

*This opinion is nonprecedential except as provided by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
A24-0597**

In the Matter of the Determination of Need
for an Environmental Impact Statement
for the Mile Post 7 West Ridge Railroad Relocation,
Dam Extensions, and Stream Mitigation Project,
Lake County, Minnesota.

**Filed February 3, 2025
Reversed and remanded
Worke, Judge**

Minnesota Department of Natural Resources

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Considered and decided by Reyes, Presiding Judge; Worke, Judge; and Cleary,
Judge.*

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

NONPRECEDENTIAL OPINION

WORKE, Judge

In this certiorari appeal, relator challenges an agency determination that a proposed project at a taconite tailings basin does not require an environmental impact statement (EIS). Because the determination that an EIS was not required was based on legal error and was arbitrary and capricious, we reverse and remand to the agency for a new EIS determination.

FACTS

The Mile Post 7 Tailings Basin is a disposal facility that receives and impounds mine tailings generated as a byproduct of taconite pellet production.¹ The facility is near the city of Silver Bay and is approximately 2.6 miles west and 625 feet above Lake Superior. The facility is currently owned by respondent Northshore Mining Company.

The tailings basin is formed by a combination of natural elevations and embankment dams constructed out of coarse tailings.² By design, construction on the basin has proceeded incrementally for the past 40 years and is expected to continue for 40 years or more. Fine tailings are delivered to the facility via pipeline and are pumped into the basin

¹ Taconite pellets are produced by crushing taconite into a powder and using magnets to remove the iron ore from the unwanted remaining material (tailings) for use in the steel industry.

² The tailings basin dams are classified as Class 1 or High Hazard dams. A Class 1 dam is a dam where “failure, misoperation, or other occurrences or conditions would probably result in . . . any loss of life or serious hazard, or damage to health, main highways, high-value industrial or commercial properties, major public utilities, or serious direct or indirect economic loss to the public.” Minn. R. 6115.0340 (2023).

in the form of a water slurry. As the basin fills with slurry, its capacity is increased by placing coarse tailings atop the dams to increase their height.

When the tailings basin was originally proposed, respondent Minnesota Department of Natural Resources (the DNR) and the Minnesota Pollution Control Agency prepared and published an EIS (1976 EIS). A master permit to construct the facility was issued by the DNR in 1977. The master permit approved the footprint and total tailings storage capacity of the facility and authorized the construction of embankment dams to an elevation of 1,315 feet above mean sea level (amsl).

Tailings deposition and incremental dam elevation increases are ongoing at the tailings basin, but to achieve full capacity, the dams must be elevated to the 1,315 feet amsl authorized by the master permit. In order to increase dam elevations, Northshore proposes a project to extend the length of several dams, relocate a portion of the rail track used to deliver coarse tailings, and divert several streams around the facility. The DNR divided this proposed project into two components. The “Tailings Basin Features” component includes the dam extensions and rail track relocation, and the “Stream Mitigation Sites” includes the stream diversions.

The DNR determined that, under Environmental Quality Board (EQB) rules, the stream diversions required an environmental assessment worksheet (EAW) which, when required, is used to determine whether a proposed project needs an EIS.³ *See* Minn. R.

³ The EQB was established by the legislature to undertake duties including the promulgation of rules governing environmental review. *See* Minn. Stat. §§ 116C.03, .04, 116D.04, subd. 2a(b).

4410.4300, subps. 1, 26 (2023) (describing the categories of action subject to a mandatory EAW); Minn. R. 4410.1700, subp. 3 (2023) (“The [responsible governmental unit] shall base its decision regarding the need for an EIS on the information gathered during the EAW process and the comments received on the EAW.”). The DNR also determined that the stream mitigation sites and tailings basin features were “connected actions” as defined by EQB rules. *See* Minn. R. 4410.0200, subp. 9c (2023) (defining “connected actions”). And because connected actions must be treated as a single project for the purpose of determining the need for an EIS, the scope of the EAW analyzed not only the proposed stream diversions, but also the proposed dam extensions and rail track relocation. But the EAW did not include review of other actions associated with the continued deposition of tailings or increases in basin capacity.

The DNR published the EAW and accepted public comments. Based on the contents of the EAW and the public comments it received, the DNR issued a record of decision (ROD) declaring that the proposed project does not have the potential for significant environmental effects, and thus, that an EIS is not required. Relator WaterLegacy appeals, arguing that the proposed project has the potential for significant environmental effects and that the DNR’s negative declaration on the need for an EIS is “erroneous, unsupported by substantial evidence, and arbitrary and capricious.”

DECISION

“Our role when reviewing agency action is to determine whether the agency has taken a hard look at the problems involved, and whether it has genuinely engaged in reasoned decision-making.” *Citizens Advocating Responsible Dev. v. Kandiyohi Cnty. Bd.*

of *Comm'rs*, 713 N.W.2d 817, 832 (Minn. 2006) (*CARD*) (quotations omitted). We accord substantial deference to an agency's decision but will reverse when a decision reflects "an error of law, the findings are arbitrary and capricious, or the findings are unsupported by substantial evidence." *Id.*; see also Minn. Stat. § 116D.04, subd. 10 (2024) (providing for judicial review of EIS decisions under Minn. Stat. §§ 14.63-.69); Minn. Stat. § 14.69 (2024) (setting forth standard of review).

A decision is arbitrary and capricious when:

the agency (a) relied on factors not intended by the legislature; (b) entirely failed to consider an important aspect of the problem; (c) offered an explanation that runs counter to the evidence; or (d) the decision is so implausible that it could not be explained as a difference in view or the result of the agency's expertise.

CARD, 713 N.W.2d at 832.

"The interpretation of statutes and rules and the application of statutes and rules to undisputed facts are both questions of law that we review de novo." *Minnesotans for Responsible Recreation v. Dep't of Nat. Res.*, 651 N.W.2d 533, 538 (Minn. App. 2002) (*MRR*).

Environmental Law Under MEPA and EQB Rules

The Minnesota Environmental Policy Act (MEPA), Minn. Stat. §§ 116D.01-.11 (2024), requires that, when "there is potential for significant environmental effects resulting from any major governmental action, the action must be preceded by a detailed [EIS] prepared by the responsible governmental unit." Minn. Stat. § 116D.04, subd. 2a(a). EQB rules identify categories of projects for which a responsible governmental unit (RGU)

is required to prepare an EAW or EIS.⁴ Here, the DNR determined that an EAW was mandatory. An EAW is “a brief document which is designed to set out the basic facts necessary to determine whether an environmental impact statement is required for a proposed action.” *Id.*, subd. 1a(c). In an EAW, the RGU analyzes the environmental effects of the project that required the preparation of the document, and the effects of any “connected actions.” *See* Minn. R. 4410.1200(E) (2023); *see also* Minn. R. 4410.0200, subp. 9c (defining “connected actions”); Minn. R. 4410.1700, subp. 9 (“Connected actions . . . shall be considered a single project for purposes of the determination of need for an EIS.”).

Based on the information and public comments gathered during the EAW process, the RGU determines whether the project “has the potential for significant environmental effects” based on the following factors: (1) “type, extent, and reversibility of environmental effects”; (2) “cumulative potential effects”; (3) “the extent to which the environmental effects are subject to mitigation by ongoing public regulatory authority”; and (4) “the extent to which environmental effects can be anticipated and controlled as a result of other available environmental studies undertaken by public agencies or the project proposer, including other EISs.” Minn. R. 4410.1700, subps. 3, 7 (2023).

Exempt Analysis

We begin by addressing the DNR and Northshore’s general contention that the ongoing construction of the tailings basin is exempt from further environmental review.

⁴ An RGU is the “governmental unit that is responsible for preparation and review of environmental documents.” Minn. R. 4410.0200, subp. 75 (2023).

The DNR states in its ROD that Minn. R. 4410.4600 (2023) (part 4600) exempts the “features” of the tailings basin construction that were reviewed in the 1976 EIS. Northshore goes a step further, arguing that, under part 4600, the “DNR is not required to analyze the environmental effects associated with features that have already been authorized and completed.” We understand the DNR and Northshore to mean that, under EQB rules, the environmental effects of a project that have been permitted, reviewed, or completed are exempt from consideration in environmental review under MEPA.

The DNR and Northshore misconstrue the nature of the exemptions provided by Minn. R. 4410.4600. Pursuant to Minn. Stat. § 116D.04, subd. 2a(b), the EQB created “categories of actions for which [EISs] and for which [EAWs] must be prepared as well as categories of actions for which no environmental review is required.” These mandatory and exempt categories are set forth in Minn. R. 4410.4300-.4600 (2023). Among the exemptions under part 4600 are (1) “projects for which all governmental decisions have been made”; (2) “projects for which a substantial portion of the project has been completed and an EIS would not influence remaining construction”; and (3) “projects for which environmental review has already been completed.” Minn. R. 4410.4600, subps. 2(B), 2(D), and 2(E).

We reject the interpretation of part 4600 advanced by the DNR and Northshore for two reasons. First, the plain language of part 4600 exempts “projects” from portions of chapter 4410, not the “effects” of projects, as the DNR and Northshore contend. *See In re Denial of Contested Case Hearing Requests*, 993 N.W.2d 627, 646 (Minn. 2023) (“When the language of a statute or regulation is unambiguous, we apply the plain language.”).

Moreover, part 4600 does not place a project entirely outside the purview of MEPA or the EQB rules. Rather, part 4600 exempts a project from portions of chapter 4410 for the purpose of determining whether that project is subject to mandatory environmental review under MEPA's provisions. As discussed above, MEPA authorized the EQB to create "categories of actions" for which environmental review is and is not required, Minn. Stat. § 116D.04, subd. 2a(b), and accordingly, the EQB promulgated Minn. R. 4410.4300-.4600. Those rules establish thresholds that trigger mandatory environmental review if they are met or exceeded, and exempt projects from mandatory review if, for example, a project has already undergone environmental review or the project is substantially complete and environmental review would not influence the project's construction. To conclude that part 4600 exempts a project from environmental review entirely would render other parts of chapter 4410 meaningless. Under Northshore's interpretation, for example, a project with a completed EIS would be exempt from Minn. R. 4410.3000 which provides for supplementing an EIS in the event a project changes or new circumstances arise. *See* Minn. R. 4410.3000, subp. 3(A) (2023).

Second, the notion that part 4600 operates to exempt the effects of a project because the project was permitted, underwent environmental review, or has already been completed, directly contradicts Minnesota caselaw.

In *CARD*, the supreme court reviewed a county's decision not to require an EIS for the construction of two proposed gravel pits. 713 N.W.2d at 821-23. In making its determination, the county did not consider the environmental effects of previously constructed gravel pits in conjunction with the potential effects of the proposed gravel pits.

Id. at 831. The supreme court reversed the county’s decision, concluding that when an RGU considers the potential environmental effects of a proposed project, it must also consider the effects of “other local projects *already in existence*.” *Id.* at 829, 838 (emphasis added). The court stated that interpreting EQB rules in such a way that an RGU “could simply ignore most other projects in the surrounding area of the proposed project, as if those other projects and their environmental consequences vanished from the map for environmental review purposes as soon as they were developed[,]” would lead to “absurd results.” *Id.* at 831.

Accordingly, we reject the argument that part 4600 entirely exempts the ongoing construction of the tailings basin, and its effects, from environmental review.

Connected Actions

Having established the limits of part 4600’s exemptions, we turn to WaterLegacy’s argument that the DNR erred by failing to consider the proposed project and the ongoing tailings basin project as connected actions.

Two projects are “connected actions” if (1) “one project would directly induce the other”; (2) “one project is a prerequisite for the other and the prerequisite project is not justified by itself”; or (3) “neither project is justified by itself.” Minn. R. 4410.0200, subp. 9c. The EQB rules provide that “[c]onnected actions . . . shall be considered a single project for purposes of the determination of need for an EIS.” Minn. R. 4410.1700, subp. 9 (2023).

WaterLegacy contends that the proposed project and the ongoing construction of the tailings basin are connected actions because the proposed project is a prerequisite for

the tailings basin project and is justified only by Northshore's need to increase the capacity of the tailings basin.

There is no dispute that the proposed project is a prerequisite to the continued construction of the tailings basin. The EAW describes the proposed project as "necessary to allow use of the Tailings Basin at its total designed capacity." The ROD states that the proposed project "provides the infrastructure necessary for Northshore to utilize the remaining increment of depositional elevation within the basin." For its part, Northshore confirms that the dam extensions and railroad relocation "would facilitate the use of the Tailings Basin toward its permitted maximum capacity."

Northshore nevertheless argues that the proposed project and the tailings basin cannot be connected actions because the tailings basin is not a "project" for purposes of environmental review. We disagree.

The EQB defines a "project" as "governmental action, the results of which would cause physical manipulation of the environment, directly or indirectly." Minn. R. 4410.0200, subp. 65 (2023). "Governmental action" is defined as "activities including projects wholly or partially conducted, permitted, assisted, financed, regulated, or approved by governmental units, including the federal government." Minn. R. 4410.0200, subp. 33 (2023). In *MRR*, we said that a proposed action constitutes "a 'project' for purposes of [MEPA]" when it "is a definite, site-specific, action that contemplates on-the-ground environmental changes." 651 N.W.2d at 540.

Northshore argues that the tailings basin is not a project as defined by MEPA and the EQB rules because it is a "previously completed permitting decision" and therefore no

longer “contemplates” environmental changes. Northshore’s argument implies that MEPA and the EQB rules apply only to future actions, and that the moment a project is permitted, it is outside the scope of environmental review. Neither contention is supported by MEPA, the EQB rules, or Minnesota caselaw.

First, Northshore neglects to parse the EQB’s definition of a project. As we already stated, the EQB rules define a “project” as “*governmental action, the results of which would cause physical manipulation of the environment,*” Minn. R. 4410.0200, subp. 65 (emphases added), and “governmental action” is defined by MEPA and the EQB rules as “*projects wholly or partially conducted [or] permitted . . . by governmental units,*” Minn. Stat. § 116D.04, subd. 1a(d) (emphasis added); Minn. R. 4410.0200, subp. 33 (emphasis added). In other words, a “project” is not defined as limited to future actions. Rather, it is defined to include an action with future effects.

Second, Northshore’s reliance on our decision in *MRR* is misguided. In *MRR*, we distinguished contemplated environmental changes “too broad and speculative to provide the basis for meaningful environmental review” from those that are “definite” and “site-specific.” 651 N.W.2d at 540. We therefore determined the point at which a plan or proposed action becomes a project subject to environmental review, but we did not conclude that a project ceases to be subject to MEPA the moment it is permitted. *See id.*

Here, the ongoing construction of the tailings basin is a project under MEPA. The construction is “definite” and “site-specific,” *see id.*, and its results include direct and indirect physical manipulations of the environment. And because there is no dispute that the proposed project is a prerequisite to continuing the tailings basin project, the two

projects are “connected actions” as defined by EQB rules. Thus, we conclude that the DNR erred by failing to consider the projects a single project in determining whether an EIS is required.

Cumulative Potential Effects

WaterLegacy argues that the DNR’s cumulative-potential-effects analysis for the proposed project was inadequate because it failed to properly consider the effects of the ongoing and future construction of the tailings basin.

In determining the need for an EIS, an RGU must consider a project’s “cumulative potential effects.” Minn. R. 4410.1700, subp. 7(B) (2023). “Cumulative potential effects” (CPE) means:

[T]he effect on the environment that results from the incremental effects of a project in addition to other projects in the environmentally relevant area that might reasonably be expected to affect the same environmental resources, including future projects actually planned or for which a basis of expectation has been laid[.]

Minn. R. 4410.0200, subp. 11a (2023). In essence, a CPE analysis considers whether the effects of a proposed project, when combined with the effects of other past, existing, or planned projects, has the potential to significantly affect the same natural resources within the same “geographic and temporal scope.” *CARD*, 713 N.W.2d at 831-32.

The CPE analysis that the DNR conducted for the proposed project failed to consider an important aspect of the problem. The DNR stated in its ROD that the scope of the CPE analysis was limited to the proposed project and “reasonably foreseeable projects.” In the EAW, the list of “[p]resent and reasonably foreseeable future projects” does not include the ongoing construction of the original tailings basin project. The DNR explains,

in a footnote, that Northshore’s “ongoing tailings placement is not considered a reasonably foreseeable future project for this EAW” because the project was previously reviewed and permitted.

Northshore argues that the CPE analysis was proper because the EAW treated the tailings basin construction as a “baseline condition,” and under Minn. R. 4410.0200, subp. 11a, “[i]n analyzing the contributions of past projects to cumulative potential effects, it is sufficient to *consider* the current aggregate effects of past actions.” (Emphasis added.) Northshore insists that the DNR satisfied any requirement to consider the effects of the tailings basin when it stated, in a second footnote, that its CPE analysis was “informed” by a prior CPE analysis conducted by the U.S. Army Corps of Engineers.

The EAW reflects a fundamental misunderstanding of the CPE analysis. The purpose of the CPE analysis “is to put the proposed project into context.” *CARD*, 713 N.W.2d at 829. The analysis determines whether a “project, which may not individually have the potential to cause significant environmental effects, could have a significant effect when other local projects already in existence or planned for the future are considered.” *Id.* Thus, the fact that the original tailings basin project has undergone previous environmental review and permitting does not obviate the need to consider its effects in a CPE analysis. Furthermore, while we acknowledge that the ongoing nature of the original tailings basin project presents challenges to environmental review, we cannot agree that a project expected to continue for the next 40 years is not reasonably foreseeable, or that the future effects of that project should be considered “past actions.”

Because the DNR failed to treat the proposed project and the tailings basin project as connected actions and conducted an incomplete CPE analysis, the environmental review of the proposed project was incomplete and the DNR's negative EIS determination was therefore arbitrary and capricious and based on an error of law.⁵ We reverse and remand this matter to the DNR to conduct a new EIS determination in accordance with this opinion.

Reversed and remanded.

⁵ Because we reverse and remand on these grounds, we do not reach WaterLegacy's additional arguments.