

8/13/84

STATE OF MINNESOTA
WASTE MANAGEMENT BOARD

In the Matter of the Proposed
Adoption of Rules to Evaluate
Applicants for Hazardous Waste
Reduction Grants

Statement of Need
and Reasonableness

I. INTRODUCTION

The subject of this rulemaking procedure is a set of proposed rules governing the hazardous waste reduction grants program. The Board is authorized by Laws of Minnesota 1984, Chapter 644, Section 10, to adopt rules to evaluate applicants and administer the program.

The proposed rules contain guidelines for applicants who wish to apply for hazardous waste reduction grants. Other items also covered by the rules include eligibility criteria, procedures and criteria to evaluate grant applications, and provisions related to the award of a grant.

II. NEED FOR THE PROPOSED RULES

The Waste Management Board is directed by Laws of Minnesota 1984, Chapter 644, Section 10, to make grants to generators of hazardous waste for studies to determine the feasibility of applying specific methods and technologies to reduce the generation of hazardous wastes. The rules are needed to establish the eligibility of both applicants and projects and to set forth criteria to be used to evaluate applications. The rules are necessary to enable the Waste Management Board to administer the program of grants for waste reduction and thus to fulfill a statutory obligation of the Board.

III. REASONABLENESS OF THE PROPOSED RULES

9200.9500 Scope and Authority

This section specifies the section of the Laws of Minnesota 1984 under which the grant program has been authorized.

9200.9501 Definitions

The terms defined in Section 9200.9501 are used throughout the rules. The definitions are provided for clarity and consistency, and include "board," "chairperson," "generation," "generator," "hazardous waste," "intrinsic hazard," "local government unit," "person," "recipient," and "reduction." Most of the definitions are either taken from existing relevant Minnesota laws or are common definitions. However, two terms warrant further discussion:

"Generation" is defined as "the act or process of producing waste." The intent of the definition is to limit eligible projects to changes in production or manufacturing processes which reduce the quantity of hazardous waste generated during the production or manufacturing process. Treatment processes which also "generate" hazardous wastes are not eligible for hazardous waste reduction grants since the reduction would occur in a treatment versus a manufacturing or production process.

"Reduction" specifically means an action which reduces the quantity of one or more types of hazardous waste generated by a generator. However, the definition is broad enough to permit not only a reduction in the total quantity of wastes generated by a generator but also a reduction in one type of waste which may actually result in an overall increase in the total amount of waste generated by the generator. In this latter case, an increase in the total quantity of all hazardous wastes generated by the generator would be offset by the production of

a lesser quantity of a hazardous waste which is considered to have a particularly high degree of intrinsic hazard. Consequently, risk to the public health and safety and the environment would be reduced.

9200.9502 Eligibility Criteria

Section 9200.9502 Subpart 1

This subpart identifies two categories of eligible applicants. Persons and local government units which generate hazardous waste in Minnesota are eligible to apply for a grant. Since the hazardous waste reduction grant program is designed to reduce the quantity of hazardous waste generated in Minnesota, only those generators who produce hazardous waste as a direct result of business activity conducted in the state are eligible. A firm which has an office or headquarters in Minnesota but generates hazardous waste only outside the state is not eligible.

In addition to individual generators, associations which consist of or represent two or more generators are also eligible to apply for grants. Information developed under the grant program will be made available to all generators in the state. Associations may be in an excellent position to disseminate information developed by the funded study due to their membership network.

Section 9200.9502 Subpart 2

This subpart identifies two general types of projects which are eligible for consideration under the hazardous waste reduction grants program. The first type of study would examine the specific application of a method or technology which has already been developed through prior research. This type of project would involve studying the applicability of the method or technology to a manufacturing or production process to determine the effectiveness of the method in

reducing hazardous waste generation.

The second type of eligible project is research oriented and would involve an evaluation of the feasibility of a reduction method of technology about which additional information is required. The primary purpose of this type of project is to determine whether the method or technology would be appropriate for application purposes.

By allowing both types of projects to be potentially eligible, the Board is able to consider a wide range of potential projects. It is likely that some projects will involve elements of both types, requiring study of the applicability of existing technologies as well as investigation into new technologies.

Section 9200.9502 Subpart 3

This subpart notes that eligible costs are limited to those necessary to conduct the analyses identified in Subpart 2.

Section 9200.9502 Subpart 4

This subpart identifies costs which are not eligible for reimbursement under the grant program and responds to the legislative mandate with respect to expenditures for capital improvements or equipment. The purchase of monitoring and testing equipment necessary for the study is not prohibited by the subpart. However, the purchase of equipment which significantly changes the production or manufacturing process would not qualify as an eligible cost.

9200.9503 Grant Application

This section identifies the types of information that must be provided by the applicant in order to allow the Board to evaluate and act upon the grant application.

Item 9200.9503A

This item asks for a description of the applicant's managerial and technical ability to undertake a hazardous waste reduction feasibility study. In those situations where a generator intends to use a consultant to complete the study, the technical qualifications of the consultant will be considered in addition to the applicant's ability to manage and, if applicable, implement the study results. This information will enable the Board to determine if the applicant is capable of completing the proposed study.

Item 9200.9503B

This item outlines and describes the types of information that must be submitted by the applicant with respect to the particular method or technology to be studied. This information is necessary to permit the Board to evaluate the potential feasibility of the project, the applicability of the method or technology to other generators located in Minnesota, and the possible impact the method or technology may have on reducing the total quantity of hazardous waste generated in the state.

The types of information requested include a description of the method or technology to be studied, whether the project is a research project or the application of a previously developed method or technology, and a description of the hazardous waste generated by the applicant which would be affected by the proposed project. Also requested is the quantity of the hazardous waste generated

in calendar year 1983 as well as in calendar years 1980 through 1982, if available. This information will permit a determination of any trend in waste generation by the applicant. The applicant is also required to estimate the reduction in hazardous waste which could be expected if the method or technology under study is implemented. This will permit the Board to determine the percentage reduction which may be expected for the applicant and will assist in determining the effectiveness of the method or technology on the generation of hazardous waste in the entire state.

The applicant is also required to provide a projection of hazardous waste generation for calendar years 1984 through 2000 with and without the proposed reduction. This will allow the Board to evaluate the long-term impact potential of the proposed project. This information will also be helpful to the Board in assessing its estimates of hazardous waste generation as presented in the Board's Hazardous Waste Management Report (Dec. 1983), Draft Hazardous Waste Management Plan (Feb. 1984), and Draft Certificate of Need (Feb. 1984).

Additional information requested of the applicant includes a discussion of the importance to the applicant of achieving the waste reduction. Among the issues which should be discussed are potential liability due to mismanagement, as well as treatment, management, disposal and transportation costs. Discussion of these items by the applicant will assist the Board in evaluating and ranking applications in terms of a funding priority.

Other items to be discussed by the applicant include the current method used by the applicant to manage his/her hazardous wastes and any increase or decrease in operating or maintenance costs which may be realized due to use of the proposed method or technology. A discussion of the method used to manage wastes at pre-

sent should include information on the technologies and location of the treatment and/or disposal and will help the Board to determine the level of risk associated with the waste generated by the applicant. A discussion of costs, especially increased costs, is necessary to determine the likelihood that other generators, particularly small businesses, will use the waste reduction technique developed under the grant program.

Item 9200.9503C

This item solicits information on the financial feasibility of the proposed project. In addition to stating the amount of funds requested, the applicant is also asked to provide a statement of need for grant funds. This statement will include a discussion of the total amount of funds required to complete the study and whether financial support is available from either external sources or internal funds. The applicant must also identify any previous requests for funds to conduct studies similar to the one proposed by the applicant. This information responds to the legislative mandate contained in Laws of Minnesota 1984, Chapter 644, Section 10, Subdivision 1, which states that the Board may consider the extent of any financial support available from other sources.

9200.9504 Application Process

Section 9200.9504 Subpart 1

This subpart requires that the applicant submit a letter of intent to apply for a grant within 30 days after the effective date of the rules. The letter of intent is not binding and in no way will it influence the evaluation of the applicant's request for grant funds. The letter of intent is necessary in order to permit the Board to determine the number of potential applicants and to determine if an extended application period is required. Additional deadlines

for letters of intent and applications may be set under Section 9200.9504 subpart 2.

A complete application is required within 60 days of the effective date of the rules. Due to planned advanced notice and publicity of the grant program, a 60 day application period is reasonable and will be sufficient time to permit interested parties to prepare an application.

Section 9200.9504 Subpart 2

This subpart allows the board to extend or reopen the application period. This provision gives the Board flexibility if the proposed 60 day application period proves to be inadequate. The lack of an extension might prevent qualified applicants who are unable to meet the other deadlines from submitting an application.

9200.9505 Initial Application Review

Section 9200.9505 Subpart 1

This subpart establishes a specific time by which an application must be received and identifies the chairperson or his designee as the authorized representative to make an initial review of the application. This provides greater specificity to applicants and allows the chairperson or designee to review all applications at the same time and compare the merit of the applications.

Section 9200.9505 Subpart 2

This subpart specifies that the chairperson or his designee will be authorized to make an initial review of each application to determine the eligibility of the proposed project. The factors to be considered with respect to this initial review are the feasibility of the project, the managerial and technical ability

of the applicant to conduct the study, and whether the proposal meets minimally evaluation criteria established in part 9200.9506 of the rules. This procedure establishes a clear method of initial review and provides the basis on which applicants will be notified of the adequacy of their application.

Section 9200.9505 Subpart 3

This subpart specifies the procedure to be used by the board to notify applicants of the eligibility status of their applications. No determination of the award of a grant is made at this time. For those applications found deficient in some way, the application is returned. The applicant must return the revised application within 14 days to be considered an eligible applicant. The time requirements are considered reasonable since the same amount of time is provided to both the Board and the applicant in making their respective responses. This procedure gives applicants a reasonable opportunity to correct deficiencies in their applications.

9200.9506 Evaluation of Proposals

Section 9200.9506 Subpart 1

This subpart specifies that within 45 days of completing the eligibility and documentation review, the Board will establish a date on which grants will be awarded. The 45-day period is reasonable in that it provides sufficient time for the Board to review applications taking into account any consultation that may be necessary. The time limit also provides greater predictability of the process to the Board and applicant. The Board, at its discretion, may complete the review in less than 45 days.

Section 9200.9506 Subpart 2

This subpart contains the evaluation factors to be used by the Board in evaluating eligible projects and selecting those projects to be funded. This provides a clear understanding to all parties of what criteria the Board will consider in its evaluation and establishes a basis for the decisions.

Section 9200.9506 Subpart 2(A)

This item requires the board to consider the relationship between the proposed waste reduction and the goals and policies of the board. It is reasonable and consistent with the Act to give preference to those projects which contribute most to the Board's overall policy of reducing the quantity of hazardous waste which would otherwise require disposal. ✓B

Section 9200.9506 Subpart 2(B)

This item involves a quantitative and qualitative evaluation of the proposed reduction. The Board's primary goal is to reduce the total quantity of hazardous waste generated in Minnesota and thus reduce the potential risk to the public health, safety, and the environment. Those proposals which offer the greatest opportunity to reduce the quantity of a hazardous waste which represents a significant proportion of all hazardous wastes generated in the state or which offer an opportunity to reduce hazardous wastes which are highly toxic, difficult to manage, or must be ultimately managed through land disposal, will be preferred.

Section 9200.9506 Subpart 2(C)

This item refers primarily to the effectiveness of the specific method or technology proposed by the applicant. Since the grant funds are designed to produce new and useful knowledge to reduce hazardous waste, it is reasonable to consider the effectiveness of the project as it relates to the applicant and to use the

information to estimate the overall effectiveness of the project for generators in the state. The likelihood of success, reliability, and whether or not a significant increase in capital, operating and maintenance costs will be required are reasonable concerns of the Board if the project is to be useful to the greatest number of generators in the state.

Section 9200.9506 Subpart 2(D)

This item lists other factors which will be used by the Board in the selection of eligible projects. An association, as a group of generators and presumably formed for the benefit of its members, will be better able to disseminate information developed under this grant program. Since disseminating the information gained by the funded studies is a goal of this program, it is reasonable for the Board to give special consideration to associations in awarding grants. This responds in part to the legislative intent of Section 10, Subdivision 2, that the information developed under this program be made available to all generators in the state.

This item also notes that the recommendations of the Board's Technical Assistance Program Advisory Committee, established to provide guidance in the technical assistance and research program developed as a result of the legislative mandate contained in the Laws of Minnesota 1984, Chapter 644, Section 9, be considered in selecting eligible projects. One purpose of the technical assistance program is to disseminate the information developed by the hazardous waste reduction grants program. This advisory committee is composed of individuals representing a wide variety of backgrounds. Their advice on the applications will be useful to the Board in providing a greater balance to the evaluation process.

In addition, the Board may choose to have the technical aspects of an eligible project evaluated by a consultant to provide some input on the technical feasibility of a proposal. This again will help the Board to make a more careful and thorough evaluation of the applications.

The Board will also consider whether alternative sources of funds may be available to the applicant and to determine whether the project would proceed without state financial support. This factor responds in part to conditions set forth in Section 10, Subdivision 1 of the Laws of Minnesota 1984, Chapter 644, and represents a reasonable concern on the part of the Board to fund those applicants who might otherwise be unable to finance a waste reduction study.

9200.9507 Award of Grants

9200.9507 Subpart 1

This subpart notes that those proposals which best meet the criteria established by the Board will be awarded grants.

9200.9507 Subpart 2

This subpart gives the Board the authority to determine the amount of a grant up to a maximum. The amount requested by the application will be an important factor in determining the amount of the grant. Based on previous studies done for the Board it is reasonable to assume that most studies proposed could be adequately funded within the \$30,000 limit. However, if a study requires additional funding and is determined to be eligible by the Board, additional grants could be considered.

9200.9508 Grant Agreement

Section 9200.9508 Subpart 1

This part specifies that the Board and a recipient will enter into a grant agreement and sets forth specific conditions which will govern the administration of the grant.

Section 9200.9508 Subpart 1(A)

This item specifies that unless otherwise stated, the maximum term of the grant agreement is one year. The period will provide sufficient time for the recipient to complete the study and provide the Board with timely results.

Section 9200.9508 Subpart 1(B)

This item establishes that the recipient is authorized to enter into contracts to complete the types of work specified in the agreement. Since many generators may not have the expertise to carry out the proposed study it is reasonable to assume that such a study could be undertaken by another party under a contractual agreement with the recipient.

Section 9200.9508 Subpart 1(C)

This item specifies that a product will be required of each recipient. Since the type of product may differ for each recipient, specification of the product to be delivered will be made in each grant agreement.

Laws of Minnesota 1984, Chapter 644, Section 10, Subdivision 2 requires that all information developed through the hazardous waste reduction grant program be made available to all generators in the state. Therefore, the requirement that the information developed by a recipient will be considered public information is a necessary and reasonable requirement.

Section 9200.9508 Subpart 2

The Board is authorized to cancel a grant not completed in accordance with the terms of the agreement. This is necessary to protect the Board's interest in assuring that the work for which the grant was awarded is undertaken according to the terms of the grant agreement.

Section 9200.9508 Subpart 3

The Board is authorized to terminate a grant upon 30 days notice and to require that no additional funds be spent by a recipient after a termination notice has been issued. A recipient may also give notice to terminate a grant. This is necessary to provide a clear method to terminate a grant and to provide the Board with the authority to halt all further expenditures of the grant funds immediately upon notice. This gives the Board specific authority over its grant funds through the time of product delivery and helps to assure the proper management of public funds.

Section 9200.9508 Subpart 4

The Board and recipient will develop a disbursement schedule in the grant agreement. Phased disbursement and final holdback provisions, if deemed appropriate by the Board, are necessary to provide greater control of public funds to be used in these grants.

Section 9200.9508 Subpart 5

The Board is authorized to conduct an audit of a recipient's records as they relate to a grant agreement. This audit, if conducted, would cover the expenditure of grant funds only. No other aspects of a recipient's business would be covered by the audit. Since public funds are being spent, this is a reasonable requirement to protect both the public's and the Board's interest in the proper

use of public funds.

Section 9200.9508 Subpart 6

This subpart requires that unspent funds following completion of the project, cancellation of the grant or termination of the project be returned to the Board. This is a reasonable requirement to protect the public's and the Board's interest in the proper use of public funds.