

**STATE OF MINNESOTA
WASTE MANAGEMENT BOARD**

**IN THE MATTER OF THE PROPOSED
RULES GOVERNING THE USED OIL PROCESSING
EQUIPMENT LOAN PROGRAM**

**STATEMENT OF NEED
AND REASONABLENESS**

I. INTRODUCTION

In 1987, the legislature created a program to encourage increased recycling of used oil in the state. Through what was then the Department of Energy and Economic Development (DEED), low-interest loans were to be made available for the purchase of used oil processing equipment in order to further the goal of increased used oil recycling.

In 1987, the Governor transferred the program from DEED to the Waste Management Board through Reorganization Order No. 150, (Dept. of Admin. 1987). The Waste Management Board (board) now promulgates permanent rules to govern the Used Oil Processing Equipment Loan Program. These Rules establish the substantive criteria and procedural conditions under which the board will award loans for used oil processing equipment.

II. STATEMENT OF BOARD'S STATUTORY AUTHORITY

The board's statutory authority to adopt the rule is established in Minn. Stat. § 115A.9162, subd. 1 which provides:

The board may make loans to businesses for the purchase of used oil processing equipment.

Under this statute the board has the necessary authority to adopt this rule.

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 the mid - 1980's, decreasing virgin petroleum prices, the imposition of new regulations on burning used oil, and the proposed listing of used oil as a hazardous waste, all threatened to disrupt used oil recycling in Minnesota. In 1987, the legislature banned the disposal of used oil in mixed municipal solid waste after January 1, 1988. These circumstances and actions created a need for increased used oil processing in the state. The legislature created the loan program that is the subject of this rulemaking to create incentives for the private sector to meet the

used oil 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.

9205.0600 DEFINITIONS

Many of the terms defined in Part 9205.0600 are terms defined by statute. The definitions in this part are provided to ensure clarity and consistency in the use of certain terms that are not in common usage.

Subpart 5. Used oil processing equipment. "Used oil processing equipment" is broadly defined to provide program flexibility in funding types of equipment not yet developed at the time of rulemaking. Pollution control equipment is included in this definition because it is an integral and inseparable part of used oil processing equipment.

Subp. 6. Used oil re-refining equipment. Used oil re-refining equipment is defined to clarify that this type of equipment differs from other used oil processing equipment in that it produces a clean, high-quality lubricating base oil. A definition of used oil re-refining equipment is needed because the rule makes the cost of such equipment eligible for more loan funding than other types of equipment.

9205.0601 SCOPE

This section is needed to provide an overall description of the rule to aid reading the following rule.

9205.0602 ELIGIBILITY CRITERIA

Subpart 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, and to ensure that those seeking to become "businesses" can participate to ensure the broadest participation. Broad participation best fulfills the objective of the program which is to expand used oil processing capacity in the state.

Subd. 2. Eligible costs. It is reasonable to include the cost of used oil processing equipment because providing loans to fund this equipment would further the program goal of increased used oil recycling. Making the cost of used oil processing equipment eligible, as defined, also keeps funding options available for types of equipment not yet developed or foreseen.

Subd. 3. Ineligible costs. It is reasonable to exclude the cost of installation, operation, preliminary and final design and engineering, overhead, land and buildings because these costs are only indirectly related to the cost of processing

equipment. Program funding is not adequate to cover costs beyond actual processing equipment.

9205.0603 APPLICATION REQUIREMENTS

Subpart 1. Contents It is reasonable to specify application contents to ensure the orderly evaluation of loan requests. Items A through D of this subpart are basic information that the board will use to obtain an overall picture of the application.

Subp. 2. Supporting documentation

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. This is reasonable to allow applicants flexibility in establishing that they are credit worthy.

B. The conceptual and technical feasibility report is needed so that the board can evaluate the chances that the operation of the used oil processing equipment will be successful. The information required is reasonable so that the board can ensure that the applicant has undertaken all work - technical and political - to ensure smooth installation and operation of the used oil processing equipment.

C. A financial plan for the acquisition and operation of the used oil processing equipment is required so that the board can be sure that purchase of the equipment will be financially feasible, ensuring repayment of the loan.

D. A report on the status of required permits from permitting agencies is needed to ensure that the applicant is aware of all permit responsibilities and to enable the board to ensure that the time frames for equipment installation are reasonable and can be maintained.

E. A report on time frames of equipment installation is required so that the board can measure whether installation is on schedule and when used oil processing capacity will be available.

Subp. 3. Additional Information. It is reasonable to require the applicant to submit additional information when required so that the board can thoroughly evaluate the application with regard to any relevant matters inadequately covered in the applicant's initial submittals. It is reasonable to limit the chair's power to request information to information needed by the board in approving applications to ensure that additional information requests are relevant and not burdensome to the applicant.

9205.0604 SPECIAL APPLICATION REQUIREMENTS FOR RE-REFINING EQUIPMENT

Development and siting of a re-refinery will entail a higher level of planning than other used oil processing projects because of the size and complicated nature of re-refining operations. The additional supporting documentation is needed for this category of equipment so that the board can adequately evaluate the re-refinery's potential for successful development and operation.

9205.0605 REVIEW AND EVALUATION OF APPLICATIONS

Subpart 1. 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 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. 2. 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 - 30 days - is reasonable because the applicant should have adequate time to correct omissions.

Subp. 3. Board approval. The goal of this program is to ensure that the state's used oil management objectives are fulfilled. Thus, it is reasonable to limit the award of a loan to those types of processing equipment that will meet the state's objectives. Applications that meet the general criteria will be funded in the order they reach the board for decision. It is reasonable to fund applications in the order they come before the board because the system will ensure that funds are distributed in a fair and orderly manner. If applications come before the board at the same time, it is reasonable to give priority to types of equipment that best meet the state's hierarchy of waste management objectives to insure that program funds have the greatest possible positive environmental impact. Re-refining better meets the State's waste management objectives for used oil than does energy-recovery because it results in the conservation and recovery of a greater part of the used oil resource. It is 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.

9205.0606 LOAN LIMITS

Subpart 1. Re-refining equipment. This provision requires that the maximum loan award be 90 percent of the eligible cost or \$500,000, whichever is less. 10 percent participation on the part of the applicant is reasonable to ensure that the applicant is committed financially to making profitable use of the equipment, while not precluding applicants lacking a high level of equity from participating. It is reasonable to set the overall limit on the amount of the loan at \$500,000 because this is the largest portion of limited program funds that could prudently be allocated for re-refining equipment.

Subp. 2. Other used oil processing equipment. This part requires that the maximum loan award be 90 percent of the eligible cost or \$200,000, whichever is less. 10 percent participation on the part of the applicant is reasonable for the same reasons as stated above. It is reasonable to place an overall limit on the amount of the loan at \$200,000 because other used oil processing equipment is typically less expensive than re-refining equipment and because program funds are limited.

Subp. 3. 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.

9205.0607 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 equipment is not installed or operated as described in the application or if payments are missed. Item A is reasonable because it ensures that applicant is required to complete and operate the equipment 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 installation and operation of the equipment can be used by others interested in similar equipment.

9205.0608 DEFAULT

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 used oil processing equipment. 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 loan 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 accommodate small businesses.

VI. CONCLUSION

Based on the foregoing, the proposed rules governing the used oil processing equipment loan program are both needed and reasonable.

Dated: 4/28, 1988


Joseph M. Pavelich, Chair