

person age 19 or older may request to be notified if a genetic parent or the child is terminally ill. The agency shall notify the other parties if a request is received under this subdivision and inform them that upon their request the agency will share information regarding a terminal illness with the adoptive or genetic parents or an adopted person age 19 or older.

Approved May 20, 1987

#### CHAPTER 174—H.F.No. 332

*An act relating to environment; authorizing the pollution control agency to issue administrative orders assessing penalties; establishing a hearing procedure; providing for the distribution and expenditure of monetary penalties; proposing coding for new law in Minnesota Statutes, chapter 116.*

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

#### Section 1. [116.072] ADMINISTRATIVE PENALTIES FOR HAZARDOUS WASTE VIOLATIONS.

Subdivision 1. AUTHORITY TO ISSUE PENALTY ORDERS. The director may issue an order requiring violations to be corrected and administratively assessing monetary penalties for hazardous waste violations under sections 115.061 and 116.07, and Minnesota Rules, chapter 7045. The order must be issued as provided in this section.

Subd. 2. AMOUNT OF PENALTY; CONSIDERATIONS. (a) The director may issue an order assessing a penalty up to \$10,000 for all violations identified during an inspection.

(b) In determining the amount of a penalty the director may consider:

(1) the willfulness of the violation;

(2) the gravity of the violation, including damage to humans, animals, air, water, land, or 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 justice may require, if the director specifically identifies the additional factors in the director's order.

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

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(1) similarity of the most 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 previous violation identified.

**Subd. 3. CONTENTS OF ORDER.** An order assessing an administrative penalty under this section shall include:

(1) a concise statement of the facts alleged to constitute a violation;

(2) a reference to the section of the statute, rule, variance, order, stipulation agreement, or term or condition of a permit that has been violated;

(3) a statement of the amount of the administrative penalty to be imposed and the factors upon which the penalty is based; and

(4) a statement of the person's right to review of the order.

**Subd. 4. CORRECTIVE ORDER.** (a) The director may issue an order assessing a penalty and requiring the violations cited in the order to be corrected within 30 calendar days from the date the order is received.

(b) The person to whom the order was issued shall provide information to the director before the 31st day after the order was received demonstrating that the violation has been corrected or that appropriate steps toward correcting the violation have been taken. The director shall determine whether the violation has been corrected and notify the person subject to the order of the director's determination.

**Subd. 5. PENALTY.** (a) Except as provided in paragraph (b), if the director determines that the violation has been corrected or appropriate steps have been taken to correct the action, the penalty must be forgiven. Unless the person requests review of the order under subdivision 6 or 7 before the penalty is due, the penalty in the order is due and payable:

(1) on the 31st day after the order was received, if the person subject to the order fails to provide information to the director showing that the violation has been corrected or that appropriate steps have been taken toward correcting the violation; or

(2) on the 20th day after the person receives the director's determination under subdivision 4, paragraph (b), if the person subject to the order has provided information to the director that the director determines is not sufficient to show the violation has been corrected or that appropriate steps have been taken toward correcting the violation.

(b) For a repeated or serious violation, the director may issue an order with a penalty that will not be forgiven after the corrective action is taken. The

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penalty is due by 31 days after the order was received unless review of the order under subdivision 6, 7, or 8 has been sought.

(c) Interest at the rate established in section 549.09 begins to accrue on penalties under this subdivision on the 31st day after the order with the penalty was received.

Subd. 6. EXPEDITED ADMINISTRATIVE HEARING. (a) Within 30 days after receiving an order or within 20 days after receiving notice that the director has determined that a violation has not been corrected or appropriate steps have not been taken, the person subject to an order under this section may request an expedited hearing to review the director's action. The person to whom the order is directed and the director are the parties to the expedited hearing. The director must notify the person to whom the order is directed of the time and place of the hearing at least 20 days before the hearing. The expedited hearing must be held within 30 days after a request for hearing has been filed with the director unless the parties agree to a later date.

(b) All written arguments must be submitted within ten days following the close of the hearing. The hearing shall be conducted under the conference contested case rules of the office of administrative hearings, as modified by this subdivision. The office of administrative hearings may, in consultation with the agency, adopt rules specifically applicable to cases under this section.

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

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

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

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

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Subd. 7. DISTRICT COURT HEARING. (a) Within 30 days after the receipt of an order or within 20 days of receipt of notice that the director has determined that a violation has not been corrected or appropriate steps have not been taken, the person subject to an order under this section may file a petition in district court for review of the order in lieu of requesting an administrative hearing under subdivision 6. The petition shall be filed with the court administrator with proof of service on the director. The petition shall be captioned in the name of the person making the petition as petitioner and the director as respondent. The petition shall state with specificity the grounds upon which the petitioner seeks rescission of the order, including the facts upon which each claim is based.

(b) At trial, the director must establish by a preponderance of the evidence that a violation subject to this section occurred, the petitioner is responsible for the violation, a penalty immediately assessed as provided for under subdivision 5, paragraph (b) or (c), is justified by the violation, and the factors listed in subdivision 2 were considered when the penalty amount was determined and the penalty amount is justified by those factors.

Subd. 8. MEDIATION. In addition to review under subdivision 6 or 7, the director is authorized to enter into mediation concerning an order issued under this section if the director and the person to whom the order is issued both agree to mediation.

Subd. 9. ENFORCEMENT. (a) The attorney general may proceed on behalf of the state to enforce penalties that are due and payable under this section in any manner provided by law for the collection of debts.

(b) The attorney general may petition the district court to file the administrative order as an order of the court. At any court hearing, the only issues parties may contest are procedural and notice issues. Once entered, the administrative order may be enforced in the same manner as a final judgment of the district court.

(c) If a person fails to pay the penalty, the attorney general may bring a civil action in district court seeking payment of the penalties, injunctive, or other appropriate relief including monetary damages, attorney fees, costs, and interest.

Subd. 10. REVOCATION AND SUSPENSION OF PERMIT. If a person fails to pay a penalty owed under this section the agency has grounds to revoke or refuse to reissue or renew a hazardous waste permit issued by the agency.

Subd. 11. CUMULATIVE REMEDY. The authority of the agency to issue a corrective order assessing penalties is in addition to other remedies available under statutory or common law. The payment of a penalty does not preclude the use of other enforcement provisions in connection with the violation for which the penalty was assessed.

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