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Overview of Feedlot Rule Enforcement Process

Introduction

Environmental rules and regulations set standards for environmental quality and limits on pollutants that can be discharged from facilities. The Minnesota Pollution Control Agency (MPCA) has a variety of enforcement options when violations occur at permitted sites and facilities. These include the Administrative Penalty Order, Stipulation Agreement, and Consent Decree. The severity of the enforcement action depends on the environmental impact of the violation, whether it is a repeat offense, and how quickly the problem is corrected, among other factors. An Alleged Violation Letter (AVL) documents alleged violations and will extend an offer to meet and discuss the violations. The AVL will also request that the feedlot owner/operator present any information that may affect the MPCA's decision on the APO.

Enforcement Process

Both the Stipulation Agreement and the APO initiate a formal enforcement process with the MPCA and both provide a means to resolve the noncompliance. Each document describes the MPCA's findings, identifies the laws or regulations the MPCA believes were violated, and assesses a penalty. The Stipulation Agreement provides for a negotiated conclusion. The APO is an administrative order that is not negotiable, but there is a statutory provision for an appeal process. In each matter, accepting the MPCA's findings will close the case after completion of the actions required by the document, and the penalty, if any, is paid. The following questions and answers help describe the process, followed by more detailed descriptions of the enforcement options.

I have been working with inspectors and staff to correct a problem. Why is the MPCA taking an enforcement action?

The MPCA presumption is that owners and operators of feedlots and other parties involved with the storage, transportation, disposal, and utilization of animal manure and process wastewater from animal feedlots will be in compliance with all applicable laws and rules. All violations identified during a file review or an inspection is considered for an enforcement action. The MPCA takes enforcement actions and assesses civil penalties to create compliance consistency and predictability in enforcement; to deter future noncompliance, and to eliminate economic benefits to individuals for not complying with environmental laws. In some instances the MPCA initiates an enforcement action if an alleged violation has not been corrected within a reasonable period of time, if a violation is serious or if a violation creates a threat to public health or the environment.

How is the penalty amount determined?

The enforcement documents typically state the penalty. For Stipulation Agreements Minnesota statutes allow for penalties up to \$10,000 per day for each violation (for water quality violations). Administrative Penalty Orders have a statutory limit of \$10,000. The amount of the civil penalty reflects the type of violations and their severity, the potential for harm to the environment, the number, and the duration of the alleged violations. Other factors considered are the history of compliance or noncompliance with environmental laws, degree of negligence, responsiveness, and the economic benefit gained through noncompliance.

Can we talk about this? What can I do to prepare for it?

If you receive a Stipulation Agreement, you will be asked to schedule a meeting because resolving the matter requires a negotiated settlement. Also, prior to receiving an APO the feedlot owner/operator or regulated party will receive a letter documenting the alleged violations and extending an offer to meet

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and discuss the violations. If you want such a meeting you must contact your MPCA inspector within 15 day of receiving this letter. If you receive an APO, you also may request an informal discussion with MPCA staff. The APO contains a summary of the issues of regulatory concern and provides the basis for discussion. Typically a meeting would be held prior to an appeal hearing but it may also be requested to merely clarify case issues. If you want such a meeting you must contact your MPCA inspector within the 30 day APO response period.

Who will attend the informal discussion?

Typically, whether the case involves a Stipulation Agreement or an APO, an MPCA compliance coordinator, the inspector involved with your case, a supervisor and/or enforcement supervisor will represent the MPCA. You likely will want to bring people most familiar with the issues and who can represent your site. You may consult with or bring an attorney if you wish. Staff from the Attorney General's Office will not participate in the meeting with the feedlot owner/operator or regulated party unless they have an attorney present.

What can I expect to happen at the meeting and what may result?

You can expect a fair and objective evaluation of the facts and circumstances surrounding the alleged violations, because it is in the interest of all parties to ascertain the facts and circumstances in the case accurately as early as possible. The MPCA encourages you to present any new or mitigating information that will shed light on the issues. It is important that you be fully prepared to present any information that contradicts the MPCA's alleged facts or that will help MPCA staff make fair and sound decisions. Also, MPCA enforcement staff may ask questions to help you elaborate on the issues. If the meeting involved an APO, then after the informal discussion, MPCA staff will make recommendations to MPCA management on what steps should be taken to conclude the action. There are several possible outcomes:

- the MPCA determines that there are no changes to the violations, and the penalty and the enforcement action remain;
- the MPCA determines that a violation or the penalty calculation should be revised based on new facts or mitigating information, and offers to resolve the action by issuing an amended APO.
- There is disagreement on the violations and/or other issues that make resolution impossible, in which case you are entitled to an appeal hearing where the MPCA must prove that the violations occurred and the penalties are reasonable.

What if I do not settle?

If you are not able to reach a resolution with the MPCA, you are entitled to an appeal hearing on the APO, if you have requested one within the 30 day time frame of the APO. The hearing will be conducted by one of several administrative law judges available through the Minnesota office of Administrative Hearings. In the alternative, you may file an appeal in District Court, using trial court procedures. In both scenarios, the judges are not employees of the MPCA and are required to render neutral and objective findings of fact. At the hearing, the MPCA must prove that, more likely than not, the allegations on which the MPCA based its case are true and the assessed penalty is supported by law. The administrative law hearing is a semi-formal proceeding and you will be given an opportunity to present evidence and cross-examine witnesses.

Where do the civil penalties from enforcement actions go?

Penalty money received is deposited in Minnesota's General Fund as provided by state statute. It is not given to the MPCA.

What is my incentive to comply if MPCA will proceed with a civil penalty assessment anyway?

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The MPCA assesses penalties to deter continued or repeated noncompliance and to create a regulatory environment that is fair to those who comply with laws, rules and permit conditions on their own initiative. For those reasons and for reasons of consistency, the MPCA rarely withdraws an action in a case where it has determined that enforcement was needed, even though you may have come into compliance after receiving notice of an impending enforcement case. Failure to come into compliance after you receive notice of violations or of pending enforcement may lead to additional penalties. On the other hand, there are steps you may take after you learn that you are in violation that may reduce your penalty, such as exceptional measures taken to prevent recurrence, or for pollution prevention.

Who should I contact if I have questions?

The last paragraph of the cover letter that accompanies the Stipulation Agreement or the APO gives you a phone number for the case contact who will handle your action for MPCA. This person will answer other questions about the enforcement process and will represent the MPCA at any meetings or hearings regarding your case. You may continue to contact the MPCA inspector with whom you have been in prior contact. The inspector will be better able to assist you with technical issues.

Administrative Penalty Order (APO)

An Administrative Penalty Order contains a monetary penalty and a schedule of actions the facility must follow to return to compliance. The maximum penalty that can be assessed in an APO is \$10,000. There are three types of APOs: Forgivable, nonforgivable or a combination of the two. A forgivable APO assesses a penalty, but “forgives” the dollar amount if actions to correct problems are completed on schedule. With a nonforgivable APO, no portion of the monetary penalty is waived. In a combination APO, a portion of the penalty is forgiven if corrective actions are completed on schedule — usually within 30 days. More information is available in the following fact sheet:

[Administrative Penalty Orders: Compliance is the Goal](#)

Stipulation Agreement (STIP)

Stipulation Agreements are negotiated settlements used when violations are serious enough to warrant a civil penalty greater than \$10,000. They are also used when the actions needed to correct the problem may take more than 30 days to complete. STIPs also include a schedule the violator must follow to return to compliance with applicable regulations. Depending on the size of the monetary penalty and the violator’s ability to pay, a payment schedule may also be included in an agreement.

Consent Decree

One way to resolve a case that has resulted in litigation is to use a Consent Decree, which is a negotiated agreement between the MPCA and a regulated party. These are also signed by a judge who has been asked to take jurisdiction of the case settlement and entered as an order of the court. A Consent Decree states how the dispute between the MPCA and regulated party is to be resolved, ordinarily this will include an obligation to pay penalties and to complete corrective actions within a specified time.

Supplemental Environmental Projects (SEPs)

Supplemental Environmental Projects are intended to provide extra environmental and public health benefits. SEPs are environmentally beneficial projects which a responsible party agrees to undertake in the settlement of an enforcement action, but which the responsible party is not otherwise legally required to perform. SEPs are often used as part of a STIP.

Determining penalty amounts

When the MPCA assigns a penalty, the dollar amount is determined using a formula that takes into account the following factors:

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- The risks a violation posed to public health or the environment;
- Whether the violation was an isolated incident or part of a pattern of violations;
- The damage the violation caused to natural resources;
- Whether the violation was intentional or accidental;
- How quickly a violation was reported to the appropriate authorities;
- Whether a business gained an economic benefit from the violations; and,
- How prompt and cooperative the party was in correcting the problem.

For more information

Since October 2000, the MPCA has posted a quarterly summary of enforcement actions on its Web site. These summaries are posted at: www.pca.state.mn.us/newscenter/enforcement.html. Information about the enforcement program is located at: www.pca.state.mn.us/rulesregs/enforcement.html or by calling your MPCA regional office: **Brainerd:** 218/828-2492, **Detroit Lakes:** 218/847-1519, **Duluth:** 218/723-4660, **Mankato:** 507/389-5977, **Marshall:** 507/537-7146, **Rochester:** 507/285-7343, **St. Paul:** 651/296-6300 or 800/657-3864, **Willmar:** 320/214-3786.