

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE MINNESOTA POLLUTION CONTROL AGENCY

Review and Approval of Good Cause  
Exempt Rulemaking under Minnesota  
Statute, Section 14.388, in the Matter of  
Amending Minnesota Pollution Control  
Agency Rules to Extend the Term of  
Land Disposal Facility Permits from an  
Existing Maximum of Five Years to a  
New Maximum of Ten Years, Minn. R.  
Part 7001.7035, subp. 1.

**ORDER ON REVIEW  
OF RULE UNDER  
MINN. STAT. §§ 14.386 AND  
14.388**

The Minnesota Pollution Control Agency (the Agency) is seeking review and approval of the above-entitled rule, pursuant to Minn. Stat. § 14.388. On June 25, 2012, the Office of Administrative Hearings received the documents from the Agency required to be filed under Minn. Stat. § 14.386.

This matter came before Administrative Law Judge Manuel J. Cervantes during the review for legality, pursuant to Minnesota Statutes, sections 14.386 and 14.388, subdivision 1, clause (3). This legal review was undertaken because the proposed amendments to Minn. R. 7001.7035, subp. 1 are otherwise exempt from the rulemaking requirements of Minnesota Statutes, Chapter 14, and Minn. R. Part 1400 by the direction of the Legislature in Minnesota Session Laws 2011, Chapter 107, Section 102.

Based upon a review of the written submissions and filings, Minnesota Statutes, Minnesota Rules, and for the reasons set forth in the Memorandum that follows below:

**IT IS HEREBY ORDERED:**

1. Minn. R. 7001.7035, subp. 1 was adopted in compliance with the procedural requirements of Minn. Stat. Chap. 14 and Minn. R. Chap. 1400.
2. The amendments to Minn. R. 7001.7035, subp. 1 are **APPROVED**.

Dated: July 9, 2012

s/Manuel J. Cervantes

MANUEL J. CERVANTES  
Administrative Law Judge

**MEMORANDUM**

On May 27, 2011, Governor Mark Dayton signed, and deposited with the Secretary of State, Chapter 107 of the 2011 Laws of Minnesota. This legislation contained the following directive::

(a) The commissioner of the Pollution Control Agency shall amend Minnesota Rules, part 7001.3500, subpart 1, to extend permit terms to ten years and take into account site capacity for a solid waste land disposal facility.

(b) In amending the rules under this section, the commissioner of the Pollution Control Agency may use the good cause exemption under Minnesota Statutes, section 14.388, subdivision 1, clause (3), and Minnesota Statutes, section 14.386, does not apply, except as provided in Minnesota Statutes, section 14.388.<sup>1</sup>

Minn. Stat. 14.386, subd. (a), in relevant part, reads:

A rule adopted, under a statute enacted after January 1, 1997, requiring rules to be adopted but excluded from the rulemaking provisions of chapter 14, has the force and effect of law only if:

- (1) the Revisor of statutes approves the form of the rule by certificate;
- (2) the person authorized to adopt the rule on behalf of the agency signs an order adopting the rule;

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<sup>1</sup> See, 2011 Laws of Minnesota, Chapter 107, Section 102.

(3) the Office of Administrative Hearings approves the rule as to its legality within 14 days after the agency submits it for approval and files four copies of the rule with the Revisor's certificate in the Office of the Secretary of State; and

(4) a copy is published by the agency in the State Register.

On June 25, 2012, the Agency submitted: 1) a copy of the notice sent to interested parties, 2) the amended rules with the Revisor's approval as to form, and 3) a proposed Order Adopting Rules, as required by Minn. Stat. 14.386 and Minn. R. 1400.2400, subp. 2. The Agency indicated that upon approval as to legality by the Administrative Law Judge, it will adopt and publish the rules in the *State Register*.

Minn. Stat. 14.388, subd. 1, in relevant part, reads:

If an agency for good cause finds that the rulemaking provisions of this chapter are unnecessary, impracticable, or contrary to the public interest when adopting a rule to incorporate specific changes set forth in applicable statutes when no interpretation of law is required, the agency may adopt the rule after satisfying the requirements of subdivision 2 and section 14.386.

The Agency found that the general rule making provisions are not necessary, impracticable or contrary to the public interest in amending these rules to incorporate specific changes set forth in statutes when no interpretation is necessary.

Minn. Stat. 14.388, subd. 2, in relevant part, reads:

An agency proposing to adopt a rule under this section must give electronic notice of its intent in accordance with section 16E.07, subdivision 3, and notice by United States mail or electronic mail to persons who have registered their names with the agency under section 14.14, subdivision 1a. The notice must be given no later than the date the agency submits the proposed rule to the Office of Administrative Hearings for review of its legality and must include:

(1) the proposed amendment;

(2) an explanation of why the rule meets the requirements of the good cause exemption under subdivision 1; and

(3) a statement that interested parties have five business days after the date of the notice to submit comments to the Office of Administrative Hearings.

In this case, the notice was given to the interested parties simultaneously with its request for OAH review. The notice contained the proposed amendments and why the amendments were exempt from the general rule making requirements. The notice also informed the public that persons had five business days after the date of the notice or until June 29, 2012 to submit comments to the OAH.

The Agency has shown that it has good cause to be exempt from the general rule making provisions found in Minn. Stat. chapter 14. The legislation was straight forward and requires no interpretation. The Agency has limited its proposed amendments to the existing rules to those required by the enabling legislation. Given the legislation, exempt rulemaking is an effective use of resources to implement the required changes.

Pursuant to Minnesota Stat. §§ 14.386, and 14.388, subd. 1(3), the amendments to Minn. R. 7001.7035, subp. 1 are approved as to legality.

With the approval of the adopted rules, the OAH has closed its file and will return the rule record to the Minnesota Pollution Control Agency. The OAH will file four certified copies of the rules with the Secretary of State. The Agency may publish a copy of the amendment in the State Register pursuant to Minn. Stat. § 14.386(a) (4). The amendments will be effective upon publication.

**M.J.C.**