This opinion is nonprecedential except as provided by Minn.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
A18-2094
A18-2095
A18-2159
A18-2163

In the Matter of the reissuance of an NPDES/SDS Permit to United States Steel Corporation (U.S. Steel) for its Minntac facility and response to Contested Case Hearing requests filed by U.S. Steel and the Minnesota Center for Environmental Advocacy ("MCEA")

and

In the matter of the Application for Variance from Water Quality Standards in the proposed NPDES/SDS permit, MPCA's Preliminary Determination to Deny the Variance Request and U.S. Steel's Contested Case Hearing request on the Variance denial.

Filed June 28, 2021
Affirmed in part, reversed in part, and remanded
Cochran, Judge

Minnesota Pollution Control Agency

Jeremy Greenhouse, Kenneth Podpeskar, The Environmental Law Group, Ltd., Mendota Heights, Minnesota (for relator/respondent United States Steel Corporation)

Paula G. Maccabee, Just Change Law Offices, St. Paul, Minnesota (for relator/respondent WaterLegacy)

Sara K. Van Norman, Van Norman Law, PLLC, Minneapolis, Minnesota; and

Sean Copeland, FDL Band Legal Department, Cloquet, Minnesota (for relator/respondent Fond du Lac Band of Lake Superior Chippewa)

Keith Ellison, Attorney General, Stacey W. Person, Assistant Attorney General, St. Paul, Minnesota (for respondent Minnesota Pollution Control Agency)

Kevin Reuther, Minnesota Center for Environmental Advocacy, St. Paul, Minnesota (for amicus curiae Minnesota Center for Environmental Advocacy)

Jeffrey K. Holth, Joseph F. Halloran, Michael L. Murphy, Barbara Cole, The Jacobson Law Group, St. Paul, Minnesota (for amici curiae the Grand Portage Band of Lake Superior Chippewa, the Bois Forte Band of Chippewa, the Bad River Band of the Lake Superior Tribe of Chippewa, the Mille Lacs Band of Ojibwe, the Lac Courte Oreilles Band of Lake Superior Chippewa Indians, the Lac du Flambeau Band of Lake Superior Chippewa Indians, the Lac Vieux Desert Band of Lake Superior Chippewa Indians, and the 1854 Treaty Authority)

Carolyn L. McIntosh (pro hac vice), Squire Patton Boggs (US) LLP, Denver, Colorado; and

Dara D. Mann, Squire Patton Boggs (US) LLP, Atlanta, Georgia (for amicus curiae Iron Mining Association of Minnesota

Considered and decided by Cochran, Presiding Judge; Connolly, Judge; and Johnson, Judge.

NONPRECEDENTIAL OPINION

COCHRAN, Judge

These consolidated appeals were taken from an order issued by the Minnesota Pollution Control Agency (MPCA) that granted United States Steel Corporation (U.S. Steel) a National Pollutant Discharge Elimination System/State Disposal System (NPDES/SDS) permit for the tailings basin at its Minntac ore processing operation. The appeals are before this court for a second time following a remand by the Minnesota Supreme Court.

Our previous decision addressed several issues regarding the terms of the permit. *See In re Reissuance of NPDES/SDS Permit to U.S. Steel Corp.*, 937 N.W.2d 770, 774 (Minn. App. 2019) (*Minntac I*), *rev'd*, 954 N.W.2d 572 (Minn. 2021). The Minnesota

Supreme Court granted review with respect to two issues—whether the federal Clean Water Act (CWA) governs discharges of pollutants to groundwater and whether Minnesota's Class 1 water-quality standards apply to groundwater. *In re Reissuance of NPDES/SDS Permit to U.S. Steel Corp.*, 954 N.W.2d 572, 574 & n.1 (Minn. 2021) (*Minntac II*). No party sought review of our holdings on the other issues addressed in our decision, including our holding that substantial evidence *does not* support the MPCA's determination that water-quality-based effluent limits for surface water discharges are not required to be included in the permit. *Minntac I*, 937 N.W.2d at 774.

After the Minnesota Supreme Court granted review but before it issued its decision, the United States Supreme Court resolved the first issue regarding the scope of the CWA. In *County of Maui v. Haw. Wildlife Fund*, the United States Supreme Court held that the permitting requirements of the CWA apply to "a discharge (from a point source) of pollutants that reach navigable waters after traveling through groundwater if that discharge is the functional equivalent of a direct discharge from the point source into navigable waters." 140 S. Ct. 1462, 1477 (2020).

The Minnesota Supreme Court subsequently reversed our decision on the second issue, holding that "groundwater is a Class 1 water under Minnesota law." *Minntac II*, 954 N.W.2d at 574. The supreme court remanded to this court for us to address two issues that we did not reach in our previous decision: (1) whether the MPCA properly denied U.S. Steel's request for a contested-case hearing on the permit, and (2) whether the MPCA properly denied U.S. Steel's request for a variance from Class 1 water-quality standards. *Id.* at 583. The supreme court also instructed that, following this court's decision on

remand, the matter should be remanded to the MPCA for the agency to conduct the functional-equivalence analysis required by *County of Maui*. *Id.*

We discern no basis to reverse the MPCA's decisions to deny the contested-case hearing and variance. And because the supreme court did not disturb our holding in *Minntac I* regarding the MPCA's determination on water-quality-based effluent limits for surface water discharges, we reiterate that holding. Accordingly, we reverse the MPCA's decision granting the permit, and we remand for the MPCA to make substantiated findings regarding whether water-quality-based effluent limits are required to be included in the permit and to conduct the functional-equivalence analysis required by *County of Maui*.

FACTS

U.S. Steel operates its Minntac ore-processing facility in the city of Mountain Iron in St. Louis County.[1] The facility includes an unlined tailings basin that leaks polluted wastewater, for which U.S. Steel requires an NPDES/SDS permit. Prior to the issuance of the permit that is challenged in these appeals, U.S. Steel had last obtained a permit for the tailings basin in 1987. The 1987 permit had an expiration date of July 31, 1992, but the terms of the permit remained in effect until the permit at issue in these appeals was issued in 2018.

Beginning as early as 2000, the MPCA notified U.S. Steel about concerns related to high sulfate levels in drainage from the tailings basin. Thereafter, the MPCA and U.S.

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[1] In *Minntac I*, we extensively discussed the tailings basin, including its permitting history and the nature and extent of discharges from the basin. We do not restate those facts here. Instead, we summarize the essential facts before turning to the two issues for our consideration on remand.

Steel agreed to multiple schedules of compliance intended to reduce the sulfate levels. To satisfy the requirements of a 2011 schedule of compliance, U.S. Steel commissioned a report from Conestoga-Rovers & Associates (CRA report) to determine the in-basin sulfate limit that would be necessary to meet groundwater-quality standards for sulfate at the property boundary. The CRA report is based on groundwater flow and sulfate transport modeling conducted for U.S. Steel by CRA with input by the MPCA. The CRA report concludes that "if the sulfate concentration is maintained at 357 mg/L in the [t]ailings [b]asin pools, the future stabilized sulfate concentration in groundwater simulated at the site boundary will not exceed the groundwater standard of 250 mg/L."

Ultimately, in November 2016, the MPCA issued a new draft permit. The terms of the draft permit included a 357 mg/L in-basin limit for sulfate, consistent with the CRA report. U.S. Steel resisted the in-basin limit, and sought two forms of relief from the MPCA. First, U.S. Steel requested a contested-case hearing on the permit, asserting among other grounds that there were material fact disputes regarding the in-basin limit. Second, U.S. Steel sought a variance from the groundwater-quality standards for sulfate and total dissolved solids, arguing that strict conformance with the limits was "economically infeasible," impractical, and unnecessary. The MPCA denied both of U.S. Steel's requests for relief, and issued the permit—with the 357 mg/L in-basin sulfate limit—on November 30, 2018.

U.S. Steel and a number of environmental organizations filed certiorari appeals to challenge the MPCA's decisions in relation to the 2018 permit. The arguments of the environmental organizations, along with some of U.S. Steel's arguments, were resolved in

Minntac I and *Minntac II*. Because we concluded in *Minntac I* that the Class 1 water-quality standards—including the 250 mg/L sulfate limit—did not apply to groundwater, we did not reach U.S. Steel's arguments challenging the MPCA's denial of a contested-case hearing or its denial of a variance from water-quality standards. 937 N.W.2d at 785. In *Minntac II*, the supreme court reversed our conclusion regarding the Class 1 water-quality standards—holding that they do apply to groundwater. 954 N.W.2d at 574. And the supreme court remanded to us for determination of whether the MPCA properly denied U.S. Steel's requests for a contested-case hearing and a variance from groundwater-quality standards. *Id.* at 583. We turn now to those two issues.[2]

DECISION

I. The MPCA properly denied U.S. Steel's petition for a contested-case hearing.

The first issue for our consideration on remand is whether the MPCA properly denied U.S. Steel's petition for a contested-case hearing on the permit application. Under

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[2] U.S. Steel argues that this court should also address its arguments "that the manner in which MPCA exercised its authority in applying the Class 1 standards was arbitrary and capricious." But this court's "review is limited by the supreme court's remand instruction." *Mortenson v. Comm'r of Pub. Safety*, 918 N.W.2d 573, 578 (Minn. App. 2018), *review denied* (Minn. Dec. 18, 2018); *cf. Halverson v. Vill. of Deerwood*, 322 N.W.2d 761, 766 (Minn. 1982) ("It is the duty of the trial court on remand to execute the mandate of this court strictly according to its terms."). The supreme court remanded to this court for consideration of two issues; the court did not direct any further proceedings on arguments related to the MPCA's application of Class 1 water-quality standards. Moreover, we are not persuaded that U.S. Steel preserved the arguments regarding application of the water-quality standards by making them in its principal appellate brief. *See Hunter v. Anchor Bank, N.A.*, 842 N.W.2d 10, 17 (Minn. App. 2013) (explaining that "an argument for reversal that is not raised in an appellant's principal brief is forfeited"), *review denied* (Minn. Mar. 18, 2014); *see also In re Martinelli*, 649 N.W.2d 886, 891 (Minn. App. 2002) (holding that scope of remand from supreme court did not encompass issue not previously raised in appeal or discussed in supreme court's remand instructions).

Minn. R. 7000.1900, subp. 1 (2019), the commissioner of the MPCA must grant a petition for a contested-case hearing upon finding that

> A. there is a material issue of fact in dispute concerning the matter pending before the . . . commissioner;
> B. the . . . commissioner has the jurisdiction to make a determination on the disputed material issue of fact; and
> C. there is a reasonable basis underlying the disputed material issue of fact or facts such that the holding of a contested case hearing would allow the introduction of information that would aid the . . . commissioner in resolving the disputed facts in making a final decision on the matter.

The party requesting a contested-case hearing has the burden to demonstrate that this standard is met. *In re NorthMet Project Permit to Mine Application*, ___ N.W.2d ___, ___, 2021 WL 1652768, at *8 (Minn. Apr. 28, 2021) (*NorthMet*); *In re Solid Waste Permit for the NSP Red Wing Ash Disposal Facility*, 421 N.W.2d 398, 404 (Minn. App. 1988), *review denied* (Minn. May 18, 1998).

There is no disagreement in these appeals that U.S. Steel disputed material facts regarding the permit or that the MPCA had jurisdiction to determine those disputed facts. U.S. Steel's challenge to the MPCA's denial of a contested-case hearing focuses on the third prong above, whether "there is a reasonable basis underlying the disputed material issue of fact or facts such that the holding of a contested case hearing would allow the introduction of information that would aid the . . . commissioner in resolving the disputed facts in making a final decision on the matter." Minn. R. 7000.1900, supb. 1(C). On this prong, it is "not enough to raise questions or pose alternatives without some showing that evidence can be produced which is contrary to the action proposed by the agency." *In re*

Amendment No. 4 to Air Emission Facility Permit, 454 N.W.2d 427, 430 (Minn. 1990) (*Amendment No. 4*).

The Minnesota Supreme Court recently discussed the standard of judicial review to be applied to an agency decision to deny a contested-case hearing. *See NorthMet*, 2021 WL 1652768, at *8.[3] The supreme court held that the agency "has the discretion to determine whether a hearing on the factual disputes in a petition for a contested case hearing will 'aid' the agency in making a final decision on the completed application." *Id.* at *11. And the supreme court held that the agency's decision should be reviewed for the support of substantial evidence. *Id.* The "substantial-evidence analysis requires [a court] to 'determine whether the agency has adequately explained how it derived its conclusion and whether that conclusion is reasonable on the basis of the record.'" *Id.* (quoting *Minn. Power & Light Co. v. Minn. Pub. Utils. Comm'n*, 342 N.W.2d 324, 330 (Minn. 1983)).

U.S. Steel argues that it demonstrated a ground for holding a contested-case hearing by identifying fact issues regarding the scientific basis for the 357 mg/L in-basin limit in the permit, which is based on the CRA report. In particular, U.S. Steel asserts that studies that were being conducted by the DNR created factual issues regarding the reactivity of

[3] Although *NorthMet* involved an appeal from a decision by the Minnesota Department of Natural Resources (DNR) to deny a contested-case hearing under Minn. Stat. § 93.483 (2020), that statute provides a contested-case-hearing standard nearly identical to the one that governs the MPCA's decision to grant or deny a contested-case hearing under Minn. R. 7000.1900, subp. 1. Moreover, the supreme court in *NorthMet* relied on appeals from MPCA decisions to deny contested-case hearings under rule 7000.1900. *NorthMet*, 2021 WL 1652768, at *8-9 (citing *Amendment No. 4*, 454 N.W.2d at 430; *In re N. States Power Co. (NSP) Wilmarth Indus. Solid Waste Incinerator Ash Storage Facility*, 459 N.W.2d 922, 923 (Minn. 1990)). We thus conclude that the standard of review announced in *NorthMet* applies equally to decisions under the MPCA's rule.

sulfate in groundwater.[4] U.S. Steel argues that, while the CRA study treated sulfate from the tailings basin as a conservative constituent (i.e., one that would not change in groundwater), the subsequent DNR studies demonstrated that sulfate can be transformed in groundwater. Because the 357 mg/L limit was calculated assuming no transformation of sulfate in groundwater, U.S. Steel asserts that the limit was no longer "scientifically defensible" following the DNR studies.

The MPCA addressed U.S. Steel's arguments regarding sulfate reactivity in its permit findings. The MPCA explained that it "was already aware at the time it developed the draft permit that sulfate is not strictly conservative," but the MPCA also explained that "sulfate can also be released through biogeochemical reactions, including continued oxidation of sulfur-bearing minerals in the fine and coarse tailings contained in the basin." For that reason, the MPCA determined there was "no assurance that the reduction identified in [U.S. Steel's] comment would result." The MPCA emphasized that U.S. Steel had not provided "any basis for an alternative calculation of a limit that would lead to meeting water quality standards." And the MPCA noted that it had "revised the schedule of compliance in the final permit to allow more time to propose an alternative basin limit"

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[4] U.S. Steel also argues that the MPCA's own documents create factual issues regarding the domain (geographic scope) used for the model underlying the 2013 report. We agree with the MPCA that U.S. Steel forfeited this issue by failing to raise it in its contested-case hearing request. U.S. Steel requested a contested-case hearing in a three-page letter that also attached U.S. Steel's comments on the draft permit. U.S. Steel's discussion of the model in that letter and the attached comments is limited to the DNR's subsequent studies on sulfate reactivity. We thus decline to address U.S. Steel's arguments regarding domain. *See N. Am. Water Office v. LTV Steel Mining Co.*, 481 N.W.2d 401, 405 (Minn. App. 1992) (declining to consider issue not raised in party's contested-case-hearing request).

and that “the first limit the facility will have to meet is ten years after permit issuance, providing ample time to revise modeling before the limit takes effect.”

In denying U.S. Steel’s request for a contested-case hearing regarding the 357 mg/L in-basin limit, the MPCA explained that it had “based its assumptions on what reductions need to be achieved on the data that it has had available.” The MPCA acknowledged that “the pathways that the pollutants are following and the fate and transport of these pollutions after they leave the basin have not been fully explored.” And the MPCA explained that “the [permit] require[s] U.S. Steel to continue its research into the flow paths”; “provides an opportunity for U.S Steel to propose an amended basin sulfate concentration that it predicts will meet applicable groundwater and surface water standards”; and “allow[s] U.S. Steel to determine dates by which surface water compliance will be achieved.” For these reasons, the MPCA found that U.S. Steel had not established a reasonable basis for a contested-case hearing on the 357 mg/L in-basin limit.

We conclude that the MPCA has adequately explained its decision to deny a contested-case hearing and that its explanation is reasonable on the basis of the record. Importantly, the 357 mg/L in-basin limit in the 2018 permit is based on the CRA study, which *was commissioned and submitted to the MPCA by U.S. Steel*. Thus, in seeking a contested-case hearing, U.S. Steel sought to indict its own report, but it identified no evidence that would support a different in-basin limit. Instead, it pointed to ongoing studies by the DNR regarding sulfate reactivity, which the MPCA acknowledged but did not find contrary to the requirements of the permit. On this record, the MPCA properly denied U.S. Steel’s request for a contested-case hearing. *See NorthMet*, 2021 WL 1652768, at *12-17

(concluding that decision to deny contested-case hearing was reasonable on the basis of record, except regarding issue as to which the agency did not adequately explain its conclusion or include supporting evidence in the record); *Amendment No. 4*, 454 N.W.2d at 430 (affirming denial of contested-case hearing where petitioner failed to present evidence supporting existence of material fact issues); *In re Decision to Deny Petitions for a Contested Case Hearing*, 924 N.W.2d 638, 649 (Minn. App. 2019) (affirming denial of contested-case hearing where petitioner failed to identify experts or their anticipated testimony and merely relied on agency acknowledgements regarding limitations of information), *review denied* (Minn. Apr. 24, 2019).

II. The MPCA properly denied U.S. Steel's request for a variance from groundwater-quality standards.

The second issue for our consideration on remand is whether the MPCA properly denied U.S. Steel's request for a variance from groundwater-quality standards. U.S. Steel sought a variance from the limits for sulfate and total dissolved solids (TDS) in the secondary drinking water standards of the Environmental Protection Agency, which are incorporated by reference in Minnesota's Class 1 water-quality standards. *See* Minn. R. 7050.0220, subp. 2(A) (2019). The MPCA has authority to grant such a variance under Minn. R. 7060.0900 (2019), which provides:

> In any cases where . . . the agency finds that by reason of exceptional circumstances the strict enforcement of any provision of these standards would cause undue hardship, that disposal of the sewage, industrial waste, or other waste is necessary for the public health, safety, or welfare, or that strict conformity with the standards would be unreasonable, impractical, or not feasible under the circumstances, the agency in its discretion may permit a variance therefrom upon

> such conditions as it may prescribe for prevention, control, or abatement of pollution in harmony with the general purpose of these standards and the intent of the applicable state and federal laws.[5]

Under Minn. R. 7000.7000, subp. 2(E) (2019), an applicant seeking a variance "primarily on grounds of economic burden" must submit with the application three years of financial statements and "an analysis of the effect of such financial status if the variance is not granted."

Like the denial of a contested-case hearing, we review the denial of a variance with deference to the MPCA's expertise. *See, e.g.*, *In re Alexandria Lake Area Sanitary Dist. NPDES/SDS Permit*, 763 N.W.2d 303, 315 (Minn. 2009) (deferring to MPCA's expertise in setting permit limits). We may reverse the decision, as relevant here, if it is arbitrary, capricious, or unsupported by substantial evidence. *See* Minn. Stat. § 14.69 (2020); *see also* Minn. Stat. § 115.05, subd. 11(2) (2020) (providing for appeal under administrative procedure act of final decisions pertaining to variances).[6]

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[5] U.S. Steel also cites Minn. Stat. § 116.07 (2020) as authorizing variances, but that section governs variances from "rules adopted under [that] section," which directs the adoption of rules governing air pollution, solid waste disposal, and noise pollution. Minn. Stat. § 116.07, subds. 2, 5(a). The rules at issue here were adopted under the authority of Minn. Stat. §§ 115.03, .44 (2020).

[6] U.S. Steel makes substantive arguments that the variance denial was arbitrary and capricious and unsupported by substantial evidence. In the heading for its argument, U.S. Steel also asserts that the denial of the variance was affected by an error of law and based on unlawful procedure. The error of law U.S. Steel asserts is the application of the secondary drinking water standards in the permit. That issue has been resolved in *Minntac II*, and at any rate is not an argument for a variance. U.S. Steel does not make any argument about unlawful procedure. Accordingly, we limit our review to whether the MPCA's decision is arbitrary, capricious, or unsupported by substantial evidence.

U.S. Steel sought a variance on the grounds that (1) attainment of the groundwater standards is "economically infeasible," citing Minn. R. 7000.7000, subp. 2(E), (2) strict conformance with the rules would be unreasonable, impracticable, or not feasible under the circumstances, citing Minn. R. 7060.0900, and (3) compliance with the permit limits is not necessary to meet the intent of the law, citing Minn. R. 7060.0900. With respect to the requirements for seeking a variance on grounds of economic burden, U.S. Steel stated that, "[a]lthough [it was] not seeking the variances primarily on grounds of economic burden, the costs required to guaranty compliance with the draft permit conditions does present an economic hardship that others in the industry and within the state do not share." U.S. Steel submitted its 2013, 2014, and 2015 10-Ks and referenced an analysis, not included with the application, estimating the cost to comply with the permit. U.S. Steel asserted that "[b]ased on the financial analysis, installation of water treatment equipment will have a substantial negative impact to profits for a company that is already facing challenging conditions in the global economy." And U.S. Steel asserted that the negative impact on the company "could also have a widespread economic impact to the region (St. Louis County) as well."

With respect to the permit requirements being unreasonable, impracticable, and infeasible, U.S. Steel asserted that the naturally occurring exceedance of other secondary standards made enforcing the secondary standards for sulfate and TDS unreasonable; that the timeline for compliance was impractical; and that the cost of compliance was "not feasible." And U.S. Steel argued that compliance with the secondary standards was not necessary to meet the intent of the law because of the other secondary standard

exceedances, and because the sulfate and TDS standards are not necessary to protect public health.

The MPCA considered and rejected U.S. Steel's variance arguments. The MPCA found that "the information provided by U.S. Steel did not demonstrate unreasonable economic hardship." The MPCA also reasoned that natural-background exceedances of secondary standards for iron and manganese does not justify allowing exceedances of sulfate and TDS, citing Minn. R. 7060.0200's policy to protect groundwater "as nearly as possible in its natural condition," and noting that the iron and manganese exceedances are more easily treated with an "inexpensive, in situ device." And the MPCA reasoned that the timeline for compliance with the groundwater-quality standards was based on U.S. Steel's own representations about the time required for compliance, and that "[i]f U.S. Steel finds that it is unlikely to meet the deadline in the permit, it has the option of seeking an amendment to the permit under Minnesota Rule 7001.0170 or requesting a variance at that time."

We conclude that the MPCA has adequately explained its decision to deny a variance, and that the MPCA's decision is reasonable on the basis of the record. On appeal, U.S. Steel reiterates its arguments about unreasonableness, impracticability, and "economic infeasibility."[7] U.S. Steel essentially seeks to challenge the MPCA's basis for

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[7] U.S. Steel also reasserts its argument that compliance with the secondary standards for sulfate and TDS is not necessary to meet the intent of the law. But this is not a factor justifying a variance under Minn. R. 7060.0900. Rather, when the agency determines that a variance is justified, the variance must be "in harmony with the general purpose of these standards and the intent of the applicable state and federal laws." Minn. R. 7060.0900.

a uniform standard governing sulfates and TDS in groundwater, and requests that the MPCA conduct a cost-benefit analysis of applying the standards in the permit. But U.S. Steel has not argued, much less substantiated with the required information, that it will suffer an "undue hardship" through application of the standards, as an applicant is required to do when seeking a variance primarily based on economic hardship. Minn. R. 7060.0900.[8] And the MPCA properly considered and reasonably rejected U.S. Steel's arguments based on unreasonableness and impracticability.

U.S. Steel also asserts that the MPCA's decision to deny a variance in this case was arbitrary and capricious in light of its recent decision to grant a variance from water-quality standards in another matter. U.S. Steel concedes that "variances are highly site-specific and the relevant facts will vary for different applications," but argues that the MPCA's decision in that matter supports its view that the MPCA failed to undertake a substantive review of its variance application. U.S. Steel asserts that this court may take judicial notice of the recent variance decision.

This court generally may take judicial notice of adjudicative facts that are either generally known or capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned. *See In re Block*, 727 N.W.2d 166, 176 (Minn. App. 2007); *see also* Minn. R. Evid. 201(b). But this court has declined to use judicial notice to expand the record in a certiorari appeal. *Block*, 727 N.W.2d at 177 (declining to

[8] U.S. Steel disclaims any reliance on the undue-hardship prong of Minn. R. 7060.0900, and asserts that the "exceptional circumstances" requirement of the rule is limited to that prong. We conclude that the MPCA properly analyzed U.S. Steel's arguments of "economic infeasibility" under the undue-hardship prong.

"consider many specific documents that were not before the county board, and use those documents to reverse the county board's decision on a disputed matter"); *see also In re Livingood*, 594 N.W.2d 889, 893 n.3 (Minn. 1999) ("Typically, when a quasi-judicial body . . . denies a permit, the reviewing court should, of course, confine itself at all times to the facts and circumstances developed before that body." (quotation omitted)); *Plowman v. Copeland, Buhl & Co.*, 261 N.W.2d 581, 584 (Minn. 1977) ("[P]roduction of record evidence is never allowed in an appellate court for the purpose of reversing a judgment."). Accordingly, we decline to consider the recently granted variance in deciding whether the commission acted arbitrarily or capriciously in denying U.S. Steel's application for a variance.[9]

In sum, having reviewed U.S. Steel's arguments regarding the two issues before us on remand, we discern no basis to interfere with the MPCA's decisions. We thus affirm the MPCA's decisions to deny U.S. Steel's petition for a contested-case hearing and to deny U.S. Steel's request for a variance from groundwater-quality standards. But we reaffirm our holding in *Minntac I* that substantial evidence does not support the MPCA's determination that water-quality-based effluent limits are not required to be included in the permit for surface water discharges. We therefore reverse the MPCA's decision granting

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[9] Even if we were to consider the documents regarding the recently granted variance, there are distinguishing facts that would preclude us from drawing any analogy. The recently granted variance was decided under different administrative rules governing variances from surface-water-quality standards, and, perhaps most critically, on a different record which the MPCA found demonstrated economic hardship. U.S. Steel did not submit documents to the MPCA that would allow it to conclude that denial of U.S. Steel's application for a variance would result in economic hardship.

the permit and remand for the MPCA to make substantiated findings regarding water-quality-based effluent limits. Finally, as directed by the supreme court, we also remand for the MPCA to conduct a functional-equivalence analysis under the standards set forth in *County of Maui*, 140 S. Ct. at 1477.

Affirmed in part, reversed in part, and remanded.