

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE DEPARTMENT OF NATURAL RESOURCES

In the Matter of the Proposed Exempt Rule
Amendments to Minn. R. 6280.0450
Relating to Aquatic Plant Management
Permit Fees

**ORDER ON REVIEW
OF RULES UNDER
MINN. STAT. § 14.388
AND MINN. R. 1400.2400**

This matter came before Administrative Law Judge Jeanne M. Cochran upon the application of the Department of Natural Resources for a legal review under Minn. Stat. § 14.388.

On October 24, 2013, the Department of Natural Resources (DNR) filed documents with the Office of Administrative Hearings (OAH) seeking review and approval of the above-entitled rules under Minn. Stat. § 14.388, subd. 1(3), and Minn. R. 1400.2400. On November 5, 2013, the DNR filed additional supporting documents.

Based upon a review of the written submissions by the DNR, and for the reasons set out in the Memorandum which follows below,

IT IS HEREBY ORDERED THAT:

1. The amendments to Minn. R. 6280.0450 were adopted in compliance with the procedural requirements of Minnesota Statutes, Chapter 14, and Minnesota Rules, Chapter 1400.
2. The amendments to Minn. R. 6280.0450 are **APPROVED**.

Dated: November 6, 2013

s/ Jeanne M. Cochran

Jeanne M. Cochran
Administrative Law Judge

MEMORANDUM

The Commissioner of the DNR is authorized by Minn. Stat. § 103G.615, subd. 2, to establish a fee schedule for aquatic plant management permits and to set such fees by rule. In 2011, the Minnesota legislature amended Minn. Stat. § 103G.615, subd. 2, to increase the maximum application fee for such a permit from \$750 to \$2500.¹ To conform to the statutory change made in 2011, the DNR proposes to amend Minn. R. 6280.0450, which governs aquatic plant management permits and fees. The rule amendments increase the maximum fee amount from \$750 to \$2500.

The DNR seeks approval of its rule amendments pursuant to Minn. Stat. § 14.388, subd. 1(3), which provides an abbreviated rulemaking procedure where an agency can show “good cause.” “Good cause” includes instances where the additional rulemaking provisions of Chapter 14 are “unnecessary, impracticable, or contrary to the public interest” because the proposed rule amendments “incorporate specific changes set forth in applicable statutes when no interpretation of law is required.”² Minn. Stat. § 14.388 also directs the OAH to review the proposed rule amendments to determine whether adequate justification has been provided for use of the “good cause” exemption process and to review the rule amendments as to legality.

Good Cause Showing

Here, the DNR has properly invoked the “good cause” exemption process set forth in Minn. Stat. § 14.388, subd. 1(3). The rule amendments incorporate the specific changes set forth in 2011 Session Law and require no additional interpretation of law.

Compliance with Notice Requirements

Under the “good cause” exemption process, the agency is required to provide notice to persons who have registered their names with the agency pursuant to Minn. Stat. § 14.14, subd. 1a, and include a statement in the notice that interested parties have five business days after the date of the notice to submit comments to the Office of Administrative Hearings (OAH). The DNR provided notice in compliance with this statutory provision on October 24, 2013.

The OAH received six public comments concerning the rule amendments during the comment period. Each of the six commenters objected to the increase in maximum permit fees, enacted by the legislature in 2011.

The DNR also received six comments from the public, including one from an individual who filed comments with the OAH. The comments received by the DNR primarily raised questions about how the proposed increase in permit fees would affect existing aquatic management plans conducted by various lake associations.

¹ 2011 Minn. Laws ch. 2, art. 4, § 16 (1st Spec. Sess.).

² Minn. Stat. § 14.388, subd. 1(3).

None of the comments received by the OAH or the DNR raised any concerns regarding the legality of the rule amendments.

Legality of the Rules

The legality determination by OAH is governed by Minn. R. 1400.2400, subp. 3, which states that in reviewing a filing the Administrative Law Judge must decide whether the rule meets the standards of part 1400.2100, Items A and D to G. Those standards of review provide as follows:

A rule must be disapproved by the judge or chief judge if the rule:

A. was not adopted in compliance with procedural requirements of this chapter, Minnesota Statutes, chapter 14, or other law or rule, unless the judge decides that the error must be disregarded under Minnesota Statutes, section 14.15, subdivision 5, or 14.36, subdivision 3, paragraph (d);

. . .

D. exceeds, conflicts with, does not comply with, or grants the agency discretion beyond what is allowed by its enabling statute or other applicable law;

E. is unconstitutional or illegal;

F. improperly delegates the agency's powers to another agency, person or group;

G. is not a "rule" as defined in Minnesota Statutes, section 14.02, subdivision 4, or by its own terms cannot have the force and effect of law. . . .

After a careful review of the rule amendments, the Administrative Law Judge concludes that the rule amendments do not raise any legality concerns. The amendments simply incorporate specific provisions of Minn. Stat. § 103G.615, subd. 2. In addition, the DNR has complied with all applicable legal requirements of Minnesota Statutes, chapter 14 and Minnesota Rules, part 1400. For these reasons, the proposed rule amendments are approved.

J. M. C.