

FREQUENTLY ASKED QUESTIONS ABOUT KENTUCKY'S UNDERGROUND FACILITY DAMAGE PREVENTION ACT

THE BASICS

WHAT IS THE KENTUCKY UNDERGROUND FACILITIES PROTECTION ACT?

The Kentucky Underground Facilities Protection Act ("the Act") is the state law intended to prevent damage to underground facilities that carry natural gas, hazardous liquids such as petroleum products, electricity, water or wastewater, or that provide telecommunication services. The act is found in KRS 367.4901 through KRS 367.4917.

WHAT CHANGES WERE MADE TO THE ACT BY THE 2018 KENTUCKY GENERAL ASSEMBLY?

The Act was amended in 2018, to make the Kentucky Public Service Commission (PSC) responsible for investigating instances of damage to natural gas or hazardous liquid pipelines and for assessing penalties as appropriate if the damage was the result of a violation of the Act.

The Act was amended again in 2022 to include amend provisions, add additional language, and additional responsibilities for excavators and operators.

WHAT ARE THE BASIC REQUIREMENTS OF THE ACT?

The Act requires that underground facilities be located and marked prior to beginning any project that involves excavation. The excavator is responsible for making the request, while the facility operators are responsible for marking the facilities. The Act spells out how and when facilities are to be marked, the requirements on excavators, exceptions to the marking requirements, and penalties for violations of the Act.

WHAT IS AN OPERATOR?

An operator is anyone owning or operating underground facilities that serve the public.

HOW DOES THE ACT DEFINE EXCAVATOR AND EXCAVATION?

An excavator is anyone doing excavation, demolition or timber harvesting using mechanized equipment. Excavation is defined as any activity that results in the movement, placement, probing, boring, or removal of earth, rock, or other material in or on the ground by the use of any tools or equipment, by the discharge of explosives, or by the harvesting of timber using mechanized equipment. Forms of excavating include but are not limited to auguring, backfilling, digging, ditching, drilling, driving, grading, piling, pulling-in, ripping, scraping, trenching, and tunneling. Driving wooden stakes by use of hand tools to a depth of six (6) inches or less below existing grade shall not constitute excavation.

ARE THERE ANY ACTIVITIES EXEMPT FROM THE REQUIREMENT TO HAVE UNDERGROUND FACILITIES MARKED PRIOR TO EXCAVATION?

Yes. They include, among others: operators working in their own easement, if no other facilities are present; routine road or railroad maintenance or repairs, as defined by the Act; tilling of soil for agricultural purposes; excavation on private property using non-mechanical means, if it is outside any operator's easement or right-of-way; opening a grave in a cemetery; solid waste disposal in a permitted facility; coal mining, if properly permitted; emergency work being done by a utility operator or contractor.

HOW DOES THE ACT DEFINE AN EMERGENCY?

Emergencies include situations that pose a likelihood of loss of life or property, an inability to restore interrupted utility service, an imminent threat to health or the environment, or the blockage of roads or other public transportation facilities.

CALLING BEFORE DIGGING

WHO DO YOU CALL TO GET UNDERGROUND FACILITIES MARKED BEFORE BEGINNING AN EXCAVATION?

The first call should be to the Kentucky Contact Center, also known as the One-Call Center. It also may be necessary to make calls to individual operators as well, if they are not a member of the One-Call Center.

WHAT IS THE ONE-CALL CENTER? WHAT IS ITS NUMBER?

The One-call Center – reached by dialing 811 or 800-752-6007 (if calling from outside Kentucky) – is a centralized call center with access to information about the location of many underground facilities in Kentucky. It serves as a single point of contact for many – but not all - operators of underground facilities. Thus, a call to the One-Call Center will serve as a call to multiple operators. But there may be a need to contact other operators individually if they are not a member of the 811 One-Call Center.

DO ALL OPERATORS OF UNDERGROUND FACILITIES PARTICIPATE IN THE ONE-CALL CENTER?

No. Only operators of natural gas or hazardous liquid pipelines are required by federal law to participate in the One-call Center. Many electric, water, sewer and telecommunications operators participate. Excavators may need to contact the county clerk's office to determine whether other operators have facilities in the area of the excavation (this can be done by identifying easements or rights-of-way on plat maps) and then contact the operators individually to request that the facilities be located.

HOW FAR IN ADVANCE OF EXCAVATION SHOULD A LOCATE REQUEST BE MADE?

The Act requires that the request be made no less than two full working days and no more

than ten working days before work is to begin. The day the request is made is NOT included in the two full working day wait period. The two day wait period begins the day after the request is made.

WHAT INFORMATION IS TO BE PROVIDED TO THE ONE-CALL CENTER OR THE OPERATOR?

The Act requires that the individual making the request provide their name, as well as the name, address and telephone number of the excavator; the location or locations of the work, including street address, nearest cross street, city and county (with each location not to exceed 5,000 feet in length, except by agreement between the operator and excavator); the type of work being performed; and the name and telephone number of the person responsible for the work. If the proposed excavation location cannot be identified precisely, the excavator should mark the boundaries using white paint, flags, stakes, chalk or other markings.

IS THERE ANY OTHER INFORMATION THAT AN EXCAVATOR CAN PROVIDE TO FACILITATE THE MARKING PROCESS?

Yes. Particularly if the excavation involves a small area – for example, planting a tree or putting in a post for a mailbox – it is helpful to designate the exact location with paint, a flag or a stake, so that only the underground facilities in the immediate area need to be marked.

CAN THE OPERATOR REQUEST ADDITIONAL INFORMATION FROM AN EXCAVATOR?

Yes. The operator can request that the excavator mark the boundaries of the proposed excavation if the excavator did not do so prior to requesting that underground facilities be located and marked.

MARKING OF FACILITIES

HOW MUCH TIME DO OPERATORS HAVE TO COMPLETE MARKING OF FACILITIES?

The Act allows operators two full working days after a request has been made to complete the marking, excluding the day the request was made. Marking of large projects (those longer than 5,000 feet, individually or in the aggregate) must be marked within five working days. Emergency requests for marking must be completed as soon as possible, but no later than within 48 hours.

WHAT INFORMATION ARE OPERATORS REQUIRED TO PROVIDE?

In addition to marking facilities, operators are to provide the approximate location and description of any facilities that might be subject to damage or that pose a safety hazard. The operator also must provide the excavator with any other information that would help in

avoiding the facilities. The operator also must inform the excavator if there are none of their facilities in the area of the excavation. This is otherwise known as positive response.

HOW LONG AFTER MAKING A LOCATE REQUEST SHOULD AN EXCAVATOR WAIT TO BEGIN WORK?

Excavators must wait two working days to allow marking in normal (non-emergency) circumstances or after positive response is received that the site is marked or that there are no facilities in the requested area. The markings are valid for 21 days.

WHAT IF THE WORK IS NOT COMPLETED WITHIN 21 DAYS, THE MARKINGS WEAR OFF OR THE PROJECT CHANGES?

If work is not completed within 21 days, a request for new marking must be made two working days in advance of the end of the 21-day period (or on the 19th day). Similarly, requests for new marking must be made if the old markings are no longer visible or if the excavation plans change.

WHAT SHOULD AN EXCAVATOR DO IF, AFTER TWO WORKING DAYS, THE UNDERGROUND FACILITIES AT THE WORK SITE HAVE NOT BEEN MARKED?

If the Underground call in a Second Notice. A Second Notice is defined as a notice that is made by an excavator to a notification center when an operator has failed to comply with the positive response requirements under KRS 367.4909(5).

If after the Second Notice is called in, the Underground Facilities at the work site have still not been marked and there is evidence that underground facilities are present, the excavator is required to immediately notify the One-call Center or individual, non-811 member, facility operators, as applicable. The excavator should not proceed with the work until the facilities are marked.

HOW ARE HAZARDOUS LIQUID OR NATURAL GAS LINES MARKED? ARE THERE ANY PERMANENT MARKINGS?

Natural gas or hazardous liquid pipelines are marked using flags, paint, stakes or chalk in high visibility safety yellow. Other types of facilities are marked with other colors, as prescribed by the Act. High-pressure pipelines and rights-of-way for major transmission pipelines are permanently delineated with marking posts.

CAN YOU CALL THE PSC TO REQUEST MARKING OF FACILITIES OR TO FILE A COMPLAINT ABOUT FACILITIES NOT BEING MARKED ON TIME?

The PSC does not take requests for marking of facilities. Depending upon the identity of the operator, the PSC may or may not have jurisdiction to investigate a complaint of failure to mark facilities in a timely manner. It is best to attempt to resolve those issues with the operator.

EXCAVATION

WHAT DOES THE ACT REQUIRE OF EXCAVATORS DOING WORK IN CLOSE PROXIMITY TO UNDERGROUND FACILITIES? HOW MUCH LEEWAY IS ALLOWED?

The Act requires hand digging only be used when excavating in the approximate location of an underground facility. Approximate location is defined as within 24 inches on either side of a metallic facility or a non-metallic facility with a metal tracer wire. For non-metallic facilities with no tracer wire, the operator is required to locate the facility as accurately as possible and to notify the excavator of the inability to provide a more precise location.

WHAT IS AN EXCAVATOR REQUIRED TO DO IF THEY HIT A NATURAL GAS OR HAZARDOUS LIQUID PIPELINE? WHAT IF THERE IS A LEAK?

The first requirement is to stop work immediately and notify the operator of the damaged facility and any other affected operators. If there is a safety hazard, the excavator must notify the appropriate public safety agencies of the location and nature of the problem. If the excavation damage causes a leak of natural gas or a hazardous liquid, the excavator is required to call the 911 emergency number immediately.

INCIDENT INVESTIGATIONS – NATURAL GAS OR HAZARDOUS LIQUID PIPELINES

WHAT CONSTITUTES AN INCIDENT?

An incident is any instance of excavation that causes damage to an underground natural gas or hazardous liquid pipeline. The damage does not have to cause a leak; weakening or affecting the structural integrity of a facility is considered damage. So is constructing a structure of one or more stories that renders the facility permanently inaccessible.

WHO INVESTIGATES INCIDENTS OF DAMAGE TO NATURAL GAS OR HAZARDOUS LIQUID PIPELINES?

The PSC's Division of Inspections is responsible for conducting such investigations.

WHO REPORTS INCIDENTS OF DAMAGE TO NATURAL GAS OR HAZARDOUS LIQUID PIPELINES TO THE PSC?

Operators of damaged pipelines are required to report incidents to the PSC via the PSC's reporting system. The reports must include a description of the incident and the causes.

HOW WILL THE PSC INVESTIGATE INCIDENTS?

The PSC will review reports from operators and determine whether further investigation is needed. In the case of major incidents, such as those causing substantial property damage, injuries, or death, the PSC may conduct an immediate field investigation. At the end of the investigation, the PSC will determine whether further action is needed and whether penalties should be assessed.

WILL EVERY INCIDENT RESULT IN PENALTIES?

Penalties will be assessed only if violations of the Act are determined to have occurred. This will be determined on a case-by-case basis.

CAN ANYONE OTHER THAN THE EXCAVATOR BE SUBJECT TO PENALTIES IF A NATURAL GAS OR HAZARDOUS LIQUID PIPELINE IS DAMAGED?

Yes. Pipeline operators are responsible for the accurate location and marking of their facilities. A failure to do so that leads to a damage incident could result in penalties.

IF A CONTRACTOR DAMAGES A NATURAL GAS PIPELINE DUE TO EITHER A FAILURE TO REQUEST THAT IT BE MARKED OR DUE TO IMPROPER EXCAVATION TECHNIQUES, WHO IS SUBJECT TO ANY RESULTING PENALTIES: THE CONTRACTOR OR THE PERSON OR COMPANY THAT HIRED THEM?

The Act places the responsibility for making the location request on the excavator. The excavator also is responsible for avoiding damage to properly located facilities by conducting work in the manner prescribed by the Act. Thus, for PSC enforcement purposes, the responsibility would rest with the contractor.

WOULD A UTILITY PERFORMING EMERGENCY REPAIRS ON ITS OWN NON-NATURAL GAS FACILITIES POTENTIALLY BE SUBJECT TO PENALTIES IF IT DAMAGES A NATURAL GAS PIPELINE?

The Act exempts emergency repairs from the location and other requirements; excavators should still use appropriate excavation methods in close proximity to natural gas pipelines in order to avoid accidents. The PSC will examine the individual circumstances of each incident to determine whether the emergency exemption applies.

CAN A HOMEOWNER BE PENALIZED FOR HITTING A GAS LINE ON THEIR OWN PROPERTY?

Yes. There are limited exemptions for homeowners who do not use mechanized equipment and are not excavating in a utility easement or right-of-way. However, those exemptions do not apply in all cases. Therefore, it is always a good idea to request that service lines and other facilities be located in order to avoid the hazard, cost and inconvenience that come with damaging such facilities.

WHAT WILL THE PSC DO IF INACCURATE LOCATION AND MARKING OF UNDERGROUND NATURAL GAS OR HAZARDOUS LIQUID FACILITIES LEADS TO EXCAVATION DAMAGE?

The Act requires that operators locate and accurately mark their facilities. Operators may be held responsible for violations that lead to damage.

PENALTIES AND ADJUDICATION

WHAT ARE MAXIMUM PENALTIES THAT CAN BE IMPOSED ON EXCAVATORS OR OPERATORS FOR VIOLATIONS OF THE ACT LEADING TO DAMAGE TO AN UNDERGROUND NATURAL GAS OR HAZARDOUS LIQUID PIPELINE?

The maximum penalty for a first offense is \$1,250. A second offense within a year carries a penalty of up to \$2,000. Third and subsequent offenses carry penalties of up to \$4,000.

HOW WILL REPEAT VIOLATIONS BE DETERMINED FOR AN ENTITY SUCH AS A MUNICIPAL UTILITY, WHICH MAY HAVE SEVERAL OPERATIONAL BRANCHES?

If the branches all fall under the control of a single entity, such as a utility board, the violations will be counted against the entity as a whole. For example, successive violations within a year by crews for the electric and water branches of a municipal utility would be treated as a first and second offense. However, violations committed by a contractor for the entity will count against the contractor, not the contracting party.

DOES A RELEASE OF NATURAL GAS OR HAZARDOUS LIQUID HAVE TO OCCUR IN ORDER FOR THE PENALTY TO BE IMPOSED?

No. The penalty applies if the pipeline suffers any damage, as defined in the Act.

WHAT WILL THE PSC DO IF IT DETERMINES THAT A VIOLATION HAS OCCURRED AND THAT A PENALTY SHOULD BE IMPOSED?

The PSC Division of Inspections will issue a demand letter outlining the reasons for a penalty, the amount of penalty, and any conditions attached to the penalty and will require payment of the penalty within a specified time.

WHAT IS THE PROCESS FOR CHALLENGING THE PSC'S DECISION?

After receiving a demand letter, a party may request an administrative hearing at the PSC. The hearing will allow both the Division of Inspections and the party in question to present testimony before a hearing officer. The hearing officer will make a recommendation to the three-member Commission, which will then issue a final order with its decision. As with all final orders of the PSC, that decision may be appealed to Franklin Circuit Court.

JURISDICTION AND OTHER TYPES OF UNDERGROUND FACILITIES

THE PSC DOES NOT REGULATE THE RATES AND SERVICE OF MUNICIPAL NATURAL GAS SYSTEMS AND OTHER PROVIDERS OF NATURAL GAS. WILL IT INVESTIGATE INCIDENTS INVOLVING ENTITIES THAT ARE NOT JURISDICTIONAL UTILITIES?

Yes. The PSC's jurisdiction over the safety of all natural gas systems in Kentucky comes through federal law. Under an agreement with the US Department of Transportation, the

PSC is delegated to enforce federal safety regulations for all intrastate natural gas systems in Kentucky. The PSC was given enforcement authority under state law in order to conform with federal requirements regarding protection of underground natural gas and hazardous liquid pipelines.

DO THE PROVISIONS OF THE ACT APPLY TO UNDERGROUND FACILITIES OTHER THAN PIPELINES CARRYING NATURAL GAS OR HAZARDOUS LIQUIDS?

Yes. All underground facilities are covered by the Act, although the PSC enforces the provisions only as they apply to natural gas and hazardous liquid pipelines.

WHO INVESTIGATES INCIDENTS OF DAMAGE TO OTHER UNDERGROUND FACILITIES IF THE PSC DOES NOT?

Enforcement of the Act as it pertains to other types of facilities falls to other state and local law enforcement and fire protection agencies under their general authority to enforce the laws of the Commonwealth. In 2008, the Kentucky General Assembly created an incentive for county and city agencies to enforce the act by allowing them to retain any civil penalties they collect as the result of enforcement actions. Under the changes made in 2018, once the PSC initiates an investigation of an incident involving a natural gas or hazardous liquid pipeline, other agencies may not do so themselves.

WHERE CAN I GET MORE INFORMATION?

More information is available on the PSC website: <https://psc.ky.gov/>

The Kentucky One-call center website: <https://kentucky811.org/>

Federal Pipeline and Hazardous Materials Safety Administration (PHMSA) website: <https://www.phmsa.dot.gov/>