STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0115
A19-0134

In the Matter of Issuance of Air Emissions
Permit No. 13700345-101 for
Polymet Mining, Inc.,
City of Hoyt Lakes,
St. Louis County, Minnesota.

Filed July 19, 2021
Remanded
Jesson, Judge

Minnesota Pollution Control Agency

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Considered and decided by Jesson, Presiding Judge; Cleary, Judge;[*] and Rodenberg, Judge.[*]

SYLLABUS

Under Minn. Stat. § 14.69 (2020), when an agency fails to adequately explain the reasons for its conclusions, a reviewing court may reverse the agency's decision as unsupported by substantial evidence or remand to the agency for additional findings.

OPINION

JESSON, Judge

Respondent Poly Met Mining Inc. (PolyMet) hopes to build a mine in northern Minnesota, and it requires numerous state and federal permits to do so. These consolidated certiorari appeals are taken from one of those permits—an air-emissions permit—issued by respondent Minnesota Pollution Control Agency (the Agency). Relators Minnesota Center for Environmental Advocacy, et al. (the Center)[1] and Fond du Lac Band of Lake Superior Chippewa assert that the Agency improperly issued an air-emissions permit for the proposed mine. Relators believe that PolyMet does not intend to comply with the operational limits of that permit. Their belief is based largely on a report that PolyMet submitted to Canadian securities regulators after the public-comment period for the air-emissions permit had closed but before the Agency issued the permit. Although the

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

[1] Counsel for the Center also represent relators Center for Biological Diversity, Friends of the Boundary Waters Wilderness, and Sierra Club.

Agency received this Canadian report before issuing the air-emissions permit, it did not address the document in its decision granting the permit.

In March 2020, we issued a decision supplementing the record with the Canadian report and other documents and concluding that the Agency's findings were not sufficient for us to review the arguments raised by relators. *See In re Issuance of Air Emissions Permit No. 13700345-101 for PolyMet Mining, Inc.*, 943 N.W.2d 399, 402 (Minn. App. 2020) (*PolyMet I*), *rev'd*, 955 N.W.2d 258 (Minn. 2021). The Minnesota Supreme Court granted PolyMet's and the Agency's petitions for further review and reversed our decision. *In re Issuance of Air Emissions Permit No. 13700345-101 for PolyMet Mining, Inc.*, 955 N.W.2d 258, 261 (Minn. 2021) (*PolyMet II*). The supreme court held that the Agency is not required, under federal law, to prospectively investigate whether a permit applicant is engaged in "sham permitting." *Id.* at 260-61.

The supreme court then remanded the appeals for us to consider two issues arising under the Agency's permitting rules. *Id.* at 269. First, the supreme court instructed us to consider whether the Canadian report and other documents undermined the Agency's conclusion that PolyMet "will . . . comply with all conditions of the permit." *Id.* (quoting Minn. R. 7007.1000, subp. 1(G) (2019)). And second, the court directed us to consider whether the Agency should have denied the permit because PolyMet "has failed to disclose fully all facts relevant" to the permit or has "knowingly submitted false or misleading information to the agency." *Id.* (quoting Minn. R. 7007.1000, subp. 2(C) (2019)).

We review these issues under the substantial-evidence test—a test that requires us to determine, as a threshold matter, whether the Agency has adequately explained the

reasons for its conclusions. Applying that standard to the two issues before us on remand, we conclude that the Agency has not adequately explained the reasons for its conclusions. Although this failure could support reversal of the Agency's decision to issue the permit, we determine that a remand—for further consideration and additional findings—is the more appropriate disposition on the facts before us.

FACTS

If built, PolyMet's mine, which it calls NorthMet, would be the first copper-nickel-platinum mine in Minnesota. *PolyMet II*, 955 N.W.2d at 261.[2] Pursuant to the federal Clean Air Act, before constructing the mine, PolyMet must obtain an air-emissions permit from the Agency.[3] This is because there will be air pollution from ore-processing equipment—including ore crushers and conveyors—as well as vehicle traffic and other sources. But the level of regulatory scrutiny triggered by this permit application depends upon the projected amount of air pollution. Generally, a facility that has the potential to emit more than 250 tons of air pollution per year is deemed a "major stationary source." *Id.* (quoting 40 C.F.R. § 52.21(b)(1)(i)(a)-(b) (2019)). And such major sources of pollution, as the supreme court explained, undergo an exacting permitting process. *Id.* (citing 40 C.F.R. § 52.21(b)(12) (2019)). Stringent pollution control measures are imposed

[2] The nature of the proposed mine and related facilities is detailed in *In re NorthMet Project Permit to Mine Application*, __ N.W.2d __, __, 2021 WL 1652768, at *2-3 (Minn. Apr. 28, 2021) (*NorthMet*). We limit our discussion here to the facts pertinent to the air-emissions permit at issue in these appeals.

[3] The Agency is authorized to issue permits under the Clean Air Act, 42 U.S.C. §§ 7401-7671q (2020). *See* 40 C.F.R. pt. 70, App. A (2019); Minn. Stat. § 116.07, subds. 2(a), 4a(a) (2020) (authorizing the Agency to set air-pollution standards and issue air-emissions permits).

before construction begins. *Id.* (citing 40 C.F.R. § 52.21(b)(12)).[4] But even if a facility is capable of emitting more than 250 tons of annual pollution, it can bypass these exacting requirements by agreeing to enforceable operational restrictions, thereby limiting air pollution. *Id.* (citing *In re Shell Offshore, Inc.*, 15 E.A.D. 536, 550 (EAB 2012)). The logic: if operations are limited, less pollution results, and less regulation should be necessary.

To avail itself of this option of limiting its operations—and avoid more stringent regulation—an entity may apply for what is known as a synthetic minor source permit under the federal Clean Air Act. *Id.* That is the permit PolyMet seeks here. Under that permit, PolyMet agrees to the restriction central to this appeal: to limit its ore-processing rate (also known as throughput) to 32,000 tons per day. An issue may arise, however, if PolyMet increases its operations to major-source levels after receiving a synthetic minor source permit. *Id.* at 261-62. In that event, PolyMet may be determined to have engaged in "sham permitting" by seeking a permit with which it did not intend to comply. *Id.* at 262.

[4] These control measures are known as best available control technology (BACT). 40 C.F.R. § 52.21(b)(12). "BACT, despite what the term implies, is not a particular type of technology. Rather, it is an 'emission limitation based on the maximum degree of reduction of each pollutant subject to regulation . . . which the permitting authority, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable' for the facility in question." *Sierra Club v. Otter Tail Power Co.*, 615 F.3d 1008, 1011 (8th Cir. 2010) (quoting 42 U.S.C. § 7479(3)).

Administrative Proceedings on the Permit Application

After PolyMet submitted its permit application, the Agency initiated proceedings that included accepting public comments on the application. Relators submitted comments questioning the accuracy of the modeling used to determine the NorthMet project's potential to emit air pollutants and the sufficiency of permit conditions to limit pollution to synthetic-minor levels.

Ten days after the close of the public-comment period, in March 2018, PolyMet's Canadian parent corporation filed a report with Canadian securities regulators (the Canadian report). The Canadian report evaluated the economics of the NorthMet mine with the ore-processing limitations provided in the synthetic minor source permit applied for by PolyMet. But the report also discussed the feasibility of increasing the throughput of the NorthMet mine to levels that would require a major-source permit under the Clean Air Act. More specifically, the Canadian report identified a 10.3% internal rate of return[5] for the NorthMet mine at the planned ore throughput of 32,000 tons per day. But the Canadian report discussed and provided preliminary economic assessments of two scenarios with higher ore throughputs of 59,000 and 118,000 tons per day. For these increased throughputs, the Canadian report identified potential internal rates of return of 18.5% and 23.6%, respectively.

[5] An internal rate of return is "a discounted-cashflow method of evaluating a long-term project, used to determine the actual return on an investment." Bryan A. Garner, ed., *A Handbook of Business Law Terms* 491 (1999).

The Center notified the Agency of the Canadian report on three separate occasions. First, in June 2018, the Center served the Agency's commissioner with a copy of a petition to the Minnesota Department of Natural Resources (DNR) for a supplemental environmental-impact statement based on information in the report. The Center attached ten exhibits to the petition, including the Canadian report, multiple articles indicating that PolyMet discussed expanded mining at NorthMet with investors, and an analysis of the Canadian report from the Center's expert. That expert opined that the 10.3% internal rate of return forecasted for the planned throughput "cannot be viewed favorably" and could suggest that NorthMet is "no longer economic." Major mining firms, the expert opined, generally require an internal rate of return of 30% or 40% for new mining projects. And the expert asserted that if PolyMet did not intend to expand operations, "it is unlikely the [Canadian report] would have included the expanded options."

Second, in November 2018, the Center submitted a request to the Agency asking that it stay all permits pending judicial review of the DNR's decision to deny a supplemental environmental-impact statement. The Center attached to the stay request an October 2018 memorandum from the DNR's consulting engineering firm that analyzed the information in the Canadian report. That memorandum, consistent with the Center's expert, characterized the NorthMet mine as "marginally" economic.

Third, on December 13, 2018, the Center sent the Agency a letter asking it to investigate whether PolyMet was engaged in sham permitting in violation of the Clean Air Act. The Center attached the Canadian report to the letter. In that letter, the Center asserted that the Canadian report "reveals a fundamental truth about the PolyMet project: the mine

as proposed is too expensive to attract investors." The Center requested that the Agency withhold issuance of the permit until it "has fully evaluated whether issuing a synthetic minor permit for this project is defensible."

The Agency took no action in response to the petition for a supplemental environmental-impact statement[6] and denied the request to stay as premature. But the Agency responded directly to the Center's letter requesting an investigation. In a December 19, 2018 letter to the Center, the commissioner cited cautionary language from the Canadian report, and stated that the increased-throughput scenarios examined in the report were "speculative at best." The letter concluded: "Neither the [Canadian report], nor PolyMet's submittals in support of the Air Permit, indicate any intent by PolyMet to circumvent major source permitting. For these reasons, the [Canadian report] does not provide a basis for withholding issuance of the final PolyMet Air Permit." The letter did not address any of the other documents submitted to the Agency by the Center in relation to the Canadian report.

The next day, December 20, 2018, the Agency granted the air-emissions permit. The Agency's permit findings are brief and largely focused on procedural history, although the findings do append a lengthy technical support document and a spreadsheet containing

[6] On appeal, the Agency acknowledges that the Center served a copy of the petition for a supplemental environmental-impact statement on the Agency's commissioner. But, the Agency asserts, it had no responsibility for issuing a decision on that petition. And, the Agency notes, the petition was not reviewed by "the [Agency] staff responsible for the air-emissions permit." But the commissioner supervises and controls the agency, and makes all decisions on its behalf. Minn. Stat. § 116.03, subd. 1 (2020). Thus we firmly reject the Agency's implicit assertion that service on the commissioner was not effective to notify the Agency—including all of its divisions—of the petition.

the Agency's responses to comments received during the public-comment period. But nothing—in the permit findings, the technical support document, or the responses to comments—addresses the Canadian report, any of the other documents submitted by the Center in relation to the report, or the potential, based on the documents, that PolyMet will expand operations after obtaining the synthetic minor source permit.

Our Initial Review

Relators filed these certiorari appeals. One argument advanced by relators: The Agency had a duty to inquire whether PolyMet was engaged in sham permitting under the Clean Air Act. But relators also argued that the Agency's decision to issue the permit was arbitrary and capricious and unsupported by substantial evidence. Relators requested that we, in evaluating their appellate arguments, consider the petition for a supplemental environmental-impact statement and the request to stay they had submitted to the Agency—neither of which the Agency had included in the administrative record.

On March 23, 2020, we issued a published decision. We determined that we could consider documents outside the administrative record for the purpose of determining whether an agency has failed to consider an important aspect of a problem. *PolyMet I*, 943 N.W.2d at 401 (syllabus by the court). We also held that our "authority under Minn. Stat. § 14.69 (2018) to remand an administrative case for further proceedings is not dependent on establishment of one of the six reasons for reversal under" that statute. *Id.* (syllabus by the court). And finally, we concluded that the Agency's findings were insufficient because they did not meaningfully engage with the requirements for granting or denying an air-emissions permit under Minn. R. 7007.1000 (2019). *Id.* at 409.

Supreme Court Review

Both the Agency and PolyMet petitioned for further review, which the supreme court granted. On February 24, 2021, the supreme court issued an opinion deciding only one issue: Do federal regulations and Environmental Protection Agency (EPA) guidance mandate prospective investigation of whether an applicant is seeking a sham permit? *PolyMet II*, 955 N.W.2d at 260-61. The supreme court answered that question in the negative. *Id.* at 268. In so answering, the court reasoned that "the legally binding regulations, passed through notice and comment, are specifically designed to provide the EPA its own independent authority to enforce the operational restrictions within synthetic minor source permits issued by the Agency and to punish *after the fact* those sources that obtained a synthetic minor source permit through deceit." *Id.* Because the supreme court "conclude[d] that the Agency was under no *federal* obligation to investigate sham permitting during the synthetic minor permit process," it reversed our decision "ordering a remand on that basis." *Id.* (emphasis added).

Turning to other issues, the supreme court concluded that both the Agency and PolyMet had forfeited any challenge to this court's supplementation of the record by not challenging it in their petitions for further review or raising it in their briefs. *Id.* at 269.[7]

[7] Despite deeming the issue forfeited, the supreme court stated that this court may look to federal administrative law in ruling on such a motion; that federal caselaw allows supplementation "for a limited class of documents which should have been considered by the [A]gency in reaching the challenged decision"; and that "[h]ere, there is no dispute that the two documents subject to the motion to supplement were sent to the Agency months before it issued the permit." *PolyMet II*, 955 N.W.2d at 269 n.6 (quotation omitted). The supreme court also saw "no error" in our denial of the Agency's motion to strike portions

And the supreme court declined to reach the issue of whether this court erred by remanding to the Agency without explicitly finding a violation of the Minnesota Administrative Procedure Act. *Id.* at 268-69. Finally, the supreme court directed this court to address two state law issues on remand:

> (1) whether "the [Canadian] report and other evidence undermined the Agency's conclusion that PolyMet 'will . . . comply with all conditions of the permit," Minn. R. 7007.1000, subp. 1(G); and (2) whether the Agency should have denied the permit because PolyMet "has failed to disclose fully all facts relevant" to the permit and has "knowingly submitted false or misleading information to the [A]gency." *Id.*, subp. 2(C).

Id. Following remand, we ordered supplemental briefing. We now turn to address the issues identified for our review on remand and to determine the proper disposition of these appeals.

ISSUE

Does substantial evidence support the Agency's determinations on the remanded issues?

ANALYSIS

Our duty on remand is to "execute the mandate of [the supreme court] strictly according to its terms." *Halverson v. Village of Deerwood*, 322 N.W.2d 761, 766 (Minn. 1982); *see also Mortenson v. Comm'r of Pub. Safety*, 918 N.W.2d 573, 578 (Minn. App. 2018) (applying rule on remand from supreme court), *review denied* (Minn. Dec. 18,

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of relators' brief and addendum, because we had not relied on outside-the-record information in reaching our decision. *Id.* at 268.

2018). Here, the supreme court clearly identified two issues for our consideration.[8] We are to consider whether the Canadian report and other related evidence undermine the Agency's finding that PolyMet is anticipated to comply with the terms of the permit. And we are to consider whether the Agency should have denied the permit because PolyMet failed to fully disclose relevant facts or because it knowingly submitted false or misleading information to the Agency.

PolyMet and the Agency assert that we should review these issues to determine whether the Agency's conclusions have the support of substantial evidence. We agree. As the supreme court has explained, the substantial-evidence standard governs judicial review of factual issues requiring agency judgment. *See In re Application of Minn. Power for Auth. to Increase Rates for Elec. Serv.*, 838 N.W.2d 747, 757 (Minn. 2013) (*Minn. Power*) ("[W]e review factual determinations made within the scope of the agency's statutory authority under the substantial evidence standard."); *Minn. Ctr. for Envtl. Advocacy v. Minn. Pollution Control Agency*, 644 N.W.2d 457, 464 (Minn. 2002) (*MCEA v. MPCA*) (holding that substantial-evidence test governs review of "determination [of] whether significant environmental effects result from [a] project" because that determination "is primarily factual and necessarily requires application of the agency's technical knowledge and expertise to the facts presented"). In conducting this review, we

[8] Following the supreme court's decision, we issued an order reinstating the appeal "for the purpose of addressing issues that were raised by the parties but not addressed in this court's previous decision." PolyMet argues that relators are precluded by this order from raising the arguments identified by the supreme court for our consideration on remand. Because the supreme court's mandate controls the scope of the remand, we disagree.

apply a "presumption of correctness" and defer to an agency's expertise. *In re Excess Surplus Status of Blue Cross & Blue Shield of Minn.*, 624 N.W.2d 264, 278 (Minn. 2001) (*Blue Cross*) (quoting *Reserve Mining Co. v. Herbst*, 256 N.W.2d 808, 824 (Minn. 1977)).[9]

Two inquiries frame the substantial-evidence test. First, this court must determine whether the Agency "adequately explained how it derived its conclusion." *Minn. Power*, 838 N.W.2d at 757 (quoting *Minn. Power & Light Co. v. Minn. Pub. Utils. Comm'n*, 342 N.W.2d 324, 330 (Minn. 1983)). Second, we review "whether that conclusion is reasonable on the basis of the record." *Id.* (quoting *Minn. Power & Light Co.*, 342 N.W.2d at 330); *see also In re NorthMet Project Permit to Mine Application*, __ N.W.2d ___, ___, 2021 WL 1652768, at *11 (Minn. Apr. 28, 2021) (*NorthMet*) (noting use of "different formulations" for substantial-evidence test but reaffirming two-part inquiry). We acknowledge that substantial-evidence review often focuses on the second part of the inquiry—whether there is sufficient evidence in the record to support an agency's conclusion.[10] But we must not vault over the first step of the inquiry. For the substantial-evidence test "is not directed solely at the quantity of evidentiary support for an administrative determination." *Minn. Power & Light Co.*, 342 N.W.2d at 329 (quotation

[9] Relators assert that there is an issue of law for our determination on remand: whether the Agency had a duty under state law to investigate whether PolyMet met its disclosure obligations and will comply with the requirements of its synthetic minor source permit. But that issue was not directly identified by the supreme court's remand instructions. Thus, we proceed to analyze whether the Agency's conclusions are supported by substantial evidence, but we address relators' duty-to-investigate argument within that analysis.

[10] Caselaw instructs that there must be more than "some" or a "scintilla" of evidence or "evidence that a reasonable mind might accept to support a conclusion." *NorthMet*, 2021 WL 1652768, at *11 (quotation omitted).

omitted). The test also requires "an agency to explain its methodology or reasoning when support for its conclusion is not readily discernible from the evidentiary record, such as when the agency must make a judgment call." *Id.* Thus, an agency decision may fail substantial-evidence review if the agency does not adequately explain the reasons for its decision *or* if the record does not support the agency's reasons for its decision. *See id.*

With this framework in mind, we turn to the first part of the substantial-evidence inquiry—whether the Agency provided adequate explanations for its conclusions. In doing so, we focus on the two questions the supreme court directed us to consider on remand. And so we ask whether the Agency adequately explained its conclusions that (1) PolyMet is anticipated to comply with the terms of the synthetic-minor air-emissions permit and (2) there was no basis to deny the permit based on a failure to disclose relevant facts or the knowing submission of false or misleading information. Because the supreme court did not disturb our decision to supplement the record with the petition for a supplemental environment-impact statement and request for a stay, together with their exhibits, we review the adequacy of the Agency's explanations on the record as supplemented. *See PolyMet II*, 955 N.W.2d at 269.

We first review the Agency's conclusion that PolyMet is anticipated to comply with the terms of the synthetic minor source permit. *See* Minn. R. 7007.1000, subp. 1(G). In its findings of fact, the Agency included no more than a conclusory statement on this requirement for approval of a permit. The Agency found that the "proposed issuance" of the permit "meets the requirements of Minn. R. 7007 .1000, subp. 1." But the Agency did not explain *why* this was so. And the Agency had before it documents that called into

question whether PolyMet could be expected to comply with the throughput limits of the synthetic minor source permit. The Canadian report suggested that the profitability of the project would be limited with the throughput limitations and that PolyMet was evaluating the profitability of the project with higher throughput. And the Center's expert opined that it was unlikely that PolyMet would have included the increased-throughput analyses in the Canadian report if it did not intend to expand the NorthMet mine.

Although we do not agree with the Center that the Agency has a hard-and-fast duty to investigate a permit applicant's future plans[11]—and the Agency strongly resists the phrase "duty to investigate"—the Agency concedes that it is required to conduct a "detailed" and "iterative" permitting process. The process, according to the Agency, "includes independently verifying technical data and assumptions" and seeking out missing information from applicants. With this obligation in mind and on this record, we cannot conclude that the Agency adequately explained its conclusion that PolyMet is anticipated to comply with the terms of the synthetic minor source permit.

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[11] In their original brief to this court, relators asserted that caselaw requiring an agency to have taken a "hard look" at relevant issues required the Agency to investigate whether PolyMet intended to comply with the requirements of the synthetic minor source permit. We rejected that argument in our first decision, reasoning that the "hard look" analysis—while a part of this court's certiorari review—does not impose a substantive requirement. *PolyMet I*, 943 N.W.2d at 408. In their supplemental brief, relators argue that Minn. Stat. § 116.07 (2020) and the Agency's permitting rules impose a duty to investigate. We agree with the Agency that nothing in the statute or rules relied upon by relators imposes a "duty to investigate" that is separate from the procedure required on an application for an air-emissions permit. *See generally* Minn. R. 7007.0100-.3010 (2019) (governing Agency review of air-emissions-permit application); *see also* Minn. Stat. § 116.07, subd. 9(3) (authorizing Agency "to conduct investigations . . . *as it may deem necessary or advisable for the discharge of its duties* . . . including but not limited to the issuance of permits" (emphasis added)).

Still, the Agency asserts that the substantial-evidence requirement is satisfied by the incorporated technical support document and by its December 19, 2018 letter to the Center. We disagree in both respects. Like the Agency's findings, the technical support document does not address the Canadian report or the documents submitted by the Center in relation to that report. And the commissioner's December 19 letter was sent solely to the Center and is not part of the Agency's decision. Moreover, though the letter addresses the Canadian report, it does so only in a conclusory fashion, relying primarily on cautionary language that is pro forma in securities-related documents to conclude that PolyMet has indicated no intent to expand the NorthMet mine.

We next review the Agency's conclusion that PolyMet did not fail to disclose any relevant facts and did not knowingly provide false or misleading information to the Agency. *See* Minn. R. 7007.1000, subp. 2(C). Again, here, the Agency's finding is conclusory. It concludes merely that "none of the justifications to deny permit issuance described in Minn. R. 7007.1000, subp. 2 exists." And again, nothing in the technical support document or the responses to comments addresses whether PolyMet complied with its disclosure obligations and refrained from knowingly making false or misleading statements. This silence stands in contrast to the documents before the Agency suggesting that PolyMet was exploring expansions of the NorthMet mine that would not comply with the terms of the synthetic minor source permit. Perhaps the most probative evidence of this intent: the Canadian report. And that report was filed *and submitted to the Agency* before the Agency issued the permit. Yet, the Agency did not make any reflective findings on whether PolyMet had failed to disclose relevant facts or knowingly submitted false or

misleading information. Nor did it directly address whether these new facts merited additional inquiry. On this record, we cannot conclude that the Agency adequately explained its conclusion that there was not a basis to deny the permit under Minn. R. 7007.1000, subp. 2(C).[12]

Because the Agency has not adequately explained the reasons for either of its conclusions before us on remand, we conclude that the substantial-evidence test is not satisfied. And we turn to determine the appropriate disposition.

The Minnesota Administrative Procedure Act (the act) provides that this 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 [relator] may have been prejudiced" for one of six reasons: the decision (a) violates constitutional provisions; (b) exceeds the agency's authority; (c) is made upon unlawful procedure; (d) is affected by other error of law; (e) is unsupported by substantial evidence; or (f) is arbitrary or capricious. Minn. Stat. § 14.69 (2020). But, as we held in our previous decision, our authority to remand to an agency under the act is not dependent on a determination that the agency's decision must be reversed. *See PolyMet I*, 943 N.W.2d at 401. The supreme court did not disturb that holding, and we remain persuaded that it is correct. We therefore reaffirm it here.

[12] We acknowledge the difficulty of proving a negative. And it may be that individualized findings regarding disclosure are not necessary in many or even most permitting cases. But in this case, the Agency had before it specific and substantiated allegations that PolyMet had failed to disclose relevant facts or knowingly submitted false or misleading information.

Under the act, then, when we determine that an agency has not adequately explained the reasons for its conclusions, we may remand for additional findings. But we may alternatively reverse the agency's decision as lacking the support of substantial evidence.

Minnesota appellate court decisions are in accord. The caselaw recognizes that we must have sufficient findings to facilitate judicial review. *See People for Envtl. Enlightenment & Responsibility (PEER), Inc. v. Minn. Envtl. Quality Council*, 266 N.W.2d 858, 871 (Minn. 1978) (stating that, in every case, a reviewing court must determine whether the findings of an agency are "sufficiently specific" to allow judicial review); *Carter v. Olmsted Cty. Hous. & Redev. Auth.*, 574 N.W.2d 725, 729 (Minn. App. 1998) (stating that agency's findings must be stated with "clarity and completeness" to facilitate appellate review). And, if an "agency's findings are insufficient, the case can be either remanded for additional findings *or* reversed for lacking substantial evidence supporting the decision." *In re Expulsion of A.D.*, 883 N.W.2d 251, 258 (Minn. 2016) (emphasis added) (quotation omitted).[13]

In this case, we conclude that it is appropriate to remand to the Agency for additional findings and a revised decision. The defect in this case stems from the Agency's failure to

[13] In our previous decision, we relied on some of these cases in concluding that we could remand the matter for additional findings without establishment of one of the six reasons to reverse under Minn. Stat. § 14.69. *PolyMet I*, 943 N.W.2d at 408-09. Here, based on further review, we observe the supreme court's steadfast adherence to the substantial-evidence test in reviewing agency findings. *See, e.g.*, *NorthMet*, 2021 WL 1652768, at *11; *Minn. Power*, 838 N.W.2d at 757; *MCEA v. MPCA*, 644 N.W.2d at 464. Thus, we apply the substantial-evidence test. But the result is the same. We still determine that the Agency's findings are insufficient, and we still remand for further consideration and additional findings.

consider pertinent documents and make reflective findings. We have not concluded that the record could not support a reasoned decision by the Agency to issue a permit. We have simply determined that the Agency did not make such a reasoned decision. Accordingly, we deem remand the appropriate disposition.[14]

DECISION

Given the Canadian report and other evidence, the Agency faced two judgment calls: Would Polymet comply with all the conditions of the permit and did Polymet fail to disclose all relevant facts or knowingly submit false or misleading information to the Agency? These questions led to a derivative judgment call: Was additional inquiry necessary to make these decisions?

We accord an agency's judgment calls much deference, particularly when those decisions call for expertise. Certainly, the technical permitting decisions here called for expertise. But with deference comes obligations. A central obligation—to adequately explain an agency's decisions. That obligation drives effective appellate review. For only after receiving a reasoned decision are we able to determine whether that conclusion is

[14] Remanding in this case is also consistent with the limited nature of our certiorari review. It is axiomatic that certiorari review is a limited and deferential review. *Blue Cross*, 624 N.W.2d at 278; *Reserve Mining*, 256 N.W.2d at 824. These limitations are rooted in the principle of separation of powers—that each branch of the government be free from unwarranted interference by other branches. *Reserve Mining*, 256 N.W.2d at 824; *see also* Minn. Const. art. III, § 1 (forbidding one branch of government from exercising powers belonging to another); *Dokmo v. Indep. Sch. Dist. No. 11*, 459 N.W.2d 671, 674 (Minn. 1990) (explaining that "[s]eparation of powers principles dictate the continued adherence to limited review by writ of certiorari").

supported by the record. And, correspondingly, that obligation drives public trust and understanding, particularly with regard to technical, controversial judgment calls.

With this in mind, we conclude that the Agency has not adequately explained the reasons for its conclusions on the two issues remanded by the supreme court for our consideration. And we determine that it is appropriate to remand the matter for the Agency to make additional findings and issue a revised decision.

Remanded.