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SF-00006-05(4/86)

DEPARTMENT: POLLUTION CONTROL AGENCY

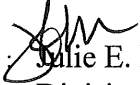
STATE OF MINNESOTA

Office Memorandum

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DATE: June 5, 1995

TO: Legislative Commission to Review
Administrative Rules

FROM:  Julie E. MacKenzie
Division Rule Coordinator
Water Quality Division

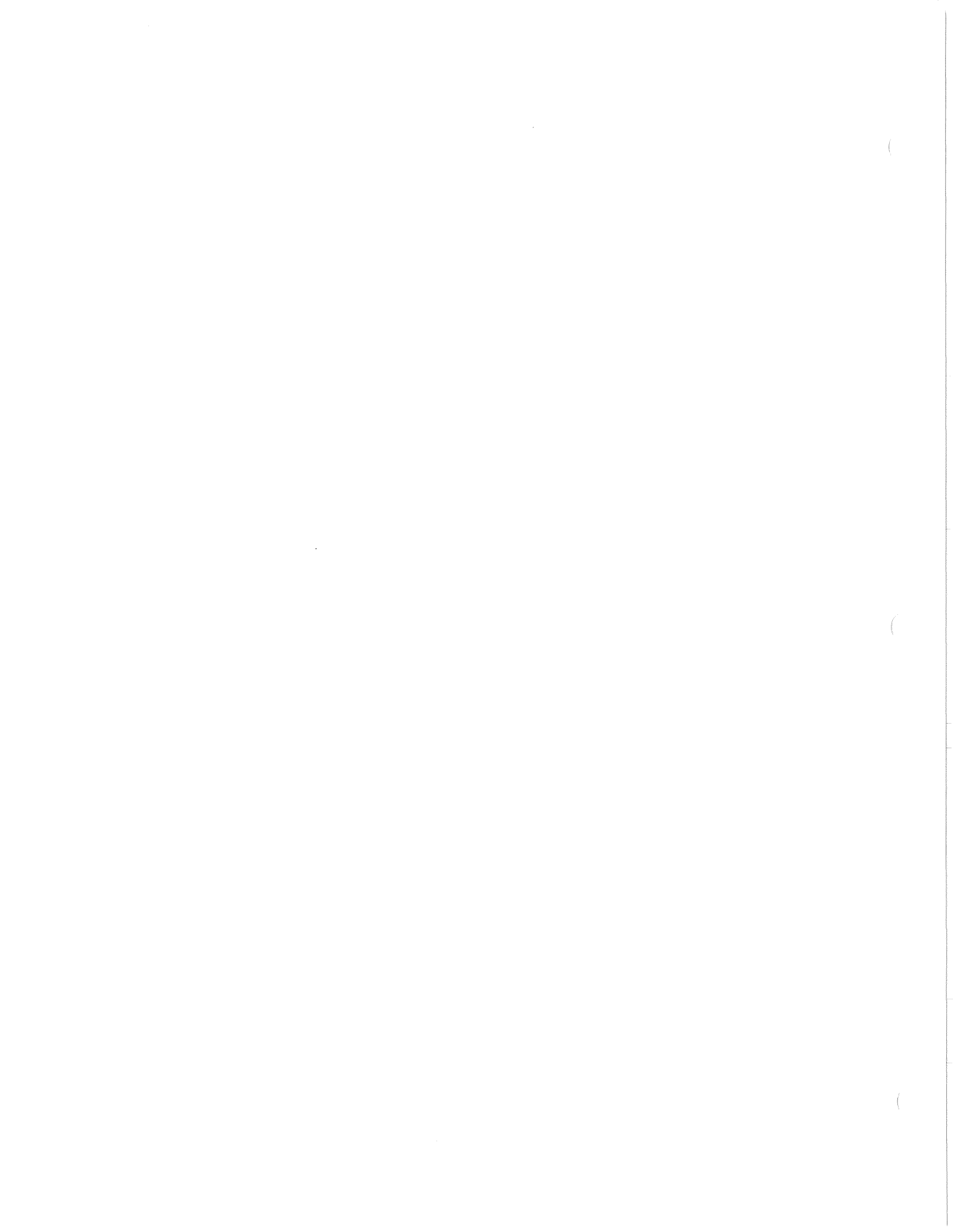
PHONE: 296-9207

SUBJECT: Statement of Need and Reasonableness

Attached please find a copy of the Statement of Need and Reasonableness for proposed amendments to rules governing the Clean Water Partnership Program, Minn. R. 7076.0100 through 7076.0290, in accordance with Minn. Stat. § 14.131.

JEM:mbo

Attachment



enclosure
LB

**STATE OF MINNESOTA
POLLUTION CONTROL AGENCY**

**In the Matter of the
Proposed Rule Amendments
Governing the Administration
of the Clean Water Partnership
Program, Minn. R. ch. 7076**

**STATEMENT OF NEED
AND REASONABLENESS**

I. INTRODUCTION

The subject of this statement of need and reasonableness (hereinafter "SONAR") is the amendment of the rules of the Minnesota Pollution Control Agency (hereinafter "Agency") that govern the Clean Water Partnership Program (hereinafter "CWPP"). The CWPP is established under the Clean Water Partnership Law, Minn. Stat. §§ 103F.701 to 103F.761(1994) (exhibit 1). Minn. R. ch. 7076 is for the administration of the CWPP.

The goal of the CWPP is to prevent and mitigate the effects of nonpoint source pollution on state surface and ground waters. The program provides technical and financial assistance to local units of government for the identification of water quality problems or threats, for the development of a plan to address the problems or threats, and for the implementation of best management practices (hereinafter "BMPs") designed to protect or improve the quality of a water of concern.

The proposed amendments add the administrative requirements for the award of loans from the state Water Pollution Control Revolving Fund (hereinafter "SRF") and modify the administrative requirements for the award of grants. The proposed amendments to the existing rule allow for the administration of SRF loan awards and improve the partnership relationship between the Agency and the local governments involved in a CWPP project.

This SONAR contains the Agency's affirmative presentation of facts on the need for and reasonableness of the proposed rule amendments. Section II contains background information regarding the CWPP and the proposed rule amendments, section III sets forth the Agency's statutory authority to adopt the proposed rule amendments, section IV discusses the need for the amendments, section V describes the reasonableness of the proposed rule amendments, and section VI describes the Agency's consideration of economic factors when developing the proposed rule amendments. Finally, sections VII, VIII and IX discuss the impact of the proposed amendments on small businesses, agricultural lands and farming operations, and local public bodies.

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II. BACKGROUND

As it was first enacted in 1987, the CWPP was a grant program. As requested by Minn. Stat. §§ 103F.761 to 103F.761, the Agency adopted rules to implement this program. These rules became effective on September 26, 1988. The rule was amended in 1991. In 1994, the Minnesota Legislature amended Minn. Stat. §§ 103F.761 to 103F.761 to allow the use of the SRF to provide loans for CWPP project implementation. In addition, the legislature required the Agency to use the criterion in the grant rule until it had amended the rule to address loans specifically, or until January 1, 1996, whichever occurred first.

The CWPP has been in operation nearly seven years, in which time 40 resource investigation and 11 project implementation projects have collectively been awarded \$6,333,541 in grants. In addition, the Agency awarded \$4,838,250 in project implementation loans for the 1994-95 application cycle.

The funding for the CWPP comes from several sources. The sources of grant funds are state General Fund monies appropriated by the Minnesota Legislature, and federal funds made available through Section 319 of the Federal Clean Water Act. The source of loan funds is the SRF. The SRF program was created by the 1987 reauthorization of the Federal Clean Water Act. The purpose of this federal program is to provide capitalization grants to states for the establishment of revolving loan funds to be used for wastewater treatment facility construction and for nonpoint source pollution control projects. In 1987, the Minnesota Legislature passed Minn. Stat. §§ 446A.01 through 446A.21, which created the Minnesota Public Facilities Authority and enabled it to establish and administer the Minnesota SRF (exhibit 2). Then in 1994, the Minnesota Legislature passed Laws of Minnesota Chapter 632 which, in part, enabled several state agencies to use the SRF to provide funds for nonpoint source pollution control programs. The Minnesota Pollution Control Agency was one such agency, and the Clean Water Partnership Law, Minn. Stat. §§ 103F.701 through 103F.761, was amended to allow the award of loans from the SRF.

Since the SRF monies are federal in origin, any loans made from the SRF must conform to the federal requirements for the SRF program outlined in Title VI of the Federal Clean Water Act and the Environmental Protection Agency Regulations 40 CFR Part 35, subpart K (exhibit 3). One notable requirement of Title VI is that SRF loans can only be used for implementation of the nonpoint source pollution control management plan required under Section 319 of the Act or the development and implementation of the estuary plan under section 320 of the Act. This means that SRF loans can only be used to finance project implementation.

The addition of the SRF as a funding source has brought changes to the CWPP. In addition, the program experience and public comments received since the last CWPP rule revision in 1991 have brought ideas for improvements to the CWPP. Since the last rule revision, the Agency has conducted a program review and received many suggestions regarding the administrative procedures of the CWPP. The rule amendments being proposed reflect comments received since the last rule revision, as well as those received by the Agency during a period of solicitation of outside information that was noticed in the State Register on January 17, 1995 (19 S.R. 1526). The Agency conducted six informational meetings; one each in Duluth, Marshall, St. Paul, Brainerd, Detroit Lakes, and Owatonna; during the period of solicitation of outside information. All CWPP participants, those who had unsuccessfully submitted an application, county local water plan coordinators, metro area watershed districts and water management organizations, and those who expressed interest in the CWPP rule revision were invited to participate in the meetings. Out of the approximately 200 people invited, a total of 13 local governments and consultants attended the meetings and expressed their opinions regarding the rule revision. The Agency also received five written comments from local governments and consultants who currently are or have been participants in a CWPP project. In addition, members of the Project Coordination Team (established by Minn. Stat. § 103F.761 (1994), hereinafter "PCT") expressed their suggestions and comments regarding the CWPP rule revision in writing and at their February 14, 1995, and March 21, 1995, meetings. The comments received were generally supportive of the rulemaking efforts. Suggestions fell into the following five general categories: SRF loan requirements, support for simplifying the CWPP reporting requirements and resource investigation application, comments for and against the eligibility of specific project costs, project continuations, and ranking. All comments were considered as the rule amendments were drafted.

III. STATEMENT OF THE AGENCY'S STATUTORY AUTHORITY

The Agency's statutory authority to adopt the rule is set forth in Minn. Stat. § 103F.745 (1994), which provides:

The Agency shall adopt rules necessary to implement §§ 103F.701 to 103F.761. The rules shall contain at a minimum:

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

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

For financial assistance by loan under Section 103F.725, subd. 1a, criteria established by rule for the clean water partnership grants program shall guide requirements and administrative procedures for the loan program until January 1, 1996, or the effective date of the administrative rules for the clean water partnership loan program, whichever occurs first.

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

IV. NEED FOR RULE AMENDMENTS

Minn. Stat. ch. 14 (1994) requires the Agency to make an affirmative presentation of facts establishing the need for, and the reasonableness of, the proposed rule amendments. In general terms, this means the Agency must set forth the reasons for the proposed rule amendments and the reasons must not be arbitrary or capricious. However, to the extent that need and reasonableness are separate, need has come to mean that a problem exists which requires administrative attention, and reasonableness has come to mean that the solution proposed by the Agency is appropriate. The need for the proposed rule amendments is discussed below.

The major reasons for the CWPP rule amendment are the need to add the administrative requirements for the award of SRF loans; the need to modify the application requirements; the need to adjust the ranking criteria for financial assistance applications; and the need to modify the reporting requirements, including the requirements for the diagnostic study, implementation plan, and work plan.

The addition of the SRF as a funding source for the CWPP resulted in a need to modify the CWPP rule. As a part of the amendment to Minn. Stat. §§ 103F.701 to 103F.761, the 1994 Minnesota Legislature required the Agency to use the existing CWPP rule to guide the award of loans until the effective date of administrative rules for the award of loans or January 1, 1996, whichever came first (§ 103F.745, paragraph b). In the interest of efficiency, the Agency chose to revise the existing CWPP rule to include the administrative procedures for the award of loans rather than create a new rule. This revision also provided a good opportunity to examine the existing rule to see where it could be improved.

Since the last revision of the CWPP rule in 1991, Agency staff have discerned areas where the CWPP could be modified to enhance the partnership between the Agency and local governments. One of these areas is the resource investigation application procedure. Staff is proposing to modify this procedure by eliminating the requirement that a work plan be submitted with the application. Instead, a brief project proposal would be submitted and the work plan would be developed by participants in the project, including Agency staff, after the award of funding.

This proposed change in the resource investigation application procedure necessitates a revision of the ranking criteria for resource investigation applications. In addition, program experience has produced suggestions for enhancing both the resource investigation and project implementation ranking criteria.

The proposed changes to the application for resource investigation also make it necessary for the Agency to modify the work plan requirements. The proposed changes to the work plan would enhance the partnership between the Agency and the local sponsors of the project, encourage public participation in the project, and clarify work plan requirements. The Agency also proposes to modify the diagnostic study, implementation plan, and reporting requirements. Program experience has shown a need for more flexibility in these requirements due to the unique nature of each CWPP project.

There is also a need to modify the eligibility requirements for grant awards to limit the eligibility of certain in-lake management techniques due to their high cost and lack of focus on reducing the pollutant loading from the project area. In addition, there is a need to make costs related to certain activities permitted through the National Pollutant Discharge Elimination System permit program conditionally eligible since some of these activities are closely related to nonpoint source pollution, and costs related to them should be eligible under the CWPP.

V. REASONABLENESS OF PROPOSED RULE AMENDMENTS

A. Reasonableness of the rule as a whole.

The proposed amendments to Minn. R. Ch. 7076 are reasonable because they are consistent with the amended Clean Water Partnership Law, Minn. Stat. §§ 103F.701 to 103F. 761(1994). The proposed administrative procedures for the award of SRF loans also conform with Title VI of the Federal Clean Water Act while maintaining program flexibility for local governments. Finally, the proposed amendments enhance the partnership aspect of the CWPP and increase the efficiency of the program.

B. Reasonableness of the individual rule.

The following paragraphs address the specific provisions of the proposed rule amendments.

Part 7076.0100 Purpose.

The Agency proposes to change “grant” to “financial assistance.” See Part 7076.0110, subpart 4a for a discussion of reasonableness. The Agency also proposes to modify the last sentence to include the award of loans from the SRF for implementation of nonpoint source projects. This is reasonable because the 1994 Minnesota Legislature authorized the use of the SRF to provide loans through the CWPP, and required the Agency to adopt rules governing the administrative procedures for awarding loans (Minn. Stat. §§ 103F.701 to 103F.761 [1994]). Since both grants and SRF loans are awarded through the CWPP, it is reasonable to amend this rule to include the administrative procedures for the award of both types of financial assistance.

Part 7076.0110 Definitions.

Subpart 4a. Financial assistance.

The Agency proposes to add a definition for “financial assistance.” The definition is needed to notify readers that “financial assistance,” as used in this rule, refers to project implementation and resource investigation grants, and project implementation loans. This is reasonable because it provides readers with a clear understanding of what is considered financial assistance in this rule.

The Agency also proposes to use the term “financial assistance” instead of “grants” throughout this rule, except in areas that refer specifically to a resource investigation or project implementation grant. This is reasonable because Minn. Stat. §§ 103F.701 to 103F.761 (1994) authorizes the use of the SRF to provide loans through the CWPP, and requires the Agency to adopt rules governing the administrative procedures for awarding loans. The change in language from “grant” to “financial assistance” allows the administrative procedures of this rule to govern the award of both grants and loans. Since both types of financial assistance are awarded through the same program, it is reasonable to have one rule that governs both types of awards.

Subpart 5a. Loan sponsor.

The Agency proposes to add a definition for “loan sponsor.” The term “loan sponsor” is used throughout the rule to indicate the local unit of government that receives a project implementation loan from the Agency and pledges its full faith and credit to repayment of the loan. In comparison, the project sponsor is the local unit of government responsible for the technical and administrative oversight of the project, and may also be a loan sponsor. There is only one project sponsor for each CWPP project, but there may be several loan sponsors. This definition is reasonable because it indicates what a loan sponsor is and the role of the loan sponsor in a CWPP project, which improves the clarity of the rule.

Subpart 6. Local share.

The proposed modification to this definition is reasonable because it acknowledges that a project implementation loan may be used as local share for a project implementation grant. It is reasonable to allow a project implementation loan to be used as local share because a project implementation loan must be repaid to the Agency by the loan sponsor, so a project implementation loan is ultimately a local contribution to the project.

Subpart 14. Project continuation grant amendment (repeal).

The Agency is proposing to repeal this definition and move much of the information to the definition for “project implementation continuation.” See subpart 18a for a discussion of reasonableness.

Subpart 18. Project implementation.

The Agency proposes to modify this definition to include a statement as to what the implementation plan must contain for project implementation to occur. This proposed change is reasonable because it assures that the monies will be well-spent by allowing project implementation only after specific BMPs have been identified in an implementation plan. Without this change, the proposed modifications to the implementation plan (Part 7076.0250) might lead to a misinterpretation of what is considered project implementation and the timing of project implementation. Therefore, this proposed change is reasonable because it improves the clarity of the rule.

Subpart 18a. Project implementation continuation.

The Agency proposes to add this definition for “project implementation continuation.” The purpose of making funding available for subsequent project work is to allow for implementation to occur over a long term (six years), without tying up funding for the entire project. By allowing project continuations, the Agency can award funding in two three-year blocks, which allows for more flexibility in funding and avoids committing funds for long periods of time. This proposed definition replaces the proposed repealed definition for “project continuation grant amendment” (subpart 14). This proposed definition is reasonable because it applies to both grant and loan awards, it is flexible (a project implementation continuation could involve amending an existing contract, or executing a new contract), and it improves the clarity of the rule.

Subpart 19. Project implementation grant.

The Agency proposes to modify this definition to include a statement as to what the implementation plan must contain for a project implementation grant to be awarded. See subpart 18 for a discussion of reasonableness.

Subpart 19a. Project implementation loan.

The Agency proposes to add a definition for “project implementation loan.” This is reasonable because it improves the clarity of the rule.

Subpart 19b. Project implementation loan set rate.

This subpart defines the “project implementation loan set rate” to be equal to the Merrill Lynch 500 Municipal Bond Index. This is proposed as the upper limit for the interest rate on a project implementation loan to meet the requirement that loans made from the SRF be at or below market rate (Minn. Stat. § 103F.725, subd. 1a, paragraph d [1994]). This is reasonable because it is the same market indicator used by the Public Facilities Authority in their rule governing the Water Pollution Control Revolving Fund (Minn. R. pts. 7380.0400 through 7380.0480, exhibit 4 [1993]), which helps maintain consistency between the programs accessing the SRF for funding.

Subpart 19c. Project implementation period.

The Agency proposes to add a definition for the “project implementation period.” Repayment of a project implementation loan is dependent on the completion of the project implementation period, so it is reasonable to include this definition in the rule to improve the understandability of the rule. It is reasonable to segment implementation into three-year periods because this allows project sponsors to phase their financial commitment to the project and allows the state to assist more projects by committing smaller sums of money for shorter periods of time. It is also reasonable because it allows both the Agency and the project sponsor to review project progress and make adjustments. Project implementation may be composed of several project implementation periods. However, in awarding project implementation financial assistance the Agency only commits funding for the first project implementation period, and possibly for a second project implementation period upon approval of a request for a project implementation continuation (see Part 7076.0200). If CWPP financial assistance is desired beyond these two project implementation periods, a new application must be submitted and the project must be ranked. This is reasonable because it provides a balance between fostering long-term implementation projects, encouraging the development of new projects, and ensuring that projects with the greatest potential for water quality improvement or protection receive funding.

Subpart 20. Project sponsor.

The Agency proposes replacing “grant” with “financial assistance” in this definition. See subpart 4a for a discussion of reasonableness. The Agency also proposes to modify this definition to better explain the roles of the project sponsor. This is reasonable because it improves the clarity of the rule.

Subpart 20c. Second-tier borrower.

This proposed definition for “second-tier borrower” identifies to whom this term refers. The term is used in Part 7076.0215, subparts 3 and 6 to indicate who may receive a second-tier loan from the loan sponsor. This is reasonable because it improves the clarity of the rule.

Subpart 20d. Second-tier loan.

The Agency proposes adding a definition for “second-tier loan” that indicates who can offer this type of loan and what type of CWPP financial assistance may be used to make the loan. The term “second-tier loan” is used throughout the rule to indicate a specific use that can be made of project implementation loan funds. This definition is reasonable because it improves the clarity of the rule.

Subpart 20e. State revolving fund.

The proposed definition for “state revolving fund” fund is reasonable because it indicates the statutory authority for establishing the fund. It also indicates that the Water Pollution Control Revolving Fund is one and the same as the “state revolving fund” or “SRF,” which are the more common names used for the fund. This lets the reader know exactly what fund is being referred to, which improves the clarity of the rule.

Subpart 23. Water of concern.

The Agency proposes to modify this definition. Comments received during the period of solicitation of outside information indicated that there is confusion about the eligibility of groundwater projects for the CWPP. By specifically mentioning ground water in this definition, the Agency hopes to clear up this confusion.

Part 7076.0120 Available Assistance.

Subpart 1. Financial assistance.

The Agency proposes to change “Financial assistance” to “Grants.” This is reasonable because there are now two types of financial assistance available. The proposed change is also reasonable because it specifies the type of financial assistance addressed in this subpart, which improves the clarity of the rule. The Agency also proposes moving the last sentence to the new subpart 1a and changing “grants” to “loans and grants.” This is reasonable because this sentence applies to both grants and loans.

Subpart 1a. Loans.

The proposed subpart indicates that loans are available for project implementation and identifies how much of eligible project costs a project implementation loan can finance. This subpart is reasonable because it corresponds with Minn. Stat. §§ 103F.725, subd. 1a (1994).

Subpart 2. Technical assistance.

The Agency proposes to replace “grants” with “financial assistance.” See Part 7076.0110, subpart 4a for a discussion of reasonableness.

Part 7076.0130 Eligibility Criteria.

Subpart 1. Eligible applicants.

Proposed changes to this subpart include changing “eligible applicants” to “grant-eligible applicants,” deleting the qualifier “state matching” used to describe the grants, and deleting the requirement that a local unit of government have the authority to implement official controls to be eligible for a grant. These changes are reasonable because they clarify the rule by differentiating grant eligibility from loan eligibility and they serve to make this subpart more consistent with Minn. Stat. § 103F.731 (1994).

Subpart 1a. Loan-eligible applicants.

The proposed addition of this subpart is reasonable because, according to Minn. Stat. § 103F.725, subd. 1a, paragraph (f) (1994), a local unit of government receiving a loan is responsible for repaying the loan and, therefore, an applicant must be able to secure repayment of the loan, generate cash for loan repayment, and enter into a loan agreement with the Agency to be eligible to receive a loan, as well as indicate that it has met the basic eligibility requirements indicated in subpart 1.

The proposed subpart also requires that a resolution from at least one loan-eligible local unit of government be submitted if the local unit of government submitting the application is not eligible for a project implementation loan, but wishes the project to be financed through a project implementation loan. This assures the Agency upon application that a loan-eligible local unit of government plans to participate in the project as a loan sponsor. This is reasonable because it allows a local unit of government that is ineligible to receive a loan to act as the project sponsor, while still providing the Agency with the necessary assurances that the loan will be secured. This improves the flexibility of the CWPP.

Subpart 2. Eligible costs.

The Agency proposes to modify this subpart to differentiate between loan-eligible and grant-eligible project costs. Loan funds can only be used for project implementation, while grant funds can be used for resource investigation and project implementation. This conforms with Title VI of the Clean Water Act.

The Agency also proposes listing two activities that are eligible for loan funds but not grant funds: dredging and chemical precipitation of phosphorus. In the current rule, dredging is ineligible for

grant funds and chemical precipitation of phosphorus is eligible for grant funds. This change is reasonable because both dredging and chemical precipitation of phosphorus are relatively expensive management techniques that treat the symptom of a water quality problem rather than the source of the problem. Therefore, designating these activities as only loan-eligible allows projects to receive loan funding for these activities or use them as local match for a grant, but reserves limited grant funds for activities that are watershed-based, which are the focus of the CWPP project implementation.

The proposed changes to items C, D, and H are reasonable because they better indicate what types of activities are eligible for funding, which clarifies the rule. The Agency also proposes to add item E to address the eligibility of costs related to animal feedlot facilities. It is reasonable to make the costs of BMP installation ineligible if they are related to a criminal enforcement action or a civil enforcement action involving fees because the Agency wishes to encourage proactive action on animal waste management concerns. Once a civil or criminal action is filed, any resultant BMP installation is no longer within the scope of the CWPP.

Subpart 3. Ineligible costs.

The Agency proposes to modify this subpart so it applies to both grants and loans. See Part 7076.0100 and Part 7076.0110, subpart 4a for a discussion of reasonableness. The proposed sentence indicating that costs associated with resource investigation are ineligible for loan funds is reasonable because Title VI of the Federal Clean Water Act requires that SRF loan funds only be used for implementation activities (see subpart 2). The Agency also proposed further modifications to items C, D, F, H, and L as discussed below.

For item C, the Agency proposes deleting the reference to the National Pollutant Discharge Elimination System permit program. This is reasonable because it is addressed in the proposed new item D. The Agency also proposes adding that activities regulated by the Chemical Liability Act (Minn. Stat. ch. 18D [1994]) be ineligible for CWPP financial assistance. This is reasonable because the CWPP is a program of limited scope and financial resources, so it is necessary to exclude regulated activities from eligible costs.

The Agency proposes to create a new item D to address the eligibility of costs related to activities permitted by the National Pollutant Discharge Elimination System permit program. Some of these activities are nonpoint source pollution control activities, and it is reasonable to include an exemption for these activities so they are eligible for CWPP financial assistance. In formulating these exemptions, the Agency consulted the Environmental Protection Agency's documents titled "Federal Guidance on the Award of Nonpoint Source Grants Under Section 319(h) of the Clean Water Act for FY

1994 and Future Years,” and “Region V’s Guidance on Section 319 Work Plan Submittals” (Exhibits 5 and 6, respectively). Sections 601 and 603 of the Federal Clean Water Act state that SRF loan funds can only be used for the implementation of a management program under Section 319 or 320 of the Act, so eligibility requirements for activities funded through Section 319 also apply to CWPP project implementation loans.

For item E, the Agency proposes adding “or loans” to the description of the state or federal funding. This is reasonable because loans and grants are now being awarded for construction of publicly owned treatment works, so making this change would preserve the intent of this subpart and improve the clarity of the rule. The Agency also proposes replacing “wastewater treatment facilities” with “publicly owned treatment works.” This change in wording is reasonable because it ensures that individual sewage treatment systems and cluster treatment systems are interpreted to be eligible for funding.

The Agency proposes to modify item H by adding the phrase “excluding farming activities occurring on the farm itself.” This is reasonable because it ensures that farming activities are interpreted to be eligible for CWPP financial assistance, which is how the Agency currently interprets its rule.

The Agency also proposes to delete item L. This is reasonable because this activity is proposed to be addressed in subpart 2.

Finally, the Agency proposes re-lettering items D through K to reflect the addition of a new item D. This is reasonable because it improves the readability of the rule.

Subpart 4. Eligible local share.

The Agency proposes to change “eligible local share” to “eligible local share for grant-funded projects.” This is reasonable because it differentiates grant-funded projects from loan-funded projects, which do not have a local share requirement, which clarifies the rule. In addition, the Agency proposes to define costs that are eligible as local share, state that a project implementation loan can be used to fulfill the local share requirement for a project implementation grant, and clarify the language regarding eligibility of the costs of operational best management practices installed by a land occupier. These changes are reasonable because they clarify what costs can be used by a project sponsor to fulfill the local share requirement for a grant award.

Part 7076.0140 Notice of Grant Availability.

The Agency proposes to change “grant” to “financial assistance” throughout this part. See Part 7076.0110, subpart 4a for a discussion of reasonableness. The Agency also proposes to replace “agency” with “commissioner” throughout this part. According to Minn. R. ch. 7000 (1993), the term “agency”

refers to the Agency's Citizen's Board, while "commissioner" is taken to mean the chief executive officer of the Agency. Since the actions governed by this part are ministerial in nature and have been undertaken by the Commissioner as the Board's delegate, it is reasonable to make this change.

Subpart 1. Notice.

The proposed addition of "and loans" to the content of the notice is reasonable because grant and loan applications will be accepted during the same application period, so the notice should contain a reference to both grants and loans. This improves the clarity of the rule.

Subpart 2. Notification list.

The Agency proposes deleting "grant" in the last sentence. This is reasonable because the intent is for this part to pertain to both grants and loans, and removing the specific reference to grants accomplishes this.

Part 7076.0150 Grant Application.

The Agency proposes to replace "grant" with "financial assistance." See Part 7076.0110, subpart 4a for a discussion of reasonableness.

Subpart 1. General requirements.

The Agency proposes to replace "grant" with "financial assistance." See Part 7076.0110, subpart 4a for a discussion of reasonableness.

Subpart 2. Resource investigation grant.

The Agency proposes to modify the wording of the first sentence. This modification is reasonable because it improves the readability of the sentence without changing its meaning.

Additional changes are proposed for items B, D, E, and G under this subpart.

For item B, the Agency proposes to require written documentation that the project sponsor has contacted the local water planning authority in developing the application. This is reasonable because the Agency wishes to foster projects that are consistent with the priorities and objectives of local water plans, and requiring the project sponsor to consult with the local water planning authority helps encourage this consistency.

Under item D, the Agency proposes to add the qualifier "technical" to the identification of the participant's role in the project. This is reasonable because it provides a clearer description of the information that the letter of support should contain. Also, the Agency proposes modifying this item to require an identification of the estimated contribution of participating local units of government to project costs rather than, as currently worded, their contribution to project costs. Amending the rule to add the word "estimated" is reasonable because the project proposal will have less information than the

previously required preliminary work plan (see item G below) and, therefore, it will only be possible for project participants to estimate their contribution to the costs of the project.

For item E, the Agency proposes to change the requirement of an identification of the amount of grant funding requested to a requirement for an estimate of the grant funding requested. This change, like the change in item D, is reasonable because the project proposal will have less information than the previously required preliminary work plan (see item G below) and, therefore, it will only be possible to estimate the costs of the project.

Under item G, the Agency proposes to change the requirement for a preliminary work plan to a project proposal. CWPP participants and unsuccessful applicants have stated that it is difficult and costly to complete an application for resource investigation. By making this change, the Agency proposes to simplify the application by eliminating the requirement that a work plan be submitted with the application. Instead, the work plan would be developed by the project sponsor and project participants with the assistance and review of Agency staff after a project is awarded a grant. This change is reasonable because it simplifies the application process and underscores the need for ongoing discussions with the Agency concerning the development and implementation of the project. In keeping with this change, the Agency proposes to make the following changes to subitem 1 through subitem 6:

- 1) change to a requirement for preliminary goals and objectives;
- 2) add a new subitem to request a list of existing data and information, renumber the existing subitem (2) to subitem (3) and add a requirement for a statement of the existing and desired uses of the water of concern;
- 3) remove the reference to the work plan, modify the language to improve grammatical sense and renumber to subitem (4);
- 4) remove the reference to the work plan, require a preliminary schedule rather than a more final schedule, and renumber to subitem (5);
- 5) delete; and
- 6) change to a requirement for an estimated budget rather than a preliminary work plan budget.

These changes are reasonable because they simplify the application requirements while still providing the Agency with the information needed to evaluate the potential for project success.

Subpart 3. Project implementation grant.

The Agency proposes to replace “grant” with “financial assistance.” See Part 7076.0110, subpart 4a for a discussion of reasonableness. The proposed modification to the first sentence is reasonable because it improves the readability without changing the meaning. Throughout this subpart, the Agency

also proposes deleting the word “grant” in reference to the type of application. This is reasonable because the application will be basically the same for both grants and loans. The Agency also proposes additional changes to the items as follows:

For item B, the Agency proposes to add a requirement for written documentation that the project sponsor has contacted the local water planning authority in developing the application. See subpart 2, item B for a discussion of reasonableness.

The proposed modification to item C is reasonable because the existing language suggests that the diagnostic study and implementation plan must actually be contained in the local water plan, which is not the intent of the requirement. Rather, the intent is that the water of concern be addressed in the local water plan, which is an eligibility requirement, and that the project be consistent with the priorities and actions contained in the local water plan, which is accomplished by requiring the project sponsor to show that the local water planning authority was consulted in preparing the application.

For item D, the Agency proposes adding the qualifiers “technical” to the identification of the participant’s role in the project and “if any” to the identification of the sources of the local share of project costs. These changes are reasonable because they provide a clearer description of the information that the letter of support should contain, and they recognize that local share is not required for a project implementation loan award.

The Agency proposes to modify items E and F to indicate that the preliminary work plan and schedule are required for the implementation period rather than the grant period. This is reasonable because it indicates that this requirement applies to grants as well as loans. The Agency also proposes to modify item F to require that the applicant designate what type of financial assistance is being requested. This is reasonable because there are now two types of financial assistance available, and this clarifies the funding request made in the application.

The proposed change to item G involves adding the qualifier “if any” to the identification of the sources of the local share of project costs. See item D for a discussion of reasonableness.

The Agency also proposes to add item I which requires additional information from applicants requesting a loan. The information requested is reasonable because the Agency must know how the local unit of government receiving the loan intends to repay it. It is reasonable to require a resolution from each proposed loan sponsor and to require that the sum of the loan requests in the resolutions equal the sum of the total requested project implementation loan because this ensures that the Agency will receive the necessary commitments to ensure repayment of the entire project implementation loan.

Finally, the Agency proposes to add item J which requires an opinion from the project sponsor's attorney stating that it and the participating local units of government have the legal authority to carry out the project. This is reasonable because it protects public funds by reassuring the Agency that the project sponsor and other participants have the authority to implement the project before the project sponsor is awarded funds to do so. This was a requirement of the implementation plan (part 7076.0250), but it is proposed to be deleted from that part. It is reasonable to move this requirement to the application because the project sponsor may change from resource investigation to project implementation, so it is better to require this information from the actual applicant for project implementation.

Part 7076.0160 Rejection of Grant Application.

The Agency proposes to replace "a resource investigation grant or a project implementation grant" with "financial assistance," and replace "grant" with "financial assistance." See Part 7076.0110, subpart 4a for a discussion of reasonableness. The Agency also proposes to replace "grant applicant" with "applicant" throughout this part. This is reasonable because the Agency intends for this part to apply to both grant and loan applicants, and removing the qualifier "grant" from "grant applicant" accomplishes this.

Part 7076.0170 Project Ranking.

Subpart 1. Process of ranking.

The Agency proposes to delete all references to "grant" in this subpart. This is reasonable because the Agency intends for this subpart to apply to loan applications as well as grant applications, and deleting the qualifier "grant" accomplishes this.

Subpart 2. Priority points for resource investigation grant applications.

The Agency proposes to change the allocation of priority points so that a project may receive a whole number from one to ten points for each ranking criterion. Program experience has shown that the existing point allocation system serves to group project scores together rather than create distinct point variations between projects, as was intended. This proposed change is reasonable because it does not change the evaluation, but it will make the funding determination easier for the Agency by creating broader point variations. The Agency also proposes to change "criteria" to "criterion" where appropriate, which is reasonable because it improves grammatical sense. Finally, the Agency proposes to change the ranking criteria used by the Agency and the PCT as discussed in items A and B below.

For item A, the proposed changes to the ranking criteria for the Agency are as follows:

- (1) The Agency proposes removing all reference to the work plan and replacing it with the potential for success based on the project organization and management structure and a broad

coalition of community support and involvement within the project area. This is reasonable for two reasons: first, the proposed modifications to the resource investigation application would result in the work plan being developed after an award was made, so it could not be used as a basis for ranking. Second, program experience has shown that the success of a project is strongly dependent on the organization and management structure of the project sponsor and the level of community support for the project. Because of the nature of nonpoint source pollution, the community support must be broad-based since everyone in the project area affects the quality of the water of concern. The project cannot be successful if the land owners who need to modify their practices do not support the project and will not implement needed changes.

(2) Due to the proposed changes to the resource investigation application, the budget that will be submitted with the application will not be detailed enough to use as a basis for ranking and no work plan will be submitted. The proposed new criterion is reasonable because project experience has shown that preliminary goals and objectives, knowledge of the existing and desired uses of the water of concern and knowledge of the perceived water quality problem or threat are the minimum elements necessary to develop a potentially successful project. The Agency wishes to fund only those projects that have a potential for success, which is reasonable due to the limited funding available.

(4) The Agency proposes combining criteria four and five into a revised criterion five, and replacing criterion four with a new criterion. The proposed new criterion four is an evaluation of the state and regional significance and priority of the water of concern. Due to the limited financial assistance available through the CWPP, the Agency must carefully evaluate each project to determine its priority for funding. The two major categories to evaluate are the potential for project success and the priority of the water of concern. Criterion three is used to evaluate the local priority of the water of concern. It is also important to take a broad view of all of the water resources in Minnesota and their priority and significance. Therefore, it is reasonable to include the proposed criterion four in the ranking criteria for the Agency.

This criterion is also used by the PCT (item B, subitem (3)). Because the Agency is involved in state and regional water quality planning and evaluation efforts, it is able to evaluate state and regional significance and priority. However, it is important to balance the Agency's evaluation with that of the inter-agency PCT, since the PCT brings together a variety of state and regional perspectives. It is not expected that the score assigned a project by the Agency and the PCT would be the same, since the two have different perspectives of state and regional significance and priority. It is reasonable that both the Agency and the PCT evaluate the state and regional significance and priority to ensure a broad perspective on this ranking element.

(5) The proposed combination of the existing criteria four and five into criterion five is reasonable because these criteria are very similar; they both are ultimately focused on the potential for water quality protection or improvement. The proposed criterion five is reasonable as a whole because the Agency does not want to award limited funds to a project with little chance of protecting or improving the quality of the water of concern. The intent of the Agency is that the priority points awarded for the proposed criterion five would be based, in part, on the severity of the water quality impairment or threat as compared to expectations for the least impacted waters in that ecoregion. This is reasonable because a comparison of the quality of the water of concern to that of the least impacted waters in the ecoregion would help the Agency determine the potential for water quality improvement or protection.

For item B, the Agency proposes to modify criterion one for the PCT to indicate that the community support must be broad-based within the project area. See item A, subitem (1) for a discussion of reasonableness.

Subpart 3. Priority points for project implementation grant applications.

The Agency proposes to change “grant” to “financial assistance.” See Part 7076.0110, subpart 4a for a discussion of reasonableness. In addition, the Agency proposes to change the allocation of priority points so that a project may receive from one to ten points for each ranking criteria. See subpart 2 for a discussion of reasonableness. The Agency also proposes to change “criteria” to “criterion” where appropriate, which is reasonable because it improves grammatical sense, and to further modify items A and B as discussed below.

For item A, the Agency proposes to modify the criteria as follows:

(2) The Agency proposes combining the technical feasibility of the proposed BMPs and the expected level of water quality improvement or protection into criterion three, and replacing criterion two with a new criterion. See subpart 2, item A, subitem (4) for a discussion of the reasonableness of the new criterion two.

(3) The proposed combination of criteria two and three into criterion three is reasonable because these criteria are closely related, and combining them eliminates overlap and allows for the proposed new criterion two.

(5) The Agency proposes modifying this criterion to include the consideration of broad-based community support for the project. See subpart 2, item A, subitem (1) for a discussion of reasonableness.

For item B, the proposed change to criterion one involves deleting the original criterion and replacing it with one based on the technical feasibility of the BMPs proposed to be implemented in regards to meeting project goals, and the likelihood of adoption of the BMPs. Some members of the PCT have suggested that the rule be amended to allow their input on technical feasibility as well as on other criteria. Since members of the PCT or their associated agency or department are often involved in the technical aspects of projects, and since it is important that the BMPs proposed to be implemented achieve the stated water quality goals and objectives, it is reasonable to replace criterion one with one that involves a technical evaluation of the BMPs to be implemented based on the project goals and objectives. It is also reasonable that this criterion include an evaluation of the likelihood of BMP adoption since a BMP will not improve or protect water quality unless it is implemented by the necessary individuals or groups.

Subpart 4. Project coordination team.

The Agency proposes to change “a grant” to “financial assistance,” and to replace “grant application” with “application.” See Part 7076.0110, subpart 4a and Part 7076.0160 for a discussion of reasonableness. The Agency also proposes replacing “approved” with “accepted,” which is reasonable because the applications actually are not approved, but rather accepted or rejected (see Part 7076.0160 of the rule). This improves the clarity of the rule. A word change is also proposed to improve grammatical sense.

Part 7076.0180 Allocation of Funding.

Subpart 1. Project continuation amendments.

The Agency proposes to replace “project continuation grant amendments” with “continuation of project implementation,” “project implementation continuation,” or “project continuations.” See Part 7076.0200 for a discussion of reasonableness. The Agency also proposes to modify the last sentence to include both grants and loans, and to remove references to grant amendments. This is reasonable because it allows the Agency to allocate both grant and loan continuations, and it increases flexibility in the type of continuation contract signed by allowing for both grant amendments and new grant or loan contracts.

Subpart 2. Grant fund allocation.

The Agency proposes replacing “90 days of” with “90 days following.” This is reasonable because it does not change the meaning of the subpart, but it provides a clearer statement as to when the determination will be made, which improves the clarity of the rule. The Agency also proposes replacing “project continuation grant amendments” with “project implementation continuations.” See Part 7076.0200 for a discussion of reasonableness. Finally, the Agency proposes adding a sentence indicating that if the Agency is appropriated funding by the Legislature for special purposes, that funding may be set aside for designated use(s). If the Agency receives funding for special purposes it would be more efficient to funnel the funding through an existing program such as the CWPP and target recipients or types of projects rather than create a new program for the funding. It is reasonable to include this provision in the rule to put potential grant recipients on notice of the possibility of set-aside funds.

Subpart 3. Resource investigation; project implementation split.

The Agency proposes adding “of available grant funds” to the subpart heading. This is reasonable because it clarifies that only grant funds can be split between resource investigation and project implementation. See subpart 2 for a discussion of the reasonableness of the proposed change from “90 days of” to “90 days following.” The addition of item C is reasonable because the

appropriation of SRF loan funds increases the total amount of funding available for project implementation and, therefore, the Agency may decide to allocate more grant funds to resource investigation to maintain a desirable mix of project implementation and resource investigation projects. Finally, the word changes made to items A and B are reasonable because of the proposed addition of item C.

Subpart 3a. Loan fund allocation.

The Agency proposes adding this subpart to describe how the loan funding will be allocated each application phase. Since the Agency is appropriated SRF funds by the legislature on a biennial basis, the addition of this subpart is reasonable because it informs potential funding recipients how the Agency will divide the appropriated loan funds between the two years of the biennium.

Part 7076.0190 Selection of Projects for Grant Award.

The Agency proposes deleting “grant.” See Part 7076.0170, subpart 1 for a discussion of reasonableness.

Subpart 1. Ranking.

The Agency proposes to delete the reference to “grant” in this subpart. See Part 7076.0170, subpart 1 for a discussion of reasonableness.

Subpart 2. Projects funded.

The proposed changes involve removing any reference to grants, changing the reference to part 7076.0180, and specifying that a project must receive 50 percent of the available points to be considered for an award. See part 7076.0170, subpart 1 for a discussion of the reasonableness of the first proposed change. The second proposed change is reasonable because the reference to subpart 2 of part 7076.0180 is too specific; it does not include the allocation of loan funds, which is covered in subpart 3a. Finally, the third proposed change is reasonable because it clarifies how the Agency currently interprets its rule should the total available points differ from 100 points.

Subpart 3. Agency decision.

The Agency proposes changing “grants” to “financial assistance.” See Part 7076.0110, subpart 4a for a discussion of reasonableness.

Subpart 4. Timing.

The Agency proposes changing “grants” to “financial assistance.” See Part 7076.0110, subpart 4a for a discussion of reasonableness. See Part 7076.0180, subpart 2 for a discussion of the reasonableness of replacing “90 days of” with “90 days following.” The proposed addition of the last

sentence is also reasonable since this practice is currently followed by the Agency, and adding it to the rule ensures that all applicants know they may request a justification.

Subpart 5. Reapplication.

The Agency proposes to change “a grant” and “grant funds” to “financial assistance,” and to replace “grant applicant” with “applicant.” See Part 7076.0110, subpart 4a and Part 7076.0160 for discussions of reasonableness. A word change is also proposed to maintain grammatical sense.

Part 7076.0200 Project Continuation Grant Amendment

The Agency proposes changing the Part heading to “Continuation of Project Implementation,” and throughout this part the Agency proposes changing “project continuation grant amendment” to “project implementation continuation” or “project continuation.” This is reasonable because the new phrases encompass both grant and loan continuations, and because project continuations may involve signing new contracts or amending the existing contract, depending on the situation.

Subpart 1. Eligibility.

The Agency proposes changing “grant” to “financial assistance” or “financial assistance award.” See Part 7076.0110, subpart 4a for a discussion of reasonableness. Program experience has shown that project continuations are sometimes requested for activities not mentioned in the work plan or implementation plan. The proposed new language is reasonable because it limits project continuation financial assistance to the intended scope of the project, which preserves funds for other projects. The Agency also proposes identifying the length of a project continuation. This is reasonable because it does not change the existing time frame for a project continuation (currently limited to the length of the original grant contract, which is three years with a possible one-year extension), but it does state the time frame explicitly and in terms applicable to both project implementation grants and loans, which improves the clarity of the rule. Note that the time frame for a project continuation is equal to a project implementation period (see Part 7076.0110, subpart 19c for a discussion of the project implementation period). Finally, the addition of the last sentence allows project sponsors wishing to receive funds beyond one project implementation continuation to go through the application process and compete with other applicants. This is reasonable because it allows the Agency to foster long-term nonpoint source pollution control projects while insuring that the projects funded represent the best use of the limited financial assistance available.

Subpart 2. Request.

The proposed changes involve replacing “project continuation grant amendment,” “grant amendment” and “amendment” with “project implementation continuation,” “project continuation” or

“continuation.” See the first paragraph of this part for a discussion of reasonableness. The Agency also proposes to replace “agency” with “commissioner.” See Part 7076.0140 for a discussion of reasonableness. The Agency also proposes to change the phrase “June of the calendar year” to “the June prior to the date,” in reference to when the request must be submitted. This is reasonable because it allows projects that will need continuation funds early in the next year to submit their request in June of the calendar year before the funds are required, rather than having to wait until the following June. This is how the Agency currently interprets its rule, so it is reasonable to make this change to clarify its intent. Finally, the proposed addition of a requirement for the Commissioner to solicit requests for continuations is reasonable because program experience has shown that project sponsors often fail to make these requests by the June deadline. The addition of a solicitation requirement would remind project sponsors to submit their requests, which would help the Agency assure that beneficial projects are not excluded by unintended failures to submit requests.

Subpart 3. Approval.

The Agency proposes to add the qualifier “all or part of” to the approval of the request. This is reasonable because, if the availability of funds caused the Agency to limit the amount of financial assistance available for project implementation continuations, the ability to give partial awards would result in more projects receiving funding. The Agency also proposes replacing “project continuation grant amendment” with “project implementation continuation” or “project continuation.” See the first paragraph of this part for a discussion of reasonableness. The changes to item A are reasonable because this rule now includes the award of both grants and loans, so the addition of “loan” improves the clarity. The addition to item B is reasonable because it provides for the situation where the project continuation is funded through a loan and, therefore, local share is not required. Finally, the addition of item C, and the resulting wording changes to items A and B, is reasonable because program experience has shown that this information is necessary for adequate evaluation of the request for project continuation, and because the Agency intends to limit project continuations to the existing scope of the project (see subpart 1 for a further discussion of reasonableness).

Part 7076.0210 Grant Conditions.

Subpart 1. Amount.

The proposed changes to this part are reasonable because, due to limited funding, the Agency may wish to make offers of partial grants to maximize the number of projects receiving financial assistance.

Subpart 2. Grant Period.

The Agency is proposing to repeal this part. This is reasonable because the information is proposed to be incorporated into subpart 3.

Subpart 3. Grant contract.

The proposed changes to this part involve the addition of the language from subpart 2 and from Part 7076.0220, which are proposed to be repealed. These changes are reasonable because they move all the grant contract information into one subpart, which improves the readability of the rule.

Subpart 5. Audit.

The proposed changes to this part are reasonable because they better identify when, where, and by whom the project sponsor may be audited.

Subparts 6. Annual progress report, Subpart 7. Quarterly update, Subpart 8. Work plan, and Subpart 9. Diagnostic study and implementation plan.

The Agency proposes repealing these subparts. This is reasonable because the information in these subparts has been included in the proposed Part 7076.0225, with some changes. See Part 7076.0225 for a discussion of the reasonableness of the proposed changes.

Subpart 10. Eligible Costs.

The Agency proposes to modify this subpart by adding the word “continuing.” This change is necessary because it indicates that the costs of activities continuing after the end of the grant contract period are not eligible for grant funds. The original language could be misinterpreted to mean that only activities started before or after the grant contract period are ineligible, as opposed to those that started during the grant contract period but were not finished and so are continuing after the end of the grant contract period. This proposed change is reasonable because it improves the clarity of the rule.

Part 7076.0215 Loan Conditions

The Agency proposes adding this part to address the requirements for the loan awards. See part 7076.0100 for a discussion of the reasonableness of adding the loan requirements to this rule. The requirements for the SRF loans are reasonable because they conform to both Title VI of the Federal Clean Water Act and Minn. Stat. §§ 103F.701 through 103F.761 (1994). The reasonableness of each subpart is discussed below.

Subpart 1. Amount.

This proposed subpart identifies how much of eligible project costs loan can finance. It is reasonable because it is consistent with Minn. Stat. § 103F.725, subd. 1(a) (1994).

Subpart 2. Interest rate.

This proposed subpart indicates that the interest rate must be at or below the project implementation loan set rate. See Part 7076.0110, subpart 19b, for a discussion of the reasonableness of the project implementation loan set rate. This proposed subpart also states that the Commissioner will

consider market conditions, the project implementation loan set rate, and the need to maintain the fiscal integrity of the SRF when setting the interest rate for each application cycle. This is reasonable because the Agency must comply with Title VI of the Federal Clean Water Act, which states that the state must preserve the integrity of the SRF, and because this re-occurring task is reasonably delegated from the Agency to the Commissioner. It is reasonable to have the Commissioner set the interest rate each application cycle because market conditions change frequently, and changes in market conditions affect the fiscal integrity of the SRF. Therefore, the interest rate charged on project implementation loans must reflect current market conditions if the Agency is to protect the fiscal integrity of the SRF.

Subpart 3. Second-tier loans.

The Agency proposes adding this subpart to provide for the award of second-tier loans by the loan sponsor to the second-tier borrower. This means that a loan sponsor may use the project implementation loan it is awarded in one of two ways: directly, as payment for eligible costs of project implementation, or as pass-through funding for second-tier loans to borrowers for the costs of eligible project activities. It is reasonable for loan sponsors to offer second-tier loans because this increases the level of funding available for individual nonpoint source pollution control projects on private land, which will result in greater water quality protection and improvement.

Subpart 4. Repayment.

This proposed subpart identifies when a loan sponsor must begin to repay a project implementation loan, how long the repayment period may be, and how often repayment must occur. This is reasonable because it is consistent with Title VI of the Federal Clean Water Act and Minn. Stat. § 103F.725, subd. 1a (1994). The repayment frequency is reasonable because it allows the Agency to receive payments to the SRF in a sufficient frequency to make loans available for other projects without placing an excessive repayment burden on the loan sponsor.

Subpart 5. Operating agreement.

The purpose of the operating agreement is to lay out the roles, responsibilities and authorities of each sponsor for the project. The disbursement of loan funds by the Agency would be conditional on the execution and observance of the operating agreement. The operating agreement is necessary because there is the potential for several local units of government to be involved in a project as loan sponsors, and without this operating agreement it would be difficult to determine the roles and responsibilities of each loan sponsor and the project sponsor. Program experience has shown that a project is more likely to be successful if the roles of the participants are clearly defined. This requirement is reasonable since it helps foster successful CWPP projects.

Subpart 6. Loan contract.

The Agency proposes to include this subpart, which requires that the loan sponsor and the Agency enter into a loan contract before the loan sponsor may receive project implementation loan funds, and indicates what the loan contract must contain. This subpart is reasonable because the loan contract is the document that identifies the terms and conditions of the receipt and repayment of the loan. The loan contract also provides the Agency with the commitment it needs from the loan sponsor to ensure repayment in full of the loan.

Subpart 7. Records.

This proposed subpart requires the project sponsor to maintain project records for three years after the termination of the loan contract. It is reasonable because it ensures that the records will be available for audit or other proceedings, and therefore helps maintain the integrity and accountability of the funding awards.

Subpart 8. Audit.

The Agency proposes to include this subpart, which requires the project sponsor and any loan sponsor to obtain audits in accordance with the Single Audit Act, if applicable. This is reasonable because it conforms with federal audit requirements for entities receiving federal funds (which applies to the SRF funds).

Subpart 9. Eligible costs.

This proposed subpart indicates that the costs of any activities starting before, after, or continuing after the end of the project implementation period established in the loan contract are ineligible for project implementation loan funds. This is reasonable because the project implementation period is used to define the time frame for eligible costs for a project implementation loan.

Part 7076.0220 Grant Contract.

The Agency proposes to repeal this part. This is reasonable because the requirements are proposed to be incorporated into Part 7076.0210, subpart 3.

Part 7076.0225 Project Reporting Requirements.

The Agency proposes creating a new subpart addressing project reporting requirements. Much of the information is moved from Part 7076.0210, subparts 6 through 9, which are proposed to be repealed. It is necessary to include these subparts in a new part because they now apply to both grant- and loan-funded projects. The inclusion of this separate part is reasonable because it results in a clearer and more succinct rule. The subparts are also proposed to be modified as discussed below.

Subpart 1. Annual progress report.

This subpart is proposed to be identical to Part 7076.0210, subpart 6, except for modifying the subpart to apply to both grants and loans. See Part 7076.0100 for a discussion of reasonableness. A new item F is proposed to be added to require an assessment of the monitoring and modeling plan and any revisions. This was a requirement of Part 7076.0210, subpart 8, but it is reasonable to move it to the annual report since it has the same deadline as the report. This ensures that the project sponsor is only required to submit one document, which streamlines the CWPP. Also, a new item G is proposed to be added regarding the annual reporting of the specific BMPs installed and their locations. This is reasonable because it will assist the Agency in maintaining a record of where and what types of BMPs have been implemented, which will help in a determination of the effectiveness of the CWPP.

Subpart 2. Semiannual update.

The Agency proposes to modify this subpart from Part 7076.0210, subpart 7, to require a semiannual update rather than a quarterly update. This is reasonable because it reduces the level of reporting that the project sponsor must do, which simplifies the program. Also, program experience has shown that Agency staff are in regular contact with the project sponsor, so a quarterly update is not necessary.

Subpart 3. Work plan.

The Agency proposes to modify this subpart by removing the requirement for submittal of the revised monitoring and modeling plan, which is proposed to be incorporated into the annual report. See subpart 1 for a discussion of reasonableness.

Subpart 4. Diagnostic study and implementation plan.

The Agency proposes to move this subpart from Part 7076.0210, subpart 9, without any changes.

Subpart 5. Project implementation final report.

This proposed new subpart requires the project sponsor for project implementation to submit a final report once project implementation is completed. This is reasonable because it documents the results of the project as well as any difficulties encountered and plans for the future, and it contains the financial information necessary for the final project review proposed to be required in Part 7076.0285, subpart 3.

Part 7076.0230 Work Plan.

Subpart 1. Requirements.

The Agency proposes to replace “grant(s)” with “financial assistance” throughout this part, except in item A which pertains solely to resource investigation grants. See Part 7076.0110, subpart 4a,

for a discussion of reasonableness. In addition, the Agency proposes changing “monitoring plan” to “monitoring and modeling plan.” See subpart 1a for a discussion of reasonableness. The Agency also proposes to make additional changes to items A and B as discussed below.

For item A, the Agency proposes that the work plan be developed in cooperation with Agency staff after the grant is awarded. This is reasonable because it reflects the changes made to the application requirements, underscores the need for ongoing discussions with the Agency concerning the development and implementation of the project, and strengthens the partnership aspect of the CWPP. The Agency also proposes modifying subitems 1, 6, 7, 8 and 9, and adding new subitems 2, 6 and 9 as discussed below.

(1) The Agency proposes requiring a description of the economic significance of the water of concern. This is reasonable because knowledge of the economic significance will help the local sponsors enlist support for the project.

(2-new) The Agency proposes adding a new subitem (2) that requires a summary and evaluation of existing water quality and land use information. This is reasonable because this information will be important in deciding what needs to be done for the project; it will help the project participants avoid duplicating efforts or setting unrealistic goals.

(6-new) The Agency proposes adding a new subitem (6) requiring a public participation plan. Program experience has shown that the success of a project is dependent on the amount of broad-based community support for and involvement in the project. Therefore, it is reasonable to require a plan for fostering community support and involvement.

(6) and (7) The Agency proposes deleting subitems (6) and (7). This is reasonable because these requirements are proposed to be incorporated into subpart 1a.

(8) The proposed addition of the qualifiers “source and expenditure” is reasonable because it clarifies what types of budgets should be included in the work plan.

(9-new) The Agency proposes adding a new subitem (9) requiring a list identifying the technical assistance needed from the Agency. This is reasonable because it corrects a past CWPP problem of confusion over the technical role needed from Agency staff, and clarifying the help needed will better allow the Agency to determine if it can provide that help and meet the applicants needs.

(9) The proposed changes to the existing subitem (9) are reasonable because they result in a clarification of the information required from each participating local unit of government.

The Agency also proposes to renumber subitems (2) through (9) to reflect the proposed additions, which is reasonable because it improves the readability of the rule.

For item B, the Agency proposes adding a requirement for a public participation plan as a new subitem (6). See the proposed new subitem (6) in item A for a discussion of reasonableness. The

proposed deletion of the existing subitem (6) is reasonable because this requirement is proposed to be incorporated in subpart 1a. The Agency also proposes adding a subitem (8), which is reasonable because it gives the Agency an indication of the amount of technical assistance the project needs. This corrects a past CWPP problem of confusion over the technical role of Agency staff in the project. The proposed changes to the existing subitem (8) are reasonable because they result in a clarification of the information required from each participating local unit of government. Finally, the Agency proposes to renumber the existing subitem (8) to subitem (9), which is reasonable because it reflects the proposed addition of a new subitem (8) and improves the readability of the rule.

Subpart 1a. Monitoring plan.

In this subpart (and in Item B (5)), the Agency proposes changing “monitoring plan” to “monitoring and modeling plan.” This is reasonable because the modeling of pollutant loading and other modeling activities are very important to a CWPP project and should be included in the title of this plan. The Agency also proposes to replace “grants” with “projects,” which is reasonable because it results in this subpart becoming applicable to both types of financial assistance. In addition, the Agency proposes to alter the language to make it clear that the monitoring and modeling plan should be developed in cooperation with Agency staff. This is reasonable because the input of Agency staff will be important to the design of the plan, and this requirement strengthens the partnership aspect of the CWPP. The Agency proposes additional changes to the items of this subpart. These changes include:

- changing the grammatical tense of the items to reflect the language change in the first paragraph.
- for item B, adding language requiring the identification of the methods used to evaluate the water quality information. This is reasonable because it is a broader requirement than item C, which is proposed to be deleted and, therefore, allows the monitoring and modeling plan to be better tailored to each individual project.
- adding language to the existing item D, which is reasonable because modeling is part of the plan.
- adding a new item D, which is reasonable because it consolidates the duplicate requirement (originally in both items A and B) into one area, which improves the readability of the rule.
- for item E, adding a requirement for quality assurance and quality control procedures for data gathering. This requirement is currently found in subpart 1, item A, subitem (7), which is proposed to be deleted. This change is reasonable because this requirement should apply to both resource investigation and project implementation

since data collection occurs in both types of projects. It is reasonable to place this requirement in the monitoring and modeling plan because it is this plan that identifies how data will be collected.

- modifying item F to emphasize that any laboratories used to perform analyses for the project should be certified by the Department of Health and to require that the monitoring and modeling plan contain the specific analytical methods that the laboratories will use for the project. The first change is reasonable because it makes the requirement that laboratories be certified by the Department of Health more evident, which improves the clarity of the rule. The second change is reasonable because this data is necessary for reporting to STORET, which is a CWPP reporting requirement (Part 7076.0225, subpart 5, item D). It is much easier to provide this information at the beginning of the project than to try to determine it after the project has ended and laboratories have closed, moved locations, etc.
- adding a new item G, which is reasonable because it is important for the plan to address how the monitoring and modeling efforts will be integrated to ensure that each part of the project generates useful data.
- adding a requirement to the existing item G for a plan to analyze project area land use data, which is reasonable because such a plan will help the project sponsor and the Agency determine how best to analyze the data and will ensure that this aspect of a project is considered during the planning process.

The proposed re-lettering of items D and G is reasonable because it improves the readability of the rule.

Part 7076.0240 Diagnostic Study.

Subpart 1. General requirements.

The Agency proposes changing the numbering of the citation; this is reasonable because the referenced subpart is proposed to be moved. The proposed changes to items A and B are reasonable because they better describe the information required in a diagnostic study and the source of that information, which improves the clarity of the rule.

Subpart 1a. Exemption.

The Agency proposes to repeal this subpart. The exemption was originally included to allow a project sponsor to omit from the diagnostic study one or more of the requirements listed in subparts 2 and 3. Since the proposed changes to this part involve removing the specific listings, it is reasonable to repeal this exemption.

Subpart 2. Description of water of concern.

The Agency proposes replacing “description of water of concern” with “water of concern.” This is reasonable because the former language led to misunderstandings as to what was required by this subpart, with some project sponsors interpreting it to mean a physical rather than a water quality description. The proposed change should correct this interpretation problem. The Agency also proposes to delete “baseline” from item B. This is reasonable because the phrase “historic baseline” is redundant and therefore the proposed change improves the readability of the rule.

The Agency also proposes to delete the lists of specific parameters to be measured (currently item C) and replace them with new items C, D, and E which state the requirements for the diagnostic study in general terms. Program experience has shown that each project is unique, and accordingly the data elements that should be measured and included in the diagnostic study are different between projects. The proposed changes are reasonable because they indicate the type of information required to be included in the diagnostic study while allowing the project sponsor and other project participants, in consultation with Agency staff, to determine the specific elements to be included in the diagnostic study.

Subpart 3. Description of project area.

The Agency proposes replacing “description of project area” with “project area.” This is reasonable because the former language led to misunderstandings as to what was required by this subpart, with some project sponsors interpreting it to mean only a physical description. The proposed change should correct this interpretation problem. The Agency also proposes to delete much of the specific lists of items to be included in the project area description and replace them with four categories of required information: a physical description, a geologic description, a description of the hydrology, and any other data identified in the work plan. Program experience has shown that each project is unique, and accordingly the elements that should be included in the diagnostic study are different between projects. The proposed change is reasonable because it indicates the type of information required to be included in the diagnostic study while allowing the project sponsor and other project participants, in consultation with Agency staff, to determine the specific elements to be included in the diagnostic study.

Subpart 4. Analysis and assessment.

Program experience has shown projects generally have not focused enough effort on this aspect of the diagnostic study. The proposed changes to this subpart are reasonable because they enhance the assessment part of the diagnostic study, which is crucial to the identification of goals, targeting of

implementation efforts, the development of a good implementation plan and the ultimate success of the project. The Agency proposes the following changes to items A through E:

For item A, the Agency proposes adding explanatory language to improve the clarity of the rule.

The Agency also proposes a new item B, which involves completing a watershed or aquifer recharge area assessment. This new item incorporates the existing items D and E. This new item is reasonable because it emphasizes the assessment aspect of the diagnostic study and indicates the specific elements that must be addressed in the assessment. This improves the clarity of the rule.

For the existing item B, the Agency proposes to add a phrase requiring that specific water quality goals be identified and that, for lake projects, an in-lake phosphorus goal be defined relative to the ecoregion phosphorus criteria. The ecoregion phosphorus criteria provide a regional framework upon which specific in-lake phosphorus goals can be based. They are presented in Table 1. These criteria were developed by first analyzing the regional differences in the total phosphorus concentration, chlorophyll-*a* concentration, Secchi disk transparency, lake morphometry, and watershed characteristics of minimally-impacted reference lakes (Heiskary & Wilson 1989, 1990 [exhibits 7 and 8, respectively]). In addition, an analysis was done of lake user perception data, which identified regional (ecoregion) trends in these data. Finally, a literature review was done to provide additional information on how regional user perceptions and water quality data relate to lake trophic status and the most sensitive uses of lakes, such as contact recreation and use as a cold-water trout fishery. This process resulted in the development of the ecoregion phosphorus criteria for use in protecting the most sensitive uses of lakes in each ecoregion. A lake with a total phosphorus concentration below the ecoregion phosphorus criterion will most likely support the most sensitive use of the water body. For lakes such as these, it is important to determine what efforts are needed to maintain the relatively low phosphorus concentrations and, therefore, maintain the most sensitive uses. For a lake with a total phosphorus concentration above the ecoregion criterion, the criterion can serve as an appropriate goal on which to focus restoration efforts. The in-lake phosphorus goal for a specific lake may not be equal to the ecoregion criterion due to lake- or watershed-specific conditions, but it is important to note the difference between the goal and the criterion and the reasons for the difference. It is reasonable to require that the ecoregion phosphorus criteria be considered when setting goals for a lake because this helps ensure that a realistic goal is set, given the ecoregion and the desired use of the lake.

Table 1. Most sensitive lake uses by ecoregion and corresponding phosphorus criteria (from Heiskary and Wilson 1990).

<u>Ecoregion</u>	<u>Most Sensitive Uses</u>	<u>P Criteria</u>
Northern Lakes and Forests	<ul style="list-style-type: none"> • drinking water supply • cold water fishery • primary contact recreation and aesthetics 	<ul style="list-style-type: none"> < 15 µg/L < 15 µg/L < 30 µg/L
North Central Hardwood Forests	<ul style="list-style-type: none"> • drinking water supply • primary contact recreation and aesthetics 	<ul style="list-style-type: none"> < 30 µg/L < 40 µg/L
Western Corn Belt Plains	<ul style="list-style-type: none"> • drinking water supply • primary contact recreation and aesthetics -- (full support) (partial support) 	<ul style="list-style-type: none"> < 40 µg/L < 40 µg/L < 90 µg/L
Northern Glaciated	<ul style="list-style-type: none"> • recreation and aesthetics (partial support) 	<ul style="list-style-type: none"> < 90 µg/L

The proposed addition to item C is reasonable because it is important to consider the characteristics of the project area when determining project objectives, and to set objectives for the priority management areas identified in the diagnostic study.

Finally, the Agency proposes re-lettering items B and C to reflect the addition of a new item B. This is reasonable because it improves the readability of the rule.

Part 7076.0250 Implementation Plan.

The Agency proposes changing the numbering of the citation; this is reasonable because the referenced subpart is proposed to be moved. The Agency also proposes to modify items A, B, E, and F; add a new item A; and re-letter items A through H. The intent of these changes is to make the implementation plan requirements more flexible to accommodate different types of projects. The following example indicates a situation where more flexible requirements for the implementation plan would be desired:

For a project on a large river such as the Le Sueur River, it is unrealistic to expect that a specific implementation plan, including an identification of BMPs and a schedule for implementation of the BMPs, could be developed based solely on a diagnostic study done on the river itself. However, it would be possible to identify categories of BMPs and develop a schedule for further project activities. In large river projects, a resource investigation could be done on the large river itself, resulting in the identification of priority management areas on which to focus attention, water quality goals for the river, categories of BMPs to consider, and a schedule for further project activities. Next, a local unit of government in each priority management area could apply for a resource investigation grant to perform a watershed assessment of the priority management area and develop an implementation plan that identifies BMPs to be

implemented and includes an implementation schedule and budget. Finally, the local unit of government in the priority management area could apply for project implementation financial assistance to implement the specific plan developed in the second step. It is important to note that a project would only be awarded project implementation financial assistance if it had an approved implementation plan that contained the identification of BMPs to be implemented, a proposed schedule for implementation, and an estimated budget for implementation.

The proposed changes to this part are reasonable because they allow for the flexibility to accomplish a project like the example used here and other projects not mentioned. This added flexibility enhances the ability of the CWPP to fund nonpoint source pollution control or abatement projects of varying scale. Finally, the Agency proposes deleting item I since this information is proposed to be required in the project implementation application. See Part 7076.0150, subpart 3, item J for a discussion of reasonableness.

Part 7076.0260 Diagnostic Study and Implementation Plan Approval.

Subpart 3. Resubmittal.

The proposed addition of the phrase “according to this part” is reasonable because it clarifies the rule by indicating how a resubmitted diagnostic study and implementation plan would be reviewed.

Part 7076.0270 Best Management Practice Evaluation.

The Agency proposes modifying item E to include a determination of the suitability for a particular priority management area. This is reasonable because the proposed modification of the implementation plan allows for the identification of categories of BMPs to be implemented, which would require the consideration of priority management areas rather than specific sites. The Agency also proposes to add an item F that requires an evaluation of the likelihood of adoption of the BMP. This is reasonable because a proposed BMP will not protect or improve water quality unless the necessary individuals or groups implement it.

Part 7076.0280 Grant Payments.

Subpart 2. Second payment.

The Agency proposes to change the numbering of the reference, since the referenced part is proposed to be moved.

Subpart 7. Payment option.

The Agency proposes to repeal this subpart. This is reasonable because there are no projects currently using this payment option, and it is not anticipated that any projects will request this option in the future since it is limited to those projects awarded a grant before October 1, 1990.

Part 7076.0285 Loan Payments.

Subpart 1. Payments.

This proposed subpart indicates how the loan payments will be made. It is reasonable because it complies with requirement in Title VI of the Federal Clean Water Act which states that payments from the SRF must only be made for incurred costs.

Subpart 2. Mid-project review and budget adjustment.

This proposed subpart is reasonable because it provides the Agency with a means of ensuring that project implementation loan funds are being used for eligible costs of the project identified in the approved work plan, and that the conditions of the loan contract are being met.

Subpart 3. Final project review.

The Agency proposes to require that each project undergo a final project review. This is reasonable because it allows the Agency to determine if the project implementation loan funds were used for eligible project costs, to determine if the work plan was completed in an acceptable manner, and to verify that the loan contract terms are being met. This proposed subpart also provides for the recovery by the Agency of funds spent on ineligible project costs. This is reasonable because it makes the program more publicly accountable. Moreover, funds used on ineligible costs should be returned to the Agency to be used for the eligible costs of other projects.

Part 7076.0290 Grant Recission.

The Agency proposes to replace “grant recission” with “recission of financial assistance.” This is reasonable because it allows for this part to pertain to both grants and loans. Also, the Agency proposes adding the phrase “and seek repayment of” to indicate that the Agency can both rescind a financial assistance contract and try to recover the money spent on the project if the project is not being completed in accordance with the contract. This is reasonable because if the project sponsor misuses CWPP funding, the Agency should be able to recover that funding and use it to fund projects that will be successful. The Agency also proposes replacing “grant” with “financial assistance.” See Part 7076.0110, subpart 4a, for a discussion of reasonableness. Finally, the Agency proposes adding “or loan contract,” which is reasonable because it indicates that violation of either contract could lead to recission of financial assistance and, therefore, this part becomes applicable to both grant and loan awards.

VI. CONSIDERATION OF ECONOMIC FACTORS

In exercising its powers, the Agency is required by Minn. Stat. § 116.07, subd. 6 (1994), to give due consideration to economic factors. The statute provides:

In exercising all its powers, the pollution control agency shall give due consideration to the establishment, maintenance, operation, and expansion of business, commerce, trade,

industry, traffic and other economic factors and other material matters affecting the feasibility and practicability of any proposed action, including, but not limited to, the burden in a municipality of any tax which may result therefrom, and shall take or provide for such action as may be reasonable, feasible, and practical under the circumstances.

In proposing the amendments to Minn. R. ch. 7076, the Agency has considered the economic impacts the revisions would have. The addition of the administrative requirements for the award of loans from the SRF will increase the amount of funding available through the CWPP. The loans do need to be repaid, but the below-market interest rate and long repayment period (up to 20 years) help to reduce the impact of a loan on the participating local government. Under the proposed amendments, the CWPP continues to be a voluntary program that makes no demands on local units of government that do not wish to participate or on businesses in the areas where projects are conducted. Projects will continue to benefit local units of government and local businesses by bringing money into the area for supplies and work that is needed for project completion. Therefore, the Agency concludes that the proposed rule amendments have a positive economic impact on participating local units of government and associated businesses.

VII. SMALL BUSINESS CONSIDERATIONS IN RULEMAKING

Minn. Stat. § 14.115, subd. 2 (1994), requires the MPCA to consider a proposed rule's effect on small businesses. The Agency has determined that the proposed rule amendments will not have any direct adverse effects on small businesses, but may have some positive indirect effect insofar as project monies are spent on work provided by small businesses.

VIII. IMPACT ON AGRICULTURAL LANDS AND FARMING OPERATIONS

Minn. Stat. § 14.11, subd. 2 (1994) requires that if the Agency determines that a proposed rule may have a direct and substantial adverse impact on agricultural land in the state, the Agency must comply with specified additional requirements. Minn. Stat. § 116.07, subd. 4 (1994), requires that before the Agency adopts or repeals rules that affect farming operations, the Agency must provide a copy of the proposed rule change and a statement of the effect of the rule change on farming operations to the Commissioner of Agriculture for review and comment and hold public meetings in agricultural areas of the state.

The proposed rule amendments will not have a direct adverse impact on agricultural land or farming operations in the state. Participation in the CWPP is not mandatory. In areas where projects are conducted, the program will continue to improve agricultural lands because BMPs implemented under the program have secondary benefits such as improving soil productivity and limiting soil erosion.

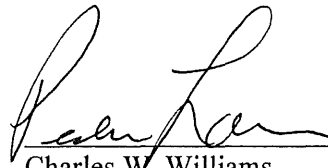
IX. COSTS TO LOCAL PUBLIC BODIES

Minn. Stat. § 14.11, subd. 1 (1994) requires the Agency to include a statement of the rule's estimated cost to local public bodies if the rule would have a total cost of over \$100,000 to all local public bodies in the state in either of the two years immediately following adoption of the rule. Participation in the CWPP by local public bodies is not mandatory. Adoption of the proposed amendments will not require the expenditure of public monies by local public bodies unless a body elects to participate in the CWPP.

X. CONCLUSION

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

dated: June 5, 1995



Charles W. Williams
Commissioner

EXHIBIT LIST

1. Minnesota Stat. §§ 103F.701 through 103F.761 (1994).
2. Regulations of the United States Environmental Protection Agency, 40 CFR Part 35, Subpart K.
3. Minn. Stat. §§ 446A.01 through 446A.21 (1994).
4. Minn. R. pts. 7380.0400 through 7380.0480 (1993).
5. United States Environmental Protection Agency Memorandum "Final Guidance on the Award of Nonpoint Source Grants Under Section 319 (h) of the Clean Water Act for FY 1994 and Future Years," June, 1993.
6. "Region V's Guidance on Section 319 Work Plan Submittals."
7. Heiskary, S. A., and C. B. Wilson. 1989. The regional nature of lake water quality across Minnesota: an analysis for improving resource management. *Journal of the Minnesota Academy of Science*. 55(1)71-77.
8. Heiskary, S. A. and C. B. Wilson. 1990. Minnesota Lake Water Quality Assessment Report. Minnesota Pollution Control Agency. St. Paul, Minnesota. 95 pp.

