

STATE OF MINNESOTA  
WASTE MANAGEMENT BOARD

In the Matter of the Proposed  
Adoption of Rules to Evaluate  
Applicants for Permits to  
Operate Hazardous Waste  
Processing Facilities

STATEMENT OF NEED  
AND REASONABLENESS

INTRODUCTION

The subject of this rulemaking proceeding is a set of proposed rules to evaluate applicants for permits to operate commercial hazardous waste processing facilities within areas designated by the Waste Management Board (hereinafter Board) under Minn. Stat. § 115A.09 (1982) as preferred areas for hazardous waste processing facilities. To obtain Pollution Control Agency (hereinafter PCA) permits to operate a commercial hazardous waste processing facility within a preferred area, a permit applicant must first be granted clearance by the Board. Pursuant to Minn. Stat. § 115A.10 (1982), the Board's review is required to evaluate the qualifications, including technical competence and financial capability, of permit applicants.

Notices of Intent to Solicit Outside Opinion concerning this rule was published in the State Register on September 28, 1981 and again on June 21, 1982. 6 S. R. 2349. Six written comments were received in response to the June 21, 1982 Notice. (See Attachment A).

Rules 6 MCAR § 8.501-8.507 set out guidelines for collecting information from prospective developers which will enable the Board to make the required evaluation. This information includes general identification and background information on the applicant, education and operating experience of the facility operators, past operating record of the company regarding similar operations, and the development plan and the general financial plan for the proposed facility. The

rules provide guidance for evaluating the required information and determining whether clearance should be granted.

## II. NEED FOR THE PROPOSED RULES

The Waste Management Board is required by Minn. Stat. § 115A.10 to promulgate rules to govern its activities for accepting, evaluating and selecting applications for permits for the construction and operation of commercial hazardous waste processing facilities at sites identified by the Board pursuant to Section 115A.09. The rules are required to include standards and procedures for making determinations on the minimum qualifications, including technical competence and financial capability, of permit applicants. These rules are thus necessary to fulfill this statutory obligation. In addition, the rules are needed to specify the information to be submitted by applicants and establish procedures to review and evaluate that information.

## III. REASONABLENESS OF THE PROPOSED RULES

### 6 MCAR § 8.501 Purpose

This Section specifies the scope of the clearance review conducted by the Board and clarifies the relationship between Board clearance and PCA permitting responsibilities.

### 6 MCAR § 8.502 Definitions

Most of the terms defined in Section 8.502 are terms used throughout the rules. Definitions are provided for clarity and consistency. These terms include "applicant," "application," "board", "chairperson," "clearance," "commercial waste processing facility," "hazardous waste," and "person."

6 MCAR § 8.503 Requirements & Limitations

Section 8.503A

This section provides that applicants who intend to locate a commercial hazardous waste processing facility within a preferred area for processing designated by the Board must be granted clearance prior to applying for PCA permits and is a reiteration of the requirements of Minn. Stat. § 115A.10. The second part of this section specifies that the rules apply only to those qualifying facilities that will begin operation after these rules take effect. Until these rules are in effect, clearly they cannot be legitimately applied to proposed facilities.

Section 8.503B

The implication that Board clearance conveys property rights or exclusive privilege to an applicant could discourage other potential facility developers from locating within the preferred areas for hazardous waste processing identified by the Board. Since development of needed hazardous waste processing facilities is a high priority of the Board, it is not intended that these rules would do anything to discourage the development of well-run facilities. Furthermore, the Board has no authority to grant or convey any exclusive rights or privileges.

Section 8.503C

This section limits applicants, upon the granting of clearance, to requesting a PCA permit only for a commercial hazardous waste processing facility substantially similar to the facility described in the application for clearance. Since final plans for a particular project will most likely be unavailable at the time of application, the most recent plan available is the only plan that can reasonably be submitted. However, since the plans used in this review will probably be preliminary plans, the rules contain

some provision for re-examination of the project if it is substantially changed from that described in the preliminary plans. A substantial change in plans may warrant a change in the Board's conclusion concerning clearance.

#### Section 8.503D

This section allows an applicant to pursue clearance prior to acquiring the property for the facility. Also, identification of the site where a facility will be located is not required in the application. In order to allow an applicant flexibility to locate a processing facility within any of the available preferred areas for hazardous waste processing facilities on the Board's inventory, it is reasonable to allow an applicant to apply for a permit prior to acquiring the property to be used as the site for the proposed facility. Acquiring property within a preferred area for hazardous waste processing facilities may involve complex and confidential negotiations. Competitive aspects of real estate transactions must be considered. Additionally, the factors to be considered in this review are not dependent upon the location of the proposed facility. Thus, information about location is not necessary for the Board's evaluation and may impose an unnecessary burden on prospective developers.

#### 6 MCAR § 8.504 Application

This rule specifies the information that must be provided by the applicant in order to allow the Board to conduct a meaningful review and evaluation of each applicant. The information specified in this section is necessary to make the evaluation required under Minn. Stat. § 115A.10 (1980).

#### Section 8.504A

This section specifies who must complete, sign, and submit an application. This section provides that both the owner and operator must submit the application to the Board. Since both the owner and operator of a facility affect the day-to-day operation of a facility and the long-range policies and financial status of that facility, it is reasonable to require that both the owner and operator be reviewed by the Board. Review of the owner and operator will provide a more complete picture of how the facility will be managed.

#### Section 8.504B

Applications must be in the form specified by the Board to ensure that the material is understandable, complete, and addresses the specific issues that the Board needs to make its decision.

#### Section 8.504B (1)

The complete name of the applicant including all of the names under which the applicant has done business for the last ten years and the approximate time periods during which those names were used is necessary to identify and contact the applicant and to aid in understanding the past activities of the applicant. Some applicants may have operated under various business names in the past, and it would be nearly impossible to trace their operating history without this information.

#### Section 8.504B (2)

Business addresses of the applicant for the past ten years are required to identify and contact the applicant and aid in understanding the past activities of the applicant. Some applicants may have operated at various locations in the past and it would be more difficult to trace their operating history without this informati



Section 8.504B (3)

Information pertaining to the applicant's form of business association is necessary to understand the ownership of the business and know which persons involved in the business are in a position to exercise control over business activities and policies of the applicant.

Section 8.504B (4)

A general description of the types and amounts of hazardous waste the facility would be capable of handling and a general description of the facility operation including proposed methods to store and process hazardous waste is necessary for the Board to determine whether the development plan for the facility and the minimum qualification of facility personnel are adequate.

Section 8.504B (5)

Specific identification of officers, partners, and directors of the applicant is necessary to understand who controls the business activities and policies of the applicant. It will also enable the Board to more easily confirm information concerning the applicant's past history, especially if the applicant has done business under more than one business name.

Section 8.504B (6)

Information pertaining to hazardous waste management related violations specified in this section is necessary in order to allow the Board to evaluate the applicant's past history in complying with regulations concerning hazardous waste. The purpose of rules 6 MCAR § 8.501 through § 8.507 is to evaluate prospective developers' ability to manage a safe hazardous waste facility. The information specified in this section can provide an important indication of the applicant's ability to manage the facility in compliance with government regulations intended

to ensure safety. Requiring an explanation of the response to any violations is intended to provide the Board with information necessary to determine if the violations specified were major and whether the applicant responded appropriately to correct those violations.

Section 8.504C

The specific justification for each type of information specified in 6 MCAR § 8.504C is stated below.

Section 8.504C (1)

Information relating to the duties and responsibilities of subcontractors and anticipated operating staff is necessary to provide the Board with an understanding of the background of the individuals who will be responsible for managing and operating the facility. Since the Board's review of applicants occurs in the early stages of project development, it may not be possible for the applicant to supply specific information about the subcontractors and operating staff (since they may not have been hired at that point). However, the applicant should have a fairly clear plan of the type of individuals who will be sought to operate the facility and how these individuals fit into the organization of the company.

Requiring the applicant to supply an organizational chart for operation of the proposed facility is necessary to determine if the applicant has supplied adequate information for all of the important personnel who will participate in facility operation. This information will indicate if appropriately qualified people will be employed.

Section 8.504C (2)

A disclosure of the hazardous waste management business activities of the applicant, its parent corporation, or any subsidiary of the applicant or the parent corporation during the last ten years is necessary to evaluate the applicant's

prior experience in building and managing hazardous waste facilities. The detailed explanation of operation and maintenance of hazardous waste management facilities required by this section will provide more specific information relating to the applicant's experience in running hazardous waste facilities. The applicant's past experience in hazardous waste management is an indication of technical competence.

SECTION 8.504D

Evaluation of the development plan and financial information is necessary to evaluate the financial capabilities of the applicant as specified in Minn. Stat. § 115A.10.

Section 8.504D (1)

The statement of the anticipated development plan for the proposed facility specified 14 factors in the development of a facility. This information will give the Board a basis for determining if the applicant's plan for development and operation of a facility are complete and adequate to ensure safe construction and use of the facility. It will also help the Board determine whether the applicant has done sufficient planning and research to enable a reasonable expectation of maintaining a financially and legally viable business.

Section 8.504C (2)

In order to have some indication whether the plan outlined in Section 8.504 (1) can be adequately financed, it is important to know how much is expected to be spent on the project and how that money will be obtained.



Section 8.504C (3)

This information helps to clarify how the plan will be carried out and what emphasis will be given to each element. This is particularly helpful since the rules do not require a breakdown of expenditures by plan element in Section 8.504 (2). It also gives an indication of the amount of planning that has gone into the applicant's development plans.

Section 8.504C (4)

A description of potential or contingent liabilities is necessary to give the Board a basis for determining whether the applicant is likely to encounter financial difficulties in carrying out the development plan specified in Section 8.504C (1).

Section 8.504C (5)

A disclosure of past bankruptcies is necessary to give the Board an indication of whether the applicant has been unable to operate a business profitably in the past. Disclosure of past bankruptcies will provide information indicating whether there are any unresolved claims against the applicant's assets.

Section 8.504E

This section provides the chairperson with flexibility to require additional information as may be needed in each individual case. The procedures provided for under 6 MCAR § 8.501 through § 8.507 apply to a wide variety of prospective developers and developments. The information required under 6 MCAR § 8.501 through § 8.507 cannot be expected to be sufficient in all cases. Therefore, it is necessary to provide some flexibility to conduct an adequate evaluation of all applicants. This section provides authority to the chairperson to undertake any necessary investigation to obtain additional information about the applicant or corroborate information

submitted by the applicant when necessary.

Section 8.504F

This section specifies the procedure for returning a deficient application. Return of a deficient application within thirty days together with a statement identifying the deficiencies in the application allows an applicant to correct and resubmit an application in a reasonable period of time.

Section 8.504G

Designating the chairperson to accept an application for review is necessary to expedite and simplify review of applications.

Section 8.504H

This section specifies the notice requirements following acceptance of an application for clearance. Notice is necessary to allow individuals within a preferred areas for processing facilities to have the opportunity to comment on the proposed development. Individuals within a preferred area for processing facilities may be especially interested in the application because these areas are potential locations for proposed facilities. The thirty-day public comment period specified by this section provides adequate time for public comment.

Section 8.504I

Board consideration of an application not less than thirty days and not more than sixty days after acceptance of a complete application is reasonable because it allows an adequate period for public comment while ensuring that a timely review of the application is made.

6 MCAR § 8.505 Board Decision

This section specifies the standards to be used by the Board in evaluating applicants for clearance.

Section 8.505A

This section provides that the Board shall grant clearance to an applicant unless the standards in this section are not met.

Section 8.505A (1)

Minimum qualifications, including technical competence and financial capabilities, of permit applicants required by Minn. Stat. § 115A.10 are not met when an applicant's development plan is not sufficient to indicate the applicant will be able to operate and maintain a facility in a manner that will ensure protection of the health and welfare of the citizens of the State. Clearly if the applicant's plan is inadequate, the Board cannot assume that the applicant will overcome that major deficiency and develop and operate an adequate facility.

Section 8.505A (2)

Statutory requirements under Minn. Stat. § 115A.10 relating to minimum qualifications are not met when an applicant's operating staff or anticipated operating staff lack the technical competence necessary to adequately operate and maintain a facility in a manner that will ensure protection of the health and welfare of the citizens of the State.

Section 8.505A (3)

Statutory requirements under Minn. Stat. § 115A.10 relating to minimum qualifications are not met when the nature of past violations of state or federal environmental statutes or regulations and applicant's response to these violations

indicate that an applicant does not have a history of responsible operation and could not be reasonably expected to operate and maintain the facility in a manner that will ensure protection of the health and welfare of the citizens of the State.

Section 8.505B

Specifying that the Board set forth its basis for decision in writing provides the applicant, the PCA and the public with an explanation of the Board's decision and the factors considered in that decision. In addition, a written basis for decision will give the applicant a specific basis for considering an appeal of the decision of the Board if clearance is denied.

Section 8.505C

In the event that clearance is denied, it is necessary to provide an applicant with an avenue of appeal. The nature of the rights involved in permit applicant clearance require that contested case procedures under Minnesota Statutes Chapter 14, as amended, and the Rules of the Office of Administrative Hearings relating to contested case proceedings (9 MCAR §§ 2.201-2.299) be applied. Providing 21 calendar days to request a contested case hearing is reasonable since it provides an applicant adequate time to consider and determine a response to the Board's initial action without allowing the entire process to continue on an unreasonable amount of time.

6 MCAR § 8.506 Notice of Final Decision

This section provides that notice of the Board's final decision granting or denying clearance is to be issued to political subdivisions which contain areas included on the Board's inventory of preferred areas for processing facilities and to the applicant. This section is necessary to inform the applicant and persons in areas which are potential locations for proposed facilities of the

Board's final decision relating to clearance. No provision is made for contested case appeal of the Board's decision to grant approval by political subdivisions or individuals since provision has been made for submission of information by these parties during initial consideration of the application. Also, delays in the consideration of applications and Board decisions on those applications must be avoided, since review under these rules is only one step in the facility siting process set up under Minn. Stat. Ch.115A and PCA rules. An applicant receiving clearance must apply for a PCA permit to build and operate the proposed facility, and interested persons may raise issues related to the applicant and the proposed facility during consideration of that application by the PCA. Judicial review of a final clearance decision may also be available.

6 MCAR § 8.507 Expiration of Clearance

The conditions under which the Board grants clearance may change as more information is obtained about the actual operation of facilities in Minnesota. In addition, the finances and personnel of a company may also change dramatically. Therefore, it is necessary that clearance granted by the Board must expire after a reasonable period of time. A period of 18 months is adequate for the applicant to request a PCA permit. If development is delayed and clearance expires, a company that has not substantially changed and still maintains an acceptable level of financial and technical competence will probably encounter few difficulties in receiving a new clearance.



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