

Legislature Expands the MPCA's Enforcement Authorities

by Brian Bell

In the 2024 Minnesota legislative session, the Legislature granted the Minnesota Pollution Control Agency (MPCA) expanded enforcement powers (Enforcement Legislation or Legislation), including clarified powers to shut down businesses, increased penalty caps, and the ability to recover oversight costs as part of negotiated settlements. [1] The Enforcement Legislation comes after several high-profile incidents in which environmental activists claimed the MPCA failed to effectively enforce Minnesota's environmental laws. Although regulated parties should not expect a wave of enforcement cases stemming solely from the Legislation, the MPCA's clarified authority to shut facilities down could have a profound effect on Minnesota businesses that become targets of the MPCA's enforcement authority. Likewise, the regulated community could see a shift away from administrative orders to emergency orders, which can become effective immediately without notice or hearing.

Clarified Emergency Powers and Increased Ability to Shut Down Operations

Perhaps the most significant change is to the clarification of the MPCA's power to issue emergency orders and require the immediate cessation of operations. [2] Lawmakers spelled out specific instances in which the MPCA can exercise emergency powers and detailed certain actions the MPCA may take.

Before the Enforcement Legislation, Minnesota Statutes allowed the MPCA to order the immediate cessation of operations based on the undefined "imminent and substantial danger" standard. The Enforcement Legislation added the defined "other acts of concern" standard to the circumstances under which the MPCA may exercise emergency powers. Those "other acts of concern" include:

- Falsification of records,
- A history of noncompliance with schedules of compliance or terms of a stipulation agreement,
- Chronic or substantial permit violations, or
- Operating with or without a permit where there is evidence of danger to the health or

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welfare of the people of the state or evidence of environmental harm.[3]

Lawmakers outlined the MPCA's emergency powers available upon a finding that a party engaged in one or more "other acts of concern." [4] Specifically, if an "other act of concern" is implicated, the MPCA may:

- Suspend or revoke a permit,
- Issue an order to cease operations,
- Require financial assurances,
- Reopen and modify a permit to require additional terms,
- Require additional agency oversight, or
- Pursue other actions deemed necessary to abate pollution and protect human health.

[5]

Historically, administrative orders under Minn. Stat. § 116.072 have been the MPCA's preferred enforcement method. But administrative orders require 30 days' notice before becoming effective. Administrative orders also place the burden on the MPCA to defend its actions if appealed to district court. In contrast, the MPCA may issue an emergency order without notice and without hearing. [6] The increased clarity regarding emergency powers may result in a shift away from administrative orders toward emergency orders.

Additionally, lawmakers added provisions detailing that a court may issue an injunction requiring a regulated party to immediately cease operation or activities "until such time as the MPCA has reasonable assurance that renewed operation or activities will not violate" environmental laws. [7] Similar to emergency orders, this new language will give the MPCA more confidence in pursuing injunctive relief to require cessation of operations.

Increased Monetary Penalties

The Enforcement Legislation also increases the cap on monetary penalties that can be assessed under an administrative penalty order (APO). The previous cap on penalties was \$20,000. The MPCA or a county board may now assess a penalty up to \$25,000 under an APO. [8]

Lawmakers also included a provision requiring heightened penalties for a repeat violation. [9] Any penalty for a "repeated violation" within three years of the previous one, must be at least "ten percent higher" than the previous penalty. [10] For example, if a party is assessed a \$5,000 penalty, any penalty for a subsequent violation within three years must be at least \$5,500 but could be as high as \$25,000.

The Enforcement Legislation also increases the penalty a court may impose for a violation of most environmental statutes from \$10,000 per day to \$15,000 per day; [11] however, the Legislation increases the court-imposed penalty for hazardous waste violations from \$25,000 per day to \$30,000 per day. [12]

Changes to Settlement Agreement Authority

The changes in the Enforcement Legislation also implicate settlement agreements. The

MPCA may negotiate a provision in a settlement agreement that requires the regulated party to pay for all oversight costs if those oversight costs exceed \$25,000.^[13] The potential oversight costs covered by the statute are comprehensive and include:

- Inspections,
- Sampling,
- Monitoring,
- Modeling,
- Risk assessment,
- Permit writing,
- Engineering review, and
- Economic analysis and review.^[14]

The grant of this authority was necessary because Minnesota law generally requires funds received by the MPCA in settling an enforcement action to be paid to the environmental fund.^[15]

Lawmakers also added a provision allowing the MPCA to deny an extension for time under an agreement if the extension is based on “increased costs of compliance.”^[16] This subdivision applies even if a party to the agreement asserts good cause or force majeure.^[17]

Conclusion

The changes to the MPCA’s enforcement authority may result in increased reliance on emergency powers to require the immediate cessation of operations without a hearing. If you find yourself the subject of an MPCA investigation or enforcement action, reach out to the author for counsel regarding this issue.

^[1] Minn. Law ch. 116, art. 2, secs. 14-18 (to be codified at Minn. Stat. ch. 116).

^[2] Minn. Law ch. 116, art. 2, sec. 18 (to be codified at Minn. Stat. ch. 116).

^[3] *Id.* (to be codified at Minn. Stat. § 116.11, subd. 2(a)(1-4)).

^[4] *Id.*

^[5] *Id.* (to be codified at Minn. Stat. § 116.11, subd. 2(b)(1-6)).

^[6] Minn. Stat. § 116.11, subd. 1.

^[7] Minn. Law ch. 116, art. 2, sec. 4 (to be codified at Minn. Stat. § 115.071, subd. 4).

^[8] Minn. Law ch. 116, art. 2, sec. 16 (to be codified at Minn. Stat. § 116.072, subd. 2).

Furthermore, the APO statute now *requires* the MPCA or county board to consider certain factors in assessing a penalty, including: (1) the willfulness of the violation, (2) the

gravity of the violation, and (3) the number of violations. *Id.* The APO statute previously just authorized the MPCA to consider those factors but did not require consideration of those factors. See Minn. Stat. § 116.072, subd. 2.

[9] Minn. Law ch. 116, art. 2, sec. 17 (to be codified at Minn. Stat. § 116.072, subd. 5)

[10] *Id.*

[11] Minn. Law ch. 116, art. 2, sec. 18 (to be codified at Minn. Stat. § 115.071, subd 3).

[12] *Id.*

[13] Minn. Law ch. 116, art. 2, secs. 1 and 14 (to be codified at Minn. Stat. §§ 115.03, subd. 1; 116.07, subd 9)

[14] *Id.*

[15] See Minn. Stat. § 115.073.

[16] Minn. Law ch. 116, art. 2, secs. 5, 15 (to be codified at Minn. Stat. §§ 115.071, subd. , 116.07, subd. 9a).

[17] *Id.*