STATE OF MINNESOTA
IN COURT OF APPEALS
A18-1956

Minnesota Center for Environmental Advocacy, et al.,
Petitioners,

vs.

Minnesota Department of Natural Resources,
Respondent,

Poly Met Mining, Inc.,
Respondent.

Filed August 5, 2019
Rules declared valid; motion denied.
Kirk, Judge[*]

Minnesota Department of Natural Resources

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Considered and decided by Schellhas, Presiding Judge; Smith, Tracy M., Judge; and Kirk, Judge.

U N P U B L I S H E D O P I N I O N

KIRK, Judge

In this declaratory-judgment action under Minn. Stat. § 14.44 (2018), petitioners challenge the rules governing nonferrous metallic mineral mining in Minnesota. Respondents move to dismiss the action, arguing that petitioners lack standing to challenge the rules and that the action is untimely. We deny the motion to dismiss and declare the rules valid.

FACTS

On November 1, 2018, respondent Minnesota Department of Natural Resources (DNR) issued the first permit in the state's history for a copper-nickel-platinum group elements mine. The permitee, respondent Poly Met Mining, Inc. (PolyMet), proposes to build the mine, called the NorthMet project, in northeastern Minnesota. The project has garnered opposition that has resulted in numerous appeals to this court.[1] In this related

[1] *See In re Applications for a Supplemental Envtl. Impact Statement for Proposed NorthMet Project*, Nos. A18-1312, A18-1524, A18-1608, 2019 WL 2262780 (Minn. App. May 28, 2019) (affirming DNR decision not to complete supplemental environmental-impact statement); *In re NorthMet Project Permit to Mine* (A18-1952, A18-1958, A18-1959), and *In re Applications for Dam Safety Permits for the NorthMet Mining Project* (A18-1953, A18-1960, A18-1961); *In re Issuance of Nat'l Pollutant Discharge Elimination Sys. / State*

declaratory-judgment action, petitioners Minnesota Center for Environmental Advocacy, et al. (MCEA)[2] and Friends of the Boundary Waters Wilderness (Friends) (together, petitioners) seek to invalidate Minn. R. 6132.0100-.5300 (2017) (chapter 6132), the administrative rules pursuant to which the NorthMet project permit to mine was issued.

Chapter 6132 was promulgated pursuant to the legislature's direction in the mine land reclamation act, Minn. Stat. §§ 93.44-.51 (2018) (the act). The first version of the act was adopted in 1969. *See* 1969 Minn. Laws ch. 774, §§ 1-8, at 1438-43 (the 1969 law). The 1969 law declared a policy, which remains part of the act today:

> In recognition of the effects of mining upon the environment, it is hereby declared to be the policy of this state to provide for the reclamation of certain lands hereafter subjected to the mining of metallic minerals or peat where such reclamation is necessary, both in the interest of the general welfare and as an exercise of the police power of the state, to control possible adverse environmental effects of mining, to preserve the natural resources, and to encourage the planning of future land utilization, while at the same time promoting the orderly development of mining, the encouragement of good mining practices, and the recognition and identification of the beneficial aspects of mining.

Disposal Sys. Permit for the Proposed Northmet Project (A19-0112, A19-0118, A19-0124); and *In re Issuance of Air Emissions Permit for Polymet Mining, Inc.*, (A19-0115, A19-0134).

[2] Counsel for MCEA also represents petitioners Duluth for Clean Water, Center for Biological Diversity, Save Lake Superior Association, Friends of the Cloquet Valley State Forest, and Save Our Sky Blue Waters.

Minn. Stat. § 93.44; *see* 1969 Minn. Laws ch. 774, § 1, at 1439.[3] The 1969 law directed the commissioner of natural resources[4] to "conduct a comprehensive study and survey in order to determine, consistent with the declared policy of this act, the extent to which regulation of mining areas is necessary in the interest of the general welfare." 1969 Minn. Laws ch. 774, § 4, at 1440. The 1969 law also authorized, but did not require, the commissioner to adopt rules governing mining. *Id.* at 1441.

In 1973, the legislature adopted Minn. Stat. § 93.481, which prohibits mining of metallic minerals without a permit. *See* 1973 Minn. Laws. ch. 526, § 5, at 1191 (the 1973 law). Under the 1973 law, the commissioner retained the discretion to adopt rules, but still was not required to do so. *Id.*, § 3, at 1190. In 1980, the commissioner promulgated rules for mining of ferrous minerals. *See* Minn. Reg. 231-239 (Aug. 18, 1980) (adopting rules now codified at Minn. R. 6130.0100-.6300 (2017)).[5] In 1983, the legislature adopted a provision precluding the DNR from issuing permits to mine nonferrous metallic minerals[6]

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[3] The statutory policy was amended in 1983 to include the reference to mining of peat, *see* 1983 Minn. Laws ch. 270, § 1, at 1161, but otherwise remains as it was adopted in 1969. *Compare* 1969 Minn. Laws ch. 774, § 1, at 1439, *with* Minn. Stat. § 93.44.

[4] Although the 1969 law defined "commissioner" as "commissioner of conservation," another law passed in 1969 changed the name of the commissioner of conservation to the commissioner of natural resources. *See* 1969 Minn. Law. ch. 1129, art. 3, § 1.

[5] Chapter 6130 applies to "metallic mining operations from which iron is the predominant metal extracted," Minn. R. 6130.0300, subp. 5, which are generally recognized as ferrous minerals. *See, e.g.*, *American Heritage Dictionary* 651 (5th ed. 2011) (defining "ferrous" as "[r]elating to or containing iron").

[6] "'Nonferrous metallic mineral' means a metallic mineral from which iron is not the predominant metal extracted," and "'[m]etallic mineral' means a naturally formed chemical, element, or compound having a definite chemical composition and, usually, a characteristic crystal form, from which a metal, metals, or metal oxides can be extracted by metallurgical processes." Minn. R. 6132.0100, subps. 15, 22.

until it adopted rules related to reclamation for such mines. *See* 1983 Minn. Laws ch. 270, § 5, at 1163 (codified at Minn. Stat. § 93.481, subd. 6).

Over the next decade, the DNR engaged in study and rulemaking proceedings, and in March 1993, the DNR noticed adoption of final rules governing nonferrous metallic mineral mining. *See* 17 Minn. Reg. 2207-09 (March 15, 1993); Minn. R. 6132.0100-.5300. Before noticing the final rules, the DNR conducted formal rule proceedings. That process included preparing a statement of need and reasonableness (SONAR); publishing notice of intent to adopt rules; accepting public comments; holding a hearing before an administrative-law judge (ALJ), who issued a report recommending adoption of the rules; and publishing notice of the final rules in the Minnesota State Register. *See* Minn. Stat. §§ 14.131-.18 (1992) (setting forth rulemaking requirements for rules adopted with a hearing).

Although chapter 6132 was promulgated more than 25 years ago, no permit to mine was issued under it until November 1, 2018, when the DNR issued the permit for the NorthMet project. Petitioners initiated this action about a month later.

D E C I S I O N

I.

The DNR and PolyMet (together, respondents) argue for dismissal of this action based on their assertion that petitioners lack standing. Under Minn. Stat. § 14.44 (2018):

> The validity of any rule may be determined upon the petition for a declaratory judgment thereon, addressed to the court of appeals, when it appears that the rule, or its threatened application, interferes with or impairs, or threatens to interfere with or impair the legal rights or privileges of the petitioner.

This court has treated this language in section 14.44 as a conferment of statutory standing and has applied general principles governing declaratory-judgment standing to determine the existence of standing in a rules action. *See Rocco Altobelli, Inc. v. State, Dep't of Commerce*, 524 N.W.2d 30, 34 (Minn. App. 1994) (citing *State ex rel. Smith v. Haveland*, 25 N.W.2d 474 (Minn. 1946) and *Arens v. Village of Rogers*, 61 N.W.2d 508 (Minn. 1953)). Under those principles, the mere possibility of injury or a mere interest in a problem is not sufficient to confer standing. *Id.* Instead, petitioners must demonstrate that a rule is, or is about to be, applied to their disadvantage. *Id.*

Petitioners are environmental organizations representing individuals who own property and enjoy natural resources on property near potential nonferrous mining sites, including the NorthMet project site. The DNR asserts that any harm to petitioners' interests is speculative and that petitioners' desire to protect the environment is not sufficient to confer standing. PolyMet goes one step further, arguing that the *only* parties that will have standing to challenge chapter 6132 are entities (like itself) that seek permits to conduct nonferrous mineral mining.

This court has recognized "the broad statutory language establishing a right to challenge regulations before enforcement." *Save Mille Lacs Sportsfishing, Inc. v. Minn. Dep't of Nat. Res.*, 859 N.W.2d 845, 849 (Minn. App. 2015). And in actions asserted by regulated parties, this court has usually concluded that standing exists. *See Minn. Envtl. Sci. & Econ. Review Bd. v. Minn. Pollution Control Agency*, 870 N.W.2d 97, 101 (Minn. App. 2015) (*MESERB*) (holding that municipalities, wastewater-treatment facilities, sanitary-sewer districts, and farming operations would have been affected by and had

sufficient particularized interest in water-quality standards to have standing in rules action); *Coal. of Greater Minn. Cities v. Minn. Pollution Control Agency*, 765 N.W.2d 159, 164 (Minn. App. 2009) (*Coal. of Cities*) (holding that coalition of municipalities that would be required to comply with challenged regulations had standing), *review denied* (Minn. Aug. 11, 2009); *cf. Save Mille Lacs Sportsfishing*, 859 N.W.2d at 848-49 (declining to dismiss action for lack of standing when parties had not raised issue and petitioners—organizations representing residents fishing the lake and resort owners—would be impacted by rules limiting fishing).

In one published decision, we addressed the standing, to pursue a rules challenge, of persons seeking more stringent regulations of others. *See Rocco Altobelli*, 524 N.W.2d at 34-35. In that case, we held that the petitioners did not have standing because their theory of injury was not borne out by the facts. *Id.* at 34-36 (explaining that injury claimed by petitioners was illusory; that even if there was an injury, it was not caused by the challenged rule; and that their arguments regarding public-safety interests were "demonstrably incorrect"). The holding in *Rocco Altobelli* is fact-specific and not helpful to our analysis here.

Our supreme court has not directly addressed standing under Minn. Stat. § 14.44. But it has addressed, in a slightly different context, the participation rights of parties whom regulations are intended to protect. *See Snyder's Drug Stores, Inc. v. Minn. State Bd. of Pharmacy*, 221 N.W.2d 162 (Minn. 1974). In *Snyder's Drug*, the court held that the district

court[7] abused its discretion in not allowing nonprofit consumer groups to intervene as plaintiffs in a rules challenge asserted by a drug-store chain to challenge a regulation prohibiting the advertisement of retail drug prices. *Id.* at 166-67. In deciding the intervention issue, the court discussed whether the consumer groups had standing to challenge the regulation, reasoning: "If no drug retailer sought to challenge the validity of [the rule], would that mean that no other class of potential plaintiffs would have standing to challenge the provision in question? [And], the question arises: For whose benefit was the regulation enacted?" *Id.* at 165. The supreme court concluded that permissive intervention was warranted in part because the pharmacy board had conceded that "it [was] not *per se* concerned with the impact that [the rule] has upon drug prices," and thus that "[n]ot allowing the appellants to intervene means that really no one representing the consuming public has any part in the lawsuit." *Id.* at 166.

We conclude that petitioners have standing to pursue a rules challenge under Minn. Stat. § 14.44. As we noted in *Save Mille Lacs Sportsfishing*, the statutory grant of standing is broad, 859 N.W.2d at 849, and petitioners have alleged threatened injuries to their members' interests in enjoying their land and the environment near potential mining sites. Additionally, under *Snyder's Drug*, it is relevant that petitioners are among the class of persons for whom the reclamation act and chapter 6132 were enacted. *See* Minn. Stat.

[7] Prior to 1984, challenges to administrative rules were heard by the district court. *See* Minn. Stat. § 15.0416 (1971) (authorizing action in district court); *see also* 1982 Minn. Laws. ch. 424, § 130, at 368 (authorizing recodification of administrative procedure provisions as chapter 14); 1984 Minn. Laws ch. 640, § 26, at 1793 (amending Minn. Stat. § 14.44 to allow for action in court of appeals).

§ 93.44 (stating environmental-protection purposes of statute); Minn. R. 6132.0200 (same for rules). Accordingly, we deny the motion to dismiss this action on the ground that petitioners lack standing.[8]

II.

Respondents argue that this action should be dismissed under the doctrine of laches, and PolyMet additionally argues that the action is barred under the six-year residual statute of limitations in Minn. Stat. § 541.05, subd. 1(5) (2018). We address the timeliness arguments in turn, beginning with PolyMet's statute-of-limitations argument.

A. Statute of limitations

PolyMet's argument for application of a statute of limitations relies on the supreme court's decision in *Weavewood, Inc. v. S & P Home Inv., LLC*, 821 N.W.2d 576 (Minn. 2012). In *Weavewood*, the supreme court held that "[s]tatutes of limitations apply to a declaratory judgment action *to the same extent* as a nondeclaratory proceeding based on the same cause of action." *Weavewood,* 821 N.W.2d. at 579 (emphasis added). The *Weavewood* holding is premised on the principle that "a complaint requesting declaratory relief must present a substantive cause of action that would be cognizable in a nondeclaratory suit." *Id.* (quotation omitted). Thus, the supreme court instructed that, to determine whether a declaratory-judgment action is timely, it must "examine the essence or gravamen of the action, to determine which, *if any*, statutes of limitations apply." *Id.* at

[8] Respondents separately assert that petitioners lack standing to assert a constitutional vagueness claim. We analyze this argument in the section addressing that claim below.

581 (quotation omitted) (emphasis added). By necessary implication, *Weavewood* recognizes that there may be claims with no governing statute of limitations. *See id.*

Assuming that *Weavewood* applies to this rules action, it does not compel the conclusion that this action is barred by the residual statute of limitations in Minn. Stat. § 541.05, subd. 1(5). *Weavewood* holds that statutes of limitation apply to the "same extent" that they would apply to the underlying cause of action if asserted in a suit not seeking declaratory relief. *Id.* at 579. In this case, there is no underlying cause of action that would be viable in a nondeclaratory action. Instead, Minn. Stat. § 14.44 provides a unique statutory remedy for which the legislature has not provided a statute of limitations.

PolyMet asserts that the comparable nondeclaratory action in this case would be for constitutional claims, which it asserts are governed by the residual statute of limitations. In support of this argument, PolyMet relies on *Berg v. Groschen*, 437 N.W.2d 75 (Minn. App. 1989). But *Berg* involved a *damages* claim under 42 U.S.C. § 1983 (1981), and this court relied on United States Supreme Court authority requiring the application of a state's residual statute of limitations to section 1983 damage claims. *Berg*, 437 N.W.2d at 77 (citing *Owens v. Okure*, 488 U.S. 235, 109 S. Ct. 573 (1989)). *Berg* is not helpful here.

PolyMet also asserts that the residual statute of limitations applies directly, by its language, to this declaratory-judgment action.[9] The residual statute of limitations provides a six-year statute for "actions . . . for any other injury to the person or rights of another, not

[9] PolyMet also cites, in a footnote, Minn. Stat. § 541.05, subd. 1(2) (2018), a six-year statute of limitations for "liability created by statute." But PolyMet does not explain how Minn. Stat. § 14.44 creates liability, which is generally understood as "an obligation, responsibility, or debt." *See American Heritage Dictionary* 1011 (5th ed. 2011).

arising on contract, and not hereinafter enumerated." Minn. Stat. 541.05, subd. 1(5). PolyMet argues that this language "straightforwardly covers Petitioners' contention that DNR exceeded its statutory authority, which they say 'impaired the legal rights and privileges of their members.'" Under PolyMet's analysis, however, *any* noncontract-based declaratory-judgment action would be governed by the residual statute of limitations. That is not the analysis that the supreme court applied in *Weavewood*.

Under *Weavewood*, we must determine what statute of limitations, *if any*, would apply to comparable claims in a nondeclaratory action. Because Minn. Stat. § 14.44 provides a unique statutory remedy without a statute of limitations, and because there is no comparable nondeclaratory action from which a statute of limitations may be derived, we reject PolyMet's argument that this action is barred by the residual statute of limitations in Minn. Stat. § 541.05, subd. 1(5). And we deny PolyMet's motion to dismiss on this ground.

B. Laches

The doctrine of laches is intended to "prevent one who has not been diligent in asserting a known right from recovering at the expense of one who has been prejudiced by the delay." *Klapmeier v. Town of Center*, 346 N.W.2d 133, 137 (Minn. 1984) (quotation omitted). "The basic question is whether there has been such an unreasonable delay in asserting a known right, resulting in prejudice to others, as would make it inequitable to grant the relief prayed for." *Id.* (quotation omitted). The determination of whether to apply laches generally has been treated as a discretionary, fact-dependent decision. *See, e.g.*, *Corah v. Corah*, 75 N.W.2d 465, 469 (Minn. 1956) ("The application of laches depends upon the facts of the particular case and rests largely with the discretion of the trial court.");

All Finish Concrete, Inc. v. Erickson, 899 N.W.2d 557, 564 (Minn. App. 2017) (reviewing laches decision for abuse of discretion).

Neither this court nor the supreme court has applied the doctrine of laches in the context of a rules action. Some federal courts have applied the doctrine to declaratory-judgment actions challenging federal administrative rules. *See, e.g.*, *Indep. Bankers Ass'n of Am. v. Heimann*, 627 F.2d 486, 488 (D.C. Cir. 1980) (holding that district court abused its discretion by failing to hold that challenge to 12-year-old interpretative rule was barred by laches). But federal courts have also recognized that laches should be applied sparingly in suits "brought to vindicate the public interest," including environmental suits. *Apache Survival Coal. v. United States*, 21 F.3d 895, 905 (9th Cir. 1994). The reason for the sparing application is twofold: first, "citizens have a right to assume that federal officials will comply with applicable law," and second, "ordinarily the plaintiff will not be the only victim of the alleged environmental damage." *Id.* at 906 (quotations omitted); *see also Park Cty. Res. Council, Inc. v. U.S. Dep't of Agric.*, 817 F.2d 609, 617 (10th Cir. 1987) ("Nearly every circuit, including this one, and numerous district courts have recognized the salutary principle that [l]aches must be invoked sparingly in environmental cases because ordinarily the plaintiff will not be the only victim of alleged environmental damage. A less grudging application of the doctrine might defeat Congress's environmental policy." (quotation omitted)) (collecting cases), *overruled on other grounds by Village of Los Ranchos De Albuquerque v. Marsh*, 956 F.2d 970 (10th Cir. 1992).

Because laches is a discretionary doctrine of uncertain application to rules actions, and because this action is based on allegations of an agency exceeding its authority and

implicates environmental concerns, we decline to apply the doctrine of laches to bar this action. Accordingly, we deny respondents' motion to dismiss on this ground.

III.

A party may petition this court to declare a rule invalid if the rule (1) violates the constitution, (2) is in excess of statutory authority, or (3) is adopted without compliance with rulemaking procedures. Minn. Stat. § 14.45 (2018). "In a preenforcement action, this court is limited to considering these three bases for a challenge." *MESERB*, 870 N.W.2d at 100. Review is also limited to the rulemaking record created by the agency. *See* Minn. Stat. § 14.365 (2018) (requiring creation of rulemaking record, which "constitutes the official and exclusive agency rulemaking record with respect to agency action on or judicial review of the rule"); *Manufactured Hous. Inst. v. Pettersen*, 347 N.W.2d 238, 241 (Minn. 1984) (providing that review under Minn. Stat. § 14.44 is on agency record).

Petitioners challenge the validity of chapter 6132 in its entirety, asserting that it violates the constitution and is in excess of statutory authority, but do not allege procedural irregularity. We address the statutory and constitutional arguments in turn, but we begin with a brief overview of the structure and content of chapter 6132.

A. Chapter 6132

Chapter 6132 is divided into four sections: "general provisions," which includes a definitions rule, Minn. R. 6132.0100; "permit requirements," which includes a permit-application rule, Minn. R. 6132.1100; "reclamation standards," which provides specific requirements for mine siting, design, operation, and closure, Minn. R. 6132.2000-.3200; and "administrative procedures," which includes rules for variances, Minn. R. 6132.4100,

as well as amendments, modifications and cancellations of permits, Minn. R. 6132.4200-.4400.

Each of the reclamation standards is divided into two sections, setting forth a goal and requirements. The "goals" are defined by the rules as "reclamation targets of achievement toward which the specific requirements of parts 6132.0100 to 6132.5300 are directed." Minn. R. 6132.0100, subp. 8. Whereas the requirements, as the word suggests, set forth requirements related to the goals. Thus, for instance, with respect to buffers, the goal is that "[a] mining operation shall be designed, constructed, and maintained so that it is compatible with surrounding nonmining uses." Minn. R. 6132.2100, subp. 1. And the requirements are that "[e]xisting terrain and vegetation, or revegetated berms, must be used to diminish impacts of the mining activities," and that "[b]uffers must be constructed before beginning operations and may be located within [certain specified] areas. . . ." *Id.*, subp. 2(A)-(B).

The requirements of the reclamation standards are intentionally stated somewhat generally. The purpose and policy provision of chapter 6132 explains:

> Because of the unique character of each mining operation and the extreme diversity of the possible types and sizes of operations, specific permit requirements shall be established within the framework established by parts 6132.0100 to 6132.5300. Permit terms and conditions shall be directed toward attaining the goals while fulfilling the requirements described in parts 6132.0100 to 6132.5300.

Minn. R. 6132.0200. Similarly, in the SONAR, the DNR explained that

> the rules are designed to act as a framework within which specific permit requirements are to be developed to address the unique problems anticipated to exist at each individual mine

> site. The actual reclamation, conducted at a given mine, will have to be custom designed to account for each site and operation's uniquely specific characteristics. In order to make the proposed rules workable, it is necessary and reasonable to build in enough flexibility, while still providing basic direction on how reclamation can be achieved.

In recommending that chapter 6132 be adopted, the ALJ recognized arguments by commentators that more specific standards should be included. But the ALJ concluded that "[t]he statute authorizing these rules do[es] not require specific standards for the conduct of mining operations."

B. Statutory Authority

"Administrative agencies are creatures of statute and they have only those powers given to them by the legislature." *In re Hubbard*, 778 N.W.2d 313, 318 (Minn. 2010). "An agency's statutory authority may be either expressly stated in the legislation or implied from the expressed powers." *Id.*

> The legislature states what the agency is to do and how it is to do it. While express statutory authority need not be given a cramped reading, any enlargement of express powers by implication must be fairly drawn and fairly evident from the agency objectives and powers expressly given by the legislature.

Peoples Nat. Gas Co. v. Minn. Pub. Utils. Comm'n, 369 N.W.2d 530, 534 (Minn. 1985).

Petitioners assert that chapter 6132 exceeds the DNR's authority because it "does not conform to requirements of the authority enabling its adoption." More specifically, petitioners assert that "[c]hapter 6132 does not contain standards mandated by DNR's enabling authority and is therefore invalid." In so asserting, petitioners rely on Minn. Stat. § 93.47, subd. 3, which provides, in relevant part:

> To the greatest extent possible, within the authority possessed by the commissioner, the rules so promulgated shall substantially comply with or exceed any minimum mine land reclamation requirements which may be established pursuant to a federal mine land reclamation act. The rules so promulgated also shall conform with any state and local land use planning program; provided further the commissioner shall develop procedures that will identify areas or types of areas which, if mined, cannot be reclaimed with existing techniques to satisfy the rules promulgated under this subdivision, and the commissioner will not issue permits to mine such areas until the commissioner determines technology is available to satisfy the rules so promulgated.

Petitioners focus in on the language requiring the commissioner to "develop procedures that will identify areas or types of areas which, if mined, cannot be reclaimed with existing techniques to satisfy the rules promulgated." This language, petitioners argue, requires the commissioner to adopt rules setting performance or prescriptive standards governing reclamation. Petitioners assert that chapter 6132 fails this requirement by conferring too much discretion on the commissioner to grant or deny a permit. Because of the discretion conferred, petitioners assert, it is impossible to determine areas or types of areas that could not be reclaimed in satisfaction of the rules.

The language on which petitioners focus, quoted above, was added to the statute by the 1973 law that also added the permit requirement. 1973 Minn. Laws ch. 526, §§ 3, 5 at 1190-92. Importantly, the 1973 law significantly broadened the scope of the DNR's regulatory authority, for the first time prohibiting mining without a permit, and making clear that permits should be denied if mining sites "cannot be reclaimed" using existing techniques. *Id.*, § 3, at 1191.

The statute does not define reclamation. *See* Minn. Stat. § 93.46 (providing definitions that do not include reclamation). Chapter 6132, however, defines "reclamation" as "the activities that successfully accomplish the requirements of [Minn. R.] 6132.2000 to 6132.3200." Minn. R. 6132.0100, subp. 29; *see also* Minn. Stat. § 14.38, subd. 1 (2018) (stating that promulgated rules have the "force and effect of law"). Minn. R. 6132.2000-.3200—the reclamation standards—set forth "goals" and "requirements" for mine siting, design, operations, and closure. Accordingly, a mine site can be reclaimed using existing techniques if the siting, design, operations, and closure requirements of the rules can be met using existing techniques.

Viewed contextually, Minn. Stat. § 93.47 requires the DNR to establish reclamation standards, to adopt procedures for determining when those standards cannot be met, and to deny permits when the standards cannot be met. The DNR has established reclamation standards in Minn. R. 6132.2000-.3200. It has adopted procedures—in the form of a permit-application rule, Minn. R. 6132.4000—for determining if the reclamation standards can be met with respect to a specific mine site. And the permit-application rule allows the DNR to deny a permit, as required by statute, if reclamation standards cannot be met. *See* Minn. Stat. § 93.47, subd. 3; Minn. R. 6132.4000, subp. 3(C). We conclude that chapter 6132 meets the DNR's obligations under Minn. Stat. § 93.47, subd. 3.

We reject petitioners' assertion that the reclamation standards adopted in Minn. R. 6132.2000-.3200 exceed statutory authority by allowing the commissioner too much discretion to grant or deny a permit. As the DNR points out, the legislature has directed agencies to avoid "overly prescriptive and inflexible" rules, and instead to "develop rules

and regulatory programs that emphasize superior achievement in meeting the agency's regulatory objectives and maximum flexibility for the regulated party and the agency in meeting those goals." Minn. Stat. § 14.002 (2018). The DNR also explains that flexible reclamation rules are necessary to accommodate the variety of conditions at proposed mine sites and allow for changes to mining technology. Each reclamation rule includes a goal and specific requirements. The DNR uses the goals to guide its application of the rule requirements, and also to determine whether to grant variances to the rule. Petitioners cite no binding, apposite authority precluding this approach, and we are aware of none.

This court has recognized that "[t]he government cannot operate without agencies that exercise discretionary power." *Coal. of Cities*, 765 N.W.2d at 165 (quoting 3 Richard J. Pierce, Jr., *Admin. Law Treatise* § 17.1, at 1227 (4th ed. 2002)). And our supreme court has explained that "[t]he modern tendency is to be more liberal in permitting grants of discretion to administrative officers in order to facilitate the administration of laws as the complexity of economic and governmental conditions increase." *Anderson v. Comm'r of Highways*, 126 N.W.2d 778, 780-81 (Minn. 1964). Accordingly, as the DNR asserts, Minnesota courts have sanctioned regulatory schemes that incorporate agency discretion in enforcement, particularly in complex, evolving areas and particularly when procedural safeguards are in place. *See Can Mfrs. Inst., Inc. v. State*, 289 N.W.2d 416, 422-24 (Minn. 1979); *Coal. of Cities*, 765 N.W.2d at 167-68. Applying these principles here leads us to conclude that chapter 6132 is not invalid for lack of statutory authority.

B. Constitutionality

Petitioners' constitutional challenge to chapter 6132 is based on the void-for-vagueness theory of substantive due process. *See Hard Times Cafe, Inc. v. City of Minneapolis*, 625 N.W.2d 165, 171 (Minn. App. 2001) ("Vague statutes are prohibited under the due process clause of the fourteenth amendment." (quotation omitted)). "A statute is void due to vagueness if it defines an act in a manner that encourages arbitrary and discriminatory enforcement, or the law is so indefinite that people must guess at its meaning." *Id.* (quotations omitted). Petitioners' vagueness claim is problematic in three related respects.

First, it is well established that—subject to certain exceptions not applicable here—a party may not assert the constitutional rights of another. *See Broadrick v. Oklahoma*, 413 U.S. 601, 610, 93 S. Ct. 2908, 2915 (1973) (holding that "constitutional rights are personal and may not be asserted vicariously"), *quoted in State v. Gray*, 413 N.W.2d 107, 112 (Minn. 1987). Respondents correctly assert that the vagueness arguments petitioners make generally would be the regulated entities' argument to make. *See, e.g.*, *Hard Times Cafe*, 625 N.W.2d at 171-72 (addressing vagueness claim against license regulations raised by licensee subject to those licenses). It is not clear, however, whether an absence of personal constitutional harm results in a jurisdictional standing defect in this rules challenge, given the broad statutory grant of standing under Minn. Stat. § 14.44 and the directive in Minn. Stat. § 14.45 that this "court shall declare [a] rule invalid if it finds that it violates constitutional provisions."

Second, it is not clear that the interests petitioners assert are protected property rights warranting due-process protections. Vagueness claims are based on "due process standards of definiteness under the United States Constitution and Minnesota Constitutions." *Minn. Chamber of Commerce v. Minn. Pollution Control Agency*, 469 N.W.2d 100, 107 (Minn. App. 1991), *review denied* (Minn. July 24, 1991); *see also State v. Newstrom*, 371 N.W.2d 525, 528 (Minn. 1985). The right to due process protects against the deprivation of life, liberty, or property without due process of law. U.S. Const. amend. XIV, § 1; Minn. Const. art. I, § 7. Accordingly, to assert a viable due-process claim, petitioners must assert a protected property interest that is impacted by chapter 6132. *See, e.g., In re Individual 35W Bridge Litig.*, 806 N.W.2d 820, 829 (Minn. 2011) (explaining that proponent of due-process claim "has the burden of proving that the interest allegedly interfered with rises to the level of a constitutionally protected 'liberty' or 'property' interest, and that this interest has been interfered with to an extent that violates the Due Process Clause"). Petitioners assert an interest in the protection of the environment and their enjoyment of property, but they cite no authority for the proposition that these interests are constitutionally protected interests. *Cf. Delaware Riverkeeper Network v. Fed. Energy Regulatory Comm'n*, 895 F.3d 102, 109 (D.C. Cir. 2018) (holding that "state-created right to clean air, pure water, and preservation of the environment does not qualify as a federally protected 'property' interest"); *Mohler v. City of St. Louis Park*, 643 N.W.2d 623, 635 (Minn. App. 2002), (holding that zoning laws do not confer property interests on adjacent landowners), *review denied* (Minn. July 16, 2002).

Third, it is not clear that petitioners may assert a facial vagueness challenge. "It is well-settled that vagueness challenges that do not involve First Amendment freedoms must be examined in light of the facts at hand." *State v. Becker*, 351 N.W.2d 923, 925 (Minn. 1984) (citing *United States v. Powell*, 423 U.S. 87, 92, 96 S. Ct. 316, 319 (1975)); *see also Village of Hoffman Estates v. Flipside, Hoffman Estates, Inc.*, 455 U.S. 489, 495, 102 S. Ct. 1186, 1191 (1982) ("A plaintiff who engages in some conduct that is clearly proscribed cannot complain of the vagueness of the law as applied to the conduct of others"); *State, City of Minneapolis v. Reha*, 483 N.W.2d 688, 691 (Minn. 1992) (same); *cf. Olson v. One 1999 Lexus*, 924 N.W.2d 594, 607-08 n.8 (Minn. 2019) (reasoning that "it makes sense that in most cases asserting a due process violation based on a deprivation of property . . . a constitutional challenge will and should be decided on an as-applied basis" but acknowledging that "there are cases where a facial challenge may be proper and preferred"). It is unclear how this principle applies in the context of this pre-enforcement rules action. *See Minn. League of Credit Unions v. Minn. Dep't of Commerce*, 486 N.W.2d 399, 405 (Minn. 1992) (addressing vagueness arguments in rules challenge but also reasoning that "this is a pre-enforcement action and that an individual could challenge the constitutionality of the rule as applied to his or her activities in an enforcement action").

Even assuming that petitioners have asserted a justiciable, viable facial challenge, they face the steep burden of proving that chapter 6132 is "unconstitutional in all applications." *McCaughtry v. City of Red Wing*, 831 N.W.2d 518, 522 (Minn. 2013) (quotation omitted). "This heavy burden stems from the presumption that statutes are constitutional such that we exercise our power to declare a statute unconstitutional with

extreme caution and only when absolutely necessary." *Olson*, 924 N.W.2d at 607 (quotations omitted). "We do not expect mathematical certainty from the English language, and a statute that is flexible and reasonably broad will be upheld if it is clear what the statute, as a whole, prohibits." *In re Minn. Dep't of Nat. Res. Special Permit No. 16868*, 867 N.W.2d 522, 532 (Minn. App. 2015) (quotation omitted), *review denied* (Minn. Oct. 20, 2015). "Unless the statute proscribes no comprehensible course of conduct at all, it will be upheld." *Becker*, 351 N.W.2d at 925.

Having carefully reviewed chapter 6132, we cannot conclude that it "proscribes no comprehensible course of conduct at all." *Id.* Rather, as we discuss above, it imposes goals and requirements for various aspects of nonferrous mining. Petitioners concede that some of the requirements are specific standards. And, to the extent that other requirements are more generalized, they become specific through the permitting process. For this reason, chapter 6132 does not implicate constitutional vagueness concerns because no one is left to guess what conduct is proscribed. *Cf. Can Mfg.*, 289 N.W.2d at 422-424 (holding that flexible regulations were not unconstitutionally vague because they forecasted the general criteria to be applied by the agency and because of the safeguards of a review process); *Hard Times Cafe*, 625 N.W.2d at 172 (holding that ordinance allowing license revocation for "good cause" was not unconstitutionally vague where other portions of ordinance provided guidance, "thereby mitigating any alleged vagueness").

Petitioners argue that chapter 6132 is unconstitutionally vague because it fails to define certain terms and defines others in a manner that accords too much discretion to the commissioner. With respect to undefined terms, we observe that "due process

requirements are satisfied by specifying standards of conduct in terms that have acquired meaning involving reasonably definite standards either according to the common law or by long and general usage." *State v. Bussmann*, 741 N.W.2d 79, 83 (Minn. 2007) (quotation omitted). The record reflects that the DNR defined terms when they were used "in a way that was unique," but otherwise intended common meanings of terms. With respect to commissioner discretion, as we note above, vagueness concerns are not implicated because of the permitting process, which makes definite the requirements imposed for a particular mine.

Petitioners' true complaint appears to be that chapter 6132 does not impose more specific and universal limitations on nonferrous mining. This complaint is more appropriately directed to the legislature or the DNR. Our limited inquiry in this rules action under Minn. Stat. § 14.44 is to determine whether chapter 6132 exceeds statutory authority or violates constitutional provisions. Because we conclude that is does neither, we declare the rules valid.

Rules declared valid; motion denied.