

February 3, 2015

PrairieStone Construction and Development, Inc.  
4625 Minnetonka Blvd. #206  
St. Louis Park, MN 55416

Re: Our File Number: REG. 1410-00028/KBU

Dear Mr. Herman:

As you know, the Minnesota Department of Labor and Industry, Construction Codes and Licensing Division, has received evidence that your company has engaged in violations of Minn. Stat. § 181.723(2014) and Minn. Stat. § 326B.081 to 326B.085 (2012). The Department has concluded its investigation into this matter. This letter is to inform you of the results of that investigation.

Enclosed is an Administrative Order we issued today by which you are ordered to pay a civil penalty of \$7,000. The \$5,000 penalty for failure to respond to the subpoena duces tecum is due and payable 10 days after the date the Administrative Order becomes final. If you fail to register successfully with the Registration Program within the required 31 day period, the forgivable portion of the penalty, \$2,000, will be due and payable 20 days after the date the Administrative Order becomes final.

You have the right to contest the Administrative Order by requesting a hearing within 30 days of the issuance of the Order. In the event a hearing is requested, the hearing would be held before an Administrative Law Judge ("ALJ") who, after hearing the evidence, would make a determination of whether or not violations have occurred.

The ALJ would then issue a recommendation to the Commissioner as to whether the violations were proven and the penalty reasonable. If the ALJ finds that the violation occurred and the penalty is reasonable, the Order will become final and the civil penalty will become due and owing. Once the Order becomes final, the civil penalty will be reduced to a judgment in Ramsey County District Court and any other appropriate district court, and collection procedures will commence. You would have the right to be represented by legal counsel throughout these proceedings, but you are not required to have one.

If you have any questions or concerns regarding this letter, or the enclosed Order, feel free to contact the undersigned investigator directly.

Sincerely,



Karen Bugar  
Senior Investigator  
Tel: 651-284-5374  
Fax: 651-284-5749  
E-mail: karen.bugar@state.mn.us  
Enclosure: Administrative Order

CC: Kirby Herman  
4625 Minnetonka Blvd. #206  
St. Louis Park, MN 55416

STATE OF MINNESOTA  
Department of Labor and Industry

In the Matter of Prairiestone Construction and  
Development, Inc. and Kirby Herman, Individually

**ADMINISTRATIVE ORDER  
WITH PENALTY**

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**I. ORDER**

The Commissioner of the Minnesota Department of Labor and Industry (“Commissioner”) issues this Order against Prairiestone Construction and Development, Inc. and Kirby Herman, individually (“Respondents”).

Pursuant to Minn. Stat. §§ 181.723; 326B.082, subd. 7; and 326B.083 (2014), the Commissioner hereby assesses against Respondents, jointly and severally, a monetary penalty of \$7,000, \$2,000 of which shall be forgiven if Respondents demonstrate to the Commissioner by the 31<sup>st</sup> day after this Administrative Order is issued that Respondents successfully registered with the Minnesota Construction Contractor Registration Program (“Registration Program”).

The Commissioner also hereby orders Respondents to cease and desist from violating the laws cited in the “Conclusions of Law” section of this Administrative Order. Specifically, the Commissioner orders Respondents to cease and desist from performing public or private sector commercial or residential building construction or improvement services for which registration in the Registration Program is required. The cease and desist order remains in effect until compliance with the registration requirements of Minn. Stat. § 326B.701, subd. 2 (b) (2014) is achieved.

The Commissioner takes the above action based upon the following findings of fact and conclusions of law:

**II. FINDINGS OF FACT**

1. Respondents are engaged in the business of providing building construction or improvement services, but have not registered with the Registration Program.
2. According to the records of the Minnesota Department of Labor and Industry (“Department”), Respondent Prairiestone Construction and Development, Inc. held a residential building contractor license, No. BC638764, which expired March 31, 2014. Respondent Kirby Herman was the qualifying person for this license.
3. According to the records of the Minnesota Secretary of State, Respondent Prairiestone Construction and Development, Inc. registered as a business corporation on February 9, 2005 with a registered office address of 5120 Danens Drive, Edina, MN 55439, but this registration expired on August 1, 2012.

4. As a part of the Department's investigation of a general contractor, a Department investigator obtained a list of the general contractor's subcontractors and this list included Respondent Prairiestone Construction and Development, Inc. According to the general contractor's records, Respondent Prairiestone Construction and Development, Inc. has a business address of 4625 Minnetonka Blvd., #206, St. Louis Park, MN 55416.
5. On October 23, 2014, a Department investigator mailed a subpoena duces tecum via first-class and certified mail to Respondents at the St. Louis Park, Minnesota address. The subpoena required the production of documentation relating to Respondents' subcontractors, contractors, and employees. The certified mail was signed for by Kirby Herman on October 30, 2014.
6. When the Department received no response to the subpoena, the Department investigator mailed a second request for information to Respondents on November 25, 2014 at the St. Louis Park, Minnesota address. This letter was not returned by the USPS.
7. On December 1, 2014, Respondent Kirby Herman called the Department investigator and stated that he doesn't do much work in Minnesota. The Department investigator told Respondent he was required register and to respond in writing to the subpoena.
8. The Commissioner has not received a reply from Respondents as of the date of this Order.

### **III. CONCLUSIONS OF LAW**

1. Respondents committed violations of applicable law. Minn. Stat. §§ 181.723, 326B.701, and 326B.082, subd. 7 (2014).
2. Respondents provided building construction or improvement services without being registered with the Registration Program. Minn. Stat. § 326B.701, subd. 2 (2014).
3. Respondents failed to comply with a subpoena issued by the Commissioner. Minn. Stat. § 326B.082, subd. 11 (b) (6) (2014).

### **IV. DETERMINATION OF PENALTY AMOUNT**

In determining the amount of the penalty, the Commissioner considered: the extent of deviation from compliance; whether the violations were willful; the gravity of the violations; the number of violations; whether there is a history of past violations; whether Respondents gained economic benefit in not complying with the law; and other factors as justice may require.

## V. REQUEST FOR HEARING

Pursuant to Minn. Stat. § 326B.082, subd. 8 (2014), Respondents shall have 30 days after issuance of this Administrative Order to request a hearing. A request for hearing must be in writing and must be served on or faxed to the Commissioner at the following address or fax number by the deadline.

Minnesota Department of Labor and Industry  
CCLD – Enforcement Services Unit  
Attention: Charlie Durenberger  
443 Lafayette Road North  
St. Paul, MN 55155

Fax number: (651) 284-5746

The date on which a request for hearing is served by mail shall be the postmark date on the envelope in which the request for hearing is mailed. The request for hearing must specifically state the reasons for seeking review of the order. If the request for hearing is served by fax it cannot exceed 15 pages in length and must be received no later than 4:30 p.m. central time on the last day permitted for serving a request. Respondents' review rights are more thoroughly described in Minn. Stat. § 326B.082, subsd. 4 and 8 (2014).

If Respondents submit to the Commissioner a timely request for hearing, the Administrative Order shall be stayed unless otherwise ordered by a judge, and a contested case hearing will be conducted. The contested case procedures are set out in chapter 14 of Minnesota Statutes, the Rules of the Office of Administrative Hearings, Minn. Rules 1400.5010 to 1400.8400 (2013), and Minn. Stat. § 326B.082, subd. 8 (2014). These materials may be purchased from the Minnesota Book Store, telephone (651) 297-3000, and are also available at [www.revisor.mn.gov](http://www.revisor.mn.gov).

## VI. EFFECT OF FINAL ORDER

If Respondents do not request a hearing or Respondents' request for a hearing is not served on or faxed to the Commissioner by the deadline specified in the "Request for Hearing" section of this Administrative Order, this Administrative Order shall become a final order of the Commissioner and will not be subject to review by any court or agency. *See* Minn. Stat. § 326B.082, subd. 8 (2014).

The penalty imposed upon Respondents by this Administrative Order, other than the forgivable portion, is due and payable ten days after the date the Administrative Order becomes final. If the Commissioner determines that Respondents failed to register successfully with the Registration Program within the 31-day period required, then the forgivable portion of the penalty is due and payable 20 days after the Commissioner serves notice of this determination or on the date this Administrative Order becomes final, whichever is later. *See* Minn. Stat. § 326B.083, subd. 3 (2014).

When this Administrative Order becomes final, the Commissioner may file and enforce any unpaid portion of the penalty as a judgment in district court without further notice or additional proceedings. *See* Minn. Stat. §§ 16D.17 and 326B.083, subd. 2 (2014). Failure to pay a monetary penalty owed may result in the revocation, suspension, or denial of any or all licenses, permits, certificates, and registrations issued by the Commissioner. *See* Minn. Stat. § 326B.082, subd. 17 (2014). Also, pursuant to Minn. Stat. § 16D.13 (2014), Respondents are hereby notified that thirty (30) days after the date this Administrative Order becomes final, simple interest computed in accordance with Minn. Stat. § 16D.13, subd. 2 (2014) will begin to accrue on the unpaid portion of the penalty.

Dated: 2/3/15

KEN B. PETERSON  
Commissioner



BY: CHARLIE DURENBERGER  
Director of Licensing and Enforcement  
Construction Codes and Licensing Division  
Department of Labor and Industry