

216D.01 DEFINITIONS.

Subd. 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) 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.
- (7) The use of non-mechanized hand tools or equipment unless it involves driving, twisting or like activities into the soil at any depth in a manner that is reasonably capable of damaging an underground facility;
- (8) An underground facility operator or representative using non-mechanized hand tools or equipment to locate the operator's underground facilities, provided 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 notice the requirement of section 216D.04, subdivision 1 has been generated and provided reasonable precaution has been taken to protect all underground facilities; or
- (10) Vacuum excavation provided reasonable precaution has been taken to protect the underground facilities.

Subd. 9 - Operator.

"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.

216D.04 EXCAVATION; LAND SURVEY.

Subd. 3 - Locating Underground Facility; Operator.

(d) Markers used to designate the approximate location of underground facilities must follow the current color code standard ~~referenced used~~ by the Common Ground Alliance American Public Works Association.

MR 7560.0125 ABANDONED AND OUT-OF-SERVICE FACILITIES

Subpart 1. Duty of Operators To Provide Readily Available Information.

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 ~~referenced used~~ by the Common Ground Alliance 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.

MR 7560.0325 EMERGENCY EXCAVATION NOTICE.

Subpart 2. Excavating Before Notice.

If an emergency is such that providing notice ~~or waiting for an 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 excavator operator of the facility, or its designated representative, may excavate without providing prior notice or waiting for ~~an operators of other underground facilities~~ to mark an underground facility. In this situation, the operator excavator 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 excavator operator from any responsibility for damage to an underground facility pursuant to Minnesota Statutes, section 216D.06.

MR 7560.0800 CIVIL PENALTIES.

Subpart 4. ~~Maximum penalties.~~

~~For the purposes of this part, penalties imposed under this part must not exceed the limits in items A to C.~~

~~A. Penalties imposed against excavators must not exceed \$1,000 for each violation per day of violation.~~

~~B. Penalties imposed against underground facility operators, other than an operator set forth in item C, must not exceed \$1,000 for each violation per day of violation.~~

~~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.~~

MR 7560.0400 CITATION.

Subpart 1. Notice of violation.

The office shall issue a warning letter or a notice of probable violation when the office has good cause to believe a violation of Minnesota Statutes, sections 216D.01 to 216D.09 or this chapter has occurred.

Subpart 2. Contents of notice of violation.

A warning letter or notice of probable violation must include:

- A. a statement of the statute or rule allegedly violated by the person and a description of the evidence on which the allegation is based;
- B. notice of response options available to the person cited;
- C. notice that the person has 30 days in which to respond;
- D. notice that failure to respond within 30 days precludes administrative review under this chapter; and
- E. if a civil penalty is proposed, the amount of the proposed civil penalty and the maximum civil penalty applicable under law.