

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE DEPARTMENT OF LABOR AND INDUSTRY

In the Matter of the Proposed Rules
Governing the Adoption of the 2012
International Energy Conservation Code,
Commercial Energy Provisions

**AMENDED ORDER ON
ADDITIONAL NOTICE
PLAN AND DUAL NOTICE**

This matter came before Administrative Law Judge Jim R. Mortenson (ALJ) upon the Minnesota Department of Labor and Industry's request for a legal review under Minn. R. 1400.2060 and 1400.2080 of the Additional Notice Plan and Dual Notice of Intent to Adopt Rules in the above-captioned proceeding.

On October 31, 2014, the Department filed documents with the Office of Administrative Hearings seeking review and approval its additional notice plan and its Notice of Intent to Adopt Rules Without a Public Hearing Unless 25 or More Persons Request a Hearing, and Notice of Hearing if 25 or More Requests for Hearing are Received.

Under its Additional Notice Plan, the Department plans to mail the Dual Notice to everyone who registered to be on the Department's rulemaking mailing list and to various officials, agencies, and associations. Under its Additional Notice Plan, in addition to the notice required by statute, the Department plans to notify:

- All municipal code officials and others involved in code administration. This list includes all municipal building officials responsible for administration of the Minnesota State Building Code;
- Minnesota Mechanical Contractors' Association;
- Minnesota Society of Professional Engineers;
- Association of Minnesota Counties;
- League of Minnesota Cities;
- American Institute of Architects - Minnesota;
- Building Owners and Managers of Minneapolis and St. Paul;
- Minnesota Manufactured Home Association;
- Minnesota Department of Commerce;

- Builders Association of Minnesota; and
- Builders Association of the Twin Cities.

On November 3, 2014, the ALJ approved the Additional Notice Plan and Dual Notice contingent upon publishing notice in newspapers of general circulation throughout the various geographic regions of the state to inform the general public. The reason for this notice was because the general public may be significantly affected by the rules because the proposed rules may affect the cost and decisions individuals and businesses in the general public, as well as various governments, make about building, renovating, and remodeling structures.

In a letter dated November 4, 2014, the Department of Labor and Industry requested reconsideration of the November 3, 2014, Order.

Based upon the Department's request for reconsideration, and for the reasons articulated in the memorandum below,

IT IS HEREBY ORDERED THAT:

- 1) The November 3, 2014 Order is rescinded.
- 2) The Additional Notice Plan and Dual Notice is **APPROVED** contingent upon providing notice to:
 - a. Minnesota Chamber of Commerce
400 Robert Street North, Suite 1500
St. Paul, Minnesota 55101
 - b. The Building Owners and Managers Association of Duluth
c/o Oneida Realty Co.
306 West Superior Street, Suite 1605
Duluth, Minnesota 55802

Dated: November 7, 2014

s/Jim Mortenson

JIM MORTENSON
Administrative Law Judge

MEMORANDUM

The Department's list for notification limits notice to persons and organizations involved in the administration of the rules and those who must implement the rules. The only organizations representing, arguably, the most important people affected by the rules are the Building Owners and Managers of Minneapolis and St. Paul. This leaves out the remainder of the state. It also does not utilize methods to reach additional people and organizations affected who may not be associated with these two local chapters of the Building Owners and Managers Association. The Department must "make reasonable efforts to notify persons or classes of persons who may be significantly affected by the rule...."¹ The Department fails to recognize that the most important people affected by the proposed rules are those who will pay for and, therefore, make determinations based, in part, on the requirements of the rules. This must be corrected.

The ALJ's first attempt to redirect the Department's perspective on this may have both overreached and underserved. Publishing notice in newspapers of general circulation in the state may have resulted in an increased cost to the Department which may not have resulted in the benefit of meaningful notice to building and business owners. By reconsidering this, the ALJ has determined that a more cost effective approach would be to notify the one outstate Building Owners and Managers Association chapter in Minnesota, Duluth, and more importantly, the Minnesota Chamber of Commerce.

The Chamber of Commerce has the ability to provide the necessary context to its membership, many of whom are undoubtedly the building owners and business owners affected by the proposed rule changes. They are the people and businesses that will be significantly affected by the rules because they are the ones faced with decisions about building, renovating, and remodeling structures. Without reaching out to these people, the proposed rule changes are not being promulgated in the transparent way the legislature sought. Further, by including the additional two organizations for direct notice, as required in this order, more meaningful communication about the proposed rule changes may occur.

J. R. M.

¹ Minnesota Statute section 14.22, subdivision 1(a) (2014).