

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

DEPARTMENT: Office of the Attorney General

STATE OF MINNESOTA

OFFICE MEMORANDUM

DATE: September 5, 1990

TO: THOMAS OSDOBA
Waste Management Grants

FROM: MARTHA J. CASSERLY
Special Assistant
Attorney General

PHONE: 296-6839

SUBJECT: In the Matter of the Adopted Rule Relating to Grant Programs

The above-referenced rule has been approved as to its legality by the Attorney General on September 4, 1990.

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

Also enclosed are any petitions, requests, submissions or comments along with any extra copies of documents which you submitted to the Attorney General.

Your next step is to arrange for publication of the Notice of Adoption in the State Register. In a day or two, you should receive from the Revisor's Office three copies of the notice of adoption of your rule. You should submit two copies of the Notice of Adoption to the State Register for publication. A permanent rule without a hearing does not become effective until five days after a notice of adoption is published in the State Register in accordance with Minn. Stat. § 14.27. An emergency rule becomes effective five working days after approval by the Attorney General; however, the agency must publish a notice in the State Register in accordance with Minn. Stat. § 14.34.

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

MJC:sc

cc: Lisa Tiegel
William Brown, Chief Judge
MaryAnn Hruby

Office of Waste Management

Adopted Permanent Rules Relating to Grant Programs

Rules as Adopted

9210.0100 DEFINITIONS.

[For text of subpart 1, see M.R.]

Subp. 2. [See Repealer.]

Subp. 3. [See Repealer.]

[For text of subps 4 and 5, see M.R.]

Subp. 5a. **Director.** "Director" means the director of the Minnesota Office of Waste Management.

[For text of subps 6 and 7, see M.R.]

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

[For text of subp 9, see M.R.]

Subp. 9a. **Office.** "Office" means the Minnesota Office of Waste Management established in Minnesota Statutes, section 115A.055.

[For text of subps 10 to 26, see M.R.]

9210.0110 SOLID WASTE PROCESSING FACILITIES CAPITAL ASSISTANCE PROGRAM.

Parts 9210.0100 to 9210.0180 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 director may award grants for capital costs of solid waste processing facilities.

9210.0120 GRANT APPLICATION PROCEDURES.

Subpart 1. [See Repealer.]

Subp. 2. [See Repealer.]

Subp. 3. [See Repealer.]

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Subp. 4. [See Repealer.]

Subp. 5. **Notification by director.** To initiate the process for awarding grants under the capital assistance program, the director shall publish a notice in the State Register. The notice shall advise eligible applicants of the availability of grant funds, inform eligible applicants of the procedure and projected schedule for the application process, and establish a date by which a preliminary grant application must be received by the director.

Subp. 6. **Preliminary grant applications.** Eligible applicants may submit to the director preliminary grant applications containing the information in part 9210.0131. Applications received by the director after the deadline in the State Register notice shall not be considered for funding and shall be returned to the applicants.

Subp. 7. **Invitation by director.** After the date established in the State Register notice, the director shall review the preliminary grant applications. Using the criteria in part 9210.0132, the director shall notify each applicant, in writing, as to whether it is invited to submit a final grant application. Only applicants so invited remain eligible for a grant. The director's invitation shall specify a date by which the final grant application must be received by the office.

Subp. 8. **Applications accepted.** Eligible applicants that have been invited to submit a final grant application may submit an application to the office. Final grant applications must contain the information in part 9210.0140. Final grant applications received by the office after the deadline in the director's invitation shall not be considered for funding and shall be returned to the applicant.

9210.0130 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, and sanitary districts as defined in Minnesota

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Statutes, section 115A.03, subdivision 28b.

Subp. 2. **Eligible project.** For purposes of parts 9210.0100 to 9210.0180, "eligible project" means a waste processing facility that includes resource recovery, together with transfer stations, transmission facilities, or other related and appurtenant facilities primarily serving the waste processing facility. A transfer station that will initially transfer waste to a landfill is an eligible project if the transfer station is part of a resource recovery project proposed in an approved comprehensive solid waste management plan. Examples of eligible projects include waste to energy; materials recovery; chemical, physical, or biological modifications; processing of special waste streams including household hazardous waste; 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 9210.0100 to 9210.0180 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; landscaping; on-site roads and parking; structures necessary to concentrate and temporarily store solid waste before transportation to a waste processing facility; trailers, containers, and rolloff 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 costs related to solid waste disposal facilities and equipment; structures for housing and maintenance of rolling stock; collection equipment including drop boxes not located on the waste processing facility site; costs related to resource recovery studies, feasibility analyses, or preliminary design and engineering/architectural plans; and costs of leasing

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equipment.

9210.0131 PRELIMINARY GRANT APPLICATION.

Subpart 1. **Preliminary grant application.** A preliminary grant application must include the following information:

A. the name of each applicant and the name and qualifications of the project manager, a 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 a description of the waste stream for the facility;

B. the status of the comprehensive solid waste management plan for each county to be affected by the proposed project, and an explanation of how the proposed project is consistent with the goals established by those plans;

C. information demonstrating:

(1) whether and to what extent the natural geologic and soil conditions of the counties that would be affected by the proposed project are unsuitable for land disposal of solid waste;

(2) whether and to what extent the area to benefit from the project has existing solid waste disposal capacity of less than five years; and

(3) whether the project serves more than one local government unit and, for projects serving eligible jurisdictions in only a single county, the extent to which cooperation with jurisdictions in other counties is not feasible;

D. a preliminary financial plan that includes:

(1) estimated total capital costs and total grant eligible costs for the project;

(2) estimated annual operating and maintenance costs, including disposal costs of residuals and anticipated equipment replacement costs; and

(3) anticipated sources of funding for the

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project, including projected tipping fees and revenues from recovered materials and energy;

E. a resolution from each political subdivision participating in the project that demonstrates that, if a grant is awarded, it will implement the project, provide necessary local financing, and accept and exercise the governmental powers necessary to develop and operate the project;

F. a description of the type and quantity of materials to be recovered and the existing and potential markets for those materials; and

G. an implementation plan for the proposed project that specifies the anticipated completion dates for environmental review, Pollution Control Agency permitting, facility construction, and the anticipated date of operation.

Subp. 2. **Completeness.** Applicants shall be notified by the director if their preliminary grant applications are not complete and shall be given 30 days from the notification in which to complete their applications. Extensions shall be granted if requested in a timely manner and good cause exists for the extension. Applications that are not completed and received by the director within ~~this 30-day deadline~~ the time allowed shall be considered ineligible for funding.

9210.0132 INVITATION TO SUBMIT FINAL GRANT APPLICATION.

Subpart 1. **Criteria.** The director shall evaluate preliminary grant applications to determine which eligible projects will best assist the state in achieving its solid waste management goals. The director shall base this evaluation on the following factors:

A. the consistency of the proposed project with the comprehensive solid waste management plan of each affected county;

B. the consistency of the proposed project with the legislative priorities in Minnesota Statutes, sections 115A.02 and 115A.49;

C. the consistency of the proposed project with

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regional solid waste management needs;

D. the extent to which the applicant is prepared to implement the proposed project upon receipt of the grant award; and

E. ~~the extent to which the grant request for the proposed project represents an effective use of grant funds, given total program resources; and~~

F. for projects serving eligible jurisdictions in only a single county, the extent to which cooperation with jurisdictions in other counties to develop the proposed project is not feasible.

Subp. 2. **Invitation to submit final grant application.** The director shall invite the eligible applicants that the director determines best meet the criteria in subpart 1 to submit final grant applications. If the director determines that no application will provide sufficient assistance to the state in achieving its solid waste management goals, the director may decide not to award any grant. The director may then reinitiate the process for awarding grants or loans by publishing a notice under part 9210.0120, subpart 5.

9210.0140 **FINAL GRANT APPLICATION.**

Subpart 1. **Final grant applications.** Final grant applications must include the following information as required in the application forms supplied by the director:

[For text of items A and B, see M.R.]

C. resolutions from each applicant in conformance with Minnesota Statutes, section 115A.54, subdivision 3;

[For text of items D to I, see M.R.]

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; processing of special waste stream including household hazardous waste; or waste incineration with resource recovery.

Subp. 2. **Project changes.** Before submitting its final

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grant application, an eligible applicant may change the components of the proposed project as described in the preliminary grant application. If, however, those changes would result in a project that the director determines no longer best meets the criteria in part 9210.0132, subpart 1, the director shall remove the project from further consideration.

9210.0150 SUPPORTING DOCUMENTATION REQUIRED TO BE SUBMITTED WITH FINAL GRANT APPLICATION.

Applicants shall submit the following supporting documentation with their final grant application:

A. A copy of the original preliminary grant application submitted under part 9210.0131.

B. A financial plan that contains:

[For text of subitem (1), see M.R.]

(2) annual operating and maintenance costs, including disposal costs of residuals and anticipated equipment replacement costs;

[For text of subitems (3) and (4), see M.R.]

C. A report demonstrating that the project is not financially prudent 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:

[For text of subitems (1) and (2), see M.R.]

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

[For text of subitems (4) to (8), see M.R.]

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

D. For each county affected by the project, a comprehensive solid waste management plan, developed under Minnesota Statutes, section 115A.46 and approved by the director.

E. Preliminary design and engineering/architectural

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plans and equipment specifications of the proposed waste processing facility, and a description of the management and staffing plans for the proposed project.

F. Documentation explaining how waste supplies will be committed to the project for the life of the project and that the applicant has mechanisms to commit the wastes.

[For text of items G to I, see M.R.]

J. Resolutions that comply with Minnesota Statutes, section 115A.54, subdivision 3.

9210.0160 REVIEW AND EVALUATION OF FINAL GRANT APPLICATIONS.

Subpart 1. **Determination of eligibility and completeness.** Upon receipt of a final grant application, the director shall confirm the eligibility of the applicant and the eligibility of the project, and shall determine the eligibility of the costs identified in the final grant application and the completeness of the final grant application.

Subp. 2. **Notice of determination of eligibility and completeness.** After receiving the final grant application, the director shall notify the applicant of the director's determinations of eligibility and completeness. If the director determines that the applicant or the project is ineligible, the director shall reject the final grant application, return it to the applicant, and notify the applicant of the reasons for the rejection. If the director determines that any project costs are ineligible or that the final grant application is incomplete, the director shall notify the applicant of the ineligible costs or shall identify the portions of the final grant application that are incomplete. The applicant has 30 days after receiving the notice to correct any inadequacies identified by the director. If the inadequacies are corrected and the corrected application is received by the director within the time allowed, the final grant application will be further considered.

Subp. 3. [See Repealer.]

Subp. 4. **Evaluation of final grant applications.** If the

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director determines that the final grant application is eligible and complete, the director shall evaluate the final grant application to determine whether the final grant application demonstrates:

[For text of item A, see M.R.]

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

[For text of items C to E, see M.R.]

F. that the project is not financially prudent without office 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. **Award of grants.** If the director determines that the final grant application satisfies the requirements of subpart 4, the director shall determine the amount of the grant award and the applicant shall be notified. If the director determines that the final grant application fails to satisfy the requirements of subpart 4, the director shall reject the final grant application and shall return the final grant application to the applicant, together with a statement of the reasons for the determination. An applicant that does not receive a grant award may resubmit a preliminary grant application upon future notice by the director under part 9210.0120, subpart 5.

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

9210.0170 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, unless the project is a recycling

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project or a project to compost or cocompost waste. A recycling project or a project to compost or cocompost waste may receive grant assistance up to 50 percent of the capital cost of the project or $2,000,000, whichever is less.

Subp. 1a. **Reduced grant award.** The director may award a grant for less than the maximum grant amount. The director shall ask an applicant to document the impacts of reduced grant assistance before reducing the amount of a grant award. The director shall only reduce the amount of a grant award under the following conditions:

A. program resources are insufficient to provide full assistance to all applicants that are awarded grants by the director;

B. the cost figures provided in the final grant application are significantly higher than the cost figures in the preliminary grant application without a change in the project scope approved by the director under part 9210.0140, subpart 2, to justify the higher cost; or

C. the director determines that the applicant has not adequately demonstrated financial need for the full grant amount.

Subp. 2. **Limitations on grant award.** The amount of the director'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 execution of the grant agreement or after the expiration of the grant agreement.

Subp. 3. **Limitations on disbursal of funds.** No grant funds shall be disbursed until the director has:

A. determined the total estimated cost of the project;

B. ascertained that financing of the project cost is assured by the recipient; and

C. received commitments from the recipient to implement the project.

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9210.0180 GRANT AGREEMENT.

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

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

B. incorporate by reference the final grant application submitted to the director under part 9210.0120;

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

[For text of item D, see M.R.]

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

F. require that the recipient provide periodic written reports to the director 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;

[For text of items G and H, see M.R.]

Subp. 2. **Rescission of grant.** If a project is not completed and operational according to 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 director determines that an amendment to the grant agreement is justified. The director shall agree to an amendment if it will allow the original objectives of the project to be accomplished.

Subp. 3. **Disbursement.** The director shall disburse grants according to the payment schedule in the grant agreement.

REPEALER. Minnesota Rules, parts 9210.0100, subparts 2 and 3; 9210.0120, subparts 1 to 4; and 9210.0160, subpart 3, are repealed.

Approved
by Revisor _____

APPROVED AS TO FORM AND LEGALITY

September 4 19 90

HUBERT H. HUMPHREY, III
ATTORNEY GENERAL

BY M T Casserly

SPECIAL ASSISTANT ATTORNEY GENERAL

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
SEP 04 1990

Joan Anderson Growe

Secretary of State

MJC

RULE REVIEW CHECKLIST

File No. 1729
DATE RECEIVED 8-23-90
REVIEW DATE 9-4-90
DUE DATE 9-6-90
(DIS)APPROVED 9-4-90 mjc
WITHDRAWN

Docket No. 05.0009.0835
ADOPTED W/O HEARING
EMERGENCY RULE
TO REVISOR ON 8-24-90
REVISOR (DIS)APPROVED 8/30/90
FILED W/SEC. OF STATE 9-4-90
RETURNED TO AGENCY

✓ Rule as adopted (4 copies)

✓ Notice to Solicit ~~Outside~~ Information/Opinion (if applicable)

✓ Date published in State Register May 14, 1990

Comments

Board's Authorizing Resolution

Date adopted

✓ Proposed Rule

✓ Revisor's Certificate

✓ Notice of Intent to Adopt Rule

115A.06 subd 2 Statutory Authority

Small Business Statement

Expenditure of public money statement

undated Signature

✓ Statement of Need and Reasonableness (if applicable)

NA Small Business Statement

NA Fees - § 16A.128

✓ Affidavit of Mailing Notice of Intent to Adopt Rule

May 31, 1990 Dated (30)/25 days before adoption

Notice attached indicates it is attached

✓ Copy of rule or summary attached

✓ Publication in State Register

June 4, 1990 Date (30)/25 days before adoption

✓ 180-day deadline from:

NA Effective date of law requiring rule

✓ (14.12) (both rules) amendments
end of comment period (§ 14.26) (rules without hearing)

effective date of statutory authority (§ 14.29) (emergency rules)

~~Resolution Adopting~~

~~Date adopted~~

✓ Findings of Fact, Conclusions & Order Adopting

8-9-90 Date

✓ Declaration of Attorney

Lisa Tiezel Name of SAAG representing agency

Notice of ~~Submission~~ to ~~Attorney~~ General (if applicable)

~~Affidavit of Mailing Notice to Attorney General~~ (if applicable)

STATE OF MINNESOTA
OFFICE OF WASTE MANAGEMENT

In the Matter of the Proposed Rule Amendments Governing the Solid Waste Processing Facility Capital Assistance Program, Minn. Rules Parts 9210.0100 to 9210.0180

STATEMENT OF NEED AND REASONABLENESS

I. INTRODUCTION

This program was originally created under the 1984 amendments to the Waste Management Act of 1980 as the Minnesota Solid Waste Processing Facility Capital Assistance Program. The legislature determined that a program of capital assistance to political subdivisions was necessary to assist the development of solid waste processing facilities necessary to properly manage solid waste, and to conserve and protect the natural resources of the state and the health, safety, and welfare of its citizens. Minn. Stat. §115A.54, subd. 1 (1988). The Minnesota Waste Management Board (Board) was authorized under Minn. Stat. §115A.54, subd. 2 (1988) to provide technical and financial assistance for the acquisition and betterment of solid waste processing facilities.

The Waste Management Board promulgated Minn. Rules pts. 9200.6000 to 9200.6800 (1986) to implement the program by establishing the substantive criteria and procedural conditions under which the Board awarded grants. The rules were non-

controversial and were adopted without a public hearing, following review by the Board's Solid Waste Management Advisory Council.

In 1989, the legislature created the Minnesota Office of Waste Management (Office) to manage the solid waste activities of the state, including this program. The Office now proposes to amend the program rules.

II. STATEMENT OF THE OFFICE'S STATUTORY AUTHORITY

The Office's authority to adopt the rules is set forth in Minn. Stat. §115A.06, subd. 2 (1988), which provides:

> Subd. 2. [RULES.] Unless otherwise provided, the board [office] shall promulgate rules in accordance with chapter 15 to govern its activities and implement sections 115A.01 to 115A.72.

Under this statute the Office has the necessary statutory authority to adopt the proposed rule amendments.

III. STATEMENT OF NEED

Minn. Stat. ch. 14 (1988) requires the Office to make an affirmative presentation of facts establishing the need for and reasonableness of the rule amendments as proposed. In general terms, this means that the Office must set forth the reasons for

its proposal, and the reasons must not be arbitrary or capricious. However, to the extent that need and reasonableness are separate, need has come to mean that a problem exists that requires administrative attention, and reasonableness means that the solution proposed by the Office is appropriate. The need for the proposed rule amendments is discussed below.

The rules governing the Solid Waste Processing Facility Capital Assistance Program (CAP) were promulgated to establish a mechanism to ensure the orderly administration of the program. The Office has administered the program on a first-come, first-serve basis, reviewing and awarding grants to applicants in the order in which completed applications were received. The Office was able to effectively administer the program because program resources exceeded the total amount of grant funds requested by applicants. As more counties improve existing solid waste management infrastructures and develop new solid waste processing facilities, grant requests will be greater than available resources. These resource limitations require the Office to amend the program rules in order to promote the most effective use of available resources. The Office proposes to amend the program rules to establish a mechanism for evaluating applications against each other and for limiting or reducing the amount of grant awards.

IV. STATEMENT OF REASONABLENESS

The Office is required by Minn. Stat. ch. 14 to make an affirmative presentation of facts establishing the reasonableness of the proposed rule amendments. Reasonableness is the opposite of arbitrariness or capriciousness. It means that there is a rational basis for the Office's proposed action. The reasonableness of the proposed rule amendments is discussed below.

Part 9210.0100 DEFINITIONS

Part 9210.0100 adds two definitions for clarity and consistency. The substitution of Director (Subp. 5a) and Office (Subp. 9a) for Board (Subp. 2) and Chair (Subp. 3) reflects the change in administrative responsibilities for the program.

Part 9210.0120 GRANT APPLICATION PROCEDURES

Part 9210.0120, subparts 5 through 8 replace subparts 1 through 4, establishing a two-stage application process. This process will provide the director with a mechanism for identifying those projects that will best promote the objectives of the program.

Part 9210.0120, subp. 5 specifies that the director initiate the process through a notice in the State Register that includes a projected schedule for the application process and a deadline by which a preliminary grant application must be received by the

director. By providing this notice, the director will assist applicants in planning for project implementation.

Part 9210.0120, subp. 7 states that only those applicants that are invited by the director to submit a final grant application remain eligible for a grant award. By inviting specific applicants to submit final grant applications, the director is reducing the documentation burden for applicants that do not receive grant assistance.

Part 9210.0130 ELIGIBILITY CRITERIA

Part 9210.0130 adds language for clarity. Part 9210.0130, subp. 1 is expanded to include sanitary districts with the authority to regulate solid waste as an eligible applicant for program assistance. This addition reflects the inclusion of sanitary districts as eligible recipients under Minn. Stat. section 115A.50 (1988).

Part 9210.0130, subp. 2 is expanded to incorporate language from Minn. Stat. §115A.54, subd. 2a (h) (1988), which defines the term "project" for a waste processing facility. This subpart is also expanded to clarify the eligibility of a project that consists of a transfer station that will initially transfer waste to a landfill. To be eligible, such a transfer station must be part of a resource recovery project that is proposed in an approved comprehensive solid waste management plan, and that resource recovery facility must be in place within five years. This clarification reflects Minn. Stat. §115A.54, subd. 2a (d) (Supp. 1989). Finally, additional clarification is provided in this

subpart to specify that a proposed project may include processing of household hazardous waste. This clarification eliminates the suggestion that such activity is specifically ineligible under this program.

Part 9210.0130, subp. 4 is revised to eliminate confusion over whether specific types of equipment are eligible costs under the program. The clarification specifies that costs related to collection equipment, including drop boxes not located on the waste processing facility site, and costs related to the lease of equipment are ineligible costs.

Part 9210.0131 PRELIMINARY GRANT APPLICATION

This part describes the information that must be provided by an applicant as part of a preliminary grant application. The Office requires the information specified in this part in order to effectively evaluate the preliminary grant applications. The information specified in this part presently must be included in a grant application submitted under the existing program rules. The specific rationale for each item of the required information is set out below.

Part 9210.0131, subp. 1 (A) requires an applicant to identify each applicant and the name and qualifications of the project manager. An applicant must describe the proposed waste processing facility, the institutional arrangements necessary for project implementation and operation, the method of facility procurement, and the

waste stream for the facility. The Office requires this descriptive information as the minimum level of technical and managerial data necessary to evaluate a proposed project in combination with the other information required in a preliminary grant application.

Part 9210.0131, subp. 1 (B) requires an applicant to demonstrate that a proposed project is consistent with the comprehensive solid waste management plan of each affected county. This requirement ensures that a proposed project is developed as a result of comprehensive planning. The Office requires a description of the status of the plan of each affected county to ensure that each county is undertaking the necessary planning procedures for effective solid waste management.

Part 9210.0131, subp. 1 (C) requires an applicant to demonstrate to what extent the legislative priorities of Minn. Stat. section 115A.49 are satisfied. Limited program resources necessitate that the Office give preference to projects that satisfy these priorities.

Part 9210.0131, subp. 1 (D) requires an applicant to submit a preliminary financial plan that will enable the Office to ascertain whether the estimated costs are realistic. This preliminary financial plan must also document that an applicant has secured necessary financing for all capital costs that would not be paid for with grant funds

and for future operating and maintenance costs. The Office requires this information in order to assess the ability of an applicant to implement a proposed project.

Part 9210.0131, subp. 1 (E) is required so that the Office can ascertain whether the participating political subdivisions are committed to implementing a proposed project, including providing the financing and exercising the governmental powers necessary to develop and operate a proposed project. The Office requires this information to ensure that an applicant will receive the local support necessary to implement a proposed project.

Part 9210.0131, subp. 1 (F) is required so that the Office can ascertain whether a proposed project will include resource recovery, and that markets exist for those recovered materials. The Office requires this information to satisfy Minn. Stat. §115A.54, subd. 2a (E) (Supp. 1989), which specifies that projects without resource recovery are not eligible for assistance, and to determine whether the proposed project is consistent with state and regional solid waste management needs.

Part 9210.0131, subp. 1 (G) requires an applicant to indicate the projected time frame for project implementation, including anticipated completion dates for environmental review, Minnesota Pollution Control Agency permitting, facility construction, and the anticipated date of operation. The Office requires this information to assess the ability

of an applicant to implement a proposed project in a timely manner upon receipt of a grant award.

Part 9210.0131, subp. 2 states that the Office shall determine the completeness of a preliminary grant application and, if necessary, provide an applicant with the opportunity to make changes or additions necessary to complete an application. An applicant will have 30 days from the date of the Office's determination that a preliminary grant application is incomplete to make any changes or additions.

Part 9210.0132 INVITATION TO SUBMIT FINAL GRANT APPLICATION

This part describes the criteria that provide the basis upon which the Office will evaluate preliminary grant applications. The Office will invite those applicants that best meet the criteria set out in this part to submit a final grant application. The rationale for each criterion is set out below.

Part 9210.0132, subp. 1 (A) requires the director to give preference to proposed projects that are consistent with the comprehensive solid waste management plan of each affected county. This criterion promotes the planning process as an integral part of project development.

Part 9210.0132, subp. 1 (B) requires the director to give preference to projects that best meet the legislative priorities Minn. Stat. sections 115A.02 (Supp. 1989) and

115A.49 (1988). Under section 115A.02, projects that process separated materials are given priority over projects that process mixed solid waste. For example, a proposed project for a recycling facility would be given priority over a proposed project for a mixed solid waste incineration facility. For projects that are equal on the basis of the other criteria set out in this part, the Office would give preference to a project that was the most consistent with the priorities in Minn. Stat. sections 115A.02 and 115A.49.

Part 9210.0132, subp. 1 (C) requires the director to consider a proposed project within the context of the solid waste management needs of the region of the state in which the project would be developed. This criterion will assure that grant funding favors projects in regions of the state that have the greatest need for the development of solid waste processing capacity.

Part 9210.0132, subp. 1 (D) requires the director to consider whether an applicant has the ability and intention to implement a proposed project upon the receipt of a grant award. This criterion favors applicants that are further along in their plans to develop and implement a proposed project.

Part 9210.0132, subp. 1 (E) requires the director to consider the impact of a proposed project on the state's ability to fund other projects. Because of the limited program resources, the Office will seek to award grants to projects that will provide the greatest

positive contribution, in terms of the number of counties affected and the amount of local funding leveraged, to meeting state solid waste management goals.

Part 9210.0132, subp. 1 (F) requires the director to consider the extent to which an applicant has attempted to develop a project in cooperation with other counties. For a proposed project that serves only a single county, the director will assess whether an applicant has adequately demonstrated that cooperation with other counties is not feasible. This criterion promotes the development of multi-county projects to the maximum extent practicable and is consistent with the requirements found in Minn. Stat. §115A.54, subd. 2a(f).

Part 9210.0132, subp. 2 provides that the director will invite only those applicants that best meet the criteria set out in subpart 1 to submit final grant applications. Because each criterion establishes a preference based on only a specific element or elements of a proposed project, the Office will balance those preferences to identify those projects that best satisfy the criteria as a whole. This is reasonable because all of the listed criteria establish important measures of the likely success of the proposed project and the consistency of the project with state waste management goals.

Those applicants that would not receive grant assistance will avoid having to prepare the information required as part of a final grant application. In addition, this subpart allows the director not to invite any applicants to submit final grant applications if the

director determines that none of the projects adequately satisfy the criteria set out in this part. Upon such a determination, the director shall reinitiate the process, allowing applicants to improve the proposed projects or to develop projects that would satisfy the criteria. This is reasonable because it will ensure that program funds are not wasted if no projects are found to be worthy of funding.

Part 9210.0140 FINAL GRANT APPLICATION

This part describes the information that must be included in a final grant application. Part 9210.0140, subp. 1 (J) is revised to clarify that an eligible project may include processing of household hazardous waste. In addition, Part 9210.0140, subp. 2 provides that an applicant may change the components of a proposed project as described in a preliminary grant application, provided that such a change would not result in a project inconsistent with the director's determination that the project best meets the criteria set out in Part 9210.0132, subp. 2. This subpart is reasonable because it provides an applicant with flexibility to adjust a proposed project during the application process in response to Office comments or changing circumstances.

Part 9210.0150 SUPPORTING DOCUMENTATION REQUIRED TO BE SUBMITTED WITH FINAL GRANT APPLICATION

This part describes the supporting documentation that must be provided by an applicant to meet the requirements set out in Minn. Stat. §115A.51. Several minor changes are made to this part and are described below.

Part 9210.0150 (A) is changed to require an applicant to provide a copy of an original preliminary grant application submitted under Part 9210.0131 instead of a conceptual and technical feasibility report. This change reflects the establishment of a two-stage application process. The information that would be presented in a conceptual and technical feasibility report is now included in a preliminary grant application.

Part 9210.0150 (B) is expanded to require an applicant to specify anticipated disposal costs of residuals from the facility and anticipated equipment replacement costs. This information is necessary for the director to determine that an applicant has the ability to effectively operate the project and finance all related costs of operation.

Part 9210.0150 (D) is changed to require an applicant to submit an approved comprehensive solid waste management plan for each affected county. This change reflects advancement in county planning; nearly all counties will have approved plans by October 1990. This is reasonable because a county that does not have an approved plan should not receive program assistance to construct a solid waste processing facility that should be the result of considerable planning.

Part 9210.0150 (E) is expanded to require an applicant to provide a description of the management and staffing plans for a proposed project. This description will provide the director with information needed to determine whether an applicant has the authority and ability to ensure that a proposed project is implemented.

Part 9210.0150 (F) is changed to clarify the information necessary for the director to determine that an applicant can provide waste assurance for the life of a proposed project.

Part 9210.0150 (K) and (L) are deleted because this information is required in the preliminary grant application stage of the process.

Part 9210.0150 REVIEW AND EVALUATION OF FINAL GRANT APPLICATIONS

This part governs the process by which the director reviews final grant applications and the conditions that must be satisfied before an applicant will receive a grant award. The changes to this part are primarily for clarity and consistency, as described below.

Part 9210.0160, subp. 1 is changed to make this subpart consistent with the proposed two-stage application process. The director, upon reviewing preliminary grant applications under Part 9210.0132, will determine whether an applicant or a proposed project is eligible for program assistance. Therefore, the director need only confirm that determination during the review of final grant applications. The director will still need to determine the eligibility of the costs identified in a final grant application because an applicant may make changes to a project under Part 9210.0140, subp. 2 after the director's invitation and before submission of a final grant application. The director must also determine the completeness of a final grant application.

Part 9210.0160, subp. 2 is revised for clarity and to provide an applicant with additional time to correct any inadequacies identified by the director during the review of final grant applications. As revised, an applicant will have 30 days rather than 14 days to make such corrections.

Part 9210.0160, subp. 3 is repealed because it represents an unnecessarily duplicative step in the review process. The director shall include the determination of the need for financial assistance as part of the evaluation under Part 9210.0160, subp. 4. That subpart is revised to reflect this simplification in the review process.

Part 9210.0160, subp. 5 is revised for consistency and to specify that an applicant that does not receive a grant award as a result of the director's review of final grant applications may resubmit a preliminary grant application upon future notice by the director. The Office anticipates that nearly every applicant that is invited to submit a final grant application will receive a grant award.

Part 9210.0170 LIMITATIONS

This part sets out the limitations on the amount of a grant award and the actual disbursal of grant funds. The proposed changes are for clarity and to set out conditions in which the director may award a grant for less than the maximum grant eligible amount, as described below.

Part 9210.0170, subp. 1a is added to allow the director to award grants for amounts less than the maximum eligible amount. The conditions in which the director may reduce the amount of a grant award are set out to allow the director to effectively manage the total program resources, to discourage an applicant from misrepresenting costs in a preliminary grant application, and to avoid the use of program resources for projects that do not demonstrate financial need for program assistance.

Part 9210.0170, subp. 2 is revised to specify that a grant will not be awarded to cover costs incurred prior to the execution of a grant agreement rather than prior to the grant award. This change is reasonable because of the delay between the date a grant is awarded and the date a grant agreement is executed. The Office should not provide assistance for costs incurred before the legal conditions of that assistance are set out in a grant agreement.

Part 9210.0170, subp. 3 is revised for clarity.

During the 1990 legislative session, the Minnesota Legislature amended Minn. Stat. §115A.54, subd. 2a (b) and (c) giving the Office authority to establish a higher maximum grant for multi-county projects. For two reasons, the Office has decided not to amend the rules at this time to reflect this higher grant amount. First, given currently available funds, the award of a higher amount to a single project could eliminate the grant program for all other projects. Such an outcome would be

inconsistent with the solid waste management goals and needs of the state as a whole. Second, to the extent the higher amount of funds is intended as a means of promoting intercounty cooperation, the proposed rules already include criterion (Part 9210.0132, subp. 1) that would further this objective.

Part 9210.0180 GRANT AGREEMENT

Part 9210.0180, subparts 1 through 3 are revised for consistency and clarity.

V. SMALL BUSINESS CONSIDERATIONS

Minn. Stat. section 14.115 (1988) requires state agencies proposing rule amendments that affect small businesses to consider the following methods for reducing the impact of the rule amendments on small businesses:

(a) the establishment of less stringent compliance or reporting requirements for small businesses;

(b) the establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses;

(c) the consolidation or simplification of compliance or reporting requirements for small businesses;

(d) the establishment of performance standards for small businesses to replace design or operational standards required in the rule; and

(e) the exemption of small businesses from any or all requirements of the rule.

The statute requires agencies to incorporate into proposed rule amendments any of the methods listed in subdivision 2 "that it finds to be feasible, unless doing so would be contrary to the statutory objectives that are the basis of the proposed rulemaking." Minn. Stat. §14.115, subd. 3 (1988).

The proposed rule amendments revise the criteria and procedures by which the Office provides financial assistance in the form of grants to cities, counties, solid waste management districts, and sanitary districts. The requirements of Minn. Stat. section 14.115 do not apply to these proposed rule amendments because this program does not place any direct regulatory burden on small businesses.

This program does limit the participation of small businesses. Because the funds for this program are obtained through the issuance of state bonds, constitutional limitations exist concerning the use of these funds. Minn. Const. art. XI, section 5. Specifically, a project completed with program assistance must be publicly owned. The existing program rules do not limit the ability of small businesses to participate in the program beyond those constitutional limitations. The proposed rule amendments will not changing these existing limits.

The Office believes that the proposed rule amendments may have some indirect impact on small businesses. The proposed rule amendments promote the development of recycling facilities. These publicly-owned facilities will, in some cases,

compete with private recycling businesses. Efforts to mitigate the impact of this program by reducing or eliminating the preference for recycling projects would contradict the state priorities for solid waste management in Minn. Stat. §115A.02 (b) (Supp. 1989).

The Office also believes that the proposed rule amendments will have some indirect benefits for small businesses. The development of solid waste processing capacity, especially increased recycling capacity, will create new opportunities for small businesses and entrepreneurs to participate in solid waste management activities.

VI. CONCLUSION

Based on the foregoing, the proposed amendments to Minn. Rules pts. 9210.0100 to 9210.0180 are both needed and reasonable.

Dated: June 1, 1990

Michael Robertson
Director

Office of the Revisor of Statutes

Administrative Rules

TITLE: Proposed Permanent Rules Relating to Grant Programs

AGENCY: Office of Waste Management

MINNESOTA RULES: Chapter 9210

The attached rules are approved for
publication in the State Register

Carla M. Riehle
Assistant Revisor

Office of Waste Management

Proposed Permanent Rules Relating to Grant Programs

Rules as Proposed

9210.0100 DEFINITIONS.

[For text of subpart 1, see M.R.]

Subp. 2. [See Repealer.]

Subp. 3. [See Repealer.]

[For text of subps 4 and 5, see M.R.]

Subp. 5a. Director. "Director" means the director of the Minnesota Office of Waste Management.

[For text of subps 6 to 9, see M.R.]

Subp. 9a. Office. "Office" means the Minnesota Office of Waste Management established in Minnesota Statutes, section 115A.055.

[For text of subps 10 to 26, see M.R.]

9210.0110 SOLID WASTE PROCESSING FACILITIES CAPITAL ASSISTANCE PROGRAM.

Parts 9210.0100 to 9210.0180 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 director may award grants for capital costs of solid waste processing facilities.

9210.0120 GRANT APPLICATION PROCEDURES.

Subpart 1. [See Repealer.]

Subp. 2. [See Repealer.]

Subp. 3. [See Repealer.]

Subp. 4. [See Repealer.]

Subp. 5. Notification by director. To initiate the process for awarding grants under the capital assistance program, the director shall publish a notice in the State Register. The notice shall advise eligible applicants of the

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availability of grant funds, inform eligible applicants of the procedure and projected schedule for the application process, and establish a date by which a preliminary grant application must be received by the director.

Subp. 6. **Preliminary grant applications.** Eligible applicants may submit to the director preliminary grant applications containing the information in part 9210.0131. Applications received by the director after the deadline in the State Register notice shall not be considered for funding and shall be returned to the applicants.

Subp. 7. **Invitation by director.** After the date established in the State Register notice, the director shall review the preliminary grant applications. Using the criteria in part 9210.0132, the director shall notify each applicant, in writing, as to whether it is invited to submit a final grant application. Only applicants so invited remain eligible for a grant. The director's invitation shall specify a date by which the final grant application must be received by the office.

Subp. 8. **Applications accepted.** Eligible applicants that have been invited to submit a final grant application may submit an application to the office. Final grant applications must contain the information in part 9210.0140. Final grant applications received by the office after the deadline in the director's invitation shall not be considered for funding and shall be returned to the applicant.

9210.0130 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, and sanitary districts as defined in Minnesota Statutes, section 115A.03, subdivision 28b.

Subp. 2. **Eligible projects project.** ~~Six types of projects are eligible for grants:~~ For purposes of parts 9210.0100 to 9210.0180, "eligible project" means a waste processing facility that includes resource recovery, together with transfer

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stations, transmission facilities, or other related and appurtenant facilities primarily serving the waste processing facility. A transfer station that will initially transfer waste to a landfill is an eligible project if the transfer station is part of a resource recovery project proposed in an approved comprehensive solid waste management plan. Examples of eligible projects include waste to energy; materials recovery; chemical, physical, or biological modifications; ~~transfer stations;~~ processing of special waste streams including household hazardous waste; 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.** ~~**Except as provided in part 9210.0200,**~~ Eligible costs under parts 9210.0100 to 9210.0180 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; landscaping; on-site roads and parking; structures necessary to concentrate and temporarily store solid waste before transportation to a waste processing facility; trailers, containers, and rolloff 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.** ~~**Except as provided in part 9210.0200,**~~ Ineligible costs include ~~any~~ costs related to solid waste disposal facilities and equipment; structures for housing and maintenance of rolling stock ~~or any~~; collection equipment including drop boxes not located on the waste processing facility site; costs related to resource recovery studies, feasibility analyses, or preliminary design and engineering/architectural plans; and costs of leasing equipment.

9210.0131 PRELIMINARY GRANT APPLICATION.

Subpart 1. **Preliminary grant application.** A preliminary

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grant application must include the following information:

A. the name of each applicant and the name and qualifications of the project manager, a 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 a description of the waste stream for the facility;

B. the status of the comprehensive solid waste management plan for each county to be affected by the proposed project, and an explanation of how the proposed project is consistent with the goals established by those plans;

C. information demonstrating:

(1) whether and to what extent the natural geologic and soil conditions of the counties that would be affected by the proposed project are unsuitable for land disposal of solid waste;

(2) whether and to what extent the area to benefit from the project has existing solid waste disposal capacity of less than five years; and

(3) whether the project serves more than one local government unit and, for projects serving eligible jurisdictions in only a single county, the extent to which cooperation with jurisdictions in other counties is not feasible;

D. a preliminary financial plan that includes:

(1) estimated total capital costs and total grant eligible costs for the project;

(2) estimated annual operating and maintenance costs, including disposal costs of residuals and anticipated equipment replacement costs; and

(3) anticipated sources of funding for the project, including projected tipping fees and revenues from recovered materials and energy;

E. a resolution from each political subdivision participating in the project that demonstrates that, if a grant

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is awarded, it will implement the project, provide necessary local financing, and accept and exercise the governmental powers necessary to develop and operate the project;

F. a description of the type and quantity of materials to be recovered and the existing and potential markets for those materials; and

G. an implementation plan for the proposed project that specifies the anticipated completion dates for environmental review, Pollution Control Agency permitting, facility construction, and the anticipated date of operation.

Subp. 2. **Completeness.** Applicants shall be notified by the director if their preliminary grant applications are not complete and shall be given 30 days from the notification in which to complete their applications. Applications that are not completed and received by the director within this 30-day deadline shall be considered ineligible for funding.

9210.0132 **INVITATION TO SUBMIT FINAL GRANT APPLICATION.**

Subpart 1. **Criteria.** The director shall evaluate preliminary grant applications to determine which eligible projects will best assist the state in achieving its solid waste management goals. The director shall base this evaluation on the following factors:

A. the consistency of the proposed project with the comprehensive solid waste management plan of each affected county;

B. the consistency of the proposed project with the legislative priorities in Minnesota Statutes, sections 115A.02 and 115A.49;

C. the consistency of the proposed project with regional solid waste management needs;

D. the extent to which the applicant is prepared to implement the proposed project upon receipt of the grant award;

E. the extent to which the grant request for the proposed project represents an effective use of grant funds, given total program resources; and

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F. for projects serving eligible jurisdictions in only a single county, the extent to which cooperation with jurisdictions in other counties to develop the proposed project is not feasible.

Subp. 2. **Invitation to submit final grant application.** The director shall invite the eligible applicants that the director determines best meet the criteria in subpart 1 to submit final grant applications. If the director determines that no application will provide sufficient assistance to the state in achieving its solid waste management goals, the director may decide not to award any grant. The director may then reinitiate the process for awarding grants or loans by publishing a notice under part 9210.0120, subpart 5.

9210.0140 ~~INFORMATION REQUIRED ON~~ FINAL GRANT APPLICATION.

~~Applications for waste processing facilities grants shall~~

Subpart 1. **Final grant applications.** Final grant applications must include the following information as required in the application forms supplied by the ~~board~~ director:

[For text of items A and B, see M.R.]

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

[For text of items D to I, see M.R.]

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; processing of special waste stream including household hazardous waste; or waste incineration with resource recovery.

Subp. 2. **Project changes.** Before submitting its final grant application, an eligible applicant may change the components of the proposed project as described in the preliminary grant application. If, however, those changes would result in a project that the director determines no longer best meets the criteria in part 9210.0132, subpart 1, the director

shall remove the project from further consideration.

9210.0150 SUPPORTING DOCUMENTATION REQUIRED TO BE SUBMITTED WITH FINAL GRANT APPLICATION.

~~Applications for waste processing facilities grants~~ Applicants shall ~~include~~ submit the following supporting documentation with their final grant application:

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~~ copy of the original preliminary grant application submitted under part 9210.0131.

B. A financial plan that contains:

[For text of subitem (1), see M.R.]

(2) annual operating and maintenance costs, including disposal costs of residuals and anticipated equipment replacement costs;

[For text of subitems (3) and (4), see M.R.]

C. A report demonstrating that the project is not financially prudent 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:

[For text of subitems (1) and (2), see M.R.]

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

[For text of subitems (4) to (8), see M.R.]

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

D. For each county affected by the project, a comprehensive solid waste management plan, developed under

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Minnesota Statutes, section 115A.46 and approved by the director.

E. Preliminary design and engineering/architectural plans and equipment specifications of the proposed waste processing facility, and a description of the management and staffing plans for the proposed project.

F. Documentation ~~that~~ explaining how waste supplies will be committed to the project for the life of the project and that the applicant has ~~the mechanism~~ mechanisms to commit the wastes.

[For text of items G to I, see M.R.]

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 especially 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 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 multicounty 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;~~

9210.0160 REVIEW AND EVALUATION OF FINAL GRANT APPLICATIONS.

Subpart 1. Determination of eligibility and completeness. Upon receipt of an a final grant application, the ~~chair or a~~ designee director shall determine confirm the eligibility of the

applicant and the eligibility of the project, and shall determine the eligibility of the costs identified in the final grant application~~, the eligibility of the project identified in the application~~ and the completeness of the final grant application.

Subp. 2. **Notice of determination of eligibility and completeness.** ~~Within 14 days~~ After receiving the final grant application, the ~~chair~~ director shall notify the applicant of the ~~chair's~~ director's determinations of eligibility and completeness. If the ~~chair~~ director determines that the applicant or the project is ineligible, the ~~chair~~ director shall reject the final grant application, return it to the applicant, and notify the applicant of the reasons for the rejection. If the ~~chair~~ director determines that any ~~part of the~~ project costs ~~is~~ are ineligible or that the final grant application is incomplete, the ~~chair~~ director shall notify the applicant of the ineligible ~~portion of the~~ costs or ~~of the deficiency~~ shall identify the portions of the final grant application that are incomplete. The applicant has ~~14~~ 30 days after receiving the notice to correct any inadequacies identified by the ~~chair~~ director. If the inadequacies are corrected and the corrected application is received by the director within the time allowed, the final grant application will be further considered.

Subp. 3. [See Repealer.]

Subp. 4. **Evaluation of final grant applications.** If the ~~board~~ director determines that the ~~project is in need of state assistance~~ final grant application is eligible and complete, the ~~board~~ director shall evaluate the final grant application to determine whether the final grant application demonstrates:

[For text of item A, see M.R.]

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

[For text of items C to E, see M.R.]

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F. that the project is not financially prudent without ~~state~~ office 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~~ Award of grants.** If the ~~board~~ director determines that the final grant application satisfies the requirements of subpart 4, the ~~board~~ director shall determine the amount of the grant award and the applicant shall be notified. If the ~~board~~ director determines that the final grant application fails to satisfy the requirements of subpart 4, the ~~board~~ director shall reject the final grant application and ~~the chair~~ shall return the final grant application to the applicant, together with a statement of the reasons for the determination. An applicant that does not receive a grant award may resubmit a preliminary grant application upon future notice by the director under part 9210.0120, subpart 5.

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

9210.0170 LIMITATIONS.

Subpart 1. **Maximum grant award.** ~~Except as provided in part 9210.0200,~~ The maximum grant award is 25 percent of the eligible capital costs of the project or $2,000,000, whichever is less, unless the project is a recycling project or a project to compost or cocompost waste. A recycling project or a project to compost or cocompost waste may receive grant assistance up to 50 percent of the capital cost of the project or $2,000,000, whichever is less.

Subp. 1a. **Reduced grant award.** The director may award a

grant for less than the maximum grant amount. The director shall ask an applicant to document the impacts of reduced grant assistance before reducing the amount of a grant award. The director shall only reduce the amount of a grant award under the following conditions:

A. program resources are insufficient to provide full assistance to all applicants that are awarded grants by the director;

B. the cost figures provided in the final grant application are significantly higher than the cost figures in the preliminary grant application without a change in the project scope approved by the director under part 9210.0140, subpart 2, to justify the higher cost; or

C. the director determines that the applicant has not adequately demonstrated financial need for the full grant amount.

Subp. 2. **Limitations on grant award.** The amount of the ~~board's~~ director'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 execution of the grant ~~award~~ agreement or after the expiration of the grant agreement.

Subp. 3. **Limitations on disbursal of funds.** No grant funds shall be disbursed until the ~~board~~ director has:

A. determined the total estimated ~~capital~~ cost of the project ~~and~~;

B. ascertained that financing of the project 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~~; and

C. received commitments from the recipient to implement the project.

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9210.0180 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~~ director under part 9210.0120;

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

[For text of item D, see M.R.]

E. provide that the ~~board~~ director will not accept amendments requesting that additional funds be awarded to the recipient ~~except as provided in part 9210.0200~~;

F. require that the recipient provide periodic written reports to the ~~board~~ director 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;

[For text of items G and H, see M.R.]

Subp. 2. **Rescission of grant.** If a project is not completed and operational ~~in accordance with~~ according to 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~~ director determines that ~~variances from the respective agreements are~~ an amendment to the grant agreement is justified ~~and that~~. The director shall agree to an amendment if it will allow the original objectives of the project ~~will~~ to be accomplished.

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

9210.0400 DEFINITIONS.

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MINNESOTA
OFFICE
OF WASTE
MANAGEMENT

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St. Paul, Minnesota 55108
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MN Toll Free
1-800-652-9747

August 22, 1990

Ms. Patti Nolte
Office of the Attorney General
Suite 500
525 Park Street
St. Paul, MN 55103

Re: In the Matter of Proposed Rules Governing Solid Waste Grants, Minn. Rules Parts 9210.0100 to 9210.0180

Dear Ms. Nolte:

On August 9, 1990, the Minnesota Office of Waste Management (Office) adopted the above-captioned rules governing solid waste grants. On behalf of the Office, I am submitting these rules to you for review under Minn. Stat., section 14.26.

Pursuant to Minn. Rules pt. 2010.0300, I have enclosed the following:

1. the Notice of Intent to Solicit Outside Opinion (14 SR 2458, May 14, 1990);

2. the proposed rules, approved as to form by the Revisor of Statutes;

3. the Statement of Need and Reasonableness;

4. the Notice of Intent to Adopt Rules Without a Public Hearing as published in the State Register (14 SR 2837, June 4, 1990);

5. the signed Notice of Intent to Adopt Rules Without a Public Hearing, as mailed;

6. the Affidavit of Mailing the Notice of Intent to Adopt Rules Without a Public Hearing and Certificate of Mailing List;

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7. all written requests, submissions, and comments on the rules received by the Office, except requests solely for copies of the rules or of the Statement of Need and Reasonableness;

8. the Findings of Fact, Conclusions and Order Adopting the Rules;

9. four copies of the rules as adopted. All modifications made to the rules as adopted are reflected on the rules and approved as to form by the Revisor of Statutes;

10. the declaration of Counsel; and

11. the Affidavit Regarding Notice of Submission of Rules Adopted Without a Public Hearing to the Attorney General.

If you have questions regarding these rules, please call me at 649-5773.

Very truly yours,

Thomas A. Osdoba

Thomas A. Osdoba
Solid Waste Grants

Enclosures

Minnesota Office of Waste Management

Solid Waste Grants and Market Development Unit

Notice of Intent to Solicit Outside Information Regarding Proposed Rule Governing Solid Waste Grants Programs

Notice is hereby given that the Minnesota Office of Waste Management (Office) is seeking information or opinions from outside sources in preparing to propose the amendment of Minn. Rules ch. 9210, governing the Office's solid waste capital assistance (CAP), environmental testing (TEST), and waste separation (LOW-TECH) grant programs. The Office is considering amending the rules to establish criteria and procedures for awarding solid waste grants when there is insufficient resources to fund all grant applications. Amendment of the rules is authorized by Minn. Stat. § 115A.06, subd. 2 (1989), which authorizes the Office to promulgate rules governing its activities.

The Office requests information and opinions concerning the subject matter of the rules. Interested persons or groups may submit data or views in writing or orally. Written or oral statements or comments should be directed to:

Thomas Osdoba

Minnesota Office of Waste Management

1350 Energy Lane

St. Paul, MN 55108

Telephone: (612) 649-5773

Oral statements will be received during regular business hours, 8:00 a.m. to 5:00 p.m., Monday through Friday.

All statements of information and opinion will be accepted until May 1, 1990. Any written materials received by the Office shall become part of the rulemaking record in the event that the rule is amended.

Michael Robertson

Director

State of Minnesota

Office of Waste Management

Proposed Rule Amendments Governing Solid Waste Processing Facility Capital Assistance Program,

Minn. Rules Parts 9210.0100 to 9210.0180

Notice of Intent to Adopt Rules Without a Public Hearing

(1) Notice is hereby given that the Minnesota Office of Waste Management (Office) intends to adopt amendments to the above-entitled rules without a public hearing following the procedures set forth in the Administrative Procedures Act for adopting rules without a public hearing in Minn. Stat. §§14.22 to 14.28 (1988). The Office's authority to adopt the amendments to the rules is set forth in Minn. Stat. §115A.06, subd. 2 (1988).

(2) All persons have until 4:30 p.m. on July 5, 1990, to submit comments in support of or in opposition to the proposed rule amendments or any part or subpart of the rule amendments. (3) Comment is encouraged. Each comment should identify the portion of the proposed rule amendments addressed, the reason for the comment, and any change proposed.

Any person may make a written request for a public hearing on the proposed rule amendments within the comment period. (4) If 25 or more persons submit a written request for a public hearing within the comment period, a public hearing will be held

unless a sufficient number withdraw their requests in writing. 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 amendments addressed, the reason for the request, and any change proposed. If a public hearing is required, the Office will proceed pursuant to Minn. Stat. §§14.131 to 14.20 (1988).

Comments or written requests for a public hearing must be submitted to:

Thomas Osdoba

Minnesota Office of Waste Management

1350 Energy Lane

St. Paul, Minnesota 55108

612-649-5773

The proposed rule amendments may be modified if the modifications are supported by data and views submitted to the Office and do not result in a substantial change in the proposed rule amendments as noticed.

The proposed rule amendments, if adopted, will revise the criteria and procedures for awarding grants under the Office's solid waste processing facility capital assistance program. The proposed rule amendments are published below. One free copy of the proposed rule amendments is available upon request from the address and telephone number stated above.

A Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed rule amendments and identifies the

data and information relied upon to support the proposed rule amendments has been prepared and is available from the Office upon request.

You are hereby advised, pursuant to Minn. Stat. §14.115 (1988), "Small business considerations in rulemaking," that the proposed rule amendments will have no negative effect on small businesses, as the amendments do not affect the ability of small businesses to participate in this program.

(9) If no hearing is required, upon adoption of the rule amendments, the rule amendments and the required supporting documents will be submitted to the Attorney General for review as to legality and form to the extent form relates to legality. Any person may request notification of the date of submission to the Attorney General. 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 rule amendments as adopted, must submit a written request to the name and address stated above.

MICHAEL ROBERTSON
Director

of submission to the attorney general. 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 adopted rules, must submit the written request to Kay Tracy at the above address.

Because the proposed rules will have no effect on small business, section 14.115 of the administrative procedure act does not apply.

Commissioner
Department of Jobs and Training

Rules as Proposed

3300.0100 DEFINITION OF TERMS.

[For text of subps 1 to 7, see M.R.]

Subp. 9. **Support services.** "Support services" means services which are necessary to enable an eligible individual to participate in employment and training funded under the act. Support services may include transportation, child care, meals, temporary shelter, reasonable and necessary safety equipment, required uniforms, and other normal expenses associated with employment and training funded under the act.

Subp. 10. **Transitional services.** "Transitional services" means services which help eligible youth complete school, upgrade basic skills, and prepare for additional schooling or permanent employment. Transitional services may include counseling, case management, basic skills training and remedial education, life skills training, mentoring and tutoring services, and work readiness skills training.

3300.0500 OPERATION PROCEDURES.

[For text of subpart 1, see M.R.]

Subp. 2a. **Transitional services.** Contractors may provide or arrange for transitional services to help eligible youth complete school, upgrade basic skills, and prepare for additional schooling or permanent employment.

[For text of subps 3 to 6, see M.R.]

3300.0601 SUPPORT SERVICES.

Contractors may provide or arrange for support services as defined in part 3300.0100, subpart 9, to eligible youth, using funds allocated under this act. The cost of the support services must not exceed 15 percent of the contract. ~~The services may include transportation, meals, career information training, work related protective devices, basic skills training, counseling services, reasonable and necessary safety equipment and materials, required uniforms, and other normal expenses associated with employment and training funded under the act.~~ Contractors shall not be required to provide support services to eligible youth when funds received under the act have been exhausted.

Office of Waste Management

Proposed Permanent Rules Relating to Grant Programs

Notice of Intent to Adopt Rules Without a Public Hearing

Proposed Rule Amendments *Minnesota Rules* Parts 9210.0100 to 9210.0180: Governing Solid Waste Processing Facility Capital Assistance Program

NOTICE IS HEREBY GIVEN that the Minnesota Office of Waste Management (Office) intends to adopt amendments to the above-entitled rules without a public hearing following the procedures set forth in the Administrative Procedures Act for adopting rules without a public hearing in *Minnesota Statutes* §§ 14.22 to 14.28 (1988). The Office's authority to adopt the amendments to the rules is set forth in *Minnesota Statutes* § 115A.06, subd. 2 (1988).

All persons have until 4:30 p.m. on July 5, 1990, to submit comments in support of or in opposition to the proposed rule amendments or any part or subpart of the rule amendments. Comment is encouraged. Each comment should identify the portion of the proposed rule amendments addressed, the reason for the comment, and any change proposed.

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.

Any person may make a written request for a public hearing on the proposed rule amendments within the comment period. If 25 or more persons submit a written request for a public hearing within the comment period, a public hearing will be held unless a sufficient number withdraw their requests in writing. 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 amendments addressed, the reason for the request, and any change proposed. If a public hearing is required, the Office will proceed pursuant to *Minnesota Statutes* §§ 14.131 to 14.20 (1988).

Comments or written requests for a public hearing must be submitted to:

Thomas Osdoba
Minnesota Office of Waste Management
1350 Energy Lane
St. Paul, Minnesota 55108
612-649-5773

The proposed rule amendments may be modified if the modifications are supported by data and views submitted to the Office and do not result in a substantial change in the proposed rule amendments as noticed.

The proposed rule amendments, if adopted, will revise the criteria and procedures for awarding grants under the Office's solid waste processing facility capital assistance program. The proposed rule amendments are published below. One free copy of the proposed rule amendments is available upon request from the address and telephone number stated above.

A STATEMENT OF NEED AND REASONABLENESS that describes the need for and reasonableness of each provision of the proposed rule amendments and identifies the data and information relied upon to support the proposed rule amendments has been prepared and is available from the Office upon request.

You are hereby advised, pursuant to *Minnesota Statutes* § 14.115 (1988), "Small business considerations in rulemaking," that the proposed rule amendments will have no negative effect on small businesses, as the amendments do not affect the ability of small businesses to participate in this program.

If no hearing is required, upon adoption of the rule amendments, the rule amendments and the required supporting documents will be submitted to the Attorney General for review as to legality and form to the extent form relates to legality. Any person may request notification of the date of submission to the Attorney General. 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 rule amendments as adopted, must submit a written request to the name and address stated above.

Michael Robertson
Director

Notice of Intent to Adopt Rules Without a Public Hearing

Proposed Rule Amendments *Minnesota Rules* Parts 9210.0400 to 9210.0460: Governing Solid Waste Reduction and Separation Grant Program

NOTICE IS HEREBY GIVEN that the Minnesota Office of Waste Management (Office) intends to adopt amendments to the above-entitled rules without a public hearing following the procedures set forth in the Administrative Procedures Act for adopting rules without a public hearing in *Minnesota Statutes* §§ 14.22 to 14.28 (1988). The Office's authority to adopt the amendments to the rules is set forth in *Minnesota Statutes* § 115A.06, subd. 2 (1988).

All persons have until 4:30 p.m. on July 5, 1990, to submit comments in support of or in opposition to the proposed rule amendments or any part or subpart of the rule amendments. Comment is encouraged. Each comment should identify the portion of the proposed rule amendments addressed, the reason for the comment, and any change proposed.

Any person may make a written request for a public hearing on the proposed rule amendments within the comment period. If 25 or more persons submit a written request for a public hearing within the comment period, a public hearing will be held unless a sufficient number withdraw their requests in writing. 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 amendments addressed, the reason for the request, and any change proposed. If a public hearing is required, the Office will proceed pursuant to *Minnesota Statutes* §§ 14.131 to 14.20 (1988).

Comments or written requests for a public hearing must be submitted to:

Thomas Osdoba
Minnesota Office of Waste Management
1350 Energy Lane
St. Paul, Minnesota 55108
612-649-5773

The proposed rule amendments may be modified if the modifications are supported by data and views submitted to the Office and do not result in a substantial change in the proposed rule amendments as noticed.

The proposed rule amendments, if adopted, will revise the criteria and procedures for awarding grants under the Office's solid waste reduction and separation grant program. The proposed rule amendments are published below. One free copy of the proposed rule amendments is available upon request from the address and telephone number stated above.

A STATEMENT OF NEED AND REASONABLENESS that describes the need for and reasonableness of each provision of the proposed rule amendments and identifies the data and information relied upon to support the proposed rule amendments has been prepared and is available from the Office upon request.

YOU ARE HEREBY ADVISED, pursuant to *Minnesota Statutes* § 14.115 (1988), "Small business considerations in rulemaking," that the proposed rule amendments will have no negative effect on small businesses, as the amendments do not affect the ability of small businesses to participate in this program.

If no hearing is required, upon adoption of the rule amendments, the rule amendments and the required supporting documents will be submitted to the Attorney General for review as to legality and form to the extent form relates to legality. Any person may request notification of the date of submission to the Attorney General. 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 rule amendments as adopted, must submit a written request to the name and address stated above.

Michael Robertson
Director

Notice of Intent to Adopt Rules Without a Public Hearing

***Minnesota Rules* Parts 9210.0500 to 9210.0570: Governing Litter Prevention, Control, and Abatement Grant Program**

NOTICE IS HEREBY GIVEN that the Minnesota Office of Waste Management (Office) intends to adopt the above-entitled rules without a public hearing following the procedures set forth in the Administrative Procedures Act for adopting rules without a public hearing in *Minnesota Statutes* §§ 14.22 to 14.28 (1988). The Office's authority to adopt the rules is set forth in *Minnesota Statutes* § 14.06 (1908). The Office is required to establish eligibility criteria for grants made under *Minnesota Statutes* § 115A.991 (2nd 1989 Supp.). Because such criteria are rules as defined by *Minnesota Statutes* § 14.02, subd. 4 (Supp. 1989), the Office is required to adopt the criteria as rules under *Minnesota Statutes* § 14.06 (1988).

All persons have until 4:30 p.m. on July 5, 1990, to submit comments in support of or in opposition to the proposed rules or any part or subpart of the proposed rules. Comment is encouraged. Each comment should identify the portion of the proposed rules addressed, the reason for the comment, and any change proposed.

Any person may make a written request for a public hearing on the proposed rules within the comment period. If 25 or more persons submit a written request for a public hearing within the comment period, a public hearing will be held unless a sufficient number withdraw their requests in writing. Any person requesting a public hearing should state his or her name and address, and is encouraged to identify the portion of the proposed rules addressed, the reason for the request, and any change proposed. If a public hearing is required, the Office will proceed pursuant to *Minnesota Statutes* §§ 14.131 to 14.20 (1988).

Comments or written requests for a public hearing must be submitted to:

Thomas Osdoba
Minnesota Office of Waste Management
1350 Energy Lane
St. Paul, Minnesota 55108
612-649-5773

The proposed rules may be modified if the modifications are supported by data and views submitted to the Office and do not result in a substantial change in the proposed rules as noticed.

The proposed rules, if adopted, will establish the criteria and procedures for awarding grants under the Office's litter prevention, control, and abatement grant program. The proposed rules are published below. One free copy of the proposed rules is available upon request from the address and telephone number stated above.

A STATEMENT OF NEED AND REASONABLENESS that describes the need for and reasonableness of each provision of the proposed rules and identifies the data and information relied upon to support the proposed rules has been prepared and is available from the Office upon request.

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.

YOU ARE HEREBY ADVISED, pursuant to *Minnesota Statutes* § 14.115 (1988), "Small business considerations in rulemaking," that the proposed rules will have no negative effect on small businesses, as the rules do not limit the ability of small businesses to participate in this program.

If no hearing is required, upon adoption of the rules, the rules and the required supporting documents will be submitted to the Attorney General for review as to legality and form to the extent form relates to legality. Any person may request notification of the date of submission to the Attorney General. 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, must submit a written request to the name and address stated above.

Michael Robertson
Director

Rules as Proposed

9210.0100 DEFINITIONS.

[For text of subpart 1, see M.R.]

Subp. 2. [See Repealer.]

Subp. 3. [See Repealer.]

[For text of subps 4 and 5, see M.R.]

Subp. 5a. **Director.** "Director" means the director of the Minnesota Office of Waste Management.

[For text of subps 6 to 9, see M.R.]

Subp. 9a. **Office.** "Office" means the Minnesota Office of Waste Management established in *Minnesota Statutes*, section 115A.055.

[For text of subps 10 to 26, see M.R.]

9210.0110 SOLID WASTE PROCESSING FACILITIES CAPITAL ASSISTANCE PROGRAM.

Parts 9210.0100 to 9210.0180 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~~ director may award grants for capital costs of solid waste processing facilities.

9210.0120 GRANT APPLICATION PROCEDURES.

Subpart 1. [See Repealer.]

Subp. 2. [See Repealer.]

Subp. 3. [See Repealer.]

Subp. 4. [See Repealer.]

Subp. 5. **Notification by director.** To initiate the process for awarding grants under the capital assistance program, the director shall publish a notice in the *State Register*. The notice shall advise eligible applicants of the availability of grant funds, inform eligible applicants of the procedure and projected schedule for the application process, and establish a date by which a preliminary grant application must be received by the director.

Subp. 6. **Preliminary grant applications.** Eligible applicants may submit to the director preliminary grant applications containing the information in part 9210.0131. Applications received by the director after the deadline in the *State Register* notice shall not be considered for funding and shall be returned to the applicants.

Subp. 7. **Invitation by director.** After the date established in the *State Register* notice, the director shall review the preliminary grant applications. Using the criteria in part 9210.0132, the director shall notify each applicant, in writing, as to whether it is invited to submit a final grant application. Only applicants so invited remain eligible for a grant. The director's invitation shall specify a date by which the final grant application must be received by the office.

Subp. 8. **Applications accepted.** Eligible applicants that have been invited to submit a final grant application may submit an application to the office. Final grant applications must contain the information in part 9210.0140. Final grant applications received by the office after the deadline in the director's invitation shall not be considered for funding and shall be returned to the applicant.

9210.0130 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, and sanitary districts as defined in *Minnesota Statutes*, section 115A.03, subdivision 28b.

Subp. 2. **Eligible ~~projects~~ project.** ~~Six types of projects are eligible for grants:~~ For purposes of parts 9210.0100 to 9210.0180, "eligible project" means a waste processing facility that includes resource recovery, together with transfer stations, transmission facilities, or other related and appurtenant facilities primarily serving the waste processing facility. A transfer station that will initially transfer waste to a landfill is an eligible project if the transfer station is part of a resource recovery project proposed in an approved comprehensive solid waste management plan. Examples of eligible projects include waste to energy; materials recovery; chemical, physical, or biological modifications; ~~transfer stations;~~ processing of special waste streams including household hazardous waste; 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.** ~~Except as provided in part 9210.0200.~~ Eligible costs under parts 9210.0100 to 9210.0180 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; landscaping; on-site roads and parking; structures necessary to concentrate and temporarily store solid waste before transportation to a waste processing facility; trailers, containers, and rolloff 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.** ~~Except as provided in part 9210.0200.~~ Ineligible costs include ~~any~~ costs related to solid waste disposal facilities and equipment~~;~~; structures for housing and maintenance of rolling stock~~, or any~~; collection equipment including drop boxes not located on the waste processing facility site; costs related to resource recovery studies, feasibility analyses, or preliminary design and engineering/architectural plans; and costs of leasing equipment.

9210.0131 PRELIMINARY GRANT APPLICATION.

Subpart 1. **Preliminary grant application.** A preliminary grant application must include the following information:

A. the name of each applicant and the name and qualifications of the project manager, a 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 a description of the waste stream for the facility;

B. the status of the comprehensive solid waste management plan for each county to be affected by the proposed project, and an explanation of how the proposed project is consistent with the goals established by those plans;

C. information demonstrating:

(1) whether and to what extent the natural geologic and soil conditions of the counties that would be affected by the proposed project are unsuitable for land disposal of solid waste;

(2) whether and to what extent the area to benefit from the project has existing solid waste disposal capacity of less than five years; and

(3) whether the project serves more than one local government unit and, for projects serving eligible jurisdictions in only a single county, the extent to which cooperation with jurisdictions in other counties is not feasible;

D. a preliminary financial plan that includes:

(1) estimated total capital costs and total grant eligible costs for the project;

(2) estimated annual operating and maintenance costs, including disposal costs of residuals and anticipated equipment replacement costs; and

(3) anticipated sources of funding for the project, including projected tipping fees and revenues from recovered materials and energy;

E. a resolution from each political subdivision participating in the project that demonstrates that, if a grant is awarded, it will implement the project, provide necessary local financing, and accept and exercise the governmental powers necessary to develop and operate the project;

F. a description of the type and quantity of materials to be recovered and the existing and potential markets for those materials; and

G. an implementation plan for the proposed project that specifies the anticipated completion dates for environmental review, Pollution Control Agency permitting, facility construction, and the anticipated date of operation.

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.

Subp. 2. **Completeness.** Applicants shall be notified by the director if their preliminary grant applications are not complete and shall be given 30 days from the notification in which to complete their applications. Applications that are not completed and received by the director within this 30-day deadline shall be considered ineligible for funding.

9210.0132 INVITATION TO SUBMIT FINAL GRANT APPLICATION.

Subpart 1. **Criteria.** The director shall evaluate preliminary grant applications to determine which eligible projects will best assist the state in achieving its solid waste management goals. The director shall base this evaluation on the following factors:

A. the consistency of the proposed project with the comprehensive solid waste management plan of each affected county;

B. the consistency of the proposed project with the legislative priorities in *Minnesota Statutes*, sections 115A.02 and 115A.49;

C. the consistency of the proposed project with regional solid waste management needs;

D. the extent to which the applicant is prepared to implement the proposed project upon receipt of the grant award;

E. the extent to which the grant request for the proposed project represents an effective use of grant funds, given total program resources; and

F. for projects serving eligible jurisdictions in only a single county, the extent to which cooperation with jurisdictions in other counties to develop the proposed project is not feasible.

Subp. 2. **Invitation to submit final grant application.** The director shall invite the eligible applicants that the director determines best meet the criteria in subpart 1 to submit final grant applications. If the director determines that no application will provide sufficient assistance to the state in achieving its solid waste management goals, the director may decide not to award any grant. The director may then reinitiate the process for awarding grants or loans by publishing a notice under part 9210.0120, subpart 5.

9210.0140 ~~INFORMATION REQUIRED ON~~ FINAL GRANT APPLICATION.

~~Applications for waste processing facilities grants shall~~

Subpart 1. **Final grant applications.** Final grant applications must include the following information as required in the application forms supplied by the ~~board~~ director:

[For text of items A and B, see M.R.]

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

[For text of items D to I, see M.R.]

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; processing of special waste stream including household hazardous waste; or waste incineration with resource recovery.

Subp. 2. **Project changes.** Before submitting its final grant application, an eligible applicant may change the components of the proposed project as described in the preliminary grant application. If, however, those changes would result in a project that the director determines no longer best meets the criteria in part 9210.0132, subpart 1, the director shall remove the project from further consideration.

9210.0150 SUPPORTING DOCUMENTATION REQUIRED TO BE SUBMITTED WITH FINAL GRANT APPLICATION.

~~Applications for waste processing facilities grants~~ Applicants shall ~~include~~ submit the following supporting documentation with their final grant application:

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~~ copy of the original preliminary grant application submitted under part 9210.0131.

B. A financial plan that contains:

[For text of subitem (1), see M.R.]

(2) annual operating and maintenance costs, including disposal costs of residuals and anticipated equipment replacement costs;

[For text of subitems (3) and (4), see M.R.]

C. A report demonstrating that the project is not financially prudent 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:

[For text of subitems (1) and (2), see M.R.]

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

[For text of subitems (4) to (8), see M.R.]

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

D. For each county affected by the project, a comprehensive solid waste management plan, developed under *Minnesota Statutes*, section 115A.46 and approved by the director.

E. Preliminary design and engineering/architectural plans and equipment specifications of the proposed waste processing facility, and a description of the management and staffing plans for the proposed project.

F. Documentation ~~that~~ explaining how waste supplies will be committed to the project for the life of the project and that the applicant has ~~the mechanism~~ mechanisms to commit the wastes.

[For text of items G to I, see M.R.]

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 especially 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 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 multicounty 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.~~

9210.0160 REVIEW AND EVALUATION OF FINAL GRANT APPLICATIONS.

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

Subp. 2. **Notice of determination of eligibility and completeness.** ~~Within 14 days~~ After receiving the final grant application, the ~~chair~~ director shall notify the applicant of the ~~chair's~~ director's determinations of eligibility and completeness. If the ~~chair~~ director determines that the applicant or the project is ineligible, the ~~chair~~ director shall reject the final grant application, return it to the applicant, and notify the applicant of the reasons for the rejection. If the ~~chair~~ director determines that any ~~part of the~~ project costs ~~is~~ are ineligible or that the final grant application is incomplete, the ~~chair~~ director shall notify the applicant of the ineligible ~~portion of the~~ costs or ~~of the deficiency~~ shall identify the portions of the final grant application that are incomplete. The applicant has ~~14~~ 30 days after receiving the notice to correct any inadequacies identified by the ~~chair~~ director. If the inadequacies are corrected and the corrected application is received by the director within the time allowed, the final grant application will be further considered.

Subp. 3. [See Repealer.]

Subp. 4. **Evaluation of final grant applications.** If the ~~board~~ director determines that the ~~project is in need of state assistance~~ final grant application is eligible and complete, the ~~board~~ director shall evaluate the final grant application to determine whether the final grant application demonstrates:

[For text of item A, see M.R.]

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

[For text of items C to E, see M.R.]

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.

F. that the project is not financially prudent without ~~state~~ office 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~~ Award of grants.** If the ~~board~~ director determines that the final grant application satisfies the requirements of subpart 4, the ~~board~~ director shall determine the amount of the grant award and the applicant shall be notified. If the ~~board~~ director determines that the final grant application fails to satisfy the requirements of subpart 4, the ~~board~~ director shall reject the final grant application and ~~the chair~~ shall return the final grant application to the applicant, together with a statement of the reasons for the determination. An applicant that does not receive a grant award may resubmit a preliminary grant application upon future notice by the director under part 9210.0120, subpart 5.

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

9210.0170 LIMITATIONS.

Subpart 1. **Maximum grant award.** ~~Except as provided in part 9210.0200.~~ The maximum grant award is 25 percent of the eligible capital costs of the project or $2,000,000, whichever is less, unless the project is a recycling project or a project to compost or cocompost waste. A recycling project or a project to compost or cocompost waste may receive grant assistance up to 50 percent of the capital cost of the project or $2,000,000, whichever is less.

Subp. 1a. **Reduced grant award.** The director may award a grant for less than the maximum grant amount. The director shall ask an applicant to document the impacts of reduced grant assistance before reducing the amount of a grant award. The director shall only reduce the amount of a grant award under the following conditions:

A. program resources are insufficient to provide full assistance to all applicants that are awarded grants by the director;

B. the cost figures provided in the final grant application are significantly higher than the cost figures in the preliminary grant application without a change in the project scope approved by the director under part 9210.0140, subpart 2, to justify the higher cost; or

C. the director determines that the applicant has not adequately demonstrated financial need for the full grant amount.

Subp. 2. **Limitations on grant award.** The amount of the ~~board's~~ director'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 execution of the grant ~~award~~ agreement or after the expiration of the grant agreement.

Subp. 3. **Limitations on disbursal of funds.** No grant funds shall be disbursed until the ~~board~~ director has:

A. determined the total estimated ~~capital~~ cost of the project ~~and~~;

B. ascertained that financing of the project 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~~; and

C. received commitments from the recipient to implement the project.

9210.0180 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~~ director under part 9210.0120;

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

[For text of item D, see M.R.]

E. provide that the ~~board~~ director will not accept amendments requesting that additional funds be awarded to the recipient ~~except as provided in part 9210.0200~~;

F. require that the recipient provide periodic written reports to the ~~board~~ director 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;

[For text of items G and H, see M.R.]

Subp. 2. **Rescission of grant.** If a project is not completed and operational ~~in accordance with~~ according to 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~~ director determines that ~~variances from the respective agreements are~~ an amendment to the grant agreement is justified ~~and that~~. The director shall agree to an amendment if it will allow the original objectives of the project ~~will~~ to be accomplished.

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

9210.0400 DEFINITIONS.

[For text of subpart 1, see M.R.]

Subp. 2. [See Repealer.]

[For text of subp 3, see M.R.]

Subp. 3a. **Director.** "Director" means the director of the Minnesota Office of Waste Management.

[For text of subps 4 and 5, see M.R.]

Subp. 5a. **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. 5b. **Office.** "Office" means the Minnesota Office of Waste Management established in *Minnesota Statutes*, section 115A.055.

Subp. 6. **Person.** "Person" has the meaning given it in *Minnesota Statutes*, section 116.06, but does not include the ~~board~~ director.

Subp. 7. **Project.** "Project" means a solid waste ~~reduction or~~ separation project.

[For text of subps 8 to 11, see M.R.]

Subp. 12. [See Repealer.]

[For text of subp 13, see M.R.]

9210.0410 PURPOSE AND ADMINISTRATION.

Parts 9210.0400 to 9210.0460 implement the solid waste ~~reduction and~~ separation grant program created and described in *Minnesota Statutes*, sections 115A.49 to 115A.53, by establishing the substantive criteria and procedural conditions under which the ~~board~~ director may award grants for the costs of solid waste ~~reduction and~~ separation projects. Applicants ~~for grants under this program are encouraged to contact the chair and request a preapplication review of proposed projects~~ are encouraged to develop solid waste separation projects that are innovative in terms of the materials to be separated, the institutional arrangements to implement the project, or the technologies to separate materials or collect separated materials.

9210.0420 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, and sanitary districts defined in *Minnesota Statutes*, section 115A.03, subdivision 28b. Eligible applicants may apply for grants on behalf of any person who is not an eligible applicant, but the named recipient shall be the city, county, or district.

Subp. 2. **Eligible projects.** Only ~~solid waste reduction projects,~~ solid waste separation projects~~,~~ and collection systems for separated solid wastes are eligible for grants. To be eligible for funding, a project must be a new project or an expansion of an existing project, and must be designed to operate for a minimum of three years after a grant is received. A project may include household hazardous waste management~~, but may not consist solely of household hazardous waste~~ or problem materials management.

Subp. 3. **Eligible costs.** ~~Grant funding is available for development costs as defined in subpart 4 and implementation costs as defined in subpart 5. Development costs shall be no more than 20 percent of the total grant award.~~ Eligible costs under parts 9210.0400 to 9210.0460 are limited to the following:

Subp. 4. [See Repealer.]

Subp. 5. [See Repealer.]

A. preliminary planning and development, feasibility study, and preliminary design costs, but not more than 20 percent of a grant award may be spent on these activities;

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.

B. capital, operating, and maintenance costs of waste ~~reduction and~~ separation equipment such as source separation collection vehicles, collection trailers, drop boxes, curbside collection bins, and other containers used exclusively for the collection or transport of separated wastes or the management of household hazardous waste or problem materials; and

~~B~~ C. costs of any necessary legal, financial, economic, educational, marketing, social, governmental, and administrative activities required for the implementation of the project.

Subp. 6. **Household hazardous waste disposal costs.** The cost of household hazardous waste or problem materials disposal is eligible provided no feasible alternative to disposal exists and no funding is available from federal, state, metropolitan, local, or private sources to fund the cost of disposal.

Subp. 7. **Ineligible costs.** Ineligible costs include any costs related to the purchase or lease of real property, waste processing equipment, structures necessary to house waste collection or processing equipment, and costs related to solid waste disposal facilities and equipment used exclusively for disposal of solid waste.

9210.0425 GRANT APPLICATION PROCEDURES.

Subpart 1. **Notification by director.** To initiate the process for awarding grants for solid waste separation projects, the director shall publish a notice in the *State Register* advising eligible applicants of the availability of waste separation project grants. The notice shall describe the procedure for awarding grants and shall establish a deadline by which proposals must be submitted.

Subp. 2. **Proposals.** Following the publication of a notice in the *State Register*, eligible applicants may submit grant proposals to the director. Proposals must contain the information in part 9210.0435, and must be received by the director by the deadline established in the *State Register* notice. Proposals received by the director after that deadline shall not be considered for funding and shall be returned to the applicant.

Subp. 3. **Award of grants.** Using the criteria in part 9210.0440, the director shall review all proposals received by the director before the deadline established in the *State Register* notice and shall award waste separation project grants. Grants shall be awarded through a grant agreement meeting the limitations in part 9210.0450 and containing the terms established in part 9210.0460.

9210.0435 PROPOSAL.

An eligible applicant shall submit a proposal in the form specified by the director. A proposal shall include the following information:

A. a detailed description of the project, including the project participants, the waste separation activities, the amounts of each type of waste to be separated, and the implementation schedule;

B. an itemized description of the project costs, including the total estimated cost, total grant eligible cost, and the amount of grant funding requested;

C. an itemized description of the project financing, including applicant contributions, other government contributions, and private contributions;

D. a list of each political subdivision affected by the project and a description of any potential barriers to successful project implementation;

E. a detailed work plan and budget for implementing the project, including a budget item for the preparation of a report to the office on the results of the project;

F. for each county affected by the project, documentation that a comprehensive solid waste management plan, developed under *Minnesota Statutes*, section 115A.46, has been approved by the director;

G. a resolution from each political subdivision participating in the project that demonstrates that, if a grant is awarded, it will implement the project, provide necessary local financing, and accept and exercise the governmental powers necessary to develop and operate the project;

H. documentation explaining how waste supplies will be committed to the project for the life of the project and that the applicant has mechanisms to commit the wastes;

I. a preliminary market analysis for recovered materials, including documentation of commitments from markets for recovered materials, such as letters of intent or contracts;

J. documentation explaining the promotion and education program to be developed in conjunction with the project and a description of the program, its timeline and budget, and how it relates to the education component of the comprehensive solid waste management plan for each affected county;

K. a discussion of the status of required permits from permitting agencies;

L. a discussion of any potential adverse environmental effects from the project and how they will be mitigated;

M. information demonstrating:

(1) whether and to what extent the natural geologic and soil conditions of the counties that would be affected by the proposed project are especially unsuitable for land disposal of solid waste;

(2) whether and to what extent the area to benefit from the proposed project has existing solid waste disposal capacity of less than five years; and

(3) whether the proposed project serves more than one local government unit and, for projects serving eligible jurisdictions in only a single county, the extent to which cooperation with jurisdictions in other counties is not feasible.

9210.0440 REVIEW AND EVALUATION OF ~~APPLICATIONS~~ PROPOSALS.

Subpart 1. **Determination of eligibility and completeness.** Upon receipt of ~~an application~~ a proposal, the ~~chair~~ director shall determine the eligibility of the applicant, the eligibility of the project ~~identified in the application~~ proposed, the eligibility of the costs identified in the ~~application~~ proposal, and the completeness of the ~~application~~ proposal. A proposal is complete if it enables the director to determine whether:

A. the project is conceptually and technically feasible;

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

C. operating revenue from the project, considering the availability and security of sources of solid waste and of markets for recyclable materials together with any proposed federal, state, local, or private financial assistance, will be sufficient to pay all costs over the life of the project.

Subp. 2. **Notice of determination of eligibility and completeness.** ~~Within 14 days~~ After receiving the ~~application~~ proposal, the ~~chair~~ director shall notify the applicant of the ~~chair's determinations of~~ eligibility and completeness of the proposal. If the ~~chair~~ director determines that the applicant or the project is ineligible, the ~~chair~~ director shall reject the ~~application~~ proposal, return it to the applicant, and notify the applicant of the reasons for the rejection. If the ~~chair~~ director determines that any part of the project costs is ineligible or that the ~~application~~ proposal is incomplete, the ~~chair~~ director shall notify the applicant of the ineligible portion of the costs or of the deficiency. The applicant has 30 days after receiving the notice to correct any inadequacies identified by the ~~chair~~ director. If the inadequacies are corrected within the time allowed, the ~~application~~ proposal will be further considered. If the inadequacies are not corrected within the time allowed, the ~~application~~ proposal is rejected~~, and the applicant must submit a new application to be considered again~~. If the ~~chair~~ director determines that the ~~application~~ proposal is complete and the project is eligible to receive grant funds, the ~~chair~~ director shall ~~forward the application to the board for its evaluation~~ evaluate the proposal under subpart 3a.

Subp. 3. [See Repealer.]

Subp. 3a. **Evaluation of proposals.** The director shall evaluate each proposal that is determined to be eligible and complete. In evaluating each proposal, the director shall consider whether:

A. the scope of the proposed project is consistent with the comprehensive solid waste management plan of each affected county;

B. the applicant is prepared to implement the proposed project upon receipt of the grant award;

C. the proposed project represents an innovative approach to solid waste separation activities, including:

(1) separation of materials that are inadequately addressed by existing solid waste separation programs;

(2) institutional arrangements that present unique advantages for the type of waste separation and the materials to be separated; or

(3) new technologies that improve or expand existing solid waste separation programs, or support new solid waste separation activities;

D. the applicant has evaluated the opportunities for private investment in the capital costs or operating costs of the proposed project; and

E. the proposed project provides information transferable to other political subdivisions throughout the state.

Subp. 4. [See Repealer.]

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.

Subd. 4a. **Award of grants.** The director shall award grants for those proposals that will be the most beneficial in improving solid waste separation in the state, based upon the director's evaluation of the factors identified in subpart 3a. The director shall return those proposals that do not receive grant awards, together with a statement of the reasons for the determination. An applicant that does not receive a grant award may resubmit a proposal upon future notice by the director under part 9210.0425, subpart 1.

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

9210.0450 LIMITATIONS.

Subpart 1. [See Repealer.]

[For text of subp 2, see M.R.]

Subp. 2a. **Reduced grant award.** The director may award a grant for less than the maximum grant amount if program resources are insufficient to provide full assistance to all applicants to be awarded grants by the director. The director shall ask an applicant to document the impacts of reduced grant assistance before reducing the amount of a grant award.

Subp. 2b. **No grant awards.** If the director determines that no proposal will provide sufficient assistance to the state in achieving its solid waste management goals, the director may decide not to award any grant. The director may then reinitiate the process for awarding grants by publishing a notice under part 9210.0425, subpart 1.

Subp. 3. **Limitations on grant award.** The amount of the ~~board's~~ director'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~~, whether or not the applicant has applied for funds~~. Grants shall not be awarded to cover any cost associated with tasks performed before the execution of the grant ~~award~~ agreement or after the expiration of the grant agreement~~, other than development costs incurred in the preparation of the grant application~~.

Subp. 4. **Limitations on disbursal of funds.** No grant ~~money~~ funds shall be ~~paid to an applicant~~ disbursed until the ~~board~~ director has:

A. determined the total estimated cost of the project ~~and~~;

B. ascertained that financing of the ~~cost~~ project 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 bond proceeds, or other funds of~~ the recipient~~, to a fund for the development and implementation of~~; and

C. received commitments from the recipient to implement the project.

9210.0460 GRANT AGREEMENT.

Subpart 1. **Requirements.** No grant ~~money~~ funds shall be paid to an applicant awarded a grant until that applicant has executed a written grant agreement with the ~~board~~ director. The grant agreement shall:

A. incorporate by reference the ~~final grant application~~ proposal submitted to the ~~board in accordance with~~ director according to part 9210.0430;

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

[For text of item C, see M.R.]

D. provide that the ~~board~~ director will not accept amendments requesting that additional funds be awarded to the recipient; and

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

Subp. 2. **Rescission of grant.** If a project is not ~~developed and~~ implemented ~~in accordance with~~ according to 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~~ director determines that ~~a variance from~~ an amendment to the grant agreement is justified ~~and that~~. The director shall agree to an amendment if it will allow the original objectives of the project ~~will~~ to be accomplished.

Subp. 3. **Disbursement.** The ~~board~~ director shall pay grant ~~money~~ funds to the recipient ~~in accordance with~~ according to the payment schedule in the grant agreement.

Rules as Proposed (all new material)

SOLID WASTE LITTER PREVENTION, CONTROL, AND ABATEMENT GRANT PROGRAM

9210.0500 DEFINITIONS.

Subpart 1. **Scope.** The terms defined in this part and in *Minnesota Statutes*, section 115A.03, apply to parts 9210.0500 to 9210.0570, unless the context requires otherwise.

Subp. 2. **Comprehensive solid waste management plan.** "Comprehensive solid waste management plan" means a written plan prepared under *Minnesota Statutes*, section 115A.46.

Subp. 3. **Director.** "Director" means the director of the Minnesota Office of Waste Management.

Subp. 4. **Litter.** "Litter" means solid waste improperly disposed of along roads, in vacant lots, or in other areas not specifically designated as solid waste disposal facilities.

Subp. 5. **Litter prevention, control, or abatement.** "Litter prevention, control, or abatement" means eliminating or reducing the improper disposal of solid waste, or containing or removing existing solid waste litter.

Subp. 6. **Office.** "Office" means the Minnesota Office of Waste Management established in *Minnesota Statutes*, section 115A.055.

Subp. 7. **Person.** "Person" has the meaning given it in *Minnesota Statutes*, section 116.06, but does not include the director.

Subp. 8. **Project.** "Project" means a solid waste litter prevention, control, or abatement project.

Subp. 9. **Recipient.** "Recipient" means an applicant who has received a grant under the solid waste litter prevention, control, and abatement grant program.

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

Subp. 11. **Waste processing equipment.** "Waste processing equipment" means machinery or devices used as an integral component of a waste processing facility.

Subp. 12. **Waste separation.** "Waste separation" means the process of segregation, accumulation, or collection of recyclable or compostable solid wastes.

9210.0510 PURPOSE AND ADMINISTRATION.

Parts 9210.0500 to 9210.0570 implement the solid waste litter prevention, control, and abatement grant program created and described in *Minnesota Statutes*, section 115A.991, by establishing the substantive criteria and procedural conditions under which the director may award grants for the costs of solid waste litter prevention, control, and abatement projects.

9210.0520 ELIGIBILITY CRITERIA.

Subpart 1. **Eligible applicants.** Eligible applicants are limited in *Minnesota Statutes*, section 115A.991, to each county that has included programs to prevent, control, or abate litter in its comprehensive solid waste management plan or solid waste master plan. Eligible applicants may apply for grants on behalf of a person who is not an eligible applicant, but the named recipient shall be the county.

Subp. 2. **Eligible projects.** Eligible projects are limited to programs developed for the prevention, control, or abatement of solid waste litter.

Subp. 3. **Eligible costs.** Eligible costs under parts 9210.0500 to 9210.0570 are limited to the following implementation costs:

A. operating and maintenance costs of equipment used to collect litter, and operating costs of processing litter to recover recyclable materials;

B. purchase costs, not to exceed ten percent of the grant award, for additional waste receptacles to prevent litter;

C. administrative, enforcement, and legal costs necessary to implement the proposed project; and

D. educational and promotional costs, including financial incentives for organizations that participate in litter prevention, control, or abatement activities.

Subp. 4. **Ineligible costs.** Ineligible costs include costs related to the purchase or lease of real property, collection equipment, waste processing equipment or structures, or costs related to equipment used exclusively for disposal of solid waste.

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.

9210.0530 GRANT APPLICATION PROCEDURES.

Subpart 1. **Notice.** To initiate the process for awarding litter grants, the director shall publish a notice in the State Register advising eligible applicants of the availability of litter grants. The notice shall describe the procedure for awarding grants and shall establish a deadline by which grant applications must be submitted.

Subp. 2. **Grant applications.** Following the publication of a notice in the *State Register*, eligible applicants may submit to the director litter grant applications. Grant applications must contain the information in part 9210.0540 and must be received by the director by the deadline established in the *State Register* notice. Grant applications received by the director after that deadline shall not be considered for funding and shall be returned to the applicant.

Subp. 3. **Award of grants.** Using the criteria in part 9210.0550, the director shall review all grant applications received by the director before the deadline established in the *State Register* notice and shall award litter grants. Grants shall be awarded through a grant agreement meeting the limitations in part 9210.0560 and containing the terms established in part 9210.0570.

9210.0540 INFORMATION AND DOCUMENTATION REQUIRED IN GRANT APPLICATION.

An application for a solid waste litter project grant shall include the following information, as required in the application form supplied by the director:

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

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

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

D. an itemized description of the project costs, including the total estimated cost, total grant eligible cost, and the amount of grant funding requested;

E. the amount and source of all other money to be used to fund the project, including the amount of money to be contributed by the applicant;

F. a detailed description of the proposed project, including a list of organizations that intend to participate in the project;

G. for each county affected by the proposed project, documentation that a comprehensive solid waste management plan, developed under *Minnesota Statutes*, section 115A.46, has been approved by the director;

H. a resolution from each political subdivision participating in the proposed project that demonstrates that, if a grant is awarded, it will implement the project, provide necessary local financing, and accept and exercise the governmental powers necessary to develop and operate the project;

I. a description of the promotion and education program to be developed in conjunction with the proposed project, including its timeline and budget, and how it relates to the education component of the comprehensive solid waste management plan for each affected county;

J. a discussion of any potential environmental impacts from the proposed project; and

K. a work plan that describes how the applicant will implement the proposed project, including:

(1) the specific tasks to be completed under the grant;

(2) the work hours of staff and employees of local government units needed to complete each task;

(3) the costs of completing each task;

(4) the time schedule needed to complete each task; and

(5) a description of the reports, documents, public education material, and other written materials to be developed.

9210.0550 REVIEW AND EVALUATION OF APPLICATIONS.

Subpart 1. **Determination of eligibility and completeness.** Upon receipt of an application, the director shall determine the eligibility of the applicant, the eligibility of the project specified in the application, the eligibility of the costs specified in the application, and the completeness of the application.

Subp. 2. **Notice of determination of eligibility and completeness.** After receiving the application, the director shall notify the applicant of the director's determinations of eligibility and completeness. If the director determines that the applicant or the project is ineligible, the director shall reject the application, return it to the applicant, and notify the applicant of the reasons for the rejection. If the director determines that any part of the project costs are ineligible or that the application is incomplete, the director shall notify the applicant of the ineligible portion of the costs or of the deficiency. The applicant has 30 days after receiving the notice to correct any inadequacies identified by the director. If the inadequacies are corrected and the corrected application is received by the director within the time allowed, the application will be further considered. If the inadequacies are not corrected within the time allowed, the

application is rejected. If the director determines that the application is complete and the project is eligible to receive grant funds, the director shall evaluate the application under subpart 3.

Subp. 3. **Evaluation of applications.** The director shall evaluate each application that is determined to be eligible and complete. In evaluating each application, the director shall consider whether:

A. the proposed project is conceptually and technically feasible;

B. the scope of the proposed project is consistent with the comprehensive solid waste management plan of each affected county;

C. the affected political subdivisions are committed to implementing the proposed project, providing necessary local financing, and accepting and exercising the governmental powers necessary for project implementation and operation;

D. the applicant is prepared to implement the proposed project upon receipt of the grant award;

E. the proposed project demonstrates a high probability of success due to community support, and encourages citizens and private and nonprofit organizations to participate in litter prevention, control, or abatement activities; and

F. the proposed project provides information transferable to other political subdivisions throughout the state.

Subp. 4. **Award of grants.** The director shall award grants for those projects that will be the most beneficial in promoting the prevention, control, or abatement of litter, based upon the director's evaluation of the factors identified in subpart 3. The director shall return those applications that do not receive grant awards, together with a statement of reasons for the determination. An applicant that does not receive a grant award may resubmit the application upon future notice by the director.

Subp. 5. **Consultation with other agencies.** In evaluating the applications, the director shall consider any recommendations provided by the Pollution Control Agency, the State Planning Agency, the Department of Natural Resources, the Department of Trade and Economic Development, the Department of Transportation, and the appropriate regional development commission or the Metropolitan Council.

9210.0560 LIMITATIONS.

Subpart 1. **Maximum grant.** The maximum grant award for each eligible project is 50 percent of the total eligible costs, or $20,000, whichever is less.

Subp. 2. **Reduced grant award.** The director may award a grant for less than the maximum grant amount. The director shall ask an applicant to document the impacts of reduced grant assistance before reducing the amount of a grant award. The director shall reduce the amount of the grant award under the following conditions:

A. program resources are insufficient to provide full assistance to all applicants awarded grants by the director; or

B. the director determines that the applicant has not adequately demonstrated financial need for the full grant amount.

Subp. 3. **No grant awards.** If the director determines that no applications will provide sufficient assistance to the state in achieving its solid waste management goals, the director may decide not to award any grant. The director may then reinitiate the process for awarding grants by publishing a notice under part 9210.0530, subpart 1.

Subp. 4. **Limitations on grant award.** The amount of the 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 execution of the grant agreement or after the expiration of the grant agreement.

Subp. 5. **Limitations on disbursal of funds.** No grant funds shall be disbursed until the director has:

A. determined the total estimated cost of the project;

B. ascertained that financing of the project cost is assured by the recipient; and

C. received commitments from the recipient to implement the project.

9210.0570 GRANT AGREEMENT.

Subpart 1. **Requirements.** No grant funds shall be paid to an applicant awarded a grant until that applicant has executed a written grant agreement with the director. The grant agreement shall:

A. incorporate by reference the grant application submitted to the director according to part 9210.0540;

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

C. provide that any cost overruns incurred in the development and implementation of the proposed project shall be the sole responsibility of the recipient;

D. provide that the director will not accept amendments requesting that additional funds be awarded to the recipient; and

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

Subp. 2. **Rescission of grant.** If a project is not developed and implemented according to 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 director determines that an amendment to the grant agreement is justified. The director shall agree to an amendment if it will allow the original objectives of the project to be accomplished.

Subp. 3. **Disbursement.** The director shall pay grant funds to the recipient according to the payment schedule in the grant agreement.

REPEALER. *Minnesota Rules*, parts 9210.0100, subparts 2 and 3; 9210.0120, subparts 1 to 4; 9210.0160, subpart 3; 9210.0400, subparts 2 and 12; 9210.0420, subparts 4 and 5; 9210.0430; 9210.0440, subparts 3 and 4; and 9210.0450, subpart 1, are repealed.

Official Notices

Pursuant to the provisions of Minnesota Statutes §14.10, 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.

Department of Commerce

Notice of Change to Official Notice Published in *State Register* Vol. 14 #44, April 30, 1990, pp. 2535 and 2536.

NOTE: Underlining indicates the changes from the original notice.

MINNESOTA REGULATED LOAN ACT—ADJUSTMENT IN DOLLAR AMOUNTS

Commissioner of Commerce Thomas H. Borman announced today that an additional ten percent (10%) change will occur in certain dollar amounts indexed in the Regulated Loan Act (The Act), *Minnesota Statutes*, Chapter 56. The Act provides for periodic adjustment in dollar amounts that would be effective on July 1, in even-numbered years based on a percentage change in the Implicit Price Deflator for the Gross National Product.

Information obtained from the U.S. Department of Commerce, Bureau of Economic Analysis, in their monthly publication "Survey of Current Business" for February 1990 indicates the percentage change from the revised reference base to be 44% calculated to the nearest whole percentage point as required. The reference index was revised nationally from 1972 = 100 to 1982 = 100, with the statutory reference base index for dollar adjustments being December 1980. The index for December 1980 was 89 and for December 1989 is 127.9, for an increase of 38.9 or a percentage change of 43.71%. The statute requires that the percentage change in the reference base index be 10% or more in order to adjust the dollar amounts. The portion of the percentage change in the index in excess of a multiple of ten percent shall be disregarded. Dollar amounts change only in multiples of ten percent of amounts appearing in law effective August 1, 1981. There was no change in dollar amounts in 1982.

According to Commissioner Borman, this means indexed dollar limits will increase an additional 10% effective July 1, 1990. The results of indexing are as follows:

STATE OF MINNESOTA
OFFICE OF WASTE MANAGEMENT

In the Matter of the Proposed Rule Amendments Governing the Solid Waste Processing Facility Capital Assistance Program, Minn. Rules Parts 9210.0100 to 9210.0180

NOTICE OF INTENT TO ADOPT RULES WITHOUT A PUBLIC HEARING

Notice is hereby given that the Minnesota Office of Waste Management (Office) intends to adopt amendments to the above-entitled rules without a public hearing following the procedures set forth in the Administrative Procedures Act for adopting rules without a public hearing in Minn. Stat. §§14.22 to 14.28 (1988). The Office's authority to adopt the amendments to the rules is set forth in Minn. Stat. §115A.06, subd. 2 (1988).

All persons have until 4:30 p.m. on July 5, 1990, to submit comments in support of or in opposition to the proposed rule amendments or any part or subpart of the rule amendments. Comment is encouraged. Each comment should identify the portion of the proposed rule amendments addressed, the reason for the comment, and any change proposed.

Any person may make a written request for a public hearing on the proposed rule amendments within the comment period. If 25 or more persons submit a written request for a public hearing within the comment period, a public hearing will be held unless a sufficient number withdraw their requests in writing. 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 amendments addressed, the reason for the request, and any change proposed. If a public hearing is required, the Office will proceed pursuant to Minn. Stat. §§14.131 to 14.20 (1988).

Comments or written requests for a public hearing must be submitted to:

Thomas Osdoba
Minnesota Office of Waste Management
1350 Energy Lane
St. Paul, Minnesota 55108
612-649-5773

The proposed rule amendments may be modified if the modifications are supported by data and views submitted to the Office and do not result in a substantial change in the proposed rule amendments as noticed.

The proposed rule amendments, if adopted, will revise the criteria and procedures for awarding grants under the Office's solid waste processing facility capital assistance program. One free copy of the proposed rule amendments is available upon request from the address and telephone number stated above.

A Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed rule amendments and identifies the data and information relied upon to support the proposed rule amendments has been prepared and is available from the Office upon request.

You are hereby advised, pursuant to Minn. Stat. §14.115 (1988), "Small business considerations in rulemaking," that the proposed rule amendments will have no negative effect on small businesses, as the amendments do not affect the ability of small businesses to participate in this program.

If no hearing is required, upon adoption of the rule amendments, the rule amendments and the required supporting documents will be submitted to the Attorney General for review as to legality and form to the extent form relates to legality. Any person may request notification of the date of submission to the Attorney General. 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 rule amendments as adopted, must submit a written request to the name and address stated above.

Dated: 5/31/90

MICHAEL ROBERTSON
Director

STATE OF MINNESOTA
OFFICE OF WASTE MANAGEMENT

In the Matter of the Proposed Rule Amendments Governing the Solid Waste Processing Facility Capital Assistance Program, Minn. Rules Parts 9210.0100 to 9210.0180

AFFIDAVIT OF MAILING THE NOTICE OF INTENT TO ADOPT RULES WITHOUT A PUBLIC HEARING AND CERTIFICATE OF MAILING LIST

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

Jeff Stuhr, being duly sworn says:

I hereby certify that the list of persons and associations who have requested, pursuant to Minn. Stat. §§14.14, subd. 1a and 14.22 (1988) that their names be placed on the Minnesota Office of Waste Management's rulemaking mailing list is accurate, complete, and current as of this thirty-first day of May, 1990.

That on the thirty-first day of May, 1990, at the City of St. Paul, County of Ramsey, State of Minnesota, I mailed the attached Notice of Intent to Adopt Rules Without a Public Hearing by depositing in the State of Minnesota Central Mail System for United States Mail or in the United States Mail a copy thereof, with postage prepaid, to all persons and associations on the aforementioned list.

Jeff Stuhr

Subscribed and sworn to before me
this 1st day of June, 1990.

Notary Public



BARBARA B. RANSON ENGINEERING INC.

ROUTE 1, BOX 130
SEBEKA, MINNESOTA 56477

BARBARA B. RANSON, P.E.
CONSULTING ENGINEER

TELEPHONE
218-837-5405

New Address:
320 Jefferson St. S.
P.O. Box 26
Wadena, MN 56482

RECEIVED
MN OFFICE OF
JUN 6 1990
WASTE MANAGEMENT

June 5, 1990

Mr. Tom Osdoba
Office of Waste Management
1350 Energy Lane
St. Paul, MN 55108

Dear Tom:

I have several questions regarding the new grant rules. Please consider this a response during the comment period and forward it to the necessary persons.

1: In-kind contributions: 9210.0170 Sub. 2 paragraph 2
In the past, the project owner (County etc) has been able to cover part of its match with in-kind contributions such as land. However, anything contributed in-kind implies that it was owned before the grant was awarded and would thus not be an eligible cost. Given the squeeze on County funding at this time, I think it would be appropriate to allow in-kind contributions. Can this issue be clarified?

2: Public Ownership: 9210.0130 Subp 2 lines 11 and 12 requires public ownership of all land, buildings and equipment related to the project. The language should be rewritten to state:

"Eligible projects are limited to those in which land, buildings and equipment <u>purchased with state grant assistance</u> are publically owned."

I think this is a very important distinction. The language as-is prevents leasing. I do not think that it is the state's intention to make economic decisions for the County. If the County feels that a portion of the project facilities should be leased (ad not be grant eligible) then the County should be allowed to make that decision.

For example, a County may wish to lease a building as a temporary recycling center until a landfill is sited. Then the center could be located at the landfill. The County should be allowed to purchase equipment and recycling trailers with the CAP grant to use in the leased building.

As a second example, a County may wish to lease a shredder to see how it works. The current language prohibits such leasing since leased equipment is privately owned.

3. Grant Limits: 9210.0450 The low-tech grant doesn't appear to have a limit. Did I miss it? It seems to me that every county will come in for 100% funding. It's really easy to say one is committed to a "free" project. In order to weed out the less committed applicants, the funding should be limited to 50%.

Sincerely,

Barbara B. Ranson

MINNESOTA
OFFICE
OF WASTE
MANAGEMENT

1350 Energy Lane
St. Paul, Minnesota 55108
(612) 649-5750
MN Toll Free
1-800-652-9747

July 18, 1990

Barbara B. Ranson Engineering Inc.
320 Jefferson Street South
P.O. Box 26
Wadena, MN 56482

Dear Barb:

The Office of Waste Management wishes to thank you for your comments on the proposed rules governing the Office's Solid Waste Processing Facility Capital Assistance Program (CAP) and Solid Waste Separation Grant Program (LOW-TECH). This letter provides you with a response to those comments. I have attached a copy of your letter, which was received by the Office on June 6, 1990.

1. The Office believes that there is a distinction between in-kind contributions and costs incurred prior to the execution of a grant agreement. While land owned by a recipient may be committed to a project as an in-kind contribution, this does not imply that the costs of all in-kind contributions are incurred prior to the execution of a grant agreement. For example, staff time and labor for implementing a project are examples of in-kind contributions that would not be incurred prior to the execution of a grant agreement.

Any cost that has been incurred prior to the execution of a grant agreement is ineligible. A recipient may use land that is already owned for a project, but this land may not be included as an eligible cost. Alternatively, staff time and labor may be included as eligible costs.

2. The rules as proposed do not prevent leasing. However, costs of leasing are not eligible costs. This exclusion reflects the Office's mandate that CAP funds, which are financed through the issuance of state bonds, are used for costs that are of a capital nature. This mandate is set out in the Minnesota Constitution.

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In addition, the designation of leasing costs as ineligible costs for this program minimizes state risk by encouraging public ownership. The Office believes that the rules do not restrict the autonomy of counties to make economic decisions, but it does clearly indicate the priorities of the state.

The Office believes that the first example you mentioned, which would involve temporary leasing of a building, is permissible under the existing rules. The Office has awarded grants in the past under similar circumstances.

3. The maximum grant award under the LOW-TECH program remains the same as in the past: $50,000 or 50 percent of eligible project costs, whichever is less. The Office of the Revisor of Statutes does not reprint sections of proposed rules where no changes are proposed.

I hope that this letter addresses the concerns you identified. Please call me at 612-649-5773 if you have any additional questions.

Sincerely,

Thomas A Osdoba

Thomas A. Osdoba
Solid Waste Grants

Enclosure

MN. OFFICE OF WASTE MANAGEMENT
1350 Energy Lane, St. Paul, MN 55108

State of Minnesota
OFFICE MEMORANDUM

DATE: July 5, 1990

TO: Administrative Record

FROM: Thomas A. Osdoba TAO
Grants and Market Development Unit
Phone - 612-649-5773

SUBJECT: **Proposed Rule Revisions to Govern Solid Waste Processing Facility Capital Assistance Program and Solid Waste Separation Grant Program**

I. Purpose

This memo summarizes comments received from Ann Cohen, from the Office of the Attorney General, on the proposed rule revisions to the Office of Waste Management's (Office's) Solid Waste Processing Facility Capital Assistance Program and Solid Waste Separation Grant Program. These comments were provided to the Office prior to publication of the proposed rules on June 4, 1990. Ms. Cohen submitted the comments for consideration at the discretion of the Office.

The comments summarized below have been identified by the Office as useful for improving the language of the rules. This memo incorporates these comments into the Administrative Record for the rulemaking.

II. Summary of Comments

The definition of "institutional arrangements" in Minnesota Rules, Parts 9210.0100, subpart 8 and 9210.0400, subpart 5a is "awkward" and should be revised.

Part 9210.0131, subpart 2, which provides that applicants shall have 30 days to respond after receiving notice from the Director that a preliminary grant application is incomplete, is "draconian." The Office should consider whether a more reasonable process is appropriate.

Part 9210.0132, subpart 1 (E) should be clarified to specify what the Office would interpret as "an effective use of grant funds."

cc: Kevin Johnson
Sigurd Scheurle

MN. OFFICE OF WASTE MANAGEMENT
1350 Energy Lane, St. Paul, MN 55108

State of Minnesota
OFFICE MEMORANDUM

DATE: June 28, 1990

TO: Administrative Record

FROM: Thomas A. Osdoba TAO
Grants and Market Development Unit
Phone - 612-649-5773

SUBJECT: **Proposed Rule Revisions to Govern Solid Waste Processing Facility Capital Assistance Program**

I. Purpose

This memo summarizes a comment received from Jim Mulder, Association of Minnesota Counties. The comment pertains to the proposed rule revisions to the Office of Waste Management's Solid Waste Processing Facility Capital Assistance Program, which were published in the State Register for public comment on June 4, 1990.

II. Summary of Comment

Minnesota Rules, Part 9210.0160, subpart 4 (F), which evaluates an applicant's need for program assistance, should be moved to Part 9210.0132, subpart 1. The commenter believed that this evaluation should take place earlier in the process.

cc: Kevin Johnson
Sigurd Scheurle

MINNESOTA
OFFICE
OF WASTE
MANAGEMENT

1350 Energy Lane
St. Paul, Minnesota 55108
(612) 649-5750
MN Toll Free
1-800-652-9747

July 18, 1990

Mr. Jim Mulder
Association of Minnesota Counties
125 Charles Avenue
St. Paul, MN 55103

Dear Mr. Mulder:

The Office of Waste Management wishes to thank you for your comment on the proposed rules governing the Office's Solid Waste Processing Facility Capital Assistance Program (CAP). This letter provides you with a response to your comment. I have attached a copy of a memo that summarizes the comment, which was received from Jeff Buss on June 28, 1990.

The Office believes that it is inappropriate to evaluate the financial need of an applicant based on a preliminary grant application, submitted under Minn. Rules Part 9210.0131. The information that is required to fairly assess the financial need of an applicant is substantial. By requiring information sufficient for such an assessment when evaluating preliminary grant applications under Part 9210.0132, the Office would be undermining the intent of the two-stage application process. The preliminary grant applications are intended to provide the Office with information to evaluate the programmatic aspects of a project and, at the same time, limit the burden of compiling a detailed application for counties that may not receive a CAP grant. The Office does not consider the applicant's ability to demonstrate financial need as necessary for the preliminary evaluation phase.

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I hope that this letter addresses the concern you identified. Please call me at 612-649-5773 if you have any additional questions.

Sincerely,

Thomas A. Osdoba
Solid Waste Grants

Enclosure

MN. OFFICE OF WASTE MANAGEMENT
1350 Energy Lane, St. Paul, MN 55108

State of Minnesota
OFFICE MEMORANDUM

DATE: June 28, 1990

TO: Administrative Record

FROM: Thomas A. Osdoba TAO
Grants and Market Development Unit
Phone - 612-649-5773

SUBJECT: **Proposed Rule Revisions to Govern Solid Waste Processing Facility Capital Assistance Program and to Solid Waste Separation Grant Program**

I. Purpose

This memo summarizes comments received from Wayne Nelson, Metropolitan Council. The comments pertain to the proposed rule revisions to the Office of Waste Management's Solid Waste Processing Facility Capital Assistance Program and the Solid Waste Separation Grant Program, which were published in the State Register for public comment on June 4, 1990.

II. Summary of Comments

Minnesota Rules, Part 9210.0160, subpart 4 (F), which evaluates an applicant's need for program assistance, may favor marginal projects that are less likely to be successful. As proposed, the rules will give preference to projects that demonstrate financial need. This criterion will work against projects with stronger financial foundations, although these projects would have better probabilities for success.

Minnesota Rules, Part 9210.0170, subpart 1a (C) and Part 9210.0450, subpart 2a, which allow the Director of the Office of Waste Management to award funds for less than the maximum eligible amount requested by an applicant, will have a similar impact on projects that receive assistance from the programs. This provision will result in smaller grant awards for projects with stronger financial foundations, thus discouraging the development of new funding sources for these projects.

cc: Kevin Johnson
Sigurd Scheurle

MINNESOTA
OFFICE
OF WASTE
MANAGEMENT

1350 Energy Lane
St. Paul, Minnesota 55108
(612) 649-5750
MN Toll Free
1-800-652-9747

July 18, 1990

Mr. Wayne Nelson
Metropolitan Council
230 East 5th Street
St. Paul, MN 55101

Dear Mr. Nelson:

The Office of Waste Management wishes to thank you for your comments on the proposed rules governing the Office's Solid Waste Processing Facility Capital Assistance Program (CAP). This letter provides you with a response to your comments. I have attached a copy of a memo that summarizes the comments, which were received on June 28, 1990.

The Office's CAP program is designed to assist in the financing of solid waste processing facilities. An applicant that receives assistance through this program must provide thorough documentation that demonstrates the feasibility of a project. This documentation is required to ensure that funded projects will be successful. Minn. Rules Part 9210.0170, subpart 3 (B), specifies that grant funds shall not be disbursed until the Director has ascertained that financing of the project is assured by the recipient. This requirement eliminates the possibility of project failure due to a lack of financing.

The evaluation of an applicant's financial need is required under Minn. Stat. §115A.54, subd. 2a (g), and is necessary for allocating scarce resources.

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I hope that this letter addresses the concerns you identified. Please call me at 612-649-5773 if you have any additional questions.

Sincerely,

Thomas A. Osdoba
Solid Waste Grants

Enclosure

STATE OF MINNESOTA
OFFICE OF WASTE MANAGEMENT

In the Matter of the Proposed Rule Amendments Governing the Solid Waste Processing Facility Capital Assistance Program, Minn. Rules Parts 9210.0100 to 9210.0180

FINDINGS OF FACT, CONCLUSIONS, AND ORDER ADOPTING RULES

(1) The above-entitled matter came for decision before the Director of the Minnesota Office of Waste Management (Office) on the 9th day of Aug, 1990. After affording all interested persons the opportunity to present written and oral data, statements and arguments to the Office, in accordance with statutory requirements regarding the adoption of noncontroversial rules, after considering the Statement of Need and Reasonableness, after considering all of the evidence adduced upon the records, files and proceedings herein, the Office, being fully advised in the premises, hereby adopts the following Findings of Fact, Conclusions, and Order:

FINDINGS OF FACT

(1) 1. Notice of the Minnesota Office of Waste Management's intent to adopt the above-entitled rules without a public hearing was published in the State Register on June 4, 1990, and was sent by mail to all persons on the list maintained by the Office pursuant to Minn. Stat. §§14.14, subd. 1a and 14.22 (1988), on May 31, 1990.

(2) 2. The Statement of Need and Reasonableness was prepared prior to mailing and publication of the notice and was made available to the public.

3. All persons were given the opportunity to submit comments on the rule for 30 days after notice of proposed rulemaking. The 30 day comment period, as set out in the notice, expired on July 5, 1990.

4. No requests for public hearing were received during the comment period.

5. No requests for notice of submission to the Attorney General were received by the Office.

6. During the comment period the Office received one written comment, a letter from Barbara B. Ranson, dated June 5, 1990. The Office responded to that comment by letter, dated July 18, 1990. A copy of the comment and the Office's response are incorporated as part of these Findings of Fact.

7. After the proposed rules received the approval of the Revisor of Statutes but before they were printed in the State Register, the Office received a number of oral comments addressing the clarity of the rules. These comments are set forth in a memorandum to the file, by T. Osdoba, dated July 5, 1990. On the basis of these comments, the Office finds that the following three modifications to the proposed rules are justified:

a. Part 9210.0100, subpart 8 is revised for clarity. The modification involved the deletion of the phrase "or joint efforts by more than one local government unit" from the definition of "institutional arrangements." This modification improves the clarity of the definition. The modification is not substantial because a joint effort by more than one local government unit is an example of an institutional arrangement rather than an essential part of the definition.

b. Part 9210.0131, subpart 2 is revised to allow applicants to receive an extension on the 30-day time limit for providing information necessary to complete a preliminary grant application. This modification is reasonable because allows applicants to adapt to unanticipated delays, and is not substantive because it has no negative impact on the procedures or parties involved in the program.

c. Part 9210.0132, subpart 1 (E) is deleted for clarity. To the extent this criterion was clear, it overlapped with other criteria set forth in the rules. The Office believes this modification is reasonable because it removes redundancy and thereby avoids confusion as to meaning of the rules. This modification is not substantial because it does not change the program.

8. The Office adopts the Statement of Need and Reasonableness, in its entirety, as the factual basis for the proposed rules. The Office hereby incorporates the Statement of Need and Reasonableness into these findings, except as modified in Finding No. 7 above.

(8) 8. The above-captioned rule is needed and reasonable.

CONCLUSIONS

1. The Minnesota Office of Waste Management duly acquired and has jurisdiction over this proceeding.

2. The Office published and served due, timely, and adequate notice of the intent to adopt the rules without a public hearing.

3. The Office has complied with all relevant legal and procedural requirements of statute and rule.

4. The modifications to the proposed rules are supported by the record and do not result in a substantial change in the proposed rules.

ORDER

NOW, THEREFORE, IT IS ORDERED, that the attached Minnesota Rules parts 9210.0100 to 9210.0180, governing the Solid Waste Processing Facility Capital Assistance Program are adopted pursuant to the authority vested in the Minnesota Office of Waste Management by Minn. Stat. §§115A.06, subd. 2 and 115A.49 to 115A.54 (2nd 1989 Supp.).

MINNESOTA OFFICE OF WASTE MANAGEMENT

Dated: 8/9/90

Michael Robertson
Director

STATE OF MINNESOTA
OFFICE OF WASTE MANAGEMENT

In the Matter of the Proposed Rule
Amendments Governing the Solid Waste
Processing Facility Capital Assistance
Program, Minn. Rules Parts 9210.0100
to 9210.0180

DECLARATION OF COUNSEL

I, Lisa Tiegel, Special Assistant Attorney General, do hereby declare that I have examined the above-captioned rules and the supporting rulemaking record, and that, based on my examination, the Administrative Procedures Act and Minnesota Rules ch. 2010 have been followed. For Attorney General billing purposes, the four-digit docket client code is 0835

Lisa Tiegel
Special Assistant
Attorney General

STATE OF MINNESOTA
OFFICE OF WASTE MANAGEMENT

In the Matter of the Proposed Rule Amendments Governing the Solid Waste Processing Facility Capital Assistance Program, Minn. Rules Parts 9210.0100 to 9210.0180

AFFIDAVIT REGARDING NOTICE OF SUBMISSION OF RULES ADOPTED WITHOUT A PUBLIC HEARING TO THE ATTORNEY GENERAL

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

Thomas Osdoba, being duly sworn says:

I hereby certify that no persons or associations have requested notice that the rules in the above-entitled matter have been submitted to the Attorney General. Therefore, the Minnesota Office of Waste Management is not mailing a Notice of Submission of Rules Adopted Without a Public Hearing to the Attorney General.

Thomas A. Osdoba

Subscribed and sworn to before me
this 3 day of Aug., 1990.

Marilyn J. Wegwart
Notary Public

MARILYN J. WEGWART
NOTARY PUBLIC - MINNESOTA
RAMSEY COUNTY
My commission expires 4-19-96