

STATE OF MINNESOTA
WASTE MANAGEMENT BOARD

In the Matter of the Proposed
Adoption of Rules Relating to
the Solid Waste Processing
Facilities Demonstration Program
6 MCAR §§ 8.401-8.412

STATEMENT OF NEED
AND REASONABLENESS

I. INTRODUCTION

The subject of this rulemaking proceeding is a set of proposed rules governing the award of grants and loans for capital costs of solid waste processing facilities. Pursuant to Minn. Stat. §§ 115A.49 through 115A.54, the Waste Management Board is to encourage and assist cities, counties, and solid waste management districts in the development and implementation of solid waste processing facilities and transfer stations of potential statewide application or significance and to transfer the knowledge and experience gained from such projects to other communities in the state.

The statute requires that the program be administered so as to demonstrate the application of feasible and prudent alternatives to disposal and further specifies several program priorities which must be considered in the review and selection of projects. Minn. Stat. § 115A.49. In addition, applications for assistance under the program must conform to several specific requirements set out in the statute. Minn. Stat. § 115A.51.

The Waste Management Board must provide technical and financial assistance for the acquisition and betterment of waste processing facilities and transfer stations from revenues derived

from the issuance of bonds authorized by section 115A.58. The statute places several limitations on grant and loan awards. Minn. Stat. § 115A.54, subd. 2. In addition, the obligations of grant and loan recipients are as set out in the statute. Minn. Stat. § 115A.54, subd. 3.

As required by Minn. Stat. § 115A.12, the Waste Management Board consulted with the Solid Waste Management Advisory Council on drafts of the proposed rules. In addition, a draft of the proposed rules was distributed by mail to potentially interested parties, including professional and trade associations and state and other government agencies concerned with waste management. Comments received as a result of the draft rule distribution were presented to both the Solid Waste Management Advisory Council and the Waste Management Board.

Notices of Intent to Solicit Outside Opinion concerning this rule were published in the State Register on December 1, 1980 and on September 28, 1981. 5 S.R. 904, December 1, 1980; 6 S.R. 543, September 28, 1981. No written comments were received in response to these Notices.

Rules 6 MCAR §§ 8.401-8.412 identify eligible project costs and eligible projects; specify grant and loan application contents; establish grant and loan application procedures; provide application deadlines; establish project review and evaluation criteria; set limitations on grant and loan awards; and specify the contents of grant and loan agreements.

II. NEED FOR THE PROPOSED RULES

The Waste Management Board is required by Minn. Stat. § 115A.49 to promulgate rules to govern its activities in awarding grants and loans. These rules are thus needed to fulfill this statutory obligation. In addition, the rules are needed to provide a coordinated and logical review and selection process in awarding grants and loans.

III. REASONABLENESS OF THE PROPOSED RULES

6 MCAR 8.401 DEFINITIONS

Most of the terms defined in Section 8.401 are terms frequently used throughout the rules. Definitions are provided for clarity and consistency. These terms include board, chairperson, cities, comprehensive solid waste management plan, disposal, final engineering/architectural plans, funding round, mixed municipal solid waste, on-site utilities, preliminary engineering/architectural plans, processing, recipient, resource recovery, resource recovery facility, solid waste, solid waste management district, transfer station, waste processing equipment and waste processing facility.

A few terms are more substantive in nature. The reasonableness of the definitions of these terms is set forth below.

Section 8.401I. - Institutional Arrangements

In addition to qualifying as a "demonstration" project based on the technology utilized, a project may also qualify if it demonstrates "institutional arrangements" which differ from those previously utilized in the state. Thus, it is important that the term institutional arrangements be clearly defined. The definition properly recognizes a variety of arrangements which could affect the viability of a project and which, if utilized in one project, could demonstrate the usefulness of the project to other communities in the state.

Section 8.401R. - Solid Waste Disposal Facilities and Equipment

Minnesota Statutes § 115A.49 establishes a program to demonstrate alternatives to the disposal of solid waste. Disposal facilities and equipment are, therefore, not eligible for funding. Solid waste disposal facilities and equipment are thus clearly defined so that applicants are able to determine whether a project could be expected to qualify for a grant or loan.

Section 8.401T. - Special Waste Stream

While most resource recovery projects fall within the four generic categories set out in the rules (waste to energy; materials recovery; chemical, physical or biological modifications; or transfer stations), projects to handle unique waste streams may not fall within any of these categories. To ensure that grants or loans could be made available to the widest range of possible projects and to encourage innovation, a special

waste stream category was included. Because this category is broad, a definition is necessary to focus the types of projects for which grant or loan applications may be submitted. The definition and the examples provide the needed focus.

Section 8.401U. - State-wide Application or Significance

Minnesota Statutes § 115A.49 requires that projects must be of "state-wide application or significance" to qualify for a grant or a loan. What constitutes state-wide application or significance is, however, undefined. While a project need not be applicable to the entire state it may still be of state-wide "significance" if it serves as a model for the resolution of solid waste problems in one or more additional communities in the state. Thus, the definition in the rules provides that a project is of state-wide application or significance if it is capable of demonstrating an alternative to disposal in other communities in the state. On a comparative basis though, projects having a wider application are more likely to be funded under the evaluation factors set out in Section 8.409C.6.

6 MCAR 8.402 - PURPOSE

This section cites the statutory authority for the rules and indicates the types of projects that the Board may consider in awarding grants and loans.

6 MCAR 8.403 - ELIGIBILITY CRITERIA

This rule specifies the requirements pertaining to eligible applicants, projects, and costs. It also identifies specific costs which are not eligible for assistance. This rule is necessary to ensure that those persons reviewing the rules will know whether or not they qualify as an eligible applicant; whether or not their project qualifies as an eligible project; and whether or not the costs that would be incurred in implementing the project are eligible costs.

Section 8.403A. - Eligible Applicants

This section reflects the statutory restriction of applicants to cities, counties and solid waste management districts. See Minn. Stat. § 115A.50.

Section 8.403B. - Eligible Projects

This section limits eligible projects to those which demonstrate feasible and prudent alternatives to land disposal as required by Minn. Stat. §§ 115A.49 and 115A.51. Obviously projects which demonstrate a feasible technology not now in operation in Minnesota would qualify under the limitations. However, because of the geographical diversity of the state and the significantly different characteristics of different regions of the state, a project may be in operation in the state but be of uncertain application to other geographic areas of the state. Thus, it is reasonable to fund additional projects of the type already in existence if it can be demonstrated that the proposed

project location has different characteristics relative to the management of wastes than does the area where a facility is currently in existence.

Section 8.403B. also provides that a conceptually and technically feasible project may qualify as a demonstration project if it demonstrates institutional arrangements which have not been previously utilized. Often the most difficult aspect of establishing solid waste resource recovery projects is showing communities that the necessary financing, marketing, procurement, methods of securing of waste supply, and the arrangements between units of government can be accomplished. Thus, projects which are able to demonstrate how these questions can be successfully resolved will likely advance the use of resource recovery facilities in the state in accordance with the policy of the Waste Management Act.

Since Minn. Stat. § 115A.49 requires technology funded under the Act to already be feasible and prudent, it is reasonable to assume that few projects will be necessary in which the purpose of the project is to prove that the technology mechanically works in Minnesota. Rather, most projects will likely demonstrate the "application" of the mechanically proven technology to unique financing, marketing, procurement, waste supply or intergovernmental situations in the state.

Section 8.403C. - Eligible Costs

Minnesota Statutes § 115A.54 limits the eligible costs for waste processing facility grants and loans to capital costs.

Waste processing equipment, structures necessary to house the equipment, associated on-site utilities and final design work are typically considered capital costs and should thus be eligible for grant or loan funding.

Section 8.403D. - Ineligible Costs

Costs associated with the acquisition of land are excluded since Minn. Stat. § 115A.54, subd. 1 states that the funds are provided for the acquisition of "facilities and transfer stations," indicating that land costs were not to be included. Further, with the limited amount of money available, the Board decided that the funds would be better spent on the actual waste processing equipment, structures to house the processing equipment, and transfer stations. Costs relating to structures for housing and maintenance of rolling stock are ineligible since they are not directly related to the resource recovery equipment. Costs relating to resource recovery studies, feasibility analyses or preliminary design and engineering are ineligible because they are not considered to be capital cost items.

6 MCAR 8.404 INFORMATION REQUIRED ON GRANT AND LOAN APPLICATIONS

This rule describes the information that must be provided by the grant and/or loan applicant. In order to conduct a meaningful review and evaluation of each project proposal, the Board must have an adequate level of information about the

applicant and the proposed facility. Much of this information is required by Minn. Stat. §§ 115A.51 and 115A.54. The specific justification for each type of information specified in 6 MCAR 8.404 is as follows.

1. The name(s) of the (each) applicant is necessary to allow the Board to identify and contact the applicant.

2. It is necessary to identify each effected political subdivision so that they may be contacted and a determination of the measure of support for the proposed waste processing facility may be made.

3. These resolutions are necessary to meet the statutory requirements specified in Minn. Stat. §§ 115A.51 and 115A.54, subd. 3.

4. The name(s), qualifications, and address(es) of the project manager(s) is necessary to allow the Board to identify, review the qualifications of, and contact the project manager(s).

5. The name(s) and qualifications of the facility operator(s) is necessary to allow the Board to identify, review the qualifications of, and contact the facility operators. The Board realizes that this information may not be available at the time the application is submitted.

6. The total capital cost of the facility is necessary to meet the statutory requirement specified in Minn. Stat. § 115A.54, subd. 2.

7. The total grant and/or loan eligible cost of the project is necessary because this cost will generally be different from the total capital cost. This cost will be considered by the Board in determining the actual award amounts.

8. The amount of grant and/or loan funding requested is necessary because this amount will generally be different from the total capital cost and also different from the total grant and/or loan eligible amount. In addition, the Board will consider this amount in making actual grant and/or loan awards.

9. The amount and sources of all other funding contributions, including the amount of funds to be contributed by the applicant is necessary to meet the statutory requirement specified in Minn. Stat. § 115A.54, subd. 2.

10. Information on the types of assistance (loan or loan and grant) applied for is necessary because the Board has established additional evaluation factors which will be considered in making grant awards.

11. Information on the type of waste processing facility for which the grant and/or loan is being applied for is necessary because of the project evaluation and selection methodology set out in 6 MCAR § 8.409.

6 MCAR 8.405 DOCUMENTATION REQUIRED TO BE SUBMITTED
WITH THE GRANT AND LOAN APPLICATION

This rule describes the documentation that must be provided by the applicant. This documentation is necessary to meet the

requirements set out in Minn. Stat. § 115A.51. The specific justification for each type of documentation specified in 6 MCAR 8.405 is as follows.

A. A conceptual and technical feasibility report is necessary to meet the statutory requirement specified in Minn. Stat. § 115A.51 that only projects which are conceptually and technically feasible be considered for funding. The review of alternative technologies considered by the applicant is also necessary to comply with Minn. Stat. § 115A.51. The other items required in the feasibility report are of importance in determining whether the project will qualify as a demonstration project.

B. A financial feasibility report is necessary to meet the statutory requirement specified in Minn. Stat. § 115A.51.

C. Adequate planning is an inherent requirement to the development and successful operation of waste processing facilities. In order to provide assurance to the Board that an adequate level of planning has been accomplished, the Board has determined that a comprehensive solid waste management plan conforming to Minn. Stat. § 115A.46 is necessary. The Board is authorized to require the completion of a plan by Minn. Stat. § 115A.51. The plan should include an assessment of all the viable alternatives available to the applicant in solving its solid waste management problems to ensure that a comprehensive review and evaluation has been conducted and to comply with the requirements of Minn. Stat. § 115A.51(d).

D. Preliminary design and engineering plans or specifications for the proposed facility are necessary to provide the Board with adequate information to conduct a project review and evaluation.

E-H. The documentation required in E-H is necessary for the Board to determine whether the requirements of Minn. Stat. § 115A.51(b) and (c) are met.

I. A report on the status of required permits from permitting agencies is necessary to provide the Board with information on the current status of the proposed project. This report may also provide the Board with information on the permitting agencies attitude toward the proposed facility.

J. A report on the proposed facility's development schedule or timeframe is necessary to conduct an adequate review and evaluation of the project and to determine whether funding should be provided at the time the project is being reviewed.

K. The resolutions are required to comply with Minn. Stat. § 115A.54, subd. 3.

L. A report documenting how a project area possesses characteristics different from the characteristics of the area where a facility is now in operation is necessary to determine if the project meets the demonstration requirements of the program.

M. A report which describes the institutional arrangements involved in a proposed waste processing facility is necessary because it may be those institutional arrangements under which the

Board would consider a proposed facility for financial assistance.

N. The Waste Management Act directs the Board to give priority to certain areas which are specified in Minn. Stat. § 115A.49. If an applicant requests priority on the basis of Minn. Stat. § 115A.49 it is necessary to document the existence of these conditions specified in Minn. Stat. § 115A.49 so that the Board may consider the project for priority status when evaluating and selecting projects.

O. The Waste Management Board has established additional factors to be considered in making grant awards. An applicant who is requesting a grant must submit a report which discusses the factor or factors in 6 MCAR 8.410.B. applicable to the project so that the Board is able to decide whether or not to make the grant award.

6 MCAR 8.406 GRANT AND/OR LOAN APPLICATION PROCEDURES

The Waste Management Board's decision to distribute the grant and loan funds over a period of four funding periods was based upon the rationale that not all of the eligible applicants will have had enough time to prepare the required documentation to be submitted with an application by the time the program starts. To allow communities in different stages of developing resource recovery programs an adequate period of time to prepare the required documentation, the Board felt it was necessary to spread the distribution of available funds over several funding rounds.

6 MCAR 8.407 INITIAL REVIEW

This section outlines the procedures that will be followed once an application is received by the Waste Management Board. The section provides a clear understanding of the initial review process. This initial review indicates that applications must be received within defined time periods, and specifies that the applications will be reviewed for eligibility, completeness and adequacy of the required documentation. Review of the application and associated documentation simply involves a determination of whether the statutory requirements and the requirements of these rules are met. Thus, the task is delegated to the chairperson of the Board.

This section also specifies defined time periods for applicants to correct and resubmit applications which have been determined to be incomplete or inadequate. These defined time periods are necessary to allow the Board to complete its review and proceed with the evaluation and selection process in a timely fashion. The section also ensures that applicants will have time to revise their applications to comply with the requirements set out in these rules.

The section further specifies that, as part of the review of the documentation, applications will be reviewed by other agencies so that their evaluations and recommendations will be considered by the Board when determining whether the documentation is adequate. Consultation with other agencies is necessary because

these agencies possess areas of expertise required in evaluating the documentation that may not be available within the Board's staff.

6 MCAR 8.408 PROJECT TYPE EVALUATION

Section 8.408A. - Process of Evaluation

Waste processing facility project applications submitted to the Waste Management Board will be reviewed and evaluated utilizing a two-stage procedure. The procedure will include one stage wherein all projects that have completed the initial review will be compared with projects of similar technology on the basis of technology specific factors. The second stage of the procedure will be to compare the top project in each technology type on the basis of legislated priorities and general program factors. The Board will then list projects in order of preference based upon the results of the comparisons. Projects will receive funding from the Board in the order that they are listed until funds for that funding round are expended.

The purpose of the first stage review is to identify the most promising project in each technology in each funding round. The purpose of the second stage review is to identify the projects in priority order based on statutory priorities, if applicable, the degree to which the project is useful in demonstrating a technology or institutional arrangements throughout the state, and the quality of the project.

A factor analysis rather than a point scoring system was utilized because the Board determined that points could not be assigned to each project in any rational manner. Instead, the Board decided that it could more accurately evaluate the merits of projects by assessing the projects in each category in the first stage, and the top project in each category in the second stage in relationship to the facts on each assessment factor. These facts will be provided through the extensive documentation requirements mandated in these rules and by statute. While this system may not be as easy to apply as a point system, it provides a better, more accurate and more understandable assessment of the merits of the projects under consideration.

The two stage analysis is utilized to ensure that projects of varying types are among the finalists for grants and loans. Since the program is designed to demonstrate a wide range of resource recovery technologies, it would be inappropriate to have only one type of technology among the finalists. However, any set of evaluation factors may favor one technology over another. By separating the analysis into two stages, factors can be applied to pick finalists for each category rather than risk the possibility that application of the evaluation factors could lead to selection of all of the finalists from a single technology category.

Section 8.408B. - General Factors

Factors have been developed for each of the five eligible technology types to assist the Board in evaluating project

proposals. The specific justification for each factor specified in 6 MCAR § 8.408 is as follows:

1. Operating Capacity. Operating capacity provides information on the operating characteristics of the proposed facility. The information obtained will assist the Board in evaluating the extent to which a proposed facility would be able to solve an area's solid waste management problems.

2. Market Viability. Market viability is a necessary factor because it provides information on market existence, volume, value, and variability. If there are market variations this factor would indicate whether the variations are matched with or non-concurrent with product variations. This factor would also provide information on the status of contracts to purchase the proposed facilities product. The information obtained will assist in assessing the economic viability of projects of the type proposed.

3. Residual Waste. Residual waste is a necessary factor because it would provide information on the amount of waste that the proposed facility would ultimately landfill. Projects which result in smaller quantities of residual waste are more desirable since they may aid in the abatement of landfilling. This factor is used only in those technology types where appropriate.

4. Waste Supply. Waste supply is a necessary factor because it provides information on the mechanism that is necessary to assure that the waste generated within a project area and intended

for the proposed processing facility will be available. A solid waste stream becomes a resource or valuable input when a waste processing facility is built for that waste stream. The flow of waste to such a facility must be assured at the quantity planned and for the lifetime of the project to achieve the various objectives--environmental and economic--intended for the project. Waste flow and facility capacity should be well matched; solid waste should not be stored for future use for any appreciable time period.

5. Product effectiveness. Product effectiveness is a necessary factor because it provides information on the quantity, quality and variability of the product. The information obtained is necessary in making further assessments on the market viability of the product. The actual measure used to assess product effectiveness in each of the appropriate technologies has been designed to fit the individual technology being evaluated. This factor is used only in those technology types where appropriate.

6. Cost Effectiveness. Cost effectiveness is a necessary factor because it provides cost/benefit information on the proposed facility. Information obtained from this factor will assist in evaluating both capital costs and annual costs against the revenues received. This information will be necessary to assess the financial feasibility of the proposed facility and to ascertain whether similar projects are likely to be feasible elsewhere in the state. The actual measure used to assess cost

effectiveness in each of the technology types has been designed to fit the individual technology being evaluated.

7. Revenue. Revenue is a necessary factor because it provides information on one component of the required financial analysis. The financial analysis will be incorporated into the financial feasibility report for the proposed project. This factor is used only in those technology types where appropriate.

8. Other Materials Required or Used in Process. Other materials required or used in a process is a factor used only in the chemical, physical, biological modification technology type. This factor is necessary to assess the costs incurred and the benefits obtained from using other raw materials in processing solid waste.

9. Mileage and Fuel Savings. Mileage and fuel savings is a factor used only in the transfer stations category. This factor is necessary to assess the economic benefits of the proposed facility in terms of cost savings. This approach is used because a facility of this type will not have any revenues except those generated from tipping fees. The major economic benefits are expected to be in the area of cost savings through reduced haul distances.

6 MCAR 8.409 EVALUATION OF PROJECTS SELECTED FROM EACH CATEGORY

This section describes the second stage of the project type evaluation procedure referred to in the previous section of this statement. The procedure indicates that the top projects selected

from each technology type will be compared on the basis of legislated priorities and general program factors. The evaluation procedure is designed to allow the Board to give priority to those top projects which meet the legislated priorities set out in Minn. Stat. § 115A.49 and to list the top projects in order of preference based upon the general program factors set out in section 8.409.

The general program factors have been developed to assist the Board in evaluating project proposals. The specific justification for each factor specified in 6 MCAR 8.409 is as follows.

1. Market Character. Market character is a necessary factor because it will provide basic information on the location; occurrence and assurance of potential markets. The information obtained will become part of the required market analysis for the proposed facility.

Market analysis is very complex, requiring sophisticated techniques that are fraught with risk. A clear statement of methodology is required, including a description of the target market. Also, it is often necessary to assess the economic viability of a target-market. Intentions and capabilities must be clearly differentiated. It is not merely sufficient to show paper commitment when the market is financially suspect. At a minimum, the proper documents must be executed by persons authorized to make commitments for such projects. A clear description of what exactly is being provided is also necessary, such as pressure and

temperature of steam, delivered to a specific location or price and quality relationships for recovered materials.

Projects with more definite markets will be favored.

2. Landfill Abatement. One of the basic purposes of the Waste Management Act is the abatement of landfills. Minn. Stat. § 115A.02(c). Thus, projects which will provide a greater degree of abatement will be favored.

3-4. Capital Cost and Cost-effectiveness. Projects with lower capital costs and those which are most cost-effective are more likely to succeed than more expensive projects or less cost-effective projects, other factors being equal. Thus, projects involving lower capital costs and projects which are more cost-effective will be favored.

5. Other Projects. Since the grant and loan program is designed to demonstrate a wide range of technologies, a project should be favored if few projects of the type have been funded by the Board in comparison to other project types.

6. Degree of Demonstration. Some projects will be more applicable to a wider range of communities in the state than will other projects. Projects which demonstrate technology or institutional arrangements to a greater number of communities than other projects will be favored.

6 MCAR 8.410 AWARD OF GRANTS AND LOANS

Section 8.410A. - General Procedure

This subsection describes the procedure and specifies the order in which the Board will award grants and loans. The subsection provides an orderly distribution of available funds based on the earlier evaluation of projects.

Section 8.410B. - Factors in Awarding Grants

B. This subsection describes the specific factors that will be considered by the Board in evaluating requests for grant assistance.

Grants may be awarded if a unit of government assumes a risk in undertaking a project. A grant is reasonable in this case to underwrite some of the risk since, once the technology is demonstrated, the risk may not be as great for other units of government.

Grants may also be awarded where the local government has made a substantial investment of its own funds to a project since the investment indicates commitment on behalf of the local government to the project. Where such a commitment is evidenced a grant, rather than solely a loan requiring an even further commitment of local funds, is appropriate.

Finally, a grant is appropriate where, because of the financial capacity of the local government, a local government would not be able to undertake the proposed project without a grant.

Section 8.410C. - Amount of Awards

This subsection specifies that the Board will set the amount of any grant and loan award. This is necessary so that the Board may award levels of assistance that are adequate to implement the project while also funding as many demonstration projects as possible with the available funds.

Section 8.410D. - Maximum Awards

Since resource recovery projects may be very expensive and since the funds available to the Board are limited, it is important to limit the maximum award to assure that several demonstration projects are funded under the program. Only in this way can the maximum effectiveness of the program be achieved. Still, award limits must be high enough to provide significant support to the projects. The limits set in this subsection are a reasonable compromise of the competing interests.

Section 8.410E. - Limitations

This subsection prohibits double funding for the same costs. It also requires that the Board ascertain that the cost of project is fully funded before making an award as required by Minn. Stat. § 115A.54, subd. 3. Finally, awards are limited to costs incurred during the grant or loan period to ensure the program is not used to simply reimburse local governments for expenses that had been already incurred.

6 MCAR 8.411 GRANT AND/OR LOAN AGREEMENT

This rule specifies the contents of the grant and/or loan agreement that will be entered into by the Board and the recipient. The rule provides reasonable and ordinary conditions to comply with the requirements of Minn. Stat. § 115A.54 and to establish the rights and obligations of the Waste Management Board and the local unit of government. This is necessary to set out the conditions under which grants and loans are awarded.

6 MCAR 8.412 APPORTIONMENT

This rule specifies both statutory requirements and general administrative procedures which are necessary to assist in the understanding of the grant and/or loan award process and to comply with Minn. Stat. § 115A.54, subd. 2.