

STATE OF MINNESOTA  
POLLUTION CONTROL AGENCY

In the Matter of the Proposed Rules  
Governing the Clean Water Partnership  
Program, Minn. Rules Parts 7076.0100  
to 7076.0290

STATEMENT OF NEED  
AND REASONABLENESS

I. INTRODUCTION

A. Nature of the Rules

Minnesota Statutes section 115.091 (Supp. 1987), established the Clean Water Partnership Program (hereinafter CWPP). The program focus is control of nonpoint sources of pollution to protect and improve surface and ground water in Minnesota.

The Minnesota Pollution Control Agency (hereinafter "Agency") is required to adopt rules for administration of state matching grants to local units of government for nonpoint source pollution control projects. These projects include the development of a diagnostic study and implementation plan and the implementation of that plan. The diagnostic study analyzes specific water quality problems and sources of pollution and identifies realistic project goals and objectives. The implementation plan identifies the combination of best management practices, activities and protective measures that will be necessary to solve the identified problems and achieve the identified goals and objectives. The implementation of the plan includes the installation of best management practices and the promotion of educational activities and other measures identified as necessary to control nonpoint sources of pollution.

The proposed rules identify the application requirements, criteria for determining priority for the award of State funds, requirements for the development of a diagnostic study and implementation plan and other aspects of administration and implementation of the program. The proposed rules provide

the mechanism to implement federal funds that may become available through Section 319 of the Water Quality Act of 1987.

B. Background

Since the passage of the Clean Water Act, many of the Agency and the U.S. Environmental Protection Agency (EPA) programs have focused efforts on point sources of pollution - discharges of wastewater from municipal sewage treatment systems and from industrial and commercial operations. Minnesota Water Quality: Water Years 1984-1985 Report to Congress included a trend analysis that indicates water quality impacts from municipal and industrial sources are declining as a direct result of improved wastewater treatment (Exhibit 1). However, nonpoint sources of pollution continue to degrade surface and ground water quality in Minnesota. In 1986, an interagency team, made up of thirteen agencies with responsibility and authorities for addressing nonpoint sources of pollution, reviewed existing state and federal programs and past program recommendations. The interagency team recommended the establishment of a program to protect and improve surface and ground water in Minnesota through State financial and technical assistance to local units of government to fund locally sponsored projects for the control of nonpoint sources of pollution (Exhibit 2). The 1987 Minnesota Legislature enacted the Laws of Minnesota 1987, Chapter 392 establishing the Clean Water Partnership Program (Exhibit 3).

C. Rules Development Process

On September 14, 1987, a "Notice of Intent to Solicit Outside Information Regarding Proposed Rules Governing the Clean Water Partnership Program" was published in the State Register, 12 S.R. 469. The Agency received one set of written comments and one request for additional information.

As a result of comments received, discussions with managers of locally led water quality projects from around the state, and the Agency's own experience

managing water quality projects and grant programs, the Agency staff developed a set of draft rules to be used for discussion purposes.

On November 20, 1987, over 800 copies of the draft rules and an announcement of informational meetings were mailed to the following: interested individuals, environmental, conservation, farm and public policy organizations; soil and water conservation districts; watershed districts; watershed management organizations; planning and zoning administrators, and state and federal agencies. The meeting announcements included a request for those who could not attend an informational meeting to provide their comments to the Agency in writing or by phone.

Between November 30 and December 8, 1987, a series of six informational meetings were held in Owatonna, Marshall, Detroit Lakes, St. Cloud, Duluth and St. Paul. Attendance at the meetings ranged from nine to thirty-one people. The meetings included representatives of the following groups and organizations: soil and water conservation districts (supervisors and staff), counties (commissioners and staff), watershed districts (managers), cities (staff), Minnesota Department of Natural Resources (staff), private industry, and environmental organizations.

The Clean Water Partnership Act calls for the creation of a project coordination team, Minn. Stat. section 115.103 (Supp. 1987). The project coordination team was established by the Agency on October 26, 1987, through a letter to each agency and organization, requesting their attendance at a meeting November 9, 1987. The project coordination team includes representatives of the Pollution Control Agency, Department of Natural Resources, Board of Water and Soil Resources, Department of Agriculture, Department of Health, State Planning Agency, Minnesota Extension Service, University of Minnesota Agriculture Experiment Station, United States Army Corps of Engineers, United States

Environmental Protection Agency, United States Department of Agriculture-Agricultural Stabilization and Conservation Service, United States Department of Agriculture-Soil Conservation Service, Metropolitan Council, Association of Minnesota Counties, League of Minnesota Cities, Minnesota Association of Townships.

The project coordination team met for the first time on November 9, 1987 and discussed the rules development process, including the proposed informational meetings. The project coordination team met on December 10, 1987, considered the comments received at the six informational meetings and provided its own comments on the draft rules. The project coordination team met for a third time on March 3, 1988 discussed several changes to the rule and recommended the draft rule be finalized and sent to the Agency Board for its approval.

A joint meeting of the Agency Board Committees on Rules and Nonpoint Source Pollution met on December 14, 1987, to review the rule development process. The two committees, because of the noncontroversial nature of the rules and the comments received at the informational meetings, recommended that the discussion draft rules be revised to reflect the discussion at the committee meeting and brought to the Agency Board for authorization to proceed with adoption of the rules without a public hearing as soon as possible.

## II. STATEMENT OF AGENCY'S STATUTORY AUTHORITY

The Agency's statutory authority to adopt the rules is set forth in Minn. Stat. section 115.10 (Supp. 1987), which provides:

"The agency shall adopt permanent rules necessary to implement sections 1 to 12. The rules shall contain at a minimum:

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

- (5) criteria for the evaluation and approval of a diagnostic study and implementation plan;
- (6) criteria for the evaluation of best management practices;
- (7) criteria for the ranking of projects in order of priority for assistance;
- (8) criteria for defining and evaluating eligible costs and cost-sharing by local units of government applying for assistance; and
- (9) other matters as the agency and the director find necessary for the proper administration of sections 1 to 12, including any rules determined by the director to be necessary for the implementation of federal programs to control nonpoint source water pollution."

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

### III. STATEMENT OF NEED

Minn. Stat. ch. 14 (1986) requires the Agency to make an affirmative presentation of facts establishing the need for and reasonableness of the rules as proposed. In general terms, this means that the Agency 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 which requires administrative attention, and reasonableness means that the solution proposed by the Agency is appropriate. The need for the rules is discussed below.

As previously discussed, Minn. Stat. Section 115.10 (Supp. 1987) requires the Agency to adopt rules necessary to implement the Clean Water Partnership Program. In enacting this program, it was the purpose of the Legislature to protect and improve surface and ground water in Minnesota by providing financial and technical assistance to local units of government for the control of water pollution associated with nonpoint sources of pollution. Thus, these rules are needed to establish the program for awarding grant funds for nonpoint source control programs.

The 1972 Clean Water Act established a nationwide goal to restore and maintain the chemical, physical and biological integrity of the nation's waters. This is a goal the State of Minnesota is committed to achieving and maintaining.

Minnesota Water Quality: Water Years 1984-1985 Report to Congress included a trend analysis that indicates water quality impacts from municipal and industrial point sources are declining as a direct result of improved wastewater treatment. However, nonpoint sources of pollution continue to degrade water quality, particularly in areas where human activities and land use intensity are high. Many human activities and land uses result in pollution as nutrients, sediment, bacteria, toxic chemicals, and other pollutants are carried from agricultural, urban and other land use activities into surface and ground water. Major sources of nonpoint source pollution include: agricultural runoff; pesticide and fertilizer use; feedlot runoff; urban runoff from streets, yards and construction sites; leachate from septic systems; runoff from forestry and mining activities; highway de-icing chemicals; dredging and drainage activities; and the impacts from the loss of wetlands.

These sources of pollution result in a wide variety of water resource use impairments ranging from increased treatment costs for industrial and consumptive uses, and toxic contamination, to reduced recreational opportunities from degraded fisheries, impaired boating and loss of swimming opportunities.

Degradation of water quality from nonpoint sources of pollution may be the most serious and complex environmental problem in Minnesota today. It encompasses a wide range of pollutants generated by a large number of sources and causes serious impacts and use impairments of surface and ground water quality across the state. It is clear that the Clean Water Partnership Act is a useful tool in the arsenal against water pollution.

#### IV. STATEMENT OF REASONABLENESS

The Agency is required by Minn. Stat. ch. 14 to make an affirmative presentation of facts establishing the reasonableness of the proposed rules.

Reasonableness is the opposite of arbitrariness or capriciousness. It means that there is a rational basis for the Agency's proposed action. The reasonableness of the proposed rules is discussed below.

A. Reasonableness of the Rules as a Whole

The overall approach that the rules take to protect and improve surface and ground water in Minnesota and control the pollution of water resulting from nonpoint sources was laid out by the Legislature in Minn. Stat. section 115.091 through section 115.103 (Supp. 1987). This overall approach is: 1) that matching grants be awarded for up to 50 percent of the eligible costs of projects; 2) that eligible projects are those that include the development of diagnostic studies and implementation plans and the implementation of those plans; 3) that eligibility is limited to local units of government with the identified authorities and documents; 4) that the Agency is required to rank applications in order of priority for funding; and 5) that the agency must adopt rules that include the specified list of criteria, requirements and procedures for implementation and administration of the CWPP.

The Agency has followed the overall approach provided by the Legislature in preparing these rules. Therefore, the overall approach is reasonable.

B. Reasonableness of Individual Parts of the Rules

The following discussion addresses the specific provisions of the proposed rules.

PART 7076.0100 PURPOSE

Part 7076.0100 explains that the proposed rules will be used to administer the CWPP and federal funds made available through the federal Nonpoint Source Management Program, (Section 319 of the Water Quality Act of 1987). This language is reasonable because it is consistent with the legislative requirement for the agency to adopt rules.

PART 7076.0110 DEFINITIONS

Subpart 1. Scope.

This subpart explains that the terms used in the proposed rule are consistent with other Minnesota Statutes and rules related to pollution control. This is reasonable because it provides consistency with other rules and statutes of the Agency. Since controlling nonpoint sources of pollution may involve a range of programs, it is important there be consistency between rules. For example, Chapter 7050 contains the state's water quality standards. These standards are equally pertinent to controlling both nonpoint and point sources of pollution.

Subpart 2. Agency.

This subpart defines the word "Agency" to mean the Pollution Control Agency. This is reasonable because it shortens the text.

Subpart 3. Best management practices.

This subpart defines "best management practices" as they are defined in Minn. Stat. section 115.093. It is reasonable to emphasize the statutory definition because the statutory definition is broader than the common use definition and must be emphasized for clarity. This also alerts the reader to the fact that the proposed rule must be read in conjunction with the Clean Water Partnership Act.

Subpart 4. Commissioner.

This subpart defines the word "commissioner" to mean the Commissioner of the Pollution Control Agency. This is reasonable because it shortens the text.

Subpart 5. Land occupier.

This subpart defines the term "land occupier" to mean the individual, organization or government responsible for management of land in the project area. This is reasonable because nonpoint source pollution comes from many



diverse land uses, so broadly defining the term land occupier provides local units of government a program which is flexible enough to cover the broad range of situations that may be encountered.

Subpart 6. Local share.

This subpart defines the term "local share" to mean local match for state grants which may include the value of cash and in-kind contributions used or expended on eligible project activities. This is reasonable because it provides a broad definition of what may be included in the calculation of local match for the state funds while insuring that it is limited to eligible costs and activities directly related and necessary for the development and implementation of the project.

Subpart 7. Local unit of government.

This subpart defines "local unit of government" as it is defined in the Clean Water Partnership Act. It is reasonable to include the statutory definition in the rules because the statutory definition is broader than the common use definition and because this is the definition that establishes who is eligible for a grant. This also alerts the reader that the proposed rule must be read in conjunction with the Clean Water Partnership Act.

Subpart 8. Local water plan.

This subpart defines "local water plan" to mean either a 1) comprehensive water plan authorized under Minn. Stat. ch. 110B, 2) surface water management plan required under Minn. Stat. section 473.878, 3) overall plan required under Minn. Stat. ch. 112, or 4) until July 1, 1991, other local plan that provides an inventory of existing and hydrologic information on the area, a general identification of water quality problems and goals, and that demonstrates a local commitment to water quality protection or improvement. This definition is

a compilation of the statutory requirements in Minn. Stat. section 115.097 subd. 2(a)(b)(Supp. 1987). It is reasonable to define the term using statutory requirements, since one of these listed documents is required for a local unit of government to be eligible for assistance through the program.

Subpart 9. Nonpoint source.

This subpart defines "nonpoint source" as it is defined in the Clean Water Partnership Act. This alerts the reader to the fact that the proposed rule must be read in conjunction with the Clean Water Partnership Act.

Subpart 10. Official controls.

This subpart defines "official controls" as it is defined in the Clean Water Partnership Act. This alerts the reader that the proposed rule must be read in conjunction with the Clean Water Partnership Act.

Subpart 11. Person.

This subpart defines the term "person" as it is defined in Minn. Stat. section 115.01 subd. 10. It is reasonable to define "person" consistent with the use of the word in other pollution control statutes and rules.

Subpart 12. Project.

This subpart defines the term "project" to be the development and implementation of the diagnostic study and implementation plan by a local unit of government for control of nonpoint sources of water pollution. This is reasonable because it is defined in Minn. Stat. section 115.093, subd. 8 and it alerts the reader that the proposed rule must be read in conjunction with the Clean Water Partnership Act.

Subpart 13. Project area.

This subpart defines the term "project area" to be that area identified by the project sponsor where water flows, runs off, percolates or seeps to the lake, stream, aquifer or other water of the state, for which the diagnostic

study and implementation plan is developed and implemented. This is reasonable because it identifies the physical land area contributing pollutants to the specific water of concern on a hydrologic basis and helps determine the boundaries on the area to be studied when a grant is issued.

Subpart 14. Project continuation grant amendment.

This subpart defines "project continuation grant amendment" to be an amendment to an existing project implementation grant for additional funds to continue activities identified in an approved diagnostic study and implementation plan. In these rules the Agency has proposed to segment implementation projects over three years in length into two parts. Once a project sponsor has received a competitive project implementation grant, that grantee will be eligible to receive a second grant (project continuation grant amendment) on a noncompetitive basis. This insures existing projects will be completed before new projects are begun. This is reasonable because it improves the readability and the understandability of the text. It is helpful to keep continuation of grant amendments separate from the two types of competitive grants, since these amendments allow the continuation of an existing project.

Subpart 15. Project coordination team.

This subpart defines the "project coordination team" as the public interagency group established by the Legislature in Minn. Stat. section 115.103, subd. 1. This is reasonable because it is the term used in the statute to identify this group and it significantly shortens the text over identifying each of the member agencies.

Subpart 16. Project development.

This subpart defines "project development" to be the development of a diagnostic study and implementation plan. This is reasonable because the Agency has proposed to separate the development of the diagnostic study and

implementation plan from the implementation of the plan. This separation is the logical point to review project proposals, potential project success and make funding decisions. Defining project development separate from project implementation improves readability and understandability of the rule.

Subpart 17. Project development grant.

This subpart defines the term "project development grant" to be the grant from the Agency to the project sponsor for the preparation of an approvable diagnostic study and implementation plan. This is reasonable because the Agency has proposed to separate the project development grants from project implementation grants since the activities conducted under each grant are very different, and it affords the Agency a logical point to make grant related decisions based on technical data and information. Defining the project development grant separate from project implementation grants also improves readability and understandability of the rule.

Subpart 18. Project implementation.

This subpart defines "project implementation" to be the activities, measures and actions taken by the local unit of government identified in the approved implementation plan to control nonpoint sources of water pollution. This is reasonable because the Agency has proposed to separate the development of the diagnostic study and implementation plan from the implementation of the plan. This separation is the logical point to review project proposals, potential project success and make funding decisions. Defining project implementation separate from project development improves its readability of the rule by making it clear this is carrying out the activities discussed in the implementation plan.

Subpart 19. Project implementation grant.

This subpart defines "project implementation grant" to be the grant from the agency to the project sponsor for project implementation. This is

reasonable because the Agency has proposed to separate the project development grants from project implementation grants since the activities conducted under each grant are very different, and it affords the Agency a logical point to make a grant related decisions based on technical data and information. Defining the project implementation grants separate from project development grants also improves readability and understandability of the rule.

Subpart 20. Project sponsor.

This subpart defines the "project sponsor" to be the local unit of government that applies, contracts and is responsible for the development and implementation of the project. This is reasonable because it designates the lead local unit of government with responsibility for project development and implementation, while recognizing there may be several local units of government participating in project development and implementation. This also improves readability and understandability of the rule.

Subpart 21. Water pollution.

This subpart defines "water pollution" as it is defined in Minn. Stat. section 115.01, subd. 5. This is reasonable because it is defined in statute.

Subpart 22. Waters of the state.

This subpart defines "waters of the state" as it is defined in Minn. Stat. section 115.01, subd. 9. This is reasonable because it is defined in statute.

Subpart 23. Water of concern.

This subpart defines "water of concern" to be that specific lake, stream, aquifer or other water of the state for which the diagnostic study and implementation plan will focus on. This is reasonable because it allows the rule to be flexible for the inclusion of a broad range of projects that might be proposed in Minnesota.

PART 7076.0120 AVAILABLE ASSISTANCE

Subpart 1. Financial assistance.

This subpart identifies that there are two types of matching grants available: grants for preparation and completion of diagnostic study and for implementation plans and grants for implementation of that plan. This is reasonable because it is specified in the Clean Water Partnership Act and is the basis for much of the rule that follows.

Subpart 2. Technical assistance.

This subpart allows the agency to provide assistance, within the limits of available Agency resources, to local units of government that have applied for and obtained a grant. It is reasonable to restrict technical assistance to only those local units who get grants because the Agency has limited staff resources to carry out this activity. At the present time the Agency has four staff persons to administer the program and provide technical assistance. It would be difficult to provide technical assistance for every community that may seek it. By focusing on those that are awarded grants, the Agency will help ensure that a State financed project is proceeding smoothly. Technical assistance will include guidance on monitoring, analysis of data, selection of best management practice and project management.

PART 7076.0130 ELIGIBILITY CRITERIA

Subpart 1. Eligible applicants.

This subpart identifies that only local units of government with authority to enter into contracts, generate revenue and adopt and enforce official controls are eligible to apply for assistance through the program. This is reasonable because it is specified in the Clean Water Partnership Act, Minn. Stat. section 115.097 Subd. 1 (Supp. 1987).

Subpart 2. Eligible costs.

This subpart establishes the criteria for determining what costs associated with a project are eligible for reimbursement with grant funds. The first requirements are that the costs must be reasonable and necessary. Certainly, the Agency is not going to pay for things that were unreasonable or unnecessary.

The main thrust of this subpart, however, is the list of activities for which the costs will be grant eligible. Any costs for which a local unit of government seeks reimbursement must fall within one of these categories in order to be grant eligible.

The Agency has attempted in this list to identify the activities that will be necessary for the development or the implementation of a project. A community that has an anticipated costs for an activity that does not fall within categories A-G will have to get approval from the Agency under category H. Since the amount of the grant is determined before the project gets underway and the costs incurred, this decision should be made upfront so both the Agency and the project sponsor know before the costs are incurred whether the cost will be reimbursed.

In some cases the project sponsor will undoubtedly make changes in the project as the work progresses. In this event, the Agency strongly encourages the project sponsor to get prior approval of eligibility and reimbursement before incurring the expense.

Categories A-G reasonably list all those activities that will be necessary to develop or implement a project. The list includes information gathering costs, administrative costs such as report preparation, land acquisition costs, public dissemination costs, and the costs of installing or implementing the actual practices or controls to complete the project. We believe the list is adequate to include those costs that reasonably should be reimbursed and yet puts some restrictions on the costs that will be grant eligible.

Subpart 3. Ineligible costs.

This subpart identifies costs that are ineligible as reimbursable costs through the program. These include activities that occurred before the project began, activities that are required as a result of regulatory or other funding programs, and activities that are not within the purpose of the program. This is reasonable because this program was established with a purpose to protect and improve surface and ground water from nonpoint sources of pollution, and it is necessary to exclude from eligible costs pollution associated with point sources and sources of pollution which are regulated or for which funding is available for cleanup through existing programs. A diagnostic study will possibly identify sources of pollution in a project area that are included as ineligible costs for cleanup. It is reasonable not to fund every conceivable pollution cleanup program since any newly discovered sources of pollution should be referred to the appropriate program for remedial action. It is also reasonable to exclude activities that are not primarily for water quality protection and improvement, as such, it is not reasonable to include flood control and certain construction activities.

Subpart 4. Eligible local share.

This subpart requires the locals to provide at least thirty percent of the project costs from nonfederal and nonstate funding sources. It also clarifies that costs provided by an individual for best management practices may be considered as part of the local share as long as the primary purpose is water quality, the best management practices are an integral part of the project, and best management practices will be effective for at least ten years as provided in an operation and maintenance plan. This is reasonable because it provides incentive for the local project participants to take ownership in the long term maintenance of the project investment. It is reasonable to allow the project to



include some state and federal funds in the local share because it encourages coordination of existing programs with the projects. For example, if a certain agricultural field is identified as a serious source of pollution and the only apparent cost-effective solution would be to remove it from intensive agricultural production, it is possible the local units of government could coordinate the retirement of the field from production through the Minnesota Reserve Program or the USDA-Conservation Reserve Program. The state or federal costs to remove the field from production could count as local share up to the point that the maximum for state and federal contribution to local share is reached. The conditions placed on a land occupier's contribution to local share ensures the contribution is directly related to the project and is of a minimum effective life. The requirement that thirty percent of project costs come from nonstate and nonfederal funds was discussed in the informational meetings and widely supported as a reasonable formula for local share. This combination provides the local project sponsor some flexibility in providing the local match, while insuring local ownership of the project and long term commitment to its operation and maintenance.

#### PART 7076.0140 NOTICE OF GRANT AVAILABILITY

##### Subpart 1. Notice.

This subpart requires the agency to publish in the State Register a notice that project applications will be accepted. The notice must be published sixty days prior to the application deadline. This is reasonable because it establishes a procedure to announce acceptance of applications and sets a deadline for application submittal which starts the ranking and project selection process. The Agency intends to assist local units of government prepare applications over a period longer than sixty days, but this provides the official notice of a submittal deadline.

Subpart 2. Notification list.

This subpart requires the agency to maintain a list of local units of government who wish to be notified of application periods published in the State Register. This is reasonable because it provides direct notification of local units of government interested in the program.

Subpart 3. Grant application periods.

This subpart requires the Agency to establish for each calendar year in which funds are available at least one application period. This is reasonable because it allows the Agency flexibility in establishing application periods so that this program can be coordinated with the federal Nonpoint Source Management program established through Section 319 of the Water Quality Act of 1987.

PART 7076.0150 GRANT APPLICATION

Subpart 1. General requirements.

This subpart requires the application to be submitted by the project sponsor before the deadline and to include the required information. This is reasonable because it ensures that the project sponsor is the actual applicant, emphasizes the requirement to have the application in before the deadline, and identifies there are specific requirements identified in this rule.

Subpart 2. Project development grants.

This subpart sets forth what is required in an application for a project development grant. What is required is the basic information related to the proposed project, including identification of the water body, its problems, estimated cost of the proposed activities, amount requested in the grant, a schedule for completion and identification of project sponsor and others involved in the project as well as statutory application requirements. It is reasonable to require this information because it is the information necessary to determine how well the project fits the criteria established for prioritizing the projects.

A. The resolution provides an official action assuring the Agency the project sponsor is serious about the project and identifies a person who may represent the project sponsor in meetings with the Agency.

B. Requiring documentation that the project sponsor has consulted soil and water conservation districts and watershed districts in preparing the application, allows the Agency to determine if the applicant meets the requirements identified in Minn. Stat. section 115.097 Subd. 2(a)(2)(Supp. 1987).

C. This information advises the Agency on who will be responsible for assisting the project sponsor in completing the proposed tasks and work activities.

D. These resolutions provide the Agency with assurance that the participating local units of government recognize their involvement in the project, both in terms of activities and funding.

E. The grant request identifies to the Agency the amount of funds the project sponsor needs to complete the activities proposed. This not only allows the Agency to insure that the grant request is for not more than 50 percent of the project cost, but it also identifies those communities that do not need the full percent. The Agency expects that some applicants will request less than the full 50 percent available. Requesting only the amount that is actually needed will allow the Agency to fund more projects.

F. Identifying the sources of local share assures the Agency the project sponsor is capable of raising the funds necessary to complete the project activities and that the applicant has the necessary local commitment to the project, a minimum of 30 percent.

G. The work plan and schedule identify for the Agency what the project sponsor proposes to do with the requested project funds, allowing the Agency to determine if the proposed activities are eligible costs, will result in an approvable diagnostic study and implementation plan and information on the waters of concern necessary for the Agency to award priority points.

H. The local water plan allows the Agency to determine if the application meets the requirements identified in Minn. Stat. section 115.097 Subd. 2(a)(3)(Supp. 1987), and provides information necessary for the Agency to avoid priority points.

I. The other documents that may be required, allow the Agency to administer federal funds through this set of rules when funds are made available through section 319 of the Water Quality Act of 1987.

### Subpart 3. Project implementation grant.

This subpart requires a project sponsor seeking a project implementation grant to submit an approved diagnostic study and implementation plan, a detailed work plan, a budget, and the identification of the project sponsor and others

involved in the project. This is reasonable because this provides the Agency with the specific information necessary to review the project in terms of the ranking criteria in this rule.

A. The resolution provides an official action assuring the Agency the project sponsor is serious about the project and identifies a person who may represent the project sponsor in meetings with the Agency.

B. Requiring documentation that the project sponsor has consulted soil and water conservation districts and watershed districts in preparing the application, allows the Agency to determine if the applicant meets the requirements identified in Minn. Stat. Section 115.097 Subd. 2(a)(2) (Supp. 1987).

C. The approved diagnostic study and implementation plan provides technical information necessary for the Agency to award priority points based on the criteria in this rule. It also provides the work plan and schedule for the project. This diagnostic study and implementation plan are very important documents for water quality improvement as a result of the project because they identify the problems and solutions and how the project implementation activities will be accomplished. The study and plan are what is required of a project development grant recipient. These rules allow an eligible project sponsor apply for a project implementation grant if the project sponsor submits a local water plan to allow the Agency to determine if the application meets the requirements identified in Minn. Stat. section 115.097 Subd. 2(a)(3)(Supp. 1987) and a diagnostic study and implementation plan not funded through this program but meets the diagnostic study and implementation plan requirements of this rule.

D. This resolution provides the Agency with assurance the participating local units of government recognize their involvement in the project, both in terms of activities and funding.

E. The work plan and schedule for the grant period identify for the Agency what the project sponsor proposes to do with the requested funds and allows the Agency to determine if the proposed activities are eligible costs, technically feasible, and fiscally reasonable. The work plan and schedule provide important information for awarding priority points.

F. The budget identifies for the Agency the amount of funds necessary to complete the activities proposed for the grant period. The budget is important to review in conjunction with the work plan and schedule to award the priority points.

G. Listing the sources of the local share assures the Agency that the project sponsor is capable of raising the funds necessary to complete the project activities and has met the requirements for the local share.

H. The long term project work plan and budget provide the Agency with the project sponsor's best estimates of length and cost of the total project, which allows the Agency to budget and identify future program needs.

I. The other documents that may be required will allow the Agency to administer federal funds through this set of rules where funds are made available through Section 319 of the Water Quality Act.

PART 7076.0160 REJECTION OF GRANT APPLICATION

Subpart 1. Grounds.

This subpart identifies that an application may be rejected if the applicant is ineligible, the costs are ineligible, the application was received after the deadline for submittal, or the applicant has failed to comply with other requirements. It is reasonable to re-emphasize that an application will be rejected if the minimum requirements are not complied with. It is also important for applicants to know that their applications will not be prioritized and ranked if their application is rejected.

Subpart 2. Procedure.

This subpart requires the Commissioner to review each application within 30 days of the deadline for submittal and notify the applicant if rejected. This is reasonable because it insures the applicant will be made aware of the status of its application in a reasonable time frame. Thirty days should be sufficient for the Agency to review all grant applications that are submitted.

Subpart 3. Effect of rejection.

This subpart allows the applicant to revise and resubmit the application within 14 days of being notified of its rejection. This is reasonable because it allows an applicant who made errors or omitted information to revise its application and resubmit the application for consideration in the current funding cycle. The Agency wants to be able to assist local units of government in submitting acceptable applications and this chance to correct a deficient application will help minimize the disappointment of being rejected for submitting an incomplete application.

PART 7076.0170 PROJECT RANKING

Subpart 1. Process of ranking.

This subpart requires the Agency to rank independently the project

development applications and the project implementation applications according to the criteria that follow in Subparts 2 and 3. This is reasonable because it distinguishes applications for development of the diagnostic study and implementation plan from the applications for implementation of the plan. This is important since the project development applications will typically contain limited technical information to judge the merit of the project. The project implementation applications have very specific technical information upon which to judge the proposed project, as a result of having completed the diagnostic study and implementation plan. Therefore, it is reasonable to distinguish the two so that the basis to rank projects is made with similar and comparable information.

Subpart 2. Priority points for project development grant applications.

The Clean Water Partnership Act requires the Agency to establish "criteria for the ranking of projects in order of priority for assistance." Minn. Stat. Section 115.10(7) (Supp. 1987). This subpart establishes those criteria for ranking project development grant applications. Once the Agency has identified eligible applications, staff will review application documents and other information the Agency has in its data files in terms of the criteria identified in A through F and assign from zero to ten points for each criterion. The project coordination team will then review each application and assign from zero to ten points under criteria G. The points for each project will be totaled and the information presented to the Agency Citizens Board for final approval.

It is impossible to remove all subjectivity from a ranking scheme, but the criteria here will allow grant applicants to know what the Agency is looking for in a high priority project. It will be a subjective task to determine how many of the ten points for each criterion should be awarded a particular project, but at least there is an objective criterion against which to evaluate the project.

The Agency does not intend to comparatively rank each project under each criterion. Instead, each project will be evaluated according to the objective criterion. Thus, under each criterion more than one project can get a ten, or a one, or any other point award. For example, those projects that involve a good deal of community support will get a high ranking and those that do not will get only a few, or even zero, points for this criterion. The projects will not be ranked against each other.

The awarding of points for each project is a task that will be first performed by the Agency staff. The staff will then make its recommendation to the Agency Board. The applicants will have an opportunity to argue to the Board that they should be awarded more points than the staff recommended. At that point, there will undoubtedly be comparisons made between competing projects. The staff agrees that at that point it will be appropriate to make those comparisons; but in performing the first evaluation, the staff will evaluate the project against the criterion, not against the competing projects. Staff experience with review of projects over time may result in differences in standards for each criterion, so that the same project judged at different times might receive a different final score. (The procedure for making the final decisions or grant awards is provided for in Parts 7076.0180 and 7076.0190).

A discussion of each of the criterion follows below.

A. A measure of community support and involvement and the participation, coordination and cooperation between federal, state and local agencies and units of government for water quality protection and improvement through the project. This is reasonable because project success is directly related to public and private community support and involvement in the project. Since the project will often be dependent on individual land managers changing their land management activities, it is important to have broad community support for the project.

Since the proposed projects will often overlap political boundaries of many units of government with various resource management responsibilities, it is important to have federal, state and local agencies' and units of government'

involvement and support for the project. So the broader the support of the community at large and the greater the participation of local units of government with responsibility for resource management in the project area, the more likely a project will be successful and the more points that will be awarded. We do not envision that a project will get zero points in this category since there must be some degree of support to submit an application.

B. The extent to which the project takes place where local units of government have adopted and implemented authorities or official controls to abate or prevent water pollution from nonpoint sources. This is reasonable because it demonstrates a record of commitment and support for water quality protection. Examples of this commitment include adoption of: the Animal Feedlot Permit Program, Minn. Rules pts. 7020.1500 to 7020.1900, Individual Sewage Treatment System Ordinance, Minn. Rules ch. 7080, Soil Loss Limits Ordinance, Minn. Rules pt. 8400.4000, Shoreland Management Regulations, Minn. Rules ch. 6120 - Cooperative Soil Survey Program. The more active the local units of government have been in these programs, the more points that will be awarded. It should be relatively easy to determine whether the local units of government have taken official actions related to these programs.

C. The extent to which the water of concern is identified as a priority water in local water plans. This is reasonable because it demonstrates that the specific water of concern has gone through a formalized process identifying it as a priority to the locality. It is reasonable that projects for waters identified and emphasized in a local water plan receive more points than those which have not been identified through a formal local planning process because waters with such emphasis are a recognized priority to the locality.

D. The extent to which the project affects waters identified in the statewide resource assessment conducted under Minn. Stat. section 115.095. Waters identified in that assessment are those waters that could not be expected to attain or maintain compliance with applicable water quality standards or goals without additional control of nonpoint sources. This is reasonable because the Agency, through two data evaluation exercises and a survey of local resource managers has identified an extensive list of nonpoint source impacted water bodies in Minnesota in the Statewide Assessment of Nonpoint Source Pollution (Exhibit 4). Therefore, waterbodies identified through the assessment process are state priority waters with recognized nonpoint impacts and the Agency will review the relation and impacts on other waters of the State. So a proposed project not identified in the assessment may receive zero points, while a proposed project on the list which affects other high resource value waters may receive ten points.

E. The extent to which the project demonstrates transferability to similar resources. This is reasonable because the information from projects should be useful examples for protecting and improving similar resources across the state. More points will be awarded projects that provide experience of common value to other water quality projects.

F. The extent to which the project is of a size and scale to promote successful project management and water quality protection and improvement. This is reasonable because of the limited resources available in the program. The Agency believes it is reasonable to provide assistance to a greater number of small projects that promise a shorter time frame for water quality



improvement, than to provide assistance to a few, larger projects that will require longer times for completion. A massive 20 year project will not fit the time limits of this program and will be awarded zero or one point.

G. The priority placed on a project by the project coordination team. This is reasonable because this interagency group has a vast array of information related to resource management activities occurring across the state. The project coordination team will bring to the prioritization process information on the proposed projects in relation to other ongoing activities and management programs will and represent a broad perspective of interests around the state in awarding points.

Subpart 3. Priority point for project implementation grant application.

The Clean Water Partnership Act requires the Agency to establish "criteria for the ranking of projects in order of priority for assistance." Minn. Stat. Section 115.10 (7) (Supp. 1987). This subpart establishes those criteria for ranking project implementation grant applications. Once the Agency has identified eligible applications, staff will review application documents, including the approved diagnostic study and implementation plan in terms of criteria identified in A through F and assign from zero to ten points for each criterion. The project coordination team will then review each application and assign from zero to ten points under criterion G. The points for each project will be totaled and the information presented to the Agency Citizen Board for final approval.

It is impossible to remove all subjectivity from a ranking scheme but the criteria here will allow grant applicants to know what the Agency is looking for in a high priority project. It will be a subjective task to determine how many of the ten points for each criterion should be awarded a particular project but at least there is an objective criterion against which to evaluate the project.

The Agency does not intend to comparatively rank each project under each criterion. Instead, each project will be evaluated according to the objective criterion. Thus, under each criterion, more than one project can get a ten, or a one, or any other point award. For example, those projects that involve a

good deal of community support will get a high ranking and those that do not will get only a few, or even zero points for this criterion. The projects will not be ranked against each other.

The awarding of points for each project is a task that will be first performed by the Agency staff. The staff will then make its recommendation to the Agency Board. The applicants will have an opportunity to argue to the Board that they should be awarded more points than the staff recommended. At that point, there will undoubtedly be comparisons made between competing projects. The staff agrees that at that point, it will be appropriate to make those comparisons; but in performing the first evaluation, the staff will evaluate the project against the criterion, not against the competing projects. Staff experience with review of projects over time may result in differences in standards for each criteria, so that the same project judged at different times might receive a different final score. (The procedure for making the final decisions on grant awards is provided for in Parts 7076.0180 and 7076.0190).

A discussion of each of the criteria follows below.

A. The extent to which the project demonstrates a high potential for successful water quality protection and improvement based on a comparison of existing water quality and the project's goals and objectives with maximum contaminant levels and recommended allowable limits for drinking water and with water quality standards and regional lake and stream water quality criteria published by the Agency, the Minnesota Department of Health and the U.S. Environmental Protection Agency (Exhibits 5,6,7,8,9). This is reasonable because it provides a technical basis from which to compare the existing water quality and the goals of the project. For example, if a proposed aquifer project identifies that current water quality exceeds the water quality standards for nitrates in drinking water, and the project goals, objectives and project implementation would improve water quality to a level within the standard, it would receive more points than an aquifer project would not improve water quality enough to bring a high nitrate concentration below the standard even after project implementation. Exhibits 5 through 9 are examples of the standards against which the project goals will be compared.

B. The extent to which the project employs best management practices which provide a technically and economically feasible means to abate or prevent water pollution from nonpoint sources. This is reasonable because it looks at

the technical and economic feasibility of implementing the best management practices and their effectiveness in solving identified problems. For example, more points would be awarded a project that takes an approach which has demonstrated effectiveness in controlling nonpoint sources of pollution over an untried or expensive technology.

C. The extent to which the project maximizes water quality protection or improvement relative to the cost of project implementation. This is reasonable because funds for water quality improvement are limited and it is fiscally prudent to award more points to projects that demonstrate greater water quality improvement relative to their cost.

D. The extent to which the project goals and objectives are consistent with state water quality management plans and other related state and federal resource management programs. This is reasonable because it is the intention of the program to complement the state water quality management plan and other resource management programs. More points will be awarded to projects that have secondary benefits to other resource management efforts such as wildlife, fisheries and soil productivity. Less points would be given to projects which protect one resource but degrade another.

E. The extent to which the project demonstrates a high potential for project success based on community support and involvement as well as participation, coordination and cooperation of federal, state and local agencies and units of government for water quality protection and improvement. This is reasonable because project implementation success is based on individuals adopting best management practices across the political boundaries of many units of government with resource management responsibility. The broader the participation and support, the more points that will be awarded.

F. The extent to which the project demonstrates transferability to similar local units of government. This is reasonable because the information from projects should be useful for like efforts across the state. More points will be awarded projects that provide experience of common value to other water quality efforts.

G. The priority placed on a project by the project coordination team. This is reasonable because this interagency group has a vast array of information related to resource management activities occurring across the state. The project coordination team will bring to the prioritization process information on the proposed projects in relation to other ongoing activities and management programs and will represent a broad perspective of interests around the state in awarding points.

#### Subp. 4. Project coordination team.

This subpart requires the project coordination team to complete its assignment of points within 60 days from the close of the application period. It also allows for the Agency to proceed with ranking projects if the project coordination team does not assign points. This is reasonable because it

provides a reasonable amount of time for the project coordination team to act while insuring if there is not a consensus of opinion on the assignment of points, the Agency could proceed with the grant process.

PART 7076.0180 ALLOCATION OF FUNDING

Subpart 1. Project continuation grant amendments.

This subpart allows the Agency to reserve funds that the Agency determines will be necessary to provide project continuation grant amendments over the next year. This is reasonable because funds are reserved to provide continued noncompetitive funding to projects that have already completed several years of implementation work and for which project sponsors have demonstrated an ability to successfully manage the project. It is reasonable to reserve money to continue existing projects before beginning new efforts. Any funds not used may be reallocated for other grants. The Agency will make the decision by March 1, which allows plenty of time in the calendar year to make decisions on new grants and on whether the grant amendments will actually be requested.

Subpart 2. Grant fund allocation.

This subpart requires the Agency to identify within 90 days from the close of applications, the amount of funds that will be available for new project development and project implementation grants. This is reasonable because it requires the Agency to identify the amount of money that will be available for new project grants, while considering the availability of funds for upcoming grant periods and the maintenance of continuity of the program. This will allow the Agency to manage available funds and phase projects through the program. It is reasonable to allow the Agency to decide how much of the existing grant funds to award in one particular application period because it ensures that some money will be carried over. Also, making this decision after the applications are submitted, allows the Agency to determine whether the present set of

applications involves good projects. The Agency might very well decide to withhold money for another application period if the applications received are for low priority projects.

Subpart 3. Development; implementation split.

This subpart requires the Agency to identify the allocation of funds identified in Subpart 2 above between project development grants and project implementation grants. It requires the Agency to consider the availability of federal funds and the continuity and phasing of projects through the program. This is reasonable because the Agency wants to be able to split the available funds between project development grants and project implementation grants so that there are projects being carried through to completion while new ones begin in the development stage.

The Agency is proposing this subpart to explain how the decision on splitting up the money will be made. The major factors to look to in deciding how to split up the money between the two kinds of grants are how much money is available, how many projects are competing for the money, and what mix of projects are there. These are exactly the factors the Agency will look to.

The amount of money available depends on both the state appropriation and the allocation of federal monies to the state. Item A, therefore, recognizes that one of the factors to consider is the availability of federal funds. Moreover, sometimes EPA puts conditions on the use of the money. This must also be considered. For example, if EPA restricts federal money to only implementation projects, it will be preferable to use state funds for development and the federal funds for implementation.

The second criteria specified in the rule is the status of existing projects. In order to get the proper mix of development and implementation grants, it is important to evaluate where the existing projects are on the road

to completion. Initially, the Agency may prefer to fund mostly development projects; later the shift may be to implementation projects.

Of course, the allocation decision is affected greatly by the projects for which grant applications are submitted. The Agency may prefer to fund higher priority development projects over lower priority implementation projects. The projects are rated separately but it is still possible to make a comparison of the desirability of a particular development project with a particular implementation project.

#### PART 7076.0190 SELECTION OF PROJECTS FOR GRANT AWARDS

##### Subpart 1. Ranking.

This subpart requires the agency to rank all project applications within 90 days. This is reasonable because it establishes a time limit within which the Agency must act. The Agency should be able to complete its ranking of the projects within 90 days. When the ranking is done, the Agency will make available written results of the ranking process.

##### Subpart 2. Projects funded.

This subpart recognizes that the agency will award grants to the highest priority projects for project development and implementation within limits of available funds. It also requires that a project receive at least forty points to be considered for funding. This is reasonable because if a project cannot get over half of the points available in the ranking scheme, it may not have the potential to be a successful project. The Agency would expect the sponsor of such a project to go back and revise the project application to get a higher ranking and apply again.

##### Subpart 3. Agency decision.

This subpart requires the final agency decision relative to ranking and award of grants to be made at a meeting of the Agency Board. This is reasonable

because it ensures that decisions will be made in a public forum providing an opportunity for applicants to appear before the Board.

Subpart 4. Timing.

This subpart requires the Agency to make the funding allocation, project rank and selection for grant awards within 90 days of the close of application. This is reasonable because it establishes a time limit within which the Agency must act. Ninety days should be adequate for the Agency to make these necessary decisions.

Subpart 5. Reapplication.

This subpart requires that project sponsors with applications not awarded grant funds, must reapply in subsequent application periods to be considered for a grant. This is reasonable because it allows the unfunded applicants to revise their project applications and do further work to improve their chances of funding.

PART 7076.0200 PROJECT CONTINUATION GRANT AMENDMENT

Subpart 1. Eligibility.

This subpart establishes that project sponsors who have received a project implementation grant are eligible to request one project continuation grant amendment, which has the same terms and conditions as the initial project implementation grant. This is reasonable because it segments the larger projects into a more manageable scale. This segmenting allows project sponsors to phase their financial commitment to the project and allows the state to assist more projects by committing smaller sums of money for shorter periods of time. The segmenting of the projects also provides the project sponsor and the Agency a good opportunity to review project progress and make necessary mid-course adjustments. The knowledge that a project continuation grant amendment will be available gives the project sponsor assurance that the project will be completed as planned.

Subpart 2. Request.

This subpart establishes that a project sponsor must submit a request for a project continuation grant amendment on forms provided by the Agency, in the year activities funded through the initial project implementation grant will be complete and additional funds will be required to continue the project. If the project sponsor does not request funds in the year funds are required, the project sponsor forfeits the right to a noncompetitive project continuation grant amendment. This is reasonable because it defines the procedure and time frame to request a project continuation grant amendment and establishes a penalty (loss of opportunity) for noncompliance. It is important to the Agency that the requests be prompt so the Agency can manage the program budget. The Agency wants to use the money set aside for a project continuation grant amendment in other ways if the project sponsor is not prepared to continue with implementation of its project.

Subpart 3. Approval.

This subpart establishes that the Agency may approve a request for a project continuation grant amendment if a project sponsor has met the terms and conditions of its current grant and has identified its share of the new request. This is reasonable because it insures that projects that have not been successful are not provided additional funds and that project sponsors who have not been able to generate a local match will not receive additional funds.

PART 7076.0210 GRANT CONDITIONS

Subpart 1. Amount.

This subpart identifies that all grants will be for the amount requested by the applicant, up to half of the eligible project costs. This is reasonable because the Clean Water Partnership Act establishes grants are up to fifty percent of eligible costs. The Agency expects that most applications will be



for fifty percent of the eligible costs but staff is hopeful that some applicants will request a lower percentage. There will be no higher priority given to a project that asks for less than fifty percent.

Subpart 2. Grant period.

This subpart identifies that the grant period for project development will be for a period of two years, the grand period for project implementation will be for a period of three years and may be extended three years with a project continuation grant amendment. This is reasonable because the requirements for project development include a 12-18 month study which should be completed within a two year period. It is also reasonable to limit grants for project implementation to two three year periods, which will provide funds for six years of implementation activities. With the addition of the one year extensions that are available to all projects for completion of project activities through Part 7076.0220 Subp. 3, a project may range up to ten years from start to finish. Projects that take over ten years to complete are either larger than the scale of this program or not making adequate progress toward completion.

Subpart 3. Grant contract.

This subpart requires a grant contract to be executed before any funds are available to the project sponsor. This is reasonable since the contract is the tool that defines the terms and conditions for receipt of the grant funds.

Subpart 4. Records.

This subpart requires the contract to include conditions relating to maintenance of records on receipt and expenditure of funds. This is reasonable because it provides the information necessary to examine and verify the accounts of the project.

Subpart 5. Audit.

This subpart requires the project sponsor to allow the Commissioner or the

Commissioner's delegee to review and examine the projects books, records, documents and accounting procedures. This is reasonable because the Commissioner is responsible for insuring that public funds are being properly used relative to the law, the contract, and the legislative intent.

Subpart 6. Annual progress report.

This subpart requires the project sponsor to complete an annual progress report that identifies progress in relation to schedule, pertinent fundings, current and anticipated expenditures, and a summary analysis of water quality data collected over the year. This is reasonable because it documents activities so the Agency and the project sponsor may review and evaluate project progress and accomplishments. Annual progress reports allow the Agency to:

- 1) identify areas where the project may need assistance or need to make adjustments in the work plan and schedule,
- 2) determine which activities are particularly effective and should be tried in other projects,
- 3) anticipate budget adjustments in the program,
- 4) receive information and monitoring data to be entered and integrated into the Minnesota Land Management information systems data bases as required by Minn. Stat. section 115.102, and
- 5) identify the need to withhold project payments necessary to encourage the project sponsor to be in compliance with the terms and conditions of the grant.

Subpart 7. Mid-year update.

This subpart requires the project sponsor to prepare a brief report on progress and delays in meeting the project schedule. This is reasonable because it provides a simple mechanism to keep the Agency informed about project progress. This will serve to alert the Agency if a project needs additional attention and assistance.

Subpart 8. Monitoring plan.

This subpart requires the project sponsor to prepare a monitoring plan,

revise it annually and submit it to the Agency. This is reasonable because the monitoring plan identifies the time, place and parameters to be sampled during the year as well as the laboratory that will be doing the analyses. It is important that the monitoring locations and parameters be reviewed each year to insure the information collected is useful and necessary. It is also important that the Agency technical staff be provided this information to be sure the funds expended result in technically useable information. The development and execution of the monitoring plan are very important to developing a feasible project and measuring the success of the project. The monitoring plan is an important tool to insure public funds are expended efficiently.

Subpart 9. Diagnostic study and implementation plan.

This subpart requires the project sponsor for a project development grant to submit a diagnostic study and implementation plan. This is reasonable because the project development grant is for the completion of a diagnostic study and implementation plan.

Subpart 10. Eligible costs.

This subpart disallows any costs incurred by the projects sponsor after the contract period. This is reasonable because the contract period defines the time frame for grant eligibility. It is not reasonable to allow costs to be eligible beyond the contract period.

PART 7076.0220 GRANT CONTRACT

Subpart 1. Contents.

This subpart requires the grant contract to include terms and conditions of the grant, work requirements, responsibility of project sponsor for cost over runs, and reporting requirements. This is reasonable because the contract provides the agreement for the cooperative relationship between the project sponsor and the Agency for project integrity, timely execution and efficient use of public funds.

Subpart 2. Amendments.

This subpart allows the grant contract to be amended. This is reasonable to allow for changes in the project that result from new or additional information, and for changes in available funds or other factors that will change the project.

Subpart 3. Contract period.

This subpart limits project development contracts to a period of up to two years and project implementation contracts to a period of up to six years. One year extensions may be allowed in either case. Two years for a development contract is reasonable because a diagnostic study and implementation plan will take 12 to 18 months to complete. Two years will provide adequate time, including development of the final report.

It is also reasonable because each project implementation period will be different based on factors of size, seriousness of the problem and the type of efforts necessary to solve the problem and the establishment of a six year contract period allows for the three year project implementation grant and a three year project continuation grant amendment, while setting a goal for projects to be designed for completion. The Agency does not intend for a separate contract when the project continuation grant amendment is awarded. The Agency may allow a one-year extension of either of the grant contracts to allow completion of activities that may have fallen behind schedule.

PART 7076.0230 MONITORING PLAN

Subpart 1. Requirements.

This subpart identifies the requirements of the monitoring plan to include identification and rationale for selection of monitoring sites, monitoring frequency and parameters and identification of the laboratory and their analysis procedures. This is reasonable because it allows the Agency to review the

monitoring program to insure useful data and information will result by describing the time, place and parameters that are monitored, the reasons for monitoring and the laboratory procedures to be used. Water quality data that is improperly gathered or analyzed may be expensive both in terms of time and money. In terms of time, it may be a year before samples could be recollected. In terms of money, a single pesticide analysis may run several hundred dollars. It is reasonable for the Agency to require a monitoring plan to avoid project delays and wasted funds.

Subpart 2. Review.

This subpart requires the Commissioner to approve or identify deficiencies in writing within 45 days and provides the project sponsor 15 days to correct identified deficiencies. This is reasonable because it establishes a time frame for review of monitoring plans by the staff and allows for the project sponsor to revise their monitoring plan.

Subpart 3. Grant payment.

This subpart requires an approved monitoring plan by March 31 each year before a project sponsor will receive additional payments. This is reasonable because it insures the monitoring plan will be revised and approved annually, thus protecting the project from unapproved monitoring activities.

PART 7076.0240 DIAGNOSTIC STUDY

Subpart 1. General requirements.

This subpart identifies the four major parts of a diagnostic study. The four parts are: 1) a description of the water of concern, 2) a description of the project area, 3) an analysis of the data and information to technically identify water quality problems, reasonable goals and objectives and target levels for pollution abatement, and 4) the methods used to complete the study. This is reasonable because the quality of water in a lake, river or aquifer is a

reflection of human activity and natural forces in the land area contributing to them and to be able to identify nonpoint sources of pollution, it is necessary to separate this information into an equation of what is the condition of the waters and what is occurring on the land area. It is then possible to analyze the data and information to identify water quality problems, understand which are natural conditions and which are human induced problems, identify reasonable goals and expectations for protection or improvement, and identify land areas contributing pollution, and identify priority areas for implementation of best management practices which will reduce pollution to achieve goals and objectives.

Subpart 2. Description of water of concern.

This subpart lists the specific requirements related to monitoring the water of concern. This includes a summary of historical uses and changes in uses as a result of pollution, a summary of previous studies and at least one year of current water quality monitoring data. This is reasonable because this subpart provides the technical water quality data to be used in Subpart 4 to identify water quality problems, assess current or human induced conditions against natural conditions, set reasonable goals and expectations and estimate reduction in pollution load to achieve those goals and objectives. This detailed description of the water of concern insures that all water quality problems are identified and environmental interactions understood so that the proposed plan for pollution control is directly associated with water quality protection and improvement. This information is required to insure that projected water quality benefits are attainable and are congruent with past water quality conditions.

The summary of historical uses and changes that have resulted from water quality degradation provides a starting point from which to identify the degree

and extent of pollutant impacts. Previous studies and other historical baseline data provide a description of the existing water quality information known about the water of concern. This information assists in identifying the water quality problems and pollutant sources and in identifying additional information that needs to be collected.

Minnesota's waters are diverse. It is necessary to collect at least one year of monitoring data on water bodies of concern so that current conditions are described and assessed in relation to appropriate best management practices. The monitoring data required represents the minimum information necessary to describe the water quality characteristics necessary to apply predictive models and identify best management practices for pollution abatement.

Subpart 3. Description of project area.

This subpart lists the specific requirements related to describing the land uses and natural conditions and forces in the area hydrologically contributing to the water of concern. This includes data on geology, hydrology, topography, soils, land use, precipitation and natural features of the project area. This is reasonable because this subpart provides the land use and physical condition data to be used in subpart 4 to identify the areas contributing pollution including the separation of natural contributions from human induced contributions, and to identify the priority areas upon which to focus pollution control efforts.

Subpart 4. Analysis and assessment.

This subpart requires the completion of an analysis and assessment of the data and information collected in subparts 2 and 3 to identify water quality problems, reasonable goals and expectations for the resource, and identification of objectives and the pollution reduction necessary to meet the goals and objectives. This is reasonable because the raw data on water quality and the

land area must be analyzed with assessment tools such as models to translate the data into useful information for resource management, in this case abatement of nonpoint sources of pollution.

Subpart 5. Exemption.

This subpart allows the Agency to exempt a project sponsor from a specific diagnostic study requirement that does not provide data or information which is necessary for development of the project. This is reasonable because of the diverse nature of nonpoint problems there may be a case where information required in subparts 1, 2 or 3 is not necessary to meet the requirement of subpart 4. This provides flexibility to the program while insuring technical credibility.

PART 7076.0250 IMPLEMENTATION PLAN

Part 7076.0250 requires the project sponsor complete an implementation plan which includes the identification of best management practices necessary to achieve desired pollutant reduction, an education program for the project area, identification of project participants and their responsibilities to the project, a schedule and budget for implementation, and a project progress and evaluation plan. This is reasonable because these are the activities for which the project implementation grant funds are requested and it is reasonable to require the project sponsor to identify how the funds will be used before they are awarded. It provides the proposed work plan for the project and identifies and describes the combination of best management practices and activities that will be needed to reach the identified goals and objectives.

PART 7076.0260 DIAGNOSTIC STUDY AND IMPLEMENTATION PLAN APPROVAL

Subpart 1. Review and decision.

This subpart requires the Commissioner to review and approve the diagnostic study and implementation plan within 90 days of its receipt. The diagnostic



study and implementation plan shall be approved if it meets the requirements of Minn. Rule pts. 7076.0240 and 7076.0250; the diagnostic study technically defines the problems, sources of pollution and reasonable goals and objectives; the implementation plan provides a technically feasible way to achieve desired goals and objectives, and is consistent with state and federal statutes, rules and regulations. This is reasonable because the Agency must insure the project sponsor met the terms and conditions of the project development grant, that the work is based on sound technical ground, that the implementation plan provides a feasible set of alternatives for pollution control, and to insure any future funds for project implementation are for a project with a reasonable chance for success.

Subpart 2. Reasons for disapproval.

This subpart requires the Commissioner to notify the project sponsor of reasons for disapproval. This is reasonable because it informs the project sponsor the reason for disapproval allowing the project sponsor an opportunity to remedy the problem.

Subpart 3. Resubmittal.

This subpart allows the project sponsor to resubmit a disapproved diagnostic study and implementation plan for review to determine if the deficiencies have been corrected. This is reasonable because it allows the project sponsor an opportunity to make the necessary changes to the document and have an approved diagnostic study and implementation plan which may be submitted as part of a project implementation grant application. Without an approved diagnostic study and implementation plan the project sponsor will not be eligible for a project implementation grant. Therefore, the Agency deems it important to provide the grantee with an opportunity to correct deficiencies.

PART 7076.0270 BEST MANAGEMENT PRACTICES EVALUATION

Part 7076.0270 establishes criteria the project sponsor shall use when evaluating and selecting best management practices for control of nonpoint sources. This is reasonable because the project sponsor must identify best management practices necessary to meet the goals and objectives established in the project and these criteria provide a standard measure for evaluation of best management practices.

PART 7076.0280 GRANT PAYMENTS

Subpart 1. Reimbursement.

This subpart allows the project sponsor to request reimbursement of expenditures for each of the standard calendar quarters ending March 31st, June 30th, September 30th and December 31st. The Agency will pay fifty percent of the eligible expenses as the project progresses. Thus, if the project sponsor incurs expenses of \$10,000 in the first quarter, the sponsor can request a grant payment of \$5,000. If the grant is for less than fifty percent of the project cost, the Agency will pay the appropriate percentage. The Agency shall reimburse eligible expenditures within 45 days. It is important that the Agency get the grant funds to the local unit of government promptly as the work progresses. Therefore, the Agency has proposed a payment scheme that allows the grantee to be paid every 3 months. In the Agency's view, this gets the money to the grantee before huge debts can mount up and also minimizes the administrative tasks of handling payment requests. More frequent payments would multiply the amount of paper work accordingly.

Subpart 2. Final payment.

This subpart allows the Agency to withhold ten percent of grant, until the project is completed to the Agency's satisfaction. This is reasonable because ten percent is a sufficient amount of funds to encourage completion of a project including a final report.

Subpart 3. Withholding of reimbursement.

This subpart allows the Agency to withhold reimbursement if the project sponsor has failed to comply with the grant contract or the rules. This is reasonable because it provides the Agency with leverage to encourage the project sponsor to honor the terms and conditions of the grant. The Agency intends to use this only when absolutely necessary to bring the project sponsor into compliance with the grant.

Subpart 4. Advance.

This subpart allows the Agency to provide the project sponsor an advance of 10 percent of the grant award to a maximum of \$50,000. This is reasonable to assist the project sponsor in getting started without depleting the local funds to a point that the project is on shaky financial grounds. The project sponsor, however, will not qualify for any quarterly payments under subpart 1, until the entire advance has been accounted for in expenditures.

PART 7076.0290 GRANT RESCISSION

Part 7076.0290 allows the Agency to rescind a grant if the project is not being completed in accordance with the terms and conditions of the contract. This is reasonable because it provides the agency a way to close a grant contract that is being seriously abused.

V. CONSIDERATION OF IMPACTS ON EXPENDITURES OF PUBLIC MONIES BY LOCAL PUBLIC BODIES, AGRICULTURAL LAND, AND SMALL BUSINESSES

A. Expenditures of Public Monies by Local Public Bodies (Minn.

Stat. section 14.11, Subd. 1)

Participation in the Clean Water Partnership Act by local unit of government is not mandatory. Adoption of the proposed rules will not require the expenditure of public monies by local units of government unless a local unit of government elects to participate in the Clean Water Partnership Program.

B. Agricultural Land (Minn. Stat. section 14.11, Subd. 2)

The proposed rules will not have any direct adverse effects on agricultural lands in the state. In areas where projects are conducted, it will improve agricultural lands because many best management practices have secondary benefits such as improving soil productivity and limiting soil erosion.

C. Small Businesses (Minn. Stat. section 14.115)

The proposed rules will not have any direct adverse effects on small businesses in the state. In most projects, small businesses will benefit from contracts provided by the project sponsor to complete project activities.

VI. CONSIDERATION OF ECONOMIC FACTORS

In exercising its powers, the Agency is required by Minn. Stat. section 116.07, Subd. 6 (1986) to give due consideration to economic factors. The statute provides:

In exercising all its powers the pollution control agency shall give due consideration to the establishment, maintenance, operation and expansion of business, commerce, trade, industry, traffic, and other economic factors and other material matters affecting the feasibility and practicability of any proposed action, including, but not limited to, the burden 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 proposing the rules governing the Clean Water Partnership Program, the Agency has given due consideration to available information regarding economic impacts the proposed rules would have. Available information suggests the proposed rules will have significant public benefits. The benefits of water quality protection and improvement are diverse and often hard to measure because the benefits often spread across more than a single generation. It is clear that protection of drinking water as a use is a significant benefit. Water quality is directly related to recreation and tourism, two major sectors of the Minnesota economy. A program similar to that proposed by these rules is the federal Clean Lakes Program. The Clean Lakes Program has identified benefits of

residential and industrial development, increases of employment and income and increased property values as well as increased recreational opportunities. In general, there is the potential for significant local, regional and state economic benefit as the result of the proposed rules.

VII. CONCLUSION

Based on the foregoing, the proposed Minn. Rules pts. 7076.0100 through 7076.0290 are both needed and reasonable.

Dated: April 18, 1988

*for* Barbara Lindsey Lewis  
Gerald L. Willet  
Commissioner

Exhibit List

1. Minnesota Pollution Control Agency. 1986. Minnesota Water Quality: Water Years 1984-1985. The 1986 Report to the Congress of the United States. Minnesota Pollution Control Agency Division of Water Quality. 69 pages.
2. Minnesota Pollution Control Agency. 1986. Nonpoint Source Pollution Issues Team Report, Presented to the Energy, Environment, and Natural Resources Subcabinet through the Executive Branch Policy Development Program 1986-1987. 103 pages.
3. Laws of Minnesota 1987, Chapter 392 - Clean Water Partnership Act.
4. Minnesota Pollution Control Agency. 1986. A Statewide Assessment of Nonpoint Source Pollution.
5. USEPA. Maximum Contaminant Levels.
6. Minnesota Department of Health. Recommended Allowable Limits for Drinking Water.
7. Minnesota Pollution Control Agency. Water Quality Standards Minn. Rule 7050.
8. Minnesota Pollution Control Agency. 1988. Minnesota Lake Water Quality Assessment Report.
9. Minnesota Pollution Control Agency. 1988. Descriptive Characteristics of the Seven Ecoregions in Minnesota.