

**STATE OF MINNESOTA  
DEPARTMENT OF NATURAL RESOURCES**

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*In the Matter of the Application  
for the NorthMet Project Permit to Mine  
Dated December 2017*

**REQUEST TO COMMISSIONER  
TO DENY AMENDMENT TO  
PERMIT TO MINE  
APPLICATION**

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**INTRODUCTION**

The Fond du Lac Band of Lake Superior Chippewa (“Band”), WaterLegacy, and the Minnesota Center for Environmental Advocacy (“MCEA”)<sup>1</sup> (collectively, “Requestors”) hereby request that the Commissioner of the Department of Natural Resources (“DNR”) deny any attempt by NewRange Copper Nickel, LLC (“NewRange”) to submit a purported “amendment” to the application for a permit to mine for the NorthMet Project filed by Poly Met Mining, Inc. (“Applicant PolyMet”) on or about January 29, 2018.<sup>2</sup> This request is made on the following grounds: 1) the Minnesota Statutes do not give the DNR authority to amend a permit to mine application after it has been completed, placed on notice, and filed; 2) the Minnesota Rules do not allow amendment of an application for a permit to mine—rather, they only allow amendment of a *permit*, which NewRange does not have; and 3) allowing a purported “amendment” to a completed, noticed, and filed permit to mine

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<sup>1</sup> MCEA submits this request in its own capacity as representative for other conservation organizations: Friends of the Boundary Waters Wilderness, Duluth for Clean Water, Center for Biological Diversity, Friends of the Cloquet Valley State Forest, Save Lake Superior Association, and Save Our Sky Blue Waters.

<sup>2</sup> Minn. Dep’t of Nat. Res., Northmet Project – Permit to Mine: Findings of Fact, Conclusions, and Order of Commissioner ¶ 115 (Nov. 1, 2018) (“NorthMet FOF”), [https://files.dnr.state.mn.us/lands\\_minerals/northmet/final\\_permit/02-ptm-findings.pdf](https://files.dnr.state.mn.us/lands_minerals/northmet/final_permit/02-ptm-findings.pdf).

application after a remand and contested case hearing on the project would be inequitable and inconsistent with the Minnesota Administrative Procedure Act (“MAPA”).

In addition, should NewRange propose instead to amend the permit for the NorthMet Project issued by the DNR to Applicant PolyMet and the Canadian company PolyMet Mining Corp. (“Canadian PolyMet”) on November 1, 2018, the Commissioner must also deny this proposed “amendment.” The NorthMet permit was reversed by the Court of Appeals and that decision was affirmed by the Supreme Court on April 28, 2021, so there is no valid NorthMet permit that could be assigned to or amended by NewRange. NewRange was neither a permit applicant nor a permittee for the NorthMet Project; it is a new entity proposing a different project. The DNR Commissioner’s rejection of a NewRange “amendment”—whether to Applicant PolyMet’s completed application or to the voided permit issued to Applicant PolyMet and Canadian PolyMet—would clarify these proceedings and conform to applicable statutes and rules. NewRange could submit and the DNR could then consider a new permit to mine application consistent with Minnesota Statutes, ch. 93, and Minnesota Rules, ch. 6132.

We ask that the Commissioner consider this submission and include it in the administrative record for any decision on the pending permit to mine application. We also anticipate that many other legal and factual issues will be presented by the filing NewRange has foreshadowed. We therefore expressly reserve our rights to provide further comments, arguments, and submissions to the Commissioner, the Commissioner’s Designee, and to any other decisionmaker in any available forum.

## STATEMENT OF FACTS

On January 5, 2018, the DNR deemed the permit to mine application for the NorthMet Project submitted by Applicant PolyMet to be “complete” and opened “a public comment, objection, and petition period” on the permit to mine application and draft special conditions. NorthMet FOF ¶¶ 43, 113. The DNR deemed this permit to mine application to be filed in accordance with Minn. R. 6132.4000, subpt. 1, on January 29, 2018, thus setting the deadline for submitting a petition for a contested case hearing. *Id.* ¶ 115. WaterLegacy and MCEA then filed petitions for a contested case hearing. NorthMet FOF ¶ 116; *In re NorthMet Project* (“*NorthMet II*”), 959 N.W.2d 731, 742 (Minn. 2021). The DNR denied those petitions and granted the permit to mine. *NorthMet II*, 959 N.W.2d at 742. Requestors then filed judicial appeals of the DNR’s decision to grant the permit to mine. *Id.* at 743.

While the appeals were pending, Requestors also filed a request for the DNR to engage in a public process to review information about the safety of upstream tailings basin dams, related to a major tailings dam failure in Brumadinho, Brazil, and to decide whether to modify the permit to mine in light of that information. The DNR never formally engaged in such a process or issued a decision on whether it would consider such information.<sup>3</sup> At

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<sup>3</sup> See Request for Public Review of New Information (Oct. 7, 2019); Letter from Sherry A.ENZLER, Gen. Couns., Minn. DNR, to Requestors (n.d., received Oct. 18, 2019); Letter from Requestors to SherryENZLER, Gen. Couns., Minn. DNR (Oct. 21, 2019); Letter from Sherry A.ENZLER, Gen. Couns., Minn. DNR, to Requestors (Oct. 22, 2019); Email from Sherry A.ENZLER, Gen. Couns., Minn. DNR, to Requestors (Nov. 8, 2019, at 1:01 PM); Letter from Requestors to Sherry A.ENZLER, Gen. Couns., Minn. DNR (Nov. 19, 2019); Fond du Lac Band’s Resp. to DNR Notice Received Oct. 18, 2019 on Dam Safety Issues (Nov. 29, 2019).

the same time, the DNR indicated it was soliciting and receiving information from PolyMet about its relationship with Glencore plc, a Swiss-based company that had acquired a majority interest in PolyMet.<sup>4</sup>

On the judicial appeals of the permit to mine, the Minnesota Court of Appeals “reverse[d] the DNR’s decision[] to issue the permit to mine . . . and remand[ed] for the DNR to hold a contested-case hearing” and ruled that “DNR erred by issuing a permit without a fixed term.” *In re NorthMet Project* (“*NorthMet I*”), 940 N.W.2d 216, 222, 238 (Minn. App. 2020). On appeal, the Minnesota Supreme Court “conclude[d] that a contested case hearing is required on the effectiveness of the proposed bentonite amendment for PolyMet’s proposed tailings basin” and “further conclude[d] that the court of appeals was correct in reversing the decision to grant the permit to mine because the DNR erred by issuing the permit without an appropriate fixed term.” *NorthMet II*, 959 N.W.2d at 738. In affirming the Court of Appeals’ decision that the DNR must hold a contested case hearing, the Supreme Court explained that “[t]he effectiveness of the bentonite amendment is critical” in “ensuring the NorthMet project’s compliance with the DNR’s reactive waste rule” and that “a contested case hearing is required to determine whether the bentonite amendment, as proposed in the permit application, is a ‘practical and workable’ reclamation

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<sup>4</sup> Letter from Sherry A.ENZLER, Gen. Couns., Minn. DNR, to Requestors (Oct. 17, 2019).

technique that will satisfy the DNR’s reactive waste rule, Minn. R. 6132.2200, subpt. 2(B)[].” *Id.* at 754.<sup>5</sup>

The Office of Administrative Hearings held the contested case hearing on March 27-31, 2023, and the Administrative Law Judge recommended on November 28, 2023 that DNR deny the permit to mine application because “PolyMet’s proposed bentonite amendment is not a workable practical reclamation technique and does not satisfy the requirements of Minnesota’s Reactive Waste Rule.” *In re NorthMet Project* (“*NorthMet IIP*”), No. OAH 60-2004-37824, 2023 WL 8378514, at \*26 (Minn. Off. of Admin. Hr’gs Nov. 28, 2023). The parties then began briefing exceptions and arguments to the Commissioner’s Designee, *see* Minn. Stat. § 14.61, subdiv. 1, in order to complete the contested case record, *see id.* § 14.61, subdiv. 2. However, proceedings have been stayed by the Commissioner’s Designee since September 6, 2024, while NewRange reviews potential changes in the design of the NorthMet project, which could fundamentally change the proposed bentonite amendment. The briefing of exceptions has not been completed.

As a result of these proceedings, multiple elements of the reversed permit to mine remain unresolved. The contested case hearing has not resolved the critical issue of whether the proposed bentonite amendment to the flotation tailings basin complies with the Reactive Mine Waste rule, Minn. R. 6132.2200 subpt. 2(B), and the contested case may be mooted out entirely if any proposed Project changes would affect the bentonite plan.

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<sup>5</sup> The Court also concluded that the DNR did not need to consider dam safety issues implicated by the Brumadinho dam failure or Glencore’s ownership of PolyMet in the contested case hearing. *Id.* at 750 n.15, 755-56 & n.21.

The necessary issue of the permit term has not been resolved. The DNR has accepted and is apparently reviewing the necessary issue of who should be named on any permit to mine. The DNR may also be reviewing dam safety issues, which are critical to determining whether the Project may be permitted and on what terms. *See* Minn. R. 6132.2500 subpt. 2(B).

In the midst of all this, in a filing with the Commissioner’s Designee on September 30, 2025, NewRange indicated that it intends to file “an amended application” for a permit to mine to the DNR on or before November 28, 2025.

## **ARGUMENT**

### **I. The DNR Commissioner Must Deny Any Proposed “Amendment” to the Permit to Mine Application.**

#### **A. The DNR Lacks Authority Under Minn. Stat. §§ 93.481 and 93.483 to Accept an Amendment to a Permit to Mine Application Deemed Complete, Noticed, and Filed.**

Minnesota statutes do not confer upon the DNR the authority to accept an amendment to a permit to mine application. The DNR’s authority over amendments is no greater than what Minnesota statutes provide. “The legislature states what the agency is to do and how it is to do it.” *Hibbing Taconite Co. v. Minn. DNR*, 17 N.W.3d 160, 164 (Minn. Ct. App. 2025) (quoting *Peoples Nat. Gas Co. v. Minn. Pub. Utils. Comm’n*, 369 N.W.2d 530, 534 (Minn. 1985)). “An agency has express authority to act only when a statute unambiguously grants the agency such authority.” *Id.* (citing *In re Hubbard*, 778 N.W.2d 313, 320 (Minn. 2010)). And “[a]ny doubt about the existence of an agency’s authority [is

resolved] against the exercise of such authority.” *Id.* (quoting *In re Qwest’s Wholesale Serv. Quality Standards*, 702 N.W.2d 246, 259 (Minn. 2005)).

Minnesota statutes provide no procedure for amendment of a completed, noticed, and filed permit to mine application. In fact, the statutes require the DNR to conduct proceedings and make a final decision “on the completed application.” A permit to mine applicant “shall submit such information as the commissioner may require,” Minn. Stat. § 93.481, subdiv. 1, which includes all information required by Minn. R. 6132.2200 and 6132.2500, *see* Minn. R. 6132.1100, subpt. 6 (requiring an application to include a mining and reclamation plan that “shall describe” how the plan “meet[s] the requirements of parts 6132.2000 to 6132.3200”). Under Minn. Stat. § 93.481, subdiv. 2, after an application is “deemed complete and filed,” the Commissioner may only grant or deny the “permit applied for,” or order a contested case hearing on that filed application.<sup>6</sup>

Any contested case hearings may only be held “on the completed application” and a petition for a contested case hearing must be submitted “within 30 days after the application is deemed complete and filed.” Minn. Stat. § 93.483, subdiv. 1. If a petition for a contested case hearing meets statutory requirements, then the Commissioner must hold a hearing “concerning the completed application . . . *in order to make a final decision*

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<sup>6</sup> The Minnesota Rules explain how an application is “deemed complete and filed” under Minn. Stat. § 93.481, subdiv. 2. Under Minn. R. 6132.4000, subpt. 1, “[a]fter the commissioner determines the application is complete, the commissioner shall publish a notice in the State Register and the EQB Monitor stating the department has received an application for a permit to mine” and the applicant “shall also publish an advertisement as required by [Minn. R.] 6132.4900.” Once the applicant verifies publication with DNR, “the application shall then be considered filed.” *Id.*; *see NorthMet II*, 959 N.W.2d at 740.

*on the completed application.” Id.* subdiv. 3(a) (emphasis added); *see NorthMet II*, 959 N.W.2d at 746, 749.

Although the DNR allowed Applicant PolyMet to modify its permit to mine application between November 3, 2016, and December 13, 2017, *see Northmet FOF* ¶¶ 94-98, those changes all occurred *before* the DNR deemed the permit to mine application “complete” and “filed,” *see id.* ¶ 107. But the plain terms of the statute do not allow amendments at this stage of the process. And the DNR explained as much in rulemaking hearings on the provisions of the proposed Minnesota Rules Chapter 6132 that implemented the permit application provision of Minn. Stat. § 93.481, subdiv. 2:

[T]here’s a lot of activity going on, a lot of involvement of the public at that point, a lot of decisions being made and changed in order to come up with a plan that’s going to work. *But at some point in time we’re going to get to the point where the permittee puts down in writing the information that we require on the permit application. And that’s going to be submitted to us, we’re going to review it, determine that it is complete, and then we’re going to give direction to the operator to begin a process that’s been established in the statute of informing the public that the permittee—or the applicant is now seeking a permit from the Commissioner of the Department of Natural Resources.*

Ex. 1, Dec. 8, 1992 Hr’g Tr. 37:14-38:2 (emphasis added).

No statutory language authorizes the DNR to amend a permit to mine application after it has been deemed complete, noticed, and filed, let alone after it has served as the basis for contested case proceedings. And “[w]ithout that specific language that unambiguously grants the authority to the agency, Minnesota Supreme Court precedent dictates that the agency has no express authority.” *Hibbing*, 17 N.W.3d at 166.



There is also nothing in the statutory text that suggests the DNR has *implied* power to accept an amendment to a complete and filed application. Indeed, the plain text of both Minn. Stat. § 93.481 and Minn. Stat. § 93.483, as discussed *supra* at 6-8, supports the opposite conclusion. These statutes clearly describe a process where public comments, the Commissioner’s decision, and any contested case process rely on the completed and filed application.

Nor is there any equitable reason to infer the existence of such a power. *See Hibbing*, 17 N.W. 3d at 168 (discussing *In re Minnegasco*, 565 N.W.2d 706, 713 (Minn. 1997)). To the contrary, allowing “amendments” to a permit to mine application at this late stage of the process would only invite mischief that would be inequitable to the public, prejudicial to the substantial rights of contested case petitioners, *see* Minn. Stat. § 14.69, and contrary to the purpose of MAPA, *id.* § 14.001(6) (stating the purpose of “increas[ing] the fairness of agencies in their conduct of contested case proceedings.”). If an applicant—or a new party claiming an interest in an altered mine project—could “amend” a permit to mine application after the application was completed and filed, or after a contested case hearing, a project proponent would gain an unfair advantage with respect to the public and any contested case petitioners. Indeed, the applicant or new party could revise mine plans so that public review and the contested case process would be rendered meaningless. An applicant could withhold elements of its plan, only to introduce them after public review had closed. That would prevent members of the public from commenting on or filing petitions for contested case concerning those new elements. Petitioners who had obtained a contested case hearing on the original application would find that they had expended

significant resources in a hearing on an abandoned plan, and they might not be able to secure or devote resources to yet another contested case hearing.

The DNR may not expand its statutory authority beyond what the legislature granted, nor may it undermine the fairness of the contested case process and grant applicants inequitable power to change the course of proceedings to benefit themselves. The DNR therefore cannot accept an amendment to a permit application that has been deemed “complete.”

**B. The DNR Cannot Approve an “Amendment” to a Permit to Mine Application under Minn. R. 6132.4200.**

NewRange has asserted that it will amend the permit to mine application under Minn. R. 6132.4200. But the procedure NewRange proposes is contrary to the plain text of this Rule and the governing statute it implements.

Minn. R. 6132.4200, subp. 1 does not authorize an amendment to an application. It could not be clearer from the text that Rule 6132.4200 allows an amendments to a *permit to mine*, not an *application* for a permit. The Rule is titled “Amendment to Permit to Mine.” Subpart 1 provides that “[a] proceeding for requesting *an amendment of a permit to mine*,” begins when the “*permittee* files an application for an amendment” to the Commissioner. (emphasis added). Under Subpart 2, the Commissioner reviews the application to determine “whether the proposed amendment constitutes a substantial change *from the permit to mine*.” (emphasis added). The Rule’s plain and unambiguous text does *not* allow an amendment of an application and only allows amendment of a *permit to mine* when the

amendment “meets the requirements of parts 6132.0100 to 6132.5300 and state law.” *Id.* subp. 1.

Even if the language of Minn. R. 6132.4200 were ambiguous—which it clearly is not—the rulemaking history for Chapter 6132 demonstrates that the DNR intended that its amendment provision applied to *permit* amendments. In the statement of need and reasonableness (“SONAR”), the DNR explained that Minn. R. 6132.4200 allows “an amendment *to the permit to mine* . . . upon application therefor.” Ex. 2, SONAR at 36 (emphasis added). The DNR explained that Minn. Stat. § 93.481, subdiv. 3 “requires the commissioner to make a determination regarding whether the proposed amendment *constitutes a substantial change to the permit to mine.*” SONAR at 36 (emphasis added). A DNR witness at the 1992 hearings on Rule 6132.4200 explained that Minn. R. 6132.4200 allows for “[a]n amendment to the permit to mine,” which

is a request that is generated by the operator, *it's after the operator has a permit*. For some reason something changes in -- in their operations and they feel that they want to do something differently than *they were given permission for*. They make a request to us and -- and the Commissioner determines. His determination is based on whether or not the proposed amendment constitutes a substantial change *from the permit to mine*.

Ex. 3, Dec. 8, 1992 Hr’g Tr. 57:16-25 (emphasis added).

NewRange is not a permittee and has no permit to mine. It is only a party asserting an interest in, and seeking an amendment to, a completed and filed application it did not even submit. That makes Minn. R. 6132.4200 categorically inapplicable here.

Moreover, Minn. R. 6132.4200 cannot empower the DNR to do more than is allowed by statute. The governing statute pertaining to amendments for mining projects,

Minn. Stat. § 93.481, subdiv. 3(b), authorizes an amendment to a *permit to mine*—not to an application—if the Commissioner “determines that lawful requirements have been met.” When interpreting this very provision, the Minnesota Court of Appeals recently explained that “the statute unambiguously provides a process *for how a permit to mine may be amended.*” *Hibbing*, 17 N.W.3d at 165 (emphasis added). The legislature provided no language that expressly or impliedly empowers the DNR to accept an amendment to a complete and filed application and there is no “specific statutory language” suggesting that the DNR might have that authority. *See id.* at 168; *supra* at I.A.

## **II. The DNR Cannot Approve an Amendment to the NorthMet Permit to Mine for NewRange under Minn. R. 6132.4200.**

Should NewRange attempt to seek an amendment to the permit to mine for the NorthMet Project, instead of the application, the DNR Commissioner must also deny that request. NewRange was not a permittee on the 2018 permit to mine, so it cannot seek an amendment. Moreover, the Minnesota Court of Appeals and Supreme Court reversed the NorthMet permit to mine, so the permit was invalidated and does not currently exist.

The process for amending a permit “begins when the *permittee* files an application for an amendment to the commissioner.” Minn. R. 6132.4200 subp. 1 (emphasis added). Since NewRange is not the “permittee” on the reversed permit to mine, it could not seek amendment of that permit now, even if the permit were in effect. That permit to mine was issued to Applicant PolyMet and Canadian PolyMet, a Canadian company that owned Applicant PolyMet. *See* NorthMet FOF Conclusions ¶ 7. Neither company is NewRange.

As we previously explained,<sup>7</sup> on or about February 10, 2023, Applicant PolyMet announced that it had converted from a Minnesota corporation into NewRange—a Delaware joint venture owned by Teck American, Inc., and another corporation called PolyMet US, Inc., which was incorporated in November 2022 and was never listed on the permit to mine. 2023 Request at 5. That conversion did not make NewRange a permittee. First, NewRange is not Applicant PolyMet for purposes of a permit to mine. The Minnesota statute under which Applicant PolyMet converted into NewRange, Minn. Stat. § 302A.691, does not give NewRange ownership or a right to permit applications or permits held by Applicant PolyMet. *See* 2023 Request at 11-13. Indeed, as the DNR itself explained in 2023, at the time of the conversion, “[t]he conversion statute . . . only applies to assets, property contracts, and liabilities. A permit to mine, a permit to mine application is none of these, it is a regulatory approval that should be respected.” *Id.* at 12-13 (quoting Ex. 4, *NorthMet III*, Pre-Hr’g Tr. 8:14-16 (Mar. 17, 2023)). The DNR further explained “[t]he Department’s view is that we don’t believe the conversion statute allows New Range [sic] to automatically step into PolyMet Mining’s corporate shoes and become a party to the permit to mine, the permit to mine application.” *Id.* at 11-12 (quoting Ex. 4, *NorthMet*

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<sup>7</sup> The ownership of NewRange and the PolyMet companies was described in prior filings concerning the remanded proceedings on the permit to mine application and the dam safety permits for the NorthMet Project. *See* Request for Pub. Review of New Info. to Determine Proper Permit to Mine Applicants & Permittees & Proper Owner & Permittee Under Dam Safety Permits (June 16, 2023) (“2023 Request”); Supplement to Request for Pub. Review of New Info. to Determine Proper Permit to Mine Applicants & Permittees & Proper Owner & Permittee Under Dam Safety Permits (Jan. 17, 2024). These filings and their exhibits are incorporated by reference.

*III*, Pre-Hr’g Tr. 8:9-13). Second, NewRange is not Canadian PolyMet, which still exists separately from NewRange and the newly-minted PolyMet US, Inc. *Id.* at 5. In sum, NewRange was not issued and does not hold a permit to mine for the NorthMet Project.

But whatever relationship NewRange might claim with Applicant PolyMet or Canadian PolyMet, the most salient fact is that the Minnesota Court of Appeals and Supreme Court reversed the NorthMet permit to mine. It has been nullified and is no longer in effect. NewRange cannot “amend” a permit that does not exist.

Under MAPA, a reviewing court has the power to “affirm the decision of the agency or remand the case for further proceedings; or it may reverse or modify the decision.” Minn. Stat. § 14.69; *see NorthMet II*, 959 N.W.2d at 749. The Court of Appeals plainly “reversed the DNR’s decision[] granting the permit to mine . . . on the basis of MCEA’s and [WaterLegacy]’s contested-case arguments,” and then directed the DNR to set a definite term “for any permit issued following remand.” *NorthMet I*, 940 N.W.2d at 237-38. The Supreme Court affirmed the Court of Appeals’ determination that the DNR should have held a contested case hearing and was required to set a fixed permit term. *NorthMet II*, 959 N.W.2d at 753-54, 756-58. The Supreme Court explicitly concluded that “the court of appeals *was correct in reversing the decision to grant the permit to mine* because the DNR erred by issuing the permit without an appropriate fixed term.” *Id.* at 738 (emphasis added).<sup>8</sup>

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<sup>8</sup> The Supreme Court also found it was “premature” to address other legal challenges to the permit to mine because the DNR “may decide to address issues raised by this appeal regarding the legal sufficiency of the permits” in the contested case proceeding, and the

Although the word “reverse” is not specifically defined in Minn. Stat. § 14.69, the plain and common meaning of “reverse” in a legal context means “[t]o nullify or cancel; make void; invalidate.” *Reverse*, Black’s *Law Dictionary* (12th ed. 2024). Unless the Legislature specifies otherwise, Minnesota courts apply the commonly understood meaning of words and phrases. *See Sanchez v. State*, 816 N.W.2d 550, 558-59 (Minn. 2012) (“We have often said that ‘when the legislature uses a phrase we assume the legislature is aware of the common law understanding of the phrase and that the legislature intended the phrase according to its commonly understood meaning.’ . . . If the Legislature intended a different standard to apply, it could have so provided.”) (quoting *U.S. Bank N.A. v. Cold Spring Granite Co.*, 802 N.W.2d 363, 372 (Minn. 2011)) (citation omitted). Applying the plain and common meaning of reverse, its meaning is unambiguous.

The Supreme Court has explained that “reversal” has the “same practical effect” as “the act of vacating a judgment.” *Kulinski v. Medtronic Bio-Medicus, Inc.*, 577 N.W.2d 499, 502-03 (Minn. 1998). The Court has also distinguished between a case simply “remanded” for additional findings and one where the agency decision is “reversed” for “failing to show a substantial basis in the record or for misapplying the applicable law.” *In re A.D.*, 883 N.W. 2d 251, 258-59 (Minn. 2016).

The effect of reversal is illustrated by *In re Northern States Power Co. (NSP) Wilmarth Indus. Solid Waste Incinerator Ash Storage Facility (Wilmarth I)*, No. C6-89-

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respondents could renew challenges to the permitting decisions made under Minn. Stat. § 93.483, subdiv. 5. *NorthMet II*, 959 N.W.2d at 738 n.4.

1892, 1990 WL 52610 (Minn. App. 1990), in which the Court of Appeals reversed an agency's decision to deny a contested case hearing and issue a permit, finding that relators had raised genuine issues of material fact, and ruling that "issuance of the permit is reversed and the case is remanded for a contested case hearing." *Id.* at \*3-4. On review, the Supreme Court ordered "the decision of the court of appeals is reversed" and the "*permit reinstated.*" *In re N. States Power Co. (NSP) Wilmarth Indus. Solid Waste Incinerator Ash Storage Facility (Wilmarth II)*, 459 N.W.2d 922, 923 (Minn. 1990) (emphasis added). Of course, there would be no reason to "reinstate" the permit, had reversal not voided it. Notably, the Supreme Court analyzed *Wilmarth II* in its discussion of standards for a contested case. *NorthMet II*, 959 N.W.2d at 745, 749.

Similar to the court's ruling in *Wilmarth I*, the Court of Appeals in *NorthMet I* concluded that a contested case was required, "reverse[d] the DNR's decision[] granting the permit to mine," remanded for a contested case hearing, and directed the imposition of a definite term "*for any permit issued following remand.*" *NorthMet I*, 940 N.W.2d at 237-38 (emphasis added). That nullified and invalidated the NorthMet permit to mine. However, unlike in *Wilmarth II*, the Supreme Court in *NorthMet II* affirmed the Court of Appeals' decision that "a contested case hearing is required" and found that "the court of appeals was correct in reversing the decision to grant the permit to mine because the DNR erred by issuing the permit without an appropriate fixed term." *NorthMet II*, 959 N.W.2d at 738. In contrast with *Wilmarth II*, the Court *did not* reinstate the NorthMet permit, so



there is no existing, effective permit to mine for the NorthMet Project.<sup>9</sup> And, as described above, necessary and critical elements of the permit to mine are unresolved. The DNR lacks authority to amend a permit that has been nullified by the courts.

### **III. The DNR Has the Authority to Accept a New Permit to Mine Application to Reflect New Ownership and New Plans for the NorthMet Project.**

The limits on the DNR’s authority to accept an “amendment” from NewRange of the permit to mine application or the reversed NorthMet permit to mine do not entirely tie the DNR’s hands. The DNR can accept a new permit to mine application from NewRange reflecting changes NewRange would propose for the NorthMet project and initiate the appropriate environmental review and permitting process for the new proposal, including all required regulatory review, public notice and comment, and opportunities for petitions on the application. *See* Minn. Stat. § 93.481, subdiv. 1; Minn. R. 6132.1100; *see also* Minn. Stat. § 106D.04, subdiv. 2a. Such a process would be consistent with statutes, rules, and court decisions and would provide a common sense approach to address changed circumstances and new facts.

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<sup>9</sup> No law would allow NewRange to claim that only part of the NorthMet permit was reversed. Minn. Stat. § 14.69 does not allow a reversal of one issue or element of an agency decision; it only permits a court to “reverse . . . *the decision*.” (emphasis added); *see id.* §§ 93.481, subdiv. 2, 93.50 (stating that “the commissioner’s decision to grant the permit” is the final order for purposes of judicial review). And no equitable principles would support an exception here. The NorthMet permit to mine was stayed beginning in September 18, 2019, *NorthMet II*, 959 N.W.2d at 742-43; *NorthMet I*, 940 N.W.2d at 225 n.10, and no significant work took place in reliance on the permit.

We reserve the right to submit further comments to the Commissioner on how to exercise this authority or sequence decisionmaking in light of the submission that NewRange makes.

## CONCLUSION

For the foregoing reasons, the DNR Commissioner should reject any attempt by NewRange to “amend” the permit to mine application or the reversed NorthMet permit to mine.

Dated: November 25, 2025

Respectfully submitted,

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