

# 2012 MS216D Review Meeting Survey Results

MNOPS would like to thank everyone who participated in the MS216D review meeting on August 8, 2012. The level of interest in this topic from such a diverse stakeholder group shows the commitment and common goal we all share for public safety. The issues discussed at the MS216D meeting were facilitated by MNOPS, however they were a reflection of the feedback and comments MNOPS has received. Some in attendance may have thought these were the "final" ideas and positions of MNOPS, and that these will be put forth as legislative changes - that was not and is not the case. MNOPS will be carefully reviewing the information we have received, and may request further information prior to taking a final position on the issues raised.

Thanks to those that have taken the time to provide comment and to those who have taken the time to complete the MS216D survey prior to August 24, 2012.

If you still wish to submit written comment, you can submit to our Office at [jeff.murray@state.mn.us](mailto:jeff.murray@state.mn.us).

For questions, concerns or further comment, please contact Jeff Murray at 651-201-7236.

<b>Question 1: What industry do you represent?</b>	
<b>Answer Options</b>	<b>Response Percent</b>
Pipeline Utility Operator	41.7%
Communications Utility Operator	8.3%
Sewer and/or Water Utility Operator	2.8%
Electric Utility Operator	5.6%
Contractor	5.6%
Excavator	5.6%
Underground Utility Locator	5.6%
Private organization	5.6%
City, County and/or State Representative	19.4%
Individually represented	2.8%

**Question 2: Did you think the MS216D review meeting was beneficial and effective?**

<b>Answer Options</b>	<b>Response Percent</b>
Yes	69.7%
Somewhat	27.3%
No	3.0%

**Question 3: Was the length of the MS216D meeting appropriate?**

<b>Answer Options</b>	<b>Response Percent</b>
Yes	87.9%
No	12.1%

**Question 4: Was the location of the meeting and room appropriate?**

<b>Answer Options</b>	<b>Response Percent</b>
Yes	79.3%
No	20.7%

**Question 5: Definition of Excavation**

Proposed Language:

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

(1-6) .....

- (7) The use of non-mechanized hand tools or equipment unless it disturbs the soil to a depth of 12 inches or more;
- (8) An underground facility operator using non-mechanized hand tools or equipment to locate the operator's underground facilities, provided all reasonable precaution has been taken to protect the underground facilities;
- (9) An excavator using non-mechanized hand tools or equipment within two feet on either side of a marked location of an underground facility, provided that a valid ticket meeting the requirement of section 216D.04, subdivision 1 has been generated and provided all reasonable precaution has been taken to protect the underground facilities; or
- (10) vacuum excavation provided all reasonable precaution has been taken to protect the underground facilities.

**Question 5: Definition of Excavation - Indicate the choice that best represents the organization you represent.**

Answer Options	Response Percent
Support the proposed language	22.9%
Partially support but the comments need to be considered further	28.6%
Partially support the proposed language but a sub-committee would be most beneficial	20.0%
Mainly do not support proposed language but further consideration is warranted	14.3%
Do not support the proposed language	14.3%

### **Question 6: Review of Current Exemptions**

Proposed Language:

- (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.~~

#### **Question 6: Review of Current Exemptions - Indicate the choice that best represents the organization you represent.**

<b>Answer Options</b>	<b>Response Percent</b>
Support the proposed language without any modification required	22.9%
Partially support but feel the comments need to be considered further prior to the next meeting	28.6%
Partially support the proposed language but feel further consideration is warranted	31.4%
Do not support the proposed language	22.9%

### Question 7: Mandatory Damage Reporting

Whether it is appropriate to require mandatory reporting on all underground facility damages by the excavator.

Question 7: Mandatory Damage Reporting	
Answer Options	Response Percent
Support mandatory reporting on all underground facility damages	47.1%
Do not support mandatory reporting on all underground facility damages	52.9%

### Question 8: Definition of Operator

Proposed language:

"Operator" means a person who owns or operates an underground facility or abandoned 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.

Question 8: Definition of Operator - Indicate the choice that best represents the organization you represent.	
Answer Options	Response Percent
Support the proposed language without any modification required	40.0%
Partially support but feel the comments need to be considered further prior to the next step	20.0%
Partially support the proposed language but feel a sub-committee would be most beneficial	11.4%
Mainly do not support proposed language but feel further consideration is warranted	8.6%
Do not support the proposed language	20.0%

**Question 9: Utility Quality level**

MNOPS is requesting comment regarding whether additional language needs to be provided to address the quality levels for utilities required on projects where existing utilities will be impacted.

MS216D.04 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 the completion of the final drawing used for the bid or contract.

<b>Question 9: Utility Quality Level - Indicate the choice that best represents the organization you represent.</b>	
<b>Answer Options</b>	<b>Response Percent</b>
More language needs to be provided to address utility quality level	17.6%
The current MS216D language regarding utility quality level is appropriate	44.1%
The utility quality level should not be addressed in MS216D	38.2%

### **Question 10: Abandoned and Out-of-Service Facilities**

Proposed language:

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. contacting the excavator and providing copies of maps, diagrams, or records.

<b>Question 10: Abandoned and Out-of-Service Facilities</b>	
<b>Answer Options</b>	<b>Response Percent</b>
Support the proposed language without any modification required	29.4%
Partially support but feel the comments need to be considered further prior to the next step	23.5%
Partially support the proposed language but feel a sub-committee would be most beneficial	14.7%
Mainly do not support proposed language but feel further consideration is warranted	14.7%
Do not support the proposed language	17.6%

**Question 11: Operator Duties in a no Conflict Situation**

Whether contacting the notification center to indicate there are no underground facilities in conflict with the proposed excavation and no markings or flags were left at the proposed excavation site is adequate.

<b>Question 11: Operator Duties in a No Conflict Situation - indicate the choice that best represents the organization you represent.</b>	
<b>Answer Options</b>	<b>Response Percent</b>
Support contacting the notification center to indicate there are no underground facilities in conflict with the proposed excavation	66.7%
Do not support contacting the notification center to indicate there are no underground facilities in conflict with the proposed excavation	33.3%

**Question 12: White Markings**

To determine whether "Practical" needs to be further defined in MS216D.

MS216D.05 An excavator shall:

(2) Use white markings for proposed excavations except where it can be shown that it is not practical;

<b>Question 12: White Markings - Indicate the choice that best represents the organization you represent.</b>	
<b>Answer Options</b>	<b>Response Percent</b>
The current white marking language is acceptable	58.8%
White marking needs to be better defined in the rules	29.4%
A subcommittee needs to be developed to further research the language regarding white markings	17.6%

**Question 13: Facility Owner Marking Requirements**

Proposed Language

*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 sufficient 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. Description of the facility material (STL, PLA, etc);*
- C. Width of the underground facility ~~if it is greater than eight inches;~~ and*
- D. Number of underground facilities if greater than one.*

*\* If flags are used, it will be a best practice to include a phone number*

<b>Question 13: Facility Owner Marking Requirements - Indicate the choice that best represents the organization you represent.</b>	
<b>Answer Options</b>	<b>Response Percent</b>
Support the proposed language without any modification required	22.9%
Partially support but feel the comments need to be considered further prior to the next step	25.7%
Partially support the proposed language but feel a sub-committee would be most beneficial	22.9%
Mainly do not support proposed language but feel further consideration is warranted	11.4%
Do not support the proposed language	17.1%

**Question 14: Information Required on a Ticket**

Whether the statutorily required questions the one-call center asks on each ticket request as necessary.

<b>Question 14: Information Required on a Ticket</b>	
<b>Answer Options</b>	<b>Response Percent</b>
There should be statutorily required questions that the one-call center must ask each and every ticket	29.4%
There should not be statutorily required questions that the one-call center must ask each and every ticket	26.5%
This issue needs to be further reviewed prior to determining whether or not the one-call center must ask each and every ticket	44.1%

**Question 15: Meets**

Whether the current MS216D Rule is appropriate.

The current language is as follows:

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.

<b>Question 15: Meets - Indicate the choice that best represents the organization you represent.</b>	
<b>Answer Options</b>	<b>Response Percent</b>
The current language regarding meets is appropriate	57.6%
The current language regarding meets is not appropriate	12.1%
This issue must be further reviewed prior to determining whether or not the current language regarding meets is appropriate.	33.3%

**Question 16: Civil Penalties (regarding excavators)**

Proposed Language:

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 the first each violation per day of violation and up to \$10,000 for each subsequent violation per day within a 12 month period. 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.

<b>Question 16: Civil Penalties (regarding excavators) - Indicate the choice that best represents the organization you represent.</b>	
<b>Answer Options</b>	<b>Response Percent</b>
Support the proposed language without any modification required	30.3%
Partially support but feel the comments need to be considered further prior to the next step	15.2%
Partially support the proposed language but feel a sub-committee would be most beneficial	12.1%
Mainly do not support proposed language but feel further consideration is warranted	15.2%
Do not support the proposed language	27.3%

**Question 17: Civil Penalties (regarding excavators)**

Proposed Language:

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 \$4200,000 for each violation for each day that the violation persists, except that the maximum civil penalty must not exceed \$52,000,000 for a related series of violations.

<b>Question 17: Civil Penalties (regarding pipeline operators) - Indicate the choice that best represents the organization you represent.</b>	
<b>Answer Options</b>	<b>Response Percent</b>
Support the proposed language without any modification required	20.6%
Partially support but feel the comments need to be considered further prior to the next step	20.6%
Partially support the proposed language but feel a sub-committee would be most beneficial	17.6%
Mainly do not support proposed language but feel further consideration is warranted	14.7%
Do not support the proposed language	29.4%

**Question 18: Private Facilities**

Whether the current laws regarding private facilities, specifically sewer lateral marking and farm tap marking is adequate.

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.

<b>Question 18: Private Facilities - Indicate the choice that best represents the organization you represent.</b>	
<b>Answer Options</b>	<b>Response Percent</b>
The current laws regarding private facilities are adequate	52.9%
The current laws regarding private facilities are not adequate	20.6%
This issue must be reviewed further prior to determining whether or not the current laws regarding private facilities are adequate	29.4%

**Question 19: Mandatory DIRT Reporting**

Whether Minnesota should have mandatory DIRT reporting.

<b>Question 19: Mandatory DIRT Reporting - Indicate the choice that best represents the organization you represent.</b>	
<b>Answer Options</b>	<b>Response Percent</b>
Minnesota should have mandatory DIRT reporting	40.0%
Minnesota should not have mandatory DIRT reporting	60.0%