

OAH Docket No. 12-2000-16595-1

**STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE DEPARTMENT OF NATURAL RESOURCES**

In the Matter of the Proposed
Permanent Rules Governing Wildlife, Minn.
Rule Chapters 6200, 6230, 6232, 6234, 6236,
6237, and 6240.

REPORT OF THE
ADMINISTRATIVE LAW JUDGE

Administrative Law Judge Steve M. Mihalchick held a hearing concerning the above rules on July 6, 2005, at 9:00 a.m. at the Minnesota Department of Natural Resources (“DNR”), 800 Lafayette Road, St. Paul, Minnesota. The hearing continued until everyone present had an opportunity to state his or her views on the proposed rules.

The hearing and this Report are part of a rulemaking process governed by the Minnesota Administrative Procedure Act.^[1] The legislature has designed the rulemaking process to ensure that state agencies have met all the requirements that Minnesota law specifies for adopting rules. Those requirements include assurances that the proposed rules are necessary and reasonable and that any modifications that the agency made after the proposed rules were initially published do not result in their being substantially different from what the agency originally proposed. The rulemaking process also includes a hearing when a sufficient number of persons request one. The hearing is intended to allow the agency and the Administrative Law Judge reviewing the proposed rules to hear public comment regarding the impact of the proposed rules and what changes might be appropriate.

The agency hearing panel, consisting of Mike DonCarlos, Wildlife Program Manager, Ed Boggess, Policy Manager, Lou Cornicelli, Big Game/Seasons Program Consultant, Kathy Lewis, Transactions Manager and Ray Norrgard, Wetlands Wildlife Program Consultant, all of the DNR, were available to provide the public with information about the proposed rules and to answer any questions. Approximately 12 members of the public attended the hearing and signed the hearing register.

The Administrative Law Judge received one written comment prior to the hearing. After the hearing ended, the record remained open for seven days, until July 13, 2005, to allow interested persons and the Agency an opportunity to submit written comments. Following the initial comment period, the record remained open for an additional five business days to allow interested persons and the Agency the opportunity to file a written response to the three comments submitted. The deadline for responses to the comments was July 20, 2005. One responsive comment was received. The hearing record closed for all purposes on July 20, 2005.

NOTICE

The DNR must make this Report available for review for at least five working days before the Agency takes any further action to adopt final rules or to modify or withdraw the proposed rules. During that time, this Report must be made available to interested persons upon request.

If the DNR makes any changes to the rules as finally proposed, whether or not those changes have been approved or recommended by this Administrative Law Judge, it must resubmit the rules to the Chief Administrative Law Judge for a review of those changes.

After adopting the final version of the rules, the Agency should inform this Office. This Office will request certified copies of the rules from the Revisor and will file the rules with the Secretary of State.

Based upon all the testimony, exhibits, and written comments, the Administrative Law Judge makes the following:

FINDINGS OF FACT

Procedural Requirements

1. On November 5, 2001 and November 25, 2002, the DNR published Requests for Comments on planned rules and rule amendments governing wildlife. The notice indicated that DNR was engaged in rulemaking on this topic and that the DNR did not contemplate appointing an advisory committee to comment on the possible rules. The request for comment was published in the *State Register*.^[2]

2. On April 21, 2005, the DNR filed copies of the proposed Notice of Hearing, proposed rules, and draft SONAR with the Office of Administrative Hearings. The filings complied with Minn. R. 1400.2080, subp. 5. On the same date, the DNR also filed a proposed additional notice plan for its Notice of Hearing and requested that the plan be approved pursuant to Minn. R. 1400.2060. By letter of April 29, 2005, Administrative Law Judge Steve M. Mihalchick approved the additional notice plan.

3. As required by Minn. Stat. § 14.131, the DNR asked the Commissioner of Finance to evaluate the fiscal impacts and benefits of the proposed rules upon local units of government. The Department of Finance concluded that the rules would have little fiscal impact on local units of government.^[3]

4. On May 18, 2005, the DNR mailed the Dual Notice of Hearing to all persons and associations who had registered their names with the DNR for the purpose of receiving such notice.^[4] The Dual Notice contained the elements required by Minn. R. 1400.2080, subp. 2. Requests for a hearing had to be received by June 22, 2005. If the required 25 requests for hearing were received, a hearing would be held July 6, 2005, in St. Paul. The Dual Notice also announced that the hearing would continue until all interested persons had been heard.

5. On June 29, 2005, a Notice of Hearing was mailed to all persons who had requested a hearing.^[5]

6. At the hearing on July 6, 2005, the DNR filed the following documents as required by Minn. R. 1400.2220:

A. The DNR's Request for Comments as published in the *State Register* on November 5, 2001 and November 25, 2002.^[6]

B. The proposed rules dated April 22, 2005, including the Revisor's approval.^[7]

- C. The SONAR;^[8]
- D. The certification that the DNR mailed a copy of the SONAR to the Legislative Reference Library;^[9]
- E. The Dual Notice of Hearing as mailed and published in the *State Register* on May 23, 2005;^[10]
- F. The letter approving the DNR's Additional Notice Plan;^[11]
- G. Certificate of Mailing the Dual Notice of Hearing and Certificate of Mailing List;^[12]
- H. A copy of the transmittal letter sending a copy of the SONAR and other documents to Legislators on May 18, 2005;^[13]
- I. A copy of the statewide news release, dated May 24, 2005, announcing the proposed rules, and a paper copy of information on the rules on the DNR's web page, as provided in the notice plan.^[14]
- J. Written comments and requests for hearing received by the DNR in response to proposed rules.^[15]
- K. Memo, dated March 17, 2005, to the Commissioner of Finance, and response from the Commissioner of Finance, dated April 12, 2005, in accordance with Minn. Stat. § 14.131.^[16]
- L. Addendum to the SONAR regarding cost threshold analysis required by Laws of MN 2005, Chapter 156, Article 2, Section 9 (to be codified as Minn. Stat., sec. 14.127).^[17]
- M. Certificate of mailing the notice to those persons who requested a hearing, dated June 29, 2005, and the notice of hearing to those who requested a hearing, dated June 29, 2005.^[18]
- N. Opening Statement of Michael DonCarlos, Division of Fish and Wildlife, DNR.^[19]
- O. Summary of Deer Hunting and Deer Harvest, Bemidji Statutory Game Refuge, Beltrami County.^[20]

7. The Administrative Law Judge finds that the DNR has met all of the procedural requirements under the applicable statutes and rules.

Background and Nature of the Proposed Rules

8. Under Minn. Stat. § 97A.025, wild animals in Minnesota are owned by the state, in its sovereign capacity for the benefit of all the people of the state. A person

may not acquire a property right in wild animals, or destroy them, unless authorized under the game and fish laws and rules. The DNR establishes game and fish rules.

9. The DNR concluded that the proposed rules and amendments to existing rules covering wildlife were warranted. The proposed and amended rules include:

Provisions for state wildlife management areas and game refuges;

Controlled waterfowl hunting zones;

Deer hunting regulations;

Licensing applications and tagging provisions;

Raccoon, fox, badger and opossum seasons;

Bobcat, fisher and pine marten seasons and limits;

Use of snares;

Pelt registration provisions;

Wild turkey seasons and permit areas;

Prairie chicken hunting seasons and procedures;

Waterfowl shooting hours and goose hunting regulations; and

Migratory waterfowl feeding and resting areas.

Statutory Authority

10. Minnesota Statutes, sections 86A.06; 97A.045; 97A.091; 97A.092; 97A.137; 97A.401; 97A.431; 97A.433; 97A.434; 97A.435; 97A.441; 97A.475; 97A.485; 97A.535; 97B.105; 97B.112; 97B.301; 97B.305; 97B.311; 97B.405; 97B.411; 97B.505; 97B.605; 97B.621; 97B.625; 97B.635; 97B.711; 97B.716; 97B.723; 97B.731; 97B.803; 97B.901; 97B.921; and 97B.925 provide the authority for DNR to adopt and implement rules and standards relating to wildlife.

11. The Administrative Law Judge finds that the DNR has the statutory authority to adopt the proposed rules and rule amendments.

Rulemaking Legal Standards

12. Under Minnesota law,^[21] one of the determinations that must be made in a rulemaking proceeding is whether the agency has established the need for and reasonableness of the proposed rules by an affirmative presentation of facts. In support of a rule, an agency may rely on legislative facts, namely general facts concerning questions of law, policy and discretion, or it may simply rely on interpretation of a

statute, or stated policy preferences.^[22] The DNR prepared a Statement of Need and Reasonableness (SONAR)^[23] in support of its proposed rules. At the hearing, the DNR relied upon the SONAR as its affirmative presentation of need and reasonableness for the proposed amendments. The SONAR was supplemented by comments made by DNR staff at the public hearing, and by the DNR written post-hearing comments and reply.

13. The question of whether a rule has been shown to be reasonable focuses on whether it has been shown to have a rational basis, or whether it is arbitrary, based upon the rulemaking record. Minnesota case law has equated an unreasonable rule with an arbitrary rule.^[24] Arbitrary or unreasonable agency action is action without consideration and in disregard of the facts and circumstances of the case.^[25] A rule is generally found to be reasonable if it is rationally related to the end sought to be achieved by the governing statute.^[26] The Minnesota Supreme Court has further defined an agency's burden in adopting rules by requiring it to "explain on what evidence it is relying and how the evidence connects rationally with the agency's choice of action to be taken."^[27]

14. Reasonable minds might be divided about the wisdom of a certain course of action. An agency is legally entitled to make choices between possible approaches so long as its choice is rational. It is not the role of the Administrative Law Judge to determine which policy alternative presents the "best" approach, since this would invade the policy-making discretion of the agency. The question is, rather, whether the choice made by the agency is one that a rational person could have made.^[28]

15. In addition to need and reasonableness, the Administrative Law Judge must also assess whether the rule adoption procedure was complied with, whether the rule grants undue discretion, whether an agency has statutory authority to adopt the rule, whether the rule is unconstitutional or otherwise illegal, whether the rule constitutes an undue delegation of authority to another entity, or whether the proposed language is not a rule.^[29]

16. Minnesota law allows an agency to withdraw a proposed rule, or a portion of a rule, at any time prior to filing it with the Secretary of State,^[30] "unless the withdrawal of a rule or a portion of the rule makes the remaining rules substantially different."^[31]

17. The standards to determine whether changes to proposed rules published initially create a substantially different rule are found in Minn. Stat. § 14.05, subd. 2. The statute specifies that a modification does not make a proposed rule substantially different if "the differences are within the scope of the matter announced . . . in the notice of hearing and are in character with the issues raised in that notice," the differences "are a logical outgrowth of the contents of the . . . notice of hearing, and the comments submitted in response to the notice," and the notice of hearing "provided fair warning that the outcome of that rulemaking proceeding could be the rule in question." In determining whether modifications to initially published proposals are substantially different, the administrative law judge is to consider whether "persons who will be

affected by the rule should have understood that the rulemaking proceeding . . . could affect their interests,” whether the “subject matter of the rule or issues determined by the rule are different from the subject matter or issues contained in the . . . notice of hearing,” and whether “the effects of the rule differ from the effects of the proposed rule contained in the . . . notice of hearing.”

Additional Notice Requirements

18. Minn. Stat. § 14.131 requires that an agency include in its SONAR a description of its efforts to provide additional notification to persons or classes of persons who may be affected by the proposed rule or must explain why these efforts were not made. The DNR made significant efforts to inform and involve interested and affected parties in this rulemaking:

- A. The DNR published a Request for Comments on November 5, 2001.
- B. The DNR published statewide news releases describing the proposals and held public meetings. Since 2001, a total of thirty-one public meetings, attended by more than 2400 people, have been held in various areas of the state.
- C. The proposed rule was available at the DNR web site.
- D. A second Request for Comments was published on November 2, 2002.^[32]

19. People at the hearing, most of whom live or bow hunt in the Bemidji Game Refuge, complained that they were not specifically notified of the rule change that affected them and that no hearing was scheduled for Bemidji.

20. Kevin Crosby submitted a comment after the hearing. Mr. Crosby argued that the Minn. Stat. § 97A.085 requires a public hearing before the Commissioner can modify rules that affect a game refuge to allow firearms hunting.^[33] The DNR replied that the statute governs the establishment and abandonment of game refuges, not the adoption of hunting rules within an existing game refuge.^[34]

21. The DNR met the requirements of law regarding notice. The DNR had given substantial amounts of notice over the years and knew there were different opinions regarding the use of rifles in the Bemidji game refuge. It provided notice in places interested persons were likely see. Likewise, the bow hunters and residents in the area were aware that DNR had had been addressing the issues over the recent past, and had opportunities to make sure they were notified. They can sign up on the DNR’s rule hearing notice list. Given the interest in the area, it might have been preferable to have a hearing in the area, but it was not required. Most importantly, DNR has now withdrawn the proposed change in the permanent rules that would have affected people living or hunting in the Bemidji Game Refuge. So there is no issue

remaining in this proceeding. The Administrative Law Judge finds that the DNR fulfilled its additional notice requirement.

Consideration of Economic Factors

22. The proposed rules pertaining to wildlife management areas and state game refugees will not have any negative impact on the economy. The proposed rules concerning controlled hunting zone regulations are designed to accommodate changes in public and private land ownership and to provide for effective wildlife management. The DNR believes that the proposed rules should enhance the incomes of those selling hunting and trapping products and services related to those activities.^[35]

23. The Administrative Law Judge finds that the DNR gave due consideration to economic factors when adopting its proposed rules.

Statutory Requirements for the SONAR

Cost and Alternative Assessments in the SONAR:

24. Minn. Stat. § 14.131 requires an agency adopting rules to include in its SONAR:

- (1) a description of the classes of persons who probably will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule;
- (2) the probable costs to the agency and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues;
- (3) a determination of whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule;
- (4) a description of any alternative methods for achieving the purpose of the proposed rule that were seriously considered by the agency and the reasons why they were rejected in favor of the proposed rule;
- (5) the probable costs of complying with the proposed rule; and
- (6) an assessment of any differences between the proposed rule and existing federal regulations and a specific analysis of the need for and reasonableness of each difference.

25. Those who will primarily be affected by the proposed rule changes are small game hunters, big game hunters, waterfowl hunters, wild turkey hunters, prairie chicken hunters, falconers, furbearer hunters, trappers and hunters with disabilities. Other classes of persons include non-hunters and non-trappers who object to hunting and trapping^[36]

26. With regard to the second factor, with the exception of the prairie chicken season, the proposed rules will not result in additional costs to the DNR. Revenue

generated by application and license fees will cover the additional costs associated with the prairie chicken season.

27. Regarding the third factor, for wildlife management areas and state game refuges, the changes will have no added costs and are not intrusive. The more restrictive provisions are to protect populations, comply with deed restrictions, or for public safety. The only alternative to the proposed rules considered by the DNR was the continued use of current rules. The DNR believes the current rules create unnecessary restrictions and fewer opportunities for hunters and trappers in Minnesota. This alternative was rejected by the DNR. ^[37]

28. With regard to the fifth regulatory factor, the DNR states that the proposed rules will not result in increased costs to the public. ^[38]

29. The proposed wildlife rules cover areas that are not addressed by federal law, except for the portions relating to migratory birds. State law requires migratory bird regulations to be consistent with federal law (Minn. Stat. §§. 97B.731 and 97B.803). The state waterfowl hunting regulations that are the subject of this rule are established within the allowable frameworks established by federal law and regulation, and are fully consistent with federal and state law. ^[39]

Performance-Based Regulation:

30. Minn. Stat. § 14.131, requires that an agency include in its SONAR a description of how it “considered and implemented the legislative policy supporting performance-based regulatory systems set forth in section 14.002.” Section 14.002 states, in relevant part, that “whenever feasible, state agencies must develop rules and regulatory programs that emphasize superior achievement in meeting the agency’s regulatory objectives and maximum flexibility for the regulated party and the agency in meeting those goals.”

31. The DNR states that the rule as proposed is performance-based.

32. The Administrative Law Judge finds that the DNR has met the requirements set forth in Minn. Stat. § 14.131 for assessing the impact of the proposed rules, including consideration and implementation of the legislative policy supporting performance-based regulatory systems.

33. This Report is limited to discussion of the portions of the proposed rules that received critical comment or otherwise need to be examined, and it will not discuss each comment or rule part. Persons or groups who do not find their particular comments referenced in this Report should know that each and every suggestion, including those made prior to the hearing, has been carefully read and considered. Moreover, because sections of the proposed rules were not opposed and were adequately supported by the SONAR, a detailed discussion of each section of the proposed rules is unnecessary.

34. The Administrative Law Judge finds that the DNR has demonstrated, by an affirmative presentation of facts, the need for and reasonableness of all rule provisions not specifically discussed in this Report. The Administrative Law Judge also finds that all provisions not specifically discussed are authorized by statute and there are no other problems that would prevent the adoption of the rules.

Need and Reasonableness of this Rulemaking in General

35. The DNR received approximately seventy requests for a public hearing. Nearly all of these requests were concerned about proposed rule changes that would have affected the Bemidji Game Refuge.^[40]

36. The DNR proposed rules would have opened the Bemidji Game Refuge (Refuge) to deer and bear hunting by firearms. 6230.0400, subp. 2. E (As proposed.)

37. Kevin Crosby, Ted Devries, Dan Thul and other witnesses from the Bemidji area questioned the need for a permanent rule permitting the use of firearms for hunting deer and bear in the Refuge. The witnesses asserted that the Refuge lies within a rapidly developing area around the City of Bemidji and that use of firearms could pose a public safety risk. Most of these witnesses are bow hunters who highly value the excellent bow hunting experience their exclusive use provides. The witnesses argued that archery hunting alone could control deer populations in the Refuge.

38. DNR responded, as it had in the SONAR, that it still considered the firearms season to be experimental and would review the results after two years to determine whether to continue with it, or amend the rule to terminate it. None of the audience trusted the DNR's promise.

39. The DNR responded by withdrawing 6230.0400, subp. 2, E, the provision that would have authorized firearms hunting for deer and bear in the Refuge. The DNR indicated that even though it was withdrawing the firearms hunting provision from these proposed rules, it intended to proceed with an "expedited" rule that would permit firearms hunting of deer and bear in the Refuge during the 2005 and 2006 hunting season. This position is consistent with the DNR's stated goals.

40. Witnesses from the Bemidji area continued to express their concern about firearms hunting in the Refuge. See the following Memorandum.

41. No witnesses objected to any other provisions of the proposed rules.

Modification of Effective Date for the Rules

42. Following the hearing the DNR notified the Administrative Law Judge that it wanted to amend the proposed rules to change their effective date from October 22, 2005, to January 2, 2006.^[41]

43. The language required to carry out that change reads as follows:

Page 89, line 1, delete everything after Effective Period, and insert: The amendments to Minnesota Rules, parts 6230.0400, subp. 2, 4, 5, 8, 11, 21, 22, 31, 54, 56, and 58; 6232.0200, subp. 4a, 5, and 9; 6232.0300, subp. 1, 3, 5, 6, and 8; 6232.0400, subpart 4; 6232.0500; 6232.0600, subpart 2; 6232.0700; 6232.0900, subpart 2; 6232.100, subp. 1 and 2; 6232.1100, subpart 1; 6232.1250, subp. 1 and 2; 6232.1300, subp. 1 to 6; 6232.1400, subp. 1 to 4; 6232.1950, subp. 1 and 2; 6232.2000, subpart 2, 6232.2050, subp. 1 and 2; 6232.2550, subp. 1 and 2; 6232.2560; 6232.4700, subp. 2, 5, 8, 9, 10, 16, 20, 21, 25, 26, 28, 29, 32, 33, 35, 39, 40, 43, 45, 46, 48, 52, 59, 65, 69, 70, 73, 75, 77a, 77b, 80, 81, 83, 84a, 85, 86, 89, and 90; 6234.0400, subpart 1; 6234.1200, subpart 1; 6234.1300, subpart 1; 6234.1400, subpart 1; 6240.0610; 6240.1000, subpart 1; 6240.1100, subpart 1 and 2; 6240.1150, subpart 1 and 2; 6240.1200, subpart 1; 6240.1500, subpart 1; 6240.1600, subp. 1 and 2; 6240.1700, subpart 1 and 3; 6240.1750; 6240.1800, subpart 1; 6240.1850, subp. 1 to 3; 6240.1900, subpart 1, 3, and 4; 6240.2000, subpart 4; and 6240.2100, subp. 1 and 9 are effective January 2, 2006. ^[42]

44. The modification noted in the preceding finding is necessary so that these proposed permanent rules do not supersede existing emergency rules governing the Fall 2005 seasons and limits. ^[43] It is found to be necessary and reasonable.

45. The modification of the effective dates of the rules listed in Finding 43 do not result in a substantially different rules from the published proposed rules.

Based on the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Department of Natural Resources gave proper notice in this matter.
2. The DNR has fulfilled the procedural requirements of Minn. Stat. § 14.14 and all other procedural requirements of law or rule.
3. The DNR has demonstrated its statutory authority to adopt the proposed rules, and has fulfilled all other substantive requirements of law or rule within the meaning of Minn. Stat. §§ 14.05, subd. 1; 14.15, subd. 3; and 14.50 (i) and (ii).
4. The DNR has demonstrated the need for and reasonableness of the proposed rules by an affirmative presentation of facts in the record within the meaning of Minn. Stat. §§ 14.14, subd. 4; and 14.50 (iii).
5. The modification of the effective date of certain of the proposed rules does not result in substantially different rules than were published.
6. Any Findings that might properly be termed Conclusions and any Conclusions that might properly be termed Findings are hereby adopted as such.

7. A Finding or Conclusion of need and reasonableness with regard to any particular rule subsection does not preclude and should not discourage the DNR from further modification of the proposed rules based upon this Report and an examination of the public comments, provided that the rule finally adopted is based upon facts appearing in this rule hearing record.

RECOMMENDATION

IT IS HEREBY RECOMMENDED that the proposed rules, as modified, be adopted.

Dated this 3rd day of August, 2005.

s/Steve M. Mihalchick

STEVE M. MIHALCHICK
Administrative Law Judge

Recorded: Two Tapes, not transcribed

Memorandum

The only issue at the hearing was the DNR's proposal to adopt a permanent rule opening the Bemidji Game Refuge (Refuge) to firearms for deer and bear hunting. The Refuge, which completely encircles and includes the City of Bemidji and parts of seven adjoining townships, is a seventy-four square mile area.^[44] The refuge has been open to archery-only hunting since 1972.^[45] In 1984 a public hearing was held on a proposal to allow firearms deer hunting on a 17 square mile area of the refuge. Of the fifty-one people offering input, ninety-six percent opposed firearms hunting. The DNR did not authorize firearms deer hunting. In 2001 the DNR received a formal petition from several Bemidji Township farmers to have the DNR authorize firearms hunting in the Refuge. A public hearing was held in June 2003 to obtain citizen input on a proposal to open a 6.5 square mile area of the southeast portion of Bemidji Township to firearms hunting. Nineteen of twenty-one comments received by the DNR supported firearms hunting in this area. The DNR authorized firearms hunting in the 6.5 square mile area in 2003.

In June 2004 the DNR sought comment regarding the expansion of firearms deer hunting throughout the entire Refuge. Thirty-four of the sixty comments received favored expanding firearms hunting. The DNR authorized firearms hunting within the entire Refuge, except within the City of Bemidji and Lake Bemidji State Park in 2004. The rule authorizing firearms hunting throughout the Refuge expired in December 2004.^[46]

In April 2005 the DNR initiated this rulemaking process pursuant to Chapter 14 that included a permanent rule permitting firearms hunting for deer and bear in the Refuge. Approximately 70 individuals requested a public hearing, which was held on July 6, 2005. After several witnesses at the hearing objected to the firearms hunting in the Refuge, DNR staff decided to strike the language authorizing firearms hunting for deer and bear in the Bemidji game refuge from the proposed permanent rules under consideration. Instead, the DNR staff indicated that they would recommend that the Commissioner again adopt an "expedited" rule to permit firearms hunting in the Refuge during the 2005 and 2006 hunting seasons.^[47]

The DNR has indicated that when it refers to "expedited" rules, it is referring to its emergency rulemaking authority under Minn. Stat. § 84.027, subd. 13 and Minn. Stats. §§ 97A.0451 to 97A.0459. The Administrative Law Judge notes that rules adopted pursuant to Minn. Stat. § 84.027, subd. 13 are only effective for a period no longer than 18 months after adoption.^[48]

S.M.M.

[1] Minn. Stat. §§ 14.131 through 14.20. (Unless otherwise specified, all references to Minnesota Statutes are to the 2004 edition, and all references to Minnesota Rules are to the 2003 edition.)

[2] 26 S.R. 609 (November 5, 2001) and 27 S.R. 747 (November 25, 2002); Exhibit 1.

[3] DNR Exhibit 12.

[4] Exhibit 7

[5] Exhibit 14.

[6] Exhibit 1.

[7] Exhibit 2.

[8] Exhibit 3.

[9] Exhibit 4.

[10] Exhibit 6.

[11] Exhibit 7.

[12] Exhibit 8.

[13] Exhibit 9.

[14] Exhibit 10.

[15] Exhibit 11.

[16] Exhibit 12.

[17] Exhibit 13.

[18] Exhibit 14.

[19] Exhibit 15.

[20] Exhibit 16.

[21] Minn. Stat. § 14.14, subd. 2; Minn. R. 1400.2100.

[22] *Mammenga v. DNR of Human Services*, 442 N.W.2d 786 (Minn. 1989); *Manufactured Hous. Inst. v. Petterson*, 347 N.W.2d 238, 244 (Minn. 1984).

[23] Ex. 4.

[24] *In re Hanson*, 275 N.W.2d 790 (Minn. 1978); *Hurley v. Chaffee*, 231 Minn. 362, 43 N.W.2d 281, 284 (1950).

[25] *Greenhill v. Bailey*, 519 F.2d 5, 19 (8th Cir. 1975).

[26] *Mammenga*, 442 N.W.2d at 789-90; *Broen Mem'l Home v. Minnesota Dept. of Human Services*, 364 N.W.2d 436, 444 (Minn. Ct. App. 1985).

[27] *Manufactured Hous. Inst. v. Petterson*, 347 N.W.2d at 244.

[28] *Federal Sec. Adm'r v. Quaker Oats Co.*, 318 U.S. 218, 233 (1943).

[29] Minn. R. 1400.2100.

[30] Minn. Stat. § 14.05, subd. 3.

[31] Minn. R. part 1400.2240, subp. 8.

[32] Exhibit 3 at 1 – 5.

[33] Public Exhibit 10.

[34] Exhibit 18.

[35] Exhibit 3 at 4.

[36] Exhibit 3 at 3.

[37] Exhibit 3 at 5.

[38] Exhibit 3 at 5.

[39] *Id* at p.5.

[40] Exhibit 11.

[41] Letter of Michael DonCarlos dated July 20, 2005.

[42] Id. page 2.

[43] Id.

[44] Exhibit 16.

[45] Id.

[46] Testimony of Kathy Lewis.

[47] Exhibit 17.

[48] Minn. Stat. § 84.027, subd. 13 (g). The Attorney General reviews rules adopted using this process for legality. Minn. Stat. § 97A.0455. Questions regarding the “legality” of such emergency rules must be directed to the Attorney General.