

ISSUE SUMMARY – MS216D MEETING

On August 8, 2012 MNOPS hosted a meeting to discuss possible changes to MS 216D.

Information from this meeting can be found at:

<https://dps.mn.gov/divisions/ops/forms-documents/Documents/2012%20MS216D%20Review%20Meeting.pdf>

After this meeting, an online survey was provided to solicit input from interested stakeholders.

Results from this survey can be found at:

<https://dps.mn.gov/divisions/ops/forms-documents/Documents/2012%20MS216D%20Meeting%20Survey%20Results.pdf>

Several stakeholders submitted written comments with the survey, and/or to MNOPS directly.

MNOPS has reviewed these comments, and as a result some of the issues have been dropped from consideration at this time. These include issues that were either best left “as is”, lacked stakeholder support to change, are being addressed in other venues, or for other reasons it does not appear to be desirable to attempt to address in the near term. Survey results, survey comments and other written comments submitted for the remaining open issues have been compiled and are listed below. The listing includes those comments addressing the specific issues selected for further consideration. Comments addressing dropped issues or those concerning other issues that were not specifically being pursued are not reproduced here. Comments have been redacted to remove the name of the submitter if it was included within the text of the comment.

In the near future MNOPS will provide information on a follow up meeting to be held in the early part of 2013. Future correspondence relating to the follow up meeting will only be through a dedicated MS216D mailing list. Previously an e-mail was sent indicating the survey results from the MS216D were available on our website, if you did not receive that e-mail you are likely not on the

MS216D mailing list. If you would like to be added to the MS216D mailing list, please let us know by sending an e-mail to jeff.murray@state.mn.us and you will be added.

ISSUES NOT CONSIDERED FOR STATUTORY CHANGE AT THIS TIME

The following issues are being dropped from immediate consideration.

Mandatory Damage Reporting: MNOPS Comments- At this time there was not enough of a consensus on this issue to move forward, as 53% of the responses did not support mandatory reporting. Currently the Office encourages the use of voluntary damage reporting. Many comments indicated that by making this a mandatory requirement, it could lead to an increase in the number of unreported damages.

Utility Quality Level: MNOPS Comments- 82.4% of the respondents indicated that the existing language is sufficient or that Utility Quality Level should not be addressed at all. For this reason, this issue does not appear to warrant further actions with regards to a statute change at this time.

Operator Duties in a no Conflict Situation: MNOPS Comments- Actions towards addressing this issue have been taken by the One Call Center. If additional information is desired regarding the actions Gopher State One Call has taken, contact Mark Palma at mpalma@hinshawlaw.com.

White Markings: MNOPS Comments- Less than 1/3 of the survey respondents felt that the current white marking language needs to be better defined in statute. Many respondents suggested that this issue would be more effectively addressed through continued education. At this time no further action is warranted.

Information Required on a Ticket: MNOPS Comments- Many of the survey responses indicated that a criteria or process needs to be developed in such a way to assure that all necessary information is gathered when an excavator calls in a ticket. MNOPS will continue to work on developing this process.

Meets: MNOPS Comments- This issue could be further developed. Actions towards addressing this issue in part are being considered at the GSOC operations committee level. If additional information is desired on the actions the Gopher State One Call Operations Committee has taken, contact Mark Palma at mpalma@hinshawlaw.com.

Private Facilities: MNOPS Comments- 79.4% of the survey respondents indicated that this issue is either adequate or needs to be further developed. This issue does not warrant a statutory change at this time.

Mandatory DIRT Reporting: MNOPS Comments- At this time there is not enough of a consensus on this issue to move forward. Currently the Office encourages the use of voluntary damage reporting. Many comments indicated that by making this a mandatory requirement, it could lead to an increase in the number of unreported damages.

ISSUES PROPOSED FOR FURTHER CONSIDERATION

ISSUE: Definition of Excavation

MNOPS COMMENTS: Most of the comments at the meeting felt that this approach was good but that 12 inches was too shallow. MNOPS is proposing 18 inches (to align better with the other exceptions dealing with depth). MNOPS will seek additional comment at upcoming meeting.

ORIGINAL 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.

UPDATED 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 **18** 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.

SURVEY RESULTS:

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%

STAKEHOLDER SURVEY COMMENTS:

Comment 1: recommend further defining "excavation" and "non-mechanized tools".

Comment 2: As was commented in the meeting, there appears to be a bigger issue with damage caused by hand tools where the excavator DID have a locate ticket than damages caused by hand tools where the excavator did not have a locate ticket (14.6% versus 8.7%). There's clearly an existing issue with hand digging following a locate request. Before adding more participants to a system that already has a problem, that issue should be investigated (perhaps by a subcommittee) to determine if it's being caused by poor marking, poor digging practices, or something else, and an appropriate response should be taken. The rule shouldn't be expanded to require a ticket for hand digging until that issue has been fixed and the statistics show a reduction in damages caused by hand tools where the excavator had a ticket. Specifically regarding the proposed language: strike "non-mechanized" from the proposed new language in MS216D.01 Subdivision 5 item 8, or change it to "non-motorized" or something similar. If "non-mechanized" stays, it could introduce interpretations that are counter to the intent of the proposed language (e.g. a shovel could be considered "mechanized" because it's a lever, and therefore a simple machine which provides a mechanical advantage).

Comment 3: concern about opening up the law

Comment 4: good to see vacuum excavation as exception

Comment 5: Enforcement of this will be very difficult and must be considered prior to any rule change. Support training of hand digging

Comment 6: Hand digging is a basic fundamental freedom that should not be governed. The damage prevent efforts will be successful when 100% of all damages are caused by hand digging. The survey does not rate the level of do not support as in slightly or strongly do not support. This issue is a strongly do not support!

Comment 7: Good effort to create a starting point for discussion.

Comment 8: By changing the language to include hand tools/shovels you will create a ton and i mean a ton more tickets to have located when we are already short staffed as it is (especially the phone and natural gas folks) plus how else are these excavators supposed to excavate around our pipes, I think it would be a better addition to the law to make it available somewhere in the language that a representative from the operating company be on site to witness the crossings if available. Almost 100% of pipeline damage is caused to service drops , cable TV , fiber and phone lines all of which do not ever have representatives on site when being crossed or any excavating is going on around them, they mark it and leave that's it , and there my friends is the problem in a nut shell.

STAKEHOLDER WRITTEN COMMENTS:

Private Organization No. 1:

Definition of "Excavation" – **** strongly supports the Gopher State One Call system and urges member companies to comply with GSOC rules. We have no sympathy for **** members who choose not to use the system. We have been concerned about the proposed inclusion of hand tools in the definition of excavation in MS216D. However, our concern was mitigated by the proposed wording in PowerPoint slide #12 of the following two new exclusions from the definition of excavation:

(7) The use of non-mechanized tools or equipment unless it disturbs the soil to a depth of 12" or more, and (9) an excavator using non-mechanized hand tools or equipment within two feet on either side of the 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 that all reasonable precaution has been taken to protect the underground facilities.

Pipeline Utility Operator No. 1:

Although we understand MnOPS's intent to improve safety by eliminating many of the current hand tool exclusions, we feel that both manpower and financial resources can be better utilized by placing the emphasis on additional safety education activities focused on the contractor I excavator and general public stakeholder groups who use hand tools. Eliminating the current exclusions will cause facility operators to incur additional financial and workload burdens from additional locate requests with limited improvement in overall

safety goals. In addition we feel that this change will not cause a significant increase in homeowner participation in the one call process, which is one of the primary stakeholder groups that would be affected by these proposed changes.

Pipeline Utility Operator No. 2:

Adopt the North Dakota one-call excavation definition to clarify:

“Excavation” means any operation in which earth, rock, or other materials in or below the ground is moved or otherwise displaced by means of hand or power tools, power equipment, or explosives and includes grading, trenching, digging, ditching, drilling, auguring, tunneling, boring, scraping, and cable or pipe plowing and driving. The term does not include:

- a. Opening a grave in a cemetery.
- b. Plowing, cultivating, planting, harvesting, and similar operations in connection with agricultural activities, unless any of these activities disturbs the soil to a depth of eighteen inches [45.72 centimeters] or more.
- c. Gardening and landscaping unless it disturbs the soil to a depth of twelve inches [30.48 centimeters] or more.
- d. Normal maintenance of roads and streets if the maintenance does not change the original grade and does not involve the road ditch.
- e. Normal repair and maintenance of track and track bed by a railroad on its own right-of-way.

Pipeline Utility Operator No. 3:

***** doesn't object to these changes; however a homeowner exception may also be needed to acknowledge the reality that homeowners will continue to use hand tools for landscaping, gardening and other routine household activity.

Individual No. 1:

Currently, when digging under 18" or driving stakes with hand tools, a person is not required to call into Gopher State One Call. As the slides show, there is a considerable amount of damages with hand tools. Presently, some contractors are hiding behind the hand dig exemption, driving stakes (concrete form pins, commercial tent stakes), and guy anchors (hand cranked in) which have caused a lot of damages due to no required markings. The goal is to help reduce the amount of damages and give facility operators a method to go after contractors who damage their facilities while using non-powered tools on excavations without facility markings. Very few of these cases have been life threatening, but could endanger the hand excavator himself (pounding a steel form pin into an electric line). Still, there is a few hand dug damages that pose a serious threat to public safety. The proposed language for changing the definition of excavation seems to be fairly good. It allows hand digging up to 12" deep without marking. I think this is important because some low volt wire and private communications lines to homes or buildings only need to be that deep. There are some exemptions as noted in the existing and proposed language.

Electric Utility Operator No. 1:

Including hand digging without very strong exemptions to exclude common landscaping, gardening, and planting would be a mistake. If people complied, the system would be overwhelmed in terms of GSOC workload and locating requests. More realistically, people would see the folly in calling in for work in a flower bed or garden and would simply disregard the law. We have worked hard as an industry to build credibility and engage the homeowners in the One Call/One Click process. This type of action would hurt our credibility and could reduce the homeowner compliance that we have been able to achieve to this point. If hand digging is included, an 18" exemption would line up with the current exemptions for mechanized activity cited in MS216D.01 subd 5 – parts 4 and 6, and would still include the 12" exemption for gardening in subd 5 part 5. The 18" exemption would eliminate most common yard and garden activities, but would require that individuals performing activities that penetrate the earth greater than 18" (ground rods, stakes, anchors) call the center and get a ticket.

Private Organization No. 3:

The proposed changes would not be harmful and could be helpful. It would be important to include operators' use of hand tools for locating, excavators' use of hand tools within two feet of a facility and careful vacuum excavation, as the suggested language proposes.

Governmental Organization No. 1

Currently, when digging under 18" or driving stakes with hand tools, a person is not required to call into Gopher State One Call. As the slides show, there is a considerable amount of damages with hand tools. Presently, some contractors are hiding behind the hand dig exemption, driving stakes (concrete form pins, commercial tent stakes), and guy anchors (hand cranked in) which have caused a lot of damages due to no required markings. The goal is to help reduce the amount of damages and give facility operators a method to go after contractors who damage their facilities while using non-powered tools on excavations without facility markings. Very few of these cases have been life threatening, but could endanger the hand excavator himself (pounding a steel form pin into an electric line). Still, there is a few hand dug damages that pose a serious threat to public safety. **The proposed language for changing the definition of excavation seems to be fairly good. It allows hand digging up to 12" deep without marking. I think this is important because some low volt wire and private communications lines to homes or buildings only need to be that deep. There are some exemptions as noted in the existing and proposed language.**

ISSUE: MR7560.0325 Subp 2.

MNOPS COMMENTS: This issue was not included in the survey. The written comments and comments at the meeting indicated that the wording needs to be revised to assure that only the operator of a facility that is damaged can excavate prior to the facilities at the site being marked.

ORIGINAL PROPOSED LANGUAGE:

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.

UPDATED PROPOSED LANGUAGE:

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

STAKEHOLDER WRITTEN COMMENTS:

Pipeline Utility Operator No. 3:

**** does not support this change for two reasons. First, the provision would continue to grant an excavator the right to perform additional excavation in response to an emergency. As an operator, we don't want an excavator performing additional excavation, possibly unsupervised or without knowledge of the location of other underground facilities, to respond to an emergency because it increases the risk of greater damage to facilities and could impede, rather than improve, the incident response. Second, the use of the word "any" is overly broad and creates the possibility that an additional excavation could be performed irrespective of the amount of gas or liquid released.

At the same time, as an operator responding to an emergency, we do want the ability to excavate to address the emergency condition without waiting for other operators

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

Governmental Organization No. 1

The proposed change is to expand the definition to include the escape of flammable or toxic or corrosive liquids. *But the concern I have, if they excavate without facility markings, it could create a bigger problem if something else is cut in the process and even add to the danger. I believe the facility operator with the damage, needs to make the area safe by whatever means and wait till facilities are marked then excavate. Only in a dire emergency, should a blind excavation be attempted.*

ISSUE: Review of Current Exemptions

MNOPS COMMENTS: Comments indicate MNOPS should proceed with the exemptions. MNOPS will be requesting comment at a future meeting on whether or not a sub-committee is appropriate on item #3.

ORIGINALLY PROPOSED LANGUAGE (NO ADDITIONAL CHANGES PROPOSED):

- (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.~~

SURVEY RESULTS:

Question 6: Review of Current Exemptions - Indicate the choice that best represents the organization you represent.	
Answer Options	Response Percent
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%

STAKEHOLDER SURVEY COMMENTS:

Comment 1: Item 6 (4) Should specify agricultural operations

Comment 2: would like to make mill & overlay's be required to call in tickets to protect structures coming to the surface ie. water gate boxes and man holes

Comment 3: I do not like item 7 in the language. No matter the depth they should have a ticket.

Comment 4: Remove shelterbelts it has no purpose.

STAKEHOLDER WRITTEN COMMENTS:

Private Organization No. 2:

Minn. Stat. § 2160.01 subd. 5. The testimony suggests that the term "original grade" as used in subdivision 5 has been the source of some ambiguity in determining exemptions. It seems apparent that "original grade" in this context means "the grade existing at the time the work commences," rather than an original grade at the time of the first project, that may have been changed by subsequent projects. Striking "original" and adding after "grade" "existing at the time the subject work commences ... " would clear that up. That language eliminates an argument over which "original grade" is intended.

Pipeline Utility Operator No. 1:

The current exemptions are appropriate and should not be removed from state statute. There is little concrete data that would support that removing the current exemptions would improve safety. If these exemptions were removed, we believe that it would result in a significant increase in homeowner non-compliance.

Pipeline Utility Operator No. 2:

MNOPS is requesting comment regarding whether or not the current exemptions to “excavation” are appropriate. The current exemptions are as follows:

(1) the extraction of minerals; (On first request one-call needs to be made so a location can be marked to ensure mineral/mining activities are not interfering with pipeline/easement. Gravel pits are becoming an issue to pipelines. Additionally, even if marked, and then Okay'd by utility/pipeline for a mining activity for an extended period of time by pit owner, if the scope of work changes another one-call should be made – similar to the comment below for roads – “does not change the original.....)

(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; (I caution the phrase and similar operations in blue above. The 18 inch exemption becomes sketchy as well due to the following factors. To a farmer these are all farming related activities. That leaves this wide open to their interpretation of “similar operations” – farmers use this interpretation for “ditching”, and for “removal of cover and or topsoil” which is not acceptable on a pipeline/easement. This area should be clarified to emphasize that it is not acceptable to remove soil or dirt when doing any farming related activity over a pipeline. There may be exemptions to one-call, but where existing easements rights exist for utilities, it needs to be clear to landowners that without prior notification to the utilities they cannot remove dirt/cover over a pipeline. They need to understand that removal of dirt, erosion, etc. is leading to lack of cover over pipelines and will lead to a much higher risk of damage over time. We have found out that in certain areas there has been a few inches of removal over 4 or 5 year periods leading to depth of cover issues over time.

(5) gardening unless it disturbs the soil to a depth of 12 inches or more; or (ok)

(6) planting of windbreaks, shelterbelts, and tree plantations, unless any of these activities disturbs the soil to a depth of 18 inches or more. (Why would this be more than the 12 inches in #5 above? You can't garden more than 12 but can plant a tree to 17 inches?) This number should be the same as #5 above. Additionally: Our understanding is that after the recent face to face meeting held by MNOPS that #6 above was removed altogether, or is being proposed to be removed. If this is the case and the thinking is that #5 will cover it all if the exemption depth is to be 12 inches for all, the regulations around farming/plowing/planting exemptions needs to be very clear. Farmers need to be fully aware of what exactly constitutes farming activities, and the difference between farming and ditching and soil removal.

PHMSA Notice of Proposed Rule Making (Published April 2, 2012) indicates “Does the state limit exemptions for excavators from its excavation damage prevention law? A state must provide PHMSA a written justification for any exemptions for excavators from state damage prevention requirements. PHMSA will make the written justifications available to the public.

See above regarding current excavation definition, however, if not adjusted comments are these: See comments behind current exemption verbiage in red. Gravel pits, removal of cover by farmers, and ditching are becoming problematic issues for the pipeline industry. There needs to be clarity around the fact that removal of topsoil over a pipeline/easement is not an exemption/farming activity.

Pipeline Utility Operator No. 3:

***** has not had frequent damage caused by any of the exempted activities. We would support including pot-holing as an exempt activity. We would not oppose deleting the exemption for windbreaks.

Individual No. 1:

Taking away the exemption for planting windbreaks, shelterbelts, etc.- shouldn't be an issue because the number 4 exemption seems to apply to this. I do have some concern over number 3, "Normal road maintenance that doesn't change the grade". There are times on mill and overlay projects where Gopher State One Call is not called. Unexpectedly, some water and gas valve box covers, and some manhole covers have been paved over and could be in danger of being damaged by the milling. It's important that City and utility companies get project plan sheets or have the Gopher One call, so these facilities are reviewed and marked. Full reclaim projects should always involve a Gopher One Call. These are considered a grade change. You never know what might be just under the pavement.

Private Organization No. 3:

The existing exemptions are useful and do not create problems. If MNOPS finds that it should justify the current exemptions to PHMSA, it should note that the state finds the exempted activities pose a minimal risk for underground facility damage and thus an unjustifiable mandate in terms of expense to operators who would otherwise be required to conduct thousands of unnecessary locates. Alternatively, a provision could be added to the subdivision that would rescind any exemption in instances where a reasonable person would suspect the presence of underground facilities.

Governmental Organization No. 1

Taking away the exemption for planting windbreaks, shelterbelts, etc.- shouldn't be an issue because the number 4 exemption seems to apply to this. I do have some concern over number 3, "Normal road maintenance that doesn't change the grade". There are times on mill and overlay projects where Gopher State One Call is not called. Unexpectedly, some water and gas valve box covers, and some manhole covers have been paved over and could be in danger of being damaged by the milling. It's important that City and utility companies get project plan sheets or have the Gopher One call, so these facilities are reviewed and marked. Full reclaim projects should always involve a Gopher One Call. These are considered a grade change. You never know what might be just under the pavement.

ISSUE: DEFINITION OF OPERATOR

MNOPS COMMENTS: 71.4% of the respondents either agreed or partially agreed with the proposed statute language. Comments suggest this issue should be further considered.

ORIGINALLY 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.

UPDATED PROPOSED LANGUAGE:

"Operator" means a person who owns or operates an underground facility or at one time owned or operated the subject facility and did not transfer title to or operation of the facility to another person. 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.

SURVEY RESULTS:

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%

STAKEHOLDER SURVEY COMMENTS:

Comment 1: Since the proposed new definition adds "abandoned facilities", comments made regarding item 10 below should be considered as part of this proposed change.

Comment 2: To difficult to enforce because of the definition of abandon which means no longer owns it.

Comment 3: What have been the issues with abandoned facilities?

STAKEHOLDER WRITTEN COMMENTS:

Private Organization No. 2:

Minn. Stat. § 216D.01 subd. 9. Operator. The proposed addition of "or abandoned facility" may not broaden the definition of operator as much as the OPS intends. First, by definition the operator no longer "operates" an abandoned facility so the affected utility could argue it is never an "operator" of an abandoned facility. This leaves the operator who "owns" the abandoned facility. Again, however, the most common definition of abandoned property is the relinquishment of all right, title and interest to the property. So the operator could argue that it no longer owns the abandoned facility either, because the operator has abandoned it. I realize that "abandon" in this context may not mean relinquishment of title but only discontinuance of use for facilities operation. Nevertheless, the argument exists and, if successful, even the inclusion of "or abandoned facility" as worded may not broaden the provision as intended.

Though the following language would not cover all situations, it would tie the operator to more of its abandoned facilities. Alternative language could read:

"Operator means a person who owns or operates an underground facility or at one time owned or operated the subject facility and did not transfer title to or operation of the facility to another person."

The latter clause would cover those operators who owned or operated the facility at one time and truly abandoned it rather than having transferred it to another utility, which then abandoned it.

Pipeline Utility Operator No. 1:

****is taking comprehensive steps to ensure that abandoned pipelines are properly identified on our mapping system in order to aid locaters and the excavator community to determine the location of our in -service pipelines. There are many below grade abandoned pipelines that because of past acceptable practices that were appropriate at that time, are not identified on any mapping system. We do make all efforts to aid excavators with any and all data requested, and make every attempt to ensure that all facilities that are abandoned today, are identified on our mapping system to aid the excavator and locaters of tomorrow. If an operator is out of business or did not track past abandonments, no change in the statute will correct that. There are already requirements

in place to identify locations of currently abandoned facilities, so ***does not feel that there is any advantage to making changes to the definition of an operator.

Pipeline Utility Operator No. 2:

Sure, it would be good to make it more specific/clear.

Pipeline Utility Operator No. 3:

We have no objection to clarifying that an operator who abandons facilities and remains in business retains ownership of those facilities. However, the proposed language only says that an owner of abandoned facilities is an Operator, but it does not resolve the issue of when ownership ceases. For example, if an Operator ceases operations or goes out of business then it's not clear who owns the abandoned facilities. It seems at least impractical to assert the dissolved organization remains an owner and thereby an Operator. We don't think the proposed language addresses MNOPS' concern as we understand it.

Individual No. 1:

Some utility companies refuse to locate abandoned facilities, claiming they are no longer responsible. Some facilities have been abandon and the owners have moved out of the area. They no longer receive notification from Gopher State One Call. Excavators encountering these abandoned facilities are experiencing difficulty determining ownership and if they are still live or not. I'm not sure if there needs to be any change because under 216D.04 sub.3- F., an operator is required to maintain maps of facilities that were abandon after 12/31/98 and that Mn Rules 7560.0125, talks about operator sharing the information, that would imply they are still owners or be responsible for those abandon facilities. Also in MR 7819.3300 Abandon Facilities, "right of way user shall remove them from the right of way if required in conjunction with other right of way repair, excavation or construction". Several of the large utility companies understand by "SONAR" that "if required" means they physically are in the way. So if an operator has an abandon facility (after 12/31/98) maintains mapping and then understands they would be responsible to remove an abandon facility "in the way", implies the operator still owns abandon facilities.

Private Organization No. 3:

The proposed change would not be harmful.

Governmental Organization No. 1

Some utility companies refuse to locate abandoned facilities, claiming they are no longer responsible. Some facilities have been abandoned and the owners have moved out of the area. They no longer receive notification from Gopher State One Call. Excavators encountering these abandoned facilities are experiencing difficulty determining ownership and if they are still live or not. I'm not sure if there needs to be any change because under 216D.04 sub.3- F., an operator is required to maintain maps of facilities that were abandon after 12/31 /98 and that Mn Rules 7560.0125, talks about operator sharing the information that would imply they are still owners or be responsible for those abandon facilities. Also in MR 7819.3300 Abandon Facilities, "right of way user shall remove them from the right of

way if required in conjunction with other right of way repair, excavation or construction". Several of the large utility companies understand by "SONAR" that "if required" means they physically are in the way. So if an operator has an abandon facility (after 12/31198) maintains mapping and then understands they would be responsible to remove an abandon facility "in the way", implies the operator still owns abandon facilities.

ISSUE: Abandoned and Out-of-Service Facilities

MNOPS COMMENTS: Approximately two-thirds of respondents either support or partially support the proposed change.

ORIGINAL 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.

UPDATED 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. providing copies of maps diagrams or records; or

E. directing the excavator to where readily available electronic versions of maps, diagrams or records are available

SURVEY RESULTS:

Question 10: Abandoned and Out-of-Service Facilities	
Answer Options	Response Percent
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%

STAKEHOLDER SURVEY COMMENTS:

Comment 1: As was commented in the meeting, consideration should be given to the treatment of abandoned facilities that are bought/sold as part of a larger asset purchase, or that are completely abandoned such that the former operator no longer has any dealings (and no personnel) in the city, county or state where the abandoned facility is located.

Comment 2: Inserted language does not provide value. You can communicate with the excavator in C. or provide maps in D. Locator could also indicate through GSOC system that maps are available.

Comment 3: Many utilities do not have abandon facilities on their print. In most cases they are not locatable. Compensating an excavator as Idaho is doing is unreasonable.

Comment 4: Support existing language

Change the wording to include D: contacting the excavator and offering to provide copies.....

STAKEHOLDER WRITTEN COMMENTS:

Pipeline Utility Operator No. 1:

The requirements concerning the proper mapping of abandoned facilities, which began in January 1, 2000 already provide for adequate information to protect excavators from injury or damage to other facilities. Operators generally will not receive removal information of currently abandoned facilities if they are removed by other entities not associated with the operator such as municipalities and homeowners. It is rare that a properly abandoned pipeline will result in an incident if the excavator is following all pipeline marking indicators and are following current one-call legislation. **** believes that it is more important for the excavator to concentrate on existing in-service facilities while excavating, and only use abandoned facilities as a guide to help them determine that they have found the correct in-service facilities. Excavators currently have the option of requesting copies of maps, diagrams or records, which they rarely take advantage of. **** would not be in favor of being required the contact the excavator with this information. Additionally **** is already providing indicators via tags on meter sets, which provide additional visual reference to excavators that abandoned facilities are in the area. Excavators should be educated to better utilize the positive response features within Gopher State One Call systems to ensure all operators have located their facilities before they begin excavation. Currently only two percent of locate tickets are being checked by excavators.

Pipeline Utility Operator No. 2:

This is pretty clear, but mandating the need to identify the specific type of facility is not a bad additional adder.

Pipeline Utility Operator No. 3:

We believe the current rules for abandoned facilities are effective. At the August 8, 2012 meeting with MNOPS, it appeared that by this proposal MNOPS was trying to make it clear that the operator should contact the excavator and provide maps, diagrams or records if an operator chose option D. ***** is not opposed to clarifying the operator should contact the excavator if it chooses option D, however the language should be revised to state the operator should offer, but not be required, to provide copies of maps, diagrams, or records. We propose the following: D. contacting the excavator and providing or offering to provide copies of maps, diagrams, or records.

Individual No. 1:

MnOPS would like more communication between utilities and excavators on abandoned facilities. That of course would apply to anyone who has abandon facilities.

Private Organization No. 3:

Given discussion at the August 8 meeting, a better approach may be:

D. providing copies of maps, diagrams, or records, or directing the excavator to an active site on the internet where electronic versions of such documents are available for adequate viewing.

Governmental Organization No. 1

MnOPS would like more communication between utilities and excavators on abandoned facilities. *That of course would apply to anyone who has abandon facilities.*

ISSUE: Facility Owner Marking Requirements

MNOPS COMMENTS: A significant number of survey respondents (71.5%) indicated they at least partially support this issue but feel comments need to be further considered or a sub-committee would be most beneficial. MNOPS will be requesting comment at a future meeting on whether or not a sub-committee is appropriate.

PROPOSED LANGUAGE (NO ADDITIONAL CHANGES PROPOSED):

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*

SURVEY RESULTS:

Question 13: Facility Owner Marking Requirements - Indicate the choice that best represents the organization you represent.	
Answer Options	Response Percent
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%

STAKEHOLDER SURVEY COMMENTS:

Comment 1: would like to see small service sizes (2" and smaller lumped together so we do not have to look up each service) Also may be difficult to mark transitions of pipe from one material to another.

Comment 2: Gas facilities will indicate size but electric and other types of facilities do not. If an excavator is not allowed to place power equipment within 24 inches of a facility...why would it matter to them that it is 2", 4", 8"?

Comment 3: A. OK with change B. Need to clarify when the description of facility material needs to be used. Is this for pipe? This is not a reasonable request for electric lines? C. Leave width greater than 8 inches. This would create a significant amount of work for minimal benefit if changed.

Comment 4: Flags should be required to have facility owner on them, along with contact information.

Comment 5: also maybe they should include words like warning petroleum or natural gas and make those is a different color lettering , so people know they are 2 different lines , I have been called to an area by an excavator saying they wanted to cross our gas line marked in yellow , ok I drive out some 60 miles get there and it's not our gas line but its a natural gas line also marked in yellow , so there definitely needs to be some better

defining between the two , and land owners get this confused all the time , they think all the yellow flags are one company , so yes this needs to be addressed for sure , along with better education of landowners , maybe we should get more involved with neighborhood nights out meetings ?

STAKEHOLDER WRITTEN COMMENTS:

Private Organization No. 2:

Minn. R. 7560.0125 subp 1. As pointed out at the hearing, the following clarification may be helpful: D. "contacting the excavator and notifying it of copies of maps, diagrams, or records in the possession or control of the operator, which the operator shall offer to provide upon excavator request."

This keeps the notice requirement of the existence of maps, etc. but places on the excavator the burden of requesting the materials. The current proposed language requires the operator to provide all such materials even if the excavator doesn't request them.

Pipeline Utility Operator No. 1:

**** believes that the current regulatory language in MR 7560.0250 is adequate to provide sufficient information to the excavator. It is possible that the size of facilities as well as the material type could vary within a specific locate area. In addition, past repairs may have been completed with a different type of material and is not specified on company documentation nor was there a requirement to do so at the time the repair was completed. **** believes that total compliance with current one-call regulatory requirements will provide the best potential for overall pipeline safety.

Pipeline Utility Operator No. 3:

We support adoption of the Common Ground Alliance best practices regarding marking facilities with name/logo, type, and, if 2" or over, the size. We also support clarification that such information may not be available or accurate for abandoned facilities.

Individual No. 1:

Describing what the facility is and what it's made of, sounds like a great idea. But does have some concerns. It could dramatically increase time marking facilities. Field staff would need to have good maps and records in their vehicles. There is a concern that if a facility type is misidentified and the excavator damages the good facility? Field staff would need to be more accurate on everything they do.

Electric Utility Operator No. 1:

Most of the discussion surrounding this issue refers to UG gas facilities and pipelines. The suggested changes may make sense with gas lines and pipelines but have little value for electrical facilities.

A. Name, abbreviation, or logo of the operator

In most of our area we are the only electrical provider due to our service territory boundaries. Adding the name of the facility owner provides little additional information

(since it is already on the GSOC ticket) but does result in significantly more paint on the ground.

B. Description of the facility material (STL, PLA, etc);

Our lines are either copper or aluminum, but from the outside they all look the same due to the insulation. Identifying the material would provide no value to anyone. In addition, it may not be advisable to identify where we have copper conductor 2 ft to 4 ft underground.

C. Width of the underground facility

Below are the widths (diameter) of typical electric cables. Displaying these numbers provides little value to excavators. Does the knowledge that the conductor they are looking for is 1.06" rather than 1.73" wide really make any difference in the manner in which they excavate or assist in the identification once it is exposed?

D. Number of underground facilities if greater than one.

It does make sense to identify 3 phase lines (3 conductors) as compared to single phase (1 conductor) lines.

Although reducing paint on the ground should not be our primary motivation, it should at least be part of the discussion. There seems to be growing concern from the public over the extensive marking that takes place on some projects or in some areas. If the additional marking adds to public safety and reduces damages, then go ahead with it. If not, the original intent of marking by color alone should remain.

Private Organization No. 3:

A. ... when more than one operator is listed on the notice ~~uses the same color markings;~~
Before requiring material type identification, as in "*B.," potential issues would need to be addressed, including excavators' duty of care, marking mistakes and damage liability.

Governmental Organization No. 1

B. Describing what the facility is and what it's made of, sounds like a great idea. **But does have some concerns. It could dramatically increase time marking facilities. Field staff would need to have good maps and records in their vehicles. There is a concern that if a facility type is misidentified and the excavator damages the good facility? Field staff would need to be more accurate on everything they do.**

ISSUE: Civil Penalties (regarding excavators)

MNOPS COMMENTS: Over 50% of the survey respondents indicated that they either support or partially support increasing civil penalties (regarding excavators). Increasing the civil penalties would allow MNOPS the flexibility to appropriately address repeat offenders that are negligently excavating to gain an economical advantage.

PROPOSED LANGUAGE (NO ADDITIONAL CHANGES PROPOSED):

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.

SURVEY RESULTS:

Question 16: Civil Penalties (regarding excavators) - Indicate the choice that best represents the organization you represent.	
Answer Options	Response Percent
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%

STAKEHOLDER SURVEY COMMENTS:

Comment 1: As mentioned in the meeting: rather than just assessing large fines to excavators who have multiple violations, good results can come from working with those excavators to improve their practices.

Comment 2: I assume that this question was suppose to be for "duty to install locating wire"

Comment 3: enforce current laws

Comment 4: These are maximums, we do not necessary have to have the same maximum penalty

Comment 5: increased fines per day is not going to day anything to ensure damage prevention and will likely set us back in the field

Comment 6: Why not leave the language as written and double the penalty to \$2000. From \$1000 to 10,000 is a ridiculous increase.

Comment 7: We support language currently used by California, with maximums used by Missouri.

Comment 8: rather than raise the fines , have it required that we as operator reps at least be given the opportunity to have to be on site for any work crossing our lines and that would alleviate the damages or risk to pipe lines and cables , plus why not try a more positive approach I was working with Dan Munthe formerly of MnOPS on this , my idea was a positive one , where you have certain written criteria or expectations of working with in your row and facilities , and you have a rating system , and you rate the excavator , then at the end of the season or beginning of the next season , at your damage prevention educational seminars , you present the excavator that you deem or rated as the safest or of best to work in your row with some type of reward , plaque, gift card something acknowledging them and have it presented at the meeting ,and maybe have something put in the damage prevention magazine and or mentioned in the CAER meetings , some type of positive reinforcement , to encourage others to follow suit . I have a few that I thoroughly trust around my pipe they do great work are safe, contact me with questions etc and mine would be MBC drainage out of Sauk Centre, MN, I remember years back I had a father and son electrical contractor , installing power to an irrigator , they did not call in a one call ticket as the landowner told them they didn't need to , and they were at that time new to all this , anyhow long story short they were digging and they hit are pipe, which was the only thing within 800 feet of where they were at in the middle of a farm field where they were told there was no utilities , anyhow they nicked our coating no major damage just we had to come out and recoat a small area , but the thing was they called us right away , not a day latter or a week later when they felt guilty but right away , he felt really bad , I talked with him about gopher state and he acknowledged it and called in a ticket and even waited an additional 48 hours before resuming his work there even though the land owner threatened to hire someone else to complete it asap , so he basically risked his income do what he felt was right , anyhow MNOPs was notified and this man received a warning and was fined , do I think he needed the fine , heck know , i think that the education he received and definitely acknowledged and took the appropriate action then some he got the message , no fine was necessary , and to this day some 15 years latter i have had no more trouble with this company and he calls in all his tickets , so for me a

more positive proactive method may be better ,and not always a fine or a higher fine just enforce the ones you have now

STAKEHOLDER WRITTEN COMMENTS:

Pipeline Utility Operator No. 1:

Although financial penalties can be an incentive toward regulatory compliance, ****believes that better education and utilization of the current penalty structure would be more beneficial in most situations. Excavators, who must report all damage to MnOPS and are subsequently financially penalized, may be demotivated to report many "minor" damages, which could result in substantial future pipeline incidents.

Pipeline Utility Operator No. 2:

Agree they could be raised a bit. The break and repair later vs. do it correct now theory is way too prevalent with some contractors due to the penalties being too low now. Outside of the \$ limits being raised there should be a "number of offense" criteria developed. Perhaps they could be elevated for every additional offense or based on "willful" vs. a "mistake". Higher fines would likely deter the smaller outfits that can't afford to break the rule or could put themselves in financial Jeopardy of going out of business. For larger operators there should be a criteria developed for steeper fines based on number of offenses. Once you hit a threshold of offenses committed there should be a very large fine, or somehow make it hard for them to continue doing business if doing over and over again.

The only possible drawback here is if the fines are raised too much, would it deter those who are currently self-reporting from reporting at all? It's a tough balance.

Pipeline Utility Operator No. 3:

This proposal does not apply to ***** as an operator or an excavator, however we could be affected by the impact of this change on excavators and therefore provide the following comment.

While increasing the amount of fines could be an incentive for some excavators or operators to comply with damage prevention rules and procedures, we are concerned it could also lead some excavators to not report damage that does not cause an immediate or significant leak. We'd like more information about MNOPS' current use of fines and their ability to collect fines that are levied. It's possible that increasing the effectiveness of the current fines could accomplish the goal of reducing damage. This could be a reasonable first step.

Private Organization No. 3:

MNOPS is considering whether to increase the civil penalty limit for excavators, as well as gas and hazardous liquid pipeline operators so that the penalties would be substantially the same as in 49 CFR Part 198, as required by federal law enacted in January, 2012. **** position is neutral.

ISSUE: Civil Penalties (regarding pipeline operators)

MNOPS COMMENTS: The Federal Code of Regulations require that Operators of underground pipeline facilities who violate the applicable requirements of the regulation must be subject to civil penalties and injunctive relief that are substantially the same as provided under the pipeline safety laws (49 U.S.C. 60101 et seq.).

PROPOSED LANGUAGE (NO ADDITIONAL CHANGES PROPOSED):

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.

SURVEY RESULTS:

Question 17: Civil Penalties (regarding pipeline operators) - Indicate the choice that best represents the organization you represent.	
Answer Options	Response Percent
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%

STAKEHOLDER SURVEY COMMENTS:

Comment 1: I believe that the penalties should be the same across the board. I do not support fining one industry more than another. Change existing law to increase penalties for individuals who continuously violate the law, not the industry they represent as a whole.

Comment 2: Would a locating contractor fall under the subsequent violations per day? The locating contractor may have a great damage record but perform 200,000 locates

annually. They could have a damage record of 1 damage per 10,000. This would mean annually they have 20 damages. Is the subsequent?

Comment 3: enforce current laws

Comment 4: Two reasons: conform with federal levels & large utilities are financially driven and may knowingly violate regs if the fine is not sufficient.

These are maximums, we do not necessary have to have the same maximum penalty

Comment 5: Use 192.614 if the \$1000 is not adequate. They should be no different in the 216D rule than anyone else.

Comment 6: I once had a landowner remove my row posts so he could farm the road ditch, I constantly had to replace them and meet with him and try to educate him about the markers to no avail, that was when I got MnOPS involved and he was appropriately fined and his actions ceased albeit he wasn't happy with me and felt that he could farm right up to the road way, so fines are important and in some instances work better than education alone, but do they need to be higher I just don't know at this time.

STAKEHOLDER WRITTEN COMMENTS:

Public Organization No. 1:

Civil Penalties – Neither of our **** representatives was able to stay for this portion of the 216D meeting, so I wanted to relay a continuing concern about the proposed increased penalties shown in your PowerPoint slide #39 of 48. In our phone conversation of August 6th, you indicated to me that the civil penalties proposed changes were aimed at pipeline operators, to increase compliance with 216D. Slides #40-43 address pipeline operators specifically, but slide #39 seems to take aim at non-pipeline excavators and operators through a ten-fold increase in daily penalties for subsequent violations. Since most **** excavator members are small businesses, the current \$1,000/day penalties are already huge incentives to comply with 216D. **** would be opposed to the proposed increase if it is in fact aimed at our excavators.

Pipeline Utility Operator No. 1:

Since the penalty limit for operators was substantially increased as a result of the Pipeline, Regulatory Certainty, and Job Creation Act of 2011, it is probably appropriate to modify state regulations to accurately reflect those changes.

Pipeline Utility Operator No. 2:

The civil penalty should depend on the non-compliance. Should “all utilities” be the same across the board vs. just the pipeline industry?

Pipeline Utility Operator No. 3:

At the August 8, 2012 meeting with MNOPS, it appeared MNOPS was requesting comments on what would be required to comply with 49 CFR part 198.37 (h) which states: "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.)."

***** notes the key phrase is "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.)" (emphasis added). A determination that the penalties are or are not substantially the same would require a comprehensive review of relevant federal laws and regulations and Minnesota statutes or rules. This review should include: who is subject to penalties, whether state laws or rules encompass more or less than federal laws or regulations, the considerations in determining the amount of a penalty, and the administrative or legal process for disputing penalties. ***** does not believe merely changing the current maximum penalty amounts in Minn. Stat. 299F.60 from \$100,000 to \$200,000 and from \$1,000,000 to \$2,000,000 is sufficient to make the penalties "substantially the same".

Individual No. 1:

MnOPS is looking to increase penalties to force 216D compliance and be more in line with other states.

Private Organization No. 3:

Here MNOPS is considering whether to increase the civil penalty limit for excavators, as well as gas and hazardous liquid pipeline operators so that the penalties would be substantially the same as in 49 CFR Part 198, as required by federal law enacted in January, 2012. ***** position is neutral.