

Minnesota Attorney General: Administrative Rules Proceedings

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STATE OF MINNESOTA
OFFICE OF WASTE MANAGEMENT

In the Matter of the Proposed Amendment of Rules Governing Pollution Prevention Grants Minn. Rules parts 9205.0400 to 9205.0480

Statement of Need and Reasonableness

I. INTRODUCTION

The subject of this rulemaking is a set of proposed amendments to Minn. Rules pts. 9205.0400 to 9205.0480.[1] Currently, those rules establish the standards and procedures through which the Office of Waste Management (OWM) awards waste reduction grants under Minn. Stat. § 115A.154 (1990). The OWM is proposing to amend Minn. Rules pts. 9205.0400 to 9205.0480 to incorporate the pollution prevention grant program recently created under Minn. Stat. § 115D.05 (1990).

The OWM has prepared this Statement of Need and Reasonableness (SONAR) to explain its proposed rule amendments and satisfy the rulemaking requirements of the Administrative Procedure Act, Minn. Stat. ch. 14 (1990). Part II of this SONAR describes the statutory authority for the OWM to undertake this rulemaking. Part III describes the need for and reasonableness of the OWM's proposed rule amendments. Part IV addresses the Administrative Procedure Act's "small business consideration" requirement.

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[1] The OWM has proposed these rules after consultation with its Hazardous waste Management Planning Council and its Pollution Prevention Task Force. These two organizations consist of citizens who provide advice to the OWM.

II. STATUTORY AUTHORITY FOR THIS RULEMAKING

The statutory authority for the OWM to undertake this rulemaking is set out in Minn. Stat. §§ 115A.06, subd. 2 and 115D.05, subd. 3(b) (1990).

Minn. Stat. § 115A.06, subd. 2 establishes general authority for the OWM to adopt and amend rules governing its programs, including the OWM's waste reduction grant program established under Minn. Stat. § 115A.154.[2] Minn. Stat. § 115D.05, subd. 3(b) establishes specific authority for the OWM to adopt and amend rules to administer its pollution prevention grant program.[3] Together, these two statutes provide sufficient authority for the rulemaking addressed in this SONAR.

III. STATEMENT OF NEED AND REASONABLENESS

The Administrative Procedure Act, Minn. Stat. ch. 14 (1990), requires an agency proposing to adopt, amend, suspend or repeal a rule to establish the need for and reasonableness of the agency's proposed action. In general terms, this means that the agency must explain the reasons for its proposal and those reasons must not be arbitrary or capricious. To the extent that need and reasonableness may be described as separate tests, need means

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[2] Minn. Stat. § 115A.06, subd. 2 states: "Unless otherwise provided, the office shall promulgate rules in accordance with chapter 15 to govern its activities and implement sections 115A.01 to 115A.72."

[3] Minn. Stat. § 115D.05, subd. 3(b) states: "The director shall adopt rules to administer the [pollution prevention] grant program. Prior to completion of any new rulemaking, the director may administer the program under the procedures established in the rules promulgated under Section 115A.154."

that a problem exists that requires administrative attention and reasonableness means that the solution proposed by the agency is appropriate.

A. NEED FOR THE PROPOSED RULE AMENDMENTS

In 1990, the Minnesota Legislature enacted the Toxic Pollution Prevention Act. Among other things, that Act authorizes the OWM to "make grants to study or demonstrate the feasibility of applying specific technologies and methods to prevent pollution." Minn. Stat. § 115D.05, subd. 1 (1990). The Toxic Pollution Prevention Act expressly requires the OWM "to adopt rules to administer" this grant program. Minn. Stat. § 115D.05, subd. 3(b) (1990). This statutory requirement establishes the need for rules describing the procedures and standards for obtaining a pollution prevention grant.

B. REASONABLENESS OF THE PROPOSED RULE AMENDMENTS

1. Reasonableness of amending Minn. Rules pts. 9205.0400 to 9205.0480 to include pollution prevention grants.

As currently promulgated, Minn. Rules pts 9205.0400 to 9205.0480 govern the OWM's waste reduction grant program under Minn. Stat. § 115A.154. The grant program established by the Toxic Pollution Prevent Act is similar to the waste reduction grant program under section 115A.154, but the pollution prevention grant program has a somewhat broader scope and focus.[4] The Minnesota Legislature appears to have recognized

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[4] Compare Minn. Stat. § 115A.154 (1990) which authorizes the OWM to "make grants to generators of hazardous and industrial waste . . . for studies to determine the feasibility of applying

the connection between the two statutes when it established the pollution prevention grant program.[5] Because of this connection, the OWM proposes to integrate the two grant programs into a single set of rules.

Integrating the two grant programs into one set of rules will provide administrative efficiency for the OWM. It also will make it easier for grant applicants to understand the grant programs. Further, integrating the two programs into one set of rules will express clearly Minnesota's primary environmental objective of preventing pollution by reducing the generation of waste at the source of generation. See Minn. Stat. § 115A.02 (1990). For all these reasons, it is reasonable for the OWM to amend Minn. Rules pts. 9205.0400 to 9205.0480 to integrate into one set of rules the waste reduction and pollution prevention grants programs.

2. Reasonableness of the proposed amendments.

The reasonableness of each of the proposed amendments is addressed below.

Part 9205.0400 Scope and Authority

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specific methods and technologies to reduce the generation of hazardous and industrial waste" with Minn. Stat. § 115D.05, subd. 1 which authorizes the OWM to "make grants to study or demonstrate the feasibility of applying specific technologies to prevent pollution."

[5] See Minn. Stat. § 115D.05, subd. 3(b), through which the Minnesota Legislature expressly authorizes the OWM to administer the pollution prevention grant program under the rulemaking procedures established in Minn. Rules pts 9205.0400 to 9205.0480.

Minn. Rule pt. 9205.0400 is an introductory rule that describes the scope and authority of the grant program rules. Specifically, Minn. Rule pt. 9205.0400 states that Minn. Rule pts. 9205.0400 to 9205.0445 govern the administration of grants for hazardous waste reduction under Minn. Stat. § 115A.154.

The OWM proposes rules to amend Minn. Rule pt. 9205.0400 so that it also references the pollution prevention grant program under Minn. Stat. § 115D.05. This change is both needed and reasonable to reflect accurately the new scope of the grant programs to be administered under these rules.

Part 9205.0410 Definitions

Minn. Rule pt. 9205.0400 defines terms used in the grant program rules. The OWM proposes to amend existing definitions, repeal others, and establish new definitions. These changes are as follows:

The OWM proposes to amend the existing definitions in subp. 1 (scope) and subp. 6 (hazardous waste). In addition, the OWM proposes to define, for the first time: hazardous substance (subp. 5a); pollution prevention (subp. 16); release (subp. 17); and toxic pollutant (subp. 18). Each of these definitions concern the new scope of the grant program. The terms hazardous waste, hazardous substance and release are specifically used in Minn. Rule pt. 9205.0420, subp. 1 to describe the applicants that are eligible for a grant. The term pollution prevention is used in Minn. Rule pt. 9205.0420, subp. 2 to describe the projects that are eligible for grants. These proposed definitions are all

reasonable because they incorporate the criteria established by the Toxic Pollution Prevention Act, Minn. Stat. § 115D.05 and clarify the new scope of the grant rules.

The OWM also proposes to amend subp. 4 (chair) and to define a new term, office (subp. 10a). These two amendments are needed to reflect changes in the structure of the governmental agency administering the grant programs. When first enacted, the waste reduction grant program was governed by the Waste Management Board. Because the OWM is now responsible for governing the grant programs, it is reasonable to amend the rules to reflect this change.

The OWM also proposes to repeal definitions that are obsolete under the expanded grant program. These definitions include subps. 2 (abatement); 3 (board); 5 (generator); 8 (intrinsic hazard); 9 (local government unit); 10 (minimization); 12 (recipient); 13 (recycling); 14 (reduction); and 15 (reuse). Some of these definitions are no longer needed because they refer to a governmental agency no longer responsible for managing the grant program (i.e., board). Others are obsolete because they refer to criteria which, under the Toxic Pollution Prevention Act, are not relevant to eligibility (e.g., generator, intrinsic hazard). Other definitions are obsolete because they are no longer used in the rules (e.g., recipient). It is reasonable to repeal definitions that are no longer useful.

Finally, the OWM proposes to amend sup. 7 (industrial waste) to correct a grammatical error. Grammar corrections are reasonable because they clarify the meaning of the rule.

Part 9205.0420 Eligibility Criteria

Part 9205.0420 establishes grant eligibility criteria. The OWM proposes to amend these criteria to incorporate the grant program set out in the Toxic Pollution Prevention Act, Minn. Stat. § 115D.05. These amendments are reasonable because they clarify the scope of the grant program to be administered by the rule.

The OWM also proposes to establish a limitation on the amount of costs eligible for funding under the grant program. Subp. 3 of Minn. Rule pt. 9205.0420 would limit eligible costs to two-thirds of the total cost of the project. This cost limitation is reasonable for two reasons: First, grantees with a financial stake in a project are expected to have a greater personal interest in assuring the success of the project. Second, limiting maximum grant awards may make grant funds available for a larger number of eligible projects.

Part 9205.0430 Grant Application

Minn. Rules pt. 9205.0430 describes requirements for grant applications. The OWM proposes to amend this part to set out the procedures through which the OWM will solicit grant applications, review those applications and award grants. The proposed amendments correspond to other grant program rules administered by the OWM. By adopting grant administration rules that, where

possible, are similar to each other, the OWM enhances its efficiency and simplifies the grant process for potential applicants. Thus, the OWM's proposed amendments corresponding to its other grant procedures are reasonable. Each of these amendments is described briefly below:

The OWM proposes a new subpart 1 to describe the procedure for grant solicitation. Under this procedure, the Director of the OWM initiates the process for awarding a grant by publishing a notice in the State Register to advise eligible applicants of the availability of pollution prevention Grants.

The OWM proposes to amend subpart 2 to clarify the information an applicant must include in a pollution prevention grant application. The changes in this subpart are reasonable because they provide for the collection of information relevant to the eligibility criteria established by the grant program under the Toxic Pollution Prevention Act, Minn. Stat. § 115D.05.

The OWM proposes a new subpart 3 and 4 to describe the initial review that the OWM will make of grant applications. This review is reasonable because it will allow the director to provide grant applicants with a preliminary determination of the eligibility and completeness of the grant application. This early review also will allow applicants to provide additional information to correct any inadequacies in their initial proposals.

The OWM proposes a new supart 5 to describe the criteria for evaluating grant applications. These criteria are reasonable

because they incorporate the statutory criteria for a pollution prevention grant. See Minn. Stat. § 115D.05, subd 3.

The OWM proposes a new subpart 6 to describe which grants will be given an award by the OWM. This procedure is reasonable because it assures that grants will be awarded to proposals that best meet the criteria set out in subpart 5.

The OWM proposes a new subpart 7, which clarifies that the OWM may decide not to award a grant if the Director of the OWM determines that no proposed project has sufficient potential to prevent pollution. This provision is reasonable because it assures that the state's limited funds will be spent only on truly worthy projects.

The OWM proposes a new subpart 8, which states that the OWM may solicit recommendations of certain groups to assist in reviewing grant applications. This provision is reasonable because it notifies prospective applicants of the possible scope of public review of their grant applications.

Part 9205.0435 Limitations

The OWM proposes a new part, 9205.0435. This new part sets out limitations on the amount of a grant award and the disbursal of grant funds. This new part is reasonable because it establishes procedures for preserving the limited state fisc.

Part 9205.0445 Grant Agreement

Minn. Rule pt. 9205.0480 currently describes the terms to be included in a waste reduction grant agreement between the state and a grantee. The OWM proposes to replace this part entirely

with a new part, 9205.0445. The new part contains grant terms that are consistent with and correspond to the grant terms set out in other grant program rules administered by the OWM. By adopting grant administration rules that, where possible, are similar to each other, the OWM enhances its efficiency and simplifies the grant process for potential applicants. Thus, the OWM's proposed amendments corresponding to its other grant procedures are reasonable. Moreover, the grant agreement requirements set out in the rules establish the basic terms required for the state to administer the grant equitably and in a financially responsible manner.

Repeal of Parts 9205.0440; 9205.0450; 9205.0460; 9205.0470; and 9205.0480

The OWM proposes to repeal Minn. Rule pts. 9205.0440 (application process): 9205.0450 (initial application review): 9205.0460 (evaluation of proposals): and 9205.0470 (award of grants). Repeal of these four parts is reasonable because these parts are superseded by the proposed amendments to Minn. Rule pt. 9205.0430.

The OWM also proposes to repeal Minn. Rule pt. 9205.0480 (grant agreement). Repeal of this part is reasonable because pt. 9205.0480 is superseded by pt. 9205.0445 (grant agreement).

IV. SMALL BUSINESS CONSIDERATION

Minn. Stat. § 14.115 (1990) requires state agencies proposing rule amendments that affect small business to consider methods for reducing their negative impact on small business.

The OWM's proposed rule amendments would revise the

procedures and criteria for awarding grants. These amendments would not create a regulatory burden on any small business. Thus, the requirements of Minn. Stat. § 14.155 (1990) do not apply.

V. CONCLUSION

Based on the foregoing, the proposed amendments to Minn. Rules pts 9205.0400 to 9205.0480 are both needed and reasonable.

Dated: March 6, 1991

Linda Bruemmer
Acting Director
Office of Waste Management

Office of Waste Management

Adopted Permanent Rules Relating to Pollution Prevention Grant Program

Rules as Adopted

POLLUTION PREVENTION GRANT PROGRAM

9205.0400 SCOPE AND AUTHORITY.

Parts 9205.0400 to 9205.0445 govern the administration of grants for hazardous waste reduction under Minnesota Statutes, section 115A.154 and for the prevention of pollution under Minnesota Statutes, section 115D.05.

9205.0410 DEFINITIONS.

Subpart 1. **Scope.** The terms defined in this part apply to parts 9205.0400 to 9205.0445. For terms not defined in this part, the definitions in Minnesota Statutes, section 115D.03, apply, unless the context requires otherwise.

Subp. 2. and 3. [See repealer.]

Subp. 4. **Director.** "Director" means the director of the Office of Waste Management.

Subp. 5. [See repealer.]

Subp. 5a. **Hazardous substance.** "Hazardous substance" has the meaning given it in Minnesota Statutes, section 115B.02, subdivision 8.

Subp. 6. **Hazardous waste.** "Hazardous waste" has the meaning given it in Minnesota Statutes, section 116.06, subdivision 13.

Subp. 7. **Industrial waste.** "Industrial waste" has the meaning given it in Minnesota Statutes, section 115A.03, subdivision 13a.

Subp. 8. to 10. [See repealer.]

Subp. 10a. **Office.** "Office" means the Office of Waste Management established in Minnesota Statutes, section 115A.055.

[For text of subp 11, see M.R.]

Subp. 12. to 15. [See repealer.]

Subp. 16. **Pollution prevention or prevent pollution.** "Pollution prevention" or "prevent pollution" means eliminating or reducing at the source the quantity or toxicity of toxic pollutants, hazardous substances, hazardous wastes, or industrial wastes used, generated, or released. Examples of technologies or methods to prevent pollution include process modification, inventory control measures, feedstock substitutions, various housekeeping and management practices, and improved efficiency of machinery.

Subp. 17. **Release.** "Release" has the meaning given it in Minnesota Statutes, section 115D.03, subdivision 10.

Subp. 18. **Toxic pollutant.** "Toxic pollutant" has the meaning given it in Minnesota Statutes, section 115D.03, subdivision 11.

9205.0420 ELIGIBILITY CRITERIA.

Subpart 1. **Eligible applicants.** Eligible applicants are persons who use, generate, or release toxic pollutants, hazardous substances, hazardous wastes, or industrial wastes in a business, institutional, or governmental setting in Minnesota or associations that represent persons who use, generate, or release toxic pollutants, hazardous substances, hazardous wastes, or industrial wastes in a business, institutional, or governmental setting in Minnesota.

Subp. 2. **Eligible projects.** Eligible projects are:

A. projects to study or demonstrate the feasibility of applying new technologies or methods to prevent pollution by the eligible applicant; and

B. projects to study or demonstrate the feasibility of applying existing technologies or methods to prevent pollution by the eligible applicant in previously untested applications. Decreases in quantity or toxicity are not reductions where the decrease is solely the result of a decrease in the output of the facility.

Projects currently under development by the applicant and new projects are eligible; however, grant funds shall only be

awarded for costs incurred after the effective date of the grant agreement.

Subp. 3. **Eligible costs.** Eligible costs are limited to the costs of conducting studies and analyses consistent with subpart 2. Eligible costs are limited to a maximum of two-thirds of the total cost of the project. Grant money awarded through this program may not be spent for capital improvements or the purchase of equipment.

Subp. 4. [See repealer.]

9205.0430 GRANT APPLICATION.

Subpart 1. **Notification by director.** To initiate the process for awarding a pollution prevention grant, the director shall publish a notice in the State Register advising eligible applicants of the availability of pollution prevention grants. The notice shall describe the procedure for awarding grants and establish a deadline by which applications must be submitted. In the notice, the director may limit the types of projects for which a grant would be awarded in the funding round initiated by the notice and may specify the maximum amount of funding to be awarded to a project.

Subp. 2. **Applications.** Following the publication of a notice in the State Register, applicants that seek assistance must submit applications in the form specified by the director. Applications 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 in the grant application as nonpublic data in accordance with the criteria established by Minnesota Statutes, section 115A.06, subdivision 13; however, all information developed as a result of a pollution prevention grant shall be public data. Each application must include the following:

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

B. a description of the proposed project, including:

(1) a description of the method or technology

proposed to be studied, with a list of project activities and an implementation schedule;

(2) a statement as to whether this method or technology is new or existing, with a literature search or similar demonstration in support of this statement;

(3) a discussion of whether implementation of this method or technology is likely to minimize the transfer of pollution from one environmental medium to another;

(4) a listing of the toxic pollutants, hazardous substances, hazardous wastes, or industrial wastes that are the subject of the proposed project, with a statement, in pounds, of the quantity of each of these pollutants, substances, or wastes that the applicant generated in the previous calendar year;

(5) an estimate, in pounds, of the decrease in the quantity of the toxic pollutants, hazardous substances, hazardous wastes, or industrial wastes that the applicant believes could be realized if the methods and technologies to be studied in the proposed project were implemented; and

(6) a statement of the current status of the proposed project;

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

D. a statement of the willingness of the applicant to implement the methods and technologies proposed to be studied, if those methods and technologies are found to be technically and economically feasible;

E. a statement of the willingness of the applicant to assist the director in disseminating information about the results of the project;

F. a statement describing the statewide significance of the information to be gained from the proposed project;

G. a project budget that:

(1) identifies the total cost of the proposed project and identifies each of the expenditures that make up this cost; and

(2) states the amount of grant funds being requested and the amount of matching funds being supplied by the applicant or others. If a person other than the applicant is providing matching funds, the application must identify the sources of the additional funds.

Subp. 3. **Eligibility and completeness review.** For all applications received by the director by the deadline established in the notice under subpart 1, the director shall determine the eligibility of the applicant, the proposed project, and the costs identified in the application and shall determine the completeness of the application.

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 application. If the director determines that the applicant or the project is ineligible, the director shall reject the application and notify the applicant. If the director determines that any of the project costs are ineligible or that the application is incomplete, the director shall notify the applicant of the ineligible portion of the costs or of the deficiency. The applicant has 14 days after receiving the notice to correct any inadequacies.

Subp. 5. **Evaluation of proposal.** In order to determine which projects should receive a pollution prevention grant, the director shall evaluate each application that is determined to be eligible and complete. In making this evaluation, the director shall consider whether:

A. the proposed project involves the study or analysis of a method or technology that has a significant potential to prevent pollution;

B. the proposed project involves the study or analysis of a method or technology that is consistent with the legislative goals and policies in Minnesota Statutes, sections 115A.02 and 115D.02;

C. the persons who will undertake the proposed project are qualified to perform the work described in the

project;

D. implementation of the method or technology that is the subject of the proposed project is likely to minimize the transfer of pollution from one environmental medium to another;

E. the proposed project will comply with regulatory requirements;

F. the applicant is willing to implement methods and technologies that the proposed project finds to be feasible;

G. the applicant is willing to assist the director in disseminating information about the results of the project; and

H. the proposed project has statewide significance.

Subp. 6. **Award of grants.** The director shall award grants to those projects that the director determines best meets the evaluation criteria in subpart 5. The director shall promptly notify all applicants as to whether they have been awarded a grant.

Subp. 7. **No grant awards.** If the director determines that no proposed project has sufficient potential to prevent pollution in Minnesota, the director shall not award any grants. 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 an application, the director may solicit and consider any recommendations provided by Office of Waste Management advisory councils, task forces, citizen groups, or any independent consultant hired by the director to assist in the review of applications.

9205.0435 LIMITATIONS.

Subpart 1. **Reduced grant awards.** The director shall ask an applicant to document the impacts of reduced financial assistance before finalizing an award for less than the eligible amount requested by an applicant or less than the maximum award established in the notice under part 9205.0430, subpart 1. Reduced funds shall be awarded where the director determines:

A. program resources are insufficient to provide full

assistance to all applicant 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. **Limit on disbursal of funds.** No grant shall be disbursed until the director has:

A. determined the total estimated cost of the project;

B. ascertained that the provision of matching funds is assured by the recipient; and

C. executed a written grant agreement with the recipient meeting the requirements in part 9205.0445.

9205.0445 GRANT AGREEMENT.

A grant agreement shall:

A. establish a work plan and schedule and require that the recipient perform and complete project activities according to this work plan and schedule;

B. provide that any cost overruns incurred in the 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 progress and results of the project;

D. 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 conducted according to terms and conditions of the grant agreement;

E. authorize the director to cease making further disbursements to the recipient and to recover unspent funds if the director determines that, for reasons other than bad faith, a project has not made progress according to the terms and conditions of the grant agreement and an amendment to the agreement is not justified;

F. provide that the results of all studies or

analyses performed under this agreement are public data;

G. require that a percentage of funds not be paid to the recipient until the director approves the recipient's final report;

H. require that the recipient maintain detailed records of all expenditures related to the agreement; and

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

REPEALER. Minnesota Rules, parts 9205.0410, subparts 2, 3, 5, 8, 9, 10, 12, 13, 14, and 15; 9205.0420, subpart 4; 9205.0440; 9205.0450; 9205.0460; 9205.0470; and 9205.0480 are repealed.

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED

JUL 9 1992

Joan Anderson Growe
Secretary of State

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APPROVED AS TO FORM AND LEGALITY
July 9 19 92
HUBERT H. HUMPHREY III
ATTORNEY GENERAL
BY
SPECIAL ASSISTANT ATTORNEY GENERAL

Office of Waste Management

Proposed Permanent Rules Relating to Pollution Prevention Grant Program

Rules as Proposed

~~WASTE REDUCTION GRANTS~~

POLLUTION PREVENTION GRANT PROGRAM

9205.0400 SCOPE AND AUTHORITY.

Parts 9205.0400 to ~~9205.0480~~ 9205.0445 govern the administration of grants for hazardous waste reduction under Minnesota Statutes, section 115A.154 and for the prevention of pollution under Minnesota Statutes, section 115D.05.

9205.0410 DEFINITIONS.

Subpart 1. **Scope.** ~~For the purposes of parts 9205.0400 to 9205.0480,~~ The ~~following~~ terms ~~have the meanings given them~~ defined in this part apply to parts 9205.0400 to 9205.0445. For terms not defined in this part, the definitions in Minnesota Statutes, section 115D.03, apply, unless the context requires otherwise.

Subp. 2. and 3. [See repealer.]

Subp. 4. ~~Chair~~ Director. "~~Chair~~ Director" means the ~~chair~~ director of the ~~board~~ Office of Waste Management.

Subp. 5. [See repealer.]

Subp. 5a. **Hazardous substance.** "Hazardous substance" has the meaning given it in Minnesota Statutes, section 115B.02, subdivision 8.

Subp. 6. **Hazardous waste.** "Hazardous waste" ~~means those wastes identified and listed in the rules of the Minnesota Pollution Control Agency, parts 7045.0100 to 7045.0141~~ has the meaning given it in Minnesota Statutes, section 116.06, subdivision 13.

Subp. 7. **Industrial waste.** "Industrial waste" has the meaning given it in Minnesota Statutes, section 115A.03, subdivision 13a.

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Subp. 8. to 10. [See repealer.]

Subp. 10a. **Office.** "Office" means the Office of Waste Management established in Minnesota Statutes, section 115A.055.

[For text of subp 11, see M.R.]

Subp. 12. to 15. [See repealer.]

Subp. 16. **Pollution prevention or prevent pollution.** "Pollution prevention" or "prevent pollution" means eliminating or reducing at the source the quantity or toxicity of toxic pollutants, hazardous substances, hazardous wastes, or industrial wastes used, generated, or released. Examples of technologies or methods to prevent pollution include process modification, inventory control measures, feedstock substitutions, various housekeeping and management practices, and improved efficiency of machinery.

Subp. 17. **Release.** "Release" has the meaning given it in Minnesota Statutes, section 115D.03, subdivision 10.

Subp. 18. **Toxic pollutant.** "Toxic pollutant" has the meaning given it in Minnesota Statutes, section 115D.03, subdivision 11.

9205.0420 ELIGIBILITY CRITERIA.

Subpart 1. **Eligible applicants.** ~~The following are~~ Eligible ~~to apply for a~~ applicants are persons who use, generate, or release toxic pollutants, hazardous substances, hazardous wastes, or industrial ~~waste reduction grant:~~

~~A. a generator; or~~

~~B. an association that consists of or represents two or more generators generating similar~~ wastes in a business, institutional, or governmental setting in Minnesota or associations that represent persons who use, generate, or release toxic pollutants, hazardous substances, hazardous wastes, or industrial wastes in a business, institutional, or governmental setting in Minnesota.

Subp. 2. **Eligible projects.** Eligible projects ~~designed to determine~~ are:

A. projects to study or demonstrate the feasibility

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of applying ~~specific~~ new technologies or methods ~~and technologies to reduce the generation of hazardous or industrial waste are eligible to receive a hazardous or industrial waste reduction grant. Eligible projects include projects to study the specific application of a method or technology already developed and projects to analyze a method or technology for which additional research is necessary to establish~~ prevent pollution by the eligible applicant; and

B. projects to study or demonstrate the feasibility of ~~the method or technology~~ applying existing technologies or methods to prevent pollution by the eligible applicant in previously untested applications. Decreases in quantity or toxicity are not reductions where the decrease is solely the result of a decrease in the output of the facility.

~~Application or research~~ Projects currently under development by the applicant and new projects are eligible; however, grant funds shall only be awarded for costs incurred after the effective date of the grant agreement.

Subp. 3. **Eligible costs.** Eligible costs are limited to the costs of conducting studies and analyses consistent with subpart 2. Eligible costs are limited to a maximum of two-thirds of the total cost of the project. Grant money awarded through this program may not be spent for capital improvements or the purchase of equipment.

Subp. 4. [See repealer.]

9205.0430 GRANT APPLICATION.

~~An applicant shall~~

Subpart 1. **Notification by director.** To initiate the process for awarding a pollution prevention grant, the director shall publish a notice in the State Register advising eligible applicants of the availability of pollution prevention grants. The notice shall describe the procedure for awarding grants and establish a deadline by which applications must be submitted. In the notice, the director may limit the types of projects for which a grant would be awarded in the funding round initiated by

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the notice and may specify the maximum amount of funding to be awarded to a project.

Subp. 2. **Applications.** Following the publication of a notice in the State Register, applicants that seek assistance must submit ~~an application~~ applications in the form specified by the ~~chair~~ director. ~~An~~ Applications 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 in the grant application as nonpublic data in accordance with the criteria established by Minnesota Statutes, section 115A.06, subdivision 13; however, all information developed as a result of a pollution prevention grant shall be public data. Each application must include the following ~~information~~:

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

B. a description of the ~~applicant's managerial and technical ability to undertake a hazardous or industrial waste reduction feasibility study~~ proposed project, including ~~any consultant help that may be anticipated~~.

~~B. A statement outlining the method or technology that will be studied by the applicant and the waste reduction that may result from application of the method or technology. This statement must include a discussion of the following items:~~

(1) a description of the method or technology proposed to be studied, with a list of project activities and an implementation schedule;

(2) a statement as to whether ~~the study involves the application of an existing~~ this method or technology~~, or original or continuing research on a~~ is new or existing, with a literature search or similar demonstration in support of this statement;

(3) a discussion of whether implementation of this method or technology ~~for which additional research~~ is ~~necessary~~ likely to ~~determine the feasibility of the method or technology~~ minimize the transfer of pollution from one

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environmental medium to another;

~~(3)~~ (4) a ~~description~~ listing of the toxic pollutants, hazardous ~~or~~ substances, hazardous wastes, or industrial ~~waste-affected-by~~ wastes that are the subject of the proposed project ~~that-is-generated-by-the-applicant, including~~ with a statement, in pounds, of the quantity of each of these pollutants, substances, or wastes that the applicant generated in the previous calendar year;

~~(4)~~ (5) an estimate, in pounds, of the decrease in the quantity of the toxic pollutants, hazardous substances, hazardous wastes, or industrial ~~waste-generated~~ wastes that the applicant believes could be realized if the methods and technologies to be studied in the proposed project were implemented; and

~~(5)~~ (6) a statement of the current ~~method-used-to manage-the-hazardous-or-industrial-waste-generated-by-the applicant,-and-any-anticipated-change-in-management-occurring after-the-reduction.~~ status of the proposed project;

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

D. a statement of ~~financial-feasibility-for-the project-must-be-included-with-the-application,-and-must-include a-discussion-of~~ the ~~following-items~~ willingness of the applicant to implement the methods and technologies proposed to be studied, if those methods and technologies are found to be technically and economically feasible;

E. a statement of the willingness of the applicant to assist the director in disseminating information about the results of the project;

F. a statement describing the statewide significance of the information to be gained from the proposed project;

G. a project budget that:

(1) identifies the total cost of the proposed project and identifies each of the expenditures that make up this cost; and

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by Revisor _____

(2) states the amount of grant funds being requested; and

~~(2) an estimate of~~ the ~~total~~ amount of matching funds ~~needed to complete the study. This section should include a discussion of any financial support that might be available to the applicant from other sources, including both external and internal sources~~ being supplied by the applicant or others. If a person other than the applicant is providing matching funds, the application must identify the sources of the additional funds.

Subp. 3. **Eligibility and completeness review.** For all applications received by the director by the deadline established in the notice under subpart 1, the director shall determine the eligibility of the applicant, the proposed project, and the costs identified in the application and shall determine the completeness of the application.

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 application. If the director determines that the applicant or the project is ineligible, the director shall reject the application and notify the applicant. If the director determines that any of the project costs are ineligible or that the application is incomplete, the director shall notify the applicant of the ineligible portion of the costs or of the deficiency. The applicant has 14 days after receiving the notice to correct any inadequacies.

Subp. 5. **Evaluation of proposal.** In order to determine which projects should receive a pollution prevention grant, the director shall evaluate each application that is determined to be eligible and complete. In making this evaluation, the director shall consider whether:

A. the proposed project involves the study or analysis of a method or technology that has a significant potential to prevent pollution;

B. the proposed project involves the study or

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analysis of a method or technology that is consistent with the legislative goals and policies in Minnesota Statutes, sections 115A.02 and 115D.02;

C. the persons who will undertake the proposed project are qualified to perform the work described in the project;

D. implementation of the method or technology that is the subject of the proposed project is likely to minimize the transfer of pollution from one environmental medium to another;

E. the proposed project will comply with regulatory requirements;

F. the applicant is willing to implement methods and technologies that the proposed project finds to be feasible;

G. the applicant is willing to assist the director in disseminating information about the results of the project; and

H. the proposed project has statewide significance.

Subp. 6. **Award of grants.** The director shall award grants to those projects that the director determines best meets the evaluation criteria in subpart 5. The director shall promptly notify all applicants as to whether they have been awarded a grant.

Subp. 7. **No grant awards.** If the director determines that no proposed project has sufficient potential to prevent pollution in Minnesota, the director shall not award any grants. 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 an application, the director may solicit and consider any recommendations provided by Office of Waste Management advisory councils, task forces, citizen groups, or any independent consultant hired by the director to assist in the review of applications.

9205.0435 LIMITATIONS.

Subpart 1. **Reduced grant awards.** The director shall ask an applicant to document the impacts of reduced financial

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by Revisor _____

assistance before finalizing an award for less than the eligible amount requested by an applicant or less than the maximum award established in the notice under part 9205.0430, subpart 1. Reduced funds shall be awarded where the director determines:

A. program resources are insufficient to provide full assistance to all applicant 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. **Limit on disbursal of funds.** No grant shall be disbursed until the director has:

A. determined the total estimated cost of the project;

B. ascertained that the provision of matching funds is assured by the recipient; and

C. executed a written grant agreement with the recipient meeting the requirements in part 9205.0445.

9205.0445 GRANT AGREEMENT.

A grant agreement shall:

A. establish a work plan and schedule and require that the recipient perform and complete project activities according to this work plan and schedule;

B. provide that any cost overruns incurred in the 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 progress and results of the project;

D. 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 conducted according to terms and conditions of the grant agreement;

E. authorize the director to cease making further disbursements to the recipient and to recover unspent funds if

Approved
by Revisor _____

the director determines that, for reasons other than bad faith, a project has not made progress according to the terms and conditions of the grant agreement and an amendment to the agreement is not justified;

F. provide that the results of all studies or analyses performed under this agreement are public data;

G. require that a percentage of funds not be paid to the recipient until the director approves the recipient's final report;

H. require that the recipient maintain detailed records of all expenditures related to the agreement; and

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

REPEALER. Minnesota Rules, parts 9205.0410, subparts 2, 3, 5, 8, 9, 10, 12, 13, 14, and 15; 9205.0420, subpart 4; 9205.0440; 9205.0450; 9205.0460; 9205.0470; and 9205.0480 are repealed.

Approved
by Revisor _____

Office of the Revisor of Statutes

Administrative Rules

TITLE: Proposed Permanent Rules Relating to Pollution Prevention Grant Program

AGENCY: Office of Waste Management

MINNESOTA RULES: Chapter 9205

APPROVED AS TO FORM AND LEGALITY
July 9 19 92
HUBERT H. HUMPHREY III
ATTORNEY GENERAL
BY
SPECIAL ASSISTANT ATTORNEY GENERAL

The attached rules are approved for publication in the State Register

Carla M. Riehle
Assistant Revisor

STATE OF MINNESOTA

Office of the Attorney General

TO : JULIE MacKENZIE
Coordinator, Pollution Prevention Grant Program
Minnesota Office of Waste Management
1350 Energy Lane
St. Paul

DATE : July 9, 1992

FROM : MARY JO MURRAY
Special Assistant
Attorney General

PHONE : 296-3258

SUBJECT : In the Matter of the Adopted Rule Relating to Pollution Prevention Grant Program

The above-referenced rule has been approved as to its legality by the Attorney General on July 9, 1992.

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.

Enclosures
cc: Beverly Conerton
William Brown, Chief Judge
MaryAnn Hruby

MJM:jj.Rules.ay4

CE 6/29/92

RULE REVIEW CHECKLIST

File No. 1925 Docket No. 05.0009, 0837

DATE RECEIVED ~~7-28-92~~ 6-26-92 ADOPTED W/O HEARING _____

REVIEW DATE ~~7-5-92~~ 7-6-92 EMERGENCY RULE _____

DUE DATE 7-10-92 TO REVISOR ON 6-29-92

~~(DIS)~~APPROVED 7/9/92 REVISOR (DIS)APPROVED 6/30/92

WITHDRAWN _____ FILED W/SEC. OF STATE 7-9-92

RETURNED TO AGENCY 7-10-92

✓ Rule as adopted (4 copies)

✓ Notice to Solicit Outside Information/Opinion (if applicable)
June 30, 1992 Date published in State Register
_____ Comments

_____ Petition for Adoption of a Rule

na Board's Authorizing Resolution
_____ Date adopted

X Proposed Rule
6/18/91 Revisor's Certificate

✓ 11/18/91 Notice of Intent to Adopt Rule
+8/12/91 115A.06(2) 115D.05(3)(b) Statutory Authority
_____ Small Business Statement
_____ Expenditure of public money statement
11-4-91 Signature

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

✓ Affidavit of Mailing Notice of Intent to Adopt Rule
not 8/8/91 OK 11/81 Dated 30/25 days before adoption
X Notice attached indicates it is attached
_____ Copy of rule or summary attached

✓ Publication in State Register
OK 11/81 Date 30/25 days before adoption

Barely 180-day deadline from:
_____ 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
June 24, 1992 Date

_____ Written Requests, Submissions or Comments

✓ Declaration of Attorney
Bev Connerton Name of SAAG representing agency

_____ Notice of Submission to Attorney General (if applicable)

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

1. Notice of intent letter - 29 days
republished but not mailed DL

Authority 115A.154 115D.05
2. .06(2) shall promulgate rules
.05(3)(b) The director shall adopt rules.

grants

Office of the Revisor of Statutes
Administrative Rules

Carla M. Riehle
Assistant Revisor
297-2948

700 State Office Building
100 Constitution Avenue
St. Paul, MN 55155-1297

August 13, 1991

RECEIVED
MN OFFICE OF
AUG 16 1991
WASTE MANAGEMENT

Julie Mackenzie
Office of Waste Management
1350 Energy Lane
St. Paul, MN 55108

RE: File No. 1893

Dear Julie:

Enclosed are stripped copies of your proposed rules as published in the State Register. The copy shows the text of the rules as you proposed them with the stricken text deleted and the underscoring removed.

If your emergency rules or rules adopted without public hearing are adopted without modification, please submit the required number of copies of this document to the Attorney General for final approval. If these rules are to be modified, please use this copy to indicate the modifications you wish to make. Our office will then input the changes, approve the document as to form, and provide you with copies to submit to the Attorney General.

If your rules are adopted after public hearing without modification, please submit one copy of this document to our office for final approval as to form. If these rules are to be modified, please use this copy to indicate the modifications you wish to make. Our office will input the changes, approve the document as to form, and provide you with copies.

Very truly yours,

CMR/cs

Carla M. Riehle

MINNESOTA
OFFICE
OF WASTE
MANAGEMENT

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

June 25, 1992

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

Re: In the Matter of Proposed Amendments to Rules Governing the Pollution Prevention Grant Program, Minn. Rules parts 9205.0400 to 9205.0480

Dear Ms. Nolte:

On June 24, 1992, the Minnesota Office of Waste Management (Office) adopted the above-captioned rules governing the Pollution Prevention Grant Program. On behalf of the Office, I am submitting these rules to you for review under Minn. Stat. § 14.26.

The above-captioned rules were adopted after three publications in the State Register because of procedural problems in rulemaking. The Notice of Intent to Adopt Rules Without a Public Hearing was first published on March 11, 1991. At that time, the Office did not send a copy of the Notice of proposed rulemaking to potentially interested persons because the Office did not maintain a list of names or persons registered to receive Notices of proposed rulemaking specifically concerning hazardous waste rules. Because the Notice was not mailed to potentially interested persons, the Office decided to re-publish the Notice and to mail the Notice to a list of persons who had registered with the Office to receive Notices pertaining to other Office rulemaking in order to satisfy this rulemaking requirement.

On August 12, 1991, the Office published the Notice of Intent to Adopt Rules Without a Public Hearing for the second time. The proposed rules published with this Notice included changes to the proposed rules based on comments submitted in response to the prior notice. In addition to the publication in the State Register, the Office mailed a copy of the Notice to persons who had registered their names with the Office to receive notice of Office rulemaking.

After the expiration of the comment period on this published Notice, the Office realized that the published Notice had provided for only a 29-day comment period rather than the required 30-day comment period. To remedy this procedural error, the Office decided to re-publish the Notice to provide a full 30-day comment period. On November 18, 1991, the Office published the Notice of Intent to Adopt Rules Without a Public Hearing in the State Register for the third time. This published notice referred

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to the proposed rules as published in the August 12, 1991 State Register. The Office did not remail a copy of this Notice to persons who had been sent a copy of the Notice on August 8th because the proposed rules that were referred to in the Notice which was mailed on August 8th were the same rules referred to in the Notice published in the State Register on November 18th. The Office believes that to the extent that the failure to remail the Notice was a procedural error, the failure did not deprive any person of the opportunity to participate meaningfully in the rulemaking process.

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

1. Rules as Adopted.

2. Findings of Fact, Conclusions and Order Adopting Rules.

3. Notice to Intent to Solicit Outside Opinion as Published in the State Register on July 30, 1990. (15 S.R. 315).

4. Notice of Intent to Adopt Rules Without a Public Hearing as published in the State Register on November 18, 1991. (16 S.R. 1223-1224). This Notice references previously proposed rules as published on August 12, 1991.

5. Notice of Intent to Adopt Rules Without a Public Hearing as Published in the State Register on August 12, 1991 (16 S.R. 242-246).

6. Notice of Intent to Adopt Rules Without a Public Hearing as mailed on August 8, 1991.

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

8. Public comments received in response to August 12, 1991 State Register Notice and the August 8, 1991 mailed Notice.

9. Notice of Intent to Adopt Rules Without a Public Hearing as published in the State Register on March 11, 1991 (15 S.R. 2038-2042).

10. Affidavit of Mailing the Statement of Need and Reasonableness to the Legislative Commission to Review Administrative Rules.

11. Comments of Office of Waste Management Staff in response to the March 11, 1991 State Register Notice, dated April 8, 1991.

12. Rules as Proposed, approved as to form by Revisor of Statutes.

13. The Statement of Need and Reasonableness.

14. Declaration of Counsel.

If you have questions regarding these rules, please call me at 649-5994 or Beverly Conerton, Special Assistant Attorney General , at 296-7344.

Sincerely,

Julie MacKenzie

Julie MacKenzie, Coordinator
Pollution Prevention Grant Program

Rules as Proposed (all new material)

3700.1060 INTERPRETER FOR HEARING-IMPAIRED.

Subpart 1. **License required.** A person must be licensed as an interpreter for the hearing-impaired under this part if the person is responsible for any of the following activities:

A. classroom, shop, and laboratory interpretation for hearing-impaired students;

B. interpretation for activities related to course or program content for pre-enrolled or enrolled students in a technical college;

C. provision of communication services between individuals who are hearing-impaired and other individuals; or

D. service as a professional resource for information regarding hearing impairment.

Subp. 2. **Other requirements.** The applicant must meet the requirements in part 3700.0100, except that the applicant need not comply with part 3515.1400, items A to D.

Subp. 3. **Educational experience requirement.** An applicant for a license as an interpreter for the hearing-impaired must meet the following requirements:

A. must be certified by the Registry of Interpreters for the Deaf; or

B. must have completed one or more years of an interpreter training program resulting in a diploma or degree at an accredited postsecondary institution.

Subp. 4. **First license renewal.** An applicant must complete six hours of special needs inservice before the applicant's first renewal.

REPEALER. *Minnesota Rules*, part 3515.5500, subpart 10, is repealed. Part 3515.9942 no longer applies to a new license for interpreter for the deaf/hearing impaired. A person with a license for interpreter for the deaf/hearing impaired, previously issued under parts 3515.5500, subpart 9, and 3515.9942, who is using the license may keep and renew the license under those parts as long as the person remains employed by the person's employer on the effective date of this repealer.

Office of Waste Management

Proposed Permanent Rules Relating to Pollution Prevention Grant Program

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 rule amendments without a public hearing following the procedures sent forth in the Administrative Procedures Act for adopting rules without a public hearing in *Minnesota Statutes* §§ 14.22 to 14.28 (1990). The authority of the Office to adopt the amendments is set forth in *Minnesota Statutes* §§ 115A.06, Subd. 2 and 115D.05, subd. 3(b).

All persons have until 4:30 p.m. on March 25, 1991, to submit comments in support or opposition to the amendments or any part or subpart of the proposed amendments. 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 amendments within the comment period. If 25 or more persons submit a written request for a public hearing within the comment period, a public hearing will be held unless a sufficient number withdraw their requests in writing. Any person requesting a public hearing should state his or her name and address and is encouraged to identify the portion of the proposed amendments addressed, the reason for the request, and any change proposed. If a public hearing is required, the Office will proceed pursuant to *Minnesota Statutes* §§ 14.131 to 14.20 (1990).

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

Julie MacKenzie, Coordinator
Pollution Prevention Grant Program
Minnesota Office of Waste Management
1350 Energy Lane
Saint Paul, MN 55108
612-649-5494 or
1-800-652-9747 (MN Toll-Free)

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

The proposed amendments, if adopted, will establish the criteria and procedures for awarding grants under the Office's Pollution Prevention Grant Program established by *Minnesota Statutes* § 115D.05 (1990). 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 amendments and identifies the data and information relied upon to support the proposed amendments has been prepared and is available from the Office upon request.

You are hereby advised, pursuant to *Minnesota Statutes* § 14.115 (1990), "Small business considerations in rulemaking," that the proposed amendments will have no negative effect on small business, as the amendments to not limit the ability of small business to participate in this program.

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

Dated: 25 February 1991

Linda Bruemmer
Acting Director

Rules as Proposed

~~WASTE REDUCTION GRANTS~~

POLLUTION PREVENTION GRANT PROGRAM

9205.0400 SCOPE AND AUTHORITY.

Parts 9205.0400 to ~~9205.0480~~ 9205.0445 govern the administration of grants for hazardous waste reduction under *Minnesota Statutes*, section 115A.154 and for the prevention of pollution under *Minnesota Statutes*, section 115D.05.

9205.0410 DEFINITIONS.

Subpart 1. **Scope.** ~~For the purposes of parts 9205.0400 to 9205.0480,~~ The ~~following~~ terms ~~have the meanings given them~~ defined in this part apply to parts 9205.0400 to 9205.0445. For terms not defined in this part, the definitions in *Minnesota Statutes*, section 115D.03, apply, unless the context requires otherwise.

Subp. 2. and 3. [See repealer.]

Subp. 4. **~~Chair~~ Director.** "~~Chair~~ Director" means the ~~chair~~ director of the ~~board~~ Office of Waste Management.

Subp. 5. [See repealer.]

Subp. 5a. **Hazardous substance.** "Hazardous substance" has the meaning given it in *Minnesota Statutes*, section 115B.02, subdivision 8.

Subp. 6. **Hazardous waste.** "Hazardous waste" ~~means those wastes identified and listed in the rules of the Minnesota Pollution Control Agency, parts 7045.0100 to 7045.0141~~ has the meaning given it in *Minnesota Statutes*, section 116.06, subdivision 13.

Subp. 7. **Industrial waste.** "Industrial waste" has the meaning given it in *Minnesota Statutes*, section 115A.03, subdivision 13a.

Subp. 8. to 10. [See repealer.]

Subp. 10a. **Office.** "Office" means the Office of Waste Management established in *Minnesota Statutes*, section 115A.055.

[For text of subp 11, see M.R.]

Subp. 12. to 15. [See repealer.]

Subp. 16. **Pollution prevention or prevent pollution.** "Pollution prevention" or "prevent pollution" means eliminating or reducing at the source the quantity or toxicity of toxic pollutants, hazardous substances, hazardous wastes, or industrial wastes used, generated, or released. Examples of technologies or methods to prevent pollution include process modification, inventory control measures, feedstock substitutions, various housekeeping and management practices, and improved efficiency of machinery.

KEY: PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." **ADOPTED RULES SECTION** — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

Subp. 17. **Release.** "Release" has the meaning given it in *Minnesota Statutes*, section 115D.03, subdivision 10.

Subp. 18. **Toxic pollutant.** "Toxic pollutant" has the meaning given it in *Minnesota Statutes*, section 115D.03, subdivision 11.

9205.0420 ELIGIBILITY CRITERIA.

Subpart 1. **Eligible applicants.** ~~The following are~~ Eligible ~~to apply for a~~ applicants are persons who use, generate, or release toxic pollutants, hazardous substances, hazardous wastes, or industrial ~~waste reduction grant:~~

~~A. a generator; or~~

~~B. an association that consists of or represents two or more generators generating similar~~ wastes in Minnesota or associations that represent persons who use, generate, or release toxic pollutants, hazardous substances, hazardous wastes, or industrial wastes in Minnesota.

Subp. 2. **Eligible projects.** Eligible projects ~~designed to determine~~ are:

A. projects to study or demonstrate the feasibility of applying ~~specific~~ new technologies or methods ~~and technologies~~ to ~~reduce the generation of hazardous or industrial waste are eligible to receive a hazardous or industrial waste reduction grant. Eligible projects include projects to study the specific application of a method or technology already developed and projects to analyze a method or technology for which additional research is necessary to establish~~ prevent pollution; and

B. projects to study or demonstrate the feasibility of ~~the method or technology~~ applying existing technologies or methods to prevent pollution in previously untested applications. Decreases in quantity or toxicity are not reductions where the decrease is solely the result of a decrease in the output of the facility.

~~Application or research~~ Projects currently under development by the applicant and new projects are eligible; however, grant funds shall only be awarded for costs incurred after the effective date of the grant agreement.

Subp. 3. **Eligible costs.** Eligible costs are limited to the costs of conducting studies and analyses consistent with subpart 2. Eligible costs are limited to a maximum of two-thirds of the total cost of the project. Grant money awarded through this program may not be spent for capital improvements or the purchase of equipment.

Subp. 4. [See repealer.]

9205.0430 GRANT APPLICATION.

~~An applicant shall~~

Subpart 1. **Notification by director.** To initiate the process for awarding a pollution prevention grant, the director shall publish a notice in the *State Register* advising eligible applicants of the availability of pollution prevention grants. The notice shall describe the procedure for awarding grants and establish a deadline by which applications must be submitted. In the notice, the director may limit the types of projects for which a grant would be awarded in the funding round initiated by the notice and may specify the maximum amount of funding to be awarded to a project.

Subp. 2. **Applications.** Following the publication of a notice in the *State Register*, applicants that seek assistance must submit ~~an application~~ applications in the form specified by the ~~chair~~ director. ~~An~~ Applications 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 in the grant application as nonpublic data in accordance with the criteria established by *Minnesota Statutes*, section 115A.06, subdivision 13; however, all information developed as a result of a pollution prevention grant shall be public data. Each application must include the following ~~information~~:

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

B. a description of the ~~applicant's managerial and technical ability to undertake a hazardous or industrial waste reduction feasibility study~~ proposed project, including ~~any consultant help that may be anticipated.~~

~~B. A statement outlining the method or technology that will be studied by the applicant and the waste reduction that may result from application of the method or technology. This statement must include a discussion of the following items~~:

(1) a description of the method or technology proposed to be studied, with a list of project activities and an implementation schedule;

(2) a statement as to whether ~~the study involves the application of an existing~~ this method or technology~~, or original or continuing research on a~~ is new or existing, with a literature search or similar demonstration in support of this statement;

(3) a discussion of whether implementation of this method or technology ~~for which additional research~~ is ~~necessary~~ likely to ~~determine the feasibility of the method or technology~~ minimize the transfer of pollution from one environmental medium to another;

~~(3)~~ (4) a ~~description~~ listing of the toxic pollutants, hazardous ~~or~~ substances, hazardous wastes, or industrial ~~waste affected by~~ wastes that are the subject of the proposed project ~~that is generated by the applicant, including~~ with a statement, in pounds, of the quantity of each of these pollutants, substances, or wastes that the applicant generated in the previous calendar year:

~~(4)~~ (5) an estimate, in pounds, of the decrease in the quantity of the toxic pollutants, hazardous substances, hazardous wastes, or industrial ~~waste generated~~ wastes that the applicant believes could be realized if the methods and technologies to be studied in the proposed project were implemented; and

~~(5)~~ (6) a statement of the current ~~method used to manage the hazardous or industrial waste generated by the applicant, and any anticipated change in management occurring after the reduction.~~ status of the proposed project;

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

D. a statement of ~~financial feasibility for the project must be included with the application, and must include a discussion of~~ the ~~following items~~ willingness of the applicant to implement the methods and technologies proposed to be studied, if those methods and technologies are found to be technically and economically feasible;

E. a statement of the willingness of the applicant to assist the director in disseminating information about the results of the project;

F. a statement describing the statewide significance of the information to be gained from the proposed project;

G. a project budget that:

(1) identifies the total cost of the proposed project and identifies each of the expenditures that make up this cost; and

(2) states the amount of grant funds being requested~~;~~ and

~~(2) an estimate of~~ the ~~total~~ amount of matching funds ~~needed to complete the study. This section should include a discussion of any financial support that might be available to the applicant from other sources, including both external and internal sources~~ being supplied by the applicant or others. If a person other than the applicant is providing matching funds, the application must identify the sources of the additional funds.

Subp. 3. **Eligibility and completeness review.** For all applications received by the director by the deadline established in the notice under subpart 1, the director shall determine the eligibility of the applicant, the proposed project, and the costs identified in the application and shall determine the completeness of the application.

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 application. If the director determines that the applicant or the project is ineligible, the director shall reject the application and notify the applicant. If the director determines that any of the project costs are ineligible or that the application is incomplete, the director shall notify the applicant of the ineligible portion of the costs or of the deficiency. The applicant has 14 days after receiving the notice to correct any inadequacies.

Subp. 5. **Evaluation of proposal.** In order to determine which projects should receive a pollution prevention grant, the director shall evaluate each application that is determined to be eligible and complete. In making this evaluation, the director shall consider whether:

A. the proposed project involves the study or analysis of a method or technology that has a significant potential to prevent pollution;

B. the proposed project involves the study or analysis of a method or technology that is consistent with the legislative goals and policies in *Minnesota Statutes*, sections 115A.02 and 115D.02;

C. the persons who will undertake the proposed project are qualified to perform the work described in the project;

D. implementation of the method or technology that is the subject of the proposed project is likely to minimize the transfer of pollution from one environmental medium to another;

E. the proposed project will comply with regulatory requirements;

F. the applicant is willing to implement methods and technologies that the proposed project finds to be feasible;

G. the applicant is willing to assist the director in disseminating information about the results of the project; and

H. the proposed project has statewide significance.

Subp. 6. **Award of grants.** The director shall award grants to those projects that the director determines best meets the evaluation criteria in subpart 5. The director shall promptly notify all applicants as to whether they have been awarded a grant.

KEY: PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." **ADOPTED RULES SECTION** — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

Subp. 7. **No grant awards.** If the director determines that no proposed project has sufficient potential to prevent pollution in Minnesota, the director shall not award any grants. 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 an application, the director may solicit and consider any recommendations provided by Office of Waste Management advisory councils, task forces, citizen groups, or any independent consultant hired by the director to assist in the review of applications.

9205.0435 LIMITATIONS.

Subpart 1. **Reduced grant awards.** The director shall ask an applicant to document the impacts of reduced financial assistance before finalizing an award for less than the eligible amount requested by an applicant or less than the maximum award established in the notice under part 9205.0430, subpart 1. Reduced funds shall be awarded where the director determines:

A. program resources are insufficient to provide full assistance to all applicant 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. **Limit on disbursal of funds.** No grant shall be disbursed until the director has:

A. determined the total estimated cost of the project;

B. ascertained that the provision of matching funds is assured by the recipient; and

C. executed a written grant agreement with the recipient meeting the requirements in part 9205.0445.

9205.0445 GRANT AGREEMENT.

A grant agreement shall:

A. establish a work plan and schedule and require that the recipient perform and complete project activities according to this work plan and schedule;

B. provide that any cost overruns incurred in the 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 progress and results of the project;

D. 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 conducted according to terms and conditions of the grant agreement;

E. authorize the director to cease making further disbursements to the recipient and to recover unspent funds if the director determines that, for reasons other than bad faith, a project has not made progress according to the terms and conditions of the grant agreement and an amendment to the agreement is not justified;

F. provide that the results of all studies or analyses performed under this agreement are public data;

G. require that a percentage of funds not be paid to the recipient until the director approves the recipient's final report;

H. require that the recipient maintain detailed records of all expenditures related to the agreement; and

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

REPEALER. *Minnesota Rules*, parts 9205.0410, subparts 2, 3, 5, 8, 9, 10, 12, 13, 14, and 15; 9205.0420, subpart 4; 9205.0440; 9205.0450; 9205.0460; 9205.0470; and 9205.0480 are repealed.

Rules as Proposed (all new material)

1525.1521 DAIRY PLANT MONTHLY REPORTS.

A dairy plant that purchases products containing milk fat from producers shall report those transactions each month on forms furnished by the Minnesota Agriculture Statistics Service through the commissioner of agriculture.

REPEALER. *Minnesota Rules*, part 1525.1520, is repealed.

Office of Waste Management

Notice of Intent to Adopt Rules Without a Public Hearing in the Matter of Proposed Amendment of Rules Governing Pollution Prevention Grants, *Minnesota Rules* Parts 9205.0400 to 9205.0480

NOTICE IS HEREBY GIVEN that the Minnesota Office of Waste Management (Office) intends to adopt the above-entitled rule amendments without a public hearing. The rule amendments are published in lieu of previous rule amendments proposed and published in the *State Register* on Monday, March 11, 1991; CITE 15 S.R. 2038-2042 and the previously published rules are withdrawn. The adoption of rule amendments follow the procedures sent forth in the Administrative Procedures Act for adopting rules without a public hearing in *Minnesota Statutes* §§ 14.22 to 14.28 (1990). The authority of the Office to adopt the amendments is set forth in *Minnesota Statutes* §§ 115A.06, Subd. 2 and 115D.05, subd. 3(b).

All persons have until 4:30 p.m. on September 10, 1991, to submit comments in support or opposition to the amendments or any part or subpart of the proposed amendments. 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 amendments within the comment period. If 25 or more persons submit a written request for a public hearing within the comment period, a public hearing will be held unless a sufficient number withdraw their requests in writing. Any person requesting a public hearing should state his or her name and address and is encouraged to identify the portion of the proposed amendments addressed, the reason for the request, and any change proposed. If a public hearing is required, the Office will proceed pursuant to *Minnesota Statutes* §§ 14.131 to 14.20 (1990).

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

Julie MacKenzie, Coordinator
Pollution Prevention Grant Program
Minnesota Office of Waste Management
1350 Energy Lane
Saint Paul, MN 55108
612-649-5494 or
1-800-652-9747 (MN Toll-Free)

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

The proposed amendments, if adopted, will establish the criteria and procedures for awarding grants under the Office's Pollution Prevention Grant Program established by *Minnesota Statutes* § 115D.05 (1990). 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 amendments and identifies the data and information relied upon to support the proposed amendments has been prepared and is available from the Office upon request.

You are hereby advised, pursuant to *Minnesota Statutes* § 14.115 (1990), "Small business considerations in rulemaking," that the proposed amendments will have no negative effect on small business, as the amendments do not limit the ability of small business to participate in this program.

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

Dated: 18 July 1991

Dottie Rietow
Director

Rules as Proposed

~~WASTE REDUCTION GRANTS~~

POLLUTION PREVENTION GRANT PROGRAM

9205.0400 SCOPE AND AUTHORITY.

Parts 9205.0400 to ~~9205.0480~~ 9205.0445 govern the administration of grants for hazardous waste reduction under *Minnesota Statutes*, section 115A.154 and for the prevention of pollution under *Minnesota Statutes*, section 115D.05.

9205.0410 DEFINITIONS.

Subpart 1. **Scope.** ~~For the purposes of parts 9205.0400 to 9205.0480,~~ The ~~following~~ terms ~~have the meanings given them~~ defined in this part apply to parts 9205.0400 to 9205.0445. For terms not defined in this part, the definitions in *Minnesota Statutes*, section 115D.03, apply, unless the context requires otherwise.

Subp. 2. and 3. **[See repealer.]**

Subp. 4. **~~Chair~~ Director.** "~~Chair~~ Director" means the ~~chair~~ director of the ~~board~~ Office of Waste Management.

Subp. 5. **[See repealer.]**

Subp. 5a. **Hazardous substance.** "Hazardous substance" has the meaning given it in *Minnesota Statutes*, section 115B.02, subdivision 8.

Subp. 6. **Hazardous waste.** "Hazardous waste" ~~means those wastes identified and listed in the rules of the Minnesota Pollution Control Agency, parts 7045.0100 to 7045.0141~~ has the meaning given it in *Minnesota Statutes*, section 116.06, subdivision 13.

Subp. 7. **Industrial waste.** "Industrial waste" has the meaning given it in *Minnesota Statutes*, section 115A.03, subdivision 13a.

Subp. 8. to 10. **[See repealer.]**

Subp. 10a. **Office.** "Office" means the Office of Waste Management established in *Minnesota Statutes*, section 115A.055.

[For text of subp 11, see M.R.]

Subp. 12. to 15. **[See repealer.]**

Subp. 16. **Pollution prevention or prevent pollution.** "Pollution prevention" or "prevent pollution" means eliminating or reducing at the source the quantity or toxicity of toxic pollutants, hazardous substances, hazardous wastes, or industrial wastes used, generated, or released. Examples of technologies or methods to prevent pollution include process modification, inventory control measures, feedstock substitutions, various housekeeping and management practices, and improved efficiency of machinery.

Subp. 17. **Release.** "Release" has the meaning given it in *Minnesota Statutes*, section 115D.03, subdivision 10.

Subp. 18. **Toxic pollutant.** "Toxic pollutant" has the meaning given it in *Minnesota Statutes*, section 115D.03, subdivision 11.

9205.0420 ELIGIBILITY CRITERIA.

Subpart 1. **Eligible applicants.** ~~The following are~~ Eligible ~~to apply for a~~ applicants are persons who use, generate, or release toxic pollutants, hazardous substances, hazardous wastes, or industrial ~~waste reduction grant:~~

~~A. a generator; or~~

~~B. an association that consists of or represents two or more generators generating similar~~ wastes in a business, institutional, or governmental setting in Minnesota or associations that represent persons who use, generate, or release toxic pollutants, hazardous substances, hazardous wastes, or industrial wastes in a business, institutional, or governmental setting in Minnesota.

Subp. 2. **Eligible projects.** Eligible projects ~~designed to determine~~ are:

A. projects to study or demonstrate the feasibility of applying ~~specific~~ new technologies or methods ~~and technologies~~ to ~~reduce the generation of hazardous or industrial waste are eligible to receive a hazardous or industrial waste reduction grant. Eligible projects include projects to study the specific application of a method or technology already developed and projects to analyze a method or technology for which additional research is necessary to establish~~ prevent pollution by the eligible applicant; and

B. projects to study or demonstrate the feasibility of ~~the method or technology~~ applying existing technologies or methods to prevent pollution by the eligible applicant in previously untested applications. Decreases in quantity or toxicity are not reductions where the decrease is solely the result of a decrease in the output of the facility.

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.

~~Application or research~~ Projects currently under development by the applicant and new projects are eligible; however, grant funds shall only be awarded for costs incurred after the effective date of the grant agreement.

Subp. 3. **Eligible costs.** Eligible costs are limited to the costs of conducting studies and analyses consistent with subpart 2. Eligible costs are limited to a maximum of two-thirds of the total cost of the project. Grant money awarded through this program may not be spent for capital improvements or the purchase of equipment.

Subp. 4. **[See repealer.]**

9205.0430 GRANT APPLICATION.

~~An applicant shall~~

Subpart 1. **Notification by director.** To initiate the process for awarding a pollution prevention grant, the director shall publish a notice in the *State Register* advising eligible applicants of the availability of pollution prevention grants. The notice shall describe the procedure for awarding grants and establish a deadline by which applications must be submitted. In the notice, the director may limit the types of projects for which a grant would be awarded in the funding round initiated by the notice and may specify the maximum amount of funding to be awarded to a project.

Subp. 2. **Applications.** Following the publication of a notice in the *State Register,* applicants that seek assistance must submit ~~an application~~ applications in the form specified by the ~~chair~~ director. ~~An~~ Applications 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 in the grant application as nonpublic data in accordance with the criteria established by *Minnesota Statutes,* section 115A.06, subdivision 13; however, all information developed as a result of a pollution prevention grant shall be public data. Each application must include the following ~~information~~:

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

B. a description of the ~~applicant's managerial and technical ability to undertake a hazardous or industrial waste reduction feasibility study~~ proposed project, including ~~any consultant help that may be anticipated.~~

~~B. A statement outlining the method or technology that will be studied by the applicant and the waste reduction that may result from application of the method or technology. This statement must include a discussion of the following items~~:

(1) a description of the method or technology proposed to be studied, with a list of project activities and an implementation schedule;

(2) a statement as to whether ~~the study involves the application of an existing~~ this method or technology~~, or original or continuing research on a~~ is new or existing, with a literature search or similar demonstration in support of this statement;

(3) a discussion of whether implementation of this method or technology ~~for which additional research~~ is ~~necessary~~ likely to ~~determine the feasibility of the method or technology~~ minimize the transfer of pollution from one environmental medium to another;

~~(3)~~ (4) a ~~description~~ listing of the toxic pollutants, hazardous ~~or~~ substances, hazardous wastes, or industrial ~~waste affected by~~ wastes that are the subject of the proposed project ~~that is generated by the applicant~~, ~~including~~ with a statement, in pounds, of the quantity of each of these pollutants, substances, or wastes that the applicant generated in the previous calendar year;

~~(4)~~ (5) an estimate, in pounds, of the decrease in the quantity of the toxic pollutants, hazardous substances, hazardous wastes, or industrial ~~waste generated~~ wastes that the applicant believes could be realized if the methods and technologies to be studied in the proposed project were implemented; and

~~(5)~~ (6) a statement of the current ~~method used to manage the hazardous or industrial waste generated by the applicant, and any anticipated change in management occurring after the reduction.~~ status of the proposed project;

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

D. a statement of ~~financial feasibility for the project must be included with the application, and must include a discussion of~~ the ~~following items~~ willingness of the applicant to implement the methods and technologies proposed to be studied, if those methods and technologies are found to be technically and economically feasible;

E. a statement of the willingness of the applicant to assist the director in disseminating information about the results of the project;

F. a statement describing the statewide significance of the information to be gained from the proposed project;

G. a project budget that:

(1) identifies the total cost of the proposed project and identifies each of the expenditures that make up this cost; and

(2) states the amount of grant funds being requested~~;~~ and

~~(2) an estimate of~~ the ~~total~~ amount of matching funds ~~needed to complete the study. This section should include a discussion of any financial support that might be available to the applicant from other sources, including both external and internal sources~~ being supplied by the applicant or others. If a person other than the applicant is providing matching funds, the application must identify the sources of the additional funds.

Subp. 3. **Eligibility and completeness review.** For all applications received by the director by the deadline established in the notice under subpart 1, the director shall determine the eligibility of the applicant, the proposed project, and the costs identified in the application and shall determine the completeness of the application.

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 application. If the director determines that the applicant or the project is ineligible, the director shall reject the application and notify the applicant. If the director determines that any of the project costs are ineligible or that the application is incomplete, the director shall notify the applicant of the ineligible portion of the costs or of the deficiency. The applicant has 14 days after receiving the notice to correct any inadequacies.

Subp. 5. **Evaluation of proposal.** In order to determine which projects should receive a pollution prevention grant, the director shall evaluate each application that is determined to be eligible and complete. In making this evaluation, the director shall consider whether:

A. the proposed project involves the study or analysis of a method or technology that has a significant potential to prevent pollution;

B. the proposed project involves the study or analysis of a method or technology that is consistent with the legislative goals and policies in *Minnesota Statutes*, sections 115A.02 and 115D.02;

C. the persons who will undertake the proposed project are qualified to perform the work described in the project;

D. implementation of the method or technology that is the subject of the proposed project is likely to minimize the transfer of pollution from one environmental medium to another;

E. the proposed project will comply with regulatory requirements;

F. the applicant is willing to implement methods and technologies that the proposed project finds to be feasible;

G. the applicant is willing to assist the director in disseminating information about the results of the project; and

H. the proposed project has statewide significance.

Subp. 6. **Award of grants.** The director shall award grants to those projects that the director determines best meets the evaluation criteria in subpart 5. The director shall promptly notify all applicants as to whether they have been awarded a grant.

Subp. 7. **No grant awards.** If the director determines that no proposed project has sufficient potential to prevent pollution in Minnesota, the director shall not award any grants. 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 an application, the director may solicit and consider any recommendations provided by Office of Waste Management advisory councils, task forces, citizen groups, or any independent consultant hired by the director to assist in the review of applications.

9205.0435 LIMITATIONS.

Subpart 1. **Reduced grant awards.** The director shall ask an applicant to document the impacts of reduced financial assistance before finalizing an award for less than the eligible amount requested by an applicant or less than the maximum award established in the notice under part 9205.0430, subpart 1. Reduced funds shall be awarded where the director determines:

A. program resources are insufficient to provide full assistance to all applicant 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. **Limit on disbursal of funds.** No grant shall be disbursed until the director has:

A. determined the total estimated cost of the project;

B. ascertained that the provision of matching funds is assured by the recipient; and

C. executed a written grant agreement with the recipient meeting the requirements in part 9205.0445.

9205.0445 GRANT AGREEMENT.

A grant agreement shall:

A. establish a work plan and schedule and require that the recipient perform and complete project activities according to this work plan and schedule;

B. provide that any cost overruns incurred in the 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 progress and results of the project;

D. 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 conducted according to terms and conditions of the grant agreement;

E. authorize the director to cease making further disbursements to the recipient and to recover unspent funds if the director determines that, for reasons other than bad faith, a project has not made progress according to the terms and conditions of the grant agreement and an amendment to the agreement is not justified;

F. provide that the results of all studies or analyses performed under this agreement are public data;

G. require that a percentage of funds not be paid to the recipient until the director approves the recipient's final report;

H. require that the recipient maintain detailed records of all expenditures related to the agreement; and

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

REPEALER. *Minnesota Rules*, parts 9205.0410, subparts 2, 3, 5, 8, 9, 10, 12, 13, 14, and 15; 9205.0420, subpart 4; 9205.0440; 9205.0450; 9205.0460; 9205.0470; and 9205.0480 are repealed.

Pollution Control Agency

Proposed Permanent Rules Relating to Priorities for Soil Lead Abatement

Rules as Proposed (all new material)

4760.0500 SCOPE.

Parts 4760.0500 to 4760.0540 establish procedures for determining priorities for response action for residential sites and playgrounds in the state where soils are found to be contaminated with lead, as required by *Minnesota Statutes*, section 116.53, subdivision 2.

4760.0510 DEFINITIONS.

Subpart 1. **Scope.** As used in parts 4760.0500 to 4760.0540, the following terms have the meanings given them.

Subp. 2. **Child.** "Child" means a human being under the age of six years.

Subp. 3. **Distributing authority.** "Distributing authority" means a governmental agency or entity, such as a local board of health, that distributes funds for the abatement of soil lead contamination.

Subp. 4. **Elevated blood lead level.** "Elevated blood lead level" means a confirmed concentration of 25 micrograms or more of lead in each deciliter of whole blood.

Subp. 5. **Person.** "Person" has the meaning given in *Minnesota Statutes*, section 116.06, subdivision 8.

Subp. 6. **Playground.** "Playground" means an open area, including vacant lots, used for outdoor games, recreation, and amusement that may contain swings, seesaws, slides, or other means for children's recreation and play.

Subp. 7. **Residence.** "Residence" means a house, duplex, apartment, or other building or structure used or intended for use as human habitation and the real property upon which the building or structure is located.

Subp. 8. **Response action.** "Response action" has the meaning given in *Minnesota Statutes*, section 116.51, subdivision 5.

Subp. 9. **Site.** "Site" means an area of land that has been sampled for soil lead concentration. A site may be as small as a residence or as large as a census tract.

4760.0520 PRIORITY RANKING SYSTEM.

Subpart 1. **Priority one.** A site is a priority one site if the site contains more than 300 parts per million lead and the site is a residence of a child with an elevated blood lead level or the residence of a pregnant woman with a blood lead level of ten micrograms per deciliter or more.

Subp. 2. **Priority two.** A site is a priority two site if the site contains more than 300 parts per million lead and the site is a residence or a playground and the site is frequented by a child with an elevated blood lead level.

Subp. 3. **Priority three.** A site is a priority three site if it is a census tract that meets one or more of the following criteria:

A. it contains the residence of a child with an elevated blood lead level or a pregnant woman with a blood lead level of ten micrograms per deciliter or more;

that program. An individual may teach full time in an authorized new program offering when the individual:

A. is determined to be technically and professionally qualified through:

(1) approval and signature of the approved hiring technical college administrator;

(2) education and/or occupational experience as described in a qualifications description developed by the new program advisory committee; and

(3) approval and signature of the chancellor of the State Board of Technical Colleges;

B. has submitted for record with the licensing unit of the State Board of Technical Colleges the approved qualifications description and credentials to substantiate compliance with item A; and

C. submits evidence of complying with the teacher education course: introduction to vocational teaching.

Subp. 2. **Duration; not renewable.** A license issued under this part is valid for only four years from the date it is issued and is not renewable.

Office of Waste Management

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 rule amendments without a public hearing. The Office is proposing to adopt rules as published in the *State Register* on Monday, August 12, 1991; CITE 16 S.R. 243-246. The adoption of rule amendments follow the procedures set forth in the Administrative Procedures Act for adopting rules without a public hearing in *Minnesota Statutes* §§ 14.22 to 14.28 (1990). The authority of the Office to adopt the amendments is set forth in *Minnesota Statutes* §§ 115A.06, Subd. 2 and 115D.05, subd. 3(b).

All persons have until 4:30 p.m. on December 30, 1991, to submit comments in support or opposition to the amendments or any part or subpart of the proposed amendments. 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 amendments within the comment period. If 25 or more persons submit a written request for a public hearing within the comment period, a public hearing will be held unless a sufficient number withdraw their requests in writing. Any person requesting a public hearing should state his or her name and address and is encouraged to identify the portion of the proposed amendments addressed, the reason for the request, and any change proposed. If a public hearing is required, the Office will proceed pursuant to *Minnesota Statutes* §§ 14.131 to 14.20 (1990).

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

Julie MacKenzie, Coordinator
Pollution Prevention Grant Program
Minnesota Office of Waste Management
1350 Energy Lane
Saint Paul, MN 55108
612-649-5494 or
1-800-652-9747 (MN Toll-Free)

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

The proposed amendments, if adopted, will establish the criteria and procedures for awarding grants under the Office's Pollution Prevention Grant Program established by *Minnesota Statute* § 115D.05 (1990). One free copy of the proposed rule 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 amendments and identifies the data and information relied upon to support the proposed amendments has been prepared and is available from the Office upon request.

KEY: PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." **ADOPTED RULES SECTION** — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

You are hereby advised, pursuant to *Minnesota Statute* § 14.115 (1990), "Small business considerations in rulemaking," that the proposed amendments will have no negative effect on small business, as the amendments do not limit the ability of small business to participate in this program.

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

Dated: 4 November 1991

Dottie Rietow
Director

Minnesota Housing Finance Agency

Proposed Permanent Rule Relating to Mortgage Revenue Bonds for the Purchase of New Housing

Notice of Intent to Adopt a Rule Without a Public Hearing

NOTICE IS HEREBY GIVEN that the Minnesota Housing Finance Agency intends to adopt the above rule without a public hearing following the procedures set forth in the Administrative Procedure Act for adopting rules without a public hearing in *Minnesota Statutes* sections 14.22 to 14.28. The statutory authority to adopt the rule is *Minnesota Statutes* 462A.06, subd. 4 and 11.

All persons have 30 days in which to submit comment in support of or in opposition to the proposed rule or any part or subpart of the rule. Comment is encouraged. Each comment should identify the portion of the proposed rule addressed, the reason for the comment, and any change proposed.

Any person may make a written request for a public hearing on the rule within the 30-day comment period. If 25 or more persons submit a written request for a public hearing within the 30-day comment period, a public hearing will be held unless a sufficient number withdraw their request in writing. Any person requesting a public hearing should state his or her name and address, and is encouraged to identify the portion of the proposed rule addressed, the reason for the request, and any change proposed. If a public hearing is required, the agency will proceed pursuant to *Minnesota Statutes*, sections 14.131 to 14.20. Comments or written requests for a public hearing must be submitted to:

Susan K. Noren, Legal Division
Minnesota Housing Finance Agency
400 Sibley St., Suite 300
St. Paul, MN 55101-1998
Telephone: 612/296-9794

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

A copy of the proposed rule is attached to this notice.

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

If no hearing is required, upon adoption of the rule, the rule and the required supporting documents will be submitted to the Attorney General for review as to legality and form to the extent the 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 adopted rule must submit the written request to Susan K. Noren.

Dated: 15 November 1991

James J. Solem
Commissioner

STATE OF MINNESOTA
OFFICE OF WASTE MANAGEMENT

In the Matter of the Proposed Amendment of Rules Governing Pollution Prevention Grants, Minn. Rules Parts 9205.0400 to 9205.0480

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 24th day of June, 1992. After affording all interested persons the opportunity to present written and oral comments, statements and arguments to the Office, in accordance with statutory requirements regarding the adoption of rules adopted without a public hearing, after considering the Statement of Need and Reasonableness, after considering all of the evidence adduced upon the records, files and proceedings herein, the Director of the Office, being fully advised in the premises, hereby adopts the following Findings of Fact, Conclusions, and Order:

FINDINGS OF FACT

1. The Notice of Intent to Solicit Outside Information regarding the proposed amendments to the above-entitled rules was published in the State Register on July 30, 1990. No comments were received in response to this Notice.

2. The Office of Waste Management also solicited comments on the proposed rule amendments from the Office's Pollution Prevention Task Force and the Hazardous Waste Management Planning Council. Neither the Task Force nor the Planning Council suggested any changes in the proposed rule amendments.

3. A Statement of Need and Reasonableness was prepared prior to mailing and publication of the notice and was made available to the public.

4. A Notice of Intent to Adopt Rules Without a Public Hearing was first published in the State Register on March 11, 1991. The Notice gave the public an opportunity to submit comments on the proposed rules for thirty (30) days after the notice of proposed rulemaking. The 30-day comment period ended on April 10, 1991.

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

6. No requests for notice of submission to the Attorney General were received during the comment period.

7. During this comment period, no person outside the Office submitted any comments about the proposed rule amendments. The Office's own grant program staff, however, suggested two modifications to the proposed amendments. These two comments clarify the eligibility requirements for pollution prevention grants and do not change the rules substantively. These two changes are set forth in April 8 and April 19, 1991 memoranda prepared by the staff and submitted into the rulemaking record.

8. The two modifications suggested by the Office staff are as follows:

   a. The insertion of the words "in a business, institutional, or governmental setting" in two places after the words "industrial wastes" in Minnesota Rules part 9205.0420, subpart 1.

   b. The insertion of the words "by the eligible applicant" in two places after the word "pollution" in Minnesota Rules part 9205.0420, subpart 2.

9. The insertion of the words "in a business, institutional, or governmental setting" in subpart 1 will assure that an eligible applicant is a person who generates, uses or releases hazardous wastes, industrial wastes, hazardous substances, or toxic pollutants in a business, institutional, or governmental setting, which is what the Toxic Pollution Prevention Act and the Waste Management Act intend. Other persons, such as persons

who use consumer household products containing a hazardous substance, are not eligible for a grant and this change will help make that clear.

10. Adding the words "by the eligible applicant" in subpart 2 will strengthen the intent of the grant program to assist businesses in dealing with their own generation, use or release of wastes. The grant program is not designed to allow a person to study the reduction of pollution by another person. This modification in the rule language will assure that a proposed project will not focus on the waste stream of a person who is not the grantee.

11. The Office did not mail a copy of the Notice of this proposed rulemaking to potentially interested persons because the Office did not have any list of names of persons registered with the Office to receive notices of proposed rulemaking specifically concerning hazardous waste rules. Because the Notice was not mailed to potentially interested persons, the Office decided to re-publish the Notice and mail the Notice to a list of persons who had registered with the Office to receive Notices pertaining to other Office rulemaking.

12. On August 12, 1991, the Office published in the State Register a Notice of Intent to Adopt Rules Without a Public Hearing. In addition, on August 8, 1991, the Office mailed a copy of the Notice to all persons who had registered their names with the Office to receive notices of Office rulemaking. The rule amendments proposed for adoption in this Notice were the same amendments as proposed in the March 11, 1991 Notice with the addition of two changes described in paragraph 8 of these Findings.

13. The Notice published in the State Register on August 12 and mailed to persons on the rulemaking list advised that all interested persons had until September 10, 1991 to submit comments.

14. During the public comment period, Victoria Reinhardt, Grants Administrator from the Metropolitan Council, submitted seven comments into the rulemaking record. Ms. Reinhardt did not suggest any changes in the proposed rule language but supported adoption of the changes that were proposed.

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

16. No requests for notice of submission to the Attorney General were received during the comment period.

17. After the expiration of the comment period, the Office realized that the Notice published in the August 12, 1991 State Register had provided for only a 29-day comment period rather than the required 30-day comment period. To remedy this procedural error, the Office decided to re-publish the Notice to provide for a full 30-day comment period.

18. On November 18, 1991, the Office published in the State Register a Notice of Intent to Adopt Without a Public Hearing the proposed rules as published in the State Register on August 12, 1991. The Notice advised that all interested persons had until December 30, 1991 to submit comments on the proposed rules.

19. The Office did not remail a copy of this Notice to persons who had been sent a copy of the Notice on August 8 (see Finding 12) because the proposed rules referred to in the notice mailed on August 8, 1991 were the same rules referred to in the notice published in the State Register on November 18, 1991. To the extent that the failure to remail the notice was a procedural error, the failure did not deprive any person of the opportunity to participate meaningfully in the rulemaking process since no changes had been made to the proposed rules from the time of the August 8th mailing of the Notice to the November 18 republication of the Notice.

20. No comments were received as a result of the November 18, 1991 Notice.

21. No requests for a public hearing were received as a result of the November 18, 1991 Notice.

22. No requests for Notice of Submission to the Attorney General were received by the Office as a result of the November 18, 1991 Notice.

22. The Office adopts the Statement of Need and Reasonableness, in its entirety, as the factual basis for the proposed amendment to rules. The Office hereby incorporates the Statement of Need and Reasonableness into these findings.

23. 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. To the extent that there has been any error or defect in the proceeding due to the Office's failure to satisfy a procedural requirement, the failure did not deprive any person or entity of an opportunity to participate meaningfully in the rulemaking process. The Office has taken corrective action to cure any error or defect so that the failure did not deprive any person or entity of an opportunity to participate meaningfully in the rulemaking process.

ORDER

NOW, THEREFORE, IT IS ORDERED, that the amendments to Minnesota Rules parts 9205.0400 to 9205.0480, governing the pollution prevention grant program, as published in the State Register on August 12, 1991 (16 S.R. 243-246), are adopted pursuant to the authority vested to me by Minn. Stat. §§ 115A.154 and 115D.05, subd. 3(b) (1990).

MINNESOTA OFFICE OF WASTE MANAGEMENT

Dated: 6-24-92

Dottie Rietow

Dottie Rietow
Director

and services. Eighteen members: the commissioners of public safety, education, health human services, the state planning agency and the attorney general each appoint one member from their employees; the speaker of the house and subcommittee for committees of the senate each appoint a legislative member; the governor appoints ten members from throughout the state with demonstrated knowledge in drug abuse prevention, representing the following groups: parents, educators, clergy, local government, racial and ethnic minority communities, professional providers of prevention services, volunteers in private non-profit prevention programs, and the business community. Meetings held the second Thursday of each month, 1:00 to 4:00 p.m., at the Centennial Building (call 297-4749 for meeting room).

Office of Waste Management

Notice of Intent to Solicit Outside Information Regarding Proposed Amendments to Grant Rules

NOTICE IS HEREBY GIVEN that the Office of Waste Management (OWM) is seeking information and opinions from outside sources in preparing to amend its rules governing grants for hazardous and industrial waste reduction. These rules are cited as *Minnesota Rules* pts. 9205.0400 through 9205.0480. The OWM is planning to amend these rules both to incorporate the pollution prevention grant program created by the legislature during this last legislative session and to improve the existing procedures for obtaining hazardous and industrial waste grants. The amendment of these rules is authorized by *Minnesota Statutes* §§ 115A.06, subd. 2 and 115D.05, which direct the OWM to promulgate rules governing, among other things, these grant programs.

The Office of Waste Management requests information and opinions concerning the subject matter of the proposed amendments. Interested person(s) or group(s) may submit data and views in writing or by oral communication. Both written and orally communicated statements and comments should be directed to:

Julie Mackenzie, Coordinator
Pollution Prevention Grants Program
Minnesota Office of Waste Management
1350 Energy Lane Suite #201
Saint Paul, MN 55108
Telephone: (612) 649-5494
or MN toll free at 1-800-652-9747

All statements of information and opinion will be accepted until 4:30 p.m., August 31, 1990. Oral statements will be received during regular business hours, Monday through Friday. Any written material received by the Office of Waste Management by August 31, 1990, will become a part of the rulemaking record in the event that the proposed amendments are adopted.

Good Business Decisions are Made with Good Information

Minnesota Manufacturer's Directory. More than 7,000 entries that include name, address, phone number, staff size, sales volume, market area, year of establishment, type of firm, C.E.O., Sales or Marketing Manager, Purchasing Manager and four major manufactured products. Code #40-2, $78.50 plus tax.

Business and NonProfit Corporation Act 1989. A handy reference that contains all the state laws governing the establishment and conduct of corporations in Minnesota. Includes *Minnesota Statutes* Chapters 80B, 302, 302A and 317. Code #2-87, $15.00 plus tax.

Minnesota Guidebook to State Agency Services 1987-1990. Packed with information to help you cut through red tape for easy and fast dealing with state agencies, this treasure of information opens state government to you. Its 640 pages describe agencies, how they work, listing contacts, addresses, phones, and license requirements, grants, forms, reports, maps, publications and much more. Gives historical, statistical and important data useful in hundreds of ways. Code #1-4. $15.00 plus tax. FAX: (612) 296-2265.



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STATE OF MINNESOTA
OFFICE OF WASTE MANAGEMENT

In the Matter of Proposed Amendment of Rules Governing Pollution Prevention Grants, Minn. Rules Parts 9205.0400 to 9205.0480

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 rule amendments without a public hearing. The Office is proposing to adopt rules as published in the State Register on Monday, August 12, 1991; CITE 16 S.R. 243 - 246. The adoption of rule amendments follow the procedures sent forth in the Administrative Procedures Act for adopting rules without a public hearing in Minn. Stat. §§ 14.22 to 14.28 (1990.) The authority of the Office to adopt the amendments is set forth in Minn. Stat. §§ 115A.06, Subd. 2 and 115D.05, subd. 3(b.)

All persons have until 4:30 p.m. on December 30, 1991, to submit comments in support or opposition to the amendments or any part or subpart of the proposed amendments. 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 amendments within the comment period. If 25 or more persons submit a written request for a public hearing within

the comment period, a public hearing will be held unless a sufficient number withdraw their requests in writing. Any person requesting a public hearing should state his or her name and address and is encouraged to identify the portion of the proposed amendments addressed, the reason for the request, and any change proposed. If a public hearing is required, the Office will proceed pursuant to Minn. §§ 14.131 to 14.20 (1990.)

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

Julie MacKenzie, Coordinator
Pollution Prevention Grant Program
Minnesota Office of Waste Management
1350 Energy Lane
Saint Paul, MN 55108
612-649-5494 or
1-800-652-9747 (MN Toll-Free)

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

The proposed amendments, if adopted, will establish the criteria and procedures for awarding grants under the Office's

Pollution Prevention Grant Program established by Minn. Stat. § 115D.05 (1990.) 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 amendments and identifies the data and information relied upon to support the proposed amendments has been prepared and is available from the Office upon request.

You are hereby advised, pursuant to Minn. Stat. § 14.115 (1990,) "Small business considerations in rulemaking," that the proposed amendments will have no negative effect on small business, as the amendments do not limit the ability of small business to participate in this program.

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

Dated: 11-4-91

Dottie Rietow

Dottie Rietow

Director

FILE COPY

STATE OF MINNESOTA
OFFICE OF WASTE MANAGEMENT

In the Matter of the Proposed Amendment of Rules Governing Pollution Prevention Grants Minn. Rules Parts 9205.0400 to 9205.0480

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)

Kristen Stahnke, 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 8TH day of August, 1991.

That at the City of St. Paul, County of Ramsey, State of Minnesota, I mailed 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.

Kristen Stahnke

Subscribed and sworn to before me
this 8th day of August, 1991.

Helen L. Renner
Notary Public

HELEN L. RENNER
NOTARY PUBLIC-MINNESOTA
WASHINGTON COUNTY
MY COMMISSION EXPIRES MARCH 6, 1994

April 22, 1991 RULES - INTERESTED PARTIES

Mr. Jim Mulder
Association of Mn Counties
525 Park Street, Ste 404
St. Paul, MN 55103

Dr. Raymond Thron
Minnesota Department of Health
717 Delaware St. S.E., Box 9441
Minneapolis, MN 55440

Mr. Patrick Story
Resource Recovery Project
1811 Weir Drive., Ste 235
Woodbury, MN 55125

Ms. Norma Schumacher
O'Connor & Hannan
3800 IDS Tower, 80 S. 8th Str.
Minneapolis, MN 55402

Ms. Susan Lund
Headwaters Reg'l Development Comm.
722 15th St. NW, P.O. Box 906
Bemidji, MN 56601

Mr. Darrell Nelson
I.S.D. #2
500 Ione Ave.
Hill City, MN 55748

Mr. Joel Jamnick
League of Minnesota Cities
183 University Ave. East
St. Paul, MN 55101

Mr. Tom Todd
House Research
17 State Capitol Bldg.
St. Paul, MN 55155

Mr. Dave Locey
MSD Recycle
1711 W County Road B, Ste 300N
Roseville, MN 55113

Ms. Bonnie Holtz
Brown-Nicollet Human Service Brd
100 Freeman Drive
St. Peter, MN 56082

Mr. Michael Moodie
Trinity Engineer
5615 Woodstock
Golden Valley, MN 55422

Mr. Gregory Lie
Hennepin County, Haz. Waste Div.
822 S. 3rd Street
Minneapolis, MN 55415

Ms. Diane Heldt
Broeker, Geer, Fletcher & LaFond
8500 Normandale Lake Blvd., Ste 1510
Minneapolis, MN 55437

Ms. Karen Schaffer
Dakota County Attorney's Office
Dakota Cty Gov't Ctr, 1560 W Hwy 55
Hastings, MN 55033

Mr. Ivan Jacobs
Mississippi Street Metals
800 Mississippi Str.
St. Paul, MN 55101

Mr. Bob Orth
Metro Inter-County Assoc.
114 Metro Sq, 7th & Robert Str
St. Paul, MN 55101

Ms. Susan Schmidt
Recycling Association of Minnesota
2222 Elm Street S.E.
Minneapolis, MN 55414

Mr. Steve Keefe
Metropolitan Council
Ste 300, Metro Square Bldg.
St. Paul, MN 55101

Mr. Tony Heinbaugh
American Crystal Sugar Company
101 North 3rd Street
Moorhead, MN 56560

Ms. Annette Wayne Bair
Regional Development Commission
Box 265
Slayton, MN 56172

Terry Hoffman
Ste 840, One Capital Centre Plaza
386 N. Wabasha Street
St. Paul, MN 55102

Mr. Robert Burk
Popham, Haik, Schnobrich & Kaufman
3300 Piper Jaffray Tower
Minneapolis, MN 55402

Mr. Stephen Nichols
P.O. Box 10296
Minneapolis, MN 55458

Mr. Vern Peterson
Assoc. of Metro. Municipalities
183 University Ave. East
St. Paul, MN 55101

Ms. Kim Austrian
Legislative Comm. on Waster Mgt.
Room 85, State Office Bldg.
St. Paul, MN 55155

STATE OF MINNESOTA **MEMORANDUM**
OFFICE OF WASTE MANAGEMENT

Date: September 13, 1991

To: Pollution Prevention Grant Rulemaking File

From: Julie MacKenzie, Coordinator
Pollution Prevention Grant Program

Phone: (612) 649-5494

Subject: **Official Record of Comments In the Matter of Proposed Amendment of Rules Governing Pollution Prevention Grants Minn. Rules parts 9205.0400 to 9205.0480**

As required in the rulemaking process, this memo documents comments and/or questions that were received by the Office regarding proposed amendments of rules governing Pollution Prevention Grants Minn. Rules parts 9205.0400 to 9205.0480.

Comments regarding the above-captioned rules governing the Pollution Prevention Grant Program were solicited during three publications within the State Register. After the publication of the Notice of Intent to Solicit Outside Opinion (CITE 16 S.R. 315, 30 July 1990), the Notice of Intent to Adopt Rules Without a Public Hearing and the above-captioned rules appeared in the State Register on Monday 11 March 1992 (CITE 15 S.R. 2038-2042) and on Monday 12 August 1991 (CITE 16 S.R. 241-246). The Notice to Adopt Rules Without a Public Hearing appeared in the State Register for a third time on Monday 18 November 1991 (CITE 16 S.R. 1223-1224). The second publishing allowed the Office of Waste Management (Office) to mail a copy of the Notice to a list of parties interested in rulemaking; which was previously not maintained by the Office. The third publication of the Notice allowed a full 30 day comment period (the second publication only allowed 29 days for public comment).

Seven comments were recieved in total during the public comment period(s), none of which are substantial or controversial. Any comment received does not lead to revision of the rules. The seven comments recieved, follow below. In addition, two memos are attached that document non-controversial changes from Office staff. Staff changes reflect and clarify the intent of the rules and do not modify the proposed rules as published. Changes by staff were proposed and incorporated before the date of first publication (staff memos are dated April 8, 1991 and April 19, 1991). An October 24, 1990 correspondence from the Minnesota Pollution Control Agency that comments on the adequacy of the

rules and can also be found attached.

Seven comments were received via a telephone conversation on August 27, 1991 with Victoria Reinhardt, Grants Administrator, Metropolitan Council, Mears Park Centre, 230 East Fifth Street, Saint Paul, Minnesota, 55101. Reinhardt's comments and the Office response is listed below:

1. Minn. Rule Section 9205.0410, Subp. 6. **Hazardous Waste.** Reinhardt questioned whether or not the Statutory definition included "infectious waste." Waste types were questioned primarily because eligible applicant criteria (Section 9205.0420, subpart. 1, B), would allow an institution such as a hospital, which generates hazardous waste to be eligible. The significance is that the major component in the waste stream from a hospital would be infectious waste.

   Minn. Stat. § 116.06, subd. 13 would appear to include infectious waste in its definition of "hazardous waste" virtue of the "infectious characteristic" of the refuse. Additionally, "industrial waste" (Minn. Stat. § 115A.03, subd. 13a) clearly includes infectious waste in its definition. Therefore, a hospital as a type of "institution," and one which generates infectious waste, is an eligible applicant under this grant program. However, the nature of infectious waste does not apply itself easily to desired and eligible project types. Eligible projects must investigate the feasibility of technologies that prevent the use of infectious waste or recycle and re-use the waste on-site. If such a project could come forth, it would be eligible for consideration according to the process outlined in rule.

2. Section 9205.0420, Subpart 1. **Eligibility of the Applicant.** Reinhardt questioned whether or not the Office would care to have the rules allow the eligibility of collectors and/or consultants. Reinhardt thinks these actors may have good ideas for projects because they deal with wastes or waste issues.

   Minn. Stat. § 115D.03, Subd. 5 establishes eligible recipients as "generators of hazardous waste, releasers of toxic pollutants and users of hazardous substances" The intent of the grant program is to specifically involve these actors for many reasons.

   Industry has often been heard to say that the state regulatory environment poses a hardship on them by requiring improvements to their manufacturing and waste generating technologies and processes. However, little or no direct financial assistance is provided for industry to develop sound technologies that would enable them to achieve

increasing and mandatory environmental standards. Therefore, the state provides modest grant awards to eligible applicants to offset the financial risk inherent in developing and investigating new and innovative methods and technologies. Information developed as a result of the award are shared with other generators in the state to assist them in reducing risk to our Minnesota environment and the health of its public.

Intentionally designating eligible applicants as "persons who use, generate or release hazardous substances, hazardous and industrial wastes, or toxic pollutants" directly educates industry personnel about Minnesota's pollution prevention/ waste reduction idealology and involves them its technical applications. It is imperative that technologies and methods be developed in the industrial environment so that they have a direct and practical application in its processes. It is believed that collectors and consultants are further removed from direct and ongoing practice with manufacturing processes. Therefore, users, releasers and generators are preferred as applicants. However, rules would not prevent consultants or collectors from working with or for, eligible industry personnel and lending their expertise in the role of a subcontractor.

3. Section 9205.0420, Subp. 2. **Eligible Projects.** The Metropolitan Council sometimes experiences a problem stressing the required regional emphasis to potential applicants regarding potentially awarded projects. If the state feels there is an analogous problem in stressing the necessity of state wide emphasis to its potential applicants, a slight edit or revision of the rule was suggested. Reinhardt's suggested revision would read "Eligible projects <u>have statewide impact and</u> are:".

   The Office believes that such a revision is unnecessary. A regional government like the Metropolitan Council is a somewhat more unique form of government with a distinctive jurisdiction. Apparently, this has necessitated increased clarification and emphasis regarding regional emphasis. However, the Office has not experienced a problem analogous to the Metropolitan Council's. The Office believes that statute and rules sufficiently highlight the necessity of a state wide significance in its awarded projects. If the Office experiences the unlikely situation where such clarification is warranted, the grant program's application material would allow an opportunity to stress certain desired factors regarding this and other issues.

4. Section 9205.0420, Subp. 2., B. **Eligible Projects.** Rule language allows projects that are currently under development by applicant to be eligible. However, the rules

only allow grant funds to be used on a project after the effective date of the Agreement. Reinhardt linked potential inferences in the language to public data or proprietary information clauses. It prompted Reinhardt to question when data becomes public within the grant award process.

Non-public status for "sales information" and "trade secrets" is provided as defined in Minn. Statute. For items deemed by the Office Director to be "non-public," limited review by persons and advisory councils is provided during the evaluation of applications. Non-public information is kept locked in a secure office location. However, all data, information and etc. that is developed under any and all monies from the state award and the required match, must be public data. In some instances, proprietary tooling and formulations not key to project transfer have been allowed a confidential status. However, the transfer of technical information to other Minnesota industries for the purpose of preventing and reducing wastes statewide, is a key element of the Pollution Prevention Grant Program.

5. Section 9205.0420, Subp. 3. **Eligible Costs.** Reinhardt questioned whether or not the Pollution Prevention Grant Program allowed the applicant's required matching dollars to be used on capital costs/improvements.

   Rule prohibits state money from being used to cover capital costs. However, rule is not clear on the use of matching funds regarding capital costs. The use of matching funds is generally covered by the grant agreement.

6. Section 9205.0420 Supb. 2., B(4). **Applications.** This language requires applications to include a figure representing the quantity of wastes generated by the applicant in the previous calendar year. Reinhardt thought this language might sound vague because it is not specifically stated that wastes to be reported should be generated in the state.

   The Office does not feel that this interpretation will be common, seeing as section 9205.0430, subp. 2, B (4) and subp 2, B (5) are to be interpreted conjunctively. In addition, applicants work very closely with grant program staff in filling out their applications. This assists them in interpreting application requirements correctly.

7. 9205.0430, Subp.8. **Consultation.** This subpart provides that the Office Director may solicit and consider recommendations in reviewing applications. Reinhardt stressed that the Metropolitan Council would be a willing to serve as a consultant in this manner.

The Office values and appreciates the input of the Metropolitan Council and will use their input wherever feasible.

STATE OF MINNESOTA
Office of Waste Management

In the Matter of the Proposed Amendments of Rules Governing Pollution Prevention Grants, Minn. Rules Parts 9205.0400 to 9205.0480

Affidavit of Mailing SONAR to Legislative Commission to Review Administrative Rules

STATE OF MINNESOTA)
) SS
COUNT OF RAMSEY)

Julie MacKenzie, being duly sworn, says:

I hereby certify that on March 11, 1991 I mailed at the City of St. Paul, County of Ramsey, State of Minnesota a copy of the Statement of Need and Reasonableness (SONAR) in the above entitled matter to the Legislative Commission to Review Administrative Rules by depositing in the State of Minnesota Central Mail System.

Julie MacKenzie

Julie MacKenzie

Subscribed and Sworn to
Before me this 25th day
of June 1992.

Noel Lyman

Notary Public

NOEL LYMAN
NOTARY PUBLIC—MINNESOTA
RAMSEY COUNTY
My commission expires 8-30-94

STATE OF MINNESOTA
OFFICE OF WASTE MANAGEMENT



Date: April 8, 1991

To: Office of Waste Management Pollution Prevention Grant Program File

From: Julie MacKenzie, Coordinator
Pollution Prevention Grant Program

Regarding: **Description and Rationale for Proposed OWM Staff Changes to Proposed Amendment of Rules Governing Pollution Prevention Grants Minn. Rules Parts 9205.0400 to 9205.0480.**

This memorandum describes and provides justification for proposed OWM staff changes to the proposed amendments to rules governing pollution prevention grants.

I. BACKGROUND

The OWM entered into the rulemaking process under the authority of Minn. Stat. §§ 115A.06, subd. 2 and 115D.05, subd. 3(b) (1990,) to amend Minn. Rules pts. 9205.0440 to 9205.0480. As currently promulgated, Minn. Rules pts 9205.0400 to 9205,0480 govern the OWM's waste reduction grant program under Minn. Stat. § 115A.154. The amended rules incorporate the pollution prevention grant program that was created under Minn. Stat. § 115D.05 (1990.) The grant program established by the Toxic Pollution Prevention Act (TPPA) is similar to the waste reduction grant program, but the pollution prevention grant program has a somewhat broader scope and focus. The proposed amendment of rules was published for public comment in the State Register on March 11, 1991. Publication was followed by a thirty day public comment period that will end on April 9, 1991.

Minn. Stat. § 115D.05, Subd. 3 (b) gives the OWM the authority to administer a new round of grants while in the rulemaking process. During the process of administering the grant round, several unforseen technical problems regarding applicant and project eligibility were identified which could be remedied by making certain changes in the proposed rule amendments. Staff believe that these changes are non-controversial because they merely make clearer what was already the intent of the rules. The purpose of this memo is to outline and provide a rationale for these proposed changes.

II. ISSUES

Applicant Eligibility:

Without further clarification of the proposed rules governing pollution prevention grants, it would be possible to argue that an individual was technically an eligible applicant if that individual were a user of a consumer product that contained a hazardous substance (e.g. chlorine bleach) in a household. This would be contrary to the intent of the TPPA and the Waste Management Act, which are clearly aimed at pollution prevention in a business setting.

Due to the broad nature of the new TPPA legislation, persons who use, generate, or release toxic pollutants, hazardous substances, or hazardous wastes are eligible to be considered for a pollution prevention grant. The legislative intent was to expand the existing waste reduction grant program beyond just generators of hazardous and nonhazardous industrial waste to include other businesses who might use or release toxic chemicals. It was not the intent of the Act to include households or other users in a non business setting.

To clarify this issue, staff is proposing two changes in the proposed rule amendments:

1. Page 2, line 27, after "industrial wastes" insert <u>in a business setting</u>.

2. Page 2, line 30, after "industrial wastes" insert <u>in a business setting</u>.

Project Eligibility:

Without further clarification of the proposed rules, it could be argued that a proposed project need not be demonstrated on the waste, substance or pollutant generated, used or released by the applicant, but rather on the waste stream or releases of some other party. The clear purpose of the grant program is to assist businesses in dealing with their own use, generation or releases. To achieve this goal it is essential that the applicant demonstrate new pollution prevention technologies on wastes from their industrial and manufacturing processes so that measurable results from direct application can be obtained. The link between the project and its application on the applicant's waste is found in Minn. Stat. § 115A.154, subd.1, which governs the Waste Reduction Grant Program. The statute reads in part, "The board shall select proposals that offer the greatest opportunity to significantly reduce the generation of hazardous and industrial waste <u>by</u> the generators making the proposal (emphasis added)..." The statute is interpreted to mean that the hazardous or industrial waste to be reduced is of the generator's.

To clarify this issue, staff is proposing two changes to the proposed rule amendments:

1. Page 3, line 6, after "pollution" insert by the eligible applicant.

2. Page 3, line 9, after "pollution" insert by the eligible applicant.

STATE OF MINNESOTA
OFFICE OF WASTE MANAGEMENT

In the Matter of the Proposed Amendment of Rules Governing the Pollution Prevention Grant Program, Minn. Rules Parts 9205.0400 to 9205.0480

DECLARATION OF COUNSEL

DECLARATION OF COUNSEL

I, Beverly Conerton, 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 0837.

Beverly Conerton 6/25/92

Beverly Conerton
Special Assistant
Attorney General