

Chapter 8a Damage to Underground Utility Facilities

54-8a-2 Definitions.

As used in this chapter:

- (1) "Association" means two or more operators organized to receive notification of excavation activities in a specified area, as provided by Section 54-8a-9.
- (2) "Board" means the Underground Facilities Damage Dispute Board created in Section 54-8a-13.
- (3) "Emergency" means an occurrence or suspected natural gas leak necessitating immediate action to prevent or mitigate loss of, or damage to, life, health, property, or essential public services.
- (4) "Excavate" or "excavation" means an operation in which earth, rock, or other material on or below the ground is moved or displaced by tools, equipment, or explosives.
- (5) "Excavator" means any person or entity that excavates or conducts excavation activities.
- (6) "48 hours" means a 48-hour period occurring during business days which includes any day except Saturday, Sunday, or a legal holiday.
- (7) "Hand tool" means an implement:
 - (a) powered by hand; or
 - (b) designed to avoid damaging an underground facility, including a vacuum excavation tool and air knife.
- (8) "Location" means the site of a proposed area of excavation described:
 - (a)
 - (i) by street address, if available;
 - (ii) by the area at that street address to be excavated; and
 - (iii) as specified in Subsection 54-8a-4(3) or 54-8a-5(2)(b)(ii); or
 - (b) if there is no street address available, by the area of excavation using any available designations, including a nearby street or road, an intersection, GPS coordinates, or other generally accepted methods.
- (9) "Location request assignment" means a number assigned to a proposed excavation by an association or operator upon receiving notice of the proposed excavation from the excavator.
- (10)
 - (a) "Operator" means a person who owns, operates, or maintains an underground facility.
 - (b) "Operator" does not include an owner of real property where underground facilities are:
 - (i) located within:
 - (A) the owner's property; or
 - (B) a public street adjacent to the owner's property, a right-of-way adjacent to the owner's property, or a public utility easement adjacent to the owner's property;
 - (ii) used exclusively to furnish services to the owner's property; and
 - (iii) maintained under the operation and control of that owner.
- (11) "Person" includes:
 - (a) an individual, government entity, corporation, partnership, association, or company; and
 - (b) the trustee, receiver, assignee, and personal representative of a person listed in Subsection (11)(a).
- (12) "Sewer lateral cleanout" means a point of access where a sewer lateral can be serviced.
- (13) "24 hours" means a 24-hour period, excluding hours occurring during a Saturday, Sunday, or a legal holiday.

- (14) "Underground facility" means personal property that is buried or placed below ground level for use in the storage or conveyance of any of the following:
- (a) water;
 - (b) sewage, including sewer laterals;
 - (c) communications, including electronic, photonic, telephonic, or telegraphic communications;
 - (d) television, cable television, or other telecommunication signals, including transmission to subscribers of video or other programming;
 - (e) electric power;
 - (f) oil, gas, or other fluid and gaseous substances;
 - (g) steam;
 - (h) slurry; or
 - (i) dangerous materials or products.

Amended by Chapter 426, 2011 General Session

54-8a-3 Information filed with county clerk.

- (1) An operator shall file with the county clerk of a county in which the operator has an underground facility the following:
- (a) the name of each municipality, city, or town in which the operator has an underground facility within that county;
 - (b) the operator's name;
 - (c) the title, telephone number, and address of the operator's representative designated to receive calls regarding excavation; and
 - (d) a statement concerning whether the operator is a member of an association and, if the operator is a member of an association, the name of and contact information for the association.
- (2) In a county where an association is established, the association shall file its telephone number and a list of its members who are operators with the county clerk on behalf of any participating operator.

Amended by Chapter 344, 2008 General Session

54-8a-3.5 Excavation-related information included with construction and building permit.

An entity issuing a permit for building or construction that may require excavation may, and is encouraged to, include a notice on or with a permit stating, "Attention, Utah law requires any excavator to notify the owner of underground facilities 48 hours before excavating and comply with Utah Code Title 54, Chapter 8a, Damage to Underground Utility Facilities."

Enacted by Chapter 344, 2008 General Session

54-8a-4 Notice of excavation.

- (1)
- (a) Before excavating, an excavator shall notify each operator with an underground facility in the area of the proposed excavation.
 - (b) The requirements of Subsection (1)(a) do not apply:
 - (i) if there is an emergency;
 - (ii) while gardening; or
 - (iii) while tilling private ground.

- (2) The notice required by Subsection (1) shall:
 - (a) be given:
 - (i) by telephone;
 - (ii) in person; or
 - (iii) by other means acceptable to each operator;
 - (b) be given not:
 - (i) less than 48 hours before excavation begins; or
 - (ii) more than 14 days before excavation begins; and
 - (c) include the proposed excavation's anticipated:
 - (i) location, with reasonable specificity;
 - (ii) dimensions;
 - (iii) type; and
 - (iv) duration.
- (3) If the proposed excavation's anticipated location and dimensions cannot be described as required under Subsection (2)(c) or as requested in accordance with Subsection 54-8a-5(2)(b), an excavator shall outline the proposed excavation site using as a guideline the then-existing Uniform Color Code and Marking Guidelines, Appendix B, published by the Common Ground Alliance, as amended in the current version of the excavators' guide published by the statewide association established in Section 54-8a-9.
- (4) If more than one excavator will operate at the same excavation site, each excavator shall provide the notice required by this section.
- (5) If there is an association in the county, notice to that association constitutes notice to each operator that has facilities within the proposed excavation site.
- (6)
 - (a) Notice given under this section is valid for 14 days from the day on which the notice is given.
 - (b) If an excavation will continue beyond the 14-day period under Subsection (6)(a), the excavator shall provide notice of that fact at least 48 hours, but no sooner than six calendar days, before expiration of the 14-day period.
 - (c) A notice under Subsection (6)(b) is valid for 14 days from the day on which the previous notice expires.
 - (d) An excavator shall give notice as provided in this Subsection (6) for the duration of the excavation.
- (7) If markings made by the operator have been disturbed so that the markings no longer identify the underground facility:
 - (a) before excavating the site an excavator shall notify:
 - (i) the association; or
 - (ii) each operator; and
 - (b) the operator shall mark the area again within 48 hours of the renotification.
- (8) An excavator may begin excavation if:
 - (a)
 - (i) all underground facilities have been:
 - (A) located; and
 - (B) marked; or
 - (ii) the operators have indicated that there are no underground facilities within the proposed excavation site;
 - (b)
 - (i) 48 hours have elapsed from the time of initial notice; and
 - (ii) the excavator has not:

- (A) been notified by the operator; or
 - (B) received a request for a meeting under Subsection 54-8a-5(2); or
 - (c) 48 hours have elapsed from the time of renotification under Subsection (6).
- (9) Unless an operator remarks an area pursuant to Subsection (7), the excavator shall be responsible for the costs incurred by an operator to remark its underground facilities following the second or subsequent notice given by an excavator for a proposed excavation.

Amended by Chapter 426, 2011 General Session

54-8a-5 Marking of underground facilities.

- (1)
- (a) Within 48 hours of the receipt of the notice required by Section 54-8a-4, the operator shall:
 - (i) mark the location of its underground facilities in the area of the proposed excavation; or
 - (ii) notify the excavator, by telephonic or electronic message or indication at the excavation site, that the operator does not have any underground facility in the area of the proposed excavation.
 - (b) The underground facility shall be marked using as a guideline the then-existing Uniform Color Code and Marking Guidelines, Appendix B, published by the Common Ground Alliance, as amended in the current version of the excavators' guide published by the statewide association established in Section 54-8a-9.
- (2)
- (a) The operator is not required to mark the underground facilities within 48 hours if:
 - (i) the proposed excavation:
 - (A) is not identified in accordance with Subsection 54-8a-4(2) or is not marked as provided in Subsection 54-8a-4(3);
 - (B) is located in a remote area;
 - (C) is an extensive excavation; or
 - (D) presents other constraints that make it unreasonably difficult for the operator to comply with the marking requirements of this section; or
 - (ii) the operator is not able to readily locate the underground facilities from the surface with standard underground detection devices.
 - (b) If the operator cannot proceed with the marking because of a situation described in Subsection (2)(a), the operator shall contact the excavator within 48 hours after the excavator's notice of excavation or request for a location request assignment made in accordance with Section 54-8a-4 and:
 - (i) request a meeting at the proposed excavation site or some other mutually agreed upon location; or
 - (ii) at the operator's discretion, contact the excavator and request the proposed excavation site be outlined in accordance with Subsection 54-8a-4(3).
 - (c) For a situation described under Subsection (2)(a)(i), the meeting or completed outlining of the proposed excavation site constitutes the beginning of a new 48-hour period within which the operator must begin marking the underground facilities.
- (d)
- (i) For the situation described under Subsection (2)(a)(ii), the excavator and operator shall agree on a plan of excavation designed to prevent damage to the operator's underground facility.
 - (ii) Notwithstanding the agreement, the excavator shall proceed in a manner that is reasonably calculated to avoid damage to the underground facility.

- (e)
 - (i) An operator need not mark or locate an underground facility the operator does not own.
 - (ii) An underground facility under Subsection (2)(e)(i) includes a water or sewer lateral or a facility running from a house to a garage or outbuilding.
- (f)
 - (i) An operator may mark the location of a known facility connected to the operator's facilities that is not owned or operated by the operator.
 - (ii) Marking a known facility under Subsection (2)(f)(i) imposes no liability on the operator for the accuracy of the marking.
- (3) Each marking is valid for not more than 14 calendar days from the date notice is given.
- (4) If multiple lines exist:
 - (a) the markings must indicate the number of lines; or
 - (b) all lines must be marked.

Amended by Chapter 426, 2011 General Session

54-8a-5.5 Determining the precise location of marked underground facilities.

- (1) An excavator may not use any power-operated or power-driven excavating or boring equipment within 24 inches of the markings made in accordance with Section 54-8a-5 unless:
 - (a) the excavator determines the exact location of the underground facility by excavating with hand tools to confirm that the excavation will not damage the underground facilities; or
 - (b) the operator provides an excavator with written or electronic notice waiving the requirement that the excavator determine the exact location of the underground facilities by excavating with hand tools.
- (2) Power-operated or power-driven excavating or boring equipment may be used for the removal of any existing pavement if there is no underground facility contained in the pavement, as marked by the operator.

Amended by Chapter 426, 2011 General Session

54-8a-5.8 Excavator access.

An excavator may enter or access an owner's property or dwelling to locate a sewer lateral with the owner's permission.

Enacted by Chapter 209, 2009 General Session

54-8a-6 Duties and liabilities of an excavator.

- (1) Damage to an underground facility by an excavator who excavates but fails to comply with Section 54-8a-4, is prima facie evidence that the excavator is liable for any damage caused by the negligence of that excavator.
- (2)
 - (a) An excavator is not liable for a civil penalty under this chapter if the excavator has:
 - (i) given proper notice of the proposed excavation as required in this chapter;
 - (ii) marked the area of the proposed excavation as required in Section 54-8a-4;
 - (iii) complied with Section 54-8a-5.5; and
 - (iv) complied with Section 54-8a-7.
 - (b) An excavator is liable for damage incurred by an operator if:
 - (i) the operator complies with Section 54-8a-5; and

- (ii) the damage occurs within 24 inches of the operator's markings or the physical presence of an above ground facility, including a manhole, meter, or junction box.

Amended by Chapter 426, 2011 General Session

54-8a-7 Notice of damage -- Repairs.

- (1) If an excavator contacts or damages an underground facility, the excavator shall:
 - (a) immediately notify the appropriate operator and then proceed in a manner that is reasonably calculated to avoid further damage to the underground facility; and
 - (b) immediately call 911 if the excavation may result in an immediate risk to human life.
- (2) Upon receipt of notice, the operator shall immediately examine the underground facility, and, if necessary, make repairs.

Amended by Chapter 344, 2008 General Session

54-8a-7.5 Third-party damages caused by failure to locate.

- (1) If an operator fails to locate a facility as required by this chapter and an excavator damages another operator's facility of a similar size and appearance that fits surface markings as required by Subsection 54-8a-5(1)(b), the operator who failed to locate its facility is liable for the costs of damage to the facility caused by the excavator if:
 - (a) the excavator complies with Sections 54-8a-4, 54-8a-5.5, and 54-8a-6; and
 - (b) the excavator demonstrates that the damage is the direct result of the operator's failure to locate its facility.
- (2) An excavator who damages a third-party operator's facility as described in Subsection (1):
 - (a) shall pay for the costs of repairing the damaged facility; and
 - (b) may seek recovery of the costs of damage from the operator who failed to mark its facility.
- (3) Resolution of a dispute under this section may be in accordance with Section 54-8a-13.

Enacted by Chapter 426, 2011 General Session

54-8a-8 Civil penalty for damage -- Exceptions -- Other remedies.

- (1) A civil penalty may be imposed for a violation of this chapter as provided in this section.
- (2) A civil penalty under this section may be imposed on:
 - (a) any person who violates this chapter in an amount no greater than \$5,000 for each violation with a maximum civil penalty of \$100,000 per excavation; or
 - (b) an excavator who fails to provide notice of an excavation in accordance with Section 54-8a-4 in an amount no greater than \$500 in addition to the amount under Subsection (2)(a).
- (3) Notwithstanding Subsection (2)(a), a penalty under this chapter may not be imposed on an excavator or operator unless the excavator or operator fails to comply with this chapter and damages an underground facility.
- (4) The amount of a civil penalty under this section shall be made taking into consideration the following:
 - (a) the excavator's or operator's history of any prior violation or penalty;
 - (b) the seriousness of the violation;
 - (c) any discharge or pollution resulting from the damage;
 - (d) the hazard to the health or safety of the public;
 - (e) the degree of culpability and willfulness of the violation;
 - (f) any good faith of the excavator or operator; and

- (g) any other factor considered relevant, including the number of past excavations conducted by the excavator, the number of location requests made by the excavator and the number of location markings made for the excavator or by the operator.
- (5) "Good faith," as used in Subsection (4)(f), includes actions taken before the filing of an action for civil penalty under this section to:
 - (a) remedy, in whole or in part, a violation of this chapter; or
 - (b) mitigate the consequences and damages resulting from a violation of this chapter.
- (6)
 - (a) A civil penalty may not be imposed on an excavator if the damage to an underground facility results from an operator's:
 - (i) failure to mark; or
 - (ii) inaccurate marking or locating of the operator's underground facilities.
 - (b) In addition to or in lieu of part of or all of a civil penalty, the excavator or operator may be required to undertake actions that are designed to prevent future violations of this chapter, including attending safety and compliance training, improving internal monitoring and compliance processes and procedures, or any other action that may result in compliance with this chapter.
- (7) Subsection (1) does not apply to an excavation made:
 - (a) during an emergency, if reasonable precautions are taken to protect any underground facility;
 - (b) in agricultural operations;
 - (c) for the purpose of finding or extracting natural resources; or
 - (d) with hand tools on property owned or occupied by the excavator.
- (8)
 - (a) A civil penalty under this section is in addition to any damages that an operator or an excavator may seek to recover.
 - (b) In an action brought under this section, the prevailing party shall be awarded its costs and attorney fees as determined by the court.

Amended by Chapter 426, 2011 General Session

54-8a-9 Association for mutual receipt of notice of excavation activities.

- (1)
 - (a)
 - (i) Two or more operators may form and operate a statewide association providing for mutual receipt of notice of excavation activities.
 - (ii) If an association is operational, notice to the association shall be given pursuant to Section 54-8a-4.
 - (b)
 - (i) If an association is formed, each operator with an underground facility in the area shall become a member of the association and participate in it to:
 - (A) receive a notice of a proposed excavation submitted to the association;
 - (B) receive the services furnished by it; and
 - (C) pay its share of the cost for the service furnished.
 - (ii) If an operator does not comply with Subsection (1)(b)(i) and Section 54-8a-5, the operator is liable for damages incurred by an excavator who complies with this chapter's requirements.
 - (c) An association whose members or participants have underground facilities within a county shall:
 - (i) file a description of the geographical area served by the association; and

- (ii) file the name and address of every member and participating operator with the county clerk.
- (2) An association receiving notice as provided in Subsection 54-8a-4(1) shall:
 - (a) notify members and participants in the relevant geographic area within 24 hours after receiving notice from the person who proposes to excavate; and
 - (b) maintain a record of any notice received for a period of five years to document compliance with the requirements of this chapter.
- (3) An association contacted by a public agency to identify a utility company, in accordance with Section 54-3-29, shall provide the public agency with a list, including contact information to the extent available, of each utility company of which the association is aware that has a utility facility within the area identified by the public agency.

Amended by Chapter 272, 2010 General Session

54-8a-9.5 Inspection of records.

The books and records of an association shall be open to inspection by its members during normal business hours upon 48 hours advance notice.

Enacted by Chapter 198, 1998 General Session

54-8a-10 Installation of nonmetallic facilities.

Any operator installing a nonmetallic facility, such as a sewer, water, or fiber optic line, shall install the nonmetallic facility so that it can be located with standard underground facility detection devices or in a concrete conduit system.

Amended by Chapter 344, 2008 General Session

54-8a-10.5 Installation and location of sewer lateral cleanouts -- Records.

- (1)
 - (a) An operator or person installing or replacing a sewer lateral cleanout beginning August 1, 2009 shall install or replace the sewer lateral cleanout in a manner so that the lateral can be located, including:
 - (i) house sheets; or
 - (ii) electronic markers.
 - (b) An operator or person installing a sewer lateral cleanout shall notify the sewer operator of the sewer lateral cleanout location for record keeping purposes.
- (2) Beginning on August 1, 2009, a sewer operator shall maintain records identifying where all new, replaced, or contractor-identified sewer lateral cleanouts are located within the sewer operator's jurisdiction.
- (3)
 - (a) A sewer operator shall provide to an excavator information in the sewer operator's possession pertaining to a sewer lateral cleanout location within the sewer operator's jurisdiction.
 - (b) The sewer operator shall provide the information within 48 hours of the excavator's request.

Enacted by Chapter 209, 2009 General Session

54-8a-11 Applicability of federal law.

The following persons or entities are subject to the provisions of Title 49, Code of Federal Regulations, Part 198, Regulations for Grants to Aid State Pipeline Safety Programs, including those provisions relating to damage to underground facilities:

- (1) an operator, to the extent subject to the Pipeline Safety Improvement Act of 2002, 49 U.S.C. 60101 et seq.;
- (2) an excavator; and
- (3) a person who operates an association.

Amended by Chapter 340, 2011 General Session

54-8a-12 Enforcement -- Attorney general.

- (1)
 - (a) The attorney general may bring an action in the district court located in the county in which the excavation is located to enforce this chapter.
 - (b) The right of any person to bring a civil action for damage arising from an excavator's or operator's actions or conduct relating to underground facilities is not affected by:
 - (i) a proceeding commenced by the attorney general under this chapter; or
 - (ii) the imposition of a civil penalty under this chapter.
 - (c) If the attorney general does not bring an action under Subsection (1)(a), the operator or excavator may pursue any remedy, including a civil penalty.
- (2) Any civil penalty imposed and collected under this chapter shall be deposited into the General Fund.

Enacted by Chapter 344, 2008 General Session

54-8a-13 Underground Facilities Damage Dispute Board -- Arbitration -- Relationship with Public Service Commission.

- (1) There is created within the commission the Underground Facilities Damage Dispute Board to arbitrate a dispute arising from:
 - (a) an operator's or excavator's violation of this chapter; and
 - (b) damage caused by excavation during an emergency.
- (2) The board consists of five members appointed by the governor as follows:
 - (a) one member from a list of names provided to the governor by a group representing operators;
 - (b) one member from a list of names provided to the governor by the Associated General Contractors;
 - (c) one member from a list of names provided to the governor by Blue Stakes of Utah;
 - (d) one member from a list of names provided to the governor by the Utah Home Builders Association; and
 - (e) one member from the Division of Public Utilities.
- (3)
 - (a) A member of the board:
 - (i) shall be appointed for a three-year term; and
 - (ii) may continue to serve until the member's successor takes office.
 - (b) At the time of appointment, the governor shall stagger the terms of the members to ensure that approximately 1/3 of the members of the board are reappointed each year.
 - (c) A vacancy in the board shall be filled:
 - (i) for the unexpired term; and
 - (ii) in the same manner as the board member is initially appointed.

- (d) The board shall select an alternate for a specific board member to serve on a specific case if it becomes necessary to replace a member who has a conflict of interest because a dispute involves that member or that member's employer.
- (4) Three members of the board constitute a quorum.
- (5) The board may, upon agreement of the disputing parties, arbitrate a dispute regarding damages, not including personal injury damages, arising between:
 - (a) an operator;
 - (b) an excavator;
 - (c) a property owner; or
 - (d) any other interested party.
- (6) At least four members of the board shall be present and vote on an arbitration decision.
- (7) An arbitration before the board shall be consistent with Title 78B, Chapter 11, Utah Uniform Arbitration Act.
- (8) The prevailing party in an arbitration conducted under this section shall be awarded its costs and attorney fees in an amount determined by the board.
- (9) A member may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:
 - (a) Section 63A-3-106;
 - (b) Section 63A-3-107; and
 - (c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.
- (10) The commission shall provide administrative support to the board.

Amended by Chapter 286, 2010 General Session