

WYOMING STATE LAW

Title 37 Public Utilities

Chapter 12

Article 3. DAMAGE TO UNDERGROUND PUBLIC UTILITY FACILITIES

§ 37-12-301. Short title; definitions.

This act may be known and shall be cited as the "Wyoming Underground Facilities Notification Act."

(b) As used in this act:

(i) "Business day" means any twenty-four (24) hour period other than Saturday, Sunday or legal holiday;

(ii) "Emergency" means a sudden, unforeseen occurrence, including a loss of communications, which demands immediate action to protect the health, safety and welfare of the public and to prevent loss of life, health, property or essential public services and advance notice to the Notification Center prior to excavation is impracticable under the circumstances. "Emergency" shall include ruptures and leakage of pipelines, explosions, fires and similar instances where immediate action is necessary to prevent loss of life or significant damage to underground facilities or the environment;

(iii) "Excavation" or "excavates" means any operation in which earth, rock or other materials on or below the ground is moved or otherwise displaced by means of hand or power tools, power equipment or explosives or other means, and includes grading, trenching, digging, ditching, drilling, auguring, tunneling, boring, plowing-in, pulling-in, ripping, scraping and cable or pipe installing, except tilling of soil and gardening or agricultural purposes;

(iv) "Excavator" means any person or entity that excavates or conducts excavation activities;

(v) "Impoundment" means a closed basin formed naturally, or artificially built, which is dammed or excavated for the retention of water, slurry or other liquid or semi-liquid material;

(vi) "Notification Center" means a center that receives notice from excavators of planned excavation or other requests for location and transmits this notice to participating operators;

(vii) "Operator" means any person, including public utilities, municipal corporations, political subdivisions or other persons having the legal authority to bury, operate, maintain, repair and replace underground facilities;

(viii) "Person" means an individual, partnership, municipality, state, county, political subdivision, utility, joint venture, corporation, limited liability company, statutory trust or other business entity and includes the employer of an individual;

(ix) "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 (1) or more gates that are locked at all times or monitored by a person who can prevent unauthorized access;

(x) "Sump" means a surface pit into which drilling mud flows on reaching the surface of the well after being pumped through the drill pipe and bit, then up through the annular opening between the walls of the hole and the drill pipe, carrying with it cuttings from the well, which settle out of the mud in the sump pits;

(xi) "Underground facility" means any item of personal property buried or placed below ground for use in connection with the storage or conveyance of water, sewage, electronic, telephonic or other form of electronic communications, cable television, electric energy, oil, gas, hazardous liquids or other substances and including but not limited to pipes, sewers, conduits, cables, valves, lines, wires, manholes and attachments;

(xii) "Government entity" means any agency, department, board, commission, authority, institution or instrumentality of the state and any county, municipality or other political subdivision of the state;

(xiii) "Public right-of-way" means any public street, road, highway or sidewalk;

(xiv) "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;

(xv) "This act" means W.S. 37-12-301 through 37-12-307.

§ 37-12-302. Notice of excavation by excavator; information to be supplied upon notice; exceptions; penalty.

Every operator shall file with the notification center a general description of the area served together with the name, address and telephone number of the person from whom necessary information may be obtained concerning the location of underground facilities.

(b) Any person preparing or designing architectural or engineering design drawings that call for excavation shall comply with W.S. 37-12-307.

(c) Except as hereafter provided, no excavator shall make or begin excavation without first notifying the notification center of the proposed excavation. Notice shall be given by telephone, email, fax or other electronic medium approved by the notification center at least two (2) full business days, but not more than fourteen (14) business days prior to any excavation to the notification center pursuant to W.S. 37-12-304. If an excavation on a single project lasts more than fourteen (14) business days, the excavator shall give notice at least once each succeeding fourteen (14) business day period. Notice to the notification center is notice to each member thereof in the area. Notification of the following information to the notification center shall be required and shall include the following:

(i) Name of the person notifying notification center;

- (ii) Name, address and telephone number of the excavator;
- (iii) Specific location by legal description or other reliable method that allows for current and accurate means of identifying geographic locations, and starting date and description of the intended activity.

(d) An operator shall at its expense, upon receipt of the notice provided for in subsection (c) of this section, use reasonable care to mark the location of the underground facilities with stakes, flags, paint or by other clearly identifiable marking within twenty-four (24) inches horizontally from the exterior sides of the operator's underground facilities. The location shall be marked using American Public Works Association uniform color standards. If requested by the excavator, the operator receiving the notice shall advise the excavator of the nature, location, size, function and depth if known, of underground facilities in the proposed excavation area. The operator shall respond no later than two (2) full business days after receipt of the notice from the notification center or at a time otherwise mutually agreed to by the operator and excavator.

(e) Emergency excavations are exempt from the time constraints of the provisions of subsections (c) and (d) of this section.

(f) If information required pursuant to subsection (d) of this section is not provided within the time specified therein, or if the information provided fails to identify the location of the underground facilities in accordance with subsection (d) of this section, then any excavator damaging or injuring underground facilities shall not be liable for such damage or injury except when failing to utilize reasonable care. However, if information required pursuant to subsection (d) of this section is provided within the time specified therein, and if the information provided sufficiently identifies the location of the underground facilities in accordance with subsection (d) of this section, then any excavator damaging or injuring underground facilities shall be liable for all damage or injury to persons or property.

(g) Compliance with this section does not excuse an excavator from exercising reasonable care in complying with this act nor does compliance with this section excuse an excavator from liability for damage or injury for failure to so act. When excavating, reasonable care shall require hand digging or soft digging, as necessary, to protect the underground facility.

(h) When any contact with or damage to any underground facility occurs, the excavator shall first immediately call a 911 emergency reporting system as defined by W.S. 16-9-102 (a) (iv) and request emergency services if the contacted or damaged underground facility releases gas or a hazardous liquid. In all cases the excavator shall immediately notify the operator of the facility and the notification center, of the location of and extent of damage to the underground facility and shall cooperate with the operator of the damaged underground facility to mitigate the damages incurred to the extent reasonably possible, including the provision of in-kind work where technical or special skills are not required according to the nature of the underground facility. An excavator shall not conceal or attempt to conceal any dislocation, disturbance or damage to an underground facility and shall not repair or attempt to repair the underground facility unless authorized by the operator of the underground facility. Upon notification of damage to an underground facility from an excavator, the operator of the underground facility shall respond to the notification in a manner

reasonably appropriate to the circumstances. The operator shall file a report with the notification center describing the response within seventy-two (72) hours of the initial notification. This requirement of notification shall not relieve the excavator and the operator from compliance with any other state or federal notification obligation. In any dispute concerning the liability for damages to any underground facility, the excavator shall bear the burden of proof concerning its use of reasonable care in conducting the excavation.

(m) Unless an exception in this subsection is applicable, an excavator shall mark the location of the area or path of excavation before the arrival of an operator or agent of an operator to locate their underground facility. The obligations of an operator specified by W.S. 37-12-302 (d) shall not apply until an excavator has complied with the requirements of this subsections. Markings may include stakes, flags, marking whiskers, white paint, signage, electronic white lining on digital mapping or any other identifiable marking that clearly marks the location of the area or path of excavation, provided that any marking used cannot be confused with the accepted American National Standards Institute Standard Z535.1 safety color code.

An excavator need not pre-mark the location as required by this section if any of the following apply:

(i) There is only one (1) operator with underground facilities in the proposed excavation area and the operator or the operator's agent can determine the location of the area or path of excavation by street address, lot number, global positioning system, latitude and longitude coordinates, mapping or other method agreed to by the excavator and operator;

(ii) The excavator and operator had a meeting at the proposed excavation area before beginning the proposed excavation and exchanged the information on the location of the area or path of excavation as specified in paragraph (i) of this subsection;

(iii) The proposed excavation is of an emergency nature;

(iv) A different method of locating or defining the area or path of excavation has been agreed to by the excavator and all operators within the proposed excavation area.

W.S. 37-12-302 (j) and (k) is repealed.

§ 37-12-303.

Repealed by Laws 1996, ch. 113, § 3.

§ 37-12-304.

Notification centers; formation; duties.

(a) All operators having underground facilities shall join the notification center and shall participate in the notification center providing for mutual receipt of notification of excavation activities in a specified area and pay their share of the cost for the service provided.

(b) The notification center shall:

(i) File with the county clerk the statewide toll-free telephone number;

(ii) Repealed by Laws 2003, Ch. 59, § 2.

(iii) Maintain adequate records documenting compliance with the requirements of this act, including the following:

Records of all telephone calls and other notifications received electronically;

(B) Records of all location requests which shall be retained for fifty (50) months and can be printed through use of a unique file numbering system developed by the notification center.

(C) Written records related to all complaints and responses alleging noncompliance with this act.

(iv) Provide the service at a minimum during normal business hours, Monday through Friday, excluding legal holidays;

(v) For calls received after normal business hours for the notification center, provide a recording for callers which explain emergency notification and excavation procedures;

(vi) Provide a timely method for notifying participating members of the information received regarding proposed excavation activities. The method of notification shall be determined by each notification system;

(vii) Upon request, provide to excavators giving notice of an intent to engage in an excavation activity the names of participating operators of underground facilities to whom the notice will be transmitted;

(viii) Repealed by Laws 2003, Ch. 59, § 2.

(ix) Offer an excavation safety training program.

(x) Upon request, provide to any person preparing or designing architectural or engineering design drawings that call for excavation the names and contact information of operators of underground facilities within the proposed excavation area;

(xi) Provide a monthly report to the Wyoming attorney general on recent complaints alleging noncompliance with this act, including the contact information of any person or entity alleged to be in noncompliance with this act.

(c) Repealed by Laws 2003, Ch. 59, § 2.

§ 37-12-305. Exemptions.

The following oil and gas production facilities are not subject to this act:

- (i) Aboveground or underground storage tanks, sumps, impoundments or piping connected to aboveground or underground storage tanks, sumps or impoundments located in the same tract of land as the storage tanks, sumps or impoundments;
- (ii) Underground production facilities operated by the operator of a secured facility which are located entirely within the secured facility;
- (iii) Piping within a well bore;
- (iv) Underground facilities which are located on a production lease or unit and which are operated by a person:
 - (A) Who owns, in whole or in part, the mineral lease rights to that production lease or unit; and
 - (B) Who operates the underground facility only for their own use.
- (b) An underground facility which extends beyond the boundaries of a production lease or unit is exempt only for that portion of the facility which is located within the boundaries of the lease or unit.
- (c) An underground facility which contains gas or hazardous liquid shall not be exempted under the provisions of this act as provided by paragraph (a) (iv) of this section if the facility is located within the boundaries of, or within one-eighth (1/8) of a mile of, an incorporated or unincorporated city or town, or any residential or commercial area, subdivision, business or shopping area, community development or any similarly populated area, or on an established surface or underground easement or if it contains more than one hundred (100) parts per million of hydrogen sulfide.
- (d) Underground facilities located on private property owned by and existing for the exclusive use of that private property operator are exempt from the provisions of this act.
- (e) Private domestic water and sewer lines located outside any incorporated area and serving nine (9) or fewer service hook-ups, private irrigation and drainage lines and ditches, irrigation district and drainage district lines and ditches, and private livestock water pipelines and facilities are exempt from the provisions of this act.
- (f) Nothing in this section shall prohibit an operator of an underground facility which is exempted under this section to voluntarily register that facility under this act.
- (g) Underground facilities operated by the operator of a secured facility which are located entirely within the secured facility are exempt from the provisions of this act.

(h) The following routine maintenance activities in a government entity's public right-of-way are exempt from the following provisions of this act:

- (i) Snowplowing;
- (ii) Adding of granular material to unpaved roads and road shoulders;
- (iii) Removal and application of patches to the surface of pavement;
- (iv) Cleaning and sealing of road or pavement cracks or joints.

§ 37-12-306. Civil penalties; applicability.

An action to recover a civil penalty under this section may be brought by an operator, excavator, aggrieved party, the notification center, county attorney, district attorney or the attorney general. Venue for an action shall be in the district court for the county in which the operator, excavator, aggrieved party or the notification center 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. The action provided in this subsection may be by jury trial if a jury is demanded by either party.

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

(c) The penalties provided in this section are in addition to any other remedy available at law or equity.

(d) No civil penalty shall be imposed under this section against an excavator or operator who violates any of the provisions of this article if the violation occurred while the excavator 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.

(e) This section shall not apply to any governmental entity as defined by W.S. 1-39-103 (a) (i), which participates in the notification center as provided by this act. Nothing in this article shall affect any provision of the Wyoming Governmental Claims Act, W.S. 1-39-101 through 1-39-120.

(f) Any civil penalty received under subsection (g) or (h) of this section shall be deposited into the county public school fund of the county in which the violation occurred.

(g) With respect to operators:

(i) Every operator in Wyoming shall join and participate in the notification center pursuant to W.S. 37-12-304 (a). Any operator who does not join or participate in the notification center shall be liable for a fine of five thousand dollars (\$5000.00) each year it is not in compliance with this subsection;

(ii) If any underground facility located in the service area of an operator is damaged as a result of the operator's failure to join or participate in the notification center pursuant to W.S. 37-12-304 (a), the court shall impose upon such operator a civil penalty up to the amount of five thousand dollars (\$5,000.00) for the first offense and up to twenty-five thousand dollars (\$25,000.00) for a second offense within a twelve (12) month period after the first offense. If any underground facility located in the service area of an operator is damaged as a result of the operator's failure to join or participate in the notification center pursuant to W.S. 37-12-304(a) on more than two (2) separate occasions within a twelve (12) month period from the date of the first failure to comply with W.S. 37-12-304 (a), then the civil penalty shall be up to seventy-five thousand dollars (\$75,000.00). Upon a first offense, the operator may be required by the court to complete an excavation safety training program with the notification center;

(iii) If any underground facility is damaged as a result of the operator's failure to comply with W.S. 37-12-304 (a), the operator's failure to use reasonable care in the marking of the damaged underground facility or the operator's failure to mark the location of its underground facilities within the time period specified in W.S. 37-12-302 (d) unless that failure is due to circumstances beyond the operator's control, the operator shall be liable for:

(A) 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

(B) Any injury or damage to persons or property resulting from the damage to the underground facility. The 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.

(iv) If an operator, after receipt of a notice from an excavator or notification center pursuant to W.S. 37-12-302 (c), fails to mark the location of its underground facilities within the time period specified in W.S. 37-12-302(d), and unless the failure resulted from circumstances beyond the operator's control, the operator shall be liable for a civil penalty of up to five thousand dollars (\$5000.00).

(h) With respect to excavators:

(i) Every excavator shall notify the notification center pursuant to W.S. 37-12-302 (c) prior to commencing any excavation activity. Any excavator who fails to notify the notification center pursuant to W.S. 37-12-302 (c) shall be liable for a civil penalty in the amount of five thousand dollars (\$5000.00);

(ii) If an excavator fails to comply with W.S. 37-12-302 (c), (g), or (h) and damages an underground facility during excavation, the excavator shall be liable for a civil penalty up to the amount of five thousand dollars (\$5,000.00) for the first offense and up to twenty-five thousand dollars (\$25,000.00) for a second offense within a twelve (12) month period after the date of the first offense.

If an excavator fails to comply with W.S. 37-12-302 (c), (g) or (h) on more than two (2) separate occasions within a twelve (12) month period from the date of the first failure to comply with the appropriate subsection, then the civil penalty shall be up to seventy-five thousand dollars (\$75,000.00). Upon a first offense, the excavator may be required to complete an excavation safety training program with the notification center;

(iii) If an excavator requests a facilities locate on an expedited basis (less than two (2) full business days) for an emergency excavation and the excavation at issue was not an emergency and did not require a locate on an expedited basis, the excavator shall be liable for a civil penalty of up to five thousand dollars (\$5000.00) for each false emergency locate incident;

(iv) If an excavator fails to comply with W.S. 37-12-302 (c), (g) or (h) and damages an underground facility during an excavation, or fails to exercise reasonable care in excavating and damages a located underground facility during an excavation, the excavator shall be liable for:

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

(B) Any injury or damage to persons or property resulting from the damage to the underground facility. The excavator shall also indemnify and defend the 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.

(v) Subparagraph (iv) (A) of this subsection shall not apply to an excavator if the operator of the underground facility has failed to comply with W.S. 37-12-302 (d) or 37-12-304(a).

(j) Any provision of an agreement or release that requires an excavator or an operator who has suffered damage or loss due to a violation of this act to indemnify the violator for penalties is unenforceable with respect to any obligation to indemnify the violator for the penalties.

§ 37-12-307. Architectural or engineering design drawings notice.

(a) Any person preparing or designing architectural or engineering design drawings that call for excavation shall make reasonable efforts to determine at no expense to the operator the nature, location, and depth if known, of underground facilities. If the location of an operator's underground facilities within the proposed excavation area are restricted as classified by the federal or state government a contacted operator shall disclose to the person the potential presence of the underground facilities in the proposed excavation area and any known disclosable information about the nature and location of the underground facilities, as well as the contact information, if known, of the federal or state government official who may be able to provide further information. Any person preparing or designing architectural or engineering design drawings that call for excavation shall make the information and location under this subsection a part of the plan by which the excavators operate.

(b) Any person preparing or designing architectural or engineering design drawings that call for excavation for a government entity in a public right-of-way with a project cost greater than seven hundred fifty thousand dollars (\$750,000.00) may schedule one (1) or more predesign meetings. The person shall notify the notification center at least thirty (30) calendar days before the first predesign meeting and provide the person's contact information, the name of the government entity, the scheduled predesign meeting dates, the location of the proposed excavation area and the project's scope of work. The notification center shall provide this information to operators with underground facilities in the proposed excavation area. Any operator or the operator's agent receiving notice pursuant to this subsection shall do any one (1) of the following;

(i) Attend the predesign meeting and provide information on the location of the operator's underground facilities within the proposed excavation area;

(ii) Notify the person that the operator has already or will, within fourteen (14) business days of receipt of the notice, mark the location of the operator's underground facilities within the proposed excavation area in accordance with the standards set forth in W.S. 37-12-302 (d);

(iii) Contact the person for conceptual drawings and then mark the location of the operator's underground facilities on the drawings. The operator shall return the marked drawings to the person within thirty (30) calendar days of receipt of the drawings.

OSHA REGULATIONS

§ 1926/751(b) Underground installations

(1) The estimated location of utility installations, such as sewer, telephone, fuel, electric, water lines, or any other underground installations that reasonably may be expected to be encountered during excavation work, shall be determined prior to opening an excavation.

(2) Utility companies or operators shall be contacted within established or customary local response times, advised of the proposed work, and asked to establish the location of the utility underground installations prior to the start of actual excavation. When utility companies or operators cannot respond to a request to locate underground utility installations within 24 hours (unless a longer period is required by state or local law), or cannot establish the exact location of these installations, the employer may proceed, provided the employer does so with caution, and provided detection equipment or other acceptable means to locate utility installations are used. When excavation operations approach the estimated location of underground installations, the exact location of the installations shall be determined by safe and acceptable means.

FEDERAL LAW

§ 49 USC 60122 – CIVIL PENALTIES

A person that the Secretary of Transportation decides, after written notice and an opportunity for a hearing, has violated section 60114(b) or 60118(a) of this title or a regulation prescribed or order issued under this chapter is liable to the United States Government for a civil penalty of not more than \$100,000 for each violation. A separate violation occurs for each day the violation continues. The maximum civil penalty under this paragraph for a related series of violations is \$1,000,000.

§ 49 USC 60123 - Sec. 60123 (d) Penalty for Not Using One-Call Notification System or Not Heeding Location Information or Markings.

A person shall be fined under title 18, imprisoned for not more than 5 years, or both, if the person:

- (1) knowingly and willfully engages in an excavation activity;
 - (A) without first using an available one-call notification system to establish the location of underground facilities in the excavation area; or
 - (B) without paying attention to appropriate location information or markings the operator of a pipeline facility establishes; and subsequently damages a pipeline facility that results in death, serious bodily harm, or actual damage to property of more than \$50,000;
 - (C) a pipeline facility, and knows or has reason to know of the damage, but does not report the damage promptly to the operator of the pipeline facility and to other appropriate authorities; or
 - (D) a hazardous liquid pipeline facility that results in the release of more than 50 barrels of product.

