

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

SF-00006-01

STATE OF MINNESOTA

Office Memorandum

DEPARTMENT AG/WMB

TO : ATTORNEY GENERAL'S OFFICE
Administration Division

DATE: 1/28/83

FROM : LEROY C. PADDOCK
Special Assistant
Attorney General

PHONE: 296-7726

RECEIVED
JAN 2 [illegible]
ATTORNEY GENERAL
ADMINISTRATIVE AGENCIES

SUBJECT: Rules Governing Solid Waste Demonstration Grant Program

Enclosed for your review are the adopted rules of the Waste Management Board governing the Solid Waste Demonstration Grant Program. Two copies of the rules have been submitted to the Revisor's Office. If there are any questions about these rules feel free to call.

LCP:ha
enc.

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JAN 28 1983
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Our File No. 884

RULE REVIEW CHECKLIST

DATE RULE RECEIVED 1/28/83
DATE FOR REVIEW 2/7/83
DATE DUE 2/11/83

Adopted w/a hearing _____
Adopted w/o hearing ✓
Temporary rule _____

Approved 2/11/83 Disapproved _____ Returned to Agency 2/15/83

Resubmitted _____ Due _____
Approved _____ Disapproved _____ Returned to Agency _____

Date filed w/Secretary of State 2/15/83 Revisor approved 1/31/83 disapproved _____

✓ Rule as Adopted

✓ Rule as Proposed

✓ Order Adopting 1.20.83 Date

✓ Notice of Intent to Solicit Outside Opinion + Comments

✓ Order for rulemaking
N/A date of Hearing

✓ Certificate of Board's Authorizing Resolution

✓ Notice of rulemaking
✓ Sufficiency

✓ Affidavit of Mailing Notice or rulemaking
11.17.82 At least 30 days prior to ~~hearing~~/adoption

✓ Mailing list Certificate

✓ Publication in State Register
11.22.82 At least 30/~~20~~ days prior to ~~hearing~~/adoption

N/A Hearing Examiner's Report

✓ Chief Hearing Examiner's Report(s)
_____ Approving H.E.'s Report
_____ Approving agency action

✓ Agency's Findings of Fact

N/A LCRAR Report or agency Affidavit

✓ Certificate of Board's Resolution Adopting Rules

N/A Order Approving Incorporation by Reference

✓ Statement of Need and Reasonableness

N/A Petition for Adoption of a Rule

✓ Record (includes transcript or tape, exhibits, comments received by agency, requests for a hearing, and other relevant materials)

✓ Certificate of Compliance w/Rulemaking Procedures

✓ Affidavit of Mailing Notice of Submission to Attorney General

N/A Notice of Submission to the Attorney General

SF-00006-02

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL

Office Memorandum

TO : ROBERT G. DUNN, Chairman DATE: 2/11/83

Attn: LEROY C. PADDOCK, Special Asst. Atty. Gen.

FROM : TED A. MARTINEZ PHONE: 296-4692
Special Assistant
Attorney General

SUBJECT: In the Matter of the Prposed Adoption of Rules Relating to the Solid Waste Processing Facilities Demonstration Program

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. Please 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 stamps of the Attorney General and Secretary of State;

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

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

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

Encs.

TAM/ls
cc: Ms. Kathy Burek
Mr. Duane Harves

Rules as Proposed (all new material)

6 MCAR S 8.401 Definitions.

A. Scope. For the purposes of 6 MCAR SS 8.401-8.412, the following terms have the meanings given them, unless the context requires otherwise.

B. Board. "Board" means the Minnesota Waste Management Board established in Minnesota Statutes, section 115A.04.

C. Chairperson. "Chairperson" means the chairperson and chief executive officer of the board.

D. Cities. "Cities" has the meaning given it in Minnesota Statutes, section 115A.03, subdivision 4.

E. Comprehensive solid waste management plan. "Comprehensive solid waste management plan" means a written plan conforming to the requirements of Minnesota Statutes, section 115A.46.

F. Disposal. "Disposal" has the meaning given it in Minnesota Statutes, section 115A.03, subdivision 9.

G. Final engineering/architectural plans. "Final engineering/architectural plans" means those engineering drawings and specifications used to secure bids for construction or equipment.

H. Funding round. "Funding round" means a six-month period.

I. Institutional arrangements. "Institutional arrangements" means methods of financing, marketing, procurement, methods of securing the waste supply, or joint efforts between political subdivisions.

J. Mixed municipal solid waste. "Mixed municipal solid waste" has the meaning given it in Minnesota Statutes, section 115A.03, subdivision 21.

K. On-site utilities. "On-site utilities" means gas, electrical, water, and sewer facilities within the geographic boundaries of the waste processing facility.

L. Preliminary engineering/architectural plans. "Preliminary engineering/architectural plans" means conceptual plans adequate to obtain preconstruction permits and to meet the needs of an environmental assessment.

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M. Processing. "Processing" has the meaning given it in Minnesota Statutes, section 115A.03, subdivision 25.

N. Recipient. "Recipient" means an applicant who has received a grant or loan under the solid waste processing facilities demonstration program.

O. Resource recovery. "Resource recovery" has the meaning given it in Minnesota Statutes, section 115A.03, subdivision 27.

P. Resource recovery facility. "Resource recovery facility" has the meaning given it in Minnesota Statutes, section 115A.03, subdivision 28.

Q. Solid waste. "Solid waste" has the meaning given it in Minnesota Statutes, section 116.06, subdivision 10.

R. Solid waste disposal facilities and equipment. "Solid waste disposal facilities and equipment" means structures, machinery, or devices at a disposal site necessary for efficient land disposal of solid wastes, including machinery or devices designed to move earth during burial of wastes or to increase the density of wastes buried or to be buried, and facilities in which solid waste is temporarily stored and concentrated prior to transport to a disposal site.

S. Solid waste management district. "Solid waste management district" has the meaning given it in Minnesota Statutes, section 115A.03, subdivision 32.

T. Special waste stream. "Special waste stream" means materials which are normally found in the solid waste stream in sufficient quantity to be recovered for subsequent use, if separated from the solid waste stream and processed separately. Examples of special waste streams include used tires, wood wastes, and agricultural wastes.

U. Statewide application or significance. "Statewide application or significance" means that a project is capable of demonstrating a feasible alternative to disposal to other communities in the state.

V. Transfer station. "Transfer station" has the meaning given it in Minnesota Statutes, section 115A.03, subdivision 33.

W. Waste processing equipment. "Waste processing equipment"

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means machinery or devices acquired and used as an integral component of a waste processing facility.

X. Waste processing facility. "Waste processing facility" means structures and equipment singly or in combination, designed, constructed, and used to separate, modify, convert, heat, prepare, or otherwise process solid waste so that materials or substances contained within the waste may be recovered for subsequent use.

6 MCAR S 8.402 Solid waste processing facilities demonstration program. Rules 6 MCAR SS 8.401-8.412 implement the solid waste processing facilities demonstration program created and described in Minnesota Statutes, sections 115A.49 to 115A.54, by establishing the substantive criteria and procedural conditions under which the board may award grants and loans for capital costs of projects which demonstrate the feasibility of waste processing technology or equipment or the feasibility of institutional arrangements in providing waste processing facilities.

6 MCAR S 8.403 Eligibility criteria.

A. Eligible applicants. Eligible applicants are limited to cities, counties, and solid waste management districts established pursuant to Minnesota Statutes, sections 115A.62 to 115A.72.

B. Eligible projects. Only projects which demonstrate feasible and prudent alternatives to disposal are eligible for loans and grants. To qualify as a demonstration project, a project must be conceptually and technically feasible but not now in operation in the state or not now in operation in a geographical area of the state with demonstrably different characteristics from those of the area where a facility is now in operation. A conceptually and technically feasible project may also qualify as a demonstration project if it involves institutional arrangements not previously utilized in the state, or not previously utilized in a geographical area of the state with demonstrably different characteristics from those in the

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area where a facility is now in operation. Five types of projects are eligible for loans and grants: waste to energy; materials recovery; chemical, physical, or biological modifications; transfer stations; and special waste streams.

C. Eligible costs. Eligible costs under 6 MCAR SS 8.401-8.412 shall be limited to the costs of waste processing equipment; structures necessary to house the waste processing equipment; appropriate and necessary on-site utilities; structures necessary to concentrate and temporarily store solid waste prior to transportation to a waste processing facility; and final design and engineering specifications.

D. Ineligible costs. Ineligible costs include any costs related to acquisition of land, solid waste disposal facilities and equipment, structures for housing and maintenance of rolling stock, or any costs related to resource recovery studies, feasibility analyses, or preliminary design and engineering.

6 MCAR S 8.404 Information required on the grant and loan application. Applications for grants and loans for waste processing facilities shall include the following information as required in the application forms supplied by the board:

1. the name of each applicant making the grant or loan application;

2. the name of each political subdivision affected by the project, located in the area studied in the project, or located in the area in which the project is intended to be implemented;

3. resolutions from each applicant which demonstrate that the applicant is committed to implementing the project; providing necessary local financing; and accepting and exercising the government powers necessary to the project;

4. the name, qualifications, and address of the project manager;

5. the name and qualifications of the facility operator, if available;

6. the total capital cost of the project;

7. the total grant- or loan-eligible cost of the project;

8. the amount of grant or loan funding requested;

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

10. the type of assistance applied for (loan or grant and loan together);

11. the type of waste processing facility for which a grant or loan is being applied for: waste to energy; materials recovery; chemical, physical, or biological modification; transfer stations; or special waste stream.

6 MCAR S 8.405 Documentation required to be submitted with the grant and loan application. Applications for grants or loans for waste processing facilities shall include the following documentation:

A. a conceptual and technical feasibility report which includes at least the following analysis: description of alternative waste processing facilities, description of the institutional arrangements necessary for project implementation and operation, description of methods of procurement, and waste stream analysis;

B. a financial feasibility report including: an evaluation and analysis of all capital and operating costs of the proposed project, an evaluation and analysis of various financing mechanisms available to the applicant, an analysis of the ability of the community to continue operation of the facility over the life of the facility;

C. a comprehensive solid waste management plan conforming to Minnesota Statutes, section 115A.46, including consideration of solid waste management alternatives;

D. preliminary design and engineering plans or specifications of the proposed waste processing facility and equipment;

E. documentation that waste supplies are committed to the project and that the applicant has the authority and mechanism to commit such wastes;

F. a marketability analysis of recovered materials/energy, including market commitments such as letters of intent or market

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contracts;

G. a detailed estimate of annual operating and maintenance costs;

H. a report on the proposed project's potential for statewide application or significance;

I. a report on the status of required permits from permitting agencies;

J. a report on time frames of project development;

K. resolutions complying with the requirements of Minnesota Statutes, section 115A.54, subdivision 3;

L. if the applicant seeks to qualify a project as demonstrating a technology or institutional arrangements in a geographical area of the state rather than the entire state, a report on how the area is demonstrably different from the characteristics of the area where a facility is now in operation;

M. if the project application proposes a waste processing facility that demonstrates institutional arrangements, a report which describes the institutional arrangements;

N. if the applicant requests priority based on any of the following conditions, documentation of the existence of the condition:

1. the natural geologic and soil conditions which are claimed to be unsuitable for land disposal of solid waste;

2. the available capacity of existing solid waste disposal facilities are claimed to be less than five years; or

3. the claim that the proposed project would service an area outside the metropolitan area and would serve more than one local government unit;

O. if the applicant is seeking a grant, a report discussing the factor or factors in 6 MCAR S 8.410 B. upon which the applicant is basing the request for a grant.

6 MCAR S 8.406 Grant and loan application procedures.

A. Funding rounds. There shall be four funding rounds. The first funding round commences on January 1, 1983 and subsequent funding rounds commence every six months thereafter. Each funding round entails a six-month period and consists of two

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three-month segments, the first being the application segment and the second being the review segment.

B. Application segment. The application segment of each funding round consists of the first three months of each funding round and commences each January 1 and July 1 and terminate each March 31 and September 30, respectively, of years 1983 and 1984. During the application segment, the applicant shall prepare or accumulate all of the information and documentation set out in 6 MCAR SS 8.404 and 8.405. The applicant is encouraged to contact the chairperson and request a preapplication review of the proposed project. The applicant then must submit the grant or loan application to the board no later than March 31 or September 30, whichever date is appropriate for consideration during that funding round. If the grant or loan application is postmarked later than March 31 or September 30, whichever date is appropriate to the specific funding round, the applications shall be returned.

C. Review segment. The review segment of each funding round consists of the second three months of each funding round and commences each April 1 and October 1 and terminate each June 30 and December 31, respectively, of years 1983 and 1984. During the review segment the chairperson or his designee shall conduct the initial review of all applications and the board shall evaluate and select projects and award the grants and loans.

6 MCAR S 8.407 Initial review.

A. Applications reviewed. The chairperson or his designee shall review all applications received during the application segment of each funding round. Applications received after the last day of each application segment shall be returned to the applicant.

B. Eligibility and completeness review. Upon receipt of a timely filed application, the chairperson or his designee shall determine the eligibility of the applicant, the eligibility of the costs specified in the application, the eligibility of the project specified in the application, and the completeness of the application.

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C. Notice of determination. Within 14 days after receiving the application, the chairperson shall notify each applicant of the chairperson's determinations. If the chairperson determines that the applicant or the project is not eligible, the application shall not be further considered and the applicant shall be notified of the determination. If the chairperson determines that any of the costs or any part of the project is not eligible or that the application is otherwise not complete, the chairperson shall return the application together with a statement of the reasons for rejecting the application. The applicant shall have 14 days after receipt of the rejection of the application or until two weeks following the final day of the application segment, whichever is later, to correct any inadequacies identified in the application. Applications which are not resubmitted within the time period allowed shall not be further considered during the funding round.

D. Review of documentation. If the applicant, the costs, and the project are determined to be eligible and the application is complete, the chairperson shall, within 45 days after the receipt of the application, review the application to determine whether the supporting documentation is adequate. In determining whether the documentation is adequate, the chairperson shall consider whether the documentation demonstrates:

1. that the project is conceptually and technically feasible;

2. that affected political subdivisions are committed to implementing the project, providing necessary local financing, and accepting and exercising the government powers necessary for project implementation and operation;

3. that operating revenues from the project, considering the availability and security of sources of solid waste and of markets for recovered resources together with any proposed federal, state, or local financial assistance, will be sufficient to pay all costs over the projected life of the project;

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4. that the applicant has evaluated the feasible and prudent alternatives to disposal and has compared and evaluated the costs of the alternatives, including capital and operating costs, the effects of the alternatives on the cost to generators, and the effects of the alternatives on the solid waste management and recycling industry within the projects service area;

5. that the applicant has completed a comprehensive solid waste management plan conforming to the requirements of Minnesota Statutes, section 115A.46, including consideration of solid waste management alternatives; and

6. that the project demonstrates a technology that is of potential statewide application or significance.

E. Consultation with other agencies. In determining the adequacy of the documentation, the chairperson shall consider any recommendations provided by the Pollution Control Agency, the appropriate regional development commission, the State Planning Agency, and, if appropriate, the Metropolitan Council.

F. Determination of sufficient documentation. If the chairperson determines that the documentation in the application is adequate, the application shall be considered final and the applicant shall be so notified. The application shall then be referred to the board to be evaluated as provided in 6 MCAR S 8.408. If the chairperson determines that the documentation in the application is inadequate, the chairperson shall return the application together with a statement of the reasons for rejecting the application. The applicant shall have 14 days after receipt of the rejection of the application or two weeks after the final day of the application segment, whichever time period is greater, to correct the inadequacies in the documentation. Applications which are not resubmitted within the time periods allowed shall not be further considered during the funding round.

If the inadequacies in the documentation are corrected within the time allowed, the application shall be considered final and the applicant shall be so notified. The application

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shall then be referred to the board to be evaluated as provided in 6 MCAR S 8.408.

6 MCAR S 8.408 Project type evaluation.

A. Process of evaluation. Upon completion of the chairperson's initial review of the application as set out in 6 MCAR S 8.407, the board shall compare projects of similar technology based on the factors set out in this section and select the top project in each category for further evaluation.

B. General factors. In evaluating all five types of projects the board shall, to the extent the factor is relevant to the project, consider:

1. operating capacity measured in tons of waste processed per day, percent of total waste stream to facility, area serviced, number of communities served, operating hours per day, and operating days per year;

2. market viability determined by the distance the market is from the facility, the existence of expressions of interest, contracts or long-term contracts; and the length of time the market has been in existence and the likelihood the market will remain in existence;

3. percent of input that is residual waste;

4. whether the method of securing waste is in place or planned.

C. Waste-to-energy facility factors. For waste-to-energy facilities, the board will consider:

1. energy production effectiveness measured in Btu output per tons of waste input;

2. whether variations in energy demand are matched to variations in waste supply;

3. cost effectiveness measured in Btu's delivered to customer per year per dollar capital cost, and Btu's delivered to customer per year per dollar annual cost;

4. revenue per million Btu's delivered, total annual revenue from energy sales, and revenue as percent of total annual cost.

D. Materials recovery factors. For materials recovery

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facilities, the board will consider:

1. recovery effectiveness determined by identifying types and quantity of product recovered;

2. cost effectiveness measured by the value of recovered materials per year per dollar of capital cost and the value of recovered materials per year per dollar of annual cost; and

3. revenue per unit weight of products, the total annual revenue from recovered products, and revenue as a percent of total annual cost.

E. Chemical, physical, or biological modification factors. For chemical, physical, or biological modification facilities, the board will consider:

1. product description, including quality and probable uses;

2. cost effectiveness measured by the value of the product per year per dollar capital cost and the value of product per dollar annual cost;

3. revenue per unit of product, total annual revenue from product sales, and revenue as a percent of total annual cost;

4. other materials required or used in process by describing and identifying sources, certainty of supply, and any benefits in consuming other materials.

F. Tranfer stations factors. For transfer stations, the board will consider:

1. cost effectiveness measured by the total fuel cost savings per year per dollar capital cost and total waste hauling cost savings per year per dollar total annual cost; and

2. mileage and fuel savings measured by the total miles saved per year and gallons of fuel and total fuel cost savings per year.

G. Special waste stream factors. For special waste stream facilities, the board will consider:

1. product effectiveness measured by the product selling price and competitive product selling price;

2. operating factors measured by input waste stream quantity as a percent of total waste stream and resolution of

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problems encountered in landfilling the special waste;

3. cost effectiveness measured by the value of product per year per dollar capital cost and value of product per year per dollar annual cost; and

4. revenue per year from products or sales of processed waste and revenue as a percent of total annual cost.

6 MCAR S 8.409 Evaluation of projects selected from each category.

A. Evaluation process. Following the selection of the top project in each category, the board shall compare the projects on the basis of the priorities and factors listed in B. and C. The board shall then list the projects in order of preference based on the results of the comparison.

B. Legislative priorities. The board shall give priority to projects where:

1. the natural geologic and soil conditions are unsuitable for land disposal of solid waste;

2. the capacity of existing solid waste disposal facilities is less than five years; or

3. projects outside of the metropolitan area, the project serves more than one political subdivision.

C. General program factors. The board shall compare the projects in relation to the following factors:

1. the market for recovered resources, its location relative to the proposed facility, and any commitments which have been made to purchase the recovered resource;

2. the proportion of the total waste stream that will be processed by the facility and the extent that the facility will extend the life of existing landfills in the area;

3. the capital cost of the facility, the estimated cost per ton of waste processed compared to the current cost per ton of waste disposed of in the area, the projected annual cost per unit of landfill capacity abated, and the projected annual cost per unit of material or energy recovered;

4. the projected revenue per ton of waste processed, the projected profitability of the facility throughout its operating

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life, the need for revenue sources in addition to operating revenue, and the availability of additional revenue sources.

5. the existence of other projects of the type proposed which have been funded by the board; and

6. the degree to which the technology or institutional arrangements demonstrated by the project are applicable to other cities, counties, or solid waste management districts in the state.

6 MCAR S 8.410 Award of grants and loans.

A. General procedure. The board shall award a loan, or a grant and loan if the board determines a grant should be awarded under B., to the project which receives the top rating under 6 MCAR S 8.409. The board shall then award loans and grants, if applicable, to the extent funds remain available, to the other top-rated projects in order of preference. If all of the top-rated projects identified under 6 MCAR S 8.409 are funded, the board shall select the second highest rated project in each category identified under 6 MCAR 8.408 and shall further evaluate those projects as provided for in 6 MCAR S 8.409. The board shall then award grants or loans to the projects in the same manner and order as it did for the top-rated projects.

B. Factors in awarding grants. In making its determination on whether to award grants and loans, the board shall consider whether the project involves a significant risk to the local unit of government; whether the local unit of government has made a substantial commitment of its own funds to the project; and, in view of the applicant's financial capacity, whether a grant would affect the decision or ability to undertake the project.

C. Amount of awards. The board shall determine the amount of the loans and grants it awards based on a review of the factors set out in 6 MCAR S 8.409 and the degree to which the project serves to demonstrate the uses of technology involved in Minnesota.

D. Maximum awards. The maximum loan award shall be 50 percent of the eligible costs specified in the application or

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$700,000, whichever is less. The maximum grant award shall be 50 percent of the eligible costs specified in the application or $300,000, whichever is less.

E. Limitations.

1. No funds shall be awarded for costs for which the applicant has applied for and received funds from another source.

2. No grant or loan shall be disbursed until the board has determined the total cost of the project and ascertained that financing of the cost is assured by funds provided by the state, by an agency of the federal government within the amount of funds then appropriated to that agency and allocated by it to projects within the state, by any person, or by the appropriation of proceeds of bonds or other funds of the recipient to a fund for the construction of the project.

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

6 MCAR S 8.411 Grant and loan agreement.

A. The grant and loan agreements must:

1. contain the resolutions required under Minnesota Statutes, section 115A.54, subdivision 3;

2. incorporate by reference the final grant and loan application submitted to the board in accordance with 6 MCAR S 8.406;

3. establish the term of the grant and loan. All grants awarded under this rule shall have a maximum term of two years. All loans awarded under this rule shall have a loan life determined by considering facility type, expected life of equipment, capital cost of the project, and loan amount;

4. in the case of a loan agreement, include schedules for the repayment of principal and interest;

5. provide that the recipient shall be authorized to

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enter into contracts to complete the work specified in the agreement;

6. provide that any cost overruns incurred in the development of the proposed facility shall be the sole responsibility of the recipients;

7. provide that the board will not accept amendments requesting additional grant and loan funds; and

8. require that the recipient provide a report on the developmental and operational history of the project so that knowledge and experience gained from the project may be made available to other communities in the state.

B. Cancellation of grants and loans. Grants and loans not completed in accordance with the terms and conditions of the respective agreements, including time schedules, shall be canceled unless the board determines that the variances from the respective agreements are due to factors outside the control of the grant or loan recipient.

C. Disbursement. The board shall disburse grants in accordance with the payment schedule set out in the grant agreement.

D. Interest payments. Interest payments on the loan shall be due annually and shall begin to accrue from the date the loan agreement is signed. The first repayment of the principal amount of the loan shall be due one year after the facility becomes operational or two years after the date the loan agreement is executed, whichever is earlier. Subsequent repayments of principal and interest shall be due annually on the anniversary date of the first repayment.

E. Due and payable clause. The loan agreement shall stipulate that if the recipient desires to sell the facility to a private enterprise, all outstanding loan obligations to the board shall become due and payable upon the sale to the private enterprise.

F. Repayment of grant if facility is sold to a private enterprise within three years. The grant agreements shall require repayment of the grant if the facility is sold to a

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private enterprise within three years of the date the grant was made. Beginning on the third anniversary of the grant, the amount of the grant which must be repaid shall be reduced ten percent each year. The sale agreement between the recipient and the private enterprise shall transfer the responsibilities outlined in 6 MCAR S 8.411 A.8. to the private enterprise.

6 MCAR S 8.412 Apportionment.

A. In general. For grants and loans to be awarded over the life of this program, the board shall apportion funds allocated to it by the legislature for this program as set out in Article VI of the Waste Management Act, Minnesota Statutes, sections 115A.49 to 115A.54, as follows in B.-E.

B. Percentage of loans and grants. Of the money appropriated for the purposes of the demonstration program, at least 70 percent shall be distributed as loans, and the remainder shall be distributed as grants.

C. Number of funding rounds. The board shall distribute the money appropriated for the purposes of the demonstration program during four funding rounds commencing on January 1, 1983. Each funding round entails a six-month period of time.

D. Amount distributed per round. During each funding round, the board shall distribute one-fourth of the money appropriated for the purposes of the demonstration program, and of the monies distributed each funding round, at least 70 percent shall be distributed as loans and the remainder shall be distributed as grants. In the event that projects awarded loans are not eligible for grants, during a specific funding round, the board may use the unobligated grant moneys to award additional loans or may carry the unobligated grant monies forward for use in the next funding round.

E. Differences between application requests and available funds. If the board receives more applications which are eligible for grant or loan assistance in a specific funding round than the board has funds available, those eligible applicants not receiving funding may resubmit applications in future funding rounds. If the board does not receive enough

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eligible applications for grant and loan assistance in a specific funding round to fully obligate the funds available for that funding round, the balance shall carry forward and be available as additional funds in the following funding round.

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OFFICE OF THE REVISOR OF STATUTES

Proposed Rule

RD260

Agency: Waste Management Board

Division:

Agency Contact: Leroy Paddock

Rule Numbers: 6 MCAR SS 8.401-8.412

Title: Proposed Rules Governing the Solid Waste Processing Facilities Demonstration Grant Program

Type of Rules: Permanent

Incorporations by Reference:
None

Duplication of Statutory Language:
None

The attached rules are approved as to form.

Steven C. Cross
Revisor of Statutes

Theresa M. Lauterbach
Assistant Deputy Revisor
Phone: 296-0956
Date: November 5, 1982

AG copy

Waste Management Board

Adopted Rules Governing the Solid Waste Processing Facilities Demonstration Program

Rules as Adopted

6 MCAR S 8.401 Definitions.

A. Scope. For the purposes of 6 MCAR SS 8.401-8.412, the following terms have the meanings given them, unless the context requires otherwise.

B. Board. "Board" means the Minnesota Waste Management Board established in Minnesota Statutes, section 115A.04.

C. Chairperson. "Chairperson" means the chairperson and chief executive officer of the board.

D. Cities. "Cities" has the meaning given it in Minnesota Statutes, section 115A.03, subdivision 4.

E. Comprehensive solid waste management plan. "Comprehensive solid waste management plan" means a written plan conforming to the requirements of Minnesota Statutes, section 115A.46.

F. Disposal. "Disposal" has the meaning given it in Minnesota Statutes, section 115A.03, subdivision 9.

G. Final engineering/architectural plans. "Final engineering/architectural plans" means those engineering drawings and specifications used to secure bids for construction or equipment.

H. Funding round. "Funding round" means a six-month period.

I. Institutional arrangements. "Institutional arrangements" means methods of financing, marketing, procurement, methods of securing the waste supply, or joint efforts between political subdivisions.

J. Mixed municipal solid waste. "Mixed municipal solid waste" has the meaning given it in Minnesota Statutes, section 115A.03, subdivision 21.

K. On-site utilities. "On-site utilities" means gas, electrical, water, and sewer facilities within the geographic

boundaries of the waste processing facility.

L. Preliminary engineering/architectural plans. "Preliminary engineering/architectural plans" means conceptual plans adequate to obtain preconstruction permits and to meet the needs of an environmental assessment.

M. Processing. "Processing" has the meaning given it in Minnesota Statutes, section 115A.03, subdivision 25.

N. Recipient. "Recipient" means an applicant who has received a grant or loan under the solid waste processing facilities demonstration program.

O. Resource recovery. "Resource recovery" has the meaning given it in Minnesota Statutes, section 115A.03, subdivision 27.

P. Resource recovery facility. "Resource recovery facility" has the meaning given it in Minnesota Statutes, section 115A.03, subdivision 28.

Q. Solid waste. "Solid waste" has the meaning given it in Minnesota Statutes, section 116.06, subdivision 10.

R. Solid waste disposal facilities and equipment. "Solid waste disposal facilities and equipment" means structures, machinery, or devices at a disposal site necessary for efficient land disposal of solid wastes, including machinery or devices designed to move earth during burial of wastes or to increase the density of wastes buried or to be buried, and facilities in which solid waste is temporarily stored and concentrated prior to transport to a disposal site.

S. Solid waste management district. "Solid waste management district" has the meaning given it in Minnesota Statutes, section 115A.03, subdivision 32.

T. Special waste stream. "Special waste stream" means materials which are normally found in the solid waste stream in sufficient quantity to be recovered for subsequent use, if separated from the solid waste stream and processed separately. Examples of special waste streams include used tires, wood wastes, and agricultural wastes.

U. Statewide application or significance. "Statewide application or significance" means that a project is capable of

demonstrating a feasible alternative to disposal to other communities in the state.

V. Transfer station. "Transfer station" has the meaning given it in Minnesota Statutes, section 115A.03, subdivision 33.

W. Waste processing equipment. "Waste processing equipment" means machinery or devices acquired and used as an integral component of a waste processing facility.

X. Waste processing facility. "Waste processing facility" means structures and equipment singly or in combination, designed, constructed, and used to separate, modify, convert, heat, prepare, or otherwise process solid waste so that materials ~~or~~, substances, or energy contained within the waste may be recovered for subsequent use.

6 MCAR S 8.402 Solid waste processing facilities demonstration program. Rules 6 MCAR SS 8.401-8.412 implement the solid waste processing facilities demonstration program created and described in Minnesota Statutes, sections 115A.49 to 115A.54, by establishing the substantive criteria and procedural conditions under which the board may award grants and loans for capital costs of projects which demonstrate the feasibility of waste processing technology or equipment or the feasibility of institutional arrangements in providing waste processing facilities.

6 MCAR S 8.403 Eligibility criteria.

A. Eligible applicants. Eligible applicants are limited to cities, counties, and solid waste management districts established pursuant to Minnesota Statutes, sections 115A.62 to 115A.72.

B. Eligible projects. Only projects which demonstrate feasible and prudent alternatives to disposal are eligible for loans and grants. To qualify as a demonstration project, a project must be conceptually and technically feasible but not now in operation in the state or not now in operation in a geographical area of the state with demonstrably different characteristics from those of the area where a facility is now

in operation. A conceptually and technically feasible project may also qualify as a demonstration project if it involves institutional arrangements not previously utilized in the state, or not previously utilized in a geographical area of the state with demonstrably different characteristics from those in the area where a facility is now in operation. Five types of projects are eligible for loans and grants: waste to energy; materials recovery; chemical, physical, or biological modifications; transfer stations; and special waste streams.

C. Eligible costs. Eligible costs under 6 MCAR SS 8.401-8.412 shall be limited to the costs of waste processing equipment; structures necessary to house the waste processing equipment; appropriate and necessary on-site utilities; structures necessary to concentrate and temporarily store solid waste prior to transportation to a waste processing facility; and final design and engineering specifications.

D. Ineligible costs. Ineligible costs include any costs related to acquisition of land, solid waste disposal facilities and equipment, structures for housing and maintenance of rolling stock, or any costs related to resource recovery studies, feasibility analyses, or preliminary design and engineering.

6 MCAR S 8.404 Information required on the grant and loan application. Applications for grants and loans for waste processing facilities shall include the following information as required in the application forms supplied by the board:

1. the name of each applicant making the grant or loan application;

2. the name of each political subdivision affected by the project, located in the area studied in the project, or located in the area in which the project is intended to be implemented;

3. resolutions from each applicant which demonstrate that the applicant is committed to implementing the project; providing necessary local financing; and accepting and exercising the government powers necessary to the project;

4. the name, qualifications, and address of the project manager;

5. the name and qualifications of the facility operator, if available;

6. the total capital cost of the project;

7. the total grant- or loan-eligible cost of the project;

8. the amount of grant or loan funding requested;

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

10. the type of assistance applied for (loan or grant and loan together);

11. the type of waste processing facility for which a grant or loan is being applied for: waste to energy; materials recovery; chemical, physical, or biological modification; transfer stations; or special waste stream.

6 MCAR S 8.405 Documentation required to be submitted with the grant and loan application. Applications for grants or loans for waste processing facilities shall include the following documentation:

A. a conceptual and technical feasibility report which includes at least the following analysis: description of alternative waste processing facilities, description of the institutional arrangements necessary for project implementation and operation, description of methods of procurement, and waste stream analysis;

B. a financial feasibility report including: an evaluation and analysis of all capital and operating costs of the proposed project, an evaluation and analysis of various financing mechanisms available to the applicant, an analysis of the ability of the community to continue operation of the facility over the life of the facility;

C. a comprehensive solid waste management plan conforming to Minnesota Statutes, section 115A.46, including consideration of solid waste management alternatives;

D. preliminary design and engineering plans or specifications of the proposed waste processing facility and equipment;

F8 F6

E. documentation that waste supplies are will be committed to the project and that the applicant has the authority and mechanism to commit such wastes;

F. a marketability analysis of recovered materials/energy, including market commitments such as letters of intent or market contracts;

G. a detailed estimate of annual operating and maintenance costs;

H. a report on the proposed project's potential for statewide application or significance;

I. a report on the status of required permits from permitting agencies;

J. a report on time frames of project development;

K. resolutions complying with the requirements of Minnesota Statutes, section 115A.54, subdivision 3;

L. if the applicant seeks to qualify a project as demonstrating a technology or institutional arrangements in a geographical area of the state rather than the entire state, a report on how the area is demonstrably different from the characteristics of the area where a facility is now in operation;

M. if the project application proposes a waste processing facility that demonstrates institutional arrangements, a report which describes the institutional arrangements;

N. if the applicant requests priority based on any of the following conditions, documentation of the existence of the condition:

1. the natural geologic and soil conditions which are claimed to be unsuitable for land disposal of solid waste;

2. the available capacity of existing solid waste disposal facilities are claimed to be less than five years; or

3. the claim that the proposed project would service an area outside the metropolitan area and would serve more than one local government unit;

O. if the applicant is seeking a grant, a report discussing the factor or factors in 6 MCAR S 8.410 B. upon which the applicant is basing the request for a grant.

6 MCAR S 8.406 Grant and loan application procedures.

A. Funding rounds. There shall be four funding rounds. The first funding round commences on January 1, 1983 and subsequent funding rounds commence every six months thereafter. Each funding round entails a six-month period and consists of two three-month segments, the first being the application segment and the second being the review segment.

B. Application segment. The application segment of each funding round consists of the first three months of each funding round and commences each January 1 and July 1 and terminates each March 31 and September 30, respectively, of years 1983 and 1984. During the application segment, the applicant shall prepare or accumulate all of the information and documentation set out in 6 MCAR SS 8.404 and 8.405. The applicant is encouraged to contact the chairperson and request a preapplication review of the proposed project. The applicant then must submit the grant or loan application to the board no later than March 31 or September 30, whichever date is appropriate for consideration during that funding round. If the grant or loan application is ~~postmarked~~ received later than March 31 or September 30, whichever date is appropriate to the specific funding round, the applications shall be returned.

C. Review segment. The review segment of each funding round consists of the second three months of each funding round and commences each April 1 and October 1 and terminates each June 30 and December 31, respectively, of years 1983 and 1984. During the review segment the chairperson or his designee shall conduct the initial review of all applications and the board shall evaluate and select projects and award the grants and loans.

6 MCAR S 8.407 Initial review.

A. Applications reviewed. The chairperson or his designee shall review all applications received during the application segment of each funding round. Applications received after the last day of each application segment shall be returned to the applicant.

B. Eligibility and completeness review. Upon receipt of a timely filed application, the chairperson or his designee shall determine the eligibility of the applicant, the eligibility of the costs specified in the application, the eligibility of the project specified in the application, and the completeness of the application.

C. Notice of determination. Within 14 days after receiving the application, the chairperson shall notify each applicant of the chairperson's determinations. If the chairperson determines that the applicant or the project is not eligible, the application shall not be further considered and the applicant shall be notified of the determination. If the chairperson determines that any of the costs or any part of the project is not eligible or that the application is otherwise not complete, the chairperson shall return the application together with a statement of the reasons for rejecting the application. The applicant shall have 14 days after receipt of the rejection of the application or until two weeks following the final day of the application segment, whichever is later, to correct any inadequacies identified in the application. Applications which are not resubmitted within the time period allowed shall not be further considered during the funding round.

D. Review of documentation. If the applicant, the costs, and the project are determined to be eligible and the application is complete, the chairperson shall, within 45 days after the receipt of the application, review the application to determine whether the supporting documentation is adequate. In determining whether the documentation is adequate, the chairperson shall consider whether the documentation demonstrates:

1. that the project is conceptually and technically feasible;

2. that affected political subdivisions are committed to implementing the project, providing necessary local financing, and accepting and exercising the government powers necessary for project implementation and operation;

3. that operating revenues from the project, considering the availability and security of sources of solid waste and of markets for recovered resources together with any proposed federal, state, or local financial assistance, will be sufficient to pay all costs over the projected life of the project;

4. that the applicant has evaluated the feasible and prudent alternatives to disposal and has compared and evaluated the costs of the alternatives, including capital and operating costs, the effects of the alternatives on the cost to generators, and the effects of the alternatives on the solid waste management and recycling industry within the projects service area;

5. that the applicant has completed a comprehensive solid waste management plan conforming to the requirements of Minnesota Statutes, section 115A.46, including consideration of solid waste management alternatives; and

6. that the project demonstrates a technology that is of potential statewide application or significance.

E. Consultation with other agencies. In determining the adequacy of the documentation, the chairperson shall consider any recommendations provided by the Pollution Control Agency, the appropriate regional development commission, the State Planning Agency, and, if appropriate, the Metropolitan Council.

F. Determination of sufficient documentation. If the chairperson determines that the documentation in the application is adequate, the application shall be considered final and the applicant shall be so notified. The application shall then be referred to the board to be evaluated as provided in 6 MCAR S 8.408. If the chairperson determines that the documentation in the application is inadequate, the chairperson shall return the application together with a statement of the reasons for rejecting the application. The applicant shall have 14 days after receipt of the rejection of the application or two weeks after the final day of the application segment, whichever time period is greater, to correct the inadequacies in the

documentation. Applications which are not resubmitted within the time periods allowed shall not be further considered during the funding round.

If the inadequacies in the documentation are corrected within the time allowed, the application shall be considered final and the applicant shall be so notified. The application shall then be referred to the board to be evaluated as provided in 6 MCAR S 8.408.

6 MCAR S 8.408 Project type evaluation.

A. Process of evaluation. Upon completion of the chairperson's initial review of the application as set out in 6 MCAR S 8.407, the board shall compare projects of similar technology based on the factors set out in this section and select the top project in each category for further evaluation.

B. General factors. In evaluating all five types of projects the board shall, to the extent the factor is relevant to the project, consider:

1. operating capacity measured in tons of waste processed per day, percent of total waste stream to facility, area serviced, number of communities served, operating hours per day, and operating days per year;

2. market viability determined by the distance the market is from the facility, the existence of expressions of interest, or contracts ~~or long-term contracts, and~~ the length of time the market has been in existence, and the likelihood the market will remain in existence;

3. percent of input that is residual waste;

4. whether the method of securing waste is in place or planned.

C. Waste-to-energy facility factors. For waste-to-energy facilities, the board will consider:

1. energy production effectiveness measured in Btu output per tons of waste input;

2. whether variations in energy demand are matched to variations in waste supply;

3. cost effectiveness measured in Btu's delivered to

customer per year per dollar capital cost, and Btu's delivered to customer per year per dollar annual cost;

4. revenue per million Btu's delivered, total annual revenue from energy sales, and revenue as percent of total annual cost.

D. Materials recovery factors. For materials recovery facilities, the board will consider:

1. recovery effectiveness determined by identifying types and quantity of product recovered;

2. cost effectiveness measured by the value of recovered materials per year per dollar of capital cost and the value of recovered materials per year per dollar of annual cost; and

3. revenue per unit weight of products, the total annual revenue from recovered products, and revenue as a percent of total annual cost.

E. Chemical, physical, or biological modification factors. For chemical, physical, or biological modification facilities, the board will consider:

1. product description, including quality and probable uses;

2. cost effectiveness measured by the value of the product per year per dollar capital cost and the value of product per dollar annual cost;

3. revenue per unit of product, total annual revenue from product sales, and revenue as a percent of total annual cost;

4. other materials required or used in process by describing and identifying sources, certainty of supply, and any benefits in consuming other materials.

F. Tranfer stations factors. For transfer stations, the board will consider:

1. cost effectiveness measured by the total fuel cost savings per year per dollar capital cost and total waste hauling cost savings per year per dollar total annual cost; and

2. mileage and fuel savings measured by the total miles saved per year and gallons of fuel and total fuel cost savings per year.

G. Special waste stream factors. For special waste stream facilities, the board will consider:

1. product effectiveness measured by the product selling price and competitive product selling price;

2. operating factors measured by input waste stream quantity as a percent of total waste stream and resolution of problems encountered in landfilling the special waste;

3. cost effectiveness measured by the value of product per year per dollar capital cost and value of product per year per dollar annual cost; and

4. revenue per year from products or sales of processed waste and revenue as a percent of total annual cost.

6 MCAR S 8.409 Evaluation of projects selected from each category.

A. Evaluation process. Following the selection of the top project in each category, the board shall compare the projects on the basis of the priorities and factors listed in B. and C. The board shall then list the projects in order of preference based on the results of the comparison.

B. Legislative priorities. The board shall give priority to projects where:

1. the natural geologic and soil conditions are unsuitable for land disposal of solid waste;

2. the capacity of existing solid waste disposal facilities is less than five years; or

3. projects outside of the metropolitan area, the project serves more than one political subdivision.

C. General program factors. The board shall compare the projects in relation to the following factors:

1. the market for recovered resources, its location relative to the proposed facility, and any commitments which have been made to purchase the recovered resource;

2. the proportion of the total waste stream that will be processed by the facility and the extent that the facility will extend the life of existing landfills in the area;

3. the capital cost of the facility, the estimated cost

per ton of waste processed compared to the current cost per ton of waste disposed of in the area, the projected annual cost per unit of landfill capacity abated, and the projected annual cost per unit of material or energy recovered;

4. the projected revenue per ton of waste processed, the projected profitability of the facility throughout its operating life, the need for revenue sources in addition to operating revenue, and the availability of additional revenue sources.

5. the existence of other projects of the type proposed which have been funded by the board; and

6. the degree to which the technology or institutional arrangements demonstrated by the project are applicable to other cities, counties, or solid waste management districts in the state.

6 MCAR S 8.410 Award of grants and loans.

A. General procedure. The board shall award a loan, or a grant and loan if the board determines a grant should be awarded under B., to the project which receives the top rating under 6 MCAR S 8.409. The board shall then award loans and grants, if applicable, to the extent funds remain available, to the other top-rated projects in order of preference. If all of the top-rated projects identified under 6 MCAR S 8.409 are funded, the board shall select the second highest rated project in each category identified under 6 MCAR 8.408 and shall further evaluate those projects as provided for in 6 MCAR S 8.409. The board shall then award grants or loans to the projects in the same manner and order as it did for the top-rated projects.

B. Factors in awarding grants. In making its determination on whether to award grants and loans, the board shall consider whether the project involves a significant risk to the local unit of government; whether the local unit of government has made a substantial commitment of its own funds to the project; and, in view of the applicant's financial capacity, whether a grant would affect the decision or ability to undertake the project.

C. Amount of awards. The board shall determine the amount

of the loans and grants it awards based on a review of the factors set out in 6 MCAR S 8.409 and the degree to which the project serves to demonstrate the uses of technology involved in Minnesota.

D. Maximum awards. The maximum loan award shall be 50 percent of the eligible costs specified in the application or $700,000, whichever is less. The maximum grant award shall be 50 percent of the eligible costs specified in the application or $300,000, whichever is less.

E. Limitations.

1. No funds shall be awarded for costs for which the applicant has applied for and received funds from another source.

2. No grant or loan shall be disbursed until the board has determined the total cost of the project and ascertained that financing of the cost is assured by funds provided by the state, by an agency of the federal government within the amount of funds then appropriated to that agency and allocated by it to projects within the state, by any person, or by the appropriation of proceeds of bonds or other funds of the recipient to a fund for the construction of the project.

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

6 MCAR S 8.411 Grant and loan agreement.

A. The grant and loan agreements must:

1. contain the resolutions required under Minnesota Statutes, section 115A.54, subdivision 3;

2. incorporate by reference the final grant and loan application submitted to the board in accordance with 6 MCAR S 8.406;

3. establish the term of the grant and loan. All grants awarded under this rule shall have a maximum term of two years.

All loans awarded under this rule shall have a loan life determined by considering facility type, expected life of equipment, capital cost of the project, and loan amount;

4. in the case of a loan agreement, include schedules for the repayment of principal and interest;

5. provide that the recipient shall be authorized to enter into contracts to complete the work specified in the agreement;

6. provide that any cost overruns incurred in the development of the proposed facility shall be the sole responsibility of the recipients;

7. provide that the board will not accept amendments requesting additional grant and loan funds; and

8. require that the recipient provide a report on the developmental and operational history of the project so that knowledge and experience gained from the project may be made available to other communities in the state.

B. ~~Cancellation~~ Rescission of grants and loans. Grants and loans not completed in accordance with the terms and conditions of the respective agreements, including time schedules, shall be ~~canceled~~ rescinded unless the board determines that the variances from the respective agreements are due to factors outside the control of the grant or loan recipient.

FofF 9

C. Disbursement. The board shall disburse grants in accordance with the payment schedule set out in the grant agreement.

D. Interest payments. Interest payments on the loan shall be due annually and shall begin to accrue from the date the loan agreement is signed. The first repayment of the principal amount of the loan shall be due one year after the facility becomes operational or two years after the date the loan agreement is executed, whichever is earlier. The board shall consider the facility operational at the point where the facility meets all vendor guaranteed operating specifications. Subsequent repayments of principal and interest shall be due annually on the anniversary date of the first repayment.

no FofF indicating why this change was made. See memo of 1/12/83 from Ed Welch and PCA Comment #18 (Response where)

E. Due and payable clause. The loan agreement shall stipulate that if the recipient ~~desires to sell~~ sells the facility to a private enterprise, all outstanding loan obligations to the board shall become due and payable upon the sale to the private enterprise.

F. Repayment of grant if facility is sold to a private enterprise within three years. The grant agreements shall require repayment of the grant if the facility is sold to a private enterprise within three years of the date the grant was made. Beginning on the third anniversary of the grant, the amount of the grant which must be repaid shall be reduced ten percent each year. The sale agreement between the recipient and the private enterprise shall transfer the responsibilities outlined in 6 MCAR S 8.411 A.8. to the private enterprise.

6 MCAR S 8.412 Apportionment.

A. In general. For grants and loans to be awarded over the life of this program, the board shall apportion funds allocated to it by the legislature for this program as set out in Article VI of the Waste Management Act, Minnesota Statutes, sections 115A.49 to 115A.54, as follows in B.-E.

B. Percentage of loans and grants. Of the money appropriated for the purposes of the demonstration program, at least 70 percent shall be distributed as loans, and the remainder shall be distributed as grants.

C. Number of funding rounds. The board shall distribute the money appropriated for the purposes of the demonstration program during four funding rounds commencing on January 1, 1983. Each funding round entails a six-month period of time.

D. Amount distributed per round. During each funding round, the board shall distribute one-fourth of the money appropriated for the purposes of the demonstration program, and of the monies distributed each funding round, at least 70 percent shall be distributed as loans and the remainder shall be distributed as grants. In the event that projects awarded loans are not eligible for grants, during a specific funding round, the board may use the unobligated grant moneys to award additional loans

or may carry the unobligated grant monies forward for use in the next funding round.

E. Differences between application requests and available funds. If the board receives more applications which are eligible for grant or loan assistance in a specific funding round than the board has funds available, those eligible applicants not receiving funding may resubmit applications in future funding rounds. If the board does not receive enough eligible applications for grant and loan assistance in a specific funding round to fully obligate the funds available for that funding round, the balance shall carry forward and be available as additional funds in the following funding round.

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
FEB 15 1983

11:18AM

APPROVED AS TO LEGALITY

Feb. 11, 1983

HUBERT H. HUMPHREY, III

By Ted A. Mantyla

Special Assistant Attorney General

STATE OF MINNESOTA

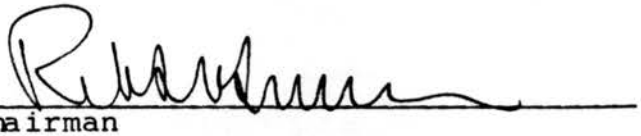
WASTE MANAGEMENT BOARD

In the Matter of the Proposed Adoption of Rules Relating to the Solid Waste Processing Facilities Demonstration Program	ORDER ADOPTING RULES

Notice of the Board's intent to adopt the above-entitled rules without a public hearing was published in the State Register on November 22, 1982 and was sent by United States mail to all persons on the list maintained by the agency pursuant to Minnesota Statutes section 15.0412, subdivision 4 on November 17, 1982. After affording interested and affected persons an opportunity to submit comments for 30 days after Notice, receiving fewer than seven written requests for a public hearing within the 30-day comment period, reviewing and considering the comments, and determining the need for and reasonableness of the above-captioned rules,

NOW, THEREFORE, IT IS ORDERED that these rules identified as Rules Relating to the Solid Waste Processing Facilities Demonstration Program are adopted this 20th day of January, 1983 pursuant to authority vested in the Board by Minnesota Statutes section 115A.49.

STATE OF MINNESOTA



Chairman
Minnesota Waste Management Board

C. A generator of hazardous waste within the state who has been issued permits by the Pollution Control Agency for a hazardous waste facility to be owned and operated by the generator, on property owned by the generator, and to be used by the generator for managing the hazardous wastes produced by the generator only;

D. A person who has been issued permits by the Pollution Control Agency for a commercial hazardous waste processing facility at a site included in the Waste Management Board's inventory of preferred sites for such facilities adopted pursuant to section 115A.09; and

E. A person who has been issued permits by the agency for a disposal facility for the nonhazardous sludge, ash, or other solid waste generated by a permitted hazardous waste processing facility operated by the person.

Minn. Stat. § 115A.36 (1980) requires *at least* the following factors be considered in the supplementary review process:

A. The risk and effect of the proposed facility on local residents, units of government, and the local public health, safety, and welfare, including such dangers as an accidental release of wastes during transportation to the facility; water, air and land pollution; fire or explosion, where appropriate; and the degree to which the risk or effect may be alleviated.

B. The consistency of the proposed facility with, and its effect on, existing and planned local land use and development; local laws, ordinances, and permits; and local public facilities and services.

C. The adverse effects of the facility on agriculture and natural resources and opportunities to mitigate or eliminate the adverse effects by additional stipulations, conditions, and requirements respecting the proposed facility at the proposed site.

D. The need for the proposed facility, especially its contribution to abating solid and hazardous waste disposal, the availability of alternative sites, and opportunities to mitigate or eliminate need by additional and alternative waste management strategies or actions of a significantly different nature.

E. Whether, in the case of solid waste resource recovery facilities, the applicant has considered the feasible and prudent waste processing alternatives for accomplishing the purposes of the proposed project and has compared and evaluated the costs, and the effects of the alternatives on the cost to generators.

Written or oral information and comments on these factors, additional factors which should be considered, the structure of the supplementary review process or any other matter related to the supplementary review process should be addressed to:

Waste Management Board
Attn: Madeline Harris
123 Thorson Building
7323-58th Avenue North
Crystal, Minnesota 55428
612/536-0816

All statements of information or comment should be received by November 1, 1981. Written material received by this date will become part of the record of any rules hearing held on this subject.

September 18, 1981

Robert G. Dunn, Chairman
Waste Management Board

Waste Management Board

Notice of Intent to Solicit Opinions and Information Concerning Rules for Solid Waste Demonstration Program

Notice is hereby given that the Minnesota Waste Management Board is seeking opinions and information from sources outside the agency for the purpose of preparing rules for administering a solid waste demonstration program. Such rules are authorized by Minn. Stat. § 115A.49 (1980).

Under Minn. Stat. § 115A.53 (1980) the Waste Management Board may provide technical and financial assistance in the form of grants and loans to eligible applicants and projects to stimulate and encourage the acquisition and betterment of waste processing facilities and transfer stations. Financial assistance provided under this program may only be used for capital costs of a project. The rules, if adopted, would regulate at least the following aspects of the solid waste demonstration program: (1) application and review procedures, (2) criteria for eligibility, (3) levels of local funding required, and (4) priority criteria for funding eligible projects. The Waste Management Act requires the board in administering these programs to give priority to areas where natural geologic and soil conditions are unsuitable for land disposal of solid waste and areas where the capacity of existing solid waste disposal facilities is less than five years. In addition, in areas outside the metropolitan area, priority must be given to projects serving more than one local governmental unit.

Any person desiring to submit information or comment on the subject of the proposed rules may do so either orally or in writing. All statements of information or comment should be received by November 1, 1981. Written material received by this date will become part of the record of any rules hearing on this subject. Written or oral information or comment should be addressed to:

Robert Pulford
Minnesota Waste Management Board
123 Thorson Building
7323-58th Avenue North
Crystal, Minnesota 55428
612/536-0816

September 18, 1981.

Robert C. Dunn, Chairman
Minnesota Waste Management Board

Waste Management Board

Notice of Intent to Solicit Outside Opinions and Information Concerning Rules on Accepting, Evaluating, and Selecting Applications for Permits for Certain Hazardous Waste Facilities

Notice is hereby given that the Waste Management Board is seeking opinions and information from sources outside the agency for the purpose of preparing rules on accepting, evaluating, and selecting applications for permits for certain hazardous waste facilities. Such rules are authorized by Minn. Stat. § 115A.10 (1980).

Under Minn. Stat. §§ 115A.09, 115A.18-.30 (1980), the Waste Management Board is required to select at least one hazardous waste disposal facility for the state and to prepare an inventory of sites for the chemical processing, incineration, and transfer and storage of hazardous waste. The rules referred to in this notice will establish a basis for accepting, evaluating, and selecting applications for permits for facilities to be located at these sites. The rules must address at least the following subjects: (1) standards and procedures for making determinations on minimum qualifications, including technical competence and financial capability, of permit applicants for processing and disposal facilities; and (2) standards and procedures for soliciting and accepting bids or permit applications and for selecting developers and operators of hazardous waste disposal facilities at sites chosen by the Board, including a preference for qualified permit applicants who control a site chosen by the Board.

Any person desiring to submit information or comment on the subject of the proposed rules may do so either orally or in writing. All statements of information or comment should be received by November 1, 1981. Written information or comment received by this date will become part of the record of any rules hearing on this subject. Written or oral information or comment should be addressed to:

Waste Management Board
Attn: Madeline Harris
123 Thorson Building
7323 - 58th Avenue North
Crystal, Minnesota 55428
612/536-0816

September 18, 1981

Robert G. Dunn, Chairman
Waste Management Board

Minnesota Water Resources Board

Notice of Hearing on the Petition to Withdraw Territory

A hearing on a Petition to Withdraw Territory from the Minnehaha Creek Watershed District will begin at 7:30 p.m. on Wednesday, October 7, 1981, at the Medina City Hall, 2052 County Road 24 (located near the intersection of County Road 24 and Medina Road) in Medina, Minnesota.

A complete notice of and order for hearing will be published in the Crow River News, Osseo, Minnesota, on September 16 and 23, 1981.

Copies of the complete notice are also available from the Minnesota Water Resources Board's office at 555 Wabasha Street, Room 206, St. Paul, Minnesota 55102 (612-296-2840).

STATE OF MINNESOTA

WASTE MANAGEMENT BOARD

In the Matter of the Proposed Adoption of Rules of the State Waste Management Board Governing the Solid Waste Processing Facilities Demonstration Program	)))))	ORDER

IT IS HEREBY ORDERED, this 16th day of November, 1982, that a Notice of Intent to Adopt Rules Without a Public Hearing in the above-entitled matter be given to all persons who have registered their names with the State Waste Management Board for that purpose and be published in the State Register.

STATE OF MINNESOTA

ROBERT G. DUNN
Chairman
Waste Management Board

STATE OF MINNESOTA

WASTE MANAGEMENT BOARD

In the Matter of the Proposed Adoption of Rules of the State Waste Management Board Governing the Solid Waste Processing Facilities Demonstration Program	)))))	CERTIFICATE OF BOARD'S RESOLUTION

I, Robert G. Dunn, do hereby certify that I am a member and the Chairman of the Waste Management Board, a board duly authorized under the laws of the State of Minneosta, and that the following is a true, complete, and correct copy of a resolution adopted at a meeting of the Waste Management Board duly and properly called and held on the 27th day of October, 1982, that a quorum was present at said meeting, that a majority of those present voted for the resolution and that said resolution is set forth in the minutes of said meeting and has not been rescinded or modified.

> "RESOLVED, that Robert G. Dunn, Chairman of the Waste Management Board, be and hereby is granted authority and directed to sign an Order of the Board directing that Notice be given of the Board's intent to adopt without a public hearing rules governing the Solid Waste Processing Facilities Demonstration Program, to sign the Notice thereof, to make such changes in form required by the Revisor of Statutes, and to perform any and all acts incidental thereto. In the event a public hearing becomes necessary, he hereby is granted the authority and directed to call a hearing for the purpose of promulgating said rules as well as perform any and all acts incidental thereto, including but without being limited to signing an Order For Hearing and Notice of Hearing as well as acting as the Board's representative at all hearings.

IN WITNESS WHEREOF, I have hereunto subscribed my name, this 27th day of October, 1982.

ROBERT G. DUNN
Chairman, Waste Management Board

Attest: Lawrence E. Hunter

WASTE MANAGEMENT BOARD
PROPOSED RULES GOVERNING THE SOLID WASTE PROCESSING FACILITIES DEMONSTRATION PROGRAM

NOTICE OF INTENT TO ADOPT
RULES WITHOUT A PUBLIC HEARING

NOTICE IS HEREBY GIVEN that the State Waste Management Board proposes to adopt the above-entitled rules without a public hearing. The Waste Management Board has determined that the proposed adoption of these rules will be noncontroversial in nature and has elected to follow the procedures set forth in Minnesota Statutes section 15.0412, subd. 4h (1980).

Persons interested in these rules shall have 30 days to submit comments on the proposed rules. The proposed rules may be modified if the modifications are supported by the data and views submitted to the agency and do not result in a substantial change in the proposed language.

Unless seven or more persons submit written requests for a public hearing on the proposed rules within the 30-day comment period, a public hearing will not be held. In the event a public hearing is required, the agency will proceed according to the provisions of Minnesota Statutes section 15.0412, subds. 4-4f.

Persons who wish to submit comments or a written request for a public hearing should submit such comments or request to:

Waste Management Board
Attn: Ed Welsch
123 Thorson Building
7323 - 58th Avenue North
Crystal, MN 55428
(612) 536-0816

Authority for the adoption of these rules is contained in Minnesota Statutes section 115A.49. Additionally, a Statement of Need and Reasonableness that describes the need for and resonableness of each provision of the proposed rules and identifies the data and information relied upon to support the proposed rules has been prepared and is available from the Waste Management Board, Attn: Ed Welsch, 123 Thorson Building, 7323 - 58th Avenue North, Crystal, MN, upon request.

Upon adoption of the final rules without a public hearing, the proposed rules, this Notice, the Statment of Need and Reasonableness, all written comments received, and the final Rules as adopted will be delivered to the Attorney General for review as to form and legality, including the issue of substantial change. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the

final rules as proposed for adoption, should submit a written statement of such request to the Waste Management, Attn: Ed Welsch, 123 Thorson Building, 7323 - 58th Avenue North, Crystal, MN 55428.

The rules proposed for adoption relate to the following matters: (1) eligibility for loans and grants; (2) information and documents which must be submitted in an application; (3) procedures for initial review of applications; (4) procedures and criteria for evaluating loan and grant aplications and for selecting loan and grant recipients; (5) provisions related to the awarding of loans and grants; (6) required contents of loan and grant agreements; and (7) provisions relating to apportioning available funds between loans and grants.

Copies of this Notice and the proposed Rules are available and may be obtained by contacting the Waste Management Board, Attn: Ed Welsch, 123 Thorson Building, 7323 - 58th Avenue North, Crystal, MN 55428.

Dated: November 16, 1982.

STATE OF MINNESOTA

ROBERT G. DUNN, Chairman
Waste Management Board

STATE OF MINNESOTA

WASTE MANAGEMENT BOARD

In the Matter of the Proposed)
Adoption of Rules of the State)
Waste Management Board Governing) AFFIDAVIT OF MAILING
the Solid Waste Processing)
Facilities Demonstration Program)

State of Minnesota)
) ss.
County of Hennepin)

Edward A. Welsch, being first duly sworn deposes and says:

That on the 12th day of November, 1982, at the City of Crystal, County of Hennepin, State of Minnesota, he served the attached Notice of Intent to Adopt Rules Without Public Hearing by depositing in the United States mail at said City of Crystal, a copy thereof properly enveloped, with postage prepaid, on all persons, associations and other interested groups who have requested that their names be placed on file with the State Waste Management Board for the purpose of receiving notice of the proposed adoption of rules by this Board.

Edward A. Welsch

Subscribed and sworn to before me
this 12th day of November, 1982.

Notary Public

L. STYMIE
NOTARY PUBLIC—MINNESOTA
HENNEPIN COUNTY
MY COMMISSION EXP AUG. 1, 1983

STATE OF MINNESOTA

WASTE MANAGEMENT BOARD

In the Matter of the Proposed Adoption of Rules of the State Waste Management Board Governing the Solid Waste Processing Facilities Demonstration Program	)))))	CERTIFICATE

I hereby certify that the list of persons, associations, and other interested groups who have requested, pursuant to Minn. Stat. § 15.0412, subd. 4, that their names be placed on file with and maintained by the State Waste Management Board for the purpose of receiving notice of the proposed adoption of rules by this board is accurate and complete as of 4:00 P.M., this 17th day of November, 1982.

Edward A. Welsch

and numerals must be of a color that contrasts with the background and may be reflectorized decals or metal or may be painted. The letters and numerals shall read from left to right and shall not be less than ~~3~~ three inches in height, of block type, of a stroke not less than ~~1/2~~ one-half inch or more than ~~3/4~~ three-fourths inch in width, not including a border. The license number shall be maintained so that it is clearly visible and legible, and the letter groups must be separated from the numeral groups by a space of not less than ~~3~~ three inches nor more than ~~4~~ four inches. Adjacent letters and numerals within each group must be spaced not less than ~~1/2~~ one-half inch nor more than ~~3/4~~ three-fourths inch apart. A state validation decal for the current license period must be affixed toward the stern of the boat and not more than ~~4~~ four inches from the first or last letter of the license number on each side of the boat.

~~(d)~~ D. Marking of nonmotorized canoes, kayaks, paddle boats, and rowing shells. All nonmotorized canoes, kayaks, paddle boats, and rowing shells shall display decals furnished by the Department of Natural Resources for such watercraft. These decals shall be securely affixed on each side of the forward half of the watercraft for which the decal was issued, in such a position as to provide clear and legible identification.

(e) and (f) [Reletter as E. and F.]

~~(g)~~ G. Other insignia. No person shall operate any watercraft, except a nonmotorized canoe, kayak, rowing shell, sailboard, paddle boat, or sailboat, which has any number, letter, design, or insignia displayed on either side thereof which is closer than 24 inches to any part of the watercraft license number ~~of~~ or validation decal.

~~(h)~~ H. Dealer license numbers. The last two characters of all dealers' license numbers shall be the letters DD. No other license number shall include both such letters. Dealers' license numbers shall be displayed in accordance with ~~NR 200, section (c)~~ C., except that such numbers may be so affixed as to be readily detachable and must be attached to any watercraft owned by the dealer when such watercraft is being used for demonstration purposes or any other purpose incident to the usual and customary conduct of the business of manufacturing, selling, or trading of watercraft. A dealer may use as many detachable sets of numbers as is necessary in the conduct of his business.

(i) and (j) [Reletter as I. and J.]

Waste Management Board

Proposed Rules Governing the Solid Waste Processing Facilities Demonstration Program

Notice of Intent to Adopt Rules without a Public Hearing

Notice is hereby given that the State Waste Management Board proposes to adopt the above-entitled rules without a public hearing. The Waste Management Board has determined that the proposed adoption of these rules will be noncontroversial in nature and has elected to follow the procedures set forth in Minnesota Statutes section 15.0412, subd. 4h (1980).

Persons interested in these rules shall have 30 days to submit comments on the proposed rules. The proposed rules may be modified if the modifications are supported by the data and views submitted to the agency and do not result in a substantial change in the proposed language.

Unless seven or more persons submit written requests for a public hearing on the proposed rules within the 30-day comment period, a public hearing will not be held. In the event a public hearing is required, the agency will proceed according to the provisions of Minnesota Statutes section 15.0412, subds. 4-4f.

Persons who wish to submit comments or a written request for a public hearing should submit such comments or request to:

Waste Management Board
Attn: Ed Welsch
123 Thorson Building
7323 - 58th Avenue North
Crystal, MN 55428
(612) 536-0816

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Authority for the adoption of these rules is contained in Minnesota Statutes section 115A.49. Additionally, a statement of need and reasonableness that describes the need for and reasonableness of each provision of the proposed rules and identifies the data and information relied upon to support the proposed rules has been prepared and is available from the Waste Management Board, Attn: Ed Welsch, 123 Thorson Building, 7323 - 58th Avenue North, Crystal, MN, upon request.

Upon adoption of the final rules without a public hearing, the proposed rules, this notice, the statement of need and reasonableness, all written comments received, and the final rules as adopted will be delivered to the Attorney General for review as to form and legality, including the issue of substantial change. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the final rules as proposed for adoption, should submit a written statement of such request to the Waste Management, Attn: Ed Welsch, 123 Thorson Building, 7323 - 58th Avenue North, Crystal, MN 55428.

The rules proposed for adoption relate to the following matters: (1) eligibility for loans and grants; (2) information and documents which must be submitted in an application; (3) procedures for initial review of applications; (4) procedures and criteria for evaluating loan and grant applications and for selecting loan and grant recipients; (5) provisions related to the awarding of loans and grants; (6) required contents of loan and grant agreements; and (7) provisions relating to apportioning available funds between loans and grants.

Copies of this notice and the proposed rules are available and may be obtained by contacting the Waste Management Board, Attn: Ed Welsch, 123 Thorson Building, 7323 - 58th Avenue North, Crystal, MN 55428.

Robert G. Dunn, Chairman
Waste Management Board

Rules as Proposed (all new material)

6 MCAR § 8.401 Definitions.

A. Scope. For the purposes of 6 MCAR §§ 8.401-8.412, the following terms have the meanings given them, unless the context requires otherwise.

B. Board. "Board" means the Minnesota Waste Management Board established in Minnesota Statutes, section 115A.04.

C. Chairperson. "Chairperson" means the chairperson and chief executive officer of the board.

D. Cities. "Cities" has the meaning given it in Minnesota Statutes, section 115A.03, subdivision 4.

E. Comprehensive solid waste management plan. "Comprehensive solid waste management plan" means a written plan conforming to the requirements of Minnesota Statutes, section 115A.46.

F. Disposal. "Disposal" has the meaning given it in Minnesota Statutes, section 115A.03, subdivision 9.

G. Final engineering/architectural plans. "Final engineering/architectural plans" means those engineering drawings and specifications used to secure bids for construction or equipment.

H. Funding round. "Funding round" means a six-month period.

I. Institutional arrangements. "Institutional arrangements" means methods of financing, marketing, procurement, methods of securing the waste supply, or joint efforts between political subdivisions.

J. Mixed municipal solid waste. "Mixed municipal solid waste" has the meaning given it in Minnesota Statutes, section 115A.03, subdivision 21.

K. On-site utilities. "On-site utilities" means gas, electrical, water, and sewer facilities within the geographic boundaries of the waste processing facility.

L. Preliminary engineering/architectural plans. "Preliminary engineering/architectural plans" means conceptual plans adequate to obtain preconstruction permits and to meet the needs of an environmental assessment.

M. Processing. "Processing" has the meaning given it in Minnesota Statutes, section 115A.03, subdivision 25.

N. Recipient. "Recipient" means an applicant who has received a grant or loan under the solid waste processing facilities demonstration program.

O. Resource recovery. "Resource recovery" has the meaning given it in Minnesota Statutes, section 115A.03, subdivision 27.

P. Resource recovery facility. "Resource recovery facility" has the meaning given it in Minnesota Statutes, section 115A.03, subdivision 28.

Q. Solid waste. "Solid waste" has the meaning given it in Minnesota Statutes, section 116.06, subdivision 10.

R. Solid waste disposal facilities and equipment. "Solid waste disposal facilities and equipment" means structures, machinery, or devices at a disposal site necessary for efficient land disposal of solid wastes, including machinery or devices designed to move earth during burial of wastes or to increase the density of wastes buried or to be buried, and facilities in which solid waste is temporarily stored and concentrated prior to transport to a disposal site.

S. Solid waste management district. "Solid waste management district" has the meaning given it in Minnesota Statutes, section 115A.03, subdivision 32.

T. Special waste stream. "Special waste stream" means materials which are normally found in the solid waste stream in sufficient quantity to be recovered for subsequent use, if separated from the solid waste stream and processed separately. Examples of special waste streams include used tires, wood wastes, and agricultural wastes.

U. Statewide application or significance. "Statewide application or significance" means that a project is capable of demonstrating a feasible alternative to disposal to other communities in the state.

V. Transfer station. "Transfer station" has the meaning given it in Minnesota Statutes, section 115A.03, subdivision 33.

W. Waste processing equipment. "Waste processing equipment" means machinery or devices acquired and used as an integral component of a waste processing facility.

X. Waste processing facility. "Waste processing facility" means structures and equipment singly or in combination, designed, constructed, and used to separate, modify, convert, heat, prepare, or otherwise process solid waste so that materials or substances contained within the waste may be recovered for subsequent use.

6 MCAR § 8.402 solid waste processing facilities demonstration program. Rules 6 MCAR §§ 8.401-8.412 implement the solid waste processing facilities demonstration program created and described in Minnesota Statutes, sections 115A.49 to 115A.54, by establishing the substantive criteria and procedural conditions under which the board may award grants and loans for capital costs of projects which demonstrate the feasibility of waste processing technology or equipment or the feasibility of institutional arrangements in providing waste processing facilities.

6 MCAR § 8.403 Eligibility criteria.

A. Eligible applicants. Eligible applicants are limited to cities, counties, and solid waste management districts established pursuant to Minnesota Statutes, sections 115A.62 to 115A.72.

B. Eligible projects. Only projects which demonstrate feasible and prudent alternatives to disposal are eligible for loans and grants. To qualify as a demonstration project, a project must be conceptually and technically feasible but not now in operation in the state or not now in operation in a geographical area of the state with demonstrably different characteristics from those of the area where a facility is now in operation. A conceptually and technically feasible project may also qualify as a demonstration project if it involves institutional arrangements not previously utilized in the state, or not previously utilized in a geographical area of the state with demonstrably different characteristics from those in the area where a facility is now in operation. Five types of projects are eligible for loans and grants: waste to energy; materials recovery; chemical, physical, or biological modifications; transfer stations; and special waste streams.

C. Eligible costs. Eligible costs under 6 MCAR §§ 8.401-8.412 shall be limited to the costs of waste processing equipment; structures necessary to house the waste processing equipment; appropriate and necessary on-site utilities; structures necessary to concentrate and temporarily store solid waste prior to transportation to a waste processing facility; and final design and engineering specifications.

D. Ineligible costs. Ineligible costs include any costs related to acquisition of land, solid waste disposal facilities and equipment, structures for housing and maintenance of rolling stock, or any costs related to resource recovery studies, feasibility analyses, or preliminary design and engineering.

6 MCAR § 8.404 Information required on the grant and loan application. Applications for grants and loans for waste processing facilities shall include the following information as required in the application forms supplied by the board:

1. the name of each applicant making the grant or loan application;

2. the name of each political subdivision affected by the project, located in the area studied in the project, or located in the area in which the project is intended to be implemented;

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3. resolutions from each applicant which demonstrate that the applicant is committed to implementing the project; providing necessary local financing; and accepting and exercising the government powers necessary to the project;

4. the name, qualifications, and address of the project manager;

5. the name and qualifications of the facility operator, if available;

6. the total capital cost of the project;

7. the total grant- or loan-eligible cost of the project;

8. the amount of grant or loan funding requested;

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

10. the type of assistance applied for (loan or grant and loan together);

11. the type of waste processing facility for which a grant or loan is being applied for: waste to energy; materials recovery; chemical, physical, or biological modification; transfer stations; or special waste stream.

6 MCAR § 8.405 Documentation required to be submitted with the grant and loan application. Applications for grants or loans for waste processing facilities shall include the following documentation:

A. a conceptual and technical feasibility report which includes at least the following analysis: description of alternative waste processing facilities, description of the institutional arrangements necessary for project implementation and operation, description of methods of procurement, and waste stream analysis;

B. a financial feasibility report including: an evaluation and analysis of all capital and operating costs of the proposed project, an evaluation and analysis of various financing mechanisms available to the applicant, an analysis of the ability of the community to continue operation of the facility over the life of the facility;

C. a comprehensive solid waste management plan conforming to Minnesota Statutes, section 115A.46, including consideration of solid waste management alternatives;

D. preliminary design and engineering plans or specifications of the proposed waste processing facility and equipment;

E. documentation that waste supplies are committed to the project and that the applicant has the authority and mechanism to commit such wastes;

F. a marketability analysis of recovered materials/energy, including market commitments such as letters of intent or market contracts;

G. a detailed estimate of annual operating and maintenance costs;

H. a report on the proposed project's potential for statewide application or significance;

I. a report on the status of required permits from permitting agencies;

J. a report on time frames of project development;

K. resolutions complying with the requirements of Minnesota Statutes, section 115A.54, subdivision 3;

L. if the applicant seeks to qualify a project as demonstrating a technology or institutional arrangements in a geographical area of the state rather than the entire state, a report on how the area is demonstrably different from the characteristics of the area where a facility is now in operation;

M. if the project application proposes a waste processing facility that demonstrates institutional arrangements, a report which describes the institutional arrangements;

N. if the applicant requests priority based on any of the following conditions, documentation of the existence of the condition:

1. the natural geologic and soil conditions which are claimed to be unsuitable for land disposal of solid waste;

2. the available capacity of existing solid waste disposal facilities are claimed to be less than five years; or

3. the claim that the proposed project would service an area outside the metropolitan area and would serve more than one local government unit;

O. if the applicant is seeking a grant, a report discussing the factor or factors in 6 MCAR § 8.410 B. upon which the applicant is basing the request for a grant.

6 MCAR § 8.406 Grant and loan application procedures.

A. Funding rounds. There shall be four funding rounds. The first funding round commences on January 1, 1983 and

subsequent funding rounds commence every six months thereafter. Each funding round entails a six-month period and consists of two three-month segments, the first being the application segment and the second being the review segment.

B. Application segment. The application segment of each funding round consists of the first three months of each funding round and commences each January 1 and July 1 and terminate each March 31 and September 30, respectively, of years 1983 and 1984. During the application segment, the applicant shall prepare or accumulate all of the information and documentation set out in 6 MCAR §§ 8.404 and 8.405. The applicant is encouraged to contact the chairperson and request a preapplication review of the proposed project. The applicant then must submit the grant or loan application to the board no later than March 31 or September 30, whichever date is appropriate for consideration during that funding round. If the grant or loan application is postmarked later than March 31 or September 30, whichever date is appropriate to the specific funding round, the applications shall be returned.

C. Review segment. The review segment of each funding round consists of the second three months of each funding round and commences each April 1 and October 1 and terminate each June 30 and December 31, respectively, of years 1983 and 1984. During the review segment the chairperson or his designee shall conduct the initial review of all applications and the board shall evaluate and select projects and award the grants and loans.

6 MCAR § 8.407 Initial review.

A. Applications reviewed. The chairperson or his designee shall review all applications received during the application segment of each funding round. Applications received after the last day of each application segment shall be returned to the applicant.

B. Eligibility and completeness review. Upon receipt of a timely filed application, the chairperson or his designee shall determine the eligibility of the applicant, the eligibility of the costs specified in the application, the eligibility of the project specified in the application, and the completeness of the application.

C. Notice of determination. Within 14 days after receiving the application, the chairperson shall notify each applicant of the chairperson's determinations. If the chairperson determines that the applicant or the project is not eligible, the application shall not be further considered and the applicant shall be notified of the determination. If the chairperson determines that any of the costs or any part of the project is not eligible or that the application is otherwise not complete, the chairperson shall return the application together with a statement of the reasons for rejecting the application. The applicant shall have 14 days after receipt of the rejection of the application or until two weeks following the final day of the application segment, whichever is later, to correct any inadequacies identified in the application. Applications which are not resubmitted within the time period allowed shall not be further considered during the funding round.

D. Review of documentation. If the applicant, the costs, and the project are determined to be eligible and the application is complete, the chairperson shall, within 45 days after the receipt of the application, review the application to determine whether the supporting documentation is adequate. In determining whether the documentation is adequate, the chairperson shall consider whether the documentation demonstrates:

1. that the project is conceptually and technically feasible;

2. that affected political subdivisions are committed to implementing the project, providing necessary local financing, and accepting and exercising the government powers necessary for project implementation and operation;

3. that operating revenues from the project, considering the availability and security of sources of solid waste and of markets for recovered resources together with any proposed federal, state, or local financial assistance, will be sufficient to pay all costs over the projected life of the project;

4. that the applicant has evaluated the feasible and prudent alternatives to disposal and has compared and evaluated the costs of the alternatives, including capital and operating costs, the effects of the alternatives on the cost to generators, and the effects of the alternatives on the solid waste management and recycling industry within the projects service area;

5. that the applicant has completed a comprehensive solid waste management plan conforming to the requirements of Minnesota Statutes, section 115A.46, including consideration of solid waste management alternatives; and

6. that the project demonstrates a technology that is of potential statewide application or significance.

E. Consultation with other agencies. In determining the adequacy of the documentation, the chairperson shall consider any

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recommendations provided by the Pollution Control Agency, the appropriate regional development commission, the State Planning Agency, and, if appropriate, the Metropolitan Council.

F. Determination of sufficient documentation. If the chairperson determines that the documentation in the application is adequate, the application shall be considered final and the applicant shall be so notified. The application shall then be referred to the board to be evaluated as provided in 6 MCAR § 8.408. If the chairperson determines that the documentation in the application is inadequate, the chairperson shall return the application together with a statement of the reasons for rejecting the application. The applicant shall have 14 days after receipt of the rejection of the application or two weeks after the final day of the application segment, whichever time period is greater, to correct the inadequacies in the documentation. Applications which are not resubmitted within the time periods allowed shall not be further considered during the funding round.

If the inadequacies in the documentation are corrected within the time allowed, the application shall be considered final and the applicant shall be so notified. The application shall then be referred to the board to be evaluated as provided in 6 MCAR § 8.408.

6 MCAR § 8.408 Project type evaluation.

A. Process of evaluation. Upon completion of the chairperson's initial review of the application as set out in 6 MCAR § 8.407, the board shall compare projects of similar technology based on the factors set out in this section and select the top project in each category for further evaluation.

B. General factors. In evaluating all five types of projects the board shall, to the extent the factor is relevant to the project, consider:

1. operating capacity measured in tons of waste processed per day, percent of total waste stream to facility, area serviced, number of communities served, operating hours per day, and operating days per year;

2. market viability determined by the distance the market is from the facility, the existence of expressions of interest, contracts or long-term contracts; and the length of time the market has been in existence and the likelihood the market will remain in existence;

3. percent of input that is residual waste;

4. whether the method of securing waste is in place or planned.

C. Waste-to-energy facility factors. For waste-to-energy facilities, the board will consider:

1. energy production effectiveness measured in Btu output per tons of waste input;

2. whether variations in energy demand are matched to variations in waste supply;

3. cost effectiveness measured in Btu's delivered to customer per year per dollar capital cost, and Btu's delivered to customer per year per dollar annual cost;

4. revenue per million Btu's delivered, total annual revenue from energy sales, and revenue as percent of total annual cost.

D. Materials recovery factors. For materials recovery facilities, the board will consider:

1. recovery effectiveness determined by identifying types and quantity of product recovered;

2. cost effectiveness measured by the value of recovered materials per year per dollar of capital cost and the value of recovered materials per year per dollar of annual cost; and

3. revenue per unit weight of products, the total annual revenue from recovered products, and revenue as a percent of total annual cost.

E. Chemical, physical, or biological modification factors. For chemical, physical, or biological modification facilities, the board will consider:

1. product description, including quality and probable uses;

2. cost effectiveness measured by the value of the product per year per dollar capital cost and the value of product per dollar annual cost;

3. revenue per unit of product, total annual revenue from product sales, and revenue as a percent of total annual cost;

4. other materials required or used in process by describing and identifying sources, certainty of supply, and any benefits in consuming other materials.

F. Transfer station factors. For transfer stations, the board will consider:

1. cost effectiveness measured by the total fuel cost savings per year per dollar capital cost and total waste hauling cost savings per year per dollar total annual cost; and

2. mileage and fuel savings measured by the total miles saved per year and gallons of fuel and total fuel cost savings per year.

G. Special waste stream factors. For special waste stream facilities, the board will consider:

1. product effectiveness measured by the product selling price and competitive product selling price;

2. operating factors measured by input waste stream quantity as a percent of total waste stream and resolution of problems encountered in landfilling the special waste;

3. cost effectiveness measured by the value of product per year per dollar capital cost and value of product per year per dollar annual cost; and

4. revenue per year from products or sales of processed waste and revenue as a percent of total annual cost.

6 MCAR § 8.409 Evaluation of projects selected from each category.

A. Evaluation process. Following the selection of the top project in each category, the board shall compare the projects on the basis of the priorities and factors listed in B. and C. The board shall then list the projects in order of preference based on the results of the comparison.

B. Legislative priorities. The board shall give priority to projects where:

1. the natural geologic and soil conditions are unsuitable for land disposal of solid waste;

2. the capacity of existing solid waste disposal facilities is less than five years; or

3. projects outside of the metropolitan area, the project serves more than one political subdivision.

C. General program factors. The board shall compare the projects in relation to the following factors:

1. the market for recovered resources, its location relative to the proposed facility, and any commitments which have been made to purchase the recovered resource;

2. the proportion of the total waste stream that will be processed by the facility and the extent that the facility will extend the life of existing landfills in the area;

3. the capital cost of the facility, the estimated cost per ton of waste processed compared to the current cost per ton of waste disposed of in the area, the projected annual cost per unit of landfill capacity abated, and the projected annual cost per unit of material or energy recovered;

4. the projected revenue per ton of waste processed, the projected profitability of the facility throughout its operating life, the need for revenue sources in addition to operating revenue, and the availability of additional revenue sources.

5. the existence of other projects of the type proposed which have been funded by the board; and

6. the degree to which the technology or institutional arrangements demonstrated by the project are applicable to other cities, counties, or solid waste management districts in the state.

6 MCAR § 8.410 Award of grants and loans.

A. General procedure. The board shall award a loan, or a grant and loan if the board determines a grant should be awarded under B., to the project which receives the top rating under 6 MCAR § 8.409. The board shall then award loans and grants, if applicable, to the extent funds remain available, to the other top-rated projects in order of preference. If all of the top-rated projects identified under 6 MCAR § 8.409 are funded, the board shall select the second highest rated project in each category identified under 6 MCAR § 8.408 and shall further evaluate those projects as provided for in 6 MCAR § 8.409. The board shall then award grants or loans to the projects in the same manner and order as it did for the top-rated projects.

B. Factors in awarding grants. In making its determination on whether to award grants and loans, the board shall consider whether the project involves a significant risk to the local unit of government; whether the local unit of government has made a substantial commitment of its own funds to the project; and, in view of the applicant's financial capacity, whether a grant would affect the decision or ability to undertake the project.

C. Amount of awards. The board shall determine the amount of the loans and grants it awards based on a review of the

KEY: 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." ADOPTED RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

factors set out in 6 MCAR § 8.409 and the degree to which the project serves to demonstrate the uses of technology involved in Minnesota.

D. Maximum awards. The maximum loan award shall be 50 percent of the eligible costs specified in the application or $700,000, whichever is less. The maximum grant award shall be 50 percent of the eligible costs specified in the application or $300,000, whichever is less.

E. Limitations.

1. No funds shall be awarded for costs for which the applicant has applied for and received funds from another source.

2. No grant or loan shall be disbursed until the board has determined the total cost of the project and ascertained that financing of the cost is assured by funds provided by the state, by an agency of the federal government within the amount of funds then appropriated to that agency and allocated by it to projects within the state, by any person, or by the appropriation of proceeds of bonds or other funds of the recipient to a fund for the construction of the project.

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

6 MCAR § 8.411 Grant and loan agreement.

A. The grant and loan agreements must:

1. contain the resolutions required under Minnesota Statutes, section 115A.54, subdivision 3;

2. incorporate by reference the final grant and loan application submitted to the board in accordance with 6 MCAR § 8.406;

3. establish the term of the grant and loan. All grants awarded under this rule shall have a maximum term of two years. All loans awarded under this rule shall have a loan life determined by considering facility type, expected life of equipment, capital cost of the project, and loan amount;

4. in the case of a loan agreement, include schedules for the repayment of principal and interest;

5. provide that the recipient shall be authorized to enter into contracts to complete the work specified in the agreement;

6. provide that any cost overruns incurred in the development of the proposed facility shall be the sole responsibility of the recipients;

7. provide that the board will not accept amendments requesting additional grant and loan funds; and

8. require that the recipient provide a report on the developmental and operational history of the project so that knowledge and experience gained from the project may be made available to other communities in the state.

B. Cancellation of grants and loans. Grants and loans not completed in accordance with the terms and conditions of the respective agreements, including time schedules, shall be canceled unless the board determines that the variances from the respective agreements are due to factors outside the control of the grant or loan recipient.

C. Disbursement. The board shall disburse grants in accordance with the payment schedule set out in the grant agreement.

D. Interest payments. Interest payments on the loan shall be due annually and shall begin to accrue from the date the loan agreement is signed. The first repayment of the principal amount of the loan shall be due one year after the facility becomes operational or two years after the date the loan agreement is executed, whichever is earlier. Subsequent repayments of principal and interest shall be due annually on the anniversary date of the first repayment.

E. Due and payable clause. The loan agreement shall stipulate that if the recipient desires to sell the facility to a private enterprise, all outstanding loan obligations to the board shall become due and payable upon the sale to the private enterprise.

F. Repayment of grant if facility is sold to a private enterprise within three years. The grant agreements shall require repayment of the grant if the facility is sold to a private enterprise within three years of the date the grant was made. Beginning on the third anniversary of the grant, the amount of the grant which must be repaid shall be reduced ten percent each year. The sale agreement between the recipient and the private enterprise shall transfer the responsibilities outlined in 6 MCAR § 8.411 A.8. to the private enterprise.

6 MCAR § 8.412 Apportionment.

A. In general. For grants and loans to be awarded over the life of this program, the board shall apportion funds allocated to it by the legislature for this program as set out in Article VI of the Waste Management Act, Minnesota Statutes, sections 115A.49 to 115A.54, as follows in B.-E.

B. Percentage of loans and grants. Of the money appropriated for the purposes of the demonstration program, at least 70 percent shall be distributed as loans, and the remainder shall be distributed as grants.

C. Number of funding rounds. The board shall distribute the money appropriated for the purposes of the demonstration program during four funding rounds commencing on January 1, 1983. Each funding round entails a six-month period of time.

D. Amount distributed per round. During each funding round, the board shall distribute one-fourth of the money appropriated for the purposes of the demonstration program, and of the monies distributed each funding round, at least 70 percent shall be distributed as loans and the remainder shall be distributed as grants. In the event that projects awarded loans are not eligible for grants, during a specific funding round, the board may use the unobligated grant moneys to award additional loans or may carry the unobligated grant monies forward for use in the next funding round.

E. Differences between application requests and available funds. If the board receives more applications which are eligible for grant or loan assistance in a specific funding round than the board has funds available, those eligible applicants not receiving funding may resubmit applications in future funding rounds. If the board does not receive enough eligible applications for grant and loan assistance in a specific funding round to fully obligate the funds available for that funding round, the balance shall carry forward and be available as additional funds in the following funding round.

TAX COURT

Pursuant to Minn. Stat. § 271.06, subd. 1, an appeal to the tax court may be taken from any official order of the Commissioner of Revenue regarding any tax, fee or assessment, or any matter concerning the tax laws listed in § 271.01, subd. 5, by an interested or affected person, by any political subdivision of the state, by the Attorney General in behalf of the state, or by any resident taxpayer of the state in behalf of the state in case the Attorney General, upon request, shall refuse to appeal. Decisions of the tax court are printed in the *State Register*, except in the case of appeals dealing with property valuation, assessment, or taxation for property tax purposes.

State of Minnesota

Tax Court

Robert R. and Helen Truex,

Appellants,

v.

The Commissioner of Revenue,

Appellee.

In the matter of the Appeal from the Commissioner's Order dated December 9, 1980, relating to the income tax liability for the years 1976, 1977 and 1978.

Order dated November 5, 1982

Docket No. 3246

The above entitled matter came on for hearing before the Minnesota Tax Court at 444 Lafayette Road, St. Paul, Minnesota, on June 15, 1982, Judge Earl B. Gustafson presiding and was submitted to the Court for decision on post-trial memoranda.

Harold E. Farnes, attorney at law, Waconia, Minnesota, appeared on behalf of Appellants.

Linda F. Close, Special Assistant Attorney General, appeared on behalf of Appellee.

Syllabus

A taxpayer's domicile requires bodily presence in a state coupled with an intent to make that place one's permanent home. The question of intent is a fact question gathered from a person's acts and declarations. The evidence supports a finding that Appellants intended to make the State of Florida their home.

Findings of Fact

1. Appellants, husband and wife, are cash-basis taxpayers. The taxable years in issue are calendar years 1976, 1977 and 1978.

2. Appellant Robert Truex was employed as a pilot by Northwest Airlines from March 11, 1943, until his retirement in April 1978.

3. In 1950 Appellants built a home at 2835 Inner Road, Wayzata, Minnesota, on land owned by Lakeside Methodist Assembly. In January 1978, Appellant renewed the original, twenty-five year ground lease for an additional twenty-five year period. Appellants continue to own this home to the present date and do not intend to sell it, in part because they stay at the home whenever they are in Minnesota.

STATE OF MINNESOTA

WASTE MANAGEMENT BOARD

In the Matter of the Proposed Adoption of Rules of the State Waste Management Board Governing Solid Waste Demonstration Grant Program	)))))	FINDINGS OF FACT AND CONCLUSIONS

Notice of the proposed adoption of the above-referenced rules was published in the State Register on November 22, 1982. Notice of the proposed adoption of rules was also served upon all persons, associations, and other interested groups registered with the State Waste Management Board for that purpose.

After affording interested persons an opportunity to comment, having considered all of the evidence adduced upon the records, files, and proceedings herein, the Waste Management Board makes the following:

FINDINGS OF FACT

1. By an Order dated November 16, 1982, the Chairman of the Waste Management Board directed that a Notice of Intent to Adopt Rules Without Public Hearing in the above-captioned matter be given to all persons who had registered their names with the Board, and that the Notice be published in the State Register.

2. The Notice of Intent to Adopt Rules Without Public Hearing was published in the State Register on November 22, 1982. 7 S.R. 791.

3. The Notice of Intent to Adopt Rules Without Public Hearing was sent to all persons who had registered their names with the Board.

4. Only one comment on the rules was received. There were no requests for a public hearing.

5. Section 8.401X. of the rules is amended by adding the words "or energy" to the definition of waste processing facilities. One of the types of projects which is eligible for grants or loans is energy recovery facilities. The change makes it clear that such a facility would fall within the definition of waste processing facilities.

6. Section 8.405E. is amended to make it clear that waste supplies need not be actually committed at the time an application is submitted. The change requires documentation that indicates commitment of waste supplies at the time the grant or loan agreement is executed. The change was made in response to the Pollution Control Agency's concern that local government units will not be able to obtain waste supply commitments until all of the financing for the project, including a Board grant or loan, is in place.

7. Section 8.406B. is amended to insert the word "received" for the word "postmarked" as the basis for determining whether an application has been timely filed. The change provides a more certain deadline and makes the section consistent with the language in section 8.407A.

8. Section 8.408B.2. is amended by deleting the phrase "or long term contracts." The phrase was deleted as redundant based on the suggestion of the Pollution Control Agency.

9. Section 8.411B. is amended by substituting the word "rescission" in the title for the word "cancellation" and by substituting the word "rescinded" for the word "canceled" in the text. The change is made upon the Pollution Control Agency's suggestion that the "cancellation" of a loan or grant might indicate that no repayment was necessary. The use of the word rescission was believed to be clearer. p.15

10. Section 8.411E. is amended by changing the phrase "desires to sell" on line 30 to "sells." This technical amendment is made to clarify the fact that a loan is not due and payable unless the local government unit actually sells a facility. Public comment was not received on this issue. p.16

CONCLUSIONS

1. The modification in the rules from the version published in the State Register on November 22, 1982 do not result in a substantial change in the proposed language.

2. The rules as adopted, including the modifications in the proposed language, are needed and reasonable.

3. The Waste Management Board has complied with the rulemaking procedures for non-controversial rulemaking set out in Minn. Stat. § 14.0412, subds. 4-4.

Dated: January 27, 1983

ROBERT G. DUNN
Chairman
Waste Management Board

STATE OF MINNESOTA

WASTE MANAGEMENT BOARD

In the Matter of the Proposed Adoption of Rules Relating to the Solid Waste Processing Facilities Demonstration Program	)))))	CERTIFICATE OF BOARD'S RESOLUTION ADOPTING RULES

I, Robert G. Dunn, do hereby certify that I am a member and the Chairman of the Minnesota Waste Management Board, a board duly authorized under the laws of the State of Minnesota, and that the following is a true, complete, and correct copy of a resolution adopted at a special meeting of the Waste Management Board, duly and properly called and held on the 20th day of January, 1983, that a quorum of the Board was present at the meeting, that a majority of those present voted for the resolution, and that the resolution is set forth in the minutes of the meeting and has not been rescinded or modified.

> RESOLVED, that the rules relating to the Solid Waste Processing Facilities Demonstration Program 6 MCAR § 8.401-8.412 be and they hereby are approved and adopted, pursuant to authority vested in us by Minnesota Statutes 115A.49, and that Robert G. Dunn, the Chairman of the Waste Management Board, be and hereby is authorized to sign an Order adopting these rules and further is authorized to perform the necessary acts to provide that these rules shall have the force and effect of law.

IN WITNESS WHEREOF, I have hereunto subscribed my name this 20th day of January, 1983.

Robert G. Dunn
(Officer of the Board)

Keith S. Kantero
Attest by one other Board Member

STATE OF MINNESOTA

WASTE MANAGEMENT BOARD

In the Matter of the Proposed
Adoption of Rules Relating to
the Solid Waste Processing
Facilities Demonstration Program
6 MCAR §§ 8.401-8.412

STATEMENT OF NEED
AND REASONABLENESS

I. INTRODUCTION

The subject of this rulemaking proceeding is a set of proposed rules governing the award of grants and loans for capital costs of solid waste processing facilities. Pursuant to Minn. Stat. §§ 115A.49 through 115A.54, the Waste Management Board is to encourage and assist cities, counties, and solid waste management districts in the development and implementation of solid waste processing facilities and transfer stations of potential statewide application or significance and to transfer the knowledge and experience gained from such projects to other communities in the state.

The statute requires that the program be administered so as to demonstrate the application of feasible and prudent alternatives to disposal and further specifies several program priorities which must be considered in the review and selection of projects. Minn. Stat. § 115A.49. In addition, applications for assistance under the program must conform to several specific requirements set out in the statute. Minn. Stat. § 115A.51.

The Waste Management Board must provide technical and financial assistance for the acquisition and betterment of waste processing facilities and transfer stations from revenues derived

from the issuance of bonds authorized by section 115A.58. The statute places several limitations on grant and loan awards. Minn. Stat. § 115A.54, subd. 2. In addition, the obligations of grant and loan recipients are as set out in the statute. Minn. Stat. § 115A.54, subd. 3.

As required by Minn. Stat. § 115A.12, the Waste Management Board consulted with the Solid Waste Management Advisory Council on drafts of the proposed rules. In addition, a draft of the proposed rules was distributed by mail to potentially interested parties, including professional and trade associations and state and other government agencies concerned with waste management. Comments received as a result of the draft rule distribution were presented to both the Solid Waste Management Advisory Council and the Waste Management Board.

Notices of Intent to Solicit Outside Opinion concerning this rule were published in the State Register on December 1, 1980 and on September 28, 1981. 5 S.R. 904, December 1, 1980; 6 S.R. 543, September 28, 1981. No written comments were received in response to these Notices.

Rules 6 MCAR §§ 8.401-8.412 identify eligible project costs and eligible projects; specify grant and loan application contents; establish grant and loan application procedures; provide application deadlines; establish project review and evaluation criteria; set limitations on grant and loan awards; and specify the contents of grant and loan agreements.

II. NEED FOR THE PROPOSED RULES

The Waste Management Board is required by Minn. Stat. § 115A.49 to promulgate rules to govern its activities in awarding grants and loans. These rules are thus needed to fulfill this statutory obligation. In addition, the rules are needed to provide a coordinated and logical review and selection process in awarding grants and loans.

III. REASONABLENESS OF THE PROPOSED RULES

6 MCAR 8.401 DEFINITIONS

Most of the terms defined in Section 8.401 are terms frequently used throughout the rules. Definitions are provided for clarity and consistency. These terms include board, chairperson, cities, comprehensive solid waste management plan, disposal, final engineering/architectural plans, funding round, mixed municipal solid waste, on-site utilities, preliminary engineering/architectural plans, processing, recipient, resource recovery, resource recovery facility, solid waste, solid waste management district, transfer station, waste processing equipment and waste processing facility.

A few terms are more substantive in nature. The reasonableness of the definitions of these terms in set forth below.

Section 8.401I. - Institutional Arrangements

In addition to qualifying as a "demonstration" project based on the technology utilized, a project may also quality if it demonstrates "institutional arrangements" which differ from those previously utilized in the state. Thus, it is important that the term institutional arrangements be clearly defined. The definition properly recognizes a variety of arrangements which could affect the viability of a project and which, if utilized in one project, could demonstrate the usefulness of the project to other communities in the state.

Section 8.401R. - Solid Waste Disposal Facilities and Equipment

Minnesota Statutes § 115A.49 establishes a program to demonstrate alternatives to the disposal of solid waste. Disposal facilities and equipment are, therefore, not eligible for funding. Solid waste disposal facilities and equipment are thus clearly defined so that applicants are able to determine whether a project could be expected to qualify for a grant or loan.

Section 8.401T. - Special Waste Stream

While most resource recovery projects fall within the four generic categories set out in the rules (waste to energy; materials recovery; chemical, physical or biological modifications; or transfer stations), projects to handle unique waste streams may not fall within any of these categories. To ensure that grants or loans could be made available to the widest range of possible projects and to encourage innovation, a special

waste stream category was included. Because this category is broad, a definition is necessary to focus the types of projects for which grant or loan applications may be submitted. The definition and the examples provide the needed focus.

Section 8.401U. - State-wide Application or Significance

Minnesota Statutes § 115A.49 requires that projects must be of "state-wide application or significance" to qualify for a grant or a loan. What constitutes state-wide application or significance is, however, undefined. While a project need not be applicable to the entire state it may still be of state-wide "significance" if it serves as a model for the resolution of solid waste problems in one or more additional communities in the state. Thus, the definition in the rules provides that a project is of state-wide application or significance if it is capable of demonstrating an alternative to disposal in other communities in the state. On a comparative basis though, projects having a wider application are more likely to be funded under the evaluation factors set out in Section 8.409C.6.

6 MCAR 8.402 - PURPOSE

This section cites the statutory authority for the rules and indicates the types of projects that the Board may consider in awarding grants and loans.

6 MCAR 8.403 - ELIGIBILITY CRITERIA

This rule specifies the requirements pertaining to eligible applicants, projects, and costs. It also identifies specific costs which are not eligible for assistance. This rule is necessary to ensure that those persons reviewing the rules will know whether or not they qualify as an eligible applicant; whether or not their project qualifies as an eligible project; and whether or not the costs that would be incurred in implementing the project are eligible costs.

Section 8.403A. - Eligible Applicants

This section reflects the statutory restriction of applicants to cities, counties and solid waste management districts. See Minn. Stat. § 115A.50.

Section 8.403B. - Eligible Projects

This section limits eligible projects to those which demonstrate feasible and prudent alternatives to land disposal as required by Minn. Stat. §§ 115A.49 and 115A.51. Obviously projects which demonstrate a feasible technology not now in operation in Minnesota would qualify under the limitations. However, because of the geographical diversity of the state and the significantly different characteristics of different regions of the state, a project may be in operation in the state but be of uncertain application to other geographic areas of the state. Thus, it is reasonable to fund additional projects of the type already in existence if it can be demonstrated that the proposed

project location has different characteristics relative to the management of wastes than does the area where a facility is currently in existence.

Section 8.403B. also provides that a conceptually and technically feasible project may qualify as a demonstration project if it demonstrates institutional arrangements which have not been previously utilized. Often the most difficult aspect of establishing solid waste resource recovery projects is showing communities that the necessary financing, marketing, procurement, methods of securing of waste supply, and the arrangements between units of government can be accomplished. Thus, projects which are able to demonstrate how these questions can be successfully resolved will likely advance the use of resource recovery facilities in the state in accordance with the policy of the Waste Management Act.

Since Minn. Stat. § 115A.49 requires technology funded under the Act to already be feasible and prudent, it is reasonable to assume that few projects will be necessary in which the purpose of the project is to prove that the technology mechanially works in Minnesota. Rather, most projects will likely demonstrate the "application" of the mechanically proven technology to unique financing, marketing, procurement, waste supply or intergovernmental situations in the state.

Section 8.403C. - Eligible Costs

Minnesota Statutes § 115A.54 limits the eligible costs for waste processing facility grants and loans to capital costs.

Waste processing equipment, structures necessary to house the equipment, associated on-site utilities and final design work are typically considered capital costs and should thus be eligible for grant or loan funding.

Section 8.403D. - Ineligible Costs

Costs associated with the acquisition of land are excluded since Minn. Stat. § 115A.54, subd. 1 states that the funds are provided for the acquisition of "facilities and transfer stations," indicating that land costs were not to be included. Further, with the limited amount of money available, the Board decided that the funds would be better spent on the actual waste processing equipment, structures to house the processing equipment, and transfer stations. Costs relating to structures for housing and maintenance of rolling stock are ineligible since they are not directly related to the resource recovery equipment. Costs relating to resource recovery studies, feasibility analyses or preliminary design and engineering are ineligible because they are not considered to be capital cost items.

6 MCAR 8.404 INFORMATION REQUIRED ON GRANT AND LOAN APPLICATIONS

This rule describes the information that must be provided by the grant and/or loan applicant. In order to conduct a meaningful review and evalution of each project proposal, the Board must have an adequate level of information about the

applicant and the proposed facility. Much of this information is required by Minn. Stat. §§ 115A.51 and 115A.54. The specific justification for each type of information specified in 6 MCAR 8.404 is as follows.

1. The name(s) of the (each) applicant is necessary to allow the Board to identify and contact the applicant.

2. It is necessary to identify each effected political subdivision so that they may be contacted and a determination of the measure of support for the proposed waste processing facility may be made.

3. These resolutions are necessary to meet the statutory requirements specified in Minn. Stat. §§ 115A.51 and 115A.54, subd. 3.

4. The name(s), qualifications, and address(es) of the project manager(s) is necessary to allow the Board to identify, review the qualifications of, and contact the project manager(s).

5. The name(s) and qualifications of the facility operator(s) is necessary to allow the Board to identify, review the qualifications of, and contact the facility operators. The Board realizes that this information may not be available at the time the application is submitted.

6. The total capital cost of the facility is necessary to meet the statutory requirement specified in Minn. Stat. § 115A.54, subd. 2.

7. The total grant and/or loan eligible cost of the project is necessary because this cost will generally be different from the total capital cost. This cost will be considered by the Board in determining the actual award amounts.

8. The amount of grant and/or loan funding requested is necessary because this amount will generally be different from the total capital cost and also different from the total grant and/or loan eligible amount. In addition, the Board will consider this amount in making actual grant and/or loan awards.

9. The amount and soures of all other funding contributions, including the amount of funds to be contributed by the applicant is necessary to meet the statutory requirement specified in Minn. Stat. § 115A.54, subd. 2.

10. Information on the types of assistance (loan or loan and grant) applied for is necessary because the Board has established additional evaluation factors which will be considered in making grant awards.

11. Information on the type of waste processing facility for which the grant and/or loan is being applied for is necessary because of the project evaluation and selection methodology set out in 6 MCAR § 8.409.

6 MCAR 8.405 DOCUMENTATION REQUIRED TO BE SUBMITTED WITH THE GRANT AND LOAN APPLICATION

This rule describes the documentation that must be provided by the applicant. This documentation is necessary to meet the

requirements set out in Minn. Stat. § 115A.51. The specific justification for each type of documentation specified in 6 MCAR 8.405 is as follows.

A. A conceptual and technical feasibility report is necessary to meet the statutory requirement specified in Minn. Stat. § 115A.51 that only projects which are conceptually and technically feasible be considered for funding. The review of alternative technologies considered by the applicant is also necessary to comply with Minn. Stat. § 115A.51. The other items required in the feasibility report are of importance in determining whether the project will qualify as a demonstration project.

B. A financial feasibility report is necessary to meet the statutory requirement specified in Minn. Stat. § 115A.51.

C. Adequate planning is an inherent requirement to the development and successful operation of waste processing facilities. In order to provide assurance to the Board that an adequate level of planning has been accomplished, the Board has determined that a comprehensive solid waste management plan conforming to Minn. Stat. § 115A.46 is necessary. The Board is authorized to require the completion of a plan by Minn. Stat. § 115A.51. The plan should include an assessment of all the viable alternatives available to the applicant in solving its solid waste management problems to ensure that a comprehensive review and evaluation has been conducted and to comply with the requirements of Minn. Stat. § 115A.51(d).

D. Preliminary design and engineering plans or specifications for the proposed facility are necessary to provide the Board with adequate information to conduct a project review and evaluation.

E-H. The documentation required in E-H is necessary for the Board to determine whether the requirements of Minn. Stat. § 115A.51(b) and (c) are met.

I. A report on the status of required permits from permitting agencies is necessary to provide the Board with information on the current status of the proposed project. This report may also provide the Board with information on the permitting agencies attitude toward the proposed facility.

J. A report on the proposed facility's development schedule or timeframe is necessary to conduct an adequate review and evaluation of the project and to determine whether funding should be provided at the time the project is being reviewed.

K. The resolutions are required to comply with Minn. Stat. § 115A.54, subd. 3.

L. A report documenting how a project area possesses characteristics different from the characteristics of the area where a facility is now in operation is necessary to determine if the project meets the demonstration requirements of the program.

M. A report which describes the institutional arrangements involved in a proposed waste processing facility is necessary because it may be those institutional arrangements under which the

Board would consider a proposed facility for financial assistance.

N. The Waste Management Act directs the Board to give priority to certain areas which are specified in Minn. Stat. § 115A.49. If an applicant requests priority on the basis of Minn. Stat. § 115A.49 it is necessary to document the existence of these conditions specified in Minn. Stat. § 115A.49 so that the Board may consider the project for priority status when evaluating and selecting projects.

O. The Waste Management Board has established additional factors to be considered in making grant awards. An applicant who is requesting a grant must submit a report which discusses the factor or factors in 6 MCAR 8.410.B. applicable to the project so that the Board is able to decide whether or not to make the grant award.

6 MCAR 8.406 GRANT AND/OR LOAN APPLICATION PROCEDURES

The Waste Management Board's decision to distribute the grant and loan funds over a period of four funding periods was based upon the rationale that not all of the eligible applicants will have had enough time to prepare the required documentation to be submitted with an application by the time the program starts. To allow communities in different stages of developing resource recovery programs an adequate period of time to prepare the required documentation, the Board felt it was necessary to spread the distribution of available funds over several funding rounds.

6 MCAR 8.407 INITIAL REVIEW

This section outlines the procedures that will be followed once an application is received by the Waste Management Board. The section provides a clear understanding of the initial review process. This initial review indicates that applications must be received within defined time periods, and specifies that the applications will be reviewed for eligibility, completeness and adequacy of the required documentation. Review of the application and associated documentation simply involves a determination of whether the statutory requirements and the requirements of these rules are met. Thus, the task is delegated to the chairperson of the Board.

This section also specifies defined time periods for applicants to correct and resubmit applications which have been determined to be incomplete or inadequate. These defined time periods are necessary to allow the Board to complete its review and proceed with the evaluation and selection process in a timely fashion. The section also ensures that applicants will have time to revise their applications to comply with the requirements set out in these rules.

The section further specifies that, as part of the review of the documentation, applications will be reviewed by other agencies so that their evaluations and recommendations will be considered by the Board when determining whether the documentation is adequate. Consultation with other agencies is necessary because

these agencies possess areas of expertise required in evaluating the documentation that may not be available within the Board's staff.

6 MCAR 8.408 PROJECT TYPE EVALUATION

Section 8.408A. - Process of Evaluation

Waste processing facility project applications submitted to the Waste Management Board will be reviewed and evaluated utilizing a two-stage procedure. The procedure will include one stage wherein all projects that have completed the initial review will be compared with projects of similar technology on the basis of technology specific factors. The second stage of the procedure will be to compare the top project in each technology type on the basis of legislated priorities and general program factors. The Board will then list projects in order of preference based upon the results of the comparisons. Projects will receive funding from the Board in the order that they are listed until funds for that funding round are expended.

The purpose of the first stage review is to identify the most promising project in each technology in each funding round. The purpose of the second stage review is to identify the projects in priority order based on statutory priorities, if applicable, the degree to which the project is useful in demonstrating a technology or institutional arrangements throughout the state, and the quality of the project.

A factor analysis rather than a point scoring system was utilized because the Board determined that points could not be assigned to each project in any rational manner. Instead, the Board decided that it could more accurately evaluate the merits of projects by assessing the projects in each category in the first stage, and the top project in each category in the second stage in relationship to the facts on each assessment factor. These facts will be provided through the extensive documentation requirements mandated in these rules and by statute. While this system may not be as easy to apply as a point system, it provides a better, more accurate and more understandable assessment of the merits of the projects under consideration.

The two stage analysis is utilized to ensure that projects of varying types are among the finalists for grants and loans. Since the program is designed to demonstrate a wide range of resource recovery technologies, it would be inappropriate to have only one type of technology among the finalists. However, any set of evaluation factors may favor one technology over another. By separating the analysis into two stages, factors can be applied to pick finalists for each category rather than risk the possibility that application of the evaluation factors could lead to selection of all of the finalists from a single technology category.

Section 8.408B. - General Factors

Factors have been developed for each of the five eligible technology types to assist the Board in evaluating project

proposals. The specific justification for each factor specified in 6 MCAR § 8.408 is as follows:

1. Operating Capacity. Operating capacity provides information on the operating characteristics of the proposed facility. The information obtained will assist the Board in evaluating the extent to which a proposed facility would be able to solve an area's solid waste management problems.

2. Market Viability. Market viability is a necessary factor because it provides information on market existence, volume, value, and variability. If there are market variations this factor would indicate whether the variations are matched with or non-concurrent with product variations. This factor would also provide information on the status of contracts to purchase the proposed facilities product. The information obtained will assist in assessing the economic viability of projects of the type proposed.

3. Residual Waste. Residual waste is a necessary factor because it would provide information on the amount of waste that the proposed facility would ultimately landfill. Projects which result in smaller quantities of residual waste are more desireable since they may aid in the abatement of landfilling. This factor is used only in those technology types where appropriate.

4. Waste Supply. Waste supply is a necessary factor because it provides information on the mechanism that is necessary to assure that the waste generated within a project area and intended

for the proposed processing facility will be available. A solid waste stream becomes a resource or valuable input when a waste processing facility is built for that waste stream. The flow of waste to such a facility must be assured at the quantity planned and for the lifetime of the project to achieve the various objectives--environmental and economic--intended for the project. Waste flow and facility capacity should be well matched; solid waste should not be stored for future use for any appreciable time period.

5. Product effectiveness. Product effectiveness is a necessary factor because it provides information on the quantity, quality and variability of the product. The information obtained is necessary in making further assessments on the market viability of the product. The actual measure used to assess product effectiveness in each of the appropriate technologies has been designed to fit the individual technology being evaluated. This factor is used only in those technology types where appropriate.

6. Cost Effectiveness. Cost effectiveness is a necessary factor because it provides cost/benefit information on the proposed facility. Information obtained from this factor will assist in evaluating both capital costs and annual costs against the revenues received. This information will be necessary to assess the financial feasibility of the proposed facility and to ascertain whether similar projects are likely to be feasible elsewhere in the state. The actual measure used to assess cost

effectiveness in each of the technology types has been designed to fit the individual technology being evaluated.

7. Revenue. Revenue is a necessary factor because it provides information on one component of the required financial analysis. The financial analysis will be incorporated into the financial feasibility report for the proposed project. This factor is used only in those technology types where appropriate.

8. Other Materials Required or Used in Process. Other materials required or used in a process is a factor used only in the chemical, physical, biological modification technology type. This factor is necessary to assess the costs incurred and the benefits obtained from using other raw materials in processing solid waste.

9. Mileage and Fuel Savings. Mileage and fuel savings is a factor used only in the transfer stations category. This factor is necessary to assess the economic benefits of the proposed facility in terms of cost savings. This approach is used because a facility of this type will not have any revenues except those generated from tipping fees. The major economic benefits are expected to be in the area of cost savings through reduced haul distances.

6 MCAR 8.409 EVALUATION OF PROJECTS SELECTED FROM EACH CATETORY

This section describes the second stage of the project type evaluation procedure referred to in the previous section of this statement. The procedure indicates that the top projects selected

from each technology type will be compared on the basis of legislated priorities and general program factors. The evaluation procedure is designed to allow the Board to give priority to those top projects which meet the legislated priorities set out in Minn. Stat. § 115A.49 and to list the top projects in order of preference based upon the general program factors set out in section 8.409.

The general program factors have been developed to assist the Board in evaluating project proposals. The specific justification for each factor specified in 6 MCAR 8.409 is as follows.

1. Market Character. Market character is a necessary factor because it will provide basic information on the location; occurrence and assurance of potential markets. The information obtained will become part of the required market analysis for the proposed facility.

Market analysis is very complex, requiring sophisticated techniques that are frought with risk. A clear statement of methodology is required, including a description of the target market. Also, it is often necessary to assess the economic viability of a target-market. Intentions and capabilities must be clearly differentiated. It is not merely sufficient to show paper commitment when the market is financially suspect. At a minimum, the proper documents must be executed by persons authorized to make commitments for such projects. A clear description of what exactly is being provided is also necessary, such as pressure and

temperature of steam, delivered to a specific location or price and quality relationships for recovered materials. Projects with more definite markets will be favored.

2. Landfill Abatement. One of the basic purposes of the Waste Management Act is the abatement of landfills. Minn. Stat. § 115A.02(c). Thus, projects which will provide a greater degree of abatement will be favored.

3-4. Capital Cost and Cost-effectiveness. Projects with lower capital costs and those which are most cost-effective are more likely to succeed than more expensive projects or less cost-effective projects, other factors being equal. Thus, projects involving lower capital costs and projects which are more cost-effective will be favored.

5. Other Projects. Since the grant and loan program is designed to demonstrate a wide range of technologies, a project should be favored if few projects of the type have been funded by the Board in comparison to other project types.

6. Degree of Demonstration. Some projects will be more applicable to a wider range of communities in the state than will other projects. Projects which demonstrate technology or institutional arrangements to a greater number of communities than other projects will be favored.

6 MCAR 8.410 AWARD OF GRANTS AND LOANS

Section 8.410A. - General Procedure

This subsection describes the procedure and specifies the order in which the Board will award grants and loans. The subsection provides an orderly distribution of available funds based on the earlier evaluation of projects.

Section 8.410B. - Factors in Awarding Grants

B. This subsection describes the specific factors that will be considered by the Board in evaluating requests for grant assistance.

Grants may be awarded if a unit of government assumes a risk in undertaking a project. A grant is reasonable in this case to underwrite some of the risk since, once the technology is demonstrated, the risk may not be as great for other units of government.

Grants may also be awarded where the local government has made a substantial investment of its own funds to a project since the investment indicates commitment on behalf of the local government to the project. Where such a commitment is evidenced a grant, rather than solely a loan requiring an even further commitment of local funds, is appropriate.

Finally, a grant is appropriate where, because of the financial capacity of the local government, a local goverment would not be able to undertake the proposed project without a grant.

Section 8.410C. - Amount of Awards

This subsection specifies that the Board will set the amount of any grant and loan award. This is necessary so that the Board may award levels of assistance that are adequate to implement the project while also funding as many demonstration projects as possible with the available funds.

Section 8.410D. - Maximum Awards

Since resource recovery projects may be very expensive and since the funds available to the Board are limited, it is important to limit the maximum award to assure that several demonstration projects are funded under the program. Only in this way can the maximum effectiveness of the program be achieved. Still, award limits must be high enough to provide significant support to the projects. The limits set in this subsection are a reasonable compromise of the competing interests.

Section 8.410E. - Limitations

This subsection prohibits double funding for the same costs. It also requires that the Board ascertain that the cost of project is fully funded before making an award as required by Minn. Stat. § 115A.54, subd. 3. Finally, awards are limited to costs incurred during the grant or loan period to ensure the program is not used to simply reimburse local governments for expenses that had been already incurred.

6 MCAR 8.411 GRANT AND/OR LOAN AGREEMENT

This rule specifies the contents of the grant and/or loan agreement that will be entered into by the Board and the recipient. The rule provides reasonable and ordinary conditions to comply with the requirements of Minn. Stat. § 115A.54 and to establish the rights and obligations of the Waste Management Board and the local unit of government. This is necessary to set out the conditions under which grants and loans are awarded.

6 MCAR 8.412 APPORTIONMENT

This rule specifies both statutory requirements and general administrative procedures which are necessary to assist in the understanding of the grant and/or loan award process and to comply with Minn. Stat. § 115A.54, subd. 2.

STATE OF MINNESOTA

WASTE MANAGEMENT BOARD

In the Matter of the Proposed Adoption of Rules Relating to the Solid Waste Processing Facilities Demonstration Program	)))))	STATEMENT OF COMPLIANCE WITH RULEMAKING PROCEDURES

I, Special Assistant Attorney General LeRoy C. Paddock, do hereby delcare that I have examined the proposed rules and all related documents and that, based on my examination and my personal familiarity with the applicable procedures, the Administrative Procedure Act, the rules of the Office of Administrative Hearings, and the rules of the Attorney General have been followed. Any exceptions are noted below.

LeRoy C. Paddock
Special Assistant
Attorney General

Dated: Jan. 27, 1983

In the Matter of the Proposed
Adoption of Rules of the
State Waste Management Board
Governing Solid Waste
Demonstration Grant Program

AFFIDAVIT OF MAILING
NOTICE OF SUBMISSION
TO THE ATTORNEY GENERAL

STATE OF MINNESOTA)
) ss.
COUNTY OF HENNEPIN)

EDWARD WELSCH, being first duly sworn, deposes and says:

That no requests for Notice of Submission to the Attorney General were received in connection with the above-captioned rulemaking proceeding.

Edward E Welsch
EDWARD WELSCH

Subscribed and sworn to before me
this 27th day of January, 1983.

Beatrice L. Szymo
Notary Public

BEATRICE L. SZYMI...
NOTARY PUBLIC—MINNESOTA
HENNEPIN COUNTY
MY COMMISSION EXPIRES AUG. 1, 19...