§ 71-0703. Penalties.

In order to secure the enforcement of the several sections of article 9 the following fines and civil penalties are provided:

1. Except as otherwise provided in subdivision 4, 5, 6 or 7 of this section, any person who violates any provision of article 9 or the rules, regulations or orders promulgated pursuant thereto or the terms of any permit issued thereunder, or who fails to perform any duty imposed by any provision thereof shall be guilty of a violation, and, upon conviction, shall be punished by a fine of not more than two hundred fifty dollars, or by imprisonment for not more than fifteen days, or by both such fine and imprisonment, and in addition thereto shall be liable to a civil penalty of not less than ten nor more than one hundred dollars.

2. The violation of any of the provisions of the following sections shall subject the person guilty thereof to the following civil penalties in addition to the liability prescribed in subdivision 1 of this section:

a. Section 9-1113 of this chapter, two dollars per tree;

b. Subdivision 3 of section 9-1105 of this chapter, twenty-five dollars per day;

c. Subdivision 4 of section 9-1105 of this chapter, and subdivision 1 of section 9-1117 of this chapter, ten dollars per mile per day;

d. Section 9-1115 of this chapter, ten dollars per mile;

e. Subdivision 2 of section 9-1117 of this chapter, one hundred dollars per each offense; and

f. Section 9-1119 of this chapter, one hundred dollars per day per locomotive.

With respect to the penalty for violation of subdivision 4 of section 9-1105 of this chapter, the owner and every person engaged in such cutting shall be liable therefor; however, the liability for penalty shall not arise until the expiration of twenty days after service, personally or by mail upon the alleged violator at his last known place of residence of a written notice of failure to comply with the requirements of subdivision 4 of section 9-1105 of this chapter.

3. Any person who molests, injures, removes, destroys or withholds supplies or other material maintained for forest fire protection purposes shall be guilty of a violation and shall be punishable and liable to a civil penalty as provided in subdivision 1 of this section.

4. Any person who sets fire wilfully in violation of subdivision 1 of section 9-1105 of this chapter shall be guilty of a felony.

5. In addition to any prosecution as provided under article one hundred fifty-five of the penal law, any person who violates subdivision 1 of section 9-0303 or section 9-1501 of this chapter except where the lawful exercise of an easement or right of way on land not owned by the state is involved shall be guilty of a class A misdemeanor. Upon conviction, such person shall be sentenced to a fine and/or imprisonment as provided in the penal law.

6. (a) In addition to any other penalty provided by law, any person who violates subdivision 1 of section 9-0303 of this chapter shall be liable to a civil penalty of two hundred fifty dollars per tree or treble damages, based on the stumpage value of such tree or both. Where the order or decision finds that the defendant established by clear and convincing evidence, that when such defendant committed the violation, he or she had cause to believe that the land was his or her own, or that he or she had an easement or right of way across such land which permitted such action, damages shall be awarded on the basis of the stumpage value of such tree or trees in the market as if they were privately owned. Notwithstanding the foregoing, this section shall not be construed to authorize the cutting of timber or removal of trees where such action would otherwise be violative of any provision of the

state constitution or law.

(b) In addition to any other penalty provided by law, a person who violates section 9-1501 of this chapter shall be liable for a civil penalty of two hundred fifty dollars per tree or treble damages or both, based on the stumpage value of such tree or trees. Where the order or decision finds that the defendant established by clear and convincing evidence, that when such defendant committed the violation, he or she had cause to believe that the land was his or her own or that he or she had an easement or right of way across such land which permitted such action, damages shall be awarded on the basis of the stumpage value of such tree or trees. Notwithstanding the foregoing, this section shall not be construed to authorize the cutting of timber or removal of trees where such action would otherwise be violative of any provision of the state constitution or law.

(c) For purposes of this subdivision, "stumpage value" shall mean the current fair market value of a tree as it stands prior to the time of sale, cutting, or removal. Stumpage value shall be determined by one or more of the following methods: the sale price of the tree in an arm's-length sale, a review of solicited bids, the stumpage price report prepared by the department of environmental conservation, comparison with like sales on trees on state or private lands, or other appropriate means to assure that a fair market value is established within an acceptable range based on the appropriate geographic area.

7. In addition to the penalties otherwise provided, any person who violates any of the provisions of subdivision 1 of section 9-0303 or section 9-1501 of this chapter may be ordered by the commissioner or the court to make reparations for any permanent and substantial damage caused to the land or the improvements thereon as a result of such violation. Such reparations shall be of such kind, nature and extent as will reasonably restore the lands affected by the violation to their condition immediately before the violation and may be made by physical restoration of such lands and/or by the assessment of a monetary payment to make such restoration.

8. Any person who violates any provision of any proclamation issued by the governor pursuant to the provisions of section 9-1101 of this

chapter shall be guilty of a violation and shall be punishable and liable to a civil penalty as provided in subdivision 1 of this section.

9. a. Any person who transports, sells, imports or introduces invasive species, in violation of the regulations promulgated pursuant to section 9-1709 of this chapter shall be subject to the following:

For any first violation in lieu of a penalty there may be issued a written warning by the department and there may also be issued education materials at the discretion of the department regarding requirements related to invasive species. Such person shall, however, for any subsequent violation thereafter be subject to a fine of no less than two hundred fifty dollars.

b. Any nursery grower licensed pursuant to article fourteen of the agriculture and markets law, any person who owns or operates a public vessel as such term is defined in paragraph (a) of subdivision six of section two of the navigation law, or any person who owns or operates a commercial fishing vessel who transports, sells, imports or introduces invasive species in violation of the regulations promulgated pursuant to section 9-1709 of this chapter, shall be subject to a fine of not less than six hundred dollars upon the first penalty. Upon the second penalty such person shall be subject to a fine of not less than two thousand dollars. Upon a subsequent penalty and after a hearing or opportunity to be heard upon due notice the following penalties may apply: (i) such nursery grower may be subject to the revocation procedures of section one hundred sixty-three-c of the agriculture and markets law (ii) such person's vessel registration may be suspended or (iii) such person's fishing permit may be revoked by the department.

10. Any person who violates section 9-1710 of this chapter shall be guilty of a violation and shall be punishable and liable to a civil penalty as provided in subdivision one of this section, provided, however, that for any first violation in lieu of a penalty there shall be issued a written warning by the department and there shall also be issued education materials at the discretion of the department regarding requirements related to invasive species. Such person shall be subject

to a fine of up to one hundred fifty dollars for a second offense, up to two hundred fifty dollars for a third offense, and no less than two hundred fifty dollars nor more than one thousand dollars for a fourth or subsequent offense.