

STATE OF MINNESOTA  
IN SUPREME COURT

A18-2094  
A18-2095  
A18-2159  
A18-2163

Court of Appeals

Thissen, J.

In the matter of the reissuance of an NPDES/SDS Permit to United States Steel Corporation (U.S. Steel) for its Minntac facility and response to Contested Case Hearing requests filed by U.S. Steel and the Minnesota Center for Environmental Advocacy (“MCEA”)

Filed: February 10, 2021  
Office of Appellate Courts

And

In the matter of the Application for Variance from Water Quality Standards in the proposed NPDES/SDS permit, MPCA’s Preliminary Determination to Deny the Variance Request and U.S. Steel’s Contested Case Hearing request on the Variance denial.

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## S Y L L A B U S

The Minnesota Pollution Control Agency properly exercised its authority by applying the Class 1 secondary drinking water standards to a National Pollutant Discharge Elimination System/State Disposal System permit issued to United States Steel Corporation.

Reversed and remanded.

## O P I N I O N

THISSEN, Justice.

In this case, we must determine whether groundwater is a Class 1 water under Minnesota law and therefore subject to the secondary drinking water standards, including a sulfate standard of 250 milligrams per liter (mg/L), promulgated by the United States Environmental Protection Agency (EPA).<sup>1</sup>

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<sup>1</sup> We also granted review on the question of whether the federal Clean Water Act (CWA) governs discharges from a point source into groundwater. On April 23, 2020, the Supreme Court of the United States decided *County of Maui v. Hawaii Wildlife Fund*, holding that the CWA requires a federal permit “if the addition of . . . pollutants through groundwater is the functional equivalent of a direct discharge from the point source into navigable waters.” \_\_ U.S. \_\_, 140 S. Ct. 1462, 1468 (2020). In light of *County of Maui*, all of the parties agree that the court of appeals’ decision that the CWA does not regulate

Appellant Minnesota Pollution Control Agency (MPCA) issued a National Pollutant Discharge Elimination System/State Disposal System permit (the 2018 Permit) to respondent United States Steel Corporation (U.S. Steel) in 2018. The 2018 Permit governs U.S. Steel's Minntac Tailings Basin Area in Mountain Iron and sets a groundwater sulfate limit of 250 mg/L at the facility's boundary, which U.S. Steel must meet by 2025.

U.S. Steel argues that the MPCA did not have authority to impose the 250 mg/L sulfate standard in the 2018 Permit because the EPA's secondary drinking water standards apply only to bodies of water classified as "Class 1 waters" and groundwater is not classified as Class 1. In response, the MPCA and appellants WaterLegacy and Fond du Lac Band of Lake Superior Chippewa argue that groundwater is a Class 1 water to which the secondary drinking water standards apply.

We conclude that groundwater is a Class 1 water under Minnesota law. Accordingly, we hold that the MPCA correctly exercised its authority by applying the Class 1 secondary drinking water standards to the 2018 Permit. We therefore reverse the decision of the court of appeals on this issue and remand the case to the court of appeals for further proceedings.

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discharges from a point source into groundwater was incorrect. *In re Reissuance of NPDES/SDS Permit to U.S. Steel Corp.*, 937 N.W.2d 770, 782 (Minn. App. 2019). Accordingly, we hold that the Minnesota Pollution Control Agency (MPCA) erred by interpreting the CWA as not governing discharges from a point source into groundwater. We therefore reverse the court of appeals' decision that upheld the MPCA's interpretation.

## FACTS

U.S. Steel processes taconite at its Minntac Taconite Facility in St. Louis County. Taconite is a raw form of iron ore that U.S. Steel refines to produce high-grade iron ore pellets later used to make steel. During the refining process, 70 to 72 percent of ore mined becomes waste, known as “tailings.”

Tailings are stored in a tailings basin, which is not lined. The taconite mining and refining process produces a significant amount of wastewater, most of which goes directly into the tailings basin.<sup>2</sup> This wastewater contains various chemical constituents, including sulfate. Because the basin is unlined, some of the stored wastewater leaks into the surrounding surface waters and groundwater. For example, in 2018, U.S. Steel estimated that approximately 2,000 gallons per minute of wastewater seeped from the tailings basin directly into local groundwater.

The MPCA first issued a National Pollutant Discharge Elimination System/State Disposal System (NPDES/SDS) permit covering the Minntac Tailings Basin Area facility (the Facility) in 1987 (the 1987 Permit). The 1987 Permit expired in 1992, but U.S. Steel continued to operate the Facility until 2018 pursuant to Minn. R. 7001.0160 (2019), which, subject to exceptions not at issue here, allows a permit holder to continue its permitted activity until the MPCA takes final action on the holder’s application for reissuance of the permit. When issuing the 1987 Permit, the MPCA expressed concern about the discharge of sulfate from the tailings basin into surrounding waters and imposed a permit condition

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<sup>2</sup> According to the MPCA’s findings in issuing the 2018 Permit, at least 36,800 gallons of wastewater are discharged into the tailings basin every minute.

“requiring U.S. Steel to develop a plan to study the sources of sulfate” in the tailings basin. Over the years of the Facility’s operation, the MPCA has continued to express concern that sulfate concentrations in the tailings basin and surrounding waters have been increasing substantially.

In 2000, the MPCA issued a warning letter to U.S. Steel, highlighting elevated levels of sulfate in the waters surrounding the Facility. U.S. Steel and the MPCA subsequently entered into a series of compliance schedules over the next decade designed to reduce sulfate levels in local groundwater. However, sulfate levels have continued to increase since then, despite U.S. Steel’s 2010 installation of a “Seep Collection and Return System” on one side of the tailings basin designed to capture and return wastewater seepage. As of 2018, U.S. Steel reported groundwater sulfate levels ranging between 585 mg/L and 928 mg/L at various collection points surrounding the Facility.

Following a notice and comment period that began in December 2014, the MPCA issued the 2018 Permit. The 2018 Permit requires U.S. Steel to meet a sulfate limit of 250 mg/L in groundwater at the Facility’s boundary by 2025. It also requires U.S. Steel to reduce sulfate levels in the tailings basin itself to 357 mg/L by 2028. The 250 mg/L sulfate standard applied by the MPCA is set out in secondary drinking water standards promulgated by the EPA, *see* 40 C.F.R. § 143 (2020), which are incorporated by reference into Minnesota law, *see* Minn. R. 7050.0220–.0221 (2019).

U.S. Steel challenged certain groundwater pollutant limits imposed by the 2018 Permit in the court of appeals.<sup>3</sup> The court of appeals held that the Class 1 secondary drinking water standards do not apply to groundwater because the relevant regulations “unambiguously do not classify groundwater” as a Class 1 water. *In re Reissuance of NPDES/SDS Permit to U.S. Steel Corp.*, 937 N.W.2d 770, 785 (Minn. App. 2019). We granted review.

### ANALYSIS

The issuance of the 2018 Permit is a contested agency decision. In reviewing such decisions, we may “affirm the decision of the agency or remand the case for further proceedings; or [we] may reverse or modify the decision” if made “in excess of the statutory authority or jurisdiction of the agency.” Minn. Stat. § 14.69 (2020).

Whether the MPCA had the authority to impose a 250mg/L sulfate standard in the 2018 Permit turns on the interpretation of chapter 115 of the Minnesota Statutes and chapters 7050 and 7060 of the Minnesota Rules. The interpretation of statutes and administrative regulations presents a question of law which we review de novo. *Cocchiarella v. Driggs*, 884 N.W.2d 621, 624 (Minn. 2016); *J.D. Donovan, Inc. v. Minn. Dep’t of Transp.*, 878 N.W.2d 1, 5 (Minn. 2016).

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<sup>3</sup> U.S. Steel also sought review in the court of appeals of the MPCA’s denial of its request for a contested case hearing on the permit and for a variance from groundwater quality standards. Because the court of appeals held that groundwater is not subject to the 250mg/L sulfate standard, it did not reach the contested case hearing and variance issues. *U.S. Steel*, 937 N.W.2d at 785. We too do not reach these issues. Rather, because we hold that the 250 mg/L sulfate standard applies, we remand to the court of appeals to address whether U.S. Steel is entitled to a contested case hearing or a variance.

When interpreting statutes and regulations, we apply our familiar rules. When the language is plain and unambiguous, we follow that plain language. *Vill. Lofts at St. Anthony Falls Ass’n v. Hous. Partners III-Lofts, LLC*, 937 N.W.2d 430, 435 (Minn. 2020). But if the language of a statute is subject to more than one reasonable interpretation, we “may resort to the canons of statutory construction to determine its meaning.” *500, LLC v. City of Minneapolis*, 837 N.W.2d 287, 290 (Minn. 2013).

“Like statutes, administrative regulations are governed by general rules of construction.” *White Bear Lake Care Ctr., Inc. v. Minn. Dep’t of Pub. Welfare*, 319 N.W.2d 7, 8 (Minn. 1982). “[W]hen the language of the regulation is clear and capable of understanding,” we do not defer to an agency’s interpretation and may substitute our own judgment for that of the agency. *In re Cities of Annandale & Maple Lake NPDES/SDS Permit Issuance (Annandale)*, 731 N.W.2d 502, 515 (Minn. 2007). However, “when the relevant language of the regulation” is ambiguous, we will defer to the agency’s interpretation and “will generally uphold that interpretation if it is reasonable.” *Id.* When ambiguity exists, we consider several factors to determine whether the agency’s interpretation is reasonable, including the nature of the regulation at issue and the agency’s expertise and judgment in relation to the subject matter of the regulation. *See In re Alexandria Lake Area Sanitary Dist. NPDES/SDS Permit No. MN0040738 (Alexandria)*, 763 N.W.2d 303, 312–13 (Minn. 2009).

#### A.

As an initial matter, we provide some background on the relevant regulatory framework. The Clean Water Act (CWA) aims to “restore and maintain . . . the integrity

of the Nation’s waters.” 33 U.S.C. § 1251(a). Although a federal law, the CWA recognizes the “primary responsibilities and rights of States to prevent, reduce, and eliminate pollution.” 33 U.S.C. § 1251(b). Accordingly, under the Minnesota Water Pollution Control Act, Minn. Stat. §§ 115.01–.09 (2020), the MPCA has the authority to “administer and enforce all laws relating to the pollution of any waters of the state,” including the authority to issue permits requiring compliance with the CWA. Minn. Stat. § 115.03, subd. 1(a), (e).

The CWA prohibits “the discharge of any pollutant” without a permit. 33 U.S.C. § 1311(a). The relevant permitting scheme for the Facility is the National Pollutant Discharge Elimination System (NPDES) program, which provides for the issuance of permits allowing holders to discharge pollutants if they meet all applicable requirements. 33 U.S.C. § 1342(a)(1). The CWA also provides for the development of state permitting programs in conjunction with the NPDES program, subject to approval by the EPA. 33 U.S.C. § 1342(b).

The MPCA administers the NPDES program in Minnesota. Minn. Stat. § 115.03, subd. 5. NPDES permits issued by the MPCA must conform to state statutory and regulatory standards. 40 C.F.R. §§ 122.43(b)(1), .44 (2020). The Water Pollution Control Act outlines the relevant state standards. For example, a party may not discharge pollutants “into the waters of the state until a written permit for the discharge is granted” by the MPCA. Minn. Stat. § 115.07, subd. 1(c). In conjunction with the NPDES program, the MPCA also administers a State Disposal System (SDS) permit program. *Id.* Persons who



must obtain both an NPDES and an SDS permit may receive a combined NPDES/SDS permit to satisfy all requirements. Minn. R. 7001.1010 (2019).

To protect Minnesota “waters of the state,” the MPCA groups designated waters into different classes. Minn. Stat. § 115.44, subd. 2. As required by the Water Pollution Control Act and CWA, the MPCA adopts and applies water quality and purity standards for each class of waters. Minn. Stat. § 115.44, subd. 4; 33 U.S.C. § 1313(c)(1)–(2) (requiring state pollution control agencies to periodically review and modify water quality standards, subject to EPA approval).

The MPCA’s water classification system and associated quality standards are outlined in chapter 7050 of the Minnesota Rules. *See* Minn. R. 7050.0110 (2019). The classifications may apply to both surface water and groundwater. *Id.*; Minn. R. 7050.0140 (2019). The chapter contains seven primary water classifications, ranging from Class 1 (intended for domestic consumption) to Class 7 (limited resource value waters). Minn. R. 7050.0140. Class 1 waters include “all waters of the state that are or may be used as a source of supply for drinking, culinary or food processing use, or other domestic purposes and for which quality control is or may be necessary to protect the public health, safety, or welfare.” Minn. R. 7050.0140, subp. 2. In conjunction with chapter 7050, Minnesota Rules chapter 7060 provides protections to “preserve and protect the underground waters of the state.” Minn. R. 7060.0100 (2019).<sup>4</sup>

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<sup>4</sup> The terms “underground water” and “groundwater” are used synonymously in these regulations and include any “water contained below the surface of the earth in the saturated zone.” Minn. R. 7060.0300, subp. 6 (2019).

Rule 7050.0220 expressly incorporates the EPA’s secondary drinking water standards (which include the 250 mg/L sulfate standard) into the standards for Class 1 waters, Minn. R. 7050.0220 subp. 2(A); 40 C.F.R. § 143.3. Rule 7050.0221 contains further detail on quality standards for Class 1 waters and again incorporates by reference the secondary drinking water standards. Minn. R. 7050.0221, subp. 1(A)–(B). This means that if groundwater is a Class 1 water, then groundwater must meet the 250 mg/L sulfate standard. No party disagrees with that conclusion.

B.

We next turn to the question of whether Minnesota Rules chapters 7050 and 7060 classify groundwater as a Class 1 water. When determining the meaning of administrative rules, “we interpret words and sentences in the light of their context and construe rules as a whole.” *In re Ali*, 938 N.W.2d 835, 838 (Minn. 2020) (citation omitted) (internal quotation marks omitted). After reading chapters 7050 and 7060 in context, considering the regulatory framework as a whole, we conclude that the rules are ambiguous because they can reasonably be read either to support or disprove groundwater’s classification as a Class 1 water.

As the court of appeals pointed out, one textual clue that reasonably supports an interpretation that chapters 7050 and 7060 do not classify groundwater as a Class 1 water is that those chapters never *expressly* state that groundwater is classified as a Class 1 water. *U.S. Steel*, 937 N.W.2d at 783. Notably, chapters 7050 and 7060 also do not expressly classify groundwater as belonging to any other primary class of water. Stated another way, the gap in the rules identified by the court of appeals is that chapters 7050 and 7060 do not

expressly place groundwater in any of the seven classes of water set forth in chapter 7050, *see* Minn. R. 7050.0140. The logical conclusion of the court of appeals’ reasoning, then, is that groundwater is not subject to *any* numeric standards set forth in chapter 7050.

Other textual clues in chapters 7050 and 7060, however, make clear that groundwater is subject to certain numeric standards in chapter 7050. First, Rules 7050.0130 to .0227—provisions that include the definition of and standards for Class 1 waters—“apply to all waters of the state, both surface and underground.” Minn. R. 7050.0110. Rule 7050.0110 is a straightforward statement that the numeric standards set forth in chapter 7050 (such as those applicable to Class 1 waters) can apply to groundwater.

Similarly, Rule 7050.0221 notes that its “numeric [including Class 1] and narrative water quality standards” broadly apply to “the waters of the state.” Minn. R. 7050.0221, subp. 1(A); *see also* Minn. R. 7050.0220, subp. 1 (“The numeric and narrative water quality standards in this chapter prescribe the qualities or properties of *waters of the state* that are necessary for the designated public uses and benefits.” (emphasis added)). Waters of the state include groundwater. Minn. Stat. § 115.01, subd. 22 (“ ‘Waters of the state’ means all streams, lakes[,] . . . and all other bodies or accumulations of water, surface or *underground*, natural or artificial, public or private, which are contained within . . . the state or any portion thereof.” (emphasis added)). These provisions generally contemplate that the classification rules for water, including the Class 1 standards, apply to surface water and groundwater alike.

Other parts of chapter 7050 also treat groundwater as subject to numeric standards, including the Class 1 standards specifically. For instance, Rule 7050.0221 applies the

EPA’s primary and secondary drinking water standards to Class 1 waters. Minn. R. 7050.0221, subp. 1(B). The rule then clarifies that some of the EPA drinking water “standards are not applicable to *class 1 groundwaters*.”<sup>5</sup> *Id.* (emphasis added). If, as U.S. Steel argues, groundwater is not subject to the numeric standards in chapter 7050, including the Class 1 standards, why would Rule 7050.0221 make exceptions for Class 1 groundwaters? *See J.D. Donovan, Inc.*, 878 N.W.2d at 7 n.4 (stating that we interpret a rule “in a way that gives effect to all of the rule’s provisions”).

Rule 7050.0221 also sets a specific standard for a subclass of Class 1 waters: “The quality of class 1A waters of the state shall be such that without treatment of any kind the raw waters will meet in all respects both the [EPA’s] primary . . . and secondary drinking water standards . . . .” Minn. R. 7050.0221, subp. 2. It then provides that “[t]hese standards will ordinarily be restricted to *underground waters* with a high degree of natural protection.” *Id.* (emphasis added); *see also* Minn. R. 7050.0221, subp. 3 (providing that another subclass of Class 1 waters—Class 1B—“will ordinarily be restricted to surface and *underground waters* with a moderately high degree of natural protection and apply to these waters in the untreated state” (emphasis added)). Once again, language in this rule restricting Class 1 standards to certain types of groundwater makes no sense if groundwater is not subject to the numeric standards in chapter 7050 which include the Class 1 standards.

Provisions in chapter 7060, which specifically govern groundwater, support the conclusion that groundwater is subject to the numeric standards and that groundwater fits

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<sup>5</sup> The standards exempted from application to Class 1 groundwaters do not include the 250 mg/L sulfate standard. Minn. R. 7050.0221, subp. 1(B).

most clearly in Class 1. The rules provide that “[i]t is the purpose of this chapter to preserve and protect the underground waters of the state by preventing any new pollution and abating existing pollution,” Minn. R. 7060.0100, and the policy of the agency is “to provide maximum protection to all underground waters,” Minn. R. 7060.0200 (2019). We read chapter 7060 with these regulatory objectives in mind. *See Annandale*, 731 N.W.2d at 517 (explaining that we interpret “the meaning assigned to . . . words or phrases in accordance with the apparent purpose of the regulation as a whole”).

Rule 7060.0200 expressly provides that Rules 7050.0100–.0220—provisions that include numeric water quality standards, including the general rules for Class 1 waters<sup>6</sup>—“apply to underground waters” and further states that “[w]here differences exist between parts 7050.0100 to 7050.0220 and this chapter, the more stringent of the conditions shall be construed to apply.” Minn. R. 7060.0200. The Class 1 classification, which contains the most stringent numeric standards intended to safeguard water for human consumption, provides maximum protection to waters of the state. *See* Minn. R. 7050.0140.0220–.0221.<sup>7</sup>

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<sup>6</sup> As previously noted, Rule 7050.0140, one of the rules incorporated by Rule 7060.0200, defines Class 1 waters as well as other classes of water. Rule 7050.0220, another of the incorporated rules that applies to groundwater, provides that “Class 1 domestic consumption standards are the [EPA’s] primary . . . and secondary drinking water standards” and further states that “[t]he drinking water standards not applicable to class 1 groundwaters are listed in part 7050.0221.” Minn. R. 7050.0220, subp. 2(A)–(B). It is reasonable to read Rules 7060.0200 and 7050.0220 together as providing that the Class 1 domestic consumption standards apply to groundwater as well.

<sup>7</sup> We recognize that Rule 7060.0200 incorporates only a subset of chapter 7050 (through Rule 7050.0220) and does not expressly incorporate Rules 7050.0221–.0227, which outline the specific quality standards for each class of waters. The more detailed standards for Class 1 waters are included in Rule 7050.0221 which is not incorporated.

This suggests that a reasonable reading of chapters 7050 and 7060 is that groundwater is properly classified as a Class 1 water.

Further, chapter 7060 makes clear that the highest priority use for groundwater is “as a source of drinking, culinary, or food processing water.” Minn. R. 7060.0400 (2019). And in light of “the policy of the agency to consider the actual or potential use of the underground waters for potable water supply as constituting the highest priority use and as such to provide maximum protection to all underground waters,” Minn. R. 7060.0200, the agency classified all groundwater “for use as potable water supply,” Minn. R. 7060.0400. “Potable water” means “water which is or may be used as a source of supply for human consumption including drinking, culinary use, food processing, and other similar purposes, and which is suitable for such uses in its untreated state or when treated using generally recognized treatment methods.” Minn. Stat. § 115.01, subd. 14.

These standards for groundwater in chapter 7060 look strikingly similar to the definition of Class 1 waters in chapter 7050: “[A]ll waters of the state that are or may be used as a source of supply for drinking, culinary or food processing use, or other domestic purposes and for which quality control is or may be necessary to protect the public health, safety, or welfare.” Minn. R. 7050.0140, subp. 2. The overlap between the classification of groundwater in chapter 7060 as potable water with a highest priority use as a source of

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Thus, the incorporation language in Rule 7060.0200, which includes reference to some Class 1 standards (including the secondary drinking water standards), but not other Class 1 standards, creates textual confusion. As we discuss below, however, the language in Rule 7060.0200 that Rules “7050.0100 to 7050.0220 also apply to underground waters” makes more sense in view of the historical evolution of the rule.

drinking, culinary, or food processing water and the definition of Class 1 waters as a source of supply for drinking, culinary, or food processing use is another strong signal that groundwater is reasonably classified as a Class 1 water.

As U.S. Steel points out, however, the overlap between the definition of potable water and the definition of Class 1 waters is not precise. In particular, the statutory definition of potable water does not incorporate the EPA's drinking water standards. Minn. Stat. § 115.01, subd. 14. Consequently, a water source could be potable (i.e., safe for human consumption) even if it violates some Class 1 numeric standards. Indeed, the EPA regulations that establish the secondary drinking water standards (including the sulfate standard) state that they are intended to "control contaminants in drinking water that primarily affect the aesthetic qualities relating to the public acceptance of drinking water" rather than address concerns about human health. 40 C.F.R. § 143.1 (noting that contaminants included in the secondary drinking water standards may have health implications at "considerably higher concentrations"). Moreover, unlike the mandatory maximum allowable contaminant levels for various pollutants set forth in the primary drinking water standards, the secondary standards are nonbinding at the federal level and intended primarily as guidance for states. *Compare* 40 C.F.R. § 141.3 (2020), *with* 40 C.F.R. § 143.1. If drinking water exceeding the secondary standards set out in 40 C.F.R. § 143.3 in any quantity posed an immediate threat to human health and rendered the water nonpotable, the EPA would not have framed those standards as recommendations focused primarily on the aesthetic qualities of water.

Because water that exceeds the secondary drinking water standards may in some cases still amount to potable water that is safe for human consumption, we conclude that groundwater's classification "for use as potable water supply," Minn. R. 7060.0400, does not definitively mean that all groundwater is classified as Class 1, even if both definitions employ the same "drinking, culinary or food processing" language. *See* Minn. R. 7050.0140, subp. 2; Minn. Stat. § 115.01, subd. 14.

In summary, the fact that chapters 7050 and 7060 do not expressly define groundwater as a Class 1 water and the lack of a precise overlap between the definition of Class 1 waters in Rule 7050.0140 and the classification of groundwater in Rule 7060.0400 provide a reasonable basis to conclude that groundwater is not classified as a Class 1 water under chapters 7050 and 7060. On the other hand, the frequent references to Class 1 groundwaters in chapter 7050, the provisions in chapter 7060 that require groundwater to be protected at the maximum level and direct that the more stringent of competing standards under chapters 7050 and 7060 apply, and significant language overlap between the definitions of Class 1 waters and potable water also support a reasonable textual interpretation of chapters 7050 and 7060 as classifying all groundwater as a Class 1 water despite the lack of an express statement stating as much.

Because the text of chapters 7050 and 7060 can be reasonably read as supporting both an interpretation that groundwater is classified as a Class 1 water and an interpretation that groundwater is not so classified, we conclude that the regulations are ambiguous.



### C.

Having concluded that the text of chapters 7050 and 7060 does not clearly answer whether groundwater is classified as Class 1 water, we turn to other tools of construction to determine whether the MPCA's interpretation of these ambiguous regulations is reasonable. *See Annandale*, 731 N.W.2d at 516. Applying those tools of construction, we hold that groundwater is a Class 1 water under Minnesota law.

First, the MPCA's interpretation of its own regulations that groundwater is a Class 1 water is entitled to "considerable deference." *St. Otto's Home v. Minn. Dep't of Hum. Servs.*, 437 N.W.2d 35, 40 (Minn. 1989). Such deference is particularly apt here because water pollution control and classification is a technical issue. *See Alexandria*, 763 N.W.2d at 313 (observing that we consider an agency's interpretation in light of the agency's technical expertise in relation to the subject matter of the regulation).

In addition, the MPCA's interpretation that groundwater is a Class 1 water "is one of long standing." *Resident v. Noot*, 305 N.W. 311, 312 (Minn. 1981); *see also Annandale*, 731 N.W.2d at 528 (Page, J., dissenting) ("[D]eference may be justified because longstanding and consistent interpretations may have encouraged reliance by the public . . ."). Since at least 1993, the MPCA (under a variety of administrations) has unequivocally and consistently stated in Statements of Need and Reasonableness (SONARs) that groundwater is a Class 1 water. *See Citizens Advocating Responsible Dev.*

*v. Kandiyohi Cnty. Bd. of Comm'rs (CARD)*, 713 N.W.2d 817, 830 (Minn. 2006) (relying on agency SONARs as evidence of regulatory intent).<sup>8</sup>

In a 1993 SONAR, the MPCA stated that “[g]round waters (Class 1) are protected for just one beneficial use, drinking water, and only the drinking water standards apply to ground waters.” 1993 SONAR 49 (Apr. 1993). A 2006 SONAR highlighted that chapter 7050 “contains statewide provisions that protect Minnesota’s surface and ground water resources from pollution” before going on to state that “all ground water is protected for just one use, as an actual or potential source of drinking water (Class 1).” 2006 SONAR 1, 3 (May 2006). More recently, in a 2014 SONAR, the MPCA stated that “Minn. R. ch. 7050 addresses drinking water use through the Class 1 Domestic Consumption (DC) designation. Class 1 applies to all groundwater and specified surface waters.” 2014 SONAR 5 (June 2014); *see also* 2007 SONAR 6 (July 2007) (“In Minnesota all ground water is protected as an actual or potential source of drinking water (Class 1).”); 2013 SONAR 8 (Nov. 2013) (“In Minnesota all ground water is protected as an actual or potential source of drinking water (Class 1 Domestic Consumption).”).

This history makes clear that the MPCA interprets the rules to mean that all groundwater is Class 1 water and demonstrates that the MPCA has not suddenly or recently

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<sup>8</sup> Not all of the SONARs we cite here are part of the record on appeal; however, we are empowered to take judicial notice of public records and may “look beyond the record where the orderly administration of justice commends it.” *Eagan Econ. Dev. Auth. v. U-Haul Co. of Minn.*, 787 N.W.2d 523, 530 (Minn. 2010) (quoting *Crystal Beach Bay Ass’n v. County of Koochiching*, 243 N.W.2d 40, 43 (Minn. 1976)); *see also United Power Ass’n v. Comm’r of Revenue*, 483 N.W.2d 74, 77 n.3 (Minn. 1992) (taking judicial notice of an MPCA permit “as a matter of public record”).

shifted its interpretation of chapter 7050. To the contrary, the MPCA has maintained that chapter 7050 classifies groundwater as Class 1 for nearly three decades.

The evolution of chapters 7050 and 7060 also supports our holding that groundwater is classified as a Class 1 water. *See J.D. Donovan, Inc.*, 878 N.W.2d at 9–12 (examining the rulemaking record to determine agency intent); *CARD*, 713 N.W.2d at 828 (stating that we may use the legislative and rulemaking record to ascertain the agency’s intent).

As previously discussed, Rule 7060.0200 provides that Rules “7050.0100 to 7050.0220 also apply to underground waters.” That language has been in effect and unchanged since 1983 when Chapter 7060 was adopted as a recodification of its predecessor rule, WPC-22. Minn. R. 7060.0200 (1983).<sup>9</sup> Further, from 1983 to 1993, Rule 7050.0220 contained all numeric and narrative standards applicable to the seven water classifications set forth in chapter 7050, including the Class 1 secondary drinking water standards that today are included in Rule 7050.0221. Minn. R. 7050.0220 (1983). Put another way, when the MPCA adopted the language in Rule 7060.0200, the inclusion of Rule 7050.0220 meant that the entire numeric classification system of chapter 7050, including the 250 mg/L sulfate standard for Class 1 waters, applied to groundwater. That is a strong indication of the MPCA’s intent when it adopted the incorporation language in Rule 7060.0200.

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<sup>9</sup> WPC-22 contained similar language applying chapter 7050’s predecessor (WPC-14) to groundwater: “Regulation WPC 14 also applies to underground waters. Where differences exist between regulation WPC 14 and this regulation, the more stringent of the conditions shall be construed to apply.” WPC-22 (1982).

In 1993, the MPCA divided Rule 7050.0220 into eight new parts, one for each class of waters plus a revised version of Rule 7050.0220. 1993 SONAR 48–49 (Apr. 1993). The MPCA explained that “the proposed tables will make the rule easier to use and reduce the chances of making errors in selecting the correct standards for a particular surface water.” *Id.* at 49. When the MPCA made the changes to chapter 7050, however, it did not make conforming changes to the language of Rule 7060.0200 to reflect the 1993 amendments because, according to the MPCA, it “has had no occasion to reopen the language of chapter 7060.” Nonetheless, the MPCA made it quite clear that Class 1 standards continued to apply to groundwater, stating:

The standards in the proposed tables [in the newly created parts 7050.0221–.0227] are restricted to surface waters because surface waters have multiple beneficial uses and multiple sets of standards assigned to them, which has been the source of some confusion . . . . Ground waters (Class 1) are protected for just one beneficial use, drinking water, and only the drinking water standards apply to ground waters. For this reason the proposed tables are restricted to the associated use classes and standards applicable to surface waters. However, it should be noted that some surface waters are protected for drinking water in addition to their other uses, and the same drinking water standards applicable to these surface waters are applicable to ground waters.

1993 SONAR 49 (Apr. 1993). Despite the MPCA’s failure to amend the relevant language in chapter 7060, the history of chapters 7050 and 7060, including the 1993 adoption of Rule 7050.0221, supports the MPCA’s interpretation that groundwater is properly classified as a Class 1 water and, accordingly, subject to the 250 mg/L sulfate standard.

Because the MPCA’s interpretation of the ambiguous regulations contained within chapters 7050 and 7060 as classifying all groundwater as a Class 1 water is reasonable, longstanding, and supported by the evolution of the regulatory scheme, we hold that

groundwater is a Class 1 water and that the MPCA properly exercised its authority in applying the Class 1 secondary drinking water standards to the 2018 Permit, including the 250 mg/L sulfate standard.

D.

We now turn to the proper disposition of this appeal. First, we reverse the court of appeals' decision that the MPCA improperly imposed the 250 mg/L sulfate standard in the 2018 Permit because chapters 7050 and 7060 unambiguously do not classify groundwater as a Class 1 water. We also clarify that our decision reverses only those portions of the court of appeals' opinion concerning the application of the CWA to groundwater, *see supra* n.1, and Class 1 water issues. We granted review only on those two issues and we do not address other issues raised at the court of appeals.

Because the court of appeals held that groundwater is not a Class 1 water, however, it did not reach the issue of whether the MPCA properly denied U.S. Steel's requests for a permit-related contested case hearing and a variance from certain groundwater standards included in the 2018 Permit. *U.S. Steel*, 937 N.W.2d at 785. Accordingly, we remand to the court of appeals for analysis of those issues. After the court of appeals completes its analysis, it should remand to the MPCA to complete a functional equivalence analysis under the standards set forth in the Supreme Court's decision in *County of Maui v. Hawaii Wildlife Fund*, \_\_\_ U.S. \_\_\_, 140 S. Ct. 1462 (2020).<sup>10</sup>

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<sup>10</sup> Although the Fond du Lac Band of Lake Superior Chippewa requests that we "impose a reasonable timeline" on the MPCA to complete the analysis, we choose not to do so. Imposing a timeline on the MPCA would infringe on its ability "to perform the

Finally, WaterLegacy asks that in reversing the court of appeals' decision on the Class 1 waters issue, we deny a stay requested by U.S. Steel to postpone application of the 250 mg/L sulfate standard in the 2018 Permit until the MPCA completes its CWA functional equivalence analysis on remand. We agree that the MPCA's functional equivalence analysis should not delay application of the sulfate limit contained in the 2018 Permit. However, application of that limit must wait until the court of appeals completes its analysis of U.S. Steel's request for a contested case hearing and groundwater standards variance.

### **CONCLUSION**

For the foregoing reasons, we reverse the decision of the court of appeals and remand to the court of appeals for further proceedings consistent with this opinion.

Reversed and remanded.

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functions delegated to it by the legislature.” *Minn. Distillers, Inc. v. Novak*, 265 N.W.2d 420, 422 (Minn. 1978).