

2023 Minnesota Enhanced Enforcement Authority (APO)



Related Facts

Minnesota has 85,000 miles of streams, rivers, and altered watercourses and 3.4 million acres of public water lakes and wetlands.

For the fiscal years 2020-2022, the DNR has averaged 833 public water permit decisions per year.

Summary

The Minnesota Department of Natural Resources (DNR) plays an important role in managing water resources through its water permit programs, information collection and analysis, education, technical assistance, and enforcement. Compliance with the state's water laws and DNR permits is necessary to protect and ensure the best use of Minnesota's water resources. Noncompliance with water laws or permit conditions threatens the sustainability of water resources on which Minnesotans depend on, and also disadvantages the vast majority of Minnesotans who do comply with our water laws.

DNR's current Administrative Penalty Order (APO) authority allows for the DNR to issue penalties up to \$20,000 to entities for appropriating water without the necessary permit, which is too low to deter noncompliance in some instances. The current authority also requires the DNR to forgive penalties, including for serious or repeat violations, if corrective actions are completed within the 30-day timeframe. Changes to the existing authorities will help DNR ensure our water supply is sustainable, protect public water resources, and to address noncompliance using a variety of compliance tools. The intent of this proposed policy change is to ensure the DNR has the compliance tools necessary to protect Minnesota's water resources for future generations of Minnesotans.



Proposal

This proposal will give DNR greater discretion for calculating penalties, increase the DNR's current APO cap to \$40,000, allow use of an APO for public water violations, and allow DNR to assess nonforgivable penalties for serious or repeat violations. An APO is an order that requires both corrective actions to resolve a noncompliance situation and may also impose a civil penalty.

In addition to a limited penalty amount, the current APO tool can only be used for situations in which corrective actions can be completed within 30 days. This proposal will 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 do not 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 will give DNR the authority to investigate, require tests and information 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.

This proposal also includes Duty of Candor language, which prohibits parties from knowingly providing false information or failing to provide



information the person knows is necessary for the DNR to administer water permits.

For repeat or 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 provides a negotiated settlement with the responsible party and would not be subject to the APO cap.

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

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