

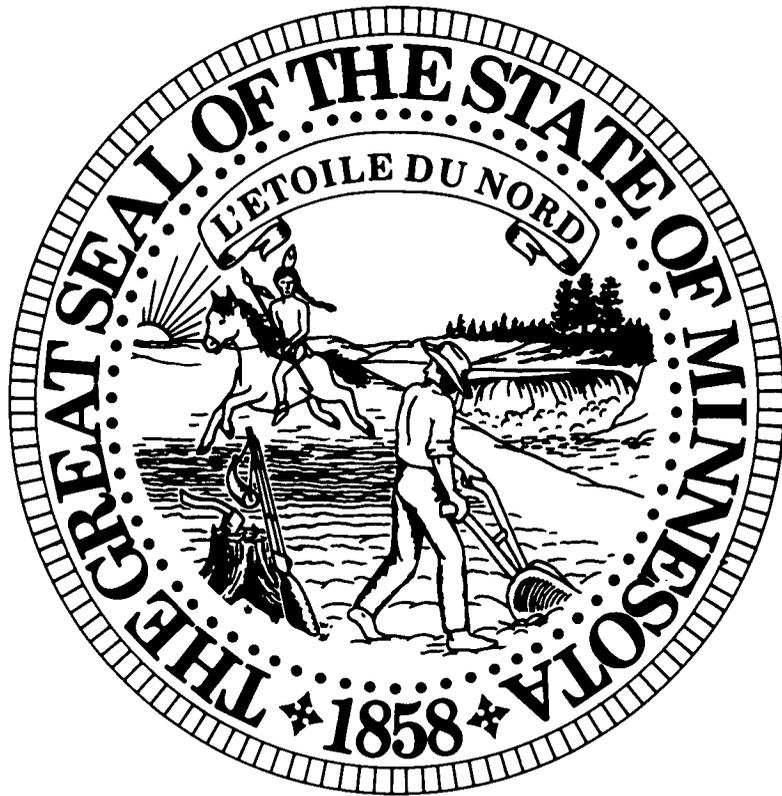
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State of Minnesota

STATE REGISTER

Department of Administration—Print Communications Division



Rules edition

Published every Monday

26 February 1990

Volume 14, Number 35

Pages 2075-2146

STATE REGISTER

Judicial Notice Shall Be Taken of Material Published in the State Register

The *State Register* is the official publication of the State of Minnesota, containing executive and commissioners' orders, proposed and adopted rules, official notices, state and non-state contracts, contract awards, grants, supreme court and tax court decisions, and a monthly calendar of cases to be heard by the state supreme court.

A *Contracts Supplement* is published every Thursday and contains additional state contracts and advertised bids, and the most complete source of state contract awards available in one source.

Printing Schedule and Submission Deadlines

Vol. 14 Issue Number	*Submission deadline for Adopted and Proposed Rules, Commissioners' Orders**	*Submission deadline for Executive Orders, Contracts, and Official Notices**	Issue Date
35	Monday 12 February	Friday 16 February	Monday 26 February
36	Friday 16 February	Monday 26 February	Monday 5 March
37	Monday 26 February	Monday 5 March	Monday 12 March
38	Monday 5 March	Monday 12 March	Monday 19 March

*Deadline extensions may be possible at the editor's discretion; however, none will be made beyond the second Wednesday (12 calendar days) preceding the issue date for rules, proposed rules and executive orders, or beyond the Wednesday (5 calendar days) preceding the issue date for official notices. Requests for deadline extensions should be made only in valid emergency situations.

**Notices of public hearings on proposed rules and notices of intent to adopt rules without a public hearing are published in the Proposed Rules section and must be submitted two weeks prior to the issue date.

Instructions for submission of documents may be obtained from the *State Register* editorial offices, 504 Rice Street, St. Paul, Minnesota 55103, (612) 296-4273.

The *STATE REGISTER* is published every Monday (Tuesday when Monday is a holiday) by the State of Minnesota, Department of Administration, Print Communications Division, 117 University Avenue, St. Paul, Minnesota 55155, pursuant to *Minnesota Statutes* § 14.46. A *STATE REGISTER Contracts Supplement* is published every Thursday. The Monday edition is the vehicle for conveying all information about state agency rulemaking, including official notices; hearing notices; proposed, adopted and emergency rules. It also contains executive orders of the governor; commissioners' orders; state contracts and advertised bids; professional, technical and consulting contracts; non-state public contracts; state grants; decisions of the supreme and tax courts; a monthly calendar of scheduled cases before the supreme court; and other announcements. The Thursday edition contains additional state contracts and advertised bids, and the most complete listing of contract awards available in one source.

In accordance with expressed legislative intent that the *STATE REGISTER* be self-supporting, the following subscription rates have been established: the Monday edition costs \$130.00 per year and includes an index issue published in August (single issues are available at the address listed above for \$3.50 per copy); the combined Monday and Thursday editions cost \$195.00 (subscriptions are not available for just the *Contracts Supplement*); trial subscriptions are available for \$60.00, include both the Monday and Thursday edition, last for 13 weeks, and may be converted to a full subscription anytime by making up the price difference. No refunds will be made in the event of subscription cancellation.

Both editions are delivered postpaid to points in the United States, second class postage paid for the Monday edition at St. Paul, MN, first class for the Thursday edition. Publication Number 326630 (ISSN 0146-7751).

Subscribers who do not receive a copy of an issue should notify the *STATE REGISTER* circulation manager immediately at (612) 296-0931. Copies of back issues may not be available more than two weeks after publication.

Rudy Perpich, Governor
Sandra J. Hale, Commissioner
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Paul Hoffman, Assistant Editor
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FOR LEGISLATIVE NEWS

Publications containing news and information from the Minnesota Senate and House of Representatives are available free to concerned citizens and the news media. To be placed on the mailing list, write or call the offices listed below:

SENATE

Briefly-Preview—Senate news and committee calendar; published weekly during legislative sessions.

Perspectives—Publication about the Senate.

Session Review—Summarizes actions of the Minnesota Senate.

Contact: Senate Public Information Office
Room 231 State Capitol, St. Paul, MN 55155
(612) 296-0504

HOUSE

Session Weekly—House committees, committee assignments of individual representatives; news on committee meetings and action. House action and bill introductions

This Week—weekly interim bulletin of the House.

Session Summary—Summarizes all bills that both the Minnesota House of Representatives and Minnesota Senate passed during their regular and special sessions.

Contact: House Information Office
Room 175 State Office Building, St. Paul, MN 55155
(612) 296-2146

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NOTICE: How to Follow State Agency Rulemaking in the State Register

The *State Register* is the official source, and only complete listing, for all state agency rulemaking in its various stages. State agencies are required to publish notice of their rulemaking action in the *State Register*. Published every Monday, the *State Register* makes it easy to follow and participate in the important rulemaking process. Approximately 75 state agencies have the authority to issue rules. Each agency is assigned specific *Minnesota Rule* chapter numbers. Every odd-numbered year the *Minnesota Rules* are published. This is a ten-volume bound collection of all adopted rules in effect at the time. Supplements are published to update this set of rules. Proposed and adopted emergency rules do not appear in this set because of their short-term nature, but are published in the *State Register*.

If an agency seeks outside opinion before issuing new rules or rule amendments, it must publish a NOTICE OF INTENT TO SOLICIT OUTSIDE OPINION in the *Official Notices* section of the *State Register*. When rules are first drafted, state agencies publish them as **Proposed Rules**, along with a notice of hearing, or notice of intent to adopt rules without a hearing in the case of noncontroversial rules. This notice asks for comment on the rules as proposed. Proposed emergency rules and withdrawn proposed rules are also published in the *State Register*. After proposed rules have gone through the comment period, and have been rewritten into their final form, they again appear in the *State Register* as **Adopted Rules**. These final adopted rules are not printed in their entirety in the *State Register*, only the changes made since their publication as Proposed Rules. To see the full rule, as adopted and in effect, a person simply needs two issues of the *State Register*, the issue the rule appeared in as proposed, and later as adopted. For a more detailed description of the rulemaking process, see the *Minnesota Guidebook to State Agency Services*.

The *State Register* features partial and cumulative listings of rules in this section on the following schedule: issues 1-13 inclusive; issues 14-25 inclusive; issue 26, cumulative for issues 1-26; issues 27-38 inclusive; issue 39, cumulative for 1-39; issues 40-51 inclusive; and issue 52, cumulative for 1-52. An annual subject matter index for rules appears in August. For copies of the *State Register*, a subscription, the annual index, the *Minnesota Rules* or the *Minnesota Guidebook to State Agency Services*, contact the Print Communications Division, 117 University Avenue, St. Paul, MN 55155 (612) 297-3000 or toll-free in Minnesota 1-800-9747.

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Proposed Rules

Pursuant to Minn. Stat. §§ 14.22, an agency may propose to adopt, amend, suspend or repeal rules without first holding a public hearing, as long as the agency determines that the rules will be noncontroversial in nature. The agency must first publish a notice of intent to adopt rules without a public hearing, together with the proposed rules, in the *State Register*. The notice must advise the public:

1. that they have 30 days in which to submit comment on the proposed rules;
2. that no public hearing will be held unless 25 or more persons make a written request for a hearing within the 30-day comment period;
3. of the manner in which persons shall request a hearing on the proposed rules; and
4. that the rule may be modified if the modifications are supported by the data and views submitted.

If, during the 30-day comment period, 25 or more persons submit to the agency a written request for a hearing of the proposed rules, the agency must proceed under the provisions of §§ 14.14-14.20, which state that if an agency decides to hold a public hearing, it must publish a notice of intent in the *State Register*.

Pursuant to Minn. Stat. §§ 14.29 and 14.30, agencies may propose emergency rules under certain circumstances. Proposed emergency rules are published in the *State Register* and, for at least 25 days thereafter, interested persons may submit data and views in writing to the proposing agency.

Department of Agriculture

Proposed Permanent Rules Relating to Retail Food Store Plan Review Fees

Notice of Intent to Adopt a Rule without a Public Hearing

NOTICE IS HEREBY GIVEN that the Minnesota Department of Agriculture intends to adopt the above-entitled rule without a public hearing following the procedures set forth in the Administrative Procedures Act for adopting rules without a public hearing in *Minnesota Statutes*, sections 14.22-14.28. The statutory authority to adopt this rule is *Minnesota Statutes*, section 31.11, subdivision 2.

All persons have 30 days in which to submit comment in support of or in opposition to the proposed rule or any part or subpart of the rule. Comment is encouraged. Each comment should identify the portion of the proposed rule addressed, the reason for the comment, and any change proposed.

Any person may make a written request for a public hearing on the rule within the 30-day comment period. If 25 or more persons submit a written request for a public hearing within the 30-day comment period, a public hearing will be held unless a sufficient number withdraw their request in writing. Any person requesting a public hearing should state their name and address, and is encouraged to identify the portion of the proposed rule addressed, the reason for the request, and any proposed change. If a public hearing is required, the department will proceed according to *Minnesota Statutes*, sections 14.131-14.20.

Comments or written requests for a public hearing must be submitted to: Carol Milligan, Minnesota Department of Agriculture, 90 West Plato Boulevard, St. Paul, MN 55107, (612) 296-6906.

The proposed rule may be modified if the modifications are supported by the data and views submitted to the department and do not result in a substantial change in the proposed rule as noticed.

A copy of the proposed rule is attached to this notice.

A Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed rule and identifies the data and information relied upon to support the proposed rule has been prepared and is available upon request from Ms. Milligan.

All food stores including those that meet the definition of a small business in *Minnesota Statutes*, section 14.115, will be required to comply with the rule. However, the fee is based on the size of the store, which means that small businesses will usually pay a lower fee.

If no hearing is required, upon adoption of the final rule, the rule and the required supporting documents will be submitted to Attorney General for review as to legality and form to the extent the form relates to legality. Any person may request notification of the date of submission to the Attorney General. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the adopted rule must submit a written request to Ms. Milligan.

Dated: 2 January 1990

Jim Nichols, Commissioner
Department of Agriculture

Rules as Proposed

1547.0110 REVIEW OF PLANS.

Subpart 1. Submission of plans. Before construction or major remodeling of a retail food store, and when an existing structure is

converted to use as a retail food store, properly prepared plans and specifications for construction, major remodeling, or conversion must be submitted to the Department of Agriculture for review and approval. The plans and specifications must show the proposed layout, arrangement, mechanical plans, construction materials of work areas, and the type and model of proposed fixed equipment and facilities. The Department of Agriculture will treat the plans and specifications as confidential or trade secret information in accordance with law and will approve the plans and specifications if they meet the requirements of this chapter. A retail food store may not be constructed, extensively remodeled, or converted except in accordance with plans and specifications approved by the Department of Agriculture.

Subp. 2. Plan review fee. Plans submitted to the Department of Agriculture under this part must be accompanied by the appropriate fee and a plan review application form provided by the department. Fees are based on the square footage of the structure being constructed, remodeled, or converted as prescribed below.

<u>Square Footage</u>	<u>Review Fee</u>
0 - 4,999	\$125
5,000 - 24,999	175
25,000 plus	275

Bureau of Mediation Services

Proposed Permanent Rules Relating to Public Employee Labor Relations

Notice of Intent to Adopt a Rule without a Public Hearing

NOTICE IS HEREBY GIVEN that the State Bureau of Mediation Service intends to adopt the above-entitled rule without a public hearing following the procedures set forth in the Administrative Procedure Act for adopting rules without a public hearing in *Minnesota Statutes*, sections 14.22 to 14.28. The statutory authority to adopt the rule is *Minnesota Statutes*, section 179.02, subdivision 4.

All persons have 30 days in which to submit comment in support of or in opposition to the proposed rule or any part or subpart of the rule. Comment is encouraged. Each comment should identify the portion of the proposed rule addressed, the reason for the comment, and any change proposed.

Any person may make a written request for a public hearing on the rule within the 30-day comment period. If 25 or more persons submit a written request for a public hearing within the 30-day comment period, a public hearing will be held unless a sufficient number withdraw their request in writing. Any person requesting a public hearing should state his or her name and address, and is encouraged to identify the portion of the proposed rule addressed, the reason for the request and any change proposed. If a public hearing is required, the agency will proceed pursuant to *Minnesota Statutes*, sections 14.131 to 14.20.

Comments or written requests for a public hearing must be submitted to:

Paul W. Goldberg, Commissioner
Bureau of Mediation Services
1380 Energy Lane, Suite Two
St. Paul, MN 55108
(612) 649-5421

The proposed rule may be modified if the modifications are supported by data and views submitted to the agency and do not result in a substantial change in the proposed rule as noticed.

A copy of the proposed rule is attached to this notice.

A STATEMENT OF NEED AND REASONABLENESS that describes the need for and reasonableness of each provision of the proposed rule and identifies the data and information relied upon to support the proposed rule has been prepared and is available from Paul W. Goldberg, Commissioner, Bureau of Mediation Services, 1380 Energy Lane, Suite Two, St. Paul, Minnesota, 55108.

YOU ARE HEREBY ADVISED pursuant to *Minnesota Statutes*, section 14.115 (1988) that the proposed rules are not considered to have any impact on small business.

KEY: PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." **ADOPTED RULES SECTION** — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

Proposed Rules

If no hearing is required, upon adoption of the rule, the rule and the required supporting documents will be submitted to the Attorney General for review as to legality and form to the extent the form relates to legality. Any person may request notification of the date of submission to the Attorney General. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the adopted rule, must submit the written request to Paul W. Goldberg, Commissioner, Bureau of Mediation Services, 1380 Energy Lane, Suite Two, St. Paul, Minnesota, 55108.

Dated: 26 February 1990

Rules as Proposed

5510.0510 LIMITATION ON FILING PETITION.

Subpart 1. **Contract bar.**

A. If there is an exclusive representative and a labor contract in effect, the commissioner shall consider a petition for ~~clarification, decertification, or representation only:~~

~~A. (1) when it is submitted during the open-window period or after the expiration date in the contract; or~~

~~B. when it is submitted jointly by the employer and the exclusive representative; or~~

~~C. (2) when the commissioner determines that the interests of good labor relations policy warrant consideration of the petition during the life of the existing contract.~~

B. A single-party petition for clarification of a unit shall be accepted only when submitted prior to the close of the open-window period of an existing collective bargaining contract.

A joint request for clarification of a unit shall be accepted at any time during the life of the existing contract.

[For text of subs 2 to 7, see M.R.]

5510.1410 FAIR SHARE FEE REQUIREMENTS.

Subpart 1. **Advance notice of fair share fee assessment.** The exclusive representative must provide written notice of the amount of the fair share fee assessment to ~~the commissioner, the employer, and each employee assessed;~~ upon initial implementation of the fair share fee assessment; to employees hired after the original notice has been issued; and upon a change in the amount of the fair share fee assessment. The notice must contain:

[For text of items A to C, see M.R.]

D. sufficient information to identify expenditures for benefits available only to members of the exclusive representative and sufficient information to identify expenditures for collective bargaining and contract administration services that have been provided for bargaining unit employees without regard to membership status. This information shall include documentation of the preceding year's actual expenditures and of the current year's projected expenditures;

[For text of items E and F, see M.R.]

[For text of subs 2 and 3, see M.R.]

Subp. 4. **Assessment.** On the effective day of the fair share fee assessment and thereafter, the amount of the assessment shall be deducted by the employer from the pay of the employee. The initial amounts deducted must be held in escrow by the employer and not remitted to the exclusive representative for a period of 30 calendar days from the date notice is provided under subpart 1.

If at the end of the 30-day period an employee has not challenged the fair share fee assessment, subsequent assessments shall be promptly remitted to the exclusive representative ~~without the need for escrow by the employer.~~

If an employee challenges the fair share fee assessment, the assessment for that employee shall continue to be deducted, but must be held in escrow by the employer until otherwise ordered by the commissioner.

5510.1510 FAIR SHARE FEE CHALLENGE PETITION.

Subpart 1. **Filing petition.** A petition challenging a fair share fee assessment may be filed by individual employees and must include:

[For text of items A to C, see M.R.]

D. ~~the job classification of the petitioner;~~

~~E. the amount of regular membership dues in the unit;~~

~~F. E. the amount of the fair share fee assessment;~~

~~G. the amount that represents 85 percent of the regular membership dues;~~

~~H. the percent of regular membership dues which the fair share fee represents;~~

~~I.~~ the amount by which the fair share fee assessment should be adjusted to conform to the statutory prerequisites of *Minnesota Statutes*, section 179A.06, subdivision 3;

~~F.~~ the specific activities or expenditures of the exclusive representative which the ~~challenger~~ petitioner believes are not in conformance with the statutory prerequisites of *Minnesota Statutes*, section 179A.06, subdivision 3; and

~~K.~~ G. the date on which the petitioner received notice of the fair share fee assessment.

[For text of subp 2, see M.R.]

Subp. 3. **Filing fee.** The challenge petition must be accompanied by a certified check or other guaranteed form of payment in the amount of \$10, made payable to ~~“Treasurer, State of Minnesota.”~~ “Bureau of Mediation Services.” A challenge petition filed without the proper filing fee shall be returned to the individual filing the petition.

Subp. 4. **Receipt of petition.** Upon receipt of the challenge petition and fee, the commissioner shall provide the ~~challenger~~ petitioner with an acknowledgment and receipt, along with a copy of the rules governing such challenge.

[For text of subps 5 and 6, see M.R.]

5510.1910 HEARINGS OR INVESTIGATIONS.

[For text of subps 1 to 9, see M.R.]

Subp. 10. **The record.** The commissioner shall maintain the record in each case. The record shall contain:

[For text of items A to D, see M.R.]

E. an audiomagnetic or stenographic recording of the hearing.

The commissioner shall retain the audiomagnetic or stenographic recording of the hearing for a period not less than 60 calendar days after the issuance of his order. ~~In the event that an appeal of the commissioner's order is initiated by any party to the hearing on the matter, the record shall be transcribed, in whole or in part, at the request of any party, provided the request is timely and the party requesting the transcript pays a charge per page, as established by the commissioner, for transcript production and for duplication of other requested or necessary parts of the record. In the event a party to a hearing before the commissioner requests that all or part of the record be transcribed absent a pending appeal from or prior to the issuance of the commissioner's order in such matter, the commissioner shall require the party to pay the full costs associated with the production of the transcript. In all cases, the commissioner shall maintain original documents as a part of bureau records and parties requesting copies of the record for any purpose shall be required to pay a charge per page, as established by the commissioner.~~

Subp. 10a. Requests for transcripts. The audiomagnetic recording of a hearing before the bureau may be transcribed in whole or in part upon the written request of any party or person, provided that the party or person requesting the transcript makes a request within the 60-day retention period and agrees in writing to pay full costs of preparation of the transcript.

Subp. 10b. Preparation of case record on appeal to PERB. Any person or party appealing a determination of the commissioner to the board must agree in writing to pay for the cost of preparing the transcript of the hearing upon which the determination was based, as well as the costs of duplicating all relevant exhibits and other written case file material. If the appeal involves only a portion of the elements or factors decided by the commissioner, and only parts of the hearing are relevant to that element or factor, a partial transcript and record may be purchased. The extent of the transcript and record necessary to provide the board with the complete record upon which that portion of the commissioner's determination was based will be determined by the commissioner, based upon the scope of the issues under appeal. Any partial transcript shall include all testimony and evidence relevant to the issues under appeal.

[For text of subps 11 to 15, see M.R.]

5510.2810 PETITION FOR MEDIATION.

[For text of subps 1 to 4, see M.R.]

Subp. 5. **Mediation meetings.** Joint or separate mediation meetings of the parties may be scheduled by the commissioner. Mediation meetings are informal and must be limited by the commissioner to matters relevant to the settlement of the dispute. The parties must continue to participate in a mediation meeting until excused by the commissioner. Use of recording devices, stenographic records, or other recording methods is prohibited in mediation meetings.

A mediation meeting may be closed to the public by the commissioner when, in the commissioner's judgment, closing will facilitate resolution of the dispute. In all cases a meeting will be closed only after receipt by the bureau of a valid and timely petition for

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Proposed Rules

mediation or after initiation of mediation by the commissioner. The commissioner may close a meeting to the public prior to its start or at any time during the meeting.

Subp. 5a. Meetings of governing bodies. When the commissioner determines that it is in the interest of resolution of a dispute, the commissioner may authorize a closed meeting of the public employer's governing body for the purpose of review and discussion of the status of negotiations and the employer's positions.

No closed meeting may be authorized unless the bureau has received a valid and timely petition for mediation or unless mediation has been initiated by the commissioner.

No closed meeting may be authorized when the commissioner or a representative of the commissioner is not physically present at the meeting unless the bureau has received a timely and valid notice of intent to strike.

In the event the commissioner determines that a closed meeting is necessary, but the commissioner cannot be physically present at the meeting and a timely and valid notice of intent to strike has been received by the bureau, the commissioner may authorize a closed meeting upon written notice to the governing body and exclusive representative at least 24 hours prior to the closed meeting. The written notice must include the date, time, and place of the closed meeting of the governing body and limit the purpose of the meeting to matters relevant to the dispute.

Pollution Control Agency

Proposed Permanent Rules Relating to Municipal Wastewater Treatment Construction Grant Programs

Notice of Intent to Adopt Rules Without a Public Hearing and Intent to Adopt Rules With Public Hearing Upon Receiving 25 or More Requests

NOTICE IS HEREBY GIVEN that the Minnesota Pollution Control Agency (Agency) intends to adopt the above-entitled rule without a public hearing following the procedures set forth in the Administrative Procedure Act in *Minnesota Statutes* §§ 14.22 to 14.28 (1988). The Agency's authority to adopt the rule is set forth in *Minnesota Statutes* § 116.07, subd. 3 (1988).

The proposed rules follow this notice. All persons have until 4:30 p.m. on March 28, 1990, to submit comments in support of or in opposition to the proposed rules or any part or subpart of the rules. Comment is encouraged. Each comment should identify the portion of the proposed rules addressed, the reason for the comment, and any change proposed.

Any person may also make a written request for a public hearing on the rules within the comment period. **IF 25 OR MORE PERSONS SUBMIT A WRITTEN REQUEST FOR A PUBLIC HEARING WITHIN THE COMMENT PERIOD, A PUBLIC HEARING WILL BE HELD UNLESS A SUFFICIENT NUMBER WITHDRAW THEIR REQUESTS IN WRITING.** Any person requesting a public hearing should state his or her name and address, and is encouraged to identify the portion of the proposed rules addressed, the reason for the request, and any change proposed.

Comments or written requests for a public hearing must be submitted to:

Debbie Olson
Minnesota Pollution Control Agency
520 Lafayette Road North
St. Paul, Minnesota 55155
(612) 296-7223

If 25 or more requests for a public hearing are received, a hearing will be held pursuant to *Minnesota Statutes* § 14.14, subdivision 1, beginning on Wednesday, April 4, at 10:00 a.m. in the 5th floor conference rooms of the Minnesota Pollution Control Agency, at the above address. The hearing will continue at the following times and locations:

1. Monday, April 9, 1990, 7:00 p.m.
Mankato State University
Student Union, Room 203
Mankato, Minnesota
2. Wednesday, April 11, 1990, 7:00 p.m.
Meeting Room 1
Crow Wing County Services Building
Laurel Street behind the Court House
Brainerd, Minnesota

If necessary, the hearing will continue on additional days at times and places determined during the hearing. All interested or affected persons would have an opportunity to participate.

The proposed rules may be modified without a public hearing if the modifications are supported by data and views submitted to the Agency and do not result in a substantial change in the proposed rule as noticed.

Minnesota Rules ch. 7075 currently provides for the administration of the federal and state financial assistance programs available to municipalities with an environmental need to construct or upgrade a wastewater treatment facility. The federal government's plan to eliminate assistance funds after July 1, 1990, prompted the Agency to propose rule changes under a new chapter, Chapter 7077. Chapter 7077 nearly mirrors Chapter 7075 in administrative procedures, but does not include the federal Construction Grants Program or federal rule and regulation references. The proposed rules under Chapter 7077 also reflect the responsibilities assumed by the Public Facilities Authority on July 1, 1988, to award grants and to make payments under the State Independent Grants Program. State Independent, State Match, and Construction Grants awarded before July 1, 1990, will continue to be administered under Chapter 7075. One free copy of the proposed rules is available from Debbie Olson at the address and telephone number stated above.

A STATEMENT OF NEED AND REASONABLENESS (SONAR) includes a summary of all the evidence and arguments justifying both the need for and the reasonableness of the proposed rules and identifies the data and information relied upon during the preparation of the proposed rule. Copies of the SONAR may be reviewed at the Agency Offices or at the Office of Administrative Hearings and copies may be obtained from the Office of Administrative Hearings at the cost of reproduction.

YOU ARE HEREBY ADVISED, pursuant to *Minnesota Statutes* § 14.115 (1988), "Small business considerations in rulemaking," that the proposed rules will affect small businesses by offering business opportunities in the planning, design, and construction of wastewater treatment facilities. Without the assistance programs, many of the facilities being built would have to be delayed indefinitely due to the financial burden the cost would place on local governments. The proposed rules do not impose any particular or unreasonable requirements on small businesses.

IF NO HEARING IS REQUIRED, this fact will be included in the rule adoption notification published by the Agency in the *State Register*. Upon adoption of the rule, the rule and the required supporting documents will be submitted to the Attorney General for review as to legality and form to the extent form relates to legality. Any person may request notification of the date of submission to the Attorney General. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the rule as adopted, must submit a written request to Debbie Olson.

IF A HEARING IS REQUIRED, it will proceed in accordance with *Minnesota Statutes* §§ 14.14 to 14.20 and rule parts 1400.0200 to 1400.1200. Questions about these procedures may be directed to Administrative Law Judge Allen Giles, Office of Administrative Hearings, 5th floor Flour Exchange Building, 310 4th Avenue South, Minneapolis, Minnesota 55415, telephone (612) 349-2543. The proposed rules are subject to change as a result of the rule hearing process.

All interested or affected persons will have an opportunity to participate in the hearing by asking questions about the SONAR and by presenting oral and written comments about the proposed rules. Comments are most helpful if the commenters identify with particularity each provision of the proposed rules that is supported or objected to and if the comments suggest specific alternative language to what is proposed and provide the reasons and data that support the proposed modifications.

Written material may be submitted and recorded in the hearing record for five working days after the public hearing ends, or for a longer period not to exceed 20 calendar days if ordered by the administrative law judge at the hearing. Written material received during this period shall be available for review at the office of administrative hearings. The Agency and interested persons may respond to any new information that is submitted. Response must be made in writing within three business days after the submission period ends. No additional evidence may be submitted during this three-day comment period.

Any person may request notification of the date on which the administrative law judge's report will be available, after which date the Agency may not take any final action on the rules for a period of five working days. If you desire to be so notified, you may so indicate at the hearing. After the hearing, you may request notification by sending a written request to the administrative law judge. Any person may request notification of the date on which the rules were adopted and filed with the secretary of state. The notice must be mailed on the same day that the rules are filed. If you want to be so notified you may so indicate at the hearing or send a request in writing to the Agency at any time prior to the filing of the rules with the secretary of state.

Lobbyists must register with the State Ethical Practices Board within five working days after s/he commences lobbying, as required by *Minnesota Statutes* ch. 10A. A lobbyist is defined in *Minnesota Statutes* § 10A.01, subd. 11, as any individual:

- a) engaged for pay or other consideration, or authorized by another individual or association to spend money, who spends more

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than five hours in any month or more than \$250, not including travel expenses and membership dues, in any year for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials; or

b) who spends more than \$250, not including traveling expenses and membership dues, in any year for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials.

The statute provides certain exceptions. Questions should be directed to the Ethical Practices Board, 41 State Office Building, Saint Paul, Minnesota 55155, telephone (612) 296-5615.

Gerald L. Willet
Commissioner

Rules as Proposed

7075.0100 PURPOSE.

This chapter provides for the administration of the federal construction grant program, the independent state construction grant program, the state matching construction grant program, the state loan program for the construction of municipal disposal systems, and the state financial assistance program for combined sewer overflow abatement. It applies to grants and loans awarded before July 1, 1990.

Rules as Proposed (all new material)

7077.0100 PURPOSE.

Parts 7077.0100 to 7077.0330 provide for the administration of the financial assistance programs for the construction of municipal wastewater treatment facilities and apply to grants and loans awarded on or after July 1, 1990. Parts 7077.0400 to 7077.0765 apply to funds awarded at any time. Chapter 7075 applies to grants and loans awarded before July 1, 1990. The programs in chapter 7077 consist of the state independent grants program, parts 7077.0200 to 7077.0265; the combined sewer overflow abatement program, parts 7077.0300 to 7077.0330; and the water pollution control revolving fund program, parts 7077.0400 to 7077.0445. The state independent grants program includes three set-aside programs:

- A. the corrective action grants program, parts 7077.0500 to 7077.0560;
- B. the capital cost component grants program, parts 7077.0600 to 7077.0660; and
- C. the individual on-site wastewater treatment systems grants program, parts 7077.0700 to 7077.0765.

7077.0105 DEFINITIONS.

Subpart 1. **Scope.** For the purposes of chapter 7077, the terms defined in this part and in *Minnesota Statutes*, chapters 115 and 116, have the meanings given them.

Subp. 2. **Act.** "Act" means the Federal Water Pollution Control Act, United States Code, title 33, sections 1251 et seq.

Subp. 3. **Adequate errors and omissions insurance.** "Adequate errors and omissions insurance" means an insurance policy that provides the minimum amount of coverage for the corresponding estimated project construction cost, as determined from the following table, and that is maintained for a minimum of two years after initiation of operation of the project.

Estimated project construction cost	Minimum amount of coverage
less than \$1,000,000	\$250,000
\$1,000,000 to \$2,999,999	\$500,000
\$3,000,000 to \$9,999,999	\$1,000,000
\$10,000,000 or over	\$2,000,000

Subp. 4. **Adverse impact.** "Adverse impact" means the violation of a water quality standard, according to chapter 7050; an objectionable growth of weeds, algae, or rough fish; or a deleterious effect on the physical, chemical, or biological condition of the receiving water that lessens the present or long-term uses of the receiving water.

Subp. 5. **Agency.** "Agency" means the Minnesota Pollution Control Agency.

Subp. 6. **Authority.** "Authority" means the Minnesota Public Facilities Authority.

Subp. 7. **Average dry weather flow.** "Average dry weather flow" means the daily average flow when the groundwater is at or near normal and a runoff condition is not occurring.

Subp. 8. **Average wet weather flow.** "Average wet weather flow" means the daily average flow for the wettest 30 consecutive days for mechanical facilities or for the wettest 180 consecutive days for controlled discharge pond systems. The 180 consecutive days for

pond systems must be based on either the storage period from approximately November 15 through May 15 or the storage period from approximately May 15 through November 15.

Subp. 9. **Budget period.** "Budget period" means the period of time approved by the commissioner during which a municipality may incur reimbursable costs.

Subp. 10. **Commissioner.** "Commissioner" means the commissioner of the Minnesota Pollution Control Agency.

Subp. 11. **Debt charge.** "Debt charge" means the charge levied on users of a wastewater treatment facility for the user's share of the local capital costs of construction of the facility.

Subp. 12. **Excessive infiltration.** "Excessive infiltration" means the quantity of flow which is more than 120 gallons per capita per day (domestic base flow and infiltration) or the quantity of infiltration which can be economically and effectively eliminated from a sewer system as determined through a cost effectiveness analysis.

Subp. 13. **Excessive inflow.** "Excessive inflow" means the maximum total flow rate during storm events that results in chronic operational problems related to hydraulic overloading of the treatment facility or that results in a total flow of more than 275 gallons per capita per day (domestic base flow plus infiltration plus inflow). Chronic operational problems may include surcharging, backups, bypasses, and overflows.

Subp. 14. **Facilities plan.** "Facilities plan" means the plans and studies necessary to determine wastewater treatment needs of a project service area, to systematically evaluate wastewater treatment alternatives that will result in compliance with enforceable water quality standards, and to identify the cost-effective implementable alternative.

Subp. 15. **Fiscal year.** "Fiscal year" means the state fiscal year which begins July 1 and ends the following June 30.

Subp. 16. **Flow equalization system.** "Flow equalization system" means a containment system such as a pond, basin, or tank designed to temporarily hold wet weather flow until the flow can be transported to a wastewater treatment facility. A flow equalization system is a type of sewer system rehabilitation project.

Subp. 17. **Infiltration.** "Infiltration" means water other than wastewater that enters a sewer system (including sewer service connections and foundation drains) from the ground through defective pipes, pipe joints, connections, or manholes. Infiltration does not include, and is distinguished from, inflow.

Subp. 18. **Inflow.** "Inflow" means water other than wastewater that enters a sewer system (including sewer service connections) from sources such as, but not limited to, roof leaders, cellar drains, yard drains, area drains, drains from springs and swampy areas, manhole covers, cross connections between storm sewers and sanitary sewers, catch basins, cooling towers, storm waters, surface runoff, street wash waters, or drainage. Inflow does not include, and is distinguished from, infiltration.

Subp. 19. **Intended use plan.** "Intended use plan" means the document prepared annually by the agency according to the requirements in Title VI of the act and submitted to the United States Environmental Protection Agency. The plan will identify the intended uses of the amounts available to the water pollution control revolving fund, including a list of wastewater treatment projects and other eligible activities proposed to be funded during the fiscal year. Projects will be listed on the intended use plan in the order of their priority ranking on the municipal needs list.

Subp. 20. **Major contributing industry.** "Major contributing industry" means an industrial user of a treatment facility that:

A. has a rated flow of 50,000 gallons or more per work day where the rated flow is the daily design flow multiplied by 24 and divided by the actual hours of discharge in a day;

B. has a rated flow greater than five percent of the total design flow to the treatment works;

C. has a total organic load of greater than five percent of the total organic load to the treatment works;

D. has in its waste before pretreatment a toxic pollutant in excess of what may be discharged to waters of the state, according to chapter 7050; or

E. is found by the agency in connection with the issuance of an NPDES/SDS permit to the municipality, either singly or in combination with other contributing industries, to interfere with the treatment plant's ability to meet effluent limitations, interfere with digester operation or biological unit process operation, impact the area required for sludge disposal, or increase sizing of the facility by five percent or more.

Subp. 21. **Major interceptor sewer.** "Major interceptor sewer" means a sewer, including related lift stations, that intercepts

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wastewater from the final point in a collector sewer of a municipality and transports the wastewater directly to a wastewater treatment facility, to another major interceptor sewer, or to the collector sewer of another municipality. To be a major interceptor sewer, the average design flow of the sewer must not increase by more than ten percent between its origin and its termination, and physical connections to the sewer must be more than 1,000 feet apart. Infiltration and inflow directly to the sewer and flow from other major interceptor sewers is not included in determining whether the average design flow has increased by more than ten percent.

Subp. 22. **Maximum wet weather flow.** "Maximum wet weather flow" means one-seventh of the total maximum flow received during a seven-day period when the groundwater is high and a runoff condition is occurring.

Subp. 23. **Municipal needs list.** "Municipal needs list" means the priority list prepared by the commissioner under parts 7077.0115 to 7077.0145.

Subp. 24. **Municipality.** "Municipality" means any county, city, town, the Metropolitan Waste Control Commission established in *Minnesota Statutes*, chapter 473, the Metropolitan Council when acting under that chapter, an Indian tribe or an authorized Indian tribal organization, or any other governmental subdivision of the state responsible by law for the prevention, control, and abatement of water pollution in any area of the state.

Subp. 25. **Need.** "Need" means a determination that a new or upgraded disposal system is currently required, or will be required within a five-year period to comply with chapter 7050, 7060, or 7080; provided the situation does not exist primarily due to inadequate operation and maintenance or to negligence on the part of any person.

Subp. 26. **NPDES/SDS permit.** "NPDES/SDS permit" means a National Pollutant Discharge Elimination System and State Disposal System permit issued by the agency that authorizes under certain conditions the discharge of pollutants to waters of the state and subsurface disposal or on-land disposal and the operation of a disposal system.

Subp. 27. **Operation and maintenance manual.** "Operation and maintenance manual" means a document developed to give treatment facility personnel the proper understanding, techniques, and references necessary to properly operate and maintain the treatment facility.

Subp. 28. **Outstanding resource value water.** "Outstanding resource value water" means those waters defined in part 7050.0180, subpart 2.

Subp. 29. **Peak hourly wet weather flow.** "Peak hourly wet weather flow" is the peak flow during the peak hour of the day at a time when the groundwater is high and a five-year one hour storm event is occurring.

Subp. 30. **Peak instantaneous wet weather flow.** "Peak instantaneous wet weather flow" means the peak instantaneous flow during the day at a time when the groundwater is high and a 25-year one hour storm event is occurring.

Subp. 31. **Performance certification.** "Performance certification" means a certification made by a municipality one year after initiation of operation that states its newly constructed wastewater treatment facility is meeting performance standards, as specified under part 7077.0255, subpart 1, item A.

Subp. 32. **Plans and specifications.** "Plans and specifications" means documents, including completed drawings and specifications, that describe the project in full and detail the complete requirements for materials, dimensions, and construction technique. The documents that comprise the plans and specifications must conform with generally accepted engineering practices and applicable state statutes, rules, and requirements.

Subp. 33. **Primary treatment facilities.** "Primary treatment facilities" means facilities designed to provide a level of treatment lower than that provided by secondary treatment facilities.

Subp. 34. **Reimbursement project.** "Reimbursement project" means a municipal wastewater treatment facility constructed under the reimbursement provision of *Minnesota Statutes*, section 116.18, subdivision 3a.

Subp. 35. **Relief sewer.** "Relief sewer" means a sewer primarily designed to eliminate bypassing caused by insufficient hydraulic capacity in sanitary sewer systems by transporting infiltration or inflow to adequately sized sewers or to a wastewater treatment facility for proper treatment. A sewer is a collector sewer and not a relief sewer if its design flow includes more than 15 percent wastewater at peak instantaneous flow conditions or if it has physical connections closer to each other than 1,000 feet. A relief sewer is a type of sewer system rehabilitation project.

Subp. 36. **Secondary treatment facilities.** "Secondary treatment facilities" means facilities designed to provide biochemical oxidation, effective sedimentation, and disinfection, or the equivalent, consistent with requirements of part 7050.0211, subpart 1. Facilities discharging to limited resource value waters (Class 7 waters) and assigned effluent limitations based on part 7050.0214 and that do not have a phosphorous or toxic substances effluent limitation are secondary treatment facilities for the purpose of this chapter.

Subp. 37. **Sewer rate ordinance or SRO.** "Sewer rate ordinance" or "SRO" means a municipal ordinance that determines the method by which a municipality will charge its users for wastewater treatment services, including the local capital cost of the treatment works.

Subp. 38. **Sewer service charge.** "Sewer service charge" means the aggregate of all charges, including charges for operation, maintenance, replacement, debt service, and other sewer related charges that are billed periodically to users of the city's wastewater treatment facility.

Subp. 39. **Sewer service charge system or SSCS.** "Sewer service charge system" or "SSCS" means a document developed by the municipality that determines the user charge and debt charge that each user will pay for wastewater treatment services.

Subp. 40. **Sewer system rehabilitation project.** "Sewer system rehabilitation project" means a project that repairs or replaces an existing collector or interceptor sewer in order to eliminate bypasses caused by insufficient hydraulic capacity or to reduce the hydraulic flows to a wastewater treatment facility. A sewer system rehabilitation project may include flow equalization systems and relief sewers.

Subp. 41. **Sewer use ordinance or SUO.** "Sewer use ordinance" or "SUO" means a municipal ordinance enacted to control the type and quantities of discharges to the wastewater treatment facility, and the type and method of connections to the system.

Subp. 42. **Tertiary treatment facilities.** "Tertiary treatment facilities" means facilities specifically designed to achieve effluent limitations based on part 7050.0211, subpart 1, for phosphorus or toxic substances and facilities designed to meet effluent standards that are more stringent than standards for secondary treatment facilities.

Subp. 43. **Treatment agreement.** "Treatment agreement" means an enforceable agreement between a municipality and a major contributing industry that includes the following:

A. the variations in daily flow and the monthly average and daily maximum quantity of compatible and incompatible pollutants to be discharged to the treatment facility;

B. the intended period of use of the treatment facility by the major contributing industry;

C. signatures by the major contributing industry and the owner of the treatment system accepting the wastewater; and

D. a requirement that the quantities to be discharged to the treatment system will be according to applicable standards and requirements.

Subp. 44. **Unanticipated site condition.** "Unanticipated site condition" means any subsurface, latent or unknown physical condition at the construction site, which differs materially from those ordinarily encountered and generally recognized as inherent in work of the type provided for in the construction contract that could not have been reasonably identified during the planning or design of the project.

Subp. 45. **User charge.** "User charge" means a charge levied on users of a wastewater treatment facility for the user's proportionate share of the cost of equipment replacement and operation and maintenance of the wastewater treatment facility.

Subp. 46. **Value engineering.** "Value engineering" means a specialized cost control technique which uses a systematic and creative approach to identify and to focus on unnecessarily high cost in a project in order to arrive at a cost saving without sacrificing the reliability or efficiency of the project.

Subp. 47. **Wastewater.** "Wastewater" means sewage, industrial waste, and other waste collected for treatment in a wastewater treatment facility.

7077.0110 TYPES OF PROGRAMS.

Subpart 1. **Scope.** Under this chapter and *Minnesota Statutes*, sections 116.16 to 116.181, the agency may certify to the authority that municipalities may be awarded funds for the assistance programs described in subparts 2 to 7.

Subp. 2. **State independent grants program.** The state independent grants program under parts 7077.0200 to 7077.0265 offers grant funds to municipalities for the construction of wastewater treatment facilities and applies to funds awarded on or after July 1, 1990. The process is described in items A to D.

A. Construction grants are awarded to municipalities on a priority basis, except as provided in parts 7077.0205, subpart 3, item E; and 7077.0210. Municipalities with the highest priorities, as determined by the point system described in parts 7077.0120 to 7077.0145, are awarded construction grants first.

B. The commissioner develops and maintains a municipal needs list that ranks in priority order the municipalities that have a need for a new or upgraded treatment system and that have requested placement on the list. Priorities are determined by awarding points for projects based on the waters affected, the population affected, the type of project proposed, and extra points for qualifying projects.

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C. The agency adopts a municipal project list that identifies the municipalities that are eligible to apply for construction grants during a designated fiscal year.

D. A reimbursement option is available to municipalities willing to proceed with construction while waiting to reach a fundable priority on the municipal needs list.

Subp. 3. **Combined sewer overflow abatement program.** Financial assistance is available for design and construction of combined sewer overflow abatement projects under parts 7077.0300 to 7077.0330. The program applies to funds awarded on or after July 1, 1990. The process awards this assistance on a pro rata basis to qualifying municipalities.

Subp. 4. **Water pollution control revolving fund program.** Loans are available to municipalities for the construction of publicly owned wastewater treatment facilities under parts 7077.0400 to 7077.0445. The program applies to funds awarded before, on, or after July 1, 1990. Loans may be requested for planning, design, and construction costs. The process is described in items A to C.

A. Municipalities seeking funds from the water pollution control revolving fund must be on the municipal needs list.

B. The agency annually adopts an intended use plan that includes a list of municipalities with eligible projects that have requested loan assistance.

C. The actual loan amounts, terms, and conditions are determined by the authority.

Subp. 5. **Corrective action grants program.** Financial assistance is available under parts 7077.0500 to 7077.0560 for the costs associated with correcting a wastewater treatment facility that failed to meet performance standards within the first year of operation. The program applies to funds awarded before, on, or after July 1, 1990. The process is described in items A and B.

A. Corrective action grants are certified to the authority for awards in the order that applications that meet the rule requirements are received and to the extent funds are available.

B. Recipients of corrective action funds must seek to recover the costs of the corrective work from the parties that are responsible for the performance failure. When funds are recovered, the municipality shall repay the state a portion of the money recovered.

Subp. 6. **Capital cost component grant program.** Grant funds are available to municipalities under parts 7077.0600 to 7077.0660 for part of the capital cost component of the service fee under a service contract with a private vendor to construct and operate wastewater treatment facilities for 20 years. The program applies to funds awarded before, on, or after July 1, 1990. The process is described in items A to D.

A. Municipalities seeking a capital cost component grant must be listed on the municipal needs list. Grant applications are taken during announced application periods.

B. Applications are ranked according to the priority order on the municipal needs list.

C. Grant amounts are determined by comparing the costs of recently constructed facilities in municipalities of similar size.

D. Payment of the grant is made following completion of construction and demonstration of satisfactory performance.

Subp. 7. **Individual on-site wastewater treatment systems grants program.** Grant funds are available to municipalities under parts 7077.0700 to 7077.0765 to assist owners of individual on-site wastewater treatment systems in upgrading or replacing failed systems. The program applies to funds awarded before, on, or after July 1, 1990. The process is described in items A to C.

A. Municipalities meeting the eligibility requirements in part 7077.0710 may submit grant applications during announced application periods. Both the municipality and the owners of the failed systems must meet statutory and rule requirements.

B. Applications are prioritized according to a municipality's median household income.

C. Grant payments are made on a reimbursement basis for 50 percent of the on-site system construction costs up to the maximum amounts specified in part 7077.0735.

7077.0115 MUNICIPAL NEEDS LIST.

Subpart 1. **Requirement.** The commissioner shall develop and maintain a municipal needs list of municipalities that have a need for a new or upgraded wastewater treatment facility.

Subp. 2. **Points and listing order.** A municipality on the municipal needs list must be awarded points under the criteria established in this chapter. The municipalities must be listed on the municipal needs list in descending order according to the number of points awarded to each.

Subp. 3. **Request for placement on list.** A municipality may submit a written request to the commissioner for placement on the municipal needs list.

A. If the municipality is sewered, its request must include the following information:

(1) type and age of existing wastewater treatment facilities;

- (2) design capacity and current treatment capabilities of existing facilities;
- (3) data describing actual wastewater flows and loadings;
- (4) current discharge point and NPDES permit standards;
- (5) a description of the need for new or upgraded treatment facilities; and
- (6) an explanation of why the need for new or upgraded facilities is not primarily due to inadequate operation and maintenance or to negligence on the part of any person.

B. If the municipality is unsewered, its request must include the following information:

- (1) number of existing on-site treatment systems in the municipality;
- (2) general description of the type and age of existing on-site treatment systems; and
- (3) a description of the identified need for improved wastewater treatment facilities including the estimated number of failing on-site systems and a description of the basis for that estimate.

Subp. 4. **Review.** The commissioner shall review each request and add to the municipal needs list each municipality for which a need has been found to exist. If the commissioner determines that a need does not exist, the municipality shall not be added to the list and the commissioner shall notify the municipality of the reasons for the determination.

7077.0120 PRIORITY POINTS FOR WATERS AFFECTED.

Subpart 1. **Water use and point ratings.** A municipality shall be awarded priority points based on the water use of the receiving water of the discharge according to the following:

Water Use	Point Rating
Class 1 Domestic consumption:	
Class 1A waters	70
Class 1B waters	65
Class 1C waters	60
Class 1D waters	55
Class 2 Fisheries and recreation:	
Class 2A waters	60
Class 2B waters	50
Class 2C waters	40
Class 7 Limited resource value waters	35

The water uses are defined in parts 7050.0200 and 7050.0220. The water use of a specific water of the state is the water use established by parts 7050.0400 to 7050.0470.

Subp. 2. **Receiving water with more than one designated water use.** If a municipality discharges to a receiving water with more than one designated water use, the municipality shall be awarded the points for the designated water use with the greatest number of points.

Subp. 3. **Adverse impact on downstream water.** If a municipal discharge has an adverse impact on a downstream water with a designated water use receiving more points than the receiving water, the municipality shall be awarded the priority points for the downstream water.

7077.0125 PRIORITY POINTS FOR POPULATION SERVED.

A municipality shall be awarded priority points based on the population of the municipality served by the project. The priority points for population served are five times the logarithm base 10 (\log_{10}) of the population determined by the most recent official census. The table below gives examples of the priority points assigned for various populations:

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Population	Log ₁₀	Priority Points Assigned
100	2	10.0
1,000	3	15.0
10,000	4	20.0
100,000	5	25.0
1,000,000	6	30.0

7077.0130 PRIORITY POINTS FOR TYPE OF PROJECT.

Subpart 1. **Table of priority points by type of project.** A municipality shall be awarded priority points based on the type of project to be constructed according to the following:

Type of Project	Priority Points
A. Major treatment facilities:	
(1) major tertiary treatment facilities	160
(2) major secondary treatment facilities	150
B. Dechlorination facilities:	
(1) tertiary treatment dechlorination facilities	120
(2) secondary treatment dechlorination facilities	110
C. Ancillary additions:	
(1) ancillary additions to existing tertiary treatment facilities	80
(2) ancillary additions to existing secondary treatment facilities	75
D. Collection systems or collector sewers:	
(1) collection system or collector sewer	10
(2) improvement of collection system or collector sewer reliability	10
E. Control of combined sewer overflow	150

Subp. 2. **Description of project types.** Project types are described as follows:

A. Major treatment facilities are new facilities or additions to existing facilities which improve effluent quality in order that a municipality may achieve compliance with its NPDES/SDS permit conditions. Major treatment facilities include major interceptor sewers and may include sewer system rehabilitation projects in subpart 4.

(1) Land application systems and stabilization ponds that are proposed as an alternative to tertiary and secondary treatment facilities that discharge to waters of the state are considered tertiary treatment and secondary treatment for purposes of project priority. Whether a land application system or stabilization pond is a tertiary or secondary treatment system is determined as based on the effluent limitations applicable to discharges to the receiving water.

(2) Subsurface disposal systems, including septic tanks, designed to treat an average daily flow of not more than 1,200 gallons and the drainfield portion and one central septic tank to treat an average daily flow in excess of 1,200 gallons are considered secondary treatment for purposes of project priority.

B. Dechlorination facilities are facilities that remove chlorine from the effluent of a wastewater treatment facility. When a municipality is listed on the municipal needs list for major treatment facilities, the facilities described in this item may be included as part of that project.

C. Ancillary additions to existing tertiary or secondary treatment facilities are additions that are not major treatment facilities, dechlorination facilities, or collector sewers. When a municipality is listed on the municipal needs list for a major treatment facility, the facilities described in this item will be included as part of that project.

D. A collection system or collector sewer is a sanitary sewer, specifically constructed to carry raw or partially treated wastewater and providing collection system reliability such as alternative power or dual pumps, that is not a major interceptor sewer or a relief sewer. For treatment works including subsurface disposal systems designed to treat an average daily flow in excess of 1,200 gallons, a collection system includes devices such as grinder pumps and septic tanks that will partly treat the wastewater, as well as septic tank effluent pumps and small diameter sewers that will pump and convey the partially treated waste.

E. A project for the control of combined sewer overflow is a project designed to eliminate bypasses caused by insufficient

hydraulic capacity in combined storm and sanitary sewers. A combined sewer overflow project is not eligible for priority points under subpart 1, item E unless the project is necessary to meet requirements of the municipality's NPDES/SDS permit.

Subp. 3. **Special restrictions for sewer system rehabilitation projects.** Special restrictions for sewer system rehabilitation projects are as follows:

A. In order for a sewer system rehabilitation project to be eligible for priority points under subpart 1, item A, the municipality must not have obtained a grant for wastewater treatment facility construction since February 11, 1974, and sewer system rehabilitation must be justified by an infiltration/inflow analysis and sewer system evaluation survey that complies with part 7077.0150, subpart 2, item C.

B. A municipality proposing to undertake a sewer system rehabilitation project that does not meet the criteria in item A shall be awarded the priority points credited to a collection system or collector sewer under subpart 1, item D.

Subp. 4. **Temporary improvements.** If a municipality makes improvements to its existing wastewater treatment facility that are temporary in nature for the purpose of maximizing effluent quality or keeping its system operational while the municipality is awaiting a grant, the municipality shall receive the same priority points for its project as it would have received without the temporary improvements.

7077.0135 EXTRA POINTS.

In addition to the priority points to which a municipality is entitled for its project, the following extra points shall also be awarded to a qualifying municipality:

A. A municipality that proposes a project that will eliminate an existing public health hazard assessed by the Department of Health in a health advisory or commissioner's order shall be awarded 40 extra points. A municipality requesting the award of 40 extra points under this provision shall submit the following information to the agency and to the Department of Health:

- (1) information on geologic and soil conditions including soil types, permeabilities, and presence or absence of confining units;
- (2) groundwater flow patterns in the area of the facility or proposed facility;
- (3) an assessment of the extent and magnitude of the contaminant plume;
- (4) an identification of water users and assessment of the amount of water appropriations in the area of the facility or proposed facility;
- (5) flow rates and flow patterns of surface waters;
- (6) information on well construction for wells in the area of the facility or proposed facility, particularly wells that have been or will be impacted;
- (7) a description of the facility's construction, operation, and performance if there is an existing facility, with an explanation of why the facility is creating a public health hazard;
- (8) an identification and assessment of the suspected route of human exposure and the population exposed; and
- (9) a description of how the proposed improvements will mitigate or eliminate the public health hazard.

B. A qualifying municipality shall be awarded extra points under one of the provisions below for its existing level of treatment:

- (1) A municipality that presently has a collection system serving 50 percent or more of the population but provides no treatment before discharge, or a municipality which collects an average daily flow exceeding 1,000,000 gallons through a system without combined sewers and which has bypassed sewage more than 40 percent of the time over a period of at least two years while its plant is operating at full capacity, shall be awarded 40 extra points.
- (2) A municipality with no collection system where more than 50 percent of the existing septic systems discharge raw or partially treated sewage directly to the ground surface shall be awarded 30 extra points.
- (3) A municipality that presently has a collection system serving 50 percent or more of the population and whose present facilities are designed for only primary treatment shall be awarded 20 extra points.
- (4) A municipality that discharges untreated sewage as a result of combined sewer overflows shall be awarded 20 extra points.

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C. A municipality that proposes a project that is an integral part of a watershed pollution abatement plan shall be awarded 15 extra points. A municipality is not entitled to the 15 extra points under this provision unless the agency received the plan for review by December 1, and it is in approvable condition by May 1, before the beginning of the fiscal year for which funding is sought. A watershed pollution abatement plan shall include the following:

- (1) an in depth description of the physical environment (geology, soils, topography, and land cover), land use and development in the watershed, as well as the planned future land use and development;
 - (2) an inventory and in depth description of the watershed's hydrologic system, including climatic conditions (precipitation), lakes, wetlands, streams, groundwater, drainage, and conveyance systems;
 - (3) information on the existing and potential water quality problems in the watershed, including both point and nonpoint sources of pollution;
 - (4) objectives and policies, including management plans for water quality and natural resource protection;
 - (5) a description of the hydrologic and water quality conditions that will be sought, including a description of the opportunities for improvement;
 - (6) a statement on conflicts between the watershed pollution abatement plan and existing plans of local government units;
- and
- (7) a plan for implementation, consisting of governmental work agreements and schedules for implementing corrective actions.

D. A municipality that discharges to or has an adverse impact on an outstanding resource value water shall be awarded ten extra points.

E. A municipality proposing to undertake a project that will result in the elimination of a point source discharge to a game fish lake or outstanding resource value water, or the elimination of a discharge that has an adverse impact on a game fish lake or outstanding resource value water shall be awarded ten extra points. A game fish lake is a lake managed for propagation of game fish species and used for fisheries and recreation. There may be occasional but not regular winter kill in a game fish lake.

F. Ten extra points will be awarded to a sanitary district or other multimunicipal wastewater treatment project.

G. A municipality listed on the municipal needs list on January 1, 1985, shall be awarded 40 extra points.

H. A municipality which does not qualify for the points awarded in item G and which is in compliance with its NPDES/SDS permit conditions less than 90 percent of the time during a one-year period computed on the basis of the interval appropriate to the limitation shall be awarded 20 extra points. Periods of noncompliance caused by inadequate operation and maintenance or negligence on the part of any person are not included in the percentage computation for the purposes of this definition.

7077.0140 TOTAL POINTS.

The total points to be awarded a municipality for placement on the municipal needs list is the sum of the priority points awarded under one of the provisions of parts 7077.0120, 7077.0125, and 7077.0130, and one or more of the provisions of part 7077.0135.

7077.0145 RESOLUTION OF EQUAL POINT RATINGS.

If, in the determination of the order of priority on the municipal needs list, two or more municipalities have the same total number of points, the municipality with the highest priority points under part 7077.0120 for water use is ranked higher. If two or more municipalities have the same total number of points and the same priority points under part 7077.0120 for water use, the municipalities are ranked based on population under part 7077.0125.

7077.0150 FACILITIES PLAN.

Subpart 1. **In general.** A municipality must have a facilities plan approved by the commissioner before it will be considered for placement on the municipal project list for a construction grant or the intended use plan for a construction loan. A facilities plan must be prepared and signed by a professional engineer registered in the state and submitted to the agency according to part 7077.0205, subpart 2, items B and C.

Subp. 2. **Facilities plan contents.** A facilities plan must include:

A. A complete description and evaluation of the existing treatment facility, including information about the age, condition, design capacity, and treatment capabilities of each treatment unit, an analysis of the facility's ability to meet current permit requirements, and the location, frequency, and quantity of any bypasses.

B. Data describing existing flows that accurately represent flows during rain events and high groundwater conditions. Flow data must be based on actual flow monitoring for at least 30 consecutive days.

C. An analysis of inflow and infiltration in the existing sewer system to determine whether excessive levels of inflow or

infiltration exist as defined in part 7077.0105, subparts 12 and 13. If excessive levels of inflow or infiltration are determined to exist, a sewer system evaluation survey must be conducted to identify the specific sources of inflow and infiltration and the estimated flows from each source.

D. Projected flows and loadings within the next five- and 20-year periods based on projected population growth and letters of intent from major contributing industries.

E. A cost effectiveness analysis of all feasible treatment works, processes, and techniques capable of meeting the applicable effluent, water quality, and public health requirements for 20 years. If excessive levels of inflow/infiltration are determined to exist under item C, the cost effectiveness analysis of treatment alternatives must include a comparison of the costs of eliminating excessive inflow/infiltration with the costs of transportation and treatment of the inflow/infiltration. For unsewered and partially unsewered communities, consideration must be given to on-site treatment systems. The following information must be provided for each treatment alternative considered:

(1) a detailed breakdown of the present worth of all capital costs, annual operation and maintenance costs, equipment replacement costs, and salvage costs; and

(2) a site assessment conducted by a registered engineer or geotechnical engineer of the existing soil and groundwater conditions.

F. A description of the selected treatment alternative and the complete wastewater treatment system of which it is a part, including:

(1) the specific design parameters of all individual treatment units and the complete treatment system;

(2) estimated construction, annual operation and maintenance, and equipment replacement costs;

(3) estimated annual sewer service charges;

(4) a determination of whether pretreatment of any industrial wastes is needed in order not to disrupt the proper operation of the proposed facility;

(5) an evaluation of how and where sludge resulting from the treatment process will be disposed;

(6) an analysis of the 25- and 100-year flood elevations in relation to the proposed project site showing that the project will be operable during a 25-year flood and protected during a 100-year flood;

(7) a description of any ordinances or intermunicipal agreements necessary for the successful implementation and administration of the project; and

(8) an analysis of how interim treatment will be accomplished during construction to meet permit requirements.

G. An evaluation of the environmental impacts, including:

(1) a description of the potential impacts of the selected treatment alternative on wetlands; floodplains; areas of archaeological, cultural, and historical significance; endangered or threatened species; wild and scenic rivers; farmlands; air quality; fish and wildlife; open space and recreation opportunities; and

(2) a comparison of the potential environmental impacts of the selected treatment alternative with the other treatment alternatives considered in the cost effectiveness analysis.

Subp. 3. **Public hearing.** Before adopting the facilities plan, the municipality must hold at least one public hearing to discuss the proposed facilities plan. The proposed facilities plan must be made available for review by interested persons before the date of the hearing. At the public hearing, information must be presented on the various treatment alternatives considered, the reasons for choosing the selected alternative, the location of the proposed project site, and the estimated sewer service charges. A summary of the information presented and public comments received at the public hearing must be provided to the commissioner before the commissioner's approval of the facilities plan.

Subp. 4. **Adoption.** Before the commissioner's approval of the facilities plan, the municipality must adopt the facilities plan through a formal resolution of the municipality's governing body.

7077.0155 PLANS AND SPECIFICATIONS.

Subpart 1. **In general.** A municipality must submit plans and specifications or a council resolution to the commissioner according

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to part 7077.0205, subpart 2, item D, before it will be considered for placement on the municipal project list. The plans and specifications must be consistent with the scope of the approved facilities plan under part 7077.0150. The project must be constructed according to the approved plans and specifications and change orders.

Subp. 2. **Contents.** A complete set of plans and specifications must include:

- A. drawings and specifications signed by a professional engineer registered in Minnesota;
- B. a summary of design parameters for the treatment units;
- C. a summary of flow conditions for average dry weather, average wet weather, maximum wet weather, peak hourly and instantaneous wet weather on a form provided by the agency;
- D. a hydraulic profile of the flow through the treatment system;
- E. a plan for interim treatment during construction;
- F. the latest detailed cost estimate based on the plans and specifications submitted;
- G. administrative, bidding, and contract documents according to the applicable requirements under *Minnesota Statutes*, chapters 412, 429, and 471 including, at a minimum:
 - (1) five percent bid bond;
 - (2) 100 percent payment bond;
 - (3) 100 percent performance bond; and
 - (4) prevailing wage certifications issued by the Minnesota Department of Labor and Industry.

7077.0160 RATE SYSTEM AND ORDINANCES.

Subpart 1. **In general.** A municipality must submit a sewer service charge system, a sewer rate ordinance, and a sewer use ordinance or a council resolution to the commissioner according to part 7077.0205, subpart 2, item D, before it will be considered for placement on the municipal project list. The sewer service charge system, sewer rate ordinance, and sewer use ordinance must demonstrate that the municipality has the legal and financial capability to ensure adequate construction and operation and maintenance of the wastewater treatment facility. The rate system and ordinances must be enacted according to part 7077.0260, subpart 2, item C, to ensure full payment of the grant.

Subp. 2. **Sewer service charge system.** A sewer service charge system must include:

- A. The engineering and accounting data for the wastewater flows and loadings of the users of the wastewater treatment facility.
- B. The estimated annual costs of equipment replacement, and operating and maintaining the facility.
- C. The rates that will be charged to each user for the user's share of the annual costs of equipment replacement and operation and maintenance of the treatment facility in proportion to the user's contribution of wastewater flow and loadings and according to the rate formula established in the sewer rate ordinance. The costs of treating infiltration and inflow and the costs of administration may be charged through other methods than proportionality, but the manner in which the charges will be distributed must be justified and described.
- D. The rates that will be charged to each user for the cost of the debt retirement for the local capital cost of the treatment facility. The debt charge need not be proportionally assessed against each user, but the manner in which the charge will be distributed must be described.

Subp. 3. **Sewer rate ordinance.** The sewer rate ordinance must include the following minimum provisions:

- A. the rate setting method for proportionate user charges;
- B. the rate setting method for debt charges; and
- C. separate accounts for:
 - (1) operation and maintenance;
 - (2) equipment replacement; and
 - (3) debt retirement; and
- D. administrative procedures for the financial management of the sewer service charges.

Subp. 4. **Sewer use ordinance.** The sewer use ordinance must include the following minimum provisions:

- A. prohibition of new connections from inflow sources;
- B. new sewers and connections must be properly designed and constructed; and
- C. prohibition of toxics and other pollutants in amounts or concentrations that endanger public safety or the physical integrity of the treatment facility or cause violation of permit limitations.

STATE INDEPENDENT GRANTS PROGRAM**7077.0200 PURPOSE.**

The state independent grants program provides grants to municipalities for the construction of publicly owned wastewater treatment facilities according to the priority order of the municipal needs list and the provisions of *Minnesota Statutes*, section 116.18, subdivision 3a. The program is jointly administered by the Minnesota Pollution Control Agency and the Minnesota Public Facilities Authority. Parts 7077.0200 to 7077.0265 provide for the agency's responsibilities for the administration of the program.

7077.0205 MUNICIPAL PROJECT LIST.

Subpart 1. **Adoption of municipal project list.** Each fiscal year the agency shall adopt a municipal project list that identifies, in priority order, the municipalities that are eligible to apply for state independent grants from appropriated funds.

The municipal project list shall also list other uses of the appropriated funds including reserves for grant increases and costs of administration.

Subp. 2. **Requirements for placement on list.** To be placed on the municipal project list:

A. The municipality must be on the municipal needs list.

B. The municipality must submit by December 1 before the beginning of the fiscal year for which the municipal project list is prepared:

(1) a facilities plan in conformance with part 7077.0150; and

(2) if the municipality is proposing to change the selected treatment method or any other major element of a previously approved facilities plan, a facilities plan addendum in conformance with part 7077.0150.

C. The municipality must, by May 1 before the beginning of the fiscal year for which the project list is prepared, make all revisions to the documents listed in item B that are necessary to obtain the commissioner's approval.

D. The municipality must also submit by May 1 the following documents for the commissioner's review and approval or a resolution of the municipality's governing body agreeing to submit the following documents by the following October 1:

(1) plans and specifications in conformance with part 7077.0155, and based on a facilities plan previously approved by the agency;

(2) if the municipality is proposing to change the selected treatment method or any other major element of previously approved plans and specifications, a plans and specifications addendum in conformance with part 7077.0155, and based on a previously approved facilities plan;

(3) a sewer service charge system under part 7077.0160, subpart 2;

(4) documentation of how the public has been informed within the past year of the proposed sewer service rates;

(5) a sewer rate ordinance under part 7077.0160, subpart 3;

(6) a sewer use ordinance under 7077.0160, subpart 4; and

(7) if more than one municipality is involved in the project, an unexecuted intermunicipal agreement that sets forth the terms and conditions of joint treatment and the cost-sharing methodology.

E. Failure to submit, for the commissioner's review and approval, the documents agreed to in item D by October 1 of the fiscal year for which the municipal project list is prepared will result in the removal of the municipality from the municipal project list.

Subp. 3. **Preparation of proposed municipal project list.** In drafting the proposed municipal project list, the commissioner shall consider the following factors in the order given:

A. total dollars available for the purpose of constructing a municipal wastewater treatment facility;

B. restrictions and obligations mandated by these parts and applicable state statutes;

C. priority rank of projects according to the municipal needs list;

D. requirements of subpart 2;

E. eligibility of projects according to part 7077.0210; and

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F. additional projects, in priority order, identified by the authority for award under the economic development set-aside under *Minnesota Statutes*, section 116.18, subdivision 3a, paragraph (b).

Subp. 4. **Reserve list.** The municipal project list shall include a list of reserve projects with priority rankings lower than those identified under subpart 3, items A to E. Municipalities listed on the reserve list meeting the requirements under subpart 3, items D and E, may receive funding if funds become available.

Subp. 5. **Reimbursement list.** The municipal project list shall include a list of municipalities that have requested to proceed with their projects and be reimbursed in a subsequent year conditioned upon appropriation of sufficient funds.

A. No municipality may be listed on the reimbursement list unless the municipality has submitted a written request for placement on the list and has received approval of the documents listed in subpart 2, items B and D.

B. A municipality may retain eligibility of construction and construction related costs incurred before the award of a state independent grant only if:

(1) the municipality was on the reimbursement list when construction began;

(2) the municipality submitted a complete application, as defined under part 7077.0215, subpart 2, to the commissioner within 90 days after adoption of or amendment to the municipal project list; and

(3) the municipality has received written approval of the application from the commissioner before initiating construction.

C. Reimbursement projects must be listed in the same order of priority as they appear on the municipal needs list.

Subp. 6. **Public participation.** The commissioner shall prepare a proposed municipal project list and make it available to the public at least 30 days before adoption. A free copy of the proposed list shall be mailed to interested persons upon request. Municipalities affected by the proposed list shall be given notice at least 30 days in advance of the agency board meeting at which the list will be considered for adoption.

7077.0210 ELIGIBILITY.

Subpart 1. **Project eligibility.** The provisions in items A to C govern project eligibility.

A. Only the cost-effective implementable alternative determined according to part 7077.0150, subpart 2, and identified in an approved facilities plan is eligible to receive grant assistance, unless a municipality receives an exemption under item B.

B. The commissioner may grant an exemption to the required 20-year planning period for the cost-effectiveness analysis under part 7077.0150, subpart 2, item E, to a municipality under 1,500 population for reasons of significant financial hardship. If an exemption is granted, the municipality may receive grant assistance for a proposed treatment alternative that is different than the 20-year cost-effective alternative. A municipality must submit a written request for this exemption that includes:

(1) a description of the proposed treatment alternative and a discussion of the extent to which it fails to satisfy the 20-year cost-effectiveness analysis;

(2) an explanation, including any necessary supporting documentation, of why the 20-year cost-effective alternative identified in the facilities plan would create a significant financial hardship for the municipality;

(3) a plan for reevaluating the municipality's wastewater treatment needs at a specific time in the future; and

(4) a resolution of the municipality's governing body that supports the municipality's request to construct a treatment alternative other than that identified in the facilities plan as the 20-year cost-effective alternative, and provides a formal commitment to reevaluate the municipality's wastewater treatment needs at a specific time in the future.

C. Grant assistance is not available for a project or portion of a project if the principal purpose is the treatment or conveyance of industrial wastewater.

Subp. 2. **Cost eligibility.** The following categories of costs related to the construction of the approved treatment alternative under subpart 1 are eligible for grant assistance:

A. costs of only those items identified in the approved plans and specifications and change orders that are necessary to construct a treatment facility that complies with NPDES/SDS permit requirements;

B. costs of procuring construction contractors;

C. costs relating to construction and start-up engineering services;

D. costs of providing full-time inspection of the project construction;

E. costs of land on which stabilization ponds will be built;

F. a contingency fund equal to three percent of the grant eligible construction costs;

G. costs associated with unanticipated site conditions as specified under part 7077.0240, subpart 2; and

H. costs incurred for project planning, design, administration, and legal services up to a maximum of 12 percent of the grant eligible construction costs for municipalities of 1,500 or less population and ten percent of the grant eligible construction costs for municipalities over 1,500 population. If a municipality has previously received funding for planning or design, the eligible costs from previous awards for planning or design will be subtracted from the eligible costs in this item.

Subp. 3. **Timing of eligible costs.** The following items govern the grant eligibility of project costs:

A. Costs of construction and construction related engineering and inspection services incurred before the certification of a grant application by the commissioner to the authority are ineligible unless the municipality receives prior written approval from the commissioner.

B. Costs of purchasing the land identified in subpart 2, item E, incurred before the approval of a facilities plan by the commissioner are ineligible unless the municipality receives prior written approval from the commissioner.

7077.0215 GRANT APPLICATIONS.

Subpart 1. **Agency notification.** The commissioner shall notify each municipality of its placement on the municipal project list. No municipality shall submit a state independent grant application unless it has been notified by the commissioner in writing that it is on this list.

Subp. 2. **Complete application required.** No municipality may be eligible for a state independent grant unless a complete grant application has been submitted to the authority. A complete application must include all documents required under subparts 3 and 4.

Subp. 3. **Timing and form of application.** The following provisions govern the timing and form of grant applications:

A. The application for grant funds shall be on forms provided by the agency and the authority.

B. A municipality on the municipal project list shall submit a complete construction grant application to the authority within 90 days after the date on which the agency adopts that fiscal year's municipal project list.

C. If a land acquisition legal opinion, specified under subpart 4, item F, is unobtainable at the time of application, a land acquisition status report and schedule must be included with the application. If the legal opinion is not received at the agency by the following April 1, the application must be rejected and the project must be removed from the municipal project list for that fiscal year.

Subp. 4. **Application requirements.** A municipality that applies for a construction grant shall, in addition to submitting the completed application form, submit the following information for the commissioner's review and approval:

A. A proposed engineering contract that includes, at a minimum, the following provisions:

(1) full-time inspection during construction and written monthly reports submitted to the agency describing the type of construction inspected and the time involved in inspection;

(2) two sets of "as built" plans and specifications on microfiche for submittal to the agency;

(3) preparation of an operation and maintenance manual; and

(4) start-up services during the first year of operation, including:

(a) direct the operation of the project and revise the operation and maintenance manual as necessary to accommodate actual operating experience;

(b) training or providing for training of operating personnel and prepare necessary curricula and training materials; and

(c) advise the municipality whether the project is meeting performance standards.

B. A certificate of adequate errors and omissions insurance carried by the engineering firm.

C. A signature and registration number of the consulting engineer accompanying the following certification statement:

The facilities described in this application have been designed based on data that has been verified to accurately represent present and future flows and loadings and with full knowledge of the effluent limitations required by the Minnesota Pollution Control Agency as set forth in NPDES Permit No. dated It is my judgment and carefully considered opinion that these facilities are capable of consistently producing the required effluent quality, provided that the facilities are operated in conformance with the approved operation and maintenance manual and that the volume and characteristics of raw wastewater are within the limits of the flow data presented in the plans and specifications under the requirements of *Minnesota Rules*, part 7077.0155, subpart 2, item C.

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D. A treatment agreement with each major contributing industry.

E. A cost breakdown for all project work to be funded by the grant, including separation of grant eligible and ineligible items, in a format provided by the agency.

F. A legal opinion identifying that the municipality has sufficient legal vested interest in all sites, easements, or rights-of-way to ensure immediate construction and undisturbed use for the estimated life of the facilities. If this opinion can not be submitted at the time of application, a land acquisition status report and schedule must be provided.

G. A project schedule on a form provided by the agency.

Subp. 5. **Three copies.** State independent grant application forms and attachments must be submitted in triplicate to the authority. At least one set of forms and attachments must contain original signatures.

7077.0220 APPROVAL AND CERTIFICATION OF GRANT APPLICATIONS.

Subpart 1. **Approval.** The commissioner shall approve grant applications from municipalities that:

A. meet the requirements of parts 7077.0205, subpart 2, item D; and 7077.0215, subparts 3 and 4, within 180 days of the date the agency received a complete application;

B. complete the environmental review process requirements in chapter 4410 and *Minnesota Statutes*, chapter 116D; and

C. obtain the required NPDES/SDS permits.

Subp. 2. **Certification.** The commissioner shall certify each approved grant application to the authority for award. Grant eligible costs under part 7077.0210, subpart 2, items B to D, will be determined at the time of certification. Following certification, grant eligible costs under these items can be increased only through the approval of an unanticipated site condition amendment under part 7077.0240, subpart 2, or through the use of contingency funds under part 7077.0210, subpart 2, item F, approved by the commissioner.

7077.0225 REJECTION OF GRANT APPLICATIONS.

Subpart 1. **Grounds.** A municipality's grant application for a project on the municipal project list may be rejected by the commissioner if it cannot receive approval under part 7077.0220.

Subp. 2. **Effect of rejection.** When a grant application is rejected, the commissioner shall remove the municipality from the municipal project list for that fiscal year.

7077.0230 CONTRACT ASSIGNMENT.

A municipality that enters into a contract with a contractor or engineer for the planning, design, or construction of a part of or an entire wastewater treatment system, to be paid for in whole or in part by state independent grant funds, shall provide in the contract that any or all of its rights and duties thereunder may be assigned to the commissioner without the agreement of the contractor or engineer. The assignment may be made by mutual agreement between the municipality and the commissioner or according to an agency assumption of municipal powers under *Minnesota Statutes*, section 115.48.

7077.0235 CONTRACT BENEFICIARY.

A municipality that enters into a contract with a contractor or engineer for the planning, design, or construction of a part of or an entire wastewater treatment system, to be paid for in whole or in part by state independent grant funds, shall provide in the contract that the agency is a third-party beneficiary to the contract.

7077.0240 GRANT AMENDMENTS.

Subpart 1. **After-bid amendments.** A municipality shall submit to the authority a written request for an after-bid amendment when actual construction contracts costs differ from construction costs estimated in the grant certification. Final grant eligible construction costs are based on the amounts in the signed construction contracts. No further amendments for additional construction costs will be considered except as provided under subpart 2. The commissioner shall certify the amendment to the authority if funds are available and the costs are eligible and reasonable.

Subp. 2. **Unanticipated site condition amendments.** Only cost overruns caused by unanticipated site conditions are eligible for grant amendments once final grant eligible construction costs based on the amounts in the signed construction contracts are determined under subpart 1.

A. The commissioner may approve an amendment for up to two percent of the final grant eligible construction costs to compensate for unanticipated site conditions encountered during construction. The three percent contingency fund under part 7077.0210, subpart 2, item F, must be depleted before an amendment for unanticipated site conditions is approved.

B. A written request by the municipality for an unanticipated site condition amendment must include:

- (1) an explanation of why the site condition causing the cost overrun was unanticipated;
- (2) a change order that defines the scope and cost of the work;

- (3) a breakdown of costs and tasks;
- (4) an amended engineering contract, if applicable; and
- (5) a budget period extension request, if applicable.

7077.0245 CHANGE ORDERS.

Subpart 1. **In general.** A change order must be submitted to the commissioner for any change that:

- A. alters the design or scope of the project;
- B. increases or decreases the contract price;
- C. changes the construction completion date;
- D. causes a deviation from the approved plans and specifications; or
- E. causes a substitution or replacement of equipment, suppliers, or subcontractors.

Subp. 2. **Contents.** Change orders submitted to the commissioner must contain the following:

- A. signatures of the municipality's authorized representative, the project engineer, and the contractor;
- B. the date on which the municipality and the contractor executed the change order;
- C. identification of grant eligible and ineligible costs;
- D. a complete description and justification of the change;
- E. an explanation of why the change was not included in the original plans and specifications and contractor's bid;
- F. a detailed cost breakdown for the change from the contractor showing the costs of materials, labor, overhead, and profit;

and

G. a cost estimate for the change from the project engineer and an analysis of any differences between the engineer's estimate and the contractor's cost breakdown. If the project engineer's estimate differs from the contractor's price by more than ten percent, an explanation of how the costs were agreed to is required.

Subp. 3. **Eligible costs.** The following costs associated with approved change orders are eligible for grant assistance:

- A. construction costs resulting from defects in the plans and specifications that would have been eligible and would have been incurred if the plans and specifications had been free of the defects, excluding the costs of any rework, redesign, restocking, small tools, supervision, delay, acceleration, or disruption caused by the defects;
- B. costs determined by the commissioner to be the result of unanticipated site conditions;
- C. combined profit and overhead costs for the contractor or subcontractor that actually performs the change order work not exceeding 15 percent of the costs of materials and labor;
- D. combined profit and overhead costs for a contractor or subcontractor that administers the change order but does not actually perform the change order work not exceeding five percent of the costs of materials and labor.

Subp. 4. **Approval of change orders.** Approval of change orders is required as follows:

- A. Proposed changes that substantially alter the type of treatment process, or its efficiency, versatility, or reliability, must be submitted to the commissioner for prior approval.
- B. Change orders not requiring the commissioner's prior approval under item A must be submitted to the commissioner for review and approval within one month after the date on which the municipality, its engineer, or other authorized agent, and the contractor execute the change.
- C. Proposed changes described in item A do not require prior written approval from the commissioner when the work is agreed by the commissioner to be of an emergency nature.

7077.0250 COMPLETION OF CONSTRUCTION.

Subpart 1. **Building completion.** Building completion is the date when all major components of a project have been built, all

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equipment is operational, start-up testing has been completed, and the project is capable of functioning as designed. At this point the municipality must notify the commissioner it is ready to initiate operation and request that a prefinal inspection be scheduled.

Subp. 2. **Initiation of operation.** Initiation of operation is the date the project begins operating for the purposes for which it was planned, designed, and built. A project must not initiate operation until it receives approval from the commissioner.

A. The municipality must notify the commissioner in writing of the initiation of operation date within ten days of initiating operation.

B. The date of initiation of operation is the first day of the one year performance period.

Subp. 3. **Final inspection.** A final inspection of the treatment facility must be performed by agency staff when all the construction is complete except for minor weather-related components. The purpose of the inspection is to verify that construction is complete and conforms with the approved plans, specifications, and change orders. A municipality requests that a final inspection be performed when it believes construction is complete. At the final inspection, any outstanding change orders must be identified and a cut-off date for incurring grant eligible construction related costs must be established.

7077.0255 PROJECT PERFORMANCE.

Subpart 1. **Performance certification.** One year after the initiation of operation of the project, the municipality shall submit to the commissioner the following items:

A. a certification stating whether the project meets the following performance standards:

(1) the project has been completed according to approved construction plans and specifications and change orders;

(2) the municipality has a sufficient number of trained and capable personnel to provide adequate operation and maintenance of the project, and the project requires only operation and maintenance as outlined as normal and routine in the approved operation and maintenance manual;

(3) the project accepts hydraulic and organic loading to the extent described in the approved design specifications and is in compliance with all NPDES/SDS permit requirements;

(4) industrial wastewater discharges to the treatment facility do not interfere with the operation of the project or the disposal or use of municipal sludges;

(5) sludge treatment and disposal is accomplished in conformance with chapter 7040 or parts 7005.2350 to 7005.2400, as applicable; and

(6) the project meets the requirements in the approved plans and specifications for the prevention of contamination of underground drinking water sources beyond the property boundary, if applicable;

B. a start-up evaluation report describing the performance of the project;

C. a revised operation and maintenance manual based on actual operating experience obtained during the one-year start-up period;

D. a certification by the contractor that the project was built according to plans and specifications and change orders; and

E. two copies of the "as-built" plans and specifications on microfiche.

Subp. 2. **Corrective action report.** If the commissioner or the municipality determines that the project does not meet the project performance standards under subpart 1, item A, the municipality shall:

A. submit within 30 days of the performance certification date a corrective action report that includes:

(1) an analysis of the project's failure to meet the performance standards;

(2) an estimate of the nature, scope, and cost of the corrective action necessary to bring the project into compliance; and

(3) a schedule for initiating, in a timely manner, the necessary corrective action work and for meeting the performance certification requirements following a start-up period that is reasonable for the type of corrective action work to be performed; and

B. following the completion of corrective action work, submit a performance certification as specified under subpart 1 according to the schedule in item A, subitem (3).

7077.0260 PAYMENT OF STATE INDEPENDENT GRANTS.

Subpart 1. **Payment request.** A municipality must submit written payment requests to the authority. The municipality must include documentation for costs incurred under part 7077.0210, subpart 2, item H.

Subp. 2. **Certification of payment requests.** The commissioner shall certify to the authority payment requests for eligible costs incurred according to the following schedule:

A. No payments will be certified until the municipality has submitted:

- (1) the accepted bid proposal;
- (2) detailed tabulation of all bids received;
- (3) payment and performance bonds;
- (4) executed construction contract and notice to proceed;
- (5) executed engineering contract; and
- (6) if more than one municipality is involved in the project, an executed intermunicipal agreement.

B. Payments will not be certified beyond 50 percent of the construction grant until the municipality has hired a wastewater treatment operator having a valid state certificate appropriate for the facility being constructed.

C. Payments will not be certified beyond 80 percent of the construction grant until the municipality has:

- (1) enacted the approved sewer use ordinance;
- (2) enacted the approved sewer rate ordinance;
- (3) adopted by a resolution of the governing body the approved sewer service charge system with updated cost revisions;

and

- (4) received approval of the operation and maintenance manual.

D. Payments will not be certified beyond 90 percent of the construction grant until the municipality has met requirements of the performance certification process under part 7077.0255. If a project cannot meet these requirements, final payment will not be made until the requirements under part 7077.0255, subpart 2, have been completed or the municipality has entered into a legally enforceable agreement with the agency containing a schedule for completing the corrective work.

Subp. 3. **Retained payments.** The commissioner may withhold certification of construction grant payments if the commissioner determines that a project does not substantially conform to approved plans and specifications, or there has been a major breach of a condition in the grant agreement, or the municipality has failed to comply with the applicable requirements of this chapter. If funds are withheld pursuant to this subpart, the commissioner shall certify further payments when the condition causing the withholding has been corrected, or otherwise agreed to by the commissioner and the municipality.

7077.0265 RECOVERY OF FUNDS.

The commissioner shall recommend that the authority seek the immediate recovery of grant funds if funds are disbursed in excess of eligible costs incurred, or if a project is improperly designed, improperly constructed, or improperly operated and maintained.

COMBINED SEWER OVERFLOW ABATEMENT PROGRAM

7077.0300 PURPOSE.

State financial assistance is available for combined sewer overflow abatement for those municipalities eligible under *Minnesota Statutes*, section 116.162, subdivision 3. Parts 7077.0300 to 7077.0330 provide for the administration of the program.

7077.0305 MUNICIPAL PROJECT LIST.

Subpart 1. **In general.** The municipal project list prepared according to part 7077.0205 must contain those projects for which state financial assistance is available for combined sewer overflow abatement.

Subp. 2. **Requirements for placement on the list.** To be placed on the municipal project list, a municipality shall meet the following requirements:

A. The municipality must be listed on the municipal needs list.

B. The municipality shall submit by June 1 a list and schedule of construction projects to be initiated in the following fiscal year. If the municipality's NPDES/SDS permit provides a different date for submission of the list and schedule, the date in the permit shall take precedence.

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7077.0310 APPLICATIONS.

Subpart 1. **Complete application required.** No municipality is eligible for combined sewer overflow abatement financial assistance unless a complete application has been submitted to the agency. A complete application must include all documents required under subparts 2 and 3.

Subp. 2. **Timing and form of application.** The following provisions govern the timing and form of financial assistance applications:

A. The application shall be on the form provided by the agency.

B. A municipality on the final municipal project list for a combined sewer overflow abatement project shall submit a complete application for state financial assistance by December 1 following agency adoption of that fiscal year's municipal project list, unless a different date is provided in the municipality's NPDES/SDS permit, in which case the deadline in the permit shall take precedence.

Subp. 3. **Additional information.** A municipality that applies for state financial assistance for a combined sewer overflow abatement project shall submit the following information for the commissioner's review and approval:

A. The scope of work contained in the list and schedule submitted the previous June 1, or according to the NPDES/SDS permit, plus additional scope of work as may be necessary to use any additional funds that may become available.

B. A resolution of the governing body of the municipality that authorizes the filing of the application and that designates the municipal official authorized to sign the application, financial assistance offer, and other related documents.

C. A proposed engineering contract that includes, at a minimum, the following provisions:

(1) full-time inspection during construction and written monthly reports submitted to the agency describing the type of construction inspected and the time involved in inspection;

(2) two sets of "as-built" plans and specifications on microfiche.

D. An engineer's certificate of adequate errors and omissions insurance.

E. A cost breakdown for all project work to be funded by the financial assistance, including separation of eligible and ineligible items, in a format provided by the agency.

F. Plans and specifications as required under part 7077.0155 for the scope of work described in item A.

G. A project schedule on a form provided by the agency.

7077.0315 FINANCIAL ASSISTANCE AWARDS.

Each fiscal year that funds are appropriated for combined sewer overflow abatement, the commissioner shall award financial assistance to municipalities that meet the requirements of part 7077.0310. The municipalities shall be awarded a proportionate share of the appropriation available in that fiscal year. The proportionate share for each eligible municipality is as follows:

A. Minneapolis, 24.2 percent;

B. Saint Paul, 71.6 percent; and

C. South Saint Paul, 4.2 percent.

7077.0320 CHANGE ORDERS.

Subpart 1. **In general.** A change order must be submitted to the commissioner for any change that:

A. alters the design or scope of the project;

B. increases or decreases the contract price;

C. changes the construction completion date;

D. causes a deviation from the approved plans and specifications; or

E. causes a substitution or replacement of equipment, suppliers, or subcontractors.

Subp. 2. **Contents.** Change orders submitted to the commissioner must contain the following:

A. signatures of the municipality's authorized representative, the project engineer, and the contractor;

B. the date on which the municipality and the contractor executed the change order; and

C. a complete description of the change.

Subp. 3. **Approval of change orders.** Approval of change orders is required as follows:

A. Proposed changes that substantially alter the type of facility or its efficiency, versatility, or reliability, must be submitted to the commissioner for prior approval.

B. Change orders not requiring the commissioner's prior approval under item A must be submitted to the commissioner for review and approval within one month after the date on which the municipality, its engineer, or other authorized agent, and the contractor execute the change order.

C. Proposed changes described in item A do not require prior written approval from the commissioner when the work is agreed by the commissioner to be of an emergency nature.

7077.0325 PROJECT PERFORMANCE.

Subpart 1. **Notification of initiation of operation.** Initiation of operation is the date the project begins operating for the purposes for which it was planned, designed, and built. The municipality shall notify the commissioner, in writing, of the project's initiation of operation date within ten days following initiation of operation.

Subp. 2. **Performance certification.** One year after the initiation of operation of the project, the municipality shall submit to the commissioner the following items:

A. a certification stating whether the project meets the following performance standards:

(1) the project has been completed according to approved plans and specifications and change orders;

(2) the project accepts hydraulic loading to the extent described in the approved design specifications and complies with all NPDES/SDS permit requirements; and

(3) there is complete separation of stormwater and sanitary flows within the project area, with the exception of flows from building rainleader connections authorized under the NPDES/SDS permit;

B. a start-up evaluation report describing the performance of the project;

C. a certification by the contractor that the project was built according to the approved plans and specifications and change orders; and

D. two copies of the "as-built" plans and specifications on microfiche.

Subp. 3. **Corrective action report.** If the commissioner or the municipality determines that the project does not meet the project performance standards under subpart 2, item A, the municipality shall:

A. Submit within 30 days of the performance certification date a corrective action report that includes:

(1) an analysis of the project's failure to meet the performance standards;

(2) an estimate of the nature, scope, and cost of the corrective action necessary to bring the project into compliance; and

(3) a schedule for initiating, in a timely manner, the necessary corrective action work and for meeting the performance certification requirements following a start-up period that is reasonable for the type of corrective action work to be performed.

B. Following the completion of corrective action work, submit a performance certification as specified under subpart 1 according to the schedule in item A, subitem (3).

7077.0330 PAYMENT OF STATE FINANCIAL ASSISTANCE.

Subpart 1. **Payments up to 90 percent of assistance.** The municipality may request in writing periodic payments as work on the project progresses up to 90 percent of the total amount of the financial assistance award. No payments will be made for project work until the municipality has submitted the following items, if applicable:

A. the accepted bid proposal;

B. detailed tabulation of all bids received;

C. payment and performance bonds; and

D. executed construction contract and notice to proceed.

Subp. 2. **Payments beyond 90 percent of assistance.** Payments will not be made beyond 90 percent of the financial assistance amount until a final inspection of the project is performed by agency staff and the municipality has met the requirements of part 7077.0325.

Subp. 3. **Retained payments.** Financial assistance payments may be withheld if the commissioner determines that a project does

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not substantially conform to approved plans and specifications, or there has been a major breach of a condition in the financial assistance agreement, or the municipality has failed to comply with the applicable requirements of this chapter. If funds are withheld pursuant to this subpart, further payments will be made when the condition causing the withholding has been corrected, or as otherwise agreed to by the commissioner and the municipality.

Rules as Proposed

WATER POLLUTION CONTROL REVOLVING FUND PROGRAM

~~7075.2505~~ 7077.0400 PURPOSE.

The water pollution control revolving fund program provides loans and other forms of financial assistance to municipalities for the planning, design, and construction of publicly owned wastewater treatment facilities according to ~~the provisions of Title VI of the Federal Water Pollution Control act and Minnesota Statutes, section 446A.07.~~ The program is jointly administered by the Minnesota Pollution Control Agency and the Minnesota Public Facilities Authority. Parts ~~7075.2505~~ 7077.0400 to ~~7075.2550~~ 7077.0445 provide for the agency's responsibilities for the administration of the program and apply to loans and other forms of financial assistance awarded before, on, or after July 1, 1990.

~~7075.2515~~ 7077.0405 INTENDED USE PLAN.

Subpart 1. **Adoption of intended use plan.** The agency shall annually adopt an intended use plan based upon the requests received under subpart 3. The agency will amend the intended use plan to add additional eligible projects as necessary.

Subp. 2. **Eligibility.** To be eligible for placement on the intended use plan, a municipality's project must be listed on the current municipal needs list ~~or, if the municipality is seeking refinancing, the project must have been listed on the municipal needs list before the beginning of construction and meet the requirements of Minnesota Statutes, section 446A.07, subdivision 8, clause (1).~~

Subp. 3. **Requirements for placement on the intended use plan.** To be placed on the intended use plan, a municipality must meet the requirements of items A and B.

A. The municipality must submit to the commissioner a written request for placement on the intended use plan that includes:

(1) a brief description of the project for which financial assistance is sought;

(2) a project cost estimate; and

(3) a proposed project schedule, ~~including the date for submittal of a complete financial assistance application in conformance with the requirements of part 7075.2520 and a breakdown of estimated quarterly cash flow needs.~~

B. For a ~~Step 3 project construction loan,~~ a municipality must first receive the commissioner's approval of its facilities plan, as required under part 7077.0150, before it will be placed on the intended use plan. If the municipality is proposing to change the selected treatment method or any other major element of a previously approved facilities plan, the municipality must receive the commissioner's approval of a facilities plan addendum.

~~7075.2520~~ 7077.0410 APPLICATIONS.

Subpart 1. **Timing and Form of application.** A municipality identified on the intended use plan ~~may submit an application for financial assistance according to the municipality's schedule submitted under part 7075.2515, subpart 3, item A, subitem (3).~~ Applications must be submitted submit an application to the executive director of the authority on forms provided by the authority and the agency.

Subp. 2. **~~Step 1 financial assistance Planning loans.~~** In addition to any other information required by the authority, a municipality applying for ~~Step 1 financial assistance~~ a planning loan shall include the following items for the commissioner's review and approval as part of its application:

A. a plan of study outlining the scope of work that will lead to an approvable facilities plan;

B. a schedule for completion of the facilities plan on a form provided by the agency;

C. an engineer's certificate of adequate errors and omissions insurance; and

D. if more than one municipality is involved in the application, the municipalities shall submit an agreement indicating their intent to participate in joint treatment, outlining each municipality's responsibilities during planning and setting forth the cost-sharing methodology.

Subp. 3. **~~Step 2 financial assistance Design loans.~~** In addition to any other information required by the authority, a municipality applying for ~~Step 2 financial assistance~~ a design loan shall include the following items for the commissioner's review and approval as part of its application:

A. a schedule for completion of all Step 2 work plans and specifications, a sewer service charge system, a sewer rate ordinance, and a sewer use ordinance on a form provided by the agency;

B. an engineer's certificate of adequate errors and omissions insurance;

C. a treatment agreement for each major contributing industry that will discharge wastewater to the new or upgraded system;
and

D. if more than one municipality is involved in the application, the requirements of items A to C must be submitted for each municipality involved in the project. In addition, the municipalities shall submit an unexecuted intermunicipal agreement that sets forth the terms and conditions of joint treatment and the cost-sharing methodology.

Subp. 4. **Step 3 financial assistance Construction loans.** In addition to any other information required by the authority, a municipality applying for ~~Step 3 financial assistance~~ a construction loan shall include the following items for the commissioner's review and approval as part of its application.

A. ~~Project Plans and specifications including documents that contain the requirements under which a bidder submits a bid for performing the work and the contractual requirements and detailed requirements. The documents that comprise the plans and specifications must conform to generally accepted engineering practices, applicable state statutes and rules, and applicable requirements of the act, as required under part 7077.0155.~~

B. ~~A sewer service charge system comprised of a user charge system and a system providing for dedicated sources of revenue to pay for the municipality's costs of construction and to retire the municipality's debt costs attributable to the wastewater treatment works to be constructed. The user charge system must ensure the sufficient generation of revenue to offset the annual costs of operation, maintenance, and replacement of the treatment works and must charge each user class a fee proportional to the contribution of each user class to the total wastewater loading. The user classes include residential, commercial, industrial, institutional, and governmental classes. The system providing for dedicated sources of revenue to pay for the municipality's costs of construction and to retire the municipality's debt costs need not be proportionally assessed against each user class, but the manner in which the charge will be distributed must be described, as required under part 7077.0160, subpart 2.~~

C. Documentation of how the public has been informed of the proposed sewer service charge system.

D. ~~A sewer use ordinance to control discharges to the disposal system throughout the jurisdiction of the municipality, as required under part 7077.0160, subpart 4.~~

E. ~~A sewer rate ordinance as required under part 7077.0160, subpart 3.~~

F. ~~A project schedule for completion of all Step 3 work, on a form provided by the agency.~~

~~F G.~~ A signature and registration number of the consulting engineer accompanying the following certification statement:

~~"The treatment works facilities described in this application have been designed based on data that has been verified to accurately represent present and future flows and loadings and with full knowledge of the effluent limitations required by the Minnesota Pollution Control Agency as set forth in NPDES Permit No. _____ dated _____. It is my judgment and carefully considered opinion that these treatment works facilities are capable of consistently producing the required effluent quality, provided that the facility is facilities are operated in conformance with the approved operation and maintenance manual and that the volume and characteristics of raw wastewater are within the limits of "Design Data" stated on page _____ of the plans as follows."~~
the flow data presented in the plans and specifications under the requirements of Minnesota Rules, part 7077.0155, subpart 2, item C.

~~G H.~~ An engineer's certificate of adequate errors and omissions insurance.

~~H I.~~ An engineering contract ~~for all Step 3 work, that includes, at a minimum, the following provisions:~~

~~I. A certification from the municipality that its consulting engineer or the engineer's agent will be present on site during the hours of construction for purposes of (1) full-time inspection during construction and will submit written monthly reports submitted to the agency upon request describing the type of construction inspected and the time involved in inspection after construction commences;~~

~~J. A certification from the municipality that its consulting engineer will provide the following (2) two sets of "as built" plans and specifications on microfiche;~~

~~(3) preparation of an operation and maintenance manual; and~~

~~(4) start-up services during the first year following initiation of operation, including:~~

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(1) (a) direct the operation of the project and revise the operation and maintenance manual as necessary to accommodate actual operating experience;

(2) (b) train or provide for training of operating personnel and prepare necessary curricula and training ~~material for operating personnel materials; and~~

(3) ~~revise the operation and maintenance manual based on actual operating experience obtained during the one-year start-up period; and~~

(4) (c) advise the municipality whether the project is meeting ~~the project~~ performance standards.

~~K J.~~ A certification from the municipality that it will comply with the performance certification requirements in part ~~7075.2545~~ 7077.0440.

~~L K.~~ A treatment agreement with each major contributing industry that will discharge wastewater to the new or upgraded system.

~~M L.~~ A cost breakdown of all ~~project~~ work to be funded under the ~~revolving fund program loan~~.

M. A legal opinion identifying that the municipality has sufficient legal vested interest in all sites, easements, or rights-of-way to ensure immediate construction and undisturbed utilization for the estimated life of the facilities.

N. If more than one municipality is involved in the application, an executed intermunicipal agreement that sets forth the terms and conditions of joint treatment and the cost-sharing methodology.

~~7075.2525~~ 7077.0415 APPLICATION CERTIFICATION.

Subpart 1. **Step 1 projects Planning loans.** Upon review and approval of the documents required by part ~~7075.2520~~ 7077.0410, subpart 2, and a determination that the project meets the applicable requirements of the act, federal regulations, state statutes, and this chapter, the commissioner shall certify the application to the authority.

Subp. 2. **Step 2 projects Design loans.** Upon review and approval of the documents required by part ~~7075.2520~~ 7077.0410, subpart 3, and a determination that the project meets the applicable requirements of the act, federal regulations, state statutes, and this chapter, the commissioner shall certify the application to the authority.

Subp. 3. **Step 3 projects Construction loans.** Upon review and approval of the documents required by part ~~7075.2520~~ 7077.0410, subpart 4, completion of items A and B, and a determination that the project meets the applicable requirements of the act, federal regulations, state statutes, and this chapter, the commissioner shall certify the application to the authority.

A. The environmental review requirements of chapter 4410, *Minnesota Statutes*, chapter 116D, and title VI of the act have been satisfactorily met.

B. The municipality has obtained a state disposal system permit and, if necessary, a national pollutant discharge elimination system NPDES/SDS permit from the agency for the project.

~~7075.2530~~ 7077.0420 CHANGE ORDERS.

Subpart 1. In general. A change order must be submitted to the commissioner for any change that:

A. alters the design or scope of the project;

B. increases or decreases the contract price;

C. changes the construction completion date;

D. causes a deviation from the approved plans and specifications; or

E. causes a substitution or replacement of equipment, suppliers, or subcontractors.

Subp. 2. Contents. Change orders submitted to the commissioner must contain the following:

A. signatures of the municipality's authorized representative, the project engineer, and the contractor;

B. date on which the municipality and the contractor executed the change order; and

C. a complete description of the change.

Subp. 3. Approval of change orders. Approval of a change order is required as follows:

A. A municipality proposing to make Proposed changes in a project that substantially alters alter the type or reliability of the treatment process shall submit to the commissioner such information as the commissioner requires to determine the impact of the proposed change on the environment. Changes in the project that substantially alter the type, or its efficiency, versatility, or reliability of the treatment process, must be approved by submitted to the commissioner before the change is made. The commissioner shall review the proposed change in the same manner as the original project was reviewed for compliance with applicable pollution control requirements. A substantial change in the type or reliability of the treatment process implemented without prior approval from the commissioner constitutes grounds for the commissioner to request that the authority terminate the loan agreement for prior approval.

B. Change orders for changes that do not substantially alter the type or reliability of the treatment process do not require prior approval of the commissioner, but requiring the commissioner's prior approval under item A must be submitted to the commissioner as soon as possible for review and approval within one month after the date on which the municipality, its engineer, or other authorized agent, and the contractor execute the change order.

C. Proposed changes described in item A do not require prior written approval from the commissioner when the work is agreed by the commissioner to be of an emergency nature.

7075.2540 STEP 3 7077.0430 CONSTRUCTION LOAN REPORTING REQUIREMENTS.

Subpart 1. **Sixty days before contract date for completion of construction.** At least 60 days before the scheduled contract date for completion of construction, the municipality shall submit to the commissioner:

- A. evidence that the municipality has hired a wastewater treatment works operator having a valid state certificate; ~~and~~
- B. an operation and maintenance manual for the commissioner's approval;
- C. evidence that the approved sewer use ordinance and sewer rate ordinance have been enacted; and
- D. a resolution of the governing body adopting the approved sewer service charge system with updated cost revisions.

Subp. 2. [See Repealer.]

7077.0435 COMPLETION OF CONSTRUCTION.

Subpart 1. **Building completion.** Building completion is the date when all major components of a project have been built, all equipment is operational, start-up testing has been completed, and the project is capable of functioning as designed. At this point, the municipality must notify the commissioner it is ready to initiate operation and request that a prefinal inspection be scheduled.

Subp. 2. **Initiation of operation.** Initiation of operation is the date the project begins operating for the purposes for which it was planned, designed, and built. A project must not initiate operation until it receives approval from the commissioner.

A. The municipality must notify the commissioner in writing of the initiation of operation date within ten days of initiating operation.

B. The date of initiation of operation is the first day of the one-year performance period.

Subp. 3. **Final inspection.** A final inspection of the treatment facility shall be performed by agency staff when all the construction is complete except for minor weather-related components. The purpose of the inspection is to verify that construction is complete and conforms with the approved plans, specifications, and change orders. A municipality requests that a final inspection be performed when it believes construction is complete.

7075.2545 7077.0440 PROJECT PERFORMANCE CERTIFICATION.

Subpart 1. [See Repealer.]

Subp. 2. **One year after initiation of operation Performance certification.** One year after the initiation of operation of the project, the municipality shall submit to the commissioner the following items:

A. a certification stating whether the project meets the following performance standards identified in the permit:

- (1) the project has been completed according to approved construction plans and specifications and change orders;
- (2) the municipality has a sufficient number of trained and capable personnel to provide adequate operation and maintenance of the project, and the project requires only the operation and maintenance as is outlined as normal and routine in the approved operation and maintenance manual;
- (3) the project accepts hydraulic and organic loading to the extent described in the approved design specifications and complies with all NPDES/SDS permit requirements;
- (4) industrial wastewater discharges to the treatment works do not interfere with the operation of the project or the disposal or use of municipal sludges;
- (5) sludge treatment and disposal is accomplished in conformance with chapter 7040 or parts 7005.2350 to 7005.2400, as applicable; and

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Proposed Rules

(6) the project meets the requirements in the approved plans and specifications for the prevention of contamination of underground drinking water sources beyond the property boundary, if applicable;

B. a start-up evaluation report describing the performance of the project; ~~and~~

C. a revised operation and maintenance manual based on actual operating experience obtained during the one-year start-up period;

D. a certification by the contractor that the project was built according to the approved plans and specifications and change orders; and

E. two copies of the "as-built" plans and specifications on microfiche.

Subp. 3. **Corrective action report.** If the commissioner or the municipality determines that the project does not meet the project performance standards ~~identified in the permit under subpart 2, item A,~~ the municipality shall:

A. submit within 30 days of the performance certification date a corrective action report that includes:

A- (1) an analysis of the project's failure to meet the performance standards;

B- (2) an estimate of the nature, scope, and cost of the corrective action necessary to bring the project into compliance; and

C- (3) a schedule for ~~undertaking~~ initiating, in a timely manner, the necessary corrective action necessary to bring the project into compliance work and for meeting the performance certification requirements following a start-up period that is reasonable for the type of corrective action work to be performed; and

B. following the completion of corrective action work, submit a performance certification as specified under subpart 2 according to the schedule in item A, subitem (3).

~~7075.2550~~ **7077.0445 REQUEST TO WITHHOLD FINANCIAL ASSISTANCE PAYMENTS.**

Failure of a municipality's project to conform substantially to approved plans and specifications or failure of a municipality to comply with the requirements of part ~~7075.2540 or 7075.2545~~ parts 7077.0430 and 7077.0440 constitutes grounds for the commissioner to request that the authority withhold payments to the municipality. Once an agreement for correcting the condition leading to the withholding of funds is reached between the commissioner and the municipality, the commissioner will recommend to the authority that the retained funds be released according to the provisions ~~the agency's responsibilities for the administration of the program in the agreement.~~

CORRECTIVE ACTION GRANTS PROGRAM

~~7075.1005~~ **7077.0500 PURPOSE.**

The corrective action grants program provides grants according to Minnesota Statutes, section 116.181, to municipalities with wastewater treatment facilities funded under the Clean Water Act, United States Code, title 33, sections 1281 to 1299, or the ~~independent~~ state independent grants program that are unable to meet performance standards. The grants are for the purpose of correcting performance failures. The program is jointly administered by the Minnesota Pollution Control Agency and the Minnesota Public Facilities Authority. The program applies to grants made before, on, or after July 1, 1990. Parts ~~7075.1005~~ 7077.0500 to ~~7075.1090~~ 7077.0560 pertain to the agency's responsibilities in administering the program.

~~7075.1010~~ **DEFINITIONS 7077.0505 DEFINITION.**

Subpart 1. to 4. [See Repealer.]

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

~~7075.1020~~ **7077.0510 ELIGIBILITY FOR PARTICIPATION.**

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

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

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

C. The municipality's wastewater treatment facility is unable to meet performance standards and the inability was identified by the commissioner before the end of the one-year performance certification period established by Code of Federal Regulations, title 40, section 35.2218, or part 7077.0250, subpart 2, item B.

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

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

7075.1030 7077.0515 ELIGIBLE AND INELIGIBLE COSTS.

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

Subp. 2. **Construction and land costs incurred prior to award.** Construction and land costs incurred prior to the commissioner's written approval of the corrective action report are not eligible. Construction and land costs incurred after written approval of the corrective action report and before grant award will be considered eligible at the time of application if the municipality receives the commissioner's written authorization to proceed with construction.

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

7077.0525 CONTRACT ASSIGNMENT.

A municipality that enters into a contract with a contractor or engineer for the planning, design, or construction of a part of or an entire wastewater treatment system, to be paid for in whole or in part by state corrective action grant funds, shall provide in the contract that any or all of its rights and duties thereunder may be assigned to the commissioner without the agreement of the contractor or engineer. The assignment may be made by mutual agreement between the municipality and the commissioner or according to an agency assumption of municipal powers under Minnesota Statutes, section 115.48.

7077.0530 CONTRACT BENEFICIARY.

A municipality that enters into a contract with a contractor or engineer for the planning, design, or construction of a part of or an entire wastewater treatment system, to be paid for in whole or in part by state corrective action grant funds, shall provide in the contract that the agency is a third-party beneficiary to the contract.

7075.1050 7077.0535 APPLICATION.

Subpart 1. **Agency notification.** After the preapplication items in part 7077.0520 are approved by agency staff, the commissioner shall notify the municipality that it is eligible to apply for a corrective action grant.

Subp. 2. **Application requirements.** The municipality shall apply for a corrective action grant on a form provided by the authority. ~~The municipality must also~~ and submit the following information for the commissioner's review and approval:

A. A plan, endorsed by resolution of the municipality's governing body, for the ~~recovery of~~ recovering the costs of the proposed corrective action from the responsible parties, including.

B. A report on the current status of negotiations or litigation.

C. A proposed engineering contract that includes, at a minimum, the following provisions:

(1) full-time inspection during construction and written monthly reports submitted to the agency describing the type of construction inspected and the time involved in inspection;

(2) two sets of "as built" plans and specifications on microfiche;

(3) preparation of an operation and maintenance manual, if applicable; and

(4) start-up services during the first year of operation, if applicable, including:

(a) direct the operation of the project and revise the operation and maintenance manual as necessary to accommodate actual operating experience;

(b) train or provide for training of operating personnel and prepare necessary curricula and training materials; and

(c) advise the municipality whether the project is meeting performance standards.

D. A certificate of adequate errors and omissions insurance carried by the engineering firm.

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Proposed Rules

E. A signature and registration number of the consulting engineer accompanying the following certification statement:

Corrective action for the facilities described in this grant application has been designed with full knowledge of the effluent limitations required by the Minnesota Pollution Control Agency as set forth in NPDES Permit No. dated, It is my judgment and carefully considered opinion that the performance standards required by the Minnesota Pollution Control Agency will be met after the work detailed in the approved corrective action report, dated, is completed and that the corrected facilities are capable of consistently producing the required effluent quality, provided that the facilities are operated in conformance with the approved operation and maintenance manual and the volume and characteristics of raw wastewater are within the flow data presented in the plans and specifications approved for the original project or in the corrective action report modifications.

F. A treatment agreement with each major contributing industry.

G. A cost breakdown for all project work to be funded by the grant, including separation of grant eligible and ineligible items, in a format provided by the agency.

H. If necessary, a comprehensive legal opinion identifying that the municipality has sufficient legal vested interest in all sites, easements, or rights-of-way to ensure immediate construction and undisturbed use for the estimated life of the facilities.

Subp. 3. **Three copies.** Corrective action grant application forms and attachments, must be submitted in triplicate to the authority. At least one set of forms and attachments must contain original signatures.

7075.1060 7077.0540 CERTIFICATION OF APPLICATION FOR AWARD.

Subpart 1. **Priority.** The commissioner shall certify grants to the authority for award in the order that applications that meet the requirements of parts ~~7075.1040~~ 7077.0520 and ~~7075.1050~~ 7077.0535 are received and to the extent that funds are available.

Subp. 2. **Amount of award.** Except as provided in part ~~7075.1090~~ 7077.0560, subpart 3, the amount of the grant will be 80 percent of the total corrective action costs, eligible and ineligible, or the amount of the eligible costs, whichever is less.

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

Subp. 4. **Certification to authority.** Upon review and approval of the documents required under parts ~~7075.1040~~ 7077.0520 and ~~7075.1050~~ 7077.0535, the commissioner shall certify to the authority that the project meets the statutory requirements and the requirements of this chapter and is eligible for an award in the amount determined under subpart 2.

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

7077.0545 GRANT AMENDMENTS.

Subpart 1. **Maximum grant amount.** No grant shall be amended to exceed \$500,000.

Subp. 2. **After-bid amendments.** A municipality shall submit a written request for an after-bid amendment when construction contracts differ from construction costs estimated in the grant certification. After-bid grant amendments shall be based on the cost of the completed procurement actions and shall be dependent upon the availability of additional grant funds. The commissioner shall certify the amendment to the authority if funds are available and the costs are eligible.

Subp. 3. **Final amendment.** A municipality shall submit a written request for a final amendment when construction has been completed. The commissioner shall certify the amendment to the authority if funds are available and the costs are eligible. The amendment shall:

A. be based on the eligible construction costs and change orders approved by the commissioner; and

B. increase the grant amount under part 7077.0515, subpart 3, for administrative, engineering, and legal costs as the amount of grant eligible construction costs increase through approved change orders. This increase may only be used to pay for engineering costs, including inspection, created by work specified on the approved change orders.

7075.1070 7077.0550 CHANGE ORDERS.

Subpart 1. **In general.** A change order must be submitted to the commissioner for any change that:

A. alters the design or scope of the project;

B. increases or decreases the contract price;

C. changes the construction completion date;

D. causes a deviation from the approved plans and specifications; or

E. causes a substitution or replacement of equipment, suppliers, or subcontractors.

Subp. 2. Contents. Change orders submitted to the commissioner must contain the following:

- A. signatures of the municipality's authorized representative, the project engineer, and the contractor;
 - B. date on which the municipality and the contractor execute the change order;
 - C. identification of grant eligible and ineligible costs;
 - D. a complete description and justification of the change;
 - E. an explanation of why the change was not included in the original plans and specifications and contractor's bid;
 - F. a detailed cost breakdown for the change from the contractor showing the costs of materials, labor, overhead, and profit;
- and
- G. a cost estimate for the change from the project engineer and an analysis of any differences between the engineer's estimate and the contractor's cost breakdown. If the project engineer's estimate differs from the contractor's price by more than ten percent, an explanation of how the costs were agreed to is required.

Subp. 3. Eligible costs. The following costs associated with approved change orders are eligible for grant assistance:

- A. construction costs resulting from defects in the plans and specifications that would have been eligible and would have been incurred if the plans and specifications had been free of the defects, excluding the costs of any rework, redesign, restocking, small tools, supervision, delay, acceleration, or disruption caused by the defects;
- B. costs, determined by the commissioner to be the result of unanticipated site conditions;
- C. combined profit and overhead costs for the contractor or subcontractor that actually performs the change order work not exceeding 15 percent of the costs of materials and labor; and
- D. combined profit and overhead costs for a contractor or subcontractor that administers the change order but does not actually perform the change order work not exceeding five percent of the costs of materials and labor.

Subp. 4. Approval of change orders. Approval of change orders is required as follows:

A. A municipality proposing to make A. Proposed changes in a corrective action project that substantially alter the type or reliability of the treatment process must submit to the commissioner the information the commissioner requests to determine the impact of the proposed change on the environment. Changes in the project that substantially alter the type, or its efficiency, versatility, or reliability of the treatment process, must be approved by submitted to the commissioner before the change is made. The commissioner shall review the proposed change in the same manner as the original project was reviewed for compliance with applicable pollution control requirements. A substantial change in the type or reliability of the treatment process implemented without prior approval from the commissioner constitutes grounds for the commissioner to request that the authority terminate the grant for prior approval.

B. Change orders for changes that do not substantially alter the type or reliability of the treatment process do not require prior approval of requiring the commissioner, but commissioner's prior approval under item A must be submitted to the commissioner as soon as possible for review and approval within one month after the date on which the municipality, its engineer, or other authorized agent, and the contractor execute the change order.

C. Proposed changes described in item A do not require prior written approval from the commissioner when the work is agreed by the commissioner to be of an emergency nature.

7075.1080 7077.0555 PAYMENTS.

Subpart 1. Request for payments. The municipality shall make periodic payment requests for eligible costs as costs are incurred on a form provided by the authority and submit a summary of incurred costs prepared on a form provided by the agency. The commissioner shall certify to the authority whether the municipality has met payment conditions under this part.

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

A. The municipality must submit a quarterly summary of actions taken to recover corrective action costs from or to complete needed corrective work by the responsible parties.

B. The municipality must support claims of incurred administration, legal, and engineering costs specified under part 7077.0515 with documentation.

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Proposed Rules

C. The project must substantially conform to the approved corrective actions report.

~~B- D.~~ The project must be built in accordance with the approved plans and specifications for the corrective action.

~~C- E.~~ The progress of the project must conform with the approved project schedule.

Subp. 3. **Retainage.** The commissioner shall withhold the final ten percent of the grant until the municipality has successfully completed all activities in the corrective action report, has affirmatively certified that the project meets the performance standards, and has met the recovery of costs requirement.

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

~~7075.1090~~ 7077.0560 RECOVERY OF GRANT FUNDS.

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

Subp. 2. ~~**Recovery after corrective action taken.** In the event that the municipality recovers an amount of money from the responsible persons after the corrective action has been taken and state corrective action grant funds spent, the municipality shall repay to the state a portion of the money recovered. The portion of the recovery to be paid to the state shall be proportional to the state's monetary participation in the corrective action project. The amount of the payment to the state shall not exceed the amount of the grant.~~ **Recovery before corrective action grant award.** In the event that the municipality recovers an amount of money from the responsible persons before the corrective action grant is awarded, the amount of the award shall be determined by subtracting the amount recovered for grant eligible work from the total eligible costs determined under part 7077.0515.

Subp. 3. ~~**Recovery before corrective action taken.** In the event that the municipality recovers an amount of money from the responsible persons before the corrective action is taken, the amount of the corrective action grant to be awarded shall be determined by allowing the municipality to keep the entire payment from the responsible persons.~~ **Recovery after corrective action grant award.** In the event that the municipality recovers an amount of money from the responsible persons after the corrective action has been awarded, the grant will be amended by subtracting the amount recovered for grant eligible work from the total eligible costs determined under part 7077.0515. If corrective action grant funds have been paid to the municipality in excess of the amended grant amount, the municipality shall repay the excess amount to the state.

Subp. 4. **Approval of negotiated settlement.** A municipality must obtain the written approval of the commissioner of any settlement negotiated with the responsible persons before the municipality may enter into the settlement, whether the settlement is before or after litigation has begun and whether or not a corrective action grant has been awarded, if the municipality wants to maintain its eligibility for a corrective action grant. Failure of the municipality to obtain written approval from the commissioner of any settlement constitutes grounds for the commissioner to recommend denial of a corrective action grant or to request that the authority commence action to terminate the grant and seek repayment of the funds from the municipality if a grant has already been awarded.

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

CAPITAL COST COMPONENT GRANT PROGRAM

~~7075.1105~~ 7077.0600 PURPOSE.

~~Parts 7075.1105 to 7075.1160 provide for the administration of~~ The capital cost component grant program ~~which makes~~ provides grants available to municipalities for part of the capital cost component of the service fee under a service contract with a private vendor to construct and operate wastewater treatment facilities according to the provisions of Minnesota Statutes, section 116.18, subdivision 3b. The program is jointly administered by the Minnesota Pollution Control Agency and the Minnesota Public Facilities Authority. The program applies to grants made before, on, or after July 1, 1990. ~~Parts 7077.0600 to 7077.0660 provide for the agency's responsibilities for the administration of the program.~~

~~7075.1110~~ 7077.0605 DEFINITIONS.

Subpart 1. **Scope.** For the purpose of parts ~~7075.1105~~ 7077.0600 to ~~7075.1160~~ 7077.0660, the following terms have the meanings given them.

Subp. 2. to 4. [See Repealer.]

Subp. 5. **Initiation of construction.** "Initiation of construction" means issuance of a notice to proceed under a construction contract for any segment of work on the project.

Subp. 6. [See Repealer.]

Subp. 7. **Project.** "Project" means the work for which a grant or grant amendment is awarded under parts ~~7075.1105~~ 7077.0600 to ~~7075.1160~~ 7077.0660.

~~7075.1120~~ 7077.0615 GRANT APPLICATIONS.

Subpart 1. **Notice of taking applications.** The commissioner shall request that the authority publish notice in the *State Register* that capital cost component grant applications will be accepted by the authority. The application closing date must be established by the commissioner and must be no less than 90 days after the publication date.

Subp. 2. **Application requirements.** The municipality shall apply for a capital cost component grant on an application form provided by the commissioner. The municipality shall submit the following information with the application:

- A. a copy of the municipality's request for proposals for construction and operation of the wastewater treatment facility;
- B. an engineering report containing:
 - (1) a description of the geographic planning area and the population to be served by the wastewater treatment facility;
 - (2) the effluent limitations for which the wastewater treatment facility is being designed;
 - (3) the municipality's existing wastewater flows and loadings data on a form provided by the agency; and
 - (4) the municipality's estimated future wastewater flows and loadings data on a form provided by the agency;
- C. a copy of all proposals received in response to the municipality's request for proposals; and
- D. a design summary of the wastewater treatment facility with all components listed and sized.

Subp. 3. **Other information.** After the application is received, the applicant shall submit other information requested by the commissioner necessary to clarify the application.

Subp. 4. **Application closing date.** The application must be submitted to the authority or postmarked by the noticed application closing date.

Subp. 5. **Incomplete applications.** Municipalities that submit applications that do not include the information required in subpart 2 or that are not submitted by the application closing date are ineligible for funding. The municipalities may reapply in a later application period.

~~7075.1135~~ 7077.0630 CERTIFICATION OF AWARD.

The commissioner shall certify to the authority the list of projects to be awarded grants and the amount of the grant to be awarded based on the criteria in parts ~~7075.1125~~ 7077.0620 and ~~7075.1130~~ 7077.0625.

7077.0635 PLANS AND SPECIFICATIONS.

Subpart 1. In general. A municipality must submit plans and specifications to the commissioner for review and approval according to part 7077.0640, subpart 2, item A.

Subp. 2. Contents. A complete set of plans and specifications must include:

- A. drawings and specifications signed by a professional engineer registered in Minnesota;
- B. a summary of design parameters for the treatment units;
- C. a summary of flow conditions for average dry weather, average wet weather, maximum wet weather, peak hourly and instantaneous wet weather on a form provided by the agency;
- D. a hydraulic profile of the flow through the treatment system; and
- E. a plan for interim treatment during construction.

~~7075.1140~~ 7077.0640 GRANT CONDITIONS.

Subpart 1. **Statutory and regulatory requirements.** The grantee shall comply with applicable statutory and regulatory requirements for capital cost component grants.

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Proposed Rules

Subp. 2. **General conditions.** The grantee shall comply with the conditions in items A to E during the course of constructing the wastewater treatment facility.

A. Within ~~90~~ 365 days after the grant award date, the grantee shall submit to the commissioner for technical review and approval complete plans and specifications for the wastewater treatment facility. The commissioner shall approve or deny approval of the plans and specifications within 90 days after initial submittal. The grantee and the commissioner may agree to one extension of up to an additional 90 days.

B. The grantee shall not initiate construction of the project until:

- (1) the environmental review process in chapter 4410 and *Minnesota Statutes*, chapter 116D₂ has been completed;
- (2) the grantee has obtained the required permits for the project;
- (3) the commissioner has approved the plans and specifications for the project; and
- (4) a copy of the executed service contract between the grantee and the private vendor has been submitted to the commissioner along with a certification from the grantee that the service contract satisfies all statutory requirements applicable to the contract.

C. The project must be constructed in accordance with the approved plans and specifications and any approved change orders.

D. A grantee proposing to make changes in the project that alter the type, efficiency, or reliability of the treatment process shall submit to the commissioner information as the commissioner requires to determine the impact of the proposed change on the environment. Changes to the project that alter the type, efficiency, or reliability of the treatment process must not be made without the prior approval of the commissioner. The commissioner shall review a proposed change in the same manner as the original project was reviewed for compliance with applicable pollution control requirements. Change orders for changes not requiring prior approval must be submitted to the commissioner as soon as possible. A change in the type, efficiency, or reliability of the treatment process without prior approval from the commissioner shall constitute grounds for the commissioner to request that the authority terminate the grant of a grantee.

E. Before placing the wastewater treatment facility into operation, the grantee shall submit to the commissioner an operations and maintenance manual for the wastewater treatment facility. The commissioner shall review the manual and provide comments to the grantee.

~~7075.1150~~ 7077.0650 GRANT PAYMENT.

Subpart 1. **Request for payment.** A grantee seeking a grant payment shall submit a payment request to the ~~commissioner~~ authority on a form provided by the ~~commissioner~~ authority.

Subp. 2. **Schedule of payment.** Capital cost component grants shall be paid in accordance with the following schedule:

A. 80 percent of the grant upon compliance by the grantee with the following conditions:

- (1) submission of a certification that the wastewater treatment facility has been completed in accordance with the approved plans and specifications and approved change orders;
- (2) submission of a certification of compliance with all permit conditions for a period of two consecutive calendar months following project completion;
- (3) submission of a certification of compliance with all grant conditions in part ~~7075.1140~~ 7077.0640, subpart 2;
- (4) submission of ~~as-built~~ two sets of "as-built" plans and specifications to the commissioner on microfiche; and
- (5) submission of written documentation to the commissioner of actual design and construction costs incurred for the wastewater treatment facility.

B. The remaining 20 percent of the grant upon compliance by the grantee with the following conditions:

- (1) submission of a certification of compliance with all permit conditions for a period of 12 consecutive calendar months following project completion;
- (2) submission of a certification that the project is capable of accepting hydraulic and organic loadings to the extent designed for in the approved plans and specifications; and
- (3) submission of a certification that the project will have no overflows or bypasses under design conditions.

Subp. 3. **Verification of compliance.** Before a grant payment is made, the commissioner shall verify that the grantee has complied with part ~~7075.1135~~ 7077.0630 and with the grantee's permit conditions.

Subp. 4. **Certification of payment.** Within ten days of receipt of a payment request, the commissioner shall determine whether the grantee qualifies for payment. If the commissioner determines that payment is not appropriate, the commissioner shall advise the grantee of the deficiencies in the request. If the commissioner determines that payment is appropriate, the commissioner shall certify to the authority that payment should be made.

~~7075.1155~~ 7077.0655 TERMINATION OF GRANT.

Failure of the grantee to comply with part ~~7075.1140~~ 7077.0640 shall constitute grounds for the commissioner to recommend that the authority terminate the grant of a grantee.

**INDIVIDUAL ON-SITE WASTEWATER TREATMENT
SYSTEMS GRANTS PROGRAM****~~7075.1400~~ 7077.0700 PURPOSE.**

~~Parts 7075.1400 to 7075.1530 provide for the administration of~~ The individual on-site wastewater treatment systems grants program ~~that makes~~ provides grants available to municipalities to assist owners of individual on-site wastewater treatment systems to upgrade or replace their failed ~~individual on-site wastewater treatment~~ systems according to the provisions of Minnesota Statutes, section 116.18, subdivision 3c. The program is jointly administered by the Minnesota Pollution Control Agency and the Minnesota Public Facilities Authority. The program applies to grants awarded before, on, or after July 1, 1990. ~~Parts 7077.0700 to 7077.0765 provide for the agency's responsibilities for the administration of the program.~~

~~7075.1410~~ 7077.0705 DEFINITIONS.

Subpart 1. **Scope.** For the purpose of parts ~~7075.1400~~ 7077.0700 to ~~7075.1530~~ 7077.0765, the following terms have the meanings given them.

Subp. 2. **Abatement notice.** "Abatement notice" means an official document issued by the municipality to the owner of an individual on-site wastewater treatment system stating that the owner is in violation of the municipality's ordinance that adopts the requirements of chapter 7080. The abatement notice must include a citation to the ordinance alleged to have been violated.

Subp. 3. to 5. [See Repealer.]

Subp. 6. **Construction cost.** "Construction cost" means the cost of the materials, labor, overhead, and profit necessary for installation, construction, and repair of an individual on-site wastewater treatment system established by a contract between a system owner and a system installer.

Subp. 7. **Designer.** "Designer" means a person who designs individual on-site wastewater treatment systems, and has received agency approval under part ~~7075.1440~~ 7077.0720.

Subp. 8. **Dwelling.** "Dwelling" means any building or place used or intended to be used by human occupants as a single family or two family unit.

Subp. 9. **Failed system.** "Failed system" means a wastewater treatment system that has been issued an abatement notice by the municipality's inspector.

Subp. 10. **Individual on-site wastewater treatment system or individual system.** "Individual on-site wastewater treatment system" or "individual system" means a wastewater treatment system, or part of a system, serving one or two dwellings or other establishments, that uses subsurface soil treatment and disposal.

Subp. 11. **Inspector.** "Inspector" means a person employed by or under contract to the municipality who inspects individual on-site wastewater treatment systems for conformance with the ordinance that adopts the requirements of chapter 7080, and has received agency approval under part ~~7075.1440~~ 7077.0720.

Subp. 12. **Installer.** "Installer" means a person who constructs or repairs individual on-site wastewater treatment systems, and has received agency approval under part ~~7075.1440~~ 7077.0720.

Subp. 12a. **Maintenance plan.** "Maintenance plan" means a plan developed and administered by a municipality that demonstrates how the maintenance requirements of chapter 7080 will be implemented and enforced.

Subp. 13. **Median household income.** "Median household income" means the income data named "median household income" from the most recent decennial census of the United States.

Subp. 14. **Mound system.** "Mound system" means a system for which the soil treatment area is built above the naturally occurring soil surface to overcome limits imposed by proximity to water table or bedrock, or by rapidly or slowly permeable soils.

Subp. 15. [See Repealer.]

Subp. 16. **Other establishment.** "Other establishment" means a public or private structure other than a dwelling that generates wastewater.

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Proposed Rules

Subp. 17. **Seasonal residence.** "Seasonal residence" means a dwelling used for less than 182 days of a calendar year by a single family or household. Second homes, vacation residences, and recreation residences are included in this definition.

Subp. 18. **Site evaluator.** "Site evaluator" means a person who investigates soils and site characteristics, does soil borings or percolation tests for use in designing individual on-site wastewater treatment systems, and has received agency approval under part ~~7075.1440~~ 7077.0720.

Subp. 19. **Trench or bed system.** "Trench or bed system" means an individual wastewater treatment system employing a building sewer, sewage tank, and the soil treatment system consisting of trenches or a seepage bed constructed below the original soil surface.

~~7075.1420~~ 7077.0710 ELIGIBILITY.

Subpart 1. **Municipality eligibility.** A municipality applying for the individual system owners must meet the following conditions to be eligible for a grant:

A. be authorized by its governing body to assume responsibility for the grant application and related documents for owners of individual on-site wastewater treatment systems who are in its jurisdiction and included in the planning area under part ~~7075.1430~~ 7077.0715, subpart 2;

B. have developed and adopted a wastewater treatment plan under part ~~7075.1430~~ 7077.0715;

C. have enacted and be enforcing an ordinance that adopts the requirements of chapter 7080, Individual Sewage Treatment Systems Standards; and

D. have enacted an ordinance that establishes a maintenance plan for the individual on-site wastewater treatment systems in its jurisdiction; and

~~E. have a median household income that is less than the state median household income. Municipalities not included in the decennial census shall submit an alternate median household income figure for their municipality, supported by complete income data and a computation methodology. If the data is complete and the computation methodology is equivalent to the decennial census, the alternate median household income will be approved by the commissioner.~~

Subp. 2. **Individual system eligibility.** The individual systems to be replaced or upgraded included in the municipality's grant application must meet the following conditions:

A. be a failed system;

B. have been constructed before January 1, 1977;

C. not be serving a seasonal residence; and

D. not have been constructed with state or federal water pollution control funds.

Subp. 3. **Previous funding.** Individual systems located in geographic areas that were included in planning areas of projects previously funded with state or federal water pollution control funds are not eligible for funding under this part.

~~7075.1430~~ 7077.0715 WASTEWATER TREATMENT PLAN.

Subpart 1. **General requirements.** The municipality must develop a wastewater treatment plan that identifies wastewater treatment needs and proposes long-term solutions for a planning area under subpart 2. The plan must be adopted by the municipality's governing body.

Subp. 2. **Planning area.** The planning area is the entire geographic area in the municipality's jurisdiction unless the municipality submits an alternative proposal ~~at the time of~~ before application. Alternative proposals must be approved by the commissioner and will be evaluated based on housing density, water quality impact, and public health impact. Separate dwellings that do not form a contiguous area are not considered a planning area.

Subp. 3. **Plan contents.** The plan must include the following:

A. a planning area survey prepared by an inspector that identifies ~~failed~~ all systems in the planning area as failed systems or systems in compliance with chapter 7080;

B. site evaluations, including soil investigations, soil borings, and percolation tests, for the failed systems identified in item A prepared by a site evaluator or site evaluators ~~to determine and a determination~~ if it is feasible to replace or upgrade the failed systems on site;

C. an analysis of the overall wastewater treatment needs in the municipality planning area, including sizing and the location of the proposed systems, prepared by a designer using data from a ~~site evaluator or site evaluators~~ the site evaluations prepared under item B;

D. a list of the specific failed individual on-site wastewater treatment systems, including addresses and names of property owners requesting grant funds and copies of the abatement notices;

E. a proposal for addressing the remaining wastewater treatment needs in the planning area not covered in item D, including specific actions to be taken and a proposed timetable for addressing the wastewater treatment needs; and

F. documentation of approval of the inspector, site evaluator or site evaluators, and designer under part ~~7075.1440~~ 7077.0720.

Subp. 4. [See Repealer.]

~~7075.1440~~ 7077.0720 APPROVAL OF INDIVIDUAL ON-SITE WASTEWATER TREATMENT PERSONNEL.

Subpart 1. **General requirement.** For the purposes of parts ~~7075.1400~~ 7077.0700 to ~~7075.1530~~ 7077.0765, inspectors, site evaluators, designers, and installers who inspect, evaluate sites for, design, and install individual on-site wastewater treatment systems under those parts must be approved by the commissioner under subpart 2 or 3.

Subp. 2. **First alternate approval criteria.** A person referred to in subpart 1 will be approved by the commissioner if the person is fully certified by the agency through the individual sewage treatment systems certification program administered by the agency in cooperation with the Individual Sewage Treatment Systems Advisory Committee established under part 7080.0100. Approval is automatic upon submittal of certification number.

Subp. 3. **Second alternate approval criteria.** A person referred to in subpart 1 may apply for approval under this subpart by submitting an application provided by the commissioner upon request. An applicant will be approved by the commissioner if the applicant meets the requirements of items A and B.

A. An applicant must demonstrate knowledge by scoring a minimum of 70 percent correct on an examination based on chapter 7080 and administered by the commissioner.

B. An applicant must document experience by completing the following requirements:

(1) An inspector must submit a list of individual on-site wastewater treatment systems inspected by the applicant in the past three years. The inspector must certify that a minimum of 30 systems, or parts of systems, listed conform with the criteria in chapter 7080.

(2) A site evaluator must submit a list of individual on-site wastewater treatment systems for which the evaluator has conducted site evaluations in the past three years. The site evaluator must certify that a minimum of 20 sites for the systems listed were evaluated according to the criteria in chapter 7080.

(3) A designer must submit a list of individual on-site wastewater treatment systems designed by the applicant in the past three years. The designer must certify that a minimum of 20 systems listed were designed according to the criteria in chapter 7080.

(4) An installer must submit a list of individual on-site wastewater treatment systems constructed or repaired by the applicant in the past three years. The installer must certify that a minimum of ten systems listed were constructed or repaired according to the criteria in chapter 7080.

Subp. 4. **Notification of approval.** The commissioner will approve or deny an application within 30 days of the receipt of information required under subpart 3. Applicants may reapply at any time.

Subp. 5. **Purpose of agency approval.** Agency approval of inspectors, site evaluators, designers, and installers is for grant funding purposes only. This approval does not make the agency responsible for the technical adequacy of the work of inspectors, site evaluators, designers, and installers nor does it alter legal liability of this personnel otherwise provided by law.

~~7075.1450~~ 7077.0725 APPLICATION.

Subpart 1. **Notice of taking applications.** The commissioner will request the authority to publish in the *State Register* a notice that applications for individual on-site wastewater treatment grants will be accepted by the authority. The application closing date will be established by the commissioner, and will be no less than ~~90~~ 120 days after the publication date.

Subp. 2. **Application requirements.** The municipality must apply for a grant on a form provided by the commissioner. The municipality must submit to the authority the following information with the application:

A. a resolution of the governing body of the municipality that designates the municipality as the responsible party for the grant application and related documents, authorizes the filing of the application, and designates the municipal official authorized to sign the application and related documents;

B. the wastewater treatment plan prepared under part ~~7075.1430~~ 7077.0715;

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Proposed Rules

- C. a copy of the ordinance that adopts the requirements of chapter 7080 and certification that the ordinance is being enforced;
- D. a copy of the ordinance establishing a maintenance plan under part ~~7075-1420~~ 7077.0710, item D;
- E. alternative median household income data under part ~~7075-1420~~ 7077.0710, item E, for municipalities and planning areas not included in the decennial census;
- F. signed statements from the individual system owners stating that their system meets the following conditions:
 - (1) the system to be replaced or upgraded was constructed before January 1, 1977;
 - (2) the system to be replaced or upgraded was not constructed with funds from state or federal water pollution control funds; and
 - (3) the system to be replaced or upgraded does not serve a seasonal residence;
- G. the municipality's estimated date for the completion of all construction and final request for payment for the grant eligible systems; and
- H. a statement from the municipality that it has an inspector on staff or under contract for services, including documentation of approval under part ~~7075-1440~~ 7077.0720.

Subp. 3. **Other information.** After the application is received, the municipality must submit any other information requested by the commissioner necessary to clarify the application.

Subp. 4. **Application closing date.** The application must be postmarked by the noticed application closing date.

Subp. 5. **Incomplete applications.** Municipalities that submit applications that do not include the information required in subparts 2 and 3 or that are not submitted by the application closing date are ineligible for funding. The municipalities may reapply in a later application period.

~~7075-1460~~ 7077.0730 ELIGIBLE COSTS.

Subpart 1. **Eligible costs.** Only the actual construction costs of upgrading or replacing failed individual on-site wastewater treatment systems that have been identified under part ~~7075-1430~~ 7077.0715, subpart 3, item D, are eligible.

Subp. 2. **Ineligible costs.** All nonconstruction costs including planning, engineering and design, site evaluation and soil investigation, inspection, and administrative costs are ineligible.

Subp. 3. **Number of systems limitation.** The eligibility of costs for a treatment site is limited to either a trench or bed system or a mound system under part ~~7075-1470~~ 7077.0735, subpart 1.

Subp. 4. **Costs incurred before grant award.** An owner may incur costs before the award of the grant and retain eligibility for reimbursement of eligible costs if the following conditions are met:

A. the municipality has developed and adopted a wastewater treatment plan as described in part ~~7075-1430~~ 7077.0715 before construction costs are incurred by the owner of the individual system;

B. the owner's system is specifically identified on the municipality's wastewater treatment plan; and

C. the municipality submits a complete and timely application, during the first noticed application period under part ~~7075-1450~~ 7077.0725, subpart 1, following the adoption of the wastewater treatment plan.

~~7075-1470~~ 7077.0735 AMOUNT OF THE GRANT AWARD.

Subpart 1. **Grant amount.** The amount of the grant will be 50 percent of the actual eligible costs under part ~~7075-1460~~ 7077.0730 up to a maximum grant of \$2,500 per household for a trench or bed system and \$3,750 per household for a mound system.

Subp. 2. **Partial awards.** A municipality that receives only a part of the grant to which it is entitled, due to the limitation of funding, will be entitled to receive a grant amendment in the next year or years, if individual on-site wastewater treatment systems grant funding is available, until the full amount of the grant is awarded.

~~7075-1480~~ 7077.0740 PRIORITY RANKING.

Municipalities that meet the requirements of parts ~~7075-1420~~ 7077.0710 to ~~7075-1450~~ 7077.0725 will be ranked for funding priority from lowest median household income to highest median household income, with the lowest median household income receiving the highest priority. Median household income is that established for the planning area identified under part 7077.0715, subpart 2. Planning areas not included in the decennial census shall submit a median household income figure for the planning area supported by complete income data and a computation methodology. If the data is complete and the computation methodology is equivalent to the decennial census, the median household income will be approved by the commissioner.

~~7075.1510~~ 7077.0755 PAYMENTS.

Subpart 1. **Request for payments.** A municipality must submit payment requests to the ~~commissioner~~ authority on a form provided by the ~~commissioner~~ authority.

Subp. 2. **Schedule of payments.** Payments may be requested monthly as construction on individual systems is completed and approved by the inspector.

Subp. 3. **Documentation.** Before payment of any part of the grant is made, the municipality must submit copies of the following documents for each individual system:

- A. invoices documenting incurred construction costs;
- B. documentation that the system was designed by a designer using data from a site evaluator;
- C. documentation that the system was upgraded or replaced by an installer; and
- D. documentation that the system was inspected and approved by the municipality's inspector.

Subp. 4. **Certification of payment.** Within 30 days of agency receipt of payment request, the commissioner will determine whether payment will be made. If the commissioner determines that payment will not be made, the commissioner will advise the municipality of the deficiencies in the request. If the commissioner determines that payment conditions have been met, the commissioner will certify to the authority that payment should be made.

~~7075.1530~~ 7077.0765 SUBSEQUENT GRANTS.

A municipality awarded a grant from the individual on-site wastewater treatment systems grants program is not eligible for additional funding under the program established by the 1972 Federal Water Pollution Control Act amendments or the state independent grants program, including the individual on-site wastewater treatment systems grants program, unless the municipality is applying for a project that serves a planning area that was not included, under part ~~7075.1430~~ 7077.0715, subpart 2, in the awarded grant.

PROCEDURAL REQUIREMENTS

7077.2000 DISPUTES.

A municipality adversely affected by an action of agency staff may request a review of the action. A request for review of the action must be submitted in writing to the commissioner by the municipality within 45 days of the date of notification of a final decision made by agency staff.

7077.2005 PROCEDURAL RULES AND APPEALS.

A request for a hearing, an appeal, or other procedural matter not specifically provided for in this chapter is governed by the agency rules of procedure, the rules of the Office of Administrative Hearings, and other applicable laws.

7077.2010 VARIANCES.

A person may apply for a variance from any requirement of parts in this chapter. The variance shall be applied for and acted upon by the agency according to Minnesota Statutes, section 116.07, subdivision 5, and other applicable statutes and rules.

REPEALER. Minnesota Rules, parts 7075.1010, subparts 1, 2, 3, and 4; 7075.1060, subparts 3 and 5; 7075.1110, subparts 2, 3, 4, and 6; 7075.1410, subparts 3, 4, 5, and 15; 7075.1430, subpart 4, 7075.2510; 7075.2540, subpart 2; 7075.2545, subpart 1, are repealed.

RENUMBER. In the next edition of Minnesota Rules, renumber the parts in column A with the corresponding part numbers in column B.

<u>A</u>	<u>B</u>
<u>7075.1005</u>	<u>7077.0500</u>
<u>7075.1010</u>	<u>7077.0505</u>
<u>7075.1020</u>	<u>7077.0510</u>
<u>7075.1030</u>	<u>7077.0515</u>
<u>7075.1040</u>	<u>7077.0520</u>
<u>7075.1050</u>	<u>7077.0535</u>
<u>7075.1060</u>	<u>7077.0540</u>

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<u>A</u>	<u>B</u>
<u>7075.1070</u>	<u>7077.0550</u>
<u>7075.1080</u>	<u>7077.0555</u>
<u>7075.1090</u>	<u>7077.0560</u>
<u>7075.1105</u>	<u>7077.0600</u>
<u>7075.1110</u>	<u>7077.0605</u>
<u>7075.1115</u>	<u>7077.0610</u>
<u>7075.1120</u>	<u>7077.0615</u>
<u>7075.1125</u>	<u>7077.0620</u>
<u>7075.1130</u>	<u>7077.0625</u>
<u>7075.1135</u>	<u>7077.0630</u>
<u>7075.1140</u>	<u>7077.0640</u>
<u>7075.1145</u>	<u>7077.0645</u>
<u>7075.1150</u>	<u>7077.0650</u>
<u>7075.1155</u>	<u>7077.0655</u>
<u>7075.1160</u>	<u>7077.0660</u>
<u>7075.1400</u>	<u>7077.0700</u>
<u>7075.1410</u>	<u>7077.0705</u>
<u>7075.1420</u>	<u>7077.0710</u>
<u>7075.1430</u>	<u>7077.0715</u>
<u>7075.1440</u>	<u>7077.0720</u>
<u>7075.1450</u>	<u>7077.0725</u>
<u>7075.1460</u>	<u>7077.0730</u>
<u>7075.1470</u>	<u>7077.0735</u>
<u>7075.1480</u>	<u>7077.0740</u>
<u>7075.1490</u>	<u>7077.0745</u>
<u>7075.1500</u>	<u>7077.0750</u>
<u>7075.1510</u>	<u>7077.0755</u>
<u>7075.1520</u>	<u>7077.0760</u>
<u>7075.1530</u>	<u>7077.0765</u>
<u>7075.2505</u>	<u>7077.0400</u>
<u>7075.2515</u>	<u>7077.0405</u>
<u>7075.2520</u>	<u>7077.0410</u>
<u>7075.2525</u>	<u>7077.0415</u>
<u>7075.2530</u>	<u>7077.0420</u>
<u>7075.2535</u>	<u>7077.0425</u>
<u>7075.2540</u>	<u>7077.0430</u>
<u>7075.2545</u>	<u>7077.0440</u>
<u>7075.2550</u>	<u>7077.0445</u>

Department of Public Service

Proposed Permanent Rules Relating to Insulation Standards

Notice of Intent to Amend Rules Without a Public Hearing

NOTICE IS HEREBY GIVEN that the Minnesota Department of Public Service intends to adopt amendments to *Minnesota Rules* Chapter 7640, without a public hearing. The Commissioner has determined that the proposed amendment of these rules will be noncontroversial in nature and has elected to follow the procedures set forth in the *Minnesota Statutes*, sections 14.22 to 14.28. Authority for the adoption of these rules is contained in *Minnesota Statutes*, sections 325F.20, subd. 1 and 325F.21, subd. 1 and 2.

All persons have 30 days in which to submit comment in support of or in opposition to any part or subpart of the proposed amendments. Comment is encouraged. Each comment should identify the proposed amendment addressed, the reason for the comment, and any change proposed.

All persons may make a written request for a public hearing on the proposed amendments within the 30-day comment period. If 25 or more persons submit a written request for a public hearing within the 30-day comment period, a public hearing will be held

unless a sufficient number withdraw their requests in writing. Any person requesting a public hearing must state his or her name and address and is encouraged to identify the portion of the proposed amendment addressed, the reason for the request, and any change proposed. If a public hearing is required, the agency will proceed pursuant to *Minnesota Statutes*, sections 14.131 to 14.20.

Comments or written requests for a public hearing must be submitted to:

Bruce Nelson, Senior Engineer
Department of Public Service, Energy Division
900 American Center Building
150 East Kellogg Boulevard
St. Paul, MN 55101
phone (612) 297-2313 fax (612) 297-1959

Comments or requests for a public hearing must be received no later than 4:00 p.m., March 29, 1990.

The proposed amendments may be modified if the modifications are supported by the data and views submitted to the Department and do not result in a substantial change in the proposed amendments as noticed.

A copy of the proposed rule amendment is attached to this notice.

A **STATEMENT OF NEED AND REASONABLENESS** that describes the need for and reasonableness of each provision of the proposed amendments and identifies the data and information relied upon to support the proposed amendments has been prepared and is available by requesting a copy from Mr. Nelson at the address listed above.

If no hearing is required, upon adoption of the rule, the rule and the required supporting documents will be submitted to the Attorney General for review as to legality and form to the extent that form relates to legality. Any person may request notification of the date of submission to the Attorney General. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the adopted rules, must submit a written request for such to Mr. Nelson at the address listed above.

Dated: 7 February 1990

Tony Perpich, Commissioner
Department of Public Service

Rules as Proposed

7640.0120 DEFINITIONS.

Subpart 1. **Applicability.** For the purposes of this chapter, the following definitions of terms apply. Technical, scientific, and engineering terms undefined by this part have the meanings given in ~~the ASHRAE Handbook of Fundamentals or in ASTM C 468-88a~~ 168, Standard Definitions of Terms Relating to Thermal Insulation Materials.

[For text of subps 2 to 16, see M.R.]

Subp. 17. **Manufacturer of insulation.** "Manufacturer of insulation" means:

A. an industry member who produces insulation materials in their final form for distribution or sale to intermediate and ultimate consumers ~~or who is a urea formaldehyde foam or spray urethane foam insulation manufacturer of the component resins and catalysts used for in situ foaming;~~

B. an industry member who produces insulation materials or installation instructions for a product the manufacture of which is completed at the jobsite; or

C. an installer of an insulation product the manufacture of which is completed at the jobsite who prepares or modifies the product's installation instructions.

An applicator, contractor, or fabricator of insulation materials who installs, applies, or uses insulation materials for their intended uses, without changing the thermal or physical properties of the insulation material is not a manufacturer of insulation.

[For text of subps 18 to 26, see M.R.]

7640.0130 INSULATION MATERIALS STANDARDS.

[For text of subpart 1, see M.R.]

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Proposed Rules

Subp. 2. **General testing requirements.** General testing requirements for regulated thermal insulation materials in this part are as follows:

[For text of item A, see M.R.]

B. All regulated thermal insulation materials must be tested for compliance with the standards in this part ~~by April 2, 1986.~~ ~~Testing procedures are~~ as follows:

[For text of subitems (1) to (4), see M.R.]

(5) Insulation must have flammability characteristics in accordance with the ~~Uniform Building Code, 1985 Edition~~ UBC, sections 1712 and 1713, for its intended uses.

C. All thermal performance tests must be conducted in accordance with this item, unless additional requirements are imposed within the body of a materials standard. Insulation's thermal performance must be stated in R-value.

(1) One of the following ASTM test methods must be used: ASTM C 477-85 177, ASTM C 236-87 236, ASTM C 518-85 518, or ASTM C 976-82 976. Manufacturers shall select the appropriate test method for the material unless a specific method or procedure is referenced within a materials specification. Thermal conductivity must only be measured at a mean temperature of 75 degrees Fahrenheit.

(2) R-value testing must be performed at the insulation's representative thickness, and be consistent with the requirements of the ~~United States Federal Trade Commission Code of Federal Regulations, title 16, part 460.~~ Unit R per inch must be derived from R-value testing performed to its representative thickness.

(3) ~~For polyurethane, polyisocyanurate, and extruded polystyrene, in accordance with the FTC R-value rule, section 460.5 foam plastic insulations that incorporate blowing agents other than air or pentane, R-value tests must be done on samples that have been treated to fully reflect the effect of aging on the product's R-value. If criteria for treating samples to reflect the effect of aging are not specified within a material specification, the samples must be treated for either 90 days at 140 ± 2 degrees Fahrenheit (60 ± 1 degree centigrade) or six months at ambient conditions prior to conditioning and thermal resistance testing. During treating, air circulation must be provided so that all surfaces of the insulation are exposed to the surrounding environmental conditions.~~

[For text of subitems (4) to (6), see M.R.]

[For text of item D, see M.R.]

Subp. 3. Cellulose insulation.

A. Cellulose fiber in loose-fill form must meet the following requirements:

(1) The product must comply with ASTM C 739-86 739, Standard Specification for Cellulosic Fiber (wood-base) Loose-Fill Thermal Insulation or the United States Consumer Product Safety Commission Interim Safety Standard for Cellulose Insulation, Code of Federal Regulations, title 16, part 1209 subpart B.

[For text of subitems (2) and (3), see M.R.]

B. Cellulose fiber spray-applied must meet the following requirements:

[For text of subitems (1) and (2), see M.R.]

(3) Determination of thermal performance must be in accordance with ~~ASTM C 177-85, ASTM C 236-87, ASTM C 518-85 or ASTM C 976-82 at the manufacturer's option subpart 2, item C,~~ at the test defined density of the material. R value testing must be performed at a thickness of material of two inches, unless the material is designed for use at a lesser maximum thickness and the material is so designated on the label or label notice by the manufacturer. It must then be tested at the maximum thickness of suggested use.

(4) Density must be determined in accordance with ~~section 7 of ASTM E 605-77 reapproved 1982~~ 605. The density established by this test must be used in the preparation of manufacturer's installation guidelines and in the determination of thermal performance.

(5) Critical radiant flux and smoldering combustion must be ~~tested for~~ in accordance with ASTM C 739-86, ~~part 5~~ 739, or the CPSC Interim Safety Standard for Cellulose Insulation, Code of Federal Regulations, title 16, part 1209. ~~Values achieved must not exceed those established by the CPSC.~~ If the product in loose-fill form meets the criteria for critical radiant flux, then a test of the product in spray-applied form for critical radiant flux is unnecessary.

(6) Moisture absorption must be determined in accordance with ~~section 14 of ASTM C 553-70 reapproved 1977~~ 553. Moisture absorption must not exceed 15 percent by weight.

(7) The product must ~~comply with test standards for air erosion, bond strength, and bond deflection that have been accepted by the ASTM or a federal or state government agency~~ have a minimum adhesive/cohesive bond strength per unit area of five times the weight of the material under the test plate when tested in accordance with ASTM E 736.

(8) ~~Test procedures in subitem (7)~~ Exception: Testing and compliance with bond strength criteria are not required of products that are installed so that physical restrictions imposed by the construction elements preclude any possibility of subsequent delamination, erosion, or dusting intended only for installation in enclosed cavities, and the product is identified as intended only for those installations.

(8) Corrosion must be in accordance with ASTM C 739, or the CPSC Interim Safety Standard for Cellulose Insulation, Code of Federal Regulations, title 16, part 1209. If the product in loose-fill form meets the criteria for corrosion, then a test of the product in spray-applied form is unnecessary.

(9) Odor emission must be in accordance with ASTM C 739, or the CPSC Interim Safety Standard for Cellulose Insulation, Code of Federal Regulations, title 16, part 1209. If the product in loose-fill form meets the criteria for odor emission, then a test of the product in spray-applied form is unnecessary.

(10) Fungi resistance must be in accordance with ASTM C 739, or the CPSC Interim Safety Standard for Cellulose Insulation, Code of Federal Regulations, title 16, part 1209. If the product in loose-fill form meets the criteria for fungi resistance, then a test of the product in spray-applied form is unnecessary.

Subp. 4. Mineral fiber insulation.

A. Mineral fiber in loose fill form must comply with ASTM C ~~764-84~~ 764, Standard Specification for Mineral Fiber Loose Fill Thermal Insulation.

B. Mineral fiber in batts and blankets form must comply with ASTM C ~~665-86~~ 665, Standard Specification for Mineral Fiber Blanket Thermal Insulation for Light Frame Construction and Manufactured Housing.

C. Mineral fiber in board form must ~~meet the following requirements:~~ comply with ASTM C 612, Standard Specification for Mineral Fiber Block and Board Thermal Insulation.

~~(1) The basic material shall be made from mineral substances such as rock, slag, or glass processed from a molten state into a fibrous form. Insulation shall be composed of mineral fibers with water resistant binder added and formed into flat rectangular units. Insulation boards shall be uniform in quality and free from defects, such as broken edges, splits, or loose materials which would impair its intended use.~~

~~(2) Thermal performance and surface burning characteristics shall be determined in accordance with subpart 2.~~

D. Spray applied mineral fiber must comply with ASTM C ~~1014-84~~ 1014, Standard Specification for Spray Applied Mineral Fiber Thermal or Acoustical Insulation.

Subp. 5. Foam plastic insulation.

A. Molded expanded polystyrene insulation must comply with ASTM C ~~578-87A~~ 578, Standard Specification for Preformed, Cellular Polystyrene Thermal Insulation and the accompanying Supplementary Requirements.

B. Extruded Polystyrene must comply with ASTM C ~~578-87A~~ 578, Standard Specification for Preformed, Cellular Polystyrene Thermal Insulation and the accompanying Supplementary Requirements.

C. Unfaced polyurethane and polyisocyanurate in board form must comply with ASTM C ~~591-85~~ 591, Standard Specification for Unfaced Preformed Rigid Cellular Polyurethane Thermal Insulation.

Exception: Aged R-value must be 5.6 per inch or greater at 75 degrees Fahrenheit.

[For text of item D, see M.R.]

E. Field applied urea formaldehyde foam must meet the following requirements:

(1) The product must comply with ASTM C ~~951-85~~ 951, Standard Specification for Urea Formaldehyde Based, Foam in Place Insulation.

[For text of subitem (2), see M.R.]

~~(3) Manufacturers and installers of urea formaldehyde foam insulation shall comply with statutes and rules, including parts 4620.1600 to 4620.2100, and Minnesota Statutes, section 325F.18.~~

F. Spray applied urethane must comply with ASTM C ~~1029-85~~ 1029, Standard Specification for Spray Applied Rigid Polyurethane Thermal Insulation.

KEY: PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. **Strike outs** indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." **ADOPTED RULES SECTION** — Underlining indicates additions to proposed rule language. **Strike outs** indicate deletions from proposed rule language.

Proposed Rules

G. Rigid cellular phenolic insulation must comply with ASTM C 1126, Standard Specification for Faced or Unfaced Rigid Cellular Phenolic Thermal Insulation.

H. Foam plastic insulation that conforms to all requirements of ICBO Evaluation Service Acceptance Criteria for Foam Plastic, October, 1982, for the intended application, meets the Minnesota testing standards in this subpart requirements of part 7640.0130.

Subp. 6. **Perlite and vermiculite insulation.**

A. Perlite loose fill insulation must meet the following requirements:

(1) The product must comply with ASTM C ~~549-84 (reapproved 1986)~~ 549, Standard Specification for Perlite Loose Fill Insulation.

[For text of subitem (2), see M.R.]

B. Vermiculite in loose fill form must meet the following requirements:

(1) The product must comply with ASTM C ~~516-80 (reapproved 1985)~~ 516, Standard Specification for Vermiculite Loose Fill Thermal Insulation.

[For text of subitem (2), see M.R.]

Subp. 7. **Reflective foil insulation.**

A. The following requirements apply to reflective foil insulation:

[For text of subitem (1), see M.R.]

(2) Except for radiant barrier products, thermal performance for single or multiple sheet sections must be determined according to ASTM C ~~976-82~~ 976 or ASTM C ~~236-87~~ 236. The test panel must consist of a panel using a wooden frame of two-by-six inch boards 16 inches apart and at least 24 inches long, covered with a minimum of 1/2-inch gypsum wallboard or 1/2-inch plywood on each side. For tests in the vertical position, the test panel must be at least seven feet high at a mean temperature of 75 degrees Fahrenheit, with a temperature differential of 30 degrees Fahrenheit. The resultant thermal performance must be based upon the insulation and the associated air spaces.

[For text of subitems (3) to (6), see M.R.]

B. Reflective insulation systems with more than one sheet must be tested according to ASTM C ~~976-82~~ 976 or ASTM C ~~236-87~~ 236 to determine the thermal performance in horizontal, upward, and downward directions. The tested thermal performance in the heat-flow direction or directions of the intended application must be labeled on the material. The manufacturer shall test once in each direction of intended application; except that, for products labeled with only one heat-flow direction, the manufacturer shall test two samples in that direction. The tests must be done at a mean temperature of 75 degrees Fahrenheit, with a temperature differential of 30 degrees Fahrenheit.

C. A single sheet reflective insulation systems system must be tested with according to ASTM E 408 or another test method that provides comparable results. This tests the to determine its emissivity of the foil (its power to radiate heat). To get the R-value for a specific the measured emissivity level, and a specific air space, and direction of heat flow, use the tables in the most recent edition of the American Society of Heating, Refrigerating, and Air Conditioning Engineers (ASHRAE) Table 2 in chapter 22 of the ASHRAE Handbook of Fundamentals must be used. The R-value shown for 50 degrees Fahrenheit must be used, with a temperature differential of 30 degrees Fahrenheit.

[For text of item D, see M.R.]

Subp. 8. **Other insulation.** Insulation other than insulation specified in subparts 1 to 7, to be sold, marketed, or advertised for use in residential structures in Minnesota must comply with the requirements in items A to F.

[For text of item A, see M.R.]

B. Results of the Water or moisture absorption test must be reported determined according to one of the following methods:

(1) ASTM C 272;

(2) ASTM C 553, section 14;

(3) ASTM C 739, section 12; or

(4) ASTM D 2842.

[For text of items C and D, see M.R.]

E. The initial report as required by part 7640.0150, subpart 2, must include a description of other tests applied to the product must not produce a detectable odor that is classified as objectionable and strong or very strong by two or more panel members when tested in accordance with ASTM C 739, section 13.

[For text of item F, see M.R.]

7640.0140 REQUIREMENTS FOR INSULATION FOR SPECIAL APPLICATIONS.

Subpart 1. **Application testing** Physical requirements for insulation materials designed for exterior, underground insulation use.

A. The insulation by itself or as part of a system, installed according to the manufacturer's recommendations, must be in service tested in at either a testing facility designed to duplicate actual underground conditions or an actual house for a period of one continuous year. The testing environment must reflect the extremes of have historical winter weather, moisture conditions no less than 8,000 Fahrenheit heating degree days, and soil conditions with drainage characteristics classified as poor in Table 7-4 of the Building Foundation Design Handbook. The purpose of the testing must be to determine aged R-value performance, giving consideration to the conditions listed in item C. A summary of the test results must be submitted to the department.

Exception: In-service testing is not necessary if the manufacturer demonstrates that a product of the same material specification with equal or less durability in this application has been successfully in-service tested. The manufacturer shall demonstrate the equal or less durability test by comparing laboratory test results of the physical characteristics listed in part 7640.0140, subpart 1, item B, clauses (1) to (4).

B. As an alternative to item A, the testing initiator may elect to have an insulation tested by an approved laboratory and listed for underground use, with consideration given to the conditions listed in item C.

C. The listing of the manufacturer shall demonstrate that the product for will exhibit less than a ten percent loss in R-value when installed underground use must be based on the most recent applicable ASTM tests or any other tests that are available that give consideration to each and the combined effect of the following assumed conditions on the following physical characteristics are considered:

[For text of subitems (1) and (2), see M.R.]

- (3) soil compatibility; and
- (4) flexural strength or compression; and compressive strength
- (5) vapor drives due to high low pressure gradients.

D. The initiator manufacturer seeking the listing shall select state the appropriate tests that best address the assumed conditions stated in item C the initial report filed according to part 7640.0150, subpart 2.

E. An association or trade representative may initiate a product's listing conduct tests and prepare a filing for exterior below grade application of a type of product on behalf of its constituency. The association shall submit representative samples for conduct testing and certify to the department which manufacturers within its constituency the samples are representative of according to subpart 1, item A, on at least three specimens of the product. The association must have an internal certification procedure to determine constituency conformity to shall demonstrate that the manufacturers' products for which the tests and filing would apply are representative samples submitted for testing of the tests and filing performed by the association.

F. A summary of test results for item B must be submitted to the department Mineral fiber board for exterior below ground application must be manufactured to facilitate downward drainage.

Subp. 2. **Requirements for installation instructions for underground use.** Written instructions on underground use of insulation must, at a minimum, contain instructions or information for vertical and, if recommended, horizontal application regarding:

- A. optimal application techniques;
- B. if required for the insulation, drainage, as specified in section R-305 of the CABO One & Two Family Dwelling Code by CABO (1983 Edition);
- C. if required for the insulation, waterproofing and or dampproofing, as specified in section R-306 of the CABO One & Two Family Dwelling Code by CABO (1983 Edition);
- D. varying soil and soil moisture conditions chemical resistance information;
- E. ambient temperature effects on range permitted during application; and
- F. optimal backfill techniques and backfill materials for protection from physical damage; and prevention of damage to the insulation material and below grade protective coating.

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Proposed Rules

G. the manufacturers' warranty, if any. The manufacturer shall state whether it warrants the insulation for underground use and, if applicable, the conditions of warranty and the length of warranty, including a statement of the number of years for which the product is warranted to maintain 80 percent of its advertised R value.

Manufacturers that recommend a product for underground use in the vertical or horizontal position shall provide complete instructions for its respective applications.

⁹ Subp. 3. ~~Practice of insulation use~~ Installation requirements for exterior above ground and underground installation use. The following requirements apply to the exterior installation or application of insulation below the ground:

A. The installation or application of insulation in the vertical and horizontal position must conform to the manufacturers' instructions and recommendations.

~~B.~~ Insulation extending above the ground line grade must be covered with an exterior wall finish to protect the insulation from ultraviolet deterioration due to sunlight, moisture absorption, freeze thaw durability, air erosion, and general weather conditions and physical abuse.

~~C~~ B. Polyurethane or polyisocyanurate ~~spray applied~~ application must meet the following conditions:

(1) ~~Manufacturers shall recommend the type of urethane systems to be used for underground use and applicators shall only use a recommended system.~~

(2) ~~Polyurethane or polyisocyanurate spray applied~~ application must have a protective coating applied to its exterior surface ~~above and below ground.~~ The type of protective coating and method of application must be in accordance with the insulation manufacturer's instructions and recommendations.

~~D~~ C. Mineral fiber foundation insulation and ~~drainage boards~~ must meet the following conditions:

(1) ~~The board must be manufactured to facilitate proper downward drainage, or in the alternative, manufactured in such a manner that moisture will not substantially penetrate horizontally toward the foundation wall.~~

(2) ~~The board must not be used without~~ include exterior drainage, as defined in part 7640.0120.

[For text of subp 4, see M.R.]

7640.0150 REPORTING REQUIREMENTS.

[For text of subpart 1, see M.R.]

Subp. 2. **Initial report.** An industry member shall file an initial report at least 30 days before offering for sale in the state any new products, significant changes to a product already filed, or changes to product installation instructions to a product already filed.

The initial report must include the following:

[For text of items A to E, see M.R.]

F results of initial tests, as required by part 7640.0130, identifying tests performed, name of laboratory, testing dates, and test results. The report for "other" insulation products regulated by part 7640.0130, subpart 8, must also include the products' Material Safety Data Sheet;

[For text of items G to I, see M.R.]

[For text of subp 3, see M.R.]

7640.0160 APPLICATION AND INSTALLATION STANDARDS.

Subpart 1. **Applicability.** Industry members, including industry members who offer insulation installation services for new and existing residential buildings, shall comply with ~~the application standards in~~ this part.

~~The application standards in this part do not apply to nonresidential buildings or construction.~~

~~This part applies to new residential construction and retrofit applications.~~

An installer of an insulation the manufacture of which is completed at the jobsite who significantly alters the manufacturer's installation instructions becomes a manufacturer for the purpose of Minnesota Rules, chapter 7640.

Subp. 2. **Application and inspection.**

A. Industry members installing insulation shall follow manufacturer's written application instructions.

~~In attic areas where insulation is to be installed, the installer shall comply with part 7640.0110, subpart 5.~~

B. When installing insulation in attic areas, the installer shall locate flush and recessed light fixtures, and other heat producing appurtenances, and shall comply with National Electrical Code, section 410-66, subsections A and B.

~~C.~~ Installation of cellulosic and mineral fiber in loose-fill form must comply be in conformance with ASTM standard C ~~4014-84~~ 1015, including part 7.7.2.

~~D.~~ Installation of reflective insulation must comply be in conformance with ASTM standard C ~~727-72~~ (reapproved 1978) 727.

~~E.~~ Installers of urea formaldehyde foam insulation shall conform with Minnesota Statutes, section 325F.18, and Minnesota Rules, parts 4620.1600 to 4620.2100.

~~F.~~ State and local agencies using appropriated federal funds and persons contracting with state or local agencies with respect to work performed under the contracts shall comply with Code of Federal Regulations, title 40, part 248, Guideline for Federal Procurement of Building Products Containing Recovered Materials.

Subp. 3. **Manufacturer's installation or application instructions.** Manufacturers shall provide installation and application instructions that comply with this subpart:

[For text of items A and B, see M.R.]

~~C.~~ Urea formaldehyde foam insulation installation must conform with Minnesota Statutes, section 325F.18 and Minnesota Rules, part 4620.2100. Installation instructions for products whose manufacture is completed at the jobsite must address the quality assurance program required by part 7640.0130, subpart 2, item D; ambient temperature during application; and actions necessary to facilitate curing or drying.

7640.0180 INCORPORATIONS BY REFERENCE AND CITATIONS.

[For text of subpart 1, see M.R.]

Subp. 2. **ASTM.** The following ASTM standards are incorporated by reference:

[For text of items A to C, see M.R.]

~~D.~~ ASTM C 272-53 (reapproved 1980), Standard Test Method for Water Absorption of Core Materials for Structural Sandwich Constructions.

~~E.~~ ASTM C 516-80 (reapproved 1985), Standard Specification for Vermiculite Loose-Fill Thermal Insulation.

~~E F.~~ ASTM C 518-85, Standard Test Method for Steady State Heat Flux Measurements and Thermal Transmission Properties by Means of the Heat Flow Meter Apparatus.

~~F G.~~ ASTM C 549-81 (reapproved 86), Standard Specification for Perlite Loose Fill Insulation.

~~G H.~~ ASTM C 553-70 (reapproved 1977), Standard Specification for Mineral Fiber Blanket and Felt Insulation (Industrial Type).

~~H I.~~ ASTM C 578-87A, Standard Specification for Preformed, Cellular Polystyrene Thermal Insulation.

~~I J.~~ ASTM C 591-85, Standard Specification for Unfaced Preformed Rigid Cellular Polyurethane Thermal Insulation.

~~J K.~~ ASTM C 612-83, Standard Specification for Mineral Fiber Block and Board Thermal Insulation.

~~L.~~ ASTM C ~~665-86~~ 665-88, Standard Specification for Mineral Fiber Blanket Thermal Insulation for Light Frame Construction and Manufactured Housing.

~~K M.~~ ASTM C 727-72 (reapproved 1978), Standard Recommended Practice for Use of Reflective Insulation in Building Constructions.

~~L N.~~ ASTM C ~~739-86~~ 739-88, Standard Specification for Cellulosic Fiber (wood-base) Loose-Fill Thermal Insulation.

~~M O.~~ ASTM C ~~764-84~~ 764-88, Standard Specification for Mineral Fiber Loose-Fill Thermal Insulation.

~~N P.~~ ASTM C 951-83, Standard Specification for Urea-Formaldehyde-Based, Foam in Place Insulation.

~~O Q.~~ ASTM C 976-82, Standard Test Method for Thermal Performance of Building Assemblies by Means of a Calibrated Hot Box.

~~P R.~~ ASTM C ~~1014-84~~ 1014-88, Standard Specification for Spray-Applied Mineral Fiber Thermal or Acoustical Insulation.

~~Q.~~ ASTM E 84-84 Revision A, Surface Burning Characteristics of Building Materials.

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Proposed Rules

R S. ASTM C 1015-84, Standard Practice for Installation of Cellulosic and Mineral Fiber Loose-Fill Thermal Insulation.

S T. ASTM C 1029-85, Standard Specification for Spray-Applied Rigid Cellular Polyurethane Thermal Insulation.

F U. ASTM C 1126-89, Standard Specification for Faced or Unfaced Rigid Cellular Phenolic Thermal Insulation.

V. ASTM D 2842-69 (reapproved 1975), Standard Test Method for Water Absorption of Rigid Cellular Plastics.

W. ASTM E 84-84 Revision A, Surface Burning Characteristics of Building Materials.

X. ASTM E 408-71 (reapproved 1985), Standard Test Methods for Total Normal Emittance of Surfaces Using Inspection Meter Techniques.

Y. ASTM E 605-77 (reapproved 1982), Thickness and Density of Sprayed Fire-Resistive Material Applied to Structural Members.

Z. ASTM E 736-86, Test for Cohesion/Adhesion of Sprayed Fire Resistive Materials Applied to Structural Members.

[For text of subp 2a, see M.R.]

Subp. 3. **Other incorporation and citations.** The following non ASTM standards are also incorporated by reference:

A. ASHRAE Handbook of Fundamentals, (~~1984~~ 1989 Edition) by the American Society of Heating, Refrigerating and Air Conditioning Engineers, Inc. (~~Technical Reference Book~~), chapter 22, tables 1 and 2.

[For text of item B, see M.R.]

C. ~~Federal Trade Commission requirements in~~ Code of Federal Regulations, title 16, part 460, Labeling and Advertising of Home Insulation.

[For text of items D to J, see M.R.]

K. Code of Federal Regulations, title 40, part 248, Guideline for Federal Procurement of Building Insulation Products Containing Recovered Materials.

L. Underground Space Center, University of Minnesota; Building Foundation Design Handbook; Prepared for Oak Ridge National Laboratory; May 1988, Table 7-4.

[For text of subp 4, see M.R.]

REPEALER. Minnesota Rules, part 7640.0110, subpart 5, is repealed.

Adopted Rules

The adoption of a rule becomes effective after the requirements of Minn. Stat. §14.14-14.28 have been met and five working days after the rule is published in *State Register*, unless a later date is required by statutes or specified in the rule.

If an adopted rule is identical to its proposed form as previously published, a notice of adoption and a citation to its previous *State Register* publication will be printed.

If an adopted rule differs from its proposed form, language which has been deleted will be printed with strikeouts and new language will be underlined. The rule's previous *State Register* publication will be cited.

An emergency rule becomes effective five working days after the approval of the Attorney General as specified in Minn. Stat. §14.33 and upon the approval of the Revisor of Statutes as specified in §14.36. Notice of approval by the Attorney General will be published as soon as practicable, and the adopted emergency rule will be published in the manner provided for adopted rules under §14.18.

Department of Labor and Industry

Adopted Permanent Rules Relating to OSHA Update

Rules as Adopted

5205.0010 ADOPTION OF FEDERAL OCCUPATIONAL SAFETY AND HEALTH STANDARDS BY REFERENCE.

[For text of subpart 1, see M.R.]

Subp. 2. **Part 1910.** Part 1910: Occupational Safety and Health Standards as published in Volume 43, No. 206 of the *Federal Register* on October 24, 1978, and corrected in Volume 43, No. 216 on November 7, 1978, which incorporates changes, additions, deletions, and corrections made up to November 7, 1978; and subsequent changes made prior to December 6, 1989:

[For text of items A to K, see M.R.]

L. *Federal Register*, Vol. 54:

[For text of subitems (1) to (6), see M.R.]

(7) *Federal Register*, Vol. 54, No. 146, dated August 1, 1989: "Occupational Exposure to Formaldehyde (1910.1048); Correction."

(8) *Federal Register*, Vol. 54, No. 166, dated August 29, 1989: "Occupational Exposure to Formaldehyde (1910.1048); Extension of Administrative Stay."

(9) *Federal Register*, Vol. 54, No. 169, dated September 1, 1989: "Control of Hazardous Energy Sources - Lockout/Tagout (1910.147)."

(10) *Federal Register*, Vol. 54, No. 170, dated September 5, 1989: "Air Contaminants; Final Rule - Grant of Petitions for Reconsideration of Three Exposure Limits and Partial Stays of Effective Dates for Four Substances (1910.1000)."

(11) *Federal Register*, Vol. 54, No. 174, dated September 11, 1989: "Occupational Exposure to Formaldehyde (1910.1048); Correction."

(12) *Federal Register*, Vol. 54, No. 193, dated October 6, 1989: "Air Contaminants (1910.1000); Final Rule Partial Stay of Effective Date for Two Substances."

(13) *Federal Register*, Vol. 54, No. 199, dated October 17, 1989: "Control of Hazardous Energy Sources - Lockout/Tagout (1910.147); Final Rule Approval of Information Collection Requirements."

(14) *Federal Register*, Vol. 54, No. 213, dated November 6, 1989: "Control of Hazardous Energy Sources - Lockout/Tagout (1910.147); Final Rule Extension of Effective Date."

(15) *Federal Register*, Vol. 54, No. 219, dated November 15, 1989: "Air Contaminants; Final Rule Corrections."

(16) *Federal Register*, Vol. 54, No. 233, dated December 6, 1989: "Air Contaminants; Final Rule Partial Stay of Effective Date for Two Substances."

[For text of subps 3 to 5, see M.R.]

Subp. 6. **Part 1926.** Part 1926: Construction Safety and Health Regulations as published in Part VII, Volume 44, No. 29 of the *Federal Register* on February 9, 1979, which incorporates changes, additions, deletions, and corrections made up to October 17, 1978, and includes General Industry Occupational Safety and Health Standards (29 CFR Part 1910) which have been identified as applicable to construction work; and subsequent changes made prior to December 6, 1989:

[For text of items A to D, see M.R.]

E. *Federal Register*, Volume 54:

[For text of subitems (1) and (2), see M.R.]

(3) *Federal Register*, Vol. 54, No. 192, dated October 5, 1989: "Concrete and Masonry Construction Safety Standards (Subpart O of 29 CFR Part 1926); Final Rule Technical Amendment."

(4) *Federal Register*, Vol. 54, No. 209, dated October 31, 1989: "Excavations (Subpart P of 29 CFR Part 1926)."

[For text of subp 7, see M.R.]

REPEALER. *Minnesota Rules*, part 5205.0680, is repealed.

Board of Veterinary Medicine

Adopted Permanent Rules Relating to Veterinary License Renewal Fees

The rule proposed and published at *State Register*, Volume 14, Number 4, pages 159-160, July 24, 1989 (14 S.R. 159) is adopted as proposed.

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Executive Orders

Executive Order #90-1 Providing for the Establishment of the Governor's Council on Children 2000; Rescinding Executive Order #88-7

I, RUDY PERPICH, GOVERNOR OF THE STATE OF MINNESOTA, by virtue of the authority vested in me by the Constitution and applicable statutes, do hereby issue this Executive Order:

WHEREAS, the well-being of children is a matter of high priority because of its great and pervasive impact on society; and

WHEREAS, persons and organizations, including state government, do not individually have resources to deal comprehensively with the needs of children; and

WHEREAS, a comprehensive state vision for children through the year 2000 will promote more directed and unified actions, and more effective application of resources, to better the interests of children; and

WHEREAS, the groundwork toward a vision for children has been laid and a mechanism is needed to articulate and implement a state vision for children; and

WHEREAS, a partnership of leaders from government, business, the nonprofit community and education can significantly advance the implementation of a vision for children;

NOW, THEREFORE, I hereby order that a Governor's Council on Children 2000 be established.

1. The Council shall advise the Governor on policy issues concerning the well-being of children.
2. The Council shall consist of up to 15 members, appointed by the Governor. Members shall be persons in leadership positions who have a demonstrated commitment to children's issues. State agencies not represented on the Council may become ex officio members. The Lieutenant Governor shall serve as Council chair and may choose another member as co-chair.
3. The Council shall promote the interests of children in the state. Goals of the Council shall be:
 - (a) To develop and foster an ongoing public-private partnership of leaders from business, government, education and nonprofit sectors to provide statewide leadership in promoting, initiating action on and sustaining support for children's issues.
 - (b) To integrate consideration of children's issues into government and business policy.
 - (c) To create a public information program that highlights innovative public-private efforts on behalf of children, increases public awareness of children's issues, and recognizes exemplary service on behalf of children.
4. The Council may form working committees of members and nonmembers to carry out its activities. Working committees will support the Council through fact-finding, examining issues, and formulating recommendations for action. Working committees shall be composed of persons with knowledge and familiarity in specific issue areas that relate to the Council's goals.
5. The Council may be staffed by persons on loan from state agencies or other organizations. In addition, the Council, to the extent of available funds, may hire staff. State agencies shall assist the Council in carrying out its work.
6. The Council may solicit funds from private sources to support its work. Funds received by the Council shall, upon acceptance by the State Treasurer and Commissioner of Finance pursuant to *Minnesota Statutes 1988*, Chapter 7, become the property of the State of Minnesota. Such funds shall be subject to all standard state accounting policies and procedures and shall further be subject to all appropriate auditing requirements and mechanisms.
7. Council members may be reimbursed for expenses as provided in *Minnesota Statutes 1988*, Section 15.0593.

Executive Order 88-7 is rescinded.

Pursuant to *Minnesota Statutes 1988*, Section 4.035, Subdivision 2, this Order shall be effective fifteen (15) days after publication in the *State Register* and filing with the Secretary of State, and shall remain in effect until rescinded by proper authority or it expires in accordance with *Minnesota Statutes 1988*, Section 4.035, Subdivision 3.

IN TESTIMONY WHEREOF, I have set my hand this 20th day of February, 1990.



Rudy Perpich
Governor

Official Notices

Pursuant to the provisions of Minnesota Statutes §14.10, an agency, in preparing proposed rules, may seek information or opinion from sources outside the agency. Notices of intent to solicit outside opinion must be published in the *State Register* and all interested persons afforded the opportunity to submit data or views on the subject, either orally or in writing.

The *State Register* also publishes other official notices of state agencies, notices of meetings, and matters of public interest.

Department of Administration

Building Codes & Standards Division

Notice to Solicit Outside Opinion Regarding Proposed Amendments to Minnesota State Building Code, Chapter 1340, Facilities for the Handicapped

NOTICE IS HEREBY GIVEN that the State Building Codes and Standards Division is seeking information or opinions from sources outside the agency in preparing to amend the current rules relating to facilities for the handicapped. The adoption of the rule is authorized by *Minnesota Statutes* section 16B.59 which permits the commissioner of administration to adopt and amend the State Building Code, and section 16B.64 which authorizes the commissioner of administration to hold all state hearings in regard to the State Building Code including rules proposed by another state agency.

The State Building Codes and Standards Division requests information and opinions concerning the subject matter of the rule. Interested persons or groups may submit data or views on the subject matter of concern in writing. Written statements should be addressed to Margaret White, Building Codes and Standards Division, 408 Metro Square Building, St. Paul, Minnesota 55101.

All statements of information and opinions shall be accepted until July 2, 1990. Any written material received by the State Building Codes and Standards Division shall become part of the rulemaking record to be submitted to the attorney general or the administrative law judge in the event the rule is adopted.

Minnesota State Arts Board

Notice of Board Meeting

A meeting of the Minnesota State Arts Board will take place at 10:00 a.m. on Thursday, March 1, 1990 at the Arts Board offices, 432 Summit Avenue in Saint Paul. The public is invited to attend. Open meeting law guidelines will be in effect.

Agenda items will include recommendations on Artist Assistance Fellowship grants for Music and Dance. For information on this meeting or other programs, contact the Arts Board at 432 Summit Avenue, Saint Paul, MN 55102, (612) 297-2603 or toll-free from greater Minnesota at (800) 652-9747.

Minnesota State Arts Board

Notice of Committee Meeting

The Minnesota State Arts Board's Cultural Diversity Advisory Committee will hold its first meeting at 10:00 a.m. on March 8, 1990, at the Arts Board offices, 432 Summit Avenue in Saint Paul. All committee meetings are open to the public and adhere to the state's Open Meeting Law guidelines.

The committee's primary purpose will be to help the Arts Board determine the current status of cultural diversity programming in Minnesota, and to provide practical recommendations for improvement.

The sixteen-member committee includes designated representatives from the state's four minority councils; professional managers of minority-based arts organizations; practicing minority artists; representatives from Minnesota's funding community, regional arts councils, and major arts organizations; a public policy expert; a folk arts scholar; and a representative from a recognized coalition of minority artists. (Up to four additional committee members may be appointed after the first meeting. A list of current appointees is available from the Arts Board.)

For more information on this committee or other programs, contact the Minnesota State Arts Board at (612) 297-2603 or toll-free from greater Minnesota at (800) 652-9747.

Minnesota Comprehensive Health Association

Notice of Meeting of Public Awareness Committee

NOTICE IS HEREBY GIVEN that a meeting of the Public Awareness Committee of the Minnesota Comprehensive Health Association will be held at 9:00 a.m. on Tuesday, March 6, 1990, at Blue Cross and Blue Shield of Minnesota, Conference Room D, 3535 Blue Cross Road, Eagan, Minnesota. For additional information, please call (612) 456-8466.

Department of Finance

Notice of Maximum Interest Rate for Municipal Obligations in February

Pursuant to *Minnesota Statutes*, Section 475.55, Subdivision 4, Commissioner of Finance, Peter Hutchinson, announced today that the maximum interest rate for municipal obligations in the month of February, 1990 would be nine (9) percent per annum. Obligations which are payable wholly or in part from the proceeds of special assessments or which are not secured by General Obligations of the municipality may bear an interest rate of up to ten (10) percent per annum.

Dated: 14 February 1990

Peter Sausen
Assistant Commissioner
Cash & Debt Management

Minnesota Historical Society

State Review Board Regular Meeting

A meeting of the State Review Board of the Minnesota Historical Society to consider nominations to the National Register of Historic Places will be held on March 22, 1990 in the Auditorium of the Fort Snelling History Center, Fort Snelling Minnesota. The Preservation Office staff will make an informational presentation on program activities at 5:30 p.m. The meeting will be called to order and consideration of the meeting's agenda will begin at 7:00 p.m. For further information contact the State Historic Preservation Office, Minnesota Historical Society, Fort Snelling History Center, St. Paul, MN 55111, (612) 726-1171.

State Contracts and Advertised Bids

Pursuant to the provisions of Minn. Stat. §14.10, an agency must make reasonable effort to publicize the availability of any services contract or professional and technical services contract which has an estimated cost of over \$2,000.

Department of Administration procedures require that notice of any consultant services contract or professional and technical services contract which has an estimated cost of over \$10,000 be printed in the *State Register*. These procedures also require that the following information be included in the notice: name of contact person, agency name and address, description of project and tasks, cost estimate, and final submission date of completed contract proposal. Certain quasi-state agencies are exempted from some of the provisions of this statute.

Commodities contracts with an estimated value of \$15,000 or more are listed under the Procurement Division, Department of Administration. All bids are open for 7-10 days before bidding deadline. For bid specifics, time lines, and other general information, contact the appropriate buyers whose initials appear in parentheses next to the commodity for bid, by calling (612) 296-6152.

Awards of contracts and advertised bids for commodities and printing, as well as awards of professional, technical and consulting contracts, appear in the midweek **STATE REGISTER Contracts Supplement**, published every Thursday. Call (612) 296-0931 for subscription information.

Department of Administration: Materials Management Division

Contracts and Requisitions Open for Bid

Call 296-2600 for information on a specific bid, or to request a specific bid.

Commodity: Used presses
Contact: John Bauer 296-2621
Bid due date at 2pm: February 28
Agency: Printcomm-Department of Administration
Deliver to: St. Paul
Requisition #: 02520 00917

Commodity: Toshiba T1200 HB
Contact: Bernadette Vogel 296-3778
Bid due date at 4:30pm: February 28
Agency: Public Safety Department
Deliver to: St. Paul
Requisition #: 07100 61328

Commodity: Sound equipment
Contact: Pam Anderson 296-1053
Bid due date at 4:30pm: February 28
Agency: Normandale Community College
Deliver to: Bloomington
Requisition #: 27156 10601

Commodity: Judicial chairs—rebid
Contact: John Bauer 296-2621
Bid due date at 2pm: March 1
Agency: Judicial Center
Deliver to: St. Paul
Requisition #: 02310 17501 2

Commodity: AT—clones
Contact: Bernadette Vogel 296-3778
Bid due date at 2pm: March 2
Agency: Transportation Department
Deliver to: St. Paul
Requisition #: 79000 05036

Commodity: AA spectrometer
Contact: Joseph Gibbs 296-3750
Bid due date at 2pm: March 2
Agency: State University
Deliver to: St. Cloud
Requisition #: 26073 21613 1

Commodity: Tower installation/removal
Contact: Pam Anderson 296-1053
Bid due date at 4:30pm: March 2
Agency: Pollution Control Agency
Deliver to: St. Paul
Requisition #: 32200 22033

Commodity: Speech and voice analysis system
Contact: Joseph Gibbs 296-3750
Bid due date at 2pm: March 5
Agency: State University
Deliver to: Moorhead
Requisition #: 26072 02151 1

Commodity: Spectrophotometer
Contact: Joseph Gibbs 296-3750
Bid due date at 2pm: March 5
Agency: Health Department
Deliver to: Minneapolis
Requisition #: 12400 45476

Commodity: Regular & unleaded gasoline: No. 1 & 2 regular diesel fuel
Contact: Dale Meyer 296-3773
Bid due date at 2pm: March 7
Agency: Transportation Department
Deliver to: Windom
Requisition #: Price Contract

Commodity: Security systems purchase & maintenance
Contact: Pat Anderson 296-3770
Bid due date at 2pm: March 14
Agency: Tourism Office
Deliver to: Various
Requisition #: Price Contract

Commodity: Automated fingerprint ID system
Contact: Pat Anderson 296-3770
Bid due date at 2pm: April 11
Agency: Public Safety Department
Deliver to: St. Paul
Requisition #: Price Contract

Commodity: Tableware/cutlery-stainless steel
Contact: Norma Cameron 296-2546
Bid due date at 2pm: March 8
Agency: Various
Deliver to: Various
Requisition #: Price Contract

Commodity: Underbody snowplow
Contact: Mary Jo Bruski 296-3772
Bid due date at 2pm: March 6
Agency: Transportation Department
Deliver to: St. Paul
Requisition #: 79382 01906

Department of Administration: Print Communications Division

Printing vendors for the following printing contracts must review contract specifications in printing buyers office at 117 University Avenue, Room 134-B, St. Paul, MN.

Printing vendors NOTE: Other printing contracts can be found in the Materials Management Division listing above, and in the Professional, Technical & Consulting Contracts section immediately following this section.

Commodity: Small mail labels, 2.5M in rolls of 500, 3½"x2¾", pinfeed, crack and peel, sensitive
Contact: Printing Buyer's Office
Bids are due: February 28
Agency: Office of Volunteer Services
Deliver to: St. Paul
Requisition #: 5246

Commodity: Traffic accident report, 75M (3M pads of 25) 2-part sets, 8½"x12¼" includes stubs, camera ready, 1-sided, perf for snapout
Contact: Printing Buyer's Office
Bids are due: February 28
Agency: Public Safety Department
Deliver to: St. Paul
Requisition #: 5183

Commodity: Food stamp ID card, 15M on sheets of 10, 7"x12½" sheets—cards 2½"x3½", negs available, 1-sided, perfs
Contact: Printing Buyer's Office
Bids are due: February 28
Agency: Human Services Department
Deliver to: St. Paul
Requisition #: 5226

Commodity: Brochure, 2M 4-pages 9"x12", die cut, score and fold cover, stitch into pocket folder
Contact: Printing Buyer's Office
Bids are due: March 1
Agency: St. Peter Regional Treatment Center
Deliver to: St. Peter
Requisition #: 4913

Commodity: State Parks Special Programs Tabloid 1990, 46M 22¾"x17½" two foils to 11⅜"x8¾", camera ready 2-sided, 4-colors
Contact: Printing Buyer's Office
Bids are due: February 28
Agency: Natural Resources Department
Deliver to: St. Paul
Requisition #: 5230

Commodity: Mailing labels, 50M 6¼"x4" type to set, 1-sided, fanfold
Contact: Printing Buyer's Office
Bids are due: February 28
Agency: Teachers Retirement Association
Deliver to: St. Paul
Requisition #: 5208

Commodity: Benefit Account Deposit Slips, 1,500 4-part sets, type to set, 1-sided, 6"x11¼" detached, 2-hole punch
Contact: Printing Buyer's Office
Bids are due: March 1
Agency: Jobs & Training Department
Deliver to: St. Paul
Requisition #: 5254

Commodity: Envelopes with clasp, 15M 14½"x11½", camera ready, 1-sided, gummed flap
Contact: Printing Buyer's Office
Bids are due: March 1
Agency: Education Department
Deliver to: St. Paul
Requisition #: 5238

Commodity: Envelopes, 10M #10 (4⅛"x9½"), camera ready
Contact: Printing Buyer's Office
Bids are due: February 28
Agency: Office of Volunteer Services
Deliver to: St. Paul
Requisition #: 5247

Commodity: Food stamp notice of decision, 10M 4-part, 3-page sets, 1&2 2-sided, 3&4 2-sided, 8½"x14" and 8½"x11", negs available
Contact: Printing Buyer's Office
Bids are due: February 28
Agency: Human Services Department
Deliver to: St. Paul
Requisition #: 5225

Commodity: Reports to determine liability and succession, 20M 9"x11" overall, 4-part sets, type to set, 2-sided
Contact: Printing Buyer's Office
Bids are due: February 28
Agency: Jobs & Training Department
Deliver to: St. Paul
Requisition #: 5195

Commodity: 1990 State Telephone Directory, 24.5M, 8½"x11", 250 pages, 4 sections each a different color paper, disk conversion, perfect bind, cover bleeds
Contact: Printing Buyer's Office
Bids are due: March 6
Agency: Administration Department—Communications Center
Deliver to: St. Paul
Requisition #: 5274

Commodity: Arbor Day Packets, 3M sets with folders, 210M sheets 8½"x11", 3-hole punch, 2-sided, 3-color, 2 folded pockets in folders, 4-sided bleeds
Contact: Printing Buyer's Office
Bids are due: March 1
Agency: Natural Resources Department
Deliver to: St. Paul
Requisition #: 5277



Morel: Minnesota's mushroom

The Mushroom Hunter's Field Guide. An all-color guide by Alexander Smith and Nancy Smith Weber with clear and orderly facts, explicit pictures and scientific accuracy. Stock # 9-10, \$14.95 + tax.

Edible Mushrooms, a classic guide to safe mushrooms, describes 60 species in detail, with photographs (many in color) to show each in its natural habitat. Advice to amateur mushroom hunters. Paperbound, 118 pp. Code #19-11, \$9.95.

Malfred Ferndock's Morel Cookbook, brim full of morel lore, interesting and tall tales, recounts of the hunt, and many savory recipes. Spiral bound, 117 pgs., black & white photos and drawings. Code #19-83, \$8.50.

Northland Wildflowers, the perfect mushroomers companion. An excellent guide for identification and enjoyment of wildflowers, with 308 color photographs and descriptions of 300 species. Paperbound. 236 pp. Code #19-9, \$14.95.

TO ORDER: Send to Minnesota's Bookstore, 117 University Avenue, St. Paul, MN 55155. Call (612) 297-3000, or toll-free in Minnesota: 1-800-652-9747. Minnesota residents please include 6% sales tax. On all orders, add \$2.00 per order for postage and handling. Prepayment is required. Please include daytime phone. VISA/MasterCard and American Express orders accepted over phone and through mail. **Prices are subject to change.** FAX: (612) 296-2265.

Publication editors: As a public service, please reprint this ad in your publication as is, reduced, enlarged, or redesigned to suit your format. Thank you.

Professional, Technical & Consulting Contracts

Department of Jobs and Training

Division of Jobs, Opportunities, and Insurance

Minnesota Employment and Training Information System Project

Availability of Funds to Identify and Analyze the Information Needs of the Service Delivery Areas in their Roles as Provider of Employment and Training Programs

The Minnesota Employment and Training Information System (METIS) Project is soliciting bids from potential vendors to undertake a user requirements study and to identify IBM-compatible options to meet those requirements. The current systems (a description of the current systems environment is included as part of the RFP) are presently experiencing the following problems:

- 1) The current systems do not report a participant's status across multiple programs adequately.
- 2) System doesn't link with agencies required for proper participant management.
- 3) System does not provide fiscal accountability/data.

Professional, Technical & Consulting Contracts

- 4) System does not serve business functions at local level.
- 5) System is not accessible and user friendly.

It will be the responsibility of the vendor to develop the necessary survey and interview instruments to identify user requirements; the surveys and interviews will be administered by members of the user community in order to reduce project costs. Further it will be the responsibility of the vendor to identify at least four system configurations to address identified user requirements.

The deliverable of this entire work effort will be a final report presenting all findings. A more detailed description of tasks and deliverables is included as part of the complete Request for Proposal (RFP). The State will then decide on the appropriate next steps with regards to system development.

All proposals will be reviewed based on criterion listed in the RFP.

The State has estimated this work effort to be approximately \$20,000.00.

Copies of the complete Request for Proposal are available from:

Paul Wasko
Minnesota Department of Jobs and Training
State Job Training Office
690 American Center Building
St. Paul, MN 55101
612-296-6868

Proposals must be received by 2:00 p.m. on March 30, 1990.

Non-State Public Contracts

The *State Register* also serves as a central marketplace for contracts let out on bid by the public sector. The *Register* meets state and federal guidelines for statewide circulation of public notices. Any tax-supported institution or government jurisdiction may advertise contracts and requests for proposals from the private sector.

It is recommended that contracts and RFPs include the following: 1) name of contact person; 2) institution name, address, and telephone number; 3) brief description of project and tasks; 4) cost estimate; and 5) final submission date of completed contract proposal. Allow at least three weeks from publication date (four weeks from date article is submitted for publication). Surveys show that subscribers are interested in hearing about contracts for estimates as low as \$1,000. Contact the editor for further details.

City of Grand Rapids

Notice of Request for Proposals for Municipal Computer System Suppliers

The City of Grand Rapids is issuing a Request for Proposals (RFP) for a City Hall Automation System. The City seeks to automate a number of its information management functions, including accounting, recreation programming, police records, special assessments, project management, building permits, and computer aided design/drafting.

Details of the City's specifications and bid requirements can be found in the Request for Proposals dated February 09, 1990. The City emphasizes that it is not predetermined on any hardware/software platform. We are quite open to considering "proven" solutions to our automation needs.

The deadline for submission of proposals is 11:00 a.m., March 23, 1990. Copies of the RFP are available from the City of Grand Rapids.

Please Contact:

Chad Haatvedt, Chairperson
Computer Task Force
420 North Pokegama Avenue
P.O. Box 867
Grand Rapids, MN 55744
or phone
(218) 327-2803

Late proposals shall not be accepted.

Supreme Court Calendar

Listed below are the cases scheduled to be heard by the Minnesota Supreme Court in the next few weeks. This listing has been compiled by the Minnesota State Law Library for informational purposes only. Cases may be rescheduled by the Court subsequent to publication in the *State Register*. Questions concerning dates, locations, cases, etc., should be directed to: Clerk of the Appellate Courts, Room 230 State Capitol, St. Paul, MN 55155 612-296-2581.

Supreme Court Calendar for March, 1990

Compiled by Dale A. Hansen (612) 297-4050

Listed below are the cases scheduled to be heard by the Minnesota Supreme Court in the next few weeks. This listing has been compiled by the Minnesota State Law Library for informational purposes only. Cases may be rescheduled by the Court subsequent to publication in the *State Register*. Questions concerning the time and location of hearings should be directed to: Clerk of the Appellate Courts, Room 230 State Capitol, St. Paul, MN 55155, (612) 296-2581.

Monday 5 March 1990 9:00 AM

C8-88-782 In Re Petition for Disciplinary Action against JOHN R. WYLDE, JR., an Attorney at Law of the State of Minnesota (Attorney for Respondent: Jack S. Nordby of Meshbesher, Singer & Spence). Petition for Disciplinary Action.

In Re Petition for Disciplinary Action against WAYNE A. POKORNY, an Attorney at Law of the State of Minnesota (Attorney for Respondent: Wayne A. Pokorny). Petition for Disciplinary Action.

Tuesday 6 March 1990 9:00 AM

C2-89-190 KRISTINE DOKMO, Respondent (Attorney: Richard A. Williams, Jr. of Hvass, Weisman & King) vs. **INDEPENDENT SCHOOL DISTRICT NO. 11, ANOKA-HENNEPIN, MINNESOTA, petitioner, Appellant** (Attorneys: John M. Roszak and Anne F. Krisnik of Ratwick, Roszak, Bergstrom, Maloney & Bartel). Opinion Court of Appeals.

In a case involving the right of a teacher to reinstatement following an extended leave of absence, did the court of appeals err in holding Respondent was not required to obtain review of her termination by certiorari?

Was Respondent entitled to reinstatement even though she had accepted a position with another school district during her extended leave of absence?

May a teacher waive continuing contract rights in order to preserve a right of reinstatement?

C8-89-744 STATE OF MINNESOTA, Respondent (Attorney: Lee W. Barry, Senior Assistant County Attorney, Hennepin County) vs. **LEONARD RICHARDS, Appellant** (Attorney: Susan M. Maki, Assistant State Public Defender). Judgment Hennepin County.

Wednesday 7 March 1990 5:30 PM William Mitchell College of Law

C1-89-1671 DONALD SHETKA, et al., Respondents (Attorneys: Richard E. Bend of Bend & Beckjord and Richard E. Berger) vs. **KUEPPERS, KUEPPERS, VON FELDT AND SALMEN, a partnership, et al., petitioners, Appellants** (Attorney: Richard J. Thomas of Geraghty, O'Loughlin & Kenney), **T. JAY SALMEN, et al., Respondents** (Attorney: Anthony K. Berg of Salmen, Brinkman & Martinson). Order Court of Appeals.

Is a partner/principal's financial condition discoverable where punitive damages may be awarded against him as a result of actions taken by his agent and the partnership has been dissolved following the event giving rise to the liability?

May a Plaintiff discover a Defendant's financial condition where Plaintiff's complaint alleges a claim for punitive damages resulting from Defendant's reckless and willful failure to notify them that they required independent legal counsel due to the firm's representation of a party with an adverse interest?

Thursday 8 March 1990 9:00 AM

C0-89-186 PATRICK F. HUNT, Respondent (Attorneys: Robert J. Sheran, David G. Newhall, Charles J. Lloyd, and Ansis V. Viksnins of Lindquist & Vennum) vs. **REGENTS OF THE UNIVERSITY OF MINNESOTA, et al., Appellants** (Attorney: David C. Hutchinson of Geraghty, O'Loughlin & Kenney), **SHELLEY N. CHOU, M.D., petitioner, Appellant** (Attorneys: J. Richard Bland and William M. Hart of Meagher, Geer, Markham, Anderson, Adamson, Flaskamp & Brennan), **AIZIK WOLF, M.D., petitioner, Appellant** (Attorneys: Jerome C. Briggs and Charles E. Lundberg of Bassford, Heckt, Lockhart, Truesdell & Briggs). Opinion Court of Appeals.

Is it reversible error, as a matter of law and without showing of prejudice, for a trial court to grant additional peremptory challenges to multiple party defendants based on adverse interests among them at the outset of the trial?

Where prospective jurors have been asked about their employment, and Defendants' insurers are never identified during trial, is it

Supreme Court Calendar

reversible error for the trial court, in the exercise of its discretion, not to inquire or permit Plaintiff's attorneys to inquire about whether the prospective jurors are policyholders, stockholders, or officers of Defendants' insurers?

Do the trial court's discretionary rulings to require foundation before allowing impeachment of a causation witness and to give cautionary and corrective instructions constitute reversible error where the jury found no negligence and did not decide causation?

C1-89-1993 PATRICIA A. RUETHER, Respondent (Attorney: Ruth M. Harvey of Blethen, Gage & Krause) **vs. STATE OF MINNESOTA, MANKATO STATE UNIVERSITY, Self-Insured, Relator** (Attorneys: Candice E. Hektner and Christopher E. Celichowski of Chadwick, Johnson & Condon), **and BLUE CROSS/BLUE SHIELD OF MINNESOTA, intervenor, Respondent** (Attorney: Indru Advani). Order Workers' Compensation Court of Appeals.

Did the Workers' Compensation Court of Appeals (WCCA) properly apply *Hengemuhle v. Long Prairie Jaycees* in reversing some of the compensation judge's findings of fact?

Is Employee's organic brain disorder, whether considered physical or psychiatric, a compensable disability if caused by breathing organic toxins in Employers' chemistry labs, a physical insult?

Did the WCCA properly apply *Soderberg v. Medtronics, Inc.* and *Swanson v. Medtronics, Inc.* which hold uncertainty regarding levels of toxic chemicals is not enough in and of itself to discredit a medical opinion linking toxic exposure to an injury?

Monday 12 March 1990 9:00 AM

C2-89-1064 STATE OF MINNESOTA, by STEPHEN W. COOPER, COMMISSIONER, DEPARTMENT OF HUMAN RIGHTS, Respondent (Attorneys: Andrea Mitau Kircher, Carl M. Warren, and Earll M. Pott, Special Assistants State Attorney General) **vs. LAYLE FRENCH, petitioner, Appellant** (Attorney: James R. Anderson). Opinion Court of Appeals.

Did Appellant violate the statutory prohibition against making rental decisions on the basis of marital status when he refused to rent his house to a woman because she lived with a man to whom she was not married?

Were Appellant's religious liberties, due process or equal protection rights under the First, Fifth and Fourteenth Amendments to the United States Constitution violated by enforcement of the Minnesota Human Rights Act against marital status discrimination?

C2-89-1534 STATE OF MINNESOTA, Respondent (Attorney: Andrea G. White, Assistant Dakota County Attorney) **vs. PEGGY ANN BARSNESS, petitioner, Appellant** (Attorney: Scott G. Swanson, Assistant State Public Defender). Opinion Court of Appeals.

Is testimony regarding the Defendant's I.Q., including expert psychiatric testimony, not offered to establish the mental illness or deficiency defense, admissible at trial?

Tuesday 13 March 1990 9:00 AM

C7-89-1156 STATE OF MINNESOTA, Respondent (Attorney: Paul R. Kempainen, Assistant State Attorney General) **vs. EUGENE DENNIS MOORE, Appellant** (Attorney: Steven P. Russett, Assistant State Public Defender). Judgment Crow Wing County.

Are first degree murder and second degree manslaughter guilty verdicts legally inconsistent?

Did the evidence exclude beyond a reasonable doubt the rational hypotheses of culpable negligence and heat-of-passion manslaughter?

Did the State properly qualify a witness as an expert before he gave an opinion as to the victim's position when she was shot, establish that the results of blood-splatter analysis are generally accepted in the scientific community, and demonstrate that the results in this case were reliable?

Did Appellant's counsel, during closing argument, concede Appellant's guilt of a lesser offense and comment adversely on Appellant's credibility thereby denying Appellant of a fair trial and the effective assistance of counsel?

C8-88-2631 and C0-88-2672 DAN COHEN, petitioner, Respondent (Attorney: Eliot C. Rothenberg) **vs. COWLES MEDIA COMPANY, d/b/a/ MINNEAPOLIS STAR AND TRIBUNE COMPANY, petitioner, Appellant** (Attorneys: John Borger, James Fitzmaurice, and Andrew S. Dunne of Faegre & Benson and Patricia A. Longstaff) (Of Counsel: Norton L. Armour), **NORTHWEST PUBLICATIONS, INC., petitioner, Appellant** (Attorney: Paul R. Hannah) (Of Counsel: Richard J. Ovelmen and Landon K. Claymen of Baker & McKenzie). Opinion Court of Appeals.

Wednesday 14 March 1990 9:00 AM

CX-89-616 AMERICAN FAMILY MUTUAL INSURANCE COMPANY, Respondent (Attorney: Mark C. Vandelist of Cousineau, McGuire, Shaughnessy & Anderson) **vs. ELEANOR C. BAUMANN, et al., petitioners, Appellants** (Attorney: Mary C. Ivory of Lyons Sawicki & Associates). Opinion Court of Appeals.

Did the Appellant give proper notice prior to settling their bodily injury action with the underinsured tortfeasor?

Has Respondent waived its right to object to the defective notice?

C3-89-277 LIBERTY MUTUAL INSURANCE COMPANY, Respondent (Attorney: Michael S. Kreidler of Stich, Angell, Kriedler & Muth) vs. **AMERICAN FAMILY MUTUAL INSURANCE COMPANY, et al., petitioners, Appellants** (Attorneys: Kenneth P. Gleason and Victor E. Lund of Mahoney, Dougherty and Mahoney). Opinion Court of Appeals.

Is a claimant who seeks recovery of underinsured motorist benefits barred from recovering such benefits by his failure to give adequate and timely notice of a proposed settlement with the liability insurer?

Is a liability carrier that has satisfied a judgment owed by its insured to an injured party entitled to recover by way of subrogation from the injured party's uninsured/underinsured motorist insurer?

Was there adequate consideration given by the parties for the agreement upon which Appellant's subrogation claim is based?

Supreme Court Decisions, Opinions & Rules

Orders Filed 23 February 1990

C2-89-1520 In Re Petition for Disciplinary Action against David C. Beman, an Attorney at Law of the State of Minnesota. Supreme Court.

Indefinitely suspended. Kelley, J.

CX-90-203 In Re Petition for Disciplinary Action against Donald P. Halva, an Attorney at Law of the State of Minnesota. Supreme Court.

Publicly reprimanded. Kelley, J.

Announcements

Environmental Quality Board (EQB): Comments are due March 21 on the EAWs (environmental assessment worksheets) for the following projects at their listed regional governing unit: **Roberts Bird Sanctuary Restoration**, Minneapolis Park and Recreation Board (612) 348-2220; **Medford Outlet Center**, Steele County (507) 451-4842; **Lexington Avenue-County Road G2 to County Road J**, Ramsey County (612) 298-4127; **Wawina Wetland Mitigation Project**, Minn. Dept. of Transportation (612) 296-1611. • Copies of the EAW and Draft Scoping Decision Document for the **Midway Corridor Light Rail Transit System** will be available for review at Ramsey County Regional Railroad Authority, 316 Courthouse, 15 West Kellogg Blvd., St. Paul, and at Hennepin County Regional Railroad Authority, Southwest Street Level, Hennepin County Gov't Center, Minneapolis. Two scoping meetings are scheduled for March 27, 10 a.m. in the Ramsey County Boardroom, 316 Courthouse, 15 West Kellogg Blvd., and St. Paul, and March 27, 7 p.m. at Concordia College, Fine Arts Center (Hamline between Marshall and Concordia Aves.). Written comments are due by April 4 to Kathryn DeSpiegelaere, Ramsey Co. Reg. Railroad Authority, 316 Courthouse, St. Paul, MN 55102. Call (612) 298-4145 for more information. • The City of Eagan has begun preparation of an EIS (environmental impact statement) for the proposed **West Publishing/Eagan Corporate Center** project, located on the west side of Highway 149, generally between Yankee Doodle and Westcott Roads. For further information regarding the scoping decision or the draft EIS, contact Dale Runkle, Community Development Director, City of Eagan, 3830 Pilot Knob Road, Eagan, MN 55122, (612) 454-8100. • A DEIS (draft environmental impact statement) information meeting will be held for the **Ritz Block Development** in downtown Minneapolis. Scheduled for March 14 at 3pm in Room 210 City Hall, the DEIS comment period ends March 28. For more information contact Neil Anderson, Minneapolis Planning Dept., 210 City Hall, Minneapolis, MN 55415 (612) 673-2351 where copies are available for review.

Library & Information Services Conference: Nominations are being taken for 160 delegates to participate in the Governor's Conference on Library and Information Services, to be held Sept. 16-17, in St. Paul. Governor Rudy Perpich will host the conference in preparation for a national White House Conference on Library and Information Services scheduled for July 1991 in Washington, D.C. Any resident of the state may apply to become a delegate to the Governor's Conference and become a candidate for the national conference. Nomination forms are available at public libraries throughout the state or by writing or calling the Office of Library Development and Services, 440 Capitol Square Bldg., 550 Cedar St., St. Paul, MN 55101, (612) 296-2821. Nomination forms must be submitted by March 30, and the 160 delegates will be announced by June 30.

Announcements

Metro Council Focuses on Housing: Addressing the challenges of a changing housing market in the 1990s will be the focus of the Metropolitan Council's 1990 "State of the Region" event on Wednesday, March 7. Jack Kemp, U.S. Secretary of Housing and Urban Development (HUD), the keynote speaker, will outline HUD's national agenda for the '90s. Council Chair Steve Keefe, in his address, will challenge current thinking about housing and outline new directions and initiatives for the Twin Cities Metro Area in the next decade. The event will be held at the Minneapolis Hyatt Regency Hotel, 1300 Nicollet Mall, from 1:30 to 7:30 p.m. The \$40 registration fee includes an evening meal and a new Council report—sent to registrants before the event—summarizing recent regional housing studies. To register and for more information, call Bernadine Scott at (612) 291-6500.

RIM Annual Report Available: Minnesotans interested in the state's Reinvest in Minnesota (RIM) program can now receive copies of the 1990 RIM annual report. The 12-page report explains how RIM uses tax dollars to improve water quality, enhance fisheries, increase wildlife populations, reduce erosion and flooding, and protect rare species. The report shows examples of how this nationally acclaimed conservation program, now in its fourth year, has enhanced 233,000 acres of land and water at more than 2,200 locations and spread across all of Minnesota's 87 counties. The report also contains a list of RIM projects completed in each county between July 1, 1988, and June 30, 1989. For a 1990 RIM annual report, call or write: Information Center, Minnesota Department of Natural Resources, 500 Lafayette Road, St. Paul, MN 55155-4040; (612) 296-6157; 1-800-652-9747; Telecommunications Device for the Deaf (612) 296-5484. People may also write: Board of Water and Soil Resources, South Bridge Office Building, 155 Wabasha St., Suite 104, St. Paul, MN 55107.

DNR Asks for Volunteers: Volunteers play a vital role in the success of many Minnesota Department of Natural Resources (DNR) programs. Opportunities are available for those with interests in a broad range of natural resources areas. Volunteers perform duties such as presenting talks and films, assisting with newsletter mailings, assisting in research studies, collecting seeds and water samples, serving as campground hosts, sharing knowledge through interpretive programs, entering data on computers, and cleaning up rivers and streams. Volunteers also assist in the operation of the popular DNR State Fair Building, which draws an estimated 650,000 visitors each year. Volunteers of all ages and skills are needed. For more information, contact the DNR Volunteer Services Office, 500 Lafayette Road, St. Paul, MN 55155-4036. Call (612) 297-1449, or call toll free in Minnesota 1-800-652-9747 (ask for the DNR).



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Chemical Dependency Programs Directory 1989. Features comprehensive listings for programs ranging from prevention/intervention services to a wide range of treatment services. Each type of program includes a listing of facilities and description of programs. Stock No. 1-12, \$15.00 + tax.

Process parenting—Breaking the Addictive Cycle. This training manual provides parent education and treatment techniques for professionals working with recovering chemically dependent parents or dysfunctional families. Stock No. 5-4, \$15.00 + tax.

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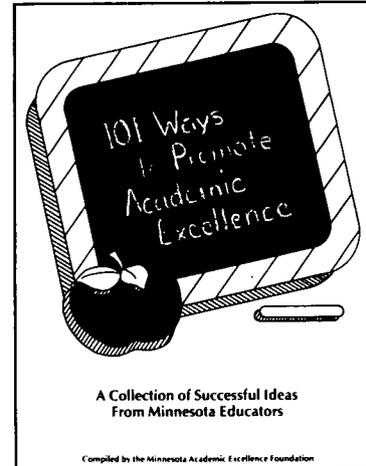
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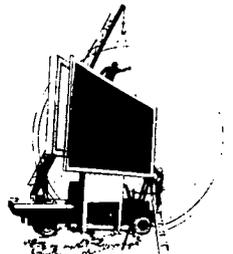
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Minnesota Manufacturer's Directory 1989-90



UPDATED: Name, address, phone number, staff size, sales volume, market area, year of establishment, type of firm, C.E.O., Sales or Marketing Manager, Purchasing Manager and four major manufactured products. Code #40-2, \$78.50.

NEW: In the directory this year are two titles (where applicable) Chief Engineer and Data Processing Manager.



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Voices of the Loon, cassette tape, includes introduction and loon call identification, chorus from a distant lake, tremolo duet, wail duet, border confrontation, wails with morning songbird chorus, tremolos while running, wails during a thunderstorm, and coyotes calling with loons. Code #19-73, \$12.00.

The Loon: Voice of the Wilderness, hardbound with color plates and illustrations, 143 pages. Code #19-54, \$17.95.

Love of Loons. A Voyageur Wilderness Book, with color photos and lore of this delightful state bird make this a beautiful gift. Stock #9-22, \$12.95 + tax.

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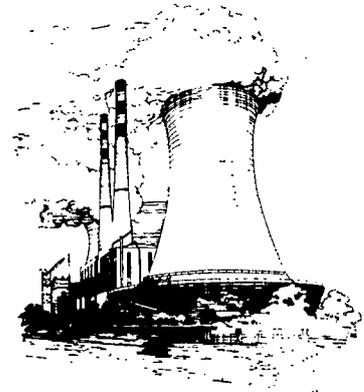
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Chemical Dependency Programs Directory 1989. Features comprehensive listings for programs ranging from Prevention/Intervention Services to a wide range of Treatment Services. Each type of program includes an alphabetical listing of facilities and brief narrative description of programming provided. Stock No. 1-12, \$15.00 plus tax.

Process Parenting—Breaking the Addictive Cycle. A training manual that provides parent education and treatment techniques for professionals who work with recovering chemically dependent parents or dysfunctional families. Stock No. 5-4, \$15.00 plus tax.

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