller amount than the 200 points given to vital projects as in items A and B, but it is still large enough to be significant. It is necessary to assign these points to encourage multi-municipal projects, which promote much better use of the public monies. It is almost always more efficient to build one large treatment plant rather than three smaller ones a few miles apart. A comparable item was part 7077.0135, item D in the existing rule, which assigned 10 points on a list whose likely maximum was around 200. In the proposed project priority system, 50 points are comparable to the 10 in the existing priority points process, because the proposed project priority system could reach as high as 1,000 points.

It is also reasonable to give the points only when the entity is formed as an incentive to carry out this project, but once the entity exists, it is reasonable that the Agency does not continue to assign it extra points indefinitely. Furthermore, since municipalities are often reluctant to surrender even a little of their sovereignty to a new entity such as a sanitary district, it is reasonable to reward municipalities with a higher priority to encourage them to take this step. However, once the sanitary

district is formed, there is no particular reason to continue to provide an incentive since the desired activity has been accomplished.

**Subpart 6. Diagnostic study.** This subpart provides 50 points if a project is identified as a priority project in an approved "Diagnostic Study and Implementation Plan" which meets the requirements of the Clean Water Partnership Program. This provides an incentive to municipalities to undertake a wholistic study approach of the local water situation. A study of this sort is undertaken to alleviate an existing problem with a water, and if a project is identified as a priority in such a study, the project deserves higher priority to help correct this problem.

**Subpart 7. Local water plan.** This subpart provides half as many points, 25, if a project is in a county's Local Water Plan, for similar reasons as in item 6. It is reasonable that fewer points are given because the Diagnostic Study and Implementation Plan is a much more rigorous analytical study. Higher points should be assigned to those municipalities that undertake the more rigorous analysis as an incentive to encourage these efforts.

**Part 7077.0176. Penalty factor for wastewater treatment systems with an NPDES permit.**

This part is being added. The total points assigned to a project are reduced by 30% if the project will (a) create a new or expanded discharge to an Outstanding Resource Value Water, or (b) will create a new or expanded discharge to a stream with a water use classification of 2A, a lake, or a

wetland and that new or expanded discharge consists of more than 200,000 gallons per day based on the design average wet weather flow for the wettest 30 day period.

This will have a large negative impact on a project's priority ranking, which is reasonable because these are projects having a negative impact on a highly-valued water. This is necessary in view of the statutory requirement to assess the degree of environmental impact.

The distinction between a discharge to an outstanding resource value water and a discharge of a certain magnitude to other waters is necessary because of the statutory requirement to take account of wild and scenic rivers, all of which are Outstanding Resource Value Waters. It is reasonable because it parallels Minn. Rules, ch. 7050, pts. 0180 to 0185, on non-degradation of waters of the state. The penalty factor is intended to discourage undesirable discharges, which is what the nondegradation rules regulate. Given this similarity in aim, it is reasonable that this subpart contain the same language as Minn. Rules ch. 7050, pts. 0180 to 0185.

**Part 7077.0177. Total points for wastewater treatment systems with an SDS permit.**

This part is being added. This portion of the proposed rule addresses the second of the three large categories of projects, those with an SDS permit. Typically, this category consists of municipalities sewerred to a central treatment plant, which does not discharge to a lake or stream. Instead, it employs one of several technologies which discharge to subsurface ground

water. This part gives the formula for total points for SDS projects: (impact factor x use factor) + extra points. There is no condition factor because the information on ground water quality is generally less available than is the information on surface waters.

Part 7077.0179. Impact factor for wastewater treatment systems with an SDS permit.

This part is being added. The impact factor for systems that have an SDS permit will be based on the average amount of wastewater flow over the last 12 months, as reported on the discharge monitoring reports which the facility submits to the Agency:

Average Daily Flow	Impact
0.01 million gallons / day or less	1
Between 0.01 and 0.25 million gallons per day	$(5 + (100 \times \text{average flow})) / 6$
0.25 million gallons / day or more	5

This parallels half of the impact factor for NPDES systems, which compares the effluent flow to the flow in the receiving water. Unfortunately, there is no universally available and practical way to measure the flow of the ground water, to which, in effect, SDS systems discharge. Thus, it is necessary to base the impact factor solely on the amount of effluent, which is also reasonable, since the more flow there is, the more impact there will be.

It is necessary for the impact factor to range from one to five, to maximize comparability with the impact factor for NPDES systems. It is reasonable to use the formula above to calculate an impact factor between "1" and "5" when the average flow is between 0.01 and 0.25, because that formula is the simplest method to calculate in a continuous fashion.

The numbers (0.01 and 0.25) used to set the minimum and maximum impact factors were arrived at empirically, by examining a large number of discharge monitoring reports. One facility had an average daily flow over 0.25, and several had average daily flows just over 0.01. The vast majority were distributed between these two points, so it is reasonable to use 0.01 and 0.25 as the end points of the Agency's system.

**Part 7077.0181. Use factor for wastewater treatment systems with an SDS permit.**

This part is being added. In this proposed section, all SDS systems are given a use factor of 85. This is reasonable since all subsurface ground water has a water use class of "1," according to the rule under Minn. Rules, ch. 7050, pt. 0220, subp. 2. All ground water is considered drinking water because of drinking water wells. Therefore, ground water is assigned the same factor of 85 that an NPDES system which discharges to a Class 1 stream would get. This is necessary to maintain comparability in the priority system between the NPDES and the SDS systems.

Part 7077.0185. Extra points for wastewater treatment systems with an SDS permit.

Subpart 1. This part is being added. Determining extra points. This subpart explains that extra points are assigned under subparts 2 to 6 of this part as well as under part 7077.0175, subparts 3 to 7. The 7077.0175 references assign extra points for NPDES projects which apply equally well to SDS projects, namely points for Karst ponds, leaky ponds, multi-municipal cooperation, diagnostic studies, and local water plans. These cross-references are necessary to maintain the comparability between the NPDES and SDS systems to the greatest extent possible and to maintain equity.

Subpart 2. Component failure. This subpart assigns points if the existing wastewater treatment system has one or more failed subsystems which will lead to a loss of performance or capacity. The project is given points equal to twice the percentage of the total project cost devoted to said failed subsystems. This is reasonable because it provides an incentive to fix a small problem before it destroys the whole system and unnecessarily increases the total cost. Relating the amount of points to the share of the total project cost devoted to fixing the failed subsystem is necessary to avoid perverse incentives to cause some minor subsystem to fail in order to get some fixed number of points for the rest of a project. It is reasonable to base points on costs in this one instance in the rule because this subpart relates only to rehabilitating an existing system, so that the project and its costs are likely to be known at the time of placement on the Project Priority List.

**Subpart 3. Seepage problems.** This subpart assigns 50 points if the municipality has had seepage problems or sewage backups due to systemic problems and the project is intended to correct such problems. Seepage is the undesigned and unanticipated discharge of sewage to the surface. This subpart is necessary to safeguard public health from such seepage of untreated or partially treated waste. An additional 50 extra points shall be assigned to the project in the case of continuous seepage if the project is intended to correct said seepage. This is because continuous seepage both poses a more constant health hazard and indicates a more serious problem with the facility.

**Subpart 4. Permit exceedances.** This subpart assigns 25 points if (1) the municipality's discharge monitoring report data indicate that the ground water has exceeded its permit standards for nitrate as nitrogen at least two times in the last two years and (2) the project is intended to address this problem. Another 25 points is given if the above is true for any other single permitted condition. This is necessary to carry out the Agency's statutory charge to base the system on environmental impact. It is reasonable to give the points only if the project will correct the problem since otherwise the project does not really have environmental impact in this particular area. It is necessary to single out nitrogen because it is the largest problem area in ground water. Indeed, for many municipalities, nitrogen is the only permitted condition in their permit.

**Subpart 5. Nitrate removal.** This subpart assigns 150 points for installation of nitrate removal technology. Nitrates are generally considered the largest problem facing ground water, so it is reasonable to

assign a large number of points to a project attempting to address this problem. It is especially advantageous to provide an incentive for nitrate removal because it is still a new and innovative technology. Whenever a municipality uses it, the whole state is benefited because it helps us evaluate the effectiveness of each approach to nitrate removal.

**Subpart 6. Geologically sensitive area.** This subpart measures geological sensitivity by a widely available but less accurate method than does subpart 3. A project shall be assigned 50 sensitivity points if, according to a county soil survey, the parent material identified for over 25% of the project service area is one of a variety of types of soil which drain well. If no county soil survey information is available, the points will be assigned if the Minnesota Soil Atlas identifies at least 25% of the project service area as "poorly drained with sandy soil below five feet". This is reasonable because in such areas wastewater is more likely to drain into the ground water without adequate treatment by the soil.

**Part 7077.0186 Penalty factor for wastewater treatment systems with an SDS permit.**

This part is being added. This part assigns a penalty factor identical to that given for NPDES projects. It is given in the case of a new discharge to a lake, wetland, trout stream, or outstanding resource value water. This would not often be relevant to SDS projects, but it is a possibility. Consider the case where the project consists of scrapping a municipal drainfield and replacing it with a new NPDES plant that discharges to a lake. It is necessary to include this part to maintain comparability between the NPDES, SDS, and unpermitted point systems.

Part 7077.0187 Total points for wastewater treatment systems without an NPDES or SDS permit.

This part describes how total points for unpermitted systems will be calculated. It is: total points = (impact factor x use factor) + extra points. The total points can then be reduced by a penalty factor, if applicable. Since this is identical to the formula for an SDS system, this approach is reasonable because it maximizes comparability between systems.

Part 7077.0189 Impact factor for wastewater treatment systems without an NPDES or SDS permit.

This part is being added. This part assigns the impact factor based on an approximated density ratio of the municipality. The more densely concentrated wastewater flows are, the greater will be the municipality's impact on the ground water. Structures with individual sewage treatment systems concentrated on a small amount of land will have more impact than the same number of structures spread over a whole county. The density ratio gives a measure of how concentrated a municipality is, and hence, how much impact it has on the ground water.

The density ratio is defined as "the number of structures with wastewater flows in the maximum impact zone of the project service area, divided by the total acreage of the maximum impact zone." This density ratio is necessary to approximate the maximum impact, located at the center of the maximum impact zone, on the ground water which the current system is having. The

maximum impact zone is a term defined in the proposed rule under part 7077.0105, subpart 21a.

As discussed below, for all but the smallest municipalities, the maximum impact zone includes only 25% of the structures with wastewater flows. This is reasonable because the most significant impact on the ground water is where the structures are most densely situated. It is also necessary to avoid having outlying structures increase the size of the zone inordinately and disproportionately.

If the project includes less than 50 structures with wastewater flows, it is necessary to include more than 25% of the structures to avoid getting a misleadingly dense maximum impact zone. For example, if the project service area contained only four structures with wastewater flows, the 25% approach would lead to a maximum impact zone including only one structure. This would, therefore, have a very small maximum impact zone and a very high resulting density ratio. It is reasonable to use 50 as the cut-off because under Minn. Rules, ch. 4410, pts. 0200 to 7800, page 48, the rule for the Environmental Quality Board, identifies 50 or more structures as a number which is significant to regulate.

It is necessary to specify that the zone be a circle for several reasons. (1) It enhances comparability between cities. (2) It avoids oddly gerrymandered zones which could maximize but distort the density ratio, and whose area would be extremely difficult to calculate. (3) Comparable structures at the edge of a circle can logically be assumed to have equal effects on the point of maximum impact, at the center of the circle. This

would not be true of two comparable structures at the edges of a regular polygon if one structure was at a corner of the polygon and the other was not. (4) It is also reasonable to specify that the zone be a circle because a circle's area is easy to calculate. (5) Finally, given a compass, a circular maximum impact zone is very easy for a local official to draw on a map.

The calculated density ratio is converted to an impact factor, according to the following table:

Density Ratio	Impact Factor
0.5 or less	1
Between 0.5 and 4	$(3 + (8 \times \text{Density Ratio})) / 7$
4 or more	5

It is reasonable for the impact factor to range from one to five to maximize comparability with the NPDES and SDS systems. The 0.5 cutoff point is reasonable because one structure every two acres is generally considered to be adequate spacing. (See "Predicting Ground Water Nitrate-Nitrogen Impacts" by Norman N. Hantzsche and E. John Finnemore. GROUND WATER, Vol. 30, No. 4 (July-August 1992), pp. 490-499.) The maximum of four is reasonable because an average of a quarter of an acre per structure is very dense, and going beyond that would not be very meaningful. When calculating an impact factor, which rises from one to five as the density ratio rises from 0.5 to four, it is reasonable to employ the formula above, since it provides the simplest way to do so in a continuous fashion.

Part 7077.0191 Use factor for wastewater treatment systems without an NPDES or SDS permit.

This part is being added. This part assigns a use factor of 85 to the ground water. This is identical to the use factor for SDS systems, and equals the use factor for an NPDES system discharging to a Class 1 (drinking water) stream or lake. This is reasonable to maintain comparability between the NPDES, SDS, and unpermitted systems.

Part 7077.0195 Extra points for wastewater treatment systems without an NPDES or SDS permit.

This part is being added.

**Subpart 1. Determining extra points.** This subpart explains that points are available from subparts 2 to 8 of this part, from subparts 5 to 7 of the proposed rule, under part 7077.0175, and from subparts 5 and 6 of the proposed rule; under part 7077.0185. The two cross-references are to the portions of the NPDES and SDS systems that give extra points for items as applicable to unpermitted systems as they are to NPDES or SDS systems. This is reasonable to maintain comparability between the NPDES, SDS, and unpermitted point systems.

**Subparts 2 to 7** give extra points based on the percentage of various undesirable conditions existing among the structures with wastewater flows in the project service area, if said conditions will be eliminated by the project.

**Subpart 2. Eliminate discharge.** This subpart gives points equal to three times the percentage of structures in the project service area which discharge wastewater directly to the surface of the land or to surface water. This is an unhealthy and unpleasant way to dispose of wastewater, hence it is reasonable to place a high priority on it.

**Subpart 3. Well code setback infringements.** This subpart assigns points equal to 1.5 times the percentage of structures in the project service area which have well code setback infringements. This is reasonable because of the distinct possibility of a health impact from having a drinking water well too close to a point of wastewater discharge. It is, however, less dangerous than the situation dealt with by subpart 2.

**Subpart 4. Failed systems.** This subpart assigns points equal to 1.5 times the percentage of failed systems in the project service area. Failed systems include a variety of conditions which pose possible health and environmental impacts, as did the situation in subpart 3.

**Subpart 5. Seepage problems.** This subpart assigns points equal to 1.5 times the percentage of systems with seepage and backup problems. As in subpart 2, such systems expose people to sewage, but in this case, only a portion of the sewage has a surface release.

**Subpart 6. Non-domestic wastewater.** This subpart gives a comparable amount of points for the elimination of non-domestic wastewater discharges. This is necessary because these discharges typically introduce pollutants that are not suitable for subsurface treatment and disposal. For example, a

small photography business may discharge a multitude of chemicals into its individual sewage treatment system; unlike sewage, these will not be adequately treated by slow percolation through soil to the ground water, and therefore pose an undesirable impact.

**Subpart 7. Surface water code setback infringements.** If there are infringements of code setbacks to a surface water, subpart 7 assigns points equal to the percentage of such infringements which are eliminated. Surface water infringement means there is not enough distance between the point of wastewater disposal and a lake or stream. This is undesirable because the sewage reaching the lake or stream may not be fully treated by the time it reaches the waterway.

**Subpart 8. Sewer connection.** This subpart assigns 150 points for sewerage to an existing wastewater treatment plant. As in the proposed rule under part 7077.0185, subpart 5, which assigns points for installation of nitrate removal technology, this part promotes the removal of nitrates from the ground water. Sewerage removes nitrates from the ground water because NPDES plants are required to treat the wastewater to meet strict standards and then discharge to the surface. It is reasonable to give the same amount of points as in part 7077.0185 because both parts promote the goal of removal of nitrates from the ground water. The extra points are not an incentive to sewer, but rather an incentive to use existing facilities whenever feasible. This eliminates multiple discharges and allows more control over single discharges through permitting and operator training.

Part 7077.0196 Penalty factor for wastewater treatment systems without an NPDES or SDS permit.

This part is being added. In this part, a penalty factor, nearly identical to those assigned to NPDES and SDS systems, is assigned for unpermitted systems. This is reasonable to maintain comparability in the priority system between surface water and non-surface water systems. Refer to part 7077.0176 of this SONAR for a further discussion.

Part 7077.0197 Resolution of equal point ratings.

This part is being added. This part provides tie-breakers in case two or more projects have an equal point rating. The first tie-breaker is the use factor. This is reasonable, because, if all other things are equal, the project priority process ought to favor the most highly-valued waters. The second tie-breaker, if needed, is the impact factor. This is reasonable because it measures the impact on identical waters. The waters are considered identical since they are already tied for use factor. Finally, any remaining ties will be broken by the size of the population. This is necessary to finally break a tie, because by the Agency's ranking system, the two projects look identical. Also, since higher population generally means higher wastewater flows, this is another measure of impact.

Parts 7077.0200 through 7077.0265 State Independent Grants Program.

These parts are being deleted. The Minnesota Legislature has not provided funding for the SIGP for a number of years. With the creation of the WIFP,

it appears that the Legislature considers the SRF and the WIFP to be the primary state funding programs for wastewater treatment system construction in the future and that no new funding will be provided for the SIGP. The expected lack of activity in SIGP that has been projected for the future and supports the reasonability of deleting all the sections of the rule that relate specifically to SIGP projects. The proposed rule includes these projects in addition to all current and future SRF projects and all WIFP projects under the heading "Financial Assistance Program," in parts 7077.0100 to 7077.2010. If any funds were to be appropriated to the SIGP, new projects would also be required to comply with these provisions. SIGP projects and existing SRF projects should not be required to comply with more stringent requirements than the requirements being proposed for future SRF and WIFP projects. The only difference between these various types of projects is the source of funding. One type of project does not require more review than other types of projects. It is reasonable to have one set of consistent requirements for all wastewater treatment system projects to simplify the program for all participants. One set of requirements will also decrease the time Agency staff need to spend on review and will allow projects to move through the review process more quickly.

**Part 7077.0276 Essential project components.**

This part is being added.

**Subpart 1. Essential project components.** The legislature in Minn. Stat. § 446A.071, subd. 4, limited the use of the WIFP's supplemental assistance to fund only "essential project components" of a wastewater treatment system.

Minn. Stat. § 116.182, subd. 1(e) defines the term, "essential project components". It is reasonable to repeat the definition in this subpart of the proposed rule because it is often referred to in this part and persons using the rule will not have to use another reference source. This definition provides the basis for the calculation method for the essential project components percentage as discussed in subparts 2 and 3 below. The use of the statutory definition as the basis for the calculation method avoids the confusion of two separate and possibly contradictory definitions and assists in ensuring that the Agency's proposed rule is consistent with legislative intent as described in the statute.

**Subpart 2. Essential project components percentage.** This subpart outlines the method for calculating the essential project components percentage. A percentage is used to describe a project's essential project components for program simplicity. A percentage value is easier to understand and to use in other calculations than a list of components or portions of components that could number up to 100 items. In past grant programs, eligibility was calculated by analyzing each individual component of a wastewater treatment system to determine the "reserve capacity", which is that portion of the proposed project costs not allocable to current needs. This process was extremely time consuming for applicants, their consulting engineers, and Agency staff. In addition, the resulting values were not understandable to most municipal officials and the general public.

This subpart defines essential project components percentage as the simple ratio involving existing and projected loadings to compute the percentage because this data is available for all types of wastewater treatment

systems. The data that will be used to perform this calculation is part of the wastewater facilities planning process and must be submitted as part of the facilities plan. There will be no additional burden placed on a municipality to acquire and submit any data for the Agency's use in this calculation. It is reasonable to base the calculation on information from the approved facilities plan because the Agency and the municipality will have agreed on the project scope when the facilities plan is approved.

While the definition of essential project components in the statute refers to flows and loadings, the essential project components percentage is calculated based on loadings alone. This is reasonable because flows are directly related to loadings. Basically, flow equals loadings divided by concentration. However, for the purposes of this rule, concentration can be considered roughly constant, especially since future flows and loadings are based entirely on residential growth in flows and loadings. Residential concentrations are generally the same. Basing the percentage on loadings alone thus simplifies the calculations involved without seriously distorting the outcome. Simpler calculations impose less burden on consulting engineers and on Agency staff and therefore promote efficiency and, in the long run, save public monies.

Biochemical oxygen demand (BOD) is the amount of oxygen used in the aerobic stabilization of wastewater. BOD is the most common parameter used for describing the strength of municipal wastewater. In this rule, the term CBOD is used to maintain consistency with other state rules relating to discharge permits and permit effluent limitations.

Subpart 3. Certification to the Authority. The Agency is required under Minn. Statute § 116.182, subd. 4, to include a statement of essential project components and associated costs to the Authority. It is reasonable to include this requirement in the proposed rule so that municipalities are aware of how the essential project component percentage will be used.

Part 7077.0286 Completion of construction and initiation of operation.

This part is being added. The proposed part is a combination of language from the existing rule under parts 7077.0250, 7077.0430, and 7077.0435. This part is different from the existing rule because the resulting requirements are less stringent than the requirements in the existing rule. Refer to parts 7077.0200 through 7077.0265 of this SONAR for further discussion of the reasonability of one set of requirements.

Subpart 1. Construction reporting requirements. The existing requirements for submittal of evidence of a certified operator and submittal of an operation and maintenance manual for review and approval are under part 7077.0430. It is reasonable to continue to have these requirements, since the requirement for a certified operator still exists under Minn. Rules, ch. 9400, and the requirement for an O & M manual is the state's insurance that a municipality will have the appropriate reference material, unique to that municipality, for operating the wastewater treatment system. In addition, it is reasonable to include these required items in this part because the timing of submittals will be at the end of construction, just prior to initiation of operation.

**Subpart 2. Pre-final inspection.** This subpart requires the municipality to notify the Agency that it is ready to initiate operation and request a pre-final inspection. This assures that the Agency has the opportunity to inspect the facility prior to initiation of operation.

**Subpart 3. Initiation of Operation.** The Subpart outlines the requirements with which a municipality must comply to initiate operation. It is reasonable to include these requirements in the rule so municipalities are aware of the steps that must be followed before initiation can occur. A pre-final inspection must be held in accordance with subpart 2.

Construction reporting requirements submitted under subpart 1 must be approved by the commissioner. It is reasonable to require that the requirements of subparts 1 and 2 be completed before initiation can occur so that the Agency is assured that the project has been constructed correctly and that the municipality is able to operate the system. The municipality must notify the Agency in writing of the initiation of operation date so that there will be no confusion regarding the exact date. Also, it is reasonable to specify that the initiation of operation date is the first day of the one-year performance period to clarify the duration of the one-year performance period.

**Subpart 4. Final inspection.** This subpart is the same as part 7077.0435, subpart 3 in the existing rule. It is reasonable to use the language from the existing subpart 3 since the language clearly states when the Agency shall hold the final inspection and why a final inspection should be held.

Part 7077.0290 Commissioner's notification of performance.

This part is being added.

Upon receipt of a written certification that requirements listed under the proposed rule in part 7077.0288, subpart 2 meet project performance standards, and after concurring with the certification, the commissioner shall provide written notification to the Authority of the project's satisfactory performance. This notification serves as the Agency's final approval of the project and will provide the Authority with the information it needs to make its final determination of the type and level of financial assistance for a project.

**COMBINED SEWER OVERFLOW ABATEMENT PROGRAM**

Part 7077.0300 Purpose.

Few changes are being made to the existing rule in parts 7077.0300 through 7077.0330. Most of the changes that are occurring reflect proposed revisions to other parts of the existing rule. The proposed revisions are deleting proposed obsolete concepts and terms from all parts of the rule so that language and administration of this program will parallel the proposed rules for other programs. It is reasonable that programs be similar wherever possible to maximize clarity and simplicity.

The phrase "for combined sewer overflow abatement financial assistance awarded on or after July 1, 1990" has been moved from the existing rule, in

part 7077.0100. It is important to include the date because only projects funded on or after July 1, 1990 will be governed by this section of the rule.

Part 7077.0305 Municipal project list.

This part is being deleted. The Municipal Project List is a list of projects expected to be funded from Federal Construction Grants Program funds or from an allotment of grant funds appropriated by the legislature. Because the Federal Construction Grants Program has been terminated, and the legislature is no longer appropriating grant funds for such projects, it is reasonable to delete this part of the rule.

Part 7077.0310 Applications.

All references to the Municipal Project List have been deleted from this part because there no longer will be such a list. It is reasonable to expect municipalities to follow the requirements of their NPDES permit and to submit required documents in order to apply for combined sewer overflow funding.

Part 7077.0325 Project performance.

The language that defines the definition for initiation of operation is being deleted because it is not necessary to have this definition repeated here.

Part 7077.0400 Purpose.

This part is being renumbered Part 7077.0111. The purpose of the Financial Assistance Program is to provide financial assistance to eligible municipalities for the planning, design and construction of publicly owned wastewater treatment systems. It is reasonable to change the name of the program because it encompasses the SRF and SIGP as well as the WIFP.

Part 7077.0405 Intended use plan.

This part is being renumbered Part 7077.0278.

**Subpart 1. Adoption of the Intended Use Plan.** This part now includes a provision that the commissioner shall solicit requests for placement on the Intended Use Plan. It is reasonable to publicize the opening of the Intended Use Plan at times that are deemed appropriate by the commissioner to notify the municipalities that the Agency is accepting requests for placement on the Intended Use Plan. It also provides more opportunities for municipalities to enter the program.

**Subpart 2. Notice.** This subpart is being added. Notification to municipalities on an annual basis is a way to ensure adequate communication of requirements. It also provides more opportunities for municipalities to enter into the program.

**Subpart 3. Requirements.** "Municipal needs" is being changed to "project priority" in keeping with the Municipal Needs List being replaced with the

Project Priority List. Refer to the proposed rule under part 7077.0115 for a further discussion.

Subpart 4. Intended use plan amendments. It is reasonable for the Agency to amend the list of projects to assist additional projects in preparing to proceed with their plans and gives more opportunities to allow for municipalities receiving funding throughout the year, rather than only once a year.

#### Part 7077.0410 Applications

This part is being renumbered Part 7077.0280 and retitled "Certification Submittal Requirements." The proposed rule has changed the requirements for municipalities to request funding. Under the proposed rule, there will be no separate Agency application. This is to avoid duplication of effort with the Authority, to focus on the environmental and technical criteria, and to ease the financial and timeliness burden on municipalities.

Subpart 1. Requirements. Under this rule, the Agency will require that a municipality submit certification material to the commissioner within 90 days of notification of placement on the Intended Use Plan. It is reasonable to require the submittals within 90 days to allow the Agency to do workload planning. Also, setting deadlines encourages municipalities to move quickly through the process and resolve their environmental problems.

Subpart 2. Planning projects. The word "project" is replacing the word "loan" to encompass all funding requests. This change in terminology is

reasonable because the Agency will certify the project to the Authority, which will be responsible for the financial portion of the request.

Item A. The item is being changed to reflect two word changes: from "plan" to "description," and from "approvable" to "approved" to maintain consistency in the proposed rule. In addition, "and estimated costs" is being added since final costs are not known and cannot be required.

Item C. The submittal of errors and omissions insurance is being deleted from this item because it is not related to the Agency's responsibility to review technical and environmental requirements.

The requirement for a draft ordinance for individual sewage treatment systems is being added. It is reasonable to include the requirement because most municipalities applying for individual sewage treatment system grant funds do not have ordinances, and the required ordinances will assist them in maintaining their systems and protecting the environment.

Item D. The requirement for a multi-municipal agreement is being deleted from this part of the rule as it is being included in the proposed rule under part 7077.0274, subpart 3, item C.

Subpart 3. Design projects. Because the Agency is now certifying projects to the Authority, and will not be responsible for administrative items, many financial and administrative requirements have been dropped. Municipalities will still be expected to submit plans and specifications, schedules and, for individual sewage treatment system projects, a draft ordinance that

adopts Minn. Rules, ch. 7080. These changes are reasonable because the Agency's responsibilities are now focused on environmental areas rather than administrative and financial issues.

Subpart 4. Construction projects. Submittal of a certification of adequate errors and omission insurance has been deleted. See the discussion under 7077.0410, subp. 2, item A. Submittal of a joint treatment agreement has been deleted because, under the proposed rule, this will be addressed during the facilities planning and design processes.

This subpart will require certification ONLY that the municipality has adopted a sewer service charge system (SSCS). A municipality will no longer be required to submit the SSCS to the Agency for review and approval. By deleting the submittal requirement, the rule will allow a municipality to have more control over its financial management processes.

Item C. This item is reasonable because it simplifies the requirement regarding documentation of the public notification of the SSCS. The municipality may submit a copy of the resolution adopting the SSCS rather than submitting the adopted SSCS for Agency review and approval.

Item D. The Agency will now require certification of provisions in the municipality's sewer use ordinance (SUO) and sewer rate ordinance (SRO) rather than the submittal of the actual documents to the Agency for review and approval. This is reasonable because the Agency wants to ensure that the city is protecting its treatment system from abuse and damage and is collecting adequate revenue for operation and maintenance. Refer to subpart 4 above.

Item E. The Agency will no longer require submittal of a SRO but will require an affidavit of publication for the SUO and the SRO. Refer to subpart 4, above.

Item F. This item lists the requirements for an individual sewage treatment system project's ordinance certification. This is a clear description of the requirements that will be helpful to affected municipalities and their consultants. Refer to the last paragraph of the SONAR for part 7077.0105, subpart 16a, for a discussion of the terminology change from "dwellings" and "other establishments" to "structures with wastewater flows."

Item G. The requirement for a certification by a consulting engineer that the project has been designed according to the plans and specifications is no longer a requirement of the rule. The certification being deleted is specifically tailored to wastewater treatment plants. With new and expanded types of projects, the certification does not apply to all situations. State statutes and rules governing engineering registration already sufficiently cover the ethics of the profession and standards of practice.

This item has been changed to require the participating municipalities with individual sewage treatment systems to enforce the ordinance. This is reasonable to make the programs more consistent under the proposed rule.

Items H through N are being deleted. These items do not relate to the Agency's statutory requirement of reviewing technical and environmental requirements.

Subpart 5. Extension procedure. It may be necessary for a municipality to have additional time to submit requirements because of circumstances outside of its control. The Agency must have the authority to extend the submitted deadline to accommodate these situations. For documentation purposes and for planning purposes, the municipality will be required to request extensions in writing.

Item C. Construction projects. Submittal of certification of adequate errors and omission insurance and submittal of a joint treatment agreement have been deleted. See the discussion under 7077.0410, subp. 2, item A.

Part 7077.0415 Commissioner certification to authority.

This part is proposed to be renumbered as part 7077.0281.

Subpart 1. Certification of planning projects. The Agency will be certifying the project to the Authority. Under the existing rule, the Agency certifies the project application to the Authority. It is reasonable to make this change because the Agency will no longer require that municipalities submit applications.

Subpart 2. Certification of design projects. Refer to subpart 1, above.

Subpart 3. Certification of construction projects. Refer to subpart 1, above. Under the existing rule, there are many requirements requiring Agency review and approval. Under the proposed rule, the commissioner will review certifications that the municipality has completed requirements, but

will not review or approve the actual documents. This will give more control back to the local government and lessen Agency staff review time.

**Subpart 4. Amended certification.** Because of changes in the project scope, it may be necessary for the Agency to amend the project's certification to the Authority. This is reasonable because the certification must reflect the actual project. For documentation purposes and for planning purposes, the municipality will be required to request amended certifications in writing.

**Part 7077.0420 Change orders.**

This part of the rule is being deleted because, under the proposed rule, the Agency will no longer require municipalities to submit change orders. This is reasonable because change orders are an extension of plans and specifications which are statutorily required to be reviewed by the Agency. The requirement to submit them is being deleted to also allow the Agency more leeway in the review and approval process. For example, it may be more efficient to review and approve change orders during a project inspection at the construction site.

**Part 7077.0425 Inspections.**

This part is being renumbered part 7077.0284. The requirement still exists to conduct inspections to ensure that construction is being done in a timely manner and monitored sufficiently.

The word "municipality" is being changed to "project" to be consistent with the terminology used throughout the Rule.

Part 7077.0430 Construction loan reporting requirements.

This entire part is being deleted from the existing rule. The requirement will remain in the financial assistance program rule but under different sections. Items A. and B. are being moved to the proposed rule under part 7077.0286, completion of construction and items C. and D. are being moved to the proposed rule under part 7077.0288, project certification language section. This restructuring is reasonable to put these items in a more logical order.

Part 7077.0435 Completion of construction.

It is reasonable to delete this part because it will be covered under the proposed rule in part 7077.0286, completion of construction and initiation of operation.

Part 7077.0440 Project performance.

This part is being proposed to be renumbered part 7077.0288 since it will be used throughout the financial assistance program.

Subpart 1. Performance certification. The phrase "as appropriate for a project" is being added because not all of the requirements for certification will apply to all projects. This is reasonable because it

clarifies that there are different requirements for different projects in a simple style.

**Item A.**

**Subitem (2).** The requirement for a certified wastewater treatment operator is being included. It is a reasonable requirement to ensure that the system is being operated by trained personnel to assure its proper maintenance and operation.

**Subitem (3).** The last clause is being added to provide consistency with the proposed individual sewage treatment system part of the proposed rule. The parts on individual sewage treatment systems refers to a maintenance plan rather than an operation and maintenance manual. Refer to part 7077.0105, subp. 19a of the SONAR for additional information regarding a maintenance plan.

**Subitems (5) and (6).** The phrase including "septage" is being added because this is the term used to describe sludge for individual sewage treatment systems.

**Item C.** The phrase "or revised maintenance plan" is being added to provide consistency with the proposed individual sewage treatment system parts which does not refer to the operation and maintenance manual but to the maintenance plan.

Item D. The Agency will review documentation provided by the municipality that it is collecting enough funds to maintain and operate the treatment system. Under the existing rule, the Agency would review the actual sewer service charge system. Because it is the Agency's responsibility to review for technical and environmental requirements, it is reasonable to have the Agency only review the municipalities' documentation that there are sufficient funds to operate the system properly.

**Subpart 2. Corrective action report.**

Item A. This item is being changed to include a provision for submittal of the corrective action report within 30 days of the commissioner's determination that the project does not meet the project performance standards. This is a reasonable change because the determination may not be made until almost 30 days after the performance certification date.

Subitem (2). "With its performance standard" is being added to indicate with what the project should comply. It is a reasonable clarification since it makes the requirements easier for municipalities to understand.

**Part 7077.0445 Request to withhold financial assistance payments.**

This section is being renumbered to part 7077.0292. There are not many changes to this section other than wording changes to be consistent throughout the proposed rule.

The word "municipality's" has been changed to "project's" to be consistent with the rest of the proposed rule. The word "part" was changed to "parts" because there are two citations. The word "leading" has been changed to the phrase "which led" because it better explains the fact that a project's failure to conform to plans and specifications or to comply with requirements has a cause which must be corrected. It is reasonable to make these changes to maintain consistency and clarity in the proposed rule.

#### **CORRECTIVE ACTION GRANTS PROGRAM**

The primary changes in the corrective action grants program section of the proposed rule is to change words to maintain consistency throughout the proposed rule.

#### **Part 7077.0505 Definition.**

Subpart 5. Performance standards. This subpart has been changed to reflect a wording change from "facility" to "system." Refer to part 7077.0105, subpart 48 of this SONAR for a further discussion.

#### **Part 7077.0510 Eligibility for participation.**

Subitem A has been changed to reflect a wording change from "on site wastewater" to "sewage". Refer to part 7077.0105, subpart 48 of this SONAR for a further discussion.

**CAPITAL COST COMPONENT GRANTS PROGRAM**

The primary changes in the capital cost component grants program parts of the proposed rule are to change words to provide consistency throughout the proposed rule.

**Part 7077.0600 Purpose.**

Part 7077.0600 is being changed to reflect a wording change from "facilities" to "system". Refer to part 7077.0105, subpart 48 of this SONAR for a further discussion.

**Part 7077.0610 Eligibility.**

Part 7077.0610 is being changed to reflect a wording change from "municipal needs" to "project priority". Refer to part 7077.0115 of this SONAR for a further discussion.

**Part 7077.0615 Grant applications.**

Subpart 2, Application requirements. Subitems A through D are being changed to reflect a wording change from "facilities" to "system". Refer to part 7077.0105, subpart 48 of this SONAR for a further discussion.

**Part 7077.0620 Selection of eligible grantees.**

Part 7077.0620 is being changed to reflect a wording change from "municipal

needs" to "project priority" list. Refer to part 7077.0115 of this SONAR for a further discussion.

Part 7077.0625 Amount of grant award.

Part 7077.0625 is being changed to reflect a wording change from "facilities" to "system". Refer to part 7077.0105, subpart 48 of this SONAR for a further discussion.

Part 7077.0640 Grant conditions.

Subpart 2 is being changed to reflect a wording change from "facilities" to "system". Refer to part 7077.0105, subpart 48 of this SONAR for a further discussion.

Part 7077.0650 Grant payment.

Subpart 2 is being changed to reflect a wording changed from "facilities" to "system". Refer to part 7077.0105, subpart 48 of this SONAR for a further discussion.

Part 7077.0700 Individual sewage treatment systems.

Several terms used under the Individual On-site Wastewater Treatment Systems Grants Program are proposed to be changed. These proposed word changes are addressed here because they impact many different rule parts.

"Individual on-site wastewater treatment systems" is proposed to be changed to "individual sewage treatment systems." "Individual sewage treatment systems" is the term used under the state design and maintenance standards for systems that use soil to treat and dispose of wastewater, in Minn. Rules, pt. 7080. It is reasonable to use consistent terms in state rules because it will prevent confusion when state rules and regulations are interpreted and will establish consistency between related state programs. It is reasonable to use the term established under Minn. Rules, ch. 7080 because it contains the standards for the design and maintenance of these treatment systems.

The change to "individual sewage treatment systems" will also change the name of the grants program from "Individual on-site wastewater treatment systems grants program" to "Individual Sewage Treatment Systems Grants Program."

Changes to "individual sewage treatment system" are proposed throughout the chapter and are under the following citations for the grants program: parts 7077.0700; 7077.0705, subparts 2, 2a, 6, 9, 10, 11, and 12; 7077.0710, subparts 1 to 3; 7077.0713, subpart 1, subpart 2, item A, subitems (3) and (6), and subpart 5; 7077.0720, subpart 1 and subpart 3, item B; 7077.0725, subpart 1 and subpart 2, items A, subitem (4), and B, and subpart 6; 7077.0730, subpart 1; 7077.0735, subparts 2 to 4; 7077.0745, 7077.0755, subparts 2 and 3; and part 7077.0765.

"Individual sewage treatment systems" will make the term "on-site" obsolete and make it necessary to change "on-site funding list" to "funding list."

The term "on-site" is proposed to be deleted from the following citations for the grants program: parts 7077.0705, subpart 2a; 7077.0710, subpart 5 and subpart 6, items A and B; 7077.0713; 7077.0725, subpart 5; and 7077.0735, subpart 4, item A.

The "site evaluator" and "designer" classifications of personnel approved according to part 7077.0720 are proposed to be combined into one classification called "evaluator/designer." This change impacts the whole chapter and is proposed under the following citations for the grants program: parts 7077.0705, subpart 17a and subpart 18a; 7077.0720, subpart 1 and subpart 3, item B, subitems (2) and (3) and subpart 5; 7077.0725, subpart 2, item A, subitems (2), (3) and (6); part 7077.0750, item A. See part 7077.0720, subpart 1, for an explanation of the reasonableness for the personnel classification change.

The term "cluster system" is proposed to be deleted. See part 7077.0705, subpart 5a, for an explanation of the reasonableness for this deletion.

The term is proposed to be changed to "individual sewage treatment system" throughout this chapter and under the following citations for the grants program: parts 7077.0705, subpart 2; 7077.0710, subpart 2; 7077.0725, subpart 2, item G; 7077.0730, subpart 1; and 7077.0755, subpart 2.

**Part 7077.0705 Definitions.**

**Subpart 2. Abatement notice.** Language has been proposed that will require abatement notices given to the owners of failed wastewater

treatment systems to include a time frame to correct the alleged violations of the municipal ordinance. The time frame is needed to ensure that a municipality has met the state grant obligations and to set the stage for the municipality to take enforcement action.

Municipalities that receive grant funds are required to correct all the failed systems that are identified in the grant project description. It is reasonable to establish a time frame for a municipality to meet this obligation.

A failing individual sewage treatment system is a potential source of ground water contamination and public health concerns. A municipality must establish deadlines for the system owners so that it can implement enforcement action. It is reasonable for a municipality to take enforcement steps to ensure that an owner of a failed treatment system upgrades or replaces the system because it will ensure the risk to ground water or public health is not prolonged by the procrastination of the system owner.

Subpart 5A. "Cluster on-site wastewater treatment system or cluster system."

The Agency proposes to change the term "on-site wastewater treatment system" to "individual sewage treatment system." Refer to the SONAR, part 7077.0700, "Individual on-site wastewater treatment systems grants program" for an explanation of the need and reasonableness for this change in terminology.

The terms "cluster on-site wastewater treatment system" and "cluster system" are proposed to be deleted. The existing rules identify two classifications

of individual sewage treatment systems: "individual systems," systems that serve one home or business, and "cluster systems," systems that serve more than one home or business. These classifications add unnecessary terminology to the rules and make the rules confusing because the terms do not relate to the requirements or restrictions of the grants program.

The "individual" and "cluster" system classifications are not needed to describe which individual sewage treatment systems are eligibility to be included on a municipality's grant application. This eligibility rule is identified under part 7077.0710, subpart 2, item A, as proposed, and requires a treatment system to be a failed system, as defined under part 7077.0705, subpart 9.

The "individual" and "cluster" system classifications are not needed to describe which upgraded or newly constructed treatment systems are eligible to receive grant funds. These eligibility rules are identified under part 7077.0710, subpart 2, item B, as proposed, and require the system to replace or correct a system that is identified on a grant application, to serve less than six dwellings or other establishments, to have a capacity to treat no more than 5,000 gallons of wastewater per day, and to meet the standards and criteria under the rules in Minn. Rules, ch. 7080.

It is reasonable to delete the terms "cluster on-site wastewater treatment system" and "cluster system" from the chapter because the terms are not needed in the rule to establish eligibility and other requirements for the grants program. There are a few requirements in the rules that differ for systems that serve more than one home or business, like the application

requirements under part 7077.0725, subpart 2, item G, for an assurance. The rule language is the most clear if the phrase "a system that serves two or more structures is used instead of the unfamiliar term "cluster system."

**Subpart 7. " Designer."** The definition of "designer" is proposed to be deleted here because it will no longer be used under this chapter.

"Designer" currently refers to a classification of personnel approved under part 7077.0720. This classification is proposed to be combined with another classification called "site evaluator" under the term "evaluator/designer." The definition for "evaluator/designer" is proposed under part 7077.0105, subpart 11c. It is reasonable to eliminate definitions for terms that will not be used under the rule.

**Subpart 8. "Dwelling."** The definition of "dwelling" is proposed to be deleted. The term is not an accurate description of a structure that is used in individual wastewater treatment systems, and it is also not a technical term. Therefore, it is reasonable to delete the definition from the rule.

**Subpart 10. "Individual on-site wastewater treatment system."** The definition is proposed to be changed to "individual sewage treatment system" proposed to be changed to address the inconsistency between the name of the grants program proposed in the rule and the program name under Minn. Stat. § 116.18, subd. 3c. It is reasonable not to use the statutory name for the grant program because it is different from the terms proposed to be used in the rule (see the introduction of this part) and would create confusion for rule readers. It is reasonable to document this difference

by definition because it clarifies the connection between the statute and the rule for readers and preserves the history of the grant program.

**Subpart 12a. " Maintenance plan."** The definition for "maintenance plan" is proposed to be deleted here and to be moved under part 7077.0105, subpart 19a. Part 7077.0105 identifies terms and definitions that are used throughout the chapter. This move is reasonable because the "maintenance plan" is proposed to be used under other programs in addition to the Individual Sewage Treatment Grants Program.

**Subpart 18. " Site evaluator."** The definition of "site evaluator" is proposed to be deleted here because it will no longer be used under this chapter. Site evaluator currently refers to a classification of personnel approved under part 7077.0720. This classification is proposed to be combined with another classification called "designer" under the term "evaluator/designer." The definition for "evaluator/designer" is proposed under part 7077.0105, subpart 11c. It is reasonable to eliminate definitions for terms that will not be used under the rule.

#### Part 7077.0710 Eligibility.

**Subpart 2. Eligibility of individual and cluster systems.** The subpart heading has been proposed to be changed from "eligibility of individual and cluster systems" to "eligibility of individual sewage treatment systems" to correspond to a proposed change in terminology.

The structure of this subpart is proposed to be changed. The requirements under the introductory sentence are proposed to be split between item A and

item B. This structure is reasonable because it provides the information in a format that is easy to read and easy to make comparisons between eligibility requirements for application and for construction.

Item A, as proposed, will be used to determine the individual sewage treatment systems that are eligible to be included in a grant application. The criteria for making this determination are currently listed under items A to E. These existing items are proposed to be changed to subitems (1) to (5). Therefore, no new requirements are proposed by the changes in the citation.

Item B, as proposed, will be used to determine if an individual sewage treatment system that is upgraded or constructed to address a system failure will be eligible to receive grant assistance. It is reasonable to add this item because it clarifies the differences between the eligibility of an individual sewage treatment system to participate in the program at the time of application and at the time construction is completed. It is important that this information is easy to locate because a misunderstanding of which costs are eligible for grant assistance could create fiscal problems for a municipality.

Subitem (1) under item B proposes to require that a new or upgraded treatment system must correct or replace a failed system identified on a municipality's grant application to be eligible to receive grant funds. This requirement is currently obscurely written and obscurely placed in the rule under part 7077.0730, subpart 1. This part states that only the eligible costs of upgrading or replacing failed treatment systems that have been identified

according to part 7077.0725, subpart 2, item A, subitem (4), which refers to the portion of the grant application that lists the failed systems, are eligible for grant assistance. Restating the requirement under this subitem is reasonable because it clarifies the requirements of the rule and makes the information easier for readers to find.

Subitem (2) proposes to require an upgraded or replacement system to be designed to meet the requirements under Minn. Stat. § 116.18, subd. 3c, item (b). Minn. Stat. § 116.18 defines an individual on-site treatment system (called individual sewage treatment system under the proposed rule) as a wastewater treatment system, or part thereof, serving less than six structures. The statutory restriction on the number of service connections is already incorporated in the rule under part 7077.0730, subpart 1, which states that upgraded or replacement systems must serve five or fewer structures to be eligible for grant participation. Therefore, adding the statutory design language is not a new requirements. Relocating the requirement under this subitem is reasonable because it clarifies the requirements of the rules and makes the information easier for readers to find.

Subitem (3) proposes a treatment capacity restriction of 5,000 gallons per day, which is a new requirement. The Individual Sewage Treatment Grants Program was established to prevent ground water pollution by providing financial assistance for the correction of failed wastewater treatment systems. The 5,000 gallon treatment capacity restriction is being proposed as a ground water protection measure.

Grant funds are very limited under the Individual Sewage Treatment System Grants Program. Since home owners that have individual systems have the responsibility to maintain and upgrade their systems, grant funds are targeted to assist municipalities with homeowners who are facing financial hardships. Experience working with these communities has shown Agency staff that system failures are often attributed to inadequate property parcels, high water tables, inappropriate soil conditions or proximity to a lake or river.

The grants awarded under the Individual Sewage Treatment System Grants Program provide only 50 percent of the costs of construction, site evaluation and system design. Municipalities that receive grant funds look for the most inexpensive treatment system options because of their limited financial resources. Experience has shown that personnel approved by the commissioner under part 7077.0720 are usually used, instead of engineering firms, to cut costs. The approval process ensures personnel have the skills and knowledge to work on systems that treat 5,000 gallons or less of wastewater per day.

Minn. Stat. § 116.18, subd. 3c, item (f) authorizes the Agency to adopt permanent rules that address matters that the Agency finds necessary for proper administration of grants awarded under this subdivision. Since municipalities that receive grant funds usually have land characteristics that present problems for soil-based wastewater treatment and financial conditions play a large part in the treatment and construction options chosen by municipalities, a treatment capacity maximum is necessary in the rule to ensure that wastewater treatment systems that protect the ground water of the State are being constructed with grant funds.

Agency staff has witnessed more system failures and wastewater treatment problems with systems that were constructed to treat more than 5,000 gallons of wastewater per day. The larger the treatment system the more sensitive it will be to the water table depths and variations, soil characteristics at deeper soil depths, and natural recharge events caused by spring rains and snow melts (see Exhibit 4, page 2-4-3). Large discharges of wastewater present a greater threat of inadequate treatment. The more wastewater that is discharged into the soil the greater the chances the wastewater will mound instead of moving vertically and/or horizontally through the soil. The effects of this mounding may cause the water table to reach the bottom of the treatment system or produce a nearly saturated or more anaerobic condition. Unsaturated and aerobic conditions are necessary for the purification of effluent (see Exhibit 4, page 2-4-2).

Studies on soil characteristics and wastewater treatment systems have raised concern about ground water pollution caused by individual wastewater treatment systems that treat more than 5,000 gallons of wastewater per day. The Great Lakes and Upper Mississippi River States Engineering Council have reviewed individual sewage treatment system projects. Based on their review, the council is drafting design criteria for individual household sewage disposal. The draft criteria states that the maximum design flow for a single soil absorption system is 5,000 gallons per day (see exhibit 5, page 6). The Agency currently requires larger individual sewage treatment systems to obtain an SDS permit.

The proposed rule will limit the treatment capacity of systems that receive grant funds to 5,000 gallons or less of wastewater per day. The limitation

of 5,000 gallons for the treatment capacity of one system is reasonable because it will eliminate the construction of systems that have a high risk of inadequately treating wastewater, and was established by the professional engineers in the states of Minnesota, Illinois, Indiana, Iowa, Michigan, Missouri, New York, Ohio, Pennsylvania, and Wisconsin.

The program provides greater access to low interest loans for individual sewage treatment systems than the existing loan program offers. Therefore, a municipality that has a unique problem that requires an individual sewage treatment system to serve more than five homes or businesses or to treat more than 5,000 gallons of wastewater per day can apply for funds under parts 7077.0111 to 7077.0292 as proposed.

It is reasonable to limit an individual sewage treatment system constructed with grant funds by both the five-connection limit and the 5,000 gallon capacity limit because: (1) these conditions will ensure wastewater treatment systems that provide the greatest degree of protection to the State's ground water are constructed with grant funds; and (2) alternative financial assistance is available to municipalities that have a special need for larger treatment systems. In addition, individual sewage treatment systems with more than 5,000 gallon capacity are disproportionately expensive. Therefore, the 5,000 gallon limit promotes the best use of state monies.

Subitem (4) under item B proposes to require that treatment systems subsidized with grant funds must be constructed according to the design, location, installation, maintenance and use standards and criteria

established in Minn. Rules, ch. 7080. This requirement is currently obscurely written and obscurely placed in the rule under part 7077.0730, subpart 4, item B, which requires all construction to be completed in accordance with Chapter 7080 to be eligible for grant assistance, and under part 7077.0725, subpart 2, item B, which requires a municipality to enact an ordinance that adopts the requirements of Minn. Rules, ch. 7080. Restating the requirement under this subitem is reasonable because it clarifies the requirements of the rule and makes the information easier for readers to locate.

**Subpart 4. Eligibility of alternative planning area.** The phrase "dwellings or other establishments" is being changed to "structures with wastewater flows." Refer to the last paragraph of the SONAR for part 7077.0105, subpart 16a, for a discussion of the terminology change from "dwellings" and "other establishments" to "structures with wastewater flows."

**Part 7077.0720. Approval of individual onsite wastewater treatment personnel.**

The name of this part is changed to "Approval of Individual Sewage Treatment Personnel."

**Subpart 1. General requirement.** The personnel classifications of "site evaluator" and "designer" are proposed to be combined into one classification called "evaluator/designer." It is reasonable to combine the classifications because the site evaluator and the designer need the

same type and level of knowledge and skills to complete their work. Site evaluators are required under part 7077.0725, subpart 2, item A, subitem (2), to conduct the site evaluation for determining failed treatment systems. A site evaluator must understand the requirements for proper system design and the treatment technology principles to accurately determine if a system should be upgraded or replaced. Plans for system upgrades or replacements are required under part 7077.0725, subpart 2, item A, subitem (3) to be completed by a designer. A designer must understand soil conditions and ground water characteristics to design treatment systems that provide adequate treatment and prevent ground water contamination.

Experience with the grant program has shown that one person typically performs both the site evaluation work and the design work for individual sewage treatment systems included in a project. Since the evaluation and design work are so inter-related, the majority of experienced personnel can meet both the qualification requirements under part 7077.0720, subpart 3, item B, subitems (2) and (3). The new classification will simplify the approval process. Municipalities are required under part 7077.0725, subpart 2, item A, subitem (6), to submit documentation that the personnel who will be completing the grant project have proper approval.

Part 7077.0725 Grant application.

Subpart 2. Application requirements.

Item G. This item requires a municipality to submit an assurance

as part of the grant application. The assurance will state that all owners of failed systems that are planned to be connected to a system that serves more than one structure with wastewater flows agree to be part of the construction project and to financially support the system.

The purpose of requiring the assurance is to be sure that the municipality has educated the persons that will be part of a multi-connection system of their responsibilities and that the system owners agree to fulfill those responsibilities before the project begins. The words "owners of dwellings or other establishments" are proposed to be replaced by the words "structures with wastewater flows." This word substitution is reasonable because it simplifies the language.

The term "cluster system" is proposed to be removed from the chapter. In response to deleting "cluster system" from this item, the phrase "an individual sewage treatment system that serves two or more structures with wastewater flows" is proposed to be added. This phrase is the existing definition for "cluster system" and is needed to clarify which property owners must be included in the assurance.

**Part 7077.0730 Eligible costs.**

**Subpart 1. Eligible costs.** This subpart specifies which project costs can be paid with grant funds. The phrase "and serve five or fewer dwellings or other establishments" is proposed to be changed to "that meet the requirements under part 7077.0710, subpart 2, item B."

The phrase "and meet the requirements under part 7077.0710, subpart 2, item B," is proposed to be added to the description of an individual sewage treatment system that is eligible to receive grant funds to pay construction costs. Part 7077.0710, subpart 2, item B, proposes to require a system to replace or upgrade a failed treatment system that was identified on the grant application, to serve less than six homes or businesses and have the capacity to treat no more than 5,000 gallons of wastewater per day, and to be constructed according to the criteria and standards under Minn. Rules ch., 7080. It is reasonable to reference the eligibility part instead of repeating this list of requirements in the rule. Refer to the last paragraph of the SONAR for part 7077.0105, subpart 16a, for a discussion of the terminology change from "dwellings" and "other establishments" to "structures with wastewater flows."

Subpart 2. Ineligible costs. This subpart specifies which project costs cannot be paid with grant funds. The words "for grant assistance" are proposed to be added to clarify the word "ineligible."

Part 7077.0735 Amount of Grant Award.

Subpart 1. Grant amount. In this subpart, the phrase "dwelling or other establishment" is being changed to "structure with wastewater flows." For a further discussion see the SONAR for part 7077.0725.

**V. SMALL BUSINESS CONSIDERATIONS IN RULEMAKING**

Minn. Stat. § 14.115, subd. 2 (1990) requires the Agency, when proposing

rules that municipalities must follow, to consider the following methods for reducing potential impacts 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 statute requires the Agency to incorporate into the proposed rule any of these methods that it finds to be feasible, unless doing so would be contrary to the statutory objectives that are the basis of the proposed rulemaking.

The proposed rule will only be applicable to municipalities in the state of Minnesota. The proposed rule will not be applicable to small businesses, as defined under Minn. Stat. § 14.115, subd. 1 (1990) in the state of Minnesota.

Municipalities which are impacted by the proposed rule may contract with small businesses, but there should be little or no adverse affect on the

business. Since the technical and administrative requirements in the proposed rule are being simplified and minimized due to the end of several federal requirements, some of the provisions may be of benefit to small businesses.

For example, in small projects, municipalities are exempted from the requirement that a professional engineer prepare the facilities plan and plans and specifications. Instead, they may employ a certified evaluator/designer. The Agency will no longer require a 100% payment bond (part 7077.0274, subpart 2, item G), which was a prohibitive burden on small businesses, but was less of a problem for larger firms. Similarly, the Agency no longer requires a 5% bid bond.

As a result of these exemptions and the overall reduction in administrative and technical requirements in the proposed rule, small firms may have more of an opportunity to design and build wastewater treatment systems. The impact of the proposed rule will therefore have less of an impact than before on small businesses.

## VI. CONSIDERATION OF ECONOMIC FACTORS

In exercising its powers, the Agency is required by Minn. Stat. § 116.07, subd. 6 (1990) and Minn. Stat. § 115.43, subd. 1 (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, 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 rule for the administration of the financial assistance program, the Agency has given due consideration to the possible economic impacts on the municipalities that will receive financing. While some expense and effort will be involved in complying with this proposed rule, 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. Also, no municipality is required to use these funding programs; they are strictly optional. If a municipality chooses to go through the program or programs to receive financial assistance, one benefit may be that the local taxes may decrease, since the municipality will have lower local capital costs.

#### **VII. PUBLIC BODIES.**

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 proposed rules. Participation in wastewater financial assistance

programs is optional. Municipalities are required to participate in any of these funding programs. If a municipality must build or upgrade its wastewater treatment facilities, it will need to expend money for planning, design and construction. The construction of many wastewater treatment systems will undoubtedly cost in excess of \$100,000, but none of that expense is directly attributable to these rules. As explained earlier, the proposed rule may assist in lessening local capital costs when meeting the requirements of NPDES or SDS permits. By reducing the number of requirements, the proposed rule may assist in reducing expenses, rather than increasing them.

#### VIII. AGRICULTURAL FACTORS

Minn. Stat. § 17.83 (1990) requires the Agency to describe any direct and substantial adverse effects on agricultural land as a result of the proposed rule. The Agency has determined that this proposed rule will have no such effect. By revising the project priority system to reflect environmental concerns, the proposed rule will help protect agricultural land from further degradation. It is to be stressed again that the proposed rule will apply to municipalities that choose to go through the funding programs, and not to individual farmers. Again, the less stringent requirements and exemptions on small projects may decrease local taxes, since the need for local capital will be less. Therefore, the farmers may directly benefit from this proposed rule.

#### IX. EXHIBITS

In drafting the proposed rule, the Agency relied on technical documents

prepared by a number of sources. The following documents were utilized by Agency staff in developing this rule and are relied on by the Agency as further support for the reasonableness of the proposed rule. These documents are available for review at the Agency's Public Information Office at 520 Lafayette Road North, St. Paul, Minnesota 55155-4194.

In support of the need for and reasonableness of the rule, the following exhibits will be entered into the hearing record by the Agency:

<u>Exhibit Number</u>	<u>Document</u>
1.	Rule with Revisor's Certificate of Approval.
2.	Notice to Solicit Outside Opinion.
3.	Outline of Comments in response to Notice to Solicit Outside Opinion.
4.	Minnesota Pollution Control Agency. 1984. High Rate Soil Absorption (HRSA) Task Force Final Report.
5.	Great Lakes Upper Mississippi River Consortium. Revised 1990. Ten States Standards for Individual Sewage Treatment Systems. Chapter 50, Design of Large Systems.
6.	"Water Pollution Control" (June 1987), Volume 911, Pages 1004 to 1005.

#### **X. CONCLUSION**

Based on the foregoing, the proposed Minn. Rules, pts. 7077.0100 through 7077.2010 are both needed and reasonable.

Dated: \_\_\_\_\_, 1993

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Charles W. Williams  
Commissioner