

## [Chapter 271. Underground Facilities Damage Prevention \(Refs & Annos\)](#)

### **§ 14-271-101. Citation**

This chapter may be cited as the “Arkansas Underground Facilities Damage Prevention Act”.

### **§ 14-271-102. Definitions**

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

- (1) Approximate location of underground facilities means a strip of land at least three feet (3') wide but not wider than the width of the facility plus one and one-half feet (1 1/2 ') on either side of the facility;
- (2) “Damage” includes the substantial weakening of structural or lateral support of underground facilities, the penetration or destruction of any protective coating, housing, or other protective device of underground facilities, the partial or complete severance of an underground facility, and the rendering of any underground facility inaccessible;
- (3) “Demolish” or “demolition” means any operation by which a structure or mass of material is wrecked, razed, rendered, moved, or removed by means of any powered tools, powered equipment, exclusive of transportation equipment, or discharge explosives;
- (4) “Excavate” or “excavation” means to dig, compress, or remove earth, rock, or other materials in or on the ground by use of mechanized equipment, tools manipulated only by human or animal power, or blasting, including without limitation augering, boring, backfilling, drilling, grading, pile-driving, plowing in, pulling in, trenching, tunneling, and plowing;
- (5) “Mechanized equipment” means equipment operated by means of mechanical power, including trenchers, bulldozers, power shovels, augers, backhoes, scrapers, drills, cable and pipe plows, and other equipment used for plowing in or pulling in cable or pipe;
- (6) “Member operator” means any operator that is a member of the Arkansas One Call Center;
- (7) “One Call Center” means a center operated by an organization which has as one of its purposes to receive notification of planned excavation and demolition in a specified area from excavators and to disseminate such notification of planned excavation or demolition to operators who are members of the center;
- (8) “Operator” means any person that owns or operates an underground facility;
- (9) “Person” means any individual, any corporation, partnership, association, improvement district, property owners association, property developer, public agency, or any other entity organized under the laws of any state or any subdivision or instrumentality of a state, and any employee, agent, or legal representative thereof;

- (10) “Preengineered project” means a public project wherein the public agency responsible for the project, as part of its engineering and contract procedures, holds a formal meeting prior to the commencement of any construction work on the project in which all persons determined by the public agency to have underground facilities located within the construction area of the project are invited to attend and given an opportunity to verify or inform the public agency of the location of their underground facilities, if any, within the construction area and wherein the location of all known underground facilities are located or noted on the engineering drawing and specifications for the project;
- (11) “Public agency” means the state or any board, commission, or agency of the state and any city, town, county, subdivision thereof, or other governmental entity;
- (12) “Right-of-way” means any area along which an underground facility is located;
- (13) (A) “Underground facility” means any line, system, and appurtenance or facility that is:
- (i) Located beneath the ground surface or beneath structures, streets, roads, alleys, sidewalks, or other public rights-of-way; and
  - (ii) Used for producing, storing, conveying, transmitting, or distributing communications, data, electricity, gas, heat, water, steam, chemicals, television or radio transmissions or signals, or sewage.
- (B) “Underground facility” does not include:
- (i) Privately owned service lines:
    - (a) Used solely for the purpose of transporting communications, data, electricity, gas, heat, water, steam, chemicals, television or radio transmissions or signals, or sewage for the operation of a residence or business; and
    - (b) Wholly located on or beneath private property; or
  - (ii) Residential or agricultural underground irrigation systems;
- (14) “Underground pipeline facilities” means any underground pipeline facility used to transport natural gas or hazardous liquids. However, this definition does not apply to persons, including operator's master meters, whose primary activity does not include the production, transportation, or marketing of gas or hazardous liquids or to master metered systems whose underground facilities do not cross property other than their own or are not located under public rights-of-way; and
- (15) “Working day” means every day, except Saturday, Sunday, and national and legal state holidays.

- (a) The Arkansas Public Service Commission shall, after public comment and hearing as provided below, promulgate regulations providing for an Arkansas one call center to be established and maintained by all operators subject to the jurisdiction of the commission.
- (b) The regulations shall at a minimum be consistent with the requirements of any federal law relating to one call centers, and otherwise shall provide standards and guidelines for the organization and administration by operators of the Arkansas One Call Center consistent with the terms, purposes, and requirements of this chapter, provided, however, that nothing herein, nor in the rules to be promulgated by the commission, shall be construed to restrict, diminish, or otherwise affect the ratemaking authority and responsibility of the commission with respect to One Call System expenditures by utilities or with respect to any other matter.

#### **§ 14-271-104. Civil penalties**

- (a)
  - (1) Except as provided in subdivision (a) (2) of this subsection, any person who violates any provisions of this chapter shall be subject to a civil penalty not to exceed two thousand five hundred dollars (\$2,500) for each violation.
  - (2) Operators of underground pipeline facilities and excavators shall, upon violation of any applicable requirements of 49 C.F.R. Part 198, Subpart C, or [49 U.S.C. § 60114\(b\)](#) concerning marking facilities, [§ 60114\(d\)](#) concerning applicability to excavators, or § 60118(a) concerning general waivers, as in effect on February 2013, unless excepted under [§ 14-271-109](#), and damage of an interstate or intrastate natural gas pipeline facility or an interstate or intrastate hazardous liquid pipeline facility, be subject to civil penalties in an amount not to exceed two (2) times the amount of property damage to the interstate or intrastate natural gas pipeline facility or an interstate or intrastate hazardous liquid pipeline facility up to a maximum of two hundred thousand dollars (\$200,000) for each violation for each day that the violation persists, except that the maximum civil penalty shall not exceed two million dollars (\$2,000,000) for any related series of violations.
- (b)
  - (1) Actions to recover the penalties provided for in this section shall be brought by the Attorney General of Arkansas, the county prosecutor, or the city attorney, at the request of any person, in the circuit court in the county in which the cause, or some part thereof, arose or in which the defendant has its principal place of business or resides.
  - (2) All penalties recovered in any such action shall be paid into the general fund of the state, county, or municipality that prosecutes the action.
- (c) The Attorney General of Arkansas, the county prosecutor, or the city attorney shall, at the request of any person, bring an action in a court of competent jurisdiction to enjoin any

violation of 49 C.F.R. Part 198, Subpart C, committed by operators of underground pipeline facilities and excavators.

- (d) Nothing in this chapter shall be construed to modify or repeal existing laws pertaining to the tort liability of local governments and their employees.
- (e) This chapter does not affect any civil remedies for personal injury or property damage, including underground facilities, except as otherwise specifically provided for in this chapter.
- (f) Neither the State Highway Commission, nor the Arkansas State Highway and Transportation Department, nor their officers or employees nor the county judges or their road departments are subject to the provisions of this section.

**§ 14-271-105. Repealed by Acts of 2007, Act 41, § 6, eff. Jan. 1, 2008**

**§ 14-271-106. Compliance with provisions; permits**

A permit issued pursuant to law authorizing excavation or demolition operation shall not be deemed to relieve a person from the responsibility for complying with the provisions of this chapter.

**§ 14-271-107. One Call Center; membership**

- (a) All operators of underground facilities shall become members of the One Call Center; however, the commission may provide, by rule or by orders, for such exemptions or waivers concerning some or all of the requirements of membership as may appear reasonable and proper, as long as the exemption or waiver is not prohibited by statute or federal law.
- (b) Additionally, other persons who own or control underground facilities or similar facilities may, upon application, become members of the One Call Center.
- (c) Membership shall be evidenced by participation in, and payment for, the services furnished by the One Call Center.

**§ 14-271-108. One Call Center; notice of underground facilities**

- (a) (1) Each member operator having underground facilities, including those facilities that have been abandoned in place by the member operator but not yet physically removed and that can be identified, shall file a notice with the One Call Center that the member operator has underground facilities.

- (2) The notice shall include a list of the geographic areas where facilities are located, providing as much specific information as reasonably possible, the name of the member operator, and the name, title, address, and telephone number of its representative designated to respond to notices of intent to excavate.
- (b) Changes to any of the information contained in the notice filed in accordance with subsection (a) of this section shall be filed with the One Call Center within thirty (30) days of the change.
- (c) The One Call Center shall file the notice submitted by member operators and shall maintain an index of the notices.
- (d) Member operators shall maintain records and drawings of all changes and additions to their underground facilities.

**§ 14-271-109. Notice requirement compliance exceptions**

- (a) Compliance with notice requirements of [§ 14-271-112](#) is not required for:
  - (1) The moving of earth that is not on a right-of-way or within an easement of an operator by tools manipulated only by human or animal power;
  - (2) The moving of earth by an operator that is on a right-of-way or within an easement of the operator by tools only manipulated by human power and exclusively for the purposes of system maintenance and leak detection;
  - (3) Any agricultural purposes, including any form of cultivation for agricultural purposes, digging for postholes on private property, construction and maintenance of farm ponds, land clearing, or other normal agricultural purposes, that are not on a right-of-way of an operator;
  - (4) The opening of a grave in a cemetery that is not on a right-of-way of an operator; or
  - (5) Routine road work and general maintenance as performed in the right-of-way by state or county maintenance departments, but excluding any work or maintenance involving any demolition or excavation.
- (b)
  - (1) Compliance with notice requirements of [§ 14-271-112](#) is not required of persons responsible for repair or restoration of service, or to ameliorate an imminent danger to life, health, property, or public safety.
  - (2) However, those persons shall give, as soon as practicable, oral notice of the emergency excavation or demolition to the One Call Center and request

emergency assistance from the One Call Center in locating and providing immediate protection to its underground facilities.

- (3) An imminent danger to life, health, property, or public safety exists whenever there is a substantial likelihood that loss of life, health, or property will result before the procedures under § 14-271-112 can be fully complied with.

**§ 14-271-110. Underground facilities operators; notification; identification**

- (a)
  - (1) Within four (4) working hours after receiving notification of intent to excavate or demolish, the One Call Center shall in turn notify all member operators of underground facilities in the affected area of the proposed activity.
  - (2)
    - (A) Unless otherwise agreed to between the excavators and the operator, within two (2) working days after notification from the One Call Center, the operator shall identify the approximate location of the facilities by field-marking on the surface by paint, dye, stakes, or any other clearly visible marking which designates the horizontal course of the facilities.
    - (B) If the operator has no facilities in the area, the operator shall so inform the person proposing the activity, either by contacting that person or by leaving such information at the site.
  - (3) When an underground facility is being located, the operator shall furnish the excavator information which identifies the approximate center line, approximate or estimated depth, when known, and dimensions of the underground facility.
  - (4)
    - (A) When excavating within the approximate location of an underground facility, the excavator shall uncover the facility using a method approved by the operator.
    - (B) No power-driven tools or equipment shall be used without the express approval of the operator.
- (b) Subject to the provisions of § 14-271-112(b) governing the duration of a locate request, when projects are delayed or are lengthy in time and location, the operator and the excavator shall establish and maintain coordination regarding location, marking, and identification of the facilities until all excavation or demolition is completed.

**§ 14-271-111. Underground facility locations; color codes**

- (a) (1) If the approximate location of an underground facility is marked with temporary markers, stakes, or other physical means, the operator shall follow the color coding prescribed as follows:

<b>FACILITY AND TYPE OF PRODUCT</b>	<b>SPECIFIC GROUP IDENTIFYING COLOR</b>
Electric power distribution and transmission	Safety red
Municipal electric systems	Safety red
Gas distribution and transmission	High visibility safety yellow
Oil distribution and transmission	High visibility safety yellow
Dangerous materials' product lines	High visibility safety yellow
Telephone and telegraph systems	Safety alert orange
Cable television	Safety alert orange
Police and fire communications	Safety alert orange
Water systems	Safety precaution blue
Sewer systems	Safety green.

- (2) In addition to the foregoing, all underground facilities installed after January 1, 1996, shall be permanently marked with tracing wires of appropriate durability or in other manner which will enable the operator to trace the specific course of the underground facility.
- (b) Unless otherwise agreed by all affected operators, persons engaged in excavation or demolition shall mark the proposed area of work with stakes, flags, posts, or painted or chalked lines that are white in color and are clearly visible.
- (c) Any person who moves, removes, alters, conceals, or defaces any markings required under this chapter before the demolition or excavation work is commenced shall be subject to the penalties contained in § 14-271-104.

**§ 14-271-112. Excavation and demolition; notice**

- (a) Except as provided in § 14-271-109, no person may engage in excavation or demolition activities without having first notified the One Call Center in accordance with the provisions listed in this section.
- (b) (1) Each person responsible for any excavation or demolition operation shall serve written or telephonic notice of intent to excavate or demolish at least two (2), but not more than ten (10), full working days before commencing this activity.
- (2) The notice of intent shall be delivered to the One Call Center.

- (3) (A) The notice given by this section shall be effective for a period of twenty (20) working days from the date that the notice was given.
- (B) If the work to be performed is not completed within this period, or if the location markings have been removed or are no longer visible, the person engaging in the demolition or excavation activity shall reinitiate the notice procedure set forth in this section.
- (c) The written or telephonic notice of intent required by subsection (b) of this section shall contain the name of the person notifying the One Call Center, the name, address, and telephone number of the person responsible for the excavation or demolition, the starting date, anticipated duration and type of excavation or demolition operation to be conducted, the specific location of the proposed excavation or demolition, and whether or not explosives are anticipated to be used.
- (d) The One Call Center shall, as soon as practicable after receiving such notice, provide persons giving notice of an intention to engage in an excavation activity the names of any member operators of underground facilities to whom the notice will be transmitted.
- (e) (1) An adequate record of notifications to the One Call Center shall be maintained by the One Call Center.
- (2) A copy of the record shall be furnished to the persons giving notice of intent to excavate or demolish if requested.
- (3) The records shall be maintained by the One Call Center for at least three (3) years.
- (f) Nothing in this section shall be construed to obligate the One Call Center to transmit a notice of intent to excavate for any operator that is not a member of the One Call Center.

**§ 14-271-113. Excavation and demolition; damage notification**

- (a)(1) Except as provided by subsection (b) of this section, a person responsible for an excavation or demolition that results in damage to an underground facility shall:
- (A) Immediately upon discovery of the damage, notify the One Call Center of the location and nature of the damage and current work status of the excavation or demolition; and
- (B) Allow the operator reasonable time to accomplish necessary repairs before completing the excavation or demolition in the immediate area of

the underground facility.

(2) An operator shall respond and examine the damage within two (2) business days of notification and shall complete repairs to the damaged facilities within a reasonable amount of time.

- (b) Each person responsible for any excavation or demolition operation that results in damage to an underground facility permitting the escape of any flammable, toxic, or corrosive gas or liquid shall notify the operator and police and fire departments immediately upon discovery of the damage and take any other action reasonably necessary to protect persons and property and to minimize the hazards until arrival of the operator's personnel or police and fire departments.

**§ 14-271-114. Operators of underground pipeline facilities**

In addition to the provisions of this chapter, all operators of underground pipeline facilities are required to comply with all applicable federal statutes and regulations pertaining to pipeline safety and damage prevention.

**§ 14-271-115. No responsibility for nonmember facilities**

Neither the One Call Center, nor any entity operating the One Call Center, nor any member of the One Call Center shall be responsible for locating nonmember underground utility facilities, or for advising or otherwise warning of the possibility of the existence of underground utility facilities other than those owned or operated by members of the One Call Center.

|  
|