OAH 22-9000-38392
Revisor R-4754

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of the Proposed Amendment to Rules Governing Wells and Borings Minn. R. 4725, Revisor ID # R4754	**ORDER ON REVIEW OF RULES UNDER MINN. STAT. § 14.26**

The Minnesota Department of Health (Department) is seeking review and approval of the above-entitled rules, which were adopted by the agency pursuant to Minn. Stat. § 14.26 (2022). On September 18, 2023, the Office of Administrative Hearings (OAH) received the documents that must be filed by the Department under Minn. Stat. § 14.26 and Minn. R. 1400.2310 (2023). Based upon a review of the written submissions and filings, Minnesota Statutes, Minnesota Rules, and for the reasons in the Memorandum that follows,

IT IS HEREBY DETERMINED:

1. The Department has the statutory authority to adopt the rules.

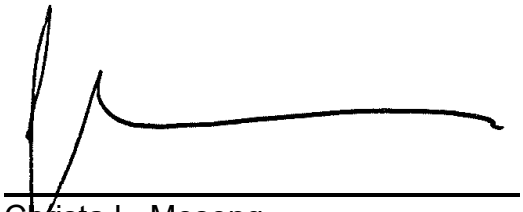
2. The rules were adopted in substantial compliance with the procedural requirements of Minnesota Statutes, Chapter 14 (2022), and Minnesota Rules, Chapter 1400 (2023).

3. The record demonstrates the rules are needed and reasonable.

IT IS HEREBY ORDERED THAT:

The rules are **APPROVED**.

Dated: September 28, 2023



Christa L. Moseng
Administrative Law Judge

MEMORANDUM

A rule must be disapproved if it was not adopted in compliance with procedural requirements of Minnesota Rules, Chapter 1400, unless a statute provides that the error must be disregarded.[1] An error or defect due to the failure to satisfy a procedural requirement must be disregarded if the failure did not deprive any person or entity of an opportunity to participate meaningfully in the rulemaking process.[2]

A statement of need and reasonableness (SONAR) must include the date the statement is made available for public review.[3] The SONAR must be prepared on or before the signature date on the agency's notice of intent to adopt rules.[4]

In its request for review of proposed amendments to Minnesota Rules, Chapter 4725, the Department submitted a SONAR dated "May 2023," with an undated signature block.[5] The SONAR does not include the date that it was made available for public review. The *State Register* published the Department's Notice of Intent to Adopt Rules without a Public Hearing (Notice) on May 8, 2023.[6] The signature block on the Notice of Intent to Adopt Rules without a Public Hearing (Notice), as published in the State Register, is dated April 17, 2023.[7]

Because the signature block on the SONAR lacks a date, it is not apparent from the face of the SONAR that it was prepared on or before the signature date of the Notice.[8] The Department did submit an incomplete and unsigned draft SONAR on March 24, 2023, as part of its request for approval of its additional notice plan. The Department also posted the SONAR on its website on May 3, 2023, and included the SONAR (or links to the SONAR) in the notices that it mailed and emailed on May 3 and May 4.[9]

In this case, the failure to demonstrate that the SONAR was prepared on or before the signature date of the Notice did not deprive any person or entity of an opportunity to participate meaningfully in the rulemaking process. Even assuming that the SONAR was finalized after April 17, 2023, it was prepared by the time it was posted and provided to notice recipients on May 3, 2023. Because the SONAR was available to every noticed individual and entity for the full public comment period,[10] even if the SONAR was belatedly finalized between April 17 and May 3, no person was denied an opportunity to participate meaningfully in the rulemaking process.

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[1] Minn. R. 1400.2100(A).
[2] Minn. Stat. § 14.26, subd. 3(d)(1).
[3] Minn. R. 1400.2070, subp. 1(E).
[4] Minn. R. 1400.2070, subp. 3.
[5] Letter to Judge Moseng from Josh Skaar (September 18, 2023), attachment D (Statement of Need and Reasonableness In the Matter of Proposed Amendments of Minnesota Rules, Chapter 4725).
[6] 47 S.R. 1085–1088 (May 8, 2023).
[7] *Id*. at 1086.
[8] The PDF of the SONAR on the Department's website indicates a creation date of April 13, 2023, and a modification date of May 3, 2023. SONAR *available a*t https://www.health.state.mn.us/communities/environment/water/docs/wells/pcsonar4725.pdf (last visited September 20, 2023).
[9] Letter to Judge Moseng from Josh Skaar (September 18, 2023), attachments E, G, H2, H3, and I.
[10] Public comments were accepted for at least 30 days—from the date of publication in the *State Register* on May 8, 2023, until June 7, 2023.

Similarly, the failure to include in the SONAR the date that it was made available for public review did not deprive any person or entity of an opportunity to participate meaningfully in the rulemaking process. The SONAR states that it "will be available during the public comment period[.]" The SONAR was posted and publicly available by May 3, 2023. Therefore, although it does not reflect the specific date of its availability, the SONAR does include accurate information about when it was made publicly available. The failure to include the specific availability date in the SONAR, by itself, did not affect anyone's ability to participate.

The Department's submissions otherwise satisfy the requirements of Minnesota Statutes, Chapter 14, and Minnesota Rules, Chapter 1400. No procedural failure deprived a person or entity of the opportunity to meaningfully participate in the rulemaking process. Accordingly, the procedural errors discussed above must be disregarded and the rule is therefore **APPROVED**.

C. L. M.