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FIELD CITATION PILOT PROJECT

**A REPORT TO THE
LEGISLATIVE COMMISSION ON WASTE MANAGEMENT
NOVEMBER 1993**

**MINNESOTA POLLUTION CONTROL AGENCY
AND
MINNESOTA DEPARTMENT NATURAL RESOURCES**



**MINNESOTA
POLLUTION CONTROL
AGENCY**

**520 Lafayette Road
St. Paul, Minnesota 55155**

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1993

Pursuant to 1991 Laws, Chap 347, Art 1,
Sec 15, Subd 6 amended by 1993 Laws,
Chapter 249, Section 46

FIELD CITATION PILOT PROJECT

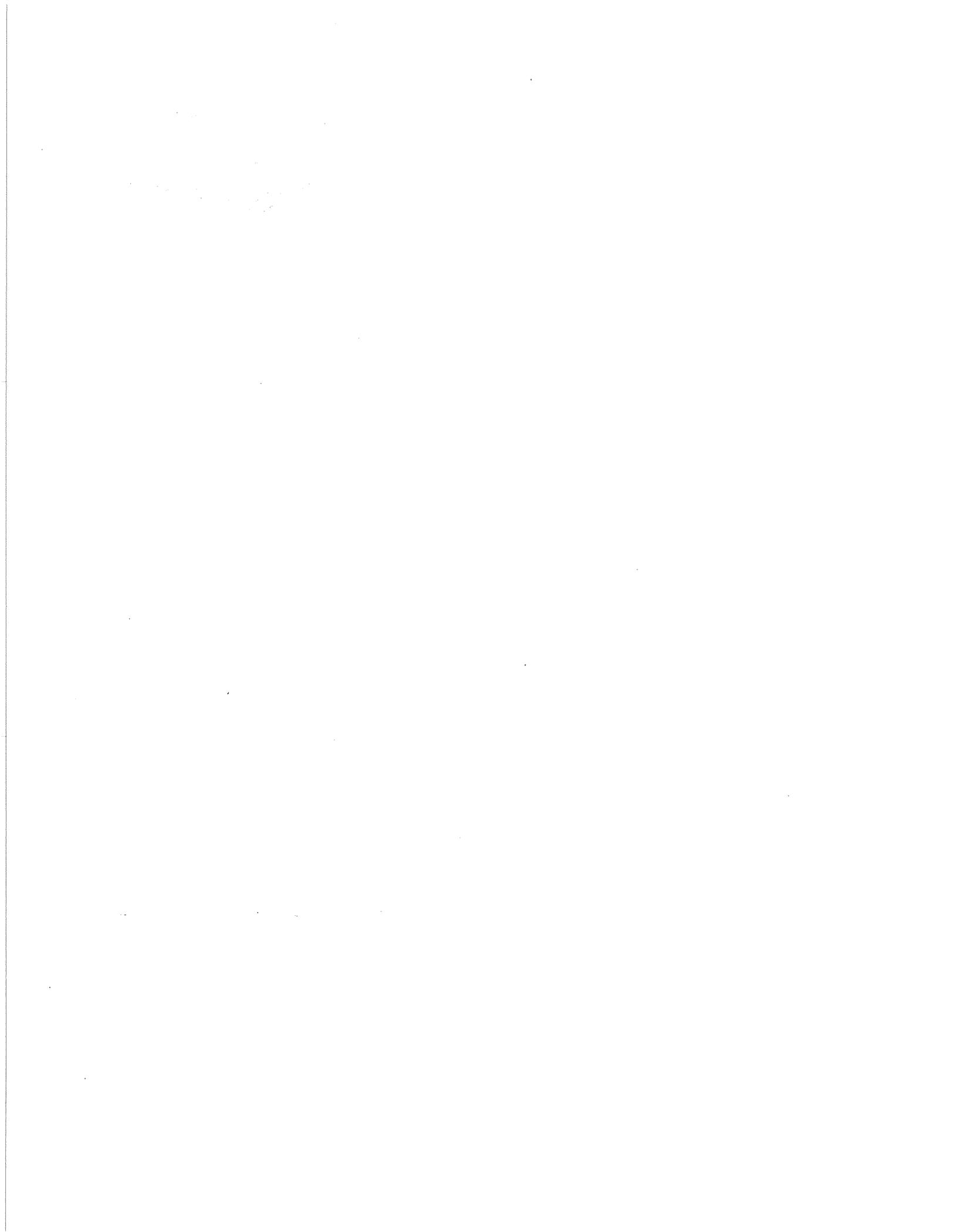
**A REPORT TO THE
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List of Attachments

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Attachment III	Citation Form
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Introduction

As part of the environmental enforcement act of 1991, the Minnesota Legislature created a pilot project for issuing field citations for the illegal disposal of solid waste. The 1993 Legislature amended the statutory language, extending the pilot for another year and including a provision for the removal of the illegally disposed waste. A copy of the legislation is included in Attachment I of this report.

The citation is one of the tools used by Minnesota Pollution Control Agency (MPCA) and Department of Natural Resources (DNR) staff to enforce solid waste statutes and regulations. It is part of the continuum of tools available and joins the administrative and civil responses and criminal litter statutes used by the MPCA and DNR. It is issued in the field and addresses illegal disposal sites that are relatively small, where there is no evidence of hazardous waste or contamination, and where insufficient proof exists to support a criminal case. The citation has been an effective tool in responding to and deterring illegal disposal and should become permanent.

This report summarizes the current status of the pilot project, discusses the effectiveness and limitations identified to date, and provides recommendations for future considerations for field citations. The MPCA, in consultation with DNR and the Minnesota Attorney General (AG), provides this study to the Legislative Commission on Waste Management (LCWM) as required by Minn. Statutes Chapter 347, Sec. 15, subd. 6.

Status Summary

The first citation for the illegal disposal of solid waste without the landowner's permission was issued on November 8, 1991. The table in Attachment II provides a summary status of the citations issued as of October 30, 1993. As of this date, 154 citations have been issued with penalty amounts ranging from \$10.00 to \$2475.00 and a total penalty amount of \$37,670.00. Thirteen of these citations have been appealed and 36 citations still have payments outstanding, corresponding to penalty amounts of \$13,318 and \$11,275, respectively.

The interim period between the effective date of the legislation and issuance of the first citation was used to develop the document, develop procedures and methods so that the pilot project was incorporated efficiently with ongoing programs and staff, and to develop and conduct training sessions for field staff. A copy of the citation can be found in Attachment III. DNR Conservation Officers (COs) and MPCA Solid Waste Specialists (SWS) attended the initial October 1991 training session conducted by staff from the

AG office, DNR, and MPCA. The materials from this training session were used to train additional authorized staff in the use of the citation.

DNR COs have issued the majority of citations statewide, typically where waste has been disposed of on public land. The MPCA Commissioner initially authorized one SWS to issue citations and the remaining SWS have served as liaisons with the COs. After the experience gained during the first year, the MPCA Commissioner authorized all certified SWS to issue citations. SWS have not issued a proportionate number of citations as the COs. They have, however, used it as a known consequence when responding to complaints, issuing a citation if the waste is not promptly removed. AG staff has responded to appeals and coordinated administrative hearings. The cost to initiate and implement this pilot has been minimal. The agencies have incorporated it into existing programs and priorities, using the citation as another tool to address certain solid waste violations. No additional staff was added to implement the pilot.

Effectiveness and Limitations

Two of the main objectives of this pilot project are to deter indiscriminate dumping and to penalize people who dispose of waste illegally. Based upon the low percentage of appeals, record of payment of penalties in comparison with the experience of DNR with other ticketing programs, and the response of state and local field staff, the program is successful and should become a permanent tool. No hard evidence exists regarding the number of indiscriminate dumps of all sizes and there is no current data management system that inventories current cases of indiscriminate dumping. A significant investment of staff time and dollars would be necessary to conduct an aerial survey of the state and develop an effective data system to locate, establish, and maintain an inventory of illegal dumps.

A survey of county solid waste officers, sheriff departments, county highway staff and MPCA and DNR field staff was completed this fall to assess their perceptions of the field citation. The timing was chosen so that additional spring and summer periods of experience could be incorporated. Approximately 400 surveys were sent to state and local field staff and 225 responses were returned. Attachment IV summarizes the results in percentages of individual offices and of the total number of responses. The raw numbers are provided in Attachment V.

An overwhelming majority of responders thought that the program should become a permanent tool in addressing illegal dumping. It

is perceived as an effective tool when responding to and preventing illegal disposal. Based upon the survey results, the number of complaints received by field staff has remained the same, ranging from 0 to 5 per month. The responses to questions 2 and 3 indicate the majority of field staff is aware that the citation is available to address specific situations. However, responses given to questions seven and eight do not reflect the same degree of contact with DNR or MPCA staff for assistance in responding to complaints of illegal waste disposal.

Another objective of the citation is removal of the illegally disposed waste to an authorized area. Staff involved in this program has been effective in ensuring that waste is removed from the unpermitted area. Two primary methods have been used. If the waste disposer is present at the time of the citation issuance, he is encouraged to remove the waste. If the waste owner is not present, field staff will make a follow-up visit to ensure removal of the waste from the area.

Major limitations identified last year were: no ordered cleanup, lack of an alternate procedure for collection of unpaid penalties, and high costs of administrative hearings. The returned surveys also identified other limitations perceived by state and local field staff.

As discussed above, the statute was amended to require removal of the waste to a permitted facility. The citation form continues to include a requirement to remove the waste to a permitted facility. This amendment provides a firm basis, if needed, to enforce removal.

The statute does authorize the attorney general to bring civil actions in district court for payment of penalties, which may include recovery of costs. However, these actions do require a fair amount of staff time that may be used more effectively in other critical cases or issues. Currently certified letters are sent to citation recipients notifying them that the penalty is delinquent and requiring payment. These have been fairly effective, but there are still penalties outstanding. The MPCA contracted with a collection firm in January of 1993 and forwarded outstanding penalties to them. However, this firm was not successful in obtaining any payments during the 6 month time period and the contract was not renewed. Presently, MPCA staff is working with staff from the Department of Revenue to implement state collection of outstanding penalties.

Administrative hearing costs are high in comparison with the typical penalty amount, these costs have ranged from two to five thousand dollars and are paid out of the Environmental Enforcement Fund. An opportunity for review of a citation is necessary.

Typically, when an appeal is received by the Commissioner, the attorney general reviews the facts and advises the MPCA and DNR on the merits of the case. If a hearing is scheduled, the state's case is presented before an Administrative Law Judge (ALJ). The citation recipient also has an opportunity to present his point of view. The ALJ makes a determination of the case and presents his recommendations to the MPCA Commissioner who makes the final decision.

Of the thirteen citations that have been appealed, three have had a complete hearing, nine have been settled without a hearing or prior to the conclusion of a hearing, and one appeal is pending. The ALJ recommended rescission of the citations that were heard. However, on the basis of the evidence and solid waste statutes, the Commissioner and the Appeal Team did not concur with the ALJ's recommendation and ordered payment and cleanup. The decision to settle is based upon the available evidence provided by field staff and additional information provided by the citation recipient. Resolution has included reducing the amount of the penalty based upon the amount of the waste and dropping the citation if the evidence does not meet the statute standards of not having the landowner's permission.

Alternatives to addressing appeals by administrative hearings include reviewing the appeal in district court and handling the citation as a traffic ticket. Reviewing a citation in district court, based upon the MPCA's experience with Administrative Penalty Orders, can be more expensive and time consuming. Since there is a wide range of penalty amounts associated with the citation, it may not be appropriate to treat all citations similar to a traffic ticket. Although we have not proposed specific language at this time, we may suggest a future amendment for alternatives for small citations (less than \$250 to \$300).

Several comments included in the survey also listed limitations perceived by the field staff. Question nine, which dealt with excluding instances where the property owner has allowed illegal disposal of waste generated the largest number of comments. Several respondents felt that the property owner should not be excluded and a citation issued whether or not permission was given by the property owner. A few comments noted that the cost of disposal is high and other means exist to deal with those situations. Historically this issue has generated much discussion, an exemption for agricultural dumps was passed several years ago. The MPCA has addressed illegal dumping by other enforcement tools; Notice of Violations, Administrative Penalty Orders and negotiated enforcement documents have been used. The decision whether to address these situations with these alternate tools includes evaluation of the size of the dump, observed or potential impacts, and other competing priorities of the region. For the present, we are not proposing any changes to this language.

Another concern that was identified by the survey was the need for better coordination and cooperation from state field staff. The agencies recognize the importance of positive working relationships with our local governmental counterparts and strive to continue to improve them. The MPCA has recently increased SWS in four of the five regional offices to better address this issue. We will also be looking at how to better communicate the status of citation activity to the local offices if the authority is made permanent.

Summary and Recommendations

In summary, we believe that the pilot project is successful and should be made a permanent authority. Although there are improvements that can be made in implementing the program and communicating with other field staff, overall, this additional tool has been useful and effective in responding to and deterring illegal dumping. We have initiated the administrative process to incorporate the citation as a permanent remedy. In the upcoming weeks a determination will be made on the preferred method to achieve this recommendation. We will continue to advise and consult with the LCWM regarding our progress and conclusions.



Attachment I

Chapter 347

Article 1. Civil Enforcement

Sec. 15. Field Citation Pilot Project Subdivision 1. Authority to issue. Pollution control agency staff designated by the commissioner and department of natural resources conservation officers may issue citations to a person who disposes of solid waste as defined in Minnesota Statutes, section 116.06, subdivision 10, at a location not authorized by law for the disposal of solid waste without permission of the owner of the property. A citation issued under this subdivision must include a requirement that the person cited remove and dispose or otherwise manage the waste.

Subd. 2. Penalty amount. The citation must impose the following penalty amounts: (1) \$100 per major appliance, as defined Minnesota Statutes, section 115A.03, subdivision 17a, up to a maximum of \$2,000; (2) \$25 per waste tire, as defined in Minnesota Statutes, section 115A.90, subdivision 11, unless utilized in an agricultural pursuit, up to a maximum of \$2,000; (3) \$25 per lead acid battery governed by Minnesota Statutes, section 115A.915, up to a maximum of \$2,000; (4) \$1 per pound of other solid waste or \$20 per cubic foot up to a maximum of \$2,000; and (5) up to \$200 for any amount of waste that escapes from a vehicle used for the transportation of solid waste if, after receiving actual notice that waste has escaped the vehicle, the person or company transporting the waste fails to collect the waste.

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

Subd. 4. Enforcement of field citations. Field citations may be enforced under Minnesota Statutes, section 116.072, subdivisions 9 and 10.

Subd. 5. Cumulative remedy. The authority of conservation officers to issue field citations is in addition to other remedies available under statutory or common law, except that the state may not seek penalties under any other provision of law for the incident subject to the citation.

Subd. 6. Study of field citation pilot program. The pollution control agency, in consultation with the department of natural resources and the attorney general, shall prepare a study on the effectiveness and limitations of the field citation pilot program.

The study must make recommendations about the continued use of field citations. The study must be submitted to the legislative commission on waste management by November 15, 1992, and must be updated and resubmitted to the commission by November 15, 1993.

ATTACHMENT II

FIELD CITATION PILOT PROJECT

SUMMARY OF CITATIONS ISSUED
(as of October 30, 1993)

	FY 1992	FY 1993	FY 1994
General			
Citations Issued	53	91	10
Penalty Assessed	\$7,978	\$27,225	\$2,467
Disposition			
Numbers Paid	42	56	7
Amount Paid*	\$5,665	\$8,800	\$512
Numbers Appealed	1	12	0
Penalty Appealed	\$83	\$13,235	
Numbers Heard		3	
Penalty Upheld**		\$ 2,500 (\$500)	
Number Pending		1	
Penalty Pending		\$2,000	
Numbers Settled	1	8	
Dollars Settled**	(\$83)	\$2,750 (\$5,485)	
Numbers Outstanding	10	23	3
Dollars Outstanding	\$2,230	\$7,090	\$1,955

* Includes community service accepted in lieu of penalty

** Figure without parenthesis indicates penalty amount remaining due or paid, dollar figure inside parenthesis indicates penalty amount forgiven.



NA-01290-01

**NOTICE OF SOLID WASTE DISPOSAL VIOLATION,
CIVIL CITATION, AND IMPOSITION OF PENALTY No. 0859**

ISSUE DATE		TIME		ICR	
NAME (LAST)		FIRST		MIDDLE	
D.C.B.		D/L NO.			
ADDRESS: STREET		CITY		STATE	
ZIP		PHONE (RESIDENCE/BUSINESS)			
LOCATION/ (8) PROJECT CODE		COUNTY (2)		VIOLATION DATE/TIME	
DAY OF WEEK		ACT (3) CODE		VIOLATION (3) CODE	
SPECIES (4) CODE					
LOCATION DESCRIPTION					
VEHICLE YEAR		MAKE		MODEL	
STYLE		COLOR		LICENSE	
STATE		VIN/SER/BHN			

This civil citation is being issued to you in lieu of criminal charges for unlawful disposal of solid waste on public property or on private property without the permission of the owner. You are hereby directed to remit within 30 days the following amount for this unlawful disposal of solid waste:

1. Major Appliances (Number) x \$100.00 each = \$ (Maximum \$2,000.00)
2. Waste Tires (Number) x \$ 25.00 each = \$ (Maximum \$2,000.00)
3. Lead Acid Battery (Number) x \$ 25.00 each = \$ (Maximum \$2,000.00)
4. Other Solid Waste (either pounds or cubic feet, or combination):
 - (Pounds) x \$ 1.00 per pound = \$ (Maximum \$2,000.00)
 - (Cubic Feet) x \$20.00 per cubic ft = \$ (Maximum \$2,000.00)
5. Solid materials (waste) that has escaped from a vehicle. NOTICE DATE/TIME = \$ (Maximum \$ 200.00)

TOTAL OF THIS CITATION = \$

I hereby acknowledge receipt of this notice and order of Civil Citation and Penalty.

VIOLATOR'S SIGNATURE		OFFICER'S SIGNATURE		AGENCY	BADGE #	STATION #

Payment of the amount specified must be sent within 30 days to: Commissioner MN PCA
Solid Waste Section
520 Lafayette Road
St. Paul, MN 55155-3898

Appeals to this citation must be made in writing within 15 days after issue in accordance with provisions outlined on the back of this notice. This citation becomes final and is not subject to further review after 15 days from the date of issue. SEE BACK OF THIS FORM FOR SPECIFIC APPEAL PROCEDURES.

INFORMATION REGARDING THE REMOVAL NOTICE AND APPEAL PROVISIONS IS ALSO PRINTED ON THE BACK OF NOTICE.

APPEALS OF CIVIL CITATIONS:

Citations may be appealed under the procedures in Minnesota Statutes, Section 116.072, Subdivision 6, if the person requests a hearing by notifying the Commissioner of the Pollution Control Agency within 15 days after receipt of the citation. If a hearing is not requested within the 15 day period, the citation becomes a final order not subject to further review. Appeals may be filed at the address provided for payment of the penalty.

NOTICE TO REMOVE:

You are required under Minnesota law to remove any solid waste that has been disposed of in an unpermitted location. Failure to remove unlawfully placed solid waste within 30 days as cited on the Notice of Solid Waste Disposal Violation, Civil Citation, and Imposition of Penalty may result in additional legal actions, including penalties, under Minnesota law.

Narrative Report:

**A Separate Report Exists
Regarding This Case**

ATTACHMENT IV

Citation Survey							
percentages							
	Sheriff	Cty Env	DNRCO	MPCA	Cty Hwy	Other	Total
surveys returned	54	66	94	3	2	6	225
I am aware that DNR Conservation Officers may issue tickets for the illegal disposal of solid waste, tires, appliances, and batteries							
yes	89	92	99	100	50	100	94
no	11	8	1		50		6
I am aware that MPCA staff may issue tickets for the illegal disposal of solid waste, tires, appliances, and batteries.							
yes	87	82	83	100	50	100	84
no	11	8	17		50		12
What is your estimate of the extent of the illegal solid waste dumping in the area you work?							
very severe	2	5	2				3
severe	6	9	10			17	8
serious	35	52	52	100	50	50	48
minor	52	35	33		50	33	40
no problem	6		2				2
I receive the following number of complaints regarding illegal disposal of all types of solid waste.							
0 to 5 per month	85	65	83		100	50	76
5 to 10 per month	9	23	15	100		50	18
10 to 20 per month	4	8					3
20 to 30 per month		5	1				2
more than 30 per month							0
The number of complaints I receive about illegal solid waste dumping has ___ in the last year.							
increased	28	44	43			67	39
stayed the same	67	44	49	100	50	33	52
decreased	6	12	7		50		8

ATTACHMENT V

Citation Survey							
raw numbers							
	Sheriff	Cty Env	DNRCO	MPCA	Cty Hwy	Other	Total
surveys returned	54	66	94	3	2	6	225
I am aware that DNR Conservation Officers may issue tickets for the illegal disposal of solid waste, tires, appliances, and batteries							
yes	48	61	93	3	1	6	212
no	6	5	1		1		13
I am aware that MPCA staff may issue tickets for the illegal disposal of solid waste, tires, appliances, and batteries.							
yes	47	54	78	3	1	6	189
no	6	5	16		1		28
What is your estimate of the extent of the illegal solid waste dumping in the area you work?							
very severe	1	3	2				6
severe	3	6	9			1	19
serious	19	34	49	3	1	3	109
minor	28	23	31		1	2	90
no problem	3		2				5
I receive the following number of complaints regarding illegal disposal of all types of solid waste.							
0 to 5 per month	46	43	78		2	3	172
5 to 10 per month	5	15	14	3		3	40
10 to 20 per month	2	5					7
20 to 30 per month		3	1				4
more than 30 per month							0
The number of complaints I receive about illegal solid waste dumping has ___ in the last year.							
increased	15	29	40			4	88
stayed the same	36	29	46	3	1	2	117
decreased	3	8	7				18

I have contacted Conservation Officers to assist in resolving some complaints with the solid waste citation I have received.							
yes	19	30	38	3		6	96
no	34	34	16		2		86
I have contacted staff at the MPCA to assist in resolving some complaints with the solid waste citation							
yes	12	40	41			5	98
no	40	25	51		2	1	119
A citation is given to someone who has disposed of waste illegally without a landowner's permission. I believe we should exclude those instances where the property owner allowed disposal of solid waste even though it is not a permitted facility.							
agree	7	10	10			3	30
no opinion	16		12		2		30
disagree	30	55	70	3		3	161
The citation authority expires July 1, 1994. I believe the authority should be made permanent.							
agree	36	58	85	3	2	6	190
no opinion	12	2	3				17
disagree	5	5	6				16