

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

Our File No. 1182 . . 05-0009-0841

RULE REVIEW CHECKLIST

DATE RULE RECEIVED 7-5-85
DATE FOR REVIEW 7-15-85
DATE DUE 7-19-85

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

Approved 7-19-85 mjc Disapproved _____ Returned to Agency _____

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

Date filed w/Secretary of State 7-22-85 Revisor approved 7/9/85 disapproved _____

✓ Rule as Adopted

_____ Rule as Proposed

✓ Order Adopting 6.27.85. Date

_____ 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
3.27.85 At least 30 days prior to ~~hearing~~/adoption

✓ Mailing list Certificate

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

N/A Hearing Examiner's Report

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

✓ Agency's Findings of Fact

N/A LCRAR Report or agency Affidavit

✓ Certificate of Board's Resolution Adopting Rules labeled "authorizing"

N/A Order Approving Incorporation by Reference

✓ Statement of Need and Reasonableness includes small biz statement — no direct effect.

N/A Petition for Adoption of a Rule

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

✓ Certificate of Compliance w/Rulemaking Procedures

✓ Affidavit of Mailing Notice of Submission to Attorney General
no requests

N/A Notice of Submission to the Attorney General

To:

Date: 7/9/85

Re: Waste Management Board – Development Grants for Waste Processing and Collection Facilities

Rules as Adopted

p. 8, line 22 9200. 6008, subp. 5.

There appears to be a word missing from the section – "the grantee" should be inserted between "agreement" and "shall".

p. 10, line 11 9200. 6010, subp. 3.

This section provides for the board to request additional information if required to complete its evaluation. This seems a somewhat vague standard.

1) pg 7, line 26 est criteria en cour ag special circumstances

~~2) pg 8, line 7-8~~

3) pg 8, line 21 OK

4) pg 10, line 11 OK

5) pg 11, line 9

HUBERT H. HUMPHREY, III
ATTORNEY GENERAL

STATE OF MINNESOTA

OFFICE OF THE ATTORNEY GENERAL

ST. PAUL 55155

ADDRESS REPLY TO:
ATTORNEY GENERAL'S OFFICE
POLLUTION CONTROL DIVISION
1935 WEST COUNTY ROAD B-2
ROSEVILLE, MN 55113
TELEPHONE: (612) 296-7342

July 2, 1985

Mr. Mike Miles
Assistant Attorney General
Office of the Attorney General
Administration Building
St. Paul, MN 55155

RE: Proposed Minnesota Rules Parts 9200.6000 to .6011, Hazardous Waste Processing Grant and Loan Rules

Dear Mr. Miles:

On June 27, 1985, the Waste Management Board adopted Hazardous Waste Processing Grant and Loan Rules. Enclosed for your review are the following:

1. Rules as adopted (original and three copies).
2. Order Adopting Rules (two copies).
3. Certificate of Board Authorizing Resolution adopting rules.
4. Order for Publication of Notice of Intent to Adopt Rules Without Public Hearing.
5. Certificate of Board's Resolution ordering publication of Notice of Intent.
6. Notice of Intent to Adopt Rules Without a Public Hearing and Rules as Proposed (9 S.R. 2271, April 8, 1985).
7. Written comments received from Mr. Warren R. Goodroad of Minnesota Department of Energy and Economic Development during the comment period.
8. Affidavit of Mailing, Notice of Intent to Adopt Rules Without a Public Hearing, and Rules as Proposed, as mailed, and mailing list.
9. Mailing List Certificate.
10. Statement of Need and Reasonableness.

11. Findings of Fact and Conclusions.

12. Statement of Compliance with Rulemaking Procedures.

13. Affidavit Regarding Notification of Submission to Attorney General.

The impact of the proposed rules on small businesses was discussed in the Statement of Need and Reasonableness, and it was determined that the rules do not directly affect small businesses.

Please note that the rules as adopted incorporate the modifications suggested by the written comments of Mr. Goodroad, and therefore differ from the rules as proposed. We have considered these modifications and have determined that they do not constitute a substantial change for the following reasons:

(1) A definition of "capital costs" was added merely to clarify its meaning as used in the rules.

(2) References to "any other funding sources" were eliminated to avoid confusing potential loan applicants with vague references to sources of financing not governed under the hazardous waste loan program.

(3) The reference to establishing a match by the loan applicant of greater than 25 percent was deleted to remove an unnecessary burden on loan applicants that could curtail applications and undermine the success of the program. The current statutory match requirements appear to be sufficient to ensure the applicant is sharing a sufficient percentage of the financial risk.

(4) References to eligibility review were modified or eliminated because the rules do not provide for any Board review of eligibility and therefore the references were surplus language which would confuse loan applicants.

Very truly yours,

PENNY TROOLIN
Special Assistant
Attorney General

Enclosures

PT/mlj

SF-00003-03

DEPARTMENT ATTORNEY GENERAL

STATE OF MINNESOTA

Office Memorandum

TO: ROBERT G. DUNN, Chairperson
Waste Management Board

DATE: 7-22-85

ATTN: ALAN WILLIAMS
Special Assistant Attorney General

FROM: MARTHA J. CASSERLY MJC

PHONE: 296-4692

Special Assistant Attorney General

SUBJECT: In the Matter of the Adoption of Proposed Rules of the Waste Management Board Governing Hazardous Waste Processing Grants and Loans, Minnesota Rules Parts 9200.6000 to 9200.6011.

The above-referenced rule has been approved as to its legality by the Attorney General on July 19, 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

Waste Management Board

Adopted Rules Relating to Development Grants for Waste Processing and Collection Facilities

Rules as Adopted

9200.6000 SCOPE AND AUTHORITY.

Parts 9200.6000 to 9200.6011 govern the administration of development grants for waste processing and collection facilities and services as provided under Minnesota Statutes, section 115A.156, and certification of hazardous waste processing facility loan applications received by the energy and economic development authority and forwarded to the board for certification under Minnesota Statutes, sections 115A.162 and 116M.07, subdivision 9.

9200.6001 DEFINITIONS.

Subpart 1. **Scope.** For the purposes of parts 9200.6000 to 9200.6011, the following terms have the meanings given them unless the context requires otherwise.

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 Minnesota Waste Management Board established in Minnesota Statutes, section 115A.04.

Subp. 4. **Capital costs.** "Capital costs" means expenditures that meet the requirements of federal industrial development bond law, including:

A. acquisition costs of buildings, equipment, machinery, or any combination of them;

B. site preparation;

C. construction costs;

D. engineering costs;

E. bond issuance costs;

F. underwriting or placement fees;

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G. trustee's fees;

H. fee of guarantor, insurer, or financial institution, other than the authority, who provides letters of credit, surety bonds, or equivalent security;

I. authority fees, including application and guaranty fees of the authority and administrative costs and expenses;

J. certain contingency costs;

K. interest costs during construction;

L. legal fees, including those of the authority's bond counsel; and

M. debt service reserve fund.

Subp. 5. **Chairperson.** "Chairperson" means the chairperson of the board.

Subp. ~~5~~ 6. **Collection.** "Collection" has the meaning given it in Minnesota Statutes, section 115A.03, subdivision 5.

Subp. 6 7. **Commercial.** "Commercial" means that the facility or service referred to is established and permitted to sell waste collection or processing services to generators other than the owner and operator of the facility or services.

Subp. ~~7~~ 8. **Commissioner.** "Commissioner" means the commissioner of energy and economic development.

Subp. 8 9. **Generator.** "Generator" means a person who produces a hazardous waste.

Subp. 9 10. **Hazardous waste.** "Hazardous waste" means those wastes identified and listed in parts 7045.0100 to 7045.0141.

Subp. ~~10~~ 11. **Loan.** "Loan" means a hazardous waste processing facility loan as defined in Minnesota Statutes, section 116M.03, subdivision 15.

Subp. ~~11~~ 12. **Person.** "Person" means a natural person or a corporation, association, operation, firm, partnership, trust, or other form of organization.

Subp. ~~12~~ 13. **Processing.** "Processing" has the meaning given it in Minnesota Statutes, section 115A.03, subdivision 25.

Subp. ~~13~~ 14. **Proposal.** "Proposal" means the work that is intended to be conducted with the grant funds.

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Subp. ~~14~~ 15. **Service.** "Service" means work done or duty performed for others.

HAZARDOUS WASTE PROCESSING FACILITY GRANTS

9200.6002 ELIGIBILITY CRITERIA.

Subpart 1. **Eligible applicants.** The following are eligible to apply for a development grant:

A. a person who proposes to develop and operate specific commercial collection or processing facilities or services to serve generators of hazardous waste in the state;

B. an association of two or more Minnesota generators who propose to develop and operate specific commercial collection and processing facilities or services to serve generators of hazardous waste in the state.

Subp. 2. **Eligible proposals.** Proposals for the following types of work which are preliminary to the development and operation of specific types of commercial facilities and services for collecting or processing hazardous waste are eligible:

A. market assessment, including generator surveys;

B. conceptual design and preliminary engineering;

C. financial and business planning necessary to address sources of funding, financial security, liability, pricing structure, and related matters required for the development and proper operation of a facility or service;

D. environmental impact and site analysis, preparation of permit applications, and environmental and permit reviews;

E. analysis of methods to overcome identified technical, institutional, legal, regulatory, market, or other problems in developing or operating a facility or service; and

F. analysis of other factors affecting development, operation, and use of the proposed facility or service.

Subp. 3. **Eligible costs.** Eligible costs are limited to the costs of conducting studies, analyses, or other work consistent with subpart 2.

Subp. 4. **Ineligible costs.** Grant money awarded through

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this program may not be spent for capital improvements or equipment.

Subp. 5. **Matching funds.** To be eligible to receive a grant under this program a recipient must agree to provide matching funds as specified in part 9200.6007.

Subp. 6. **Multiple proposals for a facility or service.** Proposals for more than one grant for the same facility or service are eligible only if the proposals concern different aspects of the development or operation of the facility or service.

9200.6003 GRANT APPLICATION.

An applicant must submit an application in the form specified by the board. An application must include the following information:

A. A detailed description of the proposal, including primary tasks, the schedule for completion of the work, and a statement of the amount which the applicant expects to contribute to the cost of the proposal.

B. A description of the applicant's financial, managerial, and technical ability to carry out the work described in the proposal, including the applicant's experience in carrying out similar work, and any work for which the applicant expects to use consultant assistance.

C. A description of the applicant's financial, managerial, and technical ability to develop and operate the proposed facility or service.

D. A statement whether the applicant is planning to apply for future grants under this program, or has applied or is planning to apply for a hazardous waste processing facility loan administered by the Minnesota Energy and Economic Development Authority.

E. Information which addresses the evaluation factors in Minnesota Statutes, section 115A.156, subdivision 3, and those factors listed in part 9200.6006 in sufficient detail to enable the board to adequately evaluate the proposal.

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9200.6004 APPLICATION PROCESS.

Subpart 1. **Deadline.** The board will solicit applications by notification in the State Register. The board may set reasonable deadlines for submission of applications.

Subp. 2. **Limited solicitation of applications.** The board may limit its solicitation of applications to particular types of proposals, facilities, or services based upon:

A. the board's evaluation of the results of previous studies of hazardous waste processing and reduction proposals and opportunities in Minnesota; and

B. any board determination of the types of processing facilities or services recommended for development in the state.

9200.6005 INITIAL APPLICATION REVIEW.

Subpart 1. **Application review.** The chairperson or a designee shall review all applications.

Subp. 2. **Eligibility and documentation review.** The chairperson or a designee shall review each application to determine the eligibility of the applicant, the eligibility of the costs specified in the application, the eligibility of the proposal specified in the application, and the adequacy of the supporting documentation. Documentation is considered adequate if it enables the board to determine whether:

A. the proposal is feasible at the costs indicated in the application;

B. the applicant has the financial, managerial, and technical ability and experience to carry out the proposal;

C. the applicant has the financial, managerial, and technical ability to develop and operate the proposed facility or service; and

D. the proposal adequately addresses the evaluation factors listed in part 9200.6006.

Subp. 3. **Notice of determination.** Within 14 days after receiving the application, the chairperson shall notify each applicant of the chairperson's determinations. If the chairperson determines that the applicant, project, and costs are eligible and that the supporting documentation is adequate,

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the application is considered final and the applicant shall be so notified. The application must then be referred to the board to be evaluated as provided in part 9200.6006. If the chairperson determines that any costs or any part of the proposal is not eligible or that the documentation in the application is inadequate, the application must be returned with a statement of the reasons for rejecting the application. The applicant has 14 days after receipt of the rejection to correct the inadequacies. If the inadequacies are corrected within the time allowed, the application is considered final and the applicant shall be so notified. The application must then be referred to the board to be evaluated as provided in part 9200.6006.

9200.6006 EVALUATION OF PROPOSALS.

Subpart 1. **Evaluation schedule.** Within 60 days after the application is considered final, the board shall evaluate the proposal and set a date for action.

Subp. 2. **Evaluation factors.** In evaluating each proposal the board shall consider the following factors:

A. The factors listed in Minnesota Statutes, section 115A.156, subdivision 3.

B. The importance of the proposal to the eventual development and operation of the proposed facility or service.

C. The likelihood that the proposed facility or service will be developed.

D. The results of any previous proposal for which the applicant received a grant under this program.

E. The consistency of the proposal with any board determination of the types of processing facilities or services recommended for development in the state.

F. Whether an applicant is an association of two or more Minnesota generators. In considering this factor, the board may give preference to an association of two or more Minnesota generators if the board determines that the association significantly contributes to cooperation among generators in solving hazardous waste management problems.

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9200.6007 AWARD OF GRANTS.

Subpart 1. **General procedure.** The board shall award grants for those proposals which in the board's judgment will be the most beneficial in improving hazardous waste management in the state, based upon its evaluation of the factors identified in part 9200.6006.

Subp. 2. **Amount of grants.** The board shall determine the amount of a grant based on a review of the factors identified in this part and based upon the availability of funds. No grant may exceed $50,000.

Subp. 3. **Matching funds required.** A recipient other than an association of generators in the state shall agree to provide at least 50 percent of the cost of the proposal. An association of two or more generators in the state shall agree to provide at least 20 percent of the cost of the proposal.

Subp. 4. **Multiple grants for same facility or service.** The board may award more than one grant for the development of the same facility or service only if the board finds that results of previous proposals for that facility or service justify additional work on other aspects of its development or operation.

9200.6008 GRANT AGREEMENT.

Subpart 1. **Grant contents.** The board and a grant recipient shall enter into a grant agreement. The grant agreement must:

A. Establish the term of the grant. Unless otherwise determined by the board, all grants awarded under this part will have a maximum of one year.

B. Provide that the recipient is authorized to enter into contracts to complete the work specified in the agreement.

C. Identify the product of the proposal and provide that the results of all studies, analyses, or other work performed under this agreement are made available to the board. The grant agreement may include provisions for classifying certain information provided by the grantee as nonpublic

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pursuant to the board's authority under Minnesota Statutes, section 115A.06, subdivision 13, and the Minnesota Data Practices Act, Minnesota Statutes, chapter 13.

Subp. 2. **Cancellation of grants.** The grant is subject to cancellation by the board if the proposed work is not completed in accordance with the terms and conditions of the grant agreement, including time schedules, unless the chairperson determines that variances from the respective agreements are in order.

Subp. 3. **Termination.** The board may terminate the work under an agreement upon 30 days notice if it determines that the proposal is no longer feasible. A request for termination may be initiated by either the board or a grant recipient. The procedure for determining that a proposal is not feasible shall be specified in the grant agreement.

Subp. 4. **Disbursement.** The board shall disburse grants in accordance with the payment schedule set out in the grant agreement. At the discretion of the board, this may include a phased disbursement or final holdback of a percentage of funds.

Subp. 5. **Return of unspent funds.** Upon completion of the proposal, cancellation of the grant, or termination of the work under a grant agreement the grant recipient shall return the state's share of the unspent funds. The procedure for determining the amount of funds to be returned shall be specified in the grant agreement.

HAZARDOUS WASTE PROCESSING FACILITY LOANS

9200.6009 INITIAL APPLICATION REVIEW.

Subpart 1. **Transmittal from commissioner.** Upon receipt from the commissioner of a copy of a hazardous waste processing facility loan application, the chairperson or a designee shall review the application for eligibility and adequacy of documentation.

Subp. 2. **~~Eligibility and~~ Documentation review.** The chairperson or a designee shall review each application to determine the adequacy of the supporting documentation. Documentation is considered adequate if it enables the board to

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make the determination required for certification and if it provides sufficient information to address the certification factors.

Subp. 3. **Notification of ~~eligibility~~ adequacy.** Within 14 days after receiving a copy of the application, the chairperson or designee shall notify the commissioner of the determination of ~~eligibility and~~ adequacy of documentation. The notice shall state the additional information needed by the board to determine whether the application will be certified.

9200.6010 EVALUATION OF LOAN APPLICATIONS.

Subpart 1. **Evaluation schedule.** The board will begin to review the application upon receipt of an application determined by the commissioner to be complete.

Subp. 2. **Certification factors.** In addition to determining whether the requirements of part 9200.6011, subpart 2, have been satisfied, the board shall consider the following factors in evaluating whether a loan application will be certified and in determining the share of capital costs that must be provided by the applicant:

A. the types and quantities of hazardous waste that will be handled by the facility or service;

B. the types and quantities of residuals produced by the facility or service and their final disposition;

C. the number of generators that are served by the facility or service;

D. the extent to which the facility will serve the needs of smaller businesses that generate hazardous waste;

E. whether an applicant has received a grant from the board to undertake feasibility studies for the proposal. In considering this factor, the board may give preference to an applicant who has received a grant from the board and successfully, completed the feasibility studies for which the grant was awarded;

F. the applicant's managerial and technical experience for developing and operating the proposed facility or service, including past operating experience with similar

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facilities and services;

G. the results of previous studies of hazardous waste processing and waste reduction proposals and opportunities in Minnesota, including a comparison of the applicant's market assessment with market information previously available to the board;

H. any board determination of the types of processing facilities or services recommended for development in the state;

I. the availability of funds from the authority ~~or other funding sources~~.

Subp. 3. **Request for additional information.** If the board finds that additional information is required to complete its evaluation, the board may request in writing that the applicant provide the necessary information. The board shall notify the commissioner of this request. If the information is not provided within 30 days, the application will be deemed rejected and no longer considered for certification by the board. The board shall notify the commissioner if an application is rejected under this subpart.

9200.6011 CERTIFICATION.

Subpart 1. **Conditions for certification.** The board may certify a loan application only if it determines that:

A. the applicant has demonstrated that the proposed facility or service is technically feasible;

B. the applicant has made a reasonable assessment of the market for the services offered by the proposed facility or service;

C. the applicant has agreed to provide funds for the proposed facility in an amount equal to at least 25 percent of the capital cost of the facility excluding land acquisition cost;

D. the applicant has agreed to pay the cost of any land acquisition necessary to develop the facility;

E. the facility will contribute in a significant way to achievement of the policies and objectives of the board's draft hazardous waste management plan, in particular, the reduction of the need for and practice of hazardous waste

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disposal.

Subp. 2. ~~Matching-funds.--As-a-condition-of-its certification-and-based-on-its-consideration-of-the certification-factors,-the-board-may-require-an-applicant-to agree-to-provide-funds-in-excess-of-25-percent-of-the-capital cost-of-the-facility-excluding-land-acquisition-cost.~~

~~Subp.-3.~~ Notification to commissioner. The chairperson shall notify the applicant and the commissioner in writing of the board's decision regarding certification of the loan application,~~-and-the-percentage-of-matching-funds-required-if more-than-25-percent~~. The board in its notice shall state the basis for its decision including any reason for the decision which is based on a certification factor under part 9200.6010, subpart 2.

APPROVED IN THE
REVISOR OF STATUTES
OFFICE BY:

APPROVED AS TO FORM AND LEGALITY

July 19 1985

HUBERT H. HUMPHREY, III
ATTORNEY GENERAL

BY MJ Cassedy
SPECIAL ASSISTANT ATTORNEY GENERAL

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
JUL 22 1985

Joan Anderson Growe
Secretary of State

10:10 A.M.

AG copy

Waste Management Board

Adopted Rules Relating to Development Grants for Waste Processing and Collection Facilities

Rules as Adopted

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F. underwriting or placement fees;

FF8.

APPROVED IN THE REVISOR OF STATUTES OFFICE BY:

G. trustee's fees;

H. fee of guarantor, insurer, or financial institution, other than the authority, who provides letters of credit, surety bonds, or equivalent security;

I. authority fees, including application and guaranty fees of the authority and administrative costs and expenses;

J. certain contingency costs;

K. interest costs during construction;

L. legal fees, including those of the authority's bond counsel; and

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HAZARDOUS WASTE PROCESSING FACILITY GRANTS

9200.6002 ELIGIBILITY CRITERIA.

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E. analysis of methods to overcome identified technical, institutional, legal, regulatory, market, or other problems in developing or operating a facility or service; and

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Subp. 4. **Ineligible costs.** Grant money awarded through

APPROVED IN THE REVISOR OF STATUTES OFFICE BY:

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A. A detailed description of the proposal, including primary tasks, the schedule for completion of the work, and a statement of the amount which the applicant expects to contribute to the cost of the proposal.

B. A description of the applicant's financial, managerial, and technical ability to carry out the work described in the proposal, including the applicant's experience in carrying out similar work, and any work for which the applicant expects to use consultant assistance.

C. A description of the applicant's financial, managerial, and technical ability to develop and operate the proposed facility or service.

D. A statement whether the applicant is planning to apply for future grants under this program, or has applied or is planning to apply for a hazardous waste processing facility loan administered by the Minnesota Energy and Economic Development Authority.

E. Information which addresses the evaluation factors in Minnesota Statutes, section 115A.156, subdivision 3, and those factors listed in part 9200.6006 in sufficient detail to enable the board to adequately evaluate the proposal.

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Subpart 1. **Deadline.** The board will solicit applications by notification in the State Register. The board may set reasonable deadlines for submission of applications.

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B. any board determination of the types of processing facilities or services recommended for development in the state.

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Subp. 2. **Eligibility and documentation review.** The chairperson or a designee shall review each application to determine the eligibility of the applicant, the eligibility of the costs specified in the application, the eligibility of the proposal specified in the application, and the adequacy of the supporting documentation. Documentation is considered adequate if it enables the board to determine whether:

A. the proposal is feasible at the costs indicated in the application;

B. the applicant has the financial, managerial, and technical ability and experience to carry out the proposal;

C. the applicant has the financial, managerial, and technical ability to develop and operate the proposed facility or service; and

D. the proposal adequately addresses the evaluation factors listed in part 9200.6006.

Subp. 3. **Notice of determination.** Within 14 days after receiving the application, the chairperson shall notify each applicant of the chairperson's determinations. If the chairperson determines that the applicant, project, and costs are eligible and that the supporting documentation is adequate,

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the application is considered final and the applicant shall be so notified. The application must then be referred to the board to be evaluated as provided in part 9200.6006. If the chairperson determines that any costs or any part of the proposal is not eligible or that the documentation in the application is inadequate, the application must be returned with a statement of the reasons for rejecting the application. The applicant has 14 days after receipt of the rejection to correct the inadequacies. If the inadequacies are corrected within the time allowed, the application is considered final and the applicant shall be so notified. The application must then be referred to the board to be evaluated as provided in part 9200.6006.

9200.6006 EVALUATION OF PROPOSALS.

Subpart 1. **Evaluation schedule.** Within 60 days after the application is considered final, the board shall evaluate the proposal and set a date for action.

Subp. 2. **Evaluation factors.** In evaluating each proposal the board shall consider the following factors:

A. The factors listed in Minnesota Statutes, section 115A.156, subdivision 3.

B. The importance of the proposal to the eventual development and operation of the proposed facility or service.

C. The likelihood that the proposed facility or service will be developed.

D. The results of any previous proposal for which the applicant received a grant under this program.

E. The consistency of the proposal with any board determination of the types of processing facilities or services recommended for development in the state.

F. Whether an applicant is an association of two or more Minnesota generators. In considering this factor, the board may give preference to an association of two or more Minnesota generators if the board determines that the association significantly contributes to cooperation among generators in solving hazardous waste management problems.

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9200.6007 AWARD OF GRANTS.

Subpart 1. **General procedure.** The board shall award grants for those proposals which in the board's judgment will be the most beneficial in improving hazardous waste management in the state, based upon its evaluation of the factors identified in part 9200.6006.

Subp. 2. **Amount of grants.** The board shall determine the amount of a grant based on a review of the factors identified in this part and based upon the availability of funds. No grant may exceed $50,000.

Subp. 3. **Matching funds required.** A recipient other than an association of generators in the state shall agree to provide at least 50 percent of the cost of the proposal. An association of two or more generators in the state shall agree to provide at least 20 percent of the cost of the proposal.

Subp. 4. **Multiple grants for same facility or service.** The board may award more than one grant for the development of the same facility or service only if the board finds that results of previous proposals for that facility or service justify additional work on other aspects of its development or operation.

9200.6008 GRANT AGREEMENT.

Subpart 1. **Grant contents.** The board and a grant recipient shall enter into a grant agreement. The grant agreement must:

A. Establish the term of the grant. Unless otherwise determined by the board, all grants awarded under this part will have a maximum of one year.

B. Provide that the recipient is authorized to enter into contracts to complete the work specified in the agreement.

C. Identify the product of the proposal and provide that the results of all studies, analyses, or other work performed under this agreement are made available to the board. The grant agreement may include provisions for classifying certain information provided by the grantee as nonpublic

pursuant to the board's authority under Minnesota Statutes, section 115A.06, subdivision 13, and the Minnesota Data Practices Act, Minnesota Statutes, chapter 13.

Subp. 2. **Cancellation of grants.** The grant is subject to cancellation by the board if the proposed work is not completed in accordance with the terms and conditions of the grant agreement, including time schedules, unless the chairperson determines that variances from the respective agreements are in order.

Subp. 3. **Termination.** The board may terminate the work under an agreement upon 30 days notice if it determines that the proposal is no longer feasible. A request for termination may be initiated by either the board or a grant recipient. The procedure for determining that a proposal is not feasible shall be specified in the grant agreement.

Subp. 4. **Disbursement.** The board shall disburse grants in accordance with the payment schedule set out in the grant agreement. At the discretion of the board, this may include a phased disbursement or final holdback of a percentage of funds.

Subp. 5. **Return of unspent funds.** Upon completion of the proposal, cancellation of the grant, or termination of the work under a grant agreement shall return the state's share of the unspent funds. The procedure for determining the amount of funds to be returned shall be specified in the grant agreement.

HAZARDOUS WASTE PROCESSING FACILITY LOANS

9200.6009 INITIAL APPLICATION REVIEW.

Subpart 1. **Transmittal from commissioner.** Upon receipt from the commissioner of a copy of a hazardous waste processing facility loan application, the chairperson or a designee shall review the application for eligibility and adequacy of documentation.

Subp. 2. **~~Eligibility~~ and Documentation review.** The chairperson or a designee shall review each application to determine the adequacy of the supporting documentation. Documentation is considered adequate if it enables the board to make the determination required for certification and if it

provides sufficient information to address the certification factors.

Subp. 3. **Notification of ~~eligibility~~ adequacy.** Within 14 days after receiving a copy of the application, the chairperson or designee shall notify the commissioner of the determination of ~~eligibility and~~ adequacy of documentation. The notice shall state the additional information needed by the board to determine whether the application will be certified.

9200.6010 EVALUATION OF LOAN APPLICATIONS.

Subpart 1. **Evaluation schedule.** The board will begin to review the application upon receipt of an application determined by the commissioner to be complete.

Subp. 2. **Certification factors.** In addition to determining whether the requirements of part 9200.6011, subpart 2, have been satisfied, the board shall consider the following factors in evaluating whether a loan application will be certified and in determining the share of capital costs that must be provided by the applicant:

A. the types and quantities of hazardous waste that will be handled by the facility or service;

B. the types and quantities of residuals produced by the facility or service and their final disposition;

C. the number of generators that are served by the facility or service;

D. the extent to which the facility will serve the needs of smaller businesses that generate hazardous waste;

E. whether an applicant has received a grant from the board to undertake feasibility studies for the proposal. In considering this factor, the board may give preference to an applicant who has received a grant from the board and successfully, completed the feasibility studies for which the grant was awarded;

F. the applicant's managerial and technical experience for developing and operating the proposed facility or service, including past operating experience with similar facilities and services;

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G. the results of previous studies of hazardous waste processing and waste reduction proposals and opportunities in Minnesota, including a comparison of the applicant's market assessment with market information previously available to the board;

H. any board determination of the types of processing facilities or services recommended for development in the state;

I. the availability of funds from the authority ~~or other funding sources~~. FF

Subp. 3. **Request for additional information.** If the board finds that additional information is required to complete its evaluation, the board may request in writing that the applicant provide the necessary information. The board shall notify the commissioner of this request. If the information is not provided within 30 days, the application will be deemed rejected and no longer considered for certification by the board. The board shall notify the commissioner if an application is rejected under this subpart.

what sort of additional info?

9200.6011 CERTIFICATION.

Subpart 1. **Conditions for certification.** The board may certify a loan application only if it determines that:

A. the applicant has demonstrated that the proposed facility or service is technically feasible;

B. the applicant has made a reasonable assessment of the market for the services offered by the proposed facility or service;

C. the applicant has agreed to provide funds for the proposed facility in an amount equal to at least 25 percent of the capital cost of the facility excluding land acquisition cost;

D. the applicant has agreed to pay the cost of any land acquisition necessary to develop the facility;

E. the facility will contribute in a significant way to achievement of the policies and objectives of the board's draft hazardous waste management plan, in particular, the reduction of the need for and practice of hazardous waste disposal.

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Subp. 2. ~~Matching-funds.--As-a-condition-of-its certification-and-based-on-its-consideration-of-the certification-factors,-the-board-may-require-an-applicant-to agree-to-provide-funds-in-excess-of-25-percent-of-the-capital cost-of-the-facility-excluding-land-acquisition-cost.~~

~~Subp.-3.~~ **Notification to commissioner.** The chairperson shall notify the applicant and the commissioner in writing of the board's decision regarding certification of the loan application, and the percentage of matching funds required if more than 25 percent. The board in its notice shall state the basis for its decision including any reason for the decision which is based on a certification factor under part 9200.6010, subpart 2.

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Rules as Proposed (all new material)

9200.6000 SCOPE AND AUTHORITY.

Parts 9200.6000 to 9200.6011 govern the administration of development grants for waste processing and collection facilities and services as provided under Minnesota Statutes, section 115A.156, and certification of hazardous waste processing facility loan applications received by the energy and economic development authority and forwarded to the board for certification under Minnesota Statutes, sections 115A.162 and 116M.07, subdivision 9.

9200.6001 DEFINITIONS.

Subpart 1. Scope. For the purposes of parts 9200.6000 to 9200.6011, the following terms have the meanings given them unless the context requires otherwise.

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 Minnesota Waste Management Board established in Minnesota Statutes, section 115A.04.

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

Subp. 5. Collection. "Collection" has the meaning given it in Minnesota Statutes, section 115A.03, subdivision 5.

Subp. 6. Commercial. "Commercial" means that the facility or service referred to is established and permitted to sell waste collection or processing services to generators other than the owner and operator of the facility or services.

Subp. 7. Commissioner. "Commissioner" means the commissioner of energy and economic development.

Subp. 8. Generator. "Generator" means a person who produces a hazardous waste.

Subp. 9. Hazardous waste. "Hazardous waste" means those wastes identified and listed in parts 7045.0100 to 7045.0141.

Subp. 10. Loan. "Loan" means a hazardous waste processing

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Proposed Rule

RD747

Agency: Waste Management Board

Division:

Agency Contact: Jerry Johnson

Minnesota Rules: Parts 9200.6000 to 9200.6011

Title: Proposed Rules Relating to Development Grants for Waste Processing and Collection Facilities

Type of Rules: Permanent

Incorporations by Reference: None

Steven C. Cross
Revisor of Statutes

David S. Niss
Assistant Revisor
Phone: 297-2948

Date: March 21, 1985

facility loan as defined in Minnesota Statutes, section 116M.03, subdivision 15.

Subp. 11. **Person.** "Person" means a natural person or a corporation, association, operation, firm, partnership, trust, or other form of organization.

Subp. 12. **Processing.** "Processing" has the meaning given it in Minnesota Statutes, section 115A.03, subdivision 25.

Subp. 13. **Proposal.** "Proposal" means the work that is intended to be conducted with the grant funds.

Subp. 14. **Service.** "Service" means work done or duty performed for others.

HAZARDOUS WASTE PROCESSING FACILITY GRANTS

9200.6002 ELIGIBILITY CRITERIA.

Subpart 1. **Eligible applicants.** The following are eligible to apply for a development grant:

A. a person who proposes to develop and operate specific commercial collection or processing facilities or services to serve generators of hazardous waste in the state;

B. an association of two or more Minnesota generators who propose to develop and operate specific commercial collection and processing facilities or services to serve generators of hazardous waste in the state.

Subp. 2. **Eligible proposals.** Proposals for the following types of work which are preliminary to the development and operation of specific types of commercial facilities and services for collecting or processing hazardous waste are eligible:

A. market assessment, including generator surveys;

B. conceptual design and preliminary engineering;

C. financial and business planning necessary to address sources of funding, financial security, liability, pricing structure, and related matters required for the development and proper operation of a facility or service;

D. environmental impact and site analysis, preparation of permit applications, and environmental and permit reviews;

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E. analysis of methods to overcome identified technical, institutional, legal, regulatory, market, or other problems in developing or operating a facility or service; and

F. analysis of other factors affecting development, operation, and use of the proposed facility or service.

Subp. 3. **Eligible costs.** Eligible costs are limited to the costs of conducting studies, analyses, or other work consistent with subpart 2.

Subp. 4. **Ineligible costs.** Grant money awarded through this program may not be spent for capital improvements or equipment.

Subp. 5. **Matching funds.** To be eligible to receive a grant under this program a recipient must agree to provide matching funds as specified in part 9200.6007.

Subp. 6. **Multiple proposals for a facility or service.** Proposals for more than one grant for the same facility or service are eligible only if the proposals concern different aspects of the development or operation of the facility or service.

9200.6003 GRANT APPLICATION.

An applicant must submit an application in the form specified by the board. An application must include the following information:

A. A detailed description of the proposal, including primary tasks, the schedule for completion of the work, and a statement of the amount which the applicant expects to contribute to the cost of the proposal.

B. A description of the applicant's financial, managerial, and technical ability to carry out the work described in the proposal, including the applicant's experience in carrying out similar work, and any work for which the applicant expects to use consultant assistance.

C. A description of the applicant's financial, managerial, and technical ability to develop and operate the proposed facility or service.

D. A statement whether the applicant is planning to

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apply for future grants under this program, or has applied or is planning to apply for a hazardous waste processing facility loan administered by the Minnesota Energy and Economic Development Authority.

E. Information which addresses the evaluation factors in Minnesota Statutes, section 115A.156, subdivision 3, and those factors listed in part 9200.6006 in sufficient detail to enable the board to adequately evaluate the proposal.

9200.6004 APPLICATION PROCESS.

Subpart 1. **Deadline.** The board will solicit applications by notification in the State Register. The board may set reasonable deadlines for submission of applications.

Subp. 2. **Limited solicitation of applications.** The board may limit its solicitation of applications to particular types of proposals, facilities, or services based upon:

A. the board's evaluation of the results of previous studies of hazardous waste processing and reduction proposals and opportunities in Minnesota; and

B. any board determination of the types of processing facilities or services recommended for development in the state.

9200.6005 INITIAL APPLICATION REVIEW.

Subpart 1. **Application review.** The chairperson or a designee shall review all applications.

Subp. 2. **Eligibility and documentation review.** The chairperson or a designee shall review each application to determine the eligibility of the applicant, the eligibility of the costs specified in the application, the eligibility of the proposal specified in the application, and the adequacy of the supporting documentation. Documentation is considered adequate if it enables the board to determine whether:

A. the proposal is feasible at the costs indicated in the application;

B. the applicant has the financial, managerial, and technical ability and experience to carry out the proposal;

C. the applicant has the financial, managerial, and

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technical ability to develop and operate the proposed facility or service; and

D. the proposal adequately addresses the evaluation factors listed in part 9200.6006.

Subp. 3. **Notice of determination.** Within 14 days after receiving the application, the chairperson shall notify each applicant of the chairperson's determinations. If the chairperson determines that the applicant, project, and costs are eligible and that the supporting documentation is adequate, the application is considered final and the applicant shall be so notified. The application must then be referred to the board to be evaluated as provided in part 9200.6006. If the chairperson determines that any costs or any part of the proposal is not eligible or that the documentation in the application is inadequate, the application must be returned with a statement of the reasons for rejecting the application. The applicant has 14 days after receipt of the rejection to correct the inadequacies. If the inadequacies are corrected within the time allowed, the application is considered final and the applicant shall be so notified. The application must then be referred to the board to be evaluated as provided in part 9200.6006.

9200.6006 EVALUATION OF PROPOSALS.

Subpart 1. **Evaluation schedule.** Within 60 days after the application is considered final, the board shall evaluate the proposal and set a date for action.

Subp. 2. **Evaluation factors.** In evaluating each proposal the board shall consider the following factors:

A. The factors listed in Minnesota Statutes, section 115A.156, subdivision 3.

B. The importance of the proposal to the eventual development and operation of the proposed facility or service.

C. The likelihood that the proposed facility or service will be developed.

D. The results of any previous proposal for which the applicant received a grant under this program.

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E. The consistency of the proposal with any board determination of the types of processing facilities or services recommended for development in the state.

F. Whether an applicant is an association of two or more Minnesota generators. In considering this factor, the board may give preference to an association of two or more Minnesota generators if the board determines that the association significantly contributes to cooperation among generators in solving hazardous waste management problems.

9200.6007 AWARD OF GRANTS.

Subpart 1. **General procedure.** The board shall award grants for those proposals which in the board's judgment will be the most beneficial in improving hazardous waste management in the state, based upon its evaluation of the factors identified in part 9200.6006.

Subp. 2. **Amount of grants.** The board shall determine the amount of a grant based on a review of the factors identified in this part and based upon the availability of funds. No grant may exceed $50,000.

Subp. 3. **Matching funds required.** A recipient other than an association of generators in the state shall agree to provide at least 50 percent of the cost of the proposal. An association of two or more generators in the state shall agree to provide at least 20 percent of the cost of the proposal.

Subp. 4. **Multiple grants for same facility or service.** The board may award more than one grant for the development of the same facility or service only if the board finds that results of previous proposals for that facility or service justify additional work on other aspects of its development or operation.

9200.6008 GRANT AGREEMENT.

Subpart 1. **Grant contents.** The board and a grant recipient shall enter into a grant agreement. The grant agreement must:

A. Establish the term of the grant. Unless otherwise

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determined by the board, all grants awarded under this part will have a maximum of one year.

B. Provide that the recipient is authorized to enter into contracts to complete the work specified in the agreement.

C. Identify the product of the proposal and provide that the results of all studies, analyses, or other work performed under this agreement are made available to the board. The grant agreement may include provisions for classifying certain information provided by the grantee as nonpublic pursuant to the board's authority under Minnesota Statutes, section 115A.06, subdivision 13, and the Minnesota Data Practices Act, Minnesota Statutes, chapter 13.

Subp. 2. **Cancellation of grants.** The grant is subject to cancellation by the board if the proposed work is not completed in accordance with the terms and conditions of the grant agreement, including time schedules, unless the chairperson determines that variances from the respective agreements are in order.

Subp. 3. **Termination.** The board may terminate the work under an agreement upon 30 days notice if it determines that the proposal is no longer feasible. A request for termination may be initiated by either the board or a grant recipient. The procedure for determining that a proposal is not feasible shall be specified in the grant agreement.

Subp. 4. **Disbursement.** The board shall disburse grants in accordance with the payment schedule set out in the grant agreement. At the discretion of the board, this may include a phased disbursement or final holdback of a percentage of funds.

Subp. 5. **Return of unspent funds.** Upon completion of the proposal, cancellation of the grant, or termination of the work under a grant agreement shall return the state's share of the unspent funds. The procedure for determining the amount of funds to be returned shall be specified in the grant agreement.

HAZARDOUS WASTE PROCESSING FACILITY LOANS

9200.6009 INITIAL APPLICATION REVIEW.

Subpart 1. **Transmittal from commissioner.** Upon receipt

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from the commissioner of a copy of a hazardous waste processing facility loan application, the chairperson or a designee shall review the application for eligibility and adequacy of documentation.

Subp. 2. (Eligibility and) Documentation review. The chairperson or a designee shall review each application to determine the adequacy of the supporting documentation. Documentation is considered adequate if it enables the board to make the determination required for certification and if it provides sufficient information to address the certification factors.

Subp. 3. Notification of ~~eligibility.~~ adequacy Within 14 days after receiving a copy of the application, the chairperson or designee shall notify the commissioner of the determination of ~~eligibility and~~/adequacy of documentation. The notice shall state the additional information needed by the board to determine whether the application will be certified.

9200.6010 EVALUATION OF LOAN APPLICATIONS.

Subpart 1. Evaluation schedule. The board will begin to review the application upon receipt of an application determined by the commissioner to be complete.

Subp. 2. Certification factors. In addition to determining whether the requirements of part 9200.6011, subpart 2, have been satisfied, the board shall consider the following factors in evaluating whether a loan application will be certified and in determining the share of capital costs that must be provided by the applicant:

A. the types and quantities of hazardous waste that will be handled by the facility or service;

B. the types and quantities of residuals produced by the facility or service and their final disposition;

C. the number of generators that are served by the facility or service;

D. the extent to which the facility will serve the needs of smaller businesses that generate hazardous waste;

E. whether an applicant has received a grant from the

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board to undertake feasibility studies for the proposal. In considering this factor, the board may give preference to an applicant who has received a grant from the board and successfully, completed the feasibility studies for which the grant was awarded;

F. the applicant's managerial and technical experience for developing and operating the proposed facility or service, including past operating experience with similar facilities and services;

G. the results of previous studies of hazardous waste processing and waste reduction proposals and opportunities in Minnesota, including a comparison of the applicant's market assessment with market information previously available to the board;

H. any board determination of the types of processing facilities or services recommended for development in the state;

I. the availability of funds from the authority or other funding sources.

Subp. 3. **Request for additional information.** If the board finds that additional information is required to complete its evaluation, the board may request in writing that the applicant provide the necessary information. The board shall notify the commissioner of this request. If the information is not provided within 30 days, the application will be deemed rejected and no longer considered for certification by the board. The board shall notify the commissioner if an application is rejected under this subpart.

9200.6011 CERTIFICATION.

Subpart 1. **Conditions for certification.** The board may certify a loan application only if it determines that:

A. the applicant has demonstrated that the proposed facility or service is technically feasible;

B. the applicant has made a reasonable assessment of the market for the services offered by the proposed facility or service;

C. the applicant has agreed to provide funds for the

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proposed facility in an amount equal to at least 25 percent of the capital cost of the facility excluding land acquisition cost;

D. the applicant has agreed to pay the cost of any land acquisition necessary to develop the facility;

E. the facility will contribute in a significant way to achievement of the policies and objectives of the board's draft hazardous waste management plan, in particular, the reduction of the need for and practice of hazardous waste disposal.

Subp. 2. **Matching funds.** As a condition of its certification and based on its consideration of the certification factors, the board may require an applicant to agree to provide funds in excess of 25 percent of the capital cost of the facility excluding land acquisition cost.

Subp. 3. **Notification to commissioner.** The chairperson shall notify the applicant and the commissioner in writing of the board's decision regarding certification of the loan application, and the percentage of matching funds required if more than 25 percent. The board in its notice shall state the basis for its decision including any reason for the decision which is based on a certification factor under part 9200.6010, subpart 2.

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STATE OF MINNESOTA

WASTE MANAGEMENT BOARD

In the Matter of the Adoption of Proposed Rules of the Waste Management Board Governing Hazardous Waste Processing Grants and Loans, Minnesota Rules Parts 9200.6000 to 9200.6011.

SUPPLEMENTAL FINDINGS OF FACT, CONCLUSION, AND ORDER ADOPTING RULES

The following findings, conclusion and order amend and are supplementary to the findings, conclusions and order in the above-entitled matter which were issued on June 27, 1985.

FINDINGS OF FACT

1. The proposed rules and all relevant documentation in the above-entitled matter were submitted to the Attorney General for review pursuant to Minn. Stat. § 14.26 (1984) on July 2, 1985.

2. Upon review of the proposed rules by the Attorney General, two inadvertent errors or oversights were identified which require correction in the rules as adopted.

3. In proposed part 9200.6008, subp. 5 the subject of the first sentence was inadvertently omitted. For this reason, proposed part 9200.6008, subp. 5 is amended to read as follows:

> Subp. 5. Return of unspent funds. Upon completion of the proposal, cancellation of the grant, or termination of the work under a grant agreement, the grant recipient shall return the state's share of the unspent funds. The procedure for determining the amount of funds to be returned shall be specified in the grant agreement.

4. In the proposed rules as amended under the findings, conclusions and order issued on June 27, 1985, proposed part 9200.6011, subp. 2, which provided for the

possibility of a matching fund requirement for processing facility loans of greater than 25 percent, was deleted in its entirety. However, a reference to the possibility of a match of greater than 25 percent was inadvertently retained in proposed part 9200.6011, subp. 2 (as renumbered from subpart 3 as originally proposed). For this reason, proposed part 9200.6011, subp. 2, as amended by the findings, conclusions and order of June 27, 1985, is further amended to read as follows:

Subp. 2. Notification to commissioner. The chairperson shall notify the applicant and the commissioner in writing of the board's decision regarding certification of the loan application~~, and the percentage of matching funds required if more than 25 percent~~. The board in its notice shall state the basis for its decision including any reason for the decision which is based on a certification factor under part 9200.6010, subpart 2.

CONCLUSION

The modifications to the proposed rules as set forth in the above findings are supported by the recommendations of the Attorney General pursuant to the review under Minn. Stat. § 14.26 (1984) and are necessary to correct inadvertent errors or oversights in the proposed rules as adopted on June 27, 1985.

ORDER

NOW, THEREFORE, IT IS ORDERED THAT, pursuant to authority vested in the Waste Management Board by Minn. Stat. §§ 115A.06, subd. 2, 115A.156 and 115A.162, these rules identified as "Rules of the Waste Management Board Governing Hazardous Waste Processing Grants and Loans" as published at 9 State Register 2271 to 2276 (April 8, 1985), and as modified pursuant to the findings,

conclusions and order of the Board issued on June 27, 1985, are adopted with the following additional modifications:

(a) Proposed part 9200.6008, subp. 5 is amended to read as follows:

Subp. 5. Return of unspent funds. Upon completion of the proposal, cancellation of the grant, or termination of the work under a grant agreement, the grant recipient shall return the state's share of the unspent funds. The procedure for determining the amount of funds to be returned shall be specified in the grant agreement.

(b) Proposed part 9200.6011, subp. 2, as amended by the findings, conclusions and order of June 27, 1985, is further amended to read as follows:

Subp. 2. Notification to commissioner. The chairperson shall notify the applicant and the commissioner in writing of the board's decision regarding certification of the loan application~~, and the percentage of matching funds required if more than 25 percent~~. The board in its notice shall state the basis for its decision including any reason for the decision which is based on a certification factor under part 9200.6010, subpart 2.

DATED: July 19, 1985, 1985

STATE OF MINNESOTA

Robert G. Dunn
Chairperson
Waste Management Board

RECEIVED
JUL 23 1985
ATTORNEY GENERAL
ADMINISTRATIVE AGENCIES

6/27/85

STATE OF MINNESOTA

WASTE MANAGEMENT BOARD

In the Matter of the Adoption
of Proposed Rules of the
Waste Management Board Governing
Hazardous Waste Processing Grants
and Loans, Minnesota Rules
Parts 9200.6000 to 9200.6011.

ORDER ADOPTING
RULES

Notice of the Waste Management Board's intent to adopt the above-captioned rules without a public hearing was published in the State Register on Monday, April 8, 1985, and was sent by United States mail to all persons on the list maintained by the Waste Management Board pursuant to Minnesota Statute, Section 14.14, on March 27, 1985. After affording interested and affected persons an opportunity to submit written data and views for 30 days after 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, pursuant to authority vested in the Board by Minnesota Statutes, Sections 115A.06, Subd. 2, 115A.156 and 115A.162, these rules identified as "Rules of the Waste Management Board Governing Hazardous Waste Processing Grants and Loans" as published at 9 State Register 2271 to 2276 (April 8, 1985) are adopted with the following modifications:

(1) Proposed part 9200.6001 is amended to add a new subpart which reads as follows:

Subp. 4. Capital Costs. "Capital costs" means expenditures that meet the requirements of federal industrial development bond law, including:

A. acquisition costs of buildings, equipment, machinery, or any combination of them;

B. site preparation;

C. construction costs;

D. engineering costs:

E. bond issuance costs;

F. underwriting or placement fees;

G. trustee's fees;

H. fee of guarantor, insurer, or financial institution, other than the authority, who provides letters of credit, surety bonds, or equivalent security;

I. authority fees, including application and guaranty fees of the authority and administrative costs and expenses;

J. certain contingency costs:

K. interest costs during construction;

L. legal fees, including those of the authority's bond counsel; and

M. debt service reserve fund.

(2) Proposed part 9200.6010, subpart 2, item I is amended to read as follows:

I. the availability of funds from the authority. ~~or other funding sources~~.

(3) Proposed part 9200.6011 is amended by deleting subpart 2.

(4) Proposed part 9200.6009, subparts 2 and 3 are amended to read as follows:

Subp. 2, ~~Eligibility and~~ Documentation review. The chairperson or a designee shall review each application to determine the adequacy of the supporting documentation. Documentation is considered adequate if it enables the board to make the determination required for certification and if it provides sufficient information to address the certification factors.

Subp.3. Notification of ~~eligibility~~ adequacy. Within 14 days after receiving a copy of application, the chairperson or designee shall notify the commissioner of the determination of ~~eligibility and~~ adequacy of documentation. The notice shall state the additional information needed by the board to determine whether the application will be certified.

DATED: June 27, 1985

STATE OF MINNESOTA

Robert G. Dunn
Chairperson
Waste Management Board

STATE OF MINNESOTA

WASTE MANAGEMENT BOARD

In the Matter of the Proposed)
Adoption of Rules Governing)
Hazardous Waste Processing) ORDER
Facility Grants and Loans)

IT IS ORDERED this 14 day of March, 1985, that a Notice of Intent to Adopt Rules Without a Public Hearing in the above-titled matter be given to all persons and associations who have registered their names with the Waste Management Board for that purpose and be published in the State Register.

STATE OF MINNESOTA

Robert G. Dunn

ROBERT G. DUNN
Chairperson
Waste Management Board

STATE OF MINNESOTA

WASTE MANAGEMENT BOARD

In the Matter of the Proposed Adoption of Rules Governing Hazardous Waste Processing Facility Grants and Loans	CERTIFICATE OF BOARD'S RESOLUTION

I, Robert G. Dunn, do hereby certify that I am a member and the Chairperson of the Waste Management Board, a board duly authorized under the laws of the State of Minnesota, and that the following is a true, complete, and correct copy of a resolution adopted at a meeting of the Waste Management Board duly and properly called and held on the 14th day of March 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 the minutes of said meeting and has not been rescinded or modified.

RESOLVED, that the Waste Management Board determines that the adoption of the proposed rules governing Hazardous Waste Processing Facility Grants and Loans will not be controversial in nature and authorizes and directs the Chairperson of the Board to sign an order in the name of the Board directing the publication and mailing of notice of the Board's intent to adopt the rules without public hearing. The Chairperson may perform any and all acts incidental to issuing the order and may make changes in the form of the proposed rules prior to giving notice to the extent required to obtain the approval of the Revisor of Statutes under Minn. Stat. § 14.20 (1984). In the event a public hearing on these rules is required, the Chairperson is authorized and directed to call a public hearing for this purpose and to perform all acts necessary and incidental to calling the hearing, including signing an order for and notice of public hearing and acting as the representative of the Board at the hearing.

IN WITNESS WHEREOF, I have hereunto subscribed my name, this 14 day of March, 1985.

ROBERT G. DUNN
Chairman, Waste Management Board

Attest by one other Board member

WP/JERRY/NOTICE 3/14/85

WASTE MANAGEMENT BOARD

Proposed Rules Governing Hazardous Waste Processing Facility Grants and Loans
Notice of Intent to Adopt Rules without a Public Hearing

Notice is hereby given that the Minnesota Waste Management Board proposes to adopt the above-entitled rules without a public hearing. The Waste management Board has determined that the proposed adoption of these rules will be non-controversial in nature and has elected to follow the procedures set forth in Minnesota Statutes Sections 14.22 to 14.28.

Persons interested in these rules have 30 days to submit comments in support of or in opposition to the proposed rules. The Board encourages public comment on these proposed rules. Each comment should identify the portion of the proposed rule addressed by the comment, the reason for the comment, and any change that is proposed. The proposed rules may be modified if the modifications are supported by the data and views submitted to the agency and do not result in a substantial change in the proposed language.

If twenty-five (25) or more persons submit written requests for a public hearing on the proposed rules within the 30-day comment period, a public hearing will be held. Persons requesting a hearing are encouraged to identify the reasons for their request, the portion of the proposed rules that the hearing should address, and proposed changes. In the event a public hearing is required, the Board will proceed according to the provisions of Minnesota Statutes Section 14.14 to 14.20.

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

Jerry Johnson
123 Thorson Building
7323 - 58th Avenue North
Crystal, MN 55428
(612) 536-0816

Authority to adopt rules for hazardous waste processing facility grants is contained in Minnesota Statutes Section 115A.06 Subd. 2 and 115A.156. The Board is authorized by these sections to adopt rules for the administration of hazardous waste procesing facility grants. The grants are intended to help determine the feasibility of developing and operating specific types of commercial facilities and services for processing hazardous waste. Accordingly, the proposed rules include eligibility criteria, information which shall be included in an application, procedures for initial review of applications, procedures and criteria for evaluating grant applications, provisions related to the awarding of grants and required content of grant agreements.

Authority to adopt rules for hazardous waste processing facility loans is contained in Minnesota Statutes Sections 115A.06 Subd. 2 and 115A.162. The Board is authorized by these sections to adopt rules to administer the certification of hazardous waste processing facility loan applications received by the Minnesota

Energy and Economic Development Authority. The loans are intended to fund the construction of hazardous waste processing facilities or services. The proposed rules include provisions for initial application review, evaluation of loan applications and certification of loan applications.

Upon adoption of the final rules without a public hearing, the proposed rules, this notice, all written comments received, and the final rules as adopted will be delivered to the Attorney General for review as to form and legality, including the issue of substantial change. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the final rules as proposed for adoption, should submit a written statement of such request to Mr. Johnson. persons who wish to receive a copy of the rules as adopted should also request a copy from Mr. Johnson.

Dated March 22, 1985

STATE OF MINNESOTA

ROBERT G. DUNN, CHAIRMAN
Waste Management Board

STATE OF MINNESOTA

WASTE MANAGEMENT BOARD

In the Matter of the Proposed)
Adoption of Rules Governing)
Hazardous Waste Processing) AFFIDAVIT OF MAILING
Facility Grants and Loans)

Susan K. Vikstrom, being first duly sworn deposes and says:

That on the 27 day of March, 1985, at the City of Crystal, County of Hennepin, State of Minnesota, he mailed the attached material to those persons on the attached mailing list by deposition in the United States mail at said City of Crystal, a copy, thereof, properly enveloped, with postage prepaid:

Susan K Vikstrom

Subscribed and sworn to
before me this 27 day
of March, 1985.

June Seery

JUNE J. SEERY
NOTARY PUBLIC — MINNESOTA
HENNEPIN COUNTY
My commission expires Nov. 28, 1990

STATE OF MINNESOTA

WASTE MANAGEMENT BOARD

In the Matter of the Proposed)
Adoption of Rules Governing)
Hazardous Waste Processing) CERTIFICATE
Facility Grants and Loans)

I hereby certify that the list of persons and associations who have requested, pursuant to Minn. Stat. § 14.14, that their names be placed on file with and maintained by the Waste Management Board for the purpose of receiving notice of the proposed adoption of rules by this Board is accurate and complete as of 9:00 A.M., this 27th day of March, 1985.

Jerry Johnson

DISTRIBUTION LIST FOR

NOT[illegible]ICATION OF RULEMAKING ~~3/[illegible]/8~~

Update 3/27/85

Page 1

Joseph D. Bizzano, Jr.
JoAnn McGuire
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Department of Public Works
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St. Paul, MN 55102

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3M
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Dr. Robert A. Reid, Manager
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Dakota County Government Center
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M[redacted]s, Inc.
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Minnesota Petroleum Council
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St. Paul, MN 55102

Dave Gurney
Environmental Engineer
Dakota County Highway Department
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P. O. Box 1113
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St. Paul, MN 55102

MN Department of Transporta.
ATTN: Cheryl Heide
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G. Robert Johnson
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Director
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Mankato, MN 56001

Robert S. Burk
4344 IDS Center
Minneapolis, MN 55402

Holly Rodin
Minnesota COACT
1216 So. 6th Street
Brainerd, MN 56401

Joeeph S. Hensel
Rochester Public Utilities
506 First Ave. NE Box 6057

Subp. 7. Change in resident class due to request for reconsideration of resident classification. Any change in a resident class due to a request for reconsideration of the classification must be made in accordance with items A and B.

A. The resident classification established by the Department of Health must be the classification that applies to the resident while any request for reconsideration under part 4546.0060 is pending.

B. Any change in a resident class due to a reclassification under part 4546.0060 must be effective as of the date of the assessment for which a reconsideration was requested.

Subp. 8. Reconsideration of resident classification. Any request for reconsideration of a resident classification must be made pursuant to the procedures set forth in part 4546.0060.

Waste Management Board

Proposed Rules Relating to Development Grants for Waste Processing and Collection Facilities

Notice of Intent to Adopt Rules without a Public Hearing

Notice is hereby given that the Minnesota Waste Management Board proposes to adopt the above-entitled rules without a public hearing. The Waste Management Board has determined that the proposed adoption of these rules will be noncontroversial in nature and has elected to follow the procedures set forth in Minnesota Statutes Sections 14.22 to 14.28.

Persons interested in these rules have 30 days to submit comments in support of or in opposition to the proposed rules. The Board encourages public comment on these proposed rules. Each comment should identify the portion of the proposed rule addressed by the comment, the reason for the comment, and any change that is proposed. The proposed rules may be modified if the modifications are supported by the data and views submitted to the agency and do not result in a substantial change in the proposed language.

If twenty-five (25) or more persons submit written requests for a public hearing on the proposed rules within the 30-day comment period, a public hearing will be held. Persons requesting a hearing are encouraged to identify the reasons for their request, the portion of the proposed rules that the hearing should address, and proposed changes. In the event a public hearing is required, the Board will proceed according to the provisions of Minnesota Statutes Section 14.14 to 14.20.

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

Jerry Johnson
123 Thorson Building
7323 - 58th Avenue North
Crystal, MN 55428
(612) 536-0816

Authority to adopt rules for hazardous waste processing facility grants is contained in Minnesota Statutes Section 115A.06 Subd. 2 and 115A.156. The Board is authorized by these sections to adopt rules for the administration of hazardous waste processing facility grants. The grants are intended to help determine the feasibility of developing and operating specific types of commercial facilities and services for processing hazardous waste. Accordingly, the proposed rules include eligibility criteria, information which shall be included in an application, procedures for initial review of applications, procedures and criteria for evaluating grant applications, provisions related to the awarding of grants and required content of grant agreements.

Authority to adopt rules for hazardous waste processing facility loans is contained in Minnesota Statutes Sections 115A.06 Subd. 2 and 115A.162. The Board is authorized by these sections to adopt rules to administer the certification of hazardous waste processing facility loan applications received by the Minnesota Energy and Economic Development Authority. The loans are intended to fund the construction of hazardous waste processing facilities or services. The proposed rules include provisions for initial application review, evaluation of loan applications and certification of loan applications.

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

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.

of the final rules as proposed for adoption, should submit a written statement of such request to Mr. Johnson. Persons who wish to receive a copy of the rules as adopted should also request a copy from Mr. Johnson.

March 22, 1985

Robert G. Dunn, Chairman
Waste Management Board

Rules as Proposed (all new material)

9200.6000 SCOPE AND AUTHORITY.

Parts 9200.6000 to 9200.6011 govern the administration of development grants for waste processing and collection facilities and services as provided under Minnesota Statutes, section 115A.156, and certification of hazardous waste processing facility loan applications received by the energy and economic development authority, and forwarded to the board for certification under Minnesota Statutes, section 115A.162 and 116M.07, subdivision 9.

9200.6001 DEFINITIONS.

Subpart 1. Scope. For the purposes of parts 9200.6000 to 9200.6011, the following terms have the meanings given them unless the context requires otherwise.

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 Minnesota Waste Management Board established in Minnesota Statutes, section 115A.04.

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

Subp. 5. Collection. "Collection" has the meaning given it in Minnesota Statutes, section 115A.03, subdivision 5.

Subp. 6. Commercial. "Commercial" means that the facility or service referred to is established and permitted to sell waste collection or processing services to generators other than the owner and operator of the facility or services.

Subp. 7. Commissioner. "Commissioner" means the commissioner of energy and economic development.

Subp. 8. Generator. "Generator" means a person who produces a hazardous waste.

Subp. 9. Hazardous waste. "Hazardous waste" means those wastes identified and listed in parts 7045.0100 to 7045.0141.

Subp. 10. Loan. "Loan" means a hazardous waste processing facility loan as defined in Minnesota Statutes, section 116M.03, subdivision 15.

Subp. 11. Person. "Person" means a natural person or a corporation, association, operation, firm, partnership, trust, or other form of organization.

Subp. 12. Processing. "Processing" has the meaning given it in Minnesota Statutes, section 115A.03, subdivision 25.

Subp. 13. Proposal. "Proposal" means the work that is intended to be conducted with the grant funds.

Subp. 14. Service. "Service" means work done or duty performed for others.

HAZARDOUS WASTE PROCESSING FACILITY GRANTS

9200.6002 ELIGIBILITY CRITERIA.

Subpart 1. Eligible applicants. The following are eligible to apply for a development grant:

A. a person who proposes to develop and operate specific commercial collection or processing facilities or services to serve generators of hazardous waste in the state;

B. an association of two or more Minnesota generators who propose to develop and operate specific commercial collection and processing facilities or services to serve generators of hazardous waste in the state.

Subp. 2. Eligible proposals. Proposals for the following types of work which are preliminary to the development and operation of specific types of commercial facilities and services for collecting or processing hazardous waste are eligible:

A. market assessment, including generator surveys;

B. conceptual design and preliminary engineering;

C. financial and business planning necessary to address sources of funding, financial security, liability, pricing structure, and related matters required for the development and proper operation of a facility or service;

D. environmental impact and site analysis, preparation of permit applications, and environmental and permit reviews;

E. analysis of methods to overcome identified technical, institutional, legal, regulatory, market, or other problems in developing or operating a facility or service; and

F. analysis of other factors affecting development, operation, and use of the proposed facility or service.

Subp. 3. Eligible costs. Eligible costs are limited to the costs of conducting studies, analyses, or other work consistent with subpart 2.

Subp. 4. Ineligible costs. Grant money awarded through this program may not be spent for capital improvements or equipment.

Subp. 5. Matching funds. To be eligible to receive a grant under this program a recipient must agree to provide matching funds as specified in part 9200.6007.

Subp. 6. Multiple proposals for a facility or service. Proposals for more than one grant for the same facility or service are eligible only if the proposals concern different aspects of the development or operation of the facility or service.

9200.6003 GRANT APPLICATION.

An applicant must submit an application in the form specified by the board. An application must include the following information:

A. A detailed description of the proposal, including primary tasks, the schedule for completion of the work, and a statement of the amount which the applicant expects to contribute to the cost of the proposal.

B. A description of the applicant's financial, managerial, and technical ability to carry out the work described in the proposal, including the applicant's experience in carrying out similar work, and any work for which the applicant expects to use consultant assistance.

C. A description of the applicant's financial, managerial, and technical ability to develop and operate the proposed facility or service.

D. A statement whether the applicant is planning to apply for future grants under this program, or has applied or is planning to apply for a hazardous waste processing facility loan administered by the Minnesota Energy and Economic Development Authority.

E. Information which addresses the evaluation factors in Minnesota Statutes, section 115A.156, subdivision 3, and those factors listed in part 9200.6006 in sufficient detail to enable the board to adequately evaluate the proposal.

9200.6004 APPLICATION PROCESS.

Subpart 1. Deadline. The board will solicit applications by notification in the *State Register*. The board may set reasonable deadlines for submission of applications.

Subp. 2. Limited solicitation of applications. The board may limit its solicitation of applications to particular types of proposals, facilities, or services based upon:

A. the board's evaluation of the results of previous studies of hazardous waste processing and reduction proposals and opportunities in Minnesota; and

B. any board determination of the types of processing facilities or services recommended for development in the state.

9200.6005 INITIAL APPLICATION REVIEW.

Subpart 1. Application review. The chairperson or a designee shall review all applications.

Subp. 2. Eligibility and documentation review. The chairperson or a designee shall review each application to determine the eligibility of the applicant, the eligibility of the costs specified in the application, the eligibility of the proposal specified in the application, and the adequacy of the supporting documentation. Documentation is considered adequate if it enables the board to determine whether:

A. the proposal is feasible at the costs indicated in the application;

B. the applicant has the financial, managerial, and technical ability and experience to carry out the proposal;

C. the applicant has the financial, managerial, and technical ability to develop and operate the proposed facility or service; and

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D. the proposal adequately addresses the evaluation factors listed in part 9200.6006.

Subp. 3. Notice of determination. Within 14 days after receiving the application, the chairperson shall notify each applicant of the chairperson's determinations. If the chairperson determines that the applicant, project, and costs are eligible and that the supporting documentation is adequate, the application is considered final and the applicant shall be so notified. The application must then be referred to the board to be evaluated as provided in part 9200.6006. If the chairperson determines that any costs or any part of the proposal is not eligible or that the documentation in the application is inadequate, the application must be returned with a statement of the reasons for rejecting the application. The applicant has 14 days after receipt of the rejection to correct the inadequacies. If the inadequacies are corrected within the time allowed, the application is considered final and the applicant shall be so notified. The application must then be referred to the board to be evaluated as provided in part 9200.6006.

9200.6006 EVALUATION OF PROPOSALS.

Subpart 1. Evaluation schedule. Within 60 days after the application is considered final, the board shall evaluate the proposal and set a date for action.

Subp. 2. Evaluation factors. In evaluating each proposal the board shall consider the following factors:

A. The factors listed in Minnesota Statutes, section 115A.156, subdivision 3.

B. The importance of the propsal to the eventual development and operation of the proposed facility or service.

C. The likelihood that the proposed facility or service will be developed.

D. The results of any previous proposal for which the applicant received a grant under this program.

E. The consistency of the proposal with any board determination of the types of processing facilities or services recommended for development in the state.

F. Whether an applicant is an association of two or more Minnesota generators. In considering this factor, the board may give preference to an association of two or more Minnesota generators if the board determines that the association significantly contributes to cooperation among generators in solving hazardous waste management problems.

9200.6007 AWARD OF GRANTS.

Subpart 1. General procedure. The board shall award grants for those proposals which in the board's judgment will be the most beneficial in improving hazardous waste management in the state, based upon its evaluation of the factors identified in part 9200.6006.

Subp. 2. Amount of grants. The board shall determine the amount of a grant based on a review of the factors identified in this part and based upon the availability of funds. No grant may exceed $50,000.

Subp. 3. Matching funds required. A recipient other than an association of generators in the state shall agree to provide at least 50 percent of the cost of the proposal. An association of two or more generators in the state shall agree to provide at least 20 percent of the cost of the proposal.

Subp. 4. Multiple grants for same facility or service. The board may award more than one grant for the development of the same facility or service only if the board finds that results of previous proposals for that facility or service justify additional work on other aspects of its development or operation.

9200.6008 GRANT AGREEMENT.

Subpart 1. Grant contents. The board and a grant recipient shall enter into a grant agreement. The grant agreement must:

A. Establish the term of the grant. Unless otherwise determined by the board, all grants awarded under this part will have a maximum of one year.

B. Provide that the recipient is authorized to enter into contracts to complete the work specified in the agreement.

C. Identify the product of the proposal and provide that the results of all studies, analyses, or other work performed under this agreement are made available to the board. The grant agreement may include provisions for classifying certain information provided by the grantee as nonpublic pursuant to the board's authority under Minnesota Statutes, section 115A.06, subdivision 13, and the Minnesota Data Practices Act, Minnesota Statutes, chapter 13.

Subp. 2. Cancellation of grants. The grant is subject to cancellation by the board if the proposed work is not completed in accordance with the terms and conditions of the grant agreement, including time schedules, unless the chairperson determines that variances from the respective agreements are in order.

Subp. 3. Termination. The board may terminate the work under an agreement upon 30 days notice if it determines that the proposal is no longer feasible. A request for termination may be initiated by either the board or a grant recipient. The procedure for determining that a proposal is not feasible shall be specified in the grant agreement.

Subp. 4. Disbursement. The board shall disburse grants in accordance with the payment schedule set out in the grant agreement. At the discretion of the board, this may include a phased disbursement or final holdback of a percentage of funds.

Subp. 5. Return of unspent funds. Upon completion of the proposal, cancellation of the grant, or termination of the work under a grant agreement shall return the state's share of the unspent funds. The procedure for determining the amount of funds to be returned shall be specified in the grant agreement.

HAZARDOUS WASTE PROCESSING FACILITY LOANS

9200.6009 INITIAL APPLICATION REVIEW.

Subpart 1. Transmittal from commissioner. Upon receipt from the commissioner of a copy of a hazardous waste processing facility loan application, the chairperson or a designee shall review the application for eligibility and adequacy of documentation.

Subp. 2. Eligibility and documentation review. The chairperson or a designee shall review each application to determine the adequacy of the supporting documentation. Documentation is considered adequate if it enables the board to make the determination required for certification and if it provides sufficient information to address the certification factors.

Subp. 3. Notification of eligibility. Within 14 days after receiving a copy of the application, the chairperson or designee shall notify the commissioner of the determination of eligibility and adequacy of documentation. The notice shall state the additional information needed by the board to determine whether the application will be certified.

9200.6010 EVALUATION OF LOAN APPLICATIONS.

Subpart 1. Evaluation schedule. The board will begin to review the application upon receipt of an application determined by the commissioner to be complete.

Subp. 2. Certification factors. In addition to determining whether the requirements of part 9200.6011, subpart 2, have been satisfied, the board shall consider the following factors in evaluating whether a loan application will be certified and in determining the share of capital costs that must be provided by the applicant:

A. the types and quantities of hazardous waste that will be handled by the facility or service;

B. the types and quantities of residuals produced by the facility or service and their final disposition;

C. the number of generators that are served by the facility or service;

D. the extent to which the facility will serve the needs of smaller businesses that generate hazardous waste;

E. whether an applicant has received a grant from the board to undertake feasibility studies for the proposal. In considering this factor, the board may give preference to an applicant who has received a grant from the board and successfully, completed the feasibility studies for which the grant was awarded;

F. the applicant's managerial and technical experience for developing and operating the proposed facility or service, including past operating experience with similar facilities and services;

G. the results of previous studies of hazardous waste processing and waste reduction proposals and opportunities in Minnesota, including a comparison of the applicant's market assessment with market information previously available to the board;

H. any board determination of the types of processing facilities or services recommended for development in the state;

I. the availability of funds from the authority or other funding sources.

Subp. 3. Request for additional information. If the board finds that additional information is required to complete its evaluation, the board may request in writing that the applicant provide the necessary information. The board shall notify the commissioner of this request. If the information is not provided within 30 days, the application will be deemed rejected and no longer considered for certification by the board. The board shall notify the commissioner if an application is rejected under this subpart.

9200.6011 CERTIFICATION.

Subpart 1. Conditions for certification. The board may certify a loan application only if it determines that:

A. the applicant has demonstrated that the proposed facility or service is technically feasible;

B. the applicant has made a reasonable assessment of the market for the services offered by the proposed facility or service;

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C. the applicant has agreed to provide funds for the proposed facility in an amount equal to at least 25 percent of the capital cost of the facility excluding land acquisition cost;

D. the applicant has agreed to pay the cost of any land acquisition necessary to develop the facility;

E. the facility will contribute in a significant way to achievement of the policies and objectives of the board's draft hazardous waste management plan, in particular, the reduction of the need for and practice of hazardous waste disposal.

Subp. 2. Matching funds. As a condition of its certification and based on its consideration of the certification factors, the board may require an applicant to agree to provide funds in excess of 25 percent of the capital cost of the facility excluding land acquisition cost.

Subp. 3. Notification to commissioner. The chairperson shall notify the applicant and the commissioner in writing of the board's decision regarding certification of the loan application, and the percentage of matching funds required if more than 25 percent. The board in its notice shall state the basis for its decision including any reason for the decision which is based on a certification factor under part 9200.6010, subpart 2.

ADOPTED RULES

The adoption of a rule becomes effective after the requirements of Minn. Stat. § 14.14-14.28 have been met and five working days after the rule is published in *State Register*, unless a later date is required by statutes or specified in the rule.

If an adopted rule is identical to its proposed form as previously published, a notice of adoption and a citation to its previous *State Register* publication will be printed.

If an adopted rule differs from its proposed form, language which has been deleted will be printed with strikeouts and new language will be underlined. The rule's previous *State Register* publication will be cited.

An emergency rule becomes effective five working days after the approval of the Attorney General as specified in Minn. Stat. § 14.33 and upon the approval of the Revisor of Statutes as specified in § 14.36. Notice of approval by the Attorney General will be published as soon as practicable, and the adopted emergency rule will be published in the manner provided for adopted rules under § 14.18.

Office of Administrative Hearings

Adopted Rules Relating to Rulemaking Procedures of the Office of Administrative Hearings; and Adopted Rules Relating to Contested Case Hearings

The rules proposed and published at *State Register*, Volume 9, Number 17, pages 794-816, October 22, 1984 (9 S.R. 794) are adopted with the following modifications:

Rules as Adopted

1400.0250 SIZE OF MATERIALS.

All materials submitted to the administrative law judge or chief administrative law judge in a rulemaking proceeding, except the draft of the proposed or adopted rules prepared by the revisor of statutes, handwritten comments from members of the public and ~~illustrative~~ exhibits, must be on standard size 8-1/2-inch by 11-inch paper.

1400.0300 INITIATION OF HEARING.

Subpart 1. ~~Filing documents.~~ Assigning administrative law judge. Any agency desiring to initiate a rule hearing pursuant to Minnesota Statutes, sections 14.14 to 14.20, shall first file with the chief administrative law judge or a designee ~~the following documents:~~ a description of the subject matter of the upcoming rulemaking proceeding and a request for the assignment of an administrative law judge. Within ten days of receipt of the request, the chief administrative law judge shall assign an administrative law judge to preside over the proceeding.

Subp. 1a. Filing documents. Prior to giving notice of the hearing, the agency shall file with the chief administrative law judge, or the administrative law judge who will preside over the proceeding, the following documents:

A. A copy of the proposed rule or rules, with a certification of approval as to form by the revisor of statutes attached.

B. An order for hearing that shall contain the following: a proposed time, date, and place for the hearing to be held; a statement that the notice of hearing shall be given to all persons who have registered with the agency for that purpose, and a statement that the

6/27/85

STATE OF MINNESOTA

WASTE MANAGEMENT BOARD

In the Matter of the Adoption
of Proposed Rules of the
Waste Management Board Governing
Hazardous Waste Processing Grants
and Loans, Minnesota Rules
Parts 9200.6000 to 9200.6011.

FINDINGS OF FACT
AND CONCLUSIONS

The above-entitled matter came on for decision before the Minnesota Waste Management Board on the 27th day of June, 1985, after publication and notice of the proposed rules was provided as required by Minnesota Statutes, Sections 14.22 to 14.28. After affording all interested persons an opportunity to submit written comment on the proposed rules for 30 days following the publication date, having considered the written comments submitted to the Board, and having considered all of the evidence adduced upon the records, files and proceedings, herein, the Board makes the following:

FINDINGS OF FACT

1. On March 14, 1985, the Order for Publication authorizing publication of the proposed rules was executed by the Chairperson of the Board under authority of Waste Management Board Resolution WMB-008-85 (March 14, 1985).

2. On March 26, 1985 the Statement of Need and Reasonableness for the proposed rules was completed, placed on file and made available for public inspection.

3. On March 27, 1985, the Notice of Intent to Adopt Rules without a Public Hearing was mailed to all persons and associations who had requested that their names be placed on file with the Board for the purpose of receiving notice of the proposed adoption of rules by the agency.

4. On April 8, 1985, the Notice of Intent to Adopt Rules without a Public Hearing and the Proposed Rules were published at 9 State Register 2271 to 2276.

5. The notice of the Board's intent to adopt the rules afforded all interested persons 30 days to submit data and views on the proposed rules. The notice was in all respects in compliance with the requirements of Minn. Stat. Section 14.22 (1984).

6. The public comment period of 30 days after publication of the proposed rules expired May 8, 1985.

7. Written comments were received within the 30-day comment period from Mr. Warren Goodroad of the Minnesota Department of Energy and Economic Development (dated April 30, 1985). Mr. Goodroad is staff for the Minnesota Energy and Economic Development Authority. Under Minnesota Statutes, Section 116M.07, subd. 9, the Energy and Economic Development Authority and the Board are directed to establish coordinated procedures for loan applications, certification and approval.

8. The Board finds that the written comments of Mr. Goodroad support the modification of the proposed rules by the addition of a definition of capital costs in proposed rules 9200.6001, the elimination of the reference to "any other funding sources" under proposed rule 9200.6010 subp. 2 item I and the deletion of proposed rule 9200.6011 subp. 2.

Mr. Goodroad's comment states that the term "capital costs" is used in proposed rule 9200.6011 without being defined. This term has a generally accepted meaning within the programs of the Minnesota Energy and Economic Development Authority. (See Minnesota Rules part 8300.3022, subp. 2 and part 8300.4023 subp. 2). A definition of this term would clarify its meaning as it is used in the rule. This is especially true since land acquisition costs which are normally considered as eligible capital costs under the Authority programs are not

eligible for funding under this loan program.

For these reasons, proposed rule 9200.6001 is amended to add a new subp. 4 which reads as follows:

Subp. 4. Capital Costs, "Capital costs" means expenditures that meet the requirements of federal industrial development bond law, including:

A. acquisition costs of buildings, equipment, machinery or any combination of them;

B. site preparation;

C. construction costs;

D. engineering costs;

E. bond issuance costs;

F. underwriting or placement fees;

G. trustee's fees;

H. fee of guarantor, insurer, or financial institution, other than the authority, who provides letters of credit, surety bonds, or equivalent security;

I. authority fees, including application and guaranty fees of the authority and administrative costs and expenses;

J. certain contigency costs;

K. interest costs during construction;

L. legal fees, including those of the authority's bond counsel; and

M. debt service reserve fund.

p. 1

Mr. Goodroad's comment also states that proposed rule 9200.6010 subp. 2 item I should be modified to eliminate the reference to "any other funding sources." The reason for this modification is to remove references to sources of financing that are not governed under the hazardous waste loan program. Any reference to other programs is unnecessary and confusing. The Board agrees that a general

p. 10

reference to other funding services is vague and would confuse potential loan applicants.

For these reasons, proposed rule 9200.6010 subp. 2 item I is amended to read as follows:

I. the availability of funds from the authority. ~~or other funding sources~~

The comment further states that under proposed rule 9200.6011 the reference to establishing a match by the loan applicant of greater than 25 percent does not facilitate bonding under the program, since higher percentage matches may limit substantially the number of potential applicants who can meet the rigorous requirements. The Board recognizes that the Energy and Economic Development Authority has a great deal of experience with loan programs financed by revenue bonds. Despite the fact that statutory authority exists for the higher match, the current match requirements appear to be sufficient to ensure that the applicant is sharing a sufficient percentage of the financial risk. Deletion of proposed rule 9200.6011 subp.2 will remove an unnecessary burden on loan applicants that could curtail applications and undermine the success of the program. p. 11

For these reasons proposed rule 9200.6011 is amended by deleting subp. 2.

During the comment period, Board staff discovered references to eligibility review in proposed rule 9200.6009 Subp.2 and 3. Since the rule, as proposed, did not provide for any Board review of eligibility, these references are surplus language and confusing to loan applicants. These references have been modified or eliminated in order to correct and clarify these subparts.

For these reasons proposed rule 9200.6009 subparts 2 and 3 are amended to read as follows:

Subp. 2. ~~Eligibility and~~ Documentation review. The chairperson or a designee shall review each application to determine the adequacy of the supporting documentation. Documentation is considered adequate if it enables the Board to make the determination required for certification and if it provides sufficient information to address the certification factors.

Subp. 3. Notification of ~~eligibility~~ adequacy. Within 14 days after receiving a copy of the application, the chairperson or designee shall notify the commissioner of the determination of ~~eligibility and~~ adequacy of documentation. The notice shall state the additional information needed by the board to determine whether the application will be certified.

9. The Board adopts the Statement of Need and Reasonableness, in its entirety, as the factual basis for these rules. The Board hereby incorporates the Statement of Need and Reasonableness into these findings.

CONCLUSIONS

A. The Board has duly acquired and has jurisdiction over this matter.

B. The Board has statutory authority to adopt the proposed rules.

C. The Board has published and served due, timely and adequate notice of its intent to adopt the above-captioned rules without a public hearing.

D. The Board has complied with all relevant substantive and procedural requirements of Minnesota statutes and rules.

E. All of the modifications to the proposed rules are supported by the data and views submitted to the Board.

Dated: June 27, 1985

Minnesota Waste Management Board

Robert G. Dunn
Chairman

STATE OF MINNESOTA

WASTE MANAGEMENT BOARD

In the Matter of the Proposed Adoption of the Rules of the Waste Management Board Governing Hazardous Waste Processing Grants and Loans	)))))	CERTIFICATE OF BOARD AUTHORIZING RESOLUTION

I, Robert G. Dunn, do hereby certify that I am a member and the Chairperson of the Minnesota Waste Management 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 Minnesota Waste Management Board duly and properly called and held on the 27th day of June, 1985, that a quorum was present at said meeting, that a majority of those present voted for the resolution and that said resolution will be set forth in the minutes of said meeting and has not been rescinded or modified:

> RESOLVED, that the Minnesota Waste Management Board hereby approves and adopts the attached Minnesota Rules Parts 9200.6000 to 9200.6011, Hazardous Waste Processing Grant and Loan Rules, pursuant to the authority vested in the Board by Minnesota Statutes, sections 115A.06, subdivision 2, 115A.156 and 115A.162.
>
> BE IT FURTHER RESOLVED, that prior to publishing the rules as adopted in the State Register, the Chairperson is authorized to make any form changes in the rules that the Revisor of Statutes requires the Board to make in order to obtain the Revisor's Certificate of Approval as required by Minnesota Statutes, section 14.28.
>
> BE IT FURTHER RESOLVED, that the Board hereby adopts the attached Findings of Fact and Conclusions relating to the above-named rules and authorizes the Chairperson to execute the attached Findings of Fact and Conclusions on behalf of the Board.
>
> BE IT FURTHER RESOLVED, that the Chairperson is hereby authorized to sign an order of the Board adopting the above-named rules, and to perform any acts incidental thereto.

IN WITNESS WHEREOF, I have hereunto subscribed my name this 27th day of June, 1985.

ROBERT G. DUNN
Chairperson

Allan B. Eide
Attest by one other Board member

STATE OF MINNESOTA
WASTE MANAGEMENT BOARD

In the Matter of the Proposed
Adoption of Rules Governing
Hazardous Waste Processing
Facility Grants and Loans

Statement of Need
and Reasonableness

I. INTRODUCTION

The subject of this rulemaking procedure is a set of proposed rules governing the hazardous waste processing facility grant and loan programs. The adoption of the grant rules is authorized by Minnesota Statutes, Section 115A.06, Subd. 2 and 115A.156 . Authority to adopt loan rules is contained in Minnesota Statutes, Section 115A.06, Subd. 2 and 115A.162.

The proposed grant rules include eligibility criteria, information which shall be included in an application, procedures for initial review of applications, procedures and criteria for evaluating grant applications, provisions related to the awarding of grants and required content of grant agreements. The proposed loan rules include provisions for initial application review, evaluation of loan applications, and certification of loan applications.

II. NEED FOR THE PROPOSED RULES

A. Grant Rules

The Waste Management Board (Board) is directed by Minnesota Statutes, Section 115A.156 (1984) to make grants to eligible recipients to determine the feasibility and method of developing and operating specific types of commercial facilities and services for collecting and processing hazardous waste. The rules are necessary to enable the Waste Management Board to effectively administer the program of grants for development of waste processing and collection facilities and services and thereby fulfill a statutory obligation of the

Board. Rules are needed to establish procedures and criteria to be used to evaluate grant applicants and the proposed projects.

B. Loan Rules

The Board is directed by Minnesota Statutes, Section 115A.162 (1984) to review applications for hazardous waste processing facility loans received by the Energy and Economic Development Authority and forwarded to the Board for certification. Rules are needed to establish coordinated procedures for loan applications and certification between the Board and the Energy and Economic Development Authority. Rules are also needed to establish procedures and factors to be used by the Board in determining whether a loan application should be certified. The rules are necessary to enable the Waste Management Board to effectively administer with the Energy and Economic Development Authority the loan program for the development of hazardous waste processing facilities and services. This fulfills a statutory obligation of the Board.

III. REASONABLENESS OF THE PROPOSED RULES

9200.6000 Scope and Authority

This section specifies the sections of Minnesota Statutes which authorize the Board to administer the grant and loan program.

9200.6001 Definitions

The terms defined in Section 9200.6001 are used throughout the rules. The definitions are provided for clarity and consistency, and include "authority," "board," "chairperson," "collection," "commercial," "commissioner," "generator," "hazardous waste," "loan," "person," "processing," "proposal," and "service." The definitions are either taken from existing relevant Minnesota laws or rules, or are commonly understood definitions.

HAZARDOUS WASTE PROCESSING FACILITY GRANTS

9200.6002 Eligibility Criteria

Section 9200.6002 Subpart 1

This subpart identifies two categories of eligible applicants. Persons who propose to develop and operate specific commercial collection and processing facilities or services to serve generators of hazardous waste in the state are eligible to apply for a grant. Since this grant program is designed to determine the feasibility of developing commercial collection or processing facilities or services, applicants must propose a study for specific facilities or services. Applicants must make their proposed facility or service available to Minnesota generators of hazardous waste.

An association of two or more Minnesota generators who propose to develop and operate specific commercial collection or processing facilities or services to serve state generators is eligible. Generators with similar waste streams may be in the best position to develop a treatment facility or service that would best meet their needs in terms of efficiency and cost. Separate reference to the eligibility of such an association is reasonable because the Board may give preference to applications from such an association (see 9200.6006 Subp. 2.F and 9200.6007 Subp.3).

Section 9200.6002 Subpart 2

Minnesota Statutes, Section 115A.156, Subd. 1. allows the Board to make grants for six categories of work. These types of work are repeated in the rules in order to provide comprehensive instruction to potential applicants about the purposes for which they can seek a grant.

Section 9200.6002 Subpart 2.A.

Market assessments, including generator surveys.

A survey of the potential market for its process or service is one of the first steps a company must take in determining the feasibility of developing a facility or service.

Section 9200.6002 Subpart 2.B.

Conceptual design and preliminary engineering.

The determination of the size, design and engineering that would be needed to construct a facility are important early steps a firm must take in order to determine the cost and feasibility of a facility.

Section 9200.6002 Subpart 2.C.

Financial and business planning necessary to address sources of funding, financial security, liability, pricing structure, and similar matters necessary to the development and proper operation of a facility or service.

All of these items must be taken into consideration when examining the feasibility of starting a new business.

Section 9200.6002 Subpart 2.D.

Environmental impact and site analysis, preparation of permit applications, and environmental and permit reviews.

The environmental analysis of a site and the preparation of permits is one of the major considerations for a company developing a hazardous waste facility or service. This can be a very lengthy and costly process that must be completed before any construction can begin.

Section 9200.6002 Subpart 2.E.

Analysis of methods to overcome identified technical, institutional, legal, regulatory, market, or other problems in developing or operating a facility or service.

One of the purposes of this program is for grantees to determine what barriers may exist which would prevent the development or operation of a service or facility and to help identify what can be done to overcome those barriers. The rules use the phrase "problems in developing or operating a facility or service" in order to more clearly define the statutory term "constraints."

Section 9200.6002 Subpart 2.F.

Analysis of other factors affecting development, operation, and use of the proposed facility or service.

Since the planning, siting and permitting of a hazardous waste facility can be a very difficult process, this allows the Board to grant money for the study of unforeseen barriers to development.

Section 9200.6002 subpart 3

Eligible costs are limited to that which is necessary to conduct the studies and analyses identified in subpart 2.

Section 9200.6002 Subpart 4

This subpart identifies costs which are not eligible for payment from a grant and implements the legislative mandate of Minnesota Statutes, Section 115A.156, Subd. 4 with respect to expenditures for capital improvements or equipment.

Section 9200.6002 Subpart 5

This subpart implements the requirement under Minnesota Statutes, Section

115A.156, Subd. 5, that a recipient must agree to pay for a portion of the work which will be carried out under the grant. The exact amount of matching funds is specified in section 9200.6007.

Section 9200.6002 Subpart 6

This subpart provides that proposals for more than one grant for the same facility or service are eligible only if the proposals address different aspects of the work preliminary to the development of a facility or service. This provision carries out the limitation on multiple grants for the same facility or service mandated by Minnesota Statutes, Section 115A.156, Subd. 4.

9200.6003 Grant Application

This section identifies the types of information that must be provided by the applicant in order to allow the Board to evaluate and act upon the grant application. The rule also allows the Board to specify a uniform application form and requires applicants to use that form.

Item 9200.6003.A

Applicants must include a detailed description of the proposal, including primary tasks, the schedule for completion of the work, and a statement of the amount which the applicant expects to contribute to the cost of the proposal. This is the basic information needed by the Board to determine what work is being proposed by an applicant. This information will be used to determine if the proposal is eligible for a grant, if the proposed costs are eligible, and if the applicant has satisfied the requirements for matching funds. In order for the Board to make a fair and complete evaluation of a proposal, it is reasonable for the Board to require detailed information on the applicant's

proposed work.

Item 9200.6003.B

Applicants must describe their financial, managerial and technical ability to undertake the work described in their proposal. A description by the applicant of similar work experience is useful in determining an applicant's capabilities. By requiring the applicant to identify work for which an applicant intends to use a consultant, the qualifications of the consultant can be considered in addition to that of the applicant. This information will enable the Board to determine if the applicant is capable of completing the proposed work.

Item 9200.6003.C

Applicants must describe their financial, managerial and technical ability to develop and operate the proposed facility or service. A description of the applicant's experience in developing and operating similar facilities or services will be very useful. The Board does not want to fund applicants who do not have the capability to actually develop a facility or service. This information will enable the Board to determine if the applicant has the ability to follow up on any work carried out under a grant. Demonstrated experience is a factor which the Board is required to consider under Minnesota Statutes, Section 115A.156, Subd. 3(5) when awarding grants.

Item 9200.6003.D

Applicants must state whether they plan to apply for additional grants in the future or for a hazardous waste processing facility loan from the Minnesota Energy and Economic Development Authority. This information is needed to estimate the total amount of state financial help from these sources that

may be needed to develop a proposed facility or service. This information is also useful to the agencies to determine future demand for assistance and funding levels for these programs.

Item 9200.6003.E

Applicants must provide information which addresses the evaluation factors listed in Minnesota Statutes, Section 115A.156, Subd. 3, and in section 9200.6006 of the rules. This information must be provided in enough detail so that the Board can make a thorough and complete evaluation of the proposal, including consideration of all factors which Minnesota Statutes require the Board to consider. Complete information is important to the Board in order to select those applications which best meet the objectives of the grant program, which is to assist in the development of facilities and services needed to improve hazardous waste management.

9200.6004 Application Process

Section 9200.6004 Subpart 1

This subpart provides that the Board will give advance notice and publicity when soliciting applications for the grant program. In order to operate the program efficiently the Board will need to set deadlines for receiving applications. These deadlines must allow interested parties a reasonable time to prepare and submit an application.

Section 9200.6004 Subpart 2

This subpart allows the Board the opportunity to limit the solicitation of grant applications to particular proposals, facilities, or services. The Board would identify the desired types of applications based upon its evaluation of studies which have already been completed concerning possible development

and operation of facilities and services or other proposals for processing or reducing hazardous waste. This allows the Board to direct State funds to the types of studies which are more likely to provide needed and useful information, and avoid duplication. It also allows funds to be directed to the types of facilities or services more likely to be successfully developed and operated.

The Board also has the authority to recommend the number and types of hazardous waste processing facilities which should be developed in the State (See Minnesota Statutes, Sections 115A.11, Subd.1b(d) and 115A.24, Subd.1 (4)). Once the Board makes such recommendations, it is reasonable for the Board to direct grant funds to proposals that are consistent with the types of facilities that it has recommended for development.

9200.6005 Initial Application Review

Section 9200.6005 Subpart 1

This subpart identifies the chairperson of the Board or his designee as the person who will make the initial review of the application.

Section 9200.6005 Subpart 2

This subpart specifies that the chairperson or his designee will be authorized to determine the eligibility of the applicant, the proposal, the proposal costs, and the adequacy of the supporting documentation. This procedure establishes a clear method of initial review and provides the basis on which applicants will be notified of the eligibility of their application. It allows the Board to avoid time consuming work on applications that are not complete and do not allow adequate evaluation.

Section 9200.6005 Subpart 3

This subpart specifies the procedure to be used by the Board to notify applicants of the eligibility status of their applications. No determination of the award of a grant is made at this time. If an application is found deficient the application is returned to the applicant with a statement of reasons for rejecting it. The applicant must revise the application within 14 days after it is returned to be considered an eligible applicant. The time requirements are considered reasonable since the same amount of time is provided to both the Board and the applicant in making their respective responses. This procedure gives applicants a reasonable opportunity to correct deficiencies in their applications and allows the Board to eliminate ineligible or incomplete applications from further consideration.

9200.6006 Evaluation of Proposals

Section 9200.6006 Subpart 1

This subpart specifies that within 60 days after the application is final the Board will evaluate the proposal and establish a date when grants will be awarded. The 60-day period is reasonable in that it provides sufficient time for the Board to review applications taking into account the time needed to obtain any consultant services that may be necessary to assist the Board in its review. A time limit also provides greater predictability of the process to the Board and applicant.

Section 9200.6006 Subpart 2

This subpart contains the evaluation factors to be used by the Board in evaluating eligible projects and selecting those projects to be funded. This provides a clear understanding to all parties of what criteria the Board will consider

in its evaluation and establishes a basis for the decisions.

Section 9200.6006 Subpart 2.A.

This item states that the Board in evaluating each proposal shall follow the statutory requirement that it consider the factors listed in Minnesota Statutes, Section 115A.156, Subd. 3.

Section 9200.6006 Subpart 2.B.

This item requires the Board to consider the relationship between the proposed study and the eventual development and operation of the proposed facility or service. The purpose of this criterion is to help ensure that work which is funded will contribute in some significant way to actual development of the proposed facility or service in Minnesota.

Section 9200.6006 Subpart 2.C.

This item requires the Board to evaluate the chances that the proposed facility or service will be developed. This requires the Board to examine the type of facility or service being proposed, waste generators proposed to be served and the experience of the company, among other items. The Board does not wish to fund grants for proposed projects that have no chance for success. The likelihood of success for the proposed facility or service is a reasonable concern for the Board.

Section 9200.6006 Subpart 2.D.

This item requires the Board to examine the results of any previous work on the proposed project which was funded by the Board. This information will be useful in determining the likelihood that the proposed facility or service will be developed and the capability of the applicant to carry out

its proposals.

Section 9200.6006 Subpart 2.E.

This item requires the Board to determine if the proposal is consistent with any Board determination of the types of processing facilities or services recommended for development in the state. Once the Board has recommended certain facilities or services, it is reasonable for the Board in its evaluation of a proposal to determine if the proposal is consistent with the Board's recommendations.

Section 9200.6006 Subpart 2.F.

This item responds to Minnesota Statutes, Section 115A.156, Subd. 2 which states that the Board may give preference to an application from an association of two or more Minnesota generators. The Board must determine whether the proposed facility or service will make a major contribution toward cooperation among generators and will help solve their hazardous waste management problems. It is reasonable that the Board give preference to Minnesota hazardous waste generators who are making a serious effort to help solve mutual hazardous waste problems. Cooperation among generators to solve waste management problems is desirable because it promotes greater economic efficiency and avoids proliferation of on-site treatment facilities which may increase risks to health and safety, and impose greater regulatory enforcement burdens on the state.

9200.6007 Award of Grants

9200.6007 Subpart 1

This subpart provides that grants will be awarded for those proposals which in the Board's judgment will be most beneficial in improving hazardous waste management in the state, based upon the Board's evaluation of the factors

set forth in Section 9200.6006. The decision on any given grant requires the Board to consider, evaluate, and balance many factors, including those factors mandated by statute. The final decision is necessarily one of judgment based on everything the Board has reviewed.

9200.6007 Subpart 2

This subpart gives the Board the authority to determine the amount of a grant up to a maximum. The amount requested by the applicant will be an important factor in determining the amount of the grant. Minnesota Statutes, Section 115A.156, Subd. 4 limits a grant to $50,000 for any one proposal.

9200.6007 Subpart 3

This subpart specifies that a grant recipient other than an association of Minnesota generators must agree to provide at least 50 percent of the cost of the proposal. These are the minimum matching amounts required under Minnesota Statutes, Section 115A.156, Subd.5. An association of two or more generators in the state must agree to provide at least 20 percent of the cost of the proposal. These are the minimum matching amounts required under Minnesota Statutes, Section 115A.156, Subd.5. It is reasonable to require a match for these grants since applicants which must supply their own resources to complete a study will have more at stake in the project. This should help insure more complete and well thought out proposals. It is also reasonable to require a smaller match from an association of Minnesota generators if they are making a major contribution toward solving mutual hazardous waste management problems.

9200.6007 Subpart 4

This item provides that the Board may award more than one grant for proposals

related to the same facility or service. However, these grants would be awarded in a sequence where any additional grants beyond the original grant would be based on evaluation of the results of the previous grant. This item is reasonable in that the Board realizes that it may take more than one grant to implement the development of a facility or service. At the same time the Board will not fund additional grants if the results of previous work fail to show a proposed facility or service is feasible.

9200.6008 Grant Agreement

Section 9200.6008 Subpart 1

This part specifies that the Board and a recipient will enter into a grant agreement and sets forth specific conditions which will govern the administration of the grant. An agreement is necessary in order to insure that the proposed work is carried out in a manner that is satisfactory to the Board.

Section 9200.6008 Subpart 1.A.

This item specifies that, unless otherwise stated in the agreement, the maximum term of the grant agreement is one year. The period will provide sufficient time for the recipient to complete the study and provide the Board with timely results.

Section 9200.6008 Subpart 1.B.

This item establishes that the recipient is authorized to enter into contracts to complete the types of work specified in the agreement. Since a recipient may not have the expertise to carry out all or part of the proposed study it is reasonable to assume that such a study could be undertaken by another party under a contractual agreement with the recipient.

Section 9200.6008 Subpart 1.C.

This item specifies that a product such as a report will be required of each recipient. Since the type of product may differ for each recipient, specification of the product to be delivered will be made in each grant agreement. All results of the study shall be made available to the Board. Since grant recipients may provide the Board with information which, if made public, may give competitors an economic advantage, the grant agreement may include provisions for classifying certain trade secret and sales information as non-public. This provision on non-public data is subject to the Board's ordinary statutory authority to classify information. The provision is reasonable and needed to assure grant recipients that the information they gather will not be used by competitors to gain an economic advantage in the marketplace and to assure the Board that it will obtain the information needed for its evaluation of the recipient's work.

Section 9200.6008 Subpart 2

The Board is authorized to cancel a grant not completed in accordance with the terms of the agreement. This is necessary to protect the Board's interest in assuring that the work for which the grant was awarded is undertaken according to the terms of the grant agreement. It also allows flexibility in administering a grant by authorizing the chairperson to grant a variance when he determines it is necessary. This provision protects the legitimate interests of both the Board and the grant recipients.

Section 9200.6008 Subpart 3

The Board is authorized to terminate the work under a grant upon 30 days notice and to require that no additional funds be spent by a recipient after a termination notice has been issued. A recipient may also give notice to

terminate work under a grant. This is necessary to provide a clear method to terminate work under a grant and to provide the Board with the authority to halt all further expenditures of the grant funds immediately upon notice. This gives the Board authority to assure the proper management of grant funds.

Section 9200.6008 Subpart 4

The Board and recipient will develop a disbursement schedule in the grant agreement. Phased disbursement and final holdback provisions, if deemed appropriate by the Board, are necessary to provide effective control of public funds and completion of the work under these grants.

Section 9200.6008 Subpart 5

This subpart requires that unspent funds following completion of the project, cancellation of the grant, or termination of the project be returned to the Board. This is a reasonable requirement to protect the Board's interest in the proper use of public funds.

9200.6009 Initial Application Review

Section 9200.6009 Subpart 1

This subpart identifies the chairperson or his designee as the person who will make the initial review of the application after it has been transmitted to the Board from the commissioner.

Section 9200.6009 Subpart 2

This subpart specifies that the chairperson or his designee will be authorized to determine if the supporting documentation is adequate. This subpart specifies that documentation is considered adequate if it provides sufficient information for the Board to review the certification factors and to make a determination on certifying a loan. This procedure establishes a clear method of initial review and provides the basis on which applicants will be notified of the adequacy of their application. It allows the Board to avoid time consuming work on applications that are not complete and cannot be adequately evaluated.

Section 9200.6009 Subpart 3

This subpart specifies the procedure to be used by the Board to notify the commissioner of the additional information needed by the Board to determine whether the application will be certified. No determination on certification is made at this time. The time requirement of 14 days is a reasonable length of time for the board to determine if supporting documentation is adequate.

9200.6010 Evaluation of Loan Application

Section 9200.6010 Subpart 1

This subpart specifies that the Board will begin to review a loan application once it receives an application that the commissioner has determined to be complete.

Section 9200.6010 Subpart 2

This subpart specifies certain factors in addition to the requirements of Section 9200.6011 which the Board shall consider when evaluating whether a loan application will be certified and determining the share of capital costs that must be provided by the applicant. The Board is authorized to consider the factors listed in Subpart 2.A., C. and D. by Minnesota Statutes, Section 115A.162.

Section 9200.6010 Subpart 2.A.

This subpart states that the Board shall consider the types and quantities of hazardous waste that will be handled by the facility or service. The Board will consider if the facility or service handles a significant quantity of hazardous waste or a waste that is particularly difficult to process. In either case such a facility or service would make a major contribution towards improving hazardous waste management in the state. This would insure that state funds would be used where they have the most beneficial impact.

Section 9200.6010 Subpart 2.B.

This subpart states that the Board shall consider the types and quantities of residuals produced by the facility or service and their final disposition. The ability of a company to properly dispose of its treatment residuals can affect the overall feasibility of a project. Also, certain types of treatment may result in residuals which are still hazardous while other facilities may produce

residuals that are non-hazardous. Thus the final disposition of treatment residuals may be different. It is reasonable that the Board consider the disposition of treatment residuals as a certification factor.

Section 9200.6010 Subpart 2.C.

This subpart states that the Board shall consider the number of generators that are served by the facility or service. Facilities or services which would serve a large number of generators would have the most impact on waste management.

Section 9200.6010 Subpart 2.D.

This subpart states that the Board shall consider the extent to which the facility will serve the needs of smaller businesses that generate hazardous waste. Many smaller generators of hazardous waste, especially those outside the Minneapolis/St. Paul area have a difficult time in properly disposing of their waste. A facility which takes into account the special needs of smaller businesses could greatly improve hazardous waste management in Minnesota. Such a facility or service could also lower transportation costs now incurred to move waste to facilities outside of Minnesota. These costs can be a significant factor for many small businesses.

Section 9200.6010 Subpart 2.E.

This subpart states that the Board shall consider whether an applicant has received a grant from the Board to undertake feasibility studies for the proposal. In considering this factor, the Board may give preference to an applicant who has received a grant from the Board and successfully completed the feasibility studies. This is a reasonable factor since the Board may want to give preferences to companies that have successfully worked with the Board on the feasi-

bility of a proposed facility. If a feasibility study shows a facility or service is viable the Board could further assist the development of the facility or service through the loan program. At the same time if an applicant did a poor job with a Board grant, the Board would want to consider that when deciding whether to certify a loan application.

Section 9200.6010 Subpart 2.F.

This subpart states that the Board shall consider the applicant's managerial and technical experience for developing and operating the proposed facility or service. A review of an applicant's experience in developing and operating similar facilities or services will be very useful. The Board does not want to certify applications from applicants who do not have the capability to develop and operate a facility or service.

Section 9200.6010 Subpart 2.G.

This subpart states that the Board shall consider the results of previous studies of hazardous waste processing and reduction proposals and opportunities in Minnesota, including a comparison of the applicant's market assessment with market information previously available to the Board. Several studies have been made regarding the amount of hazardous waste generated in Minnesota. It is reasonable that the Board should compare the applicants market study with other market studies to determine whether the applicant's market assessment is reasonable (see Section 9200.6211.B.).

Section 9200.6010 Subpart 2.H.

This subpart states that the Board shall consider any Board determination of the types of processing facilities or services recommended for development in the state. It is reasonable that the Board should compare the proposed facility

with the type of facility or service that may be recommended for development and to direct loans to those applicants whose proposals are consistent with the types of facilities that it has recommended for development. This allows the Board to direct loans to facilities and services that support the policy objectives of the Board and of the Waste Management Act, Minnesota Statutes Ch. 115A.

Section 9200.6010 Supart 2.I.

This subpart states that the Board shall consider the availability of funds from the Authority or other funding sources. With only a limited amount of public funds available it is reasonable that the Board consider what other funding sources are available to an applicant. If applicants are able to secure funding from other sources, state funds can be reserved for those applicants who would have no other source of funds for their project.

Section 9200.6010 Subpart 3

This subpart outlines the procedures that the Board will use if it needs additional information from an applicant after it begins to evaluate a loan application. Though the Board made a preliminary determination as to the completeness of the application, it may find that to do a fair and thorough evaluation additional information is necessary. It is reasonable to expect an applicant to provide the requested information within 30 days. It is also reasonable that the Board should not consider an application for certification if after a sufficient length of time the requested supporting information is not provided.

9200.6011 Certification

Section 9200.6011 Subpart 1

Minnesota Statutes, Section 115A.162 lists five items that the Board must deter-

mine have been met before certifying a loan application. These items are repeated in the rules so that potential loan applicants will have a clear understanding of what the Board must determine before certifying an application.

Section 9200.6011 Subpart 1.A.

The applicant has demonstrated that the proposed facility or service is technically feasible.

Section 9200.6011 Subpart 1.B.

The applicant has made a reasonable assessment of the market for the services offered by the proposed facility or service.

Section 9200.6011 Subpart 1.C.

The applicant has agreed to provide funds for the proposed facility in an amount equal to at least 25 percent of the capital cost of the facility excluding land acquisition cost.

Section 9200.6011 Subpart 1.D.

The applicant has agreed to pay the cost of any land acquisition necessary to develop the facility.

Section 9200.6011 Subpart 1.E.

The facility will contribute in a significant way to achievement of the policies and objectives of the Board's draft hazardous waste management plan, in particular, the reduction of the need for and practice of hazardous waste disposal.

Section 9200.6011 Subpart 2

Minnesota Statutes, Section 115A.162 allows the Board as a condition of its certification to require an applicant to agree to provide funds in excess of 25

percent of the capital cost of the facility excluding land acquisition cost. This subpart specifies that the Board would have to base the requirement for a match in excess of 25 percent on its consideration of the certification factors.

Section 9200.6011 Subpart 3

This subpart identifies the chairperson as the person who will notify the commissioner and the applicant in writing of the Board's decision regarding certification, the percentage of matching funds, and the basis for its decision. If the Board bases its decision on any of the certification factors listed in Section 9200.6010, Subpart 2, the Board will state in its written decision the relationship of that factor to the decision.

EFFECT OF PROPOSED RULE ON SMALL BUSINESS

The proposed rules do not directly affect small businesses and therefore do not require the Board to address the requirements of Minnesota Statutes Section 14.115. The rules do not impose any requirements or standards on the operation of small businesses. The programs which these rules are designed to implement will provide grants and loans to persons seeking to develop and operate hazardous waste collection and processing facilities and services. Availability of these facilities and services to small businesses generating hazardous waste is an important goal of the Board. Under the rules for processing facility loans, the Board must specifically consider the extent to which a proposed facility serves the needs of smaller businesses that generate hazardous waste when evaluating loan applications (see Part 9200.6010, subpart 2.D.).

STATE OF MINNESOTA
WASTE MANAGEMENT BOARD

Proposed Minnesota Rules
Parts 9200.6000 to .6011,
Hazardous Waste Processing
Grant and Loan Rules

STATEMENT OF COMPLIANCE
WITH RULEMAKING PROCEDURES

I, Special Assistant Attorney General Penny Troolin, do hereby declare that I have examined the proposed rules and all related documents and that, based on my examination and my personal familiarity with the applicable procedures, the Administrative Procedure Act, the rules of the Office of Administrative Hearings, and the rules of the Attorney General have been followed.

Penny Troolin

PENNY TROOLIN
Special Assistant
Attorney General

Dated: July 2, 1985

STATE OF MINNESOTA
WASTE MANAGEMENT BOARD

Proposed Minnesota Rules
Parts 9200.6000 to .6011,
Hazardous Waste Processing
Grant and Loan Rules

AFFIDAVIT REGARDING
NOTIFICATION OF
SUBMISSION TO
ATTORNEY GENERAL

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

Jerry Johnson, being duly sworn on oath deposes and says:

1. That he is the person named in the Notice of Intent to Adopt Rules Without a Public Hearing as published in the State Register (9 S.R. 2271, April 8, 1985) and as mailed to interested persons on March 27, 1985, as the person to receive requests for notification on the date that the Board submits the above-entitled rules to the Attorney General for review.

2. That no person requested to be notified of the date that the Board submits the rules to the Attorney General for review.

Jerry Johnson
JERRY JOHNSON

Subscribed and sworn to before me
this 2 day of July, 1985

Mary Ann Hammer
Notary Public

MARY ANN HAMMER
NOTARY PUBLIC - MINNESOTA
RAMSEY COUNTY
My Commission Expires Dec. 11, 1985