

FIRST REGULAR SESSION
HOUSE COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 752
103RD GENERAL ASSEMBLY

1929H.02C

JOSEPH ENGLER, Chief Clerk

AN ACT

To repeal sections 319.015, 319.022, 319.024, 319.025, 319.026, 319.027, 319.030, 319.031, and 319.035, RSMo, and to enact in lieu thereof eleven new sections relating to underground facilities.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Sections 319.015, 319.022, 319.024, 319.025, 319.026, 319.027, 319.030, 319.031, and 319.035, RSMo, are repealed and eleven new sections enacted in lieu thereof, to be known as sections 319.015, 319.019, 319.022, 319.024, 319.025, 319.026, 319.027, 319.030, 319.031, 319.034, and 319.035, to read as follows:

319.015. For the purposes of sections 319.010 to 319.050, the following terms mean:

(1) "Approximate location", a strip of land not wider than the width of the underground facility plus two feet on either side thereof. In situations where reinforced concrete, multiplicity of adjacent facilities or other unusual specified conditions interfere with location attempts, the owner or operator shall designate to the best of his ~~[or]~~, her, or its ability an approximate location of greater width;

(2) **"Best practices", the damage prevention recommended standard for protecting vital underground facilities issued by the Common Ground Alliance, sponsored by the Department of Transportation as described in 49 U.S.C. Section 6105 (a), as amended. The Common Ground Alliance Best Practices shall be read in conjunction with Missouri law; in any instance in which such best practices conflict with state law, state law shall control;**

(3) **"Careful and prudent", conducting excavation using best practices;**

(4) "Design request", a request from any person for facility location information for design purposes only;

EXPLANATION — Matter enclosed in bold-faced brackets ~~[thus]~~ in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

16 (5) "Detectible underground location device", any device that is installed
17 underground and that is capable of being detected from above ground with an electronic
18 locating device, including a locator strip or locator wire;

19 (6) "Electronic white lining", the process in which an excavator identifies where
20 a proposed excavation will occur by drawing a polygon shape on a GIS map,
21 transmitted in a manner that may then be delivered by the notification center to its
22 member operator;

23 ~~[(3)]~~ (7) "Emergency", a sudden, unexpected occurrence, presenting a clear and
24 imminent danger demanding immediate action to prevent or mitigate loss or damage to life,
25 health, property, or essential public services. "Unexpected occurrence" includes, but is not
26 limited to, thunderstorms, high winds, ice or snow storms, fires, floods, earthquakes, or other
27 soil or geologic movements, riots, accidents, water or wastewater pipe breaks, vandalism, or
28 sabotage;

29 ~~[(4)]~~ (8) "Excavation", any operation in which earth, rock or other material in or on
30 the ground is moved, removed or otherwise displaced by means of any tools, equipment or
31 explosives and includes, without limitation, backfilling, grading, trenching, digging, ditching,
32 pulling material from a ditch ~~[but not including]~~ **not in conjunction with** routine road
33 maintenance, drilling, well-drilling, augering, boring, tunneling, scraping, cable or pipe
34 plowing, plowing-in, pulling-in, ripping, driving, and demolition of structures~~[-except that,].~~
35 **Exemptions to this definition include: routine road maintenance**, the use of mechanized
36 tools and equipment to break and remove pavement and masonry down only to the depth of
37 such pavement or masonry on roads dedicated to the public use for vehicular traffic, the
38 tilling of soil for agricultural purposes when such excavation does not exceed sixteen inches
39 in depth, the installation of marking flags and stakes and the use of pressurized air to
40 disintegrate and **the** suction to remove earth, rock, or other materials for the location of
41 underground facilities ~~[shall not be deemed excavation]~~. Backfilling or moving earth on the
42 ground in connection with other excavation operations at the same site shall not be deemed
43 separate instances of excavation. For railroads regulated by the Federal Railroad
44 Administration, "excavation" shall not include any excavating done by a railroad when
45 such excavating is done entirely on land that the railroad owns or on which the railroad
46 operates, or in the event of an emergency, excavating done by a railroad on adjacent land;

47 ~~[(5)]~~ (9) "Excavator", any person making one or more excavations who is required to
48 make notices of excavation under the requirements of sections 319.010 to 319.050;

49 ~~[(6)]~~ (10) "Locate status", the underground facility owner's designation of the status
50 of the locate request to the notification center which then makes that information available to
51 the person making the locate request through electronic or other means;

52 **(11) "Locator strip", a type of detectible underground location device that**
53 **consists of a plastic or other durable material ribbon containing a material capable of**
54 **being detected from above ground with an electronic locating device and color coded by**
55 **type of underground facility;**

56 **(12) "Locator wire", a type of detectible underground location device that**
57 **consists of a copper wire or metallic, conductive, noncorrosive trace wire capable of**
58 **being detected from above ground with an electronic locating device;**

59 ~~[(7)]~~ **(13) "Marking", the use of paint, flags, stakes, or other clearly identifiable**
60 **materials to show the field location of underground facilities, or the area of proposed**
61 **excavation, in accordance with the marking standards for underground facilities as designated**
62 **by the Common Ground Alliance Best Practices [Version 10.0] except that "approximate**
63 **location" shall comply with the requirements as set forth in subdivision (1) of this section;**

64 ~~[(8)]~~ **(14) "Notification center", a statewide organization operating twenty-four hours**
65 **a day, three hundred sixty-five days a year on a not-for-profit basis, supported by a majority**
66 **of the underground facility owners in the state of Missouri;**

67 ~~[(9)]~~ **(15) "Notification center participant", an underground facility owner who is a**
68 **member and participant in the notification center;**

69 ~~[(10)]~~ **(16) "Permitted project", a project for which a permit for the work to be**
70 **performed is required to be issued by a local, state or federal agency and, as a prerequisite to**
71 **receiving such permit, the applicant is required to notify all underground facility owners in**
72 **the area of the work for purposes of identifying the location of existing underground facilities;**

73 ~~[(11)]~~ **(17) "Person", any individual, firm, joint venture, partnership, corporation,**
74 **association, cooperative, municipality, political subdivision, governmental unit, department or**
75 **agency and shall include a notification center and any trustee, receiver, assignee or personal**
76 **representative thereof;**

77 ~~[(12)]~~ **(18) "Pipeline facility" includes all parts of a facility through which a**
78 **hazardous liquid or gas moves in transportation including, but not limited to, pipe, valves and**
79 **other appurtenances connected to pipe, pumping units, fabricated assemblies associated with**
80 **pumping units, metering and delivery stations and fabricated assemblies therein, and breakout**
81 **tanks;**

82 **(19) "Reasonable care", includes compliance with Common Ground Alliance**
83 **Best Practices;**

84 **(20) "Start date of work", the date provided by the excavator on the notice of**
85 **intent to excavate that identifies the date of intention to begin excavation;**

86 ~~[(13)]~~ **(21) "State plane coordinates", a system of locating a point on a flat plane**
87 **developed by the National Oceanic and Atmospheric Administration and utilized by state**
88 **agencies, local governments, and other persons to designate the site of a construction project;**

89 ~~[(14)]~~ **(22)** "Trenchless excavation", horizontal excavation parallel to the surface of
90 the earth which does not use trenching or vertical digging as the primary means of excavation,
91 including but not limited to directional boring, tunneling, or augering;

92 ~~[(15)]~~ **(23)** "Underground facility", any item of personal property which shall be
93 buried or placed below ground for use in connection with the storage or conveyance of water,
94 storm drainage, sewage, telecommunications **service, broadband** service, cable television
95 service, electricity, oil, gas, hazardous liquids or other substances, and shall include but not be
96 limited to pipes, sewers, conduits, cables, valves, vaults, **fiber optic or other** lines, wires,
97 manholes, attachments, or appurtenances, and those portions of pylons or other supports
98 below ground that are within any public or private street, road or alley, right-of-way dedicated
99 to the public use or utility easement of record, or prescriptive easement. If gas distribution
100 lines or electric lines, telecommunications **or broadband** facilities, cable television facilities,
101 water service lines, water system, storm drainage or sewer system lines, other than those used
102 for vehicular traffic control, lighting of streets and highways and communications for
103 emergency response, are located on private property and are owned solely by the owner or
104 owners of such private property, such lines or facilities receiving service shall not be
105 considered underground facilities for purposes of this chapter, except at locations where they
106 cross or lie within an easement or right-of-way dedicated to public use or owned by a person
107 other than the owner of the private property. Water and sanitary sewer lines providing service
108 to private property that are owned solely by the owner of such property shall not be
109 considered underground facilities at any location. A structure that transports only storm water
110 drainage under roadways, driveways, or railways shall not be considered an underground
111 facility;

112 ~~[(16)]~~ **(24)** "Underground facility owner", any person who owns or operates
113 underground facilities;

114 ~~[(17)]~~ **(25)** "Working day", every day, except Saturday, Sunday or a legally declared
115 state or federal holiday.

319.019. The underground facility owner shall ensure that all new and active
2 **underground facilities installed on any real property after August 28, 2025, with the**
3 **exception of storm sewers and sanitary sewer mains and laterals installed at depths**
4 **more than six feet, shall be installed with a detectible underground location device**
5 **unless the facility is capable of being detected from above ground with an electronic**
6 **locating device.**

319.022. 1. Any person, except a railroad regulated by the Federal Railroad
2 Administration, who installs or otherwise owns or operates an underground facility shall
3 become a participant in a notification center upon first acquiring or owning or operating such
4 underground facility. All underground facility owners within the state shall maintain

5 participation in a notification center for the duration of owning and operating such
6 underground facility.

7 **2.** Such notification center shall be governed by a board of directors elected by the
8 membership and composed of representatives from the general membership group, **plus four**
9 **voting directors from other damage prevention stakeholders within the construction**
10 **industry, three of whom shall be from a heavy civil, site grading, road or highway**
11 **contractor and one of whom shall be from a utility or underground contractor;**
12 **provided, however, that none of the directors appointed shall work for a contractor that**
13 **owns or operates an underground facility. The appointed directors shall be subject to**
14 **the bylaws and policies of the notification center.**

15 ~~[2-]~~ **3.** The notification center shall maintain in its offices and make available to any
16 notification center participant or excavator upon request a current list of the names and
17 addresses of each notification center participant, including the county or counties wherein
18 each participant has underground facilities. The notification center may charge a reasonable
19 fee to notification center participants or excavators requesting such list as is necessary to
20 recover the actual costs of printing and mailing.

21 ~~[3-]~~ **4.** Excavators shall be informed of the availability of the list of notification center
22 participants.

23 ~~[4-]~~ **5.** An annual audit or review of the notification center shall be performed by a
24 certified public accountant and a report of the findings submitted to the speaker of the house
25 of representatives and the president pro tem of the senate.

319.024. 1. Every person owning or operating an underground facility shall assist
2 excavators and the general public in determining the location of underground facilities before
3 excavation activities are begun or as may be required by subsection ~~[6]~~ 7 of section 319.026
4 or subsection 1 of section 319.030 after an excavation has commenced. Methods of
5 informing the public and excavators of the means of obtaining such information may, but
6 need not, include advertising, including advertising in periodicals of general circulation or
7 trade publications, information provided to professional or trade associations which routinely
8 provide information to excavators or design professionals, or sponsoring meetings of
9 excavators and design professionals for such purposes. Information provided by the
10 notification center on behalf of persons owning or operating an underground facility shall be
11 deemed in compliance with this section by such persons.

12 2. Every person owning or operating underground pipeline facilities shall, in addition
13 to the requirements of subsection 1 of this section:

14 (1) Identify on a current basis persons who normally engage in excavation activities
15 in the area in which the pipeline is located. Every such person who is a participant in a
16 notification center shall be deemed to comply with this subdivision if such notification center

17 maintains and updates a list of the names and addresses of all excavators who have given
18 notice of intent to excavate to such notification center during the previous year and provided
19 the notification center shall, not less frequently than annually, provide public notification and
20 actual notification to all excavators on such list of the existence and purpose of the
21 notification center, and procedures for obtaining information from the notification center;

22 (2) Either directly or through the notification center, notify excavators and the public
23 in the vicinity of his ~~or~~, her, **or its** underground pipeline facility of the availability of the
24 notification center by including the information set out in subsection 1 of section 319.025 in
25 notifications required by the safety rules of the Missouri public service commission relating
26 to its damage prevention program;

27 (3) Notify excavators annually who give notice of their intent to excavate of the type
28 of marking to be provided and how to identify the markings.

319.025. 1. Except as provided in subsection 4 of section 319.030 and in section
2 319.050, ~~a person~~ **an excavator** shall not make or begin any excavation in any public street,
3 road or alley, right-of-way dedicated to the public use or utility easement of record or within
4 any private street or private property ~~[without first giving]~~ **until such excavator gives** notice
5 to the notification center and ~~[obtaining]~~ **obtains** information concerning the possible
6 location of any underground facilities which may be affected by said excavation from
7 underground facility owners whose names appear on the current list of participants in the
8 notification center and who were communicated to the excavator as notification center
9 participants who would be informed of the excavation notice. Notice to the notification
10 center of proposed excavation shall be deemed notice to all owners and operators of
11 underground facilities **and shall have an operational life ending at 11:59 p.m. twenty-one**
12 **consecutive calendar days from the start date of work.** The notice referred to in this
13 section shall comply with the provisions of section 319.026.

14 2. An excavator's notice to owners and operators of underground facilities
15 participating in the notification center pursuant to section 319.022 is ineffective for
16 purposes of subsection 1 of this section unless given to such notification center.

17 3. Notification center participants shall be relieved of the responsibility to respond to
18 a notice of intent to excavate received directly from the person intending to commence an
19 excavation, except for requests for clarification of markings through on-site meetings as
20 provided in subsection 1 of section 319.030 and requests for locations at the time of an
21 emergency as provided by section 319.050.

22 4. Notwithstanding the provisions of this section to the contrary, a person shall not
23 make or begin any excavation in any state highway, or on the right-of-way of any state
24 highway, without first obtaining a permit from the state highways and transportation

25 commission pursuant to section 227.240, provided however, the provisions of this subsection
26 shall not apply to railroad right-of-way owned or operated by a railroad.

319.026. 1. An excavator shall serve notice of intent to excavate to the notification
2 center by toll-free telephone number operated on a twenty-four hour per-day, seven day per-
3 week basis ~~[or by facsimile]~~ or by completing notice via the internet at least two working
4 days, but not more than ten working days, before the expected date of commencing the
5 excavation activity. The notification center receiving such notice shall inform the excavator
6 of all notification center participants to whom such notice will be transmitted and shall
7 promptly transmit all details of such notice provided under subsection 2 of this section to
8 every notification center participant in the area of excavation.

9 2. Notices of intent to excavate given pursuant to this section shall contain the
10 following information:

11 (1) The name and telephone number of the person filing the notice of excavation, if
12 the telephone number is different than that of the excavator, and the name, address, **and**
13 telephone number of the excavator ~~[and whether the excavator's telephone is equipped with a~~
14 ~~recording device]~~;

15 (2) The date the excavation activity is expected to commence, the depth of planned
16 excavation and, if applicable, that the use of explosives is anticipated on the excavation site,
17 and the type of excavation being planned, including whether the excavation involves
18 trenchless excavation;

19 (3) The ~~[facsimile number,]~~ email address~~;~~ and cellular telephone number of the
20 excavator, if any;

21 (4) The name of the person primarily responsible for conducting the excavation or
22 managing the excavation process, and if any of the information stated in subdivision (1) or (3)
23 of this subsection is different for the person primarily responsible for the excavation, the
24 notice shall also state the same information for that person;

25 (5) A detailed description accepted by the notification center sufficient for the
26 location of the excavation by any one or more of the following means: by reference to a
27 specific street address, or by description of location in relation to the nearest numbered,
28 lettered, or named state or county road or city street for which a road sign is posted, or by
29 latitude and longitude including the appropriate description in degrees, minutes, and seconds,
30 or by state plane coordinates;

31 (6) A description of the site of excavation by approximate distance and direction from
32 the nearest state or county road or city street or intersection of such roads or streets unless
33 previously provided under subdivision (5) of this subsection, and the proximity of the site to
34 any prominent landmarks;

35 (7) A description of the location or locations of the excavation at the site described by
36 direction and approximate distance in relation to prominent features of the site, such as
37 existing buildings or roadways;

38 (8) Directions as to how to reach the site of the excavation from the nearest such road,
39 if the excavation is not on or near a posted numbered, lettered, or named state or county road
40 or city street.

41 **3. When the location of the planned excavation cannot be clearly identified solely**
42 **by the means described in subdivision (5) of subsection 2 of this section, the excavator**
43 **may also designate the planned excavation route or area to be excavated by physical**
44 **white lining using white paint, stakes, whiskers, or other similar markings on and along**
45 **the area to be excavated, or by electronic white lining when available through the**
46 **notification center. Such information may be provided to the notification center prior to**
47 **or with the notification required under this section. Nothing in this section shall conflict**
48 **with sections 319.024, 319.025, or 319.030.**

49 **4.** The notification center receiving such notice shall solicit all information required
50 by subsection 2 of this section and shall require the excavator to provide all such information
51 before notice by the excavator is deemed to be completed pursuant to sections 319.015 to
52 319.050. The notification center shall transmit all details of such notice as required by this
53 section.

54 ~~[4:]~~ **5.** A record of each notice of intent to excavate shall be maintained by the
55 notification center for a period of five years. The record shall include the date the notice was
56 received and all information required by subsection 2 of this section which was provided by
57 the excavator and a record of the underground facility owners notified by the notification
58 center. If the notification center creates a record of the notice by telephonic recording, such
59 record of the original notice shall be maintained for one year from the date of receipt.
60 Records of notices to excavate maintained by the notification center in electronic form shall
61 be deemed to be records under this subsection. Persons holding records of notices of intent to
62 excavate and records of information provided to the excavator by the notification center or
63 owner or operator of the facility shall make copies of such records available for a reasonable
64 copying fee upon the request of the owner or operator of the underground facilities or the
65 excavator filing the notice.

66 ~~[5:]~~ **6.** If in the course of excavation the person responsible for the excavation
67 operations discovers that the owner or operator of the underground facility who is a
68 participant in a notification center has incorrectly located the underground facility, **or**
69 **discovers an underground facility that is not marked**, he or she shall notify the notification
70 center which shall inform the underground facility owner. The underground facility owner
71 shall respond to the incorrect locate notification within two hours of receipt of the notification

72 by contacting the person responsible for the excavation or by correctly locating their
73 underground facility. The person responsible for maintaining records of the location of
74 underground facilities for the notification center participant shall correct such records to show
75 the actual location of such facilities, if current records are incorrect.

76 ~~[6-]~~ 7. When markings have been provided in response to a notice of intent to
77 excavate, excavators may commence or continue to work within the area described in the
78 notice ~~[for so]~~ **until the notice of intent to excavate expiration date** as long as the markings
79 are visible. If an excavator is unable to begin the excavation within ten working days as
80 described in the request, the excavator shall make a relocate request before beginning the
81 excavation. If markings become unusable due to weather, construction or other cause, the
82 excavator shall contact the notification center to request remarking. Such notice shall be
83 given in the same manner as original notice of intent to excavate, and the owner or operator
84 shall remark the site in the same manner, within the same time, as required in response to an
85 original notice of intent to excavate. Each excavator shall exercise reasonable care not to
86 unnecessarily disturb or obliterate markings provided for location of underground facilities.
87 If remarking is required due to the excavator's failure to exercise reasonable care, or if
88 repeated unnecessary requests for remarking are made by an excavator even though the
89 markings are visible and usable, the excavator may be liable to the owner or operator for the
90 reasonable cost of such remarking. Nothing in this section shall allow any person other than
91 the facility owner or their representative to mark or relocate any underground facility.

92 ~~[7-]~~ 8. Before commencing excavation, the excavator shall determine best practices
93 for confirming the horizontal and vertical location of facilities at the site of excavation
94 considering conditions at the site including geology, access to the site, and the presence of
95 paved surfaces. Hand digging or soft digging shall be used as a best practice when possible.

96 ~~[8-]~~ 9. In the event of any damage, dislocation, or disturbance of any underground
97 facility in connection with any excavation, the person responsible for the excavation
98 operations shall notify the notification center. This subsection shall be deemed to require
99 reporting of any damage, dislocation, or disturbance to trace wires, encasements, cathode
100 protection, permanent above-ground stakes, or other such items utilized for protection of the
101 underground facility. The excavator shall immediately contact 911 when any damage or
102 contact with a pipeline results in a release from the pipeline of hazardous liquid or gas to
103 occur.

104 ~~[9-]~~ 10. In the event of any damage, dislocation, or disturbance to any underground
105 facility or any protective devices required to be reported by the excavator under subsection
106 ~~[8]~~ 9 of this section in advance of or during the excavation work, the person responsible for
107 the excavation operations shall not conceal or attempt to conceal such damage, dislocation, or
108 disturbance, nor shall that person attempt to make repairs to the facility unless authorized by

109 the underground facility owner. In the case of sewer lines or facilities, emergency temporary
110 repairs may be made by the excavator after notification without the owners' or operators'
111 authorization to prevent further damage to the facilities. Such emergency repairs shall not
112 relieve the excavator of responsibility to make notification as required by subsection ~~[8]~~ 9 of
113 this section.

114 ~~[10.]~~ 11. No later than ~~April 1, 2015, and each year thereafter~~ **the date determined**
115 **annually by Common Ground Alliance, or any successor organization**, each underground
116 facility owner who owns or operates electric, gas, or pipeline facilities shall submit to a
117 central repository designated by the notification center a report of damages experienced by its
118 facilities for the prior calendar year. The notification center shall determine the minimum
119 information to be reported. All data submitted shall be aggregated and anonymous.
120 Information provided by the underground facility owner specific to damage data submitted
121 shall be accessible only to the underground facility owner unless otherwise designated by the
122 underground facility owner.

319.027. 1. Any person may make design requests by contacting the notification
2 center. Such design requests shall include all information deemed necessary by the
3 notification center to complete the notice, including the identification of the person and a
4 description of the location of the project being designed and other information similar to that
5 required of excavators under section 319.026.

6 2. Design requests shall be made to the notification center at least five working days~~;~~
7 ~~but not more than ten working days,~~ before the date the person has requested receiving the
8 information from the underground facility owner. Upon receipt of a design request, the
9 notification center shall inform the person of the name of all notification center participants to
10 whom the notice will be transmitted and shall promptly transmit such notice to the
11 appropriate underground facility owners.

12 3. Every underground facility owner who receives a design request shall mark the
13 location of the facility, or contact the person making the request, within five working days
14 after the date the notice was received from the notification center. If the person making the
15 request was contacted as an alternative to marking location, the person and the underground
16 facility owner shall mutually agree on a schedule and method for providing the information,
17 provided that the facility shall be marked within five working days if the facility owner and
18 the person making the request are unable to agree.

19 4. No excavation may be commenced based upon information received through a
20 design request. Obtaining information through a design request shall not excuse any person
21 commencing an excavation from making notice and obtaining information under sections
22 319.025 and 319.026 concerning the possible location of any underground facilities which
23 may be affected.

319.030. 1. Every person owning or operating an underground facility to whom notice of intent to excavate is required to be given shall, upon receipt of such notice as provided in this section from a person intending to commence an excavation, inform the excavator as promptly as practical, but not in excess of two working days, unless the excavator agrees to extend the start date and time provided in the locate request through methods established by the notification center, of the approximate location of underground facilities in or near the area of the excavation so as to enable the person engaged in the excavation work to locate the facilities in advance of and during the excavation work, provided that no excavation shall begin earlier than the scheduled excavation date provided on the locate request unless the excavator has confirmed that all underground facilities have been located. The two working days provided for notice in this subsection and subsection 1 of section 319.026 shall begin at 12:00 a.m. following the receipt of the request by the notification center. Each underground facility owner receiving notifications from the notification center by use of the internet shall, after December 31, 2014, use the locate status system provided by the notification center. Those underground facility owners that do not receive notifications by use of the internet shall, no later than January 1, 2016, provide locate status to the notification center by an alternate method provided by the notification center. If the excavator states in the notice of intent to excavate that the excavation will involve trenchless technology, the owner or operator shall inform the excavator of the depth, to the best of his ~~or~~, her, **or its** knowledge or ability, of the facility according to the records of the owner or operator. The owner or operator shall provide the approximate location of underground facilities by use of markings as designated in section 319.015. Persons representing the excavator and the owner or operator shall meet on the site of excavation within two working days of a request by either person for such meeting for the purpose of clarifying markings, or upon agreement of the excavator and owner or operator, such meeting may be an alternate means of providing the location of facilities by originally marking the approximate location of the facility at the time of the meeting. If upon receipt of a notice of intent to excavate, an owner or operator determines that he or she neither owns or operates underground facilities in or near the area of excavation, the owner or operator shall within two working days after receipt of the notice, inform the excavator that the owner or operator has no facilities located in the area of the proposed excavation. The owner or operator of the underground facility shall make notice to the excavator that no facilities are located in the area of excavation by contacting the excavator by any of the following methods:

(1) By calling the primary number of the excavator or by calling the telephone number of the responsible person as provided by the excavator under subdivision (4) of subsection 2 of section 319.026;

(2) By leaving a message on the recording device for such numbers;

- 38 (3) By calling the cellular telephone number of the excavator or responsible person;
39 (4) By notifying the excavator by ~~[facsimile or]~~ electronic mail at ~~[numbers or]~~
40 addresses stated by the excavator in the notice of excavation made under subsection 2 of
41 section 319.026;
42 (5) By marking "clear" or "OK" at the site of excavation;
43 (6) By verbally informing the excavator in person.

44

45 If the only means of contacting the excavator is one or more telephone numbers provided by
46 the excavator in the notice of excavation under section 319.026, then two attempts by the
47 underground facility owner to contact the excavator at one of the telephone numbers provided
48 shall constitute compliance with this subsection; or

- 49 (7) By use of a locate status system.

50 2. A record of the date and means of informing the excavator that no facilities were
51 located by the owner or operator shall be included in the written records of the underground
52 facility owner regarding each specific notice of excavation and shall be retained for a period
53 of five years.

54 3. If the owner or operator notifies the excavator that the area of excavation cannot be
55 determined from the description provided by the excavator through the notice required by this
56 section, the excavator shall provide clarification of the area of excavation by marking the area
57 with white flags or white paint, or by providing project plans to the owner or operator, or by
58 meeting on the site of the excavation with representatives of the owner or operator as
59 provided for in this section.

60 4. In the event that a person owning or operating an underground facility fails to
61 comply with the provisions of subsection 1 of this section after notice given by an excavator
62 in compliance with section 319.026, the excavator, prior to commencing the excavation, shall
63 give a second notice to the notification center as required by section 319.026 stating that there
64 has been no response to the original notice given under section 319.026. After the receipt of
65 the notice stating there has been "no response", the owner or operator of an underground
66 facility shall, within two hours of the receipt of such notice, mark its facilities or contact and
67 inform the excavator of when the facilities will be marked; provided, however, that for "no
68 response" notices made to the notification center by 2:00 p.m., the markings shall be
69 completed on the working day the notice is made to the notification center, and provided that
70 for "no response" notices made to the notification center after 2:00 p.m., the markings shall be
71 completed no later than 10:00 a.m. on the next working day. If an underground facility owner
72 fails to mark its facilities or contact the excavator as required by this subsection, the excavator
73 may commence the excavation. Nothing in this subsection shall excuse the excavator from
74 exercising the degree of care in making the excavation as is otherwise required by law.

75 5. For purposes of this section, a period of two working days begins at 12:00 a.m.
76 following when the request is made.

 319.031. 1. In addition to the other requirements of section 319.030, the response to a
2 notice of intent to excavate received by a sewer system owner, when such owner has
3 underground facilities located in the area of excavation identified in the notice and when the
4 notice indicates that trenchless excavation methods will be used, shall include a determination
5 of whether sewer service connections exist in the area of the excavation.

6 2. If the sewer system owner determines that sewer service connections exist in the
7 area of the excavation identified in a notice of intent to excavate, the owner shall provide his
8 ~~[or]~~, her, or its best available information, or notice that the information does not exist,
9 regarding the location of such connections to the excavator by any of the following methods:

10 (1) Placing a triangular green mark at the approximate location of the sewer service
11 connection pointing in the direction of the customer structure serviced;

12 (2) Providing electronic copies of the information to the excavator;

13 (3) Delivering copies of the information to the excavator by ~~[facsimile or by]~~ other
14 agreed upon means; or

15 (4) Arranging to meet the excavator at the site of the excavation to provide the
16 information.

17 3. Providing the best available information, or notice that the information does not
18 exist, regarding the location of sewer service connections that exist in the area of excavation
19 identified in a notice of intent to excavate shall constitute full compliance with this section,
20 and a sewer system owner shall not be liable to any party for damages or injuries resulting
21 from an excavation if they are in compliance with this section.

22 4. Providing the best available information regarding the location of sewer service
23 connections that exist in the area of excavation identified in a notice of intent to excavate shall
24 not in and of itself constitute ownership, operation, control, or management of sewer service
25 lines by a sewer system owner.

319.034. For purposes of sections 319.010 to 319.050, the location of
2 **underground facilities provided by a facility owner or operator in accordance with**
3 **section 319.026 to any person engaging in scheduled excavating shall be accurate. If any**
4 **underground facility is damaged by an excavator due to the furnishing of incorrect**
5 **information by the facility owner or operator, the excavator shall not be subject to any**
6 **liability resulting from damage to the underground facility as a result of the excavating,**
7 **provided that such person engaging in scheduled excavating complies with the**
8 **requirements of sections 319.010 to 319.050 with respect to such excavation and there**
9 **is no evidence visible and obvious to the excavator of the presence of a mismarked**
10 **underground facility.**

319.035. 1. Obtaining information as required by sections 319.010 to 319.050 does
2 not excuse any person making any excavation from doing so in a careful and prudent manner.

3 2. Nothing in sections 319.010 to 319.050 shall relieve an excavator from the
4 obligation to excavate in a safe and prudent manner, nor shall it absolve an excavator from
5 liability for damage to underground facilities **except as provided in section 319.034.**

6 3. The failure of any excavator to give notice of proposed excavation activities as
7 required by this chapter shall be a rebuttable presumption of negligence on his or her part in
8 the event that such failure shall cause injury, loss, or damage. In addition to any penalties
9 provided herein, liability under common law may apply.

10 4. The failure of an underground facility owner **or a locator or other contractor**
11 **engaged by the facility owner** to mark ~~his or her~~ **the facility owner's** facilities that are
12 located in an area of excavation described in a notice of intent to excavate received by the
13 underground facility owner, as required by section 319.030, or the failure of an underground
14 facility owner to be a notification center participant, consistent with the provisions of section
15 319.022, shall be a rebuttable presumption of negligence on the part of such owner, **and of**
16 **the locator or other contractor engaged by the facility owner**, in the event that such failure
17 shall cause injury, loss, or damage. In addition to any penalties provided herein, liability
18 under common law may apply.

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