

Plan for the Use of Administrative Penalty Order, Cease and Desist Authority, and Other Enforcement Tools

Minnesota Department of Health

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1. Introduction

The 1993 Minnesota Legislature granted the Minnesota Department of Health the authority to use enforcement tools in the Health Enforcement Consolidation Act of 1993. (Laws of Minnesota 1993, Chapter 206, sections 7 to 11). This law, codified as Minnesota Statutes, sections 144.989 to 144.993, was effective August 1, 1993. The Minnesota Legislature subsequently amended Minnesota Statutes, sections 144.989 to 144.993 in:

Laws of Minnesota Special Session 1993, Chapter 6, section 33
Laws of Minnesota 1994, Chapter 465, Article 1, sections 18 and 19.
Laws of Minnesota 1994, Chapter 465, Article 2, section 1
Laws of Minnesota 1995, Chapter 165, sections 5 to 10.
Laws of Minnesota 1995, Chapter 180, section 13
Laws of Minnesota 1995, Chapter 213, Article 1, section 12
Laws of Minnesota 1997, Chapter 205, sections 29 and 30
Laws of Minnesota 1998, Chapter 261, section 2
Laws of Minnesota 1998, Chapter 407, Article 2, section 80
Laws of Minnesota 1999, Chapter 245, Article 2, sections 28 and 29
Laws of Minnesota 2007, Chapter 140, Article 12, section 4
Laws of Minnesota 2007, Chapter 147, Article 16, section 20
Laws of Minnesota 2009, Chapter 79, Article 10, section 34

The department prompted the original legislation to develop a statewide enforcement system of authorized programs to promote compliance and deterrence. Streamlined procedures, improved consistency, increased efficiency and fairness for the regulated community, were also objectives. The department created this Plan for the Use of Administrative Penalty, Cease and Desist Authority, and Other Enforcement Tools to comply with statutory requirements of the Health Enforcement Consolidation Act of 1993.

2. Definitions

For purposes of this plan the following terms have the meaning given them.

“Commissioner” - means the commissioner of the Minnesota Department of Health or the commissioner’s designee.

“Department” - means the Minnesota Department of Health.

“Plan” - means the Plan for the Use of the Administrative Penalty, Cease and Desist Authority and Other Enforcement Tools.

3. Programs to Which the Law Applies

Provisions of the Health Enforcement Consolidation Act of 1993, Minnesota Statutes, section 144.99, subdivision 1, authorize using enforcement tools for the programs identified in the table below, in addition to all rules, orders, stipulation agreements, settlements, compliance agreements, licenses, registrations, certificates, and permits adopted or issued by the department or under any other law now in force or later enacted for the preservation of public health.

Minnesota Department of Health Regulatory Programs

Minnesota Statutes	Regulatory Area	Program Area
Sections 103I.001 to 103I.715	Wells and Borings	Well Management Section
Sections 115.71 to 115.77	Public water supply	Drinking Water Protection Section
Section 144.12 subdivision 1 paragraph (1)	Manufacture of articles from diseased, tainted or decayed matter	Environmental Health Services Section
paragraph (2)	Sewage	Environmental Health Services Section
paragraph (5)	Drinking water	Drinking Water Protection Section
paragraph (6)	Sanitary conditions	Environmental Health Services Section
paragraph (10)	Filthy conditions	Environmental Health Services Section
paragraph (12)	Sanitation in camps	Environmental Health Services Section
paragraph (13)	Sanitation in tourist camps, hotels, and resorts	Environmental Health Services Section
paragraph (14)	Atmospheric pollution	Indoor Environments and Radiation Section
paragraph (15)	Handling of radioactive materials	Indoor Environments and Radiation Section
Sections 144.1201 to 144.1204	Radioactive materials handling and licensure	Indoor Environments and Radiation Section
Section 144.121	X-ray machines and operators	Indoor Environments and Radiation Section
Section 144.1222	Public pools	Environmental Health Services Section
Section 144.1222 Subd. 3	Enclosed sports arenas	Indoor Environments and Radiation Section
Section 144.35	Pollution of water for domestic use	Environmental Health Division
Sections 144.381 to 144.387	Public Water supplies	Drinking Water Protection Section
Sections 144.411 to 144.417	Minnesota Clean Indoor Air Act	Indoor Environments and Radiation Section
Section 144.495	Formaldehyde	Indoor Environments and Radiation Section
Sections 144.71 to 144.74	Youth camps	Environmental Health Services Section
Sections 144.9501 to 144.9512	Lead Poisoning Prevention Act	Indoor Environments and Radiation Section
Sections 144.97 to 144.98	Environmental Laboratories	Public Health Laboratory Division
Sections 144.992	False Information	All Regulatory Programs
Sections 157.011 to 157.22	Food, beverage and lodging establishments; board and lodging houses; hotels, motels and resorts	Environmental Health Services Section
Sections 326.70 to 326.785	Asbestos	Indoor Environments and Radiation Section
Sections 327.10 to 327.28	Hotels, motels, resorts and manufactured homes	Environmental Health Services Section

4. The Enforcement Process

General

The enforcement process begins when department staff determine violations have, or may have occurred. Staff may discover violations through an inspection, review of compliance data, a complaint from citizens, district offices or other governmental agencies, or from the regulated community.

Facts are established through an investigation and documentation process. The department determines appropriate enforcement action which may involve consultation with the Office of the Attorney General.

Enforcement Tools

The Health Enforcement Consolidation Act of 1993 provides for using enforcement tools, which include correction orders, administrative penalty orders, cease and desist, suspension or revocation of permits, licenses, and registrations or certificates. Beyond the enforcement tools codified in statute, the commissioner may also attempt to resolve violations through informal means such as a stipulation agreement or settlement.

Additional department enforcement tools are contained in the Health Enforcement Consolidation Act of 1993, and in other statutes. Some programs have authority to take action against a bond or impound equipment. Other programs have authority to issue civil penalties and pursue criminal action through district court. However, according to Minnesota Statutes, section 144.991, subdivision 9, the department may not seek civil penalties under any other provision of law for violations covered by an administrative penalty order.

The Health Enforcement Consolidation Act of 1993 authorizes access to information and property for investigation purposes or taking steps to remedy violations.

Reporting and Documentation

An effective reporting and documentation system is essential to enforce the law and regulations. This system ensures that the department takes proper enforcement action, and maintains a record of the outcome of enforcement actions. Proper enforcement administration promotes compliance.

The Minnesota Department of Health Enforcement Manual describes standardized procedures for conducting an inspection, investigation and documentation.

All information in the department files on enforcement matters, except data classified as confidential, private, or nonpublic under state or federal law, is open and accessible to the public.

Serious Violations

Serious violations include conduct showing disregard for requirements or standards, or violations that present an actual or potential danger to public health or natural resources. Department regulatory programs are likely to consider the following types of violations as serious:

- operating or performing work for which a license, certificate, registration or permit is required without the required license, certificate, registration or permit;
- employing a person who does not have the appropriate license, certification, registration or permit;
- failing to call for an inspection; failing to provide notice, plans, reports or other information required to be submitted to the department under statute or rule; failure to secure plan approval before commencement of an activity;
- failing to comply with a cease and desist order issued under Minnesota Statutes, section 144.99, subdivision 6, including removal of a sign;
- failing to provide the department with access to information or property under Minnesota Statutes, section 144.99, subdivision 2 and adopted rules;
- knowingly making a false material statement, representation, or certification in; omitting material information from; or altering, concealing, or failing to file or maintain a notice, application, record, report, plan, or other document required under the statutes, rules, or other actions listed in section 144.99, subdivision 1, in violation of Minnesota Statutes, section 144.992;
- failing to comply with an order, agreement or corrective plan; or
- failing to obtain or have a bond if required by law.

In addition to the serious violations described above, the regulatory programs specified under Minnesota Statutes, section 144.99, subdivision 1, have provided additional examples in Appendix A. These examples of serious violations are subject to a non-forgivable administrative penalty order. The list of program specific examples of serious violations is not exclusive. Each program may determine additional violations using the statutory criteria for penalty assessment specified in the Health Enforcement Consolidation Act of 1993.

Violations that warrant a cease and desist order are also presumed to be serious violations and might also warrant a penalty assessment.

Repeat Violations

A repeat violation may be based on a variety of prior enforcement actions. The department may determine that a violation is a repeat violation if a similar violation occurs after any of the following actions:

- a correction order, whether corrected or not;
- a forgivable administrative penalty order where a correction was made;
- a forgivable administrative penalty order where a correction was not made and a penalty was assessed;
- a non-forgivable administrative penalty order;
- a failure to comply with a commissioner's order, agreement, corrective plan or other action contained in Minnesota Statutes, section 144.99, subdivision 1; or
- any other violation for which written notice has been given to the regulated party for a violation statute, rule, or other action identified in Minnesota Statutes, section 144.99, subdivision 1.

A repeat violation may be based on the same conduct that led to the initial violation. For example, if a regulated party fails to correct a violation after a correction order and the department subsequently inspects and finds the violation, the department considers it a repeat violation, which might be subject to a non-forgivable penalty assessment. The fact that a party appeals a prior penalty amount will not prejudice the determination of a current penalty amount.

5. Correction Orders

General

The commissioner may issue correction orders to require a regulated party to correct violations.

Issuance

The correction order must state the deficiencies that constitute the violation(s), cite the statute or rule or other action violated, and the date the correction is due.

If a regulated party subject to the correction order believes the information in the order is in error, the regulated party may request the commissioner to reconsider the part(s) of the order alleged to be in error. The regulated party must make the request in writing and deliver it to the commissioner by certified mail within seven days of receiving the order. The commissioner must respond within 15 calendar days after receiving a request and her or his disposition of the request is final.

The correction order assesses no penalty. It will, however, be considered a violation and used for purposes of determining subsequent enforcement action, including administrative penalty orders.

Compliance

The commissioner will obtain, review, and evaluate all information that the regulated party subject to a correction order provides. The commissioner will determine whether the violation(s) has been corrected or an acceptable correction plan developed and notify the regulated party of the determination.

Failure to Comply

Failure to comply with the requirements of a correction order might result in additional enforcement action. This enforcement may include an action in district court to require the corrections to be made, issuance of an administrative penalty, or licensure action.

6. Administrative Penalty Order

General

The Health Enforcement Consolidation Act of 1993 grants the commissioner authority to issue an administrative penalty order. The administrative penalty order identifies violation(s) discovered, requires that the violation(s) be corrected, and imposes a penalty that may or may not be forgiven by the commissioner depending on the seriousness or repetitiveness of the violation(s) and the violator's response to the order.

Administrative penalty orders may be used as a remedy for violation of the statutes stated in Minnesota Statutes, section 144.99, subdivision 1 and for violation of other statutes. Administrative penalty orders may also be used for violation of rules, failure to comply with conditions or additional requirements of a variance issued by the department, orders, stipulation agreements, settlements, or compliance agreements. They may also be used for violation of licenses, registrations, certificates, and permits adopted or issued by the department, or under any other law now in force or that the legislature enacts later for the preservation of public health.

Issuance

The order must include a statement of fact supporting the claim that violation(s) have occurred; a reference to the rule, law, or order violated or other action; the amount of the penalty and the factors on which it is based. The order must also include a statement of the person's right to review the order.

Penalty Amount

The Health Enforcement Consolidation Act of 1993 provides criteria that the department must consider when in determining any penalty amount. The maximum penalty is \$10,000 for each violator for all violations that the department identifies in an inspection or compliance review. The commissioner, however, may issue a penalty of at least \$1,000 per day per violation, but not more than \$10,000 per each violation of sections 144.381 to 144.387 and these statutes' corresponding rules, to a large public water supply serving a population of more than 10,000 persons.

The commissioner may consider willfulness, gravity, history, number of violations, economic benefit and other factors specifically identified in the order. For repeat violations, the commissioner must also consider similarity to previous violations, time elapsed, the number of previous violations, and the response of the regulated party to the most recent previous violation.

To determine an administrative penalty, the department uses a penalty calculation worksheet. An example of a penalty calculation worksheet appears in Appendix B.

Forgivable Administrative Penalty Orders

General

For a violation that is not serious or repeated, the commissioner may issue a forgivable administrative penalty order. This type of administrative penalty order assigns a monetary penalty to the violation(s) identified. However, the commissioner will forgive the penalty if the violation(s) is corrected according to corrective actions specified within the forgivable administrative penalty order.

Issuance

The commissioner may provide written notice of the alleged violation(s) and an opportunity for response before issuing the forgivable administrative penalty order. Without a prior meeting or other communication related to the violation(s), the commissioner may provide a letter, called a "ten-day letter," to the regulated party. The letter clearly identifies the violation(s) and explains the findings upon which the alleged violation(s) are based. The letter contains a request that the regulated party provide, within ten calendar days, any information that might affect the commissioner's determination of alleged violation(s). In addition, department staff may contact the regulated party by telephone to explain the violation(s).

The regulated party's response to the ten-day letter will be considered before issuing a forgivable administrative penalty order.

Compliance

Except for repeated or serious violations, the commissioner must forgive the penalty assessed if:

- within 30 days of receipt of the order, the regulated party provides written information to the commissioner demonstrating that the violation(s) has been corrected, or
- within a specified time period, the regulated party has taken appropriate steps to correct the violation(s) as demonstrated in a written corrective plan that is acceptable to the commissioner.

The commissioner will obtain, review, and evaluate all information provided by the regulated party subject to a forgivable penalty order. The commissioner will determine whether the violation(s) has been corrected or an acceptable corrective plan has been developed and will notify the regulated party of the determination.

Ordinarily, the department will mail written notice of the commissioner's determination of compliance to the regulated party within ten working days after receipt of the information; or within ten working days after the 31st day after the department issued the penalty order, whichever is later.

Failure to Comply

The commissioner will not forgive the penalty if the party does not complete the corrective action in a specified time period.

Failure to correct violations may be grounds for an additional administrative penalty order or other enforcement action.

Penalty Due; Interest

Unless the regulated party requests an expedited administrative hearing on the forgivable penalty assessed in a forgivable administrative penalty order, the penalty is due and payable to the department on the 31st day after the regulated party received the order if:

- on the 31st day after the order was received, the regulated party has not provided written information to the commissioner demonstrating that the violation(s) has been corrected, or
- the regulated party has not taken appropriate steps to correct the violation(s) as demonstrated in a written corrective plan that is acceptable to the commissioner.

If the regulated party has submitted information to the department that the commissioner determines is not sufficient to show that the violation(s) has been corrected or that

appropriate steps have been taken toward correcting the violation(s), the forgivable penalty is due on the 20th day after the regulated party receives this determination.

Interest, at the rate established by the state court administrator under Minnesota Statutes, section 549.09, begins to accrue on forgivable penalties on the 31st day after the regulated party received the administrative penalty order. However, if the commissioner cannot reach a determination of compliance within ten working days after the expiration of the 31-day period, interest will be abated until the department has notified the regulated party of the commissioner's decision.

Non-forgivable Administrative Penalty Orders

General

For a serious or repeated violation(s), the commissioner may issue a non-forgivable administrative penalty order. A non-forgivable administrative penalty order assigns a penalty to the violation(s) identified, which is non-forgivable. The non-forgivable administrative penalty order also assigns corrective actions which must be completed. If the violation(s) is not corrected, the commissioner may issue an additional penalty order or take additional enforcement action. The general criteria for use of remedies other than, or remedies in addition to, an administrative penalty order are indicated in statute.

Issuance

Because of the seriousness and finality of a non-forgivable administrative penalty order, the department will provide written notice of the alleged violation(s) and an opportunity for response before issuing the non-forgivable order. The department will provide a letter, called a "ten-day letter," to the regulated party which clearly identifies the violation(s) and explains the underlying findings. The letter contains a request that the regulated party provide, within ten calendar days, any information that might impact the commissioner's determination of alleged violation(s). In addition, department staff may contact the regulated party by telephone to explain the violation(s).

The regulated party's response to the ten-day letter will be considered before issuing a non-forgivable administrative penalty order.

Compliance

Upon receipt of a non-forgivable administrative penalty order, the regulated party must provide to the commissioner:

- within 30 days, written information to the commissioner demonstrating that the violation(s) has been corrected, or

- within a specified time period, a written corrective plan, demonstrating that the regulated party has taken appropriate steps to correct the violation(s) that is acceptable to the commissioner.

The commissioner will obtain, review, and evaluate all information provided by the regulated party subject to a non-forgivable penalty order. The commissioner will determine whether the violation(s) has been corrected or an acceptable corrective plan developed and will notify the regulated party of that determination.

Correction of violation(s) does not relieve the regulated party from the duty to pay the non-forgivable penalty.

Failure to Comply

Failure to correct violation(s) may be grounds for an additional administrative penalty order or other enforcement action.

Penalty Due; Interest

Unless the regulated party requests review of the non-forgivable administrative penalty order in an expedited administrative hearing, the non-forgivable penalty is due and payable to the Minnesota Department of Health on the 31st day after the order was received regardless of whether the regulated party has performed the corrective action required in the order. Interest at the rate established by the state court administrator under Minnesota Statutes, section 549.09 begins to accrue on the non-forgivable penalty on the 31st day after the regulated party received the order.

Combination Administrative Penalty Orders

The commissioner issues a combination administrative penalty order when the case represents forgivable and non-forgivable penalties based on violation(s) of the regulated party.

As in the case of a non-forgivable administrative penalty order, department staff will issue a ten-day letter before issuing a combination administrative penalty order and will request any information relating to the violation(s).

The forgivable penalty is due and interest owed for the forgivable portion of the combination administrative penalty as spelled out in this plan, under Forgivable Administrative Penalty Orders. The non-forgivable penalty portion of the combination administrative penalty is due and interest owed as spelled out in this plan, under Non-Forgivable Administrative Penalty Orders.

Cross-Program Administrative Penalty Orders

Administrative penalty orders might cite violations of more than one regulatory program. The program that cites the most serious violations will generally take the lead in the case once violations have been identified.

Referral for Collection of Penalty

The regulated party must pay all penalties, interest, costs, attorney fees, and litigation expenses collected under an administrative penalty order or the enforcement of an administrative penalty order by certified or cashier's check made payable to the Minnesota Department of Health within a specified time.

Any penalty, interest, costs, attorney fees and litigation expenses not timely remitted to the department, by the regulated party, may be subject to the following:

- Collection by lawful means, under the Minnesota Revenue Recapture Act, Minnesota Statutes, sections 270A.01 to 270A.12.
- Referral for collection to the Office of the Attorney General, under Minnesota Statutes, section 144.991, subdivision 7.
- Filing of a judgment, without further notice or additional proceedings, under Minnesota Statutes, section 16D17 as long as this possibility is stated in the notice or order of the penalty.

7. Use of Cease and Desist Order Authority

General

The commissioner may issue a cease and desist order to stop an activity covered by Minnesota Statutes, section 144.99, subdivision 1, if continuation of the activity would result in an immediate risk to public health.

A cease and desist order is effective for a maximum of 72 hours. The commissioner must seek an injunction or take other authorized action to restrain activities for a period beyond 72 hours. If a case appears to warrant criminal prosecution, the department may refer the case to the appropriate city or county attorney.

In addition to the general statutory test of an activity posing an immediate risk to public health, each regulatory program specified under Minnesota Statutes, section 144.99, subdivision 1, has provided program specific examples of violations that would warrant issuance of a cease and desist order (see Appendix A). The list of program specific examples of violations that would warrant cease and desist action is not exclusive.

Issuance

A cease and desist order must be issued in writing, except in cases of extreme emergency. The department must determine that failure to issue the order would result in an immediate risk to public health.

Department staff may issue a cease and desist on-site with the commissioner's prior approval. Staff may also post a sign or notice indicating that a cease and desist order has been issued and specifying the duration of the order. This posting must not be removed without the commissioner's authorization.

If a cease and desist order is issued on-site, formal written confirmation to the regulated party from the commissioner must follow within 24 hours. A cease and desist order must include:

- a concise statement of the findings alleged to constitute a violation(s);
- a reference to the section of the statute, rule, variance, order, or term or condition of a permit violated; and
- a statement requiring that the regulated party correct or cease the violation(s) cited immediately.

Department staff will provide the commissioner with a copy of the cease and desist order when it issued. Staff will also provide a copy to the assistant attorney general representing the regulatory program issuing the order, should further action become necessary.

Compliance

Once a regulated party has corrected a violation(s), the commissioner must verify compliance.

The commissioner will review and evaluate all information related to the issuance of a cease and desist order to determine if violation(s) have been corrected and there is no longer an immediate risk to public health.

The commissioner may verify compliance by conducting a site visit, re-inspection, examination of documents, or by other reasonable means.

The commissioner will determine whether a violation(s) has been corrected and notify the regulated party of that determination. Compliance must be documented and maintained in the case file.

8. Licensure and Permitting Actions

Denial or refusal to reissue permits, licenses, registrations, or certificates

The commissioner may deny or refuse to reissue an application for a permit, license, registration, or certificate, if the applicant:

- does not meet or fails to maintain the minimum qualifications for holding a permit, license, registration, or certificate;
- has any unresolved violation(s) related to the activity for which the permit, license, registration, or certificate was issued;
- has a persistent pattern of violations related to the permit, license, registration, or certificate; or
- submitted false information to the division or department in connection with the application.

The commissioner may condition the grant or renewal of a permit, license, registration, or certificate on demonstration by the applicant, that the applicant has taken the actions needed to ensure health and safety. The commissioner may place conditions on or issue a limited permit, license, registration, or certificate because of previous violations by the applicant.

Suspension or Revocation of permits, licenses, registrations, or certificates

The commissioner may suspend, place conditions on, or revoke a permit, license, registration, or certificate for:

- serious or repeated violations related to the permit, license, registration, or certificate;
- submitting false material information in connection with the activities for which the permit, license, registration or certificate is issued;
- allowing the alteration or use of one's own permit, license, registration or certificate by another; or
- conviction of a crime within the previous five years in connection with activities for which the permit, license, registration, or certificate was issued.

9. Hearing Requests

Hearings related to an administrative penalty order

The recipient of an administrative penalty order has the right to challenge the order by requesting an expedited administrative hearing described in Minnesota Statutes, section 144.991, subdivision 5.

The department must receive a written request for a hearing within 30 days after the order is received. The recipient subject to an order may request an expedited hearing within 20 days after receiving notice that the commissioner has determined that a violation(s) has not been corrected or appropriate steps have not been taken. An administrative law judge from the Office of Administrative Hearings, using the procedures of Minnesota Rules, parts 1400.8510 to 1400.8612, shall conduct the hearing.

The recipient of the administrative penalty order must state the reasons for requesting the hearing. If the recipient does not respond to the administrative penalty order, agency staff may contact the recipient before the end of the 30-day compliance period to determine the recipient's intentions.

The hearing must be held within 30 days after an administrative-penalty-order recipient of files a hearing request with the commissioner, unless all parties agree to a later date. The commissioner must notify the recipient of the time and place of the hearing at least 15 days before the hearing.

At the hearing, both parties will have an opportunity to present evidence. Any party wishing to submit written arguments to the administrative law judge must do so within ten days after the close of the hearing. The administrative law judge must issue a report making recommendations to the commissioner within 30 days after the close of the hearing record. After the commissioner receives the administrative law judge's report, the recipient of the administrative penalty order has five days in which to submit comments for consideration by the commissioner. The commissioner has 90 days to render a final decision. If the commissioner exceeds 90 days, then the decision of the administrative law judge becomes final.

If the administrative law judge finds that the hearing was requested solely for purposes of delay or that the hearing request was frivolous, the commissioner may add the costs that the Office of Administrative Hearings charged to the agency for the hearing to the amount of the penalty.

The recipient of the final administrative penalty order may appeal it to the Minnesota Court of Appeals. If the recipient does not appeal a final administrative penalty order to the Minnesota Court of Appeals, or the order is reviewed and upheld by the court, then the recipient must pay the amount of the penalty plus interest accruing from 31 days after the recipient received the original administrative penalty order.

Hearings Related to Denial, Refusal to Renew, Suspension, or Revocation of a Permit, License, Registration, or Certificate

As stated in Minnesota Statutes, section 144.99, subdivision 10, if the department proposes to deny, refuses to renew, suspends, or revokes a permit, license, registration, or certificate for any of the reasons described in section 8 of this plan, the commissioner must first notify the person against whom the action is proposed to be taken in writing. The department must give the person an opportunity to request a hearing under the contested case provisions of Minnesota Statutes, Chapter 14. If the person does not request a hearing by notifying the commissioner within 20 days after receipt of the notice of proposed action, the commissioner may proceed with the action without a hearing.

This does not apply to the denial of or refusal to renew a permit, license, registration, or certificate based on the applicant's failure to:

- meet or maintain the minimum qualifications for holding the permit, license, registration, or certificate; or
- submit a complete application, including any application fee.

This does not apply to the denial of, refusal to renew, suspension of, or revocation of a permit, license, registration, or certificate:

- if the person against whom the action is proposed to be taken has been granted a hearing described above within the previous 12 months; or
- if the person is under the authority of another government agency due to an outstanding tax liability or child support payments, for example.

In all cases where the commissioner renders the final decision, the contested case record must close upon the filing of any exceptions to the report or upon expiration of the deadline for doing so. The department will notify the regulated party and the presiding administrative law judge of the date when the hearing record closed.

The department may, by order, determine that the report of the administrative law judge constitutes the final decision in the case. In all contested case hearings where the order or report of the administrative law judge constitutes the final decision in the case, the hearing record must close as ordered in writing by the presiding administrative law judge.

A decision or order that rejects or modifies a finding of fact, conclusion or recommendation in the administrative law judge report must include the reasons for rejection or modification.

Independence of the commissioner

The department must separate persons involved in the issuance of the administrative penalty order from persons involved in consideration of an appeal through the expedited hearing process to ensure an unbiased final administrative penalty order. Persons involved in issuing

the administrative penalty order are the “enforcement team.” Persons involved in advising the commissioner are the “advisory team.”

When an administrative penalty order is anticipated, department staff will identify members of the enforcement team and the advisory team according to the Minnesota Department of Health Enforcement Manual.

Mediation

All contested cases will be conducted and decided in accordance with the Administrative Procedure Act (see Minnesota Statutes, Chapter 14). Authority to enter into mediation is provided by Minnesota Statutes, section 144.991, subdivision 6.

10. Plan Revision

The commissioner incorporates any department programs that the legislature subsequently grants administrative penalty order authority or any revisions to authority previously granted under the Health Enforcement Consolidation Act of 1993, et sequel, into this plan automatically by reference without further plan revision.

The department may revise this plan in whole or in part by publishing any amendments or the revised plan in the State Register. The publication notice will also solicit public comment for at least 30 days before the effective date of any changes.

11. Severability

If a court of competent jurisdiction declares any part of this plan to be illegal or unenforceable, the rest of the plan is not affected and remains in full effect.

12. Adoption of Revised Plan

By authority granted under the Health Enforcement Consolidation Act of 1993, I approve and adopt this revised plan for the use of the administrative penalty and cease and desist orders.

SO APPROVED AND ADOPTED _____ day of _____, 2010

Sanne Magnan, MD, PHD
Commissioner

Appendix A: Examples of Serious Violations

The general criteria for the assessment of serious violations are described in section 4 of this plan. The general criteria for the use of cease and desist orders is described in section 7. In addition, each regulatory program specified under Minnesota Statutes, section 144.99, subdivision 1, has provided examples of violations that the program considers serious and subject to a non-forgivable administrative penalty order or a violation warranting a cease and desist order. The program specific examples are not exclusive.

Violations that warrant a cease and desist order are presumed to be serious violations and might also warrant the issuance of administrative penalty order following procedures outlined in this plan.

Asbestos

Serious Violations

1. **Minnesota Statutes, section 326.72, subdivision 1 and Minnesota Rules, part 4620.3200, subpart 9:** Failure to be licensed to perform asbestos-related work.
2. **Minnesota Statutes, section 326.73; Minnesota Rules, parts 4630.3300, subpart 1; 4620.3310, subpart 1; 4620.3330, subpart 1; 4620.3340, subpart 1; and 4620.3350, subpart 1:** Failure to obtain certification before performing asbestos-related work or asbestos management activity.
3. **Minnesota Statutes, section 326.74, Minnesota Rules, part 4620.3410, subpart 1, Minnesota Rules, part 4620.3420, subparts 1 and 2:** Failure to provide advance notification and reporting of asbestos-related work.
4. **Minnesota Statutes, section 326.76 and Minnesota Rules, part 4620.3450, item B:** Failure to comply with Duties of Contracting Entity Rule.
5. **Minnesota Rules, part 4620.3250, items A and C:** Failure to employ only persons certified to do asbestos-related work and failure to ensure that certified asbestos site supervisor is present at the work site at all times when asbestos-related work is performed.
6. **Minnesota Rules, part 4620.3559:** Failure to comply with Applicable Work Practices for Abatement Rule.
7. **Minnesota Rules, part 4620.3460, subpart 1-4:** Failure to comply with Inspection and Assessment of Asbestos-Containing Materials Rule.
8. **Minnesota Rules, part 4620.3566, subpart A-C:** Failure to comply with Containment Cleaning Before Abatement Rule.
9. **Minnesota Rules, part 4620.3567:** Failure to comply with Installation of Critical Barriers Rule.
10. **Minnesota Rules, part 4620.3568, subpart 1:** Failure to comply with Containment Rule.
11. **Minnesota Rules part 4620.3569, subpart 1:** Failure to comply with Decontamination Unit rule.
12. **Minnesota Rules part 4620.3570, subparts 1 and 3; Minnesota Rules part 4620.3570, subpart 4, subitems A and B; Minnesota Rules part 4620.3570, subpart 4, subitem C, subparts 1-3:** Failure to comply with HEPA-Filtered Negative Pressure Rule.

13. **Minnesota Rules part 4620.3571:** Failure to comply with Removal of Asbestos-Containing Material Rule.
14. **Minnesota Rules part 4620.3572, subparts A and E:** Failure to comply with Encapsulation of Asbestos-containing Material Rule
15. **Minnesota Rules part 4620.3573:** Failure to comply with Permanent Enclosure of Asbestos-Containing Material Rule.
16. **Minnesota Rules part 4620.3575, subparts 1-7 and 9:** Failure to comply with Completion of Abatement Rule.
17. **Minnesota Rules part 4620.3580:** Failure to comply with Glove Bag Procedures Rule.
18. **Minnesota Rules part 4620. 3581:** Failure to comply with Mini-containment Procedures Rule.
19. **Minnesota Rules part 4620.3582:** Failure to comply with Removal of Entire Facility Components with Intact Asbestos-containing Material Rule.
20. **Minnesota Rules part 4620.3585:** Failure to comply with Abatement for Demolition by Destruction to the Ground Rule.
21. **Minnesota Rules part 4620.3592:** Failure to comply with Indoor Air Monitoring Rule.
22. **Minnesota Rules part 4620.3594:** Failure to comply with Clearance Air Sampling Rule.
23. **Minnesota Rules part 4620.3596:** Failure to comply with General Requirements for Air Monitoring Sample Collection Rule
24. **Minnesota Rules part 4620.3597:** Failure to comply with Phase Contrast Microscopy Rule
25. **Minnesota Rules part 4620.3598:** Failure to comply with Transmission Electron Microscopy Rule
26. **Minnesota Rules part 4620.3702, subpart 1:** Failure to obtain training course permit
27. **Minnesota Rules part 4620.3710, Item A:** Failure to provide advance notice of training course.

Asbestos Cease and Desist

1. **Minnesota Statutes, section 326.73; Minnesota Rules, parts 4630.3300, subpart 1; 4620.3310, subpart 1; 4620.3330, subpart 1; 4620.3340, subpart 1; and 4620.3350, subpart 1:** Failure to obtain certification before performing asbestos-related work or asbestos management activity.
3. **Minnesota Statutes, section 326.72, subdivision 1 and Minnesota Rules, part 4620.3200, subpart 9:** Failure to be licensed to perform asbestos-related work.
4. **Minnesota Rules, part 4620.3559:** Failure to comply with Applicable Work Practices for Abatement Rule.
5. **Minnesota Rules, part 4620.3566, subpart A-C:** Failure to comply with Containment Cleaning Before Abatement Rule.
6. **Minnesota Rules, part 4620.3567:** Failure to comply with Installation of Critical Barriers Rule.
7. **Minnesota Rules, part 4620.3568:** Failure to comply with Containment Rule.
8. **Minnesota Rules part 4620.3569, subpart 1:** Failure to comply with Decontamination Unit Rule.
9. **Minnesota Rules part 4620.3570, subparts 1 and 3; Minnesota Rules part 4620.3570, subpart 4, subitems A and B; Minnesota Rules part 4620.3570, subpart 4, subitem C, subparts 1-3:** Failure to comply with HEPA-Filtered Negative Pressure Rule.
10. **Minnesota Rules part 4620.3571:** Failure to comply with Removal of Asbestos-Containing Material Rule.
11. **Minnesota Rules part 4620.3572, subparts A and E:** Failure to comply with Encapsulation of Asbestos-containing Material Rule
12. **Minnesota Rules part 4620.3573:** Failure to comply with Permanent Enclosure of Asbestos-Containing Material Rule.
13. **Minnesota Rules part 4620.3575, subparts 1-7 and 9:** Failure to comply with Completion of Abatement Rule.
14. **Minnesota Rules part 4620.3580:** Failure to comply with Glove Bag Procedures Rule.
15. **Minnesota Rules part 4620. 3581:** Failure to comply with Mini-containment Procedures Rule.

16. **Minnesota Rules part 4620.3582:** Failure to comply with Removal of Entire Facility Components with Intact Asbestos-containing Material Rule.
17. **Minnesota Rules part 4620.3585:** Failure to comply with Abatement for Demolition by Destruction to the Ground Rule.
18. **Minnesota Rules part 4620.3592:** Failure to comply with Indoor Air Monitoring Rule.
19. **Minnesota Rules part 4620.3594:** Failure to comply with Clearance Air Sampling Rule.
20. **Minnesota Rules part 4620.3596:** Failure to comply with General Requirements for Air Monitoring Sample Collection Rule
21. **Minnesota Rules part 4620.3597:** Failure to comply with Phase Contrast Microscopy Rule
22. **Minnesota Rules part 4620.3598:** Failure to comply with Transmission Electron Microscopy Rule

Environmental Laboratories

Regulated under Minnesota Statutes, sections 144.97 to 144.98 which incorporates national standards by reference and Minnesota Rules, chapter 4740, which incorporates federal code by reference.

Serious Violations

Violations resulting in suspension of accreditation as provided in the national standards

1. **Minnesota Statutes, section 144.98, subd. 2a:** observed laboratory activities that imperatively requires emergency action due to threats to the public interest, safety or welfare
2. **Minnesota Statutes, section 144.98, subd. 2a:** failure to complete proficiency testing studies or to maintain passing scores on proficiency testing conducted
3. **Minnesota Statutes, section 144.98, subd. 2a:** failure to notify the department of any changes in key accreditation criteria such as location, personnel, equipment or testing capabilities
4. **Minnesota Statutes, section 144.98, subd. 2a:** failure to maintain a quality system according to the national standards
5. **Minnesota Statutes, section 144.98, subd. 2a:** failure to employ staff that meet the personnel qualifications for education, training and experience

Cease and Desist

Violations resulting in revocation of accreditation as provided in the national standards.

1. **Minnesota Statutes, section 144.98, subd. 2a:** failure to correct deficiencies identified by the department
2. **Minnesota Statutes, section 144.98, subd. 2a:** failure to correct the reasons for suspension of accreditation
3. **Minnesota Statutes, section 144.98, subd. 2a:** failure to obtain an acceptable score on a remedial proficiency upon the third attempt
4. **Minnesota Statutes, section 144.98, subd. 2a:** failure to submit a corrective action report in response to deficiencies cited
5. **Minnesota Statutes, section 144.98, subd. 2a:** failure to participate in proficiency testing studies

6. **Minnesota Statutes, section 144.98, subd. 2a:** submitting proficiency testing samples generated by another laboratory as its own
7. **Minnesota Statutes, section 144.98, subd. 2a:** misrepresentation of any material fact pertinent to receiving or maintaining accreditation
8. **Minnesota Statutes, section 144.98, subd. 2a:** denial of entry during normal business hours for an onsite assessment
9. **Minnesota Statutes, section 144.98, subd. 2a:** conviction of charges relating to the falsification of any report relating to a laboratory analysis
10. **Minnesota Statutes, section 144.98, subd. 3, subd. 3b, subd. 4:** Failure to remit appropriate accreditation fees
11. **Minnesota statutes, section 144.98, subd. 6, subd. 6a, and subd. 7:** Failure to remit application and fees according to established dates

Food, Beverage & Lodging Establishments, Manufactured Home Parks, Recreational Camps, Children's Camps

Serious Violations

1. **Minnesota Rules, parts 4625.1300; 4626.0980; 4630.0600; 4630.3100:** Violations identified as serious under the Public Water Supply section of Appendix A, when associated with an establishment that is licensed under Minnesota Statutes, section 157.16, or section 327.15, or permitted under section 144.72.
2. **Minnesota Rules, part 4625.1300:** In a lodging facility, hot water that exceeds 130 degrees Fahrenheit at hand washing sinks, showers, or bathtubs.
3. **Minnesota Rules, part 4625.2000:** In a lodging facility, failure to comply with fire protection requirements in accordance with requirements of the state fire marshal.
4. **Minnesota Rules, part 4626.0020, subpart 20:** For food establishments, violation of a critical item, as defined by the Minnesota Food Code, Chapter 4626.
5. **Minnesota Rules, part 4626.1795:** For food establishments, failure to notify the commissioner of imminent health hazard due to food borne illness outbreak, fire, flooding, or sewage backup that endangers water or food sources.
6. **Minnesota Rules, parts 4626.1805, 4626.1810:** For food establishments, use of food or equipment that has been embargoed or condemned.
7. **Minnesota Rules, parts 4630.2600 to 4630.3000:** In a children's camp, failure to meet requirements for food service and food service personnel.
8. **Minnesota Statutes, section 327.20, subdivision 1, clauses (6) and (7):** Failure to provide a municipally-approved shelter or evacuation plan for a manufactured home park after notification by the department.

Cease and Desist

1. **Minnesota Rules, parts 4625.1300; 4626.0980; 4630.0600; 4630.3100:** Failure to take appropriate corrective action (disinfect) and provide public notice for coliform maximum contaminant level violation, when associated with an establishment that is licensed under Minnesota Statutes, section 157.16, or section 327.15, or permitted under section 144.72.
2. **Minnesota Rules, part 4626.0020, subpart 20:** For food establishments, failure to correct violation of a critical item as defined by the Food Code.

Indoor Air Unit

Serious Violations

1. **Minnesota Statutes, section 144.414, subdivision 1:** The proprietor or other person or entity in charge permitted smoking in a public place, at a public meeting, in a place of employment, or in public transportation not specifically exempted in this section or section 144.4167.
2. **Minnesota Statutes, section 144.414, subdivision 2:** The proprietor or other person or entity in charge failed to prohibit smoking in a licensed day care facility during its hours of operation.
3. **Minnesota Statutes, section 144.414, subdivision 3:** The proprietor or other person or entity in charge failed to prohibit smoking in a health care facility or licensed residential facility for children. (Except as exempted in this subdivision).
4. **Minnesota Statutes, section 144.414, subdivision 4:** The person in charge failed to prohibit smoking in a public transportation vehicle with for-hire passengers present.
5. **Minnesota Statutes, section 144.416, item (a):** The proprietor or other person or entity in charge failed to make reasonable efforts to prevent smoking in a public place, public transportation, place of employment or public meeting.
6. **Minnesota Statutes, section 144.416, item (b):** The proprietor or other person or entity in charge of a restaurant or bar served an individual smoking in a smoking-prohibited area.
7. **Minnesota Statutes, section 144.417, subdivision 2, item (c):** The proprietor or other person or entity in charge of a public place, public meeting, place of employment or public transportation retaliated or took adverse action against a person who, in good faith, reported a violation of sections 144.414 to 144.417 to the proprietor or other person or entity in charge of the place or to the commissioner of health or other designee responsible for enforcing sections 144.414 to 144.417.
8. **Minnesota Statutes, section 144.417, subdivision 2, item (d):** A person or employer discharged, refused to hire, penalized, discriminated against, or in some manner retaliated against an employee, applicant for employment, or customer because the employee, applicant, or customer exercised a right to a smoke-free environment provided by sections 144.414 to 144.417 or other law.
9. **Minnesota Rules, part 4620.4100:** The owner or operator of an enclosed sports arena operated an enclosed sports arena in which a resurfacing machine is used without a certificate of approval from the commissioner of health.
10. **Minnesota Rules, part 4620.4400:** The owner or operator of an enclosed sports arena failed to utilize acceptable methods to maintain required air quality conditions.

11. **Minnesota Rules, part 4620.4500, subpart 1:** The owner or operator of an enclosed sports arena failed to measure carbon monoxide air concentrations and/or nitrogen dioxide air concentrations at least once every week when internal combustion engines are operated.
12. **Minnesota Rules, part 4620.4500, subpart 1:** The owner or operator of an enclosed sports arena failed to submit air quality measurement records as requested by the department.
13. **Minnesota Rules, part 4620.4600, subpart 1:** The owner or operator of an enclosed sports arena failed to take immediate corrective action when one-hour average air concentrations of carbon monoxide exceeded 30 parts per million or one-hour average nitrogen dioxide air concentrations exceeded 0.5 parts per million.
14. **Minnesota Rules, part 4620.4600, subpart 1:** The owner or operator of an enclosed sports arena failed to conduct follow-up air testing to confirm that corrective measures reduced air concentrations of carbon monoxide below 30 ppm and/or nitrogen dioxide air concentrations below 0.5 ppm following a documented exceedence event.
15. **Minnesota Rules, part 4620.4600, subpart 2:** The owner or operator of an enclosed sports arena failed to notify the department within five working days of one-hour average air concentrations of carbon monoxide that exceeded 30 parts per million and/or one-hour average nitrogen dioxide air concentrations that exceeded 0.5 parts per million.
16. **Minnesota Rules, part 4620.4700:** The owner or operator of an enclosed sports arena operated an enclosed sports arena open to the general public where internal combustion engine-powered equipment or vehicles were in use without a certificate of approval from the commissioner of health.
17. **Minnesota Rules, part 4620.4700:** The owner or operator of an enclosed sports arena open to the general public where internal combustion engine-powered equipment or vehicles are in use failed to measure air quality conditions and /or submit air quality reports as directed by the commissioner of health.

Indoor Air Unit Cease and Desist

1. **Minnesota Rules, part 4620.4600, subpart 3:** The owner or operator of an enclosed sports arena failed to immediately suspend operations and evacuate the arena when one-hour average air concentration of carbon monoxide exceeded 125 parts per million or when one-hour average air concentrations of nitrogen dioxide exceeded 2.0 parts per million.

Lead

Serious Violations

1. **Minnesota Statutes Section 144.9504, subdivision 2, items a, c and e:** Failure to perform lead risk assessments in the required time frames.
2. **Minnesota Statutes Section 144.9504, subdivision 5, item a:** Failure to issue lead orders.
3. **Minnesota Statutes Section 144.9504, subdivision 8:** Failure of property owner to notify the department of when lead regulated work is to take place
4. **Minnesota Statutes Section 144.9504, subdivision 9:** Failure to perform a clearance inspection.
5. **Minnesota Statutes Section 144.9505, subdivision 1, item b:** A person advertising or otherwise presenting themselves as certified or licensed to perform regulated lead work without having a certificate or license issued by the commissioner.
6. **Minnesota Statutes Section 144.9505, subdivisions 1a-1g:** Failure of an individual or company to be certified, licensed or registered to perform regulated lead work.
7. **Minnesota Statutes Section 144.9505, subdivision 4:** Failure to provide notice of regulated lead work.
8. **Minnesota Statutes Section 144.9505, subdivision 6:** Failure of contracting entity to hire an appropriately certified, licensed or registered party to perform regulated lead work.
9. **Minnesota Rules, part 4761.2200, subpart 1:** Failure to comply with Certified Lead Firms Rule.
10. **Minnesota Rules, part 4761.2220, subparts A, B, D, E, and G:** Failure to comply with Qualified Individuals Rule.
11. **Minnesota Rules, part 4761.2240, subpart 1:** Failure to comply with Lead Worker License Rule.
12. **Minnesota Rules, part 4761.2260, subpart 1:** Failure to comply with Lead Supervisor License Rule.
13. **Minnesota Rules, part 4761.2280, subpart 1:** Failure to comply with Lead Inspector License Rule.
14. **Minnesota Rules, part 4761.2300, subpart 1:** Failure to comply with Lead Risk Assessor License Rule.

15. **Minnesota Rules, part 4761.2320, subpart 1:** Failure to comply with Lead Project Designer License Rule.
16. **Minnesota Rules, part 4761.2370, subpart 1:** Failure to comply with Training Course Permits Rule.
17. **Minnesota Rules, part 4761.2400, subpart 3:** Failure to comply with Training Course Notification Rule.
18. **Minnesota Rules, part 4761.2460, subpart 1:** Failure to comply with Independent Testing Organization; Permits Rule.
19. **Minnesota Rules, part 4761.2480, subpart 1:** Failure to comply with Independent Testing Organization Requirements Examination Notification Rule.
20. **Minnesota Rules, part 4761.2510:** Failure to comply with Standards for Lead in Paint, Dust, Bare Soil, Drinking Water Rule.
21. **Minnesota Rules, part 4761.2550:** Failure to comply with Lead Hazard Screen Rule.
22. **Minnesota Rules, part 4761.2560:** Failure to comply with Lead Inspection Rule.
23. **Minnesota Rules, part 4761.2570:** Failure to comply with Lead Risk Assessment Rule.
24. **Minnesota Rules, part 4761.2580, subpart 1:** Failure to comply with Lead Hazard Reduction Notification Rule.
25. **Minnesota Rules, part 4761.2600, subpart 1:** Failure to comply with Emergency Project Notice Rule.
26. **Minnesota Rules, part 4761.2615, item C:** Failure to comply with Occupant Protection Plan and Warning Signs Rule.
27. **Minnesota Rules, part 4761.2620:** Failure to comply with Prohibited Practices for Lead Hazard Reduction Rule.
28. **Minnesota Rules, part 4761.2625:** Failure to comply with Abrasive and Water Blasting Methods for Lead Hazard Reduction Rule.
29. **Minnesota Rules, part 4761.2630:** Failure to comply with Methods for Removing Intact Building Components Rule.
30. **Minnesota Rules, part 4761.2640:** Failure to comply with Methods for Removing Interior Building Components and Small Areas of Deteriorated Paint Rule.

31. **Minnesota Rules, part 4761.2645:** Failure to comply with Methods for Removing Large Areas of Interior Paint Rule.
32. **Minnesota Rules, part 4761.2650:** Failure to comply with Methods for Removing Large Areas of Exterior Paint Rule.
33. **Minnesota Rules, part 4761.2655:** Failure to comply with Encapsulation of Lead-Based Paint Rule.
34. **Minnesota Rules, part 4761.2660:** Failure to comply with Methods for Lead Hazard Reduction for Soil Rule.
35. **Minnesota Rules, part 4761.2665:** Failure to comply with Storage of Lead-Contaminated Debris Rule.
36. **Minnesota Rules, part 4761.2670:** Failure to comply with Clearance Inspections Rule.
37. **Minnesota Rules, part 4761.2690:** Failure to comply with Enforcement Rule.

Lead Cease and Desist

1. **Minnesota Statutes Section 144.9505, subdivision 1, item b:** A person advertising or otherwise presenting themselves as certified or licensed to perform regulated lead work without having a certificate or license issued by the commissioner.
2. **Minnesota Statutes Section 144.9505, subdivisions 1a-1g:** Failure of an individual or company to be certified, licensed or registered to perform regulated lead work.
3. **Minnesota Rules, part 4761.2220, subparts A, B, D, E, and G:** Failure to comply with Qualified Individuals Rule.
4. **Minnesota Rules, part 4761.2240, subpart 1:** Failure to comply with Lead Worker License Rule.
5. **Minnesota Rules, part 4761.2260, subpart 1:** Failure to comply with Lead Supervisor License Rule.
6. **Minnesota Rules, part 4761.2280, subpart 1:** Failure to comply with Lead Inspector License Rule.
7. **Minnesota Rules, part 4761.2300, subpart 1:** Failure to comply with Lead Risk Assessor License Rule.
8. **Minnesota Rules, part 4761.2320, subpart 1:** Failure to comply with Lead Project Designer License Rule.

9. **Minnesota Rules, part 4761.2550:** Failure to comply with Lead Hazard Screen Rule.
10. **Minnesota Rules, part 4761.2560:** Failure to comply with Lead Inspection Rule.
11. **Minnesota Rules, part 4761.2570:** Failure to comply with Lead Risk Assessment Rule.
12. **Minnesota Rules, part 4761.2620:** Failure to comply with Prohibited Practices for Lead Hazard Reduction Rule.
13. **Minnesota Rules, part 4761.2625:** Failure to comply with Abrasive and Water Blasting Methods for Lead Hazard Reduction Rule.
14. **Minnesota Rules, part 4761.2630:** Failure to comply with Methods for Removing Intact Building Components Rule.
15. **Minnesota Rules, part 4761.2640:** Failure to comply with Methods for Removing Interior Building Components and Small Areas of Deteriorated Paint Rule.
16. **Minnesota Rules, part 4761.2645:** Failure to comply with Methods for Removing Large Areas of Interior Paint Rule.
17. **Minnesota Rules, part 4761.2650:** Failure to comply with Methods for Removing Large Areas of Exterior Paint Rule.
18. **Minnesota Rules, part 4761.2655:** Failure to comply with Encapsulation of Lead-Based Paint Rule.
19. **Minnesota Rules, part 4761.2660:** Failure to comply with Methods for Lead Hazard Reduction for Soil Rule.
20. **Minnesota Rules, part 4761.2670:** Failure to comply with Clearance Inspections Rule.

Public Pools

Serious Violations

1. **Minnesota Rules, part 4717.0650, subp. 3:** Failure to designate a trained operator who is responsible for the operation of the pool.
2. **Minnesota Rules, part 4717.0775:** Failure to report pool incidents resulting in death or serious injury.
3. **Minnesota Rules, part 4717.0950 and 4717.1050:** Failure to provide a certified lifeguard or a lifeguard not on duty sign.
4. **Minnesota Rules, part 4717.1250:** Failure to provide a sign indicating the nearest emergency telephone.
5. **Minnesota Rules, part 4717.1450:** Failure to provide required lifeguard stands and/or lifesaving equipment.
6. **Minnesota Rules, part 4717.1550:** Failure to control access to the pool by use of approved fencing and latching gates or doors.
7. **Minnesota Rules, part 4717.1750:** Failure to maintain the pool water as it relates to disinfection residual, pH, and temperature.
8. **Minnesota Rules, part 4717.2450:** Failure to maintain required markings and lines.
9. **Minnesota Rules, part 4717.2550:** Operation of a pool without functioning recirculation system.
10. **Minnesota Rules, part 4717.2630, subp.8:** Use of compressed chlorine gas without available respiratory protection equipment.
11. **Minnesota Statutes, section 144.1222, subd. 1d:** Failure to conduct daily physical inspections of drain covers.

Cease and Desist

1. **Minnesota Rules, part 4717.3970:** Violations requiring pool closure as identified by the Pool Code.
2. **Minnesota Statutes, section 144.1222, subd. 1c:** Failure to provide approved suction outlet drains and/or covers.
3. **Minnesota Statutes, section 144.1222, subd. 1d:** Failure to close pool when an outlet cover or grate is missing, broken, or loose.

Public Water Supplies

Regulated under Minnesota Statutes, sections 144.381 to 144.385. Minnesota Rules, Chapter 4720 incorporates federal code by reference.

Serious Violations

1. **Code of Federal Regulation, title 40, section 141.63:** Failure to take appropriate corrective action (disinfect) for coliform maximum contaminant level.
2. **Code of Federal Regulation, title 40, section 141.32:** Failure to provide public notice for acute maximum contaminant level violations (coliform and nitrates).
3. **Code of Federal Regulation, title 40, section 141.73:** Failure to continuously provide required treatment at surface water systems.

Public Water Supplies Cease and Desist

1. **Code of Federal Regulation, title 40, section 141.63 and 141.32:** Failure to take appropriate corrective action (disinfect) and provide public notice for coliform maximum contaminant level violation.

Radioactive Materials

In the event of an emergency that poses a danger to the public health, the commissioner has the authority to impound radioactive materials and the associated shielding in the possession of a person who fails to abide by the public health requirements of the statutes, rules, and any other item listed in Minnesota Statutes 144.99 subdivision 1.

Serious Violations

1. **Minnesota Rules, part 4731.0280, subpart 2:** Knowingly engaging in deliberate misconduct that causes or would have caused, if not detected, any entity to be in violation of a rule; an order; a regulation; or a term, condition, or limitation of a license, certificate, approval, or registration issued by the commissioner.
2. **Minnesota Rules, part 4731.0280, subpart 2:** Deliberately submitting any information known to be incomplete or inaccurate in some respect.
3. **Minnesota Rules, part 4731.0290:** Engaging in employee protection and employment discrimination issues are governed by Minnesota Statutes, sections 181.931 to 181.935.
4. **Minnesota Rules, part 4731.0355, subpart 1:** Failure to apply for reciprocal recognition of licenses issued by the US Nuclear Regulatory Commission or other agreement states.
5. **Minnesota Rules, part 4731.0355, subpart 3:** Failure to notify the commissioner in writing at least three days before engaging in the activities in the state.
6. **Minnesota Rules, part 4731.0401:** Unauthorized delivery of licensed material to a carrier for transport or transport licensed material.
7. **Minnesota Rules, part 4731.0402, subpart 1:** Failure to comply with the applicable DOT regulations in Code of Federal Regulations, title 49, parts 107, 171 to 180, and 390 to 397.
8. **Minnesota Rules, part 4731.0412, subpart 1:** Failure to transport radioactive materials in a package designed and prepared for shipment so that the radiation level does not exceed 200 millirems per hour (2 mSv/hr) at any point on the external surface of the package and the transport index does not exceed ten.
9. **Minnesota Rules, part 4731.0412, subpart 2:** Failure to transport packages as exclusive use shipment when the radiation level exceeds the 200 millirems per hour (2 mSv/hr) at any point on the external surface of the package and the transport index does not exceed ten.

10. **Minnesota Rules, part 4731.0412, subpart 2:** Transport of exclusive use packages that exceed the established limits.
11. **Minnesota Rules, part 4731.0412, subpart 3:** Failure to provide specific written instructions to the carrier for maintenance of the exclusive use shipment controls.
12. **Minnesota Rules, part 4731.0530; 4731.0710; 4731.3005; 4731.3520; 4731.4010; 4731.4403; 4731.6010; 4731.7010:** Failure to obtain a specific license or unauthorized ownership, acquisition, delivery, receipt, possession, use, or transfer of radioactive material.
13. **Minnesota Rules, part 4731.0580, subpart 2; 4731.0780, subpart 5; 4731.3080, subpart 2:** Failure to provide financial assurance for decommissioning.
14. **Minnesota Rules, part 4731.0600, subpart 2; 4731.0790, subpart 4; 4731.3085, subpart 4:** Failure to provide notice of decommissioning.
15. **Minnesota Rules, part 4731.0615, subpart 1; 4731.0815, subpart 1; 4731.3105, subpart 1:** Unauthorized transfer of radioactive material.
16. **Minnesota Rules, part 4731.0595, subpart 1; 4731.0795, subpart 1; 4731.3090, subpart 1:** Failure to submit a license renewal application.
17. **Minnesota Rules, part 4731.0595, subpart 3, 4731.0795, subpart 2; 4731.3090, subpart 3; 4731.4403, subpart 3:** Failure to submit a license amendment application.
18. **Minnesota Rules, part 4731.0620, subpart 1; 4731.0820, subpart 1; 4731.3110, subpart 1:** Failure to notify the commissioner as soon as possible but not later than four hours after the discovery of an event that prevents immediate protective actions necessary to avoid exposures to radiation and radioactive materials that could exceed regulatory limits or releases of licensed material that could exceed regulatory limits.
19. **Minnesota Rules, part 4731.0620, subpart 2, 4731.0820, subpart 2; 4731.3110, subpart 2:** Failure to notify the commissioner within 24 hours after discovery of events involving an unplanned contamination; an event in which equipment is disabled or fails to function as designed; an event that requires unplanned medical treatment at a medical facility of an individual with spreadable radioactive contamination on the individual's clothing or body; or an unplanned fire or explosion that damages any licensed material or any device, container, or equipment containing licensed materials.
20. **Minnesota Rules, part 4731.1040:** Failure to allow inspection of materials, premises, and records or failure to allow inspector to consult privately with workers or consultants.

21. **Minnesota Rules, part 4731.2010, subpart 1:** Failure to develop, document, and implement a radiation protection program commensurate with the scope and extent of licensed activities and sufficient to ensure compliance with parts 4731.2000 to 4731.2950.
22. **Minnesota Rules, part 4731.2010, subpart 2:** Failure to use procedures and engineering controls based upon sound radiation protection principles to achieve occupational doses and doses to members of the public that are as low as reasonably achievable (ALARA).
23. **Minnesota Rules, part 4731.2010, subpart 4:** Failure to constrain air emissions of radioactive materials to the environment.
24. **Minnesota Rules, part 4731.2020, subpart 1:** Failure to control the occupational exposure to individual adults to the established dose limits.
25. **Minnesota Rules, part 4731.2080, subpart 1:** Failure to control the dose equivalent to an embryo/fetus during the entire pregnancy due to occupational exposure of the declared pregnant woman to 0.5 rem (5 mSv).
26. **Minnesota Rules, part 4731.2080:** Failure to maintain the annual occupational dose limit for a minor to ten percent of the dose limits specified for adult workers.
27. **Minnesota Rules, part 4731.2090, subpart 1:** Failure of licensees to conduct operations so that dose limits to the public are not exceeded.
28. **Minnesota Rules, part 4731.2090, subpart 1:** Failure to maintain the dose in any unrestricted area from external sources to 0.002 rem (0.02 Sv) in any one hour.
29. **Minnesota Rules, part 4731.2200, subpart 1:** Failure to make (or cause to be made) surveys that are necessary to evaluate the magnitude and extent of radiation levels, concentrations or quantities of radioactive material, and potential radiological hazards.
30. **Minnesota Rules, part 4731.2220, subpart 1:** Failure to control access to a high radiation area.
31. **Minnesota Rules, part 4731.2220, subpart 2:** Failure to establish the controls for a high radiation area in a way that does not prevent individuals from leaving a high radiation area.
32. **Minnesota Rules, part 4731.2290, subpart 1:** Failure to institute additional measures to ensure that an individual is not able to gain unauthorized or inadvertent access to areas in which radiation levels could be encountered at 500 rads (5 Gy) or more in one hour at one meter from a radiation source or any surface through which the radiation penetrates.

33. **Minnesota Rules, part 4731.2290, subpart 1:** A significant failure to control sources of radiation in storage.
34. **Minnesota Rules, part 4731.2290, subpart 2:** A significant failure to control sources of radiation not in storage.
35. **Minnesota Rules, part 4731.2360, subpart 5:** Failure to report a leaking source.
36. **Minnesota Rules, part 4731.2400:** Failure to properly dispose of license material.
37. **Minnesota Rules, part 4731.2600, subpart 1:** Failure to report any lost, stolen, or missing licensed material.
38. **Minnesota Rules, part 4731.2610, subpart 1:** Failure to report any event involving radioactive material that may have caused (or threatens to cause an individual to receive a dose in excess of established limits or the release of radioactive material, inside or outside of a restricted area, so that, had an individual been present for 24 hours, the individual could have received an intake of five times the annual limit on intake.
39. **Minnesota Rules, part 4731.2705, subpart 1:** Failure to complete and submit a National Source Tracking Transaction Report.
40. **Minnesota Rules, part 4731.4350, subpart 1; 4731.6270, subpart 1:** Failure to provide notification of equipment failure.
41. **Minnesota Rules, part 4731.4403, subpart 1:** Failure to obtain a license to manufacture, produce, acquire, receive, possess, prepare, use, or transfer radioactive material for medical use.
42. **Minnesota Rules, part 4731.4403, subpart 3:** Failure to obtain a license amendment.
43. **Minnesota Rules, part 4731.4525, subpart 1:** Failure to report any event in which the administration of radioactive material or radiation from radioactive material results in a dose in excess of the established dose limits.
44. **Minnesota Rules, part 4731.4525, subpart 2:** Failure to report any event resulting from intervention of a patient or human research subject in which the administration of radioactive material or radiation from radioactive material results or will result in unintended permanent functional damage to an organ or a physiological system, as determined by a physician.

45. **Minnesota Rules, part 4731.4526, subpart 1:** Failure to report any dose to an embryo/fetus that is greater than five rems (50 mSv) dose equivalent that is a result of an administration of radioactive material or radiation from radioactive material to a pregnant woman unless the dose to the embryo/fetus was specifically approved, in advance, by the authorized user.
46. **Minnesota Rules, part 4731.4526, subpart 2:** Failure to report a dose to a nursing child that is a result of an administration of radioactive material to a breast-feeding woman that is greater than 5.0 rems (50 mSv) total effective dose equivalent or has resulted in unintended permanent functional damage to an organ or a physiological system of the child, as determined by a physician.
47. **Minnesota Rules, part 4731.7280, subpart 1:** Failure to notify the commissioner of a ruptured source.
48. **Minnesota Rules, part 4731.7280, subpart 3:** Failure to notify the commissioner of an irretrievable source.

Source Water Protection

Serious Violations

1. **Minnesota Rules, part 4720.5130:** Failure to notify the department of wellhead plan manager.
2. **Minnesota Rules, part 4720.5300, subpart 2:** Failure to notify the department of wellhead plan manager.
3. **Minnesota Rules, part 4720.5570:** Failure to amend a wellhead protection plan.
4. **Minnesota Rules, part 4720.5630, subpart 4:** Failure to re-submit a disapproved plan with 120 days.
5. **Minnesota Rules, part 4720.5660:** Failure to implement a wellhead protection plan after approval by the department.

Source Water Protection Cease and Desist

1. **Minnesota Rules, part 4720.5130:** Failing to submit a preliminary delineation and assessment before drilling a new municipal well.

Wells and Borings

Serious Violations

1. **Minnesota Rules, part 4725.2020, and Minnesota Rules, part 4727.0975:** Constructing a well or boring with greater than 10 feet of ungrouted borehole or screened interval through a confining layer. Constructing well or boring in a manner that interconnects aquifers separated by a confining layer.
2. **Minnesota Rules, part 4725.2050, and Minnesota Rules, part 4727.0925:** Use of a well or boring to inject or dispose of contaminants.
3. **Minnesota Rules, parts 4725.2250, 4725.2350, 4725.2550, and 4725.2650, and Minnesota Rules, part 4727.0950:** Violation of casing requirements such as:
 - a. Terminating casing below grade.
 - b. Using non-watertight casing.
 - c. Using previously rejected casing.
 - d. Telescoped casing.
 - e. Failure to properly join casing.
 - f. Using pins, screws, rivets, or other similar connections to attach plastic casing together.
 - g. Drilling inside plastic casing that is not temporary casing and is not removed.
 - h. Using plastic casing in limestone or dolomite.
 - i. Driving plastic casing.
4. **Minnesota Rules, part 4725.2850:** Constructing a well or boring with a gravel pack that extends greater than 10 feet above static, or greater than 10 feet above top or below bottom of screen.
5. **Minnesota Rules, part 4725.2950, and part 4725.5475, and Minnesota Rules, part 4727.0935:** Using non-potable water (except for water from the well or boring itself) for drilling, development, hydrofracturing, sealing, repairing, or rehabilitating a well or boring.
6. **Minnesota Rules, part 4725.3050, and part 4725. 5825, and Minnesota Rules, part 4727.0980:** Violation of grouting requirements such as:
 - a. Failure to grout where grouting is required.
 - b. Failure to full length grout public water-supply well.
 - c. Using bentonite grout where cement grout is required.
 - d. Using unapproved materials where grout is required.
 - e. Failure to extend tremie line to bottom of space to be grouted.
 - f. Dump grouting through more than 10 feet.
 - g. Failure to use drive shoe when driving casing.
 - h. Failure to maintain minimum annular space between bore hole and casing or between casings.

7. **Minnesota Rules, part 4725.3150:** Gross violation of above ground, below ground casing connection requirements.
8. **Minnesota Rules, part 4725.3350:** Interconnecting wells without proper protection, or using a well with a chemigation system without the required back flow prevention device.
9. **Minnesota Rules, part 4725.3450, and Minnesota Rules, part 4727.0985:** Improper flowing well or boring construction such as:
 - a. Failure to control the flow of a flowing well or boring.
 - b. Failure to grout.
 - c. Failure to use neat cement grout.
10. **Minnesota Rules, part 4725.3650:** Beginning construction within a Special Well Construction Area before plan review or failure to comply with Special Well Construction Area requirements.
11. **Minnesota Rules, part 4725.3850, Minnesota Statutes, section 103I.301, and Minnesota Rules, part 4727.1000, part 4727.1100, and part 4727.1250:** Violation of well or boring sealing requirements such as:
 - a. Failure to fill well with proper grout.
 - b. Using improper grout material.
 - c. Dump grouting.
 - d. Failure to submerge tremie pipe during grouting.
 - e. Failure to remove obstructions and debris before sealing.
 - f. Failure to remove or perforate casing where required.
 - g. Failure to seal well or boring requiring sealing.
 - h. Failure to stop discharge of a flowing well or boring when sealing.
12. **Minnesota Rules, part 4725.4350:** Failure to provide required flood protection.
13. **Minnesota Rules, part 4725.4450, and Minnesota Statutes, section 103I.205:** Gross violation of isolation distance requirements.
14. **Minnesota Rules, part 4725.4550:** Violation of minimum protective depth requirements by failing to construct a potable water-supply well with bottom of casing at least 15 feet below ground surface, or failing to construct a potable water-supply well with top of gravel pack at least 15 feet below ground surface.
15. **Minnesota Rules, part 4725.5150:** Installing a buried suction line without proper protection.
16. **Minnesota Rules, part 4725.5475:** Violation of hydrofracturing requirements that hydrofracturing must not be performed less than 50 feet below ground surface, must not be performed closer than 10 feet below the lower termination of casing, and must not be performed within casing.

17. **Minnesota Rules, part 4725.5550:** Failure to disinfect.
18. **Minnesota Rules, part 4725.5650:** Failure to collect water sample and provide water analysis results.
19. **Minnesota Rules, part 4725.3750:** Failure to extend casing to surface when repairing well.
20. **Minnesota Rules, part 4725.6150:** Violation of grouting or sealing requirements when constructing or sealing dewatering wells.
21. **Minnesota Rules, part 4725.6450:** Violation of grouting or sealing requirements when constructing or sealing monitoring wells.
22. **Minnesota Rules, part 4725.6850:** Flagrant violation of at-grade requirements or constructing a monitoring well at-grade without permit.
23. **Minnesota Rules, part 4725.7050:** Violation of grouting or sealing requirements when constructing or sealing a vertical heat exchanger, using improper heat transfer fluid, or constructing a vertical heat exchanger system with improper piping.
24. **Minnesota Rules, part 4725.7250:** Violation of grouting or sealing requirements when constructing or sealing an elevator boring.
25. **Minnesota Rules, part 4725.7450:** Violation of grouting or sealing requirements when constructing or sealing an environmental bore hole or violation of casing and construction requirements when constructing an environmental bore hole.
26. **Minnesota Rules, part 4725.0410, Minnesota Rules, parts 4717.7000 through 4717.7050:** Willful or flagrant disregard additional requirements of a variance.
27. **Minnesota Statutes, section 103I.231, and section 103I.301:** Failing to seal or maintaining a well or boring in a manner that constitutes a public health or safety hazard such as an open large diameter (greater than 8-inch) well or dug well without cover.
28. **Minnesota Statutes, section 144.992, and Minnesota Rules, part 4725.1851:** Making a false material statement, representation, or certification in; omitting material information from; or altering, concealing, or failing to file or maintain a notice, application, record, report, plan, or other required document.
29. **Minnesota Rules, part 4725.1848:** Failure to obtain a Maintenance Permit after Third Notice.

Wells and Borings Cease and Desist

1. **Minnesota Statutes, section 103I.205**, subdivision 6: Constructing, placing, installing, or locating a source of contamination too close to existing well.
2. **Minnesota Rules, part 4725.3650**: Constructing a well or boring in a “Special Well and Boring Construction Area” without plan review.
3. **Minnesota Rules, part 4725.2050**: Injecting contaminants into groundwater or using a well for disposal of contaminants.
4. **Minnesota Statutes, section 103I.231 and section 103I.315, and Minnesota Rules, part 4725.3750**: Improper construction, repair, or sealing that poses an imminent threat to safety, health, or groundwater.
5. **Minnesota Statutes, section 103I.501; Minnesota Statutes, section 103I.525; Minnesota Statutes, section 103I.531; Minnesota Statutes, section 103I.535; Minnesota Statutes, section 103I.541; Minnesota Statutes, section 103I.601, subdivision 2; Minnesota Statutes, section 103I.205, subdivision 4**: Operation or performance of work for which a license, registration, or certification is required without the required license, registration, or certification.
6. **Minnesota Statutes, section 103I.545, Minnesota Rules, part 4725.1800, and Minnesota Rules, part 4727.0850**: Operation or performance of work with drilling machine or pump hoist for which registration is required without registering the equipment.
7. **Minnesota Statutes, section 103I.205, subdivisions 1 and 2; Minnesota Statutes, section 103I.208; Minnesota Statutes, section 103I.301, subdivision 6; Minnesota Statutes, section 103I.621; Minnesota Statutes, section 103I.641, subdivision 3; Minnesota Statutes, section 103I.601, subdivision 3; Minnesota Statutes, section 103I.681; Minnesota Statutes, section 103I.691**: Operation or performance of work for which a notification, permit, certificate, or fee is required without the required notification, permit, certificate or fee.

X-ray

Serious Violations

1. **Minnesota Rules, part 4732.0250:** Reciprocity for out-of-state radiation producing equipment.
2. **Minnesota Rules, part 4732.0330, subpart 4, item L:** Valid Supervisory agreements.
3. **Minnesota Rules, part 4732.0360:** Shielding Plan Requirements.
4. **Minnesota Rules, part 4732.0340:** Failure to correct Notice of Violation.
5. **Minnesota Rules, part 4732.0440:** Failure to wear required personnel monitoring devices.
6. **Minnesota Rules, parts 4732.0510, subpart 3; 4732.0875, subpart 5:** Failure to require proper shielding to those in the x-ray room.
7. **Minnesota Rules, parts 4732.0520; 4732.0550; 4732.0555, subpart 2:** Failure to establish and/or maintain quality assurance and radiologic practice standards.
8. **Minnesota Rules, parts; 4732.0560, subparts 2, 4; 4732.0570; 4732.0580:** Failure to obtain an order for an exposure or unqualified operators executing orders.

X-ray Cease and Desist

1. **Minnesota Rules, parts 4732.0305; 4732.0306:** Any prohibited or unauthorized use of ionizing radiation.
2. **Minnesota Rules, part 4732.0335:** Failure to afford the opportunity to inspect.
3. **Minnesota Rules, parts 4732.0200; subparts 1-5; 4732.0210:** Failure to register ionizing radiation sources.
4. **Minnesota Rules, part 4732.0275, subparts 1, 3:** Failure of Service Providers to register with the commissioner.
5. **Minnesota Rules, parts 4732.410, subpart 2; 4732.0415; 4732.0420; 4732.0430:** Failure to monitor to dose levels that exceed maximums.
6. **Minnesota Rules, part 4732.0565, subpart 1:** Failure to gain commissioner's approval for Healing Arts Screening.

7. **Minnesota Rules, parts 4732.0800; 4732.0820; 4732.0825; 4732.1100:** Failure to maintain equipment according to manufacturer's specifications.

X-ray Industrial

Serious Violations

1. **Minnesota Rules, part 4732.1040, subpart 5, item C:** Dose levels exceeded.
2. **Minnesota Rules, part 4732.1050:** Requirements for Permanent Industrial Radiographic Installations.
3. **Minnesota Rules, part 4732.0440, subpart 6:** Failure to wear individual monitoring devices at industrial facilities.

X-ray Industrial Cease and Desist

1. **Minnesota Rules, part 4732.0440, subpart 6:** Failure to wear individual monitoring devices at industrial facilities.
2. **Minnesota Rules, part 4732.0620:** Failure to warn and control high or very high radiation areas.
3. **Minnesota Rules, part 4732.1060, subpart 2, item C:** Failure to acquire radiographer certification.

X-ray Therapy

Serious Violations

1. **Minnesota Rules, part 4732.0330:** Failure to maintain records required by this chapter to ensure public health.
2. **Minnesota Rules, part 4732.0610:** Failure to make medical event/incident notifications.
3. **Minnesota Rules, part 4732.0900, subpart 2:** Unqualified Operators
4. **Minnesota Rules, parts 4732.0930, subpart 3; 4732.0940, subpart 5:** Unqualified therapeutic radiological physicist as defined in 4732.0110, subpart 200.

X-ray Therapy Cease and Desist

1. **Minnesota Rules, parts 4732.0930, subpart 3; 4732.0940, subpart 5:** Failure to perform initial or annual calibration or quality control testing.

Appendix B: Penalty Calculation Worksheet

INSTRUCTIONS

General

This worksheet provides guidance for calculating the amount of an administrative penalty order issued under Minnesota Statutes, section 144.99. The calculation of an administrative penalty order is a discretionary act based on the recommendation of staff and on the criteria for penalty assessment described in Minnesota Statutes, section 144.99 and on the Plan for the Use of Administrative Penalty and Cease and Desist Authority, and Other Enforcement Tool (plan).

Penalty Calculation Process

Multiple violations

If a regulated party has committed more than one violation, calculate a separate penalty for each violation. Penalties are added together for the total administrative penalty base amount.

Serious violations

Serious violations include conduct showing disregard of requirements or standards, or violations that present an actual or potential danger to the public health or natural resources. In considering whether a violation is serious, refer to the description of serious violations, and the list of program-specific serious violations in the plan.

Repeat violations

The violation may be considered a repeat violation if the regulated party has previously violated one or more statutes, rules, or other actions under provisions granted by Minnesota Statutes, section 144.99, subdivision 1. To be considered a repeat violation, the current violation must be of a similar type as the prior violation.

Forgivable or non-forgivable Penalty

If the violation is neither serious nor repeated, the penalty must be forgivable. The penalty assessed (base penalty for the violation and any adjustments to the penalty for the violation) in an administrative penalty order may be non-forgivable only if the violation is serious, repeated, or both.

Base penalty

The following matrix is used to calculate the base penalty for each violation. The vertical axis of the matrix, titled “Potential for Harm” represents the gravity of the violation, including damage or potential damage to humans, animals, air, water, land, or other natural resources of the state. Potential for harm is rated as severe, moderate, or minor. The risk of actual harm caused by the violation should be considered in the rating. Many department laws and regulations are preventive in nature. Therefore, the focus is on potential for harm and not on actual harm. Where actual harm from a violation is observed, the potential for harm has been realized and the rating may reflect this fact.

Penalty Matrix

The horizontal axis, titled “Deviation from Compliance” represents the range of non-compliance the violation presents. Deviation from compliance is rated as severe, moderate, or minor and is based on the quantity or extent the violation deviated from compliance

		DEVIATION FROM COMPLIANCE		
			MINOR	MODERATE
POTENTIAL FOR HARM	MINOR	\$0 to \$500	\$200 to \$1,000	\$500 to \$2,000
	MODERATE	\$500 to \$2,000	\$1,000 to \$3,500	\$2,000 to \$5,000
	SEVERE	\$2,000 to \$5,000	\$3,500 to \$8,000	\$5,000 to \$10,000

After establishing the position of the violation in the matrix, a base penalty from within the applicable range is determined. The amount chosen is discretionary because the matrix is

intended to be only a guide. However, similar types of violations should be assigned similar base penalties depending on the circumstances of a particular case.

Determine any adjustments to the base penalty.

For each violation, each of the following factors are considered to make adjustments of the base penalty.

Repeat violations: If the violation is a repeat violation, determine whether the penalty for that violation should be adjusted because of one or more of the following four factors identified in Minnesota Statutes, section 144.991, subdivision 1. For each applicable factor, the base penalty may be increased. Also determine if the adjustment to the penalty should be forgivable or nonforgivable.

1. **Similarity to previous violations.** For a repeat violation, determine the extent to which the current violation is similar to the most recent previous violation. The greater the similarity between the current violation and the most recent previous violation, the more the penalty may be increased.
2. **Time elapsed since last violation.** For a repeat violation, an increase in the penalty may be appropriate based on the time elapsed since the most recent previous violation. The more recent the last violation, the greater the penalty increase may be.
3. **Number of previous violations.** For repeat violations, an increase in the penalty may be appropriate based on the number of previous violations. The more previous violations, the greater the penalty increase may be.
4. **Response to most recent violation.** For repeat violations, an increase in the penalty may be appropriate for the response of the regulated party to the most recent previous violation. The less satisfactory the response, the greater the penalty increase may be.

Additional adjustments to the penalty amount: For each violation, determine if the penalty for that violation should be adjusted for one of the factors identified in Minnesota Statutes, section 144.991, subdivision 1. Also determine the amount of the adjustment and whether the adjustment should be forgivable, nonforgivable, or a combination. The adjustment must be forgivable unless the violation was determined to be repeat, serious, or both.

1. **Willfulness:** If the unlawful behavior was willful, an upward adjustment might be warranted. A violation is willful if the violator's conduct was performed with knowledge that it was illegal, if the violator reasonably should have known that the conduct was illegal, or if the violator proceeded with indifference about whether the conduct was illegal. In addition to consideration of behavior when committing the violation, the violator's response to the department after the department begins to seek compliance should be considered. If the violator refuses to respond to department notices or calls or refuses to take any corrective action, such recalcitrance may establish the violator's willfulness and warrant an increased penalty.

2. **History:** If the violation is a repeat violation, then the previous similar violations have already been considered above. In this section, therefore, consider only the history of past violations which have not already been considered. If the violator has no history of violations, the penalty should not be increased under this section. A long history of documented compliance may be a mitigating factor. In considering past violations, consider the similarity to the current violations, the number of past violations, the seriousness of the past violations, the time elapsed since the last violation, and the response to the most recent violation. The greater the history of past violations, the greater the penalty increase may be.
3. **Number of violations:** Determine if an increase in the penalty is appropriate for the number of current violations. Do not consider previous violations in calculating this adjustment factor. If a separate base penalty for each of the current violations has been calculated, base penalty should not be adjusted based on the number of violations. If the base penalty amounts have not been calculated separately for each violation and there are multiple current violations, an adjustment of the base penalty amount might be appropriate. The larger the number of current violations, the greater the penalty increase may be. The penalty may be increased based on the number of violations despite whether the violations are initial violations or repeated.
4. **Economic benefit:** Determine the amount of any economic benefit gained by the regulated party by engaging in the violation. Economic benefit may be money the regulated party saved by not complying with the relevant law, or money the regulated party made as a result of violating the law. After determining the amount of money the regulated party saved or made as a result of the violation, determine if the corrective action required by the department has reduced or will reduce the economic benefit. The dollar amount of the adjustment for economic benefit should be equal to the money saved or made as a result of the violation minus the expense of the required corrective action. The adjustment for economic benefit cannot be a negative number.
5. **Other factors as justice may require:** Under this section, the base penalty may be adjusted based on unique facts and issues associated with the case. Factors to be considered may include whether the violation was negligent, reckless, or careless. If the behavior was negligent, reckless, or careless, an increase of the base penalty may be appropriate. Any adjustments to the base penalty due to this part, must identify the additional factors in the administrative penalty order.

Reduce the penalty, if necessary, to \$10,000.

The penalty established in an administrative penalty order cannot exceed \$10,000 for all violations identified in an inspection or review of compliance for each regulated party. If the total penalty calculated exceeds \$10,000 for a regulated party, the penalty must be reduced to \$10,000. If the penalty is a combination forgivable and non-forgivable penalty, reduce the penalty proportionately from both the non-forgivable and forgivable portions so the total equals \$10,000.

S U M M A R Y

General Information	
Regulated Party Name:	License Number:
Address:	Inspector:
Date of Inspection:	EH Program:
Site Name and Address:	

	Present Violations Cite rules	Serious? <input type="checkbox"/> Yes <input type="checkbox"/> No	Repeat? <input type="checkbox"/> Yes <input type="checkbox"/> No	Forgivable (F) or Non-Forgivable (N) <input type="checkbox"/> F <input type="checkbox"/> N
1.		<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> F <input type="checkbox"/> N
2.		<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> F <input type="checkbox"/> N
3.		<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> F <input type="checkbox"/> N
4.		<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> F <input type="checkbox"/> N
5.		<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> F <input type="checkbox"/> N
6.		<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> F <input type="checkbox"/> N

Forum Information
Date of Penalty Calculation Forum:
Forum Participants:

Step 1: Determine if the penalty is forgivable or non-forgivable		
A. Determine if the violation is Serious.		
Are any of the violations serious?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Why?		
B. Determine if the violation is a repeat.		
Are any of the violations repeat violations?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Why?		
C. Determine if the penalty is forgivable?		
Is a portion of the penalty forgivable?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Why?		

Step 2: Calculate the base penalty.
Violation #1:
Potential for harm is:
Why?
The deviation from compliance is:
Why?
Base Penalty Amount: \$

Violation #2:

Potential for harm is:

Why?

The deviation from compliance is:

Why?

Base Penalty Amount: \$

Violation #3:

Potential for harm is:

Why?

The deviation from compliance is:

Why?

Base Penalty Amount: \$

Total Base Penalty		
Forgivable \$	Non-Forgivable \$	Total \$

Step 3: Determine any adjustments to base penalty				
A. For repeat violations only.				
		Forgivable	Non-forgivable	Total
(1)	Similarity to previous violations.			
	Adjustment percent	0%	0%	0%
	Adjustment amount	\$0.00	\$0.00	\$0.00
	Reason for adjustment:			
(2)	Time elapsed since last inspection.			
	Adjustment percent	0%	0%	0%
	Adjustment amount	\$0.00	\$0.00	\$0.00
	Reason for adjustment:			
(3)	Number of previous violations.			
	Adjustment percent	0%	0%	0%
	Adjustment amount	\$0.00	\$0.00	\$0.00
	Reason for adjustment:			
(4)	Response to most recent violation.			
	Adjustment percent	0%	0%	0%
	Adjustment amount	\$0.00	\$0.00	\$0.00
	Reason for adjustment:			

Step 3: Determine any adjustments to the base penalty.				
B. For all violations:				
		Forgivable	Non-forgivable	Total
(1)	The willfulness of the violation.			
	Adjustment percent	0%	0%	0%
	Adjustment amount	\$0.00	\$0.00	\$0.00
	Reason for adjustment:			
(2)	History of past violations.			
	Adjustment percent	0%	0%	0%
	Adjustment amount	\$0.00	\$0.00	\$0.00
	Reason for adjustment:			
(3)	The number of current violations			
	Adjustment percent	0%	0%	0%
	Adjustment amount	\$0.00	\$0.00	\$0.00
	Reason for adjustment:			
(4)	Economic Benefit.			
	Adjustment amount	\$	\$	\$
	Explanation of economic benefit gained:			
(5)	Other factors justice may require.			
	Amount of adjustment for other factors	\$0.00	\$0.00	\$0.00
	Identify factors considered in this section:			
	Reason for adjustment based on these factors:			

Step 4: Reduce the penalty, only if greater than \$10,000.				
	Forgivable	Non-forgivable	Total	
Total initial penalty	\$0.00	\$0.00	\$0.00	
Amount of reduction to meet \$10,000	\$0.00	\$0.00	\$0.00	
Net penalty	\$0.00	\$0.00	\$0.00	

Total Assessed Penalty		
Forgivable	Non-forgivable	Total
\$	\$	\$