

AN ACT

RELATING TO UTILITIES; CLARIFYING NOTIFICATION PROCEDURES TO PREVENT EXCAVATION DAMAGE TO PIPELINE AND UNDERGROUND FACILITIES.

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

SECTION 1. Section 62-14-2 NMSA 1978 (being Laws 1973, Chapter 252, Section 2, as amended) is amended to read:

"62-14-2. DEFINITIONS.--As used in 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 communications 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 augering, backfilling, digging, ditching, drilling, grading, plowing in, pulling in, ripping, scraping, trenching, tunneling and directional boring;

G. "excavator" means a person that excavates;

H. "master meter system and operators" means a pipeline system that distributes natural gas or liquid propane gas within a public place, such as a mobile home park, housing project, apartment complex, school, university or hospital where the operator of the master meter system purchases gas from a distributor through a single large meter and resells the gas through a gas distribution pipeline system. The resale may occur as a payment included in a rental payment or association dues or as a separately metered system;

I. "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;

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

K. "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 receiving excavation notice and damage reporting information and distributing that information to owners and operators of pipelines and other underground facilities;

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

M. "pipeline" means a pipeline or system of pipelines and appurtenances for the transportation or movement of any oil or gas, or oil or gas products and their byproducts subject to the jurisdiction of federal law or regulation, with the exception of master meter systems and operators;

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

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

P. "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, sewer and

fire protection lines, with the exception of master meter systems and operators."

SECTION 2. Section 62-14-3 NMSA 1978 (being Laws 1973, Chapter 252, Section 3, as amended) is amended to read:

"62-14-3. EXCAVATION.--A 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, and to 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 allow the owners to locate and mark the location of the underground facility as 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 request to locate;

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 equipment 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 preexisting underground facilities in or near the excavation area;

G. immediately notify the one-call notification system operating in the area in the form and format required by the commission and by telephone the owner of any underground facilities that 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."

SECTION 3. Section 62-14-4 NMSA 1978 (being Laws 1973, Chapter 252, Section 4, as amended) is amended to read:

"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 excavation area and shall notify as promptly as possible the owners of underground facilities located in and near the emergency excavation area and the one-call notification system operating in the area in the form and format required by the commission. 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 and the one-call notification system operating in the area in the form and format required by the commission."

SECTION 4. Section 62-14-5 NMSA 1978 (being Laws 1973, Chapter 252, Section 5, as amended) is amended to read:

"62-14-5. MARKING OF FACILITIES.--

A. A 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 that the owner or operator 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, marking the area as "Clear" or "No Underground Facilities". If the area is not marked as "Clear" or "No Underground Facilities", the excavator shall contact the one-call notification system operating in the region 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."

SECTION 5. Section 62-14-5.1 NMSA 1978 (being Laws 2001, Chapter 150, Section 4) is amended to read:

"62-14-5.1. UNIFORM COLOR CODE FOR LOCATION OF UNDERGROUND FACILITIES.--In marking an excavation site and the location of underground facilities, both the excavator and the owner or operator shall use the following uniform color code:

- A. blue for water;
- B. green for sewer;
- C. orange for communications or 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."

SECTION 6. Section 62-14-7.1 NMSA 1978 (being Laws 1997, Chapter 30, Section 1, as amended) is amended to read:

"62-14-7.1. ONE-CALL NOTIFICATION SYSTEM.--

A. An owner or operator of an underground facility subject to Chapter 62, Article 14 NMSA 1978 shall be a member of a one-call notification system operating in the region with the exception of private underground facilities owned by a homeowner and operated and located on residential property. 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 and other underground facilities in the intended excavation area.

F. After receiving advance notice, owners and operators of pipeline facilities and other underground facilities shall locate and mark their 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 and other underground 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 promoting awareness by excavators of one-call notification systems.

J. The commission may prescribe reasonable maximum rates for the provision of one-call services in New Mexico, provided that if the reasonableness of such rates is contested in the manner provided by commission rule, the burden of proof to show the unreasonableness of such rates shall be upon the person contesting their reasonableness."

SECTION 7. Section 62-14-8 NMSA 1978 (being Laws 1973, Chapter 252, Section 8, as amended) is amended to read:

"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 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."