

STATE OF MINNESOTA

DEPARTMENT OF TRADE AND ECONOMIC DEVELOPMENT

In the Matter of the Proposed
Rule Governing the Septic System
Grant Program

**STATEMENT OF NEED
AND REASONABLENESS**

I. INTRODUCTION

These proposed rules establish standards and procedures to govern the administration of the Septic System Grant Program. The 1993 Legislature established a new Septic System Grant Program upon recommendation by the Legislative Commission on Minnesota Resources. The legal citation establishing this program is M. L. 93, Chpt. 172, Art. 1, Sect. 14, Subd. 11(h).

II. STATEMENT OF COMMISSIONER'S STATUTORY AUTHORITY

The commissioner's authority to adopt the rule is set forth in MS s 116J.035, Subd. 2 (1992) which provides:

116J.035 DUTIES AND POWERS OF THE COMMISSIONER; RULES

Subd. 2. Rules. The commissioner may adopt rules pursuant to chapter 14 as necessary to carry out the commissioner's duties and responsibilities pursuant to this chapter.

III. STATEMENT OF NEED

The 1993 Legislature established a new septic system grant program to provide matching grants of up to \$10,000 to resorts and related tourism businesses located o lakes and rivers for replacement of failing or nonconforming septic systems. It is expected that there will insufficient funds to satisfy the demand for grant assistance and that applicants will be competing for the limited grant funds. The legislation itself provides few specific guidelines for administration of the program. More detailed guidance is contained in a work program submitted by the department to the Legislative Commission on Minnesota Resources (LCMR). The LCMR reviewed and approved the proposed program and recommended its establishment by the Legislature. This work program, while providing some of the basic eligibility parameters and guidelines for determining priorities, leaves much of the mechanics and process for administering the program to the discretion of the commissioner. To ensure consistent and equitable administration of the program, and to inform the potential grantees and the general public of the process required to apply for a grant, it is necessary to develop and adopt rules for the administration of the program.

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reasonable to expect eligible applicants to satisfy the requirements of the program rule in order to receive a grant because all applicants will then be subject to all of the same requirements and prerequisites. It is reasonable to limit an eligible business to only one grant during the LCMR project period because of limited funds and the expected large number of applications for grant assistance. It is reasonable to require that the application be submitted by the eligible business because the application process is simple and the eligible business will be most capable of obtaining and providing the information requested.

Subpart 2. Eligibility of project. It is reasonable to provide guidelines for the types of projects that will be eligible for septic system grants to reflect the restrictions and priorities mandated by the legislation and the LCMR work program and to provide practical and manageable parameters for implementation of the legislation. It is reasonable to require that the project be associated with an eligible business and involve eligible costs so that projects may be evaluated on an equal basis. It is reasonable to limit the amount of grant assistance to a maximum of 50 percent and to limit the maximum grant amount to \$10,000 because of the limited funding available for the program, the desire to assist primarily small and medium sized tourism businesses that are in greatest need of state financial assistance, and so that the available funding can be used to assist several small to moderate sized projects rather than a few large projects. It is reasonable to limit the eligibility of project-related costs to those incurred after the effective date of the legislation because it would be very difficult for applicants to provide required information on previously completed work, there is no other logical cut-off date for how far back in time a project would be considered eligible, and because the LCMR has a policy of not providing retroactive funding for projects.

Subpart 3. Application content and requirements. It is reasonable for the department to make the application documents and information available to eligible businesses upon request because of the high cost of mailing the materials up front to all potential applicants. The department has held numerous public informational meetings related to the proposed program, distributed fact sheets, maintained a mailing list of interested potential applicants, and worked closely with tourism organizations, so potential applicants should be well aware of the program. In addition, not all potential applicants are in need of assistance through the program. It is reasonable for the department to require that the applications be completed in accordance with instructions so that all applications will be comparable and can be evaluated on an equal basis. It is reasonable to establish a formal closing date for the receipt of all applications and inform applicants of that date so that they will have adequate notification of when the application must be submitted. In addition, a formal closing date will allow all applications submitted by that time to be evaluated as a group and ranked against each other so that a competitive ranking can be established.

C. It is reasonable to evaluate whether the system has been verified as a failing system because such a verification indicates that the system is already causing ground and/or surface water pollution and is causing, or could in the future cause, health and safety problems.

D. It is reasonable to evaluate whether a written order has been issued by local authorities to repair or replace the system because such an order indicates that the system does not meet local standards and requirements and prompt action is required by the applicant to replace the system or further regulatory action will be taken.

Priority Two Criteria:

A. It is reasonable to evaluate the extent to which the nonconforming status of the existing system has impeded, or will likely impede, the operation of the existing business because several local authorities have determined that replacement of nonconforming systems, even though they may not have failed, is a priority. Several have placed restrictions on the expansion, sale, or other modification of resorts or similar businesses until nonconforming systems have been replaced. This has impeded other needed improvements or expansion of some tourism businesses.

B. It is reasonable to evaluate the extent to which the proposed project would contribute to the economic vitality of the eligible business because economic assistance to the tourism industry is a secondary purpose of the program and it is desirable to optimize the economic benefit of the program while realizing the water protection goals as well.

C. It is reasonable to evaluate whether the proposed project represents a different approach or technology for on-site treatment because this was a specific concern expressed by members of the LCMR and information gained from the funding of such projects could help to improve on-site waste management in the future and help replace reliance on septic systems, which have proven to be only marginal and temporary solutions to the problem in many cases.

D. It is reasonable to evaluate whether the proposed system would serve more than one eligible business because larger systems may offer economies of scale and more effective and efficient waste treatment.

E. It is reasonable to determine the reasonableness of the estimated project costs to ensure that state funds are being used effectively and efficiently and private persons or businesses are not unduly profiting from the state's involvement in attempting to address the septic system problem.