

Enhanced Compliance and Enforcement Authority



Why is this legislation needed?

DNR's existing enforcement authorities are insufficient to address serious or repeat violations of state water laws. Changes to the existing authorities would help DNR to ensure our water supply is protected and hold violators accountable using a variety of compliance tools.

The Minnesota Department of Natural Resources (DNR) plays an important role in ensuring sustainable water use through its water permit programs, information collection and analysis, education, technical assistance, and enforcement. Compliance with the state's water laws and permit programs is necessary to protect natural resources and ensure the best use of Minnesota's water resources. The permit programs provide for equity and fairness among water users, applies the best available information to inform permit decisions; and provides protection for water quantity, quality and ecological benefits. Noncompliance with water laws, particularly in times of drought, threaten this sustainability.

Major program elements

The overall intent of this proposed policy is to ensure Minnesota's water resources are protected and available for future generations of Minnesotans. The DNR has existing, limited authority to compel compliance and assess penalties for water program violations.

The DNR has the authority to issue Administrative Penalty Orders (APO) with monetary penalties up to \$20,000 for appropriating water without the necessary permit. The \$20,000 penalty limit currently dictated in statute is too low to deter violators. The proposal would give DNR greater discretion for calculating penalties, increase the APO cap to \$40,000, and require penalties for serious or repeat violations.

The APO is a tool that allows for a limited penalty amount and can only be used for situations in which corrective actions can be completed within 30 days. Additional compliance tools would give DNR new authority to enter into schedules of compliance, stipulation agreements, and other

actions to compel performance. These tools can be applied to situations that don't warrant a penalty, have prolonged corrective action timeframes, would benefit from negotiations with a permittee, or are so egregious they warrant higher penalties. This proposal would give DNR the authority to investigate, require tests and information to be provided, and then use the appropriate tool to achieve compliance with water appropriation laws, work in public waters, and other laws governing waters of the state.

The DNR also proposes that Duty of Candor language is enacted, prohibiting parties from knowingly providing false information or failing to provide information the person knows is necessary for the DNR to make decisions to administer these water permit programs and laws.

For repeated violations or other serious violations that may harm or have harmed natural resources or in which economic benefit was gained, DNR is seeking authority to assess civil penalties of up to \$10,000 per day per violation. These penalties would be assessed through tools, such as a stipulation agreement, that are not limited by a maximum penalty amount and that provide for a negotiated settlement with the violator.

This proposal allows DNR to refer willful or negligent violations of water programs to law enforcement agencies for investigation.

Fiscal impacts

This proposal does not have a fiscal impact. Penalties that may be collected must be credited to the water management account in the natural resources fund.

Statute proposal

Sec 1. Amends M.S. 103G.134 by adding language authorizing the DNR to conduct investigations, issue notices and enter into orders and agreements.

Sec 2. Amends M.S. 103G.146 by adding that a person must not knowingly make false statements or offer false information to the agency.

Sec 4. Amends M.S. 103G.299 by removing specific penalty amounts and increases the amount of penalty limit by inserting "up to \$40,000."

Sec 5. Amends 103G.299 by adding that penalties will not be forgiven for repeat or serious violations.

Sec 6. Amends 103G.2991 by adding language that allows the DNR to assess civil penalties of up to \$10,000 per day of violation and describes enforcement tool options.

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