

Clarifying Shoreland and Public Water Resources Rulemaking Authority



Summary

The authority to develop and implement administrative rules needs to be granted by the legislature to executive branch agencies. These legislative directions help establish clear and transparent expectations for agencies, regulated parties, and the public, and are an important tool for agencies to use in conducting the business of the state. Administrative rulemaking may be conducted by an agency under its general statutory authorities, or under specific legislative direction, and may address a wide range of agency business—from larger/more significant programmatic directives to simply keeping rules up-to-date and more readily understandable.

This proposal reaffirms the DNR's standing authority to conduct rulemaking for shorelands and waters of the state. Uncertainty about the DNR's rulemaking authority developed after the Legislature directed the DNR to update the statewide rules pertaining to shorelands and structures in public waters. This legislative

direction may have triggered a deadline under Minnesota Statute 14.125 (Minnesota's Administrative Procedure Act), which requires publishing a notice of intent to adopt rules within 18 months of the law directing rules to be adopted or amended, after which the authority for the rules expires. Due to the complexity of the rules and the highly participatory approach taken, the DNR was unable to meet the 18-month deadline and did not update the rules. The DNR believes that it was not the Legislature's intent for Minnesota Statute 14.125 to remove standing general rulemaking authority from state agencies, but rather to remove any specific legislatively-directed rulemaking authority after 18 months in order to ensure agencies carry out the directed rulemaking in a timely manner. The DNR seeks clarification and reaffirmation of our general rulemaking authorities for these programs and to ensure the agency can timely and transparently conduct rulemaking under these authorities.



Proposal

The DNR must maintain clear rulemaking authority to keep the shoreland and waters of the state rules current, relevant, and reasonable for effective program administration. Without it, the DNR is unable to do simple housekeeping to clean-up obsolete, unnecessary, and duplicative rules provisions as required of all agencies under Minnesota Statute 14.05, Subd. 5 (Obsolete Rulemaking) and to amend the rules to reflect statutory changes that supersede rules or other changes that don't alter the sense, meaning or effect of rules per Minnesota Statute 14.388 (Good Cause Exempt Rulemaking). Though the DNR has no current plans to do so, the agency is not able to update the rules to address contemporary development issues without clear rulemaking authority.

The proposal would amend Minnesota Statute 103F.211, Subd. 1 (Shoreland Management Act) and 103G.315, Subd. 15 (Water Law, Public Waters Permits & Use) to clarify that the time limit on authority to adopt, amend, or repeal rules associated with laws authorizing/requiring such rules would not apply to DNR's standing general rule authorities for Minnesota's Water Law and Shoreland Management Act. In doing so, it affirms DNR's standing rulemaking authority originally granted by the Legislature for these programs. The proposal would not provide the DNR with any new or expanded authority, nor would it direct or require any rulemaking activity by DNR.



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