

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

MINNESOTA
OFFICE
OF WASTE
MANAGEMENT

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

September 26, 1990

Ms. Maryanne V. Hruby
Legislative Commission to Review
Administrative Rules
55 State Office Building
St. Paul, Minnesota 55155

Dear Ms. Hruby:

This letter is written to satisfy the notice requirement established by Minn. Stat. §14.12. That statute requires an agency: (1) to publish a notice of intent to adopt rules within 180 days after the effective date of a law requiring rules to be promulgated unless otherwise specified by law or (2) to notify the legislative commission to review administrative rules, other appropriate committees of the legislature, and the governor of its failure to meet the 180 day deadline and the reasons therefor.

On July 23, 1990, the Office of Waste Management (OWM) published notices of its intent to adopt proposed permanent rules relating to "recyclable material market development grant and loan programs" and "solid waste reduction grant and loan programs." Laws requiring the adoption of these rules became effective on October 4, 1989, 292 days before the notices were published. It took the OWM more than 180 days to publish these rules for the following reasons.

For several months after it was recreated in July 1989, the OWM had fewer staff than it needed to meet all of the statutory time limitations applicable to it and other agencies. Once the OWM had hired necessary staff, it immediately proceeded to fulfill its statutory obligations and mandate.

Second, the OWM sought to resolve public concerns even before publishing notice of the proposed rules. By soliciting comments before publishing its rulemaking notices, the OWM hoped to preserve public finances by avoiding the need for multiple notices or more expensive, controversial rulemaking.

To ensure adequate public comment, the OWM solicited comments from its citizen advisory councils before publishing its rulemaking notices. The OWM believes that these discussions provided for a better rule and assisted the OWM in proceeding

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through noncontroversial rulemaking. In conclusion, the OWM believes that the additional time it took to obtain meaningful community review of the proposed rules was well worth the effort and minor delay.

If you have questions regarding these rules, please call me or Thomas Osdoba of my staff at 649-5750.

Sincerely,

Michael Robertson
Director

MR:rf

cc: The Honorable Rudy Perpich, Governor of Minnesota
The Honorable Bob Lessard, Minnesota State Senator
The Honorable Willard Munger, Minnesota State Representative
Ms. Patti Nolte, Office of the Attorney General
Administrative Rules

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September 26, 1990

The Honorable Rudy Perpich
Governor of Minnesota
130 Capitol
75 Constitution Avenue
St. Paul, Minnesota 55155

Dear Governor Perpich:

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Ms. Patti Nolte, Office of the Attorney General
Ms. Maryanne V. Hruby, Legislative Commission to Review Administrative Rules

Proposed Rule not here yet to be delivered 9-19-90 MJC

RULE REVIEW CHECKLIST

File No. 1736
DATE RECEIVED 9-14-90
REVIEW DATE 9-24-90
DUE DATE 9-28-90
(DIS)APPROVED 9-27-90 mjc
WITHDRAWN

Docket No. 05 0009 0835
ADOPTED W/O HEARING ✓
EMERGENCY RULE
TO REVISOR ON 9-20-90
REVISOR (DIS)APPROVED
FILED W/SEC. OF STATE 9-27-90
RETURNED TO AGENCY 9-28-90

✓ Rule as adopted (4 copies)

✓ Notice to Solicit Outside Information/Opinion (if applicable)
April 23, 1990 Date published in State Register
Comments

~~Petition for Adoption of a Rule~~

~~Board's Authorizing Resolution~~
~~Date adopted~~

Proposed Rule no proposed rule
Revisor's Certificate

✓ Notice of Intent to Adopt Rule
115A.53 115A.55 Subd 2 & 3 Statutory Authority
NA Small Business Statement
Expenditure of public money statement
July 9, 1990 Signature

Statement of Need and Reasonableness (if applicable)
Small Business Statement
Fees - § 16A.128

✓ Affidavit of Mailing Notice of Intent to Adopt Rule
July 20, 1990 Dated 30/25 days before adoption
✓ Notice attached indicates it is attached
Copy of rule or summary attached

✓ Publication in State Register
July 23, 1990 Date 30/25 days before adoption

✓ 180-day deadline from: see my note - OK - gave notice
Effective date of law requiring rule (14.12) (both rules) amendments don't apply
✓ 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
~~September 10, 1990~~ Date

✓ Written Requests, Submissions or Comments

Declaration of Attorney
Lisa Tegt Name of SAAG representing agency

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

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

Left a message for Kevin Johnson to call

DEPARTMENT: Office of the Attorney General **STATE OF MINNESOTA**

OFFICE MEMORANDUM

DATE: September 28, 1990

TO: KEVIN JOHNSON
Solid Waste Grants
Minnesota Office of Waste Management

FROM: MARTHA J. CASSERLY
Special Assistant Attorney General
525 Park Street, Suite 500 (55103)

PHONE: 296-6839

SUBJECT: In the Matter of the Adopted Permanent Rules Relating to Solid Waste Reduction Grant and Loan Programs

The above-referenced rule has been approved as to its legality by the Attorney General on September 27, 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
Enclosures
cc: William Brown, Chief Judge
MaryAnn Hruby
Lisa Tiegel

MINNESOTA
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MANAGEMENT

1350 Energy Lane
St. Paul, Minnesota 55108
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September 14, 1990

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

Re: Proposed Rules Governing the Solid Waste Reduction Grant and Loan Program, Minn. Rules pts. 9210.0700 to 9210.0770

Dear Ms. Nolte:

On September 10, 1990, the Minnesota Office of Waste Management (Office) adopted the above-captioned rules governing the solid waste reduction grant and loan program. 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 2508, April 23, 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 (15 SR 190, July 23, 1990);

5. the Notice of Extension of the Public Comment Period as published in the State Register (15 SR 385, August 13, 1990);

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

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

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8. 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;

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

10. 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;

11. the Declaration of Counsel; and

12. 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 649-5788.

Sincerely,

Kevin Johnson
Solid Waste Grants

Enclosures

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September 26, 1990

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

Dear Ms. Nolte:

This letter is written to satisfy the notice requirement established by Minn. Stat. §14.12. That statute requires an agency: (1) to publish a notice of intent to adopt rules within 180 days after the effective date of a law requiring rules to be promulgated unless otherwise specified by law or (2) to notify the legislative commission to review administrative rules, other appropriate committees of the legislature, and the governor of its failure to meet the 180 day deadline and the reasons therefor.

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MR:rf

cc: The Honorable Rudy Perpich, Governor of Minnesota
The Honorable Bob Lessard, Minnesota State Senator
The Honorable Willard Munger, Minnesota State Representative
Ms. Maryanne V. Hruby, Legislative Commission to Review Administrative Rules

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September 26, 1990

The Honorable Bob Lessard
State Senator
111 State Capitol
75 Constitution Avenue
St. Paul, Minnesota 55155

Dear Senator Lessard:

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September 26, 1990

The Honorable Willard Munger
State Representative
1121 South 70th Avenue West
Duluth, Minnesota 55807

Dear Representative Munger:

This letter is written to satisfy the notice requirement established by Minn. Stat. §14.12. That statute requires an agency: (1) to publish a notice of intent to adopt rules within 180 days after the effective date of a law requiring rules to be promulgated unless otherwise specified by law or (2) to notify the legislative commission to review administrative rules, other appropriate committees of the legislature, and the governor of its failure to meet the 180 day deadline and the reasons therefor.

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The Honorable Bob Lessard, Minnesota State Senator
Ms. Patti Nolte, Office of the Attorney General
Ms. Maryanne V. Hruby, Legislative Commission to Review Administrative Rules

Office of Waste Management

Adopted Permanent Rules Relating to Solid Waste Reduction Grant and Loan Programs

Rules as Adopted

SOLID WASTE REDUCTION GRANT AND LOAN PROGRAM

9210.0700 SCOPE AND AUTHORITY.

Parts 9210.0700 to 9210.0770 implement the solid waste reduction grant and loan program created and described under Minnesota Statutes, sections 115A.53 and 115A.55, by establishing the substantive criteria and procedural conditions under which the director may award grants or loans for solid waste reduction projects.

9210.0710 DEFINITIONS.

Subpart 1. **Scope.** The terms defined in this part apply to parts 9210.0700 to 9210.0770. For terms not defined in this part, the definitions in Minnesota Statutes, section 115A.03, apply unless the context states otherwise.

Subp. 2. **Director.** "Director" means the director of the Office of Waste Management.

Subp. 3. **Office.** "Office" means the Minnesota Office of Waste Management established in Minnesota Statutes, section 115A.055.

Subp. 4. **Person.** "Person" means an individual, partnership, association, public or private organization, or other legal entity, the state, or an agency, department, or political subdivision of the state.

Subp. 5. **Program.** "Program" means the Solid Waste Reduction Grant and Loan Program.

Subp. 6. **Solid waste.** "Solid waste" has the meaning given it in Minnesota Statutes, section 116.06, subdivision 10.

Subp. 7. **Solid waste reduction.** "Solid waste reduction" means an activity that prevents the generation of solid waste including:

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A. producing, procuring, or using products or packaging with a longer useful life;

B. producing, procuring, or using products or packaging with reduced material; or

C. changing solid waste generation habits to result in smaller quantities of solid waste generated.

Subp. 8. **Useful life.** "Useful life" means the length of time or number of times that a product may be used or reused in its original form.

9210.0720 APPLICATION PROCEDURES.

Subpart 1. **Notification by director.** To initiate the process for awarding grants and loans for solid waste reduction projects, the director shall publish a notice in the State Register advising eligible applicants of the availability of solid waste reduction grants and loans. The notice shall describe the maximum amount of funding available for a project, and establish a deadline by which proposals must be submitted. In the notice, the director may also limit the types of projects for which a grant or loan would be awarded in the funding round initiated by the notice.

Subp. 2. **Proposals.** Following the publication of a notice in the State Register, eligible applicants that seek assistance must submit proposals to the director. Proposals must be received by the director by the deadline established in the notice. Upon the request of the applicant, the office shall handle specific information as nonpublic data pursuant to Minnesota Statutes, section 115A.06, subdivision 13; however, all information developed as a result of a grant or loan shall be made available to persons through the office's public information program.

A. Proposals for grants under part ~~9210.0740~~ 9210.0750 shall contain the information in part ~~9210.0740~~ 9210.0750, subpart 5.

B. Proposals for grants under part ~~9210.0750~~ 9210.0760 shall contain the information in part ~~9210.0750~~

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9210.0760, subpart 5.

C. Proposals for loans under part ~~9210.0760~~ 9210.0770 shall contain the information in part ~~9210.0760~~ 9210.0770, subpart 5.

Subp. 3. **Determination of eligibility and completeness.** For all proposals received by the director by the deadline established in the notice, the director shall determine the eligibility of the applicant, the proposed project, the costs identified in the proposal, and the completeness of the proposal.

Subp. 4. **Notice of determination of eligibility and completeness.** The director shall notify the applicant of the director's determination of eligibility and completeness of the proposal. If the director determines that the applicant or the project is ineligible, the director shall reject the proposal and notify the applicant. If the director determines that any of the project costs are ineligible or that the proposal is incomplete, the director shall notify the applicant of the ineligible portion of the costs or of the deficiency. The applicant has 14 days after receiving the notice to correct any inadequacies. Extensions shall be granted if requested in a timely manner and good cause exists for the extension. If the inadequacies are not corrected within the time allowed, the proposal shall be rejected.

Subp. 5. **Evaluation of proposal.** The director shall evaluate each proposal that is determined to be eligible and complete.

A. Proposals for grants under part ~~9210.0740~~ 9210.0750 shall be evaluated using the criteria in part ~~9210.0740~~ 9210.0750, subpart 6.

B. Proposals for grants under part ~~9210.0750~~ 9210.0760 shall be evaluated using the criteria in part ~~9210.0750~~ 9210.0760, subpart 6.

C. Proposals for loans under part ~~9210.0760~~ 9210.0770 shall be evaluated using the criteria in part ~~9210.0760~~ 9210.0770, subpart 6.

Subp. 6. **Award of grants or loans.** The director shall

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award grants or loans for those projects that the director determines best satisfy the criteria applicable to the program under which the applicant is requesting financial assistance. The director shall notify those applicants that do not receive grant or loan awards. An applicant that does not receive an award may resubmit a proposal upon future notice by the director under subpart 1.

Subp. 7. **No grant or loan awards.** If the director determines that no proposal will provide sufficient assistance to the state in achieving its solid waste reduction goals, the director may decide not to award any grant or loan. The director may then reinitiate the process for awarding grants by publishing a notice under subpart 1.

Subp. 8. **Consultation.** In the director's evaluation of the proposal, the director shall consider recommendations provided by the Solid Waste Management Advisory Council.

9210.0730 LIMITATIONS.

Subpart 1. **Reduced grant or loan awards.** The director shall ask an applicant to document the impacts of reduced financial assistance before awarding funds less than the eligible amount requested by the applicant or less than the maximum award established in the notice under part 9210.0720, subpart 1. Reduced funds shall be awarded where the director determines that:

A. program resources are insufficient to provide full assistance to all applicants to which the director intends to award grants or loans; or

B. the applicant could operate the project at a reduced level and still achieve project objectives.

Subp. 2. **Limitations on disbursal of funds.** No grant or loan funds shall be disbursed until the recipient has executed a written grant or loan agreement with the director.

9210.0740 GRANT AND LOAN AGREEMENTS.

A grant or loan agreement shall:

A. incorporate by reference the proposal submitted to

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the director;

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

C. require that the recipient provide periodic written reports to the director on the implementation and results of the project;

D. identify the interest rate and repayment obligations for the loan recipient;

E. authorize the director to rescind the grant and require the grant recipient to repay the grant in full if the director determines that, due to the bad faith of the grant recipient, a project has not been developed and implemented according to the terms and conditions of the grant agreement;

F. authorize the director to determine that the loan recipient is in default and require that loan recipient immediately repay the loan in full if the director determines that, due to the bad faith of the loan recipient, a project has not been developed and implemented according to the terms and conditions of the loan agreement;

G. authorize the director to cease making further disbursements to the grant or loan recipient and to recover the unspent funds if the director determines that, for reasons other than bad faith, a project has not been developed and implemented according to the terms and conditions of the grant or loan agreement and amendment of the agreement is not justified;

H. require that the recipient perform and complete project activities according to the work plan in the proposal submitted to the director and incorporated into the grant and loan agreement;

I. require that all information developed as a result of a grant or loan shall be made available to other persons through the office's public information program;

J. require that the recipient maintain detailed records of all expenditures related to the project; and

K. establish other conditions or terms needed to

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manage or implement the grant or loan agreement.

9210.0750 PUBLIC INSTITUTION GRANT PROGRAM.

Subpart 1. **Scope.** This part establishes the conditions under which the director shall award solid waste reduction public institution grants.

Subp. 2. **Eligible applicants.** Eligible applicants are political subdivisions and other public entities, including state, county, and local agencies; school districts, universities, and hospitals; and solid waste management districts established under Minnesota Statutes, sections 115A.62 to 115A.72. An eligible applicant may apply for a grant on behalf of any person who is not an eligible applicant, but the named recipient shall be the eligible applicant.

Subp. 3. **Eligible projects.** Eligible projects are projects that study the technical and economic feasibility of solid waste reduction activities or projects that implement solid waste reduction activities. Projects that study or implement composting or recycling are not considered eligible projects.

Subp. 4. **Eligible costs.** Eligible costs are limited to:

A. 75 percent of the costs of technical and economic feasibility studies, including labor and supplies necessary to conduct these studies; and

B. 75 percent of the costs of implementing a waste reduction project, except that only 50 percent of the cost of purchasing and installing equipment are eligible.

The cost of operating or maintaining equipment, or of purchasing or renting real property, are not eligible costs. Regardless of the amount of eligible costs, no grant shall be awarded for an amount that exceeds the maximum established by the notice under part 9210.0720, subpart 1.

Subp. 5. **Proposal.** An eligible applicant shall submit a proposal in the form specified by the director. The director may request additional information from the applicant if it is necessary to clarify the proposal. A proposal must include the

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by Revisor _____

following information:

A. the names, qualifications, addresses of the applicant and other project participants, and letters of commitment or resolutions from the public entities participating in the proposed project;

B. a description of the proposed project, including:

(1) a work plan that includes a list of project activities, an implementation schedule with specific timelines, and persons involved in completing each activity;

(2) location of the proposed project;

(3) type, source, and quantity of solid waste to be eliminated by the proposed project, including an explanation on how these estimates were determined;

(4) current status of the proposed project; and

(5) description or identification of persons that the proposed project activities and results may be applicable to;

C. a financial report including:

(1) an itemized description of the proposed project costs, including the total estimated cost, total grant eligible costs, the amount of grant funding requested, and a discussion of the economic feasibility of implementing the proposed project;

(2) an itemized description of the proposed project financing, including the applicant contributions, other government contributions, private contributions, and where applicable, any projected revenues from the proposed project;

(3) a business plan that demonstrates ongoing financial commitment over the life of the proposed project, including financial commitment over the projected life of equipment funded by the grant;

(4) if the applicant is applying on behalf of another person that is not an eligible applicant, the proposal must provide a credit history and the last three years' financial statements for the ineligible applicant;

D. information demonstrating, where applicable, the

Approved by Revisor _____

technical feasibility of the proposed project, including preliminary design and engineering plans for capital expenditures; and

E. information demonstrating that the project will comply with applicable regulations, including a list of permits required for the project.

Subp. 6. **Evaluation of proposals.** The director shall evaluate each proposal that is determined to be eligible and complete and shall award grants to those projects that, in the director's view, best satisfy the following criteria:

A. the proposed project is technically and economically feasible;

B. the applicant has the experience and knowledge to complete the proposed project and is committed to implementing the proposed project in a timely manner upon receipt of a grant award;

C. the proposed project is consistent with the office's solid waste reduction priorities;

D. the proposed project has the necessary financial commitment to cover all proposed project costs;

E. the applicant has demonstrated that the proposed project has the support of all public entities that are involved in the proposed project; and

F. the proposed project complies with federal, state, and local regulations.

In addition, the director shall give priority to solid waste reduction projects that have broad application in the state and that have the potential to significantly reduce the generation of solid waste.

9210.0760 FEASIBILITY STUDY GRANT PROGRAM.

Subpart 1. **Scope.** This part establishes the conditions under which the director shall award solid waste reduction feasibility study grants.

Subp. 2. **Eligible applicants.** Eligible applicants are private organizations that generate solid waste in Minnesota.

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by Revisor _____

Subp. 3. **Eligible projects.** Eligible projects are projects that study the technical and economic feasibility of solid waste reduction activities that may be implemented by an eligible applicant. Projects that study composting or recycling are not considered eligible projects.

Subp. 4. **Eligible costs.** Eligible costs are limited to 50 percent of technical and economic feasibility studies, including labor and supplies necessary to conduct these studies. Regardless of the amount of eligible project costs, no grant shall be awarded for an amount that exceeds the maximum established by the notice under part 9210.0720, subpart 1.

Subp. 5. **Proposal.** An eligible applicant shall submit a proposal in the form specified by the director. The director may request additional information from the applicant if it is necessary to clarify the proposal. A proposal must include the following information:

A. the names, qualifications, and addresses of the applicant and other project participants;

B. a description of the proposed project, including:

(1) a work plan that includes a list of project activities, an implementation schedule with specific timelines, and persons involved in completing each activity;

(2) location of the proposed project;

(3) type, source, and quantity of solid waste that implementation of the proposed project may eliminate, including an explanation on how these estimates were determined;

(4) current status of the proposed project; and

(5) identification of persons or organizations that proposed project results may be applicable to;

C. a financial report including:

(1) an itemized description of the proposed project costs, including the total estimated costs, total grant eligible costs, the amount of grant funding requested, and a discussion of the economic feasibility of implementing the proposed project; and

(2) an itemized description of the proposed

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project financing, including the applicant contributions, other government contributions, private contributions, and where applicable, any projected revenues from the proposed project; and

D. information demonstrating that the project will comply with applicable regulations, including a list of permits required for the project.

Subp. 6. **Evaluation of proposals.** The director shall evaluate each proposal that is determined to be eligible and complete and shall award grants to those projects that, in the director's view, best satisfy the following criteria:

A. the proposed project is technically and economically feasible;

B. the applicant has the experience and knowledge to complete the proposed project and is committed to implementing the proposed project in a timely manner upon receipt of a grant award;

C. the proposed project is consistent with the office's solid waste reduction priorities;

D. the proposed project has the necessary financial commitment to cover all proposed project costs; and

E. the proposed project complies with federal, state, and local regulations.

In addition, the director shall give priority to solid waste reduction projects that have broad application in the state and that have the potential to significantly reduce the generation of solid waste.

9210.0770 IMPLEMENTATION LOAN PROGRAM.

Subpart 1. **Scope.** This part establishes the conditions under which the director shall award solid waste reduction loans.

Subp. 2. **Eligible applicants.** Eligible applicants are private organizations that generate solid waste in Minnesota.

Subp. 3. **Eligible projects.** Eligible projects are projects that implement solid waste reduction activities. Projects that implement composting or recycling are not

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considered eligible projects.

Subp. 4. **Eligible costs.** Eligible costs are limited to 50 percent of the costs of implementing a solid waste reduction activity, except that only 20 percent of a loan award may be spent for final design and engineering plan costs. In addition, the cost of operating or maintaining equipment, or of purchasing or renting real property, are not eligible costs. Regardless of the amount of eligible costs, no loan shall be awarded for an amount that exceeds the maximum established by the notice under part 9210.0720, subpart 1.

Subp. 5. **Proposal.** An eligible applicant shall submit a proposal in the form specified by the director. The director may request additional information from the applicant if it is necessary to clarify the proposal. A proposal must include the following information:

A. the names, qualifications, and addresses of the applicant and other project participants;

B. a description of the proposed project, including:

(1) a work plan that includes a list of project activities, an implementation schedule with specific timelines, and persons involved in completing each activity;

(2) location of the proposed project;

(3) type, source, and quantity of solid waste to be eliminated by the proposed project, including an explanation on how these estimates were determined;

(4) current status of the proposed project; and

(5) description or identification of persons that the proposed project results may be applicable to;

C. a financial report including:

(1) an itemized description of the proposed project costs, including the total estimated cost, total grant eligible costs, the amount of grant funding requested, and a discussion of the economic feasibility of implementing the proposed project;

(2) an itemized description of the proposed project financing, including the applicant contributions, other

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government contributions, private contributions, and if applicable, any projected revenues from the proposed project;

(3) a business plan that demonstrates ongoing financial commitment over the life of the proposed project, including financial commitment over the projected life of equipment funded by the loan;

(4) a credit history of the organization; and

(5) financial statements for the last three years;

D. information demonstrating the technical feasibility of the proposed project, including preliminary design and engineering plans for capital expenditures, if applicable; and

E. information demonstrating that the project will comply with applicable regulations, including a list of permits required for the project.

Subp. 6. **Evaluation of proposals.** The director shall evaluate each proposal that is determined to be eligible and complete and shall award grants to those projects that, in the director's view, best satisfy the following criteria:

A. the proposed project is technically and economically feasible;

B. the applicant has the experience and knowledge to complete the proposed project and is committed to implementing the proposed project in a timely manner upon receipt of a loan award;

C. the proposed project is consistent with the office's solid waste reduction priorities;

D. the proposed project has the necessary financial commitment to cover all project costs; and

E. the proposed project complies with federal, state, and local regulations.

In addition, the director shall give priority to solid waste reduction projects that have broad application in the state and that have the potential to significantly reduce the generation of solid waste.

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APPROVED AS TO FORM AND LEGALITY

September 27 19 90

HUBERT H. HUMPHREY, III
ATTORNEY GENERAL

BY MJ Cassidy
SPECIAL ASSISTANT ATTORNEY GENERAL

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
SEP 27 1990
Joan Anderson Growe
Secretary of State
2:45 PM

Recind Proposed Rule

End of Comment period is stated as August 23, 1990 - it was extended to August 30, 1990

Stat Auth.

115A.53 (1988) - last date is 1987

The board shall provide grants to develop and implement projects for waste reduction; waste separation ...
The rules of the board shall prescribe the level or levels of local funding required for grants under this section.

115A.55 subd 3 (d) ~~(1987)~~ 1st sp. session (fall 1989) ch 1, art 20, §5 effect Oct 4

The office shall adopt rules for the administration of this program.
Office rules must prescribe the level or levels of matching funds required for grants or loans under this subdivision. - This was in the 1st ~~the~~ special session

The article is effective the day following enactment. - Cover page for 1989 First Special Session Laws of the State of Minnesota states enacted by the 76 Legislature at the 1989 First Special Session - Sept 27-29, 1989

Findings of Fact

According to ~~SOLAR~~ findings, SOLAR was prepared prior to Notice being published but it was not mailed out until July 26, 1990

STATE OF MINNESOTA
OFFICE OF WASTE MANAGEMENT

In the Matter of the Proposed Rules
Governing the Solid Waste Reduction
Grant and Loan Programs, Minn. Rules,
Parts 9210.0700 to 9210.0770

STATEMENT OF NEED
AND REASONABLENESS

I. INTRODUCTION

This Statement of Need and Reasonableness discusses proposed new rules governing a solid waste reduction grant and loan program. The Minnesota legislature established this program in order to encourage and facilitate the development and implementation of solid waste reduction projects. Minn. Stat. §§115A.53 and 115A.55, subd. 3 (2nd 1989 Supp.). The program is to be adminstered by the Minnesota Office of Waste Management (Office). Id.

The proposed rules establish procedures for the orderly administration of the grant and loan program. Specifically, the proposed rules identify projects and costs that may be funded through the program; establish application procedures; establish criteria for the review of projects and for the award of grants and loans; set limits on the applicant match and award of funds; and specify the content of the grant and loan agreements.

The proposed rules are intended to fulfill the statutory directives of Minn. Stats. §§115A.53 and 115A.55, subd. 3 (2nd 1989 Supp.) and to further state environmental goals for solid waste management practices.

II. STATEMENT OF OFFICE'S STATUTORY AUTHORITY

Minn. Stat. §§115A.53 and 115A.55, subd. 3 both instruct the Office to provide grants and loans to develop and implement projects for solid waste reduction. The Office's authority to adopt rules for this program is found in Minn. Stat. §115A.55, subd. 3 (d) which expressly authorizes the Office to adopt rules for this grant and loan program, and in Minn. Stat. §115A.06, subd. 2, which authorizes the Office to adopt rules to govern and implement its activities.

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 rules 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 and 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 rules is discussed below.

The proposed rules are needed to specify clearly the eligibility criteria and procedural conditions under which the Office will award grants and loans pursuant to Minn. Statutes §§115A.53 and 115A.55, subd. 3. Minn. Stat. §115A.53 states, in relevant part, that the Office "shall provide grants to develop and implement projects for waste reduction...." Minn. Stat. §115A.55, subd. 3 provides:

> (a) The office shall make loans and grants to any person for the purpose of developing and implementing projects or practices to prevent or reduce the generation of solid waste including those that involve reuse of items in their

original form or in manufacturing processes that do not cause the destruction of recyclable materials in a manner that precludes further use, or involve procuring, using, or producing products with long useful lives. Grants may be used to fund studies needed to determine the technical and financial feasibility of a waste reduction project or practice or for the cost of implementation of a waste reduction project or practice that the office has determined is technically and financially feasible.

(b) In making grants or loans, the office shall give priority to waste reduction projects of practices that have broad application in the state and that have the potential for significant reduction of the amount of waste generated.

(c) All information developed as a result of a grant or loan shall be made available to other solid waste generators through the public information program established in subdivision 2.

(d) The office shall adopt rules for the administration of this program. Office rules must prescribe the level or levels of matching funds required for grants or loans under this subdivision.

As the Office interprets this statutory subdivision, there are two separate activities that may receive assistance from this grant and loan program: (1) developing solid waste reduction projects and (2) implementing solid waste reduction projects. For each of these activities, proposed rules are needed to clarify both the types of projects and the costs that qualify for state financial assistance.

IV. STATEMENT OF REASONABLENESS

Minn. Stat. ch. 14 (1988) requires the Office to make an affirmative presentation of facts establishing the reasonableness of the proposed rules. 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 rules is discussed below.

A. Reasonableness of the Rules as a Whole

Solid waste reduction can be accomplished through a wide range of activities taken by public or private institutions, as well as individuals. Given this wide range, the Office believes that it can best achieve state solid waste reduction goals by managing the grant program and loan program in parts: (1) public institution grant program; (2) feasibility study grant program; and (3) implementation loan program.

There are no disadvantages to managing the program in these parts since, together, the parts cover essentially all of the solid waste generating community. Moreover, managing the program in these parts has a number of advantages: First, it encourages the solid waste generating community to engage in solid waste reduction activities. Second, it allows the Office to tailor program requirements in a manner that best suits the type of applicants to be addressed by the program. Third, it is both easier to administrate and more equitable for the Office to evaluate similar applications against each other. If the program were not divided into parts, applicants serving different functions would compete against each other for limited grant and loan funds. In sum, the Office's decision to manage the program in three parts is reasonable because it promotes efficiency in managing the program, is fair and implements the statutory mandate.

B. Reasonableness of Individual Rules

Part 9210.0710 DEFINITIONS

This part provides definitions necessary for the rule. Several of the terms defined in this part require definitions for clarity and consistency. Those terms are: Director (Subpart 2); Office (Subpart 3); Program (Subpart 5); and Solid Waste (Subpart 6). The other terms defined in this part are substantive and have special significance as used. The reasonableness of the definitions of these terms is discussed below.

Subpart 7 defines solid waste reduction. The importance of defining solid waste reduction as used in the solid waste reduction rules is self-evident. The definition set forth in the rules is reasonable because it identifies a wide range of activities that are commonly understood to prevent or reduce the generation of solid waste. In addition, the definition set forth in the rules is consistent with and intended to clarify the definition in Minn. Stat. §115A.03, subd. 36a.

Subpart 8 defines useful life. This term is used in the definition of solid waste reduction (subpart 7). The definition of useful life established in the rules is reasonable because it conforms to the common understanding of the persons involved in solid waste reduction efforts.

Part 9210.0720 APPLICATION PROCEDURES

Part 9210.0720 is intended to provide potential applicants with a clear and concise presentation of the application process for this program. To this end, part 9210.0720 is divided into eight subparts which, together, establish the procedures for obtaining a grant or loan for solid waste reduction projects. These procedures create a Request for Proposal (RFP) process, a common process for providing financial

assistance. Use of the RFP process is reasonable in that it allows the Office to adjust the grant and loan program to the availability of state funds as they are appropriated by the legislature.

The RFP process is created in subpart 1 which states that funding rounds are initiated when the Director publishes a notice in the STATE REGISTER. This notice will contain basic information of interest to persons who may wish to apply for a solid waste reduction grant or loan, including the availability of grants and loans, deadline for submitting a grant or loan application, and the maximum amount of funds available for a project. Use of the STATE REGISTER to provide notice of the funding program is reasonable because the program is statewide and because the STATE REGISTER is the official publication for state notices. Further, by specifying the maximum amount of funding available, the Office will be able to adjust the grant and loan program to reflect changes in the availability of state funds. Moreover, by providing notice of these adjustments in the STATE REGISTER potential applicants are fully apprised of the availability of funds for projects of interest.

Subpart 1 also states that the Director may use the STATE REGISTER notice to limit the types of projects that will be accepted during a funding round. By limiting a funding round to specific types of projects, the Office will be able to react more effectively to changing solid waste management conditions and advancing technology. Accordingly, the Office will be able to encourage solid waste reduction projects of particular interest and need at any given time. The ability to make this adjustment is reasonable because it will allow the Office to manage the grant and loan program to

suit, as best as possible, the solid waste reduction needs of the state.

Subparts 2 through 5 identify the procedures the Director will use in evaluating applications. These procedures ensure that applications will receive equal and fair treatment.[1] Further, they provide administrative certainty to the application process. Thus, the proposed procedures are reasonable. (Please note that the criteria for evaluating applications are established later in the rules and are discussed later in this Statement of Need and Reasonableness.)

Subpart 6 provides that the Director will award grants and loans to those projects that the Director determines best satisfy the solid waste reduction needs of the state, as measured according to criteria established later in the rules. Because each criterion establishes a preference based on only a specific element or elements of a proposed project, the Director will balance those preferences to identify those projects that satisfy the criteria as a whole. This subpart also allows applicants that do not receive an award to resubmit their application in response to a future notice from the director, published in the STATE REGISTER. This is reasonable because, although the proposed project may be meritorious, proposals will be selected based on which projects best satisfy the evalution criteria; and it thus may be surpassed by a proposal that is even better.

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[1] They also establish that information developed as a result of a grant or loan shall be made available to the public, although applicants may request that data included in their applications be treated as nonpublic pursuant to Minn. Stat. §115A.06, subd. 13. See part 9210.0720, subp. 2. This provision derives directly from statutory requirements on the availability of information developed under the grant programs and therefore is reasonable. See Minn. Stat. §115A.55, subd. 3(c).

Subpart 7 specifies that the Director may decline awards to any or all of the applicants if the Director determines that the proposals would not provide sufficient assistance to the state in achieving its solid waste reduction goals. The Office believes this subpart provides a safeguard to ensure that program funds are disbursed to satisfy the objectives of the program.

Subpart 8 provides that the Director shall solicit and consider the recommendations provided by the Solid Waste Management Advisory Council established in Minn. Stat. §115A.12, subd. 11. The Office believes that use of this advisory council is consistent with statutory directives and will promote consistent and comprehensive evaluation of grant and loan applications.

Part 9210.0730 LIMITATIONS

This part sets out the limitations of the program. The rationale for each limitation is provided below.

Subpart 1 sets out the conditions under which the Director may award a grant or loan for less than the eligible amount requested by an applicant or less than the maximum award established in the notice under Part 9210.0720, subpart 1. Two conditions are set out: (1) insufficient state resources to provide full assistance to all proposed grantees and (2) ability of an applicant to operate the project at a lesser award. These conditions are reasonable in that they allow projects to go forward while at the same time preserving limited state funds.

Subpart 2 provides that the Director will not disburse grant or loan funds until

the recipient has executed a written grant or loan agreement with the Director. This condition establishes a reasonable safeguard to prevent abuse of funds awarded through these rules. Part 9210.0740 sets out the terms of grant and loan agreements.

Part 9210.0740 GRANT AGREEMENT

This part sets out the basic terms of the agreements that a grant or loan recipient will need to sign before receiving funds from the Office. Identifying these terms by rule is reasonable because it provides advance notice to potential grant or loan applicants of the conditions of a grant or loan award. The rationale for each condition specified by the rules is provided below.

Item A states that the grant or loan proposal submitted to the Director under 9210.0720, subpart 2 will be incorporated into the grant or loan agreement. This incorporation contractually obligates a recipient to develop and implement the project described in the proposal and thereby establishes criteria against which the Director may evaluate progress of the grant or loan recipient.

Item B specifies that the grant or loan agreement will state that no further program funding will be available for cost overruns. This safeguard is necessary to ensure effective administration of the program with limited state funds.

Item C specifies that a recipient must provide written reports to the Director. Written reports will allow the Director to assess the performance of a recipient and, where applicable, transfer knowledge and experience gained from a project to other persons of the solid waste generating community. Thus, this requirement is reasonable

because it will assist the Director in attaining state solid waste reduction goals.

Item D provides that the Director specify the interest rate and repayment obligations for a loan recipient. This provision will assist a recipient in planning for the repayment of a loan.

Item E provides that the Director may rescind a grant and require a recipient to repay the grant in full if the Director determines that, due to the bad faith of the recipient, a project has not been developed and implemented in accordance with the terms and conditions of the grant agreement. By ensuring that funded projects are implemented properly, this provision will assist the Director in administering the grant program and preserving state funds. Item F establishes a parallel provision for the loan program and is reasonable for the same reasons as Item E.

Item G provides that the Director may cease making further disbursements of grant or loan funds and may recover unspent funds that have been disbursed if the director determines that, for reasons other than bad faith, a project has not been developed and implemented in accordance with the terms and conditions of the grant or loan agreement and amendment to the agreement is not justified. This provision is a companion to Item E which addresses repayment of a grant where there has been bad faith. Like Item E, Item G will assist the Director in administering the grant program and preserving state funds by assuring that funded projects are implemented properly. Unlike Items E, however, Item G does not require repayment where the failure of the project is due to causes other than bad faith. The Office believes that it is reasonable to establish different financial repercussions for project failures due to bad faith and those

due to causes unrelated to bad faith on the part of the recipient.

Item H states that the grant or loan agreement must require a recipient to perform and complete project activities in accordance with the work schedule in the proposal submitted to the Director and incorporated into the grant or loan agreement. This provision will ensure that a recipient implements a project in timely manner upon receipt of a grant or loan award. Thus, this provision will assure that the state obtains as quickly as possible the benefits hoped to be achieved by the grant or loan.

Item I provides that all information developed as a result of a grant or loan shall be made available to other persons through the Office's public information program. This is a condition of the statute governing these rules. Minn. Stat. §115A.55, subd. 3(c).

Item J provides that a recipient must maintain detailed records of all expenditures related to the grant or loan agreement. This provision will ensure that program resources received by a recipient are used to finance project costs only. Accordingly, this provision is reasonable because it assures the proper use of state funds.

Item K provides that the grant or loan agreement shall establish other conditions or terms needed to implement the agreement. This provision is intended to make clear that the grant or loan agreement will also contain other conditions needed to ensure orderly administration of the grant or loan.

Part 9210.0750 PUBLIC INSTITUTION GRANT PROGRAM

This part applies only to the grant program for public institutions. It is divided into six subparts which, together, establish the substantive conditions and criteria under which the Office will provide financial assistance to public institutions for solid waste reduction projects. These subparts are: (1) scope; (2) eligible applicants; (3) eligible projects; (4) eligible costs; (5) proposal; and (6) evaluation of proposals. The first subpart (scope) is self-evident and requires no further explanation. Subparts 2 through 6 are discussed below.

Subpart 2 identifies eligible applicants as political subdivisions and other public entities, including state, county, and local agencies; school districts, universities, and hospitals; and solid waste management districts established under Minn. Stat. §§115A.62 to 115A.72. The rule is intended to be broad in scope since the Office would like to encourage all sectors of society to develop and implement solid waste reduction practices. Thus, the Office believes it is reasonable to make virtually any public institution eligible for a grant under this program.

Subpart 2 also allows an eligible applicant to apply for assistance on behalf of another person. This condition is reasonable because it promotes cooperation with the private sector and allows financing of a project that may best address local needs.

Subpart 3 identifies projects that are eligible for assistance under the public institution solid waste reduction grant program. Specifically, eligible projects include both feasibility studies and implementation projects. This definition is intended to be quite broad in order to give potential applicants great leeway in designing solid waste reduction projects. The Office believes such a broad definition encourages the creative

design and implementation of solid waste reduction practices and therefore is reasonable. It also is reasonable to expressly exclude recycling and composting from the definition of eligible projects since those activities are the subject of separate statutory programs.

Subpart 4 identifies costs that are eligible for assistance under the public institution grant program. Specifically, subpart 4 states that eligible costs are limited to 75 percent of the costs of a project, except that only 50 percent of the costs of purchasing and installing equipment are eligible. Minn. Stat. §115A.55, subd. 3(d) instructs the Office "to prescribe the level or levels of matching funds" for grants and loans, and it is the experience of the Office that recipients who are willing to fund a portion of a project themselves are often more serious about the project. The Office believes that a limit of 75 percent of eligible project costs, with the exception of purchase and installation of equipment, is reasonable because it will ensure that a recipient under this program will have a compelling interest in developing and implementing a proposed project. The Office also believes that a limit of 50 percent of costs for purchasing and installing equipment is reasonable, because this larger investment provides the recipient with additional incentive to more wisely purchase equipment and maintain it.

Subpart 5 describes five categories of information that an applicant must include in a proposal under this program. This is the minimum amount of information needed to ensure that the Director can effectively evaluate the proposals under subpart 6. The

rationale for each specific category of information is provided below.[2]

Subpart 5 (A) requires the names, qualifications, and addresses of the applicant and other project participants, and letters of resolution from the applicants participating in the proposed project. This information is needed to allow the Director to contact each applicant and to assess the ability and commitment of project participants to complete project activities.

Subpart 5 (B) requires a description of a proposed project, including specific information. This information is needed and reasonable because it allows the Director to determine, among other things, the eligibility of a proposed project; the feasibility of a proposed project; the applicant's ability and intention to implement the project in a timely manner; and the consistency of the proposed project with solid waste reduction priorities. Each of these factors will be considered by the Director in deciding which projects to fund. (See discussion regarding subpart 6, below.)

Subpart 5 (C) requires financial information. Requiring this information is reasonable because it will allow the Director to assess, in accordance with subpart 6, the economic feasibility of the proposed project; the eligibility of project costs; and the ability of the applicant to implement the project in a timely manner. Item C (1) requires an itemized description of project costs. This information is needed to determine whether estimated costs realistically match the scope of a proposed project

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[2] Subpart 5 also provides that the Director may request additional information from an applicant if the Director determines that additional information is necessary to clarify and evaluate a proposal. This is reasonable because it allows the Director to obtain sufficient information to fully review and evaluate proposals under the criteria established in subpart 6.

and whether the eligible costs identified by an applicant are within the range of eligible costs described in subpart 4 of this part. Item C (2) requires an itemized description of project financing. This information is needed to determine whether an applicant has secured financing for all project costs that would not be paid for with grant funds. Item C(3) requires a business plan demonstrating ongoing financial commitment to the project. This is reasonable because it ensures that the project will receive the financial attention needed to make it successful over the life of the project. Item C (4) requires a credit history and financial statements for the past three years if the applicant (a public institution) is applying on behalf of another person. This requirement is reasonable because it allows the Director to assess whether the ultimate beneficiary of grant funds has the financial wherewithal to complete the project successfully.

Subpart 5 (D) requires information demonstrating, where applicable, the technical feasibility of a proposed project, including preliminary design and engineering plans. This information is needed to assess a project's potential for success. For capital expenditures, preliminary design and engineering plans provide a framework for determining a project's technical viability.

Subpart 5 (E) requires information demonstrating that a proposed project will comply with applicable regulations, including a list of permits required for a project. Requiring this information is needed and reasonable because it allows the Director to assess whether a proposed project will conform with applicable legal requirements.

Subpart 6 specifies the criteria that the Director will use to evaluate proposals. The rationale for each criterion is set out below.

Subpart 6 (A) requires the Director to determine that a proposed project is technically and economically feasible. This criterion is reasonable because it assures that state funds will only be used on projects that present a high potential for success.

Subpart 6 (B) requires the Director to determine whether an applicant has the ability and intention to implement a proposed project upon the receipt of a grant award. This criterion is reasonable in that it assures that the state will benefit, as soon as possible, from a project receiving state funding.

Subpart 6 (C) requires the Director to determine the extent to which a proposed project is consistent with state solid waste reduction priorities. These priorities may change with developments in technology and changes in the solid waste management needs of communities and the state as a whole. Using these priorities as a funding criterion will allow the Office to direct state funds to projects that best satisfy the current solid waste management needs of the state at any given time.

Subpart 6 (D) requires that applicants demonstrate the necessary financial commitment for all project costs. This criterion is reasonable because it ensures that state funds will be awarded only to projects that demonstrate the potential for success over the life of the project.

Subpart 6 (E) requires the applicant to demonstrate that it has the support of all public entities involved in the project. This is reasonable because all project participants must demonstrate support in order for the project to be successfully completed.

Subpart 6 (F) requires the Director to determine that a proposed project will

comply with federal, state, and local regulations. This criterion is reasonable because it assures a coordinated, consistent effort to address legal issues raised by solid waste reduction efforts.

In addition, subpart 6 requires the Director to give priority to solid waste reduction projects that have broad application throughout the state and that have the greatest potential to significantly reduce the generation of solid waste. This criterion is a condition of the statute [Minn. Stat. §115A.55, subd. 3(b)] and favors proposed projects that have the greatest ability to achieve state solid waste reduction goals and be duplicated by other organizations or areas in the state.

Part 9210.0760 FEASIBILITY STUDY GRANT PROGRAM

Part 9210.0760 applies only to feasibility study projects that are proposed by private organizations. (Implementation projects are governed by part 9210.0770.)

Part 9210.0760 is divided into six subparts which, together, establish the substantive conditions and criteria under which the Office will provide financial assistance to private organizations for solid waste reduction feasibility studies. These six subparts are: (1) scope; (2) eligible applicants; (3) eligible projects; (4) eligible costs; (5) proposal; and (6) evaluation of proposals. The first subpart (scope) is self-evident and requires no further explanation. Subparts 2 through 6 are discussed below.

Subpart 2 identifies eligible applicants as private organizations, both for-profit and non-profit. Public institutions may obtain grant funds for feasibility studies under part 9210.0750. Thus, it is reasonable to limit eligibility under this rule to private

organizations alone.

Subpart 3 identifies projects that are eligible for assistance under the feasibility study grant program. Essentially, any study of the technical and economic feasibility of a solid waste reduction project that may be implemented by an applicant is eligible for funding. The Office believes such a broad definition encourages the creative design of solid waste reduction practices and therefore is reasonable. It also is reasonable to expressly exclude recycling and composting from the definition of eligible projects since those activities are the subject of separate statutory programs.

Subpart 4 identifies costs that are eligible for assistance under the feasibility study grant program. Specifically, subpart 4 states that eligible costs are limited to 50 percent of the costs of the study, up to the maximum established by the notice under part 9210.0720, subpart 1. Minn. Stat. §115A.55, subd. 3 (d) instructs the Office "to prescribe the level or levels of matching funds" for grants and loans, and it is the experience of the Office that recipients who are willing to fund a portion of a project themselves are often more serious about the project. The Office believes that requiring a recipient to provide a 50 percent match is reasonable for feasibility studies because it will ensure that a recipient under this program will have a compelling interest in developing and implementing a proposed project.

Subpart 5 describes the information that an applicant must include in a proposal under this program. This is the minimum amount of information needed to ensure that the Director can effectively evaluate the proposals under subpart 6. Subparts 5 (A) through (D) require essentially the same information as required for feasibility studies

under part 9210.0750. It is reasonable to require this information for private institutions seeking assistance for feasibility studies for the same reasons as stated for the public institutions program. (See discussion, above, regarding subpart 5 of the public institution grant program.)

Subpart 6 establishes criteria that the Director will use in determining which projects should be awarded state funds. These criteria are essentially the same as the criteria established in the public institution grant program. (That program also includes one other criterion not applicable to the private sector.) These criteria are needed and reasonable for the same reasons as they are needed and reasonable in the public institution grant program. (See discussion, above, regarding subpart 6 of the public institution grant program.)

Part 9210.0770 IMPLEMENTATION LOAN PROGRAM

Part 9210.0770 establishes the conditions under which the Office will make loans to private organizations for implementation projects. (Feasibility projects are governed by part 9210.0760.)

Part 9210.0770 is divided into six subparts which, together, establish the substantive conditions and criteria under which the Office will provide financial assistance to private organizations for solid waste reduction implementation projects. These six subparts are: (1) scope; (2) eligible applicants; (3) eligible projects; (4) eligible costs; (5) proposal; and (6) evaluation of proposals. The first subpart (scope) is self-evident and requires no further explanation. Subparts 2 through 6 are discussed

below.

Subpart 2 identifies eligible applicants as private organizations, both for-profit and non-profit. Through separate programs under these rules, the Office will make grants to both private and public organizations to conduct feasibility studies. The Office has decided to make loans, but not grants, to private organizations interested in implementing (as distinguished from studying the feasibility of) solid waste reduction projects. The Office believes that the use of loans, but not grants, for this program is reasonable because it provides the most efficient and equitable distribution of government funds to private organizations seeking to make capital expenditures for solid waste reduction projects.

Subpart 3 identifies projects that are eligible for assistance under the implementation loan program. This definition is intended to be quite broad in order to give potential applicants great leeway in designing solid waste reduction implementation projects. The Office believes such a broad definition encourages the creative design and implementation of solid waste reduction practices and therefore is reasonable. It also is reasonable to expressly exclude recycling and composting from the definition of eligible projects since those activities are the subject of separate statutory programs.

Subpart 4 identifies costs that are eligible for assistance under the implementation loan program. Specifically, subpart 4 states that eligible costs are limited to 50 percent of the costs of the project, except that only 20 percent of the loan may be awarded for final design and engineering. Minn. Stat. §115A.55, subd. 3(d)

instructs the Office "to prescribe the level or levels of matching funds" for grants and loans, and it is the experience of the Office that funding recipients who are willing to fund a portion of a project themselves are often more serious about the project. The Office believes that requiring a loan recipient to provide a 50 percent match is reasonable for implementing projects because it will ensure that a loan recipient under this program will have a compelling interest in implementing a proposed project. The Office also believes that it is reasonable to limit final design and engineering plan costs to 20 percent in order to ensure that state funds are being spent on actual project implementation rather than development. In addition, it is reasonable to exclude operational costs from eligible costs of implementing a solid waste reduction project, because the Office does not wish to fund projects that cannot become self sustaining after the loan funds are exhausted. Also, it is reasonable to exclude the costs of real property because the Office does not wish to fund the high cost of land, which is not closely tied to promoting the reduction of solid waste and achieving solid waste reduction goals.

Subpart 5 describes the information that an applicant must include in a proposal under this program. This is the minimum amount of information needed to ensure that the Director can effectively evaluate the proposals under subpart 6. Subparts 5 (A) through (E) require essentially the same information as required for implementation projects under part 9210.0750. It is reasonable to require this information for private organizations seeking assistance for implementation of projects for the same reasons as stated for the public institution grant program. (See discussion, above, regarding

subpart 5 of the public institution grant program.)

Subpart 6 establishes criteria that the Director will use in determining which projects should be awarded state funds. These criteria are essentially the same as the criteria established in the public institution grant program. (That program also includes one other criterion not applicable to the private sector.) These criteria are needed and reasonable for the same reasons as they are needed and reasonable in the public institution grant program. (See discussion, above, regarding subpart 6 of the public institution grant program.)

VI. SMALL BUSINESS CONSIDERATIONS

Minn. Stat. §14.155 (1988) requires state agencies proposing rules that affect small businesses to consider the following methods for reducing the impact of the rules 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 rules 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 rules establish the criteria and procedures by which the Office provides financial assistance for solid waste reduction projects. The requirements of Minn. Stat. §14.115 do not apply to these proposed rules because this program does not place any direct regulatory burden on small businesses.

The proposed rules establish three programs to promote solid waste reduction activities. Each of the three programs provide for the participation of small businesses, either directly or indirectly. The proposed rules do not limit the ability of small businesses to participate in the program.

VI. CONCLUSION

Based on the foregoing, proposed Minn. Rules pts. 9210.0700 to 9210.0770, are needed and reasonable.

Dated: July 20, 1990

Michael Robertson
Director

Minnesota Office of Waste Management

Solid Waste Grants and Market Development Unit

Notice of Intent to Solicit Outside Opinion Regarding Proposed Rules Governing Solid Waste Reduction Grant and Loan Programs

Notice is hereby given that the Minnesota Office of Waste Management (Office) is seeking information or opinions from outside sources as it prepares to propose the adoption of rules governing the Office's issuance of grants and loans, to public, non-profit, and private organizations, for developing and implementing projects or practices to prevent or reduce the generation of solid waste. The rules will establish criteria and procedures for awarding solid waste reduction grants and loans. Adoption of the rules is authorized by Minn. Stat. §§ 115A.53 (1989) and 115A.55, subd. 3.(d) (1989), which directs the Office to adopt rules for administering solid waste reduction grant and loan programs.

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:

Cristine Leavitt
Minnesota Office of Waste Management
1350 Energy Lane
St. Paul, MN 55108

Telephone: (612) 649-5771 or

1-800-652-9747

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 23, 1990. Any written materials received by the Office shall become part of the rulemaking record in the event that the rule is adopted.

Michael Robertson

Director

Office of the Revisor of Statutes

Administrative Rules

TITLE: Proposed Permanent Rules Relating to Solid Waste Reduction Grant and Loan 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 Solid Waste Reduction Grant and Loan Programs

Rules as Proposed (all new material)

SOLID WASTE REDUCTION GRANT AND LOAN PROGRAM

9210.0700 SCOPE AND AUTHORITY.

Parts 9210.0700 to 9210.0770 implement the solid waste reduction grant and loan program created and described under Minnesota Statutes, sections 115A.53 and 115A.55, by establishing the substantive criteria and procedural conditions under which the director may award grants or loans for solid waste reduction projects.

9210.0710 DEFINITIONS.

Subpart 1. **Scope.** The terms defined in this part apply to parts 9210.0700 to 9210.0770. For terms not defined in this part, the definitions in Minnesota Statutes, section 115A.03, apply unless the context states otherwise.

Subp. 2. Director. "Director" means the director of the Office of Waste Management.

Subp. 3. **Office.** "Office" means the Minnesota Office of Waste Management established in Minnesota Statutes, section 115A.055.

Subp. 4. **Person.** "Person" means an individual, partnership, association, public or private organization, or other legal entity, the state, or an agency, department, or political subdivision of the state.

Subp. 5. **Program.** "Program" means the Solid Waste Reduction Grant and Loan Program.

Subp. 6. **Solid waste.** "Solid waste" has the meaning given it in Minnesota Statutes, section 116.06, subdivision 10.

Subp. 7. **Solid waste reduction.** "Solid waste reduction" means an activity that prevents the generation of solid waste including:

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A. producing, procuring, or using products or packaging with a longer useful life;

B. producing, procuring, or using products or packaging with reduced material; or

C. changing solid waste generation habits to result in smaller quantities of solid waste generated.

Subp. 8. **Useful life.** "Useful life" means the length of time or number of times that a product may be used or reused in its original form.

9210.0720 APPLICATION PROCEDURES.

Subpart 1. **Notification by director.** To initiate the process for awarding grants and loans for solid waste reduction projects, the director shall publish a notice in the State Register advising eligible applicants of the availability of solid waste reduction grants and loans. The notice shall describe the maximum amount of funding available for a project, and establish a deadline by which proposals must be submitted. In the notice, the director may also limit the types of projects for which a grant or loan would be awarded in the funding round initiated by the notice.

Subp. 2. **Proposals.** Following the publication of a notice in the State Register, eligible applicants that seek assistance must submit proposals to the director. Proposals must be received by the director by the deadline established in the notice. Upon the request of the applicant, the office shall handle specific information as nonpublic data pursuant to Minnesota Statutes, section 115A.06, subdivision 13; however, all information developed as a result of a grant or loan shall be made available to persons through the office's public information program.

A. Proposals for grants under part 9210.0740 shall contain the information in part 9210.0740, subpart 5.

B. Proposals for grants under part 9210.0750 shall contain the information in part 9210.0750, subpart 5.

C. Proposals for loans under part 9210.0760 shall

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contain the information in part 9210.0760, subpart 5.

Subp. 3. **Determination of eligibility and completeness.** For all proposals received by the director by the deadline established in the notice, the director shall determine the eligibility of the applicant, the proposed project, the costs identified in the proposal, and the completeness of the proposal.

Subp. 4. **Notice of determination of eligibility and completeness.** The director shall notify the applicant of the director's determination of eligibility and completeness of the proposal. If the director determines that the applicant or the project is ineligible, the director shall reject the proposal and notify the applicant. If the director determines that any of the project costs are ineligible or that the proposal is incomplete, the director shall notify the applicant of the ineligible portion of the costs or of the deficiency. The applicant has 14 days after receiving the notice to correct any inadequacies. Extensions shall be granted if requested in a timely manner and good cause exists for the extension. If the inadequacies are not corrected within the time allowed, the proposal shall be rejected.

Subp. 5. **Evaluation of proposal.** The director shall evaluate each proposal that is determined to be eligible and complete.

A. Proposals for grants under part 9210.0740 shall be evaluated using the criteria in part 9210.0740; subpart 6.

B. Proposals for grants under part 9210.0750 shall be evaluated using the criteria in part 9210.0750, subpart 6.

C. Proposals for loans under part 9210.0760 shall be evaluated using the criteria in part 9210.0760, subpart 6.

Subp. 6. **Award of grants or loans.** The director shall award grants or loans for those projects that the director determines best satisfy the criteria applicable to the program under which the applicant is requesting financial assistance. The director shall notify those applicants that do not receive grant or loan awards. An applicant that does not receive an award may resubmit a proposal upon future notice by the director

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under subpart 1.

Subp. 7. **No grant or loan awards.** If the director determines that no proposal will provide sufficient assistance to the state in achieving its solid waste reduction goals, the director may decide not to award any grant or loan. The director may then reinitiate the process for awarding grants by publishing a notice under subpart 1.

Subp. 8. **Consultation.** In the director's evaluation of the proposal, the director shall consider recommendations provided by the Solid Waste Management Advisory Council.

9210.0730 LIMITATIONS.

Subpart 1. **Reduced grant or loan awards.** The director shall ask an applicant to document the impacts of reduced financial assistance before awarding funds less than the eligible amount requested by the applicant or less than the maximum award established in the notice under part 9210.0720, subpart 1. Reduced funds shall be awarded where the director determines that:

A. program resources are insufficient to provide full assistance to all applicants to which the director intends to award grants or loans; or

B. the applicant could operate the project at a reduced level and still achieve project objectives.

Subp. 2. **Limitations on disbursal of funds.** No grant or loan funds shall be disbursed until the recipient has executed a written grant or loan agreement with the director.

9210.0740 GRANT AND LOAN AGREEMENTS.

A grant or loan agreement shall:

A. incorporate by reference the proposal submitted to the director;

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

C. require that the recipient provide periodic written reports to the director on the implementation and

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results of the project;

D. identify the interest rate and repayment obligations for the loan recipient;

E. authorize the director to rescind the grant and require the grant recipient to repay the grant in full if the director determines that, due to the bad faith of the grant recipient, a project has not been developed and implemented according to the terms and conditions of the grant agreement;

F. authorize the director to determine that the loan recipient is in default and require that loan recipient immediately repay the loan in full if the director determines that, due to the bad faith of the loan recipient, a project has not been developed and implemented according to the terms and conditions of the loan agreement;

G. authorize the director to cease making further disbursements to the grant or loan recipient and to recover the unspent funds if the director determines that, for reasons other than bad faith, a project has not been developed and implemented according to the terms and conditions of the grant or loan agreement and amendment of the agreement is not justified;

H. require that the recipient perform and complete project activities according to the work plan in the proposal submitted to the director and incorporated into the grant and loan agreement;

I. require that all information developed as a result of a grant or loan shall be made available to other persons through the office's public information program;

J. require that the recipient maintain detailed records of all expenditures related to the project; and

K. establish other conditions or terms needed to manage or implement the grant or loan agreement.

9210.0750 PUBLIC INSTITUTION GRANT PROGRAM.

Subpart 1. **Scope.** This part establishes the conditions under which the director shall award solid waste reduction public institution grants.

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Subp. 2. **Eligible applicants.** Eligible applicants are political subdivisions and other public entities, including state, county, and local agencies; school districts, universities, and hospitals; and solid waste management districts established under Minnesota Statutes, sections 115A.62 to 115A.72. An eligible applicant may apply for a grant on behalf of any person who is not an eligible applicant, but the named recipient shall be the eligible applicant.

Subp. 3. **Eligible projects.** Eligible projects are projects that study the technical and economic feasibility of solid waste reduction activities or projects that implement solid waste reduction activities. Projects that study or implement composting or recycling are not considered eligible projects.

Subp. 4. **Eligible costs.** Eligible costs are limited to:

A. 75 percent of the costs of technical and economic feasibility studies, including labor and supplies necessary to conduct these studies; and

B. 75 percent of the costs of implementing a waste reduction project, except that only 50 percent of the cost of purchasing and installing equipment are eligible.

The cost of operating or maintaining equipment, or of purchasing or renting real property, are not eligible costs. Regardless of the amount of eligible costs, no grant shall be awarded for an amount that exceeds the maximum established by the notice under part 9210.0720, subpart 1.

Subp. 5. **Proposal.** An eligible applicant shall submit a proposal in the form specified by the director. The director may request additional information from the applicant if it is necessary to clarify the proposal. A proposal must include the following information:

A. the names, qualifications, addresses of the applicant and other project participants, and letters of commitment or resolutions from the public entities participating in the proposed project;

B. a description of the proposed project, including:

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(1) a work plan that includes a list of project activities, an implementation schedule with specific timelines, and persons involved in completing each activity;

(2) location of the proposed project;

(3) type, source, and quantity of solid waste to be eliminated by the proposed project, including an explanation on how these estimates were determined;

(4) current status of the proposed project; and

(5) description or identification of persons that the proposed project activities and results may be applicable to;

C. a financial report including:

(1) an itemized description of the proposed project costs, including the total estimated cost, total grant eligible costs, the amount of grant funding requested, and a discussion of the economic feasibility of implementing the proposed project;

(2) an itemized description of the proposed project financing, including the applicant contributions, other government contributions, private contributions, and where applicable, any projected revenues from the proposed project;

(3) a business plan that demonstrates ongoing financial commitment over the life of the proposed project, including financial commitment over the projected life of equipment funded by the grant;

(4) if the applicant is applying on behalf of another person that is not an eligible applicant, the proposal must provide a credit history and the last three years' financial statements for the ineligible applicant;

D. information demonstrating, where applicable, the technical feasibility of the proposed project, including preliminary design and engineering plans for capital expenditures; and

E. information demonstrating that the project will comply with applicable regulations, including a list of permits required for the project.

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Subp. 6. **Evaluation of proposals.** The director shall evaluate each proposal that is determined to be eligible and complete and shall award grants to those projects that, in the director's view, best satisfy the following criteria:

A. the proposed project is technically and economically feasible;

B. the applicant has the experience and knowledge to complete the proposed project and is committed to implementing the proposed project in a timely manner upon receipt of a grant award;

C. the proposed project is consistent with the office's solid waste reduction priorities;

D. the proposed project has the necessary financial commitment to cover all proposed project costs;

E. the applicant has demonstrated that the proposed project has the support of all public entities that are involved in the proposed project; and

F. the proposed project complies with federal, state, and local regulations.

In addition, the director shall give priority to solid waste reduction projects that have broad application in the state and that have the potential to significantly reduce the generation of solid waste.

9210.0760 FEASIBILITY STUDY GRANT PROGRAM.

Subpart 1. **Scope.** This part establishes the conditions under which the director shall award solid waste reduction feasibility study grants.

Subp. 2. **Eligible applicants.** Eligible applicants are private organizations that generate solid waste in Minnesota.

Subp. 3. **Eligible projects.** Eligible projects are projects that study the technical and economic feasibility of solid waste reduction activities that may be implemented by an eligible applicant. Projects that study composting or recycling are not considered eligible projects.

Subp. 4. **Eligible costs.** Eligible costs are limited to 50

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percent of technical and economic feasibility studies, including labor and supplies necessary to conduct these studies. Regardless of the amount of eligible project costs, no grant shall be awarded for an amount that exceeds the maximum established by the notice under part 9210.0720, subpart 1.

Subp. 5. **Proposal.** An eligible applicant shall submit a proposal in the form specified by the director. The director may request additional information from the applicant if it is necessary to clarify the proposal. A proposal must include the following information:

A. the names, qualifications, and addresses of the applicant and other project participants;

B. a description of the proposed project, including:

(1) a work plan that includes a list of project activities, an implementation schedule with specific timelines, and persons involved in completing each activity;

(2) location of the proposed project;

(3) type, source, and quantity of solid waste that implementation of the proposed project may eliminate, including an explanation on how these estimates were determined;

(4) current status of the proposed project; and

(5) identification of persons or organizations that proposed project results may be applicable to;

C. a financial report including:

(1) an itemized description of the proposed project costs, including the total estimated costs, total grant eligible costs, the amount of grant funding requested, and a discussion of the economic feasibility of implementing the proposed project; and

(2) an itemized description of the proposed project financing, including the applicant contributions, other government contributions, private contributions, and where applicable, any projected revenues from the proposed project; and

D. information demonstrating that the project will comply with applicable regulations, including a list of permits

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by Revisor _____

required for the project.

Subp. 6. **Evaluation of proposals.** The director shall evaluate each proposal that is determined to be eligible and complete and shall award grants to those projects that, in the director's view, best satisfy the following criteria:

A. the proposed project is technically and economically feasible;

B. the applicant has the experience and knowledge to complete the proposed project and is committed to implementing the proposed project in a timely manner upon receipt of a grant award;

C. the proposed project is consistent with the office's solid waste reduction priorities;

D. the proposed project has the necessary financial commitment to cover all proposed project costs; and

E. the proposed project complies with federal, state, and local regulations.

In addition, the director shall give priority to solid waste reduction projects that have broad application in the state and that have the potential to significantly reduce the generation of solid waste.

9210.0770 **IMPLEMENTATION LOAN PROGRAM.**

Subpart 1. **Scope.** This part establishes the conditions under which the director shall award solid waste reduction loans.

Subp. 2. **Eligible applicants.** Eligible applicants are private organizations that generate solid waste in Minnesota.

Subp. 3. **Eligible projects.** Eligible projects are projects that implement solid waste reduction activities. Projects that implement composting or recycling are not considered eligible projects.

Subp. 4. **Eligible costs.** Eligible costs are limited to 50 percent of the costs of implementing a solid waste reduction activity, except that only 20 percent of a loan award may be spent for final design and engineering plan costs. In addition, the cost of operating or maintaining equipment, or of purchasing

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or renting real property, are not eligible costs. Regardless of the amount of eligible costs, no loan shall be awarded for an amount that exceeds the maximum established by the notice under part 9210.0720, subpart 1.

Subp. 5. **Proposal.** An eligible applicant shall submit a proposal in the form specified by the director. The director may request additional information from the applicant if it is necessary to clarify the proposal. A proposal must include the following information:

A. the names, qualifications, and addresses of the applicant and other project participants;

B. a description of the proposed project, including:

(1) a work plan that includes a list of project activities, an implementation schedule with specific timelines, and persons involved in completing each activity;

(2) location of the proposed project;

(3) type, source, and quantity of solid waste to be eliminated by the proposed project, including an explanation on how these estimates were determined;

(4) current status of the proposed project; and

(5) description or identification of persons that the proposed project results may be applicable to;

C. a financial report including:

(1) an itemized description of the proposed project costs, including the total estimated cost, total grant eligible costs, the amount of grant funding requested, and a discussion of the economic feasibility of implementing the proposed project;

(2) an itemized description of the proposed project financing, including the applicant contributions, other government contributions, private contributions, and if applicable, any projected revenues from the proposed project;

(3) a business plan that demonstrates ongoing financial commitment over the life of the proposed project, including financial commitment over the projected life of equipment funded by the loan;

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by Revisor _____

(4) a credit history of the organization; and

(5) financial statements for the last three years;

D. information demonstrating the technical feasibility of the proposed project, including preliminary design and engineering plans for capital expenditures, if applicable; and

E. information demonstrating that the project will comply with applicable regulations, including a list of permits required for the project.

Subp. 6. **Evaluation of proposals.** The director shall evaluate each proposal that is determined to be eligible and complete and shall award grants to those projects that, in the director's view, best satisfy the following criteria:

A. the proposed project is technically and economically feasible;

B. the applicant has the experience and knowledge to complete the proposed project and is committed to implementing the proposed project in a timely manner upon receipt of a loan award;

C. the proposed project is consistent with the office's solid waste reduction priorities;

D. the proposed project has the necessary financial commitment to cover all project costs; and

E. the proposed project complies with federal, state, and local regulations.

In addition, the director shall give priority to solid waste reduction projects that have broad application in the state and that have the potential to significantly reduce the generation of solid waste.

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STATE OF MINNESOTA
OFFICE OF WASTE MANAGEMENT

In the Matter of the Proposed Rules Governing the Solid Waste Reduction Grant and Loan Program, Minn. Rules Parts 9210.0700 to 9210.0770

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 twentieth day of July, 1990.

That on the twentieth day of July, 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 20th day of July, 1990.

June J. Seery
Notary Public

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

Le Sueur County

SOLID WASTE OFFICE

Le Sueur County Courthouse
88 S. Park Avenue
LE CENTER, MN 56057-1620

July 27, 1990

RECEIVED
MN OFFICE OF
JUL 30 1990
WASTE MANAGEMENT

Thomas Osdoba
Solid Waste Grants
MN Office of Waste Management
1350 Energy Lane
St. Paul, MN 55108

RE: Proposed Rules Chapter 9210

Dear Mr. Osdoba:

I again want to thank you for providing me with copies of the Proposed Rules Parts 9210.600 to 9210.0645 and Parts 9210.700 to 9210.770. I have reviewed them and feel that in general, the rules appear to be functional.

I did, however, notice one problem in the Solid Waste Reduction Grant and Loan Program (9210.0700). In Sections 9210.0720, Subp. 2, A., (Proposals) and Subp. 5. A. (Evaluation of Proposal) reference is made to the information/criteria in "part 9210.0740, subpart 6." In the copy sent to me, there is not a Subpart 6, or 1-5, in the referenced Section 9210.0740.

I reading the Proposed Rules, and in light of the fact that the counties must, by legislative mandate, have programs running by October 1, 1990, and that it appears most likely that these Rules will not be finalized until after that date, there should be provision for paying expenses which qualify for funding retroactively.

Assume the two following:

> County A, looking at the state mandate to have the recycling programs up and running by the October 1, 1990 deadline, and not wanting to be in violation of the state laws, plans and implements programs for waste reduction and marketing. The County is not eligible for any additional funding through the SCORE grants and loan program because the Rules necessary for the distribution have not been completed. As a result, they expend all of the SCORE funds passed through the them plus a large amount of funds from the general revenue. The result, the county has no or reduces funds to accomplish other recycling programs that may not be eligible for funds, but are worth while.

Thomas Osdoba
Proposed Rules 9210
July 27, 1990

County B, looking at the state mandate, decides that they will wait until funds are available to assist them in developing their waste reduction and marketing programs. At the same time, they see what county A has accomplished, and decide to use the same programs, but, county B can now apply and receive funds under the grant and loan programs. The result, the county has additional funds to accomplish other recycling programs without the necessity of increasing taxes.

In looking at both counties, while county A followed the letter of the law, the affect has put them at a disadvantage with county B. While they both have the same programs, county B had help funding theirs, allowing them to do more without having to do what all county commissioners hate, raise taxes. On the other hand county A has had to raise taxes to continue their programs. For this reason, I feel that there should be some retro-active provision for certain expenses which were generated as a result of complying with the SCORE mandate, yet were incurred before the grant/loan programs were established.

If you have any questions, please feel free to contact me at (612) 357-2251 ext. 211.

Sincerely,

Bruce Jones

Bruce L. Jones
Solid Waste Officer

MINNESOTA OFFICE OF WASTE MANAGEMENT

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

September 5, 1990

Mr. Bruce L. Jones
Solid Waste Officer
LeSueur County Courthouse
88 S. Park Avenue
LeCenter, Minnesota 56057-1620

Dear Mr. Jones:

Thank you for your July 27 letter on the proposed rules governing the Minnesota Office of Waste Management's (OWM's) Solid Waste Reduction and Recyclable Material Market Development Grant and Loan Programs.

In response to your comment regarding a reference error in the rules governing the Solid Waste Reduction Grant and Loan Program, the following corrections have been made:

Minn. Rules pts. 9210.0720, subp. 2. Items A, B, and C are corrected to read:

A. Proposals for grants under part 9210.0750 shall contain the information in part 9210.0750, subpart 5.
B. Proposals for grants under part 9210.0760 shall contain the information in part 9210.0760, subpart 5.
C. Proposals for loans under part 9210.0770 shall contain the information in part 9210.0770, subpart 5.

Minn. Rules pts. 9210.0720, subp. 5. Items A, B, and C are corrected to read:

A. Proposals for grants under part 9210.0750 shall be evaluated using the criteria in part 9210.0750, subpart 6.
B. Proposals for grants under part 9210.0760 shall be evaluated using the criteria in part 9210.0760, subpart 6.
C. Proposals for grants under part 9210.0770 shall be evaluated using the criteria in part 9210.0770, subpart 6.

In your letter, you also urged the OWM to provide grant and loan funds retroactively for county projects. Although we understand your concern on this issue, the OWM cannot legally bind the State of Minnesota to pay for eligible expenses already incurred by a recipient prior to the making of a formal grant or loan agreement between the State and the recipient.

Celebrate MINNESOTA 1990

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We hope this letter clarifies your concerns regarding the proposed rules. Please call us at 612-649-5750 if you have additional questions.

Sincerely,

Thomas A. Osdoba
Solid Waste Grants

Cristine Leavitt
Solid Waste Reduction

Enclosure

STATE OF MINNESOTA
OFFICE OF WASTE MANAGEMENT

In the Matter of the Proposed Rules Governing the Solid Waste Reduction Grant and Loan Program, Minn. Rules Parts 9210.0700 to 9210.0770

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 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 rules is set forth in Minn. Stat. §§115A.53 (1989) and 115A.55, subd. 3 (d) (1989).

(2) All persons have until 4:30 p.m. on August 23, 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. (3) 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. (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. (6) 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. (7) If a public hearing is required, the Office will proceed pursuant to Minn. Stat. §§14.131 to 14.20 (1988).

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

Cristine Leavitt
Minnesota Office of Waste Management
1350 Energy Lane
St. Paul, Minnesota 55108
612-649-5771 or
1-800-652-9747 (MN Toll-Free)

(8) 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.

(11) The proposed rules, if adopted, will establish the criteria and procedures for awarding grants and loans under the Office's Solid Waste Reduction Grant and Loan

Program. One free copy of the proposed rules is available upon request from the address and telephone number stated above.

(12) 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.

(14) You are hereby advised, pursuant to Minn. Stat. §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.

(9) 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.

Dated: July 9, 1990

MICHAEL ROBERTSON
Director

(3) type, quantity, and source of recyclable material and recycled products relevant to the project; and

(4) description or identification of persons that may benefit from project activities and results;

C. the projected economic viability of implementing project results;

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

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

The director may request additional information from the applicant if it is necessary to clarify and evaluate the proposal.

Subp. 7. **Evaluation of proposals.** The director shall evaluate each proposal that is determined to be eligible and complete. The director shall base this evaluation on the following factors:

A. the technical and economic feasibility of the proposed project;

B. the applicant's ability and intention to implement the project in a timely manner upon receipt of a grant award;

C. the extent to which the proposed project promotes market development activities for recyclable materials and recycled products;

D. the consistency of the proposed project with state market development priorities;

E. the extent to which the proposed project promotes the highest end use for each recyclable material;

F. the extent to which the proposed project promotes the use of postconsumer material; and

G. the extent to which the project provides information transferable to other organizations and the absence of available information in the proposed area of study.

Office of Waste Management

Proposed Permanent Rules Relating to Solid Waste Reduction Grant and Loan Programs

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 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* §§ 115A.53 (1989) and 115A.55, subd. 3 (d) (1989).

All persons have until 4:30 p.m. on August 23, 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:

Cristine Leavitt
Minnesota Office of Waste Management
1350 Energy Lane
St. Paul, Minnesota 55108
612-649-5771 or
1-800-652-9747 (MN Toll-Free)

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 and loans under the Office's Solid Waste Reduction Grant and Loan 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.

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 (all new material)

SOLID WASTE REDUCTION GRANT AND LOAN PROGRAM

9210.0700 SCOPE AND AUTHORITY.

Parts 9210.0700 to 9210.0770 implement the solid waste reduction grant and loan program created and described under *Minnesota Statutes*, sections 115A.53 and 115A.55, by establishing the substantive criteria and procedural conditions under which the director may award grants or loans for solid waste reduction projects.

9210.0710 DEFINITIONS.

Subpart 1. **Scope.** The terms defined in this part apply to parts 9210.0700 to 9210.0770. For terms not defined in this part, the definitions in *Minnesota Statutes*, section 115A.03, apply unless the context states otherwise.

Subp. 2. **Director.** "Director" means the director of the Office of Waste Management.

Subp. 3. **Office.** "Office" means the Minnesota Office of Waste Management established in *Minnesota Statutes*, section 115A.055.

Subp. 4. **Person.** "Person" means an individual, partnership, association, public or private organization, or other legal entity, the state, or an agency, department, or political subdivision of the state.

Subp. 5. **Program.** "Program" means the Solid Waste Reduction Grant and Loan Program.

Subp. 6. **Solid waste.** "Solid waste" has the meaning given it in *Minnesota Statutes*, section 116.06, subdivision 10.

Subp. 7. **Solid waste reduction.** "Solid waste reduction" means an activity that prevents the generation of solid waste including:

A. producing, procuring, or using products or packaging with a longer useful life;

B. producing, procuring, or using products or packaging with reduced material; or

C. changing solid waste generation habits to result in smaller quantities of solid waste generated.

Subp. 8. **Useful life.** "Useful life" means the length of time or number of times that a product may be used or reused in its original form.

9210.0720 APPLICATION PROCEDURES.

Subpart 1. **Notification by director.** To initiate the process for awarding grants and loans for solid waste reduction projects, the director shall publish a notice in the State Register advising eligible applicants of the availability of solid waste reduction grants and loans. The notice shall describe the maximum amount of funding available for a project, and establish a deadline by which proposals must be submitted. In the notice, the director may also limit the types of projects for which a grant or loan would be awarded in the funding round initiated by the notice.

Subp. 2. **Proposals.** Following the publication of a notice in the *State Register*, eligible applicants that seek assistance must submit proposals to the director. Proposals must be received by the director by the deadline established in the notice. Upon the request of the applicant, the office shall handle specific information as nonpublic data pursuant to *Minnesota Statutes*, section 115A.06, subdivision 13; however, all information developed as a result of a grant or loan shall be made available to persons through the office's public information program.

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.

Minnesota Office of Waste Management

Proposed Rules Governing Solid Waste Reduction Grant and Loan Program,
Minn. Rules Parts 9210.0700 to 9210.0770

Notice of Extension of Public Comment Period

(1) Notice is hereby given that the Minnesota Office of Waste Management (Office) is extending the public comment period for the proposed rules to govern the Solid Waste Reduction Grant and Loan Program. A Notice of Intent to Adopt Rules Without a Public Hearing and the proposed rules were published in the State Register on July 23, 1990 (15 S.R. 190). All persons were informed that the Office will accept written comments on the proposed rules until 5:00 p.m., August 23, 1990. The Office is now extending the public comment period until 5:00 p.m., August 30, 1990. Comments or questions relating to the proposed rules should be directed to:

Cristine Leavitt
Minnesota Office of Waste Management
1350 Energy Lane
St. Paul, MN 55108
612-649-5771 or 1-800-652-9747 (Minnesota Toll-Free)

Michael Robertson
Director

STATE OF MINNESOTA
OFFICE OF WASTE MANAGEMENT

In the Matter of the Proposed Rules
Governing the Solid Waste Reduction
Grant and Loan Program, Minn. Rules
Parts 9210.0700 to 9210.0770

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 Rules Governing the Solid Waste Reduction Grant and Loan Program, Minn. Rules Parts 9210.0700 to 9210.0770

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

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

Cristine Leavitt, 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.

Cristine Leavitt

Subscribed and sworn to before me
this 10th day of September, 1990.

June J. Seery
Notary Public

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

STATE OF MINNESOTA
OFFICE OF WASTE MANAGEMENT

In the Matter of the Proposed Rules Governing the Solid Waste Reduction Grant and Loan Program, Minn. Rules Parts 9210.0700 to 9210.0770

FINDINGS OF FACT, CONCLUSIONS, AND ORDER ADOPTING RULES

The above-entitled matter came for decision before the Director of the Minnesota Office of Waste Management (Office) on the 10th day of September 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 July 23, 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), by July 26, 1990.

(2) 2. The Statement of Need and Reasonableness was prepared prior to publication of the notice and prior to mailing. However, it was not signed until July 26, 1990. (The typed date on the back of the Statement of Need and Reasonableness is in error).

3. In order to provide a full thirty day comment period after the Statement of Need and Reasonableness was signed, the comment period was extended until August 30, 1990. Notice of extension of the comment period was published in the State Register on August 13, 1990 and was sent to all persons who requested copies of the rules or Statement of Need and Reasonableness. Thus, all persons were given the opportunity to submit comments on the rule for a total of 37 days after the July 23, 1990 notice of proposed rulemaking.

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 Bruce L. Jones, dated July 27, 1990. A copy of the comment and the Office's response are incorporated as part of these Findings of Fact.

7. 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.

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 9210.0700 to 9210.0770, governing the Solid Waste Reduction Grant and Loan Program are adopted pursuant to the authority vested in the Minnesota Office of Waste Management by Minn. Stat. §§115A.53 and 115A.55, subd. 3 (d) (2nd 1989 Supp.).

MINNESOTA OFFICE OF WASTE MANAGEMENT

Michael Robertson

Michael Robertson
Director

Dated: 9/10/90