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Overview

This bill would give authority to the commissioner of natural resources to use administrative penalty orders for certain violations of the state's water and related laws and rules. The department is requesting the authority to address egregious and repeat violations with more efficiency and flexibility, and hopes to reduce the need for criminal proceedings.

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- 1 Administrative penalty orders.** Adds § 103G.252. Allows the commissioner of natural resources to use administrative penalty orders for certain violations involving the state's water and related laws and rules. States that the maximum amount of an administrative penalty order is \$10,000 for each violator.
- 2 Administrative penalty order procedure.** Adds § 103G.253.

Subd. 1. Contents of order. Establishes minimum requirements for an administrative penalty order under this act.

Subd. 2. Amount of penalty; considerations. Provides guidance to the commissioner in determining the amount or the requirements of an administrative penalty order.

Subd. 3. Corrective order. Allows the commissioner to issue a corrective order. Requires a person issued a corrective order, within 30 days of receiving the order, to

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provide the commissioner with information demonstrating that the violation has been corrected or that a corrective plan has been developed. Requires the commissioner to make a determination on whether the violation has been corrected or whether the plan is acceptable and notify the person issued the corrective order.

Subd. 4. Penalty. Allows the commissioner to forgive the monetary penalty for a violation when the violation has been corrected or when a corrective plan has been developed, except for orders for serious and repeated violations issued where the monetary penalty is not forgivable. States that the monetary penalty is due on the 31st day after the order was received unless an expedited administrative hearing (as provided in subdivision 5) has been requested. States that interest begins to accrue on penalties on the 31st day after the order was received.

Subd. 5. Expedited administrative hearing. Paragraph (a) allows a person to request an expedited administrative hearing and establishes a process for requesting the hearing. Requires the commissioner to notify the person of the time and place of the hearing at least 15 days before the hearing, and requires that the hearing be held within 30 days after receiving the request unless otherwise agreed to.

Paragraph (b) requires all written arguments for the hearing to be submitted ten days following the close of the hearing.

Paragraph (c) requires the administrative law judge to issue a report to the commissioner with recommended actions by the commissioner. Prohibits the administrative law judge from changing the proposed penalty or corrective order unless the administrative law judge determines that they are unreasonable according to the guidelines established in subdivision 2.

Paragraph (d) allows the administrative law judge to increase the amount of the penalty by the costs of the hearing charged to the department when the judge finds that the hearing request was solely for the purposes of delay or was frivolous.

Paragraph (e) requires the commissioner to refund the costs of the hearing charged to a person when the administrative law judge recommends the dismissal of the order. States that the administrative law judge may recommend attorney fees to be refunded up to the amount of the penalty order.

Paragraph (f) requires the commissioner to wait five days after receiving the administrative law judge's report before issuing a final order and allows the person issued the order to comment to the commissioner on the administrative law judge's recommendation during that time. Allows the final order to be appealed.

Paragraph (g) requires the penalty to be paid within 30 days after the final order unless the final order is being appealed. States that interest accrues from the 31st day if the order is not appealed or the final order is upheld.

Subd. 6. Alternative dispute resolution. Allows the commissioner and person

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issued an order to agree to mediation or other alternative dispute resolution.

Subd. 7. Enforcement. Allows the attorney general to enforce penalties under this section and petition the district court to file an administrative order as an order of the court. Allows the attorney general to bring a civil action in district court if a person fails to pay the penalty or comply with a corrective order.

Subd. 8. Revocation and suspension of permit, license, or registration. Allows the commissioner to revoke or fail to reissue or renew permits, licenses or registrations for persons failing to pay a penalty under this section.

Subd. 9. Cumulative remedy. States that the commissioner may use other remedies available under current law in addition to an administrative penalty order under this section, except that the state may not seek civil penalties under any other law for violations covered by the order.

3 Implementation plan; rulemaking exemption. Requires the commissioner to develop a plan to implement the administrative penalty order provisions contained in sections 1 to 3 of this bill by December 31, 2008 , and provide a 30-day period for public comment. Exempts the plan from rulemaking procedures.