

§ 87-121. Facility operator responsibilities.

- (a) An operator shall provide to the excavator the following:
 - (1) The horizontal location and description of all of the operator's facilities in the area where the proposed excavation or demolition is to occur. The location shall be marked by stakes, soluble paint, flags, or any combination thereof, as appropriate, depending upon the conditions in the area of the proposed excavation or demolition. The operator shall, when marking as provided under this subdivision, use the APWA Uniform Color Code. If the diameter or width of the facility is greater than four inches, the dimension of the facility shall be indicated at least every 50 feet in the area of the proposed excavation or demolition. An operator who operates multiple facilities in the area of the proposed excavation or demolition shall locate each facility.
 - (1a) The operator's identity, marked as provided in subdivision (1) of this subsection, in the area where the proposed excavation or demolition is to occur. At a minimum, the operator's identity shall be marked at the beginning point, at intervals of 200 linear feet, and at the end point of the proposed excavation or demolition.
 - (2) Any other information that would assist the excavator in identifying and thereby avoiding damage to the marked facilities.
- (b) Unless otherwise provided in a written agreement between the operator and the excavator, the operator shall provide to the excavator the information required by subsection (a) of this section within the times provided below:
 - (1) For a facility, within three full working days after the day notice of the proposed excavation or demolition was provided to the Notification Center.
 - (2) For a subaqueous facility, within 10 full working days after the day notice of the proposed excavation or demolition was provided to the Notification Center.
 - (3) If the operator declares an extraordinary circumstance, the times provided in this subsection shall not apply.
- (c) The operator shall provide a positive response to the Notification Center before the expiration of the time provided in subsection (b) of this section. The response shall indicate whether and to what extent the operator is able to provide the information required by subsection (a) of this section to respond to the notice from the excavator.
- (d) If the operator determines that provisions for marking subaqueous facilities are required, the operator will provide a positive response to the Notification Center not more than three full working days after notice has been provided by the excavator.
- (e) If extraordinary circumstances prevent the operator from marking the location of the facilities within the time specified in subsection (b) of this section, the operator shall either notify the excavator directly or notify the excavator through the Notification Center. When providing the notification under this subsection, the operator shall state the date and time when the location will be marked.
- (f) An operator shall prepare or cause to be prepared installation records of all facilities installed on or after the date this Article becomes effective in a public street, alley, or right-of-way dedicated to public use, excluding service drops and services lines. The operator shall maintain these records in the operator's possession while the facility is in service.
- (g) All facilities installed by or on behalf of operators on or after the date this Article becomes effective shall be electronically locatable using a locating method that is generally accepted by operators in the particular industry or trade in which the operator is engaged.

(h) A locator shall notify the operator if the locator becomes aware of an error or omission in the records or documentation showing the location of the operator's facilities. The operator must update its records to correct any error or omission.

(i) An operator may reject an excavation or demolition notice due to homeland security considerations based upon federal statutes or federal regulations until the operator can confirm the legitimacy of the notice. The operator shall notify the person making the notice of the denial and may request additional information through the positive response system.

(j) Gravity fed sanitary sewers installed prior to the date this Article becomes effective and all storm water facilities shall be exempt from the location requirements provided in subsection (a) of this section. Neither the excavator nor the person financially responsible for the excavation will be liable for any damage to an unmarked gravity fed sanitary sewer line or unmarked storm water facility if the person doing the excavation exercises due care to protect existing facilities when there is evidence of the existence of those facilities near the proposed excavation area.

(k) An operator who does not become a member of the Notification Center as required by G.S. 87-120(b) may not recover for damages to a facility caused by an excavator who has complied with the provisions of this Article and has exercised reasonable care in the performance of the excavation or demolition. (2013-407, s. 2; 2019-189, s. 1.)