

ORDINANCE NO. 48

ADMINISTRATIVE PENALTY ORDER ORDINANCE

The County Board of Commissioners of St. Louis County, Minnesota, ordains:

ARTICLE I

PURPOSE AND AUTHORITY

This ordinance is enacted pursuant to the authority contained in Minnesota Statute § 116.072 for the purpose of allowing the St. Louis County Board of Commissioners to issue Administrative Penalty Orders for violations of St. Louis County ordinances adopted under Minnesota Statutes Chapter 115A or Minnesota Statutes § 400.16 or 400.161 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 September 10, 1996. This authority ends on August 1, 1999, if not extended by the Legislature.

ARTICLE II

DEFINITIONS

Section 2.01. Definitions Incorporated by Reference

The terms used in this ordinance shall have the same meanings as contained in the St. Louis County ordinances regulating solid and hazardous waste that may be enforced under this 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 Order Ordinance that assesses a penalty and may require that the violations cited in the Order be corrected.
- b. "Department" means the Solid Waste Department.
- c. "Hazardous Waste" shall have the meaning given it in Minnesota Statute § 116.06, subd. 11.
- d. "Notice of Warning" means a written document issued by the Department following an inspection or other compliance review that indicates a violation of this Ordinance has occurred, the actions necessary to correct the violation, and the date by which the violation must be corrected.
- e. "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.
- f. "Person" shall have the meaning given it in Minnesota Statute § 116.06, subd. 17.
- g. "Solid Waste" shall have the meaning given it in Minnesota Statute § 116.06, subd.

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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 St. Louis County hazardous waste ordinances.

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 an Order

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

- a. A concise statement of the facts alleged to constitute a violation;
- b. 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 violation;
- c. A statement of the amount of the administrative penalty to be imposed and the factors upon which the penalty is based; and
- d. 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:

- a. 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
- b. 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 31 days after the Order was received unless review of the Order under Article V of this ordinance has been sought.

Section 3.07. Compliance Verification

If the Department or the County Board determines that a violation has been corrected or that appropriate steps have been taken to correct the violation within the specified time period, a Notice of Compliance will be issued to the Person verifying that the violation has been corrected.

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

Section 4.01. Procedures

The procedures set forth in Article IV 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 St. Louis County solid waste ordinances. 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. Notice of Warning

If a violation is identified by the Department during an inspection or other compliance review, the Department shall issue a Notice of Warning in writing informing the Person of such violation before the County may issue a Notice of Violation or Administrative Penalty Order. This Notice of Warning documents the conditions that constitute a violation, states the corrective actions necessary to correct the violation, and establishes a time period to complete the corrective actions not to exceed 90 days.

Section 4.03. Notice of Violation

At the end of the corrective period, the County Attorney or the Department may issue a Notice of Violation for violations identified during the inspection or other compliance review if corrective actions have not been taken. No penalty shall be assessed in the Notice of Violation. The Notice of Violation shall require that violations cited be corrected within 30 calendar days from the date the Notice of Violation was received. The Notice of Violation shall further require the Person 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 of the Department's determination.

Section 4.04. Order

If appropriate corrective actions have not been taken at the end of the 30-day period, the County Board may:

- a. 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. 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 violation, 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:

- a. 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
- b. 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 31 days after the Order was received unless review of the Order under Article V of this ordinance has been sought.

Section 4.08. Compliance Verification

If the Department or the County Board determines that a violation has been corrected or that appropriate steps have been taken to correct the violation within the specified time period, a Notice of Compliance will be issued to the Person verifying that the violation has been corrected.

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 the 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 Office 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 Minnesota Statutes § 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 before the 31st day after the date the final Order is received unless review of the final Order is requested under Minnesota Statutes § 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 Minnesota Statute § 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 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 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 Minnesota Statute § 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 Permit

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 permit or 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 and hazardous waste.

EFFECTUATION

Section 6.04. Effectuation

That this ordinance shall take effect on September 10, 1996, after publication in the official newspaper(s) of St. Louis County as provided by Minnesota Statutes and upon its adoption by the St. Louis County Board of Commissioners.

A public hearing was held by the St. Louis County Board of Commissioners on September 3, 1996.

Commissioner Mattson moved the adoption of this ordinance, Commissioner Raukar duly seconded the motion, and the ordinance was adopted on the following vote:

Yeas: Commissioners Mattson, Krueger, Kron, Forsman, Lepak, Raukar, and
Chair Prebich - 7
Nays: None
Absent: None

Liz Prebich
Chair of the County Board

Certified as a complete and
accurate copy of Ordinance
No. 48.

Gordon D. McFaul
County Auditor

Attest: Karen Erickson
Clerk of the County Board

Passed and approved by the St. Louis County Board on the 3rd day of September, 1996.