This opinion is nonprecedential except as provided by Minn. R. Civ. App. P. 136.01, subd. 1(c).

STATE OF MINNESOTA
IN COURT OF APPEALS
A24-0428

Application for a Sulfate Site-Specific Standard for Hay Lake (AUID 31-0037-00), located downstream of the U.S. Steel - Keetac (Keetac).

Filed March 31, 2025
Affirmed; motion granted
Harris, Judge

Minnesota Pollution Control Agency

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Considered and decided by Ede, Presiding Judge; Bratvold, Judge; and Harris, Judge.

NONPRECEDENTIAL OPINION

HARRIS, Judge

This appeal involves the statewide water quality standard for sulfate, implemented by respondent Minnesota Pollution Control Agency (MPCA) to protect wild rice, also known as the wild rice rule. *See* Minn. R. 7050.0224, subp. 2 (2023). In 2014, relator United States Steel Corporation (U.S. Steel) applied for a modification from this statewide standard for a particular waterbody, Hay Lake. Such a modification is referred to as a site-specific standard (SSS). U.S. Steel challenges the MPCA's decision to deny U.S. Steel's application for an SSS, arguing that (1) the MPCA's decision was arbitrary and capricious, unsupported by substantial evidence, or based on legal error; and (2) the MPCA improperly relied on an unpromulgated rule when it made its decision. U.S. Steel also moves to complete or supplement the record on appeal. We grant U.S. Steel's motion to supplement the record, and we affirm.

FACTS

U.S. Steel operates the Keetac taconite mine and processing facility in Keewatin, a city located in the iron-range region of northern Minnesota. Hay Lake is a 25.2-acre lake located approximately five miles downstream from the southern surface-water discharge points of Keetac's mining and tailings basin facilities. Keetac's mining operations,

processing facilities, and tailings basin release pollutants, including sulfate, into Hay Lake, which contains naturally occurring wild rice along its perimeter. To protect wild rice from the harmful effects of sulfate, the MPCA adopted the wild rice rule in 1973. *In re Reissuance of NPDES/SDS Permit to U.S. Steel Corp.*, 937 N.W.2d 770, 788 (Minn. App. 2019). This rule sets a statewide water quality sulfate standard of 10 mg/L for "water used for [the] production of wild rice during periods when the rice may be susceptible to damage by high sulfate levels." Minn. R. 7050.0224, subp. 2. The wild rice rule is part of a larger scheme prescribing specific water quality standards for different classes of waters throughout Minnesota. Minn. Stat. § 115.44, subd. 2 (2024); Minn. R. 7050.0140 (2023). The wild rice rule applies to class 4A agricultural waters, which are those waters "use[d] for irrigation without significant damage or adverse effect upon any crops or vegetation usually grown in the waters or area." Minn. R. 7050.0224, subp. 2.

The MPCA has the duty and authority to enforce the wild rice rule by issuing National Pollutant Discharge Elimination System (NPDES) permits and State Disposal System (SDS) permits. *In re Denial of Contested Case Hearing Requests*, 993 N.W.2d 627, 638 (Minn. 2023). Historically, however, the MPCA made few attempts to enforce the wild rice rule, and it did not attempt to enforce it in the mining areas of northern Minnesota until 2009. *See Minn. Chamber of Commerce v. Minn. Pollution Control Agency*, No. A12-0950, 2012 WL 6554544, at *2 (Minn. App. Dec. 17, 2012).[1]

[1] Nonprecedential opinions of this court are not binding but they may be persuasive. *See* Minn. R. Civ. App. P. 136.01, subd. 1(c) ("Nonprecedential opinions and order opinions are not binding authority except as law of the case, res judicata, or collateral estoppel, but nonprecedential opinions may be cited as persuasive authority.").

In 2011, the legislature passed a law requiring the MPCA to conduct scientific research and adopt new wild rice water quality standards, and to limit enforcement of the existing wild rice rule until new rules were adopted. The 2011 legislation did not include a deadline for adoption of new rules. 2011 Minn. Laws 1st Spec. Sess. ch. 2, art. 4, § 32, at 71-73. The legislature passed additional laws in 2015 and 2016, which attempted to limit the MPCA's implementation of the wild rice rule.[2] 2015 Minn. Laws 1st Spec. Sess. ch. 4, art. 4, § 136, at 2094-95; 2016 Minn. Laws ch. 165, § 1 at 665.

In 2017, the legislature set a deadline for adopting new rules to January 15, 2019. 2017 Minn. Laws ch. 93, art. 2, § 149, at 742. The MPCA drafted new rules, which proposed replacing the wild rice rule with a sediment-based equation.[3] The proposed rules were not approved by the administrative-law judge (ALJ) of the office of administrative hearings, and the MPCA "withdrew the Wild Rice rule from the rulemaking process to allow for more work on the implementation process." *In re Reissuance of NPDES/SDS Permit to U.S. Steel Corp.*, 937 N.W.2d at 789, *rev'd in part on other grounds*, 954 N.W.2d 572 (Minn. 2021).

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[2] In a letter to the MPCA, the United States Environmental Protection Agency stated that these laws were improper modifications of the MPCA's authority to implement the NPDES program because the laws "limit[ed] [the] MPCA's authority to implement its approved NPDES program and improperly modif[ied] a facility's existing permit in contravention of the [Clean Water Act]."

[3] The sediment-based equation calculates a concentration of sulfate for a specific waterbody using the values of iron and carbon in the waterbody's sediment. The goal of the equation was to keep sulfide less than 120 μg/L, which the MPCA determined was protective of wild rice.

Minnesota and federal law allow for modifications of the wild rice rule for a particular body of water. Minn. R. 7050.0220, subp.7(A), (C) (2023); 40 C.F.R. § 131.11(a) (2024). A modification is referred to as an SSS. In 2023, the MPCA initiated public meetings to develop procedures and requirements for parties seeking an SSS for sulfate. U.S. Steel attended the meetings and submitted comments. In December 2023, the MPCA published the Framework for Developing and Evaluating Site-Specific Sulfate Standards for the Protection of Wild Rice (the Framework). The goals of the Framework are to: (1) "Describe what constitutes protection of the wild rice beneficial use"; (2) "Establish expectations for applicants requesting a[n] SSS and for agency staff reviewing those applications"; and (3) "Identify informational needs that should be satisfied before advancing a[n] SSS and encourage data collection consistent with meeting those needs."

U.S. Steel applied for an SSS for sulfate for Hay Lake in 2014. Because the standard applied to Hay Lake would affect the water-quality-based effluent limitations in U.S. Steel's future NPDES permit, U.S. Steel sought a more permissive standard than the 10 mg/L permitted by the wild rice rule. In 2022, U.S. Steel updated its 2014 application using the sediment-based equation from the MPCA's 2017-2018 rulemaking to propose an SSS of 79 mg/L. The MPCA first denied U.S. Steel's application during a conference call in November 2023. In February 2024, the MPCA provided U.S. Steel with a letter that included written comments and more information on its decision.

U.S. Steel appeals.

DECISION

As an initial matter, we do not consider U.S. Steel's arguments related to whether Hay Lake is subject to the wild rice rule. U.S. Steel argues that (1) the MPCA exceeded its statutory authority by designating Hay Lake as subject to the sulfate standard without undertaking statutorily required rulemaking; (2) the MPCA exceeded its statutory authority because the MPCA did not follow 2011 legislation and develop specific criteria for designating waters subject to the sulfate standard; (3) the MPCA acted in excess of its statutory authority by interpreting "production of wild rice" as including waters with naturally occurring wild rice as opposed to waters used for intentional irrigation of wild rice cultivated as an agricultural crop; and (4) that the MPCA's informal designation of Hay Lake as subject to the sulfate standard is invalid as an unpromulgated rule. We decline to decide these issues because the arguments were raised for the first time on appeal. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988); *see also In re Shakopee Mdewakanton Sioux Cmty.*, 988 N.W.2d 135, 141 (Minn. App. 2023) ("Procedurally under [the Minnesota Administrative Procedure Act (MAPA)], when challenging an agency's enforcement of an unpromulgated rule, a party must first seek a determination from an ALJ."). And this appeal is limited to the MPCA's denial of U.S. Steel's application for an SSS.[4]

[4] U.S. Steel disagrees that the wild rice rule applies to Hay Lake and argues that it applied for an SSS "out of an abundance of caution." However, by seeking a modification from the wild rice rule in its SSS application, U.S. Steel assumed the wild rice rule applied to Hay Lake. This does not prohibit U.S. Steel from raising these arguments in the future. *See* Minn. Stat. § 115.05, subd. 11(1), (2), (4) (2024) (providing for appeal under MAPA of final decisions pertaining to permits, variances, and requests for contested-case hearings).

As relevant here, U.S. Steel argues that the MPCA improperly denied its application for an SSS for sulfate for Hay Lake because (1) the MPCA's decision was arbitrary and capricious, unsupported by substantial evidence, or based on legal error; and (2) the MPCA legally erred by basing its decision on an unpromulgated rule.

The MPCA's decisions are subject to judicial review under Minn. Stat. §§ 14.63-.69 (2024). Minn. Stat. § 115.05, subd. 11. In a certiorari appeal, we may reverse or modify an agency's decision:

> if the substantial rights of the petitioners may have been prejudiced because the administrative finding, inferences, conclusion, or decisions are:
>
> (a) in violation of constitutional provisions; or
> (b) in excess of the statutory authority or jurisdiction of the agency; or
> (c) made upon unlawful procedure; or
> (d) affected by other error of law; or
> (e) unsupported by substantial evidence in view of the entire record as submitted; or
> (f) arbitrary or capricious.

Minn. Stat. § 14.69. When an agency's decision relies on the application of its technical knowledge and expertise to the facts presented, deference should be given to the agency. *In re Rev. of 2004 Ann. Automatic Adjustment of Charges for All Elec. & Gas Utils.*, 768 N.W.2d 112, 119 (Minn. 2009). The party challenging the decision has the burden of demonstrating any basis for reversal. *In re Application of Enbridge Energy, Ltd. P'ship*, 964 N.W.2d 173, 189 (Minn. App. 2021), *rev. denied* (Minn. Aug. 24, 2021). We address each of U.S. Steel's arguments regarding the MPCA's denial of its application for an SSS in turn.

I. The MPCA's decision was not arbitrary and capricious, unsupported by substantial evidence, or based on legal error.

The MPCA denied U.S. Steel's application for an SSS because the application did "not contain sufficient information to justify a modification to the existing wild rice standard." *See* Minn. R. 7050.0220, subp. 7(B) (2023) (stating that the commissioner "evaluate[s] all relevant data in support of a modified standard and determine[s] whether a change in the standard for a specific water body or reach is justified"). To determine whether a modification from the statewide standard is justified, the MPCA considers whether the applicant submitted sufficient information demonstrating that the proposed standard: (1) protects the waterbody's beneficial use; (2) is based on a scientifically sound rationale; and (3) is more appropriate than the generally applicable standard. 40 C.F.R. 131.11(a)(1); Minn. R. 7050.0220, subp. 7(A).

The MPCA determined that U.S. Steel's application did not meet any of these three criteria. It found that U.S. Steel's proposed standard of 79 mg/L "relie[d] exclusively on the sediment-based equation from MPCA's 2018 rulemaking [attempt]." U.S. Steel's arguments on appeal are primarily focused on the MPCA's determination that the sediment-based equation is no longer scientifically defensible. In its letter denying U.S. Steel's application, the MPCA explained that the sediment-based equation was no longer scientifically defensible because:

> [T]he [sediment-based equation] output is a prediction, based on geochemical relationships, of the sulfate concentration at which wild rice is likely protected from harm due to elevated sulfate and the associated accumulation of sulfide in the sediment porewaters, but it neither reflects any on-site biological observations nor considers the long-term

> ecological production of the waterbody's wild rice population. Thus, MPCA does not support the use of this [sediment-based equation] as the primary means to determine the proposed sulfate standard because it does not directly link to a demonstration of wild rice health and therefore cannot show beneficial use attainment (40 C.F.R. § 131.11(a)(1)). Additionally, the use of the sediment-based equation may return sulfate concentration values that are thought to be generally unsupportive of wild rice, at least in some environments, as evidenced by growth experiments in mesocosms, and recent concerns have emerged that suggest the degree of protection against sulfide that is afforded by iron may not be as great as originally conceived.

The MPCA also stated that the proposed standard was not scientifically defensible because U.S. Steel's application did "not include consideration of recent publications and updated scientific understanding of wild rice ecology," did "not consider or mention the duration and frequency of the SSS," and did "not provide other lines of evidence to indicate that the proposed sulfate value will be protective of wild rice."

A. U.S. Steel did not demonstrate that the MPCA's decision was arbitrary and capricious.

U.S. Steel argues that MPCA's decision was arbitrary and capricious. "An agency decision is arbitrary and capricious if it represents the agency's will and not its judgment." *In re Denial of Contested Case Hearing Requests*, 993 N.W.2d at 646 (quotation omitted). To determine whether an agency's decision is arbitrary and capricious, we analyze "whether a combination of danger signals suggests that the agency has not taken a hard look at the salient problems and has not genuinely engaged in reasoned decision-making." *Id.* at 646-47 (quotations omitted). These danger signals include whether the agency (1) "relied on factors not intended by the legislature"; (2) "entirely failed to consider an

important aspect of the problem"; (3) "offered an explanation that runs counter to the evidence"; or (4) "the decision is so implausible that it could not be explained as a difference in view or the result of the agency's expertise." *Citizens Advocating Responsible Dev. v. Kandiyohi Cnty. Bd. of Comm'rs*, 713 N.W.2d 817, 832 (Minn. 2006).

U.S. Steel argues that MPCA's decision was arbitrary and capricious because the MPCA changed its position between the 2018 rulemaking and its 2024 decision on whether the sediment-based equation is scientifically defensible. "[A]n agency must generally conform to its prior norms and decisions or, to the extent that it departs from its prior norms and decisions, the agency must set forth a reasoned analysis for the departure that is not arbitrary and capricious." *Ann. Automatic Adjustment*, 768 N.W.2d at 120.

The MPCA argues that its position did not change as U.S. Steel suggests because MPCA "did not endorse the [sediment-based equation's] use to calculate site-specific sulfate standards." This is supported by the record. If adopted during the 2018 rulemaking, the sediment-based equation would have replaced the statewide, 10 mg/L, sulfate standard, but the MPCA would still have had authority to adopt SSSs to protect wild rice.

To the extent that the MPCA changed its position on whether the sediment-based equation is scientifically defensible, the MPCA provided a reasoned analysis for this change. In the denial letter, the MPCA referenced recent research questioning the scientific basis for the sediment-based equation, including some of the same research the ALJ referred to in its decision during the 2018 rulemaking. *See In re Proposed Rules of the Pollution Control Agency Amending the Sulfate Water Quality Standard Applicable To Wild Rice and Identification of Wild Rice Rivers, Minnesota Rules Parts 7050.0130,*

7050.0220, OAH 80-9003-34519, 2018 WL 1059648, at *48 (OAH Jan. 9, 2018). The sediment-based equation calculated waterbody-specific concentrations of sulfate, based on values of iron and carbon in the waterbody's sediment, to keep sulfide at a level that would protect wild rice from harm. However, the MPCA explained that "recent concerns have emerged that suggest the degree of protection against sulfide that is afforded by iron may not be as great as originally conceived."

Overall, the record does not support U.S. Steel's argument that MPCA used its will and not its judgment when determining that the sediment-based equation was not scientifically defensible, especially when used to grant an SSS, instead of a statewide sulfate standard. Even if research related to the sediment-based equation continues to develop, potentially leading to conflicting scientific opinions, evolving research does not make the MPCA's decision arbitrary and capricious. *See Ann. Automatic Adjustment*, 768 N.W.2d at 120 ("If there is room for two opinions on a matter, the [agency's] decision is not arbitrary and capricious, even though the court may believe that an erroneous conclusion was reached."). Therefore, the MPCA's decision denying U.S. Steel's application for an SSS was not arbitrary and capricious.

B. U.S. Steel did not demonstrate that the MPCA's decision was unsupported by substantial evidence.

U.S. Steel argues that the MPCA's decision was unsupported by substantial evidence. We review the agency's factual findings and quasi-judicial application of the law to those facts under the substantial evidence standard. *In re Application of Minn. Power for Auth. to Increase Rates for Elec. Serv.*, 838 N.W.2d 747, 757 (Minn. 2013). An

agency's decision is based on substantial evidence if it is based on "relevant evidence that a reasonable mind might accept as adequate to support a conclusion, and more than a scintilla, some, or any evidence." *In re NorthMet Project Permit to Mine Application*, 959 N.W.2d 731, 749 (Minn. 2021) (quotation omitted). To determine whether there is substantial evidence in the record to support an agency's decision, we analyze "whether the agency has adequately explained how it derived its conclusion and whether that conclusion is reasonable on the basis of the record." *Id.* (quotation omitted).

U.S. Steel argues that the MPCA's decision was unsupported by substantial evidence because (1) "MPCA's criticisms about 'on-site biological observations' and 'long-term ecological production'" are not new and did not prevent the MPCA from approving the sediment-based equation in 2017; (2) "MPCA fails to explain why SSSs derived from the [sediment-based equation] are 'thought to be generally unsupportive of wild rice,' other than mentioning 'growth experiments in mesocosms'"; and (3) the list of post-2018 studies included in the denial letter is not exhaustive and omits the Tedrow study,[5] which supports U.S. Steel's proposed sulfate SSS. We are unpersuaded.

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[5] The Tedrow study, *Use of Wild Rice (Zizania palustris L.) in Paddy-Scale Bioassays for Assessing Potential Use of Mining-Influenced Water for Irrigation*, was published in November 2022. The study developed two wild rice paddies adjacent to two mine-pit lakes with differing concentrations of sulfate. Over multiple growing seasons, the study analyzed wild rice growth and other physical and chemical characteristics. The study concluded that "potential use of mining-influenced waters containing elevated [sulfate] as the primary contaminant for appropratie irrigation purposes is supported. However, site-specific conditions and potential environmental risks must be considered prior to use of mining-influenced waters for anthropogenic applications."

The MPCA is required to adopt water quality standards that are protective of the waterbody's beneficial use. 40 C.F.R. § 131.11(a)(1). Here, the MPCA adopted the wild rice rule, a 10 mg/L statewide water quality standard for sulfate. Minn. R. 7050.0224, subp. 2. The MPCA shall approve an SSS "[i]f site-specific information is available that shows that a site-specific modification is more appropriate than the statewide or ecoregion standard." Minn. R. 7050.0220, subp. 7(A). Whether the necessary site-specific information is available is a decision that requires the agency's technical knowledge and expertise. And "deference should be shown by courts to the agencies' expertise and their special knowledge in the field of their technical training, education, and experience." *Anoka County v. Law Enf't Lab. Servs., Inc.*, 3 N.W.3d 586, 591 (Minn. 2024).

U.S. Steel argues that the Tedrow study supported its proposed SSS because it "found no adverse effects on wild rice grown throughout multiple consecutive growing seasons in mining-influenced waters with sulfate levels between 350 and 1350 mg/L, significantly greater than U.S. Steel's proposed 79 mg/L SSS for Hay Lake." Other than the Tedrow study, U.S. Steel does not point to specific evidence in the record suggesting that the MPCA's decision was unreasonable. Because other evidence in the record supports the MPCA's decision, we are not persuaded that the MPCA acted unreasonably by rejecting the Tedrow study.

Also, U.S. Steel seems to argue that the MPCA did not sufficiently explain its decision in light of the agency's previous support of the sediment-based equation. However, U.S. Steel had the burden to submit an adequate application, and the MPCA, as the fact-finder, determined the appropriate weight to give to particular research. First, the

MPCA explained that U.S. Steel's application did not consider recent publications and updated scientific understanding of wild rice ecology. Second, while U.S. Steel's application referred to the Tedrow study, the MPCA weighed other evidence in the record to reach its conclusion and explained that the references mentioned in the letter were not exhaustive. Although the MPCA could have provided additional reasons for its decision, its explanation was more than a conclusory rejection of U.S. Steel's application. Based on this record, we reject U.S. Steel's argument that the decision of the MPCA is unsupported by substantial evidence.

C. U.S. Steel did not demonstrate that the MPCA's decision was based on an error of law.

U.S. Steel also appears to argue that the MPCA's decision was based on an error of law because the MPCA legally erred in its interpretation of the phrase "more appropriate" in rule 7050.0220, subpart 7(A). The MPCA determined that U.S. Steel's application was insufficient because it lacked an "adequate description and analysis on the matter of whether conditions in Hay Lake are unique and justify the application of a site-specific modification of the sulfate standard."

U.S. Steel argues that "MPCA's conclusion that U.S. Steel did not demonstrate [that] its proposed sulfate SSS was 'more appropriate' than the statewide 10 mg/L standard . . . imposes an 'unwarranted, heightened burden' into Rule 7050.0220, subp. 7." U.S. Steel contends that its application was sufficient because a proposed standard is "more appropriate" if the proposed standard "protects the beneficial use and water quality while avoiding imposing unnecessary financial and practical burdens upon regulated parties."

U.S. Steel does not provide legal authority or analysis to support its argument that the MPCA applied a heightened standard. *See Waters v. Fiebelkorn*, 13 N.W.2d 461, 464-65 (Minn. 1944) ("[O]n appeal error is never presumed. It must be made [to] appear affirmatively before there can be reversal . . . [and] the burden of showing error rests upon the one who relies upon it."). And the MPCA denied U.S. Steel's application because it did not contain sufficient information for the MPCA to determine if the 79 mg/L proposed standard was more appropriate than the statewide standard. The MPCA's analysis in this regard was based on its expertise, to which we defer. The MPCA's reasoning is consistent with rule 7050.0220, subpart 7, which gives the agency authority to determine if a modified standard is justified. Therefore, U.S. Steel did not demonstrate that the MPCA's decision was based on an error of law.

II. The MPCA did not err by relying on an unpromulgated rule to make its decision.

U.S. Steel argues that the MPCA's decision must be reversed because the MPCA based its decision on the Framework, which, U.S. Steel argues, is an invalid, unpromulgated interpretive rule. As a threshold matter, we address the MPCA's argument that there is nothing in the record to indicate that the MPCA actually relied on the Framework when it made its decision. We note that the Framework was adopted after the MPCA first communicated its decision to U.S. Steel. The MPCA first communicated its decision orally during a conference call in November 2023, and the Framework was adopted a month later. And it is also true that the Framework is not directly mentioned in the MPCA's February 2024 letter explaining its decision. However, the similar timing and

language in the Framework and the MPCA's decision support U.S. Steel's contention that the MPCA relied in part on the Framework when it made its decision. For the purpose of this analysis, we are assuming without deciding that the MPCA relied on the Framework.

U.S. Steel argues that the MPCA erred by relying on the Framework because the Framework is an unpromulgated interpretive rule that "makes specific how applicants must apply—and how the MPCA Commissioner will decide on—sulfate SSS applications under Minn. R. 7050.0220, subp. 7," making the Framework a statement of general applicability and future effect. *See* Minn. Stat. § 14.02, subd. 4 (2024) (defining rule). And U.S. Steel maintains that the Framework is "MPCA's statement as to how [SSS] applications *will* be judged." U.S. Steel further contends that: (1) the MPCA's informal adoption of the Framework and interpretation of "more appropriate" violates the plain language of Minnesota Statutes section 115.44, subdivision 4 (2024), which requires the MPCA to adopt water quality standards "after proper study, and in accordance with chapter 14"; and (2) the MPCA's interpretation of the beneficial use under the sulfate standard—"production of wild rice during periods when the rice may be susceptible to damage by high sulfate levels"—as encompassing both naturally occurring and cultivated wild rice is invalid as an unpromulgated rule and violates the plain meaning of the 2011 law. Minn. R. 7050.0224, subp. 2. We are unpersuaded.

An agency engages in unpromulgated rulemaking when it announces a new rule of general applicability without complying with statutory rulemaking requirements. *In re Minn. Living Assistance, Inc.*, 934 N.W.2d 300, 309 (Minn. 2019). However, an agency is not always required to engage in rulemaking to establish a policy like the Framework.

"[A]n agency may formulate policy in two ways: rules or case-by-case determinations." *In re Shakopee Mdewakanton Sioux Cmty.*, 988 N.W.2d at 143. "The agency has discretion to decide what method is appropriate in a particular situation." *In re Hibbing Taconite Co.*, 431 N.W.2d 885, 894 (Minn. App. 1988).

A "rule" is an "agency statement of general applicability and future effect." Minn. Stat. § 14.02, subd. 4. Rules generally require "an agency to use MAPA's notice-and-comment procedures to promulgate interpretive rules." *In re Shakopee Mdewakanton Sioux Cmty.*, 988 N.W.2d at 143. Interpretive rules "make specific the law enforced or administered by the agency." *Id.* at 143-44 (quotations omitted). In contrast, an agency makes decisions on a case-by-case basis when it applies the law "to a specific party." *Hibbing Taconite Co.*, 431 N.W.2d at 894.

As U.S. Steel argues, portions of the Framework do include what the MPCA "expects" in an application for an SSS, meaning the Framework could, like a rule, have some effect on future applications. However, the Framework is also nonbinding and allows the MPCA to use its discretion and conduct a fact-specific analysis to fulfill its statutory responsibility to evaluate whether "a site-specific modification is more appropriate" for a particular waterbody. Minn. R. 7050.0220, subp. 7(A). For example, while the Framework states that an application for an SSS should not be approved in some instances, such as if "wild rice persists across a period of long-term monitoring but appears to be 'barely hanging on' and/or highly vulnerable to extirpation," the MPCA must still analyze the specific party's application to determine facts particular to that party and waterbody. *See In re Crown Coco, Inc.*, 458 N.W.2d 132, 136-37 (Minn. App. 1990) (concluding that a

decision to deny reimbursement to any responsible persons whose cleanup costs are already covered by insurance was a rule because it did not "involve the application of specific facts to specific parties"). Thus, even assuming that the MPCA relied on the Framework, U.S. Steel has not established unpromulgated rulemaking. This record shows that MPCA applied a case-by-case, fact-specific analysis to fulfill its obligation to determine whether sufficient information was available to justify a site-specific modification. *See Hibbing Taconite Co.*, 431 N.W.2d at 894-95 (finding an improperly promulgated rule where agency did not apply specific facts to specific parties). Therefore, the MPCA did not engage in unpromulgated rulemaking by relying on the Framework to make its decision.

III. We grant U.S. Steel's motion to supplement the record.

During briefing of this appeal, U.S. Steel filed a motion to complete or supplement the record with six documents, exhibits 1 through 6. The MPCA did not object to exhibits 1 and 6, and those exhibits are included in the record. However, the MPCA objected to completing or supplementing the record with exhibits 2 through 5. We first consider U.S. Steel's motion to complete the record and then address the motion to supplement the record.

The record in a certiorari appeal consists of documents submitted to the agency or considered by the agency in reaching its decision. Minn. R. Civ. App. P. 110.01, 115.04; *see also Amdahl v. County of Fillmore*, 258 N.W.2d 869, 874 (Minn. 1977) ("Certiorari is, by its nature, a review based solely upon the record."); *In re Block*, 727 N.W.2d 166, 177 (Minn. App. 2007) (granting motion to strike documents not considered by decision-maker). Courts generally have attached a presumption of regularity to agency decisions,

which the MPCA argues extends to the agency's designation of the record. *No. Power Line, Inc. v. Minn. Env't Quality Council*, 262 N.W.2d 312, 325 (Minn. 1977).

If the record submitted is inaccurate or incomplete, a party may move to correct or complete the record under Minnesota Rule of Civil Appellate Procedure 110.05. *In re Issuance of Air Emissions Permit No. 13700345-101 for PolyMet Mining, Inc.*, 955 N.W.2d 258, 264 n.2 (Minn. 2021) (*PolyMet Air Emissions*); *see also* Minn. R. Civ. App. P. 115.04, subd. 1 (incorporating rules 110 and 111 for purposes of certiorari appeals). U.S. Steel cites federal caselaw to argue that the record is incomplete or inaccurate if the record is missing any documents and materials that were available to and in possession of the decisionmaker. But "[r]ule 110.05 is limited to correction of the record so that it accurately reflects anything of material value that was omitted from the record by error or accident or is misstated in it." *W. World Ins. Co. v. Anothen, Inc.*, 391 N.W.2d 70, 72 (Minn. App. 1986); *see also PolyMet Air Emissions*, 955 N.W.2d at 264 n.2. Because the MPCA did not consider exhibits 2 through 5 when making its decision and the MPCA intentionally excluded the documents from the record, we are not persuaded by U.S. Steel's argument that we should grant the motion on the basis of completing the record.

"A motion to supplement, on the other hand, seeks to add evidence to the record that the agency did not consider but is necessary for the court to conduct a substantial inquiry." *PolyMet Air Emissions*, 955 N.W.2d at 264 n.2 (quotation omitted). This court has held that evidence outside the administrative record may be considered when

> (1) the agency's failure to explain its action frustrates judicial review; (2) additional evidence is necessary to explain technical terms or complex subject matter involved in the

> agency action; (3) the agency failed to consider information relevant to making its decision; or (4) plaintiffs make a showing that the agency acted in bad faith.

White v. Minn. Dep't of Nat. Res., 567 N.W.2d 724, 735 (Minn. App. 1997).

Additionally, the supreme court has explained that "the court of appeals may look to federal administrative law in granting" a motion to supplement and more specifically has stated that "[s]upplementing the record can be appropriate for 'a limited class of documents which should have been considered by the [agency] in reaching the challenged decision.'" *PolyMet Air Emissions*, 955 N.W.2d at 269 n.6 (quoting *Ctr. for Native Ecosystems v. Salazar*, 711 F. Supp. 2d 1267, 1281 (D. Colo. 2010)).

Exhibits 2 through 5 consist of staff notes and contain information from unknown and unnamed sources, and the exhibits are generally relevant to the MPCA's decision. Exhibit 2, dated November 2022, is titled "Discussion with Tribal Partners regarding the development of the framework," and includes staff notes regarding the beneficial use of wild rice, a key consideration in MPCA's decision. Exhibit 3 is undated and appears to be notes from a meeting regarding a plant ecologist, whose research the MPCA largely relied on to determine that the sediment-based equation was no longer scientifically defensible. Exhibit 4 is an incomplete summary of eight wild rice research papers following the 2017-2018 rulemaking. Some of these papers were referenced in the MPCA's letter denying U.S. Steel's application. The summary also includes the Tedrow study,[6] which U.S. Steel

[6]The Tedrow study is exhibit 1 in U.S. Steel's motion to complete or supplement the record. The study is also referenced in exhibit 4, a summary of wild rice research since the 2017-2018 rulemaking. MPCA agreed to include exhibit 1 in the record, but did not agree to exhibit 4.

argues the MPCA arbitrarily failed to consider when making its decision. Exhibit 5 is titled "Note Compilation: Sulfur, Wild Rice," and perhaps demonstrates some factors that the MPCA considered when developing the Framework and used to review U.S. Steel's application.

These four exhibits are relevant to the MPCA's decision, but they do not affect the outcome of the case because the exhibits consist of incomplete notes and the relevant information is available elsewhere in the record. Therefore, we assume without deciding that the documents "should have been considered by the [agency] in reaching the challenged decision," and we grant U.S. Steel's motion to supplement the record. *Id.*

Affirmed; motion granted.