

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

In the Matter of Minnesota Department of
Natural Resources Special Permit No.
16868 (December 12, 2012) Issued to
Lynn Rogers

**ORDER REGARDING MOTION
TO TERMINATE DESIGNATION OF
ROGERS' RESEARCH DATA AS
"CONFIDENTIAL AND PROTECTED"
DATA**

This matter was heard by Chief Administrative Law Judge Tammy L. Pust from February 24, 2014 through March 6, 2014. After receipt of post-hearing submissions, the record closed on April 2, 2014

David R. Marshall, Leah C. Janus and Jessica L. Edwards, Fredrikson & Byron, P.A., appeared on behalf of Dr. Lynn Rogers (Dr. Rogers).

David P. Iverson and Linda S. Jensen, Assistant Attorneys General, appeared on behalf of the Department of Natural Resources (Department or DNR).

On March 24, 2014, Dr. Rogers brought a Motion to Terminate Designation of Rogers' Research Data as "Confidential and Protected" Data. Dr. Rogers filed a response to the motion on April 2, 2014.

Based upon the evidence and argument submitted by the parties, and the files and proceedings herein, the Chief Administrative Law Judge makes the following:

ORDER

1. The Motion to Terminate Designation of Rogers' Research Data as "Confidential and Protected" Data is DENIED for the reasons stated in the attached Memorandum.

Dated: May 23, 2014

s/Tammy L. Pust

TAMMY L. PUST
Chief Administrative Law Judge

MEMORANDUM

On February 12, 2014,¹ the undersigned issued a Protective Order that designated as “protected data”

Trade secret or proprietary data requested by the Department in its Request for Production No. 4 and referred to in the Administrative Law Judge’s Order Regarding DNR’s Motion to Compel Discovery and Dr. Lynn Rogers’ Motion in Limine dated February 12, 2014 as “Rogers’ research data.”

Once data was designated as “Confidential and Protected” pursuant to the Protective Order, the parties were prohibited from using or disclosing the protected data “for purposes of business or competition, or any other purpose other than the purposes of preparation for and conduct of these proceedings.” The Protective Order further provided that data produced pursuant to its terms “shall not become public data by virtue of having been submitted in this proceeding and shall remain protected after the conclusion of the action.”

In compliance with the undersigned’s Order Regarding DNR’s Motion to Compel Discovery and Dr. Lynn Rogers’ Motion in Limine, Dr. Rogers produced to the Department copies of various research data, all of which was designated as “Confidential and Protected.” In a confidential portion of the evidentiary hearing, the Department’s expert witnesses testified to the content of the research data and offered opinions regarding its validity.

In the present motion, the Department now seeks to terminate the confidential and protected designation of certain identified portions of the data, as well as the experts’ testimony about the data, on the grounds that the data is not “trade secret or proprietary data” under the Minnesota Government Data Practices Act, Minn. Stat § 13.37, subd 1(b) .

Rule 26.03, Minn. R. Civ. P., allows the Chief Administrative Law Judge broad discretion to fashion a protective order appropriate to the case. The Minnesota Government Data Practice Act does not limit the undersigned’s authority in that regard.² In appropriate circumstances, one who conducts research can acquire a proprietary interest in the information developed.³ Dr. Rogers has consistently maintained that his research is entitled to this protection and has treated it as such. The Department has failed to establish any public purpose behind the current attempt to defeat that protection, and none is obvious. Therefore, the motion is denied.

T. L. P.

¹ The Protective Order was later amended twice; relevant terms remained unchanged.

² *In re GlaxoSmithKline PLC*, 732 N.W.2d 257, 268-69 (Minn. 2007); *Star Tribune v. Minn. Twins P’ship*, 659 N.W.2d 287 (Minn. Ct. App. 2003).

³ *N. Star Research Inst. v. Hennepin Cnty.*, 306 Minn. 1, 3, 236 N.W.2d 754, 755 (1975).