

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

Our File No. 1156

RULE REVIEW CHECKLIST

DATE RULE RECEIVED 5-10-85
DATE FOR REVIEW _____
DATE DUE 5-24-85

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

Approved 5/24/85 (CDS) Disapproved _____ Returned to Agency _____

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

Date filed w/Secretary of State 5-24-85 Revisor approved _____ disapproved _____

✓ Rule as Adopted

✓ Rule as Proposed

✓ Order Adopting 4.24.85 Date ✓

N/A Notice of Intent to Solicit Outside Opinion

✓ Order for rulemaking
N/A date of Hearing

✓ Certificate of Board's Authorizing Resolution

✓ Notice of rulemaking
✓ Sufficiency

✓ Affidavit of Mailing Notice or rulemaking ✓
3.15.85 At least ~~30~~ 25 days prior to hearing/adoption

✓ Mailing list Certificate ✓

✓ Publication in State Register
3.18.85 At least ~~30/20~~ 25 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

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

N/A Affidavit of Mailing Notice of Submission to Attorney General

✓ Notice of Submission to the Attorney General

to Larry
fm mjc

re Deed rule - on ⓞ (tires)

OK
LTS 5/22/85

- as per discussion with Christie Eller, the following ~~[illegible]~~ changes will be made in the rule by Friday

1. pg 3, line 14-15
   pg 3, line 17-18
   pg 3, line 24
   } after the word "authority" insert "under ~~[illegible]~~ generally accepted commercial lending standards"

2. pg 4, line 5
   pg 4, line 10
   pg 4, line 19
   } the words "should" or "may" must be changed to "must"

3. pg 8, line 14 - sentence → ("the commissioner may rqe documentation, ...) must be moved up to line 10 on pg 8; so it is before "this info is rqd.

4. pg 8, line 21-22 - delete "; and will determine,"

There supposed to be also submitted a supplemental EE C + Order

To: Marty.
Date: 5.14.85.
Re: DEED — Waste Tire Recycling Loan Program.

Rules as Adopted

p.3, lines 14, 17 — .3087 A. + B.
These sections permit the agency to determine what is "adequate" security without any criteria

p.3, line 23 — .3087 C.
This section permits the agency to require additional security for the loan without criteria.

p.4, line 5 — should = must

p.4, lines 10, 19 — .3088 B + C.
Permit agency discretion without criteria

p.8, line 15 — .3090, subp. 6.
Permits agency discretion without criteria.

→ p98, line 21

SF-00006-03

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL - Bremer Tower **Office Memorandum**

TO: JUDITH WEHRWEIN
Office of Attorney General
2nd floor Administration Building
50 Sherburne Avenue

DATE: 5-10-85

FROM: CHRISTIE B. ELLER CBE
Special Assistant Attorney General

PHONE: 6-9200

SUBJECT: In the Matter of the Adoption of Emergency Rules of the Minnesota Energy and Economic Development Authority Governing the Waste Tire Recycling Loan Program.

Enclosed please find the following documents relating to the above-entitled proposed emergency rules:

1. Certificate of the Authority's Authorizing Resolution to Adopt Emergency Rules.
2. Certificate of the Authority's Resolution Ordering Publication.
3. Written comments together with responses thereto.
4. Certificate of Compliance with Rulemaking Procedures.
5. Order For Notice of Intent to Adopt Emergency Rules without Public Hearing.
6. Findings of Fact and Conclusions.
7. Emergency Rules as Proposed.
8. Emergency Rules as Adopted (original and 1 copy).
9. Order Adopting Rules (original and 1 copy).
10. Mailing List Certificate.
11. Affidavit of Mailing.
12. Copy of State Register.

RECEIVED
MAY 10 1985
ATTORNEY GENERAL
ADMINISTRATIVE AGENCIES

The Minnesota Energy and Economic Development Authority (the Authority), the successor to the Small Business Finance Agency, is authorized to adopt rules for waste tire recycling under Minn. Stat. § 116M.07, subd. 3 and emergency rules for all its programs by Minn. Stat. § 116M.08, subd. 4 (1984). The Authority is an agency which is authorized to issue bonds to obtain funds to implement its programs. See Minn. Stat. § 116M.08, subd. 11 (1984). Thus, under Minn. Stat. § 14.29, subd. 3 (1984), the Authority may continue to adopt emergency rules governing its programs without regard to the 180-day limit to Minn. Stat. § 14.29, subd. 2 (1984).

SF-001006-03

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL

Office Memorandum

TO: MARK B. DAYTON, Chairman
Minnesota Energy & Economic Development Authority

DATE: 5-24-85

ATTN: CHRISTIE B. ELLER
Special Assistant Attorney General

FROM: LARRY D. STARNS LDS
Special Assistant Attorney General

PHONE: 297-3493

SUBJECT: In the Matter of the Proposed Emergency Rules of the Minnesota Energy & Economic Development Authority Relating to the Waste Tire Recycling Loan Program.

The above-referenced rule has been approved as to its legality by the Attorney General on May 24, 1985.

Enclosed is the agency's copy of the approved rule. This office has already filed two copies of the approved rule with the Secretary of State, who will forward one copy to the Revisor of Statutes. The fourth copy is being retained by this division of the Attorney General's Office for its records.

Also enclosed are any petitions, requests, submission or comments received by the agency and any extra copies of documents which the agency submitted to the Attorney General.

In order for a permanent rule without a hearing to become effective, your agency must publish a notice of adoption in the State Register in accordance with Minn. Stat. § 14.27. An emergency rule becomes effective five working days after approval by the Attorney General; however, the agency must publish a notice in the State Register in accordance with Minn. Stat. § 14.34.

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

LDS(sz)

Enclosures

cc: Executive Director
Legislative Commission to Review
Administrative Rules

Chief Administrative Law Judge
Office of Administrative Hearings

Department of Energy and Economic Development

Adopted Emergency Rules Relating to Waste Tire Recycling Loan Program

Emergency Rules as Adopted

CHAPTER 8300

DEPARTMENT OF ENERGY AND ECONOMIC DEVELOPMENT

WASTE TIRE RECYCLING LOAN PROGRAM

8300.3081 [Emergency] PURPOSE.

The purpose of the waste tire recycling loan program is to issue loans to finance acquisition of land, buildings, or equipment, installation of equipment, construction of buildings, and capital improvements for waste tire processing.

8300.3082 [Emergency] DEFINITIONS.

Subpart 1. **Scope.** For purposes of parts 8300.3081 to 8300.3090 [Emergency], the terms used in those parts have the meanings given to them in Minnesota Statutes, section 116M.03 and this part.

Subp. 2. **Act.** "Act" means the Minnesota Energy and Economic Development Authority Act.

Subp. 3. **Commissioner.** "Commissioner" means the commissioner of energy and economic development.

Subp. 4. **Eligible borrower.** "Eligible borrower" means a person, partnership, firm, or corporation engaged in, and determined by the authority to constitute, a waste tire recycling business.

Subp. 5. **Eligible project.** "Eligible project" means a project for a waste tire recycling business, proposed by an eligible borrower, that meets the public purpose standards of part 8300.3089 [Emergency], subpart 5.

Subp. 6. **Waste tire recycling business.** "Waste tire recycling business" means a business engaged in waste tire processing.

APPROVED IN THE REVISOR OF STATUTES OFFICE BY:

8300.3083 [Emergency] ELIGIBILITY FOR LOANS.

A waste tire recycling loan may be made only to an eligible borrower for eligible costs of eligible projects. No waste tire recycling loan may exceed $500,000 or 40 percent of the eligible project costs, whichever is less. The applicant shall provide the commissioner with written verification that at least ten percent of the eligible project costs have been or will be committed to the project by the applicant. The applicant shall provide the commissioner with a written commitment from the lender who provides the remaining 50 percent financing.

8300.3084 [Emergency] ELIGIBLE PROJECT COSTS.

Eligible costs for financing by the authority include any of the following costs for eligible projects:

A. land and building acquisition costs;

B. site preparation;

C. construction costs;

D. engineering costs;

E. authority fees including application fees of the authority;

F. contingency costs;

G. interest costs during construction;

H. legal fees incurred for the purposes of acquisition and construction; and

I. capital improvements including equipment.

8300.3085 [Emergency] INTEREST RATE.

The interest rate of a loan from the waste tire recycling loan program is five percentage points below a full faith and credit obligation of the United States government of comparable maturity, as of five working days before the day of closing of the loan, as determined by the authority. In the alternative, the authority may set interest rates at a negotiated rate after reviewing market rates and comparable sources of financing available to the applicant at the time the financial assistance is extended.

APPROVED IN THE REVISOR OF STATUTES OFFICE BY:

8300.3086 [Emergency] TERM OF LOAN.

The maximum term of a loan from the waste tire recycling loan program will not exceed the average useful life of the real property, or 80 percent of the useful life of the equipment or machinery, or the following limits, whichever is less:

A. for real property (land or buildings), ten years;

B. for equipment or machinery, seven years;

C. for a combination of items A and B, a weighted average of those years will be used.

8300.3087 [Emergency] SECURITY REQUIREMENTS.

All loans for either real property or equipment must be secured in accordance with the following requirements:

A. A real property loan must be secured by a second mortgage or other adequate security, as determined by the authority under generally accepted commercial lending standards.

B. Equipment loans must be secured by (i) a second lien on the equipment or other adequate security as determined by the authority under generally accepted commercial lending standards; or (ii) the personal guarantee of principal owners, officers, sole proprietors, partners, major shareholders, corporate officers, or other related entities such as subsidiaries or parent corporations of the borrower. Principal owners are those having 20 percent or more ownership.

C. Additional forms of security may be required by the authority under generally accepted commercial lending standards.

8300.3088 [Emergency] CONTENTS OF APPLICATION FOR LOANS.

To apply for a waste tire recycling loan, an eligible borrower must submit a completed application to the commissioner on a form provided by the commissioner. The application must contain or be accompanied by:

A. a comprehensive business plan containing information regarding the business including a three-year projection of the balance sheet, an income statement, identification of the source of other funds and a description of

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the intended use of those funds, an assessment of the potential of the business, and the written commitment of the lender required by part 8300.3083 [Emergency];

B. financial statements, including a profit-and-loss statement, and a source and use of funds statement current to the most recent quarter; when available, audited financial statements (including footnotes) ~~should~~ must be provided for the immediate past three years; if audited statements are not available, balance sheets, profit-and-loss statements, and source and use of funds statements from a three-year period shall be provided; borrowers who are sole proprietors of the business ~~may~~ must also be required to submit complete copies of their personal tax returns for the time periods specified, in addition to the financial statements required by this part;

C. applications from firms owned by individuals or from closely held corporations must also be accompanied by signed and dated personal financial statements from any officer, shareholder, or other person with at least a 20 percent interest in the company; in addition, if the application is made by an individual, copies of the borrower's personal tax returns for the immediately preceding three years ~~may~~ must be requested by the authority; and

D. personal credit references as required by part 8300.3090 [Emergency], subpart 4.

8300.3089 [Emergency] PROCEDURES FOR LOAN APPROVAL.

Subpart 1. **Preliminary eligibility review.** An application is considered to have been made upon the commissioner's receipt of a completed application with all required documentation and exhibits. The commissioner shall make a preliminary determination whether the application is complete and whether the borrower, project, and costs are eligible for consideration under the statutes and rules of the waste tire recycling program.

Subp. 2. **Notification of deficiencies.** If an incomplete application is received, the commissioner shall notify the borrower, specifying the deficiencies. The borrower has 60 days from the date of the commissioner's notification to complete

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such application in accordance with parts 8300.3081 to 8300.3088 [Emergency]. If an application is not made complete within 60 days of the date of the commissioner's notification of deficiencies, the application shall be rejected for processing and the borrower must resubmit the application at a later date if it is to be considered by the authority.

Subp. 3. **Approval for processing.** When an application is determined to be complete, the commissioner shall review the various components of the application and will assess the ability of the borrower to reasonably repay the loan.

Subp. 4. **Evaluation procedures.** The evaluation of the application shall be undertaken in accordance with the standards and requirements set forth in part 8300.3090 [Emergency] and the act. Applications which, in the judgment of the commissioner, meet the standards and requirements set forth shall be submitted to the authority with a recommendation for its approval at the earliest possible time. Applications which do not meet the criteria, standards, and requirements of parts 8300.3081 to 8300.3090 [Emergency] and the act shall not be submitted to the authority for its consideration until the application documents have been modified to conform to the standards of the program. If a completed application has not been modified to meet the program financial requirements within 60 days after submission, it is considered rejected and the borrower is required to submit a new application for further consideration. The borrower may in his or her discretion appeal directly to the authority for reconsideration of the commissioner's decision.

Subp. 5. **Requirements of public purpose.** Loan applications by eligible borrowers for eligible costs shall be recommended for approval by the authority only after the commissioner has determined that the project meets one or more of the following standards of public purpose:

A. that the project and its development is economically advantageous to the state and that energy sources to support the successful operation of the project are adequate;

B. that if the project has the effect of a transfer

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of jobs from one area of the state to another, that the project is economically advantageous to the state or that the project is necessary to the continued operation of the business enterprise within the state; and

C. that the project will assist in fulfilling the purposes of the act including the preferences in Minnesota Statutes, section 116M.06.

Subp. 6. **Priority.** The project will be given priority for funding among other loan applicants if:

A. the source of the tire supply is Minnesota tires;

B. the product of the waste tire recycling project is used in Minnesota;

C. if the tires are to be burned, the project is further from violating the air quality standards adopted by the Minnesota Pollution Control Agency than a competing project;

D. the recycling process produces a tangible product which is usable and marketable; or

E. the project produces an alternative energy resource.

Subp. 7. **Approval.** The authority may reject or disapprove any loan application that does not provide sufficient documentation or otherwise comply with the provisions of the act and parts 8300.3081 to 8300.3090 [Emergency]. If the authority approves a loan application, it shall pass a resolution directing the commissioner to prepare and execute the necessary loan documents.

8300.3090 [Emergency] LOAN STANDARDS.

Subpart 1. **General.** Loans may be approved by the authority only in accordance with the standards and procedures listed in this part.

Subp. 2. **Credit evaluation by commissioner.** The commissioner shall review all applications and supporting documents submitted by the borrower. For all loans, the commissioner shall make recommendations to the authority based upon an objective evaluation of the credit worthiness of the borrower, the extent to which the borrower might reasonably be

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expected to repay the loan, and the extent to which the state will benefit in the form of net new jobs created, expanded state or local tax bases, improvement of economic activities in depressed areas of the state, and the abatement of waste tires.

Subp. 3. **General criteria for credit evaluation.** Applications will be reviewed in accordance with generally accepted commercial lending practices. Standards for credit worthiness vary from industry to industry. The variation in credit characteristics of firms from one industry to the next means that each application must be evaluated against the standards for the industry which a particular borrower represents. In general, the standards set forth annually in Robert Morris Associates' (Philadelphia, PA) Annual Statements Studies shall be used as a guide in the credit analysis.

Additional credit information available from such private credit rating agencies as Standard and Poors, Dun and Bradstreet, or other reputable credit agencies may be used. Whatever credit information is obtained regarding the borrower that is included in the loan application file is subject to appropriate data privacy statutes.

Subp. 4. **Personal credit references.** Unless the loan is to be privately insured, credit references are required when a guaranty or pledge of personal assets or property is required as a condition for making a loan. Personal credit information pertaining to individual owners of business entities, partners, or major shareholders of closely held corporations is required in all cases when a loan is not to be privately insured, and the information must be evaluated by the commissioner. The personal credit references and credit information may include personal tax returns, personal credit reports from credit bureaus and other credit reporting agencies, and references from personal bankers.

Subp. 5. **Site visit and standard.** Loans may be approved by the authority only after a representative from the Department of Energy and Economic Development acting on behalf of the authority has personally visited the site at which the business

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is located or where the borrower proposes to do business. To the extent feasible, the authority must examine the equipment which the borrower proposes to acquire with the loan proceeds or must otherwise verify that the proceeds of the loan can reasonably be expected to be used in accordance with the plans submitted with the application.

Subp. 6. **Technical analysis and standard.** In those cases where the commissioner is unfamiliar with the technology associated with the capital expenditure to be financed by the loan, the commissioner may require technical documentation from a reputable testing laboratory, engineering firm, or other source of technical information. The commissioner may require documentation of the borrower's claims for the performance of his or her company's products. This information is required only if it is necessary to verify the claims made by the borrower for the performance of a product manufactured by the borrower, or for a piece of equipment to be acquired by the borrower with the proceeds of a business loan. ~~The commissioner may require documentation of the borrower's claims for the performance of his or her company's products.~~ This documentation may take the form of reports from independent testing agencies such as Underwriters' Laboratories which are generally recognized to have expertise in the area.

The Minnesota Pollution Control Agency will also be sent sufficient information to enable it to determine~~, and will determine~~, whether or not the project meets the air quality standards set by the Minnesota Pollution Control Agency.

Subp. 7. **Cash flow analysis and standard.** Unless it is privately insured, no business loan may be recommended by the commissioner to the authority for approval unless the commissioner or a subcommittee of the authority has performed a financial analysis on data contained in the applicant's loan file. The analysis must demonstrate that the borrower's past performance, combined with its projected financial performance, is adequate to reasonably assure that the loan will be repaid.

APPROVED IN THE REVISOR OF STATUTES OFFICE BY:

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
MAY 24 1985
Joan Anderson Growe
Secretary of State

2:40 PM

APPROVED AS TO LEGALITY
May 24, 1985
HUBERT H. HUMPHREY, III
ATTORNEY GENERAL
BY
SPECIAL ASSISTANT ATTORNEY GENERAL

Emergency Rules as Proposed (all new material)

CHAPTER 8300
DEPARTMENT OF ENERGY AND ECONOMIC DEVELOPMENT
WASTE TIRE RECYCLING LOAN PROGRAM

8300.3081 [Emergency] PURPOSE.

The purpose of the waste tire recycling loan program is to issue loans to finance acquisition of land, buildings, or equipment, installation of equipment, construction of buildings, and capital improvements for waste tire processing.

8300.3082 [Emergency] DEFINITIONS.

Subpart 1. **Scope.** For purposes of parts 8300.3081 to 8300.3090 [Emergency], the terms used in those parts have the meanings given to them in Minnesota Statutes, section 116M.03 and this part.

Subp. 2. **Act.** "Act" means the Minnesota Energy and Economic Development Authority Act.

Subp. 3. **Commissioner.** "Commissioner" means the commissioner of energy and economic development.

Subp. 4. **Eligible borrower.** "Eligible borrower" means a person, partnership, firm, or corporation engaged in, and determined by the authority to constitute, a waste tire recycling business.

Subp. 5. **Eligible project.** "Eligible project" means a project for a waste tire recycling business, proposed by an eligible borrower, that meets the public purpose standards of part 8300.3089 [Emergency], subpart 5.

Subp. 6. **Waste tire recycling business.** "Waste tire recycling business" means a business engaged in waste tire processing.

8300.3083 [Emergency] ELIGIBILITY FOR LOANS.

A waste tire recycling loan may be made only to an eligible borrower for eligible costs of eligible projects. No waste tire recycling loan may exceed $500,000 or 40 percent of the eligible project costs, whichever is less. The applicant shall provide

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the commissioner with written verification that at least ten percent of the eligible project costs have been or will be committed to the project by the applicant. The applicant shall provide the commissioner with a written commitment from the lender who provides the remaining 50 percent financing.

8300.3084 [Emergency] ELIGIBLE PROJECT COSTS.

Eligible costs for financing by the authority include any of the following costs for eligible projects:

A. land and building acquisition costs;

B. site preparation;

C. construction costs;

D. engineering costs;

E. authority fees including application fees of the authority;

F. contingency costs;

G. interest costs during construction;

H. legal fees incurred for the purposes of acquisition and construction; and

I. capital improvements including equipment.

8300.3085 [Emergency] INTEREST RATE.

The interest rate of a loan from the waste tire recycling loan program is five percentage points below a full faith and credit obligation of the United States government of comparable maturity, as of five working days before the day of closing of the loan, as determined by the authority. In the alternative, the authority may set interest rates at a negotiated rate after reviewing market rates and comparable sources of financing available to the applicant at the time the financial assistance is extended.

8300.3086 [Emergency] TERM OF LOAN.

The maximum term of a loan from the waste tire recycling loan program will not exceed the average useful life of the real property, or 80 percent of the useful life of the equipment or machinery, or the following limits, whichever is less:

A. for real property (land or buildings), ten years;

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B. for equipment or machinery, seven years;

C. for a combination of items A and B, a weighted average of those years will be used.

8300.3087 [Emergency] SECURITY REQUIREMENTS.

All loans for either real property or equipment must be secured in accordance with the following requirements:

A. A real property loan must be secured by a second mortgage or other adequate security, as determined by the authority.

B. Equipment loans must be secured by (i) a second lien on the equipment or other adequate security as determined by the authority; or (ii) the personal guarantee of principal owners, officers, sole proprietors, partners, major shareholders, corporate officers, or other related entities such as subsidiaries or parent corporations of the borrower. Principal owners are those having 20 percent or more ownership.

C. Additional forms of security may be required by the authority.

8300.3088 [Emergency] CONTENTS OF APPLICATION FOR LOANS.

To apply for a waste tire recycling loan, an eligible borrower must submit a completed application to the commissioner on a form provided by the commissioner. The application must contain or be accompanied by:

A. a comprehensive business plan containing information regarding the business including a three-year projection of the balance sheet, an income statement, identification of the source of other funds and a description of the intended use of those funds, an assessment of the potential of the business, and the written commitment of the lender required by part 8300.3083 [Emergency];

B. financial statements, including a profit-and-loss statement, and a source and use of funds statement current to the most recent quarter; when available, audited financial statements (including footnotes) should be provided for the immediate past three years; if audited statements are not

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available, balance sheets, profit-and-loss statements, and source and use of funds statements from a three-year period shall be provided; borrowers who are sole proprietors of the business may also be required to submit complete copies of their personal tax returns for the time periods specified, in addition to the financial statements required by this part;

C. applications from firms owned by individuals or from closely held corporations must also be accompanied by signed and dated personal financial statements from any officer, shareholder, or other person with at least a 20 percent interest in the company; in addition, if the application is made by an individual, copies of the borrower's personal tax returns for the immediately preceding three years may be requested by the authority; and

D. personal credit references as required by part 8300.3090 [Emergency], subpart 4.

8300.3089 [Emergency] PROCEDURES FOR LOAN APPROVAL.

Subpart 1. **Preliminary eligibility review.** An application is considered to have been made upon the commissioner's receipt of a completed application with all required documentation and exhibits. The commissioner shall make a preliminary determination whether the application is complete and whether the borrower, project, and costs are eligible for consideration under the statutes and rules of the waste tire recycling program.

Subp. 2. **Notification of deficiencies.** If an incomplete application is received, the commissioner shall notify the borrower, specifying the deficiencies. The borrower has 60 days from the date of the commissioner's notification to complete such application in accordance with parts 8300.3081 to 8300.3088 [Emergency]. If an application is not made complete within 60 days of the date of the commissioner's notification of deficiencies, the application shall be rejected for processing and the borrower must resubmit the application at a later date if it is to be considered by the authority.

Subp. 3. **Approval for processing.** When an application is determined to be complete, the commissioner shall review the

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various components of the application and will assess the ability of the borrower to reasonably repay the loan.

Subp. 4. **Evaluation procedures.** The evaluation of the application shall be undertaken in accordance with the standards and requirements set forth in part 8300.3090 [Emergency] and the act. Applications which, in the judgment of the commissioner, meet the standards and requirements set forth shall be submitted to the authority with a recommendation for its approval at the earliest possible time. Applications which do not meet the criteria, standards, and requirements of parts 8300.3081 to 8300.3090 [Emergency] and the act shall not be submitted to the authority for its consideration until the application documents have been modified to conform to the standards of the program. If a completed application has not been modified to meet the program financial requirements within 60 days after submission, it is considered rejected and the borrower is required to submit a new application for further consideration. The borrower may in his or her discretion appeal directly to the authority for reconsideration of the commissioner's decision.

Subp. 5. **Requirements of public purpose.** Loan applications by eligible borrowers for eligible costs shall be recommended for approval by the authority only after the commissioner has determined that the project meets one or more of the following standards of public purpose:

A. that the project and its development is economically advantageous to the state and that energy sources to support the successful operation of the project are adequate;

B. that if the project has the effect of a transfer of jobs from one area of the state to another, that the project is economically advantageous to the state or that the project is necessary to the continued operation of the business enterprise within the state; and

C. that the project will assist in fulfilling the purposes of the act including the preferences in Minnesota Statutes, section 116M.06.

Subp. 6. **Priority.** The project will be given priority for

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funding among other loan applicants if:

A. the source of the tire supply is Minnesota tires;

B. the product of the waste tire recycling project is used in Minnesota;

C. if the tires are to be burned, the project is further from violating the air quality standards adopted by the Minnesota Pollution Control Agency than a competing project;

D. the recycling process produces a tangible product which is usable and marketable; or

E. the project produces an alternative energy resource.

Subp. 7. **Approval.** The authority may reject or disapprove any loan application that does not provide sufficient documentation or otherwise comply with the provisions of the act and parts 8300.3081 to 8300.3090 [Emergency]. If the authority approves a loan application, it shall pass a resolution directing the commissioner to prepare and execute the necessary loan documents.

8300.3090 [Emergency] LOAN STANDARDS.

Subpart 1. **General.** Loans may be approved by the authority only in accordance with the standards and procedures listed in this part.

Subp. 2. **Credit evaluation by commissioner.** The commissioner shall review all applications and supporting documents submitted by the borrower. For all loans, the commissioner shall make recommendations to the authority based upon an objective evaluation of the credit worthiness of the borrower, the extent to which the borrower might reasonably be expected to repay the loan, and the extent to which the state will benefit in the form of net new jobs created, expanded state or local tax bases, improvement of economic activities in depressed areas of the state, and the abatement of waste tires.

Subp. 3. **General criteria for credit evaluation.** Applications will be reviewed in accordance with generally accepted commercial lending practices. Standards for credit worthiness vary from industry to industry. The variation in

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credit characteristics of firms from one industry to the next means that each application must be evaluated against the standards for the industry which a particular borrower represents. In general, the standards set forth annually in Robert Morris Associates' (Philadelphia, PA) Annual Statements Studies shall be used as a guide in the credit analysis.

Additional credit information available from such private credit rating agencies as Standard and Poors, Dun and Bradstreet, or other reputable credit agencies may be used. Whatever credit information is obtained regarding the borrower that is included in the loan application file is subject to appropriate data privacy statutes.

Subp. 4. **Personal credit references.** Unless the loan is to be privately insured, credit references are required when a guaranty or pledge of personal assets or property is required as a condition for making a loan. Personal credit information pertaining to individual owners of business entities, partners, or major shareholders of closely held corporations is required in all cases when a loan is not to be privately insured, and the information must be evaluated by the commissioner. The personal credit references and credit information may include personal tax returns, personal credit reports from credit bureaus and other credit reporting agencies, and references from personal bankers.

Subp. 5. **Site visit and standard.** Loans may be approved by the authority only after a representative from the Department of Energy and Economic Development acting on behalf of the authority has personally visited the site at which the business is located or where the borrower proposes to do business. To the extent feasible, the authority must examine the equipment which the borrower proposes to acquire with the loan proceeds or must otherwise verify that the proceeds of the loan can reasonably be expected to be used in accordance with the plans submitted with the application.

Subp. 6. **Technical analysis and standard.** In those cases where the commissioner is unfamiliar with the technology

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REVISOR OF STATUTES
OFFICE BY:

associated with the capital expenditure to be financed by the loan, the commissioner may require technical documentation from a reputable testing laboratory, engineering firm, or other source of technical information. This information is required only if it is necessary to verify the claims made by the borrower for the performance of a product manufactured by the borrower, or for a piece of equipment to be acquired by the borrower with the proceeds of a business loan. The commissioner may require documentation of the borrower's claims for the performance of his or her company's products. This documentation may take the form of reports from independent testing agencies such as Underwriters' Laboratories which are generally recognized to have expertise in the area.

The Minnesota Pollution Control Agency will also be sent sufficient information to enable it to determine, and will determine, whether or not the project meets the air quality standards set by the Minnesota Pollution Control Agency.

Subp. 7. **Cash flow analysis and standard.** Unless it is privately insured, no business loan may be recommended by the commissioner to the authority for approval unless the commissioner or a subcommittee of the authority has performed a financial analysis on data contained in the applicant's loan file. The analysis must demonstrate that the borrower's past performance, combined with its projected financial performance, is adequate to reasonably assure that the loan will be repaid.

APPROVED IN THE
REVISOR OF STATUTES
OFFICE BY:

OFFICE OF THE REVISOR OF STATUTES

Proposed Rule

RD723E

Agency: Department of Energy and Economic Development

Division:

Agency Contact: Terry Brown

Minnesota Rules: Parts 8300.3081 to 8300.3090 [Emergency]

Title: Proposed Emergency Rules Relating to Waste Tire Recycling Loan Program

Type of Rules: Emergency

Incorporations by Reference: None

Steven C. Cross
Revisor of Statutes

David S. Niss
Assistant Revisor
Phone: 297-2948

Date: March 1, 1985

STATE OF MINNESOTA

MINNESOTA ENERGY AND ECONOMIC DEVELOPMENT AUTHORITY

In the Matter of the Proposed Emergency Rules of the Minnesota Energy and Economic Development Authority Relating to The Waste Tire Recycling Loan Program.

ORDER ADOPTING RULES

Notice of Intent to adopt the above-entitled emergency rules was published in the State Register on March 18, 1985 and was sent by United States Mail to all persons on the list maintained by an agency pursuant to M.S. 14.14, subd. 1 on March 14, 1985. After affording interested and affected persons an opportunity to submit comments for 25 days after Notice, receiving 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 the Proposed Emergency Rules of the Minnesota Energy and Economic Development Authority Relating to The Waste Tire Recycling Loan Program are adopted this 24th day of April, 1985, pursuant to authority vested in me by M.S. 116M.07 subd. 3 and Minn. Laws of 1983, ch. 289, sect. 1, subd. 3.

STATE OF MINNESOTA



Mark B. Dayton
Chairman, Minnesota Energy and Economic Development Authority

STATE OF MINNESOTA

MINNESOTA ENERGY AND ECONOMIC DEVELOPMENT AUTHORITY

In the Matter of the Proposed Adoption of Emergency Rules of the State of Minnesota Energy and Economic Development Authority Governing The Waste Tire Recycling Loan Program.

ORDER FOR NOTICE OF INTENT TO ADOPT EMERGENCY RULES WITHOUT PUBLIC HEARING

IT IS ORDERED this 15th day of March, 1985 that a Notice of Intent to Adopt Emergency Rules Without Public Hearing in the above-entitled matter be given to all persons who have registered their names with the State Department of Energy and Economic Development for that purpose and be published in the State Register.

STATE OF MINNESOTA



Mark B. Dayton, Chairman, Minnesota Energy and Economic Development Authority

MEEDA RESOLUTION NO. 84-140
MINNESOTA ENERGY AND ECONOMIC
DEVELOPMENT AUTHORITY
STATE OF MINNESOTA
ST. PAUL, MINNESOTA

In the Matter of the Proposed Emergency Rules of the Energy and Economic Development Authority Relating to Rules for the Waste Tire Recycling Loan and Grants Program

Certificate of Authority's Authorizing Resolution

I, Mark B. Dayton, do hereby certify that I am a member and the Chairman of the Energy and Economic Development Authority, 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 meeting of the Energy and Economic Development Authority duly and properly called and held on the 20th day of June,1984, 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 Mark B. Dayton, Chairman of the Energy and Economic Development Authority, be and he hereby is granted the authority and directed to sign an Order of the Energy and Economic Development Authority directing the publication in the State Register of proposed emergency rules for the Waste Tire Recycling Loan and Grants Program as well as perform any and all acts incidental thereto.

IN WITNESS WHEREOF, I have hereunto subscribed my name this 20th day of June, 1984.

BY: _____
Chair

ATTEST: Lyn Dutton
Member

In the Matter of the Proposed Adoption of Emergency Rules of the Minnesota Energy and Economic Development Authority Governing The Waste Tire Recycling Loan Program.

AFFIDAVIT OF MAILING

STATE OF MINNESOTA)
) SS.
COUNTY OF RAMSEY)

Darlene Christenson, being first duly sworn deposes and says:

That on the 15th day of March, 1985, at the City of St. Paul, County of Ramsey, State of Minnesota, she served that attached Notice of Intent to Adopt Rules without a Public Hearing by depositing in the State of Minnesota Central Mail System for United States mailing at said City of St. Paul, a copy thereof, properly enveloped, with postage prepaid, on all persons and associations who have requested that their names be placed on file with the State of Minnesota for the purpose of receiving notice of the proposed adoption of rules by this Department.

Darlene Christenson

Subscribed and sworn to before me this 15 day of March, 1985.

Robert A. Heck

ROBERT A. HECK
NOTARY PUBLIC - MINNESOTA
RAMSEY COUNTY
My Commission Expires Mar. 23, 1991

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

CERTIFICATE

In the Matter of the Proposed Adoption
of the Emergency rules for the Energy and
Economic Development Authority governing
Waste Tire Recycling Loans

I hereby certify that the list of persons, associations and other interested groups who have requested, pursuant to Minnesota Statute 14.14 subd.1, that their names be placed on file with and maintained by the State Department of Energy and Economic Development for both the Department and the Energy Economic Development Authority for the purpose of receiving notice of the proposed adoption of rules by both the Energy and Economic Development Authority and the Department of Energy and Economic Development is accurate and complete as of Friday, this 15 day of March, 1985.

Mary Anderson

Department of Energy and Economic Development

Proposed Emergency Rules Relating to Waste Tire Recycling Loan Program

Notice of Intent to Adopt Emergency Rules without a Hearing

Notice is hereby given that the Minnesota Energy and Economic Development Authority is proposing to adopt emergency rules for Waste Tire Recycling Loans. The agency is authorized by Minnesota Statutes, section 116M.08, subdivision 4, to adopt emergency rules for its financial assistance programs.

All interested parties have 25 days from the day of publication of this notice in the *State Register* to submit written comments to the agency in support of or in opposition to the proposed emergency rules, and comments are encouraged. With publication of this notice in the March 18, 1985 *State Register*, written comments must be received by the agency no later than 4:30 p.m. on April 12, 1985. Written comments should be sent to:

Terry Brown
Financial Management Division
Department of Energy & Economic Development
900 American Center Building
150 East Kellogg Boulevard
St. Paul, Minnesota 55101
Telephone: 612/297-1981

Please be advised that the proposed emergency rules may be modified as a result of the comments received. Any written material received by the agency will become part of the record in this matter.

The proposed emergency rules with any modifications adopted by the agency, will be submitted to the Attorney General for review as to form and legality after close of the comment period. Persons wishing to be informed of the date of submission of the proposed emergency rules to the Attorney General should notify the agency of such desire at the address given above. The Attorney General has ten working days to approve or disapprove the rules.

The emergency rules will be effective five working days following approval of the rules by the Attorney General. It is the agency's intent to keep the rules in effect for a period of 180 days, although the proposed emergency rules may be continued in effect for an additional period of up to 180 days if the agency publishes a separate notice to such effect in the *State Register* and mails the same notice to all persons on the agency's list to receive notice of rulemaking proceedings.

A full copy of the proposed emergency rules is available by contacting Terry Brown at the above address.

March 4, 1985

Mark B. Dayton, Commissioner of the Department
of Energy & Economic Development
and Chairman of the Minnesota Energy
and Economic Development Authority

Emergency Rules as Proposed (all new material)

CHAPTER 8300
DEPARTMENT OF ENERGY AND ECONOMIC DEVELOPMENT
WASTE TIRE RECYCLING LOAN PROGRAM

8300.3081 [Emergency] PURPOSE.

The purpose of the waste tire recycling loan program is to issue loans to finance acquisition of land, buildings, or equipment, installation of equipment, construction of buildings, and capital improvements for waste tire processing.

8300.3082 [Emergency] DEFINITIONS.

Subpart 1. Scope. For purposes of parts 8300.3081 to 8300.3090 [Emergency], the terms used in those parts have the meanings given to them in Minnesota Statutes, section 116M.03 and this part.

Subp. 2. Act. "Act" means the Minnesota Energy and Economic Development Authority Act.

Subp. 3. Commissioner. "Commissioner" means the commissioner of energy and economic development.

Subp. 4. Eligible borrower. "Eligible borrower" means a person, partnership, firm, or corporation engaged in, and determined by the authority to constitute, a waste tire recycling business.

Subp. 5. Eligible project. "Eligible project" means a project for a waste tire recycling business, proposed by an eligible borrower, that meets the public purpose standards of part 8300.3089 [Emergency], subpart 5.

Subp. 6. Waste tire recycling business. "Waste tire recycling business" means a business engaged in waste tire processing.

8300.3083 [Emergency] ELIGIBILITY FOR LOANS.

A waste tire recycling loan may be made only to an eligible borrower for eligible costs of eligible projects. No waste tire recycling loan may exceed $500,000 or 40 percent of the eligible project costs, whichever is less. The applicant shall provide the commissioner with written verification that at least ten percent of the eligible project costs have been or will be committed to the project by the applicant. The applicant shall provide the commissioner with a written commitment from the lender who provides the remaining 50 percent financing.

8300.3084 [Emergency] ELIGIBLE PROJECT COSTS.

Eligible costs for financing by the authority include any of the following costs for eligible projects:

A. land and building acquisition costs;

B. site preparation;

C. construction costs;

D. engineering costs;

E. authority fees including application fees of the authority;

F. contingency costs;

G. interest costs during construction;

H. legal fees incurred for the purposes of acquisition and construction; and

I. capital improvements including equipment.

8300.3085 [Emergency] INTEREST RATE.

The interest rate of a loan from the waste tire recycling loan program is five percentage points below a full faith and credit obligation of the United States government of comparable maturity, as of five working days before the day of closing of the loan, as determined by the authority. In the alternative, the authority may set interest rates at a negotiated rate after reviewing market rates and comparable sources of financing available to the applicant at the time the financial assistance is extended.

8300.3086 [Emergency] TERM OF LOAN.

The maximum term of a loan from the waste tire recycling loan program will not exceed the average useful life of the real property, or 80 percent of the useful life of the equipment or machinery, or the following limits, whichever is less:

A. for real property (land or buildings), ten years;

B. for equipment or machinery, seven years;

C. for a combination of items A and B, a weighted average of those years will be used.

8300.3087 [Emergency] SECURITY REQUIREMENTS.

All loans for either real property or equipment must be secured in accordance with the following requirements:

A. A real property loan must be secured by a second mortgage or other adequate security, as determined by the authority.

B. Equipment loans must be secured by (i) a second lien on the equipment or other adequate security as determined by the authority; or (ii) the personal guarantee of the principal owners, officers, sole proprietors, partners, major shareholders, corporate officers, or other related entities such as subsidiaries or parent corporations of the borrower.

C. Additional forms of security may be required by the authority.

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.

8300.3088 [Emergency] CONTENTS OF APPLICATION FOR LOANS.

To apply for a waste tire recycling loan, an eligible borrower must submit a completed application to the commissioner on a form provided by the commissioner. The application must contain or be accompanied by:

A. a comprehensive business plan containing information regarding the business including a three-year projection of the balance sheet, an income statement, identification of the source of other funds and a description of the intended use of those funds, an assessment of the potential of the business, and the written commitment of the lender required by part 8300.3083 [Emergency];

B. financial statements, including a profit-and-loss statement, and a source and use of funds statement current to the most recent quarter; when available, audited financial statements (including footnotes) should be provided for the immediate past three years; if audited statements are not available, balance sheets, profit-and-loss statements, and source and use of funds statements from a three-year period shall be provided; borrowers who are sole proprietors of the business may also be required to submit complete copies of their personal tax returns for the time periods specified, in addition to the financial statements required by this part;

C. applications from firms owned by individuals or from closely held corporations must also be accompanied by signed and dated personal financial statements from any officer, shareholder, or other person with at least a 20 percent interest in the company; in addition, if the application is made by an individual, copies of the borrower's personal tax returns for the immediately preceding three years may be requested by the authority; and

D. personal credit references as required by part 8300.3090 [Emergency], subpart 4.

8300.3089 [Emergency] PROCEDURES FOR LOAN APPROVAL.

Subpart 1. Preliminary eligibility review. An application is considered to have been made upon the commissioner's receipt of a completed application with all required documentation and exhibits. The commissioner shall make a preliminary determination whether the application is complete and whether the borrower, project, and costs are eligible for consideration under the statutes and rules of the waste tire recycling program.

Subp. 2. Notification of deficiencies. If an incomplete application is received, the commissioner shall notify the borrower, specifying the deficiencies. The borrower has 60 days from the date of the commissioner's notification to complete such application in accordance with parts 8300.3081 to 8300.3088 [Emergency]. If an application is not made complete within 60 days of the date of the commissioner's notification of deficiencies, the application shall be rejected for processing and the borrower must resubmit the application at a later date if it is to be considered by the authority.

Subp. 3. Approval for processing. When an application is determined to be complete, the commissioner shall review the various components of the application and will assess the ability of the borrower to reasonably repay the loan.

Subp. 4. Evaluation procedures. The evaluation of the application shall be undertaken in accordance with the standards and requirements set forth in part 8300.3090 [Emergency] and the act. Applications which, in the judgment of the commissioner, meet the standards and requirements set forth shall be submitted to the authority with a recommendation for its approval at the earliest possible time. Applications which do not meet the criteria, standards, and requirements of parts 8300.3081 to 8300.3090 [Emergency] and the act shall not be submitted to the authority for its consideration until the application documents have been modified to conform to the standards of the program. If a completed application has not been modified to meet the program financial requirements within 60 days after submission, it is considered rejected and the borrower is required to submit a new application for further consideration. The borrower may in his or her discretion appeal directly to the authority for reconsideration of the commissioner's decision.

Subp. 5. Requirements of public purpose. Loan applications by eligible borrowers for eligible costs shall be recommended for approval by the authority only after the commissioner has determined that the project meets one or more of the following standards of public purpose:

A. that the project and its development is economically advantageous to the state and that energy sources to support the successful operation of the project are adequate;

B. that if the project has the effect of a transfer of jobs from one area of the state to another, that the project is economically advantageous to the state or that the project is necessary to the continued operation of the business enterprise within the state; and

C. that the project will assist in fulfilling the purposes of the act including the preferences in Minnesota Statutes, section 116M.06.

Subp. 6. Priority. The project will be given priority for funding among other loan applicants if:

A. the source of the tire supply is Minnesota tires;

B. the product of the waste tire recycling project is used in Minnesota;

C. if the tires are to be burned, the project is further from violating the air quality standards adopted by the Minnesota Pollution Control Agency than a competing project;

D. the recycling process produces a tangible product which is usable and marketable; or

E. the project produces an alternative energy resource.

Subp. 7. Approval. The authority may reject or disapprove any loan application that does not provide sufficient documentation or otherwise comply with the provisions of the act and parts 8300.3081 to 8300.3090 [Emergency]. If the authority approves a loan application, it shall pass a resolution directing the commissioner to prepare and execute the necessary loan documents.

8300.3090 [Emergency] LOAN STANDARDS.

Subpart 1. General. Loans may be approved by the authority only in accordance with the standards and procedures listed in this part.

Subp. 2. Credit evaluation by commissioner. The commissioner shall review all applications and supporting documents submitted by the borrower. For all loans, the commissioner shall make recommendations to the authority based upon an objective evaluation of the credit worthiness of the borrower, the extent to which the borrower might reasonably be expected to repay the loan, and the extent to which the state will benefit in the form of net new jobs created, expanded state or local tax bases, improvement of economic activities in depressed areas of the state, and the abatement of waste tires.

Subp. 3. General criteria for credit evaluation. Applications will be reviewed in accordance with generally accepted commercial lending practices. Standards for credit worthiness vary from industry to industry. The variation in credit characteristics of firms from one industry to the next means that each application must be evaluated against the standards for the industry which a particular borrower represents. In general, the standards set forth annually in Robert Morris Associates' (Philadelphia, PA) Annual Statements Studies shall be used as a guide in the credit analysis.

Additional credit information available from such private credit rating agencies as Standard and Poors, Dun and Bradstreet, or other reputable credit agencies may be used. Whatever credit information is obtained regarding the borrower that is included in the loan application file is subject to appropriate data privacy statutes.

Subp. 4. Personal credit references. Unless the loan is to be privately insured, credit references are required when a guaranty or pledge of personal assets or property is required as a condition for making a loan. Personal credit information pertaining to individual owners of business entities, partners, or major shareholders of closely held corporations is required in all cases when a loan is not to be privately insured, and the information must be evaluated by the commissioner. The personal credit references and credit information may include personal tax returns, personal credit reports from credit bureaus and other credit reporting agencies, and references from personal bankers.

Subp. 5. Site visit and standard. Loans may be approved by the authority only after a representative from the Department of Energy and Economic Development acting on behalf of the authority has personally visited the site at which the business is located or where the borrower proposes to do business. To the extent feasible, the authority must examine the equipment which the borrower proposes to acquire with the loan proceeds or must otherwise verify that the proceeds of the loan can reasonably be expected to be used in accordance with the plans submitted with the application.

Subp. 6. Technical analysis and standard. In those cases where the commissioner is unfamiliar with the technology associated with the capital expenditure to be financed by the loan, the commissioner may require technical documentation from a reputable testing laboratory, engineering firm, or other source of technical information. This information is required only if it is necessary to verify the claims made by the borrower for the performance of a product manufactured by the borrower, or for a piece of equipment to be acquired by the borrower with the proceeds of a business loan. The commissioner may require documentation of the borrower's claims for the performance of his or her company's products. This documentation may take the form of reports from independent testing agencies such as Underwriters' Laboratories which are generally recognized to have expertise in the area.

The Minnesota Pollution Control Agency will also be sent sufficient information to enable it to determine, and will determine, whether or not the project meets the air quality standards set by the Minnesota Pollution Control Agency.

Subp. 7. Cash flow analysis and standard. Unless it is privately insured, no business loan may be recommended by the commissioner to the authority for approval unless the commissioner or a subcommittee of the authority has performed a financial analysis on data contained in the applicant's loan file. The analysis must demonstrate that the borrower's past performance, combined with its projected financial performance, is adequate to reasonably assure that the loan will be repaid.

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.

MEEDA RESOLUTION NO. 85-344
MINNESOTA ENERGY AND ECONOMIC DEVELOPMENT AUTHORITY
STATE OF MINNESOTA

In the Matter of the Proposed Adoption of Emergency Rules of the Minnesota Energy and Economic Development Authority Governing the Waste Tire Recycling Loan Program.

SUPPLEMENTAL FINDINGS OF FACT AND CONCLUSIONS

1. The Authority proposed the following changes to the above entitled rules in response to the comments of the Office of the Attorney General that such changes are needed in order to eliminate discretionary language.

Part 8300.3087, Paragraph 1, Item A will be changed to read:

"A. A real property loan must be secured by a second mortgage or other adequate security, as determined by the Authority under generally accepted commercial lending standards."

Part 8300.3087, Paragraph 1, Item B, will be changed to read:

"B. Equipment loans must be secured by (i) A second lien on the equipment or other adequate security as determined by the Authority under generally accepted commercial lending standards; ..."

Part 8300.3087, Paragraph 1, Item C, will be changed to read:

"C. Additional forms of security may be required by the Authority under generally accepted commercial lending standards."

Part 8300.3088, Paragraph 1, Item B, Line 5, will be changed to read:

"statements (including footnotes) must be provided for the"

Part 8300.3088, Paragraph 1, Item B, Line 10, will be changed to read:

"business must also be required to submit complete copies of their"

Part 8300.3088, Paragraph 1, Item C, Line 19, will be changed to read:

"the immediately preceding three years must be requested by the"

Part 8300.3090, Subpart 6, Lines 10 through 16, will be changed to read:

"source of technical information. The commissioner may require documentation of the borrower's claims for the performance of his or her company's products. This information is required only if it is necessary to verify the claims made by the borrower, or for a piece of equipment to be equipped by the borrower with the process of a business loan. This ..."

Part 8300.3090, Subpart 6, Line 21 and 22, will be changed to read:

"sufficient information to enable it to determine whether or not the project meets the air quality ..."

Conclusions

1. The Authority gave proper notice of its intent to adopt the proposed rules.

2. The Authority has fulfilled the procedural requirements of Chapter 14, and all other procedural requirements of law or rule.

3. The Authority has statutory authority to adopt the proposed rules and has fulfilled all other substantive requirements of the law or rule within the meaning of the Administrative Procedures Act.

4. The Authority has determined that the above captioned emergency rules as proposed and adopted are needed and reasonable.

Lyn Burton

Lyn Burton, Vice Chairman
Minnesota Energy and Economic Development Authority.

STATE OF MINNESOTA

MINNESOTA ENERGY AND ECONOMIC DEVELOPMENT AUTHORITY

In the Matter of the Proposed Emergency Rules of the Minnesota Energy and Economic Development Authority Relating to The Waste Tire Recycling Loan Program.

ORDER ADOPTING RULES

Notice of Intent to adopt the above-entitled emergency rules was published in the State Register on March 18, 1985 and was sent by United States Mail to all persons on the list maintained by an agency pursuant to M.S. 1414, subd. 1 on March 14, 1985. After affording interested and affected persons an opportunity to submit comments for 25 days after Notice, receiving 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 the Proposed Emergency Rules of the Minnesota Energy and Economic Development Authority Relating to The Waste Tire Recycling Loan Program are adopted this 22th day of May, 1985, pursuant to authority vested in me by M.S. 116M.07 subd. 3 and Minn. Laws of 1983, ch. 289, sect. 1, subd. 3.

STATE OF MINNESOTA

Lyn Burton

Lyn Burton, Vice Chairman
Minnesota Energy and Economic Development Authority

STATE OF MINNESOTA

MINNESOTA ENERGY AND ECONOMIC DEVELOPMENT AUTHORITY

In the Matter of the Proposed Emergency Rules of the Minnesota Energy and Economic Development Authority Relating to The Waste Tire Recycling Loan Program.

ORDER ADOPTING RULES

Notice of Intent to adopt the above-entitled emergency rules was published in the State Register on March 18, 1985 and was sent by United States Mail to all persons on the list maintained by an agency pursuant to M.S. 1414, subd. 1 on March 14, 1985. After affording interested and affected persons an opportunity to submit comments for 25 days after Notice, receiving 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 the Proposed Emergency Rules of the Minnesota Energy and Economic Development Authority Relating to The Waste Tire Recycling Loan Program are adopted this 22th day of May, 1985, pursuant to authority vested in me by M.S. 116M.07 subd. 3 and Minn. Laws of 1983, ch. 289, sect. 1, subd. 3.

STATE OF MINNESOTA

Lyn Burton

Lyn Burton, Vice Chairman
Minnesota Energy and Economic Development Authority

MEEDA RESOLUTION NO. 85-317
MINNESOTA ENERGY AND ECONOMIC DEVELOPMENT AUTHORITY
STATE OF MINNESOTA

In the Matter of the Proposed Adoption of Emergency Rules of the Minnesota Energy and Economic Development Authority Governing the Waste Tire Recycling Loan Program.

FINDINGS OF FACT AND CONCLUSIONS

Notice of Intent to Adopt Rules without a Public Hearing regarding the above entitled matter was published in the State Register on March 18, 1985 and was mailed to all persons who had registered their names with the Authority or the Department of Energy and Economic Development. The Notice offered interested parties 25 days in which to submit comments to the Authority and request notification of the submission of final rules to the Attorney General.

The Authority received two comments during that period. The Authority received no requests for notification of the submission of the final rules to the Attorney General.

After affording interested parties an opportunity to submit comments and having received the sets of comments, the Authority makes the following.

1. The Authority received a letter with comments from Ms. Barbara Sims, Minnesota Pollution Control Agency, of St. Paul, Minnesota. (attached hereto) The response to her comments is the following:

   The reason waste tire processing is not defined in the proposed rules is that it is defined by statute in Minn. Stat. 116M.03, Sub. 16, and the Authority is seeking to avoid duplication of statutory language in the proposed rules.

   The reason that priority would be given to those applicants when the source of the tire supply is Minnesota tires is that the Authority believes that Minnesota tires should be given preference.

   The fact that application for loans are not complete unless the project is certified to be technically feasible by the Minnesota Pollution Control Agency Director is defined by statute in Minn. Stat. 116M.03, Sub. 3. and the Authority is seeking to avoid duplication of statutory language in the proposed rules.

   The provision of 8300.3090, Subpart 6, was included in order that meeting air quality standards was one of the chief criteria for evaluating the technical feasibility of the project.

2. The Authority received a telephone call with comments from Mr. Mark Hope, Waste Recovery Inc., of Minneapolis, Minnesota. He stated that he thought the term of the loan for machinery and equipment should be 10 years. The response to his comments is the following.

   In proposed part 8300.3086, the term of the loan for machinery and equipment is seven years in accordance with generally accepted commercial lending practices.

Conclusions

1. The Authority gave proper notice of its intent to adopt the proposed rules.

2. The Authority has fulfilled the procedural requirements of Chapter 14, and all other procedural requirements of law or rule.

3. The Authority has statutory authority to adopt the proposed rules and has fulfilled all other substantive requirements of the law or rule within the meaning of the Administrative Procedures Act.

4. The Authority has determined that the above captioned emergency rules as proposed and adopted are needed and reasonable.

Mark B. Dayton
Chairman, Minnesota Energy and Economic Development Authority.

Minnesota Pollution Control Agency

April 12, 1985

Mr. Terry Brown
Financial Management Division
Department of Energy and Economic Development
900 American Center Building
150 East Kellogg Boulevard
St. Paul, Minnesota 55101

Dear Mr. Brown:

Minnesota Pollution Control Agency (MPCA) staff have reviewed the proposed emergency rules regarding the Department of Energy and Economic Development (DEED) Waste Tire Recycling Loan Program. As you know, the MPCA is involved in developing a waste tire program and accordingly is interested in DEED's waste tire loan program. Based on our review of the proposed rules and our experience in developing a waste tire program, staff have prepared comments and questions which are presented in this letter.

Proposed Minnesota Rules part 8300.3081 specifies that the loan program is for waste tire processing. However, waste tire processing is not defined in the proposed rules. Based on a review of the proposed rules, it is not clear what activities constitute waste tire processing, or what facilities would be eligible to apply for a loan. According to Minnesota Statutes §115A.90, subdivision 6, processing means producing or manufacturing usable materials, including fuel, from waste tires including necessary incidental temporary storage activity. Based on this definition, processing would include activities to produce a product, such as tire chips, but not activities to utilize the product, such as the burning of tire chips. Staff believe that the proposed emergency rules should clarify what is covered by waste tire processing either by adding clarifying language to proposed Minnesota Rules part 8300.3081 or adding a definition of waste tire processing to proposed Minnesota Rules part 8300.3082.

Phone: 612/296-7282
1935 West County Road B2, Roseville, Minnesota 55113-2785
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Proposed Minnesota Rules part 8300.3089, subpart 6, item B provides for funding priority if the product is used in Minnesota. Considering that for tire derived fuel (TDF) the current market and some potential markets, such as cement kilns, are located outside of Minnesota, it may not be appropriate to give priority to product use in Minnesota. To establish an economically viable waste tire collection and utilization system, the development of all markets should be encouraged regardless of whether they are located in Minnesota. Therefore, I would suggest that item B be deleted at least until markets have been established in Minnesota.

Proposed Minnesota Rules part 8300.3089, subpart 6, item C provides for funding priority to a facility burning waste tires if it is further from violating MPCA air quality standards than another facility. The meaning of the term "further from violating" is not clear. Generally, facilities are either in compliance or out of compliance with applicable standards. However, in order to establish a priority ranking of facilities it may be more reasonable to consider the overall environmental impact of the facility rather than the degree of compliance with air quality standards. I recommend that the language in item C be replaced with the following: "the project will cause less of an environmental impact than a competing project;." This language would allow DEED to take into consideration such factors as methods of waste tire handling and storage, solid waste generation and management, air emissions, and wastewater discharges. Considering that most tire processing projects will not be burning waste tires, this language is more appropriate and applies to all projects.

Proposed Minnesota Rules part 8300.3090, subpart 6 specifies that the MPCA will determine whether or not a project meets MPCA air quality standards. This is rather limited in scope, considering that most waste tire processing activities would not be subject to air quality standards. These standards would apply to a facility burning waste tires, but not to a facility processing tires into a material such as TDF or molded rubber products. Minnesota Statutes §116M.07, subdivision 3 specifies that loan applications are not complete unless the project which is the subject of the loan application has been certified to be technically feasible by the director of the MPCA. Based on discussions between MPCA and DEED staff, it was MPCA staff understanding that language regarding MPCA certification of technical feasibility would be included in the proposed rules. I believe such language should be added to subpart 6 to clarify that loan applications are not considered to be complete unless the MPCA director certifies the project to be technically feasible. Since loan applicants will be using the proposed emergency rules to prepare their loan application, it is reasonable to specify in the rule that such a certification is necessary to complete the application. Therefore, I recommend that language be added to subpart 6 to provide sufficient information to the MPCA director to make a determination on technical feasibility, and that loan applications are not complete unless the MPCA director has certified the project to be technically feasible.

MPCA staff would like to work with DEED staff regarding the waste tire program. In particular, we would appreciate being kept informed of DEED's waste tire grant program rules and the permanent rules for the waste tire loan program. If you have any questions regarding our comments, please contact Karen Ryss of my staff at 297-1793.

Sincerely,

Barbara Lindsey Sims

Barbara Lindsey Sims
Assistant Executive Director

BLS:dd

MEEDA RESOLUTION NO. 85-318
MINNESOTA ENERGY AND ECONOMIC DEVELOPMENT AUTHORITY
STATE OF MINNESOTA

In the Matter of the adoption of Emergency Rules of the Minnesota Energy and Economic Development Authority Governing the Waste Tire Recycling Loan Program

Certificate of the Authority's Authorizing Resolution to Adopt Emergency Rules

I, Mark B. Dayton, do hereby certify that I am a member and the Chairman of the Minnesota Energy and Economic Development Authority, an authority 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 meeting of the Authority duly and properly called and held on the 24th day of April, 1985, that a quorum was present at said meeting, that said resolution is set forth in the minutes of said meeting and has not been rescinded or modified.

> "Resolved, that the emergency rules relating to the Waste Tire Recycling Loan Program, be and they hereby are approved and adopted pursuant to authority vested in us by Minnesota Statutes section 116M.07, subdivision 3, and that Mark B. Dayton, Chairman of the Minnesota Energy and Economic Development Authority, Lyn Burton, Vice Chair and David L. Printy, Secretary, be and they hereby are authorized to sign an order adopting these rules and further they are 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 24th day of April, 1985.

Mark B. Dayton, Chairman of the Minnesota Energy and Economic Development Authority

Member of the Authority

In the Matter of the Proposed Rules of the Minnesota Energy and Economic Development Authority Relating to The Waste Tire Recycling Loan Program.

STATEMENT OF COMPLIANCE WITH RULEMAKING PROCEDURES

I, Christie B. Eller, do hereby declare that I have examined the 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.

Dated: 5-9-85

Christie B Eller

Christie B. Eller
Special Assistant
Attorney General