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MINNESOTA
PUBLIC SAFETY

2012 MS216D Review Meeting

651.201.7230

www.dps.state.mn.us/pipeline



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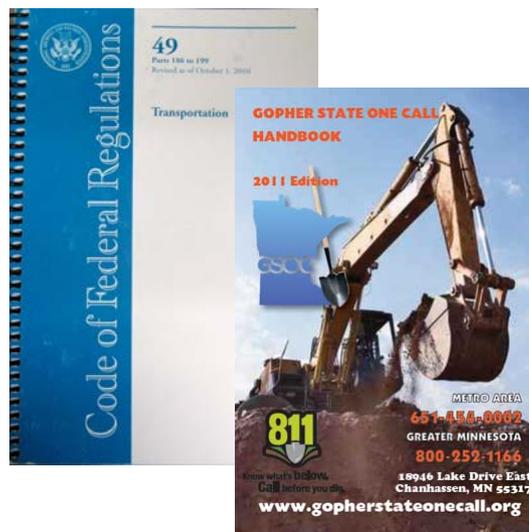
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ABOUT MNOPS

- Created in 1987 following the 1986 “Mounds View” incident. (1400 psi Gasoline Pipeline Rupture)
- **MS216D** – Excavation Laws in Minnesota.
- **49 CFR PARTS 190-199** – Pipeline Regulations.





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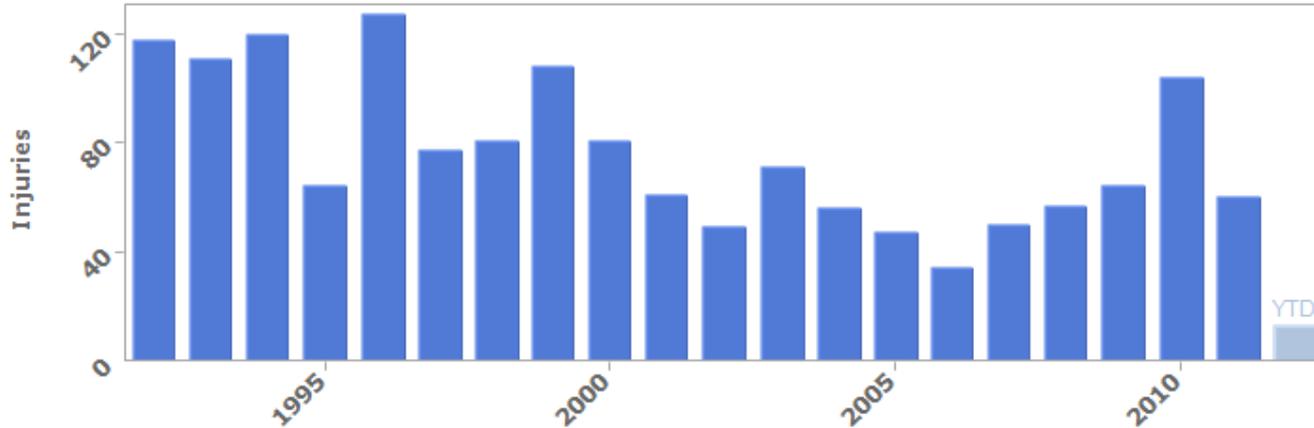
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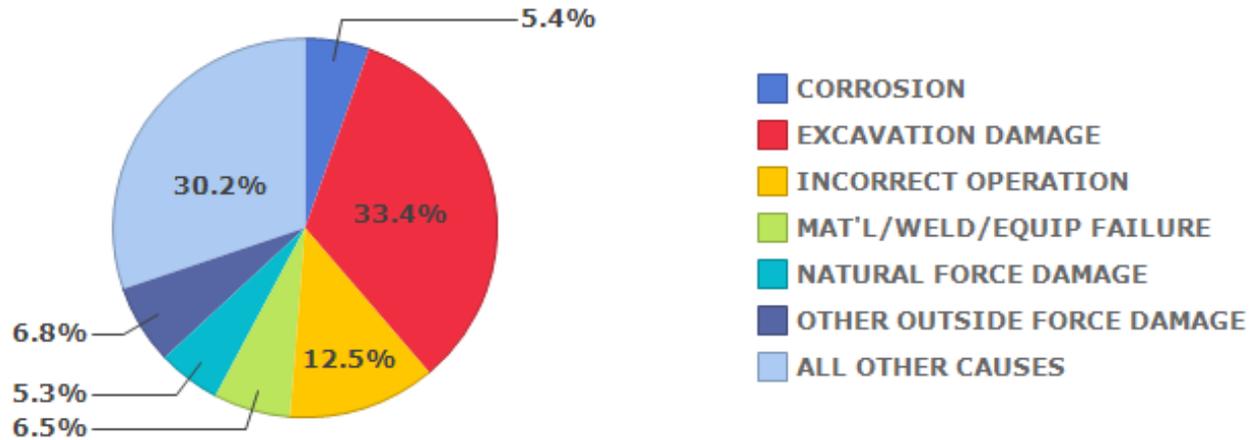


National, All Pipeline Systems, Serious Incidents: Injuries 1992-2011



Source: PHMSA Significant Incidents Files March 30, 2012

Serious Incident Cause Breakdown National, All Pipeline Systems, 1992-2011



Source: PHMSA Significant Incidents Files March 30, 2012

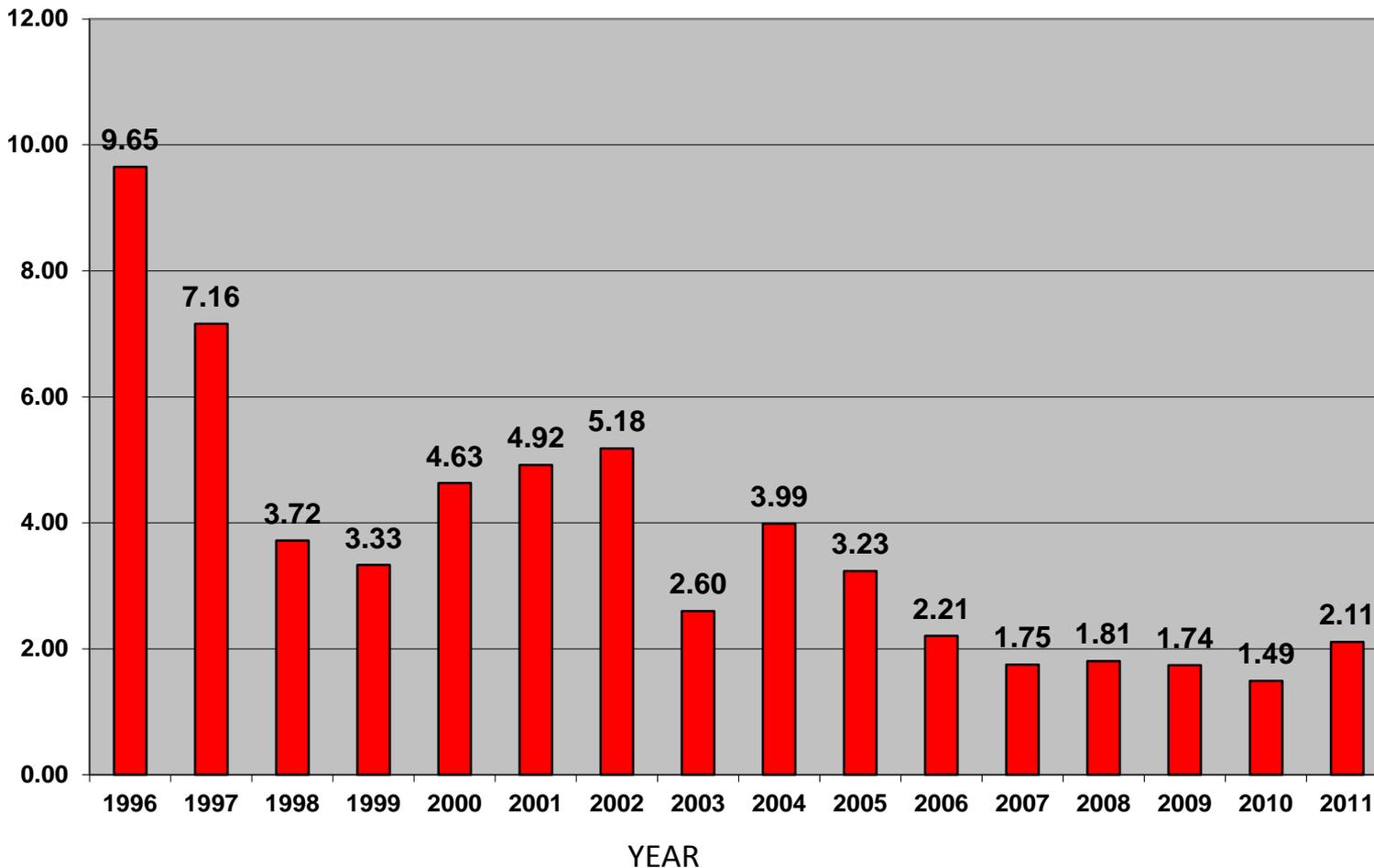




MN EXCAVATION DAMAGES

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DAMAGES



DAMAGES PER EVERY 1000 LOCATE TICKETS





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Meeting Ground Rules

1. No Food or Drink allowed.
2. Three people may be at the microphone table at one time. Only one person speaks at a time; no one will interrupt while someone is speaking. **The speaker is the one who has the microphone.**
3. The person that speaks shall identify themselves by name and organization they represent.
4. **Avoid extended comments, so that everyone has an opportunity to speak. (Phone line will be open for comment if time permits)**
5. Everybody agrees to make a strong effort to stay on track with the agenda and to move the discussions forward.
6. In order to assure that all issues are discussed, it may be necessary to move discussion forward before all comments are heard.



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Feedback & Comments Requested

- Your feedback and comments are very important!
- Please have a representative of your organization complete our survey at:

<https://www.surveymonkey.com/s/MS216D>

- Deadline is August 24, 2012





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Definition of Excavation (MS216D.01 Subd 5)

Issue:

Whether the definition of excavation should include hand tools .

Purpose:

- 1) To reduce the amount of damages to underground facilities resulting from hand tools.
- 2) To require that hand tool damages are required to be reported prior to backfill.



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Definition of Excavation (MS216D.01 Subd 5)

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Definition of Excavation (MS216D.01 Subd 5)

Recent analysis involving 1311 gas facility damages due to excavation related activities.

23.3% caused by hand tools

14.6% caused by hand tools & had a locate ticket

8.7% caused by hand tools & did not have a locate ticket

3.0% caused by hand tools & no locate ticket & professional excavator



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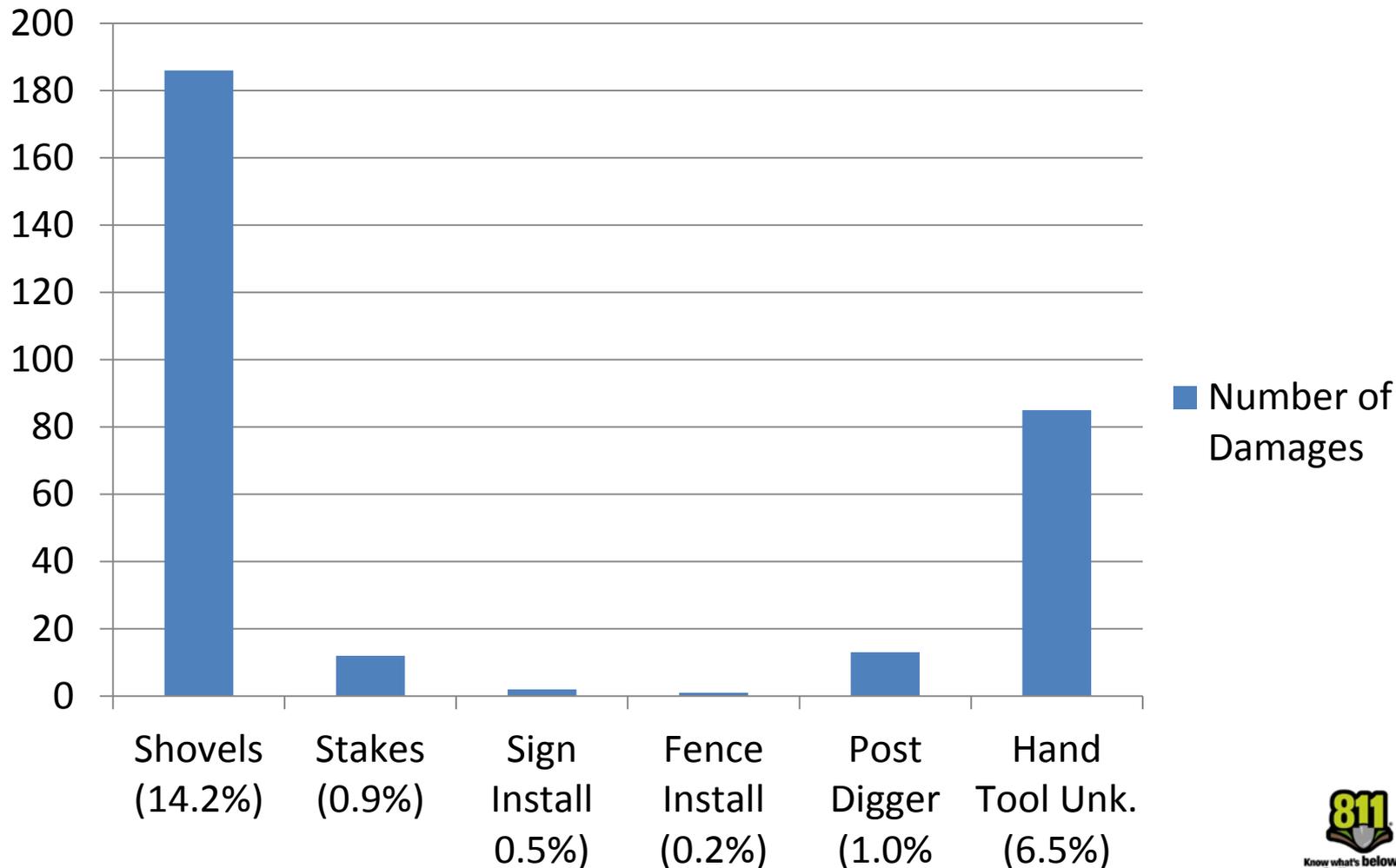


1311 **gas facility** damages due to excavation

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Number of Damages





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Definition of Excavation (MS216D.01 Subd 5)

- MS216D requires **excavation** damages to be reported to the Operator. Currently hand tools are not considered excavation.
- Having knowledge of where underground facilities are located affects the manner in which an excavator conducts an excavation.



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Definition of Excavation (MS216D.01 Subd 5)

Subdivision 5 - Excavation.

"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.





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Definition of Mechanize

mech·a·nize

verb (used with object), mech·a·nized, mech·a·niz·ing.

1. to make mechanical.
2. to operate or perform by or as if by machinery.
3. to introduce machinery into (an industry, enterprise, etc.), especially in order to replace manual labor.
4. Military . to equip with tanks and other armored vehicles.

Source: <http://dictionary.reference.com>



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MR7560.0325 Proposed Amendment

MR7560.0325 Subp 2.

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

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Review of Current Excavation Exemptions (MS216D.01 Subd 5)

Issue:

Whether or not the current exemptions to the definition of excavation are appropriate and **justifiable**.



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LATEST FROM PHMSA: NPRM 04/02/2012

“PHMSA agrees that, in general, exemptions of categories of excavators from state excavation damage prevention laws can be problematic because exempt excavators can damage underground utilities. However **some excavations may be justifiable** in some states, especially where substantiated by data (e.g., Virginia's exemption for VDOT), States are ultimately responsible for establishing their own excavation damage prevention laws.

Under the proposed rule, only homeowners using hand tools, as opposed to mechanized excavating equipment, on their own property are exempt from Federal administrative enforcement action.”



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Review of Current Excavation Exemptions (MS216D.01 Subd 5)

- (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.~~

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Mandatory Damage Reporting

Issue:

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

Purpose:

Increased underground facility damage data would allow for greater damage analysis resulting in more informed and targeted damage prevention initiatives and solutions.



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Mandatory Damage Reporting

Example:

If all excavation damage was reported, Damages could be analyzed by who the work was being done for and causes of damages could be broken out accordingly.

A homeowner excavation top cause may be “no locate”, whereas a contracted excavator may have a different top cause of damage.



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Mandatory Damage Reporting

A Common Ground Alliance (CGA) Best Practice

Practice Statement: An excavator discovering or causing damage to underground facilities notifies the facility owner/operator and the one call center.





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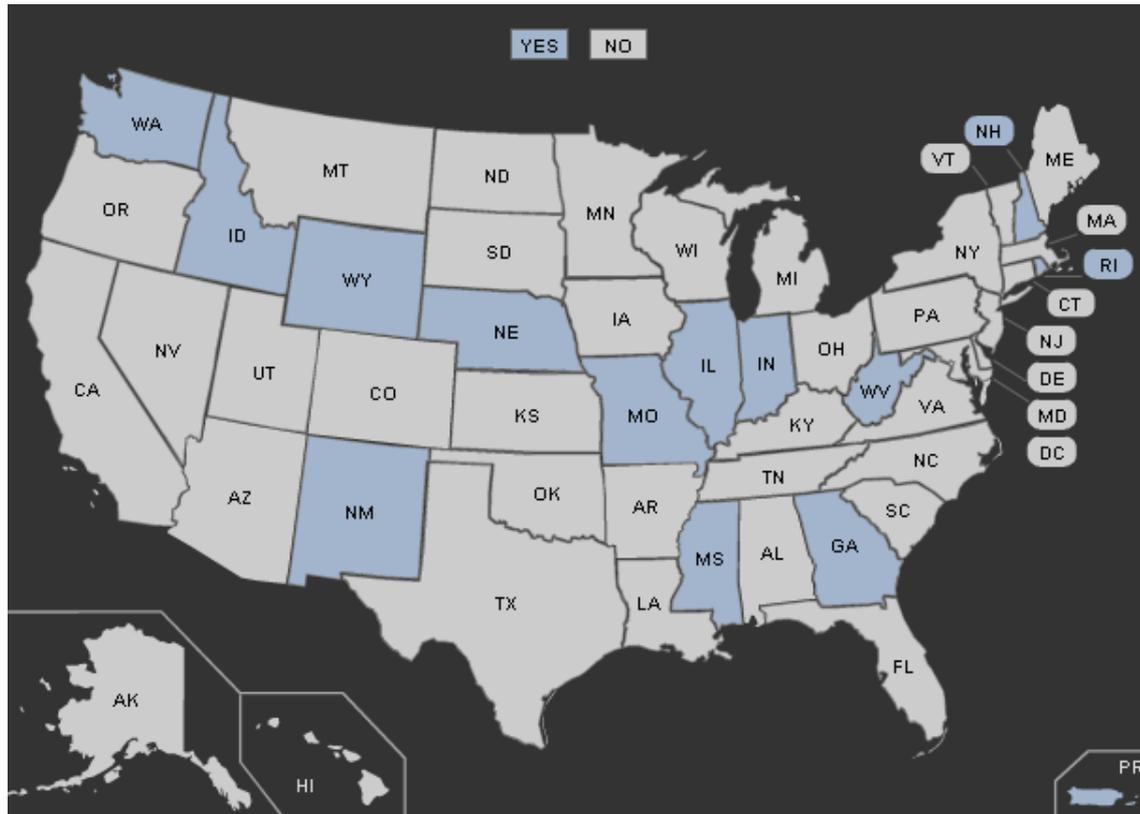
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States that Require Excavator Reporting to One-Call Center



PHMSA reports that 13 states currently require one-call notification following an underground facility damage





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Definition of an Operator (MS216D.01 Subd 9)

Issue:

Whether the current definition of an Operator is adequate to address the operator or owner of an abandoned facility.

Discussion:

“**Operator**” means a person who owns or operates an underground facility...

Yet,

“**Underground Facility**” means an underground line, facility, system, and its appurtenances used to produce, store, convey, transmit, or distribute communications, data, electricity, power, heat, gas, oil, petroleum products, water including storm water, steam, sewage, and other similar substances.



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Definition of an Operator (MS216D.01 Subd 9)

Proposed amended Language:

Subdivision 9 - Operator.

"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.



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Utility Quality Level (MS216D.04 Subd 1(A))

Issue:

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.

Purpose:

To determine if an appropriate utility quality level is required in MS216D.



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Utility Quality Level (MS216D.04 Subd 1(A))

Subdivision 1a - Plans for excavation.

(a) Any person, prior to soliciting bids or entering into a contract for excavation, shall provide a proposed notice to the notification center to obtain from the affected operators of underground facilities the type, size, and general location of underground facilities. Affected operators shall provide the information within 15 working days. An operator who provides information to a person who is not a unit of government may indicate any portions of the information which are proprietary and may require the person to provide appropriate confidentiality protection. The information obtained from affected operators must be submitted on the final drawing used for the bid or contract and **must depict the utility quality level of that information**. This information must be updated not more than 90 days before completion of the final drawing used for the bid or contract.



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Utility Quality Level (MS216D.04 Subd 1(A))

Subdivision. 12 - Utility quality level.

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



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Abandoned and Out-Of-Service Facilities (MR7560.0125 Subp 1)

Issue:

Whether the current excavation laws in MN regarding abandoned and out-of-service facilities are effective.

Discussion :

- 39 States - Do not require or do not address locating abandoned facilities in excavation laws.
- 11 States - require locating abandoned underground facilities. Several of these states allow various alternatives to physical marking.

A couple states are more restrictive than MN:

- Oregon - explicitly requires an operator to locate abandoned lines.
- Idaho - takes the approach that all facilities must be located, and if an unmarked active or abandoned facility is identified, the excavator will have a compensation right for standby costs.





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Abandoned and out-of-service facilities (MR7560.0125 Subp 1)

The current and proposed language reads as follows:

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.*



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Operator Duties in a No Conflict Situation (MR7560.0250 Subp 2)

Issue:

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.



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White Markings (MS216D.05)

Issue:

To determine whether “Practical” needs to be further defined in MS216D

Current Language:

An excavator shall:

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



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White Markings (MS216D.05)

Definition of Practical

- capable of being put to use.

Source: <http://www.merriam-webster.com/dictionary/practical>





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Facility Owner Marking Requirements (MR7560.0250)

Issue:

MNOPS is requesting comment regarding facility owner marking requirements.

Proposal:

MNOPS proposes amending the current language as follows:

*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.*

** Common Ground Alliance (CGA) Best practice. (Source CGA Best Practices 9.0)*

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



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Information Required on a Ticket (MS216D.04 Subd 1(b))

Issue:

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

Discussion:

In order to allow the most efficient use of the one-call center, does allowing the one-call representative to ask questions based on the type of excavation improve the process?



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Meets (MR7560.0350 Subp 3)

Issue:

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.



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Meets (MR7560.0350 Subp 3)

- Meets can be effectively used when an excavation is complex in nature and not easily understood through a routine ticket.
- An **excavator** is required to wait the 48 hrs. until the meet and an additional 24 hrs. after the meet prior to excavation.
- Following the meet, an **operator** is required to locate proposed excavations that are complex in nature in less time (24 hrs) than a standard ticket (48 hrs).



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Duty to Install Locating Wire (MR7560.0150 Subp 2)

Issue:

MNOPS is requesting comment regarding the duty to install locating wire.

Proposal:

MNOPS proposes amending the current language as follows:

After ~~December 31, 2005~~ January 1, 2014, an operator shall install a locating wire or have an equally effective means of ~~marking~~ making each nonconductive underground facility electromagnetically locatable within a public right-of-way installed after that date. This requirement does not apply when making minor repairs to an existing nonconductive facility. As applied to this chapter, "minor repairs" means repairs to or partial replacement of portions of existing service laterals located within a public right-of-way for purposes of routine maintenance and upkeep.



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Civil Penalties (MS216D.08 Subd 1)

Issue:

Whether increasing the civil penalty limit in MS216D is appropriate.

Purpose:

To encourage excavators and facility owner compliance with **MS216D**.

Example:

Discourages an excavator from negligently damaging underground facilities to gain an economical advantage.



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STATE	Civil Penalties
Minnesota	1,000 per day per violation
North Dakota	Reimbursement for Damages
South Dakota	1,000 / 5,000 for subsequent within 12 months
Iowa	10,000 per violation / 500,000 total (gas / HL) 1,000 per violation / 20,000 total (other facilities)
Wisconsin	2,000 for each offense, each day
Utah	500 for failure to provide notice 5,000 per violation / 100,000 total (all others)
California	10,000 (negligent) 50,000 (willful)
Oregon	1,000 first, 5,000 subsequent (un intentional) 5,000 first, 10,000 subsequent (intentional)
New York	1000 (first) 7000 (same excavation within two month period)
Arizona	5000
Missouri	10,000 each day each violation, up to 500,000
Louisiana	250 (first) 500 (second) 1000 (third) 25,000 (fourth)



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Civil Penalties (MS216D.0800 Subd 1)

Proposed amended 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.





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Civil Penalties (MR 7560.0800 Subp 4)

Issue:

MNOPS is requesting comment regarding whether it is appropriate to increase the civil penalty limit for **gas and hazardous liquid pipeline operators** to be substantially the same as the pipeline safety laws as required by 49 CFR part 198.

Purpose:

To assure the laws in Minnesota are substantially the same as the pipeline safety laws as required by 49 CFR part 198.



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Civil Penalties (MR 7560.0800 Subp 4)

49 CFR Part 198.37 State one-call damage prevention program

A State must adopt a one-call damage prevention program that requires each of the following at a minimum:

(a-g).....

(h) Operators of underground pipeline facilities (other than operators of interstate transmission facilities as defined in the pipeline safety laws (49 U.S.C. 60101 et seq.), and interstate pipelines as defined in §195.2 of this chapter), excavators and persons who operate one-call notification systems who violate the applicable requirements of this subpart must be subject to civil penalties and injunctive relief that are substantially the same as are provided under the pipeline safety laws (49 U.S.C. 60101 et seq.).





Civil Penalties (MR 7560.0800 Subp 4)

MN – MR7560.0800 Subp. 4(C)

Penalties imposed against an operator who engages in the transportation of gas or hazardous liquids or who owns or operates a gas or hazardous liquid pipeline facility must not exceed \$10,000 for each violation for each day that the violation persists, except that the maximum civil penalty must not exceed \$500,000 for a related series of violations.

Pipeline Safety law 49 USC 60122

On January 3, 2012 the President signed the Pipeline Safety, Regulatory Certainty, and job creation act of 2011. The law makes the following changes with respect to civil penalties of a pipeline operator:

- (a) GENERAL PENALTIES; PENALTY CONSIDERATIONS.—Section 60122 is amended—
- (1) in subsection (a)(1)—
 - (A) in the first sentence by striking “\$100,000” and inserting “\$200,000”; and
 - (B) in the last sentence by striking “\$1,000,000” and inserting “\$2,000,000”; ...

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Civil Penalties (MR 7560.0800 Subp 4)

Proposed amended 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 \$~~1~~200,000 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.



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Private Facilities (MR7560.0375)

Issue:

Whether the current laws regarding private facilities, specifically sewer lateral marking and farm tap marking is adequate. The current language is as follows:

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.





Mandatory DIRT Reporting

DIRT – Damage Information Reporting Tool

Issue:

Whether Minnesota should have mandatory DIRT reporting.

Purpose:

To assure that Minnesota is contributing to the national damage prevention effort.

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Mandatory DIRT Reporting

- DIRT reports summarize collected information for use by members and interested parties.
- CGA reports increasing participation each year with almost 63% of estimated damages being submitted into DIRT for 2008.
- Kansas has mandatory reporting to DIRT for operators who receive 2000 or more locate tickets per year. Connecticut and Maine have mandatory reporting to a state entity.



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Feedback & Comments Requested

- Your feedback and comments are very important!
- Please have a representative of your organization complete our survey at:

<https://www.surveymonkey.com/s/MS216D>

- Deadline is August 24, 2012





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MINNESOTA
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MS216D Meeting

THANK YOU!

PIPELINE
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