

Excavator Handbook

WHAT'S
HOT
IN NEW
MEXICO!



New Mexico One Call, Inc.



Dig  **Safely.**



Know what's below.
Call before you dig.

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PREFACE

Excavation is a regulated activity in New Mexico. The Public Regulation Commission, Pipeline Safety Bureau has statutory authority to administer New Mexico's Excavation Law Chapter 62, Article 14 NMSA 1978 including the assessment of fines for violations of the excavation law. This publication has been prepared for New Mexico's excavators as a reference guide for interacting with New Mexico One Call, Inc. (NMOC). We recommend you give a copy of this guide to all employees who regularly contact NMOC. Familiarity with its contents is essential for successful communication between the NMOC operator and the caller. We suggest you keep this guide on hand for future reference when questions or problems arise.

We do not have a copyright on the material in this guide. We encourage you to copy part or all of it for fellow employees. If you need additional copies, contact NMOC by calling:

505-260-1165

(NOTE: The contents of this guide are subject to change without notice.)

INTRODUCTION

Who We Are

New Mexico One Call, Inc. is a statewide one call notification center that was formed in 1990. Our purpose is to provide damage prevention resources by offering excavators and the public the ability to inform multiple underground facility owners of intended digs via a single telephone call.

Municipalities, pipelines, gas distribution, tele-communications, water, and electric companies have underground facilities everywhere in New Mexico. Striking any one of these lines can cause service interruptions, injury, and even death!

New Mexico state law requires everyone involved in any excavation to provide at least two working days notice to owners of underground facilities when a dig is planned. All facility owners are then required to mark the locations of any underground lines or take other appropriate measures to protect them.

Remember: Unfortunately, not all underground facility owners are members of New Mexico One Call. You **must** also call all non-member facility owners in the area of your dig site and give them at least two working days notice prior to every planned dig!

PREPARING TO MAKE A LOCATE REQUEST

Plan your excavation

New Mexico excavation law requires excavators to plan every dig to minimize interference and prevent damage to underground facility lines in or near the excavation area. You can help facility owners identify conflicts by marking the excavation site with white paint, flags, stakes, or whiskers. You must also limit the requested work area to no more than ten days worth of work.

Line spots are valid for only ten working days. The law requires excavators to call the one call center at least two working days before beginning any planned excavation. Two working days excludes holidays and weekends.

New Mexico's excavation law requires you to provide certain information to the one call center. If you do not supply the necessary information, your request may be delayed or denied until the necessary information is provided. Excavators are encouraged to mark the excavation site in white before requesting a locate.

Collecting information for the locate request

As you plan for the request, be prepared to provide the following information:

1. Excavator's name (company), a contact person (first & last name), contact's daytime phone number,

mailing address, or a New Mexico One Call ID number.

2. A description and the purpose of the type of work to be done. For example, "Repairing sewer line", or "New electric service," or "Installing new signs."
3. The name of the person or company for whom the work is being done.
4. Whether or not the excavation site is marked in white.
5. An accurate physical description of the location and size of the excavation site. Reference to a plat of a subdivision shall not by itself be a sufficient description. For example, a street address, or GPS coordinates (with degrees only in decimal format), or the TRSQ legals are all good location descriptions. The one call operator will also ask for the nearest cross street. This greatly helps in locating the dig site in the mapping system.
6. Driving instructions to a rural excavation site. These should start from the nearest community or the intersection of 2 major highways.
7. Spotting instructions. Accurately describe the area that needs to be spotted. Sites pre-marked in white per APWA color code make it much easier to say, "Spot the area marked in white", or "Spot 25ft radius of stake with white flag".
8. Any appropriate remarks regarding access to or hazards at the excavation site. This should include comments about animals, locked gates, or other hazards the locators should know about.

MAKING THE LOCATE REQUEST

When to contact New Mexico One Call

If you plan on digging, excavating, blasting, or moving earth in any way, contact New Mexico One Call no less than two working days prior to the planned excavation. New Mexico One Call is open from 7 am to 5 pm, Monday-Friday, except holidays. The one call center observes and is closed on all State holidays. The State holiday schedule is as follows:

New Year's Day
Martin Luther King, Jr. Birthday
Memorial Day
Independence Day
Labor Day
Columbus Day
Veterans' Day
Thanksgiving Day
Presidents' Day
Winter Holiday

If any of the above holidays fall on a Saturday, the holiday will normally be observed on the preceding Friday. If the holiday falls on Sunday, it will normally be observed on the following Monday.

Contacting New Mexico One Call

When requesting line locates, you have several options. You can call, fax, or even enter your requests online.

Call before you dig

Calls to New Mexico One Call (NMOC) are free. You can call New Mexico One Call Monday -

Friday, 7 am to 5 pm, except holidays. NMOC can be reached at:

Toll free from anywhere in New Mexico:

Dial 811

Toll free from anywhere in the United States:

1-800-321-2537

Faxing New Mexico One Call

You can fax standard requests to the below numbers. Faxed locate requests are processed within three hours. Fax requests received after 4 pm or on weekends or holidays will not be processed until the next normal business day (Monday - Friday, 7 am to 5 pm). Fax your requests to:

Toll free from anywhere in the United States:

1-800-727-8809

In the Albuquerque area:

505-260-1248

Entering your locate request online

You can also enter standard locate requests 24 hours a day, seven days a week, online. Locate requests made online are processed within three hours. Requests received after 4 pm or on weekends or holidays, will not be processed until the next normal business day (Monday - Friday, 7 am to 5 pm). To access an online form, click on the "Request a Line Spot" link at:

www.nmonecall.org

What Happens When You Call

When you call New Mexico One Call

At the time of your call, the New Mexico One Call operator will ask for all the information needed for your ticket. When the ticket is complete, the operator will process the ticket and read you the list of companies that will be notified. They will also inform you of the start work date and time, the date the ticket expires, and the relocate date should the ticket need to be extended beyond the normal ten working days. You will also be given a unique ticket number for your request. You should record this information and have it available at your dig site. A state inspector could stop at your dig site and request that information. At your choosing, the operator can also send you a confirmation fax or email of your ticket.

During the process of collecting your ticket information, the one call operator will also read back all pertinent information from the request. Please listen carefully to this verification and make corrections as necessary. If the caller verifies incorrect information, the excavator is liable for any damages to unmarked facilities due to the incorrect information dispatched. If, at any time, it is discovered that incorrect information was provided to New Mexico One Call, callers should immediately notify New Mexico One Call. An operator will assist you in making corrections or creating a new ticket if the

situation warrants it. In most cases, a corrected request will require two working days (from the time of the correction request) to allow facility owners to mark their facilities. Corrections will only be accepted from the company that originated the ticket.

Likewise, for faxed or online requests, a confirmation will be returned to the excavator, and it is the excavator's responsibility to immediately verify the information on the confirmation is correct. If you find any errors, contact the one call center immediately.

Legal matters

New Mexico One Call records all telephone conversations that pertain to the work location request and maintains a copy for five years. New Mexico One Call can provide copies of these records in case of disputes. In some cases, there may be a fee involved for archived record retrieval.

WHAT HAPPENS AFTER YOU CALL

After you contact New Mexico One Call

Once you've contacted New Mexico One Call, all member facility owners affected by your excavation will be notified. Within two working days, the facility owners will either clear the facility if no underground utilities are present, or they will mark any under-ground lines using the standard APWA marking colors.

These marks are good for ten working days. If your dig is delayed and you will need more than ten working days to complete your work, then you should call New Mexico One Call two working days before your ticket expires, so the lines can be remarked. You will be required to state the reason for the delay, so it can be added to your relocated ticket.

Locating all underground facilities

The excavator is responsible for determining the location of all facilities in the excavation area before digging. After you make your locate request, the one call center will provide a list of all **member** facility owners being notified. If a facility owner is not a member of the one call service, it is the excavators' responsibility to notify the non-member facility owners directly, so they can mark their facilities.

Facility owners are not required to spot facilities they do not own. Service lines from the facility owner's meter, transformer, or other facility to the home or business usually belong to the

homeowner or business. The excavator must ensure service lines and private lines are marked by the owner before digging.

Facility owners provide the approximate horizontal location of underground facilities. Depth of facilities is not provided.

Checking clears

Facility owners have two working days to mark the facilities. If the excavator determines a facility owner has not marked “CLEAR” or “NO FACILITIES” at the job site, then the excavator is required to contact the one call center to determine if the facility owner has registered a “clear” for the request. An excavator may call the one call center and ask the operator the status of a ticket, or go online and check the status themselves.

The excavator is not permitted to dig until all the facilities have been marked or cleared. If an excavator is delayed or incurs costs because a facility owner failed to mark or clear the facilities at the job site within the two working day period, the excavator can recover those costs from the facility owner under the law. The facility owner may also be subject to additional fines and penalties.

Barricading

Very often the area to be marked encompasses one or more traffic lanes of a heavily-traveled street or highway. In this type of environment, it may be necessary to take extra precautions, including barricading, to protect the spotters. If a facility owner deems barricades are necessary prior to marking, they may contact the excavator and

arrange to mark the area after the excavator's construction barricades are erected. The facility owner requesting this type of arrangement will contact the excavator and work out the details so as not to delay the excavator.

DIG SAFELY

Dig safely around facilities

1. Only begin excavation after the area is marked or cleared by all facility owners.
2. Preserve line location markings.
3. Expose any conflicts and maintain at least 18 inches of clearance from the horizontal mark and the edge of the mechanical digging device.
4. Support the underground facilities during the excavation as necessary.
5. Backfill with care to avoid damage to existing underground facilities.
6. Call for relocates if the excavation work is delayed and going to exceed ten working days. The reason for the relocate must be stated, and it will be added to the relocate ticket.

CAUTION: A “clear” is only good for the facility owner who calls in his or her facilities as “clear.” Not all facility owners will necessarily be clear of

excavation conflicts. If the facility owner's records are unclear, or if the spotter elects to do so, the locate request may be field checked. If it is determined the area is clear, the spotter may choose to mark, (using the appropriate APWA color code color) that the area is "CLEAR" or "NO UNDERGROUND FACILITIES." This type of marking will include a company design-nation. The spotters may alternately choose to notify New Mexico One Call that their facilities are "clear."

Preserve line location and markings

The excavator is required by law to not move or obliterate markings made by the facility owners or to fabricate markings in an unmarked location for the purpose of concealing a violation or noncompliance with the excavation law. Facility owners and excavators are encouraged to keep and maintain their own records to show their compliance with marking and preserving marks in the field.

The use of offset marks may be necessary to reconstruct actual locate marks. Excavators may find it useful to request chalk, paint, flags, stakes, or whisksers, for marking a site to withstand the construction activity occurring at the site. The excavator is responsible for cleaning the excavation site of any locate marks after construction.

The 18 inch rule

The excavator is required by law to maintain a clearance of 18 inches from the mark of the underground facility line as marked horizontally on the surface of the ground. Depth of facilities is not provided.

Expose conflicts

Where conflicts with the planned excavation and existing underground facility lines exist, the excavator is required to expose the facility line using non-invasive techniques, such as vacuum or hydro extraction, or by hand digging to ensure the mechanical excavating device does not violate the 18 inch zone on each side of the marked location. This is especially important where the excavator uses directional boring or tunneling techniques.

Supporting the underground facilities

The excavator is required to provide support for the existing facilities in or near the excavation area as necessary to prevent damage to them. In some cases, the excavator may need to enlist the help of the facility owner who has the expertise, the equipment, and the qualifications to work near or on hazardous facilities to ensure the safety of the excavator's workers.

Backfill in a careful manner

The excavator is required by law to fill all excavations in a manner and with materials as may be necessary to prevent damage to and provide reliable support during and following backfilling activities for pre-existing underground facilities in or near the excavation area.

Call for relocates

Locate marks are valid for ten working days. An excavator may request relocates for the same area only if justified by the circumstances and

nature of work. If the excavator's job is delayed and the work will not be completed within the ten-day period, the excavator must call the one call center for a relocate. The reason for the delay must be stated and will be added to the relocated ticket. Facility owners have two working days to remark their facilities.

Precautions for gas pipelines

During construction, when working in or near an area containing underground gas facilities, be alert to the following signs of a potential hazard:

- Natural gas odor in or near your excavation site.
- Apparent or non-apparent damage to pipes that have been broken, pulled, dislodged, or gouged.
- Brown patches in vegetation on or near a right-of-way.
- Dry spots in moist earth.
- Evidence of blowing (gas) noise, blowing dirt or bubbling mud or water.
- Fire coming from the ground or burning above the ground.

Immediately notify the gas facility owner if you observe any of the above.

Typical Pipeline Markers



Pipeline Markers
Located near roads, railroads, fences and along pipeline right-of-way



Marker for
pipeline patrol plane



Pipeline casing vents



Test station

*Pipeline markers are used to let you know there are underground facilities in the area. **Do not use pipeline markers for locating purposes.** You should call NMOC and request a line locate to determine where the actual line is located.*

HANDLING PROBLEMS

Facilities not marked

If the start date and time arrives and one or more facility members have failed to mark their facilities, you **must** call NMOC to see if the member(s) has called in any clears. Facility owners may contact excavators to arrange for on-site review or to schedule portions of the work in larger jobs. The excavator should try to accommodate any special circumstances needed by the facility owner to locate the facilities. If a facility owner fails to respond or mark a facility, the excavator should document the incident and notify the Pipeline Safety Bureau for compliance assistance.

If you damage an underground facility

If your equipment makes contact with an under-ground facility, stop your excavation and notify the facility owner immediately. Contact means if you nick, dent, gouge, cut, scrape or scratch the coating or insulating jacket. Contacting the facility owner allows the facility owner the opportunity to investigate and correct future hazards.

Don't assume that damage can occur only at the point of contact. A facility that is pulled or bumped could break at a location away from the actual excavation site. Failure to notify the facility owner of these occurrences could result in future corrosion and/or failure.

What happens if a damage occurs

If an excavator damages a facility, the excavator must stop excavation immediately and notify, if necessary, the emergency responders (911) and take necessary action to make the damage site safe. The excavator is required by law to immediately notify the owner of an underground facility that may have been damaged or dislocated during the excavation work. This includes: nicks, dents, gouges, cuts, scrapes, or scratches to the coatings of pipe, wires, or cables. If you have an emergency or need to contact an under-ground facility owner after hours or on the weekend, please refer to our website

www.nmonecall.org

to find direct contact information for member facility owners.

The excavator must stop work until the facility owner inspects the damage and determines it is safe to resume work. Damage may not only occur at the point of contact but may also occur at one or both ends of the pipe, cable, or wire by damaging the termination points where the facilities enter buildings or are fed from other facilities.

What to do if you damage a gas pipeline

In the event an underground gas facility is damaged, the excavator (machine operator) should take immediate action to minimize the hazard:

- If you can do so safely, turn off the motor to prevent possible ignition of any gas and abandon the equipment immediately.

- If the motor stalls, **DO NOT** attempt to restart it.
- **CLEAR THE IMMEDIATE AREA.** Avoid use of cellular phones, machinery and other devices that can cause a spark. **DO NOT** cover the damaged pipe with dirt as a means of stopping the leak. **DO NOT** crimp plastic gas facilities. **DO NOT** attempt to plug damaged pipes. Allow the gas to vent into the atmosphere.
- If natural gas ignites, let it burn. **DO NOT** put out the flame – burning gas will **NOT** explode.
- Move away from the area and immediately call 911 to seek the aid of local law enforcement officers and fire departments.
- Notify the owner of the gas pipeline.

Evacuation

In an emergency, when gas is escaping from a broken pipe, the excavator's responsibility is to evacuate everyone to an area up wind from the damage. Call 911 immediately.

If you, the excavator, have damaged a gas line and suspect leaking gas may be entering or blowing into a building, you should take immediate action:

- Be certain the facility owner has been notified.
- Evacuate the occupants and leave the doors open.

- Inform occupants they must not return to the building for any reason.
- **DO NOT** operate light switches, door bells, or use telephones in the building.
- **PROHIBIT** smoking in the area.
- Keep people far away from the leak area.
- **PROHIBIT** the operation of machinery.

Prompt action by you may save lives or prevent serious injury or property damage. **DO NOT** leave a potentially hazardous situation to chance.

If you feel that your problem has not been handled to your satisfaction, you have the right to contact your PRC representative at the following:

New Mexico Public Regulation Commission
PO Box 1269
Santa Fe, NM 87504-1269
1-800-663-9782
www.nmprc.state.nm.us

OTHER TYPES OF ONE CALL TICKETS

A project owner may select either a conference or physical locate request for obtaining information on the location of underground facilities, but may not switch methods once having made a choice.

Design conference

Allows the designer/engineer to obtain locate data directly from the underground facility owner. The facility owners have two working days to

contact the requester to arrange to meet and provide the necessary information to the requestor within a reasonable time. The requester and the facility owners will continue working together until the project is awarded and an excavation locate is requested. This type of request is useful when it is impractical to have a site marked. No relocates are allowed for this type of ticket.

Design locate

Allows the designer/engineer to have a site marked for the purpose of capturing the locate information. The facility owners have two working days to complete the marking. The requester has 10 working days to capture the locate data. No relocates are allowed for this type of ticket.

Bid conference

Allows the project owner to obtain locate data directly from the underground facility owner to be used by the project bidders. The facility owners have two working days to contact the bidders to arrange for a meeting and provide the necessary information to the requestor within a reasonable time. The requester and the facility owners will continue working together until the project is awarded and an excavator requests an excavation locate. No relocates are allowed for this type of ticket.

Bid locate

The project owner has the underground facilities marked at the project site so that the persons bidding on the project can capture the

location information of the underground facilities. The facility owners have two working days to complete the marking. The bidders have ten working days to capture the locate data. No relocates are allowed for this type of ticket.

Wide area conference and locate

This conference and locate procedure is designed for handling large area or long term projects that will take longer than ten working days to complete. The process starts with the project owner calling the one call center and any non-member facility owners to request a wide area conference. The facility owners have two working days to contact the project owner to schedule a conference. At the conference, a written work plan will be developed between the project owner and each facility owner. It shall be signed by all parties.

When the project is ready to begin, the project owner will contact the one call center and any non-member facility owners and request a wide area locate. The project owner must provide the ticket number that was issued for the conference by the one call center and any non-member facility owners. The excavation ticket will reference the conference ticket number and cite the work plan as the description of the work to be performed. Updates or revisions to the work plan shall be in writing and signed by all parties. The wide area locate ticket must be reaffirmed every ten working days to maintain a valid ticket for the duration of the project.

Unless the excavator states that the existing

markings are sufficient for the time being, the facility owners shall verify that existing markings are still visible, refresh them if needed, and continue to locate according to the work plan.

Road maintenance

Road maintenance is defined as the routine grading and resurfacing of the earth and gravel surface. It does not include the sub base of a roadway for the purpose of maintaining the surface condition of the road and includes recovery of material from a borrow ditch. It does not include road construction or reconstruction and shall entail moving no more than *four inches of earth*.

If an underground facility owner deems their facilities not to be in conflict with the road maintenance activity, then they can “clear” the ticket. Otherwise, they must mark the location of all their facilities. It is also possible for facility owners to set up physical markers for facilities that cross the road.

RESPONSIBILITIES OF FACILITY OWNERS

State Law Requirements for Facility Owners or Operators

Pipelines, gas transmission, and gas distribution companies

New Mexico has adopted the federal pipeline regulations that make it mandatory for all gas and hazardous liquid pipeline facility owners to belong to a one call notification system. The owner may join a one call center that is operating statewide or within a region of the state. All of an owner's facilities must be covered by one or more one call operating systems.

Other facility owners

Other underground facility owners are encouraged to belong to a one call center. Even though membership is not mandatory, its benefits far outweigh the risks of not belonging. Facility owners who do not belong to a one call system run a greater risk of being damaged and bear an implied burden of demonstrating that they had informed the general public that they have buried facilities in the area and that they needed to be contacted before excavating. Non-member facility owners are encouraged to register their contact information online at:

www.nmonecall.org/ufo

Marking the facilities

Unless it is an emergency excavation, the facility owner has two working days from the time the excavator called to mark their underground lines. The law requires the facility owner to locate the facility by some means. In many cases, locating a facility is more art than science and requires trained personnel to accurately determine the facilities location. In instances where pipelines are plastic and there is no tracer wire or the wire has been damaged, it may be necessary for the facility owner to expose the line to ensure it is properly located.

The facility owner must mark the horizontal location of the line within 12 inches of the actual location or the line is considered miss-marked. *Failure to locate the line before an excavation is scheduled to start, or to neglect marking a line location is a violation of the excavation law and the facility owner is subject to penalties and significant fines, as well as the cost of repair and the costs incurred by the excavator should a damage occur.*

What happens if your facilities are damaged

If an excavator damages underground facilities, it is the excavators' responsibility under the law to immediately notify by telephone the owner of any underground facility that may have been damaged or dislocated.

The owner of the facility should respond immediately and assess the situation. If not directly contacted, the facility owner may need to contact

emergency responders (911). The first priority is to make the damage site safe. If the facility owner determines that an emergency condition exists and must excavate, the facility owner should request an emergency locate.

Before any emergency locate is issued, an excavator must provide information that indicates a utility service outage or a situation of imminent threat to the general public exists. The excavator must take all necessary and reasonable precautions to avoid or minimize interference with or damage to underground facilities in and near the site. Cost is not a determinant of an emergency!

If an emergency exists, the excavator is requested to notify the one call center immediately. Facility owners will respond within two hours and mark their facilities.

If the excavation site is clear

When a facility owner receives a request from an excavator and they have determined there are no facilities in the area, the facility owner is required to either mark the site (using the approved APWA color) "CLEAR" or "NO FACILITIES" or register a "clear" with the one call center. This provides the excavator with a positive response so he will know there is no facilities and can begin his excavation.

If the facility owner chooses not to mark the site "clear," the excavation law requires the facility owner to register the "clear" with the one call center. This can be done by either calling the one call center directly, or going online and entering the "clear" into a form. In either case, the one call

center must log the “clear”. When the excavator calls the one call center, the excavator can be made aware that the “clear” was recorded. *The facility owner must inform the one call center of the “clear” within the two working day marking period.*

Approved colors and marking standards.

New Mexico has adopted the industry use of the APWA color scheme and marking guidelines for marking underground facilities. The guidelines can be found in Appendix C of this handbook.

Marks must last at least ten working days

It may be prudent for the facility owner to work directly with the excavator on when and how to provide locate marks at the excavation site. Many times projects require large work areas and will take several days to complete marking. The use of flags, stakes, or tape may be too tempting for neighborhood children to resist playing with and should be placed closer to the actual excavation time to avoid vandalism. The use of whisksers and offset marks may be necessary in high traffic areas.

When locating marks are vandalized or removed, the facility owner should replace the marks. Marks are to be placed so that they last at least ten working days. Facility owners should consider using chalks and water based paints, which can be more easily removed in areas where graffiti will not be tolerated.

Moving or obliterating markings

It is a violation of the excavation law for the facility owner or the excavator to move, obliterate, or fabricate markings for the purpose of concealing or avoiding a violation of non-compliance with the states excavation

law. Facility owners and excavators are encouraged to keep and maintain their own records to show their compliance with marking and preserving marks in the field.

Reporting third party damages

New Mexico excavation law has charged the Public Regulation Commission with making rules and regulations to administer the excavation law. Effective July 1, 2003, regulations require all underground facility owners to report third party damages to the Pipeline Safety Bureau. The facility owner must report the damage by the 15th day of the month following the month of occurrence or within 30 days.

Relocates

Due to circumstances beyond the requestor's control, the excavation may not be completed within the ten working day valid period of the original markings. Also, the markings (spots) provided by the member companies may be destroyed by weather prior to the completion of the planned excavation. Under these circumstances the requestor may ask for a RELOCATE of the previous marking.

RELOCATES will be typically completed within two working days and update the previous request for another ten working days. The requestor will receive a new confirmation number. If any of the information on the ticket changes, then a new ticket will be issued instead of a relocate.

Emergency locate requests

Emergencies are unplanned excavations and have different requirements under the excavation law. An emergency is defined as an excavation that must be performed due to circumstances beyond the control of the excavator and that affects public health, safety, or welfare.

An emergency locate request is designed to dis-patch line locators within two hours to excavation sites where eminent dangers or hazards to the public exist. Emergency requests are to provide owners of damaged facilities assistance in bringing the emergency situation under control. Once an emergency situation is brought under control, i.e. the hazard mitigated, then the facility owner should call for a regular location request to make any further corrective actions that may require excavation.

An emergency locate request should not be used to circumvent poor job planning. Abuse of emergency location requests is a violation of the intent of the excavation law and is subject to significant administrative fines.

Guidelines for determining an emergency

Telecommunications - The loss of services to a customer(s). A utility representative may be on site for an emergency.

Gas Distribution - A blowing or leaking gas line, which must be repaired immediately, otherwise it

may result in property damage or the loss of life. This includes the loss of service to a customer(s).

Electric - The loss of service to a customer(s). A situation which can result in loss of life or property damage. Excavation for these situations will be required to prevent damage or restore service.

Pipelines - A broken or damaged line, which must be repaired immediately, or loss of life, property damage, or environmental contamination may occur.

Water - Line breaks causing: cave-ins, street, sidewalk or structure damage. Defective fire hydrants and valves that could lead to fire protection problems. This includes the loss of service to a customer(s).

Sewer - Line breaks causing cave-ins and liquid waste spills in areas accessible to the public such as streets and sidewalks. This includes the loss of service to a customer(s).

If you have an emergency during regular business hours, call the number below immediately. Your call will be routed to the top of the waiting queue. Emergency requests can only be made by phone.

FOR EMERGENCIES ONLY
during regular business hours:
1-866-344-6662

Contacting the Pipeline Safety Bureau

You may contact the Pipeline Safety Bureau for gas and hazardous liquid pipeline emergencies at (505) 490-2375.

Appendix A - The Law

CHAPTER 62, ARTICLE 14 NMSA 1978 (Known as the New Mexico Excavation Law)

The following information contains the wording of Chapter 62, Article 14 NMSA 1978, including the 2001 amendment. It has been structurally altered to allow ease of reading and understanding. Please consult a law library to obtain an exact copy of the statute.

AN ACT

Relating to pipelines and underground utility lines; amending statutes providing for regulation of excavation near or of pipelines and underground utility lines; increasing penalties.

**BE IT ENACTED BY THE LEGISLATURE
OF THE STATE OF NEW MEXICO:**

62-14-1 Purpose and Intent

The purpose of Chapter 62, Article 14 NMSA 1978, is to prevent injury to persons and damage to property from accidents resulting from damage to pipelines, underground utility lines, cable television lines and related facilities by excavating and blasting.

62-14-2 Definitions

For purposes of Chapter 62, Article 14 NMSA 1978:

- A. "advance notice" means two working days;
- B. "blasting" means the use of an explosive to excavate;

C. “cable television lines and related facilities” means the facilities of any cable television system or closed-circuit coaxial cable communications system or other similar transmission service used in connection with any cable television system or other similar closed-circuit coaxial cable communication system;

D. “commission” means the public regulation commission;

E. “emergency excavation” means an excavation that must be performed due to circumstances beyond the excavator’s control and that affects public safety, health or welfare;

F. “excavate” means the movement or removal of earth using mechanical excavating equipment or blasting and includes auguring, backfilling, digging, ditching, drilling, grading, plowing in, pulling in, ripping, scraping, trenching, tunneling and directional boring;

G. “excavator” means a person that excavates;

H. “means of location” means a mark such as a stake, a flag, whiskers or paint that is conspicuous in nature and that is designed to last at least ten working days if not disturbed;

I. “mechanical excavating equipment” means all equipment powered by any motor, engine or hydraulic or pneumatic device used for excavating and includes trenchers, bulldozers, back hoes, power shovels, scrapers, draglines, clam shells, augers, drills, cable and pipe plows or other plowing-in or pulling-in equipment;

J. “one call notification system” means a communication system in which an operation center provides telephone services or other reliable means of communication for the purpose of receiv-

ing excavation notice information and distributing that information to owners and operators of pipeline and other underground facilities;

K. “person” means the legal representative of or an individual, partnership, corporation, joint venture, state, subdivision or instrumentality of the state or an association;

L. “pipeline” means a pipeline or system of pipelines and appurtenances for the transportation or movement of any oil or gas, oil or gas products and byproducts, but does not include gathering lines or systems operated exclusively for the gathering of oil or gas, oil or gas products and their byproducts in any field or area, lines or systems constituting a part of any tank farm, plant facilities of any processing plant or underground storage projects unless it is located within a municipality or in the boundaries of an established easement or right of way or within the limits of any unincorporated city, town or village or within any designated residential or commercial area such as a subdivision, business or shopping center or community development;

M. “reasonable efforts” means notifying the appropriate one-call notification center or underground facility owner or operator of planned excavation;

N. “underground facility” means any tangible property described in Subsections C, L and O of this section that is underground, but does not include residential sprinklers or low-voltage lighting; and

O. “underground utility line” means an underground conduit or cable, including fiber optics, and related facilities for transportation and delivery of

electricity, telephonic or telegraphic communications or water;

62-14-3 Excavation

Every person who prepares engineering plans for excavation or who engages in excavation shall:

A. determine the location of any underground facility in or near the area where the excavation is to be conducted, including a request to the owner or operator of the underground facility to locate the underground facility pursuant to Section 62-14-5 NMSA 1978;

B. plan the excavation to avoid or minimize interference or damage to underground facilities in or near the excavation area;

C. provide telephonic advance notice of the commencement, extent and duration of the excavation work to the one-call-notification system operating in the intended excavation area, or the owners of any existing underground facility in and near the excavation area that are not members of the local one-call notification center, in order to allow the owners to locate, and mark the location of the underground facility described in Section 62-14-5 NMSA 1978 prior to the commencement of work in the excavation area and shall request reaffirmation of line location every ten working days after the initial locate request;

D. prior to initial exposure of the underground facility, maintain at least an estimated clearance of eighteen inches between existing underground facilities for which the owners or operators have previously identified the location and the cutting edge or point of any mechanical excavating equip-

ment utilized in the excavation and continue excavation in a manner necessary to prevent damage;

E. provide such support for existing underground facilities in or near the excavation area necessary to prevent damage to them;

F. backfill all excavations in a manner and with materials as may be necessary to prevent damage to and provide reliable support during and following backfilling activities for pre-existing underground facilities in or near the excavation area;

G. immediately notify by telephone the owner of any underground facilities which may have been damaged or dislocated during the excavation work; and

H. not move or obliterate markings made pursuant to Chapter 62, Article 14 NMSA 1978, or fabricate markings in an unmarked location for the purpose of concealing or avoiding liability for a violation of or noncompliance with the provisions of Chapter 62, Article 14 NMSA 1978.

62-14-4 Emergency Excavation

Every person who engages in emergency excavation shall take all necessary and reasonable precaution to avoid or minimize interference with or damage to existing underground facilities in and near the construction area and shall notify as promptly as possible the owners of underground facilities located in and near the emergency excavation area. In the event of any damage to or dislocation of any underground facility caused by the emergency excavation work, the person responsible for the excavation shall immediately notify the owner of the underground facility.

62-14-5 Marking of Facilities

A. Every person owning or operating an underground facility shall, upon the request of a person intending to commence an excavation and upon advance notice, locate and mark on the surface the actual horizontal location, within twelve inches by some means of location, of the underground facilities in or near the area of the excavation so as to enable the person engaged in excavation work to locate the facilities in advance of and during the excavation work.

B. If the owner or operator of the underground facility finds he has no underground facilities in the proposed area of excavation, the owner or operator shall contact the appropriate one-call notification center or mark in the appropriate color code as specified in Section 62-14-5.1 NMSA 1978 the area as "Clear" or "No Underground Facilities." If the area is not marked "Clear" or "No Underground Facilities," the excavator shall contact the one-call notification system operating in the intended excavation area or the owners or operators of any existing underground facility in and near the excavation area that are not members of the local one-call notification center in order to verify the area as "Clear" or "No Underground Facilities."

C. If the owner or operator fails to correctly mark the underground facility after being given advance notice and such failure to correctly mark the facility results in additional costs to the person doing the excavating, then the owner or operator shall reimburse the person engaging in the excavation for the reasonable costs incurred.

D. An owner of an underground facility shall not move or obliterate markings made pursuant to

Chapter 62, Article 14, NMSA 1978, or fabricate markings in an unmarked location for the purpose of concealing or avoiding liability for a violation of or noncompliance with the provisions of Chapter 62, Article 14 NMSA 1978.

62-14-5.1 Uniform Color Code for Location of Underground Facilities

In marking the location of underground facilities, an owner or operator shall use the following uniform color code:

- A. blue for water;
- B. green for sewer;
- C. orange for communications/coaxial cable;
- D. pink for survey;
- E. purple for reclaimed water;
- F. red for electric;
- G. white for proposed excavation area; and
- H. yellow for gas.

62-14-6 Liability for Damage to Underground Facilities

A. If any underground facility is damaged by any person who failed to make reasonable efforts to determine its location as provided in Chapter 62, Article 14 NMSA 1978, that person shall reimburse the owner of the underground facility for the actual cost of damage to the underground facility, including the cost of restoration of services. The person engaging in the excavation may also be liable to the owner or operator of the underground facility for the comparative negligence of the person engaging in the excavation which results in damage to the facility for an additional amount not to exceed three hundred thousand dollars (\$300,000) for each

occurrence.

B. If any underground facility is damaged by any person who has made reasonable efforts to determine its location and the damaged underground facility was correctly located by the owner or operator of the underground facility as provided in Section 62-14-5 NMSA 1978, then that person causing the damage shall be liable to the owner or operator of the underground facility for only the actual cost of damage to the underground facility, including the cost of restoration of service.

C. If any underground facility is damaged by any person who has made reasonable efforts to determine its location and damage to the underground facility is caused by the failure of the owner or operator to correctly locate that underground facility as provided in Section 62-14-5 NMSA 1978, then the person engaging in the excavation shall have no liability for the damage to that facility.

D. It is not the intent of Chapter 62 Article 14 NMSA 1978 to impose civil liability to any person beyond that provided in this section.

62-14-7 Liability for Negligence Notwithstanding Information Obtained

The act of obtaining or making reasonable efforts to obtain information as required by Chapter 62, Article 14 NMSA 1978 shall not excuse any person making any excavation from doing so in a careful and prudent manner, nor shall it excuse such person from liability for any damage or injury resulting from his negligence as limited in Section 62-14-6 NMSA 1978.

62-14-7.1 Pipeline One-Call Notification System

A. Every owner or operator of a pipeline facility shall be a member of a one-call notification system. A one-call notification system may be for a region of the state or statewide in scope, unless federal law provides otherwise.

B. Each one-call notification system shall be operated by:

- (1) an owner or operator of pipeline facilities;
- (2) a private contractor;
- (3) a state or local government agency; or
- (4) a person who is otherwise eligible under state law to operate a one-call notification system.

C. If the one-call notification system is operated by owners or operators of pipeline facilities, it shall be established as a nonprofit entity governed by a board of directors that shall establish the operating processes, procedures and technology needed for a one-call notification system. The board shall further establish a procedure or formula to determine the equitable share of each member for the costs of the one-call notification system. The board may include representatives of excavators or other persons deemed eligible to participate in the system who are not owners or operators.

D. Excavators shall give advance notice to the one-call notification system operating in the intended excavation area and provide information established by rule of the commission, except when excavations are by or for a person that:

- (1) owns or leases or owns a mineral leasehold interest in the real property on which the excavation occurs; and
- (2) operates all underground facilities located in the intended excavation area.

E. The one-call notification system shall promptly transmit excavation notice information to owners or operators of pipeline facilities in the intended excavation area.

F. After receiving advance notice, owners and operators of pipeline facilities shall locate and mark their pipeline facilities in the intended excavation area.

G. The one-call notification system shall provide a toll-free telephone number or another comparable and reliable means of communication to receive advance notice of excavation. Means of communication to distribute excavation notice to owners or operators of pipeline facilities shall be reliable and capable of coordination with one-call notification systems operating in other regions of the state.

H. Operators of one-call notification systems shall notify the commission of its members and the name and telephone number of the contact person for each member and make available to the commission appropriate records in investigations of alleged violations of Chapter 62, Article 14 NMSA 1978.

I. One-call notification systems and owners and operators of pipeline facilities shall promote public awareness of the availability and operation of one-call notification systems and work with state and local governmental agencies charged with issuing excavation permits to provide information concerning and promote awareness by excavators of one-call notification systems.

62-14-8 Penalties

In addition to any other liability imposed by law, an excavator, after a formal hearing and upon a

finding, who has failed to comply with Subsection C of Section 62-14-3 NMSA 1978 is subject to an administrative penalty of up to five thousand dollars (\$5,000) for a first offense as assessed by the commission. Thereafter, the commission may assess an administrative penalty of up to a maximum of twenty-five thousand dollars (\$25,000) for subsequent violations of Subsection C of Section 62-14-3 NMSA 1978. In addition to any other penalty imposed by law, an operator of underground pipeline facilities or underground utilities, excavator or operator of a one-call notification system, after formal hearing and upon a finding, who has willfully failed to comply with Chapter 62, Article 14 NMSA 1978, and whose failure contributes to the damage of any pipeline or underground utility line, shall be subject to an administrative penalty of up to five thousand dollars (\$5,000) for a first offense as assessed by the commission. Thereafter, upon finding that a violation of Chapter 62, Article 14 NMSA 1978, has occurred, the commission may, upon consideration of the nature, circumstances, gravity of the violation, history of prior violations, effect on public health, safety or welfare and good faith on the part of the person in attempting to remedy the cause of the violation, assess an administrative penalty up to a maximum of twenty-five thousand dollars (\$25,000) per violation consistent with federal law. No offense occurring more than five years prior to the current offense charged shall be considered for any purpose. All actions to recover the penalties provided for in this section shall be brought by the commission. All penalties recovered in any such action shall be paid into the state general fund.

62-14-9 Enforcement

If any person excavates or intends to excavate in violation of Chapter 62, Article 14 NMSA 1978, the commission or any interested or affected owner or operator of an underground facility may file, in the district court of the county in which the excavation is occurring or intended, an action seeking to enjoin the excavation.

62-14-9.1 Alternative Dispute Resolution

The commission shall promulgate rules for voluntary alternative dispute resolution procedures available to owners or operators, excavators and other interested parties regarding disputes that cannot be resolved through consultation and negotiation arising from damage to underground facilities, including any cost of damage incurred by the owner or operator or the excavator as a result of any delay in an excavation project while an underground facility is restored, repaired or replaced. The alternative dispute resolution procedure shall not affect civil penalties levied pursuant to Section 62-14-8 NMSA 1978 or change the basis for civil liability for damages.

62-14-10 Rule Making

The commission shall promulgate rules and regulations to implement the provisions of Chapter 62, Article 14 NMSA 1978.

Effective Date

The effective date of the provisions of the 2001 amendment is July 1, 2001.

APPENDIX B - THE RULES

TITLE 18 TRANSPORTATION AND HIGHWAYS CHAPTER 60 PIPELINE CONSTRUCTION AND MAINTENANCE PART 2 PIPELINE SAFETY GENERAL PROVISIONS

18.60.2.1 ISSUING AGENCY: New Mexico Public Regulation Commission.

[18.60.2.1 NMAC - N, 7-1-06]

18.60.2.2 SCOPE: This rule applies to all owners and operators of gas and hazardous liquid pipelines and underground facilities, excavators, and one-call notification systems in New Mexico subject to the jurisdiction of the commission pursuant to applicable laws.

[18.60.2.21 NMAC - N, 7-1-06]

18.60.2.3 STATUTORY AUTHORITY: Sections 8-8-4, 62-14-9.1, 62-14-10, and 70-3-13 NMSA 1978.

[18.60.2.3 NMAC - N, 7-1-06]

18.60.2.4 DURATION: Permanent.

[18.60.2.4 NMAC - N, 7-1-06]

18.60.2.5 EFFECTIVE DATE: July 1, 2006, unless a later date is cited at the end of a section.

[18.60.2.5 NMAC - N, 7-1-06]

18.60.2.6 OBJECTIVE: The purpose of this rule is to implement Chapter 62, Article 14 NMSA 1978,

and the Pipeline Safety Act, Sections 70-3-11 to 70-3-20 NMSA 1978.

[18.60.2.6 NMAC - N, 7-1-06]

18.60.2.7 DEFINITIONS: In addition to the definitions in 49 CFR Parts 40, 190, 191, 192, 195, and 199, and Sections 62-14-2 and 70-3-12 NMSA 1978, as used in these rules:

A. applicable laws means the Hazardous Liquid Pipeline Safety Act, 49 USC Sections 2001 et seq; the Hazardous Materials Transportation Act, 49 USC Sections 1801 et seq; the Natural Gas Pipeline Safety Act, 49 USC Sections 60101 et seq; Chapter 62, Article 14 NMSA 1978; the Pipeline Safety Act, Sections 70-3-11 to 70-320 NMSA 1978; these rules, and commission orders issued pursuant to them;

B. director means the director of the transportation division of the New Mexico public regulation commission or his designee;

C. staff means the staff of the pipeline safety bureau of the transportation division of the public regulation commission; and D. these rules means Title 18, Chapter 60.

[18.60.2.7 NMAC - Rp, 18.60.2.7 NMAC, 7-1-06]

18.60.2.8 ADOPTION OF PORTIONS OF THE CODE OF FEDERAL REGULATIONS:

A. Adoption by reference. Except for the variances set forth in Subsection B of this section, the commission adopts the following portions of the code of federal regulations, as such may be amended from time to time, pertaining to gas and hazardous liquid pipeline operators and facilities, and concerning the health, safety, and welfare of

persons and property in New Mexico, as part of this rule:

- (1) pipeline safety programs and procedures. 49 CFR 190.5, 190.233(a) and (b), and 190.237;
- (2) annual, incident, and safety related condition reports. 49 CFR Part 191;
- (3) minimum federal safety standards. 49 CFR Part 192;
- (4) transportation of hazardous liquids by pipeline, 49 CFR Part 195;
- (5) drug and alcohol testing, 49 CFR Parts 40 and 199.

B. New Mexico variances to adopted federal regulations.

(1) The reporting threshold in New Mexico shall be \$5,000 instead of the \$50,000 reporting threshold established in 49 CFR 191.3.

(2) Leakage surveys of transmission lines in New Mexico shall be conducted using leak detection equipment but shall otherwise be conducted in accordance with 49 CFR 192.706(b).

C. Interpretation of references and terms in federal regulations.

(1) References in the code of federal regulations to “state agency” shall be deemed references to the transportation division of the New Mexico public regulation commission;

(2) References in 49 CFR 190.233(a) and (b) to the “associate administrator, OPS” shall be deemed references to the director of the transportation division of the New Mexico public regulation commission; and

(3) References in 49 CFR 190.233(a) and (b) to 49 CFR 190.233(c), 49 CFR 190.233(c)(2), or 49 CFR 190.233(g) shall be deemed references to

18.60.4.9 NMAC through 18.60.4.15 NMAC.

(4) References in 49 CFR 192.723(b)(1) to “business district” shall have the meaning given by the United States department of transportation in correspondence interpreting the term.

[18.60.2.8 NMAC - Rp, 18.60.2.8 NMAC, 7-1-06]

18.60.2.9 NOTICE OF INTENT TO CONSTRUCT:

Prior to the start of construction of any new or replacement intrastate natural gas pipeline with a total construction value of \$50,000 or more, the operator of such pipeline shall give written notice of its intent to construct to the Transportation Division Director, Post Office Box 1269, Santa Fe, New Mexico, 87504-1269. The notice of intent to construct shall state:

A. the pipe material;

B. the finished diameter, length, and approximate location of the pipeline;

C. the size and capacity of any compressors or pumps;

D. and the contemplated date construction will commence.

[18.60.2.9 NMAC - Rp, 18.60.2.18 NMAC, 7-1-06]

18.60.2.10 REPORTS OF MASTER METERS:

Annually, by March 15, each owner or operator of a gas distribution or transmission system shall report to the director the name, address, and location of any master meter operator connected to its facilities.

[18.60.2.10 NMAC - Rp, 18.60.2.19 NMAC, 7-1-06]

18.60.2.11 OPERATION AND MAINTENANCE

MANUAL: Each owner or operator of gas or hazardous liquid pipeline facilities in New Mexico,

whether above ground or underground, shall file with the director a manual prescribing its procedures for emergencies and for inspection and maintenance of each pipeline facility it owns or operates and a plan for classification and repair of leaks consistent with 18.60.2.12 NMAC. Any change to procedures set forth in the manual must be filed with the director within twenty (20) days after the change is made.

[18.60.2.11 NMAC - Rp, 18.60.2.21 NMAC, 7-1-06]

18.60.2.12 CLASSIFICATION AND REPAIR OF

LEAKS: Immediately upon discovery, and in accordance with generally accepted industry criteria, an owner or operator shall classify a leak as:

A. a hazardous leak, grade I or C, if it is a leak which, due to its location and/or magnitude, constitutes an immediate hazard to persons or property;

B. a potentially hazardous leak, grade II or B, if it is a leak that does not constitute an immediate hazard, but may become hazardous if not repaired within a reasonable time period; or

C. a non-hazardous leak, grade III or A, if it is a leak which does not constitute a hazard and shows no indication of becoming hazardous before routine scheduled repair could be accomplished.

[18.60.2.12 NMAC - Rp, 18.60.2.22 NMAC, 7-1-06]

18.60.2.13 OIL PIPELINE TARIFFS:

A. An owner or operator of an oil pipeline shall file with the commission at least ten (10) days prior to its effective date two (2) copies of its tariff covering intrastate movements within New Mexico.

B. An owner or operator of an oil pipeline shall file with the commission at least ten (10) days prior to its effective date two (2) copies of any changes

to its tariff.

C. If an owner or operator of an oil pipeline assesses separate charges for the gathering of oil and for its transportation and delivery, the charges shall be separately specified in its tariff.

D. In determining whether an oil pipeline's rates for the transportation of oil are reasonable, the commission shall consider:

(1) the actual costs to transport;

(2) market factors;

(3) the range of rates being charged by other oil pipelines for similar services;

(4) any other factors the commission deems relevant.

[18.60.2.13 NMAC - N, 7-1-06]

History of 18.60.2 NMAC:

Pre-NMAC History: The material in this rule was derived from that previously filed with the commission of public records-state records center and archives.

SCC 69-29, Order No. 2966, Cause No.516, filed 9-24-69.

SCC 71-2, Amended Order No. 2966, Cause No.516, filed 3-18-71.

SCC 72-1, Amended Order No. 3096, Cause No.516, filed 1-12-72.

SCC 77-2, Order No. 3096-C, Docket No.750, filed 3-04-77.

SCC 79-4, Regulations Relating to Minimum Safety Standards for the Transportation of Natural and other Gas by Pipeline, filed 6-27-79.

SCC 84-9-PL, Regulation for the Transportation of Natural and other Gas by Pipeline - Minimum Standards, filed 11-26-84.

History of Repealed Material: 18 NMAC 60.1, General Provisions; 18 NMAC 60.2, Reports Required for New Master Meters and Third Party Damage; 18 NMAC 60.3, Requirement of Filing of Procedural Manual; 18 NMAC 60.4, Classification and Repair of Leaks; 18 NMAC 60.5, Pipeline Safety Program Procedures; 18 NMAC 60.6, Transportation of Natural and Other Gas by Pipeline: Minimum Federal Safety Standards: Annual and Incident Reports; 18 NMAC 60.7, Transportation of Natural and Other Gas by Pipeline: Minimum Federal Safety Standards; 18 NMAC 60.8, Transportation of Hazardous Liquids by Pipeline; 18 NMAC 60.9, Pipeline Safety Regulations: Drugs & Alcohol Testing; 18 NMAC 60.10, Procedures for Transportation Workplace Drug & Alcohol Testing Programs (all filed 5-1-96) repealed 7-1-03.

Other History: SCC 84-9-PL, Regulation for the Transportation of Natural and other Gas by Pipeline - Minimum Standards, filed 11-26-84, was renumbered into first version of the New Mexico Administrative Code as 18 NMAC 60.1 through 18 NMAC 60.10, effective 6-5-96. 18 NMAC 60.1 through 18 NMAC 60.10 (all filed 5-1-96), were replaced by 18.60.2 NMAC, Pipeline Safety, effective 7 -1-03. 18.60.2 NMAC, Pipeline Safety (filed 6-16-2003) replaced by 18.60.2 NMAC, Pipeline Safety General Provisions, effective 7-1-06.

TITLE 18
TRANSPORTATION AND HIGHWAYS
CHAPTER 60
PIPELINE CONSTRUCTION AND MAINTENANCE
PART 4
PIPELINE SAFETY ENFORCEMENT
PROCEDURES

18.60.4.1 ISSUING AGENCY: New Mexico Public Regulation Commission.

[18.60.4.1 NMAC - N, 7-1-06]

18.60.4.2 SCOPE: This rule applies to all owners and operators of gas and hazardous liquid pipelines and underground facilities, excavators, and one-call notification systems in New Mexico subject to the jurisdiction of the commission pursuant to applicable laws.

[18.60.4.2 NMAC - N, 7-1-06]

18.60.4.3 STATUTORY AUTHORITY: Sections 8-8-4, 62-14-9.1, 62-14-10, and 70-3-13 NMSA 1978.

[18.60.4.3 NMAC - N, 7-1-06]

18.60.4.4 DURATION: Permanent.

[18.60.4.4 NMAC - N, 7-1-06]

18.60.4.5 EFFECTIVE DATE: July 1, 2006, unless a later date is cited at the end of a section.

[18.60.4.5 NMAC - N, 7-1-06]

18.60.4.6 OBJECTIVE: The purpose of this rule is to prescribe procedures to administer and enforce Chapter 62, Article 14 NMSA 1978, and the Pipeline Safety Act, Sections 70-3-11 to 70-3-20

NMSA 1978.

[18.60.4.6 NMAC - N, 7-1-06]

18.60.4.7 DEFINITIONS: In addition to the definitions in 18.60.2.7 and 18.60.5.7 NMAC, as used in this rule, **respondent** means an owner or operator of gas and hazardous liquid pipelines or underground facilities, an excavator, or a one-call notification system.

[18.60.4.7 NMAC - Rp, 18.60.2.7 NMAC, 7-1-06]

18.60.4.8 INSPECTIONS AND INVESTIGATIONS:

A. Pipelines.

(1) Staff is authorized to enter upon, inspect, and examine, at reasonable times and in a reasonable manner, those records and pipeline facilities of an owner or operator relevant to determining whether the owner or operator is in compliance with applicable laws.

(2) Staff may conduct an inspection pursuant to:

(a) scheduling by staff;

(b) a written complaint received from a member of the public;

(c) information obtained from a previous inspection;

(d) an accident or incident; or

(e) whenever the commission or the director deems it appropriate.

(3) If, after an inspection, staff believes that further information is needed to determine appropriate action, staff may send a request for specific information to the owner or operator. The owner or operator shall answer the request within thirty (30) days of its receipt.

(4) The commission may, subject to applicable laws, require testing of portions of facilities that have been involved in, or affected by, an accident. The commission shall make every effort to negotiate with the owner or operator of the facility a mutually acceptable plan for performing the testing.

(5) When the information obtained from an inspection or from other appropriate sources indicates that further commission action is warranted, the director shall issue a notice of probable violation or notice of intent to issue a hazardous facility order, as appropriate.

B. Excavation. A one-call notification system, underground facility operator, excavator, or project owner, as appropriate, shall, upon reasonable notice and presentation of identification, grant staff access to:

(1) an excavation site for the purpose of previewing, observing, or examining an excavation activity;

(2) all records pertaining to an excavation activity that are in the possession of the one-call notification system, underground facility operator, excavator, or project owner.

[18.60.4.8 NMAC - Rp, 18.60.2.9 NMAC, 7-1-06]

18.60.4.9 SERVICE OF PROCESS: Whenever this rule requires notice or other process to be served on a respondent, the notice or other process shall be served at the last known address of the respondent.
[18.60.4.9 NMAC - Rp, 18.60.2.10 NMAC, 7-1-06]

18.60.4.10 NOTICE OF PROBABLE VIOLATION:

A. Except as otherwise provided in Section 70-3-

19 NMSA 1978, the director shall begin an enforcement proceeding by serving a notice of probable violation on the respondent.

B. The director may serve a notice of probable violation of applicable laws through staff on the respondent or the respondent's agent at an excavation site. In such case, the director shall also serve the notice of probable violation by mail on the respondent as prescribed in 18.60.4.9 NMAC.

C. A notice of probable violation shall include a statement of those provisions of applicable laws that the respondent is alleged to have violated, a statement of the evidence upon which the allegations are based, a statement that the respondent may request a settlement conference within fifteen (15) days of receipt of the notice of probable violation, and instructions regarding how the respondent may request a settlement conference. A respondent shall respond to the allegations in writing within fifteen (15) days of receipt of the notice of probable violation. The director may, in his discretion and in accordance with applicable laws, grant or deny a request for a settlement conference.

D. If, in his discretion, the director determines that a settlement conference would be useful, the notice of probable violation shall also contain a date, time and location for a settlement conference, and a statement that if the respondent fails to appear for the settlement conference, the respondent will be deemed to have admitted the violation.

E. The director may amend a notice of probable violation at any time prior to issuance of a final order.

[18.60.4.10 NMAC - Rp, 18.60.2.11 NMAC, 7-1-06]

18.60.4.11 ATTORNEY REPRESENTATION. In settlement conferences, dispositional hearings, commission hearings conducted pursuant to this rule, and arbitrations and mediations conducted pursuant to 18.60.5 NMAC, respondents shall be represented as provided in this section.

A. An individual or sole proprietorship shall appear in person on his or her own behalf or may be represented by an attorney.

B. A partnership with fewer than ten (10) partners, whether limited or general, who are all natural persons, may appear and be represented by an attorney or by a general partner or manager who has been authorized by the general partnership to do so.

C. A limited liability company with fewer than ten (10) members, who are all natural persons, may appear and be represented by an attorney or by a manager or member who has been authorized by the limited liability company to do so.

D. A corporation whose voting shares are held by a single shareholder or closely knit group of shareholders who are all natural persons active in the operation of the business may appear and be represented by an attorney or by an officer or manager who has been authorized by the corporation to do so.

E. All other persons shall be represented by an attorney.

[18.60.4.11 NMAC - N, 7-1-06]

18.60.4.12 SETTLEMENT CONFERENCES: The director may conduct a settlement conference with the respondent at the date, time and in the manner set forth in the notice of probable violation, or at such other time agreed to by the director and the

respondent. At the settlement conference, the director shall explore with the respondent the facts of the probable violation and the possibility of reaching an agreed upon resolution, which may include dismissal or a voluntary settlement agreement with administrative or civil penalties or other sanctions.

A. Voluntary dismissal. If the director and respondent agree to dismiss the notice of probable violation, the director shall issue a letter dismissing the probable violation which shall resolve the matter.

B. Voluntary settlement agreement. If the director and respondent agree to settle, the director and respondent shall enter into and sign a written settlement agreement which shall resolve the matter. The written settlement agreement shall include any administrative or civil penalties or other sanctions and the respondent's knowing waiver of his right to a formal hearing.

C. Failure to settle. If the respondent appears at the settlement conference but does not agree to terms and conditions that are satisfactory to the director, the director may request a hearing before the commission pursuant to 18.60.4.14 NMAC or file a petition in district court for injunctive action.

D. Failure to appear. If the respondent fails to appear for the settlement conference, the respondent will be deemed to have admitted the violation. Within ten (10) days, the director may serve on respondent a determination of violation. The determination shall include notice of the respondent's right to appeal pursuant to 18.60.4.14 NMAC and may include notice of a dispositional hearing pursuant to 18.60.4.13 NMAC.

E. Alternative procedures. The director may give notice of a dispositional hearing, request a hearing before the commission, or file a petition in district court for injunctive action without offering to hold a settlement conference.

[18.60.4.12 NMAC - Rp, 18.60.2.12 NMAC, 7-1-06]

18.60.4.13 DISPOSITIONAL HEARINGS:

A. Notice. Not less than twenty (20) days prior to the date of the dispositional hearing, the director shall serve on the respondent notice of the dispositional hearing and copies of the notice of probable violation, staffs inspection reports, and any third party complaints or damage reports by mail as prescribed by 18.60.4.9 NMAC. The notice shall state in boldface type that failure to appear at the dispositional hearing may result in the issuance of a default disposition and administrative or civil penalties or other sanctions.

B. Procedures.

(1) The director shall appoint a person or a panel to hear the case, or may hear the case himself or herself.

(2) The dispositional hearing shall be recorded by mechanical or electronic means and the director, or person or panel conducting the hearing, shall determine if the record shall be transcribed.

(3) If the director does not hear the case himself or herself, the person or panel conducting the dispositional hearing shall issue a recommended disposition to the director setting forth findings of fact, the amount of any administrative or civil penalties, and any other sanctions.

C. Disposition. The director shall promptly act on the recommended disposition. The director's

disposition shall include:

(1) findings of fact;

(2) the amount of the penalty and the procedure for its payment, if an administrative or civil penalty is assessed;

(3) a statement of the actions required to be taken by the respondent and the time by which each action must be accomplished; and (4) a statement that the respondent may appeal the director's disposition by filing a request for a hearing before the commission pursuant to 18.60.4.14 NMAC.

D. Failure to appear. If the respondent fails to appear for the dispositional hearing, the director may issue a default disposition, which may include administrative or civil penalties or other sanctions. [18.60.4.13 NMAC - N, 7-1-06]

18.60.4.14 HEARINGS BEFORE THE COMMISSION:

A. Request for hearing.

(1) By the director. At any time after the notice of probable violation has been served on the respondent, the director may request a hearing before the commission.

(2) By the respondent. A respondent may appeal a determination made by the director pursuant to Subsection D of 18.60.4.12 NMAC or a disposition made by the director pursuant to 18.60.4.13 NMAC by filing a request for hearing before the commission. The respondent shall file the appeal with the docket filing unit of the commission within thirty (30) days of the date the director's determination or disposition is mailed to the respondent. The appeal shall be in writing and signed by the respondent and shall set forth the

factual basis for the appeal and the nature of the relief requested. An appeal may request a stay of the director's determination or disposition pending a decision of the commission.

B. Notice of hearing. The commission shall:

(1) fix a time and location for a public hearing on the alleged violations; and

(2) serve notice of the hearing upon the respondent by mail as prescribed by 18.60.4.9 NMAC not less than ten (10) days prior to the date of the hearing with copies of the notice of probable violation, staffs inspection reports, and any third party complaints or damage reports. The notice shall state in boldface type that failure to appear at the hearing may result in a default judgment and the imposition of administrative or civil penalties or other sanctions.

C. Hearing procedures. The commission may appoint a hearing examiner or may hear the matter itself. The commission or hearing examiner shall conduct the hearing in accordance with the PRC rules of procedure. If a hearing examiner conducts the hearing, the hearing examiner shall submit to the commission a recommended decision with findings of fact and conclusions of law.

[18.60.4.14 NMAC - Rp, 18.60.2.13 and 18.60.2.14 NMAC, 7-1-06]

18.60.4.15 STIPULATION:

A. At any time before the issuance of a final order, the director and the respondent may agree to resolve a case by stipulation. The stipulation may include assessment or waiver of a civil or administrative penalty or other sanctions.

B. A stipulation shall include:

(1) an admission by the respondent of all jurisdictional facts;

(2) an express waiver of the right to pursue further procedural remedies before the commission and of the right to seek judicial review or otherwise challenge or contest the validity of the stipulation;

(3) an acknowledgement that the notice of probable violation may be used to construe the terms of the stipulation;

(4) an acknowledgement that the stipulation will be considered a violation for purposes of penalties for subsequent violations; and

(5) a statement of the actions to be taken by the respondent and the time by which each action shall be accomplished.

C. If a case is resolved by stipulation, staff shall file a motion requesting approval of the stipulation and closing of the case.

[18.60.4.15 NMAC - Rp, 18.60.2.15 NMAC, 7-1-06]

18.60.4.16 FINAL ORDER: After a hearing, and the consideration of any exceptions pursuant to the PRC rules of procedure, the commission shall issue a final order that includes:

A. findings of fact and conclusions of law;

B. the amount of the penalty and the procedure for its payment, if a civil or administrative penalty is assessed; and

C. a statement of the actions required to be taken by the respondent and the time by which each action must be accomplished.

[18.60.4.16 NMAC - Rp, 18.60.2.16 NMAC, 7-1-06]

18.60.4.17 PAYMENT OF PENALTY:

A. A respondent shall pay an administrative or civil penalty agreed to in a voluntary settlement agreement or assessed in a director's disposition or commission final order by certified check or money order made payable to the New Mexico Public Regulation Commission and shall submit the payment to the address provided by the commission.

B. If a respondent fails to pay the full amount of an administrative or civil penalty within twenty (20) days of receipt of a director's disposition or commission final order, or other time frame specified in the disposition or order, the commission or director may file an action in district court to collect the assessed penalty.

[18.60.4.17 NMAC - Rp, 18.60.2.17 NMAC, 7-1-06]

18.60.4.18 REFERRAL FOR PROSECUTION: If an employee of the transportation division of the New Mexico public regulation commission becomes aware of any actual or possible activity subject to criminal penalties under Section 70-3-19 NMSA 1978, the employee shall report such actual or possible activity to the office of the attorney general for the state of New Mexico.

[18.60.4.18 NMAC - Rp, 18.60.2.26 NMAC, 7-1-06]

History of 18.60.4 NMAC:

Pre-NMAC History: The material in this rule was derived from that previously filed with the Commission of Public Records-State Records Center and Archives.

SCC 69-29, Order No. 2966, Cause No.516, filed 9-24-69.

SCC 71-2, Amended Order No. 2966, Cause No.516, filed 3-18-71.

SCC 72-1, Amended Order No. 3096, Cause No.516, filed 1-12-72.

SCC 77-2, Order No. 3096-C, Docket No.750, f:L1ed 3-04-77.

SCC 79-4, Regulations Relating to Minimum Safety Standards for the Transportation of Natural and other Gas by Pipeline, filed 6-27 - 79.

SCC 84-9-PL, Regulation for the Transportation of Natural and other Gas by Pipeline - Minimum Standards, filed 11-26-84.

History of Repealed Material: 18 NMAC 60.1, General Provisions; 18 NMAC 60.2, Reports Required for New Master Meters and Third Party Damage; 18 NMAC 60.3, Requirement of Filing of Procedural Manual; 18 NMAC 60.4, Classification and Repair of Leaks; 18 NMAC 60.5, Pipeline Safety Program Procedures; 18 NMAC 60.6, Transportation of Natural and Other Gas by Pipeline: Minimum Federal Safety Standards: Annual and Incident Reports; 18 NMAC 60.7, Transportation of Natural and Other Gas by Pipeline: Minimum Federal Safety Standards; 18 NMAC 60.8, Transportation of Hazardous Liquids by Pipeline; 18 NMAC 60.9, Pipeline Safety Regulations: Drugs & Alcohol Testing; 18 NMAC 60.10, Procedures for Transportation Workplace Drug & Alcohol Testing Programs (all filed 5-1-96) repealed 7-1-03.

Other History: SCC 84-9-PL, Regulation for the Transportation of Natural and other Gas by Pipeline - Minimum Standards, filed 11-26-84, was renumbered into first version of the New Mexico Administrative Code as 18 NMAC 60.1 through 18 NMAC 60.10, effective 6-5-96.

18 NMAC 60.1 through 18 NMAC 60.10 (all filed 5-1-96), were replaced by 18.60.2 NMAC, Pipeline Safety, effective 7-1-03.

Those **applicable portions** of 18.60.2 NMAC, Pipeline Safety (filed 6-16-2003) replaced by 18.60.4 NMAC, Pipeline Safety Enforcement Procedures, effective 7-1-06.

TITLE 18
TRANSPORTATION AND HIGHWAYS
CHAPTER 60
PIPELINE CONSTRUCTION AND MAINTENANCE
PART 5
PIPELINE SAFETY EXCAVATION
DAMAGE PREVENTION

18.60.5.1 ISSUING AGENCY: New Mexico Public Regulation Commission.

[18.60.5.1 NMAC - N, 7-1-06]

18.60.5.2 SCOPE: This rule applies to all one-call notification systems, excavators, and owners and operators of pipelines and other underground facilities in New Mexico subject to the jurisdiction of the commission.

[18.60.5.2 NMAC - N, 7-1-06]

18.60.5.3 STATUTORY AUTHORITY: Sections 8-8-4, 62-14-7.1, 62-14-10, 70-3-4, and 70-3-13 NMSA 1978.

[18.60.5.3 NMAC - N, 7-1-06]

18.60.5.4 DURATION: Permanent.

[18.60.5.4 NMAC - N, 7-1-06]

18.60.5.5 EFFECTIVE DATE: July 1, 2006, unless a later date is cited at the end of a section.

[18.60.5.5 NMAC - N, 7-1-06]

18.60.5.6 OBJECTIVE: The purpose of this rule is to implement Chapter 62, Article 14 NMSA 1978 by providing procedures for preventing excavation

damage and for dealing with damage when it occurs.

[18.60.5.6 NMAC - N, 7-1-06]

18.60.5.7 DEFINITIONS: In addition to the definitions in Section 62-14-2 NMSA 1978, as used in this rule:

A. access information means a telephone number, a facsimile number, an email address, and, if available, a website address;

B. bid locate means the marking of underground facilities at the request of a project owner for the purpose of providing information to persons bidding on a project;

C. design locate means the marking of underground facilities at the request of a project owner for the purpose of providing information to persons designing a project;

D. excavation locate means the marking of underground facilities at the request of an excavator for the purpose of providing information to an excavator working on a project;

E. holiday means the day New Mexico state government observes New Year's Day, Martin Luther King, Jr.'s, Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veteran's Day, Thanksgiving Day, President's Day, and Christmas Day;

F. non-member UFO means a UFO that is not a member of a one-call system;

G. project owner means the owner of a project involving excavation or the person designated by the owner to be in charge of the project involving excavation;

H. road maintenance means routine grading and

resurfacing of the earth and gravel surface, but not the subbase, of a roadway for the purpose of maintaining the surface condition of the road and includes recovery of material from a borrow ditch but does not include road construction or reconstruction and shall entail moving no more than four (4) inches of earth; road maintenance does not include street sweeping or road milling and resurfacing as long as the subsurface is not disturbed;

I. underground facility operator (UFO) means a person who operates an underground facility; and

J. working day means a twenty-four (24) hour period excluding weekends and holidays.

[18.60.5.7 NMAC - N, 7-1-06]

18.60.5.8 RESPONSIBILITIES OF ONE-CALL NOTIFICATION SYSTEMS: A one-call notification system shall:

A. provide toll-free access;

B. provide to the commission quarterly the name, contact person, and access information for each member of the one-call notification system;

C. notify the commission of the service area in which the one-call notification system operates;

D. have a written coordination agreement with other one-call notification systems operating in New Mexico;

E. keep a record of all locate requests, tickets, and clears for five (5) years and make such records available to the commission upon request;

F. report to the commission quarterly the:

(1) average wait time for answered calls for each month in the quarter;

(2) number of calls received for each month in the quarter;

(3) number of tickets generated for each month in the quarter;

(4) number of requests by type (regular, priority, emergency) for each month in the quarter;

G. report any changes in access information to the commission on or before the date the information will change;

H. inform any person who calls with a complaint that he or she may file a complaint with the commission, and provide the commission's access information, if the one-call system is unable to satisfactorily resolve the matter.

[18.60.5.8 NMAC - N, 7-1-06]

18.60.5.9 RESPONSIBILITIES OF UFOs:

A. All UFOs.

(1) A UFO shall report any changes in access information to the commission on or before the date the information will change.

(2) A UFO shall keep a record of all locate requests and make such records available to the commission upon request.

(3) A UFO shall retain records of locate requests and excavation notices for a period of five (5) years.

(4) A UFO that utilizes contractors to perform locate and excavation activities on its behalf shall be responsible for compliance with the law and these rules.

B. Non-member UFOs. A non-member UFO shall:

(1) continuously advise the general public and excavators known to work in the area where the nonmember UFO's underground facilities exist of:

(a) the requirement to submit a request for a locate at least two (2) working days prior to commencing any excavation;

(b) the local or toll-free telephone number or other authorized contact method for submitting locate requests; and

(c) the local or toll-free telephone number for reporting damage or an emergency situation to the non-member UFO;

(2) at a minimum, provide telephone access at no cost to an excavator during normal business hours Monday to Friday, excluding holidays.

[18.60.5.9 NMAC - N, 7-1-06]

18.60.5.10 LOCATE REQUESTS: An excavator shall make an excavation locate request for all projects involving excavation, including road maintenance.

A. Submittal.

(1) **One-call notification systems.** An excavator shall submit an excavation locate request to each one-call notification system:

(a) by telephone or in person during normal business hours Monday to Friday, excluding holidays; or

(b) by facsimile or electronically twenty-four hours a day, seven days a week.

(2) **Non-member UFOs.** An excavator shall also submit an excavation locate request to each non-member UFO.

B. Size of locate requests.

(1) An excavator shall determine the maximum area that he can reasonably expect to excavate within a ten (10) working day period and shall request an excavation locate for that area only.

(2) An excavator may request relocates for the same area only if justified by the circumstances and nature of the work; such justification shall be made part of the relocate request.

C. Minimum information required. When requesting an excavation locate or a locate conference, an excavator shall comply with the requirements of the one-call notification system or non-member UFO operating in the intended excavation area and shall provide accurate and truthful information. A locate request shall be deemed incomplete if it does not contain, at a minimum:

(1) the name and contact information of the excavator;

(2) a description and the purpose of the type of work to be done;

(3) the name of the person for whom the work is being done;

(4) whether or not the excavation site is pre-marked in white;

(5) an accurate physical description of the location and size of the excavation site. Reference to a plat of a subdivision shall not by itself be sufficient description;

(6) driving instructions to a rural excavation site;

(7) spotting instructions;

(8) any appropriate remarks regarding access to or hazards at the site.

D. Processing.

(1) A one-call notification system or non-member UFO may hold a locate request in suspension until it is complete. The one-call notification system or non-member UFO shall contact an excavator within three (3) hours to request any missing information that prevents the one-call notification system or non-member UFO from processing the request.

(2) A one-call notification system or non-member UFO shall process all complete locate requests within three (3) hours of receipt. A one-call notification system or non-member UFO shall deem locate requests received on a weekend or holiday, or after 4:00 pm on a working day, to have been received at 7:00 am on the next working day and shall deem locate requests received before 7:00 am on a working day to have been received at 7:00 am on that working day.

(3) Upon receipt of a complete locate request:

(a) a one-call notification system shall issue a ticket with a unique number to the requesting excavator as confirmation; a one-call notification system shall send a ticket to all members of the system that have underground facilities in the excavation area, or notify members by telephone; a ticket shall become effective at the date and time a one-call notification system issues a ticket number; if the ticket is for a conference, the ticket shall be marked "wide area conference," "bid conference," or "design conference," as appropriate;

(b) a non-member UFO shall provide, by telephone, facsimile, or e-mail, confirmation of receipt and a unique confirmation number to the requesting excavator, followed by a written confirmation of receipt if the initial confirmation was made by telephone; the confirmation shall be the equivalent of a ticket and shall be effective at the date and time the non-member UFO initially contacts the excavator.

[18.60.5.10 NMAC - N, 7-1-06]

18.60.5.11 WIDE AREA LOCATE REQUESTS: An excavator who expects a project to take more than

ten (10) working days to complete shall either request separate locates which meet the requirements of Subsection B of 18.60.5.10 NMAC or follow the conference procedure set forth in this section.

A. If an excavator expects that an excavation will take more than ten (10) working days to complete, the excavator shall contact the one-call notification system and non-member UFOs to request a wide area conference. The one-call notification system and non-member UFOs shall process the request as provided in Subsection D of 18.60.5.10 NMAC.

B. A UFO shall contact an excavator who requests a wide area conference within two (2) working days of the issuance of the conference ticket to schedule a conference.

C. At the conference, the excavator shall develop a written work plan in concert with each UFO, which shall be signed by all parties. Updates or revisions to the work plan shall also be in writing and signed by all parties.

D. After the work plan has been developed, an excavator shall request a wide area excavation locate. The one-call notification system or non-member UFO shall process the request as provided in Subsection D of 18.60.5.10 NMAC. The excavation ticket shall reference the wide area conference ticket number and cite the work plan as the description of the work to be performed.

E. An excavator working pursuant to a wide area excavation locate ticket shall request reaffirmation of the ticket every ten (10) working days for the duration of the ticket. For the purpose of reaffirmation, a working day begins on the date and time stamped on the ticket and ends ten (10) working

days from such date and time. Unless the excavator states that the existing markings are sufficient for the time being, a UFO shall verify that existing markings are still visible, refresh them if needed, and continue to locate according to the work plan. [18.60.5.11 NMAC - N, 7-1-06]

18.60.5.12 DESIGN AND BID LOCATE

REQUESTS: A project owner shall request information regarding the location of underground facilities in accordance with either Subsection A or B of this section, but may not switch methods once having made an election.

A. Physical locates.

(1) A project owner may request from one-call notification systems and non-member UFOs a design locate or a bid locate.

(2) The one-call notification system and non-member UFOs for the intended excavation area shall issue a ticket marked "bid locate" or "design locate" as appropriate.

(3) UFOs shall physically mark the location of underground facilities on the site within two (2) working days from the date of the ticket.

(4) Designers or bidders, as appropriate, shall capture data from the site within ten (10) working days from the end of the two day marking period.

(5) A project owner shall not request relocations or time extensions.

B. Conferences.

(1) A project owner may request from the one-call notification system for the intended excavation area and non-member UFOs a design conference or bid conference with UFOs.

(2) The one-call notification system for the

intended excavation area shall process the request as provided in Subsection D of 18.60.5.10 NMAC.

(3) UFOs shall contact the project owner within two (2) working days to arrange to provide information to designers or bidders within a reasonable time.

(4) A project owner and UFOs shall continue coordinating until the bid for the project has been awarded and an excavator requests an excavation locate.

[18.60.5.12 NMAC - N, 7-1-06]

18.60.5.13 MARKING EXCAVATION SITES:

A. Excavators. The commission encourages excavators to mark all proposed excavation sites in accordance with American public works association (APWA) standards. In assessing administrative penalties for damage to underground facilities, the commission may consider whether and how well an excavator marked a proposed excavation site.

B. UFOs.

(1) A UFO shall mark underground facilities for excavation purposes in accordance with the APWA standards.

(2) A UFO shall locate and mark its underground facilities within two (2) working days from the effective date of the ticket.

(3) If it does not have underground facilities at the excavation site, a UFO may write "clear" or "no underground facilities" and the UFO's name at the site in the appropriate color. Alternatively:

(a) a UFO that is a member of the one-call notification system for the intended excavation area may contact the one-call notification system within two (2) working days to report it has no under-

ground facilities;

(b) a non-member UFO may:

(i) if it receives a locate request by telephone, and can determine at the time of the call that it has no underground facilities in the intended excavation area, so inform the excavator at the time of the call;

(ii) contact the excavator directly by telephone, facsimile, or email, within two (2) working days to report it has no underground facilities;

(iii) in either case, both the non-member UFO and the excavator shall document the notification.

(4) The locate markings shall be valid for ten (10) working days from the end of the two (2) day marking period. For the purpose of excavation, a working day begins on the date and time stamped on the ticket and ends twelve (12) working days from such date and time.

(5) If a UFO fails to mark its underground facility in accordance with the requirements of applicable laws, the UFO may be liable to the excavator in accordance with Subsection C of 62-14-5 NMSA 1978.

[18.60.5.13 NMAC - N, 7-1-06]

18.60.5.14 IDENTIFYING UNDERGROUND FACILITIES FOR ROAD MAINTENANCE:

In response to an excavation locate request for road maintenance, a UFO shall physically mark its underground facilities that are parallel to the road, as provided in Subsection A, and shall either physically mark or locate by marker its underground facilities that cross the road, as provided in Subsection B.

A. Underground facilities parallel to road. A UFO shall physically mark the location of all underground facilities located parallel to the road to be maintained if the UFO deems the facilities to be in conflict with the road maintenance activity. If the UFO deems the facilities not to be in conflict with the road maintenance activity, then the UFO may “clear” the ticket with the excavator using the procedure set forth in 18.60.5.13 NMAC.

B. Underground facilities that cross the road.

(1) Physical locate. A UFO may physically mark the location of all underground facilities that cross the road to be maintained if the UFO deems the facilities to be in conflict with the road maintenance activity. If the UFO deems the facilities not to be in conflict with the road maintenance activity, then the UFO may “clear” the ticket with the excavator using the procedure for positive response set forth in 18.60.5.13 NMAC.

(2) Locate by marker. Alternatively, a UFO may use a system of markers to indicate the location of underground facilities that cross the road to be maintained. Such markers shall:

(a) only be used to mark underground facilities that cross the road to be maintained and only for the purposes of road maintenance;

(b) be durable enough to withstand normal weathering;

(c) be the same APWA color as is designated for marking the UFO’s type of underground facility; and

(d) have a decal on the marker specifying the depth of the underground facility at the marker.

C. Maintenance of markers. A UFO shall be deemed to have failed to correctly mark its under-

ground facility that crosses a road to be maintained unless it:

(1) ensures that the markers are in place;

(2) maintains a minimum twenty-four (24) inches of coverage over the underground facility that crosses the road;

(3) verifies the depth of its underground facilities at the markers at least annually; and

(4) ensures that the decal is visible and the information on it is readable.

[18.60.5.14 NMAC - N, 7-1-06]

18.60.5.15 EXCAVATION PROCEDURES:

A. Pre-excavation. Before excavating, an excavator shall determine whether all underground facilities have been marked.

(1) If all underground facilities have been marked and the two (2) working day marking period has expired, the excavator may begin excavating.

(2) If one or more underground facilities have not been marked, an excavator shall, prior to commencing excavation, call:

(a) the one-call notification system for the intended excavation area if the UFO is a member of the one-call notification system; or

(b) any non-member UFOs operating in the intended excavation area.

B. Excavation.

(1) If, while excavating, an excavator observes evidence that an unmarked underground facility may exist, the excavator shall, before excavating in the immediate area of such evidence,

(a) make a reasonable effort to identify and contact the UFO and wait until the UFO marks or clears the immediate area of the evidence; the

UFO shall mark or clear the area within two (2) hours of contact or as expeditiously as possible if the excavation site is in a rural area; or

(b) expose the underground facility by non-mechanical means or mechanical vacuum excavation methods.

(2) If excavation activity cannot proceed without obliterating all or some of the markings made by a UFO, an excavator shall provide temporary offset marks or stakes to retain the information regarding the location of each UFO's underground facilities.

C. Temporary suspension of excavation activity. If staff determines that an excavation activity is not in compliance with the requirements of this rule, and that continued noncompliance may result in injury to persons or damage to property, staff may suspend the excavation activity until the excavation activity is brought into compliance with the requirements of this rule and excavation conditions are safe.

[18.60.5.15 NMAC - N, 7-1-06]

18.60.5.16 EMERGENCY EXCAVATION PROCEDURE: This section applies whenever damage to underground facilities or public infrastructure threatens or causes interruption of utility services or use of the public infrastructure.

A. Excavators. An excavator who damages an underground facility while excavating shall exercise prudence and shall:

- (1) stop excavating immediately;
- (2) call 911 if appropriate and/or the operator of the damaged underground facility;
- (3) secure the site and direct people and traffic

a safe distance away from the site of the damage;

(4) not leave the scene until authorized by an emergency responder or the operator of the damaged underground facility; an excavator may leave the scene without such authorization only if the excavator has made reasonable, if unsuccessful, efforts to contact the affected UFOs and has safely secured the site;

(5) not resume work within an unsafe distance of the damage until authorized by the operator of the damaged underground facility.

B. Operators of damaged underground facilities. The operator of a damaged underground facility shall exercise prudence and shall:

(1) promptly respond to a report of damage to its underground facilities and travel to the site of the damage;

(2) while on the way to the site or at the site, call the one-call notification system for the excavation area to request an emergency locate if damage occurs during normal business hours;

(3) make the site safe and get the emergency situation under control;

(4) locate its own underground facilities as soon as practical, ideally within two (2) hours; and

(5) obtain an excavation locate ticket for repair work beyond resolution of the emergency situation.

C. Operators of damaged public infrastructure. The entity responsible for the damaged public infrastructure shall:

(1) call the one-call notification system for the excavation area to request an emergency locate if damage occurs during normal business hours;

(2) obtain an excavation locate ticket for repair work beyond resolution of the emergency situation.

D. One-call notification system. A one-call notification system shall upon request, issue an emergency excavation notice; an emergency excavation notice shall be valid until the emergency is resolved, or for forty-eight (48) hours, whichever is longer;

[18.60.5.16 NMAC - N, 7-1-06]

18.60.5.17 ABUSE OF THE LAW: A person shall be deemed to have willfully failed to comply with this rule or Chapter 62, Article 14 NMSA 1978 and shall be subject to the penalties in Section 62-14-8 NMSA 1978 if the person:

A. requests a locate for an area that cannot reasonably be excavated in ten (10) working days;

B. provides misinformation or withholds information regarding the size of an excavation area;

C. requests locates that unduly burden a one-call notification system or UFO;

D. requests a locate for fraudulent reasons;

E. fails to process locate requests or clears within the requisite timeframe;

F. fails to mark, or call in a clear for, its underground facilities within the requisite time frame;

G. commences excavation prior to the expiration of the two (2) day notice period;

H. obliterates markings at an excavation site without providing temporary offset marks or stakes;

I. alters any record relating to excavation activity; or

J. commits any other act that the commission determines violates Chapter 62, Article 14 NMSA 1978 or this rule.

[18.60.5.17 NMAC - N, 7-1-06]

18.60.5.18 REPORTS OF THIRD PARTY

DAMAGE:

A. A UFO shall report to the director, in writing, any incident in which the owner or operator's underground facility is damaged, or a person is injured by a person not employed by the owner or operator. For purposes of this subsection, incident is to be taken in its general sense and is not to be restricted to the definition given in 49 CFR 191.3.

B. The report shall include the identity of the alleged violator, if known, and all pertinent information required by the director.

C. The report shall be submitted by the 15th day of the month following the month of occurrence, or within thirty (30) days of occurrence, whichever is later.

D. The UFO shall make available to the director within a reasonable time such other information or documentation as the director may require regarding any incident reportable under this section.

[18.60.5.18 NMAC - Rp, 18.60.2.20 NMAC, 7-1-06]

18.60.5.19 ALTERNATIVE DISPUTE RESOLUTION:

A. The commission encourages owners and operators of underground facilities and excavators to privately negotiate and settle disputes arising from excavation damage to underground facilities.

B. In the event the parties are unable to resolve such disputes privately, any owner or operator of underground facilities or any excavator may request mediation or arbitration from the commission.

C. Staff may participate in mediation or arbitration proceedings.

D. In mediation and arbitration proceedings,

persons shall be represented in accordance with the requirements of 18.60.4.11 NMAC.

[18.60.5.19 NMAC - Rp, 18.60.2.23 NMAC, 7-1-06]

18.60.5.20 MEDIATION OF EXCAVATION DAMAGE DISPUTES:

A. Designation of mediator. If any of the parties request mediation, the commission shall designate a mediator. The mediator may be a permanent or temporary employee of the commission or another state agency or any other individual acceptable to the parties. If the parties request a mediator who is not an employee of the commission, the commission shall not approve the request unless the parties agree in writing to bear as their own the costs of obtaining the mediator's services. The mediator shall have no official, financial, or personal conflict of interest with respect to the issues in controversy, unless such interest is fully disclosed in writing to all parties at the time the mediator is assigned by the commission and all parties agree that the mediator may serve. The mediator shall not, subsequent to serving as a mediator in an excavation damage dispute, participate in any subsequent proceeding in the same cause as a hearing examiner, advisory staff, staff counselor expert witness, or as an attorney, expert witness, or representative of any party to the proceeding.

B. Duties of mediator. The mediator shall notify the parties by telephone or mail of the time and place of the mediation conference, which will be held at commission offices unless otherwise directed by the mediator. The notice may direct the parties to send the mediator, but not other parties, their settlement positions and other necessary

information that could facilitate the mediation conference, including the results of staff's investigation of the damage. In addition, the mediator may require counsel to have their clients present at the mediation conference or accessible by telephone. The mediation conference shall be held within twenty (20) days of the date of the notice unless good cause is shown for an extension. If the parties are able to reach a settlement of their dispute, in appropriate cases the mediator shall assist the parties in preparing a written agreement to reflect that resolution. If the parties are unable to reach a complete settlement of their dispute, the mediator shall advise the parties that they may request arbitration or file an action for civil liability for damages in district court.

C. Inadmissibility of settlement offers. Offers of settlement and statements in furtherance of settlement made in the course of mediation" are privileged and, except by agreement among all parties, shall not be admissible as evidence in any formal hearing before the commission nor disclosed by the mediator voluntarily or through discovery or compulsory process.

[18.60.5.20 NMAC - Rp, 18.60.2.24 NMAC, 7-1-06]

18.60.5.21 BINDING ARBITRATION OF EXCAVATION DAMAGE DISPUTES:

A. Request for arbitration. Any party to a dispute arising from excavation damage to underground facilities may request binding arbitration of the dispute. The request shall be in writing to the Commission and shall include a concise statement of the grounds for the dispute, the remedy sought, and an acknowledgment that the requesting party

agrees to be bound by the decision of the arbitrator. The commission shall forward the request for arbitration to all other parties and require that they submit a written response within ten (10) days of receipt of the commission's letter forwarding the request.

(1) If the other parties agree to arbitration of the dispute, they shall include in their response to the commission a concise statement of their position with regard to the merits of the dispute and an acknowledgment that they agree to be bound by the decision of the arbitrator.

(2) If the other parties will not agree to arbitration, they shall so state in their response.

(3) If the other parties either fail to respond to a request for arbitration or do not agree to arbitration, the requesting party retains the right to proceed with an action for civil liability for damages in district court.

B. Designation of arbitrator. If all parties agree to arbitration, the commission shall designate an arbitrator. The arbitrator may be a permanent or temporary employee of the commission or another state agency or any other individual who is acceptable to the parties to the dispute. The designated arbitrator shall have no official, financial or personal conflict of interest with respect to the issues in controversy, unless such interest is fully disclosed in writing to all parties at the time of the commission's designation and all parties agree that the arbitrator may serve. The parties shall be required to indicate their consent in writing to the designated arbitrator within ten (10) days of the date of the commission's letter of designation. If the parties request an arbitrator who is not an employee of the commis-

sion, the commission shall not approve the request unless the parties agree in writing to bear as their own the costs of obtaining the arbitrator's services. Any employee of the commission designated to arbitrate a dispute under these provisions shall not participate in any subsequent proceeding in the same cause regarding excavation damage to underground facilities as a hearing examiner, advisory staff, staff counsel, or expert witness or as an attorney, expert witness, or representative of any party to the proceeding.

C. Duties of arbitrator.

(1) The arbitrator shall render a decision in the arbitration proceeding within sixty (60) days of the date the parties approved the arbitrator, unless good cause exists to extend the time.

(2) The arbitrator shall fix a time and place for an arbitration and shall serve notice of arbitration on all parties at least ten (10) days in advance of the arbitration. The arbitrator may issue subpoenas for the attendance of witnesses and for the production of books, records, documents, and other evidence and shall have the power to administer oaths. The parties may offer such evidence and produce such additional evidence as the arbitrator may deem necessary to an understanding and determination of the dispute. The arbitrator shall decide the relevancy and materiality of the evidence offered. The arbitrator shall give consideration to but shall not be bound by the New Mexico rules of evidence. No stenographic or electronic record will be made of the testimony at the hearing unless requested by a party, who shall bear the cost of the record.

(3) The arbitrator shall permit discovery only if it will not unduly complicate, burden, or impede the expeditious and informal nature of the proceeding.

(4) At the close of or soon after the hearing, the arbitrator will issue a brief written decision, which need not contain findings of fact and conclusions of law. The arbitrator's decision will be binding on the parties, but will not be deemed a decision of the Commission and shall have no precedential effect.

C. Inadmissibility of settlement offers. Unless agreed to by all the parties, no statements, admissions, or offers of settlement made during the course of arbitration proceedings shall be admissible as evidence in any formal proceeding nor shall the arbitrator disclose the same voluntarily or through discovery or compulsory process.

Nothing in this section, however, shall preclude the arbitrator from issuing a brief written decision describing his conclusions and the bases for them.

[18.60.5.21 NMAC - Rp, 18.60.2.25 NMAC, 7-1-06]

18.60.5.22 WAIVER OR VARIANCE FROM RULE REQUIREMENTS:

A. The commission may, in its discretion, waive or vary any requirement of this rule whenever the commission finds that such waiver or variance would be in the public interest.

B. An excavator, one-call notification system, or UFO that cannot meet one or more of the requirements of this rule may petition the commission for a waiver or variance. The petition shall be in writing and shall include:

(1) a list of those requirements which the excavator, one-call notification system, or UFO

wishes to have waived or varied;

(2) an explanation and description of the specific conditions which prevent the requirement from being met; and,

(3) a statement of steps already taken and to be taken, with projected time limits for each step, in attempting to meet the requirements.

C. The commission may order a hearing on the merits of the petition.

D. An excavator, one-call notification system, or UFO shall be required to comply with requirements it has petitioned to have waived or varied until the commission has issued an order on the merits of the petition, unless the commission or its designee grants an interim waiver of or variance from one of more of the requirements that are the subject of the petition.

[18.60.5.22 NMAC - N, 7-1-06]

HISTORY OF 18.60.5 NMAC:

Pre-NMAC History: The material in this rule was derived from that previously filed with the commission of public records-state records center and archives.

SCC 69-29, Order No. 2966, Cause No.516, filed 9-24-69.

SCC 71-2, Amended Order No. 2966, Cause No.516, filed 3-18-71.

SCC 72-1, Amended Order No. 3096, Cause No.516, filed 1-12-72.

SCC 77-2, Order No. 3096-C, Docket No.750, filed 3-04-77.

SCC 79-4, Regulations Relating to Minimum Safety Standards for the Transportation of Natural and other Gas by Pipeline, filed 6-27 -79.

SCC 84-9-PL, Regulation for the Transportation of Natural and other Gas by Pipeline - Minimum Standards, filed 11-26-84.

History of Repealed Material: 18 NMAC 60.1, General Provisions; 18 NMAC 60.2, Reports Required for New Master Meters and Third Party Damage; 18 NMAC 60.3, Requirement of Filing of Procedural Manual; 18 NMAC 60.4, Classification and Repair of Leaks; 18 NMAC 60.5, Pipeline Safety Program Procedures; 18 NMAC 60.6, Transportation of Natural and Other Gas by Pipeline: Minimum Federal Safety Standards: Annual and Incident Reports; 18 NMAC 60.7, Transportation of Natural and Other Gas by Pipeline: Minimum Federal Safety Standards; 18 NMAC 60.8, Transportation of Hazardous Liquids by Pipeline; 18 NMAC 60.9, Pipeline Safety Regulations: Drugs & Alcohol Testing; 18 NMAC 60.10, Procedures for Transportation Workplace Drug & Alcohol Testing Programs (all filed 5-1-96) repealed 7-1-03.

Other History: SCC 84-9-PL, Regulation for the Transportation of Natural and other Gas by Pipeline - Minimum Standards, filed 11-26-84, was renumbered into first version of the New Mexico administrative code as 18 NMAC 60.1 through 18 NMAC 60.10, effective 6-5-96. 18 NMAC 60.1 through 18 NMAC 60.10 (all filed 5-1-96), were replaced by 18.60.2 NMAC, Pipeline Safety, effective 7-1-03.

Those **applicable portions** of 18.60.2 NMAC, Pipeline Safety (filed 6-16-2003) replaced by 18.60.5 NMAC, Pipeline Safety Excavation Damage Prevention, effective 7-1-06.

APPENDIX C - APWA MARKING GUIDELINES

Recommended Marking Guidelines For Underground Utilities

**Adopted by APWA Board of Directors
September 12, 2001**

The APWA Marking Recommendations Committee

The APWA Marking Recommendations Committee was organized and operated under guidelines similar to those used by the Common Ground: Best Practices committees.

- Anyone on the committee could propose or recommend existing marking practices.
- Only those practices receiving a consensus of all committee members were included in the final recommendations.
- The committee felt that the original name for the committee: "APWA Marking Standards Committee" be changed to the "APWA Marking Recommendations Committee", this change was agreed to by all committee members. Henceforth, all proposals from the committee will be referred to as recommendations versus standards.

1. "Utility lines will be indicated by markings using current APWA color codes. Markings should be 18"-24" in length and 2" in width."

2. “The owner of a facility should be indicated by initials or by name in letters 6” high at the beginning and end of the locate. On long locates the facility owner should be indicated every 100’.”

3. “When known, the total number of lines within the ground will be indicated.” The number of lines indicated should be based on the physical lines “that you could place your hands on.” Multiple cables twisted together to form a single facility, as in the case of electric lines, would be considered one cable for locate purposes.

4. “If a facility is known to be present but the total number of lines for a facility cannot be determined a corridor marker may be used. The corridor marker should indicate the approximate width of the facility.” A marking resembling the letter “H” lying on its side will indicate the corridor marker.

5. “When known, the size of the line being located will be indicated. Line size will indicate the outside diameter of the pipe or structure. The oversized utility marking should indicate the approximate size of pipe or structure.” A mark resembling the letter “H” lying on its side, bisected by line extending along its length will indicate the oversized utility marking. The committee discussions centered on indicating sizes of single

physical structures such as gas lines, sewer lines, water lines, and storm drains.

6. “Duct structures, whether a single duct or multiple ducts, will be indicated by duct symbol indicating the approximate width of the duct structure.” The duct marker will be indicated by a marking resembling a diamond bracketed by two parallel lines. The committee did not state whether indicating size should extend to indicating size of duct structures (telecommunications, electric) or indicating pair count for telephone lines.

7. “When known, the pressure of a gas facility will be indicated.” Gas pressure will be indicated as either low pressure, intermediate high pressure or high pressure. The committee did not determine whether gas pressure would be indicated in instances of high pressure only or for all pressures. The committee did not determine whether the type of pipe should be indicated (plastic, steel, cast iron, etc.).

8. “When known, termination points, dead ends and stub outs should be indicated.” The committee reviewed NULCA’s recommendation, which resembles the letter “T” with drop downs.

9. “When there is a strong likelihood that marks may be destroyed offsets should be used.” Offsets are indicated on a permanent surface and are placed parallel to the running line of the facility. The offset should indicate the distance from the offset to the facility and should identify the facility owner and if necessary size of the facility.

The following issues were discussed but either a consensus could not be reached or further discussion was considered necessary:

1. How does a locator indicate that access could not be gained to a yard or location and the locate request could not be completed. This is usually due to locked fences, dogs or other physical obstructions. The committee felt that a marking standard for this issue would not be developed. Suggestions that would be acceptable included the use of door hangers (indicating that the locator needed access to the property) and/or telephone calls to the requestor.

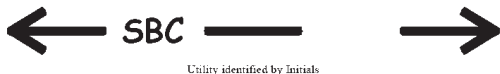
2. How and when do we indicate the presence of buried, abandoned facilities? Excavators felt that the utilities should indicate ALL facilities in the ground regardless of status. Utility records often do not indicate the presence of abandoned facilities. Access may not be available to abandoned facilities or those facilities may not be capable of being located. An additional issue is whether the abandoned facility should be identified as abandoned.

3. How to indicate the presence of electronic markers (EM's).

4. How to indicate the presence of buried splices, valves and manholes.

The following are samples on how the above suggestions would look:

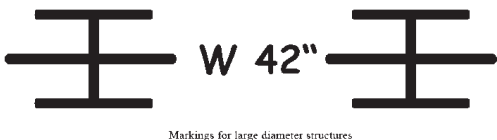
Line Markings



Corridor Markings



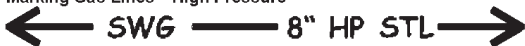
Oversized Utility Markings



Conduit Markings



Marking Gas Lines – High Pressure



Marking Termination Point, Dead End, Stub Outs



Marking Offsets



Indicate – Facility owner, direction to utility and distance to facility

No Conflict (No utilities within the requested area)

NO/MCI

NO/EPG

Proposed Markings – Consensus not reached by committee

Electronic Marker

EM

Marking Buried Splices, Valves, Manholes



Notes

NMOC Location and Marking Standards Guide

Electric

Electric Power Lines, Cables, Conduit, and Lighting Cables

Gas-Oil

Gas, Oil, Steam, Petroleum, or Gaseous Materials

Communication/CATV

Communication, Fiber, Alarm, or Signal Lines, Cables or Conduit

Water

Potable Water for domestic use

Reclaimed Water

Reclaimed Water, Irrigation and Slurry Lines, not for domestic use

Sewer

Storm Sewers and Sanitary Sewers and Drain Lines

Temporary Survey Markings

Proposed Excavation



Pipeline Safety Bureau
NM Public Regulation Commission
P.O. Box 1269
Santa Fe, NM 87504-1269
www.nmprc.state.nm.us



New Mexico One Call, Inc.
P.O. Box 27192
Albuquerque, NM 87125
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