

IN COURT OF APPEALS

Center for Biological Diversity, Howling
for Wolves,

VS.

Minnesota Department of Natural Resources, and Tom Landwehr, in his official capacity as the Commissioner of the Minnesota Department of Natural Resources,

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

1. I am the Administrative Rules Coordinator for the Minnesota Department of Natural Resources (“DNR”). My office is located at 500 Lafayette Road, St. Paul, Minnesota 55155. I have been employed by DNR since 1993 as a strategic planner, facilitator, and public participation practitioner. I assumed the responsibilities of Administrative Rules Coordinator in 2007. I hold a Master of Planning from the University of Minnesota’s Humphrey School of Public Affairs. Prior to graduate school,

I was employed as a legal assistant by the law firm of Murnane, Conlin, White, Brandt, and Hoffman, in St. Paul, Minnesota.

2. Rulemaking in Minnesota generally follows procedures outlined in the Minnesota Administrative Procedure Act (“APA”), Minnesota Statutes, chapter 14, which allows permanent rules to be adopted with or without a hearing. The major stages of a permanent rulemaking process are (a) rule development, (b) public notice of the agency’s intent to adopt proposed rules, and (c) review and approval as to form and legality. A general rule of thumb is that it can take 18 to 24 months to complete a permanent rulemaking process. Rule development can take 6 to 12 months and sometimes longer for complex or controversial rules. The procedures for notice, review, and approval of proposed rules usually take at least 12 months.

3. The APA requires agencies to seek public comment during rule development. Publication of a Request for Comments in the State Register is the first formal step in the rulemaking process. A Request for Comments does not have to include a set of proposed rules. DNR often publishes a Request for Comments early in rule development before any rule drafting takes place, in order to hear all relevant ideas unconstrained by preconceived language.

4. When DNR decides on a final set of proposed rules, a Statement of Need and Reasonableness (“SONAR”) is prepared and signed by the commissioner. The SONAR contains a summary of the evidence and argument that DNR is relying on to justify that the rules are needed and reasonable. The contents of the SONAR are prescribed by the APA. *See* Minn. Stat. § 14.131 (2010).

5. DNR must give notice of its intent to adopt rules and make the proposed rules available to the public. The notice and the proposed rules must be published in the State Register and must be delivered to interested parties according to an Additional Notice Plan.

6. DNR usually uses the option of publishing a Dual Notice: Notice of Intent to Adopt Rules without a Hearing. In this type of notice, DNR announces one or more hearing dates and locations but reserves the right to cancel the hearing if 25 or more requests for a hearing are not received. If DNR does cancel the hearing, it is not required to re-publish its notice of intent and can proceed to have the proposed rules reviewed by an Administrative Law Judge at the Office of Administrative Hearings. In some cases of controversial rules, DNR initially opts instead to go through hearings and publishes a Notice of Intent to Adopt Rules with a Hearing.

7. After the public comment period on the notice of intent to adopt rules, DNR submits a required set of exhibits to the Administrative Law Judge. The purpose of the exhibits is to present DNR's case for adopting the rules and to demonstrate compliance with all procedural requirements. Upon review and approval of the rules by the Administrative Law Judge, the Commissioner of Natural Resources signs an Order Adopting Rules and the rules are filed with the Secretary of State. The Revisor's office prepares a Notice of Adoption for DNR to submit to the State Register for publication. That completes the rulemaking process.

8. Minnesota Statutes, sections 97A.0451 to 97A.0459, outlines an emergency rulemaking procedure for use when DNR needs to adopt, amend, suspend, or repeal a

rule in a manner that does not allow for compliance with the permanent rulemaking procedures of the Administrative Procedure Act in Minnesota Statutes, sections 14.14 to 14.28, or when commissioner is expressly required or authorized by statute to adopt emergency rules. In turn, Minnesota Statutes, section 84.027, subdivision 13, provides an expedited process for use under conditions that do not allow the commissioner to comply with the requirements of the emergency rulemaking process in sections 97A.0451 to 97A.0459.

9. Authority for emergency rules under sections 97A.0451 to 97A.0459 is effective for only a limited time; the intended purpose is to allow the agency temporary regulatory authority until permanent rules can be promulgated. Consequently, the emergency rulemaking may only be used one time for a 180-day effective period, with one additional 180-day effective period available “if the commissioner gives notice of continuation by publishing notice in the State Register and mailing the same notice to all persons registered with the commissioner to receive notice of any rulemaking proceedings,” before the agency must use the permanent rulemaking procedures of chapter 14. Minn. Stat. § 97A.0458 (2010). Expedited rules, on the other hand, are effective for 18 months, and there is no requirement that permanent rulemaking be utilized after the expiration of the 18 month period. DNR uses the expedited emergency rulemaking process for hunting, trapping, and fishing rules that need to be revised each season, year after year. The conditions that do not allow DNR to use the emergency rulemaking process are that, for numerous game species, DNR must gather data on a yearly basis, analyze the data, and then, if necessary, modify bag limits, season dates,

hunting/trapping zones, etc.—changes that require yearly modification of the rules within a maximum of a few months’ time. If emergency rulemaking were used, it could only be used for one season, and then any subsequent modifications to the rule would have to be performed through permanent rulemaking. Permanent rulemaking could not be accomplished during the short time period DNR has to adopt the new seasonal rules prior to the beginning of the hunting, trapping, or fishing season.

10. The 1995 Minnesota Legislature repealed the emergency and expedited rule authority previously contained in Minnesota Statutes, sections 14.29 to 14.36, and moved much of the authority and enabling language for emergency and expedited game and fish rulemaking from Chapter 14 to Chapters 84 and 97A. At that time, DNR converted its previous system of commissioner’s orders for fish and wildlife activities into legislation and rules in order to increase public input for and awareness of regulations.

11. DNR has used the expedited rulemaking process since 1995 for the topics listed in Minnesota Statutes, section 84.027, subdivision 13, for species of animals that require annual modification to the existing rules. See *FY 2012 Activities Report for Administrative Rules Coordination*, attached as Exhibit A hereto, which includes a list of all expedited emergency rulemaking projects completed by DNR during Fiscal Year 2012.

12. DNR followed the following steps in the expedited rulemaking process under Minnesota Statutes, section 84.027, subdivision 13, to adopt rules for the 2012 wolf season:

- a. Division staff developed rule language during May and June 2012.

- b. On July 10, 2012, DNR submitted draft rule language to the Revisor's office for preparation of a preliminary draft in required form.
- c. On July 11, 2012, division staff obtained Commissioner Landwehr's signature on the combined *Notice of Adoption and Statement of Emergency Conditions* and *Preliminary Proposal Form* for the Governor's office.
- d. On July 17, 2012, DNR received a preliminary draft numbered RD4098 from the Revisor's office and forwarded it to division staff for review.
- e. On July 24, 2012, division staff made requested changes.
- f. On July 30, 2012, DNR advised the Revisor's office of the requested changes and requested preparation of rules approved as to form.
- g. On August 6, 2012, DNR submitted the *Preliminary Proposal Form* informational package to Governor's office.
- h. On August 7, 2012, DNR submitted the rules to Office of the Attorney General and requested approval as to legality.
- i. On August 10, 2012, DNR received notification that the Office of the Attorney General had approved the rules as to legality.
- j. On August 10, 2012, DNR submitted a printing order to the State Register for publication on August 20, 2012. The printing order deadline for this type of rule is noon on the Tuesday preceding the publication date.
- k. On August 15, 2012, DNR filed the approved rules with Secretary of State.
- l. On August 16, 2012, DNR sent a copy of the rules as filed to the Legislative Coordinating Commission.

13. The rules were published and effective on August 20, 2012, following approval as to form by the Office of Revisor of Statutes as of August 1, 2012, and approval as to legality by the Office of the Attorney General on August 10, 2012. These rules included an expiration date of February 2, 2013.

14. DNR has not received a request from the Petitioners to stay implementation of the 2012 wolf season rules.

FURTHER YOUR AFFIANT SAYETH NOT.

Elizabeth P. Carlson

Subscribed and sworn to before me on
this _____ day of September, 2012

NOTARY PUBLIC

AG: #3089877-v1

Operations Services Division

Office Memorandum

Date: September 17, 2012**To:** Laurie Martinson, Division Director**From:** Beth Carlson, DNR Rules Coordinator**Copy:** Mark Wallace
Laura Preus
Keith Wendt*Both***Phone:** 651-259-5531**Subject: FY 2012 ACTIVITIES REPORT FOR ADMINISTRATIVE RULES COORDINATION****QUANTITY**Annual Summary of Completed Rulemaking Activities
Minnesota Department of Natural Resources

	Permanent Chap. 14	Expedited Permanent §14.389 *	Good Cause Exempt Permanent §14.388	Exempt Permanent §14.386	Repeal Obsolete §14.3895	Exempt Permanent Fisheries §§97C.001, .005	Expedited Emergency Game & Fish §84.027, subd. 13(b)	Emergency Game & Fish §84.027, subd. 13(a)	TOTAL
FY 2012	2	0	2	0	0	2	19	0	25
FY 2011	2	3	0	0	0	2	20	0	27
FY 2010	2	0	1	0	1	1	18	0	23
FY 2009	1	3	2	1	0	3	18	0	28
FY 2008	3	n.a.	1	0	0	3	17	0	24
FY 2007	0	n.a.	2	0	0	1	21	0	24
FY 2006	1	n.a.	1	0	0	2	17	0	21
FY 2005	0	n.a.	1	0	0	2	16	1	20
FY 2004	2	n.a.	1	0	0	3	16	0	22
FY 2003	3	n.a.	1	0	0	4	9	0	17
FY 2002	0	n.a.	1	0	0	2	11	0	14
FY 2001	2	n.a.	2	0	0	1	12	0	17

* DNR did not have statutory authority to use the expedited permanent process until FY 2009

OTHER ACCOMPLISHMENTS

- Planning committee for the Annual Rulemaking Seminar.
- Participated and represented the DNR in quarterly meetings of the Interagency Rules Committee for briefings on legal determinations, legislative developments, and other items of common interest.

ATTACHMENTS

Rulemaking projects completed during FY 2012

**RULEMAKING ACTIVITIES COMPLETED IN FISCAL YEAR 2012
BY THE MINNESOTA DEPARTMENT OF NATURAL RESOURCES**

500 Lafayette Road, St. Paul, MN 55155-4010

* Rules types: P = Permanent; ExpP = Expedited Permanent (14.389); GCE = Good Cause Exempt (14.388);
Ex = Exempt (14.386); ExFSH = Exempt Fisheries; ExpEm = Expedited Emergency; Em = Emergency

Subject Matter of Rules	Rule Type*	Agency Unit Lead Staff	Publication Date and Citation	Effective Date of New or Amended Rule
Wild Turkey and Prairie Chicken Hunting	ExpEm	Fish & Wildlife J. Abraham	18 June 2012 36 SR 1569	18 June 2012
Camp Ripley Archery and Youth Deer Hunts	ExpEm	Fish & Wildlife J. Abraham	11 June 2012 36 SR 1503	11 June 2012
2012 Elk Season	ExpEm	Fish & Wildlife J. Abraham	30 April 2012 36 SR 1291	30 April 2012
2012 Bear Season	ExpEm	Fish & Wildlife J. Abraham	30 April 2012 36 SR 1290	30 April 2012
Designated Experimental Waters and Special Management Waters — Northern Pike <i>permanently remove lakes from lists that were temporarily removed under expedited emergency process (see 36 SR 501 below)</i>	ExFSH	Fish & Wildlife L. Erickson-Eastwood	23 April 2012 36 SR 1247	30 April 2012
Mille Lacs Lake Fishing	ExpEm	Fish & Wildlife L. Erickson-Eastwood	23 April 2012 36 SR 1252	23 April 2012
Moose Season Quota	ExpEm	Fish & Wildlife J. Abraham	9 April 2012 36 SR 1184	9 April 2012
Special Spring Turkey Hunt	ExpEm	Fish & Wildlife J. Abraham	9 April 2012 36 SR 1181	9 April 2012
Wildlife Management, Hunting, Trapping, and Stamp Design (Notice of Adoption)	P	Fish & Wildlife J. Abraham	2 April 2012 36 SR 1155	9 April 2012
Using Cisco and Smelt as Bait	ExpEm	Fish & Wildlife L. Erickson-Eastwood	2 April 2012 36 SR 1155	5 April 2012
Designated Experimental and Special Management Waters	ExFSH	Fish & Wildlife L. Erickson-Eastwood	17 January 2012 36 SR 810	1 March 2012
Aquatic Plant Management Permits	GCE	Ecological & Water Resources S. Enger	3 January 2012 36 SR 764	10 January 2012
Elk Hunt Extension	ExpEm	Fish & Wildlife J. Abraham	3 January 2012 36 SR 463	3 January 2012
Spring Turkey Season	ExpEm	Fish & Wildlife J. Abraham	5 December 2011 36 SR 635	5 December 2011 2 January 2012
Hunting on State Recreation Areas <i>LaSalle Lake</i>	ExpEm	Fish & Wildlife J. Abraham	7 November 2011 36 SR 545	5 November 2011 <i>retroactive</i>
Special Deer Hunts and Light Goose Population Control	ExpEm	Fish & Wildlife J. Abraham	31 October 2011 36 SR 507	31 October 2011

Subject Matter of Rules	Rule Type*	Agency Unit Lead Staff	Publication Date and Citation	Effective Date of New or Amended Rule
Restrictions on the Taking of Northern Pike	ExpEm	Fish & Wildlife L. Erickson-Eastwood	31 October 2011 36 SR 505	31 October 2011
Repeal of Northern Pike Rules	ExpEm	Fish & Wildlife L. Erickson-Eastwood	31 October 2011 36 SR 501	31 October 2011
Spearing on Cass Lake	GCE	Fish & Wildlife L. Erickson-Eastwood	17 October 2011 36 SR 436	17 October 2011
Aquatic Wildlife <i>Fisheries 8B & AR200-Part 3</i>	P	Fish & Wildlife L. Erickson-Eastwood	17 October 2011 36 SR 435	1 November 2011
Camp Ripley and Waterfowl Hunting	ExpEm	Fish & Wildlife J. Abraham	22 August 2011 36 SR 160	22 August 2011
2011 Deer Season	ExpEm	Fish & Wildlife J. Abraham	15 August 2011 36 SR 115	15 August 2011
State Game Refuges, Wildlife Management Areas, and Furbearers Seasons	ExpEm	Fish & Wildlife J. Abraham	8 August 2011 36 SR 75	8 August 2011
Sandhill Crane Hunting	ExpEm	Fish & Wildlife J. Abraham	1 August 2011 36 SR 39	1 August 2011
Youth Waterfowl Day; Early Goose Hunting; Waterfowl Feeding and Resting Areas	ExpEm	Fish & Wildlife J. Abraham	25 July 2011 36 SR 12	25 July 2011