

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of the Proposed Rules of
the Department of Agriculture Governing
Groundwater Protection

**ORDER OF THE CHIEF
ADMINISTRATIVE LAW JUDGE ON
REVIEW OF RULES**

This matter came before the Chief Administrative Law Judge for review pursuant to Minn. Stat. § 14.16, subd. 2 (2018) and Minn. R. 1400.2240, subps. 4, 5 (2017).

The Minnesota Department of Agriculture (Department) proposes to adopt the above-entitled rules under Minn. Stat. § 14.16 (2018). The rules address the issue of groundwater protection under the authority of the 1989 Minnesota Groundwater Protection Act.¹

On May 19, 2018, the Committee on Agriculture, Rural Development, and Housing Policy of the Minnesota Senate (Senate Committee) adopted Resolution No. 18-7919.² This Resolution advises the Department not to adopt the proposed rules until adjournment of the 2019 Legislative Session.³ The Senate Committee cites Minn. Stat. § 14.126 (2018) and the designation of jurisdiction as determined by the president of the Senate as its authority for this action. Similarly, following jurisdictional designation by the Speaker of the Minnesota House of Representatives (House),⁴ the House Committee on Agriculture Policy adopted Resolution CS-RES03 on May 20, 2018, advising the Department, pursuant to Minn. Stat. § 14.126, not to adopt the proposed rules until the 2019 Legislative Session is adjourned.⁵

The proposed rules came before Administrative Law Judge Jessica A. Palmer-Denig for public hearings on July 16, 18, 19, 25, and 26, 2018. The Administrative Law Judge issued a Report dated September 21, 2018, in which she disapproved portions of

¹ Minn. Stat. §§ 103H.001-.280 (2018).

² May 19, 2018 Minutes of the Senate Committee together with Committee Resolution 18-7919, filed with the Office of Administrative Hearings on June 8, 2018, as attachments to correspondence between Senator Bill Weber, Senate Committee Chair, and Department Commissioner Dave Frederickson dated June 4, 2018.

³ *Id.*

⁴ May 18, 2018, correspondence from Kurt Daudt, Speaker of the House, filed with the Office of Administrative Hearings on June 4, 2018.

⁵ May 20, 2018 Minutes of the House Committee on Agriculture Policy (House Committee) filed with the Office of Administrative Hearings on June 4, 2018, as attachments to correspondence between Representative Paul Anderson, House Committee Chair, and Department Commissioner Dave Frederickson dated June 4, 2018. See *also* June 13, 2018 Minority Report authored by Rep. Jeanne Poppe, DFL Lead, House Agriculture Finance Committee, filed with the Office of Administrative Hearings on June 15, 2018.

the proposed rules. The Chief Administrative Law Judge concurred with the determinations of the Administrative Law Judge by Order dated October 1, 2018.

On November 20, 2018, the Department resubmitted the proposed rules to the Chief Administrative Law Judge for review and approval.⁶ The Department also requested approval of its Order Approving Rules. On November 26, 2018, the Department amended its submission by filing revised rule text correcting a typographical error.

Based upon a review of the modifications made by the Department as presented in its submissions on November 20 and 26, 2018, and the rulemaking record, the Chief Administrative Law Judge issues the following:

ORDER

1. The defects identified in the prior orders have been corrected.
2. The Department's modifications to the rule do not render the final proposed rules substantially different, under Minn. Stat. § 14.05, subd. 2 (2018), from those published in the *State Register* on April 30, 2018.
3. The proposed Order Approving Rules should be modified to correct the date of the Administrative Law Judge's Report to September 21, 2018.
4. The proposed rules as modified and as approved by the Office of the Revisor on November 26, 2018, are approved as to compliance with all procedural requirements of Minn. Stat. §§ 14.001-.70 (2018) and Minn. R. 1400.2000-.8612 (2017).
5. Because "the standing committee of the house of representatives and the standing committee of the senate with jurisdiction over the subject matter of a proposed rule both vote[d] to advise [the Department] that [the] proposed rule should not be adopted as proposed,"⁷ the Department may not adopt the rule until after the 2019 Legislative Session adjourns.

Dated: November 29, 2018



TAMMY L. PUST
Chief Administrative Law Judge

⁶ The Department's request for review references "reconsideration" of the disapproved portions of the proposed rules, but the Department does not identify any portion of the prior orders that it wishes to have reconsidered. More correctly, the Department requests review under Minn. R. 1400.2240, subp. 5, and has either made the required modifications or proposed new language to cure the defects identified by the Administrative Law Judge. Therefore, the Chief Administrative Law Judge construes the Department's request to seek approval of the rule modifications under Minn. R. 1400.2240, subp. 4, and changes including new rule language under Minn. R. 1400.2240, subp. 5.

⁷ Minn. Stat. § 14.126.