

Minnesota Attorney General: Administrative Rules Proceedings

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Our File No. 1274

95.0009, 0835

RULE REVIEW CHECKLIST

DATE RULE RECEIVED 8-6-86
DATE FOR REVIEW 8-15
DATE DUE 8-20

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

Approved 8/15/86 Disapproved _____ Returned to Agency _____

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

Date filed w/Secretary of State 8-8-86 Revisor approved 8-6-86
disapproved _____

✓ Rule as Adopted see note

✓ Rule as Proposed See S.R. 6-2-86

✓ Order Adopting 7-24-86 Date

NA Notice of Intent to Solicit Outside Opinion

✓ Order for rulemaking
NA date of Hearing

✓ Certificate of Board's Authorizing Resolution

✓ Notice of rulemaking
✓ Sufficiency

✓ Affidavit of Mailing Notice or rulemaking
5-30-86 At least 30 days prior to ~~hearing~~/adoption

✓ Mailing list Certificate

✓ Publication in State Register
6-2-86 At least (30)/20 days prior to ~~hearing~~/adoption

NA Hearing Examiner's Report

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

✓ Agency's Findings of Fact

LCRAR Report or agency Affidavit

✓ Certificate of Board's Resolution Adopting Rules

NA Order Approving Incorporation by Reference

✓ Statement of Need and Reasonableness

NA 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

NA Affidavit of Mailing Notice of Submission to Attorney General

✓ Notice of Submission to the Attorney General

SF-00006-03

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL

Office Memorandum

TO: WILLIAM WALKER, CHARI
Waste Management Board

ATTN: ANN E. COHEN
Special Assistant Attorney General

DATE: 8/18/86

FROM: J. MICHAEL MILES
Assistant Attorney General

PHONE: 296-6555

SUBJECT: In the Matter of the Adoption of the Proposed Rules of the Waste Management Board Governing the Solid Waste Processing Facility Capital Assistance Program

The above-referenced rule has been approved as to its legality by the Attorney General on August 15, 1986.

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.

JMM:pmf

Enclosures

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

Duane Harves
Chief Administrative Law Judge
Office of Administrative Hearings

RR1297

Waste Management Board

Adopted Rules Relating to Solid Waste Processing Facility Capital Assistance and Demonstration Programs

Rules as Adopted

CAPITAL ASSISTANCE PROGRAM

9200.6000 DEFINITIONS.

Subpart 1. **Scope.** For the purposes of parts 9200.6000 to 9200.6800 the following terms have the meaning given them, unless the context requires otherwise.

Subp. 2. **Board.** "Board" means the Minnesota Waste Management Board established in Minnesota Statutes, section 115A.04.

Subp. 3. **Chair.** "Chair" means the chair and chief executive officer of the board.

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

Subp. 5. **Comprehensive solid waste management plan.** "Comprehensive solid waste management plan" means a written plan prepared under Minnesota Statutes, section 115A.46.

Subp. 6. **Disposal.** "Disposal" has the meaning given it in Minnesota Statutes, section 115A.03, subdivision 9.

Subp. 7. **Final design and engineering/architectural plans.** "Final design and engineering/architectural plans" means those engineering drawings and specifications used to secure bids for construction or equipment.

Subp. 8. **Institutional arrangements.** "Institutional arrangements" means methods of financing, marketing, procurement, securing the waste supply, or joint efforts by more than one local government unit.

Subp. 9. **Mixed municipal solid waste.** "Mixed municipal solid waste" has the meaning given it in Minnesota Statutes, section 115A.03, subdivision 21.

Subp. 10. **On-site utilities.** "On-site utilities" means

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gas, electrical, water, and sewer facilities within the geographic boundaries of the waste processing facility site, that are used for facility operations, excluding transmission of energy to markets.

Subp. 11. **Preliminary design and engineering/architectural plans.** "Preliminary design and engineering/architectural plans" means conceptual plans adequate to obtain preconstruction permits and to meet the needs of an environmental assessment.

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

Subp. 13. **Project.** "Project" means a processing facility, together with any transfer stations, transmission facilities, and other related and appurtenant facilities primarily serving the processing facility.

Subp. 14. **Recyclable materials.** "Recyclable materials" has the meaning given it in Minnesota Statutes, section 115A.03, subdivision 25a.

Subp. 15. **Recycling.** "Recycling" has the meaning given it in Minnesota Statutes, section 115A.03, subdivision 25b.

Subp. 16. **Recipient.** "Recipient" means an applicant who has received a grant under the solid waste processing facilities capital assistance program.

Subp. 17. **Resource recovery.** "Resource recovery" has the meaning given it in Minnesota Statutes, section 115A.03, subdivision 27.

Subp. 18. **Resource recovery facility.** "Resource recovery facility" has the meaning given it in Minnesota Statutes, section 115A.03, subdivision 28.

Subp. 19. **Solid waste.** "Solid waste" has the meaning given it in Minnesota Statutes, section 116.06, subdivision 10.

Subp. 20. **Solid waste disposal facilities and equipment.** "Solid waste disposal facilities and equipment" means structures, machinery, or devices at a disposal site necessary for efficient land disposal of solid wastes, including machinery or devices designed to move earth during burial of wastes or to increase the density of wastes buried or to be buried, and

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facilities in which solid waste is temporarily stored and concentrated before transport to a disposal site.

Subp. 21. **Solid waste management district.** "Solid waste management district" has the meaning given it in Minnesota Statutes, section 115A.03, subdivision 32.

Subp. 22. **Special waste stream.** "Special waste stream" means materials normally found in the solid waste stream in sufficient quantity to be recovered for subsequent use, if separated from the solid waste stream and processed separately. Examples of special waste streams include waste tires, wood wastes, and agricultural wastes.

Subp. 23. **Transmission facilities.** "Transmission facilities" means any steam, water, or electrical lines that are used to transport energy to markets.

Subp. 24. **Transfer station.** "Transfer station" has the meaning given it in Minnesota Statutes, section 115A.03, subdivision 33.

Subp. 25. **Waste processing equipment.** "Waste processing equipment" means machinery or devices acquired and used as an integral component of a waste processing facility.

Subp. 26. **Waste processing facility.** "Waste processing facility" means structures and equipment, singly or in combination, that are designed, constructed, and used to separate, modify, convert, heat, prepare, or otherwise process solid waste so that materials, substances, or energy contained within the waste may be recovered for subsequent use.

9200.6100 SOLID WASTE PROCESSING FACILITIES CAPITAL ASSISTANCE PROGRAM.

Parts 9200.6000 to 9200.6800 implement the solid waste processing facilities capital assistance program created and described in Minnesota Statutes, sections 115A.49 to 115A.54, by establishing the substantive criteria and procedural conditions under which the board may award grants for capital costs of solid waste processing facilities.

9200.6200 GRANT APPLICATION PROCEDURES.

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Subpart 1. **Applications.** An application may be submitted to the board when the applicant has met the information and documentation requirements in parts 9200.6400 and 9200.6500. The applicant is encouraged to contact the chair and request a preapplication review of the proposed project.

Subp. 2. **Review of applications.** Upon receipt of an application, the chair or a designee shall conduct an initial review of the application under part 9200.6600. The board shall evaluate projects and award grants.

Subp. 3. **Applications accepted.** The board shall accept applications for funds under the solid waste processing facilities capital assistance program until all the funds for the program are awarded or until three months before the expiration of the board pursuant to law, whichever occurs first.

Subp. 4. **Legislative priorities.** The board shall give priority to projects located in cities, counties, or districts in which:

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

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

C. the project serves more than one local government unit.

9200.6300 ELIGIBILITY CRITERIA.

Subpart 1. **Eligible applicants.** Eligible applicants are limited to cities, counties, and solid waste management districts established under Minnesota Statutes, sections 115A.62 to 115A.72.

Subp. 2. **Eligible projects.** Six types of projects are eligible for grants: waste to energy; materials recovery; chemical, physical, or biological modifications; transfer stations; special waste streams; and waste incineration with resource recovery. Eligible projects are limited to those in which the land, buildings, and equipment are publicly owned.

Projects that were awarded assistance by the board pursuant

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to applications submitted under Minnesota Statutes, sections 115A.49 to 115A.54 before July 1, 1985, are eligible for additional assistance under this program, but no project may receive a total amount of grant assistance in excess of the limits in part 9200.6700, subpart 1. Previously funded projects seeking additional funding under this program shall complete the documentation required under part 9200.6500.

Subp. 3. **Eligible costs.** Eligible costs under parts 9200.6000 to 9200.6800 are limited to the costs of land; waste processing equipment; structures necessary to house the waste processing equipment; transmission facilities; appropriate and necessary on-site utilities; structures necessary to concentrate and temporarily store solid waste before transportation to a waste processing facility; trailers, containers, and roll-off boxes necessary to transport wastes from transfer stations to a processing facility, to transport processing facility products to market, or to transport residue from the processing facility to a solid waste land disposal facility; and final design and engineering/architectural plans.

Subp. 4. **Ineligible costs.** Ineligible costs include any costs related to solid waste disposal facilities and equipment, structures for housing and maintenance of rolling stock, or any costs related to resource recovery studies, feasibility analyses, or preliminary design and engineering/architectural plans.

9200.6400 INFORMATION REQUIRED ON GRANT APPLICATION.

Applications for waste processing facilities grants shall include the following information as required in the application forms supplied by the board:

A. the name of each applicant making the grant application;

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

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C. resolutions from each applicant in conformance with Minnesota Statutes, section 115A.54, subdivision 2a, clause (1) and subdivision 3;

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

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

F. the total capital cost of the project;

G. the total grant-eligible cost of the project;

H. the amount of grant funding requested;

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

J. the type of waste processing facility for which the grant application is being submitted: waste to energy; materials recovery; chemical, physical, or biological modification; transfer stations; special waste stream; or waste incineration with resource recovery.

9200.6500 SUPPORTING DOCUMENTATION REQUIRED TO BE SUBMITTED WITH GRANT APPLICATION.

Applications for waste processing facilities grants shall include the following supporting documentation:

A. A conceptual and technical feasibility report that includes at least the following: a detailed description of the proposed waste processing facility; a description of the institutional arrangements necessary for project implementation and operation; a description of the method of facility procurement; and an analysis of the waste stream for the facility.

B. A financial plan that contains:

(1) initial capital development costs and the method of financing those costs;

(2) annual operating and maintenance costs;

(3) projections of total facility costs and revenues over 20 years or for the term of the longest debt

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obligation, whichever is longer; and

(4) total capital costs per ton of installed daily capacity.

C. A report demonstrating that the project is not financially feasible without state assistance, due to the applicant's financial capacity and the problems inherent in waste management in the area. The report shall include the following documentation:

(1) capital financing alternatives and operational cost financing alternatives, both public and private, explored by the applicant for the project and reasons for selecting the proposed financing methods;

(2) information on the applicant's financial situation including the applicant's current credit rating on general obligation bonds, the amount of general obligation bonds outstanding, general obligation debt divided by market valuation, and debt service levy divided by total levy. If the applicant has issued general obligation bonds in the past two years, the documentation must include the most recent general purpose financial statements, current year budgets, and official statement on bond issuance;

(3) projected facility tipping fees, product revenues, and other project revenues, with and without board assistance;

(4) impact of proposed project on existing solid waste commitments, obligations and expenditures, and total current solid waste management costs on a per capita and per ton basis;

(5) general information pertinent to a determination of the applicant's financial capacity, including such factors as location, population characteristics, employment base, and other characteristics;

(6) transportation distances and estimated costs, both in waste collection and to markets for recovered resources;

(7) waste supply characteristics;

(8) availability of markets for recovered

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resources; and

(9) other characteristics of waste management in the area that render state assistance necessary to the financial feasibility of the project.

D. A comprehensive solid waste management plan.

E. Preliminary design and engineering/architectural plans and equipment specifications of the proposed waste processing facility.

F. Documentation that waste supplies will be committed to the project and that the applicant has the mechanism to commit the wastes.

G. A market analysis of recovered materials/energy, including documentation of market commitments such as letters of intent or contracts.

H. A report on the status of required permits from permitting agencies.

I. A report on time frames of project development.

J. Resolutions that comply with Minnesota Statutes, section 115A.54, subdivision 2a, clause (1) and subdivision 3.

K. If the applicant requests priority under Minnesota Statutes, section 115A.49, documentation:

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

(2) that the available capacity of existing solid waste disposal facilities is less than five years; or

(3) that the proposed project would serve more than one local government unit.

L. If the project has previously received funding from the board under the board's solid waste processing facility demonstration program, documentation of how the project has changed since the previous award and why the project is not financially feasible without additional funding. This documentation shall include:

(1) a description of changes in the scope or design of the project;

(2) a description of changes in major external

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factors affecting the project;

(3) an explanation and demonstration of why the project is no longer financially feasible without additional state assistance; and

(4) a revised implementation schedule.

M. If the project serves eligible jurisdictions in only a single county, documentation demonstrating that cooperation with jurisdictions in other counties is not needed or not feasible, including:

(1) a description of past efforts to develop multi-county facilities or waste management programs; and

(2) a description of characteristics of the applicant's individual situation that preclude or inhibit cooperation with other counties, such as waste supply, market availability, technology constraints, geographic factors, or factors involving institutional arrangements.

9200.6600 REVIEW AND EVALUATION OF APPLICATIONS.

Subpart 1. **Determination of eligibility and completeness.** Upon receipt of an application, the chair or a designee shall determine the eligibility of the applicant, the eligibility of the costs identified in the application, the eligibility of the project identified in the application, and the completeness of the application.

Subp. 2. **Notice of determination of eligibility and completeness.** Within 14 days after receiving the application, the chair shall notify the applicant of the chair's determinations of eligibility and completeness. If the chair determines that the applicant or the project is ineligible, the chair shall reject the application, return it to the applicant, and notify the applicant of the reasons for the rejection. If the chair determines that any part of the project costs is ineligible or that the application is incomplete, the chair shall notify the applicant of the ineligible portion of the costs or of the deficiency. The applicant has 14 days after receiving the notice to correct any inadequacies identified by

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the chair. If the inadequacies are corrected within the time allowed, the application will be further considered.

Subp. 3. **Evaluation of need for financial assistance.** In making its evaluation of the application, the board shall first evaluate the information supplied in part 9200.6500, item C to determine whether or not board assistance is necessary for facility development. If the board determines that assistance is not necessary, evaluation of the application shall cease and the application shall be returned to the applicant. If the board determines that assistance is necessary, evaluation will proceed to the second stage. During the second stage, the board shall evaluate documentation submitted under part 9200.6500, items A, B, and D to M.

Subp. 4. **Evaluation of applications.** If the board determines that the project is in need of state assistance, the board shall evaluate the application to determine whether the application demonstrates:

A. that the project is conceptually and technically feasible;

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

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

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

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E. that for projects serving eligible jurisdictions in only a single county, cooperation with jurisdictions in other counties to develop the project is not needed or not feasible;

F. that resource recovery facilities that burn waste, convert waste to energy, or convert waste into materials for combustion will not accept recyclable materials except for transfer to a recycler; and

G. that the project is not financially feasible without state assistance, because of the applicant's financial capacity and the problems inherent in the waste management situation in the area, particularily transportation distances and limited waste supply and markets for resources recovered.

Subp. 5. **Board determination.** If the board determines that the application satisfies the requirements of subpart 4, the board shall determine the amount of the grant award and the applicant shall be notified. If the board determines that the application fails to satisfy the requirements of subpart 4, the board shall reject the application and the chair shall return the application to the applicant, together with a statement of the reasons for the determination.

Subp. 6. **Consultation with other agencies.** In its evaluation of the application, the board shall consider any recommendations provided by the Pollution Control Agency, the State Planning Agency, and the appropriate regional development commission or the Metropolitan Council.

9200.6700 LIMITATIONS.

Subpart 1. **Maximum grant award.** The maximum grant award is 25 percent of the eligible capital costs of the project or $2,000,000, whichever is less.

Subp. 2. **Limitations on grant award.** The amount of the board's grant award shall be limited to an amount needed to complete the project considering all the sources of funding presently available to the applicant.

Grants shall not be awarded to cover any cost associated with tasks performed before the grant award or after the

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expiration of the grant agreement.

Subp. 3. **Limitations on disbursal of funds.** No funds shall be disbursed until the board has determined the total estimated capital cost of the project and ascertained that financing of the cost is assured by funds provided by the state, by an agency of the federal government within the amount of funds then appropriated to that agency and allocated by it to projects within the state, by any person, or by the appropriation of proceeds of bonds or other funds of the recipient to a fund for the construction of the project.

9200.6800 GRANT AGREEMENT.

Subpart 1. **Requirements.** A grant agreement shall:

A. include as attachments the resolutions required under Minnesota Statutes, section 115A.54, subdivision 2a, clause (1) and subdivision 3;

B. incorporate by reference the final grant application submitted to the board under part 9200.6200;

C. allow the recipient to enter into contracts to complete the work specified in the agreement subject to any board approval that may be required in the agreement;

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

E. provide that the board will not accept amendments requesting that additional funds be awarded to the recipient;

F. require that the recipient provide periodic written reports to the board on the developmental and operational history of the project so that knowledge and experience gained from the project may be made available to other communities in the state;

G. require total repayment of the grant if the facility is sold to a private enterprise within three years of the effective date of the grant agreement. Beginning on the third anniversary of the grant, the amount of the grant that must be repaid shall be reduced ten percent each year. The

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sales agreement between the recipient and the private enterprise shall transfer the responsibilities in subpart 1, item F to the private enterprise; and

H. require that the facility may only be sold to a private enterprise in accordance with the constitution of the state of Minnesota and any applicable Minnesota statutes and rules.

Subp. 2. **Rescission of grant.** If a project is not completed and operational in accordance with the terms and conditions of the grant agreement, including time schedules, the grant shall be rescinded, and the entire amount of the grant shall be repaid unless the board determines that variances from the respective agreements are justified and that the original objectives of the project will be accomplished.

Subp. 3. **Disbursement.** The board shall disburse grants in accordance with the payment schedule in the grant agreement.

Rules as Adopted

DEMONSTRATION PROGRAM

9200.8100 DEFINITIONS.

Subpart 1, and 2. [Unchanged.]

Subp. 3. **Chair.** "Chair" means the chair and chief executive officer of the board.

Subp. 4. [Unchanged.]

Subp. 5. **Comprehensive solid waste management plan.** "Comprehensive solid waste management plan" means a written plan prepared under Minnesota Statutes, section 115A.46.

Subp. 6. [Unchanged.]

Subp. 7. **Final design and engineering/architectural plans.** "Final design and engineering/architectural plans" means those engineering drawings and specifications used to secure bids for construction or equipment.

Subp. 9. **Institutional arrangements.** "Institutional arrangements" means methods of financing, marketing, procurement, securing the waste supply, or joint efforts by more

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than one local government unit.

Subp. 10. and 11. [Unchanged.]

Subp. 12. **Preliminary design and engineering/architectural plans.** "Preliminary design and engineering/architectural plans" means conceptual plans adequate to obtain preconstruction permits and to meet the needs of an environmental assessment.

Subp. 13. [Unchanged.]

Subp. 13a. **Project.** "Project" means a processing facility, together with any transfer stations, transmission facilities, and other related and appurtenant facilities primarily serving the processing facility.

Subp. 14. [Unchanged.]

Subp. 14a. **Recyclable materials.** "Recyclable materials" has the meaning given it in Minnesota Statutes, section 115A.03, subdivision 25a.

Subp. 14b. **Recycling.** "Recycling" has the meaning given it in Minnesota Statutes, section 115A.03, subdivision 25b.

Subp. 15. to 19. [Unchanged.]

Subp. 20. **Special waste stream.** "Special waste stream" means materials that are normally found in the solid waste stream in sufficient quantity to be recovered for subsequent use, if separated from the solid waste stream and processed separately. Examples of special waste streams include waste tires, wood wastes, and agricultural wastes.

Subp. 21. [See Repealer.]

Subp. 22. to 24. [Unchanged.]

9200.8200 SOLID WASTE PROCESSING FACILITIES DEMONSTRATION PROGRAM.

Parts 9200.8100 to 9200.9200 implement the solid waste processing facilities demonstration program created and described in Minnesota Statutes, sections 115A.49 to 115A.54, by establishing the substantive criteria and procedural conditions under which the board may award grants and loans for capital costs of waste processing facilities.

9200.8300 ELIGIBILITY CRITERIA.

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Subpart 1. [Unchanged.]

Subp. 2. **Eligible projects.** Only projects that demonstrate feasible and prudent alternatives to disposal are eligible for loans and grants. Three types of projects are eligible for loans and grants: materials recovery; chemical, physical, or biological modifications; and special waste streams. Eligible projects are limited to those in which the land, buildings, and equipment are publicly owned.

Subp. 3. **Eligible costs.** Eligible costs under parts 9200.8100 to 9200.9200 shall be limited to the costs of land, waste processing equipment, structures necessary to house the waste processing equipment, appropriate and necessary on-site utilities, trailers, containers, and roll-off boxes necessary to transport products to market, or to transport residue from the processing facility to a solid waste land disposal facility, and final design and engineering/architectural plans.

Subp. 4. **Ineligible costs.** Ineligible costs include any costs related to solid waste disposal facilities and equipment, structures for housing and maintenance of rolling stock, or any costs related to resource recovery studies, feasibility analyses, or preliminary design and engineering/architectural plans.

9200.8400 INFORMATION REQUIRED ON APPLICATION.

Applications for grants, loans, or grants and loans for waste processing facilities shall include the following information as required in the application forms supplied by the board:

A. the name of each applicant making the application;

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

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

D. the name and qualifications of the facility

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operator, if available;

E. the total capital cost of the project;

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

G. the amount of grant, loan, or grant and loan funding requested;

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

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

J. the type of waste processing facility for which assistance is being requested: materials recovery; chemical, physical, or biological modification; or special waste stream.

9200.8500 SUPPORTING DOCUMENTATION REQUIRED TO BE SUBMITTED WITH APPLICATION.

Applications for grants or loans for waste processing facilities shall include the following supporting documentation:

A. a conceptual and technical feasibility report that includes at least the following: a detailed description of the proposed waste processing facility; a description of the institutional arrangements necessary for project implementation and operation; a description of the method of facility procurement; and an analysis of the waste stream for the facility;

B. a financial plan that contains:

(1) initial capital development costs and the method of financing those costs;

(2) annual operating and maintenance costs;

(3) projections of total facility costs and revenues over 20 years or for the term of the longest debt obligation, whichever is longer; and

(4) total capital costs per ton of installed daily capacity;

C. a comprehensive solid waste management plan;

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

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

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

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

H. a report on time frames of project development;

I. resolutions that comply with Minnesota Statutes, section 115A.54, subdivision 3; and

J. if the applicant requests priority under Minnesota Statutes, section 115A.49, documentation:

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

(2) that the available capacity of existing solid waste disposal facilities is less than five years; or

(3) that the proposed project would serve more than one local government unit.

9200.8600 GRANT AND LOAN APPLICATION PROCEDURES.

Subp. 1a. **Applications.** An application may be submitted to the board when the applicant has met the information and documentation requirements in parts 9200.8400 and 9200.8500. The applicant is encouraged to contact the chair and request a preapplication review of the proposed project.

Subp. 2a. **Review of applications.** Upon receipt of an application, the chair or a designee shall conduct an initial review of the application under part 9200.8700. The board shall evaluate projects and award grants and loans.

Subp. 4. **Applications accepted.** The board shall accept applications for funds under the solid waste processing facilities demonstration program until all funds for the program

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are awarded or until three months before the expiration of the board pursuant to law, whichever occurs first.

Subp. 5. **Legislative priorities.** The board shall give priority to projects located in cities, counties, or districts in which:

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

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

C. the project serves more than one local government unit.

9200.8700 REVIEW AND EVALUATION OF APPLICATIONS.

Subpart 1. [See Repealer.]

Subp. 2. **Determination of eligibility and completeness.** Upon receipt of an application, the chair or a designee shall determine the eligibility of the applicant, the eligibility of the costs specified in the application, the eligibility of the project specified in the application, and the completeness of the application.

Subp. 3. **Notice of determination of eligibility and completeness.** Within 14 days after receiving the application, the chair shall notify the applicant of the chair's determinations of eligibility and completeness. If the chair determines that the applicant or the project is ineligible, the chair shall reject the application, return it to the applicant, and notify the applicant of the reasons for the rejection. If the chair determines that any part of the project costs is ineligible or that the application is incomplete, the chair shall notify the applicant of the ineligible portion of the costs or of the deficiency. The applicant has 14 days after receiving the notice to correct inadequacies identified by the chair. If the inadequacies are corrected within the time allowed, the application will be further considered.

Subp. 4. **Evaluation of applications.** If the applicant, the costs, and the project are determined to be eligible and the

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application is complete, the board shall evaluate the application to determine whether the documentation demonstrates:

A. that the project is conceptually and technically feasible;

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

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

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

Subp. 5. **Consultation with other agencies.** In its evaluation of the application, the board shall consider any recommendations provided by the Pollution Control Agency, the State Planning Agency, and the appropriate regional development commission or the Metropolitan Council.

Subp. 6. **Board determination.** If the board determines that the application satisfies the requirements of subpart 4, the board shall determine the amount of the grant, loan, or grant and loan award and the applicant shall be notified of the grant, loan, or grant and loan awarded. If the board determines that the application fails to satisfy the requirements of subpart 4, the board shall reject the application and the chair shall return the application to the applicant, together with a statement of the reasons for rejection.

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9200.9000 AWARD OF GRANTS AND LOANS.

Subpart 1. to 3. [See Repealer.]

Subp. 4. **Maximum awards.** The maximum loan award shall be 50 percent of the eligible costs specified in the application or ~~$200,000~~ $400,000, whichever is less. The maximum grant award shall be 50 percent of the eligible costs specified in the application or ~~$200,000~~ $400,000, whichever is less. The maximum combined grant and loan award is $400,000.

Subp. 5. **Limitations.** The amount of the board's grant, loan, or grant and loan award shall be limited to an amount needed to complete the project considering all sources of funding presently available to the applicant.

Grants and loans shall not be awarded to cover any cost associated with tasks performed before the award of a grant, loan, or grant and loan or after the expiration of the grant, loan, or grant and loan agreement.

Subp. 6. **Limitations on disbursal of funds.** No funds shall be disbursed until the board has determined the total estimated capital cost of the project and ascertained that financing of the cost is assured by funds provided by the state, by an agency of the federal government within the amount of funds then appropriated to that agency and allocated by it to projects within the state, by any person, or by the appropriation of proceeds of bonds or other funds of the recipient to a fund for the construction of the project.

9200.9100 GRANT, LOAN, OR GRANT AND LOAN AGREEMENT.

Subpart 1. **Requirements.** A grant, loan, or grant and loan agreement shall:

A. include as attachments the resolutions required under Minnesota Statutes, section 115A.54, subdivision 3;

B. incorporate by reference the final application submitted to the board in accordance with part 9200.8600;

C. establish the term of the grant, loan, or grant and loan. Grants awarded under parts 9200.8100 to 9200.9100 shall have a maximum term of two years. Loans awarded under

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parts 9200.8100 to 9200.9100 shall have a loan life determined by considering facility type, expected life of equipment, capital cost of the project, and loan amount;

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

E. allow the recipient to enter into contracts to complete the work specified in the agreement subject to any board approval that may be required in the agreement;

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

G. provide that the board will not accept amendments requesting that additional funds be awarded to the recipient;

H. require that the recipient provide periodic reports to the board on the developmental and operational history of the project so that knowledge and experience gained from the project may be made available to other communities in the state;

I. provide that if the recipient sells the facility to a private enterprise, all outstanding loan obligations to the board shall become due and payable upon sale to the private enterprise;

J. require total repayment of the grant if the facility is sold to a private enterprise within three years of the effective date of the grant agreement. Beginning on the third anniversary of the grant, the amount of the grant that must be repaid shall be reduced ten percent each year. The sales agreement between the recipient and the private enterprise shall transfer the responsibilities outlined in item H to the private enterprise; and

K. require that the facility may only be sold to a private enterprise in accordance with the constitution of the state of Minnesota and any applicable Minnesota statutes and rules.

Subp. 2. **Rescission of grants and loans.** If projects are not completed and operational in accordance with the terms and

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conditions of the respective agreements, including time schedules, the grants and loans for those projects shall be rescinded, and the entire amount of grants and loans shall be repaid unless the board determines that variances from the respective agreements are justified and that the original objectives of the project will be accomplished.

Subp. 3. **Disbursement.** The board shall disburse grants in accordance with the payment schedule in the grant, loan, or grant and loan agreement.

Subp. 4. **Interest payments.** Interest payments on the loan shall be due annually and shall begin to accrue from the date the loan agreement is signed. The first repayment of the principal amount of the loan shall be due one year after the facility becomes operational or two years after the date the loan agreement is executed, whichever is earlier. The board shall consider the facility operational at the point where the facility meets all vendor guaranteed operating specifications. Subsequent repayments of principal and interest shall be due annually on the anniversary date of the first repayment.

Subp. 5. and 6. [See Repealer.]

REPEALER. Minnesota Rules, parts 9200.8100, subpart 21; 9200.8700, subpart 1; 9200.8800; 9200.9000, subparts 1, 2, and 3; 9200.9100, subparts 5 and 6; and 9200.9200 are repealed.

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STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
AUG 18 1986
Joan Anderson Growe
Secretary of State
10:19 AM

APPROVED AS TO FORM AND LEGALITY

8/15 19 86

HUBERT H. HUMPHREY, III
ATTORNEY GENERAL

BY _____
ASSISTANT ATTORNEY GENERAL

STATE OF MINNESOTA

WASTE MANAGEMENT BOARD

In the Matter of the Proposed Adoption of Rules of the Waste Management Board Governing the Solid Waste Processing Facility Capital Assistance Program

ORDER ADOPTING RULES

Notice of the Waste Management Board's intent to adopt the above-entitled rules without a public hearing was published in the State Register on June 2, 1986 and was sent by United States mail to all persons on the list maintained by the agency pursuant to Minnesota Statutes, section 14.14 on May 30, 1986. After affording interested an affected persons an opportunity to submit comments for 30 days after Notice, receiving fewer than twenty-five written requests for a public hearing within the 30-day comment period, reviewing and considering the comments, and determining the need for an reasonableness of the above-captioned rules,

NOW, THEREFORE, IT IS ORDERED that these rules identified as the Solid Waste Processing Facility Capital Assistance Program rules are adopted this 24th day of July, 1986, pursuant to authority vested in the Waste Management Board by Minnesota Statutes, sections 115A.49 and 115A.54, subdivision 2a (Supp. 1985).

STATE OF MINNESOTA
WASTE MANAGEMENT BOARD

Dated: July 24, 1986



WILLIAM WALKER
CHAIR

STATE OF MINNESOTA

WASTE MANAGEMENT BOARD

In the Matter of the Proposed)
Adoption of Rules of the Waste)
Management Board Governing the) ORDER FOR
Solid Waste Processing Facility) PUBLICATION
Capital Assistance Program)

IT IS SO ORDERED this 20th day of May, 1986, that 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 Minnesota Waste Management Board for that purpose and be published in the State Register.

WILLIAM WALKER
Chairperson
Waste Management Board

STATE OF MINNESOTA

WASTE MANAGEMENT BOARD

In the Matter of the Proposed Adoption of Rules of the Waste Management Board Governing the Solid Waste Processing Facility Capital Assistance Program

CERTIFICATE OF BOARD'S AUTHORIZING RESOLUTION

I, William Walker, do hereby certify that I am a member and the Chair 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 16th day of January, 1986, 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 proposed rules governing the Solid Waste Processing Facilities Capital Assistance Program under Minn. Stat. § 115A.49 to 115A.54, subd.1 and 115A.54, subd. 2a and subd. 3, will not be contoversial in nature and that the Chairperson of the Board is authorized and directed 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 a public hearing. The Chairperson may perform any and all acts incidental to issuing the order. 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 24th day of July, 1986.

WILLIAM WALKER
CHAIR

Attested by
Waste Management Board Member

NOTE: CAP PROGRAM NOTICE FOLLOWS

STATE OF MINNESOTA

WASTE MANAGEMENT BOARD

In the Matter of the Proposed Adoption of Amendments to Existing Rules of the Waste Management Board Governing the Solid Waste Processing Facility Demonstration Program	NOTICE OF INTENT TO ADOPT AMENDMENTS TO EXISTING RULES WITHOUT A PUBLIC HEARING

Notice is hereby given that the Minnesota Waste Management Board proposes to adopt the above-entitled amendments to existing 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 Minn. Stat. §§ 14.22 - 14.28, as amended by Laws 1984, ch. 640, §§ 12 - 15.

Persons interested in these rules shall have 30 days in which to submit comments in support of or in opposition to the proposed amendments to existing rules. Comment is encouraged. Each comment should identify the portion of the proposed amendment addressed, the reason for the comment, and any change proposed. The proposed amendments to existing rules may be modified if the modifications are supported by the data and views submitted to the Waste Management Board and do not result in a substantial change in the proposed language.

Unless 25 or more persons submit written requests for a public hearing on the proposed amendments within the 30-day comment period, a public hearing will not be held. Any person requesting a public hearing should state his or her name and address, and is encouraged to identify the portion of the proposed amendment

addressed, the reason for the request, and any change proposed. In the event a public hearing is required, the Waste Management Board will proceed according to the provisions of Minn. Stat. §§ 14.08 - 14.28, as amended by Laws 1984, ch. 640, §§ 4 - 15.

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

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

Authority for the adoption of these rules is contained in Minn. Stat. § 115A.49 (1984). Additionally, a statement of need and reasonableness that describes the need for and reasonableness of each provision of the proposed amendments to existing rules and that identifies the data and information relied upon to support the proposed amendments to existing rules has been prepared. A copy may be obtained by contacting the Waste Management Board, Attn: Ed Welsch, 123 Thorson Building, 7323 58th Avenue North, Crystal, MN 55428.

If a hearing is not required, and upon adoption of the final amendments to existing rules without a public hearing, the proposed amendments to existing rules, this Notice, the statement of need and reasonableness, all written comments received, and the final amendments to existing 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 amendments to existing rules as adopted, should submit a written statement of such request to the Waste Management Board, Attn: Ed Welsch, 123 Thorson Building, 7323 58th Avenue North, Crystal, MN 55428.

A copy of the proposed amendments to the existing rules is attached to this Notice.

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

WILLIAM WALKER
Chairperson

STATE OF MINNESOTA

WASTE MANAGEMENT BOARD

In the Matter of the Proposed Adoption of Rules of the Waste Management Board Governing the Solid Waste Processing Facility) Capital Assistance Program	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 Minn. Stat. §§ 14.22 - 14.28, as amended by Laws 1984, ch. 640, §§ 12 - 15.

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

Unless 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 not be held. Any person requesting a public hearing should state his or her name and address, and is encouraged to identify the portion of the proposed rule addressed, the reason for the request, and any change proposed. In the event a public hearing is required, the Waste Management

Board will proceed according to the provisions of Minn. Stat. §§ 14.08 - 14.28, as amended by Laws 1984, ch. 640, §§ 4 - 15.

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

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

Authority for the adoption of these rules is contained in Minnesota Statutes, section 115A.06, subd. 2 (1984) and 115A.49 to 115A.54 (1984), as amended. Additionally, a statement of need and reasonableness that describes the need for and reasonableness of each provision of the proposed rules and that identifies the data and information relied upon to support the proposed rules has been prepared. A copy may be obtained by contacting the Waste Management Board, Attn: Ed Welsch, 123 Thorson Building, 7323 58th Avenue North, Crystal, MN 55428.

If a hearing is not required, and upon adoption of the final rules without a public hearing, the proposed rules, this Notice, the statement of need and reasonableness, all written comments received, and the final rules as adopted will be delivered to the Attorney General for review as to form and legality, including the issue of substantial change. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the rules as adopted, should submit a written statement of such request to the Waste Management

Board, Attn: Ed Welsch, 123 Thorson Building, 7323 58th Avenue North, Crystal, MN 55428.

A copy of the proposed rules is attached to this Notice.

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

WILLIAM WALKER
Chairperson

Waste Management Board

Proposed Rules Relating to Solid Waste Processing Facility Capital Assistance and Demonstration Programs

Rules as Proposed (all new material)

CAPITAL ASSISTANCE PROGRAM

9200.6000 DEFINITIONS.

Subpart 1. Scope. For the purposes of parts 9200.6000 to 9200.6800 the following terms have the meaning given them, unless the context requires otherwise.

Subp. 2. **Board.** "Board" means the Minnesota Waste Management Board established in Minnesota Statutes, section 115A.04.

Subp. 3. **Chair.** "Chair" means the chair and chief executive officer of the board.

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

Subp. 5. **Comprehensive solid waste management plan.** "Comprehensive solid waste management plan" means a written plan prepared under Minnesota Statutes, section 115A.46.

Subp. 6. **Disposal.** "Disposal" has the meaning given it in Minnesota Statutes, section 115A.03, subdivision 9.

Subp. 7. **Final design and engineering/architectural plans.** "Final design and engineering/architectural plans" means those engineering drawings and specifications used to secure bids for construction or equipment.

Subp. 8. **Institutional arrangements.** "Institutional arrangements" means methods of financing, marketing, procurement, securing the waste supply, or joint efforts by more than one local government unit.

Subp. 9. **Mixed municipal solid waste.** "Mixed municipal solid waste" has the meaning given it in Minnesota Statutes, section 115A.03, subdivision 21.

Subp. 10. **On-site utilities.** "On-site utilities" means

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gas, electrical, water, and sewer facilities within the geographic boundaries of the waste processing facility site, that are used for facility operations, excluding transmission of energy to markets.

Subp. 11. **Preliminary design and engineering/architectural plans.** "Preliminary design and engineering/architectural plans" means conceptual plans adequate to obtain preconstruction permits and to meet the needs of an environmental assessment.

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

Subp. 13. **Project.** "Project" means a processing facility, together with any transfer stations, transmission facilities, and other related and appurtenant facilities primarily serving the processing facility.

Subp. 14. **Recyclable materials.** "Recyclable materials" has the meaning given it in Minnesota Statutes, section 115A.03, subdivision 25a.

Subp. 15. **Recycling.** "Recycling" has the meaning given it in Minnesota Statutes, section 115A.03, subdivision 25b.

Subp. 16. **Recipient.** "Recipient" means an applicant who has received a grant under the solid waste processing facilities capital assistance program.

Subp. 17. **Resource recovery.** "Resource recovery" has the meaning given it in Minnesota Statutes, section 115A.03, subdivision 27.

Subp. 18. **Resource recovery facility.** "Resource recovery facility" has the meaning given it in Minnesota Statutes, section 115A.03, subdivision 28.

Subp. 19. **Solid waste.** "Solid waste" has the meaning given it in Minnesota Statutes, section 116.06, subdivision 10.

Subp. 20. **Solid waste disposal facilities and equipment.** "Solid waste disposal facilities and equipment" means structures, machinery, or devices at a disposal site necessary for efficient land disposal of solid wastes, including machinery or devices designed to move earth during burial of wastes or to increase the density of wastes buried or to be

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buried, and facilities in which solid waste is temporarily stored and concentrated before transport to a disposal site.

Subp. 21. **Solid waste management district.** "Solid waste management district" has the meaning given it in Minnesota Statutes, section 115A.03, subdivision 32.

Subp. 22. **Special waste stream.** "Special waste stream" means materials normally found in the solid waste stream in sufficient quantity to be recovered for subsequent use, if separated from the solid waste stream and processed separately. Examples of special waste streams include waste tires, wood wastes, and agricultural wastes.

Subp. 23. **Transmission facilities.** "Transmission facilities" means any steam, water, or electrical lines that are used to transport energy to markets.

Subp. 24. **Transfer station.** "Transfer station" has the meaning given it in Minnesota Statutes, section 115A.03, subdivision 33.

Subp. 25. **Waste processing equipment.** "Waste processing equipment" means machinery or devices acquired and used as an integral component of a waste processing facility.

Subp. 26. **Waste processing facility.** "Waste processing facility" means structures and equipment, singly or in combination, that are designed, constructed, and used to separate, modify, convert, heat, prepare, or otherwise process solid waste so that materials, substances, or energy contained within the waste may be recovered for subsequent use.

9200.6100 SOLID WASTE PROCESSING FACILITIES CAPITAL ASSISTANCE PROGRAM.

Parts 9200.6000 to 9200.6800 implement the solid waste processing facilities capital assistance program created and described in Minnesota Statutes, sections 115A.49 to 115A.54, by establishing the substantive criteria and procedural conditions under which the board may award grants for capital costs of solid waste processing facilities.

9200.6200 GRANT APPLICATION PROCEDURES.

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Subpart 1. **Applications.** An application may be submitted to the board when the applicant has met the information and documentation requirements in parts 9200.6400 and 9200.6500. The applicant is encouraged to contact the chair and request a preapplication review of the proposed project.

Subp. 2. **Review of applications.** Upon receipt of an application, the chair or a designee shall conduct an initial review of the application under part 9200.6600. The board shall evaluate projects and award grants.

Subp. 3. **Applications accepted.** The board shall accept applications for funds under the solid waste processing facilities capital assistance program until all the funds for the program are awarded or until three months before the expiration of the board pursuant to law, whichever occurs first.

Subp. 4. **Legislative priorities.** The board shall give priority to projects located in cities, counties, or districts in which:

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

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

C. the project serves more than one local government unit.

9200.6300 ELIGIBILITY CRITERIA.

Subpart 1. **Eligible applicants.** Eligible applicants are limited to cities, counties, and solid waste management districts established under Minnesota Statutes, sections 115A.62 to 115A.72.

Subp. 2. **Eligible projects.** Six types of projects are eligible for grants: waste to energy; materials recovery; chemical, physical, or biological modifications; transfer stations; special waste streams; and waste incineration with resource recovery. Eligible projects are limited to those in which the land, buildings, and equipment are publicly owned.

Projects that were awarded assistance by the board pursuant

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to applications submitted under Minnesota Statutes, sections 115A.49 to 115A.54 before July 1, 1985, are eligible for additional assistance under this program, but no project may receive a total amount of grant assistance in excess of the limits in part 9200.6700, subpart 1. Previously funded projects seeking additional funding under this program shall complete the documentation required under part 9200.6500.

Subp. 3. Eligible costs. Eligible costs under parts 9200.6000 to 9200.6800 are limited to the costs of land; waste processing equipment; structures necessary to house the waste processing equipment; transmission facilities; appropriate and necessary on-site utilities; structures necessary to concentrate and temporarily store solid waste before transportation to a waste processing facility; trailers, containers, and roll-off boxes necessary to transport wastes from transfer stations to a processing facility, to transport processing facility products to market, or to transport residue from the processing facility to a solid waste land disposal facility; and final design and engineering/architectural plans.

Subp. 4. Ineligible costs. Ineligible costs include any costs related to solid waste disposal facilities and equipment, structures for housing and maintenance of rolling stock, or any costs related to resource recovery studies, feasibility analyses, or preliminary design and engineering/architectural plans.

9200.6400 INFORMATION REQUIRED ON GRANT APPLICATION.

Applications for waste processing facilities grants shall include the following information as required in the application forms supplied by the board:

A. the name of each applicant making the grant application;

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

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C. resolutions from each applicant in conformance with Minnesota Statutes, section 115A.54, subdivision 2a, clause (1) and subdivision 3;

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

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

F. the total capital cost of the project;

G. the total grant-eligible cost of the project;

H. the amount of grant funding requested;

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

J. the type of waste processing facility for which the grant application is being submitted: waste to energy; materials recovery; chemical, physical, or biological modification; transfer stations; special waste stream; or waste incineration with resource recovery.

9200.6500 SUPPORTING DOCUMENTATION REQUIRED TO BE SUBMITTED WITH GRANT APPLICATION.

Applications for waste processing facilities grants shall include the following supporting documentation:

A. A conceptual and technical feasibility report that includes at least the following: a detailed description of the proposed waste processing facility; a description of the institutional arrangements necessary for project implementation and operation; a description of the method of facility procurement; and an analysis of the waste stream for the facility.

B. A financial plan that contains:

(1) initial capital development costs and the method of financing those costs;

(2) annual operating and maintenance costs;

(3) projections of total facility costs and revenues over 20 years or for the term of the longest debt

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obligation, whichever is longer; and

(4) total capital costs per ton of installed daily capacity.

C. A report demonstrating that the project is not financially feasible without state assistance, due to the applicant's financial capacity and the problems inherent in waste management in the area. The report shall include the following documentation:

(1) capital financing alternatives and operational cost financing alternatives, both public and private, explored by the applicant for the project and reasons for selecting the proposed financing methods;

(2) information on the applicant's financial situation including the applicant's current credit rating on general obligation bonds, the amount of general obligation bonds outstanding, general obligation debt divided by market valuation, and debt service levy divided by total levy. If the applicant has issued general obligation bonds in the past two years, the documentation must include the most recent general purpose financial statements, current year budgets, and official statement on bond issuance;

(3) projected facility tipping fees, product revenues, and other project revenues, with and without board assistance;

(4) impact of proposed project on existing solid waste commitments, obligations and expenditures, and total current solid waste management costs on a per capita and per ton basis;

(5) general information pertinent to a determination of the applicant's financial capacity, including such factors as location, population characteristics, employment base, and other characteristics;

(6) transportation distances and estimated costs, both in waste collection and to markets for recovered resources;

(7) waste supply characteristics;

(8) availability of markets for recovered

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resources; and

(9) other characteristics of waste management in the area that render state assistance necessary to the financial feasibility of the project.

D. A comprehensive solid waste management plan.

E. Preliminary design and engineering/architectural plans and equipment specifications of the proposed waste processing facility.

F. Documentation that waste supplies will be committed to the project and that the applicant has the mechanism to commit the wastes.

G. A market analysis of recovered materials/energy, including documentation of market commitments such as letters of intent or contracts.

H. A report on the status of required permits from permitting agencies.

I. A report on time frames of project development.

J. Resolutions that comply with Minnesota Statutes, section 115A.54, subdivision 2a, clause (1) and subdivision 3.

K. If the applicant requests priority under Minnesota Statutes, section 115A.49, documentation:

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

(2) that the available capacity of existing solid waste disposal facilities is less than five years; or

(3) that the proposed project would serve more than one local government unit.

L. If the project has previously received funding from the board under the board's solid waste processing facility demonstration program, documentation of how the project has changed since the previous award and why the project is not financially feasible without additional funding. This documentation shall include:

(1) a description of changes in the scope or design of the project;

(2) a description of changes in major external

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factors affecting the project;

(3) an explanation and demonstration of why the project is no longer financially feasible without additional state assistance; and

(4) a revised implementation schedule.

M. If the project serves eligible jurisdictions in only a single county, documentation demonstrating that cooperation with jurisdictions in other counties is not needed or not feasible, including:

(1) a description of past efforts to develop multi-county facilities or waste management programs; and

(2) a description of characteristics of the applicant's individual situation that preclude or inhibit cooperation with other counties, such as waste supply, market availability, technology constraints, geographic factors, or factors involving institutional arrangements.

9200.6600 REVIEW AND EVALUATION OF APPLICATIONS.

Subpart 1. **Determination of eligibility and completeness.** Upon receipt of an application, the chair or a designee shall determine the eligibility of the applicant, the eligibility of the costs identified in the application, the eligibility of the project identified in the application, and the completeness of the application.

Subp. 2. **Notice of determination of eligibility and completeness.** Within 14 days after receiving the application, the chair shall notify the applicant of the chair's determinations of eligibility and completeness. If the chair determines that the applicant or the project is ineligible, the chair shall reject the application, return it to the applicant, and notify the applicant of the reasons for the rejection. If the chair determines that any part of the project costs is ineligible or that the application is incomplete, the chair shall notify the applicant of the ineligible portion of the costs or of the deficiency. The applicant has 14 days after receiving the notice to correct any inadequacies identified by

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the chair. If the inadequacies are corrected within the time allowed, the application will be further considered.

Subp. 3. **Evaluation of need for financial assistance.** In making its evaluation of the application, the board shall first evaluate the information supplied in part 9200.6500, item C to determine whether or not board assistance is necessary for facility development. If the board determines that assistance is not necessary, evaluation of the application shall cease and the application shall be returned to the applicant. If the board determines that assistance is necessary, evaluation will proceed to the second stage. During the second stage, the board shall evaluate documentation submitted under part 9200.6500, items A, B, and D to M.

Subp. 4. **Evaluation of applications.** If the board determines that the project is in need of state assistance, the board shall evaluate the application to determine whether the application demonstrates:

A. that the project is conceptually and technically feasible;

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

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

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

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E. that for projects serving eligible jurisdictions in only a single county, cooperation with jurisdictions in other counties to develop the project is not needed or not feasible;

F. that resource recovery facilities that burn waste, convert waste to energy, or convert waste into materials for combustion will not accept recyclable materials except for transfer to a recycler; and

G. that the project is not financially feasible without state assistance, because of the applicant's financial capacity and the problems inherent in the waste management situation in the area, particularily transportation distances and limited waste supply and markets for resources recovered.

Subp. 5. **Board determination.** If the board determines that the application satisfies the requirements of subpart 4, the board shall determine the amount of the grant award and the applicant shall be notified. If the board determines that the application fails to satisfy the requirements of subpart 4, the board shall reject the application and the chair shall return the application to the applicant, together with a statement of the reasons for the determination.

Subp. 6. **Consultation with other agencies.** In its evaluation of the application, the board shall consider any recommendations provided by the Pollution Control Agency, the State Planning Agency, and the appropriate regional development commission or the Metropolitan Council.

9200.6700 LIMITATIONS.

Subpart 1. **Maximum grant award.** The maximum grant award is 25 percent of the eligible capital costs of the project or $2,000,000, whichever is less.

Subp. 2. **Limitations on grant award.** The amount of the board's grant award shall be limited to an amount needed to complete the project considering all the sources of funding presently available to the applicant.

Grants shall not be awarded to cover any cost associated with tasks performed before the grant award or after the

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expiration of the grant agreement.

Subp. 3. **Limitations on disbursal of funds.** No funds shall be disbursed until the board has determined the total estimated capital cost of the project and ascertained that financing of the cost is assured by funds provided by the state, by an agency of the federal government within the amount of funds then appropriated to that agency and allocated by it to projects within the state, by any person, or by the appropriation of proceeds of bonds or other funds of the recipient to a fund for the construction of the project.

9200.6800 GRANT AGREEMENT.

Subpart 1. **Requirements.** A grant agreement shall:

A. include as attachments the resolutions required under Minnesota Statutes, section 115A.54, subdivision 2a, clause (1) and subdivision 3;

B. incorporate by reference the final grant application submitted to the board under part 9200.6200;

C. allow the recipient to enter into contracts to complete the work specified in the agreement subject to any board approval that may be required in the agreement;

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

E. provide that the board will not accept amendments requesting that additional funds be awarded to the recipient;

F. require that the recipient provide periodic written reports to the board on the developmental and operational history of the project so that knowledge and experience gained from the project may be made available to other communities in the state;

G. require total repayment of the grant if the facility is sold to a private enterprise within three years of the effective date of the grant agreement. Beginning on the third anniversary of the grant, the amount of the grant that must be repaid shall be reduced ten percent each year. The

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sales agreement between the recipient and the private enterprise shall transfer the responsibilities in subpart 1, item F to the private enterprise; and

H. require that the facility may only be sold to a private enterprise in accordance with the constitution of the state of Minnesota and any applicable Minnesota statutes and rules.

Subp. 2. Rescission of grant. If a project is not completed and operational in accordance with the terms and conditions of the grant agreement, including time schedules, the grant shall be rescinded, and the entire amount of the grant shall be repaid unless the board determines that variances from the respective agreements are justified and that the original objectives of the project will be accomplished.

Subp. 3. Disbursement. The board shall disburse grants in accordance with the payment schedule in the grant agreement.

Rules as Proposed

DEMONSTRATION PROGRAM

9200.8100 DEFINITIONS.

Subpart 1. and 2. [Unchanged.]

Subp. 3. ~~Chairperson~~ Chair. "~~Chairperson~~" "Chair" means the ~~chairperson~~ chair and chief executive officer of the board.

Subp. 4. [Unchanged.]

Subp. 5. Comprehensive solid waste management plan. "Comprehensive solid waste management plan" means a written plan ~~conforming to the requirements of~~ prepared under Minnesota Statutes, section 115A.46.

Subp. 6. [Unchanged.]

Subp. 7. Final design and engineering/architectural plans. "Final design and engineering/architectural plans" means those engineering drawings and specifications used to secure bids for construction or equipment.

Subp. 9. Institutional arrangements. "Institutional arrangements" means methods of financing, marketing,

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procurement, ~~methods of~~ securing the waste supply, or joint efforts by more than one local government unit.

Subp. 10. and 11. [Unchanged.]

Subp. 12. **Preliminary design and engineering/architectural plans.** "Preliminary design and engineering/architectural plans" means conceptual plans adequate to obtain preconstruction permits and to meet the needs of an environmental assessment.

Subp. 13. [Unchanged.]

Subp. 13a. **Project.** "Project" means a processing facility, together with any transfer stations, transmission facilities, and other related and appurtenant facilities primarily serving the processing facility.

Subp. 14. [Unchanged.]

Subp. 14a. **Recyclable materials.** "Recyclable materials" has the meaning given it in Minnesota Statutes, section 115A.03, subdivision 25a.

Subp. 14b. **Recycling.** "Recycling" has the meaning given it in Minnesota Statutes, section 115A.03, subdivision 25b.

Subp. 15. to 19. [Unchanged.]

Subp. 20. **Special waste stream.** "Special waste stream" means materials ~~which~~ that are normally found in the solid waste stream in sufficient quantity to be recovered for subsequent use, if separated from the solid waste stream and processed separately. Examples of special waste streams include ~~used~~ waste tires, wood wastes, and agricultural wastes.

Subp. 21. [See Repealer.]

Subp. 22. to 24. [Unchanged.]

9200.8200 SOLID WASTE PROCESSING FACILITIES DEMONSTRATION PROGRAM.

Parts 9200.8100 to 9200.9200 implement the solid waste processing facilities demonstration program created and described in Minnesota Statutes, sections 115A.49 to 115A.54, by establishing the substantive criteria and procedural conditions under which the board may award grants and loans for capital costs of ~~projects which demonstrate the feasibility of waste~~

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~~processing-technology-or-equipment-or-the-feasibility-of institutional-arrangements-in-providing~~ waste processing facilities.

9200.8300 ELIGIBILITY CRITERIA.

Subpart 1. [Unchanged.]

Subp. 2. **Eligible projects.** Only projects ~~which~~ that demonstrate feasible and prudent alternatives to disposal are eligible for loans and grants. ~~To-qualify-as-a-demonstration project,-a-project-must-be-conceptually-and-technically-feasible but-not-now-in-operation-in-the-state-or-not-now-in-operation-in a-geographical-area-of-the-state-with-demonstrably-different characteristics-from-those-of-the-area-where-a-facility-is-now in-operation.--A-conceptually-and-technically-feasible-project may-also-qualify-as-a-demonstration-project-if-it-involves institutional-arrangements-not-previously-utilized-in-the-state, or-not-previously-utilized-in-a-geographical-area-of-the-state with-demonstrably-different-characteristics-from-those-in-the area-where-a-facility-is-now-in-operation.--Six~~ Three types of projects are eligible for loans and grants: waste-to-energy, materials recovery; chemical, physical, or biological modifications; ~~transfer-stations,~~ and special waste streams, ~~and waste-incineration-with-resource-recovery.~~ Eligible projects are limited to those in which the land, buildings, and equipment are publicly owned.

Subp. 3. **Eligible costs.** Eligible costs under parts 9200.8100 to 9200.9200 shall be limited to the costs of land, waste processing equipment, structures necessary to house the waste processing equipment, appropriate and necessary on-site utilities, ~~structures-necessary-to-concentrate-and-temporarily store-solid-waste-prior-to-transportation-to-a-waste-processing facility~~ trailers, containers, and roll-off boxes necessary to transport products to market, or to transport residue from the processing facility to a solid waste land disposal facility, and ~~final design and engineering-specifications~~ engineering/architectural plans.

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Subp. 4. Ineligible costs. Ineligible costs include any costs related to ~~acquisition of land~~, solid waste disposal facilities and equipment, structures for housing and maintenance of rolling stock, or any costs related to resource recovery studies, feasibility analyses, or preliminary design and ~~engineering~~ engineering/architectural plans.

9200.8400 INFORMATION REQUIRED ON ~~GRANT AND LOAN~~ APPLICATION.

Applications for grants, loans, or grants and loans for waste processing facilities shall include the following information as required in the application forms supplied by the board:

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

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

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

~~B~~ the name, qualifications, and address of the project manager;

~~E~~ D. the name and qualifications of the facility operator, if available;

~~F~~ E. the total capital cost of the project;

~~G~~ F. the total grant- or loan-eligible cost of the project;

~~H~~ G. the amount of grant or, loan, or grant and loan funding requested;

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

~~J~~ I. the type of assistance applied for (grant, loan, or grant and loan together);

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~~K.~~ J. the type of waste processing facility for which ~~a-grant-or-loan~~ assistance is being ~~applied~~ for requested: ~~waste-to-energy,~~ materials recovery; chemical, physical, or biological modification; ~~transfer-stations,~~ or special waste stream~~,-or-waste-incineration-with-resource recovery~~.

9200.8500 SUPPORTING DOCUMENTATION REQUIRED TO BE SUBMITTED WITH ~~GRANT-AND-LOAN~~ APPLICATION.

Applications for grants or loans for waste processing facilities shall include the following supporting documentation:

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

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

(1) initial capital development costs and the method of financing those costs;

(2) annual operating and maintenance costs;

(3) projections of total facility costs and revenues over 20 years or for the term of the longest debt obligation, whichever is longer; and

(4) total capital costs per ton of installed daily capacity;

C. a comprehensive solid waste management plan

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

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

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

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

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

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

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

J. H. a report on time frames of project development;

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

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

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

N. J. if the applicant requests priority based on any of the following conditions under Minnesota Statutes, section 115A.49, documentation of the existence of the condition:

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

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(2) that the available capacity of existing solid waste disposal facilities ~~are claimed to be~~ is less than five years; or

(3) ~~the claim~~ that the proposed project ~~would service an area outside the metropolitan area and~~ would serve more than one local government unit~~, and~~

~~(i) if the applicant is seeking a grant, a report discussing the factor or factors in part 9200.9000, subpart 2~~ upon ~~which the applicant is basing the request for a grant.~~

9200.8600 GRANT AND LOAN APPLICATION PROCEDURES.

Subp. 1a. **Applications.** An application may be submitted to the board when the applicant has met the information and documentation requirements in parts 9200.8400 and 9200.8500. The applicant is encouraged to contact the ~~chairperson~~ chair and request a preapplication review of the proposed project.

Subp. 2a. **Review ~~schedule~~ of applications.** ~~When~~ Upon receipt of an application, the ~~chairperson~~ chair or a designee ~~receives an application, he or she shall initially~~ conduct an initial review of the application under part 9200.8700. The board shall evaluate ~~and select~~ projects and award grants and loans.

Subp. 4. **Applications accepted.** The board shall accept applications for funds under the solid waste processing facilities demonstration program until all funds for the program are awarded or until three months before the expiration of the board pursuant to law, whichever occurs first.

Subp. 5. **Legislative priorities.** The board shall give priority to projects located in cities, counties, or districts in which:

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

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

C. the project serves more than one local government unit.

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9200.8700 ~~INITIAL~~ REVIEW AND EVALUATION OF APPLICATIONS.

Subpart 1. [See Repealer.]

Subp. 2. **Determination of eligibility and completeness review.** Upon receipt of an application, the ~~chairperson~~ chair or a designee shall determine the eligibility of the applicant, the eligibility of the costs specified in the application, the eligibility of the project specified in the application, and the completeness of the application.

Subp. 3. **Notice of determination of eligibility and completeness.** Within 14 days after receiving the application, the ~~chairperson~~ chair shall notify ~~each~~ the applicant of the ~~chairperson's~~ chair's determinations of eligibility and completeness. If the ~~chairperson~~ chair determines that the applicant or the project is ~~not eligible, the application shall not be further considered and the applicant shall be notified of the determination. If the chairperson determines that any of the costs or any part of the project is not eligible or that the application is otherwise not complete~~ ineligible, the ~~chairperson~~ chair shall reject the application, return ~~the application together with a statement~~ it to the applicant, and notify the applicant of the reasons for ~~rejecting the~~ application the rejection. ~~The applicant shall have~~ If the chair determines that any part of the project costs is ineligible or that the application is incomplete, the chair shall notify the applicant of the ineligible portion of the costs or of the deficiency. The applicant has 14 days after ~~receipt of the rejection of the application~~ receiving the notice to correct any inadequacies identified ~~in the application~~ by the chair. If the inadequacies are corrected within the time allowed, the application will be further considered.

Subp. 4. **Review Evaluation of documentation applications.** If the applicant, the costs, and the project are determined to be eligible and the application is complete, the ~~chairperson~~ board ~~shall, within 45 days after the receipt of the application, review the application to determine whether the~~

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~~supporting-documentation-is-adequate,--In-determining-whether the-documentation-is-adequate,-the-chairperson-shall consider~~ evaluate the application to determine whether the documentation demonstrates:

A. that the project is conceptually and technically feasible;

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

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

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

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

~~F,--that-the-project-demonstrates-a-technology-that-is of-potential-statewide-application-or-significance.~~

Subp. 5. Consultation with other agencies. In determining ~~the-adequacy-of-the-documentation~~ its evaluation of the application, the ~~chairperson~~ board shall consider any recommendations provided by the Pollution Control Agency, ~~the appropriate-regional-development-commission,~~ the State Planning Agency, ~~and,-if-appropriate,~~ the appropriate regional development commission or the Metropolitan Council.

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Subp. 6. Board determination ~~of sufficient documentation.~~ ~~If the chairperson determines that the documentation in the application is adequate, the application shall be considered final and the applicant shall be so notified. The application shall then be referred to the board to be evaluated as provided in part 9200.8000. If the chairperson determines that the documentation in the application is inadequate, the chairperson shall return the application together with a statement of the reasons for rejecting the application. The applicant shall have 14 days after receipt of the rejection of the application to correct the inadequacies in the documentation.~~

~~If the inadequacies in the documentation are corrected within the time allowed, the application shall be considered final and the applicant shall be so notified. The application shall then be referred to the board to be evaluated as provided in part 9200.8000.~~ If the board determines that the application satisfies the requirements of subpart 4, the board shall determine the amount of the grant, loan, or grant and loan award and the applicant shall be notified of the grant, loan, or grant and loan awarded. If the board determines that the application fails to satisfy the requirements of subpart 4, the board shall reject the application and the chair shall return the application to the applicant, together with a statement of the reasons for rejection.

9200.9000 AWARD OF GRANTS AND LOANS.

Subpart 1. to 3. [See Repealer.]

Subp. 4. **Maximum awards.** The maximum loan award shall be 50 percent of the eligible costs specified in the application or ~~$700,000~~ $200,000, whichever is less. The maximum grant award shall be 50 percent of the eligible costs specified in the application or ~~$300,000~~ $200,000, whichever is less. The maximum combined grant and loan award is $400,000.

~~Subp. 5. Limitations. No funds shall be awarded for costs for which the applicant has applied for and received funds from another source.~~

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

~~Grants and loans shall be awarded to cover the eligible costs of only those tasks which are undertaken and completed during the grant and loan period established in the grant and loan agreement.~~ The amount of the board's grant, loan, or grant and loan award shall be limited to an amount needed to complete the project considering all sources of funding presently available to the applicant.

Grants and loans shall not be awarded to cover any cost associated with tasks performed ~~prior to~~ before the award of a grant, loan, or grant and loan or after the expiration of the grant, loan, or grant and loan agreement.

Subp. 6. **Limitations on disbursal of funds.** No funds shall be disbursed until the board has determined the total estimated capital cost of the project and ascertained that financing of the cost is assured by funds provided by the state, by an agency of the federal government within the amount of funds then appropriated to that agency and allocated by it to projects within the state, by any person, or by the appropriation of proceeds of bonds or other funds of the recipient to a fund for the construction of the project.

9200.9100 GRANT, LOAN, OR GRANT AND LOAN AGREEMENT.

Subpart 1. Requirements. ~~The~~ A grant, loan, or grant and loan ~~agreements must~~ agreement shall:

A. ~~contain~~ include as attachments the resolutions required under Minnesota Statutes, section 115A.54, subdivision 3;

B. incorporate by reference the final ~~grant and loan~~

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application submitted to the board in accordance with part 9200.8600;

C. establish the term of the grant, loan, or grant and loan. ~~All~~ Grants awarded under ~~this rule~~ parts 9200.8100 to 9200.9100 shall have a maximum term of two years. ~~All~~ Loans awarded under ~~this rule~~ parts 9200.8100 to 9200.9100 shall have a loan life determined by considering facility type, expected life of equipment, capital cost of the project, and loan amount;

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

E. ~~provide that~~ allow the recipient ~~shall be authorized~~ to enter into contracts to complete the work specified in the agreement subject to any board approval that may be required in the agreement;

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

G. provide that the board will not accept amendments requesting that additional ~~grant and loan~~ funds be awarded to the recipient; and

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

I. provide that if the recipient sells the facility to a private enterprise, all outstanding loan obligations to the board shall become due and payable upon sale to the private enterprise;

J. require total repayment of the grant if the facility is sold to a private enterprise within three years of the effective date of the grant agreement. Beginning on the third anniversary of the grant, the amount of the grant that must be repaid shall be reduced ten percent each year. The sales agreement between the recipient and the private enterprise shall transfer the responsibilities outlined in item H to the

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private enterprise; and

K. require that the facility may only be sold to a private enterprise in accordance with the constitution of the state of Minnesota and any applicable Minnesota statutes and rules.

Subp. 2. Rescission of grants and loans. If projects are not completed and operational in accordance with the terms and conditions of the respective agreements, including time schedules, the grants and loans for those projects shall be rescinded, and the entire amount of grants and loans shall be repaid unless the board determines that variances from the respective agreements are justified and that the original objectives of the project will be accomplished.

Subp. 3. **Disbursement.** The board shall disburse grants in accordance with the payment schedule ~~set out~~ in the grant, loan, or grant and loan agreement.

Subp. 4. **Interest payments.** Interest payments on the loan shall be due annually and shall begin to accrue from the date the loan agreement is signed. The first repayment of the principal amount of the loan shall be due one year after the facility becomes operational or two years after the date the loan agreement is executed, whichever is earlier. The board shall consider the facility operational at the point where the facility meets all vendor guaranteed operating specifications. Subsequent repayments of principal and interest shall be due annually on the anniversary date of the first repayment.

Subp. 5. and 6. [See Repealer.]

REPEALER. Minnesota Rules, parts 9200.8100, subpart 21; 9200.8700, subpart 1; 9200.8800; 9200.9000, subparts 1, 2, and 3; 9200.9100, subparts 5 and 6; and 9200.9200 are repealed.

APPROVED IN THE REVISOR OF STATUTES OFFICE BY:

STATE OF MINNESOTA

WASTE MANAGEMENT BOARD

In the Matter of the Proposed Adoption of Rules of the Waste Management Board Governing the Solid Waste Processing Facility Capital Assistance Program

AFFIDAVIT OF MAILING

Norma L. Gilles, being first duly sworn, deposes and says:

That on the 30th day of May, 1986, at the City of Crystal, County of Hennepin, State of Minnesota, he mailed a copy of the attached material to those persons on the attached mailing list by depositing it in the United States mail at said City of Crystal, properly enveloped, with postage prepaid:

Norma L. Gilles

Subscribed and sworn to before me this 30th day of May, 1986.

June J. Seery
Notary Public

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 of the Waste)
Management Board Governing the)
Solid Waste Processing Facility)
Capital Assistance Program)

CERTIFICATE

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 for the purpose of receiving notice of the proposed adoption of rules by the Waste Management Board, is accurate and complete as of 10 :00 A.m., this 30 day of May, 1986.

T W Troolin

Subscribed and sworn to before me this 30th day of May, 1986.

June J Seery
Notary Public

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

original

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original 4/14/86

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Waste Management Board

Proposed Rules Governing the Solid Waste Processing Facility Capital Assistance Program

Notice of Intent to Adopt Rules Without a Public Notice

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 Minn. Stat. §§ 14.22-14.28, as amended by Laws 1984, ch. 640, §§ 12-15.

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

Unless 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 not be held. Any person requesting a public hearing should state his or her name and address, and is encouraged to identify the portion of the proposed rule addressed, the reason for the request, and any change proposed. In the event a public hearing is required, the Waste Management Board will proceed according to the provisions of Minn. Stat. §§ 14.08-14.28, as amended by Laws 1984, ch. 640, §§ 4-15.

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

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

Authority for the adoption of these rules is contained in Minnesota Statutes, section 115A.06, subd. 2 (1984) and 115A.49 to 115A.54 (1984), as amended. Additionally, a statement of need and reasonableness that describes the need for and reasonableness of each provision of the proposed rules and that identifies the data and information relied upon to support the proposed rules has been prepared. A copy may be obtained by contacting the Waste Management Board, Attn: Ed Welsch, 123 Thorson Building, 7323 58th Avenue North, Crystal, MN 55428.

If a hearing is not required, and upon adoption of the final rules without a public hearing, the proposed rules, this Notice, the statement of need and reasonableness, all written comments received, and the final rules as adopted will be delivered to the Attorney General for review as to form and legality, including the issue of substantial change. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the rules as adopted, should submit a written statement of such request to the Waste Management Board, Attn: Ed Welsch, 123 Thorson Building, 7323 58th Avenue North, Crystal, MN 55428.

A copy of the proposed rules is attached to this Notice.

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

William Walker
Chairperson

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.

Waste Management Board

Proposed Rules Relating to Solid Waste Processing Facility Capital Assistance and Demonstration Programs

Rules as Proposed (all new material)

CAPITAL ASSISTANCE PROGRAM

9200.6000 DEFINITIONS.

Subpart 1. **Scope.** For the purposes of parts 9200.6000 to 9200.6800 the following terms have the meaning given them, unless the context requires otherwise.

Subp. 2. **Board.** "Board" means the Minnesota Waste Management Board established in Minnesota Statutes, section 115A.04.

Subp. 3. **Chair.** "Chair" means the chair and chief executive officer of the board.

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

Subp. 5. **Comprehensive solid waste management plan.** "Comprehensive solid waste management plan" means a written plan prepared under Minnesota Statutes, section 115A.46.

Subp. 6. **Disposal.** "Disposal" has the meaning given it in Minnesota Statutes, section 115A.03, subdivision 9.

Subp. 7. **Final design and engineering/architectural plans.** "Final design and engineering/architectural plans" means those engineering drawings and specifications used to secure bids for construction or equipment.

Subp. 8. **Institutional arrangements.** "Institutional arrangements" means methods of financing, marketing, procurement, securing the waste supply, or joint efforts by more than one local government unit.

Subp. 9. **Mixed municipal solid waste.** "Mixed municipal solid waste" has the meaning given it in Minnesota Statutes, section 115A.03, subdivision 21.

Subp. 10. **On-site utilities.** "On-site utilities" means gas, electrical, water, and sewer facilities within the geographic boundaries of the waste processing facility site, that are used for facility operations, excluding transmission of energy to markets.

Subp. 11. **Preliminary design and engineering/architectural plans.** "Preliminary design and engineering/architectural plans" means conceptual plans adequate to obtain preconstruction permits and to meet the needs of an environmental assessment.

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

Subp. 13. **Project.** "Project" means a processing facility, together with any transfer stations, transmission facilities, and other related and appurtenant facilities primarily serving the processing facility.

Subp. 14. **Recyclable materials.** "Recyclable materials" has the meaning given it in Minnesota Statutes, section 115A.03, subdivision 25a.

Subp. 15. **Recycling.** "Recycling" has the meaning given it in Minnesota Statutes, section 115A.03, subdivision 25b.

Subp. 16. **Recipient.** "Recipient" means an applicant who has received a grant under the solid waste processing facilities capital assistance program.

Subp. 17. **Resource recovery.** "Resource recovery" has the meaning given it in Minnesota Statutes, section 115A.03, subdivision 27.

Subp. 18. **Resource recovery facility.** "Resource recovery facility" has the meaning given it in Minnesota Statutes, section 115A.03, subdivision 28.

Subp. 19. **Solid waste.** "Solid waste" has the meaning given it in Minnesota Statutes, section 116.06, subdivision 10.

Subp. 20. **Solid waste disposal facilities and equipment.** "Solid waste disposal facilities and equipment" means structures, machinery, or devices at a disposal site necessary for efficient land disposal of solid wastes, including machinery or devices designed to move earth during burial of wastes or to increase the density of wastes buried or to be buried, and facilities in which solid waste is temporarily stored and concentrated before transport to a disposal site.

Subp. 21. **Solid waste management district.** "Solid waste management district" has the meaning given it in Minnesota Statutes, section 115A.03, subdivision 32.

Subp. 22. **Special waste stream.** "Special waste stream" means materials normally found in the solid waste stream in sufficient quantity to be recovered for subsequent use, if separated from the solid waste stream and processed separately. Examples of special waste streams include waste tires, wood wastes, and agricultural wastes.

Subp. 23. **Transmission facilities.** "Transmission facilities" means any steam, water, or electrical lines that are used to transport energy to markets.

Subp. 24. **Transfer station.** "Transfer station" has the meaning given it in Minnesota Statutes, section 115A.03, subdivision 33.

Subp. 25. **Waste processing equipment.** "Waste processing equipment" means machinery or devices acquired and used as an integral component of a waste processing facility.

Subp. 26. **Waste processing facility.** "Waste processing facility" means structures and equipment, singly or in combination, that are designed, constructed, and used to separate, modify, convert, heat, prepare, or otherwise process solid waste so that materials, substances, or energy contained within the waste may be recovered for subsequent use.

9200.6100 SOLID WASTE PROCESSING FACILITIES CAPITAL ASSISTANCE PROGRAM.

Parts 9200.6000 to 9200.6800 implement the solid waste processing facilities capital assistance program created and described in Minnesota Statutes, sections 115A.49 to 115A.54, by establishing the substantive criteria and procedural conditions under which the board may award grants for capital costs of solid waste processing facilities.

9200.6200 GRANT APPLICATION PROCEDURES.

Subpart 1. **Applications.** An application may be submitted to the board when the applicant has met the information and documentation requirements in parts 9200.6400 and 9200.6500. The applicant is encouraged to contact the chair and request a preapplication review of the proposed project.

Subp. 2. **Review of applications.** Upon receipt of an application, the chair or a designee shall conduct an initial review of the application under part 9200.6600. The board shall evaluate projects and award grants.

Subp. 3. **Applications accepted.** The board shall accept applications for funds under the solid waste processing facilities capital assistance program until all the funds for the program are awarded or until three months before the expiration of the board pursuant to law, whichever occurs first.

Subp. 4. **Legislative priorities.** The board shall give priority to projects located in cities, counties, or districts in which:

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

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

C. the project serves more than one local government unit.

9200.6300 ELIGIBILITY CRITERIA.

Subpart 1. **Eligible applicants.** Eligible applicants are limited to cities, counties, and solid waste management districts established under Minnesota Statutes, sections 115A.62 to 115A.72.

Subp. 2. **Eligible projects.** Six types of projects are eligible for grants: waste to energy; materials recovery; chemical, physical, or biological modifications; transfer stations; special waste streams; and waste incineration with resource recovery. Eligible projects are limited to those in which the land, buildings, and equipment are publicly owned.

Projects that were awarded assistance by the board pursuant to applications submitted under Minnesota Statutes, sections 115A.49 to 115A.54 before July 1, 1985, are eligible for additional assistance under this program, but no project may receive a total amount of grant assistance in excess of the limits in part 9200.6700, subpart 1. Previously funded projects seeking additional funding under this program shall complete the documentation required under part 9200.6500.

Subp. 3. **Eligible costs.** Eligible costs under parts 9200.6000 to 9200.6800 are limited to the costs of land; waste processing equipment; structures necessary to house the waste processing equipment; transmission facilities; appropriate and necessary on-site utilities; structures necessary to concentrate and temporarily store solid waste before transportation to a waste processing facility; trailers, containers, and roll-off boxes necessary to transport wastes from transfer stations to a processing facility, to transport processing facility products to market, or to transport residue from the processing facility to a solid waste land disposal facility; and final design and engineering/architectural plans.

Subp. 4. **Ineligible costs.** Ineligible costs include any costs related to solid waste disposal facilities and equipment, structures

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for housing and maintenance of rolling stock, or any costs related to resource recovery studies, feasibility analyses, or preliminary design and engineering/architectural plans.

9200.6400 INFORMATION REQUIRED ON GRANT APPLICATION.

Applications for waste processing facilities grants shall include the following information as required in the application forms supplied by the board:

A. the name of each applicant making the grant application;

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

C. resolutions from each applicant in conformance with Minnesota Statutes, section 115A.54, subdivision 2a, clause (1) and subdivision 3;

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

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

F. the total capital cost of the project;

G. the total grant-eligible cost of the project;

H. the amount of grant funding requested;

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

J. the type of waste processing facility for which the grant application is being submitted: waste to energy; materials recovery; chemical, physical, or biological modification; transfer stations; special waste stream; or waste incineration with resource recovery.

9200.6500 SUPPORTING DOCUMENTATION REQUIRED TO BE SUBMITTED WITH GRANT APPLICATION.

Applications for waste processing facilities grants shall include the following supporting documentation:

A. A conceptual and technical feasibility report that includes at least the following: a detailed description of the proposed waste processing facility; a description of the institutional arrangements necessary for project implementation and operation; a description of the method of facility procurement; and an analysis of the waste stream for the facility.

B. A financial plan that contains:

(1) initial capital development costs and the method of financing those costs;

(2) annual operating and maintenance costs;

(3) projections of total facility costs and revenues over 20 years or for the term of the longest debt obligation, whichever is longer; and

(4) total capital costs per ton of installed daily capacity.

C. A report demonstrating that the project is not financially feasible without state assistance, due to the applicant's financial capacity and the problems inherent in waste management in the area. The report shall include the following documentation:

(1) capital financing alternatives and operational cost financing alternatives, both public and private, explored by the applicant for the project and reasons for selecting the proposed financing methods;

(2) information on the applicant's financial situation including the applicant's current credit rating on general obligation bonds, the amount of general obligation bonds outstanding, general obligation debt divided by market valuation, and debt service levy divided by total levy. If the applicant has issued general obligation bonds in the past two years, the documentation must include the most recent general purpose financial statements, current year budgets, and official statement on bond issuance;

(3) projected facility tipping fees, product revenues, and other project revenues, with and without board assistance;

(4) impact of proposed project on existing solid waste commitments, obligations and expenditures, and total current solid waste management costs on a per capita and per ton basis;

(5) general information pertinent to a determination of the applicant's financial capacity, including such factors as location, population characteristics, employment base, and other characteristics;

(6) transportation distances and estimated costs, both in waste collection and to markets for recovered resources;

(7) waste supply characteristics;

(8) availability of markets for recovered resources; and

(9) other characteristics of waste management in the area that render state assistance necessary to the financial feasibility of the project.

D. A comprehensive solid waste management plan.

E. Preliminary design and engineering/architectural plans and equipment specifications of the proposed waste processing facility.

F. Documentation that waste supplies will be committed to the project and that the applicant has the mechanism to commit the wastes.

G. A market analysis of recovered materials/energy, including documentation of market commitments such as letters of intent or contracts.

H. A report on the status of required permits from permitting agencies.

I. A report on time frames of project development.

J. Resolutions that comply with Minnesota Statutes, section 115A.54, subdivision 2a, clause (1) and subdivision 3.

K. If the applicant requests priority under Minnesota Statutes, section 115A.49, documentation:

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

(2) that the available capacity of existing solid waste disposal facilities is less than five years; or

(3) that the proposed project would serve more than one local government unit.

L. If the project has previously received funding from the board under the board's solid waste processing facility demonstration program, documentation of how the project has changed since the previous award and why the project is not financially feasible without additional funding. This documentation shall include:

(1) a description of changes in the scope or design of the project;

(2) a description of changes in major external factors affecting the project;

(3) an explanation and demonstration of why the project is no longer financially feasible without additional state assistance; and

(4) a revised implementation schedule.

M. If the project serves eligible jurisdictions in only a single county, documentation demonstrating that cooperation with jurisdictions in other counties is not needed or not feasible, including:

(1) a description of past efforts to develop multi-county facilities or waste management programs; and

(2) a description of characteristics of the applicant's individual situation that preclude or inhibit cooperation with other counties, such as waste supply, market availability, technology constraints, geographic factors, or factors involving institutional arrangements.

9200.6600 REVIEW AND EVALUATION OF APPLICATIONS.

Subpart 1. **Determination of eligibility and completeness.** Upon receipt of an application, the chair or a designee shall determine the eligibility of the applicant, the eligibility of the costs identified in the application, the eligibility of the project identified in the application, and the completeness of the application.

Subp. 2. **Notice of determination of eligibility and completeness.** Within 14 days after receiving the application, the chair shall notify the applicant of the chair's determinations of eligibility and completeness. If the chair determines that the applicant or the project is ineligible, the chair shall reject the application, return it to the applicant, and notify the applicant of the reasons for the rejection. If the chair determines that any part of the project costs is ineligible or that the application is incomplete, the chair shall notify the applicant of the ineligible portion of the costs or of the deficiency. The applicant has 14 days after receiving the notice to correct any inadequacies identified by the chair. If the inadequacies are corrected within the time allowed, the application will be further considered.

Subp. 3. **Evaluation of need for financial assistance.** In making its evaluation of the application, the board shall first evaluate the information supplied in part 9200.6500, item C to determine whether or not board assistance is necessary for facility development. If

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the board determines that assistance is not necessary, evaluation of the application shall cease and the application shall be returned to the applicant. If the board determines that assistance is necessary, evaluation will proceed to the second stage. During the second stage, the board shall evaluate documentation submitted under part 9200.6500, items A, B, and D to M.

Subp. 4. **Evaluation of applications.** If the board determines that the project is in need of state assistance, the board shall evaluate the application to determine whether the application demonstrates:

A. that the project is conceptually and technically feasible;

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

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

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

E. that for projects serving eligible jurisdictions in only a single county, cooperation with jurisdictions in other counties to develop the project is not needed or not feasible;

F. that resource recovery facilities that burn waste, convert waste to energy, or convert waste into materials for combustion will not accept recyclable materials except for transfer to a recycler; and

G. that the project is not financially feasible without state assistance, because of the applicant's financial capacity and the problems inherent in the waste management situation in the area, particularly transportation distances and limited waste supply and markets for resources recovered.

Subp. 5. **Board determination.** If the board determines that the application satisfies the requirements of subpart 4, the board shall determine the amount of the grant award and the applicant shall be notified. If the board determines that the application fails to satisfy the requirements of subpart 4, the board shall reject the application and the chair shall return the application to the applicant, together with a statement of the reasons for the determination.

Subp. 6. **Consultation with other agencies.** In its evaluation of the application, the board shall consider any recommendations provided by the Pollution Control Agency, the State Planning Agency, and the appropriate regional development commission or the Metropolitan Council.

9200.6700 LIMITATIONS.

Subpart 1. **Maximum grant award.** The maximum grant award is 25 percent of the eligible capital costs of the project or $2,000,000, whichever is less.

Subp. 2. **Limitations on grant award.** The amount of the board's grant award shall be limited to an amount needed to complete the project considering all the sources of funding presently available to the applicant.

Grants shall not be awarded to cover any cost associated with tasks performed before the grant award or after the expiration of the grant agreement.

Subp. 3. **Limitations on disbursal of funds.** No funds shall be disbursed until the board has determined the total estimated capital cost of the project and ascertained that financing of the cost is assured by funds provided by the state, by an agency of the federal government within the amount of funds then appropriated to that agency and allocated by it to projects within the state, by any person, or by the appropriation of proceeds of bonds or other funds of the recipient to a fund for the construction of the project.

9200.6800 GRANT AGREEMENT.

Subpart 1. **Requirements.** A grant agreement shall:

A. include as attachments the resolutions required under Minnesota Statutes, section 115A.54, subdivision 2a, clause (1) and subdivision 3;

B. incorporate by reference the final grant application submitted to the board under part 9200.6200;

C. allow the recipient to enter into contracts to complete the work specified in the agreement subject to any board approval that may be required in the agreement;

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

E. provide that the board will not accept amendments requesting that additional funds be awarded to the recipient;

F. require that the recipient provide periodic written reports to the board on the developmental and operational history of the project so that knowledge and experience gained from the project may be made available to other communities in the state;

G. require total repayment of the grant if the facility is sold to a private enterprise within three years of the effective date of the grant agreement. Beginning on the third anniversary of the grant, the amount of the grant that must be repaid shall be reduced ten percent each year. The sales agreement between the recipient and the private enterprise shall transfer the responsibilities in subpart 1, item F to the private enterprise; and

H. require that the facility may only be sold to a private enterprise in accordance with the constitution of the state of Minnesota and any applicable Minnesota statutes and rules.

Subp. 2. **Rescission of grant.** If a project is not completed and operational in accordance with the terms and conditions of the grant agreement, including time schedules, the grant shall be rescinded, and the entire amount of the grant shall be repaid unless the board determines that variances from the respective agreements are justified and that the original objectives of the project will be accomplished.

Subp. 3. **Disbursement.** The board shall disburse grants in accordance with the payment schedule in the grant agreement.

Waste Management Board

Proposed Amendments to Rules Governing the Solid Waste Processing Facility Demonstration Program

Notice of Intent to Adopt Amendments to Existing Rules Without a Public Hearing

Notice is hereby given that the Minnesota Waste Management Board proposes to adopt the above-entitled amendments to existing 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 Minn. Stat. §§ 14.22-14.28, as amended by Laws 1984, ch. 640, §§ 12-15.

Persons interested in these rules shall have 30 days in which to submit comments in support of or in opposition to the proposed amendments to existing rules. Comment is encouraged. Each comment should identify the portion of the proposed amendment addressed, the reason for the comment, and any change proposed.

The proposed amendments to existing rules may be modified if the modifications are supported by the data and views submitted to the Waste Management Board and do not result in a substantial change in the proposed language.

Unless 25 or more persons submit written requests for a public hearing on the proposed amendments within the 30-day comment period, a public hearing will not be held. Any person requesting a public hearing should state his or her name and address, and is encouraged to identify the portion of the proposed amendment addressed, the reason for the request, and any change proposed. In the event a public hearing is required, the Waste Management Board will proceed according to the provisions of Minn. Stat. §§ 14.08-14.28, as amended by Laws 1984, ch. 640, §§ 4-15.

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

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

Authority for the adoption of these rules is contained in Minn. Stat. § 115A.49 (1984). Additionally, a statement of need and reasonableness that describes the need for and reasonableness of each provision of the proposed amendments to existing rules and that identifies the data and information relied upon to support the proposed amendments to existing rules has been prepared. A copy may be obtained by contacting the Waste Management Board, Attn: Ed Welsch, 123 Thorson Building, 7323 58th Avenue North, Crystal, MN 55428.

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If a hearing is not required, and upon adoption of the final amendments to existing rules without a public hearing, the proposed amendments to existing rules, this Notice, the statement of need and reasonableness, all written comments received, and the final amendments to existing 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 amendments to existing rules as adopted, should submit a written statement of such request to the Waste Management Board, Attn: Ed Welsch, 123 Thorson Building, 7323 58th Avenue North, Crystal, MN 55428.

A copy of the proposed amendments to the existing rules is attached to this Notice.

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

William Walker
Chairperson

Rules as Proposed

DEMONSTRATION PROGRAM

9200.8100 DEFINITIONS.

Subpart 1. and 2. [Unchanged.]

Subp. 3. ~~**Chairperson**~~ **Chair.** ~~"Chairperson"~~ "Chair" means the ~~chairperson~~ chair and chief executive officer of the board.

Subp. 4. [Unchanged.]

Subp. 5. **Comprehensive solid waste management plan.** "Comprehensive solid waste management plan" means a written plan ~~conforming to the requirements of~~ prepared under Minnesota Statutes, section 115A.46.

Subp. 6. [Unchanged.]

Subp. 7. **Final design and engineering/architectural plans.** "Final design and engineering/architectural plans" means those engineering drawings and specifications used to secure bids for construction or equipment.

Subp. 9. **Institutional arrangements.** "Institutional arrangements" means methods of financing, marketing, procurement, ~~methods of~~ securing the waste supply, or joint efforts by more than one local government unit.

Subp. 10. and 11. [Unchanged.]

Subp. 12. **Preliminary design and engineering/architectural plans.** "Preliminary design and engineering/architectural plans" means conceptual plans adequate to obtain preconstruction permits and to meet the needs of an environmental assessment.

Subp. 13. [Unchanged.]

Subp. 13a. **Project.** "Project" means a processing facility, together with any transfer stations, transmission facilities, and other related and appurtenant facilities primarily serving the processing facility.

Subp. 14. [Unchanged.]

Subp. 14a. **Recyclable materials.** "Recyclable materials" has the meaning given it in Minnesota Statutes, section 115A.03, subdivision 25a.

Subp. 14b. **Recycling.** "Recycling" has the meaning given it in Minnesota Statutes, section 115A.03, subdivision 25b.

Subp. 15. to 19. [Unchanged.]

Subp. 20. **Special waste stream.** "Special waste stream" means materials ~~which~~ that are normally found in the solid waste stream in sufficient quantity to be recovered for subsequent use, if separated from the solid waste stream and processed separately. Examples of special waste streams include ~~used~~ waste tires, wood wastes, and agricultural wastes.

Subp. 21. [See Repealer.]

Subp. 22. to 24. [Unchanged.]

9200.8200 SOLID WASTE PROCESSING FACILITIES DEMONSTRATION PROGRAM.

Parts 9200.8100 to 9200.9200 implement the solid waste processing facilities demonstration program created and described in Minnesota Statutes, sections 115A.49 to 115A.54, by establishing the substantive criteria and procedural conditions under which the board may award grants and loans for capital costs of ~~projects which demonstrate the feasibility of waste processing technology or equipment or the feasibility of institutional arrangements in providing~~ waste processing facilities.

9200.8300 ELIGIBILITY CRITERIA.

Subpart 1. [Unchanged.]

Subp. 2. **Eligible projects.** Only projects ~~which~~ that demonstrate feasible and prudent alternatives to disposal are eligible for loans and grants. ~~To qualify as a demonstration project, a project must be conceptually and technically feasible but not now in operation in the state or not now in operation in a geographical area of the state with demonstrably different characteristics from those of the area where a facility is now in operation. A conceptually and technically feasible project may also qualify as a demonstration project if it involves institutional arrangements not previously utilized in the state, or not previously utilized in a geographical area of the state with demonstrably different characteristics from those in the area where a facility is now in operation.~~ ~~Six~~ Three types of projects are eligible for loans and grants: ~~waste to energy;~~ materials recovery; chemical, physical, or biological modifications; ~~transfer stations;~~ and special waste streams; ~~and waste incineration with resource recovery~~. Eligible projects are limited to those in which the land, buildings, and equipment are publicly owned.

Subp. 3. **Eligible costs.** Eligible costs under parts 9200.8100 to 9200.9200 shall be limited to the costs of land, waste processing equipment, structures necessary to house the waste processing equipment, appropriate and necessary on-site utilities, ~~structures necessary to concentrate and temporarily store solid waste prior to transportation to a waste processing facility~~ trailers, containers, and roll-off boxes necessary to transport products to market, or to transport residue from the processing facility to a solid waste land disposal facility, and final design and ~~engineering specifications~~ engineering/architectural plans.

Subp. 4. **Ineligible costs.** Ineligible costs include any costs related to ~~acquisition of land,~~ solid waste disposal facilities and equipment, structures for housing and maintenance of rolling stock, or any costs related to resource recovery studies, feasibility analyses, or preliminary design and ~~engineering~~ engineering/architectural plans.

9200.8400 INFORMATION REQUIRED ON GRANT AND LOAN APPLICATION.

Applications for grants, loans, or grants and loans for waste processing facilities shall include the following information as required in the application forms supplied by the board:

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

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

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

~~D.~~ the name, qualifications, and address of the project manager;

~~E.~~ D. the name and qualifications of the facility operator, if available;

~~F.~~ E. the total capital cost of the project;

~~G.~~ F. the total grant- or loan-eligible cost of the project;

~~H.~~ G. the amount of grant ~~or~~, loan, or grant and loan funding requested;

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

~~J.~~ I. the type of assistance applied for (grant, loan , or grant and loan together);

~~K.~~ J. the type of waste processing facility for which ~~a grant or loan~~ assistance is being ~~applied for~~ requested: ~~waste to energy;~~ materials recovery; chemical, physical, or biological modification; ~~transfer stations;~~ or special waste stream; ~~or waste incineration with resource recovery~~.

9200.8500 SUPPORTING DOCUMENTATION REQUIRED TO BE SUBMITTED WITH GRANT AND LOAN APPLICATION.

Applications for grants or loans for waste processing facilities shall include the following supporting documentation:

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

B. ~~a financial feasibility report including: an evaluation and analysis of all capital and operating costs of the proposed~~

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~~project, an evaluation and analysis of various financing mechanisms available to the applicant, an analysis of the ability of the community to continue operation of the facility over the life of the facility~~ a financial plan that contains:

(1) initial capital development costs and the method of financing those costs;

(2) annual operating and maintenance costs;

(3) projections of total facility costs and revenues over 20 years or for the term of the longest debt obligation, whichever is longer; and

(4) total capital costs per ton of installed daily capacity;

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

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

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

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

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

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

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

~~J.~~ H. a report on time frames of project development;

~~K.~~ I. resolutions ~~complying~~ that comply with ~~the requirements of~~ Minnesota Statutes, section 115A.54, subdivision 3; and

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

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

~~N.~~ J. if the applicant requests priority ~~based on any of the following conditions~~ under Minnesota Statutes, section 115A.49, documentation ~~of the existence of the condition~~:

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

(2) that the available capacity of existing solid waste disposal facilities ~~are claimed to be~~ is less than five years; or

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

~~O. if the applicant is seeking a grant, a report discussing the factor or factors in part 9200.9000, subpart 2 upon which the applicant is basing the request for a grant.~~

9200.8600 GRANT AND LOAN APPLICATION PROCEDURES.

Subp. 1a. **Applications.** An application may be submitted to the board when the applicant has met the information and documentation requirements in parts 9200.8400 and 9200.8500. The applicant is encouraged to contact the ~~chairperson~~ chair and request a preapplication review of the proposed project.

Subp. 2a. **Review ~~schedule~~ of applications.** ~~When~~ Upon receipt of an application, the ~~chairperson~~ chair or a designee ~~receives an application, he or she~~ shall ~~initially~~ conduct an initial review of the application under part 9200.8700. The board shall evaluate ~~and select~~ projects and award grants and loans.

Subp. 4. **Applications accepted.** The board shall accept applications for funds under the solid waste processing facilities demonstration program until all funds for the program are awarded or until three months before the expiration of the board pursuant to law, whichever occurs first.

Subp. 5. **Legislative priorities.** The board shall give priority to projects located in cities, counties, or districts in which:

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

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

C. the project serves more than one local government unit.

9200.8700 ~~INITIAL~~ REVIEW AND EVALUATION OF APPLICATIONS.

Subpart 1. [See Repealer.]

Subp. 2. **Determination of eligibility and completeness ~~review.~~** Upon receipt of an application, the ~~chairperson~~ chair or a designee shall determine the eligibility of the applicant, the eligibility of the costs specified in the application, the eligibility of the project specified in the application, and the completeness of the application.

Subp. 3. **Notice of determination of eligibility and completeness.** Within 14 days after receiving the application, the ~~chairperson~~ chair shall notify ~~each~~ the applicant of the ~~chairperson's~~ chair's determinations of eligibility and completeness. If the ~~chairperson~~ chair determines that the applicant or the project is ~~not eligible, the application shall not be further considered and the applicant shall be notified of the determination. If the chairperson determines that any of the costs or any part of the project is not eligible or that the application is otherwise not complete~~ ineligible, the ~~chairperson~~ chair shall reject the application, return ~~the application together with a statement~~ it to the applicant, and notify the applicant of the reasons for ~~rejecting the application~~ the rejection. ~~The applicant shall have~~ If the chair determines that any part of the project costs is ineligible or that the application is incomplete, the chair shall notify the applicant of the ineligible portion of the costs or of the deficiency. The applicant has 14 days after ~~receipt of the rejection of the application~~ receiving the notice to correct ~~any~~ inadequacies identified ~~in the application~~ by the chair. If the inadequacies are corrected within the time allowed, the application will be further considered.

Subp. 4. **~~Review~~ Evaluation of ~~documentation~~ applications.** If the applicant, the costs, and the project are determined to be eligible and the application is complete, the ~~chairperson~~ board shall~~,~~ ~~within 45 days after the receipt of the application, review the application to determine whether the supporting documentation is adequate. In determining whether the documentation is adequate, the chairperson shall consider~~ evaluate the application to determine whether the documentation demonstrates:

A. that the project is conceptually and technically feasible;

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

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

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

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

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

Subp. 5. **Consultation with other agencies.** In ~~determining the adequacy of the documentation~~ its evaluation of the application, the ~~chairperson~~ board shall consider any recommendations provided by the Pollution Control Agency, ~~the appropriate regional development commission,~~ the State Planning Agency, and~~, if appropriate,~~ the appropriate regional development commission or the Metropolitan Council.

Subp. 6. **Board determination ~~of sufficient documentation.~~** ~~If the chairperson determines that the documentation in the application is adequate, the application shall be considered final and the applicant shall be so notified. The application shall then be referred to the board to be evaluated as provided in part 9200.8800. If the chairperson determines that the documentation in the application is inadequate, the chairperson shall return the application together with a statement of the reasons for rejecting the application. The applicant shall have 14 days after receipt of the rejection of the application to correct the inadequacies in the documentation.~~

~~If the inadequacies in the documentation are corrected within the time allowed, the application shall be considered final and the applicant shall be so notified. The application shall then be referred to the board to be evaluated as provided in part 9200.8800.~~ If the board determines that the application satisfies the requirements of subpart 4, the board shall determine the amount of the grant, loan, or grant and loan award and the applicant shall be notified of the grant, loan, or grant and loan awarded. If the board determines that the application fails to satisfy the requirements of subpart 4, the board shall reject the application and the chair shall return the application to the applicant, together with a statement of the reasons for rejection.

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9200.9000 AWARD OF GRANTS AND LOANS.

Subpart 1. to 3. [See Repealer.]

Subp. 4. **Maximum awards.** The maximum loan award shall be 50 percent of the eligible costs specified in the application or ~~$700,000~~ $200,000, whichever is less. The maximum grant award shall be 50 percent of the eligible costs specified in the application or ~~$300,000~~ $200,000, whichever is less. The maximum combined grant and loan award is $400,000.

Subp. 5. **Limitations.** ~~No funds shall be awarded for costs for which the applicant has applied for and received funds from another source.~~

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

~~Grants and loans shall be awarded to cover the eligible costs of only those tasks which are undertaken and completed during the grant and loan period established in the grant and loan agreement.~~ The amount of the board's grant, loan, or grant and loan award shall be limited to an amount needed to complete the project considering all sources of funding presently available to the applicant.

Grants and loans shall not be awarded to cover any cost associated with tasks performed ~~prior to~~ before the award of a grant, loan, or grant and loan or after the expiration of the grant, loan, or grant and loan agreement.

Subp. 6. **Limitations on disbursal of funds.** No funds shall be disbursed until the board has determined the total estimated capital cost of the project and ascertained that financing of the cost is assured by funds provided by the state, by an agency of the federal government within the amount of funds then appropriated to that agency and allocated by it to projects within the state, by any person, or by the appropriation of proceeds of bonds or other funds of the recipient to a fund for the construction of the project.

9200.9100 GRANT, LOAN, OR GRANT AND LOAN AGREEMENT.

Subpart 1. **Requirements.** ~~The~~ A grant, loan, or grant and loan ~~agreements must~~ agreement shall:

A. ~~contain~~ include as attachments the resolutions required under Minnesota Statutes, section 115A.54, subdivision 3;

B. incorporate by reference the final ~~grant and loan~~ application submitted to the board in accordance with part 9200.8600;

C. establish the term of the grant, loan, or grant and loan. ~~All~~ Grants awarded under ~~this rule~~ parts 9200.8100 to 9200.9100 shall have a maximum term of two years. ~~All~~ Loans awarded under ~~this rule~~ parts 9200.8100 to 9200.9100 shall have a loan life determined by considering facility type, expected life of equipment, capital cost of the project, and loan amount;

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

E. ~~provide that~~ allow the recipient ~~shall be authorized~~ to enter into contracts to complete the work specified in the agreement subject to any board approval that may be required in the agreement;

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

G. provide that the board will not accept amendments requesting that additional ~~grant and loan~~ funds be awarded to the recipient; ~~and~~

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

I. provide that if the recipient sells the facility to a private enterprise, all outstanding loan obligations to the board shall become due and payable upon sale to the private enterprise;

J. require total repayment of the grant if the facility is sold to a private enterprise within three years of the effective date of the grant agreement. Beginning on the third anniversary of the grant, the amount of the grant that must be repaid shall be reduced ten percent each year. The sales agreement between the recipient and the private enterprise shall transfer the responsibilities outlined in item H to the private enterprise, and

K. require that the facility may only be sold to a private enterprise in accordance with the constitution of the state of Minnesota and any applicable Minnesota statutes and rules.

Subp. 2. **Rescission of grants and loans.** If projects are not completed and operational in accordance with the terms and conditions of the respective agreements, including time schedules, the grants and loans for those projects shall be rescinded, and the entire amount of grants and loans shall be repaid unless the board determines that variances from the respective agreements are justified and that the original objectives of the project will be accomplished.

Subp. 3. **Disbursement.** The board shall disburse grants in accordance with the payment schedule ~~set out~~ in the grant, loan, or grant and loan agreement.

Subp. 4. **Interest payments.** Interest payments on the loan shall be due annually and shall begin to accrue from the date the loan agreement is signed. The first repayment of the principal amount of the loan shall be due one year after the facility becomes operational or two years after the date the loan agreement is executed, whichever is earlier. The board shall consider the facility operational at the point where the facility meets all vendor guaranteed operating specifications. Subsequent repayments of principal and interest shall be due annually on the anniversary date of the first repayment.

Subp. 5. and 6. [See Repealer.]

REPEALER. Minnesota Rules, parts 9200.8100, subpart 21; 9200.8700, subpart 1; 9200.8800; 9200.9000, subparts 1, 2, and 3; 9200.9100, subparts 5 and 6; and 9200.9200 are repealed.

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.

Energy and Economic Development Authority

Adopted Rules Relating to Tourism Loan Program

The rules proposed and published at *State Register*, Volume 10, Number 39, pages 1961-1965, March 24, 1986 (10 S.R. 1961) are adopted as proposed.

Higher Education Coordinating Board

Adopted Rules Relating to Part-time Student Grants

The rules proposed and published at *State Register*, Volume 10, Number 33, pages 1654-1656, February 10, 1986 (10 S.R. 1654) are adopted as proposed.

Department of Human Services

Adopted Rule Relating to Medical Assistance Reimbursement to Day Service Providers

The rule proposed and published at *State Register*, Volume 10, Number 34, pages 1708-1709, February 17, 1986 (10 S.R. 1708) is adopted as proposed.

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Department of Labor and Industry

Occupational Safety and Health Division

Adopted Revisions to the Occupational Safety and Health Standards

Pursuant to Minn. Stat. § 182.655 (1984) notice was duly published in the *State Register*, Volume 10, Number 42, dated April 14, 1986 [10 S.R. 2157] specifying the modification of certain Occupational Safety and Health Standards; specifically, the revisions to Occupational Exposure to Cotton Dust standard (29 CFR 1910.1043).

No objections, comments or written requests for public hearing have been received; therefore, this Occupational Safety and Health Standard is adopted and is identical in every respect to its proposed form.

Steve Keefe
Commissioner of Labor and Industry

OFFICIAL NOTICES

Pursuant to the provisions of Minn. Stat. § 15.0412, subd. 6, an agency, in preparing proposed rules, may seek information or opinion from sources outside the agency. Notices of intent to solicit outside opinion must be published in the *State Register* and all interested persons afforded the opportunity to submit data or views on the subject, either orally or in writing.

The *State Register* also publishes other official notices of state agencies, notices of meetings, and matters of public interest.

Office of Administrative Hearings

Outside Opinion Sought Concerning Rules to Implement the Equal Access to Justice Act

Pursuant to the provisions of Minnesota Statutes, § 14.10, notice is hereby given that the Minnesota Office of Administrative Hearings will be seeking information or opinions in preparing to propose the adoption of amendments to the procedural rules for contested case hearings.

The primary reason for the solicitation of information is to determine whether it is necessary or appropriate to adopt additional rules to implement the provisions of the Equal Access to Justice Act, Minnesota Laws 1976, Chapter 377. However, interested persons should feel free to submit their thoughts and ideas relating to any other parts of the contested case rules which may be in need of amendment, especially if there are amendments which would aid in making the contested case hearings move more expeditiously and at less costs to all participants.

A very brief set of procedural rules to implement the Equal Access to Justice Act is being proposed in this same issue of the *State Register*. However, the office believes it may be appropriate to adopt additional interpretive rules to establish standards and criteria for determinations of attorney's fees, to further define terms such as "prevailing party" and "substantially justified". The office is looking at rules adopted by Federal agencies such as the Department of Labor, the Department of Transportation, the Federal Communications Commission and the Environmental Protection Agency for guidance.

Persons interested in submitting any information, ideas, opinions or thoughts should submit them, in writing, by July 3, 1986. The submissions are to be sent to:

Duane R. Harves
Chief Administrative Law Judge
Minnesota Office of Administrative Hearings
400 Summit Bank Building
310 - 4th Avenue South
Minneapolis, Minnesota 55415
612 341-7640

All written submissions received shall become part of the rulemaking record in the event amendments are proposed.

STATE OF MINNESOTA

WASTE MANAGEMENT BOARD

In the Matter of the Proposed Adoption of Rules of the Waste Management Board Governing the Solid Waste Processing Facility Capital Assistance Program

CERTIFICATE OF RESOLUTION ADOPTING RULES

I, William Walker, do hereby certify that I am a member and the Chair 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 24th day of July, 1986, 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.

BE IT RESOLVED, that the Waste Management Board hereby approves and adopts the attached proposed rules, Minnesota Rules Parts 9200.6000 to 9200.6800, governing the Solid Waste Processing Facility Capital Assistance Program, pursuant to authority vested in the Board by Minnesota Statutes Sections 115A.54, subdivision 2a and 115A.49 (Supp. 1985)

BE IT FURTHER RESOLVED, that prior to publishing the rules as adopted in the the State Register, the Chair 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 Chair to execute the attached Findings of Fact and Conclusions on behalf of the Board;

BE IT FURTHER RESOLVED, that the Chair is hereby authorized to sign an order of the Board adopting the above-named rules in whole or in part and to perform any acts incidental thereto.

WILLIAM WALKER
Chair

Attested by
Board Member

STATE OF MINNESOTA

WASTE MANAGEMENT BOARD

RESOLUTION WMB-016-86

BE IT RESOLVED, that the Waste Management Board hereby approves and adopts the attached proposed rules, Minnesota Rules Parts 9200.6000 to 9200.6800, governing the Solid Waste Processing Facility Capital Assistance Program, pursuant to authority vested in the Board by Minnesota Statutes Sections 115A.54, subdivision 2a and 115A.49 (Supp. 1985)

BE IT FURTHER RESOLVED, that prior to publishing the rules as adopted in the State Register, the Chair 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 Chair to execute the attached Findings of Fact and Conclusions on behalf of the Board;

BE IT FURTHER RESOLVED, that the Chair is hereby authorized to sign an order of the Board adopting the above-named rules in whole or in part and to perform any acts incidental thereto.

Dated: July 24, 1986

WILLIAM WALKER
Chair

STATE OF MINNESOTA

WASTE MANAGEMENT BOARD

In the Matter of the Adoption
of the Proposed Rules of the
Waste Management Board Governing
the Solid Waste Processing Facility
Capital Assistance Program

FINDINGS OF FACT AND CONCLUSIONS

The above-mentioned matter came on for decision before the Minnesota Waste Management Board on the 24th day of July, 1986, after publication notice of the proposed rules was provided as set forth in Minnesota Statutes, Section 14.22 (1984). Having afforded all interested persons an opportunity to submit written comments 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. The Board has the authority to adopt rules for the Solid Waste Processing Facility Capital Assistance Program pursuant to Minnesota Statutes 115A.54, subdivision 2a (Supp. 1985).

2. Minnesota Special Session Laws 1985, chapter 15, section 34 required the Board to adopt rules for this program by July 1, 1985.

3. The Board developed and adopted emergency rules based upon the need to meet the July 1, 1985 deadline. These emergency rules were adopted August 22, 1985, the earliest date legally

possible. The term of the emergency rules was 180 days.

4. On January 16, 1986, the Board authorized the Chair to begin the process of enacting permanent rules to govern the Solid Waste Processing Facility Capital Assistance Program through the non-controversial rulemaking process.

5. On February 27, 1986, the Board directed its staff to publish notice in the State Register extending the emergency rules of the Solid Waste Processing Facility Capital Assistance Program for a second and final 180 day period.

6. On May 20, 1986, the Order for Publication authorizing publication and mailing of the proposed rules was executed by the Chair of the Board under authority of Waste Management Board Resolution WMB-003-86, dated January 16, 1986.

7. On May 30, 1986, the Notice of Intent to Adopt Rules without a Public Hearing and a copy of the proposed rules were 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 Board.

8. On June 2, 1986, the Notice of Intent to Adopt Rules without a Public Hearing and the Proposed Rules were published at 10 State Register 2405 to 2411.

9. The Board's Notice of Intent to Adopt Rules without a Public Hearing afforded all interested persons 30 days to submit comments on the proposed rules. The notice was in all respects in compliance with the requirements of Minnesota Statutes, sections 14.22 - .28 as amended.

10. The public comment period expired July 1, 1986.

11. Written comments were received during the comment period from Mr. Mark R. Kaster of the law firm Dorsey and Whitney.

12. The Board has reviewed the comments received on the proposed rules and has determined that no modifications will be made of the rules as published.

CONCLUSIONS

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

B. The Board has published and served due, timely and adequate notice of its intent to adopt the proposed rules.

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

Dated: July 24, 1986

MINNESOTA WASTE MANAGEMENT BOARD

WILLIAM WALKER
CHAIR

WASTE MANAGEMENT BOARD SOLID WASTE PROCESSING FACILITY

CAPITAL ASSISTANCE PROGRAM

STATEMENT OF NEED AND REASONABLENESS

INTRODUCTION

The legislature has found that waste processing facilities and transfer stations serving such facilities are needed to manage properly the solid waste generated in the state and to conserve and protect the natural resources in the state and the health, safety, and welfare of its citizens. Minn. Stat. §115A.54, Subd. 1 (1984). The legislature has also determined that a program of capital assistance to political subdivisions is necessary to realize fully the opportunities to create such facilities. Id.

In 1985, the legislature instructed the Board to provide technical and financial assistance for the acquisition and betterment of solid waste management projects. As codified at Minn. Stat. §115A.54, Subd.2a (Supp. 1985), the purpose of the program "is to demonstrate whether an ongoing state capital assistance program to assist local development of feasible and prudent alternatives to disposal is an appropriate and desirable method to further state waste management policies."

The subject of this rulemaking proceeding is a set of rules to govern the award of grants for capital costs of solid waste processing facilities made pursuant to Minn. State §115A.54,

Subd. 2a (Supp. 1985) (Capital Assistance program). The proposed rules seek to establish a mechanism to ensure the orderly administration of the Capital Assistance program. In general, the proposed rules identify those projects and costs that may be funded through the Capital Assistance program; set up application procedures and timetables; establish criteria for the review of projects and for the award of grants; set limits on the amount of funds that can be awarded; and specify contents of grant agreements.

The proposed rules seek to fulfill the Waste Management Board's statutory mandate as set out in Minn. Stat. §§ 115A.49 -.54 (Supp. 1985), and to meet the specific goals established for this grant program.

II. HISTORY

On August 22, 1985, the Waste Management Board adopted emergency rules to govern the Capital Assistance program. These rules were codified as Minn. Rules Parts 9200.6000 to 9200.6800 [Emergency]. On February 27, 1986, the Capital Assistance program emergency rules were continued in effect for 180 days or until permanent rules were enacted. Because funds remain available for use in the Capital Assistance program, the Waste Management Board now seeks to enact the rules that are the subject of this rulemaking proceeding.

As required by Minn. Stat. §115A.12 (1984), the Waste Management Board consulted the Solid Waste Management Advisory Council concerning the proposed rules. After receiving Council and Board approval, a Notice of Intent to Adopt Rules Without A Hearing and a copy of the proposed rules were published in the State Register on June 2, 1986. 10 S.R. 2405 (1986).

III. NEED FOR THE PROPOSED RULES

The Waste Management Board is required by Minn. Stat. §115A.54, Subd.2a(2) (Supp. 1985) to promulgate rules to govern the award of grants through the solid waste processing facility capital assistance program. In addition, the Waste Management Board is required to adopt rules to govern the solid waste management demonstration program, Minn. Stat. §§115A.49 - .54 (1984), of which the Capital Assistance program is a part.

The presently proposed rules are needed to fulfill this statutory obligation. Moreover, the rules are needed to provide a coordinated and consistent process to review and select grant recipients.

IV. REASONABLENESS OF THE PROPOSED RULES

9200.6000 DEFINITIONS

Many of the terms defined in 9200.6000 are terms defined by statute. Other definitions are provided simply for clarity and

consistency. The definitions in 9200.6000 that fall into these catagories include the definition of Board (Subp. 2); Chair (Subp. 3); Cities (Subp. 4); Disposal (Subp. 6); Mixed municipal solid waste (Subp. 9); Processing (Subp. 12); Recyclable materials (Subp. 14); Recycling (Subp. 15); Recipient (Subp. 16); Resource Recovery (Subp. 17); Resource recovery facility (Subp. 18); Solid waste (Subp. 19); Solid waste management district (Subp. 20); and Transfer station (Subp. 24).

Other terms defined in the proposed rules are substantive and have special significance as used. The reasonableness of the definitions of these terms is set forth below.

9200.6000 Subp. 5

The definition of comprehensive solid waste management plan is derived from the statutory definition provided at Minn. Stat. §115A.46. However, as defined here the plan need not be an approved plan.

9200.6000 Subp. 7

Because what constitutes final design and engineering/architectural plans may be subject to varied interpretation, a definition has been provided. This definition provides a simple standard to determine which plans are "final" and thus is reasonable.

9200.6000 Subp. 8

A definition of "institutional arrangements" is provided

because, as used in the rules, this term is a term of art and is not in common useage.

9200.6000 Subp. 10

A definition of on-site utilities is necessary because this term may be subject to varied interpretation. Facilities used for the transmission of energy to markets are excluded because such facilities are not considered to be a part of the processing facility.

9200.6000 Subp. 11

A definition of preliminary design and engineering/architectural plans is provided for the same reason as stated in 9200.6000 Subp. 7 above.

9200.6000 Subp. 20

To comply with legislative mandate, solid waste facilities and equipment are not eligible for funding. A definition of solid waste facilities and equipment is provided to enable applicants to determine whether a project or a piece of equipment would be eligible for funding.

9200.6000 Subp. 22

Projects which process special waste streams are eligible for funding under the Capital Assistance program. Because "special waste stream" is not a term in common usage, a

definition is supplied. This definition is made more clear through the use of examples.

9200.6200 GRANT APPLICATION PROCEDURES

This section gives an overview of the procedures which applicants must follow in submitting application for grants. The section also sets out the procedures the Board will follow in reviewing applications, and how the program will terminate.

The termination of the program occurs when funds are exhausted, or three months before the expiration of the authority of the Waste Management Board, whichever comes first. This termination point is reasonable in that the program can not function without funds or an administering authority.

This section also notes that projects meeting the priorities set out at Minn. Stat. §115A.49 (1984) will be given priority in funding. This restriction is necessary to comply with the statute.

9200.6300 ELIGIBILITY CRITERIA

In this section, eligible applicants, projects, and costs are identified. In addition, specific costs that are not eligible are identified. This portion of the rule is necessary to ensure that potential applicants know whether or not they qualify as an eligible applicant, whether or not their project qualifies as an eligible project, and which project costs would be eligible for funding.

9200.6300 Subp. 1

This section identifies eligible applicants. Only cities, counties and solid waste management districts are eligible. This restriction is dictated by Minn. Stat. §115A.50 (1984).

9200.6300 Subp. 2

This part set out six types of projects which will be eligible for funding under the Capital Assistance program. Five of these project types are derived directly from the statutory definition of "processing". This definition is given at Minn. Stat. §115A.03 Subd. 25 (1984). Special waste stream projects form the final catagory of eligible projects. The inclusion of special waste stream projects is reasonable because these projects meet the general definition of processing, in that they treat the special waste stream after collection and before disposal. These projects also qualify as solid waste management projects, in that the management of the special waste streams is a necessary part of solid waste management.

This part also acknowledges that projects that were awarded assistance by the Board pursuant to applications submitted under Minn. Stat. §115A.49 -.54 (1984) (the Demonstration Program) are eligible for additional funding under the Capital Assistance program. Applicants are asked to submit the documentation required of new applicants for Capital Assistance program funding. This is reasonable due to the differing requirements of the two programs.

9200.6300 Subp. 3

Minnesota Statutes Section 115A.54 limits grant assistance to 25% of the capital cost of the waste management project, or $2,000,000, whichever is less. This subpart sets out those costs that will be considered capital costs eligible for funding within the statutory limit. This part defines as capital costs those items which traditionally are considered "hard costs." These include waste processing equipment, structures to house the equipment, associated on-site utilities, land, and final design work. These costs are easily priced and verifiable.

9200.6300 Subp. 4

The cost of solid waste disposal facilities and equipment, though part of the overall capital cost of some projects, is made ineligible for funding by this part. These capital costs are ineligible because the purpose of the Capital Assistance program is to fund alternatives to traditional disposal facilities. Costs that are not easily ascertainable ("soft costs") and costs for items not directly related to the waste processing equipment (such as structures for housing and maintenance of rolling stock) are also made ineligible. This exclusion is reasonable to alleviate administrative difficulty and to reserve the funds availible under the program to meet its goal of funding waste processing facilities.

9200.6400 INFORMATION REQUIRED ON GRANT APPLICATIONS

This part describes the information that must be provided by the grant applicant. In order to conduct a meaningful review and evaluation of each project proposal, the Board must have an adequate level of information about the applicant and the proposed facility. Much of this information is required to satisfy requirements set out at Minn. Stat. §115A.51 -.54 (1984).

The specific justification for each type of information required is set out below.

9200.6400(A)

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

9200.6400(B)

It is necessary to identify each affected political subdivision so that they may be contacted to determine the degree to which they support the proposed waste processing facility. Such support is essential for a successful project.

9200.6400(C)

These resolutions are necessary to meet the statutory requirements specified in Minn. Stat. §115A.54, subd.2a(1) (Supp. 1985) and Minn. Stat. §115A.54 subd. 3 (1984).

9200.6400 (D)

This information is required so that the Board can evaluate

the qualifications of the project manager, and contact the manager during the project evaluation process.

9200.6400(E)

As stated above, this information is needed during the evaluation process. This information is not required unless it is available at the time the application is submitted.

9200.6400(F)

An estimate of the total capital cost of the facility is needed to calculate the amount of grant funds for which the project is potentially eligible.

9200.6400(g)

An estimate of the total grant eligible cost is necessary as this is the number that will be used to determine the final grant amount.

9200.6400(h)

The amount of grant funding requested is necessary because this amount will be considered by the Board in making the grant award.

9200.6400(i)

An account of the amount and sources of all other funding contributions, including the amount of funds to be contributed by the applicant, is necessary to meet the requirement, specified in

Minn. Stat. §115A.54, subd. 2, that before any grant funds are disbursed the Board must find that full funding of the project is assured.

9200.6400(j)

Information on the type of waste processing facility proposed is necessary to ascertain whether the project is eligible for assistance.

9200.6500 SUPPORTING DOCUMENTATION REQUIRED TO BE SUBMITTED WITH GRANT APPLICATION

This section describes the supporting documentation that must be provided by the applicant. This documentation is necessary to meet the requirements set out in Minn. Stat. §115A.51 (1984).

9200.6500(A)

The submission of a conceptual and technical feasibility report that includes the information required in this part is necessary to aid the Board to find, as required by statute, that the project is conceptually and technically feasible. To make the required finding, the Board needs to know what is proposed to be built, how it will be implemented and operated, how the technology will be obtained, and what waste will be processed.

9200.6500(B)

The submission of a financial plan that includes the

information required in this part is necessary to aid the Board to find, as required by statute, that the operating revenues of the project will be sufficient to cover the costs over the projected life of the project. The Board is required to consider the availability and security of sources of solid waste and of markets for recovered resources, and federal state and local financial assistance.

9200.6500(C)

The submission of a report on the applicant's need for financial assistance is also necessary to enable to the Board to find, as required by statute, that such assistance is needed. This requirement is found in Minn. Stat. §115A.54, subd.2a(2) (Supp. 1985). That statute requires the Board to consider the applicant's financial capacity and the problems inherent in the waste management situation in the area, particularly transportation distances and limited waste supply and markets for resources recovered. The items required to be in the report required in this portion of the rule will enable the Board to make the required evaluation, and thus are reasonable.

9200.6500(D)

Adequate planning is required for the succesful development and implementation of waste processing facilities. In order to ascertain that an adequate level of planning has been acheived,

it is reasonable to require that applicants submit a comprehensive solid waste management plan prepared pursuant to Minn. Stat. §115A.46 (1984). Further, the Board is specifically authorized to require the completion of such a plan by Minn. Stat. §115A.51 (1984).

It is also reasonable for the Board to require that a comprehensive solid waste management plan have been completed to assure that applicants have considered all viable alternatives to disposal, and that the proposed project is the best alternative.

9200.6500(E)

To adequately assess the technical feasibility of the proposed project, it is reasonable to require that applicants submit preliminary design and engineering/architectural plans for Board review. Requiring the submission of such plans also enables the Board to ascertain that an applicant has a sufficient grasp of what will be required in building and operating the project, and that projected costs are accurate.

9200.6500(F)

Requiring applicants to submit documentation of how waste will be supplied to the proposed facility is reasonable because an adequate waste stream is essential to the success and feasibility of a project.

9200.6500(G)

Information on the markets for recovered resources (materials and energy) is essential to evaluate the financial viability of the project. It is reasonable to require applicants to submit such information with the application because the Board must find that the project is financially feasible.

9200.6500(H)

Many solid waste projects will need to obtain a variety of permits. Obtaining the required permits is essential to successful operation. It is reassonable to require applicants to report on their efforts to obtain permits to enable the Board to get a sense of whether the proposed project will be permitted, what conditions will be imposed on its operation, and when the permits will finally be issued. It is also reasonable to require applicants to report on the status of required permits to alert applicants to permitting requirements.

9200.6500(I)

It is reasonable to require applicants to submit a time frame for project development in order to give the Board a sense of when a proposed project will be operating, and whether that projected date is realistic.

9200.6500(J)

It is reasonable to require applicants to submit the

required resolutions with the application to ensure that the applicants are serious about proceeding with the proposed project, and are committed to it.

9200.6500(K)

If an applicant is requesting priority pursuant to Minn. Stat. §115A.49 (1984), it is reasonable to require that applicant to submit documentation of the existence of those conditions set out in the statute.

9200.6500(L)

If an applicant who has received funding under the demonstration program is requesting additional funding, it is reasonable to require the applicant to submit the information required in this part. Because a grant or loan under the demonstration program was given under the condition that full funding of the project was assured, it is necessary that the applicant for more funding document why that condition no longer exists.

9200.6500(M)

The documentation required under this part of the rule is reasonable because such information is necessary to enable the Board to fund a project serving a single county. To fund such a project, the Board must find that cooperation with other jurisdictions is not needed or not feasible. Minn. Stat. §115A.54, subd. 2a (Supp. 1985).

9200.6600 REVIEW AND EVALUATION OF APPLICATIONS

This part of the rule sets out the procedures that will be followed by the Board when evaluating applications, and the standards that must be met for an applicant to receive funding.

9200.6600 Subp. 1

This part delegates the responsibility of determining whether an application is complete and whether the applicant, the proposed project, and the costs listed in the application are eligible to the chair of the Board. It is reasonable for this duty to be delegated to the chair because these initial determinations are prefunctory.

9200.6600 Subp. 2

This part sets out times within which applicants will receive notice of the chair's initial decision on the application, and within which they must respond to any finding of deficiency. The time period allotted for the initial review-- 14 days-- is reasonable in that it gives adequate time for the review yet will not delay decision on the project. The time period for response to any finding of deficiency-- also 14 days-- is reasonable because the applicant has had notice as to what must be submitted and should be able to correct omissions without further delay.

9200.6600 Subp. 3

This part requires the Board to make a determination as to whether Board assistance is necessary before proceeding to evaluate the merits of the project. This is a reasonable first step in the process of evaluating applications in that there is no point in reviewing the merits of a project only to find that state assistance is not necessary.

9200.6600 Subp. 4

After the Board has determined that the applicant needs state assistance to complete the project proposed, the Board will proceed to evaluate the project with regard to the factors set out in this subpart. The factors set out are derived from statutory requirements for funding projects under the Capital Assistance program. It is reasonable to set out these factors in the rule to put applicants on notice as to what the Board must determine in order to give the applicant a grant.

9200.6600 Subp. 5

This part sets notifies applicants that, if the factors set out in Subpart 4 are met, the Board will move to determine the amount of the grant. If the requirements are not met, this part informs applicants that the Board will provide the applicants with a statement of the reasons a grant was not given. Providing this notice is reasonable because it sets out the basis of the

Board's decision and allows applicants to evaluate the reasonableness of that decision.

9200.6600 Subp. 6

This part notes that the Board will consider recommendations provided by other agencies in making its decision to fund a project. This is required by statute. It is also reasonable because the success of a project will depend in part on whether it is supported by regulatory and planning agencies having jurisdiction over it.

9200.6700 LIMITATIONS

9200.6700 Subp. 1

This part references the statutory limits on the amount of grants awarded under this program.

9200.6700 Subp. 2

The limits set out in this part are reasonable to conserve state funds and to prevent applicants from over-financing projects.

In this section, grants are limited to that amount necessary to complete a project considering the funds presently available to the applicant. This is reasonable in that it does not limit Board funds based on the mere potential that an applicant will obtain funds from another source. It is also

reasonable in that it does not allow an applicant to obtain state funds for portions of the project which could be funded by the applicant through other means.

This section also notes that the grant will not cover tasks performed before the grant is awarded or after the grant agreement has expired. This is reasonable because it discourages applicants from making committments before funding is assured, and limits state responsibility to the funding of just those costs incurred during the construction of the project.

9200.6800 GRANT AGREEMENT

This part sets out certain requirements for the agreements that will be executed with grant recipients. These requirements are included to ensure that the grant recipient is aware of the restrictions that will be placed on the grant money received.

9200.6800 Subp. 1(A)

This requirement is reasonable because it contractually obligates grant recipients to comply with the resolutions required by statute. A contractual obligation is easier to enforce.

9200.6800 Subp. 1(B)

This requirement is reasonable because it contractually obligates grant recipients to build and operate the project that

was proposed to the Board in the application submitted to the Board. Incorporating the application will aid the Board in determining whether the applicant has fulfilled its obligation or whether the applicant has deviated from what was intended.

9200.6800 Subp. 1(C)

This requirement is ministerial.

9200.6800 Subp. 1(D)

This requirement re-enforces the obligation of recipients to see that projects are completed, and to again emphasize that no further state funding will be available. This limit is reasonable in that it re-enforces statutory restrictions.

9200.6800 Subp. 1(E)

This requirement is reasonable in that it puts applicants on notice that the Board will not provide funds beyond the amount given in the grant.

9200.6800 Subp. 1(F)

This requirement is necessary to allow the Board to fulfill a duty, given by statute, to transfer the knowledge and experience gained from projects to other communities in the state. It is reasonable to require applicants to submit reports on the developmental and operation history of projects because applicants have the best access to the information needed.

9200.6800 Subp. 1(G)

This requirement is reasonable because it is the intent of the legislature that the projects funded under this program be publically owned and operated. Repayment or partial repayment of the grant money is reasonable to encourage recipients to maintain public ownership, while not entirely forbidding the sale to private entities. The requirement that the sale agreement transfer the requirement that reports on the project be submitted is reasonable in that it is necessary to enable the Board to fulfill its statutory duties.

9200.6800 Subp. 1(H)

This requirement is reasonable in that it alerts grant recipients to the fact that there may be constitutional or statutory restrictions on the sale of facilities funded under this progam to private enterprises.

9200.6800 Subp. 2

This part is reasonable because it notifies recipients that the grant will be rescinded if the agreement is not complied with, but that it may be possible to obtain Board approval to deviate from the original proposal if the original objectives of the project will be fulfilled. Allowing minor variations in the projects funded under the program is reasonable given the complexity and novelty of solid waste management projects.

9200.6800 Subp. 3

This section is reasonable because it alerts recipients to the fact that the grant agreement will control the disbursement of funds.

Dated: May 30, 1986



Chairman, Waste Management Board

ATTACHMENT I

RECEIVED
JUL 3 1986
WASTE MANAGEMENT BOARD

DORSEY & WHITNEY
A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

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30 RUE LA BOËTIE
75008 PARIS, FRANCE
011-33 (1) 40-59-13-65
011-33 (1) 45-62-32-50

July 2, 1986

Mr. Ed Welsch
Waste Management Board
123 Thorson Building
7323 58th Avenue North
Crystal, Minnesota 55428

Re: Comments to the Proposed Rules Governing the Waste Management Board's Capital Assistance Program.

Dear Mr. Welsch:

Our law firm has been retained as bond counsel and environmental counsel for several proposed out-state resource recovery projects. Our clients are or will be seeking capital assistance from the Waste Management Board (WMB) for their projects. It is therefore with some interest that I comment on the proposed amendments to the existing emergency rules governing the Capital Assistance Program.

The WMB's Capital Assistance Program was established to encourage local communities to develop sensible and prudent alternatives for the disposal of solid waste. Minn. Stat. § 115A.49. The program identifies at least six alternative types of projects which are appropriate for capital funding and assistance. Minn. Rules § 9200.6300 Subp 2. Further, the rules identify eligible and ineligible costs for those projects. Minn. Rules § 9200.6300 subps. 3 and 4.

My comments are specifically related to the definition of costs and the limitations proposed by the WMB rules. In particular, the Legislature appropriated funding for the "capital cost" of innovative solid waste projects (meaning processing facilities, together with any transfer stations, transmission facilities, and other related and appurtenant facilities primarily serving the processing facility) Minn. Stat. § 115A.54 Subd. 2(a).

It seems from my reading of the WMB rules, that the Board's definition of eligible costs is too limiting inasmuch as it narrows the scope of what one normally considers capital costs. As a practical matter, I would amend the WMB's proposed language in Minn. Rule § 9200.6300 Subp. 3 by deleting the words "are limited to" on line 9 and substituting the term "includes" on the same line. I believe this more accurately conforms with the legislative directive. The new language would define eligible costs as including the costs of land, waste processing equipment, etc. This change would provide a mechanism for funding those capital costs not otherwise considered by the narrow definition of eligible costs but essential to the success of an eligible project.

Similarly, the limitations identified in Minn. Rules § 9200.6300 Subp. 2 preclude the use of grant funds for any costs associated with tasks performed before the grant award or after the expiration of the grant agreement. Again, this provision is unnecessarily restrictive. Capital expenditures incurred prior to the grant award but directly related to the project should be eligble for assistance. The ultimate objective in implementing this program is to stimulate and encourage the acquisition and betterment of waste processing facilities. Minn. Stat. § 115A.54 Subd. 1. I would suggest the following changes to the proposed language:

> Section 9200.6700 LIMITATION
>
> Subp.2. * * * Grants should not be awarded to cover any costs associated with tasks performed before the grant award or after expiration of the grant term, except for those eligible capital costs directly related or necessary for implementing the grant project.

I would welcome an opportunity to discuss these changes with the WMB staff and I further trust that the full Board will consider these comments in their adoption of the final rules for the Capital Assistance Program.

Very truly yours,

Mark R. Kaster

Mark R. Kaster

MRK/aj
cc: C.D. Mahoney

ADMIN 1000 (Rev. 1/78)

STATE OF MINNESOTA

DEPARTMENT Waste Management Board

Office Memorandum

TO : Waste Management Board Members

DATE: July 11, 1986

FROM : Ted Troolin

Ted Troolin

PHONE:

SUBJECT: SOLID WASTE PROCESSING FACILITY CAPITAL ASSISTANCE PROGRAM RULES

Background

The 1985 amendments to the Waste Management Act of 1980 authorize the Board to administer a $15 million solid waste processing facility capital assistance program (CAP). Since its inception in July, 1985, the CAP program has been administered using emergency rules. In order to continue to administer the program, these emergency rules must be made permanent.

In January, 1986 the Board directed the staff to undertake the process of making the rules permanent. Since then, draft final rules have been prepared and published, and public comments on those rules solicited.

At the July 24 Board meeting, the Board is scheduled to discuss the CAP program rules, consider any amendments suggested in the rules development process, and adopt final rules.

Public Comments on Rules

On June 2, 1986 the Board published the proposed CAP rules in the State Register (10 S.R.2405) and solicited public comment on those rules. Comments were received from one party, Mr. Mark R. Kaster of the law firm of Dorsey & Whitney. Dorsey & Whitney represents several potential program applicants.

Mr. Kaster's comments concerned the Board's definition of eligible costs and when costs incurred in a project become eligible for assistance.

Comment #1:

"It seems from my reading of the WMB rules, that the Board's definition of eligible costs is too limiting inasmuch as it narrows the scope of what one normally considers capital costs. As a practical matter, I would amend the WMB's proposed language in Minn. Rule §9200.6300 Subp. 3 by deleting the words "are limited to" on line 9 and substituting the term "includes" on the same line. I believe this more accurately conforms with the legislative directive. The new language would define eligible costs as including the costs of land, waste processing equipment, etc. This change

would provide a mechanism for funding those capital costs not otherwise considered by the narrow definition of eligible costs but essential to the success of an eligible project."

Response:

The Board's definition of eligible costs has been developed to concentrate on providing assistance in funding "hard costs" incurred in facility development such as waste processing equipment, structures, land, and final design and engineering. Funding has been directed specifically at "bricks and mortar" types of costs in order to provide a clear line of demarcation concerning what costs are and are not eligible and to direct as much funding as possible towards actual facility construction. The words "are limited to" are used to clearly indicate to project developers what costs are and are not eligible for assistance.

Comment #2:

"Similarly, the limitations identified in Minn. Rules § 9200.6300 Subp. 2 preclude the use of grant funds for any costs associated with tasks performed before the grant award or after the expiration of the grant agreement. Again, this provision is unnecessarily restrictive. Capital expenditures incurred prior to the grant award but directly related to the project should be eligible for assistance. The ultimate objective in implementing this program is to stimulate and encourage the acquisition and betterment of waste processing facilities. Minn. Stat. § 115A.54 Subd. 1. I would suggest the following changes to the proposed language:

Section 9200.6700 LIMITATION

Subp. 2. * * * Grants should not be awarded to cover any costs associated with tasks performed before the grant award or after expiration of the grant term except for those eligible capital costs directly related or necessary for implementing the grant project."

Response:

Limiting grant-eligible costs to a specific period starting with the grant award and ending with the expiration of the grant agreement is reasonable because such a limitation discourages applicants from making commitments before funding is assured, and limits state responsibility to the funding of just those costs incurred during the construction of the project. The limitation also provides the Board with a clear line of demarcation concerning when costs become eligible.

In addition, limiting the eligible costs to a period starting with the grant award is in keeping with the directive of the Waste Management Act (Minn. Stat.§ 115A.54 Subd. 2a) that only applicants that demonstrate that the project is not financially feasible without the WMB assistance are eligible for assistance.

If a project begins incurring "hard costs" prior to the WMB award, it can be construed as indicating that the applicant has made the decision to proceed with the project with or without WMB assistance, and may not need the WMB assistance. This would render the applicant ineligible for assistance.

Attached are the letter of comments and the rules as proposed. Board members with questions or concerns about these rules are encouraged to contact Ed Welsch or myself.

STATE OF MINNESOTA
WASTE MANAGEMENT BOARD
123 THORSON COMMUNITY CENTER
7323 58TH AVENUE NORTH
CRYSTAL, MINNESOTA 55428

METRO AREA (612) 536-0816
MN TOLL FREE 1-800-652-9747

July 15, 1986

Mark R. Kaster
Dorsey & Whitney
2200 First Bank Place East
Minneapolis, MN 55402

SUBJECT: WMB Solid Waste Capital Assistance Program Rules

Dear Mr. Kaster:

Only July 24, 1986 the Waste Management Board is scheduled to discuss and adopt rules governing the Solid Waste Processing Facility Capital Assistance Program. Enclosed is an agenda for the Board meeting, which will be held in Rochester. Also enclosed is the WMB staff memo to the Board on the action.

The Board will entertain public testimony on the proposed rules. You are encouraged to attend the Rochester meeting if you wish to discuss your suggestions with the Board.

Sincerely,

Ted Troolin

Ted Troolin
Waste Management Planner

TT:js:01

Encl: July 24 WMB Meeting Agenda
July 11 WMB staff memo

STATE OF MINNESOTA

WASTE MANAGEMENT BOARD

In the Matter of the Adoption
of the Proposed Rules of the
Waste Management Board Governing
the Solid Waste Processing Facility
Capital Assistance Program

STATEMENT OF
COMPLIANCE WITH
RULEMAKING
PROCEDURES

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

Ann E. Cohen

ANN E. COHEN
Special Assistant
Attorney General

Dated: August 5, 1986

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

August 5, 1986

RECEIVED
AUG 06 1986
ATTORNEY GENERAL
ADMINISTRATIVE AGENCIES

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

RE: Proposed Adoption of Rules of the Waste Management Board Governing the Solid Waste Processing Facility Capital Assistance Program

Dear Mr. Miles:

On July 24, 1986, the Waste Management Board adopted rules governing the Solid Waste Processing Facility Capital Assistance Program. Enclosed for your review are the following:

1. Rules as adopted (original and three copies).
2. Order Adopting Rules.
3. Certificate of Board's Authorizing Resolution Adopting Rules.
4. Order for Publication of Notice of Intent to Adopt Rules and Proposed Rules.
5. Certificate of Board's Authorizing Resolution ordering publication of Notice of Intent and Proposed Rules.
6. Notice of Intent to Adopt Rules and Rules as Proposed, 10 State Register 2405, June 2, 1986.
7. Written comment received during the comment period from Mr. Mark R. Kaster, Esq.
8. Affidavit of Mailing; Notice of Intent to Adopt Rules and Proposed Rules as mailed.
9. Mailing List Certificate and mailing list.
10. Findings of Fact and Conclusions.
11. Statement of Compliance with Rulemaking Procedures.

12. Statement of Need and Reasonableness.

Please note that there were no modifications to the rules as published, and that no-one requested to be notified of the submission of the rules to the Attorney General.

Sincerely,

Ann E. Cohen

Ann E. Cohen
Special Assistant
Attorney General