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REPORT TO THE SENATE AND HOUSE ENVIRONMENT AND NATURAL RESOURCES COMMITTEES

ON

THE ENVIRONMENTAL ENFORCEMENT ACT OF 1991

November 1992

Minnesota Pollution Control Agency
520 Lafayette Road, St. Paul, MN 55155

Background

The Environmental Enforcement Act of 1991 established new enforcement authority for several state agencies (see Attachment A). Section 17 of Article I requires that the Pollution Control Agency, after consultation with the Attorney General, report on the results of its new enforcement authority to the committees on environment and natural resources. The following information summarizes the results achieved from implementation of the new enforcement authority, the use of the appropriation made in the act, and recommendations for reporting progress on achieving compliance with environmental laws.

Report Organization

The report is divided into two sections. The first section addresses the activities implemented by the Pollution Control Agency and is broken down into the following subjects:

- Administrative Penalty Orders
- Environmental Fund
- Use of Money Appropriated from the Environmental Fund
- Recommendations for Reporting Progress

The second section of the report addresses activities of the Attorney General's Office and is broken down into the following subject areas:

- Use of Money Appropriated from the Environmental Fund
- Use of the New Environmental Crime Authority
- Recommendations for Reporting Progress
- Recommendations for Additional Legislation

Section One: Pollution Control Agency

The Environmental Enforcement Act of 1991 addressed several program elements for the Agency. Two specific programs, the Field Citation Pilot Project and the Role of Local Governmental Units in Environmental Programs, are being addressed in separate reports as directed in the Act. The focus of this report will be on the new Administrative Penalty Order authority given to the Agency and the use of the appropriation made in the Act.

Administrative Penalty Orders

The Administrative Penalty Order (Order) was originally authorized for use in the Agency's Hazardous Waste Program in 1987. The Act of 1991 extended this authority to the Agency's Air, Water and Solid Waste Programs. This authority allows the Commissioner to issue an order assessing a penalty of up to \$10,000 to a party for all violations identified during an inspection or other compliance review activity. The penalties are forgivable if the offense is not repeated or serious and is corrected promptly by the party. As required by the Act, prior to implementation of the authority the Commissioner prepared a plan for using the administrative penalty authority and placed it on public notice for 30 days. The Administrative Penalty Order Implementation Plan (see Attachment B) was approved by the Agency on September 24, 1991. The plan provides a brief overview of the following: 1) Order authority; 2) discussion of the application of the authority; 3) description of the process used to implement the authority; 4) the procedures by which a regulated party may challenge an Order; and 5) the process by which an Order will be referred to the Attorney General for failure to comply.

Following approval of the Administrative Penalty Order Implementation Plan, the respective program areas developed program specific procedures and embarked on the use of this new authority. As of November 1, 1992, the Agency has issued 64 Orders in the Air, Water and Solid Waste Programs. Of these 64 Orders, 56 were issued with forgivable penalties and eight were issued with nonforgivable penalties.

Based on the use of this authority to date, it is anticipated that an additional 65 to 75 Orders will be issued in the Air, Water and Solid Waste Programs prior to the end of the biennium. For comparative purposes the Hazardous Waste Program has issued 109 Orders from the beginning of the biennium through November 1, 1992.

The response to the Orders has been very positive. Most facilities have achieved compliance with the Order within the 30-day time frame allowed. Only three of the Orders issued this biennium have been contested with the Commissioner or through a petition filed in district court. In addition to the positive response to the Orders issued, the mere existence of the Order authority has served as an effective tool to achieve compliance. For example, in the Water Program at least 30 facilities immediately returned to compliance after they were contacted to verify a violation and informed of potential enforcement action to be taken by the Agency through the use of the Order authority. The effectiveness of this new authority is having a positive impact on the Agency's ability to address noncompliance.

Environmental improvements or continued protection of the environment are the benefits received from returning facilities to compliance. The Order authority has enabled the Agency to respond to noncompliance situations much more quickly and with a smaller investment of time and resources. This has enabled staff to address more noncompliance situations before they become major issues that require the use of escalated enforcement actions. By following the Administration Penalty Order Implementation Plan, procedures have been put in place which assure rapid training of the staff and consistency in the use of the authority.

Environmental Fund

Section 4 of Article I of the Act entitled Enforcement Funding requires that specified penalties and money paid under an agreement, stipulation or settlement, up to the amount appropriated for implementation of this Act, must be deposited in the state treasury and credited to the Environmental Fund.

The receipts needed to fulfill this requirement, \$1,328,000, were deposited in the Environmental Fund by June 29, 1992. An additional \$209,237 have been deposited to the General Fund as of November 1, 1992, and all additional money received from November 1, 1992 to the end of the biennium will also be placed in the General Fund.

Use of Money Appropriated from the Environmental Fund

The Agency was appropriated \$890,000 from the Environmental Fund for the administration of requirements specified in Articles I and II of the Act. Table I provides a breakdown of the expenditures and obligations made as of November 1, 1992.

TABLE I

Activity	Expenditures and Obligations as of November 1, 1992
Training.....	\$20,600
Sampling/Monitoring.....	\$171,800
Equipment.....	\$30,500
Public Information.....	\$300
Hearings*	\$40,600
Local Government Study.....	\$50,000
Toll-Free Line.....	\$34,600
Total.....	\$348,400

* Costs included under Hearings for the Air Quality Division represents Attorney General costs that are integral to the Air Quality Enforcement Program. Examples of these expenditures include responding to court actions filed against the State [Temporary Restraining Order - \$6,795] and extraordinary measures required to collect penalties owed to the State [Summary Judgment Motion - \$7,758].

Expenditures from the appropriation have been lower during the first year of the biennium due to the time spent in development and implementation of this new enforcement authority. It is projected that the expenditures will increase significantly during the remainder of the biennium based on increased activities in all program areas. As an example, in the area of hearings, current expenditures are low but three Orders have been contested and with the anticipated increase in the number of Orders issued, the number of hearings and court cases is also expected to increase. More experience with the use of Orders is needed before the anticipated cost of hearings can be accurately assessed.

Recommendations for Reporting Progress

Section 17 of Article I of the Act directs the Agency to provide recommendations on establishing a permanent system for reporting progress with achieving compliance with environmental laws to the Legislature and the public. The Agency currently has several activities in place for communicating with our stakeholders and is developing new communication tools to enhance this effort.

One of the Agency's best tools for communicating with the Legislature is the narrative in the biennial budget document. As in the past, the FY94-95 document will provide information on progress achieved in meeting the mandates established by the Legislature.

A second communication tool that is currently used and that is being revised to improve its effectiveness is the quarterly permitting and enforcement action report, which is provided to the Agency board and all interested persons. This report provides a summary of all permits issued and enforcement actions taken in each program area on a quarterly basis.

The Agency is working on two new tools that will document progress in achieving compliance with environmental laws. The first is the development of a comprehensive set of quantifiable measures, including compliance indicators, which are linked to the Agency mission. These indicators will aid in measuring the progress made in addressing all environmental program activities. Full implementation of this project is scheduled for the end of the 1993 calendar year. The second is the development of a fully integrated data management system, referred to as the Compliance Management System. The goal is for this system, which will be able to track the compliance status of any facility for any medium, to be accessible to the Agency staff and the general public. Full development of this system is dependent on securing adequate financing for design and implementation.

The Agency recommends that those reporting tools currently in place be maintained and that work continue on the development of the new tools described above.

Conclusion

The Environmental Enforcement Act of 1991 has been very beneficial for the Pollution Control Agency in addressing noncompliance through the enforcement authority provided in the Administrative Penalty Order. This tool, along with the additional financial resources provided by the Act, have enabled the Agency to make significant strides in assuring that the state maintains a high level of compliance with our environmental laws.

Section Two: Attorney General's Office

The Act provides that in preparing the report the Pollution Control Agency is to consult with the Attorney General's Office. Following is information from the Attorney General's Office on the use of the money the Attorney General's Office was appropriated, the efforts the Office has undertaken to investigate and prosecute environmental crimes and recommendations for reporting these efforts to the Legislature and the public and for additional legislation to enhance enforcement efforts.

Use of Money Appropriated from the Environmental Fund

The Environmental Enforcement Act of 1991 appropriated \$238,000 from the Environmental Fund to the Attorney General's Office for fiscal years 1992 and 1993. The Attorney General has been able to use this money to expand the Office's efforts to investigate and prosecute environmental crimes.

In September 1991, as a result of the funding from the Environmental Fund, the Attorney General was able to establish an entirely new Division within the Attorney General's Office, called the Environmental Investigations Division. The Environmental Investigations Division currently consists of an attorney manager, two criminal attorneys, two criminal investigators, a toxicologist, and a secretary. The Division is responsible for enforcement of the criminal laws in the environmental area, and it also performs an environmental advocacy and citizen assistance role.

Prior to the appropriation, the Attorney General's Office had one criminal attorney and one criminal investigator working less than full-time on environmental crimes. With the appropriation, the Attorney General's Office has been able to assign these people to work on environmental crimes full-time, to transfer a toxicologist, a secretary, and an attorney manager, and to hire two additional people. A second investigator was hired in January 1992, and a second attorney was hired in March 1992. The appropriation from the Environmental Fund covers a portion of the salaries and other expenses of these people.

The criminal attorneys and criminal investigators in the Division are part of the State of Minnesota's Environmental Crimes Team. They work with other members of the Environmental Crimes Team, including Pollution Control Agency regulators, Department of Natural Resources conservation officers, Department of Transportation inspectors, and Department of Agriculture regulators, and with county attorneys, local environmental officers, and other law enforcement officials in investigating and prosecuting environmental crimes around the state.

The Environmental Investigations Division also provides assistance and training to various local and state law enforcement and environmental officials in the investigation and prosecution of environmental crimes. In the last year, it has provided training in environmental criminal enforcement for several hundred attorneys, conservation officers, and state regulatory technical people. Once these people are trained, they provide additional resources for enforcement of the environmental laws. The Division has developed a good deal of experience in investigating and prosecuting environmental crimes, and was invited last year to teach at several multi-state training programs around the country.

The Division has also given more than a dozen presentations on environmental crimes to various organizations, including civic organizations, sewage treatment plant operators association, and Continuing Legal Education programs. More than 1,500 people heard these presentations.

In its environmental advocacy role, the Division has participated in various proceedings to promote sound environmental decision-making. It is involved in a lawsuit over the need for environmental review of a proposed concrete crusher project in Minneapolis; that lawsuit is now pending in the Minnesota Supreme Court. The Division has participated in rulemaking activities by state agencies. The Division has been a resource for other staff within the Attorney General's Office and has provided assistance to other state agencies and to local government. The Division also responds to numerous citizen requests for assistance on matters involving the public and the environment.

Use of the New Environmental Crime Authority

The Legislature first created felony crimes for environmental misconduct in 1983, when legislation was passed that made the illegal disposal of hazardous waste a felony. In 1987, the improper storage and transportation of hazardous waste also became felonies. In the Environmental Enforcement Act of 1991, the Legislature created new crimes in the air, water, and solid waste areas, some of which are felonies. New felonies were also created for the submission of false material statements in certain reports and permits and other documents.

Most criminal enforcement of environmental requirements involves the mismanagement of hazardous waste. These crimes have been on the books longer and hazardous waste often creates a serious threat to the environment. However, there is increased attention on water pollution violations, even though most water violations are gross misdemeanors and not felonies. Also, the Attorney General's Office and the Pollution Control Agency have begun to focus on cases involving the submission of incomplete or false documents to the Pollution Control Agency. The Attorney General's office attempts to give a high priority to violations identified by the state agencies and counties as areas where criminal enforcement of a single case would carry a broad deterrent effect.

The felony crimes in the air and water pollution areas involve violations of requirements for limiting the emission or discharge of toxics air or water pollutants. The Pollution Control Agency has promulgated some water toxic rules but not many permits have been issued that contain effluent limits for these toxics. The Pollution Control Agency is in the process of adopting rules for air toxics and it will be some time before any Pollution Control Agency air permits with toxic limitations are issued. Under existing state law, it is unlikely that there will be any felony prosecutions for these air and water violations for a period of years.

Attachments C and D to this report provide statistics for environmental crimes investigations and prosecutions for the past three years that the Attorney General's Office has participated in either as investigators or prosecutors or both. These statistics do not include cases handled entirely by county attorneys or others. These statistics are reported on a calendar year basis up to November 1, 1992.

Environmental crime prosecutions have involved a number of corporate and individual defendants. An Aitkin County company and one of its employees

recently pled guilty to the illegal disposal of paint wastes by open burning. One county engineer has been charged with felony counts for the illegal disposal of hazardous waste by spreading a pesticide on a county road. One municipal sewage treatment plant operator pled guilty to submitting false monitoring reports to the Pollution Control Agency regarding the quality of the discharge from the plant. One prosecution by Sibley County involved a feedlot operator who discharged manure into a ditch that ran into a lake.

Recommendations for Reporting Progress

It is necessary to keep track of the investigations conducted, the charges filed, and the convictions obtained, the kind of statistics included in the attached tables. The Office currently is in the process of developing a computer program to account for all environmental crime prosecutions statewide. With this computer capability, it will be able to quickly report these kind of statistics.

It is also important, however, to report narrative information about the environmental cases that are investigated and prosecuted. The narrative form will provide information on the kind of violations that are occurring, who the defendants are, and where they are occurring. In addition, it is important to report the amount of time the Attorney General's Office and other agencies with people on the Environmental Crimes Team devote to the investigation and prosecution of environmental crimes. Some investigations take one day or one week and some take six months of concentrated effort by a large number of people. The raw numbers will not convey the entire picture.

The Division can make some judgments about its progress in achieving compliance with environmental laws from these statistics, but will have to look beyond these numbers to gauge progress in obtaining compliance. One indicator of the deterrent effect criminal prosecution is having is the large number of requests to give presentations at various forums on environmental crimes and the Environmental Crimes Team. Another indicator is simply the reaction of the public to state efforts to enforce the environmental laws.

Recommendations for Additional Legislation

The State criminal code does not provide as many felony crimes for environmental violations as does federal law, specifically the Clean Air Act and the Clean Water Act. Nearly every knowing environmental violation is a felony under federal law.

The United States Environmental Protection Agency has indicated to the Pollution Control Agency that in order to have an acceptable air program, the state will in the future be required to have the same civil and criminal enforcement tools that are available to the federal government. This would mean that the state law would have to be amended to provide felony crimes for additional air pollution violations.

One of the Attorney General's Office specific recommendations for amending the environmental crimes statute is an amendment to clarify that emitting pollutants into the air or discharging pollutants into the water or engaging in other conduct that requires a permit, without first obtaining the necessary permit, is a felony. Currently Minn. Stat. { 609.671, subd. 9(a)(a) (1990)

provides that the failure to maintain a permit or license required under other specific laws including chapters 115 and 116, is a felony. The Attorney General's Office believes the failure to have a permit from the Pollution Control Agency would fit the language of this statute. However, it would enhance enforcement efforts, provide a deterrent impact on its own accord, and encourage persons to apply in advance for all necessary permits, if the statute were amended to say clearly that failure to have a permit is a felony. The following language would be appropriate to address this point:

- (a) A person is guilty of a felony who knowingly engages in any conduct for which a permit is required under chapter 115 or 116 or the rules promulgated thereunder by the Pollution Control Agency without first obtaining the necessary permit from the Agency.
- (b) A person convicted under this subdivision may be sentenced to imprisonment for not more than two years, or to payment of a fine of not more than \$25,000 per day of violation, or both.

There have been situations where individuals have engaged in conduct for which they should have first applied to the Pollution Control Agency for a permit. Emphasizing that such conduct is a crime will not only make enforcement easier, but should help to prevent many of these incidents from occurring.

Conclusion

Over the past few years the Environmental Crimes Team has investigated a significant number of environmental violations and has prosecuted several knowing violations of state environmental laws. The experience and the pattern in several other states with active environmental crimes programs show that more criminal violations will be identified as the environmental crimes program matures. The Attorney General's Office has found that criminal prosecution of environmental misconduct is an important tool in the State's enforcement arsenal. With continued funding, the State will be able to maintain a credible environmental crimes program as an integral part of the overall environmental compliance effort in Minnesota.

AN ACT

NOTE

This is the final version
of the bill that will be
transmitted to the governor's
desk. Check House Index Department
for updated status (296-60-6)

1
2 relating to the environment; establishing an
3 environmental enforcement account; establishing a
4 field citation pilot project for unauthorized disposal
5 of solid waste; authorizing background investigations
6 of environmental permit applicants; expanding current
7 authority to impose administrative penalties for air
8 and water pollution and solid waste management
9 violations; clarifying that certain persons who own or
10 have the capacity to influence operation of property
11 are not responsible persons under the environmental
12 response and liability act solely because of ownership
13 or the capacity to influence operation; imposing
14 criminal penalties for knowing violations of standards
15 related to hazardous air pollutants and toxic
16 pollutants in water; providing that certain property
17 is subject to forfeiture in connection with
18 convictions for water pollution and air pollution
19 violations; imposing criminal penalties for
20 unauthorized disposal of solid waste; authorizing
21 prosecution of environmental crimes by the attorney
22 general; providing for environmental restitution as
23 part of a sentence; increasing criminal penalties for
24 false statements on documents related to permits and
25 record keeping; requiring reports; appropriating
26 money; amending Minnesota Statutes 1990, sections
27 18D.331, subdivision 4; 115.071, by adding a
28 subdivision; 115.072; 115B.03, by adding subdivisions;
29 115C.05; 116.07, subdivision 4d; 116.072, subdivisions
30 1, 2, 6, 10, and 11; 609.531, subdivision 1; and
31 609.671; proposing coding for new law in Minnesota
32 Statutes, chapters 115 and 116.

33 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

34 ARTICLE 1

35 CIVIL ENFORCEMENT

36 Section 1. [CITATION.]

37 Articles 1 and 3 may be cited as the "environmental
38 enforcement act of 1991."

39 Sec. 2. Minnesota Statutes 1990, section 115.071, is

1 amended by adding a subdivision to read:

2 Subd. 6. [ADMINISTRATIVE PENALTIES.] A provision of law
3 that may be enforced under this section may also be enforced
4 under section 116.072.

5 Sec. 3. Minnesota Statutes 1990, section 115.072, is
6 amended to read:

7 115.072 [RECOVERY OF LITIGATION COSTS AND EXPENSES.]

8 In any action brought by the attorney general, in the name
9 of the state, pursuant to the provisions of this chapter and
10 chapter 116, for civil penalties, injunctive relief, or in an
11 action to compel compliance, if the state shall finally prevail,
12 and if the proven violation was willful, the state, in addition
13 to other penalties provided in this chapter, may be allowed an
14 amount determined by the court to be the reasonable value of all
15 or a part of the litigation expenses incurred by the state. In
16 determining the amount of such litigation expenses to be
17 allowed, the court shall give consideration to the economic
18 circumstances of the defendant.

19 ~~All~~ Amounts recovered under the provisions of this section
20 and section 115.071, subdivisions 3 to 5, shall be paid into the
21 environmental fund in the state treasury to the extent provided
22 in section 4.

23 Sec. 4. [115.073] [ENFORCEMENT FUNDING.]

24 Except as provided in sections 115B.20, subdivision 4,
25 clause (2); 115C.05; and 473.845, subdivision 8, all money
26 recovered by the state under this chapter and chapters 115A and
27 116, including civil penalties and money paid under an
28 agreement, stipulation, or settlement, excluding money paid for
29 past due fees or taxes, up to the amount appropriated for
30 implementation of this act, must be deposited in the state
31 treasury and credited to the environmental fund.

32 Sec. 5. [115.075] [INFORMATION AND MONITORING.]

33 A person may not:

34 (1) make a false material statement, representation, or
35 certification in; omit material information from; or alter,
36 conceal, or fail to file or maintain a notice, application,

1 record, report, plan, manifest, or other document required under
2 section 103F.701 or this chapter or chapter 115A or 116; or
3 (2) falsify, tamper with, render inaccurate, or fail to
4 install a monitoring device or method required to be maintained
5 or followed for the purpose of compliance with sections 103F.701
6 to 103F.761 or this chapter or chapter 115A or 116.

7 Sec. 6. [115.076] [BACKGROUND OF PERMIT APPLICANTS.]

8 Subdivision 1. [AUTHORITY OF COMMISSIONER.] The agency may
9 refuse to issue or to authorize the transfer of a hazardous
10 waste facility permit or a solid waste facility permit to
11 construct or operate a commercial waste facility as defined in
12 section 115A.03, subdivision 6, if the agency determines that
13 the permit applicant does not possess sufficient expertise and
14 competence to operate the facility in conformance with the
15 requirements of chapters 115 and 116, or if other circumstances
16 exist that demonstrate that the permit applicant may not operate
17 the facility in conformance with the requirements of chapters
18 115 and 116. In making this determination, the agency may
19 consider:

20 (1) the experience of the permit applicant in constructing
21 or operating commercial waste facilities;

22 (2) the expertise of the permit applicant;

23 (3) the past record of the permit applicant in operating
24 commercial waste facilities in Minnesota and other states;

25 (4) any criminal convictions of the permit applicant in
26 state or federal court during the past five years that bear on
27 the likelihood that the permit applicant will operate the
28 facility in conformance with the requirements of chapters 115
29 and 116; and

30 (5) in the case of a corporation or business entity, any
31 criminal convictions in state or federal court during the past
32 five years of any of the permit applicant's officers, partners,
33 or facility managers that bear on the likelihood that the
34 facility will be operated in conformance with the requirements
35 of chapters 115 and 116.

36 Subd. 2. [PERMIT APPLICANT:] For purposes of this section,

1 a permit applicant includes a natural person, a partnership and
2 its owners, and a corporation and its parent.

3 Subd. 3. [INVESTIGATION.] The commissioner may conduct an
4 investigation to assist in making determinations under
5 subdivision 1. The reasonable costs of any investigation must
6 be paid by the permit applicant.

7 Subd. 4. [NOTICE OF PERMIT DENIAL.] The agency may not
8 refuse to issue or transfer a permit under this section without
9 first providing the permit applicant with the relevant
10 information and with an opportunity to respond by commenting on
11 the information and submitting additional information regarding
12 the circumstances surrounding the conviction, corrective
13 measures to prevent recurrence, the applicant's rehabilitation,
14 and technical and managerial experience. In making a final
15 decision on the permit, the agency shall consider the permit
16 applicant's response prior to making a final decision on the
17 permit.

18 Subd. 5. [HEARING.] If the agency proposes to deny a
19 permit under this section, the permit applicant may request a
20 hearing under chapter 14. The permit applicant may request that
21 the hearing be held under Minnesota Rules, parts 1400.8510 to
22 1400.8612.

23 Sec. 7. Minnesota Statutes 1990, section 115C.05, is
24 amended to read:

25 115C.05 [CIVIL PENALTY.]

26 The agency may enforce section 115C.03 using the actions
27 and remedies authorized under section sections 115.071,
28 subdivision 3, and 116.072. The civil penalties recovered by
29 the state must be credited to the fund.

30 Sec. 8. Minnesota Statutes 1990, section 116.07,
31 subdivision 4d, is amended to read:

32 Subd. 4d. [PERMIT FEES.] The agency may collect permit
33 fees in amounts not greater than those necessary to cover the
34 reasonable costs of reviewing and acting upon applications for
35 agency permits and implementing and enforcing the conditions of
36 the permits pursuant to agency rules. Permit fees shall not

1 include the costs of litigation. The agency shall adopt rules
2 under section 16A.128 establishing the amounts and methods of
3 collection of any permit fees collected under this subdivision.
4 The fee schedule must reflect reasonable and routine permitting,
5 implementation, and enforcement costs. The agency may impose an
6 additional enforcement fee to be collected for a period of up to
7 two years to cover the reasonable costs of implementing and
8 enforcing the conditions of a permit under the rules of the
9 agency. Any money collected under this subdivision shall be
10 deposited in the special revenue account.

11 Sec. 9. Minnesota Statutes 1990, section 116.072,
12 subdivision 1, is amended to read:

13 Subdivision 1. [AUTHORITY TO ISSUE PENALTY ORDERS.] The
14 commissioner may issue an order requiring violations to be
15 corrected and administratively assessing monetary penalties for
16 ~~hazardous-waste violations under sections 115.061 and 116.07,~~
17 ~~and Minnesota Rules, chapter 7045~~ of this chapter and chapters
18 115, 115A, and 115D, any rules adopted under those chapters, and
19 any standards, limitations, or conditions established in an
20 agency permit; and for failure to respond to a request for
21 information under section 115B.17, subdivision 3. The order
22 must be issued as provided in this section.

23 Sec. 10. Minnesota Statutes 1990, section 116.072,
24 subdivision 2, is amended to read:

25 Subd. 2. [AMOUNT OF PENALTY; CONSIDERATIONS.] (a) The
26 commissioner may issue an order assessing a penalty up to
27 \$10,000 for all violations identified during an inspection or
28 other compliance review.

29 (b) In determining the amount of a penalty the commissioner
30 may consider:

31 (1) the willfulness of the violation;

32 (2) the gravity of the violation, including damage to
33 humans, animals, air, water, land, or other natural resources of
34 the state;

35 (3) the history of past violations;

36 (4) the number of violations;

1 (5) the economic benefit gained by the person by allowing
2 or committing the violation; and

3 (6) other factors as justice may require, if the
4 commissioner specifically identifies the additional factors in
5 the commissioner's order.

6 (c) For a violation after an initial violation, the
7 commissioner shall, in determining the amount of a penalty,
8 consider the factors in paragraph (b) and the:

9 (1) similarity of the most recent previous violation and
10 the violation to be penalized;

11 (2) time elapsed since the last violation;

12 (3) number of previous violations; and

13 (4) response of the person to the most recent previous
14 violation identified.

15 Sec. 11. Minnesota Statutes 1990, section 116.072,
16 subdivision 6, is amended to read:

17 Subd. 6. [EXPEDITED ADMINISTRATIVE HEARING.] (a) Within 30
18 days after receiving an order or within 20 days after receiving
19 notice that the commissioner has determined that a violation has
20 not been corrected or appropriate steps have not been taken, the
21 person subject to an order under this section may request an
22 expedited hearing, utilizing the procedures of Minnesota Rules,
23 parts 1400.8510 to 1400.8612, to review the commissioner's
24 action. The hearing request must specifically state the reasons
25 for seeking review of the order. The person to whom the order
26 is directed and the ~~director~~ commissioner are the parties to the
27 expedited hearing. The commissioner must notify the person to
28 whom the order is directed of the time and place of the hearing
29 at least 20 days before the hearing. The expedited hearing must
30 be held within 30 days after a request for hearing has been
31 filed with the commissioner unless the parties agree to a later
32 date.

33 (b) All written arguments must be submitted within ten days
34 following the close of the hearing. The hearing shall be
35 conducted under the ~~conference-contested-case-rules-of-the~~
36 ~~office-of-administrative-hearings~~ Minnesota Rules, parts

1 1400.8510 to 1400.8612, as modified by this subdivision. The
2 office of administrative hearings may, in consultation with the
3 agency, adopt rules specifically applicable to cases under this
4 section.

5 (c) The administrative law judge shall issue a report
6 making recommendations about the commissioner's action to the
7 commissioner within 30 days following the close of the record.
8 The administrative law judge may not recommend a change in the
9 amount of the proposed penalty unless the administrative law
10 judge determines that, based on the factors in subdivision 2,
11 the amount of the penalty is unreasonable.

12 (d) If the administrative law judge makes a finding that
13 the hearing was requested solely for purposes of delay or that
14 the hearing request was frivolous, the commissioner may add to
15 the amount of the penalty the costs charged to the agency by the
16 office of administrative hearings for the hearing.

17 (e) If a hearing has been held, the commissioner may not
18 issue a final order until at least five days after receipt of
19 the report of the administrative law judge. The person to whom
20 an order is issued may, within those five days, comment to the
21 commissioner on the recommendations and the commissioner will
22 consider the comments. The final order may be appealed in the
23 manner provided in sections 14.63 to 14.69.

24 (f) If a hearing has been held and a final order issued by
25 the commissioner, the penalty shall be paid by 30 days after the
26 date the final order is received unless review of the final
27 order is requested under sections 14.63 to 14.69. If review is
28 not requested or the order is reviewed and upheld, the amount
29 due is the penalty, together with interest accruing from 31 days
30 after the original order was received at the rate established in
31 section 549.09.

32 Sec. 12. Minnesota Statutes 1990, section 116.072,
33 subdivision 10, is amended to read:

34 Subd. 10. [REVOCATION AND SUSPENSION OF PERMIT.] If a
35 person fails to pay a penalty owed under this section, the
36 agency has grounds to revoke or refuse to reissue or renew a

1 hazardous-waste permit issued by the agency.

2 Sec. 13. Minnesota Statutes 1990, section 116.072,
3 subdivision 11, is amended to read:

4 Subd. 11. [CORRECTIVE REMEDY.] The authority of the agency
5 to issue a corrective order assessing penalties is in addition
6 to other remedies available under statutory or common law,
7 except that the state may not seek civil penalties under any
8 other provision of law for the violations covered by the
9 administrative penalty order. The payment of a penalty does not
10 preclude the use of other enforcement provisions, under which
11 penalties are not assessed, in connection with the violation for
12 which the penalty was assessed.

13 Sec. 14. [PLAN FOR USE OF ADMINISTRATIVE PENALTY ORDERS.]
14 The commissioner of the pollution control agency shall
15 prepare a plan for using the administrative penalty authority in
16 Minnesota Statutes, section 116.072. The commissioner shall
17 provide a 30-day period for public comment on the plan. The
18 plan must be submitted to the agency for approval by October 1,
19 1991.

20 Sec. 15. [FIELD CITATION PILOT PROJECT.]

21 Subdivision 1. [AUTHORITY TO ISSUE.] Pollution control
22 agency staff designated by the commissioner and department of
23 natural resources conservation officers may issue citations to a
24 person who disposes of solid waste as defined in Minnesota
25 Statutes, section 116.06, subdivision 10, at a location not
26 authorized by law for the disposal of solid waste without
27 permission of the owner of the property.

28 Subd. 2. [PENALTY AMOUNT.] The citation must impose the
29 following penalty amounts:

30 (1) \$100 per major appliance, as defined in Minnesota
31 Statutes, section 115A.03, subdivision 17a, up to a maximum of
32 \$2,000;

33 (2) \$25 per waste tire, as defined in Minnesota Statutes,
34 section 115A.90, subdivision 11, unless utilized in an
35 agricultural pursuit, up to a maximum of \$2,000;

36 (3) \$25 per lead acid battery governed by Minnesota

1 Statutes, section 115A.915, up to a maximum of \$2,000;
 2 (4) \$1 per pound of other solid waste or \$20 per cubic foot
 3 up to a maximum of \$2,000; and
 4 (5) up to \$200 for any amount of waste that escapes from a
 5 vehicle used for the transportation of solid waste if, after
 6 receiving actual notice that waste has escaped the vehicle, the
 7 person or company transporting the waste fails to collect the
 8 waste.

9 Subd. 3. [APPEALS.] Citations may be appealed under the
 10 procedures in Minnesota Statutes, section 116.072, subdivision
 11 6, if the person requests a hearing by notifying the
 12 commissioner within 15 days after receipt of the citation. If a
 13 hearing is not requested within the 15-day period, the citation
 14 becomes a final order not subject to further review.

15 Subd. 4. [ENFORCEMENT OF FIELD CITATIONS.] Field citations
 16 may be enforced under Minnesota Statutes, section 116.072,
 17 subdivisions 9 and 10.

18 Subd. 5. [CUMULATIVE REMEDY.] The authority of
 19 conservation officers to issue field citations is in addition to
 20 other remedies available under statutory or common law, except
 21 that the state may not seek penalties under any other provision
 22 of law for the incident subject to the citation.

23 Subd. 6. [STUDY OF FIELD CITATION PILOT PROGRAM.] The
 24 pollution control agency, in consultation with the department of
 25 natural resources and the attorney general, shall prepare a
 26 study on the effectiveness and limitations of the field citation
 27 pilot program. The study must make recommendations about the
 28 continued use of field citations. The study must be submitted
 29 to the legislative commission on waste management by November
 30 15, 1992.

31 Sec. 16. [STUDY OF THE ROLE OF LOCAL GOVERNMENTAL UNITS IN
 32 ENVIRONMENTAL PROGRAMS.]

33 The pollution control agency shall conduct a study of the
 34 role that local governmental units should play in enforcing the
 35 requirements of state environmental programs within the
 36 jurisdiction of the pollution control agency. The study must

1 involve representatives of the attorney general, local
2 governmental units, environmental organizations, and
3 businesses. Public meetings must be held in at least four
4 locations in the state prior to the completion of the study.
5 The study must identify which environmental programs, or parts
6 of programs, could be enforced by local government units;
7 criteria for approving local enforcement programs; resources
8 needed to support local enforcement programs; sources of funding
9 to ensure adequate resources are available; the ability of local
10 governmental units to enforce the laws; and the training and
11 testing needs of local governmental units to support
12 enforcement. If the study concludes that additional elements of
13 the state's environmental programs should be enforced by local
14 governmental units, the study report must include a recommended
15 strategy for involving local governmental units in the
16 enforcement of program elements. The strategy must consider
17 methods of maintaining consistent enforcement throughout the
18 state of environmental program elements that may be enforced by
19 local governmental units and methods of avoiding duplicative
20 enforcement activities. The study must be submitted to the
21 committees on environment and natural resources of the
22 legislature by October 1, 1992.

23 Sec. 17. [REPORT TO THE LEGISLATURE.]

24 The pollution control agency shall monitor the use of the
25 new enforcement authority provided in the 1991 legislative
26 session and the use of the money appropriated to the agency in
27 article 3, section 5, and, after consulting with the attorney
28 general, report the results to the committees on environment and
29 natural resources of the legislature by November 15, 1992. The
30 report must also contain recommendations on establishing a
31 permanent system for reporting progress in achieving compliance
32 with environmental laws to the legislature and to the public.

33 Sec. 18. [INSTRUCTION TO REVISOR.]

34 In Minnesota Statutes 1992 and subsequent editions, the
35 revisor of statutes shall, in each of the following sections,
36 before "115.071" delete "section" and insert "sections" and

1 after "115.071" insert "and 116.072":

2 115A.906, subdivision 2;

3 115A.915;

4 115A.916;

5 115A.9561;

6 116.07, subdivision 4i;

7 116.83, subdivision 2; and

8 473.845, subdivision 8.

9 Sec. 19. [REPEALER.]

10 Section 15 is repealed.

11 Sec. 20. [EFFECTIVE DATE.]

12 Section 19 is effective July 1, 1993.

13 ARTICLE 2

14 HAZARDOUS WASTE LIABILITY

15 Section 1. Minnesota Statutes 1990, section 115B.03, is
16 amended by adding a subdivision to read:

17 Subd. 5. [MORTGAGES.] (a) A mortgagee is not a responsible
18 person under this section solely because the mortgagee becomes
19 an owner of real property through foreclosure of the mortgage or
20 by receipt of the deed to the mortgaged property in lieu of
21 foreclosure.

22 (b) A mortgagee of real property where a facility is
23 located or a holder of a security interest in facility assets or
24 inventory is not an operator of the facility for the purpose of
25 this section solely because the mortgagee or holder has a
26 capacity to influence the operation of the facility to protect
27 its security interest in the real property or assets.

28 Sec. 2. Minnesota Statutes 1990, section 115B.03, is
29 amended by adding a subdivision to read:

30 Subd. 6. [CONTRACT FOR DEED VENDORS.] A contract for deed
31 vendor who is otherwise not a responsible party for a release or
32 a threatened release of a hazardous substance from a facility is
33 not a responsible person under this section solely as a result
34 of a termination of the contract for deed under section 559.21.

35 ARTICLE 3

36 CRIMINAL ENFORCEMENT

1 Section 1. Minnesota Statutes 1990, section 18D.331,
2 subdivision 4, is amended to read:

3 Subd. 4. [~~DISPOSAL THAT BECOMES HAZARDOUS WASTE.~~] A person
4 who knowingly~~7--or-with-reason-to-know7~~ disposes of an
5 agricultural chemical ~~so-that-the-product-becomes~~ in violation
6 of this chapter, chapter 18B or 18C, or a standard, special
7 order, stipulation agreement, or schedule of compliance of the
8 commissioner and the agricultural chemical is hazardous waste is
9 subject to the penalties in section ~~115.071~~ 609.671, subdivision
10 4.

11 Sec. 2. [116.90] [CITIZEN REPORTS OF ENVIRONMENTAL
12 VIOLATIONS.]

13 The agency shall maintain and publicize a toll-free number
14 to enable citizens to report information about potential
15 environmental violations. The agency may establish a program to
16 pay awards from funds raised from private sources to persons who
17 provide information that leads to the conviction for an
18 environmental crime.

19 Sec. 3. Minnesota Statutes 1990, section 609.531,
20 subdivision 1, is amended to read:

21 Subdivision 1. [DEFINITIONS.] For the purpose of sections
22 609.531 to 609.5317, the following terms have the meanings given
23 them.

24 (a) "Conveyance device" means a device used for
25 transportation and includes, but is not limited to, a motor
26 vehicle, trailer, snowmobile, airplane, and vessel and any
27 equipment attached to it. The term "conveyance device" does not
28 include property which is, in fact, itself stolen or taken in
29 violation of the law.

30 (b) "Weapon used" means a weapon used in the furtherance of
31 a crime and defined as a dangerous weapon under section 609.02,
32 subdivision 6.

33 (c) "Property" means property as defined in section 609.52,
34 subdivision 1, clause (1).

35 (d) "Contraband" means property which is illegal to possess
36 under Minnesota law.

1 (e) "Appropriate agency" means the bureau of criminal
2 apprehension, the Minnesota state patrol, a county sheriff's
3 department, the suburban Hennepin regional park district park
4 rangers, or a city or airport police department.

5 (f) "Designated offense" includes:

6 (1) for weapons used: any violation of this chapter;

7 (2) for all other purposes: a felony violation of, or a
8 felony-level attempt or conspiracy to violate, section 609.185;
9 609.19; 609.195; 609.21; 609.221; 609.222; 609.223; 609.2231;
10 609.24; 609.245; 609.25; 609.255; 609.322; 609.342, subdivision
11 1, clauses (a) to (f); 609.343, subdivision 1, clauses (a) to
12 (f); 609.344, subdivision 1, clauses (a) to (e), and (h) to (j);
13 609.345, subdivision 1, clauses (a) to (e), and (h) to (j);
14 609.42; 609.425; 609.466; 609.485; 609.487; 609.52; 609.525;
15 609.53; 609.54; 609.551; 609.561; 609.562; 609.563; 609.582;
16 609.59; 609.595; 609.631; 609.671, subdivisions 3, 4, and 5, 8,
17 and 12; 609.687; 609.821; 609.825; 609.86; 609.88; 609.89;
18 237.73; 617.246; or a gross misdemeanor or felony violation of
19 section 609.891.

20 (g) "Controlled substance" has the meaning given in section
21 152.01, subdivision 4.

22 Sec. 4. Minnesota Statutes 1990, section 609.671, is
23 amended to read:

24 609.671 [ENVIRONMENT; CRIMINAL PENALTIES.]

25 Subdivision 1. [DEFINITIONS.] The definitions in this
26 subdivision apply to this section.

27 (a) "Agency" means the pollution control agency.

28 (b) "Deliver" or "delivery" means the transfer of
29 possession of hazardous waste, with or without consideration.

30 (c) "Dispose" or "disposal" has the meaning given it in
31 section 115A.03, subdivision 9.

32 (d) "Hazardous air pollutant" means an air pollutant listed
33 under United States Code, title 42, section 7412(b).

34 (e) "Hazardous waste" means any waste identified as
35 hazardous under the authority of section 116.07, subdivision 4,
36 except for those wastes exempted under Minnesota Rules, part

1 7045.0120, wastes generated under Minnesota Rules, part
 2 7045.0213 or 7045.0304, and household appliances.

3 ~~(e)~~ (f) "Permit" means a permit issued by the pollution
 4 control agency ~~or-interim-status-for-a-treatment,-storage,-or~~
 5 ~~disposal-facility~~ under chapter 115 or 116 or the rules
 6 promulgated under those chapters including interim status for
 7 hazardous waste that-qualifies-under-the-agency-rules facilities.

8 (g) "Solid waste" has the meaning given in section 116.06,
 9 subdivision 10.

10 (h) "Toxic pollutant" means a toxic pollutant on the list
 11 established under United States Code, title 33, section 1317.

12 Subd. 2. [~~PROOF-OF-KNOWING-STATE-OF-MIND~~ DEFINITION OF
 13 KNOWING.] ~~(a)-Knowledge-possession-by-a-person-other-than-the~~
 14 ~~defendant-but-not-by-the-defendant-may-not-be-attributed-to-the~~
 15 ~~defendant.--In-proving-a-defendant's-actual-knowledge,~~
 16 ~~circumstantial-evidence-may-be-used,-including-evidence-that-the~~
 17 ~~defendant-took-affirmative-steps-to-shield-the-defendant-from~~
 18 ~~relevant-information.~~

19 ~~(b)-Proof-of-a-defendant's-reason-to-know-may-not-consist~~
 20 ~~solely-of-the-fact-that-the-defendant-held-a-certain-job-or~~
 21 ~~position-of-management-responsibility.--If-evidence-of-the~~
 22 ~~defendant's-job-or-position-is-offered,-it-must-be-corroborated~~
 23 ~~by-evidence-of-defendant's-reason-to-know.--Corroborating~~
 24 ~~evidence-must-include-evidence-that-the-defendant-had~~
 25 ~~information-regarding-the-offense-for-which-the-defendant-is~~
 26 ~~charged,-that-the-information-pertained-to-hazardous-waste~~
 27 ~~management-practices-directly-under-the-defendant's-control-or~~
 28 ~~within-the-defendant's-supervisory-responsibilities,-and-that~~
 29 ~~the-information-would-cause-a-reasonable-and-prudent-person-in~~
 30 ~~the-defendant's-position-to-learn-the-actual-facts~~ (a) For
 31 purposes of this section, an act is committed knowingly if it is
 32 done voluntarily and is not the result of negligence, mistake,
 33 accident, or circumstances that are beyond the control of the
 34 defendant. Whether an act was knowing may be inferred from the
 35 person's conduct, from the person's familiarity with the subject
 36 matter in question, or from all of the facts and circumstances

1 connected with the case. Knowledge may also be established by
2 evidence that the person took affirmative steps to shield the
3 person from relevant information. Proof of knowledge does not
4 require that a person knew a particular act or failure to act
5 was a violation of law or that the person had specific knowledge
6 of the regulatory limits or testing procedures involved in a
7 case.

8 (b) Knowledge of a corporate official may be established
9 under paragraph (a) or by proof that the person is a responsible
10 corporate official. To prove that a person is a responsible
11 corporate official, it must be shown that:

12 (1) the person is an official of the corporation, not
13 merely an employee;

14 (2) the person has direct control of or supervisory
15 responsibility for the activities related to the alleged
16 violation, but not solely that the person held a certain job or
17 position in a corporation; and

18 (3) the person had information regarding the offense for
19 which the defendant is charged that would lead a reasonable and
20 prudent person in the defendant's position to learn the actual
21 facts.

22 (c) Knowledge of a corporation may be established by
23 showing that an illegal act was performed by an agent acting on
24 behalf of the corporation within the scope of employment and in
25 furtherance of the corporation's business interest, unless a
26 high managerial person with direct supervisory authority over
27 the agent demonstrated due diligence to prevent the crime's
28 commission.

29 Subd. 3. [HAZARDOUS-WASTE; KNOWING ENDANGERMENT.] (a) A
30 person is guilty of a felony if the person:

31 (1) knowingly, or with reason-to-know, transports, treats,
32 stores, or disposes of hazardous waste in violation of
33 an act described in subdivision 4 or, 5, 8, paragraph (a), or
34 12; and

35 (2) at the time of the violation knowingly places, or has
36 reason-to-know-that-the-person's-conduct-places, another person

1 in imminent danger of death, great bodily harm, or substantial
2 bodily harm.

3 (b) A person convicted under this subdivision may be
4 sentenced to imprisonment for not more than ten years, or to pay
5 payment of a fine of not more than \$100,000, or both, except
6 that a defendant that is an organization may be sentenced to pay
7 payment of a fine of not more than \$1,000,000.

8 Subd. 4. [HAZARDOUS WASTE; UNLAWFUL DISPOSAL OR
9 ABANDONMENT.] A person who knowingly~~,-or-with-reason-to-know,~~
10 disposes of or abandons hazardous waste or arranges for the
11 disposal of hazardous waste at a location other than one
12 authorized by the pollution control agency or the United States
13 Environmental Protection Agency, or in violation of any material
14 term or condition of a hazardous waste facility permit, is
15 guilty of a felony and may be sentenced to imprisonment for not
16 more than five years or to pay payment of a fine of not more
17 than \$50,000, or both.

18 Subd. 5. [HAZARDOUS WASTE; UNLAWFUL TREATMENT, STORAGE,
19 TRANSPORTATION, OR DELIVERY~~,-FALSE-STATEMENTS~~.] (a) A person is
20 guilty of a felony who knowingly~~,-or-with-reason-to-know,~~ does
21 any of the following:

22 (1) delivers hazardous waste to any person other than a
23 person who is authorized to receive the waste under rules
24 adopted under section 116.07, subdivision 4, or under United
25 States Code, title 42, sections 9601 6921 to 9675 6938;

26 (2) treats or stores hazardous waste without a permit if a
27 permit is required, or in violation of a material term or
28 condition of a permit held by the person, unless:

29 (i) the person notifies the agency prior to the time a
30 permit would be required that the person will be treating or
31 storing waste without a permit; or

32 (ii) for a violation of a material term or condition of a
33 permit, the person immediately notifies the agency issuing the
34 permit of the circumstances of the violation as soon as the
35 person becomes aware of the violation;

36 (3) transports hazardous waste to any location other than a

1 facility that is authorized to receive, treat, store, or dispose
2 of the hazardous waste under rules adopted under section 116.07,
3 subdivision 4, or under United States Code, title 42, sections
4 9601 6921 to 9675 6938;

5 (4) transports hazardous waste without a manifest as
6 required by the rules under sections 116.07, subdivision 4, and
7 221.172; or

8 (5) transports hazardous waste without a license required
9 for the transportation of hazardous waste by chapter 221;

10 ~~(6)-makes-a-false-material-statement-or-representation-or~~
11 ~~a-material-omission-in-an-application-for-a-permit-or-license~~
12 ~~required-by-chapter-116-or-221-to-treat-transport-store-or~~
13 ~~dispose-of-hazardous-waste-or~~

14 ~~(7)-makes-a-false-material-statement-or-representation-or~~
15 ~~a-material-omission-in-or-on-a-label-manifest-record-report,~~
16 ~~or-other-document-filed-maintained-or-used-for-the-purpose-of~~
17 ~~compliance-with-chapter-116-or-221-in-connection-with-the~~
18 ~~generation-transportation-disposal-treatment-or-storage-of~~
19 ~~hazardous-waste.~~

20 (b) A person convicted under this subdivision may be
21 sentenced to imprisonment for not more than three years, or to
22 pay payment of a fine of not more than \$25,000, or both. A
23 person convicted for a second or subsequent offense may be
24 sentenced to imprisonment for not more than five years, or
25 to pay payment of a fine of not more than \$50,000, or both.

26 Subd. 6. [NEGLIGENT VIOLATION AS GROSS MISDEMEANOR.] A
27 person who commits any of the acts set forth in subdivision
28 4 or, 5, or 12 as a result of the person's gross negligence is
29 guilty of a gross misdemeanor and may be sentenced to
30 imprisonment for not more than one year, or to pay payment of a
31 fine of not more than \$15,000, or both.

32 Subd. 7. [AGGREGATION PROSECUTION.] When two or more
33 offenses in violation of ~~subdivision 4~~ this section are
34 committed by the same person in two or more counties within a
35 two-year period, ~~the offenses may be aggregated and~~ the accused
36 may be prosecuted in any county in which one of the offenses was

1 committed.

2 Subd. 8. [WATER POLLUTION.] (a) A person is guilty of a
3 felony who knowingly:

4 (1) causes the violation of an effluent standard or
5 limitation for a toxic pollutant in a national pollutant
6 discharge elimination system permit or state disposal system
7 permit;

8 (2) introduces into a sewer system or into a publicly owned
9 treatment works a hazardous substance that the person knew or
10 reasonably should have known is likely to cause personal injury
11 or property damage; or

12 (3) except in compliance with all applicable federal,
13 state, and local requirements and permits, introduces into a
14 sewer system or into a publicly owned treatment works a
15 hazardous substance that causes the treatment works to violate
16 an effluent limitation or condition of the treatment works'
17 national pollutant discharge elimination system permit.

18 (b) For purposes of paragraph (a), "hazardous substance"
19 means a substance on the list established under United States
20 Code, title 33, section 1321(b).

21 (c) A person convicted under paragraph (a) may be sentenced
22 to imprisonment for not more than three years, or to payment of
23 a fine of not more than \$50,000 per day of violation, or both.

24 (d) A person is guilty of a gross-misdemeanor crime who
25 willfully-commits-any-of-the-following-acts knowingly:

26 (1) violates any effluent standard or limitation, or any
27 water quality standard adopted by the agency;

28 (2) violates any material term or condition of a national
29 pollutant discharge elimination system permit or any-term-or
30 condition-of-the state disposal system permit;

31 (3) fails to permit-or carry out any recording, reporting,
32 monitoring, sampling, or information entry,-access,-copying,-or
33 other-inspection-or-investigation gathering requirement provided
34 for under chapter 115 or,-with-respect-to-pollution-of-the
35 waters-of-the-state,-chapter 116; or

36 (4) fails to comply-with-any file a discharge monitoring

1 report or other document required for compliance with a national
2 pollutant discharge elimination system filing-requirement or
3 state disposal system permit.

4 ~~(b)~~ (e) A person convicted under ~~this-subdivision~~ paragraph
5 (d) may be sentenced to imprisonment for not more than one year,
6 or to pay payment of a fine of not less than \$2,500 and not more
7 than \$40,000 \$25,000 per day of violation, or both. A person
8 convicted for a second or subsequent offense may be sentenced to
9 imprisonment for not more than two years, or to pay payment of a
10 fine of not more than \$50,000 per day of violation, or both.

11 Subd. 9. [~~INFORMATION-AND-MONITORING~~ FALSE STATEMENTS;
12 TAMPERING.] (a) ~~Except-as-provided-in-subdivision-5, paragraph~~
13 ~~(a), clauses (6) and (7),~~ A person is guilty of a gross
14 misdemeanor felony who knowingly:

15 (1) makes any ~~material~~ false material statement,
16 representation, or certification in any; omits material
17 information from; or alters, conceals, or fails to file or
18 maintain a notice, application, record, report, plan, manifest,
19 permit, license, or other document filed, maintained, or used
20 for-the-purpose-of-compliance-with required under sections
21 103F.701 to 103F.761, or; chapter 115 or, with-respect-to
22 pollution-of-the-waters-of-the-state, chapter 116; or the
23 hazardous waste transportation requirements of chapter 221; or

24 (2) falsifies, tampers with, or renders inaccurate, or
25 fails to install any monitoring device or method required to be
26 maintained or used followed for the purpose of compliance with
27 sections 103F.701 to 103F.761, or chapter 115 or, with-respect
28 to-pollution-of-the-waters-of-the-state, chapter 116.

29 (b) A person convicted under this subdivision may be
30 sentenced to imprisonment for not more than ~~six-months~~ two
31 years, or to pay payment of a fine of not more than \$20,000-per
32 day-of-violation \$10,000, or both.

33 Subd. 10. [FAILURE TO REPORT A RELEASE OF A HAZARDOUS
34 SUBSTANCE OR AN EXTREMELY HAZARDOUS SUBSTANCE.] (a) A person is,
35 upon conviction, subject to a fine of up to \$25,000 or
36 imprisonment for up to two years, or both, who:

1 (1) is required to report the release of a hazardous
2 substance under United States Code, title 42, section 9603, or
3 the release of an extremely hazardous substance under United
4 States Code, title 42, section 11004;

5 (2) knows ~~or-has-reason-to-know~~ that a hazardous substance
6 or an extremely hazardous substance has been released; and

7 (3) fails to provide immediate notification of the release
8 of a reportable quantity of a hazardous substance or an
9 extremely hazardous substance to the state emergency response
10 center, or a firefighting or law enforcement organization.

11 (b) For a second or subsequent conviction under this
12 subdivision, the violator is subject to a fine of up to \$50,000
13 or imprisonment for not more than five years, or both.

14 (c) For purposes of this subdivision, a "hazardous
15 substance" means a substance on the list established under
16 United States Code, title 42, section 9602.

17 (d) For purposes of this subdivision, an "extremely
18 hazardous substance" means a substance on the list established
19 under United States Code, title 42, section 11002.

20 (e) For purposes of this subdivision, a "reportable
21 quantity" means a quantity that must be reported under United
22 States Code, title 42, section 9602 or 11002.

23 Subd. 11. [INFECTIOUS WASTE.] A person who knowingly~~-or~~
24 ~~with-reason-to-know~~ disposes of or arranges for the disposal of
25 infectious waste as defined in section 116.76 at a location or
26 in a manner that is prohibited by section 116.78 is guilty of a
27 gross misdemeanor and may be sentenced to imprisonment for not
28 more than one year, or to payment of a fine of not more than
29 \$10,000, or both. A person convicted a second or subsequent
30 time under this subdivision is guilty of a felony and may be
31 sentenced to imprisonment for not more than two years, or to
32 payment of a fine of not more than \$25,000, or both.

33 Subd. 12. [AIR POLLUTION.] (a) A person is guilty of a
34 felony who knowingly:

35 (1) causes a violation of a national emission standard for
36 a hazardous air pollutant adopted under United States Code,

1 title 42, section 7412; or

2 (2) causes a violation of an emission standard, limitation,
3 or operational limitation for a hazardous air pollutant
4 established in a permit issued by the pollution control agency.

5 (b) A person convicted under this subdivision may be
6 sentenced to imprisonment for not more than three years, or to
7 payment of a fine of not more than \$50,000 per day of violation,
8 or both.

9 Subd. 13. [SOLID WASTE DISPOSAL.] (a) A person is guilty
10 of a gross misdemeanor who:

11 (1) knowingly disposes of solid waste at, transports solid
12 waste to, or arranges for disposal of solid waste at a location
13 that does not have a required permit for the disposal of solid
14 waste; and

15 (2) does so in exchange for or in expectation of money or
16 other consideration.

17 (b) A person convicted under this subdivision may be
18 sentenced to imprisonment for not more than one year, or to
19 payment of a fine of not more than \$15,000, or both.

20 Subd. 14. [DEFENSE.] Except for intentional violations, a
21 person is not guilty of a crime for air quality violations under
22 subdivision 6 or 12, or for water quality violations under
23 subdivision 8, if the person notified the pollution control
24 agency of the violation as soon as the person discovered the
25 violation and took steps to promptly remedy the violation.

26 Sec. 5. [APPROPRIATIONS.]

27 Subdivision 1. [POLLUTION CONTROL AGENCY.] (a) \$890,000 is
28 appropriated from the environmental fund to the pollution
29 control agency for administration of articles 1 and 2. \$460,000
30 is for fiscal year 1992 and \$430,000 is for fiscal year 1993.

31 (b) \$238,000 is appropriated from the environmental fund to
32 the attorney general for costs incurred under articles 1 and 2.
33 \$119,000 is for fiscal year 1992 and \$119,000 is for fiscal year
34 1993.

35 Subd. 2. [DEPARTMENT OF NATURAL RESOURCES.] \$200,000 is
36 appropriated from the environmental fund to the commissioner of

1 natural resources for implementation of the field citation pilot
2 project under article 1, section 15. \$100,000 is for fiscal
3 year 1992 and \$100,000 is for fiscal year 1993.

4 Sec. 6. [EFFECTIVE DATE.]

5 Sections 1, 3, and 4 are effective August 1, 1991, and
6 apply to crimes committed on or after that date.

ADMINISTRATIVE PENALTY ORDER
IMPLEMENTATION PLAN
MINNESOTA POLLUTION CONTROL AGENCY

September 24, 1991

I. INTRODUCTION

The legislation that authorizes the Minnesota Pollution Control Agency (MPCA) to use the Administrative Penalty Order (Order) requires an implementation plan. The Commissioner of the MPCA shall prepare a plan for using the administrative penalty authority in Minn. Stat. § 116.072. The Commissioner shall provide a 30-day period for public comment on the plan. The plan must be submitted to the agency for approval by October 1, 1991.

Minn. Stat. § 116.072 allows the MPCA Commissioner to issue administrative penalties for violations that occur under programs authorized under ch. 116, 115, 115A, 115D or 115B.17, subd. 3. The Minnesota Department of Health (MDH) operates the Infectious Waste Control Act that is authorized under Minn. Stat. § 116.78.

This plan does not establish procedures for MDH for use of orders. The MPCA Commissioner will not use this authority at facilities where the MDH has issued an order. Any use of this authority by the MDH is not subject to MPCA review. Appeals that may occur from MDH actions under this authority are the responsibility of the MDH.

In developing the Administrative Penalty Order Implementation Plan (Plan), the Commissioner has attempted to describe the manner in which the administrative penalty authority will be implemented. As experience is gained in issuing Orders, changes in the manner in which the Commissioner uses this authority may be necessary. It is not possible to develop a plan that will fit all enforcement situations that arise. The Commissioner reserves the right to act in ways not specified in this plan in order to pursue an appropriate enforcement response and to protect Minnesota's environment.

The Order authority is not a new enforcement tool for the MPCA. During the 1987 Legislative Session, Minn. Stat. § 116.072 was passed that authorized the MPCA Commissioner authority to issue Orders for up to \$10,000 for violations of Minn. Rules ch. 7045 [Hazardous Waste]. The MPCA has used the authority since passage of that legislation in over 170 different cases. The experience gained in determining when to use the authority, how to develop penalties, how to document cases and the administrative appeal process has all been extremely valuable and is the basis for the development of this plan.

The Plan that follows includes: (1) a brief overview of the Order authority; (2) a discussion of the application of the authority; (3) an explanation of the process used to implement the authority; (4) the procedures by which a regulated party may challenge an Order; and (5) the process by which an Order will be referred to the Attorney General for failure to comply.

II. OVERVIEW OF THE AUTHORITY

During the 1991 Legislative Session, the scope of existing authority was amended to allow the Commissioner to issue Orders requiring violations to be corrected and administratively assessing monetary penalties. Violations of Minn. Stat. chapters 115, 115A, 115D, and 115E, and 116, any rules adopted under those chapters, limitations, or conditions established in an MPCA permit and failure to respond to a request for information under Minn. Stat § 115B.17, subdivision 3 are covered under this authority.

An Administrative Penalty Order is an order that is issued unilaterally by the Commissioner. It identifies the violations that have been discovered, requires that the violations be corrected, and imposes a penalty that may or may not be forgiven depending on the seriousness and repetitiveness of the violations and the violator's response to the order.

A violation is either forgivable after compliance is attained (within 30 days) or may be nonforgivable if the violation is serious or repeated. When a violation(s) is not serious or repeated, the penalty must be forgiven after compliance is achieved, or when appropriate steps toward compliance are taken. The statute provides specific considerations to be used in determining amount of penalty. The Commissioner may consider willfulness, gravity, history, number of violations, economic benefit and other factors as justice may require. For violations after an initial violation, the Commissioner shall also consider similarity to the most recent previous violation, time elapsed since the last violations, number of previous violations and response of the person to the most recent previous violation.

The Order must include a statement of facts supporting the claim that the violations have occurred, a reference to the rule or law that has been violated, a statement of the factors used to establish the penalty amount and a statement of the person's rights to review the Order.

The statute provides for an expedited administrative hearing process or judicial review as a means for due process. Refer to Part V of the plan and Attachment 4 for further description of the appeal process.

III. APPLICABILITY

A. GENERAL

The U.S. Environmental Protection Agency (EPA) delegation for many programs requires that each violation documented at an inspection be resolved as quickly as possible, leaving the staff with no alternative but to attempt to resolve all cases without regard to the time spent in the process. Where violations are minor, a lot of time is often spent to persuade the violator toward compliance. This is not always productive. A lot of time is spent trying to resolve noncompliance at this level, diverting attention from higher priority issues and inspection activities.

The Order authority is an important supplement to existing enforcement tools, and one way to streamline the enforcement process. The Order helps achieve a balance of enforcement options that range from the letters and Notices of Violation (Notice) to criminal prosecutions. Streamlining the enforcement process has become critical to meeting the challenge of assuring a high rate of compliance for thousands of Minnesota's regulated parties. The Order authority will play a major role in making enforcement actions efficient and effective.

Orders will become the primary enforcement tool for the Agency in resolving routine violations. However, an Order will not normally be used when violation(s) warrant an escalated level of enforcement or the time to resolve the noncompliance is lengthy (usually greater than 90 days). The Agency staff will continue to use other enforcement options (i.e. Stipulation and Compliance Agreements) that will be brought to the Agency Board for approval to resolve many compliance problems.

The Order will replace some Letters of Warning, Notices and minor Stipulation Agreements. However, these enforcement tools may continue to be used on a case by case basis as circumstances warrant.

The Order is a streamlined, efficient compliance tool that allows less serious violations to be resolved quickly, thus avoiding the problems from developing into serious situations with increased real or potential harm to the environment.

The concept of an Order with a forgivable penalty when the violator takes quick action to correct problems is one compliance option. By providing that the penalty must be forgiven if compliance is achieved within time limit (unless the violations were serious or repeated), the legislation provides a clear incentive for compliance.

It is also important to consider the increased deterrent by assessing nonforgivable penalties for the serious and or repeated violations.

Seriousness, as implemented under the Order authority is defined by judgment and experience based on individual program management history.

For example, in the Hazardous Waste Division there are many violations that are classified as serious. The actual range of seriousness is very broad. Activities like overaccumulation, outdoor storage and a release to the environment are all serious, however, all investigation factors associated with the violations must be evaluated prior to determining the appropriate enforcement action.

Hazardous Waste Division staff finds that this compliance tool is effective. Regulated parties have responded positively. Compliance is achieved more quickly than with previous efforts as it gives the regulated parties and staff a chance to work together and to foster a positive working relationship. Additionally, the Order prompts many

regulated parties to take a hard look at their management practices and implement improvements beyond just correcting violations.

B. PROGRAM SPECIFIC APPLICATIONS

1. Hazardous Waste Division

- a. The Regulatory Compliance Program of the Hazardous Waste Division has had Order authority since 1987. The decisions made as to the type of enforcement action/follow-up to use to resolve violations can be very difficult. Therefore, the Hazardous Waste Division developed a decision making process referred to as "enforcement forums" to ensure consistent and current approaches to deal with the various types of enforcement situations. The enforcement forum process is discussed in Section IV.

The Regulatory Compliance program will continue to use this tool as it has in the past to resolve compliance problems at all types of hazardous waste facilities.

- b. The Order authority is new to the Tanks and Spills Programs in the Hazardous Waste Division. The Order may be used in these programs for violations that include not reporting a release or spill, failure to register underground or aboveground storage tanks; lack of storage safeguards required by applicable rules such as secondary containment, corrosion protection or leak detection; failure to prevent or prepare for spills, violations of the tank contractor certification program, and failure to follow-up on cleanup requirements.

2. Water Quality Division

In the Water Quality Program, an Order may be used to facilitate compliance with permitted and unpermitted municipal and industrial dischargers, animal feedlots, large individual sewage treatment systems, dredge and fill operations requiring 401 certification and municipal sewage sludge disposal.

The types of Water Quality violations where an Order will be considered include reporting violations, effluent violations, compliance schedule violations and violations of other requirements or prohibitions contained in permits, rules, statutes or enforcement documents. Examples of possible violations include: failure to submit a required report, effluent violations reported on a Discharge Monitoring Report (DMR), failure to complete a compliance schedule requirement, an unauthorized discharge, lack of a certified waste water treatment plant operator, failure to have permit required chemical analyses conducted by a certified laboratory, failure to construct a

wastewater treatment system in accordance with approved plans and specifications, and constructing a wastewater treatment plant expansion or sewer extension without obtaining the proper permits.

3. Ground Water and Solid Waste Division

- a. An Order may be used in the Solid Waste and Waste Tire Programs to address and resolve violations that can be corrected in a timely manner. Typical violations that may be addressed by an Order at permitted facilities include failure to submit required reports, solid waste management operational violations, failure to follow the industrial solid waste management plan or acceptance of prohibited wastes or, failure to conduct necessary monitoring. Use of the Order at nonpermitted facilities will depend on the amount and type of waste that was improperly disposed. The Order may be used for violation of infectious waste program requirements. Applications for use of the Order in the Waste Tire Program management include compliance with transporter requirements, illegal collection, storage or processing, violations of permit conditions, and abatement of small tire stockpiles which do not qualify for reimbursement under Minn. Rules ch. 9200.
- b. An Order may be issued in the Superfund Program for failure to respond to a request for information (RFI).

4. Air Quality Division

In the Regulatory Compliance Section, the programs that would most likely use Orders to address violations include: permits [minor permit violations]; enforcement [minor rule violations - permitted and non-permitted facilities]; asbestos [reporting and removal procedures]; open burning [no permit, unauthorized permit, illegal materials]; vehicle tampering [minor state and federal violations, failure to make repairs]; and noise [rule violations].

IV. PROCESS

The key to ensuring that an effective program is implemented is the establishment of a uniform process across all agency programs. Each program will adhere to the following process.

A. Developing Actions

MPCA staff conducts investigations and compliance reviews throughout the State. Staff then evaluates the results of the investigation and determines if violations may have occurred. Staff develops the case to ensure that the evidence is documented and supports the claim that violations have occurred. The staff then recommends the appropriate enforcement response to program supervisors/managers.

With the addition of the Order authority to the Agency's existing "compliance tools," it is apparent that a formal decision making process (enforcement forums) was necessary to ensure that a fair, consistent and current approach to enforcement is taken. It is important to understand that rule changes, program growth and other influences change forum decisions over time and therefore, the decision making process must evolve within each program.

An enforcement forum is held shortly after conducting a compliance review (normally on a weekly basis). The investigator/inspector presents the facts of the case and recommends follow-up enforcement action to supervisors/managers and other individuals as appropriate. The forum participants evaluate the circumstances surrounding the case including, but not limited to; violations observed, severity, impact to human health and the environment, past history, responsible parties attitude, reason for noncompliance, and corrective action necessary.

A decision is then made on which compliance tool to use and whether the approach is consistent with past actions, represents proper use of agency authorities and resolves the noncompliance issues in a reasonable time frame. Normally the forum members include the supervisors, staff and managers, and may include Attorney General staff input.

In addition to Orders, the forums decision may be to use other enforcement tools which include letters, a Notice, Stipulation Agreements, or referral for possible civil or criminal actions. Attachment 5 illustrates the various compliance/enforcement tools available to the agency for resolving noncompliance.

A letter/Notice will be used prior to issuing a nonforgivable Order. In the letter/Notice the violations are detailed clearly and the regulated party is asked to respond if they have any information that may adjust the facts. This approach to issuing nonforgivable Orders in the Hazardous Waste Program has been very effective in that it provides accuracy, ensures fairness, and reduces the potential for a hearing.

The Commissioner may issue three types of Orders. Forgivable Orders are issued unless it has been determined that the violations are repeated or serious. Nonforgivable Orders are issued for violations that are considered repeat and/or serious, however, are not of a magnitude that would warrant more serious administrative, civil or criminal remedies. Combined Orders (forgivable/nonforgivable) are issued when there are a number of violations with differing levels of concern and penalties. Attachments 1, 2, and 3 represent the format the Commissioner will be using when issuing Orders. The Order format was designed to ensure that the regulated parties could clearly understand the circumstances and requirements of the Order and their rights under the law.

After the decision has been made that an Order will be issued, Agency staff will prepare the Order and supporting documents. The Order will be reviewed by Agency management and the Attorney General as necessary and presented to the Commissioner for issuance.

Immediately after the Order has been mailed, Agency staff will contact the regulated parties to explain the Order and to offer assistance. If the responsible party does not respond to the Order, Agency staff will contact them prior to the end of the 30-day compliance period to verify the status of the case.

If the responsible party requests an expedited hearing, the Agency will offer one pre-hearing conference to discuss circumstances surrounding the case. The intent of this meeting is to clarify the issues, not to negotiate a settlement.

After the responsible party has complied with the Order and Agency staff have verified compliance, the Commissioner will notify the responsible party in writing as to their status with the Order and penalty.

B. Developing Penalties

As provided for in Minn. Stat. § 116.072, subp. 2(b) and (c), penalties are determined using the criteria established in law. The agency staff also use the civil penalty determination process that has been endorsed by the agency board. The factors the Commissioner may consider in determining a penalty are:

1. The willfulness of the violation
2. The gravity of the violation including damage to humans, animals, air, water, and other natural resources of the state
3. The history of past violations
4. The number of violations
5. The economic benefit gained by the person by allowing or committing the violation; and
6. Other factors as identified by the MPCA Commissioner

For repeat violations, additional penalty factors are considered:

1. Similarity of the most recent previous violation and the violation to be penalized
2. Time elapsed since the last violation
3. Number of previous violations; and
4. Response of the person to the most recent previous violation identified

The penalty is determined by completing a penalty calculation worksheet and then having it reviewed for consistency. The same level of scrutiny and care is given to determine the penalty amount for Orders

as is given to other MPCA enforcement and penalty calculation processes. It is extremely important that when an Order is issued it is fair, consistent and developed in accordance with the authority given to the Commissioner.

V. PROCEDURE TO CHALLENGE ORDERS

Persons issued Orders have a right to appeal the violation or the penalty. Procedures to challenge an Order or the determination that a violation has not been corrected are established in Minn. Stat. § 116/072, subds. 6 and 7. The recipient of an Order has 30 days after receiving the Order to request an expedited administrative hearing or to file a petition for review in district court. The recipient also has 20 days in which to request a hearing after receiving notice from the Commissioner that the violation has not been corrected or notice that the appropriate steps have not been taken to correct the violation.

Procedural time lines for the review of the Order are set in statute. If the recipient of an Order requests an expedited administrative hearing, the Commissioner notifies all parties of the time and place of the hearing within 30 days unless all parties agree to a different date. Both parties have an opportunity to comment; written arguments must be submitted to the Administrative Law Judge (ALJ) within 10 days after the hearing record closes. The recommendation from the ALJ is issued within 30 days after the close of the hearing record. The recipient has 5 days in which to submit comments for consideration by the Commissioner prior to the issuance of the final Order by the Commissioner. The final Order can be appealed by the recipient to the Minnesota Court of Appeals. A flow chart showing the appeal process is contained in Attachment 5.

VI. REFERRAL TO ATTORNEY GENERAL'S

The Attorney General's Office is authorized to institute legal action to enforce Orders.

Where the Commissioner has either assessed a nonforgivable penalty or determined that a forgivable penalty is due because a person has not satisfactorily completed the required corrective action within the prescribed time frame, the Attorney General may proceed to collect the penalty. The Attorney General may petition the district court to file the Order as an Order of the Court. The only patterns a party may contest at a court hearing are procedural and Notice issues.

The Attorney General may also commence a civil action in district court to seek payment of penalties or may seek injunctive or other appropriate relief. This provision of the law provides that the Attorney General may recover monetary damages, attorney fees, cost and interest on behalf of the Commissioner.

STATE OF MINNESOTA
Minnesota Pollution Control Agency

ADMINISTRATIVE PENALTY ORDER

Johnson Ink Company, Inc.
2240 Johnson Road
Johnsonville, Minnesota 55444

Company Status: Small Quantity Generator
Inspection Date: November 26, 1990
Inspection Location: Johnsonville

This Administrative Penalty Order (Order) is issued pursuant to Minn. Stat. § 116.072 (1990), for violations of the hazardous waste laws of the state of Minnesota. You must document to the Commissioner, in writing, that the violations have been corrected or that appropriate steps have been taken to correct the violations within 30 days of receipt of this Order unless you contest the Order. The Commissioner will notify you whether your corrective action is satisfactory. If your corrective action is satisfactory, the penalty ordered herein will be forgiven. The penalty ordered herein will not be forgiven unless you properly document corrective action within 30 days. If you fail to provide documentation of corrective action, the penalty is due on the 31st day after receipt of the Order. If your corrective action is unsatisfactory, the penalty is due on the 20 day after notification that it is unsatisfactory. Payment is to be by check or money order payable to the Environmental Response, Compensation & Liability Fund.

VIOLATION

1. Minn. Rules pt. 7045.0219, subp. 5, item A, paragraph 4 [SPECIAL REQUIREMENTS FOR SMALL QUANTITY GENERATORS OF HAZARDOUS WASTE; Management requirements] which references Minn. Rules pt. 7045.0292, subp. 1, item C [ACCUMULATION OF HAZARDOUS WASTE; When allowed without a permit]

The Company failed to mark accumulation start dates and the words "Hazardous Waste" on six 55-gallon drums of solvent (D001) waste.

2. Minn. Rules pt. 7045.0219, subp. 5, item A, paragraph 4, which references Minn. Rules pt. 7045.0292, subp. 4, item B, paragraph 2 [ACCUMULATION OF HAZARDOUS WASTE; Accumulation of waste by generator]

The Company failed to mark or label three 55-gallon drums containing solvent filled rags and one 55-gallon drum of solvents, stored at various satellite accumulation areas with the words "Hazardous Waste."

3. Minn. Rules pt. 7045.0219, subp. 5, item A, paragraph 7, which references Minn. Rules pt. 7045.0626, subp. 4 [USE AND MANAGEMENT OF CONTAINERS; Management of containers]

The Company failed to store closed three 55-gallon drums containing solvent filled rags, and one 55-gallon drum of solvents, stored at various satellite accumulation areas.

4. Minn. Rules pt. 7045.0219, subp. 5, item B, paragraph 4

The Company failed to document that all employees are trained in proper waste handling and emergency procedures.

5. Minn. Rules pt. 7045.0219, subp. 5, item B, paragraph 3

The Company failed to post information regarding the location of fire extinguishers and spill control material next to all telephones.

CORRECTIVE ACTION REQUIRED

Pursuant to Minn. Stat. § 116.072, subd. 4 (1990), you are required to correct all the violations listed in this Order. If you have any questions on the corrective action required, please call the inspector identified below for assistance.

1. Mark or label all containers holding hazardous waste with the words "Hazardous Waste," the accumulation start date, and a clear description of the waste identifying its contents.

. Within 5 days upon receipt of this Order.

2. Insure that all satellite accumulation hazardous waste containers are marked or labeled with the words "Hazardous Waste."

. Within 5 days upon receipt of this Order.

3. Keep all hazardous waste containers closed except when adding or removing waste, this includes all satellite accumulation containers.

. Within 5 days upon receipt of this Order.

4. Submit a complete personnel training plan that describes the programs, emergency procedures and the responsibilities for employees involved in hazardous waste management at the facility.

. Within 30 days upon receipt of this Order.

5. Submit documentation ensuring that all employees have received personnel training regarding hazardous waste and emergency procedures. at the Company.

. . . . Within 30 days upon receipt of this Order.

6. Post next to all telephones information regarding the location of fire extinguishers and spill control equipment.

. . . . Within 5 days upon receipt of this Order.

* * * * *

PENALTY

You are hereby assessed a penalty of \$2,875 for violations cited above. In determining the amount of penalties, the Commissioner considered the willfulness of the violation(s), the economic benefit gained by the Company, and the gravity of the violation(s), including the potential for damage to humans, animals, air, water, land, or other natural resources of the state. However, if the Company performs and documents the corrective action procedures listed above to the satisfaction of the Commissioner, within 30 days after receipt of the Order, the penalty is:

FORGIVEN

* * * * *

RIGHT TO REVIEW

You have the right to contest this Order or the determination that your corrective action is unsatisfactory. Within 30 days of receipt of this Order or within 20 days of receipt of the Commissioner's determination that your corrective action is unsatisfactory, you may file a written notice of contest with the Commissioner. An expedited hearing by the Office of Administrative Hearings pursuant to Minn. Stat. ch. 14 (1990), will then be scheduled. The Office of Administrative Hearings is an independent administrative judicial agency. You may, instead, file a petition in district court within the same time periods for review of this Order. The petition must state the specific grounds upon which you challenge this Order. You must send a copy of your petition to Charles W. Williams, Commissioner, Minnesota Pollution Control Agency, and file a proof of service on the Commissioner with the clerk of the district court. If your contest is found to be frivolous, you may be required to pay the costs of the contest. Your review rights are more thoroughly described in Minn. Stat. § 116.072, subds. 6 and 7 (1990). Please check the law carefully.

Date _____

Charles W. Williams
Commissioner

**CERTIFIED MAIL
RETURN RECEIPT REQUESTED**

For further information, please contact:

**John Dow
Minnesota Pollution Control Agency
Compliance and Enforcement Unit II
Regulatory Compliance Section
520 Lafayette Road North
Saint Paul, Minnesota 55155-3898
(612) 642-0000**

STATE OF MINNESOTA
Minnesota Pollution Control Agency
ADMINISTRATIVE PENALTY ORDER

Johnson Industries, Incorporated
Johnson Boat Division
Johnsonville, Minnesota 55555

Company Status: Large Quantity Generator
Inspection Date: December 12, 1990
Inspection Location: Johnsonville

This Administrative Penalty Order (Order) is issued pursuant to Minn. Stat. § 116.072 (1990), for violation(s) of the hazardous waste laws of the state of Minnesota. You must document to the Commissioner, in writing, that the violation(s) have been corrected or that appropriate steps towards correcting the violation(s) have been taken within 30 days of receipt of this Order unless you contest the Order. The Commissioner will notify you whether your corrective action is satisfactory.

This Order contains both a nonforgivable penalty, and a provisionally forgivable penalty. The violation(s) in Category A listed below are serious and require the Company to pay a penalty which is not forgivable. The penalty is due on the 31st day after receipt of this Order unless you contest. Payment is to be made by check or money order payable to the Environmental Response, Compensation and Liability Fund.

The violation(s) in Category B listed below are assessed a provisionally forgivable penalty provided the Company's corrective action is satisfactory. The penalty ordered herein will not be forgiven unless you properly document corrective action within 30 days of receipt of this Order. If you fail to provide documentation of corrective action, the penalty is due on the 31st day after receipt of the Order. If your corrective action is unsatisfactory, the penalty is due on the 20 days after notification that it is unsatisfactory. Payment is to be by check or money order payable to the Environmental Response, Compensation and Liability Fund.

CATEGORY A. VIOLATIONS

1. Minn. Rules pt. 7045.0292, subp. 1, item H [ACCUMULATION OF HAZARDOUS WASTE; When allowed without a permit] which references Minn. Rules pt. 7045.0558, subp. 4 [PERSONNEL TRAINING; Effective date].

The Company failed to provide proper training regarding management of hazardous waste to new employees within six months of their employment.

2. Minn. Rules pt. 7045.0292, subp. 1, item H, which references Minn. Rules pt. 7045.0558, subp. 5 [Training review].

The Company failed to provide an annual review of the initial training regarding management of hazardous waste to personnel.

CATEGORY B. VIOLATIONS

3. Minn. Rules pt. 7045.0292, subp. 1, item H, which references Minn. Rules pt. 7045.0558, subp. 6, item A [Personnel records].

The Company failed to provide job titles for each position related to hazardous waste management or the name of the employee filling each job.

4. Minn. Rules pt. 7045.0292, subp. 1, item H, which references Minn. Rules pt. 7045.0558, subp. 6, item B.

The Company failed to provide a written job description for each position related to hazardous waste management.

5. Minn. Rules pt. 7045.0292, subp. 1, item H, which references Minn. Rules pt. 7045.0558, subp. 6, item D.

The Company failed to have records which document that employees filling positions related to hazardous waste management have completed the required training.

CORRECTIVE ACTION REQUIRED

Pursuant to Minn. Stat. § 116.072, subd. 4 (1990), you are required to correct all the violation(s) listed in this Order. If you have any questions on the corrective action required, please call the inspector identified below for assistance.

A. Corrective Action Required for Category A. Violations

1. Conduct training or provide a schedule with dates to ensure that employees receive annual training to familiarize them with emergency procedures, emergency equipment, emergency systems, and proper hazardous waste handling procedures relevant to the positions in which they are employed.

..... Within 30 days upon receipt of this Order.

B. Corrective Action Required for Category B. Violations

2. Develop and submit to the MPCA for review and approval, the Company's personnel training program for the training of employees in proper hazardous waste management. The training program must

include a listing of the job titles and job descriptions which are required to receive training, must identify the employees to be trained, and must provide a record to document that the required training has been provided.

. . . . Within 30 days upon receipt of this Order.

* * * * *

CATEGORY A. PENALTY

You are hereby assessed a penalty of Two Thousand Four Hundred Twenty Five Dollars (\$2,425) for the violation(s) cited in Category A. In determining the amount of the penalty for Category A, the Commissioner considered the willfulness of the violation(s), the economic benefit gained by the Company, and the gravity of the violation(s), including the potential for damage to humans, animals, air, water, land, or other natural resources of the state. Based on the serious nature of the violation(s), the Commissioner has determined that the penalty of Two Thousand Four Hundred Twenty Five Dollars (\$2,425) is:

NONFORGIVABLE

CATEGORY B. PENALTY

If the corrective action requirements for Category B are corrected and documented by the Company to the satisfaction of the Commissioner, within 30 days after receipt of the Order, penalty of Two Thousand Four Hundred Twenty Five Dollars (\$2,425) shall be:

FORGIVEN

* * * * *

RIGHT TO REVIEW

You have the right to contest this Order or the determination that your corrective action is unsatisfactory. Within 30 days of receipt of this Order or within 20 days of receipt of the Commissioner's determination that your corrective action is unsatisfactory, you may file a written notice of contest with the Commissioner. An expedited hearing by the Office of Administrative Hearings pursuant to Minn. Stat. ch. 14 (1990) will then be scheduled. The Office of Administrative Hearings is an independent administrative judicial agency. You may, instead, file a petition in district court within the same time periods for review of this Order. The petition must state the specific grounds upon which you challenge this Order. You must send a copy of your petition to Charles W. Williams, Commissioner, Minnesota Pollution Control Agency, and file a proof of service on the Commissioner with the clerk of the district court. If your contest is found to be frivolous, you may be required to pay the costs of the contest. Your review rights are more thoroughly described in Minn. Stat. § 116.072, subds. 6 and 7 (1990). Please check the law carefully.

Date

Charles W. Williams
Commissioner

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

For further information, please contact:

Jane Dow
Minnesota Pollution Control Agency
Regulatory Compliance Section
520 Lafayette Road North
St. Paul, Minnesota 55155-3839
(612) 642-1111

STATE OF MINNESOTA
Minnesota Pollution Control Agency

ADMINISTRATIVE PENALTY ORDER

Johnson Corporation - Johnsonville
2276 Johnson Road
Johnsonville, Minnesota 55666

Company Status: Storage Facility
Inspection Date: September 17, 1990
Inspection Location: Johnsonville

This Administrative Penalty Order (Order) is issued pursuant to Minn. Stat. § 116.072 (1990), for violations of the hazardous waste laws of the state of Minnesota. You must document to the Commissioner, in writing, that the violations have been corrected or that appropriate steps towards correcting the violations have been taken within 30 days of receipt of this Order unless you contest the Order. The Commissioner will notify you whether your corrective action is satisfactory. The penalty is due on the 31st day after receipt of this Order unless you contest. Payment is to be made by check or money order payable to the Environmental Response, Compensation & Liability Fund.

PERMIT VIOLATIONS

Hazardous Waste Storage Facility Permit Johnson Computer Systems, U.S. Environmental Protection Agency (EPA) Identification Number MND888888888 issued September 17, 1984.

1. PART I. D. 15, REPORTING NONCOMPLIANCE.

The Company failed to notify the MPCA, within five (5) days, that they were storing seven (7) drums of hazardous waste in open containers.

2. PART II. I. 1, IMPLEMENTATION OF CONTINGENCY PLAN.

The Company failed to immediately implement it's contingency plan when F006 plating sludge was spilled in the Company's sludge drying area on September 17, 1990.

VIOLATIONS

3. Minn. Rules pt. 7045.0275, subp. 3 [PROPER HAZARDOUS WASTE MANAGEMENT, Spills; Duty to recover].

The Company failed to recover the spill or release of F006 plating sludge that escaped it's containment system.

4. Minn. Rules pt. 7045.0526, subp. 6, item A (1) [USE AND MANAGEMENT OF CONTAINERS] Containment.

The Company failed to maintain a containment system in the hazardous waste storage area that was capable of collecting and holding spills or leaks and is sufficiently impervious to contain spills or leaks until the collected material is detected and removed.

5. Minn. Rules pt. 7045.0526, subp. 4 [USE AND MANAGEMENT OF CONTAINERS].

The Company failed to maintain seven (7) 55-gallon containers of hazardous waste closed during storage. These seven (7) containers contained F006 plating sludge that was to be put into the sludge during process according to Company employees.

* * * * *

CORRECTIVE ACTION REQUIRED

Pursuant to Minn. Stat. § 116.072, subd. 4 (1990), you are required to correct all the violations listed in this Order. If you have any questions on the corrective action required, please call the inspector identified below for assistance.

1. The Company must immediately recover spilled F006 plating sludge in accordance with the Minnesota hazardous waste rules.

. . . . Immediately.

2. The Company must store the seven (7) drums of hazardous waste in closed containers except when it is necessary to add or remove waste.

. . . . Within 5 days upon receipt of this Order.

3. The Company must maintain a containment system in the hazardous waste storage area that is capable of collecting and holding spills or leaks until the collected material is detected and removed.

. . . . Within 30 days upon receipt of this Order.

* * * * *

PENALTY

You are hereby assessed a penalty of \$9,250.00 for the violation(s) cited above. In determining the amount of the penalty, the Commissioner considered the willfulness of the violation(s), the economic benefit gained by the Company and the gravity of the violation(s), including the potential for damage to humans, animals, air, water, land, or other natural resources of the state. Based on the serious nature of the violations, the Commissioner has determined that the penalty is:

NONFORGIVABLE

* * * * *

RIGHT TO REVIEW

You have the right to contest this Order or the determination that your corrective action is unsatisfactory. Within 30 days of receipt of this Order or within 20 days of receipt of the Commissioner's determination that your corrective action is unsatisfactory, you may file a written notice of contest with the Commissioner. An expedited hearing by the Office of Administrative Hearings pursuant to Minn. Stat. ch. 14 (1990) will then be scheduled. The Office of Administrative Hearings is an independent administrative judicial agency. You may, instead, file a petition in district court within the same time periods for review of this Order. The petition must state the specific grounds upon which you challenge this Order. You must send a copy of your petition to Charles W. Williams, Commissioner, Minnesota Pollution Control Agency, and file a proof of service on the Commissioner with the clerk of the district court. If your contest is found to be frivolous, you may be required to pay the costs of the contest. Your review rights are more thoroughly described in Minn. Stat. § 116.072, subds. 6 and 7 (1990). Please check the law carefully.

Date

Charles W. Williams
Commissioner

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

For further information, please contact:

Jean Dow
Minnesota Pollution Control Agency
Regulatory Compliance Section
520 Lafayette Road North
St. Paul, Minnesota 55155-3898
(612) 642-2222

Example of a Forgivable/Nonforgivable
Administrative Penalty Order Involving
Hazardous Waste Violations

Inspection Background:

A hazardous waste inspection was conducted at Johnson Printing on May 5, 1991. The inspection revealed the following hazardous waste violations:

- The Company was conducting "right-to-know" training, however, it lacked a personnel training program and any training records for hazardous waste management.
- Failure to evaluate one of six waste streams for hazardous waste properties.
- The Company's contingency plan lacked an updated evacuation plan.
- The Company's outdoor hazardous waste storage area was unsecured.
- Failure to maintain a written record of the Company's inspections of their hazardous waste storage area.

Forum/Decision:

A week after the inspection, the inspector summarized the following facts at an enforcement forum:

- The Company is a large quantity generator and employs one hundred people, seven of which are required to have training in hazardous waste management.
- The Company generated a "new waste" that was not evaluated or disclosed prior to the inspection.
- The Company had a contingency plan, however, it needed to have an updated evacuation plan to reflect recent plant expansion.
- While inspecting the Company's outdoor hazardous waste storage area, the inspector observed that it was unlocked.
- The Company told the inspector that they were unaware of the rules that required them to maintain a written record of their inspections.
- Overall, the Company appeared to be managing their hazardous waste property. However, it is unacceptable not to have a personnel training program on hazardous waste management which more than likely accounted for the other hazardous waste violation observed.
- The Company was cooperative and no actual environmental damage was observed.

Based upon the above mentioned factors, the forums decision was to issue the Company an APO that contained a forgivable and nonforgivable penalty. The nonforgivable portion was considered serious because of the lack of a personnel training program for hazardous waste management.

Ten Day Letter:

Because the APO would contain a nonforgivable penalty, the inspector sent a ten day letter to the Company which cited the alleged violations. The letter also requested the Company to respond within ten days, on the accuracy of the violations and if they were in disagreement, provide an explanation.

Company Response:

The Company responded to the ten day letter within a week. Their response addressed each violation and indicated what steps they were taking to correct the violations.

Order:

After receiving the Company's response to the ten day letter, an APO containing a forgivable and nonforgivable penalty was sent to the Company. The APO cited the rule violations, contained a compliance schedule and assessed a forgivable penalty for four of the five violations provided compliance was achieved or a schedule was submitted within thirty days. A nonforgivable penalty was assessed to the Company due to their failure to have a personnel training program. This is viewed as a serious violation because of the potential to create harm to human health and/or the environment.

EXAMPLE OF A FORGIVABLE/NON-FORGIVABLE
ADMINISTRATIVE PENALTY ORDER SITUATION
INVOLVING AIR QUALITY DIVISION VIOLATIONS

BACKGROUND:

The Company owns a Barber-Greene and Boeing model asphalt concrete plants that were issued air emission operating permits in 1989 and 1990, respectively, for the operation of the plants and wet scrubber air pollution control equipment. The permits contained specific conditions for plant operations, monitoring, recording and emission limitations.

During an MPCA compliance inspection of the Company's Barber-Greene plant on September 22, 1989, MPCA staff documented fugitive dust emission violations from leaks in the plant's ductwork. Staff also discovered that the Company had failed to install a water flow meter for the scrubber as required by the permit. In addition, the plant operator informed MPCA staff that the plant had been using recycled asphalt pavement in 1988 and 1989, but had not applied for and received an amendment to its permit authorizing recycling.

On January 9, 1990, the MPCA issued a Notice of Violation (NOV) to the Company for recycling without authorization, failure to install a scrubber water flow meter, and failure to conduct daily recording of the scrubber water flow rate as required by the permit. The Company was told that it should make all of its employees aware of the permit conditions for each of its plants. The Company eventually satisfied the requirements of the NOV.

On May 22, 1991, MPCA staff received a complaint that the Company's Boeing plant was operating in Anoka County and emitting visible emissions. MPCA staff checked the file to determine whether the Company had submitted a relocation notice. The last notice was for a move to Wright County in 1990. Staff conducted an inspection of the plant the same day at 2 p.m. Before entering the plant area, MPCA staff observed and documented visible emission violations from the plant's scrubber stack. Staff entered the plant area and discussed the complaint and visible emission violations with the plant operator. After discussions with the operator, and inspection of the plant equipment and records, MPCA staff determined that the visible emission violations were a result of the scrubber water being shut off due to a water line break that had occurred at 9 a.m. that day. In the Company's response to the NOV that was issued, MPCA staff learned that the Company had not submitted a relocation notice and had not informed staff of the scrubber shutdown.

COMPLIANCE DETERMINATION:

Staff discussed together the nature and extent of the violations cited in the NOV for the Boeing plant and the Company's response. Staff also discussed the past history of the Company. After discussion of the facts with the forum, the following Administrative Penalty Order (APO) was presented for issuance:

Forgivable - Nonsubmittal Of Relocation Notice:

Although a condition of its permit, the Company had been punctual in 1990 with its submittals for each plant, and the job in Wright County was the first plant relocation in 1991.

Non-Forgivable - Operation Of Asphalt Plant Without Water To The Wet Scrubber:

In the January 1990, NOV for its Barber-Greene plant the Company was reminded that in addition to monitoring and recording water flow rate and pressure, the scrubber must be operational at all times the plant is operated. The Company had also been reminded that the Company and its employees should be aware of the conditions of each plant permit. The Company's failure to report the breakdown and continued plant operation without water to the scrubber was a serious violation of the permit.

Non-Forgivable - Visible Emission Violations:

Given the above reasoning, the shutdown of the scrubber thereby resulted in visible emission violations that could have been avoided if the Company had performed the required repairs on the water line. The violation is considered serious.

A Fictitious EXample of Use of
Administrative Penalty Orders in the Solid Waste Section

A hypothetical example of an inspection, observed violations and subsequent forum follows.

A staff completes an inspection at a mixed municipal solid waste management facility, the following violations are noted:

- Acceptance of prohibited waste - lead acid batteries were observed in the working face.
- Lack of intermittant cover - the facility is required to cover daily with six inches of cover unless an alternate plan has been approved. There was a large working face observed during the inspection, estimated to be about one week's worth of waste based on waste acceptance rates.
- No certified operator present at the site.
- No permanent benchmark installed.
- Contingency Action, Closure, and Postclosure Plans were not present at the facility.
- No permanent markers were present at the fill area.

A Solid Waste Enforcement Forum was held where the staff person presented the facts pertaining to the case and the information acquired from the permittee during the inspection.

- The permittee of the facility informed the inspector that they also operated a recycling facility next door. There had been a certified operator on-site, but he was working at the recycling facility at the time of the inspection and was just next door.
- The facility's Industrial Solid Waste Management Plan did designate that lead acid batteries were not accepted at the site and the procedures that would be followed to notify haulers on what types of waste were acceptable. The inspector was informed that these procedures had been carried out. The batteries were removed from the working face during the inspection.
- An area of exposed garbage, estimated to contain 1,600 cubic yards of waste, was observed during the inspection. The permittee estimated that they get 400 cubic yards of waste a day, the permittee said they had been busy all week at the recycling facility and had not gotten a chance to apply cover.
- No grading stakes or permanent markers were observed during the inspection. The operator said he did not realize that those were required by the rules.
- The permittee had submitted a Contingency Action, Closure and Postclosure Plans to the MPCA, which were approved. However, a copy had not been delivered to the office at the facility.

Based upon the facts and information obtained during the inspection, the decision made by members of the forum was to issue the permittee an Administrative Penalty Order that included a forgivable penalty and a non-forgivable penalty. The non-forgivable portion was considered serious because of lack of a certified operator on-site during operating hours and acceptance of prohibited waste.

Because the penalty contained a non-forgivable penalty, a letter was sent to the permittee citing the alleged violations. The permittee was requested to respond within ten days on the accuracy of the information and requested an explanation if the information was disputed. The permittee responded within the time period, stating they had brought the batteries to the appropriate recycler.

An APO was issued to the permittee after receiving the response. The APO contained a forgivable penalty for four of the six violations provided that compliance is achieved within 30 days. A non-forgivable penalty was assessed to the permittee for lack of a certified operator and acceptance of prohibited waste. These are viewed as serious violations because of the potential to create harm to human health and/or the environment.

Example of a Fictitious Forgivable/Non-Forgivable
Administrative Penalty Order Involving Water Quality Violations

Background:

Majorville, Minnesota is a municipal NPDES permittee (NPDES Permit No. MN0000001) identified as a major discharger in accordance with U.S. Environmental Protection Agency (EPA) and Minnesota Pollution Control Agency (MPCA) criteria. The municipal wastewater treatment plant discharges to an effluent limited receiving water. Monthly average permit limitations in effect for this facility are 25 mg/l CBOD₅ and 30 mg/l TSS.

A computer generated discharge monitoring report (DMR) review conducted on August 30, 1991, (eleven days after the July DMR was received) identified that the facility reported a monthly average TSS discharge of 35 mg/l for July 1991. The July TSS violation is considered a chronic violation as defined by EPA's "Criteria for Noncompliance Reporting in the NPDES Program."

A subsequent computer generated DMR review conducted on September 25, 1991, identified that the city's August 1991 DMR reported a TSS violation of 45 mg/l as a monthly average. The August TSS violation exceeded EPA's technical review criteria (TRC)¹. In response to the August TSS violation MPCA staff issued a Notice of Violation (NOV) which alleged that permit violations for TSS occurred in July and August 1991. The NOV required that the city respond to the NOV, in writing, within twenty days after receipt with a proposed schedule of corrective actions that would return the facility to compliance within thirty days.

The city's response to the NOV acknowledged that the violations did indeed occur. The city further explained that the violations were caused by the WWTF operating staff's inability to properly dispose of sludge. Apparently the WWTP's solids processing system was approaching its maximum storage capacity near the end of June. The operating staff, however, did not start land applying the sludge because the volatile solids were higher than recommended. Finally, in early July, the volatile solids levels dropped below 70 percent and the operating staff started land application of the sludge in accordance with Minn. Rules ch. 7040. Soon after the sludge spreading started, however, the city's sludge truck broke down. Significant repairs were needed and the city waited three weeks for parts to be delivered to complete repairs on the truck. During this period of time, solids continued to build up in the WWTF. The operators' inability to properly waste sludge combined with excess volumes of high strength supernatant being returned to the head of the treatment facility

¹ EPA's Technical Review Criteria (TRC) for defining reportable violations are described in 40 CFR 123.45. Violations of conventional pollutants that exceed the permit limitation by 40 percent or more are serious violations if they occur during two or more months during a consecutive six month period. Violations of conventional limitations below a 40 percent exceedance level are considered chronic violations. Chronic violations are considered serious if they occur four or more months during a consecutive six month period.

from the secondary digester resulted in excess TSS being wasted through the effluent during the last ten days of July and continuing through August. The city further projected in its response to the NOV that effluent TSS violations may continue into September before operating staff could spread enough sludge to provide adequate digestion capacity.

A computer generated DMR review on October 30, 1991, identified that the city had reported a TSS violation of 50 mg/l during September 1991. Additional comments by the City Administrator on the September DMR discussed that the city's class A certified operator quit his job September 1 and went to work for a neighboring city.

Forum/Decision:

The following discussion and determinations were made by water quality staff during an enforcement forum:

The nature and extent of the city's violations were evaluated. Both the August and September violations were considered serious since they exceeded EPA's TRC which are defined as Category I violations by 40 CFR 123.45. Staff also considered the violations repeat violations, since they occurred over three consecutive months. Staff estimated that the city could have avoided the violations by simply starting to spread sludge at an earlier date. The city could have applied sludge with high volatile solids if the sludge was immediately incorporated into the soil to prevent odors. Further, the city could have rented a sludge truck from a neighboring city or another source to land apply during its critical situation. As a result of these determinations, staff concluded that the TSS violations warranted a non-forgivable penalty. Staff then calculated the non-forgivable portion of the proposed penalty utilizing MPCA's civil penalty determination process and EPA's Federal Clean Water Act Civil Penalty Policy dated February 11, 1986, as a guidance document.

Utilizing the above referenced calculation methodology, staff assessed a portion of the penalty for the city's economic savings; the cost of renting a sludge truck while the city's truck was down for repairs. Staff further established the gravity component for the three monthly TSS violations in July, August and September. Staff determined that no additional adjustment factors either upward or downward were appropriate in this particular case. Using this approach, staff established the nonforgivable penalty.

In addition, based upon the city's comments on the September DMR, staff concluded that the city was not operating the WWTP with a properly certified operator in responsible charge of the facility as required by Minn. Rules ch. 9400. As a result of this violation, staff determined that a forgivable penalty was appropriate. The APO identified that a penalty for failure to have a properly certified operator would be forgiven if the city retained an appropriately certified wastewater operator within 30 days after the APO was issued.

Fictional Example of a Forgivable/Non-forgivable
Administrative Penalty Order Involving
Waste Tire Management Violations

Inspection Background

An inspection of a waste tire processing facility was conducted at XYZ Tire Processing. The inspection revealed the following violations:

- the company was accepting tires at a rate which exceeded their ability to process the tires; resulting in a significant accumulation of tires in excess of the permit level.
- the company had not reported any problems to MPCA staff prior to the inspection.
- the company had not maintained the required 50 foot fire lanes between tire stockpiles at the facility.

Forum/Discussion

One week after the inspection, the inspector summarized the following facts at a waste tire forum.

- the maximum number of tires is clearly stated in the permit and there have been previous discussions with the operator regarding potential capacity problems at the facility; however, this is the first instance in which an overage has been documented.
- the company is required by a permit condition to notify MPCA if the permitted capacity is exceeded and they did not do that in this case.
- the company is aware of the fire lane requirements of the permit but has failed to maintain fire lanes, which is a violation of permit conditions and creates a hazard.
- the company has repeatedly failed to maintain fire lanes at the site; written and verbal warnings on this issue has not been effective in maintaining compliance.
- no actual environmental damage has occurred due to the violations, rather there is a potential for great environmental damage if a fire were to occur.

Forum Decision

Based on the above-mentioned factors, the forum's decision was to issue the company an APO that contained both a forgivable and a non-forgivable penalty. The non-forgivable penalty was considered necessary because of both the repeated nature of the failure to maintain fire lanes and the fact that the violation exacerbated the potential for serious environmental damage if a fire had occurred.

Notice Letter

Because the APO would contain a non-forgivable penalty, the staff sent a letter allowing the company 10 days to respond to the cited violations. The letter also requested the company to comment on the accuracy of the cited violations and to provide an explanation if it was in disagreement.

Company Response

The company responded to the notice letter within a few days. It explained the circumstances which caused the problems and indicated what they would do in order to correct the violations. The company could not deny that the violations existed or that it had been noted on previous occasions.

Order

After reviewing the company's response to the notice letter, an APO containing a forgivable and non-forgivable penalty was sent to the company. The APO cited the permit violations, contained a compliance schedule, and assessed a forgivable penalty for the capacity violation if compliance was achieved within the scheduled time frame of 30 days. A non-forgivable penalty was assessed for the fire lane violation because of the repeated nature and the potential for serious environmental damage.

INSPECTION/COMPLAINT/OTHER

VIOLATIONS

Documented and Sustantiated

DECISION

Which enforcement track to follow

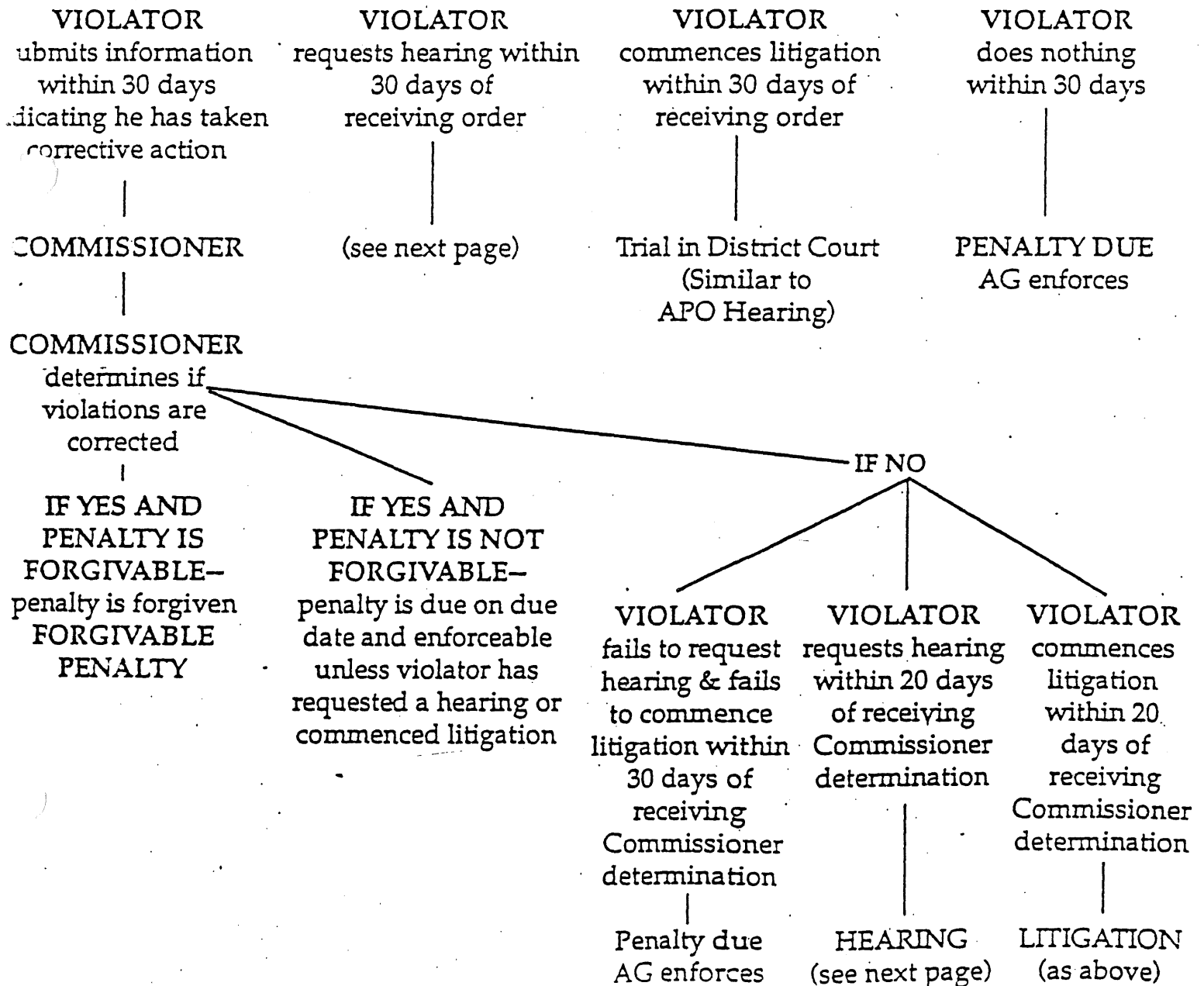
USE ADMINISTRATIVE
PENALTY ORDER (APO)

USE NEGOTIATIONS/LITIGATION

CALCULATE PENALTY

USE ESTABLISHED PROCEDURE:
(NOV; Stipulation Agreement; Litigation)

ISSUE ORDER



REQUEST FOR HEARING

Attachment 5

COMMISSIONER
notifies parties of hearing time and place
within 10 days of receiving request

HEARING
no later than 30 days
after hearing request is received

HEARING CLOSES

WRITTEN COMMENTS
within 10 days after hearing closes

ALJ REPORT
within 30 days after hearing closes

MPCA COMMISSIONER
receives ALJ report

VIOLATOR
submits comments

COMMISSIONER
issues final order

ORDER CAN BE APPEALED

Attachment C
INVESTIGATIONS

	1990	1991	1992	1993
HAZARDOUS WASTE				
STORAGE, DISPOSAL	17	25	21	
TRANSPORTATION	2	5	7	
SOLID WASTE	0	1	5	
WATER	0	3	4	
AIR	0	1	1	
PESTICIDES	1	1	1	
FALSE DOCUMENTS/ STATEMENTS	4	5	12	
TOTAL INVESTIGATIONS	23	41	51	
SEARCH WARRANTS	4	6	4	

Attachment D

PROSECUTIONS

CASES BROUGHT	1990	1991	1992
INDIVIDUALS	3	6	4
CORPORATIONS	1	3	1

PROSECUTOR

ATTORNEY GENERAL	3	5	3
COUNTY ATTORNEY	1	4	1
U.S. ATTORNEY	0	0	1

COUNTS ALLEGED

HAZARDOUS WASTE			
STORAGE, DISPOSAL	6	8	9
TRANSPORTATION	0	3	2
SOLID WASTE	0	1	2
WATER	0	1	3
AIR	0	0	1
PESTICIDES	1	1	1
FALSE DOCUMENTS/ STATEMENTS	1	1	3
TOTAL PROSECUTIONS	8	15	21

CHARGES

FELONIES	5	5	17
GROSS MISDEMEANORS	1	5	2
MISDEMEANORS	0	4	0

CONVICTIONS

INDIVIDUALS	3	6	4
CORPORATIONS	1	3	1

SENTENCES

JAIL TIME			
SENTENCED (MONTHS)	24	39	27
SERVED (MONTHS)	9	2.25	3
FINES (DOLLARS)	\$15,000	\$1,455	\$6,300
RESTITUTION	\$54,000	\$21,000	\$2,000
PROBATION (MONTHS)	120	196	84
COMMUNITY SERVICE (HOURS)	0	100	605

