

This Revenue Notice was revoked and replaced on October 22, 2018 by publication of Revenue Notice # 18-02.

DEPARTMENT OF REVENUE

Revenue Notice # 03-02: Property Tax - Sustainable Forest Incentive Act - Violation of a Condition of Enrollment

Background

Minnesota Statutes, section 290C.03 provides that property may be enrolled in the Sustainable Forest Incentive Program (The Program) if all of the conditions for enrollment are met. *Minnesota Statutes*, section 290C.11(a) provides that if the Commissioner of Revenue determines that land enrolled in The Program is in violation of the conditions for enrollment as specified in *Minnesota Statutes*, section 290C.03, the commissioner shall notify the claimant of his or her intent to remove all enrolled land from The Program. Upon notification, the claimant has 60 days to administratively appeal the determination. If the commissioner denies the appeal the claimant may appeal to tax court.

Issue

One of the conditions of enrollment is that the Timber Harvesting and Forest Management Guidelines adopted by the Minnesota Forest Resources Council (The Guidelines) must be used in conjunction with any timber harvesting or forest management activities. The statute does not indicate what activities or omissions constitute a violation of The Guidelines.

This Revenue Notice provides guidance in determining what constitutes a violation of The Guidelines. This Revenue Notice does not deal with any of the other conditions of enrollment. Even if the claimant's activities do not constitute a violation of The Guidelines, there may still be violations of the other conditions of enrollment, which would lead to the land being removed from The Program. One example of this is if there are delinquent property taxes on the property

Department of Revenue Position

If deviations from The Guidelines:

- are of an accidental or inadvertent character;
- the claimant has made a good faith effort to follow The Guidelines;
- the claimant has made efforts to correct any damage, if possible; and
- the claimant has taken measures to avoid future violations,

The commissioner may determine that a violation of The Guidelines has not occurred. Where development activities have occurred in violation of the covenant required under *Minnesota Statutes*, section 290C.04, the commissioner is not required to take into account any actions in mitigation.

In determining whether land enrolled in The Program is in violation of The Guidelines the commissioner shall take into consideration:

- The cause of the violation.
- The extent of the violation (area of damage).
- Whether the claimant has substantially complied with the Forest Management Plan (The Plan).
- Whether the claimant has substantially complied with The Guidelines in timber harvest and forest management activities.
- Whether the claimant took measures to avoid the violation.
- If the claimant has violated one or more of The Guidelines concerning harvest practices, whether the claimant has attempted to mitigate the violation.
- Whether the claimant has taken measures to avoid future violations.
- Whether there has been a pattern of violations by the claimant related to any land enrolled in The Program.

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Examples

For purposes of this notice the term “claimant” includes all persons and entities bound by the covenant and all employees, contractors and agents of the claimant.

Example 1

The claimant locates a skid trail in such a way as to avoid a large part of a wetland, and during creation of the trail it becomes clear that a small, unforeseen portion of the wetland is impacted.

This set of circumstances would not give rise to a violation even though there has been some damage to a wetland because the claimant clearly intended to avoid the damage and changed its course of action once it noticed the problem.

Example 2

The claimant conducts a harvest during the summer in a low area knowing that the area is likely to be negatively impacted. During operations the equipment causes rutting. The claimant continues operations despite the conditions and only moves trails to avoid equipment getting stuck.

Under these circumstances the commissioner could find a violation because the claimant knew that there could be a negative impact and when the damage occurred did nothing to minimize it.

Raymond R. Krause
Assistant Commissioner

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