



U.S. Department
of Transportation
**Pipeline and Hazardous
Materials Safety
Administration**

1200 New Jersey Avenue SE
Washington DC 20590

PIPELINE SAFETY

2010 State Damage Prevention Grant

for

MN Office of Pipeline Safety

Please follow the directions listed below:

1. Review the entire document for completeness.
2. Review and have an authorized signatory sign page 2.
3. Fasten all pages with a paper or binder clip - no staples please as this package will be scanned upon it's arrival at PHMSA.
4. Mail the entire document, including this cover page to the following:

**ATTN: Karina Munoz
U.S. Department of Transportation
Pipeline & Hazardous Materials Safety Administration
Office of Contracts and Procurement
1200 New Jersey Avenue, SE Second Floor E22-228
Washington, D.C. 20590**

FedSTAR Information

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Pipeline and Hazardous Materials Safety Administration
1200 New Jersey Avenue, SE
Washington DC 20590

DEPARTMENT OF TRANSPORTATION

APPLICATION

2010 GRANT PROGRAM IN SUPPORT OF STATE DAMAGE PREVENTION

The MN Office of Pipeline Safety hereby applies to the Department of Transportation for Federal funds appropriated for the support of State Damage Prevention Programs established under 49 U.S.C. Section 60134 et seq.

The State agency plans to carry out the State Damage Prevention Program, during calendar year 2010, as described in Attachment 1, "Project Abstract/Statement of Objectives". To accomplish the program, the state agency proposes to expend funds as set forth in Attachment 4, "State Damage Prevention Estimated Budget".

Signature

Title

Date



Project Abstract/Statement of Objectives

Please provide a clear and concise description of the work this grant will fund for calendar year 2010

With this grant funding approval, the Minnesota Office of Pipeline Safety (MNOPS) will continue to devote the equivalent of one Full Time Employee (FTE) from a full staff count of thirteen, for the enforcement, education, training, communication, support, analysis, partnership, and mediation activities associated with damage prevention (DP). All of these activities are tracked separately (by case number) in Minnesota's Pipeline Safety Program Management System (aka OPS System) database. It is important to note that MNOPS will likely devote more resources to this endeavor than one FTE.

The primary activity of MNOPS Outreach / Enforcement (aka Damage Prevention) during the excavation season (spring, summer, & fall) will be investigating excavation related incidents and responding to One Call (Gopher State) related complaints for the purpose of determining compliance with Minnesota's damage prevention laws contained in MS216D & MR7560. Where evidence supports an enforcement action, a penalty and/or compliance order is issued. Where an enforcement action is taken a collection process is followed and/or a compliance order is tracked. Not until compliance is realized can a case be closed. Any contested case will be reviewed by the State Fire Marshal (who is also the director of MNOPS). When a probable violation continues to be contested the case must be brought to court for final mediation.

The late winter and early spring is devoted to participating in damage prevention education seminars conducted throughout the entire state. Typically the audience is the excavation community and the message from MNOPS is compliance and safety information. Less often, other educational activities and presentations are offered to the benefit of locators, utility operators, and the general public. Training efforts are often coordinated with the stakeholders (such as pipeline operators, and Gopher State One Call - GSOC). MNOPS annually hosts an educational conference in the spring where damage prevention is given an entire track. Education, Training, and Communication are fostered at this event.

MNOPS participates in and supports the MN Regional CGA and all of the utility coordinating committees (UCCs) throughout the state. These partnerships are beneficial in fostering communications between stakeholders who might be otherwise isolated and insulated. Beyond ideas and improvements made available and shared between stakeholders, MNOPS is also made available to these entities. In situations MNOPS is also made aware of areas for improvement.

Using the OPS database, reports are run for analysis and tracking of damage prevention efforts and enforcement activities. MNOPS has also initiated a Voluntary Damage Reporting program. Similar in concept to the DIRT initiative, this analysis since 1996 has shown that an active State Agency (MNOPS) can promote safety by reducing the number of line hits through education and enforcement.

MNOPS is often asked to participate in activities (pre-construction or construction progress meetings) where an impartial 3rd party might help to mediate between parties at odds over damage prevention issues. MNOPS dispels misconceptions and offers insights. Project progress is often followed through to completion. Though Damage Prevention efforts at MNOPS are predominately pipeline related it is not limited in that regard. Data suggests that MNOPS involvement in excavation damage cases involving utilities other than pipeline help to prevent the risk to pipelines by changing behaviors. For example, an excavator who might otherwise be a repeat offender and who might next hit a pipeline will now think twice before excavating in an unsafe manner.

Most of the 9 elements are developed in Minnesota and there are part of the processes and procedures integrated into the program as a whole. To a large extent Minnesota practice and procedure is in alignment with the CGA Best Practices. Predominantly the grant is necessary to continue this DP program.

State Damage Prevention Elements

ELEMENT 1 - EFFECTIVE COMMUNICATIONS

"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."

Does the proposed project address this element? (Required) Yes

Describe any existing state initiatives that support this element: (Required)

MNOPS primary method of assuring communications is through enforcement of applicable DP laws, which first requires all operators participate in the GSOC system and that secondly requires all excavators to use the GSOC system. Communication is necessitated by many requirements of MN's DP laws and rules including:

Preliminary design meets - early communication initiated by a project owner before a project is designed to give operators an early heads up about possible conflicts.

Preconstruction meets - communication initiated before excavation occurs between the project owner, designer, operators, and excavators. (CGA BP 2-1 to 2-4).

Plans for excavation - during the design phase the designer must obtain information from operators about their utilities. This must include the SUE level designation (CGA BP 2-14).

Operator must notify - If an operator cannot locate by start date and time (i.e. unlocateable) they must communicate this to the excavator.

Abandoned, private, markouts - operator must locate or otherwise provide (communicate) best available information on these types of facilities (consistent with CGA BP 4-11).

Protect and preserve - In the event the excavator has reason to believe markings are missing they are required to contact the operator for remarks.

Meet documentation - Any locate meet initiated by an excavator must be documented (consistent with CGA BP 4-14) MNOPS designed a meet documentation form and it has been made available on the website for several years. See Attached

ExcavatorMeetAgreementRev32406.pdf

positive response - consistent with CGA BP 4-9 facilities are either marked out on site or a no conflict notification is left and/or the locate ticket can be "stated" at GSOC. A web based application that anyone can use to determine actions taken by affected operators.

Marking standards - Markouts identify operator and stand colors and identifiers are specified (consistent with CGA BP 4-13)

White lining & precise excavation descriptions - reducing over notification and over locating.

The early meeting requirements (preliminary design meets & preconstruction meetings) where initiated by MNOPS and are unique to MN. To aid in the education of stakeholders, a new ticket matrix was developed by GSOC the operations committee. See attached New Ticket Type Matrix.pdf

MNOPS was asked to present on this topic at the National CGA meeting early this spring. See attached CGA-Design.pdf There seemed to be much interest in this initiative and in the potential to avoid utility conflicts during construction.

GSOC has many methods of fostering communications, including taking GPS coordinates, email and web based applications for ticket taking, Web based excavation polygons (maps), and web based operator polygons (base maps). Further the ticket status system was put into use after 2005 when MNOPS changed the rules requiring positive response. This Ticket status system is web based and available to anyone with internet access.

Operator contact information is provided on every excavation notice (aka ticket), including contact numbers for Marking Concerns, Damage/Repair, and for Customer Service.

Excavator Contact information is also included on each ticket; office phone, field phone, fax number, email address, and alternate contact names and numbers.

Further MNOPS is involved with the Road Authority Workshops which is basically an early spring meeting where road authorities (state, counties, townships, and cities) meet to present their upcoming projects, projects being planned, and projects in the "still just thinking about it" stage.

Describe how the proposed project will enhance or continue implementation of this element: (Required only if proposal addresses this element)

MNOPS endeavors to continue implementation through enforcement and active participation in Regional CGA, UCCs, and GSOC operations and communications committees.

Project and meet handling is a focus of MNOPS. Recognizing that locate meets account for only a small percentage of tickets (less than 5%) but projects account for ~30% of the utility strikes, more work in this area needs to be done. Will likely be accomplished with partnerships through the MN Regional CGA and the UCCs.

Estimated budget for this element: (Required only if proposal addresses this element)

a. Personnel:	\$3,772.00
b. Fringe Benefits:	\$420.00
c. Travel:	\$0.00
d. Equipment:	\$0.00
e. Supplies:	\$0.00
f. Contractual:	\$0.00
g. Construction:	\$0.00
h. Other:	\$0.00
i. Total Direct Charges (sum of a through h):	\$4,192.00
j. Indirect Charges:	\$471.00
k. TOTAL (sum of i and j):	\$4,663.00

Budget Narrative for this element: (Required only if proposal addresses this element)

The budget calculations are based on the percentages of time spent YTD 2009 as tracked in the OPS database. The projections are further based on an extrapolation of what the rest of the calendar year should be. This Element was most difficult to differentiate from the rest as it is a crossover and a necessary component into just about every other element.

ELEMENT 2 - COMPREHENSIVE STAKEHOLDER SUPPORT

"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."

Does the proposed project address this element? (Required) Yes

Describe any existing state initiatives that support this element: (Required)

MNOPS has initiated the "MS216D Review Committee" which invites all associations and stakeholders to participate. This law and rule review and discussion occurs at least annually. Invitation to attend is open and agendas are usually loosely formatted to allow for anyone to bring issues and ideas forward for discussion. The MS216 Review Committee meetings are often held in conjunction with other events like Regional CGA Meetings and the MNOPS Spring Educational Conference. See attached 090416 216D Rules Meeting bullets.pdf The MNOPS Director holds a seat at the GSOC board where all stakeholders participate. This participation includes municipalities, investor owned utilities, contractors, excavators, the MN Dept of Transportation, association representatives (i.e. MN Association of Plumbing, MN Nursery and Landscape Association), and others.

MNOPS is available 24/7/365 for any type of inquiry, complaint, or incident. Contact is initiated with on call personnel through the MN duty officer afterhours and office attendant during office hours.

The local and regional Utility Coordinating Committees (UCCs) are fully supported by MNOPS. MNOPS is also very active with the MN Regional CGA. These interactions with persons throughout the state are essential in building networks and keeping the lines of communication open between MNOPS, GSOC, and stakeholders. These interactions are opportunities for sharing ideas and processes to enhance damage prevention and public safety.

Describe how the proposed project will enhance or continue implementation of this element: (Required only if proposal addresses this element)

MNOPS desires to initiate a recognition program for operators, excavators, and other stakeholders for their contribution(s) and efforts toward damage prevention. This will likely be an annual award and published in both the MNOPS newsletter and the GSOC Dig newsletters. The award would be public at both the MNOPS annual spring educational conference and possibly at other events (i.e. MN Utility Contractors Association). Criteria for the award would needs to be developed.



Estimated budget for this element: (Required only if proposal addresses this element)

a. Personnel:	\$9,055.00
b. Fringe Benefits:	\$1,006.00
c. Travel:	\$500.00
d. Equipment:	\$0.00
e. Supplies:	\$0.00
f. Contractual:	\$0.00
g. Construction:	\$0.00
h. Other:	\$0.00
i. Total Direct Charges (sum of a through h):	\$10,561.00
j. Indirect Charges:	\$1,130.00
k. TOTAL (sum of i and j):	\$11,691.00

Budget Narrative for this element: (Required only if proposal addresses this element)

The budget calculations are based on the percentages of time spent YTD 2009 as tracked in the OPS database. The projections are further based on an extrapolation of what the rest of the calendar year should be.



ELEMENT 3 - OPERATOR INTERNAL PERFORMANCE MEASUREMENT

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

Does the proposed project address this element? (Required) Yes

Describe any existing state initiatives that support this element: (Required)

Minnesota's process for reviewing performance measures and quality assurance programs related to locating personnel has been limited to the operator qualification requirements of Parts 192 and 195, and to the extent that locator performance may have been a factor in specific accident investigations. Locator performance is recognized as a contributing factor in a significant percentage of pipeline damages.

MNOPS hosts Locator Roundtables. These are typically held in the winter months when excavation activity is minimal. Issues discussed here are included into their spring training initiatives.

Describe how the proposed project will enhance or continue implementation of this element: (Required only if proposal addresses this element)

MNOPS has drafted (not yet complete) a DP protocol and desires to move forward with a specialized risk based inspection (operators with a history of poor DP performance). See attached DP Protocol.pdf

Estimated budget for this element: (Required only if proposal addresses this element)

a. Personnel:	\$3,018.00
b. Fringe Benefits:	\$335.00
c. Travel:	\$0.00
d. Equipment:	\$0.00
e. Supplies:	\$0.00
f. Contractual:	\$0.00
g. Construction:	\$0.00
h. Other:	\$0.00
i. Total Direct Charges (sum of a through h):	\$3,353.00
j. Indirect Charges:	\$377.00
k. TOTAL (sum of i and j):	\$3,730.00

Budget Narrative for this element: (Required only if proposal addresses this element)

The budget calculations are based on the percentages of time spent YTD 2009 as tracked in the OPS database. The projections are further based on an extrapolation of what the rest of the calendar year should be.



ELEMENT 4 - EFFECTIVE EMPLOYEE TRAINING

"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."

Does the proposed project address this element? (Required) Yes

Describe any existing state initiatives that support this element: (Required)

MNOPS is involved with the MN Regional CGA and has assisted in the building of a presentation that is presently being presented to various entities by the participating committee members. See Attached MNRCGA DPP.pdf.

MNOPS is actively involved in the locator workshops that are hosted by the Utility Coordinating Committees (UCCs) in MN. The UCCs participate in development and delivery of the programs. All the programs include the necessity of 911 notifications. GSOC public education persons are also actively involved.

The MNOPS spring educational conference has many available opportunities for training operators of all types of utilities. See attached 2009 MNOPSConfAgenda.pdf. Included in the conference is the locator rodeo. During the rodeo MNOPS brings in a subject matter expert (SME) to observe the competition. Then the following day, the SME makes a presentation specific to the observations made and to address other similar learning objectives.

MNOPS training is offered in mitigating proposed civil penalties where appropriate. A penalty might also be mitigated when an offender can demonstrate that they conducted training that addresses a specific situation(s) that should eliminate the possibility of recurrence.

Describe how the proposed project will enhance or continue implementation of this element: (Required only if proposal addresses this element)

The SDP grant is essential to continued implementation of all activities under this element.

Estimated budget for this element: (Required only if proposal addresses this element)

a. Personnel:	\$3,772.00
b. Fringe Benefits:	\$419.00
c. Travel:	\$1,000.00
d. Equipment:	\$0.00
e. Supplies:	\$50.00
f. Contractual:	\$0.00
g. Construction:	\$0.00
h. Other:	\$0.00
i. Total Direct Charges (sum of a through h):	\$5,241.00
j. Indirect Charges:	\$471.00
k. TOTAL (sum of i and j):	\$5,712.00

Budget Narrative for this element: (Required only if proposal addresses this element)

The budget calculations are based on the percentages of time spent YTD 2009 as tracked in



the OPS database. The projections are further based on an extrapolation of what the rest of the calendar year should be.



ELEMENT 5 - PUBLIC EDUCATION

"A process for fostering and ensuring active participation by all stakeholders in public education for damage prevention activities."

Does the proposed project address this element? (Required) Yes

Describe any existing state initiatives that support this element: (Required)

MNOPS performs close to 100 damage prevention presentations to excavators and utility operators each year, covering all areas of the State. The majority of these presentations are sponsored by the local Utility Coordinating Committees (UCC). These presentations are typically conducted jointly with a representative of the one call notification center and utility representatives. See attached 2008 - tblDamagePreventionEducation.xls, please note that 2009 data is not yet available.

The MNOPS presentation is developed during the course of participation in the regional UCCs, with the GSOC Communications committee, the MN Regional CGA, and through incident and complaint review. MNOPS uses a structured education campaign consistent with CGA best practice 8-3. See attached 009 DPP.pdf

MNOPS is involved in the GSOC communications committee which organizes the state fair public education initiative, Radio ads, and publications. The outreach at the MN state fair reaches thousands of people.

Describe how the proposed project will enhance or continue implementation of this element: (Required only if proposal addresses this element)

All of the activities in this element have previously been supported by the SDP grant and previously the One Call Grant. The continued implementation of this initiative is critical to the overall success of Minnesota's damage prevention efforts.

Estimated budget for this element: (Required only if proposal addresses this element)

a. Personnel:	\$11,317.00
b. Fringe Benefits:	\$1,257.00
c. Travel:	\$5,000.00
d. Equipment:	\$0.00
e. Supplies:	\$200.00
f. Contractual:	\$0.00
g. Construction:	\$0.00
h. Other:	\$0.00
i. Total Direct Charges (sum of a through h):	\$17,774.00
j. Indirect Charges:	\$1,413.00
k. TOTAL (sum of i and j):	\$19,187.00

Budget Narrative for this element: (Required only if proposal addresses this element)

The budget calculations are based on the percentages of time spent YTD 2009 as tracked in the OPS database. The projections are further based on an extrapolation of what the rest of the calendar year should be.



ELEMENT 6 - DISPUTE RESOLUTION

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

Does the proposed project address this element? (Required) Yes

Describe any existing state initiatives that support this element: (Required)

MNOPS hosts a MS216D Review Committee at least annually where all stakeholders are invited to participate. Invitation to attend is open and agendas are usually loosely formatted to allow for anyone to bring issues and ideas forward for discussion. A living document is used to track issues and possible law /rule changes. See attached Law&Rules - consideration for revision 090413.pdf. The MS216 Review Committee meetings are often held in conjunction with other events like Regional CGA Meetings and the MNOPS Spring Educational Conference. See attached CGA MN Regional CGA Meeting Notes.PDF, and 090416 216D Rules Meeting bullets.pdf.

MNOPS is active in the MN Regional CGA. See CGA MN Regional CGA Meeting Notes. PDF. All parties are invited to participate. See attached mn regional cga_brochure.pdf.

MNOPS as the enforcing agency is often notified to investigate situations where involved parties dispute each other's accountabilities. As an impartial 3rd party our reports are available to involved stakeholders. Responding to incidents, complaints, and inquiries occurs 24/7/365. The response is not limited to only pipeline involved situations. It is not uncommon for MNOPS, as the subject matter experts (SME), to be invited to attend preconstruction, safety, and progress meetings for the purpose of moderating and mediating. MNOPS solicits information through newsletters. See attached GSOC-DIG FALL 2008.pdf Results in this case were incorporated into discussion topic for the MS216D Review Committee.

Describe how the proposed project will enhance or continue implementation of this element: (Required only if proposal addresses this element)

MNOPS desires to continue these activities using the SDP grant. The MS216D Review committee has identified the existing "Hand Dig" exemption (see attached 2008 GSOC Handbook.pdf pages 40 & 41, definition of excavation) in the law as a potential for dangerous consequence. MNOPS desires to continue to pursue a resolution to this issue and has formed an open hand dig subcommittee to work on a solution. This subcommittee and the main committee will continue into 2010.



Estimated budget for this element: (Required only if proposal addresses this element)

a. Personnel:	\$2,263.00
b. Fringe Benefits:	\$251.00
c. Travel:	\$0.00
d. Equipment:	\$0.00
e. Supplies:	\$0.00
f. Contractual:	\$0.00
g. Construction:	\$0.00
h. Other:	\$0.00
i. Total Direct Charges (sum of a through h):	\$2,514.00
j. Indirect Charges:	\$283.00
k. TOTAL (sum of i and j):	\$2,797.00

Budget Narrative for this element: (Required only if proposal addresses this element)

The budget calculations are based on the percentages of time spent YTD 2009 as tracked in the OPS database. The projections are further based on an extrapolation of what the rest of the calendar year should be.



ELEMENT 7 - ENFORCEMENT

"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."

Does the proposed project address this element? (Required) Yes

Describe any existing state initiatives that support this element: (Required)

MNOPS has been in the business of DP enforcement since the Office inception in 1987. Without question this is the largest percentage of DP activity this Office conducts. It includes investigation, report writing, enforcement action preparation and collection of penalties. See attached NPV Flowchart.pdf. Many of the other activities MNOPS conducts were initiated through a DP complaint or incident (i.e. attending a safety meeting as a result of a DP issue). Consistent enforcement is maintained by having a DP lead who reviews every enforcement action and by MNOPS adopting assessment considerations which are incorporated in MR7560.0800 Subpart 3. See attached 2008 GSOC Handbook.pdf page 79. The database identifies repeat offenders and previous violation instances to ensure that history is not repeated.

MNOPS is not incentivized in by collecting on penalties, rather MNOPS is motivated to only change behaviors that might otherwise lead to utility dig ins. To that end penalties may be mitigated if a proposal is made by the offending party to participate in training or by implementing procedure or technology which is believed to reduce possibility of recurrence.

Describe how the proposed project will enhance or continue implementation of this element: (Required only if proposal addresses this element)

Not every complaint or incident is pipeline related. There is no funding mechanism that presently exists for these non-pipeline activities other than this federal grants and/or the One Call grant. MNOPS involvement in any type of DP situation, whether pipeline related or not, maintains overall DP consistency and mutual respect for all UG installations.

MNOPS is implementing an O&M manual and procedures for DP will be further refined and incorporated into this manual.

Transparency is a goal of MNOPS and the intent is to make closed enforcement data available on the MNOPS website. DP cases will also be included and made available to the public.



Estimated budget for this element: (Required only if proposal addresses this element)

a. Personnel:	\$37,725.00
b. Fringe Benefits:	\$4,192.00
c. Travel:	\$0.00
d. Equipment:	\$0.00
e. Supplies:	\$0.00
f. Contractual:	\$0.00
g. Construction:	\$0.00
h. Other:	\$0.00
i. Total Direct Charges (sum of a through h):	\$41,917.00
j. Indirect Charges:	\$4,709.00
k. TOTAL (sum of i and j):	\$46,626.00

Budget Narrative for this element: (Required only if proposal addresses this element)

The budget calculations are based on the percentages of time spent YTD 2009 as tracked in the OPS database. The projections are further based on an extrapolation of what the rest of the calendar year should be.



ELEMENT 8 - TECHNOLOGY

"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."

Does the proposed project address this element? (Required) Yes

Describe any existing state initiatives that support this element: (Required)

MNOPS supports a separate track at the annual educational seminar entitled "New Technologies". See attached 2009 MNOPSConfAgenda.pdf. New Technology is continually being sought out for invitation to participate in the conference.

Through participation in GSOC operations committee, MNOPS continues to push for advancements of center technology, such as some of the most recent additions; Web-Tickets (ITIC), GPS, on line base maps (operator polygons), and most recently on-line Dig Polygons available to all users. MNOPS has access to GSOC's ticket management system which is entirely web based. All investigations into DP complaints or incidents begins here. GSO Chas also recently implemented the Interactive Voice Response system which handles some of the important messages that a caller would otherwise hear from a GSOC customer service representative.

Describe how the proposed project will enhance or continue implementation of this element: (Required only if proposal addresses this element)

MNOPS continues to make improvements to the OPS database system. Also several other state programs are in process of using the same system. MNOPS hopes that other state programs will continue to be enticed into using the SQL/VB.net based program as additional improvements and enhancements are completed. The "One Call" area of the database is an area where specific additional fields and questions can be added to this tab to better capture the root causal factors which contributed to the complaint or incident. Further the tab can be modified for easier upload into the CGA's Damage Information Reporting Tool (DIRT).

Estimated budget for this element: (Required only if proposal addresses this element)

a. Personnel:	\$2,263.00
b. Fringe Benefits:	\$251.00
c. Travel:	\$0.00
d. Equipment:	\$0.00
e. Supplies:	\$0.00
f. Contractual:	\$0.00
g. Construction:	\$0.00
h. Other:	\$0.00
i. Total Direct Charges (sum of a through h):	\$2,514.00
j. Indirect Charges:	\$283.00
k. TOTAL (sum of i and j):	\$2,797.00

Budget Narrative for this element: (Required only if proposal addresses this element)

The budget calculations are based on the percentages of time spent YTD 2009 as tracked in

the OPS database. The projections are further based on an extrapolation of what the rest of the calendar year should be.



ELEMENT 9 - DAMAGE PREVENTION PROGRAM REVIEW

"A process for review and analysis of the effectiveness of each program element, including a means for implementing improvements identified by such program reviews."

Does the proposed project address this element? (Required) Yes

Describe any existing state initiatives that support this element: (Required)

MNOPS currently uses various management reports from the OPS system which track case volumes, penalties assessed, penalties collected and rescinded, educational sessions w/ number of attendees, Accidents/Incidents, complaints, and pipeline specific inspections/complaints, enforcement actions by type, and complaints by type. This information is used in month by month and year by year comparisons.

MNOPS has also implemented the Voluntary Damage Reporting (VDR) program which has been populated with data since 1996. The information is used by MNOPS and others to determine: the extent of excavation related damages; the causes of excavation related damages; trend damages over time; and as a tool for evaluating (or benchmarking) damage prevention efforts. The information is also used by MNOPS to direct resources where they would provide the most benefit in reducing damage and ultimately increasing public safety. See attached VDR 2008.xls; note that Hazardous liquid and water & sewer charts are not included because of the low rate of damage. VDR results are made available on MNOPS website.

Describe how the proposed project will enhance or continue implementation of this element: (Required only if proposal addresses this element)

MNOPS will enhance this program element by developing additional OPS database reports and further develop performance matrix for inspectors. It will be referred to as the MNOPS dashboard report, see attached MNOPS Dashboards-2008Q1-4.PDF. This project is just in the conceptual stage and as such the numbers are not actual or accurate and all the charts are not yet developed.

MNOPS intends to develop a formal report on GSOC's annual performance. This will be presented to the Commissioner of Public Safety and will likely be made public information in the interest of transparency.



Estimated budget for this element: (Required only if proposal addresses this element)

a. Personnel:	\$2,263.00
b. Fringe Benefits:	\$251.00
c. Travel:	\$0.00
d. Equipment:	\$0.00
e. Supplies:	\$0.00
f. Contractual:	\$0.00
g. Construction:	\$0.00
h. Other:	\$0.00
i. Total Direct Charges (sum of a through h):	\$2,514.00
j. Indirect Charges:	\$283.00
k. TOTAL (sum of i and j):	\$2,797.00

Budget Narrative for this element: (Required only if proposal addresses this element)

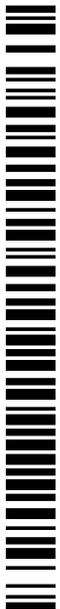
The budget calculations are based on the percentages of time spent YTD 2009 as tracked in the OPS database. The projections are further based on an extrapolation of what the rest of the calendar year should be.



Legislative/Regulatory Actions

Provide a description of any legislature or regulatory actions (including legislative/regulatory studies) taken by the State within the past five (5) years pertaining to damage prevention program improvement, even if those actions were not completely successful.

In 2001 MNOPS initiated a rules review comparing the CGA best Practices to existing Law and Rules. After a lengthy effort to build consensus MNOPS pursued rules changes through an administrative law hearing. See attached Rules7560AdministrativeLawJudgeReport.pdf. On March 31, 2005, the Law Judges report was made final and new rules were put into place. Rules such as locating service laterals, positive response, marking standards, and meet documentation were all adopted. The rules as proposed by MNOPS were accepted without change. The endeavor was time consuming and an expensive process but one that proved completely successful.



State Damage Prevention Estimated Budget - Calendar Year 2010

DIRECT COSTS

Personnel	\$75,448.00
Fringe Benefits	\$8,382.00
Travel	\$6,500.00
Equipment	\$0.00
Supplies	\$250.00
Contractual	\$0.00
Construction	\$0.00
Other	\$0.00
Total Direct	\$90,580.00

INDIRECT COSTS

Indirect Charges	\$9,420.00
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TOTAL ESTIMATED COSTS

\$100,000.00



State Damage Prevention Application Attachments

090731 Governors Approval Letter.pdf
MNRCGA DPP.pdf
2009 DPP.pdf
New Ticket Type Matrix.pdf
090416 216D Rules Meeting bullets.pdf
2008 - tblDamagePreventionEducation.xls
CGA MN Regional CGA Meeting Notes.pdf
mn regional cga_brochure.pdf
GSOC-DIG FALL 2008.pdf
VDR-2008.xls
Rules7560AdministrativeLawJudgeReport.pdf
ExcavatorMeetAgreementRev32406.pdf
DP Protocol.pdf
2009 MNOPSConfAgenda.pdf
Law&Rules - consideration for revision 090413.pdf
2008 GSOC Handbook.pdf
NVP flowchart.pdf
MNOPS Dashboards-2008Q1-4.pdf
CGA-Design.pdf



*This Presentation brought to you by the
The Regional Common Ground Alliance*



MINNESOTA REGIONAL
CGATM
Common Ground Alliance

www.rgcahdbio.net/og

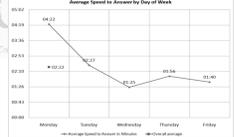
Preparing the Excavation Area

- **White Markings**
- **Prepare for GSOC notification**
 - ✓ geographic location
 - ✓ precise marking instructions
 - ✓ r/w
 - ✓ accurate callback info
 - ✓ gps coordinates
- **unprepared callers may be disconnected during high call volume periods**

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Methods of Contacting GSOC

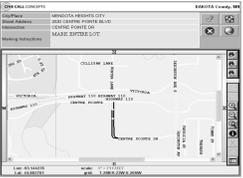
- **ITIC (Internet Tkt)**
 - ✓ 24 hour access
 - ✓ mapping
 - ✓ all ticket info including utility listing w/phone #s
 - ✓ local training available
- **Telephone**
 - ✓ 881-464-0082
 - ✓ 800-262-1166
 - ✓ 811
 - **best time to call**



Day of Week	Average Speed to Answer (seconds)
Monday	24.22
Tuesday	22.27
Wednesday	21.25
Thursday	22.26
Friday	21.27

GSOC New Technology

- **Interactive Voice Response (IVR)**
 - ✓ coming enhancements for IVR system
 - ✓ future usage
- **New Maps**



GSOC New Technology

- **Map URL**
 - **Question most often asked of GSOC by utilities is "Why did I get this tkt?" location link @ bottom of tkt to see list two options; today's tkts and more tkts**



GSOC New Technology - Map URL

- **Activating the "Google Map" allows you to see the locate polygon (red lines) drawn by the CSR or ITIC user, as well as the District polygon or utility polygon (blue lines)**



GSOC ticket types

- **Routine**
- **Emergency**
- **Appointment (meets)**
- **Boundary survey**
- **Non-excavation request**
 - ✓ owner inquiry (*new!*)
 - ✓ plans for excavation
 - ✓ engineering / pre-construction meetings (*new!*)

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GSOC 'Routine' ticket

- **48 hour notice prior to excavation**
- **Validity**
 - ✓ markings are good only as long as they're visible and up to 14 calendar days maximum
 - ✓ The ticket can be kept valid up to 6 months as long as arrangements are made to keep the marks fresh
 - ✓ Can be processed w/ GSOC up to 14 calendar days in advance of when excavation is to begin

www.rgcahdbio.net/og

GSOC 'Emergency' ticket

- **Definition:** "Emergency means a condition that poses a clear and immediate danger to life or health, or a significant loss of property"
- **Contact info must be accurate**
 - ✓ Accurate field phone number
- **Immediate response**
 - ✓ 1 hour contact
 - ✓ 3 hour markings
- **Scheduled response**
 - ✓ excavator on site as scheduled

Emergencies only # - 866.640.3637

www.rgcahdbio.net/og

GSOC 'Appointment' ticket

- **48 hours prior to meet**
 - ✓ appointments are only tentative
 - ✓ all parties must make effort to be on time
 - ✓ provide maps diagrams or sketches of job site
 - ✓ set locate / excavation schedule for project
- **24 hours after the meet**
 - ✓ Locators have up to 24 hours after meet to locate job site
- **Meet documentation – excavator**

www.gophanloc.com/eng

Meet Documentation

✓ **date & time**
 ✓ **names, companies, contact info**
 ✓ **diagram, sketch, and precise excavation area**
 ✓ **agreed schedule**

www.gophanloc.com/eng

GSOC 'other' ticket types

Header Code	New Ticket Information	Plans for Excavation (Design)	New Ticket - Non-Excavation Meeting	Inventory Society
Need marks for Survey Information	Contract/History	Plans for Excavation	Engine/Contract	Survey
Need marks for S&E Engineering		X		X & S & E (Locs)
Inventory			X	
Marks for Excavation				
Determine facility operators in area	X			
Determine facility operators in area for 90-Day verification	X			
Pre-Design Meeting			X	
Design Meeting			X	
Pre-Construction Meeting			X	
Arrange Meeting with Locators			X	
How will ticket Delivery be handled?	Suppressed	Locator or Engineering Department, as determined by Facility Operator	Locator or Engineering Department, as determined by Facility Operator	Locator
Expected Results?	Names of utility operators provided to requester	Facility Operator provided maps or records.	Facility Operator shown at meeting and exchanges information.	Facility Operator Marked
Expected Time Frame for Response?	Instant	15 Days	15 Days	16 Hours

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GSOC New 'Information' ticket

- **Header code: Owner Inquiry**
- **Can determine which facilities are in excavation area.**
- **Determine facility operators in area for 90 day verification**
- **Ticket delivery – Suppressed, utility never receives ticket**
 - ✓ No locating required
 - ✓ No charge

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GSOC New 'Non-Excavation Meeting' ticket

- **Header code: Eng/Pre-Con Mtg**
- **Pre-Design Meet**
- **Design Meeting**
- **Pre-Construction meeting**
- **Ticket Delivery:**
 - ✓ Delivered to locators or Engineering Dept, as determined by facility operator
- **Time frame: 15 Days**

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COLOR CODES

- ⇒ Proposed Excavation
- ⇒ GAS – OIL – STEAM
- ⇒ ELECTRIC
- ⇒ COMMUNICATIONS
- ⇒ WATER
- ⇒ RECLAIMED WATER
- ⇒ SEWER

www.gophanloc.com/eng

Help Desk

Please use the GSOC Help Desk for all inquiries other than processing a locate

- ✓ **Tkt Information**
- ✓ **Cancellations**
- ✓ **Retransmit**
- ✓ **Tkt Searches**
- ✓ **Job site problems**
 - No marks at job site
- ✓ **Status of Locate**

800.245.5852 / 651.681.7326

www.gophanloc.com/eng

GSOC 'other' ticket types

Header Code	New Ticket Information	Plans for Excavation (Design)	New Ticket - Non-Excavation Meeting	Inventory Society
Need marks for Survey Information	Contract/History	Plans for Excavation	Engine/Contract	Survey
Need marks for S&E Engineering		X		X & S & E (Locs)
Inventory			X	
Marks for Excavation				
Determine facility operators in area	X			
Determine facility operators in area for 90-Day verification	X			
Pre-Design Meeting			X	
Design Meeting			X	
Pre-Construction Meeting			X	
Arrange Meeting with Locators			X	
How will ticket Delivery be handled?	Suppressed	Locator or Engineering Department, as determined by Facility Operator	Locator or Engineering Department, as determined by Facility Operator	Locator
Expected Results?	Names of utility operators provided to requester	Facility Operator provided maps or records.	Facility Operator shown at meeting and exchanges information.	Facility Operator Marked
Expected Time Frame for Response?	Instant	15 Days	15 Days	16 Hours

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Wait Required Time

- **Routine**
 - 48 hours
- **Meets**
 - 48 hours + 24 hours
- **Emergencies**
 - 1 hour contact
 - 3 hours on site

www.gophanloc.com/eng

Respect the Marks

- **Determine precise location of buried facilities**
 - **Utility Identification**



Respect the Marks

Exposing facility



The right way..



www.gophershell.com/Log

Respect the Marks

And...



The wrong way



www.gophershell.com/Log

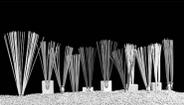
Safety

- **Support**
- **Do not handle electric**
- **Don't assume abandoned**
- **Overhead clearance**
- **Protect future locate-ability**
- **Warning tape not installed with all utilities**



Protect the Marks

- **Offsets**
- **Whiskers**
- **Call for relocates when needed**

Projects ~ Meets

- **Managing your marks**
 - **Locators to place**
 - **Excavators to maintain**



Projects ~ Meets

- **Shared Responsibilities**
 - **Setting reasonable expectations**
 - **Excavation and locations**
 - **Utility relocations**
 - **Meet documentation**
 - **Communication**
 - **Locator Contact Info**

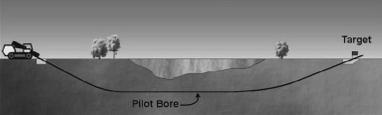
Projects ~ Meets

- **Locating expectations**
- **Utility relocations**



Directional Drilling

- **Check Calibration of Machine**
 - **Operations manual**
 - **Should be performed daily**



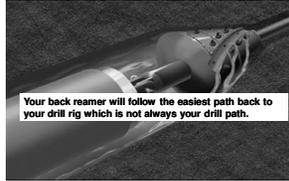
Directional Drilling

- **Pothole/expose**
 - Expose bore head to verify depth prior to crossing
 - Watch bore head crossing facility going through and on back ream



Directional Drilling

- **Determine Soil Types**



Your back reamer will follow the easiest path back to your drill rig which is not always your drill path.

Directional Drilling

- **Back ream: size of bore head**
 - Respect the 24 inch tolerance zone



Directional Drilling

- **Maintain Bore Records**
 - Depth and Path
 - Facility locations



www.gcp.com/central

Directional Drilling

- **Gas Damages**
 - **Underground migration**
 - Path of least resistance
 - Gas follows bore path
 - Follows other underground paths
 - Ignition source

Partners of the Mn Regional Common Ground Alliance

www.gcp.com/central



*Dan Munkle
Outreach | Enforcement Supervisor
cell: 612-741-2626
dan.munkle@state.mn.us*



Electric Cable Safety

- Assume all lines are energized. Some lines are not fused and may re-energize (re-closer).
- Don't make assumptions about what appear to be abandoned facilities.
- The presence of aerial lines does not mean there are no buried lines.
- Hand dig anywhere near pedestals, transformers, meters etc., cables may loop.
- Sudden failures – Do not handle.

Electric Cable Safety

- After Contacting a Cable:
 - stay on the machine and avoid becoming a path to ground.
 - maneuver the equipment to break the electrical contact.
 - If necessary to leave the equipment - jump clear.
 - Warn others - call 911.

Communications Cable Safety

- Laser danger
- Because fiber is glass, shattering could occur even without a physical cut.
- Be Aware - Fiber found Everywhere.
- Pulp Cable.
- Broadband.
- Report Nicks.

Water & Sewer Safety

Depth Issues.
 Marking of pipe material - locate difficulty.
 Know what you are looking for.

- Mains can be PVC, Polyethylene, cast iron, copper, steel, ductile iron.

Water & Sewer Safety

- Cross-bores.
- Crushing.
- Stubs.

Appointments Documentation

➤ date & time
 ➤ names, companies, contact info
 ➤ diagram, sketch, and precise excavation area
 ➤ agreed schedule



Projects

- 30% of the problem.
- Excavator protects & preserves markings.
- Excavator is responsible to coordinate re-marks.
- 6 months ticket life span.
- Precise marking instructions (ask for only what you need).

Off Set Markings



Excavator Responsibilities

- Provide Notice of Excavation
- Be Precise - *WASTE* markings
- Wait the required time
- Protect & preserve the markings
- Hand dig (vacuum) to expose
- Cancel
- 911, notify utility, protect public.
- Support
- Careful and Precise Excavation



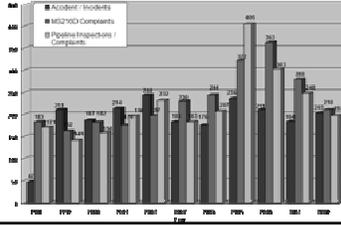
Operator Responsibilities

- Locate Accurately & Sufficiently
- Notify if otherwise unable.
- Non-Excavation Requests
- Maintain Info as GSOE
- Damage Investigations & Repair
- No Conflicts
- Service Laterals
- Maps & 'Locatable'
- Abandonment
- Qualify if pipeline location.



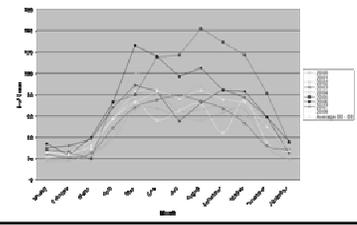
Enforcement Actions

Case Breakdowns By Year



Enforcement Case Load

2007's Case Timeline



Minnesota Office of Pipeline Safety

www.dps.state.mn.us/pipeline

St. Paul 651.201.7230

Manhato 507.359.7372



300.422.0793

365 & 24-7

	New Ticket - Information	Plans for Excavation (Design)	New Ticket – Non-Excavation Meeting	Boundary Survey	Locate Request
Header Code	Owner Inquiry	Plans for Excavation	Eng/Pre-Con Mtg.	Survey marks	Routine
Need marks for Survey Information				X	
Need marks for SUE Engineering		X C & D SUE Levels		X A & B SUE Levels	
Maps/Prints		X			
Marks for Excavation					X
Determine facility operators in area	X				
Determine facility operators in area for 90-Day Verification	X				
Pre-Design Meeting			X		
Design Meeting			X		
Pre-Construction Meeting			X		
Arrange Meeting with Locators					X
How will ticket Delivery be handled?	Suppressed	Locator or Engineering Department, as determined by Facility Operator	Locator or Engineering Department, as determined by Facility Operator	Locator	Locator
Expected Results?	Names of utility operators provided to requestor	Facility Operator provides maps or records.	Facility Operator shows up at meeting and exchanges information.	Facility Operator Marks.	Facility Operator Marks.
Expected Time Frame for Response?	Instant	15 Days	15 Days	96 Hours	48 Hours

216D Review Committee Meeting – Discussion Bullet Points
April 16, 2009 - Breezy Point Resort, MNOPS Annual Spring Conference

Attendees:

See Attachment: '090416 attendance.pdf'

Distributed:

LawsAndRules – Consideration for Revision 091413.xls
GSOC Handbooks
090224 - CGA Regional Meeting Notes-RulesReview.doc
080926 newsletter responses.xls

Announcements:

Jon Eisele facilitated the meeting (Dan Munthe was unable to attend).

General Discussion Points:

Review of last meeting from Feb 24, 2009. (*090224 - CGA Regional Meeting Notes-RulesReview.doc*)

GSOC newsletter article regarding “White Markings” and the responses received by MNOPS (*080926 newsletter responses.xls*). Jon read the idea for a law change encouraged group to review comments.

Jon introduced the discussion topics in order (*LawsAndRules – Consideration for Revision 091413.xls*)

Revision of the definition of excavation MS216D.01 Subd. 5 –

MN is one of the few states that exempts hand digging. From a safety standpoint this is problematic.

Delete exemption for trees and shrubs? Perhaps less of an issue now than when the law was written.

Delete an exemption based on depth? Depth is not consistent. Not really a good idea to have this exemption. GSOC and GSOC CSR's promote getting an excavation notice (LORQ) regardless of the activity.

Specific types of hand dig problems: driving sidewalk forms, anchors, soil testing, bar holing. There needs to be certain activities that need to be identified as activities necessitating a LORQ. If MN did not have a hand dig exemption it is assumed that the LORQ volume would not increase significantly.

Planting flowers (as an example) should not necessitate a LORQ. People will think it is foolish and they might therefore think the whole law and GSOC system is foolish.

Perhaps the best way to change the law is add the things that are not exemptions (i.e. anchors).

*A subcommittee meeting specific to this topic will still need to be scheduled.

Railroads specifically identified as an operator under MS216D.01 Subd. 9 -

Railroads not exempt now under MN law. Railroads should always be registered when they have buried facilities (i.e. fiber optic).

Designee appointed by Director of MNOPS to represent the State on the GSOC board.
MS216D.03 Sub 2 (a) –

No time needs to be spent on this as Mark Palma will address MNOPS directly.

Establishment of the One Call Center language is confusing (i.e. commissioner of public safety contracts with the vendor not the board). This section needs to be looked at in the future so it reflects the process that is currently being used.

Meetings like this with all the stakeholders prior to change is the best way to accomplish.
Thanks to everyone involved. (per Jerry Rosendahl)

Precise Marking Instructions MS216D.04 Sub 2 (b)(2) and White Markings MS216D.05 (2) –

Precise marking instructions are sometimes better than white markings because white markings can go missing, especially after a damage.

There is value to having a whole lot marked if you are a homeowner (i.e. the actual tree location might get moved half a dozen times before the owner finally makes up their mind).

Homeowners are not the concern, rather it is the professional excavator who gives imprecise marking instructions.

An excavator gets a better mark out if they give good marking instructions or white markings – because you get marks right where you need them quicker (i.e. comm. drops).

Sometimes excavators have to reroute when they encounter UG conflicts and if the excavator described marking instructions too tightly, they would need to generate a new LORQ with updated marking instructions.

Reasonableness needs to be exercised when requesting a buffer around a white marking (i.e. 75' radius of white stake for a tree).

Does there need to be a limit on the buffer size that can be requested?

The practicality of white markings is at the base of many arguments. Who is it practical for, the excavator or the locator? Is it practical for a locator to go out and mark more than necessary? Is it practical for an excavator to mark in white when all the locator would have to do is mark out a single service or just a couple of services?

Provide Protection. MS216D.05 (3) -

The word “support” is in the law and the word “protect” is assumed but not in the law.

Persons subject to penalties expanded to include all persons beyond excavation for remuneration. Increase the penalty amount. MS216D.08 Sub 1 –

Remuneration is a broad term.

Repeat offenders a problem. Scalable penalties difficult when the penalty is only \$1000.

MNOPS inspectors need to exercise judgment when accessing. Don't want their hands tied for egregious violations. Belligerent violation needs to be penalized.

Sometimes the enforcement is more expensive than the fine amount. Cost prohibitive for MNOPS to pursue

MNOPS does not want to become a revenue generator. Stakeholders do not want MNOPS to become a revenue generator.

Venue for court to include where the violation occurred. MS216D.09 Sub 2 –

Out of state excavators and you are out of luck.

Witness availability.

* A.G. Office needs to review. This law (rule) change may not be allowable.

Add verbiage to law to make the Private Facility Owner responsible for their private facility(s). MS216D ? -

Farm taps on private property the driving issue.

Want to avoid having every private facility owner a member (i.e. gas grill feed, sprinkler systems).

This issue has also been referred to the CGA best practices committee.

Some private facility operators in other states are mandated to pay for their facilities to be located.

Should a subcommittee be organized in this regard? Maybe this issue is beyond MNOPS authority (private property).

Could this issue be punted to the real estate community (transferring private facility information).

Precise Marking Instructions and White Markings in rules MR7560 –

Same discussion as above.

White lining should be in sufficient detail to clearly delineate.

Include Meet definition to include "subsequent meets". MR7560 - Definitions Subpart 7

Documentation on all meets not necessarily a new APPT LORQ.

Add documentation requirements for routine LORQs that turn into a project lasting up to 6 months. MR7560.0225 Subp 3 –

Does this documentation really matter if no one is doing it anyway?

MNOPS in investigations where no evidence exists.

A portion of meeting recording is missing.

Add judicial review. MR7560.400 Citations Subp 2 (D) –

This would avoid MNOPS being forced into administrative court.

Closing:

The discussed topics were initiated by MNOPS but not limited. Open invitation to other points of discussion. Opening the law/rules will not be done in a vacuum and consensus is the goal. Any urgent issue(s) need to be communicated to MNOPS. All stakeholders need to be involved.

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"A Shared Responsibility"



Know what's below.
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Minnesota Regional CGA Meeting attendance February 24, 2009

Name	Phone	Email
Bill Marka - Quality Contracting	651-365-7356	bill.marka@qcu3.com
BUTCH MCCONNELL	952-891-7115	GORDON.MCCONNELL@CO.DAKOTA.MN. US
LARRY CHAMBLISS	612-381-5294	larry.chambliss@qwest.com
Ross Larson	651-714-7541	Ross.Larson@Qwest.com
Bred Johnson	952-697-3144	bjohnson@korterra.com



Minnesota Regional CGA Meeting attendance February 24, 2009

Name	Phone	Email
Jan Eisele	651-681-7303	joneisele@gopherstateonecall.org
Kris Tande	612-861-8692	Kristina.Tande@centuryenergy.com
Rob Yelton	612-209-6451	ryelton@unitedlocating.com
DAN MUNTHE	612 741 2626	DAN.MUNTHE@STATE.MN.US
JUSTIN BRADFORD	952.428.7966	jbradford@rhinemarkers.com

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Name	Phone	Email
Tim Mahedy (Xcel)	651 245 7043	timothy.a.mahedy@xcelenergy.com
Lisa John	320-558-9485	lisa@telcomconstruction.com
Randy Bern	515-210-2128	randybern@vanguard.net

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Name	Phone	Email
Bill Johnson	651-229-2418	williams.d.johnson@xcelenergy.com
Kenton Muntze	507-993-0673	Kenton.Muntze@elmlocating.com
Mike Willits	507-993-0689	mike.willits@elmlocating.com
WALT KELLY	507 454 3147	WALT@WALTKELLY.COM
Terry Huxiede	612-963-5111	thukriede@a-p.com
Russ Lewis	(952) 452-2417	rlewis@mpnextlevel.com
BEN WALLACE	651-895-0473	BENWALLACE@USICINC.COM
MIKE BROSHOUS	(515) 745-3866	MIKE.BROSHOUS@CUSINK.COM

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Name	Phone	Email
DAVID STARK	952-428-7993	DACE@EMAZZTR.COM
CHRIS THOME	952-428-7968	CTHOME@RHINOMARKERS.COM
KARL BLESER	218 766 2005	kbleser@minnesotaenergyresources.com
CHUCK JENSEN	763-323-2687	chuck.jensen@conexusenergy.com
Ryan Zelenki	763-398-0980	Ryan.Zelenki@Sun-P.com
MARIE PALMA	612-991-7733	mpalma@hinslowlaw.com
TOM PRESTON	952-703-7019	TPRESTON@RHINOMARKERS.COM

National Committee Review:

- The meeting focused around whether or not to be profit or non-profit. Concerns were limited influence and lobbying abilities that come with being a non-profit. Also, municipalities are getting concerned regarding paint on roadways and decorative pathways, etc... they are beginning to require different markings to be used, duct tape, chalk, etc... Jon Eisle mentioned that the City of St Paul was looking into eliminating paint in the down town area, but nothing ever became of that. Duct tape was not approved in best practices committee. Another proposal came up to use flags to indicate newly installed facilities.
- Dan Munthe gave two presentations. Positive response and most of the discussion was geared around how it interacts with the call center. Less than 3% of tickets are checked for positive response through the system. The question is to what extent does the excavator have with regards to using positive response. CGA had recommended this as a best practice.
 - Concerns: The utility cannot respond through the computer on meets and emergencies because they need to respond to the site anyway. There are multiple ways to fulfill positive response requirements so excavators must check several ways to see if it is clear. It was recommended that we need a sub committee and better representation of excavators to further this subject. Rules don't really allow for a verbal response.
- Dan's second presentation was design locates.
 - GSOC will have informational ticket. This is pulled prior to the design stage. It will give a list of effected utilities in the area. It will not generate a ticket to the actual utility. It just gives the caller that information of which utilities are in the area.
 - The second one is a pre-construction ticket. This would be the next step in the process. This is a 15-day ticket and does go out to the utilities. This allows you to pull a ticket for a site meet with the utilities to discuss possible needs for moving utilities, etc... Then you would use the design or current non-excavation ticket for the job site. The intent was to have these tickets routed to their engineering/design departments at utility companies. This will be a newsletter story, included in presentations, etc... Goal is to roll this out prior to the end of February. There will also be a mass mailing to utilities as well. Expecting this to be only 2 to 3% of the ticket volume. Concern will be that for counties doing work this may eliminate the need for a pre-con letter or do both. Second concern was for aerial facilities that may not be mapped through GSOC might not be notified. There will be a need to include engineers into these spring meetings. Michigan currently has a similar system and is experiencing that they are skipping the design ticket and going straight to the survey ticket. Another concern is that the

actual location of the facilities are not geographically mapped correctly and is the need for actual locations relevant to the pre-con tickets to see actual location of the facility including elevations due to the project delay and utility costs involved. If this happens prior to the design stage, it can prove to be very cost saving.

Education Committee Presentation: Tim Mahedy presented power point to everyone. The objective of the presentation is to provide anyone who wants one a pre-made presentation that includes basic information regarding the law and best practices. There are several blank slides on here as well to input your specific utility information if you wish to. Feel free to adjust and make modifications to this presentation. Send Tim Mahedy your logo if it is not found on the presentation and he will insert it. This will be available by disk, please email Tim for a copy of it: Timothy.A.Mahedy@Xcelenergy.com

- Mark Palma mentioned that GSOC is trying to use more ticket types and explaining them in a better way for folks to use these to make them more practical for the users. Also by 2010, they are looking to have a complete re-write in the manual concerning meets. If you have thoughts, forward them to Jon Eisle within the next 60 to 90 days. One objective is to provide clearer expectations of parties at the meets, documentation, etc.
- Additional slides on open trenches and private utilities will be added to this presentation.
 - Over 40% of the ticket volume comes from homeowners while nationally it is approximately 8%. Often times they don't consider private utilities. "The house the Jack Owns" is a presentation available on the GSOC web site that was put together by Jim Holzer. 12,000 emails were sent to homeowners containing information regarding the color codes and private utility information. GSOC is putting in some software changes with IVR at the beginning of the call depending on the ticket type as well as the caller type.

Moving Forward-After our first year

- What are the needs for us in the future? Forward ideas to Tim Mahedy regarding speakers or items you would like to see. Some examples for speakers would be on railroad issues, non profit information, colored granular fill in place of a warning tape, flexible snake with tracer wire, ground penetrating radar, and white lining on Google maps. Tim will create a list for us to review and decide what we would like to learn about.
- Anyone is welcome to recommend a best practice here. An idea was presented to have us as SMEs present something at each meeting about what we know about. Objective would be to learn what each other does as well as how we interact with each other.

- Pricing and examples of 811 stickers were shared with everyone. These will be the same material that is used on their posts, so it will be durable. Quantity of 500 is \$1.50 a piece. 100 would be the minimum amount you could order. Contact Tim with how many you would like, he is going to order 500 of them.

216D Rules Review

- Dan Munthe mentioned that there is no intent at this time to move forward with any rule changes, but recognizes that there is some need to clean up some items. On April 16th, there is 2 hours dedicated to discussion on rule changes. You are welcome to come to this meeting even if you are not attending the conference; there is no fee for just attending this meeting.
 - Issues discussed last year: pre-con tickets, homeowners removing flags, repeat ticket issue, private facilities, definition of hand digging, private sewer laterals, horizontal directional drilling and some municipalities not observing the potholing-it was decided that when this was witnessed it would be brought to the attention of MNOPS. There have not been a lot of complaints with regards to this last issue. With regards to anchors, stakes being defined as non excavation-no sub committee was ever created to pursue this issue.
 - It was recommended that we create a sub committee this year to deal with Anchors and Stakes. It was noted OSHA's definition of excavation is different. In 7 states it is defined as an activity with the purpose of removing the soil. Considerations might be for emergency gas leak needs, depth of activity. Also there may be a difference between a minimal standard and a best practice. Dan Munthe will email everyone in attendance so they can respond if they want to be part of this sub committee.
 - Virginia Pilot Project is currently a project of virtual white lining. The excavator walks around the site with a "smart" device and clicks. Then this is sent to the one call center and this is their boundary of their ticket request. GSOC can already support it with their technology but is waiting to promote this until there are more practical options and software that is available to the general public at a reasonable cost.
 - There will be a link from the ticket to a map. You will see the polygon on a Google map drawn as well as your facilities mapped registered with GSOC. Benefits: Understand why you received the ticket and also a tool for folks in the field. If you receive your tickets by fax, it will have the link listed.
 - Should the law define what is practical with regards to white lining to give a precise location and would that be able to be done if it was done via the web? Concerns would be utility/locator's mapping technology, would it create minimum standards for technology,

etc... How much extra cost does that put on the excavator vs. what the utility is currently experiencing? It was mentioned that the audience is wide and varied that may be in need of training on how to be precise.

- NPL has a good presentation on cross bores and gas rebuild project. It is about 15 minutes long. Contact Jon Eisle if you would like a copy of it.
- It was brought up by Walt Kelly that further discussion needs to take place regarding apartment complexes, campuses, mobile home parks, private owners and developers-are they aware of their responsibilities within the law.
- Butch McConnell mentioned that having the survey done up front on the underground facilities has proved to be very cost saving with regards to both time and money when it is done prior to the design stage. There is a need to have more of a working relationship on county projects where utilities are considered a sub contractor so they are involved with the communication prior to the job being actually designed.

Who are we?

The MNRCGA is an organization of stakeholders that promote the shared responsibility of public safety and damage prevention.

Who should be a member?

Any stakeholder in damage prevention:

- Excavator
- Municipality
- Locating Company
- Facility Operator
- One Call Regulator
- Pipeline Operators
- Distribution Gas, Electric
- Transmission Electric
- Telecommunication
- Cable Television
- One Call
- Regulatory
- Municipality
- Rental Suppliers
- Excavators: Sewer, Water, Road, Landscape, Utility, Homebuilders, Flatwork

Benefits of Membership

Voice in national and regional concerns such as laws, rules and best practices.

Information from the national level.

Partnerships with Industry Professionals.

For information, please contact anyone on the steering committee:

Luann Chambliss, Qwest

Communications

LuAnn.Chambliss@qwest.com

651-381-5294 office

Tim Mahedy, Xcel Energy

Distribution, Gas and Electric

timothy.a.mahedy@xcelenergy.com

651-265-7043 office

Ken Walker, MP Nexlevel

Excavation

kwalker@mpnexlevel.com

320-963-2406 office

Randy Bern, Vannguard

Locating

randybern@vannguard.net

515-210-2128 office

Dolly Ludden, City of Saint Paul

Municipality

dolly.ludden@ci.stpaul.mn.us

651-266-6880 office

Jim Holzer, One Call Concepts

One Call

jimh@occinc.com

651-681-7329 office

Dan Munthe, MNOPS

Regulatory

Dan.Munthe@state.mn.us

651-201-7240 office

Sally Fossum, Alliance Pipeline

Transmission Gas

fossums@alliance-pipeline.com

952-983-1006 office



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www.gopherstateonecall.org



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G

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THE PUBLICATION
FOR UNDERGROUND
DAMAGE PREVENTION
IN MINNESOTA

GOPHER ONE STATE CALL



FALL 2008 CELEBRATING 20 YEARS OF DAMAGE PREVENTION SAFETY



CONTENTS

A MINNESOTA PROCLAMATION! ...	2
MN Office of Pipeline Safety	3
The "FLAGS & PAINT" GANG	4-5
GSOC UPGRADES	6
Say Hello: Chris Chelgren	7
Bulletin Board	8

GSOC BOARD MEMBERS

Adam Kramer – Chair Emeritus
952-941-3824
akramer@oaconsulting.com
American Water Works Association

Loren Fritz – Chair
612-296-9222
fritzlr@msn.com
Director at Large

Dan Tonder
Vice Chair
320-632-2311
dtonder@mnpower.com
Minnesota Power
North Central Electric Association

Bill Mahre – Treasurer
651-777-8565
billmahre@aol.com
Propane Technical Services
Minnesota Propane Gas Association

Mark Palma – Secretary
715-458-4588
mpalma@hinshawlaw.com
Legal Council
Hinshaw and Culbertson

Jerry Rosendahl
651-296-9636
Jerry.Rosendahl@state.mn.us
Director of Pipeline Safety
State Fire Marshal
MN Office of Pipeline Safety

Steve Yehle
651-229-2485
steve.yehle@xcelenergy.com
Xcel Energy
Midwest Gas Association

Joe Thill
952-67-4230
joseph_thill@cable.comcast.com
Comcast
Minnesota Cable TV Association

Timothy Malooly
763-559-7771
timm@ibdmn.com
Irrigation by Design
MN Nursery and Landscape Association

Dan Schroeder
763-543-4624
dschroeder@usenergyservices.com
U.S. Energy Services
Midwest Gas Association

Jennifer Sweney
651-480-3936
jennifer.sweney@kochpipeline.com
Koch Pipeline
American Petroleum Institute

Jeff Kimpling
320-235-4422
jkimpling@wmu.willmar.mn.us
City of Willmar
Minnesota Municipal Utility Association

Tom Hoffman
320-843-4150
thoffman@agralite.com
Agralite Electric Cooperative
MN Rural Electrical Association

Marilyn Remer
651-366-4648
marilyn.remer@state.mn.us
MN Dot
Roads and Right of Way

Gary Thaden
651-646-2121
gthaden@gmail.com
Pettersen and Associates, Inc
MN Mechanical Contractors Association

Rich Nelson
612-307-2650
rich.nelson2@qwest.com
Qwest
MN Telephone Association

Terry Van Watermulen
763-424-6600
Terry.m.vanwatermulen@embarq.com
Embarq
MN Telephone Association

Phil Lesnar
763-428-4868
phill@northdaleconst.com
Northdale Construction
MN Utility Contractors Association

As Gopher State One Call (GSOC) celebrates 20 years of service to the state of Minnesota, we need to thank EVERYONE who has contributed to GSOC's success. Damage prevention is a shared responsibility, to which many have lent their time and talents over the years. Everyone who has contributed to the effectiveness of Minnesota's program over the years has made the state a safer place to live and work.

The firm support and genuine acceptance of the "call before you dig" message by the professional excavators and homeowners who have used GSOC regularly since it opened in October of 1988 has been a tremendous contribution to our success. The facility operators around the state are committed to making sure all jobs are marked in a timely fashion upon the receipt of a locate request. Without their dedication to meeting the needs of the excavating public, no one would have taken damage prevention seriously. The Minnesota Office of Pipeline Safety (MNOPS) has served as both an educator and facilitator over the years, keeping all of us pointed collectively in the right direction. While it's difficult to single out any one individual who has made an outstanding contribution, GSOC would not be where it is today without the singular vision and tireless efforts of the late Roger Kiffmeyer. His passion and drive to make Minnesota a leader in damage prevention has brought us national recognition and still serves as an inspiration. For the past 20 years, everyone has worked together to make Minnesota a safer place to live and work, and has helped protect our infrastructure. We're glad you've all made it possible for GSOC to be there every step of the way to lend a hand.

Congratulations on 20 great years of service!



STATE of MINNESOTA

Proclamation

WHEREAS: Gopher State One Call has served for the past 20 years as the state's one call notification center, promoting public safety and awareness of underground facilities when excavating; and

WHEREAS: By reducing the hazards associated with excavation and ensuring continuity of service, efforts to prevent underground facility damage benefit the general public, professional excavators, and facility operators; and

WHEREAS: Minnesota recognizes the hazard to life and property that can occur if underground facilities are damaged when excavating; and

WHEREAS: Gopher State One Call works to increase public awareness through its educational and outreach efforts that emphasize the importance of calling before excavating; and

WHEREAS: Gopher State One Call provides a convenient tool for persons involved in excavation, helping them ensure their personal safety and the safety of the surrounding community while complying with the Minnesota state law requiring Minnesota citizens to "call before you dig."

NOW, THEREFORE, I, TIM PAWLENTY, Governor of Minnesota, do hereby proclaim the month of October 2008 as:

GOPHER STATE ONE CALL MONTH

in the State of Minnesota.



IN WITNESS WHEREOF, I have hereunto set my hand and caused the Great Seal of the State of Minnesota to be affixed at the State Capitol this 24th day of July in the year of our Lord two thousand and eight, and of the State the one hundred forty-fiftieth.

GOVERNOR

SECRETARY OF STATE

MN OFFICE OF PIPELINE SAFETY

Dan Munthe-Outreach/Enforcement Supervisor-MN Office of Pipeline Safety

Is It Time to Change the Law?



The dig season of 2008 is setting up to conclude and with it some unique dynamics that we have not seen before. Fewer locate requests have been generated this year and overall utility damages seem to be lower. New housing is down but project work has increased.

The MN Office of Pipeline Safety also changed its name (and then changed back again). Some of the inspectors, who have been here seemingly forever, have moved on. And, we now have a new chief engineer.

Yes, 2008 has seen some interesting changes. However, some things have not changed; this Office continues to be embroiled in controversy regarding the use of white markings to delineate the area of proposed excavation. Some excavators use white marks religiously while others do not. Those that don't use white markings have many arguments why it is not practical...

- Too far away to just drive out and place white marks
- Too much to mark out
- White marks went last
- No time to place them
- Have already told the locators exactly where the excavation will occur

Many locating technicians might think these arguments against use of white markings are weak. But to many excavators they are all very valid. The excavator considers not using white markings as a way to improve efficiency and productivity. And that, of course, is exactly why the locator wants white markings; so they can be both efficient and productive.

Is there a way both sides can be satisfied and we can stop arguing about what is practical?

Many times I have heard locate technicians say "I don't care if they (excavators) use white markings; I just want to know exactly where they are going to be digging!"

This leads one to consider, could the law be changed and keep both sides happy? Consider the following as a possible change...

MS216D05(2) Precautions to avoid damage.

An excavator shall:

- (2)) use white markings for proposed excavations ~~except where it can be shown that it is not practical;~~ *where the area of proposed excavation can be exactly and precisely described in the excavation notice and is readily identifiable to the utility operator.*

Could you live with this? I am interested in your thoughts, please let me know at dan.munthe@state.mn.us

Twenty years into this and I for one am tired of the arguments.



ITIC SWEEPSTAKES WINNERS

Rolling like a juggernaut, the ITIC Sweepstakes fever has seized the entire Gopher State! From April 1 through September 30th, 2008, all correctly formatted ITIC locate requests, whether mapped or unmapped are eligible for entry. At the end of each month of the contest period, one new ticket is drawn. Each "monthly winner" receives a cash prize of \$500, and a single entry into the Grand Prize drawing. The Grand Prize winner will be drawn by the OCC Technology Committee later in the month of October. The Grand Prize winner receives a \$4,000 travel voucher, along with \$1,000 spending money! Best of luck to all!!

June Winner: Stephanie Randle

July Winner: Wanda Van Buren

August Winner: Charles Clay

LOCATOR SURVEY



Remember those public relations posters and advertisements that were seemingly everywhere in America during World War II? Whether you lived through that era or have read or seen the history or documentaries, you may have seen one that is particularly poignant when applied to today's Minnesota's excavation environment:

The Word Now Is—MUST

In English, "must" implies concurrence, compliance, and adherence. You must obey the law. Children must clean their rooms. Everyone must eat to survive. In the excavation world "must" implies a necessary prerequisite to safety and shared responsibility. Excavators must contact Gopher State One Call (GSOC) before excavation. Your call center must rapidly & accurately relay that information to facility operators. Facility operators must pass the locate request to their underground line locators. Locators must either mark or "clear" the excavator's "dig" site. This notification process completes the excavation "wheel" of communication. Sounds simple, but anyone involved in this industry knows it is sometimes anything but.

GSOC has worked very hard to improve its role as the "bridge" between excavators and facility operators. In its first 20 years of existence, throughout millions of locate requests, thousands of presentations, meetings and conversations, formal and informal, and in previous editions of DIG, the call center has provided information to each of the "players" in the notification process with the goal of improving damage prevention in Minnesota while at the same time helping everyone make more efficient use of their time, money, and talents. The key for all of us is knowledge, gained by education, specifically damage prevention, supported by experience, bolstered by a desire to improve. That was the high-priority goal of your call center in the distribution of the following Locator Survey.

The survey is informal, based solely on the total responses received. The comments were well

thought out, even passionate in some cases. Locators statewide were contacted to contribute between late April and mid-September 2008. The overall response bordered on the encouragingly overwhelming. As an editor, let me say my keyboard is still lying in a smoking ruin after the response. As an educator, I must say: "Thanks to the Professional Locators across Minnesota who took time from their busy schedules to help educate and improve all of us!"

LOCATOR SURVEY

(Although purely voluntary, contributing Locators were asked to provide the very best information available to them.)

1: What percentage of the total dig-sites you've marked for *professional excavators* since JAN 1, 2007 until today are pre-marked with (or in):

A: White marks? **Low%: 0 High%: 60%**
Avg%: 17.07%

B: Any pre-marks? **Low%: 0 High%: 60%**
Avg%: 12.76%

C: Not marked at all? **Low%: 0 High%: 95%**
Avg%: 46.6%

D: Stated "Mark entire lot"?
Avg% 23.57% (see conclusion)

Now apply the same question to *homeowner/casual excavators*:

A: White marks **Low%: 0 High%: 70%**
Avg%: 10.98%

B: Any pre-marks ? **Low%: 0 High%: 50%**
Avg%: 14.28%

C: Not marked at all? **Low%: 0 High% 100%**
Avg%: 54.16%

D: Simply stated "Mark entire lot"?
Avg% 20.58% (see conclusion)

(Editor's note - A statewide numbers perspective on questions 2 - 6: Of all survey results received by GSOC, 1 locator reported attending 1 meeting during this time frame, another over 800. Close to 47,350 meet requests were made to GSOC between January 1st, 2007 and July 31st, 2008. This figure does not include "Updated" meeting requests. During the same time-frame, an approx. total of 1,081,500 incoming locate request tickets of all types were entered. Historically, meets comprise approx. 4.5% of all incoming locate requests. According to reported MNOPS statistics in 2006, 36% of all excavation complaints and incidents occurred during the course of projects that were longer than 14 calendar days and related to appointments.)

THE "FLAGS & PAINT" GANG SPEAKS OUT

2: How many total excavation meets (appointments) have you attended since JAN 1, 2007?

Total Meets Reported by Survey Group: 5,398

2(A) In your opinion, of those meets, how many were actually necessary?

Total: 3,614 (or 67%)

3: What percentage of the excavation meets that you've attended since JAN 1, 2007 until today are being documented by the excavator?

Low%: 0% High%: 100% Avg%: 21.47%

4: As a locator do you provide your own companies' supplemental documentation for excavation meets?

YES: 83% NO: 10%
"Sometimes" or "Phone # Only" 7%

5: What percentage of professional excavators you meet with suggest or request the use of off-set marks or "whiskers" for high-traffic construction-area dig sites?

Low%: 0% High%: 10% Avg%: 1.3%

6: Do you generally suggest off-sets/whiskers if the excavator does not?

No: 56.6% Yes: 20%
Sometimes/If appropriate: 23.4%

7: In your opinion, what is the single most important piece of advice you can give to an excavator to make your job as locator easier?

Use White Marks-Be Specific: 54%

Cooperate, Communicate with us: 14%

Be Careful, Hand-Dig, Follow the law: 14%

Maps/Plans of Dig-site: 11%

Wait full 48 hours/Update locates: 7%

8: Give the single most important suggestion you feel that could improve the services provided by GSOC for the excavators, underground facilities, and locators in Minnesota:

(Editor) Over 90% of the suggestions received relate to better or more specific marking instructions, the use of white marks for proposed excavation routes, and the avoidance, when possible, of the "mark entire lot" scenario.

All CSR's at the call center are trained to suggest the use of pre-marks when it becomes apparent to them, during the course of filing a locate request,

that the excavator may not have already done so. When excavators pre-mark with white, locators can use more and better detailed markings in those specific areas, which in turn, can at least partially alleviate the requests for updates (remarks) both in the call center and via the ITIC system. This also saves locators, facility operators, and excavators time and money.

When asked, the majority of locators expressed a desire to attend the Locate Rodeo planned during the Spring 2009 Pipeline Safety Conference. GSOC heartily encourages your attendance at this intense, exciting, and educational competition with your professional peers!

Conclusion: 100% of all surveyed locators reported a high percentage of tickets that asked for an entire lot to be marked, with no white markings provided by the excavator at all. In most cases the added comments indicated a belief that there was a subsequent waste of their time and materials as a result of inadequate planning by excavators requesting markings throughout the entire lot. State law is quite specific in regard to the subject:

"Mn Statute 216D.05 Precautions to avoid damage. An excavator shall:.....(2) use white markings for proposed excavation except where it can be shown that it is not practical....."

Obviously, it's impossible to gain opinions from every person in a targeted survey group. However, the results that were received provide invaluable insight to GSOC's public relations/education team and staff when considering its future effectiveness and how to maximize its positive role in Minnesota's damage prevention efforts, both among professional and "casual" excavators.

The Locators who provided answers and comments helped point to areas of progress - and areas requiring improvement. With this list of action items firmly in hand and mind, GSOC **must** offer its sincere thanks, and doff of the hat to them all!

**Locate Accurately
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Underground Safety and Facility Damage Prevention
"A Shared Responsibility"

MAJOR UPGRADES & OPERATIONAL IMPROVEMENTS

Major Upgrades & Operational Improvements at GSOC!

In its ongoing mission to provide ever more efficient, effective, and enhanced notification procedures and methods, GSOC has developed and implemented wide ranging upgrades and improvements to its services.

CALLER INFORMATION PRISM UPGRADE

Occasionally, GSOC receives reports from locators that caller information is incorrect. The ticket may list the wrong telephone number or contact name. Even though CSRs verify caller information during the ticket taking process to help catch outdated or incorrect information, errors still find their way into the caller records.

OCC's System Division installed a PRISM upgrade during the week of August 15th to assist in correcting caller records that are reported to be incorrect. This new feature will allow GSOC to enter caller-specific notes that will appear when that caller's ID or phone number are entered. We like to think of it as an electronic "Post-it" note.

The first use of these comments

is to try to address errors that are found in the caller records. Like any other new feature, however, we are sure other creative and inventive uses may be found.

INTERACTIVE VOICE RESPONSE (IVR)

The IVR is designed to complete each "live" locate request call by issuing the GSOC ticket number assigned to each request, "read-back" the list of potentially affected underground facilities in that area, and supply supplementary information, upon request, to each caller. Its implementation opened a number of possibilities for improving both the callers' experience and the centers' efficiency. Limited live testing began on July 18th, and by August 1st, all calls were being completed by IVR. Callers are able to use their phone keypad to repeat any of the information supplied at their convenience. Although it's been a brief period of time since IVR began, it's safe to say that people are utilizing IVR, and are listening to the messages and/or repeating company names. Information regarding private facilities and other related topics are available. GSOC will closely monitor its over-

all impact on call time and ticket duration to improve and streamline the call taking experience.

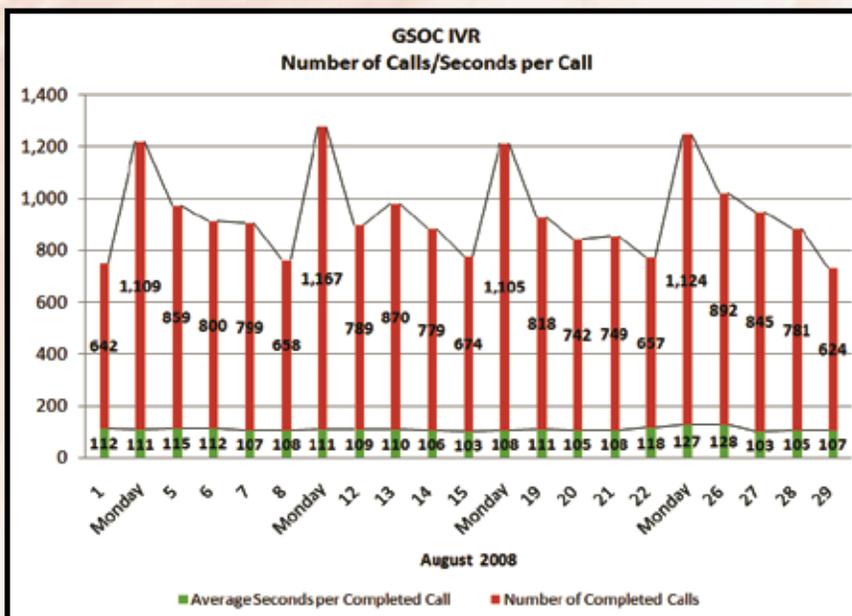
ITIC MAP TOOLS

Originally introduced to ITIC "Text" users in mid - June, ITIC-Lite (homeowner/casual excavators) a few weeks later, and the remaining "full-mapping" ITIC users in late July, Map Tools has already proven to provide a dramatic increase in the percentage of directly released tickets, which in turn, has vastly increased the overall efficiency of the GSOC center. Not only are "live" calls answered faster in the call center, but ITIC users releasing tickets via the Map Tools option immediately receive a ticket number, and list of utilities. ITIC "Text" users have the option not to release Map Tools polygons if they are uncertain of total excavation coverage by the pictured "geometric box". In that case, the GSOC review staff maps and releases the ticket for the text user. In either case, time & money are saved, and aggravation largely eliminated by ITIC "Text" usage.

ITIC users who have attended an ITIC "full mapping class" often-times encounter a slightly different set of challenges requiring a different solution: ITIC User Support.

ShowmyPC

As all savvy ITIC users know, the answers to 99% of their questions on entering a ticket can be found in the training manual they received in class or downloaded online (www.gopherstateonecall.org). For the remaining 1%, ITIC users will call on our support staff for assistance. Sometimes it can be difficult to try and resolve a technical issue or answer a mapping question without seeing



AT GSOC!

what the user is experiencing. To improve our ability to support users, we have added another "tool" to our support team's "toolbox".

GSOC has recently begun using ShowmyPC to support ITIC users. The "live" training tool is available to all ITIC users, professional and homeowner (ITIC-Lite) alike. ITIC users requiring a little more "hands-on" attention are directed to a website called www.showmypc.com. There the user can download a free remote desktop client that is easily installed and run.

Once the end-user has downloaded the program and installed the client, a password is generated. Support staff in the call center using the same program then enters the password the ITIC user gives them and is connected to the ITIC user's PC desktop. The ITIC user can choose whether or not to give GSOC support staff mouse control, so we assist the ITIC user in "real time". They can also choose to allow support staff to only "view" what the ITIC user is seeing. Either way, this extraordinary support option, combining vocal and visual training is another example of GSOC's commitment to locate request accuracy, enhanced excavation safety, and an easier and more efficient contact process than ever before.

To contact GSOC for ITIC assistance, call the Help Desk at: 651-681-7326, (Metro) 800-245-5852. (Greater MN) Or, consult your current ITIC manuals, July 2008 edition for ITIC with "full-mapping" or August 2008 for ITIC "Text" only version. As a reminder, the current color-printer-friendly editions of both ITIC manuals can be found at www.gopherstatone-call.org under the ITIC left-side menu drop-down panel.

SAY HELLO: CHRIS CHELGREN

ITIC COORDINATOR

Chris Chelgren began his career at Gopher State One Call (GSOC) on May 15th, 2002. Initially trained in mapping incoming locate requests, it became immediately apparent that Chris was not only directionally un-impaired, (north, south, east, and west made perfect sense to him) but that he grasped far more than a cursory knowledge of computers and their technical applications. Fully trained as a customer service representative, he rapidly received a promotion to assistant lead operator, then to assistant technical support specialist and in January 2004 assumed the mantle of ITIC Coordinator, at the "dawn" of ITIC's introduction to Minnesota. Not surprisingly, Chris hails ITIC as the single most significant technological achievement during his hiatus at the call center.



"It's opened a world of time-flexibility and convenience for excavators and facility operators. Anytime and anywhere they have the internet available they are logging-in rather than phoning in." He stressed the words "convenience" and "anytime" by recounting his amazement at a routine ticket that came into the ITIC system at 3AM on a Saturday morning. Chris cites the recent Map Tools installation to ITIC as providing a more user friendly view of GSOC's mapping software library. "With Map Tools, ITIC users can benefit again as a result of an instantaneously provided ticket number, and eliminated "wait time" for processing. GSOC also benefits in decreased incoming locate call volume."

When asked about the favorite part of his job at GSOC, the answer was as rapid-fire as the man's good humor and wit: "Without question, working with all types of people-happy, unhappy, friendly, and otherwise. And working to solve their ITIC-related issues, the many internal GSOC procedural challenges, and dealing with all unforeseen and spontaneous events that change at a moments notice at GSOC. That's what keeps me coming to work." Chris was instrumental in the implementation of the ShowmyPC option at the center. A small internet program that runs on system memory with no malware or malicious virus problems, it allows remote visual and vocal interchange between Chris and ITIC users who encounter difficulty in ITIC procedures. (Editor's note: see enclosed "Upgrades" article for more ShowmyPC information).

As a techno-computer wizard, Chris' wish list includes an improved visual look and perhaps "slicker" graphics for the ITIC program. "While it's completely technically functional, highly advanced and user friendly, a good program, which ITIC certainly is, is also malleable and can always be improved."

To relax Chris enjoys home micro-brewing, playing European board games like Canvassone, Pillars of the Earth, reading world historical fiction, teaching violin and viola for private students, and listening to classical and electronic music. GSOC has found a valuable asset in Chris' multifold abilities, and the entire staff thanks him for his dedication to damage prevention and superlative training skills.



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UPCOMING EVENTS

MN Assoc. of Townships Conference
Arrowwood Resort, Alexandria
November 20-21, 2008
MN Soil & Water Conference
Crowne Plaza, St. Paul
December 8, 2008
Minnesota Green Expo
MPLS Convention Center
January 7-9, 2009

CHECK OUT GSOC online

www.gopherstateonecall.org
ITIC TIPS-N-TRICKS
INTERACTIVE VOICE RESPONSE (IVR)
I-MAP for FACILITY OPERATORS
SEARCH & STATUS (Find your Locate Requests!)
ITIC Training Dates and Locations

HOLIDAYS FOR GSOC

Tuesday, November 11, 2008
VETERAN'S DAY
Thurs/Fri, Nov. 27 & 28, 2008
THANKSGIVING
Wed/Thurs, December 24 & 25th, 2008
CHRISTMAS EVE, CHRISTMAS DAY



STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

100 Washington Square, Suite 1700
100 Washington Avenue South
Minneapolis, Minnesota 55401-2138

TELEPHONE: (612) 341-7600
TTY: (612) 341-7346

March 31, 2005

Michael Campion
Acting Commissioner
MN Dept. of Public Safety
445 Minnesota Street #1000
St. Paul, MN 55101

Re: In the Matter of the Proposed Amendments to Rules Governing the
Minnesota Excavation Notification System; Minnesota Rules,
Chapter 7560; OAH Docket No. 7-2400-15550-1

Dear Mr. Campion:

Enclosed herewith and served upon you by mail is the Report of the
Administrative Law Judge in the above-entitled matter. The official record will be
returned to you at a later date.

Very truly yours,

Richard C. Luis
mo.

RICHARD C. LUIS
Administrative Law Judge

Telephone: (612) 349-2542

RCL:mo
Encl.

cc: ~~Michael McGrath~~
Kristine Hernandez Pierce

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**STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE DEPARTMENT OF PUBLIC SAFETY**

In the Matter of the Proposed
Amendments to Rules Governing the
Minnesota Excavation Notification System;
Minnesota Rules, Chapter 7560

**REPORT OF THE
ADMINISTRATIVE LAW JUDGE**

INTRODUCTION

This Report is part of the rulemaking process that must occur under the Minnesota Administrative Procedure Act (APA)¹ before an agency can adopt rules. The legislature designed the process to ensure that state agencies—here, the Department of Public Safety—Office of Pipeline Safety (Agency, Department, DPS or OPS)—meet the APA requirements for adopting rules. Agencies are required to demonstrate that their proposed rules are necessary and reasonable and that any modifications they propose later do not result in rules that are substantially different from those proposed originally.

The Minnesota One-Call Excavation Notification System, codified in Minn. Stat. chapter 216D, was passed by the legislature in 1988. The DPS-OPS enforces the provisions of Chapter 216D as well as administrative rules governing the Excavation Notification System, codified at Minn. Rules, chapter 7560. The Agency has determined there is a need to amend chapter 7560. The need to clarify the existing rules is based on the continuing effort to increase public safety and on the findings of a group of stakeholders interested in ways to prevent damage to underground facilities. In August 2001, the OPS assembled 49 experts in the area of pipeline safety to examine the current state of the Excavation Notification System. This group (the MS216D Review Committee), included underground facility operators, excavators, municipalities and government regulators. The group identified numerous areas in state law and rules that needed review, and held nine meetings over 11 months. Five subgroups were formed to address the issues, research problem areas and propose possible solutions. In working toward possible solutions of the issues identified, the subgroups attempted to apply the techniques and methodologies recommended in a national study entitled "2003 Common Ground Alliance Best Practices-Version 1.0".

The Minnesota Utility Contractors Association (MUCA) used some of the MS216D Review Committee's work and findings to introduce legislation to amend Minn. Stat. Ch. 216D, which legislation passed during the 2004 session. The Department notes that a number of issues identified by the MS216D Review Committee were

¹ Minn. Stat. §§ 14.131 through 14.20.

determined by the legislature to be addressed more properly through rulemaking, and decided to initiate this rulemaking proceeding.

Through this rulemaking process, the Department's general objective is to clarify the current rules to increase enforcement, efficiency and fairness, enhance public safety and promote and maintain the integrity of the existing Gopher State One-Call notification system. The OPS has gained 16 years of experience as an enforcement agency and active member of the common ground alliance since the initial One-Call legislation was enacted in 1988, and has applied that experience to identify changes needed to enforce effectively the law and rules governing underground facility safety.

This matter came on for hearing before Administrative Law Judge Richard C. Luis in a conference room of the Minnesota Department of Transportation in St. Cloud on February 1, 2005. The hearing continued until all persons present had an opportunity to be heard.

The Agency was represented by Staff Counsel Kristine Hernandez Pierce, Charles Kenow, Administrator of the OPS, Mike McGrath, Chief Engineer for the Office, and Dan Munthe, Damage and Prevention Inspector at the Office of Pipeline Safety.

At the request of the Agency and other interested parties, the Administrative Law Judge extended the comment period to 20 days, until February 22, 2005, to allow interested persons and the Agency to submit written comments. The five-working day response period required by Minn. Stat. § 14.15, subd. 1 kept the record open through March 1, 2005, on which date the record closed.

NOTICE

The DPS-OPS must make this Report available for review by anyone who wishes to review it for at least five working days before the agency takes any further action to adopt final rules or to modify or withdraw the proposed rules. If the agency makes changes in the rules, it must submit the rules, along with the complete hearing record, to the Chief Administrative Law Judge for a review of those changes before it may adopt the rules in final form.

After adopting the final version of the rules, the DPS-OPS must send the order adopting rules to the Administrative Law Judge. Provided that the agency has taken all of the steps required to adopt the rule, the Office of Administrative Hearings will request certified copies of the rules from the Revisor of Statutes and file them with the Secretary of State.

Based on all of the proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

Rulemaking Legal Standards

1. Under Minn. Stat. § 14.14, subd. 2, and Minn. R. 1400.2100, one of the determinations that must be made in a rulemaking proceeding is whether the agency has established the need for and reasonableness of the proposed rules by an affirmative presentation of facts. In support of a rule, an agency may rely on legislative facts, namely general facts concerning questions of law, policy, and discretion, or it may simply rely on interpretation of a statute, or stated policy preferences.² The DPS-OPS prepared a Statement of Need and Reasonableness (SONAR)³ in support of its proposed rules. At the hearing, the DPS-OPS relied on the SONAR as its affirmative presentation of need and reasonableness for the proposed amendments. The SONAR was supplemented by comments and answers by Department staff at the public hearing and by the DPS-OPS's written post-hearing submissions.

2. The question of whether a rule has been shown to be reasonable focuses on whether it has been shown to have a rational basis, or whether it is arbitrary, based upon the rulemaking record. Minnesota case law has equated an unreasonable rule with an arbitrary rule.⁴ Arbitrary or unreasonable agency action is action without consideration and in disregard of the facts and circumstances of the case.⁵ A rule is generally found to be reasonable if it is related rationally to the end sought to be achieved by the governing statute.⁶ The Minnesota Supreme Court has further defined an agency's burden in adopting rules by requiring it to "explain on what evidence it is relying and how the evidence connects rationally with the agency's choice of action to be taken."⁷

3. An Agency is legally entitled to make choices between possible approaches so long as its choice is rational. It is not the role of the Administrative Law Judge to determine which policy alternative presents the "best" approach, since this would invade the policy-making discretion of the agency. The question is, rather, whether the choice made by the agency is one that a rational person could have made.⁸

4. In addition to need and reasonableness, the Administrative Law Judge must also assess whether the rule adoption procedures were properly followed and whether any parts of the proposed rules are improper because a rule grants undue discretion, the agency lacks statutory authority to adopt a rule, a rule is unconstitutional

² *Mammenga v. Department of Human Services*, 442 N.W.2d 786 (Minn. 1989); *Manufactured Hous. Inst. v. Petterson*, 347 N.W.2d 238, 244 (Minn. 1984).

³ Agency Exhibit 3.

⁴ *In re Hanson*, 275 N.W.2d 790 (Minn. 1978); *Hurley v. Chaffee*, 231 Minn. 362, 43 N.W.2d 281, 284 (1950).

⁵ *Greenhill v. Bailey*, 519 F.2d 5, 19 (8th Cir. 1975).

⁶ *Mammenga*, 442 N.W.2d at 789-90; *Broen Mem'l Home v. Minnesota Dept. of Human Services*, 364 N.W.2d 436, 444 (Minn. Ct. App. 1985).

⁷ *Manufactured Hous. Inst. v. Petterson*, 347 N.W.2d at 244.

⁸ *Federal Sec. Adm'r v. Quaker Oats Co.*, 318 U.S. 218, 233 (1943).

or otherwise illegal, a rule constitutes an undue delegation of authority to another entity, or because the proposed language of a rule does not constitute a rule.⁹

Procedural Requirements

5. Minn. Laws 2004, Chap. 163, was enacted by the legislature with an effective date of August 1, 2004. This enactment created no new independent rulemaking authority for the Agency with respect to the Excavation Notification System.

6. The Agency prepared a draft Request for Comments for intended publication in the *State Register* as required by Minn. Stat. § 14.101. On September 19, 2003, the OPS received approval of its additional notice plan from Administrative Law Judge George A. Beck of the Office of Administrative Hearings.

7. On September 29, 2003, the Agency published a Request for Comments at 28 *State Register* 400. The Request for Comments described the subject matter of the proposal, described the types of groups and individuals likely to be affected, indicated how persons could comment on the proposal, and indicated how drafts of any proposal could be obtained from the Agency.

8. In the fall of 2003, another advisory committee was formed, this to aid the OPS in reviewing rule drafts. The committee met on five occasions between October 21, 2003 and May 11, 2004. At each meeting, the OPS received input on drafts and requested that members submit written comment. A summary of each advisory committee meeting is attached to the Statement of Need and Reasonableness (SONAR), as Appendix B to Exhibit 3. Throughout the rule drafting process, the OPS published drafts subject to review and comment on its web page and encouraged comment and suggestions.

9. At various points in this process, the OPS mailed a copy of the Request for Comments, a copy of the proposed rules, the SONAR and the Notice of Hearing to the DPS's list of persons registered with the Department for purposes of receiving rulemaking notice pursuant to Minn. Stat. § 14.14, subd. 1a.

10. As required by Minn. Stat. § 14.131, the Department asked the Commissioner of Finance for an evaluation of the fiscal impacts and benefits of the proposed rules upon local units of government.¹⁰ As noted at the hearing by Ms. Pierce,¹¹ the Office of the Governor informed the Agency that approval from them was tantamount to approval from the Department of Finance. Approval, in the form of acquiescence in the position of the Agency to the effect that the proposed rules would have little financial impact on local units of government, was transmitted orally to the OPS when the Governor's office approved the rules.

11. As required by Minn. Stat. § 14.116, the Agency sent a copy of the Notice of Intent to Adopt Rules under §§ 14.14 or 14.22 and a copy of the Statement of Need and Reasonableness to the Chairs and ranking Minority Party Members of the

⁹ Minn. R. 1400.2100.

¹⁰ Agency Exhibit 29.

¹¹ Transcript, pp. 21-22.

Legislative Policy and Budget Committees with jurisdiction over the subject matter of the proposed rules.¹² The Agency notified also the Chairs and Ranking Minority Party Members for Committees that may have an interest in the subject matter of the proposed rulemaking. On or about December 3, 2004, the Agency requested the scheduling of a hearing and filed the following documents with the Chief Administrative Law Judge:

- A. A copy of the proposed rules certified by the Revisor of Statute.
- B. The Notice of Hearing proposed to be issued.
- C. The Statement of Need and Reasonableness.

12. On December 20, 2004, a Notice of Hearing and a copy of the proposed rules were published at 29 *State Register* 697.¹³ On December 17, 2004, the Agency mailed a Notice of Hearing to all persons and associations who had registered their names with the Department of Public Service for the purpose of receiving such notice.¹⁴

13. On the day of the hearing, the DPS-OPS placed the following additional documents in the record:

- A. The Notice of Hearing as mailed and published.¹⁵
- B. The Agency's Certificate of Mailing the Notice of Hearing and Certificate of Mailing List.¹⁶
- C. A Certificate of Additional Notice.¹⁷
- D. A copy of the Certificate showing the Agency submitted the SONAR to the Legislative Reference Library.¹⁸
- E. All written comments received by the Agency after publication of the Notice of Hearing and prior to the hearing.¹⁹
- F. A copy of the Request for Comments published at 28 *State Register* 400.²⁰

The documents noted above were available for inspection at the Office of Administrative Hearings since the date of the hearing.

14. The materials received following the publication of the Request for Comments in the *State Register* at 28 *State Register* 400 were filed with the Administrative Law Judge on March 29, 2005. They were entered into the record on the Judge's own motion as Agency Exhibit 30.

¹² SONAR, pp. 7-8.

¹³ Agency Exhibit 5.

¹⁴ Agency Exhibit 6.

¹⁵ Agency Exhibit 5.

¹⁶ Agency Exhibit 6.

¹⁷ Agency Exhibit 7.

¹⁸ Agency Exhibit 4.

¹⁹ Agency Exhibit 8.

²⁰ Agency Exhibit 1.

Statutory Authority

15. The Agency relies on Minn. Stat. § 299J.04, subd. 1(4), which gives the Commissioner of Public Safety the authority to “adopt rules to implement §§ 299J.01 to 299J.17” of Minnesota Statutes for general statutory authority to adopt the proposed rules and amendments. Minn. Stat. § 299J.04, subd. 1(1) gives the Commissioner the duty to enforce §§ 216D.01 to 216D.09, as provided in §§ 216D.08 and 216D.09. The latter two statutes allow for civil penalties and injunctions for violations of §§ 216D.01 to 216D.07. Minn. Stat. §§ 216D.01 through 216D.09 make up the entirety of Minn. Stat. Ch. 216D, which is entitled “Excavation Notice System”.

16. It is found that the above-noted authority gives the Commissioner of Public Safety the authorization to adopt rules to enforce Ch. 216D. Minn. Stat. § 14.02, subd. 4, the legislature’s definition of “rule” as codified in the Administrative Procedure Act, means every agency statement of general applicability and future effect...adopted to implement or make specific the law enforced or administered by that agency...”. The statutes cited grant the agency general statutory authority to adopt the rules proposed in this proceeding.

Regulatory Analysis

17. Under Minn. Stat. § 14.131, an agency must address the following in its SONAR:

a. A description of the classes of person who probably will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule.

b. The probable costs to the agency and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues.

c. Whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule.

d. A description of any alternative methods for achieving the purpose of the proposed rule that were seriously considered by the agency and the reasons why they were rejected in favor of the proposed rule.

e. The probable costs of complying with the proposed rule, including the portion of the total costs that will be borne by identifiable categories of affected parties, such as separate classes of governmental units, businesses, or individuals;

f. The probable costs or consequences of not adopting the proposed rule, including those costs or consequences borne by identifiable categories of affected parties, such as separate classes of government units, businesses, or individuals; and the probable costs or consequences of not adopting the proposed rule.

g. An assessment of any differences between the proposed rule and existing federal regulations and a specific analysis of the need for and reasonableness of each difference.

h. How the agency considered and implemented the legislative policy supporting performance-based regulatory systems set forth in section 14.002.

i. The agency's efforts to provide additional notification under section 14.14, subdivision 1a, to persons or classes of person who may be affected by the proposed rule or must explain why these efforts were not made.

18. In its SONAR,²¹ the Department:

a. Stated that the proposed rules would directly affect excavators, underground facility operators, the Gopher State One-Call Center staff, members of the general public who wish to conduct their own excavations and members of the general public concerned about underground facility safety, worker safety, public safety and the environment. The Agency maintains that the cost of the proposed rules would be borne by excavators, underground facility operators and the Gopher State One-Call Center. The Agency maintains that the Minnesota Department of Transportation (MnDOT) may experience nominal costs associated with responding positively to all excavation notices issued, and maintains that because the rules leave open the method by which MnDOT must respond, its costs should not be overly burdensome. No additional costs are anticipated for the DPS or OPS. The Metropolitan Council would be affected as an operator of wastewater facilities, however, its costs should be the same as those of MnDOT. No effect is anticipated on state revenues.

b. Noted that the Agency will benefit from these rules by having a better enforcement ability because of the clarifications proposed for existing rules. Excavators and underground facility operators will benefit, the Agency argues, because their responsibilities will be clear and these parties will be able to perform their duties with confidence that the rules will reduce risk to themselves and to the public. The rules will provide clear standards on how to handle emergencies, conduct pre-excavation meetings, maintain information and on the use of a new system of positive response. The proposals are designed to lower public safety risk, on-the-job safety risks and damage associated with miscommunication, missed underground facility locates, undue delays, lack of available information and general confusion over responsibilities. The Agency also forecasts an immense benefit to the general public because of the lowered risk associated with excavations due to more effective facility locating standards and positive communication between excavators and operators. General benefit to the public is foreseen from the fact that information on underground facilities located under public rights-of-way will be improved. There will also be clarification about who will locate service laterals and supply services to end-use customers and whether or not the service laterals will or can be located. Any

²¹ Agency Exhibit 3 at 9-18.

system that cuts down damage to service laterals will benefit the public tremendously, the Agency maintains.

c. Argues that there is no less costly or less intrusive methodology feasible to accomplish the purpose of the rules. To require homeowners or businesses to locate a public underground facility operator's service laterals would be far more expensive than requiring the operator to perform that function. If location is not done, public safety would be in jeopardy. It is viewed as impractical, unreasonable, and unduly burdensome to require customers of an underground facility to be operators, with all the duties and extra responsibilities entailed with that designation. Under such circumstances, the risk of damage or delay to excavators would also rise significantly.

d. Maintained with respect to alternative regulatory methods that were seriously considered, and reasons why those methods were rejected, why it was better to require operators to notify the Gopher State One-Call Center when there is a no-conflict situation and no markings were left on the site. That way, the operator processes all notices the same way and can incorporate easily the notification procedure into the standard business practice. The alternative considered was to have operators notify excavators directly of the "no conflict" situation, but it was rejected as being less efficient. It was considered that requiring operators to maintain information and documentation on meets called by excavators was appropriate, as advocated by the Minnesota Utility Contractors Association (MUCA). The OPS rejected that suggestion because it believes operators should not be required to do more than necessary for a meeting that is held solely at the discretion of an excavator. A proposed requirement to keep documentation for six months to a year after completion of an excavation was discounted as unnecessary and burdensome. Also rejected as overly burdensome was a requirement specifying that excavators had to provide copies to participants in meets of the written documentation for the meet. That proposal was discarded in favor of making the documentation available to operators only on request. Some commentators thought sewer and water laterals should be located regardless of their date of installation. This recommendation was discounted as being overly burdensome. Under the proposed rules, underground sewer and water facility operators have the latitude either to locate the water and sewer laterals or provide available information on the location of sewer and water laterals installed before January 1, 2006. They are required to locate sewer and water lateral facilities installed after December 31, 2005. Also rejected was a proposal, advanced initially by OPS but on which the Agency later reversed its position, that required operators who had located their facilities to call in to the Gopher State One-Call Center indicating they had completed their job. It was reasoned that markings and flags on-site would accomplish the same purpose by alerting an excavator who appears. Similarly, the OPS was persuaded that there was no overriding public safety need to require operators to notify the Gopher State One-Call Center that they had marked an area with "No Conflict" signage, because the flags and markings would be visible to the excavator.

e. Maintained that operators of underground facilities who do not presently keep up-to-date information on their underground facilities located within in a public right-of-way would find the most increase in costs. Such operators will be required to maintain information about the location of their underground facilities in public rights-of-way for facilities installed after December 31, 2005, and also will need to install a locating wire on a non-conductive facility (or use another equally effective means) on such facilities installed after December 31, 2005. The ultimate cost depends on the number of facilities an entity operates and the type of locating means the operator installs. No future cost pursuant to this requirement for local governments is foreseen, because the Agency maintains the installation of service laterals in the public right-of-way is handled by and paid for by the installing contractor or by the property owner. The Agency notes that some operators will have increased costs associated with locating service laterals that have not been located previously because these operators alleged it was not their obligation to locate service laterals. The proposed rules place the responsibility on the underground facility operator supplying the service to the customer via the service laterals to locate those facilities for scheduled excavations. The OPS rejects the assertion made by representatives of some local governments that operate underground facilities that they will suffer high costs to locate service laterals because they already have a duty to locate them.²² It is reasoned that the same operators, including operators of sewer mains, will be at the site already to locate underground facilities. Locating service laterals connected to such facilities should not be too costly. The Agency acknowledges that expenses will occur when an operator must maintain information on service laterals so that they can be located. However, the agency believes most operators already have this information and the ability to locate. The OPS believes that local governments should have this information since most local governments regulate carefully the public rights-of-way within their jurisdictions, by means of connection fees and a permit process.

f. Noted that any costs associated with maintaining information can vary from local government to local government depending on whether the municipality maintained service lateral records previously as part of their management of rights-of-way.

g. Points out that even if costs associated with the location of service laterals exist, that the rules (at proposed part 7540.0375) allow the affected parties to "agree otherwise". If the parties agree there is no reason for the laterals to be located, then this is acceptable under the proposed rules and there should be no cost to an operator.

h. Points out that the main concern expressed to OPS has centered on liability issues rather than cost issues. Local government officials express concern that offering information on service laterals increases the risk of costly litigation because some of the existing location information may be faulty. The Agency disagrees. It is noted that local governments have indemnification under

²² Minn. Stat. § 216D.04, subd. 3.

current statutes to keep the risk of litigation minimal. See Minn. Laws 2004, Ch. 163, § 5, codified at Minn. Stat. § 216D.04, subd. 3(g), which provides that an operator or other person providing information pursuant to the subdivision is not responsible to any person for any costs, claims or damages for information provided in good faith regarding private or customer-owned underground facilities. The Agency maintains that the electric utilities were satisfied that the risk of litigation would lower sufficiently with the passage of this statute, and the OPS has heard no complaints since.

i. Noted that the Gopher State One-Call Center will find increased costs associated with creating and maintaining another means of communication between affected parties by accepting and providing information about the disposition of notices that have been cleared as “no conflicts”. It is anticipated that a nominal increase (possibly ten cents per notice) and the fee charged currently by the Center to operators who are obligated under statute to support the expenses of the Center, will result.

j. Maintains that the costs or consequences of not adopting the proposed rules include that information on underground facilities and public rights-of-way will continue not to be maintained, by creating a risk to excavators and the public, that excavators who need to perform emergency excavations may be unduly delayed for lack of information (which may create a potential risk to public safety) and that service laterals will continue not to be located, creating an additional public safety risk to excavators and the public. A concern exists also that pre-construction meets will continue to be held without standards and excavators and operators may rely upon mistaken communications about excavations, and that excavators will not have a method to verify sites determined not to be in conflict with their facilities when no flags or markings are left behind unless they call each operator individually.

k. Maintains that there are no meaningful differences between the Code of Federal Regulations, Title 49, section 198.37 that address the subject matter found in the rules, and the proposed rules. The proposals actually bring Minnesota’s regulatory system more in line with the Federal Regulations.

l. Responded to the requirement in §§ 14.002 and 14.131, which require that an Agency’s SONAR describe how the Agency considered and implemented performance-based standards in development of its rules that emphasize superior achievement in meeting the Agency’s regulatory objectives and maximum flexibility for the regulated party and the Agency in meeting those goals, as a requirement that is met by the proposed rules as drafted. The OPS maintains that, to the extent possible and without sacrifice to public safety standards, it has proposed rules that reflect the state-promoted policy regarding performance-based regulatory systems. For example:

1. An excavator has the ultimate responsibility in determining if an emergency situation exists that is so dire that it would be a mistake to provide notice before beginning that emergency excavation.

2. In various places in the proposal, parties are exempt from certain requirements if the parties have made other arrangements or prior agreements.
3. Operators will be required to obtain information on the underground facilities located in a public right-of-way but will not be held to a specific method of obtaining that information.
4. Operators must install a locating wire in certain circumstances but can also use another equally effective means of locating underground service laterals – the choice of methodology is up to the operator.
5. Under the proposed rules, the operators in “no conflict” situations have different options available to them to meet the “positive response” requirement found in rules.

m. Minn. Stat. §§ 14.131 and 14.23 require that the SONAR contain a description of the Agency’s efforts to provide additional notice to persons who may be affected by the proposed rules or explain why those efforts were not made. In that connection, the Agency developed a plan to provide additional notice to persons affected by the proposed rules, which notice plan was reviewed and approved by Administrative Law Judge George A. Beck on September 19, 2003. Pursuant to the additional notice plan, the OPS completed the following:

1. Copies of the Request for Comments, Hearing Notice, and Proposed Rules and Statement of Need and Reasonableness were mailed to the League of Minnesota Cities, the Association of Minnesota Counties and the Minnesota Association of Townships.
2. The same documents were e-mailed to umbrella organizations and associations with a particular interest in the subject matter of the rulemaking, which e-mails also contained a request by the OPS for the organizations and associations to disseminate the information to their members.
3. The copies of the documents noted above were e-mailed to individuals, organizations or groups having a continuing relationship with the Office of Pipeline Safety and a particular interest in the subject matter of the rulemaking, including the 49 damage prevention stakeholders from underground facility operators, excavators, municipalities and government regulators who were assembled by the OPS to critique the Gopher State One-Call System.
4. The Request for Comments and Hearing Notice were published in DIG, a newsletter sent to members of the

Gopher State One-Call System, which includes 30,000 members, to provide affected persons with pertinent information contained in the Request and the Proposed Notice of Hearing. The newsletter was sent out on or around September 26, 2003, with information on possible topics for the proposed rules and information on how to contact the Agency. The December 2004 issue of DIG contained information on the proposed rules, listed the Agency contact person and noted that a copy of the proposed rules and a copy of the SONAR could be obtained directly from OPS.

5. A copy of the Request for Comments, the Hearing Notice of Intention to Adopt Rules, the Statement of Need and Reasonableness and the proposed rules were placed on the Office of Pipeline Safety's web page available throughout the website of the DPS. This was an effort to reach interested and affected members of the general public.

The OPS maintains that the use of direct mailings, use of industry groups to e-mail or mail information to their members, use of newsletters and other industry publications, and using the internet is sufficient notice to affected persons in groups regardless of affiliation or location. Particular attention was paid to include local government participation by providing notice to organizations such as the League of Minnesota Cities and requesting dissemination of information to its members.

19. The proposed rules will not affect farming operations. Therefore, no notice to the Commissioner of Agriculture was required under Minn. Stat. § 14.111.

19. The Agency has complied with all applicable procedural requirements necessary for the adoption of the proposed rules and amendments.

RULE-BY-RULE ANALYSIS

21. The balance of these Findings concern an analysis of the need for and reasonableness of the Department's rules as finally proposed. In response to comments and upon additional review, the Department made modifications to some of its initial proposals. A substantial change analysis, detailed below in each instance, was performed by the Administrative Law Judge with respect to each of these changes. Any of the rules as finally proposed not discussed below are found to be necessary and reasonable.

7560.0100-Definitions

22. Subpart 4 Locate. Subpart 4 defines "locate" as a noun, with the language "'Locate' means an operator's markings of an underground facility." The proposal published in the State Register converted the word to a verb by inserting the words "to provide" after the word "means." In its comments, the Department stated that the proposed amendment published in the *State Register* was an error and is being withdrawn, so that the definition remains unchanged from its present version.

The Agency declined to recommend adoption of an amendment suggested by the League of Minnesota Cities (LMC) which would have modified the definition of "locate" to include allowing "maps, drawings, diagrams, and/or other records used in the operator's normal course of business to indicate the location of an underground facility". The Department elects at this time to keep the original language of the rule as it exists, reasoning in part that to modify it as suggested by the LMC would result in a substantial change.

The Administrative Law Judge finds that the Agency's decision not to modify the definition of "locate" in this rulemaking process is reasonable.

23. Subpart 10. Public right-of-way. The LMC requested that the phrase "utility easements of government units" be deleted from the definition of public right-of-way. The LMC was joined in this request by the Minnesota Rural Electric Association (MREA), which believes the phrase creates an undue burden on electric coops because easements are not, and will not in the foreseeable future, be widely known.

The Department declines to follow the recommendations of the LMC and MREA regarding the definition of public right-of-way. The definition proposed is similar to that found in Minn. Stat. § 237.162, and the Agency reasons that it is logical to use a familiar definition in this proposal. They argue that the very fact that the original definition found in Minnesota Statutes was written broadly to allow private utilities to make use of municipal utility easements underlines why such easements should be included in the definition proposed here. Such easements are crowded with utilities and any time a new utility adds a line or works on existing lines in such easements, all underground facilities within the area of work should be marked and located to prevent mishaps. The Department disagrees with the argument of the MERA, pointing out that information on easements is generally available from city offices in cases where a cooperative installs its underground facilities within a local government unit. In cases where local government units cannot manage their rights-of-way, it is reasoned that no utility easements would exist and that this information would be ascertained easily. In rural areas outside city limits, municipal utility easements do not exist and therefore present no problem.

The Department's decision not to change the definition of public right-of-way as proposed originally is necessary and reasonable.

24. Subpart 12. Service lateral. This term is defined as an underground facility used to transmit, distribute or furnish commodities such as gas or water from a common source (such as a main) to an end-use customer. The definition published originally in the *State Register* goes on to state "A service lateral is also an underground facility that is used in the removal of sewage from a customer's premises."

During the comment period, the Agency requested to delete the word "sewage" in the previous sentence and substitute the word "wastewater". This change, suggested by the League of Minnesota Cities, makes the wording more consistent with current municipal nomenclature and describes the facilities addressed in these rules more clearly. The Department agrees, and notes that the modification does not result in a substantial change from the rule as proposed because it does not change the meaning

or effect of the rules as proposed in the Notice of Hearing published in the *State Register*.

The Administrative Law Judge finds that the substitution of the word “wastewater” for the word “sewage” in this subpart is needed, reasonable and not a substantial change. The modification is within the scope of the matter announced in the Notice of Hearing, is a logical outgrowth of the contents of the rules published originally and the comments submitted in response to the Notice, and the Notice of Hearing provided a fair warning that the outcome of the rulemaking proceeding could result in modifications such as this.

7560.0150-Public Right-of-Way Mapping and Installation

25. **Subparts 1 and 2, Duty of operator to map and Duty to install locating wire.** This proposed new rule is highly controversial. The main controversy regards subpart 2, which is proposed to require operators to install a locating wire (or have an equally effective means of marking) to locate each nonconductive underground facility within a public right-of-way installed after December 31, 2005. Municipalities also objected heavily to the duty created in subpart 1 to maintain a map, diagram, drawing or other information regarding the location of underground facilities within public rights-of-way installed after December 31, 2005.

Regarding the duty of an operator to map, the LMC argues that the proposed rule requires cities (Local Government Units or LGUs) to exercise control over the installation of private utility facilities and to supervise what is done below the surface of their rights-of-way. LMC argued that requiring LGUs to exercise control is beyond the authority of the Department of Public Safety, and conflicts with Minn. Stat. Ch. 237, which requires action on the part of LGUs that is permissive by statute and not mandatory. The Agency counters with the response that Minn. Stat. Ch. 216D affords distinct regulatory rights and obligations to the DPS over the subject matter of these rules which are separate and distinct from the permissive rights granted to LGUs by Chapter 237 with respect to telecommunications facilities. It reasoned that Chapter 216D regulates the activities of excavators and operators both by requiring underground facilities to be located before excavation (implying they also need to be locatable) and in a way as to limit threats to public safety and damage to underground facilities. The Department’s SONAR notes that between the years 2002 and 2003 approximately one-quarter of all damage caused to gas and electric facilities was due to missed locates or not locating an underground facility. Depending on the year, a mistake in the location of an underground facility is the second or third leading cause of damage to underground facilities.²³

The Agency notes that Minn. Stat. § 216D.04, subd. 3, requires operators to find and mark their underground facilities so that excavators have notice that there are underground facilities within an area of proposed excavation. Subdivision 4 of that statute requires excavators to use the information provided by operators to determine the “precise location” of the facility without damaging it before the excavator can commence excavating activities within two feet of the marked location.

²³ Exhibit 3, pp. 21-22.

26. The primary objective of Ch. 216D is to create a system that promotes public safety by keeping track of all underground facilities located within the state so that excavating activities may be performed with limited public safety threats. The Department reasons that the responsibility for doing so lies first with the operator who must keep track of underground facilities and provide notice of their existence to an excavator. It is noted that the rule proposal provides flexibility on the method in which records are maintained and does not require a specific accuracy level for records or mapping. A fair reading of Minn. Stat. § Ch. 216D leads to a conclusion that all underground facilities are covered by its provisions, since the statutes include provisions for keeping track not only of facilities that are in-service but also facilities considered abandoned.²⁴ The Administrative Law Judge does not agree with LMC's argument that the DPS surpasses its regulatory authority by mandating that LGUs manage their rights-of-way. The Department has complete regulatory authority to enforce Ch. 216D as it applies to LGUs that are considered operators. Certainly LGUs have the right to and many do manage and control their rights-of-way. The Department has regulatory authority to make operators responsible for underground facilities. That authority over such subject matter is clear and is separate and distinct from the permissive rights of LGUs to manage their public rights-of-way. Even if LGUs do not manage their rights-of-way or claim ownership of the lateral underneath them, the Department still has the right and authority to require that LGUs meet the statutory obligation to maintain information on those facilities. One of the responsibilities is location of the underground facilities and the giving of notice to excavators that underground facilities exist at specific places.

27. LMC argues that installers, not the operators, should be required to create the type of information required by the proposed rule. Except for installers who also operate underground facilities, the installers contemplated under Minn. Stat. Ch. 216D are excavators who, at the time of installation, have information on the location of underground facilities but are not required by statute to maintain or create that information on facilities that they do not operate. The Department reasons that, with respect to any new service lateral installed, any operator has the right to require that installers inform them about, and provide information on new service laterals installed and connected to their own facilities. It reasons that common sense implies that operators can and do ask for some variant of the same information when an installer alters the main facility by connecting a lateral to it – if not for locating purposes then certainly for proprietary, billing and service purposes. Therefore, the Department maintains that it is logical and reasonable to assume operators can require installers to provide them with the necessary information for operators to maintain sufficient information on such laterals for future locate purposes.

28. David Sahli of the Minnesota Pollution Control Agency (PCA) testified at the hearing that, with respect to sewers, LGUs have access to, have seen and have maintained detailed maps or diagrams on sewers that would be sufficient for the purposes of the proposed rule. Based on this, the Agency maintains that LGUs can and have acquired information on new laterals. The Department also declines the suggestion by the LMC to conduct a pilot project or study before imposing any new

²⁴ Minn. Stat. § 216D.04, subd. 3(a).

obligations in the nature of or affecting public rights-of-way. The Department believes that any rule proposal should have a specific effective date, as its current proposal contains. Adoption of the LMC suggestion could lead also to a rule that was defective due to creating an unfettered discretion to implement whatever methodology the Department would decide upon ultimately after the study connected with the pilot project without the benefit of public notice and comment or justification meeting the standards of reasonableness.

29. The Department maintains also that delaying the rule in order to conduct such a project would impede public safety. It argues that the rule is actually needed immediately to cover future informational needs created by the increased amount of current construction this state is experiencing. In deference to operators, the Department has proposed a rule to delay the requirements until 2006 so operators can implement internal practices to meet the requirements. To delay the rule longer yet for the sake of a pilot project that would impose ultimately more prescriptive requirements that might not be met so easily by such varied parties would possibly result in more controversy than exists right now.

30. The LMC argues further that the rules are unreasonable because they are too costly. The Department counters that LGUs now can require, as operators of underground facilities providing services to customers, any new installations and connections to be recorded within a city. The Agency points out also that the delay built into the rule affords operators an opportunity to set up a workable system to meet the new requirements. Further, the proposed rules allow this information to be recorded in a variety of forms. To mandate a certain and specific method of keeping records would be more prescriptive and less likely to meet the needs of all the LGUs equally without imposing on some a greater cost burden than would be experienced under the current proposals.

31. The Minnesota Utility Contactors Association proposed the rule to be modified to require installers to furnish operators with a map, diagram, drawing or geospatial information showing the location of the interconnected lines and locations that will allow the operator to locate the line in the future. The Department declines to adopt MUCA's proposed modification in this regard. It is not persuaded that a rule is necessary for operators to obtain information from installers. The type of modification requested by MUCA would impose a new duty, not included in the rules as proposed, on a different party and all these factors may constitute a substantial change in the rule. Therefore, the DPS is not willing to modify the proposed rule as requested.

32. With respect to the duty to install locating wire proposed for subpart 2 of part 7560.0150, the Department maintains in the SONAR²⁵ that the duty to install a locating wire when installing nonconductive underground facilities such as plastic pipe is a logical outgrowth from the operator's statutory duty to locate and mark such facilities. After installation by the operator, there must be an accurate way subsequently to locate the facility. Because conventional methods used to locate metal or other conductive facilities do not work on nonconductive facilities, it is reasonable to require another

²⁵ Exhibit 3, p. 23.

effective means of locating to be used. The review by the OPS has resulted in the recommendation that wire be used as a method to ensure future accurate locating. Wire has proven efficient and accurate for underground facilities and is the most common method used to make non-metallic structures locatable underground. But the rule has some latitude built in – an operator can choose any other equally effective means as well.

33. It is important to note that the rule requirement applies only to underground facilities installed within a public right-of-way. Comments suggesting that the requirement is not workable because installation methods must be consistent with the Minnesota Building Code are misplaced. The Minnesota Building Code does not apply to public rights-of-way. Therefore, the rule proposal herein does not contradict any Building Code requirement or lack thereof. Regardless of who owns the underground facility, be the entity private, public or utility, the underground facilities located within a public right-of-way are subject to the jurisdiction of the DPS/OPS and therefore subject to this rule proposal, even if such facilities continue on to private property. To require operators to provide accurate information about their facilities so excavators can also fulfill their statutory duty to excavate without damage is a general need established convincingly on the record. The Department argues also that the rules are reasonable with respect to not creating any new expenses on their own because they simply expand on the uniform locating requirements already established under Minn. Stat. § 216D.04, subd. 3.

34. With regard to the duty to install locating wire, Mr. Mark Palma, an attorney with Hinshaw & Culbertson, L.L.P., representing Gopher State One-Call, requested that the Department define “minor repairs” because reasonable parties could differ in their interpretation of the phrase. In its post-hearing comments, the Department agreed with Mr. Palma’s suggestion and proposed that the phrase “minor repairs” be defined as “repairs to or partial replacement of portions of existing service laterals located within a public right-of-way for purposes of routine maintenance and upkeep”. It is found that this proposed modification of the rules as published is necessary and reasonable because it helps clarify the rule as proposed. It does not constitute a substantial change because it does not alter the meaning of the proposed rule in any way and is a logical outgrowth of the Notice of Hearing and comments submitted in response to that Notice.

35. The LMC argues that the requirement to install wiring or other effective means of locating nonconductive underground facilities after December 31, 2005 is unreasonable because current technology does not work, is not accurate, and that locating wires are unreliable when used to locate water and sewer laterals at the depths that they are found in Minnesota. The LMC asserts that the Department has failed to place on the record any evidence showing that locating wires are reliable, and therefore the Department fails to meet the standard that rules have to be related rationally to the goals they desire to accomplish in order to establish reasonableness. It is argued further that even if current technology does work, the cost of the technology is prohibitive. The LMC argues with respect to this subpart that the Department should undertake a series of pilot projects to test and study various installation techniques available before requiring one in particular (such as wiring) and should propose a

particular method later because many LGUs have limited budgets and staff, so they should not be expected to adopt untested and unproven methodology. The LMC also urges the Department, after the appropriate research, to establish a statewide installation standard that all service installers must meet if the Department believes private service laterals must be installed in a certain manner.

36. For the reasons already stated above regarding the Department's response to LMC's challenging the rule proposing the maintaining of information, the Department argues that it has the authority to require LGUs now to do what is necessary to help make underground facilities locatable. To that end, the Department proposed a rule requiring LGUs to install locating wire or other equally effective technology that is used to help mark the location of hard-to-find nonconductive underground facilities installed after December 31, 2005. It argues that the rule is rationally related to the public safety objective of locating underground facilities and is not persuaded of a need to wait beyond that date to complete more studies. The Administrative Law Judge finds that the agency has demonstrated the need for adopting its proposal now, and finds the proposed rule necessary and reasonable.

37. The LMC's argument that existing technology is not able to locate water and wastewater facilities, and that any technology existing is not cost effective, is disputed by the Agency. The proposed rule allows LGUs to use whatever method or combination of methods best suits their circumstances, and does not cause disruption to the methodology being employed by LGUs who presently are locating water and wastewater laterals. The Department believes it appropriate to leave up to the discretion of the LGUs as to where locator wires should be terminated, for example at curb valves, exterior water meters or ground level markers. Regarding the use of locating (tracer) wire-type technology, it notes that gas companies have been using tracer wires effectively since the late 1960s when plastic facilities were first installed. Tracer wire has proven to be inexpensive and reliable and today is still the primary method of locating nonconductive facilities used by the gas industry.

38. It is important to note that the rules do not require the mapping or facility record keeping of the depth of the underground facilities. The rule as proposed requires only surface coordinates or horizontal locations to be located (marked).

39. The Department acknowledges that existing technology might not be perfect, but maintains that it is effective and can be used (is feasible). Testimony from the LGUs acknowledges that no one knows when "perfect" technology will exist in this field. The Department conceivably could introduce one method which works better than others to make nonconductive facilities locatable, but soil conditions, the amount of underground facility congestion and other factors would still play parts in the accuracy of any given technology.

40. The Department listed five available technologies in its Statement of Need and Reasonableness, but that list was not meant to be exclusive. The DPS/OPS decided it was better left to individual LGUs to determine what is best for their unique circumstances, including their own budgetary constraints. The Agency decided that a prescriptive rule requiring one form of technology without any latitude would not be

reasonable for promoting accuracy or saving costs. By allowing for "other effective means", the rules also leave room for future technological advances.

41. In its post-hearing comments, the Agency emphasizes that only after an operator meets its statutory obligation under Ch. 216D to locate does the excavator have an obligation to use the information provided to determine further where the underground facilities are located before commencing excavation. The Department does not agree that there is an obligation for excavators to perform the duty imposed by the law on operators to make locatable the facilities which they are responsible to locate. The responsibility for making an underground facility locatable lies appropriately with operators. Therefore, the Department argues, the rule proposed is within the scope of authority given to the Department and assigns appropriately the responsibility of making a facility locatable to operators. The Department emphasizes that the proposed rule applies only to new installation of nonconductive facilities in public rights-of-way, and thus is not dependent on other codes having jurisdiction on private property, so there is no question of overlapping jurisdiction. It believes the rule proposal is within the purview of its authority and related rationally to the objective of making all underground facilities locatable, and also that it does not fail for being unreasonably costly.

42. The Department rejects the recommendation of MUCA to expand the rule as proposed to include the length of the entire service lateral. If it were to do so, the Department's jurisdictional authority may be brought into question with respect to codes such as the Building Code, as noted above.

43. In its comments, the League of Minnesota Cities supported its earlier arguments with a letter submitted by Mr. Leonard Krumm of CNA Consulting Engineers. Mr. Krumm's experience includes many years as a professional engineer for the City of Minneapolis Public Works Department. Mr. Krumm states in his comments that locating wires are not a "proven, reliable technology for use in identifying private laterals connected to water or sewer pipes." He believes the OPS has not explored the "best methods of locating water and sewer laterals." The Department responded that based on its consulting with gas industry experts, it believes that gas companies have been using "locating wires" for years on nonconductive plastic facilities, and that those facilities have been installed at depths of up to 15 feet. As noted earlier, if the methodology is accurate up to 15 feet deep, satisfactory results should be provided when applied to water and sewer laterals buried only 8 or 9 feet deep. It is argued by the DPS that an agency may "make judgments and draw conclusions from 'suspected, but not completely substantiated relationships between facts, from trends among facts, from theoretical projections from imperfect data, from probative preliminary data not certifiable as "fact" and the like".²⁶

44. The Department acknowledges it does not know of any current technology that is 100 percent accurate, but that the use of "locating wire" is meant to be a minimum standard that it believes is reasonable. As noted above, whether or not a proposed rule provides the "best" or most reasonable standard available does not

²⁶ Beck, Gossman and Nehl-Trueman, *Minnesota Administrative Procedure* 343 (1998), citing *Manufacturing Hous. Inst. v. Pettersen*, 347 N.W.2d 238, 244 (Minn. 1984).

control whether or not it is reasonable for purposes of adoption. For an ALJ or a reviewing court to pick a more reasonable alternative, when the Agency's proposal has a rational basis, would invade the policy-making discretion of the Agency.²⁷

45. Attorney James Strommen, representing the Suburban Rate Authority (SRA), filed comments suggesting also that the "locate wire" requirement is not related rationally to the intended public safety goal. He also argues that the Department has failed to provide evidence that demonstrates the reliability of locating wire and in fact, most evidence provided supported its unreliability as a method for locating water and sewer laterals. Strommen argues that because the standard the agency has set is unreliable, the rule creates an absurd result. He contends that the proposed rule requires that LGUs use a means that is not reliable or effective ("locating wire") in order to adhere to this rule. The Administrative Law Judge is not persuaded by Mr. Strommen's argument, and finds that the Department has entered sufficient evidence into the record to show that the use of locating wires is a reasonable minimum standard that is rationally related to public safety goals. The Department's final proposal for subpart 2 of Minn. Rule 7560.0150 is found to be needed and reasonable, and the modifications proposed to it are found not to constitute substantial changes.

7560.0225 Excavator Responsibilities Regarding a Locate

46. Mr. Palma requested that subpart 1 of this rule part be repealed in its entirety. Palma asserted, and OPS agreed ultimately during the comment period, that it had overlooked a technical change precipitated by legislation passed in 2004. It is the opinion of Mr. Palma and the Department that the rule subpart in question was made obsolete when the legislation took effect and that repeal of the subpart would in no way affect the rights of regulated parties. The rule had provided that an excavation or location notice is valid so long as the excavator commences the excavating activity within 96 hours of the time stated on the notice. Minn. Laws 2004, Chapter 163, Section 6, codified as an amendment to Minn. Stat. § 216D.04, subd. 4(b) removed the 96-hour restriction. The statute now reads that if the excavator or land surveyor cancels the excavation or boundary survey, the excavator or land surveyor shall cancel the notice through the notification center. The statutory authority authorizing the validity of a location notice only if the excavation commences within 96 hours of the commencement time stated on the location notice has been removed. Given that, the DPS agrees that it is necessary and reasonable to modify the rules so that the rules are consistent with statute and legislative intent. The Administrative Law Judge agrees, and finds that to repeal the rule subpart is necessary and reasonable and does not result in a substantial change to the rules. The repeal is within the scope of the matter announced in the Notice of Hearing and is in character with the issues raised in that notice. It is a logical outgrowth of the contents of the notice and the testimony submitted in response to it. Significantly, the Notice of Hearing provided fair warning that technical amendments to make the rules consistent with statute could be part of the outcome of the rule proceeding and the rule in question. No persons will be affected adversely by the repeal of the rule since the rule is obsolete.

²⁷ Beck, Gossman and Nehl-Trueman, Minn. Admin. Pro. 346 (1998).

7560.0250 Locate Standards

47. The agency believes that there is a need for marking standards to be listed at a place other than Minn. Stat. § 215D.04, subd. 3(d). The statute requires use of standardized color codes to designate underground facilities. The issue to be addressed by the proposed rule part is that miscommunication increases when there is a lack of standardization of markings and flags. The Department notes that standardized marking helps avoid misrepresentation between operators who designate the positions of underground facilities and excavators who work around those facilities.

48. The Administrative Law Judge finds that the Department's argument that the rule is necessary to ensure the effective and uniform enforcement of Minn. Stat. § 216D.04, subd. 3 (Location of underground facilities) constitutes a demonstration of need. The rule as published specifies what must be included when an operator locates an underground facility, lists the options an operator has when a "no conflict" situation exists, details the placement of "no conflict" flags or markings when an operator chooses to place them and requires the Gopher State One Call Center to communicate the reported status of each notice received under the subpart to the excavator before the excavation is scheduled to begin. Regarding subpart 1, the LMC suggests that the subpart should be modified to provide that an operator does not need to locate and mark a facility. Rather, operators would be requested only to provide maps, drawings, diagrams and other records used. For the same reasons as it rejected the LMC's proposed modifications regarding this subject matter under its response for the definition of "locate," the agency disagrees. DPS/OPS believes that the League's interpretation is incorrect and that their proposed modification would serve no public safety benefit and would constitute a substantial change.

49. Regarding an operator's duties in no conflict situations (proposed subpart 2), Mr. Palma testified that the Gopher State One Call Center's estimation of costs associated with positive response and referred to in the Department's Statement of Need and Reasonableness was incorrect and based on the Department's initial proposal that all operators give notice to Gopher State as to their disposition of tickets. The MREA requests that the subpart be withdrawn, along with subparts three and four in their entirety because a positive response system creates undue burdens on electric co-ops. The agency is unwilling to withdraw subpart 2 because the Minnesota Rural Electrification Association has not given the Department an alternative suggestion nor any other reason to believe it would agree to any form of a positive response system.

50. MUCA suggests the phrase "not in conflict" be replaced with "that is not in the defined area of excavation." The Department rejects the suggestion because it believes the rule is clear as drafted and published in the State Register.

51. Regarding subpart 3 of proposed Minn. Rule 7560.0250, the MREA would like subparts 3 and 4 withdrawn in their entirety because of its allegation that the proposed positive response system creates undue burdens on cooperatives, in conjunction with the comments by many rural electrical co-ops stating that they do not believe the system would work since the old No Locate Required system also did not work. The Department rejects that suggestion because MREA has not provided it with an alternative suggestion for a positive response. It notes that the positive response

system serves an integral part in promoting public safety, as described and justified in the SONAR. It notes further that the reasons the NLR (No Locate Required) systems did not work do not apply with respect to the positive response system-the NLR system was an administrative practice used by Gopher State One Call for billing purposes instead of a mandatory rule-regulated system linked to public safety issues. Also, since it was not mandatory, it was not followed strictly and the information was not always handled immediately. Not all operators took the time to identify all their NLRs on a timely basis (at least 24 hours before the start date and time on the ticket). Excavators did not use the system routinely because NLR was an unreliable system. It is reasoned by the DPS that the proposed rules eliminate the weakness of the old system.

52. In its initial comments, the Department agreed with Mr. Palma that subpart 4 (Duties of the notification center) needs to be modified to reflect the concerns of the Gopher State One-Call Center. The Department believes it is necessary and reasonable to modify the proposal in accordance with Mr. Palma's suggestion to keep ticket prices within the original cost estimate. The modification would require only excavators who need to verify "missing" locates to view any positive responses received electronically by the One-Call Center. As opposed to requiring the notification center to make at least one attempt to notify the excavator at an email address or fax number provided by the excavator on notice, the modification requires that the notification center shall make "available the information received by operators pursuant to this section through an electronic means." The agency maintains that the proposed modification is not a substantial change because it still requires the notification center to make available to excavators the information it receives. The difference is that the modification does not require at least one contact to be made by the notification center in the form of an email or facsimile. The notification center is no longer required to contact actively all excavators including excavators who do not need the information.

53. It is found that the modification proposed at subpart 4 does not make the rule substantially different than the proposed originally because the difference is within the scope of the Notice of Hearing and is in character with issues raised in the notice. The modification is a logical outgrowth of the contents of the notice and the comments submitted as response to the notice. The subject matter of this modification-positive response with respect to notification centered duties-is not so great as to make the modification substantially different from that contained in the notice.

7560.0325 Emergency Excavation Notices

54. The agency believes that because the statute on which this rule proposal is based, Minn. Stat. § 216D.04, subd. 1, does not give direction as to procedures to follow in an emergency situation, it is necessary to specify clear procedures to follow at such times. The statute provides "except in an emergency, an excavator shall...contact the notification center and provide excavation or location notice...." The statute does not give direction as to procedures to follow in an emergency. The Department maintains that it is necessary to specify clear procedures to follow in an emergency situation. The Administrative Law Judge finds that a need for this rule part has been established.

55. The proposals for 7560.0325 were not controversial, and are explained and justified thoroughly in the Statement of Need and Reasonableness.²⁸ The MUCA and LMC offered friendly amendments, which have been adopted by the Department. At subpart 1, the words “to the notification center” are inserted between “notice” and “before” in the first sentence of the subpart. At subpart 3B and subpart 4A, the words “locate and” are added to the beginning of the subparts.

56. It is found that the modifications proposed by the Department at 7560.0325 are necessary and reasonable. In the first instance, insertion of the words “to the notification center” are clarifying only. The following two modifications, adding “locate and” at the beginning of the two subparts before the word “mark” follows from a suggestion by the LMC that proposed substituting “locate” for “mark.” Adding the words “locate and” where finally proposed is found necessary and reasonable in order to make the newly proposed language consistent with language found in the rest of the rule and statutes. It is found that none of the changes proposed for this part constitute substantial changes.

7560.0350 Excavation Notice Requesting Meet

57. The agency proposed to modify subpart 1 by adding the words “and the Notification center shall relay this information to the affected operators” at the end of the second sentence originally proposed for this subpart, which deals with excavator duties. The proposed modification does not result in a substantial difference from the rule as proposed, but simply clarifies the role of Gopher State One-Call and in no way alters the meaning or effect of the rule as proposed initially. The Notice of Hearing gave fair warning that the rule as modified could be the result of the rulemaking proceeding. It is found that subpart 1, as modified, is necessary and reasonable.

58. With respect to subpart 3, dealing with the start date and time for an excavation, the Department proposes simply to insert the words “excluding Saturdays, Sundays, and holidays,” in the first sentence, after the word “provided.” It is found that this modification does not result in a substantially different rule because it is simply a technical change to correct a drafting error in the proposed rules. The substance of the rule as it was originally intended by the Department has not changed, and the modification is within the scope of the matter proposed in the Notice of Hearing.

59. With respect to subpart 4 of part 7560.0350, the League of Minnesota Cities proposes modifications which will require copies of required documentation and minutes from meets to be given to all affected operators within a certain amount of time. The Department declined to modify this rule subpart as LMC requested. It did consider the issue of creating a rule requiring excavators to disseminate minutes and/or other documentation to affected operators, but decided that the Department should allow the excavator to decide whether or not to share this information rather than mandate it in the rules. Such a stance is consistent with the Department’s position that it is trying to promote flexibility throughout this rule package. As a result, DPS/OPS decided that excavators should not be required to produce information for every affected operator. It was reasoned that interested operators could easily request the information from the

²⁸ Ex. 3, pp. 27-30.

excavator. The Department was persuaded also that, for regulatory purposes, it was not necessary to have more than one copy of the documentation on hand.

Part 7560.0375 Locating a Service Lateral

60. A service lateral is an underground facility that is used to transmit, distribute or furnish gas, electricity, communications, or water from a common source to an end-use customer or an underground facility that is used in the removal of waste water from a customer's premises.²⁹ "Underground facility" is defined as 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.³⁰ The Department's proposal in part 7560.0375, for an underground facility operator to locate a service lateral before the start date and time on the notice for excavation in accordance with items A through C in the proposed part, created a great deal of controversy. The controversies swirl around who actually owns the facilities, who is responsible for them and whether the agency goes beyond its statutory authority in attempting to regulate the locating/marketing of such facilities in the manner laid out in the proposal.

61. Sam Erickson, on behalf of the Minnesota Rural Electrification Association, opposes any service lateral locating and marking by electric utilities. The Department reasons that Mr. Erickson's opposition means that the MREA is opposed to the rule only as it applies to locating and marking beyond the "point-of-sale" (the meter), because electric cooperatives already locate and mark up to meters. The Department proposes at subpart 1A of 7560.0375 to require an operator to locate a service lateral anywhere within a public right-of-way, even if the meter or connection to the customer's underground facility is within the right-of-way.

62. The MREA argues that electric co-ops do not own, install or maintain the lines beyond the meter. The reasoning then becomes that anything located beyond the meter must be located by a licensed electrician because only persons who are licensed may work on those portions of the lines. MREA asserts that electric utilities are exempt from licensure, but that the tasks included under this exemption do not include "locating" privately-owned lines. Therefore, MREA reasons that electric utilities are not allowed to locate privately owned lines. The cooperatives also are concerned that the proposed new requirement would result in prohibitive costs to the cooperatives due to increased ticketing and the need for additional persons, noting that the only way to locate some private electric lines is to get into private panels and induce a signal or maybe even shut off the line. Another concern is about electric lines that run back across a public right-of-way to serve both houses or sheds, which (according to the proposed rules, MREA argues) an electric co-op would have to do to locate such lines as well.

63. The Department concedes that a person must be licensed to work on the customer-owned portion of electric lines, but disagrees with the MREA interpretation that "locating" customer-owned underground facilities falls within the definition of

²⁹ Proposed Minn. Rule 7560.0100, subp. 12.

³⁰ Minn. Stat. § 216D.03, subd. 11.

"electrical work" found at Minn. Stat. § 326.01, subd. 6(f). That statute characterizes electrical work as "installing, altering, repairing, planning, or laying out electrical wiring..." The Department maintains that no part of this definition can be construed to include marking and locating an underground line for the purposes of the proposed rules. The Department inquired with the Board of Electricity as to its interpretation of "electrical work." The Board of Electricity's email responding to the Department inquiry, attached to the Department's post-hearing comments filed February 22, 2005, indicate that the locating and marking of underground cables be accomplished without performing any tasks that fall within the definition of "electrical work" as defined in § 326.01, subd. 6(f).

64. In its comments, the agency established that customer panels did not have to be opened in order for electric facilities to be located electromagnetically.

65. The MREA and many individual rural electric co-ops argue that the cost of implementing the proposed rule would be overly burdensome. The Department disagrees, noting that it has no further evidence indicating that higher ticketing volume will result. The agency is not convinced that it is common to find areas where lines to the meter above ground and the meter are within the public right-of-way (in those cases underground service laterals could lead off the meters that run to the end of the public right-of-way or the property line). The facilities just described would be required to be located by entities such as the electric cooperatives under the rule proposal, but the Department believes that new service area registrations will not be so substantial as to result in dramatically higher ticket volumes causing unreasonable, increased costs. The Department maintains that very few, if any service areas have meters located on utility poles or some such above-ground facility found within the public right-of-way. To the extent such situations exist, the Department reasons that the electric co-ops have, or should have registered most of their service areas already in order to locate lines up to the meter, because they have noted in their comments that they already do locate up to meters.

66. The agency does not dispute that there will be costs associated with this proposed subpart, but the extent of such costs should not make the rule unreasonable. It is noted that the service laterals contemplated for location should be located for overriding public safety reasons. If an owner or tenant is not an "operator" for purposes of Chapter 216D, only the utilities are left to locate the lines.

67. In its SONAR³¹ the Department notes that Part 7560.0375 involves facilities (service laterals) that historically have not been located or have been inconsistently located and marked because of claims they are not owned or operated by the service utility. Such facilities commonly are located on property within a public right-of-way and are connected to a residence or business located on private property. In almost all cases the business or homeowner is not registered with the One-Call Center, is not set up to receive the location requests via fax or computer modem, does not have the expertise to perform locates within 24 hours of receiving notice and often is not even aware that they would be responsible to locate underground facilities. Such facilities

³¹ Ex. 3, pp. 33-34.

are likely to be damaged if they are unmarked because excavators may not be aware of their presence in the public right-of-way. The MS 216D Review Committee recognized this problem as a high public safety concern.

68. The Department reasons that it is important to place primary responsibility for identifying underground facilities on the entity that is in the best position to maintain records and locate the underground facilities-the facility operators. The OPS does not believe the legislature intended to place primary responsibility for locating underground facilities on private property owners. The proposed rules are found to be generally necessary to clarify locate responsibilities associated with service laterals in the public rights-of-way and to assign such responsibility properly and reasonably to utility providers (including local government units) rather than to the private property owners or customers.

69. As noted in Minn. Stat. § 216D.01, subd. 9, a person is not considered an operator solely because that person is an owner or tenant of real property where underground facilities are located if the facilities are used exclusively to furnish services or commodities on the property unless that person is the state, a state agency or a local government unit. Therefore, for the purposes of this regulatory scheme, even those considered owners of the service laterals found under their private property are not considered operators for the purposes of these regulations if they are customers. The Department notes also that private property owners or tenants lack the specialized knowledge to locate facilities in a public right-of-way compared to utility operators. The agency argues further that in order to acquire information on underground facilities, a private property owner or tenant most likely will go to the local government unit or underground facility operator in any case. Minn. Stat. § 216D.03, subd. 1 requires also that every operator must participate and share in the costs of the notification center (the Gopher State One-Call Center). The Department does not believe the legislature intended to require private property owners served via service laterals located in public rights-of-way to participate in the Gopher State One-Call Center. Such a result would be unduly burdensome for the Center and unreasonable for private property owners.

70. The Department reasons that unless it is acceptable for excavators to excavate blindly in areas where service laterals lie underneath, it is still necessary to locate such laterals that lie within the public rights-of-way, and that the statutes noted above require by definition that the party to do that job is the operator of the facility supplying the commodity or service to the customer. Based on that, the Department urges that it is reasonable for the proposed rules to require that operators of underground facilities locate not only their own underground facilities but also the service laterals found under the same public rights-of-way.

71. The argument noted above made by rural electric cooperatives, that under the proposed rules the cooperative is required to locate all underground electric services laterals located within the public right-of-way, including lines that might cross back over the right-of-way to service a shed or boathouse, has persuaded the Department that it is unreasonable to require electric co-ops to have to anticipate, search, locate and mark such additional lines. Therefore, the Department proposes a modification to the rules that would only require locating and marking laterals within the

public right-of-way up to the point where the services lateral first leaves the right-of-way. To accomplish this, the Department proposes adding the words "up to the point where the service lateral first leaves the public right-of-way" at the end of the originally-proposed subpart 1A. to part 7560.0375. The Administrative Law Judge is persuaded that the change proposed is necessary and reasonable and does not result in a substantial change because the intent of the rule does not change. The intent of the rule as proposed was to require service laterals to be located and the modification limits only how much of a line is expected to be located and marked. To limit the responsibility for marking and finding service laterals up to the point where they first leave the public right-of-way is sufficient, especially if requiring that utilities find and mark service laterals that may re-enter the right-of-way at several points would cause undue hardship. Fair warning was provided in the Notice of Hearing that the extent of responsibility for operators to locate service laterals could be modified.

72. A similar amendment is proposed by the Department for item C of subpart 1, and for the same reasons noted in the preceding finding the modification of subpart 1, item C, is found to be needed and reasonable and not a substantial change.

The change offered by the Department to subpart 1, item C was prompted by the testimony of Brian Herberg, the Mayor of Rockville, who testified that the rule as drafted initially would put great burdens on his city because farm water lines frequently cross the road and often run parallel to the road within the road right-of-way. Since farmers are not registered as operators within the Gopher State One-Call system, they often do not have records of the exact locations of such lines, which would be considered service laterals that would also need to be located pursuant to the rules as proposed originally.

73. The SONAR, at pages 37-39, lays out several legal arguments in support of the proposition that local government units exercise authority and control over facilities located within the public right-of-way and any user action within the public right-of-way. In addition to the arguments noted above, the agency stresses that Minn. Stat. § 444.075, subd. 1a authorized any municipality to "build, construct, reconstruct, repair, enlarge, improve or in any other manner obtain" water works systems, sewer systems and storm sewer systems. In this statute, the legislature allows municipalities to control specifically the water and sewer systems within their jurisdiction, and the Department argues that this legislation strengthens the idea that ultimate responsibility for locating sewer and water laterals, at a minimum within the public right-of-way, should fall upon the local government unit. Minnesota case law also establishes a proposition that the general right of control over a water line in the street lies in a municipality because of the municipal government's paramount authority over its streets, including the subsoil beneath the surface. Municipalities also possess extensive police powers with respect to care, supervision and control of streets.³²

³² Quigley v. Hibbing, 129 N.W. 2d 765 (Minn. 1964).

74. The Quigley court held that Hibbing was responsible for a service line break point between a water main and private hotel premises because “control of the service line was in the hands of the village.”³³

75. It is persuasive that, under Wycon Construction Co. v. Wheat Ridge Sanitation District, 870 P.2d 496 (Co. Ct. of App. 1993) individual property owners in Colorado are not considered operators with respect to locating individual service lines in a public right-of-way. The Wycon court stated “it is difficult to comprehend that the General Assembly would have intended that individual property owners, without any specialized knowledge or equipment, would have to mark the route through the public thoroughfare to where their service lines attached to the main.”³⁴

76. Some commentators have argued that it is the excavators or contractors who have the duty to locate underground facilities in public rights-of-way. The OPS does not agree with that comment, and the Administrative Law Judge finds that interpretation to be reasonable. Minn. Stat. § 216D.04, subd. 4 states that “the excavator or land surveyor shall determine the precise location of the underground facility, without damage, before excavating within two feet on either side of the marked location of the underground facility.” The Administrative Law Judge agrees with the agency that the statutory duty laid out here presupposes the operator has performed the locate and marking on the underground facilities before the excavation begins. Nowhere in Minnesota Statutes or Rules is an excavator required to perform a locate on underground facilities. As defined at Minn. Rule 7650.0100, subd. 4, “locate” means operator’s markings of an underground facility. The rules and the legislature, for these purposes, mean to distinguish the duty to “locate” from “determining the precise location of underground facilities.” The former is a duty of a facility operator, the latter a duty of an excavator or land surveyor. It is reasoned by the Department that if excavators were required by statute to be the original locators of underground facilities, they would also have to register as an operator of an underground facility (which they clearly are not).

77. Some cities have argued that the requirement to locate water and sewer laterals increases their liability because they must find or provide information on facilities they do not own, operate or control directly and for which they may not have adequate information. The Agency argues that local governments do have this information and do maintain control over service laterals and, if they do not, the rules as proposed take such a situation into account by accepting “no information available” as meeting the requirements for providing information.

78. Municipal operators argue for adopting a rule that indemnifies local governments from liability for any information provided in good faith that proves to be incorrect. The Department maintains that the indemnity sought is unnecessary because Minn. Stat. § 216D.04, subd. 3(g) has been amended to offer liability protection to operators offering good faith information on “private or customer owned” underground facilities.³⁵ The Agency notes further that any statute pertaining to locating underground facilities and indemnifying operators from information shared on private or customer-

³³ Id., at 768.

³⁴ 870 P.2d 496, 498.

³⁵ Minn. Laws of Minnesota 2004, Ch. 163, § 5.

owned facilities implies that there already is a duty that operators should be locating and providing information on such facilities.

79. Local governments have contended that there is no technically feasible way to locate sewer and water laterals and that the state should not mandate cities to do it until they have afforded cities enough time to research and test methods. The proposed rules recognize this fact because they do not go into effect until January 1, 2006. The rules also allow for numerous ways, even ways not yet developed, to make non-conductive facilities locatable, such as locating wires, GIS mapping, electronic marking systems, above-ground markers, and ground penetrating radar. Such flexibility allows municipalities who have developed successful methods for locating service laterals to continue to use those methods. The proposal is flexible enough so that municipalities can choose the method that works best for them.

80. When laterals that provide services or commodities maintained by operators other than government units are implicated, the proposed rules require the operator of the facility/utility to locate such lines regardless of the local government unit's control over the right-of-way. The OPS reasons that these operators were intended by the legislature to be the ones having primary responsibility for locating their facilities regardless of whether or not they are located within a public right-of-way. Such utility operators have the best information on service laterals connected to their main facilities. The Department points out that many utilities locate such service laterals as part of their standard business practices already. Therefore, the Department maintains it is reasonable to require, at a minimum, that facility operators locate the service laterals within a public right-of-way.

81. Items A through C of proposed part 7560.0375 distinguish between the different types of service laterals and how they must be located in order to reflect their unique circumstances. Item A concerns itself with operators of natural gas, propane or electric facilities, Item B is concerned with operators of communication facilities and Item C is pertinent to operators of sewage or water facilities. Item C, concerning operators of sewage and water facilities, does not take effect until after December 31, 2005. The Department has taken into consideration comments made by local governments that many of their facilities were never installed to be located easily, nor were adequate records of service laterals in these instances maintained or created. Therefore, it is reasoned that it is unreasonable to expect compliance with the locating mandated immediately upon adoption of the rules. Instead, the proposed rule provides for an effective date of January 1, 2006. Operators of sewage and water facilities also have the option either to locate or provide information on the location of a sewer or water service lateral installed before January 1, 2006. And, if no information is available on such laterals, then notifying the excavator that no information exists fulfills the rule's requirement.

82. With respect to water lines, the OPS did not find it appropriate to place the same duty to locate up to the meter as the rules placed on gas and electric operators, because most water meters are located inside buildings due to Minnesota's cold climate.

83. Subpart 2 of 7560.0375 allows for an exception to locating a service lateral, which exception applies to a service lateral of a customer who currently participates in the notification system as long as the customer is notified in writing of the duty to locate the service lateral. This exception is listed primarily to cover customers who have the technology to receive locate requests from the One-Call Center and the capacity to perform their own locates. An example is a telephone utility receiving power from an electric utility. A telephone utility likely has a system for receiving tickets and expertise for locating these facilities. This exception relieves the operator of a duty to locate and is reasonable because the customer has demonstrated an ability to receive locate requests and perform locates accurately by knowingly registering with the One-Call Center. Regarding the proposed exception, comments were submitted by Michael Ahern and Jerry Knickerbocker on behalf of the Minnesota Independent Coalition (MIC) and the Minnesota Telecom Alliance (MTA). Their concern is that to allow the exception without modification, there is potential for an electric provider to notify a telephone company that it would no longer locate the electric laterals servicing the phone company's remote terminals. To avoid that problem, the MTA and MIC contend that the rule could force utilities to cross-train and equip their locators to accommodate requests from operators pursuant to this provision, which would be burdensome.

84. The Department is persuaded by the concerns stated by MTA and MIC that it is necessary to limit the exception found in subpart 2. The Department believes that the limitation suggested by MTA and MIC, however, is too limiting. The Department proposes language that would allow operators to agree mutually, in writing, to locate. It maintains that such a result is reasonable because it ensures an operator is agreeable to locating a type of service as well as offering the freedom for operators to allow other agreeable operators to locate their own facilities.

85. The Department proposes to delete the words "is notified in writing of the duty to locate the service lateral" at the end of the proposed exception and substitute "and operator mutually agree that the customer will soon locate responsibilities. The agreement must be in writing." The Administrative Law Judge finds that the modification proposed to subpart 2, as noted herein, is necessary and reasonable and does not constitute a substantial change to the rules as published initially. The change is not substantial because it clarifies the responsibility of operators to locate service laterals within public rights-of-way. The modification clarifies also that both parties must agree to any arrangement made regarding locate responsibilities.

86. In response to an argument made by the LMC that the Department has no authority to require that LGUs manage their public rights-of-way and therefore, the Department lacks authority to require LGUs to locate service laterals in the right-of-way, which argument was presented in opposition to proposed Subpart 1, Item C of part 7560.0375, the Department responds that it is clear that the legislature did not intend to include owners or tenants (customers) in its definition of "operator" for purposes of meeting the requirements of Minnesota Statutes Ch. 216D. The Department maintains it is clear that Minnesota Statutes, Ch. 216D regulates all underground facilities, exemplified by the fact that the statutes specifically include both in-service facilities as

well as abandoned facilities.³⁶ Likewise, the statute does not exempt “service laterals” from its definition. It is noted that Minn. Stat. § 216D.01, subd. 11 defines “underground facility” as “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.” The Administrative Law Judge agrees with the Department that this definition clearly includes service laterals as they are defined in the proposed rules, which is that service laterals mean an underground facility used to transmit, distribute or furnish gas, electricity, communications or water from a common source to an end-use customer, and that a service lateral is also an underground facility used for the removal of wastewater from a customer’s premises.³⁷ The Administrative Law Judge agrees that the Department has the authority to adopt a rule that requires operators to locate water and wastewater service laterals.

87. The LMC argues also that the proposed rules require locates that cannot be done feasibly. In its comments filed on February 22, 2005, at pages 25 through 26, the Agency rebuts convincingly the argument that location of the type contemplated in the rules is not feasible.

88. The Department notes that a cost analysis could not have been done reasonably concerning local government units because circumstances affecting the obligations found in these rules are so varied and depend on future construction forecasts. The rules requiring a locate for facilities installed after December 31, 2005 will have much less impact in communities that are not growing as fast as certain others.

89. With respect to the LMC contention that the proposed rules do little to advance public safety, the Department discusses in the SONAR and through the testimony of Mr. Walt Kelly that the proposals indeed do advance public safety goals by addressing a substantial void in operators’ concepts of what their legal obligations are concerning service laterals.

90. The Department maintains that a primary reason it has focused on clarifying operator responsibilities in this rule proceeding is that operators’ interpretation of what their own responsibilities are concerning service laterals is the primary question at issue. The Department maintains that excavators know their rules already. And the Department notes that the governing statute places the burden of locating the underground facility on an excavator only after the facility has been located and marked by the operator. Even if the Department wished to explore rulemaking concerning trenchless boring techniques, the Department is not certain it has the authority to regulate installation techniques to the extent that LGUs would be satisfied. Such rulemaking may require parallel rulemaking with other agencies such as the Departments of Administration and Labor and Industry in order to accomplish an appropriate level of specificity, including installation standards and certified training advocated by the LMC in its comments. Minnesota Statutes Ch. 216D makes it clear

³⁶ Minn. Stat. § 216D.04, subd. 4(a).

³⁷ Proposed Minn. Rule 7560.0100, subp. 12.

that excavators have a responsibility to find the location of facilities already marked, but they do not have the duty to mark initially.

91. Numerous local government units commented that Minnesota is the only state that would require the action contemplated in this rule proposal and argued that since other states are not contemplating doing anything about the situation, it is not Minnesota's place to try to set an example. In its SONAR, the Department included a number of examples to refute the implication that other states do not find the issue as concerning as Minnesota. The inclusion of other state practices also serves to emphasize the fact that the issue is of immediate concern nationwide and states are struggling to find answers today.³⁸

92. MUCA, in its comments, requests modification of the rule proposal to require operators to locate and mark not only facilities installed after December 31, 2005 but also facilities installed prior to that date, provided that the operator has any information on those facilities. The Department did not follow through with MUCA's suggestion because it believes that such an imposition in the rules at this point would be a substantial change. The Department is persuaded that providing information on older waste water and water laterals, without requiring a locate to be performed, is reasonable.

93. In its response to comments filed on February 22, the Department notes in its March 1 response document that the LMC argues the testimony heard from the MPCA should not be considered in determining the reasonableness of this rule. At page 3 of its March 1 filing, the agency rebuts successfully the LMC arguments. Regarding the LMC's argument that the requirement to locate and mark water and waste water laterals does not promote public safety because it only requires marking the approximate horizontal location laterals, and not the depth of these laterals, the Department responds correctly that the statutes are silent with respect to locating depths of such facilities, so there is no authority to pursue rules in that regard. Legislative action would be required.

94. The SRA, through a filing by Attorney Jim Strommen, argues that the 2004 legislature limited locating requirements to exclude customer-owned service laterals. The SRA asserts that the legislature specifically requires only "information" (not to include locates and markings) to be supplied, if anything, by operators who do not own the laterals. The SRA notes that legislation originally including language requiring customer-owned service laterals to be located was dropped and amendments to the indemnification clause were then added. Therefore, the amendments limit operator responsibilities with respect to customer-owned laterals simply to provide information and not locates.

95. The Department disagrees with the SRA's contention as stated above. It notes that amendments to Minn. Stat. § 216D.03, subd. 3(g) do not limit the locate duty found in Section 216D.03, subd. 3(a) to offering simply information to excavators concerning customer-owned service laterals. It is noted also that State Representative Ray Cox, author of the House bill that gave rise to the 2004 legislation, filed a comment

³⁸ Ex. 3, at 43.

during the post hearing comment period stating that he withdrew the language requiring operators to locate privately-owned service laterals after it was apparent there would be no consensus at the legislature with the understanding that this topic would be addressed in the rules. State Senator Dan Sparks's comment (filed January 31, 2005 and included in Exhibit 8) that the subject matter is addressed better in the legislature does not resolve the question.

96. The SRA argues that the proposed rule seeks to create new law rather than enforce existing law by requiring operators to locate customer-owned service laterals. The Administrative Law Judge agrees with the Department that the requirement to locate customer-owned service laterals already exists in the affirmative requirements found in Section 216D.03, subd. 3(a). In its brief, the SRA concedes by implication that the existing definition for "underground facility" could include all facilities, whether operator or customer-owned. SRA admits further that this interpretation could require, pursuant to the requirements found in Subdivision 3(a), obligations that go beyond an operator's ownership and authority.³⁹ It is found that the Department has the authority to define service laterals because these laterals fall within the meaning of underground facilities. Thus, the Department does not create new law by requiring new operators to locate customer-owned service laterals.

97. The Department argues that the SRA's interpretation that the "information" referred to in the statutory indemnification does not include locates ignores the express obligations of operators to locate and mark underground facilities. When read within the context and meaning of the statute as a whole, "information" as it applies to customer-owned facilities should include locating and marking a facility. Minn. Stat. § 645.16 provides that the intent of the legislature may be ascertained by considering, among other things, certain specific factors listed there, such as the circumstances under which a law was enacted; the mischief to be remedied; the object to be obtained; the consequences of a particular interpretation; and the legislative and administrative interpretations of this statute. Upon considering these factors, the Administrative Law Judge is persuaded that the SRA's interpretation cannot be adopted.

98. The Administrative Law Judge finds that the Department is correct in its argument that the indemnification clause was intended to be read and applied in conjunction with the duty of operators to locate customer-owned service laterals. In deleting the locate language from a bill intended to amend § 216D.04, subd. 3(a), the legislature did not create any new meanings to the remaining indemnification amendments at subd. 3(g) other than those that were intended originally.

99. The mischief to be remedied and object to be obtained are clear. Given that the indemnification amendments were introduced at the same time as language that was introduced requiring customer-owned locates, the only logical conclusion is that the legislature sought to obtain operator compliance in locating customer-owned service laterals by easing fears of liability. An interpretation that the indemnification amendments limited locates at the same time language was introduced requiring locates is inconsistent. The Department maintains and the Administrative Law Judge

³⁹ SRA Comment, 2/22/05, at 5.

agrees that the consequence of SRA's interpretation would be a failure to give effect to all the provisions of Chapter 216D without altering their clear and original meaning.

100. Representative Cox's withdrawal of locate language does not indicate that remaining language would thus limit locating obligations.

101. The Department argues further that if the intent of the legislature was to limit locates to owner-operated facilities, the easiest and most logical method to do so would have been to state clearly in the statute such an intention. It argues that since the subject matter was so controversial, it is unlikely that the legislature would have provided its intent so indirectly as Mr. Strommen suggests.

102. The Administrative Law Judge cannot accept the SRA's contention that the legislature intended that operators not be responsible for locating customer-owned service laterals. The Department is correct in its assertion it has not created new law with this proposed rule package but merely seeks to clarify and enforce existing obligations.

103. Keven Maxa, with Austin Utilities, submitted additional material concerning other states' actions with respect to locating and marking underground service laterals. The Department responded adequately to those in its initial comments filed on February 22, 2005. It is found that the Department's SONAR, in the single paragraph providing general information concerning a sampling of other states and what they have done in this area, does not constitute a demonstration by the Agency of the reasonableness of its proposed rules, because progress made in other states was not compared with what is happening in Minnesota. Therefore, Mr. Maxa's submissions regarding other states are not material to whether or not the rules proposed in this package are reasonable here.

Based on the above Findings, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Department gave proper notice in this matter.
2. The Department has fulfilled the procedural requirements of Minn. Stat. § 14.14 and all other procedural requirements of law or rule.
3. The Department has demonstrated its statutory authority to adopt the proposed rules, and has fulfilled all other substantive requirements of law or rule within the meaning of Minn. Stat. §§ 14.05, subd. 1, 14.15, subd. 3, and 14.50 (i) and (ii).
4. The Department has demonstrated the need for and reasonableness of the proposed rules by an affirmative presentation of facts in the record within the meaning of Minn. Stat. §§ 14.14, subd. 4 and 14.50 (iii).
5. Any Findings that might properly be termed Conclusions and any Conclusions that might properly be termed Findings are hereby adopted as such.
6. A Finding or Conclusion of need and reasonableness in regard to any particular rule subsection does not preclude and should not discourage the Department

from further modification of the proposed rules bases upon an examination of the public comments, provided that the rule finally adopted is based upon facts as appearing in this rule hearing record.

Based upon the above Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS RECOMMENDED that the proposed amended rules be adopted, as modified.

Dated: March 31, 2005



RICHARD C. LUIS
Administrative Law Judge

Reported: Shaddix & Associates
Gail M. Hinrichs, Court Reporter.

Transcript prepared.

To be completed by Excavator with input from Locator

Suggestions: Make in duplicate, separate set for each Locator; Give a copy to Locator

GSOC#: _____ Meet Date: _____ Meet Time: _____

Specific location of Meet: _____

Excavator Name: _____ Phone #: _____ Company _____

Locator Name: _____ Phone #: _____ Company _____

Utility responsible for: CATV _____ Electric _____ Gas _____ Oil _____
 Steam _____ Phone _____ Water _____ San. Sewer _____ Storm Sewer _____

Entire geographic area of proposed excavation:

Proposed excavation area delineated by white markings: Yes No; why is it not practical? _____

Prints / map attached: Yes No

Agreed upon locating schedule: _____

Agreed schedule of future meets or communications: _____

Signature, Excavator: _____ Date: _____

Signature, Locator: _____ Date: _____

Sketch of Request (as needed)

Excavation Start Date: _____ Excavation Start Time: _____

*The excavation start date and time must be at least 24 hours after the proposed meet date and time specified on the notice, excluding Saturdays, Sundays, and holidays. Unless provided for in a written agreement with all affected facility operators.

Minnesota Rules Chapter 7560

7560.0350 EXCAVATION NOTICE REQUESTING MEET.

Subpart 1. Excavator duties.

When requesting a meet through the notification center, an excavator must provide at least one contact name and telephone number to assist in facilitating the meet. An excavator shall contact the notification center to cancel or reschedule the meet and the notification center shall relay this information to the affected operators. When a meet is requested, an excavator's notice must include the entire geographic area of the proposed excavation and the specific location of the meet. This part does not relieve an excavator from the duty to provide a precise geographic location of the proposed area of excavation, or to use white markings except where it can be shown that to do so is not practical.

Subpart 2. Operator duties.

When a meet is requested, an affected operator shall make a reasonable effort to attend the meet at the proposed date and time, or contact the excavator before the meet and reschedule for a mutually agreed date and time.

Subpart 3. Excavation start date and time.

When a meet is requested, the meet date and time must be at least 48 hours after notice is provided, excluding Saturdays, Sundays, and holidays, and the excavation start date and time must be at least 24 hours after the proposed meet date and time specified on the notice, excluding Saturdays, Sundays, and holidays. This subpart does not apply if these matters are provided for in a written agreement with all affected operators.

Subpart 4. Meet request documentation.

An excavator shall maintain written documentation of each meet with an underground facility operator or representative. This documentation must be kept for the duration of the excavation conducted under the notice.

The documentation must include:

- A. the date and time of each meet;
- B. the names, company affiliations, and contact information of the attendees of each meet;
- C. a diagram, sketch, or description of the precise excavation locations, dates, and times; and
- D. the agreed schedule of any future meets or communications.

7560.0100 DEFINITIONS.

Subpart 7. Meet.

When used as a noun in this chapter, "meet" refers to a meeting at the site of proposed excavation requested at the time of notice by the excavator with all affected underground facility operators to further clarify the precise geographic location of excavation, schedule locating, propose future contacts, and share other information concerning the excavation and facilities.

Gas - Damage Prevention Protocol		Key - Enforceable Question - Non Enforceable Question (from Guide Material) - Non Enforceable (SFM-PST)									
Sub Part L											
192.603 (b)	Each operator shall keep records necessary to administer the procedures established under §192.605.										
	The Operator shall produce documentation or record(s) of compliance. ▶										
192.605 (a)	(a) General. Each operator shall prepare and follow for each pipeline, a manual of written procedures for conducting operations and maintenance activities and for emergency response. For transmission lines, the manual must also include procedures for handling abnormal operations. This manual must be reviewed and updated by the operator at intervals not exceeding 15 months, but at least one each calendar year. This manual must be prepared before operations of a pipeline system commence. Appropriate parts of the manual must be kept at locations where operations and maintenance activities are conducted. Does the Operator have a manual (or portions of a manual) specific to damage prevention activities? ▶										
	Is the DP portion of the manual stand alone? If yes is it incorporated by reference?										
	Is there a training program outlined?										
	Individual training records available?										
	Does the manual include procedures for handling abnormal operations for transmission lines? ✓										
	Does Operator follow procedures outlined for damage prevention in the manual? ✓										
	Has the Operator reviewed and updated the manual? ▶ ✓										
	Is the manual kept at locations accessible for locating technicians? Internal & Contract Resources? ✓ Are stand alone portions accessible?										
(b) (3)	Making construction records, maps, and operating history available to appropriate operating personnel. Per an O&M plan does Operator make Maps/Records available to locating personnel? ✓ Do the locating personnel have the maps and records as outlined in the O&M? ✓										
(b) (8)	Periodically reviewing the work done by operator personnel to determine the effectiveness and adequacy of the procedures used in normal operation and maintenance and modifying the procedure when deficiencies are found. Does the operator have procedures for reviewing locating technician performance? Internal & Contract Resources? ✓ Has the Operator reviewed the locating technician staff's performance? Internal & Contract Resources? ✓										
(e)	Surveillance, emergency response, and accident investigation. The procedures required by §§192.613(a), 192.615, and 192.617 must be included in the manual required by paragraph (a) of this section Does the O&M include provisions for analyzing 3rd party damages? ✓ Is on-going project related 3rd party damage information captured? Is locating technician performance measured?										
192.613 (a)	Each operator shall have a procedure for continuing surveillance of its facilities to determine and take appropriate action concerning changes in class location, failures, leakage history, corrosion, substantial changes in cathodic protection requirements, and other unusual operating and maintenance conditions. Does the operator have procedures for surveillance of facilities subject to possible excavation damage? ✓ Do procedures address conditions that may lead to premature failure, such as inadequate backfill and HDD? Is There risk based identification of at risk facilities (i.e. pipe type, excavator history)? Is there a critical facilities procedure?										
192.614 (a)	Except for pipelines listed in paragraphs (d) and (e) of this section, each operator of a buried pipeline shall carry out in accordance with this section a written program to prevent damage to that pipeline by excavation activities. Does the operator carry out a written program to prevent excavation related damage? ✓ Does the written damage prevention program include provisions for compliance with MS216D & MR7560? Is there an unlocateable facility procedure? Is there a 'watchdog' or 'mark and monitor' procedure?										

2009 Minnesota Pipeline Safety Conference

Tuesday, April 14: GSOC Board Meeting from 8:30-5:00 (Governor's Room)

Tuesday, April 14: Rodeo Event Demonstration 5:00-5:30 (Outside by Registration Area)

Tuesday, April 14: Dinner from 5:00-7:00 (Marina II Restaurant)

Wednesday, April 15	8:00-10:00	Breakfast / Registration / Exhibits Open (Whitebirch 1 & 2)			
	9:00-10:00	Pre-Rodeo Meeting-All Competitors, Judges, and Volunteers (Governor's Room)			
	10:00-11:00	Welcome & Opening Remarks (Minnesota 1 & 2)			
	11:00-11:45	Federal Regulations Update Harold Winnie, Community Assistance & Technical Services (CATS) Project Manager (Minnesota 1 & 2)			
	11:45-Noon	Community Awareness Emergency Response (CAER) , Ken Burmeister (Minnesota 1 & 2)			
	Noon-1:00	Lunch (Exhibit Area - Whitebirch 1 & 2)			
		TQ - Natural Gas (Minnesota 1)	TQ - Hazardous Liquids (Minnesota 2)	Damage Prevention (Governor's Room)	New Technology, Lessons Learned (Pelican Room)
	1:00-1:55	DIMP John West, PHMSA TQ	Operator Qualification Wally McGaughey, PHMSA TQ	Rodeo	
	2:00-2:55		Control Room Management Wally McGaughey, PHMSA TQ		
	3:00-3:30	Break (Exhibit Area - Whitebirch 1 & 2)			
3:35-4:30	DIMP Risk Assessment Mike Zandaroski, CenterPoint Energy	Enbridge Construction Denise Hamsher, Enbridge	Rodeo		
5:00-7:00	Dinner (Marina II Restaurant)		Rodeo Awards 7:00pm		
6:00 - 10:00	Exhibitor Hospitality (Exhibit Area - Whitebirch 1 & 2)				

Thursday, April 16	7:00-8:00	Breakfast/Registration/Exhibits Open (Exhibit Area - Whitebirch 1 & 2)			
	8:05-9:00	192 /195 Welding John West, PHMSA TQ		How To Win a Rodeo Mike Parilac, Planet Underground	Plastic Pipe - Past, Present and Future Mike Zandaroski, CenterPoint Energy
	9:05-10:00	PIPA Harold Winnie, CATS Project Manager			Trench Safety Lisa Hollingsworth, Hilmerson Safety Services
	10:00-10:45	Break (Exhibit Area - Whitebirch 1 & 2)			
	10:50-Noon	191/192 Reporting John West, PHMSA TQ	195 Annual Reporting Wally McGaughey, PHMSA TQ	New and Improved GSOC Mark Palma/Jon Eisele	Regulators-Relief Hands On Ben Sherman, Xcel Energy
	Noon-1:00	Lunch/Farewell to Exhibitors (Exhibit Area - Whitebirch 1 & 2)			
	1:05-2:00	192 External Corrosion John West, PHMSA TQ	Overpressure and Overfill Protection Wally McGaughey, PHMSA TQ	MS 216D Review Committee Annual Meeting	SHRIMP Jim Ramnes, MMUA
	2:05-3:00	Odorization John West, PHMSA TQ	MinnCan Project Mick Hemenway, Koch	MS 216D Review Committee Annual Meeting	Winter Leak Investigations Dave Perron, MERC
	3:00-3:15	Break (Minnesota Lobby)			
	3:15-4:15	How to Manage Contractor Safety Lisa Hollingsworth, Hilmerson Safety Services		MN Regional CGA Meeting/Roundtable	Line & Grade Curt Fakler, MNDOT
5:00-7:00	Dinner (Marina II Restaurant)				

Friday, April 17	7:30-9:00	Networking/Breakfast/Checkout (Marina II Restaurant)			
	9:00-9:30	GSOC Update , Jim Holzer, Gopher State One Call (Minnesota 1 & 2)			
	9:30-10:30	1162 Effectiveness Harold Winnie, CATS Project Manager and Dan Maschka, Northern Natural Gas (Minnesota 1 & 2)			
	10:30-10:45	Break (Minnesota Lobby)			
	10:45-11:45	Hugo Tornado , Sue Carter and Craig Hayman, Xcel Energy (Minnesota 1 & 2)			
	11:45-12:00	Closing Comments/Prize Drawing (Minnesota 1 & 2)			
	12:00-12:30	Lunch (Marina II Restaurant)			

090413 = last revision **YTBD = Yet to be Discussed**

<u>Law or Rule Reference</u>	<u>Intent of Revision</u>	<u>Modification Suggestion</u>
MS216D.01 Sub 5 Excavation MS216D.01 Sub 5 (4)	Revise definition of Excavation to include non motorized activities that include driving or pounding stakes, anchors and other similar installations. delete exemption for trees and shrubs	YTBD ... operations in connection with growing crops, trees, and shrubs, ... (6) planting of windbreaks, shelterbelts, and tree plantations, unless any of these activities disturbs the soil to a depth of 18 inches or more.
MS216D.01 Sub 5 (6) MS216D.01 Sub 9 Operator	delete an exemption based on depth Specify that Railroads are subject to being defined as an Operator in MN	YTBD
MS216D.03 Sub 2 (a)	Included designee appointed by Director of MNOPS to represent the State On the GSOC board.	YTBD
MS216D.04 Sub 2 (b)(2)	Strengthen requirement for precise marking instructions.	(2) the <u>accurately described and easily identifiable</u> , precise location of the proposed area of excavation or survey; (2) use white markings for proposed excavations except where it can be shown that it is not practical the precise area of excavation can be accurately described and immediately recognizable.
MS216D.05 (2) MS216D.05 (3)	Strengthen requirement for precise marking instructions & use of White Markings Add requirements for loading, or consequence of movement of soil and other material into the buried structure	YTBD
MS216D.05 (4)	Add requirement to provide protection	(4) provide support <u>and protection</u> for underground facilities in and near the construction area, including during backfill operations, to protect the facilities; and 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 \$1,000 for each... 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 \$1,000 \$2000 for each... 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, <u>or where the violation occurred</u> , 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.
MS216D.08 Sub 1 - Penalties	Expand those persons subject to fine to include all entities.	YTBD
MS216D.08 Sub 1 - Penalties	Increase the penalty amount	YTBD
MS216D.09 Sub 2 - Venue MS216D - ?	Venue to include the county where violation occurred. This in effort to ensure witnesses are available Add verbiage for Private Facility locations making owner responsible to locate White lining is required whenever precise area of excavation can not be accurately described and identified.	YTBD
MR7560 - ? MR7560 - ?	White lining shall be in sufficient detail to readily identify the precise area of excavation.	YTBD YTBD
MR7560 - Definitions Subpart 7	Include Meet definition to include "subsequent meets"	YTBD
MR7560.0225 Subp 3 - Use of a locate	Add documentation requirements for routine LORQs that turn into a project lasting up to 6 months	YTBD
MR7560.0250 Subp 1 - Facility locate	Add requirement to document changes from the LORQ	YTBD
MR7560.0250 Subp 1 - Facility locate (B.)	When an UG facility width is indicated, 1/2 that width is added to the tolerance zone.	Unless otherwise agreed to between the excavator and operator, <u>and documented per MR7560.0350 Subp 4</u> , an operator shall locate an underground facility using stakes,...
MR7560.0350 Subp 4 - Meet Request Documentation	Add requirement to keep documentation for 6 mos after project completion. Add Requirement to make the documentation immediately available to a MNOPS or other state inspector(s).	YTBD
MR7560.400 Citations Subp 2 (D)	Add judicial review	D. notice that failure to respond within 30 days precludes administrative <u>or judicial</u> review under this chapter; and

20
Years

CELEBRATING

**GOPHER STATE
ONE CALL**



GOPHER STATE ONE CALL HANDBOOK
2008 Edition



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www.gopherstateonecall.org



Dig Safely

PREFACE

This manual has been prepared for the professional excavator. It is intended to be a reference tool for interacting with the Gopher State One-Call notification center and it is also intended to fulfill the requirements of Minnesota State Statute 216D.02 subdivision 2. It is suggested that this manual be kept on hand for future reference when questions or problems arise. It is recommended that this manual be given to all individuals who regularly contact Gopher State One-Call.

If required, additional copies can be obtained from the Gopher State One-Call office. This manual has not been copyrighted by Gopher State One-Call. They have authorized and recommended its duplication.

This manual was updated January 2008. Its contents and Minnesota State Statute 216D are subject to change without notice.

Gopher State One Call Responsibilities

Who we are

Gopher State One Call (GSOC) is the one-call notification system established to inform Minnesota underground facility operators of intended excavation. GSOC serves as a communication link between the party conducting excavation and the underground facility operator. GSOC transmits the information from the excavator to the facility operator. This allows the facility operator to locate its underground facilities.

GSOC, a non-profit organization, was formed at the direction of the Minnesota Legislature in 1987 with the adoption of Minnesota Statute Chapter 216D. Chapter 216D requires anyone who engages in any type of excavation anywhere in Minnesota to provide notice at least 48 hours in advance (excluding weekends and holidays). An excavator may notify GSOC up to 14 calendar days prior to excavation. The service provided by GSOC to excavators is free of charge. The cost of GSOC services is paid by underground facility operators.

What we do

It is the responsibility of GSOC to:

- Administer the provisions of Minnesota Statutes 216D and Rules Chapter 7560.
- Educate facility operators and excavators about

Minnesota Statute 216D and call center practices.

- Take information from excavators who plan to excavate and provide that information in locate ticket format to facility operators requesting notification for the excavation area.
- Maintain a database of facility operator utility information, contact information and emergency contact information.

It is NOT the responsibility of GSOC to:

- Physically locate and mark any underground facilities.
- Settle disputes between excavators and facility operators.
- Maintain a database of the exact location of underground facilities.

Methods of providing information for locate requests

GSOC asks for your help when you are processing your locate requests during the busy digging season of April through October. Please avoid using the phone to contact GSOC between the peak calling hours of 7 am and 11 am, Monday through Wednesday if at all possible. Emergency calls are exempt from this request and are always accepted.

If you must contact the center during these times, please allow GSOC to set you up with an alternative method of contacting the call center. We would be

more than happy to assist training you how to use I Tic, our internet based ticket processing system. GSOC could also schedule a specific time for you to contact us prior to or after the hours of 7am and 11am. Please assist us as we try to make it easier and more convenient to process your locate requests while making GSOC run as efficiently and economically as possible.

GSOC offers excavators several convenient options for providing information to process locate tickets:

- **Internet Ticket (I-TIC)**

ITIC is an Internet based ticket entry program that allows the user to provide the required data as well as draw their own polygon to encompass the excavation site. This service is available 24 hours a day and anywhere you have Internet access. To start using ITIC, find an ITIC training class near you by visiting www.gopherstateonecall.org.

- **I-TIC Lite**

ITIC Lite is a scaled down version of I-TIC that allows the homeowner and infrequent users of GSOC the ability to also process their requests using the internet. With I-TIC Lite you provide GSOC with the required data, then the GSOC Customer Service Representative's map out the location of work described in the ticket. Like I-TIC, this service is available 24 hours a day, anywhere you have internet access.

- **Fax-a-Locate**

The Fax-A-Locate program allows the user to submit locate requests using a facsimile machine. It is an alternative for those without Internet access. To sign up for the Fax-A-Locate program, simply contact the GSOC's administration line (651-454-8388) and ask to speak with the fax department.

- **Telephone**

GSOC can be contacted between 6 am and 6 pm, Monday through Friday, April through October and then 7 am - 5 pm November through March to process routine, meet and design locate requests. GSOC will take emergency locate requests 24 hours a day. Before calling, make sure all excavation information is ready. A copy of the ticket with the needed information can be found on Page 29 or at www.gopherstateonecall.org.

- **Free Cellular Service**

Some wireless plans provide a free call to GSOC. Excavators with cellular phones may dial #dig (#344) to contact GSOC provided you are calling within the State of Minnesota. Check with your cellular provider to see if they provide free three-digit dialing options.

Private Underground Facilities, Utilities and Distribution Networks

Private underground facilities are found everywhere, including single family homes, farms, multi-family housing units, businesses, industrial areas, mobile home courts, shopping centers and sometimes in the road right of way. GSOC encourages owners and operators of private underground facilities to include those facilities on to the GSOC system. However, most private facilities are not listed on GSOC.

Unless the private facility owner participates in GSOC, privately or customer owned facilities will not be notified and may not be marked. Therefore, it is imperative that special precautions be taken by excavators as part of every excavation project.

Please note: Facilities that run under or cross a public road right of way or any other public right of way are no longer classified as "private facilities". As a result, these facilities are Underground Facilities within the meaning of Minnesota Statute 216D and must be registered with GSOC.

GSOC recommends every excavator make a detailed inquiry for private facilities as part of every excavation project. This inquiry can include physically inspecting the entire construction site and the surrounding area. Interviewing owners or occupants (or former owners or operators). Ask questions! If a building has heat, what is the source of supply? If there are lights, there is electricity.

Private facilities can be used to convey many different types of products. These products fall into two broad categories: **Energy Related Facilities and Non-Energy Related.**

Energy Related Facilities

Energy related facilities include natural gas, electricity and propane. These lines or pipes can provide service for a variety of different purposes.

Propane

Propane facilities can be found in a variety of applications in residential, agricultural and industrial settings.

In residential settings, propane may be used to heat buildings, swimming pools, grills, fireplaces and appliances. Propane may also fuel lighting and other appliances.

In agricultural settings, propane may be a fuel source for buildings, corn dryers and other equipment.

Commercial and industrial locations also rely on propane for a fuel source. This can include a wide variety of facilities from heating to standby or off-peak backup facilities.

Visible indications of the use of propane at a location are above-ground or buried storage tanks. A buried propane tank usually has an exposed location with a fitting for re-filling. Remember that a single propane tank can provide fuel for multiple buildings, mobile homes, single family homes, cabins or town homes.

For more information about propane, please visit the

Minnesota Propane Gas Association's web site at www.mnpropane.org.

Natural Gas

Private natural gas lines in a residential setting may provide fuel for a number of different devices. Among them are barbecues and grills, pool heaters, yard lights or heaters in outbuildings like sheds, garages or barns.

Natural gas may be delivered to a “master meter” at multi-resident properties, such as mobile home courts, town home or apartment complexes. Buried facilities carrying natural gas between the master meter and units on the property are usually private facilities. As a general rule, natural gas providers will only mark underground gas lines from the main to the meter.

It is important to remember the operators of natural gas facilities only mark the line leading to the meter. Any appliance or device fueled by natural gas that is on the “other side” of the meter is almost invariably served by a private facility.

For more information about natural gas, please visit the Blue Flame Association's web site at www.blueflame.org.

Electricity

Like natural gas, electric service may be supplied to a “master meter” at multi-resident properties, such as mobile home courts, town homes or apartment complexes. Any line that connects the “master meter” to another unit or device on that property is private.

Any property, residential or commercial, may also have buried private electric lines serving power to, among other things, yard lighting, pool heaters or pumps. Additionally, on residential properties or farms, private lines may connect outbuildings like garages, sheds, barns or electric fences to a source of power. Remember that the supplier of electricity usually only marks the power line up to the meter. If there is power in a garage or if a piece of equipment or building is served by electricity, make sure to look for a private electric line.

Although the meter set is often found on/at the home or main building, in some areas it is set on a pole or other attachment at a nearby power pole. Red marks or flags leading up to a pole, but not going on to other buildings are indicators that there are one or more private facilities in the area. Also, use care where a property is served by overhead lines, that are buried after they enter the property. In this situation, it may be that all underground electric facilities are considered private.

Other Types of Private Facilities

Several other types of private buried lines may be found on private property. Some may carry low-voltage electrical current. These include buried lines for invisible fences, data communications cables and low voltage landscape lighting. Other private facilities can include water systems, septic systems, underground sprinkler systems, private phone lines that connect outbuildings to a home or waste collection lines. Drain tile, irrigation, farm taps and other facilities may be

found in rural areas. Drain tile systems are used by farmers as an underground culvert system to remove excess water from their fields. Farm taps are connections to natural gas transmission pipelines to farm locations, i.e. the farm house, corn dryers, barns or out buildings. Between industrial or commercial buildings connections, steam lines, private communications or fiber lines, tunnels and a variety of facilities may exist.

Be on the Lookout for Private Facilities

A good excavator is also a great detective or investigator. The excavator knows that private facilities will be part of almost every job. They physically inspect the jobsite prior to entering a ticket (or even bidding the job), they query the property owner, see what equipment or power may serve buildings, they will excavate around, and look for warning signs. They find out who installed the original underground facilities and contact them to determine if any records or maps exist. They also prepare maps of any new facilities they install, so that this problem doesn't exist in the future.

What should I do if I suspect I have private facilities in the area of my excavation?

Do not dig until they are each identified and marked. When a property owner or tenant has any type of private underground facility, they are responsible to locate those facilities, or hire someone to locate them. The contact information for a number of private locating companies can be found at the Gopher State One Call website: www.gopherstateonecall.org.

Excavator Responsibilities

Notifying GSOC

Excavators, including homeowners alike, throughout Minnesota are responsible for notifying GSOC of their proposed excavations so that GSOC can notify facility operators with underground facilities in proximity to the proposed excavation site.

GSOC reminds you that each company performing an act of excavation must have their own one-call ticket. If you are a sub-contractor and you are excavating protect yourself and your company by obtaining your own one-call ticket. The general contractor's ticket does not necessarily apply to anyone except them.

If you are a contractor doing work for a homeowner, it is your responsibility (NOT the homeowners) to contact GSOC and obtain a one-call ticket.

Planning for your Excavation

GSOC wants you as the excavator to have a very successful excavation process. One suggestion that we make is that you break your excavation down into multiple tickets if that makes it easier either for you to describe the work, or for the locator to find your excavation site. For example, we would suggest you follow the following guidelines:

- Use white markings to define the entire area where your excavation will occur. Include an area of safe-

ty margin within the area delineated by white markings. If after you start digging you determine that your excavation will need to move beyond the original white paint area, call in a new ticket for the expanded area.

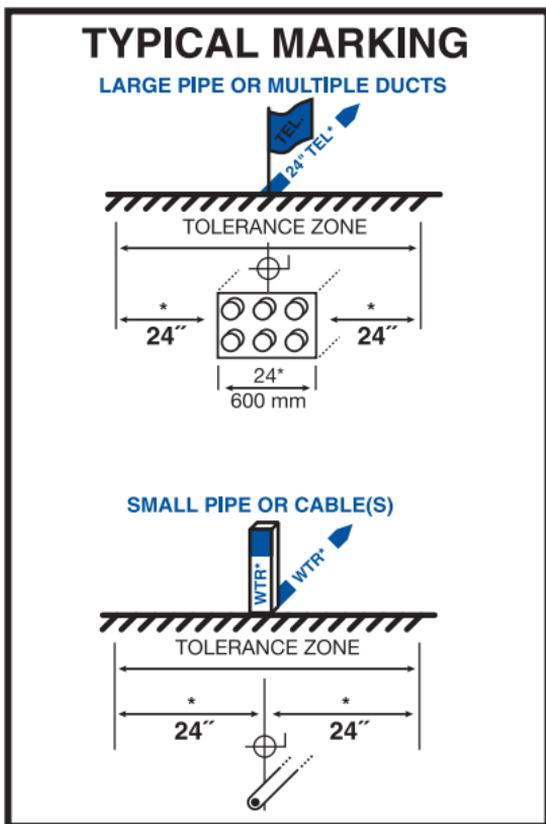
- Limit your ticket to a contiguous dig area. We recognize it may be faster to try to include two different dig areas on one ticket, but it makes a more difficult job for the locator. We suggest even if the projects are related or part of the same job, if the dig sites are unconnected, you break them down into separate tickets.
- Use common sense when defining your excavation area. Even if it is a contiguous single project, maybe a ticket covering 10 miles, or 250 trees, or 200 signposts isn't always a good idea. You want to help the facility operator know where you will be digging. Make the job easier by either using white markings or breaking down the work area into parts that will be more understandable. Also, think about their work schedule. If the work will happen in stages, stage your tickets so that your marks will be fresh when you enter an area.

Preparing for an excavation

1. Prepare the information for your excavation site prior to beginning the process to submit a locate ticket. While completing the locate ticket, you will be required to give detailed directions to

the excavation site - driving directions are best - and marking instructions for the specific area where locates are needed. You are required to use **white markings** for indicating the area of proposed excavations unless it can be shown that is not practical.

2. Not less than two full business days before excavating, you must contact the GSOC to provide information necessary to complete a locate ticket. You may contact GSOC up to 14 calendar days prior to commencing excavation to provide facility operators additional time to mark the area of proposed excavation.
3. When your locate ticket is complete, you will be given a ticket number and a list of facility operators with underground facilities in proximity to your excavation site. It is recommended that you write down your ticket number and the facility owners/contract locators so you are able to track which facility owners have responded to your one-call request. ITIC users obtain this ticket number immediately and Fax-A-Locate users will receive a fax or e-mail confirmation of the locate ticket subsequent to sending the information to GSOC.
4. If you fail to provide GSOC with the required information, GSOC may reject your request until you obtain complete information. To pre-



vent this, please plan ahead.

Excavating within tolerance zone

Many people believe that by notifying GSOC of intended excavation they have completed all of their responsibilities in the one-call process. This is not the case, notifying GSOC is only the first step.

First, carefully review your I-Tic or Fax-A-Locate ticket to make sure it is correct. Pay particular attention to similar sounding street names. Contact GSOC immediately if there are any discrepancies. Next, review the list

of facility operators notified by GSOC and compare it to a physical inspection of the area (including the surrounding area). If evidence of any other underground facility is discernable, contact GSOC immediately.

Excavators are required to maintain a minimum horizontal (side to side) clearance of two feet (24”) between an unexposed facility and the cutting edge or point of any power operated excavating or earth-moving equipment. For example: if the markings indicate a 6” pipe is buried, the hand dig zone is 54” wide (24” + 6” + 24”). If the excavation is required within the hand dig zone, the excavation must be performed very carefully with vacuum excavation or hand tools and without damage to the facility or undermining of lateral support.

Excavators are reminded that a facility depth may vary due to installation practices, changes in grade, frost, erosion and other variables. Therefore, any depth readings given by a locator, if given at all, are only an estimation of the depth of the facilities, and the excavator is still responsible to safely expose the facility without damage.

Conducting an excavation

While working at the excavation site, have your valid locate ticket and information with you.

During the course of digging it is the excavator’s responsibility to inspect and support all facilities that have been exposed. The excavator also must inspect facilities for any damage which could have accidentally

occurred. This damage could include the pulling or kinking of the facility or damage to the protective coating or covering. If damage occurs, it is the excavator's responsibility to immediately notify the facility owner directly. If during your excavation the excavation equipment comes in physical contact with an underground facility, even if there is no noticeable damage, you must stop excavation and contact the facility owner.

The excavator is responsible for reasonably protecting and preserving locate markings until no longer required for proper and safe excavation near the underground facility. If the excavator has reason to believe locate markings are obliterated, obscured, missing or incorrect, the excavator shall notify the facility operator or GSOC in order to have an operator verify, refresh or remark the locate. It is important that all facilities be marked prior to digging.

Emergency Excavations

An emergency is defined by Minnesota State Statute 216D.01, subdivision 3 as **“a condition that poses clear and immediate danger to life health or significant loss of property.”**

Please note that work-scheduling problems or customer demands are not considered an emergency.

GSOC reminds you to call 911 whenever there is a release of flammable, toxic or corrosive gas or liquid, or if a dangerous situation has been created.

Examples of emergencies:

- A. An unforeseen excavation necessary in order to prevent a condition that poses clear and immediate danger to life or health.
- B. An excavation required to repair a service outage.
- C. An excavation required in order to prevent significant and immediate property damage.
- D. The repair of an existing unstable condition which may result in an emergency.

Emergency locates should be given top priority by utilities. Utilities will mark facilities within the excavation area as soon as practical, given the nature and circumstances of the emergency.

The Minnesota Office of Pipeline Safety has requested that Gopher State One Call remind excavators that anyone inappropriately claiming an emergency may be considered in violation of Minnesota Statute Chapter 216D subject to the penalties of 216D.08.

Correcting Errors

Call GSOC immediately to correct errors or to correct any information on a ticket. Customer service representatives will assist in making corrections, depending on the circumstances. Corrections will only be accepted from the caller working for the same company from which the ticket originated. In other words, a sub-contractor may not change information on a ticket filed by a

general contractor.



Abandoned Facilities

Starting in January 1999, facility owners are required to maintain maps, drawings, diagrams or other records of any underground facility abandoned or out-of-service. It is the facility owner's responsibility to give the excavator any known information about the abandoned facilities location.

If the facility owner notifies the excavator at the job site, this symbol should be used, either painted on the ground or on a locate flag. The capital A inside a circle represents abandoned facilities. The symbol should be painted or put on a flag in the same APWA color as is required for marking the underground facilities. For example, if this symbol were found on a yellow flag it would represent an abandoned gas, oil, or steam line.

Even though the facility may be abandoned it remains the property of the underground facility operator. As an excavator, you may not remove that abandoned facility from the ground without prior permission from the facility operator.

When notified of abandoned facilities existing in your proposed work site, gather as much knowledge and information as you can about the abandoned facility, (i.e. type, size, color, material, location, and possible depth).

Search & Status

Excavators can check on the status of tickets to see if there is no conflict within their dig-site. To check the status of tickets, do the following:

1. Go to www.gopherstateonecall.org.
2. On the right hand side under “Frequent GSOC Users” you’ll find Ticket Search. Click on Ticket Search.
3. Once there, you can search by a specific ticket number or towards the bottom of the screen there are other options such as “Search by Excavator” or “Location.”

The logo features the words "Dig Safely." in a bold, white, sans-serif font against a black rectangular background. A vertical graphic element, consisting of three parallel diagonal lines, is positioned between the words "Dig" and "Safely".

Dig Safely.

Facility Operator Responsibilities

Responding to a locate request

After receiving a locate ticket for an excavation, the facility operator must locate underground facilities prior to the legal excavation start date and time on the ticket, unless otherwise agreed or in the case of an on site meet. GSOC will issue the start time requested by the excavator as long as the time requested allows the facility operator at least two full business days (excluding weekends and holidays) to do the following:

- Physically locate and mark the horizontal location of underground facilities within the excavation site according to the American Public Works Association (APWA) color codes; or
- If the underground facilities at the excavation site cannot be located prior to the legal start date, contact the excavator to arrange a new locate due date and time that is mutually agreeable and will not unreasonably delay the excavator's work.

Emergency excavation tickets are given top priority. Facility members will mark facilities within the emergency excavation area as soon as practical.

If excavation, demolition or weather conditions change the locate marks and they are believed to be obliterated, obscured, missing or incorrect, the excavator shall

notify the facility operator. The GSOC notification center may be re-contacted to have the facility operator verify, refresh, or remark the locate. It is important that all facilities be marked prior to digging.

Positive Response

After January 1, 2006 underground facility operators will need to respond to every ticket they receive from GSOC, even if there are no underground facilities in the excavation area. One way in which an underground facility operator can respond to tickets that are not in conflict is through the Internet. The webpage is www.managetickets.com and on this webpage you can change the status of your tickets to Clear/No Conflict. For more information see Minnesota Rules Chapter 7560 located in the back of this manual.

Guidelines for marking underground facilities

Underground facility operators should use the recommended guidelines for uniform temporary markings of underground facilities as approved by the Common Ground Alliance (www.commongroundalliance.com) when marking the horizontal route of any underground facility.

The operator of an underground facility should be indicated by initials or by name along with the marks indicating the horizontal location of the underground facility.

When known, the total number of lines within the ground should be indicated. The number of lines indicated should be based on the actual number of physical

lines. Multiple cables twisted together to form a single facility, as in the case of electric lines, would be considered one cable for a locate purpose.

If a facility is in a duct bank or a duct structure a corridor marker may be used. The corridor marker should indicate the approximate width of the facility. A marking resembling the capital letter “H” lying on its side, will indicate the corridor marker.



When there is a strong likelihood that the marks may be destroyed, the contractor may want to request offset markings. Offsets are indicated on a permanent surface or stakes and are placed parallel to the running line of the facility. The offset should indicate the distance from the offset to the facility and should identify the facility owner and if necessary the size of the facility.

Abandoned Facilities

Facility owners are required to maintain maps, drawings, diagrams or other records of any underground facility abandoned or out-of-service. It is the facility owner’s responsibility to give the excavator any known information about the abandoned facilities location.

Please refer to page 18 under “Excavator Information” for Abandoned Facilities Requirements.

Locate Tickets

Once the excavator has notified GSOC of pending excavation the call center will prepare a locate ticket that contains information provided by the excavator about the proposed excavation activity. This locate ticket is then transmitted to underground facility operators who have indicated to GSOC that they may have underground facilities in the vicinity of the excavation. The locate ticket is valid for 14 calendar days from the start time stated on the notice. If the activity will continue after the expiration time, the excavator shall serve an additional notice prior to the expiration time of the original notice, unless arrangements are made for remarks.

When refreshing the paint and flags you have two options:

- Contact the facility operator / locator directly and ask for your job site to be refreshed, or
- Contact GSOC and have your ticket updated.

Types of Locate Requests

1. Routine Locate

This is the most common type of request processed at GSOC. These tickets need to be requested by the excavator not less than two business days (excluding weekends and Holidays) from the planned start of excavation. The ticket may be requested up to 14 calendar days prior to the time of proposed excavation. The ticket is valid for 14 calendar days from the start time stated on the notice, unless the locate markings become obscure or obliterated. The excavator also can make arrangements with the operators affected to periodically verify or refresh the marks, in which case the ticket is valid for up to six months from start time stated on the notice.

2. Emergency Request

An emergency request is defined by Minnesota Statute Chapter 216D.01, subdivision 3, as **“A condition that poses a clear and immediate danger to life or health or significant loss of property.”**

GSOC customer service representatives do not determine whether an emergency condition exists.

Examples of emergencies:

- An unforeseen excavation necessary in order to prevent a condition that poses clear and immediate danger to life or health.
- An excavation required to repair a service outage.

- An excavation required in order to prevent significant and immediate property damage.
- The repair of an existing unstable condition that may result in an emergency.

Please note that work-scheduling problems or customer demands are not considered an emergency!

GSOC reminds you to first call 911 whenever there is a release of flammable, toxic or corrosive gas or liquid, or a dangerous situation has been created. Next, contact the facility operator involved in the emergency, then contact GSOC.

Emergency locates are given top priority by the facility operator and will be marked within the excavation area as soon as practical, given the nature and circumstances of the emergency.

The Minnesota Office of Pipeline Safety has requested Gopher State One Call to remind excavators that anyone inappropriately claiming an emergency may be considered in violation of Minnesota Statute Chapter 216D and subject to the penalties of 216D.08.

3. Meets

A meet should only be requested when it is difficult to precisely define the location of the excavation site in a routine locate request. At times, using white paint and flags can very easily substitute for a meet.

When processing a meet ticket, the excavator must provide a general description of the area of excavation on that ticket. Once at the meet, the excavator must make

every effort to clearly define the extent of the project and specific details about the project. The use of white paint, white flags or combination of the two will assist the facility operator in complicated projects. Also handing out maps, sketches, diagrams and the schedule of excavation, if done in multiple steps, will also assist in getting a quality locate. Be prepared at the meet to exchange contact information and schedule for remarks. Then document this information for future use. It is the responsibility of the excavator requesting the meet to provide all relevant information to the facility operator, so that the facility operator can properly mark the underground facilities.

The scheduling of a meet request does not mean that the work site will be marked at the time of your meet. Meets are for conveying information; Gopher State One Call does NOT recommend you plan to begin excavation at or immediately after the meet in case delays occur. It is important that the excavators and facility owners/locators work together and cooperate with each other to guarantee a successful finish to the project.

Gopher State One Call customer service representatives cannot make binding appointments on behalf of the facility operators. Excavators are reminded that all meets are tentative and are subject to change. Since these appointments are tentative, the customer service representatives can only schedule a Meet Request between the hours of 9 am and 3 pm at least two business days from the time of the locate request.

If the facility operator cannot make the Meet Request, it is important that the facility operator contact the

excavator to make other arrangements that work best for each party.

The excavator, who scheduled the meet, and all affected facility operators, should make reasonable efforts to be there on time.

4. Non-Excavation Tickets

MN State Statute 216D.04, Subdivision 1a requires contacting GSOC in many circumstances involving contract bid proposals. The law refers to these as “Plans for Excavation.” These tickets are a way for engineers, architects, surveyors, planners or any person soliciting bids or entering into a contract for excavation to obtain the type, size and general location of the facilities.

Once the facility operators receives the Plans for Excavation Ticket they must provide the excavator the information within 15 working days. Notification can be provided by either performing:

1. An actual field locate at the job site, and or
2. Providing maps or diagrams of the facilities.

The information obtained from the affected operators must be submitted with the final drawing used for the bid or contract. This bid or contract must also depict the “utility quality level”, as defined in 216D.01 subdivision 12. This information must be obtained not more than 90 days before completion of the final drawing used for the bid or contract. A person required to obtain this information is also required to hold one or more preliminary design meetings and comply with Minnesota Statutes

216D.04 subdivision 1a (C) and (D). This subdivision does not apply to bids and contracts for:

1. Routine maintenance of underground facilities or installation, maintenance or repair of service lines.
2. Excavation for home construction and projects by homeowners.
3. Excavation for operators of underground facilities performed on a unit of work or similar basis.

NOTE: An operator who provides information to a person who is not a unit of government may indicate any portions of the information that are proprietary and may require the person to provide appropriate confidentiality protection.

5. Boundary Survey

A Boundary Survey is another type of a non-excavation ticket processed by Gopher State One Call.

By law, underground facility operators must respond to a Boundary Survey request within 96 hours.

The facility operator must preform an actual field locate unless both parties agree otherwise.

GOPHER STATE ONE CALL TICKET FORMAT

1. Ticket Type: Ticket No. _____
 Locate Request Emergency Design Locate
 Excavation Meet Boundary Survey
2. Phone number _____ Ext. _____
Caller ID number _____
3. Caller name _____
Company name _____
4. Mailing Address _____
City _____ State _____ Zip _____
5. Alternate contact name _____
Alternate phone number _____
6. Work to begin date _____ Time _____
- 7a. Explosives (Y/N) _____ 7b. R.O.W. (Y/N) _____
- 7c. HDD (Y/N) _____
8. Duration of Work _____
9. Type of Work _____
10. Work being done for _____
11. County _____ City/Place _____
12. Nearest Intersecting Street _____
13. Address _____ Street _____
14. Marking Instructions _____
15. Remarks _____
16. Township _____ Range _____ Section _____ Quarter _____
17. Hudson/King Page _____ Grid _____

Information requested on a locate ticket

Below are brief explanations of the information that you will be required to provide when processing a locate ticket. The information is listed in the order it appears on the ticket.

1. **Telephone number / Caller ID number** - Your phone number is used to access GSOC's database. You also use your ID number to gain the same information.
2. **Caller name and Company name** - This information is taken in order to maintain records of all locate requests. This is also helpful in the event it is necessary to contact someone for further information regarding the project.
3. **Mailing Address** - The mailing address of the caller or caller's company is recorded in order to enable the computer to store this information in a mailing list database. This mailing list can be utilized to notify excavators of information pertaining to Gopher State One Call. All identified information is also made available to facility operators, excavators and government agencies. This is not private information and no expectation of confidentiality or privacy shall be assumed.
4. **Alternate contact name and phone number** - If the person in charge of the work is different than the caller, an alternate name is needed. Locate request can often be expedited when the person

supervising the work can be reached directly.

5. **E-mail Address** - Email addresses will be collected as another way in which communication can be made between the facility operators, excavators and Gopher State One Call.
6. **Excavation start date** - It is critical **NOT** to begin work prior to the start date and time. Beginning work before the start date and time can result in the forfeiture of the excavator's rights and protections provided under the law. **If the excavator cancels the excavation, the excavator is required by law to notify the call center.**
- 7A. **Explosives** - Gas safety rules require gas facility owners to perform leakage surveys in the vicinity of any excavation where blasting has been performed. Gopher State One Call asks whether explosives will be used in an effort to assist gas facility operators to stay in compliance with these rules.
- 7B. **Right of Way (ROW)** - The question if the work will be performed in the "road right of way." For the purposes of this question, GSOC defines the ROW as the area on, below, or above a public roadway, highway, street, cart way, bicycle lane, and public sidewalk in which the government unit has an interest, including other dedicated rights-of-way for travel purposes and utility easements of government units.

Make sure you are familiar with the area in which you are working and contact the ROW holder for any questions regarding the ROW boundary. Please note that the ROW is not the same as an easement. GSOC cannot be responsible for determining the ROW area. Further, the facility operator may rely on your answer to this question in determining if a locate is necessary. Therefore, the excavator must confirm the ROW area prior to contacting GSOC.

7C. HDD (Horizontal Directional Drilling) or tunneling / boring - excavation taking place beneath the ground with out disturbing the ground surface, in a tunneling fashion.

8. Duration - This question is an estimate of how long you plan on being at the job site. Please note, a ticket is valid for 14 calendar days. If the duration of the work will extend beyond 14 calendar days you must request an update on the ticket at least two business days prior to the expiration of the 14-day period, and every subsequent 14-day period thereafter, unless arrangements are made with affected operators to periodically remark. If the project will exceed 6 months, a new ticket must be sought prior to the expiration of the 6-month period.

9. Type of Work - Field locators need to know the specific reason for excavation. Customer service

representatives, therefore, need to identify the specific reason for the work as compared to the work method. For example, “installation of a sanitary sewer lateral” is much more helpful than “digging for a sewer line.”

10. **Work Being Done For** - The identification of whom the work is being done for is another resource for obtaining additional information about the project. The customer’s name or the general contractor’s name is sufficient.
11. **Street Address of Work Site** - GSOC also uses the street name to identify which facility operator are to be notified. It should be noted that the underground facility operators participating in GSOC utilize different mapping records. To ensure that the information received for all underground facility operators, Gopher State One Call has requirements for identifying the location of the job site. The best information is a street address. If a street address is not available, the customer service representative will ask for the following information:
 - A. What is the precise name of the street?
 - B. Name of the nearest intersecting street.
(Not necessarily the nearest *major* street.)

The following are examples of proper information when identifying the location of a job site:

A. 2020 Centre Pointe Blvd

B. Centre Pointe Blvd and Lexington Ave.

Use caution to ensure you have the proper street name before you call GSOC. It is critical for you to have the full and proper name to allow GSOC to accurately process your locate request. Use caution with differences between “street,” “avenue,” “boulevard,” etc. Fire numbers are helpful as additional information, but are not an address that GSOC can access.

NOTE: GSOC call taking procedures state that a separate ticket must be filed for each job site. In other words, the installation of 15 sewer laterals will result in filing 15 separate tickets.

In addition, “Blanket Tickets” are strongly discouraged. If you are a sub-contractor and you are excavating, protect yourself and your company by calling in to get a ticket. The general contractor’s ticket does not apply to anyone except them.

- 12. County and City/Place Name** - The county and city/place of the work site are needed to identify where the job site is located. This information is critical to GSOC and it is the excavator’s responsibility to determine the correct political subdivision in which the work will be performed. The excavator must confirm political boundaries prior to contacting GSOC. Failure to provide GSOC with cor-

rect information can result in facility operators not being properly notified. Therefore it is important the excavator carefully confirms this important information. GSOC utilizes this information to identify which members are to be notified.

GSOC accepts calls for all 87 counties in Minnesota. Work outside Minnesota should be referred directly to the one-call system responsible for that area. Visit our web site, www.gopherstateonecall.org for contact numbers to all other one-call centers.

- 13. Nearest Intersecting Street** - Provide the customer service representative with the nearest intersecting street to the job project. The nearest intersecting street is the information that drives the selectivity of the GSOC system. Therefore, the street given must be the nearest intersecting street. This requires the excavator to investigate in all directions of the jobsite to determine which is the nearest street that intersects the street address of the worksite. Failure to provide GSOC with correct information can result in a facility operator not being properly notified. Therefore it is important the excavator carefully confirms this important information.
- 14. Marking Instructions** - Identifies the specific portion of the excavation site that needs to be marked. (See “Preparing marking instruction” beginning on page 30.)

15. Remarks - Includes any additional information, comments or instructions to help the utility locators respond to your ticket, such as: 1) information that could prevent a locator from accessing the excavation site i.e. “locked gate” or “guard dog on property”; 2) an excavator’s request to meet with a utility; 3) map page and grids; 4) fire or route numbers; or 5) safety precautions.

16. Township, Range, Section and Quarter -

This information will aid the customer service representative and allow them to quickly and accurately process your location request. Studies show that telephone time can be cut by 50% if complete legal descriptions are provided to the customer service representative.

Indicate the appropriate township, range and quarter-section in which your job site is located. To do this, indicate the township, range, and section by their numeric designations and quarter sections by their directional qualifier (NE, NW, SE, SW).

Example - Township: 108N Range: 28W Section 12-NE

17. Map page and grid - Hudson or King map page and grids are acceptable for the greater metro area.

Example - Page Number 451 Grid 3C, Year of Book: 2004.

Preparing Marking Instruction (Excavation site description)

After identifying the location (address and corresponding driving directions) of the excavation site, you will be required to identify the portion of the excavation site that is to be marked. In identifying this area, the following guidelines should be considered:

1. Use north, south, east and west rather than left or right.
2. If the excavation is in the roadway, marking instructions could include:
 - a. Mark entire road right of way
 - b. Mark from centerline of road to the (North, South, East, West) (lot line, curb or right of way) and designate footage to the ending point.
3. If the excavation site information does not adequately describe where the locates are needed, utility owners may need additional information before locating their underground facilities. Customer service representative will note that the information obtained is the best available. However, the start date may be delayed until the required information is provided or white markings have been done.
4. In all cases, GSOC is looking for a description of the area to be marked out. Customer service rep-

representatives will not accept instructions to mark a particular facility (i.e., “Mark the gas line at this address”).

5. The following are some terms that can be used to help describe the area to be marked:

Center lane	Frontage Road	Rear lot line
Cul-de-sac	Front lot line	Right of way
Culvert	Intersection	Road
Curb lane	Interchange	Roadway
Curb to curb	Lot line	Shoulder
Side lot line	Curb line	Median
Street	Easement	Property line
Curb to property line	Lot line to lot line	



THE LAW

Minnesota Statute Chapter 216D

One Call Excavation Notice System

As Amended August, 2004

216D.01 - Definitions

Subdivision 1 - Applicability.

The definitions in this section apply to sections 216D.01 to 216D.07.

Subdivision 1a - Commissioner.

“Commissioner” means the commissioner of public safety.

Subdivision 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.

Subdivision 2 - Damage.

- (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.

Subdivision 3 - Emergency.

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

Subdivision 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.

Subdivision 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.

Subdivision 6 - Excavator

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

Subdivision 6a - Land Surveyor.

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

Subdivision 7 - Local governmental unit.

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

Subdivision 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.

Subdivision 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.

Subdivision 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.

Subdivision 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.

Subdivision. 12 - Utility quality level.

"Utility quality level" means a professional opinion about the quality and reliability of utility information. There are four levels of utility quality information, ranging from the most precise and reliable, level A, to the least precise and reliable, level D. The utility quality level must be determined in accordance with guidelines established by the Construction Institute of the American Society of Civil Engineers in document CI/ASCE 38-02 entitled "Stan-

Standard Guidelines for the Collection and Depiction of Existing Subsurface Utility Data."

216D.02 Notice to excavator or operator

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.

Subdivision 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.

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.

Subdivision 2 - Establishment of notification center; rules.

- (a) The notification center services must be provided by a nonprofit corporation approved in writing by the commissioner. 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. 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) The commissioner shall adopt rules:
 - (1) establishing a notification process and competitive bidding procedure for selecting a vendor to provide the notification service;
 - (2) governing the operating procedures and technology needed for a statewide notification center; and

- (3) setting forth the method for assessing the cost of the service among operators.
- (c) The commissioner shall select a vendor to provide the notification center service. The commissioner may advertise for bids as provided in section 16C.06, subdivisions 1 and 2, and base the selection of a vendor on best value as provided in section 16C.06, subdivision 6. 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.
- (d) An operator may submit a bid and be selected to contract to provide the notification center service under paragraph (a) or (c). The commissioner shall annually review the services provided by the nonprofit corporation approved under paragraph (a) or the vendor selected under paragraph (c).

Subdivision 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.

Subdivision 4 - Notice to local government.

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.

216D.04 - Excavation; land survey.

Subdivision 1 - Notice required; contents.

- (a) Except in an emergency, an excavator shall and a land surveyor may contact the notification center and provide notice at least 48 hours, excluding Saturdays, Sundays, and holidays and not more than 14 calendar days before beginning any excavation or boundary survey. 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 the notice.
- (b) The notice may be oral or written, and must contain the following information:

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

Subdivision 1a - Plans for excavation.

- (a) Any person, prior to soliciting bids or entering into a contract for excavation, shall provide a proposed notice to the notification center to obtain from the affected operators of underground facilities the type, size, and general location of underground facilities. Affected operators shall provide the information within 15 working days. An operator who provides information to a person who is not a unit of government may indicate any portions of the information which are proprietary and may

require the person to provide appropriate confidentiality protection. The information obtained from affected operators must be submitted on the final drawing used for the bid or contract and must depict the utility quality level of that information. This information must be updated not more than 90 days before completion of the final drawing used for the bid or contract.

- (b) This subdivision does not apply to bids and contracts for:
 - (1) routine maintenance of underground facilities or installation, maintenance, or repair of service lines;
 - (2) excavation for operators of underground facilities performed on a unit of work or similar basis; or
 - (3) excavation for home construction and projects by home owners.
- (c) A person required by this section to show existing underground facilities on its drawings shall conduct one or more preliminary design meetings during the design phase to communicate the project design and coordinate utility relocation. Affected facility operators shall attend these meetings or make other arrangements to provide information.
- (d) A person required by this section to show existing underground facilities on its drawings shall

conduct one or more preconstruction meetings to communicate the project design and coordinate utility relocation. Affected facility operators and contractors shall attend these meetings or make other arrangements to provide information.

- (e) This subdivision does not affect the obligation to provide a notice of excavation as required under subdivision 1.

Subdivision 2 - Duties of notification center; regarding notice.

The notification center shall assign an inquiry identification number to each notice and retain a record of all notices received for at least six years. The center shall immediately transmit the information contained in a notice to every operator that has an underground facility in the area of the proposed excavation or boundary survey.

Subdivision 3 - Locating underground facility; operator.

- (a) Prior to the excavation start time on the notice, an operator shall locate and mark or otherwise provide the approximate horizontal location of the underground facilities of the operator and provide readily available information regarding the operator's abandoned and out-of-service underground facilities as shown on maps, drawings, diagrams, or other records used in the operator's normal course of business, without cost to the excavator. The excavator shall deter-

mine the precise location of the underground facility, without damage, before excavating within two feet of the marked location of the underground facility.

- (b) Within 96 hours or the time specified in the notice, whichever is later, after receiving a notice for boundary survey from the notification center, excluding Saturdays, Sundays, and holidays, unless otherwise agreed to between the land surveyor and operator, an operator shall locate and mark or otherwise provide the approximate horizontal location of the underground facilities of the operator, without cost to the land surveyor.
- (c) 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.
- (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 or boundary survey area before the excavation or boundary survey start time stated in the notice, the operator shall promptly contact the excavator or land surveyor.

- (f) After December 31, 1998, operators shall maintain maps, drawings, diagrams, or other records of any underground facility abandoned or out-of-service after December 31, 1998.
- (g) An operator or other person providing information pursuant to this subdivision is not responsible to any person, for any costs, claims, or damages for information provided in good faith regarding abandoned, out-of-service, or private or customer-owned underground facilities.

Subdivision 4 - Locating underground facility; excavator or land surveyor.

- (a) The excavator or land surveyor shall determine the precise location of the underground facility, without damage, before excavating within two feet on either side of the marked location of the underground facility.
- (b) If the excavator or land surveyor cancels the excavation or boundary survey, the excavator or land surveyor shall cancel the notice through the notification center.
- (c) The notice is valid for 14 calendar days from the start time stated on the notice. If the activity will continue after the expiration time, then the person responsible for the activity shall serve an additional notice at least 48 hours, excluding Saturdays, Sundays, and holidays,

before the expiration time of the original notice, unless the excavator makes arrangements with the operators affected to periodically verify or refresh the marks, in which case the notice is valid for six months from the start time stated on the notice.

- (d) The excavator is responsible for reasonably protecting and preserving the marks until no longer required for proper and safe excavation near the underground facility. If the excavator has reason to believe the marks are obliterated, obscured, missing, or incorrect, the excavator shall notify the facility operator or notification center in order to have an operator verify or refresh the marks.

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) use white markings for proposed excavations except where it can be shown that it is not practical;
- (3) 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;
- (4) provide support for underground facilities in and near the construction area, including during backfill operations, to protect the facilities; and
 - (5) conduct the excavation in a careful and prudent manner.

216D.06 - Damage to facility.

Subdivision 1 - Notice; repair

- (a) If any damage occurs to an underground facility or its protective covering, the excavator shall notify the operator promptly. When the operator receives a damage notice, the operator shall promptly dispatch personnel to the damage area to investigate. If the damage results in the escape of any flammable, toxic, or corrosive gas or liquid or endangers life, health, or property, the excavator responsible shall immediately notify the operator and the 911 public safety answering point, as defined in section 403.02, subdivision 19, and take immediate action to protect the public and property. The excavator shall also attempt to minimize the hazard until arrival of the operator's personnel or until emergency responders have arrived and completed their assessment. The 911 public safety answering point shall maintain a response plan for notifications generated by this section.

- (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.

Subdivision 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.

Subdivision 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 excava-

tion notice under section 216D.04 or provide support as required by section 216D.05.

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.

216D.08 - Civil penalties; proceeds to safety account; rules.

Subdivision 1 - Penalties.

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 \$1,000 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. The district court may hear, try, and determine actions commenced under this section. Trials under this section

must be to the court sitting without a jury. If the fine exceeds the maximum limit for conciliation court, the person appealing the fine may request the commissioner to conduct an administrative hearing under chapter 14.

Subdivision 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. Unless the commissioner chooses to proceed in district court under subdivision 1, 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.

Subdivision 3 - Credited to pipeline safety account; appropriation.

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 commis-

sioner against persons regulated under this chapter. Penalties collected under this section are annually appropriated to the commissioner of public safety.

Subdivision 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.

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 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 opportu-

nity to present views does not preclude the granting of appropriate relief.

Subdivision 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.

The logo features the words "Dig Safely." in a bold, white, sans-serif font against a solid black rectangular background. A vertical graphic element, consisting of three parallel diagonal lines, is positioned between the words "Dig" and "Safely".

Dig Safely.

Minnesota Rules Chapter 7560

Office of Pipeline Safety Excavation Notice System As amended October, 2005

7560.0100 - Definitions

Subpart 1. - Scope.

The terms used in this chapter have the meanings given them. Terms not defined in this part have the meanings given them in Minnesota Statutes, section 216D.01.

Subpart 1A. Abandoned facility.

"Abandoned facility" means an underground facility that is no longer in service and is physically disconnected from a portion of the operating facility that is in use or still carries service. An abandoned facility has been deemed abandoned by the operator.

Subpart 2. Director.

"Director" means the director of the Office of Pipeline Safety of the Minnesota Department of Public Safety.

Subpart 3. Good cause to believe.

"Good cause to believe" means grounds put forth in good faith that are not arbitrary, irrational, unreasonable, or irrelevant and that are based on at least one of the following sources:

- A. information from a person;
- B. facts supplied by the notification center defined in Minnesota Statutes, section 216D.01, subdivision 8;
- C. facts of which the director or an agent of the director has personal knowledge; and
- D. information provided by excavators or operators.

Subpart 4. Locate.

“Locate” means an operator’s markings of an underground facility.

Subpart 5.

[Renumbered as subp 8]

Subpart 5A.

[Renumbered as subp 9]

Subpart 6.

[Renumbered as subp 11]

Subpart 7. Meet.

When used as a noun in this chapter, "meet" refers to a meeting at the site of proposed excavation requested at the time of notice by the excavator with all affected underground facility operators to further clarify the precise geographic location of excavation, schedule locating, propose future contacts, and share other information concerning the excavation and facilities.

Subpart 8. Office.

“Office” means the Office of Pipeline Safety of the Minnesota Department of Public Safety.

Subpart 9. Out-of-service facility.

"Out-of-service facility" means an underground facility that is no longer maintained and is not intended for future use, but has not been deemed abandoned. An out-of-service facility may still be connected to a portion of the operating facility that is in use or still carries service.

Subpart 10. Public right-of-way.

"Public right-of-way" means the area on, below, or above a public roadway, highway, street, cartway, bicycle lane, and sidewalk in which a government unit has an interest, including other rights-of-way dedicated for travel purposes and utility easements of government units.

Subpart 11. Remuneration.

"Remuneration" means direct or indirect compensation or consideration paid to the person or the person's agent, employer, employee, subcontractor, or contractor. A person who excavates as part of the person's duties as an employee, employer, agent, subcontractor, or contractor is considered to be acting for remuneration.

Subpart 12. Service lateral.

"Service lateral" means an underground facility that is used to transmit, distribute, or furnish gas, electricity, communications, or water from a common source to an end-use customer. A service lateral is also an underground facility that is used in the removal of wastewater from a customer's premises.

7560.0125 ABANDONED AND OUT-OF-SERVICE FACILITIES.

Subpart 1. Duty of operators to provide readily available information.

Operators shall provide readily available information, as shown on maps, drawings, diagrams, or other records used in the normal course of business, on the approximate location of abandoned and out-of-service facilities to an excavator by the excavation date and time noted on the excavation or location notice unless otherwise agreed between the excavator and the operator. An operator fulfills an obligation to provide information on these facilities by doing one or more of the following:

- A. locating and marking the approximate location of the facility according to the current color code standard used by the American Public Works Association, as required in Minnesota Statutes, section 216D.04, subdivision 3, with an abandoned or out-of-service facility identified by an uppercase A surrounded by a circle;

- B. providing informational flags at the area of proposed excavation;
- C. communicating information verbally; or
- D. providing copies of maps, diagrams, or records.

Subpart 2. Duty to notify operator.

An excavator shall notify the operator:

- A. before moving, removing, or otherwise altering a facility that is thought to be abandoned or out of service; or
- B. if damage to the facility occurs, pursuant to Minnesota Statutes, section 216D.01, subdivision 2.

Subpart 3. Verification of abandoned or out-of-service facility.

Upon receipt of notification by an excavator pursuant to subpart 2, an operator shall verify that an underground facility is abandoned or out of service, by either reference to installation records, testing, or other comparable standard of verification, before an excavator is allowed to move, remove, or otherwise alter an underground facility.

Subpart 4. Liability.

An operator providing information pursuant to Minnesota Statutes, section 216D.04, subdivision 3, is not responsible to any person for any costs, claims, or damages for information provided in good faith

regarding abandoned and out-of-service underground facilities.

7560.0150 PUBLIC RIGHT-OF-WAY MAPPING AND INSTALLATION.

Subpart 1. Duty of operator to map.

After December 31, 2005, an operator shall maintain a map, a diagram, a drawing, or geospatial information regarding the location of its underground facility within a public right-of-way installed after that date.

Subpart 2. Duty to install locating wire.

After December 31, 2005, an operator shall install a locating wire or have an equally effective means of marking the location of each nonconductive underground facility within a public right-of-way installed after that date. This requirement does not apply when making minor repairs to an existing nonconductive facility. As applied to this chapter, "minor repairs" means repairs to or partial replacement of portions of existing service laterals located within a public right-of-way for purposes of routine maintenance and upkeep.

7560.0200 [Repealed, 24 SR 448]

7560.0225 EXCAVATOR RESPONSIBILITIES REGARDING A LOCATE.

Subpart 1.

[Repealed, 29 SR 1503]

Subpart 2. Responsibility to protect and preserve.

The excavator is responsible for reasonably protecting and preserving a locate until no longer required for proper and safe excavation near the underground facility. If the excavator has reason to believe a locate is obliterated, obscured, missing, or incorrect, the excavator shall notify the facility operator or notification center in order to have an operator verify, refresh, or re-mark the locate.

Subpart 3. Use of locate.

A locate is valid for 14 days from the excavation commencement time stated on the excavation or location notice, unless the excavator has made previous arrangements with the operators affected to periodically verify, refresh, or re-mark the locate.

7560.0250 LOCATE STANDARDS.

Subpart 1. Facility locate.

Unless otherwise agreed to between the excavator and operator, an operator shall locate an underground facility using stakes, flags, paint, or other suitable materials in varying combinations dependent upon the surface. The locate must be in suffi-

cient detail to clearly identify the approximate route of the underground facility. The locate must also include:

- A. name, abbreviation, or logo of the operator when more than one operator listed on the notice uses the same color markings;
- B. width of the underground facility if it is greater than eight inches; and
- C. number of underground facilities if greater than one.

Subpart 2. Operator duties in no conflict situation.

After December 31, 2005, an operator who receives notice and determines that an underground facility is not in conflict with the proposed excavation shall complete one or more of the following:

- A. mark the area “NO” followed by the operator’s name, abbreviation, or logo in the color code of the underground facility not in conflict;
- B. place a clear plastic flag at the area that:
 - (1) states “N/C” or “NO CONFLICT” in lettering matching the color code of the underground facility that is not in conflict; and
 - (2) includes the operator’s name, abbreviation, or logo, the date, a contact telephone number, and the ticket number; or

- C. contact the notification center through procedures required by the notification center and indicate that there are no underground facilities in conflict with the proposed excavation and that no markings or flags were left at the proposed excavation site.

Subpart 3. Placement of flags or markings.

If using N/C (no conflict) flags or markings pursuant to subpart 2, an operator shall place the flags or markings in a location that can be readily observed by an excavator. When an area of proposed excavation is delineated by the use of white markings, an operator shall place the N/C flags or markings within, or as near as practicable to, the delineated area.

Subpart 4. Duties of notification center.

After December 31, 2005, the notification center shall make the information received under subpart 2 available to the excavator before the start date and time on the notice. The notification center may fulfill this requirement by making the information accessible through one or more Internet addresses, by transmitting the information to a continuously working facsimile machine maintained by the excavator, or by other methodology developed by the notification center. The notification center shall make available the information received by operators pursuant to this section through an electronic means. The notification center is not required by this

subpart to contact an excavator verbally via telephone.

7560.0300 OPERATOR PARTICIPATES AND SHARES COSTS.

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, as required by Minnesota Statutes, chapter 216D.

7560.0325 EMERGENCY EXCAVATION NOTICES.

Subpart 1. Duty of excavator to provide notice.

An excavator shall provide notice to the notification center before commencing an emergency excavation, unless subpart 2 applies. All emergency notices, regardless whether made prior to excava-

tion, must be verbal or in a manner accepted by the notification center. In addition to the information required by the notification center, the notice must also contain:

- A. a description of the situation requiring the emergency excavation;
- B. the precise location of the proposed area of the emergency excavation;
- C. at least one continuously staffed telephone number where the excavator can be contacted by the operator throughout the emergency; and
- D. the excavation start date and time if the need for excavation is not immediate.

Subpart 2. Excavating before notice.

If an emergency is such that providing notice or waiting for an operator would result in an undue risk to life, health, or significant loss of property, the excavator may excavate without providing prior notice or waiting for an operator to mark an underground facility. In this situation, the excavator shall provide notice as soon as practicable and take all reasonable precautions to avoid or minimize damage. Excavation prior to notice under this subpart does not relieve an excavator from any responsibility for damage to an underground facility pursuant to Minnesota Statutes, section 216D.06.

Subpart 3. Emergency notice requesting immediate response.

Upon receiving an emergency excavation notice requesting an immediate response, an operator shall:

- A. attempt to contact the excavator within one hour at the telephone number provided in subpart 1, item C, to provide any information concerning facilities at or near the area of excavation including an anticipated response time; and
- B. locate and mark the underground facility within three hours of notice unless:
 - (1) otherwise agreed between the parties;
 - (2) the operator notifies the excavator that not locating does not present an immediate danger to life or health, or a significant loss of property; or
 - (3) there is an event or situation that cannot be reasonably anticipated or controlled by the operator.

Subpart 4. Emergency notice requesting scheduled response.

Upon receiving an emergency excavation notice that does not require an immediate response, and before the scheduled excavation start date and time, an operator shall:

- A. locate and mark the underground facility, unless otherwise agreed between the parties; or

- B. notify the excavator at the telephone number provided in subpart 1, item C, that there is not an underground facility within the area of proposed excavation.

For purposes of this subpart, a requested start time of three hours or less from the time notice is provided to the center is considered an emergency notice requesting immediate response under subpart 3.

7560.0350 EXCAVATION NOTICE REQUESTING MEET.

Subpart 1. Excavator duties.

When requesting a meet through the notification center, an excavator must provide at least one contact name and telephone number to assist in facilitating the meet. An excavator shall contact the notification center to cancel or reschedule the meet and the notification center shall relay this information to the affected operators. When a meet is requested, an excavator's notice must include the entire geographic area of the proposed excavation and the specific location of the meet. This part does not relieve an excavator from the duty to provide a precise geographic location of the proposed area of excavation, or to use white markings except where it can be shown that to do so is not practical.

Subpart 2. Operator duties.

When a meet is requested, an affected operator shall make a reasonable effort to attend the meet at the

proposed date and time, or contact the excavator before the meet and reschedule for a mutually agreed date and time.

Subpart 3. Excavation start date and time.

When a meet is requested, the meet date and time must be at least 48 hours after notice is provided, excluding Saturdays, Sundays, and holidays, and the excavation start date and time must be at least 24 hours after the proposed meet date and time specified on the notice, excluding Saturdays, Sundays, and holidays. This subpart does not apply if these matters are provided for in a written agreement with all affected operators.

Subpart 4. Meet request documentation.

An excavator shall maintain written documentation of each meet with an underground facility operator or representative. This documentation must be kept for the duration of the excavation conducted under the notice. The documentation must include:

- A. the date and time of each meet;
- B. the names, company affiliations, and contact information of the attendees of each meet;
- C. a diagram, sketch, or description of the precise excavation locations, dates, and times; and
- D. the agreed schedule of any future meets or communications.

7560.0375 LOCATING A SERVICE LATERAL.

Subpart 1. Operator duties.

Unless otherwise agreed, an underground facility operator shall locate a service lateral before the start date and time on the notice and in accordance with items A through C:

- A. An operator of a natural gas, propane, or electric facility shall locate a service lateral up to the meter or the connection to a customer's underground facility, whichever is closer to the end-use customer. If the meter or connection to the customer's underground facility is within a public right-of-way, at a minimum the operator shall locate that portion of the service lateral within the public right-of-way up to the point where the service lateral first leaves the public right-of-way.
- B. An operator of a communication facility shall locate a service lateral up to the entry of the first building. If the service lateral does not enter a building, the operator shall locate up to the utilization equipment, fence, or wall that surrounds the equipment.
- C. After December 31, 2005, an operator of a sewage or water facility, at a minimum, shall locate that portion of the service lateral within a public right-of-way installed after that date up to the point where the service lateral first leaves

the public right-of-way. The operator shall either locate or provide information as shown on maps, drawings, diagrams, or other records, on the location of a sewer or water service lateral installed before January 1, 2006. If no information is available on a sewer or water service lateral installed before January 1, 2006, then notifying the excavator that no information exists fulfills the requirements of this section.

Subpart 2. Exception.

An operator is not required to locate a service lateral of a customer who currently participates in the statewide notification system, provided the customer and operator mutually agree that the customer will assume locate responsibilities. The agreement must be in writing.

7560.0400 CITATIONS.

Subpart 1. Notice of violation.

The office shall issue a notice of probable violation when the office has good cause to believe a violation of Minnesota Statutes, sections 216D.01 to 216D.09 or this chapter has occurred.

Subpart 2. Contents of notice of violation.

A notice of violation must include:

- A. a statement of the statute or rule allegedly violated by the person and a description of the evi-

- dence on which the allegation is based;
- B. notice of response options available to the person cited;
 - C. notice that the person has 30 days in which to respond;
 - D. notice that failure to respond within 30 days precludes administrative review under this chapter; and
 - E. if a civil penalty is proposed, the amount of the proposed civil penalty and the maximum civil penalty applicable under law.

Subpart 3. Receipt of notice.

The notice of violation is deemed received three days after mailing to the person's last known address.

7560.0500 RESPONSE OPTIONS.

The person shall respond to the notice of violation in the following way:

- A. When the notice contains a proposed compliance order, the person shall:
 - (1) agree to the proposed compliance order;
 - (2) request the execution of a consent order;
 - (3) object to the proposed compliance order and submit written explanations, information, or other materials in answer to the

allegations in the notice; or

- (4) request the office to initiate a hearing under Minnesota Statutes, sections 14.50 to 14.69.

B. When the notice contains a proposed civil penalty, the person shall:

- (1) pay the penalty and close the case;
- (2) submit an offer in compromise of the proposed civil penalty;
- (3) submit a written explanation, information, or other material in answer to the allegations or in mitigation of the proposed civil penalty; or
- (4) request the office to initiate a hearing under Minnesota Statutes, sections 14.50 to 14.69.

C. Failure to respond in writing within 30 days precludes administrative review under this chapter. A final order will be issued and penalties will be forwarded for collection.

7560.0600 DIRECTOR REVIEW.

If the person objects to the proposed civil penalty or compliance order and submits written explanations, information, or other materials in response to a notice of violation, within the time specified in part 7560.0500, the director shall review the submis-

sions and determine whether to negotiate further, to change or withdraw the notice of violation, or to initiate a hearing under Minnesota Statutes, sections 14.50 to 14.69.

7560.0700 CONSENT ORDER.

An executed consent order must contain:

- A. an admission by the person of the jurisdictional facts;
- B. a waiver of further procedural steps and the right to seek judicial or administrative review or otherwise challenge or contest the validity of the consent order; and
- C. an agreement that the notice of violation may be used to construe the terms of the consent order.

7560.0800 CIVIL PENALTIES.

Subpart 1. Proceedings against excavators.

When the office has good cause to believe that an excavator is engaging or has engaged in conduct that violates Minnesota Statutes, section 216D.04, subdivision 1, 2, or 3; 216D.05, clause (1), (2), (3), or (4); or 216D.06, subdivision 1, or a rule adopted under Minnesota Statutes, section 216D.08, subdivision 4, the office, if appropriate, shall negotiate a civil penalty under Minnesota Statutes, section 216D.08, subdivision 2. A penalty imposed under Minnesota Statutes, section 216D.08, is subject to

the contested case and judicial review provisions of Minnesota Statutes, chapter 14. An operator who engages or has engaged in excavation that violates Minnesota Statutes, chapter 216D, is subject to the proceedings specified in subpart 2 and is subject to the penalties specified in subpart 4, item B or C.

Subpart 2. Proceedings against underground facility operators.

The office may negotiate a civil penalty under item A or B.

- A. When the office has good cause to believe that an underground facility operator, other than an operator set forth in item B, is engaging or has engaged in conduct that violates Minnesota Statutes, sections 216D.01 to 216D.07, or a rule adopted under Minnesota Statutes, section 216D.08, subdivision 4, the office, if appropriate, shall negotiate a civil penalty under Minnesota Statutes, section 216D.08, subdivision 2. A penalty imposed under Minnesota Statutes, section 216D.08, is subject to the contested case and judicial review provisions of Minnesota Statutes, chapter 14.
- B. When the office has good cause to believe that an operator who engages in the transportation of gas or hazardous liquids or who owns or operates a gas or hazardous liquid pipeline facility is engaging or has engaged in conduct that violates Minnesota Statutes, sections

299F.56 to 299F.641, or a rule adopted under Minnesota Statutes, section 299F.60, subdivision 5, the office, if appropriate, shall negotiate a civil penalty under Minnesota Statutes, section 299F.60, subdivision 2. A penalty imposed under Minnesota Statutes, section 299F.60, is subject to the contested case and judicial review provisions of Minnesota Statutes, chapter 14.

Subpart 3. Assessment considerations.

In assessing a civil penalty under this part, the office shall consider the following factors:

- A. the nature, circumstances, and gravity of the violation;
- B. the degree of the person's culpability;
- C. the person's history of previous offenses;
- D. the person's ability to pay;
- E. good faith on the part of the person in attempting to remedy the cause of the violation;
- F. the effect of the penalty on the person's ability to continue in business; and
- G. past reports of damage to an underground facility by a person.

Subpart 4. Maximum penalties.

For the purposes of this part, penalties imposed under this part must not exceed the limits in items A to C.

- A. Penalties imposed against excavators must not exceed \$1,000 for each violation per day of violation.
- B. Penalties imposed against underground facility operators, other than an operator set forth in item C, must not exceed \$1,000 for each violation per day of violation.
- C. Penalties imposed against an operator who engages in the transportation of gas or hazardous liquids or who owns or operates a gas or hazardous liquid pipeline facility must not exceed \$10,000 for each violation for each day that the violation persists, except that the maximum civil penalty must not exceed \$500,000 for a related series of violations.

Subpart 5. Payment procedure.

The person shall pay a civil penalty that has been proposed, assessed, or compromised by submitting to the office a check or money order in the correct amount, payable to the commissioner of public safety.

Holiday Schedule and Hours of Operation

Gopher State One Call is open Monday through Friday between 7:00 am and 5:00 pm November-March and between 6:00 am and 6:00 pm April-October. Calls during off hours, weekends and on holidays are accepted for emergencies only.

Holidays are:

New Year's Day

Martin Luther King, Jr. Day

President's Day

Memorial Day

Independence Day

Labor Day

Veteran's Day

Thanksgiving Day

Friday after Thanksgiving Day

Christmas Eve Day

Christmas Day

Gopher State One Call has adopted a "Holiday Substitution Policy" so that excavators and operators are better aware, in advance, of what days GSOC will observe as holidays. If a holiday falls on a Saturday, GSOC will observe the Friday before as the holiday; if it falls on a Sunday, GSOC will observe the Monday after as the holiday.

Contact information for Gopher State One Call

Address:

Gopher State One Call
2020 Centre Pointe Blvd
Mendota Heights, MN 55120-1200

Web Address:

www.gopherstateonecall.org

Help Desk:

651-681-7326
800-245-5852

Locate Requests:

651-454-0002
800-252-1166

Emergency ONLY:

866-640-3637

Administration:

651-454-8388
800-422-1242



Staff

Jim Holzer, General Manager651-681-7329
jimholzer@gopherstateonecall.org

Tammy Gardner, Office Manager.....651-681-7304
tammygardner@gopherstateonecall.org

Adam Franco, Asst. Office Manager651-681-7325
adamf@gopherstateonecall.org

Matt Osmundson, Office Administrator651-681-7301
matthew@gopherstateonecall.org

Jon Eardley, Database Admin651-681-7312
joneardley@gopherstateonecall.org

Jon Eisele, Dir. of Education and PR.651-681-7303
joneisele@gopherstateonecall.org

Kevin Grutzmacher,
Education & PR Coordinator651-681-7305
kevin@gopherstateonecall.org

Contact Information for State Fire Marshal - Pipeline Safety Team

Address:

MN State Fire Marshal's Office
444 Cedar Street
Suite 147
St Paul, MN 55101

Web Address: www.dps.state.mn.us/pipeline/index.html

Main Office (St Paul): 651-201-7230

State Duty Officer: 800-422-0798

Field Offices:

Grand Rapids	218-327-4218
Detroit Lakes	218-983-3608
Mankato	507-389-7372



Gopher State One Call Board of Directors

Chair Emeritus

Adam Kramer

Olsson Associates
6600 France Ave. So.
Suite 230
Edina, MN 55435
952-927-3824
akramer@oaconsulting.com

Chair

Loren Fritz

Director at Large
3845 North Shore Drive
Mound, MN 55364
612-296-9222
fritzlrf@msn.com

Vice Chair

Dan Tonder

Minnesota Power
Representing North Central Electric
Association
Box 60
Little Falls, MN 56345
320-632-2311
dtonder@mnpower.com

Treasurer

W.A. "Bill" Mahre

Propane Technical Services
Representing MN Propane Gas
Association
1195 Sterling Circle N.
Maplewood, MN 55119
651-777-8565
billmahre@aol.com

Secretary**Mark Palma**

Hinshaw and Culbertson
1212 22nd Street
Cameron, WI 54822
715-458-4588
612-991-7733
mpalma@hinshawlaw.com

**State Fire
Marshal****Jerry Rosendahl**

State of Minnesota
Department of Public Safety
State Fire Marshal
444 Cedar Street, Suite 147
St. Paul, MN 55101-5145
651-201-7230
jerry.rosendahl@state.mn.us

Steve Yehle

Xcel Energy
Representing Midwest Gas Association
825 Rice St.
St. Paul, MN
651-229-2485
steve.c.yehle@xcelenergy.com

Jeff Kimpling

City of Willmar
Representing MN Municipal Utilities Association
Box 937
Willmar, MN 56201
320-235-4422
jkimpling@wmu.willmar.mn.us

Terry Van Watermulen

EMBARQ
Representing MN Telephone Alliance
249 Prairie Smoke CT
Watertown, MN 55388
763-424-6600
terry.m.vanwatermulen@embarq.com

Dan Schroeder

U.S. Energy Services
Representing Midwest Gas Association
605 N. Hwy 169, Suite 1200
Plymouth, MN 55441
763-543-4624
dschroeder@usenergyservices.com

Phil Lesnar

Northdale Construction
Representing MN Utility Contractors Association
9760 71st Street NE
Albertville, MN 55301
763-428-4868
phill@northdaleconst.com

Gary K. Thaden

Pettersen and Associates Inc.
Representing MN Mechanical Contractors Association
830 Transfer Road
St. Paul, MN 55114
651-646-2121
gthaden@gmail.com

Joe Thill

Comcast Business Services
9705 Data Park
Minnetonka, MN 55343
952-607-4230
joseph_thill@cable.comcast.com

Rich Nelson

Qwest Communications
Representing MN Telecom Alliance
200 S. Fifth Street, Floor eight
Minneapolis, MN 55402
612-307-2650
rich.nelson2@qwest.com

Jennifer Sweney

Koch Pipeline Company
Representing American Petroleum Institute
PO Box 64596
St. Paul, MN 55164-0596
651-480-3936
jennifer.sweney@kochpipeline.com

Timothy Malooly

Irrigation by Design, Inc.
Representing the MN Nursery and Landscape Association
14070 23rd Ave N.
Plymouth, MN 55447
763-559-7771
tim@ibdmn.com

Tom Hoffman

Agralite Electric Cooperative
Representing MN Rural Electric Assn.
320 East Highway 12
Benson, MN 56215
320-843-4150
thoffman@agralite.com

Marilyn Remer

Minnesota Department of Transportation.
Representing Roads and Right of Way
395 John Ireland Blvd, MS-678
St. Paul, MN 55155-1899
651-366-4668
marilyn.remer@state.mn.us

**COLOR CODE FOR MARKING
UNDERGROUND UTILITY LINES**



	Electric
	Gas-Oil-Steam
	Communication CATV
	Water
	Reclaimed Water, Irrigation
	Sewer
	Temporary Survey Markings
	Proposed Excavation

METRO AREA
651-454-0002
MN TOLL FREE
800-252-1166



**GOPHER
STATE
ONE CALL**

www.gopherstateonecall.org

**COLOR CODE FOR MARKING
UNDERGROUND UTILITY LINES**



	Electric
	Gas-Oil-Steam
	Communication CATV
	Water
	Reclaimed Water, Irrigation
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	Temporary Survey Markings
	Proposed Excavation

METRO AREA
651-454-0002
MN TOLL FREE
800-252-1166



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STATE
ONE CALL**

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GOPHER STATE ONE CALL

**2020 Centre Pointe Blvd.
Mendota Heights, MN 55120**

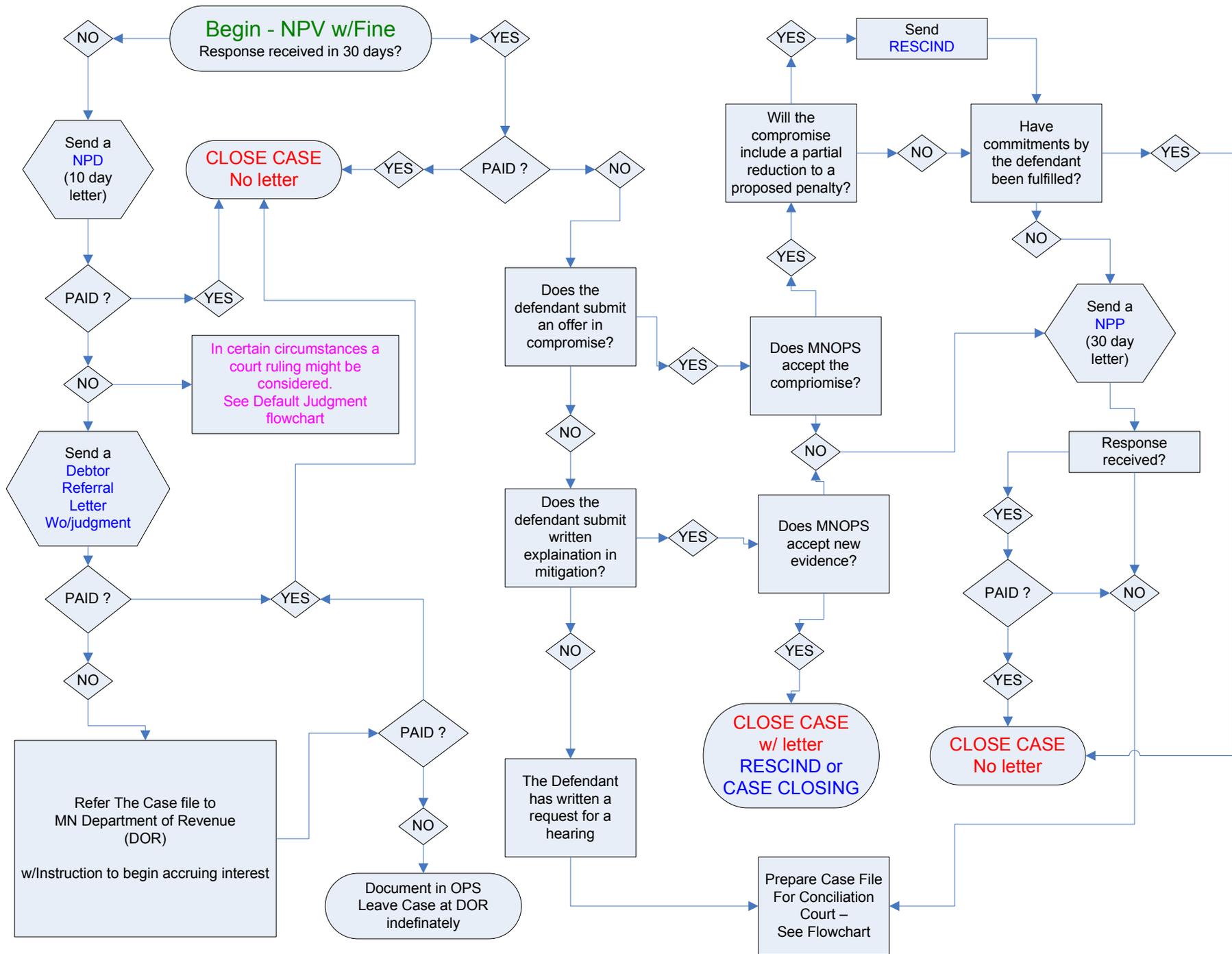
www.gopherstateonecall.org

651-454-8388 (Administration)

800-245-5852 (Help Desk)

651-454-0002

800-252-1166

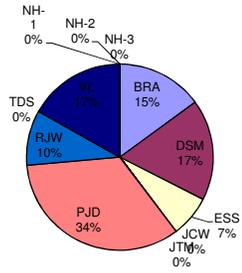


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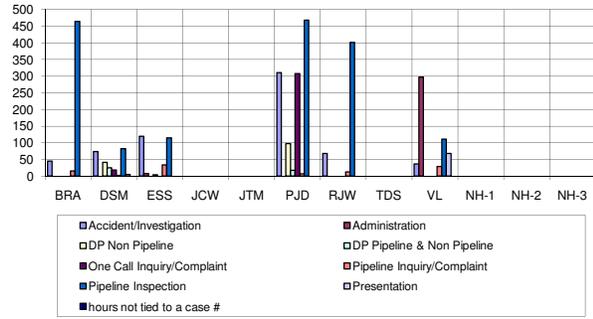
2008		%Case	60.7%	48.5%	92.6%	100.0%	100.0%	79.2%	85.1%	100.0%	75.1%			
		Total	BRA	DSM	ESS	JCW	JTM	PJD	RJW	TDS	VL	NH-1	NH-2	NH-3
1-Number of Cases by Type		Total Of CaseID												
Accident/Investigation	141.00	19	29	10	0	0	42	14	0	27				
Administration	1.00	0	0	1	0	0	0	0	0	0				
DP Non Pipeline	48.00		20				25			3				
DP Pipeline & Non Pipeline	12.00		8		0		4							
One Call Inquiry/Complaint	66.00		8	0	0	0	50	0	0	8				
Pipeline Inquiry/Complaint	18.00	5	2	4	0	0	0	4		3				
Pipeline Inspection	141.00	40	7	16	0	0	24	23	0	31				
Presentation	1.00	0	1	0	0	0	0	0	0	0				
Total	428	64	75	31	0	0	145	41	0	72				
2-Hours Spent by Case Type		Total Of Hr	BRA	DSM	ESS	JCW	JTM	PJD	RJW	TDS	VL			
Accident/Investigation	717.75	45	73.5	119.75	0	0	310.5	68	0	36.5				
Administration	8			8	0	0				297				
DP Non Pipeline	148.5		41.5				98							
DP Pipeline & Non Pipeline	46.5		25.5	4	0		17							
One Call Inquiry/Complaint	349.5		18.5		0	0	307.5			0				
Pipeline Inquiry/Complaint	124	16	2.5	34	0		7	12.5		28.5				
Pipeline Inspection	1900	464	82.5	114.5	0	0	468	401	0	111.5				
Presentation	5	0	5	0	0	0	0			68.5				
hours not tied to a case #														
Total	3299.25	525	249	280.25	0	0	1208	481.5	0	542				
% of Time														
Accident/Investigation	5.09	2.37	2.53	11.98	#DIV/0!	#DIV/0!	7.39	4.86	#DIV/0!	1.35	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!
Administration	8.00	#DIV/0!	#DIV/0!	8.00	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!
DP Non Pipeline	3.09	#DIV/0!	2.08	#DIV/0!	#DIV/0!	#DIV/0!	3.92	#DIV/0!	#DIV/0!	0.00	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!
DP Pipeline & Non Pipeline	3.88	#DIV/0!	3.19	#DIV/0!	#DIV/0!	#DIV/0!	4.25	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!
One Call Inquiry/Complaint	5.30	#DIV/0!	2.31	#DIV/0!	#DIV/0!	#DIV/0!	6.15	#DIV/0!	#DIV/0!	0.00	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!
Pipeline Inquiry/Complaint	6.89	3.20	1.25	8.50	#DIV/0!	#DIV/0!	#DIV/0!	3.13	#DIV/0!	9.50	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!
Pipeline Inspection	13.48	11.60	11.79	7.16	#DIV/0!	#DIV/0!	19.50	17.43	#DIV/0!	3.60	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!
Presentation	5.00	#DIV/0!	5.00	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!
hours not tied to a case #	0.00	0.00	0.00	0.00	#DIV/0!	#DIV/0!	0.00	0.00	#DIV/0!	0.00	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!
Total														
3-Number of On-Site Investigations		Total Of C	BRA	DSM	ESS	JCW	JTM	PJD	RJW	TDS	VL			
Accident/Investigation	48	5	9	5	0	0	15	7	0	7				
DP Non Pipeline	30		17				0	11		2				
DP Pipeline & Non Pipeline	13		8	1				4						
Pipeline Inquiry/Complaint	1	1	0	0	0	0								
Total		6	34	6	0	0	30	7	0	9				
4-Number of Enforcement Actions by Case Type		Total Of Er	BRA	DSM	JCW	PJD	RJW	VL						
Accident/Investigation	77		18		0		30		11					
DP Non Pipeline	29		15				12		2					
DP Pipeline & Non Pipeline	7		5				2							
One Call Inquiry/Complaint	45		11		0		28		6					
Pipeline Inquiry/Complaint	6								6					
Pipeline Inspection	268	89	16				57	8	33					
Total		89	65	0	0	0	129	8	0	58				
5-Number of Informal Enforcement Actions by Case Type		Total Of Er	BRA	DSM	PJD									
Accident/Investigation	2				2									
Pipeline Inspection	28	7	2		12									
6-Number of Warning Letters by Case Type		Total Of Er	BRA	DSM	JCW	PJD	RJW	VL						
Accident/Investigation	33		6		0		9		4					
DP Non Pipeline	10		6				3		1					
DP Pipeline & Non Pipeline	3		3											
One Call Inquiry/Complaint	20		5		0		9		6					
Pipeline Inquiry/Complaint	3								3					
Pipeline Inspection	216	76	6				38	8	33					
7-Number of NPVs w/Penalty by Case Type		Total Of Er	BRA	DSM	PJD	RJW	VL							
Accident/Investigation	32		11			13	0		7					
DP Non Pipeline	16		8			7			1					
DP Pipeline & Non Pipeline	4		2			2								
One Call Inquiry/Complaint	19		5			14								
Pipeline Inquiry/Complaint	3								3					
Pipeline Inspection	11	6	5											
8-Penalty Amounts Assessed by Case Type		Total Of P	BRA	DSM	PJD	RJW	VL							
Accident/Investigation	\$29,500.00		\$10,500.00			\$13,500.00	\$0.00		\$4,500.00					
DP Non Pipeline	\$17,000.00		\$7,000.00			\$9,500.00			\$500.00					
DP Pipeline & Non Pipeline	\$2,000.00		\$1,000.00			\$1,000.00								
One Call Inquiry/Complaint	\$18,500.00		\$4,000.00			\$14,500.00								
Pipeline Inquiry/Complaint	\$7,500.00								\$7,500.00					
Pipeline Inspection	\$7,000.00	\$3,000.00	\$4,000.00											
9-Days to process a WL or NPV														
Pipeline Inspections														
Accidents/Incidents														
DP Pipeline & Non-Pipeline														
DP Non-pipeline														
*Unable to query assignments as table has been modified.														
10-Miles of Pipe Assigned		0	0	0	0	0	0	0	0	0	0	0	0	0
11-# of Inspection Units Assigned		0	0	0	0	0	0	0	0	0	0	0	0	0
12-# of Meters Assigned		0	0	0	0	0	0	0	0	0	0	0	0	0

13-Balanced Hours	546.3	71	124.8	173	0	0	76	59.5	0	42
14-Comp / OT	807.75	11	87.5	88.25	0	0	36.5	41.5	0	3
15-Sick Leave Taken	819	57	0	0	0	0	26.5	14	0	87
16-Hours per Inspection Day	5.722002	5.5	3.8	5.5	0.0	0.0	6.1	6.4	0.0	4.6
17-Inspection Person Days	884	87	82	48	0	0	104	90	0	95
18-Total IPD Hours	<u>5058.25</u>	480.5	308	264.3	0	0	630	573	0	435.5

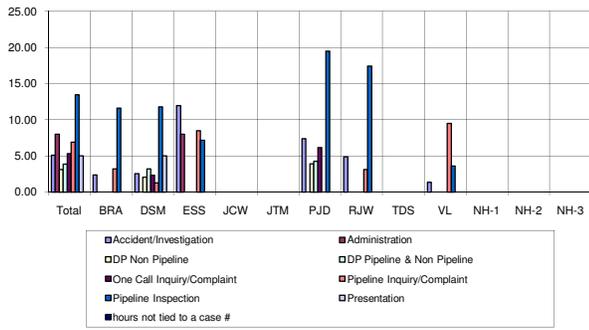
Case Load



Hours By Type



Average Hours Per Case Type



*MN Office of Pipeline Safety
presentation for...*



*- Design Information Requests -
Wednesday Feb 18, 2009 3:00 PM*

*Dan Muntke
Outreach | Enforcement Supervisor
cell: 612-741-2626
dan.muntke@state.mn.us*

Why pre-plan?



Design Locate Requests



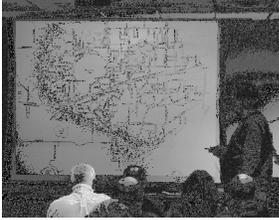
Boundary Survey Locate Request



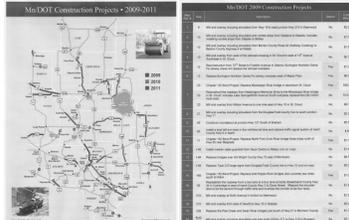
Cyclic Weather Patterns



Meanwhile - Road Authority Workshops



Projects Communicated



Accidents and Incidents



Designers



Excavators



Plans for Excavation



Timbering with the Law & Rules



Preliminary Design Meetings



Pre Construction Meetings



Designers are going to put facility locations from operator supplied utility maps on their certified drawings! — oh no!



Joint RTW Purchases?



GSO's New Ticket Types



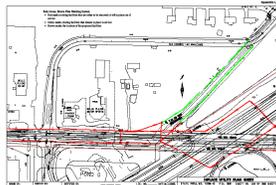
www.gopherstateonecall.org

New Ticket - Information



Who ...

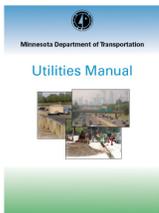
New Ticket - Non-Excavation Meeting



... What, Where, & When

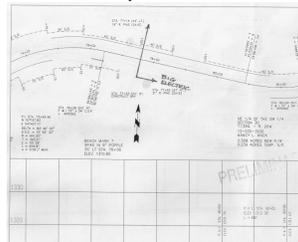
	New Ticket - Information	Plan for Excavation (Design)	New Ticket - Non-Excavation Meeting	Boundary Survey
Header Code	Owner Inquiry	Plan for Excavation	Eng/Pre-Construct	Survey marks
Need marks for Survey Information				X
Need marks for SUE Engineering		X C & D SUE Levels		A & B SUE Levels
Utility Types				
Marks for Excavation		X		
Determine facility locations in area	X			
Determine facility operations in area for 90-day notification	X			
Pre-Design Meeting			X	
Design Meeting			X	
Pre-Construction Meeting			X	
Pre-Construction Meeting with Locators				
How will ticket delivery be handled?	Suppressed	Locator or Engineering Department, as determined by Facility Operator	Locator or Engineering Department, as determined by Facility Operator	Locator
Expected Results?	Names of utility operators provided to requester	Facility Operator provides maps or records.	Facility Operator shows up at meeting and exchanges information.	Facility Operator Marks.
Expected Time Frame for Response?	Instant	15 Days	15 Days	96 Hours

MN Dept. of Transportation



www.dot.state.mn.us/utility/

"We are on the Design Plans" - Now What ???



BUDGET INFORMATION - Non-Construction Programs

OMB Approval No. 4040-0006
Expiration Date 07/30/2010

SECTION A - BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1. State Damage Prevention Program		\$	\$	\$ 100,000.00	\$ 0.00	\$ 100,000.00
2.						
3.						
4.						
5. Totals		\$	\$	\$ 100,000.00	\$	\$ 100,000.00

SECTION B - BUDGET CATEGORIES

6. Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY				Total (5)
	(1)	(2)	(3)	(4)	
	State Damage Prevention Program				
a. Personnel	\$ 75,448.00	\$	\$	\$	\$ 75,448.00
b. Fringe Benefits	8,382.00				8,382.00
c. Travel	6,500.00				6,500.00
d. Equipment	0.00				
e. Supplies	250.00				250.00
f. Contractual	0.00				
g. Construction	0.00				
h. Other	0.00				
i. Total Direct Charges (sum of 6a-6h)	90,580.00				\$ 90,580.00
j. Indirect Charges	9,420.00				\$ 9,420.00
k. TOTALS (sum of 6i and 6j)	\$ 100,000.00	\$	\$	\$	\$ 100,000.00
7. Program Income	\$	\$	\$	\$	\$

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Prescribed by OMB (Circular A -102) Page 1A

SECTION C - NON-FEDERAL RESOURCES

(a) Grant Program		(b) Applicant	(c) State	(d) Other Sources	(e)TOTALS
8.	State Damage Prevention Program	\$ <input type="text"/>	\$ <input type="text"/>	\$ <input type="text"/>	\$ <input type="text"/>
9.	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
10.	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
11.	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
12. TOTAL (sum of lines 8-11)		\$ <input type="text"/>	\$ <input type="text"/>	\$ <input type="text"/>	\$ <input type="text"/>

SECTION D - FORECASTED CASH NEEDS

	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	\$ <input type="text"/>				
14. Non-Federal	\$ <input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
15. TOTAL (sum of lines 13 and 14)	\$ <input type="text"/>				

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT

(a) Grant Program		FUTURE FUNDING PERIODS (YEARS)			
		(b)First	(c) Second	(d) Third	(e) Fourth
16.	State Damage Prevention Program	\$ <input type="text"/>	\$ <input type="text"/>	\$ <input type="text"/>	\$ <input type="text"/>
17.	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
18.	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
19.	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
20. TOTAL (sum of lines 16 - 19)		\$ <input type="text"/>	\$ <input type="text"/>	\$ <input type="text"/>	\$ <input type="text"/>

SECTION F - OTHER BUDGET INFORMATION

21. Direct Charges: <input type="text"/>	22. Indirect Charges: <input type="text"/>
23. Remarks: <input type="text"/>	

Application for Federal Assistance SF-424

Version 02

* 1. Type of Submission: <input type="checkbox"/> Preapplication <input checked="" type="checkbox"/> Application <input type="checkbox"/> Changed/Corrected Application		* 2. Type of Application: <input checked="" type="checkbox"/> New <input type="checkbox"/> Continuation <input type="checkbox"/> Revision		* If Revision, select appropriate letter(s): <input type="text"/> * Other (Specify) <input type="text"/>	
* 3. Date Received: <input type="text" value="08/31/2009"/>		4. Applicant Identifier: <input type="text"/>			
5a. Federal Entity Identifier: <input type="text"/>			* 5b. Federal Award Identifier: <input type="text"/>		
State Use Only:					
6. Date Received by State: <input type="text"/>		7. State Application Identifier: <input type="text"/>			
8. APPLICANT INFORMATION:					
* a. Legal Name: <input type="text" value="MN Office of Pipeline Safety"/>					
* b. Employer/Taxpayer Identification Number (EIN/TIN): <input type="text" value="41-6007162"/>			* c. Organizational DUNS: <input type="text" value="804886729"/>		
d. Address:					
* Street1:	<input type="text" value="444 Cedar St., Suite 147"/>				
Street2:	<input type="text"/>				
* City:	<input type="text" value="St. Paul"/>				
County:	<input type="text"/>				
* State:	<input type="text" value="MN: Minnesota"/>				
Province:	<input type="text"/>				
* Country:	<input type="text" value="USA: UNITED STATES"/>				
* Zip / Postal Code:	<input type="text" value="55101-5147"/>				
e. Organizational Unit:					
Department Name: <input type="text" value="MN Department of Public Safet"/>			Division Name: <input type="text" value="MN Office of Pipeline Safety"/>		
f. Name and contact information of person to be contacted on matters involving this application:					
Prefix:	<input type="text" value="Ms ."/>	* First Name:	<input type="text" value="Elizabeth"/>		
Middle Name:	<input type="text"/>				
* Last Name:	<input type="text" value="Skalnek"/>				
Suffix:	<input type="text"/>				
Title:	<input type="text" value="Administrative Chief Engineer"/>				
Organizational Affiliation: <input type="text"/>					
* Telephone Number:	<input type="text" value="651-201-7239"/>	Fax Number:	<input type="text" value="651-296-9641"/>		
* Email:	<input type="text" value="mn@napsr.net"/>				

Application for Federal Assistance SF-424

Version 02

9. Type of Applicant 1: Select Applicant Type:

A: State Government

Type of Applicant 2: Select Applicant Type:

Type of Applicant 3: Select Applicant Type:

* Other (specify):

*** 10. Name of Federal Agency:**

Pipeline & Hazardous Material Safety Administration

11. Catalog of Federal Domestic Assistance Number:

20.720

CFDA Title:

Pipeline Safety

*** 12. Funding Opportunity Number:**

DTPH56-10-SN-0001

* Title:

State Damage Prevention Grants

13. Competition Identification Number:

Title:

14. Areas Affected by Project (Cities, Counties, States, etc.):

*** 15. Descriptive Title of Applicant's Project:**

MN Office of Pipeline Safety State Damage Prevention

Attach supporting documents as specified in agency instructions.

Add Attachments

Delete Attachments

View Attachments

Application for Federal Assistance SF-424

Version 02

16. Congressional Districts Of:

* a. Applicant

4

* b. Program/Project

MN-a11

Attach an additional list of Program/Project Congressional Districts if needed.

Add Attachment

Delete Attachment

View Attachment

17. Proposed Project:

* a. Start Date:

01/01/2010

* b. End Date:

12/31/2010

18. Estimated Funding (\$):

* a. Federal	100,000.00
* b. Applicant	0.00
* c. State	0.00
* d. Local	0.00
* e. Other	0.00
* f. Program Income	0.00
* g. TOTAL	100,000.00

* 19. Is Application Subject to Review By State Under Executive Order 12372 Process?

 a. This application was made available to the State under the Executive Order 12372 Process for review on

 b. Program is subject to E.O. 12372 but has not been selected by the State for review.

 c. Program is not covered by E.O. 12372.

* 20. Is the Applicant Delinquent On Any Federal Debt? (If "Yes", provide explanation.)

 Yes

 No

Explanation

21. *By signing this application, I certify (1) to the statements contained in the list of certifications** and (2) that the statements herein are true, complete and accurate to the best of my knowledge. I also provide the required assurances** and agree to comply with any resulting terms if I accept an award. I am aware that any false, fictitious, or fraudulent statements or claims may subject me to criminal, civil, or administrative penalties. (U.S. Code, Title 218, Section 1001)

 ** I AGREE

** The list of certifications and assurances, or an internet site where you may obtain this list, is contained in the announcement or agency specific instructions.

Authorized Representative:

Prefix: Mr. * First Name: Jerry
 Middle Name:
 * Last Name: Rosendahl
 Suffix:
 * Title: Director
 * Telephone Number: 651-201-7201 Fax Number: 651-296-9641
 * Email: mn@napsr.net
 * Signature of Authorized Representative: Jerry Rosendahl * Date Signed: 08/31/2009

Application for Federal Assistance SF-424

Version 02

*** Applicant Federal Debt Delinquency Explanation**

The following field should contain an explanation if the Applicant organization is delinquent on any Federal Debt. Maximum number of characters that can be entered is 4,000. Try and avoid extra spaces and carriage returns to maximize the availability of space.

CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure of Lobbying Activities," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Statement for Loan Guarantees and Loan Insurance

The undersigned states, to the best of his or her knowledge and belief, that:

If any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States to insure or guarantee a loan, the undersigned shall complete and submit Standard Form-LLL, "Disclosure of Lobbying Activities," in accordance with its instructions. Submission of this statement is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required statement shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

* APPLICANT'S ORGANIZATION	
<input style="width: 90%;" type="text" value="MN Office of Pipeline Safety"/>	
* PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
Prefix: <input style="width: 50px;" type="text" value="Mr."/>	* First Name: <input style="width: 150px;" type="text" value="Jerry"/> Middle Name: <input style="width: 100px;" type="text"/>
* Last Name: <input style="width: 200px;" type="text" value="Rosendahl"/>	Suffix: <input style="width: 50px;" type="text"/>
* Title: <input style="width: 200px;" type="text" value="Director"/>	
* SIGNATURE: <input style="width: 250px;" type="text" value="Jerry Rosendahl"/>	* DATE: <input style="width: 100px;" type="text" value="08/31/2009"/>



STATE OF MINNESOTA

Office of Governor Tim Pawlenty

130 State Capitol ♦ 75 Rev. Dr. Martin Luther King Jr. Boulevard ♦ Saint Paul, MN 55155

July 31, 2009

Warren D. Osterberg
Agreement Officer
DOT/PHMSA
1200 New Jersey Avenue SE, E22-103
Washington, DC 20590

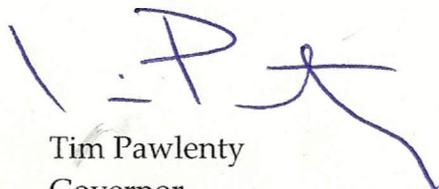
Dear Mr. Osterberg:

This letter is to confirm that the Minnesota Department of Public Safety-State Fire Marshal Division is the appropriate state agency designated to apply for and receive any available federal grant funds associated with the State Damage Prevention Program, which was authorized by the PIPES Act of 2006.

Any questions concerning this program may be directed to State Fire Marshal Jerry Rosendahl or Chief Engineer Elizabeth Skalnek at (651) 201-7230.

Thank you for your consideration.

Sincerely,



Tim Pawlenty
Governor

Cc: Michael Campion, Public Safety Commissioner
Jerry Rosendahl, State Fire Marshal