

1 Department of Public Safety

2 Office of Pipeline Safety

3

4 Adopted Permanent Rules Relating to One Call Excavation Notice

5 System Enforcement and Sanctions

6

7 Rules as Adopted

8 7560.0100 DEFINITIONS.

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

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

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

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

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

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

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

35 7560.0200 ~~UNDERGROUND-FACILITY-LOCATE,--RELIANCE~~ EXCAVATOR:

1 DUTY TO NOTIFY NOTIFICATION CENTER.

2 After facilities are located by an operator, an excavator  
3 must-be-able-to-rely-on-the-locate-for-a-period-of-48-hours-from  
4 the-date-and-the-time-when-excavation-is-to-begin-unless shall  
5 notify the notification center if:

6 A. the excavator postpones the excavation  
7 commencement time stated in the excavation notice by more than  
8 48 hours or cancels the excavation;

9 B. the markings have been obliterated or obscured;

10 ~~B.~~ C. weather conditions have impeded visibility of  
11 the markings;

12 ~~C.~~ D. the site shows evidence of recent excavation;  
13 or

14 ~~D.~~ E. the excavator has other reason to believe the  
15 markings are incorrect or missing.

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

19 7560.0300 OPERATOR PARTICIPATES AND SHARES COSTS.

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

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

25 B. updating the information provided to the  
26 notification center on a timely basis;

27 C. installing and paying for equipment reasonably  
28 requested by the notification center to facilitate receipt of  
29 notice of excavation from the center;

30 D. paying the costs charged by the notification  
31 center on a timely basis; and

32 E. receiving and responding to excavation notices,  
33 including emergency notices, as required by Minnesota Statutes,  
34 chapter 216D.

35 7560.0400 CITATIONS.

1 Subpart 1. Notice of violation. The office shall issue a  
2 notice of probable violation when the office has good cause to  
3 believe a violation of Minnesota Statutes, sections 216D.01 to  
4 216D.09 or this chapter has occurred.

5 Subp. 2. Contents of notice of violation. A notice of  
6 violation must include:

7 A. a statement of the statute or rule allegedly  
8 violated by the person and a description of the evidence on  
9 which the allegation is based;

10 B. notice of response options available to the person  
11 cited; and

12 C. if a civil penalty is proposed, the amount of the  
13 proposed civil penalty and the maximum civil penalty applicable  
14 under law.

15 7560.0500 RESPONSE OPTIONS.

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

18 A. When the notice contains a proposed compliance  
19 order, the person shall:

20 (1) agree to the proposed compliance order;

21 (2) request the execution of a consent order;

22 (3) object to the proposed compliance order and  
23 submit written explanations, information, or other materials in  
24 answer to the allegations in the notice; or

25 (4) request the office to initiate a hearing  
26 under Minnesota Statutes, sections 14.50 to 14.69.

27 B. When the notice contains a proposed civil penalty,  
28 the person shall:

29 (1) pay the penalty and close the case;

30 (2) submit an offer in compromise of the proposed  
31 civil penalty;

32 (3) submit a written explanation, information, or  
33 other material in answer to the allegations or in mitigation of  
34 the proposed civil penalty; or

35 (4) request the office to initiate a hearing

1 under Minnesota Statutes, sections 14.50 to 14.69.

2 7560.0600 DIRECTOR REVIEW.

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

10 7560.0700 CONSENT ORDER.

11 An executed consent order must contain:

12 A. an admission by the person of the jurisdictional  
13 facts;

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

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

19 7560.0800 CIVIL PENALTIES.

20 Subpart 1. **Proceedings against excavators.** When the  
21 office has good cause to believe that an excavator is engaging  
22 or has engaged in conduct that violates Minnesota Statutes,  
23 section 216D.04, subdivision 1, 2, or 3; 216D.05, clause (1),  
24 (2), (3), or (4); or 216D.06, subdivision 1, or a rule adopted  
25 under Minnesota Statutes, section 216D.08, subdivision 4, the  
26 office, if appropriate, shall negotiate a civil penalty under  
27 Minnesota Statutes, section 216D.08, subdivision 2. A penalty  
28 imposed under Minnesota Statutes, section 216D.08, is subject to  
29 the contested case and judicial review provisions of Minnesota  
30 Statutes, chapter 14. An operator who engages or has engaged in  
31 excavation that violates Minnesota Statutes, chapter 216D, is  
32 subject to the proceedings specified in subpart 2 and is subject  
33 to the penalties specified in subpart 4, item B or C.

34 Subp. 2. **Proceedings against underground facility**

1 operators. The office may negotiate a civil penalty under item  
2 A or B.

3 A. When the office has good cause to believe that an  
4 underground facility operator, other than an operator set forth  
5 in item B, is engaging or has engaged in conduct that violates  
6 Minnesota Statutes, sections 216D.01 to 216D.07, or a rule  
7 adopted under Minnesota Statutes, section 216D.08, subdivision  
8 4, the office, if appropriate, shall negotiate a civil penalty  
9 under Minnesota Statutes, section 216D.08, subdivision 2. A  
10 penalty imposed under Minnesota Statutes, section 216D.08, is  
11 subject to the contested case and judicial review provisions of  
12 Minnesota Statutes, chapter 14.

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

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

27 A. the nature, circumstances, and gravity of the  
28 violation;

29 B. the degree of the person's culpability;

30 C. the person's history of previous offenses;

31 D. the person's ability to pay;

32 E. good faith on the part of the person in attempting  
33 to remedy the cause of the violation;

34 F. the effect of the penalty on the person's ability  
35 to continue in business; and

36 G. past reports of damage to an underground facility

1 by a person.

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

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

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

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

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