

MEMORANDUM

TO: **FILE NO. GW-2010-0120**

FROM: Dale W. Johansen
MO PSC Natural Gas Pipeline Safety Staff
/s/ Dale W. Johansen

SUBJECT: Update 4 of the Chapter 319 Revisions Document

DATE: May 4, 2011

The purpose of this Memorandum is to provide the Commission and interested underground facility damage prevention stakeholders with the following documents:

- (1) A summary of the pipeline safety staff's suggested changes to the Chapter 319 Revisions Document that was discussed during the 12/06/2010 Stakeholder Roundtable; and
- (2) An updated "full version" of the pipeline safety staff's proposed Chapter 319 Revisions Document.

Additionally, it should be noted that I sent the summary of the pipeline safety staff's suggested changes to the Chapter 319 Revisions document referenced in item (1) above to my project e-mail contact lists on May 3rd, and that I solicited comments regarding the suggested changes. To the extent that stakeholders provide comments regarding the suggested changes, I will see that the comments are submitted to the working docket.

Anyone that has questions regarding the attached documents should direct those questions directly to me via e-mail at **dale.johansen@psc.mo.gov**.

Attachments

MO PSC CHAPTER 319 REVISION PROJECT

**UPDATE 4 – PROPOSED CHANGES BASED ON
ROUNDTABLE 3 STAKEHOLDER COMMENTS**

05/04/2011

MO PSC CHAPTER 319 REVISION PROJECT – ADDITIONAL PROPOSED CHANGES BASED ON ROUNDTABLE 3 STAKEHOLDER COMMENTS

All changes are shown in "Track Changes" format, with the proposed "post Roundtable 3 changes" also being shown in ***bold/italics & bold/italics/strikethrough*** font and Gray shading. Other than the noted Gray shading, the color shading used is the same as that used in previous drafts of the Chapter 319 revisions document. Explanations of the "Roundtable 3 changes" are included after each affected area and are shown in *italics/underline* font.

SECTION 319.015 (Definitions of Damage Event/Reportable Event & Marking)

(3) "Damage event", the occurrence of any of the events that are to be reported to the notification center pursuant to the provisions of section 319.045.

~~*(15) "Reportable event", the occurrence of a damage to an underground facility, a near miss or downtime as those occurrences are defined in the Glossary of Terms contained in the User's Guide for the Damage Information Reporting Tool (DIRT) data base system maintained by the Common Ground Alliance (CGA).*~~

The proposed change in the term defined is intended to avoid confusion with regard to similar definitions that pertain to matters that are reportable under the Commission's pipeline safety rules. The proposed changes to the text are intended to make the definition consistent with other Chapter 319 provisions and to also address the stakeholder comments that information regarding near misses and excavator downtime would be difficult to obtain and is not needed.

~~*(6)*~~*(8)* "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 and the standards for marking underground facilities set forth graphically in the Missouri Marking Standards established by the Missouri Common Ground Alliance, as may be changed from time to time as of January 1, 2013. Unless otherwise provided by the American Public Works Association, the following ~~color scheme~~ color code 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;

Without a specific date reference relative to the Missouri Marking Standards, changes could be made to those standards without necessitating a change to the statute, and this is considered problematic due to the fact that the Missouri Common Ground Alliance is not a public body. The date used in the proposed change assumes legislative action being taken during the 2012 legislative session.

SECTION 319.022 (Subsections 1, 2 & 3)

1. Any person, except a railroad regulated by the Federal Railroad Administration, who installs or acquires, or otherwise ~~owns or operates~~ owns, operates, controls or manages, an underground facility within the state shall become a notification center participant ~~in a notification center~~ upon first installing, acquiring, ~~or owning or operating~~ owning, operating, controlling or managing 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 and section 319.028.

Changes proposed for consistency with the proposed change to the definition of underground facility, and to reflect the notification center participation "opt-out" provisions that are included in section 319.028.

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 and section 319.028.

Change proposed to reflect the notification center participation "opt-out" provisions that are included in section 319.028.

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 and section 319.028.

Change proposed to reflect the notification center participation "opt-out" provisions that are included in section 319.028.

SECTION 319.025 (Subsection 1)

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, except for such owners that are not notification center participants pursuant to the provisions of section 319.016 or section 319.028. 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.

Change proposed to reflect the notification center participation "opt-out" provisions that are included in sections 319.016 & 319.028.

SECTION 319.030 (Subsections 6, 7 & 9)

6. If upon receipt of a notice of intent to excavate, an ~~owner or operator~~ underground facility owner determines that he or she neither ~~owns or operates~~ owns, operates, controls or manages 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~~ he or she has no facilities located in the area of the proposed excavation. The ~~owner or operator of the~~ underground facility owner 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:

Change proposed for consistency with the proposed change to the definition of underground facility.

~~2.7.~~ A record of the date and means of informing the excavator that no facilities were located by the ~~owner or operator~~ underground facility owner shall be included in the written records of the underground facility owner regarding each specific notice of excavation, and such record shall be retained by the underground facility owner for a period of not less than five (5) years.

Change proposed so that the subject records do not have to be retained indefinitely, as is currently the case, with the retention period chosen being the same as the record retention period included in subsection 319.026.4 pertaining to notices of intent to excavate made to the notification center.

4.9. For purposes of subsections 1 and 6 of this section, a period of two working days begins at 12:00 a.m. on the first working day following ~~when the request is made~~ the date when the notification center receives a notice of intent to excavate, and ends at 11:59 p.m. on the second working day following the date when the notification center receives a notice of intent to excavate.

Change proposed to clarify the end-time that is applicable to the referenced response periods, with the time chosen being consistent with the PSC pipeline safety staff's and MOCS staff's interpretation of the existing provisions.

SECTION 319.040 (Subsection 2)

2. The failure of an underground facility owner to ~~inform an excavator of the approximate location of mark~~ his or her facilities that are located in an area of excavation described in a notice of intent to excavate ~~received by the underground facility owner~~, as required by section 319.030, or the failure of an underground facility owner to be a notification center participant, ~~as required by consistent with the provisions of~~ section 319.022, shall be a rebuttable presumption of negligence on the part of such owner 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.

The changes proposed in the first three lines are intended to address concerns about the "specificity" of the circumstances under which this subsection would be applicable. The change proposed in the fourth and fifth lines is intended to better recognize the fact that section 319.022 includes "opt-out" provisions with regard to notification center participation.

SECTION 319.042

Notwithstanding any provision of law to the contrary, nothing in this chapter shall abrogate any contractual provisions entered into between any railroad ~~regulated by the Federal Railroad Administration~~ and any other party ~~owning or operating~~ owning, operating, controlling or managing an underground facility within the railroad's right-of-way. ~~For railroads regulated by the Federal Railroad Administration, sections 319.015 to 319.050 shall not include any underground facility owned or operated by a railroad on land which the railroad owns or any excavation done by a railroad when such excavation is done entirely on land which the railroad owns.~~

Changes proposed to clarify the railroads to which the provisions apply (which is needed due to the proposed removal of the last sentence), and for consistency with the proposed change to the definition of underground facility.

SECTION 319.046 (Subsections 4 & 7 (new))

4. Subject to the limitations set out in subsection 6 of this section, the public service commission is authorized to investigate possible violations of sections 319.022 through 319.070 by any person subject to the provisions of those sections, and is further authorized to refer any such violations found to the attorney general, subject to the limitations of subsection 7 of this section, for prosecution under the provisions of subsection 2 and subsection 3 of this section.

Change proposed to reflect the proposed addition of subsection 7.

7. For situations involving gas companies, gas pipelines or municipal gas systems subject to the commission's jurisdiction for safety purposes under chapter 386, RSMo, actions that could result in the recovery of civil penalties from those entities can only be taken pursuant to either the authority granted to the commission by subsection 4 of this section or the authority granted to the commission by chapter 386, RSMo.

This proposed addition is intended to address stakeholder concerns about multiple enforcement actions for the same situation being taken against facility owners that are subject to the Commission's pipeline safety jurisdiction.

SECTION 319.055 (Subsections 1 & 2)

1. Beginning January 1, 2012, each underground facility owner shall, and excavators and the notification center may, submit a report regarding each ~~reportable event~~ **known damage event** to the Missouri Virtual Private DIRT (data information reporting tool) database established by the public service commission with the Common Ground Alliance (CGA). Such reports are to consist of the most current version of the CGA's DIRT field form and are to be submitted within sixty (60) days after the ~~reportable event~~ **subject damage event** occurs or is discovered.

The proposed changes reflect a change in the term defined in 319.015.

2. Beginning sixty (60) days after the end of the first quarter of calendar year 2012, and no later than sixty (60) days after the end of each subsequent calendar year quarter, each underground facility owner shall submit to the Missouri Virtual Private DIRT database a summary of the number and types of excavation notifications received from the notification center during the previous calendar year quarter, with such information to be submitted on a form provided by the public service commission. **Submission of the reports required by this subsection by the notification center on behalf of notification center participants shall be deemed compliance with this subsection by such participants.**

The proposed addition is intended to address stakeholder suggestions that submission of the required reports by the notification center on behalf of notification center participants should be considered acceptable for compliance.

SECTION 319.060 (Subsections 1 & 2)

1. Effective January 1, 2012, underground facility owners subject to the public service commission's jurisdiction for any purpose, ~~and pipeline operators subject to 49 CFR Part 192 and 49 CFR Part 195 that are not otherwise subject to the commission's jurisdiction,~~ shall implement, ~~if they have not already done so,~~ performance measures applicable to all persons performing underground facility ~~locating marking~~ for such owners, and shall also implement, ~~if they have not already done so,~~ a quality assurance program to ensure their facility ~~locating marking~~ performance measures are being met.

The proposed changes are intended to address stakeholder comments regarding: the applicability of this subsection to PHMSA-regulated pipeline operators; the fact that facility owners may already have marking performance measures and quality assurance programs in place; and the use of the applicable term defined in 319.015.

~~2. The requirements of subsection 1 of this section shall only apply to the referenced pipeline operators if the pipeline and hazardous materials safety administration of the federal department of transportation has not established similar requirements applicable to such operators.~~

This subsection is not needed if the reference to PHMSA-regulated pipeline operators is removed from subsection 1.

SECTION 319.070 (New Subsection 3)

2. In addition to the requirements of subsection 1 of this section, sewer system owners shall ensure that sewer service connections made to their collecting sewers on or after January 1, 2012 can be located through the use of electronic locating devices, or they shall document the location of such connections on as-built drawings, or by the use of other means such as the state plane coordinates system, in a manner such that they can provide the approximate location of the connections.

3. *Complying with the requirements of subsection 2 of this section shall not in and of itself constitute ownership, operation, control or management of sewer service connections or related sewer service lines by a sewer system owner.*

This proposed addition is intended to clarify that the "ownership dynamic" currently existing with regard to sewer service connections and sewer service lines will not change as a result of the addition of subsection 2. (This is similar to language on this issue that is included in proposed section 319.032.)

MO PSC CHAPTER 319 REVISION PROJECT

UPDATE 4 – FULL VERSION

05/04/2011

CHAPTER 319 PROPOSED REVISIONS

UPDATE 4 – FULL VERSION

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 to Address Known
Safety Issues and Other Statutory Provisions

Pale Blue Shading

Changes Suggested by Stakeholders with Most
Language Developed by Pipeline Safety Staff

Short title.

319.010. Sections 319.010 through ~~319.050~~ 319.070 shall be known as the "Underground Facility Safety and Damage Prevention Act".

Definitions.

319.015. For the purposes of sections 319.010 ~~to 319.050~~ through 319.070, 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;

(3) "Damage event", the occurrence of any of the events that are to be reported to the notification center pursuant to the provisions of section 319.045.

~~(2)~~(4) "Design request", a request from any person for facility location information for design purposes only;

~~(3)~~(5) "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;

(4)(6) "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 or pressurized water 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. For railroads regulated by the Federal Railroad Administration, "excavation" shall not include any excavating done by a railroad when such excavating is done entirely on land that the railroad owns or on which the railroad operates, or in the event of an emergency, excavating done by a railroad on adjacent land;

(5)(7) "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 through 319.070;

(6)(8) "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 and the standards for marking underground facilities set forth graphically in the Missouri Marking Standards established by the Missouri Common Ground Alliance as of January 1, 2013. Unless otherwise provided by the American Public Works Association, the following color scheme color code 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;

(7)(9) "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 underground facility owners 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;

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

(9)(11) "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;

(10)(12) "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;

1 ~~(11)~~(13) "Pipeline facility" includes, without limitation, new and existing pipe, rights-of-way,
2 and any equipment, facility, or building used or intended for use in the transportation of gas or the
3 treatment of gas, or used or intended for use in the transportation of hazardous liquids including
4 petroleum, or petroleum products;

5 ~~(12)~~(14) "Pre-engineered project", a project which is approved by an agency or political
6 subdivision of the state and for which the agency or political subdivision responsible for the project,
7 as part of its engineering and contract procedures, holds a meeting prior to the commencement of
8 any construction work on such project and in such meeting all persons determined by the agency or
9 political subdivision to have underground facilities located within the excavation area of the project
10 are invited to attend and given an opportunity to verify or inform any agency or political subdivision
11 of the location of their underground facilities, if any, within the excavation area and where the
12 location of all known underground facilities are duly located or noted on the engineering drawing as
13 specifications for the project;

14 (15) "Public service commission", the Missouri Public Service Commission as created by
15 chapter 386, RSMo;

16 (16) "Sewer service line", a sewer pipe extending from a customer's structure to a collecting
17 sewer, which conveys wastewater from the structure to the collecting sewer;

18 (17) "Sewer service connection", the connection of a sewer service line to a collecting sewer;

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

25 (19) "Sewer system owner", any person who owns, operates, controls or manages a sewer system
26 as defined by this section;

27 ~~(13)~~(20) "State plane coordinates", a system of locating a point on a flat plane developed by the
28 National Oceanic and Atmospheric Administration and utilized by state agencies, local governments,
29 and other persons to designate the site of a construction project;

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

33 ~~(15)~~(22) "Underground facility", any item of personal property which shall be buried or placed
34 below ground for use in connection with the storage or conveyance of water, storm drainage,
35 sewage, telecommunications service, cable television service, electricity, oil, gas, hazardous liquids
36 or other substances, and shall include but not be limited to pipes, sewers, conduits, cables, valves,
37 lines, wires, manholes, attachments, or appurtenances, and those portions of pylons or other supports
38 below ground that are within any public or private street, road or alley, right-of-way dedicated to the
39 public use or utility easement of record, or prescriptive easement. If gas distribution lines or electric
40 lines, telecommunications facilities, cable television facilities, water service lines, water system,
41 storm drainage or sewer system lines, other than those used for vehicular traffic control, lighting of
42 streets and highways and communications for emergency response, are located on private property
43 and are owned solely by the owner or owners of such private property, such lines or facilities
44 receiving service shall not be considered underground facilities for purposes of this chapter, except
45 at locations where they cross or lie within an easement or right-of-way dedicated to public use or
46 owned by a person other than the owner of the private property. Water and sanitary sewer lines
47 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~~ underground facility owned or operated 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 if the facility is located on land that the railroad owns;~~

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

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

Notification center participant, commission not required to be, when.

319.016. Notwithstanding any provision of sections 319.010 ~~to 319.050~~ through 319.070 to the contrary, the state highways and transportation commission shall not be required to be a notification center participant after December 31, 2011, but nothing in this section shall prohibit the commission from voluntarily choosing to be a notification center participant after that date.

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~~ owns, operates, controls or manages, an underground facility within the state shall become a notification center participant ~~in a notification center~~ upon first installing, acquiring, ~~or owning or operating~~ owning, operating, controlling or managing 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 and section 319.028.

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 and section 319.028.

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 and section 319.028.

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

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

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

12 **Public notice of excavations, duties of underground facility owner ~~and operator~~.**

13 **319.024.** 1. Every ~~person owning or operating an underground facility~~ underground facility owner
14 shall assist excavators and the general public in determining the location of underground facilities
15 before excavation activities are begun, or as may be required by ~~subsection 6~~ subsection 7 of section
16 319.026 or ~~subsection 4~~ subsection 5 of section 319.030 after an excavation has commenced.
17 Methods of informing the public and excavators of the means of obtaining such information may,
18 but need not, include advertising, including advertising in periodicals of general circulation or trade
19 publications, information provided to professional or trade associations which routinely provide
20 information to excavators or design professionals, or sponsoring meetings of excavators and design
21 professionals for such purposes. Information provided by the notification center on behalf of ~~persons~~
22 ~~owning or operating an underground facility~~ underground facility owners shall be deemed in
23 compliance with this section by such ~~persons~~ owners. Every ~~person owning or operating~~
24 ~~underground facilities who~~ underground facility owner that has a written policy in determining the
25 location of its underground facilities shall make available a copy of said policy to any notification
26 center participant or excavator upon request.

27 2. Every ~~person owning or operating~~ underground facility owner with pipeline facilities shall, in
28 addition to the requirements of subsection 1 of this section:

29 (1) Identify on a current basis persons who normally engage in excavation activities in the
30 area in which the pipeline is located. Every such ~~person who is a participant in~~ underground facility
31 owner that is a notification center participant shall be deemed to comply with this subdivision if such
32 notification center maintains and updates a list of the names and addresses of all excavators who
33 have given notice of intent to excavate to such notification center during the previous year and
34 provided the notification center shall, not less frequently than annually, provide public notification
35 and actual notification to all excavators on such list of the existence and purpose of the notification
36 center, and procedures for obtaining information from the notification center;

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

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

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

4 **319.025.** 1. Except as provided in ~~subsection 3~~ subsection 8 of section 319.030 and in section
5 319.050, a person shall not make or begin any excavation in any public street, road or alley, right-of-
6 way dedicated to the public use or utility easement of record or within any private street or private
7 property without first giving notice to the notification center and obtaining information concerning
8 the possible location of any underground facilities ~~which~~ that may be affected by said excavation
9 from underground facility owners whose names appear on the current list of participants in the
10 notification center and who were communicated to the excavator as notification center participants
11 who would be informed of the excavation notice. ~~Prior to January 1, 2003, a person shall not make~~
12 ~~or begin any excavation pursuant to this subsection without also making notice to owners or~~
13 ~~operators of underground facilities which do not participate in a notification center and whose name~~
14 ~~appears on the current list of the recorder of deeds in and for the county in which the excavation is to~~
15 ~~occur.~~ Beginning January 1, 2003, notice to the notification center of proposed excavation shall be
16 deemed notice to all ~~owners and operators of underground facilities~~ underground facility owners,
17 except for such owners that are not notification center participants pursuant to the provisions of
18 section 319.016 or section 319.028. The notice referred to in this section shall comply with the
19 provisions of section 319.026. As part of the process to request the locating of underground facilities
20 and having them properly marked, the notification center shall ask excavators to identify whether or
21 not the proposed excavation will be on a public right-of-way or easement dedicated to public use for
22 vehicular traffic.

23 2. An excavator's notice to ~~owners and operators of underground facilities~~ underground facility
24 owners participating in the notification center pursuant to section 319.022 is ineffective for purposes
25 of subsection 1 of this section unless given to such notification center. ~~Prior to January 1, 2003, the~~
26 ~~notice required by subsection 1 of this section shall be given directly to owners or operators of~~
27 ~~underground facilities who are not represented by a notification center.~~

28 3. Notification center participants shall be relieved of the responsibility to respond to a notice of
29 intent to excavate received directly from the person intending to commence an excavation, except
30 for requests for clarification of markings through on-site meetings as provided in ~~subsection 1~~
31 subsection 5 of section 319.030 and requests for locations at the time of an emergency as provided
32 by section 319.050.

33 4. If ~~the owner or operator~~ an underground facility owner notifies the excavator that the area of
34 excavation cannot be determined from the description provided by the excavator through the notice
35 required by this section, the excavator shall provide clarification of the area of excavation by
36 markings or by providing project plans to the ~~owner or operator~~ underground facility owner, or by
37 meeting on the site of the excavation with representatives of ~~the owner or operator~~ underground
38 facility owner as provided by ~~subsection 1~~ subsection 5 of section 319.030.

39 5. Notwithstanding the provisions of this section to the contrary, a person shall not make or begin
40 any excavation in any state highway, or on the right-of-way of any state highway, without first
41 obtaining a permit from the state highways and transportation commission pursuant to section
42 227.240, RSMo, provided however, the provisions of this subsection shall not apply to railroad right-
43 of-way owned or operated by a railroad.

1 **Notice of excavator intent to excavate, form of - - written record maintained - -**
2 **incorrect location of facility, duty of excavator - - visible and usable markings necessary**
3 **to continue work.**

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

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

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

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

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

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

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

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

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

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

39 3. The notification center receiving such notice shall solicit all information required by
40 subsection 2 of this section and shall require the excavator to provide all such information before
41 notice by the excavator is deemed to be completed pursuant to sections 319.015 ~~to 319.050~~ through
42 319.070. The notification center shall transmit all details of such notice as required by this section.

43 4. A record of each notice of intent to excavate shall be maintained by the notification center ~~or,~~
44 ~~prior to January 1, 2003, by the nonmember owner or operator receiving direct notifications~~ for a
45 period of five years. The record shall include the date the notice was received and all information
46 required by subsection 2 of this section which was provided by the excavator and a record of the

1 underground facility owners notified by the notification center. If the notification center creates a
2 record of the notice by telephonic recording, such record of the original notice shall be maintained
3 for one year from the date of receipt. Records of notices to excavate maintained by the notification
4 center in electronic form shall be deemed to be records under this subsection. Persons holding
5 records of notices of intent to excavate and records of information provided to the excavator by the
6 notification center ~~or owner or operator of the facility, or by an underground facility owner,~~ shall
7 make copies of such records available for a reasonable copying fee upon the request of the ~~owner or~~
8 ~~operator of the underground facilities~~ affected underground facility owners or the excavator filing
9 the notice.

10 5. If in the course of excavation the person responsible for the excavation operations discovers
11 that ~~the owner or operator of the underground facility who is a participant in a notification center a~~
12 ~~notification center participant~~ has incorrectly located ~~the an~~ underground facility, he or she shall
13 notify the notification center which shall inform the notification center participant. ~~If the owner or~~
14 ~~operator of the underground facility is not a participant in a notification center prior to the January 1,~~
15 ~~2003, effective date for mandatory participation pursuant to section 319.022, the person responsible~~
16 ~~for the excavation shall notify the owner.~~ The person responsible for maintaining records of the
17 location of underground facilities for the notification center participant shall correct such records to
18 show the actual location of such facilities, if current records are incorrect.

19 6. When markings have been provided in response to a notice of intent to excavate, excavators
20 may commence or continue to work within the area described in the notice for so long as the
21 markings ~~are visible~~ continue to be visible and usable.

22 7. If markings ~~are no longer visible or~~ become unusable due to weather, construction or other
23 cause, the excavator shall contact the notification center to request remarking. Such notice shall be
24 given in the same manner as an original notice of intent to excavate, and the ~~owner or operator~~
25 ~~affected underground facility owners~~ shall remark the site in the same manner, within the same time,
26 as required in response to an original notice of intent to excavate. Under no circumstances may
27 anyone other than an underground facility owner or its authorized agent refresh the markings
28 provided for an underground facility.

29 8. Each excavator shall exercise reasonable care not to unnecessarily disturb or obliterate
30 markings provided for location of underground facilities. If remarking is required due to the
31 excavator's failure to exercise reasonable care, or if repeated unnecessary requests for remarking are
32 made by an excavator even though the markings are visible and usable, the excavator may be liable
33 to the ~~owner or operator~~ affected underground facility owners for the reasonable cost of such
34 remarking.

35 9. For purposes of subsection 1 of this section, the two working days to ten working days notice
36 period begins at 12:00 a.m. on the first working day following the date when the notification center
37 receives a notice of intent to excavate.

38 10. In the event an excavation associated with a notice of intent to excavate is not completed
39 within forty-five (45) calendar days after the date the notice was submitted to the notification center,
40 the person responsible for the excavation shall so advise the notification center, including a reference
41 to the ticket number for the notice, and the notification center shall notify the affected underground
42 facility owners that the excavation has not been completed.

43 11. In the event any of the following information provided with a notice of intent to excavate
44 changes before an excavation begins, or changes during the course of an excavation, the original
45 notice of intent to excavate shall be considered void and the excavator shall submit a new notice of
46 intent to excavate, including the ticket number for the original notice, to the notification center.

47 (a) The depth of the planned excavation:

1 (b) That the use of explosives is anticipated on the excavation site;

2 (c) The type of excavation planned, including whether the excavation involves trenchless
3 excavation; and

4 (d) The area of the excavation.

5 12. Under the circumstances described in subsection 11 of this section, an excavation may not
6 commence until such time that the affected underground facility owners have responded to the
7 required new notice of intent to excavate as required by section 319.030, and any excavation begun
8 pursuant to the original notice of intent to excavate shall cease until such time that the affected
9 underground facility owners have responded to the required new notice of intent to excavate as
10 required by section 319.030.

11 **Design requests, how made - - marking location required.**

12 **319.027.** 1. Any person may make design requests by contacting the notification center. Such design
13 requests shall include all information deemed necessary by the notification center to complete the
14 notice, including the identification of the person and a description of the location of the project being
15 designed and other information similar to that required of excavators under section 319.026.

16 2. Design requests shall be made to the notification center at least five working days, but not
17 more than ten working days, before the date the person ~~has requested receiving the~~ making the
18 request desires to receive facility location information from the affected underground facility
19 owners. Upon receipt of a design request, the notification center shall inform the person of the name
20 of all notification center participants to whom the notice will be transmitted and shall promptly
21 transmit such notice to the appropriate underground facility owners.

22 3. Every underground facility owner who receives a design request shall mark the location of ~~the~~
23 ~~facility~~ his or her facilities, or contact the person making the request, within five working days after
24 the date the notice was received from the notification center. If the person making the request was
25 contacted as an alternative to the marking ~~location of facilities~~, the person and the underground
26 facility owner shall mutually agree on a schedule and method for providing the information.

27 4. No excavation may be commenced based upon information received through a design request.
28 Obtaining information through a design request shall not excuse any person commencing an
29 excavation from making notice and obtaining information under sections 319.025 and 319.026
30 concerning the possible location of any underground facilities ~~which that~~ may be affected by the
31 excavation.

32 **Participation in notification center required, exceptions - - withdrawal from** 33 **notification center inadmissible in court proceedings.**

34 **319.028.** 1. On or after January 1, 2003, an ~~owner or operator of underground facilities~~ underground
35 facility owner, who has become a participant in the notification center as required in section
36 319.022, will maintain participation in the notification center, unless it is determined that the
37 inaccuracy rate of the notification center reaches fifteen percent. The accuracy rate shall be
38 determined by the number of notifications of an excavation, where the ~~owner or operator~~
39 underground facility owner has no underground facilities at the excavation site, as described in the
40 excavators' notifications, divided by the total number of notifications ~~to an owner or operator of~~
41 ~~underground facilities~~ transmitted to the underground facility owner during any twelve-month
42 period.

43 2. Once the notification center has an inaccuracy rate of fifteen percent or higher for any ~~owner~~
44 ~~or operator of underground facilities~~ underground facility owner, then any such owner ~~or operator~~
45 may withdraw from participation in the notification center by providing written notice to the

notification center of its withdrawal. The ~~owner or operator~~ underground facility owner shall then file with the recorder of deeds for each county in which it has underground facilities a statement that it has underground facilities and a name and phone number of a contact person that excavators shall contact and notify of its intent to excavate. The ~~owner or operator~~ underground facility owner shall also publish, at least quarterly, in a newspaper or other publication of general circulation in counties ~~that have in which it has~~ underground facilities a statement that the owner ~~or operator~~ has underground facilities and who the excavator shall contact regarding its intent to excavate.

3. After January 1, 2003, in the event that an ~~owner or operator~~ underground facility owner withdraws from the notification center no party may use in any legal proceeding the fact that ~~an the~~ owner ~~or operator~~ has withdrawn from the notification center as evidence to establish negligence, recklessness, lack of adherence to industry standards, or any other manner which would suggest that the owner ~~or operator~~ failed to comply with any standard of care.

Notification required prior to excavation.

319.029. Notwithstanding the fact that a project is a pre-engineered project or a permitted project, or that a design request was previously made, excavators connected therewith shall be required to give notification in accordance with sections 319.025 and 319.026 prior to commencement of excavation.

Notification of underground facility, when, how - - failure to provide notice of location, effect.

319.030. 1. Every ~~person owning or operating an~~ underground facility owner 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 otherwise mutually agreed, 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. ~~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.~~

2. If the information available to ~~the owner or operator of a pipeline facility or an underground electric or communications cable~~ an underground facility owner discloses that valves, vaults or other appurtenances are located in or near the area of excavation, the owner ~~or operator~~ shall either inform the excavator of the approximate location of such appurtenances at the same time and in the same manner as the approximate location of the remainder of the facility is provided, or shall at such time inform the excavator that appurtenances exist in the area and provide a telephone number through which the excavator may contact a representative of the owner ~~or operator~~ who will meet at the site ~~within one~~ on the next working day after a request from the excavator and at such meeting furnish the excavator with the available information about the location and nature of such appurtenances.

3. If the excavator states in the notice of intent to excavate that the excavation will involve trenchless technology, the ~~owner or operator~~ underground facility owner shall inform the excavator of the depth, to the best of his or her knowledge or ability, of the facility according to the records of the owner ~~or operator~~.

4. The ~~owner or operator~~ underground facility owner shall provide the approximate location of underground facilities by use of markings. If flags or stakes are used, such marking shall be consistent with the color code and other standards for ground markings.

5. Persons representing the excavator and the ~~owner or operator~~ underground facility owner 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 the area of the planned excavation, or upon agreement of the excavator and the facility 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.

6. If upon receipt of a notice of intent to excavate, an ~~owner or operator~~ underground facility owner determines that he or she neither ~~owns or operates~~ owns, operates, controls or manages 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~~ he or she has no facilities located in the area of the proposed excavation. The ~~owner or operator of the~~ underground facility owner 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;

(3) By calling the cellular telephone number of the excavator or responsible person;

(4) By notifying the excavator by facsimile or electronic mail at numbers or addresses stated by the excavator in the notice of excavation made under subsection 2 of section 319.026;

(5) By marking "clear" or "OK" at the site of excavation; or

(6) By verbally informing the excavator in person.

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

~~2.7.~~ A record of the date and means of informing the excavator that no facilities were located by the ~~owner or operator~~ underground facility owner shall be included in the written records of the underground facility owner regarding each specific notice of excavation, and such records shall be retained by the underground facility owner for a period of not less than five (5) years.

~~3.8.~~ In the event that ~~a person owning or operating~~ an underground facility owner fails to comply with the provisions of subsection 1 or subsection 6 of this section after notice given by an excavator in compliance with section 319.026, the excavator, prior to commencing the excavation, shall give a second notice to the notification center as required by section 319.026 stating that there has been no response to the original notice given under section 319.026. After the receipt of the notice stating there has been "no response", the ~~owner or operator of an~~ underground facility owner shall, within two hours of the receipt of such notice, mark its facilities or contact and inform the excavator of when the facilities will be marked; provided, however, that for "no response" notices made to the notification center by 2:00 p.m. on a working day, the markings shall be completed on the working day the notice is made to the notification center, and provided that for "no response" notices made to the notification center after 2:00 p.m. on a working day or on a non-working day, the markings shall be completed no later than 10:00 a.m. on the next working day. If an underground facility owner fails to mark its facilities or contact the excavator as required by this subsection, or fails to contact the excavator as required by subsection 6, the excavator may commence the excavation. Nothing in this subsection shall excuse the excavator from exercising the degree of care in making the excavation as is otherwise required by law. If an excavator submits a false "no response" notice to the notification center, the excavator may be liable to the affected underground facility owners for the costs associated with such owners' responses to the notice.

~~4.9.~~ For purposes of subsections 1 and 6 of this section, a period of two working days begins at 12:00 a.m. on the first working day following ~~when the request is made~~ the date when the

notification center receives a notice of intent to excavate, and ends at 11:59 p.m. on the second working day following the date when the notification center receives a notice of intent to excavate.

10. For purposes of subsection 5 of this section, a period of two working days begins at 12:00 a.m. on the first working day following the date when a request for an on-site meeting is made.

Information regarding sewer service 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 methods will be used, shall include a determination of whether sewer service connections exist or are likely to exist in the area of the excavation.

2. If the sewer system owner determines that sewer service 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 to the excavator by any of the following methods:

(1) Placing a triangular green mark at the approximate location of the sewer service connection pointing in the direction of the customer structure 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. Providing the best available information regarding the location of sewer service connections that exist or are likely to exist in the area of excavation identified in a notice of intent to excavate shall constitute full compliance with this section, and a sewer system owner shall not be liable to any party for damages or injuries resulting from an excavation if they are in compliance with this section.

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

Compliance with law still requires excavation to be made in careful and prudent manner.

319.035. Obtaining information as required by sections 319.010 ~~to 319.050~~ through 319.070 does not excuse any person making any excavation from doing so in a careful and prudent manner.

Excavation sites included in requirements - - equipment prohibited at such sites.

319.037. 1. Notwithstanding any other provision of law to the contrary, the procedures and requirements set forth in this section shall apply on the site of any excavation involving trenchless excavation, including directional drilling, where the approximate location of underground facilities has been marked in compliance with section 319.030 and where any part of the walls of the intended bore are within the marked approximate location of the underground facility.

2. The excavator shall not use power-driven equipment for trenchless excavation, including directional drilling, within the marked approximate location of such underground facilities until the excavator has made careful and prudent efforts to confirm the horizontal and vertical location thereof in the vicinity of the proposed excavation through methods appropriate to the geologic and weather conditions, and the nature of the facility, such as the use of electronic locating devices, hand digging,

1 pot holing when practical, soft digging, vacuum methods, use of pressurized air or water, pneumatic
2 hand tools or other noninvasive methods as such methods are developed. Such methods of
3 confirming location shall not violate established safety practices.

4 3. Nothing in this subsection shall authorize any person other than the owner or operator of a
5 facility to attach an electronic locating device to any underground facility.

6 4. For excavations paralleling the underground facility, such the efforts to confirm the location of
7 the facility shall be made at careful and prudent intervals. The excavator shall also make careful and
8 prudent efforts by such means as are appropriate to the geologic and weather conditions and the
9 nature of the facility, to confirm the horizontal and vertical location of the boring device during
10 boring operations.

11 5. Notwithstanding the foregoing, the excavator shall not be required to confirm the horizontal or
12 vertical location of the underground facilities if the excavator, using the methods described in this
13 section, excavates a hole over the underground facilities to a depth two feet or more below the
14 planned boring path and then carefully and prudently monitors the horizontal and vertical location of
15 the boring device in a manner calculated to enable the device to be visually observed by the
16 excavator as it crosses the entire width of the marked approximate location of the underground
17 facilities.

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

19 **319.040.** 1. The failure of any excavator to give notice of proposed excavation activities as required
20 by this chapter in accordance with the provisions of sections 319.022 through 319.070 shall be a
21 rebuttable presumption of negligence on his or her part in the event that such failure shall cause
22 injury, loss or damage. In addition to any penalties provided herein, liability under common law may
23 apply.

24 2. The failure of an underground facility owner to mark his or her facilities that are located in an
25 area of excavation described in a notice of intent to excavate received by the underground facility
26 owner, as required by section 319.030, or the failure of an underground facility owner to be a
27 notification center participant, consistent with the provisions of section 319.022, shall be a rebuttable
28 presumption of negligence on the part of such owner in the event that such failure shall cause injury,
29 loss or damage. In addition to any penalties provided herein, liability under common law may apply.

30 **Safe and prudent excavation required.**

31 **319.041.** Nothing in the foregoing shall relieve an excavator from the obligation to excavate in a safe
32 and prudent manner, nor shall it absolve an excavator from liability for damage to legally installed
33 facilities.

34 **No abrogation of contractual obligations with railroads.**

35 **319.042.** Notwithstanding any provision of law to the contrary, nothing in this chapter shall abrogate
36 any contractual provisions entered into between any railroad regulated by the Federal Railroad
37 Administration and any other party owning or operating ~~owning, operating, controlling or managing~~
38 an underground facility within the railroad's right-of-way. ~~For railroads regulated by the Federal~~
39 ~~Railroad Administration, sections 319.015 to 319.050 shall not include any underground facility~~
40 ~~owned or operated by a railroad on land which the railroad owns or any excavation done by a~~
41 ~~railroad when such excavation is done entirely on land which the railroad owns.~~

Notice to notification center if underground facility is damaged, dislocated or disturbed ~~to notification center~~, when - - duties of excavator ~~---civil penalties--- attorney general may bring action.~~

319.045. 1. In the event of any damage or dislocation or disturbance of any underground facility in connection with any excavation, the person responsible for the excavation operations shall immediately notify the notification center. This subsection shall be deemed to also require reporting of any damage, dislocation, or disturbance to trace wires, encasements, ~~cathode~~ cathodic protection facilities, permanent above-ground stakes or markers, or other such items utilized for protection of the underground facility.

2. In the event of any damage or dislocation or disturbance to any underground facility or any protective devices required to be reported by the excavator under subsection 1 of this section, in advance of or during the excavation work, the person responsible for the excavation operations shall not conceal or attempt to conceal such damage or dislocation or disturbance, nor shall that person attempt or make repairs to the facility unless authorized by the owner or operator of the facility. In the case of sewer lines or facilities, emergency temporary repairs may be made by the excavator after notification without the owners' or operators' authorization to prevent further damage to the facilities. Such emergency repairs shall not relieve the excavator of responsibility to make notification as required by subsection 1 of this section.

~~3. Any person who violates in any material respect the provisions of section 319.022, 319.025, 319.026, 319.029, 319.030, 319.037, or this section or who willfully damages an underground facility shall be liable to the state of Missouri for a civil penalty of up to ten thousand dollars for each violation for each day such violation persists, except that the maximum penalty for violation of the provisions of sections 319.010 to 319.050 shall not exceed five hundred thousand dollars for any related series of violations. An action to recover such civil penalty may be brought by the attorney general or a prosecuting attorney on behalf of the state of Missouri in any appropriate circuit court of this state. Trial thereof shall be before the court, which shall consider the nature, circumstances and gravity of the violation, and with respect to the person found to have committed the violation, the degree of culpability, the absence or existence of prior violations, whether the violation was a willful act, the effect on ability to continue to do business, any good faith in attempting to achieve compliance, ability to pay the penalty, and such other matters as justice may require in determining the amount of penalty imposed. (Moved to section 319.046 as subsections 1 & 2, with some changes made.)~~

~~4. The attorney general may bring an action in any appropriate circuit court of this state for equitable relief to redress or restrain a violation by any person of any provision of sections 319.010 to 319.050. The court may grant such relief as is necessary or appropriate, including mandatory or prohibitive injunctive relief, temporary or permanent. (Moved to section 319.046 as subsection 3, with some changes made.)~~

Attorney general authorized to take actions to recover civil penalties and to obtain equitable relief - - public service commission authorized to investigate certain possible violations and to make referrals to attorney general for prosecution - - submission of certain compliance information and investigation requests to public service commission authorized.

319.046. 1. Any person who violates in any material respect the provisions of ~~section 319.022, 319.025, 319.026, 319.029, 319.030, 319.037, or this section~~ sections 319.022 through 319.070, or who willfully damages an underground facility, shall be liable to the state of Missouri for a civil penalty of up to ten thousand dollars for each violation for each day such violation persists, except

that the maximum penalty for violation of the provisions of sections ~~319.010 to 319.050~~ 319.022 through 319.070 shall not exceed five hundred thousand dollars for any related series of violations.

2. An action to recover ~~such civil penalty~~ the civil penalties authorized by subsection 1 of this section may be brought by the attorney general or a prosecuting attorney on behalf of the state of Missouri in any appropriate circuit court of this state. Trial thereof shall be before the court, which shall consider the nature, circumstances and gravity of the violation, and with respect to the person found to have committed the violation, the degree of culpability, the absence or existence of prior violations, whether the violation was a willful act, the effect on ability to continue to do business, any good faith in attempting to achieve compliance, ability to pay the penalty, and such other matters as justice may require in determining the amount of penalty imposed.

3. The attorney general may bring an action in any appropriate circuit court of this state for equitable relief to redress or restrain a violation by any person of any provision of sections ~~319.010 to 319.050~~ 319.022 through 319.070. The court may grant such relief as is necessary or appropriate, including mandatory or prohibitive injunctive relief, temporary or permanent.

4. Subject to the limitations set out in subsection 6 of this section, the public service commission is authorized to investigate possible violations of sections 319.022 through 319.070 by any person subject to the provisions of those sections, and is further authorized to refer any such violations found to the attorney general, subject to the limitations of subsection 7 of this section, for prosecution under the provisions of subsection 2 and subsection 3 of this section.

5. Subject to the limitations set out in subsection 6 of this section, underground facility owners, excavators and the notification center are authorized to submit to the public service commission information supporting the investigations authorized by subsection 4 of this section, and are further authorized to request that the commission initiate an investigation authorized by subsection 4 of this section so long as the request includes information supporting the investigation.

6. The authority granted by subsection 4 of this section and the authority granted by subsection 5 of this section shall extend only to situations that directly involve gas companies, gas pipelines and municipal gas systems subject to the public service commission's jurisdiction for safety purposes, and to situations that directly involve pipeline operators subject to the provisions of 49 CFR Part 192 and 49 CFR Part 195 that are not otherwise subject to the commission's jurisdiction.

7. For situations involving gas companies, gas pipelines or municipal gas systems subject to the commission's jurisdiction for safety purposes under chapter 386, RSMo, actions that could result in the recovery of civil penalties from those entities can only be taken pursuant to either the authority granted to the commission by subsection 4 of this section or the authority granted to the commission by chapter 386, RSMo.

Exemptions from requirement to obtain information.

319.050. The provisions of sections 319.025 and 319.026 shall not apply to any excavation ~~when that is~~ necessary due to an emergency as defined in section 319.015. An excavation may proceed regarding such emergency, provided all reasonable precautions have been taken to protect the underground facilities. In any such case, the excavator shall give notification, substantially in compliance with section 319.026, as soon as practical, and upon being notified that an emergency exists, each underground facility owner in the area shall, within two hours after receiving such notice, provide markings or contact the excavator with any information immediately available to assist the excavator and shall inform the excavator if not able to mark within the two hours of when the underground facility will be marked at the site of the emergency. The excavator may be liable to ~~the owner or operator~~ an underground facility owner for costs directly associated with the locating of any such underground facility relating to a notification of an emergency that does not meet the definition of emergency as stated in section 319.015.

Reporting of damage events and excavation notifications, how, when - - public service commission annual report required - - confidentiality of reports.

319.055. 1. Beginning January 1, 2012, each underground facility owner shall, and excavators and the notification center may, submit a report regarding each known damage event to the Missouri Virtual Private DIRT (data information reporting tool) data base established by the public service commission with the Common Ground Alliance (CGA). Such reports are to consist of the most current version of the CGA's DIRT field form and are to be submitted within sixty (60) days after the subject damage event occurs or is discovered.

2. Beginning sixty (60) days after the end of the first quarter of calendar year 2012, and no later than sixty (60) days after the end of each subsequent calendar year quarter, each underground facility owner shall submit to the Missouri Virtual Private DIRT data base a summary of the number and types of excavation notifications received from the notification center during the previous calendar year quarter, with such information to be submitted on a form provided by the public service commission. Submission of the reports required by this subsection by the notification center on behalf of notification center participants shall be deemed compliance with this subsection by such participants.

3. Beginning June 1, 2013, and no later than June 1 of each year thereafter, the public service commission shall publish an annual report of aggregate information compiled from the reports submitted to the Missouri Virtual Private DIRT data base under the provisions of subsection 1 and subsection 2 of this section, with that report to include summaries regarding the number and cause of reportable events and the number and type of excavation notifications similar to the summaries for those items that are included in the annual DIRT report produced by the CGA.

4. Notwithstanding other provisions of the law to the contrary, the reports submitted to the Missouri Virtual Private DIRT data base under the provisions of subsection 1 and subsection 2 of this section shall not be considered public information; however, the annual report published by the public service commission under the provisions of subsection 3 of this section shall be considered public information.

Performance measures and quality assurance programs for facility locating - - public service commission enforcement authority - - rulemaking authorized.

319.060. Effective January 1, 2012, underground facility owners subject to the public service commission's jurisdiction for any purpose shall implement, if they have not already done so, performance measures applicable to all persons performing underground facility marking for such owners, and shall also implement, if they have not already done so, a quality assurance program to ensure their facility marking performance measures are being met.

Underground facilities to be locatable, when, how - - sewer service connections to be locatable, when, how.

319.070. 1. Beginning January 1, 2012, underground facility owners shall install their underground facilities, including replacement facilities as well as new facilities, in a manner such that the facilities can be located through the use of electronic locating devices, or they shall document the location of such facilities on as-built drawings, or by the use of other means such as the state plane coordinates system, in a manner such that they can provide the approximate location of the facilities.

2. In addition to the requirements of subsection 1 of this section, sewer system owners shall ensure that sewer service connections made to their collecting sewers on or after January 1, 2012 can be located through the use of electronic locating devices, or they shall document the location of such

1 connections on as-built drawings, or by the use of other means such as the state plane coordinates
2 system, in a manner such that they can provide the approximate location of the connections.

3 3. Complying with the requirements of subsection 2 of this section shall not in and of itself
4 constitute ownership, operation, control or management of sewer service connections or related
5 sewer service lines by a sewer system owner.