

1573.0050 WATER RESOURCE PROTECTION REQUIREMENTS ORDER.**Subpart 1. Commissioner's water resource protection requirements order.**

A. The commissioner shall issue a water resource protection requirements order to responsible parties in mitigation level 3 and 4 drinking water supply management areas that meet the criteria in part 1573.0040, subparts 7 to 9. The commissioner shall use the nitrate-nitrogen concentration results obtained in part 1573.0040, subpart 5, to issue a water resource protection requirements order for a mitigation level 3 or 4 drinking water supply management area.

B. If a groundwater monitoring network is installed or residual soil nitrate testing is conducted in the drinking water supply management area, then a commissioner's order applies to the entire drinking water supply management area.

C. If a groundwater monitoring network is not installed or residual soil nitrate testing is not conducted in the drinking water supply management area, then the commissioner's order applies to the area within the drinking water supply management area for which land surface practices may impact water quality within the monitored well after the recommended nitrogen fertilizer best management practices for the drinking water supply management area are first published by the commissioner. This area shall be determined based on the estimated travel time, including lag time, for nitrate-nitrogen to travel from the place of application to the well.

D. In prioritizing the issuance of water resource protection requirements orders throughout the state, the commissioner shall consider the following:

(1) the nitrate-nitrogen concentration in drinking water supply management areas as determined by the commissioner of health's public well data or the groundwater monitoring network data;

(2) the size of the population at risk receiving water from the public well in the drinking water supply management area due to high nitrate in groundwater;

(3) whether the drinking water supply management area has a water treatment system; and

(4) the potential cost for a new water treatment system or systems.

E. A commissioner's water resource protection requirements order shall include the following:

(1) the mitigation level of the drinking water supply management area;

(2) the drinking water supply management area that is subject to the water resource protection requirements order;

(3) the water resource protection requirements for the drinking water supply management area that is subject to the water resource protection requirements order;

(4) the effective date of the water resource protection requirements order; and

(5) information on a responsible party's right to request a contested case hearing regarding the water resource protection requirements order.

F. A commissioner's water resource protection requirements order applies to responsible parties in a drinking water supply management area that is subject to a water resource protection requirements order.

G. The commissioner may exclude part of a drinking water supply management area from the water resource protection requirements order if the commissioner determines that the area is not contributing significantly to the contamination of the well. In determining whether an area is not contributing significantly, the commissioner shall apply the following:

(1) areas within the wellhead protection plan as approved by the Department of Health under chapter 4720 that identify an area as low vulnerability are not subject to the water resource protection requirements order; or

(2) areas within a drinking water supply management area that have a ten-foot or greater confining layer, as defined in part 4725.0100, subpart 24a, are not subject to the water resource protection requirements order, unless computer modeling indicates that leaching and infiltration of nitrate from sources at or near the ground surface is predicted to result in nitrate exceeding 5.4 mg/L in the aquifer being monitored.

The commissioner shall regulate areas under this part by quarter section or using the boundaries in the wellhead protection plan for the drinking water supply management area.

H. The commissioner shall issue a water resource protection requirements order within 180 days of receiving all the information required in part 1573.0040, subparts 7, 8, and 9. For good cause shown, the commissioner may extend the deadline by 180 days.

Subp. 2. Notice of proposed water resource protection requirements order.

A. The commissioner shall hold at least one public informational meeting in the county of the mitigation area subject to the proposed water resource protection requirements order before publishing the proposed water resource protection requirements order.

B. The commissioner shall provide notice of the proposed water resource protection requirements order to all known affected responsible parties within the drinking water supply management area. If personal notification is not practicable, the commissioner shall publish notice of the proposed water resource protection requirements order in two consecutive issues of the legal newspaper for the affected drinking water supply management area and in the State Register.

C. The commissioner shall also provide the notice required under item B to the following entities whose jurisdiction includes a mitigation area:

- (1) cities;
- (2) township boards;
- (3) counties;

- (4) soil and water conservation districts; and
- (5) watershed districts.

D. The commissioner shall also provide the notice required under item B to the executive director of the Board of Water and Soil Resources, the commissioner of natural resources, the commissioner of the Pollution Control Agency, the commissioner of health, and the executive director of the Environmental Quality Board.

E. The commissioner must provide or publish the notices required under this subpart at least 60 days before the proposed effective date of the water resource protection requirements order.

Subp. 3. Contested case hearing.

A. Following notice of the proposed water resource protection requirements order as required by subpart 2, any person or entity subject to the water resource protection requirements order may petition the commissioner for a contested case hearing to challenge a water resource protection requirements order.

B. A petition for a hearing must contain a statement of the issue or issues proposed to be addressed at the hearing as well as the part of the proposed water resource protection requirements order to be challenged. The petition must also contain the specific relief or resolution requested as well as the proposed findings of fact in dispute.

C. Upon receipt of a timely petition for a hearing, the commissioner shall order a public hearing. The commissioner shall publish the order for hearing in the legal newspaper for the affected drinking water supply management area and in the State Register at least 30 days before the public hearing. The public hearing shall be held within 60 days of the proposed effective date of the proposed water resource protection requirements order. The hearing shall be held before an administrative law judge in the county in which the mitigation area is located and in accordance with the requirements of Minnesota Statutes, chapter 14, and the rules relating to contested case proceedings.

D. The administrative law judge shall submit recommended findings of fact, conclusions of law, and the final order to the commissioner and each petitioner no later than 30 days from the conclusion of the public hearing.

E. Any party to the hearing may submit written exceptions and argument to the commissioner up to ten business days from the date of issuance of the recommendations from the administrative law judge.

F. Within 30 days of the issuance of the recommended findings of fact, conclusions of law, and final order by the administrative law judge, the commissioner shall issue a final water resource protection requirements order, which is the final decision of the agency for a contested case for purposes of judicial review under Minnesota Statutes, sections 14.63 to 14.69.

G. The commissioner shall publish notice of the final water resource protection requirements order in two consecutive issues of the legal newspaper for any affected drinking water supply management area.

The commissioner shall also provide the notice of the final water resource protection requirements order to the executive director of the Board of Water and Soil Resources, the commissioner of natural resources, the commissioner of the Pollution Control Agency, the commissioner of health, and the executive director of the Environmental Quality Board.

Subp. 4. **Final water resource protection requirements order.** If the commissioner does not receive any petitions requesting a hearing under subpart 3 within 60 days of the notice of the proposed water resource protection requirements order as required by subpart 2, the published proposed water resource protection requirements order is effective on the date provided in the proposed water resource protection requirements order.

Subp. 5. **Amendment to water resource protection requirements order.**

A. The commissioner may amend the content of a water resource protection requirements order based on the content of part 1573.0070.

B. The commissioner shall provide notice of proposed amendments to a water resource protection requirements order to all known affected responsible parties within the drinking water supply management area. If personal notification is not practicable, the commissioner shall publish notice of proposed amendments to a water resource protection requirements order in two consecutive issues of the legal newspaper for any affected drinking water supply management area and in the State Register at least 30 days before the proposed effective date of the amendments. The commissioner shall also provide notice of proposed amendments to a water resource protection requirements order to the executive director of the Board of Water and Soil Resources, the commissioner of natural resources, the commissioner of the Pollution Control Agency, the commissioner of health, and the executive director of the Environmental Quality Board at least 30 days before the proposed effective date of the amendments.

C. Any person or entity subject to proposed amendments to a water resource protection requirements order has 30 days from the date of notice of the amendments under item B to provide written comments to the commissioner on the proposed amendments.

D. The commissioner shall publish notice of the amended final water resource protection requirements order in two consecutive issues in the legal newspaper for any drinking water supply management area affected by the amendments to the water resource protection requirements order.

E. The amended final water resource protection requirements order is effective upon publication under item D.

Subp. 6. **Judicial review.**

A. Any person or entity subject to a final water resource protection requirements order or an amended water resource protection requirements order may seek judicial review pursuant to Minnesota Statutes, sections 14.63 to 14.69.

B. For judicial review of an amended water resource protection requirements order, only the amendments to the water resource protection requirements order are subject to judicial review.

Subp. 7. **Recording.** The commissioner shall record all final water resource protection requirements orders and amendments for water resource protection requirements in the appropriate county.

Statutory Authority: *MS s 103H.275*

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