

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of the MPCA Amendments to
Permanent Rules Governing Financial
Assistance for Municipal Projects Treating
Wastewater or Stormwater, *Minnesota Rules*
Chapter 7707

**ORDER ON REVIEW OF
ADDITIONAL NOTICE PLAN**

This matter came before Administrative Law Judge Eric L. Lipman upon the Minnesota Pollution Control Agency's request for review of its Additional Notice Plan. The Department seeks a legal review of its materials under Minn. Stat. § 14.131, and Minn. R. 1400.2060, subp. 2 and Minn. R. 1400.2080, subp. 2.

Based upon a review of the written submissions made on May 17, 2013, and an additional submission from the Agency made on May 22, 2013,

IT IS HEREBY ORDERED THAT:

The Additional Notice Plan is approved contingent upon the Agency's sending a paper or electronic copy of the Rulemaking Notice to the persons and entities listed in its additional submission of May 22, 2013.

Dated: May 24, 2013

s/Eric L. Lipman
ERIC L. LIPMAN
Administrative Law Judge

MEMORANDUM

This matter presents itself in an unusual posture. In its Statement of Need and Reasonableness (SONAR), the Agency only committed to sending notice of the proposed rulemaking to those whom it is statutorily obliged to send such notices (under Minn. Stat. §§ 14.14 and 14.116) and posting the same notice on its website. See, SONAR, OAH Docket No. 8-2200-30670, at 5. In the view of the Administrative Law Judge, such a plan does not meet the requirements of Minn. Stat. §§ 14.14 and 14.22.

Each of these statutes provides that the “agency shall make reasonable efforts to notify persons or classes of persons who may be significantly affected by the rule by giving notice of its intention in newsletters, newspapers, or other publications, or through other means of communication.”¹ Even if it were conceded that the Agency’s website qualifies as a “means of communication,” it is not in any way directed at reaching those who “may be significantly affected by the rule being proposed” Thus, some additional effort is needed to meet the requirements of Minn. Stat. §§ 14.14 and 14.22.

Moreover, the stakeholder meeting that the Agency held in September of 2010, at the Request for Comments stage of the proceeding, does not alter this conclusion. At that point in the rulemaking proceedings, the Agency had not committed to adopt any particular reform.² This is not the case, however, after a Notice of Intent to Adopt rules. For this reason, the Agency’s obligation to make reasonable efforts to notify interested persons, beyond those on its official rulemaking notice list, recurs. Fulfilling that duty requires more than posting to the Agency’s website.³

Following its original submission, and on its own initiative, the Agency committed to sending electronic notice to a group of 440 “potentially interested parties” from its Project Priority List and a set of associations that represent local units of government in Minnesota. With this addendum, and conditioned upon fulfilling these additional commitments, the Agency’s Additional Notice Plan is approved. Because the Agency has contact information for these persons and entities readily available to it; and it is likely that many of these persons and entities “may be significantly affected by the rule being proposed,” this additional effort is required by Minn. Stat. §§ 14.14 and 14.22.

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¹ See, Minn. Stat. §§ 14.14 and 14.22 (emphasis added).

² See, Order on Review of Additional Notice Plan, *In the Matter of the Proposed Permanent Rules Relating to the Practice of Psychology*, OAH Docket No. 8-0907-22847-1 (2012).

³ *Id.*