

KANSAS UNDERGROUND UTILITY DAMAGE PREVENTION ACT: EXCAVATOR AND UTILITY OPERATOR OBLIGATIONS

This unofficial version of excavator and operator obligations provides a "user friendly" version of Kansas law as it pertains to the Kansas Underground Utility Damage Prevention Act. It is a combination of the requirements of Kansas statutes and regulations that pertain to the Act. Official copies of the statutes, (K.S.A. 66-1801 et seq.), and the regulations, (K.A.R. 82-14-1 through 82-14-5), can be accessed through www.kansas.gov. An unofficial copy also is available on the KCC damage prevention web page.

The italicized text are excerpts from the Kansas regulations.

The non-italicized text are excerpts from Kansas statutes.

At times, KCC Staff has modified the original text in order to better fit the context of this document.

Definitions.

"Backreaming" means the process of enlarging the diameter of a bore by pulling a specially designed tool through the bore from the bore exit point back to the bore entry point.

"Commission" means the state corporation commission of Kansas.

"Damage" means any impact or contact with an underground facility, its appurtenances or its protective coating, or any weakening of the support for the facility or protective housing which requires repair.

"Drill head" means the mechanical device connected to the drill pipe that is used to initiate the excavation in a directional boring operation. This term is sometimes referred to as the drill bit.

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

“Excavation” means any operation in which earth, rock or other material below the surface is moved or otherwise displaced by any means, except tilling the soil for normal agricultural purposes, or railroad or road and ditch maintenance that does not change the existing railroad grade, road grade and/or ditch flowline, or operations related to exploration and production of crude oil or natural gas, or both.

"Excavation scheduled start date" means the later of the start date stated in the notice

of intent of excavation filed by the excavator pursuant to K.S.A. 66-1804(d) and amendments thereto with the notification center or the start date filed by the excavator with a tier 2 member or tier 3 member.

“Excavation site” means the area where excavation is to occur.

"Excavator" means any person who engages directly in excavation activities within the state of Kansas, but shall not include any occupant of a dwelling who:

- (1) Uses such dwelling as a primary residence; and
- (2) excavates on the premises of such dwelling.

(3) Garden Plain Ordinance #616 includes occupants within city limits, as excavators.

"Facility" means any sanitary sewer, underground line, system or structure used for transporting, gathering, storing, conveying, transmitting or distributing potable water, gas, electricity, communication, crude oil, refined or processed petroleum, petroleum products or hazardous liquids; facility shall not include, any stormwater sewers, production petroleum lead lines, salt water disposal lines or injection lines, which are not located on platted land or inside the corporate limits of any city.

“Locatable” has the meaning of that word as used in “locatable facility,” which is defined in K.S.A. 66-1802 and amendments thereto. In addition to the requirements for locating underground facilities, as specified in K.S.A. 66-1802 and amendments thereto, the operator shall be able to locate underground facilities within 24 inches of the outside dimensions in all horizontal directions of an underground facility using tracer wire, conductive material, GPS technology, or any other technology that provides the operator with the ability to locate the pipelines for at least 20 years.

“Locatable facility” means facilities for which the tolerance zone can be determined by the operator using generally accepted practices such as as-built construction drawings, system maps, probes, locator devices or any other type of proven technology for locating.

“Locate” means the act of marking the tolerance zone of the operator’s underground facilities by the operator.

“Locate ball” means an electronic marker device that is buried with the facility and is used to enhance signal reflection to a facility detection device.

“Marking” means the use of stakes, paint, flags or other clearly identifiable materials to show the field location of underground facilities, in accordance with the rules and regulations promulgated by the state corporation commission in the administration and enforcement of this act.

“Meet on site” means a meeting between an operator and an excavator that occurs at the excavation site in order for the excavator to provide an accurate description of the excavation site.

“Municipality” means any city, county, municipal corporation, public district or public authority located in whole or in part within this state which provides firefighting, law enforcement, ambulance, emergency medical or other emergency services.

“Notification center” means the statewide communication system operated by an organization which has as one of its purposes to receive and record notification of planned excavation in the state from excavators and to disseminate such notification of planned excavation to operators who are members and participants.

“Notification center,” as defined in K.S.A. 66-1802 and amendments thereto, means the underground utility notification center operated by Kansas one call, inc.

“Notice of intent of excavation” means the written notification required by K.S.A. 66-1804 and amendments thereto.

"Operator" means any person who owns or operates an underground tier 1 or tier 2 facility, except for any person who is the owner of real property wherein is located underground facilities for the purpose of furnishing services or materials only to such person or occupants of such property.

"Preengineered project" means a public project or a project which is approved by a public agency wherein the public agency responsible for the project, as part of its engineering and contract procedures, holds a meeting prior to the commencement of any construction work on such project in which all persons, determined by the public agency to have underground facilities located within the construction area of the project, are invited to attend and given an opportunity to verify or inform the public agency of the location of their underground facilities, if any, within the construction area and where the location of all known and underground facilities are duly located or noted on the engineering drawing as specifications for the project.

"Permitted project" means a project where a permit for the work to be performed must be issued by a city, county, state or federal agency and, as a prerequisite to receiving such permit, the applicant must locate all underground facilities in the area of the work and in the vicinity of the excavation and notify each owner of such underground facilities.

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

“Production petroleum lead line” means an underground facility used for production, gathering or processing on the lease or unit, or for delivery of hydrocarbon gas and/or liquids to an associated tank battery, separator or sales facility. Production petroleum lead lines shall include underground lines associated with lease fuel and saltwater disposal and injection.

“Platted land” means a tract or parcel of land which has been subdivided into lots of less than five acres for the purpose of building developments, including housing developments, and for which a surveyor’s plat has been filed of record in the office of the register of deeds in the county where the land is located.

“Pullback operation” means the installation of facilities in a directional bore by pulling the facility from the bore exit point back to the bore entry point.

“Pullback device” means the apparatus used to connect drilling tools to the facility being installed in a directional bore.

"Tolerance zone" means the area within 24 inches of the outside dimensions in all horizontal directions of an underground facility.

“Reasonable care” means the precautions taken by an excavator to conduct an excavation in a careful and prudent manner. Reasonable care shall include the following:

- (1) Providing for proper support and backfill around all existing underground facilities;*
- (2) using nonintrusive means, as necessary, to expose the existing facility in order to visually determine that there will be no conflict between the facility and the proposed excavation path when the path is within the tolerance zone of the existing facility;*
- (3) exposing the existing facility at intervals as often as necessary to avoid damage when the proposed excavation path is parallel to and within the tolerance zone of an existing facility; and*
- (4) maintaining the visibility of the markings that indicate the location of underground utilities throughout the excavation period.*

“Tier 1 facility” means an underground facility used for transporting, gathering, storing, conveying, transmitting or distributing gas, electricity, communications, crude oil, refined or reprocessed petroleum, petroleum products or hazardous liquids.

“Tier 2 facility” means an underground facility used for transporting, gathering, storing, conveying, transmitting or distributing potable water or sanitary sewage.

“Tier 3 facility” means a water or wastewater system utility which serves more than 20,000 customers who elects to be a tier 3 member of the notification center pursuant to this subsection.

“Tier 1 member” means any operator of a tier 1 facility, as defined in K.S.A. 66-1802 and amendments thereto, or any operator of a tier 2 facility, as defined in K.S.A. 66-1802 and amendments thereto, that elects to be a tier 1 member of the notification center pursuant to K.A.R. 82-14-3.

“Tier 2 member” means any operator of a tier 2 facility, as defined in K.S.A. 66-1802

and amendments thereto, that elects to be a tier 2 member of the notification center.

“Tier 3 member” means any operator of a tier 2 facility, as defined in K.S.A. 66-1802 and amendments thereto, that meets the requirements for a tier 3 facility, as defined in K.S.A. 66-1802 and amendments thereto, and elects to be a tier 3 member of the notification center.

“Tolerance zone” means the area not less than 24 inches of the outside dimensions in all horizontal directions of an underground facility, except that a larger tolerance zone for a tier 1, 2, or 3 facility may be established by rules and regulations adopted by under K.S.A. 2007 Supp. 66-1815, and amendments thereto.

“Tolerance zone” has the meaning specified in K.S.A. 66-1802 and amendments thereto. The tolerance zone shall not be greater than the following:

- (1) 25 inches for each tier 1 facility; and*
- (2) 61 inches for each tier 2 facility.*

“Trenchless excavation” means any excavation performed in a manner that does not allow the excavator to visually observe the placement of the new facility. This term shall include underground boring, tunneling, horizontal auguring, directional drilling, plowing, and geoprobing.

“Update” means an additional request from the excavator to extend the time period of the request for intent to excavate beyond the 15 calendar day duration of the request.

“Whitelining” means the act of marking by the excavator the route or boundary of the proposed excavation site with white paint, white stakes or white flags.

“Working day” means every day, Monday through Friday beginning at 12:01 a.m., except for the following officially recognized holidays: New Year’s day, Memorial day, Independence day, Labor day, Thanksgiving day, the day after Thanksgiving and Christmas.

EXCAVATOR'S OBLIGATIONS

General

An excavator shall not engage in excavation near the location of any underground facility without first having ascertained, in the manner prescribed in this section, a location of all underground facilities in the proposed area of the excavation.

An excavator *may* serve notice of intent of excavation at least two full working days, but not more than 15 calendar days before the scheduled excavation start date, on each operator of tier 2 facilities located in the proposed area of excavation.

Notification to operators of tier 2 facilities *may* be given by notifying the operator of tier 2 facilities using the contact information provided by the notification center. The content of such notification shall be as required by K.S.A. 66-1804, and amendments thereto.

If an excavator directly contacts a tier 2 member or a tier 3 member, the excavation scheduled start date shall be the later of the following:

- (1) The excavation scheduled start date assigned by the notification center; or*
- (2) two full working days after the day of contact with the tier 2 member or tier 3 member.*

Unless all facilities notified by the affected operators have provided notification to the excavator, excavation shall not begin at any excavation site before the excavation scheduled start date.

After the excavation scheduled start date, an excavator shall exercise such reasonable care as may be necessary for the protection of any underground facility in and near the construction area when working in close proximity to any such underground facility.

In the case of an emergency which involves danger to life, health or property or which requires immediate correction in order to continue the operation of an industrial plant or to assure the continuity of public utility service, excavation, maintenance or repairs may be made without using explosives, if notice and advice thereof, whether in writing or otherwise are given to the operator or notification center as soon as reasonably possible.

Notice of intent of excavation.

Notification or intent to excavate shall be given to operators by notifying the notification center by telephone at the toll free number or by other communication methods approved by the notification center.

Except in the case of an emergency, an excavator shall serve notice of intent of excavation at least two full working days, but not more than 15 calendar days before the scheduled excavation start date, on each tier 1 operator having underground facilities located in the proposed area of

excavation.

The notice of intent to excavate or any subsequent updates shall be valid for 15 calendar days after the excavation start date and such notice shall only describe an area in which the proposed excavation reasonably can be completed within the 15 calendar days.

No person shall make repeated requests for remarking unless the request is due to circumstances not reasonably within the control of such person.

Any person providing a misrepresentation of an emergency excavation may be subject to the penalties set out in K.S.A. 2001 Supp. 66-1812, and amendments thereto.

The notice of intent of excavation shall contain:

- (1) the name, address and telephone number of the person filing the notice of intent;
- (2) the name of the excavator;
- (3) *the name and telephone number of the individual who will be representing the excavator at the excavation site;*
- (4) the date the excavation activity is to commence; and
- (5) the type of excavation being planned.

Each description of the excavation site shall include the following:

- (1) The street address, if available, the specific location of the proposed excavation site at the street address; and*
- (2) an accurate description of the proposed excavation site using any available designations, including the closest street, road, or intersection, and any additional information requested by the notification center.*

If the excavation site is outside the boundaries of any city or if a street address is not available, the description of the excavation site shall include one of the following:

- (1) An accurate description of the excavation site using any available designations, including driving directions from the closest named street, road, or intersection;*
- (2) the specific legal description, including the quarter section; or*
- (3) the longitude and latitude coordinates.*

On Site Meetings and Whiteline Requests

Upon request of the operator, the person filing the notice of intent to excavate shall whiteline the proposed excavation site prior to locates being performed.

If a meet on site is requested by the excavator, the excavation scheduled start date shall be no earlier than the fifth working day after the date on which the notice of intent of excavation was given to the notification center or to the tier 2 member or tier 3 member, unless otherwise agreed between the parties.

If the excavator requests a meet on site as part of the description of the proposed excavation site given to the notification center, the tier 2 member, or the tier 3 member, then the excavator shall document the meet on site and any subsequent meetings regarding facility locations with a record noting the name and company affiliation for the representative of the excavator and the representative of the operator that attend the meeting. The excavator shall keep this record for at least two years. This documentation shall include the following:

- (1) Verification that the description of the excavation site is understood by both parties;*
- (2) the agreed-upon excavation scheduled start date;*
- (3) the date and time of the meet on site; and*
- (4) the name and company affiliation of each attendee of the meet on site.*

The person filing the notice of intent to excavate shall, at the request of the operator, whieline the proposed excavation site when the description of the excavation location cannot be described with sufficient detail to enable the operator to ascertain the location of the proposed excavation.

If the operator requests that the excavator whieline the excavation site, the operator shall have two working days after the whielining is completed to provide the location of the tolerance zone.

Excavator Obligations and Liability when Damages Occur

If any contact with or damage to any underground facility or the facility's associated tracer wire or locate ball, or associated surface equipment occurs, the excavator shall immediately inform the operator.

If the protective covering of an electrical line is penetrated or dangerous gases or fluids are escaping from a broken line, the excavator immediately shall:

- inform emergency personnel of the municipality in which such electrical short or broken line is located; and
- take any other action as may be reasonably necessary to protect persons and property and to minimize hazards until arrival of the operator's personnel or emergency first responders.

If the operator notifies the excavator that it has no underground facilities in the area of the planned excavation, fails to respond or improperly marks the tolerance zone for the facilities, the excavator may proceed and shall not be liable to the operator for any direct or indirect damages resulting from contact with the operator's facilities, except that nothing in this act shall be construed to hold any excavator harmless from liability to the operator in those cases of gross negligence or willful and wanton conduct.

In no event shall the excavator be responsible for any damage to underground facilities if such damage was caused by the failure of the operator to correctly and properly mark the location of

the tolerance zone of the damaged facility.

For economic damages in any civil court of this state, failure of an operator to inform the excavator within two working days of the tolerance zone of the underground facilities of the operator in the manner required shall not give rise to a cause of action on the part of the excavator against an operator, except in cases of inaccurate marking of the tolerance zone, gross negligence or willful and wanton conduct on the part of the operator.

Trenchless Excavation Training Requirements

Each excavator using trenchless excavation techniques shall develop and implement operating guidelines for trenchless excavation techniques. At a minimum, the guidelines shall require the following:

- (1) Training in the requirements of the Kansas underground utility damage prevention act;*
- (2) training in the use of nonintrusive methods of excavation used if there is an indication of a conflict between the tolerance zone of an existing facility and the proposed excavation path;*
- (3) calibration procedures for the locator and sonde if this equipment is used by the excavator;*
- (4) recordkeeping procedures for measurements taken while boring;*
- (5) training in the necessary precautions to be taken in monitoring a horizontal drilling tool when backreaming or performing a pullback operation that crosses within the tolerance zone of an existing facility;*
- (6) training in the maintenance of appropriate clearance from existing facilities during the excavation operation and during the placement of new underground facilities;*
- (7) for horizontal directional drilling operations, a requirement to visually check the drill head and pullback device as they pass through potholes, entrances, and exit pits; and*
- (8) emergency procedures for unplanned utility strikes.*

Excavator's Option for Pre-Engineered and Permitted Projects

A request for locates for a preengineered project or a permitted project is valid from the excavation start date until completion of the project. Preengineered or permitted projects are not required to limit the description of the excavation site to an area in which the proposed excavation reasonably can be completed within the 15 calendar days.

If an excavator wishes to conduct an excavation as a permitted project, the permit obtained by the excavator shall have been issued by a federal, state, or municipal governmental entity and shall have been issued contingent on the excavator's having met the following requirements:

- (1) Notified all operators with facilities in the vicinity of the excavation of the intent to excavate as a permitted project;*

- (2) visually verified the presence of the facility markings at the excavation site;*
- and*
- (3) Served notice of intent of excavation at least two full working days, but not more than 15 calendar days before the scheduled excavation start date, on each operator having underground facilities located in the proposed area of excavation.*

An excavator shall not claim preengineered project status unless the public agency responsible for the project performed the following before allowing excavation:

- (1) Identified all operators that have underground facilities located within the excavation site;*
- (2) requested that the operators that have underground facilities located within the excavation site to verify the location of their underground facilities, if any, within the excavation site;*
- (3) required the location of all known underground facilities to be noted on updated engineering drawings as specifications for the project;*
- (4) notified all operators that have underground facilities located within the excavation site of the project of any changes to the engineering drawings that could affect the safety of existing facilities; and*
- (5) Served notice of intent of excavation at least two full working days, but not more than 15 calendar days before the scheduled excavation start date, on each operator having underground facilities located in the proposed area of excavation.*

Identification of location of facilities; duties of operator;

General

Each operator who has an underground facility shall become a member of the notification center

Each operator shall inform the notification center of its election to be considered as a tier 1 member, tier 2 member, or tier 3 member.

Unless otherwise agreed to between the notification center and the operator, any operator of a tier 2 facility may change its membership election once every calendar year by informing the notification center of the operator's intention on or before November 30 of the preceding calendar year.

Each Tier 1 member shall perform the following:

(1): File and maintain maps of the operator's underground facilities or a map showing the operator's service area with the notification center; and (2): file and maintain, with the notification center, the operator's telephone contact number that can be accessed on a 24-hour-per-day basis.

An operator of a water or wastewater facility may elect to use a tolerance zone for such water or wastewater facility in which tolerance zone means the area not less than 60 inches of the outside dimensions in all horizontal directions of an underground water or wastewater facility upon notification of the excavator, except that a larger tolerance zone may be established by rules and regulations adopted under K.S.A. 2007 Supp. 66-1815, and amendments thereto.

If the operator of tier 2 facilities cannot accurately mark the tolerance zone, such operator shall mark the approximate location to the best of its ability, notify the excavator that the markings may not be accurate, and provide additional guidance to the excavator in locating the facilities as needed during the excavation.

The operator of tier 2 facilities shall not be required to provide notification of the tolerance zone for facilities which are at a depth at least two feet deeper than the excavator plans to excavate but does have to notify the excavator of their existence.

Except in cases of emergencies or separate agreements between the parties, the operator of a tier 2 facility shall perform one of the following within the two working days before the excavation scheduled start date assigned by the notification center or the tier 2 member or tier 3 member, whichever is later:

(1): Mark the location of its facilities according to the requirements of subsections (m) and (n) in the area described in the notice of intent of excavation and, if applicable, notify the excavator of the operator's election to require a tolerance zone of 60 inches; or (2): inform the excavator that the operator's underground facilities are expected to be at least two feet deeper than the excavator's planned excavation depth and that the location of its facilities will not be provided for the affected tier 2 facilities.

Each operator of a tier 2 facility that notifies an excavator of its election to require a tolerance zone of 60 inches shall record and maintain the following records of the notification for at least two years:

(1) The name of the excavator contacted for the notification of a 60-inch tolerance zone; (2) the date of the notification; and (3) a description of the location of the excavation site

Each operator of a tier 2 facility that notifies an excavator of its election not to provide locates for its facilities that are expected to be two feet deeper than the excavator's maximum planned excavation depth shall record and maintain the following records of the notification for at least two years:

*(1) The name of the excavator notified that the operator will not provide locates;
(2) the excavator's maximum planned excavation depth;
(3) the date of the notification; and
(4) a description of the location of the excavation site.*

If the operator of a tier 2 facility is unable to provide the location of its facilities within a 60-inch tolerance zone, the operator shall mark the approximate location of its facilities to the best of its ability, notify the excavator that the markings could be inaccurate, remain on site or in the vicinity of the excavation, and provide additional guidance to the excavator in locating the facilities as needed during the excavation.

Each tier 2 facility constructed, replaced, or repaired after July 1, 2008 shall be locatable. Location data shall be maintained in the form of maps or any other format as determined by the operator.

If the excavator notifies the notification center, within two working days after the initial identification of the tolerance zone by the operator, that the identifiers have been improperly removed or altered, the operator shall make a reasonable effort to reidentify the tolerance zone within one working day after the operator receives actual notice from the notification center.

Upon receiving notice from an operator that damage to its underground facility has occurred, the operator immediately shall dispatch personnel to the location to provide necessary temporary or permanent repair of the damage.

All tier 1 facilities installed by an operator after January 1, 2003, shall be locatable.

All tier 2 facilities installed by an operator after July 1, 2008, shall be locatable.

Marking Requirements

The requirement to inform the excavator of the facility location shall be met by marking the location of the operator's facility and identifying the name of the operator with flags, paint, or any other method by which the location of the facility is marked in a clearly

visible manner.

If an operator receives a request to locate its facilities for an emergency condition, such operator shall make a reasonable effort to identify the location of its facility within two hours of receiving notification or before excavation is scheduled to begin, whichever is later.

In marking the location of its facilities, each operator shall use the following colors to indicate the type of facility:

Facility Type	Color
<i>Electric power distribution lines and transmission lines</i>	<i>Safety red</i>
<i>Gas distribution and transmission lines</i>	<i>Safety yellow</i>
<i>hazardous liquid distribution and transmission lines</i>	<i>Safety yellow</i>
<i>Telephone, telegraph, and fiber optic system lines</i>	<i>Safety orange</i>
<i>Cable television lines; alarm lines; and signal lines</i>	<i>Safety orange</i>
<i>Potable Water distribution and transmission lines</i>	<i>Safety blue</i>
<i>Sanitary sewer main lines</i>	<i>Safety Green</i>

(e) If the facility has any outside dimension that is eight inches or larger, the operator shall mark its facility so that the outside dimensions of the facility can be easily determined by the excavator.

If the facility has any outside dimension that is smaller than eight inches, the operator shall mark its facility so that the location of the facility can be easily determined by the excavator.

If the Tier 1 operator has no facilities in the area described in the notice of intent of excavation, the operator shall perform one of the following:

- (1) Mark the excavation site in a manner indicating that the operator has no facilities at that site; or*
- (2) contact the excavator by telephone, facsimile, or any other means of communication.*

Two documented attempts by the operator to reach an excavator by telephone during normal business hours shall constitute compliance with this paragraph.

Meet on Site and Whitelining: Obligations of Operator

If the notice of intent of excavation contains a request for a meet on site, the operator shall meet with the excavator at a mutually agreed-upon time within two working days after the day on which the notice of intent of excavation was given.

After attending a meet on site, the operator shall inform the excavator of the tolerance zone of the operator's facilities in the area of the planned excavation within two working days before the excavation scheduled start date that was agreed to at the meet on site.

Any operator may request that the excavator whittle the proposed excavation site.

If the operator requests that the excavator use whitelining at the excavation site, the operator shall document the whitelining request and any subsequent meetings regarding the facility location for that excavation site. The operator shall maintain records of the whitelining documentation for six months after the excavation scheduled start date. The documentation shall include the following:

- (1) A record stating the name of the excavator contacted for the request for whitelining;*
- (2) verification that both parties understand the description of the excavation site;*
- (3) the agreed-upon excavation scheduled start date; and*
- (4) the date and time of the request for whitelining.*

Reporting of Damages to Corporation Commission

Each operator that received more than 2,000 requests for facility locations in the preceding calendar year shall file a damage summary report at least semiannually with the Kansas corporation commission. The report shall include information on each incident of facility damage resulting from excavation activity that was discovered by the operator during that period. For each incident, at a minimum the following data, if known, shall be included in the report:

- (1) The type of operator;*
 - (2) the type of excavator;*
 - (3) the type of excavation equipment;*
 - (4) the city or county, or both, in which the damage occurred;*
 - (5) the type of facility that was damaged;*
 - (6) the date of damage, specifying the month and year;*
 - (7) the type of locator;*
 - (8) the existence of a valid notice of intent of excavation; and*
 - (9) the primary cause of the damage.*
- (n) The damage summary report for the first six months of the calendar year shall be due on or before August 1 of the same calendar year. The damage summary report for the last six months of the calendar year shall be due on or before February 1 of the next calendar year.*

Additional Obligations of the Tier 2 Member of the Notification Center

Each tier 2 member shall perform the following:

- (1) Establish telephone or internet service with the ability to receive notification from excavators on a 24-hour-per-day basis;*
- (2) file with the notification center updated maps of the operator's underground facilities or a map showing the operator's service area;*
- (3) file with the notification center the operator's current telephone contact number or numbers that can be accessed on a 24-hour-per-day basis;*
- (4) file with the notification center the operator's preferred method of contact for all referrals received from the notification center; and*
- (5) maintain for at least two years all information provided by the excavator pursuant to K.A.R. 82-14-2(e) and (f).*

Additional Obligations of the Tier 3 Member of the Notification Center

The operator of a tier 3 facility shall:

(1) Develop and operate a locate service website capable of receiving locate requests; (2): Publish and maintain a dedicated telephone number for locate services; (3): Maintain 24-hour response capability for emergency locates; and (4): Employ not less than two individuals whose primary job function shall be the location of underground utilities.

Operators of tier 3 facilities shall make either such website or contact information available to the notification center.

Tier 3 members shall be subject to all provisions of 66-1804, 66-1805, 66-1806 and amendments thereto.

Each tier 3 member shall perform the following:

- (1) File with the notification center updated maps of the operator's underground facilities or a map showing the operator's service area;*
- (2) file with the notification center the operator's current telephone contact number or numbers that can be accessed on a 24-hour-per-day basis;*
- (3) file with the notification center the operator's preferred method of contact for all referrals received from the notification center;*
- (4) maintain for at least two years all information provided by the excavator pursuant to K.A.R. 82-14-2(e) and (f);*
- (5) develop and operate a locate service web site capable of receiving locate requests;*
- (6) publish and maintain a dedicated telephone number for locate services;*
- (7) maintain 24-hour response capability for emergency locates; and*
- (8) employ at least two technically qualified individuals whose job function is dedicated to the location of underground utilities.*

A record of receipts for each notice of intent of excavation shall be maintained for at least two years, including an audio record, if available, of each notice of intent of excavation and a written or electronic version of the notification.

A copy of the tier 3 member's record documenting the notice of intent of excavation resulting in a response from the member shall be provided to the commission or to the person giving the notice of intent of excavation, upon request.

A quality control program shall be established and maintained. The program shall establish procedures for receiving and recording the notices of intent of excavation.

Obligations of the Notification Center

This act recognizes the establishment of a single notification center for the state of Kansas. Each operator who has an underground facility shall become a member of the notification center.

Each operator who has an underground facility within the state shall be afforded the opportunity to become a member of the notification center on the same terms as the original members.

For operators of tier 1 facilities or operators of tier 2 facilities that desire notification in the same manner as operators of tier 1 facilities, the notification center shall provide prompt notice of any proposed excavation to each affected operator that has facilities recorded with the notification center in the area of a proposed excavation site.

For operators of tier 2 facilities that desire direct contact with the excavator, the notification center shall provide the excavator with the name and contact information of the affected operator that has facilities recorded with the notification center in the area of the proposed excavation.

A suitable record shall be maintained by operators of tier 2 facilities that desire direct contact with the excavator pursuant to subsection (c) to document the receipt of notices from excavators.

The notification center shall charge and collect an annual membership fee in the amount of \$25 from each tier 2 facility member.

The notification center shall charge a referral fee to tier 2 facility members in an amount no more than 50% of the referral fee rate charged to tier 1 facility members.

The notification center shall collect and charge a fee of \$500 a year for each tier 3 facility. No other fee, charge or cost shall be assessed to a tier 3 facility by the notification center.

The notification center established pursuant to this section shall be and is hereby deemed to be a public agency and shall be subject to the provisions of the open records act, K.S.A. 45-215 et seq., and amendments thereto, and the open meetings act, K.S.A. 75-4317 et seq., and amendments thereto, except that the notification center or board of directors, or successor managing organization shall not disseminate, make available or otherwise distribute data or information provided by an operator of a tier 1, 2 or 3 facility unless such dissemination, making available or distributing is necessary for the state corporation commission or the notification center to carry out legal duties or specific statutory duties prescribed under this chapter.

On and after July 1, 2009, the notification center's board of directors shall include two members from tier 2 facilities and 1 member from tier 3 facilities.

The notification center shall prepare an annual report which describes the activities of such center. An annual audit of the notification center shall be conducted by an independent certified public accountant. The notification center shall provide copies of such reports to each member of the notification center and shall be subject to the open records act, K.S.A. 45-215, et seq., and amendments thereto.

The notification center shall solicit proposals for operation of the notification center not more

than every five years which shall be awarded in an open meeting by the board of directors of the notification center. The bidding process prescribed by this subsection shall be subject to the open records act, K.S.A. 45-215 et seq., and amendments thereto.

The notification center shall conduct a cost of service audit not more than every five years or as otherwise requested by the board of directors of the notification center or a majority of the members of such center.

Notice shall be provided to each affected operator of a Tier 1 facility of any excavation site for which the location has been requested if the affected operator is a Tier 1 member and has facilities recorded with the notification center in the area of the proposed excavation site.

If the affected operator is a tier 2 member and has a facility recorded with the notification center in the area of the proposed excavation, the notification center shall provide the excavator with the name of the tier 2 member and contact information for the tier 2 member.

If the affected operator is a tier 3 member and has facilities recorded with the notification center in the area of the proposed excavation, the notification center shall provide the excavator with the name of the tier 3 member and the preferred method of contact for the tier 3 member.

Notice provided by the notification center directly to the operators of tier 2 facilities of any excavation site shall be deemed to meet the requirements of subsections (b) and (c) if the operator agrees to the method of notification.

A record of receipts for each notice of intent of excavation shall be maintained by the notification center for two years, including an audio record of each notice of intent of excavation, if available, and a written or electronic version of the notification sent to each operator that is a Tier 1 member.

A copy of the notification center's record documenting the notice of intent of excavation shall be provided to the commission or to the person giving the notice of intent of excavation, upon request.

A quality control program shall be established by the notification center and maintained. The program shall ensure that the employees receiving and recording the notices of intent of excavation are adequately trained.

KCC Staff Investigation Procedures

After investigation, if the commission staff believes that there has been a violation or violations of K.S.A. 66-1801 et seq. and amendments thereto or any regulation or commission order issued pursuant to the Kansas underground utility damage prevention

act and the commission staff determines that penalties or remedial action is necessary to correct the violation or violations, the commission staff may serve a notice of probable noncompliance on the person or persons against whom a violation is alleged. Service shall be made by registered mail or hand delivery.

Any notice of probable noncompliance issued under this regulation may include the following:

(1): A statement of the provisions of the statutes, regulations, or commission orders that the respondent is alleged to have violated and a statement of the evidence upon which the allegations are based; (2): a copy of this regulation; and (3): any proposed remedial action or penalty assessments, or both, requested by the commission staff.

Within 30 days of receipt of a notice of probable noncompliance, the recipient shall respond by mail in at least one of the following ways:

(1): Submit written explanations, a statement of general denial, or other materials contesting the allegations; (2): submit a signed acknowledgment of commission staff's findings of noncompliance; or (3): submit a signed proposal for the completion of any remedial action that addresses the commission staff's findings of noncompliance.

The commission staff may amend a notice of probable noncompliance at any time before issuance of a penalty assessment. If an amendment includes any new material allegations of fact or if the staff proposes an increased civil penalty amount or additional remedial action, the respondent shall have 30 days from service of the amendment to respond.

Unless good cause is shown or a consent agreement is executed by the commission staff and the respondent before the expiration of the 30-day time limit, the failure of a party to mail a timely response to a notice of probable noncompliance shall constitute an admission to all factual allegations made by the commission staff and may be used against the respondent in future proceedings.

At any time before an order is issued assessing penalties or requiring remedial action or before a hearing, the commission staff and the respondent may agree to dispose of the case by joint execution of a consent agreement. The consent agreement may allow for a smaller penalty than otherwise required. The consent agreement may also allow for nonmonetary remedial penalties. Upon joint execution, the consent agreement shall become effective when the commission issues an order approving the consent agreement.

Each consent agreement shall include the following:

(1): An admission by the respondent of all jurisdictional facts; (2): an express waiver of any further procedural steps and of the right to seek judicial review or otherwise challenge or contest the validity of the commission's show cause order; (3): an acknowledgment that the notice of probable noncompliance may be used to construe the terms of the order approving the consent agreement; and (4): a statement of the

actions required of the respondent and the time by which the actions shall be completed.

If any violation resulting in a notice of probable noncompliance is not settled with a consent agreement, a penalty order may be issued by the commission no sooner than 30 days after the respondent has been served with a notice of probable noncompliance.

The respondent shall remit payment for any civil assessments imposed by a penalty order within 20 days of service of the order.

The respondent may request a hearing to challenge the allegations set forth in the penalty order by filing a motion with the commission within 15 days of service of a penalty order. The respondent's failure to respond within 15 days shall be considered an admission of noncompliance.

An order may be issued by the commission to open a formal investigation docket regarding any potential noncompliance with the Kansas underground utility damage prevention act, and amendments thereto, or any regulations or orders pursuant to that act. If the commission finds evidence that any party to the investigation docket was not in compliance, a show cause order may be issued by the commission. If a show cause order is issued during the course of a formal investigation, the staff shall not be required to issue a notice of probable noncompliance.