CHAPTER 49-23
ONE-CALL EXCAVATION NOTICE SYSTEM

49-23-01. Definitions.

As used in this chapter, unless the context otherwise requires:

1. "Abandoned" means no longer in service and physically disconnected from a portion of the facility or from any other facility that is in use or still carries services.
2. "Board" means the board of directors of the nonprofit corporation governing the notification center under section 49-23-03.
3. "Careful and prudent manner" means:
   a. Manually excavating within twenty-four inches [60.96 centimeters] of the outer edges of any underground facility on a horizontal plane as located and marked by the owner or operator; and
   b. Supporting and protecting the uncovered facility.
4. "Damage" means:
   a. Substantial weakening of structural or lateral support of an underground facility;
   b. Penetration, impairment, or destruction of any underground protective coating, housing, or other protective device; or
   c. Impact with or the partial or complete severance of an underground facility to the extent that the facility operator determines that repairs are required.
5. "Emergency" means a sudden, unexpected occurrence, involving a clear and imminent danger, and demanding immediate action to prevent or mitigate loss of, or damage to, life, health, property, or essential public services.
6. "Emergency responder" means a fire department, a law enforcement officer, or other emergency rescue service.
7. "Excavation" means any operation in which earth, rock, or other materials in or below the ground is moved or otherwise displaced by means of hand or power tools, power equipment, or explosives and includes grading, trenching, digging, ditching, dredging, drilling, augering, tunneling, boring, scraping, and cable or pipe plowing and driving. The term does not include:
   a. Opening a grave in a cemetery.
   b. Plowing, cultivating, planting, harvesting, and similar operations in connection with agricultural activities, unless any of these activities disturbs the soil to a depth of eighteen inches [45.72 centimeters] or more.
   c. Gardening and landscaping unless it disturbs the soil to a depth of twelve inches [30.48 centimeters] or more.
   d. Normal maintenance of paved roads and streets if the maintenance does not extend deeper than the depth of the existing pavement and does not involve the road ditch.
   e. Normal surface maintenance of gravel roads and streets if the maintenance does not involve the road ditch.
   f. Normal repair and maintenance of track and track bed by a railroad on its own right of way.
8. "Excavator" means a person who conducts excavation.
9. "Holiday" means New Year's Day, Martin Luther King Day, Presidents' Day, Good Friday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans' Day, Thanksgiving Day, and Christmas Day. When a holiday falls on a Saturday, it is observed on the preceding Friday as if the Friday were the actual holiday, and when a holiday falls on a Sunday, it is observed on the following Monday as if the Monday were the actual holiday.
10. "Local governmental unit" means a county, township, or city.
11. "Locate" means an operator's markings of an underground facility showing the approximate horizontal location, including all lines, line direction, intersections, tees, and lateral facilities.
12. "Locate period" means the later of:

a. The forty-eight hour period beginning at 12:01 a.m. of the day after the location request was submitted to the notification center; excluding any Saturday, Sunday, or holiday; and any twenty-four hour extension provided through the notification center; or
b. The period between the submission of a location request to the notification center and the noted date and time of excavation.

13. "Nonprofit corporation" means a corporation established under chapter 10-33.
14. "Notification center" means a center that receives notice from an excavator of planned excavation or any other request for location and transmits this notice to a participating operator.
15. "Operator" means a person who owns or operates an underground facility, including a master meter operator with underground facilities, or a state or local governmental entity. The department of transportation is considered an operator for the department's facilities buried on the department's rights of way. A person is not considered an operator solely because the person is an owner or tenant of real property where underground facilities are located if the underground facilities are used exclusively to furnish services or commodities on that property.
16. "Positive response" means notification by the operator to the notification center that underground facilities within the area covered by a location request have been marked or cleared.
17. "Tangible marking materials" means any material perceptible by touch used to mark the location of an underground facility, including flags, stakes, poles, or other materials inserted into or affixed to the ground. The term does not include paint, chalk, or other liquid ink-based materials applied to the ground.
18. "Underground facility" means an underground line, pipeline, cable, facility, system, and its appurtenances used to produce, store, convey, gather, transmit, or distribute communications, data, electricity, power, television signals, heat, gas, oil, petroleum products, carbon dioxide, water, steam, sewage, hazardous liquids, and other similar substances. Privately owned and operated underground facilities which do not extend beyond the boundary of the private property are excluded.
19. "Unexpected occurrence" includes a fire, flood, earthquake or other soil or geologic movement, riot, accident, damage to a subsurface installation requiring immediate repair, or sabotage.
20. "Water" includes potable water, wastewater, and storm water.

49-23-02. Notice to excavators and underground facility operators.

A local governmental entity that issues permits for an activity involving excavation shall display an excavator's and operator's notice at the location where permits are obtained. An excavator's and operator's notice and a copy of this chapter must be furnished to each person obtaining a permit for excavation. The notification center shall prescribe an excavator's and operator's notice. The notice must inform excavators and operators of their obligation to comply with this chapter. The center shall furnish to local governmental units:

1. A copy of the notice and this chapter;
2. A copy of the display required under this section; and
3. The telephone number and mailing address of the notification center.

49-23-03. Notification center - Participation - Establishment.

1. An operator shall participate in and share in the costs of the statewide notification center operated by a vendor selected under this section.
2. A person doing business as an excavator or operator under this chapter shall participate in and share in the costs of a statewide notification center on a per-call basis. An operator, installing the operator's own facilities, may not be charged as an excavator.
3. An operator shall participate in and share the costs of the one-call excavation notice system by:

a. Submitting the information required by the notification center to allow the center to notify the operator of excavation activity;
b. Updating the information provided to the notification center on a timely basis;
c. Installing and paying for equipment reasonably requested by the notification center to facilitate receipt of notice of excavation from the center;
d. Paying the costs charged by the notification center on a timely basis; and
e. Receiving and responding to excavation notices, including emergency notices.

4. A nonprofit corporation, North Dakota one-call, incorporated, shall govern the notification center.
   a. The board of directors of North Dakota one-call, incorporated must consist of nine members representing the participants in the center. The members of the board of directors must be chosen and serve for terms as provided in the bylaws of the corporation. One member of the board of directors must be chosen by representatives of each of the following participant groups:
      (1) Telecommunications service providers.
      (2) Gas distribution lines operators.
      (3) Oil or gas transmission or gathering lines operators.
      (4) Electrical transmission and distribution operators.
      (5) Rural water systems.
      (6) Cities of five thousand or more population.
      (7) Cities of fewer than five thousand population.
      (8) Cable television service providers.
      (9) Excavators.
   b. The board shall establish a competitive bidding procedure to select a vendor to provide the notification service, establish a procedure by which members of the center share the costs of the center on a fair, reasonable, and nondiscriminatory basis, and do all other things necessary to implement the purpose of the center. Any agreement between the center and a vendor for the notification service may be modified from time to time by the board, and any agreement shall be reviewed by the board at least once every three years, with an opportunity to receive new bids, if desired, by the board. An operator may submit a bid and be selected to contract to provide the notification center service.
   c. Members of the board and any of its agents are immune from any liability of any kind based on any acts or omissions in the course of the performance of responsibilities in an official capacity except for bodily injury arising out of accidents caused by or contributed to by the negligence of the board member or agent.
   d. The board shall aid the state's attorneys of the various counties in the enforcement of this chapter and the prosecution of any violations. The board may institute a civil action for an injunction to enjoin violations of this chapter without proof that anyone suffered actual damages.

49-23-04. Excavation.

1. Except in an emergency, an excavator shall contact the notification center and provide an excavation or location notice before beginning any excavation. An excavation begins the first time excavation occurs in an area that was not previously identified by the excavator in an excavation notice. The notice must contain:
   a. The name, address, and telephone number of the person making the notification;
   b. The name, address, and telephone number of the excavator;
   c. The date and time when excavation is scheduled to begin;
   d. The depth of planned excavation;
   e. The type and extent of excavation being planned, including whether the excavation involves tunneling or horizontal boring;
   f. Whether the use of explosives is anticipated and any other information as may be required by the notification center; and
   g. The location of the excavation by any one or more of the following means:

(1) A specific street address;
(2) A reference to a platted lot number of record;
(3) An identifiable roadway or roadway intersection; or
(4) A specific quarter section by section number, range, township, and county. In this case, the location shall be further described by coordinates measured in feet from the nearest one-fourth corner or section corner.

2. Unless otherwise exempted, the ticket request must include site identification information by one or more of the following means: white marking, digital white lining, project staking, geographic information system shape file, detailed drawing, map, or other means agreed upon by the parties to the ticket. Site identification under this subsection is not required if:
   a. The precise location of excavation can be clearly and adequately identified on the location notice and is limited to a single street address or a platted lot number of record;
   b. The precise location of excavation can be clearly and adequately identified on the location notice and the excavation is an emergency excavation; or
   c. Prior to any excavation, the excavator requests and conducts a meeting with the affected operators at the location of the excavation.
3. A request for location is limited to an area not exceeding three contiguous city blocks within an urban area or an area of four contiguous quarter sections or five linear miles [8.05 kilometers] in a rural area.
4. An excavator may begin excavation in a location when the excavator has received notice that all facilities have been located or cleared or at the expiration of the location period or extension of the location period.
5. The notification center shall:
   a. Provide a toll-free telephone number and assign an inquiry identification number to each excavation notice and retain a record of all excavation notices received for at least six years.
   b. Immediately transmit the information contained in an excavation notice to every operator that has an underground facility in the area of the proposed excavation.
   c. Inform the persons giving notice of an intent to engage in an excavation activity the names of participating operators of underground facilities to whom the notice will be given.
   d. Establish procedures for assuring positive response from the affected operator in all emergency excavation notices.
   e. Establish procedures to receive from operators and convey to ticket holders positive response when operators have located or cleared underground facilities identified within the area of a location request.
6. a. An operator with underground facilities within the area of a location request shall locate and mark or otherwise provide the approximate horizontal location of the underground facilities of the operator within the location period or as agreed by the parties.
   b. For purposes of this section, the approximate horizontal location of the underground facilities is a strip of land two feet [60.96 centimeters] on either side of the underground facilities. An operator of a facility required to be locatable is responsible for the costs of location. If an excavator is unable to locate a facility within two feet on either side of the operator's facility location markings and requests assistance from the operator to locate the facility, but the operator fails to provide the requested assistance within a reasonable time, the operator is responsible for the excavator's reasonable costs incurred to locate the facility. This subdivision does not apply to an underground facility to convey water installed before August 1, 2013.
   c. When an operator cannot establish the exact location of the underground facility to convey water, the operator shall mark the location as accurately as possible and the excavator may proceed with caution. When excavation operations approach the estimated location of the underground facility to convey water, the

exact location of the facility must be determined by safe and acceptable means. The uncovered facility must be supported and protected to prevent damage.

d. Markers used to designate the approximate location of underground facilities must follow the current color code standard used by the American public works association.

e. If the operator cannot complete marking of the excavation area before the excavation commencement time stated in the excavation notice, the operator shall promptly contact the excavator.

f. After facilities are located by an operator, an excavator shall notify the notification center if:
   (1) The excavator postpones the excavation commencement time stated in the excavation notice by more than forty-eight hours, or any extension of that period, or cancels the excavation;
   (2) The markings have been obliterated or obscured;
   (3) Weather conditions have impeded visibility of the markings;
   (4) The site shows evidence of recent excavation; or
   (5) The excavator has other reason to believe the markings are incorrect or missing.

g. An excavator may not use a location more than twenty-one days, or any extension of that period, after the planned excavation date unless the excavator has made previous arrangements with the operators affected.

h. If excavation has not occurred within the initial twenty-one days of the locate, the excavator shall request that the facility be relocated before excavating unless other arrangements have been made with the underground facility owner. Upon the third locate request at the same excavation site where no excavation has occurred after the initial two locates, the excavator is responsible for reasonable costs associated with relocating facilities in that location. If the issue of whether excavation has occurred is disputed for purposes of this section, the excavator bears the burden of proof that excavation has occurred.

i. If a relocate request is made for an area which includes areas where excavation has been completed, a request for relocate must be modified from the original locate request to reflect only the area to be excavated during each subsequent twenty-one-day period, otherwise the excavator is responsible for reasonable costs associated with relocating facilities in the location.

j. An excavator that makes repeated location requests within the area of a previously made location request due to the excavator's failure to reasonably maintain and remove markings under subsection 3 of section 49-23-05 or failure to follow prudent and careful digging practices required by subsection 5 of section 49-23-05 is responsible for reasonable costs of location and removal if the public service commission determines the additional location request was caused by the excavator's failure described in this subdivision.

k. If in the course of excavation the excavator is unable to locate the underground facility or discovers that the operator of the underground facility has incorrectly located the underground facility, the excavator shall promptly notify the operator or, if unknown, the one-call notification center.

l. A facility owner, excavator, or other person may not present or presume that an underground facility is abandoned, or treat an underground facility as abandoned, unless the facility has been verified as abandoned by reference to installation records or by testing. The notification center shall establish a method of providing personnel from a facility owner qualified to safely inspect and verify whether a facility is abandoned or inactive if necessary. An inactive facility must be considered active for purposes of this section.

m. An underground facility owner shall make all new facilities locatable.

n. An operator that has completed marking of the excavation area or has determined there are no facilities in the area identified in the ticket shall provide positive response to the notification center in compliance with the notification

center's procedures established under subsection 5 for assuring positive response from operators.

7. If an excavation is being made in a time of emergency, all reasonable precautions must be taken to protect the underground facilities. In an emergency, the excavator shall give notification in compliance with this chapter, as soon as practical, that an emergency exists. As soon as practical, each operator shall provide all location information that is reasonably available to the excavator.

49-23-04.1. Survey.

1. An individual making a request for location for information, design, or purposes other than excavation shall contact the notification center for a survey location. The survey notice must contain:
   a. The name, address, and telephone number of the person making the notification;
   b. The name, address, and telephone number of the surveyor;
   c. The date and time information will be captured;
   d. The depth of any planned future excavation;
   e. The type and extent of any planned future excavation, including whether it involves tunneling or horizontal boring;
   f. Whether the use of explosives is anticipated;
   g. Any other information the notification center requires;
   h. The location of the area to be surveyed by one of the following means:
      (1) A specific street address;
      (2) A reference to a platted lot number of record;
      (3) An identifiable roadway or roadway intersection; or
      (4) A specific quarter section by section number, range, township, and county. In this case, the location must be further described by coordinates measured in feet from the nearest quarter section corner or section corner.
2. Unless otherwise exempted, the ticket request must include site identification information by one or more of the following means: white marking, digital white lining, project staking, geographic information system shape file, detailed drawing, map, or other means agreed upon by the parties to the ticket. Site identification under this subsection is not required if:
   a. The precise location of planned future excavation can be clearly and adequately identified on the location notice and is limited to a single street address or a platted lot number of record; or
   b. Prior to any survey, the excavator requests and conducts a meeting with the affected operators at the location of the survey.
3. The notification center shall:
   a. Immediately transmit the information contained in a survey notice to every operator that has an underground facility in the survey area; and
   b. Inform the individual who made the survey location request of the names of participating operators of underground facilities to whom the notice will be given.
4. Within five days; excluding Saturdays, Sundays, and holidays; an operator with a facility within the survey area shall locate or mark the facilities physically, provide location information electronically, or meet with the ticket holder.
5. Meetings may be held at the discretion of the ticket holder.
6. Electronic information may be exchanged at the discretion of the operator.
7. The survey ticket holder shall assume ownership of materials used to mark the facility, use reasonable efforts to maintain markings until the survey information has been captured, and remove all tangible marking materials used to mark the facility and the site area upon completion of the capture.
8. The survey ticket holder is responsible for the reasonable costs of any relocate after a survey location has been properly located and marked.

49-23-05. Precautions to avoid damage.

To avoid damage to and minimize interference with underground facilities in and near the excavation area, a ticket holder shall:

1. Maintain a clearance between an underground facility and the cutting edge or point of any mechanized equipment, considering the known limit of control of the cutting edge or point to avoid damage to the facility.
2. Provide support in a manner approved by the operator for underground facilities in and near the construction area, including backfill operations to protect the facilities. Backfill must be of a material equal to or better in both quality and quantity to the existing backfill.
3. Assume ownership of materials used to mark the facility, use reasonable efforts to maintain markings during excavation, and remove all tangible marking materials used to mark the underground facility and site area upon completion of the excavation.
4. Assume the cost of excavation to expose the facility unless otherwise indicated by owner of facility.
5. Conduct the excavation in a careful and prudent manner.
6. Properly manage spoil material to prevent shifting or falling material that could damage belowground facilities.

49-23-06. Damage to facilities - Penalty.

1. a. If any damage occurs to an underground facility or its protective covering, the excavator shall notify the operator as soon as reasonably possible. When the operator receives a damage notice, the operator shall dispatch, as soon as reasonably possible, personnel to the damage area to investigate. If the damage results in the escape of flammable, toxic, or corrosive gas or liquid, the excavator shall:
      (1) Call 911 immediately; and
      (2) Notify the pipeline operator immediately.
   b. If the damage endangers life, health, or property, the excavator responsible for the work shall take immediate action to protect the public and property and to minimize the hazard until arrival of the operator's personnel or until emergency responders have arrived and taken charge of the damaged area.
   c. An excavator shall delay backfilling in the immediate area of the damaged underground facilities until the damage has been investigated by the operator, unless the operator authorizes otherwise. The repair of damage must be performed by the operator or by qualified personnel authorized by the operator.
   d. An excavator is guilty of a class A misdemeanor if the excavator damages an underground facility or its protective covering and knew or reasonably should have known the damage occurred and:
      (1) The excavator does not notify the operator as soon as reasonably possible; or
      (2) The excavator backfills in violation of subdivision c.
2. a. If an excavator fails to comply with this chapter or damages an underground facility, the excavator is liable for all damages caused by the failure to comply with this chapter and for all damages to the facilities and must reimburse the operator for the cost of location, repair and restoration, loss of product, and interruption of service occurring because of the damage or injury to the facilities, together with reasonable costs and expenses of suit, including reasonable attorney's fees.
   b. Reimbursement to the operator under this subsection is not required if the damage to the underground facility was caused by the sole negligence of the operator or the operator failed to comply with sections 49-23-03 and 49-23-04.

49-23-07. Effect on local ordinances.

A person with a permit for excavation from the state or a local governmental unit is subject to this chapter. This chapter does not affect or impair local ordinances, charters, or other provisions of law requiring permits to be obtained before excavating.