

STATE OF MINNESOTA
WASTE MANAGEMENT BOARD

In the matter of the proposed
rules governing grants for
waste tire collection sites

Statement of Need
and Reasonableness

I. Introduction

In 1988, the Legislature created a program to encourage local governments to establish collection sites for waste tires. Establishment of local collection sites will play a part in the development a collection and transportation network for waste tires generated now and in the future in Minnesota.

The Waste Management Board (Board) now promulgates permanent rules to govern the waste tire collection site grant program. These rules establish the substantive criteria and procedural conditions under which the Board will award grants for waste tire collection sites.

II. Statement of Board's Statutory Authority

The Board's statutory authority to establish the program is stated in Minn. Stat. § 115A.913 subd. 2, (1988 Minn. Laws ch. 685, sec. 15) which provides:

The [Board] may make grants to local government units for the cost of establishing waste tire collection sites. Grants may be used for the capital costs of land, structures and equipment needed to establish waste tire collection sites, and to collect and transport waste tires. A grant may not exceed 50 percent of the cost to a local government unit to establish a waste tire collection site.

The [Board's] statutory authority to adopt rules for this program is established in Minn. Stat. § 115.914 subd. 1, which provides:

The board shall adopt rules for the administration of waste tire collector and processor permits, waste tire nuisance abatement, and waste tire collection. Until December 31, 1985, the agency may adopt emergency rules for these purposes.

Under this statute the Board has the necessary authority to adopt this rule because the program authorized in Minn. Laws ch. 685, sec. 15 relates to "waste tire collection".

III. Statement of Need

Minn. Stat. ch. 14 (1986) requires the Board to make an affirmative presentation of facts establishing the need for and the reasonableness of the rule as proposed. In general terms, this means that the Board must set forth the reasons for its proposal, and the reasons must not be arbitrary or capricious. However, to the extent that need and reasonableness are separate, need has come to mean that a problem exists which requires administrative attention, and reasonableness means that the solution proposed by the Board is appropriate. The need for the rule is discussed below:

On May 21, 1988, permanent rules took effect relating to permitting of waste tire facilities and regulation of waste tire transportation. All newly generated waste tires will have to be hauled to a permitted processor, or a collection site. Collection sites that are now in existence will have the opportunity to become permitted and serve as transfer stations in their area of the state. However, there is a need for additional transfer stations to provide convenient, inexpensive disposal points open to the public in any area of Minnesota. The legislature created incentives for local governments to meet waste tire disposal needs of the state by authorizing grants to be made to local government units. The program requires rules to ensure its orderly administration.

IV. Statement of Reasonableness

The Board is required by Minn. Stat. ch. 14 to make an affirmative presentation of facts establishing the reasonableness of the proposed rules. Reasonableness is the opposite of arbitrariness or capriciousness. It means that there is a rational basis for the Board's proposed action. The reasonableness of each part of the proposed rule is discussed below.

9220.0900 Scope and Authority

This section is needed to provide a description of the rule and to state the authority given to the Board to promulgate the rule.

9220.0905 Definitions

The definitions used in the rule are used to promote clarity and consistency of usage. The definition of "collection site" incorporates the statutory definition of collection site, but clarifies the definition by adding the requirement that waste tires

transferred to a processing facility. Because the rules applicable to transfer stations, Minn. Rules Pt. 9220.0460, will require that waste tires be transferred to a processing facility, this clarification is reasonable. A definition of waste tire processing facility is also provided. This definition is reasonable because it follows the definition and requirements governing waste tire processing facilities found in the waste tire facility permit rule.

9220.0910 Eligibility Criteria

Subpart 1. Eligible Applicants. It is reasonable to include a provision on eligibility to alert potential applicants as to their ability to apply. By statute, grants are made to "local government units." As defined in Minn. Stat § 115A.03, subd. 17, local government units includes cities, towns, and counties.

Subp. 2. Eligible Costs. It is reasonable to include the costs of land, structures, and equipment incurred in the development of a waste tire collection site because these costs are specifically made eligible by statute.

Subp. 3. Ineligible Costs. It is reasonable to exclude any consulting, engineering, operation or administration costs because the sites are not expected to require technical or architectural plans, and these costs are not capital costs incurred in the development of the site.

9220.0915 Grant Application

It is reasonable to specify application contents to ensure the orderly evaluation of grant requests. Items A through G of this section are basic information that the Board will use to obtain the general picture of the application.

9220.0920 Supporting Documentation

Supporting documentation is required to be submitted with each grant application.

A. A detailed description of the proposed site is required. This is reasonable because it provides the broad overall concept of the proposal. This description will be used by the Board to determine if the facility is complete and the costs specified in the application are accurate.

B. The specifications and design of equipment that will be used at the collection site and for collection. This is reasonable to require because it will enable the Board to determine whether the equipment that will be used will be adequate for these

purposes.

C. A detailed description of the operation of the site is required in the application. This is reasonable because it will enable the Board to determine whether the waste tires will be handled and organized at the proposed site properly.

D. It is reasonable to require the date that the proposed site will be operational because it provides a time structure for the implementation of the proposed site that can be incorporated into the grant agreement.

E. The number of tires that will be handled annually, and where those tires will be collected and taken for processing is required. This is reasonable because it indicates to the Board that the collection site is adequate to handle the possible number of waste tires it may attract, and that the site has a processing facility available to accept the collected tires.

F. A description of needed permits, and when applications for needed permits will be filed. This is required and reasonable to demonstrate to the Board that any and all required permits will be sufficiently obtained.

G. How the operation, maintenance, and administrative costs associated with the proposed site will be paid is required in the application. It is reasonable to require this so that the Board can determine that the proposed site will be paid for, and that the applicant is aware of and will be able to afford the cost of site operation.

H. It is reasonable to require the costs to users of the collection site so that the Board can assess the impact of disposal costs on potential users, and whether these costs are adequate to cover the needs of the proposed site.

9220.0925 Review and Evaluation of Applications

Subpart 1. It is reasonable for the review of the application with regard to the completeness and eligibility to be done by the staff because the task is essentially ministerial. This will ensure that only complete applications from eligible applicants are subject to formal action, conserving administrative resources.

Subp. 2. Notice of Determination of Eligibility and Completeness. This part sets out a time frame which applicants will receive notice of the Chair's initial decision on the application, and which they must respond to any finding of deficiency. The time period - 14 days - is reasonable because it gives adequate time for the review, yet will not delay decision. The time period to respond to a finding of deficiency - 14 days -

is reasonable to allow the applicant to correct deficiencies or omissions.

Subp. 3. Board Approval

The goal of this program is to establish a collection and transportation system for waste tires. Thus, it is reasonable to award grants by Board resolution which will contribute to these objectives. Applications that meet the general criteria will be decided on in the order they reach the Board for decision. This is reasonable to ensure funding is distributed in a fair and orderly manner.

9220.0930 Grant Limitations

Subpart 1. Maximum Grant Award

The provision requires that the maximum grant award not be more than 50 percent of the eligible capital costs of the project, not to exceed 25,000 dollars. The percentage is required by statute. The maximum award is set to ensure that site costs do not become inflated, and to preserve program funds.

9220.0935 Grant Agreement

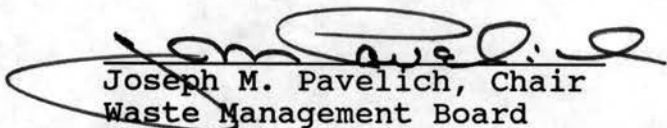
It is reasonable to require that grant funds be disbursed under the terms of a grant agreement to ensure that the Board and applicant understand the terms of the grant, and to provide for enforcement of the terms of the grant.

V. Small Business Considerations in Rulemaking

By statute, participation in this program is restricted to local government units. However, local governmental units are not prevented from contracting with private businesses for the operation of the publicly owned facilities. Thus, this program may create opportunities for small businesses engaged in waste tire collection and transportation.

VI. Based on the foregoing, the proposed Minn. Rules pts. 9220.0900 -.0935 are both needed and reasonable.

Dated: 7/20, 1988.


Joseph M. Pavelich, Chair
Waste Management Board