

STATE OF MINNESOTA
MINNESOTA POLLUTION CONTROL AGENCY

IN THE MATTER OF THE PROPOSED REVISIONS
TO RULES GOVERNING FINANCIAL ASSISTANCE
FOR WASTEWATER TREATMENT SYSTEMS,
MINN. R. 7077.0100 TO 7077.0650

STATEMENT OF NEED
AND REASONABLENESS

I. Introduction

The Minnesota Pollution Control Agency (MPCA) is proposing to make changes to existing rules, Minn. R. ch. 7077, which govern its financial assistance programs for the construction of municipal wastewater treatment systems. The rules currently allow for financial assistance for municipal wastewater treatment systems, but do not allow for assistance for municipal storm water projects. The MPCA is proposing to amend Minn. R. ch. 7077 to provide financial assistance for municipal storm water projects, as well as for municipal wastewater treatment systems.

II. Statement of Agency's Statutory Authority

The MPCA's general authority to adopt and amend rules concerning water pollution is set forth in Minn. Stat. § 115.03, subd. 1 (1994). This statute provides, in relevant part:

The agency is hereby given and charged with the following powers and duties:

(e) To adopt . . . rules . . . under such conditions as it may prescribe, in order to prevent, control or abate water pollution, or for the installation or operation of disposal systems or parts thereof, or for other equipment and facilities

The MPCA's proposed amendments to Minn. R. ch. 7077 concern the prevention, control and abatement of water pollution, as well as the installation of operation of disposal system or other facilities. The rulemaking is therefore authorized by Minn. Stat. § 115.03, subd. 1 (1994).

The MPCA's specific authority to adopt amendments governing financial assistance for storm water projects is set forth in Minn. Stat. § 446.07 (1994). Subdivision 1 of Minn. Stat. § 446A.07 establishes a water pollution control revolving fund to provide loans for the purposes and costs authorized under Title VI of the Federal Water Pollution Control Act (FWPCA), 33 U.S.C. §§ 1381-1387. Subdivision 11 of Minn. Stat. § 446.07 authorizes the MPCA to adopt rules for the loan program. It provides: "[t]he agency shall adopt rules relating to . . . matters that the agency considers necessary for proper loan administration." Thus, the MPCA is authorized by Minn. Stat. § 446A.07 to amend its rules to provide loans for municipal storm water projects.

III. Statement of Need

The Minnesota Administrative Procedure Act requires the MPCA to make an affirmative presentation of facts establishing the need for and reasonableness of proposed rules and proposed rule amendments. Minn. Stat. §§ 14.14, subd. 2 and 14.23 (Supp. 1995). In general terms, this means that the MPCA must set forth the reasons for its proposal and the reasons must not be arbitrary or capricious. However, to the extent that need and reasonableness are separate, need has come to mean that a problem exists that requires administrative attention and reasonableness means that the solution proposed by the MPCA is appropriate. The need for the proposed amendments to Minn. R. ch. 7077 is two-fold.

First, the Minnesota Legislature has instructed the MPCA to conform its definition of loan eligible activities to the “activities . . . required under the [FWPCA]”.¹ The MPCA understands these activities to mean “treatment works” as defined in section 212 of the FWPCA (33 U.S.C. § 1292). The term treatment works includes municipal projects designed to control and treat storm water runoff. Existing Minn. R. ch. 7077 does not include as loan eligible project to control and treat storm water runoff. The MPCA therefore needs to amend ch. 7077 to make these projects loan eligible.

Second, existing Minn. R. ch. 7077 includes requirements for two MPCA grant programs -- the corrective action grant program and the capital cost component grant program. Each of these state funded programs were part of the Federal Grants Program. Minn. Stat. 116.181 and Minn. Stat. 116.18, subd. 3b. The Federal Grants Program for these projects no longer exists. The MPCA therefore needs to amend Minn. R. ch. 7077 to remove the references to these now defunct funding programs.

IV. Statement of Reasonableness

The Minnesota Administrative Procedure Act requires the MPCA to make an affirmative presentation of facts establishing the reasonableness of proposed rules and proposed rule amendments. Minn. Stat. §§ 14.14, subd. 2 and 14.23 (Supp. 1995). “Reasonableness” means that there is rational basis for the Agency's proposed action. Generally, the proposed amendments to the rules is reasonable because they make it possible for the MPCA to provide state revolving fund loans to municipalities for storm water projects. The reasonableness of each of the specific proposed amendments is discussed below.

7077.0100 PURPOSE

Existing Minn. R. 7077.0100 lists five municipal wastewater treatment system programs that are eligible for financial assistance under the rules. The MPCA proposes to delete two of these, item

¹ Specifically, the Minnesota Legislature amended Minn. Stat. § 446A.07, subd. 11 as follows: “The agency shall adopt rules relating to the procedure for preparation of the annual intended use plan and other matters the agency considers necessary for proper loan administration. Eligible activities are those required under the Federal Water Pollution Control Act of 1987, as amended.” 1994 Minn. laws ch. 632, Art. 2, Section 48. Underlining shows language adopted in 1994.

C (which concerns the corrective action grants program) and item D (which concerns the capital cost component grants program). The MPCA's reasons for proposing to repeal these programs is explained in the discussion below concerning Minn. R. 7077.0500-7077.0650. The deletion of these two programs will require the relettering of item E to item C.

7077.0105 DEFINITIONS

The MPCA proposes to add four new definitions to Minn. R. ch. 7077 and to amend seven existing definitions. The reasons for these revisions are as follows.

Subpart 8a. "Best management practices." Under the proposed amendments to Minn. R. ch. 7077, the MPCA will make financial assistance available for storm water project plans and their implementation. A new definition for "storm water project plan" is proposed in Minn. R. 7077.0105, subp. 41c. The definition refers to plans that, among other things, identify the best management practices to be implemented. To clarify what it means by best management practices, the MPCA proposes to add a definition of the term. The definition proposed by the MPCA is reasonable because it is a well understood term of art; already defined in Minn. Stat. § 103F.711, subd. 3.

Subpart 18a. "Initiation of operation." Under existing Minn. R. 7077.0105, subp. 18(a), the term "initiation of operation" only refers to wastewater treatment systems. Because the MPCA is proposing to amend Minn. R. ch. 7077 to provide for financial assistance for storm water treatment systems too, the MPCA proposes to amend the term "initiation of operation" so it will also apply to storm water treatment systems. See discussion below concerning proposed Minn. R. 7077.0287 and 7077.0288 for a further discussion of the use and reasonableness of this term in the proposed amendments.

Subpart 19. "Intended Use Plan." Under existing Minn. R. 7077.0105, subp. 19, the term "intended use plan" only refers to wastewater treatment systems. Because the MPCA is proposing to amend Minn. R. ch. 7077 to provide for financial assistance for storm water treatment systems too, the MPCA proposes to amend the term "intended use plan" so it will also apply to storm water treatment systems. See discussion below concerning proposed Minn. R. 7077.0278 for a further explanation of the use and reasonableness of this term in the proposed amendments.

Subpart 24. "Municipality." This term is found throughout the existing rule to provide the basis of eligible loan recipients and to provide their basic responsibilities. As it is currently defined, municipality refers to the Metropolitan Waste Control Commission. During its 1994 legislative session integrated the Metropolitan Waste Control Commission into the Metropolitan Council, and changed its name to the Metropolitan Council Environmental Services. 1994 Minn. laws ch. 628, Art. 2, Sec. 4, subd. 3. The MPCA proposes to amend the definition of municipality to reflect this organizational change. Doing so is reasonable because it makes the rules more clear and current.

Subpart 25. "Need." Existing Minn. R. 7077.0272, subp. 2, item A states that facilities plans for wastewater treatment systems must include, among other things, a complete description and

evaluation of the existing system and problems that need correction. The term need is defined in existing Minn. R. 7077.0105, subp. 25. Because the MPCA is proposing to amend Minn. R. ch. 7077 to provide for financial assistance for storm water treatment systems too, the MPCA proposes to amend the term “need” so it will also apply to storm water treatment systems. The MPCA proposes to amend the definition of need so that, for storm water treatment systems, the MPCA can rely on the determination in a local water plan, an area-wide assessment of the watershed, NPDES permit requirements, or other water quality based reason as the basis for concluding a project is a priority. It is reasonable to provide a means for loan applicants for storm water projects to demonstrate the reasons and priorities for their project and, since these existing plans and analyses are likely to have studied the project and its problems, they are likely to provide useful data, including a local perspective. It is therefore reasonable for the MPCA to base its review of these data and other information. See discussion below concerning proposed Minn. R. 7077.0105, subp. 41c and 7077.0277 for a further explanation of the use and reasonableness of this term in the proposed amendments.

Subpart 31. “Performance certification.” Under existing Minn. R. 7077.0105, subp. 31, the term “performance certification” only refers to wastewater treatment systems. Because the MPCA is proposing to amend Minn. R. ch. 7077 to provide for financial assistance for storm water treatment systems too, the MPCA proposes to amend the term “performance certification” so it will also apply to storm water treatment systems. The MPCA also proposes to delete the cross reference to part 7077.0255 because that rule part was repealed in 17 SR 3097 and to delete the cross reference to part 7077.0440 and replace it with a cross reference to 7077.0288 since part 7077.0440 was renumbered in a prior rulemaking to 7077.0288. It is reasonable to make these housekeeping correct the cross references in the rules.

Subpart 33a. “Project priority list.” The MPCA proposes housekeeping amendments to the definition of project priority list, found at Minn. R. 7077.0105, subp. 33a. As it is now written, part 7077.0105, subp. 4a defines project priority list by cross referencing parts 7077.0115 to 7077.0197. But in 1993 when the rules were amended, the performance standards were expanded so that they are now found in parts 7077.0115 to 7077.0197 and part 7077.0145 was repealed in 17 SR 3097. It is reasonable to amend the definition of project priority list to reflect past revisions made to the rule.

Subpart 33b. “Project service area.” Under existing Minn. R. 7077.0105, subp. 33b, the term “project service area” only refers to wastewater treatment systems. Because the MPCA is proposing to amend Minn. R. ch. 7077 to provide for financial assistance for storm water treatment systems too, the MPCA proposes to amend the term “performance certification” so it will also apply to storm water treatment systems.

Subpart 41b. “Storm water.” The MPCA proposes to add a definition of storm water to Minn. R. ch. 7077 to clarify what the MPCA means when it refers to storm water throughout the rule. The proposed definition is reasonable because it is the definition given to it in 40 CFR Part 122.26 (b)(13) and therefore allows the MPCA to conform its rules to the federal program.

Subpart 41c. “Storm water project plan.” The MPCA proposes to add a new definition of storm water project plan. This term is proposed to be used in proposed new Minn. R. 7077.0277,

which sets out the contents for the storm water project plan. The proposed definition is reasonable because it refers to the information required to demonstrate that a project has been appropriately planned to achieve the desired water quality benefits.

Subpart 41d. "Storm water treatment system." The MPCA proposes to add a new definition of storm water treatment system to clarify what the MPCA means by the term as it used throughout the proposed revisions. The proposed definition is reasonable because it is the definition given to "treatment works" in section 212, 2B of the Clean Water Act of 1987, 33 U.S.C. 1292, 2B.

7077.0115 PROJECT PRIORITY LIST

Subp. 1. In order to receive financial assistance from the state revolving fund under Minn. R. ch. 7077, a municipal project must be on a project priority list developed and maintained by the MPCA Commissioner under part 7077.0115. As it currently exists, however, Minn. R. pt. 7077.0115, subp. 1 calls for the MPCA Commissioner to list and prioritize only municipal wastewater treatment systems. Because the MPCA wants to be able to provide assistance under ch. 7077 for storm water treatment projects as well, the MPCA proposes to amend 7077.0115, subp. 1 to include storm water treatment systems as projects to be included on the priority list.

Subp. 3. The MPCA proposes to amend Minn. R. pt. 7077.0115, subp. 3, which requires municipalities that want a project included on the priority list to submit a written request to that effect. As it currently exists, subp. 3 only permits municipalities to request that wastewater treatment systems be listed. The MPCA proposes to amend this subpart to make it clear that municipalities may also request that storm water treatment systems be listed.

The MPCA also proposes to add the modifier "wastewater treatment" before the word "project" so that the last sentence before the items in subpart 3 will read: "Unless a municipality requests that its wastewater treatment project be placed on the list with total points equal to one, information must be submitted according to items A to C." Items A to C in the existing rule only relate to wastewater treatment projects and now that storm water treatment projects are being added to pt. 7077.0115, it is necessary and reasonable to amend the rule to make it clear which items apply to which projects.

Subp. 4. Minn. R. pt. 7077.0115, subp. 4 provides how the MPCA Commissioner decides which projects to include on the MPCA's priority list. The MPCA proposes to renumber Item C so that it becomes Item D and to add a new Item C to explain how the MPCA will decide placement and priority for the storm water treatment projects. Under the proposed amendments, storm water treatment systems will be given a minimal listing of one point if the project is based on acceptable engineering practices, consists of permanent structures and addresses water quality needs. Reliance on "acceptable engineering practices" is reasonable here since storm water projects, unlike wastewater projects, are not permitted or reviewed by the MPCA. If the Commissioner does not find that the project includes acceptable practices it cannot be listed on the priority list. It is reasonable to assure that the project consists of permanent structures to assure the best, most long term use of limited state funds. It is reasonable to require the project to address water quality need because the goal of the state revolving fund program is to improve water quality (not to address water quantity or other possible meritorious issues.) Finally, it may

be helpful to note that in the history of the state revolving fund loan program administered under the Ch. 7077 rules, sufficient funds have been available for all eligible projects. The MPCA therefore does not expect the minimal priority ranking of one to be a limiting factor.

7077.0277 STORM WATER PROJECT PLAN AND
7077.0278 INTENDED USE PLAN

Existing Minn. R. 7077.0278 requires the MPCA to adopt annually an intended use plan identifying the projects proposed to be funded during the fiscal year. Subpart 3 of part 7077.0278 establishes requirements that projects must meet to be placed on the intended use plan. Subpart 3, item C now provides that before it will be placed on the intended use plan for a construction loan, a municipality must first receive the MPCA Commissioner's approval of its facilities plan. However, only wastewater treatment facilities are required to receive approval of facilities plans. The MPCA proposes to amend pt. 7077.0278 to provide for a different approval for construction loans for storm water projects. It is reasonable to establish different approval requirements for storm water projects to assure technical and administrative feasibility. The specific requirements cited in amended 7077.0278 are contained in a proposed new part of the rules, pt 7077.0277.

Proposed new part 7077.0277 specifies the requirements for a storm water project plan. The reasonableness of each subpart of proposed 7077.0277 is described below.

First, subpart 1 provides that the plan must be prepared and signed by a professional engineer registered in the state of Minnesota. The storm water project plan is designed to evaluate the existing storm water need and treatment systems and to determine the best alternative for the existing situation. The preparation by a professional engineer is reasonable because it will assure that the analyses is prepared by a person duly qualified to undertake the review.

Second, subpart 2 requires that the plan must describe the storm water collection system, storm water treatment system if in existence, and the need in the service area; must describe the project service area including the number of acres served, the estimated flow and description of the watershed; must describe the location of the project, the best management practices to be implemented, the estimated cost of construction, annual operation and maintenance and equipment replacement costs; must contain a long term maintenance plan and must estimate the reduction in pollutants expected from the project. Describing the existing collection and treatment systems and the need in the service area is reasonable because it will allow analysis of what the existing system is and how the need, in relation to the existing system, will determine the best project alternative. Providing information in the storm water project plan on the service area, estimated flow and description of the watershed is reasonable because it provides for the analysis of the existing water condition. This analysis of water conditions along with the analysis of the existing collection and treatment systems, in relation to the need, will allow for a comprehensive look at possible and best alternatives. The storm water project plan must also include a description of the best management practices to be implemented, the location of the project and the estimated cost of construction. This is reasonable because it will assure the land is available and the best management practices will improve water quality for a reasonable cost. The cost of the project will also be used to determine whether the financial assistance can be

obtained. The storm water project plan includes annual operation and equipment replacement costs because it allows the project sponsors to plan for the costs of not only implementing but also maintaining the best management practices implemented. It will also require a long term maintenance plan which is reasonable because it will allow the proper maintenance for the investment of the project. Lastly, the requirement of the estimated reduction in pollutants is reasonable because it allows the projects to plan for water quality improvement. In sum, these requirements are reasonable because they provide for the evaluation of storm water problems and the water quality benefit to be achieved by implementing solutions.

Third, additional items must be submitted to the Commissioner. Specifically, the municipality must submit a complete list of addresses used for public notice purposes, a summary of the information presented and public comments received at the public hearing required under this section, a formal resolution adopting the storm water project plan, a list of ordinances or intermunicipal agreements necessary for the success of the project, a completed environmental worksheet, and a certification from the appropriate county or watershed management organization assuring that the project is consistent with the local water plan. These items are listed as supplemental information because they are administrative requirements and a storm water project plan can be fully evaluated for technical sufficiency without this information. A list of addresses is reasonable to assure an adequate public notice. A list of comments and responses is reasonable to assure all of the comments from the public are heard, recorded and adequately addressed. A formal resolution adopting the storm water project plan is reasonable to assure that this is the plan the municipality has agreed upon. A list of all city ordinances and inter-municipal agreements is reasonable because, when there are ordinances to be passed or two or more municipalities involved in a project, all of the entities, including those affected by ordinances, must understand their roles and responsibilities in the project. This will allow for entities to understand before the project is underway. A complete environmental worksheet is reasonable because it will assure that the project has received appropriate environmental review. And requiring certification from the local water planners is reasonable because it will assure that the project is a priority for improving water quality locally.

Fourth, before a storm water project plan can be adopted by the municipality, a public hearing must be held to discuss the proposed project. The storm water project plan must be made available for review by interested persons before the date of the hearing. At the hearing, information must be presented on the alternatives considered, reasons for choosing the selected alternative and a description and location of the proposed project site. It is reasonable to hold a public meeting to allow for public comment and reaction to the project. Making the storm water project plan available for review will allow those interested the opportunity to become familiar with the project and requiring the presentation of information at the hearing will help assist the public in better understanding the project.

Please note that the storm water project plan was developed to separate the planning and design requirements of the storm water and wastewater projects. Being a regulated activity, the wastewater treatment system projects are in need of a higher degree of review of planning and design documents than the non-regulated storm water treatment projects. The storm water project plan, and its supplements are to assure that all technical considerations are included and that the administrative requirements are completed without the need of resource intensive review.

7077.0280 CERTIFICATION SUBMITTAL REQUIREMENTS

Existing Minn. R. 7077.0280 sets out the requirements that must be met before the MPCA Commissioner will certify a project under Minn. R. 7077.0281 as loan eligible. The MPCA proposes to make most of these requirements applicable to storm water projects as well.

Subpart 2. The MPCA proposes to extend all the requirements for wastewater treatment planning projects to storm water project plans as well. This is reasonable because a description of the scope of the work and associated estimated costs of the planning process as well as a schedule for completion of a planning document will be adequate for the storm water projects as well as the wastewater projects.

Subpart 3. The MPCA proposes to extend all the requirements for wastewater treatment design projects to storm water project plans as well. This is reasonable because a schedule for the completion of plans and specifications will be adequate for the storm water projects as well as the wastewater projects.

Subpart 4. The MPCA proposes not to extend the requirements for wastewater treatment construction projects to storm water project plans. Instead, the MPCA proposes to require the following information for storm water construction projects. It is reasonable not to extend the wastewater treatment construction project certification requirements to storm water construction projects because the wastewater facilities and their projects require review of plans and specifications as well as NPDES permit issuance whereas the storm water facilities and their projects do not have these requirements (except the communities over population greater than 100,000 who require NPDES permits). The proposed certification submittal requirements for storm water projects are a project schedule and a copy of finalized and executed intermunicipal agreements necessary for the successful implementation and administration of the project. It is reasonable to require a project schedule because it will be applicable for the storm water projects as well as the wastewater projects. It is reasonable to require finalized and executed intermunicipal agreements necessary for the successful implementation and administration of the project because it will be applicable for the storm water projects as well as the wastewater projects.

7077.0287 COMPLETION ON CONSTRUCTION AND INITIATION OF OPERATION OF STORM WATER TREATMENT SYSTEMS

The MPCA proposes Minn. R. pt. 7077.0287 as a new part in order to give storm water treatment projects separate completion of construction and initiation of operation requirements. These requirements are proposed to be different from those for wastewater treatment projects. Wastewater treatment projects require both pre-final and final inspections before initiation of operation can occur. In proposed Minn. R. 7077.0287, the MPCA does not refer to inspections, since the inspection requirements are only applicable to regulated wastewater treatment projects. The MPCA therefore proposes not to refer to inspections in proposed Minn. R. 7077.0287, but to simply define the date of initiation of operation as the first day of the one year project

performance evaluation period. This definition is reasonable due to the fact that the wastewater treatment projects require pre-final and final inspections and the storm water projects do not. The requirements under the initiation of operation should reflect these differences.

7077.0288 PROJECT PERFORMANCE

The MPCA proposes a new subpart, Minn. R. 7077.0288, subpart 2, to define what the project performance of a storm water project will be measured upon. The specific performance standards are designed to evaluate whether the project performs as planned and designed. Item A asks for a certification that the project has been completed according to the storm water project plan. This will assure that the project has not deviated from the originally approved plan. It also asks for the certification that the state revolving fund monies are only used for work directly associated with storm water treatment activities. This assures that the funds have been spent for eligible items only. Certification that all outlet pipes are stabilized and that a long term maintenance manual, provided by the project engineer, will assure that the project is both working properly and will be maintained. Item B requires an evaluation report which describes the project's performance with respect to its purpose as identified in the storm water project plan. These requirements will allow for a proper evaluation on performance of the project.

7077.0290 COMMISSIONER'S NOTIFICATION OF PERFORMANCE

The MPCA proposes housekeeping amendments to the Minn. R. 7077.0290. As it is now written, the rule contains cross references to part 7077.0288, subpart 1 which was repealed in prior amendments (15 SR 288). It is reasonable to make these housekeeping amendments to reflect past revisions made to the rule.

7077.0500-7077.0650 CORRECTIVE ACTION GRANTS AND CAPITAL COST COMPONENT GRANTS PROGRAMS

The MPCA is proposing to repeal the above sections. The corrective action grants program has been a part of the independent state grants program. The program was developed to correct the problems with the facilities which were originally funded by federal money. Since there is no longer federal grant money available and there are no longer any projects that are being funded, it is reasonable to repeal the rules for the grants program. Similarly, the capital cost component grants program was developed to help fund the privatization of facilities. The grant money is no longer available for this program. It is therefore also reasonable to repeal the rules for this grants program.

V. CONSIDERATIONS OF ECONOMIC FACTORS

In exercising its powers, the Agency is required by Minn. Stat. § 116.07, subd. 6 (1990) to give due consideration to economic factors. The statute provides:

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

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

In considering revisions to the rule for the administration of the financial assistance program, the MPCA has given due consideration to the possible economic impacts on the municipalities that will receive financing. While some expense and effort may be involved in participating in this proposed loan program, the benefits are the receipt of substantial financial, technical, and administrative assistance in planning and constructing wastewater or storm water treatment facilities and, ultimately, improved water quality for Minnesota. Also, no municipality is required to use these funding programs; they are strictly voluntary. If a municipality chooses to go through the program or programs to receive financial assistance, one benefit may be that the municipality has lower capital costs due to lower interest rates than for a similar project financed through other methods.

VI. SPECIAL NOTICE OF RULEMAKING FOR EXPENDITURES OF PUBLIC MONEY BY LOCAL PUBLIC BODIES

Pursuant to Minn. Stat. § 14.11, subd. 1, the MPCA must provide an estimate of the public moneys associated with implementing these rules if it is estimated that the total cost to all local bodies exceeds \$100,000 in either of the first two years following adoption of the proposed rules. Participation in storm water financial assistance program is voluntary. If a municipality decides that it wants to build or upgrade an existing storm water treatment system it will need to expend money for planning, design and construction. The construction of many storm water systems will undoubtedly cost in excess of \$100,000, but none of this cost is directly attributed to the proposed rule. The rule may assist in lessening local capital costs by offering a better option for financial assistance.

VII. IMPACTS ON AGRICULTURAL LAND

Minn. Stat. § 17.83 requires the MPCA to describe any direct and substantial adverse effects on agricultural land as a result of the proposed rule. The MPCA has determined that the proposed rule will not affect farming operations.

VIII. REVIEW BY COMMISSIONER OF MNDOT

Minn. Stat. § 174.05 requires the MPCA to inform the Commissioner of Transportation of all rulemakings that concern transportation, and requires the Commissioner of Transportation to prepare a written review of the rules. This rule revision of 7077 does not concern transportation.

IX. GENERAL RULEMAKING REQUIREMENTS

Minn. Stat. § 14.131 requires six additional items to be considered in the Statement of Need and Reasonableness.

Description of classes of persons likely affected. The proposed amendments rule will allow for municipalities of all sizes to acquire, on a voluntary basis, a low interest loan for the treatment of storm water. All classes of persons within a community will have equal cost and benefits of the loan.

Cost of implementation. Because this is a rule amendment to add storm water projects to an existing loan program, it is not anticipated that additional resources in personnel will be needed. The storm water projects are also non-regulatory, as opposed to the wastewater projects, which makes their review less resource intensive. The MPCA therefore does not anticipate significant effects on state revenues apart from the appropriation of funds for the loan program itself.

Less costly or intrusive methods. The rules for adding storm water projects to the eligibility for funding have been done in the least costly method by adding them to the existing rules. The wastewater and storm water projects will be administered together, thus eliminating a second set of administrative functions for the storm water treatment projects. The storm water project requirements have been written to minimize the documents needed to receive a loan. This allows the MPCA resources to be utilized at a maximum benefit.

Other methods considered. The MPCA did not consider alternatives other than rulemaking to incorporate storm water treatment projects into the existing loan program.

Probable cost of compliance. This is a voluntary program to provide financial assistance to municipalities for storm water treatment projects. For municipalities that choose to participate, the rules have been written to minimize any costs beyond those that would otherwise be incurred for this type of project. The MPCA therefore does not believe there are any "compliance costs" for the proposed amendments.

Federal-state comparison. There are no differences between the proposed rule and existing federal regulations.

Minn. Stat. 14.131 also provides that, "For rules setting, adjusting, or establishing regulatory, licensure or other charges for goods and services, the statement of need and reasonableness must include the comments and recommendations of the commissioner of finance and must address any fiscal and policy concerns raised during the review process, as required by section 16A.1285"

The proposed amendments do not set, adjust, or establish regulatory, licensure, or other charges for goods and services. There were no fiscal and policy concerns raised during the review process.

Minn. Stat. ch. 14.23, for rules adopted without public hearing, states, "The statement of need and reasonableness must include the analysis required in section 14.131 and the comments and recommendations of the commissioner of finance, and must address any fiscal and policy concerns raised during the review process, as required by section 16A.1285. The statement must also describe the agency's efforts to provide additional notification to persons or classes of persons who may be affected by the proposed rules or must explain why these efforts were not made." The analysis required in Minn. Stat. § 14.131 for this revision to Minn. R. ch. 7077 is

found above. As for notification to affected persons, notification of draft rules was given to consulting engineers and municipalities who are involved in the process of designing a storm water treatment project and to the watershed districts who will need to certify that the projects fall within the scope of the local water plans. The MPCA received no negative comments from this process. Rather, questions were raised as to when and what needed to be done to receive a low interest loan for a storm water treatment project.

X. LIST OF WITNESSES AND EXHIBITS

A Witnesses

In support of the need for and reasonableness of the proposed amendments, the following witnesses will testify at rulemaking hearing if one is necessary:

1. Peter Skwira, SRF Coordinator. Mr. Skwira will testify on the State Revolving Fund process and the requirements for the funding of storm water treatment projects.
2. Julie MacKenzie, Water Quality Rule Coordinator. Ms. MacKenzie will testify on the rule procedure taken on Minn. R. ch 7077.

B. Attachments and Exhibits

Attachment 1: Title VI of the Federal Water Pollution Control Act, 33 U.S.C. §§ 1381-1387;

Attachment 2: Comment letters.

XI. CONCLUSION

Based on the foregoing, the proposed amendments of Minn. R. ch. 7077 are both needed and reasonable.

Dated: _____, 1996

Charles W. Williams
Commissioner

