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STATE OF MINNESOTA
IN COURT OF APPEALS
A25-1049

In re the Final NPDES/SDS Permit for 3M Cottage Grove Center.

Filed June 8, 2026
Reversed and remanded
Smith, Tracy M., Judge

Minnesota Pollution Control Agency
Permit No. MN0001449

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Considered and decided by Wheelock, Presiding Judge; Connolly, Judge; and Smith, Tracy M., Judge.

NONPRECEDENTIAL OPINION

SMITH, TRACY M., Judge

In this certiorari appeal, relator 3M Chemical Operations LLC (3M) challenges the terms of a water-discharge permit issued by respondent Minnesota Pollution Control Agency (MPCA). 3M argues that (1) the permit's condition regarding PFAS[1]-testing

[1] "PFAS" refers to per- and poly-fluorinated alkyl substances, which are human-made chemicals that do not break down naturally and accumulate in the environment over time.

requirements is in excess of MPCA's authority, unsupported by substantial evidence, and arbitrary and capricious; (2) the permit's condition regarding accreditation requirements for PFAS-testing methods are arbitrary and capricious; and (3) the permit's thermal-load condition regarding the effect of 3M's wastewater discharge on the temperature of the receiving water is an end-result requirement that is prohibited under a United States Supreme Court decision that was issued shortly before the issuance of the permit. Because we conclude that the PFAS-testing condition is, in one respect, not supported by substantial evidence and that the MPCA should have the opportunity to address the thermal-load condition in light of the recent Supreme Court decision, we reverse and remand for MPCA to address the PFAS-testing condition and the thermal-load condition.

FACTS

This appeal arises out of a water-discharge permit issued by MPCA for 3M's Cottage Grove manufacturing facility (3M Cottage Grove). 3M Cottage Grove manufactures many products, including various chemicals, adhesives, resins, beads, tapes, films, coatings, traffic control materials, and automotive products. Manufacturing these products generates wastewater, which is treated onsite and then discharged into a creek that runs into the Mississippi River.

It is illegal to discharge pollutants into surface water or ground water without a permit. Water-discharge permits are governed by both federal and state law. The federal Clean Water Act (CWA) prohibits "the discharge of any pollutant," 33 U.S.C. § 1311(a)

(2024), without a National Pollutant Discharge Elimination System (NPDES) permit,[2] 33 U.S.C. § 1342(a) (2024). While the Environmental Protection Agency (EPA) generally administers the NPDES program, the CWA also provides for the EPA to approve state agencies to administer it themselves with EPA oversight. 33 U.S.C. § 1342(b) (2024). MPCA has been authorized by the EPA to issue NPDES permits. 39 Fed. Reg. 26,061, 26,061 (July 16, 1974); *see* Minn. Stat. § 115.03, subd. 5 (Supp. 2025). Additionally, MPCA issues State Disposal System (SDS) permits under Minnesota's Water Pollution Control Act (WPCA). *See* Minn. Stat. §§ 115.01-.17 (2024 & Supp. 2025). The WPCA prohibits "discharging pollutants into the waters of the state until a written permit for the discharge is granted."[3] Minn. Stat. § 115.07, subd. 1(c). When a Minnesota permit applicant requires both an NPDES permit and an SDS permit, MPCA issues a joint NPDES/SDS permit. *See In re Reissuance of an NPDES/SDS Permit to U.S. Steel Corp.*, 954 N.W.2d 572, 576-77 (Minn. 2021) (describing the joint NPDES/SDS scheme). The permit at issue here is a joint NPDES/SDS permit, issued by MPCA.

[2] The CWA applies to the "waters of the United States," which has been interpreted by the United States Supreme Court to include "only those relatively permanent, standing or continuously flowing bodies of water forming geographical features that are described in ordinary parlance as streams, oceans, rivers, and lakes." *Sackett v. Env't Prot. Agency*, 598 U.S. 651, 671 (2023) (quotations omitted).

[3] "Waters of the state" is defined as "all streams, lakes, ponds, marshes, watercourses, waterways, wells, springs, reservoirs, aquifers, irrigation systems, drainage systems and all other bodies or accumulations of water, surface or underground, natural or artificial, public or private, which are contained within, flow through, or border upon the state or any portion thereof." Minn. Stat. § 115.01, subd. 22 (2024).

Prior to issuance of the permit challenged here, 3M Cottage Grove was operating under a NPDES/SDS permit issued by MPCA in 2003.[4] 3M applied for renewal in 2021 as requested by MPCA. MPCA published draft permits for public comment in July and December 2024. 3M provided comments on the drafts in August 2024 and February 2025, raising concerns about the drafts' PFAS-testing and accreditation conditions. In May 2025, MPCA wrote to 3M, responding to its comments and addressing some, but not all, of 3M's concerns. MPCA issued the final permit on June 1, 2025.

The permit contains three conditions that 3M challenges here. Two of the conditions relate to PFAS testing and the third relates to water temperature.

Condition 5.70.77 (the PFAS-testing condition) requires 3M Cottage Grove to test its discharge for PFAS. Studies have linked PFAS to a variety of serious health consequences, including endocrine disruption, obesity, diabetes, and cancer. The permit's PFAS-testing condition requires 3M Cottage Grove to monitor for 110 particular PFAS chemicals, or "analytes,"[5] listed in the permit's accompanying fact sheet.

[4] The 2003 permit expired in 2008, but 3M lawfully continued to operate under the expired permit because 3M timely applied for renewal in 2007 and MPCA did not take any final action on that application. *See* Minn. R. 7001.0160 (2025) (allowing the holder of an expired permit to "continue to conduct the permitted activity in accordance with the terms and conditions of the expired permit until the agency takes final action"); 40 C.F.R. § 122.6(d) (2025) ("States authorized to administer the NPDES program may continue either EPA or State-issued permits until the effective date of the new permits, if State law allows.").

[5] An "analyte" is "[a] substance or sample being analyzed." *The American Heritage Dictionary of the English Language* 64 (5th ed. 2018).

Condition 5.70.81 (the accreditation condition) requires PFAS testing to be done by accredited laboratories or, where no laboratory is accredited to test a particular analyte, laboratories that are pursuing accreditation.

Condition 5.66.20 (the thermal-load condition) prohibits 3M Cottage Grove's wastewater discharge from increasing the temperature of the receiving water by more than five degrees Fahrenheit above the ambient temperature.

After the permit was issued, 3M wrote to MPCA seeking a waiver from enforcement of the PFAS-testing and accreditation conditions regarding two described categories of analytes. MPCA granted the waiver in part through April 30, 2026. The record before us does not reflect whether MPCA extended the waiver beyond that date.

This appeal follows.

DECISION

MPCA's issuance of a permit is subject to judicial review pursuant to Minnesota Statutes sections 14.63 to 14.69 (2024). Minn. Stat. § 115.05, subd. 11. A court "may reverse or modify" an agency's decision when it is "in excess of the statutory authority or jurisdiction of the agency," "affected by other error of law," "unsupported by substantial evidence," or "arbitrary or capricious." Minn. Stat. § 14.69. The party challenging an agency decision "has the burden of proof when appealing an agency decision." *In re Excelsior Energy, Inc.*, 782 N.W.2d 282, 289 (Minn. App. 2010).

As noted above, 3M challenges three conditions of the permit: (1) the PFAS-testing condition, (2) the accreditation condition, and (3) the thermal-load condition. We organize our analysis accordingly.

I. PFAS-Testing Condition

The PFAS-testing condition states, in relevant part:

> [3M] shall analyze [PFAS] at all monitoring locations in accordance with the following:
>
> > A. [3M] must sample and analyze PFAS compounds using methodology capable of detecting PFAS to the minimum reporting limits available and specifically below a 4 ng/L reporting limit (RL) for PFOS, PFOA, and PFHxS,[6] such as EPA method 1633, a method equivalent to EPA 1633, or a method better than EPA method 1633.

3M asserts three challenges to this condition. It argues that (A) MPCA exceeded its authority by requiring testing without specifying an appropriate method, (B) MPCA exceeded its authority by failing to make a finding that the methods listed were "appropriate," and (C) testing for PFAS analytes that MPCA has not shown are likely to be present is unsupported by substantial evidence and arbitrary and capricious.

A. Test Methods

3M argues that MPCA "exceeded its authority" by requiring testing without a specified analytical method.

As an initial matter, although 3M frames the issue as whether MPCA exceeded its authority in imposing this condition, it does not argue that MPCA lacks jurisdiction or authority to issue water-discharge permits or impose conditions within them. And MPCA clearly has this authority. *See* Minn. Stat. §§ 115.03, subd. 1(a)(5), .07, subd. 1. Instead, 3M's arguments appear to take issue with how MPCA exercised its authority in light of the

[6] PFOS, PFOA, and PFHxS are 3 of the 110 analytes for which the permit requires testing.

evidence and MPCA regulations. In our view, 3M's arguments here are better considered under the substantial-evidence standard.

"The substantial-evidence standard addresses the reasonableness of what the agency did on the basis of the evidence before it." *In re Expulsion of A.D.*, 883 N.W.2d 251, 259 (Minn. 2016) (quotation omitted). "Substantial evidence is defined as: (1) such relevant evidence as a reasonable mind might accept as adequate to support a conclusion; (2) more than a scintilla of evidence; (3) more than some evidence; (4) more than any evidence; or (5) the evidence considered in its entirety." *Cannon v. Minneapolis Police Dep't*, 783 N.W.2d 182, 189 (Minn. App. 2010) (quotation omitted). A reviewing court will reverse an agency's decision "where there is a combination of danger signals which suggest the agency has not taken a hard look at the salient problems and the decision lacks articulated standards and reflective findings." *Cable Commc'ns Bd. v. Nor-west Cable Commc'ns P'ship*, 356 N.W.2d 658, 668-69 (Minn. 1984) (quotations and citations omitted). "[D]ecisions of administrative agencies enjoy a presumption of correctness, and deference should be shown by courts to the agencies' expertise and their special knowledge in the field of their technical training, education, and experience." *Rsrv. Min. Co. v. Herbst*, 256 N.W.2d 808, 824 (Minn. 1977).

Permits issued by MPCA "must contain conditions necessary for the permittee to achieve compliance with applicable Minnesota or federal statutes or rules." Minn. R. 7001.0150, subp. 2 (2025). "If applicable to the circumstances," these conditions must include "[m]onitoring and testing requirements," which "must specify the type, interval, and frequency of monitoring and testing activities." *Id.* With respect to NPDES permits,

monitoring requirements must include "specification as to any test procedures which the permittee is required to use which differ from those set forth in" 40 Code of Federal Regulations section 136 (2025). Minn. R. 7001.1080, subp. 5(D) (2025).

To evaluate whether the PFAS-testing condition satisfies the substantial-evidence test, we consider how it applies to three categories of the 110 PFAS analytes required to be tested under the permit: (1) 38 analytes that Method 1633 can reliably detect, (2) 56 analytes that cannot be reliably detected by Method 1633 but can be detected by existing methods other than Method 1633, and (3) 16 analytes for which there is currently no existing test method.[7]

1. Analytes Detectable by Method 1633[8]

Neither party disputes that Method 1633 should be used to test for the 38 PFAS analytes that Method 1633 can reliably detect. 3M raises no challenge to the testing condition with respect to these analytes.

[7] In its briefing, 3M states that 38 analytes are detectable by Method 1633 and that 72 are not. During oral argument, 3M broke down the latter number further into the second and third categories identified above. While we cannot confirm these numbers based on our review of the record before us, MPCA did not dispute them, and we have no reason to doubt them. Regardless, our holding applies to the categories of analytes as described, even if the total number of analytes in each particular category is different from that asserted by 3M in this appeal.

[8] While Method 1633 is not yet officially or finally "approved," the EPA has determined that Method 1633 can reliably detect 40 specific PFAS analytes. Only 38 of those 40 PFAS analytes are implicated here.

2. Analytes that Can Be Tested by Methods Other than Method 1633

In response to 3M's comments on the draft permit, MPCA elaborated on what methods should be used to test analytes that cannot be detected by Method 1633. MPCA stated that it would consider alternative methods to those officially approved by the EPA, including methods that are accredited by the Minnesota Department of Health (MDH) Environmental Laboratory Accreditation Program (MNELAP). MPCA also stated that it will accept 3M's internal methods, including Method ETS-8-044, if those methods receive an accreditation variance through MNELAP.

For the 56 analytes that cannot be detected by Method 1633 but may be detected by other existing methods, it is clear that MPCA has thoroughly considered the problem. The permit states that 3M can use any methods "equivalent to" or "better than" Method 1633. MPCA has stated that it will accept methods that are accredited by MNELAP, 3M's Method ETS-8-044, and other internal 3M non-standard methods that receive variances. Considering the deference that we afford agencies' expertise and special knowledge in their field, *Herbst*, 256 N.W.2d at 824, we are convinced that there is substantial evidence supporting MPCA's decision to allow these alternative methods. *Cannon*, 783 N.W.2d at 189.

3M argues, though, that the permit's reference to methods "equivalent to" or "better" than Method 1633 does not sufficiently specify methods as required by MPCA regulations, *see* Minn. R. 7001.0150, subp. 2(B); Minn. R. 7001.1080, subp. 5(D), and that "the permit improperly puts the onus on 3M to prove that another technique is appropriate during the term of the permit." (Emphasis omitted.) We disagree. The permit and MPCA's

clarifying communications do not require 3M to prove anything regarding alternative methods. Rather, they identify what classes of methods will be accepted, acceptable examples, and the steps 3M should take to comply. We discern no "danger signals" in MPCA's decision to require 3M to use the alternative methods clarified during in response to 3M's comments. *Cable Commc'ns Bd.*, 356 N.W.2d at 669. As for 3M's argument that these communications are not specified in the permit itself, we do not consider the further explication provided by MPCA to undermine the specificity of the condition itself.[9]

We conclude that requiring 3M to use methods equivalent to or better than Method 1633 is supported by substantial evidence for analytes that cannot be reliably detected by Method 1633 but may be detected by another existing test method.

3. Analytes That Have No Existing Test Method

Lastly, we address the analytes for which there is no existing test method.[10]

3M argues that MPCA "is not authorized to require monitoring of PFAS analytes without any available method to do so," citing Minnesota Statutes section 116.07, subdivision 6 (2024). Under that provision, MPCA must "give due consideration to

[9] Because, as described in next subsection, we are remanding the PFAS-testing condition to MPCA for another reason, we note that MPCA can consider whether the clarification it provided during commenting should be written into the PFAS-testing condition in the permit.

[10] MPCA argues that 3M's challenge here is not ripe because MPCA temporarily waived enforcement of the PFAS-testing condition for analytes that have no existing test method. But MPCA cites no case in which a temporary waiver of enforcement made a challenge to a permit condition unripe. In addition, although MPCA may have extended the waiver, on the record before us, it lasted only until April 30, 2026. We conclude that 3M asserts a "direct and imminent injury" and that the controversy is therefore ripe. *State v. Colsch*, 284 N.W.2d 839, 841 (Minn. 1979).

the . . . operation and expansion of business . . . and other economic factors and other material matters affecting the feasibility and practicability of any proposed action" and must "take or provide for such action as may be reasonable, feasible and practical under the circumstances." Minn. Stat. § 116.07, subd. 6.

There is no dispute that, for some analytes on the list for required testing, test methods capable of detecting them do not currently exist. For such analytes, we conclude that there is not substantial evidence to support the feasibility and practicability of a current testing requirement. Because the condition as written requires such testing currently, the condition does not satisfy the substantial-evidence test.[11]

To be clear, our decision does not foreclose the ability of MPCA to impose other conditions regarding these analytes. Permits "must contain conditions necessary for the permittee to achieve compliance with applicable Minnesota or federal statutes or rules . . . and any conditions that the agency determines to be necessary to protect human health and the environment." Minn. R. 7001.0150, subp. 2. We do not hold that MPCA cannot require a permittee to pursue methods for testing for pollutants in its wastewater or that MPCA cannot require future testing that becomes available in satisfaction of the standard described in the condition.

[11] We note that MPCA temporarily waived enforcement of the PFAS-testing condition for analytes that have no existing testing method. But since the waiver expired on April 30, 2026, 3M may be subject to enforcement. And unlike the waiver for the accreditation condition discussed below—where MPCA also softened the requirements and indicated that it was working towards a resolution—MPCA has provided no further solution for when the waiver ends. The temporary waiver does not cure the lack of substantial evidence supporting the permit's requirement to test for analytes that have no existing method.

As written, the PFAS-testing condition lacks substantial evidence to the extent it fails to specify a feasible and practicable method to test for analytes that are not detectable by any existing test method. We therefore remand for MPCA to address the PFAS-testing condition consistent with this opinion.

B. Appropriateness Finding

3M argues that MPCA exceeded its statutory authority because it imposed the PFAS-testing requirements without first finding that the methods described for analytes not detectable by Method 1633 are "appropriate." 3M cites Minnesota Rule 7001.1060 (2025) as support for its argument. Because this argument does not allege that MPCA exceeded its jurisdiction or any statutory authority, we determine that it is better understood as asserting an error of law.

This court "may reverse or modify" an agency decision when "affected by other error of law." Minn. Stat. § 14.69(d) (2024). "The interpretation of an administrative regulation presents a question of law that we review de novo." *J.D. Donovan, Inc. v. Minn. Dep't of Transp.*, 878 N.W.2d 1, 5 (Minn. 2016). "Like statutes, administrative regulations are governed by general rules of construction." *U.S. Steel Corp.*, 954 N.W.2d at 576. "[W]hen the language of the regulation is clear and capable of understanding," courts "give no deference to the agency's interpretation." *In re Annandale NPDES/SDS Permit Issuance*, 731 N.W.2d 502, 515 (Minn. 2007). But appellate courts generally "defer[] to an agency's expertise and special knowledge when (1) the agency is interpreting a regulation

that is unclear and susceptible to more than one interpretation; and (2) the agency's interpretation is reasonable."[12] *Id.*

Rule 7001.1060 applies to the NPDES permit-application process. It requires certain applicants for NPDES permits, including existing manufacturing dischargers, to perform an analysis of their effluents. Minn. R. 7001.1060, subp. 1. The rule provides:

> The applicant shall perform the analysis by . . . using techniques found by the commissioner to be appropriate considering the circumstances and the parameters which are to be analyzed.

Minn. R. 7001.1060, subp. 2.

3M argues that this rule precludes MPCA from "impos[ing] permit conditions without first making the required preliminary findings" that the required methods are "appropriate." It contends that MPCA failed to make those findings here. MPCA argues that the rule does not require that MPCA make an explicit finding that the methods described in a permit condition are "appropriate." We agree with MPCA's interpretation. The rule simply says "found by the commissioner." It does not state that findings must be written or included in the permit.

Considering the deference we give an agency's reasonable interpretation of its own rule, we determine that an explicit finding of appropriateness by MPCA is not required by rule 7001.1060. 3M has failed to establish an error of law with respect to rule 7001.1060, subpart 2.

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[12] The agency must also be "legally required to enforce and administer the regulation under review" before the court can defer to its interpretation. *Annandale*, 731 N.W.2d at 516. But neither party disputes this here.

C. Analytes Not Yet Shown to Be Present

3M argues that the PFAS-testing condition is arbitrary and capricious and lacks the support of substantial evidence because it requires 3M to test for 38 PFAS analytes that MPCA has not shown are likely to be present at 3M Cottage Grove.

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

Citizens Advocating Responsible Dev. v. Kandiyohi Cnty. Bd. of Comm'rs, 713 N.W.2d 817, 832 (Minn. 2006). An agency's conclusions are not arbitrary or capricious so long as there is a "rational connection between the facts found and the choice made." *In re Review of 2005 Annual Automatic Adjustment of Charges*, 768 N.W.2d 112, 120 (Minn. 2009) (quotation omitted). "[T]he party challenging the agency's decision has the burden of proof." *In re Request for Issuance of SDS Gen. Permit MNG300000*, 769 N.W.2d 312, 317 (Minn. App. 2009).

3M argues that there is no evidence that these 38 analytes are present or even likely to be present at 3M Cottage Grove and that MPCA has failed to articulate a reason to believe that they would be present.

In support of the condition, MPCA points to the reasoning it gave in response to 3M's comments on the draft permit. 3M, in its August 2024 comments, requested that certain analytes be removed from the monitoring list because they are not associated with the processes that 3M uses at 3M Cottage Grove. MPCA responded by removing several

analytes from the list and lowering the monitoring frequency for 36 of the analytes from monthly to annually. But MPCA explained that "[t]he addition of stormwater, new production/groundwater extraction wells and air deposition degradants (present in both stormwater and groundwater) may continue to result in an evolving list of PFAS compounds that is difficult, if not impossible, to precisely predict with 100% certainty." MPCA also noted an instance where testing revealed four compounds in 3M's discharges after 3M represented that they were not reasonably expected to be present. As a result, MPCA argues, "failure to test for all the compounds would inhibit MPCA's ability to make accurate scientific and/or environmental conclusions down the road."[13]

3M argues that this condition unfairly shifts the burden to 3M because, rather than providing evidence that the analytes will be present, MPCA demands that 3M justify the exclusion of the analytes from testing. It argues that agency decisions must be based on the record, not speculation that monitoring will be helpful in the future.

It is true that MPCA does not point to evidence suggesting that these analytes may be present at 3M Cottage Grove or even explain why these 38 analytes were selected for testing. But MPCA has shown that it based its decision on other reasons, such as the

[13] We note that, in its brief, MPCA includes four citations to the record to provide "explanation for retaining specific analytes in the required list." But we find only one of these citations relevant—MPCA's response to 3M's August comments addressed above. The other three citations are not relevant. One citation ("R. 1157 at MPCA 027104-5") does not appear in the record. Another citation—a letter discussing MPCA's recalculation of testing compliance limits—does not explain why MPCA believes the analytes will be present. And the last citation—MPCA's response to 3M's February comments—merely directs 3M back to its prior response to the August comments.

uncertainty of testing for new PFAS, 3M's own failure to predict the presence of some analytes, and the future necessity for PFAS-testing requirements. "[A]bsent a manifest injustice, inferences drawn from the evidence by the agency must be accepted by a reviewing court even though it appears contrary inferences would be better supported." *Urb. Council on Mobility v. Minn. Dep't of Nat. Res.*, 289 N.W.2d 729, 733 (Minn. 1980). Accordingly, we accept MPCA's inference that monitoring for these analytes is necessary and justified. 3M also cites no authority that prevents an agency from considering future regulatory needs in permit conditions. We defer to MPCA's expertise in regulating the ever-evolving PFAS landscape, *see Herbst*, 256 N.W.2d at 824, and conclude that testing for the 38 analytes is supported by substantial evidence.

Additionally, MPCA notes that the permit provides for removal of analytes from the testing list if the analytes are not detected over a 12-month period. 3M argues that the fact that it can request analytes to be removed after a year of testing does not reduce the burden on 3M. The argument is not persuasive. MPCA already responded to 3M's concerns by removing some analytes from the list and reducing the monitoring frequency from monthly to yearly on most of the analytes. If after one year the tests reveal that 3M is correct that none of the 38 analytes are present, it can request that they be removed from the testing requirements.[14] And while 3M may need to develop methods and seek accreditation for

[14] 3M appears to read the PFAS-testing condition as always requiring annual monitoring at a minimum. MPCA reads their own permit differently, stating in response to comments that it "allows for PFAS compounds to be removed." Our reading of the permit aligns with MPCA's view. The condition appears to allow removal as a "change" to monitoring, but where a "reduction" in monitoring frequency is granted, the minimum is annual testing. In

testing these analytes, this requirement is not unreasonable given the difficulty MPCA faces in regulating an ever-growing universe of PFAS analytes. MPCA's removal of some analytes, reduction in monitoring frequency, and provision for removal of further analytes all show that MPCA has "taken a hard look at the salient problems" that 3M raises. *Cable Commc'ns Bd.*, 356 N.W.2d at 669 (quotation omitted).

3M argues that the permit already adequately addresses the concern about monitoring new analytes in the future because it requires 3M to conduct a nontargeted analysis (NTA) for any additional PFAS that may be in its discharge every five years and add any new PFAS analytes to the testing list. 3M appears to suggest that, rather than having 3M test for these analytes annually and removing them from the permit if they are absent, MPCA should have omitted the analytes and then relied on the NTA results every five years to add the analytes if they are found. While 3M's approach may be reasonable, MPCA's approach is also reasonable given the uncertainty of the contents of 3M Cottage Grove's discharge and the fact that the NTA occurs only every five years. And where there is "room for two opinions on a matter, the [agency's] decision is not arbitrary and capricious, even though the court may believe that an erroneous conclusion was reached." *2005 Annual Automatic Adjustment*, 768 N.W.2d at 120.

In sum, while MPCA has not provided evidence showing that the 38 analytes are likely to be present at 3M Cottage Grove, MPCA has shown that it sufficiently considered the problem in other ways. In response to comments, MPCA removed several analytes

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other words, analytes can be removed *or* have their monitoring frequency reduced to a minimum of annual testing.

from the list and greatly reduced the monitoring frequency for others. MPCA noted 3M's demonstrated unreliability in predicting the analytes in its discharge and stated its concerns that 3M cannot be sure which analytes are included. MPCA also provided 3M with a way to remove analytes from the monitoring list if they do not appear during testing. MPCA's decision is based on "more than a scintilla of evidence," *Cannon*, 783 N.W.2d at 189, and has a "rational connection between the facts found and the choice made," *2005 Annual Automatic Adjustment*, 768 N.W.2d at 120.

The PFAS-testing condition's requirement that 3M monitor for the 38 analytes is supported by substantial evidence and not arbitrary or capricious.

II. Accreditation Condition

The accreditation condition states, in relevant part:

> [A]ll data analyses required by this permit must be conducted by a laboratory accredited by the Minnesota Department of Health and/or certified by the MPCA, unless approved in writing by the MPCA.
>
> [3M] is authorized to submit data for analytes of which there are no certified/accredited labs conducting analyses so long as the lab doing the analysis is pursuing accreditation. However, once accredited labs are available, analyses for those analytes must be conducted at certified/accredited labs by sending to an outside certified/accredited lab and/or by having [3M's] lab(s) become certified/accredited.

3M argues that this condition is arbitrary and capricious.[15] The arbitrary-or-capricious standard is laid out above.

[15] MPCA argues that this challenge is not ripe because MPCA has temporarily waived enforcement of the accreditation condition for 36 analytes that have no accredited method,

MPCA regulations require that data analyses required by a permit be performed by certified laboratories, unless MPCA gives an exemption. Minn. R. 7001.4330 (2025). As noted above, the accreditation condition in the permit requires all data analyses to be conducted by a laboratory accredited by MDH or certified by MPCA, unless approved in writing by MPCA. MPCA later clarified that 3M would need to seek accreditation through MNELAP because MPCA cannot certify laboratories for the PFAS analytes at issue. Additionally, for the testing of analytes that currently have no certified or accredited laboratories, 3M may use a laboratory that is pursuing accreditation. But when an accredited laboratory becomes available, analyses must be conducted by that laboratory. 3M makes three arguments challenging this condition.

First, 3M argues that the accreditation condition imposes an "impossible burden" because "3M cannot apply for accreditation that the State does not offer." But MPCA built into the accreditation condition the ability to approve exceptions in writing. It then temporarily waived enforcement of the accreditation requirement for analytes currently lacking an accreditation option. And although the waiver may have expired on April 30, 2026, MPCA has stated that it "is working with MNELAP to have those analytes added to be available for accreditation." Furthermore, MPCA softened its approach on this condition, stating it will accept laboratories that are *pursuing* accreditation. MPCA considered 3M's concerns and implemented a rational approach to this issue.

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accredited testing laboratory, or laboratory seeking accreditation. But for the same reasons discussed above, we determine that 3M's challenge to the accreditation condition is ripe.

Second, 3M argues that the condition "effectively compels 3M to develop analytical methods and seek burdensome accreditation for analytes that are likely not present in the Cottage Grove effluent." But this argument effectively repeats 3M's challenge to the PFAS-testing condition, rather than the accreditation requirement. We already determined that the PFAS-testing condition's requirement that 3M monitor for the 38 analytes is not unsupported by substantial evidence or arbitrary or capricious. And when testing is required, MPCA regulations require that testing be done by accredited laboratories. *See* Minn. R. 7001.4330. The requirement that 3M use accredited laboratories to monitor these analytes is not arbitrary or capricious.

Third, 3M argues that it has no control over its contracted laboratories' accreditation decisions, potentially requiring 3M to use a "non-preferred" laboratory that receives accreditation before 3M's own internal laboratories. 3M argues that this creates a "serious risk of noncompliance" if the outside laboratory has limited availability or delays in turn-around time. But MPCA specifically addressed these concerns by 3M, stating that "[i]f a situation materializes where a lack of certified/accredited laboratories creates sample turnaround time issues, the existing permit language allows MPCA to approve, in writing, temporary relief from this requirement." As for why the permit includes a preference for outside laboratories to 3M's internal laboratories, MPCA explained its hesitation to rely on 3M's internal laboratories for testing after an incident in which 3M failed to perform the proper analysis for PFAS analytes in 2023. Requiring 3M to use the first laboratory that gets accredited, regardless of whether it is internal or external, is not arbitrary or capricious.

3M has not shown any error in the accreditation condition's requirement that 3M use accredited laboratories or laboratories seeking accreditation to conduct its analyses. The accreditation condition is not arbitrary or capricious.

III. Thermal-Load Condition

The thermal-load condition states:

> The thermal load of the discharge shall not increase the temperature of the receiving water more than five degrees Fahrenheit above the ambient temperature, based on the calendar month average of the maximum daily temperature.

3M argues that this condition must be vacated because it is an end-result condition and MPCA lacks the authority to impose an end-result condition under the United States Supreme Court's decision in *City of San Francisco v. Environmental Protection Agency*, 604 U.S. 334 (2025).

In *San Francisco*, the Supreme Court addressed whether two conditions in a NPDES permit were authorized under section 1311(b)(1)(C) of the CWA. 604 U.S. at 345-52. The Court labelled these provisions "end-result" requirements because they "do not spell out what a permittee must do or refrain from doing; rather, they make a permittee responsible for the quality of the water in the body of water into which the permittee discharges pollutants." *Id.* at 338. The Court then reviewed the language of the CWA provision, the history of federal water-pollution legislation, and the context of the overall statutory scheme, *id.* at 345-52, concluding that, under section 1311(b)(1)(C), the EPA cannot "simply tell[] a permittee that a particular end result must be achieved and that it is up to the permittee to figure out what it should do." *Id.* at 346. It concluded "that § 1311(b)(1)(C)

does not authorize the EPA to include 'end-result' provisions in NPDES permits." *Id.* at 355.

MPCA argues that 3M's challenge to the thermal-load condition under *San Francisco* is forfeited because the issue was not first presented to MPCA. It also argues that, if the issue is not forfeited, the thermal-load condition is not an end-result requirement and that, even if it were, Minnesota law independently authorizes MPCA to issue end-result requirements.

The *San Francisco* decision was issued on March 4, 2025, during 3M's application process for the permit. 3M did not raise any challenge to the draft permit based on *San Francisco*, and MPCA issued the final permit on June 1, 2025. Generally, questions not raised to a district court are forfeited on appeal. *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988). But this rule is not "ironclad." *Putz v. Putz*, 645 N.W.2d 343, 350 (Minn. 2002). In determining a disposition on appeal, this court may "take any other action as the interest of justice may require." Minn. R. Civ. App. P. 103.04. "Factors favoring review include: the issue is a novel legal issue of first impression; the issue was raised prominently in briefing; the issue was 'implicit in' or 'closely akin to' the arguments below; and the issue is not dependent on any new or controverted facts." *Blakey v. Jones*, 997 N.W.2d 67, 72 (Minn. 2023) (quotation omitted).

3M argues that, even though it did not raise the issue to MPCA before the permit was issued, we should nonetheless consider it because the question is purely legal, has been adequately briefed by both parties, presents a novel legal issue, and is decisive of the issue. *See id.* 3M also notes that MPCA has made its views clear on appeal, so remanding to the

agency would be pointless. MPCA counters that, given 3M's failure to raise the issue before MPCA, a record of decision was not established. It argues that we therefore should reject the issue as forfeited.

We decline to conclude that the issue is forfeited, as MPCA would have us do. We also decline to consider the issue on the merits, as 3M urges. Instead, we conclude that the issue should be remanded for MPCA to address the thermal-load condition and whether it is affected by *San Francisco*. *See U.S. Steel Corp.*, 954 N.W.2d at 583 (directing this court to remand the matter to MPCA in light of intervening United States Supreme Court precedent). What conditions should be included in a state-issued permit is within MPCA's jurisdiction. *See* Minn. Stat. § 115.03. Thus, this issue is first and foremost "administrative in character" and warrants caution in respect of the separation of powers. *Herbst*, 256 N.W.2d at 824. MPCA should be given a chance to develop a record of decision on whether the thermal-load condition should be included in the permit after the Supreme Court's decision in *San Francisco*.

Because we remand this issue, we do not decide whether the thermal-load condition is an end-result requirement prohibited by *San Francisco*. We also discern nothing in the record that indicates that MPCA imposed the thermal-load condition pursuant to Minnesota law and therefore decline to address MPCA's argument that it was independently authorized by state law.

* * *

In sum, we reverse and remand this matter for MPCA to address (1) the PFAS-testing condition with respect to analytes for which there are no currently available test methods and (2) the thermal-load condition.

Reversed and remanded.