

Title 9 Safety- Industrial and Commercial
Article 1.5 Excavation Requirements

§ 9-1.5-101. Legislative declaration

The purpose of this article is to prevent injury to persons and damage to property from accidents resulting from damage to underground facilities by excavation. This purpose shall be facilitated through the creation of a single statewide notification system to be administered by an association of the owners and operators of underground facilities. Through the association, excavators shall be able to obtain crucial information regarding the location of underground facilities prior to excavating and shall thereby be able to greatly reduce the likelihood of damage to any such underground facility or injury to any person working at an excavation site.

§ 9-1.5-102. Definitions

As used in this article, unless the context otherwise requires:

(1) "Damage" includes the penetration or destruction of any protective coating, housing, or other protective device of an underground facility, the partial or complete severance of an underground facility, or the rendering of any underground facility inaccessible.

(2) "Emergency situations" includes ruptures and leakage of pipelines, explosions, fires, and similar instances where immediate action is necessary to prevent loss of life or significant damage to **PROPERTY, INCLUDING, WITHOUT LIMITATION**, underground facilities and advance notice of proposed excavation is impracticable under the circumstances.

(3) "Excavation" means any operation in which earth is moved or removed by means of any tools, equipment, or explosives and includes augering, backfilling, boring, ditching, drilling, grading, plowing-in, pulling-in, ripping, scraping, trenching, and tunneling. **"EXCAVATION" SHALL NOT INCLUDE ROUTINE MAINTENANCE ON EXISTING PLANTED LANDSCAPES.**

(4) "Notification association" or "association" means the statewide notification association of owners and operators of underground facilities created in section 9-1.5-105.

(5)(a) "Operator" or "owner" means any person, including public utilities, municipal corporations, political subdivisions, or other persons having the right to bury underground facilities in or near a public road, street, alley, right-of-way, or utility easement.

(b) "Operator" or "owner" does not include any railroad.

(6) "Person" means any individual acting on his or her own behalf, sole proprietor, partnership, association, corporation, or joint venture; the state, any political subdivision of the state, or any instrumentality or agency of either; or the legal representative of any of them.

(6.5) **"ROUTINE MAINTENANCE" MEANS A REGULAR ACTIVITY THAT HAPPENS AT LEAST ONCE PER YEAR ON AN EXISTING PLANTED LANDSCAPE IF EARTH IS NOT DISTURBED AT A DEPTH OF MORE THAN TWELVE INCHES BY NONMECHANICAL MEANS OR FOUR INCHES BY MECHANICAL MEANS AND IF THE ACTIVITIES ARE NOT INTENDED TO PERMANENTLY LESSEN THE GROUND COVER OR LOWER THE EXISTING GROUND CONTOURS. MECHANICAL EQUIPMENT USED FOR ROUTINE MAINTENANCE TASKS SHALL BE DEFINED AS AERATORS, HAND-HELD ROTOTILLERS, SOIL INJECTION NEEDLES, LAWN EDGERS, OVERSEEDERS, AND HAND TOOLS.**

(7) "Underground facility" means any item of personal property which is buried or placed below ground for use in connection with the storage or conveyance of water or sewage, electronic, telephonic, or telegraphic communications or cable television, electric energy, or oil, gas, or other substances. "Item of personal property", as used in this subsection (7), includes, but is not limited to, pipes, sewers, conduits, cables, valves, lines, wires, manholes, and attachments thereto.

§ 9-1.5-103. Plans and specifications--notice of excavation--duties of excavators--duties of owners and operators

(1) Deleted by Laws 1993, S.B.93-155, § 1, eff. Sept. 1, 1993.

(2) Architects, engineers, or other persons designing excavation shall obtain general information as to the description, nature, and location of underground facilities in the area of such proposed excavation and include such general information in the plans or specifications to inform an excavation contractor of the existence of such facilities and of the need to obtain information thereon pursuant to subsection (3) of this section.

(3)(a) Except in emergency situations and except as to an employee with respect to the employer's underground facilities or as otherwise provided in an agreement with an owner or operator, no person shall make or begin excavation without first notifying the notification association and, if necessary, the tier two members having underground facilities in the area of such excavation. Notice may be given in person, by telephone, or in writing if delivered.

(b) Notice of the commencement, extent, and duration of the excavation work shall be given at least two business days prior thereto not including the day of actual notice.

(c) Any notice given pursuant to paragraph (b) of this subsection (3) shall include the following:

(I) The name and telephone number of the person who is giving the notice;

(II) The name and telephone number of the excavator; and

(III) The specific location, starting date, and description of the intended excavation activity.

(d) An excavator may request a written record of any information from an owner or operator of an underground facility regarding the location of specific underground facilities.

(4)(a) Any owner or operator receiving notice pursuant to subsection (3) of this section shall, at no cost to the excavator, use reasonable care to advise the excavator of the location and size of any underground facilities in the proposed excavation area by marking the location of the facilities with clearly identifiable markings within eighteen inches horizontally from the exterior sides of any such facilities. Such markings shall include the depth, if known, and shall be made pursuant to the uniform color code as approved by the utility location and coordinating council of the American public works association. In the event any person is involved in excavating across a preexisting underground facility, the owner of such facility shall, upon a predetermined agreement at the request of the excavator or the owner, provide on-site assistance. Any owner or operator receiving notice concerning an excavator's intent to excavate shall use reasonable care to advise the excavator of the absence of any underground facilities in the proposed excavation area by communicating directly with the excavator and providing documentation thereof, if requested, or by clearly marking that no underground facilities exist in the proposed excavation area. Owners and operators shall, within the time limits specified in subsection (6) of this section, provide to the excavator evidence, if any, of facilities abandoned after January 1, 2001, known to the owner or operator to be in the proposed excavation area.

(b) The marking of underground facilities shall be considered valid so long as the markings are clearly visible but not for more than thirty calendar days. If an excavation has not been completed within the thirty-day period, the excavator shall notify the affected owner or operator and the notification association at least two business days, not including the day of actual notice, before the end of such thirty-day period.

(b.5) Any person who willfully or maliciously removes a marking used by an owner or operator to mark the location of any underground facility, except in the ordinary course of excavation, is guilty of a class 2 misdemeanor, and, upon conviction thereof, in addition to any order for restitution, shall be punished by a fine of not more than five thousand dollars for each offense, by imprisonment for not more than one year, or by both such fine and imprisonment.

(c)(I) When a person excavates within eighteen inches horizontally from the exterior sides of any underground facility, such person shall exercise such reasonable care as necessary to protect any underground facility in or near the excavation area. It shall be the responsibility of the excavator to maintain adequate and accurate documentation, including but not limited to photographs, video, or sketches, at the excavation site on the location and identification of any underground facility throughout the excavation period.

(II)(A) If the documentation maintained pursuant to subparagraph (I) of this paragraph (c) becomes lost or invalid, the excavator shall notify the notification association or the affected owner or operator and request an immediate reverification of the location of any underground facility. Upon receipt of such notification, such affected owner or operator shall respond as quickly as is practicable. The excavator shall cease excavation activities at the affected location until the location of any underground facilities has been reverified.

(B) If the documentation maintained pursuant to subparagraph (I) of this paragraph (c) is determined to be inaccurate, the excavator shall immediately notify the affected owner or operator and shall request an immediate reverification of the location of any underground facility. Upon receipt of such notification, such affected owner or operator shall respond as quickly as practicable. The excavator may continue excavation activity if such excavator exercises due caution and care to prevent damaging any underground facility.

(c) (III) IF A PERSON PERFORMING ROUTINE MAINTENANCE DISCOVERS AN UNDERGROUND FACILITY IN THE AREA WHERE THE ROUTINE MAINTENANCE IS BEING PERFORMED, THE PERSON SHALL NOTIFY THE NOTIFICATION ASSOCIATION AND THE AFFECTED OWNER OR OPERATOR AS QUICKLY AS PRACTICABLE AND REQUEST AN IMMEDIATE VERIFICATION OF THE LOCATION OF ANY UNDERGROUND FACILITY. UPON RECEIVING NOTIFICATION, THE AFFECTED OWNER OR OPERATOR SHALL RESPOND AS QUICKLY AS PRACTICABLE. THE PERSON SHALL CEASE ROUTINE MAINTENANCE ACTIVITIES IN THE IMMEDIATE AREA, AS DETERMINED BY EXERCISING DUE CAUTION AND CARE, UNTIL THE LOCATION OF ANY UNDERGROUND FACILITIES HAS BEEN VERIFIED.

(5) In emergency situations, excavators shall take such precautions as are reasonable under the circumstances to avoid damage to underground facilities and notify affected owners or operators and the notification association as soon as possible of such emergency excavations. In the event of damage to any underground facility, the excavator shall immediately notify the affected owner or operator and the notification association of the location and extent of such damage.

(6) If documentation requested and needed by an excavator pursuant to subsection (4) of this section is not provided by the owner or operator pursuant thereto within two business days, not including the day of actual notice, or such later time as agreed upon by the excavator and the owner or operator or if the documentation provided fails to identify the location of the underground facilities, the excavator shall

immediately give notice to the notification association or the owner or operator and may proceed and shall not be liable for such damage except upon proof of such excavator's lack of reasonable care.

(7)(a) In the event of damage to an underground facility, the excavator, owner, and operator shall cooperate to mitigate damages to the extent reasonably possible, including the provision of in-kind work by the excavator where technical or specialty skills are not required by the nature of the underground facility. Such in-kind work may be under the supervision and pursuant to the specifications of the owner or operator.

(b) If damage to an underground facility meets or exceeds the reporting threshold as established by the notification association pursuant to paragraph (c) of this subsection (7), the owner or operator of the damaged underground facility shall provide the information listed in subparagraphs (I) to (VII) of paragraph (c) of this subsection (7) to the notification association within ninety days after service has been restored.

(c) The notification association shall create and publicize to its members a reporting process, including the availability of electronic reporting and a threshold at which reporting is required, to compile the following information:

(I) The type of underground facility that was damaged;

(II) Whether notice of the intention to excavate was provided to the notification association;

(III) Whether the underground facility had been validly marked prior to being damaged;

(IV) The type of service that was interrupted;

(V) The number of persons whose service may have been interrupted;

(VI) The duration of the interruption; and

(VII) The location of the area where the underground facility was damaged.

(d) The notification association shall include a statistical summary of the information provided to it under this subsection (7) in the annual report required under section 9-1.5-105(2.6).

(8) A PERSON WHO PERFORMS MAINTENANCE SHALL TAKE REASONABLE CARE WHEN DISTURBING THE SOIL.

§ 9-1.5-104. Injunctive Relief.

(deleted by amendment)

§ 9-1.5-104.3. Alternative dispute resolution

The notification association shall create a voluntary alternative dispute resolution program in consultation with its members and all affected parties. The alternative dispute resolution program shall be available to all owners or operators, excavators, and other interested parties regarding disputes arising from damage to underground facilities, including, but not limited to, any cost or damage incurred by the owner or operator or the excavator as a result of any delay in the excavation project while the underground facility is restored, repaired, or replaced, exclusive of civil penalties set forth in section 9-1.5-104.5, that cannot be resolved through consultation and negotiation. The alternative dispute resolution program shall include mediation, arbitration, or other appropriate processes of dispute resolution. The issue of liability and amount of

damages under Colorado law may be decided by an appointed arbitrator or by the parties in mediation. Nothing in this section shall be construed to change the basis for civil liability for damages.

§ 9-1.5-104.5. Civil penalties--applicability

(1)(a) Every owner or operator of an underground facility in this state shall join the notification association pursuant to section 9-1.5-105.

(b) Any owner or operator of an underground facility who does not join the notification association in accordance with paragraph (a) of this subsection (1) shall be liable for a civil penalty of two hundred dollars.

(c)(I) If any underground facility located in the service area of an owner or operator is damaged as a result of such owner or operator's failure to comply with paragraph (a) of this subsection (1), the court shall impose upon such owner or operator a civil penalty in the amount of five thousand dollars for the first offense and up to twenty-five thousand dollars for each subsequent offense within a twelve-month period after the first offense. Upon a first offense, the owner or operator shall be required by the court to complete an excavation safety training program with the notification association.

(II) If any owner or operator fails to comply with paragraph (a) of this subsection (1) on more than three separate occasions within a twelve-month period from the date of the first failure to comply with paragraph (a) of this subsection (1), then the civil penalty shall be up to seventy-five thousand dollars.

(d) If any underground facility is damaged as a result of the owner or operator's failure to comply with paragraph (a) of this subsection (1) or failure to use reasonable care in the marking of the damaged underground facility, such owner or operator shall be presumably liable for:

(I) Any cost or damage incurred by the excavator as a result of any delay in the excavation project while the underground facility is restored, repaired, or replaced, together with reasonable costs and expenses of suit, including reasonable attorney fees; and

(II) Any injury or damage to persons or property resulting from the damage to the underground facility. Any such owner or operator shall also indemnify and defend the affected excavator against any and all claims or actions, if any, for personal injury, death, property damage, or service interruption resulting from the damage to the underground facility.

(2)(a) Any person who intends to excavate shall notify the notification association pursuant to section 9-1.5-103 prior to commencing any excavation activity. For purposes of this paragraph (a), excavation shall not include an excavation by a rancher or a farmer, as defined in section 42-20-108.5, C.R.S., occurring on a ranch or farm unless such excavation is for a nonagricultural purpose.

(b) Any person, other than a homeowner, rancher, or farmer, as defined in section 42-20-108.5, C.R.S., working on such homeowner's, rancher's, or farmer's property, who fails to notify the notification association or the affected owner or operator pursuant to paragraph (a) of this subsection (2) shall be liable for a civil penalty in the amount of two hundred dollars.

(c)(I) If any person, other than a homeowner, rancher, or farmer, as defined in section 42-20-108.5, C.R.S., working on such homeowner's, rancher's, or farmer's property, fails to comply with paragraph (a) of this subsection (2) and damages an underground facility during excavation, such person shall be liable for a civil penalty in the amount of five thousand dollars for the first offense and up to twenty-five thousand dollars for each subsequent offense within a twelve-month period after the first offense. Upon a first offense, such person shall be required to complete an excavation safety training program with the notification association.

(II) If any person fails to comply with paragraph (a) of this subsection (2) on more than three separate occasions within a twelve-month period from the date of the first failure to comply with paragraph (a) of this subsection (2), then the civil penalty shall be up to seventy-five thousand dollars.

(d) If any person, other than a homeowner, rancher, or farmer, as defined in section 42-20-108.5, C.R.S., working on such homeowner's, rancher's, or farmer's property, fails to comply with paragraph (a) of this subsection (2) or fails to exercise reasonable care in excavating **OR PERFORMING ROUTINE MAINTENANCE** and damages an underground facility during **SUCH** excavation **OR ROUTINE MAINTENANCE**, such person shall be presumably liable for:

(I) Any cost or damage incurred by the owner or operator in restoring, repairing, or replacing its damaged underground facility, together with reasonable costs and expenses of suit, including reasonable attorney fees; and

(II) Any injury or damage to persons or property resulting from the damage to the underground facility. Any such person shall also indemnify and defend the affected owner or operator against any and all claims or actions, if any, for personal injury, death, property damage, or service interruption resulting from the damage to the underground facility.

(e) Paragraph (d) of this subsection (2) shall not apply to a person who commences excavation affecting an underground facility if the owner or operator of the underground facility has failed to comply with paragraph (a) of subsection (1) of this section or has failed to use reasonable care in the marking of the affected underground facility.

(3)(a) An action to recover a civil penalty under this section may be brought by an owner or operator, excavator, aggrieved party, district attorney, or the attorney general. Venue for such an action shall be proper in the district court for the county in which the owner or operator, excavator, or aggrieved party resides or maintains a principal place of business in this state or in the county in which the conduct giving rise to a civil penalty occurred.

(b) Any civil penalty imposed pursuant to this section, including reasonable attorney fees, shall be paid to the prevailing party.

(c) The penalties provided in this article are in addition to any other remedy at law or equity available to an excavator or to the owner or operator of a damaged underground facility.

(d) No civil penalty shall be imposed under this section against an excavator or owner or operator who violates any of the provisions of this section if the violation occurred while the excavator or owner or operator was responding to a service outage or other emergency; except that such penalty shall be imposed if such violation was willful or malicious.

(4) Nothing in this article shall be construed to impose an indemnification obligation on any public entity or to alter the liability of public entities as provided in article 10 of title 24, C.R.S.

(5) In determining the liability for or the amount of any damages or civil penalty pursuant to this article, a court or arbitrator shall consider the nature, circumstances, and gravity of the alleged violation and the alleged violator's degree of culpability, history of prior violations, and level of cooperation with the requirements of this article.

§ 9-1.5-105. Notification association--structure and funding requirements--duties of owners and operators--report

(1) There is hereby created a nonprofit corporation in the state of Colorado, referred to in this article as the "notification association", which shall consist of all owners or operators of underground facilities. All such owners and operators shall join the notification association and shall participate in a statewide program which utilizes a single toll-free telephone number which excavators can use to notify the notification association of pending excavation plans. Upon its organization and incorporation, the association shall file a letter to such effect with the public utilities commission so that the commission may refer inquiries arising under this article to an appropriate person.

(2) All underground facility owners and operators except the Colorado department of transportation shall be members of the notification association which shall be organized as follows:

(a) "Tier one" members who shall be full members of the notification association and shall receive full service benefits as part of such membership as specified in this article. Any owner or operator required to be a member of the association who was a member on February 1, 1993, shall be designated a tier one member without further action by such member.

(b)(I) "Tier two" members who shall be limited members and shall receive limited services as a part of such membership as specified in this article. Tier two members shall pay a one-time membership fee of twenty-five dollars to the notification association to partially defray the costs incurred by the association in organizing pursuant to this article. The notification association shall not assess any charges, costs, or fees to any tier two member other than the one-time membership fee.

(II) All tier two members shall provide the association with accurate information regarding the boundaries of such member's service area, the type of underground facility that may be encountered within such service area, and the name, address, and telephone number of a person who shall be the designated contact person for information regarding such member's underground facilities. A tier two member shall also provide geographical information concerning underground facilities it owns or operates which are not located within the designated service area to the notification association.

(III) Not later than January 1, 1994, the notification association shall provide any person who contacts the association regarding information concerning underground facilities owned or operated by a tier two member with the name of the person specified in subparagraph (II) of this paragraph (b).

(IV) The following owners or operators of underground facilities who are not designated as tier one members pursuant to paragraph (a) of this subsection (2) shall be designated as tier two members:

(A) Electric cooperative associations;

(B) Special districts organized under title 32, C.R.S.;

(C) Cable television operators;

(D) Municipalities and counties; and

(E) Telecommunications local exchange providers with fewer than fifty thousand access lines.

(2.3) Any association member may alter the status of its membership and move from tier one to tier two or from tier two to tier one at any time that such member chooses; except that every tier one member shall remain a tier one member for at least two years after becoming a tier one member.

(2.5) The notification association may accept any organization, person, or entity which has an interest in the purposes and functions of the association as a member whether specifically enumerated in this article or not. Any such member shall comply with the bylaws of the association.

(2.6)(a) The notification association shall prepare annual reports on its activities, as follows:

(I) A statistical summary of the information reported to it pursuant to section 9-1.5-103(7)(b); and

(II) An annual, independent financial audit of its operations.

(b) The notification association shall provide a copy of both reports created under paragraph (a) of this subsection (2.6) to its members and shall provide the report created under subparagraph (I) of paragraph (a) of this subsection (2.6) to the public utilities commission of the state of Colorado.

(3) Except as provided in subsection (2) of this section, each member of the notification association shall provide all of the locations of any underground facilities which such member owns or operates to the notification association, and the association shall maintain such information on file for use by excavators.

(4) The notification association shall be governed by a board of directors which is representative of the membership of the association and shall have at least one director that is a tier two member. The board of directors shall be elected by the membership of the association pursuant to the bylaws of the association.

(5) The notification association shall be incorporated and operated as a nonprofit corporation pursuant to the "Colorado Revised Nonprofit Corporation Act", articles 121 to 137 of title 7, C.R.S.

(6) This section shall not apply to any owner or occupant of real property under which underground facilities are buried if such facilities are used solely to furnish service or commodities to such real property and no part of such facilities is located in a public street, county road, alley, or right-of-way dedicated to public use.

§ 9-1.5-106. Notice requirements

(1) The notification association created in section 9-1.5-105 shall:

(a) Receive and record notifications from excavators concerning intended excavation activities including sites, dates, and the nature of any intended excavation;

(b) Maintain a record of each notice of intent to excavate for a minimum of three years; and

(c) File the notification received regarding any proposed excavation site and the notification provided regarding such excavation site, including the date and time of each such notification, by reference number.

(2) The notification association shall establish and maintain a damage prevention safety program and shall conduct periodic public awareness campaigns.

(3) The notification association shall provide prompt notice of any proposed excavation to each affected tier one member that has any underground facilities in the area of the proposed excavation site. The notification association shall also provide the excavator with the name and telephone number of each tier two member that has any underground facilities in the area of the proposed excavation.

§ 9-1.5-107. Notice of removal of underground facilities

At least ten days before beginning an excavation to remove an underground facility that is a gas transmission pipeline that has been abandoned or is unused and is not located in a public road, street, alley, or right-of-way dedicated to public use, the excavator shall notify each owner of record and occupant of the real property where such underground facility is located. The notice shall state the commencement, extent,

and duration of the excavation in addition to the information required by section 9-1.5-103(3)(c) and shall be served in the same manner as personal service under the Colorado rules of civil procedure; except that, if such personal service cannot be made through the use of due diligence, notice may be served by mail to the owner's or occupant's last-known address. If a valid mailing address is not available through the use of due diligence, notice may be made by publication in a newspaper published in the county in which the property is located. For purposes of this section, an underground facility is not considered abandoned or unused if it is in operation for its intended purpose or is being actively maintained with reasonable anticipation of a future use

Note: Sections or words that are in all caps and bold will take effect August 4, 2009.