

August 3, 1999

Dan Medenblik  
State Planner  
Department of Health  
121 East 7<sup>th</sup> Place, Suite 230  
P.O. Box 64975  
St. Paul, Minnesota 55164-0975

RE: Review of Adopted Permanent Rules of the Department of Health  
for Rules Relating to Public Water System Capacity, Minn. R. Ch.  
4720.  
OAH Docket No. 77-0900-12459-1.

Dear Mr. Medenblik:

This is to inform you that the above-referenced rule has been approved as to legality on August 3, 1999. The approval for legality includes a finding of harmless error for two procedural errors. The Department's SONAR did not include a list a witnesses the agency anticipated asking to testify if a hearing was conducted, and a summary of their testimony as required by Minn. R. 1400.2070, subp. 1, item C. Including a list of potential witnesses is required regardless of the type of notice that is published. Also, the agency's SONAR did not explain why efforts were not made to provide additional notice to affected persons of the proposed rule as required by Minn. Stat. § 14.131. The Department simply stated that it "chose not to develop an additional [notice] plan for this rulemaking." This is insufficient to meet the requirement of Minn. Stat. § 14.131. The administrative law judge has determined that the above omissions did not deprive any person or entity of an opportunity to participate meaningfully in the rulemaking process and this constitutes harmless error under Minn. Stat. § 14.26 (3)(d)(1).

With the approval of the adoption of the rule, our office has closed this file and is returning the rule record to you so that your agency can maintain the official rulemaking record in this matter as required by Minn. Stat. § 14.365. Our office will file two copies of the adopted rule with the Secretary of State, who will forward one copy to the Revisor of Statutes. You will then receive from the Revisor's Office three copies of the Notice of Adoption of your rule.

Your next step is to arrange for publication of the Notice of Adoption in the State Register. You should submit two copies of the Notice of Adoption that you received from the Revisor's Office to the State Register for publication. A permanent rule without

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a hearing does not become effective until five working days after a Notice of Adoption is published in the State Register in accordance with Minn. Stat. § 14.27.

If you have any questions regarding this matter, please contact Catherine Anderson at 612/341-7666.

Sincerely,

GEORGE A. BECK  
Administrative Law Judge  
612/341-7601

Enclosures

cc: Office of the Attorney General  
Legislative Coordinating Commission  
Revisor of Statutes