



EXCAVATOR MANUAL



Lone Star 811

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Visit **lonestar811.com** for:

- Placing a locate request
- The entire Texas Law/One-Call Notification Act
- Training and technical resources
- A full listing of the One-Call Board of Directors
- Much, much more



The information contained in this manual does not have the force of law and is only provided as guidance.

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This manual contains information Lone Star 811 believes may be helpful in understanding the One-Call law. The material is to be used merely as a guide and should not be relied upon as a substitute for legal requirements, duties, or responsibilities imposed on excavators, operators, or others by the One-Call law. For the most up to date information, including any changes in the One-Call law, please visit lonestar811.com.



ABOUT LONE STAR 811

In 1998, the Texas Damage Prevention Law became effective. This law requires excavators and demolishers to call a notification center at least 48 hours excluding holidays and weekends before they begin their work. It also requires owners/operators of underground facilities to mark locations or supply information that will enable excavators and demolishers to locate underground utilities and facilities. It is listed in the Revised Statutes of Texas from Title 251 to Title 16, Chapter 18. It says that everyone who excavates (or otherwise disturbs the surface of the ground) must first contact or notify the state one-call notification center (Lone Star 811) at least 48 hours, but not more than 14 days, before they start work. Saturday, Sunday and the holidays listed on page 2 of this manual are not included in the two business day timeframe.

Lone Star 811 is one of the statewide one-call notification centers set up by Texas state law. It is the link between people who want to excavate and the underground facility owners/operators.

Lone Star 811 can receive regular locate requests via the following methods:

Phone #: _____ 811 or 800-545-6005
(both numbers are toll free)

ITIC (Internet Ticketing): _____ lonestar811.com or
tx.itic.occinc.com

The service is FREE to the excavator requesting a locate.

Upon placing a FREE locate request to Lone Star 811 for a proposed excavation, Lone Star 811 will provide the excavator a list of the member utility companies that have underground facilities in the area of the proposed dig site. Lone Star 811 will then notify those affected utilities of the proposed excavation.

Lone Star 811 is funded by its members, the underground facility operators. Records of all locate requests are kept for four years. Lone Star 811 will contact the other one-call center so that they can notify their members as well.

HOURS OF OPERATION

Business Office: (713) 432 - 0365

8:00am - 5:00pm CST

Phone Requests: 811 or 800-545-6005

24/7/365

Internet Requests: **lonestar811.com**

24/7/365

OBSERVED HOLIDAYS

Holidays as recognized by Texas State Statutes:

New Year's Day _____ Jan. 1
Memorial Day _____ Last Monday in May
Independence Day _____ July 4
Labor Day _____ 1st Monday in Sept.
Thanksgiving _____ 4th Thursday in Nov.
Christmas _____ December 25

If a holiday falls on a Saturday, it is observed on the Friday before. If it falls on a Sunday, it is observed on the following Monday.

THE PROCESS OF USING LONE STAR 811

▶ EXCAVATOR
FILES LOCATE
REQUEST

(White-lining or pre-marking the dig site is strongly encouraged)

▶ LONE STAR 811
PROCESSES &
SUBMITS REQUEST
TO OWNER
MEMBER UTILITIES

▶ UTILITIES MARK
SITE OR ADVISE
IF THEY ARE
'CLEAR'

▶ EXCAVATOR
DIGS WITH
CARE,
AVOIDING
DAMAGES



WHO NEEDS TO PLACE A LOCATE REQUEST AND WHEN?

Everyone, everywhere in the state of Texas must contact an 811 one-call center before excavating or disturbing the soil, even in your own farm field or backyard! Forty-eight hours (but not more than 14 days) prior to your planned excavation activity, you must place a locate request with an 811 one call center. By contacting Lone Star 811, you will be placing a request for the underground utilities in your excavation area to be located and marked. Contacting an 811 one-call center is required by state law (Utilities Code Title 5 Chapter 251) and is designed to protect you, underground facilities and the public. Professional contractors, homeowners, and personal property owners all fall under the statutes.

IMPORTANT: The individual that will be doing the actual excavation, disturbing the soil, is responsible for submitting the locate request to an 811 one-call center. If you are a subcontractor and will be conducting the actual excavation, you need to place the locate request with an 811 one-call center. A locate request placed by your general contractor will not protect you or your company. If you are a homeowner and will have someone else doing the excavation on your property, the individual doing the excavation activity needs to submit the locate request to an 811 one-call center. Please ensure that the individual excavating on your property or project has submitted a locate request to an 811 one-call center 48 hours prior to the excavation activity.

HOW DO I PLACE A LOCATE REQUEST?

Forty-eight hours (but not more than 14 days) prior to your planned excavation activity, you may place a locate request with Lone Star 811 via the following methods:

Phone: 811 or 800-545-6005 (both numbers are toll free)
Online: lonestar811.com or tx.itic.occinc.com
ITIC (Internet Ticketing)

TICKET TYPES

NORMAL

This is a standard locate request. Owner member utilities must respond within 48 hours or at a time mutually agreed to by all parties. All utilities should respond by either marking the approximate location of underground facilities or calling, faxing or emailing the excavator that the utility is clear or not affected.

EMERGENCY

A locate request meeting the legal definition of an Emergency (page 6). Submitting a ticket as an emergency that does not meet the legal definition is punishable by criminal penalties. Repeated instances of filing emergency tickets that do not meet the legal definition of an emergency may result in a complaint being filed with the Texas Attorney General's office.

DAMAGE/EMERGENCY DIG-UP

A notification of the damage or disturbance of an underground utility. Texas statute requires the immediate notification of the damage, dislocation or disturbance of an underground utility to an 811 one-call center. If the damage involves pipeline or natural gas facilities, **911 should be notified as needed**.

UPDATE

A notification requesting a refresh of marks from an existing locate request. This request should be made anytime the work will continue for longer than ten business days or if marks become unusable due to work disturbance or weather.

NO RESPONSE/2ND REQUEST

A second notification reporting that a utility, or utilities, did not respond to an existing locate request by marking or notification that they are clear. Any utility receiving a No Response should respond within four hours.

TICKET TYPES CONTINUED ON NEXT PAGE →

TICKET TYPES (Continued)

DESIGN/SURVEY

A notification to provide the designer with a list of utilities in a proposed area of excavation.

EMERGENCY LOCATE REQUESTS

An Emergency Locate Request is defined as and will only be accepted and processed as the following: A clear and present danger to life, health, or property or which demands immediate action to prevent or repair a major service outage. Poor planning on the part of the excavator **DOES NOT** constitute an Emergency. If your request does not fall within the parameters of a defined emergency – you will be required to wait 48 hours or until all facilities have been located prior to any excavation activity.

Examples of Emergency Locate Requests, but not limited to:

- Blowing or leaking gas lines
- Repairing downed fence that secures livestock
- Repairing water lines that serve large facilities (nursing homes, hospitals, schools)
- Repairing crucial cable or fiber serving business/industry/911 centers

Examples of NON Emergency Requests, but not limited to:

- Installation or repair of fence on personal property
- Repair or installation of underground sprinklers
- Installing cable for personal residence
- Planting trees or any landscaping

ITIC

ITIC (Internet Ticketing) is a free internet application offering excavators the ability to enter a dig request online 24/7/365. There are 2 versions available:

TEXT ONLY – allows you to enter the ticket information (the text portion of a locate request). The ticket is then sent to Lone Star 811. An ITIC specialist will review the ticket to ensure it contains all required information, then outline the proposed excavation site on a map to determine which utilities will receive the locate request.

MAPPING – allows you to enter the ticket information AND use the mapping application to determine which utilities will receive the locate request. The mapping version requires free training. Webinars and on-site trainings are available. Visit **lonestar811.com** or call **713-432-0365** to schedule one today!



Direct link to ITIC: tx.itic.occinc.com

REQUIRED LOCATE REQUEST INFORMATION

You will be asked the following questions while submitting a locate request with Lone Star 811. To avoid any delays, please have all information available when submitting the request.

Sender Information

Phone Number: _____ Caller ID (if known): _____

First & Last Name: _____

Company Name: _____

Company Address: _____

Email Address: _____

On Site Contact Information

First & Last Name: _____ Phone Number: _____

Excavation Information

Type of Work: _____

Work Done For: _____

Digging Deeper Than 16": **YES NO** Explosives: **YES NO**

Duration: _____

Location Information

County: _____ City: _____

Address or street work is on or along: _____

On which side of the road (circle one): **N S E W BOTH**

Nearest Intersecting street: _____

Driving Directions to Site: _____

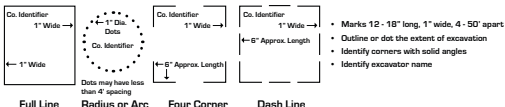
(From intersecting street to site) _____



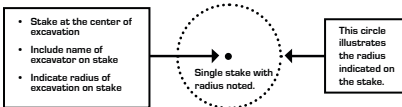
WHITE-LINING OF A PROPOSED DIG AREA

White-lining is the practice of outlining the area of excavation with white paint or flags. White-lining saves the utilities time once on site and ensures the entire area of excavation is located properly.

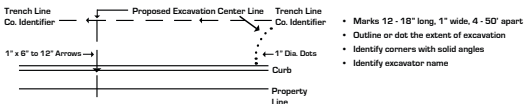
1. Single Area Excavation Marking



2. Single Stake Marking Center Point of Excavation



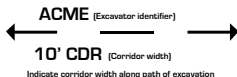
3. Trenching, Boring or Other Continuous Type Excavation



4. Stakes, Flags, or Whiskers



5. Excavation Corridor



Please refer to the Common Ground Alliance Best Practices manual for more information on marking guidelines.

Lone Star 811 strongly encourages the practice of white-lining whenever possible.

WHAT HAPPENS AFTER I SUBMIT A LOCATE REQUEST?

The member utilities affected by your proposed dig site will promptly be notified by an 811 one-call center of your excavation plans. If they are within your proposed dig site, the utility will respond no later than 48 hours after the call center has been notified of the intent to excavate. The member utilities will mark the approximate location of their underground utilities. These marks are approximate and will be within 18 inches on either side, plus $\frac{1}{2}$ the width of the underground facility. If digging must take place in an area marked, hand digging and extreme caution is suggested. An operator who determines that it does not have any underground facilities located in the area of proposed excavation will notify the excavator of that determination prior to the start date/time indicated on the ticket.

WHO MARKS THE LINES?

The facility owner/operator is required by law to respond to each notification. An 811 one-call center will send the proposed excavation information to the facility owner/operator. The operator will either respond to the locate request themselves or they may hire a contract locating company to respond for them.

DEPTH OF FACILITIES

Utilities are not required to mark/indicate the depth of their facilities under Texas law. Even though there are standards established for the installation of various facilities, factors such as erosion or landscaping can change the depth of an installed facility. It is recommended that the excavator never assume that any facility is at a given depth.

BEST PRACTICE ON PRIVATELY OWNED LINES

Privately owned underground facilities are not required to be marked by representatives of One-Call Member facility operators beyond the demarcation point of each facility (e.g. Private Property) and can vary depending on the type of facility and policies of the facility operator.

Prior to excavating, the excavator should be aware that privately owned buried facilities may exist within the work area. The excavator should inspect the work area for signs of private utilities and contact the private facility owner to verify the location.

Examples of private facilities include but are not limited to:

- Natural gas lines running to fire pits, BBQ grills, pool heaters, spas, detached garage, etc.
- Landscape lighting, invisible pet fencing
- Water lines for water features, underground sprinklers
- Electric line running to out buildings, garages, gazebos, sheds, RV hook-ups, etc.
- Electric lines for parking lot lights
- Electric line for commercial signage
- Private sewer and water including septic laterals and water service
- Electric lines to center pivots
- Farm tap service lines
- Propane lines from tank to structure

HOW DO I KNOW IF UTILITIES HAVE RESPONDED?

The facility owner/operator is required by law to respond to each notification. After the operator has been notified of the planned excavation, they are required by law to either:

1. Mark the approximate location of their underground facilities using the APWA color code [see inside back cover];

2. Request additional information if necessary; or
3. Advise you if they have no facilities at your excavation site by verbally informing the excavator in person or by calling the contact number, leaving a message, sending an email or fax if provided, or marking "clear" or "ok" at the dig site.

Contact Lone Star 811 if a utility has not responded by the start date/time on the locate request.

COLOR CODE AND LOCATING BEST PRACTICES

Use color-coded surface marks (paint) to indicate the location and route of buried lines. To increase visibility, color-coded vertical markers (temporary stakes or flags) could supplement surface marks. All marks and markers should indicate the name, initials or logo of the company that owns or operates the line and the width of the facility if it is greater than two inches.

If the surface over the buried line is to be removed, supplemental offset marking may be used. Offset markings should be on a uniform alignment and must clearly indicate that the actual facility is a specific distance away.

SEE INSIDE BACK COVER FOR COLOR CODE CHART

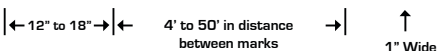
MARKING GUIDELINES

If digging must take place within this area, the excavator should exercise such reasonable care as may be necessary for the protection of any underground facility in or near the excavation area. Use extreme caution along with hand digging or other soft digging methods.

1. General Marks

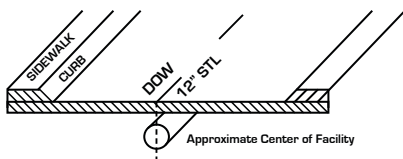
(as can be reasonably seen based on terrain)

SBC (Company identifier)



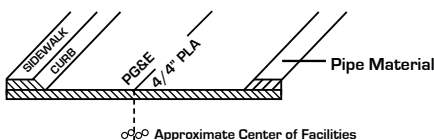
2. Single Facility

(indicate center of single toned facility)



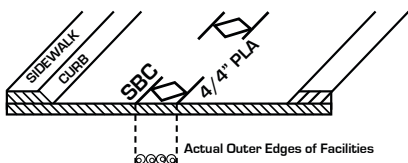
3. Multiple Facilities

(same type facilities where separate signal is not possible)



4. Conduit or Oversize Facility

(diamond enclosed by outside edge of facility)

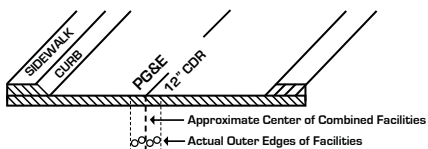


Please refer to the Common Ground Alliance Best Practices manual for more information on marking guidelines.

MARKING GUIDELINES (Continued)

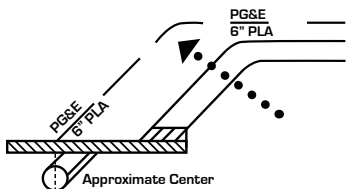
5. Corridor Mark

(same type facilities where number is not known)



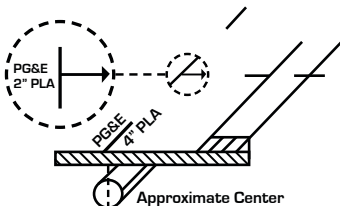
6. Bends

(radius indicated with marks depicting arc)



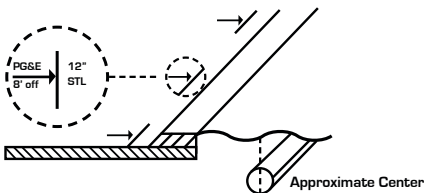
7. Laterals

(mark as a "T" - indicate any change in size or direction)



8. Painted Offset

(arrow with distance to center of facility)



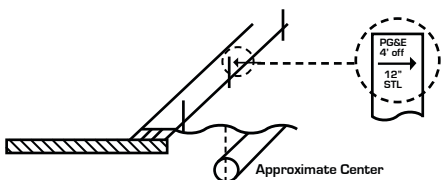
Please refer to the Common Ground Alliance Best Practices manual for more information on marking guidelines.

MARKING GUIDELINES (Continued)

Please refer to the Common Ground Alliance Best Practices manual for more information on marking guidelines.

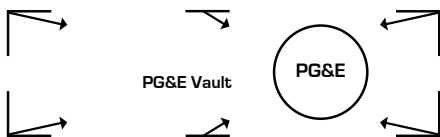
9. Staked Offset

(arrow with distance to center of facility)



10. Vaults

(mark edges and arrow toward visible access)



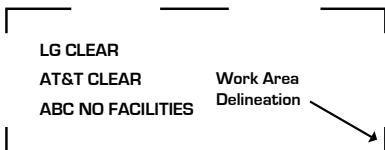
11. Terminations

(indicates capped end of a facility)



12. "Clear" or "Ok"

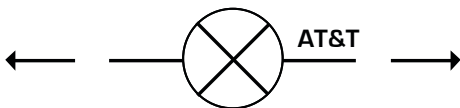
(CLEAR or OK indicates no conflict)



MARKING GUIDELINES (Continued)

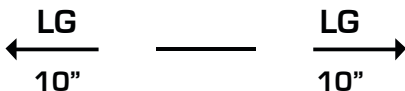
13. Appurtenance or Splice

(valves or fittings elevated from main facility depth)



14. Continuation of Facility

(arrows indicated facility continues beyond locate area)



Please refer to the Common Ground Alliance Best Practices manual for more information on marking guidelines.

HOW LONG IS A TICKET VALID?

If an active excavation project will continue for longer than 14 days or the markings become unclear or unusable at anytime due to weather, construction or other causes, an Update request needs to be submitted to an 811 one-call center. Use the original ticket number as a reference. An Update request requires the two business day waiting period.

WHEN TO UPDATE THE MARKS – BEST PRACTICE ON TICKET LIFE

Markings provided by operators shall be valid for a period of 14 days from the proposed starting date provided to an 811 one-call center. The person responsible for the excavation project shall renew the notification with an 811 one-call center at least 48 hours prior to this expiration date and shall continue to renew such notification in the same manner throughout the duration of the excavation. The renewal notice shall be valid for a period of 14 days from the proposed starting date of the renewal notification.

PRESERVING THE MARKS – BEST PRACTICE ON CONDITION OF FACILITY LOCATION MARKINGS

The excavator is responsible for reasonably protecting and preserving facility location markings until no longer required for proper and safe excavation near an underground facility. If the excavator has reason to believe locate markings are obliterated, obscured, missing or incorrect, the excavator shall notify an 811 one-call center in order to have the facility operator verify, refresh or remark the locate. It is important that all facilities are marked prior to digging. Notice to the center shall be given at least 48 hours, but not more than 14 days, before commencing the excavation.

DAMAGING/DISTURBING AN UNDERGROUND UTILITY

All excavators must notify an 811 one-call center to report damage to an underground facility (see Texas administrative code Title 16 chapter 18 Rule 18.11 on damage reporting requirements). An 811 one-call center will notify all underground member facility operators in the area, who will respond appropriately. If the damage results in a potentially dangerous emergency, the excavator shall take reasonable actions to alleviate the emergency including, but not limited to, the evacuation of the affected area. For everyone's safety in any incident involving blowing gas, make calls from a safe distance. The excavator shall leave all equipment situated where the equipment was at the time the emergency was created and immediately contact the 811 one-call center, the operator/owner, appropriate authorities and response agencies including, but not limited to, the 911 emergency response system.

DISPUTES WITH AN EXCAVATOR OR FACILITY OWNER

Lone Star 811 will not and is not authorized to settle disputes between excavators, facility operators and contract locators.

RESPONSIBILITIES OF AN EXCAVATOR/DIGGER

- You must call 811 at least 48 hours, but not more than 14 days before digging (except for emergencies. See page 6).
- You must ensure all information on the locate request is accurate. Call 811 to correct inaccurate information.
- You must contact any other utilities in the area that are NOT notified by an 811 one-call center.
- You must ensure all utilities have responded before you begin your excavation. Call 811 if the utilities have not

responded or marked correctly by the start date/
time on the locate request.

- Once all utilities have marked, or indicated clear, you must dig with reasonable care.
- Should you “hit” (damage, dislocate, disturb or expose) an underground facility, you must call an 811 one-call center immediately. Damages shall not be concealed or repaired without authorization from the owner of the facility.
- Contact an 811 one-call center if markings need to be refreshed.

RESPONSIBILITIES OF THE FACILITY OPERATORS

- Underground facility operators must be members of an 811 one-call center.
- They must mark their facilities or notify the excavator of no facilities in the dig area within 48 hours from the request.
- Underground facility operators shall mark underground pipelines by means of stakes, paint, flags, or a combination of two or more of these.
- If, in the opinion of the underground facility operator, the precise location of a facility cannot be determined and marked as required, the underground facility operator will provide all pertinent information and field locating assistance to the excavator at a mutually agreed to time.
- Underground facility operators will update their records with an 811 one-call center as needed.

PRE-EXCAVATION CHECK-LIST

Crew Foreman _____ One-Call Ticket # _____
 Contact # _____ Date _____

Complete a pre-excavation walk-out of the entire job site. Your objective is to visually inspect the dig area to ensure all utilities are marked. Look for signs of utilities that may not be marked such as, above-ground pedestals, gas meters, man-hole covers, drains, or utility poles with cable risers. If you find these indicators and suspect that there is an unmarked utility **DO NOT PROCEED**. Notify One-Call that an unidentified line has been discovered. When you have completed your walk-out, complete the following check list:

1) Verify that the One-Call ticket covers the 'Scope of work' and 'Work to begin' date:

- I have verified the One-Call ticket covers the 'Scope of work'
- I have verified the One-Call ticket 'Work to begin' date

2) What marked utilities did you observe?

Gas (Yellow) Electric (Red) Telephone (Orange)
 Cable TV (Orange) Water (Blue) Sewer (Green)

3) Based on visual observation, did you see signs of any unmarked utilities?

Yes No

If Yes, please identify?

Gas (Yellow) Electric (Red) Telephone (Orange)
 Cable TV (Orange) Water (Blue) Sewer (Green)

I have notified One-Call of the unmarked Utility

4) Photograph the entire proposed work area including all locate marks.

- I have photographed the entire site prior to excavation
- I have photographed existing locate/markings

5) Advise your crew members of the following: If they have to cross a marked Utility they must **HAND DIG ONLY within 18" of the locate marks plus half the diameter of the buried facility. **RESPECT THE MARKS!****

I have advised my crew of the 18" hand dig rule

IN THE EVENT OF DAMAGE

- Notify One-Call and your supervisor
- Photograph entire area and damage location

PHOTOGRAPHY TIPS

- Make sure the correct date & time stamp is active on your camera
- Photograph the excavation itself (damage location)
- Take photos from multiple vantage points and of surrounding area (360 degrees)
- If the utility was mis-marked, photograph the locate marks/flags (include tape measure in photo)
- If the utility was not marked, photograph the entire area and approaches to the cut site
- Show a quantifiable location/address (street sign, house number, mail box number etc.)
- Facility depth (include tape measure in photo)
- Remember!! You can never take too many photos

TEXAS ADMINISTRATIVE CODE

TITLE 16

PART 1

CHAPTER 18

RULE §18.1

ECONOMIC REGULATION

RAILROAD COMMISSION OF TEXAS

UNDERGROUND PIPELINE DAMAGE PREVENTION

Scope, Applicability, and General Provisions

(a) This chapter implements the authority of the Railroad Commission of Texas (Commission) under Texas Natural Resources Code, §117.012, and Texas Utilities Code, §121.201 (as amended by House Bill 2161, Acts 2005, 79th Leg., R.S., ch. 267, §§6 and 13, eff. Sept. 1, 2005), and under Texas Health and Safety Code, §756.106 (as added by Senate Bill 9, Acts 2005, 79th Leg., R. S., ch. 1337, §19, and editorially renumbered as Health and Safety Code, §756.126). Except as provided in subsection (d) of this section, this chapter applies to all persons engaged in or preparing to engage in the movement of earth in the vicinity of an intrastate underground pipeline containing flammable, toxic, or corrosive gas, a hazardous liquid, or carbon dioxide.

(b) The requirements of this chapter are based on the presumption that an excavator will notify a notification center pursuant to, and that a pipeline operator will respond in accordance with, the provisions of Texas Utilities Code, Chapter 251, and the requirements of the notification center. However, compliance with the provisions of Texas Utilities Code, Chapter 251, and the requirements of a notification center does not necessarily constitute compliance with the requirements of this chapter.

(c) Persons that are exempt from the provisions of Texas Utilities Code, Chapter 251, are required to comply with this chapter, unless the person is exempt under the subsection (d) of this section.

(d) This chapter does not apply to:

- (1) the exemptions in Texas Utilities Code, §251.003;
- (2) the movement of earth that does not exceed a depth of 16 inches;
- (3) surface mining operations;
- (4) the following activities when performed by an employee of TxDOT within TxDOT right-of-way:
 - (A) sampling and repair of pavement, base, and subgrade;
 - (B) repair of roadway embankment adjacent to pavement

structure;

- (C) reshaping of unpaved shoulders and drop-offs;
 - (D) installation and maintenance of guardrails, cable barriers, delineators, vehicle attenuators, sign posts, mailboxes, and cables for traffic signals and luminaries;
 - (E) cleaning of ditches; and
 - (F) removal of silt from culverts; or
- (5) hand digging by an employee or contractor of TxDOT for TxDOT’s archeological program.

(e) This chapter also applies to movement of earth by tillage that exceeds a depth of 16 inches.

(f) Unless otherwise specified, all time periods used in this chapter shall be calculated from the time the original notification is given to the notification center.

(g) Unless otherwise specified, all time periods that are stated in days shall mean working days.

(h) Unless an excavator and an operator otherwise expressly agree in accordance with the requirements set forth in §18.3 of this title, relating to Excavator Notice to Notification Center, the life of a line locate ticket shall be 14 days.

(i) Unless otherwise expressly stated in this chapter, each excavator and each operator shall retain required records for at least four years. At a minimum, each operator and each excavator shall retain locate tickets and positive response notifications. Retention at a notification center is an acceptable method of retention for locate tickets.

Source Note: The provisions of this §18.1 adopted to be effective September 1, 2007, 32 TexReg 3545

TEXAS ADMINISTRATIVE CODE

TITLE 16

PART 1

CHAPTER 18

RULE §18.2

ECONOMIC REGULATION

RAILROAD COMMISSION OF TEXAS

UNDERGROUND PIPELINE DAMAGE PREVENTION

Definitions

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise:

(1) Damage—Includes but is not limited to:



(A) defacing, scraping, displacement, penetration, destruction, or partial or complete severance of an underground pipeline or of any protective coating, housing, or other protective device of an underground pipeline;

(B) weakening of structural or lateral support of an underground pipeline that affects the integrity of the pipeline; or

(C) failure to properly replace the backfill surrounding an underground pipeline.

(2) Demolish or demolition—Any operation by which a structure or mass of material is wrecked, razed, rendered, moved, or removed by means of any tools, equipment, or discharge of explosives.

(3) Emergency—A situation that endangers life, health, or property or a situation in which the public need for uninterrupted service and immediate re-establishment of service if services are interrupted compels immediate action.

(4) Excavate—Movement of earth by any means.

(5) Excavator—A person that engages in or is preparing to engage in the movement of earth.

(6) Hand digging—Any movement of earth using non-mechanized tools or equipment, soft digging, or vacuum excavation. Hand digging includes but is not limited to digging with shovels, picks, and manual post hole diggers.

(7) Legal holiday—A holiday specified as a legal holiday by Subchapter B, Chapter 662, Texas Government Code.

(8) Locate or marking—An operator's or its contract locator's physical demarcation of the location of an underground pipeline.

(9) Locate ticket, line locate ticket, or ticket—The record of the notice of intent to excavate given by an excavator to a notification center in conformance with Texas Utilities Code, §§251.151 and 251.152.

(10) Locator—A person charged with determining and marking the approximate horizontal location of underground pipeline that may exist within an area either specified by a notice served on a notification center or designated by white-lining.

(11) Movement of earth—Any operation in which earth, rock, or other material in the ground, any structure, or any mass of material is moved, removed, disturbed, or otherwise displaced by hand digging, mechanized equipment or tools of any kind, or explosives, and includes but is not limited

to augering, backfilling, boring, cable or pipe plowing and driving, compressing, cutting, demolition, digging, ditching, dragging, dredging, drilling, grading, plowing-in, pulling-in, razing, rendering, ripping, scraping, tilling of earth at a depth exceeding 16 inches, trenching, tunneling, or wrecking.

(12) Mechanized equipment or tool—A piece of equipment or a tool operated by mechanical power, including but not limited to a tractor, trencher, bulldozer, power shovel, auger, backhoe, scraper, drill, cable or pipe plow and/or driver, and other equipment used to plow in or pull in cable or pipe.

(13) Notification center—A legal entity established and operated pursuant to Texas Utilities Code, Chapter 251, Subchapter C.

(14) Notify, notice, or notification—The completed delivery of information to the person to be notified, and the receipt of that information by that person in accordance with this chapter. The delivery of information includes but is not limited to the use of any electronic or technological means of data transfer.

(15) Operator—A person who operates on his or her own behalf, or as an agent designated by the owner, a pipeline containing flammable, toxic, or corrosive gas, a hazardous liquid, or carbon dioxide.

(16) Person—Any individual, operator, firm, joint venture, partnership, corporation, association, municipality, or other political subdivision, governmental unit, department or agency, and includes any trustee, receiver, assignee, or personal representative thereof.

(17) Positive response—Notification to an excavator by markings left at an excavation site, or by fax, phone, e-mail, pager, or written correspondence that allows an excavator to know prior to the beginning of excavation that underground pipelines have been located and marked or that there are no underground pipelines in the vicinity of the excavation.

(18) Soft digging—Any movement of earth using tools or equipment that use air or water pressure as the direct means to break up soil or earth for removal by vacuum excavation.

(19) Spot marking—Making a circle around the spot where excavation is to take place, typically used when standard marking techniques would be considered damaging to property or cannot be used because of limited space.

(20) Tillage—The manipulation of soil in preparation for planting and the cultivation by loosening or breaking up of soil around growing plants by hand digging or by use of a moldboard, disk, rotary, chisel or subsoil plow, a cultivator, a harrow, or a tiller.

(21) Tolerance zone—Half the nominal diameter of the underground pipeline plus a minimum of 18 inches on either side of the outside edge of the underground pipeline on a horizontal plane.

(22) TDRF—The Texas Damage Reporting Form, the on-line reporting system of the Railroad Commission for use in reporting damage to underground pipelines or violations of this chapter.

(23) Underground pipeline—A pipeline containing flammable, toxic, or corrosive gas, a hazardous liquid, or carbon dioxide that is located partially or totally underground.

(24) White-lining—An excavator’s designation on the ground of the area to be excavated using white paint, white flags, white stakes, or any combination of these.

(25) Working day—Every day that is not a Saturday, a Sunday, or a legal holiday.

Source Note: The provisions of this §18.2 adopted to be effective September 1, 2007, 32 TexReg 3545

TEXAS ADMINISTRATIVE CODE

TITLE 16	ECONOMIC REGULATION
PART 1	RAILROAD COMMISSION OF TEXAS
CHAPTER 18	UNDERGROUND PIPELINE DAMAGE PREVENTION
RULE §18.3	Excavator Notice to Notification Center

(a) An excavator shall request the location of underground pipelines at each excavation site by giving notice to the notification center as required by Texas Utilities Code, Chapter 251.

(b) An excavator shall include in the notice the method or methods by which the excavator will receive a positive response.

(c) When an excavation site cannot be clearly identified and described on a line locate ticket, the excavator shall use



white-lining to mark the excavation area prior to giving notice to the notification center and before the locator arrives on the excavation site.

(d) If an excavation project is too large to mark using white-lining or is so expansive that a full description cannot be provided on a line locate ticket, then the operator and the excavator shall conduct a face-to-face meeting to discuss the excavation activities and to establish protocols for:

- (1) the interval between each notice to the notification center;
- (2) the scope of each line locate ticket;
- (3) the life of each line locate ticket; and
- (4) the schedule of work on the excavation and the chronological order in which applicable locate tickets are to be marked.

(e) If an excavation project is not completed at the time a line locate ticket expires, the excavator shall refresh the ticket by giving the notice described in subsection (a) of this section. A request to refresh shall be limited to the area yet to be excavated.

(f) An excavator and an operator may agree that the life of a line locate ticket is more than 14 days provided that:

- (1) the agreement is in writing; and
- (2) the agreement is signed and dated by both the excavator and the operator.

(g) Both the excavator and the operator shall retain a copy of any agreement made pursuant to subsection (f) of this section.

Source Note: The provisions of this §18.3 adopted to be effective September 1, 2007, 32 TexReg 3545

TEXAS ADMINISTRATIVE CODE

TITLE 16

PART 1

CHAPTER 18

RULE §18.4

ECONOMIC REGULATION

RAILROAD COMMISSION OF TEXAS

UNDERGROUND PIPELINE DAMAGE PREVENTION

Excavator Obligation to Avoid Damage to Underground Pipelines

(a) An excavator shall comply with the requirements of §18.3



of this title, relating to Excavator Notice to Notification Center. An excavator shall also comply with the requirements of Texas Health & Safety Code, Subchapter H, relating to Construction Affecting Pipeline Easements and Rights-of-Way, and shall plan an excavation in such a manner as to avoid damage to and minimize interference with all underground pipelines in the vicinity of the excavation area and shall take all reasonable steps to protect underground pipelines from damage.

(b) An excavator shall wait the time required by Texas Utilities Code, Chapter 251, before beginning excavation.

(c) Prior to excavation, an excavator shall confirm that a copy of a valid locate ticket for the location is in the possession of the excavator's designated representative and can be obtained from the representative or can be provided within one hour of a request from the operator or the Commission.

(d) Prior to excavation, an excavator shall verify that it is at the correct location as specified on the locate ticket; shall verify white-lining; and, to the best of the excavator's ability, shall make a visual check for any unmarked underground pipelines. Checking for unmarked underground pipelines includes, but is not limited to, looking for additional pipeline line markers, such as painted fence post-type markers, aboveground pipeline valves, meter sets, regulator stations, or rectifier units.

(e) An excavator shall not begin excavating until a second notice is given to the notification center for the area if:

(1) the excavator has knowledge of the existence of an underground pipeline and has received an "all clear" or a "no conflict" response from an operator;

(2) the excavator observes clear evidence (such as a line marker or an above-ground fixture) of the presence of an unmarked underground pipeline in the area of the proposed excavation, and has received an "all clear" or a "no conflict" response from an operator;

(3) there is no positive response for the excavation area; or

(4) the positive response is unclear or obviously erroneous (for example, for a different location or for a different type of underground facility).

(f) If an excavator has given a second notice in accordance with this section and there is no positive response within four hours, the excavator may begin excavating.

(g) An excavator shall protect and preserve locate markings

from the time the excavator begins work until markings are no longer required for the proper and safe excavation in the vicinity of all underground pipelines.

(h) Each excavator that damages an underground pipeline shall notify the operator of the damage through the notification center immediately but not later than two hours following the damage incident. An excavator that damages an underground pipeline shall not cover the exposed pipeline without approval of the operator.

Source Note: The provisions of this §18.4 adopted to be effective September 1, 2007, 32 TexReg 3545

TEXAS ADMINISTRATIVE CODE

TITLE 16	ECONOMIC REGULATION
PART 1	RAILROAD COMMISSION OF TEXAS
CHAPTER 18	UNDERGROUND PIPELINE DAMAGE PREVENTION
RULE §18.5	Operator and Excavator Obligations with Respect to Positive Response

(a) Upon being contacted by the notification system, an operator shall provide a positive response within the time frames specified in Texas Utilities Code, Chapter 251, by either:

(1) marking the operator’s underground pipelines in accordance with the requirements of Texas Utilities Code, Chapter 251, and this chapter; or

(2) notifying the excavator that the operator has no underground pipelines in the vicinity of the proposed excavation area. The operator shall provide this “all clear” or “no conflict” notice using the method or methods that the excavator specified in accordance with §18.3 of this title, relating to Excavator Notice to Notification Center.

(b) Both the excavator and the operator shall make a record of the positive response regarding each line locate ticket received.

(c) An excavator that gives a second notice to the notification center pursuant to §18.4(e) of this title, relating to Excavator Obligation to Avoid Damage to Underground Pipelines,

because an operator failed to provide a positive response to an excavator shall report that fact to the Commission through TDRF as set forth in §18.11 of this title, relating to Reporting Requirements. An excavator shall also report an operator's failure to provide a positive response to a second call to the Commission through TDRF as specified in §18.11.

(d) An operator that receives a notice of damage to its underground pipeline through a notification center pursuant to §18.11(b) of this title, relating to reporting requirements, shall respond within four hours.

Source Note: The provisions of this §18.5 adopted to be effective September 1, 2007, 32 TexReg 3545

TEXAS ADMINISTRATIVE CODE

<p>TITLE 16</p> <p>PART 1</p> <p>CHAPTER 18</p> <p>RULE §18.6</p>	<p>ECONOMIC REGULATION</p> <p>RAILROAD COMMISSION OF TEXAS</p> <p>UNDERGROUND PIPELINE DAMAGE PREVENTION</p> <p>General Marking Requirements</p>
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(a) At a minimum, all markings shall conform to the requirements of American Public Works Association (APWA) Uniform Color Code (ANSI Standard Z535.1, Safety Color Code).

(b) Markings shall be valid for an excavation site for 14 days from the time a positive response is given, unless the markings were placed in response to an emergency and the emergency condition has ceased to exist. If a line locate ticket has been refreshed pursuant to §18.3(e) of this title, relating to Excavator Notice to Notification Center, then the operator shall either ensure that markings are still visible and valid or shall re-mark.

(c) If the use of line marking may permanently damage property (driveways, landscaping, historic locations to the extent boundaries are known), a locator shall use spot marking or another suitable marking method or methods.

Source Note: The provisions of this §18.6 adopted to be



effective September 1, 2007, 32 TexReg 3545

TEXAS ADMINISTRATIVE CODE

<u>TITLE 16</u>	ECONOMIC REGULATION
<u>PART 1</u>	RAILROAD COMMISSION OF TEXAS
<u>CHAPTER 18</u>	UNDERGROUND PIPELINE DAMAGE PREVENTION
<u>RULE §18.7</u>	Excavator Marking Requirements

(a) Prior to giving notice pursuant to §18.3 of this title, relating to Excavator Notice to Notification Center, an excavator shall mark, if applicable according to §18.3(c), the specific excavation area using white paint flags, or stakes, whichever is most visible for the terrain.

(b) An excavator shall mark the area of excavation using intervals that show the direction of the excavation.

Source Note: The provisions of this §18.7 adopted to be effective September 1, 2007, 32 TexReg 3545

TEXAS ADMINISTRATIVE CODE

<u>TITLE 16</u>	ECONOMIC REGULATION
<u>PART 1</u>	RAILROAD COMMISSION OF TEXAS
<u>CHAPTER 18</u>	UNDERGROUND PIPELINE DAMAGE PREVENTION
<u>RULE §18.8</u>	Operator Marking Requirements

(a) A locator shall use all information necessary to mark underground pipelines accurately.

(b) Locators shall mark the approximate center line of an underground pipeline.

(c) If, in the process of marking an underground pipeline, a locator discovers a customer-owned underground pipeline, the locator shall make a reasonable effort to advise the excavator of the presence of the customer-owned underground pipeline.

(d) Where a proposed excavation crosses an underground

pipeline, markings shall be at intervals that clearly define the route of the underground pipeline, to the extent possible.

(e) A locator shall mark underground pipelines by means of stakes, paint, flags, or a combination of two or more of these. The terrain, site conditions, and type and extent of the proposed excavation shall be considered in determining the most suitable means for marking underground pipelines.

(f) A locator shall mark at sufficient intervals to indicate clearly the approximate horizontal location and direction of the underground pipeline or pipelines. The distance between any two marks indicating the same line shall not exceed 20 feet; however, a shorter distance between marks may be necessary because of site conditions or directional changes of the underground pipeline.

(g) Markings of an underground pipeline greater than six inches in nominal outside dimension shall include the size in inches at every other mark.

(h) A locator shall extend all markings, if practical, at least one additional mark beyond the boundaries of the specific location of the proposed work as detailed on the line locate ticket.

(i) A locator shall make paint marks approximately eight to ten inches in length and one to two inches in width except when spot marking is necessary. A locator shall make a minimum of three separate marks for each underground pipeline marking.

Source Note: The provisions of this §18.8 adopted to be effective September 1, 2007, 32 TexReg 3545

TEXAS ADMINISTRATIVE CODE

<u>TITLE 16</u>	ECONOMIC REGULATION
<u>PART 1</u>	RAILROAD COMMISSION OF TEXAS
<u>CHAPTER 18</u>	UNDERGROUND PIPELINE DAMAGE PREVENTION
<u>RULE §18.9</u>	Options for Managing an Excavation Site in the Vicinity of an Underground Pipeline

(a) After complying with the notice requirements of §18.3



of this title, relating to Excavator Notice to Notification Center, an excavator and an operator may jointly establish the protocols applicable to an excavation site in the vicinity of underground pipelines based on the particular characteristics of each job. The protocols applicable to an excavation site may:

(1) designate the contact person or persons for each entity working at an excavation site;

(2) establish the required mode or modes of communication among all entities working at an excavation site, e.g., telephone or other electronic means or face-to-face meetings at prescribed times or intervals;

(3) provide the method for coordinating work activities among all entities working at an excavation site;

(4) provide for the ownership and/or possession of the locate ticket or tickets;

(5) declare which entity or entities must have the locate ticket or locate ticket number before beginning work;

(6) state the life of a locate ticket and the circumstances that require refreshing the locate ticket;

(7) state the schedule of work on the excavation and, if applicable, the chronological order in which applicable locate tickets are to be located;

(8) designate the extent of the tolerance zone, provided that it shall not be less than half the nominal diameter of the underground pipeline plus a minimum of 18 inches on either side of the outside edge of the underground pipeline on a horizontal plane and the type of excavation permitted within the tolerance zone; and

(9) provide for any other agreement with respect to excavation activities and/or marking requirements that will or will tend to ensure the proper and safe excavation in the vicinity of an underground pipeline.

(b) If an excavator and an operator jointly establish protocols pursuant to this section, both the excavator and the operator shall make and retain a record of the agreement.

Source Note: The provisions of this §18.9 adopted to be effective September 1, 2007, 32 TexReg 3545

TEXAS ADMINISTRATIVE CODE

<u>TITLE 16</u>	ECONOMIC REGULATION
<u>PART 1</u>	RAILROAD COMMISSION OF TEXAS
<u>CHAPTER 18</u>	UNDERGROUND PIPELINE DAMAGE PREVENTION
<u>RULE §18.10</u>	Excavation within Tolerance Zone

(a) An excavator shall comply with the requirements of Texas Health & Safety Code, Subchapter H, relating to Construction Affecting Pipeline Easements and Rights-of-Way.

(b) When excavation is to take place within the specified tolerance zone, an excavator shall exercise such reasonable care as may be necessary to prevent damage to any underground pipeline in or near the excavation area. Methods to consider, based on certain climate or geographical conditions, include hand digging when practical, soft digging, vacuum excavation methods, pneumatic hand tools. Other mechanical methods or other technical methods that may be developed may be used with the approval of the underground pipeline operator. Hand digging and non-invasive methods are not required for pavement removal.

Source Note: The provisions of this §18.10 adopted to be effective September 1, 2007, 32 TexReg 3545

TEXAS ADMINISTRATIVE CODE

<u>TITLE 16</u>	ECONOMIC REGULATION
<u>PART 1</u>	RAILROAD COMMISSION OF TEXAS
<u>CHAPTER 18</u>	UNDERGROUND PIPELINE DAMAGE PREVENTION
<u>RULE §18.11</u>	Reporting Requirements

(a) Each operator of an underground pipeline shall report to the Commission all damage to its pipelines caused by an excavator. Within 10 days of the damage incident or of the operator's actual knowledge of the damage incident, an operator shall submit the information to the Commission through TDRF, which may be accessed at <http://www.rrc.state.tx.us/formpr/index.html> using its assigned operator



identification code.

(b) Each excavator that damages an underground pipeline shall notify the operator of the damage through the notification center immediately but not later than two hours following the damage incident. The excavator shall also submit report of the damage incident to the Commission using TDRF, which may be accessed at <http://www.rrc.state.tx.us/formpr/index.html> and the excavator sign-in, within 10 days of the incident.

(c) Each excavator that makes an additional call to the notification center pursuant to §18.4(e) of this title, relating to Excavator Obligation to Avoid Damage to Underground Pipelines, because the excavator did not receive a positive response, shall report that fact to the Commission through TDRF. An excavator shall also report an operator's failure to provide a positive response to a second call to the Commission through TDRF.

(d) An emergency response official, a member of the general public, or another person aware of damage to an underground pipeline is encouraged to submit an incident form using TDRF, which can be accessed at <http://www.rrc.state.tx.us/formpr/index.html>. Entries can be made through the general public or emergency response official sign-in.

Source Note: The provisions of this §18.11 adopted to be effective September 1, 2007, 32 TexReg 3545

TEXAS ADMINISTRATIVE CODE

<u>TITLE 16</u>	ECONOMIC REGULATION
<u>PART 1</u>	RAILROAD COMMISSION OF TEXAS
<u>CHAPTER 18</u>	UNDERGROUND PIPELINE DAMAGE PREVENTION
<u>RULE §18.12</u>	Penalty Guidelines

(a) Policy. Improved safety and environmental protection are the desired outcomes of any enforcement action. Encouraging operators, excavators, and other persons to take appropriate voluntary corrective and future protective actions once a violation has occurred is an effective

component of the enforcement process. Deterrence of violations through penalty assessments is also a necessary and effective component of the enforcement process. A rule-based enforcement penalty guideline to evaluate and rank underground pipeline damage prevention-related violations is consistent with the central goal of the Commission's enforcement efforts to promote compliance. Penalty guidelines set forth in this section will provide a framework for more uniform and equitable assessment of penalties throughout the state, while also enhancing the integrity of the Commission's enforcement program.

(b) Only guidelines. The penalty amounts shown in the tables in this section are provided solely as guidelines to be considered by the Commission in determining the amount of administrative penalties for violations of the requirements of Texas Health and Safety Code, §756.126; Texas Natural Resources Code, §117.012; Texas Utilities Code, §121.201; or the provisions of a rule or standard adopted or an order issued under any of these statutes, as they pertain to underground pipeline damage prevention.

(c) Commission authority. The establishment of these penalty guidelines shall in no way limit the Commission's authority and discretion to cite violations and assess administrative penalties. The typical penalties listed in this section are for the most common violations cited; however, this is neither an exclusive nor an exhaustive list of violations that the Commission may cite. The Commission retains full authority and discretion to cite violations of Texas Health and Safety Code, §756.126; Texas Natural Resources Code, §117.012; and Texas Utilities Code, §121.201, and the provisions of a rule or standard adopted or an order issued under those statutes and to assess administrative penalties in any amount up to the statutory maximum when warranted by the facts in any case, regardless of inclusion in or omission from this section.

(d) Factors considered. The amount of any penalty requested, recommended, or finally assessed in an enforcement action will be determined on an individual case-by-case basis for each violation, taking into consideration the following factors:

(1) the person's history of previous violations or formal warnings, including the number of previous violations or formal warnings;

(2) the seriousness of the violation and of any pollution

resulting from the violation;

(3) any hazard to the health or safety of the public;

(4) the degree of culpability;

(5) the demonstrated good faith of the person charged; and

(6) any other factor the Commission considers relevant, including but not limited to the number of locate requests received and responded to by an operator and the number of location notifications given by an excavator in the previous year.

(e) Typical penalties. Regardless of the method by which the typical penalty amount is calculated, the total penalty amount will be within the statutory limit. Typical penalties for violations of Texas Health and Safety Code, §756.126; Texas Natural Resources Code, §117.012, and Texas Utilities Code, §121.201, relating to excavation in the vicinity of an underground pipeline and for violations of a rule or standard adopted or an order issued under those statutes relating to excavation in the vicinity of an underground pipeline are set forth in Table 1.

Figure: 16 TAC §18.12(e)

Table 1. Typical Penalties

Rule and violation	Guideline Penalty Amount
16 TAC §18.1-Failure to comply with Chapter 18	\$2,000
16 TAC §18.3-Failure to notify notification center	\$2,500
16 TAC §18.3-Failure to include method for positive response	\$1,000
16 TAC §18.3-Failure to use white-lining where appropriate	\$1,000
16 TAC §18.3-Failure to conduct a required face-to-face meeting	\$1,000
16 TAC §18.3; §18.9-Failure to establish sufficient protocols when required	\$1,000
16 TAC §18.3-Failure to refresh an expired locate ticket	\$1,000
16 TAC §18.4-Failure to plan excavation to avoid damage or take reasonable steps to protect pipelines	\$1,000
16 TAC §18.4-Failure to wait the required time to excavate	\$1,000
16 TAC §18.4-Failure to give second notice when required	\$1,000

16 TAC §18.4-Failure to confirm valid locate ticket	\$1,000
16 TAC §18.4-Failure to protect locate markings	\$1,000
16 TAC §18.5-Failure to provide positive response on first or second notice	\$1,000
16 TAC §18.5-Failure to keep record of positive response	\$1,000
16 TAC §18.5; §18.11-Failure to notify of no positive response	\$1,000
16 TAC §§18.6-18.8-Failure to mark excavation area or pipeline properly	\$2,500
16 TAC §18.6-Failure to notify notification center for excavation activity after an emergency notice and the emergency condition ceased to exist	\$1,000
16 TAC §18.9-Failure to record and/or retain protocol agreement	\$1,000
16 TAC §18.10-Failure to excavate with reasonable care within Tolerance Zone	\$2,500
16 TAC §18.11-Failure to submit a Texas Damage Reporting Form	\$2,000
16 TAC §18.11-Failure of excavator to report pipeline damage to operator	\$2,000

(f) Penalty enhancements for certain violations. For violations that involve threatened or actual pollution; result in threatened or actual safety hazards; or result from the reckless or intentional conduct of the person charged, the Commission may assess an enhancement of the typical penalty. The enhancement may be in any amount in the range shown for each type of violation as shown in Table 2.

Figure: 16 TAC §18.12(f)

Table 2. Guideline Penalty Enhancements

For violations that involve:	Threatened or actual pollution	Threatened or actual safety hazard	Severity of violation or culpability of person charged
Bay estuary or marine habitat	\$5,000 to \$25,000		
Pollution resulting from the violation	\$5,000 to \$25,000		

Death or personal injury		\$5,000 to \$25,000	
Impact to a residential or public area		\$5,000 to \$25,000	
Reportable incident or accident		\$5,000 to \$25,000	
Any hazard to the health or safety of the public		\$5,000 to \$25,000	
The seriousness of the violation \$5,000 to \$25,000			
Reckless conduct of person charged			Up to double the total penalty
Intentional conduct of person charged			Up to triple the total penalty

(g) Penalty enhancements for certain violators. For violations in which the person charged has a history of prior violations or warnings within seven years of the current enforcement action, the Commission may assess an enhancement based on either the number of prior violations or the total amount of previous administrative penalties, but not both. The actual amount of any penalty enhancement will be determined on an individual case-by-case basis for each violation. The guidelines in Tables 3 and 4 are intended to be used separately. Either guideline may be used where applicable, but not both.

Figure 1: 16 TAC §18.12(g)

Table 3. Guideline penalty enhancements based on number of prior violations or warnings within seven years

Number of violations or warnings in the seven years prior to action	Guideline Enhancement Amount
One	Double penalty amount
More than two but fewer than five	Triple penalty amount
More than five but fewer than ten	Four times penalty amount
More than ten	Five times penalty amount

Figure 2: 16 TAC §18.12(g)

Table 4. Guideline penalty enhancements based on total amount of prior penalties within seven years

Total administrative penalties assessed in the seven years prior to action	Guideline Enhancement amount
Less than \$10,000	\$1,000
Between \$10,001 and \$25,000	\$2,500
Between \$25,001 and \$50,000	\$5,000
Between \$50,001 and \$100,000	\$10,000
Over \$100,000	10% of total amount

(h) Penalty reduction for settlement before hearing. The recommended monetary penalty for a violation may be reduced by up to 50% if the person charged agrees to a settlement before the Commission conducts an administrative hearing to prosecute a violation. Once the hearing is convened, the opportunity for the person charged to reduce the basic monetary penalty is no longer available. The reduction applies to the basic monetary penalty amount requested and not to any requested enhancements.

(i) Demonstrated good faith. In determining the total amount of any monetary penalty requested, recommended, or finally assessed in an enforcement action, the Commission may consider, on an individual case-by-case basis for each violation, the demonstrated good faith of the person charged. Demonstrated good faith includes but is not limited to actions taken by the person charged before the filing of an enforcement action to remedy, in whole or in part, a violation of the rules in this chapter or to mitigate the consequences of a violation of the rules in this chapter.

(j) Other sanctions. Depending upon the nature of and the consequences resulting from a violation of this chapter, the Commission may impose a non-monetary penalty, such as requiring attendance at a safety training course, or may issue a warning.

(k) Penalty calculation worksheet. The penalty calculation worksheet shown in Table 5 lists the typical penalty amounts for certain violations; the circumstances justifying

enhancements of a penalty and the amount of the enhancement; and the circumstances justifying a reduction in a penalty and the amount of the reduction.

Figure: 16 TAC §18.12(k)

Table 5. Penalty calculation worksheet

Violations from Table 1		Typical penalty amounts from Table 1	
1	16 TAC §18.1-Failure to comply with Chapter 18	\$2,000	\$
2	16 TAC §18.3-Failure to notify notification center	\$2,500	\$
3	16 TAC §18.3-Failure to include method for positive response	\$1,000	\$
4	16 TAC §18.3-Failure to use white-lining where appropriate	\$1,000	\$
5	16 TAC §18.3-Failure to conduct a required face-to-face meeting	\$1,000	\$
6	16 TAC §18.3; §18.9-Failure to establish sufficient protocols when required	\$1,000	\$
7	16 TAC §18.3-Failure to refresh an expired locate ticket	\$1,000	\$
8	16 TAC §18.4-Failure to plan excavation to avoid damage or take reasonable steps to protect pipelines	\$1,000	\$
9	16 TAC §18.4-Failure to wait the required time to excavate	\$1,000	\$
10	16 TAC §18.4-Failure to give second notice when required	\$1,000	\$
11	16 TAC §18.4-Failure to confirm valid locate ticket	\$1,000	\$
12	16 TAC §18.4-Failure to protect locate markings	\$1,000	\$
13	16 TAC §18.5-Failure to provide positive response on first or second notice	\$1,000	\$
14	16 TAC §18.5-Failure to keep record of positive response	\$1,000	\$

15	16 TAC §18.5; §18.11-Failure to notify of no positive response	\$1,000	\$
16	16 TAC §§18.6-18.8-Failure to mark excavation area or pipeline properly	\$2,500	\$
17	16 TAC §18.6-Failure to notify notification center for excavation activity after an emergency notice and the emergency condition ceased to exist	\$1,000	\$
18	16 TAC §18.9-Failure to record and/or retain protocol agreement	\$1,000	\$
19	16 TAC §18.10-Failure to excavate with reasonable care within Tolerance Zone	\$2,500	\$
20	16 TAC §18.11-Failure to submit a Texas Damage Reporting Form	\$2,000	\$
21	16 TAC §18.11-Failure of excavator to report pipeline damage to operator	\$2,000	\$
22	Subtotal of typical penalty amounts from Table 1 (lines 1-21, inclusive)		\$
23	Reduction for settlement before hearing: up to 50% of line 22 amt.	_____%	\$
24	Subtotal: amount shown on line 22 less applicable settlement reduction (line 23)		\$
Penalty enhancement amounts for threatened or actual pollution or safety hazard from Table 2			
25	Bay or estuary or marine habitat	\$5,000 to \$25,000	\$
26	Pollution resulting from the violation	\$5,000 to \$25,000	\$
27	Death or personal injury	\$5,000 to \$25,000	\$
28	Impact to a residential or public area	\$5,000 to \$25,000	\$
29	Reportable incident or accident	\$5,000 to \$25,000	\$
30	Any hazard to the health or safety of the public	\$5,000 to \$25,000	\$
Penalty enhancements for severity of violation from Table 2			
31	The seriousness of the violation	\$5,000 to \$25,000	\$

32	Subtotal: amount on line 24 plus all amounts on lines 25 through 31, inclusive		\$
Penalty enhancements for culpability of person charged from Table 2			
33	Reckless conduct of person charged	double line 32 amt.	\$
34	Intentional conduct of person charged	triple line 32 amt.	\$
Penalty enhancements for number of prior violations or warnings within past seven years from Table 3			
35	One	double line 32 amt.	\$
36	More than two but fewer than five	triple line 32 amt	\$
37	More than five but fewer than ten	four times line 32 amt	\$
38	Ten or more	five times line 32 amt.	\$
Penalty enhancements for amount of penalties within past seven years from Table 4			
39	Less than \$10,000	\$1,000	\$
40	Between \$10,001 and \$25,000	\$2,500	\$
41	Between \$25,001 and \$50,000	\$5,000	\$
42	Between \$50,001 and \$100,000	\$10,000	\$
43	Over \$100,000	10% of total amt	\$
44	Subtotal: line 32 plus the amount(s) on line 33 and/or 34 plus the amount shown on any one line from 35 through line 43, inclusive		\$
45	Reduction for demonstrated good faith of person charged		\$

Source Note: The provisions of this §18.12 adopted to be effective September 1, 2007, 32 TexReg 3545; amended to be effective August 27, 2012, 37 TexReg 6578

UTILITIES CODE

TITLE 5 PROVISIONS AFFECTING THE OPERATION OF UTILITY FACILITIES

CHAPTER 251 UNDERGROUND FACILITY DAMAGE PREVENTION AND SAFETY

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 251.001. SHORT TITLE. This chapter may be cited as the Underground Facility Damage Prevention and Safety Act.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 18.17(a), eff. Sept. 1, 1999.

Sec. 251.002. DEFINITIONS. In this chapter:

(1) "Class A underground facility" means an underground facility that is used to produce, store, convey, transmit, or distribute:

- (A) electrical energy;
- (B) natural or synthetic gas;
- (C) petroleum or petroleum products;
- (D) steam;
- (E) any form of telecommunications service, including voice, data, video, or optical transmission, or cable television service; or
- (F) any other liquid, material, or product not defined as a Class B underground facility.

(2) "Class B underground facility" means an underground facility that is used to produce, store, convey, transmit, or distribute:

- (A) water;
- (B) slurry; or
- (C) sewage.

(3) "Corporation" means the Texas Underground Facility Notification Corporation.

(4) "Damage" means:

- (A) the defacing, scraping, displacement, penetration, destruction, or partial or complete severance of an underground facility or of any protective coating, housing, or other protective device of an underground facility;

(B) the weakening of structural or lateral support of an underground facility; or

(C) the failure to properly replace the backfill covering an underground facility.

(5) "Excavate" means to use explosives or a motor, engine, hydraulic or pneumatically powered tool, or other mechanized equipment of any kind and includes auguring, backfilling, boring, compressing, digging, ditching, drilling, dragging, dredging, grading, mechanical probing, plowing-in, pulling-in, ripping, scraping, trenching, and tunneling to remove or otherwise disturb soil to a depth of 16 or more inches.

(6) "Excavator" means a person that excavates or intends to excavate in this state.

(7) "Exploration and production underground facility" means an underground facility used by a person producing gas or oil, or both, for the production of that gas or oil, including facilities used for field separation, treatment, gathering, or storage of gas or oil.

(8) "High speed data transmission" means a method of data transmission that does not include facsimile or voice transmission.

(9) "Legal holiday" means a holiday specified as a legal holiday by Subchapter B, Chapter 662, Government Code.

(10) "Mechanized equipment" means equipment operated by mechanical power, including a trencher, bulldozer, power shovel, auger, backhoe, scraper, drill, cable or pipe plow, and other equipment used to plow in or pull in cable or pipe.

(11) "Operator" means a person that operates an underground facility.

(12) "Secured facility" means a parcel of land used for commercial or industrial purposes that is surrounded entirely by a fence or other means of preventing access, including a fence with one or more gates that are locked at all times or monitored by an individual who can prevent unauthorized access.

(13) "Underground facility" means a line, cable, pipeline system, conduit, or structure that is located partially or totally underground and that is used to produce, store, convey, transmit, or distribute telecommunications, electricity, gas, water, sewage, steam, or liquids such as petroleum, petroleum products, or hazardous liquids.

(14) "Saturday notification" means a notice of intent to

excavate provided by an excavator to a notification center on a Saturday before 11:59 a.m.

(15) "Violation" means a violation of Section 251.151, 251.152, or 251.159.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 18.17(a), eff. Sept. 1, 1999.

Sec. 251.003. EXEMPTIONS. The following are not subject to this chapter as underground facilities:

- (1)** an aboveground or underground storage tank, sump, or impoundment or piping connected to an aboveground or underground storage tank, sump, or impoundment located in the same tract of land as the storage tank, sump, or impoundment;
- (2)** an underground facility operated by the owner of a secured facility and located entirely within the secured facility;
- (3)** an underground facility that serves only the owner of the underground facility or the owner's tenant and that is located solely on the owner's property;
- (4)** piping within a well bore;
- (5)** the portion of an exploration and production underground facility that is located within the boundaries of the oil or gas field from which the oil and gas is produced and that is not located in the boundaries of an established easement or right-of-way granted for the benefit of a governmental entity or a private entity if the easement or right-of-way is granted for a public purpose; or
- (6)** an underground facility that serves a cemetery and is located solely on the cemetery's property.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 18.17(a), eff. Sept. 1, 1999.

Sec. 251.004. APPLICATION TO CERTAIN CONTRACTORS AND STATE EMPLOYEES.

- (a) This chapter does not apply to a contractor working in the public right-of-way under a contract with the Texas Department of Transportation.
- (b) Excavation by an employee of the Texas Department of Transportation on a segment of the state highway system is not subject to this chapter if the excavation is more than 10 feet from the right-of-way line.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 18.17(a), eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 17.004(a), eff. Sept. 1, 2003.

Sec. 251.005. CONVERSION OF FACILITY OR OPERATOR.

- (a) An operator of an underground facility that is exempted under this subchapter may voluntarily convert that facility to a Class A underground facility by sending written communication from a competent authority of the operator to the corporation advising of the status change.
- (b) An operator of a Class B underground facility may voluntarily convert to a Class A underground facility operator by sending written communication from a competent authority of the operator to the corporation advising of the status change.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 18.17(a), eff. Sept. 1, 1999.

Sec. 251.006. COMPLIANCE BY PERMIT HOLDERS.

- (a) The fact that a person has a legal permit, permission from the owner of the property or the owner's licensee, or an easement to conduct excavation operations does not affect the person's duty to comply with this chapter.
- (b) Compliance with this chapter does not affect a person's responsibility to obtain a permit required by law.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 18.17(a), eff. Sept. 1, 1999.

Sec. 251.007. FACILITY ON COUNTY OR MUNICIPAL ROAD. This chapter does not affect a contractual or statutory right of a county or municipality to require an operator to relocate, replace, or repair its underground facility.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 18.17(a), eff. Sept. 1, 1999.

Sec. 251.008. EFFECT ON CIVIL REMEDIES. Except as otherwise specifically provided by this chapter, this chapter, including Section 251.201, does not affect any civil remedy for personal injury or for property damage, including any damage to an underground facility.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 18.17(a), eff. Sept. 1, 1999.

Sec. 251.009. PROVISION OF GENERAL INFORMATION. At least once each calendar year, at intervals not exceeding 15 months, each Class A underground facility operator who conveys, transmits, or distributes by means of its underground facilities service directly to more than one million residential customers within this state shall provide all of its residential customers in this state general information about excavation activities covered by this chapter and the statewide toll-free telephone number established by the corporation.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 18.17(a), eff. Sept. 1, 1999.

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SUBCHAPTER B. TEXAS UNDERGROUND FACILITY NOTIFICATION CORPORATION

Sec. 251.051. PURPOSE. The Texas Underground Facility Notification Corporation provides statewide notification services under this chapter.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 18.17(a), eff. Sept. 1, 1999.

Sec. 251.052. NONPROFIT CORPORATION. The corporation is a public nonprofit corporation and has all the powers and duties incident to a nonprofit corporation under the Texas Non-Profit Corporation Act [Article 1396-1.01 et seq., Vernon's Texas Civil Statutes], except that the corporation:

(1) may not make donations for the public welfare or for charitable, scientific, or educational purposes or in aid of war

activities;

(2) may not merge or consolidate with another corporation;

(3) is not subject to voluntary or involuntary dissolution; and

(4) may not be placed in receivership.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 18.17(a), eff. Sept. 1, 1999.

Sec. 251.053. APPLICATION OF OPEN MEETINGS AND OPEN RECORDS LAWS. The corporation is subject to Chapters 551 and 552, Government Code, except that the corporation may not disseminate, make available, or otherwise distribute service area map data or information provided by an operator unless that action is necessary to perform the corporation's specific obligations under this chapter.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 18.17(a), eff. Sept. 1, 1999.

Sec. 251.054. EXPENSES AND LIABILITIES OF CORPORATION.

(a) All expenses of the corporation shall be paid from income of the corporation.

(b) A liability created by the corporation is not a debt of this state, and the corporation may not secure a liability with funds or assets of this state.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 18.17(a), eff. Sept. 1, 1999.

Sec. 251.055. BOARD OF DIRECTORS.

(a) The board of directors of the corporation is composed of the following 12 members appointed by the governor:

(1) six representatives of the general public;

(2) one representative of the gas industry;

(3) one representative of the telecommunications industry;

(4) one representative of the electric industry;

(5) one representative of cable television companies;

(6) one representative of municipalities; and

(7) one representative of persons who engage in

excavation operations who are not also facility operators.

- (b) Board membership is voluntary and a director is not entitled to receive compensation for serving on the board.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 18.17(a), eff. Sept. 1, 1999.

Sec. 251.056. TERMS.

- (a) Directors serve staggered three-year terms, with the terms of four directors expiring each August 31.
- (b) A director serves until the director's successor is appointed by the governor and assumes office.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 18.17(a), eff. Sept. 1, 1999.

Sec. 251.057. DECLARATION OF BOARD VACANCY.

- (a) The board may declare a director's office vacant if the director ceases to be associated with the industry or an operator the director represents.
- (b) Not later than the 60th day after the date a vacancy on the board is declared, the governor shall appoint a person to fill the vacancy for the remainder of the unexpired term.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 18.17(a), eff. Sept. 1, 1999.

Sec. 251.058. OFFICERS.

- (a) The board shall elect from among its directors a chair and vice chair.
- (b) The chair and vice chair serve for a term of one year and may be reelected.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 18.17(a), eff. Sept. 1, 1999.

Sec. 251.059. ENTITLEMENT TO VOTE. The corporation's bylaws must provide that each director is entitled to one vote.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 18.17(a), eff. Sept. 1, 1999.

Sec. 251.060. DUTIES OF CORPORATION. The corporation shall develop and implement processes to:

- (1)** maintain a registration of:
 - (A)** notification centers as provided by Section 251.101(a) [3];
 - (B)** operators who elect to convert facilities to Class A facilities under Section 251.005(a); or
 - (C)** operators who elect to become Class A underground facility operators under Section 251.005(b);
- (2)** establish minimum technical standards used by notification centers;
- (3)** establish a statewide toll-free telephone number to be used by excavators that incorporates the use of a call router system that routes calls to the notification centers on a pro rata basis;
- (4)** oversee the bid process and select the vendor for the statewide toll-free telephone number;
- (5)** oversee the bid process and select the vendor for the call router system;
- (6)** determine before May 1 of each year the cost-sharing between the notification centers of:
 - (A)** the toll-free telephone number; and
 - (B)** the call router system prescribed by Section 251.102(4);
- (7)** develop public service announcements to educate the public about statewide one-call notification and its availability;
- (8)** establish a format for information transfer among notification centers other than high speed data transmission, if appropriate;
- (9)** on a complaint concerning charges, investigate and determine appropriate charges;
- (10)** recommend a civil penalty against a notification center that does not meet the requirements of this chapter of not less than \$1,000 or more than \$5,000 for each violation;
- (11)** refer the recommended penalty to the attorney general, who shall institute a suit in a court of competent jurisdiction to recover the penalty;
- (12)** assist in dispute resolution among notification centers or between a notification center and an operator;
- (13)** assist any operator who encounters difficulty in joining

a notification center; and

(14) review and study design standards for the placement of underground facilities throughout this state.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 18.17(a), eff. Sept. 1, 1999.

Sec. 251.061. CONTRACT FOR STATEWIDE TOLL-FREE NUMBER AND CALL ROUTER SYSTEM.

- (a) The corporation shall solicit proposals for the contract to establish and operate the statewide toll-free telephone number and the call router system by using a request for proposals process that includes specifications that have been approved by the board of directors in accordance with this chapter.
- (b) The corporation is not required to award the contract to the lowest offeror if the terms of another proposal would result in a lower annual cost and are more advantageous to the corporation and its members. The corporation may reject all proposals if the corporation finds that none of the proposals is acceptable.
- (c) After the proposals are opened, each document relating to the consideration of a proposal or the award of a contract and the text of the contract are considered books and records of the corporation for the purposes of Article 2.23, Texas Non-Profit Corporation Act [Article 1396-2.23, Vernon's Texas Civil Statutes].

Added by Acts 1999, 76th Leg., ch. 62, Sec. 18.17(a), eff. Sept. 1, 1999.

Sec. 251.062. FEES AND RATES.

- (a) Except as provided by this section, the corporation may not, for any reason, impose an assessment, fee, or other charge, including a charge for inputting data, against an operator.
- (b) Before January 15 of each year, a Class A facility operator shall pay to the corporation a fee of \$50 for services to be performed by the corporation during that calendar year. A fee for a part of a year may not be prorated.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 18.17(a), eff. Sept. 1, 1999.

SUBCHAPTER C. NOTIFICATION CENTERS

Sec. 251.101. NOTIFICATION CENTER.

- (a) A notification center is a legal entity that:
- (1) operates a notification system capable of serving excavators and operators statewide;
 - (2) is created to:
 - (A) receive notification of an intent to excavate and of damage to an underground facility and disseminate that information to member operators that may be affected by the excavation or damage and to other notification centers operating in this state; and
 - (B) receive notification of an extraordinary circumstance and disseminate that information to member operators and to other notification centers operating in this state; and
 - (3) registers the following information with the corporation:
 - (A) its name, address, and telephone number;
 - (B) the name of a contact person;
 - (C) a statement of compliance with Section 251.104; and
 - (D) a listing of the counties in which it operates.
- (b) A notification center operating on September 1, 1997, may continue to operate if the notification center complies with this chapter.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 18.17(a), eff. Sept. 1, 1999.

Sec. 251.102. GENERAL DUTIES OF NOTIFICATION CENTER. A notification center shall:

- (1) operate 24 hours a day every day of the year;
- (2) have the capability to receive emergency information 24 hours a day from excavators and disseminate the information as soon as it is received to the appropriate

operators and to all registered and affected notification centers operating in this state;

(3) have the capacity to receive extraordinary circumstance information 24 hours a day from operators and disseminate the information as soon as it is received to all registered and affected notification centers;

(4) submit to the corporation, not later than May 15 of each year, a pro rata share of the expense, as established by the corporation, of the statewide toll-free telephone number and the call router;

(5) provide, on request of an excavator, a contact name and telephone number of a representative of the operator for special circumstances; and

(6) have personnel capable of assisting Spanish-speaking customers.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 18.17(a), eff. Sept. 1, 1999.

Sec. 251.103. RECORDS.

(a) A notification center shall maintain for not less than four years a record to document:

(1) the receipt of a notice of:

(A) intent to excavate;

(B) damage to an underground facility;

(C) an emergency excavation; and

(D) an extraordinary circumstance;

(2) the information the excavator is required to provide to the notification center under this chapter;

(3) contact with operators and other notification centers; and

(4) the information the notification center provided to the excavator.

(b) A notification center may not destroy records that relate to any matter that is involved in litigation if the notification center is placed on notice that the litigation has not been finally resolved.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 18.17(a), eff. Sept. 1, 1999.

Sec. 251.104. INSURANCE. A notification center shall, at all times, maintain a minimum of \$5 million professional

liability and errors and omissions insurance to cover duties prescribed by this chapter.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 18.17(a), eff. Sept. 1, 1999.

Sec. 251.105. FEES AND CHARGES.

- (a) A notification center that notifies another notification center under Section 251.102(2) or (3) or Section 251.153(b) shall recover an amount not exceeding the actual cost of providing the notice from the notification center receiving the notice.
- (b) The notification center shall charge a Class A underground facility operator not more than \$1.25 for a call made to the system that affects the operator. The board may increase or decrease the maximum charge only on an affirmative vote of at least two-thirds of the total number of votes entitled to be cast. A notification center may petition the corporation for an increase in the maximum charge and is entitled to the increase on proof that costs exceed the maximum charge.
- (c) The notification center may not charge an operator any additional fee such as an initiation fee, a membership fee, or a set-up fee.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 18.17(a), eff. Sept. 1, 1999.

Sec. 251.106. PAYMENTS TO CORPORATION. Each time a notification center receives a call from an excavator under Section 251.151, the notification center shall pay the corporation five cents. The corporation shall waive this charge for the remainder of any year in which the corporation receives \$250,000 under this section.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 18.17(a), eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 652, Sec. 1, eff. Sept. 1, 2001.

Sec. 251.107. DUTY TO PARTICIPATE IN NOTIFICATION CENTER.

- (a) Each operator of a Class A underground facility,

including a political subdivision of this state, shall participate in a notification center as a condition of doing business in this state.

- (b) Each operator of a Class A underground facility shall provide to the notification center:
 - (1) maps or grid locations or other identifiers determined by the operator indicating the location of the operator's underground facilities;
 - (2) the name and telephone number of a contact person or persons; and
 - (3) at least quarterly but, if possible, as those changes occur, information relating to each change in the operator's maps or grid locations or other identifiers or in the person or persons designated as the operator's contact person or persons.
- (c) The notification center may not require an operator to conduct a survey of the operator's underground facilities or alter the operator's existing signage.
- (d) A notification center may not disseminate, make available, or otherwise distribute maps or information provided by an operator unless that action is necessary to perform the notification center's specific obligations under this chapter.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 18.17(a), eff. Sept. 1, 1999.

SUBCHAPTER D. REQUIREMENTS RELATING TO EXCAVATION

Sec. 251.151. DUTY OF AN EXCAVATOR.

- (a) Except as provided by Sections 251.155 and 251.156, a person who intends to excavate shall notify a notification center not earlier than the 14th day before the date the excavation is to begin or later than the 48th hour before the time the excavation is to begin, excluding Saturdays, Sundays, and legal holidays.
- (b) Notwithstanding Subsection (a), if an excavator makes a Saturday notification, the excavator may begin the excavation the following Tuesday at 11:59

a.m. unless the intervening Monday is a holiday. If the intervening Monday is a holiday, the excavator may begin the excavation the following Wednesday at 11:59 a.m.

- (c) To have a representative present during the excavation, the operator shall contact the excavator and advise the excavator of the operator's intent to be present during excavation and confirm the start time of the excavation. If the excavator wants to change the start time, the excavator shall notify the operator to set a mutually agreed-to time to begin the excavation.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 18.17(a), eff. Sept. 1, 1999.

Sec. 251.152. INFORMATION INCLUDED IN NOTICE. The excavator shall include in the notice required under Section 251.151:

- (1) the name of the person serving the notice;
- (2) the location of the proposed area of excavation, including:
 - (A) the street address, if available, and the location of the excavation at the street address; or
 - (B) if there is no street address, an accurate description of the excavation area using any available designations such as the closest street, road, or intersection;
- (3) the name, address, and telephone number of the excavator or the excavator's company;
- (4) the excavator's field telephone number, if one is available;
- (5) a telephone facsimile number, e-mail address, or another electronic number or address approved by the board to which an operator may send the notification required by Section 251.157(d);
- (6) the starting date and time and the anticipated completion date of excavation; and
- (7) a statement as to whether explosives will be used.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 18.17(a), eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 858, Sec. 1, eff. Nov. 1, 2001.

Sec. 251.153. DUTY OF NOTIFICATION CENTER.

- (a) At the time an excavator provides a notification

center with the excavator's intent to excavate, the notification center shall advise the excavator that water, slurry, and sewage underground facilities in the area of the proposed excavation may not receive information concerning the excavator's proposed excavation.

- (b) Not later than two hours after the time the notification center receives a notice of intent to excavate from an excavator, the notification center shall provide to every other affected notification center operating in this state the information required by Section 251.152 and received from the excavator. The notification center shall provide the information by the use of high speed data transmission.
- (c) Not later than two hours after the time the notification center receives a notice of intent to excavate from an excavator or from a different notification center, the notification center shall notify each member operator that may have an underground facility in the vicinity of the proposed excavation operation.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 18.17(a), eff. Sept. 1, 1999.

Sec. 251.154. NOTIFICATION BY AN EXCAVATOR.

- (a) A person required to provide notice under this chapter is considered to have provided the notice when the person delivers the required information and a notification center receives that information within the time limits prescribed by this chapter.
- (b) A person may deliver information required under this chapter by any appropriate method, including the use of any electronic means of data transfer.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 18.17(a), eff. Sept. 1, 1999.

Sec. 251.155. EXCEPTION IN CASE OF EMERGENCY; OFFENSE.

- (a) Section 251.151 does not apply to an emergency excavation that is necessary to respond to a situation that endangers life, health, or property or a situation in which the public need for uninterrupted

service and immediate reestablishment of service if service is interrupted compels immediate action.

- (b) The excavator may begin emergency excavation under Subsection (a) immediately and shall take reasonable care to protect underground facilities.
- (c) When an emergency exists, the excavator shall notify a notification center as promptly as practicably possible.
- (d) An excavator may not misrepresent a fact or circumstance used in the determination of an emergency excavation under Subsection (a). A person that violates this subsection is subject to a penalty under:
 - (1) Section 251.201;
 - (2) Section 251.203; or
 - (3) both Section 251.201 and Section 251.203.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 18.17(a), eff. Sept. 1, 1999.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 184 (S.B. 1217), Sec. 1, eff. September 1, 2011.

Sec. 251.156. OTHER EXCEPTIONS TO DUTY OF EXCAVATORS.

- (a) Section 251.151 does not apply to:
 - (1) interment operations of a cemetery;
 - (2) operations at a secured facility if:
 - (A) the excavator operates each underground facility at the secured facility, other than those within a third-party underground facility easement or right-of-way; and
 - (B) the excavation activity is not within a third-party underground facility or right-of-way;
 - (3) routine railroad maintenance within 15 feet of either side of the midline of the track if the maintenance will not disturb the ground at a depth of more than 18 inches;
 - (4) activities performed on private property in connection with agricultural operations;
 - (5) operations associated with the exploration or production of oil or gas if the operations are not conducted within an underground facility easement

or right-of-way;

- (6) excavations by or for a person that:
 - (A) owns, leases, or owns a mineral leasehold interest
 - in the real property on which the excavation occurs; and
 - (B) operates all underground facilities located at the excavation site; or
- (7) routine maintenance by a county employee on a county road right-of-way to a depth of not more than 24 inches.
- (b) If a person excepted under Subsection (a)[4] elects to comply with this chapter and the operator fails to comply with this chapter, the person is not liable to the underground facility owner for damages to the underground facility.
- (c) In this section:
 - (1) "Agricultural operations" means activities performed on land and described by Section 23.51(2), Tax Code.
 - (2) "Routine maintenance" means operations, not to exceed 24 inches in depth, within a road or drainage ditch involving grading and removal or replacement of pavement and structures.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 18.17(a), eff. Sept. 1, 1999.

Sec. 251.157. DUTY OF OPERATOR TO PERSON EXCAVATING.

- (a) Each Class A underground facility operator contacted by the notification system shall mark the approximate location of its underground facilities at or near the site of the proposed excavation if the operator believes that marking the location is necessary. The operator shall mark the location not later than:
 - (1) the 48th hour after the time the excavator gives to the notification system notice of intent to excavate, excluding Saturdays, Sundays, and legal holidays;
 - (2) 11:59 a.m. on the Tuesday following a Saturday notification unless the intervening Monday is a holiday;
 - (3) 11:59 a.m. on the Wednesday following a

Saturday notification if the intervening Monday is a holiday; or

- (4) a time agreed to by the operator and the excavator.
- (b) An operator shall refer to the American Public Works Association color coding standards when marking.
- (c) An excavator who has fully complied with this chapter may not be liable for damage to an underground facility that was not marked in accordance with this chapter.
- (d) Not later than the 48th hour after the time the excavator gives to the notification center notice of intent to excavate, an operator contacted by the notification center shall notify the excavator of the operator's plans to not mark the proximate location of an underground facility at or near the site of the proposed excavation. The operator must provide the notification by e-mail or facsimile or by another verifiable electronic method approved by the board.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 18.17(a), eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 858, Sec. 2, eff. Nov. 1, 2001.

Sec. 251.158. DUTY OF OPERATOR IN EVENT OF AN EXTRAORDINARY CIRCUMSTANCE.

- (a) The deadline prescribed by Section 251.157(a) does not apply if the operator experiences an extraordinary circumstance due to an act of God, including a tornado, a hurricane, an ice storm, or a severe flood, or a war, riot, work stoppage, or strike that limits personnel or resources needed to fulfill the operator's obligations under this chapter.
- (b) The operator shall notify a notification center of the extraordinary circumstance and shall include in the notification:
 - (1) the nature and location of the extraordinary circumstance;
 - (2) the expected duration of the situation and the approximate time at which the operator will be able to resume location request activities; and
 - (3) the name and telephone number of the individual that the notification system can contact if there is an emergency that requires the

operator's immediate attention.

- (c) In addition to the notification required by Subsection (b), the operator shall also notify each excavator that has a pending location request in the location where an extraordinary circumstance is being experienced and shall include in the notification:
 - (1) the fact that the operator is experiencing an extraordinary circumstance; and
 - (2) the approximate time at which the operator will mark the requested location.
- (d) A notification center shall inform each excavator notifying the system under Section 251.151 that the operator's location request activities are suspended until the extraordinary circumstance has discontinued or has been corrected within the affected location.
- (e) An excavator is relieved from all provisions of this chapter until the operator notifies the notification center that the operator has resumed location request activities within the affected location.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 18.17(a), eff. Sept. 1, 1999.

Sec. 251.159. EXCAVATION DAMAGE.

- (a) If an excavation operation results in damage to an underground facility, the excavator shall immediately contact the underground facility operator to report the damage.
- (b) If the excavator is not certain of the operator's identity, the excavator shall contact a notification center to report the damage, and the notification center shall immediately notify all other affected notification centers. Immediately on receiving notification, each notification center shall contact each member operator that has underground facilities in or near the area in which the damage occurred.
- (c) Only the operator or a person authorized by the operator may perform repairs, and the repairs must be made in an expeditious manner.
- (d) An excavator shall delay backfilling in the immediate area of the damage until the damage is reported to the operator and a repair schedule is mutually agreed to by the excavator and the operator.

- (e) If damage endangers life, health, or property because of the presence of flammable material, the excavator shall keep sources of ignition away.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 18.17(a), eff. Sept. 1, 1999.

SUBCHAPTER E. PENALTIES

Sec. 251.201. CIVIL PENALTY OR WARNING LETTER.

- (a) An excavator that violates Section 251.151, 251.152, or 251.159 is liable for a civil penalty of not less than \$500 or more than \$1,000. If a county attorney or district attorney decides not to bring an action to recover the civil penalty, the board of directors of the corporation may, in accordance with Section 251.2011, give the excavator a warning letter and require the excavator to attend a safety training course approved by the board. The county attorney or district attorney shall notify the board of its decision.
 - (a-1) An excavator that violates Section 251.155(d) is liable for a civil penalty of not less than \$1,000 or more than \$2,000. If a county attorney or district attorney decides not to bring an action to recover the civil penalty, the board of directors of the corporation may, in accordance with Section 251.2011, give the excavator a warning letter and require the excavator to attend a safety training course approved by the board. The county attorney or district attorney shall notify the board of its decision.
- (b) Except as provided by Subsection (b-1), if it is found at the trial on a civil penalty that the excavator has violated this chapter and has been assessed a penalty under this section or has received a warning letter from the board one other time before the first anniversary of the date of the most recent violation, the excavator is liable for a civil penalty of not less than \$1,000 or more than \$2,000.
 - (b-1) If it is found at the trial on a civil penalty that

the excavator has violated Section 251.155(d)

and has been assessed a penalty under this section or has received a warning letter from the board one other time before the first anniversary of the date of the most recent violation, the excavator is liable for a civil penalty of not less than \$2,000 or more than \$5,000.

(c) Except as provided by Subsection (c-1), if it is found at the trial on a civil penalty that the excavator has violated this chapter and has been assessed a penalty under this section at least two other times before the first anniversary of the date of the most recent violation, or has been assessed a penalty at least one other time before the first anniversary of the date of the most recent violation and has received a warning letter from the board during that period, the excavator is liable for a civil penalty of not less than \$2,000 or more than \$5,000.

(c-1) If it is found at the trial on a civil penalty that the excavator has violated Section 251.155(d) and has been assessed a penalty under this section at least two other times before the first anniversary of the date of the most recent violation, or has been assessed a penalty at least one other time before the first anniversary of the date of the most recent violation and has received a warning letter from the board during that period, the excavator is liable for a civil penalty of not less than \$5,000 or more than \$10,000.

(d) In assessing the civil penalty the court shall consider the actual damage to the facility, the effect of the excavator's actions on the public health and safety, whether the violation was a wilful act, and any good faith of the excavator in attempting to achieve compliance.

(e) Venue for a proceeding to collect a civil penalty under this section is in the county in which:

- (1) all or part of the alleged violation occurred;
- (2) the defendant has its principal place of business in this state; or
- (3) the defendant resides, if in this state.

(f) The appropriate county attorney or criminal district

attorney shall bring the action to recover the civil penalty.

- (g) This section does not apply to a residential property owner excavating on the property owner's own residential lot.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 18.17(a), eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 652, Sec. 2, eff. Sept. 1, 2001.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 184 (S.B. 1217), Sec. 2, eff. September 1, 2011.

Sec. 251.2011. WARNING LETTER AND SAFETY TRAINING COURSE.

- (a) The board of directors of the corporation shall establish a procedure to ensure that the board verifies that an excavator has violated Section 251.151, 251.152, or 251.159 before giving the excavator a warning letter and requiring the excavator to attend a safety training course under Section 251.201.
- (b) The board shall solicit and consider advice and recommendations from excavators in establishing or approving a safety training course that an excavator may be required to attend under Section 251.201.

Added by Acts 2001, 77th Leg., ch. 652, Sec. 3, eff. Sept. 1, 2001.

Sec. 251.202. ALLOCATION OF CIVIL PENALTY.

- (a) Fifty percent of the civil penalty collected under Section 251.201 shall be transferred to the county treasurer of the county prosecuting the action and 50 percent of the civil penalty collected under Section 251.201 shall be transferred to the corporation.
- (b) The county treasurer shall deposit all money received under this section in the county road and bridge fund.
- (c) The corporation shall use the money received under this section to develop public service announcements to educate the public about the statewide one-call notification system and its availability as prescribed by Section 251.060(7).

Added by Acts 1999, 76th Leg., ch. 62, Sec. 18.17(a), eff. Sept. 1, 1999.

Sec. 251.203. CRIMINAL PENALTY.

- (a) A person commits an offense if:
 - (1) the person without authorization from the owner or operator of the facility intentionally removes, damages, or conceals a marker or sign giving information about the location of a Class A underground facility; and
 - (2) the marker or sign gives notice of the penalty for intentional removal, damage, or concealment of the marker or sign.
 - (a-1) A person commits an offense if the person intentionally or recklessly violates Section 251.155(d).
- (b) An offense under this section is a Class B misdemeanor.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 18.17(a), eff. Sept. 1, 1999.

Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 184 (S.B. 1217), Sec. 3, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 184 (S.B. 1217), Sec. 4, eff. September 1, 2011.



NOTES

NOTES

KNOW THE COLOR CODE

WHITE : Proposed Excavation

PINK : Temporary Survey Markings

RED : Electric Power Lines, Cables, Conduit and Lighting Cables

YELLOW : Gas, Oil, Steam, Petroleum or Gaseous Materials

ORANGE : Communication, Alarm or Signal Lines, Cables or Conduit

BLUE: Potable Water

PURPLE : Reclaimed Water, Irrigation and Slurry Lines

GREEN: Sewer and Drain Lines



Know what's below.
Call before you dig.

