



# *Department of Natural Resources Fact Sheet*



## **2008 POLICY FACT SHEET Administrative Penalty Orders (APO)**

### **It is needed because**

This bill provides authority to the Commissioner to issue civil citations in the form of fines and/or orders for corrective action for egregious and repeat violations of Department of Natural Resources (DNR) water program laws and rules dealing with floodplain, shoreland, wild and scenic rivers, water appropriations, work in public waters, and aquatic plants. This Administrative Penalty Orders (APO) civil authority is in addition to existing enforcement mechanisms, and could reduce the need for criminal proceedings.

### **Major elements**

DNR needs more effective, flexible and efficient means of dealing with persons or organizations that willfully commit violations or very severely impact our water and related land resources. In some cases traditional enforcement mechanisms (cease and desist orders, restoration orders, or criminal citations) have not been effective because:

- ◆ Fines levied have not been sufficient to deter or change the behavior; or
- ◆ Courts are reluctant to address resource violations through criminal proceedings given higher priority criminal cases.

The Departments of Health and Agriculture, the Pollution Control Agency and the Board of Soil and Water Resources already have APO authority.

This proposal was developed using language from the Non-Felony Enforcement Advisory Committee that evaluated alternatives to traditional court actions about five years ago.

APO takes less time than going through administrative hearings or criminal proceedings. This process should reduce legal costs for all parties. APO recipients may request an expedited administrative hearing.

The maximum penalty under APO is \$10,000 for each violator for all violations identified in an inspection or review report. It is expected that there will be few orders at the maximum penalty amount. The actual amount of the penalty is based on several factors including the willfulness and the degree of damage to the water resources. All or part of this penalty can be forgiven if appropriate corrective actions are taken.

This bill allows the state to recover reasonable legal and enforcement expenses if the state prevails and the violation is proven to be willful, and also allows the recipient of an order to recover some attorney's fees if the order is dismissed.

### **Priority Setting / Project Locations**

The APO authority will be used on the most egregious or repeat violations statewide.

### **Key measures and outcomes**

DNR will develop an implementation plan defining how APO will be administered before the authority is implemented. This plan will be developed in lieu of rules and will be completed by December 31, 2008.

Success is not measured by the number of APO's written, but rather by compliance with the regulations.

### **For further information contact:**

Kent Lokkesmoe, Director DNR Waters  
(651) 259-5702

[kent.lokkesmoe@dnr.state.mn.us](mailto:kent.lokkesmoe@dnr.state.mn.us)

Steve Hirsch, Asst. Director Ecological Services  
(651) 259-5106

[steve.Hirsch@dnr.state.mn.us](mailto:steve.Hirsch@dnr.state.mn.us)