

WASTE MANAGEMENT BOARD SOLID WASTE
REDUCTION AND SEPARATION
PROGRAM

STATEMENT OF NEED AND REASONABLENESS

I. INTRODUCTION

The legislature has established a program to encourage cities, counties, and solid waste management districts in the development and implementation of solid waste management projects and to transfer the knowledge and experience gained from such projects to other communities in the State. Minn. Stat. § 115A.49 (1986). The legislature has instructed that the program be administered to encourage local communities to develop feasible and prudent alternatives to disposal, including waste reduction and waste separation by generators, collectors, and other persons.

Id.

In 1987, the legislature instructed the Waste Management Board (Board) to provide technical assistance and grants to projects which demonstrate waste reduction, waste separation by generators, collectors, and others persons, and collection systems for separated waste. Minn. Stat. § 115A.53 as amended by Minn. Laws 1987, ch. 348.

The subject of this rulemaking proceeding is a set of rules to govern the award of grants for waste reduction and separation projects made pursuant to Minn. Stat. § 115A.54 (Program). The proposed rules seek to establish a mechanism to ensure the orderly administration of the Program. The proposed rules identify projects and costs that may be funded through the Program; set up application procedures and

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timetables; establish criteria for the review of projects and for the award of grants; set limits on the amount of funds that can be awarded; and specify contents of grant agreements.

The proposed rules seek to fulfill the Board's statutory mandate as set out in Minn. Stat. §§ 115A .49-.53, as amended and to meet the specific goals established for this grant program.

II. HISTORY

This program was originally created under the Waste Management Act of 1980 (Minn. Laws 1980, ch. 564, art. 6) as the Minnesota Solid Waste Management Demonstration Program for Waste Reduction and Source Separation. The original waste reduction and separation program was administered by the Minnesota Pollution Control Agency and funded the study and demonstration of solid waste reduction and source separation projects. In the 1987 amendments to the waste Management Act, the legislature changed the focus of the program from demonstration of new technologies to the implementation of proven waste reduction and separation technologies, and made the Waste Management Board the agency administering the program.

III. NEED FOR THE PROPOSED RULES

The proposed rules are needed to make specific and to clarify the criteria and procedures established by the legislature in Minn. Stat. § 115A.53. That section provides:

[t] he Board shall provide grants to develop and implement projects for waste reduction; waste separation by generators, collectors, and other persons; and collection systems for separated waste. Activities eligible for assistance under this section include legal, financial, economic, educational, marketing, social,

governmental, and administrative activities related to the development and implementation of the project. Preliminary planning and development, feasibility study, and conceptual design costs are eligible activities, but no more than 20 percent of program funds shall be used to fund those activities. Projects may include the management of household hazardous waste, as defined in section 21 [Minn. Stat. § 115A.96]. The rules of the board shall prescribe the level or levels of local funding required for grants under this section.

In this provision, the legislature has required the Board to use the rulemaking procedures to establish the level of local funding that will be required for grants under this section. In Minn. Stat. § 115A.06 (1986) the Board is given the power to promulgate rules to implement sections 115A.01 to 115A.72. The Board finds that rules are needed to implement Minn. Stat. § 115A.53 properly.

IV. REASONABLENESS OF THE PROPOSED RULES.

9200.6900 DEFINITIONS

Many of the terms defined in 9200.6900 are terms defined by statute or rule and are referenced appropriately. Other definitions are provided for clarity and consistency.

9200.6900 Subp. 7

The definition of comprehensive solid waste management plan is derived from the statutory definition provided at Minn. Stat. § 115A.46 (1986). However, as defined here the plan need not be an approved plan. This definition is needed to ensure that potential applicants understand that they can participate in the Program even if they have not had their solid waste management plan approved.

9200.6900 Subp. 9

To comply with legislative mandate, solid waste disposal facilities and equipment are not eligible for funding. A definition of waste disposal facilities and equipment

is provided in Minn. Rules pt. 9200.6900 to enable applicants to determine whether a project or a piece of equipment would be eligible for funding.

9200.6900 Subp. 10

The definition of household hazardous waste management tracks the definition of waste management given in Minn. Stat. § 115A.03, subd. 36 (1986). Because the definition is accepted and clearly understandable, it is reasonable.

9200.6900 Subp. ~~19~~¹¹ and ~~20~~

Other Board programs fund solid waste processing facilities and equipment, and thus this type of equipment is not eligible for funding under this Program. A definition of solid waste processing facilities and equipment is provided in Minn. Rules pt. 9200.6900 to enable applicants to determine whether a project or a piece of equipment would be eligible for funding under this Program.

9200.6900 Subp. ~~21~~¹²

Waste reduction is not defined by statute, and thus a definition is needed to enable potential applicants to determine whether a project would or would not be a "waste reduction" project. The definition provided is similar to definitions used by other state and federal agencies, and thus should be easily understood and applied.

9200.6900 Subp. ~~22~~¹³

Waste separation is not defined by statute, and thus a definition is needed to enable potential applicants to determine whether a project would or would not be a "waste separation" project. The definition provided is similar to definitions used by other state and federal agencies, and thus should be easily understood and applied.

9200.6901 PURPOSE AND ADMINISTRATION

This section establishes the purpose of the Program and gives an overview of the procedures which applicants must follow in submitting applications for grants. The section also sets out the procedures the Board will follow in reviewing applications, and how the Program will terminate.

9200.6902 ELIGIBILITY CRITERIA

In this section, eligible applicants, projects, and costs are identified. In addition, specific costs that are not eligible are identified. This portion of the rule is necessary to ensure that potential applicants know whether or not they qualify as an eligible applicant, whether or not their project qualifies as an eligible project, and which project costs would be eligible for funding.

9200.6902 Subp. 1

This section identifies eligible applicants. Cities, counties and solid waste management districts are eligible and can apply for themselves or on behalf of other persons. Minn. Stat. § 115A.50 (1986).

9200.6902 Subp. 2

This part sets out the types of projects that will be eligible for funding under the Program. Three types of projects are eligible for grants: solid waste reduction; solid waste separation; and collection systems for separated solid wastes. These types of projects are those that the legislature specified as eligible for funding when creating this program. Minn. Stat. § 115A.53.

The proposed rule limits the eligible projects to those that are new or expansions of old projects. This is reasonable because the intent of the program, as found in

Minn. Stat. § 115A.53, is to develop and implement projects, not to fund established projects.

The proposed rule makes clear that household hazardous waste management must be part of a broader waste reduction or separation project. It is reasonable to limit household hazardous waste management projects in this manner because the statutory language indicates that projects may include household hazardous waste management. Minn. Stat. § 115A.53 . The use of the term "include" indicates legislative intent to make household hazardous waste a part of overall solid waste management, but not the focus of projects funded under this section. It is further reasonable to require that household hazardous waste management be confined to a portion of a project to ensure that program funds are primarily spent on solid waste reduction and separation. Household hazardous waste represents a special problem in solid waste management, and this has been recognized in other legislative efforts. See, e.g., Minn. Stat. § 115A.96 (Minn. Laws 1987, ch.348.) . It is therefore proper to make household hazardous waste management a less-emphasized part of this Program, while not excluding it entirely.

9200.6902 Subp. 3

This section divides the costs that can be funded under the Program into two categories: development costs and implementation costs. This is reasonable because the statute distinguishes between the costs of development and the costs of implementation in establishing funding levels. A maximum of 20 percent of program funds may be spent on development costs.

9200.6902 Subp. 4

This subpart defines development costs as costs incurred in the preparation of the application and documentation required in the part of the proposed rule that describes what must be included in an application.

The proposed rule requires that a project be fully planned before an application may be submitted to the Board. The proposed rule requires that conceptual and financial feasibility studies be completed and be made part of the application. The proposed rule has defined the cost of this planning as the cost of development, for which 20 percent level funding will be provided. This is a reasonable method of defining what constitutes the cost of developing a project. It is reasonable because it can be applied accurately and fairly from project to project. This is also a reasonable method of defining eligible costs because it will give potential applicants an incentive to put together a well planned, complete application-- and consequently a well planned, successful project.

9200.6902 Subp. 5

This subpart defines implementation costs as divided into two types of costs: capital and non-capital costs. This division is reasonable because the type of cost documentation will differ significantly depending on whether the cost for which the grant is sought will be a "hard" or "soft" cost.

The capital costs that are eligible for funding include the cost of collection vehicles, collection trailers, drop boxes, curbside collection bins and other containers used exclusively for the collection or transport of separated waste or the management of household hazardous waste. It is reasonable to fund these costs because these items are commonly employed in solid waste reduction or separation projects. It is

reasonable to restrict funding to items used exclusively for the eligible projects to ensure that the limited funds available under this program are not spent on items commonly available or that could be used for other work.

The soft costs that can be funded under the proposed rules include necessary legal, financial, economic, education, marketing, social, governmental and administrative activities required for the implementation of the project. These costs are eligible for funding pursuant to Minn. Stat. § 115A.53 .

9200.6802 Subp. 6

This subpart limits the extent to which the cost of household hazardous waste disposal can be funded under the program. The subpart requires that the applicant first exhaust all feasible alternatives to disposal and means of participation in other programs that provide for household hazardous waste disposal before these costs become eligible for board funding.

It is reasonable to limit the eligibility of the cost of disposal until all feasible alternatives to disposal have been exhausted because the intent of the Waste Management Act is to limit the dependence on disposal for the management of waste. In most instances, there are available alternatives to household hazardous waste disposal, i.e., recycling, waste exchange, and methods of rendering household hazardous waste non-hazardous.

It is reasonable to limit the eligibility of the cost of disposal until the applicant has proven that cooperation with other programs is not possible for two reasons. First, the Board seeks to encourage cooperation with ongoing or planned programs primarily dedicated to the collection and management of household hazardous

waste. Second, the resources available for this Program are limited. It is reasonable to encourage cooperation to ensure that the resources in the Program are spent primarily on the solid waste reduction and separation components of projects.

9200.6902 Subp. 7

This subpart describes the costs that will not be eligible for funding under the Program. The items listed under this subpart are items associated with waste processing and waste disposal. Because the intent of the Program is to fund waste reduction and separation projects, not processing and disposal, it is reasonable to make these costs ineligible for funding.

9200.6903 INFORMATION AND DOCUMENTATION REQUIRED IN GRANT APPLICATION

This part describes the information that will be required to be included on an application under the Program. 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 project. Much of this information is required to satisfy the requirements of Minn. Stat. §§ 115A.50 -.53.

9200.6903 (A)

The name of each applicant is necessary to allow the Board to identify and contact the applicant.

9200.6903 (B)

It is necessary to identify each affected political subdivision so that they may be contacted to determine the degree to which they support the proposed waste processing facility. Such support is essential for a successful project.

9200.6903 (C)

Under Minn. Stat. § 115A.51, the Board must find that affected political subdivisions are committed to implement the project, to provide local financing, and to accept and exercise the government powers necessary to the project. It is reasonable to require affected political subdivisions to submit resolutions demonstrating their commitment to the project to enable the board to be assured that the project has the degree of local commitment that it needs. Local commitment is especially important when projects are likely to involve the cooperation of many persons on the local level, whether or not the local unit of government is actually implementing the project.

9200.6903(D)

This information is needed so that the Board can evaluate the qualifications of the project manager, and contact the manager during the project evaluation process.

9200.6903(E)

This information is needed so that the Board can evaluate the qualifications of the project operator, and contact the operator during the project evaluation process.

9200.6903(F)

An estimate of the total capital cost of the facility is needed to calculate the amount of grant funds for which the project is potentially eligible.

9200.6903(G)

An estimate of the total grant eligible cost is necessary as this is the number that will be used to determine the final grant amount.

9200.6903 (H)

The amount of grant funding requested is necessary because this amount will be considered by the Board in making the grant award.

9200.6903 (I)

An account of the amount and sources of all other funding contributions, including amount of funds to be contributed by the applicant, is necessary to meet the requirement, specified in Minn. Stat. §115A.51, that before any grant funds are disbursed the Board must find that full funding of the project is assured.

9200.6903 (J)

A detailed description of the project is needed to allow the Board to evaluate the conceptual and technical feasibility of the project, as required by Minn. Stat. § 115A.51 (1986). The information on the amounts of each waste type to be reduced or separated is needed so that the board can evaluate the scope and impact of the proposed project on the waste stream and on generators. Applicants are required to have considered the impact of the project on generators under Minn. Stat. § 115A.51 (1986).

9200.6903 (K)

Adequate planning is required for the successful development and implementation of waste processing facilities. In order to ascertain that an adequate level of planning has been achieved, it is reasonable to require that applicants submit a comprehensive solid waste management plan prepared pursuant to Minn. Stat. §115A.46 (1986).

It is also reasonable for the Board to require that a comprehensive solid waste management plan have been completed to assure that applicants have considered all viable alternatives to disposal, and that the proposed project is the best alternative.

9200.6903 (L)

In order for the Board to accurately assess the technical feasibility of the project, the Board needs information on how the applicant will assure that the project has an adequate waste supply at the time of application and in the future. An adequate waste supply is crucial to the success of the project, both technically and financially.

9200.6903 (M)

In order to ensure that the project will generate revenues adequate to cover operating costs over the life of the project, the Board needs information on the revenue that will be raised through sale of materials generated by the project. By requiring applicants to submit this information with the application, the Board ensures that the applicants have a realistic idea of the amount of revenue that the project will generate.

9200.6903 (N)

Education is an important component of almost any project eligible for funding under this Program, and education is a cost that can be funded under the Program. By requiring applicants to discuss the need for education, the Board can be sure that applicants have considered this critical component.

9200.6903 (O)

Household hazardous waste management may be a part of projects funded under this Program. However, before the Board could find that a project including the

management of household hazardous waste is technically feasible for a given applicant, the Board would need to know that the applicant can handle household hazardous waste properly. This information is therefore required to be submitted with the application.

9200.6903 (P)

Many solid waste projects will need to obtain a variety of permits. Obtaining the required permits is essential to successful implementation. It is reasonable to require applicants to report on their efforts to obtain permits to enable the Board to get a sense of whether the proposed project will be permitted, what conditions will be imposed on its operation, and when the permits will finally be issued. It is also reasonable to require applicants to report on the status of required permits to alert applicants to permitting requirements.

9200.6903(Q)

A project that entails significant negative environmental impacts would not be considered technically feasible, unless those impacts can be mitigated. It is reasonable to require the applicant to include information on potential impacts because the environmental impact of the project can affect the success of the project, its costs and its public support.

9200.6903 (R)

A work plan is necessary to enable to Board to assure that the applicant can successfully implement the project, and has considered all steps necessary for successful implementation. Specifically, the Board finds that adequate planning requires that the applicant consider specific tasks, work hours, costs and time schedules, and work products (such as reports, public education material, etc.).

9200.6903(S)

The cost of preparing the application will be used as the basis for determining the cost of project development, which is eligible for funding under the Program at the 20 percent level. Documentation of these costs if therefore needed for the Board to determine the appropriate amount of the grant.

9200.6903(T)

The Board is required by Minn. Stat. § 115A.49 to give priority to those projects that meet the criteria set out in this item. In order for the Board to evaluate the project relative to these criteria, the Board needs information on the project from the applicant.

9200.6904 REVIEW AND EVALUATION OF APPLICATIONS

This part of the rule sets out the procedures that will be followed by the Board when evaluating applications, and the standards that must be met for an applicant to receive funding.

9200.6904 Subp. 1

This part delegates the responsibility of determining whether an application is complete and whether the applicant, the proposed project, and the costs listed in the application are eligible to the chair of the board. It is reasonable for this duty to be delegated to the chair because these initial determinations are prefatory.

9200.6904 Subp. 2

This part sets out times within which applicants will receive notice of the chair's initial decision on the application, and within which they must respond to any finding of deficiency. The time period allotted for the initial review--14 days-- is

reasonable in that it gives adequate time for the review yet will not delay decision on the project. The time period for response to any finding of deficiency-- 30 days-- is reasonable because the applicant has had notice as to what must be submitted and should be able to correct omissions without further delay.

9200.6904 Subp.3

After the chair determines eligibility and completeness, the Board will proceed to evaluate the project with regard to the factors set out in this subpart. The factors set out are derived from statutory requirements for funding projects under the Solid Waste Management Demonstration Program. It is reasonable to set out these factors in the rule to put applicants on notice as to what the Board must determine in order to give the applicant a grant.

9200.6904 Subp. 4

This part notifies applicants that, if the factors set out in Subpart 3 are met, the Board will move to determine the amount of the grant. If the requirements are not met, this part informs applicants that the Board will provide that applicants with a statement of the reasons a grant was not awarded. Providing this notice is reasonable because it sets out the basis of the Board's decision and allows applicants to evaluate the reasonableness of that decision.

9200.6904 Subp.5

This part notes that the Board will consider recommendations provided by other agencies in making its decision to fund a project. This is required by statute. It is also reasonable because the success of a project will depend in part on whether it is supported by regulatory and planning agencies having jurisdiction over it.

9200.6905 LIMITATIONS

9200.6905 Subp. 1

Minnesota Statutes section 115A.53 requires the Board to establish the level of local funding by rule. The Board has determined that local units of government should match the state funds by contributing an equal amount of federal, local, private or other state contributions for the project. This is reasonable because there should be a significant contribution of local resources to the projects to demonstrate that the applicant or local unit of government is committed. The Board anticipates that many of the projects funded under this Program will become self-supporting. Requiring a 50 percent match will test the ability of the applicant or local unit of government to support the project in the future. Further, 50 percent represents a reasonable sum of money and most applicants or local governmental units should not find it difficult to come up with this level of funding. Much of this match could be found in the "in-kind" costs relevant to the proper implementation of a project.

9200.6905 Subp. 2

The goal of the section of the Waste Management Act under which this Program is established is to encourage communities to develop feasible and prudent alternatives to the disposal of waste. This section of the Waste Management Act also requires that knowledge and experience generated by the program be transferred throughout the state. In order to encourage the greatest number of communities to develop disposal alternatives, and in order to develop the most useful and broad store of knowledge and experience, the Board finds it reasonable to limit the amount of funds a single applicant can obtain under the Program in order to ensure that the money can be distributed to a large number of projects located throughout the state. The Board has determined that a \$ 50,000 grant will

be adequate to encourage the development and implementation of projects, while enabling the Board to fund a number of projects.

9200.6905 Subp. 3

The limits set out in this subpart are reasonable to conserve state funds and to prevent applicants from over-financing projects. In this subpart, grants are limited to that amount necessary to complete a project considering the funds presently available to the applicant, whether or not the applicant has applied for such funds. This is reasonable because it will encourage applicants to seek other funds before requesting state funds. The Board is aware that other sources of money are available to certain potential applicants. The Board finds that it would be unreasonable for the Board to expend limited state funds when the project could be funded by the applicant through other means. This will preserve state funds for those truly in need of Board assistance.

This subpart also notes that the grant will not cover tasks performed before the grant is awarded or after the grant agreement has expired, with the exception of development costs which the board will fund up to a 20 percent limit. This is reasonable because it recognizes that the cost of preparing the Board's application will be high, and allows funds to cover those costs. This will encourage applicants to do a complete job on the application. Project funds will be protected, however, because the applicant runs the risk that the project will not be funded. This will encourage applicants to keep development costs to a minimum.

9200.6905 Subp. 4

Although this is not required by statute (compare Minn. Stat. § 115A.54 (1986)) the Board finds that it is reasonable to delay disbursement of awarded funds until local

funding is in place. This will ensure that the funds of the Program will be used immediately, and will not be spent on a project that may not be implemented because other funding failed to materialize.

9200.6906 GRANT AGREEMENT

This part sets out certain requirements for the agreements that will be executed with grant recipients. These requirements are included to ensure that the grant recipient is aware of the restrictions that will be placed on the grant money awarded.

9200.6906 Subp. 1(A)

This requirement is reasonable because it contractually obligates grant recipients to build and operate the project that was proposed to the Board in the application submitted to the Board. Incorporating the application will aid the Board in determining whether the applicant has fulfilled its obligation or whether the applicant has deviated from the original project funded by the Board.

9200.6906 Subp. 1 (B)

This requirement is ministerial.

9200.6906 Subp. 1 (C)

This requirement re-enforces the obligation of recipients to see that projects are completed, and to again emphasize that no further state funding will be available. This limit is reasonable in that it re-enforces statutory restrictions.

9200.6906 Subp. 1 (D)

This requirement is reasonable in that it puts applicants on notice that the Board will not provide funds beyond the amount given in the grant.

9200.6906 Subp. 1 (E)

This requirement is necessary to allow the Board to fulfill a duty, given by statute, to transfer the knowledge and experience gained from projects to other communities in the state. It is reasonable to require applicants to submit reports on the developmental and implementation history of projects because applicants have the best access to the information needed.

9200.6906 Subp. 2

This part is reasonable because it notifies recipients that the grant will be rescinded if the agreement is not complied with, but that it may be possible to obtain Board approval to deviate from the original proposal if the original objectives of the project will be fulfilled. Allowing minor variations in the projects funded under the program is reasonable given the complexity and novelty of solid waste management projects.

9200.6906 Subp. 3

This section is reasonable because it alerts recipients to the fact that the grant agreement will control the disbursement of funds.

V. IMPACT ON SMALL BUSINESSES.

Minn. Stat. § 14.115 (1986) requires that an agency adopting a rule consider its impacts on small businesses and take steps to mitigate negative impacts. Because

small businesses can participate in this Program through local units of government,
this rule should have no negative impact on them.


JOSEPH M. PAVELICH, CHAIRMAN
WASTE MANAGEMENT BOARD

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