

NOT AN OFFICIAL PUBLICATION. We believe this on-line version of the Kansas Underground Utility Damage Prevention Act to be up-to-date as of January, 2007.

**82-14-1. Definitions.** The following terms as used in the administration and enforcement of the Kansas underground utility damage prevention act, K.S.A. 66-1801 et seq. and amendments thereto, shall be defined as specified in this regulation.

- a) “Backreaming” means the process of enlarging the diameter of a bore by pulling a specially designed tool through the bore from the bore exit point back to the bore entry point.
- b) “Commission” means the state corporation commission of Kansas.
- c) “Drill head” means the mechanical device connected to the drill pipe that is used to initiate the excavation in a directional boring operation. This term is sometimes referred to as the drill bit.
- d) “Excavation scheduled start date” means the later of the start date stated in the notice of intent of excavation filed by the excavator with the notification center or the start date filed by the excavator with a tier 2 member or tier 3 member.
- e) “Excavation site” means the area where excavation is to occur.
- f) “Locatable” has the meaning of that word as used in “locatable facility,” which is defined in K.S.A. 66-1802 and amendments thereto. In addition to the requirements for locating underground facilities, as specified in K.S.A. 66-1802 and amendments thereto, the operator shall be able to locate underground facilities within 24 inches of the outside dimensions in all horizontal directions of an underground facility using tracer wire, conductive material, GPS technology, or any other technology that provides the operator with the ability to locate the pipelines for at least 20 years.
- g) “Locate” means the act of marking the tolerance zone of the operator’s underground facilities by the operator.
- h) “Locate ball” means an electronic marker device that is buried with the facility and is used to enhance signal reflection to a facility detection device.
- i) “Meet on site” means a meeting between an operator and an excavator that occurs at the excavation site in order for the excavator to provide an accurate description of the

excavation site.

- j) “Notice of intent of excavation” means the written notification required by K.S.A. 66-1804 and amendments thereto.
- k) “Notification center,” as defined in K.S.A. 66-1802 and amendments thereto, means the underground utility notification center operated by Kansas one call, inc.
- l) “Pullback operation” means the installation of facilities in a directional bore by pulling the facility from the bore exit point back to the bore entry point.
- m) “Pullback device” means the apparatus used to connect drilling tools to the facility being installed in a directional bore.
- n) “Reasonable care” means the precautions taken by an excavator to conduct an excavation in a careful and prudent manner. Reasonable care shall include the following:
  - 1. Providing for proper support and backfill around all existing underground facilities;
  - 2. Using nonintrusive means, as necessary, to expose the existing facility in order to visually determine that there will be no conflict between the facility and the proposed excavation path when the path is within the tolerance zone of the existing facility;
  - 3. Exposing the existing facility at intervals as often as necessary to avoid damage when the proposed excavation path is parallel to and within the tolerance zone of an existing facility; and
  - 4. Maintaining the visibility of the markings that indicate the location of underground utilities throughout the excavation period.
- o) “Tier 1 member” means any operator of a tier 1 facility, as defined in K.S.A. 66-1802 and amendments thereto, or any operator of a tier 2 facility, as defined in K.S.A. 66-1802 and amendments thereto, that elects to be a tier 1 member of the notification center pursuant to K.A.R. 82-14-3.
- p) “Tier 2 member” means any operator of a tier 2 facility, as defined in K.S.A. 66-1802 and amendments thereto, that elects to be a tier 2 member of the notification center.
- q) “Tier 3 member” means any operator of a tier 2 facility, as defined in K.S.A. 66-1802 and amendments thereto, that meets the requirements for a tier 3 facility, as defined in K.S.A. 66-1802 and amendments thereto, and elects to be a tier 3 member of the notification

center.

- r) "Tolerance zone" has the meaning specified in K.S.A. 66-1802 and amendments thereto. The tolerance zone shall not be greater than the following:
  - 1. 25 inches for each tier 1 facility; and
  - 2. 61 inches for each tier 2 facility.
- s) "Trenchless excavation" means any excavation performed in a manner that does not allow the excavator to visually observe the placement of the new facility. This term shall include underground boring, tunneling, horizontal auguring, directional drilling, plowing, and geoprobing.

### **82-14-2. Excavator requirements.**

In addition to the provisions of K.S.A. 66-1804, K.S.A. 66-1807, K.S.A. 66-1809, and K.S.A. 66-1810 and amendments thereto, the following requirements shall apply to each excavator:

- a) If an excavator directly contacts a tier 2 member or a tier 3 member, the excavation scheduled start date shall be the later of the following
  - 1. The excavation scheduled start date assigned by the notification center; or
  - 2. Two full working days after the day of contact with the tier 2 member or tier 3 member.
- b) Unless all affected operators have provided notification to the excavator, excavation shall not begin at any excavation site before the excavation scheduled start date.
- c) If a meet on site is requested by the excavator, the excavation scheduled start date shall be no earlier than the fifth working day after the date on which the notice of intent of excavation was given to the notification center or to the tier 2 member or tier 3 member.
- d) Each notice of intent of excavation shall include the name and telephone number of the individual who will be representing the excavator.
- e) Each description of the excavation site shall include the following:
  - 1. The street address, if available, and the specific location of the proposed excavation site at the street address; and
  - 2. An accurate description of the proposed excavation site using any available designations, including the closest street, road, or intersection, and any additional information requested by the notification center.

- f) If the excavation site is outside the boundaries of any city or if a street address is not available, the description of the excavation site shall include one of the following:
1. An accurate description of the excavation site using any available designations, including driving directions from the closest named street, road, or intersection;
  2. The specific legal description, including the quarter section; or
  3. The longitude and latitude coordinates.
- g) An excavator shall not claim preengineered project status, as defined in K.S.A. 66-1802 and amendments thereto, unless the public agency responsible for the project performed the following before allowing excavation:
1. Identified all operators that have underground facilities located within the excavation site;
  2. Requested that the operators specified in paragraph (g)(1) verify the location of their underground facilities, if any, within the excavation site;
  3. Required the location of all known underground facilities to be noted on updated engineering drawings as specifications for the project;
  4. Notified all operators that have underground facilities located within the excavation site of the project of any changes to the engineering drawings that could affect the safety of existing facilities; and
  5. Complied with the requirements of K.S.A. 66-1804(a), and amendments thereto.
- h) If an excavator wishes to conduct an excavation as a permitted project, as defined in K.S.A. 66-1802 and amendments thereto, the permit obtained by the excavator shall have been issued by a federal, state, or municipal governmental entity and shall have been issued contingent on the excavator's having met the following requirements:
1. Notified all operators with facilities in the vicinity of the excavation of the intent to excavate as a permitted project;
  2. Visually verified the presence of the facility markings at the excavation site; and
  3. Complied with the requirements of K.S.A. 66-1804(a) and amendments thereto.
- i) If the excavator requests a meet on site as part of the description of the proposed excavation site given to the notification center, the tier 2 member, or the tier 3 member, then the excavator shall document the meet on site and any subsequent meetings regarding facility locations with a record noting the name and company affiliation for the representative of the excavator and the representative of the operator that attend the meeting. The excavator shall keep this record for at least two years. This documentation shall include the following:
1. Verification that the description of the excavation site is understood by both parties;
  2. The agreed-upon excavation scheduled start date;
  3. The date and time of the meet on site; and

4. The name and company affiliation of each attendee of the meet on site.
- j) Each excavator using trenchless excavation techniques shall develop and implement operating guidelines for trenchless excavation techniques. At a minimum, the guidelines shall require the following:
1. Training in the requirements of the Kansas underground utility damage prevention act;
  2. Training in the use of nonintrusive methods of excavation used if there is an indication of a conflict between the tolerance zone of an existing facility and the proposed excavation path;
  3. Calibration procedures for the locator and sonde if this equipment is used by the excavator;
  4. Recordkeeping procedures for measurements taken while boring;
  5. Training in the necessary precautions to be taken in monitoring a horizontal drilling tool when backreaming or performing a pullback operation that crosses within the tolerance zone of an existing facility;
  6. Training in the maintenance of appropriate clearance from existing facilities during the excavation operation and during the placement of new underground facilities;
  7. For horizontal directional drilling operations, a requirement to visually check the drill head and pullback device as they pass through potholes, entrances, and exit pits; and
  8. Emergency procedures for unplanned utility strikes.
- k) If any contact with or damage to any underground facility or the facility's associated tracer wire locate ball, or associated surface equipment occurs, the excavator shall immediately inform the operator.

### **82-14-3. Operator requirements.**

In addition to the provisions of K.S.A. 66-1806, K.S.A. 66-1807, and K.S.A. 66-1810 and amendments thereto, the requirements specified in this regulation shall apply to each operator.

- a) Each operator shall inform the notification center of its election to be considered as a tier 1 member, tier 2 member, or tier 3 member.
- b) Unless otherwise agreed to between the notification center and the operator, any operator of a tier 2 facility may change its membership election once every calendar year by informing the notification center of the operator's intention on or before November 30 of the preceding calendar year.

- c) Each tier 1 member shall perform the following:
  - 1. File and maintain maps of the operator's underground facilities or a map showing the operator's service area with the notification center; and
  - 2. File and maintain, with the notification center, the operator's telephone contact number that can be accessed on a 24-hour-per-day basis.
  
- d) Each tier 2 member shall perform the following:
  - 1. Establish telephone or internet service with the ability to receive notification from excavators on a 24-hour-per-day basis;
  - 2. File with the notification center updated maps of the operator's underground facilities or a map showing the operator's service area;
  - 3. File with the notification center the operator's current telephone contact number or numbers that can be accessed on a 24-hour-per-day basis;
  - 4. File with the notification center the operator's preferred method of contact for all referrals received from the notification center; and
  - 5. Maintain for at least two years all information provided by the excavator pursuant to K.A.R. 82-14-2(e) and (f).
  
- e) Each tier 3 member shall perform the following:
  - 1. File with the notification center updated maps of the operator's underground facilities or a map showing the operator's service area;
  - 2. File with the notification center the operator's current telephone contact number or numbers that can be accessed on a 24-hour-per-day basis;
  - 3. File with the notification center the operator's preferred method of contact for all referrals received from the notification center;
  - 4. Maintain for at least two years all information provided by the excavator pursuant to K.A.R. 82-14-2(e) and (f);
  - 5. Develop and operate a locate service web site capable of receiving locate requests;
  - 6. Publish and maintain a dedicated telephone number for locate services;
  - 7. Maintain 24-hour response capability for emergency locates; and
  - 8. Employ at least two technically qualified individuals whose job function is dedicated to the location of underground utilities.
  
- f) Except in cases of emergencies or separate agreements between the parties, each operator of a tier 1 facility shall perform one of the following, within the two working days before the excavation scheduled start date assigned by the notification center:
  - 1. Inform the excavator of the location of the tolerance zone of the operator's underground facilities in the area described in the notice of intent of excavation;or

2. Notify the excavator that the operator has no facilities in the area described in the notice of intent of excavation.
- g) Except in cases of emergencies or separate agreements between the parties, the operator of a tier 2 facility shall perform one of the following within the two working days before the excavation scheduled start date assigned by the notification center or the tier 2 member or tier 3 member, whichever is later:
1. Mark the location of its facilities according to the requirements of subsections (m) and (n) in the area described in the notice of intent of excavation and, if applicable, notify the excavator of the operator's election to require a tolerance zone of 60 inches; or
  2. Inform the excavator that the operator's underground facilities are expected to be at least two feet deeper than the excavator's planned excavation depth and that the location of its facilities will not be provided for the affected tier 2 facilities.
- h) Each operator of a tier 2 facility that notifies an excavator of its election to require a tolerance zone of 60 inches shall record and maintain the following records of the notification for at least two years:
1. The name of the excavator contacted for the notification of a 60-inch tolerance zone;
  2. The date of the notification; and
  3. A description of the location of the excavation site.
- i) Each operator of a tier 2 facility that notifies an excavator of its election not to provide locates for its facilities that are expected to be two feet deeper than the excavator's maximum planned excavation depth shall record and maintain the following records of the notification for at least two years:
1. The name of the excavator notified that the operator will not provide locates;
  2. The excavator's maximum planned excavation depth;
  3. The date of the notification; and
  4. A description of the location of the excavation site.
- j) If the operator of a tier 2 facility is unable to provide the location of its facilities within a 60-inch tolerance zone, the operator shall mark the approximate location of its facilities to the best of its ability, notify the excavator that the markings could be inaccurate, remain on site or in the vicinity of the excavation, and provide additional guidance to the excavator in locating the facilities as needed during the excavation.
- k) Each tier 2 facility constructed, replaced, or repaired after July 1, 2008 shall be locatable. Location data shall be maintained in the form of maps or any other format as determined

by the operator.

- l) The requirement to inform the excavator of the facility location shall be met by marking the location of the operator's facility and identifying the name of the operator with flags, paint, or any other method by which the location of the facility is marked in a clearly visible manner.
- m) In marking the location of its facilities, each operator shall use safety colors substantially similar to five of the colors specified in the American national standards institute standard no. Z535.1-2002, "American national standard for safety color code," not including annex A, dated July 25, 2002 and hereby adopted by reference, according to the following table:

Facility Type	Color
Electric power distribution lines and transmission lines	Safety red
Gas distribution and transmission lines	Safety yellow
Hazardous liquid distribution and transmission lines	Safety yellow
Telephone, telegraph, and fiber optic system lines; cable television lines; alarm lines; and signal lines	Safety orange
Potable water lines	Safety blue
Sanitary sewer main lines	Safety green

- n) If the facility has any outside dimension that is eight inches or larger, the operator shall mark its facility so that the outside dimensions of the facility can be easily determined by the excavator.
- o) If the facility has any outside dimension that is smaller than eight inches, the operator shall mark its facility so that the location of the facility can be easily determined by the excavator.
- p) The requirement to notify the excavator that the tier 1 operator has no facilities in the area described in the notice of intent of excavation shall be met by performing one of the following:
  1. Marking the excavation site in a manner indicating that the operator has no facilities at that site; or
  2. Contacting the excavator by telephone, facsimile, or any other means of communication. Two documented attempts by the operator to reach an excavator by telephone during normal business hours shall constitute compliance with this paragraph.

- q) If the notice of intent of excavation contains a request for a meet on site, the operator shall meet with the excavator at a mutually agreed-upon time within two working days after the day on which the notice of intent of excavation was given.
- r) After attending a meet on site, the operator shall inform the excavator of the tolerance zone of the operator's facilities in the area of the planned excavation within two working days before the excavation scheduled start date that was agreed to at the meet on site.
- s) Any operator may request that the excavator wheline the proposed excavation site.
- t) If the operator requests that the excavator wheline the excavation site, the operator shall have two working days after the whelining is completed to provide the location of the tolerance zone.
- u) If the operator requests that the excavator use whelining at the excavation site, the operator shall document the whelining request and any subsequent meetings regarding the facility location for that excavation site. The operator shall maintain records of the whelining documentation for two years after the excavation scheduled start date. The documentation shall include the following:
  - 1. A record stating the name and contact information of the excavator contacted for the request for whelining;
  - 2. Verification that both parties understand the description of the excavation site;
  - 3. The agreed-upon excavation scheduled start date; and
  - 4. The date and time of the request for whelining.
- v) Each operator that received more than 2,000 requests for facility locations in the preceding calendar year shall file a damage summary report at least semiannually with the Kansas corporation commission. The report shall include information on each incident of facility damage resulting from excavation activity that was discovered by the operator during that period. For each incident, at a minimum the following data, if known, shall be included in the report:
  - 1. The type of operator;
  - 2. The type of excavator;
  - 3. The type of excavation equipment;
  - 4. The city or county, or both, in which the damage occurred;
  - 5. The type of facility that was damaged;
  - 6. The date of damage, specifying the month and year;
  - 7. The type of locator;
  - 8. The existence of a valid notice of intent of excavation; and
  - 9. The primary cause of the damage.

- w) The damage summary report for the first six months of the calendar year shall be due on or before August 1 of the same calendar year. The damage summary report for the last six months of the calendar year shall be due on or before February 1 of the next calendar year.

#### **82-14-4. Notification center requirements.**

In addition to the provisions of K.S.A. 66-1805 and amendments thereto, the executive director of the notification center shall ensure that the following requirements are met:

- a) Notice shall be provided to each affected operator of a tier 1 facility of any excavation site for which the location has been requested pursuant to K.S.A. 66-1804(e), and amendments thereto, and K.A.R. 82-14-2 (e) or (f) if the affected operator is a tier 1 member and has facilities recorded with the notification center in the area of the proposed excavation site.
- b) If the affected operator is a tier 2 member and has a facility recorded with the notification center in the area of the proposed excavation, the notification center shall provide the excavator with the name of the tier 2 member and contact information for the tier 2 member.
- c) If the affected operator is a tier 3 member and has facilities recorded with the notification center in the area of the proposed excavation, the notification center shall provide the excavator with the name of the tier 3 member and the preferred method of contact for the tier 3 member.
- d) Notice provided by the notification center directly to the operators of tier 2 facilities of any excavation site shall be deemed to meet the requirements of subsections (b) and (c) if the operator agrees to the method of notification.
- e) A record of receipts for each notice of intent of excavation shall be maintained by the notification center for two years, including an audio record of each notice of intent of excavation, if available, and a written or electronic version of the notification sent to each operator that is a tier 1 member.
- f) A copy of the notification center's record documenting the notice of intent of excavation shall be provided to the commission or to the person giving the notice of intent of excavation, upon request.

- g) A quality control program shall be established and maintained by the notification center. The program shall ensure that the employees receiving and recording the notices of intent of excavation are adequately trained.

**82-14-5. Tier 3 member notification requirements.**

In addition to meeting the requirements of K.A.R. 82-14-3(e), each tier 3 member shall ensure that the following requirements are met:

- a) A record of receipts for each notice of intent of excavation shall be maintained for at least two years, including an audio record, if available, of each notice of intent of excavation and a written or electronic version of the notification.
- b) A copy of the tier 3 member's record documenting the notice of intent of excavation resulting in a response from the member shall be provided to the commission or to the person giving the notice of intent of excavation, upon request.
- c) A quality control program shall be established and maintained. The program shall establish procedures for receiving and recording the notices of intent of excavation.

**82-14-6. Violation of act; enforcement procedures.**

- a) After investigation, if the commission staff believes that there has been a violation or violations of K.S.A. 66-1801 et seq. and amendments thereto or any regulation or commission order issued pursuant to the Kansas underground utility damage prevention act and the commission staff determines that penalties or remedial action is necessary to correct the violation or violations, the commission staff may serve a notice of probable noncompliance on the person or persons against whom a violation is alleged. Service shall be made by registered mail or hand delivery.
- b) Any notice of probable noncompliance issued under this regulation may include the following:
  - 1. A statement of the provisions of the statutes, regulations, or commission orders that the respondent is alleged to have violated and a statement of the evidence upon which the allegations are based;
  - 2. A copy of this regulation; and
  - 3. Any proposed remedial action or penalty assessments, or both, requested by the commission staff.
- c) Within 30 days of receipt of a notice of probable noncompliance, the recipient shall respond by mail in at least one of the following ways:

1. Submit written explanations, a statement of general denial, or other materials contesting the allegations;
  2. Submit a signed acknowledgment of commission staff's findings of noncompliance; or
  3. Submit a signed proposal for the completion of any remedial action that addresses the commission staff's findings of noncompliance.
- d) The commission staff may amend a notice of probable noncompliance at any time before issuance of a penalty assessment. If an amendment includes any new material allegations of fact or if the staff proposes an increased civil penalty amount or additional remedial action, the respondent shall have 30 days from service of the amendment to respond.
- e) Unless good cause is shown or a consent agreement is executed by the commission staff and the respondent before the expiration of the 30-day time limit, the failure of a party to mail a timely response to a notice of probable noncompliance shall constitute an admission to all factual allegations made by the commission staff and may be used against the respondent in future proceedings.
- f) At any time before an order is issued assessing penalties or requiring remedial action or before a hearing, the commission staff and the respondent may agree to dispose of the case by joint execution of a consent agreement. The consent agreement may allow for a smaller penalty than otherwise required. The consent agreement may also allow for nonmonetary remedial penalties. Upon joint execution, the consent agreement shall become effective when the commission issues an order approving the consent agreement.
- g) Each consent agreement shall include the following:
1. An admission by the respondent of all jurisdictional facts;
  2. An express waiver of any further procedural steps and of the right to seek judicial review or otherwise challenge or contest the validity of the commission's show cause order;
  3. An acknowledgment that the notice of probable noncompliance may be used to construe the terms of the order approving the consent agreement; and
  4. A statement of the actions required of the respondent and the time by which the actions shall be completed.
- h) If any violation resulting in a notice of probable noncompliance is not settled with a consent agreement, a penalty order may be issued by the commission no sooner than 30 days after the respondent has been served with a notice of probable noncompliance.

- i) The respondent shall remit payment for any civil assessments imposed by a penalty order within 20 days of service of the order.
- j) The respondent may request a hearing to challenge the allegations set forth in the penalty order by filing a motion with the commission within 15 days of service of a penalty order. The respondent's failure to respond within 15 days shall be considered an admission of noncompliance.
- k) An order may be issued by the commission to open a formal investigation docket regarding any potential noncompliance with the Kansas underground utility damage prevention act, and amendments thereto, or any regulations or orders pursuant to that act. If the commission finds evidence that any party to the investigation docket was not in compliance, a show cause order may be issued by the commission. If a show cause order is issued during the course of a formal investigation, the staff shall not be required to issue a notice of probable noncompliance.