

STATE OF MINNESOTA
OFFICE OF WASTE MANAGEMENT

In the Matter of the Proposed Rule
Amendments Governing the Solid
Waste Processing Facility Capital
Assistance Program, Minn. Rules Parts
9210.0100 to 9210.0180

STATEMENT OF NEED
AND REASONABLENESS

I. INTRODUCTION

This program was originally created under the 1984 amendments to the Waste Management Act of 1980 as the Minnesota Solid Waste Processing Facility Capital Assistance Program. The legislature determined that a program of capital assistance to political subdivisions was necessary to assist the development of solid waste processing facilities necessary to properly manage solid waste, and to conserve and protect the natural resources of the state and the health, safety, and welfare of its citizens. Minn. Stat. §115A.54, subd. 1 (1988). The Minnesota Waste Management Board (Board) was authorized under Minn. Stat. §115A.54, subd. 2 (1988) to provide technical and financial assistance for the acquisition and betterment of solid waste processing facilities.

The Waste Management Board promulgated Minn. Rules pts. 9200.6000 to 9200.6800 (1986) to implement the program by establishing the substantive criteria and procedural conditions under which the Board awarded grants. The rules were non-

controversial and were adopted without a public hearing, following review by the Board's Solid Waste Management Advisory Council.

In 1989, the legislature created the Minnesota Office of Waste Management (Office) to manage the solid waste activities of the state, including this program. The Office now proposes to amend the program rules.

II. STATEMENT OF THE OFFICE'S STATUTORY AUTHORITY

The Office's authority to adopt the rules is set forth in Minn. Stat. §115A.06, subd. 2 (1988), which provides:

Subd. 2. [RULES.] Unless otherwise provided, the board [office] shall promulgate rules in accordance with chapter 15 to govern its activities and implement sections 115A.01 to 115A.72.

Under this statute the Office has the necessary statutory authority to adopt the proposed rule amendments.

III. STATEMENT OF NEED

Minn. Stat. ch. 14 (1988) requires the Office to make an affirmative presentation of facts establishing the need for and reasonableness of the rule amendments as proposed. In general terms, this means that the Office 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 that requires administrative attention, and reasonableness means that the solution proposed by the Office is appropriate. The need for the proposed rule amendments is discussed below.

The rules governing the Solid Waste Processing Facility Capital Assistance Program (CAP) were promulgated to establish a mechanism to ensure the orderly administration of the program. The Office has administered the program on a first-come, first-serve basis, reviewing and awarding grants to applicants in the order in which completed applications were received. The Office was able to effectively administer the program because program resources exceeded the total amount of grant funds requested by applicants. As more counties improve existing solid waste management infrastructures and develop new solid waste processing facilities, grant requests will be greater than available resources. These resource limitations require the Office to amend the program rules in order to promote the most effective use of available resources. The Office proposes to amend the program rules to establish a mechanism for evaluating applications against each other and for limiting or reducing the amount of grant awards.

IV. STATEMENT OF REASONABLENESS

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

Part 9210.0100 DEFINITIONS

Part 9210.0100 adds two definitions for clarity and consistency. The substitution of Director (Subp. 5a) and Office (Subp. 9a) for Board (Subp. 2) and Chair (Subp. 3) reflects the change in administrative responsibilities for the program.

Part 9210.0120 GRANT APPLICATION PROCEDURES

Part 9210.0120, subparts 5 through 8 replace subparts 1 through 4, establishing a two-stage application process. This process will provide the director with a mechanism for identifying those projects that will best promote the objectives of the program.

Part 9210.0120, subp. 5 specifies that the director initiate the process through a notice in the State Register that includes a projected schedule for the application process and a deadline by which a preliminary grant application must be received by the

director. By providing this notice, the director will assist applicants in planning for project implementation.

Part 9210.0120, subp. 7 states that only those applicants that are invited by the director to submit a final grant application remain eligible for a grant award. By inviting specific applicants to submit final grant applications, the director is reducing the documentation burden for applicants that do not receive grant assistance.

Part 9210.0130 ELIGIBILITY CRITERIA

Part 9210.0130 adds language for clarity. Part 9210.0130, subp. 1 is expanded to include sanitary districts with the authority to regulate solid waste as an eligible applicant for program assistance. This addition reflects the inclusion of sanitary districts as eligible recipients under Minn. Stat. section 115A.50 (1988).

Part 9210.0130, subp. 2 is expanded to incorporate language from Minn. Stat. §115A.54, subd. 2a (h) (1988), which defines the term "project" for a waste processing facility. This subpart is also expanded to clarify the eligibility of a project that consists of a transfer station that will initially transfer waste to a landfill. To be eligible, such a transfer station must be part of a resource recovery project that is proposed in an approved comprehensive solid waste management plan, and that resource recovery facility must be in place within five years. This clarification reflects Minn. Stat. §115A.54, subd. 2a (d) (Supp. 1989). Finally, additional clarification is provided in this

subpart to specify that a proposed project may include processing of household hazardous waste. This clarification eliminates the suggestion that such activity is specifically ineligible under this program.

Part 9210.0130, subp. 4 is revised to eliminate confusion over whether specific types of equipment are eligible costs under the program. The clarification specifies that costs related to collection equipment, including drop boxes not located on the waste processing facility site, and costs related to the lease of equipment are ineligible costs.

Part 9210.0131 PRELIMINARY GRANT APPLICATION

This part describes the information that must be provided by an applicant as part of a preliminary grant application. The Office requires the information specified in this part in order to effectively evaluate the preliminary grant applications. The information specified in this part presently must be included in a grant application submitted under the existing program rules. The specific rationale for each item of the required information is set out below.

Part 9210.0131, subp. 1 (A) requires an applicant to identify each applicant and the name and qualifications of the project manager. An applicant must describe the proposed waste processing facility, the institutional arrangements necessary for project implementation and operation, the method of facility procurement, and the

waste stream for the facility. The Office requires this descriptive information as the minimum level of technical and managerial data necessary to evaluate a proposed project in combination with the other information required in a preliminary grant application.

Part 9210.0131, subp. 1 (B) requires an applicant to demonstrate that a proposed project is consistent with the comprehensive solid waste management plan of each affected county. This requirement ensures that a proposed project is developed as a result of comprehensive planning. The Office requires a description of the status of the plan of each affected county to ensure that each county is undertaking the necessary planning procedures for effective solid waste management.

Part 9210.0131, subp. 1 (C) requires an applicant to demonstrate to what extent the legislative priorities of Minn. Stat. section 115A.49 are satisfied. Limited program resources necessitate that the Office give preference to projects that satisfy these priorities.

Part 9210.0131, subp. 1 (D) requires an applicant to submit a preliminary financial plan that will enable the Office to ascertain whether the estimated costs are realistic. This preliminary financial plan must also document that an applicant has secured necessary financing for all capital costs that would not be paid for with grant funds

and for future operating and maintenance costs. The Office requires this information in order to assess the ability of an applicant to implement a proposed project.

Part 9210.0131, subp. 1 (E) is required so that the Office can ascertain whether the participating political subdivisions are committed to implementing a proposed project, including providing the financing and exercising the governmental powers necessary to develop and operate a proposed project. The Office requires this information to ensure that an applicant will receive the local support necessary to implement a proposed project.

Part 9210.0131, subp. 1 (F) is required so that the Office can ascertain whether a proposed project will include resource recovery, and that markets exist for those recovered materials. The Office requires this information to satisfy Minn. Stat. §115A.54, subd. 2a (E) (Supp. 1989), which specifies that projects without resource recovery are not eligible for assistance, and to determine whether the proposed project is consistent with state and regional solid waste management needs.

Part 9210.0131, subp. 1 (G) requires an applicant to indicate the projected time frame for project implementation, including anticipated completion dates for environmental review, Minnesota Pollution Control Agency permitting, facility construction, and the anticipated date of operation. The Office requires this information to assess the ability

of an applicant to implement a proposed project in a timely manner upon receipt of a grant award.

Part 9210.0131, subp. 2 states that the Office shall determine the completeness of a preliminary grant application and, if necessary, provide an applicant with the opportunity to make changes or additions necessary to complete an application. An applicant will have 30 days from the date of the Office's determination that a preliminary grant application is incomplete to make any changes or additions.

Part 9210.0132 INVITATION TO SUBMIT FINAL GRANT APPLICATION

This part describes the criteria that provide the basis upon which the Office will evaluate preliminary grant applications. The Office will invite those applicants that best meet the criteria set out in this part to submit a final grant application. The rationale for each criterion is set out below.

Part 9210.0132, subp. 1 (A) requires the director to give preference to proposed projects that are consistent with the comprehensive solid waste management plan of each affected county. This criterion promotes the planning process as an integral part of project development.

Part 9210.0132, subp. 1 (B) requires the director to give preference to projects that best meet the legislative priorities Minn. Stat. sections 115A.02 (Supp. 1989) and

115A.49 (1988). Under section 115A.02, projects that process separated materials are given priority over projects that process mixed solid waste. For example, a proposed project for a recycling facility would be given priority over a proposed project for a mixed solid waste incineration facility. For projects that are equal on the basis of the other criteria set out in this part, the Office would give preference to a project that was the most consistent with the priorities in Minn. Stat. sections 115A.02 and 115A.49.

Part 9210.0132, subp. 1 (C) requires the director to consider a proposed project within the context of the solid waste management needs of the region of the state in which the project would be developed. This criterion will assure that grant funding favors projects in regions of the state that have the greatest need for the development of solid waste processing capacity.

Part 9210.0132, subp. 1 (D) requires the director to consider whether an applicant has the ability and intention to implement a proposed project upon the receipt of a grant award. This criterion favors applicants that are further along in their plans to develop and implement a proposed project.

Part 9210.0132, subp. 1 (E) requires the director to consider the impact of a proposed project on the state's ability to fund other projects. Because of the limited program resources, the Office will seek to award grants to projects that will provide the greatest

positive contribution, in terms of the number of counties affected and the amount of local funding leveraged, to meeting state solid waste management goals.

Part 9210.0132, subp. 1 (F) requires the director to consider the extent to which an applicant has attempted to develop a project in cooperation with other counties. For a proposed project that serves only a single county, the director will assess whether an applicant has adequately demonstrated that cooperation with other counties is not feasible. This criterion promotes the development of multi-county projects to the maximum extent practicable and is consistent with the requirements found in Minn. Stat. §115A.54, subd. 2a(f).

Part 9210.0132, subp. 2 provides that the director will invite only those applicants that best meet the criteria set out in subpart 1 to submit final grant applications. Because each criterion establishes a preference based on only a specific element or elements of a proposed project, the Office will balance those preferences to identify those projects that best satisfy the criteria as a whole. This is reasonable because all of the listed criteria establish important measures of the likely success of the proposed project and the consistency of the project with state waste management goals.

Those applicants that would not receive grant assistance will avoid having to prepare the information required as part of a final grant application. In addition, this subpart allows the director not to invite any applicants to submit final grant applications if the

director determines that none of the projects adequately satisfy the criteria set out in this part. Upon such a determination, the director shall reinitiate the process, allowing applicants to improve the proposed projects or to develop projects that would satisfy the criteria. This is reasonable because it will ensure that program funds are not wasted if no projects are found to be worthy of funding.

Part 9210.0140 FINAL GRANT APPLICATION

This part describes the information that must be included in a final grant application. Part 9210.0140, subp. 1 (J) is revised to clarify that an eligible project may include processing of household hazardous waste. In addition, Part 9210.0140, subp. 2 provides that an applicant may change the components of a proposed project as described in a preliminary grant application, provided that such a change would not result in a project inconsistent with the director's determination that the project best meets the criteria set out in Part 9210.0132, subp. 2. This subpart is reasonable because it provides an applicant with flexibility to adjust a proposed project during the application process in response to Office comments or changing circumstances.

Part 9210.0150 SUPPORTING DOCUMENTATION REQUIRED TO BE SUBMITTED WITH FINAL GRANT APPLICATION

This part describes the supporting documentation that must be provided by an applicant to meet the requirements set out in Minn. Stat. §115A.51. Several minor changes are made to this part and are described below.

Part 9210.0150 (A) is changed to require an applicant to provide a copy of an original preliminary grant application submitted under Part 9210.0131 instead of a conceptual and technical feasibility report. This change reflects the establishment of a two-stage application process. The information that would be presented in a conceptual and technical feasibility report is now included in a preliminary grant application.

Part 9210.0150 (B) is expanded to require an applicant to specify anticipated disposal costs of residuals from the facility and anticipated equipment replacement costs. This information is necessary for the director to determine that an applicant has the ability to effectively operate the project and finance all related costs of operation.

Part 9210.0150 (D) is changed to require an applicant to submit an approved comprehensive solid waste management plan for each affected county. This change reflects advancement in county planning; nearly all counties will have approved plans by October 1990. This is reasonable because a county that does not have an approved plan should not receive program assistance to construct a solid waste processing facility that should be the result of considerable planning.

Part 9210.0150 (E) is expanded to require an applicant to provide a description of the management and staffing plans for a proposed project. This description will provide the director with information needed to determine whether an applicant has the authority and ability to ensure that a proposed project is implemented.

Part 9210.0150 (F) is changed to clarify the information necessary for the director to determine that an applicant can provide waste assurance for the life of a proposed project.

Part 9210.0150 (K) and (L) are deleted because this information is required in the preliminary grant application stage of the process.

Part 9210.0150 REVIEW AND EVALUATION OF FINAL GRANT APPLICATIONS

This part governs the process by which the director reviews final grant applications and the conditions that must be satisfied before an applicant will receive a grant award. The changes to this part are primarily for clarity and consistency, as described below.

Part 9210.0160, subp. 1 is changed to make this subpart consistent with the proposed two-stage application process. The director, upon reviewing preliminary grant applications under Part 9210.0132, will determine whether an applicant or a proposed project is eligible for program assistance. Therefore, the director need only confirm that determination during the review of final grant applications. The director will still need to determine the eligibility of the costs identified in a final grant application because an applicant may make changes to a project under Part 9210.0140, subp. 2 after the director's invitation and before submission of a final grant application. The director must also determine the completeness of a final grant application.

Part 9210.0160, subp. 2 is revised for clarity and to provide an applicant with additional time to correct any inadequacies identified by the director during the review of final grant applications. As revised, an applicant will have 30 days rather than 14 days to make such corrections.

Part 9210.0160, subp. 3 is repealed because it represents an unnecessarily duplicative step in the review process. The director shall include the determination of the need for financial assistance as part of the evaluation under Part 9210.0160, subp. 4. That subpart is revised to reflect this simplification in the review process.

Part 9210.0160, subp. 5 is revised for consistency and to specify that an applicant that does not receive a grant award as a result of the director's review of final grant applications may resubmit a preliminary grant application upon future notice by the director. The Office anticipates that nearly every applicant that is invited to submit a final grant application will receive a grant award.

Part 9210.0170 LIMITATIONS

This part sets out the limitations on the amount of a grant award and the actual disbursement of grant funds. The proposed changes are for clarity and to set out conditions in which the director may award a grant for less than the maximum grant eligible amount, as described below.

Part 9210.0170, subp. 1a is added to allow the director to award grants for amounts less than the maximum eligible amount. The conditions in which the director may reduce the amount of a grant award are set out to allow the director to effectively manage the total program resources, to discourage an applicant from misrepresenting costs in a preliminary grant application, and to avoid the use of program resources for projects that do not demonstrate financial need for program assistance.

Part 9210.0170, subp. 2 is revised to specify that a grant will not be awarded to cover costs incurred prior to the execution of a grant agreement rather than prior to the grant award. This change is reasonable because of the delay between the date a grant is awarded and the date a grant agreement is executed. The Office should not provide assistance for costs incurred before the legal conditions of that assistance are set out in a grant agreement.

Part 9210.0170, subp. 3 is revised for clarity.

During the 1990 legislative session, the Minnesota Legislature amended Minn. Stat. §115A.54, subd. 2a (b) and (c) giving the Office authority to establish a higher maximum grant for multi-county projects. For two reasons, the Office has decided not to amend the rules at this time to reflect this higher grant amount. First, given currently available funds, the award of a higher amount to a single project could eliminate the grant program for all other projects. Such an outcome would be

inconsistent with the solid waste management goals and needs of the state as a whole. Second, to the extent the higher amount of funds is intended as a means of promoting intercounty cooperation, the proposed rules already include criterion (Part 9210.0132, subp. 1) that would further this objective.

Part 9210.0180 GRANT AGREEMENT

Part 9210.0180, subparts 1 through 3 are revised for consistency and clarity.

V. SMALL BUSINESS CONSIDERATIONS

Minn. Stat. section 14.115 (1988) requires state agencies proposing rule amendments that affect small businesses to consider the following methods for reducing the impact of the rule amendments on small businesses:

(a) the establishment of less stringent compliance or reporting requirements for small businesses;

(b) the establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses;

(c) the consolidation or simplification of compliance or reporting requirements for small businesses;

(d) the establishment of performance standards for small businesses to replace design or operational standards required in the rule; and

(e) the exemption of small businesses from any or all requirements of the rule.

The statute requires agencies to incorporate into proposed rule amendments any of the methods listed in subdivision 2 "that it finds to be feasible, unless doing so would be contrary to the statutory objectives that are the basis of the proposed rulemaking." Minn. Stat. §14.115, subd. 3 (1988).

The proposed rule amendments revise the criteria and procedures by which the Office provides financial assistance in the form of grants to cities, counties, solid waste management districts, and sanitary districts. The requirements of Minn. Stat. section 14.115 do not apply to these proposed rule amendments because this program does not place any direct regulatory burden on small businesses.

This program does limit the participation of small businesses. Because the funds for this program are obtained through the issuance of state bonds, constitutional limitations exist concerning the use of these funds. Minn. Const. art. XI, section 5. Specifically, a project completed with program assistance must be publicly owned. The existing program rules do not limit the ability of small businesses to participate in the program beyond those constitutional limitations. The proposed rule amendments will not changing these existing limits.

The Office believes that the proposed rule amendments may have some indirect impact on small businesses. The proposed rule amendments promote the development of recycling facilities. These publicly-owned facilities will, in some cases,

compete with private recycling businesses. Efforts to mitigate the impact of this program by reducing or eliminating the preference for recycling projects would contradict the state priorities for solid waste management in Minn. Stat. §115A.02 (b) (Supp. 1989).

The Office also believes that the proposed rule amendments will have some indirect benefits for small businesses. The development of solid waste processing capacity, especially increased recycling capacity, will create new opportunities for small businesses and entrepreneurs to participate in solid waste management activities.

VI. CONCLUSION

Based on the foregoing, the proposed amendments to Minn. Rules pts. 9210.0100 to 9210.0180 are both needed and reasonable.

Dated: June 1, 1990


Michael Robertson
Director

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