

## **Underground Facility Damage Prevention Project**

### List of Documents Included in This Document

- 1) Overview Paper re: Changes Needed to Chapter 319
- 2) Discussion Paper re: Federal Nine Elements for Damage Prevention Program
- 3) Preliminary Draft of Proposed Changes to Chapter 319

To go the individual documents, click on the "Bookmarks" tab on the upper left corner and then click on the bookmark for the individual document.

### **Discussion of Changes Needed to Improve Missouri's Damage Prevention Program**

Congress passed the Pipeline Inspection, Protection, Enforcement and Safety (PIPES) Act of 2006, and Section 60134 of the Act focused on the need to improve state-wide damage prevention programs. The Act prescribed nine program elements (9 Elements) that reflect processes and attributes characteristic of comprehensive and effective damage prevention programs, identified in those states with effective damage prevention programs that have successfully reduced the number of damages to underground facilities. Even though the Congressional mandate was contained in the reauthorization for the U.S. Department of Transportation-Pipeline and Hazardous Materials Safety Administration addressing pipeline safety, improvement of the state's overall damage prevention program was envisioned to better protect pipelines, as well as telecommunications, water, sewer, electric, and other vital underground facilities upon which we all rely.

Our challenge is the large "community" of damage prevention stakeholders – excavators (from heavy/highway contractors, to utilities as excavators, to small plumbers/backhoe operators, to individual homeowners), locators, operators of underground facilities (pipelines, electric, water, sewer, telecommunications, cable, municipally-owned, investor-owned, etc.), the One-Call Center, emergency responders, MoDOT, railroads, local governments, and the general public. The insight and cooperation of the stakeholders is essential to bring meaningful change to the damage prevention process and to be able to implement the different types of changes needed (statutes, regulations, One Call, training, education, etc.).

Cooperation is critical to accomplishing the goals. Collaborative efforts can build support and partnership, and make stakeholders aware of the "bigger picture" and the problems involved, while giving everyone a better perspective of the overall process. Therefore, we recommend involving all the stakeholders in the "change" process.

It is important to have an agency "in-charge" and responsible for damage prevention to advocate for the changes needed, to help facilitate efforts to make those changes, to assure compliance with the damage prevention regulations, and to monitor overall program effectiveness. It is vital that the agency given this responsibility be interested in, will push for, and facilitate continuous improvements in the state's damage prevention program, not just assess civil penalties. The penalty process can be used to train, educate, improve safety and, if necessary, assess penalties as needed to achieve that end.

Internally, the first step at the Commission would be to place a higher emphasis on damage prevention and following Chapter 319 for all the utilities we regulate. Trying to improve the damage prevention program in Missouri should be approached as an effort to reduce damage to all underground facilities, not just pipelines. Careless excavations and excavators need to be reduced, regardless of the underground facility damaged. Initially, I recommend dedicating a Gas Safety/Engineering Staff member to focus on damage prevention efforts and activities discussed below. As the damage prevention program in Missouri matures, additional Staff members (not necessarily in Gas Safety/Engineering) may be needed for investigations, enforcement activities, education, and training.

A comprehensive damage prevention program that includes effective, fair, and timely enforcement of all the provisions of the damage prevention statute has significantly lowered the risk of excavation damage and the potential for incidents in states such as Virginia and Georgia. A lot of preparatory work is needed. The primary goal would be to discuss a method for effective, fair, and timely enforcement of the damage prevention laws. To achieve that goal, we will need workshops and/or roundtables that include all stakeholders involved in damage prevention to advocate our position and foster cooperation and through Staff participation in the Missouri Common Ground regional damage prevention councils. (Several Missouri Common Ground regional damage prevention councils were formed to promote communication among those people who are responsible for protecting underground facilities on a more local level.)

In laying the foundation toward our goal of effective enforcement, we would accomplish the other concepts found in the 9 Elements along the way. Effective enforcement is a big piece of an effective damage prevention program, but it is only one of the 9 Elements that need to be addressed in order to continually improve the damage process in Missouri. While working toward creating a framework for effective enforcement, we would: foster support and partnership of all stakeholders in all phases of the program; encourage/improve the involvement of stakeholders in the process; enhance communication between operators, excavators and others; better educate the stakeholders about damage prevention; make everyone more aware of the process, the potential dangers and the civil penalty consequences if the rules are not followed; and collect and analyze data on excavation damage to underground facilities to evaluate/improve program effectiveness. Also, during the process, other revisions to the rule could be identified, such as marking of sewer laterals, requiring all newly installed non-metallic underground facilities to be locatable, just to name a few.

Currently, enforcement of Chapter 319, through civil penalties, is under the authority of the Attorney General's Office or a prosecuting attorney on behalf of the state of Missouri in any appropriate circuit court of the State. To our knowledge, this authority has never been exercised. We believe there needs to be a complete change in the manner the law is enforced. In Georgia for example, the Georgia PSC is authorized to enforce the damage prevention statutes and promulgate rules as necessary to implement enforcement. To assist in accomplishing this enforcement, a damage prevention advisory committee was established and members were appointed by the Governor consisting of the various stakeholders whose charge it is to assist the Commission in the enforcement, make recommendations to the Commission regarding rules and regulations, review reported violations and make recommendations to the Commission for penalties and/or other action, such as mandatory training. We believe this a good approach, but would take changes to the statute and the whole approach to enforcement. We believe this approach would be very effective.

Creating a damage prevention advisory group has many other advantages. First, it sends a message to all the stakeholders that enforcement of the damage prevention program is a priority and shows a commitment to fair enforcement. Second, a damage prevention advisory committee appointed by the Governor shows a high level of commitment in Missouri to improve the damage prevention process and reduce damage to all underground facilities. Finally, a damage prevention advisory committee would have the authority to determine when civil penalties were appropriate, but could also require training and/or education in lieu of fines.

As part of the process we would need to determine the specific data that would need to be collected to be able to identify and address problem areas, direct/target education and training needs to better allocate resources, and measure the progress of the efforts. As an example, the Staff recently started requesting that natural gas operators submit the number of times their pipelines were damaged by excavation during the calendar year. Until we started collecting this information we did not realize the magnitude of the damages. The average number of third-party excavation damages for CY 2007 and CY 2008 was 2,765 each year for only the natural gas pipeline systems we regulate (an average of 230 damages each month). We need to collect and analyze the types of excavation damage for all underground facilities to better direct our efforts.

#### BRIEF SUMMARY OF ACTIONS RECOMMENDED

- Place a greater emphasis on damage prevention efforts within the Staff for all utilities regulated by the Commission.
- Dedicate a Gas Safety/Engineering Staff member to focus on damage prevention program efforts and activities.
- Consider additional employee(s) to focus on damage prevention efforts (for education, training, investigations, adjudication, and working with Missouri One Call) for other utilities as damage prevention program matures.
- Help facilitate the several existing Missouri Common Ground damage prevention councils and participate in their meetings.
- Plan, schedule, and conduct stakeholder roundtables/workshops.
- Require reporting of all third-party excavation damages for all underground facility and the creation of a data base to store/analyze data.
- Draft legislation to change the responsibility for the authority for enforcement of damage prevention statutes from the Attorney General's Office to the Commission, including the creation of a damage prevention advisory council. Legislation would also include other revisions to the statute that are deemed appropriate/necessary.

## **DAMAGE PREVENTION PROGRAM ELEMENTS**

Pipeline Inspection, Protection, Enforcement, and Safety Act of 2006  
(PIPES Act of 2006) (49 USC 60101)

**NOTE: For purposes of this presentation, some of the elements have been combined. The wording of each element contained in the PIPES Act of 2006 is in black font, the Staff's discussions concerning the elements are in red font, and the Staff's comments regarding implementation actions are in red/bold/italics font.**

An effective damage prevention program includes the following elements:

(1) Participation by operators, excavators, and other stakeholders in the development and implementation of methods for *establishing and maintaining effective communications between stakeholders from receipt of an excavation notification until successful completion of the excavation*, as appropriate. (emphasis added)

Current law includes provisions regarding communications between excavators and affected facility owners under certain circumstances. Examples of such communications are when clarification of an excavation location/site is needed or when an on-site meeting is deemed necessary, and when a facility owner does not have facilities in the area of excavation identified in a notice of intent to excavate. However, the current law does not include provisions requiring underground facility owners to notify excavators that the owners' facilities in the area of excavation have been marked, nor does it include provisions requiring excavators to notify affected facility owners that an excavation project has been completed. Further, the current one-call process established by the notification center does not address either of these matters.

To meet the goal of having effective communications "*from receipt of an excavation notification until successful completion of the excavation*", the law could be changed to require facility owners to notify excavators that their facilities in the area of the planned excavation have been marked, in a manner similar to how they notify excavators that they have no facilities in the area of the excavation, *and* to require that excavators provide a "project completion notice" to the notification center upon completion of the planned excavation activities with the notification center then transmitting that notice to the affected facility owners.

In addition to the above-noted changes, the law could also be changed to provide for a maximum "ticket life" for excavation notifications, as has been done in other states such as Georgia, Texas and Virginia. With a "ticket life" for excavation notifications, facility owners could reasonably assume that the planned excavation activities have been completed if a follow-up locate request for the project is not submitted to the notification center, even if the excavator does not submit a project completion notice to the notification center. However, the establishment of a "ticket life" for excavation notifications should also include establishment of a definition for "extended projects" to which the normal "ticket life" would not apply, so long as the original facility markings continue to be visible and usable.

Development of changes to the current law and one-call process such as those discussed above would clearly require the participation of representatives of the notification center, facility owners, excavators, contract locators, and other appropriate parties such as the Public Service Commission (Commission).

*Implementation of the noted changes would require legislation, as well as process changes for the notification center. Also, the best results in meeting the goals of this element would more likely be achieved by having a Commission employee dedicated to participate in the required legislative efforts and in the development of the notification center process changes.*

- (2) A process for fostering and ensuring the support and partnership of stakeholders, including excavators, operators, locators, designers, and local government in all phases of the program.
- (5) A process for fostering and ensuring active participation by all stakeholders in public education for damage prevention activities.

The goals of these elements could logically be met through regularly scheduled meetings of the Missouri Common Ground's (MCG) regional councils and Missouri One Call System's (MOCS) regularly scheduled excavator training sessions, and through collaborative activities involving facility owner organizations, excavator/contractor organizations, and contract locator organizations.

Such organizations would include the following: facility owner organizations such as MANGO (association of natural gas companies), PAM (association of pipeline companies), MEDA (association of energy companies and Missouri-American Water Company), MCTA (cable telecommunications association), MTIA (telecommunications industry association), MEC (electric co-operatives), MPUA/MAMU (public/municipal utilities associations) and MRWA (rural water association); excavator/contractor organizations such as AGC, SITE, LICA and Builders Association; and contract locator associations such as NULCA.

*The best results in meeting the goals of these two elements would more likely be achieved by having a Commission employee dedicated to participate in the noted efforts. Also, monies to cover the costs of the above-noted activities may be available through a state damage prevention grant from the federal Department of Transportation. To be considered for such a grant, a cooperative effort between the Commission staff, members of the MCG, and other stakeholders would be required for the development of a clearly defined project, for the preparation/submission of a grant application, and for implementation of the project.*

- (3) A process for reviewing the adequacy of a pipeline operator's internal performance measures regarding persons performing locating services and quality assurance programs.

Though not specifically stated, meeting the goals of this element would logically require that some "entity" have the authority to establish basic standards for the pipeline operators' performance measures and quality assurance (QA) programs. This entity would also need to have the authority to review the adequacy of the pipeline operators' performance measures and QA programs, and to require that improvements be made to the performance measures and QA programs to ensure they are in compliance with the established standards.

The Commission has jurisdiction over intrastate natural gas pipeline operators, and presumably could promulgate rules to cover these matters, under its existing general rulemaking authority, that would be applicable to those operators; however, it does not have jurisdiction over interstate natural gas or hazardous liquid pipeline operators. Additionally, even though it is not specifically addressed in this element, to improve the overall accuracy of locating all types of underground facilities any established standards applicable to pipeline operators should also be made applicable to all underground facility owners subject to the Commission's jurisdiction. Here also, the Commission presumably could promulgate rules to do this under its existing general rulemaking authority.

*Implementation of this element would require a rulemaking applicable to intrastate natural gas pipeline operators, and would also require legislation and a rulemaking applicable to interstate natural gas and hazardous liquid pipeline operators, if such actions are permissible. Achieving the broader goal of making any established standards applicable to other types of underground facility owners subject to the Commission's jurisdiction would require a separate rulemaking or expansion of the rulemaking applicable to intrastate natural gas pipeline operators. Also, the best results in meeting the goals of this element would more likely be achieved by having a Commission employee dedicated to participate in the required rulemaking and legislative efforts.*

(4) Participation by operators, excavators, and other stakeholders in the development and implementation of effective employee training programs to ensure that operators, the one-call center, the enforcing agency, and the excavators have partnered to design and implement training for the employees of operators, excavators, and locators.

One way to meet the goals set out in this element would be implementation of Internet-based excavator, facility owner and locator training modules, with the modules being developed based upon input from the appropriate stakeholders. MOCS has recently developed an excavator training module, and it is Staff's understanding that it is currently working on other such training modules.

The MCG regional councils, the MOCS excavator training sessions, the MOCS Operating Committee, the MOCS staff, the Commission staff, representatives of excavator organizations, and representatives of contract locating companies would be logical sources of the input necessary for the development and refinement of the training modules.

Also, this is the first of the elements that specifically makes reference to an "enforcing agency." Additional discussions of "enforcement" matters are included under elements (6), (7) & (9).

*The best results in meeting the goals of this element would more likely be achieved by having a Commission employee dedicated to participate in the development of the noted training modules. Also, monies to cover the cost of developing these types of training modules may be available through a state damage prevention grant from the federal Department of Transportation. To be considered for such a grant, a cooperative effort between the Commission staff, MOCS staff, and other stakeholders would be required for the development of a clearly defined project, for the preparation/submission of a grant application, and for production/implementation of the training modules.*

(6) A process for resolving disputes that defines the State authority's role as a partner and facilitator to resolve issues.

(7) Enforcement of State damage prevention laws and regulations for all aspects of the damage prevention process, including public education, and the use of civil penalties for violations assessable by the appropriate State authority.

These two elements clearly contemplate that there will be some State "authority" that has the ability to facilitate the resolution of issues related to the applicable laws and regulations, the ability to enforce the applicable laws and regulations, and the ability to assess civil penalties for violations of the applicable laws and regulations.

Current state law does not provide for any type of dispute resolution, such as some type of arbitration procedure or a process such as the "conference, conciliation and persuasion" process set out in the Department of Natural Resources' regulations at 10 CSR 20-3.010.

Current state law does provide for civil penalty liability for violations of certain sections of the damage prevention law (but not the entire law), and also provides authority for the attorney general, or a prosecuting attorney, to take actions in a circuit court to collect the stated penalties (see Section 319.045.3.) However, the application of the penalty collection authority has historically been nonexistent. Also, the penalties provided for are not "assessable" administrative penalties as is apparently contemplated by element (7).

Current state law also provides the attorney general with the authority to seek "equitable relief to redress or restrain" violations of the law, and provides that the court where the action is taken "may grant such relief as is necessary or appropriate, including mandatory or prohibitive injunctive relief, temporary or permanent" (see Section 319.045.4). Here also, however, the application of this authority has historically been nonexistent.

From a practical standpoint, meaningful actions to meet the goals set out in these elements will likely only occur if a specific state agency, such as the Commission, is given the authority to resolve disputes and is given enforcement authority similar to that which currently lies with the attorney general. The Commission is considered a logical state agency to be given the authority for dispute resolution and enforcement because it deals daily with utility related matters and has pipeline safety jurisdiction for intrastate natural gas pipelines, and because it already has processes in place that could relatively easily be adapted to carry out such authority. For example, the Commission has a formal complaint process, procedures for alternative dispute resolution, and arbitration procedures that apply to certain telecommunications issues and to small company rate increase requests.

To assist the Commission with carrying out this dispute resolution and enforcement authority, the adoption of an advisory committee process that has worked well in other states (such as Georgia & Virginia) should also be given consideration. This process would include the formation of an independent stakeholder review board, with the board being given the authority to arbitrate/mediate and resolve disputes, or to at least make preliminary/advisory findings regarding disputes for referral to the Commission for final resolution, and to consider and make preliminary/advisory findings regarding compliance-related matters for referral to the Commission for final resolution and enforcement actions.

***Implementation of the noted changes would require legislation and would also most likely require rulemakings. Also, the best results in meeting the goals of these two elements would more likely be achieved by having a Commission employee dedicated to participate in the required legislative and rulemaking efforts.***

In addition to the above, it needs to be noted that the federal Pipeline and Hazardous Materials Safety Administration (PHMSA) has recently announced its plans to publish an Advanced Notice of Proposed Rulemaking (ANPRM) regarding federal enforcement of State damage prevention laws.

The basis for this ANPRM is the fact that the PIPES Act of 2006 gives PHMSA limited "backstop" authority to conduct civil enforcement of State damage prevention laws – if a State's enforcement programs are found to be inadequate. However, PHMSA must first establish procedures for determining that a State's enforcement programs are inadequate (through a rulemaking proceeding), and must then follow those procedures to determine that a State's enforcement programs are inadequate.



The purpose of the ANPRM will be to solicit comments on defining the procedures PHMSA will use to determine the adequacy of the States' enforcement programs. As recently stated, PHMSA's goal in this process is to minimize the need to declare State damage prevention enforcement programs inadequate by working with States to strengthen their own enforcement programs. PHMSA makes State Damage Prevention grants to States for this purpose and for implementation of the nine elements of effective damage prevention programs listed in the PIPES Act. As also recently stated, PHMSA intends to take a balanced approach in the development of the enforcement regulation and will continue to work with its stakeholders to adhere to the principles of fairness and shared responsibility.

According to recent information, the Staff expected the referenced ANPRM to be published in late June 2009, but a check of the PHMSA rulemaking website on September 15th revealed that the ANPRM has not yet been published.

- (8) A process for fostering and promoting the use, by all appropriate stakeholders, of improving technologies that may enhance communications, underground pipeline locating capability, and gathering and analyzing information about the accuracy and effectiveness of locating programs.
- (9) A process for review and analysis of the effectiveness of each program element, including a means for implementing improvements identified by such program reviews.

The most obvious manner in which to meet the goals set out in these elements would be the formation of appropriate stakeholder groups (one related to each element), with those groups operating in a manner similar to the Operating Committee of MOCS. These stakeholder groups would logically be made up of representatives from facility owners, contractors and excavators, the notification center, contract locators, and other parties such as the Commission.

***The best results in meeting the goals of these two elements would more likely be achieved by having a Commission employee dedicated to participate in the stakeholder groups.***

In addition to the above elements from the PIPES Act of 2006, a key aspect of a successful damage prevention program is the collection and analysis of data related to the number and causes of excavation-related damages to underground facilities, with the analysis of the data then being used as the basis for enhancements to the overall program, particularly in the areas of educational and enforcement efforts related to the program.

Through its natural gas pipeline safety program, the Commission currently collects information from its jurisdictional natural gas operators regarding the number and causes of excavation-related facility damages they experience each calendar year. This information is provided as a part of the pipeline safety annual report those operators submit; however, this annual report is currently submitted on a voluntary basis and not in response to a Commission rule.

Under its existing general rulemaking authority, the Commission presumably has the ability to promulgate a rule regarding the collection of the above-referenced data that would be applicable to all of the various types of underground facility owners over which it currently has jurisdiction, although it would likely be better for the current law to be changed to specifically provide the Commission with such authority. Additionally, applying such a rule to underground facility owners that are not subject to Commission jurisdiction would clearly require a change to the current law.

An alternative to a rulemaking regarding the collection of the subject data from underground facility owners currently subject to the Commission's jurisdiction would be to modify the annual report forms that those facility owners must currently submit to the Commission such that the data would be included as a part of those annual reports.

*The best results in carrying out any/all of the above-noted efforts (modifying annual report forms, rulemaking efforts, and legislative efforts to change the current law) would more likely be achieved by having a Commission employee dedicated to participate in the required efforts.*

## Chapter 319 Proposed Changes – 10/08/09

### Changes Shown in Track Changes Format

~~Red/Strikethrough Font~~ = Deletions

Blue/Underline Font = Additions

Light Green Shading

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

Light Yellow Shading

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

Tan Shading

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

### 1 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) "Design request", a request from any person for facility location information for design  
12 purposes only;

13 (3) "Emergency", either:

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

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

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

1 earth on the ground in connection with other excavation operations at the same site shall not be  
2 deemed separate instances of excavation. For railroads regulated by the Federal Railroad  
3 Administration, "excavation" shall not include any excavating done by a railroad when such  
4 excavating is done entirely on land that the railroad owns or on which the railroad operates, or in the  
5 event of an emergency, excavating done by a railroad on adjacent land; *(Combination of language*  
6 *from definition of "underground facility" and language currently in Section 319.042.)*

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

9 (6) "Extended excavation project", an excavation that will clearly not be completed within fifteen  
10 working days after the expected start date included with a notice of intent to excavate provided to the  
11 notification center, as designated by the excavator providing the notice when the notice is provided;  
12 *(Addition of this section related to federal element #1, and this matter is also addressed in Georgia*  
13 *laws/rules.)*

14 ~~(6)~~ (7) "Marking", the use of paint, flags, stakes, or other clearly identifiable materials to show  
15 the field location of underground facilities, or the area of proposed excavation, in accordance with  
16 the color code standard of the American Public Works Association. Unless otherwise provided by  
17 the American Public Works Association, the following color scheme shall be used: blue for potable  
18 water; purple for reclaimed water, irrigation and slurry lines; green for sewers and drain lines; red  
19 for electric, power lines, cables, conduit and lighting cables; orange for communications, including  
20 telephone, cable television, alarm or signal lines, cable or conduit; yellow for gas, oil, steam,  
21 petroleum or gaseous materials; white for proposed excavation; pink for temporary marking of  
22 construction project site features such as centerline and top of slope and toe of slope;

23 ~~(7)~~ (8) "Notification center", a statewide organization operating twenty-four hours a day, three  
24 hundred sixty-five days a year on a not-for-profit basis, supported by its participants, or by more  
25 than one operator of underground facilities, having as its principal purpose the statewide receipt and  
26 dissemination to participating ~~owners and operators of underground facilities~~ underground facility  
27 owners of information concerning intended excavation activities in the area where such owners and  
28 operators have underground facilities, and open to participation by any and all such owners and  
29 operators on a fair and uniform basis. Such notification center shall be governed by a board of  
30 directors elected by the membership and composed of representatives from each general membership  
31 group, provided that one of the board members shall be a representative of the state highways and  
32 transportation commission so long as the commission is a participant in the notification center;

33 ~~(8)~~ (9) "Notification center participant", an underground facility owner who is a member and  
34 participant in the notification center;

35 ~~(9)~~ (10) "Permitted project", a project for which a permit for the work to be performed is required  
36 to be issued by a local, state or federal agency and, as a prerequisite to receiving such permit, the  
37 applicant is required to notify all underground facility owners in the area of the work for purposes of  
38 identifying the location of existing underground facilities;

1 ~~(40)~~(11) "Person", any individual, firm, joint venture, partnership, corporation, association,  
2 cooperative, municipality, political subdivision, governmental unit, department or agency and shall  
3 include a notification center and any trustee, receiver, assignee or personal representative thereof;

4 ~~(44)~~(12) "Pipeline facility" includes, without limitation, new and existing pipe, rights-of-way,  
5 and any equipment, facility, or building used or intended for use in the transportation of gas or the  
6 treatment of gas, or used or intended for use in the transportation of hazardous liquids including  
7 petroleum, or petroleum products;

8 ~~(42)~~(13) "Pre-engineered project", a project which is approved by an agency or political  
9 subdivision of the state and for which the agency or political subdivision responsible for the project,  
10 as part of its engineering and contract procedures, holds a meeting prior to the commencement of  
11 any construction work on such project and in such meeting all persons determined by the agency or  
12 political subdivision to have underground facilities located within the excavation area of the project  
13 are invited to attend and given an opportunity to verify or inform any agency or political subdivision  
14 of the location of their underground facilities, if any, within the excavation area and where the  
15 location of all known underground facilities are duly located or noted on the engineering drawing as  
16 specifications for the project;

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

19 ~~(43)~~(15) "State plane coordinates", a system of locating a point on a flat plane developed by the  
20 National Oceanic and Atmospheric Administration and utilized by state agencies, local governments,  
21 and other persons to designate the site of a construction project;

22 ~~(44)~~(16) "Trenchless excavation", horizontal excavation parallel to the surface of the earth which  
23 does not use trenching or vertical digging as the primary means of excavation, including but not  
24 limited to directional boring, tunneling, ~~or~~ augering, or plowing-in cable, conduit or pipe; ***(This***  
25 ***matter is addressed somewhat by Indiana, Texas & Virginia laws/rules, and is also related to a***  
26 ***need for clarification relayed to PSC Staff by certain underground facility owners.)***

27 ~~(45)~~(17) "Underground facility", any item of personal property which shall be buried or placed  
28 below ground for use in connection with the storage or conveyance of water, storm drainage,  
29 sewage, telecommunications service, cable television service, electricity, oil, gas, hazardous liquids  
30 or other substances, and shall include but not be limited to pipes, sewers, conduits, cables, valves,  
31 lines, wires, manholes, attachments, or appurtenances, and those portions of pylons or other supports  
32 below ground that are within any public or private street, road or alley, right-of-way dedicated to the  
33 public use or utility easement of record, or prescriptive easement. If gas distribution lines or electric  
34 lines, telecommunications facilities, cable television facilities, water service lines, water system,  
35 storm drainage or sewer system lines, other than those used for vehicular traffic control, lighting of  
36 streets and highways and communications for emergency response, are located on private property  
37 and are owned solely by the owner or owners of such private property, such lines or facilities  
38 receiving service shall not be considered underground facilities for purposes of this chapter, except

at locations where they cross or lie within an easement or right-of-way dedicated to public use or owned by a person other than the owner of the private property. Water and sanitary sewer lines providing service to private property that are owned solely by the owner of such property shall not be considered underground facilities at any location. Water, storm drainage, cross road drainage, or sewer lines owned by the state highways and transportation commission shall not be considered underground facilities at any location. For railroads regulated by the Federal Railroad Administration, "underground facility" ~~as used in sections 319.015 to 319.050~~ shall not include any ~~excavating done~~ underground facility owned or operated by a railroad ~~when such excavating is done entirely on land which the railroad owns or on which the railroad operates, or in the event of emergency, on adjacent land~~ if the facility is located on land that the railroad owns or on land on which the railroad operates; *(Reference to "excavating" covered by proposed change to definition of "excavation". Proposed language partially based on language currently in Section 319.042.)*

~~(16)~~(18) "Underground facility owner", any person who owns or operates underground facilities as defined by this section;

~~(17)~~(19) "Working day", every day, except Saturday, Sunday or a legally declared ~~local~~, state or federal holiday. *(Local holidays not included in laws for Georgia, Indiana, Texas or Virginia, and are also not generally well known.)*

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

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

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

**319.022.** 1. Any person, except a railroad regulated by the Federal Railroad Administration, who installs or otherwise owns or operates an underground facility shall become a 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~~ underground facility owners within the state shall maintain participation in a notification center.

2. 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 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 that~~ 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 installing, acquiring or operating such underground facility. Beginning January 1, 2003, all ~~owners and operators of underground facilities which are~~ underground facility



1 owners that have facilities located in a county of the first classification or second classification  
2 within the state shall maintain participation in the notification center except as provided otherwise in  
3 section 319.016.

4 3. All ~~owners and operators of underground facilities which are~~ underground facility owners that  
5 have facilities located in a county of the third classification or fourth classification within the state  
6 who are not members of a notification center on August 28, 2001, shall become participants in the  
7 notification center prior to January 1, 2005. Any person who installs or otherwise becomes an owner  
8 or operator of an underground facility ~~which that~~ is located within a county of the third classification  
9 or fourth classification on or after January 1, 2005, shall become a participant in the notification  
10 center within thirty days of installing acquiring or operating such underground facility. Beginning  
11 January 1, 2005, all ~~owners and operators of underground facilities~~ underground facility owners  
12 which are located in a county of the third classification or fourth classification within the state shall  
13 maintain participation in the notification center except as provided otherwise in section 319.016.

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

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

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

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

26 **319.024.** 1. Every ~~person owning or operating an underground facility~~ underground facility owner  
27 shall assist excavators and the general public in determining the location of underground facilities  
28 before excavation activities are begun, or as may be required by ~~subsection 6~~ subsection 7 of section  
29 319.026 or ~~subsection 1~~ subsection 5 of section 319.030 after an excavation has commenced.  
30 Methods of informing the public and excavators of the means of obtaining such information may,  
31 but need not, include advertising, including advertising in periodicals of general circulation or trade  
32 publications, information provided to professional or trade associations which routinely provide  
33 information to excavators or design professionals, or sponsoring meetings of excavators and design  
34 professionals for such purposes. Information provided by the notification center on behalf of ~~persons~~  
35 ~~owning or operating an underground facility~~ underground facility owners shall be deemed ~~in~~  
36 compliance with this section by such ~~persons~~ owners. Every ~~person owning or operating~~  
37 ~~underground facilities who~~ underground facility owner that has a written policy in determining the

1 location of its underground facilities shall make available a copy of said policy to any notification  
2 center participant or excavator upon request.

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

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

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

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

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

22 **319.025.** 1. Except as provided in ~~subsection 3~~ subsection 8 of section 319.030 and in section  
23 319.050, a person shall not make or begin any excavation in any public street, road or alley, right-of-  
24 way dedicated to the public use or utility easement of record or within any private street or private  
25 property without first giving notice to the notification center and obtaining information concerning  
26 the possible location of any underground facilities which may be affected by said excavation from  
27 underground facility owners whose names appear on the current list of participants in the notification  
28 center and who were communicated to the excavator as notification center participants who would  
29 be informed of the excavation notice. Prior to January 1, 2003, a person shall not make or begin any  
30 excavation pursuant to this subsection without also making notice to ~~owners or operators of~~  
31 ~~underground facilities which~~ underground facility owners that do not participate in a notification  
32 center and whose name appears on the current list of the recorder of deeds in and for the county in  
33 which the excavation is to occur. Beginning January 1, 2003, notice to the notification center of  
34 proposed excavation shall be deemed notice to all ~~owners and operators of underground facilities~~  
35 underground facility owners. The notice referred to in this section shall comply with the provisions  
36 of section 319.026. As part of the process to request the locating of underground facilities and  
37 having them properly marked, the notification center shall ask excavators to identify whether or not



1 the proposed excavation will be on a public right-of-way or easement dedicated to public use for  
2 vehicular traffic.

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

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

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

19 5. Notwithstanding the provisions of this section to the contrary, a person shall not make or begin  
20 any excavation in any state highway, or on the right-of-way of any state highway, without first  
21 obtaining a permit from the state highways and transportation commission pursuant to section  
22 227.240, RSMo, provided however, the provisions of this subsection shall not apply to railroad right-  
23 of-way owned or operated by a railroad.

24 **Notice of ~~excavator~~ intent to excavate, form of - - written record maintained - -**  
25 **incorrect location of facility, duty of excavator - - visible and usable markings necessary**  
26 **to continue work - - notice of completion of excavation.**

27 **319.026.** 1. An excavator shall serve notice of intent to excavate to the notification center by toll-free  
28 telephone number operated on a twenty-four hour per-day, seven day per-week basis or by facsimile  
29 or by completing notice via the Internet at least two working days, but not more than ten working  
30 days, before the expected date of commencing the excavation activity. The notification center  
31 receiving such notice shall inform the excavator of all notification center participants to whom such  
32 notice will be transmitted and shall promptly transmit all details of such notice provided under  
33 subsection 2 of this section to every notification center participant in the area of excavation.

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

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

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

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

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

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

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

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

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

27 3. The notification center receiving such notice shall solicit all information required by  
28 subsection 2 of this section and shall require the excavator to provide all such information before  
29 notice by the excavator is deemed to be completed pursuant to sections 319.015 ~~to 319.050~~ through  
30 319.070. The notification center shall transmit all details of such notice as required by this section.

31 4. A record of each notice of intent to excavate shall be maintained by the notification center or,  
32 prior to January 1, 2003, by the nonmember underground facility owner ~~or operator~~ receiving direct  
33 notifications for a period of five years. The record shall include the date the notice was received and  
34 all information required by subsection 2 of this section which was provided by the excavator and a  
35 record of the underground facility owners notified by the notification center. If the notification  
36 center creates a record of the notice by telephonic recording, such record of the original notice shall  
37 be maintained for one year from the date of receipt. Records of notices to excavate maintained by the  
38 notification center in electronic form shall be deemed to be records under this subsection. Persons

1 holding records of notices of intent to excavate and records of information provided to the excavator  
2 by the notification center or ~~owner or operator of the facility~~ an underground facility owner, shall  
3 make copies of such records available for a reasonable copying fee upon the request of the ~~owner or~~  
4 ~~operator of the underground facilities~~ affected underground facility owners or the excavator filing  
5 the notice.

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

15 6. When markings have been provided in response to a notice of intent to excavate, excavators  
16 may commence or continue to work within the area described in the notice for a period not  
17 exceeding fifteen working days after the expected start date provided with the notice so long as the  
18 markings continue to be visible and usable. However, if the excavation that is the subject of the  
19 notice meets the definition of an extended excavation project, and was designated as such when the  
20 notice was submitted to the notification center, then the work may continue for up to thirty working  
21 days so long as the markings ~~are~~ continue to be visible and usable. *(Additions/changes related to*  
22 *federal element #1, and this matter is also addressed somewhat in Georgia, Texas & Virginia*  
23 *laws/rules.)*

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

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

35 9. Upon completion of the excavation that is the subject of a notice of intent to excavate  
36 previously submitted to the notification center, the involved excavator shall submit a project  
37 completion notice to the notification center, including a reference to the locate request ticket number  
38 provided by the notification center for the original notice of intent to excavate. Upon receipt of an

excavator's project completion notice, the notification center shall transmit a project completion ticket to the notification center participants to which it transmitted a locate request ticket for the original notice of intent to excavate. *(Addition of this Subsection related to federal element #1.)*

10. For purposes of subsection 1 of this section, the two working days to ten working days notice period begins at 12:00 a.m. on the first working day following the date when the notification center receives a notice of intent to excavate. *(This is currently covered in Subsection 1 of Section 319.030.)*

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

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

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

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

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

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

**319.028.** 1. On or after January 1, 2003, an ~~owner or operator of underground facilities~~ underground facility owner, who has become a participant in the notification center as required in section 319.022, will maintain participation in the notification center, unless it is determined that the inaccuracy rate of the notification center reaches fifteen percent. The accuracy rate shall be determined by the number of notifications of an excavation; where the ~~owner or operator~~ underground facility owner has no underground facilities at the excavation site, as described in the excavators' notifications, divided by the total number of notifications ~~to an owner or operator of~~

~~underground facilities~~ transmitted to the underground facility owner during any twelve-month period.

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

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

#### **Notification required prior to excavation.**

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

#### **Notification of underground facility, when, how - - failure to provide notice of location, effect - - notice of completion of facility marking.**

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

2. If the information available to ~~the owner or operator of a pipeline facility or an underground electric or communications cable~~ an underground facility owner discloses that valves, vaults or other appurtenances are located in or near the area of excavation, the owner ~~or operator~~ shall either inform the excavator of the approximate location of such appurtenances at the same time and in the same manner as the approximate location of the remainder of the facility is provided, or shall at such time



1 inform the excavator that appurtenances exist in the area and provide a telephone number through  
2 which the excavator may contact a representative of the owner ~~or operator~~ who will meet at the site  
3 ~~within one on the next~~ working day after a request from the excavator and at such meeting furnish  
4 the excavator with the available information about the location and nature of such appurtenances.

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

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

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

18 6. If upon receipt of a notice of intent to excavate, an ~~owner or operator~~ underground facility  
19 owner determines that he or she neither owns ~~or nor~~ operates underground facilities in or near the  
20 area of excavation, the owner ~~or operator~~ shall within two working days after receipt of the notice,  
21 inform the excavator that ~~the owner or operator~~ he or she has no facilities located in the area of the  
22 proposed excavation. The ~~owner or operator of the~~ underground facility owner shall make notice to  
23 the excavator that no facilities are located in the area of excavation by contacting the excavator by  
24 any of the following methods:

25 (1) By calling the primary number of the excavator or by calling the telephone number of the  
26 responsible person as provided by the excavator under subdivision (4) of subsection 2 of section  
27 319.026;

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

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

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

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

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

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

1 2.7. A record of the date and means of informing the excavator that no facilities were located by  
2 the ~~owner or operator~~ underground facility owner shall be included in the written records of the  
3 underground facility owner regarding each specific notice of excavation.

4 3.8. In the event that ~~a person owning or operating~~ an underground facility owner fails to comply  
5 with the provisions of subsection 1 or subsection 6 of this section after notice given by an excavator  
6 in compliance with section 319.026, or if an excavator observes clear evidence of the presence of an  
7 unmarked underground facility at the excavation site, the excavator, prior to commencing the  
8 excavation, shall give a second notice to the notification center as required by section 319.026  
9 stating that there has been no response to the original notice given under section 319.026. After the  
10 receipt of the notice stating there has been "no response", the ~~owner or operator of an~~ underground  
11 facility owner shall, within two hours of the receipt of such notice, mark its facilities or contact and  
12 inform the excavator of when the facilities will be marked; provided, however, that for "no response"  
13 notices made to the notification center by 2:00 p.m. on a working day, the markings shall be  
14 completed on the working day the notice is made to the notification center, and provided that for "no  
15 response" notices made to the notification center after 2:00 p.m. on a working day or on a non-  
16 working day, the markings shall be completed no later than 10:00 a.m. on the next working day. If  
17 an underground facility owner fails to mark its facilities or contact the excavator as required by this  
18 subsection, the excavator may commence the excavation. Nothing in this subsection shall excuse the  
19 excavator from exercising the degree of care in making the excavation as is otherwise required by  
20 law. *(Addition similar to provisions contained in Georgia & Virginia laws/rules.)*

21 9. Upon completing the marking of facilities in response to a locate request ticket, underground  
22 facility owners shall notify the excavator that submitted the notice of intent to excavate to the  
23 notification center that his or her facilities have been marked, with such notification being provided  
24 to the excavator in a manner consistent with the provisions of subsection 6 of this section. *(Addition*  
25 *of this Subsection related to federal element #1, and this matter is also addressed in Georgia*  
26 *laws/rules though in a different manner.)*

27 4.10. For purposes of subsections 1 and 6 of this section, a period of two working days begins at  
28 12:00 a.m. on the first working day following ~~when the request is made~~ the date when the  
29 notification center receives a notice of intent to excavate.

30 11. For purposes of subsection 5 of this section, a period of two working days begins at 12:00  
31 a.m. on the first working day following the date when a request for an on-site meeting is made.  
32 *(Not currently specifically addressed.)*

### 33 Location of sewer laterals, when, how.

34 319.032. 1. In addition to the other requirements of section 319.030, the response to a notice of  
35 intent to excavate received by an owner or operator of a sewer system, where such owner or operator  
36 has underground facilities located in the area of the excavation identified in the notice, shall include  
37 a determination of whether sewer laterals are located or are likely to be located in the area of the  
38 excavation.

2. If the sewer system owner or operator determines that sewer laterals are located or are likely to be located in the area of the excavation identified in the notice, the owner or operator shall, to the best of his or her ability based on the best available information, inform the excavator of the approximate location of such sewer laterals up to the edge of any public right-of-way or utility easement in the area of the excavation.

3. When the response to a notice of intent to excavate by a sewer system owner or operator includes informing the excavator of the approximate location of sewer laterals that are or are likely to be located in the area of the excavation identified in the notice, the owner or operator shall provide its best available information regarding the location of such sewer laterals to the excavator in a manner that may include, but not be limited to, one of the following methods:

(1) Marking the location of locatable sewer laterals in accordance with the applicable provisions of this section, or placing a triangular green mark at the sewer main pointing in the direction of the premises served by unlocatable sewer laterals;

(2) Providing electronic copies of or delivering the information by facsimile or by other means to an agreed-upon location; or

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

4. A good faith attempt by a sewer system owner or operator to inform an excavator of the approximate location of sewer laterals shall constitute full compliance with the requirement of this section, and no person shall be found liable to any party for damages or injuries as a result of performing in compliance with this section. Providing information to an excavator about the approximate location of sewer laterals shall not in and of itself constitute ownership or operation of the sewer laterals by the sewer system owner or operator.

*(The idea for this section comes from provisions in Georgia laws, and the proposed language also comes in great part from those provisions.)*

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

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

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

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

2. The excavator shall not use power-driven equipment for trenchless excavation, including directional drilling, within the marked approximate location of such underground facilities until the



excavator has made careful and prudent efforts to confirm the horizontal and vertical location thereof in the vicinity of the proposed excavation through methods appropriate to the geologic and weather conditions, and the nature of the facility, such as the use of electronic locating devices, hand digging, pot holing when practical, soft digging, vacuum methods, use of pressurized air or water, pneumatic hand tools or other noninvasive methods as such methods are developed. Such methods of confirming location shall not violate established safety practices.

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

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

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

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

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

2. The failure of any underground facility owner to respond to a notice of intent to excavate 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.  
*(Related generally to enforcement issues, federal elements #6 & #7.)*

### **Safe and prudent excavation required.**

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

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

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

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

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

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

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

1 ~~compliance, ability to pay the penalty, and such other matters as justice may require in determining~~  
2 ~~the amount of penalty imposed. (See Subsections 1 & 2 of Section 319.046 below.)~~

3 4. ~~The attorney general may bring an action in any appropriate circuit court of this state for~~  
4 ~~equitable relief to redress or restrain a violation by any person of any provision of sections 319.010~~  
5 ~~to 319.050. The court may grant such relief as is necessary or appropriate, including mandatory or~~  
6 ~~prohibitive injunctive relief, temporary or permanent. (See Subsection 3 of Section 319.046 below.)~~

7 Civil penalties - - general counsel of public service commission may bring action on  
8 behalf of state - - public service commission hearings and orders required - - public  
9 service commission authority to investigate possible violations, rulemaking required - -  
10 appeal of public service commission orders.

11 319.046. 1. Any person who violates in any material respect the provisions of ~~section 319.022,~~  
12 ~~319.025, 319.026, 319.029, 319.030, 319.037, or this section~~ sections 319.010 through 319.070, or  
13 who willfully damages an underground facility, shall be liable to the state of Missouri for a civil  
14 penalty of up to ten thousand dollars for each violation for each day such violation persists, except  
15 that the maximum penalty for violation of the provisions of sections 319.010 ~~to 319.050~~ through  
16 319.070 shall not exceed five hundred thousand dollars for any related series of violations.

17 2. An action to recover such civil penalty may be brought by the ~~attorney general or a~~  
18 ~~prosecuting attorney~~ general counsel of the public service commission on behalf of the state of  
19 Missouri in any appropriate circuit court of this state subsequent to a hearing held by the public  
20 service commission on a formal complaint brought by the public service commission on its own  
21 motion or by the staff of the public service commission, or on an enforcement referral submitted to  
22 the public service commission by the underground damage prevention review board established by  
23 section 319.065 of this chapter, and issuance of an order by the public service commission including  
24 its findings on the complaint or enforcement referral and authorizing the penalty action. Trial thereof  
25 shall be before the court, which shall consider the nature, circumstances and gravity of the violation,  
26 the findings of the public service commission, and with respect to the person found to have  
27 committed the violation, the degree of culpability, the absence or existence of prior violations,  
28 whether the violation was a willful act, the effect on ability to continue to do business, any good  
29 faith in attempting to achieve compliance, ability to pay the penalty, and such other matters as justice  
30 may require in determining the amount of penalty imposed.

31 ~~3. The attorney general may bring~~ Whenever the public service commission shall be of the  
32 opinion that any person is failing or omitting or is about to fail or omit to do anything required by  
33 sections 319.010 through 319.070, or is doing anything or about to do anything or permitting  
34 anything or about to permit anything to be done contrary to or in violation of sections 319.010  
35 through 319.070, it may direct its general counsel to commence an action in any appropriate circuit  
36 court of this state for equitable relief to redress or restrain a violation by any person of any provision  
37 of sections 319.010 ~~to 319.050~~ through 319.070. The court may grant such relief as is necessary or  
38 appropriate, including mandatory or prohibitive injunctive relief, temporary or permanent.

4. The public service commission shall promulgate rules to implement this section. To facilitate the filing of a formal complaint as contemplated by subsection 2 of this section and the submission of matters for consideration by the underground damage prevention review board established by section 319.065 of this chapter, the public service commission and its staff are hereby vested with the authority necessary to investigate possible violations of the provisions of sections 319.010 through 319.070 by any person subject to those provisions; provided, however, that such authority shall not be exercised until after the public service commission promulgates a rule, in accordance with the provisions of chapter 536, RSMo, setting forth the procedures under which such investigations shall be conducted.

5. The appeal of orders of the public service commission issued pursuant to the provisions of subsection 2 of this section shall be governed by Chapter 386 of the Missouri Revised Statutes.

*(Additions/changes related to federal elements #6 & #7.)*

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

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

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

**319.055. 1.** No later than February 28 of each year, each underground facility owner, as defined in section 319.015, 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; provided, however, that the first such report 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 provided in the report.

1 2. In addition to the report required by subsection 1 of this section, the public service  
2 commission is granted the authority to promulgate rules, in accordance with the provisions of  
3 chapter 536, RSMo, to establish requirements regarding the real-time reporting, by underground  
4 facility owners, excavators and the notification center, of damages to underground facilities and  
5 instances of purported non-compliance with the provisions of sections 319.010 through 319.070.

6 *(Addition of this section related to additional comments included in nine elements document, and*  
7 *this matter is also addressed by Georgia & Texas laws/rules.)*

8 **Performance measures and quality assurance programs for locating services - - public**  
9 **service commission authority to establish and enforce standards, rulemaking required.**

10 **319.060. 1. The public service commission is granted the authority to promulgate rules, in**  
11 **accordance with the provisions of chapter 536, RSMo, to establish criteria regarding performance**  
12 **measures applicable to persons performing locating services for underground facility owners subject**  
13 **to the public service commission's jurisdiction for safety or customer service purposes and to**  
14 **establish criteria regarding such owners' quality assurance programs for locating services.**

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

20 *(Addition of this section related to federal element #3.)*

21 **Underground facility damage prevention review board established, public service**  
22 **commission oversight, duties - - member appointments, how, when, term of service - -**  
23 **makeup of board - - public service commission authority to establish operating**  
24 **parameters, rulemaking required.**

25 **319.065. 1. There is hereby established the underground facility damage prevention review board, to**  
26 **be operated under the oversight and budget of the public service commission, the purpose of which**  
27 **is to act as an arbitrator of disputes related to the provisions of sections 319.010 through 319.070, to**  
28 **review reported violations of the provisions of sections 319.010 through 319.070, and to make**  
29 **recommendations to the public service commission regarding the imposition of civil penalties for**  
30 **violations of the provisions of sections 319.010 through 319.070. The board may also make**  
31 **recommendations to the public service commission regarding its promulgation of rules related to the**  
32 **provisions of sections 319.010 through 319.070, if such rules promulgation occurs after the date the**  
33 **board begins its operations.**

34 2. The members of the review board, as established by the provisions of subsection 3 of this  
35 section, shall be appointed by the governor for a term not exceeding six years, with the initial  
36 members of the board to be appointed no later than June 30, 2011 and with the initial board

1 chairman being appointed by the governor; provided, however, that the board member from the  
2 public service commission shall be appointed by the public service commission.

3 3. The review board shall consist of the designated number of members from each of the  
4 following interest groups:

5 (1) the public service commission – one member;

6 (2) natural gas system operators – one member;

7 (3) electric system operators – one member;

8 (4) telecommunications system operators – one member;

9 (5) water system operators – one member;

10 (6) sewer system operators – one member;

11 (7) the notification center – one member;

12 (8) state department of transportation – one member;

13 (9) underground utility locating companies – one member;

14 (10) excavators/excavator organizations – three members.

15 4. Compensation for members of the review board shall be limited to a daily per diem, to be  
16 determined under the provisions of subsection 5 of this section, applicable only to the days that  
17 members of the board are conducting official business.

18 5. Before the review board can take any official actions under the provisions of this section, the  
19 public service commission shall promulgate rules, consistent with the provisions of chapter 536,  
20 RSMo, setting forth the manner in which the board will be organized, including the establishment of  
21 standing committees, setting forth the manner in which the board will operate in carrying out the  
22 authority granted to it by subsection 1 of this section, and establishing the daily per diem  
23 compensation for board members and the procedures for payment of the per diem.

24 *(Addition of this section related to federal elements #6 & #7, and this matter is also addressed in*  
25 *Georgia, Indiana & Virginia laws/rules.)*

26 **Underground facilities to be locatable, when, how.**

27 **319.070.** Effective January 1, 2011, all underground facilities, as defined in section 319.015, shall be  
28 installed in such a manner as to be locatable through the use of electronic locating equipment, or the  
29 location of the facilities shall be documented on as-built drawings in a manner sufficient for the  
30 underground facility owner to provide the approximate location of the facilities in response to the  
31 receipt of a notice of intent to excavate. *(Addition of this section based in great part on provisions*  
32 *in Georgia law.)*

1   **Notes**

2   **(1) Still considering possible changes to civil penalty provisions based on Georgia, Texas &**  
3   **Virginia laws – perhaps to include establishment of an "underground facility damage**  
4   **prevention fund" to be used for administering enforcement of the law/rules, including the**  
5   **operation of the review board, and to be funded by the penalties collected through**  
6   **enforcement actions as has been done in Virginia;**

7   **(2) Section number 319.070 is the last "available" section number to use, as Section 319.075 is**  
8   **the beginning of the Overhead Power Line Safety Act in Chapter 319.**