

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A25-1249**

Alter Trading Corporation d/b/a Alter Metal Recycling,
Relator,

vs.

Minnesota Pollution Control Agency,
Respondent.

**Filed April 20, 2026
Affirmed in part and appeal dismissed in part
Bratvold, Judge**

Minnesota Pollution Control Agency

Ian A. J. Pitz, Michael Best & Friedrich LLP, Madison, Wisconsin; and

Ena M. Allen, Michael Best & Friedrich LLP, Milwaukee, Wisconsin (for relator)

Keith Ellison, Attorney General, Oliver J. Larson, Jordan Asch, Assistant Attorneys
General, St. Paul, Minnesota (for respondent)

Considered and decided by Ross, Presiding Judge; Bratvold, Judge; and Cleary,
Judge.*

NONPRECEDENTIAL OPINION

BRATVOLD, Judge

In this appeal by writ of certiorari, relator challenges a determination by respondent
state agency that relator is ineligible for a particular type of air emissions permit for its

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

facility; the agency also requested that relator apply for a different type of air emissions permit. Relator seeks review of two agency decisions: the denial of relator's request to reconsider the ineligibility decision and the agency's "withdrawal" of relator's new application for its preferred permit. Because the agency's denial of relator's request to reconsider was not a final agency decision, we dismiss the appeal in part. And because the agency's withdrawal of relator's permit application is supported by substantial evidence and not legally erroneous and any claimed legal error is not prejudicial to relator, we affirm in part.

FACTS

Relator Alter Trading Corporation, d/b/a Alter Metal Recycling, has a scrap and waste material recycling facility in Anoka. Since 2008, Alter has operated the facility under an option D permit from respondent Minnesota Pollution Control Agency (MPCA).¹ The parties dispute whether Alter's facility continues to qualify for an option D permit.

In an April 2025 letter, MPCA notified Alter of its determination that the Anoka facility "no longer qualifie[d]" for an option D permit (April notice). MPCA explained that it had "determined that site-specific requirements are needed to ensure [Alter's] compliance" with federal and state air quality standards. MPCA noted that emissions of volatile organic compounds—one of the pollutants regulated through MPCA air emissions permitting—"are variable depending on the number of end-of-life vehicles . . . that are

¹ MPCA issues operating permits for air pollution emissions. *See generally* Minn. R. ch. 7007 (2025). Regulated parties that meet certain criteria may apply for one of several less stringent "registration" permits, including an option D permit. Minn. R. 7007.1110-1130 (2025).

processed” at Alter’s facility. MPCA also observed that the “shredder grate size affects emissions, and a registration permit cannot specify the size of the grate used nor can it prohibit [Alter] from using a different sized grate.” MPCA concluded that, because “neither of the above [two] items can be enforced by a registration permit,” Alter’s Anoka facility “no longer qualifies for an Option D Registration Permit.”

The April notice also included a “request for a different permit application” and stated that, within 120 days, Alter must submit, among other things, “an application for a total facility individual air permit pursuant to Minn. R. 7007.0200 to 7007.0250, as applicable, for the Alter Metal Recycling-Anoka facility” (individual permit). MPCA also stated that, if Alter “fail[s] to submit the required permit application in the time required [by rule], the owners and operators lose their right to operate” the facility.

Alter responded to the April notice in two ways.

First, Alter submitted a new application for an option D permit, dated June 24, 2025. Alter stated that the application was “in partial response” to MPCA’s April notice. Alter explained that the “purpose of this submittal is to provide new site-specific emission factor information, clarify compliance demonstration methods, and reaffirm the ability for the facility to comply with the requirements of the Option D Registration permit.”

MPCA responded, stating that “the Option D Issuance application” for Alter’s Anoka facility was “being withdrawn” because the “facility has an Option D permit issued on 12/30/2008” (application-withdrawal decision).

Second, Alter submitted a “Request for Reconsideration” of the April notice, dated June 25, 2025. The reconsideration request stated that “Alter respectfully disagrees with

MPCA’s conclusions and the asserted need for a different application.” Alter included a memorandum arguing that its Anoka facility qualified for an option D permit.

MPCA responded, stating that “MPCA has considered and is denying your request to rescind the permit application request” (reconsideration-denial decision).

Alter petitioned for a writ of certiorari on August 1, 2025.

DECISION

Alter seeks review of two MPCA decisions: the denial of its request to reconsider the April notice and the withdrawal of Alter’s new option D permit application. Alter did not petition for certiorari as to the April notice, and its opening brief does not ask us to review the April notice.

In response to MPCA’s statement of the case filed pursuant to Minn. R. Civ. App. P. 133.03, Alter’s opening brief argues that this court has subject matter jurisdiction over the two MPCA decisions identified in its certiorari petition.² Alter contends that both decisions were final and thus are properly before this court.³ Alter specifically describes

² MPCA’s statement of the case suggested that it would challenge the timeliness of Alter’s appeal. *See* Minn. Stat. § 14.63 (2024) (stating that a petition for a writ of certiorari for judicial review of an agency decision “must be filed with the court of appeals . . . not more than 30 days after the party receives the final decision and order of the agency”). In its brief submitted to this court, MPCA argues that Alter’s petition was not timely as to the April notice. Because Alter does not seek review of the April notice, we need not consider MPCA’s timeliness argument.

³ Alter argues that the April notice was not a final, appealable decision because MPCA failed to provide Alter notice of its “right of review” for a permit revocation under Minn. R. 7001.0190, subp. 4 (2025). In response, MPCA contends that the April notice did not “revoke” Alter’s option D permit and the notice requirement under rule 7001.0190 “does not apply.” As explained *supra* note 2, we need not resolve this dispute.

MPCA’s application-withdrawal decision as a denial of “Alter’s renewed application for an option D permit.” MPCA responds that its reconsideration-denial decision was not a final agency decision but agrees with Alter that MPCA’s application-withdrawal decision is properly before this court.

We review our subject matter jurisdiction de novo. *Lancaster v. Dep’t of Hum. Servs.*, 18 N.W.3d 80, 83 (Minn. 2025) (discussing appealability of a decision by writ of certiorari as “a question of subject matter jurisdiction” that appellate courts review de novo). This court’s certiorari jurisdiction is “governed by the applicable statute.” Minn. R. Civ. App. P. 115.01. Minnesota Statutes section 115.05, subdivision 11 (2024), which authorizes judicial review of MPCA permitting decisions, provides that any aggrieved party may obtain judicial review of a “final decision of the agency.” *See also State ex rel. Mosloski v. County of Martin*, 80 N.W.2d 637, 639 (Minn. 1957) (“[C]ertiorari will not ordinarily lie unless there is a final determination of rights.”). Thus, we consider whether MPCA’s reconsideration-denial and application-withdrawal decisions are final agency decisions.

MPCA’s Reconsideration-Denial Decision

The supreme court’s decision in *Lancaster* guides our analysis of MPCA’s reconsideration-denial decision. In *Lancaster*, the supreme court concluded that an agency correction order directing the relator to “fix” violations in his home, where he provided adult foster-care services, was *not* appealable by writ of certiorari because it did not “bind and irrevocably fix the legal rights of a license holder.” 18 N.W.3d at 81-82, 85-86. The supreme court observed that a “correction order does not suspend or revoke a license or

otherwise subject a license holder to sanctions” but instead gives notice that a license-holder’s failure to address issues raised in the order could “lead to licensing sanctions.” *Id.* at 84. The supreme court reasoned that, “[b]ecause a correction order creates a *mere possibility of future sanctions*, it does not have a *binding effect* on a provider’s legal rights such that they are *irrevocably fixed*.” *Id.* at 85 (emphasis added). The supreme court also noted that the merits of the correction order could be challenged later if the conditions alleged in the correction order led to sanctions. *Id.*

We acknowledge some differences between the analysis in *Lancaster* and the analysis here. The supreme court in *Lancaster* analyzed whether an agency correction order was appealable by writ of certiorari by determining whether it was a quasi-judicial decision. *Id.* at 83. To do so, the supreme court applied three indicia, stating that “all three” of the indicia “must exist for certiorari review.” *Id.*

By contrast, here, we apply the statutory provision for judicial review of agency permitting decisions set out in section 115.05, subdivision 11. But the third indicium of a quasi-judicial decision, as applied in *Lancaster*, is helpful because it requires consideration of whether the agency decision was binding. *Id.* at 83-85 (explaining that the third requirement for a “binding decision” requires “some element of finality such that the rights of the parties are *irrevocably fixed* by the final decision” (quotation omitted)). We conclude that the third indicium discussed in *Lancaster* is analogous to section 115.05, subdivision 11’s provision that judicial review is available for a “final decision of the agency.” Therefore, the supreme court’s reasoning on the third indicium in *Lancaster* guides our analysis.

Like the correction order in *Lancaster*, the reconsideration-denial decision did not have a “binding effect on” or “irrevocably fix” Alter’s legal rights because MPCA imposed no sanctions or similar consequences. 18 N.W.3d at 85. Just as the correction order in *Lancaster* created a “mere possibility of future sanctions,” MPCA’s reconsideration-denial decision raised the “mere possibility of future” consequences for Alter. *Id.* MPCA’s reconsideration-denial decision referred to the April notice, which stated that Alter’s failure to timely “submit the required permit application” would cause Alter to “lose [its] right to operate” and to “be considered in violation of Minn. R. 7007.0150, subp. 1.”

But MPCA’s reconsideration-denial decision did not revoke Alter’s option D permit and actually *extended* the deadline for Alter to submit the individual permit application required by the April notice. And like the relator in *Lancaster*, Alter can challenge any future consequences should they occur. For example, if MPCA imposes sanctions, revokes Alter’s option D permit, or takes other final action based on the April notice and reconsideration-denial decision, judicial review is available as provided in section 115.05, subdivision 11. Because MPCA’s reconsideration denial was not a “final decision of the agency,” certiorari review of that decision is unavailable, and we dismiss it from this appeal.

MPCA’s Application-Withdrawal Decision

MPCA does not dispute that certiorari review is available for its application-withdrawal decision, and we agree. MPCA’s application withdrawal was a final agency decision because MPCA “complete[d] its decisionmaking process” as to the option D permit application and “the result of that process directly affect[ed]” Alter. *See*

Contel of Minn., Inc. v. Minn. Pub. Utils. Comm’n (In re Investigation into Intra-LATA Equal Access & Presubscription), 532 N.W.2d 583, 588 (Minn. App. 1995) (stating that “[a]gency action is final and reviewable when the agency completes its decisionmaking process and the result of that process directly affects a party”), *rev. denied* (Minn. Aug. 30, 1995). Therefore, we consider the merits of Alter’s challenge to MPCA’s application-withdrawal decision.

This court’s scope of review for a final agency decision is set out in Minnesota Statutes section 14.69(a)-(e) (2024). *See* Minn. Stat. § 115.05, subd. 11 (providing for judicial review of final MPCA decisions “pursuant to [Minnesota Statutes] sections 14.63 to 14.69”). As is relevant here, “[a]n agency’s [permitting] decision may be reversed if it is determined to be unsupported by substantial evidence, arbitrary or capricious, or affected by other error of law.” *City of Minneapolis v. State, Minn. Pollution Control Agency (In re Am. Iron & Supply Co.’s Proposed Metal Shredding Facility)*, 604 N.W.2d 140, 149 (Minn. App. 2000) (citing Minn. Stat. § 14.69). Appellate courts may reverse or modify an erroneous agency decision if “the substantial rights of the petitioners may have been prejudiced.” Minn. Stat. § 14.69. Alter, as the party challenging an agency decision, bears the burden of establishing error on appeal. *In re Rev. of 2005 Ann. Automatic Adjustment*, 768 N.W.2d 112, 118 (Minn. 2009).

MPCA’s application-withdrawal decision stated that the “reason the application is being withdrawn is [Alter’s] facility has an option D permit issued on 12/30/2008.” Alter asserts that MPCA’s decision “to ‘withdraw’ the application was arbitrary, capricious and

unsupported by substantial evidence” and “affected by [an] error of law.” Alter fails, however, to establish error.

First, Alter cites rule 7007.1110, subpart 5, which requires MPCA to “issue” or “deny” a permit. But the rule does not require MPCA to consider an application for an option D permit that Alter already holds. Because Alter does not provide authority showing that it had a right to MPCA review of its new option D permit application, it has not met its burden to show an error and prejudice. *See* Minn. Stat. § 14.69 (requiring prejudice to reverse or modify an agency decision).

Second, substantial evidence shows that Alter had an option D permit when MPCA withdrew Alter’s option D permit application. *In re NorthMet Project Permit to Mine Application*, 959 N.W.2d 731, 749 (Minn. 2021) (defining substantial evidence in review under section 14.69 as “relevant evidence that a reasonable mind might accept as adequate to support a conclusion” (quotation omitted)). Indeed, Alter’s option D permit is in the administrative record and plainly states that it is “considered not to expire until a new permit is issued.”

Alter argues otherwise, first maintaining that the application-withdrawal decision “ignores the fact that,” in the April notice, MPCA “declared” that the Anoka facility “no longer qualifies” for an option D permit. We are not persuaded. The April notice set a 120-day deadline for Alter to apply for an individual permit and did not revoke or set a date for termination of Alter’s option D permit. Thus, Alter’s option D permit was still in effect at the time of MPCA’s application-withdrawal decision.

Second, even assuming, without deciding, that MPCA erred by withdrawing, rather than denying, Alter’s permit application, Alter was not prejudiced because this court would apply the same analysis in reviewing a denial as it has applied herein to the withdrawal. *See* Minn. Stat. § 14.69 (allowing reviewing courts to reverse or modify an agency decision “if the substantial rights of the petitioners may have been prejudiced” by an erroneous decision).

Finally, Alter maintains that its option D permit application was “the appropriate means” to challenge MPCA’s adverse eligibility decision in the April notice and to present MPCA “with new information.” We disagree. As discussed above, if MPCA takes final action that binds and irrevocably fixes Alter’s rights, Alter may petition for a writ of certiorari. *See Lancaster*, 18 N.W.3d at 85.⁴

Affirmed in part and appeal dismissed in part.

⁴ Citing Minn. R. Civ. App. P. 128.05, Alter submitted as supplemental authority an order from an administrative law judge (ALJ). The ALJ ordered MPCA to “cease and desist from requiring current holders of registration permit option D to request new kinds of permits absent one of the permissible determinations under Minn. R. 7007.1110, subp. 16.” An appeal of the ALJ’s order is currently pending before this court. *In re Petition of Upper Midwest Chapter of Recycled Materials Ass’n*, No. A26-0236 (Minn. App. Feb. 19, 2026) (order).