

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of the Proposed Rules of the
Minnesota Department of Natural
Resources Relating to Mississippi River
Corridor Critical Area

**ORDER ON REVIEW OF
NOTICE OF HEARING AND
ADDITIONAL NOTICE PLAN**

This matter came before Administrative Law Judge Eric L. Lipman upon the Minnesota Department of Natural Resources's (Department) request for review of its Notice of Hearing and Additional Notice Plan. The Department seeks a legal review of its materials under Minn. R. 1400.2060, .2080 (2015).

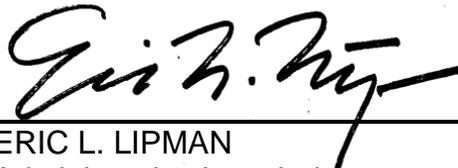
Based upon a review of the Department's submissions, including its plan to notify agencies with shoreland regulation duties, property owners along the Mississippi River Corridor, and participants in the pre-proposal "open house" process,

IT IS HEREBY ORDERED THAT:

1. The Additional Notice Plan is **APPROVED**.
2. The Notice of Hearing is **CONDITIONALLY APPROVED**, provided that:
 - (a) the following sentences are deleted from the Notice:
 - i. "The Department will collect all written comments and transfer the comments to the administrative law judge."
 - ii. "Submit written comments to the Department contact person at the address above or to mrcca.rulemaking@state.mn.us."
 - iii. "The Department must receive all comments and responses no later than 4:30 p.m. on the due date."
 - (b) the following sentences, or text of similar meaning, are added to the Notice:
 - i. "All comments and responses submitted to the Administrative Law Judge must be received at the Office of Administrative Hearings no later than 4:30 p.m. on the due date."

- ii. “All comments or responses received will be available for review at the Office of Administrative Hearings, or online at that Office’s e-Comments website.”¹

Dated: March 1, 2016


ERIC L. LIPMAN
Administrative Law Judge

MEMORANDUM

It is understandable that the Department would prefer to have post-hearing comments submitted directly to it – instead of accessing them, alongside other stakeholders, at the Office of Administrative Hearings. Yet, this is not the law.

Minnesota’s Administrative Procedure Act, and implementing regulations, is unambiguous on this point. The law makes clear that the Administrative Law Judge is responsible for development of the hearing record, that post-hearing comments are filed with the Office of Administrative Hearings in the first instance, and that no stakeholder has preferential access to materials in the hearing record.²

A Notice of Hearing that does not accurately reflect the requirements for the post-hearing comment period,³ cannot be approved.⁴

E. L. L.

¹ See <https://mn.gov/oah/forms-and-filing/e-comments/>.

² Minn. Stat. § 14.14, subd. 2a (2014) (“When a hearing is held on a proposed rule, it shall be conducted by an administrative law judge assigned by the chief administrative law judge. *The administrative law judge shall ensure that all persons involved in the rule hearing are treated fairly and impartially.* The agency shall submit into the record the jurisdictional documents, including the statement of need and reasonableness, and any written exhibits in support of the proposed rule. The agency may also present additional oral evidence. Interested persons may present written and oral evidence....”) (emphasis added); Minn. Stat. § 14.15, subd. 1 (2014) (“After allowing a comment period during which written material may be submitted and recorded in *the hearing record* for five working days after the public hearing ends, or for a longer period not to exceed 20 days if ordered by the administrative law judge, the administrative law judge assigned to the hearing shall write a report as provided for in section 14.50.”) (emphasis added); Minn. R. 1400.2230, subps. 1, 2 (2015) (“*The office must receive the written comments* no later than 4:30 p.m. on the last day for submission.... *The office must allow the agency and all interested persons to review the submissions* received under subpart 1 and must allow them a rebuttal period of five working days to respond in writing to any new information submitted. *The office must receive the responses* no later than 4:30 p.m. on the last day.... The written responses are part of the hearing record.”) (emphasis added). See also Minn. R. 1400.2530 (2015) (Recommended Notice of Hearing).

³ Minn. R. 1400.2080, subps. 1, 2(H), 4(D).

⁴ Minn. R. 1400.2080, subp. 5 (“The agency must request to schedule a rule hearing and obtain the judge’s approval of any notice of hearing ... prior to mailing it or publishing it in the State Register”); see also, Minn. Stat. § 14.001 (3) (2014).