



DEPARTMENT OF JUSTICE
GENERAL COUNSEL DIVISION

MEMORANDUM

DATE: June 4, 2014

TO: Kevin Hennessy, Chief, Pipeline Safety
Public Utility Commission of Oregon

FROM: Johanna M. Riemenschneider, Assistant Attorney General *JMR*
Business Activities Section

SUBJECT: Locating Sewer Laterals
DOJ File No. 860500/860-500

You ask whether cities or homeowners and businesses are responsible for locating sewer laterals. This question arises because, although the vast majority of cities (and sewer districts) are willing to locate sewer laterals, there has been a handful that refused in the past. Cities in the latter category claimed that it is the responsibility of the homeowners and businesses to locate the laterals because they have legal title to the laterals. This memorandum updates and confirms our May 1, 1998 memorandum to Jack Dent, Pipeline Safety Chief, Public Utility Commission of Oregon.

You have told us that cities typically require owners of homes and businesses to install laterals to city specifications. Although protesting cities assert that the owner has legal title to the lateral, the owner in fact has no administrative or operational control over the lateral in the public right-of-way. That part of the lateral is controlled and operated by the city. The part of the lateral on private property, on the other hand, is the responsibility of the owner because the owner does have the operational and administrative control of that piece of it. Thus, you are concerned with only those parts of laterals that are in the public right-of-way.

You also point out that, as a practical matter, the owners of homes and businesses will rarely have knowledge of the route of a lateral, the expertise to locate it, or the equipment to mark the location of the lateral. On the other hand, the city, as the operator, would likely know where the lateral is, as it controlled the installation, and it would have the expertise and equipment to perform the locate.

We continue to conclude that a city or sewer district operating a sewer system is responsible for marking the sewer laterals that are in the public right-of way.

The Legislative Assembly created the Oregon Utility Notification Center (OUNC) in Chapter 691, Oregon Laws 1995. This law is now listed in the Oregon Revised Statutes (ORS) sections 757.542 to 757.544. Except as provided by law, operators of underground facilities must subscribe to the OUNC, which notifies operators of proposed excavations and requires operators

to mark their underground facilities. ORS 757.552; OAR 952-001-0070. In ORS 757.542(5), "operator" is defined as:

"any person, public utility, municipal corporation, political subdivision of the state or other person with control over underground facilities."

The Legislative Assembly used "operator" rather than "owner" because an owner may not always have control over underground facilities. It made those in control of underground facilities responsible for subscribing to the OUNC and for marking facilities, not those who happen to have legal title to those facilities.¹ Consistent with ORS 757.542(5), OUNC has further clarified the definition of "operator" to mean:

"any person, municipal corporation, political subdivision of the state with control over underground facilities. Operator includes any person, as defined in ORS 756.010, having the right to bury underground facilities in any public right-of-way, or in any utility easement."

Thus, under the above definitions, cities that have the control over or the right to bury sewers that are in the public right-of-way or in any utility easement are operators that must subscribe to and comply with the requirements of the Oregon Utility Notification Center, including the location of sewer laterals. ORS 757.557(1).

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¹ORS 757.542(6) defines "underground facilities" to include "sewers."