



LCRAR

Legislative Commission

to Review Administrative Rules

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55 State Office Building
St. Paul, Minnesota 55155-1201
Telephone 612/296-1143

Maryanne V. Hruby, Director

Proposed 9/30/91 S.R.

December 12, 1991

*Received
12/17/91*

Laura Millberg
Office of Waste Management
1350 Energy Lane
St. Paul, Minnesota 55108

Dear Ms. Millberg:

I write to request a copy of the Office of Waste Management's Statement of Need and Reasonableness (SONAR) for recently published rules relating to recyclable material market development grant and loan programs.

As you may know, Minnesota Statutes, sections 14.131 and 14.23 now require state agencies to provide copies of SONAR's to the LCRAR when they become available for public review.

If you have not already done so, please send a copy of the SONAR for these proposed rules to:

The Legislative Commission to Review Administrative Rules
Maryanne Hruby, Director
55 State Office Building
St. Paul, Minnesota 55155

Please contact me at 296-1143 if you have any questions.

Thank you.

Sincerely,

Michele Swanson
Commission Secretary



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9/30/91
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STATE OF MINNESOTA
OFFICE OF WASTE MANAGEMENT

In the Matter of the Proposed Rule
Amendments Governing the Recyclable
Material Market Development Grant
and Loan Programs, Minn. Rules, Parts
9210.0600 to 9210.0645

STATEMENT OF NEED
AND REASONABLENESS

I. INTRODUCTION

This Statement of Need and Reasonableness discusses proposed amendments to the rules governing administration of recyclable material market development grant and loan programs. The Minnesota Legislature established the program to encourage and facilitate the development of markets for recyclable materials. Minn. Stat. §115A.48, subd. 5 (1990). The programs are administered by the Minnesota Office of Waste Management (Office) under Minn. Rules, Parts 9210.0600 to 9210.0645, originally promulgated in 1990.

The proposed amendments revise the criteria and procedures for awarding grants and loans under the Recyclable Materials Market Development Grant and Loan Program. Specifically, the proposed amendments clarify how proposals are to be incorporated into grant and loan agreements, expand the scope of the county grant program to include loan funding, clarify the eligibility requirements for the county program, set limits on the amount of loan funds that can be awarded for the county program, and revise the information required to be submitted with project proposals for the county program and the capital grant and loan program.

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II. STATEMENT OF OFFICE'S STATUTORY AUTHORITY

The Office's statutory authority to adopt the proposed amendments is set forth in Minn. Stat. §115A.48, subd. 5(d), which provides:

(d) The office shall adopt rules for the [recyclable material market development] program.

Under this statute the Office has the necessary authority to adopt the proposed amendments.

III. STATEMENT OF NEED

Minn. Stat. ch. 14 (1990) requires the Office to make an affirmative presentation of facts establishing the need for and reasonableness of the amendments as proposed. In general terms, this means that the Office must set forth the reasons for its proposal, and the reasons must not be arbitrary and capricious. However, to the extent that need and reasonableness are separate, need has come to mean that a problem exists that requires administrative attention, and reasonableness means that the solution proposed by the Office is appropriate. The need for the proposed rule amendments is discussed below.

The proposed amendments are needed to clarify the eligibility criteria and procedural conditions under which the Office will award grants and loans pursuant to Minnesota Statutes §115A.48, subd. 5(a). That section provides:

The office shall make grants and loans and shall provide technical assistance to persons for research and development or for the acquisition and betterment of projects that develop markets or end uses for recyclable materials. At least 50 percent of all funds appropriated under 1989 1st Special Session, Chapter 1, article 24 for market development efforts must be used to support county market development efforts. Grants to counties for market development must be made available to those counties that

achieve significant land disposal abatement through use of source separation of recyclable materials.

After experience with the first funding rounds, the Office has identified the need to streamline certain procedures. The proposed amendments are intended to accomplish this.

The statute specifies that at least 50 percent of the funds originally appropriated for the program be used to support county market development efforts. Typically, counties do not provide their own end markets but rely on private companies to meet this need. Loan funding will improve the ability of the Office of Waste Management to utilize the county program to support county market development efforts by increasing the number and size of private sector projects eligible for funding. Furthermore, the availability of loan funding through the county program will provide a more appropriate financial assistance option than grant funding to meet the needs of local, private sector end markets that are expected to become profitable, but require financial assistance initially in order to start up or expand operations.

IV. STATEMENT OF REASONABLENESS

Minn. Stat. ch. 14 (1990) requires the Office to make an affirmative presentation of facts establishing the reasonableness of the proposed amendments. Reasonableness is the opposite of arbitrariness or capriciousness. It means that there is a rational basis for

the Office's proposed action. The reasonableness of the proposed amendments is discussed below.

Part 9210.0620 APPLICATION PROCEDURES

Part 9210.0620 is intended to provide potential applicants with a concise description of the application process for the program.

The proposed amendment to subpart 2(A) reflects the Office's proposal to provide loans under the county program established in Part 9210.0635. The reasonableness of the proposed amendment will be discussed under the amendments to that part.

Part 9210.0630 GRANT AND LOAN AGREEMENTS

This part sets out the basic terms of the agreement that a grant or loan recipient must sign to receive funding from the Office.

The existing language in item A states that the grant or loan proposal submitted to the Director under 9210.0620, subpart 2 will be incorporated into the grant or loan agreement. This incorporation contractually obligates a recipient to develop and implement the project described in the proposal and thereby establishes criteria against which the Director may evaluate progress of the grantee or borrower. Because the proposals are often revised by proposers during the evaluation process but prior to a final award, it is reasonable to change this rule language to not require the recipient to comply with all aspects of the original proposal. The proposed amendment allows the

Office to incorporate in the grant and loan agreement only those portions of the proposal which are applicable to the project as finally approved.

Part 9210.0635 COUNTY GRANT PROGRAM

Presently, this part applies only to the county grant program. The title is amended to reference the fact that loan funding is proposed to be included in the program.

This part is divided into seven subparts which, together, establish the substantive conditions and criteria under which the Office will provide grants and loans for market development projects that specifically benefit county market development efforts.

Subpart 1 is amended to reference the fact that loan funding is to be included in the program.

Subpart 2 is amended to identify those persons on whose behalf a county may apply for a grant or loan under the program. It is reasonable to be more specific about "persons" because experience with the first funding rounds indicated that this issue of eligibility needed clarification. Under the proposed amendments, a county could apply for a grant or loan on behalf of a sole proprietorship, a partnership, or a corporation. It is reasonable to allow counties to apply for a grant or loan on behalf of these other persons because, typically, counties do not provide their own markets but rely on private companies to meet this need. A county cannot apply for a loan on its own behalf under the proposed amendments because a county is a not-for-profit entity and would more appropriately receive grant funding for a county-run recycling effort. The proposed rule

provides that the county will be a named recipient of the award because the award is intended to further the county's market development efforts. Naming the county as a recipient also will help ensure that the money is indeed used for a county effort. By statute, 50 percent of the funds must support county market development efforts.

Subpart 4 identifies costs that are eligible for assistance under the county grant and loan program. The proposed amendments specify that eligible costs for loan funds are limited to 50 percent of the capital costs of the project. Subpart 4 incorporates the Legislature's decision, set forth in Minn. Stat. §115A.48, subd. 5(b), to limit loan assistance to up to 50 percent of the total eligible capital costs of a project.

Subpart 5 specifies the maximum amount to be awarded. The proposed amendments specify the maximum loan award as \$500,000 unless the notice provided by the Director under part 9210.0620, subpart 1 establishes a lesser amount. Establishing an award ceiling for all projects is necessary to effectively administer program resources. The Office believes that a \$500,000 maximum for loan funding is a reasonable level of financial assistance for the types of projects that counties are likely to sponsor under this program. Larger private sector projects with statewide significance are intended to be funded under the capital loan program.

Subpart 6 describes the information that an applicant must include in a proposal under this program. The proposed technical amendment to subpart 6(A) clarifies the information on names, qualifications, and addresses that must be submitted. The proposed technical amendment to subpart 6(D) incorporates a reference to loan funding.

Subpart 6(E) requires an itemized description of project financing. The proposed amendment includes participant contributions in the itemized description, since the applicant may be applying on behalf of another person who will finance the remaining costs of the project.

Subpart 6(G) requires information demonstrating, where applicable, how the supply of and demand for recyclable materials and recycled products will be secured. The proposed technical amendment deletes the reference to the applicant securing this information, since the applicant may be applying on behalf of another person who will carry out the project.

A new subpart 6(I) is included that requires each county applying on behalf of a person other than the county to submit a resolution stating that the project is important to the county's market development efforts. This requirement is reasonable because county support for the project will be important to its ultimate success. A resolution by the county will document this support.

Subpart 6 also is amended to clarify the type of additional information that the Director may request from an applicant or project participants if the Director determines that additional information is necessary to clarify and evaluate a proposal. This is reasonable because it allows the Director to obtain sufficient information to fully review and evaluate proposals using the criteria established in subpart 7.

Subpart 7 specifies the criteria that the Director will use to evaluate proposals. The proposed technical amendment to subpart 7(B) deletes a reference specifically to

the applicant, since the applicant may be applying on behalf of another person who will carry out the project, and incorporates a reference to the potential for loan awards.

Part 9210.0640 CAPITAL GRANT AND LOAN PROGRAM

This part applies only to projects that are proposed directly by private organizations and involve capital expenditures. This part is divided into eight subparts that, together, establish the substantive conditions and criteria under which the Office will provide financial assistance to private organizations for market development projects involving capital expenditures. Only subpart 7 is proposed to be amended.

Subpart 7 describes the information that an applicant must include in a proposal under this program. This is the minimum amount of information needed to ensure that the Director can make an informed evaluation of the proposal under subpart 8.

The proposed amendments to subpart 7(D) and (E) delete the requirement for the company to submit a five-year business plan, credit history, and historical financial statements as part of the initial proposal. Instead, subpart 7 gives the Director discretion to request additional financial information as needed during the evaluation process. The request for a business plan has proven redundant in many cases because this information was required in other sections of the proposal. The requirement for other financial information deterred private companies from applying for assistance because the initial proposal was so burdensome to prepare and companies were concerned about providing confidential information. This proposed amendment will allow the Director to learn a good deal about the applicant and the proposal before determining whether it is even

necessary to request confidential information about the applicant and its financial status. In addition, the information will be more timely and up-to-date if provided later during the evaluation process.

VI. SMALL BUSINESS CONSIDERATIONS

The proposed rule amendments do not limit the ability of small businesses to participate in the program. To the contrary, the proposed amendments lighten the application requirements for financial assistance and create a second loan program well suited to the needs of small businesses.

VI. CONCLUSION

Based on the foregoing, the proposed amendments to Minn. Rules pts. 9210.0600 to 9210.0640 are both needed and reasonable.

Dated: October 8, 1991

A handwritten signature in cursive script, reading "Dottie Rietow", written over a horizontal line.

Dottie Rietow
Director