

Red underline text indicates Associated General Contractors (AGC) additions

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TITLE 55 PROPERTY IN GENERAL

CHAPTER 22

UNDERGROUND FACILITIES DAMAGE PREVENTION

55-2202. DEFINITIONS. As used in this chapter:

(1) "Administrator" means the administrator of the division of building safety.

(2) "Board" means the damage prevention board.

(3) "Business day" means any day other than Saturday, Sunday, or a legal, local, state, or federal holiday.

(4) "Class I Excavator" means an excavator who is not a registered contractor.

(5) "Class II Excavator" means an excavator who is a registered contractor and who was responsible for the generation of less than one-hundred (100) notifications in the prior calendar year to any of the state's one-number notification services or combination of services.

(6) "Class III Excavator" means an excavator who is a registered contractor and who was responsible for the generation of one-hundred (100) or more notifications in the prior calendar year to any of the state's one-number notification services or combination of services.

(7) "Calendar year" means a period of time commencing on January 1 and expiring on December 31 of each year.

(8) "Damage" means any impact or exposure that results in the substantial weakening of structural or lateral support of an underground facility, or the penetration, impairment, or destruction of any underground protective coating, housing, or other protective device, or the partial or complete destruction of the facility, or the severance, partial or complete, of any underground facility to the extent that the project owner or the affected underground facility owner determines that repairs are required.

(59) "Emergency" means any sudden or unforeseen condition constituting a clear and present danger to life, health or property, or a customer service outage, or the blockage of roads or transportation facilities that requires immediate action.

(10) "End user" means any customer or consumer of any utility service or commodity provided by an underground facility owner.

(611) "Excavation" means any operation in which earth, rock, or other material in the ground is moved or otherwise displaced by any means including, but not limited to, explosives.

(712) "Excavator" means any person who engages directly in excavation.

(813) "Excavator downtime" means lost time for the excavation project due to failure of one (1) or more stakeholders to comply with applicable damage prevention regulations.

(14) "Hand digging" means any excavation involving nonmechanized tools or equipment that when used properly will not damage underground facilities.

Hand digging includes, but is not limited to, hand shovel digging, manual posthole digging, vacuum excavation, and soft digging.

(~~915~~) "Identified but unlocatable underground facility" means an underground facility ~~which~~ that has been identified but cannot be located with reasonable accuracy.

(~~106~~) "Identified facility" means any underground facility ~~which~~ that is indicated in the project plans as being located within the area or proposed excavation.

(~~117~~) "Locatable underground facility" means an underground facility-~~which~~ that can be field-marked with reasonable accuracy.

(18) "Locator" means a person who identifies and marks the location of an underground facility owned or operated by an underground facility owner.

(~~129~~) "Marking" means the use of stakes, paint, or other clearly identifiable materials to show the field location of underground facilities, in accordance with the current color code standard of the American public works association. Markings shall include identification letters indicating the specific type of the underground facility.

(~~1320~~) "One-number notification service" means a service through which a person can notify owner or underground facilities and request field-marking of their underground facilities.

(~~1421~~) "Person" means an individual, partnership, association, corporation, a state, a city, a county, or any subdivision or instrumentality of a state, and its employees, agents, or legal representatives.

(22) "Public right-of-way" means the area on, below, or above a public roadway, highway, street, lane, path, sidewalk, alley, or other right-of-way dedicated for compatible uses.

(~~1523~~) "Reasonable accuracy" or "reasonably accurate" means location within ~~twenty-four (24)~~ eighteen (18) inches horizontally of the outside dimensions of each side of an underground facility.

(~~1624~~) "Rural underground facility owner" means an underground facility owner that is a public utility or a member-owned cooperative that serves fewer than five thousand (5,000) total customers in a county or counties with populations that do not exceed fifty thousand (50,000) people.

(25) "Service lateral" means any underground facility located in a public right-of-way or underground facility easement that is used to convey water (unless being delivered primarily for irrigation), stormwater, or sewage and connects an end user's building or property to an underground facility owner's main utility line.

(26) "Soft digging" means any excavation using tools or equipment that utilize air or water pressure as the direct means to break up soil or earth for removal by vacuum excavation.

(~~127~~) "Stakeholder" means any party with an interest in protecting underground facilities including, but not limited to, persons, property owners, underground facility owners, excavators, contractors, cities, counties, highway districts, railroads, public entities that deliver irrigation water and those engaged in agriculture.

(~~128~~) "Underground facility" means any item buried or placed below ground for use in connection with the storage or conveyance of water *unless being delivered primarily for irrigation), stormwater, sewage, electronic, telephonic or telegraphic communications, cable television, electric energy, petroleum products, gas, gaseous vapors, hazardous liquids, or other substances and including, but not limited to, pipes, sewers, conduits, cables, valves, lines, wires, manholes, attachments, and those parts of poles or anchors below ground.

(29) "Underground facility easement" means a nonpossessory right to operate, control, bury, install, maintain, or access an underground facility.

(~~1930~~) "Underground facility owner" means any person who owns or

operates an underground facility or who provides any utility service or commodity to an end user via an underground facility.

55-2205. PERMIT COMPLIANCE -- NOTICE OF EXCAVATION -- RESPONSE TO NOTICE -- COMPENSATION FOR FAILURE TO COMPLY -- EXEMPTIONS. (1) Before commencing excavation, the excavator shall:

(a) Comply with other applicable law or permit requirements of any public agency issuing permits;

(b) Pre-mark on-site the path of excavation with white paint or, as the circumstances require, other reasonable means that will set out clearly the path of excavation. An excavator need not pre-mark as required in this subsection if:

(i) The underground facility owner or its agent can determine the location of the proposed excavation by street address of lot and block by referring to a locate ticket; or

(ii) The excavator and underground facility owner have had a meeting prior to the beginning of the proposed excavation at the excavation site for the exchange of information required under this subsection.

(c) Provide notice of the scheduled commencement of excavation to all underground facility owners through a one-number notification service. If no one-number notification service is available, notice shall be provided individually to those owners of underground facilities known to have or suspected of having underground facilities within the area of proposed excavation. The notice shall be communicated by the excavator to the one-number notification service or, if no one-number notification service is available, to the owners of underground facilities not less than two (2) business days nor more than ten (10) business days before the scheduled date for commencement of excavation, unless otherwise agreed in writing by the parties.

(2) Upon receipt of the notice provided for in this section, the underground facility owner or the owner's agent shall locate and mark its locatable underground facilities with reasonable accuracy as defined in section 55-2202(15), Idaho Code, by surface-marking the location of the facilities. If there are identified by unlocatable underground facilities, the owner of such facilities or the owner's agent shall locate and mark the underground facilities in accordance with the best information available to the owner of the underground facilities ~~and with reasonable accuracy as defined in section 55-2202(15), Idaho Code.~~ The owner of the underground facility or the owner's agent providing the information shall respond no later than two (2) business days after the receipt of the notice or before the excavation time set forth in the excavator's notice, at the option of the underground facility owner, unless otherwise agreed in writing by the parties. Excavators shall not excavate until all known facilities have been marked. Once marked by the owner of the underground facility, or the owner's agent, the excavator is responsible for maintaining the markings. Unless otherwise agreed in writing by the parties, maintained markings shall be valid for purposes of the notified excavation for a period of no longer than three (3) consecutive weeks following the date of notification ~~so~~ as long as it is reasonable apparent that site conditions have not changed so substantially as to invalidate the markings. If excavation has not commenced within three (3) weeks from the original notice to underground facility owners through the one-number notification service, the excavator shall reinitiate notice in accordance with this section.

(a) Excavators shall have the right to receive compensation from the owner of the underground facility for costs incurred if the owner of the underground facility does not locate its facilities in accordance with this

chapter.

(b) The owner of the underground facility shall have the right to receive compensation for costs incurred in responding to excavation notices given less than two (2) business days prior to the excavation except for notices given for discovered facilities after the owner has identified facilities.

(3) An end user shall not be required to locate or mark any service lateral. An underground facility owner who provides any utility service or commodity via a service lateral shall locate and mark the service lateral in accordance with the provisions of subsection (2) of this section. Nothing in this subsection shall be construed to impose an indemnification obligation prohibited by law on any public agency, as defined in section 67-2327, Idaho Code, or to alter the liability of any public agency as provided by law, including article 8 of the Idaho constitution.

(4) Emergency excavations are exempt from the time requirements for notification provided in this section.

(45) If the excavator, while performing excavation, discovers underground facilities (whether active or abandoned) which are not identified or were not located in accordance with reasonable accuracy subsection (2) of this section, the excavator shall cease excavating in the vicinity of the facility and immediately notify the owner or operator of such facilities, or the one-number notification service. The excavator shall have the right to receive compensation from the underground facility owner for standby cost (based on standby rates made publicly available) incurred as a result of waiting for the underground facility owner or the owner's agent to arrive at the work site to identify the unidentified facilities.

(6) and provided that if the underground facility owner or the owner's agent supplies the reasonably accurate reasonably accurate locate information required under subsection (2) of this section within eight (8) hours of the time that the excavator notifies the underground facility owner of facilities not previously located, the excavator's compensation for delay of the excavation project shall be limited to actual costs or two five thousand dollars (\$25,000) per day, whichever is less.

55-2206. ONE-NUMBER NOTIFICATION SERVICE -- ESTABLISHMENT -- PARTICIPATION REQUIRED -- PENALTIES FOR NOT PARTICIPATING -- CIVIL PENALTY --

FUNDING. (1) Two (2) or more persons who own or operate underground facilities in a county may voluntarily establish or contract with a third person to provide a one-number notification service to maintain information concerning underground facilities within a county. Upon the establishment of the first such one-number notification service, all others operating and maintain underground facilities within said county shall participate and cooperate with the service, and no duplicative service shall be established pursuant to this chapter.

(2) The activities of the one-number locator service shall be funded by all of the underground facility owners or operators required by the provisions of this section to participate in and cooperate with the service.

(3) All underground facility owners or operators who are required to participate in a one-number notification service are subject to the jurisdiction of the damage prevention board established in section 55-2203, Idaho Code. The board shall impose a civil penalty upon any person required to participate in and cooperate with a one-number notification service who fails to do so. Such civil penalties shall not exceed one thousand dollars (\$1,000) per day.

(4) All civil penalties recovered shall be deposited in the underground facility damage prevention board fund and used pursuant to section 55- 2204(2), Idaho Code.

55-2207. EXCAVATION CONTRACTS -- LIMITATIONS -- PRECAUTIONS TO AVOID DAMAGE -- LIABILITY FOR DAMAGE. (1) Project owners shall indicate in bid or contract documents the existence of underground facilities known by the project owner to be located within the proposed area of excavation.

(2) An excavator shall use reasonable care to avoid damaging underground facilities. An excavator shall:

(a) Determine by hand digging, in the area ~~twenty-four (24)~~ eighteen (18) inches or less from the facilities, the precise actual location of underground facilities which have been marked;

(b) Plan the excavation to avoid damage to or minimize interference with underground facilities in and near the excavation area; and

(c) Provide such support for underground facilities in and near the construction area, including during backfill operations, as may be reasonably necessary for the protection of such facilities.

(3) If an underground facility is damaged and such damage is the consequence of the failure to fulfill an obligation under this chapter, the party failing to perform that obligation shall be liable for any damages to the underground facility owner. Nothing in this chapter prevents the parties to an excavation contract from contracting with respect to the allocation of risk for changed or differing site conditions.

(4) In any action brought under this section, the prevailing party is entitled to reasonable attorney's fees.

55-2208. DAMAGE TO UNDERGROUND FACILITIES -- DUTIES OF EXCAVATOR AND OWNER -- REPORTING OF DATA. (1) An excavator who, in the course of excavation, contacts or damages an underground facility shall notify the underground facility owner and the one-number notification service. If the damage causes an emergency condition or an actual breach of an underground facility that releases gas or hazardous liquids into the surrounding environment, the excavator causing the damage shall also alert the appropriate local public safety agencies by, at a minimum, calling 900, and take appropriate steps to ensure the public safety. No damaged underground facility may be buried until it is repaired or relocated.

(2) The owner of the underground facilities damaged shall arrange for repairs or relocation as soon as is practical or may permit the excavator to do necessary repairs or relocation at a mutually acceptable price.

(3) Any party responsible for damages to an underground facility shall be liable for the cost of repairs.

(4) The board shall adopt by rule a procedure for the processing of claims related to damages to underground facilities. Underground facility owners ~~and excavators~~ who observe, or suffer ~~or cause~~ damage to an underground facility and excavators who ~~or~~ observe, or suffer ~~or cause~~ excavator downtime related to a failure of one (1) or more stakeholders to comply with applicable damage prevention regulations shall report such information to the board in accordance with the rules promulgated by the board. Reporting of such data does not constitute a complaint provided for in section 55-2211, Idaho Code.

55-2211. VIOLATION -- CIVIL PENALTY -- DUTIES OF THE BOARD AND THE ADMINISTRATOR -- OTHER REMEDIES UNIMPAIRED. (1) The damage prevention board established in section 55-2203, Idaho Code, may hear, but may not initiate, contested cases of alleged violations of this chapter involving practices related to underground facilities as set forth in rules by the board. Persons who violate the provisions of this chapter are subject to civil penalties in accordance with this section. Complaints regarding an

alleged violation of this chapter may be made by an individual and shall be made to the administrator. Complaints shall include the name and address of the complainant and the alleged violator, and the violation alleged. If the alleged violation involves facility damage or a downtime event, the complaint must be submitted on such forms and contain such information as required by the board in rule. Upon review of the complaint, and an investigation conducted therewith, the administrator shall notify the person making the complaint and the alleged violator, in writing, of the administrator's ~~recommended course of action to the board findings.~~

(2) The administrator shall ~~recommend order~~ that a training course adopted by the board, by rule, be successfully completed for a first violation of this chapter, except that if the complaint is for a first violation of this chapter wherein a residential homeowner or residential tenant excavating on the lot of his residency failed to provide notice as required in section 55-2205, Idaho Code, and caused damage to underground facilities, the board shall direct the administrator to deliver to the violator a written warning and educational materials to prevent a future violation. The administrator ~~may recommend the imposition of~~ shall impose a civil penalty in an amount not to exceed one thousand dollars (\$1,000) for a ~~second subsequent~~ violation of this chapter ~~within eighteen (18) months from an earlier violation and where facility damage has not occurred in accordance with the time limits established in subsections (3), (4), and (5) of this section~~ and in addition may ~~recommend order~~ successful completion of a training course adopted by the board, by rule, and issue a notice of ~~intent to impose imposition of~~ such penalty and training on behalf of the board. If the administrator ~~recommends the imposition of imposes training,~~ a civil penalty, ~~or both~~ the violator ~~may shall complete the training,~~ pay the fine to the board upon receipt of such notice, ~~or both.~~ ~~If, upon the expiration of twenty-one (21) days, the violator has not responded in writing to the division, the board may impose the penalty provided for in the notice.~~ A violator shall also have the right to ~~contest appeal~~ the imposition of ~~training or~~ a civil penalty to the board and the opportunity to produce evidence in his behalf. Notice of the time and place of such hearing shall be provided by the board, and such proceeding shall be governed by the provisions of chapter 52, title 67, Idaho Code. ~~The board may is authorized to affirm, reject, decrease, or increase the training or penalty imposed, as applicable. The board shall not increase any penalty to an amount that exceeds what is authorized pursuant to the provisions of this section.~~

(23) In the event the ~~board administrator~~ determines that a ~~person~~ class I excavator has violated the provisions of this chapter a subsequent time within eighteen (18) months from an earlier violation, and where facility damage has occurred, the ~~board administrator~~ may impose a civil penalty of not more than ~~five two~~ thousand dollars (\$~~52~~,000) for each ~~separate violation incident where damage occurred~~ in accordance with the process described in subsection (1) of this section.

(34) ~~In the event the administrator determines that a class II excavator has violated the provisions of this chapter a subsequent time within nine (9) months from an earlier violation, and where facility damage has occurred, the administrator may impose a civil penalty of not more than two thousand dollars (\$2,000) for each incident where damage occurred in accordance with the process described in subsection (1) of this section.~~

(5) ~~In the event the administrator determines that a class III excavator has violated the provisions of this chapter a subsequent time within six (6) months from an earlier violation, and where facility damage has occurred, the administrator may impose a civil penalty of not more than two thousand dollars (\$2,000) for each incident where damage occurred in accordance with the process described in subsection (1) of this section.~~

(6) All civil penalties recovered shall be deposited in the underground facility damage prevention board fund and used pursuant to section 55- 2204(2), Idaho Code.

(47) The penalties provided in this section are in addition to any other remedy of law or equity available to any party subject to the jurisdiction of the damage prevention board established in section 55-2203, Idaho Code.

(58) Unless expressly provided herein, nothing in this chapter eliminates, alters or otherwise impairs common law, statutory or other preexisting rights and duties of persons affected by the provisions of this chapter; nor does anything in this chapter, unless expressly so provided, eliminate, alter or otherwise impair other remedies, state or federal, including those of common law, of an underground facility owner whose facility is damaged; not do the provisions of this chapter affect any civil remedies for personal injury or property damage except as expressly provided for herein. The court in its discretion may award reasonable attorney's fees and costs to the prevailing party.