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Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A21-0544**

In the Matter of the Public Waters Restoration Order Issued to Timothy Maciej.

**Filed January 10, 2022
Affirmed
Reilly, Judge**

Office of Administrative Hearings
File No. 21-2002-36351

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Considered and decided by Reilly, Presiding Judge; Jesson, Judge; and Kirk, Judge.*

NONPRECEDENTIAL OPINION

REILLY, Judge

In this administrative appeal, relator-landowner challenges the public-waters-restoration order issued by respondent-agency requiring relator to remove fill that he placed on two trails on his property. Relator argues that the agency's decision should be reversed because (1) the trails are not public waters; (2) relator's placement of fill on the trails did not violate agency rules; (3) the commissioner erred by denying him an after-the-fact

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

permit; and (4) the agency’s investigation methods violated his constitutional rights. We affirm.

FACTS

Relator Timothy Maciej owns real property in Anoka County. Maciej bought the property in 2003. At that time, several trails existed on the property, including the two trails at issue in this case (Trail 1 and Trail 2).

In November 2017, respondent Department of Natural Resources (the DNR) received notice that trails on Maciej’s property appeared to cut across a public wetland. After investigating the matter, the DNR issued a public-waters-restoration order, which determined that Maciej had placed fill—consisting of rock, soil, and plastic netting—in public waters in violation of DNR rules. The restoration order required Maciej to remove all fill used to construct the trails and to repair the bed of the public waters. Maciej appealed the restoration order, and the case eventually proceeded to a contested-case hearing.

Before the hearing, the parties stipulated to the following facts about Maciej’s use and maintenance of the trails. Maciej traveled along the trails by foot and with motorized vehicles. In 2009, firefighters used the trails while fighting a fire that broke out on the Carlos Avery Wildlife Management Area, which is next to the property. Maciej mowed the trails twice a year “to prevent them from becoming overgrown with vegetation, including cattails.” Maciej placed wood chips and limestone on Trails 1 and 2 “to control vegetation and facilitate their continued use for transport by motor vehicle or foot.” In 2016, Maciej installed plastic erosion control netting on Trail 1, with river rock on top of

the earth netting. The purpose of the netting and rock was to prevent the trail from sinking or getting washed out.

An administrative-law judge (ALJ) held a contested-case hearing in May 2020. The next paragraphs summarize the evidence presented at the hearing.

Contested-Case Hearing

The ALJ heard testimony from multiple witnesses who worked with the DNR during the investigation. Area hydrologist Jason Spiegel testified that the DNR first learned about the trails on Maciej's property after he was contacted by a worker at the Coon Creek Watershed District. Based on the photographs of the property that the watershed district worker sent him, Spiegel believed there was a potential public-waters violation.

To investigate the potential violation, Spiegel first examined the public-waters inventory available on an electronic program known as ArcGIS. ArcGIS is a geographic information system that produces aerial images of property and shows the approximate boundaries of public waters. Spiegel explained that, when the DNR first inventoried all public waters in Minnesota in the 1970s and 1980s, the DNR generated maps for each county, and the inventory maps and the ArcGIS maps reflect the same approximate boundaries of public waters. Based on his initial review of the ArcGIS maps, Spiegel determined that the trails appeared to have been built within the boundaries of public waters.

Spiegel visited the property with conservation officer Anthony Salzer to conduct an initial onsite inspection. They observed that cattails—an aquatic species—were growing on either side of the trails and that the trails appeared to connect to higher areas above the

wetland. Trail 1 consisted of large rocks with plastic netting underneath, and the trail was big enough to drive a vehicle on it. Trail 2 was made up of smaller gravel. Spiegel also viewed historical aerial images of the property. Aerial images from 2008 and March 2016 did not show any trail where Trail 1 was located. But an April 2017 image showed “a newly constructed road” that was not visible in the March 2016 image. Aerial images also showed a “mowed trail” where Trail 2 was located as early as 2008.¹

In July 2018, DNR workers returned to the property to conduct an onsite survey. Spiegel testified that, for purposes of the DNR’s jurisdiction, the boundary of a public water is the ordinary high-water level. He explained that the inventory maps and ArcGIS maps are merely approximations of the boundary; the only way to determine the boundary is to physically survey the property to determine the ordinary high-water level.

Kurt Woodrich, the supervisor of the survey crew and lake monitoring unit, led the survey. Woodrich testified that the ordinary high-water level is “the highest water level maintained for a sufficient period of time to leave evidence on the landscape,” which is “generally the point where vegetation changes from . . . aquatic to terrestrial.” Woodrich explained that the DNR workers looked for different types of evidence when conducting the ordinary-high-water-level survey. The workers relied mainly on “tree evidence.” They looked for trees that were the most water-intolerant, such as hardwoods, and measured the elevation at the base of the trees. These types of trees typically grow above the ordinary

¹ DNR workers also examined two other trails on Maciej’s property but determined that those trails were in upland areas above the ordinary high-water level and were thus not subject to the restoration order.

high-water level. The workers also relied on water-formed evidence, which included “stain lines, wash lines, [and] debris lines left on the landscape based on water being there a substantial amount of time to leave that evidence,” as well as vegetative evidence, which was “the edge of the aquatic field where the aquatic vegetation meets the upland vegetation.” Relying on these methods, the DNR workers determined that the ordinary high-water level for Maciej’s property was 902.9 feet above sea level.

After determining the elevation of the ordinary high-water level, the DNR workers collected topographic data to identify the location of the fill in relation to the ordinary high-water level. They determined that fill on Trails 1 and 2 had been placed below the ordinary high-water level. Although the top edge of the trails was above the ordinary high-water level, this was because the fill had raised the area above that level. Woodrich testified that the trails “connected two pieces of high ground to a low area that was below the ordinary high[-]water level.” Thus, the DNR concluded that the trails violated agency rules prohibiting the placement of fill in public waters, and that violation justified the restoration order.

Maciej and his son also testified at the hearing. They testified that the trails existed on the property since before Maciej bought the property in 2003 and that they have used the trails regularly. The trails were developed by the previous owner during the 1970s and 1980s. According to Maciej, the previous owner regularly mowed the grass on the trails and placed wood chips and a gravel mix on the trails. Maciej testified that he continued this practice and that the wood chips were helpful “so [he] didn’t have to cut the grass as much.”

Maciej and his son testified that a fire swept through the area in 2009 and firefighters drove over the trails while fighting the fire. According to Maciej, the trails helped the firefighters because the trails served as a firebreak that the firefighters used to help stop the fire. And the trails prevented the fire from reaching Maciej's house. The firetrucks' use of the trails caused the trails to deteriorate.

Maciej's son testified that the water levels changed every year and that the trails were more apparent in drier years, although they always remained in place. He said that the river rock and plastic netting were added on Trail 1 to provide a solid base and to prevent erosion. Maciej testified that he added the extra rock to Trail 1 so that the trail would be easier to maintain and so that vehicles would not get stuck on the trail. Maciej said that he never knew that Trails 1 and 2 went through public water until the DNR began its investigation.

Commissioner's Final Order

After the hearing, the ALJ issued her findings of fact, conclusions of law, and recommendation. The commissioner of natural resources, through her designee, issued a final order, which adopted all the ALJ's findings of fact and conclusions of law. The commissioner determined that Maciej violated Minn. R. 6115.0190 (2019) because he placed fill in public waters "for the purposes of constructing roads, facilitating land transportation across the [b]asin, and achieving vegetation control." In reaching this conclusion, the commissioner relied on the testimony of the DNR workers that the trails fell below the ordinary high-water level and were therefore part of public waters. The

commissioner also determined that Maciej was not entitled to an after-the-fact permit. Thus, the commissioner affirmed the restoration order.

Maciej appeals.

DECISION

Maciej challenges the commissioner's final order affirming the restoration order. We "attach a presumption of correctness" to the decision of an administrative agency and "defer to an agency's conclusions in the area of its expertise." *In re Reichmann Land & Cattle, LLP*, 867 N.W.2d 502, 512 (Minn. 2015) (quotations omitted). We will reverse or modify an agency's decision only if the decision was unconstitutional, in excess of the agency's statutory authority or jurisdiction, based on unlawful procedure, based on an error of law, unsupported by substantial evidence, or arbitrary or capricious. Minn. Stat. § 14.69 (2020). The party challenging the agency's decision bears the burden of proving a basis for reversal. *Markwardt v. State, Water Res. Bd.*, 254 N.W.2d 371, 374 (Minn. 1977).

The substantial-evidence standard is met when "there is relevant evidence that a reasonable person would accept as adequate," considering all the evidence. *Webster v. Hennepin County*, 910 N.W.2d 420, 428 (Minn. 2018) (quotation omitted). Applying this standard, we view the commissioner's factual findings "in the light most favorable to the decision" and "will not disturb those findings if there is evidence reasonably tending to sustain them." *Lewison v. Hutchinson*, 929 N.W.2d 444, 451 (Minn. App. 2019). We review de novo whether the commissioner's determination is supported by substantial evidence. *Webster*, 910 N.W.2d at 428. The interpretation of statutes and administrative

rules is also a question of law, which we review de novo. *In re Reissuance of an NPDES/SDS Permit to U.S. Steel Corp.*, 954 N.W.2d 572, 576 (Minn. 2021).

The DNR is tasked with investigating activities that may affect the waters of the state and with enforcing the laws protecting and preserving waters. Minn. Stat. §§ 103G.2372, subd. 1(a), .251 (2020). If these laws are violated, the commissioner may, among other things, order restoration of public waters. Minn. Stat. § 103G.2372, subd. 1(b) (2020); Minn. R. 6115.0255, subp. 4 (2019). DNR rules prohibit the placement of fill into public waters. Minn. R. 6115.0190.

Here, the commissioner determined that Maciej violated rule 6115.0190 by placing fill on Trails 1 and 2.² Maciej argues that the commissioner’s final order should be reversed for four reasons: (1) the trails are not public waters; (2) Maciej did not violate rule 6115.0190 when he placed fill on the trails; (3) the DNR erred by denying him an after-the-fact permit; and (4) the DNR’s methods for determining the boundaries of public waters is unconstitutionally arbitrary and vague, and denied him due process. We examine each argument in turn.

² “Fill” is defined as “any material placed or intended to be placed on the bed or bank of any public water.” Minn. R. 6115.0170, subp. 11 (2019). Similarly, “filling” means “placement of unconfined or loosely confined materials in public waters.” Minn. R. 6115.0190, subp. 2. Maciej does not dispute that the plastic netting and river rock on Trail 1, as well as the wood chips and limestone on Trail 2, meet the definition of “fill” under the rules.

I. Substantial evidence supports the commissioner’s determination that the trails are public waters.

Maciej first argues that he did not violate rule 6115.0190 because the trails are not public waters. The rule prohibits the placement of fill “in public waters.” Minn. R. 6115.0190, subp. 2. Maciej argues that he did not place fill in public waters, but “merely maintained two preexisting trails that lie outside of public waters as established in 1984.”

Minnesota law provides that the boundary of public waters is the ordinary high-water level. Minn. Stat. § 103G.005, subd. 14 (2020); Minn. R. 6115.0170, subp. 25 (2019). Thus, an area lies within public waters if it falls below the ordinary high-water level. The ordinary high-water level is defined as “an elevation delineating the highest water level that has been maintained for a sufficient period of time to leave evidence upon the landscape, commonly the point where the natural vegetation changes from predominantly aquatic to predominantly terrestrial.” Minn. Stat. § 103G.005, subd. 14(1).

The record supports the commissioner’s finding that the fill placed on the trails fell below the ordinary high-water level. The DNR survey showed that the ordinary high-water level was 902.9 feet above sea level and that some fill was placed below that level. Woodrich provided expert testimony about the procedures the workers used to determine the ordinary high-water level. He explained that the determination was based on tree evidence, water-formed evidence, and vegetative evidence showing the line between predominantly aquatic and predominantly terrestrial vegetation. Maciej offered no evidence to refute the DNR’s expert testimony about the location of the ordinary high-water level or the determination that fill had been placed below that level. The record

amply supports the commissioner's findings that Maciej placed fill on the trails below the ordinary high-water level, and that the trails therefore are part of public waters.

Maciej, though, argues that the DNR presented no evidence about whether the trails were above the ordinary high-water level when the public-waters inventory was created in 1984. This argument misses the mark. As Spiegel explained during his testimony, the public-waters inventory is an approximation of the boundaries of public waters. The statute and rule provide that the actual boundaries are determined based on the ordinary high-water level, which naturally changes over time. Minn. Stat. § 103G.005, subd. 14; Minn. R. 6115.0170, subp. 25. The DNR appropriately determined this level during the survey. The location of the ordinary high-water level in 1984 is irrelevant.³ Based on the DNR workers' testimony about the present location of the ordinary high-water level, substantial evidence in the record supports the commissioner's determination that the trails are within the boundary of public waters.⁴

³ We address Maciej's related retroactivity argument below.

⁴ Maciej also raises a policy-based argument that the DNR's interpretation of the rules "precludes landowners from preventing the encroachment of their land" because of the expansion of wetlands or public waters. We note that separate rules specifically allow landowners to engage in filling activities for particular purposes. For example, the DNR may issue permits "for filling to recover shoreland lost by erosion or other natural forces," if certain conditions are met. Minn. R. 6115.0191, subp. 4 (2019). This rule might allow landowners to engage in filling to counter the encroachment of public waters in some cases. But the rule requires the DNR to issue a permit before a landowner may do so, *see id.*, and Maciej did not apply for a permit.

II. The commissioner did not err by determining that Maciej’s placement of fill violated rule 6115.0190.

Maciej argues that, even if the trails are public waters, his placement of fill on the trails did not violate rule 6115.0190. The rule lists several situations in which the placement of fill is prohibited, including:

A. to achieve vegetation control;

. . . .

F. to construct a roadway or pathway, or create or improve land accesses from peripheral shorelands to islands, or to facilitate land transportation across the waters

Minn. R. 6115.0190, subp. 3. Here, the commissioner determined that Maciej’s placement of fill violated subparts 3(A) and 3(F) because he placed the fill to achieve vegetation control, construct roads, and facilitate land transportation across the water basin.

Maciej argues that the commissioner’s reasoning was erroneous for two reasons: (1) the commissioner misinterpreted the plain language of the rule, and (2) the commissioner’s interpretation constitutes an illegal retroactive application of the law. Neither argument is persuasive.

A. The commissioner correctly interpreted rule 6115.0190, subpart 3.

Maciej challenges the commissioner’s interpretation of rule 6115.0190, subpart 3. He argues that he merely maintained preexisting trails and that the rule does not prohibit “maintenance” of a roadway or pathway. When the language of a rule is ambiguous, we “will defer to the agency’s interpretation and will generally uphold that interpretation if it is reasonable.” *Reissuance of NPDES/SDS Permit*, 954 N.W.2d at 576 (quotation omitted).

But when the language of a rule is “clear and capable of understanding,” we do not defer to the agency’s interpretation. *Id.* We conclude that the rule unambiguously prohibits the placement of fill in this case.

We agree with the commissioner that the placement of fill was for the purpose of “facilitat[ing] land transportation across the waters,” in violation of subpart 3(F). One definition of “facilitate” is “[t]o make easy or easier.” *The American Heritage Dictionary of the English Language* 632 (5th ed. 2018). Applying this definition, we conclude that subpart 3(F) prohibits the placement of fill to make it easier to cross over public waters. The record supports that this was Maciej’s exact purpose in this case. Maciej testified that he added rock to Trail 1 so that the trail would be easier to maintain and so that vehicles would not get stuck on the trail. And the parties stipulated that Maciej placed the wood chips and limestone on both trails to allow for “their continued use for transport by motor vehicle or foot.” Because the record supports that Maciej placed fill on the trails to make it easier to travel along the trails, the commissioner did not err by determining that Maciej violated rule 6115.0190, subpart 3(F).

We are not persuaded otherwise by Maciej’s contention that the placement of fill was “for the purpose of constructing or maintaining firebreaks,” which he asserts is not prohibited under rule 6115.0190. We reject the argument for two reasons. First, rule 6115.0190 contains no firebreak or emergency-access exception. Maciej’s interpretation would require this court to add a new exception to the rule.⁵ And we cannot

⁵ Rule 6115.0191 (2019) lists other types of activities for which filling may be permissible in some cases. First, a landowner must apply for a permit from the DNR to place fill in

add words to an unambiguous statute or administrative rule. *328 Barry Ave., LLC v. Nolan Props. Grp., LLC*, 871 N.W.2d 745, 750 (Minn. 2015); *Reissuance of NPDES/SDS Permit*, 954 N.W.2d at 576 (providing that administrative rules are governed by same rules of construction as statutes).

Second, Maciej overstates the record support for the proposition that safety was the “primary concern” in placing fill on the trails. Maciej and his son testified that firefighters used the trails in 2009 while fighting a nearby fire and that the trails functioned as a firebreak. But Maciej did not add the river rock and plastic netting to Trail 1 until 2016, seven years later. And the testimony does not suggest that safety concerns were the only or even predominant reason for maintaining the trails. When asked why they placed fill on the trails, Maciej and his son said that the purpose of the fill was to make the trails easier to walk over and to maintain, and they also alluded to the benefits that the trails provided during the fire. At best, the record supports that maintaining a firebreak was one of several reasons for placement of the fill. Because the record supports that Maciej placed fill on the trails for at least one impermissible reason—facilitating land transportation across the

public waters. Minn. R. 6115.0190, subp. 5, .0240 (listing requirements for permit application). Under rule 6115.0191, filling for purposes not specifically listed must comply with rule 6115.0190, subparts 2-5, and proposals must come with information showing that “the intended purpose of the fill is reasonable with respect to all other alternatives and there are no feasible and practical means to attain the intended purpose without filling,” and that “the proposal will adequately protect public safety and promote the public welfare.” Minn. R. 6115.0191, subp. 8. Building a firebreak could theoretically be a permissible reason for placing fill if a landowner applied for a permit and met the requirements of subpart 8.

waters—the commissioner did not err by determining that his activities violated rule 6115.0190, subpart 3.

B. The restoration order is not an illegal retroactive application of the law.

Maciej also argues that the restoration order is an “illegal retroactive application” of the law. He maintains that Trails 1 and 2 were constructed in coordination with the DNR before the public-waters inventory was created in 1984, and that the DNR cannot now require him to reverse actions that it had approved before the statutes and rules were enacted.

Maciej relies on this court’s decision in *State ex rel. Swan Lake Area Wildlife Ass’n v. Nicollet County Board of County Commissioners*, in which this court held that the Minnesota Environmental Rights Act (MERA) did not apply retroactively. 799 N.W.2d 619, 628-29 (Minn. App. 2011). As a result, this court determined that the district court’s authority to grant equitable relief under MERA was limited to the remedy necessary to return two lakes to a condition that existed when MERA was enacted. *Id.* at 629. This court reasoned that requiring the county to restore the lakes to a condition prior to MERA’s enactment would have constituted “an improper retroactive application of MERA.” *Id.* Maciej draws parallels between this case and *Swan Lake*, and he argues that, like MERA, chapter 103G was not intended to apply retroactively to require the restoration of conditions that preexisted the statutes’ enactment.

We do not need to decide whether chapter 103G applies retroactively because we conclude that Maciej has not met his burden to show that the restoration order constitutes a retroactive application of the law. The commissioner’s findings referred specifically to

Maciej's placement of fill on the trails since he acquired the property in 2003. Although Maciej testified that the previous owner placed wood chips and gravel mix on the trails, he also said that he continued the practice regularly. And Maciej's placement of fill went far beyond that of the previous owner. He added plastic netting and river rock to Trail 1 in 2016. This was a significant change in the character of the trail, as shown by the aerial photos of the property from April 2017, in which Trail 1 was visible, compared to photos from 2008 and 2016, in which no trail was visible. This evidence reveals that the trails were substantially improved because of Maciej's placement of fill. Unlike the proposed relief in *Swan Lake*, which sought to restore the water level to an elevation that existed at a time before MERA's enactment, the restoration order here was directed at restoring the public waters to their condition before Maciej placed fill on the property, not a time predating his ownership of the property or the enactment of chapter 103G.⁶

The party seeking to reverse an agency's decision has the burden to show error. *Markwardt*, 254 N.W.2d at 374. Given the evidence in the record, Maciej has not met his

⁶ We also note that the record does not support Maciej's assertion that the trails were built with the DNR's assistance and authorization. In support of this position, Maciej points to the testimony of his son that the previous owner "dug these ponds and whatnot with the DNR for duck hunting." This testimony vaguely suggests that the DNR was involved in some activities on the property, but it does not specifically mention the trails. Maciej also refers to a statement made by his attorney during opening arguments at the contested-case hearing that the previous owner worked with the DNR to develop the trails during the late 1970s and early 1980s. But the attorney's assertion during opening arguments is not evidence. While the record supports that the trails were built sometime in the 1970s or 1980s, the exact circumstances surrounding their construction and early maintenance are unclear on this record.

burden to show that the restoration order is an impermissible retroactive application of the law.

III. The DNR did not err by determining that Maciej was not entitled to an after-the-fact permit.

Maciej further argues that, even if the trails are public waters for which a permit is needed to place fill, the DNR should have granted him an after-the-fact permit. The party seeking an after-the-fact permit has the burden to show that he is entitled to one. *See In re Excavation of Erickson Lake (Beltrami Cnty.) by Lahman*, 392 N.W.2d 636, 639 (Minn. App. 1986) (explaining that applicant for an after-the-fact permit has burden of proving that proposed project will protect public safety and promote public welfare, as required by statute). The commissioner determined that Maciej was not entitled to an after-the-fact permit. We agree.⁷

We first note that Maciej never applied for a permit from the DNR. Landowners must obtain a permit from the DNR to place fill in public waters. Minn. R. 6115.0190, subp. 5. And landowners seeking a permit must complete an application and submit it to the DNR. *See* Minn. R. 6115.0240 (laying out procedures for applications pursuant to Minn. R. 6115.0150 to 6115.0280); *see also* Minn. Stat. § 103G.301 (2020) (describing general application requirements). While Maciej argued before the commissioner that he

⁷ Maciej frames the issue as whether the DNR “abused its discretion” by denying him an after-the-fact permit. We do not apply this standard of review to agency decisions. *See* Minn. Stat. § 14.69 (listing bases to reverse or modify an agency decision). Maciej appears to argue primarily that the commissioner misapplied the law when it determined that he did not meet the requirements of rule 6115.0190. Based on Maciej’s framing of the issue, we review whether the commissioner’s decision was affected by legal error, rather than arbitrary or capricious.

should be granted an after-the-fact permit, he did not complete an application for a permit, as required by statute and rule, nor did he present evidence at the contested-case hearing to meet his burden to establish the requirements for obtaining a permit.

More importantly, the rules do not allow for the issuance of an after-the-fact permit in this case. Rule 6115.0190, subpart 5 provides, “Permits are required for the placement of fill in public waters, except as provided under subparts 3 and 4,” and a project must meet several requirements. Under this provision, a person is not entitled to a permit if the placement of fill is for one of the prohibited purposes listed under rule 6115.0190, subpart 3. As explained above, Maciej’s placement of fill was for a prohibited purpose under subpart 3(F)—to construct a roadway or pathway, or to facilitate land transportation across the waters. Because Maciej’s placement of fill was prohibited under the rules, it would not have been proper for the commissioner to issue an after-the-fact permit.

IV. Maciej’s constitutional arguments lack merit.

Finally, Maciej raises several constitutional challenges to the restoration order. He argues that the DNR’s reliance on the ArcGIS map, rather than the original public-waters inventory from 1984, to determine the boundary of public waters fails to provide adequate notice to landowners and therefore violates his due-process rights. Maciej also asserts that the DNR’s methods of enforcement are arbitrary and should be considered void for vagueness. He argues that the DNR’s maps and enforcement procedures, together with the DNR rules and state statutes, are too complex for an ordinary person to understand. We are not persuaded, for three reasons.

First, Maciej does not cite a specific statute or rule that he wishes this court to declare unconstitutional. Instead, he appears to challenge the “original map and statutory scheme,” as well as “the entire scheme” for issuing restoration orders. Minnesota water law consists of many statutes and DNR rules, and Maciej’s constitutional challenge might cover all or many of the provisions. We presume that statutes and rules are constitutional and will declare a provision unconstitutional “with extreme caution and only when absolutely necessary.” *Irongate Enters., Inc. v. County of St. Louis*, 736 N.W.2d 326, 332 (Minn. 2007) (quotation omitted). The party challenging a provision has the burden of establishing that it is unconstitutional. *Id.* Without any specific indication of which statutes or rules Maciej is challenging, he has not met that burden here.

Second, Maciej’s focus on the ArcGIS maps and the public-waters inventory is misplaced. The testimony of the DNR workers made clear that they did *not* rely on either the ArcGIS maps or the public-waters inventory when determining whether Maciej’s placement of fill violated DNR rules. Spiegel explained that both maps are merely approximations of the boundary of public waters. He testified that he reviewed the ArcGIS maps as part of his preliminary investigation and, upon seeing that the trails appeared to fall within the boundary of public waters on the maps, he chose to investigate more. DNR workers later conducted a survey to determine the ordinary high-water level, and they relied on the survey when concluding that fill on the trails fell below the ordinary high-water level, in violation of DNR rules. Maciej does not dispute that the ordinary high-water level is the appropriate measure of the boundary for public waters, as provided by statute and rule. *See* Minn. Stat. § 103G.005, subd. 14; Minn. R. 6115.0170, subp. 25. The

1984 public-waters inventory also recognized these procedures: the legend on the 1984 map states that the boundaries of public waters shown are approximate and that the actual boundary is based on the ordinary high-water level, as defined by statute, and determined by a DNR survey. Because the DNR complied with the statutes and rules for determining the boundary of public waters, the DNR did not violate Maciej's due-process rights.

We likewise conclude that the DNR's reliance on the ordinary high-water level satisfies due-process requirements, and the statutes and rules are not void for vagueness. The purpose of the void-for-vagueness doctrine "is to assure that ordinary people are put on notice of what conduct is prohibited and to discourage arbitrary and discriminatory law enforcement." *BFI Waste Sys. of N. Am., LLC v. Bishop*, 927 N.W.2d 314, 325 (Minn. App. 2019) (quotation omitted), *rev. denied* (Minn. June 26, 2019). "More important than actual notice is the doctrine's requirement that the legislature establish minimal guidelines or standards to govern enforcement." *Id.* The statute defines the ordinary high-water level as the elevation at which the highest water level has left evidence on the landscape, which is often the point where the vegetation changes from predominantly aquatic to predominantly terrestrial. Minn. Stat. § 103G.005, subd. 14. This definition provides sufficient guidelines for determining the ordinary high-water level. Woodrich testified about the different types of evidence that the workers looked for during the survey to make that determination. The DNR's methods of determining the ordinary high-water level satisfy due process.

For these reasons, Maciej's constitutional arguments are not a basis to reverse the restoration order.

Affirmed.