

CHAPTER 7077
MINNESOTA POLLUTION CONTROL AGENCY
WATER QUALITY DIVISION
MUNICIPAL WASTEWATER TREATMENT
ASSISTANCE

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7077.0100 PURPOSE.

Parts 7077.0100 to 7077.2010 provide for the administration of the financial assistance programs for the construction of municipal wastewater treatment facilities. Parts 7077.0200 to 7077.0330 apply to state independent grants and financial assistance for combined sewer overflow abatement awarded on or after July 1, 1990. Chapter 7075 applies to awards made under these programs before July 1, 1990. Parts 7077.0400 to 7077.0765 apply to funds awarded at any time.

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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.

Statutory Authority: *MS s 116.07*

History: *15 SR 288*

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 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 7040, 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 parts 7077.0255, 7077.0325, and 7077.0440.

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.

Statutory Authority: *MS s 116.07*

History: *15 SR 288*

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.

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.

Statutory Authority: *MS s 116.07*

History: *15 SR 288*

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.

Statutory Authority: *MS s 116.07*

History: *15 SR 288*

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.

Statutory Authority: *MS s 116.07*

History: *15 SR 288*

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:

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

Statutory Authority: *MS s 116.07*

History: *15 SR 288*

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 sewer system rehabilitation projects as described in subpart 3, item A, and major interceptor sewers.

(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 will 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.

Statutory Authority: *MS s 116 07*

History: *15 SR 288*

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.

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(4) A municipality that discharges untreated sewage as a result of combined sewer overflows shall be awarded 20 extra points.

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 multi-municipal 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.

Statutory Authority: *MS s 116.07*

History: *15 SR 288*

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.

Statutory Authority: *MS s 116.07*

History: *15 SR 288*

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.

Statutory Authority: *MS s 116 07*

History: *15 SR 288*

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.

Statutory Authority: *MS s 116.07*

History: *15 SR 288*

7077.0155 PLANS AND SPECIFICATIONS.

Subpart 1. In general. A municipality must submit plans and specifications 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 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.

Statutory Authority: *MS s 116.07*

History: *15 SR 288*

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;

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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.

Statutory Authority: *MS s 116.07*

History: *15 SR 288*

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.

Statutory Authority: *MS s 116.07*

History: *15 SR 288*

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

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.

Statutory Authority: *MS s 116.07*

History: *15 SR 288*

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 shall 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 where the commissioner finds that construction of the 20-year cost-effective alternative would result in significant financial hardship. In determining significant financial hardship, the commissioner shall consider the municipality's median household income, the estimated sewer service charge for the 20-year cost-effective alternative, the municipality's total bonded indebtedness, and the patterns of population and commercial-industrial growth or decline within the municipality. 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.

Statutory Authority: *MS s 116.07*

History: *15 SR 288*

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:

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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 will be 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.

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.

Statutory Authority: *MS s 116.07*

History: *15 SR 288*

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.

Statutory Authority: *MS s 116.07*

History: *15 SR 288*

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.

Statutory Authority: *MS s 116.07*

History: *15 SR 288*

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.

Statutory Authority: *MS s 116.07*

History: *15 SR 288*

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.

Statutory Authority: *MS s 116.07*

History: *15 SR 288*

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. Where the commissioner finds that unanticipated site conditions exist, the commissioner shall approve an amendment for up to two percent of the final grant eligible construction costs. 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.

Statutory Authority: *MS s 116.07*

History: *15 SR 288*

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 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.

Statutory Authority: *MS s 116.07*

History: *15 SR 288*

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 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 following initiation of 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.

Statutory Authority: *MS s 116.07*

History: *15 SR 288*

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;

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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).

Statutory Authority: *MS s 116.07*

History: *15 SR 288*

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

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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.

Statutory Authority: *MS s 116.07*

History: *15 SR 288*

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.

Statutory Authority: *MS s 116.07*

History: *15 SR 288*

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.

Statutory Authority: *MS s 116.07*

History: *15 SR 288*

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.

Statutory Authority: *MS s 116.07*

History: *15 SR 288*

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

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

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.

Statutory Authority: *MS s 116.07*

History: *15 SR 288*

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.

Statutory Authority: *MS s 116.07*

History: *15 SR 288*

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 sub-contractors.

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.

Statutory Authority: *MS s 116.07*

History: *15 SR 288*

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;

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(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).

Statutory Authority: *MS s 116.07*

History: *15 SR 288*

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 shall be withheld 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 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.

Statutory Authority: *MS s 116.07*

History: *15 SR 288*

WATER POLLUTION CONTROL REVOLVING FUND PROGRAM

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 Title VI of the 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 7077.0400 to 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.

Statutory Authority: *MS s 116.07*

History: *15 SR 288*

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.

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 and a breakdown of estimated quarterly cash flow needs.

B. For a 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.

Statutory Authority: *MS s 116.07*

History: *15 SR 288*

7077.0410 APPLICATIONS.

Subpart 1. **Form of application.** A municipality identified on the intended use plan must submit an application to the executive director of the authority on forms provided by the authority and the agency.

Subp. 2. **Planning loans.** In addition to any other information required by the authority, a municipality applying for 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. a certificate of adequate errors and omissions insurance carried by the engineering firm; 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. **Design loans.** In addition to any other information required by the authority, a municipality applying for 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 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. a certificate of adequate errors and omissions insurance carried by the engineering firm;

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

A. Plans and specifications as required under part 7077.0155.

B. A sewer service charge system 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 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 on a form provided by the agency.

G. 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 will be 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.

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

I. An 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; 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) 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.

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

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

L. A cost breakdown of all work to be funded under the 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.

Statutory Authority: *MS s 116.07*

History: *15 SR 288*

7077.0415 APPLICATION CERTIFICATION.

Subpart 1. Planning loans. Upon review and approval of the documents required by part 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. Design loans. Upon review and approval of the documents required by part 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. Construction loans. Upon review and approval of the documents required by part 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 NPDES/SDS permit from the agency for the project.

Statutory Authority: *MS s 116.07*

History: *15 SR 288*

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 sub-contractors.

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. 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 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.

Statutory Authority: *MS s 116 07*

History: *15 SR 288*

7077.0425 INSPECTIONS.

The commissioner may conduct inspections of the municipality's project under Minnesota Statutes, section 115.03, subdivision 1, paragraph (f).

Statutory Authority: *MS s 116.07*

History: *15 SR 288*

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;

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. [Repealed, 15 SR 288]

Statutory Authority: *MS s 116.07*

History: *15 SR 288*

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 following initiation of 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.

Statutory Authority: *MS s 116.07*

History: *15 SR 288*

7077.0440 PROJECT PERFORMANCE.

Subpart 1. [Repealed, 15 SR 288]

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 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

(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 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 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; 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).

Statutory Authority: *MS s 116.07*

History: *15 SR 288*

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 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 in the agreement.

Statutory Authority: *MS s 116 07*

History: *15 SR 288*

CORRECTIVE ACTION GRANTS PROGRAM**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 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 7077.0500 to 7077.0560 pertain to the agency's responsibilities in administering the program.

Statutory Authority: *MS s 116.07*

History: *15 SR 288*

7077.0505 DEFINITION.

Subpart 1. [Repealed, 15 SR 288]

Subp. 2. [Repealed, 15 SR 288]

Subp. 3. [Repealed, 15 SR 288]

Subp. 4. [Repealed, 15 SR 288]

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 state independent construction grants program for the purpose of determining the project's satisfactory performance.

Statutory Authority: *MS s 116.07*

History: *15 SR 288*

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

Statutory Authority: *MS s 116.07*

History: *15 SR 288*

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 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 costs approved in the corrective action report and eligible under subpart 1.

Statutory Authority: *MS s 116.07*

History: *15 SR 288*

7077.0520 REQUIREMENTS PRIOR TO APPLICATION.

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

A. a corrective action report that includes:

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

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

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

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

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

(1) invoking the provisions of equipment warranties;

(2) seeking redress from construction contractor performance bonds;

(3) seeking redress from design engineer errors and omissions insurance; and

(4) initiating enforcement action against industrial dischargers.

Statutory Authority: *MS s 116.07*

History: *15 SR 288*

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.

Statutory Authority: *MS s 116.07*

History: *15 SR 288*

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 treat-

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ment 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.

Statutory Authority: *MS s 116.07*

History: *15 SR 288*

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 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 recovering the costs of the proposed corrective action from the responsible parties.

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 for submittal to the agency;

(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.

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 will be 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.

Statutory Authority: *MS s 116.07*

History: *15 SR 288*

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 7077.0520 and 7077.0535 are received and to the extent that funds are available.

Subp. 2. **Amount of award.** Except as provided in part 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. [Repealed, 15 SR 288]

Subp. 4. **Certification to authority.** Upon review and approval of the documents required under parts 7077.0520 and 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. [Repealed, 15 SR 288]

Statutory Authority: *MS s 116.07*

History: *15 SR 288*

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, as the amount of grant eligible construction costs increase through approved change orders.

Statutory Authority: *MS s 116.07*

History: *15 SR 288*

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 sub-contractors.

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. 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 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.

Statutory Authority: *MS s 116.07*

History: *15 SR 288*

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.

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

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

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

Subp. 3. **Retainage.** The commissioner shall withhold certification for payment of 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.

Statutory Authority: *MS s 116.07*

History: *15 SR 288*

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 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 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.

Statutory Authority: *MS s 116.07*

History: *15 SR 288*

CAPITAL COST COMPONENT GRANT PROGRAM

7077.0600 PURPOSE.

The capital cost component grant program provides grants 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.

Statutory Authority: *MS s 116.07*

History: *15 SR 288*

7077.0605 DEFINITIONS.

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

Subp. 2. [Repealed, 15 SR 288]

Subp. 3. [Repealed, 15 SR 288]

Subp. 4. [Repealed, 15 SR 288]

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. [Repealed, 15 SR 288]

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

Statutory Authority: *MS s 116.07*

History: *15 SR 288*

7077.0610 ELIGIBILITY.

To be eligible for a capital cost component grant, a municipality must be listed on the municipal needs list.

Statutory Authority: *MS s 116.07*

History: *15 SR 288*

7077.0615 GRANT APPLICATIONS.

Subpart 1. Notice of taking applications. The commissioner shall request that

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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.

Statutory Authority: *MS s 116.07*

History: *15 SR 288*

7077.0620 SELECTION OF ELIGIBLE GRANTEES.

Subpart 1. Ranking of applicants. Within 30 days of the close of the application period, the commissioner shall rank those applicants who have submitted a complete and timely application according to their priority ranking on the municipal needs list.

Subp. 2. Determination of grantees. Within 90 days of the close of the application period, the agency shall determine how many of the eligible applicants will receive a capital cost component grant. Grants must be awarded in priority order to as many applicants as the available funding will allow.

Statutory Authority: *MS s 116.07*

History: *15 SR 288*

7077.0625 AMOUNT OF GRANT AWARD.

Subpart 1. State and federal construction grants program list. Each August the commissioner shall prepare a list of all municipal wastewater treatment facilities that have accepted bids under the state and federal construction grants program during the three previous state fiscal years. The municipal wastewater treatment facilities shall be listed in order of the population of the service area.

Subp. 2. Grant amount. The grant applicant shall be placed on the state and

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federal construction grants program list described in subpart 1 based on the population of the grantee's service area. The amount of the grant must be 50 percent of the average total eligible costs of the ten municipalities the closest in population to the grantee's service area.

Subp. 3. **Grant restriction.** No more than 50 percent of the total funds available for the award of capital cost component grants for any fiscal year shall be awarded to a grantee. A grantee that receives only a part of the grant to which it is entitled because of this restriction is entitled to receive a grant amendment in the next year or years, if capital cost component grant money is available, until the full amount of the grant is awarded. The grantee is entitled to priority over new grantees in the next year or years. The amount of the grant must not be recalculated under subparts 1 and 2.

Subp. 4. **Grant limitation.** No grant shall exceed 100 percent of the actual costs of design and construction of the wastewater treatment facility. The cost of acquiring an existing facility must not be included as an eligible cost for the purpose of determining actual costs.

Statutory Authority: *MS s 116.07*

History: *15 SR 288*

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 7077.0620 and 7077.0625.

Statutory Authority: *MS s 116.07*

History: *15 SR 288*

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.

Statutory Authority: *MS s 116 07*

History: *15 SR 288*

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.

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 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 116D, 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.

Statutory Authority: *MS s 116.07*

History: *15 SR 288*

7077.0645 INSPECTIONS.

The commissioner has the authority to conduct inspections of the grantee's project under the authority of Minnesota Statutes, section 115.03, subdivision 1, paragraph (f).

Statutory Authority: *MS s 116.07*

History: *15 SR 288*

7077.0650 GRANT PAYMENT.

Subpart 1. Request for payment. A grantee seeking a grant payment shall submit a payment request to the authority on a form provided by the 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 7077.0640, subpart 2;

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(4) submission of 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 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.

Statutory Authority: *MS s 116.07*

History: *15 SR 288*

7077.0655 TERMINATION OF GRANT.

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

Statutory Authority: *MS s 116.07*

History: *15 SR 288*

7077.0660 RECOVERY OF FUNDS.

Violation of permit conditions by reason of improper design, improper construction, or improper operation and maintenance shall constitute grounds for the commissioner to recommend that the authority seek to recover grant funds tendered or disbursed to a grantee. In determining whether to recommend such action to the authority, the commissioner shall consider the steps the grantee has undertaken to correct the problem that caused the violation of permit conditions. The commissioner shall advise the agency whenever a recommendation is made to the authority to seek recovery of grant funds.

Statutory Authority: *MS s 116.07*

History: *15 SR 288*

INDIVIDUAL ON-SITE WASTEWATER TREATMENT SYSTEMS GRANTS PROGRAM

7077.0700 PURPOSE.

The individual on-site wastewater treatment systems grants program provides grants to municipalities to assist owners of individual on-site wastewater treatment systems to upgrade or replace their failed 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 Minne-

sota 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.

Statutory Authority: *MS s 116.07*

History: *15 SR 288*

7077.0705 DEFINITIONS.

Subpart 1. **Scope.** For the purpose of parts 7077.0700 to 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. [Repealed, 15 SR 288]

Subp. 4. [Repealed, 15 SR 288]

Subp. 5. [Repealed, 15 SR 288]

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 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 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 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. [Repealed, 15 SR 288]

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

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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 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.

Statutory Authority: *MS s 116.07*

History: *15 SR 288*

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 7077.0715, subpart 2;

B. have developed and adopted a wastewater treatment plan under part 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.

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.

Statutory Authority: *MS s 116.07*

History: *15 SR 288*

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 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 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 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 planning area, including sizing and the location of the proposed systems, prepared by a designer using data from 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 7077.0720.

Subp. 4. [Repealed, 15 SR 288]

Statutory Authority: *MS s 116.07*

History: *15 SR 288*

7077.0720 APPROVAL OF INDIVIDUAL ON-SITE WASTEWATER TREATMENT PERSONNEL.

Subpart 1. **General requirement.** For the purposes of parts 7077.0700 to 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.

Statutory Authority: *MS s 116.07*

History: *15 SR 288*

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 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 7077.0715;

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 7077.0710, item D;

E. alternative median household income data under part 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 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.

Statutory Authority: *MS s 116.07*

History: *15 SR 288*

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 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 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 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 7077.0725, subpart 1, following the adoption of the wastewater treatment plan.

Statutory Authority: *MS s 116.07*

History: *15 SR 288*

7077.0735 AMOUNT OF GRANT AWARD.

Subpart 1. **Grant amount.** The amount of the grant will be 50 percent of the actual eligible costs under part 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.

Statutory Authority: *MS s 116.07*

History: *15 SR 288*

7077.0740 PRIORITY RANKING.

Municipalities that meet the requirements of parts 7077.0710 to 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.

Statutory Authority: *MS s 116.07*

History: *15 SR 288*

7077.0745 CERTIFICATION OF AWARD.

Subpart 1. Funding list. The commissioner will prepare a list of municipalities eligible to receive grant funding under this program.

Subp. 2. Public participation. The following provisions govern public participation:

A. The commissioner will prepare an individual on-site wastewater treatment systems grants funding list and make it available to the public at least 45 days before adoption. The commissioner shall mail a free copy of the proposal to any interested person upon request.

B. The commissioner will give affected municipalities at least 45 days notice of the agency board meeting at which the funding proposal will be acted upon.

C. Interested persons may present oral statements at the agency board meeting. The chair may place reasonable restrictions upon the time and manner in which oral comments are submitted. Written statements must be received by the agency board at least five days before the meeting.

Subp. 3. Certification to authority. The commissioner will certify to the authority the individual on-site wastewater treatment systems grants program funding list approved by the agency.

Statutory Authority: *MS s 116.07*

History: *15 SR 288*

7077.0750 PAYMENT CONDITIONS.

Payment of the grant is contingent on complying with the following conditions:

A. The upgrade or replacement to the existing system must be designed by a designer using data from a site evaluator.

B. The upgrade or replacement to the existing system must be constructed by an installer.

C. The upgrade or replacement to the existing system must be inspected and approved by the inspector.

Statutory Authority: *MS s 116.07*

History: *15 SR 288*

7077.0755 PAYMENTS.

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

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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.

Statutory Authority: *MS s 116.07*

History: *15 SR 288*

7077.0760 TERMINATION OF GRANT.

Failure of the municipality to comply with the construction schedule contained in the grant agreement constitutes grounds for the commissioner to recommend that the authority terminate the grant.

Statutory Authority: *MS s 116.07*

History: *15 SR 288*

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 7077.0715, subpart 2, in the awarded grant.

Statutory Authority: *MS s 116.07*

History: *15 SR 288*

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.

Statutory Authority: *MS s 116.07*

History: *15 SR 288*

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.

Statutory Authority: *MS s 116.07*

History: *15 SR 288*

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.

Statutory Authority: *MS s 116.07*

History: *15 SR 288*