

49-7A-1. Definition of terms.

Terms used in this chapter mean:

- (1) "Bar test survey," a leakage survey completed with a non-conductive piece of equipment made by driving or boring small holes in the ground at regular intervals along the route of an underground gas pipe for the purpose of extracting a sample of the ground atmosphere and testing the atmosphere in the holes with a combustible gas detector or other suitable device;
- (2) "Board," One-Call Notification Board;
- (3) "Emergency," an occurrence which demands immediate action to prevent significant environmental damage or loss of life, health, property, or essential public services including the reerecting of critically needed traffic control signs or devices;
- (4) "Excavation," any operation in which earth, rock, or other material in or below the ground is moved or otherwise displaced by means of tools, equipment, or explosives, and includes grading, trenching, digging, ditching, drilling, augering, tunneling, scraping, and cable or pipe plowing or driving, except:
 - (a) Tilling of soil and gardening to a depth of twelve inches and the tilling of soil for agricultural purposes to a depth of eighteen inches;
 - (b) Pot hole repair and grading of an existing public road if the pot hole repair and grading does not extend more than eighteen inches below the finished roadway;
 - (c) Any vehicle operation or operation involving the use of any hand tool, other than a power tool, so long as such operation does not extend more than eighteen inches below the surface of the groundline within the right-of-way;
 - (d) Any road and ditch repair or road and ditch activity that does not extend more than eighteen inches below the surface of the original groundline within the right-of-way;
 - (e) Digging in a cemetery;
 - (f) Digging in a planned sanitary landfill; and
 - (g) Any bar test survey deemed necessary by an operator in response to a suspected natural gas, propane, or other combustible liquid or gas leak that is necessary to ensure public safety in an emergency;
- (5) "Excavator," any person who performs excavation;
- (6) "Member," any member of the one-call notification center;
- (7) "One-call notification center," the statewide one-call notification center established by [§ 49-7A-2](#);
- (8) "Operator," any person who operates an underground facility;
- (9) "Person," an individual, partnership, limited liability company, association, municipality, state, county, political subdivision, utility, joint venture, or corporation, and includes the employer of an individual;
- (10) "Underground facility," any item of personal property buried or placed below ground for use in connection with the storage or conveyance of water, sewage, electronic, telephonic or telegraphic communications, fiber optics, cablevision, electric energy, oil, gas, hazardous liquids, or other substances including pipes, sewers, conduits, cables, valves, lines, wires, manholes, and attachments.

Source: SL 1993, ch 346, § 1; SL 1994, ch 351, § 132; SL 1994, ch 354, § 1; SL 2007, ch 264, § 1; SL 2010, ch 219, § 1.

49-7A-2. Establishment of One-Call Notification Board.

The Statewide One-Call Notification Board is established as an agency of state government and funded by revenue generated by the one-call notification center. The board is attached to the Public Utilities Commission only for budgetary purposes. The board is solely responsible for all contractors and employment of any personnel working for the board and retains responsibility for all funds of the board and all expenditures thereof. The board is solely responsible for all functions and duties vested in the board and the board shall exercise those functions and duties independent of the Public Utilities Commission. Any interest earned on money in the state one-call fund shall be deposited in the fund. The money is continuously appropriated to the board to implement and administer the provisions of this chapter. The one-call notification center may be organized as a nonprofit corporation. The one-call notification center shall provide a service through which a person can notify the operators of underground facilities of plans to excavate and to request the marking of the facilities. All operators are subject to this chapter and the rules promulgated thereto. Any operator who fails to become a member of the one-call notification center or who fails to submit the locations of the operator's underground facilities to the center, as required by this chapter and rules of the board, is subject to applicable penalties under §§ [49-7A-18](#) and [49-7A-19](#) and is subject to civil liability for any damages caused by noncompliance with this chapter. Any penalties which may be assessed by the board under this chapter shall be collected as provided by law and deposited into the one-call fund.

Source: SL 1993, ch 346, § 2; SL 1994, ch 354, § 2; SL 1997, ch 263, § 1; SL 2002, ch 211, § 1; SL 2018, ch 261, § 1, eff. July 1, 2019.

49-7A-3. Governing board--Representation--Term of appointment.

The one-call notification center shall be governed by an eleven member board who shall serve without pay. The board shall consist of one member representing telecommunication companies offering local exchange service to less than fifty thousand subscribers; one member representing telecommunication companies offering local exchange service to fifty thousand or more subscribers; one member representing rural water systems; one member representing rural electric cooperatives; one member representing investor-owned electric utilities; one member representing investor-owned natural gas utilities; one member representing community antenna television systems; one member representing municipalities; one member representing underground interstate carriers of gas or petroleum; and two members representing contractors who perform excavation services. The board shall be appointed by the Governor and shall serve staggered three-year terms.

Source: SL 1993, ch 346, § 3; SL 1997, ch 263, § 15.

49-7A-4. Rules--Operating procedures.

The One-Call Notification Board shall by rules, promulgated pursuant to chapter [1-26](#), establish the procedures to operate a nonprofit one-call notification center, establish the procedures that regulate the notification process and marking of underground facilities to prevent damage

to underground facilities, establish the procedures for gathering information from facility operators that could further improve the ability to reduce damage to underground facilities, establish a competitive bidding procedure to select a vendor to provide the notification service, and establish a procedure whereby members of the one-call notification center share in the costs of the one-call notification center.

Source: SL 1993, ch 346, § 4; SL 1994, ch 354, § 3; SL 1997, ch 263, § 14; SL 2002, ch 211, § 2.

49-7A-5. Notification of proposed excavation.

No excavator may begin any excavation without first notifying the one-call notification center of the proposed excavation. The excavator shall give notice by telephone or by other methods approved by the board pursuant to rules promulgated pursuant to chapter [1-26](#) to the one-call notification center at least forty-eight hours prior to the commencement of the excavation, excluding Saturdays, Sundays, and legal holidays of the state. The board may promulgate rules to reduce the forty-eight-hour interval for emergency or subsequent inquiries to the original locate request and may lengthen the forty-eight-hour interval for nonexcavation requests.

Source: SL 1993, ch 346, § 6; SL 1994, ch 354, § 4; SL 1997, ch 263, § 2; SL 2002, ch 211, § 3; SL 2007, ch 264, § 2.

49-7A-6. Repealed by SL 2002, ch 211, § 4.

49-7A-6.1. Operator not to be billed when location of excavation on notice differs from location of operator's facility.

No operator may be billed for the costs of any notification of excavation if the location of the excavation described in the notice is different than the one call center's record of the description of the location of the operator's underground facilities.

Source: SL 2001, ch 251, § 1; SL 2002, ch 211, § 5.

49-7A-7. Duties of one-call notification center.

The one-call notification center shall:

- (1) File with the register of deeds of each county the toll-free telephone number for notification of planned excavation activities in its area;
- (2) Maintain adequate records documenting compliance with the requirements of this chapter, including records of all telephone calls and records of all location requests for the preceding forty-eight months which can be obtained by request of either a member or excavator;
- (3) Provide the service at minimum, during normal working hours, on business days;
- (4) For calls received after normal working hours for the one-call notification center, or on nonbusiness days, provide information for callers which explains emergency notification and excavation procedures; and

(5) Provide a timely method for notifying participating members of the information received regarding proposed excavation activities. The method of notification is to be determined by the one-call notification center and its members.

Source: SL 1993, ch 346, § 8.

49-7A-8. Location of underground facilities--Marking.

An operator shall, upon receipt of the notice, advise the excavator of the location of underground facilities in the proposed excavation area by marking the location of the facilities with stakes, flags, paint, or other clearly identifiable marking within eighteen inches horizontally from the exterior sides of the underground facilities. The board shall promulgate rules, pursuant to chapter [1-26](#), to establish the response time for operators to mark the underground facilities. The response time shall be no later than forty-eight hours after the receipt of the notice, excluding Saturdays, Sundays, and legal holidays of the state or the excavation start time provided by the excavator, whichever is later. The response time may be less than forty-eight hours for emergency or subsequent inquiries to the original locate request and may be longer than forty-eight hours for nonexcavation requests. Excavators shall maintain a minimum horizontal clearance of eighteen inches between a marked underground facility and the cutting edge of any mechanical equipment. If excavation is required within eighteen inches, horizontally, the excavator shall expose the facility with hand tools or noninvasive methods approved pursuant to rule and shall protect and support the facility prior to further excavation with mechanical equipment.

Source: SL 1993, ch 346, § 9; SL 1997, ch 263, § 4; SL 2002, ch 211, § 6.

49-7A-9. Failure to provide timely location markings--Inadequate markings--Liability.

If location markings requested by an excavator are not provided within the time specified by § [49-7A-8](#) or any rule promulgated pursuant to § [49-7A-8](#), or if the location markings provided fail to identify the location of the underground facilities in accordance with statute and rule, any excavator damaging or injuring underground facilities is not liable for such damage or injury except on proof of negligence.

Source: SL 1993, ch 346, § 10; SL 2002, ch 211, § 7.

49-7A-10. Liability for damage to underground facility.

Compliance with this chapter and the rules promulgated pursuant thereto does not excuse a person from acting in a careful and prudent manner nor does compliance with this chapter and the rules promulgated pursuant thereto affect any civil remedies otherwise provided by law for personal injury or for property damage except as specifically provided in this chapter. If information requested pursuant to statute or rule, is provided within the time specified and if the information provided sufficiently identifies the location of the underground facilities in accordance with § [49-7A-8](#) or any rule promulgated pursuant to § [49-7A-8](#), any excavator damaging or injuring the underground facilities is strictly liable for all damage proximately caused thereby.

Source: SL 1993, ch 346, § 11; SL 2002, ch 211, § 8.

49-7A-11. Repealed by SL 2002, ch 211, § 9.

49-7A-12. Notification of damage to underground facility--Repairs--Flammable, toxic, or corrosive gas or liquid.

If any underground facility is damaged, dislocated, or disturbed in advance of or during excavation work, the excavator shall immediately notify the one-call notification center and, if known, the operator of the facility of the damage, dislocation, or disturbance. No excavator may conceal or attempt to conceal any damage, dislocation, or disturbance, nor may that excavator attempt to make any repair to the facility unless authorized by the operator of the facility. If the damage, dislocation, or disturbance results in the escape of any flammable, toxic, or corrosive gas or liquid, the excavator shall immediately report the escape to the authorities by calling the 911 emergency telephone number and notifying the one-call notification center and, if known, the operator of the facility.

Source: SL 1993, ch 346, § 13; SL 1997, ch 263, § 6; SL 2002, ch 211, § 10; SL 2018, ch 262, § 1.

49-7A-13. Inability to locate underground facility.

If in the course of excavation the excavator is unable to locate the underground facility or discovers that the operator of the underground facility has incorrectly located the underground facility, he shall promptly notify the operator, or, if unknown, the one-call notification center.

Source: SL 1993, ch 346, § 14.

49-7A-14. Local permit requirements unaffected.

This chapter does not affect or impair any local ordinances or other provisions of law requiring permits to be obtained before excavation. However, a permit issued by any governing body does not relieve the excavator from complying with the requirements of this chapter.

Source: SL 1993, ch 346, § 15.

49-7A-15. Owners and operators of underground facilities required to register with one call notification system.

Any person owning or operating underground facilities, including a farm tap customer owning a farm tap distribution system, which serves third parties or which crosses a property line or is located in a public highway shall register with the one call notification system as an operator pursuant to this chapter.

Source: SL 1993, ch 346, § 16; SL 2017, ch 197, § 5.

49-7A-16. Repealed by SL 1997, ch 263, § 7.

49-7A-17. Complaints--Rules of Practice.

Any person with a complaint against a party who violates or with a complaint against a party who procures, aids, or abets in the violation of § [49-7A-2](#), [49-7A-5](#), [49-7A-8](#), or [49-7A-12](#), or any rules promulgated pursuant to § [49-7A-2](#), [49-7A-5](#), or [49-7A-8](#), may ~~apply to the board for relief~~ file a complaint with the board. No complaint may be dismissed because of the absence of direct damage to the complainant or petitioner. The board may promulgate rules of practice including prescribing the form for complaints in accordance with chapter [1-26](#).

Source: SL 2002, ch 211, § 11.

49-7A-18. Penalties.

Except as provided in § [49-7A-19](#) and in addition to all other penalties provided by law, any person who violates or who procures, aids, or abets in the violation of § [49-7A-2](#), [49-7A-5](#), [49-7A-8](#), or [49-7A-12](#), or any rules promulgated pursuant to § [49-7A-2](#), [49-7A-5](#), or [49-7A-8](#) may be assessed a penalty of up to ~~one~~ three thousand dollars for the first violation and up to ~~five~~ ten thousand dollars for each subsequent violation that occurs within twelve months of the initial violation.

Source: SL 2002, ch 211, § 12.

49-7A-19. Penalties for intentional violations.

In addition to all other penalties provided by law, any person who intentionally violates or who intentionally procures, aids, or abets in the violation of § [49-7A-2](#), [49-7A-5](#), [49-7A-8](#), or [49-7A-12](#), or any rules promulgated pursuant to § [49-7A-2](#), [49-7A-5](#), or [49-7A-8](#) may be assessed a penalty of up to five thousand dollars for the first violation and up to ten thousand dollars for each subsequent violation that occurs within twelve months of the initial violation.

Source: SL 2002, ch 211, § 13.

49-7A-20. Each violation as separate offense.

Each violation of any statute or rule of the Statewide One-Call Notification Board constitutes a separate offense. In the case of a continuing violation, each day that the violation continues constitutes a separate violation.

Source: SL 2002, ch 211, § 14.

49-7A-21. Complaint and order prerequisites for penalty--Time limit.

No penalty may be imposed pursuant to §§ [49-7A-18](#) and [49-7A-19](#) except by order following a complaint pursuant to § [49-7A-17](#). A complaint alleging a violation of any statute, except § [49-7A-12](#), or alleging a violation of any rule of the Statewide One-Call Notification Board shall be brought not later than ninety days after the discovery of the alleged violation, but in no case may the complaint be brought more than one year after the date of the alleged violation. Any

complaint alleging a violation of § [49-7A-12](#) shall be brought within one year of discovery of the alleged violation.

Source: SL 2002, ch 211, § 15; SL 2010, ch 220, § 1.

[49-7A-22](#). Panel to determine existence of probable cause for violation--Recommendation to board.

Upon the initiation of a complaint pursuant to § [49-7A-17](#), a panel of three ~~or five~~ members of the Statewide One-Call Notification Board shall be appointed by the chair for the purpose of determining whether there ~~is probable cause to believe there~~ has been a violation of any statute or rule of the board. A determination of whether there ~~is probable cause to believe there~~ has been a violation shall be determined by a majority vote of the panel. The panel ~~shall then recommend to the board~~ may order that the complaint be dismissed for lack of probable cause, or ~~recommend to the board that there is probable cause to believe~~ determine that there has been a violation and ~~recommend~~ determine and order what penalty, if any, should be imposed pursuant to the provisions of § [49-7A-18](#) or [49-7A-19](#).

Source: SL 2002, ch 211, § 16.

[49-7A-22.1](#) Office of Hearing Examiners can be used for hearings

The panel, the board or any party may invoke the usage of the Office of Hearing Examiners to act as hearing officer, determine the facts, or determine a penalty as appropriate. The panel may determine the facts or determine a penalty or both unless a party invokes the Office of Hearing Examiners to perform either or both of those functions.

[49-7A-23](#). Panel to forward complaint to respondent.

Upon receipt of a complaint and the appointment of a panel, the ~~panel~~ board shall forward to the respondent a statement of the complaint and a notice requiring the respondent to satisfy the complaint or answer it in writing within twenty days from the date of service of the notice or within such further time as may be specified by the board.

Source: SL 2002, ch 211, § 17.

[49-7A-24](#). Respondent to satisfy or answer complaint--Procedure.

The respondent shall, within the time fixed by the notice served upon it, satisfy the complaint or answer the complaint by filing the original and two copies of the answer in the office of the board and serving a copy on each complainant.

Source: SL 2002, ch 211, § 18.

[49-7A-25](#). Complaint, answer to be sole basis for probable cause determination.

~~A determination of probable cause shall be made by the panel solely on these submissions and no other evidence shall be considered.~~

Source: SL 2002, ch 211, § 19.

49-7A-26. Factors considered in determining amount of penalty.

The amount of ~~recommended~~ penalty shall be determined by a majority vote of the panel unless the Office of Hearing Examiners has been invoked to perform such function. In either case, Factors to be considered in determining the amount of the penalty shall be:

- (1) The amount of damage, degree of threat to the public safety, and inconvenience caused;
- (2) The respondent's plans and procedures to insure future compliance with statute and rules;
- (3) Any history of previous violations;
- (4) Other matters as justice requires.

Source: SL 2002, ch 211, § 20.

49-7A-27. Board to accept panel's recommendation--Exception when party requests hearing--Conduct of hearing.

~~The board shall accept the recommendations of the panel unless either party requests a hearing.~~ Any party may requests an appeal hearing before the full board by rejecting the panel's recommendation within twenty days from the date of service of the notice. However, the board may extend the time period for requesting a hearing. Failure to timely request an appeal hearing is considered acceptance of the panel's recommendation. If an appeal hearing is held, the appeal hearing shall be conducted before the board as a contested case under chapter 1-26. Following the appeal hearing, the board shall either render a decision dismissing the complaint ~~for insufficient evidence~~ or shall impose a penalty pursuant to the provisions of § 49-7A-18 or 49-7A-19. The board penalty after an appeal hearing may be different than that of the panel.

Source: SL 2002, ch 211, § 21; SL 2007, ch 264, § 3.

49-7A-28. Action to recover penalty.

If the amount of the penalty is not paid to the board, the board, shall bring an action in the name of the State of South Dakota to recover the penalty in accordance with § 49-7A-33. No action may be commenced until after the time has expired for an appeal from the findings, conclusions, and order of the board.

Source: SL 2002, ch 211, § 22; SL 2018, ch 261, § 2, eff. July 1, 2019.

49-7A-29. Record and evidence in court action.

In the trial of an action pursuant to § 49-7A-28, the evidence introduced in the proceedings before the board shall constitute the record and evidence on the trial of the case in court. No additional evidence other than that introduced before the board may be introduced at the court trial. The report and order of the board shall be taken and held to be prima facie evidence of the facts stated therein.

Source: SL 2002, ch 211, § 23.

[49-7A-30.](#) Board to maintain docket and index.

The board shall keep a docket in which shall be entered all matters coming before it for determination, with the date of the filing of each paper and the final action of the board in the matter. In connection with such docket, there shall be kept a carefully prepared index in which the names of the parties shall be cross-indexed under the names of both the plaintiff and defendant.

Source: SL 2002, ch 211, § 24.

[49-7A-31.](#) Board to keep transcript of proceedings--Certification.

In any action or proceeding based upon a complaint which comes before the board, the board shall keep a full, true, and verbatim record of all evidence introduced at any hearing or trial and prepare and file as a part of its record in the action or proceeding a true and correct transcript of the evidence, and attach all exhibits introduced at the trial. There shall be attached to the transcript a certificate from the recording secretary to the effect that it is a true and correct transcript of all testimony introduced at the trial.

Source: SL 2002, ch 211, § 25.

[49-7A-32.](#) Removal of board member for conflict of interest.

Either party may request the removal of a board member from any hearing based on a conflict of interest.

Source: SL 2002, ch 211, § 26.

[49-7A-33.](#) Demand for penalty required before suit brought.

A demand in writing on the party shall be made for the assessed penalty before suit is brought for recovery under § [49-7A-28](#). No suit may be brought until the expiration of thirty days after the demand.

Source: SL 2002, ch 211, § 27.

[49-7A-34.](#) Board action has presumption of validity.

Any action or proceeding or order of the Statewide One-Call Notification Board raises a presumption of validity. The burden is upon the party claiming the order to be invalid to plead and prove the facts establishing the invalidity.

Source: SL 2002, ch 211, § 28.

[49-7A-35.](#) Annual report of board.

On the first day of January of each year, the board shall make an annual report of its activities to the Governor and the Legislature containing the facts, statements, and explanations deemed necessary by the board to fully disclose its transactions and conduct.

Source: SL 2018, ch 261, § 3, eff. July 1, 2019.

