

Administrative Penalty Orders

Compliance is the goal

An Administrative Penalty Order (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 Minnesota Legislature has authorized the MPCA to use APOs when corrective action can be completed within 30 days and penalties are \$20,000 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 interest to comply. Monetary penalties also create a level playing field for all parties affected by environmental rules and regulations.

The agency uses APOs to assess monetary penalties in three different ways. The penalty can be forgivable, non-forgivable, or a combination of forgivable and non-forgivable. For those cases where there are not serious or repeat violations, the penalty is forgivable if the corrective action specified in the APO is completed within 30 days. A forgivable penalty offers the violator a chance to correct the problems, along with the financial incentives to do so without paying a monetary penalty. An APO may be non-forgivable if the violations are serious or repeat in nature. A combination forgivable/non-forgivable APO includes both types of penalties. Using an APO, the MPCA may impose a total monetary penalty up to \$20,000. By comparison, stipulation agreements may include penalties in excess of \$20,000.

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 consult with others experienced in enforcement, as well as with agency attorneys.

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

- Evidence of the violations
- Laws, rules or permits that have been violated
- Past history of violations
- Seriousness of the violations

If an APO is selected as the appropriate enforcement tool, the MPCA staff may send the responsible party an Alleged Violation Letter. The letter describes the violations and allows the responsible party an opportunity to respond.

If, after receiving the response, the MPCA continues to believe an APO is warranted, staff will finalize the amount and type (forgivable or non-forgivable) of penalty, and issue the APO.

The APO document describes the following:

- Corrective actions to be taken
- Non-forgivable portion of penalty required to be paid
- Amount of penalty that could be forgivable if corrective actions are taken within the specified time limits
- Procedures to follow if the responsible party wishes to contest the APO

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 responsible party comply with the state's environmental laws, rules and permits. With an APO, the responsible party is given 30 days to correct the violation(s).

How does the MPCA determine penalty amounts for APOs?

The MPCA has adopted a policy that the enforcement program 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:

- Responsible party's knowledge and willfulness ("culpability")
- Responsible party's compliance history, including unjustified delays, failure to provide timely and full information, and previous enforcement actions
- Economic benefit gained as a result of the violations
- Other unique factors, specific to the case

For a penalty to be an effective deterrent, it must consider the economic benefit the responsible party gained from the violation. Economic benefit usually falls into two categories: (1) delayed or avoided costs, and (2) violation-related profits. Delayed or avoided costs are those benefits that come from failure of the responsible party to invest in equipment or personnel or to take other appropriate action necessary to stay in compliance. Violation-related profits are realized when responsible 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 website at <http://www.pca.state.mn.us> to view a listing of quarterly enforcement actions and more specific information.