

AN ACT

RELATING TO PIPELINES AND UNDERGROUND UTILITY LINES; AMENDING  
STATUTES PROVIDING FOR REGULATION OF EXCAVATION NEAR OR OF  
PIPELINES AND UNDERGROUND UTILITY LINES; INCREASING  
PENALTIES.

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. -- For purposes of 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. "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;

I. "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;

J. "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 information and distributing that information to owners and operators of pipelines and other underground facilities;

K. "person" means the legal representative of or an individual, partnership, corporation, joint venture,

state, subdivision or instrumentality of the state or an association;

L. "pipeline" means a pipeline or system of pipelines and appurtenances for the transportation or movement of any oil or gas, oil or gas products and byproducts, but does not include gathering lines or systems operated exclusively for the gathering of oil or gas, oil and gas products and their byproducts in any field or area, lines or systems constituting a part of any tank farm, plant facilities of any processing plant or underground storage projects unless it is located within a municipality or in the boundaries of an established easement or right of way or within the limits of any unincorporated city, town or village or within any designated residential or commercial area such as a subdivision, business or shopping center or community development;

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

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

O. "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.

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. -- Every 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, or 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 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 locate request;

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 by telephone the owner of any underground facilities which 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 62-14-5 NMSA 1978 (being Laws 1973, Chapter 252, Section 5, as amended) is amended to read:

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

A. Every 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 he 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 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 intended excavation area or 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 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 4. A new Section 62-14-5.1 NMSA 1978 is enacted to read:

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

- A. blue for water;
- B. green for sewer;
- C. orange for communications/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 5. Section 62-14-6 NMSA 1978 (being Laws 1973, Chapter 252, Section 6, as amended) is amended to read:

"62-14-6. LIABILITY FOR DAMAGE TO UNDERGROUND FACILITIES. --

A. If any underground facility is damaged by any person who failed to make reasonable efforts to determine its location as provided in Chapter 62, Article 14 NMSA 1978, that person shall reimburse the owner of the underground facility for the actual cost of the damage to the underground facility, including the cost of restoration of services. The person engaging in the excavation may also be liable to the owner or operator of the underground facility for the comparative negligence of the person engaging in the excavation which results in damage to the facility for an additional amount not to exceed three hundred thousand dollars (\$300,000) for each occurrence.

B. If any underground facility is damaged by any person who has made reasonable efforts to determine its location and the damaged underground facility was correctly located by the owner or operator of the underground facility as provided in Section 62-14-5 NMSA 1978, then that person causing the damage shall be liable to the owner or operator of the underground facility for only the actual cost of



damage to the underground facility, including the cost of restoration of service.

C. If any underground facility is damaged by any person who has made reasonable efforts to determine its location and damage to the underground facility is caused by the failure of the owner or operator to correctly locate that underground facility as provided in Section 62-14-5 NMSA 1978, then the person engaging in the excavation shall have no liability for the damage to that facility.

D. It is not the intent of Chapter 62, Article 14 NMSA 1978 to impose civil liability to any person beyond that provided in this section."

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

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

A. Every owner or operator of a pipeline facility shall be a member of a one-call notification system. 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 in the intended excavation area.

F. After receiving advance notice, owners and operators of pipeline facilities shall locate and mark their pipeline 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 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."

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 and whose failure contributes to the damage of any pipeline or underground utility line 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."

Section 8. ALTERNATIVE DISPUTE RESOLUTION. --The commission shall promulgate rules for voluntary alternative dispute resolution procedures available to owners or operators, excavators and other interested parties regarding disputes that cannot be resolved through consultation and negotiation arising from damage to underground facilities, including any cost or damage incurred by the owner or operator or the excavator as a result of any delay in an excavation project while an underground facility is restored, repaired or replaced. The alternative dispute resolution procedure shall not affect civil penalties levied pursuant to Section 62-14-8 NMSA 1978 or change the basis for civil liability for damages.

Section 9. EFFECTIVE DATE. --The effective date of the provisions of this act is July 1, 2001. \_\_\_\_\_

