

DEC 13 1995

STATE OF MINNESOTA  
OFFICE OF ENVIRONMENTAL ASSISTANCE

In the Matter of the Proposed Amendment of Rules Governing Pollution Prevention Grants, Minn. Rules, Parts 9205.0400 to 9205.0480, and Solid Waste Source Reduction Grants and Loans, Minn. Rules, Parts 9210.0700 to 9210.0770.

**STATEMENT OF NEED AND REASONABLENESS**

**I. INTRODUCTION**

This Statement of Need and Reasonableness discusses amendments to rules governing the Minnesota Office of Environmental Assistance's (OEA) pollution prevention grant program and the solid waste source reduction grant program. The existing pollution prevention grant rules establish the standards and procedures through which the OEA awards pollution prevention grants under Minn. Stat. §§ 115A.154 (1994) and 115D.05 (1994). The OEA is proposing to amend Minn. Rules pts. 9205.0400 to 9205.0480 to incorporate the grant assistance component of the solid waste source reduction grant and loan program created under Minn. Stat. §§ 115A.53 and 115A.55 and regulated at Minn. Rules pts 9210.0700 to 9210.0770. The adoption of the proposed amendments is authorized by Minn. Laws 1995, ch. 247, Art. 1, sec. 10 (codified at Minn. Stat. § 115A.55, subd. 3 (d)) and by Minn. Laws 1995, Art. 1, sec. 31 (codified at Minn. Stat. § 115D.05, subd. 3 (b)), which direct the OEA to adopt rules for administering solid waste reduction grant and loan programs and pollution prevention grant programs and allow the director to administer the two programs conjointly. The adoption of the proposed amendments is also authorized by Minn. Laws 1995, ch. 247, Art. 1, sec. 3 (codified at Minn. Stat. § 115A.0715) which permits the OEA to consolidate several of its grant and loan programs. The consolidated program is to be administered by the OEA.

The OEA has prepared this Statement of Need and Reasonableness (SONAR) to explain its proposed rule amendments and satisfy the rulemaking requirements of the Administrative Procedure Act, Minn. Stat. ch. 14 (1994). Part II of this SONAR describes the statutory authority for the OEA to undertake this rulemaking. Part III describes the need for and reasonableness of the OEA's proposed amendments to Minn. Rules pts. 9205.0400 to 9205.0480 and to Minn. Rules pts. 9210.0700 to 9210.0770. Part IV discuss additional considerations as required by Minn. Laws 1995, ch. 233, art. 2, secs. 13 and 21 (codified at Minn. Stat. §§ 14.131 and 14.23).

**II. STATEMENT OF OEA'S STATUTORY AUTHORITY**

The OEA's general rulemaking authority is set forth in Minn. Stat. § 115A.06, subd. 2; Minn. Laws 1995, ch. 247, Art. 1, sec. 31, subd. 3(b) (codified at Minn. Stat. § 115D.05, subd. 3(b)); Minn. Laws 1995, ch. 247, Art. 1, sec. 10, subd. 3(d) (codified at Minn. Stat. § 115A.55, subd. 3(d)); and Minn. Laws 1995, ch. 247, Art. 1, sec. 3 (codified at Minn. Stat. § 115A.0715).

Minn. Stat. § 115A.06, subd. 2, establishes general authority for the director of the OEA to adopt and amend rules governing the OEA's programs.<sup>1</sup> Minn. Laws 1995, ch. 247, Art. 1, sec. 31, subd. 3(b) (codified at Minn. Stat. § 115D.05, subd. 3(b)) establishes specific authority for the director to adopt and amend rules to administer its pollution prevention grant program and to administer the program in conjunction with the solid waste source reduction grant program.<sup>2</sup> Minn. Laws 1995, ch. 247, Art. 1, sec. 10, subd. 3(d) (codified at Minn. Stat. § 115A.55, subd. 3(d)) establishes specific authority for the director to adopt and amend rules to administer its solid waste source reduction grant program and to administer the program in conjunction with the pollution prevention grant program.<sup>3</sup> Minn. Laws 1995, ch. 247, Art. 1, sec. 3 (codified at Minn. Stat. § 115A.0715) establishes specific authority for the OEA director to consolidate and jointly administer several of the OEA's grant programs<sup>4</sup>.

### III. STATEMENT OF NEED AND REASONABLENESS

Minn. Stat. ch. 14 (1994) requires an agency proposing to adopt, amend, suspend or repeal a rule to establish the need for and reasonableness of the agency's proposed action. In general terms, this means that the OEA must set forth the reasons for its proposal, and the reasons must not be arbitrary and capricious. To the extent that need and reasonableness may be described as separate tests, need means that a problem exists that requires administrative attention and reasonableness means that the solution proposed by the agency is appropriate.

#### A. Statement of Need

Pollution prevention is defined at Minn. Stat. § 115D.03, subd. 8 as the elimination or reduction of toxic pollutants, hazardous wastes and hazardous substances at the source of generation. The pollution prevention grant program described in Minn. Stat. § 115D.05 provides grants for pollution prevention projects. The OEA administers another grant program authorized by Minn. Stat. § 115A.55 that provides incentives to solid waste generators such as businesses, public entities, and other organizations and individuals to reduce or eliminate solid waste at the source of generation. Because of similarities between these two grant programs, the 1995 Legislature amended Minn. Stat. § 115D.05 and Minn. Stat. § 115A.55 to allow the OEA to jointly administer the two programs. Amendments to existing rules are needed in order to administer these programs in accordance with the revisions to Minn. Laws 1995, ch.

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<sup>1</sup> Minn. Stat. § 115A.06, subd. 2 states: "Unless otherwise provided, the director shall promulgate rules in accordance with chapter 14 to govern its activities and implement this chapter."

<sup>2</sup> Minn. Stat. § 115D.05, subd. 3(b) states: "The director shall adopt rules to administer the grant program and may administer the grant program in conjunction with the grant program established under section 115A.55, subdivision 3."

<sup>3</sup> Minn. Stat. § 115A.55, subd. 3(d) states: "The director shall adopt rules for the administration of this program and may administer the program in conjunction with the grant program established under section 115D.05."

<sup>4</sup> Minn. Stat. § 115A.0715 states: "The director may consolidate and jointly administer the following grant and loan programs: public education under section 115A.072, technical and research assistance under section 115A.152, waste reduction under section 115A.154, waste processing and collection facilities and services under section 115A.156, market development under section 115A.48, waste separation projects under section 115A.53, solid waste reduction under section 115A.55, used oil under section 115A.9162, litter under section 115A.991, pollution prevention assistance under section 115D.04, and pollution prevention under section 115D.05."

247, Art. 1, sec. 31 (codified at Minn. Stat. § 115D.05) ; Minn. Laws 1995, ch. 247, Art. 1, sec. 10 (codified at Minn. Stat. § 115A.55); and with Minn. Laws 1995, ch. 247, Art. I, sec. 3 (codified at Minn. Stat. § 115A.0715) which enables the director of the OEA to consolidate certain grant and loan programs. Amendments are also needed to clarify both the types of projects and the costs that qualify for state financial assistance.

Consolidating the pollution prevention and solid waste source reduction grant programs into one set of rules will reduce grant program redundancy and streamline the grant application process for businesses, public entities and other potential applicants. A combined pollution prevention/solid waste source reduction program will also provide potential applicants with more flexible options for project eligibility.

### **B. Statement of Reasonableness**

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

#### **Reasonableness of the Rules as a Whole**

The proposed rule amendments are reasonable because they eliminate the redundancy that currently exists between the pollution prevention and solid waste source reduction grant programs. The amendments offer broader evaluation and eligibility criteria and simplify the grant application process for businesses, public entities and other potential applicants. In addition, the proposed rule amendments are reasonable because the combined programs allow more project options than are provided by the separate pollution prevention and solid waste source reduction grant programs. Potential applicants will have an incentive to address pollution prevention and solid waste source reduction in an integrated fashion, as opposed to a fragmented or piecemeal approach.

In its 1994 session, the Minnesota Legislature changed the name of the Minnesota Office of Waste Management to the Minnesota Office of Environmental Assistance. Throughout the proposed rule, the term Office of Waste Management is replaced with Office of Environmental Assistance. The change is reasonable because it conforms the rule to its enabling legislation.

#### **Reasonableness of Proposed Amendments to Minn. Rules pts. 9205.0400 to 9205.0480**

##### **Part 9205.0400 Scope and Authority**

An amendment is proposed to describe the broader scope of the amended rule and add a reference to Minn. Stat. § 115A.55 to the part. This change is reasonable in that it accurately reflects the new scope of the grant programs to be administered under the amended rules. This amendment is also reasonable in order to cite the appropriate statutes authorizing the pollution prevention and solid waste source reduction grant programs and to ensure that the rules are consistent with Minn. Laws 1995, ch. 247, Art. I, sec. 3 (codified at Minn. Stat. § 115A.0715).

#### Part 9205.0410 Definitions

This part provides definitions necessary for the rule. Several of the definitions in this part have been amended or added to reflect either original or amended statutory language.

The proposed reference in Subpart 1 to Minn. Stat. § 115A.03, is reasonable in that it reflects the conjoining of the solid waste source reduction financial assistance program with the revised pollution prevention grant assistance program as authorized by Minn. Laws 1995, ch. 247, art. I, sec. 31 (codified at Minn. Stat. §115D.05, subd. 3(b)).

Subpart 11 proposes to replace the existing definition of “Person” with the statutory definition in Minn. Stat. § 115A.03, subd. 23. The latter definition is a more inclusive term and, therefore, represents more fully the broadened focus and eligibility criteria of the combined grant program.

Subpart 16 proposes to expand the term “pollution prevention” or “prevent pollution” to include “source reduction,” and to broaden the definition of the terms to include “solid wastes”. These changes are reasonable because they reflect the combined grant programs that will address the reduced generation of solid waste as well as pollution prevention. The proposed change is consistent with the statutory definition of “source reduction” as cited in Minn. Stat. § 115A.03, Subpart 36b.<sup>5</sup> The last sentence of Subpart 16, which lists examples of pollution prevention, is proposed for removal . This change is reasonable because it prevents a narrow interpretation of pollution prevention strategies and technologies.

Subpart 17a. proposes to add the term “solid waste” as defined by statute in Minn. Stat. § 116.06, subd. 22. This addition is reasonable because projects that address the generation of solid waste will be eligible for funding under the combined pollution prevention grant program.

#### Part 9205.0420 Eligibility Criteria

In Subpart 1, the first amendment proposes to add a reference to solid waste. This amendment is reasonable because it reflects the consolidation of the grant program with the solid waste reduction program as explained in Part III.A. of this SONAR. “Business, institutional, or governmental setting” is proposed to be removed to enable more diverse types of applicants to meet eligibility criteria. The replacement of “associations” with “individuals or organizations in Minnesota...” is reasonable because the latter reflects the new statutory language in Minn. Laws 1995, ch. 247, Art. I, sec. 29 (codified in Minn. Stat. § 115D.03, subd. 5).<sup>6</sup> The

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<sup>5</sup> Minn. Stat. § 115A.03, subpart 36b. states: “Waste reduction” or “source reduction” means an activity that prevents generation of waste or the inclusion of toxic materials in waste, including: (1) reusing a product in its original form; (2) increasing the life span of a product; (3) reducing material or the toxicity of material used in production or packaging; or (4) changing procurement, consumption, or waste generation habits to result in smaller quantities or lower toxicity of waste generated.”

<sup>6</sup> Minn. Stat. §115D.03, subd. 5. states: “Eligible recipients” means persons who use, generate, or release toxic pollutants, hazardous substances, or hazardous wastes, or individuals or organizations that provide assistance to these persons.”

proposed addition of “other interested persons in Minnesota” is reasonable because it enables the program to be flexible and responsive to new audiences and their associated needs.

Subpart 2 proposes to replace existing eligible project language with language based on Minn. Stat. § 115D.05, subd. 1 that reflects the more comprehensive nature of the new grant program. The new language allows projects that primarily address pollution prevention and waste reduction but may also include environmentally sound alternatives for managing wastes that cannot be reduced or eliminated at the source of generation. This change is reasonable because it encourages applicants to manage their wastes in an environmentally responsible manner and in a manner that is consistent with state policy.

The proposed deletion of language in Subpart 3 referring to studies and analyses is reasonable because the parallel language in Subpart 2 has been deleted. The proposed replacement in Subpart 3 of the two-thirds of total costs language with three-quarters of total costs language is reasonable because the new language reflects statutory changes<sup>7</sup>.

Language restricting funding for capital improvements and equipment was removed from statute during the 1995 Legislative session (see Minn. Laws 1995, ch. 247, Art. 1, sec. 31, codified at Minn. Stat. § 115D.05, subd 2.<sup>8</sup>). Nonetheless, concerns were raised regarding unlimited funding of capital costs. Finally, language permitting the director to limit costs during specific grant solicitations is proposed to address the concerns about the removal of statutory limits on funding for capital costs and equipment.

#### Part 9205.0425 Request for Proposal

A new part is added to specifically address the Request for Proposal process. The term Request for Proposal (RFP) is proposed to replace Notification by director. “RFP” is also used throughout the remainder of the rule. The use of “RFP” is reasonable because the RFP is a familiar tool for the solicitation of proposals and is the tool most often used by the OEA. Because the amendments to Minn. Rules ch. 9205 will result in an expanded grant program, the RFP is also reasonable because it provides the flexibility to specify within it the details of each grant round, thus serving as a targeting tool for particular grant cycles.

The next to last sentence of this part includes a proposed amendment to allow the director to prioritize the types of projects for which grants may be awarded in a given round rather than solely limiting the types of projects. This addition is reasonable because it means that rather than eliminate a type of project, the director may consider it at a lower priority. The same sentence is also amended to further emphasize and clarify the fact that eligible costs may be limited as provided in Part 9205.0420, subp. 3.

The last sentence of this subpart has been added to make clear that additional information that is specific to potential grant targets may be required by each RFP. This change is reasonable because it makes it possible to broaden the overall scope of the pollution prevention grant

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<sup>7</sup> Minn. Stat. §115D.05, Subd. 2 states: “(a) Eligible recipients may receive grants under this section. (b) Grants may be awarded up to a maximum of ~~two-thirds~~ three-quarters of the total cost of the project. ~~Grant money awarded under this section may not be spent for capital improvements or equipment.”~~”

<sup>8</sup> Ibid

process while targeting specific grant rounds to narrower areas of need. Grant program targets will vary depending on the needs of the state, technological or other developments, and similar factors.

#### Part 9205.0430 Grant Application

Subparts 2 and 3 of this part have been renumbered as Subparts 1 and 2 because old subp. 1 is now a separate part.

The discussion in Subpart 1 of the treatment of nonpublic data has been renumbered as Subpart 2. This change is reasonable because it makes it easier for potential applicants to locate the information within the rule.

Item 1B. is amended to require applicants to provide a brief project overview that illustrates a project's intent or objectives. This proposed change is reasonable because it compels the applicant to succinctly address the need for the project, as separate from how the project will be implemented.

Item 1C. proposes to replace language addressing the specific implementation aspects of the project:

Subitem 1C.(1) requires applicants to provide a workplan that includes project tasks, schedule for implementation, and persons responsible for each task. The original language in this part is repealed. This proposed change is reasonable because: (a) the project description is now required under Subpart 1B; and, (b) the new language allows the director to more fully determine the applicant's ability to implement the project in a timely manner. Requiring applicants to identify project participants for each task will also increase the applicant's accountability.

Subitem 1C.(2) proposes to remove existing language and replace it with language that requires applicants to identify a proposed project's location. The removal of the language pertaining to project technology is reasonable because the combined grant program encompasses more activities or areas of focus than the previous pollution prevention grant program. Requiring applicants to identify the location of proposed projects will assist the director in determining how projects are distributed throughout the state and will enable the director to determine if such projects are within the geographic authority of the OEA.

Subitem 1C.(3) requires applicants to identify the type and source of pollution to be eliminated by proposed projects. This proposed requirement is reasonable because the focus of the grant program is pollution prevention. The director needs to determine if the material addressed by the applicant's proposal is eligible under the definition of pollution prevention.

Subitem 1C.(4) proposes to replace language pertaining to specific methods or technologies with language that is more general in nature. This change is reasonable because of the expanded focus of the grant program.

Subitems (5) and (6) remove language that is limited in scope to technical waste-generation projects and replace it with new language. These proposed changes are reasonable because the passages are only applicable to technology-based projects; they are not pertinent to projects that are less easily quantifiable. The new language is reasonable because: (a) it emphasizes the OEA's interest in soliciting projects that can serve as models for other individuals, companies or organizations throughout Minnesota.; and, (b) it is applicable to a broader range of projects.

The amendment to Item 1D is added to clarify a requirement that may not apply to all projects. This proposed change is reasonable because of the broadened focus of the grant program.

The original language in Item 1D. is repealed. This proposed change is reasonable because this requirement is no longer relevant under the revised grant program.

The original language in Item 1E. is repealed. This proposed change is reasonable because it is no longer required by Minnesota Statutes §115D.05.

The original language in Item 1F. is repealed. This proposed change is reasonable because the information is required under the proposed amendment to item C(6) in this subpart.

Item G. is relettered as Item 1E. This proposed change is reasonable so that the subitems are lettered sequentially.

Proposed language in Item 1F. is reasonable because it enables the director to tailor specific grant rounds to address or reflect changes in technology, the needs or priorities of the state, and other factors.

New subpart 2 addresses non-public data. The reasonableness of renumbering the subpart was discussed above. The new language is reasonable because it clarifies that data meeting the statutory definition will be classified as private or non-public. The old language required the OEA to withhold data from the public solely on the request of the grant applicant.

Subparts 3 and 4, pertaining to the eligibility and completeness review and its corresponding notice, have been repealed. The deleted items involved a completeness review of the grant applications. This proposed deletion is reasonable because the review is not a statutory requirement and its deletion streamlines the overall application review process.

Subpart 5 has been amended to more closely resemble the new statutory language in Minn. Laws 1995, ch. 247, Art. 1. sec. 31. (codified at Minn. Stat. § 115D.05, subd. 3).<sup>9</sup> The original

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<sup>9</sup> Minn. Stat. §115D.05, subd. 3 states: "(a) In determining whether to award a grant, the director shall consider at least the following: (1) the potential of the project to prevent pollution; (2) the likelihood that the project will ~~develop techniques or processes that will~~ minimize the transfer of pollution from one environmental medium to another; (3) the extent to which information to be developed through the project will be applicable and disseminated to other persons in the state; and the extent to which the project will conform to the pollution prevention policy established in section 115D.02. (b) The director shall adopt rules to administer the grant program and may administer the grant program in conjunction with the grant program established under section 115A.55, subdivision 3."

language in items A, B, D, and F is repealed because the language was limited to technology-based projects and therefore, is no longer applicable under the revised grant program. The proposed amendments in these items and in items I., K., and L. are reasonable because they are consistent with the application information required in Part 9205.0430, are consistent with the revised statutory language in Minn. Stat. § 115D.05, subd. 3, and are general enough in context to apply to a diversity of projects.

Items C and E are proposed for revision for grammatical reasons. Items G and H have been amended to remove language that is now addressed in Item J.

The proposed language at the end of Subpart 5 enables the director to solicit additional information from applicants regarding proposals. This addition is reasonable because it gives the director an opportunity to gather pertinent information about projects or proposals where the information already submitted is not clear. Clarifying information will facilitate the evaluation process.

#### Part 9205.0432 Federal Grant Matches

This part sets the criteria that the director will follow in awarding grants designed to match federal pollution prevention grants. This proposed amendment is reasonable because it gives the director the ability to leverage additional resources to accomplish pollution prevention, thus maximizing the impact of state funds. Requiring that projects meet the criteria established in Part 9205.0420, subparts 1 and 2, and in Part 9205.0430, subpart 5, ensures that proposed projects are consistent with Minnesota Statutes, sections 115A.55, 115A.154 and 115D.05. Because grants awarded under this part match grants already announced by the federal government, there is no need for a RFP. If the OEA were to issue an RFP, it would have to duplicate the federal notice. Therefore, it is reasonable not to require a RFP for federal match grants.

#### Part 9205.0435 Limitations

In Subpart 1, language requiring applicants to document the impacts of reduced financial assistance has been replaced with language that allows the director to discuss such impacts with recipients before finalizing awards. This proposed change is reasonable because it gives the director the flexibility to use alternative, potentially more time-efficient methods, when available, for negotiating the financial terms of grant awards while still retaining the applicant's involvement in the process.

#### Part 9205.0445 Grant Agreement

Part 9205.0445(C) has been amended to include language requiring grant recipients to submit a one-page project summary at the end of their projects. This proposed amendment is reasonable because it ensures that the information and results developed through projects will be summarized in a form that can be easily distributed and shared with other persons or organizations in the state as required by Minn. Stat. § 115D.05. Requiring that the summaries be in a format determined by the director will ensure that there is consistency in the types of information provided by grant recipients.



This section also requires applicants to submit oral updates to the director on a periodic basis. This proposed revision is reasonable because it enables the director to closely track a project's progress while also providing grant recipients with timely support and feedback.

#### **Reasonableness of Proposed Amendments to Minn. Rules Pts. 9210.0700 to 9210.0770**

The proposed amendments to Minn. Rules pts. 9210.0700 to 9210.0770 repeal all of those elements of the rule that pertain to the solid waste source reduction grant program. These changes are reasonable because the grant program components of the rule have been incorporated into Minn. Rules pts. 9205.0400 to 9205.0480. Repealing applicable sections of the solid waste source reduction financial assistance program eliminates redundancies between it and the pollution prevention grant program.

#### **IV. ADDITIONAL CONSIDERATIONS**

Minn. Laws 1995, ch. 233, Art. 2, sec. 13 and 21 (codified at Minn. Stat. § 14.131 and 14.23) requires state agencies proposing rule amendments to address a number of other considerations in the SONAR. These include: 1) a description of the classes of persons who will be affected by the rule; 2) the cost to state agencies to implement and enforce the rule; 3) a determination of whether there are less costly or less intrusive methods for achieving the purpose of the rule; 4) a description of alternative methods that were seriously considered and the reasons why the alternatives were rejected; 5) the probable costs of complying with the rule; and, 6) the differences between the rule and existing federal regulations and an analysis of the need for and reasonableness of each difference.

The classes of persons who will be affected by the rule include all individuals, public or private corporations (excluding the OEA and the Minnesota Pollution Control Agency), nonprofit organizations, and other entities described in Minn. Stat. § 116.06, subd. 17, that would potentially apply for a solid waste source reduction grant or a pollution prevention grant from the OEA. It is anticipated that the consolidated grant program will positively impact these persons by streamlining the grant process, simplifying the eligibility criteria, and broadening the types of projects that qualify for assistance.

The cost to the OEA to implement the rule is negligible. As well, since the rule does not apply to activities that are compliance-oriented, there is no anticipated cost to enforce it and no new costs to the applicant to comply.

The proposed amendments are the less-costly or less-intrusive methods of achieving the purpose of the rule. The alternative is to retain the separate grant programs, which would place a greater burden, both financially and administratively, on potential applicants. The alternative, therefore, was rejected as being overly burdensome to potential applicants and less likely to result in significant waste and pollution prevention in Minnesota.

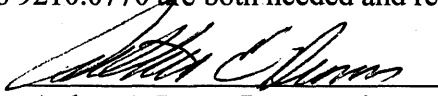
Since the rules apply to a voluntary financial assistance program and not to enforcement activities, there are no applicable federal regulations that need to be considered. Although the federal government may have grant programs that apply to waste and pollution prevention

activities, potential applicants are not prohibited from applying for federal and state funds if available.

**V. CONCLUSION**

Based on the foregoing, the proposed amendments to Minn. Rules pts. 9205.0400 to 9205.0480 and Minn. Rules pts. 9210.0700 to 9210.0770 are both needed and reasonable.

Dated: 12/11/95

  
Arthur E. Dunn, Deputy Director