

# 38941 Minnesota Department of Health Notice of Hearing (Post-Hearing Comment Period)

Closed Apr 26, 2023 · Discussion · 5 Participants · 1 Topics · 8 Answers · 3 Replies · 0 Votes

5

PARTICIPANTS

1

TOPICS

8

ANSWERS

3

REPLIES

0

VOTES

## SUMMARY OF TOPICS


### SUBMIT A COMMENT

 8 Answers · 3 Replies

Important: All comments will be made available to the public. Please only submit information that you wish to make available publicly. The Office of Administrative Hearings does not edit or delete submissions that include personal information. We reserve the right to remove any comments we deem offensive, intimidating, belligerent, harassing, or bullying, or that contain any other inappropriate or aggressive behavior without prior notification.

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**Greg Johnson** · Citizen · (Postal Code: unknown) · Apr 07, 2023 3:09 pm

 0 Votes

Comments from the Metropolitan Council are attached.


#### Response:

**Nancy Rice** · Citizen · (Postal Code: unknown) · Apr 26, 2023 11:15 am

A response from Minnesota Department of Health has been added.

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**Jean Wagenius** · Citizen · (Postal Code: unknown) · Apr 24, 2023 6:22 pm

 0 Votes

In the Matter of the Proposed Amendments to Rules Governing Health Risk Limits for Groundwater, Minnesota Rules, Chapter 4717, Part 7500, Part 7850, and Part 7860; Revisor's ID Number 4587  
OAH Docket No. 5-9000-38941

I appreciate the opportunity to respond to the Department of Health's letter dated March 31, 2023.

In the letter MDH reasserts its position that Health Risk Limits are not enforceable citing its interpretation of the definition in Minn. Stat. 103H.005, subd. 5. But this definition does not preclude MDH from enforcing HRLs. Moreover, the definition read together with the other governing statutes make it clear that HRL's are enforceable by MDH.

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I gladly support the proposed HRLs that “include a reasonable margin of safety to adequately protect the health of infants, children, and adults.” Minn. Stat 144.0751. But I ask the Administrative Law Judge to reject MDH’s assertion that HRLs promulgated in this rule making are “non-regulatory” and find that the HRLs have the force and effect of law and thus are enforceable by MDH.

Health Risk Limits were included in the 1989 Groundwater Protection Act. The operative language in Minn. Stat. 103H.201 Subd. 2 (a) says “(h)ealth risk limits shall be adopted by rule.” At that time, the Administrative Procedure Act had been in law for decades. Minn. Stat. 14.38 provides for the effect of adopted rules. Subdivision 1 states that “(e)very rule...shall have the force and effect of law.” The legislature clearly intended that HRLs would have the force and effect of law.

Moreover Subdivision 2 (b) reinforced that intention when the legislature gave the commissioner the authority to adopt health risk limits notwithstanding chapter 14 if the commissioner determines that “emergency conditions exist and the public health and welfare require the health risk limits to be adopted as soon as possible....” The legislature gave that authority with the expectation that a HRL would need to be enforced as soon as possible.

In its SONAR MDH cites the Groundwater Protection Act of 1989 as authority to adopt HRLs: “(i)f groundwater quality monitoring results show that there is a degradation of groundwater, the commissioner of health may promulgate health risk limits under subdivision 2.” SONAR p. 2

The Department also cites Minn. Stat. 144.0751 Health Standards which provides the outcome that a HRL must achieve and the criteria to be satisfied to reach that outcome. Specifically, a HRL must “include a reasonable margin of safety to adequately protect the health of infants, children, and adults” for each of the following “ reproductive development and function, respiratory function, immunologic suppression or hypersensitization, development of the brain and nervous system, endocrine (hormonal) function, cancer, general infant and child development, and any other important health outcomes identified by the commissioner.” Minn. Stat. 144.0751 was enacted in 2001, after the Groundwater Protection Act.

MDH applies the Health Standards law when it creates a HRL and then uses it to defend its proposed rules. In each of the responses to HRLs contested by members of the chemical industry MDH points out that it is responsible under law to “include a reasonable margin of safety to adequately protect the health of infants, children, and adults....”

MDH clearly understands that the Health Standards law governs its creation of HRLs. The Health Standards law does not provide for any exceptions that would give the commissioner the discretion to not enforce HRLs once they have been promulgated in a rule making process. Yet by refusing to enforce HRLs and telling others that they don’t need to follow them, MDH has chosen to make the Health Standards law meaningless. The result: the Health Standards law that was designed to protect the health of infants and children does not protect the health of infants, children, or adults according to MDH.

MDH also ignores the statute setting out the responsibilities of the commissioner of health. Minn. Stat. 144.05 says the commissioner “shall be responsible for the development and maintenance of an organized system of programs and services for

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protecting, maintaining, and improving the health of the citizens. This authority shall include...(3) establish and enforce health standards for the protection and the promotion of the public's health...." (emphasis added.) HRLs comply with Minn. Stat. 144.0751 HEALTH STANDARDS and are clearly standards to be enforced under Minn. Stat. 144.05.

The MDH enforces the federal Safe Drinking Water Act including the standards and treatment techniques that apply to public water systems in order to protect drinking and source water. SONAR p 80. EPA-derived MCLs are federal standards adopted for the regulation of public drinking water in Minnesota. "EPA has developed standards for 91 chemicals, with the most recent value developed in 2001....As a result, most MCLs were developed using outdated methods based only on adult intakes and body weight."SONAR. P 80. The more specific Health Standards law became effective in 2001. And since 2001 additional chemicals have been found in groundwater in Minnesota.

The Groundwater Act authorizes MDH to adopt HRLs by rule for contaminants found in Minnesota groundwater. MDH creates a HRL only when a contaminant is found in groundwater. MDH states that its HRLs meet the outcome and criteria of the Health Standards act. MDH acknowledges that 75% of Minnesotans use groundwater for drinking water. Nonetheless MDH asks the Administrative Law Judge to agree with it when it says that the legislature never intended that MDH protect drinking water by enforcing health standards for drinking water. MDH asks for this result: MDH would continue to enforce outdated federal standards but not enforce new or updated protective HRL standards for chemicals found in Minnesota's groundwater. The Judge should reject MDH's assertion and find that HRLs have the force and effect of law and are enforceable by MDH.

The law is clear. It is supported by well accepted public policy and MDH's own mission statement. The government's first responsibility is keeping citizens safe. That includes making sure drinking water is safe, safe for every Minnesotan. Groundwater that is drinking water is not unsafe uniformly across the state. Only parts of the state are vulnerable to groundwater contamination and unsafe drinking water. Equity, also, tells us that Minnesotans living in areas vulnerable to drinking water contamination should have safe drinking water just like the rest of Minnesotans.

Jean Wagenius  
4804 11th Avenue S.  
Minneapolis  
612-822-3347


### Response:

**Nancy Rice** · Citizen · (Postal Code: unknown) · Apr 26, 2023 4:14 pm

A response from Minnesota Department of Health has been added.

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**Barbara Losey** · Citizen · (Postal Code: unknown) · Apr 26, 2023 7:59 am

 0 Votes

The Alkylphenols & Ethoxylates Research Council (APERC) submits these post-hearing comments to oppose proposed amendments to rules governing Health Risk Limits (HRLs) for groundwater, Minnesota Rules, Ch. 4717.7860 Subpart 13a, p-Nonylphenol (pNP), also called 4-Nonylphenol (4NP). These comments are submitted under discussion 38941 to