

- BEFORE THE UNDERGROUND FACILITIES DAMAGE DISPUTE BOARD -

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Request of Landmark Installations for  
Arbitration

DOCKET NO. 21-999-14  
NOTICE REGARDING REQUEST  
FOR ARBITRATION

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ISSUED: August 26, 2021

On August 24, 2021, the Public Service Commission (PSC) received the attached request for arbitration from Landmark Installations (“Landmark”). Landmark requests arbitration related to damaged lines of Taylorsville-Bennion Improvement District. This request for arbitration is governed by Utah Code Ann. § 54-8a-13, which is available at this link:

<https://le.utah.gov/xcode/Title54/Chapter8A/54-8a-S13.html>

The PSC provides administrative support to the Underground Facilities Damage Dispute Board (“Board”). Pursuant to that role, any interested party may provide additional information regarding this dispute, including whether the disputing parties agree to arbitration as required by Utah Code Ann. § 54-8a-13(5), to the PSC by **Tuesday, September 14, 2021** at [psc@utah.gov](mailto:psc@utah.gov). The PSC will forward that information to the Board and provide administrative support for the next steps pursuant to the governing statute.

This notice is being sent to the email addresses provided by Landmark, and to the physical mailing address and email address provided on the internet website of Taylorsville-Bennion Improvement District (P.O. Box 18579, Taylorsville, UT 84118 and [company@tbid.org](mailto:company@tbid.org)).

DATED at Salt Lake City, Utah, August 26, 2021.

/s/ Gary L. Widerburg  
PSC Secretary  
DW#320095

CERTIFICATE OF SERVICE

I CERTIFY that on August 26, 2021, a true and correct copy of the foregoing was delivered upon the following as indicated below:

By USPS:

Taylorsville-Bennion Improvement District  
P.O. Box 18579  
Taylorsville, UT 84118

By Email:

Jonathan Gardner ([jonathan.gardner@landmarkinstallation.com](mailto:jonathan.gardner@landmarkinstallation.com))

Taylorsville-Bennion Improvement District ([company@tbid.org](mailto:company@tbid.org))

Patricia Schmid ([pschmid@agutah.gov](mailto:pschmid@agutah.gov))

Justin Jetter ([jjetter@agutah.gov](mailto:jjetter@agutah.gov))  
Assistant Utah Attorneys General

Madison Galt ([mgalt@utah.gov](mailto:mgalt@utah.gov))  
Division of Public Utilities

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Administrative Assistant

DOCKET NO. 21-999-14

- 3 -

**ATTACHMENTS**



PublicService Commission &lt;psc@utah.gov&gt;

## Damage Dispute Board Request

1 message

**Jonathan Gardner** <jonathan.gardner@landmarkinstallation.com>  
To: psc@utah.gov

Tue, Aug 24, 2021 at 12:09 PM

Hi, I would like to formally set up a request to dispute damages to a utility line the operator of the line is refusing responsibility.

Name: Jonathan Clyde Gardner  
Company: Landmark Installations  
Operator of the Line: Taylorsville Bennion  
Date of Occurrence 07-15-2021  
Utility Hit: 8" Pvc Line

### Description of occurrence

Landmark was hired by Ervin Cable construction to bore and place conduit for google fiber at the location of [4200 S Redwood Road Taylorsville, Ut 84123](#). Landmark Located all marked utility lines before boring beneath a UDOT road. Landmark located an 8" water line at 52" believing it was the only active line in the ground due to there being only 1 Water mark in the area indicating 1 line. Landmark began to bore across the UDOT road and proceeded to go beneath the water line at a bore depth of 77". Anticipating an 17-18" clearance beneath the located 52" water line that was located. Landmark's Drill operator proceeded to pass the 1 marked water line when the drill indicated it was being forced down. Shortly after an 8" water main burst causing water to bubble up and flood the storm drains and damage the intersection. During the excavation process to access the damaged line Landmark located an old waterline at 52" that had been replaced previously by the water company (Taylorsville Bennion) and left underground resting above the active line which was located at 65". 1 water utility mark was painted on the ground but 2 water lines were underground 1 (abandoned) line rested above the 2<sup>nd</sup> active line. Landmark also discovered large pieces of asphalt that had been left underground by the water company surrounding the line. It was also discovered that a large portion of concrete surrounded an 8-10' section of pipe to the active line making the line brittle. It was determined that the asphalt and the concrete pushed up against the water line which caused it to rupture. Landmark located the Abandoned line resting above the active line, with 1 watermark painted on the ground Landmark had no reason to believe the line they located was inactive and 18" of clearance was a safe crossing distance to a 8 inch line. Landmark is claiming no responsibility or the cause of the damage. Landmark has begun paying for repairs to the roadway as this is a state road and had to be fixed and handled as an emergency situation.

Attached is Images of what occurred and proof there were multiple lines in the ground. It also contains photo evidence of landmark fulfilling every requirement it was expected to meet while Taylorsville Bennion was grossly negligent when marking there lines and installing the updated line. Taylorsville Bennion Also removed the old line and destroyed it using an excavator before anyone could get proper measurements.

Please get back to me ASAP due to the damage being a UDOT we have already paid out a large sum of money to get the road opened back up.

Thank You,  
Jonathan Gardner  
Chief Operations Officer  
Direct: 385-222-6637  
Office: 385-474-7834



 **Utah Utility Law.docx**  
3709K

## Chapter 8a Damage to Underground Utility Facilities

### 54-8a-2 Definitions.

As used in this chapter:

- (1) "Association" means two or more operators organized to receive notification of excavation activities in a specified area, as provided by Section 54-8a-9.
- (2) "Board" means the Underground Facilities Damage Dispute Board created in Section 54-8a-13.
- (3) "Emergency" means an occurrence or suspected natural gas leak necessitating immediate action to prevent or mitigate loss of, or damage to, life, health, property, or essential public services.
- (4) "Excavate" or "excavation" means an operation in which earth, rock, or other material on or below the ground is moved or displaced by tools, equipment, or explosives.
- (5) "Excavator" means any person or entity that excavates or conducts excavation activities.
- (6) "48 hours" means a 48-hour period occurring during business days which includes any day except Saturday, Sunday, or a legal holiday.
- (7) "Hand tool" means an implement:
  - (a) powered by hand; or
  - (b) designed to avoid damaging an underground facility, including a vacuum excavation tool and air knife.
- (8) "Location" means the site of a proposed area of excavation described:
  - (a)
    - (i) by street address, if available;
    - (ii) by the area at that street address to be excavated; and
    - (iii) as specified in Subsection 54-8a-4(3) or 54-8a-5(2)(b)(ii); or
  - (b) if there is no street address available, by the area of excavation using any available designations, including a nearby street or road, an intersection, GPS coordinates, or other generally accepted methods.
- (9) "Location request assignment" means a number assigned to a proposed excavation by an association or operator upon receiving notice of the proposed excavation from the excavator.
- (10)(10)
  - (a) "Operator" means a person who owns, operates, or maintains an underground facility.
  - (b) "Operator" does not include an owner of real property where underground facilities are:
    - (i) located within:
      - (A) the owner's property; or
      - (B) a public street adjacent to the owner's property, a right-of-way adjacent to the owner's property, or a public utility easement adjacent to the owner's property;
    - (ii) used exclusively to furnish services to the owner's property; and
    - (iii) maintained under the operation and control of that owner.
- (11) "Person" includes:
  - (a) an individual, government entity, corporation, partnership, association, or company; and
  - (b) the trustee, receiver, assignee, and personal representative of a person listed in Subsection (11)(a).
- (12) "Sewer lateral cleanout" means a point of access where a sewer lateral can be serviced.
- (13) "24 hours" means a 24-hour period, excluding hours occurring during a Saturday, Sunday, or a legal holiday.

- (14) "Underground facility" means personal property that is buried or placed below ground level for use in the storage or conveyance of any of the following:
- (a) water;
  - (b) sewage, including sewer laterals;
  - (c) communications, including electronic, photonic, telephonic, or telegraphic communications;
  - (d) television, cable television, or other telecommunication signals, including transmission to subscribers of video or other programming;
  - (e) electric power;
  - (f) oil, gas, or other fluid and gaseous substances;
  - (g) steam;
  - (h) slurry; or
  - (i) dangerous materials or products.

Amended by Chapter 426, 2011 General Session

**54-8a-3 Information filed with county clerk.**

- (1) An operator shall file with the county clerk of a county in which the operator has an underground facility the following:
- (a) the name of each municipality, city, or town in which the operator has an underground facility within that county;
  - (b) the operator's name;
  - (c) the title, telephone number, and address of the operator's representative designated to receive calls regarding excavation; and
  - (d) a statement concerning whether the operator is a member of an association and, if the operator is a member of an association, the name of and contact information for the association.
- (2) In a county where an association is established, the association shall file its telephone number and a list of its members who are operators with the county clerk on behalf of any participating operator.

Amended by Chapter 344, 2008 General Session

**54-8a-3.5 Excavation-related information included with construction and building permit.**

An entity issuing a permit for building or construction that may require excavation may, and is encouraged to, include a notice on or with a permit stating, "Attention, Utah law requires any excavator to notify the owner of underground facilities 48 hours before excavating and comply with Utah Code Title 54, Chapter 8a, Damage to Underground Utility Facilities."

Enacted by Chapter 344, 2008 General Session

**54-8a-4 Notice of excavation.**

- (1)**  
(a) Before excavating, an excavator shall notify each operator with an underground facility in the area of the proposed excavation. **(This was completed)**

Ticket text:

RMPSLD 00112 UTAHc 07/07/21 09:12:47 C11880348-00C NORM UPDT POLY

\* UPDATE TICKET - LOCATE AFTER 07/07/21 04:09 PM BUT BEFORE 07/09/21 04:09 PM \*

Ticket : C11880348 Rev:00C Taken: 07/07/21 09:12  
Old Tkt: A11750869 Taken: 06/25/21 16:13 Oper: \_JAIMY  
Submitted: 07/07/21 09:12 Oper: OTRAARON\_GARDNER Chan:OTR  
Legal date: 07/09/21 16:09  
Good Thru : 07/23/21 16:09 Update By: 07/20/21 17:30

State: UT Cnty: SALT LAKE Place: TAYLORSVILLE  
Subdivision:

Address : 4216  
Street : S Redwood Rd  
Side of St: Side of Lot: Digging in Rd: Y  
Svc Side of St: SEE LOCATION Depth:  
Location: CORNER LOT  
FROM THE NORTHWEST CORNER OF THE GVN ADDRESS PLS STK EAST TO THE EAST SIDE OF REDWOOD RD, WHILE STKG 10 FT INTO THE PROPERTY ON THE SOUTH SIDE OF THE ROAD FOR THE STRETCH, INCLUDING LONG XING REDWOOD RD FOR THE SAME WIDTH.

Grids : 4040A11156C 4040B11156C

P&D: N Work type: FIBER CONDUIT INSTL  
Done for : GOOGLE FIBER  
Ug/Oh/Both: U Exp/Blast: N Boring: Y Railroad: U Emergency: N Meet: N

Company : LANDMARK INSTALLATION Phone: 801-814-4155  
Co addr : 4516 S 700 E  
City : MURRAY State: UT Zip: 84107  
Caller : FIONA GARDNER Phone: 801-814-4155 Type: E  
Contact : AARON GARDNER Phone: 801-664-0982  
BestTime:  
Email : [HR@LANDMARKINSTALLATION.COM](mailto:HR@LANDMARKINSTALLATION.COM)

Members: CCUT00 CTLUT01 EXTEN FDFO MCI QGCOCL RMPSLD SLCOSL SNI  
Members: TBIMP TTM UDOTR2

- (b) The requirements of Subsection (1)(a) do not apply:
- (i) if there is an emergency;
  - (ii) while gardening; or
  - (iii) while tilling private ground.

(2) The notice required by Subsection (1) shall:

(a) be given:

(i) **by telephone;**

**This was completed and notice was given that Taylorsville Bennion had marked the line Landmark Completed**

TBIMP TAYLORSVILLE-BENNION I.D.  
07/09/21 10:00:13  
200 - MARKED  
SEWER & CULINARY WATER  
RCVR CONTACT: MARSHALL CRABTREE 801-968-9081

(ii) in person; or

(iii) by other means acceptable to each operator;

(b) be given not:

(i) less than 48 hours before excavation begins; or

(ii) more than 14 days before excavation begins; and

(c) include the proposed excavation's anticipated:

(i) **location, with reasonable specificity;**

**(Completed Marks were on the ground C011880348, Valid 7-9-2021 through 7-23-2021)**

**Landmark Completed**

Location: CORNER LOT

FROM THE NORTHWEST CORNER OF THE GVN ADDRESS PLS STK EAST TO THE EAST SIDE OF REDWOOD RD, WHILE STKG 10 FT INTO THE PROPERTY ON THE SOUTH SIDE OF THE ROAD FOR THE STRETCH, INCLUDING LONG XING REDWOOD RD FOR THE SAME WIDTH.

Work type: FIBER CONDUIT INSTL

dimensions;

(ii) type; and

(iii) duration.

(3) If the proposed excavation's anticipated location and dimensions cannot be described as required under Subsection (2)(c) or as requested in accordance with Subsection 54-8a-5(2)(b), an excavator shall outline the proposed excavation site using as a guideline the then-existing Uniform Color Code and Marking Guidelines, Appendix B, published by the Common Ground Alliance, as amended in the current version of the excavators' guide published by the statewide association established in Section 54-8a-9.

(4) If more than one excavator will operate at the same excavation site, each excavator shall provide the notice required by this section.

(5) If there is an association in the county, notice to that association constitutes notice to each operator that has facilities within the proposed excavation site.

(6)(6)

(a) Notice given under this section is valid for 14 days from the day on which the notice is given.

(b) If an excavation will continue beyond the 14-day period under Subsection (6)(a), the excavator shall provide notice of that fact at least 48 hours, but no sooner than six calendar days, before expiration of the 14-day period.



- (c) A notice under Subsection (6)(b) is valid for 14 days from the day on which the previous notice expires.

**Blue Stakes were Valid during the time of the Strike Landmark Completed**

Ticket : C11880348 Rev: 00C Taken: 07/07/21 09:12

Legal date: 07/09/21 16:09

Good Thru : 07/23/21 16:09 Update By: 07/20/21 17:30

- (d) An excavator shall give notice as provided in this Subsection (6) for the duration of the excavation.
- (7) If markings made by the operator have been disturbed so that the markings no longer identify the underground facility:
  - (a) before excavating the site an excavator shall notify:
    - (i) the association; or
    - (ii) each operator; and
  - (b) the operator shall mark the area again within 48 hours of the renotification.
- (8) An excavator may begin excavation if:
  - (a)
    - (i) all underground facilities have been:
      - (A) located; and
      - (B) marked; or

**According to the Marks all Underground Utilities were visually located.  
Power located 18"**

**1 Gas line visually located at 48" (1 mark 1 line located)**

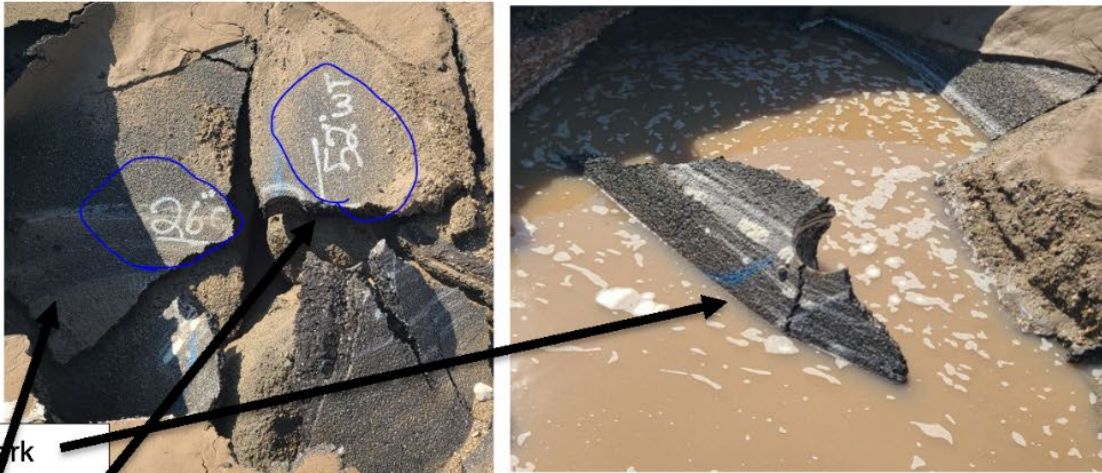
**2 Comm lines visually located at 26" (Multiple lines mark 2 line located)**

**1 Water line Visually located at 52" (1 line marked 1 line visually located)**

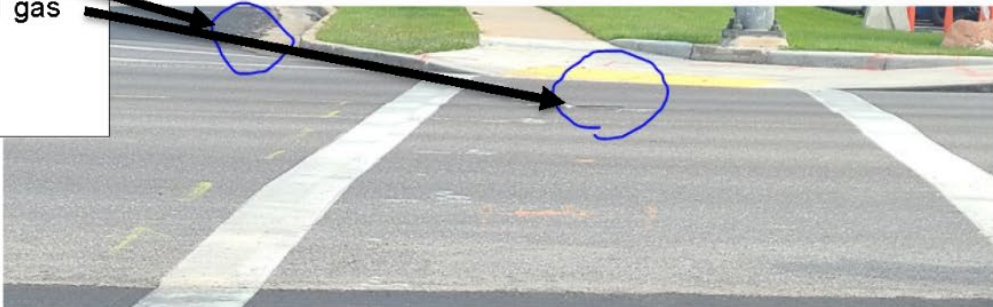
**All lines marked were visually located**



1 water Mark



1 water Mark  
26" Com  
52" deep Water  
18" Power mark  
48" deep 1 gas  
mark



- (ii) the operators have indicated that there are no underground facilities within the proposed excavation site;
- (b)
  - (i) 48 hours have elapsed from the time of initial notice; and 48 Hours had Elapses we were clear to work.
  - (ii) the excavator has not:

- (A) been notified by the operator; or
  - (B) received a request for a meeting under Subsection 54-8a-5(2); or
  - (c) 48 hours have elapsed from the time of renotification under Subsection (6).
- (9) Unless an operator remarks an area pursuant to Subsection (7), the excavator shall be responsible for the costs incurred by an operator to remark its underground facilities following the second or subsequent notice given by an excavator for a proposed excavation.

Amended by Chapter 426, 2011 General Session

**54-8a-5 Marking of underground facilities.**

- (1)
- (a) Within 48 hours of the receipt of the notice required by Section 54-8a-4, the operator shall:
    - (i) mark the location of its underground facilities in the area of the proposed excavation; or
    - (ii) notify the excavator, by telephonic or electronic message or indication at the excavation site, that the operator does not have any underground facility in the area of the proposed excavation.
  - (b) The underground facility shall be marked using as a guideline the then-existing Uniform Color Code and Marking Guidelines, Appendix B, published by the Common Ground Alliance (CGA), as amended in the current version of the excavators' guide published by the statewide association established in Section 54-8a-9.

Here is a link From CGA on how to mark multiple lines  
Taylorsville Bennion Failed to fulfill this

<https://bestpractices.commongroundalliance.com/4-Locating-and-Marking/410-Marking-Multiple-Facilities-in-the-Same-Trench#mainContentAnchor>

Below shows CGA Descriptions of how lines should be marked. Photos so 1 mark on the ground when there were 2 lines. Taylorsville Bennion did not live up to this Standard.

**4.10 Marking Multiple Facilities in the Same Trench**



**Practice Statement:**

Multiple facilities in the same trench are marked individually and with corridor markers.

**Practice Description:**

In general, the number of lines marked on the surface equals the number of lines buried below. In circumstances where the total number of lines buried in the same trench by a single facility owner/operator may not be readily known, a corridor marker is used. The corridor marker indicates the width of the facility. (See Appendix B, "Uniform Color Code and Marking Guidelines.")<sup>20</sup>



Here is a link From CGA on how to mark abandoned lines

Taylorville Bennion Failed to fulfill this. They were very aware of the abandoned line. I have a recording of Taylorville Bennion General Manager acknowledging the new the line was there and it was rerouted a few years prior. They made it clear to us that the abandoned line was there's when it was excavated.

<https://bestpractices.commongroundalliance.com/4-Locating-and-Marking/411-Abandoned-Facilities#mainContentAnchor>

## 4.11 Abandoned Facilities



### Practice Statement:

Information on abandoned facilities is provided when possible.

### Practice Description:

When the presence of an abandoned facility within an excavation site is known, an attempt is made to locate and mark the abandoned facility. When located or exposed, all abandoned facilities are treated as live facilities. Information regarding the presence or location of an abandoned facility may not be available because of updating or deletion of records. In addition, abandonment of an existing facility, damage to an abandoned facility, or limited or non-existing access points may render an abandoned line non-locatable. It should be emphasized that recommendation of this practice is not an endorsement of the maintenance of records for abandoned facilities.

CGA Best Practices Landmark Fulfilled this Tolerance Zone our marks onsite indicated we were 17-18" below the located line. See photos below Last located point was 6'5" or 77" 8' before the located water line. based on our located water line at 52" to the top of the line. We were expected to be 18"+ below the bottom of the water line when crossing the utility.

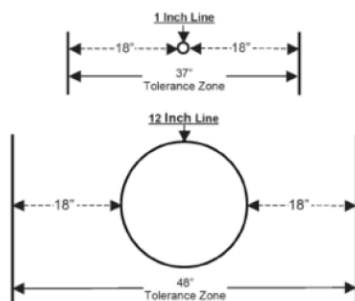
<https://bestpractices.commongroundalliance.com/Appendix-B-Uniform-Color-Code-and-Marking-Guide/Tolerance-Zone#mainContentAnchor>

## Tolerance Zone

### BEST PRACTICES CHAPTER 5 - EXCAVATION

Practice Statement 5-19: Excavation Tolerance Zone: The excavator observes a tolerance zone that is comprised of the width of the facility plus 18 in. on either side of the outside edge of the underground facility on a horizontal plane. This practice is not intended to preempt any existing state/provincial requirements that currently specify a tolerance zone of more than 18 in.

The following examples are of tolerance zones for a 1 in. and 12 in. line:<sup>40</sup>



CGA of marking a line. The size of line was not marked on the Road, nor the number of lines verified through photo evidence Bennion Taylorsville failed to mark properly. There was no evidence of the type or size sprayed on the ground anywhere. Just a mark indicating 1 line in the ground. Landmark had no reason to believe there would be an additional line see photos of marks posted above.

<https://bestpractices.commongroundalliance.com/Appendix-B-Uniform-Color-Code-and-Marking-Guide/Guidelines-for-Operator-Facility-Field-Delineation#mainContentAnchor>

## Guidelines for Operator Facility Field Delineation

### BEST PRACTICES CHAPTER 4 - LOCATING AND MARKING

#### Practice Statement 4-3:

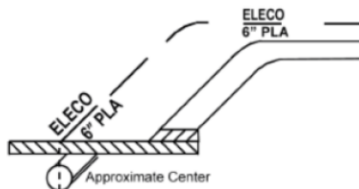
Color Code: A uniform color code and set of marking symbols is adopted nation wide.

Operator markings of facilities include the following:<sup>9</sup>

- The appropriate color for their facility type
- Their company identifier (name, initials, or abbreviation) when other companies are using the same color
- The total number of facilities and the width of each facility
- A description of the facility (HP. FO. STL. etc).

3. Changes in direction and lateral connections are clearly indicated at the point where the change in direction or connection occurs, with an arrow indicating the path of the facility. A radius is indicated with marks describing the arc. When providing offset markings (paint or stakes), show the direction of the facility and distance to the facility from the markings.

**Example:** radius



- (2)
- (a) The operator is not required to mark the underground facilities within 48 hours if:
    - (i) the proposed excavation:
      - (A) is not identified in accordance with Subsection 54-8a-4(2) or is not marked as provided in Subsection 54-8a-4(3);
      - (B) is located in a remote area;
      - (C) is an extensive excavation; or
      - (D) presents other constraints that make it unreasonably difficult for the operator to comply with the marking requirements of this section; or
    - (ii) the operator is not able to readily locate the underground facilities from the surface with standard underground detection devices.
  - (b) If the operator cannot proceed with the marking because of a situation described in Subsection (2)(a), the operator shall contact the excavator within 48 hours after the excavator's notice of excavation or request for a location request assignment made in accordance with Section 54-8a-4 and:

- (i) request a meeting at the proposed excavation site or some other mutually agreed upon location; or
  - (ii) at the operator's discretion, contact the excavator and request the proposed excavation site be outlined in accordance with Subsection 54-8a-4(3).
- (c) For a situation described under Subsection (2)(a)(i), the meeting or completed outlining of the proposed excavation site constitutes the beginning of a new 48-hour period within which the operator must begin marking the underground facilities.
- (d)(d)
- (i) For the situation described under Subsection (2)(a)(ii), the excavator and operator shall agree on a plan of excavation designed to prevent damage to the operator's underground facility.
  - (ii) Notwithstanding the agreement, the excavator shall proceed in a manner that is reasonably calculated to avoid damage to the underground facility.

- (e)(e)
  - (i) An operator need not mark or locate an underground facility the operator does not own.
  - (ii) An underground facility under Subsection (2)(e)(i) includes a water or sewer lateral or a facility running from a house to a garage or outbuilding.
- (f)(f)
  - (i) An operator may mark the location of a known facility connected to the operator's facilities that is not owned or operated by the operator.
  - (ii) Marking a known facility under Subsection (2)(f)(i) imposes no liability on the operator for the accuracy of the marking.
- (3) Each marking is valid for not more than 14 calendar days from the date notice is given.
- (4) **If multiple lines exist: There were clearly multiple lines in the ground. Regardless of the lines abandonment this line should have been marked or removed completely away from the active line.**
  - (a) the markings must indicate the number of lines; or
  - (b) all lines must be marked.



Amended by Chapter 426, 2011 General Session

**54-8a-5.5 Determining the precise location of marked underground facilities.**

- (1) An excavator may not use any power-operated or power-driven excavating or boring equipment within 24 inches of the markings made in accordance with Section 54-8a-5 unless:
  - (a) the excavator determines the exact location of the underground facility by excavating with hand tools to confirm that the excavation will not damage the underground facilities; or **This was completed by Landmark, We visually located 1 line that was on marks a line that was abandoned using Hand tools/ Hydro Vacc) There were 2 lines, the active line was below the abandoned the line. We did our due diligents and there was no reason to believe there was another line in the ground.**
  - (b) the operator provides an excavator with written or electronic notice waiving the requirement that the excavator determine the exact location of the underground facilities by excavating with hand tools.
- (2) Power-operated or power-driven excavating or boring equipment may be used for the removal of any existing pavement if there is no underground facility contained in the pavement, as

marked by the operator.

Amended by Chapter 426, 2011 General Session

**54-8a-5.8 Excavator access.**

An excavator may enter or access an owner's property or dwelling to locate a sewer lateral with the owner's permission.

Enacted by Chapter 209, 2009 General Session

**54-8a-6 Duties and liabilities of an excavator.**

(1) Damage to an underground facility by an excavator who excavates but fails to comply with Section 54-8a-4, is prima facie evidence that the excavator is liable for any damage caused by the negligence of that excavator.

**CGA Guidelines were followed up to industry best practices on Landmarks End see prior comments**

(2)

(a) An excavator is not liable for a civil penalty under this chapter if the excavator has:

- (i) given proper notice of the proposed excavation as required in this chapter;
- (ii) marked the area of the proposed excavation as required in Section 54-8a-4;
- (iii) complied with Section 54-8a-5.5; and
- (iv) complied with Section 54-8a-7.

(b) An excavator is liable for damage incurred by an operator if:

- (i) the operator complies with Section 54-8a-5; and

**Operator did not comply to there duties in marking the line proper marks, See prior comments Operator's employee destroyed the abandoned line preventing measurements from being taken.**



- (ii) the damage occurs within 24 inches of the operator's markings or the physical presence of an above ground facility, including a manhole, meter, or junction box.

Due to the extensive damage this is not able to be precisely located

Amended by Chapter 426, 2011 General Session

**54-8a-7 Notice of damage -- Repairs.**

- (1) If an excavator contacts or damages an underground facility, the excavator shall:
  - (a) immediately notify the appropriate operator and then proceed in a manner that is reasonably calculated to avoid further damage to the underground facility; and
  - (b) immediately call 911 if the excavation may result in an immediate risk to human life.
- (2) Upon receipt of notice, the operator shall immediately examine the underground facility, and, if necessary, make repairs.

Amended by Chapter 344, 2008 General Session

**54-8a-7.5 Third-party damages caused by failure to locate.**

- (1) If an operator fails to locate a facility as required by this chapter and an excavator damages another operator's facility of a similar size and appearance that fits surface markings as required by Subsection 54-8a-5(1)(b), the operator who failed to locate its facility is liable for the costs of damage to the facility caused by the excavator if:
  - (a) the excavator complies with Sections 54-8a-4, 54-8a-5.5, and 54-8a-6; and
  - (b) the excavator demonstrates that the damage is the direct result of the operator's failure to locate its facility.
- (2) An excavator who damages a third-party operator's facility as described in Subsection (1):
  - (a) shall pay for the costs of repairing the damaged facility; and
  - (b) may seek recovery of the costs of damage from the operator who failed to mark its facility.
- (3) Resolution of a dispute under this section may be in accordance with Section 54-8a-13.

Enacted by Chapter 426, 2011 General Session

**54-8a-8 Civil penalty for damage -- Exceptions -- Other remedies.**

- (1) A civil penalty may be imposed for a violation of this chapter as provided in this section.
- (2) A civil penalty under this section may be imposed on:
  - (a) any person who violates this chapter in an amount no greater than \$5,000 for each violation with a maximum civil penalty of \$100,000 per excavation; or
  - (b) an excavator who fails to provide notice of an excavation in accordance with Section 54-8a-4 in an amount no greater than \$500 in addition to the amount under Subsection (2)(a).
- (3) Notwithstanding Subsection (2)(a), a penalty under this chapter may not be imposed on an excavator or operator unless the excavator or operator fails to comply with this chapter and damages an underground facility.
- (4) The amount of a civil penalty under this section shall be made taking into consideration the following:
  - (a) the excavator's or operator's history of any prior violation or penalty;
  - (b) the seriousness of the violation;
  - (c) any discharge or pollution resulting from the damage;
  - (d) the hazard to the health or safety of the public;
  - (e) the degree of culpability and willfulness of the violation;
  - (f) any good faith of the excavator or operator; and

- (g) any other factor considered relevant, including the number of past excavations conducted by the excavator, the number of location requests made by the excavator and the number of location markings made for the excavator or by the operator.
- (5) "Good faith," as used in Subsection (4)(f), includes actions taken before the filing of an action for civil penalty under this section to:
  - (a) remedy, in whole or in part, a violation of this chapter; or
  - (b) mitigate the consequences and damages resulting from a violation of this chapter.
- (6)
  - (a) A civil penalty may not be imposed on an excavator if the damage to an underground facility results from an operator's:
    - (i) failure to mark; or
    - (ii) inaccurate marking or locating of the operator's underground facilities.
  - (b) In addition to or in lieu of part of or all of a civil penalty, the excavator or operator may be required to undertake actions that are designed to prevent future violations of this chapter, including attending safety and compliance training, improving internal monitoring and compliance processes and procedures, or any other action that may result in compliance with this chapter.
- (7) Subsection (1) does not apply to an excavation made:
  - (a) during an emergency, if reasonable precautions are taken to protect any underground facility;
  - (b) in agricultural operations;
  - (c) for the purpose of finding or extracting natural resources; or
  - (d) with hand tools on property owned or occupied by the excavator.
- (8)
  - (a) A civil penalty under this section is in addition to any damages that an operator or an excavator may seek to recover.
  - (b) In an action brought under this section, the prevailing party shall be awarded its costs and attorney fees as determined by the court.

Amended by Chapter 426, 2011 General Session

**54-8a-9 Association for mutual receipt of notice of excavation activities.**

- (1)
  - (a)
    - (i) Two or more operators may form and operate a statewide association providing for mutual receipt of notice of excavation activities.
    - (ii) If an association is operational, notice to the association shall be given pursuant to Section 54-8a-4.
  - (b)
    - (i) If an association is formed, each operator with an underground facility in the area shall become a member of the association and participate in it to:
      - (A) receive a notice of a proposed excavation submitted to the association;
      - (B) receive the services furnished by it; and
      - (C) pay its share of the cost for the service furnished.
    - (ii) If an operator does not comply with Subsection (1)(b)(i) and Section 54-8a-5, the operator is liable for damages incurred by an excavator who complies with this chapter's requirements.
  - (c) An association whose members or participants have underground facilities within a county shall:
    - (i) file a description of the geographical area served by the association; and

- (ii) file the name and address of every member and participating operator with the county clerk.
- (2) An association receiving notice as provided in Subsection 54-8a-4(1) shall:
  - (a) notify members and participants in the relevant geographic area within 24 hours after receiving notice from the person who proposes to excavate; and
  - (b) maintain a record of any notice received for a period of five years to document compliance with the requirements of this chapter.
- (3) An association contacted by a public agency to identify a utility company, in accordance with Section 54-3-29, shall provide the public agency with a list, including contact information to the extent available, of each utility company of which the association is aware that has a utility facility within the area identified by the public agency.

Amended by Chapter 272, 2010 General Session

**54-8a-9.5 Inspection of records.**

The books and records of an association shall be open to inspection by its members during normal business hours upon 48 hours advance notice.

Enacted by Chapter 198, 1998 General Session

**54-8a-10 Installation of nonmetallic facilities.**

Any operator installing a nonmetallic facility, such as a sewer, water, or fiber optic line, shall install the nonmetallic facility so that it can be located with standard underground facility detection devices or in a concrete conduit system.

Amended by Chapter 344, 2008 General Session

**54-8a-10.5 Installation and location of sewer lateral cleanouts -- Records.**

- (1)
  - (a) An operator or person installing or replacing a sewer lateral cleanout beginning August 1, 2009 shall install or replace the sewer lateral cleanout in a manner so that the lateral can be located, including:
    - (i) house sheets; or
    - (ii) electronic markers.
  - (b) An operator or person installing a sewer lateral cleanout shall notify the sewer operator of the sewer lateral cleanout location for record keeping purposes.
- (2) Beginning on August 1, 2009, a sewer operator shall maintain records identifying where all new, replaced, or contractor-identified sewer lateral cleanouts are located within the sewer operator's jurisdiction.
- (3)
  - (a) A sewer operator shall provide to an excavator information in the sewer operator's possession pertaining to a sewer lateral cleanout location within the sewer operator's jurisdiction.
  - (b) The sewer operator shall provide the information within 48 hours of the excavator's request.

Enacted by Chapter 209, 2009 General Session

**54-8a-11 Applicability of federal law.**

The following persons or entities are subject to the provisions of Title 49, Code of Federal Regulations, Part 198, Regulations for Grants to Aid State Pipeline Safety Programs, including those provisions relating to damage to underground facilities:

- (1) an operator, to the extent subject to the Pipeline Safety Improvement Act of 2002, 49 U.S.C. 60101 et seq.;
- (2) an excavator; and
- (3) a person who operates an association.

Amended by Chapter 340, 2011 General Session

**54-8a-12 Enforcement -- Attorney general.**

- (1)
  - (a) The attorney general may bring an action in the district court located in the county in which the excavation is located to enforce this chapter.
  - (b) The right of any person to bring a civil action for damage arising from an excavator's or operator's actions or conduct relating to underground facilities is not affected by:
    - (i) a proceeding commenced by the attorney general under this chapter; or
    - (ii) the imposition of a civil penalty under this chapter.
  - (c) If the attorney general does not bring an action under Subsection (1)(a), the operator or excavator may pursue any remedy, including a civil penalty.
- (2) Any civil penalty imposed and collected under this chapter shall be deposited into the General Fund.

Enacted by Chapter 344, 2008 General Session

**54-8a-13 Underground Facilities Damage Dispute Board -- Arbitration -- Relationship with Public Service Commission.**

- (1) There is created within the commission the Underground Facilities Damage Dispute Board to arbitrate a dispute arising from:
  - (a) an operator's or excavator's violation of this chapter; and
  - (b) damage caused by excavation during an emergency.
- (2) The board consists of five members appointed by the governor as follows:
  - (a) one member from a list of names provided to the governor by a group representing operators;
  - (b) one member from a list of names provided to the governor by the Associated General Contractors;
  - (c) one member from a list of names provided to the governor by Blue Stakes of Utah;
  - (d) one member from a list of names provided to the governor by the Utah Home Builders Association; and
  - (e) one member from the Division of Public Utilities.
- (3)
  - (a) A member of the board:
    - (i) shall be appointed for a three-year term; and
    - (ii) may continue to serve until the member's successor takes office.
  - (b) At the time of appointment, the governor shall stagger the terms of the members to ensure that approximately 1/3 of the members of the board are reappointed each year.
  - (c) A vacancy in the board shall be filled:
    - (i) for the unexpired term; and
    - (ii) in the same manner as the board member is initially appointed.

- (d) The board shall select an alternate for a specific board member to serve on a specific case if it becomes necessary to replace a member who has a conflict of interest because a dispute involves that member or that member's employer.
- (4) Three members of the board constitute a quorum.
- (5) The board may, upon agreement of the disputing parties, arbitrate a dispute regarding damages, not including personal injury damages, arising between:
  - (a) an operator;
  - (b) an excavator;
  - (c) a property owner; or
  - (d) any other interested party.
- (6) At least four members of the board shall be present and vote on an arbitration decision.
- (7) An arbitration before the board shall be consistent with Title 78B, Chapter 11, Utah Uniform Arbitration Act.
- (8) The prevailing party in an arbitration conducted under this section shall be awarded its costs and attorney fees in an amount determined by the board.
- (9) A member may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:
  - (a) Section 63A-3-106;
  - (b) Section 63A-3-107; and
  - (c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.
- (10) The commission shall provide administrative support to the board.

Amended by Chapter 286, 2010 General Session