

STATE OF MINNESOTA
IN COURT OF APPEALS



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

ORDER
A22-0068

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

**BASED ON THE FILE, RECORD, AND PROCEEDINGS, AND FOR THE
FOLLOWING REASONS:**

Respondent Poly Met Mining Inc. (PolyMet) moves to dismiss this certiorari appeal of a December 20, 2021 decision by respondent Minnesota Pollution Control Agency (MPCA) that issued an air-emissions permit to PolyMet for its NorthMet project. PolyMet asserts that this court lacks jurisdiction over the appeal because relators (Minnesota Center for Environmental Advocacy, Friends of the Boundary Waters Wilderness, and Sierra Club) failed to timely serve the petition for a writ of certiorari on PolyMet's counsel.

For certiorari appeals, "[t]he appeal period and the acts required to invoke appellate jurisdiction are governed by the applicable statute." Minn. R. Civ. App. P. 115.01. A decision by the MPCA to issue a permit is subject to certiorari review under the appeal provisions of the Minnesota Administrative Procedure Act (MAPA). *See* Minn. Stat.

§ 115.05, subd. 11(1) (2020). But “if MAPA is silent on a matter of procedure[,] court rules control.” *In re J.M.T.*, 759 N.W.2d 406, 408 (Minn. 2009); *see also Savre v. Indep. Sch. Dist. No. 283*, 642 N.W.2d 467, 470 (Minn. App. 2002). This court “lacks jurisdiction over an administrative appeal that is not initiated in accordance with the requirements of [MAPA].” *In re Midway Pro Bowl Relocation Benefits Claim*, 937 N.W.2d 423, 425 (Minn. 2020).

Under Minn. Stat. § 14.63, a certiorari appeal is perfected by filing a petition for a writ of certiorari and serving it on all parties within 30 days after the appealing party receives the final decision of the agency. But section 14.63 is silent on the manner of service, which is a matter of procedure. “When a certiorari statute does not prescribe how service is to be effected, the appellate rules prescribing the manner of service apply.” *Sorenson v. Life Style, Inc.*, 674 N.W.2d 439, 440 (Minn. App. 2004). The manner of service is therefore governed by the appellate rules, including Minnesota Rule of Civil Appellate Procedure 125.02, which provides that “[s]ervice on a party represented by counsel shall be made on the attorney.” *See also Palmquist v. Onan Corp.*, 482 N.W.2d 791, 792 n.1 (Minn. 1992) (“As a general rule, when a party is represented by an attorney, service is effective when made upon the attorney.”).

Under MAPA and rule 125.02, relators were required to perfect this certiorari appeal by serving the petition for a writ of certiorari on PolyMet’s counsel within 30 days of notice of the MPCA’s decision—or by January 19, 2022. Relators did not serve the petition on PolyMet’s counsel until January 20, 2022. Because the petition was not timely served on

PolyMet’s counsel, this court lacks jurisdiction, and the appeal must be dismissed. *See Midway Pro Bowl*, 937 N.W.2d at 425.

Relators argue that MAPA alone establishes the jurisdictional prerequisites for a certiorari appeal, and that Minn. Stat. § 14.63, construed together with Minn. Stat. § 14.64, provides that an appeal is perfected upon service of the petition on “all parties,” personally or by certified mail, within the 30-day appeal period. But nothing in either statute specifies who must be served when a party is a corporate entity like PolyMet. Relators seemingly rely on the methods of service provided in Minnesota Rule of Civil Procedure 4.03, which governs service of a summons in a civil action. Under that rule, delivery to an officer or designated agent is sufficient to effect service on a corporation. Minn. R. Civ. P. 4.03(c). The rules of civil procedure, however, do not govern proceedings in the appellate courts unless specifically incorporated by the appellate rules. *See* Minn. R. Civ. P. 1 (providing that civil rules govern district court proceedings). Minnesota Rule of Civil Procedure 4 is incorporated by Minnesota Rule of Civil Procedure 125.03 only in relation to serving a party who is not represented by counsel. And, as is explained above, Minnesota Rule of Civil Appellate Procedure 125.02 provides that service on a represented party is effected by serving the party’s attorney. *See also* Minn. R. Civ. App. P. 101.01 (providing that appellate rules govern “proceedings for review of orders of administrative agencies”).

IT IS HEREBY ORDERED:

1. The motion to dismiss is granted.

2. The writ of certiorari is discharged, and this appeal is dismissed.

Dated: June 21, 2022

BY THE COURT

A handwritten signature in black ink, appearing to read "Tracy M. Smith". The signature is written in a cursive, flowing style.

Tracy M. Smith
Presiding Judge