

April 26, 2023

Jean Wagenius  
4804 11th Avenue S.  
Minneapolis, MN 55417

Dear Jean Wagenius:

We received your comment dated April 24, 2023, that reiterates your opinion that Administrative Law Judge Mortenson must “find that HRLs have the force and effect of law and are enforceable by MDH.” You make this assertion, largely based on your interpretation of provisions within sections of Minnesota Statutes that make no reference to HRLs nor any section of the chapter authorizing them. You made this same claim in your earlier comment on this rule, dated March 4, 2023. Accordingly, we refer you to our March 31, 2023, response to your first comment. For your convenience, we repeat the relevant portion of that response here:

The legislature . . . specifically requires HRLs to be set in rule and defines them, not as directly enforced limits on any particular party’s conduct, but as baselines for operationalizing the point where a concentration of a given substance becomes a potential health risk (103H.005, subd. 3). That MDH has general statutory authority to regulate environmental health hazards does not prohibit MDH from complying with a clear directive from the legislature to set HRLs in rule. In more than 20 years MDH has not interpreted the statute this way, nor has any administrative law judge during previous rulemakings.

Over the course of 8 previous rulemakings, the department has adopted at least 146 HRLs through Democratic, Republican, and Independent administrations—each with their own MDH commissioners and dozens of MDH employees. To be clear, MDH has never been required to enforce or declare an intention to enforce HRLs as a prerequisite for the approval of its HRLs and its ultimate compliance with the statutory mandate that “[h]ealth risk limits shall be adopted by rule.” (103H.201, subd. 2(a)).

As you likely know, part of what makes a HRL a powerful public health tool is that it presents no economic impact on stakeholders. If HRLs were regulatory, a complex consideration of how much it would cost to enforce each HRL would need to be made alongside its establishment or revision. This would slow down and complicate MDH’s ability to set these health-based standards. Thus, MDH’s longstanding approach to HRLs accomplishes exactly what your comment seems to seek: Better health protection for people who drink water in Minnesota.

That MDH itself does not enforce HRLs does not mean, however, that they are rendered meaningless or ineffective. In addition to authorizing MDH’s adoption of HRLs into rule, Minnesota Statutes, chapter

103H, also authorizes the Minnesota Department of Agriculture (MDA) and the Minnesota Pollution Control Agency (MPCA) to adopt water resource protection requirements (WRPR) into rule. (§ 103H.275, subd. 2). In furtherance of your desire that HRLs be enforced, the legislature in fact directed that WRPRs “must be . . . designed to prevent . . . pollution from exceeding the health risk limits . . .” (§ 103H.275, subd. 1(c)(2)). Consistent with other statutory frameworks for enforcement of standards, the legislature also provides MDA and MPCA with extensive guidance for how it should adopt and enforce these regulations, including by providing remedies for their violation, something the chapter lacks regarding HRLs. (*Compare*, § 103H.201 (authorizing and directing MDH’s adoption of HRLs) *with*, §103H.275 (authorizing and directing MDA and MPCA’s adoption of WRPRs)).

Many other regulatory programs use HRLs, as well. For example, the Drinking Water Protection Section’s main goal is to enforce the federal Safe Drinking Water Act (SDWA). Over the past twenty years, staff in that section have worked closely with the Health Risk Assessment Unit staff to develop a process for addressing unregulated contaminants (HRLs) at public water supplies. This is most obvious with work on PFAS, which, for example, has led to a data portal that all Minnesotans on municipal water can view their sampling results. There have also been multiple sampling efforts by MDH, MDA, and MPCA for private well owners over the last twenty years that have used HRLs as guidance because there is no SDWA for private wells. As you can see, the HRLs do not sit unused. In fact, year after year we seek funding for more staff because we provide technical assistance to other state and local agencies seeking to use HRLs more frequently.

Respectfully,



Sarah Fossen Johnson  
Manager, Environmental Surveillance and Assessment Section  
Minnesota Department of Health  
Environmental Health Division  
651-201-4899  
[health.risk@state.mn.us](mailto:health.risk@state.mn.us)  
[www.health.state.mn.us](http://www.health.state.mn.us)