



Minnesota
Pollution
Control
Agency

Administrative Penalty Orders

Compliance is the goal

General public 2-01 • February 2008

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An Administrative Penalty Order, or “APO,” is one tool the Minnesota Pollution Control Agency (MPCA) uses to bring individuals or businesses back into compliance with environmental statutes, rules and permit conditions. This fact sheet was prepared for those who have been issued APOs and for others interested in the MPCA’s enforcement responsibilities. *(Note: the following information **does not apply** to APOs issued at animal feedlots.)*

What is an APO?

An APO is an order that requires both corrective actions to resolve a noncompliance situation and payment of a civil penalty. The Legislature has authorized the MPCA to use APOs when corrective action can be completed within 30 days and penalties are \$10,000 or less. The MPCA uses APOs when violations can be resolved relatively easily but warrant the assessment of some civil penalty.

The MPCA’s goal in seeking monetary penalties is to establish a consequence for violating environmental laws. Penalties are designed to remove any economic benefit a party received from violating a statute, rule or permit condition. The MPCA wants to ensure that it is in the best interests of affected parties to comply. Monetary penalties also create a level playing field for all parties affected by environmental rules and regulations.

The agency uses Administrative Penalty Orders to assess monetary penalties in three different ways. The penalty can be forgivable, nonforgivable, or a combination of forgivable and nonforgivable. For those

cases where there are not serious or repeat violations, the penalty is forgivable if the compliance action specified in the APO is achieved within 30 days.

A forgivable penalty offers the violator a chance to correct the problems without paying a monetary penalty. It also provides a clear financial incentive for affected parties to comply in a timely manner. An APO monetary penalty may be nonforgivable if the violations are serious or are of a repeat nature. A combination forgivable/nonforgivable APO includes both types of penalties.

Using an APO, the MPCA may impose a total monetary penalty up to \$10,000. By comparison, Stipulation Agreements may include penalties in excess of \$10,000.

What is the MPCA’s process for issuing APOs?

When the MPCA becomes aware of noncompliance, usually through site inspections, document review, or in response to citizen complaints, staff gathers information and documents possible violations. Staff then consults with others experienced in enforcement, as well as with the Attorney General’s Office.

Based on the information and discussion, MPCA management and staff decide which enforcement option is appropriate to the violations. In doing so, the MPCA considers the following:

- What is the evidence of the violations?
- What laws, rules or permits have been violated?
- Is there a past history of violations?
- How significant are the violations?

If an APO is selected as the appropriate enforcement tool, the MPCA staff may send the affected party a letter, commonly referred to as “a 10-day letter” because the recipient has 10 days in which to respond. The letter describes the violations and invites the affected party to supply whatever information is available that would show that the violations did not occur or were not as severe as determined by the MPCA.

If, after receiving the response of the affected party, the MPCA continues to believe an APO is warranted, staff will finalize the amount and nature (forgivable/nonforgivable) of the penalty and send the APO.

The APO document describes the following:

- corrective actions required to be taken;
- the nonforgivable portion of penalty required to be paid;
- the amount of penalty that could be forgivable if corrective actions are taken within the specified time limits; and
- the procedures available to the affected party if they wish to contest the Administrative Penalty Order.

Compliance is the goal

As with the other enforcement tools the MPCA is authorized to use, the primary goal in issuing an APO is to have the affected party comply with the state’s environmental laws, rules and permits. APOs nearly always specify the exact steps necessary to achieve compliance.

Generally, the affected party is given 30 days to correct the violation(s). If more than 30 days are needed for completion, the MPCA requires that corrective action at least will begin within 30 days. The MPCA will work with the affected party to complete corrective actions as soon as possible.

How does the MPCA determine penalty amounts for APOs?

The MPCA Citizens’ Board has adopted a policy that all MPCA programs must use in determining APO penalties. First, the MPCA staff calculates the base penalty. This base penalty is a dollar figure that reflects the severity of the violations (extent, duration and number) and their impacts, including actual or potential harm to public health or the environment.

After establishing the base penalty, the MPCA staff can adjust the penalty amount, based on the following factors:

- the affected party’s knowledge and willfulness (“culpability”);
- the party’s compliance history including good or bad faith, unjustified delays, failure to provide timely and full information, and previous enforcement actions;
- economic benefit; and
- other unique factors such as bankruptcies, labor disputes, environmental audits or uncontrollable circumstances. When such factors are used to determine a penalty, the MPCA provides an explanation of the factor and the reasoning for the adjustment.

For a penalty to be an effective deterrent, it must deal with the economic benefit the affected party gained from the violation. Economic benefit usually falls into two categories:

- delayed or avoided costs; and
- violation-related profits.

Delayed or avoided costs are those benefits that come from failure of the affected party to invest in equipment or personnel or to take other appropriate action necessary to stay in compliance. Violation-related profits are realized when affected parties take unauthorized or illegal measures that result in an increase in profit, giving them an economic advantage over competitors who have complied with the environmental requirements.

For more information...

Visit the MPCA Web site at www.pca.state.mn.us to access a quarterly database of enforcement actions or more specific information.