

Minnesota Pollution Control Agency

STATEMENT OF NEED AND REASONABLENESS

Proposed Amendments to Rules Relating to the Clean Water Partnership Financial Assistance Program
and the Federal Nonpoint Source Management Program
Minnesota Rules Chapters 7076 and 7077

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Many requirements in existing Clean Water Partnership Financial Assistance Program (CWP) rules remain unchanged in this proposal. This Statement of Need and Reasonableness (SONAR) does not discuss existing CWP rules that the Minnesota Pollution Control Agency (MPCA or Agency) does not propose to modify, including requirements that have simply been relocated, since the need for and reasonableness of these rules was addressed in the previous three rulemakings whose SONARs are listed below:

- Statement of Need and Reasonableness, Signed April 18, 1988
- Statement of Need and Reasonableness, Dated March 15, 1991 and Signed March 21, 1991
- Statement of Need and Reasonableness, Dated June 5, 1995

I. INTRODUCTION

The subject of this Statement of Need and Reasonableness (SONAR) is the amendment of the rules of the Minnesota Pollution Control Agency (MPCA or Agency) that govern the Clean Water Partnership Financial Assistance Program (CWP) and the Federal Nonpoint Source Management Program (Section 319 Program). Minnesota Rule chapter 7076 addresses the administration of these programs.

The goal of the CWP is to prevent and mitigate the effects of nonpoint source pollution on state surface and groundwaters. The program provides technical and financial assistance to local units of government for the identification of water quality problems or threats, for the development of a plan to address the problems or threats, and for the implementation of Best Management Practices (BMPs) designed to protect, enhance or restore the quality of a water of concern.

The goal of the proposed amendments is to address recent changes to Minnesota Statutes ch. 103F as provided by [Laws 2011, chapter 107, sections 53 through 64, and 108](#). The CWP rules (Chapter 7076) have not been amended since 1995 and the MPCA also proposes changes to streamline rule requirements based on current MPCA water quality objectives. Proposed revisions include housekeeping changes to address obsolete requirements, elimination of noncompetitive continuation grants, and funding changes from advance payments to expense reimbursement, as well as other changes necessary to streamline and update existing requirements. The MPCA anticipates this effort will simplify and streamline the rules.

II. BACKGROUND

The CWP was originally established under Minn. Stat. §§ 115.091 to 115.103 in accordance with *Laws 1987, chapter 392, sections 1 through 13*. The MPCA undertook rulemaking and adopted a final rule as noticed in the September 19, 1988 *State Register*. The rules establish processes necessary for the administration and implementation of the program. The rules provide a mechanism to implement federal funds that became available through the federal Water Pollution Control Act of 1987, United States Code, title 33, sections 1329 and 1330, as amended, commonly referred to as sections 319 and 320 of the federal Clean Water Act and just section 319. Recodification of the statute to Minn. Stat. §§ 103F.701 to 103F.761 occurred in 1990 in accordance with *Laws 1990, chapter 391, article 6, section 81*. Rules associated with this statutory change as well as other changes to improve the program were adopted as noticed in the September 16, 1991 *State Register*. In early 1995, the MPCA again initiated rule revisions to improve the CWP. The MPCA revised its rules to modify administrative processes, to allow for the administration of Water Pollution Control Revolving Fund loan awards and to improve the partnership relationships between the MPCA and local units of governments involved in CWP projects. These rule revisions were adopted as noticed in the *State Register* on November 27, 1995. In 2011, the Legislature amended Minn. Stat. §§ 103F.701 to 103F.761. This rulemaking is intended to address those changes and additional changes to simplify and streamline the rules.

As mentioned in section I of the SONAR, the rules have not been updated since 1995. In those seventeen years, the Agency's water quality objectives have changed. In addition, requirements have become obsolete and the State of Minnesota (State) has shifted to a policy of preferring reimbursements instead of advance payments for grant funds.

III. PROCEDURAL HISTORY

The MPCA took the following steps to develop the rule revision and to notify interested parties about the rule revision and to get their input on draft rule language:

1. On December 27, 2011, the MPCA published a Request for Comments in the *State Register* regarding its plans for amending the rule. The MPCA also launched the following webpage to keep interested and affected parties apprised of the status of the process:
<http://www.pca.state.mn.us/oxpgf5f>
2. The MPCA sought to get the word out about this rulemaking by publishing a short article about the rulemaking in its January 2012 Waterfront Bulletin, which serves local units of government that are most impacted by these revisions. Additionally, the MPCA used its electronic message delivery system to send out messages regarding this rulemaking to subscribers.
3. On February 3, 2012, MPCA staff held a videoconference meeting with stakeholders at its St. Paul, Brainerd, Detroit Lakes, Duluth, Mankato, Rochester and Willmar offices to obtain feedback on preliminary draft language. The meeting was webcast and archived for viewing for those unable to attend. Comments were requested no later than February 10, 2012. The MPCA received various comments and these were considered.
4. On April 18, 2012, MPCA released a second preliminary draft rule for comment. This second version addressed some major issues raised with respect to reimbursement and work plans and is discussed in the relevant reasonableness section of the SONAR. Interested and affected parties were invited to provide informal comments for consideration. No comments were received.

IV. ALTERNATIVE FORMAT

Upon request, this SONAR can be made available in an alternative format, such as large print, Braille, or audio. To make a request, contact:

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V. MPCA STATUTORY AUTHORITY

The MPCA's current statutory authority to adopt and implement these rules is set forth in Minn. Stat. § 103F.745, which provides:

“(a) The agency shall adopt rules necessary to implement sections [103F.701](#) to [103F.755](#). The rules shall contain at a minimum:

- (1) procedures to be followed by local units of government in applying for technical or financial assistance or both;*
 - (2) conditions for the administration of assistance;*
 - (3) requirements for a project;*
 - (4) criteria for the evaluation and approval of a project;*
 - (5) criteria for the ranking of projects in order of priority for assistance;*
 - (6) criteria for defining and evaluating eligible costs and cost-sharing by local units of government applying for assistance;*
 - (7) requirements for providing measurable outcomes; and*
 - (8) other matters as the agency and the commissioner find necessary for the proper administration of sections [103F.701](#) to [103F.755](#), including any rules determined by the commissioner to be necessary for the implementation of federal programs to protect, enhance, or restore water quality.*
- (b) For financial assistance by loan under section [103F.725, subdivision 1a](#), criteria established by rule shall guide requirements and administrative procedures for the clean water partnership loan program."*

Under this statute, the MPCA has the necessary statutory authority to adopt the proposed rule amendments. Minnesota Rules, part 1400.2070, subpart 1, item D, requires that if an agency's statutory authority was granted after January 1, 1996, the agency must include in its SONAR the effective date of the agency's statutory authority to adopt the rule. The MPCA's existing statutory authority was revised under [Laws 2011, sections 53 through 64, and 108](#), and became effective August 1, 2011.

The proposed rule will be enforced in accordance with the authority provided to the MPCA under Minn. Stat. § 103F.745. Additionally, the rule will be enforced in accordance with any other applicable statute, rule, or permit condition. If approved, this rule would be enforceable by the MPCA.

VI. REGULATORY ANALYSIS

Minn. Stat. § 14.131 sets out seven factors, for a regulatory analysis, that must be included in the SONAR. Paragraphs (1) through (7) below quote these factors and then provide MPCA's response. Paragraph (8) addresses additional requirements listed in Minn. Stat. § 14.131.

In general, the MPCA has chosen to pursue this rule to address legislative requirements, streamline the regulatory process, remove obsolete language, and to update applicable requirements. By streamlining its regulatory process, the MPCA hopes to make its administrative process more efficient and bring it in line with Minnesota Management and Budget (MMB) requirements that are designed to ensure project and fiscal accountability. The amount of funding and costs involved in administering CWP remains the same, but the structure of how funds are distributed is changing. For this reason, the MPCA considers this rule to be cost neutral. While it is considered cost neutral, the Agency anticipates that efficiencies gained by streamlining the process will result in time savings that are still of some benefit to proposers and the Agency. This topic is discussed further under section VIII of the SONAR.

- 1. "A description of the classes of persons who probably will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule."**

The classes of persons who will be affected by this rule are local units of government, public agencies, and local stakeholders. These classes are impacted only insofar as they choose to pursue funding from the Agency for a CWP project. The biggest anticipated impacts, which were the subject of the informal comments received in response to the preliminary draft language released at the February 3, 2012, stakeholder meeting, were that the Agency reconsider *the “proposed shift in grant payments from upfront payments of percentages of the total grant awards, to reimbursement payments for work performed...”* and its proposal of *“...withholding the contract until after the work plan is completed....”* This seems to be an issue that impacts smaller local units of government because their means of accessing funds to use until grant money is received are limited. The Agency considered the comments received and the need to adhere to MMB reimbursement policy and modified the proposal. The modified proposal allows for providing advance funds (25%) to ensure that smaller local units of government are not excluded from receiving CWP funding. These partial funds allow for completion of the work plan and initial implementation of some work plan activities.

The MPCA believes that the effects of the proposed revisions will be cost neutral. The Agency currently administers the program and does not anticipate additional costs in its administration.

In general, the MPCA believes that the proposed changes will benefit the Agency and participating parties. The proposed revisions benefit the Agency, local units of government, public agencies, and local stakeholders because the changes remove obsolete requirements and make the administrative process more efficient and accountable.

2. *“The probable costs to the MPCA and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues.”*

The Minnesota Pollution Control Agency currently administers the CWP. None of the proposed revisions are anticipated to add any additional cost to the current process or impact State revenues.

3. *“A determination of whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule.”*

The proposed rule has two primary purposes. One is to address legislatively mandated requirements. The second is to remove obsolete requirements, update the rule and streamline the process.

A. Legislative requirements:

One alternative to the proposed rules is to not undertake rulemaking. Since the Agency must comply with [Laws 2011, chapter 107, sections 53 through 64, and 108](#), this option was not considered feasible. Additionally, while this method avoids the cost of adopting this rule, it does not address changes mandated by the Legislature. Therefore, the MPCA concluded rulemaking was necessary.

B. Remove obsolete requirements, update and streamline the process:

Again, the alternative to the proposed rules is to not undertake rulemaking. While this method avoids the cost of adopting this rule, it does not remove obsolete requirements, update the rule or streamline the process. The benefit of the proposed revisions is that both the MPCA and participating parties will have updated requirements and a more efficient and streamlined process.

Additionally, all will benefit from instituting a partial reimbursement process that makes accountability for funds more transparent by the Agency and those who receive and spend funds, a need identified by the Minnesota Legislative Auditor. Since the changes contemplated cannot occur outside of a rulemaking process, the Agency concluded rulemaking was necessary.

4. *"A description of any alternative methods for achieving the purpose of the proposed rule that were seriously considered by the agency and the reasons why they were rejected in favor of the proposed rule."*

The alternatives considered were described above and rejected by the Agency for the reasons stated. Based on the MPCA's analysis, the proposed revisions appear to best meet the goals of the MPCA and participating community.

5. *"The probable costs of complying with the proposed rule including the portion of the total costs that will be borne by identifiable categories of affected parties, such as separate classes of government units, businesses, or individuals."*

As discussed above, the rule revisions are essentially considered cost neutral. The proposed revisions are changing the structure through which those funds are disbursed. These changes are necessary to ensure the accountability of the Agency and those receiving and spending funds.

6. *"The probable costs or consequences of not adopting the proposed rule, including those costs or consequences borne by identifiable categories of affected parties, such as separate classes of government units, businesses, or individuals."*

As discussed above, the rule revisions are essentially considered cost neutral. The proposed changes are meant to streamline the program and make it more efficient and accountable. More updated standards and increased efficiency means that processing time may slightly decrease. Accountability changes provide system checks and balances which ensure that funds are used for their intended purpose by participating parties and that proper oversight is provided by the Agency.

7. *"An assessment of any differences between the proposed rule and existing federal regulations and a specific analysis of the need for and reasonableness of each difference."*

Minnesota receives funds to abate nonpoint source pollution through the Federal Water Pollution Control Act, United States Code, title 33, section 1329, as amended, hereinafter referred to as Section 319 or Section 319 Program. Grant priority is established in accordance with Section 319(h)(5), which states:

"For each fiscal year beginning after September 30, 1987, the Administrator may give priority in making grants under this subsection, and shall give consideration in determining the Federal share of any such grant, to States which have implemented or are proposing to implement management programs which will:

- control particularly difficult or serious nonpoint source pollution problems, including, but not limited to, problems resulting from mining activities;*

- *implement innovative methods or practices for controlling nonpoint sources of pollution, including regulatory programs where the Administrator deems appropriate;*
- *control interstate nonpoint source pollution problems; or*
- *carry out ground water quality protection activities which the Administrator determines are part of a comprehensive nonpoint source pollution control program, including research, planning, ground water assessments, demonstration programs, enforcement, technical assistance, education, and training to protect ground water quality from nonpoint sources of pollution."*

Proposed part 7076.0110, subp. 19. defines "Project Grant" or "Grant" as indicated below:

"Subp. 19. Project Grant or Grant. "Project grant" or "grant" means a grant from the agency to the project sponsor for the implementation of a nonpoint source project."

The proposed rules are less specific in the requirements for the use of funds for nonpoint source projects than the Section 319 Program in order to allow greater flexibility in dealing with the impact of nonpoint source pollution on the watersheds in Minnesota. While Section 319 is focused more on innovative methods and demonstration projects which can enhance the effectiveness of eliminating nonpoint pollution, the CWP program allows Minnesota to deal with the actual nonpoint pollution sources in Minnesota's watersheds, insuring their subsequent abatement. Section 319 Program funding complements the CWP program so that effective and innovative Best Management Practices (BMPs) can be developed and implemented which will abate nonpoint source pollution in Minnesota and beyond.

8. *"An assessment of the cumulative effect of the rule with other federal and state regulations related to the specific purpose of the rule.... "cumulative effect" means the impact that results from incremental impact of the proposed rule in addition to other rules, regardless of what state or federal agency has adopted the other rules.*

The primary objective of this rulemaking is to streamline the existing administrative process for obtaining grant funding for nonpoint source pollution sources. Initiation of the streamlining is made possible as a result of statutory revisions per [Laws 2011, chapter 107, sections 53 through 64, and 108](#).

The CWP is not, by nature, a regulatory program designed to regulate "numerical effluent limits" of nonpoint source pollution activities. Part 7076.0100 *"provides for the administration of the state clean water partnership financial assistance program and the federal nonpoint source management program"*. The proposed rule revisions benefit local units of government by assisting them with a streamlined process to obtain state CWP funding in dealing with local nonpoint source pollution issues. MPCA believes that local units of government will find that this proposed rule is not a burden, as it provides local financial, economic and water quality benefit.

The state and federal programs generally do not overlap and are considered to complement each other as each focuses on funding to address nonpoint sources based on differing criteria. For example, the Section 319 Program, a federal program, also provides funding assistance to abate nonpoint source pollution as defined in an approved state nonpoint source management plan. Minnesota's approved Nonpoint Source Management Program Plan is a comprehensive analysis of the nonpoint source pollution abatement needs of Minnesota and outlines strategies that Minnesota will take to address these needs. Minnesota's Section 319 Program is focused more on innovative methods and

demonstration projects, as well as the implementation of Best Management Practices outlined in an approved Total Maximum Daily Load (TMDL) study and implementation plan, in order to enhance the effectiveness of nonpoint pollution abatement. In contrast, the proposed rule revisions allow funding for other types of projects in areas which currently meet water quality standards. The proposed rule revisions, therefore, complement the Section 319 Program, because they allow funding for broader nonpoint source pollution abatement needs.

The Legislative Citizen Commission on Minnesota's Resources (LCCMR), also provides grant funding. The function of the LCCMR is to make funding recommendations to the legislature for special environment and natural resource projects, primarily from the Environment and Natural Resources Trust Fund (ENRTF). According to Article XI, Section 14 of the State Constitution, "*The assets of the fund shall be appropriated by law for the public purpose of protection, conservation, preservation, and enhancement of the state's air, water, land, fish, wildlife, and other natural resources.*" The LCCMR funded past projects which would also meet the project criteria in the proposed rule. However, the proposed rule provides a more streamlined process for application and approval of a project than is found with the LCCMR process, a process which often takes two years to complete. Therefore, the proposed CWP rule revisions would streamline the process to obtain state funding and benefit local units of government.

The Clean Water, Land and Legacy Amendment (Amendment) was approved by voters on November 4, 2008 and provides funding, according to Article XI, Section 15 of the State Constitution, "*to protect, enhance, and restore water quality in lakes, rivers, and streams and to protect groundwater from degradation.*" The funding enables seven State agencies to work jointly on Minnesota's water resource management activities under the Clean Water Fund (CWF). Much of this funding is provided to the Minnesota Board of Water and Soil Resources (BWSR) to fund Best Management Practices as defined in MPCA approved TMDL and Watershed Restoration and Protection Strategy (WRAPS) implementation plans. Concerned that local needs may not always be met by WRAPS, the MPCA has provided additional CWF funding to the CWP program to increase the number of implementation projects which will enhance, protect and restore local water bodies. Thus, the proposed streamlining accomplished by the proposed rule revisions works with the Amendment towards making funding more accessible to local units of government as they work towards enhancing, protecting and restoring local water bodies. Drinking water protection activities have also been funded by the Agency through the CWF. This revised rule would provide greater flexibility for funding these types of local activities, although it has not been used frequently for such activities in the past. Thus, it is considered complementary to the Amendment.

As discussed above, one of the purposes of this rulemaking is to streamline the administrative process. The proposed revisions work in unison with existing state and federal laws without adding burden to the process of accessing state funding. These proposed revisions will benefit local units of government and citizens of the State by protecting and enhancing Minnesota's environment.

9. "Describe how the agency, in developing the rules, considered and implemented the legislative policy supporting performance-based regulatory systems set forth in section 14.002." Minn. Stat. § 14.002 states:

"...the legislature finds that some regulatory rules and programs have become over prescriptive and inflexible, thereby increasing costs to the state, local governments, and the regulated community and decreasing the effectiveness of the regulatory program. Therefore, whenever feasible, state agencies must develop rules and regulatory programs that emphasize superior achievement in meeting the agency's regulatory

objectives and maximum flexibility for the regulatory party and the agency in meeting those goals..."

As discussed under items 7 and 8 above, the MPCA is pursuing amendments that allow flexibility for state funding and provide technical assistance, as Agency resources allow, in dealing with nonpoint source pollution. The CWP program is not like a regulatory program because it is completely voluntary. The MPCA is providing flexibility in the type of projects funded and in the requirements necessary for administration of the chosen projects. This flexibility will benefit the project sponsor by allowing them to choose the type of project which they wish to implement and reduces administrative burdens which no longer meet the needs for flexible, streamlined and cost effective projects. This flexibility should result in greater achievement in nonpoint source pollution reduction by local governments and the Agency.

VII. ADDITIONAL NOTIFICATION

Minn. Stat. § 14.131 requires that an agency include in its SONAR a description of its efforts to provide additional notification to persons or classes of persons who may be affected by the proposed rule or must explain why these efforts were not made.

On December 27, 2011, the MPCA published a notice requesting comments on planned rule amendments to Minnesota Rules Chapter 7076. The same notice was also placed on the MPCA's Public Notice webpage.

MPCA Plans for Notice:

- A. The MPCA intends to send an electronic notice with a hyperlink to electronic copies of the Dual Notice, SONAR and the proposed rule amendments to all parties who have registered with the MPCA for the purpose of receiving notice of rule proceedings, as required by Minn. Stat. § 14.14, subd. 1a, on the date the Dual Notice is published in the *State Register*.
- B. The MPCA intends to send a cover letter with a hyperlink to electronic copies of the Dual Notice, SONAR and the proposed rule amendments to the chairs and ranking minority party members of the legislative policy and budget committees with jurisdiction over the subject matter of the proposed rule amendments as required by Minn. Stat § 14.116. This statute also states that if the mailing of the notice is within two years of the effective date of the law granting the agency authority to adopt the proposed rules, the agency must make reasonable efforts to send a copy of the notice and SONAR to all sitting house and senate legislators who were chief authors of the bill granting the rulemaking. This applies because SF1115, which amended Minn. Stat. §§ 103F.705 to 103F.745, was passed during the 2011 legislative session and became effective on August 1, 2011. MPCA will provide the notice and SONAR to the chief authors of SF1115. The timing of this notice will occur at least 33 days before the end of the comment period as it will be delivered via United States Mail.
- C. Individuals and representatives of associations the MPCA has on file as interested and affected parties that do not wish to receive an electronic notice shall also be mailed a copy of the Dual Notice and the draft rule language via United States Mail.
- D. The MPCA plans to issue an electronic notice to MPCA staff on the date the rule appears in the *State Register*.

In addition, a copy of the Dual Notice, proposed rule amendments and SONAR will be posted on the MPCA's Public Notice webpage: <http://www.pca.state.mn.us/iryp3c9>

Pursuant to Minn. Stat. § 14.14, subd. 1a, the MPCA believes its regular means of notice, including publication in the *State Register* and on the MPCA's Public Notice webpage will adequately provide notice of this rulemaking to persons interested in or regulated by these rules.

VIII. CONSIDERATION OF ECONOMIC FACTORS

In exercising its powers, the MPCA is required by identical provisions in Minn. Stat. § 116.07, subd. 6, and Minn. Stat. § 115.43, subd. 1, to give due consideration to:

"...the establishment, maintenance, operation and expansion of business, commerce, trade, industry, traffic, and other economic factors and other material matters affecting the feasibility and practicability of any proposed action, including, but not limited to, the burden on a municipality of any tax which may result therefrom, and shall take or provide for such action as may be reasonable, feasible, and practical under the circumstances..."

As discussed under section VI, item 1 of the SONAR, the MPCA anticipates this rulemaking will be cost neutral. The MPCA anticipates changes to the funding structure will not significantly impact any local unit of government as the structure of reimbursement is what is changing.

By simplifying and streamlining the CWP rule, the MPCA estimates that there will be time savings in the following areas:

- Changing the application process to a proposal process reduces the local unit of government paperwork necessary for the project grant and loan request. This allows proposers to focus on developing the justification for their project. Less paperwork means less time and money spent by both the local project sponsors in their preparation and by the MPCA in the review of proposals for funding.
- The reduction to 60 days from 90 days for determination of available grant and loan funding and proposal scoring allows the Agency to spend less technical resources on review and also allows the local project sponsors to have additional time, particularly in short field seasons, to further develop and implement project work plans.
- The elimination of non-competitive continuation project funding releases further grant and loan funds for use in the annual competitive proposal process, allowing more proposals the opportunity to be funded.
- The deletion of many requirements for various project work products and reports, such as work plans, allows sponsors and project staff to spend less time focusing on information that was not always relevant to the immediate project and more time on the essential tasks necessary for the successful completion of the CWP project.

The above time savings are difficult to quantify as they vary project to project, but are considered to benefit project sponsors and the MPCA.

IX. IMPACT ON FARMING OPERATIONS

Minn. Stat. § 14.111 requires an agency to provide a copy of the proposed rule changes to the Commissioner of Agriculture no later than thirty days before publication of the proposed rule in the *State Register*, if the rule has an impact on agricultural land.

This rule is not expected to impact agricultural land or farming operations, thus, the Commissioner of Agriculture will not be notified.

X. IMPACT ON CHICANO/LATINO PEOPLE

Minn. Stat. § 3.9223, subd. 4, requires agencies to give notice to the State Council on Affairs of Chicano/Latino People for review and recommendation at least five days before initial publication in the *State Register*, if the proposed rules have their primary effect on Chicano/Latino people.

This rule is not expected to have a primary effect on Chicano/Latino people, thus, the State Council on Affairs of Chicano/Latino People will not be notified.

XI. NOTIFICATION OF THE COMMISSIONER OF TRANSPORTATION

Minn. Stat. § 174.05 requires the MPCA to inform the Commissioner of Transportation of all rulemakings that concern transportation, and requires the Commissioner of Transportation to prepare a written review of the rules.

This rule is not expected to impact or concern transportation, thus, the Commissioner of Transportation will not be notified.

XII. CONSULT WITH MINNESOTA MANAGEMENT AND BUDGET ON LOCAL GOVERNMENT IMPACT

As required by Minnesota Statutes, section 14.131, the MPCA will consult with Minnesota Management and Budget (MMB). We will do this by sending MMB copies of the documents that we send to the Governor's office for review and approval on the same day we send them to the Governor's office. We will do this before publishing the Notice of Intent to Adopt. The documents will include: the Governor's Office Proposed Rule and SONAR form, the proposed rules, and the SONAR. The MPCA will submit a copy of the cover correspondence and any response received from MMB to the Office of Administrative Hearing (OAH) at the hearing or with the documents it submits for Administrative Law Judge (ALJ) review.

As discussed in sections VI and VIII of the SONAR, the costs associated with this rulemaking are considered cost neutral and change the structure of how funds are allocated in response to MMB reimbursement policy.

XIII. MINNESOTA STATUTES § 14.128, SUBDIVISION 1 – DETERMINATION IF LOCAL GOVERNMENT WILL BE REQUIRED TO ADOPT OR AMEND AN ORDINANCE OR OTHER REGULATION TO COMPLY WITH PROPOSED AGENCY RULE

During the 2009 legislative session, the Minnesota Legislature adopted Minn. Stat. § 14.128. This statute requires an agency to make a determination whether a proposed rule would require a local

government to adopt or amend its ordinances to comply with the rule. This statute is intended to address situations where an agency requires local governments to change their ordinances, for example, to be consistent with agency requirements.

The proposed amendments to the Clean Water Partnership Rules do not require local governments to amend their ordinances to comply with MPCA rules. Local units of governments who are pursuing grant or loan funds for CWP projects must comply with the requirements in Minn. R. ch. 7076, just as they have been required to comply with these rules in the past. No changes to local ordinances are required or anticipated in order to comply with these rules.

XIV. MINNESOTA STATUTES § 14.127, SUBDIVISION 1 – COST THRESHOLDS

Minn. Stat. § 14.127 requires the MPCA to assess the potential economic impact to small businesses of complying with this proposed rule amendment. The statutory provision is as follows:

“An agency must determine if the cost of complying with a proposed rule in the first year after the rule takes effect will exceed \$25,000 for: (1) any one business that has less than 50 full-time employees; or (2) any one statutory or home rule charter city that has less than ten full-time employees. For purposes of this section, “business” means a business entity organized for profit or as a nonprofit, and includes an individual, partnership, corporation, joint venture, association, or cooperative.”

As discussed in sections VI and VIII of the SONAR, the costs for this rulemaking are considered cost neutral. Therefore, the proposed rule is not expected to economically impact business entities. This rulemaking is expected to benefit businesses in that it will remove obsolete requirements and update the process so that it becomes more efficient.

XV. MINNESOTA STATUTES § 116.07, SUBDIVISION 2 – MPCA SONAR REQUIREMENTS

2011 Minnesota Laws Ch. 4, § 4, requires that for proposed rules adopting air quality, solid waste, hazardous waste, or water quality standards, the Statement of Need and Reasonableness (SONAR) must include an assessment of any differences between the proposed rule and existing federal standards adopted under the Clean Air Act, title 42, section 7412(b)(2); Clean Water Act, United States Code, title 33, sections 1312(a) and 1313(c)(4); and the Resource Conservation and Recovery Act, United States Code, title 42, section 6921(b)(1); similar standards in states bordering Minnesota; and similar standards in states within the Environmental Protection Agency Region 5; and a specific analysis of the need and reasonableness of each difference.

This rule revision does not affect rules adopting effluent limitations or water quality standards so no assessment of federal or bordering states’ water quality standards is necessary.

XVI. STATEMENT OF NEED

Minn. Stat. ch. 14 requires the MPCA to make an affirmative presentation of facts establishing the need for and reasonableness of the rules as proposed. In general terms, this means that the MPCA must not be arbitrary or capricious in proposing rules. However, to the extent that need and reasonableness are separate, “need” has come to mean that a problem exists that requires administrative attention, and

“reasonableness” means that the solution proposed by the MPCA is appropriate. The need for the rule is described below.

Minn. Stat. ch. 103F was revised during the 2011 legislative session, as provided by [Laws 2011, chapter 107, sections 53 through 64, and 108](#). Portions of the provisions in Minn. Stat. §§ 103F.701-103F.765 were amended regarding the Clean Water Partnership program. There is a need for the Agency to undertake this rulemaking to make the rules consistent with statutory changes.

In addition, the proposed rule amendments are needed because, as discussed in section I, the CWP rules (Chapter 7076) have not been amended since 1995 and MPCA proposes changes to streamline rule requirements based on the statute revision and current MPCA water quality objectives. Proposed revisions include housekeeping changes to address obsolete requirements, elimination of noncompetitive continuation grants, as well as other changes necessary to streamline and update existing requirements. The MPCA anticipates this effort will simplify and streamline the rules for greater program efficiency. The Minnesota Department of Management and Budget (MMB), in its continuing mission to make State government financing more efficient and transparent, has recommended funding changes from advance payments to expense reimbursement. This will make local units of government more accountable for the activities approved in the project work plan and the effectiveness of the project.

XVII. STATEMENT OF REASONABLENESS

Minn. Stat. ch. 14 requires the MPCA to explain the facts establishing the reasonableness of the proposed rule amendments. “Reasonableness” means that there is a rational basis for the MPCA’s proposed action. The reasonableness of the proposed rule amendments is explained in this section. This section is broken into two main parts: A. Reasonableness as a whole; and B. Reasonableness of the individual rule parts.

A. Reasonableness of the Proposed Rule Amendments as a Whole

The CWP rules (Chapter 7076) have not been amended since 1995. In general, the MPCA has chosen to pursue this rule to address revised legislative requirements, streamline the administrative process based on current water quality objectives, remove obsolete language, and update applicable requirements. It is reasonable to revise this rule in order to make its administrative process more efficient, bring it in line with Minnesota Management and Budget requirements that are designed to ensure fiscal accountability and to make the rules consistent with statutory language changes.

Chapter 7077 is being amended to simply incorporate Chapter 7076 updates. It is reasonable to amend Chapter 7077 to ensure that it references updated Chapter 7076 information.

B. Reasonableness of the Amendments to Individual Sections of Rule

This section addresses the reasonableness of each rule part and attempts to answer questions about what each rule requirement is intended to do, why it is needed, and why it is reasonable. Some rule parts are obvious as far as their need and reasonableness is concerned and therefore, are only explained briefly, while others are explained in more detail for future rule interpretation.

1. Part 7076.0100 PURPOSE.

This is an existing provision that establishes the process for the administration of the State Clean Water Partnership Financial Assistance program and the Federal Nonpoint Source Management Program. This part has been modified to clarify the specific federal citation. It is reasonable to clarify this citation so that participating parties have a clearer understanding of the actual federal rule that is being implemented. The phrase “as amended” has also been added to ensure that changes at the federal level can be implemented at the state level as soon as they become effective. It is reasonable to make this change to ensure the Agency program meets federal program requirements. Additionally, unnecessary language has been removed to improve readability. It is reasonable to make the proposed changes to ensure as much clarity as possible.

2. Part 7076.0110 DEFINITIONS.

Definitions were added to or revised in this part as necessary for understanding and using the rule amendments.

Subps. 1 to 3 are existing definitions and have not been amended.

Subp. 4. Commissioner. “Commissioner” is an existing term that has been modified to reflect that the “Commissioner” can choose to delegate a function to another individual. It is reasonable to clarify this term to ensure that participating parties are aware of it.

Subp. 4a. Financial Assistance. “Financial assistance” is an existing definition that has been modified to more appropriately reflect funding for a project and not a specific type of project. It is reasonable to revise this term to make it consistent with the statutory change.

Subp. 5 was previously repealed and no further changes are contemplated with this rulemaking.

Subp. 5a is an existing definition and has not been amended.

Subp. 6. Local share. “Local share” is an existing term that has been modified to reflect that project partners can also contribute to projects. In addition references to “implementation” have been deleted because implementation referred to a specific type of project which was deleted in Minn. Stat. §§ 103F.701-103F.765 by [Laws 2011, chapter 107, sections 53 through 64, and 108](#). This rule revision seeks to define projects more broadly, to allow greater funding flexibility. It is reasonable to revise this term to make it consistent with the statutory change.

Subps. 7 and 8 are existing definitions and have not been amended.

Subp. 8a. Measurable outcomes. “Measurable outcomes” is a new term now referenced in Minn. Stat. § 103F.745 (A)(7), which provides a requirement for providing measurable outcomes. It is reasonable to define “measurable outcomes” in the same way as it is defined in Minn. Stat. § 3.303, subd. 10(B).

Subp. 9 is an existing definition and has not been amended.

Subp. 10. Official controls. “Official controls” is an existing definition that has been amended. The statutory definition in Minn. Stat. § 103F.711, subd. 7, was repealed, but it is still a necessary term in the context of this rule. The definition is virtually identical to the former statutory definition and it is reasonable to keep the definition of this term the same as it has been.

Subp. 11 was previously repealed and no further changes are contemplated with this rulemaking.

Subp. 12 is an existing definition and has not been amended.

Subp. 13. Project area. “Project area” is an existing definition that has been modified to remove a description of specific project types which were eliminated in Minn. Stat. §§ 103F.701-103F.765 by [Laws 2011, chapter 107, sections 53 through 64, and 108](#). It is reasonable to revise the definition to eliminate references to project types that are no longer referenced in the statute.

Subp. 14 was previously repealed and no changes are contemplated with this rulemaking.

Subp. 15 is an existing definition that is repealed with this rulemaking. The statutory language that was the basis of this definition, as found in Minn. Stat. §§ 103F.761, was repealed by [Laws 2011, chapter 107, sections 53 through 64, and 108](#). It is reasonable to remove this language as a result of the statutory repeal.

Subps. 16 and 17 were previously repealed and no changes are contemplated with this rulemaking.

Subps. 18 and 18a, which defined project implementation and project implementation continuation, are existing definitions that are repealed with this rulemaking. The statutory language in various sections, such as Minn. Stat. §§ 103F.711, subd. 8, 103F.725, subd. 1, (a), (1) and (2) and 103F.745, subd. (a), (4) and (5) that were the basis of these requirements were deleted in Minn. Stat. §§ 103F.701-103F.765 by [Laws 2011, chapter 107, sections 53 through 64, and 108](#). It is reasonable to remove this language as a result of the statutory changes.

Subp. 19. Project grant or grant. “Project grant” or “grant” is part of an existing definition found in Minn. Stat. § 103F.725, subd. 1, that has been amended to delete references to a specific type of project that was repealed in Minn. Stat. §§ 103F.701-103F.765 by [Laws 2011, chapter 107, sections 53 through 64, and 108](#) and so allows additional types of projects to be considered for grant funding. It is reasonable to amend this definition to be consistent with the statutory changes, to provide greater flexibility to the grant funding process and to clarify that the grant is for non point source project purposes.

Subp. 19a. Project loan. “Project loan” or “loan” is part of an existing definition that has been amended to parallel changes made in subp. 19 and to delete references to a specific type of project that was repealed in Minn. Stat. §§ 103F.701-103F.765 by [Laws 2011, chapter 107, sections 53 through 64, and 108](#) and so allow additional types of projects to be considered for loan funding. It is reasonable to amend this definition to be consistent with the statutory changes, to provide greater flexibility to the loan funding process and to clarify that the loan is for nonpoint source project purposes.

Subp. 19b. Project loan set rate. “Project loan set rate” is an existing definition that has been amended to delete reference to the Merrill-Lynch 500 Municipal Bond Index which is no longer found in the Wall Street Journal and replace it with the prime interest rate as the current source for the loan set rate. It is

reasonable to use the prime interest rate since it is a recognized and readily ascertainable source for setting the current loan rate.

Subp. 19c. Project period. Project period is part of an existing definition that has been amended to delete references to a specific type of project that was repealed in Minn. Stat. §§ 103F.701-103F.765 by [Laws 2011, chapter 107, sections 53 through 64, and 108](#). . It is reasonable to remove this language because it is no longer necessary due to the statutory changes. This subpart is also amended to make it clear that the project period is for three years as outlined in the project contract and work plan, with a possible one year extension. It is reasonable to amend this section so that sponsors are aware of the time requirements for project completion.

Subp. 19d. Project partners. “Project partners” is a new definition that has been added to better define those entities that can be considered as partners for assistance in completion of a project. Minn. Stat. § 103F.735, subd. 2, provides that the criteria for ranking projects shall give the highest priority to projects which demonstrate, among other criteria, participation, coordination and cooperation between local units of government, other public agencies and local stakeholders. It is reasonable and logical to define the partners as those who assist with the project.

Subp. 20. Project sponsor. “Project sponsor” is an existing definition that has been amended to remove references to specific project types that were repealed in Minn. Stat. §§ 103F.701-103F.765 by [Laws 2011, chapter 107, sections 53 through 64, and 108](#), without changing that the project sponsor is the entity that enters into the grant or loan contract. It is reasonable to revise the definition to make it consistent with the statutory change.

Subp. 20a and 20b are existing definitions that are proposed for repeal with this rulemaking since they are no longer necessary due to changes in Minn. Stat. §§ 103F.701-103F.765 made by [Laws 2011, chapter 107, sections 53 through 64, and 108](#). It is reasonable to repeal this language for consistency with the statute and to streamline the program for greater efficiency.

Subp. 20c is an existing definition and has not been amended.

Subp. 20d. Second-tier loan. “Second-tier loan” is an existing definition that has been amended to remove references to repealed statutory language. It is reasonable to amend this language to be consistent with statutory changes.

Subp. 20e to 22 are existing definitions and have not been amended.

Subp. 23. Water of concern. “Water of concern” is an existing term that has been amended to be consistent with statutory changes. It is reasonable to amend this language for that consistency.

Subp. 24. Work plan. “Work plan” is an existing definition that has been amended to reflect proposed changes in the administration of the CWP. It is reasonable to amend this definition because it contained references to deleted statutory language, repealed rule parts, and unnecessary references.

3. Part 7076.0120 AVAILABLE ASSISTANCE.

This part establishes what assistance is available from the MPCA with respect to grants, loans, and technical assistance. The language has been modified as discussed below.

Subp. 1. Grants. This subpart has been revised to remove references to specific project types repealed in Minn. Stat. §§ 103F.701-103F.765 by [Laws 2011, chapter 107, sections 53 through 64, and 108](#) and to enhance the use of grant funds for many types of projects. It is reasonable to amend this language so that the Agency and participating parties understand that grants assistance is only available for nonpoint source projects for a maximum of 50 percent of the eligible cost of the project.

Subp. 1a. Loans. This subpart has been revised to remove a reference to a specific project type repealed in Minn. Stat. §§ 103F.701-103F.765 by [Laws 2011, chapter 107, sections 53 through 64, and 108](#) and to enhance the use of loan funds for many types of projects. The language on project ranking was duplicative here and has been relocated to a more appropriate area. It is reasonable to amend this language so that the Agency and regulated parties understand the amount of eligible costs a loan can cover. It is also reasonable to amend the language to ensure that it is clear that the loan can also be used to finance the local share of the project.

Subp. 2. Technical Assistance. This subpart has been revised to clarify the limitations of available Agency resources in providing technical assistance. It is reasonable to amend this language so that the Agency and participating parties understand that technical assistance resources are limited.

4. Part 7076.0130 ELIGIBILITY CRITERIA.

This part establishes eligibility criteria for grant and loan proposers, eligible or ineligible costs, and eligible local share for project grants.

Subp. 1. Grant-eligible proposers. All references to “applicants” have been changed to “proposers” to reflect an Agency change to the submittal of “proposals” rather than “applications.” A “proposal” is considered a less comprehensive document than an “application” and reflects a concern for a more streamlined review process on the part of the sponsor as well as the Agency. It is reasonable to modify the term in order to reflect a streamlined process.

Item A is an existing provision and remains unchanged.

Item B is an existing provision and has simply been changed to accommodate renumbering. It is reasonable to amend the language for formatting purposes.

Item C is an existing provision that has simply been renumbered from D to C as a result of the deletion of the line above it regarding official controls. The requirement to have authority to adopt and enforce official controls is no longer necessary with the repeal of “official controls” in Minn. Stat. §§ 103F.701-103F.765 by [Laws 2011, chapter 107, sections 53 through 64, and 108](#). This change is for local units of government that do not currently have official control authority, such as soil and water conservation districts, to enable them to be project sponsors. It is reasonable to amend the language so that the MPCA and participating parties have a common understanding of the requirements that must be met for a grant-eligible proposer and for consistency with the underlying statute.

Subp. 1a. Loan-eligible proposers. The reference to “applicants” in the title has been changed to “proposers” to reflect an Agency change to the submittal of “proposals” rather than “applications” as discussed under subp. 1 of section XVII.B.4. It is reasonable to amend the title to implement the

Agency's change from applications to proposals in order to reduce administrative requirements on both the project sponsor and the Agency.

Item A is changed to remove a reference to a specific project type repealed in Minn. Stat. §§ 103F.701-103F.765 by [Laws 2011, chapter 107, sections 53 through 64, and 108](#) and to enhance the use of loan funds for many types of projects. It is reasonable to amend the language to make it consistent with the statutory change.

Item B is an existing provision and remains unchanged.

Item C has been revised so that the reference to "application" has been changed to "proposal" to reflect an Agency change to the submittal of "proposals" rather than "applications" as discussed under subp. 1 of section XVII.B.4. It is reasonable to amend the language to a proposal process in order to reduce administrative requirements on both the Agency and the project sponsors.

Subp. 2. Eligible costs. This subpart has been revised to remove references to specific project types repealed in Minn. Stat. §§ 103F.701-103F.765 by [Laws 2011, chapter 107, sections 53 through 64, and 108](#). It is reasonable to amend the language to be consistent with the statute.

Items A and B remain unchanged.

Item C is amended to correct the reference to the federal Water Pollution Control Act. It is reasonable to amend the language for accuracy.

Items D to I remain unchanged.

Subp. 3. Ineligible costs. This subpart is amended to reference the grant signatory as the Agency commissioner and loan signatories as the Agency commissioner and commissioner of administration and to remove reference to a specific project type repealed in Minn. Stat. §§ 103F.701-103F.765 by [Laws 2011, chapter 107, sections 53 through 64, and 108](#). It is reasonable to amend the language for consistency with statutory language.

Item A is deleted to remove duplicative language as found in subpart 3 above and subsequent items have been renumbered. It is reasonable to make these changes to eliminate the unnecessary language.

Renumbered item B has been amended to add additional language which clarifies statute names as referenced in this subpart. It is reasonable to make these changes to correctly name the relevant laws.

Renumbered items C to M are existing items that remain unchanged in terms of content.

Subp. 4. Eligible local share for project grants. This subpart title is changed to better align with the reference to projects rather than specific project types deleted in Minn. Stat. §§ 103F.701-103F.765 by [Laws 2011, chapter 107, sections 53 through 64, and 108](#). This subpart is amended to remove all references to specific project types repealed in Minn. Stat. §§ 103F.701-103F.765 by [Laws 2011, chapter 107, sections 53 through 64, and 108](#) and to allow for many types of projects. This subpart also includes

the reference to “project partner” to broaden the definition of who may install a BMP and to identify that the project partner’s costs of installation qualify as local share, provided that the stated conditions are met. “Paid by the local unit of government” is deleted, since, in many cases, the local unit of government is not involved in paying the cost of a BMP. It is reasonable to make these changes to remain consistent with the statute and to provide an incentive for project partners to financially participate in a project.

Item A is amended to be consistent with the statutory changes in Minn. Stat. §§ 103F.701-103F.765 by [Laws 2011, chapter 107, sections 53 through 64, and 108](#). Item D is deleted due to the deletion of specific projects types in Minn. Stat. §§ 103F.701-103F.765 by [Laws 2011, chapter 107, sections 53 through 64, and 108](#) and the subsequent item is renumbered accordingly as new item D. It is reasonable to amend this language for consistency with statutory changes.

Item B is an existing item that has not been modified.

Item C is an existing item that has simply been amended to accommodate minor formatting as a result of the deletion of existing item D.

5. Part 7076.0140 NOTICE OF FINANCIAL ASSISTANCE AVAILABILITY.

This part establishes requirements specific to the availability of financial assistance.

Subp. 1. Notice. All references have been changed to reflect an Agency change to the submittal of “proposals” rather than “applications” as discussed under subp. 1 of section XVII.B.4. This subpart is changed to delete references to specific project types repealed in Minn. Stat. §§ 103F.701-103F.765 by [Laws 2011, chapter 107, sections 53 through 64, and 108](#) and to enhance the use of grant funds for many types of projects. This subpart is also amended to indicate that proposal requirements will be a part of the *State Register* notice. It is reasonable to make these revisions to reflect changes to terms and to be consistent with statutory revisions. Likewise, it is reasonable to make changes so that the expanded project applicability is clear to those wishing to access or oversee administration of funds. It is also reasonable to amend language pertinent to the *State Register* notice to ensure proposers are aware of where Requests for Proposals (RFPs) will be communicated with relevant information.

Subp. 2 has been repealed. Since most correspondence is no longer on paper but is completed electronically and electronic documentation changes rapidly, lists become out of date much faster. Existing language has been repealed so that the *State Register* will be the official notice location for financial assistance availability. The *State Register* will continue to be a consistent source for notice on CWP financial assistance, although other electronic sources will also be available. It is reasonable to repeal this language to ensure clarity and consistency in obtaining notice of financial availability.

Subp. 3. Financial assistance proposal periods. This subpart has been modified to reflect an Agency change to the submittal of “proposals” rather than “applications”, as previously discussed under subp. 1 of section XVII.B.4. This subpart is also amended to simplify the subpart by deleting the unnecessary reference to periods being established from time to time. If funds are available, the commissioner may still establish proposal periods more frequently than annually. The deletion does not affect any change as a practical matter and is reasonable to clarify that the proposal period is at least one proposal period

per year if funds are available. It is reasonable to make these revisions to remove unnecessary language.

6. Part 7076.0150 FINANCIAL ASSISTANCE PROPOSAL.

This part establishes requirements relevant to financial assistance proposals. The word “application” has been replaced with “proposal” for the reasons described below.

Subp. 1. General requirements. This subpart has been modified to reflect an Agency change to the submittal of “proposals” rather than “applications” as discussed under subp. 1 of section XVII.B.4. In addition, “the local unit of government that will be” is deleted since this is redundant per part 7076.0110, subp. 20, which defines the project sponsor as a local unit of government. This subpart has also been amended to simplify language regarding its proposal being on an Agency form. There is no substantive change from its previous language in this subpart regarding the form as the new language clarifies that the form is consistent with the requirements in part 7076.0150, subp. 2. This will also minimize the proposal review time by the Agency and assist the proposers with submitting a complete and accurate proposal. Revisions also remove the reference to submittal in a timely fashion, since proposal deadlines are clearly defined in part 7076.0140, subp. 1. It is reasonable to make these changes to streamline the rule and to ensure proposers and program administrators are clear on the proposal requirements.

Subp. 2. Proposal requirements. This subpart has been revised to delete all references to a specific project type which was deleted in Minn. Stat. §§ 103F.701-103F.765 by [Laws 2011, chapter 107, sections 53 through 64, and 108](#). This will provide the MPCA with more flexibility in funding different types of projects.

Item A is changed to delete “the local unit of government that will be” since this is redundant per part 7076.0110, subp. 20, which defines the project sponsor as a local unit of government. This revision reflects an Agency change to the submittal of “proposals” rather than “applications,” for reasons previously discussed under subp. 1 of section XVII.B.4. It also clarifies that the proposal may be for a loan as well as for a grant. These changes are reasonable to eliminate redundancy and to make the grant and loan programs more consistent with one another.

Item B is changed from “documentation” to “statement” to simplify the information needed by the project sponsor from the consulted parties. The change is reasonable to meet simplification goals. This item is also changed to reflect an Agency change to the submittal of “proposals” rather than “applications,” for reasons previously discussed under subp. 1 of section XVII.B.4.

Item C is changed to delete the reference to a specific project type which was repealed in Minn. Stat. §§ 103F.701-103F.765 by [Laws 2011, chapter 107, sections 53 through 64, and 108](#).

Item D is existing language that is deleted to reduce the proposal paperwork, streamline the proposal process and allow the project sponsor more flexibility in developing local support for the project. Accordingly, the subsequent item is renumbered. The language regarding project budget added under item D is not new but has been moved from deleted item G(6) to place the project cost information together in one place. Information on loan funding is also requested to provide a more complete picture of proposed project costs.

Renumbered item E is an existing requirement that remains unchanged.

Old items G and H are deleted and the requirements in old item G (1, 3-5) and H become the new items F to J of this subpart. Old item G (2) was deleted to streamline the process.

New item K contains the requirements previously located in the now repealed subp. 3. The proposal information is still necessary for MPCA review of a project loan request.

It is reasonable to make these changes to make the information needed for a loan proposal as close as possible to that needed for a grant proposal and eliminate the redundancy that previously existed when the rules address different types of projects.

Subp. 3 is repealed, due to the deletion of specific project types in Minn. Stat. §§ 103F.701-103F.765 by [Laws 2011, chapter 107, sections 53 through 64, and 108](#). It is reasonable to repeal this language to remain consistent with the statute and to accommodate the formatting discussed under new item K.

7. Part 7076.0160 REJECTION OF FINANCIAL ASSISTANCE PROPOSAL.

This part establishes administrative steps for the rejection of a financial assistance proposal. The word “application” has been replaced with “proposal” for the reasons described below.

Subp. 1. Grounds. This subpart has been changed to reflect an Agency change to the submittal of “proposals” rather than “applications”, as previously discussed under subp. 1 of section XVII.B.4.

Item A has been changed to reflect an Agency change to the submittal of “proposals” rather than “applications”, for the reasons previously discussed under subp. 1 of section XVII.B.4.

Item B remains unchanged.

Items C and D are modified for formatting purposes and grammatical purposes. It is reasonable to make these changes to ensure information is clearly laid out.

Item E has been added to allow the MPCA to consider prior grant compliance as a requirement for current grant funding. It is reasonable to consider prior grant compliance as a requirement for current grant funding because providing new funding to a project sponsor that has been unable to complete previous project work plan and administrative requirements is counterproductive to effective project management of nonpoint source pollution on local waters of concern.

Item F has been added to clarify that a proposal which does not include all the requirements outlined in the rule and the request for proposals will be rejected for further consideration. It is reasonable to make this change because a complete proposal allows the Agency to continue the review process without guessing the project sponsor’s intent for the project or requesting further information from a project sponsor, thus delaying the review process for all proposers.

Subp. 2. Procedure. This subpart is changed to reflect an Agency shift to the submittal of “proposals” rather than “applications”, as previously discussed under subp. 1 of section XVII.B.4. In addition, this

subpart clarifies that the reasons for proposal rejection are as provided in subp. 1. It is reasonable to make these changes so that a rejected proposer may be informed of the reason(s) why the proposal cannot continue in the review process.

Subp. 3. Effect of rejection. This subpart is changed to reflect an Agency change to the submittal of “proposals” rather than “applications,” for the reasons previously discussed under subp. 1 of section XVII.B.4. This subpart also changes the verb from “must” to “may” to clarify that the intent of the previous language was simply to allow the proposer to reapply to be considered for a future project. This is no change, as a practical matter, from the previous rule and is therefore reasonable.

8. Part 7076.0170 PROJECT RANKING.

This part outlines how project rankings are determined.

Subp. 1. Process of ranking. This subpart is changed to reflect an Agency change to the submittal of “proposals” rather than “applications,” as previously discussed under subp. 1 of section XVII.B.4. The reference to subp. 3 has been deleted and is reasonable since subp. 3 is being repealed and the reference is no longer necessary. This subpart has also been revised to delete a reference to a specific project type which was deleted in Minn. Stat. §§ 103F.701-103F.765 by [Laws 2011, chapter 107, sections 53 through 64, and 108](#). It is reasonable to amend this language to ensure consistency with the statute.

Subp. 2. Priority points for project proposals. This subpart title is amended to delete a reference to a specific project type which was deleted in Minn. Stat. §§ 103F.701-103F.765 by [Laws 2011, chapter 107, sections 53 through 64, and 108](#). The reference to the project coordination team here and in subsequent sections of the rule has been deleted, since the requirement for the commissioner to establish the project coordination team no longer exists following the repeal of Minn. Stat. § 103F.761. It is reasonable to amend this language to ensure consistency with the statute.

Item A is existing language previously contained in the introductory paragraph for subpart 2 and is now somewhat modified. The information is now numbered A. “Following” was deleted and “in item B” was added to clarify the place where the criteria for project ranking may be found. This item is also modified to reflect an Agency change to the submittal of “proposals” rather than “applications” as discussed under subp. 1 of section XVII.B.4. The word “each” has been exchanged for “the” to emphasize the necessity by a proposal to satisfy every ranking criteria. “Five” as a reference to criteria is deleted, since the number of criteria have been reduced. It is reasonable to make these changes for the sake of clarity and statutory consistency.

Renumbered item B is modified to reflect an Agency change to the submittal of “proposals” rather than “applications,” as previously discussed under subp. 1 of section XVII.B.4. With the deletion of “types of projects” and “the project coordination team” in Minn. Stat. §§ 103F.701-103F.765 made by [Laws 2011, chapter 107, sections 53 through 64, and 108](#), the four different criteria that were used separately by the MPCA and the project coordination team for resource investigation and implementation projects have been revised and consolidated in the four sub-items of this item for the sake of clarity and simplicity. Some of the previous criteria were deleted because they were not as significant or helpful in the process ranking as was initially thought when the rule was originally developed. “Agency” has been deleted and “project proposals” has been added to clarify what is the focus for project ranking. It is reasonable to

make these changes for consistency with the statute and to ensure proposers and the Agency are aware of requirements.

Parts of subitems (1) and (2) have been interchanged with one another and simplified or clarified.

Subitem (1) is revised to better focus a proposal on the identification of water quality concerns, goals and objectives. These concepts were previously stated in subitem (2) as preliminary goals and objectives and the perceived water quality problem or threat. It is reasonable to continue use of these concepts in a less tentative way to assist the proposer in analyzing the water quality issues and other outcomes that are sought.

Subitem (2) is revised to emphasize the extent of cooperation and involvement from those in the local project area, including local stakeholders as provided in the amendment to Minn. Stat. § 103F.735, subd. 2. The concepts of the proposal needing to demonstrate broad local support as an indicator of success was previously stated in subitem (1). It is reasonable to amend the language for consistency with the statutory change and to better explain the entities that are to provide the participation, coordination and cooperation.

Subitem (3) is revised to focus on the cost benefit of the proposed project activities. It is reasonable to amend the language to ensure that funds are allocated to cost effective projects.

Subitem (4) is revised to illuminate the benefits of the project in meeting language added in Minn. Stat. §§ 103F.701-103F.765 by [Laws 2011, chapter 107, sections 53 through 64, and 108](#). It is reasonable to amend the language to be consistent with the revised statute.

Subitem(5) is deleted, since its language is now duplicative of subitem (4). It is reasonable to delete this subitem as it is no longer necessary.

Old item B was deleted because the project coordination team was deleted in Minn. Stat. § 103F.761 by [Laws 2011, chapter 107, sections 53 through 64, and 108](#). The deletion is reasonable to obtain consistency with the statutory change.

Subp. 3 is repealed. This subpart is repealed since the specific project type of this section was deleted in Minn. Stat. §§ 103F.701-103F.765 by [Laws 2011, chapter 107, sections 53 through 64, and 108](#). It is reasonable to repeal this subpart to be consistent with the statutory change.

Subp. 4 is repealed. This subpart is repealed since the project coordination team provision of Minn. Stat. § 103F.761 was repealed by [Laws 2011, chapter 107, sections 53 through 64, and 108](#). It is reasonable to amend the language to be consistent with the statutory change.

9. Part 7076.0180 ALLOCATION OF FUNDING.

This part establishes requirements specific to funding allocations.

Subp. 1 is repealed. When continuation implementation projects were originally envisioned it was thought that nonpoint source water pollution could be abated in a short amount of time. Better science in the last twenty years makes it clear that it will take much longer to mitigate pollution and bring water bodies up to water quality standards than was previously thought. The MPCA has eliminated the non-competitive continuation projects and funding in order to better reflect Agency objectives, to have a larger impact on nonpoint source pollution, to eliminate continuation grant funding for longer periods of time than was anticipated or necessary and to increase the availability of competitive funding for a greater variety of project types. Proposals may still be submitted to continue implementation activities of a previous project, but they will now be subject to the competitive proposal process. It is reasonable to make this change in order to provide more competitive funding to nonpoint source projects.

Subp. 2. Grant fund allocation. This subpart is changed from 90 to 60 days to reflect the Agency mission to more quickly make a decision on the allocation of funds than in the past. Setting aside funds for continuation is deleted due to the elimination of non-competitive continuation implementations as discussed in the previous paragraph. References to specific types of projects are deleted in Minn. Stat. §§ 103F.701-103F.765 by [Laws 2011, chapter 107, sections 53 through 64, and 108](#). It is reasonable to make these changes in order to streamline the process for project grant funding and to be consistent with revised statutory language.

Subp. 3 is repealed. This subpart is repealed due to the deletion of this specific type of project in Minn. Stat. §§ 103F.701-103F.765 by [Laws 2011, chapter 107, sections 53 through 64, and 108](#). It is reasonable to remove this language to be consistent with the revised statute.

Subp. 4 Loan fund allocation. This subpart is changed from 90 to 60 days to reflect the Agency mission to more quickly make a decision on the allocation of funds than in the past. Setting aside funds for continuation is deleted due to the elimination of non-competitive continuation implementations. References to specific types of projects are deleted in Minn. Stat. §§ 103F.701-103F.765 by [Laws 2011, chapter 107, sections 53 through 64, and 108](#). It is reasonable to make these changes to streamline the process for project loan funding, to update language, to remain consistent with the revised statute and to better align both grant and loan funds with Agency watershed objectives.

10. Part 7076.0190 SELECTION OF PROJECTS FOR AWARD.

This part establishes requirements for the selection of a project award.

Subp. 1. Ranking. This subpart is changed to reflect an Agency change to the submittal of “proposals” rather than “applications”, for the reasons previously discussed under subp. 1 of section XVII.B.4. Completion of project ranking is changed from 90 to 60 days to reflect the Agency mission to more quickly make a decision on project awards than in the past. References to specific types of projects are deleted in Minn. Stat. §§ 103F.701-103F.765 by [Laws 2011, chapter 107, sections 53 through 64, and 108](#). It is reasonable to make these changes to streamline requirements and to remain consistent with the revised statute.

Subp. 2. Projects funded. References to specific types of projects are deleted in Minn. Stat. §§ 103F.701-103F.765 by [Laws 2011, chapter 107, sections 53 through 64, and 108](#). This subpart is changed to reflect an Agency change to the submittal of “proposals” rather than “applications”, as previously discussed under subp. 1 of section XVII.B.4. This subpart deletes “less than” and adds “or less” to better

reflect the minimum points needed for award consideration. It is reasonable to make these changes to clarify requirements for project sponsors and other stakeholders.

Subp. 3. Agency decision. This subpart is changed to clarify that the final award decision is made by the commissioner, who became chair of the board by amendment to Minn. Stat. §116.02, subd. 4, and is authorized to make this type of decision without board decision. When the rules were originally adopted the Agency board had the authority to approve grant awards. It is reasonable to make this change to reflect current law.

Subp. 4. Timing. This subpart is amended to require the completion of project ranking from 90 to 60 days in order to better reflect the Agency mission which is to more quickly make decisions on project awards. This subpart is also changed to reflect an Agency change to the submittal of “proposals” rather than “applications”, for the reasons previously discussed. “Justification” was deleted and “explanation” added. Based on the Agency’s experience in administering the program, proposers seek an explanation of the priority ranking to help them improve future submittals. It is reasonable to replace “justification” with “explanation” because it is a more appropriate term based on agency experience of what proposers actually seek from the Agency. It is reasonable to make these changes to streamline the process for project funding, to provide language clarity, and to better align both grant and loan funds with Agency watershed objectives.

Subp. 5. Reapplication. This subpart is changed to reflect an Agency change to the submittal of “proposals” rather than “applications,” as previously discussed under subp. 1 of section XVII.B.4. This subpart also changes the verb from “must” to “may” to clarify that the intent of the previous language was simply to allow the proposer to reapply to be considered for a future project. This is not a change, as a practical matter, from the previous rule and is therefore reasonable.

11. Part 7076.0200 CONTINUATION OF PROJECT IMPLEMENTATION.

This part is repealed. When continuations of implementation projects were originally envisioned it was thought that nonpoint source water pollution could be abated in a short amount of time. Better science in the last twenty years makes it clear that it will take much longer to mitigate pollution and bring water bodies up to water quality standards than was previously thought. The MPCA has eliminated the non-competitive continuation project and funding to better reflect Agency objectives, to eliminate the use of continuation grants funds for longer periods of time and to increase the availability of more competitive funding for a greater variety of project types. Proposals may still be submitted for continuation of implementation activities, but they will now be subject to the competitive proposal process. It is reasonable to make this change to streamline and improve the grant and loan funding process so that funds are provided to the highest ranking projects.

12. Part 7076.0210 GRANT CONDITIONS.

This part establishes conditions for grant funding.

Subp. 1. Amount. This subpart is changed to delete references to specific types of projects which were deleted in Minn. Stat. §§ 103F.701-103F.765 by [Laws 2011, chapter 107, sections 53 through 64, and 108](#). This subpart is also changed to reflect an Agency change to the submittal of “proposals” rather than “applications,” for the reasons previously discussed. It is reasonable to make this change to remain consistent with the revised statute and to update language.

Subp. 2 was previously repealed and no further changes are contemplated.

Subp. 3. Grant contract. This subpart is changed to delete references to specific project types which were deleted in Minn. Stat. §§ 103F.701-103F.765 by [Laws 2011, chapter 107, sections 53 through 64, and 108](#). This subpart has also been modified to delete reference to project continuation which is deleted in previous sections. It is reasonable to make this change to remain consistent with the revised statute and to reflect the repeal of part 7076.0200. This part is also amended to indicate the project period as defined in 7076.0110, subp. 19c is encompassed within the grant contract. It is reasonable to make this change to indicate the time constraints of the grant contract.

Items A to E are existing items and remain unchanged.

Subp. 4. Records. Subpart 4 has been revised to change the retention of project records from three to six years. It is reasonable to make this change to comply with Minn. Stat. § 16B.98, subd. 8. This subpart has also been modified to require that records relating to the installation, operation, and maintenance of Best Management Practices shall be maintained for three years beyond the design or useful life of the practice. This is needed to verify that all installed Best Management Practices were appropriately installed and maintained during their useful life so that they may have the maximum impact on water quality improvement. It is reasonable to make this change to verify effective water quality improvement in a project.

Subp. 5. Audit. This subpart amendment deletes the commissioner's designee which is redundant due to proposed revisions to part 7076.0110 subp. 4. It is reasonable to make this change for consistency throughout the revised rule.

Subps. 6 to 9 are existing provisions that remain unchanged.

Subp. 10 Eligible Costs. This subpart has been modified to clarify the project period of the grant contract and to indicate that no eligible project costs may be expended prior to or succeeding the project period defined in the grant contract. It is reasonable to make this change for clarity for the time frame of eligible project costs.

13. Part 7076.0215 LOAN CONDITIONS.

This part establishes the conditions for loans with regard to the amount, interest rate, repayment, loan contract, records, audit, and eligible costs.

Subp. 1. Amount. This subpart is changed to delete reference to a specific type of project which was deleted in Minn. Stat. §§ 103F.701-103F.765 by [Laws 2011, chapter 107, sections 53 through 64, and 108](#). This subpart is also changed to reflect an Agency change to the submittal of "proposals" rather than "applications", as previously discussed under subp. 1 of section XVII.B.4. It is reasonable to make these changes to remain consistent with the revised statute and to update language.

Subp. 2. Interest rate. This subpart is changed to delete reference to a specific type of project which was deleted in Minn. Stat. §§ 103F.701-103F.765 by [Laws 2011, chapter 107, sections 53 through 64, and 108](#). It is reasonable to make this change to remain consistent with the revised statute.

Subp. 3 is existing language and remains unchanged.

Subp. 4. Repayment. This subpart is modified by deleting “implementation” to delete reference to a specific type of project which was deleted in Minn. Stat. §§ 103F.701-103F.765 by [Laws 2011, chapter 107, sections 53 through 64, and 108](#). It is reasonable to make these changes to remain consistent with the revised statute.

Subp. 5. Loan contract. This subpart is existing language and is amended to indicate the project period as defined in 7076.0110, subp. 19c is encompassed within the loan contract. It is reasonable to make this change to indicate the time constraints of the loan contract and to be consistent between grant and loan contracts. This subpart is also amended as indicated below.

Item A is existing language and remains unchanged.

Item B is changed to delete reference to a specific type of project which was deleted in Minn. Stat. §§ 103F.701-103F.765 by [Laws 2011, chapter 107, sections 53 through 64, and 108](#). It is reasonable to make this change to remain consistent with the revised statute.

Items C to E are existing language and remain unchanged.

Item F is changed from “format” to “form” to better specify that the information and content for the progress reports and final report will meet the Agency’s requirements. As a practical matter, there is no change anticipated due to this wording change from what the project sponsor has been required to report. It is reasonable to make this change to clarify language.

Items G to I are existing language and remain unchanged.

Subp. 6. Records. This subpart is modified to change records retention from three to six years to be consistent with the records retention requirement for grant contracts under Minn. Stat. §16B.98, subd. 8. “Best Management Practices” is a language change added to better reference what has a design or useful life. It is reasonable to make these changes to remain consistent with State statutes and to clarify language. This subpart has also been modified to require that records relating to the installation, operation, and maintenance of Best Management Practices shall be maintained for three years beyond the design or useful life of the practice. This is needed to verify that all installed Best Management Practices were appropriately installed and maintained during their useful life so that they may have the maximum impact on water quality improvement. It is reasonable to make this change to verify effective water quality improvement in a project.

Subp. 7. Audit. This subpart is amended to revise references to sections in the Single Audit Act of 1984 to more accurately reflect the exact sections relevant to this subpart. This subpart is also modified by deleting references to the commissioner’s designee which is redundant due to part 7076.0110, subp. 4. It is reasonable to make these changes to enhance accuracy and eliminate redundancy.

Subp. 8. Eligible costs. This subpart is amended by deleting “implementation”. This change deletes reference to a specific type of project deleted in Minn. Stat. §§ 103F.701-103F.765 by [Laws 2011, chapter 107, sections 53 through 64, and 108](#) and is revised to clarify the time period for the loan eligible costs. It is reasonable to make this change to remain consistent with the revised statute and to clarify language.

14. Part 7076.0225 WORK PLAN AND REPORTS FOR PROJECT GRANTS AND LOANS.

This part establishes that a work plan is required and outlines relevant requirements and applicable reports for grants and loans. This part consolidates and simplifies requirements for work plans and reports which were previously found in repealed parts. This part has been renamed to make it more descriptive of its contents. It is reasonable to make this change for clarity.

Subp. 1 is repealed. This language is repealed and provisions of this subpart will be incorporated into new subpart 2. It is reasonable to repeal this subpart to consolidate requirements.

Subp. 1a. Work plan. This new subpart establishes that the project sponsor, in cooperation with the Agency, must prepare a work plan after the grant is awarded. It also requires that the work plan be submitted on a form prescribed by the commissioner. The work plan must be approved by the commissioner. These are largely existing requirements that have been relocated to this subpart from part 7060.0230, subps. 1 and 2 to aid the Agency and the proposer as to what must be contained in the work plan. The MPCA finds it necessary to add the requirement to using an Agency prescribed form to ensure consistency in how the information is submitted. This will greatly aid the Agency in reviewing a work plan and simplify the process for how to submit the information by the proposer. The necessity for a complete project work plan that outlines the project tasks to be accomplished and specific, measurable ways to define and review the success of the project is critical to its success. Inclusion of measurable outcomes is required by the amendment to Minn. Stat. § 103F.745, subd. (a)(7). This subpart has fewer requirements than repealed part 7076.0230, allowing greater simplicity, flexibility and creativity on the part of the project sponsor in developing a process for completion of the work plan tasks and meeting the work plan goals and objectives. This subpart also develops factors to be used in evaluating the effectiveness of Best Management Practices for project implementation.

Item A is added and is taken in its entirety from item A of repealed part 7076.0270, except that "would" is changed to "will," because this is still an appropriate consideration necessary for the development of a successful work plan.

Item B is added and is taken in its entirety from item B of repealed part 7076.0270, except that "would" is changed to "will", because this is still an appropriate consideration necessary for the development of a successful work plan.

Item C is added and is taken in its entirety from item C of repealed part 7076.0270 because this is still an appropriate consideration necessary for the development of a successful work plan.

Item D is added and is taken in its entirety from item D of repealed part 7076.0270 because this is still an appropriate consideration necessary for the development of a successful work plan.

Item E is added and is taken in its entirety from item E of repealed part 7076.0270 because this is still an appropriate consideration necessary for the development of a successful work plan.

Item F is added and is taken in its entirety from item F of repealed part 7076.0270 because this is still an appropriate consideration necessary for the development of a successful work plan.

It is reasonable to make the above changes in order to streamline and clarify the work plan contents and will be consistent with the revised statute.

Subp. 2. Semiannual progress report. The title of this subpart is changed from “update” to “progress report” to better reflect the intent for the project to move forward based on progress in meeting the work plan objectives. The submittal of a semiannual project update is deleted and the submittal of a progress report every six months by a specific date, on a form provided by the Agency, is added to better clarify the need for reporting of six-month progress on a project. Repealed subp. 1 (annual progress report) and old subp. 2 (semiannual update) were confusing to project sponsors on what information was required and when the information was required in order to document project progress. It is reasonable to make these changes to clarify reporting requirements.

Subp. 3 is repealed. The subpart is repealed since the relevant work plan information is now relocated to proposed subp. 1a. It is reasonable to repeal the language to accommodate changes, to clarify requirements and to better organize information.

Subp. 3a. Project review and budget adjustment. This subpart is added and is taken from repealed part 7076.0280, subp. 3, to which has been added a purpose of verifying that the terms of the grant or loan contract are being met. The Agency believes that there is a continuing need to assess a project's progress on work plan implementation and project expenditures part way through the project and to develop, in cooperation with the project sponsor, any project revisions necessary for the successful completion of a project. It is reasonable to make these changes so that a successful project completion is ensured.

Subp. 4 is repealed. This language is repealed due to the reference to a specific type of project which was deleted in Minn. Stat. §§ 103F.701-103F.765 by [Laws 2011, chapter 107, sections 53 through 64, and 108](#). It is reasonable to make this change to remain consistent with the revised statute.

Subp. 5. Project final report. Amendments delete the word “implementation” in the title and the first sentence, due to the reference to a specific type of project which was deleted in Minn. Stat. §§ 103F.701-103F.765 by [Laws 2011, chapter 107, sections 53 through 64, and 108](#). The amendments also add “a form prescribed by the commissioner” as a requirement. The Agency anticipates that requiring an Agency prescribed form will minimize the amount of review for the report and ensure the successful completion of a final report. This subpart also details the minimum requirements for a final report and process for review and approval of the final report and possible ramifications for inappropriate use of the funds.

Items A to H have been deleted, either because their contents have been moved to subpart 5 above and will be clearly defined as work activities in the work plan for successful project completion or are no longer needed. The Agency expects that “a form prescribed by the commissioner” will provide all the necessary steps for a final report in the future.

It is reasonable to make these changes in order to remain consistent with the revised statute, to streamline the reporting process and to clarify language for a successful final report.

15. Part 7076.0230. WORK PLAN

Part 7076.0230 is an existing provision that has been repealed. Relevant information has been relocated and is more fully discussed in those areas. Some language has become part of part 7076.0225, subpart 1a, in order to remove cumbersome and no longer relevant work plan details and to simplify the work plan process for the project sponsors and Agency reviewers, as well as to consolidate all grant reporting requirements into one section. It is reasonable to repeal this part to better organize relevant information.

16. Part 7076.0240. DIAGNOSTIC STUDY

Part 7076.0240 is an existing provision that has been repealed because this type of project was deleted in Minn. Stat. §§ 103F.701-103F.765 by [Laws 2011, chapter 107, sections 53 through 64, and 108](#). It is reasonable to repeal this part to remain consistent with the statute revision.

17. Part 7076.0250. IMPLEMENTATION PLAN

Part 7076.0250 is an existing provision that has been repealed because this type of project was deleted in Minn. Stat. §§ 103F.701-103F.765 by [Laws 2011, chapter 107, sections 53 through 64, and 108](#). It is reasonable to repeal this part to remain consistent with the statute revision.

18. Part 7076.0260. DIAGNOSTIC STUDY AND IMPLEMENTATION PLAN APPROVAL

Part 7076.0260 is an existing provision that has been repealed because this type of project was deleted by [Laws 2011, chapter 107, sections 53 through 64, and 108](#). It is reasonable to repeal this part to remain consistent with the statute revision.

19. Part 7076.0270. BEST MANAGEMENT PRACTICE EVALUATION

Part 7076.0270 is an existing provision that has been repealed and this information moved to proposed part 7076.0225, subpart 1a, items A to F, in order to better align the Best Management Practice evaluation with the development of the project work plan. It is reasonable to repeal this part to better organize and more clearly communicate relevant requirements.

20. Part 7076.0280 GRANT PAYMENTS.

This part establishes how grant payments will be made.

Subp. 1. Initial payment. This subpart contains existing provisions that are amended to clarify that the Agency commissioner has the authority to sign the grant contract. In addition, this subpart clarifies that the initial grant payment is made based on the availability of grant funds. The language is also amended to provide an initial advance payment to a project sponsor. Many small local units of government have very tight budgets and may not be able to wait for initial reimbursement payments of project funds. The 25% advance will provide necessary start-up money that will help a project to begin smoothly without the concern of how to pay for early project work. The language is also amended to reflect that, once those funds are spent, an accounting of those funds shall be provided to the commissioner for review so that the MPCA can ensure fiscal accountability for those funds. It is reasonable to make these changes

to ensure that the Agency and participating parties are aware of the conditions for the initial grant payment and that the funds are properly used.

Subp. 2 is an existing provision that is repealed as part of this rulemaking because the Agency, as per Minnesota Department of Administration, Office of Grants Management, Operating Policy and Procedure, Number 08-08, Grant Payments, is determined to change the payment process to provide for an initial advance payment and subsequent reimbursement payments. It is reasonable to repeal this provision to ensure better and more frequent accountability for the project grant funds and follow the commissioner of administration's policy.

Subp. 3 is an existing provision that is repealed. Relevant information is relocated to part 7076.0225, subp. 3a, to consolidate all project reporting requirements into one area. This activity is still an important element for the project review process, but no longer causes a grant payment to be generated. It is reasonable to repeal this provision to better organize and communicate information to proposers and persons administering the CWP grant program.

Subp. 4 is an existing provision that is repealed as part of this rulemaking because the Agency, as per Minnesota Department of Administration, Office of Grants Management, Operating Policy and Procedure, Number 08-08, Grant Payments, is determined to change the payment process to provide for an initial advance payment and subsequent reimbursement payments. It is reasonable to repeal this provision to ensure better and more frequent accountability for the project grant funds and follow the commissioner of administration's policy.

Subp. 5 is an existing provision that is repealed as part of this rulemaking because the Agency, as per Minnesota Department of Administration, Office of Grants Management, Operating Policy and Procedure, Number 08-08, Grant Payments, is determined to change the payment process to provide for an initial advance payment and subsequent reimbursement payments. Grant amendments may still occur according to part 7076.0210, subp. 3, but increasing a payment because of the increase to a grant is no longer necessary because of the change to payment reimbursement for expenses. It is reasonable to repeal this provision to ensure compliance with Minnesota Department of Administration policies and to provide clear communication to project sponsors about requirements necessary for the disbursement of grant funds.

Subp. 5a. Reimbursement payments: This subpart is a new provision that establishes that the Agency will, as per Minnesota Department of Administration, Office of Grants Management, Operating Policy and Procedure, Number 08-08, Grant Payments, provide for an initial advance payment and subsequent reimbursement payments by means of an itemized invoice for work actually performed, in a form prescribed by the commissioner. It is reasonable to amend this provision to ensure compliance with Minnesota Department of Administration policies and to provide clear communication to project sponsors about requirements necessary for the disbursement of grant funds.

Subp. 6. Final payment. This subpart is an existing provision that has been modified and clarified to allow more than ten percent of the project grant to be withheld if the project proposer does not expect to use the full grant amount for activities based on the project review report in part 7076.0225, subpart 3a, above. The previous language did not specify a time when this determination was to be made. In addition, a withholding of ten percent equal to or exceeding the grant contract is deleted, since it is redundant of the first sentence of this subpart and deemed unnecessary to meet administrative requirements. It is reasonable to amend the existing language to ensure that the Agency and

participating parties understand the conditions of final grant payment, clarify a condition for withholding more than ten percent of the grant contract amount, and eliminate redundancy.

Subp. 7 was previously repealed and no further changes are contemplated.

21. Part 7076.0285 LOAN PAYMENTS.

This part establishes how loan payments will be made.

Subp. 1. Payments. This is an existing subpart that has been amended. The sentence concerning no funds for costs incurred prior to the loan contract execution is deleted since it is redundant and was clearly stated in part 7076.0210, subp. 10. The word “format” is changed to “form” and “acceptable to” is changed to “prescribed by,” since the Agency has developed a standard form and requires all loan sponsors to use this form in requesting reimbursement. It is reasonable to modify the language to ensure the Agency and participating parties understand the requirements for loan payments and that redundancy is eliminated.

Subp. 2 is an existing provision that has been repealed because this reporting requirement has been moved to part 7076.0225, subp. 3a, in order to consolidate all project reporting requirements into one area. It is reasonable to repeal the language which would be duplicative if retained.

Subp. 3 is an existing provision that has been repealed because this reporting requirement has been moved to part 7076.0225, subp. 5, in order to consolidate all project reporting requirements into one area. It is reasonable to repeal the language since it would be duplicative if retained.

22. Part 7076.0290 RESCISSION OF FINANCIAL ASSISTANCE

This part establishes Agency ability to rescind or seek repayment of a financial assistance award and is unchanged.

23. Part 7077.0117 POINTS FOR PROJECTS WITH EXISTING NPDES OR SDS PERMIT. PART 7077.0118 PRIORITY POINTS FOR PROJECTS IN UNSEWERED AREAS. PART 7077.0119 POINTS FOR STORMWATER PROJECTS.

Chapter 7077 provides for the administration of financial assistance programs for the construction of municipal wastewater and stormwater treatment systems. Part 7077.0115 requires the commissioner to develop and maintain a project priority list for municipalities that have a need for a new wastewater treatment system, improvement, rehabilitation, expansion, or replacement of an existing wastewater treatment system, or a stormwater treatment system. Requirements relevant to points and listing order, requesting for placement on list, eligibility review, recalculation of total points, and removal from project priority list are established. Part 7077.0116 establishes requirements for priority points for types of projects under parts 7077.0117 (projects with NPDES or SDS permits), 7077.0118 (projects in unsewered areas), and 7077.0119 (storm water projects). Under existing language, these requirements reference parts 7076.0240 and 7076.0260. The remaining subparts and items remain unchanged and need not be discussed.

Parts 7077.0117, subp. 14, 7077.0118, subp. 15, item A, and 7077.0119, subp. 18, item A, contain language regarding a clean water partnership phase I diagnostic study under part 7076.0240, where the corrective actions are set forth in an implementation plan approved under part 7076.0260.

While the diagnostic study and implementation plan requirements are repealed with this rule proposal per *Laws 2011, chapter 107, sections 53 through 64, and 108*, there is still a need to administer financial assistance to projects with existing NPDES or SDS permits, projects in unsewered areas, and stormwater projects. Since the criteria used were diagnostic studies and implementation plans, which are now repealed, it is reasonable to modify language. Since the Chapter 7077 program chooses to utilize CWP criteria for ranking of priority projects, it is reasonable to remove references to diagnostic studies and implementation for consistency with CWP rule changes.

Note that while the Request for Comments did not specifically list Chapter 7077 as an area of possible amendments, the notice stated changes would be made *“to address recent changes to Minnesota §§ 103F.701 – 103F.761 as provided by 2011 Minnesota Laws, chapter 107, sections 53-62, 107, and 108.”* The notice further stated that changes *“may include housekeeping changes to address obsolete requirements...as well as other changes necessary to streamline and update existing requirements.”* The MPCA considers changes to chapter 7077 as housekeeping changes that are the logical outgrowth of revisions to chapter 7076 since they address revisions that are simply the result of proposed amendments to 7076 and minor edits to incorporate those changes into parts 7077.0117, 7077.0118, and 7077.0119.

VIII. LIST OF AUTHORS, WITNESSES AND EXHIBITS

A. Authors

Peter Fastner, Watershed Division, Minnesota Pollution Control Agency.

B. Witnesses

The MPCA anticipates that the proposed amendments will be non-controversial, and that no public hearing will be necessary. If these rules go to a public hearing, the MPCA anticipates having the following witnesses testify in support of the need for and reasonableness of the rules:

1. Mr. Peter Fastner, Watershed Division. Mr. Fastner is the primary author of the SONAR and will testify on the general need and reasonableness of the proposed rules.
2. Mr. Douglas Wetzstein, Watershed Division. Mr. Wetzstein is the Section Manager of the Watershed Section and will testify on the general need and reasonableness of the proposed rules.
3. Yolanda Letnes, Municipal Division. Ms. Letnes is the Rule Coordinator and will testify on issues related to the Minnesota Administrative Procedures Act.

XIV. CONCLUSION

Based on the foregoing, the proposed rules are both needed and reasonable.

Signed by John Linc Stine, Minnesota Pollution Control Agency Commissioner, on September 21, 2012

Attachments

- Attachment A. [Laws 2011, chapter 107, sections 53 through 64, and 108](#)
- Attachment B. [Sections 319 and 320](#)