

CHAPTER 7560

DEPARTMENT OF PUBLIC SAFETY

OFFICE OF PIPELINE SAFETY

EXCAVATION NOTICE SYSTEM

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7560.0100 DEFINITIONS.

Subpart 1. **Scope.** The terms used in this chapter have the meanings given them. Terms not defined have the meanings given them in Minnesota Statutes, section 216D.01.

Subp. 2. **Director.** "Director" means the director of the Office of Pipeline Safety of the Minnesota Department of Public Safety.

Subp. 3. **Good cause to believe.** "Good cause to believe" means grounds put forth in good faith that are not arbitrary, irrational, unreasonable, or irrelevant and that are based on at least one of the following sources:

- A. information from a person;
 - B. facts supplied by the notification center defined in Minnesota Statutes, section 216D.01, subdivision 8;
 - C. facts of which the director or an agent of the director has personal knowledge;
- and
- D. information provided by excavators or operators.

Subp. 4. **Locate.** "Locate" means an operator's markings of an underground facility.

Subp. 5. **Office.** "Office" means the Office of Pipeline Safety of the Minnesota Department of Public Safety.

Subp. 6. **Remuneration.** "Remuneration" means direct or indirect compensation or consideration paid to the person or the person's agent, employer, employee, subcontractor, or contractor. A person who excavates as part of the person's duties as an employee, employer, agent, subcontractor, or contractor is considered to be acting for remuneration.

Statutory Authority: *MS s 14.06; 216D.08; 299F.56; 299F.641*

History: *16 SR 135*

7560.0200 EXCAVATOR: DUTY TO NOTIFY NOTIFICATION CENTER.

After facilities are located by an operator, an excavator shall notify the notification center if:

- A. the excavator postpones the excavation commencement time stated in the excavation notice by more than 48 hours or cancels the excavation;
- B. the markings have been obliterated or obscured;
- C. weather conditions have impeded visibility of the markings;
- D. the site shows evidence of recent excavation; or
- E. the excavator has other reason to believe the markings are incorrect or missing.

An excavator may not use a locate more than 48 hours after the planned excavation date unless the excavator has made previous arrangements with the operators affected.

Statutory Authority: *MS s 14.06; 216D.08; 299F.56; 299F.641*

History: *16 SR 135*

7560.0300 OPERATOR PARTICIPATES AND SHARES COSTS.

An operator shall participate in and share the costs of the one call excavation notice system by:

- A. submitting the information required by the notification center to allow the center to notify the operator of excavation activity;

- B. updating the information provided to the notification center on a timely basis;
- C. installing and paying for equipment reasonably requested by the notification center to facilitate receipt of notice of excavation from the center;
- D. paying the costs charged by the notification center on a timely basis; and
- E. receiving and responding to excavation notices, including emergency notices, as required by Minnesota Statutes, chapter 216D.

Statutory Authority: *MS s 14.06; 216D.08; 299F.56; 299F.641*

History: *16 SR 135*

7560.0400 CITATIONS.

Subpart 1. **Notice of violation.** The office shall issue a notice of probable violation when the office has good cause to believe a violation of Minnesota Statutes, sections 216D.01 to 216D.09 or this chapter has occurred.

Subp. 2. **Contents of notice of violation.** A notice of violation must include:

- A. a statement of the statute or rule allegedly violated by the person and a description of the evidence on which the allegation is based;
- B. notice of response options available to the person cited; and
- C. if a civil penalty is proposed, the amount of the proposed civil penalty and the maximum civil penalty applicable under law.

Statutory Authority: *MS s 14.06; 216D.08; 299F.56; 299F.641*

History: *16 SR 135*

7560.0500 RESPONSE OPTIONS.

The person shall respond to the notice of violation in the following way:

- A. When the notice contains a proposed compliance order, the person shall:
 - (1) agree to the proposed compliance order;
 - (2) request the execution of a consent order;
 - (3) object to the proposed compliance order and submit written explanations, information, or other materials in answer to the allegations in the notice; or
 - (4) request the office to initiate a hearing under Minnesota Statutes, sections 14.50 to 14.69.
- B. When the notice contains a proposed civil penalty, the person shall:
 - (1) pay the penalty and close the case;
 - (2) submit an offer in compromise of the proposed civil penalty;
 - (3) submit a written explanation, information, or other material in answer to the allegations or in mitigation of the proposed civil penalty; or
 - (4) request the office to initiate a hearing under Minnesota Statutes, sections 14.50 to 14.69.

Statutory Authority: *MS s 14.06; 216D.08; 299F.56; 299F.641*

History: *16 SR 135*

7560.0600 DIRECTOR REVIEW.

If the person objects to the proposed civil penalty or compliance order and submits written explanations, information, or other materials in response to a notice of violation, the director shall review the submissions and determine whether to negotiate further, to change or withdraw the notice of violation, or to initiate a hearing under Minnesota Statutes, sections 14.50 to 14.69.

Statutory Authority: *MS s 14.06; 216D.08; 299F.56; 299F.641*

History: *16 SR 135*

7560.0700 CONSENT ORDER.

An executed consent order must contain:

- A. an admission by the person of the jurisdictional facts;

B. a waiver of further procedural steps and the right to seek judicial or administrative review or otherwise challenge or contest the validity of the consent order; and

C. an agreement that the notice of violation may be used to construe the terms of the consent order.

Statutory Authority: *MS s 14.06; 216D.08; 299F.56; 299F.641*

History: *16 SR 135*

7560.0800 CIVIL PENALTIES.

Subpart 1. Proceedings against excavators. When the office has good cause to believe that an excavator is engaging or has engaged in conduct that violates Minnesota Statutes, section 216D.04, subdivision 1, 2, or 3; 216D.05, clause (1), (2), (3), or (4); or 216D.06, subdivision 1, or a rule adopted under Minnesota Statutes, section 216D.08, subdivision 4, the office, if appropriate, shall negotiate a civil penalty under Minnesota Statutes, section 216D.08, subdivision 2. A penalty imposed under Minnesota Statutes, section 216D.08, is subject to the contested case and judicial review provisions of Minnesota Statutes, chapter 14. An operator who engages or has engaged in excavation that violates Minnesota Statutes, chapter 216D, is subject to the proceedings specified in subpart 2 and is subject to the penalties specified in subpart 4, item B or C.

Subp. 2. Proceedings against underground facility operators. The office may negotiate a civil penalty under item A or B.

A. When the office has good cause to believe that an underground facility operator, other than an operator set forth in item B, is engaging or has engaged in conduct that violates Minnesota Statutes, sections 216D.01 to 216D.07, or a rule adopted under Minnesota Statutes, section 216D.08, subdivision 4, the office, if appropriate, shall negotiate a civil penalty under Minnesota Statutes, section 216D.08, subdivision 2. A penalty imposed under Minnesota Statutes, section 216D.08, is subject to the contested case and judicial review provisions of Minnesota Statutes, chapter 14.

B. When the office has good cause to believe that an operator who engages in the transportation of gas or hazardous liquids or who owns or operates a gas or hazardous liquid pipeline facility is engaging or has engaged in conduct that violates Minnesota Statutes, sections 299F.56 to 299F.641, or a rule adopted under Minnesota Statutes, section 299F.60, subdivision 5, the office, if appropriate, shall negotiate a civil penalty under Minnesota Statutes, section 299F.60, subdivision 2. A penalty imposed under Minnesota Statutes, section 299F.60, is subject to the contested case and judicial review provisions of Minnesota Statutes, chapter 14.

Subp. 3. Assessment considerations. In assessing a civil penalty under this part, the office shall consider the following factors:

- A. the nature, circumstances, and gravity of the violation;
- B. the degree of the person's culpability;
- C. the person's history of previous offenses;
- D. the person's ability to pay;
- E. good faith on the part of the person in attempting to remedy the cause of the violation;
- F. the effect of the penalty on the person's ability to continue in business; and
- G. past reports of damage to an underground facility by a person.

Subp. 4. Maximum penalties. For the purposes of this part, penalties imposed under this part must not exceed the limits in items A to C.

A. Penalties imposed against excavators must not exceed \$500 for each violation per day of violation.

B. Penalties imposed against underground facility operators, other than an operator set forth in item C, must not exceed \$500 for each violation per day of violation.

C. Penalties imposed against an operator who engages in the transportation of gas or hazardous liquids or who owns or operates a gas or hazardous liquid pipeline facility must not exceed \$10,000 for each violation for each day that the violation persists, except that the maximum civil penalty must not exceed \$500,000 for a related series of violations.

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Subp. 5. **Payment procedure.** The person shall pay a civil penalty that has been proposed, assessed, or compromised by submitting to the office a certified check or money order in the correct amount, payable to the commissioner of public safety.

Statutory Authority: *MS s 14.06; 216D.08; 299F.56; 299F.641*

History: *16 SR 135*