

Chapter 19.122
UNDERGROUND UTILITIES

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19.122.010 Intent.

It is the intent of the legislature in enacting this chapter to assign responsibilities for locating and keeping accurate records of utility locations, protecting and repairing damage to existing underground facilities, and protecting the public health and safety from interruption in utility services caused by damage to existing underground utility facilities. [1984 c 144 § 1.]

19.122.020 Definitions.

Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter:

(1) "Business day" means any day other than Saturday, Sunday, or a legal local, state, or federal holiday.

(2) "Damage" includes the substantial weakening of structural or lateral support of an underground facility, penetration, impairment, or destruction of any underground protective coating, housing, or other protective device, or the severance, partial or complete, of any underground facility to the extent that the project owner or the affected utility owner determines that repairs are required.

(3) "Emergency" means any condition constituting a clear and present danger to life or property, or a customer service outage.

(4) "Excavation" means any operation in which earth, rock, or other material on or below the ground is moved or otherwise displaced by any means, except the tilling of soil less than twelve inches in depth for agricultural purposes, or road and ditch maintenance that does not change the original road grade or ditch flowline.

(5) "Excavation confirmation code" means a code or ticket issued by the one-number locator service for the site where an excavation is planned. The code must be accompanied by the date and time it was issued.

(6) "Excavator" means any person who engages directly in excavation.

(7) "Gas" means natural gas, flammable gas, or toxic or corrosive gas.

(8) "Hazardous liquid" means: (a) Petroleum, petroleum products, or anhydrous ammonia as those terms are defined in 49 C.F.R. Part 195 as in effect on March 1, 1998; and (b) carbon dioxide. The utilities and transportation commission may by rule incorporate by reference other substances designated as hazardous by the secretary of transportation.

(9) "Identified facility" means any underground facility which is indicated in the project plans as being located within the area of proposed excavation.

(10) "Identified but unlocatable underground facility" means an underground facility which has been identified but cannot be located with reasonable accuracy.

(11) "Locatable underground facility" means an underground facility which can be field-marked with reasonable accuracy.

(12) "Marking" means the use of stakes, paint, or other clearly identifiable materials to show the field location of underground facilities, in accordance with the current color code standard of the American public works association. Markings shall include identification letters indicating the specific type of the underground facility.

(13) "Notice" or "notify" means contact in person or by telephone or other electronic methods that results in the receipt of a valid excavation confirmation code.

(14) "One-number locator service" means a service through which a person can notify utilities and request field-marking of underground facilities.

(15) "Operator" means the individual conducting the excavation.

(16) "Person" means an individual, partnership, franchise holder, association, corporation, a state, a city, a county, or any subdivision or instrumentality of a state, and its employees, agents, or legal representatives.

(17) "Pipeline" or "pipeline system" means all or parts of a pipeline facility through which hazardous liquid or gas moves in transportation, including, but not limited to, line pipe, valves, and other appurtenances connected to line pipe, pumping units, fabricated assemblies associated with pumping or compressor units, metering and delivery stations and fabricated assemblies therein, and breakout tanks. "Pipeline" or "pipeline system" does not include process or transfer pipelines.

(18) "Pipeline company" means a person or entity constructing, owning, or operating a pipeline for transporting hazardous liquid or gas. A pipeline company does not include: (a) Distribution systems owned and operated under franchise for the sale, delivery, or distribution of natural gas at retail; or (b) excavation contractors or other contractors that contract with a pipeline company.

(19) "Reasonable accuracy" means location within twenty-four inches of the outside dimensions of both sides of an underground facility.

(20) "Transfer pipeline" means a buried or aboveground pipeline used to carry hazardous liquid between a tank vessel or transmission pipeline and the first valve inside secondary con-

tainment at the facility provided that any discharge on the facility side of that first valve will not directly impact waters of the state. A transfer pipeline includes valves, and other appurtenances connected to the pipeline, pumping units, and fabricated assemblies associated with pumping units. A transfer pipeline does not include process pipelines, pipelines carrying ballast or bilge water, transmission pipelines, or tank vessel or storage tanks.

(21) "Transmission pipeline" means a pipeline that transports hazardous liquid or gas within a storage field, or transports hazardous liquid or gas from an interstate pipeline or storage facility to a distribution main or a large volume hazardous liquid or gas user, or operates at a hoop stress of twenty percent or more of the specified minimum yield strength.

(22) "Underground facility" means any item buried or placed below ground for use in connection with the storage or conveyance of water, sewage, electronic, telephonic or telegraphic communications, cablevision, electric energy, petroleum products, gas, gaseous vapors, hazardous liquids, or other substances and including but not limited to pipes, sewers, conduits, cables, valves, lines, wires, manholes, attachments, and those parts of poles or anchors below ground. This definition does not include pipelines as defined in subsection (17) of this section, but does include distribution systems owned and operated under franchise for the sale, delivery, or distribution of natural gas at retail. [2007 c 142 § 9; 2005 c 448 § 1; 2000 c 191 § 15; 1984 c 144 § 2.]

NOTES:

Intent—Findings—Conflict with federal requirements—Short title—Effective date—2000 c 191: See RCW 81.88.005 and 81.88.900 through 81.88.902.

19.122.030 Notice of excavation to owners of underground facilities—One-number locator service—Time for notice—Marking of underground facilities—Costs.

(1) Before commencing any excavation, excluding agriculture tilling less than twelve inches in depth, the excavator shall provide notice of the scheduled commencement of excavation to all owners of underground facilities through a one-number locator service.

(2) All owners of underground facilities within a one-number locator service area shall subscribe to the service. One-number locator service rates for cable television companies will be based on the amount of their underground facilities. If no one-number locator service is available, notice shall be provided individually to those owners of underground facilities known to or suspected of having underground facilities within the area of proposed excavation. The notice shall be communicated to the owners of underground facilities not less than two business days or more than ten business days before the scheduled date for commencement of excavation, unless otherwise agreed by the parties.

(3) Upon receipt of the notice provided for in this section, the owner of the underground facility shall provide the excavator with reasonably accurate information as to its locatable underground facilities by surface-marking the location of the

facilities. If there are identified but unlocatable underground facilities, the owner of such facilities shall provide the excavator with the best available information as to their locations. The owner of the underground facility providing the information shall respond no later than two business days after the receipt of the notice or before the excavation time, at the option of the owner, unless otherwise agreed by the parties. Excavators shall not excavate until all known facilities have been marked. Once marked by the owner of the underground facility, the excavator is responsible for maintaining the markings. Excavators shall have the right to receive compensation from the owner of the underground facility for costs incurred if the owner of the underground facility does not locate its facilities in accordance with this section.

(4) The owner of the underground facility shall have the right to receive compensation for costs incurred in responding to excavation notices given less than two business days prior to the excavation from the excavator.

(5) An owner of underground facilities is not required to indicate the presence of existing service laterals or appurtenances if the presence of existing service laterals or appurtenances on the site of the construction project can be determined from the presence of other visible facilities, such as buildings, manholes, or meter and junction boxes on or adjacent to the construction site.

(6) Emergency excavations are exempt from the time requirements for notification provided in this section.

(7) If the excavator, while performing the contract, discovers underground facilities which are not identified, the excavator shall cease excavating in the vicinity of the facility and immediately notify the owner or operator of such facilities, or the one-number locator service. [2000 c 191 § 17; 1988 c 99 § 1; 1984 c 144 § 3.]

NOTES:

Intent—Findings—Conflict with federal requirements—Short title—Effective date—2000 c 191: See RCW 81.88.005 and 81.88.900 through 81.88.902.

Damages to facilities on state highways: RCW 47.44.150.

19.122.040 Underground facilities identified in bid or contract—Excavator's duty of reasonable care—Liability for damages—Attorneys' fees.

(1) Project owners shall indicate in bid or contract documents the existence of underground facilities known by the project owner to be located within the proposed area of excavation. The following shall be deemed changed or differing site conditions:

(a) An underground facility not identified as required by this chapter or other provision of law; and

(b) An underground facility not located, as required by this chapter or other provision of law, by the project owner or excavator if the project owner or excavator is also a utility.

(2) An excavator shall use reasonable care to avoid damaging underground facilities. An excavator shall:

(a) Determine the precise location of underground facilities which have been marked;

(b) Plan the excavation to avoid damage to or minimize interference with underground facilities in and near the excavation area; and

(c) Provide such support for underground facilities in and near the construction area, including during backfill operations, as may be reasonably necessary for the protection of such facilities.

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(3) If an underground facility is damaged and such damage is the consequence of the failure to fulfill an obligation under this chapter, the party failing to perform that obligation shall be liable for any damages. Any clause in an excavation contract which attempts to allocate liability, or requires indemnification to shift the economic consequences of liability, different from the provisions of this chapter is against public policy and unenforceable. Nothing in this chapter prevents the parties to an excavation contract from contracting with respect to the allocation of risk for changed or differing site conditions.

(4) In any action brought under this section, the prevailing party is entitled to reasonable attorneys' fees. [1984 c 144 § 4.]

19.122.045 Exemption from liability.

Excavators who comply with the requirements of this chapter are not liable for any damages arising from contact or damage to an underground fiber optics facility other than the cost to repair the facility. [1988 c 99 § 2.]

19.122.050 Damage to underground facility—Notification by excavator—Repairs or relocation of facility.

(1) An excavator who, in the course of excavation, contacts or damages an underground facility shall notify the utility owning or operating such facility and the one-number locator service. If the damage causes an emergency condition, the excavator causing the damage shall also alert the appropriate local public safety agencies and take all appropriate steps to ensure the public safety. No damaged underground facility may be buried until it is repaired or relocated.

(2) The owner of the underground facilities damaged shall arrange for repairs or relocation as soon as is practical or may permit the excavator to do necessary repairs or relocation at a mutually acceptable price. [1984 c 144 § 5.]

19.122.055 Failure to notify one-number locator service—Civil penalty, if damages.

(1)(a) Any excavator who fails to notify the one-number locator service and causes damage to a hazardous liquid or gas pipeline is subject to a civil penalty of not more than ten thousand dollars for each violation.

(b) The civil penalty in this subsection may also be imposed on any excavator who violates RCW 19.122.090.

(2) All civil penalties recovered under this section shall be deposited into the pipeline safety account created in RCW 81.88.050. [2005 c 448 § 3; 2001 c 238 § 5; 2000 c 191 § 24.]

NOTES:

Intent—Finding—Effective date—2001 c 238: See notes following RCW 80.24.060.

Intent—Findings—Conflict with federal requirements—Short title—Effective date—2000 c 191: See RCW 81.88.005 and 81.88.900 through 81.88.902.

19.122.060 Exemption from notice and marking requirements for property owners.

An excavation of less than twelve inches in vertical depth on private noncommercial property shall be exempt from the requirements of RCW 19.122.030, if the excavation is being performed by the person or an employee of the person who owns or occupies the property on which the excavation is being performed. [1984 c 144 § 6.]

19.122.070 Civil penalties—Treble damages—Existing remedies not affected.

(1) Any person who violates any provision of this chapter not amounting to a violation of RCW 19.122.055, and which violation results in damage to underground facilities, is subject to a civil penalty of not more than one thousand dollars for each violation. All penalties recovered in such actions shall be deposited in the general fund.

(2) Any excavator who willfully or maliciously damages a field-marked underground facility shall be liable for treble the costs incurred in repairing or relocating the facility. In those cases in which an excavator fails to notify known underground facility owners or the one-number locator service, any damage to the underground facility shall be deemed willful and malicious and shall be subject to treble damages for costs incurred in repairing or relocating the facility.

(3) This chapter does not affect any civil remedies for personal injury or for property damage, including that to underground facilities, nor does this chapter create any new civil remedies for such damage. [2005 c 448 § 4; 1984 c 144 § 7.]

NOTES:

Damages to facilities on state highways: RCW 47.44.150.

19.122.080 Waiver of notification and marking requirements.

The notification and marking provisions of this chapter may be waived for one or more designated persons by an underground facility owner with respect to all or part of that underground facility owner's own underground facilities. [1984 c 144 § 8.]

19.122.900 Severability—1984 c 144.

If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1984 c 144 § 9.]

