



Facts about Administrative Penalty Orders: Compliance is the Goal

This fact sheet, prepared by the Minnesota Pollution Control Agency (MPCA), provides general information about Administrative Penalty Orders. The fact sheet was prepared for individuals or companies who have been issued Administrative Penalty Orders (APO) and for others interested in the MPCA's enforcement responsibility and the APO process.

The Minnesota Pollution Control Agency is charged by the Legislature and the citizens of Minnesota with protection of the state's environment. One way the MPCA protects the environment is by ensuring that Minnesota's "affected community" complies with state statutes, rules and permit conditions. (The affected community includes any business, industry, local government or other group or individual required to comply with environmental statutes in effect in Minnesota.)

What is an Administrative Penalty Order?

An Administrative Penalty Order is one of a number of enforcement techniques that the MPCA can use to assure that the requirements of its permits, rules and state statutes are met. More specifically, an Administrative Penalty Order is a non-negotiated order that requires both corrective action to resolve a

noncompliance situation and payment of a civil penalty. The Legislature has authorized the MPCA to use Administrative Penalty Orders when corrective action can be completed within 30 days and penalties are \$10,000 or less. The MPCA uses Administrative Penalty Orders when violations can be resolved relatively easily but warrant the assessment of some civil penalty.

The agency's goal in seeking monetary penalties is to establish a consequence for violating environmental laws. Penalties are designed to remove any economic benefit of noncompliance, and reinforce the concept that it is in the best interests of affected parties to comply. Monetary penalties also help to create a level playing field for the affected community.

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 that 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 and 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 Administrative Penalty Orders?

When the MPCA becomes aware of noncompliance (usually through site inspections, document review or in response to citizen complaints), the staff gathers information about possible violations and consults with other MPCA staff and management experienced in enforcement and with staff from the Attorney General's Office.

Based on this information and discussion, the MPCA management and staff decide which enforcement option to use to address 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 Administrative Penalty Order is selected as the appropriate enforcement tool, MPCA staff sends 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, MPCA staff will finalize the amount and nature (forgivable/nonforgivable) of the penalty and send the Administrative Penalty Order.

The Administrative Penalty Order will describe the following:

- corrective actions required to be taken;
- the amount of penalty required to be paid (nonforgivable penalty amounts);
- the amount of penalty that can be avoided if corrective action is taken within the specified time limits (forgivable penalty amounts); 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. Administrative Penalty Orders nearly always specify the exact steps necessary to achieve compliance. Generally, the affected party is given 30 days to correct the violation. If more than 30 days are needed for completion, the MPCA expects that corrective action at least will be initiated within the 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 Administrative Penalty Orders?

The MPCA Citizens Board has adopted a policy that all MPCA programs must use in determining APO penalties. First, 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 compliance with 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:

- 1) delayed or avoided costs, and
- 2) 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 regulated 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.

Other questions?

For more information about MPCA environmental enforcement in general or the use of the APO specifically, please contact your case lead or the MPCA information desk at (612) 296-6300, or toll-free in Minnesota at (800) 657-3864. TTY, call (612) 282-5332.