

STATE OF MINNESOTA  
POLLUTION CONTROL AGENCY

In the Matter of the  
Proposed Rules Governing  
the Used Oil Processing  
Equipment Loan Program

STATEMENT OF NEED  
AND REASONABLENESS

I. INTRODUCTION

In 1987, the legislature created a program to encourage increased recycling of used oil in the state. Through what was then the Department of Energy and Economic Development (DEED), low-interest loans were to be made available for the purchase of used oil processing equipment in order to further the goal of increased used oil recycling.

In 1987, the Governor transferred the program from DEED to the Waste Management Board through Reorganization Order No. 150, (Dept. of Admin. 1987). In 1988, the legislature amended the Waste Management Act by creating Minn. Stat. § 115A.9162 to reflect the transfer effected by the Reorganization Order. On October 6, 1988, the Governor transferred the program from the Waste Management Board to the Pollution Control Agency by Reorganization Order No. 155 (Dept. of Admin. 1988).

The Pollution Control Agency (Agency) now proposes permanent rules to govern the Used Oil Processing Equipment Loan Program. These rules establish the substantive criteria and procedural conditions under which the Agency will award loans for used oil processing equipment.

II. AGENCY STATUTORY AUTHORITY

The Agency's statutory authority to administer the used oil

loan program is found in Reorganization Order No. 155 (Dept. of Admin. 1988) which provides:

The following powers and duties of the Waste Management Board are transferred to the Pollution Control Agency:

[ . . . ]

39. To make loans to businesses for the purchase of used oil processing equipment (Section 115A.9162, subd. 1)

Minn. Stat. § 115A.9162 provides:

The board may make loans to businesses for the purchase of used oil processing equipment.

The Agency's statutory authority to adopt the rule is established in Reorganization Order No. 155 (Dept. of Admin 1988) which provides:

The following powers and duties of the Waste Management Board are transferred to the Pollution Control Agency:

1. All powers necessary or convenient to discharge the duties transferred pursuant to this Order (Section 115A.06, subd. 1)

2. To promulgate rules (Section 115A.06, subd. 3).

Minn. Stat. § 115A.06, subd. 1 provides the Agency with the power to promulgate rules if "necessary or convenient to discharge its duties." Because this program cannot be administered without rules, the Agency must have the power to promulgate rules for this program to fulfill its duty to administer it.

Minn. Stat. § 115A.06, subd. 2, provides the following:

Unless otherwise provided, the board shall promulgate rules in accordance with chapter 15 (sic) to govern its activities and implement sections 115A.01 to 115A.72. [emphasis supplied.]

Although this section could be read to restrict the power of the Agency to promulgate rules to just the programs found in sections 115A.01 to 115A.72, it would seem obvious that the intent of this provision was to empower the Agency to enact rules through the Administrative Procedure Act for the programs it administers under this chapter-- which at the time this particular provision was drafted ended at section 115A.72. Reading the "and" more disjunctively effectuates legislative intent by rendering section 115A.06, subd. 2 a more general statement of rulemaking authority. Thus, section 115A.06, subd. 2 empowers and commands the Agency to "promulgate rules . . . to govern its activities. . ."

Finally, Minn. Stat. § 14.06 empowers the Agency to adopt this rule. Minn. Stat. § 14.06 provides:

Each agency shall adopt rules, in the form prescribed by the revisor of statutes, setting forth the nature and requirements of all formal and informal procedures related to the administration of official agency duties to the extent that those procedures directly affect the rights of or procedures available to the public.

Because informal procedures to administer the used oil processing equipment loan program would affect the public, under Minn. Stat. § 14.06, the Agency must adopt a rule.

### III. STATEMENT OF NEED

Minn. Stat. ch. 14 (1988) requires the Agency to make an affirmative presentation of fact establishing the need for and reasonableness of the rule as proposed. In general terms, this

means that the Agency 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 Agency is appropriate. The need for the rule is discussed below.

In the mid-1980s, decreasing virgin petroleum prices, the imposition of new regulations on burning used oil, and the proposed listing of used oil as a hazardous waste all threatened to disrupt used oil recycling in Minnesota. In 1987, the legislature banned the disposal of used oil in mixed municipal solid waste after January 1, 1988. These circumstances and actions created a need for increased used oil processing in the state. The legislature created the loan program that is the subject of this rulemaking to create incentives for the private sector to meet the needs of the state. The program requires rules to ensure its orderly administration.

#### IV. STATEMENT OF REASONABLENESS

The Agency is required by Minn. Stat. ch. 14 to make an affirmative presentation of fact 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 Agency's proposed action. The reasonableness of each part of the proposed rule is discussed

below.

9205.0600 Definitions.

The definitions provided in this part are intended to ensure clarity and consistency in the use of certain terms that are not common usage. The definition of "used oil processing equipment" given in subpart 4 is constructed broadly to include all types of "processing" that results in the recovery of "materials, substances, or energy." The definition also clarifies that if pollution control equipment is needed to meet pollution control standards, that equipment will be considered part of the used oil processing equipment. Because this definition is easily understood and applied, it is reasonable.

9205.0601. Scope.

This section is needed to provide an overall description of the rule to aid in interpreting it.

9205.0602. 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 for funding. By statute, loans are made to "businesses." It is reasonable to include all forms of business structure, from individuals through corporations, and to ensure that those seeking to become "businesses" can participate to ensure the broadest participation. Broad participation best fulfills the objective of the program which is to expand used oil processing capacity in the state.

**Subpart 2. Eligible costs.** The cost of used oil processing equipment as defined under part 9205.0600 is included as eligible. As stated above in the discussion of the definition of used oil processing equipment, this definition is broad and non-specific. This is reasonable because it would allow the funding of equipment not yet developed. As mentioned above, pollution control equipment related to the used oil processing equipment is eligible. This is reasonable, because the goal of the program is to promote environmentally correct management of used oil.

**Subpart 3. Ineligible costs.** It is reasonable to exclude the cost of installation, operation, preliminary and final design and engineering, overhead, land and buildings because the legislation specifies that loans are to fund purchase of processing equipment, not related costs.

9205.0603. Application Process.

**Subpart 1. Availability of funds.** This section is reasonable because it alerts applicants to the process by which the Agency will accept applications.

**Subpart 2. Agency determination.** This subpart establishes that the Agency will establish how much money will be expended and the type of processing equipment that will be funded. In deciding, the Agency is required to consider what will best improve the management of used oil in Minnesota, and the amount of funding appropriated to the Agency for this program. Allowing

the Agency this control over applications will enable the Agency to ensure that the money is spent in the manner that will result in the greatest environmental benefit, and is thus reasonable. This provision also allows the Agency the flexibility to consider changing technologies and regulatory restrictions. The description is needed to ensure that applicants know the type of equipment that will be funded by the Agency.

**Subpart 3. Notice.** This section is reasonable because it provides for a procedure for giving notice of the availability of funds that will reach the broadest possible group of interested persons. This notice provision is also reasonable because it will inform potential applicants of limitations on the expenditure of program funds established by the Agency under subpart 2.

9205.0604. Application requirements.

It is reasonable to specify application contents to ensure the orderly evaluation of loan requests. Items A through E of subpart 1 are basic information that the Agency will use to obtain an overall picture of the application.

Subpart 2 contains requirements that the Agency will use to determine whether the proposed use of the equipment is technically and financially feasible:

Item A, credit information, is requested so that the Agency can ensure that the loan will be repaid. The requirement is not specific. This is reasonable to enable applicants some

flexibility in establishing that they are creditworthy.

Item B, a conceptual and technical feasibility report, is needed so that the Agency can evaluate the chances that the proposed use of the equipment will be successful. The information is needed to establish that the applicant has undertaken all work-- technical and administrative-- to ensure smooth installation and operation of the used oil processing equipment.

Item C, a financial plan for the acquisition and operation of the equipment, is required so that the Agency can be sure that purchase and use of the equipment will be financially feasible, helping to ensure repayment of the loan.

Item D, a report on the status of required permits from permitting agencies, is needed to insure that the applicant is aware of all permit responsibilities and that the time frame for equipment installation is reasonable.

Item E, a report on time frames of equipment installation, is required so that the Agency can determine whether installation is on schedule and when the used oil processing capacity will be available.

Subpart 3 requires the submittal of additional information when requested. This is reasonable because not all relevant information can be anticipated, and the Agency needs to be fully informed before making its funding decision.

9205.0605. Review and evaluation of applications.



**Subpart 1. Determination of eligibility and completeness.**

It is reasonable for staff to review applications for completeness and eligibility because this review is ministerial and involves no judgments, and will ensure that only complete applications are submitted to the Agency for review.

**Subpart 2. Notice of determination of eligibility and completeness.**

This part sets out times within which applicants will receive notice of the Commissioner's determination under subpart 1. The time period to respond to a finding of deficiency--30 days-- is reasonable because the applicant should have adequate time to correct omissions.

**Subpart 3. Agency approval.**

It is reasonable to award loans to those applicants proposing to purchase used oil processing equipment that best meets the Agency's description developed under part 9205.0603, subpart 2, because that description was developed with the objective of funding the purchase of equipment that will best help the Agency to improve the management of used oil in Minnesota. The rule also requires the Agency to determine whether the loan will be repaid. Because this program is restricted to loans, it is reasonable for the Agency to consider whether an applicant is credit-worthy to ensure that the money appropriated for this program is not lost. The requirement that the Agency consider repayment is also reasonable in that it will ensure that loans are given only to those applicants who are proposing financially viable used oil

processing equipment uses. Funding successful uses of used oil processing equipment may help to encourage other businesses to purchase similar equipment, with or without the incentive of low-interest state funding.

9205.0606 Award of loans.

**Subpart 1. Loan limit.** This section establishes that the maximum loan will be 50 percent of the eligible cost of the used oil processing equipment or \$500,000, whichever is less. It is reasonable to establish limits to ensure that program funds are distributed among applicants, enhancing the impact of the program. It is reasonable to set the percentage participation of the applicant at 50 percent because this level will provide an incentive to participate in the program. Requiring that the applicant commit half of the funds needed to purchase the equipment is reasonable to ensure that the applicant feels committed to complete the installation and operation of the equipment. The total available was established at \$500,000, because the cost of some used oil processing equipment is quite high. However, it is estimated that \$500,000 should cover most costs with applicant participation at 50 percent.

**Subpart 2. Interest rate.** A rate of at least three percent interest is required. This is reasonable because the rate is low enough to ensure that it provides an incentive to the private sector to enter into the business, while giving the state some return on the loan. Yearly payments are reasonable to ensure a

minimum of administrative costs. Repayment is tied to the beginning of operation, or two years after the date of execution of the loan agreement. This is reasonable to ensure that the facility is producing some revenue before repayment is required, while ensuring that repayment is not overly delayed if operation is not achieved in two years.

9205.0607. Loan agreement.

It is reasonable to require that loan funds be disbursed under the terms of a loan agreement to ensure that the Agency and applicant understand the terms of the loan, and to ensure that the Agency can take legal action to recover loan money if the equipment is not installed or operated or if payments are missed. Item A is reasonable because it ensures that the applicant is required to install and to operate the equipment described in the application. Items B and C are needed for orderly loan administration. Items D and E ensure that applicants will budget carefully because they will be responsible for costs overruns. Item F is reasonable to ensure that information generated by the installation and operation of the equipment can be used by the state or others interested in similar equipment. Item G is needed for orderly administration of the loan.

9205.0608. Amendments.

This part is needed because it establishes the procedures that will be followed by the Agency in the event the loan recipient fails to install or operate the used oil processing

equipment as required. This part is reasonable because it provides that the Agency can amend the loan agreement to allow the original objectives of the loan to be accomplished. This part is also reasonable in providing for default if the loan agreement cannot be amended to accomplish the purposes of the loan, because this protects limited program funds.

#### V. SMALL BUSINESS CONSIDERATIONS IN RULEMAKING

Minn. Stat. § 14.115, subd. 2 (1986) requires the Agency, when proposing rules which may affect small businesses, to consider various methods for reducing the impacts on small businesses. The Agency finds that this loan program, because it is available to small businesses and is intended to assist small businesses, will have no negative impact on small businesses and that the rules of the program require no modification to accommodate small businesses.

#### VI. CONSIDERATION OF ECONOMIC FACTORS

In exercising its powers, the Agency is required by Minn. Stat. § 116.07, subd. 6 (1988) to give due consideration to economic factors. The statute provides:

In exercising all its powers the pollution control agency shall 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.

This program is directed toward the private sector and is

intended to help the private sector adjust to the changing regulatory environment. Thus, this program will have a positive impact on commerce in the state.

VII. OTHER CONSIDERATIONS

Under Minn. Stat. § 14.11, subd. 1 (1988), the Agency must provide an estimate of the public monies associated with implementing these rules if it is estimated that the total cost to all local public bodies exceeds \$100,000 in either of the first two years following adoption of the rules. The Agency does not anticipate that any public money will need to be expended as a result of adoption of these rules. Under Minn. Stat. § 17.83 (1988), the Agency must describe any direct and substantial adverse effects on agricultural land created by these rules. The Agency has determined that these rules will have no such effect.

VIII. CONCLUSION

Based on the foregoing, the proposed rules governing the used oil processing equipment loan program are both needed and reasonable.

Dated: 2-17-89

*for Barbara Lindsey Senis*  
GERALD L. WILLET  
Commissioner