

**Johansen, Dale**

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**To:** Holsman, Laura

**Cc:** Dietrich, Natelle\*; Hernandez, Jennifer; Leonberger, Bob; Sundermeyer, Susan

**Subject:** Submission for File No. GW-2010-0120

**Attachments:** Working Docket - Filing re Roundtable No. 2.pdf

Laura - Please submit the attached document, which already includes a copy of this message, to EFIS in File No. GW-2010-0120. For the "title" of the filing, please use **Announcement Packet for March 9 Stakeholder Roundtable**.

Let me know if you need anything else. Thanks Much - Dale J.

2/11/2010



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Chief Staff Counsel

**February 11, 2010**

**TO:** Underground Facility Damage Prevention Stakeholders  
**FROM:** Natelle Dietrich – Director, Utility Operations Division  
**SUBJECT:** Chapter 319, RSMo Revision Project  
**Damage Prevention Stakeholder Roundtable**  
Updated Draft of Chapter 319 Proposed Revisions

To facilitate further discussions and solicit further input regarding the Missouri Public Service Commission's on-going project regarding proposed revisions to the state's Underground Facility Safety and Damage Prevention Act (Chapter 319, RSMo), the Commission will be hosting a second **Damage Prevention Stakeholder Roundtable**. This second Roundtable will be held **March 9, 2010 from 10:00 a.m. to 3:00 p.m. in Room 490/492 of the Truman State Office Building, 301 West High Street** in Jefferson City.

The main topic of discussion at the March 9th Roundtable will be the two documents that are included with this announcement. The first document includes a general overview and status update regarding the Staff's suggested changes to the Chapter 319 "revision document" that was discussed at the Commission's first Roundtable on 10/21/09, with those changes all being based upon stakeholder comments. The second document includes the Staff's proposed language changes to address the issues raised in the first document.

As you are also likely aware, the Commission has established a "working docket" for the Chapter 319 project in its electronic filing and information system. To access that working docket, which includes all of the available information regarding the project, please follow the instructions below:

- 1) Go to the Commission's Website at **[www.psc.mo.gov](http://www.psc.mo.gov)**
- 2) Click on the **Natural Gas** tab near the top/center of the page
- 3) On the next page, Click on the **Working Docket** link under **Underground Facility Damage Prevention Project**
- 4) To open a document in the docket, Click on the **Item No.**

If you have questions about any of the matters discussed in this announcement, please feel free to contact one of the following staff members.

Bob Leonberger  
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573-751-3456

Dale Johansen  
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**Chapter 319 Revision Project – General Overview & Status of  
Suggested Changes Based Upon Stakeholder Comments – 02/10/10**

- 1) REMOVE proposed definition of "Extended excavation project"  
**Status: DONE**
- 2) ADD proposed definition of "Ticket life"  
**Status: DONE**
- 3) ADD proposed definition of "Collecting sewers"  
(in conjunction with proposed section 319.032)  
**Status: DONE**
- 4) ADD proposed definition of "Sewer lateral"  
(in conjunction with proposed section 319.032)  
**Status: DONE**
- 5) ADD proposed definition of "Sewer lateral connection"  
(in conjunction with proposed section 319.032)  
**Status: DONE**
- 6) ADD proposed definition of "Sewer system"  
(in conjunction with proposed section 319.032)  
**Status: DONE**
- 7) ADD proposed definition of "Sewer system owner"  
(in conjunction with proposed section 319.032)  
**Status: DONE**
- 8) REMOVE proposed addition to definition of "Trenchless excavation"  
**Status: DONE**
- 9) DO NOT REMOVE reference to "local holiday" from definition of "Working day"  
**Status: DONE**
- 10) REMOVE references to most "old dates" re: phasing-in of notification center participation and other similar "old date" references (these first appear in 319.022.2 and are also in several other places; also includes modification of 319.022.1; list of affected subsections set out at end of this document)  
**Status: DONE**
- 11) MODIFY proposed changes to 319.026.6 to include a reference to "ticket life" rather than a reference to "extended excavation project"  
**Status: DONE**
- 12) ADD reference to "ticket life" to 319.026.7  
**Status: DONE**
- 13) REMOVE proposed subsection 319.026.9 re: excavation completion notices  
**Status: DONE**

- 14) REMOVE proposed addition to 319.030.8 re: clear evidence of unmarked facilities requiring a second notice to the notification center  
**Status: DONE**
- 15) REMOVE proposed subsection 319.030.9 re: marking completion notices  
**Status: DONE**
- 16) MODIFY proposed section 319.032 to be limited to providing information re: existence of sewer lateral connections and limited to situations involving trenchless excavation  
**Status: DONE**
- 17) MODIFY proposed subsection 319.040.2 re: rebuttal presumption of negligence applicable to facility owners  
**Status: DONE**
- 18) **MODIFY** proposed section 319.046 re: enforcement (including possibly not changing the section references to which penalty actions would apply)  
**Status: Not yet done, still under discussion.**
- 19) MODIFY proposed section 319.055 re: reporting  
**Status: DONE**
- 20) MODIFY proposed section 319.060 re: standards for locating services  
**Status: DONE**
- 21) **MODIFY** proposed section 319.065 re: damage prevention review board  
**Status: Not yet done, still under discussion.**
- 22) MODIFY proposed section 319.070 re: new facilities being "locatable"  
**Status: DONE**
- 23) **?? ADD ??** language requiring the area of excavation to be "white-lined"  
**Status: Decision not yet made, still under discussion.**
- 24) **?? ADD ??** language requiring "hand-digging" for all excavations (similar to what now exists in 319.037 for excavations involving trenchless technology/directional drilling)  
**Status: Decision not yet made, still under discussion.**

Subsections from which "old date references" were removed

319.022.2	319.022.3	(319.022.1 also modified)
319.025.1	319.025.2	
319.026.4	319.026.5	

## Chapter 319 Proposed Revisions – Partial Version – 02/10/10

### Changes Shown in Track Changes Format

~~Red/Strikethrough Font~~ = Deletions

Blue/Underline Font = Additions

Light Green Shading

Proposed Changes Resulting from the Nine Federal  
Damage Prevention Program Elements & Related Matters

Light Yellow Shading

Proposed "Clean Up" Changes &  
Renumbering Due to Other Changes

Tan Shading

Proposed "Desired" Changes Based Primarily on Review  
of State Laws in Georgia, Indiana, Texas & Virginia

### 1 Definitions.

2 **319.015.** For the purposes of sections 319.010 ~~to 319.050~~ through 319.070, the following terms mean:

3 (2) "Collecting sewers", sewer lines, including force lines, gravity sewers, interceptors, laterals,  
4 trunk sewers, manholes, lampholes and necessary appurtenances, including service wyes; (Added in  
5 conjunction with proposed section 319.032. Essentially the same as the definition of "collecting  
6 sewers" found in PSC rule 4 CSR 240-60.010(3)(D).)

7 (15) "Sewer lateral", any sewer pipe extending from a customer's structure to a collecting sewer, but  
8 excluding service wyes; (Added in conjunction with proposed section 319.032. Similar to the  
9 definition of "service sewer" found in PSC rule 4 CSR 240-60.010(3)(E).)

10 (16) "Sewer lateral connection", the connection of a sewer lateral to a collecting sewer;  
11 (Added in conjunction with proposed section 319.032. Similar to the definition of "outlet" found  
12 in PSC rule 4 CSR 240-60.010(3)(K).)

13 (17) "Sewer system", includes all pipes, pumps, canals, lagoons, plants, structures and appliances,  
14 and all other real estate, fixtures and personal property, owned, operated, controlled or managed in  
15 connection with or to facilitate the collection, carriage, treatment and disposal of sewage for municipal,  
16 domestic or other beneficial or necessary purpose, except that the term shall not include a system that  
17 has less than twenty-five sewer lateral connections; (Added in conjunction with proposed section  
18 319.032. Same as the definition of "sewer system" found in Section 386.020(50), RSMo, except for  
19 the exclusion for systems with less than 25 lateral connections that comes from the definition of  
20 "sewer corporation" found in Section 386.020(49), RSMo.)

21 (18) "Sewer system owner", any person who owns or operates a sewer system as defined by this  
22 section; (Added in conjunction with proposed section 319.032. Mimics the definition of "underground  
23 facility owner" below.)

24 (20) "Ticket life", a period of forty-five (45) days after the date a notice of intent to excavate is  
25 submitted to the notification center, after which the excavator must submit a new notice of intent to  
26 excavate to the notification center if the excavation associated with the original notice has not been  
27 completed; (Replaces originally proposed definition of "Extended excavation project").)

28 ~~(14)~~(21) "Trenchless excavation", horizontal excavation parallel to the surface of the earth ~~which~~  
29 ~~that~~ does not use trenching or vertical digging as the primary means of excavation, including but not  
30 limited to directional boring, tunneling, or augering;

31 ~~(16)~~(23) "Underground facility owner", any person who owns or operates underground facilities as  
32 defined by this section;

33 ~~(17)~~(24) "Working day", every day, except Saturday, Sunday or a legally declared local, state or  
34 federal holiday.

**Notification centers, participation requirements and eligibility - - names of underground facility owners and operators 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 ~~in a notification center~~ upon first installing, acquiring, ~~or~~ owning or operating such underground facility. ~~Except as provided in section 319.016, all owners and operators of underground facilities within the state~~ and shall maintain participation in a notification center except as provided otherwise in section 319.016.

2. ~~All owners and operators of underground facilities which are located in a county of the first classification or second classification within the state who are not members of a notification center on August 28, 2001, shall become participants in the notification center prior to January 1, 2003. Any person who installs or otherwise becomes an owner or operator of an underground facility which is located within a county of the first classification or second classification on or after January 1, 2003, shall become a participant in the notification center within thirty days of acquiring or operating such underground facility.~~ Beginning January 1, 2003, all ~~owners and operators of underground facilities which are~~ 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. ~~All owners and operators of underground facilities which are located in a county of the third classification or fourth classification within the state who are not members of a notification center on August 28, 2001, shall become participants in the notification center prior to January 1, 2005. Any person who installs or otherwise becomes an owner or operator of an underground facility which is located within a county of the third classification or fourth classification on or after January 1, 2005, shall become a participant in the notification center within thirty days of acquiring or operating such underground facility.~~ Beginning January 1, 2005, all ~~owners and operators of underground facilities which are~~ 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.

**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 3~~ 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 ~~which 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. ~~Prior to January 1, 2003, a person shall not make or begin any excavation pursuant to this subsection without also making notice to owners or operators of underground facilities which do not participate in a notification center and whose name appears on the current list of the recorder of deeds in and for the county in which the excavation is to occur.~~ Beginning January 1, 2003, notice to the notification center of proposed excavation shall be deemed notice to all ~~owners and operators of underground facilities~~ 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 ~~owners and operators of underground facilities~~ 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. ~~Prior to January 1, 2003, the notice required by subsection 1 of this section shall be given directly to owners or operators of underground facilities who are not represented by a notification center.~~

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

4 **319.026.**

5 4. A record of each notice of intent to excavate shall be maintained by the notification center ~~or,~~  
6 ~~prior to January 1, 2003, by the nonmember owner or operator receiving direct notifications~~ for a period  
7 of five years. The record shall include the date the notice was received and all information required by  
8 subsection 2 of this section which was provided by the excavator and a record of the underground  
9 facility owners notified by the notification center. If the notification center creates a record of the notice  
10 by telephonic recording, such record of the original notice shall be maintained for one year from the date  
11 of receipt. Records of notices to excavate maintained by the notification center in electronic form shall  
12 be deemed to be records under this subsection. Persons holding records of notices of intent to excavate  
13 and records of information provided to the excavator by the notification center ~~or owner or operator of~~  
14 ~~the facility, or by an underground facility owner,~~ shall make copies of such records available for a  
15 reasonable copying fee upon the request of the ~~owner or operator of the underground facilities~~ affected  
16 underground facility owners or the excavator filing the notice.

17 5. If in the course of excavation the person responsible for the excavation operations discovers that  
18 ~~the owner or operator of the underground facility who is a participant in a notification center a~~  
19 notification center participant has incorrectly located ~~the an~~ underground facility, he or she shall notify  
20 the notification center which shall inform the notification center participant. ~~If the owner or operator of~~  
21 ~~the underground facility is not a participant in a notification center prior to the January 1, 2003, effective~~  
22 ~~date for mandatory participation pursuant to section 319.022, the person responsible for the excavation~~  
23 ~~shall notify the owner.~~ The person responsible for maintaining records of the location of underground  
24 facilities for the notification center participant shall correct such records to show the actual location of  
25 such facilities, if current records are incorrect.

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

29 7. If, prior to the end of the ticket life for a notice of intent to excavate, markings become unusable,  
30 or are no longer visible, due to weather, construction or other cause, the excavator shall contact the  
31 notification center to request remarking. Such notice shall be given in the same manner as an original  
32 notice of intent to excavate, and the ~~owner or operator~~ affected underground facility owners shall remark  
33 the site in the same manner, within the same time, as required in response to an original notice of intent  
34 to excavate.

**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.

**Presumption of negligence, when, rebuttable.**

**319.040.** 1. The failure of any excavator to give notice of proposed excavation activities ~~as required by this chapter~~ in accordance with the provisions of sections 319.010 through 319.070 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.

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.

**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.

**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.

**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.

**Distribution List for Roundtable No. 2 Announcement Packet**

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Derek Sherry

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Ed Twelhous    Tom Burmeister

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(d/b/a SM&P Utility Resources)

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Bob Leonberger	Dale Johansen			

**Johansen, Dale**

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**To:** Chapter 319 Project - Roundtable No. 2 Distribution List

**Subject:** Roundtable Announcement - PSC Chapter 319 Revision Project

**Attachments:** Roundtable - 2010.03.09 - Announcement Packet - 02.11.10.pdf; Roundtable - 2010.03.09 - Announcement Distribution List - 02.11.10.pdf

The purpose of this message is to inform you of an upcoming (March 9, 2010) Damage Prevention Stakeholder Roundtable regarding the Public Service Commission's project on proposed revisions to the state's Underground Facility Safety and Damage Prevention Act (Chapter 319, RSMo).

Please see the first page of the attached "Announcement Packet" for information about the Roundtable (location, time, etc.) and for information about how to access the Commission's "working docket" for this project. The two documents following the first page of the "Announcement Packet" will be the main topics of discussion for the Roundtable.

Also attached is a list of the people/entities to which this message is being sent. If you know of someone else who should know about the Roundtable, please feel free to forward the information to them.

I will be out of the office on Friday, Feb. 12 and Monday, Feb. 15 - but I will check my e-mail periodically to see if there were any reported delivery problems with this "mailing" and to see if anyone has responded with questions/comments.

Thank you for your continued attention to this important project, and we look forward to seeing you on March 9th.

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