

940463

**REPORT TO THE
SENATE COMMITTEES ON ENVIRONMENT
AND NATURAL RESOURCES,
AND CRIME PREVENTION**

and

**THE HOUSE COMMITTEES ON ENVIRONMENT
AND NATURAL RESOURCES,
AND JUDICIARY**

**Pursuant to
193 Minn. Laws Chapter 249, Section 59**

1993 Minn. Laws chapter 249, section 59 requires the Attorney General to "compile a complete list of existing civil and criminal penalties for violations of laws and rules administered by the pollution control agency." This report is submitted to provide the required compilation.

Penalties for environmental violations, like penalties for a wide variety of other state laws such as hunting, fishing and traffic laws are one important way to ensure that people comply with legislative mandates. Another important factor in setting penalties in the environmental area is the requirements of federal programs for which the state assumes responsibility. The U.S. Environmental Protection Agency reviews the "adequacy" of state enforcement programs including available penalty authority for programs related to the Clean Water Act, Clean Air Act and the Resource Conservation and Recovery Act which the MPCA manages in Minnesota.

The Attorney General's Office and the Minnesota Pollution Control Agency (MPCA) have collaborated since 1987 to expand the range of enforcement tools available to the MPCA to better match the seriousness of a violation to the severity of the penalty that may be imposed. Today, the range of enforcement tools include notices of violation, field citations; forgivable and nonforgivable administrative penalty orders; judicially-imposed civil penalties; and misdemeanor, gross misdemeanor and felony criminal penalties. The expansion of the range of enforcement tools has allowed the state to move from an approach that could be characterized as a choice of "no hammer or the big hammer" to one that could be characterized as "the right tool for each job."

PRIMARY ENFORCEMENT PROVISIONS

The majority of the enforcement provisions covering MPCA programs are contained in two sections that are generally applicable to all violations of any MPCA program established under chapters 115 or 116 (section 115.071 for judicially-imposed civil penalties and misdemeanor criminal penalties and section 116.072 for forgivable and non-forgivable administrative penalty orders). The MPCA also manages programs established in chapter 115A (Waste Management Act), 115B (Environmental Response and Liability Act), 115C (Underground Storage Tanks) and 115E (Oil and Hazardous Substance Discharge Preparedness Act). In addition, the MPCA has a role in the implementation of chapter 115D (Toxic Pollution Prevention Act). Aspects of these programs are also enforceable under 115.071 or 116.072. Two other sections of Minnesota law apply to specific environmental violations (section 116.073 for field citations and section 609.671 for gross misdemeanor and felony crimes). A more detailed description of the applicability of these enforcement provisions is contained in the attached table.

| Programs (general) | Field Citation | Forgivable APO | Non-forgivable APO | Judicially Imposed Civil Penalty | Misdemeanor | Gross Misdemeanor | Felony | License Suspension/Revocation | Other |
|--------------------|--|----------------|--------------------|----------------------------------|-------------|-------------------|--|-------------------------------|-------|
| | Solid waste escape from transport vehicle | \$200 maximum | | | | | | | |
| 609.671 | Subd. 4 Knowing disposal or abandonment of hazardous waste | | | | | | Up to 5 years imprisonment and/or fine up to \$50,000 | | |
| | Subd. 5 Delivery of hazardous waste to unauthorized person <ul style="list-style-type: none"> • Treatment or storage of hazardous waste without permit or in violation of permit • Transportation of hazardous waste to unauthorized location • Transportation of hazardous waste without manifest or license | | | | | | Up to 3 years imprisonment and/or fine up to \$25,000 Second offense: Up to 5 years imprisonment and/or fine up to \$50,000 | | |
| | Subd. 8 Violation of effluent standard or limitation for toxic pollutant in NPDES or SDSP <ul style="list-style-type: none"> • Introduction of hazardous substance into sewer system • Introduction of hazardous substance into sewer or treatment works that causes facility to violate effluent limitation | | | | | | Up to 3 years imprisonment and/or fine up to \$50,000 per day | | |

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| <ul style="list-style-type: none"> Violation of effluent standard or limitation or water quality standard Violation of material term or condition of a NPDESP or SDSP Failure to carry out reporting, recording, monitoring, sampling, or information gathering Failure to file a discharge monitoring report or other document required by NPDESP | | | | | | Up to 1 year imprisonment and/or fine \$2,500-\$25,000 per day | Second offense: Up to 2 years imprisonment and/or fine up to \$50,000 per day | | |
| Subd. 3 Commit act in subd. 4,5,8 paragraph (a) and at time of violation knowingly place persons in danger of death or bodily harm | | | | | | | Up to 10 years imprisonment and/or fine up to \$100,000 Organization fine: \$1,000,000 | | |
| Subd. 9 Make false statement, representation or certification, omit material, alter or conceal information required by air permit <ul style="list-style-type: none"> Falsify, tamper with, render inaccurate or fail to install required monitoring device | | | | | | | Up to 2 years imprisonment and/or fine up to \$10,000 | | |
| Subd. 10 Failure to provide immediate notification of a release of a hazardous or extremely hazardous substance | | | | | | | Up to 2 years imprisonment and/or fine up to \$25,000 Second Offense: Up to 5 years imprisonment and/or fine up to \$50,000 | | |

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| | | | | | | Up to 1 year imprisonment and/or fine up to \$10,000 | Second Offense: Up to 2 years imprisonment and/or fine up to \$25,000 | | |
| | | | | | | | Up to 3 years imprisonment and/or fine up to \$50,000 per day | | |
| | | | | | Up to 90 days imprisonment and/or fine up to \$10,000 | | | | |
| | | | | | | Up to 1 year imprisonment and/or fine up to \$15,000 | | | |
| | | | | | | Up to 1 year imprisonment and/or fine up to \$15,000 | | | |

Subd. 11 Disposal of infectious waste in a prohibited location

Subd. 12 Knowing violation of national emission standard for hazardous air pollutant

- Knowing violation of emission standard, limitation, or operations limitation for hazardous air pollutant established in permit issued by PCA
- Knowing violation of requirement of Chapter 116 applicable under Federal Clean Air Act
- Knowing violation of a condition of an air emission permit
- Knowing violation of requirement to pay fee based on air emissions

Subd. 13 Knowing disposal, transport or arrangement for disposal of solid waste at location without required permit in exchange for money or other consideration

Subd. 6 Commit any act in subd. 4,5,12 as a result of gross negligence

| Programs (general) | Field Citation | Forgiv- able APO | Non-for- givable APO | Judi- cially Imposed Civil Penalty | Misde- meanor | Gross Misde- meanor | Felony | License Suspend- sion/ Revoca- tion | Other |
|---|-------------------|---|--|--|------------------|--|--------|---|--|
| 115A.5501 Subd. 3 Failure of owner or operator of solid waste facility to submit report on amount of solid waste delivered to facility | | Any amount necessary to enforce subdivision | \$500 | | | | | | |
| 115A.882 Failure by owner or operator to maintain records or grant inspection of solid waste disposal facility | | | | Fine up to \$10,000 per day | | | | | Action to compel performance and/or Payment of damages caused by failure to keep records or allow inspection |
| 115A.915 Placement of lead acid battery in mixed municipal solid waste | | | | | X | | | | |
| 115A.9155 Failure to transport used lead acid batteries to recycling facility | | | | | X | | | | |
| 115A.916 Knowing placement of motor oil, brake fluid, power steering fluid, transmission fluid, motor oil filters or antifreeze anywhere other than recycling or household hazardous waste collection facilities | | | | | X | | | | |
| 115A.932 Placement of mercury or any product containing mercury in solid waste, solid waste disposal system or waste water disposal system | | | Generator of household hazardous waste not to exceed \$700 | | X | generator of household hazardous waste not subject to 115.071, subd. 3 | | | |

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| 115A.965 | <ul style="list-style-type: none"> Sale of packaging or product where any element of either contain lead, cadmium, mercury or hexavalent chromium Failure by manufacturer or distributor to certify product and packaging as to its amount of toxics | | | Fine up to \$5000 per day, court costs, attorney fees and all other costs for proper processing and disposal of nonconforming packaging | | | | | |
| 115A.9651 | Distribute for sale or use any ink, dye, paint, pigment or fungicide manufactured after 9/1/94 which contains lead, cadmium, mercury or hexavalent chromium | | | | X does not include art supplies | | | | |
| 115A.981 | Failure by owner or operator of solid waste disposal facility to submit an annual report including certification of financial assurance, schedule of fees, and if publicly financed, amounts and sources of capital financing, accounting of costs of operation and identification of source and amount of additional financing | | | | | | | X | |
| 115A.99 | Placement of any portion of solid waste in or on lands, shorelands, roadways or water | | | Not less than twice nor more than five times the cost of removing, disposing and processing waste | | | | | |
| 115B.17 | Failure to respond to a request for information | X | X | | | | | | |

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| 115D. Failure to comply with Toxic Pollution Prevention Act | | X | X | | | | | | |
| 115E. Failure to comply with Oil and Hazardous Substance Discharge Preparedness Act | | X | X | | | | | | |
| 116.11 Causing air, land or water pollution which brings substantial danger to health and welfare of the people of the state | | | | | | | | | State may order an immediate discontinuance of pollution without notice or hearing |
| 116.23 Manufacture for sale or use any cleaning agent which contains a nutrient in a concentration more than is allowed | | | | | | | | | Product may be seized and/or forfeited to the PCA |
| 116.28 Failure to display on package of laundry and dish washing compounds phosphorus content by percent of weight to weight of package contents | | | | | | | | | Forfeiture of product to PCA |
| 116.71 Purchase by state or local governments of CFC-processed packaging 116.72 Knowingly purchase, manufacture, sell or distribute CFC-processed packaging | | | | | | | | | Up to \$500 for each violation and/or action for injunctive relief and/or action to compel performance |

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| | | | | | | | | | Immediate shutdown until proper modifications have been made |
| 116.84 | Exceeding emissions permit requirements by a facility with an incinerator permit that allows the burning of PCBs and has continuously monitored emissions | | | | | | | | |
| 116.85 | Exceeding emissions permit requirements on an incinerator permit that contains limits for dioxin, cadmium, chromium, lead or mercury at a facility where emissions are continuously monitored | | | | | | | | Shutdown if modifications will take more than 72 hours |
| | Exceeding emissions requirements at a facility where emissions are periodically tested | | | | | | | | 30 days to make proper modifications or shut down |
| 116.92 | Placement or delivery of mercury to anyone who places residues, particles or scrapings in solid waste or waste water Failure to recycle or reuse an item that contains mercury after it is removed from service | | X Household hazardous waste generators not to exceed \$700 | | | | | | |
| | Sale or re-sale of a toy or game that contains mercury | | Not to exceed \$700 | | | | | | |