
CIVIL FIELD CITATIONS

PADDOCK, LEROY (LEE)

Director of Environmental Policy, Minnesota Attorney General's Office, 102 State Capitol, Saint Paul, Minnesota 55155 USA

1 SUMMARY

The number of facilities, particularly smaller facilities, subject to environmental laws has increased rapidly in the United States since the mid-1980s. To deal with this heavy new workload, the federal government in the Clean Air Acts' amendments of 1990 the State of Minnesota and a few other states have introduced a new enforcement tool known as field citations. In Minnesota, field citations may be issued by environmental inspectors and state conservation officers for up to \$2,000 for illegal disposal of solid waste such as tires, batteries, appliances and garbage. Experience from the first three years of the program demonstrates that field citations are effective in dealing with these solid waste problems. Further, the experience shows that field citations may be useful in dealing with other environmental enforcement problems, especially where the violation can be readily identified, the amount of penalty is fixed, and where enforcement officials whose other responsibilities involve issuing similar documents are involved.

2 INTRODUCTION

Beginning in the mid-1980s the number and types of activities covered by environmental law in the United States changed significantly. New laws and regulations such as those addressing chlorofluorocarbons (CFCs), small quantity hazardous waste generators, community right-to-know requirements, underground storage tanks and others brought tens of thousands of smaller facilities under the environmental regulatory umbrella.

This dramatic expansion in the reach of environmental programs had important implications for enforcement. Tools that were used to deal with a smaller number of larger facilities (primarily notices of violations and civil judicial penalty authority) were not well suited to address the much higher volume of violations that were occurring as a result of the expanded coverage of environmental laws. New approaches that deter serious violations such as criminal sanctions and new administrative enforcement tools that were more efficient and more effective than the older methods were needed to meet the challenge of ensuring compliance with environmental laws. One of the new administrative enforcement tools, field citations, has proven to be a valuable option in Minnesota in dealing with one set of environmental compliance problems.

3 THE PROBLEM

In the latter half of the 1980s waste tires, batteries and old appliances were banned from disposal in landfills in Minnesota. At the same time the costs of disposal of solid waste increased rapidly because of a shift to incineration as the primary means of disposal and because of new landfill construction requirements. The result was a significant increase in illegal disposal of tires, batteries, appliances and other solid waste, especially on public land such as roadsides and parks.

The two enforcement options that were available were not very successful in addressing the illegal disposal problem. Criminal littering penalties (maximum fine of \$700) require a high standard of proof (beyond a reasonable doubt) and depend upon the interest and time constraints of criminal prosecutors and judges. The other option, a civil restitution statute, allows a governmental unit to

recover up to four times the cost incurred by the governmental unit to clean up the site. This statute is used very little, probably because of the reluctance to "front end" the money needed for clean up. Another enforcement tool was clearly needed to better address the disposal problems.

4 THE PROCESS

The field citations program was introduced in 1991 as a pilot program to test its effectiveness in dealing with solid waste problems. The program allows solid waste inspectors from the Minnesota Pollution Control Agency (MPCA) and conservation offices from the Minnesota Department of Natural Resources (MDNR) to issue citations for solid waste violations based on the following statutory penalty schedule:

- \$25 per tire or battery.
- \$100 per used appliance.
- \$20 per cubic foot or \$1 per pound of other solid waste.

The maximum penalty for any category of waste is \$2,000. See Attachment I. The evidence supporting the citation as well as the penalty calculation is documented on the citation form. See Attachment II. An administrative appeal is available if a person requests a hearing within 15 days after receipt of the citation. Several issues were important in designing the program.

4.1 Civil versus a criminal process

The program was established as a civil rather than criminal program for several reasons. First, a criminal littering statute already existed in the state which could be used in appropriate cases. Second, a civil enforcement approach allowed more control over the use of the process by the administrative agencies than a criminal program. Rather than relying on the interest and availability of local prosecuting attorneys and judges, the MPCA and MDNR could manage the program and allocate personnel based on their own priorities. In addition, the civil standard of proof (more probable than not) made cases somewhat easier to prove.

4.2 Discretion

Most enforcement tools rely on the discretion of a court or of an agency commissioner to set penalties. The field citation program for the first time allowed field personnel to issue citations without any significant management review. This led to a concern expressed by legislators with giving field personnel too much discretion in setting penalties. To address this concern the statute authorizing field citations included a penalty schedule that makes calculation quite simple.

4.3 Who issues citations

The third issue was who should be authorized to issue field citations. The principle environmental enforcement agency in Minnesota, the MPCA had few field personnel. Further, these inspectors were not accustomed to confronting people in the way that issuing a field citation would require. To address these problems, Minnesota authorized conservation officers from the MDNR as well as MPCA solid waste inspectors to issue field citations. There are over 200 uniformed conservation officers stationed in almost all parts of the state. Their normal duties include fish and game enforcement which frequently involves issuing tickets. Further, MDNR was interested in participating in the program because illegal disposal of waste often occurred on park land which is under their jurisdiction.

Because of their familiarity with ticketing programs, the fact that they are licensed peace officers and that they are located throughout the state, the authorization of conservation officers to

issue field citations has been important to the success of the program. The majority of field citations are written by conservation officers.

4.4 Training

The state can choose among several civil and criminal enforcement options for dealing with solid waste violations. However, the field citations legislation precludes the state from seeking penalties under any other law once a field citation has been issued for an incident. As a result, training of personnel authorized to issue citations was particularly important so that citations would not be issued in circumstances where a stronger enforcement tool should be used (for example, where hazardous wastes may be found among the solid waste). Sound training also helps minimize appeals by ensuring violations are well documented. A one day training program was presented for the personnel who issue citations.

4.5 Appeals

The final issue in designing the program was the nature of appeal rights that would be provided to defendants. The state had used an expedited administrative hearing process for four years to deal with appeals of administrative penalty orders. This process was incorporated into the field citations program. The law sets a short 15-day deadline for appeal, limits some time consuming hearing procedures such as discovery and prevents the administrative law judge from altering the amount of the penalty in most cases.

5 THE EXPERIENCE

Measured by awareness of the program, number of citations issued and support for the program by MPCA and MDNR staff, the field citations program has proven to be a success. Most local governmental officials (sheriffs, county environmental officials, etc.) are aware of the program according to a survey conducted in 1993. This awareness is resulting in a growing number of referrals from local officials.

About 100 citations were issued in fiscal year 1993, the program's first full year. This number is about equal to the number of criminal littering cases initiated by the state. However, the total number of enforcement actions has almost doubled as a result of the use of field citations. Citations have ranged from \$10 to \$2,475 and average \$220. The average criminal fine for littering was \$71. The total number of hours necessary to complete a field citation enforcement action averaged 9.4 hours compared to 15.4 hours for a criminal littering case (see Attachment III).

Appeal rates have been very low averaging under five percent. Most of the appeals have been resolved prior to hearing. However, if a hearing is required, the cost to the state agencies for a hearing in Minnesota can be several thousand dollars.

6 THE FUTURE

The positive experience over the first three years with the pilot program has resulted in strong support for making the program permanent in the 1994 legislative session. In addition, the MDNR has already obtained legislation giving the agency field citation authority for violations involving trading in endangered species.

The field citations program may have further applications to other environmental violations such as improper handling of chlorofluorocarbons, improper storage of very small quantities of hazardous waste, maintenance of underground storage tanks, excess noise levels and certain minor illegal waste water discharges. Whether field citations could be a useful enforcement tool in these

and similar situations depends upon an assessment of how easily it is to identify the violations, the level of penalties that may be appropriate, the ability to provide sufficient training to field personnel, the risk of precluding more serious enforcement actions and whether enforcement personnel who have experience in issuing other types of citations can be used to enforce the law.

ATTACHMENT 1**Chapter 347****ARTICLE I. Civil Enforcement****Sec. 15.** [FIELD CITATION PILOT PROJECT.]

Subdivision 1. [Authority to issue.] Pollution control agency staff designated by the commissioner and department of natural resources conservation officers may issue citations to a person who disposes of solid waste as defined in Minnesota Statutes, section 116.06, subdivision 10, at a location not authorized by law for the disposal of solid waste without permission of the owner of the property. A citation issued under this subdivision must include a requirement that the person cited remove and dispose or otherwise manage the waste.

Subd. 2. [Penalty amount.] The citation must impose the following penalty amounts: (1) \$100 per major appliance, as defined in Minnesota Statutes, section 115A.03, subdivision 17A, up to a maximum of \$2,000; (2) \$25 per waste tire, as defined in Minnesota Statutes, section 115A.90, subdivision 11, unless utilized in an agricultural pursuit, up to a maximum of \$2,000; (3) \$25 per lead acid battery governed by Minnesota Statutes, section 115A.915, up to a maximum of \$2,000; (4) \$1 per pound of other solid waste or \$20 per cubic foot up to a maximum of \$2,000; and (5) up to \$200 for any amount of waste that escapes from a vehicle used for the transportation of solid waste if, after receiving actual notice that waste has escaped the vehicle, the person or company transporting the waste fails to collect the waste.

Subd. 3. [Appeals.] Citations may be appealed under the procedures in Minnesota Statutes, section 116.072, subdivision 6, if the person requests a hearing by notifying the commissioner within 15 days after receipt of the citation. If a hearing is not requested within the 15-day period, the citation becomes a final order not subject to further review.

Subd. 4. [Enforcement of field citations.] Field citations may be enforced under Minnesota Statutes, section 116.072, subdivisions 9 and 10.

Subd. 5. [Cumulative remedy.] The authority of conservation officers to issue field citations is in addition to other remedies available under statutory or common law, except that the state may not seek penalties under any other provision of law for the incident subject to the citation.

Subd. 6. [Study of field citation pilot program.] The pollution control agency, in consultation with the department of natural resources and the attorney general, shall prepare a study on the effectiveness and limitations of the field citation pilot program. The study must make recommendations about the continued use of field citations.

The study must be submitted to the legislative commission on waste management by November 15, 1992, and must be updated and resubmitted to the commission by November 15, 1993.

ATTACHMENT 2



NA-01290-01



Minnesota Pollution Control Agency

**NOTICE OF SOLID WASTE DISPOSAL VIOLATION,
CIVIL CITATION, AND IMPOSITION OF PENALTY**

No. 004

NAME (LAST)		NAME (FIRST)		NAME (MIDDLE)		D.O.B.		D/L NO.	
ISSUE DATE		TIME		ICR					
ADDRESS: STREET		CITY		STATE		ZIP		PHONE (RESIDENCE/BUSINESS)	
LOCATION (1) PROJECT CODE		COUNTY (2)		VIOLATION DATE/TIME		DAY OF WEEK		ACT (3) CODE	
VIOLATION (3) CODE		SPECIES (4) CODE		LOCATION DESCRIPTION					
VEHICLE		YEAR		MAKE		MODEL		STYLE	
COLOR		LICENSE		STATE		VIN/SER/BHN			

This civil citation is being issued to you in lieu of criminal charges for unlawful disposal of solid waste on public property or on private property without the permission of the owner. You are hereby directed to remit within 30 days the following amount for this unlawful disposal of solid waste:

1. Major Appliances (Number) x \$100.00 each = \$ (Maximum \$2,000.00)
 2. Waste Tires (Number) x \$ 25.00 each = \$ (Maximum \$2,000.00)
 3. Lead Acid Battery (Number) x \$ 25.00 each = \$ (Maximum \$2,000.00)
 4. Other Solid Waste (either pounds or cubic feet, or combination):

<input type="text"/>	(Pounds)	x \$ 1.00 per pound	= \$	<input type="text"/>	(Maximum \$2,000.00)
<input type="text"/>	(Cubic Feet)	x \$20.00 per cubic ft	= \$	<input type="text"/>	(Maximum \$2,000.00)
 5. Solid materials (waste) that has escaped from a vehicle. NOTICE DATE/TIME = \$ (Maximum \$ 200.00)
- TOTAL OF THIS CITATION = \$

I hereby acknowledge receipt of this notice and order of Civil Citation and Penalty.

VIOLATOR'S SIGNATURE	OFFICER'S SIGNATURE	AGENCY	BADGE #	STATION #
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Payment of the amount specified must be sent within 30 days to: Commissioner MN PCA
Solid Waste Section
520 Lafayette Road
St. Paul, MN 55155-3898

Appeals to this citation must be made in writing within 15 days after issue in accordance with provisions outlined on the back of this notice. This citation becomes final and is not subject to further review after 15 days from the date of issue. SEE BACK OF THIS FORM FOR SPECIFIC APPEAL PROCEDURES.

INFORMATION REGARDING THE REMOVAL NOTICE AND APPEAL PROVISIONS IS ALSO PRINTED ON THE BACK OF NOTICE.

ATTACHMENT 3

FIELD CITATION PILOT PROJECT — Summary of Citations Issued (as of October 30, 1993)

	FY 1992	FY 1993	FY 1994
General			
Citations issued	53	91	10
Penalty assessed	\$7,978	\$27,225	\$2,467
Disposition			
Numbers paid	42	56	7
Amount paid*	\$5,665	\$8,800	\$512
Numbers appealed	1	12	0
Penalty appealed	\$83	\$13,235	
Numbers heard		3	
Penalty upheld**		\$2,500 (\$500)	
Number pending		1	
Penalty pending		\$2,000	
Numbers settled	1	8	
Dollars settled**	(\$83)	\$2,750 (\$5,485)	
Numbers outstanding	10	23	3
Dollars outstanding	\$2,230	\$7,090	\$1,955

* Includes community service accepted in lieu of penalty.

** Figure without parenthesis indicates penalty amount remaining due or paid, dollar figure inside parenthesis indicates penalty amount forgiven.