

CHAPTER 7512
DEPARTMENT OF PUBLIC SAFETY
FIRE PROTECTION SYSTEMS, PERSONNEL

7512.2750 CIVIL PENALTY

7512.2770 CEASE AND DESIST ORDER

7512.2750 CIVIL PENALTY.

Subpart 1. **Proceeding against contractor, manager, journeyman; good cause.** When the commissioner has good cause to believe a fire protection contractor, managing employee, or journeyman is engaging or has engaged in conduct that violates Minnesota Statutes, chapter 299M, or a rule adopted under Minnesota Statutes, section 299M.04, the commissioner, in place of or in addition to licensing sanctions allowed under that chapter 299M or any rule adopted under that section 299M.04, shall impose a civil penalty upon the fire protection contractor, managing employee, or journeyman

For purposes of this part, "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. written information from an identified person,
- B. facts supplied by a contractor, managing employee, journeyman sprinkler fitter, or municipality;
- C. facts of which the commissioner, or an agent of the commissioner, has personal knowledge; or
- D. information obtained by the department during an inspection

Subp. 2. **Maximum penalty.** Penalties imposed must not be greater than \$1,000 for each violation of Minnesota Statutes, chapter 299M, or rule adopted under Minnesota Statutes, section 299M.04, for each day of violation

Subp. 3 **Assessment factors.** When determining the amount of penalty to be assessed, the commissioner shall consider

- A. those factors listed in Minnesota Statutes, section 14.045; subdivision 3, paragraph (a),
- B. the following factors.
 - (1) the degree of the person's culpability,
 - (2) the person's ability to pay,
 - (3) good faith on the part of the person in attempting to remedy the cause of the violation, and
 - (4) the effect of the penalty on the person's ability to continue in business, and

C. for a second or succeeding violation, the factors listed in items A and B and listed in Minnesota Statutes, section 14.045, subdivision 3, paragraph (b)

Subp. 4 **Notice of civil penalty.** The commissioner shall issue a notice of civil penalty when the commissioner has good cause to believe a violation of Minnesota Statutes, chapter 299M, or any rule adopted under Minnesota Statutes, section 299M.04, has occurred

A. The contents of a notice of civil penalty must include.

- (1) a statement of the statute or rule allegedly violated and a description of the evidence on which the allegation is based,
- (2) notice of response options available; and
- (3) the amount of the civil penalty proposed

B. The subject of the penalty shall respond to the notice within 15 days. The subject may select one or more of the following options for response:

- (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 commissioner to initiate a hearing under Minnesota Statutes, sections 14.50 to 14.69.

C. The commissioner shall review any written explanations, information, or other materials that are submitted in response to a notice of civil penalty. The commissioner shall determine whether to enforce, negotiate, modify, or withdraw the notice or to initiate a hearing under Minnesota Statutes, sections 14.57 to 14.69.

Subp. 5 Payment procedure. The subject of the civil penalty shall pay the penalty that has been assessed and proposed, or compromised, by submitting to the commissioner a check or money order in the correct amount, payable to the commissioner of public safety, to be deposited in the state treasury and credited to the general fund.

Subp. 6. Other enforcement provisions. Unless the commissioner determines that other enforcement provisions are unnecessary or inapplicable to the particular violation at issue, neither payment of the civil penalty nor negotiation, modification, or withdrawal of the notice of civil penalty prohibits

(1) the commissioner from pursuing other enforcement provisions provided for in Minnesota Statutes, chapter 299M, and rules adopted under Minnesota Statutes, section 299M.04, or

(2) the subject of the civil penalty from abiding by the terms of other enforcement provisions.

Subp. 7 Hearings. A penalty imposed under Minnesota Statutes, section 299M.04, is subject to the contested case and judicial review provisions of Minnesota Statutes, chapter 14.

Statutory Authority: *MS s 299M.04*

History: *24 SR 1780*

7512.2770 CEASE AND DESIST ORDER.

Subpart 1. Cease and desist order; immediate risk. The commissioner shall issue an order to cease and desist an activity that violates Minnesota Statutes, chapter 299M, or any rule adopted under Minnesota Statutes, section 299M.04, and is considered to be an immediate risk to public health or public safety. Generally, a cease and desist order under this part is appropriate if an individual or group is in danger of specific harmful consequences in the immediate future if an action or activity goes unchecked.

Subp. 2 Contents of order. An order to cease and desist an activity must be in writing and include the following:

- A. the reasons for issuing the order and a statement of the evidence compiled;
- B. the statute, rule, variance, order, or term or condition of a permit that was violated, if any;
- C. the length of time the order is effective, and
- D. notice that a contested case hearing will be held within seven working days.

Subp. 3 Maximum length of order. An order issued under this part is valid for no longer than 20 working days.

Subp. 4. Public notice. The commissioner, in conjunction with a cease and desist order, may physically tag each violation. This public notice must contain the information required for an order under subpart 2, items A to C.

Subp. 5 Administrative hearings. The commissioner shall initiate proceedings for a contested case hearing according to Minnesota Statutes, sections 14.57 to 14.69, of the Minnesota Administrative Procedure Act, and items A to C.

A An administrative hearing must be held within seven working days of issuing the cease and desist order.

B The administrative law judge shall issue an order to vacate, modify, or make permanent a cease and desist order within five working days of the administrative hearing.

C If the person to whom the order is issued fails to appear at a hearing after notice of the hearing, the party is in default and the cease and desist order becomes permanent.

Subp 6 **Noncompliance.** In the event of noncompliance with a cease and desist order, in addition to licensing sanctions allowed under Minnesota Statutes, chapter 299M, or any rule adopted under Minnesota Statutes, section 299M 04, the commissioner shall assess a civil penalty as set forth in part 7512 2750 and Minnesota Statutes, section 299M 04.

Subp 7. **Other enforcement.** Issuance of a cease and desist order does not preclude the commissioner from pursuing other enforcement actions available to the commissioner.

Subp. 8. **Elimination of immediate risk.** The commissioner shall vacate the cease and desist order when the person proves that the immediate risk to public health or public safety has been eliminated.

Subp. 9. **Determination that no immediate risk remains.** When the person asserts that the situation has been resolved so that no immediate risk remains, the commissioner shall verify that assertion according to items A to D:

A. review all information related to the issuance of the order to determine if violations have been corrected and there is no longer an immediate risk,

B as may be reasonable under the facts of the case, verify with a site visit, reinspection, examination of documentation, or other means,

C on determining that the situation has been corrected so that no immediate risk remains, notify the person within 36 hours and lift the cease and desist order, and

D document a determination that the situation has been corrected in case further infractions, incidents, or situations occur involving the person at issue.

Statutory Authority: *MS s 299M 04*

History: *24 SR 1780*