

1 Pollution Control Agency

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3 Adopted Permanent Rules Relating to the Corrective Action Grants
4 Program under the Independent State Grants Program for
5 Wastewater Treatment

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7 Rules as Adopted

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CORRECTIVE ACTION GRANTS PROGRAM

9 7075.1005 PURPOSE.

10 The corrective action grants program provides grants to
11 municipalities with wastewater treatment facilities funded under
12 the Clean Water Act, United States Code, title 33, sections 1281
13 to 1299, or the independent state grants program that are unable
14 to meet performance standards. The grants are for the purpose
15 of correcting performance failures. The program is jointly
16 administered by the Minnesota Pollution Control Agency and the
17 Minnesota Public Facilities Authority. Parts 7075.1005 to
18 7075.1090 pertain to the agency's responsibilities in
19 administering the program.

20 7075.1010 DEFINITIONS.

21 Subpart 1. **Scope.** For the purpose of this program, the
22 following terms have the meanings given them.

23 Subp. 2. **Agency.** "Agency" means the Minnesota Pollution
24 Control Agency.

25 Subp. 3. **Authority.** "Authority" means the Minnesota
26 Public Facilities Authority.

27 Subp. 4. **Commissioner.** "Commissioner" means the
28 commissioner of the Minnesota Pollution Control Agency.

29 Subp. 5. **Performance standards.** "Performance standards"
30 means the criteria established for a wastewater treatment
31 facility under the Clean Water Act, United States Code, title
32 33, sections 1281 to 1299, or the independent state construction
33 grants program for the purpose of determining the project's
34 satisfactory performance.

1 7075.1020 ELIGIBILITY FOR PARTICIPATION.

2 To be eligible for participation in the program, a
3 municipality must meet the following requirements:

4 A. The municipality received a wastewater treatment
5 facility construction grant under the Clean Water Act, United
6 States Code, title 33, sections 1281 to 1299, or the independent
7 state construction grants program after December 29, 1981. A
8 municipality that received a grant under the individual on-site
9 wastewater treatment system grants program or the capital cost
10 component grant program does not meet this eligibility
11 requirement.

12 B. The population served by the wastewater treatment
13 facility is 1,500 or less.

14 C. The municipality's wastewater treatment facility
15 is unable to meet performance standards and the inability was
16 identified by the commissioner before the end of the one-year
17 performance certification period established by Code of Federal
18 Regulations, title 40, section 35.2218.

19 D. For projects that were originally funded under the
20 Clean Water Act, United States Code, title 33, sections 1281 to
21 1299, the inability of the wastewater treatment facility to meet
22 performance standards is not the result of the failure of
23 innovative or alternative technology components.

24 E. The municipality has not received a grant under
25 the corrective action grants program.

26 7075.1030 ELIGIBLE AND INELIGIBLE COSTS.

27 Subpart 1. Construction and land costs. Construction and
28 land costs retain the same eligibility as they had under the
29 Clean Water Act, United States Code, title 33, sections 1281 to
30 1299, or the independent state grants program at the time of the
31 original construction grant award.

32 Subp. 2. Construction and land costs incurred prior to
33 award. Construction and land costs incurred prior to the
34 commissioner's written approval of the corrective action report
35 are not eligible. Construction and land costs incurred after

1 written approval of the corrective action report and before
2 grant award will be considered eligible at the time of
3 application if the municipality receives the commissioner's
4 written authorization to proceed with construction.

5 Subp. 3. **Administrative, engineering, and legal costs.**
6 Administrative, engineering, and legal costs (collectively)
7 incurred as a result of the corrective action are eligible up to
8 a maximum of 25 percent of the construction and land costs
9 approved in the corrective action report and eligible under
10 subpart 1.

11 7075.1040 REQUIREMENTS PRIOR TO APPLICATION.

12 An eligible municipality may apply for a grant only after
13 the following documents are submitted to the agency and approved
14 by the commissioner:

15 A. a corrective action report that includes:

16 (1) an analysis of the causes of the wastewater
17 treatment facility's failure to meet performance standards;

18 (2) a selected alternative for corrective action
19 including a preliminary design and cost estimates for all
20 feasible alternatives; and

21 (3) a schedule for undertaking the selected
22 corrective action, including proposed dates for meeting permit
23 requirements and for certifying that the project performance
24 standards will be met;

25 B. plans and specifications, if applicable, to
26 implement the approved corrective action; and

27 C. an assurance, including related documentation,
28 that all remedies short of litigation have been pursued in an
29 effort to complete the approved corrective action including,
30 where applicable, at a minimum, the following:

31 (1) invoking the provisions of equipment
32 warranties;

33 (2) seeking redress from construction contractor
34 performance bonds;

35 (3) seeking redress from design engineer errors

1 and omissions insurance; and

2 (4) initiating enforcement action against
3 industrial dischargers.

4 7075.1050 APPLICATION.

5 The municipality shall apply for a corrective action grant
6 on a form provided by the authority. The municipality must also
7 submit a plan, endorsed by resolution of the municipality's
8 governing body, for the recovery of the costs of the proposed
9 corrective action from responsible parties, including a report
10 on the current status of negotiations or litigation.

11 7075.1060 CERTIFICATION OF APPLICATION FOR AWARD.

12 Subpart 1. **Priority.** The commissioner shall certify
13 grants to the authority for award in the order that applications
14 that meet the requirements of parts 7075.1040 and 7075.1050 are
15 received and to the extent that funds are available.

16 Subp. 2. **Amount of award.** Except as provided in part
17 7075.1090, subpart 3, the amount of the grant will be 80 percent
18 of the total corrective action costs, eligible and ineligible,
19 or the amount of the eligible costs, whichever is less.

20 Subp. 3. **Amendments to award.** Any grant amendments shall
21 be based on the cost of the completed procurement actions and
22 shall be dependent upon the availability of additional grant
23 funds.

24 Subp. 4. **Certification to authority.** Upon review and
25 approval of the documents required under parts 7075.1040 and
26 7075.1050, the commissioner shall certify to the authority that
27 the project meets the statutory requirements and the
28 requirements of this chapter and is eligible for an award in the
29 amount determined under subpart 2.

30 Subp. 5. **Report to agency board.** The commissioner shall
31 report the certification of a corrective action grant under this
32 part to the agency board as soon as possible, but, in any case,
33 within 60 days.

34 7075.1070 CHANGE ORDERS.

1 A municipality proposing to make changes in a corrective
2 action project that substantially alter the type or reliability
3 of the treatment process must submit to the commissioner the
4 information the commissioner requests to determine the impact of
5 the proposed change on the environment. Changes in the project
6 that substantially alter the type or reliability of the
7 treatment process must be approved by the commissioner before
8 the change is made. The commissioner shall review the proposed
9 change in the same manner as the original project was reviewed
10 for compliance with applicable pollution control requirements.
11 A substantial change in the type or reliability of the treatment
12 process implemented without prior approval from the commissioner
13 constitutes grounds for the commissioner to request that the
14 authority terminate the grant.

15 Change orders for changes that do not substantially alter
16 the type or reliability of the treatment process do not require
17 prior approval of the commissioner, but must be submitted to the
18 commissioner as soon as possible.

19 7075.1080 PAYMENTS.

20 Subpart 1. Request for payments. The municipality shall
21 make periodic payment requests for eligible costs as costs are
22 incurred on a form provided by the authority. The commissioner
23 shall certify to the authority whether the municipality has met
24 payment conditions under this part.

25 Subp. 2. Payment conditions. Failure of a project to meet
26 any of the following conditions constitutes grounds for the
27 commissioner to request that the authority withhold payments to
28 the municipality:

29 A. The project must substantially conform to the
30 approved corrective actions report.

31 B. The project must be built in accordance with the
32 approved plans and specifications for the corrective action.

33 C. The progress of the project must conform with the
34 approved project schedule.

35 Subp. 3. Retainage. The commissioner shall withhold the

1 final ten percent of the grant until the municipality has
2 successfully completed all activities in the corrective action
3 report, has affirmatively certified that the project meets the
4 performance standards, and has met the recovery of costs
5 requirement.

6 Subp. 4. **Release of withheld payments.** If an agreement is
7 reached between the commissioner and the municipality, the
8 commissioner shall recommend to the authority that the withheld
9 funds be released according to the provisions of the agreement.
10 Failure of the municipality to reach an agreement with the
11 commissioner within 30 days of receiving written notification
12 that payments are being withheld constitutes grounds for the
13 commissioner to request that the authority commence action for
14 termination of the grant and repayment of the funds.

15 7075.1090 RECOVERY OF GRANT FUNDS.

16 Subpart 1. **Generally.** A municipality that is awarded a
17 corrective action grant shall seek recovery from a person who is
18 responsible for the failure of the facility to perform.

19 Subp. 2. **Recovery after corrective action taken.** In the
20 event that the municipality recovers an amount of money from the
21 responsible persons after the corrective action has been taken
22 and state corrective action grant funds spent, the municipality
23 shall repay to the state a portion of the money recovered. The
24 portion of the recovery to be paid to the state shall be
25 proportional to the state's monetary participation in the
26 corrective action project. The amount of the payment to the
27 state shall not exceed the amount of the grant.

28 Subp. 3. **Recovery before corrective action taken.** In the
29 event that the municipality recovers an amount of money from the
30 responsible persons before the corrective action is taken, the
31 amount of the corrective action grant to be awarded shall be
32 determined by allowing the municipality to keep the entire
33 payment from the responsible persons.

34 Subp. 4. **Approval of negotiated settlement.** A
35 municipality must obtain the written approval of the

1 commissioner of any settlement negotiated with the responsible
2 persons before the municipality may enter into the settlement,
3 whether the settlement is before or after litigation has begun
4 and whether or not a corrective action grant has been awarded,
5 if the municipality wants to maintain its eligibility for a
6 corrective action grant. Failure of the municipality to obtain
7 written approval from the commissioner of any settlement
8 constitutes grounds for the commissioner to recommend denial of
9 a corrective action grant or to request that the authority
10 commence action to terminate the grant and seek repayment of the
11 funds from the municipality if a grant has already been awarded.

12 Subp. 5. **Failure to seek recovery.** Failure of a
13 municipality that has been awarded a corrective action grant to
14 seek recovery of corrective action costs from responsible
15 persons constitutes grounds for the commissioner to request that
16 the authority withhold future payments to the municipality and
17 seek repayment of the funds already paid.