



Minnesota Pollution Control Agency

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June 14, 2013

Legislative Reference Library
645 State Office Building
100 Constitution Avenue
St. Paul, Minnesota 55155

Re: Minnesota Pollution Control Agency Amendments to *Minnesota Rules* Governing Financial Assistance for Municipal Projects Treating Wastewater or Stormwater; Minn. R. 7077; Revisor's ID Number RD 4068

Dear Librarian:

The Minnesota Pollution Control Agency intends to amend *Minnesota Rules*, Chapter 7077 governing financial assistance for municipal projects treating wastewater or stormwater. We plan to publish a *Notice of Intent to Adopt Rules without a Public Hearing* in the June 24, 2013 *State Register*.

The Agency has prepared a *Statement of Need and Reasonableness*. As required by *Minnesota Statutes*, §§14.131 and 14.23, the Agency is sending the Library an electronic copy of the *Statement of Need and Reasonableness* ahead of publishing and mailing our *Notice of Intent to Adopt Rules without a Public Hearing*.

If you have questions, please contact me at 651-757-2290. Thanks

Sincerely,

Nathan Brooks Cooley
Rules Coordinator
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Enclosure: Statement of Need and Reasonableness

Minnesota Pollution Control Agency
Statement of Need and Reasonableness

Proposed Amendments to *Minnesota Rules*, Chapter 7077, Governing
Financial Assistance for Treatment of Wastewater or Stormwater;
Revisor's Tracking Number RD 4068



**Minnesota Pollution
Control Agency**

INTRODUCTION. The Minnesota Pollution Control Agency (Agency), along with assistance from the Public Facilities Authority (PFA), scores and provides funding assistance for municipal wastewater and municipal stormwater treatment projects that have a substantial environmental priority for Minnesota. The Agency is proposing to amend the rules it uses to score and certify both municipal stormwater and municipal wastewater projects.

Recognizing that both wastewater projects and stormwater projects can substantially improve, protect and restore surface water quality, the Minnesota Legislature enacted *Minnesota Statutes (Minn. Stat.)* section (§) 116.182, subd. 5, paragraph (b) to provide priority points for certain stormwater projects to allow them to compete with wastewater projects in qualifying for funding through the Clean Water State Revolving Fund (SRF). With these provisions having expired on June 30, 2012, pending promulgation of equivalent rules, stormwater projects are not able to compete with wastewater projects for SRF assistance or for the Total Maximum Daily Loading (TMDL) Grant Program.

Municipal government continues to need financial assistance to complete those stormwater projects and wastewater projects deemed to provide the most benefit. Following are the primary goals of this rulemaking: 1) to reinstate the expired priority points for stormwater projects that benefit state waters, 2) to add new priority point categories for improved management of stormwater, 3) to provide priority points recognizing projects that provide for the beneficial use of treated wastewater, and 4) to make general clarifications. The Agency needs to develop a balanced scoring system based on a varied assignment of points for various project priority attributes that allows it to develop its project priority list. These goals are further discussed as follows:

1) The proposed rules will replace recently-expired statutes, allowing the Agency to continue to award priority points to environmentally-important municipal stormwater projects. This allows stormwater projects to compete for financial assistance with wastewater projects traditionally-funded by the SRF. The provisions of *Minn. Stat.* § 116.182, subd. 5, paragraph (b), which expired on June 30, 2012, provided up to 20 additional priority points for stormwater projects that helped municipalities meet pollutant load reductions associated with approved TMDL waste load allocations. Municipalities need these additional points to help make priority stormwater projects eligible for funding on an equal footing with priority wastewater projects. Following is an excerpt of the expired provisions in *Minn. Stat.* § 116.182, subd. 5, paragraph (b):

"[...] (b) Notwithstanding Minnesota Rules, chapter 7077, the agency shall apply the following criteria to Minnesota Rules, part 7077.0119:

(1) ten points shall be assigned if the municipality proposing the project holds a NPDES permit for a municipal separate storm sewer system and is implementing a stormwater pollution prevention plan pursuant to Code of Federal Regulations, title 40, section 122.34, that addresses requirements resulting from a USEPA-approved TMDL for an impaired water listed under United States Code, title 33, section 303(d), of the Clean Water Act; and

(2) up to ten points shall be assigned to a municipal stormwater project by multiplying 20 times the ratio of the project area's impervious surface area to the total project area to be served by the proposed best management practices. A maximum of ten points shall be awarded and any fraction of a point shall be rounded up to the nearest whole number.

(c) Paragraph (b) expires on June 30, 2012."

The proposed rules replace the expired statutory provision ensuring that these 20 priority points remain available for stormwater projects.

2) In some urban receiving waters, stormwater is a significant source of loading of sediment and nutrients. Stormwater runoff is the primary source of surface water pollutants in this area. Providing balanced financial assistance between priority municipal wastewater and priority municipal stormwater infrastructure projects will help improve state water quality and help municipalities meet their regulatory obligations.

The proposed rules add new criteria for awarding points for stormwater projects that are intended to prevent water impairments and the need for expensive future rehabilitation efforts. Data show prevention projects are inherently more cost-beneficial than requiring remedial projects after the fact. Projects must include one (may also include more than one) of the new criteria to be eligible for the prevention points.

3) The proposed rules provide priority points to fund the beneficial use of wastewater as a means of preventing pollution. “Beneficial use of wastewater” means the use of effluent from a wastewater treatment plant that reduces or replaces the use of groundwater, surface water or potable water. The Agency defines the term according to benefits such as ensuring the availability of groundwater, surface water and potable water where feasible through replacement of current uses of those waters with treated effluent.

4) Finally, the proposed amendments are intended to improve the clarity of existing rules.

Stakeholder feedback provided to the Agency in 2008, 2009, and 2010 provided valuable background for drafting these proposed amendments. The stakeholder meeting conducted in September 2010 consolidated information from the previous stakeholder meetings and was used to document and better define proposed changes to the rule. The proposed changes are described further in the balance of the Statement of Need and Reasonableness (SONAR) below.

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Acronyms or Abbreviations

Administrative Procedures Act (APA or Act)
Best Management Practices (BMPs)
Board of Water and Soil Resources (BWSR)
Clean Water Act (federal CWA)
Clean Water, Land & Legacy (CWL) funding
Code of Federal Regulations (CFR)
Department of Employment and Economic Development (DEED)
Intended Use Plan (IUP)
Minnesota Management and Budget (MMB)
Minnesota Pollution Control Agency (Agency)
Minnesota Rules (Minn. Rules)
Minnesota Statutes (Minn. Stat.)
Municipal Separate Storm Sewer System (MS4) Permit
National Pollutant Discharge Elimination System (NPDES) Permit
Outstanding Resource Value Water (ORVW)
Project Priority List (PPL)
Public Facilities Authority (PFA)
Section (§)
State Discharge System (SDS) Permit
State Revolving Fund (SRF)
Statement of Need and Reasonableness (SONAR)
Total Maximum Daily Load (TMDL) Grant Program
U.S. Environmental Protection Agency (EPA)
United States Code (USC)

ALTERNATIVE FORMAT. Upon request, this Statement of Need and Reasonableness (SONAR) can be made available in an alternative format, such as large print, Braille, or cassette tape. To make a request, contact Nathan Cooley at 520 Lafayette Road North, St. Paul, MN 55155-4194; telephone 651-757-2290; fax 651-297-8676; or e-mail nathan.cooley@state.mn.us. TTY users may call the Agency at 651-282-5332 or 800-657-3864.

STATUTORY AUTHORITY. The Agency has existing general statutory authorities to adopt rules for the administration of the SRF financial assistance program. Sometimes, the Legislature issues additional authority to an agency for specific rules; in this case, the Agency is relying on its existing general authority for this rulemaking. Following are several of the Agency's applicable rulemaking authorities:

Minn. Stat. § 115.03, subd. 1, provides as follows:

"(e) to adopt, issue, reissue, modify, deny, or revoke, enter into or enforce reasonable orders, permits, variances, standards, rules, schedules of compliance, and stipulation agreements, 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..."

Minn. Stat. § 116.182 provides as follows:

"Subd. 5. Rules.

(a) The agency shall adopt rules for the administration of the financial assistance program. For wastewater treatment projects, the rules must include:

(1) application requirements;

(2) criteria for the ranking of projects in order of priority based on factors including the type of project and the degree of environmental impact, and scenic and wild river standards; and

(3) criteria for determining essential project components.[...]" And

Minn. Stat. § 446A.07 provides as follows:

"Subd. 11. Rules of Pollution Control Agency. The Pollution Control Agency shall adopt rules relating to the certification of projects to the authority for funding, and other matters that the Pollution Control Agency considers necessary for proper administration of its duties under this section. Eligible activities are those required under the Federal Water Pollution Control Act of 1987, as amended."

Under these statutes, the Agency has the necessary authority to adopt the proposed rules.

REGULATORY ANALYSIS. *Minnesota Statutes* contain requirements governing rulemaking. Collectively, these are called Minnesota's Administrative Procedures Act (APA or Act). *Minn. Stat. § 14.131*, sets out eight rulemaking requirements comprising the APA. These requirements are addressed in order below as they relate to these proposed SRF amendments. Paragraphs (1) through (8) below are extracts of the statutory requirements followed by the Agency's analytic response:

"(1) a description of the classes of persons who probably will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule"

The primary class of persons potentially impacted by these proposed rules are municipalities seeking funding under the SRF Program for wastewater and stormwater projects. The term "municipality" is defined in existing part 7077.0105, subp. 24, to include, "...any county, city, town; the Metropolitan Council Environmental Services; the Metropolitan Council when acting under chapter 473; an Indian tribe or an authorized Indian tribal organization, or any other governmental subdivision of the state responsible by law for the prevention, control, and abatement of water pollution in any area of the state." The Agency intends these rules to help municipalities achieve a SRF or Clean Water, Land & Legacy (CWL) funding score for wastewater and stormwater projects commensurate with the state's priority for said projects (e.g., more points awarded under various parts of these rules would provide a higher ranking on the PPL). As a result of the changes to the priority-ranking system under these proposed rules, some municipal wastewater or stormwater projects may increase or decrease their priority rank, depending on the funding priority points assigned. Other persons who could be affected include those entities whose wastewater or stormwater is managed by a municipal treatment system.

"(2) the probable costs to the agency and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues"

The Agency expects its own costs associated with implementing and enforcing the proposed rules to be minor. It expects some minor transitional costs associated with making changes to forms used by municipalities to submit project information to the Agency and used for re-scoring the projects on the project priority list (PPL). The rules will not require changes to the staffing currently providing review of proposed projects seeking this financial assistance. The rules do not relate to or effect state revenues. No other state or federal agencies are expected to be financially impacted by these rules. The amount of loan funds available in the SRF or CWL programs is not determined by these rules.

The proposed rules will not result in additional costs to other agencies. Other agencies potentially impacted by these rules include: Minnesota's Department of Employment and Economic Development (DEED), Minnesota Management and Budget (MMB), and the Departments of Health, Agriculture, and Transportation. The Agency commissioner, along with the commissioners of the state agencies listed in the preceding sentence, serve as board members of the PFA. The DEED's Small Cities Development Program is also interested in these rules, as it considers the PPL list when setting priorities for its financial assistance programs. Federal agencies with an interest in these rules include the U.S. Environmental Protection Agency (EPA) and the U.S. Department of Agriculture's Rural Development Program. The PFA, the EPA, the DEED Small Cities Development Program, BWSR, and the Rural Development Program all provide financial assistance to municipalities for wastewater or stormwater treatment. There will be no additional costs to state and federal agencies as a result of the rules. The funding each agency is able to provide is set by its individual program, which is independent of this rulemaking.

"(3) a determination of whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule"

The Agency believes that these rules are neither costly nor intrusive. The Agency does not require municipalities to apply for funding; application is voluntary. The SRF is a self-replenishing revolving loan fund. Also, benefits far outweigh any costs associated with applying for SRF funding under the proposed rules (each year, there are more applicants than funds available).

"(4) a description of any alternative methods for achieving the purpose of the proposed rule that were seriously considered by the agency and the reasons why they were rejected in favor of the proposed rule"

The Agency considered whether it might achieve the desired outcome of scoring and certifying projects without rules. It determined that rules provide a fair and permanent solution with greater consistency and more predictability. The rules also assure that stormwater projects can compete with traditional wastewater projects under the various funding programs.

"(5) the probable costs of complying with the proposed rule, including the portion of the total costs that will be borne by identifiable categories of affected parties, such as separate classes of governmental units, businesses, or individuals"

The proposed rules will not increase the costs to municipalities of seeking SRF financial assistance. The current rules impose various administrative costs for a municipality choosing to pursue a SRF loan or CWL grant including the costs of applying for the PPL, of facility planning, of developing plans and specifications, and of construction oversight. The proposed rules are not expected to increase these existing costs for a municipal wastewater or stormwater project.

The proposed rules do not impact the amount of funds available for projects in the SRF or CWL programs. There is no change in the overall financial assistance levels available to municipalities. Also, the rules do not impact the funding levels of the other state and federal financial assistance programs for wastewater and stormwater projects that are currently available to municipalities. Direct financing for the project by the municipality is not impacted by the proposed rules either. Some municipalities choose to pursue independent financing for their projects.

The Agency is proposing amendments to the priority-ranking system. If the proposed rules are adopted, the relative ranking of individual projects on the PPL is likely to change. The proposed rules include the award of points to rank certain storm water projects higher on the PPL than certain wastewater projects of lower priority for funding. The rule's ranking system is intended to fund projects with an equivalent environmental priority, regardless of whether the benefit results from stormwater or wastewater projects. However, the number of projects that will be listed on the intended use plan (IUP) to receive financial assistance during a calendar year will be determined by the PFA based on the PPL ranking and on the funding resources available to the SRF Program for that year. Should a project fall below the priority required for funding in a particular year, that project proposer may receive financial assistance from another state or federal program or the project may stay on the PPL and request SRF financial assistance during the next funding cycle.

"(6) the probable costs or consequences of not adopting the proposed rule, including those costs or consequences borne by identifiable categories of affected parties, such as separate classes of government units, businesses, or individuals"

Not adopting the proposed rules would leave the existing priority system in place. The adoption or non-adoption of the proposed rules will not change the overall project funding level available from the SRF or CWL programs in future years. However, not adopting these rules would not allow stormwater projects to compete for funding on the PPL.

Stormwater is a significant source of water impairments in Minnesota and the Agency is elevating stormwater management as a priority. A consequence of not adopting these rules would be to limit the ability of proponents of stormwater projects to compete for SRF or CWL funding with proponents of

wastewater projects; thus reducing stormwater as a priority with municipal infrastructure and capital improvement projects.

"(7) an assessment of any differences between the proposed rule and existing federal regulations and a specific analysis of the need for and reasonableness of each difference"

Rather than differing, *Minnesota Rules* governing the financing of wastewater and stormwater projects fill in the details required to administer the funding program that is broadly defined by federal regulations. The federal regulations set the framework for how an SRF Program is established to receive federal grants or funds to capitalize the revolving loan program. The Clean Water Act at 33 United States Code (USC) Chapter 26, Subchapter Title VI, Sections 1383 and 1386, and 40 Code of Federal Regulations (CFR), Part 35, broadly allows a state program to create and maintain a PPL, to create and maintain an annual IUP, to complete environmental review on individual projects, and to provide a method to assess whether projects are constructed to meet their intended purpose. The Agency uses Chapter 7077 to establish requirements for placement on the PPL, for information to complete environmental review, and for project completion. The PFA is responsible for creating the annual IUP under *Minn. Stat. § 446A.07*, subd. 4. It is reasonable that *Minnesota Rules* and *Minnesota Statutes* provide the details to comply with the federal requirements to meet the broad program objectives.

"(8) an assessment of the cumulative effect of the rule with other federal and state regulations related to the specific purpose of the rule. . . . '[C]umulative effect' means the impact that results from incremental impact of the proposed rule in addition to other rules, regardless of what state or federal agency has adopted the other rules. Cumulative effects can result from individually minor but collectively significant rules adopted over a period of time."

The Agency does not anticipate any negative cumulative or collective regulatory results (e.g., no incremental impact) of the proposed rules related to other state and federal rules. As described in (7) above, these rules provide the details to comply with broader federal objectives. The state and federal programs generally do not overlap and are considered to complement each other. These rules are also intended to replace a recently expired state law and will not increase any regulatory burden. Rather, the rules serve as a benefit to municipalities that seek this method of project funding. The proposed rules benefit municipalities by providing additional options to finance local stormwater and wastewater treatment projects. The level of municipal interest in seeking funding indicates that they generally find the rules are a benefit to local finances, economics and water quality. The proposed rules regulate areas that are not addressed separately by federal law or other state laws.

PERFORMANCE-BASED RULES. *Minn. Stat. §§ 14.002 and 14.131*, require that the SONAR describe how the Agency, in developing the proposed rules, considered and implemented performance-based standards that emphasize superior achievement in meeting the Agency's regulatory objectives and maximum flexibility for the regulated party and the Agency in meeting those goals.

The PPL prioritization system is intended to provide financial assistance for the highest priority stormwater and wastewater treatment projects that will most-benefit the environment and the community. These rules incorporate recently-expired statutory language that provided priority points to make stormwater projects competitive for funding with wastewater projects based on their anticipated environmental performance.

ADDITIONAL NOTICE. *Minn. Stat. §§ 14.131 and 14.23*, require that the SONAR describe the Agency's efforts to provide notice to persons who might be affected by the proposed rules or explain why these

efforts were not made. The Agency has the option of asking the Office of Administrative Hearings to preview and pre-approve the Agency's proposed notice plan. Here, additional notice consists primarily of a stakeholder meeting, self-subscribed GovDelivery notices, and posting on the Agency's Web page.

1. The Agency published a Request for Comments in the August 3, 2010, *State Register* (35 SR 143). The Request was also posted on the Agency's website under public notices and on the Stormwater Program main page.
2. The Agency conducted a public stakeholder meeting at its office in St. Paul on September 8, 2010, to help determine if it should amend its rules, to help develop some draft language concepts and to verify the need for and reasonableness of amending its rules. The Agency invited representatives from the following groups: the Association of Metro Cities; the Public Facilities Authority (PFA); the Board of Water and Soil Resources (BWSR); the Minnesota Department of Agriculture; the Minnesota Department of Natural Resources; the Minnesota Department of Transportation; the Minnesota Department of Health; the Minnesota Pollution Control Agency; the League of Minnesota Cities; the Minnesota Cities Stormwater Coalition; the Minnesota Association of Townships; and the Agency's Municipal Separate Storm Sewer System (MS4) Permit Program List.
3. The Agency plans to comply with *Minn. Stat.* § 14.14, subd. 1a:

"Minn. Stat. § 14.14, subd. 1a. Notice of rule hearing. (a) Each agency shall maintain a list of all persons who have registered with the Agency for the purpose of receiving notice of rule proceedings. Persons may register to receive notice of rule proceedings by submitting to the agency:

- (1) their electronic mail address; or
- (2) their name and United States mail address."

The Agency's primary system for registering interested parties for notice is called GovDelivery. This online Web-based system allows interested parties to self-register to receive notifications via e-mail. The Agency also allows interested parties to register for notification by U.S. mail if they prefer. The Agency certifies the list of persons who received a formal rules notice.

4. The Agency plans to send the proposed rules, SONAR, and Notice to the chairs and ranking minority party members of the legislative policy and budget committees with jurisdiction over the subject matter of the proposed rules as required by *Minn. Stat.* § 14.116. This statute also requires the Agency to send a copy of the notice and SONAR to all sitting legislators who were chief authors of a bill granting specific rulemaking authority. This does not apply because there was no bill authored granting specific authority for this particular rulemaking.
5. The Agency plans to post a copy of the notice, proposed rules and SONAR on its Public Notice webpage at this link: www.pca.state.mn.us.
6. The Agency plans to allow at least 30-days for the public to comment on proposed rules.
7. The Agency has created a webpage for this rulemaking on which to post relevant documents and information for interested parties:
<http://www.pca.state.mn.us/index.php/water/water-permits-and-rules/water-rulemaking/wastewater-and-stormwater-treatment-financial-assistance-rulemaking-proposed-changes.html>.

8. The Agency does not intend to notify the Commissioner of Agriculture under *Minn. Stat.* §14.111 because the proposed rules do not directly impact or concern agriculture interests.
9. The Agency does not intend to notify the State Council on Affairs of Chicano/Latino People prior to publication in the *State Register* as would be required per *Minn. Stat.* § 3.9223, subd. 4, because the proposed rules do not have their primary effect on Chicano/Latino people.

NOTIFICATION OF THE COMMISSIONER OF TRANSPORTATION. *Minn. Stat.* § 174.05, requires the Agency 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. The Agency does not expect these rules to impact or concern transportation, so this requirement does not apply.

FARMING OPERATIONS. If proposed rules have an impact on agricultural land, *Minn. Stat.* § 14.111 requires the Agency to notify the Commissioner of Agriculture at least thirty days before proposing the rules in the *State Register*. The Agency does not expect these rules to impact or concern agriculture, so this requirement does not apply.

NOTICE TO LEGISLATURE. *Minn. Stat.* § 14.116 states that when the Agency mails notice of intent to adopt rules under *Minn. Stat.* §§ 14.14 or 14.22, it must send a copy of the same notice and a copy of the SONAR to the chairs and ranking minority party members of the legislative policy and budget committees with jurisdiction over the subject matter of the proposed rules. The Agency intends to serve the required notification to the current chairs and ranking minority party members.

Additionally, if the mailing of the notice is within two years of the effective date of a law granting the Agency authority to adopt the proposed rules, the Agency shall make reasonable efforts to notify all sitting legislators who were chief authors of the bill. This does not apply because no bill was authored granting additional authority for this rulemaking. The Agency is using its pre-existing general authority to propose these rules.

COST OF COMPLYING FOR SMALL BUSINESS OR CITY. *Minn. Stat.* § 14.127 requires the Agency to consider whether the first year cost of complying with the proposed rules will exceed \$25,000 for any small business (with fewer than 50 employees) or small city (with fewer than 10 employees). When applicable, § 14.127 allows small cities a temporary exemption from the rule pending Legislative approval. The proposed rules do not require any municipality to seek SRF loans or CWL grants. Because participation is entirely voluntary, there is no required first year cost to comply with the proposed rules.

There are administrative costs related to seeking a SRF loan or a CWL grant. These costs may include preparing the application, designing project plans and specifications, and overseeing construction; also, these costs are reimbursable when the municipality qualifies for funding. The Legislature has not appropriated money to fund the application costs for these loans or grants. These rules are not being proposed under a specific federal mandate. Since the applicability of these rules is entirely voluntary, and the costs are eligible for reimbursement, the Agency believes that no exemption under § 14.127 would apply.

IMPACT ON LOCAL GOVERNMENT ORDINANCES AND RULES. *Minn. Stat.* § 14.128 requires the Agency to determine whether proposed rules require a local government to adopt or amend its ordinances. The proposed amendments do not require municipalities to amend their ordinances. Municipalities may voluntarily apply for funding under Chapter 7077. No additions or changes to local ordinances are required in order to comply with these rules.

CONSULT WITH THE COMMISSIONER OF FINANCE. *Minn. Stat. § 14.131* requires the Agency to consult with Minnesota Management and Budget (MMB) to help evaluate the fiscal impact and benefits of proposed rules on local governments. The Agency plans to send a copy of the proposed rules and this SONAR to the MMB at the same time it sends these to the Governor's Office for review. The Agency will submit a copy of its correspondence with the MMB to the Office of Administrative Hearings (OAH) for review. The Agency's evaluation of the fiscal impact of the proposed rules on municipalities anticipates a benefit for those that apply and are able to qualify for the financial assistance.

SUBMITTAL TO LEGISLATIVE REFERENCE LIBRARY. *Minn. Stat. § 14.131* requires the Agency to submit a copy of its SONAR to the Legislative Reference Library at the time when the notice seeking public comment is mailed under *Minn. Stat. § 14.14, subd. 1(a)*. The Agency will comply as required.

ASSESSMENT OF PROPOSED RULES WITH OTHER STANDARDS. *Minn. Stat. § 116.07, subd. 2(f)* requires the Agency to assess any differences between the proposed rules and existing federal Clean Water Act (CWA) standards; similar standards in states bordering Minnesota; similar standards in states within the EPA's Region 5; and a specific analysis of the need and reasonableness of each difference.

Federal CWA: The SRF Program was established pursuant to the federal CWA to replace the federal Construction Grants Program. The *Minnesota Rules* associated with the SRF are needed and reasonable because they provide a mechanism to provide points of priority which allows them to be eligible for funding that otherwise might not happen. The EPA provides grants with a required 20 percent state match and is intended to capitalize individual state's SRF programs; this allows states to provide low-interest loans to municipalities. As loan principal and interest payments are paid back into the revolving fund, the money is used to finance new loan projects. This is a voluntary program, born of CWA requirements, but has no immediately comparable federal provisions.

Bordering States: Minnesota's bordering states are Wisconsin, Iowa, Michigan, North Dakota, and South Dakota. All of these bordering states have SRF programs. Although the process for municipalities to qualify for the low interest loans may be different, program results are very similar. It is reasonable for states to create programs that fund projects based on local priorities. Also, because municipal participation in this SRF program is completely voluntary, the Agency believes that a comparison with the program elements of bordering states is moot.

Similar States in EPA Region 5: The EPA Region 5 states are Wisconsin, Iowa, Michigan, Minnesota, Ohio, Illinois and Indiana. All of these Region 5 states have SRF programs. Although the process for municipalities to qualify for the low interest loans may be different, program results are very similar. Again, it is reasonable for states to create programs that fund projects based on local priorities. Also, because municipal participation in this SRF program is completely voluntary, the Agency believes that a comparison with the program elements of other Region 5 states is moot.

GENERAL STATEMENT OF NEED FOR AND REASONABLENESS OF THE PROPOSED RULES. Systems that treat stormwater or wastewater can be prohibitively expensive for municipalities without financial assistance. The primary source of State financial assistance for wastewater and stormwater treatment construction projects is the SRF Program. The SRF Program was established pursuant to the federal CWA to replace the federal Construction Grants Program. Under the SRF Program, the EPA provides grants that, with a required 20 percent state match, allow states to capitalize SRF programs by providing low-interest loans to municipalities for priority water treatment projects. As loan principal and interest payments are paid back into the SRF, the money is used to finance the next round of ranked projects.

There is generally more demand for SRF funding than there are funds available. The Agency works to establish rules and to work with the PFA to fairly score projects based on an analysis of environmental and cost benefits with the goal of obtaining the most benefit from the available funding each year.

Minnesota's SRF Program is managed by the PFA consisting of a board of six state commissioners from the departments of DEED, MMB, Health, Agriculture, Transportation, and the Minnesota Pollution Control Agency. The PFA and the Agency jointly administer the wastewater and stormwater components of the SRF Program. The PFA is responsible for the financial management of the program while the Agency is responsible for the environmental review and technical review components.

One of the Agency's primary responsibilities is to score proposed wastewater and stormwater construction projects in accordance with the environmental criteria contained in existing parts 7077.0115 to 7077.0197. The Agency creates an annual list of projects ranked by the number of points assigned under chapter 7077. The Agency reviews proposed wastewater and stormwater projects to ensure they meet state requirements and Agency goals.

The PFA's administration of the financial aspects of the program includes the review of loan applications, establishing the terms of the loans, and managing the funds. The PFA can sell revenue bonds to generate additional loan funds based on demand. The PFA also prepares the annual Intended Use Plan (IUP). The IUP is a list of the projects on the PPL that satisfy the requirements for Agency certification, and that the PFA expects to fund during the coming funding cycle. As part of the IUP development process, the PFA must balance the demand for loans with the overall lending capacity of the SRF.

Demand for SRF loans has increased steadily in recent years. The PFA has established an IUP funding cutoff: for a given funding cycle, there is a minimum number of priority points required for a project to be eligible for funding. The practice of the PFA has been to use its revenue bonding authority to keep the funding cutoff low and to meet as much of the demand for loans as possible.

In the coming years, PFA may raise the funding cutoff to preserve lending capacity for future high-priority projects, thus limiting the number of funded projects. Consequently, it is increasingly important for the PPL to accurately represent the State's wastewater and stormwater priorities.

In addition to setting priorities for the SRF Program, the PPL sets priorities for the supplemental assistance grants and loans provided through the Wastewater Infrastructure Fund (WIF) Program. The PPL also plays an important role in identifying high-priority projects for coordinated interagency funding provided by the DEED's Small Cities Development Program, BWSR and the U.S. Department of Agriculture's Rural Development Program. Consequently, the PPL is an important tool to prioritize funding from other federal and state financial assistance programs that may provide funds for wastewater treatment systems in Minnesota.

Beginning in 2007, the Legislature started appropriating Clean Water Legacy (CWL) funds based on placement and priority order on the current PPL. This modification changed the criteria for awards from order of adoption by the EPA to the widely-used and universally-accepted State priority ranking criteria for the State's wastewater and stormwater projects seeking financial assistance.

The proposed rules provide new mechanisms to award points to stormwater treatment projects and to wastewater reuse projects. It is necessary and beneficial for municipalities to fund these projects to benefit the environment. Without adopting the proposed rules, stormwater treatment projects and wastewater reuse projects would not be able to compete with the wastewater treatment projects that have traditionally comprised the vast majority of fundable projects on past PPLs.

SPECIFIC STATEMENTS OF NEED AND REASONABLENESS FOR THE PROPOSED RULES.

Part 7077.0105 Definitions.

[...]

The Agency repeals existing subpart 8a.

In **subp. 8b** (extract below), the Agency newly defines the term beneficial use of wastewater. This definition clarifies which projects are eligible to receive project points thus helping to conserve and ensure the availability of groundwater, surface water and potable water through replacement of their current uses with treated effluent where feasible.

“Subp. 8b. Beneficial use of wastewater. “Beneficial use of wastewater” means the use of effluent from a wastewater treatment plant that reduces or replaces the use of groundwater, surface water or potable water.”

In **subp. 8c** (extract below), the Agency adds a definition that incorporates the existing definition of BMPs found in part 7090.0080 Stormwater Regulatory Program Definitions. This provides consistency and clarity for use of this term.

“Subp. 8c. Best management practices or BMPs. “Best management practices” or “BMPs” has the meaning given under part 7090.0080.”

[...]

In **subp. 11b. Environmental information worksheet**, the Agency adds a definition for a form that applicants submit to the Agency that describes its proposed clean water project and which the Agency may use to assess the project’s eligibility to receive priority points. The definition also defines this term to distinguish it from other similar sounding terms. The prescribed form is titled Environmental Information Worksheet but has the same content as required for an Environmental Assessment Worksheet; however, the process is not related to an Environmental Assessment Worksheet (or to an Environmental Impact Statement). The Agency also renumbers existing 11b to 11c.

[...]

In **subp. 15a. Impaired water**, the Agency clarifies that impaired waters are surface waters that do not meet applicable water quality standards in Chapters 7050 and 7052, are placed on an impaired waters inventory list and that the EPA approves the listing for a TMDL in accordance with section 303(d) of the Clean Water Act, approves the TMDL, or approves the Agency’s listing of impaired waters that do not currently require a TMDL.

[...]

In **subp. 28. Outstanding resource value water or ORVW**, the Agency adds the acronym "ORVW" to also mean “outstanding resource value water.” The Agency adds the abbreviation ORVW to reduce the need to write “outstanding resource value waters” and to introduce this term-of-art abbreviation for clarity. The Agency also changes language from “those waters” to “a water” to provide consistency with other definitions in this part such as impaired water, infiltration water, stormwater, and inflow water.

[...]

In **subp. 43b. Trout waters**, the Agency incorporates by reference the existing definition of “trout waters” found in part 7050.0420 into this chapter to provide convenience and consistency.

[...]

In **subp. 49. Water use classification**, the Agency corrects an errant cite from part ~~7050.0200~~ to part 7050.0140.

[...]

Part 7077.0115 Project Priority List.

[...]

In **subp. 3. Request for placement on list**, the Agency rearranges existing language to better align with and emphasize the stated goal of the part, to request placement on a water treatment project funding list.

In **subp. 4. Eligibility review, item C, subitems (1-3)**, the Agency revises existing language. In Item C, the Agency clarifies that projects must comply with three conditions in order to qualify for the PPL. In subitem (1), the Agency clarifies that the project must address water quality needs, and that ponds may include associated flood control benefits. In subitem (2), the Agency adds the term “system” to stormwater treatment system structures. This provides consistency with the term stormwater treatment system used elsewhere in this chapter while clarifying that eligibility in this case is limited to “structures.” In subitem (3), the Agency clarifies that projects must be based on accepted engineering practices that result in water quality benefits.

[...]

Part 7077.0117 Points for Projects with Existing NPDES or SDS Permit.

In **subp. 1. Flow capacity, item B**, the Agency revises existing language to improve clarity that owners or operators of collection facilities must submit documentation demonstrating that their facilities are operating at or above 85 percent of design capacity.

[...]

In **subp. 9. Discharges to impaired or outstanding resource value waters, item A**, the Agency removes an existing reference to the federal definition of impaired waters because this rulemaking now defines impaired waters in this Chapter..

[...]

In **subp. 15. Project implements corrective measures, item A**, the Agency clarifies that it has broadened the scope of clean water partnership project types allowed under *Minnesota Rules*, Chapter 7076. In **item B**, the Agency removes an existing reference to the federal definition of impaired waters because this rulemaking now defines impaired waters in this Chapter.

In **subp. 16. Project helps meet total maximum daily load for receiving water**, the Agency clarifies the meaning of the abbreviation “TMDL” to mean “total maximum daily load.”

[...]

In **subp. 17. New or expanded discharge; points subtracted, item A, subitem (2)**, the Agency removes an existing reference to the federal definition of impaired waters because this rulemaking now defines impaired waters in this Chapter.. In **item B, subitem (2)**, the Agency corrects a cite for a definition of “wetlands” from part 7050.0130, item F to 7050.0186, subpart 1a.

In **subp. 18. Beneficial use of wastewater** (extract below), the Agency supports and promotes the beneficial use of wastewater as a contribution to the sustainability of water resources. Sustainable water resources are important for the environment and for the continuing availability of potable water from groundwater or surface water. This is particularly true as human populations increase and when drought conditions affect the supply and demand for water resources. The thirty points are intended to encourage projects that result in beneficial use of wastewater by increasing their priority for financial assistance. Requiring that beneficial use is at least 20 percent of overall project costs will help ensure that beneficial use of wastewater is a substantial portion of a project when undertaken with other improvements. Land discharge which is provided twenty points under subpart 4 of this part is also a type of wastewater beneficial use. The Agency excludes projects eligible for land discharge points under subpart 4 from eligibility for added land discharge points under this subpart in order to avoid rewarding points twice for what is essentially the same activity.

“Subp. 18. Beneficial use of wastewater. Thirty points shall be assigned if a project will result in an Agency-approved beneficial use of treated wastewater that results in reducing or replacing the use of groundwater, surface water or potable water, provided that the project component resulting in the beneficial use of wastewater accounts for at least twenty percent of the total eligible cost of the project. Projects receiving points under subpart 4 of this part for land discharge shall not receive points under this subpart for additional land discharge.”

Part 7077.0118 Priority Points for Projects in Unsewered Areas.

In **subp. 1. Discharges posing threat to public health or safety**, the Agency clarifies that the project service area is that described in part 7080.1500, subpart 4, item A.

In **subp. 2. Discharges that fail to protect groundwater**, the Agency replaces an errant cite to part 7080.0060, subpart 3, item E to clarify that the required vertical separation is described in part 7080.1500, subpart 4, items D and E.

In **subp. 3. Noncompliance with setback requirements**, the Agency corrects an errant cite to part 7080.0170, subpart 1 to clarify that a required setback is cited in part 7080.2150, subpart 2, item F.

In **subp. 4. Proximity of individual sewage treatment systems to impaired or outstanding resource value water**, the Agency removes an existing reference to the federal definition of impaired water because this rulemaking now defines impaired water in this Chapter.

In **subp. 5. Proximity of failing individual sewage treatment systems to outstanding resource value or impaired water**, the Agency removes an existing reference to the federal definition of impaired waters because this rulemaking now defines impaired waters in this Chapter. In **subp. 5, Item A**, the Agency corrects an errant cite to part 7080.0060, subpart 3, to clarify that the required vertical separation is described in part 7080.1500, subpart 4, items D and E.

[...]

In **subp. 8. Project implements corrective measures, item A**, the Agency clarifies that clean water partnership projects are done pursuant to the conditions of *Minnesota Rules*, Chapter 7076. In **item B**, the Agency removes an existing reference to the federal definition of impaired waters because this rulemaking now defines impaired waters in this Chapter.

[...]

In **subp. 10. New or expanded discharge; points subtracted, item A, subitems (1) to (3), and item B**, the Agency makes minor clarifications of existing language (changing the term “waters” to “water” for consistency), omitting the cites to the definitions of “outstanding resource value water,” “impaired water” and “lake;” unnecessary as the Agency either has or added these definitions in this Chapter, and in item B, correcting an errant cite to a preferred definition of “wetlands” from part 7050.0130, item F to part 7050.0186, subpart 1a.

In **subp. 11. Beneficial use of wastewater** (extract below), the Agency supports and promotes the beneficial use of wastewater as a contribution to the sustainability of water resources. Sustainable water resources are important for the environment and for the continuing availability of potable water from groundwater or surface water. This is particularly true as human populations increase and when drought conditions affect the supply and demand for water resources. Thirty points are intended to encourage projects that result in beneficial use of wastewater by increasing their priority for financial assistance. Requiring that beneficial use is at least 20 percent of overall project costs will help ensure that beneficial use of wastewater is a substantial portion of a project when undertaken with other improvements. Land discharge which is provided twenty points under subpart 4 of this part is also a type of wastewater beneficial use. The Agency excludes projects eligible for land discharge points under subpart 4 from eligibility for added land discharge points under this subpart in order to avoid rewarding points twice for what is essentially the same activity.

“Subp. 11. Beneficial use of wastewater. Thirty points shall be assigned if a project will result in an Agency-approved beneficial use of treated wastewater that results in reducing or replacing the use of groundwater, surface water or potable water, provided that the project component resulting in the beneficial use of wastewater accounts for at least twenty percent of the total eligible cost of the project. Projects receiving points under subpart 4 of this part for land discharge shall not receive points under this subpart for additional land discharge.”

Part 7077.0119 Points for Stormwater Projects.

Minn. Stat. § 116.182 subd. 5, paragraph (b), expired on June 30, 2012.

As a result, the Agency is incorporating a similar point system for stormwater projects into the proposed part “7077.0119 Points for Stormwater Projects.” Amending these rules will allow the Agency to continue to award priority points for priority stormwater projects, allowing them to compete with comparatively-ranked wastewater projects.

In **subp. 1. Discharges to impaired waters, item A, subitems (1) and (2)**, first, the Agency revises the existing project priority points awarded under this subpart down, from five to four points, in order to provide better balance between the points awarded under this subpart with point awards under other subparts. Next, the Agency clarifies that two conditions must be met in order to qualify for the four points: (1) the stormwater project service area currently discharges into an impaired water, and (2) the project reduces the level of the pollutant for which the receiving water is impaired. The Agency also clarifies this subpart by breaking it into items and subitems.

In **subp. 1a. Discharges to ORVW or trout waters**, the Agency provides a new opportunity to earn five priority points for a project that improves the quality of an existing stormwater discharge into an ORVW or trout waters or their immediate sub-watershed. The Agency also structures this item to match the related content and structure in subpart 1.

[...]

In **subp. 3. Project implements corrective measures, item A**, the Agency clarifies that five points shall be assigned to a stormwater project if it corrects a water quality problem identified in items A to C of this subpart. Also, the Agency clarifies in item A that clean water partnership projects are defined pursuant to the conditions found in Minnesota Chapter 7076. In *item B*, the Agency removes an existing reference to the federal definition of impaired waters because this rulemaking now defines impaired waters in this Chapter.

In **subp. 4. [See repealer.]**, the Agency repeals item 4 and replaces its provisions with newly created subparts 6 to 10 in order to clarify and expand the scope of a project's eligibility for project priority points.

In **subp. 5. New or expanded diversion of stormwater; points subtracted, items A to E**, the Agency revises existing language to clarify that five points will be subtracted from a project priority score when a project involves a new or expanded diversion of stormwater to one or more of the following types of defined waters or a subwatershed of those waters: A) an outstanding resource value water; B) an impaired water; C) a Class 2A water; D. a wetland; or E. a lake. The idea is that stormwater holds pollutants that might harm these defined valuable waters. Subtracting priority points helps discourage the diversion of stormwater into these defined waters or their subwatersheds.

In **subp. 6. Project helps meet total maximum daily load for receiving water**, the new provision describes how a municipality holding a National Pollution Discharge Elimination System (NPDES) Municipal Separate Storm Sewer System (MS4) permit and implementing a pollution prevention program that complies with 40 CFR § 122.34 in order to meet a permit requirement associated with a waste load allocation that is part of an EPA-approved TMDL is awarded 18 project priority points. The idea is to provide a strong incentive for stormwater pollution prevention program that would reduce loading to these identified priority waters.

In **subp. 7. Impervious surface ratio**, the new provision describes how to gain up to 10 priority points for a project employing BMPs and having a higher ratio of impervious surface to total surface in the project service area. The idea is that stormwater BMP projects serving areas with a higher ratio of impervious surfaces will provide a greater benefit in reducing pollutant discharges. The points are calculated by dividing the area of impervious surfaces within the project boundary by the total area served by the project to determine a ratio with a value between zero and one (e.g., $4,550 \text{ ft}^2 / 10,000 \text{ ft}^2 = 0.455$), and then multiplying that ratio by 20 to determine a point value (e.g., $0.455 \times 20 = 9.1$). Fractional results are rounded up to the next whole number up to the maximum allowable point value of 10 points (e.g., 9.1 is rounded up to 10). The total area served by the project does not change this calculation.

Protection points and scoring criteria.

Changes are proposed to part 7077.0119 which include four new subparts which are intended to provide incentives for stormwater projects that will prevent water impairments before expensive rehabilitation efforts are needed:

1. volume reduction (see subp. 8);
2. new treatment (see subp. 9);
3. multiple environmental benefits (see subp. 10); and

4. structural improvements to existing stormwater ponds (see subp. 11).

Please note that projects may be eligible for scoring under more than one criterion, and points will be awarded accordingly.

In **subp. 8. Volume reduction, items A to H**, the new provision provides nine points when a stormwater project uses qualifying BMPs to reduce the stormwater volume from an existing discharge. To qualify, stormwater volume reduction must be either a major component of the treatment system, or must comprise a majority of the cost of the overall project.

Current consensus among experts concludes that a reduction of stormwater runoff from impervious surfaces can greatly reduce the negative effects of urban stormwater runoff (see **2008, The National Academy of Sciences**; Urban Stormwater Management in the United States).

A project proposal may be comprised of volume reduction BMPs and other BMPs (non-volume reduction). Volume reduction points will be awarded if the total costs of the volume reduction BMPs exceed the total costs of the standard (non-volume reduction) BMP's.

In **subp. 9. New treatment systems, items A and B**, the new provision describes how additional project priority points can be awarded if the stormwater project includes new BMPs that provide treatment to an existing discharge that is presently untreated. Treatment which isn't required by an existing permit or TMDL help to prevent waters from becoming impaired and these projects exemplify prevention as a project strategy. The number of points will be awarded based on whether or not the applicant holds an MS4 NPDES permit which already requires a load reduction based on a TMDL:

- A. Applicant is regulated under a MS4 permit and is assigned a waste load allocation in an EPA approved TMDL – 1 point is awarded because this rewards the use of BMPs where the applicant is already required to perform load reduction under their existing permit.
- B. All other eligible applicants – 18 points are awarded because this encourages the use of BMPs to provide treatment even though load reduction is not required by a permit.

New treatment or protection systems may include any of the BMP's noted herein, and/or include other alternatives as long as treatment technologies consist of accepted engineering practices. Additional points are awarded to applicants who include new treatment and do not have a mandatory load reduction because those projects help prevent impairments before expensive rehabilitation efforts and/or mandatory waste load allocations are needed. Applicants that are a regulated MS4 permittee and have load reduction requirements under an EPA-approved TMDL may qualify for additional points under subpart 10.

General sewer maintenance projects and the installation of sump catch basins are not considered adequate treatment if there is no other treatment being provided by another BMP prior to discharge. Natural wetlands or waters of the State that have been used for treatment (even if classified or defined as "stormwater management systems" by the local government unit) do not qualify as approved treatment unless they are mitigated. New treatment must be constructed in upland and away from any wetland or water of the State. When unavoidable losses of wetlands are proposed (such as converting a wetland into a stormwater treatment system) the project must satisfy the full mitigation requirements as specified in part 7050.0186.

In **Subp. 10. Multiple environmental benefits**, the Agency describes how a maximum of six priority points are available under this subpart for a project that results in more than one environmental benefit. The goal of these points is to encourage proponents to consider and incorporate stormwater

treatment components or BMPs which result in multiple (additional) environmental benefits. This criterion recognizes that water quality and impaired waters are not the only environmental or natural resource management concern for municipalities. Projects focused on long-term sustainable solutions frequently include land and habitat management and/or energy related considerations. This criterion provides a way to credit projects that provide additional environmental benefits. Flood protection is already a primary goal of stormwater management and does not count as an additional environmental benefit. Multiple environmental benefits are defined as additional benefits which are not required by a permit or by an EPA-approved TMDL. These benefits may target environmental goals and objectives of the watershed or of the community, or may result in protecting natural resources. A project consisting of multiple types of BMPs does not necessarily qualify for points under this subpart. Following are examples of additional project benefits listed in the rules that may qualify under this part because of their recognized or potential environmental benefits. The applicant may only claim up to a maximum of 6 points under this part for achieving one applicable multiple benefit (e.g., one does not get 12 points for achieving an additional multiple benefit under this part):

- stormwater capture and reuse;
- creation of wildlife habitat (beyond that offered by standard/typical stormwater ponds and rain gardens);
- creation of a wildlife corridor or preservation of open or connected green space;
- reduced use or need for water, energy, or consumption of other natural resources;
- green roof technology that results in measurable reductions to stormwater volume; or
- other similar practices that provide multiple environmental benefits

Project proposals will be evaluated on a site-by-site basis with consideration of local conditions and project-specific goals.

In **subp. 11, Structural Improvements to Existing Stormwater Ponds** (extract below), the Agency inserted language to assist municipalities seeking to improve upon the environmental benefits of existing stormwater infrastructure by providing ten points for rehabilitating while improving the treatment effectiveness or capacity of existing stormwater ponds.

“Subpart 11. Structural Improvements to Existing Stormwater Ponds. Ten points shall be assigned to a project for structural improvements to an existing stormwater pond that increase or improve stormwater treatment. No points will be assigned for projects that address only maintenance and do not propose structural improvements.”

[...]

7077.0121 RANKING OF PROJECTS WITH EQUAL TOTAL NUMBER OF POINTS.

In **Subpart 1. Tie breaker based on environmental and human health threat**, the Agency revises existing language to include new provisions that address priority points for stormwater projects. The Agency made two additional changes: the first change was meant to reflect that the first question for “tie-breaker” stormwater points in part 7077.0119 was broken apart into two sub-questions (subpart 1 and subpart 1a), the second change added a question in subpart 2 to consider environmental and human health threats in tiebreaker situations for stormwater systems.

[...]

7077.0272 FACILITIES PLAN FOR WASTEWATER TREATMENT SYSTEMS

[...]

In **Subp. 2. Facilities plan contents, item D**, the Agency clarifies that it is talking about the project service area.

[...]

7077.0277 STORMWATER PROJECT PLAN

[...]

In **Subp. 2. Contents, items C to F**, the Agency adds language that clarifies the requirements for adequately describing proposed projects. The Agency adds a new item C that requires describing project alternatives considered and how the proposed project was selected. This allows the state to have a voice in determining appropriate alternatives. The Agency renumbers existing item C as item D and amends new item D to remove the requirement for describing an annual operating and maintenance cost along with the construction cost description. The Agency renumbers existing item D as item E and amends new item E to describe the operating and maintenance costs and responsibilities, and the intended life span of the project, by adding these to the item already describing the long-term maintenance plan. This will require the PFA to set its amortization schedule to match the expected service life of the project. Finally, the Agency amends renumbered item F to require describing any pollutants contributing toward the impairment of receiving waters.

In **Subp. 3. Stormwater project plan supplement, items A to E**, the Agency clarifies what information must accompany submittal of a stormwater project plan. In new item A, the Agency requires submittal of a completed environmental information worksheet. This provides the proponent and the Agency with a variety of environmental factors to weigh in determining comparative project viability. The Agency renumbers old item A as item B and amends new item B to clarify conditions for submitting a list of addresses used to notify parties interested in the environmental information worksheet for the proposed stormwater project. The Agency renumbers existing items B to D as items C to E. The Agency deletes existing item E, the content of which is now found in new item A.

[...]

7077.0279 PLANS AND SPECIFICATIONS FOR STORMWATER TREATMENT SYSTEMS

[...]

In **Subp. 2. Contents, items C to E**, the Agency clarifies the expected level of detail the applicant must include in the project plans and specifications. In item C, the Agency removes a requirement for proposers to use a form prescribed by the commissioner to submit predicted stormwater treatment system average and maximum design flows. It is not necessary to develop or require the use of a specific form to supply this information in sufficient detail for a stormwater treatment system. In item D, the Agency removes a requirement to include “a hydraulic profile of the flow through the stormwater treatment system.” This change was made because the flow conditions required under item C provide sufficient flow information for purposes of this part; also, for all stormwater BMP designs found in the Minnesota Stormwater Manual there is no mention of determining hydraulic profile of the flow through the system. The Agency moves a slightly-clarified construction stormwater treatment plan requirement from former item E to replace the deleted content of old item D. The Agency modified this requirement to refer to a stormwater pollution prevention plan instead of a plan for

interim treatment to be consistent with construction permit requirements. This change of terminology was made because the construction stormwater permit refers to, and has requirements for, a stormwater pollution prevention plan. There is no definition for “a plan for interim treatment” in the stormwater program. The pollution prevention plan is a necessary requirement and the change is focused on the differences in terminology between the programs. Finally, the Agency renumbers former items F and G as new items E and F, and adds clarifying language to new item E to “include operating and maintenance costs” to the existing requirement for a detailed cost estimate. This clarifies that operating and maintenance costs should be included in the detailed cost estimate. Municipalities must plan for long-term operation and maintenance responsibilities for the structures and BMPs they build. This requirement ensures that municipalities understand, and have planned for, operation and maintenance of their structures.

[...]

7077.0287 COMPLETION OF CONSTRUCTION AND INITIATION OF OPERATION; STORMWATER TREATMENT SYSTEMS

The Agency renumbers items A and B as subps. 1 to 4. In **subpart 1. Notification Required**, the Agency clarifies the timeframe for when a notification of termination for a construction stormwater permit (or no permit required) must be submitted. In **subpart 2. Date of initiation of operation**, the Agency clarifies that the date of initiation of operation begins with the date the notice of termination for the construction stormwater permit is submitted, and that this also serves as the first day of the one-year performance period. Also, when no permit is required, the date of initiation of operation is the date the municipality submitted to the Agency as the completion date of construction in subpart 1. The stormwater program change here was to clarify when a project is initiated, so that there is a clear and definitive date that can be used for the one year certification requirement. In new **subpart 3. Inspection required**, the Agency expresses that the municipality must notify the commissioner when it is ready to initiate operation and request an inspection. The purpose of an inspection, executed at the commissioner’s discretion, is to ensure that the construction conforms with the approved plans and specifications and any change orders, to identify any construction deficiencies, and to set target dates for the completion of deficient construction items. The addition of the inspection requirement was added to make this part similar to the wastewater requirement. Finally, in **subpart 4. Operation and maintenance manual**, the Agency adds a requirement that, prior to completing construction, the project engineer must submit to the commissioner an operation and maintenance manual for the stormwater treatment systems implemented by the project. An operation and maintenance manual must be developed to ensure municipalities understand their responsibilities and the associated costs of operating and maintaining the structures they build.

7077.0288 PROJECT PERFORMANCE

In **subpart 2. Performance certification for wastewater treatment systems, item A, subitems (5) and (7), and B**. The Agency revises subitem (5) to clarify the intent of existing rules. Next, the Agency revises the last sentence in item A to clarify that the certification must include a copy of “as-built” plans and specifications in a format designated by the commissioner. This change recognizes the need to stay current with evolving business technologies which include formats other than “microfiche.” While this seemingly increases Agency discretion, it is intended to make the rules easier to follow as technologies change over time. While microfiche was state-of-art to capture such material at one time, there has been a parade of more widely accepted technologies in the last ten years and these are likely to keep changing. It would be a hardship to require continued use of microfiche in light of more current

technologies. In item B, the Agency clarifies that the “one-year start-up period” is intended to mean the “one-year performance period.”

[...]

In **subpart 2a. Performance certification for stormwater treatment systems, item A, subitems (1) and (5)**, the Agency amends subitem (1) to clarify that, one year after the initiation of operation of a stormwater treatment project, the municipality must submit a certification that the project has been completed according to the approved stormwater project plan and that the project is operating as intended. The requirement to certify that a project is operating as intended is consistent with standard certifications required for any publicly-funded project. This helps determine whether the project is performing as promised. The Agency also adds new subitem (5) to clarify that the municipality must submit one copy of “as-built” plans and specifications in a format designated by the commissioner. Providing this record is consistent with standard practices required for any publicly-funded project. This provides the Agency with helpful information if the project wasn’t performing as planned.

[...]

In **subpart 3. Corrective action report, and item B** the Agency amends existing corrective action performance standard reporting requirements to apply to stormwater treatment system projects that don’t meet their performance standards under subpart 2a, item A. This reporting requirement had previously applied to wastewater treatment system projects. Similarly, the Agency amends existing item B to extend the applicability of requirements for submitting a performance certification following corrective action work for stormwater projects under subpart 2a; this already applied to wastewater treatment system projects. It is important that the corrective action report requirements, already applicable to wastewater treatment projects, be extended to stormwater projects so the parties responsible to monitor or implement performance know when corrective actions are needed. This change makes stormwater requirements consistent with wastewater requirements, and provides a process to follow when corrective actions are necessary.

7077.0290 COMMISSIONER'S NOTIFICATION OF PERFORMANCE.

In part 7077.0290, the Agency amends existing language requiring the commissioner to provide a written notification about the satisfactory performance of a wastewater treatment project to extend the applicability of this part to stormwater treatment projects when the commissioner receives and approves the items listed in part 7077.0288, subpart 2, item A or subpart 2a, item A, as applicable. It is important that the commissioner’s notification requirements, already applicable to wastewater treatment projects, be extended to stormwater projects so responsible parties know that adequate performance has been achieved. This change includes stormwater in order to be consistent with wastewater requirements and to ensure that at the one year mark there is a process in place to inform the authority (PFA) to let them know when the project is completed and performing as designed.

REPEALER. *Minnesota Rules*, part 7077.0119, subpart 4 is repealed.

EFFECTIVE PERIOD. The amendments to *Minnesota Rules*, parts 7077.0105 to 7077.0290, and the repealer are effective on June 30, 2014.

The Agency delays the applicability date of the provisions in this rulemaking. This provides time to allow regulated parties to seek assistance and gain understanding of these new provisions. Because the Agency is currently receiving PPL applications for State fiscal year 2014, this delay to the next PPL cycle is necessary to provide applicants time to develop, evaluate and submit potential beneficial use project

applications without interfering with the application deadlines of the current cycle.

LIST OF WITNESSES. The Agency will provide a list of witnesses in a notice if a hearing is required.

CONCLUSION.

Based on the foregoing, the proposed rules are both needed and reasonable.

[Date]

John Linc Stine
Commissioner