6-2901-11995-1

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE MINNESOTA ENVIRONMENTAL QUALITY BOARD

In the Matter of the Proposed Amendments to Rules Governing the Environmental Review Program Relating to the Application of Provisions on Connected Actions to Animal Feedlots, Minn. Rules, Chapter 4410

REPORT OF THE CHIEF ADMINISTRATIVE LAW JUDGE

The above-entitled matter came on for review by the Chief Administrative Law Judge pursuant to the provisions of Minn. Stat. § 14.15, subds. 3 and 4. Based upon a review of the record in this proceeding, the Chief Administrative Law Judge hereby approves the Report of the Administrative Law Judge in all respects.

In order to correct the defects enumerated by the Administrative Law Judge, the agency shall either take the action recommended by the Administrative Law Judge, follow the procedure for adopting substantially different rules or reconvene the rule hearing if appropriate. If the agency chooses to reconvene the rule hearing, it shall do so as if it is initiating a new rule hearing, complying with all substantive and procedural requirements imposed on the agency by law or rule. The procedure for adopting substantially different rules is set out in Minn. Rule 1400.2110.

At finding No. 29, the Administrative Law Judge found that the Board failed to comply with Minn. Stat. § 14.002 in that it did not discuss in its SONAR how its rules emphasized superior achievement and maximum flexibility for the regulated public in meeting Board goals. Although the ALJ found this omission to be harmless error, the Chief Administrative Law Judge wishes to point out that this statutory requirement covers considerably more ground than the interpretation presented by the Board in the addendum to its SONAR since "regulatory programs" should be broadly interpreted. This requirement must be carefully examined by all agencies in their rulemaking.

If the agency chooses to take the action recommended by the Administrative Law Judge, it shall submit to the Chief Administrative Law Judge a copy of the rules as initially published in the State Register, a copy of the rules as proposed for final adoption in the form required by the State Register for final publication, and a copy of the agency's Order Adopting Rules. The Chief Administrative Law Judge will then make a determination as to whether the

defects have been corrected and whether the modifications in the rules are substantially different.

Should the agency make changes in the rules other than those recommended by the Administrative Law Judge, it shall also submit the complete record to the Chief Administrative Law Judge for a review on the issue of substantial difference.

Dated this 31st day of March 1999.

GEORGE A. BECK
Administrative Law Judge for
KENNETH A. NICKOLAI
Chief Administrative Law Judge