

114C.24 ENFORCEMENT.

Subdivision 1. **Deferred enforcement.** The state must defer for at least 90 days enforcement of an environmental requirement against the owner or operator of a facility if a report that meets the requirements of section 114C.22, subdivision 2, has been submitted to the commissioner. If the report includes a performance schedule, and the performance schedule is approved under section 114C.23, the state must defer enforcement for the term of the approved performance schedule unless the owner or operator of the facility fails to meet an interim performance date contained in the schedule.

Subd. 2. **Penalties waived.** If, within 90 days after the report required in section 114C.22, subdivision 2, is received by the commissioner or within the time specified in an approved performance schedule, the owner or operator of a facility corrects the violations identified in the audit or by the environmental management system and certifies to the commissioner that the violations have been corrected, the state may not impose or bring an action for any administrative, civil, or criminal penalties against the owner or operator of the facility for the reported violations.

Subd. 3. **Exceptions.** Notwithstanding subdivisions 1 and 2, the state may at any time bring:

- (1) a criminal enforcement action against any person who commits a violation under section 609.671;
- (2) a civil or administrative enforcement action, which may include a penalty, under section 115.071 or 116.072, against the owner or operator of a facility if:
 - (i) the owner or operator discloses a violation in the audit report required under section 114C.22, which (A) was part of an enforcement action initiated in the previous three years involving the imposition of a monetary penalty, or (B) occurred within one year after resolution of an enforcement action which did not include the imposition of a monetary penalty;
 - (ii) the owner or operator discloses a violation in the audit report required under section 114C.22 which was also disclosed in a previous audit report submitted within the last year;
 - (iii) a violation caused serious harm to, or presents an imminent and substantial endangerment to, human health or the environment;
 - (iv) a violation is of the specific terms of an administrative order, a judicial order or consent decree, a stipulation agreement, or a schedule of compliance;
 - (v) a violation has resulted in a substantial economic benefit which gives the violator a clear advantage over its business competitors; or
 - (vi) a violation is identified through a legally mandated monitoring or sampling requirement prescribed by statute, regulation, permit, judicial or administrative order, or consent agreement; or
- (3) an enforcement action against the owner or operator of a facility to enjoin an imminent and substantial danger under section 116.11.

Subd. 4. **Good faith consideration.** If the state finds that one of the conditions in subdivision 3 exists, the state must take into account the good faith efforts of the regulated entity to comply with environmental requirements in deciding whether to pursue an enforcement action, whether an enforcement action should be civil or criminal, and what, if any, penalty should be imposed. In determining whether the regulated entity has acted in good faith, the state must consider whether:

(1) when noncompliance was discovered, the regulated entity took corrective action that was timely under the circumstances;

(2) the regulated entity exercised reasonable care in attempting to prevent the violations and ensure compliance with environmental requirements;

(3) the noncompliance resulted in significant economic benefit to the regulated entity;

(4) prior to implementing the audit program or the environmental management system, the regulated entity had a history of good faith efforts to comply with the environmental requirements;

(5) the regulated entity demonstrated good faith efforts to achieve compliance since implementing an environmental auditing program or the environmental management system; and

(6) the regulated entity has demonstrated efforts to implement pollution prevention opportunities.

Subd. 5. Violations discovered by state. Nothing in sections 114C.20 to 114C.28 precludes the state from taking any enforcement action the state is authorized to take with respect to violations discovered by the state prior to the time a regulated entity has submitted to the commissioner a report that meets the requirements of section 114C.22, subdivision 2.

Subd. 6. False statements. (a) A person may not knowingly make a false material statement or representation in the report filed in accordance with section 114C.22, subdivision 2. As used in this subdivision, "knowingly" has the meaning given in section 609.671, subdivision 2.

(b) A person found to have knowingly made a false material statement or representation shall be subject to the administrative penalties and process set forth in section 116.072.

History: 1995 c 168 s 13; 1996 c 359 s 6-9; 1996 c 437 s 24; 1999 c 158 s 7-10; 2000 c 260 s 94; 2001 c 187 s 2