

COMMISSIONER OF TRADE AND
ECONOMIC DEVELOPMENT

STATEMENT OF NEED AND REASONABLENESS

IN THE MATTER OF THE PROPOSED RULES

GOVERNING THE MINNESOTA PUBLIC FACILITIES

AUTHORITY'S OPERATION OF THE WASTEWATER

INFRASTRUCTURE FUNDING PROGRAM

02/11/93

INTRODUCTION

This proposed rule provides potential applicants - municipalities, sanitary districts and other defined eligible applicants - of the requirements, processes, and criteria to be used by the Minnesota Public Facilities Authority (Authority), Minnesota Statute, Chapter 446A, in considering the award of supplemental assistance as provided in Minnesota Statute, Section 446A.071, to construct, or upgrade wastewater treatment systems.

BACKGROUND

In 1991, the legislature enacted the Wastewater Infrastructure Funding Program, codified in Minnesota Statutes, section 446A.071, to provide supplemental assistance, as provided for in the rules of the authority, to municipalities that receive loans or other assistance from the Water Pollution Control Revolving Fund, enacted

by the legislature in 1987, and codified in Minnesota Statutes, section 446A.07.

The Wastewater Infrastructure Funding Program, as with the Water Pollution Control Revolving Fund Program, was placed under the financial management of the Minnesota Public Facilities Authority (Authority), Minnesota Statute, Chapter 446A; and authorizes the Authority to provide financial assistance to municipalities, which have received certification of their applications from the Commissioner of the Minnesota Pollution Control Agency (Agency) as provided under Minnesota Statutes, Section 116.182.

The Wastewater Infrastructure Funding Program was created by the legislature in response to financing needs of smaller-size, lower-income municipalities in the State which, although eligible for a Water Pollution Control Revolving Program loan, did not have the revenue generating capacity to be able to afford to payback the principal portion of a loan of sufficient size to construct a wastewater treatment facility. (The "average" cost of a wastewater treatment system in a presently unsewered community would be around \$1,200,000, regardless of how small the town might be. It is readily seen that a town of 100 people, with 50 households could not afford the level of sewer charges to repay even a zero interest loan. In this example the sewer service charge would be \$100.00 per month, or \$1,200.00 per year, per household.) It had also become obvious to the members and management of the Authority, as well as

the Agency, during the years of the operation the Water Pollution Control Revolving Fund Program that, even though the Water Pollution Control Revolving Fund Program could provide zero interest loans, a number of smaller-size, poorer municipalities could not afford to pay back even the principal amount of the Water Pollution Control Revolving Fund Program loan, and thus they remained in continuing non-compliance of wastewater quality standards established by the Agency.

The phase-out of the State Independent Wastewater Treatment Grants Program, Minnesota Statutes, Chapter 446A, Section 446A.06, in 1990, coupled with the phase-out of the Federal Construction Grants Program in 1991, eliminated the majority of the grant funding for wastewater treatment facilities to municipalities. The only remaining state-wide sources of grant funding for wastewater treatment systems were and are the Farmers Home Administration (FmHA); and the Small Cities Development Program (SCDP) available through the Department of Trade and Economic Development. The FmHA Program, however, requires that a municipality also borrow a portion of the project financing, i.e. FmHA does not provide 100% of the project financing as a grant. The other remaining source, the Small Cities Development Program, while it provides all of its program assistance in the form of a grant, the maximum amount of the grant is \$600,000, or less than one-half of the average cost to construct a wastewater treatment system. (NOTE: The Federal Economic Development Administration (EDA) provides grant funds to

communities for economic development projects which may involve wastewater treatment systems. However, the amount of funds available through EDA is small, and the application and approval process is quite lengthy.) The Iron Range Resources and Rehabilitation Board, (IRRRB) provides grants to communities located in the northeastern part of the State which are within the geographic area designated as the "Iron Range". But again, like EDA, the amount of funds available from the IRRRB for wastewater treatment systems grants is minimal.

Based on the latest data available (1992, except for City financing which is a 1991 figure) the Authority's Water Pollution Control Revolving Fund provides 67% of the total financing for wastewater treatment systems in the State: with Cities themselves providing 24%; FmHA providing 8.5%; and the SCDP, 9/10ths. of 1%.)

As the projects funded through grants from the State Independent Wastewater Treatment Grants Program were completed, a net balance of program funds became available as the final cost for the projects, in total, funded by the program came in under the estimated cost. At present, it is projected that \$2,000,000 in program funds will available.

As mentioned previously, in 1991, the legislature enacted the Wastewater Infrastructure Funding Program; and under Minnesota

Statute 446A.071, Subdivision 8, the legislature also appropriated any amount remaining in the State Independent Grants Program to the Authority for the Wastewater Infrastructure Funding Program.

For all practical purposes, the Wastewater Infrastructure Funding Program is a subpart of the Water Pollution Control Revolving Fund Program, Minnesota Rules 7380.0400 to 7380.0480. If not for restrictions imposed by the U.S. Environmental Protection Agency concerning the financial administration of the Water Pollution Control Revolving Fund,, the Wastewater Infrastructure Funding Program would be incorporated as a subpart of the Water Pollution Control Revolving Fund as the application requirements, process, administration of the program is identical to the Water Pollution Control Revolving Fund Program. Because of this, this rule refers to and incorporates large portions of the Water Pollution Control Revolving Fund Program rules as both programs utilize the same application, reporting, and repayment requirements.

Minnesota Statute 446A.071 directs both the Authority and the Agency to administer and operate the Wastewater Infrastructure Funding Program. The Authority is to administer and operate the financing of wastewater treatment systems through the financial resources of the Wastewater Infrastructure Funding Program; and the Agency establishes invironmental priorities and oversees the planning, design, construction, and permitting of wastewater treatment systems. Once the applicant's project has satisfied the

requirements of the Agency, the Agency will certify (approve) the application to the Authority. The Authority then is able to give consideration to providing financing for the project.

7380.0300 PURPOSE:

THE WASTEWATER INFRASTRUCTURE FUND PROGRAM SHALL PROVIDE SUPPLEMENTAL ASSISTANCE TO ELIGIBLE MUNICIPALITIES WHICH ALSO RECEIVE LOANS OR OTHER ASSISTANCE FROM THE WATER POLLUTION CONTROL REVOLVING FUND UNDER MINNESOTA STATUTES 446A.07, AND MINNESOTA RULES 7380.0400 TO 7380.0480.

The 1991 legislature directed the Minnesota Public Facilities Authority (As exacted in 1987 under Minnesota Statute 446A.03) to establish the Wastewater Infrastructure Funding Program (Minnesota Statute 446A.071) to provide supplemental assistance to municipalities demonstrating the financial need for such assistance as required by the Authority, which also receive loans or other assistance from the Water Pollution Control Revolving Fund under section 446A.07. The statute directs the Authority to operate the Fund in accordance with applicable Federal and State Statutes, and requires that the Commissioner of the Minnesota Pollution Control Agency certify the essential project components and costs to the Authority for eligible projects. The Authority shall provide the supplemental assistance in accordance with the priority ranking

established by the Agency.

It is reasonable and necessary to inform potential applicants to the program of the scope, legislative intent, and the statutory requirements of the program in order that they may understand the applicability of the program.

7380.0310 DEFINITIONS:

SUBPART. 1. SCOPE. THE TERMS DEFINED IN THIS PART AND THE TERMS DEFINED IN PART 7380.0410, SUBPARTS 1 TO 20, APPLY TO PARTS 7380.0300 TO 7380.0380.

This statement is necessary to provide the scope of the definition of terms given in this part, and to reference the definition of terms given in the Water Pollution Control Revolving Fund Program Rules (Minn. Rules 7380.0410) which have common applicability to both programs. It is reasonable to provide such definition of terms unique to the Wastewater Infrastructure Funding Program; and to make reference to and incorporate the definition of terms used in the Water Pollution Control Revolving Fund Program rules as all twenty of the definitions provided in those rules apply to the Wastewater Infrastructure Funding Program; as it serves to add to the readability of the rules.

SUBP. 2. SUPPLEMENTAL ASSISTANCE. "SUPPLEMENTAL ASSISTANCE" MEANS THE FINANCING ASSISTANCE WHICH THE AUTHORITY MAY PROVIDE TO REDUCE THE DEBT SERVICE COMPONENT OF THE SEWER SERVICE CHARGE OF A MUNICIPALITY UNDERTAKING A WASTEWATER TREATMENT PROJECT WHEN THE SEWER SERVICE CHARGE UPON SATISFACTORY COMPLETION OF THE PROJECT EXCEEDS THE LEVEL OF SEWER SERVICE CHARGES AS PROVIDED IN PART 7380.0350.

A definition of this term is necessary as it informs applicants of the specific meaning of the term, and how the supplemental assistance shall be computed and applied. It is reasonable because it has set a level of financial assistance to be provided using as criteria those factors, cost levels and measurements as were determined through a state-wide survey of municipalities, and which are consistent with the criteria used by lending and granting programs (mentioned above) operating in the State.

SUBP. 3 SATISFACTORY PERFORMANCE OF A PROJECT. "SATISFACTORY PERFORMANCE OF A PROJECT" MEANS THE CONSTRUCTED FACILITIES ACHIEVE THE OPERATIONAL PERFORMANCE STANDARDS ESTABLISHED BY THE AGENCY IN MINNESOTA RULES 7077.0290.

The definition of this term is necessary to inform applicants of the requirement that the wastewater treatment system financed by the Wastewater Infrastructure Funding Program must meet the operational wastewater discharge standards specifically required by

the Agency for the system. It is reasonable as it is consistence with the Agency's rules governing the administration of the program which takes into account the environmental conditions impacting each municipality's particular system.

SUBP. 4 ALLOWABLE COSTS. "ALLOWABLE COSTS" MEANS THOSE COSTS THAT MAY BE FINANCED BY THE FUND, AS PROVIDED IN PARTS 7380.0400 TO 7380.0480 AND;

A. WHICH ARE CERTIFIED TO BE ESSENTIAL PROJECT COMPONENTS BY THE COMMISSIONER OF THE AGENCY; AND

B. LAND ACQUISITION, EASEMENTS, AND ASSOCIATED COSTS AS CERTIFIED BY THE COMMISSIONER OF THE AGENCY; AND

C. EXPANSION CAPACITY FOR NON-RESIDENTIAL USERS FOR ECONOMIC DEVELOPMENT PROJECTS AS PROVIDED IN PART 7380.0370.

The definition of the term, "allowable cost" is necessary to identify to the applicant what constitutes allowable costs for a project to be financed by the Authority so a municipality may determine to what extent program funds are available to cover project costs, and that a listing of allowable costs may be found in the rules for the Water Pollution Control Revolving Fund Program. In addition, subpart 4A additionally informs the applicant that it is the Commissioner of the Agency that shall make the

determination, of allowable in accordance with specific Agency Rules, and what costs, i.e. essential project components, are eligible to be financed by the program. Subpart 4B is necessary as it informs the applicant that in addition to the allowable costs contained in the Water Pollution Control Revolving Fund Rules, this program will also provide financing for land acquisition, easements, and associated costs, again as required in subpart 4A, if the costs are certified by the Commissioner of the Agency. Subpart 4C informs applicants that the program may also provide funds for economic development projects, as provided in subpart 7380.0370.

The above subparts, 4A, 4B, and 4C are reasonable as they are either consistent with other financing programs which provide funds for the construction of wastewater treatment systems, or are consistent with Minnesota Statutes, Chapter 446A; Section 446A.071, or Minnesota Rules 7380.0400 to 7380.0480, which provides a listing of such costs which are customarily incurred in the financing and construction of wastewater treatment systems.

7380.0320 PROGRAM ADMINISTRATION.

SUBPART 1. IN GENERAL. THE PROCESS TO APPLY TO THE AUTHORITY FOR SUPPLEMENTAL ASSISTANCE SHALL BE AS PROVIDED IN PART 7380.0420. THE AUTHORITY SHALL REVIEW AND EVALUATE APPLICATIONS TO DETERMINE THE APPLICANTS CAPACITY TO COMPLY WITH MINNESOTA STATUTES 446A.071, AND

PARTS 7380.0320 TO 7380.0380. APPLICATIONS MUST BE CERTIFIED BY THE COMMISSIONER OF THE POLLUTION CONTROL AGENCY, AND FUNDED IN ACCORDANCE WITH THE PRIORITY RANKING AS LISTED ON THE FIRST INTENDED USE PLAN EACH YEAR PREPARED BY THE AGENCY; EXCEPT FOR ECONOMIC DEVELOPMENT PROJECTS AS PROVIDED IN PART 7380.0370. THE AUTHORITY SHALL CONSIDER PROJECTS ADDED TO THE INTENDED USE PLAN THROUGH AMENDMENTS PROVIDED SUFFICIENT FUNDING EXISTS AFTER FUNDING FOR ELIGIBLE PROJECTS ON THE FIRST INTENDED USE PLAN IS SET ASIDE FOR THOSE PROJECTS.

It is necessary to inform applicants of how they may apply to the Wastewater Infrastructure Funding Program. Part 7380.0320; Subpart 1 refers the applicant to the application procedures given in 7380.0420 as all applicants to the Wastewater Infrastructure Funding Program must first apply to the Water Pollution Control Revolving Fund Program and be approved by the Agency and the Authority. Application to the Wastewater Infrastructure Funding Program will be incorporated into the Water Pollution Control Revolving Fund Program application materials and the applicant will merely indicate whether it is applying to the Water Pollution Control Revolving Fund Program and the Wastewater Infrastructure Funding Program, or just to the Water Pollution Control Revolving Fund Program. It is reasonable as it utilizes the existing application material and process to the Water Pollution Control Revolving Fund Program and applies them to the Wastewater Infrastructure Funding Program and thus reduces the amount of

paperwork an applicant would have to prepare if the Authority were to require a separate application for each program.

It is also necessary, in Part 7380.0320, Subpart 1, to inform the applicant that certified projects shall be funded in accordance with the Priority List established in the first Intended Use Plan prepared by the Minnesota Pollution Control Agency in order that an applicant may assess the probability of receiving funding in a given year and plan accordingly. The applicant is further informed that the Priority List may be amended in subsequent Intended Use Plans issued by the Agency, and if program funds are still available the applicant's project although it was not listed on the first Priority List, or had a "low" priority ranking on the first Priority List, there may be an opportunity later in the year to receive funding consideration. It is reasonable to utilize a ranking system as the Wastewater Infrastructure Funding Program currently has limited program funds, and is likely to have limited funds for the foreseeable future. It is reasonable to use a funding priority system so as to fund a project which has the most measurable impact on the environment first, and the project which has the second most impact second, and so forth.

SUBP. 2 ELIGIBILITY. AN ELIGIBLE APPLICANT MUST MEET EACH OF THE FOLLOWING REQUIREMENTS BEFORE BEING CONSIDERED FOR SUPPLEMENTAL ASSISTANCE;

A. MUST BE ELIGIBLE FOR A WATER POLLUTION CONTROL REVOLVING FUND LOAN AS PROVIDED IN PARTS 7380.0400 TO 7380.0480; AND

B. MUST RECEIVE THE CERTIFICATION OF THE COMMISSIONER OF THE AGENCY, INCLUDING THE ESSENTIAL PROJECT COMPONENT PERCENTAGES AS CALCULATED UNDER MINN. RULES 7077.0276, SUBP. 2; AND

C. MUST HAVE APPLIED TO ALL GRANT-IN-AID FINANCING PROGRAMS AVAILABLE FOR FINANCING ITS WASTEWATER TREATMENT PROJECT; AND

D. MUST DEMONSTRATE THAT IT DOES NOT HAVE ADEQUATE FUNDS THROUGH ITS OWN RESOURCES OR GRANT-IN-AID ASSISTANCE TO KEEP THE SEWER SERVICE CHARGE FROM EXCEEDING THE LEVEL OF SEWER SERVICE CHARGES AS PROVIDED IN PART 7380.0350; AND

E. MUST PROVIDE A GENERAL OBLIGATION PROMISSORY NOTE TO THE AUTHORITY PLEDGING THE FULL FAITH AND CREDIT OF THE MUNICIPALITY FOR THE AMOUNT OF SUPPLEMENTAL ASSISTANCE TO BE PROVIDED BY THE AUTHORITY.

Parts 7380.0320, subpart 2A and 2B are necessary so as to inform applicants on what basis and by what criteria an application will be evaluated by the Authority to determine if an application can be considered for approval by the Authority. It is reasonable as it is consistent with Minn. Statutes 446A.071, Subd. 3, which states that only applicants which first borrow funds from the Water Pollution

Control Revolving Fund Program to the extent possible can be considered for supplemental assistance from the Wastewater Infrastructure Funding Program; and only those applicants whose projects are certified (approved) by the Commissioner of the Agency are eligible for supplemental assistance from the Wastewater Infrastructure Funding Program to the extent that the Commissioner of the Agency determines the essential project components as calculated under the referenced Agency rules.

Subpart 2C is necessary as it informs the applicant that they must apply to all other grant-in-aid programs which provide financing for wastewater treatment systems prior to seeking funds from the Wastewater Infrastructure Funding Program. It is reasonable as the Wastewater Infrastructure Funding Program currently has, and is very likely to have in the foreseeable future, a very limited amount of program funds. At the current time, there are only three other programs in the State of Minnesota which provide financing throughout the State for wastewater treatment projects, and one program which provides such funding in the Northeastern part of the State. Thus, we do not believe it is an onerous requirement for applicants to first determine its eligibility, and if eligible, apply to the other funding programs and secure funding to the extent possible.

Subpart 2D follows-up on subpart 2C and is necessary as it informs the applicant of the requirement to demonstrate that it does not

have the financial resources, even with utilizing all other grant-in-aid programs, to provide for the financing of its wastewater treatment project without exceeding the level of residential sewer service charges provided in part 7380.0350. It is reasonable to require applicants to do so as the Wastewater Infrastructure Funding Program has very limited funds; much more limited than the other grant-in-aid programs listed above. Also, it is in keeping with good public policy that those, (in this case municipalities) that are capable of providing for themselves, do so.

Subpart 2E, wherein it is required that the municipality provide the Authority with a general obligation note for the amount of supplemental assistance provided by the Authority is reasonable and necessary as it is the customary means by which a municipality conveys indebtedness and provides collateral for a loan. An applicant needs be aware of this requirement in order to prepare the necessary documents to complete the transaction with the Authority.

7380.0330 TERMS AND CONDITIONS OF FINANCIAL ASSISTANCE.

SUBPART 1. IN GENERAL. THE TERMS AND CONDITIONS OF THE SUPPLEMENTAL ASSISTANCE PROVIDED BY THE AUTHORITY TO APPROVED APPLICANTS ARE AS PROVIDED BY APPLICABLE FEDERAL LAW, STATE LAWS, MINNESOTA STATUTES, 446A.07, 446A.071; MINNESOTA RULES 7380.0400 TO 7380.0480, AND THIS PART.

It is necessary to inform the applicant of where the terms and conditions of the supplemental assistance agreement may be found so as it may judge its ability and willingness to agree to such terms. The applicant needs to be made aware that the municipality and the Authority are governed by a myriad of federal and state laws governing lending activities, and the repayment of loans. It is reasonable as the requirements of this subpart incorporate terms and conditions which are generic terms and conditions inherent to any municipal borrowing activity.

SUPB. 2. WASTEWATER SYSTEM REPLACEMENT FUND. A RECIPIENT OF SUPPLEMENTAL ASSISTANCE SHALL BE REQUIRED TO ESTABLISH A SYSTEM REPLACEMENT FUND THAT SHALL PROVIDE FOR THE FUTURE REPLACEMENT OF THE SYSTEM. THE FUND SHALL ONLY BE USED FOR EXPANSION, MAJOR REHABILITATION, OR REPLACEMENT OF THE WASTEWATER TREATMENT SYSTEM. THE RECIPIENT SHALL DEPOSIT AT LEAST TEN CENTS (\$.10) PER 1,000 GALLONS OF WASTEWATER FLOW. THE FUND SHALL BE MAINTAINED FOR THE TERM OF THE WATER POLLUTION CONTROL REVOLVING FUND LOAN, OR UNTIL THE FUND BALANCE EQUALS THE AMOUNT OF SUPPLEMENTAL ASSISTANCE AND OTHER GRANT FUNDS PROVIDED FOR THE PROJECT, WHICHEVER OCCURS FIRST. THE AMOUNT DEPOSITED MAY BE LESS IF THE RECIPIENT DEMONSTRATES THAT AN AMOUNT LESS THAN TEN CENTS (\$.10) PER THOUSAND GALLONS OVER A 20 YEAR PERIOD WOULD EQUAL THE FINANCING NEEDED TO REPLACE THE SYSTEM. THE APPLICANT MAY DEPOSIT MORE INTO THE FUND UP TO THE AMOUNT NEEDED TO REPLACE THE ENTIRE SYSTEM AT THE END OF ITS USEFUL LIFE.

Subpart 2 is needed as it informs an applicant that the Authority shall require the applicant to place funds into a replacement fund up to the amount of all grant funds it receives for its wastewater treatment project so as to have funds on hand when it is necessary to replace the system; and given the current trend of state aid to municipalities, it is unlikely that federal and state agencies some twenty or thirty years from now will be giving substantial amount of funds to build wastewater treatment systems, the applicant needs to get into the habit of providing the financing of its municipal infrastructure through its own revenue-generating capacity. It is reasonable as it encourages sound municipal fiscal policy.

SUBP. 3. FORM OF ASSISTANCE. SUPPLEMENTAL ASSISTANCE SHALL BE A LOAN UNTIL SATISFACTORY PERFORMANCE OF THE PROJECT IS ACHIEVED. UPON SATISFACTORY PERFORMANCE, SUPPLEMENTAL ASSISTANCE SHALL BE FORGIVEN, OR APPLIED TO THE SEMI-ANNUAL DEBT PAYMENTS DUE THE AUTHORITY.

It is necessary to inform an applicant that the supplemental assistance will initially be a loan and subject to repayment until such time as the project achieves satisfactory performance. Subpart 3 goes on to inform the municipality that at the time of achieving satisfactory performance the supplemental assistance will either be forgiven or applied to reduce the municipality's Water Pollution Control Revolving Fund loan. It is reasonable as it fulfills the commitment of the Authority to provide the supplemental assistance

in its final form - a forgiven loan - only upon the municipality's achieving of satisfactory performance.

SUBP. 4. FAILURE TO ACHIEVE SATISFACTORY PERFORMANCE. IF LOAN PAYMENTS BECOME DUE BEFORE SATISFACTORY PERFORMANCE OF THE PROJECT HAS BEEN ACHIEVED THEY SHALL BE PAID IN ACCORDANCE WITH THE REPAYMENT SCHEDULE IN THE PROJECT FINANCING AGREEMENT.

THE AUTHORITY MAY DEFER ONE OR MORE PAYMENTS DUE ON THE SUPPLEMENTAL ASSISTANCE PROVIDED;

A. THERE IS EITHER A DELAY IN STARTING CONSTRUCTION, OR IN THE CONSTRUCTION SCHEDULE, AND THESE DELAYS ARE APPROVED BY THE COMMISSIONER OF THE AGENCY IN ACCORDANCE WITH THE WATER PERMIT DISCHARGE SCHEDULE ISSUED BY THE AGENCY; OR

B. THE SYSTEM DOES NOT MEET PERFORMANCE STANDARDS, HOWEVER THE AGENCY DETERMINES THAT THE MUNICIPALITY IS DEVELOPING OR IMPLEMENTING A CORRECTIVE ACTION PLAN IN ACCORDANCE WITH AGENCY RULES, 7077.0288, Subp.3.

It is necessary to inform applicants in subpart 4, that should their wastewater treatment system not achieve satisfactory performance prior to the loan payment due date that the payment and perhaps subsequent scheduled payments must be made. It is reasonable because as long as the municipality fails to achieve the

program purpose - satisfactory performance, a key covenant in its agreement with the Authority, it will be required to repay the supplemental assistance to the Authority.

Subparts 4A and 4B are necessary to inform a municipality of the circumstances and the process available to deal with a failure to a system to achieve satisfactory performance of its wastewater treatment system which may preclude the municipality from having to make a loan payment. It is reasonable as it permits a municipality to take advantage of the Agency established procedures to address non-compliance with performance standards.

7380.0340 AUTHORITY EVALUATION PROCEDURES

SUBPART 1. IN GENERAL. THE AUTHORITY SHALL EVALUATE APPLICATIONS CERTIFIED BY THE COMMISSIONER OF THE AGENCY TO DETERMINE THE APPLICANT'S CAPACITY TO COMPLY WITH MINNESOTA STATUTES 446A.071, AND PARTS 7380.0300 TO 7380.0380.

This part provides information on the basis and criteria, and where they may be found, an application will be judged by the Authority to evaluate if an application can be approved by the Authority. It is reasonable as it informs an applicant that it must meet all the requirements of the program as provided in the rules, which are an amplification of the statutory requirements placed on applicants to

the program, as well as required of the Authority.

7380.0350 DETERMINATION OF THE AMOUNT OF SUPPLEMENTAL ASSISTANCE

SUBPART 1. THE AUTHORITY SHALL DETERMINE THE AVERAGE HOUSEHOLD COST FOR OPERATION, MAINTENANCE, EQUIPMENT REPLACEMENT, SYSTEM REPLACEMENT FUND FOR UP TO A MAXIMUM OF \$.50 PER 1,000 GALLONS OF WASTEWATER, AND DEBT SERVICE UNDER THE WATER POLLUTION CONTROL REVOLVING FUND, TAKING INTO ACCOUNT THE APPLICANT'S OWN FUNDS AVAILABLE FOR THE PROJECT AND ANY OTHER GRANT-IN-AID PROGRAMS THAT THE APPLICANT IS ELIGIBLE FOR AND CAN EXPECT TO OBTAIN. APPLICANTS SHALL BE REQUIRED TO IMPOSE A RESIDENTIAL SEWER SERVICE CHARGE OF AT LEAST \$18.00 PER MONTH PER HOUSEHOLD, OR 1.5% OF THE APPLICANT'S MEDIAN HOUSEHOLD INCOME LEVEL, WHICHEVER IS GREATER. IF NECESSARY, THE AUTHORITY SHALL UPDATE THE APPLICANTS DEMOGRAPHIC INFORMATION AND SEWER AND WATER SERVICE CHARGES UTILIZING THE CONSUMER PRICE INDEX, STATE DEMOGRAPHER DATA, OR OTHER INDEXING METHODS, AS PROVIDED IN MINNESOTA RULES 7380.0440, SUBPART 4d.

It is necessary to inform applicants of the methodology by which the Authority shall compute and determine the amount of supplemental assistance to be offered an applicant. It is reasonable as it reflects the results of a municipal survey taken by the Authority to determine what factors or criteria; such as median household income, poverty rate, population, municipal debt load, and level of poverty taxes, sewer service charge to median

household income level percentage, or other factors and criteria, the municipalities themselves would like utilized by the Authority to determine a municipality's capacity to pay. Relying on the results of that survey, and the experience gained from the operation of the Water Pollution Control Revolving Fund Program, the Authority determined the criteria and factors to be used to determine the level of supplemental assistance. It is also noted that the means used by the Authority in this case is an accepted and accredited methodology by which other State and Federal Agencies determine the need and level of assistance to be provided to municipalities.

SUBP. 2. SUPPLEMENTAL ASSISTANCE COMPUTATION. THE AUTHORITY SHALL DETERMINE THE AMOUNT OF ASSISTANCE NECESSARY TO REDUCE THE RESIDENTIAL SEWER SERVICE CHARGE TO A LEVEL OF \$18.00 PER MONTH PER HOUSEHOLD, AS ADJUSTED IN SUBPART 3; OR TO A LEVEL OF 1.5% OF THE MEDIAN HOUSEHOLD INCOME LEVEL, WHICHEVER IS GREATER. THE AMOUNT OF THE AUTHORITY ASSISTANCE SHALL BE NO GREATER THAN 75% OF THE AMOUNT DETERMINED, EXCEPT AS PROVIDED IN SUBP.4.

Subpart 2 informs an applicant that the supplemental assistance computation will either be a factor of 75% of the amount to reduce the sewer service charge to \$18.00 per month per household; or a factor of 75% of 1.5% of the municipality's median household income, whichever is greater. This information is needed as it provides the key determinant - the level of the residential sewer

service charge in a municipality - used by the Authority to determine the amount of supplemental assistance to a municipality. It is a reasonable and fair level as the \$18.00 per household, per month approximates the State-wide average for municipalities, and represents around one percent of the outstate median household income level. The other guideline, 1.5% of median household income comes is invoked when a municipality has a higher than average median household income, and is therefore able to pay a higher sewer service charge, and its use (the 1.5%) precludes the reducing of the sewer service charge by the Authority down to the \$18.00 level for a higher income municipality.

SUBP. 3. SCHEDULED CHANGE TO THE COMPUTATION OF SUPPLEMENTAL ASSISTANCE. BEGINNING IN 1996, THE AUTHORITY SHALL ADJUST THE \$18.00 PER MONTH SEWER SERVICE CHARGE FIGURE AND MEDIAN HOUSEHOLD INCOME LEVEL BY 75% OF THE CONSUMER PRICE INDEX USING THE YEAR 1995 AS THE BASE YEAR. IF MORE CURRENT DEMOGRAHIC DATA IS AVAILABLE, THE AUTHORITY SHALL USE THAT DATA RATHER THAN INDEXING.

Subpart 3 is necessary as it informs the applicant that the Authority will change the basis of its computation of the amount of supplemental assistance to be offered to an approved applicant as of 1996. It is reasonable to make this change as it was a policy determination of the Authority and the Agency to encourage applicants to move ahead with their projects by lowering the effective net amount of supplemental assistance to be offered by a

certain date. 1996 was chosen as it provides sufficient notice to potential applicants, and it is an appropriate amount of time to allow for the planning, design, and construction of a wastewater treatment projects.

SUBP. 4. ADDITIONAL SUBSIDY CONSIDERATION. THE AUTHORITY SHALL INCREASE THE PERCENTAGE OF SUPPLEMENTAL ASSISTANCE BY ADDITIONAL 5% IF AT LEAST TWO OF THE FOLLOWING CONDITIONS ARE MET:

A. THE APPLICANT IS A MULTI-JURISDICTION SANITARY SEWER DISTRICT; OR

B. THE RESIDENTIAL WATER SERVICE FEES IN THE APPLICANT'S JURISDICTIONAL AREA ARE IN EXCESS OF \$2.00 PER 1,000 GALLONS; OR

C. THE APPLICANT HAS A POVERTY RATE THAT EXCEEDS TWO TIMES THE NATIONAL AVERAGE; OR

D. THE APPLICANT PROVIDES AT LEAST TEN PERCENT OF THE PROJECT COST FROM ITS OWN FUNDS.

It is necessary to inform applicants an additional amount of supplemental assistance funding may be available should the applicant meet certain conditions, requirements, or demographic criteria. These determinants of additional supplemental assistance

are reasonable as they reflect input from the results of the aforementioned survey by the Authority soliciting factors, criteria and considerations to be utilized in providing supplemental assistance funds; or encourage cost-effective use of funds, such as results in item A: or is experiencing a high cost for other municipal service, such as reflected in item B. Item C is utilized as a criteria as it reflects an overall low household income level for the municipality; while Item D, encourages the municipality to make a financial contribution to the project utilizing its resources to an appreciable amount thus practicing sound municipal fiscal policy.

SUBP. 5. PROGRAM FUNDS. BASED UPON THE AMOUNT OF PROGRAM FUNDS AVAILABLE TO THE AUTHORITY IN A FISCAL YEAR, THE AMOUNT OF SUPPLEMENTAL ASSISTANCE THE AUTHORITY IS ABLE TO PROVIDE TO A MUNICIPALITY MAY NOT ALLOW A MUNICIPALITY TO LOWER THE LEVEL OF ITS SEWER SERVICE CHARGES TO THAT PROVIDED UNDER THIS PART.

Due to the currently anticipated limited amount of program funds available for the Wastewater Infrastructure Fund, the Authority may not have sufficient program funds at all times to reduced a municipality's residential sewer service charges to the level provided for by this program. It is necessary to inform applicants of this possibility so as they may consider other financing options. It is reasonable as the Authority can not provide funds it does not have, and applicants need to be made aware of this fact.

SUBP. 6. SUPPLEMENTAL ASSISTANCE LIMITATION. SUPPLEMENTAL ASSISTANCE SHALL NOT BE USED TO REDUCE THE SEWER SERVICE CHARGES OF A SIGNIFICANT WASTEWATER CONTRIBUTOR UNLESS THE APPLICANT CAN DEMONSTRATE TO THE AUTHORITY THAT THE SIGNIFICANT WASTEWATER CONTRIBUTOR CAN NOT PAY ITS FAIR SHARE. IN ORDER TO DEMONSTRATE THE INABILITY OF THE SIGNIFICANT WASTEWATER CONTRIBUTOR TO PAY ITS FAIR SHARE, THE APPLICANT SHALL PROVIDE TO THE AUTHORITY THE SIGNIFICANT WASTEWATER CONTRIBUTOR'S PAST THREE YEAR'S FINANCIAL STATEMENTS AND BUSINESS PLANS TO THE AUTHORITY. A SIGNIFICANT WASTEWATER CONTRIBUTOR IS AS DEFINED IN MINNESOTA RULES 7380.0410, SUBPART 20.

This subpart is necessary as it informs an applicant of the limitation placed on supplemental assistance accruing to the benefit of a significant wastewater contributor located within a municipality. It further informs an applicant of the procedure by which the Authority may be able to consider giving assistance to a significant wastewater contributor. The requirement to provide this information is reasonable as it is the experience of the Authority in operating the Water Pollution Control Revolving Fund Program that a number of projects were wholly caused, or materially caused by the wastewater flow into a municipal system by a significant wastewater contributor, and in some cases, despite the urging of the Authority, the significant wastewater contributor was not required to pay its fair share by the municipality. In structuring this program the Authority has seen to it that both the statute and the rules governing the Wastewater Infrastructure Funding Program,

and also the Water Pollution Control Revolving Fund Program contain a requirement that a significant wastewater contributor must pay its fair share.

7380.0360 REPAYMENT OF SUPPLEMENTAL ASSISTANCE

SUBPART 1. IN GENERAL. IF THE SUPPLEMENTAL ASSISTANCE IS NOT DEFERRED, WAIVED OR FORGIVEN, AND REPAYMENTS ARE DUE TO THE AUTHORITY THE FOLLOWING SHALL APPLY;

A. THE REPAYMENT OF SUPPLEMENTAL ASSISTANCE SHALL BE REPAYED ON FEBRUARY 20TH OR AUGUST 20, WHICHEVER IS THE FIRST DATE AFTER THE PROJECT IS SCHEDULED TO BE COMPLETED AND MEET ITS ONE YEAR PERFORMANCE CERTIFICATION. THE REPAYMENTS OF LOANS TO THE AUTHORITY PROVIDED BY THIS PART SHALL BE AS PROVIDED IN PART 7380.0430, SUBPART 5.

B. THE AMORTIZATION SCHEDULE FOR A LOAN PROVIDED UNDER THIS PART SHALL BE IN ADDITION TO THE AMORTIZATION SCHEDULE OF THE LOAN PROVIDED UNDER PARTS 7380.0400 TO 7380.0480.

It is necessary to inform supplemental assistance recipients of the repayment schedule should repayment of the supplemental assistance becomes necessary due to the municipality's wastewater treatment system not achieving the performance standards set by the Agency. It is reasonable as it follows the current practice of the Authority in its operation of the Water Pollution Control Revolving

Fund Program - requiring loan repayments on the 20th of February and August - and it is more convenient for the supplemental assistance recipient to combine the Wastewater Infrastructure Funding Program loan repayment with the Water Pollution Control Revolving Fund Program loan repayment and have them due on the same date.

SUBP. 2. DEDICATED SOURCES OF REVENUE. THE DEDICATED SOURCES OF REVENUE PROVIDED BY THE MUNICIPALITY TO THE AUTHORITY SHALL BE IN THE FORM OF A GENERAL OBLIGATION PROMISSORY NOTE.

This subpart informs the applicant that it is necessary to provide an income stream to repay the loan, and this is required to be done by way of issuing a general obligation promissory note to the Authority. It is reasonable as it is the customary way by which a municipality conveys indebtedness and provides a guaranteed source of funds for the repayment of a municipal obligation.

SUBP.3. PAYMENTS. PAYMENTS BY THE MUNICIPALITY TO THE AUTHORITY SHALL BE AS PROVIDED IN PART 7380.0430, SUBP.5.

It is necessary to inform supplemental assistance recipients of the schedule of the payments to be made to the Authority. It is reasonable as it requires the payments to be made on the same dates as the Water Pollution Control Revolving Fund Program loan payments are due, and it is convenient for both the supplemental

assistance recipient and the Authority to schedule both payments on the same dates.

7380.0370 ASSISTANCE TO ECONOMIC DEVELOPMENT PROJECTS

SUBPART 1. IN GENERAL. AS PROVIDED IN MINNESOTA STATUTE 446A.071, SUBD. 1(C), AND SUBD. 4(C), THE AUTHORITY MAY SET ASIDE UP TO TEN PERCENT OF PROGRAM FUNDS TO PROVIDE SUPPLEMENTAL ASSISTANCE TO MUNICIPALITIES, IDENTIFIED BY THE COMMISSIONER OF TRADE AND ECONOMIC DEVELOPMENT, FOR WASTEWATER TREATMENT PROJECTS OR PORTIONS OF PROJECTS THAT ARE NECESSARY TO ACCOMMODATE ECONOMIC DEVELOPMENT PROJECTS. ECONOMIC DEVELOPMENT PROJECTS PROVIDED FOR BY THIS PART SHALL BE FUNDED ON A FIRST COME, FIRST SERVED BASIS. ASSISTANCE SHALL BE AS PROVIDED BY THIS PART, EXCEPT THAT PART 7380.0320, SUBP. 1 SHALL NOT APPLY. UNEXPENDED ECONOMIC DEVELOPMENT FUNDS IN A GIVEN YEAR MAY BE CARRIED OVER TO THE FOLLOWING YEAR AS PROVIDED IN MINNESOTA STATUTE 446A.11, SUBDIVISION 13.

This part is necessary to inform applicants that the Wastewater Infrastructure Funding Program may use up to ten percent of the funds in the Wastewater Infrastructure Funding Program for wastewater treatment projects that are necessary to accommodate economic development projects as selected by the Commissioner of Trade and Economic Development regardless if the project is listed on the Priority Ranking List included with the first Intended Use Plan adopted by the Pollution Control Agency, or subsequent

Priority Ranking List included with any amended Intended Use Plan adopted by the Pollution Control Agency. It is reasonable as the economic development set-aside program fosters economic development in the State, and it is the principal purpose of the Department of Trade and Economic Development to foster economic development. The Economic Development set-aside specifically targets those projects which could not proceed as they do not qualify under the requirements and criteria established for the Authority's Water Pollution Control Revolving Fund Program and the Wastewater Infrastructure Funding Program (except for the Economic Development Set-Aside), or the other federal and state programs for wastewater treatment available in the State.

7380.0380 RELEASE OF FUNDS

SUBPART 1. IN GENERAL. THE RELEASE OF FUNDS SHALL BE AS PROVIDED IN PART 7380.0470.

It is necessary to inform applicants that the Authority will release funds to approved applicants in accordance with the established procedures of the Authority contained in part 7380.0470, provided the Authority has the funds available to fund the project. It is reasonable as it is as required in Minnesota Statutes 446A.07, Subd. 9, which invokes applicable federal and state law governing such payment. The Authority is bound by such requirements and must impose these requirements on its loan and supplemental assistance recipients. The disclaimer "subject to the

availability of funds" is necessary and reasonable as the Authority, of course, can not pay out funds it does not have, and in the case of the Wastewater Infrastructure Funding Program, with its currently limited amount of program funds, the likelihood that the Program could at any one time not have sufficient Program funds to pay out is a distinct possibility and the supplemental assistance recipient needs to be made aware of that fact.