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STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE MINNESOTA DEPARTMENT OF HEALTH

In the Matter of the Minnesota Department of Health's
Proposed Amendments to Rules Governing Health Risk Limits
for Groundwater, Minnesota Rules, Chapter 4717.

OAH DOCKET NO. 5-9000-38941

Met electronically via WebEx at 9:30 a.m.
on April 5, 2023.

BEFORE: Judge James Mortenson

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1 JUDGE MORTENSON: I've got 9:32 on my
2 clock here so we'll proceed with the rules hearing.
3 And I want to wish everyone a good morning. My name
4 is Jim Mortenson. I'm an Administrative Law Judge
5 with the Office of Administrative Hearings. And I
6 want to welcome everyone here this morning, and I
7 thank you for taking your time to be here to
8 participate in this public rulemaking process.

9 Today is Wednesday, April 5, 2023. It's
10 just after 9:30 a.m. And we're here for a public
11 hearing In the Matter of the Minnesota Department of
12 Health's Proposed Amendments to Rules Governing
13 Health Risk Limits for Groundwater. These appear in
14 Minnesota Rules Chapter 4717, and specifically,
15 these proposed rules govern the limits of certain
16 chemicals in groundwater for the purpose of guiding
17 state agencies and local authorities with
18 enforcement authority over groundwater
19 contamination, such agencies as the Departments of
20 Agriculture, the Minnesota Pollution Control Agency,
21 and other state and local agencies and boards.

22 This proposed rule is assigned Revisor's
23 Identification Number 4587. It's also assigned OAH
24 Docket Number 5-9000-38941. Please pay attention to
25 these last five numbers, the 38941, as they'll help

1 you navigate the e-Comments website for providing
2 written comments to the rules. In addition, you
3 should reference the OAH Docket Number whenever you
4 submit written comments so that those get directed
5 to the right docket. Next, if we can advance the
6 slide, please. Okay.

7 My office, the Office of Administrative
8 Hearings, is an executive branch court. We're
9 independent of the Department of Health. And our
10 role is to provide hearings that are neutral and
11 fair to all the participants and include overseeing
12 executive branch agency rulemaking such as this.
13 The purpose of this hearing is to allow the
14 Department to present its case for the proposed
15 rules and to hear from the public regarding the
16 proposal before the rules are finalized. Next.

17 Among other directives from the
18 legislature, specifically those in Minnesota Statute
19 Chapter 14, rulemaking hearings are conducted so
20 that members of the public can be heard as part of
21 the rulemaking process. And I am here to help
22 ensure procedural fairness. I want to ensure that
23 we're courteous to each other and that all
24 interested parties can be heard and, importantly, to
25 draw out knowledge from as many voices as possible

1 regarding the proposed rulemaking. An underlying
2 assumption of this process is that we as a
3 self-governing people collectively rely on each
4 other to share wisdom and perspective about
5 particular topics being considered for our
6 collective wellbeing for our governments. And now,
7 there's a difference between constructive criticism
8 and discourteousness, and I'm here to police that.
9 But it's always important that government agencies
10 hear your thoughts, experiences, and expertise in
11 the formation of public policies through rulemaking.
12 Next.

13 This hearing is part of a process by which
14 rules are adopted under the Minnesota Administrative
15 Procedure Act. During this rulemaking proceeding,
16 the agency is required to document its statutory
17 authority to adopt the proposed rules. It's
18 required to demonstrate that it has fulfilled all
19 relevant legal and procedural requirements of the
20 law. And third, it's here to demonstrate the need
21 for and reasonableness of each portion of the
22 proposed rules within an affirmative presentation of
23 facts. Those are the three big issues that I'll be
24 reviewing as part of this proceeding. Some of you
25 have thoughts that you wish to express about this

1 rulemaking generally and have views about particular
2 aspects of the proposed rules. Your views are
3 helpful to the Department and the process. But
4 please be aware that my job is not to rewrite the
5 rules based on the views of participants, certainly
6 not my own views, nor is it to select one set of
7 proposed rules or policy priorities over another
8 set. My job, in addition to facilitating this
9 public forum, is limited to ensure that the
10 Department followed statutory requirements for
11 rulemaking. Next.

12 After I complete my introductory remarks
13 about the hearing procedures, I'll turn the
14 presentation over to the Department's panel and I'll
15 admit its exhibits in support of the rulemaking into
16 the record. After the Department concludes its
17 presentation, I'll begin taking public comments
18 after a short break.

19 There is a court reporter on the line with
20 us today who is transcribing these proceedings to
21 create a record of the rulemaking hearing. Because
22 there is a court reporter, we'll be taking breaks
23 from time to time, and I'll choose points during the
24 hearing when it makes sense to take a break.
25 Moreover, I've authorized the court reporter to

1 interrupt the proceedings and ensure the record is
2 clear, and she can alert me about when it may be
3 time to take a break. Sometimes I get lost in the
4 work and don't do that on my own. So I appreciate
5 her assistance with that. And I want everyone to be
6 aware that the directive may come from her whether
7 it's to make something clear for the record or
8 simply to take a short break.

9 This hearing is scheduled for two days.
10 Just as if we were appearing in different locations
11 in person, when the hearing ends today there will
12 still be another hearing tomorrow on April 6. The
13 hearing will be concluded each day by 4:30 or
14 following the last commenter, whichever is earlier.
15 So if we go until 4:30 today and you've not yet
16 spoken and wish to, you will have another
17 opportunity tomorrow. Next.

18 Minnesota law provides certain
19 requirements for rulemaking hearings. These are
20 listed on the slide. But the essential aspects of
21 the standards require that the Department submit its
22 supporting evidence into the record, show that it
23 has the opportunity to present oral evidence, and
24 that interested persons may comment and ask
25 questions of agency representatives. I may limit

1 questioning that is repetitive or immaterial, and I
2 may limit comments that are discourteous or
3 irrelevant. Next, please.

4 The agency will be represented today by
5 Tom Hogan, the Department's Environmental Health
6 Division Director; Josh Skaar, the Department's
7 Legal Counsel; and Sarah Fossen Johnson, the
8 Supervisor and Manager of the Department's
9 Environmental Surveillance and Assessment Section.
10 These are the people who will provide testimony
11 about the proposed rules and will be available to
12 answer questions about the rules and the process for
13 revising them. Next, please.

14 The Board has filed with my office the
15 exhibits in support of the rules. I'll receive
16 those into the record a bit later. Those exhibits
17 are available on the Board's website at the address
18 on the screen and there will some additional
19 information about the exhibits a bit later,
20 including during the agency's presentation. Next.

21 Most of the hearing time today is allotted
22 for questions and statements from members of the
23 public. That's the key reason we're here today.
24 There are two ways you can submit comment for the
25 record. First, you can provide oral comments at

1 this hearing. Second, you can submit written
2 comments by our eComments website, by mail, or by
3 fax. Comments are not accepted by email. Email is
4 not a recognized method for commenting in OAH,
5 Office of Administrative Hearing, proceedings
6 because it's not a reliable enough method to create
7 a formal rulemaking record. Emails can be missed or
8 misdirected. Sometimes they get caught in spam
9 filters and they're never received. We also do not
10 accept comments through social media platforms. So
11 the ways to comment are here at this hearing or
12 submit them in writing electronically through our
13 eComments link or by mail or by fax. Next.

14 When you do submit eComments -- again,
15 that's our preferred method for submitting written
16 comments because it allows the agency and others to
17 see your comments as soon as they are submitted and
18 you could also read the comments of others on this
19 website. And it's a tool that makes comments easily
20 organized for purposes of me putting together a
21 report for the Department. Next, please.

22 We're here today, however, to hear from
23 folks orally. And if you want to comment at today's
24 hearing, what you need to do, you can comment via
25 our WebEx platform, this virtual platform, or by

1 telephone. For WebEx commenters, please click on
2 the chat icon on your screen, send a message that
3 you wish to speak. Be sure to include your name and
4 any organization you represent. You'll then be put
5 into a queue in the order your request was received.
6 The moderator will attempt to ensure that the order
7 of both WebEx and telephone commenters are lined up
8 in the order chronologically in terms of time when
9 they were received. Next, please.

10 Specifically for those commenting by WebEx
11 or virtually, please turn on your video by clicking
12 on the video icon. That will allow me to see you.
13 Commenters will be unmuted or invited to unmute
14 themselves so that you can make your comment. My
15 goal today is to hear from everyone who wishes to
16 make a comment. And I want you to please be mindful
17 that there are others who also wish to speak, so as
18 you prepare your comments, consider focusing your
19 comment to be as clear and succinct at possible,
20 including identifying the portion of the rule you
21 are making a comment about. That will be helpful
22 for me later as I organize and communicate to the
23 Department about the comments. Next, please.

24 As I just said in making comments, these
25 are some general directions on the screen. In

1 addition to identifying yourself in the chat
2 function, when you speak, please fully identify
3 yourself for the benefit of the court reporter.
4 That includes spelling your first and last name,
5 again, identifying any organization you represent
6 and please speak slowly and clearly so that the
7 court reporter can accurately record your identity
8 and your comment. Next.

9 Please remember that this is a legal
10 proceeding, and respect for the process includes
11 respect for each other. Because we're human beings
12 and imperfect, I have my role to play to ensure the
13 process stays respectful. As I mentioned earlier,
14 I've delegated some of that authority to the court
15 reporter and she'll use it if necessary just to
16 ensure that there is a clear record. Next.

17 The court reporter's transcript is the
18 official record of what is said here and it will
19 include all oral comments, the agency presentation,
20 and questions and answers. I may include quotes in
21 my report which come from the transcript, so that's
22 something to keep in mind when you make your public
23 comments. Next.

24 If you're unable to comment today or
25 tomorrow, please remember that you can also file

1 written comments. I am extending the comment period
2 to a full 20 calendar days allowed by law to provide
3 everyone with additional time to submit comments on
4 these important rules. This means that comments can
5 be submitted through April 26, 2023. Comments are
6 considered in the same way regardless of how they're
7 received. Comments made at the hearing are not more
8 or less important than comments received in writing.
9 No comment is given additional weight by the way
10 it's received. Next.

11 Please remember the three issues that I'll
12 be considering. Again, these include whether the
13 Department has the legal authority to adopt these
14 rules, whether the Department has complied with
15 legal and procedural requirements, and whether the
16 rule is needed and reasonable. This is very
17 important. If your comment relates to a particular
18 part of the rule, please identify the part of the
19 rule you're addressing. Again, that helps me
20 properly categorize different kinds of comments for
21 the benefit of the Department as it reviews my
22 report and the comments that are received.
23 Furthermore, if you want to supplemental your oral
24 comments, you can do that. You can submit
25 additional comments or materials that you might have

1 in writing. Just as if we were meeting in the same
2 room with each other, I would take your written
3 comments if you wanted to make them part of the
4 record. So if you've prepared written remarks that
5 you will use today, you can file those as a written
6 comment following the hearing and I certainly
7 encourage folks to do that. Next.

8 As I noted before, Minnesota Statute
9 Section 14.15, Subdivision 1 gives me the authority
10 to keep the hearing record open for up to 20 days
11 after the end of the public hearing. I've issued
12 that order on the record today and the comment
13 period is extended for 20 days from the close of the
14 hearing. So there will 20 calendar days in which
15 you can submit your written comments. Thus, you
16 have until April 26, 2023, at 4:30 p.m. to submit
17 those written comments. And this date is because
18 the record will not close until after the second day
19 of hearing on April 6. Next.

20 After the close of the comment period,
21 there will be a five working day rebuttal period.
22 The five-day period is meant for comments on the
23 comments, not to introduce new matters. So you'll
24 have until May 3, 2023, at 4:30 p.m. to submit
25 rebuttal comments, rebuttal to the comments that

1 have been presented. Next.

2 Following the close of the record I'll
3 prepare a report that contains my conclusion about
4 whether the Department has met its statutory burdens
5 in this matter, specifically whether the agency has
6 documented its authority to enact the rules, whether
7 the agency has fulfilled all required procedural and
8 legal matters, and whether the agency has
9 demonstrated the need and reasonableness for each
10 portion of the proposed rules. You can expect my
11 report typically within 30 days after the last
12 comment deadline, unless an extension is necessary.
13 And there is various reasons why an extension could
14 be necessary, including the number of comments, the
15 size of the report, and other factors. My report
16 will be published on the Office of Administrative
17 Hearings website the day it's issued. Next.

18 A final reminder for anyone who is a
19 lobbyist. You must register with the Minnesota
20 Campaign Finance and Disclosure Board. Next.

21 I'm going to turn the presentation over to
22 the Department's representative. Again, WebEx
23 commenters should enter your name using the chat
24 function; telephone callers should enter *3. But
25 don't start doing that until after the presentation.

1 After the presentation we'll take a short break.
2 That will be the time to start getting in the queue
3 to make public comments. But with that, I'm going
4 to ask the Department's first speaker, Mr. Tom
5 Hogan, to introduce himself. And following the
6 Department presentation, I will receive the
7 Department's exhibits into the record, followed by
8 the short break, and then we'll get into the public
9 comments. With that, thank you very much. Mr.
10 Hogan.

11 MR. HOGAN: Thank you, Judge Mortenson,
12 and good morning to you and members of the public.
13 I am Tom Hogan, that's H-O-G-A-N, Environmental
14 Health Division Director of the Minnesota Department
15 of Health. Among my duties, I oversee the work of
16 the Environmental Surveillance and Assessment
17 Section of the Department's Environmental Health
18 Division. Today, I'll provide a brief overview of
19 MDH's efforts in determining health risk limit rules
20 for groundwater.

21 The mission of the Minnesota Department of
22 Health is to protect, maintain, and improve the
23 health of all Minnesotans, with special care for the
24 most vulnerable such as the very young and the very
25 old. Access to clean, high-quality groundwater that

1 can be a source of drinking water with minimal
2 treatment is one factor that contributes to good
3 health. It is also a matter of fairness. Citizens
4 should expect that this natural resource is equally
5 available to all and free of contaminants that could
6 affect their health. In Minnesota, about 75 percent
7 of the drinking water comes from the groundwater.
8 Leaders have long recognized the importance of this
9 resource to the state. In 1989, the legislature
10 passed the Minnesota Groundwater Protection Act,
11 which proclaimed its goal to maintain groundwater in
12 its natural condition free from degradation caused
13 by human activities. That's Minnesota Statute
14 Section 103H.001. When groundwater quality
15 monitoring shows that water quality has degraded,
16 the Groundwater Protection Act authorizes the
17 Minnesota Department of Health to adopt rules that
18 set health protective limits known as health risk
19 limits, or HRLs. HRLs are set for those
20 contaminants found in groundwater that might be used
21 for drinking water. The reference there is
22 Minnesota Statute Section 103H.201. An HRL value is
23 a concentration of a groundwater contaminant or a
24 mixture of contaminants that people consume with
25 little or no risk of health or up to a lifetime and

1 which is adopted in the rule. The value is
2 expressed as micrograms of a chemical per liter of
3 water. MDH calculates HRL values for specific
4 durations of exposure such as a short-term, 30 days;
5 subchronic, up to 10 percent of human lifetime; and
6 chronic, which is more than 10 percent of human
7 lifetime. Excuse me. The Minnesota Department of
8 Health derives HRLs using health risk considerations
9 only. The Department does not consider cost of
10 remediation or other implementation decisions. Risk
11 managers who use the guidance make separate
12 decisions based on such considerations.

13 Effective guidance depends on up-to-date
14 sound science. To develop guidance, Minnesota
15 Department of Health toxicologists review the
16 available technical literature and discuss their
17 findings among staff and management. MDH has
18 developed and proposed water guidance derivation
19 methods and adopted them into Rule in 2009. These
20 guidance provide the basis for all HRLs and are set
21 for those contaminants found in groundwater that
22 might be used for drinking water.

23 Using this 2009 methodology, MDH has
24 adopted HRLs for a number of chemicals. Once the
25 HRLs are adopted, however, the values remain subject

1 to further evaluation as science progresses. This
2 review might warrant setting a new value which can
3 be higher or lower, depending on the evidence
4 available. At times MDH seeks additional input from
5 scientific experts outside of the agency's staff and
6 on the agency's selection of studies and
7 methodology. In addition, MDH strives to use the
8 most current data available in its derivations,
9 drawing them from data published by other agencies
10 such as the federal Environmental Protection Agency.
11 We pay particular attention when new data from other
12 agencies appears that could be scientifically
13 superior, and therefore, beneficial for the health
14 of Minnesotans.

15 According to the Groundwater Protection
16 Act, if groundwater quality monitoring results show
17 that there is a degradation of groundwater, the
18 Commissioner of Health may promulgate health risk
19 limits under Subdivision 2 for substances degrading
20 the groundwater. Following this authorization, MDH
21 has derived new and updated health-based guidance
22 for 36 contaminants identified in groundwater and
23 proposes to adopt these guidance values into Rule.
24 These contaminants include pesticides, solvents,
25 industrial chemicals, and in some cases, degradents

1 of these chemicals. In all cases, MDH seeks out the
2 highest quality studies and carefully collects
3 information about potential toxicity and exposure
4 routes for calculating water guidance.

5 The rulemaking process, while complicated,
6 provides a great venue for public engagement on
7 these important issues. We appreciate being able to
8 return to this important work post-COVID activities.
9 This concludes my comments. Thank you, Judge
10 Mortenson and members of the public, for your
11 attention this morning and through the process today
12 and tomorrow. I will turn it over to the next
13 panelist, I believe, Judge, or back to you.

14 JUDGE MORTENSON: The next panelist,
15 please. You may be muted. I'm not hearing you.

16 MS. FOSSEN JOHNSON: I know how to use
17 technology sometimes.

18 All right. My name is Sarah Fossen
19 Johnson. The last name is spelled F-O-S-S-E-N,
20 J-O-H-N-S-O-N. I work at MDH, and I'm the Health
21 Risk Assessment Supervisor and the Manager for
22 Environment Surveillance and Assessment Section.
23 Next slide, please.

24 First of all, I just wanted to reiterate
25 where you can find the health risk limits rulemaking

1 documents. You can find them online on our website,
2 but also it might be quicker for you, you might be
3 able to just search for "health risk limits rules
4 Minnesota" from any search engine and that should
5 bring up a list of 37 contaminants with links with
6 more information, the Statement of Need and
7 Reasonableness, the proposed rules, and the comments
8 received to date, and MDH's preliminary responses.
9 Next slide, please.

10 So you're going to see that there is some
11 overlap between Tom and I. We happen to agree on a
12 few things. We do agree that the goal of the
13 Minnesota Department of Health is to protect,
14 maintain, and improve the health of all Minnesotans.
15 And since 75 percent of all drinking water in
16 Minnesota is groundwater, it's long been recognized
17 in the state by its citizens that protecting
18 groundwater is very important. In the context of
19 public health specifically, access to clean,
20 high-quality groundwater as a source of drinking
21 water is one of the factors that contributes to
22 health and helps maintain good health for all. Next
23 slide, please.

24 Tom talked you through what the
25 Groundwater Protection Act is from 1989. And it

1 does give us our guiding legislation allowing us to
2 adopt rules setting health protective limits, known
3 as health risk limits, or HRLs. And I wanted to
4 mention that the Groundwater Protection Act is clear
5 that these limits are not to be used as pollute-to
6 limits. They are health protective limits instead.
7 The first rules under this statute were promulgated
8 in 1993, and MDH currently has 146 health risk
9 limits already promulgated through multiple rounds
10 of rulemaking. Next slide, please.

11 Although the first health risk limits were
12 promulgated in 1993, several improvements have been
13 made since then. The first improvement came in 2001
14 with the addition of the health standards statute.
15 The legislature, lead by Representative Jean
16 Wagenius, gave MDH additional authority to consider
17 a variety of health outcomes to ensure that all life
18 stages were protected. Examples include looking
19 specifically at reproductive and developmental
20 outcomes and also impacts on immune function, among
21 others. This second major improvement for the
22 derivation of health risk limits came in 2009 when
23 the methodology that we continue to use today was
24 promulgated. The changes to our methodology very
25 specifically direct risk assessors on what

1 parameters to use to ensure that all Minnesotans are
2 protected by health risk limits. A major focus of
3 these methods is that we protect those who are most
4 sensitive and those who are most highly exposed
5 because protecting those who would be most likely to
6 suffer health effects will by default protect
7 everyone. This focus is accomplished by looking for
8 specific windows of susceptibility, such as infancy
9 and pregnancy, and also by considering the magnitude
10 and duration of a given exposure.

11 I want to note here that many of the
12 comments we received in this rulemaking so far have
13 had concerns around components of our methods such
14 as selecting the most sensitive end point from
15 developmental studies. Our methods were promulgated
16 in 2009, and therefore, are not part of this
17 rulemaking. Next slide, please.

18 I know Tom read off for you what a health
19 risk limit is; the definition is here for you. We
20 often shorthand an HRL to a health risk limit being
21 a safe value for our partners. Although we
22 acknowledge that it is virtually impossible to
23 create a value that is safe for every person, this
24 is our approach with every chemical assessment.
25 Health risk limits are very different from

1 regulatory values, which is usually what we think of
2 in government. They do not have any regulatory
3 actions attached to them by statute, which frees our
4 partners to apply them according to their program
5 specifications. Additionally, because the Health
6 Risk Assessment Unit is not beholden to a specific
7 regulatory agenda, the values can be developed
8 solely based on the associated health effects of a
9 chemical and not on other factors like cost
10 implementation or ease of treatment that might
11 reduce how protective the values are.

12 The federal government also has values for
13 chemicals in drinking water, and these are regulated
14 by the Safe Drinking Water Act. These are typically
15 calculated using adult exposures. MDH's methods
16 direct us to look at all life stages, not just adult
17 or lifelong exposures, which has meant that we
18 regularly develop values based on a formula-fed
19 infant because infants actually drink far more water
20 for body weight than an adult. Infants represent
21 not only a sensitive life stage, but also a highly
22 exposed subpopulation.

23 And finally, health risk limits can be
24 developed in a shorter time frame than a federal
25 regulation and can address Minnesota specific

1 contaminants. For example, more than 20 years ago
2 Minnesota discovered forever chemicals in our
3 groundwater. Since that time, toxicologists in the
4 Health Risk Assessment Unit have developed
5 health-based values for six forever chemicals found
6 in Minnesota's groundwater. It is important to note
7 that beyond just calculating an initial value, MDH
8 toxicologists have repeatedly made numerous updates
9 to the values for the forever chemicals as new
10 information have become available about their
11 toxicity. And there are, in fact, three forever
12 chemicals in this rulemaking. The EPA released
13 their first draft regulations for forever chemicals
14 just this March. Next slide, please.

15 I've said some of this elsewhere, but I
16 really want to reiterate and be clear. Health risk
17 limits are designed by their very nature to be
18 protective of all people. Here are a few specifics.
19 We don't use average values in our calculations
20 because average values don't protect people who
21 drink a lot of water, like infants. We
22 intentionally focus on sensitive individuals and
23 those who are highly exposed. We also do a careful
24 review of all relative exposure for a given chemical
25 to make sure our water values won't combine with

1 other exposures to create health issues. An example
2 of this kind of multi-exposure approach would be
3 when a chemical is found both in house dust and in
4 drinking water. An infant that is frequently on the
5 floor could possibly be exposed through both routes,
6 so we need to take that into account. The health
7 risk limits can also be used to calculate
8 accumulative risk when multiple chemicals are
9 present. Standard risk assessment looks at one
10 chemical at a time, which is not how they often
11 appear in the real world. Next slide, please.

12 In this rulemaking, we have 37
13 contaminants. We have 17 contaminants without a
14 previous health risk limit; 20 contaminants with
15 proposed updates for previous HRL, which means we're
16 repealing an old HRL and replacing it with an
17 updated HRL, and one contaminant will not be
18 repealed -- will be repealed and not replaced.

19 So following the authorities given to MDH
20 and using the 2009 methodology designed to protect
21 Minnesotans, including sensitive and highly-exposed
22 subpopulations, MDH has derived or updated health
23 risk based guidance for 37 contaminants that are
24 identified in groundwater, and we propose to adopt
25 these guidance values into rule. Next slide,

1 please.

2 This is an example of a health risk limit,
3 and I wanted to share it with you and take a moment
4 to give you an orientation to how we present the
5 information. What you see here is similar to how it
6 will appear in the Rule, and it is exactly how it
7 appears on our water guidance table on our website.
8 For each chemical, we will derive a health
9 protective value for each duration if we have
10 appropriate data to do so. For chemicals that lack
11 enough data on health effects for a given duration,
12 we simply mark them ND, or not derived. If you read
13 across this table, you will see the duration, its
14 associated health-based value, and the most
15 sensitive associated health end points.

16 So in this example for acetone, for the
17 chronic duration, the associated health-based value
18 is 3,000 micrograms per liter, and the sensitive
19 health end points are blood, liver, and kidney
20 system. You can also see on this table that we have
21 NA for the cancer value. This means not applicable,
22 and usually means that we do not have information
23 that we need to calculate a cancer-based value such
24 as a slope factor for cancer potency or a cancer
25 classification. Next slide, please.

1 So this is our proposed health -- well, I
2 guess it's our actual health risk timeline at this
3 point in time. You see we are having the hearings
4 today and tomorrow. The judge has already spoken
5 about the post-hearing comment period and the
6 rebuttal period. But I wanted to give everyone a
7 chance to visually see how the timeline happens.
8 And then next slide, last slide.

9 If you have questions, please reach out to
10 Nancy Rice. She is our Rule Coordinator for the
11 Health Risk Assessment Unit. And if she doesn't
12 know the answer, I'm quite certain she can put you
13 in touch with someone who does. Her contact
14 information is there on the slide.

15 And that's all I have. Thanks.

16 JUDGE MORTENSON: I believe we've got one
17 more speaker for the Department.

18 THE COURT REPORTER: Can't really hear you
19 very well, Josh.

20 MR. SKAAR: Oh, great. Thanks for telling
21 me. Can you hear me better now if I kind of speak
22 up?

23 THE COURT REPORTER: Yes, much better.
24 Thank you.

25 MR. SKAAR: Great. Yeah, no problem at

1 all.

2 So again, I'm Josh Skaar. That's
3 S-K-A-A-R. I'm an attorney with the Department of
4 Health and the Department's Rulemaking Coordinator.
5 I'll be presenting the agency -- or I'll be
6 representing the agency at today's hearing.

7 Just want to point out that you can find
8 copies of the presentation slides that have been
9 used today, along with our hearing exhibits, on our
10 Health Risk Limits webpage that is identified in our
11 notice of hearing for these proceedings. The slides
12 themselves will be marked in that batch of exhibits
13 as Exhibit K3. I would also like to encourage
14 everyone to submit copies of their statements today
15 in writing. I know that's something the judge had
16 mentioned but I want to reiterate that. It's very
17 helpful to us in our efforts to thoughtfully respond
18 and to consider your input. I'd also just note that
19 it may be the case that we will, if asked a
20 particular question, ask that we respond in writing
21 after the hearing for the same reasons to ensure
22 that we can give a thoughtful and accurate response
23 regarding these highly-technical limits being set
24 through this rulemaking.

25 Please also -- just another reminder that

1 if you've requested to speak or wish to speak,
2 technical reasons prevent us from knowing that
3 unless you reiterate the request or make it
4 initially following this break when we've shifted
5 control over to the person who is going to help us
6 call on commenters.

7 I now am going to introduce our exhibits
8 into the record, which these exhibits have already
9 been filed with the Office of Administrative
10 Hearings. Copies of each exhibit is posted to the
11 webpage, as I already said. Those of you in
12 attendance today would have seen a link to the page
13 that contains the exhibits in the notice of hearing
14 and via a gov.delivery that I believe was sent out
15 when these exhibits were posted.

16 So as Exhibit A, we have the request for
17 comments, which was published on January 19, 2021,
18 in the State Register. Exhibit B is our -- is
19 actually just a placeholder. This is tied to
20 Minnesota Rules 1400.2220 and item B. That rule
21 part requires petitions for rulemaking; none here
22 exist. Exhibit C is our rule and revisor's
23 approval. Our Statement of Need and Reasonableness
24 is Exhibit D. Exhibit E is the certification that
25 we have sent our Statement of Need and

1 Reasonableness to the legislative reference library.
2 Our notice of hearing as mailed and as published is
3 contained in Exhibit F. That was published in the
4 February 6, 2023, State Register. Exhibit G is our
5 certificate of mailing, our notice of hearing and
6 certificate of accuracy of our mailing lists. We've
7 got certificates of additional notice at Exhibit H.
8 Exhibit I contains written comments that we received
9 and responses thus far provided, including an
10 Exhibit I1. Those comments are received in response
11 to a request for comments which normally would not
12 be part of the formal record but we are entering
13 them here as an exhibit into the record and our
14 responses thereto. Exhibit I2 are the comments
15 received thus far in the prehearing comment period.
16 A copy -- Exhibit J is a copy of the order
17 authorizing the omission of the text of these rules
18 from our notice of hearing. And finally, Exhibit K
19 provides documentation of compliance with other
20 requirements of this rulemaking, including at K1,
21 which is our certificate of notice to the Minnesota
22 legislators and the Legislative Coordinating
23 Commission, that is. K2 is additional documentation
24 of consultation with Minnesota Management and Budget
25 regarding the fiscal impact of these rules. And

1 again, as I said earlier, K3 contains those slides
2 that we are using today in these presentations.

3 With that, I actually have nothing further
4 to say, Judge. Unless you had any further remarks,
5 I believe we were going to -- well, I'd ask that you
6 enter those into the record and then we were going
7 to move to a brief break before calling commenters.

8 JUDGE MORTENSON: Very good. Thank you
9 very much, Mr. Skaar. The agency's Exhibits A
10 through K and all their subcomponents are admitted
11 into the record at this time.

12 (Exhibits 1 through K admitted.)

13 With that, we'll take 10 minutes. We'll
14 reconvene right about 10:23. And at that time,
15 between now and then, if you start to get in the
16 queue whether through WebEx or via telephone, we'll
17 start taking the public comments at that time.
18 Thank you very much.

19 (Recess.)

20 JUDGE MORTENSON: If you're not in the
21 queue and you'd like to make a public comment,
22 please do so. Again, you can do that via WebEx by
23 sending a message through your chat icon. Or if
24 you're on the telephone, you can do that by pressing
25 *3. So hopefully our -- we've got a moderator who

1 is keeping track of who is in the queue. So
2 hopefully that person can communicate to us -- at
3 least communicate to me what -- if we've got people
4 lined up who want to speak. I want to make sure we
5 don't have a technical issue that prevents public
6 comments here.

7 MR. SKAAR: I don't mean to imply that
8 there's anything like that going on right now,
9 Judge. I'm confident public comments are smoothly
10 operating. We just needed to verify, clunkily as I
11 did, just the ability to switch slides.

12 JUDGE MORTENSON: Okay.

13 MR. SKAAR: Which I think we're all set.

14 MS. CAVANAGH: Good morning, Judge. This
15 is Jacquie Cavanagh, and I will be moderating the
16 flow of those wishing to testify. So at this time,
17 if folks who would wish to testify could enter that,
18 enter your first and last name in the chat. And
19 then as that appears, I am now able to see the chat.
20 And as those names appear, then I will call on them
21 and then announce who is on deck. So at this time,
22 I don't see any names of folks in the chat. So this
23 would now be the time to enter your name, first and
24 last name, in the chat so I can see who would wish
25 to testify.

1 JUDGE MORTENSON: Thank you. We'll make
2 sure we don't prematurely cut off the opportunity
3 here, so.

4 MR. CAVANAGH: All right. I am not seeing
5 names appear in the chat, so.

6 JUDGE MORTENSON: Do we have anyone
7 attempting to comment via telephone?

8 MS. CAVANAGH: Not that I am aware of. It
9 appears that one person has joined via mobile
10 device. But I am still not seeing any indication.

11 JUDGE MORTENSON: Okay. Again, this isn't
12 a comment on what's going on here, but based on
13 experience, I want to make sure there are no
14 technical difficulties that are preventing folks
15 from queuing up.

16 MR. SKAAR: So, Judge, we'll run a
17 practice here in the background just to verify that
18 this is just a lack of interest in commenting and
19 not a lack of ability.

20 JUDGE MORTENSON: That's much appreciated.
21 Thank you.

22 MS. CAVANAGH: Okay. I can see a test
23 message, one of our staff. So the chat does appear
24 to be functional for me to see if folks want to
25 testify.

1 JUDGE MORTENSON: All right. Thank you
2 for running that check.

3 All right. Well, given we've got no
4 public commenters or questions at this point, we
5 will adjourn the public hearing for April 5. We
6 will reconvene tomorrow morning, April 6 at 9:30,
7 for another virtual public hearing. Because we may
8 have new members of the public who are able to come
9 tomorrow, we'll run through the same process just as
10 if we were travelling from different locations and
11 let -- people will receive their presentation. I
12 won't have to admit documents into the record again
13 but I want to make sure the public communication is
14 as clear as possible. With that, this public
15 hearing is adjourned for today.

16 (The hearing adjourned at approximately 10:23 a.m.)

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1 STATE OF MINNESOTA)
2)
3 COUNTY OF HENNEPIN)
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6 I, Katriina Hendrickson, do hereby certify that
7 the above and foregoing transcript consisting of the
8 preceding 34 pages is a true and correct transcript of my
9 steno notes and is a full, true and complete transcript
10 of the proceedings to the best of my ability.

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Dated: April 13, 2023.

/s/ Katriina Hendrickson
Registered Professional Reporter
Shaddix & Associates
reporters@janetshaddix.com

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