

STATE OF MINNESOTA

MINNESOTA POLLUTION

COUNTY OF RAMSEY

CONTROL AGENCY

In the Matter of the Proposed
Amendments to a Rule for the
Administration of the Minnesota
Solid Waste Management Planning
Assistance Program, Minn. Rule
6 MCAR §4.6085

STATEMENT
OF NEED AND
REASONABLENESS

I. INTRODUCTION

On February 2, 1982, the Minnesota Pollution Control Agency ("Agency") authorized the initiation of rulemaking proceedings on amendments to Minn. Rule 6 MCAR §4.6085, a rule for the administration of the Minnesota Solid Waste Management Planning Assistance Program ("the rule"). At the same time, the Agency found that the proposed adoption of the rule amendments is non-controversial in nature and directed that the rulemaking proceedings on the adoption of the rule amendments be conducted in accordance with the statutory provisions regarding the adoption of non-controversial rules, Minn. Stat. §15.0412, subd. 4h. Accordingly, the rulemaking proceedings on the proposed adoption of the rule amendments are governed by that statute and no hearing will be conducted on the adoption of the rule amendments unless, prior to March 24, 1982, seven or more persons submit to the Agency a written request for a such a hearing.

In accordance with the requirements of the non-controversial rule-making statutory provisions, this document, the Statement of Need and Reasonableness ("Statement"), was prepared before the date that the

rule was noticed. Id. The Statement is divided into the following Parts: Part II, Need and Reasonableness Requirement; Part III. Need for the Rule; Part IV. Reasonableness of the Rule; Part V. Summary; and, Part VI. Exhibit List.

II. NEED AND REASONABLENESS REQUIREMENT

Minn. Stat. §15.0412, subd. 4 requires that, in order for an agency to adopt a rule, the agency must make an affirmative presentation of facts establishing the need for and reasonableness of that rule. To establish the need for a proposed rule (or rule amendment), an agency presents facts which demonstrate the existence of a problem that requires administrative attention. To establish the reasonableness of that rule, an agency presents facts which demonstrate that the solution proposed by the agency to resolve the identified problem (that is, the rule itself) is reasonably designed to remedy the problem.

The Agency's statement and explanation of the reasons its proposed rule amendments are needed are set out in Part III. Its statement of the facts which make its proposed rule amendments reasonable is set out in Part IV.

III. NEED FOR THE RULE AMENDMENT

- A. The need for the rule amendments flows from both the statutory requirement that the Agency shall administer the solid waste management planning assistance program and from the language contained in the existing rule, 6 MCAR §4.6085.

Minn. Stat. §115A.42 requires the Agency to administer the solid waste management planning assistance program. The existing rule 6 MCAR §4.6085 provides for the administration of this program only in fiscal year (FY) 1981. In order for the Agency to administer this program in FY 1982 and beyond, the rule must be amended to specify how the program shall be administered.

B. Those rule amendments which are of minor significance or are changes in form are needed to satisfy the Office of the Revisor and to clarify the rule.

Numerous changes in form have been proposed by the Agency in response to recommendations of the Office of the Revisor. Also, a number of minor changes have been made which are intended to streamline the administration of the grant program. None of these changes are of great enough significance by themselves to warrant initiating a rule amendment process. Rather, these changes are made as a matter of convenience now that amendments referred to in paragraph A above have necessitated the rule amendment process.

IV. REASONABLENESS OF THE RULE

The following discussion provides an explanation and justification of the amendments to the individual provisions of the rule. The purpose of this section is to demonstrate that the amendments provide a reasonable approach to the function of each rule provision.

As a general matter, it may be useful to note, at the outset, that the existing rule includes both general provisions (applicable to all

fiscal years), provisions specific to FY 1981, and provisions specific to all fiscal years other than 1981. The provisions specific to FY 1981 essentially provide for the award of a grant on a "first-come, first-served" basis. The provisions specific to all other fiscal years are marked "reserved".

This approach and treatment of FY 1981 as distinct from other fiscal years was taken because of the short time period available to the Agency to promulgate rules, solicit and review applications and award grants with monies made available for FY 1981 (which ended June 30, 1981). In the Statement of Need and Reasonableness prepared in 1980 for the existing rule, the Agency stated it would reevaluate during 1981 the utility and wisdom of the "first-come, first-served" approach established in the rule for FY 1981. Having completed that revision, the Agency has decided to amend the rule to provide a different approach for all other fiscal years. The rule amendments are intended to make the rule applicable in all succeeding fiscal years.

Sections A. and J. Amendments to these sections are changes in form and not substance. These changes have been recommended by the Office of the Revisor.

Section B. Most amendments to this section are changes in form.

The two references to application deadlines are reasonable in order to clarify that only applications received on time will be considered for a grant.

Section C. Several self-explanatory changes have been made to the definition of an acceptable plan. These are reasonable because they serve to clarify the definition and thereby enable prospective applicants to more clearly understand the level of effort necessary for them to produce an acceptable written report. It is reasonable to add a definition of project manager which mandates a minimum level of competence so that a high quality plan is produced and a good administrative accountability of grant funds is assured. It is also reasonable to add a definition of a landfill in order to clarify the numerous references to landfills in Section G.

Section D.2.b.(1)(a) and (2)(a). The amendments to these paragraphs will enable the Agency to approve applications which request less than the maximum grant amounts. Several applicants in FY 1981 requested grants which totaled a few percentage points below the appropriate maximum. These amendments clarify the rule to state that an applicant may apply for and accept less than the maximum award allowed under the rule.

Section D.2.b.(5). In order to make grant funds available to the greatest number of governmental units in the wake of significant statewide, and Agency, budget cuts, it is necessary and reasonable to establish a sliding scale for the size of the state share of a planning grant. The minimum state shares of 60 and 33 percent were chosen as a reasonable compromise between providing a significant level of financial support for grantees and providing grant funds to the largest possible number of applicants.

Section D.3.a. It is equitable, and therefore reasonable, to prevent grant funds from being used to produce more than one comprehensive solid waste management plan for the same geographical area. This amendment does not prevent a grantee from applying for additional grant funds to complete a planning study which has not yet been completed.

Section E.1. The application procedure is changed from a first-come, first-served method to a priority system with a series of specific application deadlines. Administratively, it will be quicker and easier for Agency staff to review and process applications as a group than individually, as occurred in early 1981. This change will also make it possible to award grants on the basis of urgency and need for solid waste management planning. Further, all grant awards will be made simultaneously, enabling all projects to follow similar timetables. Grantees will then be able to discuss mutual problems and successes among themselves throughout the course of their projects. For these reasons, the new application procedure will benefit the grantees and the Agency, and is a reasonable change.

Section E.4.c.(2). A six-week review period following each application deadline is a reasonable period of time during which any necessary additional information can be furnished by applicants in order that their applications can be considered as final applications.

Section E.5. This extension of the six-week review period is a fair and reasonable method to safeguard an applicant's eligibility

against any administrative reviewing delays over which an applicant has no control.

Section F.9.g. It is reasonable to require an applicant to estimate dates of completion, particularly since the grant period cannot exceed one year except under special circumstances.

Section G. This entire section has been changed to make the application review and grant award process consistent with the change from a first-come, first-served method to a priority system of administering the grant program.

Section G.1. and G.2. These paragraphs establish basic criteria for including or excluding applications from further review.

Section G.3. This section establishes a method to prioritize all applications which meet the criteria of G.1. and G.2. Two primary methods and two secondary methods are intended to give a higher funding priority to those applicants having the greatest urgency to do solid waste management planning.

The two prioritizing methods involve determining whether a landfill receiving at least half the refuse from one or more of an applicant's counties (1) has less than five years of remaining permitted capacity or (2) is presently in an environmentally undesirable location. An applicant who meets either of these criteria will be placed in group number one, and will be given a higher priority for available funds than applicants who are not in group one.

The two primary prioritizing methods were chosen using criteria contained in Minn. Stat. §115A.49. The Legislature specified for the Solid Waste Management Demonstration Program that priority be given to areas where natural geologic and soil conditions are unsuitable for land disposal of solid waste and to areas where the capacity of existing solid waste disposal facilities is less than five years. Even though these priorities are assigned to the demonstration grant program, it is appropriate and reasonable to adopt these same priorities for the planning assistance program.

The two secondary prioritizing methods will rank applicants within each of groups one and two. Within each group, multi-county applicants will be placed in subgroup number one and single county applicants in subgroup two. Subgroup one applicants will receive a higher priority. Within each subgroup, applicants with the higher population growth rates between 1970 and 1980 will receive the higher priorities.

Minn. Stat. §115A.49 specifies that priority consideration be given to projects serving more than one local governmental unit. Even though this priority is assigned to the demonstration grant program, it is appropriate and reasonable to adopt this same priority for the planning assistance program. The other secondary prioritizing method was chosen using the rationale that geographical areas with higher rates of population growth are more likely to experience greater future solid waste handling and disposal problems. This is a reasonable expectation since it is well known that quantities of solid

waste needing disposal are directly proportional to the population of an area. Agency staff have observed that many landfills which were constructed in the early 1970's have filled up much faster than originally anticipated. A number of landfill owners and county boards of commissioners have been caught by surprise after discovering that a new landfill will be needed, for example, five years sooner than expected. This is very disruptive to long range solid waste management planning as well as to financial planning. For these reasons and since the rate of population growth can be readily determined, population growth rate is a reasonable secondary prioritizing method.

Section G.4. Specifying the order in which grants will be awarded is a necessary and reasonable part of a process to allocate limited grant funds.

Section G.5. It is reasonable to specify the manner in which the Agency shall provide information to applicants relevant to grant determination. Setting a maximum length time period for the Agency to draft a grant will assist grantees in beginning their projects expeditiously.

Section H.2. If extenuating circumstances occur, it may be in the best interests of the Agency and the grantee to extend the grant term beyond one year. This will be possible, though, only if the Agency determines that circumstances beyond the grantee's control make a time extension necessary. It is a good administrative practice, and therefore reasonable, to provide this flexibility.

Section H.4. The method of retaining funds has been changed in response to suggestions from organizations outside of the Agency. Retaining the last 25 percent is a reasonable incentive to ensure that grantees develop acceptable plans, while at the same time making financial bookkeeping less complicated for the grantee and the Agency.

Section I. The apportionment section has been deleted because the apportioning of funds has been done by the Legislature.

Lastly, in considering the reasonableness of the rule amendments, some mention should be given to the overall economic impact or effect of the rule amendment. The rule is a grant rule and it imposes no duty on any persons to spend monies. Rather, it encourages communities to do waste management planning and provides financial assistance for this planning. In encouraging political subdivisions of the state to plan for their waste management, the rule amendments are reasonable in all respects.

V. SUMMARY

In accordance with Minn. Stat. §15.0412, subd. 4, the Agency has, in this statement, set out an affirmative presentation of facts establishing the need for and reasonableness of its rule amendments. As stated earlier, the purpose of the rule amendment is to enable the Agency to administer the planning assistance program in FY 1982 and beyond, and to improve the administrative procedures needed to operate the program. The rule amendments are needed and reasonable in that

they provide a coherent and equitable mechanism through which the Agency shall provide financial assistance to encourage and support needed solid waste planning. The provisions of this rule are reasonably designed to accomplish their intended functions in implementing the solid waste management planning assistance program.

February 19, 1982

Minnesota Pollution
Control Agency

A handwritten signature in cursive script, reading "Louis J. Breimhurst". The signature is written in dark ink and is positioned above a horizontal line.

Louis J. Breimhurst
Executive Director