

STATE OF MINNESOTA

POLLUTION CONTROL AGENCY

In the Matter of the Proposed Amendments to Rules Governing the Waste Tire Recycling Grant and Loan Program, Minn. Rules pts. 9220.0800-.0835.

STATEMENT OF NEED  
AND REASONABLENESS

I. INTRODUCTION

In 1984, the legislature created a program to encourage the development of waste tire recycling projects in the state. Through the then Department of Energy and Economic Development (now Department of Trade and Economic Development), grants were made available for the study of waste tire recycling projects and low-interest loans were made available to implement such projects. In 1987, this program was transferred by Reorganization Order to the Waste Management Board, which adopted Minn. Rules pts. 9220.0800-.0835 to govern its administration. In 1988, the legislature amended the program authority and recodified that authority into Minn. Stat. § 115A.913, subd. 1 (1988). Minn. Stat. § 115A.913, subd. 1 (1988) provides:

(a) The [agency] may make loans to waste tire processing businesses for the capital costs of land, buildings, equipment, and other capital improvements needed for the construction or betterment of waste tire processing facilities, and for the capital cost of equipment needed to transport waste tires to a waste tire processing facility. The board may also make loans to businesses that use waste tire derived products in manufacturing processes, for the capital costs of land, buildings, and equipment used in the manufacturing process.

(b) The [agency] may make grants for studies necessary to demonstrate the technical and economic feasibility of a proposed waste tire processing project, or of a proposed use for waste tire derived products in a manufacturing process. A grant may not exceed \$30,000, and may not exceed 75 percent of the costs of a study.

In 1988, this program was again transferred by Reorganization Order to the Minnesota Pollution Control Agency (MPCA). See Exhibit 1.

## II. STATEMENT OF AGENCY'S STATUTORY AUTHORITY

Minn. Stat. § 115A.914, subd. 2 (1988) provides:

The [agency] shall adopt rules for administration of waste tire collector and processor permits, waste tire nuisance abatement, and waste tire collection.

Although it is likely that the legislature intended that this rulemaking authority extend to all aspects of the waste tire management program, it is not clear from the language that the rulemaking authority extends to the grant and loan program of Minn. Stat. § 115A.913, subd. 1 (1988). However, procedures will be needed to govern administration of this program, to ensure that grants and loans are made in an orderly fashion. Minn. Stat. § 14.06 (1988) provides:

Each agency shall adopt rules, in the form prescribed by the reviser 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 right of or procedures available to the public.

Under this statute, the MPCA has the duty to adopt rules if it intends to follow regular procedures in the administration of this program. See Minnesota-Dakotas Retail Hardware Association v. State, 279 N.W.2d 360 (Minn. 1979). The authority to adopt such rules is implied, as is the authority to amend the existing rules.

## III. STATEMENT OF NEED

Minn. Stat. ch. 14 (1988) requires the MPCA to make an affirmative presentation of facts establishing the need for and reasonableness of the rule as proposed. In general terms, this means that the MPCA 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 MPCA is appropriate.

The need for the rule and the current amendment is discussed below.

In 1984, the legislature banned the land disposal of waste tires. Minn. Stat. § 115A.904 (1988). This action created a need for the development of waste tire processing in the state. The legislature created the grant and loan program that is the subject of this rulemaking to create incentives for the private sector to meet the waste tire processing needs of the state. The program requires rules for its orderly administration. Recent legislative changes require amendments to the existing rule to ensure that the rule remains consistent with the legislative authority.

#### IV. STATEMENT OF REASONABLENESS

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

##### A. Reasonableness of the Amendments as a Whole.

The proposed amendments generally seek to incorporate changes made to the statutory authority for this program in 1988, and to reflect the fact that the MPCA is now charged with administration of the program. This is reasonable to ensure consistency between the statutory authority and the rule interpreting it, and to ensure that applicants are not confused.

##### B. Reasonableness of Individual Amendments.

#### Part 9220.0800

Subparts 2 and 3 of this part have been changed to reflect the fact that the program is now administered by the agency. This is reasonable to avoid confusion on the part of the applicants.

Subpart 4 of this part has been amended to remove "or joint efforts by more than one local government unit." This change was made because "joint efforts by government units" are methods of securing the waste supply, and thus it is redundant to include the reference to government units in the definition.

Subpart 4a adds a definition of "manufacturing process." This definition is needed to reflect a change in the statutory authority for the program, which now allows loans to be made to business that use tire derived products in manufacturing processes. The definition is reasonable because it is clear, consistent with legislative intent, and will aid in interpretation of the rule. In Minn. Stat. § 115A.02, the legislature has indicated that it favors recovery of resources over recovery of energy.

Subpart 5 is amended to reflect statutory change. Under the current statutory authority, loans may be made to waste tire processing businesses. This is reasonable to ensure consistency between the rule and the statute. The definition clarifies that certain pre-processing activities, such as cleaning, qualify as processing.

Subpart 6 is deleted. This change is made because the definition of waste tire processing facility is redundant with the new definition of project.

Subpart 7 defines project. This word is used in the rule to describe the facility, equipment, etc. that the applicant is seeking funding for. This definition is reasonable because it will simplify and clarify the rule.

Subpart 8 adds a definition of tire derived product. This definition is needed to reflect statutory changes, which authorized loans for businesses that use tire derived products in manufacturing processes. This definition is reasonable because it is consistent with other rules governing waste tire management, and is clear and easy to apply.

Part 9220.0805

Changes to this part reflect statutory changes and the change in administering agency, and are therefore reasonable.

Part 9220.0810

Subpart 1 of this part is amended to include municipalities to the list of eligible applicants for grants. This is reasonable because some municipalities have expressed interest in waste tire processing, and because the statute does not restrict eligible applicants for grants in any way.

Subpart 2 of this part is amended to reflect statutory changes and therefore reasonable.

Subpart 3 of this part is amended to reflect statutory changes and to clarify language from the existing rule. Because the changes reflect statutory amendments or clarify language, they are reasonable.

Subpart 4 of this part is amended to emphasize that funding of costs incurred before a finalized grant agreement is not allowed. This amendment is reasonable because it will clarify the fact that applicants cannot expend sums of money in anticipation of receiving a grant which is not awarded.

Part 9220.0815

Subpart 1 is amended to simplify the language by removing a redundancy, and to reflect statutory changes. Because this change will make rule easier to understand and apply, it is reasonable.

Subpart 2 is amended to reflect the change in program administration and to remove language suggesting that applicants contact the MPCA for preapplication review. This is reasonable because, in practice, applications are amended during the process of review and preapplication review is not necessary.

Subpart 3 is amended to reflect the change in program administration and to change the time requirements. The changes in time requirements are reasonable

because experience with the program has shown that the applications demand additional time to review for eligibility and completeness, and because experience has demonstrated that applicants need additional time to address any problems discovered.

Subpart 4 is amended to reflect the change in program administration, statutory changes, and to remove redundant language. Because these changes will make the rule easier to understand and apply, they are reasonable.

Part 9220.0820

The change to subpart 1 of this section clarifies that the MPCA will only pay for costs incurred after the execution of a grant agreement. This is reasonable because it ensures that applicants will not pressure the MPCA into making a grant by expending large sums in anticipation of receiving the grant.

Subpart 2 of this part is amended to reflect statutory changes, and clearly specifies that 15 percent of the grant amount must be retained in anticipation of receipt of a satisfactory final report. Although this retainage amount is higher than other MPCA programs which retain funds, MPCA staff believe it is justified based on our experience with potential grant applicants in the field of waste tire recycling. This is reasonable to remove uncertainty regarding the terms of payment. This part has also been amended to remove the requirement that the grant incorporate by reference the final grant application. This is reasonable because in practice it has proven easier to restate the purpose of the study, rather than to rely on the description provided in the application.

9220.0825

Subpart 1 of this part is amended to clarify the language and reflect statutory change expanding the eligibility for loans to businesses that use tire derived products in manufacturing processes. The amendment also clarifies that local governmental units are eligible for loans under this program. In the past, local government units seeking to enter the waste tire processing business

have received loans, but their authority to do so has not been clear. Because solid waste management project often depends upon successful public private partnerships, extending eligibility to local governmental units will promote the goals of the waste tire management program, and the amendment is reasonable.

Subpart 2 of this part is amended to reflect statutory changes expanding eligible costs (construction or betterment, manufacturing processes, transport equipment), and to make clear that only costs incurred after the execution of the loan agreement are eligible. This latter amendment is reasonable because it ensures that applicants will not pressure the MPCA into making a loan by expending large sums in anticipation of receiving the loan.

9220.0830

Subpart 1 of this part is amended to reflect statutory changes. Because these changes will make the rule easier to understand and apply, they are reasonable. The rule is also amended to correct an erroneous reference to "grant" eligible cost.

Subpart 2 of this part is amended to correct an erroneous reference to "Dunn" and Brandstreet, and to reflect the eligibility of local governmental units, which are required to submit a resolution pledging their full faith and credit toward the repayment of the loan in lieu of credit rating information. This requirement is reasonable because local units of government do not have credit ratings, and should always be able to repay a loan through raising revenues. This subpart is also amended to delete the requirement that the MPCA Commissioner certify the technical feasibility of projects. This change is reasonable because it reflects legislative removal of this requirement. This subpart is also amended to clarify confusing language and to reflect the fact that the program is now administered by the MPCA. These changes are reasonable because they will make the rule easier to read and understand.

Subpart 3 of this part is amended to reflect the change in program administration, and to clarify what the commissioner will consider in making a preliminary decision to process the application. Because eligibility is described in terms of costs and not projects, it was reasonable to remove the requirement that the commissioner consider the eligibility of projects.

Subpart 4 of this part is amended to reflect the change in program administration. Because this change will make the rule easier to understand and apply, it is reasonable.

Subpart 5 of this part is amended to reflect the change in program administration, and to clarify the standards that will be applied when prioritizing loan applications. The standards established in the amendment are reasonable because they will allow the MPCA to distribute program funds to areas of the state where they are needed, and to prioritize projects that promote recycling of resources, such as tire derived fuels or tire derived products used for their physical properties only. These priorities are reasonable because they are consistent with the priorities of the Waste Management Act, Minn. Stat. § 115A.02 (Supp. 1989). Subpart 5 is also amended to reflect the repeal of the statutory requirement that the MPCA "certify" the technical feasibility of projects.

Part 9220.0835

Subpart 1 of this part is amended to reflect statutory changes. Because this change will make the rule easier to understand and apply, it is reasonable. Subpart 1 is also amended to allow the MPCA to award a loan based on need for the funds. This clarifies that the MPCA has the power to reduce a loan from the



amount requested by the applicant. These changes are reasonable because they ensure the the program funds will be spent for the greatest benefit.

Subpart 2 of this part is amended to reflect statutory changes and to clarify when the loan repayment schedule becomes effective. It is reasonable to make the interest due from the effective date of the grant agreement, to avoid having to have many schedules for repayment based on date of disbursement.

Subpart 3 of this part is amended to reflect statutory changes and the change in program administration, to clarify language and to remove a provision that the loan agreement incorporates the final application. This change is reasonable because in practice the application is a "working document" and is not an effective means of clearly stating what will be funded and built. The project and the anticipated costs will instead be separately and specifically described.

Subpart 4 of this part is amended to clarify language, reflect statutory changes, and reflect the change in program administration. Referring to an "amendment" as opposed to a "variance" is reasonable because a variance is a term of art generally applied to creation of exceptions to rules, and this is not what was intended. Because these changes will make the rule easier to understand and apply, they are reasonable.

#### V. SMALL BUSINESS CONSIDERATIONS IN RULEMAKING

Minn. Stat. § 114.115. subd. 2 (1988) require the MPCA, when proposing rules which may affect small businesses, to consider the various methods for reducing the impact on small businesses. The MPCA finds that the amendments proposed in this rulemaking will not have any negative effect on small businesses, but will instead clarify and expand rules governing a program intended to help small businesses seeking to obtain funding for waste tire processing projects.

VI. CONSIDERATION OF ECONOMIC FACTORS


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.

In proposing these amendments, the MPCA is seeking to clarify and expand a rule which will have a beneficial effect on commerce, trade and industry by making that rule consistent with statutory authority and by simplifying its provisions.

VII. CONCLUSION

Based on the foregoing, the proposed amendments Minn. Rules pts. 9220.0800-.0830 are both needed and reasonable.

Dated: August 16, 1990

  
for Gerald L. Willet  
Commissioner