

STATE OF MINNESOTA
WASTE MANAGEMENT BOARD

In the Matter of the Proposed
Rule Amendments Governing
the Solid Waste Reduction and
Separation Grant Program,
Minn. Rules Parts 9200.6900 to 9200.6906

STATEMENT OF NEED
AND REASONABLENESS

I. INTRODUCTION

This program was originally created under the Waste Management Act of 1980 (Minn. Laws 1980, ch. 564, art. 6) as the Minnesota Solid Waste Management Demonstration Program for Waste Reduction and Source Separation. The original waste reduction and separation program was administered by the Minnesota Pollution Control Agency and funded the study and demonstration of solid waste reduction and source separation projects. In the 1987 amendments to the Waste Management Act, the legislature changed the focus of the program from development of waste reduction and separation projects to the implementation of waste reduction and separation projects, and made the Waste Management Board ("Board") the agency administering the program. The Waste Management Board promulgated Minn. Rules pts. 9200.6900 to 9200.6906 (1987) to implement the program by establishing the substantive criteria and procedural conditions under which the Board will award grants. The rules were non-controversial and were adopted without a public hearing, following review by the Waste Management Board and the Board's Solid Waste Management Advisory Council. The Board now proposes to amend the Program rules.

II. STATEMENT OF BOARD'S STATUTORY AUTHORITY

The Board's statutory authority to adopt the rule amendments is set forth in Minn. Stat. § 115A.06 (1986), which provides:

Subd. 2. [RULES] Unless otherwise provided, the Board shall promulgate rules in accordance with chapter 15 to govern its activities and implement sections 115A.01 to 115A.72.

Under this statute the Board has the necessary statutory authority to adopt the proposed rule amendments. The Board finds that amended rules are needed to implement Minn. Stat. § 115A.53 properly.

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 amendments as proposed. In general terms, this means that the Board must set forth the reasons for its proposed changes, 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 amendments is discussed below.

The Solid Waste Reduction and Separation (LOW-TECH) Grant Program ("Program") first became effective October 30, 1987. The rules were promulgated to establish a mechanism to ensure the orderly administration of the Program. The rules have

been utilized in creating the Program application procedures manual and application forms. However, Waste Management Board staff have found that potential applicants have been confused about definitions of eligible projects, costs and match contributions. The Board now proposes to amend the Program rules in order to avoid confusion, expedite application efforts and better serve those state citizens for whom this Program was intended.

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 amendments.

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 the proposed amendments is discussed below.

Five amendments to the rules are proposed. Some amendments provide clarity by adding or changing vague language. Other amendments change project requirements.

1. Part 9200.6902, subp. 2, ELIGIBLE PROJECTS

Part 9200.6902, subp. 2 adds language that requires an eligible project to be designed to operate for a minimum of three years after a grant is received. This is reasonable because the legislation creating the Program was amended in 1987 to clarify that grants should fund both development and implementation. To be fully implemented, the Board believes that a project must be operated for three years. By requiring three years of implementation, the Board will encourage permanent

projects. This will ensure that the grants made under this Program have the greatest possible impact.

2. Part 9200.6902, subp. 5, IMPLEMENTATION COSTS

Part 9200.6902, subp. 5 is amended to provide a clearer means for determining the scope of eligible project implementation costs. Limiting eligible implementation costs to those incurred in the first-year of operation is reasonable because these costs are likely to be the highest, and are easiest to ascertain. A time limit on eligible costs was needed for administrative clarity, and to aid potential applicants in structuring project financing over the long term.

Part 9200.6902 subp. 5 (A) is amended to make first year operating and maintenance costs eligible. This is reasonable because the operation and maintenance costs (such as collection labor, fuel and insurance) are crucial to the success of project implementation. This addition would also clear up confusion applicants have had over where, within the definitions of "eligible" or "ineligible," these costs might fall.

3. Part 9200.6903 (R)

This Part is amended to require submission of a work plan that describes project implementation and operation over three years. This is reasonable because it follows from the amendment to part 9200.6902, subp. 2, which established a requirement that a project be designed to operate at least three years.

4. Part 9200.6904, subp. 3 (B)

This part now includes language that provides that before funding a project, the Board must find that all political subdivisions affected by the project are committed to operating the project for three years. This revision is reasonable as it follows from the amendment to parts 9200.6902, subp. 2, which specifies that a project must be designed to operate a minimum of three years. Requiring a show of commitment for three years of operation further emphasizes to those financing the project that the grant funds are for implementation costs only, and are not meant to subsidize projects over their operating life.

5. Part 9200.6905, subp. 1

This part is revised to provide a clearer explanation of who may give matching contributions and in what form these may be given. Replacing the word "matching" for "local government" is reasonable in that this clarifies that the matching funds can come from all sources, as is stated in the first sentence of part 9200.6905, subp. 1. By replacing the phrase "or in-kind matching funds" with the words "goods, or services" the rule is clarified with regard to what may be used for matching contributions, other than cash.

It should be noted that the applicant must fund the balance of eligible costs over and above the amount of grant and match funds, as well as any ineligible costs of the project.

Date: February 29, 1988


Joseph M. Pavelich, Chair
Minnesota Waste Management Board

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