

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

Our File No. 1166

RULE REVIEW CHECKLIST

DATE RULE RECEIVED 6-4-85
DATE FOR REVIEW _____
DATE DUE 6-18-85

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

Approved 6-18-85 mjc Disapproved _____ Returned to Agency _____

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

Date filed w/Secretary of State 6-18-85 Revisor approved _____ disapproved _____

✓ Rule as Adopted

✓ Rule as Proposed see SR 1

✓ Order Adopting 5.22.85 Date

N/A Notice of Intent to Solicit Outside Opinion

✓ Order for rulemaking
N/A date of Hearing

✓ Certificate of Board's Authorizing Resolution dated 5.16.85, after notice had been published + mailed.

✓ Notice of rulemaking
✓ Sufficiency

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

✓ Mailing list Certificate

✓ Publication in State Register
4.8.85 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

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

MINNESOTA
Department of Energy
and Economic Development

Financial Management Division
Energy Finance (612) 297-1332
Business Finance (612) 297-3547

900 American Center
150 East Kellogg Boulevard
St. Paul, Minnesota 55101

May 31, 1985

Ms. Judith Wehrwein
Office of the Attorney General
Administration Building
50 Sherburne Avenue
St. Paul, MN 55155

Re: Proposed Emergency Rules Governing the Hazardous Waste Processing Facility Loan Program.

Dear Ms. Wehrwein:

A complete set of documents for the above-entitled proposed emergency rules of the Minnesota Energy and Economic Development Authority is enclosed. The following is a list of the documents:

1.) Rules as adopted
2.) Order for the publication
3.) Copy of the emergency rules as proposed
4.) Mailing list certificate
5.) Affidavit of mailing
6.) Notice of intent to adopt emergency rules and request for public comment
7.) Findings of Facts and Conclusions including written comments on rules received by the agency
8.) Order adopting emergency rules
9.) Certificate of compliance with rulemaking procedures.

Two letters of comments were received and incorporated in the Findings of Facts and Conclusions. These rules are not adopted in response to a petition and no requests have been made to be notified of submission of the rules to the Attorney General.

Your earliest response to these documents is appreciated. Should you have any questions, please call Christie B. Eller at 296-9200.

Sincerely,

Frank Altman
Assistant Commissioner

FA:wg
Attachments

RECEIVED
JUN 04 1985
ATTORNEY GENERAL
ADMINISTRATIVE AGENCIES

SF-00006-03

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL

Office Memorandum

TO: LYN BURTON, Vice Chairman
Minnesota Energy & Economic Development Authority

DATE: 6-18-85

ATTN: CHRISTIE B. ELLER
Special Assistant Attorney General

FROM: MARTHA J. CASSERLY MJC
Special Assistant Attorney General

PHONE: 296-4692

SUBJECT: In the Matter of the Proposed Adoption of Emergency Rules of the Minnesota Energy and Economic Development Authority Governing the Hazardous Waste Processing Facility Loan Program.

The above-referenced rule has been approved as to its legality by the Attorney General on June 18, 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.

MJC:sz

Enclosures

cc: Maryanne Hruby
Executive Director
Legislative Commission to Review
Administrative Rules

Duane Harves
Chief Administrative Law Judge
Office of Administrative Hearings

AG Copy

Energy and Economic Development Department

Energy and Economic Development Authority

Adopted Emergency Rules Relating to Hazardous Waste; Processing Facility Loans

Emergency Rules as Adopted

8300.5000 [Emergency] SCOPE AND AUTHORITY.

Parts 8300.5000 to 8300.5006 [Emergency] apply to applications for financial assistance for hazardous waste processing facilities made to the authority under Minnesota Statutes, sections 115A.162 and 116M.07, subdivision 9.

8300.5001 [EMERGENCY] DEFINITIONS.

Subpart 1. **Scope.** For the purposes of parts 8300.5000 to 8300.5006 [Emergency], the following terms have the meanings given to them.

Subp. 2. **Authority.** "Authority" means the Minnesota Energy and Economic Development Authority created in Minnesota Statutes, section 116M.06.

Subp. 3. **Board.** "Board" means the Waste Management Board established in Minnesota Statutes, section 115A.04.

Subp. 4. **Chairperson.** "Chairperson" means the chairperson of the board.

Subp. 5. **Commissioner.** "Commissioner" means the commissioner of Energy and Economic Development.

Subp. 6. **Hazardous waste processing facility.** "Hazardous waste processing facility" means any real or personal property to be used for the collection or processing of hazardous waste as those terms are defined in Minnesota Statutes, section 115A.03, subdivisions 5, 13, and 25.

Subp. 7. **Hazardous waste processing facility loan or loan.** "Hazardous waste processing facility loan" or "loan" has the meaning given to it in Minnesota Statutes, section 116M.03, subdivision 15.

Subp. 8. **Private person.** "Private person" means any

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person, including individuals, firms, partnerships, associations, societies, trusts, private corporations, or natural persons. "Private person" includes the plural or the singular and does not include a public or governmental body.

8300.5002 [Emergency] ELIGIBLE APPLICANTS FOR THE HAZARDOUS WASTE PROCESSING FACILITY LOAN PROGRAM.

Any private person proposing to develop and operate a hazardous waste processing facility is eligible to apply to the authority for a loan.

8300.5003 [Emergency] ELIGIBLE PROJECT FOR HAZARDOUS WASTE PROCESSING FACILITY LOAN.

An eligible project must be a hazardous waste processing facility as defined in part ~~8300.5000~~ 8300.5001 [Emergency], subpart 6. FF2

8300.5004 [Emergency] PROCEDURES FOR HAZARDOUS WASTE PROCESSING FACILITY LOAN APPLICATIONS.

Subpart 1. **In general.** To apply for assistance from the authority, an applicant shall submit an application to the commissioner on a form provided by the commissioner. An application must be completed, dated, and signed by an owner, general partner, or an authorized officer of an applicant. The commissioner shall follow the procedures under part 8300.3014 [Emergency], subparts 2 to 7 and 9 to 11.

Subp. 2. **Contents.** Applications must comply with part 8300.3012 [Emergency], subparts 2 and 3.

Also, applications must include information necessary for certification by the board under Minnesota Statutes, section 115A.162 and information demonstrating that general casualty and pollution liability insurance is available for the proposed hazardous waste processing facility and the cost of obtaining the insurance must be included in all financial data required to be provided under part 8300.3012 [Emergency], subpart 2, item J. FF5

In addition, the application must contain a certification that the applicant, the officers and directors of the applicant, any shareholder or partner which has a five percent or more FF6

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ownership of the applicant, and the proposed hazardous waste processing facility, if any, have never been a defendant in any civil or criminal action or the respondent in any administrative consent decree or assurance relating to the collection or processing of hazardous waste as those terms are defined in Minnesota Statutes, section 115A.03, subdivisions 5, 13, and 25. FF6

8300.5005 [Emergency] PROCEDURES FOR APPLICATION PROCESSING.

Subpart 1. **In general.** Processing of applications must comply with ~~part~~ parts 8300.3013 and FF8 8300.3014 [Emergency], subparts 2 to 7 and 9 to 11.

Subp. 2. **Additional review for completions.** When an application is received by the commissioner, a copy of the application will be sent to the chairperson or a designee for review. Upon receipt of the notification from the chairperson or a designee that the application is either complete or incomplete for certification by the board, the commissioner will follow the procedure under subpart 1.

Subp. 3. **Forward application to board.** Upon determination that the application is complete it will be forwarded to the board for certification pursuant to Minnesota Statutes, section 115A.162.

8300.5006 [Emergency] REVIEW AND APPROVAL.

Subpart 1. **Certification must be completed.** The authority may not approve an application nor make a loan to an applicant unless the application has been certified by the board.

Subp. 2. **Authority review and approval.** If the board has certified an application, the authority shall approve the application and make the loan if funds are available and if the authority finds that the following criteria are satisfied:

A. the application is complete and contains all required certifications; FF9

B. the development and operation of the hazardous waste processing facility as proposed in the application is economically feasible; and that the hazardous waste processing facility's feasibility is sufficient to allow the authority to

APPROVED BY THE REVISOR OF STATUTES OFFICE BY:

sell the bonds as required for its financing;

B. C. upon review of the application, there is a reasonable expectation that the principal and interest on the loan will be fully repaid; and

C. D. the hazardous waste processing facility is unlikely to be developed and operated without a loan from the authority as certified to by the applicant in the application.

Subp. 3. **Authority review and disapproval.** The authority shall disapprove the application if it finds that one or more of the criteria set forth in subpart 2 have not been satisfied.

Subp. 4. **Additional information and certifications.** The following additional information is required by the authority, if applicable, prior to disbursing financial assistance:

A. all additional information and certifications required under part 8300.3013 [Emergency], subpart 2; and

B. a certificate of the general casualty insurer and a certificate of the pollution liability insurer that the insurance is in full force and effect. Prior to expiration of any insurance policy, the applicant shall furnish the commissioner with evidence that the policy has been renewed, replaced, or is no longer required.

FF10

APPROVED AS TO FORM AND LEGALITY

June 18 1985

HUBERT H. HUMPHREY, III
ATTORNEY GENERAL

BY MJ Carsell
SPECIAL ASSISTANT ATTORNEY GENERAL

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED

JUN 18 1985

Joan Anderson Growe
Secretary of State

10:15 A.M.

STATE OF MINNESOTA
Minnesota Energy and Economic Development Authority

In the Matter of the Proposed
Adoption of Emergency Rules of
the Minnesota Energy and Economic
Development Authority Governing
the Hazardous Waste Processing
Facility Loan Program.

ORDER ADOPTING
EMERGENCY RULES

The above-entitled matter was published on Monday, April 8, 1985, as proposed emergency rules pursuant to Minnesota Statutes 14.29 to 14.36. After affording interested and affected persons an opportunity to submit written data and views within 25 days of the Publication date, reviewing and considering the data and views, and determining that the above-captioned rules are needed and reasonable.

NOW THEREFORE, IT IS ORDERED that these rules identified as Emergency Rules governing Hazardous Waste Processing Facility Loan Program, Parts 8300.5000 to 8300.5006 (Emergency) are adopted this 22th day of May, 1985, pursuant to the authority vested in me by Minnesota Statutes 116M.08, subdivision 4 and Minnesota Statutes 116M.07, subdivision 9.

STATE OF MINNESOTA

Lyn Burton

Lyn Burton, Vice Chairman
Minnesota Energy and
Economic Development
Authority

State of Minnesota
Energy and Economic Development Authority

In the Matter of the Proposed Emergency Rules of the Energy and Economic Development Authority Relating to Rules for the Hazardous Waste Processing Facility Loan Program.

ORDER FOR THE PUBLICATION OF EMERGENCY RULES

IT IS ORDERED this second day of April, 1985 that the proposed emergency rules in the above-entitled matter be published in the State Register.

STATE OF MINNESOTA

MARK B. DAYTON, CHAIRMAN
OF THE MINNESOTA ENERGY AND
ECONOMIC DEVELOPMENT AUTHORITY

MEEDA RESOLUTION NO. 84-138
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 Hazardous Waste Processing Facility Loan 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 16th day of May, 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 governing the Hazardous Waste Processing Facility Loan Program, as well as perform any and all acts incidental thereto.

IN WITNESS WHEREOF, I have hereunto subscribed my name this 16th day of May, 1984.

BY: _____
Chair

ATTEST: _____
Member

MINNESOTA ENERGY AND ECONOMIC DEVELOPMENT AUTHORITY

Proposed Emergency Rules Governing Hazardous Waste Processing Facility Loan Program

Notice of Intent to Adopt Emergency Rules and Request for Public Comment

Notice is hereby given that the Minnesota Energy and Economic Development Authority is proposing to adopt emergency rules for the Hazardous Waste Processing Facility Loan Program. The Authority is authorized by Minnesota Statutes 116M.07 Subdivision 9 to adopt emergency rules for the Hazardous Waste Processing Facility Loan Program. The Authority, in adopting the rules, is following the procedures set forth in Minnesota statutes, sections 14.29 to 14.36.

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 on the proposed emergency rules. Comments in support of or in opposition to the proposed emergency rules are encouraged. With publication of this notice in the April 8, 1985 State Register, written data or views must be received by the agency no later than 4:30 p.m. on May 3, 1985. Written comments should be sent to:

Warren Goodroad
Energy Finance Division
Department of Energy & Economic Development
900 American Center Building
150 East Kellogg Blvd.
St. Paul, Minnesota 55101
Telephone: (612) 297-1941

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

The proposed emergency rules relate to the following matters: eligible applicants for the hazardous waste processing facility loans, procedures for loan applications and for processing, reviewing and approving applications for hazardous waste processing facility loans.

The proposed emergency rules with any modifications adopted by the authority, 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 authority 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 upon publication of a separate notice to such effect.

The emergency rules will be continued in effect for an additional 180 days if the agency gives notice of continuation in accordance with Minnesota Statutes, section 14.35.

A free copy of the proposed emergency rules is available by contacting Mr. Goodroad at the above address.

Dated: March 25, 1985

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

In the matter of the Proposed Adoption of Rules of the State of Minnesota Governing the Hazardous Waste Processing Facility Loan Program

AFFIDAVIT OF MAILING

STATE OF MINNESOTA)
) SS.
COUNTY OF RAMSEY)

Sandra K. Moen, being first duly sworn deposes and says:

That on the 3rd day of April, 1985, at the City of St. Paul, County of Ramsey, State of Minnesota, she served the 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.

Sandra K. Moen

Subscribed and sworn to before me this 3rd day of April, 1985.

Madeline Harris
Notary Public

MADELINE HARRIS
NOTARY PUBLIC - MINNESOTA
CHISAGO COUNTY
My Comm. Exp. Sept. 17, 1989

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

CERTIFICATE

In the Matter of the Proposed Adoption of Emergency Rules
for the Hazardous Waste Processing Facility Loan Program

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 Tuesday, this Second day of April, 1985.

Mary Sandberg

Section 1925 The Program Management Division will assist in hazard mitigation efforts to reduce or eliminate potential hazards that endanger the citizens of the state of Minnesota.

Section 1926 The Program Management Division shall provide guidance to local law enforcement agencies in developing their emergency plans.

VOCATIONAL-TECHICAL EDUCATION SYSTEM

Section 2000 The Vocational-Technical will assist local government in training for emergency fire and rescue operations in coordination with the state Fire Marshal Division, and the Department of Natural Resources.

PROPOSED RULES

Pursuant to Minn. Stat. of 1982, §§ 14.22, an agency may propose to adopt, amend, suspend or repeal rules without first holding a public hearing, as long as the agency determines that the rules will be noncontroversial in nature. The agency must first publish a notice of intent to adopt rules without a public hearing, together with the proposed rules, in the *State Register*. The notice must advise the public:

1. that they have 30 days in which to submit comment on the proposed rules;
2. that no public hearing will be held unless 25 or more persons make a written request for a hearing within the 30-day comment period;
3. of the manner in which persons shall request a hearing on the proposed rules; and
4. that the rule may be modified if the modifications are supported by the data and views submitted.

If, during the 30-day comment period, 25 or more persons submit to the agency a written request for a hearing of the proposed rules, the agency must proceed under the provisions of §§ 14.14-14.20, which state that if an agency decides to hold a public hearing, it must publish a notice of intent in the *State Register*.

Pursuant to Minn. Stat. §§ 14.29 and 14.30, agencies may propose emergency rules under certain circumstances. Proposed emergency rules are published in the *State Register* and, for at least 25 days thereafter, interested persons may submit data and views in writing to the proposing agency.

Energy and Economic Development Department
Energy and Economic Development Authority

Proposed Emergency Rules Relating to Hazardous Waste; Processing Facility Loans

Notice of Intent to Adopt Emergency Rules and Request for Public Comment

Notice is hereby given that the Minnesota Energy and Economic Development Authority is proposing to adopt emergency rules for the Hazardous Waste Processing Facility Loan Program. The Authority is authorized by Minnesota Statutes 116M.07 Subdivision 9 to adopt emergency rules for the Hazardous Waste Processing Facility Loan Program. The Authority, in adopting the rules, is following the procedures set forth in Minnesota Statutes, sections 14.29 to 14.36.

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 on the proposed emergency rules. Comments in support of or in opposition to the proposed emergency rules are encouraged. With publication of this notice in the April 8, 1985 *State Register*, written data or views must be received by the agency no later than 4:30 p.m. on May 3, 1985. Written comments should be sent to:

Warren Goodroad
Energy Finance Division
Department of Energy & Economic Development
900 American Center Building
150 East Kellogg Blvd.
St. Paul, Minnesota 55101
Telephone: (612) 297-1941

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.

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

The proposed emergency rules relate to the following matters: eligible applicants for the hazardous waste processing facility loans, procedures for loan applications and for processing, reviewing and approving applications for hazardous waste processing facility loans.

The proposed emergency rules with any modifications adopted by the authority, 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 authority 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 upon publication of a separate notice to such effect.

The emergency rules will be continued in effect for an additional 180 days if the agency gives notice of continuation in accordance with Minnesota Statutes, section 14.35.

A free copy of the proposed emergency rules is available by contacting Mr. Goodroad at the above address.

March 25, 1985

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

Emergency Rules as Proposed (all new material)

8300.5000 [Emergency] SCOPE AND AUTHORITY.

Parts 8300.5000 to 8300.5006 [Emergency] apply to applications for financial assistance for hazardous waste processing facilities made to the authority under Minnesota Statutes, sections 115A.162 and 116M.07, subdivision 9.

8300.5001 [EMERGENCY] DEFINITIONS.

Subpart 1. Scope. For the purposes of parts 8300.5000 to 8300.5006 [Emergency], the following terms have the meanings given to them.

Subp. 2. Authority. "Authority" means the Minnesota Energy and Economic Development Authority created in Minnesota Statutes, section 116M.06.

Subp. 3. Board. "Board" means the Waste Management Board established in Minnesota Statutes, section 115A.04.

Subp. 4. Chairperson. "Chairperson" means the chairperson of the board.

Subp. 5. Commissioner. "Commissioner" means the commissioner of Energy and Economic Development.

Subp. 6. Hazardous waste processing facility. "Hazardous waste processing facility" means any real or personal property to be used for the collection or processing of hazardous waste as those terms are defined in Minnesota Statutes, section 115A.03, subdivisions 5, 13, and 25.

Subp. 7. Hazardous waste processing facility loan or loan. "Hazardous waste processing facility loan" or "loan" has the meaning given to it in Minnesota Statutes, section 116M.03, subdivision 15.

Subp. 8. Private person. "Private person" means any person, including individuals, firms, partnerships, associations, societies, trusts, private corporations, or natural persons. "Private person" includes the plural or the singular and does not include a public or governmental body.

8300.5002 [Emergency] ELIGIBLE APPLICANTS FOR THE HAZARDOUS WASTE PROCESSING FACILITY LOAN PROGRAM.

Any private person proposing to develop and operate a hazardous waste processing facility is eligible to apply to the authority for a loan.

8300.5003 [Emergency] ELIGIBLE PROJECT FOR HAZARDOUS WASTE PROCESSING FACILITY LOAN.

An eligible project must be a hazardous waste processing facility as defined in part 8300.5000, subpart 6.

8300.5004 [Emergency] PROCEDURES FOR HAZARDOUS WASTE PROCESSING FACILITY LOAN APPLICATIONS.

Subpart 1. In general. To apply for assistance from the authority, an applicant shall submit an application to the commissioner on a form provided by the commissioner. An application must be completed, dated, and signed by an owner, general partner, or an

authorized officer of an applicant. The commissioner shall follow the procedures under part 8300.3014 [Emergency], subparts 2 to 7 and 9 to 11.

Subp. 2. Contents. Applications must comply with part 8300.3012 [Emergency], subparts 2 and 3.

Also, applications must include information necessary for certification by the board under Minnesota Statutes, section 115A.162.

8300.5005 [Emergency] PROCEDURES FOR APPLICATION PROCESSING.

Subpart 1. In general. Processing of applications must comply with part 8300.3014 [Emergency], subparts 2 to 7 and 9 to 11.

Subp. 2. Additional review for completions. When an application is received by the commissioner, a copy of the application will be sent to the chairperson or a designee for review. Upon receipt of the notification from the chairperson or a designee that the application is either complete or incomplete for certification by the board, the commissioner will follow the procedure under subpart 1.

Subp. 3. Forward application to board. Upon determination that the application is complete it will be forwarded to the board for certification pursuant to Minnesota Statutes, section 115A.162.

8300.5006 [Emergency] REVIEW AND APPROVAL.

Subpart 1. Certification must be completed. The authority may not approve an application nor make a loan to an applicant unless the application has been certified by the board.

Subp. 2. Authority review and approval. If the board has certified an application, the authority shall approve the application and make the loan if funds are available and if the authority finds that the following criteria are satisfied:

A. the development and operation of the hazardous waste processing facility as proposed in the application is economically feasible; and that the hazardous waste processing facility's feasibility is sufficient to allow the authority to sell the bonds as required for its financing;

B. upon review of the application, there is a reasonable expectation that the principal and interest on the loan will be fully repaid; and

C. the hazardous waste processing facility is unlikely to be developed and operated without a loan from the authority as certified to by the applicant in the application.

Subp. 3. Authority review and disapproval. The authority shall disapprove the application if it finds that one or more of the criteria set forth in subpart 2 have not been satisfied.

Department of Health

Proposed Temporary Rules Relating to Procedures For Assessment And Classification of Residents of Nursing Homes and Boarding Care Homes Participating in the Medical Assistance Program

Notice of Intent to Adopt a Emergency Rule

The Department of Health proposes to adopt the above-entitled emergency rules to establish procedures for the assessment and classification of residents of nursing homes and boarding care homes required to determine the operating cost payment rates for all nursing homes and boarding care homes participating in the medical assistance program under Minnesota Statutes, section 256B.41 to 256B.48. The authority to adopt these rules is contained in Minnesota Statute § 256B.431, subdivision 6. Persons interested in these rules have until April 29, 1985, to submit written comments. The proposed emergency rules may be modified if the modifications are supported by the data and views submitted to the agency and do not result in substantial change in the proposed language. Written comments should be sent to: H. Michael Tripple, Minnesota Department of Health, Division of Health Resources, P.O. Box 9441, 717 Delaware Street Southeast, Minneapolis, Minnesota 55440, Telephone Number : (612) 623-5448.

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 #85-327
State of Minnesota
Energy and Economic Development Authority

In the Matter of the Proposed Emergency Rules of the Energy and Economic Development Authority Relating to Rules For the Hazardous Waste Processing Facility Loan Program.

Findings of Fact and Conclusions Adopting Emergency Rules

Notice of Intent to adopt Emergency rules regarding the above-entitled matter was published in the State Register on April 8, 1985 at 9 SR 2243-2245 and was mailed to all persons who had registered their names with the Authority. The Notice afforded interested parties at least 25 days in which to submit comments to the Authority on the proposed rules.

The Authority received two written comments which are attached as exhibits. The Authority received no other verbal or written comments on the rules or requests for notification of submission of the rules to the Attorney General.

After affording interested parties an opportunity to submit comments on the proposed emergency rules, and having received the sets of comments, the Authority makes the following:

Findings

The Authority received a letter from Mr. Thomas Dailey requesting a number modifications to the rules reflecting his concerns over the quality and potential risks in the processing of hazardous wastes, the inclusion of collection systems for financing, and the information received by the Authority concerning the potential for irresponsible individuals to receive financial assistance. The second comment letter received on the rules was an internal clarification on the deletion of a reference to Authority general procedures regarding collateral and certification requirements.

1. A request was made by Mr. Dailey to remove hazardous waste collection systems from the definition of a facility and thus from receiving financial assistance as defined in the proposed rules. Part 8300.5001, Subpart 6 defines the term, "facility". The definition will not be modified to delete the "collection" of hazardous wastes. Minnesota Statute 116M.03, subdivision 15, specifically authorizes the Authority to make loans to hazardous waste processing facilities for the "collection or processing of hazardous wastes..." An adequate collection system is an integral

part of the eventual processing and final disposition of hazardous wastes and so is both needed and reasonable to be included as eligible for financial assistance. In all facilities receiving a hazardous waste processing facility loan, the application must be certified by the Waste Management Board. As a part of its activities, the Waste Management Board has been involved in the study of hazardous waste collection systems.

2. Part 8300.5003 will be modified to correct a typographical error which incorrectly refers to part 8300.5000, subpart 6. The corrected statement will read,

"An eligible project must be a hazardous waste processing facility as defined in part 8300.5001, subpart 6."

3. A comment suggested by Mr. Dailey that hazardous waste processing facilities be certified by the applicant as "state of the art" was considered. Part 8300.5004 to part 8300.5006 will not be modified to require certification assuring that the hazardous waste processing procedures and equipment are "state of the art". This change is not needed because each application will be certified for a number of factors including technical feasibility by the Waste Management Board.

4. Mr. Dailey commented that all applications should be reviewed and approved prior to receiving financial assistance by the Minnesota Pollution Control Agency (MPCA). Part 8300.5004 to part 8300.5006 will not be modified to require the MPCA to review hazardous waste processing facility loan applications. This requirement is not necessary because Minnesota Rules chapter 7045 already require hazardous waste facilities to obtain a permit from the MPCA.

5. A comment was made by Mr. Dailey recommending that all projects receiving financial assistance be covered by general casualty and pollution liability insurance. Part 8300.5004, subpart 2 will be modified to clarify specifically the provisions in the application which require general casualty and pollution liability insurance. This will strengthen the economic feasibility of the project. The change to the rule will be on page 2, line 21 to strike the period and insert the following:

"and information demonstrating that general casualty and pollution liability insurance is available for the proposed hazardous waste processing facility and the cost of obtaining such insurance must be included in all financial data required to be provided under part 8300.3012, subpart 2J [Emergency]."

6. Mr. Dailey raised a concern that only upstanding persons should be able to receive financial assistance for hazardous waste processing. Part 8300.5004, subpart 2 will be modified to require information on any previous history of criminal sanctions or other litigious judgements or convictions pertaining to hazardous waste on the part of any persons involved in the ownership, construction,

or operation of the facility. A comment stating that certification be required showing that one has not been subject to any investigation concerning hazardous waste is too broad and too vague since an individual might not know if he or she has been the subject of an investigation. In addition, if an investigation has resulted in no civil, criminal or administrative actions, there has been no probable cause determination made and thus no determination on which to base a denial of financial assistance. The addition will read,

"In addition, the application must contain a certification that the applicant, the officers and directors of the applicant, any shareholders or partner which has a 5 percent or more ownership of the applicant and the proposed hazardous waste processing facility, if any, have never been a defendant in any civil or criminal action, the respondent in any administrative consent decree or assurance, relating to the collection or processing of hazardous waste as those terms are defined in Minnesota Statute 115A.03, subdivisions 5, 13, and 25."

p. 2, 3

7. An opportunity for public comment on hazardous waste processing facility financial assistance was requested by Mr. Dailey. Part 8300.5004 to 8300.5006 will not be modified to include an additional opportunity for public comment. This is unnecessary because loans that are primarily financed through industrial development bonds are subject to the notice and public hearing requirement of IRS Code Section 103k and under federal regulation 26 CFR Part 5f.103-2 before final approval by the Authority of the funding of the hazardous waste processing loan.

8. A comment was received from Christie B. Eller noting a inadvertent error referencing general procedures for Authority applications. Part 8300.5005, subpart 1 will be modified to include a reference to Minnesota Rule part 8300.3013 [Emergency] which was inadvertently deleted. Under Minnesota Statute section 116M.07, subdivision 2 (1984), the Authority is required to obtain the best available security for all loans. Since the Authority must require collateral, the rules should inform applicants of the requirement. The cross-reference to the collateral requirements and additional certifications is needed to inform applicants that there will be collateral requirements. The part should be revised to read as follows:

"Subpart 1. In general. Processing of applications must comply with part 8300.3013 [Emergency] and part 8300.3014 [Emergency] and part 8300.3014 [Emergency], subparts 2 to 7 and 9 to 11."

p. 3.

9. Comment was received from Ms. Eller to clarify that the Authority may reject an incomplete application. Part 8300.5006, subpart 2 will be modified to clarify that the Authority can reject an application on the basis of completeness. The modification to the subpart will be to renumber the paragraphs and insert a new paragraph "A". The modified subpart will read as follows:

"Subpt. 2. Authority review and approval. If the board has certified an application, the authority shall approve the application and make the loan if funds are available and if the authority finds that the following criteria are satisfied:

A. the application is complete and contains all required certifications.

B. the development and operation of the hazardous waste processing facility as proposed in the application is economically feasible; and that the hazardous waste processing facility's feasibility is sufficient to allow the authority to sell the bonds as required for its financing;

C. upon review of the application, there is a reasonable expectation that the principle and interest on the loan will be fully repaid; and

D. the hazardous waste processing facility is unlikely to be developed and operated without a loan from the authority as certified to by the applicant in the application."

p.3,4

10. Part 8300.5006 will be modified by adding a subpart which is consistant with the changes made to part 8300.5004, subpt. 2 as recommended in the comments received from Mr. Dailey. Prior to the disbursal of financial assistance, the authority will require the applicant to show that all required insurance and certifications are in effect. This will aid the authority in reviewing applications for approval. The new subpt. 4 will read as follows:

"Subpt. 4. Additional information and certifications. The following additional information is required by the authority, if applicable, prior to disbursing financial assistance.

A. All additional information and certifications required under part 8300.3013, subpt. 2; and

B. A certificate of the general casualty insurer and a certificate of the pollution liability insurer that such insurance is in full force and effect. Prior to expiration of any insurance policy, the applicant shall furnish the commissioner with evidence that the policy has been renewed, replaced or is no longer required."

p.4

Conclusions

1. The Authority gave proper notice of its intent to adopt the proposed emergency 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 emergency rules, and modifications there to 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 the need for and reasonableness of these adopted emergency rules.

5. The Authority has determined that the modifications to the rules are supported by the data and views submitted to the agency and do not constitute a substantial change from the rules as originally proposed and published in the State Register.

Lyn Sutton

Minnesota Energy and
Economic Development
Authority

Henkel

HENKEL CORPORATION

Law Department

APR 24 1985

Writer's Direct
Dial Phone Number:
612/828-8306

April 17, 1985

Minnesota Department of Energy
and Economic Development
900 American Center
150 East Kellogg Boulevard
Saint Paul, Minnesota 55101

Attention: Mr. Warren Goodroad
Energy Finance Division

Re: Proposed Emergency Rules Governing Hazardous Waste Processing Facility Loan Program

Gentlemen:

This response is to the notice of proposed, emergency rule-making issued by Mr. Goodroad on April 3, 1985.

As an enterprise which suffers (with others) from the lack of a Minnesota-based hazardous waste processing facility, Henkel Corporation endorses the general concept of the subject proposal. However, we believe that the referenced proposed rules lack notably some necessary features.

Recommendation 1: It is first recommended that the final rules and any related loan entitlements apply only to facilities which actually process hazardous waste; that is, which render it ecologically harmless or otherwise dispose of such waste in strict accordance with state and federal laws and regulations.

Comment: The "facility" definition in Subpart 6 of proposed Section 8300.5001 clearly encompasses ("or") facilities which may only collect hazardous waste as an individualized activity. As you may know, facilities which have in the past simply collected waste without conscientiously and lawfully processing it into a state of harmlessness by incineration, neutralization or other means are currently responsible for a majority of the waste-related enforcement and site clean-up actions of government in this country. In that regard, financial support of waste "collection" facilities is curious and, at least, a very risky involvement by your Department.

Further, inasmuch as generators of hazardous waste have "cradle-to-grave" responsiblity for such materials, it is questionable whether any informed business manager would be willing to consign such waste to a "collection" (as opposed to a disposal) facility where the ultimate fate of that waste may become obscured by

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mistaken, lax, or deferred handling by a middleman. Accordingly, the proposed extension of loans to hazardous waste "collection" facilities, as such, may not be economically warranted in relation to the practical interests (and obligations) of Minnesota-based industries.

Recommendation 2: In addition to limiting loan consideration to facilities which "process" hazardous waste, it is recommended that the final rules expressly require all applicants for loan assistance to certify the following:

a) That the procedures and equipment systems with which they intend to "process" hazardous wastes into harmlessness are state of the art;

b) That those processes and the applicant's facility operating plan have been submitted to, and previously approved in detail, by the Minnesota Pollution Control Agency (MPCA);

c) That the applicant has binders of general casualty and pollution liability insurance in substantial amounts, covering at least the first full year of loan-subsidized operation; and

d) That none of the applicant's proprietors, principles, large-block shareholders, or designated facility management staff (all to be named) has been the subject of any prior investigation or action as to questionable hazardous waste processing or disposal activities, either individually or as an affiliate or employee of an enterprise which has been subject of such an investigation or action.

Comment: The subject loan program should be designed to specifically encourage the introduction into Minnesota of the "newest and best" proven technologies of hazardous waste disposal. Only applicants which pledge the employment of such technologies (with the blessing of the MPCA) should be actively considered for financial assistance. Further, all applicants should be required to prove insurability and untainted reputation(s). As further practical matters, informed waste generators currently do check the insurabilities and the past/present reputations of waste handling facilities. Those which fall short in either respect will not be utilized by such generators.

Recommendation 3: After favorable consideration by the Board, but before any loan entitlement is certified under this program, all applications should be subject to public notification and a minimum thirty (30) day review period.

Comment: Public evaluations and comments per all applications should be considered a vital part of this assistance program. Valid questions concerning an applicant's technologies, insur-

abilities, and reputation(s) may be inadvertently missed or treated inadequately in a Board's consideration, or "glossed-over" by an applicant. In those regards, public consideration of applications may assist the Board's informed deliberations and decision making.

Additionally, public awareness of a technologically innovative and proposedly well-structured facility may result in supportive private financing, and thereby avoid the unnecessary commitment of State monies through this loan program. Relatedly, within a designated period of public notice and comment, applicants who are approached by capable private financiers, or who draw heated objections from the public, should be entitled to withdraw their applications from board consideration "without prejudice".

In summary, we strongly encourage the final rules to focus specifically and limitedly upon hazardous waste processing (i.e. disposal) facilities, which are needed in Minnesota and to set at least some minimal, functional and "personality" criteria for projects seeking loan assistance.

Very truly yours,

HENKEL CORPORATION

Thomas M. Dailey
Assistant General Counsel

TMD/pkm

cc: D. J. Vaughn, P. E. - HTC

SF-00006-03

STATE OF MINNESOTA

APR 22 1985

DEPARTMENT ATTORNEY GENERAL

Office Memorandum

TO: WARREN GOODROAD
Energy and Economic Development

DATE: April 18, 1985

FROM: CHRISTIE B. ELLER CBE
Special Assistant Attorney General

PHONE: 296-9200

SUBJECT: PROPOSED EMERGENCY RULES GOVERNING THE HAZARDOUS WASTE PROCESSING FACILITY LOAN PROGRAM.

In reviewing the rules as published it appears that the reference in prior drafts of the rule to Minn. Rule pt. 8300.3013 [Emergency] was inadvertently deleted in pt. 8300.5005, subp. 1. The part should be revised to read as follows:

> Subpart 1. In general. Processing of applications must comply with part 8300.3013 [Emergency] and part 8300.3014 [Emergency], subparts 2 to 7 and 9 to 11.

Under Minn. Stat. § 166M.07, subd. 2 (1984), the Authority is required to obtain the best available security for all loans. Since the Authority must require collateral, the rules should inform applicants of the requirement. The cross-reference to the collateral requirements and additional certifications is needed to inform applicants that there will be collateral requirements.

CBE/smo

MEEDA Resolution #85-329
State of Minnesota
Minnesota Energy and Economic Development Authority

In the matter of the adoption of Emergency Rules of the Minnesota Energy and Economic Development Authority Governing the Hazardous Waste Processing Facility Loan Program

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

I, Lyn Burton, do hereby certify that I am a member and the Vice-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 22th day of May, 1985, 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 minutes of said meeting and has not been rescinded or modified.

> "Resolved, that the emergency rules governing the Hazardous Waste Processing Facility Loan Program be and hereby are approved and adopted pursuant to the authority invested in us by Minnesota Statutes section 116M.07, subdivision 9 and Minnesota Statutes section 116M.08, subdivision 4 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 hereby are authorized to sign an order adopting these rules and further 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 22nd day of May, 1985.

Lyn Burton

Lyn Burton, Vice-chairman
Minnesota Energy and Economic Development Authority

Member

In the Matter of the Proposed
Emergency Rules of the Minnesota
Energy and Economic Development
Authority Governing the Hazardous
Waste Processing Facility 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 Procedures Act, the rules of the Office of Administrative Hearing , and the rules of the Attorney General have been followed. Any exceptions are noted below.

Christie B Eller

Christie B. Eller
Special Assistant Attorney General

Date 5-31-85