

**STATE OF MINNESOTA
IN COURT OF APPEALS
A24-0888**

Hibbing Taconite Company,
Relator,

vs.

Minnesota Department of Natural Resources,
Respondent.

**Filed February 3, 2025
Reversed and remanded; motion denied
Schmidt, Judge**

Minnesota Department of Natural Resources

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Considered and decided by Frisch, Presiding Judge; Smith, Tracy M., Judge; and
Schmidt, Judge.

SYLLABUS

The Minnesota Department of Natural Resources has no express or implied authority to require a party to file an application for a permit to mine amendment when the Department approves an application to amend a wetland replacement plan.

OPINION

SCHMIDT, Judge

In this certiorari appeal, relator Hibbing Taconite Company challenges a condition that respondent Minnesota Department of Natural Resources (DNR) placed on the approval of Hibbing Taconite's application to amend its wetland replacement plan. The condition required Hibbing Taconite to apply for an amendment to its permit to mine. Because Minnesota's statutes do not grant the DNR express or implied authority to require a party to file an application to amend a permit to mine, we reverse and remand.

FACTS

The DNR granted Hibbing Taconite a permit to mine in 1988. After several amendments to the permit over more than three decades, Hibbing Taconite began preparations for a construction project that would buttress a tailings¹ basin. The purpose of the project was to improve stability of the basin for the safe operation of the storage facility and to protect the surrounding habitat. As part of its preparations, Hibbing Taconite performed a wetland delineation study to identify the wetlands that the project may impact.

After completing the study, Hibbing Taconite submitted a wetland permit application to the DNR. In the application, Hibbing Taconite identified the wetlands that the project would impact. Where wetland disturbance was unavoidable, Hibbing Taconite

¹ Tailings are the leftover material after a valuable commodity, such as taconite, is extracted from the earth. Tailings are often stored in basins.

proposed offsetting the damage with wetland credits.² Wetland 35 was not listed as an area that might be impacted by the project. The DNR approved the application.

During construction, a third-party contractor unintentionally damaged Wetland 35. Hibbing Taconite notified the DNR and later submitted a wetland restoration plan to address the damage. The DNR approved the restoration plan.

Hibbing Taconite later notified the DNR that it was “impracticable to continue trying to restore” Wetland 35. Hibbing Taconite submitted a request to amend its wetland replacement plan to allow for Hibbing Taconite to cease restoration activities in Wetland 35 and to instead use surplus wetland credits to mitigate the impacts. After Hibbing Taconite amended the request to clarify where the wetland credits would come from, and after several extensions by the DNR to evaluate the request, the DNR approved Hibbing Taconite’s wetland replacement plan amendment. But the DNR conditioned its approval with the following caveat:

A Permit to Mine Amendment (PTMA) must be obtained to incorporate the area permanently converted to upland. A separate PTMA Application may be submitted for this area or it may be included in a PTMA Application currently under DNR review. Within 30 days of the date of this decision, [Hibbing Taconite] will specify which PTMA Application will include this area.

Hibbing Taconite filed this petition for certiorari challenging the condition that the DNR imposed on its approval of the wetland replacement plan amendment.

² Wetland credits are acquired by positive wetland actions, such as preserving, restoring, or creating a wetland. *See* Minn. R. 8420.0526 (2023). These credits can replace “lost public value from unavoidable impacts.” Minn. R. 8420.0500, subp. 1 (2023).

ISSUE

Was the DNR authorized to condition its approval of Hibbing Taconite's wetland replacement plan on Hibbing Taconite's applying to amend its mining permit?

ANALYSIS

Hibbing Taconite argues that Minnesota's statutes and regulations do not authorize the DNR to condition its approval of the wetland replacement plan on Hibbing Taconite's applying to amend its permit to mine. The DNR argues it has both express and implied authority to condition its approval of an application to amend a wetland replacement plan on Hibbing Taconite's filing a new application to amend its permit to mine.³

A final decision by the commissioner of the DNR is reviewable by this court under the Minnesota Administrative Procedure Act. Minn. Stat. §§ 93.46, subd. 8, .50 (2022). Agency decisions are entitled to deference in areas requiring an agency's technical training, education, and experience. *Minn. Ctr. for Env't Advoc. v. Minn. Pollution Control Agency*, 644 N.W.2d 457, 463 (Minn. 2002). But courts will reverse an agency's decision that exceeded the authority granted to it by the legislature. Minn. Stat. § 14.69(b) (2022). Whether an administrative agency "acted within its statutory authority is a question of law" that we review de novo. *In re Hubbard*, 778 N.W.2d 313, 318 (Minn. 2010).

³ In its reply brief, Hibbing Taconite asserted that Wetland 35 was within its original permit to mine boundaries. The DNR moved to strike that portion of the reply brief as beyond the appellate record or, alternatively, to allow the DNR to file a sur-reply brief. Because we decide that the DNR lacked express or implied authority to require Hibbing Taconite to file a new application to amend its permit to mine, we have not considered the information raised in the reply brief. Thus, the motion is denied as moot.

The DNR, “as a creature of statute, only has the authority given it by the legislature.” *Minnegasco v. Minn. Pub. Utils. Comm’n*, 549 N.W.2d 904, 907 (Minn. 1996); *see also* Minn. Stat. §§ 84.01-.65 (2022) (governing the powers and duties of the DNR and its commissioner). “The legislature states what the agency is to do and how it is to do it.” *Peoples Nat. Gas Co. v. Minn. Pub. Utils. Comm’n*, 369 N.W.2d 530, 534 (Minn. 1985). We look to the plain language of the authorizing statute to determine what an agency’s powers include. *In re Valley Branch Watershed Dist.*, 781 N.W.2d 417, 421-22 (Minn. App. 2010). “An agency’s authority may be stated either expressly in statute or implied from the express powers given to the [agency] by the Legislature.” *In re Application of Otter Tail Power Co.*, 942 N.W.2d 175, 179 (Minn. 2020).

An agency has express authority to act only when a statute unambiguously grants the agency such authority. *Hubbard*, 778 N.W.2d at 320. To determine whether an agency has express authority, we “analyze whether the relevant statute unambiguously grants authority for an administrative agency to act in the manner at issue.” *Id.*

“While express statutory authority need not be given a cramped reading, any enlargement of express powers by implication must be fairly drawn and fairly evident from the agency objectives and powers expressly given by the legislature.” *Minnegasco*, 549 N.W.2d at 907 (quoting *Peoples Nat. Gas Co.*, 369 N.W.2d at 534). “[A]ny doubt about the existence of an agency’s authority [is resolved] against the exercise of such authority.” *In re Qwest’s Wholesale Serv. Quality Standards*, 702 N.W.2d 246, 259 (Minn. 2005). Appellate courts are “reluctant to find implied statutory authority.” *Otter Tail Power*, 942 N.W.2d at 181 (quotation omitted).

A. The DNR lacked express authority to condition the agency’s approval of an application to amend a wetland replacement plan on the requirement that Hibbing Taconite file an application to amend the permit to mine.

The DNR argues it had the express authority to condition the approval of an application to amend a wetland replacement plan on the requirement that Hibbing Taconite file an application to amend the permit to mine. The legislature addressed how a permit to mine may be amended:

A permit may be amended upon written application to the commissioner. A permit amendment application fee must be submitted with the written application. . . . If the commissioner determines that the proposed amendment constitutes a substantial change to the permit, the person applying for the amendment shall publish notice in the same manner as for a new permit, and a hearing shall be held if written objections are received in the same manner as for a new permit. An amendment may be granted by the commissioner if the commissioner determines that lawful requirements have been met.

Minn. Stat. § 93.481, subd. 3(b) (2022) (emphasis added).

This statute necessarily and clearly states that the mining permittee is the one who applies to amend its permit. *Id.* There is no language authorizing the DNR to compel the permittee to submit a permit-amendment application. *Id.* “If the plain language of a statute is clear and free from ambiguity, the court’s role is to enforce the language of the statute and not explore the spirit or purpose of the law.” *Nelson v. Nelson*, 866 N.W.2d 901, 903 (Minn. 2015) (quotation omitted).

The DNR asserts that this interpretation impermissibly rewrites the statute to read: “A permit may [*only*] be amended upon written application to the commissioner.” We are not persuaded. While the statutory language does not bar the DNR from requiring

a party to file an application to amend the permit to mine, that does not answer the question of whether the language expressly authorizes the DNR to require a party to file an application to amend the permit to mine. The statute unambiguously provides a process for how a permit to mine may be amended—through an application by the permittee. The legislature provided no language that expressly empowers the DNR to affirmatively require a permittee to file such an application.

Our reading of the statute is consistent with the DNR’s own regulation relating to amending a permit to mine. The DNR’s promulgated regulation reads: “A proceeding for requesting an amendment of a permit to mine is commenced when the permittee files an application for an amendment with the commissioner.” Minn. R. 6130.5000, subp. 1 (2023). Consistent with our interpretation, the DNR’s own regulation demonstrates that the process to amend a permit to mine commences when a permittee files an application. *Id.* The regulation—like the statute—does not expressly authorize the DNR to force a permittee to file an application.

Our interpretation is also consistent with Minnesota Supreme Court precedent. In *Otter Tail Power*, the supreme court addressed whether the Minnesota Public Utilities Commission (MPUC) could require a utility in a general rate proceeding to include the costs and revenues of a transmission line project in a separate, existing transmission cost recovery proceeding. 942 N.W.2d at 177-79. To determine whether the agency had express authority, the supreme court looked no further than the plain language of the statutes at issue. *Id.* at 180. One statutory provision provided that “[u]pon filing by a public utility or utilities providing transmission service, the [MPUC] may approve, reject,

or modify . . . a tariff[.]” Minn. Stat. § 216B.16, subd. 7b(b) (2018). The second provision at issue provided that “[a] public utility may file annual rate adjustments to be applied to customer bills paid under the tariff[.]” Minn. Stat. § 216B.16, subd. 7b(c) (2018). The supreme court concluded that the statute created the transmission cost recovery process “as an optional financial tool available to a utility upon request.” *Otter Tail Power*, 942 N.W.2d at 180. The court held, “Certainly, nothing in [the statute], expressly authorizes the [agency] to compel or require a utility to use or modify” a request for transmission cost recovery. *Id.*

The statutory language at issue here is comparable to the language the supreme court addressed in *Otter Tail Power*. Compare Minn. Stat. § 93.481, subd. 3(b) (“A permit may be amended upon written application to the commissioner.”), with Minn. Stat. § 216B.16, subd. 7b(b) (“Upon filing by a public utility . . .”). The unambiguous language of both statutes creates a procedure upon which a party files an application with the agency to commence the process to request the relief that the party seeks. Minn. Stat. §§ 93.481, subd. 3(b), 216B.16, subd. 7b(b). Nothing in either statute expressly empowers the agency to require a party to file an application. Thus, like in *Otter Tail Power*, the statute here does not “expressly authorize[] the [DNR] to compel or require” Hibbing Taconite to file an application to amend a permit to mine. 942 N.W.2d at 180.

The DNR argues that subdivision 3 of section 93.481 is just “one avenue under which a permit amendment may occur[.]” The DNR contends its express authority can be found within the agency’s general power to (1) approve wetland replacement plans (Minn. Stat. § 103G.222, subd. 1 (2022)), (2) administer and enforce land reclamation (Minn. Stat.

§§ 93.44-.51 (2022)), (3) and enforce requirements of permits to mine (Minn. Stat. § 93.481, subd. 1 (2022)). But these statutes do not contain any language that specifically empowers the agency to require a party to file an application to amend a permit to mine. Without that specific language that unambiguously grants the authority to the agency, Minnesota Supreme Court precedent dictates that the agency has no express authority under those statutes. *See, e.g., Hubbard*, 778 N.W.2d at 320-21.

The DNR insists that it must have express authority to require Hibbing Taconite to file an application to amend the permit to mine because all permits to mine must include a “proposed plan for the reclamation or restoration, or both, of any mining area affected by mining operations[.]” Minn. Stat. § 93.481, subd. 1(1). Although the DNR is correct that all permits to mine must include such a plan, that does not unambiguously empower the DNR to mandate that a party file an application seeking an amendment.

The DNR is not, however, without recourse. The legislature provided the DNR with a mechanism to modify a permit to mine when a party does not affirmatively file an application to amend their permit to mine. The legislature unambiguously provided the DNR with the express statutory authority to modify or revoke a permit to mine:

Subject to the rights of the permittee to contest the commissioner’s action . . . , *a permit may be modified or revoked by the commissioner* in case of any breach of the terms or conditions thereof or in case of violation of law pertaining thereto by the permittee . . . , or in case the commissioner finds such modification or cancellation necessary to protect the public health or safety, or to protect the public interests in lands or waters against injury resulting in any manner or to any extent not expressly authorized by the permit, or to prevent injury to persons or property resulting in any manner or to any extent not so authorized[.]

Minn. Stat. § 93.481, subd. 4(3) (2022) (emphasis added). The legislature also expressly empowered the DNR to suspend a party's mining operations under certain circumstances:

By written order to the permittee *the commissioner may forthwith suspend operations under a permit* if the commissioner finds it necessary in an emergency to protect the public health or safety or to protect public interests in lands or waters against imminent danger of substantial injury in any manner or to any extent not expressly authorized by the permit, or to protect persons or property against such danger, and may require the permittee to take any measures necessary to prevent or remedy such injury.

Minn. Stat. § 93.481, subd. 4(4) (emphasis added).

If the DNR chooses to employ its express power to revoke, modify, or suspend a permit to mine, the DNR must give notice to the party and allow the party an opportunity to be heard. *See* Minn. Stat. § 93.481, subd. 4(3)-(4). The process may be less convenient for the DNR if the agency chooses to invoke these express powers, but the statutes unambiguously provide procedures for the DNR to use if the agency affirmatively wants to make changes to a permit to mine.

Parties that voluntarily seek to amend a permit to mine are not without their own set of burdens. The party must pay an application fee, may be required by the DNR to publish notice of the amendment, and may be forced to endure a hearing if the DNR receives written objections. Minn. Stat. § 93.481, subd. 3(b).⁴ But the statutes do not expressly authorize the DNR to require a party to undertake these burdens. Instead, the DNR is only

⁴ Even then, the DNR retains discretion to grant the application for an amendment. *See* Minn. Stat. § 93.481, subd. 3(b) (“An amendment *may* be granted by the commissioner if the commissioner determines that lawful requirements have been met.”) (emphasis added).

expressly authorized to commence its own process—and undertake its own burdens—to modify the permit to mine.

At a minimum, the statutory provisions related to revoking, modifying, or suspending a permit demonstrate that the legislature knew how to expressly empower the DNR to change a permit to mine. *See Hubbard*, 778 N.W.2d at 323 (“The legislature declined to give such express authority to the DNR in any of the statutory sections at issue here even though the legislature knows how to grant such authority if it desires.”). The legislature simply chose not to expressly grant those powers in the manner that the DNR attempted to utilize here. To be clear, the DNR has express power to commence a process to change a permit, but that express power is found within the statutory provisions relating to revoking, modifying, or suspending a permit to mine.⁵

B. The DNR lacked implied authority to condition the agency’s approval of an application to amend a wetland replacement plan on the requirement that Hibbing Taconite file an application to amend the permit to mine.

Our conclusion that the DNR lacks express authority to require Hibbing Taconite to file an application to amend the permit to mine does not end our analysis. The DNR’s authority may also be implied from the express powers given to it by the legislature. *Otter Tail Power*, 942 N.W.2d at 179. The Minnesota Supreme Court has cautioned, however, that courts “are reluctant to find implied statutory authority.” *Hubbard*, 778 N.W.2d at 321 (quotation omitted).

⁵ The DNR expresses concern that without the ability to compel a party to amend its permit to mine, parties will be incentivized to engage in illegal wetland filling by acting “careless at best, and nefarious at worst.” But the DNR’s express authority to revoke, modify, or suspend a permit to mine empowers the DNR to regulate and respond to such conduct.

The DNR likens these circumstances to *In re Application of Minnegasco* in arguing that the DNR's implied authority can be "fairly drawn and fairly evident from the agency objectives and powers expressly given by the legislature." 565 N.W.2d 706, 711 (Minn. 1997) (quotation omitted). In *Minnegasco*, the Minnesota Supreme Court concluded that the MPUC had no express authority to order a remedy for recoupment to compensate a utility for losses resulting from an error made by the MPUC. *Id.* In analyzing whether the legislature granted the MPUC implied authority, the supreme court endeavored to "construe the statutory language consistent with the legislature's intent and in a sensible manner that avoids unreasonable, unjust, or absurd results." *Id.* at 712.

In determining that the MPUC had implied authority to impose a recoupment remedy, the supreme court identified specific statutory language from which it could infer the authority. *Id.* The supreme court also declined to construe the statute in a manner that would inequitably deny the public utility a remedy for recovering losses after it successfully challenged the MPUC's order on appeal. *Id.* at 713. Failing to recognize this implied authority would allow the MPUC to issue unlawful orders and force the utility to decide whether to appeal the unlawful order (diminishing the possibility of recovery) or whether to accept the unlawful order (and return to the MPUC to request a rate change). *Id.* Rather than force the utility into an untenable situation, the supreme court recognized the MPUC's implied authority to provide a "meaningful remedy when the [MPUC] exceeds its statutory authority in ordering rates." *Id.*

Unlike in *Minnegasco*, we have identified no statutory language from which we can infer that the DNR has the implied authority to require a party to file an application to

amend a permit to mine. In such circumstances, the supreme court has declined to recognize an agency's implied authority to act. *See, e.g., Qwest*, 702 N.W.2d at 261 (“Unlike the situation in *Minnegasco*, in which we identified specific statutory language from which it would be inferred that the MPUC had the implied authority to impose a recoupment remedy, here, as noted above, no such language has been identified.”); *see also Hubbard*, 778 N.W.2d at 323-25; *Peoples Nat. Gas Co.*, 369 N.W.2d at 535-36.

Also unlike in *Minnegasco*, recognizing an implied authority in this case would not redress an inequity of a party being denied a remedy. *Minnegasco*, 565 N.W.2d at 713; *see also Hubbard*, 778 N.W.2d at 325 (“[W]e are not presented in this case with a situation where an agency's decision has injured a party and that party would be left without a remedy in the absence of implied agency authority to provide a remedy.”); *Qwest*, 702 N.W.2d at 262 (declining to recognize implied powers, in part, because agencies “are not left without any remedy”); *Peoples Nat. Gas Co.*, 369 N.W.2d at 535 (concluding the Commission lacked implied authority to enforce its own orders by ordering a customer refund because, in part, other enforcement tools were available in the statutes). Instead, the statutory regime here empowers both Hibbing Taconite and the DNR with avenues to commence a process to change a permit. Minn. Stat. § 93.481, subds. 3(b), 4.

The DNR also contends that the statutes place “limitations on when [the] DNR can unilaterally revoke, suspend, or modify” a permit to mine, but place “no similar limitations on requiring amendments” to a permit to mine. But the statutory grant of power to the DNR to revoke, suspend, or modify a permit to mine—which, when invoked, triggers obligations that the DNR must undertake—weighs against a determination that the same

statute contains an ambiguity, in its silence, that grants the DNR the implied authority to require a party to seek an amendment to a permit to mine. The supreme court has not interpreted silence in a statute to mean that the legislature has granted implied authority to an agency. *Qwest*, 702 N.W.2d at 261 (declining to recognize implied authority when “the statutory language being interpreted is not, except in its silence, ambiguous”); *Hubbard*, 778 N.W.2d at 325 (“We also do not have an ambiguous statutory grant of authority that requires our interpretation.”); *Peoples Nat. Gas Co.*, 369 N.W.2d at 534 (“We have no ambiguous language to construe, unless perhaps the ambiguity of silence.”). Like in *Qwest*, *Hubbard*, and *Peoples Natural Gas*, the statutes here have no ambiguity, except, perhaps, in their silence. That silence does not create implied authority.

Finally, the DNR cites its “broad authority to regulate both mining activity and the resulting wetland impacts” as well as the “strong policy in favor of reclamation set forth by the Legislature” as reasons to recognize its implied authority. But the DNR’s broad authority is not enough. “[I]f nothing more than a broad grant of authority were needed to show that implied authority could be fairly drawn from the statutory scheme, the implied authority would be present in all cases in which the agency had a broad grant of authority.” *Qwest*, 702 N.W.2d at 261; *see also Waller v. Powers Dep’t Store*, 343 N.W.2d 655, 657 (Minn. 1984) (“Neither agencies nor courts may under the guise of statutory interpretation enlarge the agency’s powers beyond that which was contemplated by the legislative body.”). Although the DNR does have broad authority, an agency’s power must be “fairly drawn” and be “fairly evident from the powers expressly granted to the [agency] by the legislature.” *Qwest*, 702 N.W.2d at 261; *see also Peoples Nat. Gas Co.*, 369 N.W.2d at

535 (“It is not enough that the power to order refunds would be useful to the Commission as an enforcement measure. The Commission remains a creature of statute.”). The DNR certainly has the authority to commence a process to endeavor to achieve its end goal—make changes to a permit to mine—but the DNR does not have the express or implied authority to force a party to affirmatively request those changes that the agency wants made. “[T]his is not the kind of agency authority that can or should be implied in the absence of more explicit legislative action.” *Peoples Nat. Gas Co.*, 369 N.W.2d at 535.

DECISION

Because the DNR does not have express or implied statutory authority to condition its approval of an application to amend a wetland replacement plan on the requirement that Hibbing Taconite file an application to amend the permit to mine, we reverse. But because the record provides no indication as to whether the DNR would have approved or denied the application to amend the wetland replacement plan without the condition, we remand to the DNR to reconsider the application without regard to the impermissible condition.⁶

Reversed and remanded; motion denied.

⁶ We offer no opinion as to whether the DNR should approve or deny the application to amend the wetland replacement plan without the impermissible condition.