

STATE OF MINNESOTA
OFFICE OF WASTE MANAGEMENT

In the Matter of the Proposed Rule
Amendments Governing the Solid Waste
Reduction Grant and Loan Programs,
Minn. Rules, Parts 9210.0700 to
9210.0770

STATEMENT OF NEED
AND REASONABLENESS

I. INTRODUCTION

This Statement of Need and Reasonableness discusses proposed amendments to the rules governing administration of programs for solid waste reduction grants and loans. The Minnesota Legislature established the program to encourage and facilitate projects that would lead to substantial source reduction and also provide valuable information for application across a wide spectrum of citizens, agencies and businesses. Minn. Stat. § 115A.55. The programs are administered by the Minnesota Office of Waste Management (Office) under Minn. Rules, Parts 9210.0700 to 9210.0770, originally promulgated in 1990.

The proposed amendments revise the criteria, eligibility and procedures for awarding grants and loans under the Solid Waste Reduction Grant and Loan Program. Specifically, the proposed amendments update the rules to match a 1992 amendment to the statute that defines waste reduction; relocate certain criteria from the evaluation sections to the eligibility and completeness section; change the wording of evaluation criteria to allow the Office to rank applications along a sliding scale that is more closely tied to the statutory mandate; specify how applicants should document waste reduction for the purpose of the Office's public information effort; and make grants for implementation available to the private sector.

II. STATEMENT OF OFFICE'S STATUTORY AUTHORITY

The Office's statutory authority to adopt the proposed amendments is set forth in Minn. Stat. § 115A.55, subd. 3(d), which provides:

The office shall adopt rules for the administration of [the Solid Waste Reduction] program. Office rules must prescribe the level or levels of matching funds required for grants or loans under this subdivision.

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

III. STATEMENT OF NEED

Minn. Stat. § 14.23 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.55, subd. 3(a). That section provides:

The office shall make loans and grants to any person for the purpose of developing and implementing projects or practices to prevent or reduce the generation of solid waste including those that involve reuse of items in their original form or in manufacturing processes that do not cause the destruction of recyclable materials in a manner that precludes further use, or involve procuring, using, or producing products with long useful lives. Grants may be used to fund studies needed to determine the technical and financial feasibility of a waste reduction project or practice or for the cost of implementation of a waste reduction project or practice that the office has determined is technically and financially feasible.

The amendments also will bring the rules into harmony with 1991 legislative amendments to Minn. Stat. § 115A.53, which eliminated references to waste reduction in order to refocus that program on waste separation for the purposes of reuse and recycling.

After experience with the first two funding rounds, the Office has identified the need to elaborate on how the rules can fulfill certain portions of the statute. The proposed amendments are intended to accomplish this.

The proposed amendments also are needed to make the rules consistent with the new definition of waste reduction. Without an amendment, the rules do not track the new definition because no mention is made of toxicity reduction.

The proposed amendments are also needed because the Office needs a specific, objective method by which to rank applications. This will facilitate the best possible decisions by the Director. Currently, all the evaluation criteria are worded in such a way that an application either meets them or does not. But the stated intention of the statute is to seek out proposals that best achieve substantial source reduction, while also generating usable information on how it was done, for use by as many people as possible. How well an application promises to do this is a question of degree.

The proposed amendments are also needed to clarify the obligations of grant and loan recipients when carrying out their projects and writing their final reports. Experience with public information campaigns has shown that the most valuable source reduction efforts employ an objective and scientific methodology for measurement; and then describe the project results in terms of weight and volume of waste avoided, in terms of cost changes, and in terms of toxicity if relevant. The Office must have such specific information if it wishes to encourage public and private organizations to undertake the many changes in purchasing, usage, and production that lead to substantial source reduction.

Finally, the changes are needed to expand financial support for implementation. Currently, the rules do not allow grants for implementation to private persons -- only loans. The statutes do not draw this distinction, and the expansion is necessary for faster progress in source reduction.

IV. STATEMENT OF REASONABLENESS

Minn. Stat. ch. 14 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 9210.0700 SCOPE AND AUTHORITY

This part describes the purpose and legislative background of the rules. The amendments insert the word "source" into "solid waste reduction." This is reasonable because it is identical to the wording of this term in Minn. Stat. § 115A.03, subd. 36a, as amended by Minn. Laws. 1992, ch. 593, art. 1, § 7.

The Office also proposes to change "solid waste reduction" to "solid waste source reduction" wherever it appears, in the interest of matching the new terminology that is employed in the statutory definition. This is reasonable because "source reduction" is a nationally recognized term for the activities listed in subd. 36a, and avoids confusion with recycling activities.

Part 9210.0710 DEFINITIONS

This part provides definitions necessary for the rule. The amendment set forth to subpart 7, which defines solid waste source reduction, is reasonable because it is identical in wording to the wording of this term in Minn. Stat. § 115A.03, subd. 36a, as amended (see above discussion under Part 9210.0700).

The amendment also replaces the term "useful life" with the term "life span." This is reasonable because "life span" is the term employed in the new definition of "waste reduction; source reduction" in Minn. Stat. § 115A.03, subd. 36a.

Part 9210.0720 APPLICATION PROCEDURES

Part 9210.0720 is intended to provide potential applicants with a clear and concise presentation of the application process for this program. To this end, part 9210.0720 is divided into eight subparts which, together, establish the procedures for obtaining a grant or loan for solid waste reduction projects. These procedures create a Request for Proposal (RFP) process, a common process for providing financial assistance.

The amendments would change the determination of eligibility and completeness in subpart 3. This is a threshold that a proposal must achieve before the Office proceeds to evaluating between proposals for the final determination.

The Office proposes several changes to this subpart. First, the amendment would add the word "eligibility" to references concerning project and cost. This is reasonable because it preserves the substance of the sentence while clarifying the sentence structure.

Second, in a separate list, the amendments would incorporate certain completeness criteria that have been shifted from parts of the rules that govern evaluation of proposals under the three programs (found in subparts 5 in each of 9210.0750, 0760 and 0770). These are feasibility in terms of concept, economics and technical requirements; the applicant's demonstrated financial resources; support from any and all public bodies involved; and compliance with applicable governmental regulations. It is reasonable to place these criteria under eligibility and completeness because they are initial thresholds that an applicant must satisfy to justify the expenditure of public money. If the Office determines that an applicant does not meet one or more of the thresholds, the Office should have the authority to reject the proposal at that time.

The amendments also create another new criteria, B, that of demonstrated ability to develop, implement and operate the project. This is reasonable because it allows the Office to winnow out applications that have failed to include participants who have management or technical experience connected to the general subject. For example, an application for a project intending to reduce metals in circuit-board manufacturing should include a participant with some experience in the electronics industry.

The amendments would add another new completeness criteria, F. This criteria asks whether the applicant has set out an explicit method by which to measure the source reduction to be achieved through the project (by volume and weight, and by toxicity if relevant). This is reasonable because it informs applicants at the outset that the proposals must contain a description of how source reduction will be quantified, before the proposals can move forward to the evaluation step. This requirement is reasonable

because it fulfills the intention of the statute, Minn. Stat. § 115A.55, subd. 3(c), which directs that all information from projects be made available to other solid waste generators. It has been the experience of the Office that to be of use to citizens and businesses, source reduction research efforts must employ a sound methodology.

The amendments also would add "or loans" to subpart 7, in the sentence concerning re-initiation of the process to award grants, if no proposals have been received that promise sufficient assistance toward source reduction goals. This is reasonable because there is no reason why re-initiation should be limited to grants alone.

Part 9210.0740 GRANT AGREEMENT

This part sets out the basic terms of the agreements that a grant or loan recipient will need to sign before receiving funds from the Office. Identifying these terms by rule provides advance notice to potential grant or loan applicants of the conditions of a grant or loan award.

The current Item A states that the grant or loan proposal submitted to the Director under 9210.0720, 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 grant or loan recipient. The proposed amendment allows the Office to incorporate in the grant and loan agreement the proposal as it is actually approved by the Director. This is reasonable because applicants sometimes change their proposals during the evaluation process to fit the statutes more precisely.

The Office also proposes to insert a new section under grant agreements, to be denoted item I. The new item I would require that henceforth, all grant and loan agreements must contain language obligating recipients to report in detail the source reduction achieved by the project, in terms of volume, weight, cost changes, and changes in toxicity, if any. This is reasonable because it assures the Office that the public will receive full value for the money invested. The public will have reports about source-reduction solutions that are thoroughly tested and measured, for distribution through the public information program described in the following item, now lettered "J."

Part 9210.0750 PUBLIC INSTITUTION GRANT PROGRAM

This part applies only to the grant program for public institutions. It is divided into six subparts which, together, establish the substantive conditions and criteria under which the Office provides financial assistance to public institutions for solid waste reduction projects.

The OWM proposes two amendments relating to subpart 2, which identifies eligible applicants. The amendment would reword the sentence referring to state agencies to exclude the Office and the Minnesota Pollution Control Agency from state agencies that can apply. This is reasonable because it reflects the statutory definition of "persons," which specifically exclude the Office and the MPCA (Minn. Stat. § 115A.03, subd. 23, and § 116.06, subd. 8).

Subpart 2 also currently allows an eligible applicant to apply for assistance on behalf of another person. This had been included in the original version of the rules because those rules made private persons ineligible for implementation grants. Since these amendments would open up implementation grants to private persons, it is reasonable to delete language that allows eligible persons to apply on behalf of ineligible persons. The amendment also would delete subpart 5C(4), regarding financial information from ineligible applicants, for this same reason.

Subpart 5B requires a description of a proposed project and specifies that certain information be listed. The amendments would change items B(3) through B(5). The change to item (3) would elaborate on the detail required in the description, asking for estimates of the volume, weight and toxicity reductions to be achieved, along with cost savings anticipated. The change to item (4) asks for references to similar projects that have already been tested or implemented, so that the Office may judge how much new information will be gained. The change to item (5) asks for specific estimates as to the number of people or organizations who might profit from the findings. These changes are reasonable because they serve the statutory instruction to the Office that the Office give priority in funding waste reduction projects that have the potential for significant reduction of the amount of waste generated, and develop information that is broadly applicable to a large number of solid waste generators. Minn. Stat. § 115A.55, subd. 3(b) and (c).

Subpart 6 specifies six criteria that the Director will use to evaluate proposals. The amendments would relocate items A, D, E and F to the eligibility criteria (see above discussion under Part 9210.0720, subpart 3). The remaining material is reworded to specify that the Office will rank projects according to their prospects for substantial source reduction in weight, volume and toxicity. This is reasonable because it will facilitate the best possible decisions by the Director. Currently, all the evaluation criteria are worded in such a way that an application either meets them or does not. But the stated intention of the statute is to seek out proposals that best achieve substantial source reduction, while also generating usable information on how it was done, for use by as many people as possible. How well an application promises to do this is a question of degree.

The amended item B allows the Office to scale a proposal according to the expertise and commitment of the participants. This is reasonable because these factors bear on the probability that the project will be successful and therefore will contribute to solid waste reduction.

The amendments also would create two new criteria. The first is denoted item A, covering the cost-effectiveness of the measure. This is reasonable because broad application to other waste generators (an important consideration set out in the statute) requires information on cost-effectiveness. The other is denoted item D, specifying that a feasibility project will be ranked on how well it avoids duplicating previous work and will break new ground. This is reasonable because it expands the knowledge base rather than duplicates existing research or projects.

The amended conclusion to subpart 6 states that the Director is to give priority to projects with broad application and that offer significant potential for source reduction. This directs the Office to give most weight to these factors. It is reasonable because the statute sets these factors as a high priority.

Part 9210.0760 PRIVATE SECTOR GRANT PROGRAM

The amendments to the title and to subpart 1 (the scope of the program) broaden the program to offer implementation as well as feasibility grants to the private sector. This is reasonable because loans (which are currently the only way to obtain financial assistance for private-sector implementation projects) are not always desirable for applicants. This is particularly the case when the Office has set low maximums on the funding available for any one project. Minn. Stat. § 115A.55 allows grants for both feasibility study and implementation by private persons, so there is no statutory restriction.

Under subpart 2, eligible applicants, the amendments broaden eligibility from "private organizations" to "private persons." This is reasonable because the statute does not limit eligibility to organizations only.

The amendment to subpart 4 offers 50 percent matching for implementation grants, which is reasonable because it is the same as for feasibility grants.

Under subpart 5(B), items required in the proposal description, the amendments would make the same changes to items (3) through (5) as with the public sector program, and for the same reasons (see above discussion under Part 9210.0750, subpart 5(B)).

Under subpart 5(C), the amendments would add a new item, 5(C)(3). This would give the director the authority to request pertinent financial information where he or she deems it necessary. This is reasonable because it protects the public interest in sound judgments by the OWM, while not requiring a complete financial cross-section for all proposals.

The amendments add another new item in this subpart: item 5(E). Where the proposal relates to implementation, the Office would require information in the proposal

indicating that it is feasible. The requirement is reasonable because an implementation project is supposed to have advanced beyond the testing stage.

Subpart 6, on how the Office is to evaluate private-sector grant proposals, is amended in the same way and for the same reasons as subpart 6 of the public institution grant program (see above discussion under Part 9210.0750, subpart 6).

Part 9210.0770 PRIVATE SECTOR IMPLEMENTATION LOAN PROGRAM

Part 9210.0770 establishes the conditions under which the Office will make loans to private persons for implementation projects.

In subpart 2, the Office proposes to broaden eligibility from "private organizations" to "private persons," which includes organizations, for the same reasons as in the private sector grant program (see above discussion under Part 9210.0760, subpart 2).

The Office would amend the project description requirements for proposals, subpart 5(B)(3) through 5(B)(5), in the same manner and for the same reasons as changes proposed to the comparable subpart for public institution and private-sector grants (see above discussion under Part 9210.0750 and .0760).

Subpart 6, on evaluation of proposals, would be amended to provide criteria to allow proposals to be ranked for a final decision. This amendment is being made for the same reasons as described in subparts 6 of the public institution and private-sector grant programs (see above discussion under Parts 9210.0750 and .0760).

V. SMALL BUSINESS CONSIDERATIONS

Minn. Stat. § 14.115 requires state agencies proposing rules that affect small businesses to consider five methods for reducing the impact of the rules on small businesses. The statute requires agencies to incorporate into proposed rules any of the methods "that it finds to be feasible, unless doing so would be contrary to the statutory objectives that are the basis of the proposed rulemaking." Minn. Stat. § 14.115, subd. 3.

The proposed rule amendments do not limit the ability of small businesses to participate in the program and in fact provide an opportunity for businesses of all sizes to participate in the program. The proposed amendments also expand private-sector grants to include implementation projects. Therefore, the requirements of Minn. Stat. § 14.115 do not apply to these proposed amendments because this program does not place any direct regulatory burden on small businesses.

VI. CONCLUSION

Based on the foregoing, the proposed amendments to Minn. Rules pts. 9210.0700 to 9210.0770 are both needed and reasonable.

Dated:

12/4/92

A handwritten signature in cursive script, appearing to read "Diane Wesman", written over a horizontal line.

DIANE WESMAN
Acting Director

12/21/92

#5

MN. OFFICE OF WASTE MANAGEMENT
1350 Energy Lane, St. Paul, MN 55108

State of Minnesota
OFFICE MEMORANDUM

DATE: December 17, 1992

TO: Ms. Maryanne Hruby
Legislative Commission to Review Administrative Rules
55 State Office Building
St. Paul, MN 55155

FROM: Jim Chiles *JK ←*
Policy Analyst
649-5770

SUBJECT: SONAR for proposed amendments to rules relating to Solid Waste Reduction financial assistance

As required by statute, I am enclosing a copy of the SONAR for our proposed amendments, as well as a copy of the proposed amendments as certified for publication by the Revisor's Office.

Publication of the notice and proposed amendments is scheduled for the December 21, 1992, State Register. Notice was mailed today to interested parties in OWM rulemaking, as well as others who are interested in solid waste reduction efforts.

Please contact me if you have any questions or comments about our SONAR or proposed amendments.

The Legislative Commission to
Review Administrative Rules

DEC 21 1992



