

**DAKOTA COUNTY ADMINISTRATIVE PENALTY ORDERS ORDINANCE**

The County Board of Dakota County, Minnesota ordains:

**ARTICLE I  
PURPOSE AND AUTHORITY**

This Ordinance is enacted pursuant to the authority contained in Minn. Stat. § 116.072 for the purpose of allowing the Dakota County Board to issue Administrative Penalty Orders for violations of Dakota County ordinances adopted under Minnesota Statutes Chapter 115A or Minn. Stat. §§ 400.16, 400.161, or 473.811 that regulate Solid and/or Hazardous Waste and any standards, limitations, or conditions established in a County license issued pursuant to these ordinances. The authority to issue Administrative Penalty Orders under this Ordinance shall begin on August 1, 1996.

**ARTICLE II  
DEFINITIONS**

**Section 2.01. Definitions Incorporated by Reference**

The terms used in this Ordinance shall have the same meanings as contained in Dakota County Ordinance 110, Solid Waste Management, and Dakota County Ordinance 111, Hazardous Waste Regulation, that may be enforced under this Dakota County Administrative Penalty Orders Ordinance, unless a different definition is provided in this Ordinance.

**Section 2.02. Defined Terms**

- (a) "Administrative Penalty Order" or "Order" means an order issued pursuant to this Administrative Penalty Orders Ordinance that assesses a penalty and may require that the violations cited in the Order be corrected.
- (b) "Hazardous Waste" shall have the meaning given it in Minn. Stat. § 116.06, subd. 11.
- (c) "Letters or Warnings" means a written document issued by the Department following an inspection or other compliance review that indicates a violation has occurred, the actions necessary to correct the violation and the date within which the violation must be corrected.

- (d) "Notice of Violation" means a written document issued by the Department or County Attorney that contains specific findings and conclusions, cites all violations and necessary corrective actions, requires that violations be corrected within a specified period of time, and meets the requirements of Section 5.03, if pertaining to a Solid Waste violation.
- (e) "Person" shall have the meaning given it in Minn. Stat. § 116.06, subd. 17.
- (f) "Solid Waste" shall have the meaning given it in Minn. Stat. § 116.06, subd. 22.

### ARTICLE III

## ISSUANCE OF ADMINISTRATIVE PENALTY ORDERS FOR VIOLATIONS RELATING TO HAZARDOUS WASTE

### **Section 3.01. Procedures**

The procedures set forth in Article III shall apply to issuance of Administrative Penalty Orders for violations of ordinances relating to Hazardous Waste and any standards, limitations, or conditions established in a County license issued pursuant to Dakota County Ordinance No. 111, Hazardous Waste Regulation.

### **Section 3.02. Amount of Penalty; Considerations**

- (a) The County Board may issue an Order assessing a penalty up to \$10,000 for all violations identified during an inspection or other compliance review.
- (b) In determining the amount of a penalty the County Board may consider:
  - (1) the willfulness of the violation;
  - (2) the gravity of the violation, including damage to humans, animals, air, water, land, or other natural resources of the state;
  - (3) the history of past violations;
  - (4) the number of violations;
  - (5) the economic benefit gained by the Person by allowing or committing the violation; and
  - (6) other factors as justice may require, if the County Board specifically identifies the additional factors in the County Board's Order.
- (c) For a violation after an initial violation, the County Board shall, in determining the amount of a penalty, consider the following factors in addition to those contained in Section 3.02(b):
  - (1) similarity of the most recent previous violation and the violation to be penalized;
  - (2) time elapsed since the last violation;
  - (3) number of previous violations; and
  - (4) response of the Person to the most recent previous violation identified.

### **Section 3.03. Contents of Order**

An Order assessing an administrative penalty under this Ordinance shall include:

- (1) a concise statement of the facts alleged to constitute a violation;
- (2) a reference to the section of the statute, rule, ordinance, variance, order, stipulation agreement, or term or condition of a permit or license 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 Person's right to review of the Order.

### **Section 3.04. Order**

- (a) The County Board may issue an Order assessing a penalty and requiring the violations cited in the Order to be corrected within 30 calendar days from the date the Order is received.
- (b) The Person to whom the Order was issued shall provide information to the County Board before the 31st day after the Order was received demonstrating that the violation has been corrected or that appropriate steps toward correcting the violation have been taken. The County Board shall determine whether the violation has been corrected and notify the Person subject to the Order of the County Board's determination.

### **Section 3.05. Forgivable Penalty**

Except as provided in Section 3.06, if the County Board determines that the violation has been corrected or appropriate steps have been taken to correct the action, the penalty must be forgiven. Unless the Person requests review of the Order under Section 5.01 or 5.02 before the penalty is due, the penalty in the Order is due and payable;

- (1) on the 31st day after the Order was received, if the Person subject to the Order fails to provide information to the County Board showing that the violation has been corrected or that appropriate steps have been taken to correct the violation; or
- (2) on the 20th day after the Person receives the County Board's determination under Section 3.04(b) if the Person subject to the Order has provided information to the County Board that the County Board determines is not sufficient to show the violation has been corrected or that appropriate steps have been taken to correct the violation.

**Section 3.06. Non-forgivable Penalty**

For a repeated or serious violation, the County Board may issue an Order with a penalty that will not be forgiven after the corrective action is taken. The penalty is due by 31 days after the Order was received unless review of the Order under Article V of this Ordinance has been sought.

**ARTICLE IV  
ISSUANCE OF ADMINISTRATIVE PENALTY ORDERS FOR VIOLATIONS  
RELATING TO SOLID WASTE**

**Section 4.01. County Penalty Authority for Solid Waste Violations**

The following procedures shall apply to issuance of Administrative Penalty Orders for violations of ordinances relating to Solid Waste and any standards, limitations, or conditions established in a County license issued pursuant to Dakota County Solid Waste Ordinance, No. 110, Solid Waste Management. The County Board may issue an Order and assess a penalty for all violations relating to Solid Waste that are identified during an inspection or other compliance review in accordance with the provisions of Article IV.

**Section 4.02. Letters or Warnings**

If a violation is identified by the Department during an inspection or other compliance review, the Department shall issue a Letter or Warning in writing, informing the Person of such violation before the County may issue a Notice of Violation or Administrative Penalty Order.

**Section 4.03. Notice of Violation**

Following the issuance of a Letter or Warning, the County Attorney or the Department may issue a Notice of Violation for violations identified during the inspection or other compliance review. No penalty shall be assessed in the Notice of Violation. The Notice of Violation shall require that violations cited in the Notice of Violation be corrected within 30 calendar days from the date the Notice of Violation is received. The Notice of Violation shall further require the Person to whom the Notice of Violation is issued to provide information to the Department before the 31st day after the Notice of Violation was received demonstrating that the violation has been corrected or that appropriate steps to correct the violation have been taken. The Department shall determine whether the violation has been corrected and notify the Person subject to the Notice of Violation of the Department's determination.

#### **Section 4.04. Order**

- (a) The County Board may issue an Order as described in Section 3.04 and assess a penalty that may not exceed \$2,000 if the County Board finds that:
  - (1) the violations cited in the Notice of Violation are not corrected;
  - (2) appropriate steps have not been taken to correct the violations cited in the Notice of Violation; or
  - (3) the gravity of the violations and their potential for damage to, or actual damage to, public health or the environment are such that action under this paragraph is warranted.
- (b) The County Board may issue an Order as described in Section 3.04 and assess a penalty that may not exceed \$5,000 if the County Board finds that:
  - (1) the violations cited in the Order issued under Section 4.04(a) are not corrected;
  - (2) appropriate steps have not been taken to correct the violations cited in the Order issued under Section 4.04(a); or
  - (3) the gravity of the violations and their potential for damage to, or actual damage to, public health or the environment are such that action under this paragraph is warranted.

#### **Section 4.05. Amount of Penalty**

- (a) In determining the amount of a penalty the County Board may consider:
  - (1) the willfulness of the violation;
  - (2) the gravity of the violation, including damage to humans, animals, air, water, land, or other natural resources of the state;
  - (3) the history of past violations;
  - (4) the number of violations;
  - (5) the economic benefit gained by the Person by allowing or committing the violation; and
  - (6) other factors as justice may require, if the County Board specifically identifies the additional factors in the County Board's Order.
- (b) For a violation after an initial violation, the County Board shall, in determining the amount of a penalty, consider the following factors in addition to those contained in Section 4.05(a):
  - (1) similarity of the most recent previous violation and the violation to be penalized;
  - (2) time elapsed since the last violation;
  - (3) number of previous violations; and
  - (4) response of the Person to the most recent previous violation identified.

**Section 4.06. Forgivable Penalty**

Except as provided in Section 4.07, if the County Board determines that the violation has been corrected or appropriate steps have been taken to correct the action, the penalty must be forgiven. Unless the Person requests review of the Order under Section 5.01 or 5.02 before the penalty is due, the penalty in the Order is due and payable;

- (1) on the 31st day after the Order was received, if the Person subject to the Order fails to provide information to the County Board showing that the violation has been corrected or that appropriate steps have been taken to correct the violation; or
- (2) on the 20th day after the Person receives the County Board's determination under Section 3.04(b) if the Person subject to the Order has provided information to the County Board that the County Board determines is not sufficient to show the violation has been corrected or that appropriate steps have been taken to correct the violation.

**Section 4.07. Non-forgivable Penalty**

Notwithstanding the provisions in Section 4.03 and 4.04, for a repeated or serious violation, the County Board may issue an Order with a penalty that will not be forgiven after the corrective action is taken. The penalty is due within 31 days after the Order was received unless review of the order under Article V of this Ordinance has been sought.

**ARTICLE V**

**REVIEW OF ADMINISTRATIVE PENALTY ORDERS**

**Section 5.01. Expedited Administrative Hearing**

- (a) Within 30 days after receiving an Order or within 20 days after receiving notice that the County Board has determined that a violation has not been corrected or appropriate steps have not been taken, the Person subject to an Order under this Ordinance may request an expedited hearing, utilizing the procedures of Minnesota Rules, parts 1400.8510 to 1400.8612, to review the County Board's action. The hearing request must specifically state the reasons for seeking review of the Order. The Person to whom the Order is directed and the County Board are the parties to the expedited hearing. The County Board must notify the Person to whom the Order is directed of the time and place of the hearing at least 20 days before the hearing. The expedited hearing must be held within 30 days after a request for hearing has been filed with the County Board unless the parties agree to a later date.
- (b) All written arguments must be submitted within ten days following the close of the hearing.

- (c) The administrative law judge shall issue a report making recommendations about the County Board's action to the County Board within 30 days following the close of the record. The administrative law judge may not recommend a change in the amount of the proposed penalty unless the administrative law judge determines that, based on the factors in Section 3.02 or 4.05, the amount of the penalty is unreasonable.
- (d) If the administrative law judge makes a finding that the hearing was requested solely for purposes of delay or that the hearing request was frivolous, the County Board may add to the amount of the penalty the costs charged to the County by the offices of administrative hearings for the hearing.
- (e) If a hearing has been held, the County Board may not issue a final Order until at least five days after receipt of the report of the administrative law judge. The Person to whom an Order is issued may, within those five days, comment to the County Board on the recommendations and the County Board will consider the comments. The final Order may be appealed in the manner provided in Minn. Stat. §§ 14.63 to 14.69.
- (f) If a hearing has been held and a final Order issued by the County Board, the penalty shall be paid by 30 days after the date the final Order is received unless review of the final Order is requested under Minn. Stat. §§ 14.63 to 14.69. If review is not requested or the Order is reviewed and upheld, the amount due is the penalty, together with interest accruing from 31 days after the original Order was received at the rate established in Minn. Stat. § 549.09.

**Section 5.02. District Court Hearing**

- (a) Within 30 days after the receipt of an Order from the County Board or within 20 days of receipt of notice that the County Board has determined that a violation has not been corrected or appropriate steps have not been taken, the Person subject to an Order under this Ordinance may file a petition in district court for review of the Order in lieu of requesting an administrative hearing under Section 5.01. The petition shall be filed with the court administrator with proof of service on the County Board. The petition shall be captioned in the name of the Person making the petition as petitioner and the County Board as respondent. The petition shall state with specificity the grounds upon which the petitioner seeks rescission of the Order, including the facts upon which each claim is based.
- (b) At trial, the County Board must establish by a preponderance of the evidence that a violation subject to this Ordinance occurred, the petitioner is responsible for the violation, a penalty assessed as provided for under Sections 3.06, 4.07 , and 6.01(d) is justified by the violation, and the factors listed in Section 3.02 or 4.05 were considered when the penalty amount was determined and the penalty amount is justified by those factors.

**Section 5.03. Mediation**

In addition to review under Section 5.01 or 5.02, the County Board is authorized to enter into mediation concerning an Order issued under this Ordinance if the County Board and the Person to whom the Order is issued both agree to mediation.

**ARTICLE VI  
ENFORCEMENT, REMEDIES AND GENERAL PROVISIONS**

**Section 6.01. Enforcement**

- (a) The County Attorney, on behalf of the County, may proceed to enforce penalties that are due and payable under this Ordinance in any manner provided by law for the collection of debts.
- (b) The County Attorney may petition the district court to file the Administrative Penalty Order as an Order of the court. At any court hearing, the only issues parties may contest are procedural and notice issues. Once entered, the Administrative Penalty Order may be enforced in the same manner as a final judgment of the district court.
- (c) If a Person fails to pay the penalty, the County Attorney may bring a civil action in district court seeking payment of the penalties, injunctive, or other appropriate relief including monetary damages, attorney fees, costs, and interest.
- (d) Interest at the rate established in Minn. Stat. § 549.09 begins to accrue on penalties under this Ordinance on the 31st day after the Order with the penalty was received.
- (e) The County Board may delegate to the Department ministerial acts under this Ordinance.

**Section 6.02. Revocation and Suspension of License**

The failure of a Person to pay a penalty owed under this Ordinance shall constitute sufficient grounds for the County Board to revoke or refuse to reissue or renew a license issued by the County.

**Section 6.03. Cumulative Remedy**

The authority of the County Board to issue an Order assessing penalties is in addition to other remedies available under statutory or common law, except that the County Board may not seek civil penalties under any other provision of law for the violations covered by the Administrative Penalty Order. The payment of a penalty does not preclude the use of other enforcement provisions, under which penalties are not assessed, in connection with the violation for which the penalty was assessed.



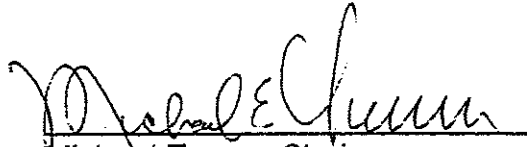
**Section 6.04. Use of Penalties Collected**

Monetary penalties collected pursuant to this Ordinance must be used by the County Board to manage Solid Waste or Hazardous Waste.

Passed by the Board of County Commissioners of Dakota County this 16th day of April 1996.

ATTEST:  
COUNTY OF DAKOTA STATE OF MINNESOTA

  
Brandt Richardson  
Dakota County Administrator

  
Michael Turner, Chairman  
Dakota County Board of Commissioners

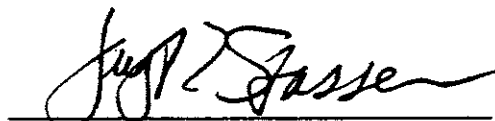
DATE: 5/14/96

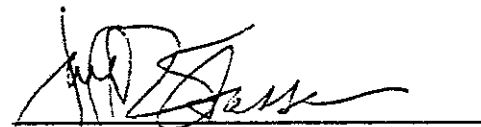
DATE: 5-14-96

ATTEST: Mary S. Scheide 5-24-96  
Mary S. Scheide  
Clerk to the Board

Approved as to form

Approved as to Execution

  
Jay R. Stassen  
Assistant County Attorney

  
Jay R. Stassen  
Assistant County Attorney

DATE: May 6, 1996

DATE: May 17, 1996

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**BOARD OF COUNTY COMMISSIONERS  
DAKOTA COUNTY, MINNESOTA**

April 16, 1996

Resolution No. 96-237

Motion by Commissioner Maher

Second by Commissioner Krause

**Adoption of Administrative Penalty Orders Ordinance**

WHEREAS, Minnesota Statutes, Section 116.072, provides that a County Board of any Minnesota county may adopt an ordinance containing procedures for the issuance of administrative penalty orders (APO) and may issue orders beginning August 1, 1996; and

WHEREAS, Minnesota Statutes, Section 116.072, requires counties to work cooperatively with the Minnesota Pollution Control Agency (MPCA) to develop a model ordinance and an implementation plan for the orders that substantially conform to the model ordinance developed by the counties and the MPCA; and

WHEREAS, the member counties of the Solid Waste Management Coordinating Board worked with the Minnesota Pollution Control Agency to develop a model ordinance and a model implementation plan as required by Minnesota Statutes, Section 116.072; and

WHEREAS, the Solid Waste Management Coordinating Board approved a Model APO Ordinance, recommending its adoption by member counties, and a model implementation plan; and

WHEREAS, the Dakota County Board desires to adopt a new county ordinance providing for the use of Administrative Penalty Orders for violations of its Solid Waste and Hazardous Waste ordinances and licenses; and

WHEREAS, the Dakota County Board held a public hearing at 9 a.m. on April 16, 1996 in the Board Room, Dakota County Administration Center, 1590 W. Highway 55, Hastings, Minnesota, for the purpose of receiving comments on the adoption of an Administrative Penalty Orders Ordinance; and

WHEREAS, notice of the public hearing was published in the official county newspaper on April 4, 1996 and April 11, 1996.

NOW, THEREFORE, BE IT RESOLVED, That the Dakota County Board of Commissioners hereby adopts the Administrative Penalty Orders Ordinance presented to the County Board on April 16, 1996, effective August 1, 1996.

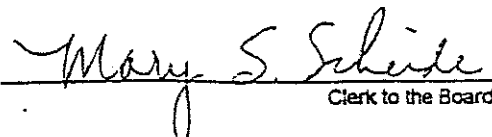
**STATE OF MINNESOTA**

County of Dakota

| YES      |              | NO       |       |
|----------|--------------|----------|-------|
| Harris   | <u>  X  </u> | Harris   | _____ |
| Maher    | <u>  X  </u> | Maher    | _____ |
| Bataglia | <u>  X  </u> | Bataglia | _____ |
| Mueller  | <u>  X  </u> | Mueller  | _____ |
| Turner   | <u>  X  </u> | Turner   | _____ |
| Krause   | <u>  X  </u> | Krause   | _____ |
| Loeding  | <u>  X  </u> | Loeding  | _____ |

I, Mary S. Scheide, Clerk to the Board of the County of Dakota, State of Minnesota, do hereby certify that I have compared the foregoing copy of a resolution with the original minutes of the proceedings of the Board of County Commissioners, Dakota County, Minnesota, at their session held on the 16th day of April 1996, now on file in the County Administration Department, and have found the same to be a true and correct copy thereof.

Witness my hand and official seal of Dakota County this 17th day of April 1996.

  
 Clerk to the Board

# Farmington Independent

## AFFIDAVIT OF PUBLICATION

Kristin Franck, being duly sworn, on oath says that she is an authorized agent and employee of the publisher of the newspaper, known as *The Farmington Independent*, and has full knowledge of the facts which are stated below:

(A) The newspaper has complied with all of the requirements constituting qualification as a legal newspaper, as provided by Minnesota Statutes 331A.02, 331A.07 and other applicable laws, as amended.

(B) The printed notice of Public Hearing

which is attached, was cut from the columns of said newspaper, and was printed and published once each week for 2 successive weeks; it was first published on Thursday, the 14th day of April, 1996 and was thereafter printed and published on every Thursday, to and including Thursday, the 15th day of April, 1996; and printed below is a copy of the lower case alphabet from A to Z, both inclusive, which is hereby acknowledged as being the size and kind of type used in the composition and publication of the notice:

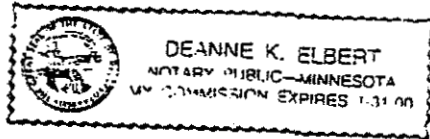
abcdefghijklmnopqrstuvwxyz

By: Kristin Franck  
 Title: Typesetter

Subscribed and sworn to before me on this 11th day of April, 1996.

Deanne K. Elbert  
 Notary Public

AFFIDAVIT.



### Notice of Public Hearing

Notice is hereby given that the Dakota County Board will hold a public hearing at 9:00 a.m. on April 16, 1996, in the County Board Room, Dakota County Administration Center, 1590 West Highway 55, Hastings, Minnesota for the purpose of receiving comments on the proposed adoption of an Administrative Penalty Order Ordinance. This Ordinance provides for the use of Administrative Penalty Orders (APOs) for violations of County solid and hazardous waste ordinances and licenses, effective August 1, 1996.

The proposed Ordinance provides that the Dakota County Board can issue APOs requiring that violations of County Ordinance No. 110, Solid Waste Management, or Ordinance No. 111, Hazardous Waste Regulation, or licenses issued pursuant to these ordinances, be corrected and assessing a monetary penalty that may be forgiven, or not be forgiven depending on the seriousness or repetitiveness of the violation and the violator's response to the APO. For most APOs, the penalty must be forgiven if the violator corrects the violation within 30 days of issuance of the APO. The County Board itself must act to issue the APO.

A copy of the Ordinance can be obtained from the County Environmental Management Department, (612) 891-7555. Agencies, groups or persons attending the public hearing shall have the right to provide written or oral comments. Prior to the public hearing, written comments may be submitted to the Dakota County Environmental Management Department, 14935 Galaxie Ave., Apple Valley, Minnesota 55104. 44-411

RECEIVED  
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