

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

STATEMENT OF MINNESOTA

COUNTY OF RAMSEY

MINNESOTA POLLUTION CONTROL AGENCY

In the Matter of the Proposed Adoption of a Rule for the Administration of the Minnesota Solid Waste Management Planning Assistance Program, Minn. Rule 6 MCAR §4.6085

ORDER ADOPTING RULE

After proper notice required by Minn. Stat. §15.0412, subd.4g (1980), after affording all interested persons an opportunity to present written and oral data, statements and arguments to the Agency, in accordance with the statutory requirements regarding the adoption of non-controversial rules, after considering the Statement of Need and Reasonableness and the written comments submitted to the Agency, and after considering all of the evidence adduced upon the records, files and proceedings herein, the Agency, being fully advised in the premises

NOW, THEREFORE, IT IS ORDERED that this rule identified as Minn. Rule 6 MCAR §4.6085, a Rule for the Administration of the Minnesota Solid Waste Management Planning Assistance Program, is adopted this 28th day of October, 1980, as published at 5 S.R. 380 et seq. (September 8, 1980) with the following corrections:

1. A typographical error occured in Part C.1.b. of the proposed rule. This error is corrected by substitution of the word "and" for the word "of" in following text:

> b. establish a siting procedure and development program to assure the orderly location, development, and financing of new or expanded solid waste facilities and services sufficient for a prospective ten year period, including

(a) estimated costs and implementation schedules, (b) proposed procedures for operation and maintenance, (c) estimated annual costs ~~of~~ and gross revenues and (d) proposals for the use of facilities after they are no longer needed or usable; and,

2. At four points in the rule, references made to another part of the rule incorrectly identified the part of the rule intended to be referenced. These errors are corrected as follows:

a. in Part D.3.a., the reference to "B.1." is corrected to read "C.1."

b. in Part E.2., the reference to "D.2." is corrected to read "E.1."

c. in part G.1.b.(2)(d), the references to "b.(2)(ii) and b.(2)(iii)" are corrected to read "b.(2)(b) and b.(2)(c)".

d. in part H.1., the reference to "E.1.d." is corrected to read "F.1.".

Dated this 28th day of October, 1980.

MINNESOTA POLLUTION CONTROL AGENCY

Art Engelbrecht

ART ENGELBRECHT
Chairman

Terry Hoffman

TERRY HOFFMAN
Executive Director

STATE OF MINNESOTA

COUNTY OF RAMSEY

MINNESOTA POLLUTION

CONTROL AGENCY

In the Matter of the Proposed Adoption of a Rule for the Administration of the Minnesota Solid Waste Management Planning Assistance Program, Minn. Rule 6 MCAR §4.6085

ORDER ADOPTING CHANGES TO THE RULE

After affording all interested persons an opportunity to present written and oral data, statements and arguments to the Agency, in accordance with statutory requirements regarding the adoption of non-controversial rules, the Agency, being fully advised in the premises, states

NOW, THEREFORE, IT IS ORDERED that this rule identified as Minn. Rule 6 MCAR §4.6085, a Rule for the Administration of the Minnesota Solid Waste Mangagement Planning Assistance Program, adopted by the Agency on the 28th day of October and forwarded to the Office of the Attorney General for approval, is hereby changed as follows;

1. H.4. of the rule is changed to read:

> 4. The grant agreement shall include a payment schedule. This payment schedule shall provide for reimbursement of stated travel costs in a manner described in the grant agreement and shall require that ten percent of each payment made under the grant agreement (except reimbursable travel costs) be retained by the Agency until the Director determines that the report submitted under the grant is an acceptable plan. If the Director determines that a report is deficient, the Director shall notify the grantee of the deficiency. The Agency shall pay the withheld ten percent of the grant as soon as the deficiency is corrected and the Director determines that the report is an acceptable plan.

2. H.5. of the rule is changed to read:

> 5. The grant agreement shall provide that the grantee shall be authorized to enter into contracts to complete the work specified in the grant. The grant agreement shall further require that all such contracts name the Agency as a third-party beneficiary to that contract.

Dated this 25th day of November, 1980.

MINNESOTA POLLUTION CONTROL AGENCY

ART ENGLEBRECHT
Chairman

TERRY HOFFMAN
Executive Director

shows changes

6 MCAR § 4.6085 Rule for the administration of the Minnesota solid waste management planning assistance program

A. Purpose

This rule implements the solid waste management planning assistance program, created and described in Article V of the Waste Management Act of 1980, Minn. Stat. §§115A.42 through 115A.46 (1980), by establishing the substantive criteria and procedural conditions according to which the Agency shall award solid waste management planning assistance grants.

B. Overview of Procedures for Applying for and Receiving a Grant

1. Application for a Grant. To be eligible for a grant under these rules, an applicant shall make an application for a grant.

a. The procedures the applicant shall follow in applying for a grant are set out in Part E. of this rule.

b. The information and documentation the applicant shall provide in the grant application are set out in Part F. of this rule.

2. Award of a Grant. The Agency shall award the applicant a grant, in accordance with the procedures and limitations set out in Part G. of this rule, if the Agency determines:

a. that the applicant specified in the grant application is grant eligible;

b. that the costs specified in the grant application are grant eligible; and,

c. that the project specified in the grant application is grant eligible.

The criteria the Agency shall use in determining the grant eligibility of the applicant is set out in section D.1. of this rule; the criteria the Agency shall use in determining the grant eligibility of the costs is set out in section D.2. of this rule; and, the criteria the Agency shall use in determining the grant eligibility of the project is set out in section D.3. of this rule.

C. Definitions

1. "Acceptable plan" means a written report prepared by a grantee to determine and provide the planning information set out in Minn. Stat. §115A.46 (1980). To be considered an acceptable plan under these rules, the written report shall:

a. contain descriptions, estimates or assessments of existing and proposed waste practices, including the following:

(1) A description of the existing collection, processing, and disposal systems used by the political subdivision(s) being studied by the named grantee, including schedules of rates and charges, financing methods, environmental acceptability, and opportunity for improvements in the systems;

(2) An estimate, calculated on the basis of current and projected waste generation practices, of the land disposal capacity in acre-feet which the political subdivisions being

studied by the named grantee shall need through the year 2000;

(3) An assessment of opportunities to reduce the need for land disposal through the use of waste reduction and resource recovery [as defined in Minn. Stat. §115A.03, subd. 27 (1980)], including an assessment of (a) the alternative degrees of reduction achievable, (b) the comparative costs of the alternatives (including capital and operating costs), and (c) the effects of the alternatives on the cost to generators of the waste.

(4) A description of existing and proposed county and municipal ordinances and license and permit requirements relating to solid waste management, including a description of the existing and proposed regulations and enforcement procedures relevant to those requirements; and,

b. establish a siting procedure and development program to assure the orderly location, development, and financing of new or expanded solid waste facilities and services sufficient for a prospective ten year period, including (a) estimated costs and implementation schedules, (b) proposed procedures for operation and maintenance, (c) estimated annual costs ~~of~~ and gross revenues and (d) proposals for the use of facilities after they are no longer needed or usable; and,

c. address the resolution of conflicting, duplicative or overlapping local management efforts, including the possible establishment of joint powers management programs or waste management districts; and,

d. establish a schedule of actions which need to be undertaken to put the procedures, programs and resolutions described in the plan into effect, including a statement of the appropriate entity to take each action.

2. "Agency" means the Minnesota Pollution Control Agency, as constituted pursuant to Minn. Stat. §116.02, subd. 1 (1980).

3. "Director" means the Executive Director and Chief Executive Officer of the Agency or a person expressly designated by the Director to discharge a duty or responsibility of the Director.

4. "Grant eligible" or "grant eligibility" means meets the criteria to receive funding assistance under these rules. The fact that an item or person is "grant eligible" under these rules does not automatically assure that a grant shall be awarded. A grant shall only be awarded if the grant elibility criteria are met and if sufficient funds are available to cover the grant.

5. "Metropolitan area" has the meaning given it in Minn. Stat. §115A.03, subd. 18 (1980).

6. "Political subdivision" has the meaning given it in Minn. Stat. §115A.03, subd. 24 (1980).

7. "Regional development commission" has the meaning given it in Minn. Stat.§115A.03, subd. 26 (1980).

D. Grant eligibility criteria

1. Eligible applicants. Except for political subdivisions located within the seven county metropolitan area, any political subdivision within the State of Minnesota is grant eligible.

2. Eligible costs.

a. The following costs are grant eligible:

(1) Salaries of staff persons, consultants, and other persons employed to develop and publish an acceptable plan;

(2) Costs associated with the drafting and execution of necessary contracts between the grantee and other units of government or qualified consultants employed to develop or publish an acceptable plan; including, but not limited to, reasonable attorneys fees;

(3) Costs associated with holding meetings to inform the public of the development of the plan and to provide an opportunity for the public to participate in and comment on the development of the plan; including, but not limited to, costs associated with noticing and recording the meeting;

(4) Costs associated with the printing and distribution of plans and draft plan materials;

(5) Costs of any in-state travel, the primary purpose of which is to attend meetings or gather information needed for the development and publication of an acceptable plan; including, but not limited to, reimbursement for mileage consistent with State allowances;

(6) Costs of any necessary supplies required for the development and publication of an acceptable plan. (The costs of any commodities, materials, capital expenditures and equipment which could be used after the plan is completed shall not be considered supplies and are, therefore, not grant eligible under these rules), and,

(7) Overhead costs.

b. The amount of the grants available under this rule is limited as follows:

(1) For planning by a regional development commission, joint planning by two or more contiguous counties, or joint planning by political subdivisions located in two or more contiguous counties:

(a) The Agency shall award grants to cover 90 percent of the eligible costs specified in the grant application; and,

(b) The grantee shall fund the remaining costs of completing the planning efforts.

(2) For all planning efforts other than that described in paragraph D.2.b.(1):

(a) The Agency shall award grants to cover 50 percent of the eligible costs specified in the grant application; and,

(b) The grantee shall fund the remaining costs of completing the planning efforts.

(3) For section D.2.b.(1) grants and D.2.b.(2) grants, the maximum amount that a grantee shall be awarded to complete the plan is 90 percent and 50 percent, respectively, of the total requested by the grantee in its application. Within these maximums, adjustments between funds awarded to cover the costs specified in section D.2. shall be made if the Agency and the grantee determine that such adjustments shall result in the development of an acceptable plan in a more efficient manner.

(4) If, while working to complete the grant, a grantee finds that more funds are needed, the grantee shall not be awarded additional funds unless the grantee makes application for an additional grant in accordance with the grant application procedures set out in Part E. of this rule. The Agency shall treat an application for an additional grant in the same manner as it treats applications for original grants, as provided in Part G. of this rule.

c. Grants shall be awarded to cover the eligible costs of only those tasks which are undertaken and completed during the grant period established in the grant agreement. Grants shall not be awarded to cover any cost associated with tasks performed prior to the award of a grant or after the expiration of the grant agreement.

d. The availability of funds is a precondition to the award of any grant by the Agency.

3. Eligible projects.

a. The Agency shall consider grant eligible all

projects which are reasonably designed to result in the development and publication of an acceptable plan, as defined in section ~~B.1.~~ C.1. of this rule.

b. The Agency shall determine that a project is reasonably designed to result in an acceptable plan if the Agency finds that the grant application required to be submitted under Part E. of this rule is complete. The Agency shall determine that a grant application is complete if the application contains all the information and meets all the requirements set out in Part F.

E. Grant Application Procedures

1. For grants to be awarded during the fiscal year ending June 30, 1981:

a. As soon as possible and no later than April 15, 1981, a grant applicant shall submit a grant application to the Agency.

b. The grant application to be submitted to the Agency shall include all the information and documentation set out in Part F. of this rule.

c. Upon receiving a grant application, the Director shall promptly review the application and shall make a determination as to

(1) the eligibility of the applicant specified in the preliminary application;

(2) the eligibility of the costs specified in the preliminary application; and,

(3) the eligibility of the project specified in the preliminary application.

d. within two weeks after receiving the application, the Director shall notify each applicant as to the Director's determinations:

(1) If the Director determines that the applicant, the costs and the project specified in the application are grant eligible, the application shall be considered final as of the date it was received and the applicant shall be so notified. The application shall then be treated in accordance with the Agency review provisions established in Part G. of this rule.

(2) If the Director determines that the applicant is not grant eligible, the application shall not be further considered and the applicant shall be so notified.

(3) If the Director determines that any of the costs described in the application are not grant eligible or that the application is otherwise incomplete:

(a) The Director shall note the inadequacies in the application and shall so notify the applicant;

(b) The applicant shall have an opportunity to cure the inadequacies noted by the Director; except that, no information received by the Agency after May 1, 1981, shall be considered by the Director in determining the grant eligibility of the applicant, costs or project.

(i) An application which is considered inadequate under this section shall not be considered final until

the Agency receives the information or documentation which cures the inadequacies described by the Director.

(ii) An application which is considered inadequate under this section shall be considered final on the date all necessary supplemental information is received by the Agency.

(iii) Once the application is considered final, it shall be treated in accordance with the Agency review provisions established in Part G. of this rule.

2. For grants to be awarded during all fiscal years other than that described in paragraph ~~D.2.~~ E.1.:

a. Preliminary grant applications. [reserved].

b. Final grant applications. [reserved].

F. Grant Application Content.

1. Applications for grants to be awarded during the fiscal year ending June 30, 1981 shall include the following information.

a. The name(s) of each political subdivision(s) making the grant application;

b. Resolutions from each political subdivision named on the application which

(1) demonstrate the political subdivision's desire to make the grant application and interest in the planning efforts described in the grant application; and,

(2) demonstrate the political subdivision's commitment to provide the required financial input to complete the planning efforts described in the grant application;

c. In the case of a regional development commission, resolutions from each of the counties represented by the regional development commission, which demonstrate the counties' interest in and support for the planning efforts described in the grant application;

d. The name(s) and address(es) of the project manager(s);

e. Total project cost;

f. Amount of grant funding requested;

g. Amount and sources of all other funding contributions, including the amount of funds to be contributed by the applicant;

h. Regional boundaries of and population in area to be considered in the planning study;

i. A work plan which provides the following information and details:

(1) A brief description of the problem which the grantee hopes to address through the planning efforts; including, a statement of any known waste management problems to be addressed by the grantee and any present support or opposition to current or proposed solid waste disposal alternatives;

(2) A breakdown of the specific work tasks to be completed under the terms of the grant; including, but not limited

to, each of the tasks required to be completed by Minn. Stat. §115A.46 (1980);

(3) A breakdown of the number of work hours needed to complete each of the tasks specified in paragraph (i)(2);

(4) A breakdown of all the costs associated with completing each of the tasks specified in paragraph (i)(2), including an explanation of how each cost was calculated;

(5) A breakdown of the staff, consultants, and units of government associated with completing each of the tasks specified in paragraph (i)(2);

(6) A breakdown of the amount of time needed to complete each of the tasks specified in paragraph (i)(2); and,

(7) A description of the program to be completed by the applicant to ensure public participation in the planning efforts.

2. Applications for grants to be awarded during all fiscal years other than the one described in paragraph F.1.. [reserved].

G. Agency Review of Grant Applications and Award of Grants

1. Review and award of grants to be awarded during the fiscal year ending June 30, 1981.

a. Grants shall be awarded to eligible grantees, to the extent funding is available, on a first come, first serve basis.

b. The Agency shall make these first come, first serve determinations as follows:

(1) The Director shall mark each and every

application and supplemental submittal the Agency receives with a notation of the date the application and submittal is received. The date the Agency shall use in determining the rank of the application is the date that the application is considered final:

(a) For applications which are complete on the day they are submitted, the application shall be considered final on the date the application is received by the Agency.

(b) For applications which require the submission of supplemental information to be complete, the application shall be considered final on the date all necessary supplemental information is received by the Agency.

(c) In those instances in which more than one application is received by the Agency during any one day, the priority status of the applications shall be determined by lottery.

(2) Once the grant application is considered final [as provided in Part E.1.a.(1) and (3)(b)], the Director shall proceed as follows:

(a) Within four weeks after notifying the applicant that the application is considered final, the Director shall draft a grant for the applicant, in accordance with the requirements and conditions set out in Part H. of this rule.

(b) At the next regularly scheduled meeting the Agency holds after the grant is drafted, the Director shall present the grant to the Agency for its consideration and review.

(c) The Agency shall review the Director's determinations as to applicant, cost and project eligibility; and, if it agrees with these determinations, shall award the grant.

(d) The Agency is authorized to delegate to the Director the authority to issue grants under this program. If the Agency delegates such authority to the Director, the Agency review provisions set out in ~~b.(2)(ii) and (iii)~~ b.(2)(b) and (c) are wavied.

2. Review and award of grants to be awarded during all fiscal years other than the one described in paragraph G.1. [reserved].

H. Grant Agreement

1. The Grant agreement shall incorporate by reference the final grant application submitted to the Agency in accordance with section ~~E.1.d.~~ F.1. of this rule.

2. The grant agreement shall establish the term of the grant. All grants awarded under this rule shall have a maximum term of one year.

3. Grants not being completed in accordance with the terms and conditions of the grant agreement, including time schedules, shall be forfeited unless the Agency determines that the variances from the grant requirements are due to factors outside the control of the grantee.

4. The grant agreement shall include a payment schedule. This payment schedule shall provide for reimbursement of stated travel~~,~~ costs in a manner described in the grant agreement~~,~~ and

shall require that ten percent of each payment made under the grant agreement (except reimbursable travel costs) be retained by the Agency until the Director determines that the report submitted under the grant is an acceptable plan. If the Director determines that a report is deficient, the Director shall notify the grantee of the deficiency. The Agency shall pay the withheld ten percent of the grant as soon as the deficiency is corrected and the Director determines that the report is an acceptable plan.

5. The grant agreement shall provide that~~, subject to the approval of the Director,~~ the grantee shall be authorized to enter into contracts to complete the work specified in the grant. The grant agreement shall further require that all such contracts name the Agency as a third-party beneficiary to that contract.

I. Apportionment

1. For grants to be awarded during the fiscal year ending June 30, 1981, the Agency shall apportion funds allocated to it by the legislature for the grant programs set out in Articles V and VI of the Waste Management Act, Minn. Stat. §§115A.42 through 115A.54 (1980), as follows:

a. Article V grants (grants awarded under these rules): forty percent of the amount appropriated to the Agency; and

b. Article VI grants (grants awarded under other rules): sixty percent of the amount appropriated to the Agency.

c. If the Agency receives more eligible requests for grant assistance under Article V than the Agency has funds available and the Agency receives less eligible requests for grant assistance under Article VI than it has funds available, the Agency shall adjust the apportionment described in this Part. Similarly, if the Agency receives less eligible requests for grant assistance under Article V than the Agency has funds available and more eligible requests for grant assistance under Article VI than it has funds available, the Agency shall adjust the apportionment described in this Part. No such adjustment shall be made until the last date that final grant applications are permitted to be submitted to the Agency under this rule and the rule developed to implement Article VI of the Waste Management Act.

2. For grants to be awarded during all fiscal years other than that described in paragraph I.1., the Agency shall apportion funds allocated to it by the legislature for the grant programs set out in Articles V and VI of the Waste Management Act. Minn. Stat. §115A.42 through 115A.54 (1980), as follows: [reserved].

J. Severability.

If any provision of this rule or the application thereof to any person or circumstance is held to be invalid, such invalidity shall not affect any other provision or application of any other part of this rule or any other rule which can be given effect without the invalid provision or application, and to this end the

provisions of this rule and the various applications thereof are declared to be severable.

APPROVED AS TO FORM AND LEGALITY

11/26 19 80

WARREN SPANNAUS, ATTORNEY GENERAL

BY

SPECIAL ASSISTANT ATTORNEY GENERAL

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
NOV 26 1980

Joan Anderson Growe
Secretary of State

9:15 AM

STATE OF MINNESOTA

OFFICE OF THE ATTORNEY GENERAL

ADDRESS REPLY TO:
OFFICE OF THE ATTORNEY GENERAL
MINNESOTA POLLUTION CONTROL AGENCY
1935 W. COUNTY ROAD B2
ROSEVILLE, MINNESOTA 55113
(612) 296-7342

November 25, 1980

Mr. Jerry Anderson
Special Assistant Attorney General
Office of the Attorney General
G-25 State Administration Building
50 Sherburne Avenue
St. Paul, Minnesota 55113

RE: In the Matter of the Proposed Adoption of a Rule for the Administration of the Minnesota Solid Waste Management Planning Assistance Program, 6 MCAR §4.6085

Dear Mr. Anderson:

We are in receipt of your memorandum, dated November 17, 1980, approving in part and disapproving in part the above-captioned rule. The Minnesota Pollution Control Agency has now amended the two sections of the rule previously disapproved by you and hereby resubmits those sections to you for your review.

To facilitate you in your review, I have enclosed, with this letter, the following:

1. Rule as adopted. (Original and two copies. One of the two copies reflects the changes made in the rule as originally proposed to the rule as finally adopted. Please note that, in accordance with your request, I have submitted to you a complete copy of the rule, that is, a copy that shows both the parts of the rule that have already been approved and those two sections of the rule that are hereby resubmitted for approval.)

2. Order adopting changes to the rule. (Original and two copies.)

3. Additional findings of fact and conclusions. (One copy)

4. Certificate of Board's Resolution Adopting Rules. (One copy).

5. Affidavit of Notification of Transmittal. (One copy.)

6. Certificate of Compliance with Rulemaking Procedures. (One copy.)

Thank you for your assistance in this matter to date. In addition, I thank you in advance for your prompt attention to this matter.

If you have any questions regarding the rule, please contact me at 296-7345.

Very truly yours,

Lisa R. Tiegel
Special Assistant
Attorney General

LRT:lt
Enc.

STATE OF MINNESOTA

COUNTY OF RAMSEY

MINNESOTA POLLUTION CONTROL AGENCY

In the Matter of the Proposed Adoption of a Rule for the Administration of the Minnesota Solid Waste Management Planning Assistance Program, Minn. Rule 6 MCAR §4.6085

ADDITIONAL FINDINGS OF FACT AND CONCLUSIONS

The above-entitled matter came on for reconsideration before the Minnesota Pollution Control Agency (hereinafter, "Agency") on the 25th day of November, 1980. After affording all interested persons an opportunity to present written and oral data, statements and arguments to the Agency, in accordance with statutory requirements regarding the adoption of non-controversial rules, the Agency, being fully advised in the premises, hereby makes accepts and adopts the following additional Findings of Fact and Conclusions.

FINDINGS OF FACT

1. On October 28, 1980, the Agency adopted 6 MCAR §4.6085 and authorized the Executive Director to submit that rule to the Attorney General for approval.

2. On November 14, 1980, the Office of the Attorney General advised the Agency staff that certain minor changes to clarify sections H.4. and H.5. are necessary.

3. These changes are the following:

a. Section H.4. of the rule, as adopted by the Agency, describes reimbursement of costs under the grants and also provides that the Agency shall retain ten percent of payments it is requested to make until an acceptable plan has been prepared. This provision should be clarified to indicate that reimbursable

travel costs are not subject to the "retain ten percent" requirement.

b. Section H.5. of the rule states that grant agreements under the rule, as adopted by the Agency, shall provide that grantees be authorized to enter into contracts, "subject to the approval of the Director." The Attorney General's Office has advised the staff that, as stated, this provision reserves too much discretion for the Director. Approval of the Director in this situation is unnecessary in that the requirement that the Agency be made a third party beneficiary to all contracts adequately protects the Agency's interests. The phrase "subject to the approval of the Director" should be deleted to remedy the problem identified by the Office of the Attorney General.

CONCLUSIONS

1. The Minnesota Pollution Control Agency duly adopted 6 MCAR §4.6085 at its October 28, 1980, meeting and submitted the rule to the Office of the Attorney General for approval.

2. The Minnesotat Polluton Control Agency has been advised by the Office of the Attorney General that it needs to make the two changes to the adopted rule described herein for the entire rule to be approvable.

3. The two changes discussed herein do not constitute substantial changes to the rule.

Dated this 25th day of November, 1980.

MINNESOTA POLLUTION CONTROL AGENCY

ART ENGLEBRECHT
Chairman

TERRY HOFFMAN
Executive Director

CERTIFICATE OF BOARD'S
RESOLUTION ADOPTING RULES

I, Terry Hoffman, do certify that I am the Executive Director of the Minnesota Pollution Control Agency, an Agency duly authorized under the laws of the State of Minnesota, and that the following resolution was adopted at a meeting of the Agency properly called on the 25th day of November, 1980, and that a quorum was present at said meeting, that the resolution will be set forth in the minutes of said meeting and has not been rescinded or modified:

> BE IT RESOLVED, that the Minnesota Pollution Control Agency adopts the attached Findings of Fact and Conclusions and the Order making changes to 6 MCAR §4.6085, a rule for the administration of the solid waste management planning assistance program.
>
> BE IT FURTHER RESOLVED, that the Executive Director is authorized to forward the changes made, together with the rest of the rule, to the Attorney General for approval, and to have the rule published in the State Register, and to do all things and sign all documents necessary to accomplish the promulgation of the rule.

IN WITNESS WHEREOF, I have hereunto subscribed my hand this 25th day of November, 1980.

Terry Hoffman

TERRY HOFFMAN
Executive Director

Subscribed to and sworn to
before me this 25th day of
November, 1980.

Maryanne Gibbons

Notary Public

MARYANNE GIBBONS
NOTARY PUBLIC - MINNESOTA
RAMSEY COUNTY
My Commission Expires Sept 26, 1985

STATE OF MINNESOTA

COUNTY RAMSEY

MINNESOTA POLLLUTION

CONTROL AGENCY

In the Matter of the Proposed Adoption of a Rule for the Administration of the Minnesota Solid Waste Management Planning Assistance Program, 6 MCAR §4.6085

AFFIDAVIT OF NOTIFICATION OF TRANSMITTAL

Donald J. Kyser, being duly sworn on oath deposes and says:

1. That he is an employee of the Solid Waste Division, Minnesota Pollution Control Agency, State of Minnesota;

2. That he was named in the Notice of Rulemaking as the person to be contacted regarding the above-referenced rules;

3. That no person requested, either orally or in writing, that he or she be notified of the transmittal by the Minnesota Pollution Control Agency of the above-referenced rule to the Office of the Attorney General; and

4. That, accordingly, no notice of resubmission to the Attorney General need be made.

FURTHER AFFIANT SAYETH NOT.

Donald J. Kyser

Subscribed to and sworn to before me this 25th day of November, 1980

Patricia Schwarz
Notary Public

PATRICIA SCHWARZ
NOTARY PUBLIC--MINNESOTA
ANOKA COUNTY
My Commission Expires Aug. 6, 1987

STATE OF MINNESOTA

COUNTY RAMSEY

MINNESOTA POLLLUTION

CONTROL AGENCY

In the Matter of the Proposed
Adoption of a Rule for the
Administration of the Minnesota
Solid Waste Management Planning
Assistance Program, 6 MCAR §4.6085

CERTIFICATE OF
COMPLIANCE WITH
RULEMAKING PROCEDURES

I, Special Assistant Attorney General Lisa R. Tiegel, do hereby declare that I have examined the proposed rule and all related documents and that, based on them and my personal familiarity with the applicable requirements, all rulemaking procedures required by statute and rule have been followed.

LISA R. TIEGEL
Special Assistant
Attorney General

DATED: November 25, 1980

Our File #649

ADMIN 1000 (Rev. 1/78)
SF-00006-01

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL

Office Memorandum

TO : TERRY HOFFMAN
Executive Director
Minnesota Pollution Control Agency

DATE: Nov. 26, 1980

ATTN: LISA R. TIEGEL
Special Assistant Attorney General

FROM : JERRY S. ANDERSON
Special Assistant
Attorney General

PHONE: 296-1288

SUBJECT: Rules as Approved In the Matter of the Proposed Adoption of a Rule for the Administration of the Minnesota Solid Waste Management Planning Assistance Program, 6 MCAR § 4.6085.

Enclosed herewith are the rules you have submitted for approval. These rules have been approved by this office and filed with the Secretary of State. Note that they have NOT been filed with the State Register; this must be done promptly by your agency.

Upon receipt and before transmittal to your agency, however, it is important that you recheck these rules as to:

1. Affixation of the stamps of the Attorney General and Secretary of State to the last page of the rules;

2. Coverage by these stamps of all rules submitted; and

3. Inclusion of all pages of the rules in the approved set.

Directly following the approved rules is a complete set of required documents and transcript which must be retained with the rules by you or your agency.

If you have any questions in this regard, please contact me.

JSA/bw
Encl.
cc: Duane Harves
Susan Robertson

One File #649

Permanent Rule X w/o hrg

Temporary Rule _____

RULES REVIEW CHECKLIST

DATE RULES RECEIVED 11/3 DUE DATE 11/17

Resubmitted and Received _____

a. Returned to Agency w/o Filing w/Secretary of State _____
b. Approved _____ Date Sent Back to Agency _____

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1. Rules as Adopted ✓
2. Rules as Proposed ✓
3. Certificate of Board's Authorizing Resolution, where applicable ✓
4. Order for ~~Hearing~~ Intent to Adopt w/o Hrg not submitted.
5. Notice of ~~Hearing~~ Intent to Adopt w/o Hrg ✓ Sufficiency ✓ in all substantial respects, conforms to provisions of proposed AG. rules.
6. ~~Secretary of State's~~ AGENCY LIST List ✓ (one copy only)
7. Certificate ~~of Acquisition of Secretary of State's List~~ OF MAILING LIST ✓
8. ~~Secretary of State's Certification of Delivery of Secretary of State's List to Agency~~ AFFIDAVIT OF RECEIPT OF AGENCY MAILING LIST ✓
9. Affidavit of Mailing A) ✓ B) with rule attached At least 30 days prior to ~~hearing~~ adoption A) 9.5.80 B) 9.10.80
10. Publication in State Register ✓ At least 30 days prior to ~~hearing~~ adoption ✓ 9.8.80
11. Statement of Need and Evidence ✓ 9.5.80
12. ~~Hearing Examiner's Report~~ _____
13. Agency's Findings of Fact ✓ 10.28.80
14. Certificate of Board's Resolution Adopting Rules, where applicable ✓
15. Order Adopting ✓ 10.28.80
16. ~~Report of Chief Hearing Examiner~~ _____
17. Order Approving Incorporation by Reference, where applicable N/A
18. Certificate of Compliance with Rulemaking Procedures ✓
19. Copy of Notice of Intent to Solicit Outside Opinion, where applicable ✓ 5.12.80

19a Response to 19 ✓

20. Petition by Public, where applicable N/A

21 COMMENT IN RESPONSE TO #6 NOTICE OF INTENT TO ADOPT ✓

22 AFFIDAVIT REGARDING NOTIFICATION OF TRANSMITTAL TO AG ✓

Our File #649

ADMIN 1000 (Rev. 1/78)
SF-00006-01

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL

Office Memorandum

TO : TERRY HOFFMAN
Executive Director
Minnesota Assistant Attorney General

DATE: Nov. 17, 1980

ATTN: LISA R. TIEGEL
Special Assistant Attorney General

FROM : JERRY S. ANDERSON
Special Assistant Attorney General

PHONE:

SUBJECT: In the Matter of the Proposed Adoption of a Rule for the Administration of the Minnesota Solid Waste Management Planning Assistance Program, 6 MCAR § 4.6085.

Pursuant to the Severability clause, 6 MCAR § 4.6085 J., contained in the above-captioned rule, this rule is approved in part and disapproved in part. The sections of the rule that are disapproved and the reasons for disapproval are discussed below.

1. Section 4.6085 H.4. is unclear as to whether the ten percent retention is to be applied to the reimbursement of travel costs. Travel costs are reimbursed under a grant agreement and the second part of the second sentence states that ten percent of each payment made under a grant agreement shall be retained. Thus, travel cost reimbursement appears to be subject to the retention. By listing travel cost separately here, however, it would appear that this reimbursement is to be treated differently from other payments, and I have been informed that in fact they are. Therefore, this section must be clarified.

2. Section 4.6085 H.5. provides that a grantee shall be authorized to enter into contracts to complete work specified in the grant but makes such authorization subject to the approval of the Director. Stated in this fashion, the Director has unbridled discretion to approve or disapprove. If the Director is to have the discretion to disapprove, criteria for the exercise of that discretion must be established in the rule. Stating criteria for approval provides predictability and nondiscriminatory application of the rule. Further, while a standard of reasonableness is applied to all agency actions, that standard is to be applied to agency acts in the context of stated criteria. Thus, this section must be rewritten or deleted.

It is my understanding that the staff intends to correct the language in the two sections discussed herein and to present the amendments to the Board at its next meeting. At that time, assuming approval and adoption of the changes by the Board, these sections will be resubmitted to this office for review. Therefore, to facilitate the filing and publication of the complete Rule as Adopted, rather than in parts, I will wait until after the Board meeting to file the finally approved rule. It has been agreed that this is the preferrable means of resolving this matter.

I am retaining in our file all documents previously submitted. At the time of resubmission of the amended rule, please submit the original and two copies of the Rule as Adopted and the Order Adopting,

accompanied by the new Certificate of Board's Resolution Adopting a Rule. Upon receipt of these materials, I will complete my review and take the appropriate action. Also, please attach a transmittal memorandum specifying that the rule is being resubmitted, so that we may obtain our original file in this matter, thereby expediting our review.

JSA:bw

cc: Duane Harves
Susan Robertson

Rule as Adopted -
AG. copy.

THIS COPY OF THE RULE SHOWS CHANGES FROM THE RULE AS PROPOSED TO THE RULE AS ADOPTED.

SEE PAGES 3, 8, 10 and 14.

Fox River Bond
25% COTTON

6 MCAR § 4.6085 Rule for the administration of the Minnesota solid waste management planning assistance program

A. Purpose

This rule implements the solid waste management planning assistance program, created and described in Article V of the Waste Management Act of 1980, Minn. Stat. §§115A.42 through 115A.46 (1980), by establishing the substantive criteria and procedural conditions according to which the Agency shall award solid waste management planning assistance grants.

B. Overview of Procedures for Applying for and Receiving a Grant

1. Application for a Grant. To be eligible for a grant under these rules, an applicant shall make an application for a grant.

a. The procedures the applicant shall follow in applying for a grant are set out in Part E. of this rule.

b. The information and documentation the applicant shall provide in the grant application are set out in Part F. of this rule.

2. Award of a Grant. The Agency shall award the applicant a grant, in accordance with the procedures and limitations set out in Part G. of this rule, if the Agency determines:

a. that the applicant specified in the grant application is grant eligible;

b. that the costs specified in the grant application are grant eligible; and,

c. that the project specified in the grant application is grant eligible.

The criteria the Agency shall use in determining the grant eligibility of the applicant is set out in section D.1. of this rule; the criteria the Agency shall use in determining the grant eligibility of the costs is set out in section D.2. of this rule; and, the criteria the Agency shall use in determining the grant eligibility of the project is set out in section D.3. of this rule.

C. Definitions

1. "Acceptable plan" means a written report prepared by a grantee to determine and provide the planning information set out in Minn. Stat. §115A.46 (1980). To be considered an acceptable plan under these rules, the written report shall:

a. contain descriptions, estimates or assessments of existing and proposed waste practices, including the following:

(1) A description of the existing collection, processing, and disposal systems used by the political subdivision(s) being studied by the named grantee, including schedules of rates and charges, financing methods, environmental acceptability, and opportunity for improvements in the systems;

(2) An estimate, calculated on the basis of current and projected waste generation practices, of the land disposal capacity in acre-feet which the political subdivisions being

studied by the named grantee shall need through the year 2000;

(3) An assessment of opportunities to reduce the need for land disposal through the use of waste reduction and resource recovery [as defined in Minn. Stat. §115A.03, subd. 27 (1980)], including an assessment of (a) the alternative degrees of reduction achievable, (b) the comparative costs of the alternatives (including capital and operating costs), and (c) the effects of the alternatives on the cost to generators of the waste.

(4) A description of existing and proposed county and municipal ordinances and license and permit requirements relating to solid waste management, including a description of the existing and proposed regulations and enforcement procedures relevant to those requirements; and,

b. establish a siting procedure and development program to assure the orderly location, development, and financing of new or expanded solid waste facilities and services sufficient for a prospective ten year period, including (a) estimated costs and implementation schedules, (b) proposed procedures for operation and maintenance, (c) estimated annual costs ~~of~~ and gross revenues and (d) proposals for the use of facilities after they are no longer needed or usable; and, FofF H.a.

c. address the resolution of conflicting, duplicative or overlapping local management efforts, including the possible establishment of joint powers management programs or waste management districts; and,

d. establish a schedule of actions which need to be undertaken to put the procedures, programs and resolutions described in the plan into effect, including a statement of the appropriate entity to take each action.

2. "Agency" means the Minnesota Pollution Control Agency, as constituted pursuant to Minn. Stat. §116.02, subd. 1 (1980).

3. "Director" means the Executive Director and Chief Executive Officer of the Agency or a person expressly designated by the Director to discharge a duty or responsibility of the Director.

4. "Grant eligible" or "grant eligibility" means meets the criteria to receive funding assistance under these rules. The fact that an item or person is "grant eligible" under these rules does not automatically assure that a grant shall be awarded. A grant shall only be awarded if the grant elibility criteria are met and if sufficient funds are available to cover the grant.

5. "Metropolitan area" has the meaning given it in Minn. Stat. §115A.03, subd. 18 (1980).

6. "Political subdivision" has the meaning given it in Minn. Stat. §115A.03, subd. 24 (1980).

7. "Regional development commission" has the meaning given it in Minn. Stat.§115A.03, subd. 26 (1980).

D. Grant eligibility criteria

1. Eligible applicants. Except for political subdivisions located within the seven county metropolitan area, any political subdivision within the State of Minnesota is grant eligible.

2. Eligible costs.

a. The following costs are grant eligible:

(1) Salaries of staff persons, consultants, and other persons employed to develop and publish an acceptable plan;

(2) Costs associated with the drafting and execution of necessary contracts between the grantee and other units of government or qualified consultants employed to develop or publish an acceptable plan; including, but not limited to, reasonable attorneys fees;

(3) Costs associated with holding meetings to inform the public of the development of the plan and to provide an opportunity for the public to participate in and comment on the development of the plan; including, but not limited to, costs associated with noticing and recording the meeting;

(4) Costs associated with the printing and distribution of plans and draft plan materials;

(5) Costs of any in-state travel, the primary purpose of which is to attend meetings or gather information needed for the development and publication of an acceptable plan; including, but not limited to, reimbursement for mileage consistent with State allowances;

(6) Costs of any necessary supplies required for the development and publication of an acceptable plan. (The costs of any commodities, materials, capital expenditures and equipment which could be used after the plan is completed shall not be considered supplies and are, therefore, not grant eligible under these rules); and,

(7) Overhead costs.

b. The amount of the grants available under this rule is limited as follows:

(1) For planning by a regional development commission, joint planning by two or more contiguous counties, or joint planning by political subdivisions located in two or more contiguous counties:

(a) The Agency shall award grants to cover 90 percent of the eligible costs specified in the grant application; and,

(b) The grantee shall fund the remaining costs of completing the planning efforts.

(2) For all planning efforts other than that described in paragraph D.2.b.(1):

(a) The Agency shall award grants to cover 50 percent of the eligible costs specified in the grant application; and,

(b) The grantee shall fund the remaining costs of completing the planning efforts.

(3) For section D.2.b.(1) grants and D.2.b.(2) grants, the maximum amount that a grantee shall be awarded to complete the plan is 90 percent and 50 percent, respectively, of the total requested by the grantee it its application. Within these maximums, adjustments between funds awarded to cover the costs specified in section D.2. shall be made if the Agency and the grantee determine that such adjustments shall result in the development of an acceptable plan in a more efficient manner.

(4) If, while working to complete the grant, a grantee finds that more funds are needed, the grantee shall not be awarded additional funds unless the grantee makes application for an additional grant in accordance with the grant application procedures set out in Part E. of this rule. The Agency shall treat an application for an additional grant in the same manner as it treats applications for original grants, as provided in Part G. of this rule.

c. Grants shall be awarded to cover the eligible costs of only those tasks which are undertaken and completed during the grant period established in the grant agreement. Grants shall not be awarded to cover any cost associated with tasks performed prior to the award of a grant or after the expiration of the grant agreement.

d. The availability of funds is a precondition to the award of any grant by the Agency.

3. Eligible projects.

a. The Agency shall consider grant eligible all

projects which are reasonably designed to result in the development and publication of an acceptable plan, as defined in section ~~B.1.~~ C.1. of this rule.

b. The Agency shall determine that a project is reasonably designed to result in an acceptable plan if the Agency finds that the grant application required to be submitted under Part E. of this rule is complete. The Agency shall determine that a grant application is complete if the application contains all the information and meets all the requirements set out in Part F.

E. Grant Application Procedures

1. For grants to be awarded during the fiscal year ending June 30, 1981:

a. As soon as possible and no later than April 15, 1981, a grant applicant shall submit a grant application to the Agency.

b. The grant application to be submitted to the Agency shall include all the information and documentation set out in Part F. of this rule.

c. Upon receiving a grant application, the Director shall promptly review the application and shall make a determination as to

(1) the eligibility of the applicant specified in the preliminary application;

(2) the eligibility of the costs specified in the preliminary application; and,

(3) the eligibility of the project specified in the preliminary application.

d. Within two weeks after receiving the application, the Director shall notify each applicant as to the Director's determinations:

(1) If the Director determines that the applicant, the costs and the project specified in the application are grant eligible, the application shall be considered final as of the date it was received and the applicant shall be so notified. The application shall then be treated in accordance with the Agency review provisions established in Part G. of this rule.

(2) If the Director determines that the applicant is not grant eligible, the application shall not be further considered and the applicant shall be so notified.

(3) If the Director determines that any of the costs described in the application are not grant eligible or that the application is otherwise incomplete:

(a) The Director shall note the inadequacies in the application and shall so notify the applicant;

(b) The applicant shall have an opportunity to cure the inadequacies noted by the Director; except that, no information received by the Agency after May 1, 1981, shall be considered by the Director in determining the grant eligibility of the applicant, costs or project.

(i) An application which is considered inadequate under this section shall not be considered final until

the Agency receives the information or documentation which cures the inadequacies described by the Director.

(ii) An application which is considered inadequate under this section shall be considered final on the date all necessary supplemental information is received by the Agency.

(iii) Once the application is considered final, it shall be treated in accordance with the Agency review provisions established in Part G. of this rule.

2. For grants to be awarded during all fiscal years other than that described in paragraph ~~D.2.~~ E.1.:

FofF 4b(b)

a. Preliminary grant applications. [reserved].

b. Final grant applications. [reserved].

F. Grant Application Content.

1. Applications for grants to be awarded during the fiscal year ending June 30, 1981 shall include the following information:

a. The name(s) of each political subdivision(s) making the grant application;

b. Resolutions from each political subdivision named on the application which

(1) demonstrate the political subdivision's desire to make the grant application and interest in the planning efforts described in the grant application; and,

(2) demonstrate the political subdivision's commitment to provide the required financial input to complete the planning efforts described in the grant application;

c. In the case of a regional development commission, resolutions from each of the counties represented by the regional development commission, which demonstrate the counties' interest in and support for the planning efforts described in the grant application;

d. The name(s) and address(es) of the project manager(s);

e. Total project cost;

f. Amount of grant funding requested;

g. Amount and sources of all other funding contributions, including the amount of funds to be contributed by the applicant;

h. Regional boundaries of and population in area to be considered in the planning study;

i. A work plan which provides the following information and details.

(1) A brief description of the problem which the grantee hopes to address through the planning efforts; including, a statement of any known waste management problems to be addressed by the grantee and any present support or opposition to current or proposed solid waste disposal alternatives;

(2) A breakdown of the specific work tasks to be completed under the terms of the grant; including, but not limited

to, each of the tasks required to be completed by Minn. Stat. §115A.46 (1980);

(3) A breakdown of the number of work hours needed to complete each of the tasks specified in paragraph (i)(2);

(4) A breakdown of all the costs associated with completing each of the tasks specified in paragraph (i)(2), including an explanation of how each cost was calculated;

(5) A breakdown of the staff, consultants, and units of government associated with completing each of the tasks specified in paragraph (i)(2);

(6) A breakdown of the amount of time needed to complete each of the tasks specified in paragraph (i)(2); and,

(7) A description of the program to be completed by the applicant to ensure public participation in the planning efforts.

2. Applications for grants to be awarded during all fiscal years other than the one described in paragraph F.1.. [reserved].

G. Agency Review of Grant Applications and Award of Grants

1. Review and award of grants to be awarded during the fiscal year ending June 30, 1981.

a. Grants shall be awarded to eligible grantees, to the extent funding is available, on a first come, first serve basis.

b. The Agency shall make these first come, first serve determinations as follows:

(1) The Director shall mark each and every

application and supplemental submittal the Agency receives with a notation of the date the application and submittal is received. The date the Agency shall use in determining the rank of the application is the date that the application is considered final:

(a) For applications which are complete on the day they are submitted, the application shall be considered final on the date the application is received by the Agency.

(b) For applications which require the submission of supplemental information to be complete, the application shall be considered final on the date all necessary supplemental information is received by the Agency.

(c) In those instances in which more than one application is received by the Agency during any one day, the priority status of the applications shall be determined by lottery.

(2) Once the grant application is considered final [as provided in Part E.1.d.(1) and (3)(b)], the Director shall proceed as follows:

(a) Within four weeks after notifying the applicant that the application is considered final, the Director shall draft a grant for the applicant, in accordance with the requirements and conditions set out in Part H. of this rule.

(b) At the next regularly scheduled meeting the Agency holds after the grant is drafted, the Director shall present the grant to the Agency for its consideration and review.

(c) The Agency shall review the Director's determinations as to applicant, cost and project eligibility; and, if it agrees with these determinations, shall award the grant.

(d) The Agency is authorized to delegate to the Director the authority to issue grants under this program. If the Agency delegates such authority to the Director, the Agency review provisions set out in ~~b.(2)(ii) and (iii)~~ b.(2)(b) and (c) FofF 4b(c) are waived.

2. Review and award of grants to be awarded during all fiscal years other than the one described in paragraph G.1. [reserved].

H. Grant Agreement

1. The grant agreement shall incorporate by reference the final grant application submitted to the Agency in accordance with section ~~E.1.d.~~ F.1. of this rule. FofF 4 a(d)

2. The grant agreement shall establish the term of the grant. All grants awarded under this rule shall have a maximum term of one year.

3. Grants not being completed in accordance with the terms and conditions of the grant agreement, including time schedules, shall be forfeited unless the Agency determines that the variances from the grant requirements are due to factors outside the control of the grantee.

4. The grant agreement shall include a payment schedule. This payment schedule shall provide for reimbursement of stated travel costs, in a manner described in the grant agreement, and

P. 5#(5).?

shall require that ten percent of each payment made under the grant agreement be retained by the Agency until the Director determines that the report submitted under the grant is an acceptable plan. If the Director determines that a report is deficient, the Director shall notify the grantee of the deficiency. The Agency shall pay the withheld ten percent of the grant as soon as the deficiency is corrected and the Director determines that the report is an acceptable plan.

5. The grant agreement shall provide that, subject to the approval of the Director, the grantee shall be authorized to enter into contracts to complete the work specified in the grant. The grant agreement shall further require that all such contracts name the Agency as a third-party beneficiary to that contract.

I. Apportionment

1. For grants to be awarded during the fiscal year ending June 30, 1981, the Agency shall apportion funds allocated to it by the legislature for the grant programs set out in Articles V and VI of the Waste Management Act, Minn. Stat. §§115A.42 through 115A.54 (1980), as follows:

a. Article V grants (grants awarded under these rules): forty percent of the amount appropriated to the Agency; and,

b. Article VI grants (grants awarded under other rules): sixty percent of the amount appropriated to the Agency.

c. If the Agency receives more eligible requests for grant assistance under Article V than the Agency has funds available and the Agency receives less eligible requests for grant assistance under Article VI than it has funds available, the Agency shall adjust the apportionment described in this Part. Similarly, if the Agency receives less eligible requests for grant assistance under Article V than the Agency has funds available and more eligible requests for grant assistance under Article VI than it has funds available, the Agency shall adjust the apportionment described in this Part. No such adjustment shall be made until the last date that final grant applications are permitted to be submitted to the Agency under this rule and the rule developed to implement Article VI of the Waste Management Act.

2. For grants to be awarded during all fiscal years other than that described in paragraph I.1., the Agency shall apportion funds allocated to it by the legislature for the grant programs set out in Articles V and VI of the Waste Management Act. Minn. Stat. §115A.42 through 115A.54 (1980), as follows: [reserved].

J. Severability.

If any provision of this rule or the application thereof to any person or circumstance is held to be invalid, such invalidity shall not affect any other provision or application of any other part of this rule or any other rule which can be given effect without the invalid provision or application, and to this end the

provisions of this rule and the various applications thereof are declared to be severable.

STATE OF MINNESOTA

COUNTY OF RAMSEY

MINNESOTA POLLUTION

CONTROL AGENCY

In the Matter of the Proposed Adoption of a Rule for the Administration of the Minnesota Solid Waste Management Planning Assistance Program, Minn. Rule 6 MCAR §4.6085

STATEMENT OF NEED AND REASONABLENESS

I. INTRODUCTION

On August 26, 1980, the Minnesota Pollution Control Agency ("Agency") authorized the initiation of rulemaking proceedings on Proposed Minn. Rule 6 MCAR §4.6085, a rule for the administration of the Minnesota Solid Waste Management Planning Assistance Program ("the rule"). At the same time, the Agency found that the proposed adoption of the rule is non-controversial in nature and directed that the rulemaking proceedings on the adoption of the rule be conducted in accordance with the statutory provisions regarding the adoption of non-controversial rules, 1980 Minn. Sess. Law Serv. (West) ch. 615 §7 [to be codified at Minn. Stat. §15.0412, subd. 4g (1980)]. Accordingly, the rulemaking proceedings on the proposed adoption of the rule are governed by that statute and no hearing will be conducted on the adoption of the rule unless, prior to October 10, 1980, seven or more persons submit to the Agency a written request for a such a hearing.

In accordance with the requirements of the non-controversial rulemaking statutory provisions, this document, the Statement of Need and Reasonableness, ("Statement") was prepared before the date that the rule was noticed in the State Register. Id. The Statement is divided into the following Parts: Part II. Need and Reasonableness Requirement; Part III. Need for the Rule; Part IV.

Reasonableness of the Rule; Part V. Summary; and, Part VI. Exhibit List.

II. NEED AND REASONABLENESS REQUIREMENT

Minn. Stat. §15.0412, subd. 4 (1978) requires that, in order for an agency to adopt a rule, the agency must make an affirmative presentation of facts establishing the need for and reasonableness of that rule. To establish the need for a proposed rule, an agency presents facts which demonstrate the existence of a problem that requires administrative attention. To establish the reasonableness of that rule, an agency presents facts which demonstrate that the solution proposed by the agency to resolve the identified problem (that is, the rule itself) is reasonably designed to remedy the problem.

The Agency's statement and explanation of the reasons its proposed rule is needed is set out in Part III. Its statement of the facts which make its proposed rule reasonable is set out in Part IV.

III. NEED FOR THE RULE

A. The need for the rule flows from both the statutory requirement that the Agency adopt a rule to implement the solid waste management planning assistance program and the fact that, before waste will be efficiently and effectively managed in the various regions of the state, it is necessary to have a comprehensive understanding of the nature of the waste problems of each region.

During its 1980 legislative session, the Minnesota legislature adopted the Waste Management Act, 1980 Minn. Sess. Law Serv. (West) ch. 564 Articles I through VIII [to be codified

at Minn. Stat. ch. 115A. (1980)] ("the Act"or "the Waste Management Act"). As established by the legislature, the goal of the Act is

> to improve waste management in the state to serve the following purposes:
>
> (a) Reduction in waste generated;
>
> (b) Separation and recovery of materials and energy from waste;
>
> (c) Reduction in indiscriminate dependence on disposal of waste;
>
> (d) Coordination of solid waste management among political subdivisions;
>
> (e) Orderly and deliberate development and financial security of waste facilities including disposal facilities.

1980 Minn. Sess. Law Serv. (West) ch. 564, Article I, §2 [to be codified at Minn. Stat. §115A.02 (1980)].

In order to accomplish these goals, the Act creates a variety of new programs through which the various needs of the state to safely manage its waste may be accommodated. Among these programs are two financial and technical assistance programs for solid waste management. 1980 Minn. Sess. Law Serv. (West) ch. 564, Articles V and VI [to be codified at Minn. Stat. §§115A.42 through 115A.54 (1980)]. The first of these two programs, the solid waste management planning assistance program, is established to provide assistance to political subdivisions of the State for the purpose of encouraging and improving regional and local solid waste management planning activities and efforts. 1980 Minn. Sess. Law

Serv. (West) ch. 564, Article V. §1 [to be codified at Minn. Stat. §115A.42 (1980)]. The second program, the solid waste management demonstration program, is established to encourage and assist specified political subdivisions of the State in developing and implementing solid waste projects of potential state wide application. 1980 Minn. Sess. Law Serv. (West) ch. 564 Article VI §1 [to be codified at Minn. Stat. §115A.49 (1980)].

The administration and implementation of these two programs is divided among three state agencies as follows: With respect to the planning program, it is the responsibility of the Metropolitan Council to implement the program in the metropolitan area of the State (as defined in 1980 Minn. Sess. Law Serv. (West) ch. 564 Article I. §3, subd. 18 [to be codified at Minn. Stat. §115A.03, subd. 18 (1980)] and the responsibility of the Agency to administer and implement the program in all other areas of the State. 1980 Minn. Sess. Law Serv. (West) ch. 564 Article V §1 [to be codified at Minn. Stat. §115A.42 (1980)]. With respect to the demonstration program, responsibility for the implementation of the program is divided, by project type, between the Agency and the Waste Management Board. For "waste reduction and source separation" demonstration projects and for "waste processing facilities," the responsibility for implementing the program falls on the Agency and the Waste Management Board, respectively. 1980 Minn. Sess. Law Serv. (West) ch. 564 Article VI [to be codified at Minn. Stat. §§115A.49 through 115A.54 (1980)].

In addition to creating the programs and identifying the

agencies responsible for their administration, the Act specifies that the Agency is to adopt rules to administer the two portions of the programs for which it is responsible. The rule which is the subject of this memorandum is designed to implement the portion of the solid waste management program the Agency is required to administer. The need for the rule, therefore, grows out of the statutory requirement that the Agency adopt such a rule as well as out of the need for the solid waste management planning assistance program itself.[1]

B. The planning program is needed to encourage political subdivisions to study and resolve their current and future waste management problems.

In the coming years, a number of factors will necessitate that many units of government make decisions on new solid waste management alternatives. Foremost among these factors is the filling of the "first generation" of landfills which were established in the late 1960's and early 1970's to replace the formerly-used open dumps. Additional factors are the the following:

(1) Pressure to close or upgrade the remaining open dumps. This pressure results, at least in part, from the passage of the federal Resource Conservation and Recovery Act

---

[1]Since the subject of the rule discussed in this memorandum is only the implementation of the solid waste management planning assistance progam, the demonstration program is not further discussed in the body of this Statement. However, the reader may be interested to know that the Agency is currently drafting a rule to implement the portion of the demonstration program for which it is responsible.

(RCRA) 42 U.S.C. §§6901 through 6986 (1976). Certain RCRA provisions require states to inventory open dumps and put them on schedules leading to closure or upgrading within five years. 42 U.S.C. §§6943 and 6945 (1976). Municipal open dumps have been inventoried in 1980 and the Agency is now evaluating the actions which should be taken on each dump. As open dumps are phased out, alternatives to the use of the dumps must be planned and phased in.

(2) The wide range of geologic conditions in the state which limit the location of land disposal sites.

(3) The variations in population density throughout the state, which variations necessitate the use of differing types of collection systems throughout the state.

(4) The ever-increasing need to conserve or recover resources from waste. Both the Congress and the Minnesota legislature recognized this need and, in RCRA and the Waste Management Act, the Congress and the Minnesota legislature, respectively, declared that the conservation and recovery of materials and energy from waste are desirable alternatives to the continued reliance on land disposal of solid waste; and,

(5) The vast expenditure of private and governmental funds for waste collection and disposal and the need to make this expenditure cost efficient. More than $160 million dollars is expended annually for waste collection and

disposal in the State of Minnesota alone. Approximately $50 to $70 million dollars of the total will be expended outside the seven county metropolitan area on an annual basis. (Agency Staff Calculations based on August 1980, City of St. Paul, Resource Recovery Feasibility Study.)

The solid waste management decisions which are or will be faced by governmental units involve choices among complex groups of options. In contrast to the past when solid waste decisions were generally concerned solely with establishing and operating acceptable landfills, today decision-makers face of variety of convention and non-conventional options to convert wastes into marketable resources. The optimum blend of recovery methods, landfills, transfer stations, and site locations for each, can only be determined through systematic evaluation. At the same time, providing for the ever necessary land disposal site has become a more difficult problem due to greater and more organized opposition from members of the public and more sophisticated environmental safeguards than were encountered or needed in siting the first generation of landfills.[2]

A thorough job of planning, with appropriate opportunities for public involvement is essential to produce prudent and cost-efficient solid waste management decisions.

---

[2]The Agency reaches this conclusion in light of its observations regarding public interest and public concerns about waste disposal. This conclusion is further supported by the various provisions found throughout the Waste Management Act which recognize and provide solutions for siting problems which have proven difficult to resolve on purely local levels.

C. Planning for waste management needs to be done on a local and regional basis in order to provide adequate consideration of the varying needs of the different areas of the state.

Not only is planning essential to prudent solid waste decisions, but in many cases, adequate planning can only be accomplished on a regional basis.

Regional planning simply means planning which is carried out irrespective of county or other political boundaries. A regionally-based approach is essential for the proper evaluation of alternative management systems. See Metropolitan Council Solid and Hazardous Waste Management Development Guide and Policy Plan, June 1979, prepared by Metropolitan Council; the Solid & Hazardous Waste Study Interm Report & Research Program, prepared for the Joint Legislative Committee on Solid and Hazardous Waste, by the Pollution Control Agency, the State Planning Agency and the Minnesota Energy Agency, Sept. 18, 1978; final report prepared March 1, 1979 (the Casserly Reports); United States Environmental Protection Agency Resource Recovery Management Model, Sept. 1979. In many cases, the most cost-efficient systems may need to combine waste streams from different counties.[3] Much of the planning which is in existence is solely disposal oriented. This planning was prepared in response to adoption in 1970 of Agency rules (Minn. Rule SW 12) which called for closing the state's 1500 dumps

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[3]For instance, the St. Cloud Metro Area, which is comprised of three counties, Stearns, Benton and Sherburne, has its landfill in Stearns County. The Stearns County landfill has, at this time, a one and one half year life expectancy. The three counties in this area--that is, the region known as the St. Cloud Metro Area--is currently in the position of searrding for a viable alternative to its existing landfill.

and permitting sanitary landfills as substitutes. (February 1969, Study and Investigation of Solid Waste Control, for the Minnesota Pollution Control Agency.) The planning was further influenced by passage of the County Solid Waste Management Act of 1971, Minn. Stat. ch. 400 (1978) which authorized all counties (except for the metropolitan area counties) to regulate and control the waste disposal practices of its citizens. Rising fuel costs, new technologies, transportation costs, increased environmental controls, citizen opposition, among other factors, now require that local and county officials be aware of regional possibilities prior to making their decisions. Further, literature, studies and experience have clearly shown that there are economic reasons for constructing or initiating larger scale resource recovery facilities, disposal sites, and source separation projects. Casserly Reports; St. Paul Study.

In creating the solid waste management planning assistance program, the Waste Management Act establishes, through its grant program, a financial incentive to all political subdivisions of the state to study and plan for solid waste management needs of the future and provides the greatest financial incentive to those political subdivisions which choose to do their planning on a regional level. 1980 Minn. Sess. Law Serv. ch. 564 Article V §3 [to be codified at Minn. Stat. §115A.44 (1980]. This emphasis on regional planning, found in both the Waste Management Act and the rule which is the subject of this document, is needed and reasonable in that regional planning may provide a broader, more

economically viable, view of the options available to resolve existing and future waste management issues.

D. Summary

The rules are needed to implement the planning program established by the Waste Management Act. The planning program is needed because solid waste planning, particularly planning on a regional basis, is necessary if decisions made by units of government on costly and complex solid waste issues are to be sound and cost effective. Regional planning as envisioned by the Waste Management Act is needed to ensure the systematic evaluation of a broad range of waste management alternatives. Costs, rapidly improving technologies, and stricter environmental controls often dictate that the most efficient waste management alternatives include a system through which the waste from several counties is combined. State financial assistance, in the form of grants, is necessary to encourage and support these planning efforts, particularly to promote planning on a regional basis.

IV. REASONABLENESS OF THE RULE

The following discussion provides an explanation and justification of the individual provisions of the rule. The purpose of this section is to demonstrate that each provision is a reasonable approach to its function.

As a general matter, it may be useful to note, at the outset, that the rule includes both general provisions (applicable to all

fiscal years), provisions specific to fiscal year 1981, and provisions specific to all fiscal years other than 1981. The provisions specific to fiscal year 1981 essentially provide for the award of a grant on a "first come, first serve" basis. The provisions specific to all other fiscal years are marked "reserved" and are not yet drafted or proposed in the rule.

This approach and treatment of fiscal year 1981 as distinct from other fiscal years was taken because of the short time period available to the Agency to promulgate rules, solicit and review applications and award grants with monies made available for fiscal year 1981 (which ends June 30, 1981). The Agency will reevaluate the utility and wisdom of the "first come, first serve" approach established in the rule for fiscal year 1981 during the course of this fiscal year and will, at some point in the future, amend the rule to provide the same or a different approach for all other fiscal years.

Thus, for all fiscal years, the rule defines general terms, specifies grants conditions and defines eligibility requirements, including eligible applicant, eligible projects, and eligible costs. For fiscal year 1981, the rule specifies the required contents of grant applications, establishes application and review procedures and establishes the amount of funding available for grants under the program. As stated earlier, these procedures and requirements may be different for future fiscal years.

Section A. "Purpose" explains the function of the rule,

which is to implement the solid waste management planning assistance program, created and described in Article V of the Waste Management Act of 1980, Minn. Stat. §§115A.42 through 115A.46 (1980), by establishing the substantive criteria and procedural conditions according to which the Agency shall award solid waste management planning assistance grants.

Section B. "Overview" outlines the content of the rule and thereby assists potential applicants in understanding the way in which the rule and the planning assistance program work. The overview section is divided into two sections, the first of which outlines the procedures for applying for a grant from the Agency, and the second of which outlines the procedures through which the Agency shall award grants. Section B. is reasonable in that it assists grant applicants by instructing them on how to read and use the rule.

Section C. "Definitions" includes a definition of the critical terms used in the rule and are generally self explanatory. Many of the definitions are identical to those established in 1980 Minn. Sess. Law Serv. (West) ch. 564 Article I §3 [to be codified at Minn. Stat. §115A.03 (1980)]; but, are specified in the rule to make the rule self-contained, and, therefore, clearer and easier to use. The definition of "acceptable plan" is not found in 1980 Minn. Sess. Law Serv. (West) ch. 564, but is based directly on the requirements for plans specified in 1980 Minn. Sess. Law Serv. (West) ch. 564

Article V §5 [to be codified at Minn. Stat. §115A.46 (1980)].

Section D. "Grant eligibility criteria." This section is divided into three parts: 1. Eligible applicants; 2. Eligible costs; and, 3. Eligible projects. In order to be awarded a grant under the rule, a grantee must meet all three eligibility criteria. The eligibility criteria are reasonable in that they provide an easy to use, efficient system for determining whether an applicant for a grant is eligible to receive a grant from the Agency.

The eligible applicant criteria, set out in D.1., make all political subdivisions outside the metropolitan area eligible to receive a grant under the rule. (The term "political subdivision" is defined in 1980 Minn. Sess. Law Serv. (West) ch. 564 Article I §3 subd. 24 [to be codified at Minn. Stat. §115A.03, subd. 24 (1980)] and in the proposed rule at C.6.) The eligible applicant criteria specified in the rule is consistent with 1980 Minn. Sess. Law Serv. (West) Article V [to be codified at Minn. Stat. §§115A.42 and 115A.43 (1980)] which make all political subdivisions of the state eligible to receive assistance under the solid waste management planning assistance program but which authorize the Agency to administer the program only in the non-metropolitan areas of the state.

The eligible cost criteria, set out in D.2., describe the types of costs which may be paid for by a grant and also establishes the portion of those costs which are eligible for

grant funding.

Those costs which are grant eligible include: salaries of staff persons, consultants and other persons employed to develop and publish an acceptable plan; the costs associated with the drafting and execution of necessary contracts between the grantee and other units of government or qualified consultants employed to develop or publish an acceptable plan; including, but not limited to, reasonable attorneys fees; the costs associated with holding meetings to inform the public of the development of the plan and to provide an opportunity for the public to participate in and comment on the development of the plan; the costs associated with printing and distributing plans and draft plan materials; the costs of specified in-state travel; the costs of necessary supplies; and, reasonable overhead costs.

The Agency Staff has had experience in a variety of grant programs [including, among others, the no longer effective Solid Waste Grant Program rules, designed to implement Minn. Stat. ch. 116F. (1978), much of which was repealed by 1980 Minn. Sess. Law Serv. (West) ch. 564 Article XIII §2 and replaced by the provisions of the Waste Management Act.) In light of the Agency's experience with these grant programs, the Agency Staff developed this list of eligible costs and believes this list is complete and consistent with all planning activities known to the Staff to be necessary to prepare and publish an acceptable plan. The Agency Staff is not aware of any costs expected to be necessary to complete the planning activities which have not been provided for

in this list.

The share of costs to be covered by the grant is described in subsection D.2.b.(1) and (2). This subsection establishes the state share at 90 percent for regional development commission planning and joint planning which crosses county boundaries, and at 50 percent for all other planning efforts. This is consistent with the enabling legislation which authorized grants for regional planning at up to 100 percent and which authorized grants for all other planning at up to 50 percent. 1980 Minn. Sess. Law Serv. (West) ch. 564 Article V §3 [to be codified at Minn. Stat. §115A.44 (1980)]. The Agency's reason for establishing a 90 (as opposed to a 100) percent rate for regional planning is based on its conclusion that a willingess on the part of the grant recipient to assume some of the cost of the planning efforts will make grantees more inclined to carefully manage the planning program and to use the results of the plans developed through the program. In addition, the Agency believes it is reasonable to provide up to 90 (as opposed to 50) percent of the eligible planning costs to encourage grantees to do their planning on a regional basis.

Subsection D.2.b.(3) provides a mechanism through which adjustments between funds awarded to cover the costs of completing the planning efforts can be made during the life of the grant. This mechanism essentially allows the grantee and the Agency to agree, during the life of the grant, to make adjustments in the

amount of grant funds available for each item covered by the grant. The mechanism is reasonable in that, at the time a grantee applies for a grant, the costs the grantee specifies are estimates of the funding necessary to complete the grant. As the grantee actually works on the grant, it may discover that some costs are less than estimated and others are higher. The mechanism for adjustment provided in the rule is reasonable because it provides an easy way of adjusting costs at the time such adjustments are known to be reasonable and needed. In addition, the rule establishes a ceiling on the amount of the total grant and thereby provides the Agency some certainty as to the grantee's funding needs (and a limit on the adjustments available).

Subsection D.2.b.(4) provides that a new application must be submitted if a grantee runs out of funds prior to completing grant related work. This is a simple and efficient way of handling such situations. The grantee will already be familiar with the form and content of the application requirements. It will allow the Agency to easily compare the initial work plan to the request for additional funds and thereby be better able to judge the reasonableness of the request. Further, it will provide an equitable procedure by which to compare requests for more funds with new grant applications.

Subsection D.2.c. provides that grants shall be awarded only to cover the costs incurred within the period covered by the grant agreement. This limitation is needed and reasonable in that in provides Agency control over the expenditure of grant funds.

Further, it serves the goal of encouraging new planning efforts in the state by not spending state monies to pay for planning efforts which have already been completed.

Subsection D.2.d. provides that the availability of funds is a precondition to the award of a grant. This section is needed and reasonable to clarify that, even if an applicant meets all relevant criteria, the applicant is not assured that it will receive a grant. The ultimate control over the issuance of grants remains with the state legislature which controls the appropriation of funds into the grants program.

Section D.3. "Eligible projects" states that an eligible project is one which is likely to result in an acceptable plan. An applicant demonstrates that its project is eligible (i.e., will result in an acceptable plan) by submitting an application which conforms to requirements laid out in section F. of the rule. The reasonableness of these requirements is discussed further in the discussion of section F. in this memorandum, see infra.

Section E. "Grant Application Procedures" outlines a series of orderly steps and associated deadlines which govern the grant application submission and processsing procedures. For fiscal year 1981, these procedures are set out in E.1. Briefly, the procedures provide that an applicant should submit the application as soon as possible; but, no later than April 15, 1981. The Director reviews the application and determines if it is complete in all relevant respects. If it is complete, the application is

considered final on the day it is received. If it is not complete, the applicant is given the opportunity to cure the deficiencies. The last date the applicant may submit information which cures any noted deficiencies is May 1, 1981. With respect to applications that are not complete on the day they are received, the application is considered complete and final on the date that the information which cures the deficiencies is received.

The day on which an application is considered final is used to determine the priority of the application for funding purposes (see discusssion on section G, infra.)

In general, the first come, first serve basis for issuing grants during the 1981 fiscal year is reasonable in that it allows the Agency to award grants during the short time period available to it to make grants available this year. (The Waste Management Act, which became effective in April, 1980, requires the Agency to adopt rules prior to awarding grants under the Act. Since the grant monies appropriated to the Agency for fiscal year 1981 were not specially appropriated and, therefore, revert to the legislature if not awarded by the end of fiscal year 1981, the Act gave the Agency little more than one year to draft and adopt rules and to award grants during fiscal year 1981). The first come, first serve basis of awarding grants is a reasonable way of quickly and efficiently making grant funds available to eligible grantees. Since the statute itself is reasonably specific as to which grantees are eligible, there is little likelihood of abuse

of the first come, first serve system. Moreover, the requirement in the rule that applications are only considered final when complete prevents serious abuse of the system and requires applicants to carefully and thoughtfully compose their grant applications. Thus, the procedure set up for fiscal year 1981 is reasonable.

The dates specified in the rule (April 15, 1981 and May 1, 1981) are also reasonable in that these dates allow as long a period for preparing and submitting an application as was possible, given the time necessary for the Agency to review and award grants by the end of the fiscal year (June 30, 1981).

For future fiscal years, the Agency reserves section E.2. to describe the procedure to be used after this fiscal year. The Agency intends to evaluate the utility of the first come, first serve method to be used this year and intends to use that or a more sophisticated process for awarding grants for use after fiscal year 1981. As stated earlier, the shortened time period for awarding grants in fiscal year 1981 prevented the use of a different procedure this year. The future procedure will probably include both a preliminary and final application review so that ineligible applicants are screened before they proceed to prepare a full application.

Section F., "Grant Application Content", describes the information which must be supplied in the application in order for the application to be considered complete. Again, the rule specifies

the content requirement for fiscal year 1981 (F.1.) and reserves E.2. for use in future years. The reasons for specifying the content requirements for fiscal year 1981 are the same as those discussed in section E., supra. That is, given the time limitations on awarding grants this year and in light of the fact that future grant procedures may be different, it is reasonable for the Agency to reserve for the future its determination as to content of a grant application.

The grant application content requirements specified for fiscal year 1981 are the following: names of the applicant; resolutions from the applicant (and, where relevent, from counties represented by the applicant) which indicate interest in the project; names and addresses of the project managers; estimated total project cost; amount of grant funding requested; amount and sources of funds available; regional boundaries and population of the area to be studied by the grantee; and, a work plan to be completed by the grantee.

Most of this information is required to be submitted as a means of identifying the applicant, the project, and the applicant's needs (See F.1.a., e, f, g, and h.). The reasonableness of those sections is self-evident. In addition, the reasonableness of sections F.1.b. and c. and F.1.i. is the following.

Subsections F.1.b. and 1.c. require the applicant to submit resolutions which evidence the applicant's interest in the project

and, in the case of regional planning, the interest of counties to be studied by the applicant. Because counties are the responsible for over-seeing waste management matters and because regional development commissions have no authority to force counties to implement their plans, the Agency believes it is reasonable to have some indication that a county to be studied by a commission will be, at least, interested in the results of the commission's study. Accordingly, the rule is reasonable in that it establishes a provision through which, prior to awarding a grant, the Agency can be assured that the political bodies with the power to implement the plans are interested in the information to be provided in the plans. (See F.1.c.)

Subsection F.1.i. prescribes the information to be included in the applicant's work plan. The work plan is the "meat" of the application in that it describes the actual work to be completed by the grant applicant. The rule requires that, in the work plan, the applicant must provide: a description of the problem the grantee hopes to address in the grant; a breakdown of the work tasks to be completed under the terms of the grant; a breakdown of the number of work hours to complete each of the tasks; a breakdown of all costs associated with completing each of the tasks; a breakdown of the staff, consultants and units of government associated with completing each of the tasks; a breakdown of the amount of time needed to complete each of the tasks; and, a description of the program to be completed by the applicant to ensure public participation in the planning efforts.

These requirements are reasonable in that they allow the Agency to determine if the applicant intends to perform activities suitable to produce an acceptable plan and also allows the Agency to determine if the costs associated with the specified tasks are reasonable. Further, the information provided in the work plan will serve as the basis for auditing the project when it is completed to determine if the applicant has satisfied the conditions of the grant. (See Section H., infra).

Section G., "Agency Review of Grant Applications and Award of Grants," describes the procedures the Agency shall follow in reviewing grant applications and awarding grants. These procedures are consistent with the grant application procedures set out in section F. and, accordingly, provide for the awarding of grants on a first come, first serve basis. (Also consistent with Section F., the procedures for reviewing and awarding grants in future years is reserved in G.2.)

Briefly, Section G. provides that the Agency shall award grants to eligible grantees, to the extent funding is available, on a first come, first serve basis. A grantee becomes eligible for receiving grant funds as as soon as the grantee's application is complete.

These procedures are reasonable in that, in creating the solid waste management planning assistance program, the legislature specified in detail the information all plans must include. 1980 Minn. Sess. Law Serv. (West) ch. 564 Article V §5 [to be

codified at Minn. Stat. §115A.46 (1980)]. In doing this, the legislature limited the inquiry the Agency must make into the merits of the "content" of a plan described in a grantee's application. Accordingly, if an applicant demonstrates the capacity to meet the eligibility requirements specified in the rule, the applicant is eligible regardless of the merits of the plan to be completed by this applicant as compared with other applicant's plan. Moreover, staff experience and communication with potential applicants as well as the limited time remaining is fiscal year 1981 to complete a project, all suggest that parties likely to apply for a grant in fiscal year 1981 will probably be funded with the available funds. In light of these facts, the first come, first serve basis for awarding a grant is reasonable in that it allows each eligible grantee to proceed as soon as ready without waiting for all other applications to be approved.

The subdivisions of section G. identify the series of steps the Agency will take to process and review applications, to notify applicants of the need to submit additional information, and to draft and execute grant agreements. These provisions are self-explanatory. The Agency used its expertise and experience with other grant programs in developing these provisions.

It should be noted that the Agency determines the priority status of a grant applicant (in terms of the first come, first serve rule) by determing the date that a completed application is received by the Agency. In the event two completed applications

are received on the same day, the Agency shall determine priority by means of a lottery. This system is reasonable in that, in the event more applications are received than funding is available, it provides a fair, efficient and effective way of establishing the order in which grantees may be awarded funds. In addition, potential grantees are put on notice that the sooner their applications are received and complete, the better their chances of being awarded a grant.

Section H., "Grant Agreement," specifies the content of grant agreements which will be executed by the Agency and the grantees. These contents are: incorporation of the grant application; term of the grant (no more than one year); remedy if the grant is not completed within the term allowed; payment schedule; and, subcontracting procedures. These content requirements are similar to those used in grant programs reviewed by the Agency and used by the Agency in the past and are reasonable in that they are based on commonly used principles of grant management and fiscal responsibility.

Section I., "Apportionment." In adopting the Waste Management Act, the legislature allocated to the Agency grant funds to be used for, among other things, both the solid waste management planning assistance program and the demonstration project program. The legislature did not allocate the amount of funds to be used for each program. Therefore, the Agency makes such an allocation in the rule. (Note that for future

fiscal years, this allocation is reserved in section I.2.)

The apportionment provided in the rule is the following: 40 percent for grants under the rule (solid waste management planning assistance grants) and 60 percent for grants under a different program (the demonstration project grant program).

This division of funds, which puts greater emphasis on the demonstration grants, is reasonable in that it is consistent with the following conclusions and policies:

(1) The Agency finds it more desirable to achieve abatement of land disposal practices than to merely plan for such abatement. It is the belief of the Agency that demonstration projects are more useful in encouraging communities to abate land disposal practices.

(2) Past planning activities (supported by state grant funds) have produced a considerable number of project concepts and planning documents which have never been implemented. The Agency believes it is desirable that these concepts be implemented and finds that emphasis on demonstration projects does more to achieve this goal.

(3) Demonstration projects are of a nature such that they produce transferable information or experience. This means that, unlike planning projects which are area specific in their attempts to abate land disposal practices, demonstration projects are physical and not simply conceptual solutions to planning problems and are, therefore, more likely to be used to solve a similar problem elsewhere.

The funds allocated according to the 40/60 percentages are believed to be adequate to fund the proposals likely to be received during fiscal year 1981. The Agency makes this conclusion in light of itspast experience and its current knowledge of the solid waste management planning efforts in the state. In addition, written comments received by the Agency to date which have addressed this point concur with the 40/60 percent distribution. (See Comments received by the Agency in response to its Notice to Solicit Outside Opinion.) The Agency, therefore, believes the distribution is reasonable.

Section J., "Severability," specifies that the various provisions of the rule are severable and that the invalidity of any provision shall not affect the validity of any other provision which can be given effect without the invalid provision. This is necessary to ensure the continued viability of the rule and the financial assistancde program if a segment of the rule is found to be invalid.

Lastly, in considering the reasonableness of the rule, some mention should be given to the overall economic impact or effect of the rule. The rule is a grant rule: it imposes no duty on any persons to spend monies; but, rather, encourages communities to do waste management planning and provides financial assistance for this planning. In encouraging political subdivisions of the state to plan for their waste management, the rule is reasonable in all respects.

V. SUMMARY

In accordance with Minn. Stat. §15.0412, subd. 4 (1980), the Agency has, in this Statement, set out an affirmative presentation of facts establishing the need for and reasonableness of its rule. As stated earlier, the purpose of the rule is to implement the solid waste management planning assistance program created by the Waste Management Act of 1980. The rule is needed and reasonable in that it provides a coherent, relatively simple, mechanism through which the Agency shall provide financial assistance to encourage and support needed solid waste planning. The planning is needed, especially on a regional basis, to assist units of goverment in making responsible, sound, and cost-efficient decisions on costly and complex solid waste issues. The provisions of this rule are reasonably designed to accomplish their intended functions in implementing the solid waste management planning assistance program.

VI. EXHIBIT LIST

In drafting the rule, the Agency Staff relied on personal experience and expertise in dealing with waste management issues and programs and a variety of different grant rules. In addition, the Staff relied on the following documents and laws (These documents are on file at the Pollution Control Agency and are hereby incorporated into this document by reference):

1. Amendments to the Minnesota Administrative Procedures Act; 1980 Minn. Sess. Law Serv. (West) ch. 615

2. Waste Management Act; 1980 Minn. Sess. Law Serv. (West) ch. 564

3. Resource Conservation and Recovery Act; 42 U.S.C. §§6901 through 6986 (1976).

4. City of St. Paul, Resource Recovery Feasibility Study, August 1980, prepared by Barr Engineering & Gordian Associates; and, Agency Staff calculations based thereon.

5. Metropolitan Council Solid and Hazardous Waste Management Development Guide and Policy Plan, June 1979, prepared by Metropolitan Council.

6. Solid & Hazardous Waste Study Interm Report & Research Program, prepared for the Joint Legislative Committee on Solid and Hazardous Waste, by the Pollution Control Agency, the State Planning Agency and the Minnesota Energy Agency, Sept. 18, 1978; final report prepared March 1, 1979 (the Casserly Reports).

7. United States Environmental Protection Agency Resource Recovery Management Model, Sept. 1979.

8. Minn. Rule SW 12.

9. February 1969, Study and Investigation of Solid Waste Control, prepared for the Minnesota Pollution Control Agency.

10. County Solid Waste Management Act of 1971, Minn. Stat. ch. 400 (1978).

11. Minn. Resource Recovery Plan, Volume I, September, 1979, prepared by Barr Engineering, for the Minnesota Pollution Control Agency.

12. Minn. Rule WPC 34.

13. State Planning Agency Land Use Planning Grant Rule, Minn. Rule SPA 101 - 124.

14. Minnesota Pollution Control Agency Analysis of the Resource Recovery Grants-In-Aid Program, December 1979, prepared by Barr Engineering.

15. Resource Recovery Grants-In-Aid Program Rules, Minn. Rules SW 80 - 83.

16. U.S. Environmental Protection Agency, General Grant Regulations and Procedures, 40 CFR Part 30, June 1979.

17. Comments received by the Agency in Response to its Notice to Solicit Outside Opinion on the Adoption of a Solid Waste Management Assistance Program Grant Rule.

18. Report on the work of the Joint Legislative Committee on Solid and Hazardous Waste, prepared by the Committee, April 1978 through April 1980 (June 1980).

19. Developing a local and regional solid waste management plan, U.S. EPA (1973).

September 5, 1980

Minnesota Pollution
Control Agency

Terry Hoffman
Executive Director

sota State Plan of Program Operations and Administration for the Special Supplemental Food Program for Women, Infants and Children (WIC) Program. Copies of the draft Plan will be available for public inspection at Minnesota Department of Health district offices and local WIC projects after May 12, 1980.

The meeting will be held Tuesday, May 27, 1980, 10:00 a.m. in the Board Room, Minnesota Department of Health, 717 SE Delaware Street, Minneapolis, Minnesota. The meeting will conclude after all registered speakers have presented testimony.

Any citizen or group may submit either written or oral testimony at the meeting. Testimony will be given on a first come, first serve basis and will be limited to fifteen (15) minutes. Advance registration is requested.

For further information, contact the Minnesota Department of Health, WIC Program, 717 SE Delaware Street, Minneapolis, Minnesota (612) 296-5233.

George R. Pettersen, M.D.
Commissioner of Health

Minnesota State Retirement System

Regular Meeting, Board of Directors

Regular quarterly meeting of the Board of Directors, Minnesota State Retirement System, will be held on Friday, May 23, 1980, at 9:00 a.m. in the office of the System, 529 Jackson Street, St. Paul, Minnesota.

Pollution Control Agency Solid Waste Division

Notice of Intent to Solicit Outside Opinion Concerning A Proposed Rule Relating to Administration of a Grant Program for Solid Waste Management Planning Assistance Grants and for Waste Reduction and Source Separation Demonstration Project Grants

Notice is hereby given that the Minnesota Pollution Control Agency is considering adoption of rules that provide for administration of a program which would provide grants to political subdivisions for solid waste management planning assistance and for waste reduction and source separation demonstration projects.

The proposed rules are authorized by the Waste Management Act of 1980, Minn. Laws of 1980, ch. 564, Article 5, § 1, and Article 6, § 1. The proposed rules if adopted, would regulate the following aspects of administering the grant program:

1. Application and review procedures.
2. Criteria for eligibility.
3. Levels of local funding required.
4. Priority criteria for funding eligible projects.

All interested or affected persons or groups are requested to participate. Statements of information and comment may be made orally or in writing. Written statements of information and comment may be addressed to:

Mr. Donald J. Kyser
Minnesota Pollution Control Agency
Division of Solid Waste
1935 West County Road B-2
Roseville, Minnesota 55113
Phone: (612) 297-2704

Oral statements of information and comment will be received during regular business hours over the telephone at (612) 297-2704, and in person at the above address.

All statements of information and comment should be received by June 30, 1980. Any written material received by the Minnesota Pollution Control Agency shall become part of the hearing record.

May 5, 1980

Dale L. Wikre, Director
Division of Solid Waste

Department of Public Welfare
Mental Health Bureau

Notice of Intent to Solicit Outside Opinion Concerning Revision of Rules Governing Community Mental Health Board and County Welfare or Human Service Board Responsibilities to Mentally Retarded Persons, and Standards of Operation for Residential Facilities for Mentally Retarded Persons

Notice is hereby given by the Minnesota Department of Public Welfare, Mental Health Bureau, has begun consideration of 1) specific language amendments to Rule 185 (12 MCAR § 2.185), concerning criteria and procedures for need

STATE OF MINNESOTA

OFFICE OF THE ATTORNEY GENERAL

ADDRESS REPLY TO:
OFFICE OF THE ATTORNEY GENERAL
MINNESOTA POLLUTION CONTROL AGENCY
1935 W. COUNTY ROAD B2
ROSEVILLE, MINNESOTA 55113
(612) 296-7342

RECEIVED
NOV 3 1980
ATTORNEY GENERAL
ADMINISTRATIVE AGENCIES

October 31, 1980

Mr. Jerry Anderson
Special Assistant Attorney General
Office of the Attorney General
G-25 State Administration Building
50 Sherburne Avenue
St. Paul, Minnesota 55113

RE: In the Matter of the Proposed Adoption of a Rule for the Administration of the Minnesota Solid Waste Management Planning Assistance Program, 6 MCAR § 4.6085

Dear Mr. Anderson:

In accordance with 1980 Minn. Laws ch. 615, section 7 (to be codified at Minn. Stat. §15.0412, subd. 4h), the above-captioned rule is hereby submitted for your review.

As you may remember, I called you several weeks ago to inquire as to the documentation to be submitted to the Attorney General's Office together with a proposed "non-controversial" rule. As you requested during that phone conversation, I have enclosed, with this letter, the following:

1. Rule as adopted. (Original and two copies. One of the two copies reflects the changes made in the rule as originally proposed to the rule as finally adopted.)

2. Order adopting the rule. (Original and two copies.)

3. Certificate of Board's Authorizing Resolution.

4. Certificate of Board's Resolution Adopting Rules.

5. Notice of Intent to Solicit Outside Opinion.

6. Copy of written comments received by the Agency in response to Notice to Solicit Outside Opinion.

7. Copy of the Notice of Rulemaking, together with the Proposed Rule, Published in the State Register, 5 S.R. 379 (September 8, 1980).

8. Affidavits of Mailing, together with Notice of Mailing, sent to persons on Agency's Mailing List.

9. Mailing List Certificate.

10. Affidavit of Receipt of Agency's Mailing List.

11. Findings of Fact and Conclusions.

12. Statement of Need and Reasonableness.

13. Copy of all written comments received in response to the Notice of Rulemaking.

14. Certificate of Compliance with Rulemaking Proceedings.

15. Affidavit evidencing that no person requested notification of transmittal of rules to the Office of the Attorney General.

Unless it is otherwise indicated, I have attached only one copy of the above-referenced documents.

If you have any questions regarding this rule, please contact me at 296-7345.

Very truly yours,

Lisa R. Tiegel
Special Assistant
Attorney General

LRT:lt
Enc.

STATE OF MINNESOTA

COUNTY OF RAMSEY

MINNESOTA POLLUTION

CONTROL AGENCY

In the Matter of the Proposed Adoption of a Rule for the Administration of the Minnesota Solid Waste Management Planning Assistance Program, Minn. Rule 6 MCAR §4.6085

AFFIDAVIT OF MAILING

(B)

STATE OF MINNESOTA)
) ss
COUNTY OF RAMSEY)

DALE NEWTON, being first duly sworn, hereby deposes and says:

That at the City of Roseville, county and state aforesaid, on the 10th day of September, 1980, she served the attached NOTICE OF INTENT TO ADOPT A RULE WITHOUT A PUBLIC HEARING, TOGETHER WITH THE ATTACHED PROPOSED RULE, by depositing in the United States mail at said City of Roseville, a true and correct copy thereof, properly enveloped, with postage prepaid and addressed to the persons named on the attached mailing list.

Dale E. Newton
DALE NEWTON

Subscribed and sworn to before me this 11th day of September, 1980.

Patricia Schwarz
Notary Public

PATRICIA SCHWARZ
NOTARY PUBLIC—MINNESOTA
ANOKA COUNTY
My Commission Expires Aug. 6, 1987

Pollution Control Agency

Proposed Rule for the Administration of the Minnesota Solid Waste Management Planning Assistance Program

Notice of Intent to Adopt a Rule without A Public Hearing

Rules attached.

Notice is hereby given that the Minnesota Pollution Control Agency (hereinafter "agency") intends to adopt the above-entitled rule without a public hearing. The agency has determined that the proposed adoption of this rule is noncontroversial in nature and has elected to follow the procedures set forth in Laws of 1980, ch. 615, § 7, for adoption of noncontroversial rules.

The proposed rule provides for the administration of the Minnesota Solid Waste Management Planning Assistance Program. This program is created and the agency is authorized to adopt this rule under the Waste Management Act (Laws of 1980, ch. 564, art. 5).

The agency has prepared a Statement of Need and Reasonableness that describes the agency's reasons for each provision of the proposed rule and identifies the data and information relied upon by the Agency to support the proposed rule. Copies of the Statement of Need and Reasonableness and the proposed rule are available from the agency by contacting:

Mr. Don Kyser
Resource Planning Section
Division of Solid Waste
Minnesota Pollution Control Agency
1935 W. County Road B2
Roseville, Minnesota 55113
Telephone: (612) 297-2704.

Interested persons have until October 10, 1980, to submit comments on the proposed rule. The proposed rule may be modified if the data and views submitted to the agency warrant modifications and the modification does not result in a substantial change in the proposed language.

If, during the comment period, seven or more persons submit to the agency a written request for a hearing on the proposed rule, the agency shall proceed to schedule a public hearing before adoption of the rule. The agency requests that if a person desires a public hearing, with the written request for a public hearing the person identify the particular provisions objected to, the suggested modifications to the proposed language, and the reasons and data relied on to support the suggested modifications.

Persons who wish to submit comments or a request for a public hearing should submit such comments or requests no later than October 10, 1980, to Mr. Don Kyser at the address given above.

In the event a hearing is required, a new Notice of Hearing will be mailed out and published in the *State Register*. If no hearing is requested, the agency board will consider the adoption of the proposed rule at the October, 1980, board meeting or as soon thereafter as possible. Persons who wish to receive a copy of the final rule as proposed for adoption should submit a written statement of such desire to Mr. Kyser.

After adoption of the final rule by the agency board, the proposed rule, this notice, the Statement of Need and Reasonableness, all written comments received by the agency, and the final rule as adopted will be sent to the Attorney General. Persons who wish to be advised of the submission of this material to the Attorney General should submit a written statement of such desire to Mr. Kyser.

Please be advised that Minn. Stat. ch. 10A (1978) requires each lobbyist to register with the Ethical Practices Board within five days after he/she commences lobbying. Lobbying includes attempting to influence rulemaking by communicating or urging others to communicate with public officials. A lobbyist is generally any individual who spends more than $250.00 per year for lobbying or any individual who is engaged for pay or authorized to spend money by another individual or association and who spends more than $250.00 per year or five hours per month lobbying. The statute in question provides certain exceptions. Questions should be directed to the Minnesota Ethical Practices Board, 41 State Office Building, St. Paul, Minnesota 55155. Telephone (612) 296-5651.

August 26, 1980

Terry Hoffman, Executive Director
Pollution Control Agency

KEY: RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language. **PROPOSED RULES SECTION —** Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material."

Rule as Proposed (all new material)

6 MCAR § 4.6085 Rule for the administration of the Minnesota solid waste management planning assistance program.

A. Purpose. This rule implements the solid waste management planning assistance program, created and described in Article V of the Waste Management Act of 1980, Minn. Stat. §§ 115A.42 through 115A.46 (1980), by establishing the substantive criteria and procedural conditions according to which the Agency shall award solid waste management planning assistance grants.

B. Overview of procedures for applying for and receiving a grant.

1. Application for a grant. To be eligible for a grant under these rules, an applicant shall make an application for a grant.

a. The procedures the applicant shall follow in applying for a grant are set out in E. of this rule.

b. The information and documentation the applicant shall provide in the grant application are set out in F. of this rule.

2. Award of a grant. The agency shall award the applicant a grant, in accordance with the procedures and limitations set out in G. of this rule, if the agency determines:

a. that the applicant specified in the grant application is grant eligible;

b. that the costs specified in the grant application are grant eligible; and,

c. that the project specified in the grant application is grant eligible.

The criteria the agency shall use in determining the grant eligibility of the applicant is set out in D.1. of this rule; the criteria the agency shall use in determining the grant eligibility of the costs is set out in D.2. of this rule; and, the criteria the agency shall use in determining the grant eligibility of the project is set out in D.3. of this rule.

C. Definitions.

1. "Acceptable plan" means a written report prepared by a grantee to determine and provide the planning information set out in Minn. Stat. § 115A.46 (1980). To be considered an acceptable plan under these rules, the written report shall:

a. contain descriptions, estimates or assessments of existing and proposed waste practices, including the following:

(1) A description of the existing collection, processing, and disposal systems used by the political subdivision(s) being studied by the named grantee, including schedules of rates and charges, financing methods, environmental acceptability, and opportunity for improvements in the systems;

(2) An estimate, calculated on the basis of current and projected waste generation practices, of the land disposal capacity in acre-feet which the political subdivisions being studied by the named grantee shall need through the year 2000;

(3) An assessment of opportunities to reduce the need for land disposal through the use of waste reduction and resource recovery [as defined in Minn. Stat. § 115A.03, subd. 27 (1980)], including an assessment of (a) the alternative degrees of reduction achievable, (b) the comparative costs of the alternatives (including capital and operating costs), and (c) the effects of the alternatives on the cost to generators of the waste.

(4) A description of existing and proposed county and municipal ordinances and license and permit requirements relating to solid waste management, including a description of the existing and proposed regulations and enforcement procedures relevant to those requirements; and,

b. establish a siting procedure and development program to assure the orderly location, development, and financing of new or expanded solid waste facilities and services sufficient for a prospective ten year period, including (a) estimated costs and implementation schedules, (b) proposed procedures for operation and maintenance, (c) estimated annual costs of gross revenues and (d) proposals for the use of facilities after they are no longer needed or usable; and,

c. address the resolution of conflicting, duplicative or overlapping local management efforts, including the possible establishment of joint powers management programs or waste management districts; and,

d. establish a schedule of actions which need to be undertaken to put the procedures, programs and resolutions described in the plan into effect, including a statement of the appropriate entity to take each action.

2. "Agency" means the Minnesota Pollution Control Agency, as constituted pursuant to Minn. Stat. § 116.02, subd. 1 (1980).

3. "Director" means the Executive Director and Chief Executive Officer of the agency or a person expressly designated by the director to discharge a duty or responsibility of the director.

4. "Grant eligible" or "grant eligibility" means meets the criteria to receive funding assistance under these rules. The fact that an item or person is "grant eligible" under these rules does not automatically assure that a grant shall be awarded. A grant shall only be awarded if the grant elibility criteria are met and if sufficient funds are available to cover the grant.

5. "Metropolitan area" has the meaning given it in Minn. Stat. § 115A.03, subd. 18 (1980).

6. "Political subdivision" has the meaning given it in Minn. Stat. § 115A.03, subd. 24 (1980).

7. "Regional development commission" has the meaning given it in Minn. Stat. § 115A.03, subd. 26 (1980).

D. Grant eligibility criteria.

1. Eligible applicants. Except for political subdivisions located within the seven county metropolitan area, any political subdivision within the State of Minnesota is grant eligible.

2. Eligible costs.

a. The following costs are grant eligible:

(1) Salaries of staff persons, consultants, and other persons employed to develop and publish an acceptable plan;

(2) Costs associated with the drafting and execution of necessary contracts between the grantee and other units of government or qualified consultants employed to develop or publish an acceptable plan; including, but not limited to, reasonable attorneys fees;

(3) Costs associated with holding meetings to inform the public of the development of the plan and to provide an opportunity for the public to participate in and comment on the development of the plan; including, but not limited to, costs associated with noticing and recording the meeting;

(4) Costs associated with the printing and distribution of plans and draft plan materials;

(5) Costs of any in-state travel, the primary purpose of which is to attend meetings or gather information needed for the development and publication of an acceptable plan; including, but not limited to, reimbursement for mileage consistent with state allowances;

(6) Costs of any necessary supplies required for the development and publication of an acceptable plan. (The costs of any commodities, materials, capital expenditures and equipment which could be used after the plan is completed shall not be considered supplies and are, therefore, not grant eligible under these rules); and,

(7) Overhead costs.

b. The amount of the grants available under this rule is limited as follows:

(1) For planning by a regional development commission, joint planning by two or more contiguous counties, or joint planning by political subdivisions located in two or more contiguous counties:

(a) The agency shall award grants to cover 90 percent of the eligible costs specified in the grant application; and,

(b) The grantee shall fund the remaining costs of completing the planning efforts.

(2) For all planning efforts other than that described in paragraph D.2.b.(1):

(a) The agency shall award grants to cover 50 percent of the eligible costs specified in the grant application; and,

(b) The grantee shall fund the remaining costs of completing the planning efforts.

(3) For D.2.b.(1) grants and D.2.b.(2) grants, the maximum amount that a grantee shall be awarded to complete the plan is 90 percent and 50 percent, respectively, of the total requested by the grantee in its application. Within these maximums, adjustments between funds awarded to cover the costs specified in D.2. shall be made if the agency and the grantee determine that such adjustments shall result in the development of an acceptable plan in a more efficient manner.

(4) If, while working to complete the grant, a grantee finds that more funds are needed, the grantee shall not be awarded additional funds unless the grantee makes application for an additional grant in accordance with the grant application procedures set out in E. of this rule. The agency shall treat an application for an additional grant in the same manner as it treats applications for original grants, as provided in G. of this rule.

c. Grants shall be awarded to cover the eligible costs of only those tasks which are undertaken and completed during the grant period established in the grant agreement. Grants shall not be awarded to cover any cost associated with tasks performed prior to the award of a grant or after the expiration of the grant agreement.

d. The availability of funds is a precondition to the award of any grant by the agency.

3. Eligible projects.

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a. The agency shall consider grant eligible all projects which are reasonably designed to result in the development and publication of an acceptable plan, as defined in B.1. of this rule.

b. The agency shall determine that a project is reasonably designed to result in an acceptable plan if the agency finds that the grant application required to be submitted under E. of this rule is complete. The agency shall determine that a grant application is complete if the application contains all the information and meets all the requirements set out in F.

E. Grant application procedures.

1. For grants to be awarded during the fiscal year ending June 30, 1981:

a. As soon as possible and no later than April 15, 1981, a grant applicant shall submit a grant application to the agency.

b. The grant application to be submitted to the agency shall include all the information and documentation set out in F. of this rule.

c. Upon receiving a grant application, the director shall promptly review the application and shall make a determination as to:

(1) the eligibility of the applicant specified in the preliminary application;

(2) the eligibility of the costs specified in the preliminary application; and,

(3) the eligibility of the project specified in the preliminary application.

d. Within two weeks after receiving the application, the Director shall notify each applicant as to the director's determinations:

(1) If the director determines that the applicant, the costs and the project specified in the application are grant eligible, the application shall be considered final as of the date it was received and the applicant shall be so notified. The application shall then be treated in accordance with the agency review provisions established in G. of this rule.

(2) If the director determines that the applicant is not grant eligible, the application shall not be further considered and the applicant shall be so notified.

(3) If the director determines that any of the costs described in the application are not grant eligible or that the application is otherwise incomplete:

(a) The director shall note the inadequacies in the application and shall so notify the applicant;

(b) The applicant shall have an opportunity to cure the inadequacies noted by the director; except that, no information received by the agency after May 1, 1981, shall be considered by the director in determining the grant eligibility of the applicant, costs or project.

(i) An application which is considered inadequate under this section shall not be considered final until the agency receives the information or documentation which cures the inadequacies described by the director.

(ii) An application which is considered inadequate under this section shall be considered final on the date all necessary supplemental information is received by the agency.

(iii) Once the application is considered final, it shall be treated in accordance with the agency review provisions established in G. of this rule.

2. For grants to be awarded during all fiscal years other than that described in D.2.:

a. Preliminary grant applications. [reserved].

b. Final grant applications. [reserved].

F. Grant application content.

1. Applications for grants to be awarded during the fiscal year ending June 30, 1981 shall include the following information:

a. The name(s) of each political subdivision(s) making the grant application;

b. Resolutions from each political subdivision named on the application which

(1) demonstrate the political subdivision's desire to make the grant application and interest in the planning efforts described in the grant application; and,

(2) demonstrate the political subdivision's commitment to provide the required financial input to complete the planning efforts described in the grant application;

c. In the case of a regional development commission, resolutions from each of the counties represented by the regional development commission, which demonstrate the counties' interest in and support for the planning efforts described in the grant application;

d. The name(s) and address(es) of the project manager(s);

e. Total project cost;

f. Amount of grant funding requested;

g. Amount and sources of all other funding contributions, including the amount of funds to be contributed by the applicant;

h. Regional boundaries of and population in area to be considered in the planning study;

i. A work plan which provides the following information and details:

(1) A brief description of the problem which the grantee hopes to address through the planning efforts; including, a statement of any known waste management problems to be addressed by the grantee and any present support or opposition to current or proposed solid waste disposal alternatives;

(2) A breakdown of the specific work tasks to be completed under the terms of the grant; including, but not limited to, each of the tasks required to be completed by Minn. Stat. § 115A.46 (1980);

(3) A breakdown of the number of work hours needed to complete each of the tasks specified in paragraph i.(2);

(4) A breakdown of all the costs associated with completing each of the tasks specified in paragraph i.(2), including an explanation of how each cost was calculated;

(5) A breakdown of the staff, consultants, and units of government associated with completing each of the tasks specified in paragraph i.(2);

(6) A breakdown of the amount of time needed to complete each of the tasks specified in paragraph i.(2); and,

(7) A description of the program to be completed by the applicant to ensure public participation in the planning efforts.

2. Applications for grants to be awarded during all fiscal years other than the one described in F.1. [reserved].

G. Agency review of grant applications and award of grants.

1. Review and award of grants to be awarded during the fiscal year ending June 30, 1981.

a. Grants shall be awarded to eligible grantees, to the extent funding is available, on a first come, first serve basis.

b. The agency shall make these first come, first serve determinations as follows:

(1) The director shall mark each and every application and supplemental submittal the agency receives with a notation of the date the application and submittal is received. The date the agency shall use in determining the rank of the application is the date that the application is considered final:

(a) For applications which are complete on the day they are submitted, the application shall be considered final on the date the application is received by the agency.

(b) For applications which require the submission of supplemental information to be complete, the application shall be considered final on the date all necessary supplemental information is received by the agency.

(c) In those instances in which more than one application is received by the agency during any one day, the priority status of the applications shall be determined by lottery.

(2) Once the grant application is considered final [as provided in E.1.d.(1) and (3)(b)], the director shall proceed as follows:

(a) Within four weeks after notifying the applicant that the application is considered final, the director shall draft a grant for the applicant, in accordance with the requirements and conditions set out in H. of this rule.

(b) At the next regularly scheduled meeting the agency holds after the grant is drafted, the director shall present the grant to the agency for its consideration and review.

(c) The agency shall review the director's determinations as to applicant, cost and project eligibility; and, if it agrees with these determinations, shall award the grant.

(d) The agency is authorized to delegate to the director the authority to issue grants under this program. If the agency delegates such authority to the director, the agency review provisions set out in b.(2)(ii) and (iii) are waived.

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2. Review and award of grants to be awarded during all fiscal years other than the one described in G.1. [reserved].

H. Grant agreement.

1. The grant agreement shall incorporate by reference the final grant application submitted to the agency in accordance with E.1.d. of this rule.

2. The grant agreement shall establish the term of the grant. All grants awarded under this rule shall have a maximum term of one year.

3. Grants not being completed in accordance with the terms and conditions of the grant agreement, including time schedules, shall be forfeited unless the agency determines that the variances from the grant requirements are due to factors outside the control of the grantee.

4. The grant agreement shall include a payment schedule. This payment schedule shall provide for reimbursement of stated travel costs, in a manner described in the grant agreement, and shall require that ten percent of each payment made under the grant agreement be retained by the agency until the director determines that the report submitted under the grant is an acceptable plan. If the director determines that a report is deficient, the director shall notify the grantee of the deficiency. The agency shall pay the withheld ten percent of the grant as soon as the deficiency is corrected and the director determines that the report is an acceptable plan.

5. The grant agreement shall provide that, subject to the approval of the director, the grantee shall be authorized to enter into contracts to complete the work specified in the grant. The grant agreement shall further require that all such contracts name the agency as a third-party beneficiary to that contract.

I. Apportionment.

1. For grants to be awarded during the fiscal year ending June 30, 1981, the agency shall apportion funds allocated to it by the legislature for the grant programs set out in Articles V and VI of the Waste Management Act, Minn. Stat. §§ 115A.42 through 115A.54 (1980), as follows:

a. Article V grants (grants awarded under these rules): forty percent of the amount appropriated to the agency; and,

b. Article VI grants (grants awarded under other rules): sixty percent of the amount appropriated to the agency.

c. If the agency receives more eligible requests for grant assistance under Article V than the agency has funds available and the agency receives less eligible requests for grant assistance under Article VI than it has funds available, the agency shall adjust the apportionment described in this part. Similarly, if the agency receives less eligible requests for grant assistance under Article V than the agency has funds available and more eligible requests for grant assistance under Article VI than it has funds available, the agency shall adjust the apportionment described in this part. No such adjustment shall be made until the last date that final grant applications are permitted to be submitted to the agency under this rule and the rule developed to implement Article VI of the Waste Management Act.

2. For grants to be awarded during all fiscal years other than that described in paragraph I.1., the agency shall apportion funds allocated to it by the legislature for the grant programs set out in Articles V and VI of the Waste Management Act. Minn. Stat. § 115A.42 through 115A.54 (1980), as follows: [reserved].

J. Severability. If any provision of this rule or the application thereof to any person or circumstance is held to be invalid, such invalidity shall not affect any other provision or application of any other part of this rule or any other rule which can be given effect without the invalid provision or application, and to this end the provisions of this rule and the various applications thereof are declared to be severable.

Department of Public Welfare
Bureau of Social Services

Proposed Amendments to Rule Governing Subsidized Adoption

Notice of Intent to Adopt Amendments to A Rule without a Public Hearing

Notice is hereby given that the Department of Public Welfare is proposing to adopt amendments to the attached adoption rule (12 MCAR § 2.200).

All persons have 30 days from the date of this notice in which to submit comments on the proposed rule amendment. All written comments will be reviewed by the Department of Public Welfare and, if no hearing is required, then by the Office of the Attorney General, Administrative Division. The rule may be modified based upon the data and views submitted.

Any person may also, within the 30 day period, make a written request for a public hearing on the rule. If seven or more persons make a written request for a hearing on the rule, a public hearing will be held according to the provisions of Minn. Stat. § 15.0412.

MPCA HEARING NOTIFICATION
MAILING LIST
INTER OFFICE

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REVIEW ADMINISTRATIVE RULES
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MANKATO MN 56001 2

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THE PILLSBURY COMPANY
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AM CRYSTAL SUGAR CO
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MOORHEAD MN 56560

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ATTN JOHN T HOEFT
300 METRO SQ BLDG
7TH ST & ROBERT ST
ST PAUL MN 55101

EPA REGION V
ATTN ART BADEN
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CHICAGO IL 60604

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ATTN BOB FRANKLIN
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MPLS MN 55488

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ATTN T J MANTHEY
1100 SUPERIOR AVE NE
CLEVELAND OH 44114

PICKANDS MATHER & CO
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1678 RED TOCK TD
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ST PAUL MN 55164

MINNKOTA POWER COOP INC
ATTN LOREN L JOHNSON
BOX 1318
GRAND FORKS MN 58201 3

DULUTH MISSABE & IRON
RANGE RAILWAY CO
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CONSULTING ENGINEERS
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GEORGE MASTOR
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MINNESOTA GAS CO
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DAMES & MOORE
ATTN GEORGE NICHOLAS
1550 NORTHWEST HIGHWAY
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LAKE MINNETONKA
CONSERVATION DISTRICT
402 E LAKE ST
WAYZATA MN 55391 3

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NORTHERN ORDINANCE DIV.
FMC CORP.
4800 E RIVER ROAD
MINNEAPOLIS MN 55421 3

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3316 W 66TH ST
MINNEAPOLIS MN 55435 3

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MANAGER
ENVIR. PLANNING
ROOM 807
TRANSPORTATION BLDG
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MN CHAPTER OF ABC
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ROBT J PUGLEASA CO INC
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MPLS MN 55414

PERRY GRUBB ASSOC INC
ATTN CHARLES R SINGER
771 HARDING ST NE
MPLS MN 55413

LAW OFFICES
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BURLINGTON NORTHERN INC
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FARIBAULT MN 55021

CALC
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HEALTH & SOCIAL SERVICES
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COURTHOUSE-4TH FLOOR
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PRESIDENT
INTERSTATE POWER CO
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DUBUQUE IA 52001 4

PHILLIPS LEGIS. SERVICES
459 RICE ST
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D H G & G ATTORNEYS AT LAW
ATTN JOHN HERMAN
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SUITE 930
MPLS MN 55401 4

MIDLAND GLASS COMPANY INC
ATTN R J BARTO
P O BOX 69 SHAK
SHAKOPEE MN 55379 4

BURLINGTON NORTHERN
LAW DEPARTMENT
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ST PAUL MN 55101 4

WOLVERTON ENGINEERING CO
847 40TH AVENUE NE
COLUMBIA HTS MN 55421
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DAIRYLAND POWER COOP
ATTN THOMAS A STEELE
P O BOX 817
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LA CROSSE WI 54601 4

ROCHESTER PUBLIC UTILITIES
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CHICAGO IL 60603
4

The attached letter was sent to the following people:

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Stearns County Courthouse
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St. Cloud, MN 56301

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Rochester, MN 55901

Malcolm Lee
Ottertail County Courthouse
Fergus Falls, MN 56537

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Association of Minnesota Counties
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Rich Detmers,
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Fergus Falls, MN 56537

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Southeastern Reg. Development Com

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Crookston, MN 56716

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County Admin. Bldg.
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Al Frechette
Scott County Environ. Health
Officer
Shakopee, MN 55379

G.J. Kempf
Wadena County Zoning Admin.
Courthouse
Wadena, MN 56482

CERTIFICATE OF BOARD'S
AUTHORIZING RESOLUTION

I, Terry Hoffman, do certify that I am the Executive Director of the Minnesota Pollution Control Agency, an Agency duly authorized under the laws of the State of Minnesota, and that the following resolution was adopted at a meeting of the Agency properly called on the 26th day of August, 1980, that a quorum was present at said meeting; that the resolution is set forth in the minutes of said meeting and has not been rescinded or modified:

> BE IT RESOLVED, that the Minnesota Pollution Control Agency approves the rule for the purpose of rulemaking and authorizes the initiation of rulemaking proceedings on the proposed rule for the administration of the Minnesota Solid Waste Management Planning Assistance Program;
>
> BE IT FURTHER RESOLVED, that the Minnesota Pollution Control Agency finds the proposed rule is non-controversial in nature and hereby authorizes rulemaking proceedings in accordance with statutory provisions regarding non-controversial rules;
>
> BE IT FURTHER RESOLVED, that the Executive Director is authorized to undertake all actions and to execute all documents necessary to accomplish these proceedings.

IN WITNESS WHEREOF, I have hereunto subscribed my hand this 30th day of October, 1980.

Terry Hoffman

TERRY HOFFMAN
Executive Director

Subscribed to & Sworn to
before me this 30th day of
October, 1980.

Notary

MARIANNE GIBBONS
NOTARY PUBLIC - MINNESOTA
RAMSEY COUNTY
My Commission Expires Sept 28, 1985

STATE OF MINNESOTA

COUNTY RAMSEY

MINNESOTA POLLUTION

CONTROL AGENCY

In the Matter of the Proposed Adoption of a Rule for the Administration of the Minnesota Solid Waste Management Planning Assistance Program, 6 MCAR § 4.6085

AFFIDAVIT OF NOTIFICATION OF TRANSMITTAL

Donald J. Kyser, being duly sworn on oath deposes and says:

1. That he is an employee of the Solid Waste Division, Minnesota Pollution Control Agency, State of Minnesota;

2. That he was named in the Notice of Rulemaking as the person to be contacted regarding the above-referenced rules;

3. That no person requested, either orally or in writing, that he or she be notified of the transmittal by the Minnesota Pollution Control Agency of the above-referenced rule to the Office of the Attorney General; and,

4. That, accordingly, no such notice need be made.

FURTHER AFFIANT SAYETH NOT.

Donald J. Kyser

Subscribed to & Sworn to before me this 29th day of October, 1980.

Patricia Schwarz
Notary Public

PATRICIA SCHWARZ
NOTARY PUBLIC—MINNESOTA
ANOKA COUNTY
My Commission Expires Aug. 6, 1987

STATE OF MINNESOTA

COUNTY RAMSEY

MINNESOTA POLLUTION

CONTROL AGENCY

In the Matter of the Proposed Adoption of a Rule for the Administration of the Minnesota Solid Waste Management Planning Assistance Program, 6 MCAR § 4.6085

AFFIDAVIT OF RECEIPT OF AGENCY'S MAILING LIST

Donald J. Kyser, being duly sworn on oath deposes and says:

1. That he is an employee of the Solid Waste Division, Minnesota Pollution Control Agency, State of Minnesota;

2. That on the 4th day of September, 1980, he requested that Diana Farrell, an employee of the Minnesota Pollution Control Agency charged with the responsibility of maintaining a Mailing List of persons to be notified of rulemaking, pursuant to 1980 Minn. Laws ch. 615, section 6 (to be codified at Minn. Stat. §15.0412, subd. 4), supply him with a true and correct copy of such Mailing List;

3. That on the 4th day of September, 1980, in response to the above-request, Diana Farrell provided him with such a list, a copy of which is attached hereto and incorporated by reference.

FURTHER AFFIANT SAYETH NOT.

Donald J. Kyser

Subscribed to & Sworn to before me this 29th day of October, 1980.

Patricia Schwarz
Notary Public

PATRICIA SCHWARZ
NOTARY PUBLIC—MINNESOTA
ANOKA COUNTY
My Commission Expires Aug. 6, 1987

MPCA HEARING NOTIFICATION
MAILING LIST
INTER OFFICE

DEPT OF EDUCATION
ATTN FREDRIK M CHRISTIANSEN
RM 911 CAPITOL SQ BLDG
ST PAUL MN 55101

DEPT OF ECONOMIC DVLPMT
ATTN KENT E EKLUND
480 CEDAR ST
ST PAUL MN 55101

DEPT OF ECONOMIC DVLPMT
ATTN RICHARD C BUSKE
480 CEDAR ST
ST PAUL MN 55101

DEPT OF ECONOMIC DVLPMT
ATTN CHARLES SCHAFFER
480 CEDAR ST
ST PAUL MN 55101

OFFICE OF HEARING EXAMINERS
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1745 UNIVERSITY RM 300
ST PAUL MN 55104

MN DEPT OF HEALTH
ATTN MARGARET SANDBERG
COMMUNITY DEVELOPMENT
717 DELAWARE ST SE
MPLS MN 55440

WATER PLANNING BOARD
ATTN SUE STAPF
555 WABASHA RM 206
ST PAUL MN 55102

LEGISLATIVE COMM TO
REVIEW ADMINISTRATIVE RULES
ATTN SUE ROBERTSON
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STATE OFFICE BLDG

MN DEPT ECONOMIC SECURITY
ATTN F JAMES RYBAK PHD
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JEAN DAWSON, EDITOR
MINNESOTA GOVT. REPORT
B-12, PRESS RM
STATE CAPITOL BLDG

OFF OF LEGISLATIVE AUDITOR
ATTN ALLAN BAUMGARTEN
PROGRAM EVALUATION SPEC
122 VETERANS SERV BLDG
ST PAUL MN 55155

LEGISLATIVE COMM ON
WASTE MANAGEMENT
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B-46
STATE CAPITOL

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NSP
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MPLS MN 55401 AQ

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LA CROSSE WI 54601 AQ

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CHAMBER OF COMMERCE
99 DOWNTOWN PLAZA
FAIRMONT MN 56031 SW

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INDUSTRIAL BUREAU
828 FIRST NATIONAL BANK
DULUTH MN 55802 1

N S P LAW DEPT
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414 NICOLLET MALL
MPLS MN 55401 1

NORTHERN STATES POWER CO
ATTN G V WELK MANAGER
REG COMPLIANCE AND SERV
414 NICOLLET MALL
MPLS MN 55101 1

MN MULTI HOUSING ASSOC
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3100 W LAKE ST
MPLS MN 55416 1

HOLMES & GRAVEN
ATTN LARRY M WERTHEIM
4610 IDS CENTER
MPLS MN 55402 1

POTLATCH CORPORATION
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BOX 510
CLOQUET MN 55720 1

ANOKA CO COMM HEALTH &
SOCIAL SERV DEPT
ATTN GERTRUDE M JAMES
COURTHOUSE 4TH FL
ANOKA MN 55303 1

FEDERAL STATE REPORTS INC
ATTN BONNIE M SPENCER
STATE REGULATORY DIVISION
5203 LEESBURG PIKE S 1201
FALLS CHURCH VA 22041 1

LAKE MINNETONKA CONS DIST
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WAYZATA MN 55391 1

U OF M PHYSICAL PLANT DEPT
ATTN ROBERT SILVAGNI
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319 15TH AVE SE
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ATTN J W HAUN
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MPLS MN 55420 1

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ALBERT LEA MN 56007 1

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THE SHERWIN-WILLIAMS CO
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STATE OF MINNESOTA

COUNTY RAMSEY

MINNESOTA POLLUTION

CONTROL AGENCY

In the Matter of the Proposed
Adoption of a Rule for the
Administration of the Minnesota
Solid Waste Management Planning
Assistance Program, 6 MCAR § 4.6085

MAILING
LIST
CERTIFICATE

I hereby certify that the attached Mailing List includes a true, correct and complete list of those persons, associations, and other interested groups who, as of September 4, 1980, requested that their names be placed on file with the Minnesota Pollution Control Agency for the purpose of receiving Notice of Rulemaking, pursuant to 1980 Minn. Laws ch. 615, section 6 (to be codified at Minn. Stat. §15.0412, subd. 4).

Diana Farrell

Subscribed to & Sworn
to before me this 29th
day of October, 1980.

Patricia Schwarz
Notary Public

PATRICIA SCHWARZ
NOTARY PUBLIC—MINNESOTA
ANOKA COUNTY
My Commission Expires Aug. 6, 1987

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Sand Rules

The attached letter was sent to the following people:

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Rochester, MN 55901

Malcolm Lee
Ottertail County Courthouse
Fergus Falls, MN 56537

Morris Anderson
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St. Paul, MN 55116

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STATE OF MINNESOTA

COUNTY RAMSEY

MINNESOTA POLLUTION

CONTROL AGENCY

In the Matter of the Proposed
Adoption of a Rule for the
Administration of the Minnesota
Solid Waste Management Planning
Assistance Program, 6 MCAR § 4.6085

CERTIFICATE OF
COMPLIANCE WITH
RULEMAKING PROCEDURES

I, Special Assistant Attorney General Lisa R. Tiegel, do hereby declare that I have examined the proposed rule and all related documents and that, based on them and my personal familiarity with the applicable requirements, all rulemaking procedures required by statute and rule have been followed.

LISA R. TIEGEL
Special Assistant
Attorney General

DATED: October 29, 1980

CERTIFICATE OF BOARD'S
RESOLUTION ADOPTING RULES

I, Terry Hoffman, do certify that I am the Executive Director of the Minnesota Pollution Control Agency, an Agency duly authorized under the laws of the State of Minnesota, and that the following resolution was adopted at a meeting of the Agency properly called on the 28th day of October, 1980, that a quorum was present at said meeting; that the resolution will be set forth in the minutes of said meeting and has not been rescinded or modified:

> BE IT RESOLVED, that the Minnesota Pollution Control Agency adopts the attached Findings of Fact and Conclusions and the Order Adopting 6 MCAR §4.6085, a Rule for the Administration of the Minnesota Solid Waste Management Planning Assistance Program.
>
> BE IT FURTHER RESOLVED, that the Executive Director is authorized to forward the rule to the Attorney General for approval, to have the rule published in the State Register, and to do all things necessary and sign all other documents necessary to accomplish the promulgation of this rule.

IN WITNESS WHEREOF, I have hereunto subscribed my hand this 30th day of October, 1980.

TERRY HOFFMAN
Executive Director

Subscribed to & Sworn to
before me this 30th day of
October, 1980.

Notary Public

MARYANNE GIBBONS
NOTARY PUBLIC - MINNESOTA
RAMSEY COUNTY
My Commission Expires Sept 26, 1985

STATEMENT OF MINNESOTA

COUNTY OF RAMSEY

MINNESOTA POLLUTION

CONTROL AGENCY

In the Matter of the Proposed Adoption of a Rule for the Administration of the Minnesota Solid Waste Management Planning Assistance Program, Minn. Rule 6 MCAR §4.6085

FINDINGS OF FACT AND CONCLUSIONS

The above-entitled matter came on for decision before the Minnesota Pollution Control Agency (hereinafter, "Agency") on the 28th day of October, 1980. After affording all interested persons an opportunity to present written and oral data, statements and arguments to the Agency, in accordance with the statutory requirements regarding the adoption of non-controversial rules, after considering the Statement of Need and Reasonableness and the written comments submitted to the Agency, and after considering all of the evidence adduced upon the records, files and proceedings herein, the Agency, being fully advised in the premises, hereby accepts and adopts the following Findings of Fact and Conclusions.

FINDINGS OF FACT

1. The Agency adopts the Statement of Need and Reasonableness, in its entirety, as the factual basis for the rule. The Agency hereby incorporates the Statement of Need and Reasonableness into these Findings.

2. The Agency finds that it received four written comments on the proposed rule, one in response to the Notice of Intent to Solicit Outside Opinion, and three in response to the Notice of Intent to Adopt a Rule Without A Hearing. After considering these

comments, the Agency finds that no substantive change in the proposed rule is needed or desirable. In specific, the Agency makes the following findings with respect to each of the comments raised:

a. Letter received from the Arrowhead Regional Development Commission, in response to the Agency's Notice to Solicit Outside Opinion.

(1) This letter contains the recommendations relating to (a) the application and review procedures in the rule; (b) the level of local funding required by the rule; and, (c) the priority criteria for funding projects.

(2) With respect to the application and review procedures, the Agency finds that the two-phase application and review procedures suggested in the letter are reasonable and have merit. However, the Agency rejects this approach for fiscal year 1981 because of the timing limitations the Agency faces in reviewing grant applications and awarding grants during that fiscal year. (The statutory framework within which the grant program was created in the Spring of 1980 requires the Agency to adopt rules before awarding grants under the program and to award this year's grant funds by the end of the fiscal year, July 1, 1981).

The proposed rule does, however, contain a number of sections which reserve for determination at a later date the procedures to follow in future fiscal years. The Agency intends to reconsider the two-phase approach for use when the sections governing grant awards in future fiscal years are amended.

(3) With respect to the level of local funding required by the rule, the letter makes the following three comments: (a) the split of funds between these (Article V) grants and grants (yet to be developed) under Article VI of the Waste Management Act should be 30 - 40 percent Article V grants and 60 -70 percent Article VI grants; (b) regional development commissions should receive 100 percent funding; and, (c) some form of sliding scale to recognize local funding constraints should be provided in the rule.

With respect to the first comment, the Agency finds that the suggested apportionment is reasonable. Part I. of the rule provides for such apportionment.

With respect to the second comment, the Agency finds that Regional Development Commissions should receive grants which cover a large portion of their funding needs; but, that funding at a 90 percent (as opposed to a 100 percent funding level) is more desirable. The Agency finds specifically finds that requiring a Regional Development Commission to provide some funding on their own creates a greater incentive for the grant applicant to carefully consider the worth of the project being proposed. In addition, the requirement that a grantee participate to some extent in the funding of the project acts as an incentive for the grantee to more carefully estimate the funds needed for the project and to carefully manage the funds allocated to the project. (See Statement of Need and Reasonableness at page 15.) Further, the Agency finds support for this position in that, after the rule

was proposed, the Agency received no criticism of this 90 percent funding level.

With respect to the third comment, the Agency finds that, at least for this fiscal year, the funding allowances provided in the rule are sufficiently great to adequately account for the concern raised regarding local funding constraints.

(4) With respect to the priority criteria for funding projects, the Agency finds that the suggestion that the Agency give priority to projects which address landfill siting, problems due to variations in fees at neighboring landfills and consolidation of service areas, and other common disposal issues is unreasonable in that the enabling legislation (the Waste Management Act) requires all grantees to address these issues. Accordingly, the Agency finds that these consideration of these matters cannot serve as prioritization criteria.

The Agency does, however, find that a "priority" system may be desirable in future fiscal years (when the Agency is not faced with timing limitations in awarding grants as it is with this fiscal year.) The Agency finds, therefore, that it is reasonable to reconsider the priority system at the time it amends the rule for future fiscal years.

b. Letter received from the City of Red Wing, in response to the Agency's Notice of Intent to Adopt the Rule Without a Hearing.

(1) This letter contains the recommendation that the funding allowances specified in the rule (i.e., 90 percent for regional development commissions and similar groups, 50 percent for all others) should be reversed.

(2) The Agency finds that this suggestion is unreasonable in light of the fact that it is inconsistent with the enabling legislation (which puts a 50 percent ceiling on grants to be awarded to local units of government other than groups like regional development commissions.)

c. Letters received from Region Nine Development Commission and the Minnesota Association of Regional Commissions, in response to the Agency's Notice of Intent to Adopt the Rule Without a Hearing.

(1) These letters contain the recommendation that the the rule should allow for regional development commissions to review and comment on grant applications submitted to the Agency by local units of government. As both letters indicate, the Regional Development Act already provides for this review. [See Minn. Stat. §462.391, subd. 3 (1980)].

(2) The Agency is aware of and supports this requirement. However, the Agency finds that notice of and implementation of this requirement is more appropriately handled without amending the rule. The Agency finds that Notice of this and all other relevant statutory requirements not specifically related to the grant program is best provided in the grant application form, instead of the grant application rule. Accordingly, the Agency directs the Agency staff to satisfy the concerns raised in these two letters by working with the regional development commissions to devise a satisfactory form of providing notice to grant applicants that the Regional Development Act requires the grant applicant to allow the regional development commission to review and comment on the grant application.

3. The Agency finds that it received no requests for a hearing and that, therefore, no hearing is required to be held prior to the adoption of the rule.

The Agency notes that the comment letter received from the Minnesota Association of Regional Commissioners requested the Agency to make "formal arrangements, either as part of the adopted grant administration rules or as agreements between the MPCA and the" Regional Development Commissions, to allow the Commissions to review and comment on the grant applications. The Commissioners also stated that, if the Agency could not comply with these requests, then the Agency should consider the letter submitted by the Commissioners to be a request for a public hearing.

The Agency finds that it has adequately addressed the concerns raised by the Minnesota Association of Regional Commissioners (see Finding 2.c.). Therefore, the Agency finds that the letter submitted by the Commissioners, does not constitute a request for a public hearing.

4. The Agency finds that there are five corrections that need to be made to the rule prior to its adoption. These corrections are the following:

a. A typographical error occured in Part C.1.b. of the proposed rule. This error is corrected by substitution of the word "and" for the word "of" in following text:

> b. establish a siting procedure and development program to assure the orderly location, development, and financing of new or expanded solid waste facilities and services sufficient for a prospective ten year period, including

(a) estimated costs and implementation schedules, (b) proposed procedures for operation and maintenance, (c) estimated annual costs ~~of~~ and gross revenues and (d) proposals for the use of facilities after they are no longer needed or usable; and, p.3

b. At four points in the rule, references made to another part of the rule incorrectly identified the part of the rule intended to be referenced. These errors are corrected as follows:

(a) in Part D.3.a., the reference to "B.1." is corrected to read "C.1." That this reference was intended to be C.1. and not B.1. is obvious from the text of the rule. p.8

(b) in Part E.2., the reference to "D.2." is corrected to read "E.1." Again, that this reference was intended to be E.1. and not D.2. is obvious from the text of the rule. p.10

(c) in part G.1.b.(2)(d), the references to "b.(2)(ii) and b.(2)(iii)" are corrected to read "b.(2)(b) and b.(2)(c)". Again, that these references were intended to be b.(2)(b) and b.(2)(c) are obvious from the text of the rule. p.14

(d) in part H.1., the reference to "E.1.d." is corrected to read "F.1.". Again, that this reference was intended to be "F.1." and not "E.1.d." is obvious from the text of the rule. p.14

CONCLUSIONS

1. The Minnesota Pollution Control Agency duly acquired and has jurisdiction over this proceeding.

2. The Agency published and served due, timely and adequate notice of the adoption of the rule without a hearing.

3. The Agency has statutory authority to promulgate and adopt the proposed rule, as finally amended and adopted by the Agency.

4. All relevant legal and procedural requirements of statutes and rules have been properly complied with.

5. None of the changes made in the rule as proposed constitute a substantial change.

Dated this 28th day of October, 1980.

MINNESOTA POLLUTION CONTROL AGENCY

ART ENGELBRECHT
Chairman

TERRY HOFFMAN
Executive Director

ARROWHEAD REGIONAL DEVELOPMENT COMMISSION

200 ARROWHEAD PLACE
DULUTH, MINNESOTA 55802
PHONE 218/722-5545

August 1, 1980

AUG 04 1980
MINN. POLLUTION CONTROL AGENCY

Mr. Donald Kyser
MN Pollution Control Agency
Division of Solid Waste
1935 West County Road B2
Roseville, MN 55113

Dear Mr. Kyser:

Pursuant to your notice of intent to solicit opinions on proposed rules relating to administration of a grant program for solid waste management planning assistance grants and for waste reduction and source separation demonstration grants, the Arrowhead Regional Development Commission (ARDC) would like to offer comments for MPCA's consideration.

On June 25, 1980, ARDC staff met with County Solid Waste Officers from the Arrowhead Region to discuss regional and county solid waste problems, needs, and issues, to review Section V and VI of the Waste Management Act, and to prepare comments on how administrative rules and procedures could be designed to address pertinent regional and county solid waste management concerns. The following comments were prepared for your consideration, based upon these discussions.

1. Application and Review Procedures

   A. We would suggest that a two phase application process be administered by MPCA. The first phase would be a pre-application followed by MPCA review and decision on those applications which should be programmed for funding. The second phase would be the completion of a final application including a detailed project proposal, work program and resolution of commitment by the applicant unit of government(s). A two phased process would eliminate extra costs for preparation of proposals by all applicants, and secondly, once programming decisions are made, technical assistance can be targeted to those applicants authorized to prepare detailed final proposals.

2. Level of Local Funding

   Concerns were discussed relating to the level of local funding for a project.

   A. Population density is a key issue related to local funding capabilities in the Region. Capital investment funds available for counties through

taxes are limited because of the many sparsely settled areas of the Region. The county representatives at the meeting indicated that transportation, collection, and maintenance in sparsely populated areas is a key factor in the expense of operating their Solid Waste Management Programs. Some form of sliding scale which reflects these local funding constraints should be developed in the grant award process.

B. The split of funds between the demonstration and planning program is recommended to be 30-40% planning and 60-70% demonstration funding. The higher demonstration program funding level is recommended because costs for planning are usually lower, and the capital investment needs for demonstration project development, which would result from planning activities, is not available locally. There is also reluctance from some local areas to commit funding to new programs.

There was agreement, however, that current local plans are out of date and inadequate. For this reason a portion of the funds should be reserved to meet this need.

C. Regional activities should be funded at a 100% rate. Currently, regions receive no money to carry out solid waste planning. All available county funds are dedicated to operation and maintenance of the existing solid waste systems. Under these circumstances, matching funds are severely limited.

3. Priority Criteria for Funding Projects

There were several concerns related to priority criteria identified at the meeting with Regional Solid Waste Officers.

A. Priority should be given to projects which address landfill siting and size limitation problems. All counties at the meeting indicated they had experienced these problems.

B. Plans which address problems of different fee levels being charged in neighboring landfills, restructuring and reduction of the number of solid waste service areas, and which promote intergovernmental approaches to solid waste management issues should be priorities. All counties in the Arrowhead Region share some form of cooperative solid waste management plan. Projects which improve operation of these systems and reduce costs are necessary

Landfill use should be consistent to discourage use of the cheapist available area. It is also necessary that these fees are not excessive for one area as opposed to another.

C. Regional Development Commissions should be given priority to carry out areawide planning activities. Currently, RDC's are required to review all Solid Waste Plan changes. If the region had an updated plan, problems with this process could be reduced. In addition, Regional Commissions offer a unique means for promoting intergovernmental cooperation and coordination among counties and other local units of government. These factors are equally important in both plan development, implementation and evaluation.

D. Past per capita expenditures should also be evaluated as a funding criteria. This information will identify past commitments of applicants to solid waste management, and will provide an indication of local management cost defeciencies. The information would also be useful for identifying problems with existing solid waste levy limitations.

E. Projects which promote new applications of existing technology should also be given priority. There are many management alternatives which have proven successful under different circumstances in other areas. These proven techniques would only require innovative implementation and may be more economical than other untested technology.

F. County approval of applications for areawide or regional solid waste planning projects should be required. County Board approval should also be required for completion of each major phase of areawide or regional plans. Projects which specify provisions for periodic work activity approval by counties would encourage implementation of management programs. Local understanding of new programs and approaches would be enhanced through this type of involvement.

ARDC would like to thank MPCA for the opportunity to offer these comments. I hope they will be helpful in developing administrative procedure for the program. We look forward to continued participation in waste management programs.

Sincerely,

David A. Martin

David A. Martin
Executive Director

DAM/lls

City of Red Wing

Box 34
Red Wing, Minnesota 55066
(612) 388-6734

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September 10, 1980

SEP 1 1 1980
MINN. POLLUTION
CONTROL AGENCY

Mr. Don Kyser
Resource Planning Section
Division of Solid Waste
Minnesota Pollution Control Agency
1935 W. County Road B2
Roseville, MN 55113

Dear Don:

I would like to submit the following comment concerninn the proposed rules for the administration of the Minnesota Solid Waste Management Planning Assistance Program.

I have some concerns regarding the financial plan as presented under Paragraph D, 2b(1). It would seem to me that it is much more difficult for smaller communities and/or counties to find funding for planning. Generally, larger municipalities have their own planning staffs who could assist in the planning process and, in turn, would reduce the planning costs

The same, I believe, holds true for Regional Planning. Regional Development Commissions have funding sources available to them that smaller communities do not. Therefore, I would like to see the percentages turned around. Outside the Metropolitan Area and Region should be considered for 90 percent of eligible cost instead of the proposed 50 percent.

The rest of the proposed rules seem reasonable and should cause no great concern. I would be interested in knowing when the planning funds officially become available.

Good Luck.

Sincerely,

Dean A. Massett

Dean A. Massett
Council Administrator

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Spoke to Dean about this at 11:55 a.m. Sept 12 on 9/12/80 DK

region nine
development commission

Don
SEP 24 1980
MINN. POLLUTION
CONTROL AGENCY

September 22, 1980

Mr. Don Kyser
Resource Planning Section
Division of Solid Waste
Minnesota Pollution Control Agency
1935 West County Road B-2
Roseville, MN 55113

Dear Mr. Kyser,

Pursuant to our discussion of September 19, 1980, regarding the rules regarding the administration of the solid waste management planning assistance program; I am forwarding Region Nine Development Commission's concern regarding regional review of applications emanating from this particular area.

We are requesting that language be placed in the rules requiring that applications for planning funds be submitted to the appropriate Regional Development Commission for review and comment. Please be advised that we are not asking for authority to approve or deny said applications, we simply believe that we should have the opportunity to comment on the proposals, as solid waste activities certainly have regional ramifications.

Very cordially,

Craig A. Waldron

Craig A. Waldron, Director
Physical Planning

CAW:jl

P.O. BOX 3367 / PHONE 507 387-5643 / MANKATO, MINNESOTA 56001

TOM JOHNSON
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MINNESOTA ASSOCIATION OF REGIONAL COMMISSIONS

JERRY CHASTEEN
EXECUTIVE VICE CHAIRMAN
P.O. Box 265
Sleyton, MN 56172
507/836-8549

October 8, 1980

OCT 9 1980
MINN. POLLUTION
CONTROL AGENCY

Mr. Don Kyser
Resource Planning Section
Division of Solid Waste
MN POLLUTION CONTROL AGENCY
1935 West County Road 32
Roseville, MN 55113

Dear Mr. Kyser:

The MARC Natural Resources Committee has reviewed the MPCA's proposed rules for the administration of the Solid Waste Management Planning Assistance Program and finds that RDC's are not included as reviewing grant applications.

It was the understanding of the committee, based on discussions with you at the August 25th meeting, that RDC's would be requested to review and comment on the applications. Subsequent rules, however, do not provide for RDC review. It is the opinion of the RDC's that because of the nature of solid waste issues and selection process for awarding solid waste planning grants, RDC review and comments will prove to be beneficial.

Also, MPCA should be reminded that the Regional Development Act as amended requires that RDC's:

> "...shall review all applications of governmental units, independent commissions, boards, or agencies operating in the region for a loan or a grant from...state agencies.... The review shall advise the granting authority as to relationship of the application to the comprehensive plans and priorities of the region as established by the region...".

To implement the intent of this legislation, it is requested that formal arrangements be made, either as part of the adopted grant administration rules or as agreements between MPCA and the RDC's, for review of solid waste planning grant applications.

If one of these arrangements cannot be made, accept this as a request for hearing on the proposed rules.

Sincerely,

Robert Pulford

Robert Pulford, Interim Chairman
MARC Natural Resources Committee

cc: RDC Executive Directors
MARC NR Committee
Tom Johnson, Chairman of MARC