

Definitions.

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 ability an approximate location of greater width;

(2) "Collecting sewers", sewer lines, including force lines, gravity sewers, interceptors, laterals, trunk sewers, manholes, lampholes and necessary appurtenances, including service wyres;

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

(4) "Emergency", either:

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

(b) Any interruption in the generation, transmission, or distribution of electricity, or any damage to property or facilities that causes or could cause such an interruption;

(5) "Excavation", any operation in which earth, rock or other material in or on the ground is moved, removed or otherwise displaced by means of any tools, equipment or explosives and includes, without limitation, backfilling, grading, trenching, digging, ditching, drilling, well-drilling, augering, boring, tunneling, scraping, cable or pipe plowing, plowing-in, pulling-in, ripping, driving, and demolition of structures, except that, the use of mechanized tools and equipment to break and remove pavement and masonry down only to the depth of such pavement or masonry, the use of pressurized air to disintegrate and suction to remove earth, rock and other materials, the tilling of soil for agricultural or seeding purposes, and the installation of marking flags and stakes for the location of underground facilities that are not driven shall not be deemed excavation. Backfilling or moving earth on the ground in connection with other excavation operations at the same site shall not be deemed separate instances of excavation;

(6) "Excavator", any person making one or more excavations who is required to make notices of excavation under the requirements of sections 319.010 to 319.050;

(7) "Marking", the use of paint, flags, stakes, or other clearly identifiable materials to show the field location of underground facilities, or the area of proposed excavation, in accordance with the color code standard of the American Public Works Association. Unless otherwise provided

by the American Public Works Association, the following color scheme shall be used: blue for potable water; purple for reclaimed water, irrigation and slurry lines; green for sewers and drain lines; red for electric, power lines, cables, conduit and lighting cables; orange for communications, including telephone, cable television, alarm or signal lines, cable or conduit; yellow for gas, oil, steam, petroleum or gaseous materials; white for proposed excavation; pink for temporary marking of construction project site features such as centerline and top of slope and toe of slope;

(8) "Notification center", a statewide organization operating twenty-four hours a day, three hundred sixty-five days a year on a not-for-profit basis, supported by its participants, or by more than one operator of underground facilities, having as its principal purpose the statewide receipt and dissemination to participating owners and operators of underground facilities of information concerning intended excavation activities in the area where such owners and operators have underground facilities, and open to participation by any and all such owners and operators on a fair and uniform basis. Such notification center shall be governed by a board of directors elected by the membership and composed of representatives from each general membership group, provided that one of the board members shall be a representative of the state highways and transportation commission so long as the commission is a participant in the notification center;

(9) "Notification center participant", an underground facility owner who is a member and participant in the notification center;

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

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

(12) "Pipeline facility" includes, without limitation, new and existing pipe, rights-of-way, and any equipment, facility, or building used or intended for use in the transportation of gas or the treatment of gas, or used or intended for use in the transportation of hazardous liquids including petroleum, or petroleum products;

(13) "Preengineered project", a project which is approved by an agency or political subdivision of the state and for which the agency or political subdivision responsible for the project, as part of its engineering and contract procedures, holds a meeting prior to the commencement of any construction work on such project and in such meeting all persons determined by the agency or political subdivision to have underground facilities located within the excavation area of the project are invited to attend and given an opportunity to verify or inform any agency or political subdivision of the location of their underground facilities, if any, within the excavation area and where the location of all known underground facilities are duly located or noted on the engineering drawing as specifications for the project;

(14) "State plane coordinates", a system of locating a point on a flat plane developed by the National Oceanic and Atmospheric Administration and utilized by state agencies, local governments, and other persons to designate the site of a construction project;

(21) "Trenchless excavation", horizontal excavation parallel to the surface of the earth that does not use trenching or vertical digging as the primary means of excavation, including but not limited to directional boring, tunneling, or augering*;

(15) "Sewer lateral", any sewer pipe extending from a customer's structure to a collecting sewer, but excluding service wyes;

(16) "Sewer lateral connection", the connection of a sewer lateral to a collecting sewer;

(17) "Sewer system", includes all pipes, pumps, canals, lagoons, plants, structures and appliances, and all other real estate, fixtures and personal property, owned, operated, controlled or managed in connection with or to facilitate the collection, carriage, treatment and disposal of sewage for municipal, domestic or other beneficial or necessary purpose, except that the term shall not include a system that has less than twenty-five sewer lateral connections;

(18) "Sewer system owner", any person who owns or operates a sewer system as defined by this section;

(20) "Ticket life", a period fifteen (15) calendar days after the date a notice of intent to excavate is submitted to the notification center, with an additional fifteen (15) calendar days upon subsequent notice~~of forty-five (45) days after the date a notice of intent to excavate is submitted to the notification center~~, after which the excavator must submit a new notice of intent to excavate to the notification center if the excavation associated with the original notice has not been completed;

(22) "Underground facility", any item of personal property which shall be buried or placed below ground for use in connection with the storage or conveyance of water, storm drainage, sewage, telecommunications service, cable television service, electricity, oil, gas, hazardous liquids or other substances, and shall include but not be limited to pipes, sewers, conduits, cables, valves, lines, wires, manholes, attachments, or appurtenances, and those portions of pylons or other supports below ground that are within any public or private street, road or alley, right-of-way dedicated to the public use or utility easement of record, or prescriptive easement. If gas distribution lines or electric lines, telecommunications facilities, cable television facilities, water service lines, water system, storm drainage or sewer system lines, other than those used for vehicular traffic control, lighting of streets and highways and communications for emergency response, are located on private property and are owned solely by the owner or owners of such private property, such lines or facilities receiving service shall not be considered underground facilities for purposes of this chapter, except at locations where they cross or lie within an easement or right-of-way dedicated to public use or owned by a person other than the owner of the private property. Water and sanitary sewer lines providing service to private property that are owned solely by the owner of such property shall not be considered underground facilities at any location. Water, storm drainage, cross road drainage, or sewer lines owned by the state highways

and transportation commission shall not be considered underground facilities at any location. For railroads regulated by the Federal Railroad Administration, "underground facility" as used in sections 319.015 to 319.050 shall not include any excavating done by a railroad when such excavating is done entirely on land which the railroad owns or on which the railroad operates, or in the event of emergency, on adjacent land;

(23) "Underground facility owner", any person who owns or operates underground facilities as defined by this section;

(24) "Water lateral", any water pipe extending from a customer's structure to a service providing water main;

(25) "Water lateral connection", the connection of a water lateral to a service providing main.

~~(2426)~~ "Working day", every day, except Saturday, Sunday or a legally declared local, state or federal holiday.

Notification centers, participation requirements and eligibility--names of underground facility owners made available, when.

319.022. 1. Any person, except a railroad regulated by the Federal Railroad Administration, who installs or acquires, or otherwise owns or operates an underground facility within the state shall become a notification center participant upon first installing, acquiring, owning or operating such underground facility and shall maintain participation in a notification center except as provided otherwise in Section 319.016.

2. Beginning January 1, 2003, all underground facility owners that have facilities located in a county of the first classification or second classification within the state shall maintain participation in the notification center except as provided otherwise in section 319.016.

3. Beginning January 1, 2005, all underground facility owners that have facilities located in a county of the third classification or fourth classification within the state shall maintain participation in the notification center except as provided otherwise in section 319.016.

4. The notification center shall maintain in its offices and make available to any notification center participant or excavator upon request a current list of the names and addresses of each notification center participant, including the county or counties wherein each participant has underground facilities. The notification center may charge a reasonable fee to notification center participants or excavators requesting such list as is necessary to recover the actual costs of printing and mailing.

5. Excavators shall be informed of the availability of the list of notification center participants required in subsection 3 of this section in the manner provided for in section 319.024.

6. An annual audit or review of the notification center shall be performed by a certified public accountant and a report of the findings submitted to the speaker of the house of representatives and the president pro tem of the senate.

Excavator must give notice and obtain information, when, how--notice to notification center, when--clarification of markings, response--project plans provided, when--permit for highway excavation required.

319.025. 1. Except as provided in subsection 8 of section 319.030 and in section 319.050, a person shall not make or begin any excavation in any public street, road or alley, right-of-way dedicated to the public use or utility easement of record or within any private street or private property without first giving notice to the notification center and obtaining information concerning the possible location of any underground facilities that may be affected by said excavation from underground facility owners whose names appear on the current list of participants in the notification center and who were communicated to the excavator as notification center participants who would be informed of the excavation notice. Beginning January 1, 2003, notice to the notification center of proposed excavation shall be deemed notice to all underground facility owners. The notice referred to in this section shall comply with the provisions of section 319.026. As part of the process to request the locating of underground facilities and having them properly marked, the notification center shall ask excavators to identify whether or not the proposed excavation will be on a public right-of-way or easement dedicated to public use for vehicular traffic.

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

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

4. If the owner or operator notifies the excavator that the area of excavation cannot be determined from the description provided by the excavator through the notice required by this section, the excavator shall provide clarification of the area of excavation by markings or by providing project plans to the owner or operator, or by meeting on the site of the excavation with representatives of the owner or operator as provided by subsection 1 of section 319.030.

5. Notwithstanding the provisions of this section to the contrary, a person shall not make or begin any excavation in any state highway, or on the right-of-way of any state highway, without first obtaining a permit from the state highways and transportation commission pursuant to section 227.240, RSMo, provided however, the provisions of this subsection shall not apply to railroad right-of-way owned or operated by a railroad.

Notice of intent to excavate, form of--written record maintained--incorrect location of facility, duty of excavator--visible and usable markings necessary to continue work - - ticket life not to be exceeded.

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

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

(1) The name and telephone number of the person filing the notice of excavation, if the telephone number is different than that of the excavator, and the name, address, telephone number of the excavator and whether the excavator's telephone is equipped with a recording device;

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

(3) The facsimile number, e-mail address, and cellular telephone number of the excavator, if any;

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

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

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

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

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

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

4. A record of each notice of intent to excavate shall be maintained by the notification center for a period of five years. The record shall include the date the notice was received and all information required by subsection 2 of this section which was provided by the excavator and a record of the underground facility owners notified by the notification center. If the notification center creates a record of the notice by telephonic recording, such record of the original notice shall be maintained for one year from the date of receipt. Records of notices to excavate maintained by the notification center in electronic form shall be deemed to be records under this subsection. Persons holding records of notices of intent to excavate and records of information provided to the excavator by the notification center or by an underground facility owner, shall make copies of such records available for a reasonable copying fee upon the request of the affected underground facility owners or the excavator filing the notice.

5. If in the course of excavation the person responsible for the excavation operations discovers that a notification center participant has incorrectly located an underground facility, he or she shall notify the notification center which shall inform the notification center participant. The person responsible for maintaining records of the location of underground facilities for the notification center participant shall correct such records to show the actual location of such facilities, if current records are incorrect.

6. When markings have been provided in response to a notice of intent to excavate, excavators may commence or continue to work within the area described in the notice for so long as the markings continue to be visible and usable, and so long as the ticket life for the notice has not been exceeded.

7. If, prior to the end of the ticket life for a notice of intent to excavate, markings become unusable, or are no longer visible, due to weather, construction or other cause, the excavator shall contact the notification center to request remarking. Such notice shall be given in the same manner as an original notice of intent to excavate, and the affected underground facility owners shall remark the site in the same manner, within the same time, as required in response to an original notice of intent to excavate. Each excavator shall exercise reasonable care not to unnecessarily disturb or obliterate markings provided for location of underground facilities. If remarking is required due to the excavator's failure to exercise reasonable care, or if repeated unnecessary requests for remarking are made by an excavator even though the markings are visible and usable, the excavator may be liable to the owner or operator for the reasonable cost of such remarking.

Information regarding sewer lateral connections, when provided, how provided.

319.032. 1. In addition to the other requirements of section 319.030, the response to a notice of intent to excavate received by a sewer system owner, when such owner has underground facilities located in the area of excavation identified in the notice and when the notice indicates that trenchless excavation will be used, shall include a determination of whether sewer lateral connections exist or are likely to exist in the area of the excavation.

2. If the sewer system owner determines that sewer lateral connections exist or are likely to exist in the area of the excavation identified in a notice of intent to excavate, the owner shall provide his or her best available information regarding the location of such connections in a manner that may include, but not be limited to, one of the following methods:

- (1) Placing a triangular green mark at the approximate location of the sewer lateral connection to the sewer main pointing in the direction of the premises served;
- (2) Providing electronic copies of the information to the excavator;
- (3) Delivering copies of the information to the excavator by facsimile or by other agreed-upon means; or
- (4) Arranging to meet the excavator at the site of the excavation to provide the information.

3. A good faith attempt by a sewer system owner to provide his or her best available information regarding the location of sewer lateral connections shall constitute full compliance with this section, and no person shall be found liable to any party for damages or injuries as a result of performing in compliance with this section. Providing information to an excavator about the existence or likely existence of sewer lateral connections shall not in and of itself constitute ownership or operation of sewer laterals by the sewer system owner.

319.040. 1. The failure of any excavator to give notice of proposed excavation activities in accordance with the provisions of sections 319.010 through 319.070 shall be a rebuttable presumption of negligence on his part in the event that such failure shall cause injury, loss or damage. In addition to any penalties provided herein, liability under common law may apply.

2. The failure of any underground facility owner to provide markings for his or her facilities that are located in an area of excavation described in a notice of intent to excavate, or the failure of any underground facility owner to be a notification center participant, shall be a rebuttable presumption of negligence on his or her part in the event that such failure shall cause injury, loss or damage. ~~In addition to any penalties provided herein, liability under common law may apply.~~
[Note: Redundant sentence. See last sentence in Section 319.040.1 above.]

~~Reporting of facility damage information --- public service commission authority to require reporting, rulemaking required.~~

319.055. 1. No later than April 15 of each year, each underground facility owner shall submit to ~~the public service commission a report for the prior calendar year including, but not necessarily limited to information regarding the number and type (routine, emergency, no response, etc.) of excavation notices it received, the source of the excavation notices, the number of excavation notices that resulted in facilities being marked, the number of third-party damages it experienced to its facilities, and the circumstances under which its facilities were damaged;~~

2. ~~The first report to be submitted under the provisions of subsection 1 of this section shall not be due until after the public service commission promulgates a rule, in accordance with the provisions of chapter 536, RSMo, setting forth the specific information to be collected~~

~~through the report; provided, however, that the information to be collected, and the manner in which the information is collected, must be such that the information can be aggregated and submitted to the Damage Information Reporting Tool system established by the Common Ground Alliance.~~

~~3. In addition to the report required by subsection 1 of this section, the public service commission is granted the authority to promulgate a rule, in accordance with the provisions of chapter 536, RSMo, through which it may establish a system that allows for, but does not require, the real time reporting, by underground facility owners and excavators, of information regarding damages to underground facilities and information regarding instances of purported non-compliance with the provisions of sections 319.010 through 319.070.~~

[NOTE: 319.055 should be deleted in its entirety. Although AT&T appreciates Staff's effort to reduce the incidence of service outages due to damage to buried and underground facilities, AT&T believes that the addition of this section does not accomplish that objective. Equally important, the tracking, collection and reporting of data required here would only add unnecessary and burdensome processes and costs to the industry. When the notification process is properly used by excavators, the incidence of damaged facilities is rare. Last October, in response to Staff's Underground Facility Damage Assessment Survey, AT&T provided three years of data demonstrating that excavators who do not call in for locates are the greatest cause of facility damages. This section does nothing to address this cause.]

~~Performance measures and quality assurance programs for locating services --- public service commission authority, rulemaking required.~~

~~319.060. 1. The public service commission is granted the authority to promulgate a rule, in accordance with the provisions of chapter 536, RSMo, establishing a requirement that underground facility owners subject to its jurisdiction for any purposes develop and implement performance measures applicable to all persons performing underground facility locating for such owners, and establishing a requirement that such owners develop and implement a quality assurance program to ensure their performance measures for underground facility locating are being met.~~

~~2. For the purpose of enforcing the rule promulgated pursuant to the authority granted by subsection 1 of this section, the public service commission is granted jurisdiction over pipeline operators subject to 49 CFR Part 192 and 49 CFR Part 195 that are not otherwise subject to the public service commission's jurisdiction, but only to the extent that similar rules applicable to such pipeline operators have not been established by the pipeline and hazardous materials safety administration of the federal department of transportation.~~

[NOTE: 319.060 should be deleted in its entirety for many of the same reasons as section 319.055 should be deleted. This proposed section likewise fails to recognize that when the notification process is properly used by excavators, the incidence of damages is rare. The data which AT&T assembled over a three-year period and provided to Staff leave no doubt that excavators who do not call in for locates are the greatest cause of facility damages. This section does nothing to address this cause. Moreover, there has been no need demonstrated for instituting a system of performance measurements and establishing processes to collect, track and report such data which would be very costly and burdensome.]

~~New underground facilities to be locatable, when, how.~~

~~319.070.~~ ~~Beginning January 1, 2012, each underground facility owner shall install his or her facilities in a manner such that the facilities can be located through the use of electronic locating devices, or the location of facilities installed on or after January 1, 2012 shall be documented on as-built drawings, or by the use of other means such as the state plane coordinates system, such that the owner can provide the approximate location of the facilities.~~

[NOTE: Section 319.070 should be deleted and rejected in its entirety. AT&T appreciates Staff's objective to reduce service outages due to damages to buried and underground facilities. However, AT&T believes this section is unnecessary and does not accomplish that objective. When the existing notification process is properly used by excavators, the incidence of damages is rare, The requirement for electronic locating devices is unnecessary and expensive. As supported by the last 3 years of data AT&T Missouri submitted to Staff in it's response the Staff's Underground Facility Damage Assessment Survey in October 2009, the greatest causes of facility damage are excavators who do not call in for locates. This section does nothing to address this issue.]