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Office of Pipeline Safety

445 Minnesota Street, Suite 147, St. Paul, Minnesota 55101-5147
Phone: 651/201-7230 FAX: 651/296-9641 TTY: 651/282-6555
<http://ops.dps.mn.gov>

MNOPS Alert Notice – 03 – 2020

MS216D Related Compliance Information and Investigation / Enforcement Processes

Date: Dec. 1, 2020

Purpose:

The purpose of this Alert Notice is to provide information for excavators and utility operators regarding compliance with [Minnesota Statutes 216D](#) and [Minnesota Rules 7560](#). This notice also provides updated information regarding compliance investigation and enforcement.

Background:

Minnesota Statute 216D – Excavation Notice System and the regulations to ensure safety when excavation occurs around underground utilities (facilities). These regulations are vital to ensure worker/public safety as well as protecting underground utility infrastructure. The Minnesota Office of Pipeline Safety is responsible for regulatory oversight of these requirements. Safety concerns as well as industry compliance trends has prompted the need for this notice in the following areas:

For Excavators:

Guidance regarding the use of white markings:

[Minnesota Statute 216D.05\(2\)](#) requires that an excavator (as defined by statute) carry out the following:

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

[Minnesota Rule 7560.0350](#) requires that an excavator use white markings when requesting a meet:

Subpart 1. Excavator duties. When requesting a meet through the notification center, an excavator must provide at least one contact name and telephone number to assist in facilitating the meet. An excavator shall contact the notification center to cancel or reschedule the meet and the notification center shall relay this information to the affected operators. When a meet is requested, an excavator's notice must include the entire geographic area of the proposed excavation and the specific location of the meet. This part does not relieve an excavator from the duty to provide a precise geographic location of the proposed area of excavation, or to use white markings except where it can be shown that to do so is not practical.

The white markings provided by the excavator are required per state statute for normal and meet tickets. These markings aid to clearly define the excavation area for the utility (facility) operator that is required to mark the approximate location of underground facilities. This Office has found that, in a majority of instances, providing white markings for the proposed excavation areas is practical.

Use of white markings in the following areas have been deemed to be impractical:

1. Excavations to take place in or under a body of water. This may include excavations in or under a stream, river, pond or lake.

White markings must be provided prior to making the notification required under [Minnesota Statute 216D.04](#).

Guidance regarding precise marking instructions:

Excavators are required to provide the precise location of the proposed area of excavation (*marking instructions*) under [Minnesota Statute 216D.04 Subdivision 1\(b\)\(2\)](#). Excavators should avoid using “mark entire lot” instructions unless the work involves excavation throughout the entire lot. If work will be done on the entire lot, use white marks to indicate what the excavator views as the boundaries of the lot. Click [here](#) for an example.

Guidance regarding submittal of notification requests:

Excavators should submit batches of normal notification requests for work that can be completed within the standard 14-day life. Avoid submitting large batches of notifications that will require subsequent updates. Notifications should only be requested when there is an intent to excavate. Consider the use of “meet” notifications for large projects.

For Utility Operators:

Guidance regarding utility response to locate notice requests:

[Minnesota Statute 216D.04 Subd. 3](#) requires that the utility operator carry out the following:

a) Prior to the excavation start time on the notice, an operator shall locate and mark or otherwise provide the approximate horizontal location of the underground facilities of the operator and provide readily available information regarding the operator's abandoned and out-of-service underground facilities as shown on maps, drawings, diagrams, or other records used in the operator's normal course of business, without cost to the excavator....

(e) If the operator cannot complete marking of the excavation or boundary survey area before the excavation or boundary survey start time stated in the notice, the operator shall promptly contact the excavator or land surveyor.

The marking of underground facilities required in (a) must be provided prior to the start time on the notice unless the notice is for a meet under [Minnesota Rule 7560.0350](#).

The utility operator must contact the excavator if the markings cannot be provided prior to the start time on the notice. The utility operator should be prepared to demonstrate that this contact has been made.

For Excavators and Utility Operators:

Guidance regarding communication between involved parties:

Clear and open forms of communication are vital and encouraged as the involved parties work throughout the excavation process. This communication is in the form of markings instructions provided on the notification request, use of white markings, as well as the phone numbers provided by both the utility operator and excavator. The following considerations should be considered when providing phone contact information.

1. For the excavator, ensure that an adequate phone number is provided on the notification for an individual who will be working on the site and familiar with the project. This will allow utility (facility) operators to contact a person associated with the work.
2. For the utility (facility) operator, ensure up-to-date contact information is provided to Gopher State One Call (GSOC). Ensure that the phone numbers provided allow the excavator to directly easily contact appropriate individuals to address questions or concerns about locates.

Investigation of complaints:

The Minnesota Office of Pipeline Safety (MNOPS) strongly encourages communication between excavators and facility operators to resolve issues involving GSOC notifications. All MNOPS investigations of alleged violations involving GSOC notifications will review compliance and consider enforcement for all parties listed on the notification.

If adequate and timely information, including efforts to resolve the issue is not provided in the complaint, MNOPS will close the complaint without further action. MNOPS does not have authority to resolve civil related complaints or monetary disputes between parties.

Enforcement:

[Minnesota Statute 216D.08](#) and [Minnesota Rules 7560.0800](#) provide a regulatory structure for enforcement in follow up to a violation. A civil penalty may be imposed not to exceed \$1,000 for each violation per day of violation for excavators and utility (facility) operators (*with the exception of intrastate pipeline companies subject to an amount \$10,000 for each violation for each day the violation persists with a maximum of \$500,000*).

Minnesota Rule 7560.0800 provides assessment considerations that MNOPS shall consider when issuing a civil penalty. The assessment considerations are as follows:

- A. the nature, circumstances, and gravity of the violation;*
- B. the degree of the person's culpability;*
- C. the person's history of previous offenses;*
- D. the person's ability to pay;*
- E. good faith on the part of the person in attempting to remedy the cause of the violation;*
- F. the effect of the penalty on the person's ability to continue in business; and*
- G. past reports of damage to an underground facility by a person.*

[Minnesota Rule 7560.0500](#) provides response options to enforcement issued by MNOPS.

Please contact our office if you have any questions regarding this alert notice.

Office of Pipeline Safety

dps.mnops.response@state.mn.us

651-201-7230