

State Damage Prevention Law Summary

State: North Dakota

(Link to State law provided in Law & Regulation section below)

Summary Date: 8/7/2017

Excavator Requirements	
Excavation: Definition	North Dakota Century Code (ND CenCode) § 49-23-01. 7. "Excavation" means any operation in which earth, rock, or other materials in or below the ground is moved or otherwise displaced by means of hand or power tools, power equipment, or explosives and includes grading, trenching, digging, ditching, drilling, augering, tunneling, boring, scraping, and cable or pipe plowing and driving. The term does not include: a. Opening a grave in a cemetery. b. Plowing, cultivating, planting, harvesting, and similar operations in connection with agricultural activities, unless any of these activities disturbs the soil to depth of eighteen inches [45.72 centimeters] or more. c. Gardening and landscaping unless it disturbs the soil to a depth of twelve inches [30.48 centimeters] or more. d. Normal maintenance of roads and streets if the maintenance does not change the original grade and does not involve the road ditch. e. Normal repair and maintenance of track and track bed by a railroad on its own right of way
Excavator: Definition	ND CenCode § 49-23-01.8. "Excavator" means a person who conducts excavation
Excavator Notice to One Call Required (Yes / No)	Yes
Excavator Notice Minimum # Working Days Before Digging	2
Excavator Notice (Specific Language)	ND CenCode § 49-23-04. 1. Except in an emergency, an excavator shall contact the notification center and provide an excavation or location notice at least forty-eight hours before beginning any excavation, excluding Saturdays, Sundays, and holidays, unless otherwise agreed to between the excavator and operator. If an operator determines more time is necessary for location, the operator may request a twenty-four-hour extension of the excavation or location notice by notifying the notification center. The notification center shall notify the excavator of the extension. An excavation begins the first time excavation occurs in an area that was not previously identified by the excavator in an excavation notice.
Ticket Life (# of days)	21 (ND CenCode § 49-23-04. 3. g.)
White-Line Required (Yes / No)	Yes. (ND CenCode § 49-23-04. 1. h.)
Tolerance Zone	24" (ND CenCode § 49-23-01. 3.)
Special Digging Requirements Within Tolerance Zone (Specific Language)	ND CenCode § 49-23-01. As used in this chapter, unless the context otherwise requires: ... 3. "Careful and prudent manner" means excavating within twenty-four inches [60.96 centimeters] of the outer edges of an underground facility located manually and marked by the owner or operator by stakes, paint or other customary manner, and supporting and protecting the uncovered facility. § 49-23-05. To avoid damage to and minimize interference with underground facilities in and near the construction area, an excavator shall: 1. Maintain a clearance between an underground facility and the cutting edge or point of any mechanized equipment, considering the known limit of control of the cutting edge or point to avoid damage to the facility. ... 5. Conduct the excavation in a careful and prudent manner.
Hand Dig / Vacuum or Soft Excavation Within Tolerance Zone (Yes / No)	Yes. (ND CenCode § 49-23-01. 3.)
Preserve / Maintain Marks Required (Yes / No)	Yes. (ND CenCode § 49-23-05. 3.)
Call Again If No Response from Operator Or Signs Of Unmarked Facilities (Yes / No)	Yes. (ND CenCode § 49-23-04. 3. f.)
Notify One-Call if Marks Moved or No Longer Visible (Yes / No)	Yes. (ND CenCode § 49-23-04. 3. f.)
Special Language Regarding Trenchless Technology (Yes / No)	No
Separate Locate Request Required for Each Excavator (Yes / No)	Yes. (ND CenCode § 49-23-04. 1.)

Notify Operator of Damage (Yes / No)	Yes. (ND CenCode § 49-23-06. 1. a.)
Notify One Call Center of Damage (Yes / No)	No
Call 911 if Hazardous Materials Released (Yes / No)	Yes. (ND CenCode § 49-23-06. 1. a.)
Notice Exemptions (Yes / No)	Yes
Notice Exemptions (Specific Language)	ND CenCode § 49-23-01. ... 7. Excavation means.... The term does not include: a. Opening a grave in a cemetery. b. Plowing, cultivating, planting, harvesting, and similar operations in connection with agricultural activities, unless any of these activities disturbs the soil to a depth of eighteen inches [45.7 centimeters] or more. c. Gardening and landscaping unless it disturbs the soil to a depth of twelve inches [30.48 centimeters] or more. d. Normal maintenance of roads and streets if the maintenance does not change the original grade and does not involve the road ditch. e. Normal repair and maintenance of track and track bed by a railroad on its own right of way. § 49-23-04. 1. Except in an emergency, an excavator shall contact the notification center and provide an excavation or location notice
Operator Response	
Minimum # Days for Operator to Respond After Receiving Notice (Generally)	2
Operator Requirements to Respond to Locate Notification (Specific Language)	ND CenCode § 49-23-04.3. a. An operator, within forty-eight hours, or any extension of that period, after receiving an excavation notice from the center, excluding Saturdays, Sundays, and holidays, unless otherwise agreed to between the excavator and operator, shall locate and mark or otherwise provide the approximate horizontal location of the underground facilities of the operator. ... e. If the operator cannot complete marking of the excavation area before the excavation commencement time stated in the excavation notice, the operator shall promptly contact the excavator. ... 4. If an excavation is being made in a time of emergency, all reasonable precautions must be taken to protect the underground facilities. In an emergency, the excavator shall give notification in compliance with this chapter, as soon as practical, that an emergency exists. As soon as practical, each operator shall provide all location information that is reasonably available to the excavator.
Minimum Standards for Locator Qualifications (Yes / No)	No
Minimum Standards for Locator Qualifications (Specific Language)	Not addressed
Law Specifies Marking Standards Other Than Color (Yes / No)	No
Law Specifies Marking Standards Other Than Color (Specific Language)	Not addressed. (Reference ND CenCode § 49-23-04. 3. d.)
Law Includes Specific Language For Operators To Locate Sewer Laterals (Yes / No)	Yes. (ND CenCode § 49-23-01.11 and 16)
Law Includes Specific Language For Operators To Locate Abandoned Facilities (Yes / No)	Yes
Operator Must Locate Abandoned Facilities (Specific Language)	ND CenCode § 49.23.04. 3. k. A facility owner, excavator, or other person may not present or presume that an underground facility is abandoned, or treat an underground facility as abandoned, unless the facility has been verified as abandoned by reference to installation records or by testing. The notification center shall establish a method of providing personnel from a facility owner qualified to safely inspect and verify whether a facility is abandoned or inactive if necessary. An inactive facility must be considered active for purposes of this section.
Positive Response Required - Operator Contact Excavator (Yes / No)	No
Positive Response Required - Operator Contact Excavator (Specific Language)	Not addressed as a normal occurrence. (Reference ND CenCode § 49.23.04. 3. e. and § 49-23-04. 2.)

Positive Response Required - Operator Contact One Call Center (Yes / No)	No
Positive Response Required - Operator Contact One Call Center (Specific Language)	Not addressed
Positive Response - One-Call Automated (Yes / No)	No
Operator Must Provide One-Call Center with Information On Locations of Buried Facilities (Yes / No)	Yes
Operator Must Provide One-Call Center with Information On Locations of Buried Facilities (Specific Language)	ND CenCode § 49-23-03. 3. An operator shall participate in and share the costs of the one-call excavation notice system by: a. Submitting the information required by the notification center to allow the center to notify the operator of excavation activity; b. Updating the information provided to the notification center on a timely basis;
Operator Must Update Information On Locations of Buried Facilities (Yes / No)	Yes
Operator Must Update Information On Locations of Buried Facilities (Specific Language)	ND CenCode § 49-23-03. 3. An operator shall participate in and share the costs of the one-call excavation notice system by: a. Submitting the information required by the notification center to allow the center to notify the operator of excavation activity; b. Updating the information provided to the notification center on a timely basis;
New Facilities Must Be Locatable Electronically (Yes / No)	No
New Facilities Must Be Locatable Electronically (Specific Language)	"Electronically" not specifically addressed. However, reference ND CenCode § 49-23-04. 3. I. An underground facility owner shall make all new facilities locatable.
Design Request (Yes / No)	No
One Call, Enforcement, and Reporting	
Mandatory One Call Membership (Yes / No)	Yes (ND CenCode § 49-23-03.1.)
One Call Membership Exemptions (Yes / No)	Yes
One Call Membership Exemptions (Specific Language)	ND CenCode § 49-23-01.14. Operator means a person who owns or operates an underground facility, including.... 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. § 49-23-01.15. Underground facility means ... Privately owned and operated underground facilities which do not extend beyond the boundary of the private property are excluded. § 49-23-03.1. An operator shall participate in and share in the costs of the statewide notification center....
One-Call Law Addresses Board Make-Up (Yes / No)	Yes
One-Call Law Addresses Board Make-Up (Specific Language)	ND CenCode § 49-23-03. 4. A nonprofit corporation shall govern the notification center. a. The nonprofit corporation must be incorporated by seventeen initial incorporators ... b. The initial incorporators shall establish, before August 1, 1996, a board of directors of the nonprofit corporation which consists of eight members representing the participants in the center.
Separate Body Designated to Advise Enforcement Authority (Yes / No)	Yes
Separate Body Designated to Advise Enforcement Authority (Specific Language)	ND CenCode § 49-23-03. 4. d. The board shall aid the state's attorneys of the various counties in the enforcement of this chapter and the prosecution of any violations. The board may institute a civil action for an injunction to enjoin violations of this chapter without proof that anyone suffered actual damages. [Also, presumably, the board will assist the ND Public Service Commission (see ND CenCode § 49-07).]

Penalties / Fines Excavators (Yes / No)	Yes
Penalties / Fines Excavators (Specific Language)	ND CenCode § 49-07-01.1. ... A violation occurring under chapter 49-23, in addition to any other penalty, is subject to a civil penalty not to exceed twenty-five thousand dollars. The commission shall develop policies for the assessment of penalties under chapter 49-23 which will take into consideration the severity of damages and the conduct of the offender. The civil penalty may be compromised by the commission. The amount of the penalty when finally determined or agreed upon in compromise, if not paid, may be recovered in a civil action in the courts of this state.
Penalties / Fines Operators (Yes / No)	Yes
Penalties / Fines Operators (Specific Language)	ND CenCode § 49-07-01.1. ... A violation occurring under chapter 49-23, in addition to any other penalty, is subject to a civil penalty not to exceed twenty-five thousand dollars. The commission shall develop policies for the assessment of penalties under chapter 49-23 which will take into consideration the severity of damages and the conduct of the offender. The civil penalty may be compromised by the commission. The amount of the penalty when finally determined or agreed upon in compromise, if not paid, may be recovered in a civil action in the courts of this state. [See http://www.legis.nd.gov/cencode/t49c07.pdf] § 49-07-05.1. Any person who violates a rule or order of the commission pursuant to section 49-02-01.2 [Pipeline safety; see http://www.legis.nd.gov/cencode/t49c02.pdf] is subject to a civil penalty to be imposed by the commission of not to exceed two hundred thousand dollars for each violation for each day that the violation continues, except that the maximum penalty may not exceed two million dollars for any related series of violations.
Penalties / Fines Other (Yes / No)	Yes
Penalties / Fines Other (Specific Language)	ND CenCode § 49-07-01.1. ... A violation occurring under chapter 49-23, in addition to any other penalty, is subject to a civil penalty not to exceed twenty-five thousand dollars. The commission shall develop policies for the assessment of penalties under chapter 49-23 which will take into consideration the severity of damages and the conduct of the offender. The civil penalty may be compromised by the commission. The amount of the penalty when finally determined or agreed upon in compromise, if not paid, may be recovered in a civil action in the courts of this state.
Enforcement Authority Identified	ND Public Service Commission (see ND CenCode § 49-07) and State's attorneys of various counties (see ND CenCode § 49-23-03.4.d)
Damage Investigation Required by Enforcement Authority (Yes / No)	No
Mandatory Reporting of Excavation Damage by All Utility Owners to State Entity or Department (Yes / No)	No
Mandatory Reporting by Excavators to State Entity or Department (Yes / No)	No
Mandatory Reporting to State Entity or Department - Gas Only (Yes / No)	No
Law and Regulation	
Statute / Law (Name & Link)	North Dakota Century Code (ND CenCode) §§ 49-23-01 to -07, One Call Excavation Notice System (http://www.legis.nd.gov/cencode/t49c23.pdf) Also see One-Call Center Website for Information on State Law .
Date of Last Revision to Statute / Law	January 6, 2015
Administrative Rules / Regulations (Yes / No)	No
Administrative Rules / Regulations (Name & Link)	Rules implementing the North Dakota Public Service Commission's jurisdiction over damage prevention are contained in North Dakota Administrative Code (NDAC), Articles 69-01 and 69-02. These address the Organization and Provisions for the Commission's functioning and do not specifically address rules regarding excavation damage prevention. (https://www.psc.nd.gov/public/laws/rulesdamageprev.php)
State One Call Center(s) (Name & Link)	North Dakota One Call (http://www.ndonecall.com)
Miscellaneous Notes	

<p>Notes</p>	<p>The North Dakota Legislative Assembly enacted the following (Senate Bill No. 2167 (2015) on January 6, 2015: "SECTION 1. LEGISLATIVE MANAGEMENT STUDY - ONE-CALL EXCAVATION NOTICE SYSTEM. During the 2015-16 interim, the legislative management shall consider studying the one-call excavation notice system. The study must include the financial and operational impact on the underground facilities owners from the tremendous increase in the number of locates, a review of who should be responsible for the expenses associated with locating underground facilities in certain situations, the appropriateness of penalties for one-call excavation notice system violators, and the enforcement of penalties by the appropriate state agencies. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations to the sixty-fifth legislative assembly." The results of that initiative (memorandum; September 2015) are available online at http://www.legis.nd.gov/files/resource/committee-memorandum/17.9108.01000.pdf. Also see Senate Bill No. 2347 (http://www.legis.nd.gov/assembly/64-2015/documents/15-0999-04000.pdf)</p>
<p>State Damage Prevention / One-Call Law Recently Revised With Future Implementation Dates</p>	<p>0</p>