

## CHAPTER 216D

### ONE CALL EXCAVATION NOTICE SYSTEM

216D.01 Definitions.

216D.02 Notice to excavators and operators.

216D.03 Notification center.

216D.04 Excavation.

216D.05 Precautions to avoid damage.

216D.06 Damage to facilities.

216D.07 Effect on local ordinances.

216D.08 Civil penalties.

216D.09 Injunctive relief.

**216D.01 DEFINITIONS.**

Subdivision 1. **Applicability.** The definitions in this section apply to sections 216D.01 to 216D.07.

Subd. 1a. **Commissioner.** "Commissioner" means the commissioner of public safety.

Subd. 1b. **Boundary survey.** "Boundary survey" means a survey made to establish or to reestablish a boundary line on the ground or to obtain data for preparing a map or plat showing boundary lines.

Subd. 2. **Damage.** "Damage" means:

(1) the substantial weakening of structural or lateral support of an underground facility;

(2) penetration, impairment, or destruction of any underground protective coating, housing, or other protective device; or

(3) impact with or the partial or complete severance of an underground facility to the extent that the facility operator determines that repairs are required.

Subd. 3. **Emergency.** "Emergency" means a condition that poses a clear and immediate danger to life or health, or a significant loss of property.

Subd. 4. **Emergency responder.** "Emergency responder" means a fire department or company, a law enforcement official or office, an ambulance or other emergency rescue service, or the division of emergency management created by section 12.04, subdivision 1.

Subd. 5. **Excavation.** "Excavation" means an activity that moves, removes, or otherwise disturbs the soil by use of a motor, engine, hydraulic or pneumatically powered tool, or machine-powered equipment of any kind, or by explosives. Excavation does not include:

(1) the extraction of minerals;

(2) the opening of a grave in a cemetery;

(3) normal maintenance of roads and streets if the maintenance does not change the original grade and does not involve the road ditch;

(4) plowing, cultivating, planting, harvesting, and similar operations in connection with growing crops, trees, and shrubs, unless any of these activities disturbs the soil to a depth of 18 inches or more;

(5) gardening unless it disturbs the soil to a depth of 12 inches or more; or

(6) planting of windbreaks, shelterbelts, and tree plantations, unless any of these activities disturbs the soil to a depth of 18 inches or more.

Subd. 6. **Excavator.** "Excavator" means a person who conducts excavation in the state.

Subd. 6a. **Land surveyor.** "Land surveyor" means a person licensed to practice land surveying under sections 326.02 to 326.15.

Subd. 7. **Local governmental unit.** "Local governmental unit" means a county, town, or statutory or home rule charter city.

Subd. 8. **Notification center.** "Notification center" means a center that receives notice from excavators of planned excavation or other requests for location and transmits this notice to participating operators.

Subd. 9. **Operator.** "Operator" means a person who owns or operates an underground facility. 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, unless the person is the state, a state agency, or a local governmental unit.

Subd. 10. **Person.** "Person" means the state, a public agency, a local governmental unit, an individual, corporation, partnership, association, or other business or public entity or a trustee, receiver, assignee, or personal representative of any of them.

Subd. 11. **Underground facility.** "Underground facility" means an underground line, facility, system, and its appurtenances used to produce, store, convey, transmit, or distribute communications, data, electricity, power, heat, gas, oil, petroleum products, water including storm water, steam, sewage, and other similar substances.

**History:** 1987 c 71 s 2; 1987 c 353 s 7; 1988 c 624 s 2; 1989 c 244 s 3-5; 1991 c 214 s 7; 1991 c 234 s 3; 1992 c 381 s 7; 1992 c 493 s 1-4; 1993 c 341 art 1 s 20

## 216D.02 NOTICE TO EXCAVATORS AND OPERATORS.

Subdivision 1. **Display and distribution.** Local governmental units that issue permits for an activity involving excavation must continuously display an excavator's and operator's notice at the location where permits are applied for and obtained. An excavator and operator's notice and a copy of sections 216D.03 to 216D.07 must be furnished to each person obtaining a permit for excavation.

Subd. 2. **Form.** The notification center shall prescribe an excavator and operator's notice. The notice must inform excavators and operators of their obligations to comply with sections 216D.03 to 216D.07. The center shall furnish to local governmental units:

- (1) a copy of the notice and sections 216D.03 to 216D.07 in a form suitable for photocopying;
- (2) a copy of the display and distribution requirements under subdivision 1; and
- (3) the telephone number and mailing address of the notification center.

**History:** 1987 c 353 s 8

## 216D.03 NOTIFICATION CENTER.

Subdivision 1. **Participation.** An operator shall participate in and share in the costs of one statewide notification center operated by a vendor selected under subdivision 2.

Subd. 2. **Establishment of notification center.** (a) The notification center services must be provided by a nonprofit corporation approved in writing by the commissioner. A group or nonprofit corporation that intends to seek approval under this paragraph shall notify the commissioner by September 1, 1987, of the date, time, and location of its first meeting. The commissioner shall provide advance notice of the first organizational meeting by publication in qualified legal newspapers and in appropriate trade journals and by written notice to all appropriate trade associations.

The nonprofit corporation must be governed by a board of directors of up to 20 members, one of whom is the director of the office of pipeline safety. The other board members must represent and be elected by operators, excavators, and other persons eligible to participate in the center. By November 1, 1987, the board shall, with input from all interested parties, determine the operating procedures and technology needed for a single statewide notification center and establish a notification process and competitive bidding procedure to select a vendor to provide the notification service. In deciding to approve a nonprofit corporation, the commissioner shall consider whether it meets the requirements of this paragraph and whether it demonstrates that it has the ability to contract for and implement the notification center service.

(b) If the commissioner has not approved a nonprofit corporation under paragraph (a) by January 1, 1988, the commissioner shall follow the procedure in this paragraph. The commissioner shall prepare a preliminary draft of operating procedures and tech-

nology needed for a statewide notification center and the method for assessing the cost of the service among operators. After holding at least one public hearing on the preliminary draft following notice given in the manner required by paragraph (a), the commissioner shall adopt final operating procedures, technology, and assessment methods. The preliminary draft, public hearings, and final adoption are not subject to chapter 14. By June 1, 1988, the commissioner shall select a vendor to provide the notification center service. The commissioner shall advertise for bids as provided in section 16B.07, subdivision 3, and base the selection of a vendor on an identification of the lowest responsible bidder as provided in section 16B.09, subdivision 1. The commissioner shall select and contract with the vendor to provide the notification center service, but all costs of the center must be paid by the operators. The commissioner may at any time appoint a task force to advise on the renewal of the contract or any other matter involving the center's operations.

(c) The notification center must be in operation by October 1, 1988. An operator may submit a bid and be selected to contract to provide the notification center service under paragraph (a) or (b). The commissioner shall annually review the services provided by the nonprofit corporation approved under paragraph (a) or the vendor selected under paragraph (b).

**Subd. 3. Cooperation with local government.** In establishing operating procedures and technology for the statewide notification center, the board of directors or the commissioner must work in cooperation with the league of Minnesota cities, the association of Minnesota counties, and the township officers' association. The purpose of this cooperation is to maximize the participation of local governmental units that issue permits for activities involving excavation to assure that excavators receive notice of and comply with the requirements of sections 216D.01 to 216D.07.

**Subd. 4. Notice to local governmental units.** The notification center shall provide local governmental units with a master list, by county, of the operators in the county who are participants in the notification center, and the telephone number and mailing address of the notification center.

**History:** 1987 c 353 s 9

## **216D.04 EXCAVATION.**

**Subdivision 1. Notice of excavation required; contents.** (a) Except in an emergency, an excavator shall and a land surveyor may contact the notification center and provide an excavation or location notice at least 48 hours before beginning any excavation or boundary survey, excluding Saturdays, Sundays, and holidays. An excavation or boundary survey begins, for purposes of this requirement, the first time excavation or a boundary survey occurs in an area that was not previously identified by the excavator or land surveyor in an excavation or boundary survey notice.

(b) The excavation or boundary survey notice may be oral or written, and must contain the following information:

- (1) the name of the individual providing the excavation or boundary survey notice;
- (2) the precise location of the proposed area of excavation or boundary survey;
- (3) the name, address, and telephone number of the excavator or land surveyor or excavator's or land surveyor's company;
- (4) the excavator's or land surveyor's field telephone number, if one is available;
- (5) the type and the extent of the proposed excavation or boundary survey work;
- (6) whether or not the discharge of explosives is anticipated; and
- (7) the date and time when excavation or boundary survey is to commence.

**Subd. 2. Duties of notification center.** The notification center shall assign an inquiry identification number to each excavation or location notice and retain a record of all excavation or location notices received for at least six years. The center shall immediately transmit the information contained in an excavation or location notice

to every operator that has an underground facility in the area of the proposed excavation or boundary survey.

**Subd. 3. Locating underground facilities.** (a) An operator shall, within 48 hours after receiving an excavation notice or within 96 hours after receiving a location notice from the center, excluding Saturdays, Sundays, and holidays, unless otherwise agreed to between the excavator or land surveyor and operator, locate and mark or otherwise provide the approximate horizontal location of the underground facilities of the operator, without cost to the excavator or land surveyor. The excavator or land surveyor shall determine the precise location of the underground facility, without damage, before excavating within two feet of the marked location of the underground facility.

(b) For the purpose of this section, the approximate horizontal location of the underground facilities is a strip of land two feet on either side of the underground facilities.

(c) Markers used to designate the approximate location of underground facilities must follow the current color code standard used by the American Public Works Association.

(d) If the operator cannot complete marking of the excavation or boundary survey area before the excavation or boundary survey commencement time stated in the excavation or location notice, the operator shall promptly contact the excavator or land surveyor. If the excavator or land surveyor postpones the excavation or boundary survey commencement time stated in the excavation or location notice by more than 48 hours, or cancels the excavation or boundary survey, the excavator or land surveyor shall notify the notification center.

**History:** 1987 c 353 s 10; 1992 c 493 s 5; 1993 c 341 art 1 s 21

#### **216D.05 PRECAUTIONS TO AVOID DAMAGE.**

An excavator shall:

(1) plan the excavation to avoid damage to and minimize interference with underground facilities in and near the construction area;

(2) 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;

(3) provide support for underground facilities in and near the construction area, including during backfill operations, to protect the facilities; and

(4) conduct the excavation in a careful and prudent manner.

**History:** 1987 c 353 s 11

#### **216D.06 DAMAGE TO FACILITIES.**

**Subdivision 1. Notice; repairs.** (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 promptly dispatch personnel to the damage area to investigate. 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.

(b) 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.

(c) An excavator who knowingly damages an underground facility, and who does not notify the operator as soon as reasonably possible or who backfills in violation of paragraph (b), is guilty of a misdemeanor.

**Subd. 2. Cost reimbursement.** (a) If an excavator damages an underground facility,

the excavator shall reimburse the operator for the cost of necessary repairs, and for a pipeline the cost of the product that was being carried in the pipeline and was lost as a direct result of the damage.

(b) Reimbursement 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 section 216D.04, subdivision 3.

**Subd. 3. Prima facie evidence of negligence.** It is prima facie evidence of the excavator's negligence in a civil court action if damage to the underground facilities of an operator resulted from excavation, and the excavator failed to give an excavation notice under section 216D.04 or provide support as required by section 216D.05.

**History:** 1987 c 353 s 12

## **216D.07 EFFECT ON LOCAL ORDINANCES.**

(a) Sections 216D.01 to 216D.07 do not affect or impair local ordinances, charters, or other provisions of law requiring permits to be obtained before excavating.

(b) A person with a permit for excavation from the state or a public agency is subject to sections 216D.01 to 216D.07. The state or public agency that issued a permit for excavation is not liable for the actions of an excavator who fails to comply with sections 216D.01 to 216D.07.

**History:** 1987 c 353 s 13

## **216D.08 CIVIL PENALTIES.**

**Subdivision 1. Penalty.** A person who is engaged in excavation for remuneration or an operator other than an operator subject to section 299F.59, subdivision 1, who violates sections 216D.01 to 216D.07 is subject to a civil penalty to be imposed by the commissioner not to exceed \$500 for each violation per day of violation. An operator subject to section 299F.59, subdivision 1, who violates sections 216D.01 to 216D.07 is subject to a civil penalty to be imposed under section 299F.60.

**Subd. 2. Settlement.** The commissioner may negotiate a compromise settlement of a civil penalty. In determining the amount of the penalty, or the amount of the compromise settlement, the commissioner shall consider the appropriateness of the penalty to the size of the business of the person charged, the gravity of the violation, and the good faith of the person charged in attempting to achieve compliance, after notification of a violation. The contested case and judicial review provisions of chapter 14 apply to the orders of the commissioner imposing a penalty under sections 216D.01 to 216D.07. The amount of the penalty, when finally determined, may be deducted from sums owing by the state of Minnesota to the person charged.

**Subd. 3. Credited to pipeline safety account.** Penalties collected under this section must be deposited in the state treasury and credited to the pipeline safety account to be applied to the reduction of expenses or costs assessed by the commissioner against persons regulated under this chapter.

**Subd. 4. Rules.** The commissioner shall adopt rules establishing reasonable guidelines for imposing penalties. The rules must provide for notice that a penalty is assessed and may exempt activities from penalties unless the excavator or operator as defined in this section has evidenced a course of action in disregard of this chapter.

**History:** 1989 c 244 s 6

## **216D.09 INJUNCTIVE RELIEF.**

**Subdivision 1. Jurisdiction.** The district courts of the state of Minnesota have jurisdiction, subject to the provisions of the statutes and the rules of practice and procedure of the state of Minnesota relative to civil actions in the district courts, to restrain violations of sections 216D.01 to 216D.07, on petition by the attorney general on behalf of the state of Minnesota. When practicable, the commissioner shall give notice to a person against whom an action for injunctive relief is contemplated and afford the person

# MINNESOTA STATUTES 1994

1249

ONE CALL EXCAVATION NOTICE SYSTEM 216D.09

an opportunity to present views and, except in the case of a knowing and willful violation, shall afford the person reasonable opportunity to achieve compliance. However, the failure to give the notice and afford an opportunity to present views does not preclude the granting of appropriate relief.

Subd. 2. **Venue.** Actions under this section must be brought in district court in the district where the defendant's principal place of business in the state is located, and process in these cases may be served in any other district in the state of Minnesota where the defendant may be found or in which the defendant is an inhabitant or transacts business.

**History:** 1989 c 244 s 7