

CHAPTER 9205
OFFICE OF WASTE MANAGEMENT
HAZARDOUS; INDUSTRIAL WASTE MANAGEMENT

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NOTE: Minnesota Statutes, section 115A.055, and Laws 1989, chapter 335, article 1, section 269, changed the Waste Management Board to the Office of Waste Management. Some of the office's rules have not been amended to reflect the change.

HAZARDOUS WASTE PROCESSING FACILITY GRANTS AND LOANS

9205.0100 SCOPE AND AUTHORITY.

Parts 9205.0100 to 9205.0110 govern the administration of development grants for waste processing and collection facilities and services as provided under Minnesota Statutes, section 115A.156, and certification of hazardous waste processing facility loan applications received by the agricultural and economic development board and forwarded to the waste management board for certification under Minnesota Statutes, section 115A.162.

Statutory Authority: *MS s 115A.06 subd 2; 115A.156; 115A.162*

History: *10 SR 540; 12 SR 1564*

9205.0110 DEFINITIONS.

Subpart 1. **Scope.** For the purposes of parts 9205.0100 and 9205.0110, the following terms have the meanings given them unless the context requires otherwise.

Subp. 2. **Lending authority.** "Lending authority" means the Minnesota Agricultural and Economic Development Board created in Minnesota Statutes, section 41A.02.

Subp. 3. **Board.** "Board" means the Minnesota Waste Management Board established in Minnesota Statutes, section 115A.04.

Subp. 4. **Capital costs.** "Capital costs" means expenditures that meet the requirements of federal industrial development bond law, including:

A. acquisition costs of buildings, equipment, machinery, or any combination of them;

B. site preparation;

C. construction costs;

D. engineering costs;

E. bond issuance costs;

F. underwriting or placement fees;

G. trustee's fees;

H. fee of guarantor, insurer, or financial institution, other than the lending authority, who provides letters of credit, surety bonds, or equivalent security;

I. lending authority fees, including application and guaranty fees of the lending authority and administrative costs and expenses;

J. certain contingency costs;

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K. interest costs during construction;

L. legal fees, including those of the authority's bond counsel; and

M. debt service reserve fund.

Subp. 5. **Chair.** "Chair" means the chair of the Waste Management Board.

Subp. 6. **Collection.** "Collection" has the meaning given it in Minnesota Statutes, section 115A.03, subdivision 5.

Subp. 7. **Commercial.** "Commercial" means that the facility or service referred to is established and permitted to sell waste collection or processing services to generators other than the owner and operator of the facility or services.

Subp. 8. **Commissioner.** "Commissioner" means the commissioner of trade and economic development.

Subp. 9. **Generator.** "Generator" means a person who produces an industrial or hazardous waste.

Subp. 10. **Hazardous waste.** "Hazardous waste" means those wastes identified and listed in parts 7045.0100 to 7045.0141.

Subp. 11. **Industrial waste.** "Industrial waste" has the meaning given it in Minnesota Statutes, section 115A.03, subdivision 13a.

Subp. 12. **Loan.** "Loan" means a hazardous waste processing facility loan as defined in Minnesota Statutes 1986, section 116M.03, subdivision 15.

Subp. 13. **Person.** "Person" means a natural person or a corporation, association, operation, firm, partnership, trust, or other form of organization.

Subp. 14. **Processing.** "Processing" has the meaning given it in Minnesota Statutes, section 115A.03, subdivision 25.

Subp. 15. **Proposal.** "Proposal" means the work that is intended to be conducted with the grant funds.

Subp. 16. **Service.** "Service" means work done or duty performed for others.

Statutory Authority: *MS s 115A.06 subd 2; 115A.156; 115A.162*

History: *10 SR 540; 12 SR 1564*

9205.0200 ELIGIBILITY CRITERIA.

Subpart 1. **Eligible applicants.** Unless eligibility is limited under part 9205.0220, subpart 3, the following are eligible to apply for a development grant:

A. a person who proposes to develop and operate specific commercial collection or processing facilities or services to serve generators of industrial or hazardous waste in the state;

B. an association of two or more Minnesota generators who propose to develop and operate specific commercial collection and processing facilities or services to serve generators of industrial or hazardous waste in the state.

Subp. 2. **Eligible proposals.** Proposals for the following types of work which are preliminary to the development and operation of specific types of commercial facilities and services for collecting or processing industrial or hazardous waste are eligible:

A. market assessment, including generator surveys;

B. conceptual design and preliminary engineering;

C. financial and business planning necessary to address sources of funding, financial security, liability, pricing structure, and related matters required for the development and proper operation of a facility or service;

D. environmental impact and site analysis, preparation of permit applications, and environmental and permit reviews;

E. analysis of methods to overcome identified technical, institutional, legal, regulatory, market, or other problems in developing or operating a facility or service; and

F. analysis of other factors affecting development, operation, and use of the proposed facility or service.

Subp. 3. **Eligible costs.** Eligible costs are limited to the costs of conducting studies, analyses, or other work consistent with subpart 2.

Subp. 4. **Ineligible costs.** Grant money awarded through this program may not be spent for capital improvements or equipment.

Subp. 5. **Matching funds.** To be eligible to receive a grant under this program a recipient must agree to provide matching funds as specified in part 9205.0250.

Subp. 6. **Multiple proposals for a facility or service.** Proposals for more than one grant for the same facility or service are eligible only if the proposals concern different aspects of the development or operation of the facility or service.

Statutory Authority: *MS s 115A.06 subd 2; 115A.156; 115A.162*

History: *10 SR 540; 12 SR 1564*

9205.0210 GRANT APPLICATION.

An applicant must submit an application in the form specified by the chair. An application must include the following information:

A. A detailed description of the proposal, including primary tasks, the schedule for completion of the work, and a statement of the amount which the applicant expects to contribute to the cost of the proposal.

B. A description of the applicant's financial, managerial, and technical ability to carry out the work described in the proposal, including the applicant's experience in carrying out similar work, and any work for which the applicant expects to use consultant assistance.

C. A description of the applicant's financial, managerial, and technical ability to develop and operate the proposed facility or service.

D. A statement whether the applicant is planning to apply for future grants under this program, or has applied or is planning to apply for an industrial or hazardous waste processing facility loan administered by the Minnesota Agricultural and Economic Development Board.

E. Information which addresses the evaluation factors in Minnesota Statutes, section 115A.156, subdivision 3, and those factors listed in part 9205.0240 in sufficient detail to enable the board to adequately evaluate the proposal.

Statutory Authority: *MS s 115A.06 subd 2; 115A.156; 115A.162*

History: *10 SR 540; 12 SR 1564*

9205.0220 APPLICATION PROCESS.

Subpart 1. **Deadline.** The board will solicit applications by notification in the State Register or by written notice to eligible applicants if eligibility is limited pursuant to subpart 3. The board may set reasonable deadlines for submission of applications.

Subp. 2. **Limited solicitation of applications.** The board may limit its solicitation of applications to particular types of proposals, facilities, or services based upon:

A. the board's evaluation of the results of previous studies of industrial or hazardous waste processing and reduction proposals and opportunities in Minnesota; and

B. any board determination of the types of processing facilities or services recommended for development in the state.

Subp. 3. **Limitations on eligibility of applicants.** The board may limit eligibility for a grant to persons who have responded to a request for proposal issued by the board or chair under Minnesota Statutes, section 115A.158 or 115A.192, for development of a facility or service for collecting or processing industrial or hazardous waste, or who have been selected by the board to develop such a facility under Minnesota Statutes, section 115A.192.

Statutory Authority: *MS s 115A.06 subd 2; 115A.156; 115A.162*

History: *10 SR 540; 12 SR 1564*

9205.0230 INITIAL APPLICATION REVIEW.

Subpart 1. **Application review.** The chair or a designee shall review all applications.

Subp. 2. **Eligibility and documentation review.** The chair or a designee shall review each application to determine the eligibility of the applicant, the eligibility of the costs specified in the application, the eligibility of the proposal specified in the application, and the ade-

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quacy of the supporting documentation. Documentation is considered adequate if it enables the board to determine whether:

- A. the proposal is feasible at the costs indicated in the application;
- B. the applicant has the financial, managerial, and technical ability and experience to carry out the proposal;
- C. the applicant has the financial, managerial, and technical ability to develop and operate the proposed facility or service; and
- D. the proposal adequately addresses the evaluation factors listed in part 9205.0240.

Subp. 3. Notice of determination. Within 14 days after receiving the application, the chair shall notify each applicant of the chair's determinations. If the chair determines that the applicant, project, and costs are eligible and that the supporting documentation is adequate, the application is considered final and the applicant shall be so notified. The application must then be referred to the board to be evaluated as provided in part 9205.0240. If the chair determines that any costs or any part of the proposal is not eligible or that the documentation in the application is inadequate, the application must be returned with a statement of the reasons for rejecting the application. The applicant has 14 days after receipt of the rejection to correct the inadequacies. If the inadequacies are corrected within the time allowed, the application is considered final and the applicant shall be so notified. The application must then be referred to the board to be evaluated as provided in part 9205.0240.

Statutory Authority: *MS s 115A.06 subd 2; 115A.156*

History: *10 SR 540*

9205.0240 EVALUATION OF PROPOSALS.

Subpart 1. Evaluation schedule. Within 60 days after the application is considered final, the board shall evaluate the proposal and set a date for action.

Subp. 2. Evaluation factors. In evaluating each proposal the board shall consider the following factors:

- A. The factors listed in Minnesota Statutes, section 115A.156, subdivision 3.
- B. The importance of the proposal to the eventual development and operation of the proposed facility or service.
- C. The likelihood that the proposed facility or service will be developed.
- D. The results of any previous proposal for which the applicant received a grant under this program.
- E. The consistency of the proposal with any board determination of the types of processing facilities or services recommended for development in the state.
- F. Whether an applicant is an association of two or more Minnesota generators. In considering this factor, the board may give preference to an association of two or more Minnesota generators if the board determines that the association significantly contributes to cooperation among generators in solving hazardous waste management problems.

Statutory Authority: *MS s 115A.06 subd 2; 115A.156*

History: *10 SR 540*

9205.0250 AWARD OF GRANTS.

Subpart 1. General procedure. The board shall award grants for those proposals which in the board's judgment will be the most beneficial in improving industrial or hazardous waste management in the state, based upon its evaluation of the factors identified in part 9205.0240.

Subp. 2. Amount of grants. The board shall determine the amount of a grant based on a review of the factors identified in this part and based upon the availability of funds. No grant may exceed \$50,000.

Subp. 3. Matching funds required. For hazardous waste, a recipient other than an association of generators in the state shall agree to provide at least 50 percent of the cost of the proposal. An association of two or more generators in the state shall agree to provide at least 20 percent of the cost of the proposal.

For industrial waste, a grant must be matched by money or in kind services provided by the grantee covering at least 50 percent of the project cost.

Subp. 4. Multiple grants for same facility or service. The board may award more than one grant for the development of the same facility or service only if the board finds that results of previous proposals for that facility or service justify additional work on other aspects of its development or operation.

Statutory Authority: *MS s 115A.06 subd 2; 115A.156; 115A.162*

History: *10 SR 540; 12 SR 1564*

9205.0260 GRANT AGREEMENT.

Subpart 1. Grant contents. The board and a grant recipient shall enter into a grant agreement. The grant agreement must:

A. Establish the term of the grant. Unless otherwise determined by the board, all grants awarded under this part will have a maximum term of one year.

B. Provide that the recipient is authorized to enter into contracts to complete the work specified in the agreement.

C. Identify the product of the proposal and provide that the results of all studies, analyses, or other work performed under this agreement are made available to the board. The grant agreement may include provisions for classifying certain information provided by the grantee as nonpublic pursuant to the board's authority under Minnesota Statutes, section 115A.06, subdivision 13, and the Minnesota Data Practices Act, Minnesota Statutes, chapter 13.

Subp. 2. Cancellation of grants. The grant is subject to cancellation by the board if the board determines that the proposal is no longer feasible or if the proposed work is not completed in accordance with the terms and conditions of the grant agreement, including time schedules, unless the chair determines that variances from the respective agreements are in order.

Subp. 3. Termination. The chair may suspend the work under an agreement upon written notice whenever it appears that there are grounds for cancellation of the grant under subpart 2. The chair may negotiate and enter into amendments to the agreement to avoid cancellation if the original purposes of the grant can be accomplished under an amended agreement. Unless amendments to the agreement have been executed, the chair shall recommend cancellation of the grant under subpart 2 within 60 days after suspending any work under the agreement. The chair shall promptly notify the board after any suspension of work or grant agreement executed under this subpart.

Subp. 4. Disbursement. The chair shall disburse grants in accordance with the payment schedule set out in the grant agreement. At the discretion of the board, this may include a phased disbursement or final hold-back of a percentage of funds.

Subp. 5. Return of unspent funds. Upon completion of the work under the grant or cancellation of the grant, the grant recipient shall return the state's share of the unspent funds. The procedure for determining the amount of funds to be returned shall be specified in the grant agreement.

Statutory Authority: *MS s 115A.06 subd 2; 115A.156; 115A.162*

History: *10 SR 540; 12 SR 1564*

9205.0270 INITIAL APPLICATION REVIEW.

Subpart 1. Transmittal from commissioner. Upon receipt from the commissioner of a copy of a hazardous waste processing facility loan application, the chair or a designee shall review the application for eligibility and adequacy of documentation.

Subp. 2. Documentation review. The chair or a designee shall review each application to determine the adequacy of the supporting documentation. Documentation is considered adequate if it enables the board to make the determination required for certification and if it provides sufficient information to address the certification factors.

Subp. 3. Notification of adequacy. Within 14 days after receiving a copy of the application, the chair or designee shall notify the commissioner of the determination of adequacy.

cy of documentation. The notice shall state the additional information needed by the board to determine whether the application will be certified.

Statutory Authority: *MS s 115A.06 subd 2; 115A.162*

History: *10 SR 540*

9205.0280 EVALUATION OF LOAN APPLICATIONS.

Subpart 1. **Evaluation schedule.** The board will begin to review the application upon receipt of an application determined by the commissioner to be complete.

Subp. 2. **Certification factors.** In addition to determining whether the requirements of part 9205.0290, subpart 1, have been satisfied, the board shall consider the following factors in evaluating whether a loan application will be certified and in determining the share of capital costs that must be provided by the applicant:

A. the types and quantities of hazardous waste that will be handled by the facility or service;

B. the types and quantities of residuals produced by the facility or service and their final disposition;

C. the number of generators that are served by the facility or service;

D. the extent to which the facility will serve the needs of smaller businesses that generate hazardous waste;

E. whether an applicant has received a grant from the board to undertake feasibility studies for the proposal. In considering this factor, the board may give preference to an applicant who has received a grant from the board and successfully, completed the feasibility studies for which the grant was awarded;

F. the applicant's managerial and technical experience for developing and operating the proposed facility or service, including past operating experience with similar facilities and services;

G. the results of previous studies of hazardous waste processing and waste reduction proposals and opportunities in Minnesota, including a comparison of the applicant's market assessment with market information previously available to the board;

H. any board determination of the types of processing facilities or services recommended for development in the state;

I. the availability of funds from the lending authority.

Subp. 3. **Request for additional information.** If the board finds that additional information is required to complete its evaluation, the board may request in writing that the applicant provide the necessary information. The board shall notify the commissioner of this request. If the information is not provided within 30 days, the application will be deemed rejected and no longer considered for certification by the board. The board shall notify the commissioner if an application is rejected under this subpart.

Statutory Authority: *MS s 115A.06 subd 2; 115A.156; 115A.162*

History: *10 SR 540; 12 SR 1564*

9205.0290 CERTIFICATION.

Subpart 1. **Conditions for certification.** The board may certify a loan application only if it determines that:

A. the applicant has demonstrated that the proposed facility or service is technically feasible;

B. the applicant has made a reasonable assessment of the market for the services offered by the proposed facility or service;

C. the applicant has agreed to provide funds for the proposed facility in an amount equal to at least 25 percent of the capital cost of the facility excluding land acquisition cost;

D. the applicant has agreed to pay the cost of any land acquisition necessary to develop the facility;

E. the facility will contribute in a significant way to achievement of the policies and objectives of the board's draft hazardous waste management plan, in particular, the reduction of the need for and practice of hazardous waste disposal.

Subp. 2. **Notification to commissioner.** The chair shall notify the applicant and the commissioner in writing of the board's decision regarding certification of the loan application. The board in its notice shall state the basis for its decision including any reason for the decision which is based on a certification factor under part 9205.0280, subpart 2.

Statutory Authority: *MS s 115A.06 subd 2; 115A.162*

History: *10 SR 540*

POLLUTION PREVENTION GRANT PROGRAM

9205.0400 SCOPE AND AUTHORITY.

Parts 9205.0400 to 9205.0445 govern the administration of grants for hazardous waste reduction under Minnesota Statutes, section 115A.154 and for the prevention of pollution under Minnesota Statutes, section 115D.05.

Statutory Authority: *MS s 115A.06; 115A.154; 115D.05*

History: *9 SR 994; 17 SR 353*

9205.0410 DEFINITIONS.

Subpart 1. **Scope.** The terms defined in this part apply to parts 9205.0400 to 9205.0445. For terms not defined in this part, the definitions in Minnesota Statutes, section 115D.03, apply, unless the context requires otherwise.

Subp. 2. [Repealed, 17 SR 353]

Subp. 3. [Repealed, 17 SR 353]

Subp. 4. **Director.** "Director" means the director of the Office of Waste Management.

Subp. 5. [Repealed, 17 SR 353]

Subp. 5a. **Hazardous substance.** "Hazardous substance" has the meaning given it in Minnesota Statutes, section 115B.02, subdivision 8.

Subp. 6. **Hazardous waste.** "Hazardous waste" has the meaning given it in Minnesota Statutes, section 116.06, subdivision 11.

Subp. 7. **Industrial waste.** "Industrial waste" has the meaning given it in Minnesota Statutes, section 115A.03, subdivision 13a.

Subp. 8. [Repealed, 17 SR 353]

Subp. 9. [Repealed, 17 SR 353]

Subp. 10. [Repealed, 17 SR 353]

Subp. 10a. **Office.** "Office" means the Office of Waste Management established in Minnesota Statutes, section 115A.055.

Subp. 11. **Person.** "Person" means a natural person or a corporation, association, operation, firm, partnership, trust, or other form of organization.

Subp. 12. [Repealed, 17 SR 353]

Subp. 13. [Repealed, 17 SR 353]

Subp. 14. [Repealed, 17 SR 353]

Subp. 15. [Repealed, 17 SR 353]

Subp. 16. **Pollution prevention or prevent pollution.** "Pollution prevention" or "prevent pollution" means eliminating or reducing at the source the quantity or toxicity of toxic pollutants, hazardous substances, hazardous wastes, or industrial wastes used, generated, or released. Examples of technologies or methods to prevent pollution include process modification, inventory control measures, feedstock substitutions, various housekeeping and management practices, and improved efficiency of machinery.

Subp. 17. **Release.** "Release" has the meaning given it in Minnesota Statutes, section 115D.03, subdivision 10.

Subp. 18. **Toxic pollutant.** "Toxic pollutant" has the meaning given it in Minnesota Statutes, section 115D.03, subdivision 11.

Statutory Authority: *MS s 115A.06; 115A.154; 115D.05*

History: *9 SR 994; 10 SR 846; 12 SR 2044; 17 SR 353*

9205.0420 ELIGIBILITY CRITERIA.

Subpart 1. **Eligible applicants.** Eligible applicants are persons who use, generate, or release toxic pollutants, hazardous substances, hazardous wastes, or industrial wastes in a business, institutional, or governmental setting in Minnesota or associations that represent persons who use, generate, or release toxic pollutants, hazardous substances, hazardous wastes, or industrial wastes in a business, institutional, or governmental setting in Minnesota.

Subp. 2. **Eligible projects.** Eligible projects are:

A. projects to study or demonstrate the feasibility of applying new technologies or methods to prevent pollution by the eligible applicant; and

B. projects to study or demonstrate the feasibility of applying existing technologies or methods to prevent pollution by the eligible applicant in previously untested applications. Decreases in quantity or toxicity are not reductions where the decrease is solely the result of a decrease in the output of the facility.

Projects currently under development by the applicant and new projects are eligible; however, grant funds shall only be awarded for costs incurred after the effective date of the grant agreement.

Subp. 3. **Eligible costs.** Eligible costs are limited to the costs of conducting studies and analyses consistent with subpart 2. Eligible costs are limited to a maximum of two-thirds of the total cost of the project. Grant money awarded through this program may not be spent for capital improvements or the purchase of equipment.

Subp. 4. [Repealed, 17 SR 353]

Statutory Authority: *MS s 115A.06; 115A.154; 115D.05*

History: *9 SR 994; 10 SR 846; 12 SR 2044; 17 SR 353*

9205.0430 GRANT APPLICATION.

Subpart 1. **Notification by director.** To initiate the process for awarding a pollution prevention grant, the director shall publish a notice in the State Register advising eligible applicants of the availability of pollution prevention grants. The notice shall describe the procedure for awarding grants and establish a deadline by which applications must be submitted. In the notice, the director may limit the types of projects for which a grant would be awarded in the funding round initiated by the notice and may specify the maximum amount of funding to be awarded to a project.

Subp. 2. **Applications.** Following the publication of a notice in the State Register, applicants that seek assistance must submit applications in the form specified by the director. Applications must be received by the director by the deadline established in the notice. Upon the request of the applicant, the office shall handle specific information in the grant application as nonpublic data in accordance with the criteria established by Minnesota Statutes, section 115A.06, subdivision 13; however, all information developed as a result of a pollution prevention grant shall be public data. Each application must include the following:

A. the names, qualifications, and addresses of the applicant and other project participants;

B. a description of the proposed project, including:

(1) a description of the method or technology proposed to be studied, with a list of project activities and an implementation schedule;

(2) a statement as to whether this method or technology is new or existing, with a literature search or similar demonstration in support of this statement;

(3) a discussion of whether implementation of this method or technology is likely to minimize the transfer of pollution from one environmental medium to another;

(4) a listing of the toxic pollutants, hazardous substances, hazardous wastes, or industrial wastes that are the subject of the proposed project, with a statement, in pounds, of the quantity of each of these pollutants, substances, or wastes that the applicant generated in the previous calendar year;

(5) an estimate, in pounds, of the decrease in the quantity of the toxic pollutants, hazardous substances, hazardous wastes, or industrial wastes that the applicant believes

could be realized if the methods and technologies to be studied in the proposed project were implemented; and

(6) a statement of the current status of the proposed project;

C. information demonstrating that the project will comply with applicable regulations, including a list of permits required for the project;

D. a statement of the willingness of the applicant to implement the methods and technologies proposed to be studied, if those methods and technologies are found to be technically and economically feasible;

E. a statement of the willingness of the applicant to assist the director in disseminating information about the results of the project;

F. a statement describing the statewide significance of the information to be gained from the proposed project;

G. a project budget that:

(1) identifies the total cost of the proposed project and identifies each of the expenditures that make up this cost; and

(2) states the amount of grant funds being requested and the amount of matching funds being supplied by the applicant or others. If a person other than the applicant is providing matching funds, the application must identify the sources of the additional funds.

Subp. 3. Eligibility and completeness review. For all applications received by the director by the deadline established in the notice under subpart 1, the director shall determine the eligibility of the applicant, the proposed project, and the costs identified in the application and shall determine the completeness of the application.

Subp. 4. Notice of determination of eligibility and completeness. The director shall notify the applicant of the director's determination of eligibility and completeness of the application. If the director determines that the applicant or the project is ineligible, the director shall reject the application and notify the applicant. If the director determines that any of the project costs are ineligible or that the application is incomplete, the director shall notify the applicant of the ineligible portion of the costs or of the deficiency. The applicant has 14 days after receiving the notice to correct any inadequacies.

Subp. 5. Evaluation of proposal. In order to determine which projects should receive a pollution prevention grant, the director shall evaluate each application that is determined to be eligible and complete. In making this evaluation, the director shall consider whether:

A. the proposed project involves the study or analysis of a method or technology that has a significant potential to prevent pollution;

B. the proposed project involves the study or analysis of a method or technology that is consistent with the legislative goals and policies in Minnesota Statutes, sections 115A.02 and 115D.02;

C. the persons who will undertake the proposed project are qualified to perform the work described in the project;

D. implementation of the method or technology that is the subject of the proposed project is likely to minimize the transfer of pollution from one environmental medium to another;

E. the proposed project will comply with regulatory requirements;

F. the applicant is willing to implement methods and technologies that the proposed project finds to be feasible;

G. the applicant is willing to assist the director in disseminating information about the results of the project; and

H. the proposed project has statewide significance.

Subp. 6. Award of grants. The director shall award grants to those projects that the director determines best meets the evaluation criteria in subpart 5. The director shall promptly notify all applicants as to whether they have been awarded a grant.

Subp. 7. No grant awards. If the director determines that no proposed project has sufficient potential to prevent pollution in Minnesota, the director shall not award any grants. The director may then reinstate the process for awarding grants by publishing a notice under subpart 1..

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Subp. 8. **Consultation.** In the director's evaluation of an application, the director may solicit and consider any recommendations provided by Office of Waste Management advisory councils, task forces, citizen groups, or any independent consultant hired by the director to assist in the review of applications.

Statutory Authority: *MS s 115A.06; 115A.154; 115D.05*

History: *9 SR 994; 10 SR 846; 12 SR 2044; 17 SR 353*

9205.0435 LIMITATIONS.

Subpart 1. **Reduced grant awards.** The director shall ask an applicant to document the impacts of reduced financial assistance before finalizing an award for less than the eligible amount requested by an applicant or less than the maximum award established in the notice under part 9205.0430, subpart 1. Reduced funds shall be awarded where the director determines:

A. program resources are insufficient to provide full assistance to all applicant to which the director intends to award grants or loans; or

B. the applicant could operate the project at a reduced level and still achieve project objectives.

Subp. 2. **Limit on disbursement of funds.** No grant shall be disbursed until the director has:

A. determined the total estimated cost of the project;

B. ascertained that the provision of matching funds is assured by the recipient; and

C. executed a written grant agreement with the recipient meeting the requirements in part 9205.0445.

Statutory Authority: *MS s 115A.06; 115D.05*

History: *17 SR 353*

9205.0440 [Repealed, 17 SR 353]

9205.0445 GRANT AGREEMENT.

A grant agreement shall:

A. establish a work plan and schedule and require that the recipient perform and complete project activities according to this work plan and schedule;

B. provide that any cost overruns incurred in the implementation of the proposed project shall be the sole responsibility of the recipient;

C. require that the recipient provide periodic written reports to the director on the progress and results of the project;

D. authorize the director to rescind the grant and require the grant recipient to repay the grant in full if the director determines that, due to the bad faith of the grant recipient, a project has not been conducted according to terms and conditions of the grant agreement;

E. authorize the director to cease making further disbursements to the recipient and to recover unspent funds if the director determines that, for reasons other than bad faith, a project has not made progress according to the terms and conditions of the grant agreement and an amendment to the agreement is not justified;

F. provide that the results of all studies or analyses performed under this agreement are public data;

G. require that a percentage of funds not be paid to the recipient until the director approves the recipient's final report;

H. require that the recipient maintain detailed records of all expenditures related to the agreement; and

I. establish other conditions or terms needed to manage or implement the grant agreement.

Statutory Authority: *MS s 115A.06; 115D.05*

History: *17 SR 353*

9205.0450 [Repealed, 17 SR 353]

9205.0460 [Repealed, 17 SR 353]

9205.0470 [Repealed, 17 SR 353]

9205.0480 [Repealed, 17 SR 353]

HAZARDOUS WASTE PERMIT CLEARANCE

9205.0500 DEFINITIONS.

Subpart 1. **Scope.** For the purposes of parts 9205.0500 to 9205.0560 the terms defined in this rule have the meanings given them.

Subp. 2. **Applicant.** "Applicant" means a person filing an application.

Subp. 3. **Application.** "Application" means the information submitted to the board pursuant to part 9205.0530.

Subp. 4. **Board.** "Board" means the Waste Management Board.

Subp. 5. **Chair.** "Chair" means the chair of the board.

Subp. 6. **Clearance.** "Clearance" means the board's approval of an application.

Subp. 7. **Commercial waste processing facility.** "Commercial waste processing facility" means a facility established and permitted to sell hazardous waste processing services to generators other than the owner and operator of the facility and located within an area in the board's inventory of preferred areas for hazardous waste processing facilities. For purposes of this definition processing means the treatment of waste after collection and before disposal and includes, but is not limited to, incineration, reduction, storage, separation, exchange, resource recovery, physical, chemical, or biological modification, and transfer from one waste facility to another.

Subp. 8. **Hazardous waste.** "Hazardous waste" has the meaning given it in Minnesota Statutes, section 116.06, subdivision 11.

Subp. 9. **Person.** "Person" means a natural person or a corporation, association, operation, firm, partnership, trust, or other form of organization.

Statutory Authority: *MS s 115A.10*

9205.0510 PURPOSE.

The purpose of parts 9205.0500 to 9205.0560 is to establish a procedure to assure that hazardous waste facility operators have the necessary technical and business competence. Parts 9205.0500 to 9205.0560 are not intended to duplicate the review required under pollution control agency permitting authority.

Statutory Authority: *MS s 115A.10*

9205.0520 REQUIREMENTS AND LIMITATIONS.

Subpart 1. **Clearance required.** A person who is required to obtain a pollution control agency permit for a commercial waste processing facility to be located within an area of the board's inventory of preferred areas for hazardous waste processing facilities established under Minnesota Statutes, section 115A.09, and which will begin operation after May 9, 1983, must obtain clearance prior to applying for a permit.

Subp. 2. **No property right or exclusive privilege.** Clearance does not convey property rights of any kind or an exclusive privilege.

Subp. 3. **Changed plans.** Clearance entitles an applicant to request a pollution control agency permit only for a commercial waste processing facility substantially similar to the facility described in the application. The applicant must supply the most recent plans for facility development available with the understanding that details of the plan may change as development progresses. If plans for the facility or for facility development change substantially prior to application for a pollution control agency permit, the applicant must submit a new application for clearance.

Subp. 4. **Acquisition or location of property.** Property to be used as the site for the proposed facility need not be acquired or identified by the applicant prior to clearance.

Statutory Authority: *MS s 115A.10*

9205.0530 APPLICATION.

Subpart 1. **Applicants.** To obtain clearance, a person must complete, sign, and submit an application to the board. The application for clearance for a facility which will be owned by one person and operated by another must be signed by both the owner and the operator.

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Subp. 2. **General contents.** An application must be in the form specified by the board and must contain the following information:

A. the complete name of the applicant, all other names under which the applicant has done business during the ten years prior to the application, and the approximate times during which those names were used;

B. the principal business address of the applicant, all other addresses from which the applicant has done business during the ten years prior to the application, and the approximate times during which those addresses were used;

C. the form of the applicant's business indicating the type of business association;

D. a general description of the types and amounts of hazardous waste the facility would be capable of handling and a general description of the proposed operation including methods of accepting, storing, and processing hazardous waste;

E. the names and addresses of all officers, partners, or directors of the applicant; and

F. the following information concerning any notices, stipulation agreements, administrative orders, license revocations, or permit revocations issued by any state or federal authority citing a violation of any administrative rule, regulation, or statute relating to hazardous waste management against the applicant or against any officer, director, or partner of the applicant within the last ten years, and any judgment or conviction under any state or federal rule, regulation, or statute or local ordinance concerning hazardous waste management entered against the applicant or against any officer, director, or partner of the applicant which has been issued within the last ten years:

(1) the name and address of the individual or company involved;

(2) the date and nature of the incident;

(3) the agency or individual taking the action; and

(4) the response made by the individual or company to correct or contest the

violation.

Subp. 3. **Technical information.** An application must contain the following information:

A. the duties and responsibilities of subcontractors and the anticipated operating staff, including job descriptions and qualifications of technical management, supervisory, and operating employees, and an organizational chart of the applicant for operation of the proposed facility; and

B. a disclosure of hazardous waste management related business activities which the applicant, its parent corporation, any subsidiary of the applicant, or any other subsidiary of the parent corporation of the applicant is or has been engaged in during the ten years prior to the date of the application, including:

(1) the approximate times during which the activity has been engaged in; and

(2) if the activity involves operation and maintenance of a waste management

facility:

(a) the location of each facility and a description of the type of facility;

(b) the processes used;

(c) the facility capacity and approximate amount of waste handled annually;

ally;

(d) the date the operation began and the date it closed if the facility is no

longer operating;

(e) any licenses or permits issued for the facility; and

(f) the reasons for discontinuing the activity if it has been discontinued.

Subp. 4. **Development plan and financial information.** An application must contain the following information:

A. a statement of the anticipated development plan for the proposed facility including the following:

(1) facility design;

(2) environmental reports;

- (3) hearings on permit application;
- (4) community relations activities;
- (5) marketing;
- (6) preparation of permit application;
- (7) site acquisition and preparation;
- (8) construction;
- (9) equipment and materials acquisitions;
- (10) operator recruitment and training;
- (11) first year operation;
- (12) monitoring;
- (13) insurance; and
- (14) contingencies;

B. a statement of the total anticipated expenditures for the project and an indication of how those expenditures will be financed;

C. for each of the items in the development plan, when applicable, whether the activity will be carried out by personnel currently employed by the applicant, by personnel who will be employed by the applicant in the future, or by independent contractors;

D. a description of potential or contingent liabilities which could materially alter the applicant's future financial position; and

E. a disclosure of any petition filed by the applicant or its parent corporation within the last five years under the Federal Bankruptcy Act or any state insolvency law.

Subp. 5. Additional information. The chair may require an applicant to submit additional information or may undertake additional investigations if the chair determines that the information would be necessary in deciding whether clearance should be granted.

Subp. 6. Deficient application. If an application does not conform to this part, the chair shall, within 30 days after receipt of the application, return it to the applicant with a statement identifying the deficiencies in the application.

Subp. 7. Acceptance of application. The chair shall accept a completed application on behalf of the board if it conforms to this rule.

Subp. 8. Notification of acceptance. Upon acceptance of a complete application, the chair shall promptly notify each political subdivision which contains an area on the board's inventory of preferred areas for processing facilities. The chair shall also publish notice of the application in a newspaper of statewide distribution. The notice must provide that comments on the application may be submitted to the board within 30 days of the date the application was accepted.

Subp. 9. Initial consideration. The board shall initially consider an application not less than 30 nor more than 60 days after its acceptance.

Statutory Authority: *MS s 115A.10*

9205.0540 BOARD DECISION.

Subpart 1. Reasons for disapproval. The board shall grant clearance to an applicant unless it determines that:

A. the applicant's development plan is not sufficient to adequately operate and maintain the facility in a manner that will assure protection of the health and welfare of citizens of the state;

B. the applicant or its anticipated operating staff lacks the technical competence necessary to adequately operate and maintain the facility in a manner that will assure protection of the health and welfare of citizens of the state; or

C. the nature of past violations of state or federal environmental statutes or regulations and the applicant's response to these violations indicate an applicant could not be reasonably expected to operate and maintain the facility in a manner that will assure protection of the health and welfare of citizens of the state.

Subp. 2. Written decision. The board shall set forth in writing the basis for its decision.

Subp. 3. Appeals. If the board denies clearance, the applicant may request a contested case hearing within 21 calendar days of the board's decision. The board shall order a con-

tested case hearing under Minnesota Statutes, chapter 14 and parts 1400.5200 to 1400.8500 if it receives a request. Following a review of the record of the hearing, the board shall make a final decision granting or denying clearance.

Statutory Authority: *MS s 115A.10*

9205.0550 NOTICE OF FINAL DECISION.

Notice of the board's final decision granting or denying clearance shall be sent to political subdivisions which contain areas included on the board's inventory of preferred areas for processing facilities and to the applicant.

Statutory Authority: *MS s 115A.10*

9205.0560 EXPIRATION OF CLEARANCE.

Clearance of an applicant expires 18 months after it is granted by the board if the applicant has not formally requested a pollution control agency permit during that period. An applicant whose clearance has expired may apply for clearance again without penalty or prejudice.

Statutory Authority: *MS s 115A.10*

9205.0600 DEFINITIONS.

Subpart 1. **Scope.** For the purposes of parts 9205.0600 to 9205.0608, the following terms have the meanings given them in this part, unless the context requires otherwise.

Subp. 2. **Agency.** "Agency" means the Pollution Control Agency.

Subp. 3. **Commissioner.** "Commissioner" means the commissioner of the agency, or staff designated by the commissioner.

Subp. 4. **Used oil processing equipment.** "Used oil processing equipment" means machinery or devices that are designed, constructed, and used to separate, modify, convert, heat, prepare, rerefine, or otherwise process used oil so that materials, substances, or energy contained within the used oil may be recovered for subsequent use. Used oil processing equipment includes pollution control equipment needed to meet applicable pollution control standards.

Statutory Authority: *MS s 115A.06 subds 1,2*

History: *14 SR 617*

9205.0601 SCOPE.

Parts 9205.0600 to 9205.0608 implement the used oil processing equipment loan program created and described in Minnesota Statutes, section 115A.9162, by establishing the substantive criteria and procedural conditions under which the agency may award loans for used oil processing equipment.

Statutory Authority: *MS s 115A.06 subds 1,2*

History: *14 SR 617*

9205.0602 ELIGIBILITY CRITERIA.

Subpart 1. **Eligible applicants.** Individuals, partnerships, corporations, and associations engaged in or intending to become engaged in a business that processes used oil, are eligible for used oil processing equipment loans.

Subp. 2. **Eligible costs.** The cost of used oil processing equipment is eligible for funding under this program. The cost of pollution control equipment is eligible only when that equipment is part of used oil processing equipment funded under this program.

Subp. 3. **Ineligible costs.** The cost of equipment used to install used oil processing equipment, operating cost, preliminary and final design and engineering cost, overhead cost, and the cost of land or buildings is not eligible for funding.

Statutory Authority: *MS s 115A.06 subds 1,2*

History: *14 SR 617*

9205.0603 APPLICATION PROCESS.

Subpart 1. **Availability of funds.** The agency shall not accept applications until the agency has determined the amount of funds available and the type of used oil processing

equipment that will be funded and has published a notice requesting the submission of applications following the procedures in subpart 3.

Subp. 2. Agency determination. The agency shall determine the amount of funds to be expended and the type of used oil processing equipment that will be funded by considering the type of used oil processing equipment that will best assist the agency in improving the management of used oil in Minnesota and the amount of available funding. The agency shall develop a description of the type of used oil processing equipment that will be funded, including objectives for performance of that equipment.

Subp. 3. Notice. After the agency makes the determination required in subpart 2, the commissioner shall solicit applications by placing a notice in the State Register and by sending written notice to eligible applicants known to the commissioner. The notice shall state when applications must be submitted, the type of equipment that will be funded, and shall incorporate the description developed by the agency under subpart 2.

Statutory Authority: *MS s 115A.06 subs 1,2*

History: *14 SR 617*

9205.0604 APPLICATION REQUIREMENTS.

Subpart 1. Contents. Applications for used oil processing equipment loans must include the following information:

- A. the name, address, and telephone number of the applicant and a contact person;
- B. the total loan eligible used oil processing equipment cost;
- C. the amount of the loan requested; and
- D. the amount and source of funding that will be used to pay the part of the cost of the used oil processing equipment not covered by the agency loan and all other eligible and ineligible costs not covered by the agency loan.

Subp. 2. Supporting documentation. Applications for used oil processing equipment loans must include the documentation in items A to E.

A. Credit information sufficient to support a finding that the loan will be repaid. If available, credit information from private credit rating agencies should be submitted by the applicant and evaluated by the agency. For applicants that do not have a credit rating, personal credit information pertaining to individual owners or shareholders of closely held corporations shall be submitted by the applicant and evaluated by the agency. Personal credit information must include personal tax returns, personal credit reports from credit bureaus or other credit reporting agencies if available, and references from personal bankers.

- B. A conceptual and technical feasibility report that includes at least the following:
- (1) a detailed description of the proposed used oil processing equipment;
 - (2) location and description of the facility where the used oil processing equipment will be used;
 - (3) a description of the method of used oil processing equipment procurement;
 - (4) documentation substantiating that the used oil processing equipment to be procured has the capability and operating history to perform as proposed;
 - (5) an analysis of the quantity and source of used oil that will be processed and an explanation of what will be done with the used oil once processed; and
 - (6) a description of what will be done with the ash, sludge, by-products, or other residue from used oil processing.

- C. A financial plan that contains:
- (1) the method of financing costs for used oil processing equipment, and all other costs to be incurred by the applicant in procuring, installing, and operating the equipment;
 - (2) estimated annual operating and maintenance costs; and
 - (3) projections of total costs and revenues for the applicant's business over the term of the loan.

D. A report on the status of permits required by permitting agencies.

E. An estimate of the time necessary for equipment installation and operation and when these events will take place.

Subp. 3. **Additional information.** The applicant shall supply additional information needed for the agency to approve applications, when requested by the commissioner.

Statutory Authority: *MS s 115A.06 subs 1,2*

History: *14 SR 617*

9205.0605 REVIEW AND EVALUATION OF APPLICATIONS.

Subpart 1. **Determination of eligibility and completeness.** Upon receipt of an application, the commissioner or a designee shall determine the eligibility of the applicant, the eligibility of the costs identified in the application, the eligibility of the equipment described in the application, and the completeness of the application. Applicants are encouraged to contact the commissioner to arrange for a preapplication review of the proposed equipment.

Subp. 2. **Notice of determination of eligibility and completeness.** The commissioner shall notify the applicant of the commissioner's determinations of eligibility and completeness. If the commissioner determines that the applicant or the equipment is ineligible, the commissioner shall reject the application, return it to the applicant, and notify the applicant of the reasons for the rejection. If the commissioner determines that any part of the equipment costs is ineligible or that the application is incomplete, the commissioner shall notify the applicant of the ineligible portion of the costs or of the deficiency. The applicant has 30 days after receiving the notice to correct any inadequacies identified by the commissioner. If the inadequacies are not corrected within the time allowed, the application is rejected, and the applicant must submit a new application to be considered again.

Subp. 3. **Agency approval.** The agency shall approve applications and award loans for used oil processing equipment. The agency shall award loans to those applicants whose applications best demonstrate that the used oil processing equipment proposed to be purchased meets the description developed by the agency under part 9205.0603, subpart 2.

No application shall be approved for funding unless the agency determines that the applicant has the ability to repay the loan, including all interest.

Statutory Authority: *MS s 115A.06 subs 1,2*

History: *14 SR 617*

9205.0606 AWARD OF LOANS.

Subpart 1. **Loan limit.** The maximum loan is 50 percent of the eligible cost of the used oil processing equipment or \$500,000, whichever is less.

Subp. 2. **Interest rate.** The interest rate of a loan from the used oil processing equipment loan program shall not be less than an annual percentage rate of three percent. Interest payments on the loan are due annually and begin to accrue from the date the loan is disbursed by the agency. The first payment toward the principal amount of the loan is due one year after the equipment becomes operational or two years after the date the loan agreement is executed by the agency, whichever is earlier. The agency shall consider the equipment operational at the point where the equipment meets all vendor guaranteed operating specifications.

Statutory Authority: *MS s 115A.06 subs 1,2*

History: *14 SR 617*

9205.0607 LOAN AGREEMENT.

The agency shall disburse loan funds only after a loan agreement containing the terms of this part has been executed by the agency and the recipient of a loan award. A loan agreement must:

- A. incorporate by reference the final application submitted to the agency;
- B. establish the term of the loan, which is determined by considering the expected life of the equipment funded;
- C. establish a schedule for repayment of principal and interest;
- D. provide that any costs incurred in the acquisition of equipment over the amount of the loan are the sole responsibility of the loan recipient;

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E. provide that the agency will not accept any amendments or supplementary applications requesting that additional loan funds be awarded to the loan recipient;

F. require that the recipient provide periodic reports to the agency on the developmental and operational history of the equipment so that knowledge and experience gained may be made available to others; and

G. provide for procedures to be followed in the event of a default as provided in part 9205.0608 or for failure to make payments of principal and interest.

Statutory Authority: *MS s 115A.06 subds 1,2*

History: *14 SR 617*

9205.0608 AMENDMENTS.

If the used oil processing equipment funded by a loan under this part is not installed or operated in accordance with the terms and conditions of the loan agreement, the agency shall determine the reason the equipment was not installed or operated as required. If the agency finds that the recipient could not install or operate the equipment as required due to forces beyond the control of the recipient but that an amendment to the agreement can be negotiated that will allow the purposes of the loan to be fulfilled, the agency shall amend the loan agreement. If an amendment cannot be negotiated that will allow the purposes of the loan to be fulfilled, the agency shall declare default and require the loan funds to be repaid following the procedures established in the loan agreement.

Statutory Authority: *MS s 115A.06 subds 1,2*

History: *14 SR 617*