



Kentucky Law Update Damage Prevention



KENTUCKY PUBLIC SERVICE COMMISSION

The views expressed in this presentation are those of the Commission's Division of Inspections (DOI). This presentation is intended to convey DOI's interpretation of the Underground Facilities Damage Prevention Act of 1994 as amended, and explain DOI's investigation process.

The views expressed in this presentation do not reflect the official position of the Kentucky Public Service Commission.



Kentucky Underground Facilities Damage Prevention Act of 1994:

- Effective January 1, 1995
 - Amended in 2018 to give PSC enforcement authority
 - Most recently amended in 2021
- KRS 367.4901 through 367.4917
- Establishes one-call (811) center
- Sets requirements for excavators and operators



Location color codes (paint or flagging):

Electric: safety red

Natural gas, oil, hazardous liquids: safety yellow

Telecomm, cable TV: safety orange

Water: blue

Sewer: green

Temporary survey markings: pink

Reclaimed water, slurry, irrigation: purple

Excavation boundaries: White



Key definitions:

Damage: Doesn't have to be a puncture. Includes any weakening of structural or lateral support or penetration of protective coating or housing. "It's just a scratch" may still be damage.

Senate Bill 172

- Effective July, 2021
- Specifies that operators must be notified immediately upon discovery of damage;
- Requires individuals or entities that are exempt to notify the operators immediately upon discovery of damage;
- Requires the notification to the proper authorities if there is the escape or suspected escape of flammable, toxic, or corrosive gas or liquid.



Key definitions:

Excavator: Any entity or individual, other than those exempted by KRS 367.4915, engaged in excavation (defined in the statute) demolition (also defined) or timber harvesting using mechanized equipment.

Operator: Anyone owning or operating underground facilities.

Emergency: An event that poses likelihood of loss of life or property, danger to health or environment, interrupts utility service or blocks transportation facilities.

Excavation: Any activity that results in the movement, placement, probing, boring, or removal of earth, rock, or other material in or on the ground by the use of any tools or equipment, by the discharge of explosives, or by the harvesting of timber using mechanized equipment.



Key definitions:

Working day: 24 hours, except Saturday, Sunday or a State or Federal holiday.

House Bill 303, Effective January 2022;

- Defines “working day” as commencing at 12:01 a.m. eastern time and ending at 12:00 midnight eastern time EXCLUDING the day the locate request was made;

Approximate location: 24 inches either side of metallic facilities or those with tracer wire.

- HB 303 Changed approximate location (tolerance zone) from 18 to **24 inches;**

Tolerance zone: means a strip of land at least four (4) feet wide but not wider than the width of the underground facility plus two (2) feet on either side of the outer limits of the facility;



Key definitions:

Nonintrusive excavating: Hand tools; air or water digging.

Mechanized equipment: Anything with a motor.

Kentucky Contact Center: Kentucky 811

Protection notification center: Operator-provided call center for operators who do not belong to 811.



Key definitions:

Hard surface language, which allows mechanized equipment in the tolerance zone:

1. Removal of pavement or other manmade hard surface during initial penetration only, **and** if an individual other than the equipment operator visually monitors the activity;
2. Removal of indigenous rock during initial penetration only to the extent necessary, **and** if an individual other than the equipment operator visually monitors the activity, **and** if the excavation is planned to avoid damage to the underground facility. ***If the underground facility contains flammable, toxic, corrosive, or hazardous products, the excavator shall notify the facility owner of the intent prior to removing the rock;***
3. Removal of materials that are more than twelve (12) inches in any direction from the outer edge of the located facility if the excavator visually identifies the precise location of the underground facility or visually confirms that no facility is present within the depth of the excavation, **and** if an individual other than the equipment operator visually monitors the excavation, and if the excavation is planned to avoid damage to the underground facility; and
4. To place shores in an existing excavation or remove shores from an existing excavation.



Key definitions:

"Positive response" means an automated or written communication system provided by each protection notification center for all locate requests the center receives that allows excavators, locators, operators, and other interested parties to determine the status of locating an underground facility and requires response and verification by operators and excavators to comply with their respective requirements of the Underground Facility Damage Prevention Act of 1994;



Key definitions:

Changes made in the 2021 General Assembly

- **"Second notice"** means a notice that is made by an excavator to a notification center when an operator has failed to comply with the positive response requirements;
- **"Untonable facility"** means an underground facility that cannot be located from the surface using locating methods which meet industry standards and that requires additional efforts and extended time;
- **"Work site contact"** means an individual that will be present at the excavation site when the excavation will occur.



Excavator requirements (KRS 367.4911):

- Make locate request 2 full workings days before scheduled start, but not more than 10 full working days before.
- HB 303 Adds language that provides for the operators and excavators to agree upon an excavation start date, and allows the operators to respond to the locate request any time prior to the agreed upon start date.
- HB 303 Requires the PSC to make available a written agreement form for an operator and an excavator to agree to a date by which the locate request must be completed. To obtain this form go to:
<https://psc.ky.gov/Home/UtilForms>



Excavator requirements (KRS 367.4911):

- Provide the protection center with name and address of excavator; location of the site or sites; type and extent of excavation; contact number for person responsible for the work to be performed.
- **HB 303 Requires the name and phone number for a work site contact.**
- If more than one excavator at a site, each must notify the protection center.
- Notification by excavator covers all employees. But, if excavator doesn't call the protection center, on-site employees are responsible.



Excavator requirements (KRS 367.4911):

- If work is not completed within 21 days, protection center must be notified to request remarking on day 19 – 2 days before expiration.
- Remarking must be requested if markings are removed or no longer visible or if excavation plan or location has changed.
- Excavator shall provide on-site employees with location information provided by each operator, any related safety information provided by operators, and locate ticket number assigned by protection center.
- If, after 2-day period for marking has expired, excavator finds evidence of unmarked facilities, protection center must be notified immediately.
- **HB 303 If given a second notice, the operator has 1 working day to locate the facilities. (This is regarding positive response)**



Excavator requirements (KRS 367.4911):

- If requested by operator, or if the proposed excavation location cannot be accurately identified, the excavator must mark the location being excavated using white paint or flagging.
- **HB 303 If an excavator finds evidence of an unmarked underground facility the operator shall have 6 business hours (from 8 a.m. to 6 p.m., in the time zone where the excavation is occurring) to identify the facility.**



Excavator requirements (KRS 367.4911):

When excavating within the approximate location of an underground facility *(24 inches either side of metallic facilities or those with tracer wire; otherwise)* **an excavator MUST use hand digging or other non-intrusive means in order to avoid damage.**



Excavator requirements (KRS 367.4911):

If an excavator damages an underground facility, the excavator must:

- **If there is an escape of any flammable, toxic or corrosive gas or liquid, call 911 immediately.**
- **Stop all work immediately.**
- **Notify the operator.**
- **If there is a safety concern, notify appropriate public safety agencies.**



**Do not attempt to repair any
gas line that has been
damaged.**

**Only the operator can perform
the repairs.**



Exemptions (KRS 367.4915):

- Landfill operations at permitted site
- Coal mining at regulated location.
- Leak migration testing using metal hand probes.
- Nonintrusive excavation by operator or contractor in order to provide location in response to excavator request.
- **Emergency work by utility operator or utility contractor.**



Operator responsibilities (KRS 367.4909):

- **Belong to Kentucky 811 or provide protection notification center access to excavators. (All natural gas system operators must be 811 members.)**
- If a member of 811, provide the call center with updated information on the location of its facilities.
- Respond to non-emergency locate requests within 2 working days (except large projects – in excess of 2,000 linear feet).
- **HB 303 Limits the size of the request to 5,000 feet in length.**
- **HB 303 Gives the operator 5 days to locate an untonable or unmapped facility (This includes the two day wait period).**
- Respond to emergency locate requests within 48 hours – this includes weekends, holidays.



Important operator responsibility(KRS 367.4909 (11):

- If extraordinary circumstances exist, an operator shall notify the excavator of the operator's inability to comply with this section.
- Notification under this subsection shall temporarily relieve the operator of complying with subsections (5) and (6) of this section until the operator can recover from the extraordinary circumstances.
- Extraordinary circumstances include weather that makes it impossible for any combination of facility markers identified in subsection (10) of this section to be used, extreme weather conditions, force majeure, disasters, or civil unrest that make timely response difficult or impossible.



Important operator responsibility

(KRS 367.4909 (12):

- **All new facilities must include means to accurately identify and locate the facility from the surface. (for example, tracer wire)** (does not apply to repairs of existing facilities)



Penalties/enforcement - general (KRS 367.4915):

- Excavators - \$250- first offense; \$1,000 – second offense within a year; \$3,000 – third and subsequent offense.
- Operators - \$250- first offense; \$1,000 – second offense within a year; \$3,000 – third and subsequent offense.
- **HB 303 Specifies that a violation shall be considered a first violation if more than 365 days have elapsed since the last incident attributable to the person in violation.**
- If there's a release of natural gas an additional \$1,000 is added.
- Protection center - \$1,000 per offense.



Some helpful hints for excavators:

- Don't assume all pipes or lines are straight.
- Don't assume facility depths are uniform.
- Don't remark or improve markings on your own.
- Don't assume everything has been marked just because some things have.
- Don't assume permanent pipeline markers are exactly above the pipe.



Questions?



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