

COMMISSIONER OF TRADE AND
ECONOMIC DEVELOPMENT
PUBLIC FACILITIES AUTHORITY

STATEMENT OF
NEED AND REASONABLENESS

IN THE MATTER OF THE PROPOSED
AMENDMENTS TO THE PERMANENT RULES
OF THE WATER POLLUTION CONTROL
REVOLVING FUND PROGRAM

3/02/93

INTRODUCTION:

This Statement of Need and Reasonableness describes the proposed amendments to the rules for the operation of the Minnesota Water Pollution Control Revolving Fund Program by the Minnesota Public Facilities Authority. The format used in this statement is as follows: each amended rule is in bold type and underlined, followed by a discussion of the necessity of the proposed amended rule, and its reasonableness.

At the time of writing the original program rules, which was begun in June, 1986, no program of this type had ever been operated in the State of Minnesota, or in the Nation. It therefore was not possible to be fully certain that the program rules, policies, and procedures developed before the actual operation of the Program would accurately describe and effectively communicate the requirements and operation of the Program to potential applicants.

While the original rules have functioned well, after the five-plus years of operation it became apparent that certain revisions to the rules were necessary. The amendments to the Water pollution Control Revolving Fund Program for the most part either clarify certain terms and requirements, or reflect the insights gained by the Authority in operating the Program. The revisions deal primarily with the following:

- (1) Clarification of certain parts of the rules that are misstated or ambiguous.
- (2) Formalizing certain practices and procedures which have become established.
- (3) Accommodating the impact of the newly-created Wastewater Infrastructure Funding Program.

BACKGROUND

In the mid-1980's, the U.S. Environmental Protection Agency (EPA) announced its intention to cease providing wastewater treatment construction grants to construct wastewater treatment systems. In Minnesota, the Minnesota Pollution Control Agency (Agency)

administered the grants in accordance with EPA and Agency requirements. In place of the construction grants program, the EPA would, starting in the late 1980's, provide capitalization grants to states to capitalize a loan program which the states were then free to set up in a way that best served the individual wastewater treatment financing needs of each state.

In 1987, the Minnesota Legislature enacted the Minnesota Public Facilities Authority (Authority) Act which designated the Authority as the State entity to receive the EPA capitalization grants scheduled to be received over a six year period, and directed the Authority to establish and financially administer the Water Pollution Control Revolving Fund.

The Pollution Control Agency, which previously had approved a municipality's plans and specifications for the construction of wastewater treatment systems; funded the municipality's construction of wastewater treatment systems (through the Federal (EPA) Construction Grants Program); and regulated the municipality's wastewater treatment system once it was built, still is required to approve the plans and specification of the construction of wastewater treatment systems, and to regulate the system once constructed. However, the Legislature chose to assign the duties of funding of projects and the management of the Fund to the newly-created Public Facilities Authority.

It was left to the Authority's discretion to come up with a marketable program that best served the wastewater treatment financing needs for municipalities in the State of Minnesota at the present and in the future. As the total estimated future financing need to construct, upgrade, or expand wastewater treatment systems in the State of Minnesota was then in excess of \$1,100,000,000, and the total estimated dollar amount of the yearly capitalization grants to be received by the Authority was \$150,000,000, the Authority determined it would operate a "leveraged program" to raise additional capital to provide for the \$950,000,000 difference. between the amount of funds scheduled to be received from the EPA capitalization grants.

The key covenant that the Authority was required to make to the EPA on behalf of the State of Minnesota in order to receive the yearly capitalization grants was that the Authority would manage the Fund so it would last in perpetuity so as to provide for the wastewater financing needs in the State of Minnesota in the future.

Given this background and the type of program set-up by the Authority there resulted four overriding factors which impact the program rules, and the Authority's operation of the Program.

- (1) The Fund must last in perpetuity.

(2) The Authority issues tax-exempt bonds, and thus is subject to securities laws and regulations.

(3) The operations of the Program and its funds are subject to IRS regulations.

(4) The Authority's cost of funds (raised through the sale of tax-exempt bonds) are subject to open-market conditions.

7380.0400 PURPOSE:

THE WATER POLLUTION CONTROL REVOLVING FUND ADMINISTERED BY THE MINNESOTA PUBLIC FACILITIES AUTHORITY PROVIDES LOANS AND OTHER FORMS OF FINANCIAL ASSISTANCE FOR CONSTRUCTION OF MUNICIPAL WASTEWATER TREATMENT ~~SYSTEMS PLANTS~~ TO ASSURE MAINTENANCE OF PROGRESS TOWARD MUNICIPAL COMPLIANCE, OR IMPLEMENTATION OF NONPOINT SOURCE MANAGEMENT CONTROLS, AS REQUIRED BY THE FEDERAL WATER POLLUTION CONTROL ACT, TO MUNICIPALITIES FOR PROJECTS THAT HAVE BEEN CERTIFIED BY THE MINNESOTA POLLUTION CONTROL AGENCY. THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY PROVIDES A CAPITALIZATION GRANT TO THE STATE OF MINNESOTA TO PROVIDE LOANS THROUGH THE AUTHORITY TO ENSURE THAT THE REVOLVING FUND IS AVAILABLE TO FINANCE WATER POLLUTION CONTROL PROJECTS IN PERPETUITY. THE TERMS AND CONDITIONS OF THE LOAN AGREEMENT FOR FINANCIAL ASSISTANCE PROVIDED BY THE AUTHORITY MUST BE IN CONFORMANCE WITH THE FEDERAL WATER POLLUTION CONTROL ACT, UNITED STATE CODE, TITLE 33, PARTICULARLY SECTIONS 1381 TO 1387, THE RULES OF THE AGENCY, AND THIS PART.

The word "systems" is being inserted, and the word "plants" deleted as the term "wastewater treatment system" is a more inclusive term and is generally used in the industry to refer to the total wastewater treatment operation, as opposed to the term "plant" which generally connotes the treatment facility and excludes the collection system portion of the wastewater treatment system. As the Water Pollution Control Revolving Fund Program provides financing for both wastewater treatment plants and collection systems, the rule as originally written could be misleading, and potential applicants may not realize that the Program can finance both types of projects. It is necessary to amend this part of the rule to more accurately represent the scope of the financing capability of the Program. It is reasonable as it better informs potential applicants.

7380.0410 DEFINITIONS:

SUBP. 6. DEDICATED SOURCES OF REVENUE FOR REPAYMENT. "DEDICATED SOURCES OF REVENUE FOR REPAYMENT" MEANS ONE OR MORE DEDICATED

SOURCES OF REVENUE ESTABLISHED BY THE MUNICIPALITY TO INSURE REPAYMENT OF THE LOAN ~~TO FROM~~ THE AUTHORITY. DEDICATED SOURCES OF REVENUE MAY BE: SPECIAL ASSESSMENTS; GENERAL TAXES OR GENERAL OBLIGATION BONDS; SEWER SERVICE CHARGES OR OTHER REVENUE SOURCES, ACCEPTABLE TO THE AUTHORITY

This wording change to the rule is necessary as the phrase "dedicated sources of repayment...to insure repayment of the loan from the Authority." is grammatically incorrect. It is reasonable as it is grammatically correct, and resolves any ambiguity. The other change, revenue sources was done for clarity.

SUBP. 14 POVERTY LEVEL. "POVERTY LEVEL" MEANS THE NUMBER LEVEL OF PERSONS IN POVERTY IN A MUNICIPALITY, EXPRESSED AS A PERCENTAGE, ~~INCOME~~ IDENTIFIED AS THE POVERTY LEVEL OF A MUNICIPALITY BY THE UNITED STATES CENSUS BUREAU: OR BY ANOTHER FEDERAL OR STATE AGENCY: OR BY AN ACCREDITED INDEPENDENT SURVEY, WHICH MOST ACCURATELY MEASURES THE LEVEL OF POVERTY WITHIN A MUNICIPALITY, ~~PROJECT SERVICE AREA.~~

The amendment to this definition is necessary for two reasons. First, the definition of the term as originally provided in the rule was not well stated, and subject to possible misinterpretation; such as to mean the average per household income level in dollars was at or below the poverty level. The second, is that the original intent, as it is now, is to use the percentage rate of poverty of an applicant, which by definition is a municipality. The original definition stating, "the poverty level in the project service area", although consistent with terminology used in federal and state programs dealing with wastewater construction projects, is not workable in the context used for this definition, as the poverty rate within an project service area will only be available if the project service area and the municipality are one in the same. The amendment using the poverty level in a municipality utilizes a measurement that is readily available.

SUBP. 16 MUNICIPAL ~~PROJECT~~ SERVICE AREA. "MUNICIPAL "PROJECT SERVICE AREA" MEANS THE GEOGRAPHIC AREA OF THE MUNICIPALITY. ~~SEWER SERVICE AREA DIRECTLY SERVED BY THE PROJECT BEING CONSTRUCTED.~~

As with the amendment to subpart 14, the term "project" service area, as used in the text of the rules, has not proved workable in practice as it calls for data that is not available, or would be extremely difficult to determine as it is an area for which demographic data is not specifically compiled. By changing the definition to "municipal" service area this problem is solved.

SUBP. 17 QUARTERLY SET RATE. "QUARTERLY SET RATE" MEANS THE MAXIMUM

RATE OF INTEREST SET FOR A CALENDAR QUARTER AND SHALL BE DETERMINED BY THE AUTHORITY USING AS GUIDANCE THE AVERAGE OF THE MUNICIPAL BOND INDEX FOR THE FOUR WEEKS PRIOR TO THE BEGINNING OF THE QUARTER MINUS 100 BASIS POINTS FOR 20 YEAR TERM LOANS. FOR LOANS OF LESS THAN 20 YEARS, ~~THE QUARTERLY SET RATE WILL BE DETERMINED BY THE AUTHORITY USING AS GUIDANCE AN INDEX OF INVESTMENT GRADE BOND ISSUES HAVING A MATURITY EQUAL TO THE TERM OF THE LOAN BEING REQUESTED BY THE MUNICIPALITY MINUS A DISCOUNT OF FIVE (5) BASIS POINTS FOR EACH YEAR LESS THAN TWENTY (20) YEARS,~~ SHALL BE DEDUCTED FROM THE QUARTERLY SET RATE.

The amendment to this definition is necessary and reasonable in order to simplify the process by which the Authority sets its interest rates for loans of less than twenty years. Although in the five plus years of operation the Authority has only made one loan for less than twenty years, it is prudent to have a mechanism to provide such loans, it is not necessary to track the tax-exempt bond indexes for less than twenty years, and then compile quarterly lending rates for less than twenty year loans, when the rate determination currently utilized for twenty year loans will serve just as well.

SUBP. 18 SEWER SERVICE AREA. "SEWER SERVICE AREA" MEANS THE SERVICE AREA WHICH UTILIZES THE MUNICIPAL WASTEWATER TREATMENT SYSTEM. ~~INDIVIDUAL SEWAGE TREATMENT PLANT.~~

This amendment to the rule is being done to incorporate a definable geographic area for which demographic data is available, as opposed to the previous definition, which although also accurate, did not wholly relate to its purpose and usage in the rules which was to provide a defined area indigenous to the project for which there was demographic data.

SUBP. 19 SEWER SERVICE CHARGE. "SEWER SERVICE CHARGE" MEANS A CHARGE LEVIED UPON THE USERS IN THE MUNICIPAL SERVICE AREA OF THE SEWER SERVICE SYSTEM TO PAY FOR THE CAPITAL COST, OPERATION, AND MAINTENANCE, AND REPLACEMENT OF EQUIPMENT. USE OF THE SYSTEM. SEWER SERVICES CHARGES INCLUDE TAX ASSESSMENT, SPECIAL ASSESSMENTS, USER FEES, OR REVENUES IDENTIFIED BY ANY OTHER NAME.

This amended definition is necessary to more fully inform an applicant of the specific costs which may be included in the sewer service charges which the Authority will allow to be included for purposes of calculating the level of sewer service charges. This is significant as the interest rate to be charged a municipality by the Authority is determined, in part, by the percentage level of the sewer service charge to the municipality's median household income level, and the applicant needs to be informed what

categories of charges may be included. It is reasonable as the allowable categories of charges allowed by the Authority to comprise the sewer service charge is all-inclusive.

SUBP. 20. SIGNIFICANT WASTEWATER CONTRIBUTOR. "SIGNIFICANT WASTEWATER CONTRIBUTOR" MEANS A NON-RESIDENTIAL USER WHOSE CURRENT WASTEWATER FLOW OR PROJECTED WASTEWATER FLOW CAUSES THE NEED FOR THE CONSTRUCTION OF THE WASTEWATER TREATMENT PROJECT, OR WHOSE CURRENT WASTEWATER CONTRIBUTION IS AT OR EXCEEDS ONE-HALF OF THE CURRENT WASTEWATER TREATMENT PLANT'S FLOW.

This new definition is necessary to define what constitutes a significant wastewater contributor because a significant wastewater contributor, if present in a municipality, is required to fully assume the capital and on-going operational costs of a wastewater treatment project in proportion to the extent it has caused the construction, expansion, or upgrading of a wastewater treatment project within a municipality. It is reasonable as the policy of the Authority, as well as required in the statute, is that all parties which are served, or to be served by a municipal sewer service system be required to pay their fair share.

FINANCIAL ASSISTANCE APPLICATIONS

7380.0420 PROCEDURES FOR FINANCIAL ASSISTANCE APPLICATIONS PROCESSING.

SUBP. 1 IN GENERAL. TO APPLY FOR FINANCIAL ASSISTANCE FROM THE AUTHORITY, ELIGIBLE APPLICANTS IDENTIFIED IN THE ANNUAL INTENDED USE PLAN PREPARED BY THE AGENCY, MAY SUBMIT AN APPLICATION AT ANY TIME TO THE EXECUTIVE DIRECTOR OF THE AUTHORITY. **UTILIZING THE DEPARTMENT OF TRADE & ECONOMIC DEVELOPMENT COMMUNITY DEVELOPMENT DIVISION'S SINGLE APPLICATION PROCESS.**

PRIOR TO THE SUBMISSION OF AN APPLICATION TO THE AUTHORITY, THE MUNICIPALITY SHALL CONTACT THE AUTHORITY TO RECEIVE THE AUTHORITY'S ADVICE UNDER MINNESOTA STATUTES, SECTION 446A.051.

It is necessary to inform applicants that they are now required to use the Department of Trade & Economic Development Community Development Division's Single Application Process to access the Water Pollution Control Revolving Fund Program. It is reasonable as the Single Application Process presents to the applicant the other programs of the Department which might be used, either in conjunction with the Water Pollution Control Revolving Fund Program, or instead of it. The applicant also has the opportunity through the Single Application Process to learn about project financing for other types of projects the applicant may currently have, or have in the future.

SUBP.2 AUTHORITY REVIEW. WHEN AN APPLICATION THAT HAS

BEEN CERTIFIED BY THE COMMISSIONER OF THE AGENCY ~~IS RETURNED TO~~ AND THE AS-BID COST HAS BEEN RECEIVED BY THE AUTHORITY ON OR BEFORE THE FIRST BUSINESS DAY OF THE MONTH, THE AUTHORITY SHALL CONSIDER THE APPLICATION AT THE AUTHORITY MEETING THAT MONTH. IF THE CERTIFIED APPLICATION IS RECEIVED AFTER THE FIRST BUSINESS DAY OF THE MONTH AND CAN BE REVIEWED BY THE EXECUTIVE DIRECTOR PRIOR TO THE AUTHORITY AGENDA DEADLINE, THE AUTHORITY MAY CONSIDER THE APPLICATION AT THE MEETING IN THAT MONTH.

This amendment to the rules is necessary because the Authority was under pressure by municipalities to approve their loans once they had by certified by the Agency, but before the as-bid cost had been received by the Authority. (In the majority of cases the as-bid cost for a municipality's project has been received by the Authority prior to approval of the loan.) However, what was occurring with greater frequency was that the as-bid prices were coming in above the estimated cost and the amount of the loan approved by the Authority. When this occurred it was then necessary to represent the application to the Authority and seek approval for the adjusted loan amount. It is reasonable as it is accepted lending practice not to approve loans for construction projects until the as-bid cost has been received.

SUBP. 6. REJECTION OF LOAN APPLICATIONS BY THE AUTHORITY. THE AUTHORITY SHALL NOT PROVIDE FINANCING FOR PROJECTS IF THE PER HOUSEHOLD COST IS IN EXCESS OF \$10,000, IN 1992 DOLLARS, AS ADJUSTED BY THE CONSUMER PRICE INDEX, UNLESS THE COMMISSIONER OF THE AGENCY CERTIFIES THAT THE PROJECT SHOULD BE FUNDED DUE TO THE ENVIRONMENTAL BENEFIT TO THE STATE. THE AUTHORITY MAY REJECT AN APPLICATION FOR FINANCIAL ASSISTANCE FOR THE FOLLOWING REASONS.

A. FAILURE TO OBTAIN CERTIFICATION OF THE COMMISSIONER OF THE AGENCY FOR THE PROJECT.

B. FAILURE TO DEVELOP AND DOCUMENT DEDICATED SOURCES OF REVENUE SUFFICIENT IN THE JUDGEMENT OF THE AUTHORITY TO INSURE REPAYMENT OF THE LOAN TO THE AUTHORITY; AND

C. FAILURE TO SUBMIT A COMPLETED APPLICATION USING THE PROCEDURE PROVIDED IN PART 7380.0420, SUBP. 4.

The amendment to part 7380.0430, subpart 1, States that the Authority states that it will not fund projects which have a household connection cost in excess of \$10,000, unless there is an environmental benefit to the State so compelling as to override the "high cost" of the project. This reflects a policy determination made by the Authority, and it is necessary to inform applicants that may have a project where the per household cost is in excess of \$10,000 per household, that unless the Commissioner of the Pollution Control Agency certifies that the project should be funded due to the environmental benefit to the State that the

Authority shall turn down the loan.

The Public Facilities Authority, acting on behalf of the State of Minnesota, has entered into agreements with the U.S. Environmental Protection Agency (EPA) to receive a series of grants to capitalize the Water Pollution Control Revolving Fund. As part of the agreement, the Authority has covenanted that it shall manage the Fund so as it will last in perpetuity. The capacity of the Water Pollution Control Revolving Fund is such that it can not afford to routinely provide funds for "high cost" wastewater treatment projects, which tend to qualify for very low rate of interest, or a zero interest loan, which deplete the resources of the Fund. Some wastewater treatment projects financed by the Authority have cost in excess of the appraised value of the total real property in the municipality.

7380.0430 AUTHORITY EVALUATION PROCEDURE

SUBP. 2. LOAN TERMS AND CONDITIONS.

A. THE TERMS AND CONDITIONS FOR LOANS AND OTHER FORMS OF FINANCIAL ASSISTANCE PROVIDED BY THE AUTHORITY TO ELIGIBLE APPLICANTS FOR CERTIFIED PROJECTS SHALL BE AS PROVIDED BY THE ACT, MINNESOTA STATUTES CHAPTER 446A; THIS PART; AND AS PROVIDED BY THE AUTHORITY IN THE LOAN AGREEMENT AND THE GENERAL OBLIGATION PROMISSORY NOTE ISSUED BY THE MUNICIPALITY TO THE AUTHORITY FOR THE PROJECT FINANCING.

B. IF THE AUTHORITY PROVIDES A LOAN TO A MUNICIPALITY FOR PLANNING OR DESIGN ENGINEERING OF A WASTEWATER TREATMENT FACILITY, THE INTEREST RATE, TERMS, AND CONDITIONS MUST BE THE SAME AS FOR LOANS ELSEWHERE IN THIS PART.

The inclusion of the requirement of a municipality which receives a loan from the Authority to issue a general obligation note to the Authority serves to formalize a policy of the Authority that has been in practice since the inception of the Program. It is necessary that the applicant be made aware of this requirement as it is a formal legal process wherein the municipality must hire a nationally recognized bond counsel, pass city resolutions authorizing the issuance of the general obligation note to the Authority, and register the note with the County Auditor. It is a reasonable requirement as it is the customary legal means by which a municipality acknowledges its indebtedness and secures the loan.

SUBP. 4. DEDICATED SOURCES OF REVENUE. LOAN RECIPIENTS SHALL ESTABLISH, AND IDENTIFY IN THE APPLICATION, DEDICATED SOURCES OF REVENUE SUFFICIENT TO OPERATE AND MAINTAIN THE NEW FACILITY, AND

REPLACEMENT OF EQUIPMENT; AND FULLY AMORTIZE THE LOAN, FOR A TERM OF NOT MORE THEN 20 YEARS. THE AUTHORITY SHALL EXAMINE THE IDENTIFIED DEDICATED SOURCES OF REVENUE TO ENSURE THAT THEY ARE A SUFFICIENT AMOUNT, AND OF SUFFICIENT CERTAINTY TO FULLY REPAY THE LOAN. MUNICIPALITIES WHOSE PROJECTS INVOLVE SIGNIFICANT WASTEWATER CONTRIBUTORS MAY BE REQUIRED TO ENTER INTO AN AGREEMENT WITH THE SIGNIFICANT WASTEWATER CONTRIBUTORS SO AS TO ENSURE THAT THE MUNICIPALITY AND THE AUTHORITY ARE ADEQUATELY PROTECTED IN THE EVENT THAT THE SIGNIFICANT WASTEWATER CONTRIBUTOR CURTAILS ITS OPERATIONS, CEASES OPERATIONS, OR MOVES OUT OF THE MUNICIPALITY.

The phrase "and replacement of equipment" was inadvertently left out in the original writing of the rules in 1987. It is necessary and reasonable as the part now provides for the three items - operation, maintenance, and replacement - always required by the Agency in a municipality's establishment of a system of sewer service charges.

The amendment to the rule that the Authority may require a municipality to enter into an agreement with a significant wastewater contributor reflects a policy determination of the Authority which seeks to make certain that a municipality does not undertake a wastewater treatment project which either places a financial hardship on the residential user of the wastewater treatment system, or exposes the municipality to undue risk should the significant wastewater contributor, for whatever reason, not pay its fair share. It is reasonable as it seeks to protect communities which may not be aware of the extent to which it is exposes itself to financial risk.

SUBP. 5 PAYMENTS. THE FIRST PRINCIPAL AND INTEREST PAYMENT SHALL BE DUE AND PAYABLE NOT LATER THAN ONE YEAR AFTER PROJECT COMPLETION, OR 24 MONTHS FROM THE APPROVAL OF THE LOAN BY THE AUTHORITY ~~BEGINNING OF CONSTRUCTION~~, WHICHEVER IS EARLIER. SUBSEQUENT PRINCIPAL AND INTEREST PAYMENTS FROM THE LOAN RECIPIENT MUST BE MADE AT TIMES AGREED UPON BY THE LOAN RECIPIENT AND THE AUTHORITY IN THE LOAN AGREEMENT. IN GENERAL, SEMIANNUAL LOAN PAYMENTS WILL BE REQUIRED, UNLESS A DIFFERENT PAYMENT SCHEDULE IS AGREED UPON AND PROVIDED IN THE LOAN AGREEMENT. HOWEVER, IN NO CASE SHALL PAYMENTS BE LESS FREQUENT THAN AN ANNUAL PRINCIPAL AND INTEREST PAYMENT SUFFICIENT TO AMORTIZE THE DEBT WITHIN THE CONTRACTED PERIOD. INTEREST SHALL ACCRUE ON ANY FUNDS PAID OUT TO THE BORROWER BY THE AUTHORITY STARTING SIX MONTHS PRIOR TO THE DUE DATE OF THE FIRST LOAN REPAYMENT TO THE AUTHORITY,

Both of the amendments to subpart 5 incorporate established practices of the Authority into the program rules. The changes are required, in the case of the substitution of "approval of the loan by the Authority" for "the beginning of construction", because a more specific and certain time is needed to fix the date of scheduled loan repayment to the Authority, and to fix a date for

the accrual of interest to begin. The date of the approval of any loan by the Authority is exact and documented, whereas the scheduled start of construction of a wastewater treatment project is not as exact and certainly not always immediately known by the Authority.

INTEREST RATE DETERMINATIONS

7380.0440

SUBP. 1 IN GENERAL. THE INTEREST RATE CHARGED BY THE AUTHORITY TO A LOAN RECIPIENT SHALL BE DETERMINED AS PROVIDED IN THIS PART. EXCEPT IN NO CASE SHALL THE RATE OF INTEREST ON A LOAN TO A BORROWER BE REDUCED TO LESS THAN ONE (1) PERCENT, EXCEPT AS PROVIDED IN SUBPART 6 OF THIS PART.

It is necessary to set a "floor" on the rate the Authority may charge a borrower as the present method for determining interest rates, in theory, could result in a negative rate of interest - the Authority could be required to pay a borrower to take the loan. A more valid concern is that the current historic low rate of interest for 20 year term tax-exempt bonds reflected in the municipal bond index used by the Authority to set its quarterly set rate for loans has declined from 6.59% in late 1988, to 5.24% for the quarter ending March 31, 1993. The latest weekly index, for the week ended February 12, 1993, adjusted to the Authority Quarterly Set Rate is, 4.99%. With a possible 350 basis points off that rate for the neediest of communities, the Authority rate to that community would presently be 1.49%. The Authority's ability to subsidize loan rates to its borrowers, and maintain the viability of the Fund as required by our agreement with EPA, is jeopardized if the Authority continues to offer loans at lower and lower rates. It is reasonable to set a downward limit on the interest rate charged by the Authority in order to maintain the required viability of the Fund.

SUBP. 2 SETTING OF INTEREST RATES.

A. THE INTEREST RATE CHARGED TO A LOAN RECIPIENT MUST BE DETERMINED BY THE AUTHORITY USING AS GUIDANCE THE QUARTERLY SET RATE IN EFFECT AT EITHER THE TIME OF THE MUNICIPALITY'S APPLICATION TO THE AUTHORITY; OR AT THE TIME OF THE APPROVAL OF THE LOAN BY THE AUTHORITY ~~SIGNING OF THE LOAN AGREEMENT BY THE AUTHORITY AND THE MUNICIPALITY~~, AS DETERMINED BY THE MUNICIPALITY AT THE TIME OF THE APPROVAL BY THE AUTHORITY. ~~SIGNING OF THE LOAN AGREEMENT.~~

As with the amendment made to part 7380.0430, subpart 5, a more exact date is needed to set the interest rate charged to a borrower. The setting of the interest rate "at the signing of the

loan agreement" proved unworkable in practice, as there are five signatories to each loan agreement - the Authority, the borrower, the Departments of Administration and Finance, and the Attorney General's Office. Unlike the private sector where a lender and a borrower meet and sign a loan agreement on a given date, and the document is then fully executed, the loan agreements entered into by the Authority and a municipal borrower must be routed to three other agencies before the loan agreement is fully executed. The amount of time that elapses during the routing of the loan agreement varies widely.

B. THE APPLICANT IS ELIGIBLE FOR THE CUMULATIVE INTEREST RATE ADJUSTMENTS PROVIDED IN THIS PART REGARDLESS OF WHEN THE APPLICANT CHOOSES TO SET THE INTEREST RATE IN ITEM A. IF AN APPLICANT'S PROJECT INCLUDES A FACILITY WHICH HAS BEEN IN SIGNIFICANT NON-COMPLIANCE IN THE PAST TWELVE MONTHS, ALL BASIS POINT REDUCTIONS PROVIDED UNDER THIS PART SHALL BE HALVED. SIGNIFICANT NON-COMPLIANCE MEANS THE FACILITY IS LISTED ON THE MOST RECENT "FACILITIES IN SIGNIFICANT NON-COMPLIANCE" REPORT WHICH THE COMMISSIONER OF THE MINNESOTA POLLUTION CONTROL AGENCY SHALL CERTIFY TO THE AUTHORITY WITH THE INTENDED USE PLAN AND AMENDMENTS TO THE INTENDED USE PLAN.

The above amendment to the rules is necessary as it takes into account a potential problem if the Authority were to provide financing to a municipality which was subject to fines for being in significant non-compliance. The municipality, if subject to a possible fine, could lack the financial capability to repay the Authority loan. The aim of the amendment is to encourage a municipality to move ahead with the construction of a wastewater treatment system, or upgrading an existing system before it is classified as being in "significant non-compliance. It is reasonable as it seeks to encourage applicants to utilize the availability of low-cost loans from the Authority, and not become involved in a litigious process costing both the State and the municipality valuable resources for something that will eventually have to be done anyway.

D. THE AUTHORITY SHALL ANNUALLY PROVIDE BY RESOLUTION ~~IN ITS APPLICATION MATERIAL~~ THE SPECIFIC BASIS POINT REDUCTION IT WILL ALLOW UNDER THIS OPTION.

This amendment, as with a number of other amendments being made at this time, is being done to more accurately describe the method by which the Authority sets interest rates for borrowers which choose this option.

SUBP. 4 DEMOGRAPHIC CONSIDERATIONS.

A. A LOAN APPLICATION WILL BE CONSIDERED FOR AN INTEREST RATE REDUCTION BASED UPON THE POPULATION OF THE PROJECT SERVICE AREA, AND BE ELIGIBLE FOR A REDUCTION AS FOLLOWS:

~~(1) APPLICANTS WITH A PROJECT SERVICE AREA POPULATION OF LESS THAN 150,000 AND LARGER THAN 100,000 ARE ELIGIBLE TO RECEIVE THE QUARTERLY SET RATE MINUS 25 BASIS POINTS, SUBJECT TO THE INTEREST RATE ADJUSTMENTS GIVEN IN THIS PART.~~

~~(2) APPLICANTS WITH A PROJECT SERVICE AREA POPULATION OF 100,000 OR LESS AND LARGER THAN 25,000 ARE ELIGIBLE TO RECEIVE THE QUARTERLY SET RATE MINUS 50 BASIS POINTS, SUBJECT TO THE INTEREST RATE ADJUSTMENT GIVEN IN THIS PART.~~

~~(3)~~ (1) APPLICANTS WITH A MUNICIPAL PROJECT SERVICE AREA POPULATION OF 25,000 OR LESS AND LARGER THAN 5,000 ARE ELIGIBLE TO RECEIVE THE QUARTERLY SET RATE MINUS 25 ~~75~~ BASIS POINTS, SUBJECT TO THE INTEREST RATE ADJUSTMENTS GIVEN IN THIS PART.

~~(4)~~ (2) APPLICANTS WITH A MUNICIPAL PROJECT SERVICE AREA POPULATION OF 5,000 OR LESS AND LARGER THAN 2,500 ARE ELIGIBLE TO RECEIVE THE QUARTERLY SET RATE MINUS 50 ~~100~~ BASIS POINTS, SUBJECT TO THE INTEREST RATE ADJUSTMENTS GIVEN IN THIS PART.

~~(5)~~ (3) APPLICANTS WITH A MUNICIPAL PROJECT SERVICE AREA POPULATION OF 2,500 OR LESS BUT LARGER THAN 1,000 ARE ELIGIBLE TO RECEIVE THE QUARTERLY SET RATE MINUS 75 ~~125~~ BASIS POINTS, SUBJECT TO THE INTEREST RATE ADJUSTMENTS GIVEN IN THIS PART.

~~(6)~~ (4) APPLICANTS WITH A MUNICIPAL PROJECT SERVICE AREA POPULATION OF 1,000 OR LESS ARE ELIGIBLE TO RECEIVE THE QUARTERLY SET RATE MINUS 100 ~~150~~ BASIS POINTS, SUBJECT TO THE INTEREST RATE ADJUSTMENTS GIVEN IN THIS PART.

The changes in the number of basis points taken off the leading rate charged to borrowers of a certain population is being done in for two reasons. (1) The discounts are based upon capacity to pay and it has been the experience of the Authority in operating the program to date that population, although a meaningful factor in determining a municipality's revenue generating capacity, is much less of a factor than originally thought. (2) The Authority's ability to continue to offer reductions in interest rates to the extent it has to date has diminished due the open market conditions which have reduced the earnings of the investments of the Authority which are used to subsidize the interest rates charged to borrowers. It is reasonable as the Authority, as a contractual condition has covenanted to the U.S. Environmental Protection Agency in that it will manage the Water Pollution Control Revolving Fund so as the funds will last in perpetuity.

B. THE DATA USED TO DETERMINE THE POPULATION AND THE

MEDIAN HOUSEHOLD INCOME AND THE POVERTY LEVEL OF THE MUNICIPALITY PROJECT SERVICE AREA SHOULD BE THAT WHICH MOST ACCURATELY MEASURES THE POPULATION AND MEDIAN HOUSEHOLD INCOME AND POVERTY LEVEL OF THE MUNICIPALITY. AREA. THE AUTHORITY SHALL DETERMINE IF THE DATA SUBMITTED BY THE MUNICIPALITY IS AN APPROPRIATE AND ACCURATE MEASUREMENT OF THE POPULATION AND HOUSEHOLD INCOME AND POVERTY LEVEL OF THE MUNICIPALITY. PROJECT SERVICE AREA.

The above amendment to include the poverty level in item B is necessary as it was inadvertently omitted in the original writing of the rules. As the poverty level of a community is one of the factors used in the setting of the interest rate to be charged a municipality, it also (in addition to population and median household income level) needs to be updated by the Authority if there are more current or accurate numbers available than those submitted by the municipality in its application.

C. THE METROPOLITAN AND NONMETROPOLITAN MEDIAN HOUSEHOLD INCOME LEVELS OF THE STATE MUST BE DETERMINED FROM INCOME DATA FROM THE MOST RECENT CENSUS OF THE UNITED STATES OR FROM DATA FROM THE STATE DEMOGRAPHER. THE DATA PROVIDED MUST BE APPLIED AS THE CRITERIA TO DETERMINE IF THE ~~APPLICANTS'~~ MUNICIPALITY'S PROJECT SERVICE AREA HOUSEHOLD INCOME LEVEL IS AT, BELOW, OR ABOVE THE MEDIAN HOUSEHOLD LEVEL FOR THE METROPOLITAN OR NONMETROPOLITAN AREA AS APPLICABLE.

D. IF THERE IS REASON TO BELIEVE THAT THE UNITED STATES CENSUS DATA OR THE DATA FROM THE STATE DEMOGRAPHER IS NOT A CURRENTLY ACCURATE REPRESENTATION OF THE MEDIAN HOUSEHOLD INCOME, POVERTY LEVEL, OR POPULATION OF THE MUNICIPALITY WITHIN THE PROJECT SERVICE AREA, THE APPLICANT MAY DOCUMENT THE REASONS WHY THE DATA IS NOT AN ACCURATE REPRESENTATION, AND OBTAIN ADDITIONAL INFORMATION REGARDING MEDIAN HOUSEHOLD INCOME OR POVERTY LEVEL POPULATION FOR THE PROJECT SERVICE AREA. THE INFORMATION MUST CONSIST OF RELIABLE DATA FROM LOCAL, REGIONAL, STATE OR FEDERAL SOURCES OR FROM A SURVEY CONDUCTED BY A RELIABLE IMPARTIAL SOURCE. IF THE AUTHORITY DETERMINES THAT THE DEMOGRAPHIC DATA SUBMITTED BY THE MUNICIPALITY DOES NOT REFLECT THE MOST CURRENT OR ACCURATE MEASURE OF THE MUNICIPALITY'S POPULATION, MEDIAN HOUSEHOLD INCOME LEVEL, OR POVERTY LEVEL, THE AUTHORITY SHALL UPDATE THE DEMOGRAPHIC DATA TO REFLECT THE MOST CURRENT AND ACCURATE FIGURES.

The amendment to subpart 4, Item D is necessary as it provides a procedure for the Authority, which has access to updated demographic data to a much greater degree than most municipalities, to update a municipality's demographic data, should the demographic information contained in the municipality's application not be current or accurate. It is reasonable as the computations made from demographic data to compute a municipality's interest rate need to utilize the most current and accurate information. The cost data for the project, which certainly is in "current dollars" needs to

be computed using the most current demographic data so as there is no skewing of the computations, such as the yearly residential sewer service charge which is always given in current year dollars being measured (as a percentage of median household income to arrive at a number of discount points off the Authority's interest rate) against a municipality's median household income in, for example, 1989 dollars.

SUBP. 5 INTEREST RATE ADJUSTMENT. ANY APPLICANT IS ELIGIBLE TO RECEIVE CONSIDERATION FOR INTERST RATE ADJUSTMENTS TO THE INTEREST RATE TO BE CHARGED BY THE AUTHORITY AS PROVIDED IN THIS PART.

A. THE MEDIAN HOUSEHOLD INCOME IS THE INCOME LEVEL FOR THE MUNICIPAL ~~PROJECT~~ SERVICE AREA TO BE SERVICED BY THE FACILITY BEING FINANCED BY THE AUTHORITY. IF THE MEDIAN HOUSEHOLD INCOME LEVEL OF THE MUNICIPALITY, ~~FOR THE AREA~~ IS BELOW THE MEDIAN HOUSEHOLD INCOME LEVEL FOR A METROPOLITAN OR NONMETROPOLITAN AREA AS APPLICABLE, THE APPLICANT SHALL BE ELIGIBLE FOR A 50 BASIS POINT REDUCTION IN THE RATE.

B. IF THE PERCENTAGE OF POVERTY LEVEL HOUSEHOLDS IN THE MUNICIPALITY ~~PROJECT SERVICE AREA~~ IS AT OR ABOVE THE NATIONAL AVERAGE, THE APPLICANT IS ELIGIBLE FOR 100 BASIS POINTS REDUCTION IN THE INTEREST RATE CHARGED BY THE AUTHORITY.

C. IF THE ESTIMATED ANNUAL SEWER SERVICE CHARGE OF THE MUNICIPALITY ~~PROJECT SERVICE AREA~~ AFTER THE COMPLETION OF THE PROJECT;

1. IS AT OR EXCEEDS OF ONE PERCENT OF THE MEDIAN HOUSEHOLD INCOME LEVEL OF THE MUNICIPALITY, ~~PROJECT SERVICE AREA,~~ THE MUNICIPALITY IS ELIGIBLE FOR A 50 100 BASIS POINTS REDUCTION IN THE INTERST RATE; OR

2. IS AT OR EXCEEDS ONE AND ONE-HALF PERCENT OF THE APPLICANT'S MEDIAN HOUSEHOLD INCOME, THE MUNICIPALITY IS ELGIBLE FOR A 100 BASIS POINT REDUCTION IN THE INTEREST RATE; OR

3. IS AT OR EXCEEDS TWO PERCENT OF THE APPLICANT'S MEDIAN HOUSEHOLD INCOME, THE MUNICIPALITY IS ELIGIBLE FOR A 150 BASIS POINT REDUCTION IN THE INTEREST RATE.

These amendments to the rules (Part 7380.0440, Subpart 5C, Items 1,2, and 3) are needed to reflect the insights and experience the Authority has gained in operating the Water Pollution Conrol Revolving Fund Program over the past five-plus years, which as it relates here, has shown that the financial burden placed on the residential users of a municipal wastewater treatment is most fully and accurately reflected by the percentage relationship of the sewer service charges to the median household income level

(SSC/MHI). Therefore, the lowering of the basis point discounts as amended in part 7380.0440, subpart 4, which deals with population-size, and increasing the discounts given in this subpart reflects the insight gained by the Authority into what more accurately measures affordability in a municipality, which is clearly the percentage relationship of the SSC/MHI. The basis points discounts have been amended to reflect that emphasis. It is reasonable as the main purpose of the program is to reduce the financial burden on the residential users in a municipality and to do that in proportion to their ability to pay.

SUBP. 6 INTEREST-FREE LOANS. OR REDUCED RATE LOANS. THE AUTHORITY MAY REDUCE INTEREST RATES FURTHER OR OFFER INTEREST-FREE LOANS TO MUNICIPALITIES WHICH ARE APPROVED FOR THE WASTEWATER INFRASTRUCTURE FUNDING PROGRAM AS PROVIDED IN MINN. RULES 7380.0300 TO 7380.0380. ~~AS PROVIDED IN THIS PART TO MUNICIPALITIES DEMONSTRATING IN THEIR APPLICATION THAT THEY ARE FINANCIALLY UNABLE TO PAY INTEREST CHARGE ON THE LOAN.~~ THE AUTHORITY MAY LIMIT THE NUMBER OF AND THE AMOUNT OF INTEREST-FREE LOANS IN A GIVEN YEAR IF THE OFFERING OF SUCH LOANS WOULD IMPAIR THE ABILITY OF THE FUND TO MEET ANTICIPATED FUTURE FINANCING NEEDS OR THE REVENUE COVERAGE REQUIREMENTS OF THE FUND. ~~SHALL NOT OFFER INTEREST-FREE LOANS IF THE OFFERING OF AN INTEREST-FREE LOAN RESULTS IN THE COMBINED RATE OF INTEREST ON THE AUTHORITY'S PORTFOLIO TO YIELD LESS THAN THE RATE OF INFLATION AS DETERMINED BY THE CONSUMER PRICE INDEX.~~

INTEREST-FREE LOANS FOR ANY APPLICANT SHALL BE LIMITED TO \$1,000,000 ~~\$500,000~~, OR THE ELIGIBLE COST OF THE PROJECT, WHICHEVER IS LESS. ~~THE AUTHORITY SHALL NOT PROVIDE INTEREST-FREE LOANS, IN TOTAL, EXCEEDING UP TO TEN PERCENT OF THE TOTAL CAPITALIZATION GRANT FUNDS SCHEDULED TO BE RECEIVED BY THE AUTHORITY.~~

~~TO BE ELIGIBLE FOR CONSIDERATION FOR AN INTEREST-FREE LOAN, AN APPLICANT MUST MEET EACH OF THE FOLLOWING CONDITIONS:~~

~~A. THE POPULATION OF THE PROJECT SERVICE AREA HAS DECLINED OVER THE PAST TEN YEARS;~~

~~B. THE PERCENT OF PEOPLE IN POVERTY IN THE PROJECT SERVICE AREA OF THE PROJECT IS AT OR EXCEEDS THE POVERTY LEVEL; AND~~

~~C. THE CURRENT ANNUAL SEWER SERVICE CHARGE OF THE PROJECT SERVICE AREA, COUPLED WITH THE FINANCING, OPERATION, MAINTENANCE, AND REPLACEMENT COSTS OF THE NEW FACILITY RESULTS IN AN ANNUAL SEWER SERVICE CHARGE IN EXCESS OF ONE AND ONE-HALF PERCENT OF THE MEDIAN HOUSEHOLD INCOME LEVEL OF THE PROJECT SERVICE AREA.~~

As with most of the other amendment to these rules the amendments to this part reflect the insights gained in the operation of the program over the past five-plus years. Also, the creation of the Wastewater Infrastructure Revolving Fund Program

serves to impact the structure and the features of this Program, particularly in the area of interest-free loans. As originally written the program had demographic threshold levels which were rather easily reached by very poor municipalities which was the intent. However, all the municipalities which have qualified for zero percent loans also needed to obtain grants from other sources to be able to afford and fully provide for funding of their wastewater treatment projects. A review of municipalities that might qualify in the future for zero percent loans for their wastewater treatment projects, showed that of these municipalities very few were capable of paying back the principal amount of a zero percent interest loan if it were for the full amount of the project costs. The Wastewater Infrastructure Program was specifically designed for the type of municipality described above, and we now envision that that program will provide a large portion of the project financing in those cases. It is still possible for municipalities to access this project to the extent it is financially feasible and this amendment, coupled with the new Wastewater Infrastructure Program, should better serve these municipalities.

7380.0480 REPORTS AND AUDITS

SUBP. 1 IN GENERAL. DURING THE TERM OF THE LOAN, THE MUNICIPALITY SHALL MAKE WRITTEN REPORTS TO THE EXECUTIVE DIRECTOR OF THE AUTHORITY ON FORMS PROVIDED BY THE AUTHORITY ON A SCHEDULE DETERMINED BY THE EXECUTIVE DIRECTOR.

SUBP. 2 AUDITS. FINANCIAL ASSISTANCE RECIPIENTS MUST ARRANGE FOR AND PAY FOR INDEPENDENT AUDITS, ACCEPTABLE TO THE AUTHORITY AND PREPARED, IF REQUIRED BY THE CLEAN WATER ACT, IN COMPLIANCE WITH THE OFFICE OF MANAGEMENT AND BUDGET, CIRCULAR A-128, PUBLISHED IN THE FEDERAL REGISTER, VOLUME 50, NUMBER 188, PAGE 39083, ON SEPTEMBER 27, 1985, AND IN COMPLIANCE WITH THE SINGLE AUDIT ACT OF 1984, UNITED STATES CODE, TITLE 31, SECTIONS 7501-7507.

This amendment to the rule is necessary to inform loan recipients that they are relieved from the requirement and the resulting cost of providing the Authority with audits performed in compliance with the A-128 audit requirements when it is not required by the Clean Water Act. The practical effect of the amendment is that a municipality is now required to provide an A-128 audit to the Authority for those years in which it is expending Authority funds for the construction of a project. Once the construction of the project is completed and Authority funds are no longer being expended, the municipality no longer has to provide audits to the Authority done in accordance with the A-128 audit requirements.