



Oregon

Tina Kotek, Governor

Oregon Utility Notification Center
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Oregon Administrative Rules Committee Meeting

Date: Monday, May 1, 2023

Time: 1:00pm – 3:00 p.m.

Location: Ziplly Office

4155 SW Cedar Hills Blvd, Beaverton OR 97005

or

Join Zoom Meeting

<https://us06web.zoom.us/j/88083951233?pwd=Y0NldGllaVNReTV0aTVNTkE1bU5sdz09>

Meeting ID: 880 8395 1233 Passcode: 436140

A G E N D A

1. Announcements and Introductions
 - a. Announcements and Guest sign-in
 - b. Review/approve and/or amend prior Meeting Minutes from 04.04.2023.
 - c. Comments from the Chair
2. OAR Committee Updates on Rulemaking Process
 - a. Discussion of next steps for rulemaking process with changes approved by the board:
 - i. OAR 952-001-0050 (2) – relating to non-invasive excavation within a defined enclosure.
 - ii. OAR 952-001-0010(10) – defining ‘large area.’
3. Old Business
 - a. OAR Committee Review of Proposed Rulemaking
 - i. OAR 952-001-0040 – amending language for requiring excavators to pre-mark all proposed excavation in white paint.

Existing language: (1) Except as provided in section (2) of this rule, prior to notifying the Oregon Utility Notification Center, an excavator must pre-mark with the color white the immediate area of the proposed excavation within both the public rights-of-way and underground easements.

(2) An excavator need not pre-mark as required in section (1) of this rule if:

(a) The operator can determine precisely the direction, length and location of the proposed excavation by referring to a locate ticket; or

(b) Before the beginning of the proposed project, the excavator and the operator met at the construction site to exchange the information required under section (1) of this rule.

Proposed language:

(1) Any excavator providing notice of a proposed excavation to the Oregon Utility Notification Center under OAR 952-001-0050 must provide the Center with a description of the physical limits of the proposed excavation with sufficient detail to enable the operators and designated agents to ascertain the location of the proposed excavation or provide the Center with confirmation that it has provided a description to the operators and designated agents as specific in (b), (d) & (e) below. The specific location of the proposed excavation may be described in the following manner:

(a) Submission to the Oregon Utility Notification Center of GPS coordinates taken at a single point where work is planned, or GPS coordinates taken to delineate a line, multi-segment line, or polygon. When providing a single point, line, or multi-segment line, the excavator providing notice must include an area measured in feet from the coordinates that describe the work area. If a polygon is used, the proposed work area must be inside the polygon. GPS nomenclatures used for providing coordinates to the notification center must be in a format accepted by the Center;

(b) White lining on site by the excavator providing notice to delineate the physical bounds of the area where excavation will take place. For single point excavation, the area must be marked using dots, dashes, or white flags to show the operators the area of excavation. If utility markings are desired outside a white lined area, the excavator must provide clear instructions, to include the distance in feet outside the white lined area, to the notification center. For continuous excavations, such as trenching and boring, the excavator must mark the center line of excavation by the use of dots or dashes. The excavation width, in feet, must be indicated on either side of the center line in legible figures or noted in the marking instructions given to the notification Center;

(c) Submission to the Oregon Utility Notification Center of white lining to delineate the physical bounds of the area where excavation will take place that is performed by electronic means using aerial imagery. White lining performed by electronic means must meet the same requirements as listed in subdivision (b) of this subsection;

(d) Submission to the Oregon Utility Notification Center of reference to the two nearest intersecting streets, if available, or driving directions to the address of the location; or

(e) The excavator arranges to meet an operator or designated agent required to locate underground facilities at the site prior to the start of the proposed excavation and the excavator identifies for the operator or designated agent the physical limits of the proposed excavation with sufficient detail to enable the operator or designated agent to ascertain the location of the proposed excavation.

(2) In the event that a proposed excavation is planned at a single address at which there are structure(s), the area of proposed excavation may, if geographically feasible, be described by dividing the parcel or property into four quadrants from the perspective of facing the front of the property using the center of the structure as the center point of the four quadrants. If no structure exists on the property, the center of the parcel or property must be used as the center point of the four quadrants. These four quadrants must be referred to as Front Left, Front Right, Rear Left, and Rear Right. If the proposed area consists only of Front Left and Front Right quadrants, the term "Front" is sufficient. If the proposed area of excavation consists only of Rear Left and Rear Right quadrants, the term "Rear" is sufficient. If the proposed area of excavation consists only of Front Left and Rear Left quadrants, the term "Left Side" is sufficient. If the proposed area of excavation consists only of Front Right and Rear Right quadrants, the term "Right Side" is sufficient. If the proposed area of excavation includes three out of the four quadrants, the entire property may be used for the proposed excavation.

ii. OAR 952-001-0080 – amending rule to provide for design information review

Existing language: (1) Within 10 business days after a designer notifies the Oregon Utility Notification Center of a proposed project, the operator of the underground facilities must:

a. Mark within 24 inches of the outside lateral dimensions of both sides of all of its locatable underground facilities within the area of proposed excavation. All marks must

indicate the name, initials or logo of the operator of the underground facilities, and the width of the facility if it is greater than 2 inches;

b. Provide the excavator the best description available to the operator of the unlocatable underground facilities in the area of the proposed excavation including as-constructed drawings, or other facility maps that are maintained by the facility operator; or

c. Contact the person requesting design information and agree on a time, prior to the beginning of the proposed project, for exchange of the information required under subsection (a) or subsection (b) of this section of this rule.

(2) If a designer intends to perform work at multiple sites or over a large area, the designer must take reasonable steps to work with the facility operators, including preconstruction meetings, so that the operators may locate their facilities at a time reasonably in advance of the actual start of survey or design for each phase of work.

Proposed language: (1) Within 10 business days after a designer notifies the Oregon Utility Notification Center of a proposed project, the operator of the underground facilities must:

a. Mark within 24 inches of the outside lateral dimensions of both sides of all of its locatable underground facilities within the area of proposed excavation. All marks must indicate the name, initials or logo of the operator of the underground facilities, and the width of the facility if it is greater than 2 inches; or

b. Provide the excavator the best description available to the operator of the unlocatable underground facilities in the area of the proposed excavation including as-constructed drawings, or other facility maps that are maintained by the facility operator; or

c. Providing copies of the best reasonably available records by electronic message, mail, facsimile, or other delivery method. (RCW 19.122.030 (4)(b)(iii))

d. Contact the person requesting design information and agree on a time, prior to the beginning of the proposed project, for exchange of the information required under subsection (a) or subsection (b) of this section of this rule.

(2) If a designer intends to perform work at multiple sites or over a large area, the designer must take reasonable steps to work with the facility operators, including preconstruction meetings, so that the operators may locate their facilities at a time reasonably in advance of the actual start of survey or design for each phase of work.

Alternative Proposed language: (1) Within 10 business days after a designer notifies the Oregon Utility Notification Center of a proposed project, the operator of the underground facilities must:

a. Mark within 24 inches of the outside lateral dimensions of both sides of all of its ~~locatable~~ underground facilities within the area of proposed excavation. All marks must indicate the name, initials or logo of the operator of the underground facilities, and the width of the facility if it is greater than 2 inches; or

b. Provide the excavator the best description available to the operator of the ~~unlocatable~~ underground facilities in the area of the proposed excavation including as-constructed drawings, or other facility maps that are maintained by the facility operator; or

c. Contact the person requesting design information and agree on a time, prior to the beginning of the proposed project, for exchange of the information required under subsection (a) or subsection (b) of this section of this rule.

4. New Business

- a. OAR 952-001-0100 – Relating to record keeping for abandoned facilities (Kyle Thomas)
- b. Creating a damage ticket (Melanie Lewis)

Existing language: None

Proposed language: Damage Reporting: The immediate reporting to a one-call center and the facility owner/operator of any damage caused or discovered in the course of excavation or demolition work; to immediately alert the occupants of premises as to any emergency that such person may create or discover at or near such premises; to contact emergency responders, if necessary, as quickly as practical.

- c. OAR 952-001-0090 - Reducing 45-day ticket life (Jaimie Lemke)

Existing language: (23) "Ticket life" means the 45 calendar day period after an excavator provides notice to the Oregon Utility Notification Center under OAR 952-001-0050(1) and the Center opens a ticket for a locate request based on this notice.

Proposed language: (23) "Ticket life" means the **28** calendar day period after an excavator provides notice to the Oregon Utility Notification Center under OAR 952-001-0050(1) and the Center opens a ticket for a locate request based on this notice.

Notes from 4/4/23 OAR Meeting: Kevin to provide CGA information on how this will reduce damages. To be reconsidered at next meeting.

- d. OAR 952-001-0010 - define noninvasive tools (Jaimie Lemke)

Existing language: (13) "Non invasive methods" means using a practice to expose an underground facility that does not damage any part of the facility.

Proposed language: (13) "Non invasive methods" means using a practice to expose an underground facility that does not damage any part of the facility; **including the use of hand tools, air cutting, vacuum excavation or hydro vacuum excavation.**

- e. Review exemptions for sidewalk and road maintenance referenced in OAR 952-001-0010 (22) (Jaimie Lemke)

Existing language: (1) An excavator may not begin an excavation that requires notice under these rules until the excavator has received a response from each operator of underground facilities in the area of the proposed excavation, or until at least two full business days have elapsed following the day the excavator notified the Oregon Utility Notification Center. See Call Timeline table below for examples.

(2) Notwithstanding section (1) of this rule, if the excavator has agreed to an alternative markings schedule with an operator consistent with OAR 952-001-0070(2), the excavator must allow the operator to mark its facilities consistent with the parties' agreement before beginning an excavation.

(3) Once underground facilities have been marked, the excavator must:

(a) Maintain marks during the excavation period to ensure that the original marks remain effective for the life of the project or the ticket life, whichever is the shorter period;

(b) Stop excavating in the vicinity of the underground facility and notify the Oregon Utility Notification Center to have the route remarked as specified in these rules, if prior to or during the excavation process, the marking or route of any underground facility is removed or no longer visible; and

(c) Employ hand tools or other non-invasive methods either to determine the exact location of the underground facility or down to 24 inches beyond the depth of intended excavation within 24 inches of the outside dimensions of a marked underground facility.

(4) The excavator must provide such lateral and subjacent support for underground facilities as may be reasonably necessary for the protection of such facilities.

(5) When excavating using horizontal directional drilling, the excavator must visually monitor the drill head and back reamer pass through the tolerance zone.

(6) If the excavator causes or observes damage to underground facilities, the excavator must notify the operator of the underground facilities immediately. If the damage causes an emergency, or if the damage from excavation activity is to a pipeline and causes the release of

any natural gas, other gas, or hazardous liquid from the pipeline, the excavator must promptly report the release to appropriate emergency response authorities by calling the 911 emergency telephone number, and take reasonable steps to ensure the public safety. The excavator must not bury damaged underground facilities without the consent of the operator of the damaged underground facilities.

(7) If an excavator discovers underground facilities in an area where the operator of the underground facilities had previously stated there were no underground facilities, prior to continuing excavation the excavator must notify the Oregon Utility Notification Center. After providing notification, the excavator must use extreme care in the affected area.

(8) If an excavator is informed that a critical facility, as determined by the operator, is in the area of their excavation and that an operator-provided monitor is required on site during the excavation, the excavator must not begin excavation without that monitor being present or without the facility operator's consent. The scheduling and fulfillment of this monitoring must in no way interfere with or delay the work.

(9) An excavator must not begin an excavation more than 10 business days after providing notice to the Oregon Utility Notification Center of the excavation, or continue excavating at a location following expiration of its ticket life unless the excavator has re-notified the Oregon Utility Notification Center of the excavation as provided in OAR 952-001-0050.

Proposed language: Retain the above and add the following:

Facility Repair: An excavator shall delay any backfilling in the immediate area of the damaged underground facilities until the damage has been repaired, unless the operator authorizes otherwise. The repair of such damage must be performed by the operator or by qualified personnel authorized by the operator.

Concealment/Permission: In the event of any damage, dislocation, or disturbance to any underground facility, the person responsible for the excavation operations shall not conceal or attempt to conceal such damage, dislocation, or disturbance, nor shall that person attempt to make repairs to the facility unless authorized by the underground facility owner. Unreasonable

Locate Scope: If excessive and unreasonable requests for marking are made by an excavator when no excavation is taking place within fourteen (14) calendar days, the excavator may be liable to the owner or operator for the reasonable cost of such marking.

- f. OAR 952-001-0010 (8) - Review exemptions for sidewalk (Jaime Lemke)

Existing language: (8) "Excavation" means any operation in which earth, rock or other material on or below the ground is moved or otherwise displaced by any means, except sidewalk, road and ditch maintenance less than 12 inches in depth that does not lower the original grade or original ditch flow line. "Excavation" does not include the tilling of soil for agricultural purposes conducted on private property that is not within the boundaries of a recorded right-of-way or easement for underground facilities.

Proposed language: (8) "Excavation" means any operation in which earth, rock or other material on or below the ground is moved or otherwise displaced by any means, except ~~sidewalk, road and~~ ditch maintenance less than 12 inches in depth that does not lower the ~~original grade or~~ original ditch flow line. "Excavation" does not include the tilling of soil for agricultural purposes conducted on private property that is not within the boundaries of a recorded right-of-way or easement for underground facilities.

- g. OAR 952-001-0010 (22) – Review exemptions for road maintenance

Existing language: (22) "Sidewalk, road and ditch maintenance" includes, but is not limited to, ditching, grinding, paving, shoulder maintenance, surveying, or grading. Unless otherwise classified on roadway plans, parallel or lateral ditches constructed as an integral part of the graded roadbed having a continuous slope from the outer limit of the shoulder to the bottom of

the ditch to include ditch back slope within right of way will be considered to be within the roadway grading limits and will be part of the work covered by road and ditch maintenance that does not lower the original road grade or the original ditch flow line. For purposes of this definition, the phrase "original road grade" refers to the original elevation of the road before gravel, rock, asphalt, cement, or other materials were applied on the ground to construct or finish a road. For purposes of this definition, the phrase, "original ditch flow line" means the documented or calculated grade between the outlet elevation of a culvert, drainage structure, water source, or place of origin to the inlet elevation of a culvert, drainage structure, water source or place of destination. Also for purposes of this definition, "sidewalk maintenance" includes but is not limited to removal and replacement of a sidewalk that is performed less than 12 inches in depth and does not lower the original grade of the sidewalk.

Proposed language: Eliminate exemptions for sidewalk and road maintenance, continue exemption for ditch maintenance.

"Ditch maintenance" includes, maintenance that does not lower the original ditch flow line. For purposes of this definition, the phrase, "original ditch flow line" means the documented or calculated grade between the outlet elevation of a culvert, drainage structure, water source, or place of origin to the inlet elevation of a culvert, drainage structure, water source or place of destination.

- h. OAR 952-001-0070(10) - requiring new utilities to be locatable (Jaimie Lemke)

Existing language: (10) Except while making minor repairs to existing non-conductive, unlocatable facilities, an operator burying non-conductive, unlocatable facilities within the public rights-of-way or utility easements must place a tracer wire or other similar conductive marking tape or device with the facility to allow for later location and marking.

Committee discussion: Does this language provide adequate obligations for utilities to be located? Are there any known compliance issues? Has OPUC noted a deficiency in this language as a result of complaints/damages/investigations?

5. Standards Manual Revisions

- a. Complaint Process (Page 39) - Review effective enforcement for dig law violations (Jaimie Lemke)

Existing language: The complaint process is initiated by a Request for Administrative Action (RAA). The RAA procedure provides the mechanism for reporting possible violations of the Oregon excavation laws. The RAA process and explanation for how to proceed with filing a complaint is available online at www.digsafelyoregon.com or from the One Call Center at (503) 232-1987. Oregon law provides that a violation of any rule of the Oregon Utility Notification Center (OUNC) shall incur a penalty of not more than \$1,000 for the first violation and not more than \$5,000 for each subsequent violation. In addition to all other penalties provided by law, every person who intentionally violates or who intentionally procures, aids or abets in the violation of any rule of the OUNC shall incur a penalty of not more than \$5,000 for the first violation and not more than \$10,000 for each subsequent violation.

Website content: Complaint Process

If you would like to report a complaint involving possible violations of Oregon's excavation laws, please submit your detailed complaint online through the following link <https://arcg.is/1u4T1b1> or QR code (QR code displayed).

Please provide as much detail about the situation as possible, including photos, maps, and any other documentation to demonstrate what happened. The complaint process is administered by Oregon Public Utility Commission, and staff may contact you or your company's designated contact for follow-up information.

You may also submit a complaint by calling 503-378-6600, or 800-522-2404.

*Please note, do not call this number to schedule utility marking services. Those calls should go directly to 811.

Website content: OUNC Enforcement Actions

To date, the Oregon Public Utility Commission (OPUC) has enforced hundreds of violations of Oregon's excavation laws. Click here for more information about the complaint process.

Visit <http://apps.puc.state.or.us/edockets/search.asp> for the OPUC's eDocket system to search notification complaints. In order to search for information regarding violations of Oregon's excavation law, the following criteria must be selected.

The "Search Dockets" button must be selected. It is automatically selected for you as well as the "Search Only Open Dockets".

Tip: To view all records the "Search Only Open Dockets" check box needs to be UNCHECKED. From the "Category" drop down menu, select "Notification Center Complaints".

The "Company" drop down menu is not a required field. You may refine your search with a date range selection.

Click on the submit button.

Committee discussion: Inconsistencies between our published material and the website could lead to confusion by stakeholders. What information should be published in the manual? What information should be maintained online with references in the manual (to maintain current information)? Suggestions of effective enforcement to be considered:

- Ability to impose monetary penalties on any entities found to be in violation of state law;
- Ability to impose penalties that are consequential for excavation damages resulting in fatalities or severe damage to the environment;
- A record that demonstrates a balanced approach to issuing penalties and fines;
- Ability to influence behaviors from all stakeholders;
- Ability to shut down an excavator who is digging without a legitimate 811 ticket;
- Ability to revoke professional licenses for excavators;
- Ability to require training for those who are found to excavate without an 811 ticket;
- Transparency in enforcement activities and all matters associated with staffing, funding, and PHMSA review; and
- Staffing that enables timely investigation of damages and imposing enforcement actions

6. For the Good of the Order
7. Next Meeting: tbd