

STATE OF MINNESOTA
WASTE MANAGEMENT BOARD

In the Matter of the Proposed
Rules Governing the Waste Tire
Recycling Grant and Loan Program

STATEMENT OF NEED
AND REASONABLENESS

I. INTRODUCTION

In 1984, the legislature created a program to encourage the development of waste tire recycling projects in the state. Through the then Department of Energy and Economic Development (DEED), grants were made available for the study of waste tire recycling projects and low-interest loans were made available to implement such projects.

Under emergency rules promulgated by DEED, one loan was made to a waste tire recycling project. The emergency rules were not made permanent.

In 1987, the legislature transferred the authority for the program to the Pollution Control Agency in the Act of June 1, 1987, Minn. Laws 1987 ch. 348. On July 1, 1987, the Governor transferred the program from the Pollution Control Agency to the Waste Management Board through Reorganization Order No. 144, (Dept. of Admin. 1987).

The Waste Management Board (Board) now promulgates permanent rules to govern the waste tire recycling grant and loan program. These rules establish the substantive criteria and procedural conditions under which the board will award grants for waste tire recycling project studies and loans for waste tire recycling projects.

II. STATEMENT OF BOARD'S STATUTORY AUTHORITY

The Board's statutory authority to adopt the rule is set forth in Minn. Stat. § 116.55 which provides:

The [board] may make waste tire recycling loans to businesses. Applications for the loans are not complete unless the waste tire recycling project for which the loan is to be made is certified to be technically feasible by the [chair of the Board]. The authority may make grants from the waste tire recycling account for studies necessary to demonstrate the technical and economic feasibility of a proposed waste tire recycling project. A grant must be less than \$30,000 and may not exceed 75 percent of the costs of the study. The [board] shall adopt rules for administration of waste tire recycling grants and loans.

Under this statute, and pursuant to Reorganization Order No. 144, the Board has the necessary authority to adopt this rule. The text of Reorganization Order No. 144 is attached.

III. STATEMENT OF NEED

Minn. Stat. ch. 14 (1986) requires the Board to make an affirmative presentation of facts establishing the need for and reasonableness of the rule as proposed. In general terms, this means that the Board must set forth the reasons for its proposal, and the reasons must not be arbitrary or capricious. However, to the extent that need and reasonableness are separate, need has come to mean that a problem exists which requires administrative attention, and reasonableness means that the solution proposed by the Board is appropriate. The need for the rule is discussed below.

In 1984, the legislature banned the land disposal of waste tires. This action created a need for waste tire processing in the state. The legislature created the grant and loan program

that is the subject of this rulemaking to create incentives for the private sector to meet the waste tire processing needs of the state. The program requires rules to ensure its orderly administration.

IV. STATEMENT OF REASONABLENESS

The Board is required by Minn. Stat. ch. 14 to make an affirmative presentation of facts establishing the reasonableness of the proposed rules. Reasonableness is the opposite of arbitrariness or capriciousness. It means that there is a rational basis for the Board's proposed action. The reasonableness of each part of the proposed rule is discussed below.

9204.XXX Definitions

The definitions in this part are provided to ensure clarity and consistency in the use of certain terms that are not in common usage.

9204.XXX1 Scope

This section provides an overall description of the rule to alert the reader as to the subjects that the rule addresses.

9204.XXX2 Grants

Subp. 1. Eligible Applicants

The rule provides that grants are to be given to businesses. This is reasonable because the goal of this program is to encourage private sector participation in waste tire recycling. A business may be operated as a corporation, partnership, or association or by an individual. It is reasonable to include all

possible entities that might qualify as "businesses" and reasonable to include this section to ensure that applicants are given notice of their eligibility. Grant applicants are not restricted to those qualifying as "waste tire recycling businesses." This is reasonable because grants for studies should be available to those who are interested in entering the waste tire recycling business but who as yet have not made a commitment to do so.

Subp. 2. Eligible studies

This part reiterates the statutory restriction on the scope of waste tire recycling studies eligible for grants. It is reasonable to reiterate the statutory limitation to alert applicants to the scope of the program.

Subp. 3. Eligible costs.

Item A. The salary of an employee or the cost of a consultant is likely to be the major element of cost of a study and therefore it is reasonable to make this cost eligible. The rule makes both employee salary and the cost of a consultant eligible to allow firms with in-house capacity to perform these types of marketing studies the opportunity to do so.

Item B. The report is required by the board to enable the board to study and disseminate the information generated by the study. Because this is a cost incurred to benefit the state, it is reasonable to make it grant eligible.

Item C. The reasonable cost of travel (limited to the

amount paid to state employees) is made grant eligible to encourage thorough research including visits to potential sites. Because this will provide valuable and needed information, it is reasonable to make the travel costs grant eligible.

Item D. It is reasonable to fund supplies used in the research and preparation of the study report because supplies are a reasonable and necessary expense. Payment is limited to those supplies actually expended during the course of research or preparation of the report to ensure that the grant money is not used to fund the normal operating costs of the business.

Subp. 4. Ineligible costs.

To limit the possibility that grant money is used to fund ordinary business expenses, it is reasonable to make overhead ineligible. The cost of developing the application is also ineligible because the application cost should not be high, and it is fair to require this to be born by potential recipients. This will also ensure that potential recipients do not spend a large amount of money to develop an application that might not be funded.

9200.XXX3 Contents, Review and Evaluation of Applications.

Subp. 1. Contents.

Item A. The name, address and telephone number of the applicant are needed to enable the board to contact the applicant during the application review process.

Item B. It is reasonable to require a description of the waste tire recycling project to enable the board to assess the potential of the study to generate information that will aid the state in the development of waste tire recycling alternatives.

Item C. The information concerning the scope of the proposed study required under Item C is needed to enable the board to evaluate whether the proposed study will be adequate to generate information of use to the state in developing waste tire recycling alternatives. Requiring this information at the application stage is also reasonable because it will ensure that applicants are well organized and prepared to move forward with the research when the grant is awarded.

Item D. It is reasonable to require applicants to describe their final reports to enable the board to evaluate how well the study will generate the information required in the final report and how the study will affect the contents of the final report.

Items E., F. This information is needed to enable the board to set the amount of the grant.

Item G. During the course of evaluation of the grant application, the board may wish to contact the researchers to assess their qualifications. It is thus reasonable to require applicants to supply names and telephone numbers of the persons performing the research, if known.

Subp. 2. Determination of eligibility and completeness.

It is reasonable that the review of the application for completeness and eligibility be done by the chair or staff because the task is essentially ministerial and should not require formal board consideration. This will ensure that only complete applications from eligible applicants are subject to formal board action, conserving administrative resources. Administrative resources will also be conserved by encouraging applicants to contact the board staff to receive guidance before submitting an application.

Subp. 3. Notice of determination of eligibility and completeness.

This part sets out times within which applicants will receive notice of the chair's initial decision on the application, and within which they must respond to any finding of deficiency. The time period--14 days--for initial review is reasonable because it gives adequate time for the review yet will not delay decision. The time period to respond to a finding of deficiency--14 days--is reasonable because the applicant has had notice of what must be submitted and should be able to correct omissions without further delay.

Subp. 4. Board approval.

The purpose of the legislation creating the waste tire recycling grant and loan program was to encourage the development of the waste tire recycling industry in the state. Thus, it is reasonable to fund only studies that will result in the

generation of information that will aid the state in the development of waste tire recycling alternatives. It is reasonable to give priority to studies unlikely to be funded without state assistance to ensure that state funds are spent when truly needed. It is further reasonable to give priority to studies likely to lead directly to the development of new waste tire recycling capacity in the state as this best fulfills the goal of the grant and loan program.

9204.XXX4 Grant Limitations; Agreement.

Subp. 1. Grant amount.

The limits set out on this subpart are reasonable because they are set by law. It is reasonable to fund costs incurred only after the award of the grant and during the time the grant agreement is in effect to insure board control over expenditures funded by the grant.

Subp. 2. Grant agreement.

Item A. It is reasonable to require the execution of a grant agreement so that the board and the recipient can clarify what is to be done during the period the grant is in effect, and to ensure that the state can pursue legal action if the terms of the award are not met.

It is reasonable to require grant recipients to prepare a final report on their study to enable the state to benefit from the information received. Item (A) is needed because market and financial information is essential for future decisions regarding development. Item (B) is needed so that

the board can respond to potential financing schemes if the report concludes development is possible. Item (C) is needed to enable the board to determine whether future development of the studied project would have a negative impact on existing recycling alternatives or a net negative impact on waste tire recycling as a whole. Item (D) ensures that the applicant will include in the final report all relevant information generated.

Item B. It is reasonable to require staged disbursement of funds to ensure that the state earns the interest on funds reserved for the study before they are spent. It is also reasonable to provide for retainage of funds to ensure that the recipient has incentive to finish the final report.

Item C. It is reasonable to incorporate by reference the final grant application to ensure that the recipient performs the study approved by the board.

Item D. It is reasonable to require the recipient to complete the study regardless of cost overruns to encourage applicants to be realistic in budgeting and to ensure that the amount of money approved for a project does not change, interfering with the funding of other studies.

9204.XXX6. Loans.

Subp. 1. Eligible applicants.

It is reasonable to include a provision on eligibility to alert potential applicants as to their ability to apply. By

statute, loans are made to "businesses." It is reasonable to include all forms of business structure, from individuals through corporations. It is also reasonable to ensure that those seeking to become "businesses" can participate, to ensure the broadest participation in the program. Broad participation best fulfills the objective of the program: to create new waste tire recycling enterprises in the state.

Subp. 2. Eligible costs.

It is reasonable to limit eligible costs to capital costs of facility development because those costs are the most easily verified, thus ensuring that the loan funds are spent as intended and that the facility is properly built and equipped.

9204.XXX7. Contents, Review and Evaluation of Applications.

It is reasonable to specify application contents to ensure the orderly evaluation of loan requests. Items A through F of this subpart are basic information that the board will use to obtain an overall picture of the application.

Subp. 2. Supporting documentation.

Item A. Credit information is requested so that the board can ensure that the loan will be repaid. The nature of the credit information is not made firm by the rule, although certain types of credit information are specifically noted as acceptable. This is reasonable to allow applicants flexibility in establishing that they are credit worthy.

Item B. The certification required in this item is required by law.

Item C. The conceptual and technical feasibility report is needed so that the board can evaluate the chances of the project's success. The information required is reasonable so that the board can ensure that the applicant has undertaken all work - technical and political - to ensure smooth project development.

Item D. A financial plan including actual contracts for the products of the facility is required so that the board can be sure that the project will be financially feasible, ensuring repayment of the loan.

Item E. A description of how the facility fits the solid waste management objectives of the jurisdiction where the facility will be located is required to ensure that the applicant's facility will harmonize with local solid waste management planning. It is reasonable to require this information from applicants because coordination with local waste management objectives will be essential for success.

Subp. 3. Determination of eligibility and completeness.

It is reasonable for the review of the application with regard to the completeness and eligibility to be done by the chair or staff because the task is essentially ministerial and should not require formal board consideration. This will ensure that only complete applications from eligible applicants are subject to formal board action, conserving administrative resources.

Administrative resources will also be conserved by encouraging applicants to contact the board staff to receive guidance before submitting an application.

Subp. 4. Notice of eligibility and completeness.

This part sets out times within which applicants will receive notice of the chair's initial decision on the application, and within which they must respond to any finding of deficiency. The time period - 14 days - for initial review is reasonable because it gives adequate time for the review yet will not delay decision. The time period to respond to a finding of deficiency - 14 days - is reasonable because the applicant has had notice of what must be submitted and should be able to correct omissions without further delay.

Subp. 5. Board approval.

The goal of this program is to ensure that the state's waste tire management objectives are fulfilled. Thus, it is reasonable to limit the award a loan to those facilities that will meet the state's objectives. It is reasonable to give priority to projects that meet the state's articulated hierarchy of waste management objectives (as found in the Waste Management Act), as projects which emphasize resource recovery are likely to have the fewest negative environmental impacts. It is reasonable to require technical certification before an award is granted because this certification is required by law. It is further reasonable to require the board to find that the loan will be repaid to ensure that the money allocated to this program is not lost.

9204.XXX8 Loan limitations.

Subp. 1. Loan amount.

This provision sets no overall limit on the amount of the loan, but requires that the recipient contribute 10% of the eligible capital costs. It is reasonable to set no overall cap because the cost of development of a waste tire recycling facility cannot adequately be predicted and is likely to be quite high. Ten percent participation on the part of the applicant is reasonable to ensure that the applicant is committed financially to the project, while not precluding an applicant lacking a high level of equity capital from participating.

Subp. 2. Interest rate.

A rate of at least three percent interest is required. This is reasonable because the rate is low enough to ensure that it provides an incentive to the private sector to enter into the business, while giving the state some return on the loan. Yearly payments are reasonable to ensure a minimum of financial administration costs. Repayment is tied to the beginning of operation, or two years after the date of execution of the loan agreement. This is reasonable to ensure that the facility is producing some revenue before repayment is required, while ensuring that repayment is not overly delayed if operation is not achieved in two years.

Subp. 3. Loan agreement.

It is reasonable to require that loan funds be disbursed under the terms of a loan agreement to ensure that the board and applicant understand the terms of the loan, and to ensure that the board can take legal action to recover loan money if the project is not completed or operated or if payments are missed. Item A is reasonable because it ensures that that applicant is required to complete and operate the project described in the application. Items B and C are needed for orderly loan administration. Items D and E ensure that applicants will budget carefully because they will be responsible for cost overruns. Item F is reasonable to ensure that information generated by the development of the facility can be used by the state or others interested in similar projects.

Subp. 4. Failure to complete and operate project

This subpart is needed because it establishes the procedures that will be followed by the board in the event of a default for failure to complete or operate the proposed project. This part is reasonable because although it provides that the board has the power to accelerate repayment of the loan, the board can also grant a variance that will allow the original objectives of the project to be accomplished.

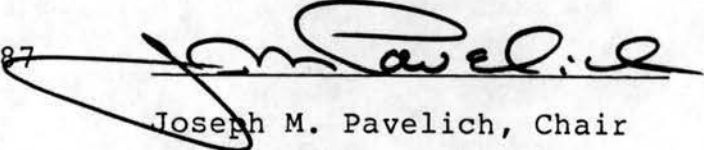
V. SMALL BUSINESS CONSIDERATIONS IN RULEMAKING

Minn. Stat. § 14.115, subd. 2 (1986) requires the board, when proposing rules which may affect small businesses, to consider various methods for reducing the impacts on small

businesses. The board finds that this grant and loan program, because it is available to small businesses and is intended to assist small businesses, will have no negative impact on small businesses and that the rules of the program require no modification to accomodate small businesses.

CONCLUSION

Based on the foregoing, the proposed rules governing the waste tire recycling grant and loan program are both needed and reasonable.

Dated: 11/4/87, 1987 
Joseph M. Pavelich, Chair