

STATE OF MINNESOTA
POLLUTION CONTROL AGENCY

In the Matter of the Proposed Rules
Relating to the Administration of the
Individual On-site Wastewater Treatment
Systems Grants Program,
Minn. Rules ch. 7075

STATEMENT OF NEED
AND REASONABLENESS

I. INTRODUCTION

In 1987, the legislature created a set-aside under the independent state grants program for the award of grants to municipalities to assist owners of individual on-site wastewater treatment systems to upgrade or replace failed systems, Minn. Stat. §116.18, subd. 3c., hereinafter called the "authorizing statute."

In drafting the proposed rules, the Agency sought and received input from interested municipalities and the Technical Advisory Committee for wastewater treatment control, established under Minn. Stat. §115.54. This document contains the Agency's affirmative presentation of facts on the need for and reasonableness of the proposed rules.

II. STATEMENT OF AGENCY'S STATUTORY AUTHORITY

The Agency's statutory authority to adopt rules for the administration of the program is set forth in Minn. Stat. §116.18, subd. 3c, items (a) and (f) (Supp. 1987), which provides:

Subd. 3c. Individual on-site treatment systems program.

(a) Beginning in fiscal year 1989, up to ten percent of the money to be awarded as grants under subdivision 3a in any single fiscal year, up to a maximum of \$1,000,000, may be set aside for the award of grants by the authority to municipalities to reimburse owners of individual on-site wastewater treatment systems for a part of the costs of upgrading or replacing the systems.

(f) The Agency shall adopt permanent rules regarding priorities, distribution of funds, payments, inspections, and other matters that the Agency finds necessary for proper administration of grants awarded under this subdivision.

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.

The legislature, in enacting the program, required the Agency to develop administrative rules to implement and administer the program. The program is an effort to simplify the funding process and to reduce costs for unsewered municipalities where it is technically feasible and economically practical to retain existing individual on-site wastewater treatment systems as an alternative to a centralized wastewater treatment system. Under the existing construction grants programs, both federal and state, it is possible for a municipality to construct individual on-site systems; however, these systems have historically cost more than systems installed by individual owners without grant assistance. No formal analysis has been done to determine the cause for the discrepancy in costs. The Agency will evaluate the individual on-site wastewater treatment systems grants program results and the costs savings after the program is operational.

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.

Rules are reasonable if they are not arbitrary or capricious. Reasonableness 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 proposed rules establish a reasonable method for distributing the grant assistance efficiently and equitably while allowing the Agency to ensure the protection of grant funds and the environment.

The authorizing statute targets the grant funds directly to owners of individual systems but requires owners to apply through a sponsoring municipality. The proposed rules are structured to lessen Agency oversight by making the municipality responsible for inspection, identification of failed systems, and approval of the individual systems. The Agency proposes in the rules to require personnel directly involved with site evaluation, design, installation, and inspection of the systems to be approved by the Agency to provide reasonable assurance that individual systems will be designed, located, and installed according to the standards and criteria in Minn. Rules ch. 7080. The rules strike a balance between relinquishing detailed Agency oversight while providing reasonable safeguards to protect grant funds and reduce the risk of environmental damage to state waters resulting from inadequately treated wastewater being discharged to surface and ground water.

Under Minn. Stat. §116.16, subd. 11, the Minnesota Public Facilities Authority (Authority) assumed responsibility on July 1, 1988 for awarding grants and making payments under the state independent grants program, including the individual on-site wastewater treatment systems grants program. The Agency retains the responsibility for selecting the municipalities to receive grants and for reviewing and approving the projects and applications in accordance with Minn. Stat. §116.16 to §116.18 and Minn. Rules ch. 7075. The Authority will

award grants and make grant payments upon certification by the Agency. The provisions concerning grant awards and payments in the proposed rules are written to accommodate this transfer of responsibilities.

B. Reasonableness of Individual Rules

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

Part 7075.1400 Purpose.

This part identifies that the individual on-site wastewater treatment grants program will be administered by these rules.

Part 7075.1410 Definitions.

The following terms used in the rules have a specific meaning. The terms and the reasonableness of the definitions are explained below.

Subpart 2. "Abatement notice". A method is needed to identify failed systems to establish eligibility. The Agency proposes that the municipality inspect local systems for conformance with the ordinance that adopts the requirements of Minn. Rules ch. 7080. Failure to conform with the ordinance will result in the issuance of a citation. It is reasonable to make the municipality responsible for this inspection because on-site systems are small, numerous, and privately owned. The notice must cite the specific violation. This allows the Agency to verify eligibility.

Subpart 3. "Agency." There are numerous references to the Minnesota Pollution Control Agency. It is appropriate to shorten this by definition.

Subpart 4. "Authority." There are numerous references to the Public Facilities Authority. It is appropriate to shorten this by definition.

Subpart 5. "Commissioner." It is appropriate to clarify that "commissioner" is the commissioner of the Minnesota Pollution Control Agency and not an official of the Authority or a local government official.

Subpart 6. "Construction cost." The definition identifies "construction cost" as materials, labor, overhead and profit necessary for installation of an individual system. The authorizing statute specifically excludes planning, engineering and administrative costs from eligibility. In developing the rules, sufficient questions were raised about what constitutes "construction cost" to indicate confusion. This definition will clarify cost eligibility under Part 7075.1460, subp. 1.

Subpart 7. "Designer." This personnel category is defined as specific to this program in order to limit applicability and effect.

Subpart 8. "Dwelling." The definition conforms with Minn. Rules ch. 7080 for consistency.

Subpart 9. "Failed system." A failed system is defined as one that has been issued an abatement notice by a municipality indicating that it is in violation of the ordinance adopting the requirements of Minn. Rules ch. 7080. The authorizing statute requires that grants be for systems that do not conform with Minn. Rules ch. 7080. Due to the nature of these systems, small and numerous, it is reasonable that the municipality be responsible for identifying failed systems.

Subpart 10. "Individual on-site wastewater treatment system." The definition conforms with Minn. Stat. §116.18, subd. 3c. Inclusion in the Rules enhances readability.

Subpart 11. "Inspector." This personnel category is defined as specific to this program in order to limit applicability and effect.

Subpart 12. "Installer." This personnel category is defined as specific to this program in order to limit applicability and effect.

Subpart 13. "Median household income." Income data is used for establishing eligibility and priority. For efficiency in a small grants program, it is reasonable to define median household income by utilizing an established data gathering system, the decennial census. Using the census also offers consistency of the data.

Subpart 14. "Mound system." The definition conforms with Minn. Rules ch. 7080 for consistency.

Subpart 15. "Municipality." The definition conforms with Minn. Stat. §116.16 for consistency.

Subpart 16. "Other establishment." The definition conforms with Minn. Rules ch. 7080 for consistency.

Subpart 17. "Seasonal residence." A residence is seasonal if occupied less than 182 days per year. One hundred eighty-two days is a reasonable method of defining seasonal because it is less than one-half of a calendar year.

Subpart 18. "Site evaluator." This personnel category is defined as specific to this program in order to limit applicability and effect.

Subpart 19. "Trench or bed system." The definition conforms with Minn. Rules ch. 7080 for consistency.

Part 7075.1420 Eligibility.

Subpart 1. "Municipality eligibility." Eligibility of the applying municipality is limited by the five criteria.

Item A. A municipality must be authorized by its governing body to submit the application. It is reasonable for the Agency to require an official and public commitment from the municipality prior to reviewing an application. The process culminates in a legal document, the grant agreement, that requires a responsible party.

Item B. A municipality must develop and adopt a wastewater treatment plan. Developing and adopting a comprehensive plan, that includes identifying needs and proposing solutions, has historically been an eligibility criteria for wastewater treatment construction grants programs. The Agency continues to use this criteria in order to direct the funding to municipalities with a demonstrated need and a proposal to remedy that need.

Item C. The municipality must enact an ordinance that adopts and enforces the requirements of Minn. Rules ch. 7080, the state design standard for individual sewage treatment systems. The authorizing statute requires that the municipality "has adopted and is enforcing the requirements of Minnesota Rules governing individual sewage treatment systems."

Item D. The municipality must enact an ordinance that establishes a maintenance plan for systems in its jurisdiction. The municipality has latitude in establishing a maintenance plan that fits its local needs. The Agency's intent is to protect the systems that receive grant funding. In addition, a large proportion of on-site system failures are due to inadequate maintenance. It is reasonable to require a municipality seeking funding under this program to develop and administer a maintenance plan for the long term success of individual on-site wastewater treatment in its jurisdiction.

Item E. The municipalities must have a median household income less than the state median household income. The income level threshold is proposed because of the limited amount of funding available. On-site treatment systems that have failed in the past have most often been replaced or upgraded at the owner's expense. The systems that are not replaced or upgraded are the systems where the owners lack financial resources. One method to apply a financial need eligibility threshold is to look at each individual owner's financial resources. Due to the number of individual systems, the Agency does not have the resources

to do this type of analysis. The median household income of the municipality as a method for determining financial need does not require a substantial investment of Agency resources. At the same time, it does give a reasonably accurate picture of the potential community resources for addressing wastewater treatment needs.

Some governmental subdivisions which meet the definition of a municipality in Part 7075.1410, subpart 15 may not be identified as a separate entity in the census. In these cases, the proposed rules allow the municipality to submit alternative data for the purpose of determining the median household income.

Subpart 2. Individual system eligibility. The systems to be funded under this program must meet four criteria.

Item A. The system must have failed. The failed determination is a method of establishing need related to water quality.

Items B to D. Under the authorizing statute, eligibility is limited to systems constructed before January 1, 1977, systems not serving seasonal residences, and systems not constructed with state or federal funds.

In addition, the statutory limitation, "systems not constructed with state or federal funds," could be interpreted to include funding from federal and state programs for other than wastewater treatment purposes, such as home mortgage financing through the Federal Housing Authority (FHA). Therefore, an owner who had received an FHA mortgage could not participate in this program. This type of exclusion was not the legislative intent and the rules clarify this by limiting by the type of state or federal funds to water pollution control funds.

Subpart 3. Previous funding. The rules limit eligibility to systems located in geographic areas that have not previously received planning consideration and grant funding. The Agency's other wastewater treatment grants programs, state and federal, require that a municipality define a wastewater

treatment need and a solution at a single point in time. The Agency intent, consistent with the U.S. Environmental Protection Agency's regulations applicable to federal funding, is to bring the municipality to a starting point, not to establish a revolving door program. In order to maintain equity between the wastewater treatment programs, that philosophy is applied to this program.

While individual systems fail independently as opposed to a centralized system failure, the municipality has the ability and is encouraged to establish an ongoing wastewater treatment management program that meets the community's needs. The municipality also has the ability to establish a rate ordinance to maintain a fund for maintenance and replacement of individual systems. The fund could be used, at the municipality's discretion, to continue a subsidy-type program for individual system owners.

Part 7075.1430 Wastewater Treatment Plan.

Subpart 1. General requirements. The municipality must develop a wastewater treatment plan as an eligibility requirement. See Statement of Reasonableness for Part 7075.1420, item B.

Subpart 2. Planning area. The planning area is the geographic area in the municipality's jurisdiction. Under the existing grants programs, the planning area is defined by using jurisdictional boundaries with the opportunity for proposing an alternative planning area. The existing federal and independent state grants programs operate similarly in determining planning areas. The provision to propose an alternative planning area provides the municipality with the ability to evaluate its specific wastewater treatment needs in conjunction with political and jurisdictional considerations that deserve consideration in order to have a viable wastewater treatment plan for the municipality.

Subpart 3. Plan contents.

Item A. A survey of the planning area is required. Identifying failed systems is a method of determining the municipality's wastewater treatment needs. A survey is a thorough and systematic approach. This method is currently used in the existing federal and independent state grants program when individual on-site wastewater treatment systems are being evaluated. Doing the survey at the local level and using the municipality's inspector, will help to reduce costs.

Item B. Site evaluations for the failed systems are required. In order for a designer to design a system to conform with Minn. Rules ch. 7080, a requirement of the authorizing statute, information from site evaluations and soil investigations must be available to the designer. Such information reveals whether it is feasible to upgrade or replace the system on-site and what type of system is appropriate.

Item C. An analysis of the municipality's overall wastewater treatment needs is required. This is a planning requirement that allows the municipality to determine whether individual on-site wastewater treatment technology is applicable.

Item D. A list of the failed systems is required. The Agency needs a list of specific systems as documentation to compare to invoices prior to payment. The information is also needed to determine the amount of grant to be set aside.

Item E. A proposal for addressing the wastewater treatment needs not eligible under this program is required. The Agency proposes that the municipality think about its overall wastewater treatment needs. This requirement encourages the municipality to approach its wastewater treatment needs comprehensively to provide some reasonable assurance that a long term plan is being developed.

Item F. Documentation of personnel approval, as required under Part 7075.1440, is appropriate to review with the associated work products to verify that this requirement has been met.

Subpart 4. Approval of plan. Adoption and enforcement of an ordinance that conforms with Chapter 7080 is a requirement of the authorizing statute. The Agency reviews and approves the part of the plan that relates to the ordinance. It is reasonable to ensure that the municipality's wastewater treatment plan conforms with the required ordinance.

Part 7075.1440 Approval of Individual On-site Wastewater Treatment Systems Personnel.

The Agency proposes to approve inspectors, site evaluators, designers, and installers who inspect, evaluate sites, design, and install individual on-site wastewater treatment systems under this program.

Subpart 1. General requirements. Approval of personnel is a method to provide reasonable assurance that the system will be designed, located and installed according to the standards and criteria in Minn. Rules ch. 7080. The approval is a reasonable method of protecting grant funds and reducing the risk of environmental damage and pollution to state waters. An alternative to this method is the Agency's direct oversight of the design and installation of individual systems. That method would involve a significant Agency administrative cost since the systems are small and numerous. Two options are available for obtaining approval.

Subpart 2. Approval criteria: option 1. Using an existing voluntary certification program as an option for approval of on-site personnel is an efficient in-place method of approval. Attachment 1 describes the certification program in detail.

Subpart 3. Approval criteria: option 2. The Agency offers an alternative to the certification program for on-site personnel not interested in obtaining formal certification but still interested in contracting with on-site system owners seeking reimbursement under this program. The alternative has two components.

Item A. Demonstration of knowledge is the basic component of an evaluation of professional ability. Testing is the most straightforward method of evaluating an applicant's knowledge. The exam is based on the Minn. Rules ch. 7080. The state developed comprehensive individual on-site design criteria in Chapter 7080 and proposes to use that source exclusively to avoid confusion for personnel preparing for the exam. Seventy percent correct on the exam is proposed as the minimum passing score. This percentage is used in the certification program under subpart 1. The Agency staff that administer the certification program maintain that a 70 percent correct score indicates adequate knowledge of on-site technology, and also, importantly, a familiarity with the Chapter 7080.

Item B. Experience in a professional field is a standard criteria for evaluating professional ability.

Subitems 1-4. The number of systems for each type of personnel is based on the Agency's estimate of the amount of recent on-site systems experience a professional needs to be familiar with on-site technology and methods. The rules proposed that affected personnel demonstrate experience by self certification. For the purposes of this smaller program, self certification is practical. The approval component of the program is not cumbersome for private business personnel, yet the Agency has written statement confirming experience.

Subpart 4. Notification of approval. The Agency will notify each applicant of whether they have received approval within 30 days of application. Applicants are entitled to a timely response. Thirty days allows the Agency to review the application thoroughly and prepare an official response. Applicants may reapply at any time because there is no reason to limit reapplication.

Subpart 5. Purpose of agency approval. The Agency's approval of personnel is limited to that which is necessary for the administration of this program. The rule provides notice that such approval does not alter the existing legal liability relationship established in the contract between the vendor and vendee under existing law.

Part 7075.1450 Application.

Subpart 1. Notice of taking applications. The initiation of the application cycle is established by the commissioner by public notification in the State Register. The application period remains open for a minimum of 90 days. This is sufficient time for a municipality to complete and submit an application.

Subpart 2. Application requirements. To allow the Agency to make a determination on an applicant's conformance with program requirements, information needs to be provided by the applicant.

The Agency will provide a form for each applicant to complete. The form will be a document that provides general information, such as the name of the applicant, the address, and the authorized representative for the municipality. The significant part of the application will be the information detailed in items A through H.

Items A - E. The municipality's authorizing resolution, the wastewater treatment plan, copies of ordinance that adopts the requirement of Minn. Rules ch. 7080 (On-site Design Criteria), maintenance ordinances, and

median income information directly correspond with the eligibility requirements. See Statement of Reasonableness for Part 7075.1420, subp. 1, items A - E. It is appropriate to verify eligibility at application time.

Item F. Individual owners must submit signed statements stating that their system meets certain requirements. These requirements are that the system was constructed before January 1, 1977, does not serve a seasonal residence, and was not constructed with state or federal water pollution control funds. These are eligibility requirements required by the authorizing statute. It is appropriate to verify eligibility at application time.

Item G. The municipality must submit a schedule for the estimated completion of construction of the funded systems and request for final payment. The Agency needs to make reasonable estimates as to when the grant monies will be disbursed.

Item H. The municipality must submit a statement that it has an inspector on staff or under contract for services. The Agency is requiring this because the authorizing statute requires enforcement of the requirements of Minn. Rules ch. 7080 as a condition of grant receipt. Also, historically, one of the problems with on-site wastewater treatment systems is that the provisions of Chapter 7080 have not been enforced, thereby contributing to failure of the systems. It is reasonable to require, with the application, an assurance that the municipality has the qualified personnel to enforce conformance with Chapter 7080. This will provide the Agency with a commitment from the municipality that the new systems being funded with grant money will be operated and maintained properly.

Subpart 3. Other information. The commissioner may require additional information from the municipality. After the information required in the application is submitted, it is sometimes necessary for the municipality to submit further information for clarification.

Subpart 4. Application closing date. The notice of taking applications will specify an application closing date no less than 90 days after the State Register publication date. During the application period (90 days), the municipality must prepare its application, the major work component being the wastewater treatment plan. The Agency maintains that for the smaller communities, the main participants in this program, the plan can be developed in 60 days. The planning requirements are limited to a local survey and an analysis.

Subpart 5. Incomplete applications. The commissioner may determine that an application does not contain the information required in Part 7075.1450, subs. 2 and 3. That application will be ineligible for funding during that funding cycle. Municipalities will have at least 90 days to complete the requirements. Any application that is submitted that does not have all the required information could impede the award process for the other applicants if the commissioner were to allow more time to complete the application.

Part 7075.1460 Eligible Costs.

Subpart 1. Eligible costs. Eligible costs are limited to costs of construction. The authorizing statute, by declaring planning, engineering, and administrative costs as ineligible, indicated that the Legislature was interested in funding only the actual installation or construction of the system.

Subpart 2. Ineligible costs. Non-construction costs are not eligible. For clarity, easily identified non-construction costs have been named in the rules. The ineligible costs are not limited to those named.

Subpart 3. Number of systems limitation. It is possible that a treatment site has a combination of systems such as a series of septic tanks. The rules propose limiting each site to a single reimbursement as a method of distributing the limited funds fairly among the applicants.

Subpart 4. Costs incurred before grant award. To allow construction and pollution abatement to proceed without delay, the rules allow costs to be incurred before award under certain conditions.

Items A - C. Conditions are imposed on the incurring of costs before award to allow the Agency to control elements of the program related to fiscal outlays. Development of a municipality plan, identification of a specific system and prompt submittal of an application are required. When allowing a grants program to reach back and fund costs already incurred, it is reasonable to establish requirements that limit the reach to an identifiable universe. Otherwise, the Agency would have limited control on the program's funding liabilities.

Part 7075.1470 Amount of the Grant Award.

Subpart 1. Grant amount. The grant amount is 50 percent of eligible costs. The grant percentage is directed by the authorizing statute. A cap of \$2,500 (50 percent of \$5,000 eligible costs) per trench or bed system, and \$3750 (50 percent of \$7,500 eligible costs) per mound system is proposed. The cost cap is a reasonable method of distributing limited funds more widely. Discussion with the Technical Advisory Committee supported the Agency's position that \$5,000 per trench or bed system, and \$7,500 per mound system will adequately cover the average cost of these systems. The Technical Advisory Committee maintained that average costs statewide are less than the maximum amounts.

Subpart 2. Partial awards. This provision allows the municipality to proceed with its project with an assurance from the Agency of funding for the remainder of the project if funding is legislatively allocated.

Part 7075.1480 Priority Ranking.

Eligible applicants are ranked according to the municipality's median household income. Unsewered communities are not necessarily on the municipal

needs list, the priority list used for the Agency's traditional grants programs. Therefore, it is necessary to establish a separate priority system. Agency experience in the area of individual on-site treatment systems indicates that poorer communities are less likely than fiscally stable communities to proceed with replacement and upgrade of on-site systems. An assessment of financial need is an appropriate method of allocating limited state assistance funds.

Part 7075.1490 Certification of Award.

Subpart 1. Funding list. The Commissioner prepares a funding list of projects that have met the eligibility criteria under this program. The Commissioner has the responsibility to review the documents required for submittal with the application to evaluate conformance with the statute and rules. It is only after the review of these documents has been completed that a list can be prepared. The creation of the funding list provides the means of implementing public participation.

Subpart 2. Public participation. The rules provide for public participation concerning the funding list to give affected persons the opportunity to formally comment on the Agency's actions. The funding list will be available to the public and notices will be sent to affected municipalities 45 days before adoption of the list. A forty-five day notification period is what the Agency has used under the existing federal and independent states grants programs, allowing an adequate period to comment that also meets the Agency's monthly meeting schedule. That length of time has proved to be sufficient for public comment. Interested parties may present oral comments to the Board, or may submit written comments. Written comments need to be submitted 5 days before the Board meeting to allow Agency staff to copy and distribute the information.

Subpart 3. Certification to authority. The Commissioner's statutory responsibility is to determine which applicants receive grants and the amount of the grant. The Commissioner then certifies to the Public Facilities Authority the list of grantees and grant amounts.

Part 7075.1500 Payment Conditions.

A requirement of the program is use of approved personnel. See Part 7075.1440, subp. 1. It is reasonable to establish the approved personnel requirement as a condition of payment. This requirement cannot be reviewed at application time since the majority of the work will be done after the award.

Part 7075.1510 Payments.

Subpart 1. Request for payment. The payment request informs the Agency staff that the grantee is requesting payment. The Commissioner will then make the determination on whether all grant and payment conditions have been satisfied.

Subpart 2. Schedule of payment. Payments may be requested on a monthly basis as construction of each individual system is completed and approved by the inspector. It is reasonable to disburse monthly payments because each owner will be completing construction of their individual system separate from the other owners.

Subpart 3. Documentation of eligible costs. Documentation is a standard procedure before payment to safeguard public funds.

Item A. Invoices are required. The documentation required is related to Part 7075.1460, subp. 1. The grant to the municipality is based on an estimated cost. Actual costs may be less than the estimated amount and the grant may need adjustment.

Items B - D. Documentation of the use of approved personnel is required. The documentation required is based on Part 1500, payment conditions.

Subpart 4. Certification of payment. The commissioner will make a determination whether the grantee qualifies for payment. If the payment cannot be made due to deficiencies in the required documents, the Commissioner will notify the grantee so that the deficiencies can be corrected and payment then made.

Part 7075.1520 Termination of Grant.

Failure to comply with the municipality's comprehensive construction schedule for completion of all work, constitutes grounds to recommend termination of the grant. This is reasonable because it is important that the limited amount of grant funds be obligated only to municipalities that are satisfactorily meeting the grant agreement conditions. After the grant is terminated, the money will then be available to municipalities that are prepared to move forward with their projects.

Part 7075.1530 Subsequent Grants.

A municipality that receives an individual on-site wastewater treatment systems grant is ineligible to receive funding from the federal construction grants program or the independent state grants program. The municipality is also prohibited from returning to the individual on-site wastewater treatment grants program for a second grant. The exclusion is consistent with the prohibitions against subsequent grants for our existing grants program (Minn. Stat. 116.16, subd. 9a (1986)). A one time only provision allows the pool of wastewater treatment funding in the state to be distributed to municipalities that have not received grant assistance for wastewater treatment. This is consistent with the program philosophy set forth in Part 7075.1420, subp. 3 addressing previous funding. The limited funding makes a revolving door program undesirable.

An exception to this part is when the municipality identifies wastewater treatment needs in a geographic area that was not originally considered in its

planning area. An example is a county that sponsors a segment of the geographic areas under its jurisdiction for participation in this program. The county could subsequently sponsor a different geographic area for grant application. The county could not apply for a second grant for any of the same geographic area that had received a grant, even if there were new treatment needs.

V. SMALL BUSINESS CONSIDERATIONS IN RULEMAKING

Minn. Stat., §14.115, subd. 2 (1986) requires the Agency, when proposing rules which may affect small businesses, to consider the methods for reducing the impact on small businesses. Minn. Stat., §14.115, subd. 7(b) (1986) provides that Agency rules that do not affect small businesses directly, including rules relating to municipal administration of state programs, are exempted from the small business consideration provision. These rules fall under subd. 7(b) and are exempted from small business considerations. However, the Agency is satisfied that small businesses will not be adversely affected by the provisions of this program.

VI. CONSIDERATION OF ECONOMIC FACTORS

In exercising its powers, the Agency is required by Minn. Stat., §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 individual on-site wastewater treatment systems grants program, the Agency has given due consideration to any economic impacts of the proposed rules. This is a voluntary program so will not

have any affect on municipalities that do not elect to participate. Data on the effectiveness, both environmentally and economically, of the new program will be gathered and analyzed by the Agency for the legislature after the program is operating. The Agency assumes that funding a portion of the cost of upgrading or replacing systems will be a benefit to the industries and businesses that service that need. The assumption is that demand will increase when funding is available to owners who delayed or abandoned repair or replacement due to financial inability.

VII. OTHER FACTORS

Pursuant to Minn. Stat. § 14.11, subd. 1 (1986), the Agency must provide an estimate of the public monies associated with implementing these rules if it is estimated that the total cost to all local public bodies exceeds \$100,000 in either of the first two years following adoption of the rules. When a program is voluntary it is not necessary to assess the costs to local public bodies that choose to participate. It is assumed that public body will make a cost/benefit assessment at the local level as part of its decision-making process prior to application. The local body is not required by statute or administrative rule to incur costs.

In any case, the administrative costs to the municipalities that sponsor individual owners for application to the program are difficult to determine. Reimbursement for administrative costs is specifically prohibited by the authorizing statute. The Agency estimates that a \$1,000,000 program for reimbursement of construction costs will not generate a ten percent (\$100,000) administrative cost for participating local bodies. The sponsoring municipalities will need to prepare an application, develop a wastewater treatment plan and an individual on-site wastewater treatment systems maintenance plan, and develop and maintain an accounting system for disbursement of funds to the owners of the systems.

Minn. Stat. § 17.83 (1986) requires the Agency to describe any direct and substantial adverse effects on agricultural land. The Agency has determined that these rules will have no such effects.

VIII. CONCLUSION

Based on the foregoing, the proposed Minnesota Rules parts 7075.1400 through 7075.1530 are both needed and reasonable.

Dated: July 15, 1988

for Barbara Bradley Sims
Gerald L. Willet
Commissioner