149A.06 ADMINISTRATIVE PENALTY ORDERS.

Subdivision 1. **Authorization.** The regulatory agency may issue an order requiring violations to be corrected and administratively assessing monetary penalties for violations of this chapter or rules, orders, stipulation agreements, settlements, compliance agreements, licenses, and permits adopted, enforced, or issued by the regulatory agency.

Subd. 2. **Contents of order.** An order assessing an administrative penalty under this section must include:

(1) a concise statement of the facts alleged to constitute a violation;

(2) a reference to the section of law, rule, order, stipulation agreement, settlement, compliance agreement, license, or permit that has been violated;

(3) a statement of the amount of the administrative penalty to be imposed and the factors upon which the penalty is based; and

(4) a statement of the right to request a hearing pursuant to sections 14.57 to 14.62.

Subd. 3. **Concurrent corrective order.** The regulatory agency may issue an order assessing an administrative penalty and requiring the violations cited in the order to be corrected within 30 calendar days from the date the order is received. The subject of the order shall provide to the regulatory agency before the 31st day after the order was received, information demonstrating that the violation has been corrected or that a corrective plan, acceptable to the regulatory agency, has been developed. The regulatory agency shall determine whether the violation has been corrected and notify the subject of the order of the regulatory agency's determination.

Subd. 4. **Penalty.** If the regulatory agency determines that the violation has been corrected or an acceptable corrective plan has been developed, the penalty may be forgiven, except, where there are repeated or serious violations, the regulatory agency may issue an order with a penalty that will not be forgiven after corrective action is taken. Unless there is a request for review of the order under subdivision 6 before the penalty is due, the penalty is due and payable:

(1) on the 31st calendar day after the order was received, if the subject of the order fails to provide information to the regulatory agency showing that the violation has been corrected or that appropriate steps have been taken toward correcting the violation;

(2) on the 20th day after the subject of the order receives the regulatory agency's determination that the information provided is not sufficient to show that the violation has been corrected or that appropriate steps have been taken toward correcting the violation; or

(3) on the 31st day after the order was received where the penalty is for repeated or serious violations and according to the order issued, the penalty will not be forgiven after corrective action is taken.

All penalties due under this section are payable to the commissioner of management and budget, state of Minnesota, and shall be credited to the state government special revenue fund in the state treasury.

Subd. 5. **Amount of penalty; considerations.** (a) The maximum amount of administrative penalty orders is $10,000 for each specific violation identified in an inspection, investigation, or compliance review.

(b) In determining the amount of the administrative penalty, the regulatory agency shall consider the following:

(1) the willfulness of the violation;

(2) the gravity of the violation;

(3) the history of past violations;

(4) the number of violations;

(5) the economic benefit gained by the person allowing or committing the violation; and

(6) other factors as justice may require, if the regulatory agency specifically identifies the additional factors in the regulatory agency's order.

(c) In determining the amount of a penalty for a violation subsequent to an initial violation under paragraph (a), the regulatory agency shall also consider:

(1) the similarity of the most recent previous violation and the violation to be penalized;

(2) the time elapsed since the last violation; and

(3) the response of the subject of the order to the most recent previous violation.

Subd. 6. **Request for hearing; hearing; and final order.** A request for hearing must be in writing, delivered to the regulatory agency by certified mail within 20 calendar days after the receipt of the order, and specifically state the reasons for seeking review of the order. The regulatory agency must initiate a hearing within 30 calendar days from the date of receipt of the written request for hearing. The hearing shall be conducted pursuant to the contested case procedures in sections 14.57 to 14.62. No earlier than ten calendar days after and within 30 calendar days of receipt of the presiding administrative law judge's report, the regulatory agency shall, based on all relevant facts, issue a final order modifying, vacating, or making the original order permanent. If, within 20 calendar days of receipt of the original order, the person that is the subject of the order fails to request a hearing in writing, the order becomes the final order of the regulatory agency.

Subd. 7. **Review of final order and payment of penalty.** Once the regulatory agency issues a final order, any penalty due under that order shall be paid within 30 calendar days after the date of the final order, unless review of the final order is requested. The final order of the regulatory agency may be appealed in the manner prescribed in sections 14.63 to 14.69. If the final order is reviewed and upheld, the penalty shall be paid 30 calendar days after the date of the decision of the reviewing court. Failure to request an administrative hearing pursuant to subdivision 6 shall constitute a waiver of the right to further agency or judicial review of the final order.

Subd. 8. **Reinspections and effect of noncompliance.** If upon reinspection, or in the determination of the regulatory agency, it is found that any deficiency specified in the order has not been corrected or an acceptable corrective plan has not been developed, the person that is subject to the order is in noncompliance. The regulatory agency shall issue a notice of noncompliance and may impose any additional remedy available under this chapter.

Subd. 9. **Enforcement.** The attorney general may proceed on behalf of the regulatory agency to enforce penalties that are due and payable under this section in any manner provided by law for the collection of debts.

Subd. 10. **Revocation; suspension; denial of license; permit; or registration.** Failure to pay penalties owed under this section constitutes grounds for the revocation or suspension of or refusal to reissue a license or permit issued by the regulatory agency under this chapter.

Subd. 11. **Cumulative remedy.** The authority of the regulatory agency to issue an administrative penalty order is in addition to other lawfully available remedies.

Subd. 12. **Mediation.** In addition to review under subdivision 6, the regulatory agency is authorized to enter into mediation concerning an order issued under this section if the regulatory agency and the subject of that order agree to mediation.

History: *1997 c 215 s 10; 2001 c 171 s 13; 2003 c 112 art 2 s 50; 2009 c 101 art 2 s 109*