15.4 SCOPE OF REVIEW

This section will focus on the scope of review provided under section 14.69 of the APA. Virtually all appellate review of state agency actions is now expressly pursuant to this statute. Even before the 1983 amendments directing judicial review through the APA,[1] the Minnesota Supreme Court had established a policy of applying the APA scope of review to decisions of all state agencies, even those with apparently conflicting appeal statutes, unless a particular statute expressly required a trial de novo.[2]

15.4.1 Section 14.69: Generally

Minnesota Statutes, section 14.69 (2014), provides in its entirety as follows:

> In a judicial review under sections 14.63 to 14.68, the court may affirm the decision of the agency or remand the case for further proceedings; or it may reverse or modify the decision if the substantial rights of the petitioners may have been prejudiced because the administrative finding, inferences, conclusion, or decisions are:
>
> (a) in violation of constitutional provisions; or
>
> (b) in excess of the statutory authority or jurisdiction of the agency; or
>
> (c) made upon unlawful procedure; or
>
> (d) affected by other error of law; or
>
> (e) unsupported by substantial evidence in view of the entire record as submitted; or
>
> (f) arbitrary or capricious.

Pursuant to section 14.69, the court of appeals may affirm, remand, reverse, or modify the agency decision. While only reversal and modification are made expressly

[1] 1983 MINN. LAWS, ch. 247, §§ 9, at 856, 17, at 859, 23, at 863, 28, at 869, 54, at 878, 60, at 883, 144, at 932.

[2] Sunstar Foods v. Uhlendorf, 310 N.W.2d 80, 84 (Minn. 1981); Reserve Mining Co. v. Herbst, 256 N.W.2d 808, 822-27 (Minn. 1977); Minneapolis Van & Warehouse Co. v. St. Paul Terminal Warehouse Co., 288 Minn. 294, 297-98, 180 N.W.2d 175, 177 (1970); *see also* Fisher Nut Co. v. Lewis, 320 N.W.2d 731, 733-34 (Minn. 1982); *In re* Nw. Bell Tel. Co., 310 Minn. 146, 148-49, 246 N.W.2d 28, 30 (1976). The scope of review in certiorari proceedings not governed by the APA is set forth in *Western Area Business & Civic Club v. Duluth School Board*, 324 N.W.2d 361, 365 (Minn. 1982) (citations omitted):

> The standard of review is narrow. The trial court must determine, through an examination of the entire record before the Board, only whether the Board had jurisdiction, whether it acted within those jurisdictional bounds and whether the evidence furnished any legal and substantial basis for the action taken. The trial court must not put itself in the place of the Board, try the matter de novo and substitute its findings for those of the Board. On appeal to this court, our function is to make an independent examination of the Board's record and decision and to arrive at our own legal conclusions without according any special deference to the trial court's review.

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subject to the holding on appeal that the petitioner's rights have been prejudiced on the basis of one or more of the six prescribed grounds for review, a frequent remedy on a determination of improper agency action is a remand for further proceedings. Modification of the agency decision is a "drastic remedy" that is "viewed with disfavor" and that is "reserved for only extraordinary situations."[3] The preferred course is for the appellate court either to reverse the agency action or to remand it for further proceedings.

The scope of review prescribed in section 14.69 applies only to the quasi-judicial decisions of an agency. Quasi-judicial conduct is marked by: (1) an investigation into a disputed claim; (2) an application of those facts to a prescribed standard; and (3) a decision binding on all the parties.[4] The term "quasi-judicial" applies only to those administrative decisions which are based on evidentiary facts and which resolve disputed claims of rights.[5] A much more limited review is applied to legislative determinations.[6] Decisions on certain issues, even within the context of a contested case proceeding, may be legislative in character and therefore subject to the more limited scope of review.[7] When an agency acts

[3] Reserve Mining Co. v. Minn. Pollution Control Agency, 267 N.W.2d 720, 723 (Minn. 1978).

[4] Minn. Ctr. For Envtl. Advocacy v. Metro. Council, 587 N.W.2d 838, 842 (Minn. 1999); Meath v. Harmful Substance Comp. Bd., 550 N.W.2d 275, 279 (Minn. 1996); *see also* David Schultz, *Quasijudicial and Quasilegislative Hearings in Minnesota Law*, BENCH & BAR OF MINN. (Sept. 2003).

[5] *Meath*, 550 N.W.2d at 279.

[6] Arvig Tel. Co. v. Nw. Bell Tel. Co., 270 N.W.2d 111, 117-16 (Minn. 1978); St. Paul Area Chamber of Commerce v. Minn. Pub. Serv. Comm'n, 312 Minn. 250, 262, 251 N.W.2d 350, 358 (1977); City of New Brighton v. Metro. Council, 306 Minn. 425, 430, 237 N.W.2d 620, 623 (1975). For a review of this distinction in the context of municipal zoning cases, see Honn v. City of Coon Rapids, 313 N.W.2d 409, 413-16 (Minn. 1981); Eagle Lake of Becker Cnty. Lake Ass'n v. Becker Cnty. Bd. of Comm'rs, 738 N.W.2d 788, 793-94 (Minn. Ct. App. 2007). *See also In re* PERA Salary Det. Affecting Emps. of Duluth, 820 N.W.2d 563, 569 (Minn. Ct. App. 2012) (reviewing determination by a public-retirement-fund board); *In re* Interstate Power Co., 419 N.W.2d 803, 807 (Minn. Ct. App. 1988) (stating while quasi-judicial action of Public Utilities Commission must be supported by substantial evidence, a legislative action will be upheld unless the action by the commission is outside the commission's statutory authority or it can be shown by clear and convincing evidence that the decision was unjust, unreasonable, or discriminatory); *In re* Hibbing Taconite Co., 431 N.W.2d 885, 889 (Minn. Ct. App. 1988) (finding issuance of permit by Minnesota Pollution Control Agency is quasi-judicial in nature and is therefore more closely scrutinized than quasi-legislative decisions that receive limited review on appeal); *In re* Interstate Power Co., 416 N.W.2d 800, 806 (Minn. Ct. App. 1987).

[7] *In re* Request of Interstate Power Co., 574 N.W.2d 408, 412-13 (Minn. 1998) (finding MPUC acted in legislative capacity when it balanced both cost and noncost factors and made choices among public policy alternatives); *St. Paul Area Chamber of Commerce*, 312 Minn. at 259-63, 251 N.W.2d at 356-58 (concluding, in utility rate hearing, that revenue requirements raise quasi-judicial issue subject to substantial evidence review while rate allocations are legislative and will be upheld absent "clear and convincing evidence" of their invalidity); Minn. Chapter of Associated Builders & Contractors, Inc. v. Bd. of Educ. of Minnetonka Indep. Sch. Dist. No. 276, 567 N.W.2d 761, 762-63 (Minn. Ct. App. 1997) (holding certiorari not available to review school board's decision requiring construction contractors to be bound by project labor agreement where board's decision was not quasi-judicial). For analyses of this distinction in utility rate proceedings, see *In re* Request for Servs. in Qwest's Tofte Exch., 666 N.W.2d 391, 395 (Minn. Ct. App. 2003) (concluding PUC acted in both quasi-legislative and quasi-judicial capacities when it ordered Qwest to extend its services while bearing most of the cost of doing so; applying both standards of review and reversing); Samuel L. Hanson & R. Scott Davies, *Judicial Review of Rate of Return Calculations*, 8 WM. MITCHELL L. REV. 499 (1982); Neil Hamilton & Irving Colacci, *Judicial Review of Utility Ratemaking in Minnesota: An Analysis and a Proposal*, 8 WM. MITCHELL L. REV. 543 (1982).

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in a legislative capacity, the standard of review is whether the agency exceeded its statutory authority. By contrast, when the agency acts in a quasi-judicial capacity, the standard of review is the substantial evidence test.[8]

Because agency decisionmakers have specialized knowledge and expertise, it is a "fundamental concept"[9] that their decisions enjoy "a presumption of "correctness"[10] and "administrative regularity."[11] The reviewing court will not substitute its judgment for that of the agency on technical matters,[12] and the responsibility for resolving conflicts in testimony

[8] *In re Request of Interstate Power Co.*, 574 N.W.2d at 412-13 (citing *St. Paul Area Chamber of Commerce*, 251 N.W.2d at 358).

[9] Reserve Mining Co. v. Herbst, 256 N.W.2d 808, 824 (Minn. 1977).

[10] *In re* Review of 2005 Automatic Adjustment of Charges, 768 N.W.2d 112, 118-19 (Minn. 2009) ("A presumption of correctness attaches to an agency decision, and deference is shown to an agency's conclusions in the area of its expertise."); *In re* Excess Surplus Status of Blue Cross & Blue Shield of Minn., 624 N.W.2d 264, 278 (Minn. 2001) (noting administrative agencies enjoy a presumption of correctness, and that deference should be shown to agencies' expertise and special knowledge in the field of their technical training, education, and experience); *Reserve Mining*, 256 N.W.2d at 824 ("[A]dministrative 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."); *In re* Application of the Grand Rapids Pub. Utils. Comm'n, 731 N.W.2d 866, 870-71 (Minn. Ct. App. 2007) (deferring to MPUC's expertise when the Commission's rejection of ALJ's decision was well-reasoned); *In re* Appeal of the Exclusion of Molnar, 720 N.W.2d 604, 610 (Minn. Ct. App. 2006) (holding Racing Commission did not abuse its authority or discretion by permanently excluding track patron rather than merely fining him or by considering all allegations of improper behavior); J.R.B. v. Dep't of Human Servs., 633 N.W.2d 33, 38 (Minn. Ct. App. 2001) (deferring to Department of Health's medical and scientific expertise where department interpreted standards of proper care); *In re* DiVall Insured Income Props. 2 Lt'd. P'ship, 445 N.W.2d 856, 859 (Minn. Ct. App. 1989) (presuming denial by Commissioner of Commerce of registration of securities to be correct); *In re* Space Ctr. Transp., 444 N.W.2d 575, 579 (Minn. Ct. App. 1989) (presuming decision of Transportation Regulation Board on petition to transfer motor carrier permit to be correct); Glencoe Area Health Ctr. v. Minn. Dep't of Human Servs., 441 N.W.2d 549, 551 (Minn. Ct. App. 1989) (finding decision of Department of Human Services setting payment rates for medical assistance reimbursement enjoys a presumption of correctness); *In re* Hutchinson, 440 N.W.2d 171, 176 (Minn. Ct. App. 1989) (presuming decision of Racing Commission to be correct); Big Fish Lake Sportsmen Club, Inc. v. Water Res. Bd., 400 N.W.2d 416, 419 (Minn. Ct. App. 1987) (presuming decision of Water Resources Board establishing boundaries of watershed district to be correct); Henry v. Metro. Waste Control Comm'n, 401 N.W.2d 401, 404 (Minn. Ct. App. 1987) (presuming decision of Commissioner of Veterans Affairs to be correct); *c.f. In re Hibbing Taconite*, 431 N.W.2d at 889-90 (noting agency's entitlement to presumption of correctness, but declining to give deference where question was "of statutory interpretation" regarding "not a technical statute and not a longstanding interpretation by the agency"). *But see* City of Lake Elmo v. Metro. Council, 685 N.W.2d 1, 3-4 (Minn. 2004) (finding specific statute governing appellate review of agency decision modified traditional scope of review under § 14.69 by providing that the court must not give preference to either the ALJ's report or the council's final decision).

[11] No Power Line v. Minn. Envtl. Quality Council, 262 N.W.2d 312, 325 (Minn. 1977); *see also* City of Moorhead v. Minn. Pub. Utils. Comm'n, 343 N.W.2d 843, 849 (Minn. 1984).

[12] State *ex rel.* Anoka Cnty. Airport Protest Comm. v. Minneapolis-St. Paul Metro. Airports Comm'n, 248 Minn. 134, 145-46, 78 N.W.2d 722, 730 (1956); Schermer v. State Farm Fire & Cas. Co., 702 N.W.2d 898, 907 (Minn. Ct. App. 2005); *In re* Rate Appeals of Lyngblomsten Care Ctr. & Camilia Rose Care Ctr., 578 N.W.2d 1, 3 (Minn. Ct. App. 1998) (giving "great weight" to DHS's statutory interpretation in medical assistance reimbursement decision due to ambiguous and technical nature of statute involved); N. Memorial Med. Ctr. v. Minn. Dep't of Health, 423 N.W.2d 737, 738 (Minn. Ct. App. 1988) (showing deference to decision of Department of Health denying license to extend service area for scheduled,

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and determining the weight to be given it and the inferences to be drawn from it rests with the agency.[13]

Judicial deference extends, however, only to matters within the peculiar expertise of the agency.[14] If the agency decision turns on a question of law[15] or on matters in which the court has factual knowledge superior to that of the agency,[16] the court will not defer to the agency. But an agency's construction of a statute is entitled to some weight when the

nonemergency ambulance services); *In re* Interstate Power Co., 416 N.W.2d 800, 806 (Minn. Ct. App. 1987) (noting that in utility rate hearings, the court will ordinarily defer to agency's expertise and its technical knowledge in the field of its technical training, education, and experience); *In re* Minn. Power's Transfer, 399 N.W.2d 147, 149 (Minn. Ct. App. 1987) (showing deference to decision of Public Utilities Comm'n determining rates); Minn. Life & Health Ins. Guar. Ass'n v. Dep't of Commerce, 400 N.W.2d 769, 772 (Minn. Ct. App. 1987) (showing deference to Commissioner of Commerce determining the assessment base for member insurers of an insurance guaranty association).

13 Quinn Distrib. Co. v. Quast Transfer, Inc., 288 Minn. 442, 448, 181 N.W.2d 696, 699-700 (1970); Gibson v. Civil Serv. Bd., 285 Minn. 123, 126, 171 N.W.2d 712, 715 (1969); *see Minn. Life & Health Guar. Ass'n*, 400 N.W.2d at 774; *In re* Minn. Joint Underwriting Ass'n, 408 N.W.2d 599, 605 (Minn. Ct. App. 1987).

14 *In re* Quantification of Envtl. Costs, 578 N.W.2d 794, 799 (Minn. Ct. App. 1998) (extending deference to agency expertise, despite relator's argument that PUC decision was not entitled to deference because PUC was acting outside of its realm of expertise, where the legislature had properly assigned task of determining environmental costs of pollutants to the commission); White v. Minn. Dep't of Natural Res., 567 N.W.2d 724, 730 (Minn. Ct. App. 1997) (showing deference to agency's conclusions in area of agency's expertise). *But see* Minn. Ctr. for Envtl. Advocacy v. Comm'r of Minn. Pollution Control Agency, 696 N.W.2d 95, 108 (Minn. Ct. App. 2005) (giving no deference to PCA's interpretation of the term "existing high [water] quality," finding that the phrase was clear and capable of being understood so the agency's expertise was not required to interpret it).

15 No Power Line v. Minn. Envtl. Quality Council, 262 N.W.2d 312, 320 (Minn. 1977) (reviewing panel determination that applicable statute was a "grandfather" clause); ConAgra v. Swanson, 356 N.W.2d 825, 827 (Minn. Ct. App. 1984); N. States Power Co. v. Hagen, 314 N.W.2d 278, 283 (N.D. 1982) ("Questions of law are reviewed on a different standard [than questions of fact]."); *see, e.g.*, *In re* Request for SDS Gen. Permit, 769 N.W.2d 312, 317 (Minn. Ct. App. 2009) (deferring to MPCA agency expertise for interpretation of ambiguous rule, but noting the court "need not defer to an agency's determination of its own regulation when the language is clear and understandable"); The Work Connection, Inc. v. Bui, 749 N.W.2d 63, 66 (Minn. Ct. App. 2008) (deferring to and upholding ULJ interpretation of statute where ULJ addressed the issue in the final ruling); *In re* Maltreatment & Disqualification of Kleven, 736 N.W.2d 707, 709 (Minn. Ct. App. 2007) (upholding Department of Human Services' interpretation of statute); Dep't of Human Servs. v. Muriel Humphrey Residences, 436 N.W.2d 110, 117 (Minn. Ct. App. 1989) (noting that reviewing court is not bound by Department of Human Services' determination of a legal question); Gorecki v. Ramsey Cnty., 437 N.W.2d 646, 649 (Minn. Ct. App. 1989) (finding decision of Commissioner of Veterans Affairs fully reviewable where decision was based on a question of law); *In re* Hutchinson, 440 N.W.2d 171, 176 (Minn. Ct. App. 1989) (interpreting plain meaning of "disciplinary hearings" to include proceedings involving status of a license as "disciplinary in nature"); State by Khalifa v. Russell Dieter Enters., 418 N.W.2d 202, 204 (Minn. Ct. App. 1988) (reversing Department of Human Rights decision because it was based on an erroneous legal theory); *In re* Minn. Ins. Guar. Ass'n, 428 N.W.2d 824, 828 (Minn. Ct. App. 1988) (holding decision of Commissioner of Commerce not based on error of law); *In re Minn. Joint Underwriting Ass'n*, 408 N.W.2d at 605 ("An agency's interpretation of legislative intent, while influential, cannot bind a court. When a statute is unambiguous, its wording controls over agency interpretations." (citations omitted)).

16 Hennepin Cnty. Court Emps. Grp. v. Pub. Emp't Relations Bd., 274 N.W.2d 492, 494 (Minn. 1979) (reviewing whether court employees are "essential" within meaning of labor relations statute).

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statutory language is technical in nature and the agency's interpretation is one of longstanding application.[17]

In the 2007 case *In re Cities of Annandale & Maple Lake NPDES/SDS Permit Issuance for the Discharge of Treated Wastewater*,[18] the Minnesota Supreme Court addressed for the first time the issue of whether courts should defer to a state agency's interpretation of a federal regulation where the state is charged with enforcing and administering the federal regulation.[19] In this decision, reversing the court of appeals, the supreme court found that the Minnesota Pollution Control Agency (MPCA) was charged with day-to-day responsibility for enforcing and administering 40 CFR § 122.4(i), such that the regulation is properly characterized as the MPCA's own regulation.[20] Drawing from the federal standard for agency deference in *Chevron*,[21] the Minnesota court concluded that the regulation is unclear and susceptible to more than one reasonable interpretation and, therefore, the MPCA's expertise and special knowledge may be considered when determining whether MPCA's interpretation of the federal regulation is reasonable.[22] Finally, the court found that MPCA's interpretation of the regulation was reasonable and deferred to that interpretation.[23] The *Annandale* decision summarizes, interprets, and distinguishes several of the court's earlier cases involving deference to an agency's interpretation of its own regulations, including *Reserve Mining*,[24] *St. Otto's Home*,[25] *Blue Cross Blue Shield of Minnesota*,[26] *Eller Media*,[27] and *Minnesota Center for Environmental Advocacy v. MPCA*.[28]

17 Martin v. Occup'l Safety & Health Review Comm'n, 499 U.S. 144, 150 (1991) (quoting Lyng v. Payne, 476 U.S. 926, 939 (1986)) ("It is well established 'that an agency's construction of its own regulations is entitled to substantial deference.'"); Lolling v. Midwest Patrol, 545 N.W.2d 372, 375 (Minn. 1996); Arvig Tel. Co. v. Nw. Bell Tel. Co., 270 N.W.2d 111, 114 (Minn. 1978); *In re Lyngblomsten Care Ctr.*, 578 N.W.2d at 3 (concluding DHS's statutory interpretation in medical assistance reimbursement decision entitled to "great weight" due to ambiguous and technical nature of statute involved); *see also* MINN. STAT. § 645.16 (2014) ("When the words of a law are not explicit, the intention of the legislature may be ascertained by considering, among other matters . . . legislative and administrative interpretations of the statute.").

18 731 N.W.2d 502.

19 *Id.* at 511-13. *See Mehmet K. Konar-Steenberg, In Re Annandale and the Disconnections Between Minnesota And Federal Agency Deference Doctrine*, 34 Wm. Mitchell L. Rev. 1375 (2008) (critiquing holding and identifying differences between Minnesota and federal deference law).

20 *Id.* at 516.

21 Chevron U.S.A., Inc. v. Natural Res. Def. Council, Inc., 467 U.S. 837, 842-43 (1984) (establishing that Federal courts should defer to an agency construction of a statute if the statute is ambiguous and if the agency has constructed a permissible interpretation of the statute). For more recent expansion of federal *Chevron* deference, see City of Arlington, Tex. v. F.C.C., 133 S.Ct. 1863, 1868-75 (2013) (establishing that *Chevron* deference even permits an agency to construe its own jurisdiction where the law does not clearly prohibit the agency from ruling on its own jurisdiction).

22 731 N.W.2d at 516, 522.

23 *Id.* at 524.

24 Reserve Mining Co. v. Herbst , 256 N.W.2d 808 (Minn. 1977).

25 St. Otto's Home v. Dep't of Human Servs., 437 N.W.2d 35 (Minn. 1989).

26 *In re* Excess Surplus Status of Blue Cross & Blue Shield of Minn., 624 N.W.2d 264 (Minn. 2001).

27 *In re* Denial of Eller Media Co.'s Applications, 664 N.W.2d 1 (Minn. 2003).

28 644 N.W.2d 457 (Minn. 2002). For further, more recent discussion of *Annandale* and regarding agency interpretation of federal and state regulatory framework, see *In re* Alexandria Lake Area Sanitary Dist., 763 N.W. 2d. 303, 313-14 (Minn. 2009).

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Because review by the court of appeals is appellate in nature, a lower court's decision will not be given any particular deference if it reaches the state supreme court. When agency actions were reviewed initially in the district courts, the supreme court made it clear that it would review the agency record independently; its review of a district court decision would not include the deference usually accorded to the findings of a trial court, because the district court was not acting in a fact-finding capacity.[29] District court review was therefore often an exercise in futility, because it was essentially duplicated in the supreme court. This was a major factor prompting the changes in the APA giving the court of appeals exclusive jurisdiction to review state agency actions. With appeal to the supreme court now being discretionary, the initial appellate review of an agency action will usually be the last.

15.4.2 Section 14.69: The Six Grounds for Review of Agency Action

15.4.2(1) In Violation of Constitutional Provisions

Agency action taken pursuant to an unconstitutional enabling statute or an unconstitutional agency rule is invalid and will be overturned.[30] The decision may also be unconstitutional because of procedural irregularities so substantial as to deny due process.[31] Constitutional questions based on procedure will not be frequent, however, because of the extent to which procedural fairness is assured by the APA and the rules of the office of administrative hearings (OAH).[32]

[29] Urban Council on Mobility v. Minn. Dep't of Natural Res., 289 N.W.2d 729, 732-33 (Minn. 1980); Signal Delivery Serv. v. Brynwood Transfer Co., 288 N.W.2d 707, 710 (Minn. 1980); *Reserve Mining*, 256 N.W.2d at 822-24.

[30] *See* Holmberg v. Holmberg, 588 N.W.2d 720, 725-726 (Minn. 1999) (reviewing constitutionality of state's administrative child support process on separation of powers concerns); Blue Earth Cnty. Welfare Dep't v. Caballero, 302 Minn. 329, 349, 225 N.W.2d 373, 385 (1974) (reviewing lower court decision striking down commissioner's order for county welfare department to comply with Federal Housing Act amendment, on constitutional challenge to the FHA amendment); *see also* Murphy v. Comm'r of Human Servs., 765 N.W.2d 100, 108 (Minn. Ct. App. 2009) (holding that a disqualification statute violated the Minnesota Equal Protection Clause). *See generally* 2 FRANK E. COOPER, STATE ADMINISTRATIVE LAW *683-84 (1965).*

[31] Pearson v. Sch. Bd. of Indep. Sch. Dist. No. 381, 356 N.W.2d 438, 441 (Minn. Ct. App. 1984); *see, e.g.*, Thompson v. Comm'r of Health, 778 N.W.2d 401, 409 (Minn. Ct. App. 2010) (holding that a denial of a hearing when employment disqualification is based on a non-conviction determination violates procedural due process rights); *In re* On-Sale Liquor License, Class B, 763 N.W.2d 359, 366-67 (Minn. Ct. App. 2009) (concluding City's imposition of conditions on liquor license based on the "good cause" standard in local ordinance violates licensee's due process rights); *In re* Expulsion of Z.K. & S.K., 695 N.W.2d 656, 663 (Minn. Ct. App. 2005) (reversing a student expulsion decision that had been affirmed by the Commissioner of the Department of Education, because parents' waiver of expulsion hearing was not "knowing" as they were not specifically advised in the Notice of Intent to Expel – as required by statute – that free or low cost legal assistance may be available and that a legal resource list could be obtained from the Department); *see also* Sawh v. City of Lino Lakes, 823 N.W.2d 627, 632-35 (Minn. 2012) (concluding City's "potentially dangerous" and "dangerous" animal designations did not deprive procedural due process protections); Obara v. Minn. Dep't of Health, 758 N.W. 2d 873, 879 (Minn. Ct. App. 2008) (exploring state and federal due process protections and adopting the federal standard, rejecting relator's due process challenge).

[32] This is contrasted with procedures before local agencies, where even the basic rudiments of due process may not be required by statute or rule. *See Pearson*, 356 N.W.2d at 441 (finding school board's refusal

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Because there is no statute or rule expressly proscribing bias on the part of the agency decisionmaker,[33] this question will most likely arise as a constitutional one. Due process requires an impartial decisionmaker.[34] There is a substantial body of law on this question at the federal level that generally distinguishes among several types of bias. A decisionmaker is not necessarily disqualified because of a preconceived position about the law, policy, or legislative facts but may be disqualified because of prejudgment of issues relating to adjudicative facts, a personal prejudice or partiality, or a self-interest in the proceedings.[35] A decisionmaker otherwise incapacitated by bias may decide a case when necessity requires it, but in such a case, the reviewing court will examine the agency decision with special scrutiny.[36]

One state has sustained a challenge to agency action when there is an appearance of partiality, even if actual bias is not shown.[37]

15.4.2(2) In Excess of Agency Authority or Jurisdiction

to utilize independent hearing examiner in teacher discipline or layoff hearings violated respondent's special education director's right to due process).

[33] The ALJ in a contested case must withdraw when "he or she deems himself or herself disqualified for any reason." MINN. R. 1400.6400 (2013). The rule provides for the use of an affidavit of prejudice to disqualify the ALJ. *Id.*

[34] Goldberg v. Kelly, 397 U.S. 254, 271 (1970); *see Urban Council on Mobility*, 289 N.W.2d at 736 ("So long as the decision-maker remains unbiased, the combination of functions by an agency does not conflict with the dictates of due process."); *In re* Khan, 804 N.W.2d 132, 143 (Minn. App. 2011) (holding that the ALJ was not biased in favor of city of Minneapolis).

[35] *See* § 4.6 in this volume. *See generally* 2 K. DAVIS, ADMINISTRATIVE LAW TREATISE § 9.8 (3rd ed. 1994).

[36] Wis. Tel. Co. v. Pub. Serv. Comm'n, 232 Wis. 274, 287 N.W. 122, 149 (1939).

[37] Fleming v. City of Tacoma, 81 Wash. 2d 292, 300, 502 P.2d 327, 332 (1972). *But see* Raynes v. City of Leavenworth, 118 Wash. 2d 237, 246-47, 821 P.2d 1204, 1208-09 (1992) (recognizing subsequent statutory limits to the appearance of fairness doctrine).

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Decisions that are in excess of the agency's statutory authority[38] or jurisdiction[39] will be reversed. When an agency acts in a legislative capacity, the standard of review applied is whether the agency exceeded its statutory authority.[40] This may also be a basis for an action to preclude agency action before it is taken, as discussed in sections 7.1.4 and 15.2.2 in this volume. The party seeking appellate review of an agency's action has the burden of proving that the agency exceeded its statutory authority or jurisdiction.[41]

The agency need not have express authority for its actions. Authority that may be implied from the agency's express authority is adequate.[42]

15.4.2(3) Made on Unlawful Procedure

Procedural irregularities may exist in the form of violations of the procedural requirements of the APA, the rules of the OAH, or the agency's own procedural rules.[43]

[38] *See, e.g.*, *In re* Application of Minn. Power, 838 N.W.2d 747, 757 (Minn. 2013) (holding PUC did not exceed its statutory authority by considering factors outside those listed in MINN. STAT. § 216B.16, subd. 3(b), in determining whether exigent circumstances were present); *In re* Hubbard, 778 N.W. 2d. 313, 325 (Minn. 2010) (concluding DNR lacks express or implied authority to certify City of Lakeland's variance decision); *In re* Haslund, 781 N.W.2d 349, 356 (Minn. 2010) (holding Lower St. Croix Act does not authorize the DNR to enforce a state rule over the plain language of the Bluffland/Shoreland Management ordinance); Peoples Natural Gas Co. v. Minn. Pub. Utils. Comm'n, 369 N.W.2d 530, 534 (Minn. 1985) (finding commission lacked statutory authority to order refunds of past revenue collections); Francis v. Minn. Bd. of Barber Exam'rs, 256 N.W.2d 521, 525 (Minn. 1977) (finding no statutory authority, either expressed or implied, for board to adopt disputed rule); G.H. Holding v. Minn. Dep't of Commerce v. Minn. Petroleum Tank Release Comp. Bd., 840 N.W.2d 838, 842-43 (Minn. Ct. App. 2013) (concluding Minnesota Petroleum Tank Release Compensation Board exceed its statutory authority in issuing a rule limiting evidence in a contested case to the written record previously submitted to the board); *In re* Petitions for Enlargement, 781 N.W.2d 417, 422-23 (Minn. Ct. App. 2010) (finding plain language of MINN. STAT. § 103D.261 did not allow modification of any aspect of an enlargement petition); *In re* Certificate of Auth. of Mut. Protective Ins. Co., 633 N.W.2d 567, 569-70 (Minn. Ct. App. 2001) (finding commissioner of commerce did not have statutory authority to issue a cease and desist order related to an insurance company's unsafe financial condition, but rather should have issued an order to show cause which would have required the commissioner to prove the allegations at a hearing before taking action); Ojala v. St. Louis Cnty., 522 N.W.2d 342, 343 (Minn. Ct. App. 1994); *In re* Combined Air & Waste Permit No. 2211-91-OT-1, 489 N.W.2d 811, 816-17 (Minn. Ct. App. 1992) (holding that the MPCA exceeded its authority in denying permit on waste management preference list where metropolitan council had found permit consistent with long range policy plans); Dep't of Natural Res. v. Todd Cnty. Hearings Unit, 356 N.W.2d 703, 707 (Minn. Ct. App. 1984) (finding designation of meandering lakes as "wetlands" exceeded the hearings unit's statutory authority).

[39] No Power Line v. Minn. Envtl. Quality Council, 262 N.W.2d 312, 319-22 (Minn. 1977); Berne Area Alliance for Quality Living v. Dodge Cnty. Bd. of Comm'rs, 694 N.W.2d 577, 581-82 (Minn. Ct. App. 2005) (finding county lacked jurisdiction to decide whether construction of proposed feedlot required an environmental impact statement because state rules required all applications for feedlots of a certain physical capacity to be forwarded to the Pollution Control Agency).

[40] *In re* Request of Interstate Power Co., 574 N.W.2d 408, 412-13 (Minn. 1998); St. Paul Area Chamber of Commerce v. Minn. Pub. Serv. Comm'n, 312 Minn. 250, 262, 251 N.W.2d 350, 358 (1977).

[41] Lolling v. Midwest Patrol, 545 N.W.2d 372, 375 (Minn. 1996); Markwardt v. State Water Res. Bd., 254 N.W.2d 371, 374 (Minn. 1977); *In re* Appeal of the Exclusion of Molnar, 720 N.W.2d 604, 611 (Minn. Ct. App. 2006) (finding racing commission did not exceed the authority granted in MINN. STAT. § 240.27).

[42] *In re* Nw. Bell Tel. Co., 371 N.W.2d 563, 565-66 (Minn. Ct. App. 1985).

[43] *See* N. Messenger v. Airport Couriers, 359 N.W.2d 302, 305 (Minn. Ct. App. 1984).

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Section 14.69 expressly requires a showing that the improper procedure may have prejudiced the substantial rights of the petitioner. The agency decision will not be reversed without this showing of prejudice.[44]

Although the merits of the agency decision will be reviewed only on the record, additional evidence may be taken in conjunction with the appeal in order to determine the essential facts pertaining to alleged procedural defects that are not shown on the record.[45] The court of appeals may transfer the case to the district court to take testimony and to decide the procedural issues, and that decision may be appealed as in other civil cases.[46]

Limited discovery is permissible in order to assist in the determination of procedural questions. For example, whether those involved in the decision-making process properly followed the procedures required by law. Such discovery has been limited and tightly regulated. Written interrogatories may be submitted within thirty days of the date of the appeal.[47] The questions are limited to the following:

1. Whether the agency adhered to all statutory and administrative procedural rules;
2. If not, what deviations occurred;
3. Whether the agency official read the entire record prior to rendering a decision;
4. Whether the agency official relied on information outside the record in making the decision;
5. If yes, what information was relied upon outside of the record in making the decision.[48]

If this discovery reveals no new evidence, the agency decisionmakers should not be called to testify at a trial.[49] These restrictions are laid down in the last Minnesota Supreme Court opinion on this issue, in which the court was critical of the delay in the appeal process caused by discovery conducted under the rule of its earlier opinions.[50] Therefore, the inference is that the interrogatories above are the only permissible means of discovery. Discovery may not be used to probe the "mental processes"[51] by which a decision is made

44 *No Power Line*, 262 N.W.2d at 322-29.

45 MINN. STAT. § 14.68 (2014).

46 *Id.*; *see* Hard Times Café v. City of Minneapolis, 625 N.W.2d 165, 173-74 (Minn. Ct. App. 2001) (finding substantial evidence of procedural irregularities where city council members considered evidence outside the record; transferring case to district court to take testimony); *In re* Dakota Cnty. Mixed Mun. Solid Waste Incinerator, 483 N.W.2d 105, 106-07 (Minn. Ct. App. 1992) (finding transfer to district court for further testimony and evidence on alleged procedural irregularities inappropriate where permit applicants failed to show that information became known only after agency proceedings).

47 *In re* Lecy, 304 N.W.2d 894, 900 (Minn. 1981).

48 *Id.*

49 *Id.*

50 People for Envtl. Enlightenment & Responsibility (PEER) v. Minn. Envtl. Quality Council, 266 N.W.2d 858, 873 (Minn. 1978) (finding district court erred in failing to require commission to respond to written interrogatories and requests for admissions); Mampel v. Eastern Heights State Bank, 254 N.W.2d 375, 378 (Minn. 1977) (granting writ of prohibition preventing overbroad discovery into procedural matters of agency review); *see also* Urban Council on Mobility v. Minn. Dep't of Natural Res., 289 N.W.2d 729, 736 (Minn. 1980) (taking into account commission's answers interrogatories which demonstrate commission's adequate consideration of evidence submitted at hearing).

51 *Mampel*, 254 N.W.2d at 378.

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or "the process of judicial decision-making which is judgmental rather than procedural in nature."[52]

15.4.2(4) Affected by Other Error of Law

On a question of law, the court is free to substitute its judgment for that of the agency. It is not bound by the decision of the agency and need not defer to agency expertise.[53]

Agency interpretation of a statute "may be entitled to some weight" if the statute is technical in nature and the agency's interpretation is a long-standing one.[54] The court has no obligation to respect administrative interpretation of a statute if it is one of first impression and the statute is not ambiguous, particularly when the agency interpretation expands its jurisdiction.[55] Courts will defer to an agency's interpretation of its own rule if the rule is so technical that only a specialized agency can properly understand it, but courts will not defer

[52] *PEER*, 266 N.W.2d at 873.

[53] No Power Line v. Minn. Envtl. Quality Council, 262 N.W.2d 312, 320 (Minn. 1977); *see* St. Otto's Home v. Dep't of Human Servs., 437 N.W.2d 35, 39-40 (Minn. 1989); Dep't of Human Servs. v. Muriel Humphrey Residences, 436 N.W.2d 110, 117 (Minn. Ct. App. 1989) (holding that the application of equitable estoppel is a question of law, and therefore, the agency's ruling on the application of equitable estoppel to the fact of the case is subject to the court's independent review); State by Khalifa v. Russell Dieter Enters., 418 N.W.2d 202, 204 (Minn. Ct. App. 1988); *In re* Assessment by Minn. Ins. Guar. Ass'n, 428 N.W.2d 824, 827 (Minn. Ct. App. 1988); *In re* Minn. Joint Underwriting Ass'n, 408 N.W.2d 599, 605 (Minn. Ct. App. 1987); Five Star Trucking v. Minn. Transp. Regulation Bd., 370 N.W.2d 666, 669-70 (Minn. Ct. App. 1985); *see also In re* Rate Appeal of Benedictine Health Ctr., 728 N.W.2d 497, 507 (Minn. 2007) (holding an agency policy that has not been promulgated as a rule and is, in whole or in part, inconsistent with promulgated rules or other policies is not entitled to deference); *In re* Wren Residential Relocation Claim, 699 N.W.2d 758, 760 (Minn. 2005); *In re* Denial of Eller Media Co.'s Applications for Outdoor Advertising Device Permits, 664 N.W.2d 1, 7 (Minn. 2003) (holding court retains authority to review *de novo* errors of law which arise when an agency decision is based upon the meaning of words in a statute); *In re* Application for PERA Disability Benefits of Brittain, 705 N.W.2d 576, 578-579 (Minn. Ct. App. 2006) (reversing agency's decision based on its interpretation of plain language of statute). *But see In re* Westling Mfg., Inc., 442 N.W.2d 328, 331 (Minn. Ct. App. 1989) ("Because the facts of this case do not permit only one conclusion, we shall review the denial of equitable estoppel here as a fact question.").

[54] Arvig Tel. Co. v. Nw. Bell Tel. Co., 270 N.W.2d 111, 114 (Minn. 1978); *see* Martin v. Occup'l Safety & Health Review Comm'n, 499 U.S. 144, 149 (1991) (noting agency's construction of its own regulation is entitled to substantial deference); Krumm v. R.A. Nadeau Co., 276 N.W.2d 641, 644 (Minn. 1977) ("When the meaning of a statute is doubtful, courts should give great weight to a construction placed upon it by the department charged with its administration."); *In re* Rate Appeals of Lyngblomsten Care Ctr. & Camilia Rose Care Ctr., 578 N.W.2d 1, 3 (Minn. Ct. App. 1998) (giving DHS interpretation of statute in medical assistance reimbursement action "great weight" due to technical and ambiguous nature of the governing statutes); *In re* Space Ctr. Transp., 444 N.W.2d 575, 579 (Minn. Ct. App. 1989); *In re* Hibbing Taconite Co., 431 N.W.2d 885, 889 (Minn. Ct. App. 1988); Henry v. Metro. Waste Control Comm'n, 401 N.W.2d 401, 404 (Minn. Ct. App. 1987).

[55] Minn. Microwave v. Pub. Serv. Comm'n, 190 N.W.2d 661, 665 (Minn. 1971); *see* Waller v. Powers Dep't Store, 343 N.W.2d 655, 657 (Minn. 1984) ("Neither agencies nor courts may under the guise of statutory interpretation enlarge the agency's powers beyond that which was contemplated by the legislative body."); The Work Connection, Inc. v. Bui, 749 N.W.2d 63, 69-70, 72-73 (Minn. Ct. App. 2008) (deferring to ULJ interpretation of statute); *In re* Maltreatment & Disqualification of Kleven, 736 N.W.2d 707, 709 (Minn. Ct. App. 2007) (upholding Department of Human Services' interpretation of statute).

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to agency interpretation if the language or standard in the rule is clear and understandable.[56] Deference also extends to any agency's expertise and special knowledge in the interpretation of statutes[57] or federal regulation[58] that the agency is charged with administering. Courts will give "considerable deference" to an agency's construction of its own rule when the rule is unclear or susceptible to different interpretations.[59] An agency's interpretation of an ambiguous rule will be upheld if it is reasonable.[60] When application of a regulation is "primarily factual and necessarily requires application of the agency's technical knowledge and expertise to the facts present"[61] deference will also be granted to an agency's expertise and knowledge. However, a long-standing administrative practice or interpretation will be invalidated if it is contrary to the plain meaning of the statute.[62]

In the 2007 case *In re Annandale*,[63] the Minnesota Supreme Court summarized what factors the courts should consider when determining whether to give deference to an agency's interpretation:

> In summary, we glean from our case law that review of an agency's interpretation of its own regulations is a question of law that courts review de novo. When answering this question, there are several factors courts need to consider when determining whether to give deference to an agency's interpretation. These factors include whether the agency is legally

56 *In re* Rate Appeal of Benedictine Health Ctr., 728 N.W.2d 497, 503 (Minn. 2007); Resident v. Noot, 305 N.W.2d 311, 312 (Minn. 1981); *In re* Contested Case of Ebenezer Soc. v. Minn. Dep't of Human Servs., 433 N.W.2d 436, 439 (Minn. Ct. App. 1988); *see also* Citizens Advocating Responsible Dev. v. Kandiyohi Cnty. Bd. of Comm'rs, 713 N.W.2d 817, 827 (Minn. 2006) ("When the plain meaning of a rule is contrary to an agency's interpretation, we cannot ignore the plain meaning by deferring to the agency's interpretation."); Hy-Vee Food Stores, Inc. v. Minn. Dep't of Health, 705 N.W.2d 181, 190 (Minn. 2005) (citing Mammenga v. Dep't of Human Servs., 442 N.W.2d 786, 789 (Minn. 1989)) (reiterating that if a rule is clear and unambiguous, the mere fact that application of the rule yields harsh or undesirable result in a particular case does not make the rule invalid).

57 *In re* Excess Surplus Status of Blue Cross & Blue Shield of Minn., 624 N.W.2d 264, 278 (Minn. 2001) ("The agency decision-maker is presumed to have the expertise necessary to decide technical matters within the scope of the agency's authority, and judicial deference, rooted in the separation of powers doctrine, is extended to an agency decision-maker in the interpretation of statutes that the agency is charged with administering and enforcing." (citation and footnote omitted)).

58 *In re* Cities of Annandale & Maple Lake Permit Issuance, 731 N.W.2d 502, 509-10 (Minn. 2007).

59 St. Otto's Home v. Dep't of Human Servs., 437 N.W.2d 35, 40 (Minn. 1989) (citing Udall v. Tallman, 380 U.S. 1, 16 (1965)).

60 *Id.*; *see also In re Excess Surplus Status of BCBS*, 624 N.W.2d at 279 (according deference to agency interpretation of a statute where interpretation reflects agency's technical expertise).

61 *In re* Review of 2005 Automatic Adjustment of Charges, 768 N.W.2d 112, 119 (Minn. 2009) (quoting Minn. Ctr. for Env't Advocacy v. Minn. Pollution Control Agency, 644 N.W.2d 457, 464 (Minn.2002)); *see also In re* Application of Minn. Power, 838 N.W.2d 747, 762 (Minn. 2013) (applying deferential standard of review where there was no evidence commission failed to make a full review and fair review); *In re* Request for SDS General Permit, 769 N.W.2d 312, 321 (Minn. Ct. App. 2009) (giving deference to agency's review involving special knowledge related to agency's technical training, education, and experience).

62 Twin Ports Convalescent, Inc. v. Minn. State Bd. of Health, 257 N.W.2d 343, 348 (Minn. 1977); Ingebritson v. Tjernlund Mfg. Co., 289 Minn. 232, 237, 183 N.W.2d 552, 554-55 (1971); *In re* City of Redwood Falls, 756 N.W.2d 133, 137-38 (Minn. Ct. App. 2008).

63 731 N.W.2d 502 (Minn. 2007); *see supra* text accompanying notes 19-29 (discussing the *Annandale* decision).

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> required to enforce and administer the regulation under review and whether the meaning of the words in the regulation is clear and unambiguous or is unclear and susceptible to different reasonable interpretations—ambiguous. If a court concludes the meaning of the words in the regulation is clear and unambiguous, it need not defer to the agency's interpretation and may substitute its own judgment for that of the agency. If a court concludes that the meaning of the words in an agency's regulation is unclear and susceptible to different reasonable interpretations, the court must then determine whether the agency's interpretation is reasonable. When determining whether an agency's interpretation is reasonable, courts may consider the agency's expertise and special knowledge, especially when the construction of the regulation's language is so technical in nature that the agency's field of technical training, education, and experience is necessary to understand the regulation. When a court concludes that the language of the agency's regulation is unclear and susceptible to different reasonable interpretations and that the agency's interpretation of the regulation is reasonable, then the court will generally defer to the agency's interpretation.[64]

These principles have been applied in several subsequent cases weighing deference to an agency's interpretation.[65]

15.4.2(5) Unsupported by Substantial Evidence

When an agency, acting in a quasi-judicial capacity, makes factual determinations and resolves disputed claims of rights, the applicable standard of review is the substantial evidence test.[66] Judicial deference to the agency reaches its peak here and with the arbitrary or capricious standard. Obtaining a reversal of the agency action on either basis is difficult.

Factual determinations of the agency will be sustained unless they are not supported by "substantial evidence in view of the entire record as submitted."[67] This test applies only to decisions made in a quasi-judicial manner, that is, when the decisionmaker hears views

64 731 N.W.2d at 516.

65 *See In re Review of 2005 Annual Automatic Adjustment*, 768 N.W.2d at 119; *In re* Alexandria Lake Area Sanitary Dist., 763 N.W.2d 303, 310-11 (Minn. 2009); Greene v. Comm'r of Minn. Dep't of Human Servs., 755 N.W.2d 713, 722 (Minn. 2008) (finding Minnesota Family Investment Program is a complex regulatory scheme that required technical expertise of the commissioner; deferring to commissioner's interpretation); *In re Request for SDS General Permit*, 769 N.W.2d at 317 (discussing the *Annandale* principles).

66 *In re* Request of Interstate Power Co., 574 N.W.2d 408, 413 (Minn. 1998); St. Paul Area Chamber of Commerce v. Minn. Pub. Serv. Comm'n, 312 Minn. 250, 261-62, 251 N.W.2d 350, 357-58 (1977).

67 MINN. STAT. § 14.69(e) (2014); *see In re* Hildebrant, 701 N.W.2d 293, 300-01 (Minn. Ct. App. 2005) (holding that the Public Employee Retirement Association's decision was not supported by substantial evidence because the record did not support the agency's determination concerning the cause of the applicant's disability); Carter v. Olmsted Cnty. Hous. & Redev. Authority, 574 N.W.2d 725, 730-31 (Minn. Ct. App. 1998); *see also In re Application of Minn. Power*, 838 N.W.2d at 762 (finding substantial evidence supports MPUC's interim rate decision); Ywswf v. Teleplan Wireless Servs., Inc., 726 N.W.2d 525, 533-34 (Minn. Ct. App. 2007) (concluding ULJ findings supported by substantial evidence; upholding ULJ decision regarding unemployment benefits); Skarhus v. Davanni's, Inc., 721 N.W.2d 340, 344 (Minn. Ct. App. 2006) (upholding ULJ unemployment benefits decision).

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of opposing sides presented in the form of written and oral testimony, examines the record, and makes findings of fact.[68] It does not apply to conclusions or conclusions of law. As is the case with appellate review of jury verdicts or trial court findings of fact, the court grants a very substantial deference to the agency findings of fact.

Conflicts in testimony, the weight to be given facts, the credibility of witnesses, and inferences to be drawn from the evidence are to be resolved by the agency; the court may not exercise its own judgment or substitute its own findings of fact.[69] The entire record must be considered, rather than simply focusing on the evidence that relates expressly to a specific finding.[70]

The comprehensive and accepted definition of *substantial evidence* was first stated by the Minnesota Supreme Court in *Reserve Mining Co. v. Herbst*:[71] [72]

> We view that by the "substantial evidence" test is meant: 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"; and 5) evidence considered in its entirety.[73]

The first component of the *Reserve Mining* definition, namely, "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion,"[74] has become a

[68] Signal Delivery Serv. v. Brynwood Transfer Co., 288 N.W.2d 707, 710 (Minn. 1980).

[69] Quinn Distrib. Co. v. Quast Transfer, Inc., 288 Minn. 442, 448, 181 N.W.2d 696, 699-700 (1970); Gibson v. Civil Serv. Bd., 285 Minn. 123, 126, 171 N.W.2d 712, 715 (1969); *see In re* Peoples Natural Gas Co., 413 N.W.2d 607, 615 (Minn. Ct. App. 1987) ("The agency's judgment concerning the inferences to be drawn from the facts shall not be rejected even though the court may be inclined to draw contrary inferences, unless there is manifest injustice."); Minn. Life & Health Ins. Guar. Ass'n v. Dep't of Com., 400 N.W.2d 769, 774 (Minn. Ct. App. 1987); Big Fish Lake Sportsmen Club, Inc. v. Water Res. Bd., 400 N.W.2d 416, 421 (Minn. Ct. App. 1987); *see also* Minn. Ctr. for Envtl. Advocacy v. MPCA, 644 N.W.2d 457, 469 (Minn. 2002) (substituting the court's judgment for that of the PCA rather than applying the substantial evidence standard of review when the court of appeals required an environmental impact statement).

[70] Liffrig v. Indep. Sch. Dist. No. 442, 292 N.W.2d 726, 729 (Minn. 1980); Minn. Ctr. for Envtl. Advocacy v. City of St. Paul Park, 711 N.W.2d 526, 534 (Minn. Ct. App. 2006).

[71] 256 N.W.2d 808 (1977).

[72] Prior courts defined *substantial evidence* as "the same as the test on review of a jury verdict," Minneapolis Van & Warehouse Co. v. St. Paul Terminal Warehouse Co., 180 N.W.2d 175, 178 (Minn. 1970), and the amount of evidence that would allow a court to reject a motion for directed verdict, Soo Line Ry. v. United States, 271 F. Supp. 869, 872 (D. Minn. 1967).

[73] *Reverse Mining*, 256 N.W.2d at 825 (quoting the trial court). This definition has been reiterated in numerous subsequent cases. *E.g.*, Citizens Advocating Responsible Dev. v. Kandiyohi Cnty. Bd. of Comm'rs, 713 N.W.2d 817, 832 (Minn. 2006) (finding county's determinations that proposed projects did not create the potential for significant environmental effects on groundwater or due to erosion were supported by substantial evidence); *Minn. Ctr. for Envtl. Advocacy*, 644 N.W.2d at 464; Cable Commc'ns Bd. v. Nor-West Cable Commc'ns P'ship, 356 N.W.2d 658, 668-69 (Minn. 1984); Taylor v. Beltrami Elec. Co-op., 319 N.W.2d 52, 56 (Minn. 1982); *In re* Toberman, 527 N.W.2d 138, 141 (Minn. Ct. App. 1995); *In re* Space Ctr. Transp., 444 N.W.2d 575, 580 (Minn. Ct. App. 1989) (finding substantial evidence supported denial by Transportation Regulation Board of petition for transfer of permit); *In re* Schroeder, 415 N.W.2d 436, 439 (Minn. Ct. App. 1987) (finding substantial evidence supported disciplinary action imposed by Board of Psychology); *Big Fish Lake Sportsmen's Club*, 400 N.W.2d at 419; Peoples Natural Gas Co. v. Minn. Pub. Utils. Comm'n, 342 N.W.2d 348, 351 (Minn. Ct. App. 1983).

[74] *Reverse Mining*, 256 N.W.2d at 825.

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common short-form definition of *substantial evidence*.[75] Whatever definition is used, the petitioner's burden in seeking to overturn an agency finding of fact is "heavy."[76]

The *Reserve Mining* definition has been called a "quantitative" test.[77] Substantial evidence also includes a qualitative component, however. Although the rules of evidence are not strictly applied in agency proceedings, a decision is not supported by substantial evidence where all the supporting evidence is "inherently unreliable," such as hearsay that would be inadmissible in a judicial proceeding.[78] There is also a third component, one that goes not to the nature of the supporting evidence but to the way in which that evidence is explained or evaluated by the agency in its findings.

Prior to 1983, the adequacy of the agency's findings (as opposed to the sufficiency of the underlying evidence) was essentially a procedural matter. Substantial evidence review could not occur if the findings were inadequate, and the case would be remanded for

[75] *See, e.g.*, *In re* Excess Surplus Status of Blue Cross & Blue Shield of Minn., 624 N.W.2d 264, 274 (Minn. 2001); Minn. Power & Light Co. v. Minn. Pub. Utils. Comm'n, 342 N.W.2d 324, 329 (Minn. 1983); Patzwold v. Pub. Emp't Relations Bd., 306 N.W.2d 118, 120 (Minn. 1981); *In re* Plum Grove Lake, 297 N.W.2d 130, 135 (Minn. 1980); Urban Council on Mobility v. Minn. Dep't of Natural Res., 289 N.W.2d 729, 733 (Minn. 1980); Rubin v. Winona State Univ., 842 N.W.2d 469, 473 (Minn. Ct. App. 2014); Zahler v. Minn. Dep't of Human Servs., 624 N.W.2d 297, 301 (Minn. Ct. App. 2001); *In re* City of Mankato v. Mahoney, 542 N.W.2d 689, 692 (Minn. Ct. App. 1996); Dep't of Human Servs. v. Muriel Humphrey Residences, 436 N.W.2d 110, 114 (Minn. Ct. App. 1989); *In re* Hibbing Taconite Co., 431 N.W.2d 885, 891 (Minn. Ct. App. 1988); *In re* Minn. Power's Transfer, 399 N.W.2d 147, 149 (Minn. Ct. App. 1987); Brinks v. Minn. Pub. Utils. Comm'n, 355 N.W.2d 446, 450 (Minn. Ct. App. 1984); *In re Peoples Natural Gas Co.*, 413 N.W.2d at 614; *see also* Pietsch v. Bd. of Chiropractic Exam'rs, 683 N.W.2d 303, 308-09 (Minn. 2004) (finding that the chiropractor's use of "runners" or "cappers" did not constitute unprofessional conduct "per se" when there was no evidence in the record of an industry standard); Shockency v. Jefferson Lines, 439 N.W.2d 715, 718 (Minn. 1989) (finding determination by Minneapolis Commission on Civil Rights, that bus company had discriminated against black employee, not supported by the evidence); *In re* Application of the Grand Rapids Pub. Utils. Comm'n, 731 N.W.2d 866, 871 (Minn. Ct. App. 2007) (finding MPUC's decision was based on substantial evidence when its rejection of ALJ recommendation was based on policy considerations and value judgments); *In re* Shannon O'Boyle, 655 N.W.2d 331, 334-35 (Minn. Ct. App. 2002) (finding no substantial evidence in record to support a conclusion that appellant fell within the statutory definition of caregiver nor any findings on the statutory exceptions to a maltreatment determination relied on by the appellant; stating an agency is obligated to make findings and conclusions on defenses presented where exceptions are claimed); Hazelton v. Comm'r of the Dep't of Human Servs., 612 N.W.2d 468, 472 (Minn. Ct. App. 2000) (holding record lacked substantial evidence of a violation by a public assistance recipient where the finding relied on two confusing forms and testimony of "standard agency practice"); *In re* Minn. Power & Light Co., 435 N.W.2d 550, 554, 557 (Minn. Ct. App. 1989) (agreeing that substantial evidence supported establishment of rates by Public Utilities Commission).

[76] State *ex rel.* Indep. Sch. Dist. No. 276 v. Dep't of Educ., 256 N.W.2d 619, 627 (Minn. 1977).

[77] *Minn. Power & Light Co.*, 342 N.W.2d at 328.

[78] *Indep. Sch. Dist. No. 276*, 256 N.W.2d at 627; *see also* Morey v. Sch. Bd. of Indep. Sch. Dist. No. 492, 271 Minn. 445, 449, 136 N.W.2d 105, 108 (1965) (commenting that although "incompetent evidence is not fatal to [the board's determination] . . . evidence which is calculated to support the charges [against teacher] should be relevant and have probative value"); *In re* Expulsion of E.J.W. from Indep. Sch. Dist. No. 500, 632 N.W.2d 775, 782 (Minn. Ct. App. 2001) (concluding substantial evidence was lacking where decision was based on contradictory hearsay statements of non-testifying witnesses); Carter v. Olmsted Cnty. Hous. & Redev. Authority, 574 N.W.2d 725, 730-32 (Minn. Ct. App. 1998) (concluding record lacked substantial evidence to support agency determination where the only evidence to support allegations of section 8 violation was hearsay unsupported by other evidence in the record).

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additional or amended findings before judicial review could proceed.[79] As a result of the Minnesota Supreme Court's opinion in *Minnesota Power & Light Co. v. Minnesota Public Utilities Commission*,[80] however, it appears that substantiality of the evidence can be controlled by the manner in which it is evaluated by the agency in its findings.[81]

In *Minnesota Power & Light Co.*, the supreme court had initially affirmed a district court ruling that the agency decision was not supported by substantial evidence. On remand, the agency did not take additional evidence. It merely issued additional findings of fact and conclusions of law detailing the original evidence and explaining in greater detail the reasons for its decision. The district court reversed again because it believed that "further explanation or rationalization of the PUC's finding cannot create 'substantial evidence.'"[82] The supreme court stated the issue to be "[w]hether, upon remand for the lack of substantial evidence to support an agency's ruling, the [substantial evidence] standard may be met, without the submission of further evidence, by the agency's expert analysis of the record, setting forth explanations for its conclusions."[83] It answered this question affirmatively, holding that "we are now satisfied that the PUC's order is supported by substantial evidence."[84]

15.4.2(6) Arbitrary or Capricious

For a time it appeared that *arbitrary or capricious* was an entirely separate standard of review that did not duplicate or overlap the substantial evidence test. In *Reserve Mining Co. v. Herbst*,[85] a leading case for the articulation of many of the principles of judicial review, the Minnesota Supreme Court stated that the substantial evidence standard applies to an agency's findings, while the arbitrary or capricious standard applies to its conclusions.[86] This

79 *E.g.*, People for Envtl. Enlightenment & Responsibility (PEER) v. Minn. Envtl. Quality Council, 266 N.W.2d 858, 874 (Minn. 1978) (remanding to district court for further hearings to permit affected homeowners to submit evidence as to uniqueness of their residencies); Markwardt v. State Water Res. Bd., 254 N.W.2d 371, 375 (Minn. 1977) (recommending the board make additional explicit findings as "a good practice" in future cases); Bryan v. Cmty. State Bank of Bloomington, 285 Minn. 226, 233, 172 N.W.2d 771, 776 (1969) (citing MINN. STAT. § 15.0424, subd. 5 (1968) (renumbered MINN. STAT. § 14.69, subsequently amended)) (noting that the APA "authorizes a reviewing court to remand the case For [sic] further proceedings"); *Morey*, 136 N.W.2d at 108 (remanding matter to the board for a second time to make further findings of facts "so that a reviewing court can determine from the record whether the facts furnish justifiable reason for its action").

80 342 N.W.2d 324 (Minn. 1983).

81 Agency decisions may still be remanded for additional findings. MINN. STAT. § 14.69 (2014); *see, e.g.*, *In re* Expulsion of N.Y.B. from Indep. Sch. Dist. No. 11, 750 N.W.2d 318, 326-27 (Minn. Ct. App. 2008) (remanding and directing school board to explain its decision in "sufficient detail," as required by the Pupil Fair Dismissal Act, MINN. STAT. § 121A.47, by articulating, at a minimum: 1. the basis for determining the relative egregiousness of the student's conduct; 2. the factual context; 3. an explanation of the board's determination in comparing this case to others; and 4. the board's consideration of mitigating circumstances).

82 *Minn. Power & Light Co.*, 342 N.W.2d at 327.

83 *Id.*

84 *Id.* at 332.

85 256 N.W.2d 808 (Minn. 1977).

86 *Id.* at 827.

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distinction was not supported by the statutory language.[87] However, the arbitrary or capricious standard has since been applied to the agency's findings, determination, action, decision, and order.[88]

The arbitrary or capricious standard incorporates a high degree of judicial deference to the agency, with the court declining to substitute its judgment for that of the agency.[89] As used in the APA, the phrase *arbitrary or capricious* has essentially been defined as requiring a showing that the agency's determination "represents its will and not its judgment."[90] If a

[87] *See* MINN. STAT. §§ 15.0424, subds. 5 (new evidence, hearing by agency), 6 (procedure on review), 15.0425 (scope of judicial review) (1976). All six bases for review are listed now in MINN. STAT. § 14.69 (2014), without distinction, as applying to "the administrative finding, inferences, conclusion, or decision."

[88] Peoples Natural Gas Co. v. Minn. Pub. Utils. Comm'n, 342 N.W.2d 348, 353-54 (Minn. Ct. App. 1983); *see also* Cable Commc'ns Bd. v. Nor-West Cable Commc'ns P'ship, 356 N.W.2d 658, 668-69 (Minn. 1984); Sunstar Foods v. Uhlendorf, 310 N.W.2d 80, 84 (Minn. 1981); Crookston Cattle Co. v. Minn. Dep't of Natural Res., 300 N.W.2d 769, 777 (Minn. 1980); Minn. Loan & Thrift Co. v. Commerce Comm'n, 278 N.W.2d 522, 525 (Minn. 1979); *Reserve Mining*, 256 N.W.2d at 823.

[89] *See In re* Rocheleau, 686 N.W.2d 882, 892-93 (Minn. Ct. App. 2004) (giving substantial judicial deference to an administrative board's fact-finding process; finding board's decision not unreasonable or arbitrary); *In re* Max Schwartzman & Sons, 670 N.W.2d 746, 755 (Minn. Ct. App. 2003) (deferring to agency due to agency's expertise); Town of Forest Lake v. Minn. Mun. Bd., 497 N.W.2d 289, 291 (Minn. Ct. App. 1993) (stating that reviewing court may not substitute its views for that of the agency).

[90] Markwardt v. State Water Res. Bd., 254 N.W.2d 371, 374 (Minn. 1977); Bryan v. Cmty. State Bank of Bloomington, 285 Minn. 226, 234, 172 N.W.2d 771, 776 (1969); *In re* Hutchinson, 440 N.W.2d 171, 177 (Minn. Ct. App. 1989); N. Memorial Med. Ctr. v. Minn. Dep't of Health, 423 N.W.2d 737, 740 (Minn. Ct. App. 1988); *In re* Minn. Joint Underwriting Ass'n, 408 N.W.2d 599, 605 (Minn. Ct. App. 1987); *In re* Minn. Power's Transfer, 399 N.W.2d 147, 149 (Minn. Ct. App. 1987); Peoples Natural Gas Co. v. Minn. Pub. Utils. Comm'n, 342 N.W.2d 348, 351 (Minn. Ct. App. 1983); *see* Mammenga v. Dep't of Human Servs., 442 N.W.2d 786, 789 (Minn. 1989) ("An agency decision may be arbitrary or capricious if the decision is based on whim or is devoid of articulated reasons."); *In re* Revocation of Family Child Care License of Burke, 666 N. W.2d 724, 728 (Minn. Ct. App. 2003) (finding that the commissioner of human services abused his discretion in revoking a child care license where ALJ recommended less severe discipline and agency failed to explain how record supported revocation; reiterating that license discipline must not exceed seriousness of violation); Rostamkhani v. City of St. Paul, 645 N.W.2d 479, 486-87 (Minn. Ct. App. 2002) (holding city council action was arbitrary and capricious where record lacked a letter from landlord setting out remedial action that had been received by a council member a week earlier, because the council had failed to consider an important aspect of the problem before it); Trout Unlimited Inc. v. Minn. Dep't of Agric., 528 N.W.2d 903, 907 (Minn. Ct. App. 1995) ("A decision will be deemed arbitrary and capricious if the agency relied on factors which the legislature had not intended it to consider, if it entirely failed to consider an important aspect of the problem, if it offered an explanation for the decision that runs counter to the evidence, or if the decision is so implausible that it could not be ascribed to a difference in view or the product of agency expertise."); *In re* Whitehead, 399 N.W.2d 226, 229-30 (Minn. Ct. App. 1987) (holding Public Utilities Commission acted arbitrarily and capriciously when it ordered another telephone company to provide telephone service to property); Big Fish Lake Sportsmen Club, Inc. v. Water Res. Bd., 400 N.W.2d 416, 420 (Minn. Ct. App. 1987); Neujahr v. Ramsey Cnty. Civil Serv. Comm'n, 370 N.W.2d 446, 448 (Minn. Ct. App. 1985); *cf. In re* Application of the Grand Rapids Pub. Utils. Comm'n, 731 N.W.2d 866, 871-73 (Minn. Ct. App. 2007) (finding MPUC's choice of various methods of cost analysis was not arbitrary and capricious); *In re* Detailing Criteria & Standards for Measuring an Elec. Utility's Good Faith Efforts, 700 N.W.2d 533, 540 (Minn. Ct. App. 2005) (finding Minnesota Public Utilities Commission's adoption of a plain language interpretation of the renewable energy statute reflected its judgment and not its will, so that the decision was not arbitrary and capricious even though it rejected one point of view).

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"decision represents a reasonable judgment," it is not arbitrary or capricious.[91] If the decision is not "entirely wrong" or not "clearly wrong," the court will not substitute its judgment.[92] So long as an agency engaged in reasoned decisionmaking, the court will affirm, even though it may have reached a different conclusion had it been the factfinder.[93] Moreover, "[w]here there is room for two opinions on the matter, such action is not 'arbitrary and capricious,' even though it may be believed that an erroneous conclusion has been reached."[94] An agency decision on the amount of time needed to correct a violation is reviewed under the arbitrary and capricious standard and a reviewing court will likely defer to the agency as to a deadline for correction of the violation where the matter is within the agency's expertise.[95]

An agency action is arbitrary and capricious if:

> the agency relied on factors which the legislature had not intended it to consider, if it entirely failed to consider an important aspect of the problem, if it offered an explanation for the decision that runs counter to the evidence, or if the decision is so implausible that it could not be ascribed to a difference in view or the product of agency expertise. The reviewing court may not supply a reasoned basis for the agency's action that the agency has not given, but must uphold a decision of less than ideal clarity if the agency's path is reasonably discernible.[96]

[91] *Peoples Natural Gas Co.*, 342 N.W.2d at 353; *see also* Mausolf v. Babbitt, 125 F.3d 661, 670 (8th Cir. 1997) (finding that, even though record was devoid of "definitive, irrefutable evidence" to establish adverse connection between snowmobiling and loss of gray wolves, evidence was sufficient to justify National Park Service's decision to order Park closures and action was not arbitrary or capricious); *In re* Review of 2005 Automatic Adjustment of Charges, 768 N.W.2d 112, 121-22 (Minn. 2009).

[92] *Peoples Natural Gas Co.*, 342 N.W.2d at 352.

[93] *Cable Commc'ns Bd.*, 356 N.W.2d at 668-69 (quoting *Reserve Mining*, 256 N.W.2d at 825); White v. Minn. Dep't of Natural Res., 567 N.W.2d 724, 730 (Minn. Ct. App. 1997); Fahey v. Avnet, Inc., 525 N.W.2d 568, 571 (Minn. Ct. App. 1994).

[94] Brown v. Wells, 181 N.W.2d 708, 711 (Minn. 1970); *see also In re Review of Annual Automatic Adjustment*, 768 N.W.2d at 120; *In re* Toberman, 527 N.W.2d 138, 142 (Minn. Ct. App. 1995).

[95] *In re* Max Schwartzman & Sons, 670 N.W.2d 746, 752 (Minn. Ct. App. 2003).

[96] *In re* Space Ctr. Transp., 444 N.W.2d 575, 581 (Minn. Ct. App. 1989) (citing Motor Vehicle Mfrs. Ass'n v. State Farm Mutual Auto. Ins. Co., 463 U.S. 29, 43 (1983)) (affirming action of Transportation Board denying transfer as not arbitrary and capricious); *see In re* Application from the Minn. Orchestral Ass'n, 607 N.W.2d 478, 481 (Minn. Ct. App. 2000) (citing *Space Ctr. Transp.*, 444 N.W.2d at 581) (finding that a variance from a noise standard granted by the PCA for an amphitheater was not arbitrary and capricious); Pope Cnty. Mothers v. MPCA, 594 N.W.2d 233, 238 (Minn. Ct. App. 1999) (finding PCA's decision not to require an environmental impact statement for a pig feedlot was arbitrary and capricious where agency proceeded without adequate information and issued permits before the EIS comment period expired); *see also In re* Application for PERA Ret. Benefits of McGuire, 756 N.W.2d 517, 520-21 (Minn. Ct. App. 2008) (holding action of PERA Board in rescinding appellant's retirement benefits without addressing equitable estoppel claim was not arbitrary and capricious). *But see* Citizens Advocating Responsible Dev. v. Kandiyohi Cnty. Bd. of Comm'rs, 713 N.W.2d 817, 836-37 (Minn. 2006) (concluding county's use of erroneous propositions as a basis for its determination that proposed gravel pits have no potential for cumulatively causing significant environmental effects is arbitrary and capricious).

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Rejection by an agency of an ALJ's findings or recommendation is arbitrary or capricious if the agency gives no reason for rejecting them,[97] or if the decision lacks "any rational basis".[98] In cases of "great importance,"[99] an agency decision made without written findings and reasons is arbitrary and capricious even though the agency was not required to follow contested case procedures.

[97] Five Star Trucking v. Minn. Transp. Regulation Bd., 370 N.W.2d 666, 670 (Minn. Ct. App. 1985); Beaty v. Minn. Bd. of Teaching, 354 N.W.2d 466, 472 (Minn. Ct. App. 1984); *see* CUP Foods v. City of Minneapolis, 633 N.W.2d 557, 565 (Minn. Ct. App. 2001) (finding city council's failure to explain why it rejected the suggestion of the ALJ for conditional licensure, imposing instead a six-month closure, rendered the decision arbitrary and capricious); Brinks v. Minn. Pub. Utils. Comm'n, 355 N.W.2d 446, 452 (Minn. Ct. App. 1984) (finding commission's rejection of hearing examiner's findings not arbitrary or capricious where reasons for rejecting the findings were explained); *cf.* Bloomquist v. Comm'r, 704 N.W.2d 184, 190 (Minn. Ct. App. 2005) (finding that agency adequately explained its deviation from the contrary recommendation of the ALJ and articulated a rational connection between its factual findings and legal conclusions).

[98] *In re* City of Mankato v. Mahoney, 542 N.W.2d 689, 692 (Minn. Ct. App. 1996); *see In re* Application of Minn. Power, 838 N.W.2d 747, 760 (Minn. 2013) (quoting *Reserve Mining*, 256 N.W.2d at 825) ("We uphold the Commission's decision when it is supported by 'such relevant evidence as a reasonable mind might accept as adequate to support [the] conclusion.'"); *In re* Excess Surplus Status of Blue Cross & Blue Shield of Minn., 624 N.W.2d 264, 277 (Minn. 2001) (quoting Burlington Truck Lines, Inc. v. United States, 371 U.S. 156, 168 (1962) ("[An appellate court] must be guided in its review by the principle that the agency's conclusions are not arbitrary and capricious so long as a 'rational connection between the facts found and the choice made' has been articulated."); *In re* Minn. Power, 807 N.W.2d 484, 490 (Minn. Ct. App. 2011) (finding commission's actions not arbitrary where commission "carefully considered and articulated its basis" for its actions); *In re* Temp. Immediate Suspension of Family Child Care License of Strecker, 777 N.W.2d 41, 45 (Minn. Ct. App. 2010) (quoting *In re* Claim for Benefits by Meuleners, 725 N.W.2d 121, 123 (Minn.App.2006)) ("'An agency acts arbitrarily if it fails to articulate a rational connection between facts found and the decision made.'"); *see also* In re Expulsion of N.Y.B. from Indep. Sch. Dist. No. 11, 750 N.W.2d 318, 325-26 (Minn. Ct. App. 2008) (finding school board twice failed to include the "controlling facts" on which it based its expulsion decision as required under statute and, therefore, the court was not able to conclude whether the board's decision was the product of reasoned decision-making).

[99] Reserve Mining Co. v. Minn. Pollution Control Agency, 364 N.W.2d 411, 414 (Minn. Ct. App. 1985); *see also* Johnson v. Comm'r of Health, 671 N.W.2d 921, 924-25 (Minn. Ct. App. 2003) (finding agency's refusal to set aside relator's disqualification cannot be sustained absent written findings and reasons); *In re* Authorization to Discharge & Construct Wastewater Treatment Facilities, 366 N.W.2d 118, 122 (Minn. Ct. App. 1985) (concluding in neighboring state's appeal to agency's provisions in granted sewer overflow discharge permits: "Although this appeal did not arise from a contested case, the MPCA should still have provided written reasons for its decision."); *cf.* Matter of Auth. to Provide Alt. Operator Servs. in Minn., 490 N.W.2d 920, 924 (Minn. Ct. App. 1992) (finding Commissioner's findings, although "somewhat meager and conclusory," were sufficient).

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