

WASTE MANAGEMENT BOARD SOLID WASTE PROCESSING FACILITY

CAPITAL ASSISTANCE AND DEMONSTRATION PROGRAM

INCLUDING ENVIRONMENTAL TESTING GRANTS

STATEMENT OF NEED AND REASONABLENESS

I INTRODUCTION

Following 1987 Amendments to the Waste Management Act of 1980 in Minn. Laws 1987, chapter 348, the Waste Management Board (WMB) proposes revisions to the rules presently governing the Solid Waste Processing Facility Capital Assistance Program (CAP) and the Solid Waste Processing Facilities Demonstration Program (DEMO), including the addition of provisions establishing an Environmental Testing Grants Program. In addition to changes needed to conform to the new legislation, the proposed revisions to the CAP and the DEMO include an expanded definition of eligible costs.

II HISTORY

The Legislature passed the Waste Management Act in 1980. The Act created an 8.8 million dollar fund to finance innovative solid waste processing facilities and was called the Solid Waste Processing Facilities Demonstration Program. The program was limited to funding capital costs of projects, and applicants for this assistance were limited to cities, counties, and solid waste management districts established pursuant to Minn. Stat. § 115A.62 to 115A.72.

In 1985, the Legislature removed the "demonstration project" element and created the Solid Waste Processing Facility Capital Assistance Program to provide greater financial assistance to eligible applicants. The CAP provided for grants to local units of government for 25% of the capital costs of a project up to a maximum of two

million dollars. Additional appropriations to the program brought the total funds available to \$15 million.

In 1987, the Legislature again amended the Waste Management Act of 1980. These revisions changed the level of grant funding available to projects funded under the CAP, as well as certain other aspects of the program relevant to funding applications.

III. NEED FOR THE PROPOSED RULES

Revision of the rules (Minn. Rules pts. 9200.6000 to 9200.6800 and 9200.8100 to 9200.9100) governing the CAP and the DEMO programs is needed to make them consistent with changes to the statutes governing the programs. In particular, provisions are needed for the orderly administration of grants authorized by Minn. Laws ch. 348, which amended Minn. Stat. § 115A.54, subd. 2a to provide that:

In addition to any assistance received under clause (B) or (C), a project may receive grant assistance for the cost of tests necessary to determine the appropriate pollution control equipment for the project or the environmental effects of the use of any product or material produced by the project.

In Minn. Stat. § 115A.06 (1986), the WMB is given power to promulgate rules to implement sections 115A.01 to 115A.72. The WMB finds that rule amendments are needed to implement Minn. Stat. §§ 115A.49-.54 properly.

9200.6200 GRANT APPLICATION PROCEDURES

Subpart 4. Legislative Priorities.

This section is revised to comply with changes to Minn. Stat. § 115A.49 found in Minn. Laws 1987, ch. 348. Because the change directly reflects the legislative change and promotes consistency between the rule and the statute, it is reasonable.

9200.6300 ELIGIBILITY CRITERIA

Subpart 2. Eligible Projects.

This part is revised in order to comply with changes to Minn. Stat. § 115A.54, subdivision 2b found in Minn. Laws 1987, ch. 348. Because the change directly reflects the legislative change and promotes consistency between the rule and the statute, it is reasonable.

Subpart 3. Eligible Costs.

Experience with implementation of the CAP and DEMO has shown that a project must include landscaping and development of on-site roads and parking to be successful. Because these improvements are capital costs, and essential to the success of the project, it is reasonable to make these costs eligible for funding. This part also reflects that there are costs that do not meet the criteria established in this part, but which are eligible under part 9200.8220 (Environmental Testing Grants). Because the inserted language alerts applicants to the additional funds now available, it is reasonable to include it here.

Subpart 4. Ineligible Costs.

This part now reflects that there are costs that do not meet the criteria established in this part, but which are eligible under part 9200.8220 (Environmental Testing Grants). Because the inserted language alerts applicants to the different funds now available, it is reasonable to include it here.

9200.6500 SUPPORTING DOCUMENTATION REQUIRED TO BE SUBMITTED WITH GRANT APPLICATION

Item C. The contents of this report has been revised to comply with changes to Minn. Stat. §115A.54, subd. 6 made in Minn. Laws 1987, ch. 348. Because the

changes to the rule implement legislative changes directly and promote consistency between the rule and the statute, they are reasonable.

Item K. This item was revised to comply with changes to Minn. Stat. §115A.49 made in Minn. Laws 1987, ch. 348.

Item L. This item has been removed because Minn. Laws 1987, ch. 348 removed the authority for previously funded projects to increase grant funding under the CAP.

9200.6600 REVIEW AND EVALUATION OF APPLICATIONS

Subpart 3. Evaluation of need for financial assistance.

This part is revised in order to comply with changes to Minn. Stat. § 115A.54, subd. 2b made in Minn. Laws 1987, ch. 348. Because the change directly implements the legislative change and promotes consistency between the rule and the statute, it is reasonable.

Subpart 4. Evaluation of applications.

This part is revised in order to comply with changes to Minn. Stat. § 115A.54, subd. 2b made in Minn. Laws 1987, ch. 348. Because the change directly implements the legislative change and promotes consistency between the rule and the statute, it is reasonable.

9200.6⁷200 LIMITATIONS

Subpart 1. Maximum grant award.

This part was revised to comply with changes to Minn. Stat. § 115A.54, subd. 2. Minn. Laws 1987, ch. 348 changed the statutory funding limitation by allowing recycling projects and composting projects to receive additional grant funding.

Because the proposed amendments directly reflect this change, they are reasonable. This section also reminds applicants of the funding available for environmental testing. It is reasonable to note that additional monies -- beyond the limits stated in this section -- are available to applicants.

9200.68 GRANT AGREEMENT

Subpart 1. Requirements.

This section has been changed to alert applicants that they are still eligible for environmental testing grants.

9200.8210 DEFINITIONS

This part indicates that existing definitions will be applied in this new part. It is reasonable to use these definitions to promote consistent interpretation.

9200.8220 ENVIRONMENTAL TESTING GRANTS

Minn. Laws 1987, ch. 348 added a provision to Minn. Stat. § 115A.54 which allows a project to receive grant assistance for the cost of tests necessary to determine the appropriate pollution control equipment for the project, or the environmental effects of the use of any product or material produced by the project. Part 9200.8200 establishes the procedures for applications for assistance under this new authority.

Subpart 1. Eligible Applicants.

This subpart establishes that applicants will be limited to those who qualify for assistance under the Minn. Stat. § 115A.50. Because the environmental testing grants program will be funded by general obligation bonds, and because the environmental testing provision is part of the solid waste management

demonstration program (Minn. Stat. § 115A.49 - .54) it is reasonable to restrict the grants to public entities.

Subpart 2. Eligible projects.

This subpart establishes that eligible projects are limited to those eligible for funding under Minn. Stat. § 115A.54. It is not necessary that the eligible project have received funding under the existing programs. This is reasonable because Minn. Stat. § 115A.54, subd. 2a requires the board to provide technical and financial assistance for the acquisition and betterment of solid waste management projects as provided in this subdivision (Minn. Stat. § 115A.54, subd. 2a) and section 115A.52. Section 115A.52 was amended in Minn. Laws 1987, ch. 348 to provide that the board is to ensure that projects eligible for funding under the program receive technical assistance. Thus, allowing any project potentially eligible for board funding to use the environmental testing grant funds is reasonable because it effectuates legislative intent. It is further reasonable in that it would allow a project to identify the environmental control equipment that would be needed, and then to seek funding for that equipment under the Capital Assistance Program (Minn. Rules pt. 9200.6000 - .6800) or the Demonstration Program (Minn. Rules pt. 9200.8100 - .9100).

Subpart 3. Eligible Costs.

This subpart identifies the costs that can be funded under the environmental testing grants program. The first limitation established in this part is from the statute, which provides that tests are limited to those necessary to determine the appropriate pollution control equipment for the project or the environmental effects of the use of any product or material produced by the project. The second limitation interprets the statutory limitation by drawing a distinction between

normal monitoring requirements and special testing needed to identify pollution control equipment or the effects of use of a product of the project. This distinction is reasonable because the funds available for testing under the program are limited, and should not be used to cover the cost of testing needed to ascertain merely that the project is operating in compliance with its permit.

Subpart 4. Information on grant application.

This subpart identifies the information that is needed to determine the eligibility of the applicant and project, and the funding that should be awarded under this part of the program. In order to conduct a meaningful review and evaluation of each proposal, the board must have an adequate level of information about the applicant and the proposed facility testing program.

Item A is needed to determine grant applicant eligibility.

Item B is needed so that the board can contact affected political subdivisions to allow them an opportunity to comment on the proposed testing program. By allowing affected subdivisions an opportunity to comment, these entities will be more likely to support the results of the testing program.

Item C is needed so that the board can evaluate the qualifications of the project manager, and so that the project manager can be contacted during board's evaluation of the application.

As with Item C, Item D is needed so that the board can evaluate the ability of the project operator, and so that the project operator can be contacted during the board's evaluation of the application.

Item E, total costs, is needed so that the board can determine the amount of the grant award. This item is required to be supported by a proposal from the testing laboratory selected to perform the testing. This is reasonable to ensure that the total cost figure is firm, and represents the actual total needed to complete the testing.

Item F, grant funding requested, is needed so that applicants can specify the money that they need to complete the testing program. Although the board will provide 100 percent funding, some applicants may not require this level because of other available funds.

Item G, the type of facility and the type of testing, is needed for the board to evaluate the adequacy of the testing program proposed by the applicant.

Item H, the work plan, is needed for detailed evaluation of the testing program. This part includes a recommendation that the applicant seek the opinion of the appropriate regulatory agency in developing the test proposal. This is necessary because, under subpart 6, the board is required to consider the comments of the regulatory agencies in making its determination to give a grant under this section.

Subpart 5. Review and approval of applications.

This subpart establishes the initial procedures that the board shall follow in reviewing applications received at the board. The first review that the application will receive will be by the chair. The chair reviews the application for eligibility and completeness. It is reasonable to delegate this duty to the chair because these determinations are strictly ministerial. The chair is also required to forward the application to the Pollution Control Agency, or other appropriate regulatory body.

This is necessary to ensure that the regulatory agencies have time to review and comment upon the application.

Subpart 6. Board determination.

This part provides for board review of the merits of an application after the chair has determined that the application is eligible for funding and ready for review. The board evaluates the application to determine if it meets the criteria for a grant established by statute. The board also is required to consider the comments of the regulatory agencies that have reviewed the application. This is reasonable because it ensures that the regulatory agencies will be satisfied with the results of the testing.

Subpart 7. Funding level.

The funding level established under this part is 100 percent, with a cap of \$100,000. This level of funding is reasonable because adequate funding exists under the program to fund anticipated applications fully, provided that each individual test is limited to \$100,000. The cap is reasonable because, according to information available from the Pollution Control Agency, most testing programs can be completed for that amount.

This subpart also limits grant funding to cover only costs incurred after the grant award and during the life of the grant agreement. This is reasonable to ensure that applicants do not spend money in anticipation of a grant that is not awarded.

Subpart 8. Grant Agreement.

This subpart sets out certain requirements for the grant agreement. These restrictions are needed to ensure that the grant recipient completes the testing

program identified in the application, within the budget established in the application. This subpart also requires that the recipient make the information developed as a result of the board-funded testing available to the state and other persons who request the information. This is reasonable to ensure that the state benefits from the testing funded by state dollars, and that the information derived from the testing receives the widest possible dissemination.

9200.8300 ELIGIBILITY CRITERIA

Subpart 3. Eligible Costs.

Experience with implementation of the CAP and DEMO has shown that a project must include landscaping and development of on-site roads and parking to be successful. Because these improvements are capital costs, and essential to the success of the project, it is reasonable to make these costs eligible for funding. This part also reflects that there are costs that do not meet the criteria established in this part, but which are eligible under part 9200.8220 (Environmental Testing Grants). Because the inserted language alerts applicants to additional funds now available, it is reasonable to include it here.

Subpart 4. Ineligible Costs.

This part now reflects that there are costs that do not meet the criteria established in this part, but which are eligible under part 9200.8220 (Environmental Testing Grants). Because the inserted language alerts applicants to additional funds now available, it is reasonable to include it here.

9200.8500 SUPPORTING DOCUMENTATION REQUIRED TO BE SUBMITTED WITH APPLICATION

Item J. This item was revised to comply with changes to Minn. Stat. § 115A.49 made in Minn. Laws 1987, ch. 348.

9200.9000 AWARD OF GRANTS AND LOANS

Subpart 5. Legislative Priorities.

This section is revised to comply with changes to Minn. Stat. § 115A.49 found in Minn. Laws 1987, ch. 348. Because the change directly reflects the legislative change and promotes consistency between the rule and the statute, it is reasonable.

9200.9000 AWARD OF GRANTS AND LOANS

Subpart 4. Maximum Awards.

This part has been changed to alert applicants that they are eligible for environmental testing grant funds in excess of these limitations.

9200.9100 GRANT, LOAN, OR GRANT AND LOAN AGREEMENT

Subpart 1. Requirements.

This part has been changed to alert applicants that they are eligible for environmental testing grant funds in excess of these limitations.

V. IMPACT ON SMALL BUSINESSES

Minn. Stat. § 14.115 (1986) requires that an agency adopting an amendment to a rule considers the impact of that amendment on small businesses and take steps to mitigate negative impact. In making grants to public entities that may compete with small private business, the CAP and DEMO may negatively impact such businesses. However, the rule requires that the information generated by this program be made available to the public, and this information should aid small businesses despite their inability to participate. Under portions of the rule previously adopted, the Board is required to consider when making a grant the

impact of that grant on the indigenous solid waste management and recycling industry.



JOSEPH M. PAVELICH, CHAIRMAN
WASTE MANAGEMENT BOARD

WP/SW/CADP/SS