

AGENDA

DAMAGE PREVENTION STAKEHOLDER ROUNDTABLE

MO PSC CHAPTER 319 REVISION PROJECT

TRUMAN OFFICE BUILDING – JEFFERSON CITY

MARCH 9, 2010 – 10:00 A.M.

I. Introductory Remarks & Introductions

Bob Leonberger

**II. Review of the "overview document" sent out February 11
(including review of changes made since Feb. 11)**

Dale Johansen

**III. Review of the Chapter 319 "partial version document" sent out February 11
(including review of changes made since Feb. 11)**

Dale Johansen

IV. Participant comments on matters addressed in the above-noted documents

Bob Leonberger – Dale Johansen
(available for response if needed)

V. Participant comments on matters not addressed in the above-noted documents

Bob Leonberger – Dale Johansen
(available for response if needed)

VI. Where do we plan to go, and where should we go, from here?

Bob Leonberger – Dale Johansen – Participants

VII. Closing Remarks

Bob Leonberger

**MO PSC Chapter 319 Revision Project – General Overview & Status
of Suggested Changes Based Upon Stakeholder Comments – 03/05/10**

- 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) (changed somewhat from proposed definition included in draft dated 02/10/10)
Status: DONE
- 4) ADD proposed definition of "Sewer service line" (in conjunction with proposed section 319.032) (replaces definition of "Sewer lateral" included in draft dated 02/10/10, but is similar to that definition)
Status: DONE
- 5) ADD proposed definition of "Sewer service connection" (in conjunction with proposed section 319.032) (replaces definition of "Sewer lateral connection" included in draft dated 02/10/10, but is similar to that definition)
Status: DONE
- 6) ADD proposed definition of "Sewer system" (in conjunction with proposed section 319.032) (changed somewhat from proposed definition included in draft dated 02/10/10)
Status: DONE
- 7) ADD proposed definition of "Sewer system owner" (in conjunction with proposed section 319.032) (changed somewhat from proposed definition included in draft dated 02/10/10)
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 (subsections affected are 319.022.2 – 319.022.3 – 319.025.1 – 319.025.2 – 319.026.4 – 319.026.5; also includes modification of 319.022.1)
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 service connections, to be limited to situations involving trenchless excavation, to reflect the modified/new sewer system related definitions discussed on page 1, and to reflect suggested changes to subsection 3
Status: DONE
- 17) MODIFY proposed subsection 319.040.2 re: rebuttal presumption of negligence applicable to facility owners (changed somewhat from language included in draft dated 02/10/10)
Status: DONE
- 18) **MODIFY** proposed section 319.046 re: enforcement (including possibly not changing the references to the sections to which penalty actions would apply)
Status: Not yet done, still under discussion.
- 19) MODIFY proposed section 319.055 re: reporting (shading on Chapter 319 document changed from tan to light green to reflect PHMSA interpretation of federal Element 9)
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 to proposed section 319.070 re: installation depth requirements for new facilities (would vary by type of facility and applicable industry codes)
Status: Decision not yet made, still under discussion.
- 24) **?? ADD ??** language requiring the area of excavation to be "white-lined"
Status: Decision not yet made, still under discussion.
- 25) **?? 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.
- 26) **?? REMOVE ??** exclusion pertaining to railroads not being required to call the notification center prior to performing excavation activities on land they own or on which they operate, or on adjacent land in the event of an emergency (would/could affect the changes proposed to definitions of "Excavation" & "Underground facility" and Section 319.042)
Status: Decision not yet made, still under discussion.

Chapter 319 Proposed Revisions – Partial Version – 03/05/10

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

Definitions.

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

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

(15) "Sewer service line", a sewer pipe extending from a customer's structure to a collecting sewer, which conveys wastewater from the structure to the collecting sewer; (Added in conjunction with proposed section 319.032. Combination of the definitions of "service sewer" found in PSC rule 4 CSR 240-60.010(3)(E) and "service connection" found in DNR rule 10 CSR 20-2.010.)

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

(17) "Sewer system", includes all pipes or conduits, pumps, pumping stations, canals, lagoons, plants, structures and appliances, and all other real estate, fixtures and personal property, excluding sewer service lines, owned, operated, controlled or managed in connection with or to facilitate the collection, carriage, treatment and disposal of sewage for municipal, domestic or other beneficial or necessary purpose, except that the term shall not include a system that has less than twenty-five sewer service connections; (Added in conjunction with proposed section 319.032. Combination of the definitions of "sewer system" found in Sections 386.020(50) and 644.016(19), RSMo, except for the exclusion for systems with less than 25 sewer service connections that comes from the definition of "sewer corporation" found in Section 386.020(49), RSMo.)

(18) "Sewer system owner", any person who owns, operates, controls or manages a sewer system as defined by this section; (Added in conjunction with proposed section 319.032. Similar to the definition of "underground facility owner".)

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

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

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

**Notification centers, participation requirements and eligibility - - names of
underground facility owners ~~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.

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 The notice referred to in this section shall comply with the provisions of section 319.026. As part of
18 the process to request the locating of underground facilities and having them properly marked, the
19 notification center shall ask excavators to identify whether or not the proposed excavation will be on
20 a public right-of-way or easement dedicated to public use for vehicular traffic.

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

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

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

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

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

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.

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 an underground facility owner to inform an excavator of the approximate location of his or her facilities that are located in an area of excavation described in a notice of intent to excavate, as required by section 319.030, or the failure of an underground facility owner to be a notification center participant, as required by 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.

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.