

**BEFORE THE PUBLIC SERVICE COMMISSION  
STATE OF MISSOURI**

In the Matter of a Repository Docket for     )  
Materials Relating to the Underground     )  
Facility Damage Prevention Project.     )

Case No. GW-2010-0120

**COMMENTS OF THE MISSOURI GAS UTILITIES  
ON POTENTIAL CHANGES TO CHAPTER 319 RSMO**

At the December 6, 2010 Roundtable held in the above-captioned proceeding, the Missouri Public Service Commission Staff requested that interested participants provide comments regarding the most recent version of the Commission's proposed changes to Chapter 319 RSMo. To that end, Atmos Energy Corporation (Atmos), Laclede Gas Company (Laclede), Missouri Gas Energy (MGE), and Union Electric Company d/b/a AmerenUE (AmerenUE), (hereinafter collectively referred to as the "Missouri Gas Utilities") submit the following comments and suggestions.

**Introduction**

The Missouri Gas Utilities are highly supportive of any reasonable effort to further protect critical utility infrastructure through enhancements to the underground facility notification, marking and excavation procedures set forth in Chapter 319 RSMo. In that spirit, they have actively cooperated with the Commission's efforts over the past year to draft proposed changes to Chapter 319 and appreciate this opportunity to offer constructive feedback on the most recent version of draft legislation that was circulated by the Commission Staff two weeks ago.

For the convenience of the Commission and other stakeholders, the Missouri Gas Utilities have reflected their suggestions in the attached markup of the Commission's most recent draft of the legislation. (*See Attachment A*). With these suggested revisions, the Missouri Gas Utilities believe that the draft legislation would actually move the ball forward on providing

additional protection to critical facilities, without imposing unnecessary or excessively burdensome requirements on either excavators or facility owners. Without the suggested revisions, the Missouri Gas Utilities believe the draft legislation would do more harm than good and should not be pursued.

### **Proposed Revisions**

#### **(a) Protection of Pipeline Facilities**

It has become apparent from the latest legislative draft, that a special focus has been placed on affording additional protection to pipeline facilities that are used in the transportation of natural gas or hazardous liquids, including petroleum or petroleum products. In contrast to earlier versions, for example, the new enforcement process being proposed (which consists of Commission investigations and referrals to the Attorney General's (AG) office) is limited solely to violations involving pipeline facilities. Although the Missouri Gas Utilities believe that it is important to protect all underground facilities, regardless of their nature, they have no objection to affording additional protections to pipeline facilities, as long as those protections are effective and reasonable. To that end, there are two critical changes that should be made to the proposed draft legislation:

First, the investigation/AG referral enforcement process should be modified to remove pipeline operators who are already subject to the Commission's safety jurisdiction. (*See* proposed subsections 4-6 of Section 319.045). The Commission already exercises broad safety jurisdiction over such operators, including the ability to set comprehensive safety standards and seek substantial penalties if those standards are violated. Given this existing enforcement process, nothing but jurisdictional confusion is to be gained by attempting to subject such operators to an alternative enforcement process, which presumes it is the AG, rather than the Commission, that is responsible for enforcing certain safety-related activities of such operators.

Where the AG is the proper agency to handle such matters, however, the Missouri Gas Utilities believe that the law should, at a minimum, establish a 90 day timeline for deciding whether matters referred to the AG will be pursued as well as a requirement that the AG provide the Commission with an explanation of any decision not to pursue a referral. The Missouri Gas Utilities believe the timeline is important to ensure, in contrast to previous practice, that such matters are actually addressed promptly. Similarly, the requirement for an explanation of any decision not to pursue a particular matter is important to ensure optimal use of the resources of both agencies.

Second, the Commission should add a requirement that hand-digging or “soft” excavation be used to confirm the horizontal and vertical position of marked pipeline facilities before using power-operated equipment. (See Section 319.037) If the focus truly is on affording additional protection for pipeline facilities, adoption of such a requirement is probably the single, most significant enhancement that the Commission could make in that direction. According to a survey of the 62 One-Call notification centers nationally, 49 notification centers (79%) indicated that their state damage prevention statutes already contain a mandatory hand-dig requirement. Moreover, the experience in Missouri since a hand-digging requirement was imposed for trenchless excavations has shown how incredibly effective such a requirement can be for avoiding damage to facilities. Although some of the Missouri Gas Utilities originally proposed in prior comments that such a requirement be adopted for excavations around *all* underground facilities, they believe that limiting such a requirement only to those instances where pipeline facilities exist would be fully consistent with the draft legislation’s current focus on affording additional protection for such facilities. At the same time, the limitation should serve to at least partially address the concerns of those who originally opposed adding a more widely-applicable requirement.

**(b) Rebuttable Presumption of Negligence**

The Missouri Gas Utilities continue to believe that the proposed revisions to Section 319.040 create an overly broad and inappropriate presumption of negligence for facility owners that goes well beyond anything necessary to compliment or balance the one imposed on excavators for failing to notify of a potential excavation. If literally applied, the presumption would apply anytime there was a failure to inform an excavator of the approximate location of an underground facility, even if the failure was due to some communication glitch or lack of availability on the part of excavator or whether the owner had actually received the notice. That is precisely why some members of the Missouri Gas Utilities recommended in prior comments that any presumption of owner negligence be limited to an owner's failure to be a participant in the notification center. If the presumption is to be broadened beyond that, however, the circumstances under which it would apply should be narrowed to those instances where the owner has actually received the notification of a proposed excavation and has nevertheless not made an attempt to inform the excavator of the approximate location of the facility.

**(c) Reporting Requirements**

There are also several modifications that the Missouri Gas Utilities believe should be made to some of the new reporting requirements proposed in the draft legislation. First, to avoid confusion with natural gas incidents that must be reported under other safety rules, the term "Reportable Event" in subsection 19 of Section 319.015 should be changed to "Damage Event", with consistent changes also made to Section 319.055. Second, the requirement to report "near misses" and "down-time" should be eliminated because there is no practical way to determine or verify whether or to what extent such events have occurred. As a consequence, any information provided pursuant to such a reporting requirement would be grossly incomplete, inconsistent, highly speculative and therefore likely to result in furnishing a false and distorted picture of the

subject matter. In contrast, known damages to facilities can and are tracked by owners and that is what the primary focus of any reporting requirements should be.

**(d) Performance Standards**

Finally, while the Missouri Gas Utilities continue to believe that it is not necessary to legislate the adoption of performance and quality assurance measures for locaters used by an owner, any such requirement should at least be modified to clarify that if an owner already has such measures in effect they will be sufficient to comply with such a requirement. Revised language to provide such clarifications is included in Attachment A.

**Conclusion**

As previously noted, the Missouri Gas Utilities fully support any effort by the Commission to provide enhanced protection for critical underground facilities. They sincerely believe that the revisions recommended herein are necessary and appropriate to ensuring that this latest effort will contribute to that objective in a meaningful and effective way and would accordingly request that they be incorporated in any final legislative initiative.

Respectfully submitted,

**/s/Michael C. Pendergast**

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On behalf of ATMOS ENERGY CORPORATION,  
LACLEDE GAS COMPANY, MISSOURI GAS  
ENERGY, UNION ELECTRIC COMPANY d/b/a  
AMERENUE.

**Certificate of Service**

The undersigned certifies that a true and correct copy of the foregoing pleading was served on the Staff and on the Office of Public Counsel on this 10th day of December, 2010 by United States mail, hand-delivery, email, or facsimile.

**/s/ Gerry Lynch** \_\_\_\_\_



## CHAPTER 319 PROPOSED REVISIONS

FULL VERSION – 11/26/10

### 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 to Address Known  
Safety Issues and Other Statutory Provisions

### Pale Blue Shading

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

### Turquoise Shading

Changes Suggest by Gas Utilities

#### 1 Short title.

2 **319.010.** Sections 319.010 through ~~319.050~~ 319.070 shall be known as the "Underground Facility  
3 Safety and Damage Prevention Act".

#### 4 Definitions.

5 **319.015.** For the purposes of sections 319.010 ~~to 319.050~~ through 319.070, the following terms  
6 mean:

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

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

13 ~~(2)(3)~~ (3) "Design request", a request from any person for facility location information for design  
14 purposes only;

1 | ~~(3)~~(4) "Emergency", either:

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

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



1 | ~~(4)~~(5) "Excavation", any operation in which earth, rock or other material in or on the ground is  
2 | moved, removed or otherwise displaced by means of any tools, equipment or explosives and  
3 | includes, without limitation, backfilling, grading, trenching, digging, ditching, drilling, well-drilling,  
4 | augering, boring, tunneling, scraping, cable or pipe plowing, plowing-in, pulling-in, ripping, driving,  
5 | and demolition of structures, except that, the use of mechanized tools and equipment to break and  
6 | remove pavement and masonry down only to the depth of such pavement or masonry, the use of  
7 | pressurized air or pressurized water to disintegrate and suction to remove earth, rock and other  
8 | materials, the tilling of soil for agricultural or seeding purposes, and the installation of marking flags  
9 | and stakes for the location of underground facilities that are not driven shall not be deemed  
10 | excavation. Backfilling or moving earth on the ground in connection with other excavation  
11 | operations at the same site shall not be deemed separate instances of excavation. For railroads  
12 | regulated by the Federal Railroad Administration, "excavation" shall not include any excavating  
13 | done by a railroad when such excavating is done entirely on land that the railroad owns or on which  
14 | the railroad operates, or in the event of an emergency, excavating done by a railroad on adjacent  
15 | land;

16 | ~~(5)~~(6) "Excavator", any person making one or more excavations who is required to make notices  
17 | of excavation under the requirements of sections 319.010 ~~to 319.050~~ through 319.070;

18 | ~~(6)~~(7) "Marking", the use of paint, flags, stakes, or other clearly identifiable materials to show  
19 | the field location of underground facilities, or the area of proposed excavation, in accordance with  
20 | the color code standard of the American Public Works Association and the standards for marking  
21 | underground facilities set forth graphically in the Missouri Marking Standards established by the  
22 | Missouri Common Ground Alliance, as may be changed from time to time. Unless otherwise  
23 | provided by the American Public Works Association, the following ~~color scheme~~ color code shall be  
24 | used: blue for potable water; purple for reclaimed water, irrigation and slurry lines; green for sewers  
25 | and drain lines; red for electric, power lines, cables, conduit and lighting cables; orange for  
26 | communications, including telephone, cable television, alarm or signal lines, cable or conduit;  
27 | yellow for gas, oil, steam, petroleum or gaseous materials; white for proposed excavation; pink for  
28 | temporary marking of construction project site features such as centerline and top of slope and toe of  
29 | slope;

30 | ~~(7)~~(8) "Notification center", a statewide organization operating twenty-four hours a day, three  
31 | hundred sixty-five days a year on a not-for-profit basis, supported by its participants, or by more  
32 | than one operator of underground facilities, having as its principal purpose the statewide receipt and  
33 | dissemination to participating ~~owners and operators of underground facilities~~ underground facility  
34 | owners of information concerning intended excavation activities in the area where such owners and  
35 | operators have underground facilities, and open to participation by any and all such owners and  
36 | operators on a fair and uniform basis. Such notification center shall be governed by a board of  
37 | directors elected by the membership and composed of representatives from each general membership  
38 | group, provided that one of the board members shall be a representative of the state highways and  
39 | transportation commission so long as the commission is a participant in the notification center;

40 | ~~(8)~~(9) "Notification center participant", an underground facility owner who is a member and  
41 | participant in the notification center;

42 | ~~(9)~~(10) "Permitted project", a project for which a permit for the work to be performed is required  
43 | to be issued by a local, state or federal agency and, as a prerequisite to receiving such permit, the  
44 | applicant is required to notify all underground facility owners in the area of the work for purposes of  
45 | identifying the location of existing underground facilities;

~~(10)~~(11) "Person", any individual, firm, joint venture, partnership, corporation, association, cooperative, municipality, political subdivision, governmental unit, department or agency and shall include a notification center and any trustee, receiver, assignee or personal representative thereof;

~~(11)~~(12) "Pipeline facility" includes, without limitation, new and existing pipe, rights-of-way, and any equipment, facility, or building used or intended for use in the transportation of gas or the treatment of gas, or used or intended for use in the transportation of hazardous liquids including petroleum, or petroleum products;

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

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

(15) "Damage Event" the occurrence of a damage to an underground facility, as such 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).

(16) "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;

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

(18) "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;

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

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

~~(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;

~~(15)~~(22) "Underground facility", any item of personal property which shall be buried or placed below ground for use in connection with the storage or conveyance of water, storm drainage, sewage, telecommunications service, cable television service, electricity, oil, gas, hazardous liquids or other substances, and shall include but not be limited to pipes, sewers, conduits, cables, valves, lines, wires, manholes, attachments, or appurtenances, and those portions of pylons or other supports below ground that are within any public or private street, road or alley, right-of-way dedicated to the public use or utility easement of record, or prescriptive easement. If gas distribution lines or electric lines, telecommunications facilities, cable television facilities, water service lines, water system,



1 storm drainage or sewer system lines, other than those used for vehicular traffic control, lighting of  
2 streets and highways and communications for emergency response, are located on private property  
3 and are owned solely by the owner or owners of such private property, such lines or facilities  
4 receiving service shall not be considered underground facilities for purposes of this chapter, except  
5 at locations where they cross or lie within an easement or right-of-way dedicated to public use or  
6 owned by a person other than the owner of the private property. Water and sanitary sewer lines  
7 providing service to private property that are owned solely by the owner of such property shall not  
8 be considered underground facilities at any location. Water, storm drainage, cross road drainage, or  
9 sewer lines owned by the state highways and transportation commission shall not be considered  
10 underground facilities at any location. For railroads regulated by the Federal Railroad  
11 Administration, "underground facility" ~~as used in sections 319.015 to 319.050~~ shall not include any  
12 ~~excavating done underground facility owned or operated~~ by a railroad ~~when such excavating is done~~  
13 ~~entirely on land which the railroad owns or on which the railroad operates, or in the event of~~  
14 ~~emergency, on adjacent land if the facility is located on land that the railroad owns;~~

15 ~~(16)(23)~~ "Underground facility owner", any person who ~~owns or operates~~ owns, operates,  
16 controls or manages underground facilities as defined by this section;

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

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

20 | **319.016.** Notwithstanding any provision of sections 319.010 ~~to 319.050~~ through 319.070 to the  
21 contrary, the state highways and transportation commission shall not be required to be a notification  
22 center participant after December 31, 2011, but nothing in this section shall prohibit the commission  
23 from voluntarily choosing to be a notification center participant after that date.

1 **Notification centers, participation requirements and eligibility - - names of**  
2 **underground facility owners ~~and operators~~ made available, when.**

3 **319.022.** 1. Any person, except a railroad regulated by the Federal Railroad Administration, who  
4 installs or acquires, or otherwise owns or operates, an underground facility within the state shall  
5 become a notification center participant ~~in a notification center~~ upon first installing, ~~acquiring, or~~  
6 ~~owning or operating such underground facility.~~ ~~Except as provided in section 319.016, all owners~~  
7 ~~and operators of underground facilities within the state and~~ shall maintain participation in a  
8 notification center except as provided otherwise in section 319.016.

9 2. ~~All owners and operators of underground facilities which are located in a county of the first~~  
10 ~~classification or second classification within the state who are not members of a notification center~~  
11 ~~on August 28, 2001, shall become participants in the notification center prior to January 1, 2003.~~  
12 ~~Any person who installs or otherwise becomes an owner or operator of an underground facility~~  
13 ~~which is located within a county of the first classification or second classification on or after January~~  
14 ~~1, 2003, shall become a participant in the notification center within thirty days of acquiring or~~  
15 ~~operating such underground facility.~~ Beginning January 1, 2003, all ~~owners and operators of~~  
16 ~~underground facilities which are~~ underground facility owners that have facilities located in a county  
17 of the first classification or second classification within the state shall maintain participation in the  
18 notification center except as provided otherwise in section 319.016.

19 3. ~~All owners and operators of underground facilities which are located in a county of the third~~  
20 ~~classification or fourth classification within the state who are not members of a notification center on~~  
21 ~~August 28, 2001, shall become participants in the notification center prior to January 1, 2005. Any~~  
22 ~~person who installs or otherwise becomes an owner or operator of an underground facility which is~~  
23 ~~located within a county of the third classification or fourth classification on or after January 1, 2005,~~  
24 ~~shall become a participant in the notification center within thirty days of acquiring or operating such~~  
25 ~~underground facility.~~ Beginning January 1, 2005, all ~~owners and operators of underground facilities~~  
26 ~~which are~~ underground facility owners that have facilities located in a county of the third  
27 classification or fourth classification within the state shall maintain participation in the notification  
28 center except as provided otherwise in section 319.016.

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

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

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



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

2 **319.024.** 1. Every ~~person owning or operating an underground facility~~ underground facility owner  
3 shall assist excavators and the general public in determining the location of underground facilities  
4 before excavation activities are begun, or as may be required by ~~subsection 6~~ subsection 7 of section  
5 319.026 or ~~subsection 1~~ subsection 5 of section 319.030 after an excavation has commenced.  
6 Methods of informing the public and excavators of the means of obtaining such information may,  
7 but need not, include advertising, including advertising in periodicals of general circulation or trade  
8 publications, information provided to professional or trade associations which routinely provide  
9 information to excavators or design professionals, or sponsoring meetings of excavators and design  
10 professionals for such purposes. Information provided by the notification center on behalf of ~~persons~~  
11 ~~owning or operating an underground facility~~ underground facility owners shall be deemed ~~in~~  
12 compliance with this section by such ~~persons~~ owners. Every ~~person owning or operating~~  
13 ~~underground facilities who~~ underground facility owner that has a written policy in determining the  
14 location of its underground facilities shall make available a copy of said policy to any notification  
15 center participant or excavator upon request.

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

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

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

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

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

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

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

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

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

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



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.



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

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

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

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

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

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

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

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

5 (a) The depth of the planned excavation;

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

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

9 (d) The area of the excavation.

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

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

17 **319.027.** 1. Any person may make design requests by contacting the notification center. Such design  
18 requests shall include all information deemed necessary by the notification center to complete the  
19 notice, including the identification of the person and a description of the location of the project being  
20 designed and other information similar to that required of excavators under section 319.026.

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

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

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



1 **Participation in notification center required, exceptions - - withdrawal from**  
2 **notification center inadmissible in court proceedings.**

3 **319.028.** 1. On or after January 1, 2003, an ~~owner or operator of underground facilities~~ underground  
4 facility owner, who has become a participant in the notification center as required in section  
5 319.022, will maintain participation in the notification center, unless it is determined that the  
6 inaccuracy rate of the notification center reaches fifteen percent. The accuracy rate shall be  
7 determined by the number of notifications of an excavation, where the ~~owner or operator~~  
8 underground facility owner has no underground facilities at the excavation site, as described in the  
9 excavators' notifications, divided by the total number of notifications ~~to an owner or operator of~~  
10 underground facilities transmitted to the underground facility owner during any twelve-month  
11 period.

12 2. Once the notification center has an inaccuracy rate of fifteen percent or higher for any ~~owner~~  
13 ~~or operator of underground facilities~~ underground facility owner, then any such owner ~~or operator~~  
14 may withdraw from participation in the notification center by providing written notice to the  
15 notification center of its withdrawal. The ~~owner or operator~~ underground facility owner shall then  
16 file with the recorder of deeds for each county in which it has underground facilities a statement that  
17 it has underground facilities and a name and phone number of a contact person that excavators shall  
18 contact and notify of its intent to excavate. The ~~owner or operator~~ underground facility owner shall  
19 also publish, at least quarterly, in a newspaper or other publication of general circulation in counties  
20 ~~that have in which it has~~ underground facilities a statement that the owner ~~or operator~~ has  
21 underground facilities and who the excavator shall contact regarding its intent to excavate.

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

27 **Notification required prior to excavation.**

28 **319.029.** Notwithstanding the fact that a project is a pre-engineered project or a permitted project, or  
29 that a design request was previously made, excavators connected therewith shall be required to give  
30 notification in accordance with sections 319.025 and 319.026 prior to commencement of excavation.

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

3 **319.030.** 1. Every ~~person owning or operating an~~ underground facility owner to whom notice of  
4 intent to excavate is required to be given shall, upon receipt of such notice as provided in this section  
5 from a person intending to commence an excavation, inform the excavator as promptly as practical,  
6 but not in excess of two working days, unless otherwise mutually agreed, of the approximate  
7 location of underground facilities in or near the area of the excavation so as to enable the person  
8 engaged in the excavation work to locate the facilities in advance of and during the excavation work.  
9 ~~The two working days provided for notice in this subsection and subsection 1 of section 319.026,~~  
10 ~~shall begin at 12:00 a.m. following the receipt of the request by the notification center.~~

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

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

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

27 5. Persons representing the excavator and the ~~owner or operator~~ underground facility owner shall  
28 meet on the site of excavation within two working days of a request by either person for such  
29 meeting for the purpose of clarifying markings ~~or the area of the planned excavation~~, or upon  
30 agreement of the excavator and the facility owner ~~or operator~~, such meeting may be an alternate  
31 means of providing the location of facilities by originally marking the approximate location of the  
32 facility at the time of the meeting.

33 6. If upon receipt of a notice of intent to excavate, an ~~owner or operator~~ underground facility  
34 owner determines that he or she neither owns ~~or nor~~ operates underground facilities in or near the  
35 area of excavation, the owner ~~or operator~~ shall within two working days after receipt of the notice,  
36 inform the excavator that ~~the owner or operator~~ he or she has no facilities located in the area of the  
37 proposed excavation. The ~~owner or operator of the~~ underground facility owner shall make notice to  
38 the excavator that no facilities are located in the area of excavation by contacting the excavator by  
39 any of the following methods:

40 (1) By calling the primary number of the excavator or by calling the telephone number of the  
41 responsible person as provided by the excavator under subdivision (4) of subsection 2 of section  
42 319.026;

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

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

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



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

2 (6) By verbally informing the excavator in person.

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

7 2.7. A record of the date and means of informing the excavator that no facilities were located by  
8 the ~~owner or operator~~ underground facility owner shall be included in the written records of the  
9 underground facility owner regarding each specific notice of excavation.

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

28 4.9. For purposes of subsections 1 and 6 of this section, a period of two working days begins at  
29 12:00 a.m. on the first working day following ~~when the request is made~~ the date when the  
30 notification center receives a notice of intent to excavate.

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

1 **Information regarding sewer service connections, when provided, how provided.**

2 **319.032.** 1. In addition to the other requirements of section 319.030, the response to a notice of  
3 intent to excavate received by a sewer system owner, when such owner has underground facilities  
4 located in the area of excavation identified in the notice and when the notice indicates that trenchless  
5 excavation methods will be used, shall include a determination of whether sewer service connections  
6 exist or are likely to exist in the area of the excavation.

7 2. If the sewer system owner determines that sewer service connections exist or are likely to exist  
8 in the area of the excavation identified in a notice of intent to excavate, the owner shall provide his  
9 or her best available information regarding the location of such connections to the excavator by any  
10 of the following methods:

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

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

14 (3) Delivering copies of the information to the excavator by facsimile or by other agreed-  
15 upon means; or

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

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

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

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

28 **319.035.** Obtaining information as required by sections 319.010 ~~to 319.050~~ through 319.070 does  
29 not excuse any person making any excavation from doing so in a careful and prudent manner.



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

2 **319.037.** 1. Notwithstanding any other provision of law to the contrary, the procedures and  
3 requirements set forth in this section shall apply on any site involving a marked pipeline facility or  
4 on the site of any excavation involving trenchless excavation, including directional drilling, where  
5 the approximate location of underground facilities has been marked in compliance with section  
6 319.030 and where any part of the walls of the intended bore are within the marked approximate  
7 location of the underground facility

8 2. The excavator shall not use power-driven equipment for trenchless excavation, including  
9 directional drilling, or for any other form of excavation on a site involving a marked pipeline facility,  
10 within the marked approximate location of such underground facilities until the excavator has made  
11 careful and prudent efforts to confirm the horizontal and vertical location thereof in the vicinity of  
12 the proposed excavation through methods appropriate to the geologic and weather conditions, and  
13 the nature of the facility, such as the use of electronic locating devices, hand digging, pot holing  
14 when practical, soft digging, vacuum methods, use of pressurized air or water, pneumatic hand tools  
15 or other noninvasive methods as such methods are developed. Such methods of confirming location  
16 shall not violate established safety practices. In situations involving trenchless excavations on a site  
17 containing a marked pipeline facility, the excavator shall excavate a hole over the approximate  
18 location of such facility and ensure that the hole is open during the boring process to enable the  
19 boring device to be visually observed by the excavator as it safely crosses the identified underground  
20 pipeline facility.

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

23 | 4. For excavations paralleling the underground facility, such the efforts to confirm the location of  
24 the facility shall be made at careful and prudent intervals. The excavator shall also make careful and  
25 prudent efforts by such means as are appropriate to the geologic and weather conditions and the  
26 nature of the facility, to confirm the horizontal and vertical location of the boring device during  
27 boring operations.

28 | 5. Notwithstanding the foregoing, the excavator shall not be required to confirm the horizontal or  
29 vertical location of the underground facilities if the excavator, using the methods described in this  
30 section, excavates a hole over the underground facilities to a depth two feet or more below the  
31 planned boring path and then carefully and prudently monitors the horizontal and vertical location of  
32 the boring device in a manner calculated to enable the device to be visually observed by the  
33 excavator as it crosses the entire width of the marked approximate location of the underground  
34 facilities.

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

36 **319.040.** 1. The failure of any excavator to give notice of proposed excavation activities as required  
37 by this chapter in accordance with the provisions of sections 319.022 through 319.070 shall be a  
38 rebuttable presumption of negligence on his or her part in the event that such failure shall cause  
39 injury, loss or damage. In addition to any penalties provided herein, liability under common law may  
40 apply.

41 | 2. The failure of an underground facility owner to make an attempt to inform an excavator of the  
42 approximate location of his or her facilities that are located in an area of excavation described in a  
43 notice of intent to excavate received by the underground facility owner, as required by section  
44 319.030, or the failure of an underground facility owner to be a notification center participant, as  
45 required by section 319.022, shall be a rebuttable presumption of negligence on the part of such



1 | owner in the event that such failure shall cause injury, loss or damage. In addition to any penalties  
2 | provided herein, liability under common law may apply.

1 **Safe and prudent excavation required.**

2 **319.041.** Nothing in the foregoing shall relieve an excavator from the obligation to excavate in a safe  
3 and prudent manner, nor shall it absolve an excavator from liability for damage to legally installed  
4 facilities.

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

6 **319.042.** Notwithstanding any provision of law to the contrary, nothing in this chapter shall abrogate  
7 any contractual provisions entered into between any railroad and any other party owning or  
8 operating an underground facility within the railroad's right-of-way. ~~For railroads regulated by the~~  
9 ~~Federal Railroad Administration, sections 319.015 to 319.050 shall not include any underground~~  
10 ~~facility owned or operated by a railroad on land which the railroad owns or any excavation done by a~~  
11 ~~railroad when such excavation is done entirely on land which the railroad owns.~~

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

4 **319.045.** 1. In the event of any damage or dislocation or disturbance of any underground facility in  
5 connection with any excavation, the person responsible for the excavation operations shall  
6 immediately notify the notification center. This subsection shall be deemed to also require reporting  
7 of any damage, dislocation, or disturbance to trace wires, encasements, ~~eathode~~ cathodic protection  
8 facilities, permanent above-ground stakes or markers, or other such items utilized for protection of  
9 the underground facility.

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

19 ~~3. Any person who violates in any material respect the provisions of section 319.022, 319.025,~~  
20 ~~319.026, 319.029, 319.030, 319.037, or this section or who willfully damages an underground~~  
21 ~~facility shall be liable to the state of Missouri for a civil penalty of up to ten thousand dollars for~~  
22 ~~each violation for each day such violation persists, except that the maximum penalty for violation of~~  
23 ~~the provisions of sections 319.010 to 319.050 shall not exceed five hundred thousand dollars for any~~  
24 ~~related series of violations. An action to recover such civil penalty may be brought by the attorney~~  
25 ~~general or a prosecuting attorney on behalf of the state of Missouri in any appropriate circuit court of~~  
26 ~~this state. Trial thereof shall be before the court, which shall consider the nature, circumstances and~~  
27 ~~gravity of the violation, and with respect to the person found to have committed the violation, the~~  
28 ~~degree of culpability, the absence or existence of prior violations, whether the violation was a willful~~  
29 ~~act, the effect on ability to continue to do business, any good faith in attempting to achieve~~  
30 ~~compliance, ability to pay the penalty, and such other matters as justice may require in determining~~  
31 ~~the amount of penalty imposed. (Moved to section 319.046 as subsections 1 & 2, with some~~  
32 ~~changes made.)~~

33 ~~4. The attorney general may bring an action in any appropriate circuit court of this state for~~  
34 ~~equitable relief to redress or restrain a violation by any person of any provision of sections 319.010~~  
35 ~~to 319.050. The court may grant such relief as is necessary or appropriate, including mandatory or~~  
36 ~~prohibitive injunctive relief, temporary or permanent. (Moved to section 319.046 as subsection 3,~~  
37 ~~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 other than pipeline operators already subject to the commission's jurisdiction for safety purposes, and is further authorized to refer any such violations found to the attorney general for prosecution under the provisions of subsection 2 and subsection 3 of this section. The attorney general will advise the commission within 90 days of whether it intends to pursue any remedies or action relating to the matters forwarded, together with an explanation of any decision not to pursue such remedies or action.

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 violations that directly involve damage to facilities owned by gas companies, gas pipelines and municipal gas systems subject to the public service commission's jurisdiction for safety purposes, and to 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.

1 **Exemptions from requirement to obtain information.**

2 **319.050.** The provisions of sections 319.025 and 319.026 shall not apply to any excavation ~~when~~  
3 ~~that is~~ necessary due to an emergency as defined in section 319.015. An excavation may proceed  
4 regarding such emergency, provided all reasonable precautions have been taken to protect the  
5 underground facilities. In any such case, the excavator shall give notification, substantially in  
6 compliance with section 319.026, as soon as practical, and upon being notified that an emergency  
7 exists, each underground facility owner in the area shall, within two hours after receiving such  
8 notice, provide markings or contact the excavator with any information immediately available to  
9 assist the excavator and shall inform the excavator if not able to mark within the two hours of when  
10 the underground facility will be marked at the site of the emergency. The excavator may be liable to  
11 ~~the owner or operator~~ **an underground facility owner** for costs directly associated with the locating of  
12 any such underground facility relating to a notification of an emergency that does not meet the  
13 definition of emergency as stated in section 319.015.

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

16 **319.055. 1.** Beginning January 1, 2012, each underground facility owner shall, and excavators and  
17 the notification center may, submit a report regarding each **damage event** to the Missouri Virtual  
18 Private DIRT (data information reporting tool) data base established by the public service  
19 commission with the Common Ground Alliance (CGA). Such reports are to consist of the most  
20 current version of the CGA's DIRT field form and are to be submitted within sixty (60) days after  
21 the reportable event occurs or is discovered.

22 **2.** Beginning sixty (60) days after the end of the first quarter of calendar year 2012, and no later  
23 than sixty (60) days after the end of each subsequent calendar year quarter, each underground facility  
24 owner shall submit to the Missouri Virtual Private DIRT data base a summary of the number and  
25 types of excavation notifications received from the notification center during the previous calendar  
26 year quarter, with such information to be submitted on a form provided by the public service  
27 commission.

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

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



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

3 **319.060.** 1. Effective January 1, 2012, underground facility owners subject to the public service  
4 commission's jurisdiction for any purpose, and pipeline operators subject to 49 CFR Part 192 and 49  
5 CFR Part 195 that are not otherwise subject to the commission's jurisdiction, shall implement or  
6 have in effect performance measures applicable to all persons performing underground facility  
7 locating for such owners, and shall also have in effect or implement a quality assurance program to  
8 ensure their facility locating performance measures are being met.

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

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

14 **319.070.** 1. Beginning January 1, 2012, underground facility owners shall install their underground  
15 facilities, including replacement facilities as well as new facilities, in a manner such that the  
16 facilities can be located through the use of electronic locating devices, or they shall document the  
17 location of such facilities on as-built drawings, or by the use of other means such as the state plane  
18 coordinates system, in a manner such that they can provide the approximate location of the facilities.

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