

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

DEPARTMENT: Office of the Attorney General

STATE OF MINNESOTA

OFFICE MEMORANDUM

DATE: June 28, 1991

TO: DAVID ORREN
Office of Pipeline Safety
175 Aurora Avenue

FROM: MARTHA J. CASSERLY
Special Assistant
Attorney General

PHONE: 296-6839

SUBJECT: In the Matter of the Adopted Rule Relating to One Call Excavation Notice System Enforcement and Sanctions

The above-referenced rule has been approved as to its legality by the Attorney General on June 26, 1991.

Enclosed is your copy of the approved rule. This office has already filed two copies with the Secretary of State, who will forward one copy to the Revisor of Statutes. The fourth is being retained by this division of the Attorney General's Office for its records.

Also enclosed are any petitions, requests, submissions or comments along with any extra copies of documents which you submitted to the Attorney General.

Your next step is to arrange for publication of the Notice of Adoption in the State Register. In a day or two, you should receive from the Revisor's Office three copies of the notice of adoption of your rule. You should submit two copies of the Notice of Adoption to the State Register for publication. A permanent rule without a hearing does not become effective until five days after a notice of adoption is published in the State Register in accordance with Minn. Stat. § 14.27. An emergency rule becomes effective five working days after approval by the Attorney General; however, the agency must publish a notice in the State Register in accordance with Minn. Stat. § 14.34.

If you have any questions in this regard, please contact me.

MJC:sc

cc: Jeff Lebowski
William Brown, Chief Judge
MaryAnn Hruby

MJC

RULE REVIEW CHECKLIST

File No. 1834
DATE RECEIVED 6-12-91
REVIEW DATE 6-21-91
DUE DATE 6-26-91
(DIS)APPROVED 6-26-91-mjc
WITHDRAWN

Docket No. 05.0009.0709
ADOPTED W/O HEARING
EMERGENCY RULE
TO REVISOR ON 6-13-91
REVISOR (DIS)APPROVED 6-21-91
FILED W/SEC. OF STATE 6-27-91
RETURNED TO AGENCY 6-28-91

✓ Rule as adopted (4 copies)

✓ Notice to Solicit Outside Information/Opinion (if applicable)
October 9, 1989 Date published in State Register
Comments

Petition for Adoption of a Rule

Board's Authorizing Resolution
Date adopted

✓ Proposed Rule
✓ Revisor's Certificate

Notice of Intent to Adopt Rule
216D.08 and 4 Statutory Authority 299F.56 to 299F.641
NA Small Business Statement
NA Expenditure of public money statement
Ralph Church Signature 4-9-91

✓ Statement of Need and Reasonableness (if applicable)
Small Business Statement
Fees - § 16A.128

✓ Affidavit of Mailing Notice of Intent to Adopt Rule
April 24, 1991 Dated 30/25 days before adoption made it
Notice attached (indicates it is attached
Copy of ~~rule or summary~~ attached

✓ Publication in State Register made it
April 29, 1991 Date 30/25 days before adoption

✓ 180-day deadline from:
Effective date of law requiring rule not mandatory
(14.12) (both rules) amendments don't apply
✓ end of comment period (§ 14.26) (rules without hearing)
effective date of statutory authority (§ 14.29) (emergency rules)

~~Resolution Adopting~~
Date adopted

✓ Findings of Fact, Conclusions & Order Adopting
June 12, 1991 Date

✓ Written Requests, Submissions or Comments

✓ Declaration of Attorney
Jeff Sikorski Name of SAAG representing agency

Notice of Submission to Attorney General (if applicable)

Affidavit of Mailing Notice to Attorney General (if applicable)

Department of Public Safety

Office of Pipeline Safety

Adopted Permanent Rules Relating to One Call Excavation Notice System Enforcement and Sanctions

Rules as Adopted

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.

7560.0200 ~~UNDERGROUND FACILITY LOCATE; RELIANCE~~ EXCAVATOR:

Approved by Revisor RR/Pmm

DUTY TO NOTIFY NOTIFICATION CENTER.

After facilities are located by an operator, an excavator ~~must be able to rely on the locate for a period of 48 hours from the date and the time when excavation is to begin unless~~ 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;

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

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

~~D.~~ 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.

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.

7560.0400 CITATIONS.

Approved by Revisor _____

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.

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

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under Minnesota Statutes, sections 14.50 to 14.69.

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.

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.

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**

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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

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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.

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.

Approved
by Revisor _____

APPROVED AS TO FORM AND LEGALITY
June 26 19 91
HUBERT H. HUMPHREY, III
ATTORNEY GENERAL
BY MJ Cassidy
SPECIAL ASSISTANT ATTORNEY GENERAL

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
JUN 27 1991
Joan Anderson Growe
Secretary of State
4:13

STATE OF MINNESOTA
DEPARTMENT OF PUBLIC SAFETY
OFFICE OF PIPELINE SAFETY

In the matter of the proposed rule of the Department of Public Safety governing the One-Call Notification System Enforcement and Sanctions.

STATEMENT OF NEED AND REASONABLENESS

GENERAL STATEMENT

Legislation requiring a one-call notification system for underground construction work was the result of the Governor's Commission on Pipeline Safety. The Commission found that nearly 50% of all pipeline accidents are caused by third-party damage. The other issue the Commission addressed that relates to the one-call system was the fact that there was a severe lack of knowledge of what exactly was running underground in the State of Minnesota. The primary purpose then, of one-call legislation was to reduce third-party damage and to bring a common database of knowledge of the underground infrastructure in Minnesota, i.e. sewer, water, electric lines, gas lines, storm sewers. This underground infrastructure needed to be protected from third-party damage.

The Legislature mandated that the entire underground infrastructure should be identified, hence participate in the one-call center. No exemptions were granted except for the homeowner and underground system on private property for the sole use of the private party.

The need for a one-call system to protect the underground infrastructure has been clear for many years. For example, many utilities in Minnesota can identify multi-millions of dollars of product loss because of third-party excavation. The damage is enormous and lives lost continues to be a tragic result of failure to identify underground infrastructure. Besides gas pipelines, loss of telephone service in rural communities endangers immediate emergency response. The Metropolitan Airports Commission had an incident, on their private property, in which a contractor "hit" power to the "tower" and for a few seconds, until back-up power came on, the air traffic controllers were not in touch with the planes. It is not just third-party damage to pipelines that can cause tragic loss of life. The promotion of safety is not just for the excavators; a one call system can decrease the risk factors of the loss of life or injury for the protection of the public.

Third-party accidents may be avoided by excavators, contractors and owners and operators of underground services by notifying the appropriate company or utility of an intent to excavate. By notifying the appropriate company of intent to excavate or dig near its facility, the company assumes responsibility for accurately locating and marking its facility in a timely manner. However, it is often difficult for an excavator to know what utilities to contact for markings. In some instances, it may be necessary for the contractor to call as many as 15 different utilities to determine if they have facilities in the vicinity of the proposed excavation. The more numbers there are to call, the greater the probability of damage assessment against the contractor, an interruption of service or loss of life.

A one-call system provides excavating contractors and other underground facility owners planning excavation with a single telephone number to call before digging. Utilities belonging to a one-call system receive notification of intent to excavate and are required to mark their facilities. Damage reduction of 35 to 80 percent has been reported by one-call members in other states. Notifications increase because facility owners no longer have to depend upon excavators to make all the necessary notifications. A single number can be promoted more effectively and with more impact.

The participation by all underground facility owners (unique to Minnesota law) increases one-call effectiveness, by assuring excavation contractors, one-call system participants and others that they can expect timely and accurate marking of underground facilities. Without a one-call system, the process of locating underground facilities before excavation is more costly, confusing and time-consuming for all parties.

The Federal Office of Pipeline Safety requires that states with pipeline safety programs must have a one-call system. The Federal OPS could limit dollars to a state without strong damage prevention programs, i.e. one-call. Further, the federal government would not allow a state to become an interstate agent for the purposes of inspecting pipelines without a strong one-call system. The primary mandate of the Minnesota Office of Pipeline Safety (M.S. 299J.) is to seek such interstate status. It is imperative that these rules be adopted to show that the State is intent on protecting our underground infrastructure through civil penalties, if necessary. These rules are needed to meet minimum federal mandates - i.e. hence, M.S. 299J.

The Federal government, through legislation passed in November of 1988, mandates that the Federal OPS adopt a model one-call ordinance for all states to accede to. Civil penalties are one of the provisions. Further, Congress mandated a study on why contractors should pay some of the cost of the program.

The original Pipeline Safety Act, which included the requirement for a one-call notification center passed the Legislature unanimously. The statutory authority is cited in M.S. 216D. The law requires all persons, prior to excavation, demolition and blasting, to ascertain the location of all underground utilities that would be affected. Other components of the law require: 1) notice of intent to excavate, with the one-call system; 2) creation of a one-call system to provide for mutual receipt of notifications of intent to excavate; 3) Timely and accurate marking of underground utilities which may be damaged; 4) precautions to be taken to avoid damage by the excavator and 5) civil penalties for any violation of the act.

The enabling act allowed the Commissioner of Public Safety to develop, operate, maintain and manage a one-call system. The act allowed the Commissioner to create a non-profit board to develop the one-call system by representing the interested and affected parties. The Gopher State One-Call Board of Directors is made up of up to 20 people representing excavators, large gas and electric utilities, small rural cable, telephone and electric associations, cities, and others. The Board determined the technology needed and all associated policies with such a system.

Initially the Legislature did not include a civil penalty provision in M.S. 216D. Only after the federal government made it clear that such a penalty clause would be needed for Minnesota to be considered an interstate agent, and after the one-call system was operational and the Gopher State One-Call Board supported the recommendation of the Office of Pipeline Safety for the implementation of civil penalties, did the Legislature unanimously endorse such a provision.

The legislation requires that all members join one-call and share in the costs of operating such a system. The new law separates pipeline operators from the act by including a violation of one-call to follow the penalty provisions in 299F.60. All other persons covered under this new act are limited to a maximum civil penalty of $500 for each violation per day of violation.

The Minnesota Office of Pipeline Safety has previously adopted permanent rules relating to Pipeline Safety Enforcement and Sanctions in Minnesota Rules, Chapter 7530. Many of the procedures pertaining to citations, response options, director review, and consent orders proposed in this chapter closely parallel these previously adopted rules. It is beneficial to all parties concerned to maintain a high level of uniformity and consistency when enforcing regulations so closely related to pipeline safety.

The one-call notification center is a major tool to enhance the public's safety. Participation in the operation and costs of such a system will go a long way toward saving lives and reducing property loss. Failure to follow this law has and will lead to

death and significant property loss. It is important then to allow for reasonable civil penalties to be issued against violators of the law.

STATUTORY AUTHORITY

These rules are specifically authorized by Minnesota Statutes, sections 216D.08, subdivision 4. The Commissioner of Public Safety also has general authority to promulgate rules to protect public safety under Minnesota Statutes, section 299F.56 - 299F.641.

EFFECT OF THE RULE

These rules will have a direct effect on persons engaged in excavation for remuneration and operators of underground facilities and on the office of pipeline safety.

SMALL BUSINESS CONSIDERATIONS

Minnesota Statutes, section 14.115 requires the office to consider the effect on small businesses when it adopts rules. Many of the persons engaged in excavation for remuneration are small businesses as defined by section 14.115, subdivision 1.

Section 14.115, subdivision 2 states in part:

> "When an agency proposes a new rule, or an amendment to an existing rule, which may affect small businesses . . ., the agency shall consider each of the following methods for reducing the impact of the rule on small businesses:
>
> (a) the establishment of less stringent compliance or reporting requirements for small businesses;
>
> (b) the establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses;
>
> (c) the consolidation or simplification of compliance or reporting requirements for small businesses;
>
> (d) the establishment of performance standards for small businesses to replace design or operational standards required in the rule; and
>
> (e) the exemption of small businesses from any or all requirements of the rule."

The legislature considered the specific methods for reducing the impact of the rule on small businesses, as required by Minnesota

Statute. The result of that consideration is the less stringent requirements that are applicable to small businesses. To have exempted small businesses completely defies the purpose of the rule, which is to reduce third party damage and compile a common data base of knowledge of underground facilities. Damage would not be significantly reduced, nor a data base be complete, if small businesses were not required to comply with the one-call notification system.

The rule as proposed reduces the legwork of the small business because it requires only "one call" as opposed to calling all underground facilities operators to determine the location of their facilities. This reduces the need for a small business to employ additional staff to make telephone inquiries and wait for information.

The fine that could be imposed against the small business that does not comply with the notification requirements was specifically set with small businesses in mind. The legislature was fully informed as to who would be affected by this rule when the details of the one-call notification system were set out in statute, and it was due to the information regarding small businesses that the legislature chose the $500 fine.

The Office of Pipeline Safety has fulfilled the requirements of Minnesota Statutes 14.115.

FEES IMPOSED BY THE RULES

The rule does not fix any fees nor does the statute authorizing promulgation of the rules require that any fees be fixed. Therefore, no approval from the Commissioner of Finance is needed.

FISCAL IMPACT

Adoption of this rule will only require the expenditure of public money by local bodies, if they would be culpable and a civil penalty was accessed. It is not anticipated that these rules will result in additional spending by local bodies in excess of $100,000 per year for the first two years following adoption of the rule.

ENVIRONMENTAL EFFECTS

Adoption of these rules will have no negative effect on the quality of air or water in the state nor will the rules have a negative effect on the quality and amount of agricultural land. These rules will help the Office of Pipeline Safety protect the quality of air, water, and agricultural land in the state from the effects of pipeline leaks.

RULE BY RULE ANALYSIS

Subpart 1. Some of the terms defined in part .0100 and used in this chapter, like "director" or "office", may be used elsewhere in Minnesota Rules with different meanings. It is necessary, therefore, to explicitly limit the application of these definitions to this chapter to avoid ambiguity in the definitions of these terms when they are used elsewhere.

Subp. 2. These rules create responsibilities and authority for the Director of the Office of Pipeline Safety. It is necessary, in the rules, to refer repeatedly to the Director. The definition of "Director" reasonably provides a single term for use in each of these references to avoid the inefficient and tedious repetitions of the Director's entire title. The use of the single term "Director" makes the rule easier to read and understand. It is necessary to provide an explicit definition of "Director" to avoid ambiguity and misunderstanding that would result from the use of the term without a definition.

Subp. 3. To fulfill the mandate of Minnesota Statutes, sections 216D it is necessary for the Office of Pipeline Safety to take certain administrative actions. These actions may affect private parties. It is necessary, therefore, to include safeguards in the rule to prevent arbitrary actions or the appearance of arbitrary actions by the Office. The definition of "good cause to believe' contained in this rule contains objective standards used in the rule to determine when it is necessary for the Office to take administrative action to protect the public.

Subp. 3.A. Information from a person is a reasonable basis for action by the Office. The public must feel free to call the office with information or concerns regarding the one-call system. Since information received by a person will be followed up by the office before action is taken there is reasonable assurance against the effects of bad faith or frivolous information.

Subp. 3.B. Facts supplied by the one-call notification system form a reasonable basis for action by the Office. It is reasonable to assume that the one-call notification center will not provide the Office with bad faith or frivolous information to its own detriment. Also, all information given to the one-call is recorded so that all information can be verified through documentation.

Subp. 3.C. Action based on objective facts is not arbitrary. Therefore, facts known to the Director or the Director's agents form a reasonable basis for administrative action.

Subp. 3.D. Since excavators and operators comprise the majority of those persons directly involved with the one-call system, and those who have the greatest stake in its success, it is reasonable

to rely on information supplied by either as good cause to believe that a violation occurred.

Subp. 4. The one-call notification system is dependent on operators of underground facilities marking their facilities for excavation. It is necessary, therefore, to explicitly define what constitutes a "locate."

Subp. 5. These rules create responsibilities and authority for the Office of Pipeline Safety. It is necessary, in the rules, to refer repeatedly to the "office". The definition of office reasonably provides a single term for use in each of these references to avoid the inefficient and tedious repetitions of the office's entire name. The use of the single term, office, makes the rule easier to read and understand. It is necessary to provide an explicit definition of office to avoid ambiguity and misunderstanding that would result from the use of the term without a definition.

Subp. 6. Minnesota Statutes, chapter 216D.08, subdivision 1, makes a person who is engaged in excavation for remuneration subject to civil penalties for violation of one-call laws. It is necessary, then, to set out in greater detail what "remuneration" will mean relative to the office's enforcement of Minnesota Statute. A person who receives financial benefit, whether through direct payment from a client for services rendered or through indirect benefit to his or her business from excavation will be held civilly responsible for any violation of one-call provisions. Only persons receiving financial benefit to a business are subject to these penalties. This is in keeping with the legislature's express intent that homeowners, farmers, or other individuals be responsible to the law, but not to possible civil penalties.

7560.0200

Subp. It is necessary for an excavator to be able to rely on a locate for a specified period of time. A 48 hour period from the date and time the excavation is to begin is reasonable because the potential for outside factors to affect a locate greatly increase with time. Because "locates" or marking of facilities can be affected by a variety of causes it is necessary to set out under what circumstances excavation may not proceed.

Subp. A. If a "locate" has been obliterated or obscured it would be dangerous to proceed with the excavation. It is reasonable to require a new locate if this has occurred.

Subp. B. If weather conditions have made the markings difficult to see it would be dangerous to proceed with the excavation. It is reasonable to require a new locate if this has occurred.

Subp. C. If there is evidence of recent excavation which may have altered or affected the location of underground facilities it would

be dangerous to proceed with excavation. It is reasonable to require a new locate if this has occurred.

Subp. D. Likewise, if the excavator has reason to believe that the locate markings are incorrect or missing it would be dangerous to proceed with the excavation. It is reasonable to require a new locate if this is the case.

7560.0300

Subp. 1. Minnesota Statutes 216D.03, subdivision 1 requires operators to "participate in and share in the costs of" the one-call notification center. It is reasonable to require the following information and financial support as a function of that participation.

Subp. 1.A. It is necessary for the notification center to have all information needed to accurately, and in a timely manner, identify all facilities located in the area of a request to dig. Therefore, operators must submit required information so that the notification center can carry out its mandate under Minnesota law.

Subp. 1.B. It is likewise reasonable that the information submitted to the notification center be updated as necessary to allow continued accurate and timely identification of all facilities located in the area of a request to dig.

Subp. 1.C. Since the one-call notification is required to be a statewide operation, and since an operation of that size must rely on automated means to carry out its mandate, it is reasonable that the center require operators to install appropriate equipment to support such a system. Also, the use of automated equipment reduces the overall cost of the system to all who participate.

Subp. 1.D. The one-call notification center board of directors is comprised of persons representative of operators, excavators, and government units affected by notification requirements. The one-call board of directors is responsible for the operation of the notification center, including setting and approving the operating expenses of the notification center, including the costs charged to recover operating expenses. It is, therefore, reasonable for the operator to pay all costs determined by such a representative body to be needed for the continued operation of the notification center.

Subp. 1.E. For the one-call notification center to properly function, and for the safety of the Minnesota public to be protected, and for the requirements of Minnesota Statutes, chapter 216D to be met, it is necessary and reasonable to require operators to receive and respond to excavation notices.

7560.0400

Subpart 1. When there is a probable violation of safety standards it is necessary for the Office to notify the person involved of the probable violation. It is necessary for the Office to have authority to take immediate corrective action to protect the public. Notice of Violation sets out the steps in this process. This provision is reasonable because it sets out, very explicitly, the contents of the Notice of Violation. This ensures that the cited person has notice of the pending action by the Office.

Subp. 2. The rule requires a statement of the statute, regulation, or rule allegedly violated. This is reasonable because it enables the cited person to correct the problem or to specifically rebut the charge.

Subp. 2.A. The rule requires a statement of the evidence on which the violation is made. This is reasonable because it enables the cited person to specifically rebut the evidence or provide additional information not provided at the time of the inspection and it may notify the cited person of facts concerning actions which have created a threat to public safety.

Subp. 2.B. The rule requires notice of the response options available to the cited person. It is reasonable to specify response options because the pipeline operator will know how to respond and because the response can then be submitted in the manner most likely to ensure fair treatment and resolution of the problem.

Subp. 2.C. The rule requires a statement of the amount of any proposed civil penalty, the maximum allowable civil penalty, and any proposed compliance order. This is reasonable because the cited person must know the extent of potential liability to determine how to respond most effectively.

7560.0500

Subp. It is reasonable to set out response options to a notice of violation in the rule so the cited person will have notice of the procedures to be followed in responding and so the process will be followed in the manner most likely to bring about a fair and speedy resolution to the problem.

Subp. A. A notice of violation may contain a proposed compliance order. It is necessary to specify the permissible response options to allow the cited person an opportunity to consider subsequent action.

Subp. 1.A.1 The rule provides agreement as one of the permissible response options. It is reasonable to allow for an expedient settlement when their is no dispute regarding the notice of violation.

Subp. 1.A.2 The rule provides for the execution of a consent order as an allowable response option. Cited persons may agree that a violation occurred, but disagree with the corrective action proposed, or disagree with the office's interpretation of the law, rule or regulation cited in the Notice of Violation. It is reasonable, therefore, to allow the cited person to propose other solutions to the problem or disagree with the interpretation.

Subp. 1.A.3 The rule provides objection to the proposed compliance order as a permissible response option. Cited persons that disagree with the Notice of Violation can submit evidence and argument to the Office to attempt to change the position of the Office. It is reasonable to provide cited person the opportunity to submit evidence and argument directly to the Office because this will be a less expensive and time consuming process than a more formal adjudication.

Subp. 1.A.4 The cited person can demand a contested case hearing before the Office of Administrative Hearings. This is a necessary response option for disagreements that cannot be resolved through any other allowable response options. It is reasonable to provide the cited person an opportunity to argue his case in an impartial forum.

Subp. 1.B. A notice of violation may contain a proposed civil penalty. It is necessary to specify the permissible response options to allow the cited person an opportunity to consider subsequent action.

Subp. 1.B.1 The rule provides agreement as one of the permissible response options. It is reasonable to allow for an expedient settlement when their is no dispute regarding the proposed civil penalty.

Subp. 1.B.2 The rule provides an opportunity for the cited person to submit an offer in compromise of the proposed civil penalty. It is reasonable to allow the cited person to negotiate directly with the Office because this will be less time consuming than more formal arbitration.

Subp. 1.B.3 The rule provides an opportunity for the cited person to submit evidence or explanations in answer to the allegations or in mitigation of the proposed civil penalty. It is reasonable to allow the cited person an opportunity to provide additional evidence and information directly to the Office because this will be a less expensive and time consuming process than a more formal adjudication.

Subp. 1.B.4 The rule provides an opportunity for the cited person to request a contested case hearing before the Office of Administrative Hearings. This is a necessary response option for

disagreements that cannot be resolved through any other allowable response options. It is reasonable to provide the cited person an opportunity to argue his case in an impartial forum.

7560.0600

When written explanations or information are submitted to the Office for review it is reasonable to expect the information will be given attention at the highest level. To this end the Director will review the information and determine whether to negotiate, modify, or withdraw the notice of violation.

It is likely that a substantial percentage of disagreements between pipeline operators and the Office over Notices of Violation will be resolved without resorting to a more formal hearing process. It is necessary to provide the cited person an opportunity to argue disagreements with the Office in an impartial forum. There will be cases where the cited person and the Office are unable to reach an agreement concerning an alleged violation of safety regulations and an impartial arbitrator is needed.

7560.0700

Part .0700 describes the consent order in detail. This provision is necessary because it notifies the cited person what is involved in a Consent Order. This information will aid the cited person in determining what course to take in response to the Notice of Violation.

Subp. A. A Consent Order is intended to be a final settlement of the issues raised by a Notice of Violation. One possible issue is the facts of the violation and jurisdiction of the Office over the cited person. It is reasonable to settle this issue in the Consent Order if it is to be a final settlement. For this reason the rule requires that the Consent Order contain an admission of all jurisdictional facts.

Subp. B. The Consent Order would not be a final settlement if either party were free to obtain further review. It is reasonable, therefore, to require that the Consent Order contain a waiver of further review.

Subp. C. After the issuance of a Consent Order, it is desirable to avoid disagreements over the interpretation of the terms of the Consent Order. It is reasonable, therefore, to require that the Consent Order contain an agreement that the Notice of Violation will be used to interpret terms of the Consent Order.

7560.0800

It is necessary in this part to distinguish between excavators, operators who are subject to civil penalties under M.S. 216D.08,

and those that are subject to civil penalties under M.S. 299F.60, as required in M.S. 216D.08, subdivision 1.

Subp. 1. Persons in the business of excavation for remuneration are in business and it is reasonable that there be financial consequences for their acts. Minnesota Statutes, section 216D.08, subdivision 1 authorizes the office to assess civil penalties against persons in the business of excavation for remuneration for violations of said statute. The proposed rule sets out the procedures for determining when a fine should be assessed and setting the amount of the fine. It is also necessary to clarify that operators who engage in excavation are still regarded as operators for the purposes of this part. This is a reasonable clarification because an operator engaged in excavation which is in violation could argue that they are subject to the proceedings specified for excavators. Further, it is reasonable that operators of underground facilities be held especially accountable for compliance with this law, as it is designed to protect their facilities.

Subp. 2. A. It is reasonable to allow for proceedings against operators of underground facilities who violate the one call excavation notice system because the purpose of a one call notification system is to protect their underground facilities from damage due to excavation. It is reasonable to expect these operators to cooperate and comply with the requirements of the One Call Excavation Notice System. It is necessary to distinguish between gas and hazardous liquid pipeline operators and underground facility operators because they are subject to different proceedings under M.S. 216D.08, subdivision 1.

Subp. 2. B. It is necessary to specify that gas and hazardous liquid pipeline operators in violation of the one call excavation notice system are subject to proceedings under M.S. 299F.60, as required by Statute. It is reasonable to allow for substantially greater civil penalties for gas and hazardous liquid pipeline operators that violate the one call system, because the potential for significant loss of life and/or property is much greater for gas and hazardous liquids pipelines than for noncombustible underground facilities. In addition, the legislature specifically considered that gas and hazardous liquid pipeline operators should be subject to M.S. 299F.60 by reference in M.S. 216D.08, subdivision 1.

Subp. 3. It is reasonable to set out the considerations on which the penalty will be based so the Office will have guidelines to help in assessing the fine and so affected parties will know that the fine determination is based on objective considerations.

Subp. 3. A. A safety regulation violation cannot be evaluated without considering the context in which it takes place. The purpose of enforcing safety regulations is to protect the public

and any violation must be considered in relation to the threat caused to public safety. For these reasons it is reasonable to include the nature, circumstances, and gravity of the violation as a basis for the civil penalty assessment determination.

Subp. 3. B. Safety regulation violations can only be evaluated by considering the culpability of the cited person. It is reasonable, therefore, to include the culpability of the cited person as a basis for the civil penalty assessment determination.

Subp. 3. C. The rule requires that the office, when determining the amount of civil penalty, consider the history of safety regulation violations. A person's history of damage to underground facilities is an important and reasonable basis on which to determine fines. If a person has a history of damaging facilities, depending on the circumstances involved, this may indicate the need for a larger assessment. Likewise, if a person has no previous history of damage to underground facilities this may indicate a lesser need for an assessment.

Subp. 3. D. Business's range widely in size. A fine that would have a significant impact on one person may be incidental to another. It is reasonable, therefore, to include the cited person's ability to pay as one basis for the civil penalty assessment determination.

Subp. 3. E. If a cited person is trying, in good faith, to comply with one-call regulations it is reasonable that this be a mitigating factor in the determination of a suitable civil penalty for violation. This factor goes to the culpability of the cited person mentioned earlier but is important enough to be mentioned separately.

Subp. 3. F. Excavation is a vital community service. It would be in no one's interest to force a person serving this function out of business. It is necessary, therefore, to consider the effect on the cited person's ability to continue in business when determining an appropriate civil penalty assessment.

Subp. 3. G. It is necessary that the office consider past reports of damage to an underground facility. If a cited person has a history of safety one-call regulation violations, it may mean that previous corrective actions by the Office have been ineffective or non-existent. It is reasonable to consider a larger civil penalty for a cited person with a history of repeated damage to an underground facility.

Subp. 4. It is necessary and reasonable to specify the maximum penalties associated with specific violations of the one call system in order that persons subject to these provisions are aware of the consequences for failure to comply.

Subp. 4. A. M.S. 216D.08, subdivision 1, specifies that civil penalties for persons engaged in excavation for remuneration are not to exceed $500 for each violation per day of violation. It is reasonable to allow penalties for a violation to be assessed for each day it exists in order to provide adequate incentive to achieve compliance.

Subp. 4. B. M.S. 216D.08, subdivision 1, specifies that civil penalties for operators other than operators subject to M.S. 299F.59 are not to exceed $500 for each violation per day of violation. It is reasonable to allow penalties for a violation to be assessed for each day it exists in order to provide adequate incentive to achieve compliance.

Subp. 4. C. M.S. 216D.08, subdivision 1, specifies that operators subject to M.S. 299F.59 who violate M.S. 216D.01 to 216D.07 are subject to a civil penalty to be imposed under section 299F.60. It is reasonable to clarify that civil penalties imposed under 299F.60 can be up to $10,000 for each violation for each day that such violation persists, except that the maximum civil penalty shall not exceed $500,000 for any related series of violations. This was a specific consideration of the legislature in both M.S. 216D.01 to 216D.09, and M.S. 299F.56 to M.S. 299F.641.

Subp. 5. It is reasonable to specify the fine payment method in the rule so that cited person will know how to pay the fine and to ensure that all persons will be treated similarly.

CONCLUSION

Excavators and operators in this state perform a vital service for the public but also present a potential serious threat to public safety. These important yet potentially dangerous functions must be regulated to protect the public without greatly interfering with their business. The Legislature has given the Commissioner the authority and responsibility to enforce one-call notification system in Minnesota Statutes, section 216D. These rules are necessary to perform that duty and to ensure that all affected parties are treated similarly.

onecall.nrs
3/26/91

STATE OF MINNESOTA
DEPARTMENT OF PUBLIC SAFETY
OFFICE OF PIPELINE SAFETY

In The Matter Of The Proposed Adoption Of Rules Of The State Department Of Public Safety Governing One-Call Excavation Notice System Enforcement And Sanctions	FINDINGS OF FACT, CONCLUSIONS, AND ORDER ADOPTING RULES WITHOUT PUBLIC HEARING

(1) Notice of the Commissioner's intent to adopt the above-entitled rules was published in the State Register on April 29, 1991, and was sent by United States mail to all persons on the list maintained by the Department pursuant to Minnesota Statutes, sections 14.14, subdivision 1a, and 14.22, on April 24, 1991. (2) The Statement Of Need And Reasonableness was prepared before the Notice Of Intent To Adopt Rules Without A Public Hearing was mailed to all persons on the rulemaking mailing list and published in the State Register and was available to the public. A copy of the Statement Of Need And Reasonableness was sent to the Legislative Commission To Review Administrative Rules when it became available to the public.

(4) All persons were given the opportunity to submit comments on the rules for 30 days after notice of proposed rulemaking. The Department received nine comments and submissions on the rules in response to the Notice Of Intent To Adopt Rules Without A Public Hearing. (7) The Department received no requests for notice of submission to the attorney general. (5) The Department received eight requests for a public hearing, of which one was subsequently withdrawn. Therefore, there are not 25 or more outstanding requests for a public hearing.

Based on the comments and evidence in the record before the agency, I find the following:

1. Part 7560.0200 of the proposed rules is changed in response to comments received by the Department as follows:

> 7560.0200 ~~UNDERGROUND-FACILITY-LOCATE;-RELIANCE~~ EXCAVATOR; DUTY TO NOTIFY NOTIFICATION CENTER.
>
> After facilities are located by an operator, an excavator ~~must-be-able-to-rely-on-the-locate-for-a-period-of-48-hours-from-the-date-and-the-time-when-excavation-is-to-begin-unless~~ 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;

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

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

D.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.

Andrew Nimmick of Williams Pipe Line Company commented by telephone on part 7560.0200, as proposed. Charles Hoffman of Maslon Edelman Borman & Brand, submitted a letter summarizing Williams' position. Williams was concerned about the proposed rule language: "An excavator must be able to rely on the locate for a period of 48 hours from the date and the time when excavation is to begin . . . ." Williams felt that this language could "be subject to a possible interpretation holding that this provision created or extended liability to the operator if a proper locate was somehow disturbed by forces beyond the control of the operator, after a proper locate is performed by the operator." Hoffman letter, page 1.

Such an interpretation would be above and beyond the responsibility of an operator for the accuracy of a locate imposed by the common law or by statute. Operators have a responsibility to accurately locate underground facilities, but are not responsible to post someone at the site to make sure that the locate is not moved, obscured, or altered.

Warren E. Satterlee of Great Plains Natural Gas also commented on part 7560.0200. Mr. Satterlee suggested that part 7560.0200 be modified to clarify the circumstances under which an excavator may rely on a locate. Mr. Satterlee also suggested that when any of the listed conditions existed, the excavator should be required to notify the One-Call Center and request that the area be remarked.

The Department's intent in proposing part 7560.0200 was to clarify the obligations of an excavator by limiting the amount of time an excavator could rely on or use a locate. The Department did not intend that part 7560.0200 would impose any additional responsibility on an operator for the continued accuracy of a locate. In the past, the Department has encountered excavators using locates that are stale. This is a problem because as time goes by, the possibility increases steadily that the

locate will be moved, obscured, or altered. The Statement Of Need And Reasonableness bears this out under the analysis of part 7560.0200 where it states: "A 48 hour period from the date and time the excavation is to begin is reasonable because the potential for outside factors to affect a locate greatly increase with time." SONAR, page 7.

The proposed modifications do not prohibit an excavator from using a locate after 48 hours if the excavator has made prior arrangements with the operators affected. This is reasonable because the operators would know the durability of the markings used to indicate a locate and would know when it is necessary to perform another locate.

The modifications to part 7560.0200 more accurately reflect the intent of the Department to limit the amount of time that an excavator can use a locate. The modifications also clarify that there is no intent to impose additional responsibility on an operator for the continued accuracy of a locate. The modifications do not change the intent of part 7560.0200 as set forth in the Statement Of Need And Reasonableness and, therefore, is not a substantial change.

2. Warren E. Satterlee of Great Plains Natural Gas questioned the different maximum penalties for different types of operators or excavators, as set out in part 7560.0800, subpart 4. Mr. Satterlee pointed out that the maximum penalty for an excavator who violates the statute is $500 per day. The maximum penalty is also $500 per day for an underground telephone, water, sewer, electricity, or cable operator who violates the statute. However, if a natural gas operator violates the statute, the penalty is limited to $10,000 per day. Mr. Satterlee asked, "Why is there such a differentiation between the penalties assessed the various participants in the system? GPNG feels that the civil penalty limits should be the same, regardless of which party violates the law." Satterlee letter, page 2.

As stated in the Statement Of Need And Reasonableness, the maximum penalties are set out in statute. Minnesota Statutes, section 216D.08, subdivision 1, states:

> A person who is engaged in excavation for remuneration or an operator other than an operator subject to section 299F.59, subdivision 1, who violates sections 216D.01 to 216D.07 is subject to a civil penalty to be imposed by the commissioner not to exceed $500 for each violation per day of violation. An operator subject to section 299F.59, subdivision 1, who violates sections 216D.01 to

216D.07 is subject to a civil penalty to be imposed under section 299F.60.

(6) A civil penalty imposed under Minnesota Statutes, section 299F.60, is "not to exceed $10,000 for each such violation for each day that such violation persists . . . ."

The Department will not modify the proposed rules as requested by Mr. Satterlee because the Department does not have the authority to use rules to supersede Minnesota Statutes. Mr. Satterlee's point is well taken, but he will have to pursue any changes through the legislative process.

3. The above modifications are not substantial in that the modifications do not affect a new class of persons who did not have an opportunity to respond to the proposed rules as originally noticed.

4. The above modifications are not substantial in that the modifications do not introduce significant new subject matter which a reasonable person, on the basis of the proposed rules as originally noticed, would not have anticipated would occur during the rulemaking proceeding.

5. The above modifications are not substantial in that the modifications do not make a major substantive change that was not raised by the proposed rules as originally noticed in such a way as to invite reaction.

6. The modifications of the above-captioned rules do not result in inadequate notice to affected parties.

7. The above captioned rules are needed and reasonable.

NOW, THEREFORE, IT IS ORDERED that the rules identified as the Rules of the State Department of Public Safety Governing One-Call Excavation Notice System Enforcement And Sanctions, as modified, is adopted this 13th day of June, 1991, pursuant to authority vested in me by Minnesota Statutes, sections 216D.08, 299F.56 to 299F.641, 14.06, and 299A.01.

Ralph Church

Ralph Church, Commissioner
Department of Public Safety

November 21, 1990

Ms. Maryanne V. Hruby, Executive Director
Legislative Commission to Review Administrative Rules
Room 55, State Office Building
100 Constitution Avenue
St. Paul, MN 55155

Dear Ms. Hruby:

Minnesota Statutes, sections 216D.08 and 299F.631, both effective August 1, 1989, direct the Commissioner of Public Safety to adopt rules to impose civil penalties within the one-call notification system and to implement fees respectively. On reviewing the progress of the rule writing within the Office of Pipeline Safety both sets of rules are near completion, but notice of intent to adopt will not be published in November as anticipated.

The one-call rules are in the revisor's preliminary draft form. The statement and rule draft are being revised for the final time. Notice of Intent to Adopt the one-call rules should be published during January, 1991, if not earlier.

The fee rules are also in the revisor's preliminary draft form. The statement and the rule draft require a little more revision. Notice of Intent to Adopt the fee rule should be published during February, 1991, if not earlier.

The reasons for the delay in promulgation of these rules mirror the reasons stated in the June 28th letter. The Office of Pipeline Safety is limited in staff and retains inspections as its first priority. The office also has a number of rule writing mandates and is attempting to do a thorough job on all rules. This has lead to the need to prioritize each rule project while striving for complete, functional, and legal rules overall.

If you have any questions or wish to discuss this matter further, please contact me at your convenience.

Sincerely,

Katherine Burke Moore
Rules Coordinator

CC: Rudy Perpich, Governor
Room 130 State Capitol
St. Paul, MN 55155

Senator Ronald Dicklich
Public Utilities & Energy
235 State Capitol
St. Paul, MN 55155

Rep. Joel Jacobs
Regulated Industries
485 State Office Building
St. Paul, MN 55155

William Barbeau, Director
Office of Pipeline Safety
175 Aurora Avenue
St. Paul, MN 55103

RECEIVED
91 MAY 30 AM 8:55
ADMINISTRATIVE
HEARINGS

STATE OF MINNESOTA
DEPARTMENT OF PUBLIC SAFETY
OFFICE OF PIPELINE SAFETY

In the Matter of the Proposed Rule of the State Department of Public Safety Governing One-Call Excavation Notice System Enforcement and Sanctions

NOTICE OF INTENT TO ADOPT A RULE WITHOUT A PUBLIC HEARING AND NOTICE OF INTENT TO ADOPT A RULE WITH A PUBLIC HEARING IF TWENTY-FIVE OR MORE PERSONS REQUEST A HEARING

(1) **NOTICE IS HEREBY GIVEN** that the State Department of Public Safety proposes to adopt the above-entitled rule without a public hearing following the procedures set forth in Minnesota Statutes, sections 14.22 to 14.28. The statutory authority to adopt the rule is Minnesota Statutes, section 216D.08, subdivision 4; sections 299F.56 to 299F.641; and section 14.06.

(2) Persons interested in this rule will have 30 days in which to submit comment in support of or in opposition to the proposed rule or any part or subpart of the rule and comment is encouraged. (3) Each comment should identify the portion of the proposed rule addressed, the reason for the comment, and any change proposed.

Any person may make a written request for a public hearing on the rule within the 30-day comment period. (4) If 25 or more persons submit a written request for a public hearing within the 30-day comment period, a public hearing will be held unless a sufficient number withdraw their request in writing. (6) Any person requesting a public hearing should state his or her name and address, and is encouraged to identify the portion of the proposed rule addressed, the reason for the request, and any change proposed. (7) If a public hearing is required, the agency will proceed pursuant to Minnesota Statutes, sections 14.131 to 14.20. **PLEASE NOTE: That if twenty-five or more persons submit written requests for a public hearing within the 30-day comment period, a hearing will be held on June 26, 1991, unless a sufficient number withdraw their request. The hearing will be in accordance with the notice of public hearing on this same rule published in this State Register and mailed to persons registered with the Department of Public Safety.** To verify whether a hearing will be held, please call the Department of Public Safety, Office of Pipeline Safety, on or after May 30, 1991, between the hours of 8:00 a.m. and 4:30 p.m. at (612)-296-9636.

(5) Persons who wish to submit comments or a written request for a public hearing must submit such comments or requests to: Brian Pierzina, Office of Pipeline Safety, 175 Aurora Avenue, St. Paul, MN 55103, (612)-296-9636

Comments or requests for a public hearing must be received by the Department by 4:30 p.m. on May 29, 1991.

(8) The proposed rule may be modified if the modifications are supported by data and views and do not result in a substantial change in the proposed rule as noticed.

(11) A free copy of this rule is available on request for your review from Brian Pierzina at the address and telephone number listed above.

Minnesota Statutes, chapter 216D, mandates the creation and use of the one-call excavation notice system. The system is to be used by excavators so that the location of all pipelines and other underground facilities is known before excavation takes place. This rule governs the enforcement of and sanctions for violating the requirements of the system. This rule sets standards for the marking of an underground facility; requires operators to participate in the one-call system; sets out the conditions under which the office must issue a notice of probable violation; gives the options that may be used to respond to a notice of violation; provides for review by the director; provides for the calculation, imposition, and payment of civil penalties assessed against excavators and operators for violations.

(12) **A Statement of Need and Reasonableness** that describes the need for and reasonableness of each provision of the proposed rule and identifies the data and information relied on to support the proposed rule has been prepared and is available from Brian Pierzina upon request at the address and telephone number listed above.

In preparing this rule, the Department has considered the requirements of Minnesota Statutes, section 14.115, in regard to the impact of the proposed rule on small businesses. The adoption of the rule will affect small businesses which are engaged in excavation for remuneration. The department has evaluated the effect of the proposed rule on small businesses and has determined that the legislature, in drafting the applicable statutes, appropriately considered and drafted the legislation to reduce the impact on small businesses. The department's evaluation of the legislation is addressed in the Statement of Need and Reasonableness.

Adoption of this rule will not result in additional spending by local public bodies in excess of $100,000 per year for the first two years following adoption of the rule nor have an impact on agricultural land under Minnesota Statutes, section 14.11. Minnesota Statutes, section 16A.128, subdivision 2a, does not apply because the rule does not fix any fees.

(9) If no hearing is required upon adoption of the rule, the rule and the required supporting documents will be delivered to the

Attorney General for review as to legality and form to the extent the form relates to legality. Any person may request notification of the date of submission to the Attorney General. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the adopted rule, must submit the written request to: Brian Pierzina, Office of Pipeline Safety, 175 Aurora Avenue, St. Paul, MN 55103.

4-9-91
Date

Ralph Church, Commissioner
Department of Public Safety

In the Matter of the Proposed Rule of the State Department of Public Safety Governing One-Call Excavation Notice System Enforcement and Sanctions

NOTICE OF HEARING AND NOTICE OF INTENT TO CANCEL HEARING IF FEWER THAN TWENTY-FIVE PERSONS REQUEST A HEARING IN RESPONSE TO NOTICE OF INTENT TO ADOPT A RULE WITHOUT A PUBLIC HEARING

NOTICE IS HEREBY GIVEN that a public hearing on the above-entitled matter will be held in Conference Room D, 5th Floor, Veterans Service Building, 20 West 12th Street, St. Paul, MN 55155, on Wednesday, June 26, 1991, commencing at 9:00 a.m. and continuing until all interested or affected persons have an opportunity to participate. The proposed rule may be modified as a result of the hearing process. Therefore, if you are affected in any manner by the proposed rule, you are urged to participate in the rule hearing process.

PLEASE NOTE, HOWEVER: that the hearing will be cancelled if fewer than twenty-five persons request a hearing in response to the notice of intent to adopt this same rule without a public hearing published in this State Register and mailed to persons registered with the Department of Public Safety. To verify whether a hearing will be held, please call the Department of Public Safety, Office of Pipeline Safety, on or after May 30, 1991 between the hours of 8:00 a.m. and 4:30 p.m. at (612)-296-9636.

Following the Department's presentation at the hearing, all interested or affected persons will have an opportunity to participate. Such persons may present their views either orally at the hearing or in writing at any time prior to the close of the hearing record. All evidence presented should be pertinent to the matter at hand. Written material not submitted at the time of the hearing which is to be included in the hearing record may be mailed to Jon L. Lunde, Administrative Law Judge, Office

of Administrative Hearings, 500 Flour Exchange Building, 310 Fourth Avenue South, Minneapolis, MN 55415, telephone (612)-341-7645, either before the hearing or within five working days after the public hearing ends. The Administrative Law Judge may at the hearing, order the record be kept open for a longer period not to exceed 20 calendar days. The comments received during the comment period shall be available for review at the Office of Administrative Hearings.

Following the close of the comment period, the agency and all interested persons have three business days to respond in writing to any new information submitted during the comment period. During the three-day period, the agency may indicate in writing whether there are amendments suggested by other persons which the agency is willing to adopt. No additional evidence may be submitted during the three-day period. Any written material or responses must be received at the Office of Administrative Hearings no later than 4:30 p.m. on the final day. The written responses shall be added to the rulemaking record. Upon the close of the record, the Administrative Law Judge will write a report as provided in Minnesota Statutes, sections 14.15 to 14.50. The rule hearing is governed by Minnesota Statutes, sections 14.14 to 14.20, and by Minnesota Rules, parts 1400.0200 to 1400.1200. Questions about procedure may be directed to the Administrative Law Judge.

Minnesota Statutes, chapter 216D, mandates the creation and use of the one-call excavation notice system. The system is to be used by excavators so that the location of all pipelines and other underground facilities is known before excavation takes place. This rule governs the enforcement of and sanctions for violating the requirements of the system. This rule sets standards for the marking of an underground facility; requires operators to participate in the one-call system; sets out the conditions under which the office must issue a notice of probable violation; gives the options that may be used to respond to a notice of violation; provides for review by the director; provides for the calculation, imposition, and payment of civil penalties assessed against excavators and operators for violations.

The agency's authority to adopt the proposed rule is contained in Minnesota Statutes, section 216D.08, subdivision 4; sections 299F.56 to 299F.641; and section 14.06.

In preparing this rule, the Department has considered the requirements of Minnesota Statutes, section 14.115, in regard to the impact of the proposed rule on small businesses. The adoption of the rule will affect small businesses which are engaged in excavation for remuneration. The department has evaluated the effect of the proposed rule on small businesses and has determined that the legislature, in drafting the applicable statutes, appropriately considered and drafted the legislation to reduce the impact on small businesses. The department's

evaluation of the legislation is addressed in the Statement of Need and Reasonableness.

Adoption of this rule will not result in additional spending by local public bodies in excess of $100,000 per year for the first two years following adoption of the rule nor have an impact on agricultural land under Minnesota Statutes, section 14.11.

Copies of the proposed rule are now available and at least one free copy may be obtained by writing to or calling: Brian Pierzina, Office of Pipeline Safety, 175 Aurora Avenue, St. Paul, MN 55103, (612)-296-9636.

Additional copies will be available at the hearing. If you have any questions on the content of the rule contact Brian Pierzina at the address or telephone number listed above.

NOTICE: Any person may request notification of the date on which the Administrative Law Judge's report will be available, after which date the agency may not take any final action on the rule for a period of five working days. If you desire to be notified, you may so indicate at the hearing. After the hearing, you may request notification by sending a written request to the Administrative Law Judge. Any person may request notification of the date on which the rule was adopted and filed with the Secretary of State. The notice must be mailed on the same day the rule is filed. If you want to be so notified you may so indicate at the hearing or send a request in writing to the Department at any time prior to the filing of the rule with the Secretary of State.

NOTICE IS HEREBY GIVEN that a Statement of Need and Reasonableness is now available for review at the Department and at the Office of Administrative Hearings. The Statement of Need and Reasonableness includes a summary of all the evidence and argument which the Department anticipates presenting at the hearing justifying both the need for and reasonableness of the proposed rule. Copies of the Statement of Need and Reasonableness may be reviewed at the Department or the Office of Administrative Hearings and copies may be obtained from the Office of Administrative Hearings at the cost of reproduction.

Lobbyists must register with the State Ethical Board. Questions should be directed to the Ethical Practices Board, 625 North Robert Street, St. Paul, Minnesota 55101-2520, telephone (612)-296-5148.

4-9-91
Date

Ralph Church, Commissioner
Department of Public Safety

OFFICE OF THE COMMISSIONER
211 Transportation Building
Telephone: _____

STATE OF MINNESOTA

DEPARTMENT OF PUBLIC SAFETY

SAINT PAUL 55155

June 12, 1991

Rec 6-12-91

Ms. Christie Eller
Assistant Attorney General
Public Finance Division
Office of the Attorney General
404 Capital Office Building
525 Park Street
St. Paul, Minnesota 55103

Re: In The Matter Of The Proposed Rules Of The State Department Of Public Safety Governing One-Call Excavation Notice System Enforcement And Sanctions

Dear Ms. Eller:

On June 12, 1991, The Minnesota Department of Public Safety adopted the above-captioned rules governing one-call excavation notice system enforcement and sanctions. Enclosed for your review are the following:

A. A photocopy of the Notice Of Solicitation Of Outside Information Or Opinions as published in the State Register. Also enclosed are copies of comments received in response to the Notice.

B. No copy of a rulemaking petition is enclosed because no such petition was filed regarding these rules.

C. No certificate of an authorizing resolution or copy of a delegation of authority is enclosed because the Department Of Public Safety is not a multi-member agency.

D. A copy of the proposed rules with a certificate of approval as to form by the Revisor Of Statutes attached.

E. A copy of the notice of intent to adopt rules without a public hearing, as mailed. The notice is in the form of dual notices of intent to adopt rules with a hearing or without a hearing, depending on the number of persons who request a hearing.

F. The Statement Of Need And Reasonableness in support of the proposed rules.

G. A copy of the affidavit of mailing the notice of intent to adopt rules without a public hearing. This affidavit is titled "Affidavit Of Mailing The Notice Of Public Hearing." Also enclosed is a copy of the Affidavit Of Certificate Of Mailing List. Also enclosed are copies of affidavits of mailing discretionary notice of intent to adopt rules and of publishing discretionary notice of intent to adopt rules.

H. A photocopy of the notice of intent to adopt the rules without a public hearing, as published in the State Register. The notice is in the form of dual notices of intent to adopt rules with a hearing or without a hearing, depending on the number of persons who request a hearing.

I. Four copies of the rules as adopted. The modifications to the proposed rules are reflected on the rules as adopted and are approved as to form by the Revisor Of Statutes.

J. No certificate of a resolution adopting the rules is enclosed because the Department Of Public Safety is not a multi-member agency.

K. A copy of the Findings of Fact, Conclusions of Law, and Order Adopting The Rules.

L. Copies of all written requests, withdrawals of requests for a hearing, submissions, or comments on the rules received by the agency except for requests solely for copies of the rules or of the Statement Of Need And Reasonableness.

M. A copy of the Declaration of Counsel signed by Special Assistant Attorney General Jeff Lebowski.

N. No notice of submission of the rules to the attorney general is enclosed because no persons requested notification of the date of submission of the rules to the attorney general.

O. No affidavit of mailing of notice of submission of the rules to the attorney general is enclosed because no such notices were given.

P. A copy of the Affidavit Of Mailing The Rules And Statement Of Need And Reasonableness To The Legislative Commission To Review Administrative Rules.

Q. No notice to the chairs of the house appropriations and senate finance committees is enclosed because the rules do not establish or adjust fees.

R. Copies of letters to the Legislative Commission To Review Administrative Rules, other appropriate committees of the legislature, and the governor, pursuant to Minnesota Statutes, section 14.12. The letter dated June 28, 1990, is a photocopy. The letters dated November 21, 1990, and February 12, 1991, are printed from computer disk.

If you have any questions about the enclosed documents or if you wish to discuss anything about the rules with me, please contact me at 296-2631.

Yours very truly,

David E. Orren
Rules Coordinator

enclosures

7560.0800 subp 2 A and B
"When the office has good cause to belie
- vague

called Dave Orren - I asked him if the same comments which were 9 were the same ones that requested a hearing - he said yes. I wanted to make sure we had all of the comments.

sent the SOLAR
180 deadline
They notified the Gov and LCAR in June 28, 1990, Novemba 21, 1990 and February 12, 1991 of their delay in writing the rules - it isn't mandatory so I don't think it is necessary

Since the fees are set up by Statute and not rule they would not need approval from Finance

Stat Authority 299F.56
Interstate Gas Pipeline Safety
Safety Standards
Safety Standards, Gas Pipelines

299F.57
subd 1 The commissioner may by rule establish additional or more stringent safety standards for the transportation of gas and gas pipeline facilities.

216D.08
A person who is engaged in excavation for ~~hire~~ remuneration or an operator other than an operator subject to section 299F.59 subd 1 who violates sections 216D.01 to 216D.07 is subject to a civil penalty to be imposed by the commissioner . . .

end of comment period ~~may 29, 1991~~ ~~June 26, 1991~~ April 29, 1991 stated in notice 30 days

Rules ~~7600~~ 7560.0600
what criteria does the director use to determine if he is going to negotiate, change or withdraw the notice or initiate a hearing

7560.0800 Civil Penalties sub 3 D, E, and F to me would be hard to judge - ie "good faith attempt" "effect of the penalty on the person's ability to continue in business"

Department of Public Safety

Notice of Solicitation of Outside Information or Opinions Regarding Proposed Rule Governing One Call Notification System, Reporting Requirements, Enforcement and Sanctions, Drug Testing, and Training Requirements

NOTICE IS HEREBY GIVEN that the State Department of Public Safety, Office of Pipeline Safety, is seeking information or opinions from sources outside the agency in preparing to propose the adoption of rules governing the one call notification system, reporting requirements, enforcement and sanctions, drug testing, and training requirements. The adoption of the rule is authorized by *Minnesota Statutes*, chapters 229F.56 to 299F.641, 299J and 216D.

The State Department of Public Safety requests information and opinions concerning the subject matter of the rule. Interested persons or groups may submit data or views on the subject matter of concern in writing or orally. Written statements should be addressed to:

William Barbeau, Director
Office of Pipeline Safety
130 Market House
289 East Fifth Street
St. Paul, MN 55101

Oral statments will be received during regular business hours over the telephone at (612) 296-9636 and in person at the above address.

Any written material received by the Statement Department of Public Safety shall become part of the rulemaking record to be submitted to the attorney general or administrative law judge in the event that the rule is adopted.

Paul J. Tschida, Commissioner
Department of Public Safety

Department of Public Service

Energy Division

Correction of Notice of Extension of Deadline

The deadline of October 1, 1989, by the Department of Public Service to seek opinions and information on proposed amendment to *Minnesota Rules* Chapter 7670 [formerly designated as *Minnesota Rules* 4215] governing energy matters within the State Building Code was established by publication June 19, 1989 [not June 27, 1989]. The deadline has been extended to December 21, 1989.

Department of Public Service

Energy Division

Notice of Solicitation of Outside Information or Opinions Regarding Proposed Rule Governing Residential Thermal Insulation Standards

NOTICE IS HEREBY GIVEN that the State Department of Public Service is seeking information or opinions from sources outside the agency in preparing to propose the amendment of *Minnesota Rules* Chapter 7640 governing Residential Thermal Insulation Standards. The adoption of the rule is authorized by *Minnesota Statutes*, section 325F.20 subdivision 1 and 325F.21 subdivisions 1 and 2, which requires the agency to establish standards for the product quality, safety, installation, and labeling of thermal insulation products, and to establish test programs and procedures to ensure that standards established by this chapter are met.

The State Department of Public Service requests information and opinions concerning the subject matter of the rule, including: revised ASTM standards, spray applied cellulose, standards for other insulation products and test standards and application requirements for insulation intended for exterior foundation wall installation. Interested persons or groups may submit data or views on the subject matter of concern in writing or orally. Written statements should be addressed to:

Bruce Nelson, Senior Engineer
Department of Public Service, Energy Division,
900 American Center Building, 150 East Kellogg Boulevard,
St. Paul, Minnesota 55101
(612) 297-2313

WASHINGTON COUNTY

PLANNING DEPARTMENT

GOVERNMENT CENTER

14900 61ST STREET NORTH, P.O. BOX 6 • STILLWATER, MINNESOTA 55082-0006

Office: 612/779-5443 Facsimile Machine: 612/779-5498

Robert J. Lockyear
Planning Coordinator

Allan R. Goodman
Building Official

RECEIVED
91 MAY 28 AM 8:06
ADMINISTRATIVE HEARINGS

DEC 1989
Minn. Dept. of
Public Safety
Pipeline Safety

December 21, 1989

William Barbeau
Office of Pipe Line Safety
Market House, Room 130
289 East 5th Street
St. Paul, MN 55101

Dear Mr. Barbeau:

Re: Third Draft of Rules Relating to the One Call Modification System Enforcement

The lone comment regarding the above described rules I have is that Item D of Section 7560.0600 Civil Penalties, Subpart 2, be removed. Including "the persons ability to pay" as a criterium determining an assessment does not provide for equal protection of all under the law.

Respectfully Submitted,

Robert W. Whitmyer
Code Enforcement Officer/Operator

RWW/mlp

Washington County does not discriminate on the basis of race, color, national origin, sex, religion, age or handicapped status in employment or the provision of services.

MILLE LACS COUNTY

DEPARTMENT OF HIGHWAYS

RICHARD C. LARSON, P.E.
COUNTY ENGINEER

DEAN C. PETERSON
ASSISTANT ENGINEER

ANDY R. EVENSEN
MAINTENANCE SUPERVISOR

TRUDY M. WEDELL
OFFICE MANAGER

665 - 8th STREET N.E.
P.O. BOX 95
MILACA, MINNESOTA 56353
(612) 983-2561 EXT. 292



December 26, 1989



William Barbeau
Director, Office of Pipeline Safety
Market House
289 East Fifth Street, Room 130
St. Paul, MN 55101

Dear Mr. Barbeau:

I am writing in response to your request for comments on the draft rules for enforcement of the one-call notice system.

Basically I object to fines and civil penalties to rules that are established by organizations outside the legislature. If compliance is a problem, then I would prefer legislative action to establish civil penalties for violation; particularly on a matter of so great importance to public safety.

If you proceed, as I am sure you will, then a "warning citation" should be give for "rule violation" with a full disclosure of your knowledge and information on alleged violations prior to assessing any civil or financial penalty. Actual violation of the law, of course, may be prosecuted; however, an education program on your part would be more appropriate at this time.

I feel the benefit to a county highway department for the one-call system is limited. Although the County has many culverts and two signal lights on its 400 mile road system, no one has caused damage to them by digging in the past. This is probably because the state law requires that anyone digging in the road right-of-way must have a permit. Further, in the urban areas where traffic lights are located, the one-call location area is so large that we would get numerous false warnings.

For the apparent cost, the benefit to the department is limited for a redundance to a permit system that has worked for years. I believe it is up to you to educate me to the benefits you provide. I asked for such information when you billed me for your service several years ago and did not receive it.

Thank you for sending me the rules information. I hope my comments will help make the system even better.

Sincerely,

Richard Larson

Richard C. Larson, P.E.
Mille Lacs County Highway Engineer

RCL/mp

cc Roger H. Kiffmeyer
Chair, Gopher State One-Call, Inc.

OWATONNA
PUBLIC UTILITIES
208 S. Walnut P.O. Box 800 Owatonna, MN 55060 (507) 451-2480 Fax (507) 451-4940



January 3, 1990

Mr. William C. Barbeau
Minnesota Office of Pipeline Safety
Market House
289 East Fifth Street, Room 130
St. Paul, Minnesota 55101

SUBJECT: Proposed Rules Relating to the One Call Notification System; Enforcement and Sanctions.

Dear Mr. Barbeau,

Thank you for the opportunity to comment on the above proposed rules. We have reviewed this document date November 15, 1989 and submit the following comments for your consideration.

In regard to Subpart 6, Paragraph C, we believe there should be some definition of "reasonable" that would distinguish between large and small operators and make it more appropriate to determine what requirements a notification center can place on a large versus small operator.

In Subpart 6, Paragraph D, there should be some limitations or provisions on the reasonableness of the costs that are charged by the notification center. Perhaps a reference to an existing rate structure can be made there or in some way make it so that the operators aren't signing a blank check.

In Subpart 8, generally, we would like to see added some limitations or restrictions on an excavator that will require him to commence work within a reasonable period, perhaps, 24 to 48 hours after the initial 48 hour location period. The reason for this is that some excavators will call in a long list of addresses or locations that would constitute one or two weeks of work for him but expects under the rules to have them all marked within the 48 hour period and then he can pick and chose to fit his schedule.

We appreciate the concern of the Minnesota Office of Pipeline Safety for these smaller operators and are confident that our comments will be given serious and full consideration in any proposed rule making.

Yours truly,

David M. Martin
General Manager

DMM/tss

Sherburne County Rural Telephone Co.

440 Eagle Lake Road North
Big Lake, Minnesota 55309
(612) 263-2111

DIRECTORS:

Robert K. Eddy
President-Gen. Mgr.

William R. Glaeser
Vice President

Donna L. Eddy
Secretary-Treasurer

Rolland K. Eddy

Jane E. Eddy-Morales

Robert J. Poirier, Jr.

DEC 1989
Minn. Dept. of
Public Safety
Pipeline Safety

December 11, 1989

State of Minnesota Department of Public Safety
Market House
289 East Fifth Street, Room 130
St. Paul, Mn. 55101

ATTN: Mr. William Barbeau, Director

RE: M.S. 216D/Draft Rules 7560.0100 ET SEQ.

We have reviewed the above mentioned proposed rules and suggest that a section be added to detail the method to initiate a complaint under this section.

We commend your efforts at addressing this situation and await the final rules.

Please do not hesitate in contacting our office with any questions you may have.

Sincerely,

Robert K. Eddy
President / General Manager

4640.RKE

City of New York Mills
Box H
New York Mills, MN. 56567

12/4/89



Office Of Pipeline Safety
Market House
289 East Fifth Street.
Room 130
St. Paul, Minn. 55101

Subject: Enforcement Of M. S. Chapter 216D.

I have reviewed the Draft of the proposed rules regarding the One-call enforcement system.
I have no comment or problems with them.

Respectfully,
Richard Carlund

Richard Carlund Operator
New York Mills Municipal Gas System
New York Mills, Minn. 56567

CITY OF WATERVILLE
P.O. BOX 9
WATERVILLE, MN 56096

December 8, 1989



Mr. William Barbeau
Office of Pipeline Safety
Market House, Room 130
289 E. 5th Street
St. Paul, MN 55101

RE: Enforcement of M.S. Chapter 216D, One-Call Excavation Notice System and Associated Civil Penalties

Dear Mr. Barbeau:

I have reviewed the "Draft" rules regarding the enforcement of M.S. Chapter 216D, One-Call Excavation Notice System and Associated Civil Penalties. I do agree with this policy and feel that this is a positive step in the right direction for public safety.

Sincerely,

Verdis Flaten

Verdis Flaten
Mayor

VF/ms

CAMPBELL, KNUTSON, SCOTT & FUCHS, P.A.

Attorneys at Law

Thomas J. Campbell
Roger N. Knutson
Thomas M. Scott
Gary G. Fuchs
James R. Walston
Elliott B. Knetsch
Dennis J. Unger

(612) 456-9539
Facsimile (612) 456-9542



December 6, 1989

Mr. William Barbeau
Minnesota Department of Public Safety
Office of Pipeline Safety
Market House
289 East Fifth Street, Room 130
Saint Paul, Minnesota 55101

RE: Third Draft Gopher State One Call Rules

Dear Mr. Barbeau:

I am legal counsel for the City of Chanhassen. The City Manger, Don Ashworth, has asked me to review the rules and respond on behalf of the City. If the program is to work, we need better response time from Gopher State One Call, this has been a very serious problem, and we need better cooperation from the Operators of Underground Facilities. The City supports the rules.

Very truly yours,

CAMPBELL, KNUTSON, SCOTT
& FUCHS, P.A.

BY: _____
Roger N. Knutson

RNK:srn

cc: Don Ashworth

Mayor
Dean R. Purdie
Councilmembers
Kathleen A. Erickson
John F. Hanscom
Gary A. Kindseth
Michael C. Meillier
Pat M. Rice
Thomas B. Waarvik
Administrator
Patrick W. Hentges

City Of Faribault

MINNESOTA

December 6, 1989



Mr. William Barbeau, Director
Office of Pipeline Safety
Market House
289 East 5th Street, Room 130
St. Paul, MN 55101

RE: Comment on Draft Enforcement Rules of M.S. Chapter 216 D

Dear Mr. Barbeau:

With regard to the draft rules, I would like to make the following suggestions:

> Modify Section 7560.0100, Subpart 6, Section C to read: "Install and pay for such equipment reasonably requested and readily available by the notification center..." It seems that GSOC has a corner on the receiving equipment market and this "hostage situation" is unfortunate.
>
> Subpart 8 should be modified to include those situations when the utility goes to mark the site but finds nothing in the area. A mark should be left to let the excavator know that the utility company has been there.

Thank you.

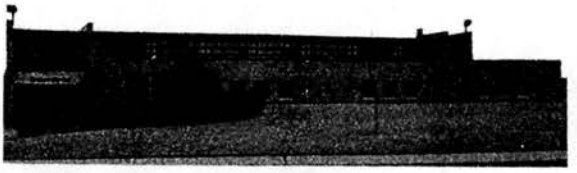
Sincerely,

Brian J. Wagstrom

Brian J. Wagstrom
Director of Public Works

BJW:pak

CITY OF
BECKER
12060 SHERBURNE AVE. P.O. BOX 337 BECKER, MINNESOTA 55308



DEC 1989
Minn. Dept. of
Public Safety,
Pipeline Safety

12-5-89

To. William Barbeau.

I have Reviewed the Draft Rules Sent to me on 11/27/89. I find the Rules to Be fair and the penalties Not Too severe. If there is anything else I can Be of assistance with please feel free to Contact me.

Sincerely
David Graning
Utilities Supervisor

Saint Louis County

Communications Department • 6702 Lackland Street, Duluth, Minnesota 55811-1551
(218) 726-2920

Nancy A. Pollock
Director



December 8, 1989

Mr. William Barbeau
Office of Pipeline Safety
Market House, Room 130
289 E. 5th St.
St. Paul, MN 55101

Dear Mr. Barbeau:

I am extremely pleased to see that some forward movement has begun regarding enforcement of M.S. Chapter 216D governing the One-Call Excavation Notice System.

We in St. Louis County emergency public safety (9-1-1) have been plagued by two cable cuts which have severely affected 9-1-1 service to the people of St. Louis County. In the first cable cut situation no notice was ever given to Gopher State and 220,000 people were totally without 9-1-1 service or any automatic backup system for over 8 hours. This outrageous situation was repeated in late September when a fiber optic cable carrying our 9-1-1 calls was cut near Pine City.

I have been working with US West and the State of Minnesota regarding the routing and backup for our 9-1-1 system.

My comments on your policy is two fold.

1. I am pleased in the interest to put "teeth" into the law.

2. The penalty is too limited for the degree of significance that such damage as I have described above is caused when excavators do not abide by the law. It's one thing when a business or coin phone is out of order for a few hours. It's quite another matter when all of the people of St. Louis County have no access to 9-1-1 and their public safety services.

My recommendation is to consider a more significant penalty in those cases where lives are endangered.

If you require additional information, please do not hesitate to call me.

Sincerely,

Nancy Pollock

Nancy Pollock
Communications Director

NP/psc

cc: Roger Kiffmeyer

CBLECUT

ENRON
Gas Pipeline Operating Company
Operator for Northern Natural Gas Company
23rd St. & Trott Ave. SW, Box 1076, Industrial Park Willmar, Minnesota 56201 (612) 235-2558



December 11, 1989
Willmar, Minnesota

William Barbeau, Director of the Office of Pipeline Safety

Re: Review of Draft rules for enforcement of One Call Legislation

Dear Mr. Barbeau,

We have reviewed the "draft" rules that were sent to us and are in agreement with these proposals.

It is good to see the One Call legislation will be enforced by fining those not participating. Total participation by all underground facilities operators is needed for this concept to operate smoothly and effectively.

Sincerely,
Enron Gas Pipeline Operating Company

Mark W. Werner

Mark W. Werner
Corrosion Technician, Willmar District

cc:file
Mike Nelson

LINCOLN COUNTY HIGHWAY DEPARTMENT

Post Office Box 97
IVANHOE, MINNESOTA 56142

Luthard M. Hagen, P.E.

Engineer's Office 507-694-1464
Maintenance Office 507-694-1730





December 11, 1989

William Barbeau
Director of Office of Pipeline Safety
Market House
289 East Fifth Street Room 130
St. Paul, Minnesota 55101

RE: Enforcement of One-Call
Excavation Notice System

Dear Mr. Barbeau:

In populated areas with increased utilities etc. it is convenvient and almost necessary to have the one-call system to locate the various underground facilities. This is especially so with excavators not familiar with the project.

However, in much of rural Minnesota the rural population is decreasing and much of the utilities are still overhead. I am not sure the one-call system is real practical out here for all local excavators.

We keep updated utility maps and check out the area for possible utilities ourselves. We then call Gopher or the utilities themselves for office verification of line location. As in most cases where we only repair a pipe, we also have to call or receive a call from the local utility after calling Gopher to further define the area(s) needing to be checked.

Whereas it is not impossible, it seems like there is some duplicate work in these less populated areas. The County tries to work with and accommodate utilities since their function is the same as ours - to serve the public. Therefore I am not convinced that the one-call should be mandatory in all rural areas. I would therefore object to mandatory joining to the center.

Following are some comments on the Draft Rules:

1. Definition of an "Operator" should be addressed.

2. Definition, Subp. 6, c. - equipment to facilitate receipt of notice - what kind of equipment is now used and/or what kind is anticipated?

3. Citations, Subpart 1. - I understand a notice when a violation of Mn Statutes is made but not because a violation of a "regulation of the office has occurred".

I realize many laws are inplace and laws without justice are worthless. I appreciate the opportunity to comment and for your consideration.

Sincerely,

Luthard Hagen

Luthard Hagen
County Engineer

Metropolitan Waste Control Commission
Mears Park Centre, 230 East Fifth Street, St. Paul, Minnesota 55101
612 222-8423

December 22, 1989



Mr. Roger Kiffmeyer, Chair
Gopher State One Call, Inc.
2025 Centre Pointe Blvd.
Mendota Heights, MN 55120

Re: Proposed Rules/Gopher State One Call

Dear Mr. Kiffmeyer:

We have reviewed the proposed rules for enforcement of M.S. Chapter 216D. Our comments are as follows:

1. The definition in Subp. 6.D, indicates that a utility would have to pay any and all costs charged by the notification center. This statement is very broad in scope and it is suggested that a more specific definition be provided.

2. It is unclear how the definition in subp. 7 would be applied. It is not mentioned anywhere in the proposed rules except in the definitions.

If you have any question on our response, please contact us at your convenience.

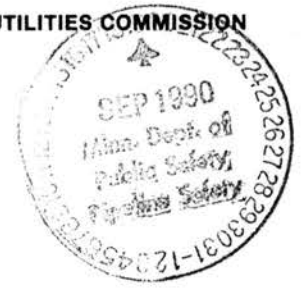
Very truly yours,

for Edward J. DeLaForest
Director of Engineering/Construction

EJD:WGM:jmb
L-8

cc: WGM
CLL
MDT

PUBLIC UTILITIES COMMISSION



CITY OF NEW ULM
L'ETOILE DU NORD
BROWN COUNTY, MINN.

OFFICE OF THE SUPERINTENDENT

September 18, 1990

Mr. William Barbeau, Director
Office of Pipeline Safety
Market House Suite 130
289 East Fifth Street
St. Paul, Minnesota 55101

Dear Bill:

This is to inform you that we support the mandatory reporting of third party damage to natural gas facilities on a standard form.

We will also support the voluntary reporting of third party damage to other (non-gas) facilities.

Experience has shown that damage to gas facilities can cause injury not only to the responsible party, but also to the general public who may be remote from the actual damage site. Further, an explosion may be delayed for months or years after the initial damage has occurred. For this reason, it is prudent for gas operators to educate the public concerning third party work.

I am not aware of any other utility which can so drastically affect others through third party damage. I therefore am <u>not</u> in favor of a mandatory education program by non-gas operators.

I also support the Proposed Permanent Rules Relating to One-Call Excavation Notice System Enforcement and Sanctions dated May 29, 1990 as presented at the September 11, 1990 Gopher State One-Call Board Meeting.

Sincerely,

JOHN R. GILMAN
Superintendent of Utilities

JRG/pw

Department of Public Safety

Office of Pipeline Safety

Proposed Permanent Rules Relating to One Call Excavation Notice System Enforcement and Sanctions

Rules as Proposed (all new material)

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.

7560.0200 UNDERGROUND FACILITY LOCATE; RELIANCE.

Approved by Revisor

An excavator must be able to rely on the locate for a period of 48 hours from the date and the time when excavation is to begin unless:

A. the markings have been obliterated or obscured;

B. weather conditions have impeded visibility of the markings;

C. the site shows evidence of recent excavation; or

D. the excavator has other reason to believe the markings are incorrect or missing.

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.

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;

Approved
by Revisor _____

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.

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.

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.

Approved
by Revisor _____

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.

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

Approved
by Revisor _____

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

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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.

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.

Approved
by Revisor _____

Office of the Revisor of Statutes

Administrative Rules

TITLE: Proposed Permanent Rules Relating to One Call Excavation Notice System Enforcement and Sanctions

AGENCY: Department of Public Safety

DIVISION: Office of Pipeline Safety

MINNESOTA RULES: Chapter 7560

The attached rules are approved for publication in the State Register

Ron Ray
Senior Assistant Revisor

STATE OF MINNESOTA
DEPARTMENT OF PUBLIC SAFETY
OFFICE OF PIPELINE SAFETY

In the Matter of the Proposed Rule of the State Department of Public Safety Governing One-Call Excavation Notice System Enforcement And Sanctions

AFFIDAVIT OF MAILING THE NOTICE OF PUBLIC HEARING

STATE OF MINNESOTA)
)ss
COUNTY OF RAMSEY)

Pam Storms, being sworn says:

That on the twenty-fourth day of April, 1991, at the City of St. Paul, County of Ramsey, State of Minnesota, I mailed the attached Notice of Public Hearing by depositing in the State of Minnesota Central Mail System for United States mailing, a copy thereof, with postage prepaid, to all persons and associations on the Department of Public Safety rulemaking mailing list. The mailing list is attached.

Pam Storms
Pam Storms

Subscribed and sworn to before me this 24th day of April, 19 91.

David E Orren
Notary Public

DAVID E. ORREN
NOTARY PUBLIC—MINNESOTA
RAMSEY COUNTY
My Commission Expires May 4, 1992

STATE OF MINNESOTA
DEPARTMENT OF PUBLIC SAFETY
OFFICE OF PIPELINE SAFETY

In the Matter of the Proposed Rule of the State Department of Public Safety Governing One-Call Excavation Notice System Enforcement and Sanctions

NOTICE OF INTENT TO ADOPT A RULE WITHOUT A PUBLIC HEARING AND NOTICE OF INTENT TO ADOPT A RULE WITH A PUBLIC HEARING IF TWENTY-FIVE OR MORE PERSONS REQUEST A HEARING

NOTICE IS HEREBY GIVEN that the State Department of Public Safety proposes to adopt the above-entitled rule without a public hearing following the procedures set forth in Minnesota Statutes, sections 14.22 to 14.28. The statutory authority to adopt the rule is Minnesota Statutes, section 216D.08, subdivision 4; sections 299F.56 to 299F.641; and section 14.06.

Persons interested in this rule will have 30 days in which to submit comment in support of or in opposition to the proposed rule or any part or subpart of the rule and comment is encouraged. Each comment should identify the portion of the proposed rule addressed, the reason for the comment, and any change proposed.

Any person may make a written request for a public hearing on the rule within the 30-day comment period. If 25 or more persons submit a written request for a public hearing within the 30-day comment period, a public hearing will be held unless a sufficient number withdraw their request in writing. Any person requesting a public hearing should state his or her name and address, and is encouraged to identify the portion of the proposed rule addressed, the reason for the request, and any change proposed. If a public hearing is required, the agency will proceed pursuant to Minnesota Statutes, sections 14.131 to 14.20. PLEASE NOTE: **That if twenty-five or more persons submit written requests for a public hearing within the 30-day comment period, a hearing will be held on June 26, 1991, unless a sufficient number withdraw their request. The hearing will be in accordance with the notice of public hearing on this same rule published in this State Register and mailed to persons registered with the Department of Public Safety.** To verify whether a hearing will be held, please call the Department of Public Safety, Office of Pipeline Safety, on or after May 30, 1991, between the hours of 8:00 a.m. and 4:30 p.m. at (612)-296-9636.

Persons who wish to submit comments or a written request for a public hearing must submit such comments or requests to: Brian Pierzina, Office of Pipeline Safety, 175 Aurora Avenue, St. Paul, MN 55103, (612)-296-9636

Comments or requests for a public hearing must be received by the Department by 4:30 p.m. on May 29, 1991.

The proposed rule may be modified if the modifications are supported by data and views and do not result in a substantial change in the proposed rule as noticed.

A free copy of this rule is available on request for your review from Brian Pierzina at the address and telephone number listed above.

Minnesota Statutes, chapter 216D, mandates the creation and use of the one-call excavation notice system. The system is to be used by excavators so that the location of all pipelines and other underground facilities is known before excavation takes place. This rule governs the enforcement of and sanctions for violating the requirements of the system. This rule sets standards for the marking of an underground facility; requires operators to participate in the one-call system; sets out the conditions under which the office must issue a notice of probable violation; gives the options that may be used to respond to a notice of violation; provides for review by the director; provides for the calculation, imposition, and payment of civil penalties assessed against excavators and operators for violations.

A Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed rule and identifies the data and information relied on to support the proposed rule has been prepared and is available from Brian Pierzina upon request at the address and telephone number listed above.

In preparing this rule, the Department has considered the requirements of Minnesota Statutes, section 14.115, in regard to the impact of the proposed rule on small businesses. The adoption of the rule will affect small businesses which are engaged in excavation for remuneration. The department has evaluated the effect of the proposed rule on small businesses and has determined that the legislature, in drafting the applicable statutes, appropriately considered and drafted the legislation to reduce the impact on small businesses. The department's evaluation of the legislation is addressed in the Statement of Need and Reasonableness.

Adoption of this rule will not result in additional spending by local public bodies in excess of $100,000 per year for the first two years following adoption of the rule nor have an impact on agricultural land under Minnesota Statutes, section 14.11. Minnesota Statutes, section 16A.128, subdivision 2a, does not apply because the rule does not fix any fees.

If no hearing is required upon adoption of the rule, the rule and the required supporting documents will be delivered to the

Attorney General for review as to legality and form to the extent the form relates to legality. Any person may request notification of the date of submission to the Attorney General. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the adopted rule, must submit the written request to: Brian Pierzina, Office of Pipeline Safety, 175 Aurora Avenue, St. Paul, MN 55103.

4-9-91
Date

Ralph Church, Commissioner
Department of Public Safety

In the Matter of the Proposed Rule of the State Department of Public Safety Governing One-Call Excavation Notice System Enforcement and Sanctions

NOTICE OF HEARING AND NOTICE OF INTENT TO CANCEL HEARING IF FEWER THAN TWENTY-FIVE PERSONS REQUEST A HEARING IN RESPONSE TO NOTICE OF INTENT TO ADOPT A RULE WITHOUT A PUBLIC HEARING

NOTICE IS HEREBY GIVEN that a public hearing on the above-entitled matter will be held in Conference Room D, 5th Floor, Veterans Service Building, 20 West 12th Street, St. Paul, MN 55155, on Wednesday, June 26, 1991, commencing at 9:00 a.m. and continuing until all interested or affected persons have an opportunity to participate. The proposed rule may be modified as a result of the hearing process. Therefore, if you are affected in any manner by the proposed rule, you are urged to participate in the rule hearing process.

PLEASE NOTE, HOWEVER: that the hearing will be cancelled if fewer than twenty-five persons request a hearing in response to the notice of intent to adopt this same rule without a public hearing published in this State Register and mailed to persons registered with the Department of Public Safety. To verify whether a hearing will be held, please call the Department of Public Safety, Office of Pipeline Safety, on or after May 30, 1991 between the hours of 8:00 a.m. and 4:30 p.m. at (612)-296-9636.

Following the Department's presentation at the hearing, all interested or affected persons will have an opportunity to participate. Such persons may present their views either orally at the hearing or in writing at any time prior to the close of the hearing record. All evidence presented should be pertinent to the matter at hand. Written material not submitted at the time of the hearing which is to be included in the hearing record may be mailed to Jon L. Lunde, Administrative Law Judge, Office

of Administrative Hearings, 500 Flour Exchange Building, 310 Fourth Avenue South, Minneapolis, MN 55415, telephone (612)-341-7645, either before the hearing or within five working days after the public hearing ends. The Administrative Law Judge may at the hearing, order the record be kept open for a longer period not to exceed 20 calendar days. The comments received during the comment period shall be available for review at the Office of Administrative Hearings.

Following the close of the comment period, the agency and all interested persons have three business days to respond in writing to any new information submitted during the comment period. During the three-day period, the agency may indicate in writing whether there are amendments suggested by other persons which the agency is willing to adopt. No additional evidence may be submitted during the three-day period. Any written material or responses must be received at the Office of Administrative Hearings no later than 4:30 p.m. on the final day. The written responses shall be added to the rulemaking record. Upon the close of the record, the Administrative Law Judge will write a report as provided in Minnesota Statutes, sections 14.15 to 14.50. The rule hearing is governed by Minnesota Statutes, sections 14.14 to 14.20, and by Minnesota Rules, parts 1400.0200 to 1400.1200. Questions about procedure may be directed to the Administrative Law Judge.

Minnesota Statutes, chapter 216D, mandates the creation and use of the one-call excavation notice system. The system is to be used by excavators so that the location of all pipelines and other underground facilities is known before excavation takes place. This rule governs the enforcement of and sanctions for violating the requirements of the system. This rule sets standards for the marking of an underground facility; requires operators to participate in the one-call system; sets out the conditions under which the office must issue a notice of probable violation; gives the options that may be used to respond to a notice of violation; provides for review by the director; provides for the calculation, imposition, and payment of civil penalties assessed against excavators and operators for violations.

The agency's authority to adopt the proposed rule is contained in Minnesota Statutes, section 216D.08, subdivision 4; sections 299F.56 to 299F.641; and section 14.06.

In preparing this rule, the Department has considered the requirements of Minnesota Statutes, section 14.115, in regard to the impact of the proposed rule on small businesses. The adoption of the rule will affect small businesses which are engaged in excavation for remuneration. The department has evaluated the effect of the proposed rule on small businesses and has determined that the legislature, in drafting the applicable statutes, appropriately considered and drafted the legislation to reduce the impact on small businesses. The department's

evaluation of the legislation is addressed in the Statement of Need and Reasonableness.

Adoption of this rule will not result in additional spending by local public bodies in excess of $100,000 per year for the first two years following adoption of the rule nor have an impact on agricultural land under Minnesota Statutes, section 14.11.

Copies of the proposed rule are now available and at least one free copy may be obtained by writing to or calling: Brian Pierzina, Office of Pipeline Safety, 175 Aurora Avenue, St. Paul, MN 55103, (612)-296-9636.

Additional copies will be available at the hearing. If you have any questions on the content of the rule contact Brian Pierzina at the address or telephone number listed above.

NOTICE: Any person may request notification of the date on which the Administrative Law Judge's report will be available, after which date the agency may not take any final action on the rule for a period of five working days. If you desire to be notified, you may so indicate at the hearing. After the hearing, you may request notification by sending a written request to the Administrative Law Judge. Any person may request notification of the date on which the rule was adopted and filed with the Secretary of State. The notice must be mailed on the same day the rule is filed. If you want to be so notified you may so indicate at the hearing or send a request in writing to the Department at any time prior to the filing of the rule with the Secretary of State.

NOTICE IS HEREBY GIVEN that a Statement of Need and Reasonableness is now available for review at the Department and at the Office of Administrative Hearings. The Statement of Need and Reasonableness includes a summary of all the evidence and argument which the Department anticipates presenting at the hearing justifying both the need for and reasonableness of the proposed rule. Copies of the Statement of Need and Reasonableness may be reviewed at the Department or the Office of Administrative Hearings and copies may be obtained from the Office of Administrative Hearings at the cost of reproduction.

Lobbyists must register with the State Ethical Board. Questions should be directed to the Ethical Practices Board, 625 North Robert Street, St. Paul, Minnesota 55101-2520, telephone (612)-296-5148.

4-9-91
Date

Ralph Church, Commissioner
Department of Public Safety

Department of Public Safety

Office of Pipeline Safety

Proposed Permanent Rules Relating to One Call Excavation Notice System Enforcement and Sanctions

Rules as Proposed (all new material)

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.

7560.0200 UNDERGROUND FACILITY LOCATE; RELIANCE.

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An excavator must be able to rely on the locate for a period of 48 hours from the date and the time when excavation is to begin unless:

A. the markings have been obliterated or obscured;

B. weather conditions have impeded visibility of the markings;

C. the site shows evidence of recent excavation; or

D. the excavator has other reason to believe the markings are incorrect or missing.

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.

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;

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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.

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.

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.

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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.

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

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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

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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.

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.

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by Revisor _____

4/22/91

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247 3rd Avenue South
Minneapolis, MN 55415

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P.O. Box 818
Mankato, MN 56002

Thomas Gmeinder
801 Selby Avenue
St. Paul, MN 55104

RECEIVED
91 MAY 28 AM 9:06
ADMINISTRATIVE
HEARINGS

STATE OF MINNESOTA
DEPARTMENT OF PUBLIC SAFETY
OFFICE OF PIPELINE SAFETY

In the Matter of the Proposed Rule of the State Department of Public Safety Governing One-Call Excavation Notice System Enforcement And Sanctions

AFFIDAVIT OF CERTIFICATE OF MAILING LIST

STATE OF MINNESOTA)
)ss
COUNTY OF RAMSEY)

Joan Lundberg, being sworn says:

I hereby certify that the attached list is of persons and associations who have requested that their names be placed on the Department of Public Safety rulemaking mailing list, pursuant to Minnesota Statutes, sections 14.14, subdivision 1a, 14.22, or 14.30. I certify that this list is accurate, complete, and current as of the twenty-fourth day of April, 1991.

Joan Lundberg
Joan Lundberg

Subscribed and sworn to before me this 24th day of April, 19 91.

David E Orren
Notary Public

DAVID E. ORREN
NOTARY PUBLIC—MINNESOTA
RAMSEY COUNTY
My Commission Expires May 4, 1992

4/22/91

Board of Directors
Hearthside Home
Pike Bay Drive, Lake Vermillion
Tower, MN 55790

Heartland Homes/Ret. Citizens
P.O. Box 214
Park Rapids, MN 56470

Henry Hagen Residence
19845 Lillehei Drv.
Hastings, MN 55033

Board of Directors
Hiawatha Children's Home
1820 Valkyrie Drive NW
Rochester, MN 55901

Board of Directors
Hiawatha Manor, Inc.
107 Fifth Ave. NE
Pipestone, MN 56164

Board of Directors
Home for Creative Living
108 Ninth St.
Windom, MN 56101

Hope Residence, Inc.
Box 63
Waterville, MN 56096

Homeward Bound, Inc.
4741 Zealand Ave.
New Hope, MN 55428

President
Interstate Power Co.
1000 Main St.
Dubuque, IA 52001

Lakeview Home
Lincoln & W. Second Sts.
Sauk Centre, MN 56378

Maryanne V. Hruby
Executive Director
Leg. Comm./Review Admin. Rules
Room 55 State Office Bldg.
St. Paul, MN 55155

M.B.W. Company
801 Center St.
New Ulm, MN 56073

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Editor
MN Government Report
B-12, Press Room
State Capitol Bldg.

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MN Multi-Housing Assoc.
4740 Park Glen Road
Mpls, MN 55416

Moore's Haven, Inc.
3490 N. Victoria
St. Paul, MN 55113

Mt. Olivet Rolling Acres
7200 Rolling Acres Rd.
Excelsior, MN 55331

Abe Rosenthal
President
MN Transport Service Association
1821 University Ave. (N310)
St. Paul, MN 55104

Board of Directors
New Dawn, Inc.
Route 1, Box K1
Fulda, MN 56131

Board of Directors
NorHavan Homes, Inc.
1394 Jackson St.
St. Paul, MN 55117

Board of Directors
Northeast House, Inc.
2821 S. Inglewood Ave.
Mpls, MN 55416

Board of Directors
Northeast Residence, Inc.
4680 Bald Eagle Ave.
White Bear Lake, MN 55110

G. V. Welk
Mgr./Regulatory Compl. & Svc
Northern States Power Co.
414 Nicollet Mall
Mpls, MN 55401

Board of Directors
Orvilla, Inc.
3430 Westcott Hills Dr.
Eagan, MN 55123

Phillips Leg. Serv. Inc.
459 Rice St.
St. Paul, MN 55103

Board of Directors
Phoenix Residence, Inc.
135 Colorado St. E.
St. Paul, MN 55107

Pine Ridge Homes, Inc.
915 18th St.
Cloquet, MN 55720

Pine River Group Home
Box 96
Pine River, MN 56474

Presbyterian Family Foundation
901 Service Drive
Willmar, MN 56201

Charles A. Kroeger
Executive Director
QSS, Inc.
P.O. Box 838
Faribault, MN 55021

Ramsey Cnty. Commissioners
Courthouse
St. Paul, MN 55101

Board of Directors
Range Center, Inc.
1001 Eighth Ave. NW
Chisholm, MN 55719

Resa, Inc.
38 Seventh Ave. N.
Hopkins, MN 55343

Board of Directors
Residence, Inc.
945 Amble Road
Roseville, MN 55133

Residential Alternatives, Inc.
5449 Lyndale Ave. N
Mpls, MN 55430

Residential Svcs. of NE MN
2048 E. Eighth St.
Duluth, MN 55812

Board of Directors
Riverview Manor, Inc.
Box 215
Wanamingo, MN 55983

Juanita B. Luis
Corporate Law Dept.
St. Paul Companies, Inc.
385 Washington St.
St. Paul, MN 55101

Board of Directors
Salmi Board & Lodging Home
Route 1, Box 235
Aurora, MN 55705

South Center Manor, Inc.
Park Island
Center City, MN 55012

Dev. Disabilities Pl. Office
State Planning Agency
3rd Floor Centennial Bldg.
658 Cedar Street
St. Paul, MN 55155

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St. Paul, MN 55117

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Mpls, MN 55455

Board of Directors
Valley Group Home
1332 Second Ave. No.
Moorhead, MN 56560

Board of Directors
Warner Care Homes
450 E. Third St.
Cokato, MN 55321

Willmar Nursing Home, Inc.
P.O. Box 1446
Willmar, MN 56201

Windom CRF, Inc.
P.O. Box 123
Windom, MN 56101

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Box 1047
Austin, MN 55912

Woodvale Management Svcs.
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Austin, MN 55912

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Roseville, MN 55113-3817

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700 Norwest Center
St. Cloud, MN 56301

Suzanne Brandon
108 Farmdale Road E.
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William Pribbla
13100 Wayzato Boulevard
Suite 120
Minnetonka, MN 55343

William Harper
Harper & Anderson Chartered
7200 80th Street South
Cottage Grove, MN 55016

RECEIVED
91 MAY 28 AM 9:06
ADMINISTRATIVE
HEARINGS

STATE OF MINNESOTA
DEPARTMENT OF PUBLIC SAFETY
OFFICE OF PIPELINE SAFETY

In the Matter of the Proposed Rule of the State Department of Public Safety Governing One-Call Excavation Notice System Enforcement And Sanctions

AFFIDAVIT OF MAILING THE DISCRETIONARY NOTICE OF PUBLIC HEARING

STATE OF MINNESOTA)
)ss
COUNTY OF RAMSEY)

Pam Storms, being sworn says:

That at the City of St. Paul, County of Ramsey, State of Minnesota, I mailed the attached Notice of Public Hearing by depositing in the State of Minnesota Central Mail System for United States mailing, a copy thereof, with postage prepaid, to all persons and associations that have expressed, to the agency, interest in this rulemaking proceeding, and to persons and associations as practical to improve the notification of all parties that might be interested in this rulemaking proceeding. These persons and associations are listed on attached list A. This discretionary notice was given pursuant to Minnesota Statutes, section 14.14, subdivision 1a.

That on the twenty-fourth day of April, 1991, I mailed a copy of the Notice of Public Hearing to each person and association on attached list A.

Pam Storms
Pam Storms

Subscribed and sworn to before me this 24th day of April, 1991.

David E Orren
Notary Public

DAVID E. ORREN
NOTARY PUBLIC—MINNESOTA
RAMSEY COUNTY
My Commission Expires May 4, 1992

STATE OF MINNESOTA
DEPARTMENT OF PUBLIC SAFETY
OFFICE OF PIPELINE SAFETY

In the Matter of the Proposed Rule of the State Department of Public Safety Governing One-Call Excavation Notice System Enforcement and Sanctions

NOTICE OF INTENT TO ADOPT A RULE WITHOUT A PUBLIC HEARING AND NOTICE OF INTENT TO ADOPT A RULE WITH A PUBLIC HEARING IF TWENTY-FIVE OR MORE PERSONS REQUEST A HEARING

NOTICE IS HEREBY GIVEN that the State Department of Public Safety proposes to adopt the above-entitled rule without a public hearing following the procedures set forth in Minnesota Statutes, sections 14.22 to 14.28. The statutory authority to adopt the rule is Minnesota Statutes, section 216D.08, subdivision 4; sections 299F.56 to 299F.641; and section 14.06.

Persons interested in this rule will have 30 days in which to submit comment in support of or in opposition to the proposed rule or any part or subpart of the rule and comment is encouraged. Each comment should identify the portion of the proposed rule addressed, the reason for the comment, and any change proposed.

Any person may make a written request for a public hearing on the rule within the 30-day comment period. If 25 or more persons submit a written request for a public hearing within the 30-day comment period, a public hearing will be held unless a sufficient number withdraw their request in writing. Any person requesting a public hearing should state his or her name and address, and is encouraged to identify the portion of the proposed rule addressed, the reason for the request, and any change proposed. If a public hearing is required, the agency will proceed pursuant to Minnesota Statutes, sections 14.131 to 14.20. PLEASE NOTE: **That if twenty-five or more persons submit written requests for a public hearing within the 30-day comment period, a hearing will be held on June 26, 1991, unless a sufficient number withdraw their request. The hearing will be in accordance with the notice of public hearing on this same rule published in this State Register and mailed to persons registered with the Department of Public Safety.** To verify whether a hearing will be held, please call the Department of Public Safety, Office of Pipeline Safety, on or after May 30, 1991, between the hours of 8:00 a.m. and 4:30 p.m. at (612)-296-9636.

Persons who wish to submit comments or a written request for a public hearing must submit such comments or requests to: Brian Pierzina, Office of Pipeline Safety, 175 Aurora Avenue, St. Paul, MN 55103, (612)-296-9636

Comments or requests for a public hearing must be received by the Department by 4:30 p.m. on May 29, 1991.

The proposed rule may be modified if the modifications are supported by data and views and do not result in a substantial change in the proposed rule as noticed.

A free copy of this rule is available on request for your review from Brian Pierzina at the address and telephone number listed above.

Minnesota Statutes, chapter 216D, mandates the creation and use of the one-call excavation notice system. The system is to be used by excavators so that the location of all pipelines and other underground facilities is known before excavation takes place. This rule governs the enforcement of and sanctions for violating the requirements of the system. This rule sets standards for the marking of an underground facility; requires operators to participate in the one-call system; sets out the conditions under which the office must issue a notice of probable violation; gives the options that may be used to respond to a notice of violation; provides for review by the director; provides for the calculation, imposition, and payment of civil penalties assessed against excavators and operators for violations.

A Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed rule and identifies the data and information relied on to support the proposed rule has been prepared and is available from Brian Pierzina upon request at the address and telephone number listed above.

In preparing this rule, the Department has considered the requirements of Minnesota Statutes, section 14.115, in regard to the impact of the proposed rule on small businesses. The adoption of the rule will affect small businesses which are engaged in excavation for remuneration. The department has evaluated the effect of the proposed rule on small businesses and has determined that the legislature, in drafting the applicable statutes, appropriately considered and drafted the legislation to reduce the impact on small businesses. The department's evaluation of the legislation is addressed in the Statement of Need and Reasonableness.

Adoption of this rule will not result in additional spending by local public bodies in excess of $100,000 per year for the first two years following adoption of the rule nor have an impact on agricultural land under Minnesota Statutes, section 14.11. Minnesota Statutes, section 16A.128, subdivision 2a, does not apply because the rule does not fix any fees.

If no hearing is required upon adoption of the rule, the rule and the required supporting documents will be delivered to the

Attorney General for review as to legality and form to the extent the form relates to legality. Any person may request notification of the date of submission to the Attorney General. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the adopted rule, must submit the written request to: Brian Pierzina, Office of Pipeline Safety, 175 Aurora Avenue, St. Paul, MN 55103.

4-9-91
Date

Ralph Church, Commissioner
Department of Public Safety

In the Matter of the Proposed Rule of the State Department of Public Safety Governing One-Call Excavation Notice System Enforcement and Sanctions

NOTICE OF HEARING AND NOTICE OF INTENT TO CANCEL HEARING IF FEWER THAN TWENTY-FIVE PERSONS REQUEST A HEARING IN RESPONSE TO NOTICE OF INTENT TO ADOPT A RULE WITHOUT A PUBLIC HEARING

NOTICE IS HEREBY GIVEN that a public hearing on the above-entitled matter will be held in Conference Room D, 5th Floor, Veterans Service Building, 20 West 12th Street, St. Paul, MN 55155, on Wednesday, June 26, 1991, commencing at 9:00 a.m. and continuing until all interested or affected persons have an opportunity to participate. The proposed rule may be modified as a result of the hearing process. Therefore, if you are affected in any manner by the proposed rule, you are urged to participate in the rule hearing process.

PLEASE NOTE, HOWEVER: that the hearing will be cancelled if fewer than twenty-five persons request a hearing in response to the notice of intent to adopt this same rule without a public hearing published in this State Register and mailed to persons registered with the Department of Public Safety. To verify whether a hearing will be held, please call the Department of Public Safety, Office of Pipeline Safety, on or after May 30, 1991 between the hours of 8:00 a.m. and 4:30 p.m. at (612)-296-9636.

Following the Department's presentation at the hearing, all interested or affected persons will have an opportunity to participate. Such persons may present their views either orally at the hearing or in writing at any time prior to the close of the hearing record. All evidence presented should be pertinent to the matter at hand. Written material not submitted at the time of the hearing which is to be included in the hearing record may be mailed to Jon L. Lunde, Administrative Law Judge, Office

of Administrative Hearings, 500 Flour Exchange Building, 310 Fourth Avenue South, Minneapolis, MN 55415, telephone (612)-341-7645, either before the hearing or within five working days after the public hearing ends. The Administrative Law Judge may at the hearing, order the record be kept open for a longer period not to exceed 20 calendar days. The comments received during the comment period shall be available for review at the Office of Administrative Hearings.

Following the close of the comment period, the agency and all interested persons have three business days to respond in writing to any new information submitted during the comment period. During the three-day period, the agency may indicate in writing whether there are amendments suggested by other persons which the agency is willing to adopt. No additional evidence may be submitted during the three-day period. Any written material or responses must be received at the Office of Administrative Hearings no later than 4:30 p.m. on the final day. The written responses shall be added to the rulemaking record. Upon the close of the record, the Administrative Law Judge will write a report as provided in Minnesota Statutes, sections 14.15 to 14.50. The rule hearing is governed by Minnesota Statutes, sections 14.14 to 14.20, and by Minnesota Rules, parts 1400.0200 to 1400.1200. Questions about procedure may be directed to the Administrative Law Judge.

Minnesota Statutes, chapter 216D, mandates the creation and use of the one-call excavation notice system. The system is to be used by excavators so that the location of all pipelines and other underground facilities is known before excavation takes place. This rule governs the enforcement of and sanctions for violating the requirements of the system. This rule sets standards for the marking of an underground facility; requires operators to participate in the one-call system; sets out the conditions under which the office must issue a notice of probable violation; gives the options that may be used to respond to a notice of violation; provides for review by the director; provides for the calculation, imposition, and payment of civil penalties assessed against excavators and operators for violations.

The agency's authority to adopt the proposed rule is contained in Minnesota Statutes, section 216D.08, subdivision 4; sections 299F.56 to 299F.641; and section 14.06.

In preparing this rule, the Department has considered the requirements of Minnesota Statutes, section 14.115, in regard to the impact of the proposed rule on small businesses. The adoption of the rule will affect small businesses which are engaged in excavation for remuneration. The department has evaluated the effect of the proposed rule on small businesses and has determined that the legislature, in drafting the applicable statutes, appropriately considered and drafted the legislation to reduce the impact on small businesses. The department's

evaluation of the legislation is addressed in the Statement of Need and Reasonableness.

Adoption of this rule will not result in additional spending by local public bodies in excess of $100,000 per year for the first two years following adoption of the rule nor have an impact on agricultural land under Minnesota Statutes, section 14.11.

Copies of the proposed rule are now available and at least one free copy may be obtained by writing to or calling: Brian Pierzina, Office of Pipeline Safety, 175 Aurora Avenue, St. Paul, MN 55103, (612)-296-9636.

Additional copies will be available at the hearing. If you have any questions on the content of the rule contact Brian Pierzina at the address or telephone number listed above.

NOTICE: Any person may request notification of the date on which the Administrative Law Judge's report will be available, after which date the agency may not take any final action on the rule for a period of five working days. If you desire to be notified, you may so indicate at the hearing. After the hearing, you may request notification by sending a written request to the Administrative Law Judge. Any person may request notification of the date on which the rule was adopted and filed with the Secretary of State. The notice must be mailed on the same day the rule is filed. If you want to be so notified you may so indicate at the hearing or send a request in writing to the Department at any time prior to the filing of the rule with the Secretary of State.

NOTICE IS HEREBY GIVEN that a Statement of Need and Reasonableness is now available for review at the Department and at the Office of Administrative Hearings. The Statement of Need and Reasonableness includes a summary of all the evidence and argument which the Department anticipates presenting at the hearing justifying both the need for and reasonableness of the proposed rule. Copies of the Statement of Need and Reasonableness may be reviewed at the Department or the Office of Administrative Hearings and copies may be obtained from the Office of Administrative Hearings at the cost of reproduction.

Lobbyists must register with the State Ethical Board. Questions should be directed to the Ethical Practices Board, 625 North Robert Street, St. Paul, Minnesota 55101-2520, telephone (612)-296-5148.

4-9-91
Date

Ralph Church, Commissioner
Department of Public Safety

Department of Public Safety

Office of Pipeline Safety

Proposed Permanent Rules Relating to One Call Excavation Notice System Enforcement and Sanctions

Rules as Proposed (all new material)

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.

7560.0200 UNDERGROUND FACILITY LOCATE; RELIANCE.

Approved by Revisor

An excavator must be able to rely on the locate for a period of 48 hours from the date and the time when excavation is to begin unless:

A. the markings have been obliterated or obscured;

B. weather conditions have impeded visibility of the markings;

C. the site shows evidence of recent excavation; or

D. the excavator has other reason to believe the markings are incorrect or missing.

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.

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;

Approved by Revisor _____

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.

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.

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.

Approved by Revisor _____

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.

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

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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

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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.

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.

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STATE OF MINNESOTA
DEPARTMENT OF PUBLIC SAFETY
OFFICE OF PIPELINE SAFETY

In the Matter of the Proposed Rule of the State Department of Public Safety Governing One-Call Excavation Notice System Enforcement And Sanctions

AFFIDAVIT OF PUBLISHING DISCRETIONARY NOTICE OF PUBLIC HEARING

STATE OF MINNESOTA)
) ss
COUNTY OF RAMSEY)

David E. Orren, being sworn says:

That announcements about the proposed rule were published in two pipeline industry trade journals. The first announcement was in Underground Focus in its March/April 1991 issue. Photocopies of the announcement and of the publication's cover are attached to this affidavit. The second announcement was in The Underground Press in its Spring, 1991 issue. Photocopies of the announcement and of the publication's cover are attached to this affidavit.

Publication of these announcements in pipeline industry trade journals improves the notification of all parties that might be interested in this rulemaking proceeding. This discretionary notice was given pursuant to Minnesota Statutes, section 14.14, subdivision 1a.

David E. Orren

Subscribed and sworn to before me this 8 day of May, 1991.

Laura Nehl-Trueman
Notary Public

Laura Nehl-Trueman
NOTARY PUBLIC - MINNESOTA
RAMSEY COUNTY
My commission expires 4-4-96

March/April 1991

$3.25

Underground FOCUS

the magazine of below-ground damage prevention

Underground Focus
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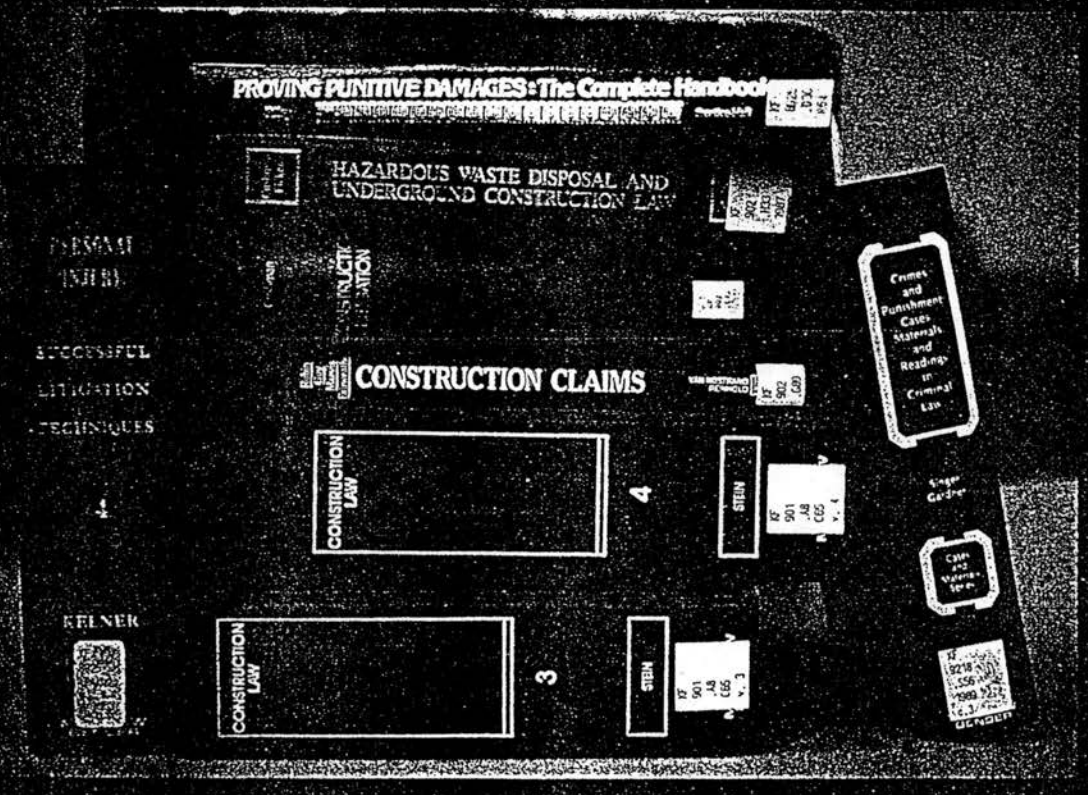
Minneapolis, MN 55428



Legal Activity on the Increase

- Milwaukee Contractor Convicted in Underground Accident Fatality
- 2 Texas Trench Cave-ins result in Negligent Homicide Charges
- Arizona One-Call Faces Member in Court

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April, 1991

GOPHER STATE ONE CALL

Vol. 3, No. 1

MINNESOTA UPDATE

Mark F. Palma — Chief Counsel
Gopher State One Call

Office of Pipeline Safety Rule Making Project

The Minnesota Office of Pipeline Safety is in the process of promulgating rules relating to the One-Call Notification Center. Since the inception of the Notification Center on October 1, 1988, the Director of Pipeline Safety's office has performed an oversight rule for the Center. In 1989, Minnesota Statutes Chapter 216D was amended to allow for civil penalties for operators and excavators who violate Minnesota Statutes Chapter 216D. These new penalties are in addition to those which already apply to gas operators under Minnesota Statutes Chapter 299J.

The Office of Pipeline Safety has determined that it is necessary to promulgate permanent rules in order to clarify the notice, enforcement, and sanctions implemented by the 1989 changes to Minnesota Statutes Chapter 216D.

Many of the phrases contained in the original statute were not defined. The Office of Pipeline Safety's rule defines and clarifies many critical terms, including:

- that a "locate" means an operator's markings of underground facilities
- that services performed for "remuneration" mean any direct or indirect compensation
- the ability of a party to rely on a "locate" for 48 hours from the date when excavation is planned to begin and the exceptions to such reliance
- an operator's responsibility for "participation and sharing in the costs" of the Center

In addition, an important aspect of the rules is providing an overview of the notices which the Office of Pipeline Safety can provide to an operator or an excavator who is believed to be violating Minnesota Statutes Chapter 216D and the response options available to the operator/excavator in question.

At the time this article is going to press, the Reviser's Office is in the process of finalizing the rules. Upon finalization, they will be published in the State Register.

If you have any questions regarding the rules, desire a copy of the rules, or have any comments regarding the rule making procedures, please contact: Office of Pipeline Safety, 175 Aurora Avenue, St. Paul, MN 55101.

Reduces Public Complaints—

Pre-Marking with White Paint Can Speed Up the Locate Process

Marking of underground lines ought to be a simple matter. Generally it is, but Gopher State One Call members are finding that sometimes it takes an effort to make sure it stays that way.

Some Minnesotans have been complaining about paint markings on their lawns and driveways, according to Roger Kiffmeyer, board chairman for Gopher State One Call. Kiffmeyer points out that similar concerns have already complicated the marking process in other parts of the country. In California, some communities have restricted use of marking paint. Complaints published in the California news media have referred to utility paint markings as "legalized grafitti."

In a specific California incident, a resident became spooked when some red lines and a big red arrow pointing at his home appeared in the street in front of his house. The letters "USA" were sprayed beside the arrow. That homeowner somehow linked this with Saddam Hussein's threat to unlesh terrorists against the United States. Thinking his home was a designated target, he called the police. It turned out that the red lines were marking a buried power cable and "USA" stands for "Underground Service Alert."

On the other side of the nation, objections to paint markings on the grounds of a state governor's mansion created a minor political flap. The governor's complaint was apparently channeled through the state's public utilities commission to the utilties involved.

"I'm concerned that we may be starting to see the begining of a potential problem here in Minnesota," Kiffmeyer says, "and there is certainly no need to wait until we're hip deep in public complaints before we start applying a solution."

Continued on next page

Let's Hear From You!

Gopher State One Call wants to hear from you about any questions you feel should be addressed in a future issue of this newsletter. If your question is selected, Gopher State One Call will publish it and the answer in an upcoming newsletter, and will send you a small token of appreciation. Please send your questions to:

Gopher State One Call
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Call Before You Dig in Minnesota

454-0002
Twin Cities Metro Area

800/252-1166
Greater Minnesota

Underground Focus



The Underground Press

Vol. 3 No. 2 Spring, 1991
Published by the MINNESOTA UTILITY CONTRACTORS ASSOCIATION

MUCA's New First Family



PRESIDENT Patrick Minger & Wife Karen

OFFICE OF PIPELINE SAFETY

STATE OF MINNESOTA
DEPARTMENT OF PUBLIC SAFETY

THE STATE DEPARTMENT OF PUBLIC SAFETY, OFFICE OF PIPELINE SAFETY, PROPOSES RULES GOVERNING ONE-CALL EXCAVATION NOTICE SYSTEM ENFORCEMENT AND SANCTIONS.

NOTICE IS HEREBY GIVEN That the State Department of Public Safety, Office of Pipeline Safety, proposes to adopt the above-entitled rule in accordance with the Minnesota Administrative Procedure Act. Notice of intent to adopt a rule without a public hearing and notice of intent to adopt a rule with a public hearing if twenty-five or more persons request a hearing will be published in the Minnesota State Register in April, 1991.

These rules govern the One-Call Notification System enforcement and sanctions. The rules include provisions regarding operator participation, costs of system, issuance of citations, response options, review and consent procedures. The rule also includes provisions regarding the civil penalties for violations under the system and procedures for payment of penalties.

For further information on the adoption procedure of the above-entitled rules or for copies of the proposed rule and the Office of Pipeline Safety's Statement of Need and Reasonableness please contact:

Brian Pierzina
Office of Pipeline Safety
175 Aurora Avenue
St. Paul, MN 55102
(612) 296-9636

New Dewatering Regulations Threaten To Put Little Guy Out Of Business

Guest Editorial by Don Evanson

American Plumbing Co. of Winona, Inc.
450 - 44th Avenue • Winona, Minnesota 55987

Winona began on a sandbar. My company, American Plumbing, has performed construction dewatering services around Winona since the 1940's. We've also lent our expertise to projects in Rochester and Albert Lea, Minnesota and La Crosse and Prairie Du Chien, Wisconsin. We are a local company, so is the sandbar.

Surprisingly (to the general public) our cousins, the water well contractors, have shown little or no interest in construction dewatering in the past half century. Really, they specialize in potable water wells, wells for drinking water.

Filling the void, we invested hundreds of thousands of dollars in specialized construction dewatering equipment. This technology and specialization allowed us to provide outstanding service to our part of the State and avoid dependence on far removed subcontractors. These efficiencies were passed on to our customers through the competitive bidding process...a process that dominates our industry.

Legislative reform of the potable water well contracting industry began in the early 1970's but began in such a way as to suggest that construction dewatering wells were just another form of potable drinking water wells. The language of the reforms was vague but all encompassing. For nearly twenty years this vagueness of language was not intrepreted to extend potable drinknig water codes to the construction dewatering site. The issue was never raised in bid specifications prepared by competent engineers, usually working for cities and counties. No water well inspectors visited our job sites. Therefore, none of us in construction dewatering were required to produce the type of records and documentation required of drinking well drillers. Our accepted practice would prove especially unfortunate as we try to comply with "grandfathering" provisions of new regulations. The "new regulations" were promulgated for the recent Groundwater Protection Act of Minnesota, legislation which suddenly reversed the twenty years of vagueness of language by declaring little difference in potable and non-potable, temporary wells. This expanded application of well supervision suddenly brought the health departments to the construction site—where they had not been during the past twenty years. They had, however, worked very closely with the potable water well contractors, who were virtualy their advisors during the rule generation process. Oddly enough, the new regulations easily allow water well contractors to qualify under grandfather provisions to conduct construction dewatering at which they have little experience or willingness to perform, but make it virtually impossible for companies who do that work, like American Plumbing Company of Winona, to qualify under those same provisions. If construction dewatering is to continue, as it must, the few bidders who remain will likely be large companies from far away metropolitan areas, and the citizens of the Winona area will not be better off financially.

We are a typical dewatering contractor. We are small. We serve a limited trade area. Given the demands of the marketplace, some years we do a great deal of construction dewatering, other very little at all. Unfortunately this ebb and flow in our activity is not treated kindly by the water well contractors grandfather clause.

We urge state administrative agencies to fully understand the industries they regulate and develop flexible rules and regulations that intelligently balance the objectives of all the citizens and commerce of our state.

the project has been completed according to the terms of the grant contract and parts 7076.0100 to 7076.0290. More than ten percent of the grant award shall be withheld if the costs necessary to complete the project are less than those identified in the grant contract. Ten percent of the grant award shall be withheld if the costs necessary to complete the project are equal to or exceed the costs identified in the grant contract.

Subp. 7. **Payment option.** Project sponsors that received grant awards before October 1, 1990, may have the grant payment conditions specified under subparts 1 to 6 or have grant payments made on a reimbursement basis. If reimbursements are desired, a project sponsor shall submit a written request for this option to the commissioner. Reimbursement payments shall be made according to items A to C.

A. The project sponsor may submit a request for reimbursement of expenditures for each of the standard calendar quarters ending March 31, June 30, September 30, and December 31. The agency shall pay the reimbursement within 45 days of the request if the grantee is in compliance with conditions of the grant contract and requirements of parts 7076.0100 to 7076.0290.

B. The agency shall withhold reimbursement on the final ten percent of the grant contract amount until the agency is satisfied that the project has been completed according to the terms of the grant contract and parts 7076.0100 to 7076.0290.

C. The agency shall withhold reimbursement if the project sponsor has failed to comply with any requirements of the grant contract or parts 7076.0100 to 7076.0290. The funds may not be released until the agency determines that the project sponsor has corrected the deficiencies causing noncompliance.

REPEALER. *Minnesota Rules*, parts 7076.0110, subparts 5, 11, 16, and 17; 7076.0230, subpart 3; and 7076.0240, subpart 5, are repealed.

Department of Public Safety

Office of Pipeline Safety

Proposed Permanent Rules Relating to One Call Excavation Notice System Enforcement and Sanctions

Notice of Intent to Adopt Rules Without a Public Hearing and Notice of Intent to Adopt Rules With a Public Hearing if Twenty-five or More Persons Request a Hearing

NOTICE IS HEREBY GIVEN that the State Department of Public Safety proposes to adopt the above-entitled rule without a public hearing following the procedures set forth in *Minnesota Statutes*, sections 14.22 to 14.28. The statutory authority to adopt the rule is *Minnesota Statutes*, section 216D.08, subdivision 4; sections 299F.56 to 299F.641; and section 14.06.

Persons interested in this rule will have 30 days in which to submit comment in support of or in opposition to the proposed rule or any part or subpart of the rule and comment is encouraged. Each comment should identify the portion of the proposed rule addressed, the reason for the comment, and any change proposed.

Any person may make a written request for a public hearing on the rule within the 30-day comment period. If 25 or more persons submit a written request for a public hearing within the 30-day comment period, a public hearing will be held unless a sufficient number withdraw their request in writing. Any person requesting a public hearing should state his or her name and address, and is encouraged to identify the portion of the proposed rule addressed, the reason for the request, and any change proposed. If a public hearing is required, the agency will proceed pursuant to *Minnesota Statutes*, sections 14.131 to 14.20. **PLEASE NOTE: That if twenty-five or more persons submit written requests for a public hearing within the 30-day comment period, a hearing will be held on June 26, 1991, unless a sufficient number withdraw their request. The hearing will be in accordance with the notice of public hearing on this same rule published in this *State Register* and mailed to persons registered with the Department of Public Safety.** To verify whether a hearing will be held, please call the Department of Public Safety, Office of Pipeline Safety, on or after May 30, 1991, between the hours of 8:00 a.m. and 4:30 p.m. at (612) 296-9636.

Persons who wish to submit comments or a written request for a public hearing must submit such comments or requests to: Brian Pierzina, Office of Pipeline Safety, 175 Aurora Avenue, St. Paul, MN 55103, (612) 296-9636.

Comments or requests for a public hearing must be received by the Department by 4:30 p.m. on May 29, 1991.

The proposed rule may be modified if the modifications are supported by data and views and do not result in a substantial change in the proposed rule as noticed.

A free copy of this rule is available on request for your review from Brian Pierzina at the address and telephone number listed above.

Minnesota Statutes, chapter 216D, mandates the creation and use of the one-call excavation notice system. The system is to be used by excavators so that the location of all pipelines and other underground facilities is known before excavation takes place. This rule governs the enforcement of and sanctions for violating the requirements of the system. This rule sets standards for the marking of an underground facility; requires operators to participate in the one-call system; sets out the conditions under which the office must issue a notice of probable violation; gives the options that may be used to respond to a notice of violation; provides for review by the director; provides for the calculation, imposition, and payment of civil penalties assessed against excavators and operators for violations.

A STATEMENT OF NEED AND REASONABLENESS that describes the need for and reasonableness of each provision of the proposed rule and identifies the data and information relied on to support the proposed rule has been prepared and is available from Brian Pierzina upon request at the address and telephone number listed above.

In preparing this rule, the Department has considered the requirements of *Minnesota Statutes*, section 14.115, in regard to the impact of the proposed rule on small businesses. The adoption of the rule will affect small businesses which are engaged in excavation for remuneration. The department has evaluated the effect of the proposed rule on small businesses and has determined that the legislature, in drafting the applicable statutes, appropriately considered and drafted the legislation to reduce the impact on small businesses. The department's evaluation of the legislation is addressed in the Statement of Need and Reasonableness.

Adoption of this rule will not result in additional spending by local public bodies in excess of $100,000 per year for the first two years following adoption of the rule nor have an impact on agricultural land under *Minnesota Statutes*, section 14.11. *Minnesota Statutes*, section 16A.128, subdivision 2a, does not apply because the rule does not fix any fees.

If no hearing is required upon adoption of the rule, the rule and the required supporting documents will be delivered to the Attorney General for review as to legality and form to the extent the form relates to legality. Any person may request notification of the date of submission to the Attorney General. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the adopted rule, must submit the written request to: Brian Pierzina, Office of Pipeline Safety, 175 Aurora Avenue, St. Paul, MN 55103.

Dated: 12 April 1991

Ralph Church, Commissioner
Department of Public Safety

Notice of Hearing and Notice of Intent to Cancel Hearing if Fewer than Twenty-five Persons Request a Hearing in Response to Notice of Intent to Adopt a Rule Without a Public Hearing

NOTICE IS HEREBY GIVEN that a public hearing on the above-entitled matter will be held in Conference Room D, 5th Floor, Veterans Service Building, 20 West 12th Street, St. Paul, MN 55155, on Wednesday, June 26, 1991, commencing at 9:00 a.m. and continuing until all interested or affected persons have an opportunity to participate. The proposed rule may be modified as a result of the hearing process. Therefore, if you are affected in any manner by the proposed rule, you are urged to participate in the rule hearing process.

PLEASE NOTE, HOWEVER: that the hearing will be cancelled if fewer than twenty-five persons request a hearing in response to the notice of intent to adopt this same rule without a public hearing published in this *State Register* and mailed to persons registered with the Department of Public Safety. To verify whether a hearing will be held, please call the Department of Public Safety, Office of Pipeline Safety, on or after May 30, 1991 between the hours of 8:00 a.m. and 4:30 p.m. at (612) 296-9636.

Following the Department's presentation at the hearing, all interested or affected persons will have an opportunity to participate. Such persons may present their views either orally at the hearing or in writing at any time prior to the close of the hearing record. All evidence presented should be pertinent to the matter at hand. Written material not submitted at the time of the hearing which is to be included in the hearing record may be mailed to Jon L. Lunde, Administrative Law Judge, Office of Administrative Hearings, 500 Flour Exchange Building, 310 Fourth Avenue South, Minneapolis, MN 55415, telephone (612) 341-7645, either before the hearing or within five working days after the public hearing ends. The Administrative Law Judge may at the hearing, order the record be kept open for a longer period not to exceed 20 calendar days. The comments received during the comment period shall be available for review at the Office of Administrative Hearings.

Following the close of the comment period, the agency and all interested persons have three business days to respond in writing to any new information submitted during the comment period. During the three-day period, the agency may indicate in writing whether there are amendments suggested by other persons which the agency is willing to adopt. No additional evidence may be submitted

KEY: PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." **ADOPTED RULES SECTION** — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

during the three-day period. Any written material or responses must be received at the Office of Administrative Hearings no later than 4:30 p.m. on the final day. The written responses shall be added to the rulemaking record. Upon the close of the record, the Administrative Law Judge will write a report as provided in *Minnesota Statutes*, sections 14.15 to 14.50. The rule hearing is governed by *Minnesota Statutes*, sections 14.14 to 14.20, and by *Minnesota Rules*, parts 1400.0200 to 1400.1200. Questions about procedure may be directed to the Administrative Law Judge.

Minnesota Statutes, chapter 216D, mandates the creation and use of the one-call excavation notice system. The system is to be used by excavators so that the location of all pipelines and other underground facilities is known before excavation takes place. This rule governs the enforcement of and sanctions for violating the requirements of the system. This rule sets standards for the marking of an underground facility; requires operators to participate in the one-call system; sets out the conditions under which the office must issue a notice of probable violation; gives the options that may be used to respond to a notice of violation; provides for review by the director; provides for the calculation, imposition, and payment of civil penalties assessed against excavators and operators for violations.

The agency's authority to adopt the proposed rule is contained in *Minnesota Statutes*, section 216D.08, subdivision 4; sections 299F.56 to 299F.641; and section 14.06.

In preparing this rule, the Department has considered the requirements of *Minnesota Statutes*, section 14.115, in regard to the impact of the proposed rule on small businesses. The adoption of the rule will affect small businesses which are engaged in excavation for remuneration. The department has evaluated the effect of the proposed rule on small businesses and has determined that the legislature, in drafting the applicable statutes, appropriately considered and drafted the legislation to reduce the impact on small businesses. The department's evaluation of the legislation is addressed in the Statement of Need and Reasonableness.

Adoption of this rule will not result in additional spending by local public bodies in excess of $100,000 per year for the first two years following adoption of the rule nor have an impact on agricultural land under *Minnesota Statutes*, section 14.11.

Copies of the proposed rule are now available and at least one free copy may be obtained by writing to or calling: Brian Pierzina, Office of Pipeline Safety, 175 Aurora Avenue, St. Paul, MN 55103, (612) 296-9636.

Additional copies will be available at the hearing. If you have any questions on the content of the rule contact Brian Pierzina at the address or telephone number listed above.

NOTICE: Any person may request notification of the date on which the Administrative Law Judge's report will be available, after which date the agency may not take any final action on the rule for a period of five working days. If you desire to be notified, you may so indicate at the hearing. After the hearing, you may request notification by sending a written request to the Administrative Law Judge. Any person may request notification of the date on which the rule was adopted and filed with the Secretary of State. The notice must be mailed on the same day the rule is filed. If you want to be so notified you may so indicate at the hearing or send a request in writing to the Department at any time prior to the filing of the rule with the Secretary of State.

NOTICE IS HEREBY GIVEN that a Statement of Need and Reasonableness is now available for review at the Department and at the Office of Administrative Hearings. The Statement of Need and Reasonableness includes a summary of all the evidence and argument which the Department anticipates presenting at the hearing justifying both the need for and reasonableness of the proposed rule. Copies of the Statement of Need and Reasonableness may be reviewed at the Department or the Office of Administrative Hearings and copies may be obtained from the Office of Administrative Hearings at the cost of reproduction.

Lobbyists must register with the State Ethical Board. Questions should be directed to the Ethical Practices Board, 625 North Robert Street, St. Paul, Minnesota 55101-2520, telephone (612) 296-5148.

Dated: 12 April 1991

Ralph Church, Commissioner
Department of Public Safety

Rules as Proposed (all new material)

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.

7560.0200 UNDERGROUND FACILITY LOCATE; RELIANCE.

An excavator must be able to rely on the locate for a period of 48 hours from the date and the time when excavation is to begin unless:

A. the markings have been obliterated or obscured;

B. weather conditions have impeded visibility of the markings;

C. the site shows evidence of recent excavation; or

D. the excavator has other reason to believe the markings are incorrect or missing.

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.

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.

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.

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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.

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.

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.

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.

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.

Errata

Department of Health

Proposed Permanent Rules Relating to Ionizing Radiation

Notice of Correction

The wrong symbol. ≧, appeared in eight places in the *State Register* for the above titled rules on pages 1979, 1980 and 1981 in Vol. 15 #37, March 11, 1991.

The correct symbol should be ≤ .

Executive Orders

Executive Order #91-12: Providing for the Reduction of State Mandates on Local Units of Government

I, ARNE CARLSON, GOVERNOR OF THE STATE OF MINNESOTA, by virtue of the authority vested in me by the Constitution and the applicable statutes, do hereby issue this Executive Order:

WHEREAS, Minnesota must fundamentally restructure the relationship between the state and local governments to meet the economic and social challenges of the 1990s; and

WHEREAS, state government has imposed many mandates on local units of government that increase costs, reduce flexibility, and create administrative requirements; and

WHEREAS, the Carlson/Dyrstad administration is committed to eliminating unnecessary mandates on local governments;

NOW, THEREFORE, I hereby order that all executive branch agencies eliminate or modify unnecessary or problematic state mandates imposed on counties, cities, school districts, and other local units of government.

1. Each agency shall conduct a comprehensive review of its mandates to identify which mandates should be maintained, modified, or eliminated.
2. Each agency shall take immediate action to eliminate or modify unnecessary or problematic mandates for which no administrative or legislative action is required.

KEY: PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." **ADOPTED RULES SECTION** — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

GREAT PLAINS NATURAL GAS CO.

TELEPHONE: (218) 736-6935

ADDRESS REPLY TO:
General Office
P. O. Box 176
Fergus Falls, MN 56538-176

May 23, 1991



Mr. Brian Pierzina
State of Minnesota Office of Pipeline Safety
175 Aurora Avenue
St. Paul, MN 55103

SUBJECT: Proposed Rule Governing One-Call Excavation Notice System Enforcement and Sanctions

Dear Mr. Pierzina:

In reference to the above subject, Great Plains Natural Gas Co. (GPNG) has the following comments:

1. The proposed rule reads as follows beginning at the top of page 2:

> "An excavator must be able to rely on the locate for a period of 48 hours from the date and the time when excavation is to begin unless:
>
> A. the markings have been obliterated or obscured;
> B. weather conditions have impeded visibility of the markings;
> C. the site shows evidence of recent excavation; or
> D. the excavator has other reason to believe the markings are incorrect or missing."

What does this mean? What does the excavator do if any of these situations exist? The proposed rule should provide more direction in this case. GPNG believes that the issue should be clarified by restating this section of the proposed rule as follows:

> "Under normal circumstances, the excavator should be able to rely on the locate for a period of 48 hours from the date and the time when an excavation is to begin. However, if any of the following conditions exist, the excavator shall so notify the One-Call Notification Center and request that the area in question be remarked.
>
> A. The excavator has reason to believe that the location has been marked but the markings have been obliterated or obscured.
> B. Weather conditions have impeded visibility of the markings.
> C. The site shows evidence of recent excavation.
> D. The excavator has other reason to believe the markings are incorrect or missing."

2. Please refer to 7560.0800 CIVIL PENALTIES Subp. 4, Pages 5 & 6.

> If an excavator violates the statute, the penalty is limited to $500 per day.
>
> If an underground telephone, water, sewer, electricity, or cable operator violates the statute, the penalty is limited to $500 per day.
>
> However, if a natural gas operator violates the statute, the penalty is limited to $10,000 per day.

The above guidelines say that if an excavator fails to call for a locate, hits a natural gas pipeline, and causes significant property damage and possible loss of life, the maximum penalty is **$500 per day**. However, if a natural gas utility fails to call for a locate, cuts a telephone cable, and causes some phone calls not to be completed, the maximum penalty is **$10,000 per day**!

Why is there such a differentiation between the penalties assessed the various participants in the system? GPNG feels that the civil penalty limits should be the same, regardless of which party violates the law.

Based on GPNG's experience, "dig-ins" are most often caused by excavator negligence, not operator negligence. The operator of a natural gas pipeline has a vested interest in protecting its own facilities and doesn't need the threat of 20 fold harsher penalties to provide locations of its facilities.

Consider an excavator with a five man crew and equipment who will be held-up for 48 hours because he failed to call for a locate. Since keeping his crew immobile for two days will cost $3000, the potential $500 maximum daily penalty constitutes a viable alternative to obeying the statute. Unless penalties for excavator and non-natural gas/hazardous liquids operators are made higher than proposed, paying the nominal penalty proposed will constitute a feasible alternative to obeying the law.

The penalties should be the same, regardless of which participant violates the statute.

GPNG hereby requests a public hearing relative to the Proposed Rule of the State Department of Public Safety Governing One-Call Excavation Notice System Enforcement and Sanctions.

Sincerely,

W E Satterlee

Warren E. Satterlee
Vice President - Operations
Great Plains Natural Gas Co.

WES/wp

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HYMAN EDELMAN
OF COUNSEL

SAMUEL H. MASLON
1901-1988

May 29, 1991

BY MESSENGER



Mr. Brian Pierzina
Mr. Walter Kelly
Director
Office of Pipeline Safety
175 Aurora Avenue
St. Paul, MN 55103

Re: Comments of Williams Pipeline Regarding One Call Rule Section No. 7560.0100 et seq.

Dear Messrs. Pierzina and Kelly:

I am in receipt of Mr. Kelly's memorandum, dated May 28, 1991, addressed to me regarding wording changes for the One Call Rule § 7560.0200. I have reviewed the proposed wording change contained therein and discussed those changes with my client, the Williams Pipeline Company ("Williams"). Williams believes the wording set forth in this memorandum represents an appropriate response to Williams' concerns as expressed to Mr. Kelly and to David Orren. Accordingly, based upon Mr. Kelly's representation that the Department intends to substitute this language for the original language which was published in the State Register, Williams has decided not to request a public hearing on this rule.

For the record in this matter, Williams would like to set forth the concerns which it had about § 7560.0200 in the original proposed rule and the reasons it believes that the changes which have been proposed are appropriate.

The original language contained in 7560.0200 as published in the State Register appeared to Williams to be subject to a possible interpretation holding that this provision created or extended liability to the operator if a proper locate was somehow disturbed by forces beyond the control of the operator, after a proper locate is performed by the operator. Williams believes that such an interpretation would be contrary to the rationale set forth in the Statement of Need and Reasonableness ("SONAR") which accompanies this rule, particularly that section which states:

> By notifying the appropriate company of intent to excavate or dig near the facility, the company assumes responsibility for accurately locating and marking its facility in a timely manner.

SONAR, p.2. Williams' believes that this statement accurately reflects the obligation of the operator to accurately locate the facility, but creates no other obligation or liability for the operator.

In the course of our discussions, it was evident that your office agreed that the purpose of the rule was to clarify the obligations of the excavator rather than to impose additional liabilities upon the operator. With this understanding, I believe and agree with your statement that the proposed new language does not represent a substantive change from the original rule as described in the SONAR.

Thank you very much for your consideration of these matters. If you have any questions, please do not hesitate to contact me.

Sincerely,

Charles A. Hoffman
ATTORNEYS FOR WILLIAMS PIPELINE

CAH/cs

IOWA PETROLEUM COUNCIL

1012 FLEMING BUILDING
DES MOINES, IOWA 50309

David A. Smitherman
Executive Director

Gary W. Steinke
Associate Director

(515) 288-8569
Omnifax (515) 244-0293



May 23, 1991

Mr. Brian Pierzina
Office of Pipeline Safety
175 Aurora Avenue
St. Paul, MN 55103

Dear Mr. Pierzina:

The Iowa Petroleum Council has received some comments and questions regarding the proposed Permanent Rules relating to One Call excavation notice system enforcement and sanctions as noticed in the Minnesota State Register, Monday, April 29, 1991 (15S.R.2344). Because of the questions and comments raised, I am hereby requesting a public hearing on this proposed rule.

Thank you.

Sincerely,

David A. Smitherman
Executive Director

ta

4:07 pm office closed left a message on answering machine

SOUTH DAKOTA PETROLEUM COUNCIL
222 E. CAPITOL, SUITE 16 PIERRE, SOUTH DAKOTA 57501
605-224-5979
FAX 605-224-6791

DON ROUNDS
EXECUTIVE DIRECTOR

MARY B. NAFUS
OFFICE MANAGER

MAY 1991
Minn. Dept. of
Public Safety
Pipeline Safety

May 23, 1991

Mr. Brian Pierzina
Office of Pipeline Safety
175 Aurora Avenue
St. Paul, Minnesota 55103

Dear Mr. Pierzina:

The South Dakota Petroleum Council has received some comments and questions regarding the proposed Permanent Rules relating to One Call excavation notice system enforcement and sanctions as noticed in the Minnesota State Register, Monday, 29 April, 1991 (15S.R.2344). Because of the questions and comments raised, I am hereby requesting a public hearing on this proposed rule.

Thank you.

Sincerely,

Don Rounds

Don Rounds
Executive Director

Dr/mbn

4:00 pm - Contacted but Mr. Rounds was not in. Left message to give us the particular operators name & question. BJP

Lakehead Pipe Line Company, Inc.

Paul W. Norgren
Senior Attorney & Assistant Secretary

119 N. 25th Street E.
P.O. Box 789
Superior, Wisconsin 54880-0789
Telephone (715) 394-1419
Fax [715] 394=1564



May 23, 1991

LLA10163

Mr. Brian Pierzina
Office of Pipeline Safety
175 Aurora Avenue
St. Paul, MN 55103

Dear Mr. Pierzina:

Lakehead Pipe Line Company, Inc. has received some comments and questions regarding the proposed Permanent Rules relating to One Call excavation notice system enforcement and sanctions as noted in the Monday, April 29, 1991 issue of the Minnesota State Register, (15S.R.2344). Because of the questions and comments raised, I am hereby requesting a public hearing on this proposed rule.

Thank you.

Sincerely,

Paul W. Norgren

jmp

Bob McFarland - MN Pet Council IDEA, BUT Paul is WORRIED ABOUT enforcement on an INTERSTATE operation, that we DO NOT HAVE ENFORCEMENT POWER over. The $10,000 VS. 500 IS a MYSTERY. PWN

NORTH DAKOTA PETROLEUM COUNCIL
A DIVISION OF THE AMERICAN PETROLEUM INSTITUTE
ROCKY MOUNTAIN OIL & GAS ASSOCIATION
NORTH DAKOTA DIVISION

LOWELL J. RIDGEWAY
EXECUTIVE DIRECTOR

ROBERT J. GRAVELINE
ASSOCIATE DIRECTOR

701-223-6380 FAX: 701-222-0006
120 N. 3RD STREET • SUITE 225
P.O. BOX 1395
BISMARCK, ND 58502

MAY 1991
Minn. Dept. of
Public Safety
Pipeline Safety

May 23, 1991

Mr. Brian Pierzina
Office of Pipeline Safety
175 Aurora Avenue
St. Paul, MN 55103

Dear Mr. Pierzina:

The North Dakota Petroleum Council has received some comments and questions regarding the proposed Permanent Rules relating to One Call excavation notice system enforcement and sanction as noticed in the Minnesota State Register, Monday, 29 April, 1991 (158.R.2344). Because of the questions and comments raised, we request a public hearing on this proposed rule.

Thank you.

Sincerely,

Lowell J. Ridgeway

Lowell J. Ridgeway

mr

American Petroleum Institute
1220 L Street, Northwest
Washington, D.C. 20005
202-682-8219

INLAND REGION

Truman Hunt, Director
Rich Martin, Associate Director



May 22, 1991

Mr. Brian Pierzina
Office of Pipeline Safety
175 Aurora Avenue
St. Paul, MN 55103

Dear Mr. Pierzina:

The American Petroleum Institute has received some comments and questions regarding the proposed Permanent Rules relating to One Call excavation notice system enforcement and sanctions as noticed in the Minnesota State Register, Monday, 29 April, 1991 (15S.R.2344). On behalf of several of our member companies, I am hereby requesting a public hearing on this proposed rule.

Thank you.

Sincerely,

An equal opportunity employer

Minnesota Petroleum Council
350 Saint Peter Street • Suite 1025
Saint Paul, MN 55102 • (612) 227-8841

Darrel Bunge, Executive Director
Bob McFarlin, Associate Director



May 22, 1991

Mr. Brian Pierzina
Office of Pipeline Safety
175 Aurora Avenue
St. Paul, MN 55103

Dear Mr. Pierzina:

The Minnesota Petroleum Council has received some comments and questions regarding the proposed Permanent Rules relating to One Call excavation notice system enforcement and sanctions as noticed in the Minnesota State Register, Monday, 29 April, 1991 (15S.R.2344). Because of the questions and comments raised, I am hereby requesting a public hearing on this proposed rule.

Thank you.

Sincerely,

Robert J. McFarlin

Robert McFarlin, Jr.
Associate Director

DARREL D. BUNGE
ATTORNEY AT LAW
350 ST. PETER STREET, SUITE 1025
ST. PAUL, MINNESOTA 55102



May 22, 1991

Mr. Brian Pierzina
Office of Pipeline Safety
175 Aurora Avenue
St. Paul, MN 55103

Dear Mr. Pierzina:

I am writing regarding the proposed Permanent Rules relating to One Call excavation notice system enforcement and sanctions as noticed in the Minnesota State Register, Monday, 29 April, 1991 (15S.R.2344). I am hereby requesting a public hearing on this proposed rule.

Thank you.

Sincerely,

Darrel D. Bunge

Darrel D. Bunge

IOWA PETROLEUM COUNCIL

1012 FLEMING BUILDING
DES MOINES, IOWA 50309

David A. Smitherman
Executive Director

Gary W. Steinke
Associate Director

(515) 288-8569
Omnifax (515) 244-0293



May 30, 1991

Mr. Brian Pierzina
Office of Pipeline Safety
175 Aurora Avenue
St. Paul, MN 55103

Dear Mr. Pierzina:

It is my understanding that the problems regarding the One Call excavation notice system enforcement and sanctions as it relates to the Williams Pipeline Company have been resolved. Gary Steinke, the Associate Director for this office, spoke with Mr. Ron Weis and was advised that the Williams Pipeline concerns have been worked out.

Therefore, I would withdraw my request for a public hearing on this proposed rule.

Sincerely,

David A. Smitherman
Executive Director

ta

STATE OF MINNESOTA
DEPARTMENT OF PUBLIC SAFETY
OFFICE OF PIPELINE SAFETY

In the Matter of the Proposed Rule of the State Department of Public Safety Governing One-Call Excavation Notice System Enforcement And Sanctions

AFFIDAVIT OF MAILING THE RULE AND STATEMENT OF NEED AND REASONABLENESS TO THE LEGISLATIVE COMMISSION TO REVIEW ADMINISTRATIVE RULES

STATE OF MINNESOTA)
)ss
COUNTY OF RAMSEY)

David E. Orren, being sworn says:

I hereby declare that the above-captioned Rule and its corresponding Statement Of Need And Reasonableness were mailed to the Legislative Commission To Review Administrative Rules in compliance with Minnesota Statutes, sections 14.131 and 14.23, on this twenty-fourth day of April, 1991. The mailing was done through the interoffice mail of the State of Minnesota.

David E. Orren

Subscribed and sworn to before me this 24 day of April, 19 91.

Laura Nehl-Truman
Notary Public

Laura Nehl-Truman
NOTARY PUBLIC - MINNESOTA
RAMSEY COUNTY
My commission expires 4-4-96

OFFICE OF THE COMMISSIONER
211 Transportation Building
Telephone: 297.5755

STATE OF MINNESOTA

DEPARTMENT OF PUBLIC SAFETY

SAINT PAUL 55155

June 28, 1990

Ms. Maryanne V. Hruby, Executive Director
Legislative Commission to Review Administrative Rules
Room 55, State Office Building
100 Constitution Avenue
St. Paul, MN 55155

Dear Ms. Hruby:

Minnesota Statutes, sections 216D.08 and 299F.631, both effective August 1, 1989, directs the Commissioner of Public Safety to adopt rules to impose civil penalties within the one-call notification system and to implement fees respectively. On reviewing the progress of the rule writing within the Office of Pipeline Safety early last winter, we initially anticipated meeting the February, 1990 deadline. Unfortunately, these two sets of rules have not been published, although both sets of rules have been drafted and statements of need and reasonableness are underway. I therefore request an extension of that deadline to November, 1990.

There are a number of reasons that the extensions are necessary. Foremost is the limited staff of the Office of Pipeline Safety. The priority of the staff continues to be inspections, which then limits the amount of time that can be assigned to drafting rules. Secondly, the office does a commendable job in getting public input and applying those comments to the rules. This does take additional time, but makes for better rules for the agency and public alike. Thirdly, the office has a number of rule writing mandates and had to prioritize them. Because the legislation setting fees in M.S. section 299F.631 is so explicit, the decision was made that the rules implementing those fees could be completed after other mandated rules such as the enforcement and sanction rules.

If you have any questions or wish to discuss this matter further, please contact me at your convenience.

Sincerely,

Katherine Burke Moore

Katherine Burke Moore
Rules Coordinator

CC: Rudy Perpich, Governor
Room 130 State Capitol
St. Paul, MN 55155

Senator Ronald Dicklich
235 State Capitol
St. Paul, MN 55155

Rep. Joel Jacobs
House of Representatives
485 State Office Building
St. Paul, MN 55155

William Barbeau, Director
Office of Pipeline Safety
Suite 130 Market House
St. Paul, MN 55101

STATE OF MINNESOTA
DEPARTMENT OF PUBLIC SAFETY
OFFICE OF PIPELINE SAFETY

In the Matter of the Proposed Adoption of the Rules of the State Department of Public Safety Governing One-Call Excavation Notice System Enforcement And Sanctions

DECLARATION OF COUNSEL

I, Jeff Lebowski, Special Assistant Attorney General, do hereby declare that I have examined the above-captioned rules, and the supporting rulemaking record, and that, based on my examination, the Administrative Procedure Act and Minnesota Rules, chapter 2010, have been followed. Any exceptions are listed below. For Attorney General Billing purposes, the four-digit docket client code is 0709.

Jeff Lebowski
Special Assistant
Attorney General

Dated: June 14, 1991

February 12, 1991

Ms. Maryanne V. Hruby, Executive Director
Legislative Commission to Review Administrative Rules
Room 55, State Office Building
100 Constitution Avenue
St. Paul, MN 55155

Dear Ms. Hruby:

Minnesota Statutes, sections 216D.08 and 299F.631, both effective August 1, 1989, direct the Commissioner of Public Safety to adopt rules to impose civil penalties within the one-call notification system and to implement fees respectively. On reviewing the progress of the rule writing within the Office of Pipeline Safety both sets of rules are near completion, but notice of intent to adopt will not be published in January and February as anticipated.

The one-call rules are in the revisor's preliminary draft form. The statement and rule draft are being revised for the final time. Notice of Intent to Adopt the one-call rules should be published during April, 1991, if not earlier.

The reasons for the delay in the promulgation of the one-call rules result from revisions being made to the rules based on the request of the revisor. The requested revisions have been made by the Office of Pipeline Safety and the revised rules are now in the process of being approved by the Attorney Generals Office and the attorney for the One-Call Board of Directors. Once approval has been received from the attorneys the rules will be forwarded on the revisors office for a final revision.

The fee rules are also in the revisor's preliminary draft form. Notice of Intent to Adopt the fee rule should be published during June, 1991, if not earlier.

The reason for the delay in the promulgation of the fee rules is that the Office of Pipeline Safety is making further revisions to the statement and the rules to properly

address the impact these rules will have on small businesses. In its statement and rules the Office of Pipeline Safety is carefully considering and addressing the needs of small business to comply with the statutory mandate.

As the previous correspondence stated the Office of Pipeline Safety is limited in staff and retains inspections as its first priority. The office also has a number of rule writing mandates and is attempting to do a thorough job on all rules. This has lead to the need to prioritize each rule project while striving for complete, functional, and legal rules overall.

If you have any questions or wish to discuss this matter further, please contact me at 296-2608 at your convenience.

Sincerely,

Laura Nehl-Trueman
Rule Writer

CC: Arne Carlson, Governor
Room 130 State Capitol
St. Paul, MN 55155

Senator Ronald Dicklich
Public Utilities & Energy
235 State Capitol
St. Paul, MN 55155

Rep. Joel Jacobs
Regulated Industries
485 State Office Building
St. Paul, MN 55155

William Barbeau, Director
Office of Pipeline Safety
175 Aurora Avenue
St. Paul, MN 55103